

When recorded, mail to:

Lehi City Recorder
153 North 100 East
Lehi City, UT 84043

Affects Parcel No(s): _____

LONG-TERM STORMWATER MANAGEMENT AGREEMENT

This Long-Term Stormwater Management Agreement ("Agreement") is made and entered into this 21st day of JUNE, 2021, by and between Lehi City, a Utah municipal corporation ("City"), and BOYEE HOLBROOK COMMERCIAL L.C., a UTAH LIMITED LIABILITY COMPANY ("Owner").

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the Lehi City Stormwater Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in *Utah Code Ann.* §§ 19-5-101, *et seq.*, as amended ("Act"); and

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner is required to build and maintain at Owner's expense a storm and surface water management facility or improvements ("Stormwater Facilities"); and

WHEREAS, the Stormwater Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference (“Development Plan”); and

WHEREAS, a summary description of all Stormwater Facilities, details and all appurtenance draining to and affecting the Stormwater Facilities and establishing the standard operation and routine maintenance procedures for the Stormwater Facilities, and control measures installed on the Property, (“Long-Term Stormwater Management Plan” or “LTSWMP”) are more particularly shown in Exhibit “B” on file with the Lehi City Recorder and,

WHEREAS, as a condition of Development Plan approval, and as required as part of the City’s Small MS4 UPDES General Permit from the State of Utah, the Owner is required to enter into this Agreement establishing a means of documenting the execution of the Long-Term Stormwater Management Plan;

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City’s approval of the Long-Term Stormwater Management Plan, and the mutual covenants contained herein, the parties agree as follows:

Section 1

Construction of Stormwater Facilities. The Owner shall, at its sole cost and expense, construct the Stormwater Facilities in accordance with the Development Plans and specifications, and any amendments thereto which have been approved by the City.

Section 2

Maintenance of Stormwater Facilities. The Owner shall, at its sole cost and expense, adequately maintain the Stormwater Facilities. Owner’s maintenance obligations shall include all system and appurtenance built to convey stormwater, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance, for purposes of this Agreement, is defined as good working condition so that the Stormwater Facilities are performing their design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Stormwater Facilities in good working condition.

Section 3

Annual Maintenance Report of Stormwater Facilities. The Owner shall, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Stormwater Facilities. The annual inspection shall cover all aspects of the Stormwater Facilities, including, but not limited to, the parking lots, structural improvements, berms, channels, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate

maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by June 30th of each year and shall be on forms acceptable to the City.

Section 4

City Oversight Inspection Authority. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Facilities upon reasonable notice not less than three (3) business days to the Owner. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection shall be to determine and ensure that the Stormwater Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Long-Term Stormwater Management Plan.

Section 5

Notice of Deficiencies. If the City finds that the Stormwater Facilities contain any defects or are not being maintained adequately, the City shall send the Owner written notice of the defects or deficiencies and provide Owner with a reasonable time, but not less than sixty (60) days, to cure such defects or deficiencies. Such notice shall be confirmed delivery to the Owner or sent certified mail to the Owner at the address listed on the records of the Utah County Tax Assessor.

Section 6

Owner to Make Repairs. The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Stormwater Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Stormwater Facilities are adequately maintained and continue to operate as designed and approved.

Section 7

City's Corrective Action Authority. In the event the Owner fails to adequately maintain the Stormwater Facilities in good working condition acceptable to the City, after due notice of the deficiencies as provided in Section 5 and failure to cure, then, upon Owner's failure to cure or correct within thirty (30) days following a second notice delivered to Owner, the City may issue a Citation punishable as a Misdemeanor in addition to any EPA fine. The City may also give written notice that the facility storm drain connection will be disconnected. Any damage resulting from the disconnection is subject to the foregoing cure periods. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Stormwater Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. The actions described in this Section are in addition to and not in lieu of any and all equitable remedies available to the City as provided by law for the Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.

Section 8

Reimbursement of Costs. In the event the City, pursuant to this Agreement, incurs any costs, or expends any funds resulting from enforcement or cost for labor, use of equipment, supplies, materials, and the like related to storm drain disconnection from the city system, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. After the thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. The Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments.

Section 9

Successor and Assigns. This Agreement shall be recorded in the Utah County Recorder's Office and the covenants and agreements contained herein shall run with the land. Whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.

Section 10

Severability Clause. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Agreement shall not be affected thereby.

Section 11

Utah Law and Venue. This Agreement shall be interpreted under the laws of the State of Utah. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Utah County, Utah.

Section 12

Indemnification. This Agreement imposes no liability of any kind whatsoever on the City, and the Owner agrees to hold the City harmless from any liability in the event the Stormwater Facilities fail to operate properly. The Owner shall indemnify and hold the City harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the City from failure of the Owner to comply with its obligations under this Agreement relating to the Stormwater Facilities.

Section 13

Amendments. This Agreement shall not be modified except by written instrument executed by the City and the Owner of the Property at the time of modification. No modification shall be effective until recorded in the Utah County Recorder's Office.

Section 14

Subordination Requirement. If there is a lien, trust deed or other property interest recorded against the Property, the trustee, lien holder, etc., shall be required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to this Agreement.

Section 15

Exhibit B. The Long-Term Stormwater Management Plan (LTSWMP) must adapt to change in good judgment when site conditions and operations change and when existing programs are ineffective. Exhibit B will not be filed with this Agreement at the County Recorder but is included by this reference and shall kept on file with the City Recorder. Revision applications must be filed with the City Stormwater Division and amended into the LTSWMP on file with the Lehi City recorder.

STORMWATER FACILITIES MAINTENANCE AGREEMENT

SO AGREED this 21st day of JUNE 20 21

PROPERTY OWNER

By: [Signature] Title: MANAGER

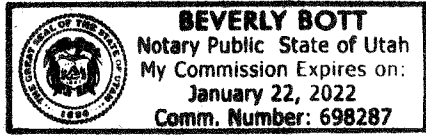
By: _____ Title: _____

STATE OF UTAH)

:SS.
COUNTY OF ~~UTAH~~ SALT LAKE)

The above instrument was acknowledged before me by Beverly Bott, this 21st day of June, 20 21.

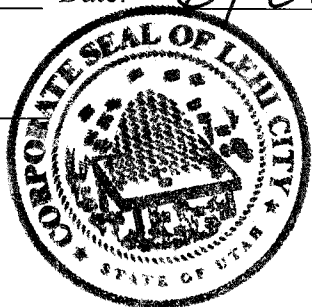
[Signature] Beverly Bott
Notary Public
Residing in: Salt Lake County
My commission expires: January 22, 2022



LEHI CITY

By: [Signature] Johnson Date: 6/22/2021
Mayor

Attest: [Signature] Teisha Wilson
City Recorder



STATE OF UTAH)

:SS.
COUNTY OF UTAH)

The above instrument was acknowledged before me by Mark Johnson, this 22 day of June, 20 21.

[Signature] Teisha Wilson
Notary Public
Residing in: Lehi
My commission expires: 06-01-25



Attachments:

Exhibit A: Plat and Legal Description

Exhibit B: Long-Term Stormwater Management Plan, on file with the Lehi City Recorder

**EXHIBIT A
LEGAL DESCRIPTION**

Proposed HOLBROOK FARMS PLAT I VILLAGE 13, being more particularly described as follows:

A portion of the NE1/4 of Section 2, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a Right-of-Way Monument on the Northerly line of State Road 85 per the Right-of-Way Plan Sheet RW-11 for UDOT Project No. MP-R399(41) 39.00 feet perpendicularly distant from engineer station 64+34, located N00°08'15"W along the Section line 21.16 feet and West 113.56 feet from the East 1/4 Corner of Section 2, T5S. R1W, SLB&M; thence Westerly along said right-of-way and along the arc of a 14,814.50 foot radius non-tangent curve to the right (radius bears: N00°46'06"E) 759.51 feet through a central angle of 02°56'15" Chord: N87°45'47"W 759.43 feet to the Southeast Corner of HOLBROOK UTAH MILITARY ACADEMY SUBDIVISION, according to the Official Plat thereof recorded February 1, 2018 as Entry No. 10597:2018 in the Office of the Utah County Recorder; thence along said plat the following nine (9) courses: 1) North 545.58 feet; 2) N89°51'06"E 4.39 feet; 3) along the arc of a curve to the left with a radius of 562.09 feet a distance of 79.90 feet through a central angle of 08°08'38" Chord: N85°46'47"E 79.83 feet; 4) N81°42'26"E 109.48 feet; 5) along the arc of a curve to the right with a radius of 738.00 feet a distance of 104.91 feet through a central angle of 08°08'41" Chord: N85°46'46"E 104.82 feet; 6) N89°51'07"E 264.49 feet; 7) S86°41'36"E 82.48 feet; 8) N89°52'23"E 80.85 feet; 9) N00°07'37"W 9.00 feet; thence N89°51'07"E 16.40 feet; thence along the arc of a curve to the right with a radius of 88.00 feet a distance of 138.25 feet through a central angle of 90°00'38" Chord: S45°08'34"E 124.46 feet to the Westerly line of 3600 West Street; thence S00°08'15"E along said street 467.70 feet to the said northerly right-of-way line of State Road 85; thence along said right-of-way the following two (2) courses: 1) N89°38'26"W 19.03 feet; 2) S43°56'02"W 75.53 feet to the point of beginning.

