

12537047  
05/17/2017 03:49 PM \$0.00  
Book - 10558 Pg - 4868-4876  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SL CO TOWNSHIP SERVICES  
NS-600  
BY: CBP, DEPUTY - W1 9 P.

[Insert Logo Here]

**When recorded, mail to:**

Salt Lake County  
Stormwater Construction Supervisor  
2001 South State Street N3-600  
Salt Lake City, Utah 84190-4050

Affects Parcel No(s): 16-31-380-016  
16-31-453-003

## STORMWATER MAINTENANCE AGREEMENT

This Stormwater Maintenance Agreement (this "Agreement") is made and entered into this 15<sup>th</sup> day of May, 2017, by and between Millcreek City, a municipal corporation of the State of Utah (the "City"); and Avk-Redwood CL SPE LLC (the "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 Millcreek 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 (the "Act"); and

WHEREAS, by contract, Salt Lake County ("County") is city's agent to provide all regulatory and management controls for the disposition or storm and surface waters, including the power to enforce the City's Ordinance; 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 (the "Property"), which property is subject to regulation by City as laid out above; 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 facilitate these anticipated changes, the Owner desires to build and maintain, at Owner's expense, storm and surface water management facilities, including structures, improvements, and/or vegetation to control the quantity and quality of the storm water (the "Stormwater Facilities"); and

WHEREAS, the Stormwater Facilities are shown in the final site plan or subdivision approved for the Property, in any related engineering drawings, and in any amendments thereto, which plans and drawings are on file in the office of the City's agent's Planning and Development Services Division, and are hereby incorporated herein by this reference (the "Development Plan"); and

WHEREAS, a detailed description of the Stormwater Facilities, which includes the operation and routine maintenance procedures required to enable the Stormwater Facilities to perform their designed functions (the "Stormwater Management Plan"), is attached hereto as Exhibit "B" and is incorporated herein by this reference; and

WHEREAS, as a condition of the Development Plan approval, and as required by the Jordan Valley Municipalities Permit No. UTS000001 ("UPDES Permit") from the State of Utah, Owner is required to enter into this Agreement establishing a means of documenting the execution of the Stormwater Maintenance Plan.

### **AGREEMENT**

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 Stormwater Maintenance Plan through its agent, County, 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 strict accordance with the Development Plan, specifications, and any amendments thereto which have been approved by the City or its agent.

#### **SECTION 2**

**Maintenance of Stormwater Facilities.** The Owner shall, at its sole cost and expense, operate and maintain the Stormwater Facilities in strict accordance with the Stormwater Maintenance Plan. Owner's maintenance obligations shall be limited to structures, systems, and appurtenances on Owner's land, including all system and appurtenance built to convey stormwater, as well as all structures, improvements, and vegetation provided solely to control the quantity and quality of the stormwater. 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.** The Owner shall, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to City's agent 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 July 31, of each year and shall be in a form acceptable to the City's agent.

#### SECTION 4

**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 to the Owner. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City or its agent. The purpose of the inspection shall be to determine and ensure that the Stormwater Facilities are adequately maintained, are continuing to perform in an adequate manner, and are in compliance with all applicable laws, regulations, rules, and ordinances, as well as the Stormwater Maintenance Plan.

#### SECTION 5

**Notice of Deficiencies.** If the City or its agent finds the Stormwater Facilities contain any defects or are not being maintained adequately, the City or its agent shall send the Owner written notice of the defects or deficiencies and provide the Owner with reasonable time to cure such defects or deficiencies, as provided in Millcreek City Ordinances Section 17.22. Such notice shall be confirmed delivery to the Owner or sent certified mail to the Owner at the Property address.

#### 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 or its agent within the required cure period to ensure the Stormwater Facilities are adequately maintained and continue to operate as designed and approved.

#### SECTION 7

**Corrective Action.** In the event the Owner fails to adequately maintain the Stormwater Facilities in good working condition acceptable to the City and its agent, the City or its agent may proceed with any enforcement mechanism provided in Millcreek City Ordinance Section 17.22. The City or its agent may also give written notice that the Stormwater Facilities will be disconnected from the City's municipal separate storm sewer system. Any damage resulting from the disconnected system will be the Owner's responsibility. It is expressly understood and agreed that neither the City nor its agent are under any 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 or its agent. The actions described in this Section are in addition to and not in lieu of the legal remedies available to the City as provided by law for 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 or its agent, 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's municipal separate storm sewer system, the Owner shall reimburse the City or its agent upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City or its agent. After said thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. Owner shall also be liable for any collection costs, including

attorney's fees and court costs, incurred by the City or its agent in collection of delinquent payments. The Owner hereby authorizes the City or its agent to assess any of the above-described costs, if remained unpaid, by recording a lien against the Property.

#### SECTION 9

**Successors and Assigns.** This Agreement shall be recorded in the office of the County Recorder and the covenants and agreements contained herein shall run with the land and 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. Suits for any claims or for any breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Salt Lake County, Utah.

#### SECTION 12

**Indemnification.** This Agreement imposes no liability of any kind whatsoever on the City or its agent. The Owner hereby agrees to indemnify and hold the City and its officers, employees, agents and representatives from and against all actions, claims, lawsuits, proceedings, liability, damages, losses, and expenses (including attorneys' fees and court costs) that result from the performance of this agreement, but only to the extent the same are caused by any negligent or wrongful act or omissions of the Owner, and the Owner's officers, employees, agents, and representatives.

#### 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, and no modification shall be effective until recorded in the office of the County Recorder.

#### 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.~~ **Intentionally Omitted**

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have signed and subscribed their names hereon and have caused this Agreement to be duly executed as of the day and year first set forth above.

**OWNER**

By: *[Handwritten Signature]*  
Title: *Vice President, Auburn Group LLC*

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH                    )  
                                              : ss.  
COUNTY OF SALT LAKE    )

PLEASE SEE ATTACHED  
FORM FROM NOTARY PUBLIC

The above instrument was acknowledged before me by \_\_\_\_\_,  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County

COMMISSION SIGNATURE  
(INCLUDE ONLY IF NECESSARY)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Clara -----)


On May 15, 2017 before me, Vikal Patel, Notary Public -----  
(insert name and title of the officer)

personally appeared Linton Young -----

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

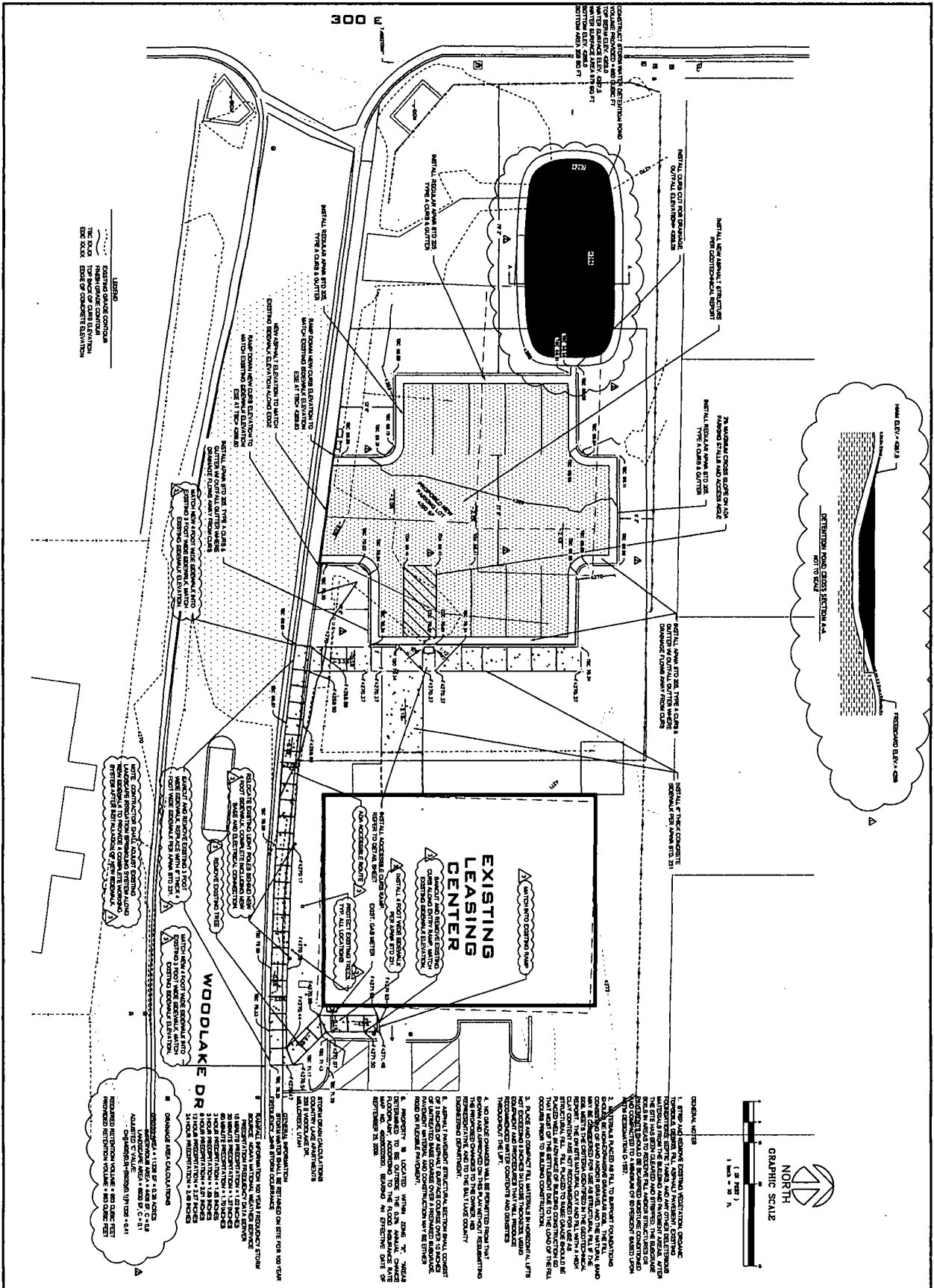
Signature 



(Seal)

**ATTACHMENTS:**

- Exhibit A (Plat and Legal Description)**
- Exhibit B (Stormwater Management Plan)**
- Exhibit C (8.5" x 11" Grading and Drainage plan)**



SHEET C2-4  
 PART 4  
 1/2" = 10' SCALE  
 1/4" = 10' SCALE  
 1/8" = 10' SCALE

**GRADING & DRAINAGE PLAN**  
**COUNTRY LAKE APARTMENTS**  
**335 E WOODLAKE DR., MILLCREEK, UT**

**BUSH & GUDGELL, INC.**  
 Engineers - Planners - Surveyors  
 200 East Telemade Sub 84  
 St. George, Utah 84770  
 Phone (435) 673-2237 / Fax (435) 673-3161  
 www.bushandgudgell.com

NO.	DATE	DESCRIPTION
1	11-20-23	FOR PERMITS
2	11-20-23	FOR PERMITS
3	11-20-23	FOR PERMITS
4	11-20-23	FOR PERMITS
5	11-20-23	FOR PERMITS
6	11-20-23	FOR PERMITS
7	11-20-23	FOR PERMITS
8	11-20-23	FOR PERMITS
9	11-20-23	FOR PERMITS
10	11-20-23	FOR PERMITS





**EXHIBIT A**

**LEGAL DESCRIPTION**

The real property located in the State of Utah, County of Salt Lake described as follows:

**Parcel 1:**

Beginning at a point which is South 0°02'03" West 108.80 feet and South 82°26'00" East 106.77 feet from the Northwest corner of Lot 7, Block 7, Ten Acre Plat "A", Big Field Survey; and running thence South 82°26'00" East 115.00 feet; thence South 149.03 feet; thence South 89°58'58" West 114.00 feet; thence North 164.21 feet to the point of beginning.

**Parcel 2:**

Beginning at a point South 0°02'03" West 57.35 feet from the Southwest corner of Lot 8, Block 7, Ten Acre Plat "A", Big Field Survey; and running thence South 82°26' East 160.25 feet; thence North 78.47 feet; thence North 89°59'42" East 216.45 feet; thence North 1°21' East 91.69 feet; thence North 0°33'10" East 132.59 feet; thence South 89°59'45" East 1.95 feet; thence North 1°22'28" East 173.69 feet; thence North 79°28'13" West 132.65 feet; thence North 0°31'34" East 151.87 feet to the North line of Lot 8, Block 7, Ten Acre Plat "A"; thence North 89°58'52" East along said North line 206.92 feet; thence South 0°01'11" West 82.50 feet; thence South 66°19'14" East 124.37 feet; thence North 89°59'12" East 149.86 feet; thence South 00°00'36" West 161.27 feet; thence South 65°06'10" East 86.97 feet; thence North 83°09'50" East 164.13 feet; thence South 0°21'32" West 368.41 feet; thence South 0°12'35" West 452.69 feet; thence South 89°36'38" West 192.70 feet; thence North 0°00'36" West 271.94 feet; thence South 89°58'58" West 551.86 feet; thence North 149.03 feet; thence North 82°26' West 221.77 feet; thence North 0°02'03" East 51.45 feet to the point of beginning.

**Parcels 3 & 4:**

A parcel of land as shown as Parcel 3, in Special Warranty Deed, recorded November 4, 2010, as Entry No. 11068482, in Book 9876, at Page 2990, official records, and a parcel of land as shown in Personal Representative's Deed, recorded February 12, 2015, as Entry No. 11991850, in Book 10295, at Page 5877, official records; being a part of Lot 7, Block 7, Ten Acre Plat "A", Big Field Survey; being in County of Salt Lake, State of Utah, being more particularly described as follows:

Beginning at the Northwest corner of said Lot 7, said point also being South 00°01'49" West (Record = South 00°02'03" West) 1181.85 feet and North 89°59'02" East (Record = North 89°59'42" East) 33.00 feet, from a found centerline monument located at the intersection of 3300 South and 300 East; thence running North 89°59'02" East (Record=North 89°59'42" East) 158.82 feet; thence South 00°00'13" East (Record = South) 78.49 feet; thence North 82°26'13" West (Record= North 82°26' West) 160.25 feet, to the East line of 300 East Street; thence North 00°01'49" East (Record= North 00°02'03" East) 57.35 feet, to the point of beginning.