

**POST-CONSTRUCTION STORMWATER CONTROL  
OPERATIONS AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT** is made and entered into this 29th day of September, 2008, by and between CH Four Commercial Park No. 3 Owners Association, Inc., (hereinafter the "Landowner"), and the City of Grand Junction, Colorado (hereinafter "Municipality");

**RECITALS**

A. The Landowner is the owner of the following real property:

Tract A of CH Four Commercial Park – Filing No. 3, Mesa County, Colorado

Hereinafter referred to as "the Property."

B. The Landowner is developing the Property and is in the final acceptance stage with the Municipality;

C. The Municipality and the Landowner, on behalf of all successors and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site stormwater Best Management Practices be constructed and maintained on the Property.

D. For the purposes of this Agreement, the following definitions shall apply:

BMP – "Best Management Practice;" activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Municipal Stormwater Pollution Prevention Ordinance, including, but not limited to, infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, grassed swales, forested buffers, sand filters and detention basins.

E. As part of the approval of the development of the Property, the Municipality has reviewed and approved a Final Drainage Report dated May 17, 2005 and Addendum dated 30<sup>th</sup> of September, 2008 (collectively, Final Drainage Report) which will implement Post-Construction Storm Water Management BMPs required by the Municipal Stormwater Pollution Prevention Ordinance.

F. The purpose of this Agreement is to provide for the adequate maintenance, operation and repair of the stormwater management facilities, in perpetuity, by the Landowner or the owners of the properties served by the BMP(s).

G. The Landowner desires to subject and place upon the Property the covenants and servitudes set forth herein which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives,

successors and assigns, and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and the following terms and conditions, the parties hereto agree as follows:

1. The BMPs shall be constructed by the Landowner in accordance with the plans and specifications shown and described in the Final Drainage Report.

2. The Landowner shall operate and maintain in perpetuity the BMP(s) as shown and described on the Final Drainage Report in good working order as reasonably determined by the Municipality and in accordance with the specific maintenance requirements noted on the Final Drainage Report. The Landowner shall cause the BMP(s) to be inspected annually by a qualified erosion control specialist or other qualified professional to ensure good working order and shall send a report from said inspection to the Municipality annually, on or before December 31st of each year.

3. The Landowner hereby grants a perpetual easement to the Municipality, its authorized agents and employees, to enter upon the Property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. The Municipality shall make reasonable efforts to notify the Landowner prior to entering the Property.

4. In the event the Landowner fails to operate and maintain the BMP(s) as shown and described on the Final Drainage Report in good working order as reasonably determined by the Municipality, the Municipality or its representatives may enter upon the Property and take action to maintain and/or repair and/or reconstruct said BMP(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.

5. In the event the Municipality, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all reasonable expenses (direct and indirect) incurred within 30 days of receipt of invoice from the Municipality.

6. This Agreement shall not be deemed to create or affect any liability of any party for damage alleged to result from or be caused by stormwater runoff.

7. The Municipality may conduct routine inspections of the BMP(s) to verify their continued adequate functioning. The Municipality may also inspect the BMP(s) in the event of reported or suspected failure to function adequately. These inspection activities shall not absolve the Landowner of its obligation to maintain the BMPs in perpetuity or to provide the Municipality with the required Landowner inspection report.

8. This Agreement shall not be interpreted or deemed to limit the authority, privilege or right of the Municipality pursuant to any duly enacted ordinance of the Municipality, charter provision, statute or any duly granted federal or state water discharge permit.

9. Notifications and reports made under this Agreement shall be made in writing and hand-delivered or sent by United States mail, postage prepaid, first class, certified return receipt requested, addressed to the City at:

Mr. Chris Spears  
Street Systems Supervisor  
250 N 5<sup>th</sup> Street  
Grand Junction, CO 81501

and to the Landowner at:

Mr. Ben Hill, President  
CH Four Commercial Park No. 3 Owners Association, Inc.  
1204 N. 7<sup>th</sup> Street  
Grand Junction, CO 81501

The addresses and persons set forth above may be changed by giving notice to the other party in accordance with this section.

10. This Agreement shall be recorded in the records of the Clerk and Recorder of Mesa County, Colorado and shall, once recorded, constitute a covenant running with the Property and shall be an equitable servitude binding on present and subsequent owners of the Property in whole or in part, and their administrators, executors, assigns, heirs and successors in interest, in perpetuity.

ATTEST:

For the City of Grand Junction:

  
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For the Landowner:

CH Four Commercial Park No. 3 Owners  
Association, Inc.

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

Ben D. Hill, President

ATTEST:

Susan M. Mueller (City of Grand Junction)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2008, by \_\_\_\_\_ for the City of Grand Junction.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2008, by Ben D. Hill, as President of CH Four Commercial Park No. 3 Owners Association, Inc..

Witness my hand and official seal.

My commission expires: 11-09-2009

Kathleen A. Bowen  
Notary Public

