

POST-CONSTRUCTION STORMWATER CONTROL OPERATIONS AND MAINTENANCE AGREEMENT

Agreement No. 2007-331

THIS AGREEMENT ("Agreement") is made and entered into this 16th day of November, 2009, by and between Dillon Real Estate Inc. Co., a Kansas corporation, (hereinafter the "Landowner"), and the City of Grand Junction, Colorado (hereinafter the "City");

RECITALS

The Landowner is the owner of the following real property (hereinafter referred to as "the Property").

If the Property is a single parcel:

Street Address: 630 24th Road

Parcel Number: 2945-043-04-007

If the Property is a subdivision or planned unit development:

Development Name: N/A

The Landowner is developing the Property.

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

For the purposes of this Agreement, the following definition 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.

As part of the approval of the development of the property, the City will review and approve a Final Drainage Report which will implement Post-Construction Storm Water Management BMPs required by the Municipal Stormwater Pollution Prevention Ordinance.

The purpose of this Agreement is to insure the adequate maintenance, operation and repair of the storm water management facilities, in perpetuity, by the owners of the property served by these facilities.

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 interests 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 promises, 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 City and in accordance with the specific maintenance requirements noted on the Final Drainage Report.
3. The Landowner shall cause the BMP(s) to be inspected annually by a Qualified Erosion Control Specialist to ensure good working order and shall send a report from said inspection to the City annually, on or before December 31st of each year.
4. The Landowner hereby grants a perpetual easement to the City, 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 City shall make reasonable efforts to notify the Landowner prior to entering the Property.
5. 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 City, the City 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 City 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 City.
6. In the event the City, 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 City for all reasonable expenses (direct and indirect) incurred within 10 days of receipt of invoice from the City.
7. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner. This Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
8. The City may conduct routine inspections of the BMP(s) to verify their continued adequate functioning. The City 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 City with the required Landowner inspection report.

9. This Agreement shall not be interpreted or deemed to limit the authority, privilege or right of the City pursuant to any duly enacted ordinance of the City, charter provision, statute or any duly granted federal or state water discharge permit.
10. The City grants authority to the 5-2-1 Drainage Authority to administer the provisions of this agreement on the City's behalf.
11. Notifications and reports made under this Agreement shall be provided to the City at:

5-2-1 Drainage Authority
P.O. Box 3389
Grand Junction, CO 81502

and to the Landowner at:

King Soopers
65 Tejon Street
Denver, Colorado 80223
(303) 778-3346

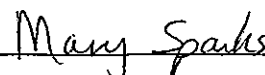
This Agreement shall be recorded in the Mesa County, Colorado land records and shall, once recorded, constitute a covenant running with the Property and shall be an equitable servitude binding on present and subsequent owners of the Property in whole or in part, and their administrators, executors, assigns,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

WITNESS the following signatures and seals:

FOR THE CITY OF GRAND JUNCTION:

By: 
Tim Moore, Public Works and Planning Director

ATTEST:


Mary Sparks Sr. Administrative Assistant
Printed Name & Title

LANDOWNER: Dillon Real Estate Inc. Co., a Kansas corporation (SEAL – if incorporated)

By: *Paul W. Heldman*

Printed name and title: Paul W. Heldman
Vice President



COUNTY OF OHIO, STATE OF HAMILTON

I, Jennifer K. Gothard, a Notary Public in and for the County and State
aforesaid, whose commission expires on the _____ day of _____, 20____, do
hereby certify that Paul W. Heldman, Vice President of Dillon Real Estate Co., Inc., a Kansas corporation,
whose name(s) is/are signed to the foregoing Agreement has/have acknowledged the same before
me in my said County and State.

Given under my hand this 17th day of November, 2009.

Jennifer K. Gothard
Notary Public

(SEAL)



JENNIFER K. GOTHARD
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Date. Section 147.03 O.R.C.