

POST-CONSTRUCTION STORMWATER CONTROL OPERATIONS AND MAINTENANCE AGREEMENT

Agreement No. 2011-GJ-009

THIS AGREEMENT ("Agreement") is made and entered into this 11 day of May, 2011, by and between BCP GRAND JUNCTION, LLC, (hereinafter the "Landowner"), and the 5-2-1 Drainage Authority (hereinafter the "Authority") as a representative of the City of Grand Junction ("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: 2139-2145 Bond Street

Parcel Number: American Tire Distribution

If the Property is a subdivision or planned unit development:

Development Name: JOB SITE 2 SUBDIVISION - AMERICAN TIRE DISTRIBUTORS

The Landowner is developing the Property.

The Authority and the Landowner, on behalf of all successors and assigns, agree that the health, safety, and welfare of the residents and the protection and maintenance of water quality require that on-site stormwater Best Management Practices be constructed and maintained on the Property. The Landowner acknowledges the 521 Drainage Authority has been granted legal authority by the City to execute this Agreement and perform the activities identified in this agreement within the jurisdiction of the City.

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 Authority will review and approve a Final Drainage Report which will implement Post-Construction Storm Water Management BMPs required by the Mesa County/City of Grand Junction Stormwater Management Manual.

RECEPTION #: 2572797, BK 5159 PG 65 05/20/2011 at 09:00:51 AM, 1 OF 4, R \$25.00 S \$1.00 Shella Reiner, Mesa County, CO CLERK AND RECORDER

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 Authority 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 Authority annually, on or before December 31st of each year.
4. The Landowner hereby grants a perpetual easement to the Authority, 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 Authority 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 Authority, the Authority and the City 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 Authority and the City are 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 Authority and the City.
6. In the event the Authority and 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 Authority and the City for all reasonable expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Authority and 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 Authority may conduct routine inspections of the BMP(s) to verify their continued adequate functioning. The Authority 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 Authority with the required Landowner inspection report.
9. This Agreement shall not be interpreted or deemed to limit the authority, privilege or right of the Authority and the City pursuant to any duly enacted ordinance of the Authority or the City, charter provision, statute or any duly granted federal or state water discharge permit.
10. Notifications and reports made under this Agreement shall be provided to the Authority at:

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

and to the Landowner at:

4904 WATERS EDGE DRIVE
SUITE 160
RALEIGH, NC 27607
ATTN: LINDSAY SEWELL

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 AUTHORITY:

By: Jim Shanks

Jim Shanks, Manager

Tim Moore

ATTEST:

Mary Sparks

Sr. Admin Assistant

Printed Name & Title

LANDOWNER: BCP GRAND JUNCTION, LLC (SEAL - if incorporated)

By: J.M. Miley

Printed name and title: JOSEPH M. MCSWEENEY / MEMBER

DATE: 4-18-11

COUNTY OF Cherokee, STATE OF Georgia

I, Christy L. White, a Notary Public in and for the County and State aforesaid, whose commission expires on the 19th day of December, 2014, do hereby certify that Joseph M. McSweeney 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 18th day of April, 2011.

Christy L. White
Notary Public

(SEAL)

