

POST-CONSTRUCTION STORMWATER CONTROL OPERATIONS AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this 4TH day of SEPT., 2009, by and between GEMINI DEVELOPMENT, LLC ("Developer") and the City of Grand Junction, Colorado ("Municipality");

RECITALS

The Landowner is the owner of the following real property:

LOOKOUT POINT SUBDIVISION
2953 Highway 50

LOT 3, Replat of Buena Vista Subdivision, Mesa County, Colorado, Together with the vacated right-of-way (Ord. # 4025)

hereinafter referred to as "the Property."

The Developer is developing the Property, intending ultimately to convey homesites to third parties and common areas to a homeowners association (the HOA@). The Property might actually be acquired and developed by a third party after all subdivision approvals are in place but before subdivision improvements are made. The HOA and future owners of the Property in whole or in part are expected to eventually bear full responsibility under this Agreement as set forth below.

The Municipality and the Developer, 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.

As part of the approval of the development of the property, the Municipality 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 then-current owners of the property served by these facilities.

The Developer and the Municipality desire 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 assign, and shall inure to the benefit of each owner thereof.

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

1. 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.

Obligated Party "Obligated Party" shall mean, at any time, the person or persons then holding title to the Property or any part thereof. Once common areas have been conveyed to it, the HOA shall be included as an Obligated Party with respect to all BMP except grade established on individual building sites pursuant to the BMP.
2. The BMP shall be constructed by the Developer in accordance with the plans and specifications shown and described in the Final Drainage Report.
3. The Obligated Party shall operate and maintain in perpetuity the BMP 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. In the event the Obligated Party fails to operate and maintain the BMP 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. Except in cases of emergency, the Municipality will give to the HOA notice and an opportunity to cure which are reasonable under the circumstances. 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.
4. The Developer 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 whenever it deems necessary. The Municipality shall make reasonable efforts to notify the Obligated Party prior to entering the Property.
5. The Obligated Party shall cause the BMP 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 Municipality annually, on or before December 31st of each year. If the Obligated Party fails to satisfy this inspection and reporting requirement 3, the Municipality may have it performed at the Obligated Party's expense.

6. In the event the Municipality, pursuant to this Agreement, performs work of any nature, including inspection and reporting, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Obligated Party shall reimburse the Municipality for all reasonable expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Municipality.
7. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP by the Obligated Party. This Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
8. The Municipality may conduct routine inspections of the BMP to verify their continued adequate functioning. The Municipality may also inspect the BMP in the event of reported or suspected failure to function adequately. These inspection activities shall not absolve the Obligated Party of its obligation to maintain the BMP in perpetuity or to provide the Municipality with the required Obligated Party inspection report.
9. 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.
10. Notifications and reports made under this Agreement shall be provided to the City at:

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

and to the Obligated Party at the address furnished in writing to the City from time to time.

11. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements of the parties whether oral or written. No provision of this Agreement may be modified, except by a single written instrument duly signed by each of the parties hereto.
12. Attorney Fees. Should litigation be required to interpret or enforce the terms of this agreement, the prevailing party shall be entitled to an award of its/his/her attorney's fees in addition to any other relief it receives.

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, at any time, an equitable servitude binding on the then-current owners of the Property, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the City of Grand Junction:

[Handwritten signature]

(SEAL)

For the Landowner:

Gemini Developmeent, LLC

[Handwritten signature]

Jay Kee Jacobson, Manager

ATTEST:

_____ (City of Grand Junction)

I, Louise Doyal, a Notary Public in and for the County and State aforesaid, whose commission expires on the 9th day of September, 2010 do hereby certify that Jay Kee Jacobson whose name(s) is/are signed to the foregoing Agreement bearing date of the 4th day of Sept, 2009, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS 4th day of Sept, 2009.

[Handwritten signature]

NOTARY PUBLIC

(SEAL)

LOUISE DOYAL NOTARY PUBLIC STATE OF COLORADO
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