

E



ENT 31711:2019 PG 1 of 17
JEFFERY SMITH
UTAH COUNTY RECORDER
2019 Apr 16 3:13 pm FEE 0.00 BY SW
RECORDED FOR AMERICAN FORK CITY

AN ORDINANCE

AN ORDINANCE AMENDING SECTION 1.12.010 OF THE REVISED ORDINANCES OF AMERICAN FORK CITY 1985, AS AMENDED, ANNEXING CERTAIN PROPERTIES TO AMERICAN FORK CITY AND ESTABLISHING ZONING CLASSIFICATION FOR SAID PROPERTY.

BE IT ORDAINED BY THE CITY COUNCIL OF AMERICAN FORK CITY, UTAH:

SECTION I. That the following described real property be, and the same is hereby annexed to American Fork City, Utah, the corporate limits of said city are hereby extended to include said described property, and said property is hereby declared to be part of American Fork City and shall henceforth be subject to all of the ordinances and regulations thereof, and that the description of the boundaries of American Fork City as set forth in Section 1.12.010 of the revised ordinances be amended to include the following described property to-wit:

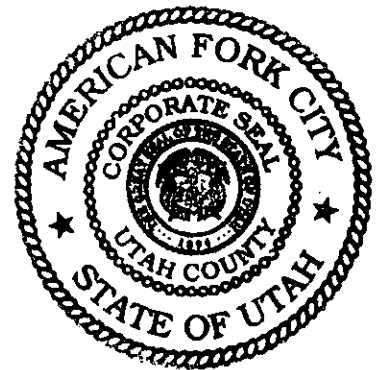
ORDINANCE NO. 2019-02-03
AF21 ANNEXATION
(850 WEST 500 SOUTH)
SEE ATTACHMENT 'A'

SECTION II. That the territory annexed under Section 1 above is hereby classified into the Transit Oriented Development (TOD) Zone and subject to the terms and conditions of the AF21 Annexation Agreement as provided in Attachment 'B'.

SECTION III. This ordinance shall take effect upon its passage and first publication.

PASSED by the City Council of American Fork this 12 day of February, 2019.

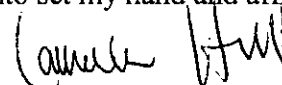

Bradley J. Frost, Mayor



ATTEST:

State of Utah
County of Utah

I, ~~Terilyn Lurker~~ ^{Lauralee Hill Deputy} City Recorder of American Fork City, Utah, do hereby certify the above and foregoing to be a full, true and correct copy of an ordinance amending Section 1.12.010 of the revised ordinances of American Fork City 1985, Amended, annexing certain properties to American Fork and establishing zoning classification for said property. In witness whereof, I hereunto set my hand and affix the corporate seal of American Fork, Utah this 12 day of February, 2019.


Lauralee Hill, Deputy Recorder

ATTACHMENT "A"

SURVEYOR'S CERTIFICATE

I, PATRICK M. HARRIS DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NUMBER 286882 IN ACCORDANCE WITH TITLE 58, CHAPTER 22 OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT, UTAH CODE ANNOTATED, 1953 AMENDED. I FURTHER CERTIFY THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO AMERICAN FORK CITY, UTAH COUNTY, UTAH.

BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS N00°01'56"E 940.50 FEET AND WEST 32.32 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE NORTH 89°11'40" WEST 240.61 FEET;

THENCE SOUTH 89°58'34" WEST 288.31 FEET;

THENCE NORTH 00°49'10" EAST 299.78 FEET;

THENCE NORTH 02°32'00" EAST 104.92 FEET;

THENCE NORTH 00°42'25" EAST 394.38 FEET;

THENCE NORTH 01°03'27" EAST 349.48 FEET;

THENCE NORTH 00°53'51" EAST 480.46 FEET;

THENCE ALONG THE EXISTING AMERICAN FORK CITY BOUNDARY THE FOLLOWING COURSE:

1) SOUTH 89°22'15" EAST 530.71 FEET ALONG THE 7750 NORTH ANNEXATION,

THENCE ALONG THE EXISTING AMERICAN FORK CITY BOUNDARY THE FOLLOWING TWO (2) COURSES:

1) SOUTH 01°00'42" WEST 454.84 FEET ALONG THE HOLINDRAKE AND BIRD ANNEXATION, AND

2) SOUTH 01°30'57" WEST 369.82 FEET ALONG THE HOLINDRAKE AND BIRD ANNEXATION

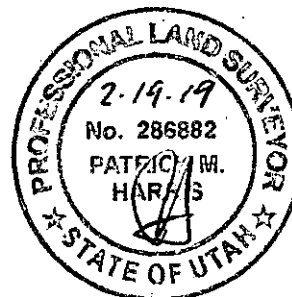
THENCE SOUTH 00°50'20" WEST 801.79 FEET TO THE POINT OF BEGINNING.

ANNEXATION PARCEL CONTAINING 859,591 SF OR 19.73 ACRES.

BASIS OF BEARING: NORTH 89°52'20" EAST ALONG THE SECTION LINE BETWEEN THE SOUTHEAST AND SOUTH QUARTER CORNER OF SAID SECTION.



SURVEYOR: PATRICK M. HARRIS



FEB. 19, 2019

DATE

ANNEXATION AGREEMENT
(*AF21 Annexation*)

This Agreement, made and entered into this 12 day of February, 2016, by and between The City of American Fork, Utah, a Utah Municipal Corporation (hereafter referred to as "City") and AF 21, LLC, a Utah Limited Liability Company, (hereafter referred to as "Applicants"), is based on the following:

RECITALS

WHEREAS, Applicants are the owners of a parcel of privately-owned real property constituting the entirety of the *AF21 Annexation*, which annexation is located within the unincorporated territory of Utah County and contiguous to the corporate boundary of the City. A "Request to Initiate Annexation of Land Within an Island or Peninsula" (Attachment 1), together with an Annexation Area map (Attachment 2) prepared by the Applicants showing the real property proposed for annexation (hereafter referred to as "Annexation Area").

WHEREAS, the Annexation Area constitutes a portion of an existing island, as defined by Utah State law; and

WHEREAS, in accordance with the provisions of UCA 10-2-418, the American Fork City Council has heretofore adopted Resolution No. 2018-10-36R indicating its intent to annex the entire Annexation Area. Further, notice of hearing regarding the proposed annexation has been published and the public hearing thereon held.

WHEREAS, the City Council has determined that annexation of the Annexation Area is in the best interest of the City and has indicated an intent to: (1) execute this Agreement and enact an ordinance of annexation relating thereto, and (2) authorize the recording of the annexation plat at the office of the Utah County Recorder, subject to the terms and conditions of this Agreement and any other conditions required prior to annexation.

TERMS AND CONDITIONS

NOW THEREFORE, based on the above recitals and in consideration of the annexation of the Annexation Area to the City, the parties covenant and agree as follows:

SECTION 1 - Applicability of Agreement: The real property to which the terms of this Agreement apply shall be the parcels of private property within the Annexation Area, identified on Attachment 2. Attachment 2 is hereby made part of this Agreement.

SECTION 2 - Annexation a benefit to Applicants: Applicants and City acknowledge that the City is not required to approve the annexation and that the terms and conditions of annexation, as set forth herein, are reasonable and entered into freely and voluntarily. Further, Applicants hereby acknowledge and agree that the benefit received from annexation of the property is equal to or greater than the requirements and conditions of annexation as set forth in this Agreement and the conditions of the development as set forth under the terms of the City's Development Code and Impact Fee Ordinance and does not constitute a taking as defined pursuant to the terms of UCA 10-9a-103(6), 1953, as amended.

SECTION 3 - Authority of Applicants: Applicants hereby affirm that they are the current owners of at least 75% of the Annexation Area and have complete authority to enter into this Agreement and bind the Annexation Area hereto.

SECTION 4 - Compatibility with Land Use Plan and Initial Zone Classification: The Land Use Element of the General Plan shows the Annexation Area classified as "Transit Oriented Development". Therefore, the zone classification attached to the parcel shall be TOD (Transit Oriented Development). A map illustrating the zone classification has been prepared by the City and is made part of this agreement (Attachment 3).

SECTION 5 - Right-of-way to be Conveyed. The City's Transportation Element of the General Plan provides for the development of 900 West as a neighborhood collector and the development of 350 South as a neighborhood collector. As a condition of annexation, Applicants hereby agree to convey to the City any right-of-way necessary for these thoroughfares in the location shown on the plat prepared by the Applicant and approved by the City (Attachment 4). Applicants shall have no obligation to construct any right-of-way improvements unless and until any improvement or development occurs on the parcel adjacent to the right-of-way, or as otherwise required by City Code, subject to the provisions as outlined in the American Fork City Development Code Section 17.5.126 (Minimum Level of Improvements Required).

SECTION 6 - Conveyance of Water Right: Applicant acknowledges that the dedication of water rights is required pursuant to City Code Section 17.1.400—Conveyance of Water. City acknowledges that Applicant has a sufficient basis to delay the time of conveyance of water rights until the time of development in accordance with City Code Section 17.1.400(C). A Water Delay Agreement is hereby entered into by the parties and is incorporated into this Agreement as Attachment 5.

SECTION 7 - Open Ditches to be Piped: Applicants acknowledge that it is their burden in full to pipe any and all gravity irrigation conveyances (ditches), to the standards of the City and to the standards of the applicable irrigation company or private ditch easement holders, as part of any forthcoming development project. Such piping shall be completed prior to or in concurrence with the development of the parcel and in compliance with City Code Section

17.8.303 – Plan to identify and accommodate natural constraints to development.

SECTION 8 - Property Taxes and Rollback Taxes to be Paid on any Right-of-Way Dedicated to City: Applicants agree to pay any outstanding property taxes on the Annexation Area including any and all rollback taxes if the subject area is classified as "Greenbelt" with the Utah County Tax Assessor, for any areas identified as right-of-way to be dedicated to City. Proof of payment of these taxes shall be required prior to recording of this Agreement.

SECTION 9 - Impact Fees: No impact fees are required as a condition of annexation. However, nothing in this Agreement constitutes a waiver of any obligation that Applicants or any successor may have for the payment of impact fees required as a condition of development of the Annexation Area or any portion thereof. Applicants acknowledge that no development approval or building permit shall be issued until all applicable fees required by City ordinance have been paid at the amount then in effect.

SECTION 10 - Default: Should any of the parties default in the performance of any of the terms of this Agreement, the parties shall first seek mediation to resolve any defaulting performance. The defaulting party shall pay all costs and expenses, including mediation fees and/or reasonable attorney's fees, which may arise from enforcing this Agreement, whether such remedy is pursued by mediation and/or filing suit or otherwise.

SECTION 11 - Notice: Any notice to be given hereunder shall be given by certified mail, return receipt requested, addressed as follows:

- a. If to the City, to the City of American Fork, 51 East Main Street, American Fork Utah, 84003
- b. If to Applicants, to AF21, LLC.

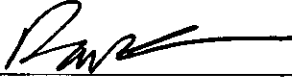
SECTION 12 - Counterparts and Severability: In the event that any provision of this Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SECTION 13 - Entire Agreement: This Agreement constitutes the entire agreement between the parties and may be changed only in writing signed by all parties, and this agreement shall bind the heirs, assigns, and successors in interest of the respective parties. If any party shall breach this Agreement, the other party shall be entitled to recover their attorney fees and court costs in addition to other lawful damages resulting therefrom.

IN WITNESS WHEREOF, the parties have signed this agreement on the date first mentioned above.

Applicants names

AF 21 LLC,
a Utah limited liability company



Applicants signatures

Darwin Fielding, President

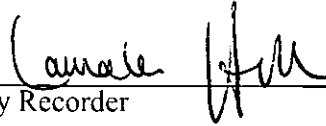
MAYOR



ATTEST:

Deputy

City Recorder





LIST OF ATTACHMENTS

- | | |
|---------------------|---|
| Attachment 1 | Request to Initiate Annexation of Land of Within an Island or Peninsula |
| Attachment 2 | Annexation Area Map |
| Attachment 3 | Zone Classification Map |
| Attachment 4 | Annexation Plat |
| Attachment 5 | Water Delay Agreement |

Attachment 1

Exhibit "A"

ENT 31711:2019 PG 8 of 17

REQUEST TO INITIATE ANNEXATION OF LAND WITHIN IN AN ISLAND OR PENINSULA

DATE: _____

We the undersigned, by virtue of our signatures affixed hereto, do hereby request the City of American Fork, Utah, to annex the parcel(s) identified on the attached map, in accordance with the procedures for "Annexation Without Petition" as set forth under Section 10-2-418(1)(a)(ii) of the Utah State Code.

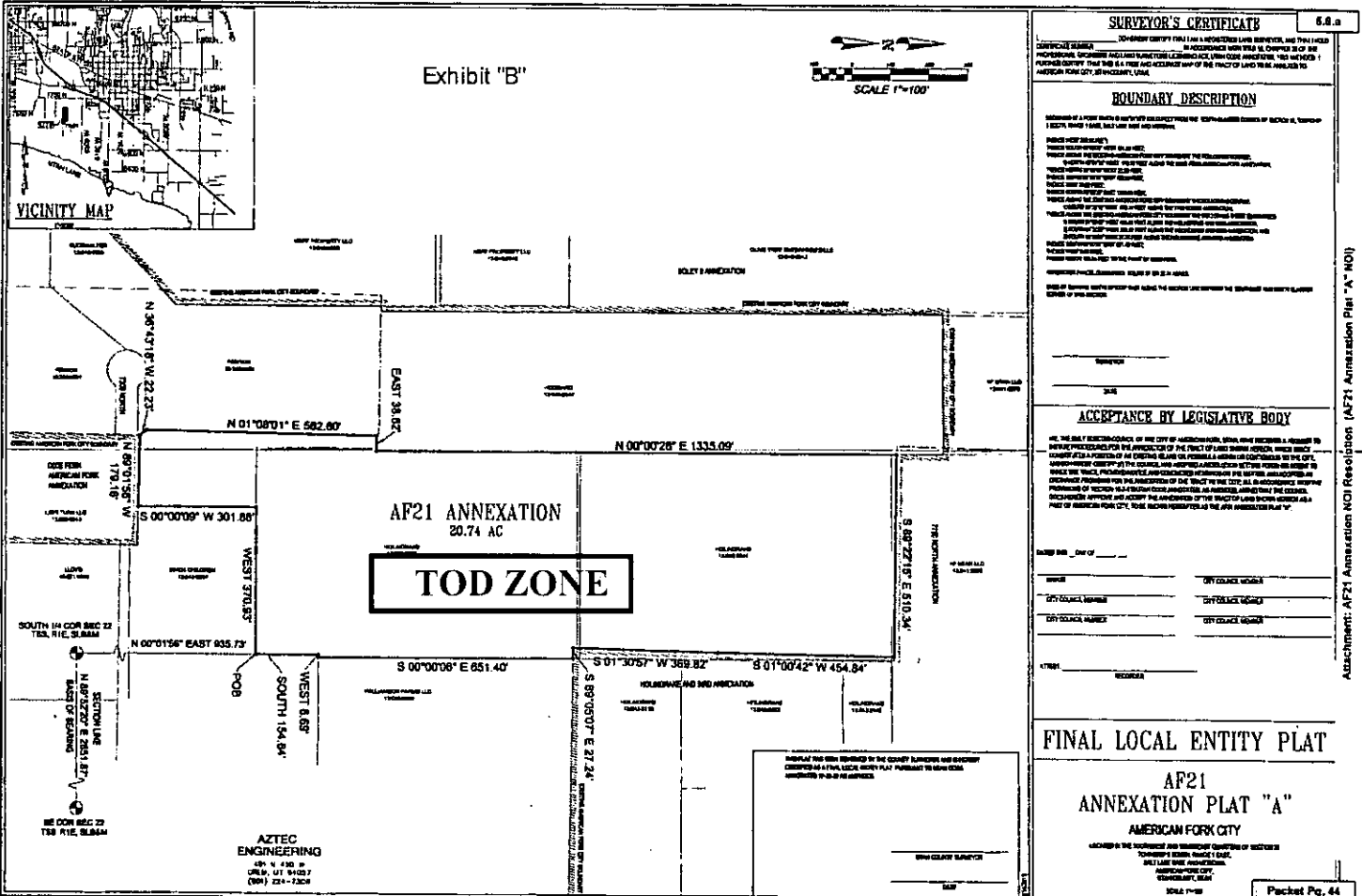
We hereby further acknowledge and affirm as follows:

- A. The area to be annexed is contiguous to the municipality and has fewer than 800 residents, and
- B. The municipality has provided one or more municipal type services to the area for at least one year.

Tax I.D. No.	Name(s) of Owner	Signature of Owner(s)
13-040-0001	PAMELA HOLINDRAKE	<i>Pamela Holindrake</i> <small>dotloop verified 07/26/18 5:22PM EDT IDC-NWRE-8Q7-H5TL</small>
13-040-0041	PAMELA HOLINDRAKE	<i>Pamela Holindrake</i> <small>dotloop verified 07/26/18 5:22PM EDT HJLZ-8KHV-00FL-GSEX</small>
13-040-0001	RUSSELL V. HOLINDRAKE	<i>Russell V. Holindrake</i> <small>dotloop verified 07/27/18 12:39PM EDT M7HF-YLPI-DBH-AOLN</small>
13-040-0041	RUSSELL V. HOLINDRAKE	<i>Russell V. Holindrake</i> <small>dotloop verified 07/27/18 12:39PM EDT LTVG-9EGM-IPR9-HVZJ</small>
13-040-0001	KIM E. HOLINDRAKE	<i>Russell V. Holindrake</i> <small>dotloop verified 07/27/18 12:39PM EDT CXP5-OWOS-00NT-MWU1</small>
13-040-0041	KIM E. HOLINDRAKE	<i>Russell V. Holindrake</i> <small>dotloop verified 07/27/18 12:39PM EDT ZTET-424W-VTUX-ARF</small>

Attachment: AF21 Annexation NOI Resolution (AF21 Annexation Plat "A" NOI)

Attachment 3



ATTACHMENT 5

WATER DELAY AGREEMENT FOR ANNEXATION

This Water Delay Agreement for Annexation ("**Agreement**") is entered into as of the 12 day of February, 2018 ("**Effective Date**"), by and between AF 21, LLC ("**Owner**"), and AMERICAN FORK CITY, a municipal corporation and political subdivision of the State of Utah ("**City**").

RECITALS

WHEREAS Owner is the owner of Parcel Nos. 13:040:0041 & 13:040:0001 ("**Property**"), which are located outside of the City's current municipal boundaries; and

WHEREAS Owner has filed with the City a request to have the Property annexed into the City ("**Annexation Request**"); and

WHEREAS Section 17.1.400(C) of the City Code requires the conveyance of title to water rights concurrently with final action by the City Council on an annexation, except under pursuant to certain findings, terms, and conditions; and

WHEREAS City and Owner desire to enter into this Agreement as part of the findings, terms, and conditions required under Section 17.1.400(C) of the City Code.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City, incorporating the recitals set forth above, agree as follows:

AGREEMENT

1. Determination of City Council. The City Council, with the recommendation of the City Planning Commission, has determined that there is good and sufficient reason to delay the time of conveyance of water rights and/or water shares beyond the time of the City Council's final action on the Annexation Request. This determination was made in the City Council meeting held on Feb. 12, 2018. The basis and reasoning for the City Council's determination are included within the recording, minutes, and other documentation from said City Council meeting.

2. Water Rights/Shares. The specific water rights and/or water shares that may be conveyed to the City, and that pursuant to the terms and conditions of this Agreement are hereby committed to the City, which commitment is irrevocable by Owner and may be released by the City only as provided in this Agreement ("**Committed Water**"), are identified in Exhibit A of this Agreement.

3. Conveyance of Committed Water. Prior to the City's approval of any development on the Property that will require the delivery of water, the City will determine the amount of water rights/shares required for dedication and conveyance to the City in order to meet the water requirements of the development. Owner will convey clear title to the required amount of the Committed Water to the City. If the amount of water necessary for the development is less than the

total amount of the Committed Water, the City will release the commitment (provided in paragraph 2 above) as to the unnecessary portion of the Committed Water. If the amount of water necessary for the development is more than the total amount of the Committed Water, Owner shall convey additional acceptable water rights/shares to the City to meet the dedication requirements. If the Committed Water consists of any water rights, the conveyance shall be by Warranty Deed and an accompanying Water Rights Deed Addendum. If the Committed Water consists of any water shares, the conveyance shall be by assignment, endorsement, and delivery of the appropriate share certificates. Owner acknowledges that under the Article XI, Section 6 of the Utah Constitution, City is prohibited from returning to Owner any portion of the Committed Water once it has been conveyed to the City.

4. Change Application. If any of the Committed Water consists of water rights, an express prerequisite for conveyance shall be the filing and approval of an Application for Permanent Change of Water (“**Change Application**”) with the Utah Division of Water Rights (“**Division**”) to convert the water rights to municipal use to be diverted from the City’s wells. Prior to the filing of the Change Application, the water rights shall be reviewed by the City’s water attorneys to ensure that the water rights are suitable for dedication. The City’s water attorneys shall also prepare and prosecute the Change Application, with the full assistance and support of Owner. The water rights will be deemed acceptable for conveyance to the City under this paragraph upon the issuance of an Order approving the Change Application that is acceptable to the City and upon expiration of all applicable deadlines for requests for reconsideration and/or appeal of the Order. Owner shall be responsible for all costs associated with the Change Application, including but not limited to the City’s attorney fees, application filing fees, and document fees.

5. Title to Committed Water. Owner shall convey unencumbered title to the Committed Water to the City. If the Committed Water consists of water rights, the City will obtain a water rights title insurance policy for the water rights. Owner shall be responsible for all costs associated with the water rights title insurance, including but not limited to the policy premium and recording fees. Owner shall be responsible for satisfying the requirements and conditions of the Title Commitment in order for the title company to issue a title insurance policy that is acceptable to the City. A water rights title insurance policy that is agreeable to the City is an express condition to the acceptability of the water rights for dedication and conveyance to the City. If the Committed Water consists of water shares, the City will obtain written confirmation of share ownership and current payment of all assessments from the respective water company/companies. Owner shall be responsible for all costs associated with obtaining the written confirmation. From the date of this Agreement until the Committed Water is conveyed to the City, Owner shall not sell or otherwise dispose of the Committed Water, nor shall Owner allow any liens or encumbrances upon the Committed Water that would prevent Owner from conveying unencumbered title to the Committed Water to the City.

6. Cessation of Owner’s Use. Upon conveyance of the Committed Water to the City, Owner shall immediately cease any and all use of the Committed Water.

7. Successors and Assigns. Pursuant to the terms of this Agreement, Owner shall have the right to assign its rights, duties, and obligations. The parties acknowledge that the rights, duties, and obligations of Owner will also apply to any successor or assign of Owner, and that the use of the term “Owner” in this contract includes Owner’s successors or assigns.

8. Ownership of Water Facilities. Nothing in this Agreement shall alter the ownership of any wells or other water facilities of Owner or City.

9. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior agreements and understandings concerning the commitment and conveyance of water rights for the Property. This Agreement shall not be amended, modified, or terminated except by written instrument signed by all parties.

10. Construction and Enforcement. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. This Agreement may be specifically enforced.

11. Third Party Beneficiaries. This Agreement is not intended to and shall not create any rights in any person or entity not a party to this Agreement.

12. Attorney Fees. In any action arising out of this Agreement, the prevailing party shall be entitled to costs and reasonable attorney fees.

13. Further Assurances. After the execution of this Agreement, the parties agree to execute and deliver such documents, and to take or cause to be taken all such other actions, as either party may reasonably deem necessary or appropriate in order to carry out the intents and purposes of this Agreement.

14. Severability. If any term, covenant, or condition of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and the remainder of the Agreement shall remain in full force and effect.

15. Authority of Parties. The persons signing this Agreement represent and warrant that they have full authority to do so and that their corporation or entity has undertaken and obtained whatever formalities and approvals are necessary to enter into this Agreement.

16. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall comprise one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

AMERICAN FORK CITY

Bradley J. Frost
Bradley J. Frost, Mayor

Attest: Terilyn Lurker
Terilyn Lurker, City Recorder

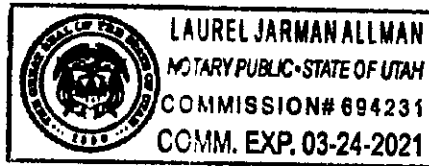
STATE OF UTAH)
)
) :SS
COUNTY OF Utah)

On the 9 day of April, 2019, personally appeared before me Bradley J. Frost and Terilyn Lurker, known to me to be the Mayor and City Recorder, respectively, of American Fork City, who acknowledged to me that they executed the within Water Delay Agreement pursuant to the approval and authorization of the City Council at a regular meeting at which a quorum was in attendance.

Laurel Jarman Allman
NOTARY PUBLIC

[OWNER]

Sam H.



STATE OF UTAH)
)
) :SS
COUNTY OF Utah)

On the 4th day of April, 2019, Darwin Fielding personally appeared before me and duly acknowledged that he/she executed this Water Delay Agreement for the purposes stated therein.

Greg William Jepesen
NOTARY PUBLIC

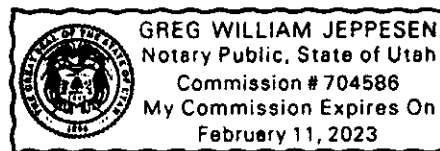


EXHIBIT A

Description of Water Rights and/or Water Shares Committed to the City

The above mentioned Parcel Numbers have the following water rights associated with them:

Parcel Number 13:040:0041
Water Right 55-571 (9.62 acre feet)
Water Right 55-1090 (9.62 acre feet)
Water Right 55-12246 (19.24 acre feet)
TOTAL Acre Feet: 38.46

Parcel Number 13:040:0001
Water Right 55-12246 (36.56 acre feet)
TOTAL Acre Feet: 36.56 acre feet

**NOTE: Willow Glen Townhomes, LLC is the owner on the deed to these water rights. Willow Glen Townhomes will retain all water rights until the water requirement for the Willow Glen townhomes project is met, then all excess water will be deeded to AF21, LLC.