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DOC # 20170037302

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Russell Shirts Washington County Recorder  
09/14/2017 09:09:42 AM Fee \$ 0.00  
By ST GEORGE CITY

MAIL RECORDED COPY TO:  
St. George City  
175 East 200 North  
St. George, UT 84770



Tax ID: SG-5-3-8-220

**STORMWATER MANAGEMENT MAINTENANCE AGREEMENT  
WITH FOSSIL HILLS TOWNHOMES, LLC., FOR FOSSIL HILLS TOWNHOMES**

This Stormwater Management Maintenance Agreement (“Agreement”) is made and entered into this 22 day of June, 2017, by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (“City”), and FOSSIL HILLS TOWN HOMES, LLC., with offices at 494 West 1300 North, Springville, Utah 84663 (Owner”).

**RECITALS**

**WHEREAS**, City is authorized and required to regulate and control the disposition of storm and surface waters within its boundaries, as set forth in the City of St. George Code, Stormwater Management, Title 9 Chapter 14, as amended (“Ordinance”), adopted pursuant to the Utah Water Quality Act, and pursuant to City’s MS4 Permit which requires stormwater runoff to be managed by the use of Stormwater Facilities and best management practices; and

**WHEREAS**, Owner owns real property located in the City of St. George, Washington County, Utah and more particularly described in Exhibit A and incorporated herein as part of this Agreement (“Property”); and

**WHEREAS**, Owner recognizes that post construction storm water facilities (“Facilities”) shall be installed or were installed pursuant to the approved development plans and specifications for the Property and must be maintained; and

**WHEREAS**, City and Owner have determined that it is in the best interest of the health, safety and welfare of the citizens of the City that the Facilities be constructed and maintained on the property and that Owner must maintain those Facilities.

**AGREEMENT**

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

1. **RECITALS.** The Recitals above are hereby incorporated as part of this Agreement and are binding on the parties.
2. **FACILITIES.** The Facilities shall be or have been constructed by Owner in accordance with the approved plans and specifications for the development. Owner shall, at its sole cost and expense, operate and maintain the Facilities in good working condition acceptable to

Legal Approved as to Form: 8/1/16

Storm Water Management  
BMP Maintenance Agreement  
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City and in accordance with the Schedule of Long Term Maintenance Activities agreed hereto and attached as Exhibit B. Owner shall report annually to the City on the City's approved forms or City's online reporting system detailing compliance with the requirements of this Agreement.

3. **ACCESS AND INSPECTIONS**. Owner hereby grants permission to City, its authorized agents and employees, to enter upon the Property to inspect the Facilities whenever City deems necessary. City shall not unreasonably interfere with the business operations on Property. Except in case of an emergency, City shall give at least a 24 hour notice to Owner prior to entry. Notice may be given by posting the Property. Owner shall maintain the Property so that City's access is clear and unobstructed. All inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by City. The purpose of the inspection shall be to determine and insure that the Facilities are adequately maintained, are continuing to perform in an adequate manner, and are in compliance with all City requirements.
4. **FAILURE TO MAINTAIN**. In the event Owner fails to maintain the Facilities in good working order acceptable to City, City shall give written notice to Owner to cure such defects or deficiencies with a time frame for compliance. If Owner fails to comply within the timeframe, City may enter the Property to cure the defects.
5. **RIGHT TO CURE DEFECTS**. Owner hereby authorizes City, its authorized agents and employees, to enter upon the Property to cure the defects if Owner has failed to cure them within the time frame given for compliance. In case of an emergency, City may enter the Property immediately, without notice, and make the repairs. Owner is solely liable for maintenance of the Facilities. It is agreed that City shall have the right, but not the obligation, to elect to perform any or all of the maintenance activities if, in the City's sole judgment, Owner has failed to perform the same. City makes no representation that it intends to or will perform any of the maintenance activities and any election by City to perform any of the maintenance activities, shall in no way relieve Owner of its continuing maintenance obligations under this Agreement. If City elects to perform any of the maintenance activities, City shall be deemed to perform such work without warranty or representation as to the safety or effectiveness of such work, the work shall be deemed to be accepted by Owner "as is", and shall be covered by Owner's indemnity provisions below. If City performs any of the maintenance activities Owner shall pay all of City's costs incurred in performing the maintenance activities. Owner's obligation to pay City's costs of performing maintenance activities is a continuing obligation.
6. **COSTS**. In the event City, pursuant to the Agreement, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and any other item needed to for the work, Owner shall reimburse City within thirty (30) days of receipt of an invoice for all the costs incurred by City. If not paid within the prescribed time period, City shall have the right to file a lien against the Property in the amount of such costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to City as a result of Owner's failure to maintain the Facilities.

7. **NO ADDITIONAL LIABILITY.** It is the intent of this Agreement to insure the proper maintenance of the Facilities by the Owner. This Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or caused by storm water runoff.
8. **EXHIBITS.** All exhibits/figures attached hereto are incorporated as part of this Agreement.
9. **AGREEMENT TO RUN WITH THE LAND.** This Agreement shall be recorded at the Recorder's Office of Washington County and shall constitute a covenant running with the land and shall be binding on Owner, its administrators, executors, heirs, assigns, including any homeowners association, and any other successors in interest.
10. **COMPLIANCE WITH APPLICABLE LAWS.** Owner expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Owner from any obligation to comply with all applicable requirements of City, state and federal law including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of City, except as modified, waived or declared in this Agreement.
11. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto. In the event of a conflict between this Agreement and any other documents with Owner, this Agreement shall govern.
12. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulations after the date of this Agreement. This Agreement is not intended to and does not bind the St. George City Council in the independent exercise of its legislative discretion with respect to such zoning regulations.
13. **INDEMNITY AND LIABILITY.** City shall not be liable for Owner's stormwater or the Facilities. Owner shall indemnify, defend and hold harmless City, employees, elected officials, officers, and agents (collectively "City") against all claims, demands, causes or action, suits or judgments, including but not limited to all claims, demands, causes of action, suits or judgments for death or injuries to persons or for loss of or damage to property, arising out of or in connection with this Agreement, the existence or maintenance of the Facilities by Owner or City, or the stormwater the Facilities is suppose to manage. In the event of any such claims made or suits filed against City, City shall give Owner prompt written notice. Owner agrees to defend against any claims brought or actions filed against City, whether such claims or actions are rightfully or wrongfully brought or filed. Owner agrees that City may employ attorneys of its own selection to appear and defend the claim or action on its own behalf at the expense of Owner. Said attorney fees shall be reasonable and subject to review by Owner. Owner shall be responsible for all reasonable costs associated with any claim, demand, action, suit or judgment including reasonable attorney fees for

which they indemnify or defend City. If any judgment or claims are entered against City, its authorized agents or employees, Owner shall pay for all reasonable costs and expenses in connection herewith. Nothing in this Agreement, City's approval of the subdivision or other applications or plans and specifications, or inspection of the work, is intended to acknowledge responsibility for any such matter, and City has no responsibility or liability therefore.

14. **COMMON INTEREST DEVELOPMENTS.** If the Property is developed as a Common Interest Development which is defined as membership in or ownership of an "Association" which is responsible for some or all of the commonly owned or controlled area, then the following provisions shall apply during such time as the Property is encumbered by a "Declaration", and the Common Area is managed and controlled by the Association:
- (a) The Association, through its Board of Directors, shall assume full responsibility to perform the maintenance activities required pursuant to this Agreement, and shall undertake all actions and efforts necessary to accomplish the maintenance activities, including but not limited to, levying regular or special assessments against each member of the Association sufficient to provide funding for the maintenance activities, conducting a vote of the membership related to such assessments if required.
  - (b) No provision of the Declaration, nor any other governing document of the Association or grant of authority to its members, shall grant or recognize a right of any member or other person to alter, improve, maintain or repair any of the Property in any manner which would impair the functioning of the Facilities. In the event of any conflict between the terms of this Agreement and the Declaration or other Association governing documents, the provisions of this Agreement shall prevail.
15. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement is intended to, or shall be deemed to be a waiver of the City's governmental immunity as set forth in applicable statutory law and case law.
16. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that jurisdiction and venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court, Washington County, State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.
17. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fees incurred for appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.

18. **NOTICES.** All notices required herein, and subsequent correspondence in connection with this Agreement shall be mailed to the following:

City of St. George  
Attn: City Attorney  
175 East 200 North  
St. George, Utah, 84770

FOSSIL HILL TOWNHOMES, LLC.,  
Attn: Rick Salisbury  
494 West 1300 North  
Springville, Utah 84663

Such notices shall be deemed delivered following the mailing of such notices in the United States mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either party of a change of address.

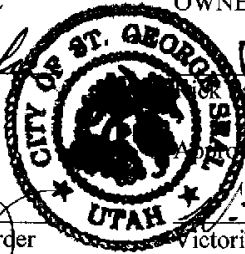
19. **SUCCESSORS AND ASSIGNS.** Owner shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement, including to any type of owner's association, without assigning the rights and the responsibilities under this Agreement and without the prior written approval of City. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
20. **NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the parties. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
21. **SEVERABILITY.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not be affected, and shall remain in full force and effect.
22. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this Agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this Agreement.
23. **SURVIVAL.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
24. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
25. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
26. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY: CITY OF ST. GEORGE

OWNER: FOSSIL HILLS TOWNHOMES, LLC

Jonathan T. Pike  
Jonathan T. Pike, Mayor



Rick Salisbury  
Rick Salisbury, Manager

ATTESTED:

Christina Fernandez  
Christina Fernandez, City Recorder

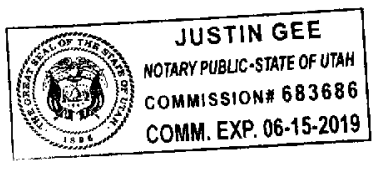
Approved as to form:

Victoria Hales 9/1/17  
Victoria Hales, Assistant City Attorney

STATE OF UTAH )  
 ) :ss.  
COUNTY OF WASHINGTON )

On the 22 day of June, 2017, personally appeared before me, Justin Gee a notary public, personally appeared Rick Salisbury, proved on the basis of satisfactory evidence to be the person whose name is subscribed on the foregoing document and acknowledged to me that s/he executed the same voluntarily for its stated purpose.

[Signature]  
NOTARY PUBLIC



**STORMWATER MANAGEMENT MAINTENANCE AGREEMENT**

**EXHIBIT A**

Legal Description(s)

(Parcel SG-5-3-8-220)

LEGAL DESCRIPTION – BEGINNING AT A POINT NORTH 88°48'57" WEST, ALONG THE SOUTH LINE OF SECTION 8, A DISTANCE OF 985.882 FEET, FROM THE SOUTHEAST CORNER OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 88°48'57" WEST ALONG SAID SECTION LINE, A DISTANCE OF 335.000 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 8; THENCE NORTH 52°26'27" WEST 298.200 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF RIVER ROAD; THENCE NORTH 37°33'33" EAST, ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 1520.278 FEET; THENCE SOUTH 52°26'27" EAST 458.183 FEET; THENCE SOUTH 37°33'33" WEST 1172.613 FEET; THENCE SOUTH 01°11'03" WEST 185.043 FEET TO THE POINT OF BEGINNING. CONTAINS: 699,750 sq. ft., (16.064 ACRES)

**STORMWATER MANAGEMENT MAINTENANCE AGREEMENT**

Exhibit B

Schedule of Long Term Maintenance Activities  
City of St. George, Utah

Activity	Frequency	Notes
Inspection	Annually	Owner shall report annually to the City on the City's approved forms or City's online reporting system at <a href="http://www.sgcity">www.sgcity</a> detailing compliance with the requirements of this Agreement.
Mowing and maintenance of vegetation	Variable, depending on vegetation and desired aesthetics	Landscaping and vegetation should be cared for throughout the year to ensure that proper sediment removal and infiltration is maintained and the Facilities remain aesthetically appealing. All trimmings shall be removed from the Property.
Remove trash and debris	As needed or following each storm	Trash and debris shall be removed from the Property regularly to ensure that the Facilities function properly and operate effectively. Trash often collects at inlet and outlet structures. These need to be cleaned regularly.
Inspect and maintain inlet and outlet structures	Annually	The inlet and outlet structures should be inspected for damage and proper operation.
Sediment removal	Variable (2-5 years is typical)	The removal of sediment is necessary if the Facilities begin to lose capacity or effectiveness. The Owner will remove and dispose of all accumulated sediments which shall be disposed of properly, offsite.