



STORM WATER FACILITY AGREEMENT

THIS AGREEMENT, is made and entered into this 1st day of February, 2019, by and between Pennylane Townhomes Owners Association (hereinafter referred to as "Owner", and American Fork City (hereinafter referred to as the "City"), a Municipal Corporation.

RECITALS

WHEREAS, the Owner desires to improve, develop or redevelop real property located at approximately 250 South 460 East in American Fork City, Utah County, State of Utah (hereinafter referred to as the "Property"), which is more particularly described in Exhibit A attached hereto;

WHEREAS, said development requires the installation and maintenance of storm water facilities (hereinafter referred to as "Facilities") to be constructed according to designs and plans approved by the City;

WHEREAS, the Owner, for and in behalf of its administrators, executors, successors, heirs, or assigns, including any homeowners association, recognizes and agrees that the health, safety, and welfare of the citizens of the City require that the Facilities be constructed and adequately maintained on the Property throughout the life of the development; and

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

**SECTION 1
FACILITIES**

Facilities include all storm water detention and control structures, flood control devices, or other improvements, which may include, but is not limited to all pipes, channels, or other structures and infrastructure built to convey storm water to the Facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water which are required by the City in the site plan attached hereto as Exhibit B.

**SECTION 2
FACILITIES CONSTRUCTION**

The Owner shall, at its sole cost and expense, construct the Facilities in accordance with the plans and specifications for the development approved by the City. Owner understands and agrees that modifications may be needed to make the system work properly after the Facilities are installed and agrees to make modifications and adjustments as may be necessary and required by the City.

SECTION 3 MAINTENANCE

The Owner shall, at its sole cost and expense, adequately maintain the Facilities in good working condition acceptable to the City and in accordance with the schedule of long term maintenance activities agreed to by the parties and attached hereto as Exhibit C. Adequate maintenance is herein defined as follows: 1) keeping the Facilities in good working condition so that the Facilities are performing their design functions, 2) performing facility inspections and repairs as may be needed, and 3) replacing and/or modifying portions, or all of the system, as may be needed to maintain the intended function of the facility.

SECTION 4 EASEMENT

The Owner hereby grants permission to the City, its authorized agents, and employees to enter upon the Property and to inspect the Facilities whenever the City deems it necessary. Whenever possible, the City shall provide notice prior to entry. Inspections by the City shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection shall be to determine and ensure that the Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with all laws, regulations, and approved plans and specifications. The Owner hereby grants a twenty-five (25) foot access easement in favor of the City with the midpoint of the easement lying over the midpoint of the Facilities identified in the attached plan. This easement shall be limited in scope to allow only those actions which are necessary to allow the City to inspect, ensure adequate maintenance, and to cause any repairs to be made that the City deems necessary. This easement shall include, but is not be limited to, prohibiting the construction of structures or improvements that would impact or obstruct the intended purposes of the Facilities or restrict the ability of the Owner or the City to inspect, maintain, or repair the Facilities.

SECTION 5 FAILURE TO MAINTAIN FACILITIES

In the event the Owner fails to maintain the Facilities in good working order acceptable to the City and in accordance with the maintenance schedule incorporated in this Agreement, the City, in addition to any other remedies provided by State or City code, may, with due notice as provided in Section 6, enter the property and take whatever steps it deems necessary to return the Facilities to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the property that is not included in the plans and specifications for the development, or other agreement between the parties. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Facilities. The decision to maintain or repair the Facilities shall be at the City's sole discretion and in no event shall this Agreement be construed to impose any such obligation on the City or to create any liability for the City refusing to undertake such a duty.

SECTION 6
NOTICE OF DEFICIENCIES

If the City finds that the Facilities contain any defects or are not being maintained adequately, the City shall provide Owner written notice of the defects or deficiencies and provide Owner with a reasonable time, as determined by the City, to cure such defects or deficiencies.

SECTION 7
RECOUPMENT OF COSTS

In the event the City performs work of any nature pursuant to the Agreement, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner shall reimburse the City within thirty (30) days of receipt thereof for all the costs incurred by the City. If not paid within the prescribed time period, the City shall be entitled to record a lien against the real 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 the City as a result of the Owner's failure to maintain the Facilities.

SECTION 8
LIMITATION OF LIABILITIES

It is the sole intent of this Agreement to insure the proper construction and maintenance of the Facilities by the Owner. As the Facilities are not part of the City's Storm Water Collection System, this agreement does not create or extend any rights to immunity or liability protections provided by law to municipalities. 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, or to constitute a waiver of any immunity provided to the City through the Utah State Code or Constitution.

SECTION 9
SEDIMENT ACCUMULATION

Adequate maintenance shall include control of sediment accumulation resulting from the normal operation of the Facilities. The Owner will make accommodations for the removal and appropriate disposal of all accumulated sediments.

SECTION 10
REQUIREMENTS AND STANDARDS

The Parties agree to follow and comply with all requirements applicable to storm water detention and control facilities as by the Utah Department of Environmental Quality, Division of Water Quality, including the Small MS4 General UPDES Permit requirements, and by the City ordinances and Storm Water Management Plan as existing at the time of executing this agreement and as may be amended from time to time. The parties agree that these requirements and regulations are incorporated herein by this reference and that this agreement shall be deemed

automatically amended to incorporate any and all changes and amendments made thereto after the signing of this agreement.

SECTION 11 INSPECTIONS

The Owner shall perform an annual inspection of the Facilities. The City may require more frequent inspections should it have reason to believe that such inspections are necessary. All inspections shall be conducted by a qualified inspector and the results shall be reported to the City. The purpose of the inspection and reporting is to assure safe and proper functioning of the Facilities, including but not limited to, the structural improvements, berms, outlet structure, pond areas, access roads, vegetation, landscaping, etc. All annual inspection reports shall be submitted to the City Public Works Department no later than September 1 of any given year and shall be on the Maintenance Inspection Report attached hereto as Exhibit D.

SECTION 12 INDEMNITY

The Owner indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Owner. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Owner and the Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Owner shall pay for all costs and expenses in connection herewith.

SECTION 13 COVENANT RUNNING WITH THE LAND

This Agreement shall be recorded at the Utah County Recorder's Office and shall constitute a covenant running with the land and shall be binding on the Owner, its administrators, executors, heirs, assigns and any other successors in interest, including any homeowners association.

SECTION 14 REMEDIES

This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest. Any rights or remedies contained in this Agreement shall be in addition, and non-exclusive, to any rights existing under the Utah Code or that may exist under the common law.

SECTION 15
ATTORNEYS FEES

If any party retains, consults, or uses an attorney because of any breach, default, or failure to perform as required by this Agreement, the non-breaching/defaulting party shall be entitled to reasonable attorney's fees incurred before litigation is filed. In the event that any litigation is commenced to enforce or interpret this Agreement the prevailing party shall be entitled to its attorneys fees, expert witness expenses, and litigation related expenses, including but not limited to court costs.

SECTION 16
THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure solely to the benefit of the parties herein and is not intended to create contractual rights in any third party.

SECTION 17
NO PARTNERSHIP

Nothing contained in this Agreement shall be deemed to create any form of a partnership or joint-venture between the City and Owner.

SECTION 18
UTAH LAW AND VENUE

This Agreement shall be interpreted pursuant to the laws of the State of Utah. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Utah County, Utah.

SECTION 19
INTEGRATED AGREEMENT

This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exists between the parties regarding the subject matter of this Agreement.

SECTION 20
SEVERABILITY

The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the, its successors and assigns, is held invalid, the remainder of this Covenant shall not be affected thereby.

Approved as to form:
Attorney for American Fork City

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SECTION 21
AMENDMENTS

Except as expressly provided elsewhere in this Agreement, no provision of this Agreement may not be modified except in writing agreed to by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

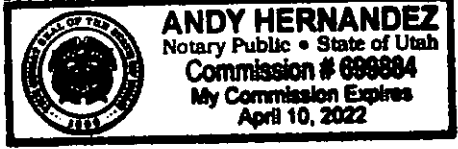
OWNER

Date: February 1st, 2019. [Signature]
By: Nicole Demill
Its: Pennylane Townhomes HOA
President

NOTARIZATION

STATE OF UTAH)
) :ss
COUNTY OF UTAH)

The above Agreement was executed on this 1 day of February, 2019 by Nicole Demill, for and on behalf of Pennylane Townhome the Owner identified in the above signed Agreement. In executing this Agreement, the signer did swear before me that he is duly authorized to sign the agreement on behalf of the Owner.



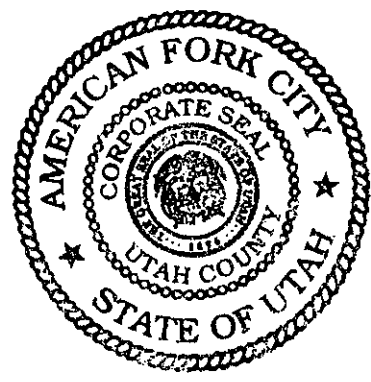
[Signature]
NOTARY PUBLIC

AMERICAN FORK CITY

Date: Feb. 7, 2019. [Signature]
Scott Sensenbaugher
Director of Public Works

ATTEST:

[Signature]



Approved as to form:
Attorney for American Fork City

Exhibit A

Plats:

- 1) Lots 1 through 12, Pennylane Townhomes PUD Phase 1
- 2) Lots 13 through 27, Pennylane Townhomes PUD Phase 2
- 3) Lots 28 through 59, Pennylane Townhomes Phase 3 Amended

Exhibit C

STORM WATER FACILITIES MAINTENANCE SCHEDULE								
Task	Parking Lot	Storm Sewer System	Sump	Catch Basin Inlet Castings	Outflow Control Structures	Water Quality Unit	Emergency Overflow	Schedule
Inspect for sediment accumulation		X	X					Annually and as needed
Removal of sediment accumulation		X	X		X			Annually and as needed
Inspect and cleaning for floatables and debris				X	X			Annually and as needed
Clean Parking Lot	X							Annually
Make adjustments as determined by annual wet weather inspection			X	X	X			As needed
Keep records of all inspections and maintenance activities								Semi-annually

Approved as to form:
 Attorney for American Fork City

Exhibit D

Facility Operation and Maintenance Inspection Report for Storm Drain Facilities

Inspector Name:		Subdivision Name:			
Inspection Date:		Address:			
Frequency of inspection	<input type="checkbox"/> Weekly	<input type="checkbox"/> Monthly		<input type="checkbox"/> Quarterly	<input type="checkbox"/> Annual
Item Inspected	Checked		Maintenance		Observations and Remarks
	Yes	No	Req'd	Not Req'd	
Pond Facilities					
1	Landscaping maintenance				
2	Remove sedimentation				
3	Remove debris				
4	Repair side slopes				
5	Repair rip-rap protection				
6	Repair control structure				
7	Cleaning of outfall				
8	Removal of floatable debris				
9	Maintenance of inlets				
10	Maintenance of outlets				
Storm drain system					
1	Remove sediment from catch basins				
2	Cleaning storm drain pipes				
3	Maintenance of drainage swales				
4	Remove sediment from manholes				
5	Remove sediment from sumps				
6	Repair oil/ water separator				
7	Repair sand filters				
Parking lot and roads maintenance					
1	Sweeping of parking lot				
2	Sweeping of streets				
3	Cleaning of garbage enclosure				
4	Cleaning of non-hazardous spills				
5	Managing fertilizer use				
6	Managing pesticide use				
7	Removal of grass after lawn mowing				

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information provided is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

BY: Date:
 Site Inspector

Approved as to form:
 Attorney for American Fork City

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT is made and entered into this 15th day of February, 2019, by and between Rimrock Construction, LLC ("Rimrock") and Pennylane Townhomes Owners Association, Inc. ("Pennylane").

RECITALS

WHEREAS, Rimrock desires to develop property as part of the Pennylane Townhomes community located at or near 250 South 460 East in American Fork, Utah (the "Property"); and,

WHEREAS, as part of the development, American Fork City (the "City") requires Storm Water Facilities ("Storm Water Facilities" shall include all storm water detention and control structures, flood control devices, or other improvements, including, but not limited to pipes, channels, or other structures) to be installed; and,

WHEREAS, the City requires Pennylane to enter into a Storm Water Facility Agreement (a copy of which is attached hereto as Exhibit "A") with the City and such agreement requires Pennylane to indemnify and hold harmless the City for all damages, accidents, casualties, occurrences or claims which may arise and be asserted against the City related to the Storm Water Facilities; and,

WHEREAS, Rimrock will be installing the Storm Water Facilities on behalf of Pennylane; and,

WHEREAS, in consideration for the right of Rimrock to develop the Property, Pennylane desires to be protected against claims that may arise under the Storm Water Facility Agreement for which Pennylane is required to indemnify the City.

NOW THEREFORE, in consideration of the foregoing and the following terms and conditions, Rimrock and Pennylane agree as follows:

AGREEMENT

1. **Indemnity**. Rimrock agrees to indemnify and hold harmless Pennylane for any and all claims related to the installation of the Storm Water Facilities and any and all claims that may arise or be brought against Pennylane under the Storm Water Facility Agreement with the City. In the event such a claim is asserted against Pennylane, Pennylane shall promptly notify Rimrock and Rimrock shall defend, at its own expense, any suit or legal action based on such claim. If any judgment or claims against Pennylane are allowed, Rimrock shall pay for all judgments, costs, attorney fees, and expenses incurred therewith.
2. **Remedies**. This agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest and the prevailing party shall be awarded its reasonable attorney fees, costs, and expenses incurred.

Agreed to:

Rimrock Construction, LLC

Pennylane Townhomes Owners Association, Inc.

By: *Marc Hannah*

By: *Nicole DeMill*

Its: *Marc Hannah, Managing Director*

Its: *Nicole DeMill, Pennylane Townhome HOA president*

Date: *2-1-19*

Date: *2-1-19*