

When recorded return to:

Brian C. Cheney
Cheney Law Group
2825 E. Cottonwood Pkwy, Suite 500
Salt Lake City, UT 84121

CTIA#89498-TF
Tax ID Nos:
67-008-0001 &
67-008-0002

**ASSIGNMENT AND ASSUMPTION
OF MASTER DEVELOPMENT AGREEMENT**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Millpond Apartments, LLC, a Utah limited liability company (the "**Assignor**"), hereby assigns and delegates to Millpond Apartments DE, LLC, a Delaware limited liability company (the "**Assignee**"), all of Assignor's right, title and interest in and to and obligations under that certain Master Development Agreement for Millpond Concept Planned Community (the "**Master Development Agreement**") by and between Assignor, the City of American Fork and Rockworth Companies, LLC relating to the property described on Exhibit A attached hereto and the improvements located thereon. The Master Development Agreement is attached hereto as Exhibit B.

Assignee accepts the assignment of the Master Development Agreement and agrees to assume and perform all liabilities and obligations of Assignor under the Master Development Agreement arising on or after the date hereof.

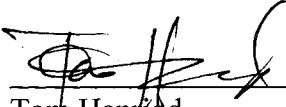
If any litigation between Assignor and Assignee arises out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonable attorneys' fees.

This Assignment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

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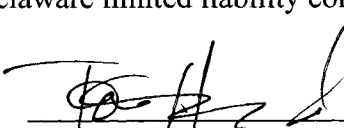
IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the 4 day of ~~August~~ September 2019.

ASSIGNOR: MILLPOND APARTMENTS, LLC,
a Utah limited liability company

By: 
Name: Tom Henriod
Title: Authorized Representative

By: _____
Name: Mark Hampton
Title: Authorized Representative

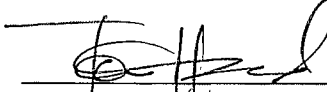
ASSIGNEE: Millpond Apartments DE, LLC,
a Delaware limited liability company

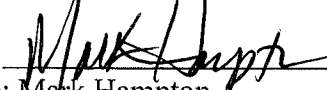
By: 
Name: Tom Henriod
Title: Authorized Representative

By: _____
Name: Mark Hampton
Title: Authorized Representative


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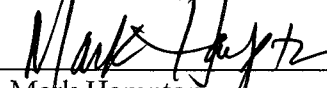
ASSIGNOR: MILLPOND APARTMENTS, LLC,
a Utah limited liability company

By: 
Name: Tom Henriod
Title: Authorized Representative

By: 
Name: Mark Hampton
Title: Authorized Representative

ASSIGNEE: Millpond Apartments DE, LLC,
a Delaware limited liability company

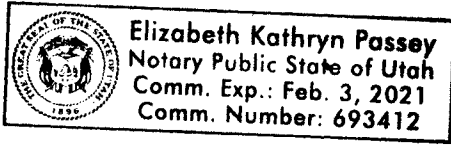
By: 
Name: Tom Henriod
Title: Authorized Representative

By: 
Name: Mark Hampton
Title: Authorized Representative

ASSIGNOR/ASSIGNEE ACKNOWLEDGMENT:

State of Utah)
 :SS
County of Salt Lake)

On the 28 day of August, 2019, personally appeared before me Tom Henriod, who acknowledged himself to be the Authorized Representative of Millpond Apartments, LLC, a Utah limited liability company and Millpond Apartments DE, LLC, a Delaware limited liability company, and that he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



[Signature]
Notary Public

State of Utah)
 :SS
County of Salt Lake)

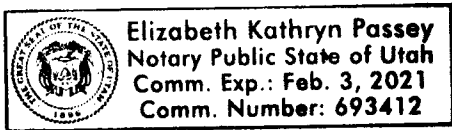
On the ___ day of August, 2019, personally appeared before me Mark Hampton, who acknowledged himself to be the Authorized Representative of Millpond Apartments, LLC, a Utah limited liability company and Millpond Apartments DE, LLC, a Delaware limited liability company, and that he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Notary Public

ASSIGNOR/ASSIGNEE ACKNOWLEDGMENT:

State of Utah)
 :SS
County of Salt Lake)

On the 28 day of August, 2019, personally appeared before me Tom Henriod, who acknowledged himself to be the Authorized Representative of Millpond Apartments, LLC, a Utah limited liability company and Millpond Apartments DE, LLC, a Delaware limited liability company, and that he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



[Handwritten Signature]

Notary Public

State of Utah)
 :SS
County of Salt Lake)

On the 27 day of August, 2019, personally appeared before me Mark Hampton, who acknowledged himself to be the Authorized Representative of Millpond Apartments, LLC, a Utah limited liability company and Millpond Apartments DE, LLC, a Delaware limited liability company, and that he, as such Authorized Representative, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

[Handwritten Signature]

Notary Public

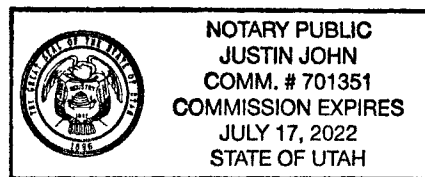


Exhibit A

Property Description

**EXHIBIT A
PROPERTY DESCRIPTION**

Lot 1 and Parcel A, MILLPOND APARTMENTS PLAT "A", according to the official plat thereof on file and of record in the Utah County Recorder's office, recorded February 1, 2018 as Entry No. 10418:2018.

Tax Id No.: 67-008-0001 and 67-008-0002

Exhibit B

Master Development Agreement



~~ENT 64068:2016 PG 1 of 24
JEFFERY SMITH
UTAH COUNTY RECORDER
2016 Jul 13 8:50 am FEE 59.00 BY SW
RECORDED FOR AMERICAN FORK CITY~~

**MASTER DEVELOPMENT AGREEMENT
FOR
MILLPOND CONCEPT PLANNED COMMUNITY**

May 24, 2016

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WHEN RECORDED, RETURN TO:

Bruce R. Baird
Bruce R. Baird, PLLC
2150 S. 1300 East # 500
Salt Lake City, UT 84016

**MASTER DEVELOPMENT AGREEMENT
FOR
MILLPOND CONCEPT PLANNED COMMUNITY**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered as of the 24 day of March, 2016, by and between the City of American Fork, a political subdivision of the State of Utah, Millpond Apartments, LLC and the Rockworth Companies, LLC, a Utah limited liability company.

RECITALS

A. Unless otherwise defined in the body of this MDA, the capitalized terms used in these Recitals are defined in Section 1.2, below.

B. Owner owns the Property.

C. Master Developer is under a contract with Owner to develop the Property.

D. The City has zoned the Property R4-7500.

E. Owner and Master Developer and the City desire that Property be developed in a unified and consistent fashion pursuant to the Zoning and this MDA.

F. Development of the Project as a master planned community pursuant to this MDA is acknowledged by the parties to be consistent with LUDMA and the Zoning Ordinance and to operate to the benefit of the City, Owner, Master Developer, and the general public.

G. The City Council has reviewed this MDA and determined that it is consistent with LUDMA, the Zoning Ordinance and the Zoning of the Property.

H. The parties acknowledge that development of the Property pursuant to this MDA will result in planning and economic benefits to the City and its residents by, among other things requiring orderly development of the Property as a Concept Planned community and increasing property tax and other revenues to the City based on improvements to be constructed on the Property.

I. Development of the Property pursuant to this MDA will also result in significant benefits to Owner and Master Developer by providing assurances to Owner and Master Developer that they will have the ability to develop the Property in accordance with this MDA.

J. Owner, Master Developer and the City have cooperated in the preparation of this MDA.

K. The parties desire to enter into this MDA to specify the rights and responsibilities of Owner and the Master Developer to develop the Property as parts of the Project as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

L. The parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102 (2015).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” – “C” are hereby incorporated into this MDA.

1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Administrator** means the person designated by the City as the Administrator of this MDA.

1.2.2. **Applicant** means a person or entity submitting a Development Application.

1.2.3. **Building** means one of the structures shown on Exhibit “B”.

1.2.4. **Building Permit** means a permit issued by the City, pursuant to the City’s Development Code, Standards of Specifications and Drawings to allow construction, erection or structural alteration of any building or structure, private or public.

1.2.5. **Buildout** means the completion and City acceptance and approval of the entire Project based on City Code and the City’s written standards for such, including all infrastructure, dwelling units, and improvements in accordance with the approved plans.

1.2.6. **City** means the City of American Fork, a political subdivision of the State of Utah.

1.2.7. **City Code** means the municipal code of American Fork City as may be amended from time to time.

1.2.8. **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.9. **City's Vested Laws** means the ordinances, policies, standards and procedures of the City in effect as of the date of this MDA.

1.2.10. **Concept Plan** means the plan for developing the Project which is attached as Exhibit "B".

1.2.11. **Council** means the elected City Council of the City.

1.2.12. **Default** means a material breach of this MDA.

1.2.13. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application.

1.2.14. **Density** means the number of Residential Dwelling Units allowed per acre.

1.2.15. **Development** means the development of a Building or a Phase of the Project thereof pursuant to an approved Development Application.

1.2.16. **Development Application** means an application to the City for development of a portion of the Project including, a Building Permit, site plan or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.17. **Dwelling Units** means an individual apartment unit.

1.2.18. **Gross Project Area** means the total area of the Property as all existing public streets have already been deducted from the acreage of the Property.

1.2.19. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2016).

1.2.20. **Master Developer** means **Rockworth Companies, LLC**, a Utah limited liability company, and its assignees or transferees as permitted by this MDA.

1.2.21. **Maximum Allowable Density** shall be determined by multiplying the number of acres of Gross Project Area by the maximum density factor for the zone district in which the project is located. The maximum density factor for this project zone is 12.

1.2.22. **Maximum Dwelling Units** means the maximum development on the Property pursuant to the Maximum Allowable Density which is 214.

1.2.23. **MDA** means this Master Development Agreement including all of its Exhibits.

1.2.24. **Notice** means any notice to or from any party to this MDA that is either required or permitted to be given to another party.

1.2.25. **Owner** means Millpond Apartments, LLC, the record title owner of the Property

1.2.26. **Phase** means the development of a portion of the Project in connection with an approved subdivision plat or site plan as contemplated and set forth in this MDA that is developed at the same time, at a point in a logical planning sequence as determined by Developer, upon approval by the City, which shall not be unreasonably withheld.

1.2.27. **Project** means the total development to be constructed on the Property pursuant to this MDA including the Maximum Dwelling Units and with the associated public and private facilities and all of the other aspects approved as part of this MDA.

1.2.28. **Property** means the approximately seventeen and seven hundred forty-two one/thousandths (17.742) acres of real property owned by Owner and under contract for development by Master Developer as more fully described in Exhibit "A".

1.2.29. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City's Vested Laws.

2. **Effect of MDA.** This MDA shall be the sole agreement between the parties related to the Project and the Property.

3. **Development of the Project.**

3.1. **Compliance with the Concept Plan and this MDA.** Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Zoning and this MDA. Further, Development of the project shall be substantially similar to the Concept Plan in terms of unit count, building type, building look and other design items.

3.2. Project Maximum Dwelling Units. At Buildout of the Project, Owner and Master Developer shall be entitled to have developed the Maximum Dwelling Units as specified in and pursuant to this MDA subject to compliance with the City's Vested Laws and City's Future Laws (to the extent that these laws are applicable).

3.3. Wetlands Restrictions. Owner and Master Developer are required by the laws of the United States of America to comply with all "wetlands" requirements. Construction of any trails or other improvements within any delineated wetlands will only be required of Master Developer if it is approved by the United States Army Corps of Engineers.

4. Zoning and Vested Rights.

4.1. Zoning Classification. The project will be zoned as R4-7500. The Project shall be constructed in a manner consistent with the R4-7500 zone adopted in the City Code and shall consist of not more than the Maximum Dwelling Units and in substantial compliance with the Concept Plan.

4.2. Concept Plan. The Concept Plan has been approved by the City. The Property shall be developed in substantial compliance with the Concept Plan. Owner, Master Developer and the City acknowledge and agree that the Concept Plan does not (and cannot at this stage of planning) contain all of the detail necessary and required for construction and installation of the project. Specifically, at this time the City has not reviewed the Concept Plan for compliance with City ordinances or other laws and regulations. The City's approval of the Concept Plan at this time does not waive its right to enforce all City ordinances and other laws and regulations. Owner, Master Developer and the City shall cooperate on the approval of future revisions and refinements of the Project plans as long as they are substantially consistent with the Concept Plan.

4.3. Vested Rights Granted by Approval of this MDA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the City, Owner and Master Developer intend that this MDA grants Master Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws and the Concept Plan except as specifically provided herein. The Parties intend that the rights granted to Owner and Master Developer under this MDA are contractual, unless specifically described as rights that exist under statute, common law and at equity. The parties specifically intend that this MDA and the Concept Plan grant to Owner and Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2016).

4.4. Exceptions. The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 4.2 are subject to only the following exceptions:

4.4.1. Owner and Master Developer Agreement. City's Future Laws that Owner and Master Developer agree in writing to the application thereof to the Project;

4.4.2. State and Federal Compliance. City's Future Laws which are generally

applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

4.4.3. Codes. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

4.4.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated; or,

4.4.5. Fees. Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

4.4.6. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not work to reduce the Maximum Residential Units, are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

4.4.7. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2016).

5. Term of Agreement.

5.1. Initial Term. The initial term of this MDA shall expire upon Buildout or December 31, 2021, whichever occurs first.

5.2. Initial Development Submittal (Condition Subsequent). Owner or Master Developer must submit a preliminary plat for approval to the City within at least 36 months from the date of entering into this MDA or the MDA with expire automatically at that time.

5.3. Extensions. The term of this MDA may be modified upon mutual agreement in writing by the parties.

6. Processing of Development Applications.

6.1. Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, or certification and/or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City. The City should endeavor to make all of its redlines, comments or suggestions at the time of the first review of the Development Application unless and changes to the Development Application raise new issues that need to be addressed.

6.2. City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, the Concept Plan and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

6.3. Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

6.4. City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Applicant shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

7. Application Under City's Future Laws. Without waiving any rights granted by this MDA, Owner or Master Developer may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application so long as Owner or Master Developer are not in current breach of this Agreement. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. In the event Owner or the Master Developer elects to submit a Development Application under the City's Future Laws the City may elect to enforce the City's Future Laws for the remainder of the Project and all future Development Applications.

8. Dedication and Development

8.1. Dedication of 1020 West. Owner and Master Developer will dedicate 1020 West to the City at the time of site plan approval. Specifically, Owner and Master Developer will dedicate a 68 foot right of way to the City on the east side of Development at the time of site plan approval or when and as requested by the City. The dedication for 1020 West shall begin on the eastern edge of the current 1020 West right of way extended and move west as shown on Exhibit B attached hereto.

8.2. Dedication of Slope Easement for 1020 West. When and as requested by the City, Owner and Master Developer will dedicate a slope easement to the City on the east side of the Development. The slope easement shall begin on the western edge of the dedicated right of way for 1020 West at approximately 80 North as shown on Exhibit B attached hereto. The exact dimensions and locations of the slope easement are presently unknown. The slope easement shall not extend to the west of the line described in Exhibit "C". It is currently estimated that the slope easement shall begin as a 10-foot slope easement and progressively increase to a 50-foot slope easement at the north end of the Project.

9. Tax Benefits. The City acknowledges that Owner or Master Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for Open Space. Owner or Master Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Owner or Master Developer by reason of the foregoing. The City shall reasonably cooperate with Owner and Master Developer to the maximum extent allowable under law to allow Owner or Master Developer to take advantage of any such tax benefits.

10. Public Infrastructure.

10.1. Construction by Owner or Master Developer. Owner and Master Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application.

10.2. Bonding. If and to the extent required by the City's Vested Laws, unless otherwise provided by Chapter 10-9a of the Utah Code as amended, security for any Public or private Infrastructure—is required by the City it shall be provided in a form acceptable to the City (which may include security based on real property) as specified in the City's Vested Laws. Partial releases of any such required security shall be made as work progresses based on the City's Vested Laws.

10.3. City Responsibility after Construction. After completion of any public infrastructure as provided in Section 9.1, by Owner or Master Developer and acceptance by the City the City shall be solely responsible for the maintenance, operation and repair of such infrastructure.

11. Provision of Municipal Services. The City shall provide all City utilities and services to the Project that it provides from time-to-time to other residents and properties within the City including, but not limited to, police, fire and other emergency services. Such utilities and services shall be provided to the Project at the same levels of services, on the same terms and at the same rates as provided to other residents and properties in the City.

12. Default.

12.1. **Notice.** If Owner, Master Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide Notice to the other party.

12.2. **Contents of the Notice of Default.** The Notice of Default shall:

12.2.1. Specific Claim. Specify the claimed event of Default;

12.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

12.2.3. Materiality. Identify why the Default is claimed to be material; and

12.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.

12.3. **Meet and Confer, Mediation, Arbitration.** Upon the issuance of a Notice of Default the parties shall engage in the “Meet and Confer”.

12.4. **Remedies.** If the parties are not able to resolve the Default by “Meet and Confer” may have the following remedies, except as specifically limited in 15.9:

12.4.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

12.4.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

12.4.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, Building Permits and/or other permits for development of the Project in the case of a default by Owner or Master Developer until the Default has been cured.

12.5. **Public Meeting.** Before any remedy in Section may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

12.6. **Emergency Defaults.** Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section without the requirements of Sections 12.5. The City shall give Notice to Owner and Master Developer of any public meeting at which an emergency default is to be considered and Owner and Master Developer shall be allowed to address the City

Council at that meeting regarding the claimed emergency Default

12.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. **Default of Assignee.** A default of any obligations assumed by an assignee shall not be deemed a default of Owner or Master Developer.

12.9. **Limitation on Recovery for Default – No Damages.** Neither party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to Master Developer or any Subdeveloper shall be that of specific performance. IN NO EVENT SHALL CITY BE LIABLE TO DEVELOPERS, THEIR SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.

13. **Notices.** All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Master Developer:

Rockworth Companies, L.L.C.
Attn: Tom Henriod
9980 South 300 West, # 310 Sandy UT 84070

To Owner:

Millpond Apartments, L.L.C.
Attn: Tom Henriod
9980 South 300 West #310
Sandy, UT 84070

Bruce R. Baird, Esq.
Bruce R. Baird PLLC
2150 South 1300 East, Fifth Floor
Salt Lake City, UT 84106
bbaird@difficultdirt.com

To the City:

City of American Fork
Attn: City Manager
51 East Main Street

American Fork, UT 84003

13.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

13.1.1. Hand Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of this Section.

14. **Estoppel Certificate.** Upon twenty (20) days prior written request by Owner or Master Developer, the City will execute an estoppel certificate to any third party certifying that Owner or Master Developer, as the case may be, at that time are not in default of the terms of this Agreement.

15. **Attorneys Fees.** In addition to any other relief, the prevailing party in any action, whether at law, in equity or by arbitration, to enforce any provision of this MDA shall be entitled to its costs of action including a reasonable attorneys' fee.

16. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

17. **No Third Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership or agency relationship between the City, Owner and Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City's Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

18. **Assignability.** The rights and responsibilities of Owner or Master Developer under this MDA may be assigned in whole or in part by Master Developer with the consent of the City as provided herein. Owner or

18.1. **Related Entity.** Owner or Master Developer's transfer of all or any part of the Property to any entity "related" to Owner or Master Developer (as defined by regulations of the Internal Revenue Service), Owner or Master Developer's entry into a joint venture for the development of the Project or Owner or Master Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Owner and Master Developer. Owner or Master Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

18.2. **Notice.** Owner or Master Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

18.3. **Partial Assignment.** If any proposed assignment is for less than all of Owner or Master Developer's rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, Owner and Master Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

18.4. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of Owner or Master Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" process.

18.5. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.

19. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

20. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this MDA shall be deemed

amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

21. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

22. **Time is of the Essence.** Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

23. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this MDA, the City and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be the City Manager and the initial representative for Owner and Master Developer shall be Tom Henriod. The parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this MDA and the development of the Project.

24. **Mutual Drafting.** Each party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against either party based on which party drafted any particular portion of this MDA.

25. **Applicable Law.** This MDA is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

26. **Venue.** Any action to enforce this MDA shall be brought only in the Fourth District Court for the State of Utah, Utah County.

27. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

28. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land.

29. **Authority.** The parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this MDA lawfully binding the City pursuant to Resolution No. ___ adopted by the City on May __, 2016.

30. Effectiveness of MDA. This MDA shall be effective as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

OWNER
Millpond Apartments, LLC

By: [Signature]
Its: Manager

MASTER DEVELOPER
Rockworth Companies, LLC

By: [Signature]
Its: Manager

CITY
City of American Fork

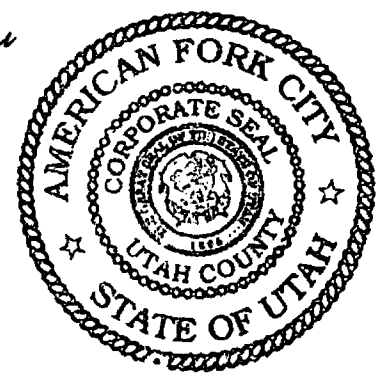
[Signature]
James H. Hadfield
Mayor, American Fork City

Approved as to form and legality:

[Signature]
City Attorney

Attest:

[Signature]
City Recorder



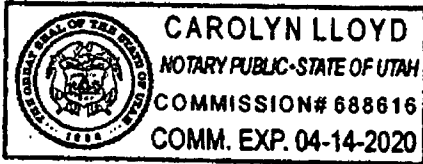
CITY ACKNOWLEDGMENT

STATE OF UTAH)

:SS.

COUNTY OF UTAH)

On the 2 day of ~~May~~^{June}, 2016, personally appeared before me, James H. Hadfield who being by me duly sworn, did say that he is the Mayor of the City of American Fork, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.



Carolyn Lloyd
NOTARY PUBLIC

My Commission Expires: 04-14-2020

Residing at: American Fork

MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)

:SS.

COUNTY OF Salt Lake

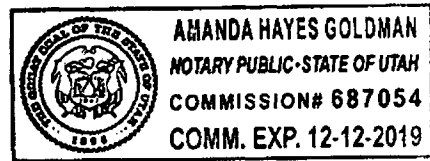
On the 8 day of May, 2010, personally appeared before me Tom Henrich, who being by me duly sworn, did say that he is the Manager of Rockworth Companies, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

Amanda Hayes Goldman

NOTARY PUBLIC

My Commission Expires: 12-12-19

Residing at: Salt Lake City



OWNER ACKNOWLEDGMENT

STATE OF UTAH)

:ss.

COUNTY OF Salt Lake

On the 8 day of May, 2010, personally appeared before me Tom Henrich who being by me duly sworn, did say that he is the Manager of Millpond Apartments, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.



NOTARY PUBLIC

My Commission Expires: 12-12-19

Residing at: Salt Lake City

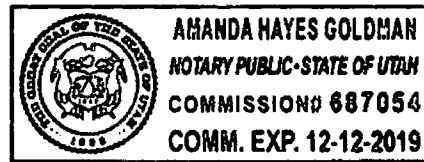
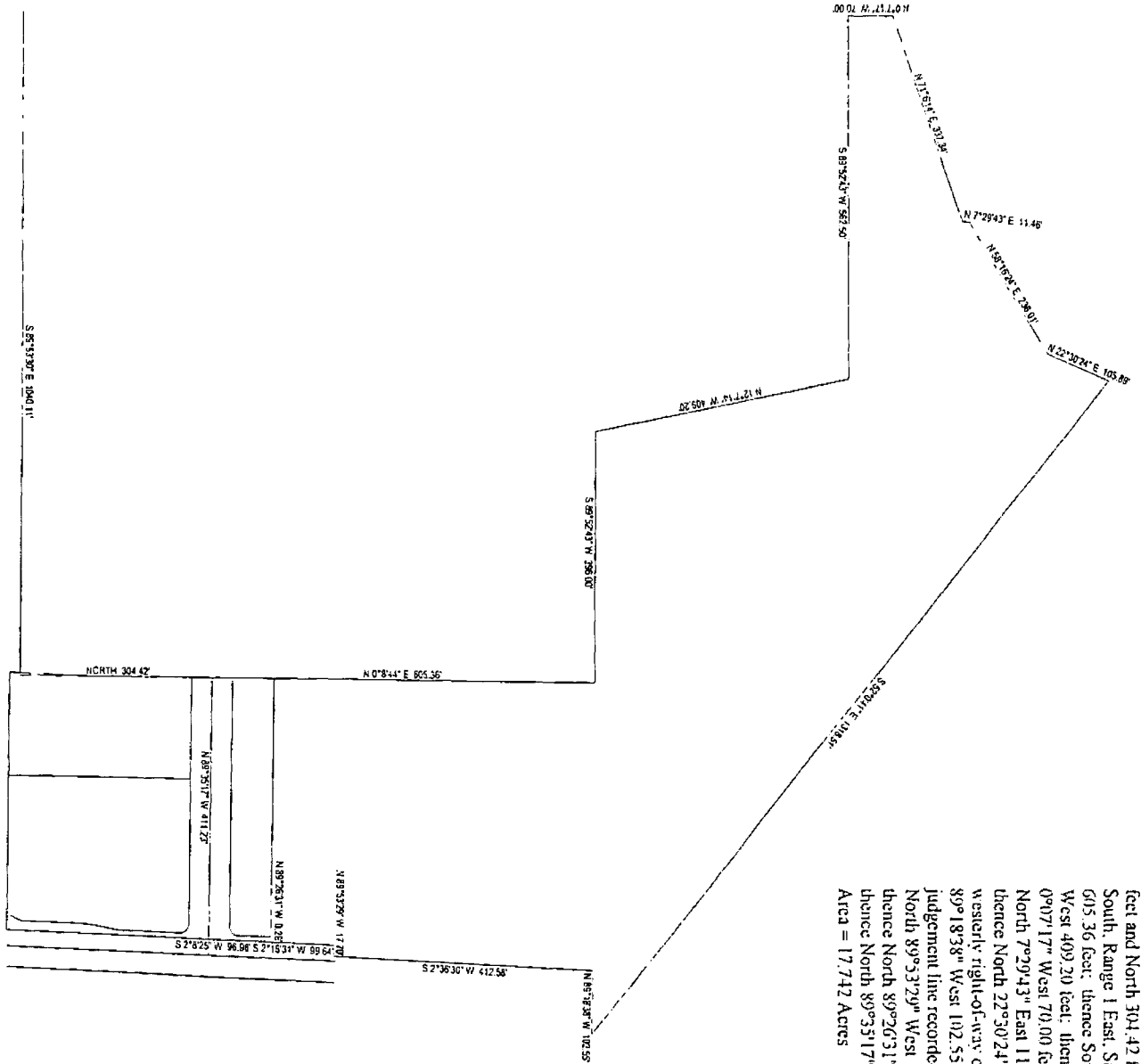


TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B":	Concept Plan
Exhibit "C"	Easement Legal Descriptions



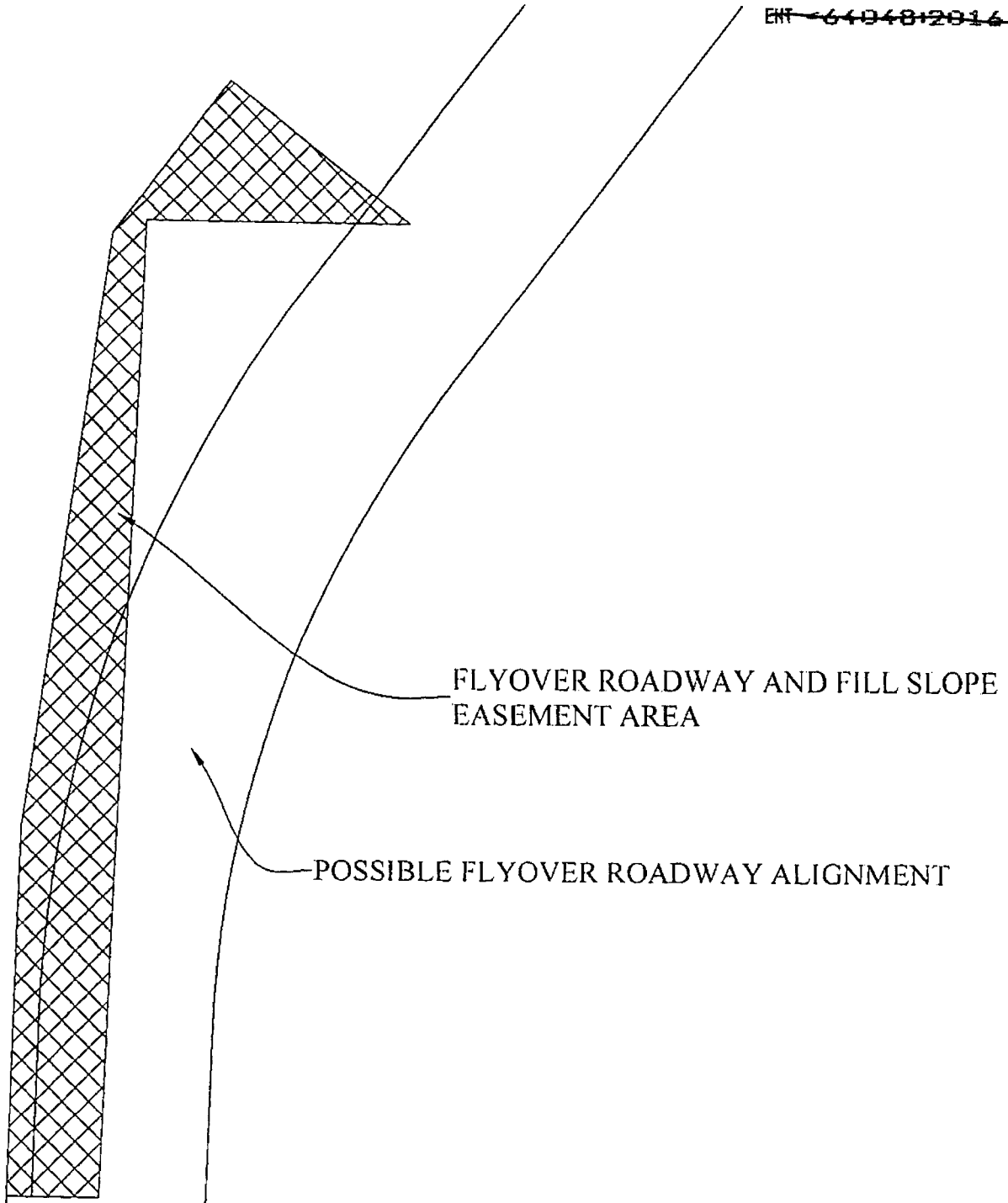
ALTA Combined Description
 Beginning at a point located South 89°33'00" East along section line 1040 11 feet and North 304.42 feet from the Southwest corner of Section 15, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence North 0°08'44" East 605.36 feet; thence South 89°52'43" West 396.00 feet; thence North 12°07'14" West 409.20 feet; thence South 89°52'43" West 562.50 feet; thence North 0°07'17" West 70.00 feet; thence North 71°06'14" East 337.34 feet; thence North 7°29'43" East 11.46 feet; thence North 58°16'24" East 236.01 feet; thence North 22°30'24" East 105.89 feet; thence South 52°00'41" East along the westerly right-of-way of Interstate-15 a distance of 1318.51 feet; thence North 89°18'38" West 102.55 feet; thence South 2°36'30" West along a fence line and judgment line recorded as Entry 37421:1980 a distance of 412.58 feet; thence North 89°53'29" West 17.70 feet; thence South 2°15'31" West 99.64 feet; thence North 89°26'31" West 0.28 feet; thence South 2°08'25" West 96.98 feet; thence North 89°35'17" West 411.23 feet to the point of beginning.
 Acre = 17.742 Acres

Possible Future flyover easement description

Beginning at a point located South 89°53'30" East along section line 1441.87 feet and North 531.13 feet from the Southwest corner of Section 15, Township 5 South, Range 1 East, Salt Lake Base and Meridian;

thence North 02°08'25" East, a distance of 145.08 feet; thence North 08°43'59" East, a distance of 232.57 feet; thence North 37°59'19" East, a distance of 73.97 feet; thence South 52°00'41" East, a distance of 88.87 feet; thence North 89°18'38" West, a distance of 102.55 feet; thence South 02°36'30" West, a distance of 380.43 feet; thence North 89°26'29" West, a distance of 36.45 feet to the POINT OF BEGINNING.

Containing 14,240 square feet or 0.3269 acres, more or less.



FLYOVER ROADWAY AND FILL SLOPE
EASEMENT AREA

POSSIBLE FLYOVER ROADWAY ALIGNMENT

FLYOVER EASEMENT EXHIBIT