

E 3379870 B 7755 P 953-961
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
05/07/2021 11:42 AM
FEE \$0.00 Pgs: 9
DEP RT REC'D FOR LAYTON CITY CORP

RETURNED
MAY 07 2021

When recorded, mail to:
Layton City Recorder
437 N. Wasatch Dr.
Layton, Utah 84041

Affects Parcel No(s): 09-050-0097

LAYTON CITY
STORM WATER FACILITIES
MAINTENANCE AGREEMENT

This Storm Water Facilities Maintenance Agreement ("Agreement") is made and entered into this 9th day of March, 2021, by and between Layton City, a Utah municipal corporation ("City"), and Lander FD LLC, a Utah Limited Liability Company ("Owner").

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the Layton City Storm Water Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in *Utah Code Ann. §§ 19-5-101, et seq.*, as amended ("Act"); and

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner desires to build and maintain at Owner's expense a storm and surface water management facility or improvements ("Storm Water Facilities"); and

WHEREAS, the Storm Water Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference ("Development Plan"); and

WHEREAS, as a condition of Development Plan approval, and as required as part of the City's Small MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Agreement addressing the maintenance requirements for the Storm Water Facilities and control measures installed on the Property.

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City's approval of the Development Plan, and the mutual covenants contained herein, the parties agree as follows:

1. Construction of Storm Water Facilities. The Owner shall, at its sole cost and expense, construct the Storm Water Facilities in strict accordance with the plans and specifications identified in the Development Plan, and any amendments thereto which have been approved by the City.
2. Maintenance of Storm Water Facilities. The Owner shall, at its sole cost and expense, adequately maintain the Storm Water Facilities. Owner's maintenance obligations shall include all pipes and channel built to convey storm water, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance, for purposes of this Agreement, is defined as good working condition so that the Storm Water Facilities are performing their design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Storm Water Facilities in good working condition. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.
3. Annual Inspection of Storm Water Facilities. The Owner shall, at its sole cost and expense, inspect the Storm Water Facilities and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Storm Water Facilities. The annual inspection shall cover all aspects of the Storm Water Facilities, including, but not limited to, the structural improvements, berms, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by July 31st of each year and shall be on forms acceptable to the City.
4. City Oversight Inspection Authority. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Storm Water Facilities whenever deemed necessary by the City. Such inspections 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 Storm Water Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Development Plan.
5. Notice of Deficiencies. If the City finds that the Storm Water Facilities contain any defects or are not being maintained adequately, the City shall send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies. Such notice shall be hand-delivered to the Owner or sent certified mail to the Owner at the Property address.

6. Owner to Make Repairs. The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Storm Water Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Storm Water Facilities are adequately maintained and continue to operate as designed and approved.
7. City's Corrective Action Authority. In the event the Owner fails to adequately maintain the Storm Water Facilities in good working condition acceptable to the City, after due notice of deficiencies as provided in Section 5, the City may enter upon the Property and take whatever steps necessary to correct deficiencies and to charge the costs of such repairs to the Owner. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Storm Water Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. 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 provided by law for Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.
8. Reimbursement of Costs. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. After said thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments.
9. Successors and Assigns. This Agreement shall be recorded in the Davis County Recorder's Office and the covenants and agreements contained herein shall run with the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.
10. Severability Clause. 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 Owner, its successors and assigns, is held invalid, the remainder of this Covenant shall not be affected thereby.
11. Utah Law and Venue. This Agreement shall be interpreted under 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 Davis County, Utah.
12. Indemnification. This Agreement imposes no liability of any kind whatsoever on the City, and the Owner agrees to hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly. The Owner shall indemnify and hold the City harmless 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 Storm Water Facilities.


13. Amendments. This Agreement shall not be modified except by written instrument executed by the City and the Owner of the Property at the time of modification, and no modification shall be effective until recorded in the Davis County Recorder's Office.

14. Subordination Requirement. If there is a lien, trust deed or other property interest recorded against the Property, the trustee, lien holder, etc., shall be required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to the Agreement.

[Signature and Notary pages to follow]

IN WITNESS WHEREOF, the OWNER has executed this Storm Water Facilities Maintenance Agreement
this 17 day of December, 2020.

OWNER:



OWNER'S SIGNATURE

(Signature must be notarized on following pages)

Tyrell J. Wall, manager

OWNER'S NAME & TITLE



ATTEST:

Kimberly S Read
KIMBERLY S READ, City Recorder

LAYTON CITY ACCEPTANCE:



ALEX R. JENSEN, City Manager

SWJ

Approved as to Form:

By: J. Mankin

Date: 4/12/21

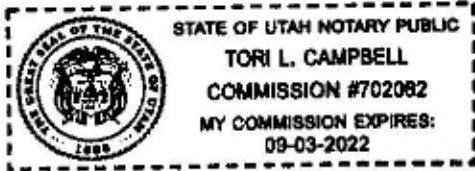
CITY ACKNOWLEDGMENT

STATE OF UTAH

:ss.

COUNTY OF DAVIS

On this 14 day of April, 2021, personally appeared before me Alex R. Jensen, who being duly sworn, did say that he/she is the City Manager of LAYTON CITY, a municipal corporation of the State of Utah, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in his capacity as land use authority on behalf of the City for approval of Storm Water Facilities Maintenance Agreements.



Tori L. Campbell
Notary Public

OWNER NOTARY

(Complete only if signing as an Individual)

STATE OF _____

:ss.

COUNTY OF _____

On this _____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that he/she has executed this Agreement with full authority to do so.

Notary Public

(See Following Page for Corporation/Partnership and Limited Liability Company Notaries)

(Complete only if signing on behalf of a Corporation/Partnership)

STATE OF _____
:SS.
COUNTY OF _____

On this _____ day of _____, 20____, personally appeared before me _____ who being by me duly sworn did say that he/she is the _____ of _____, a _____ corporation/partnership, and that _____ is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said corporation/partnership by authority of its Board of Directors/by-laws, and he/she acknowledged to me that said corporation/partnership executed the same.

NOTARY PUBLIC

(Complete only if signing on behalf of a Limited Liability Company)

STATE OF UTAH
:SS.
COUNTY OF DAVLS

On this 17 day of DECEMBER, 2020, personally appeared before me TYRELL J. WALL who being by me duly sworn did say that he/she is the MANAGER of LANDER PD, LLC, a limited liability company, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said company by authority, and he/she acknowledged to me that said company executed the same.



ORIONA WALL
NOTARY PUBLIC

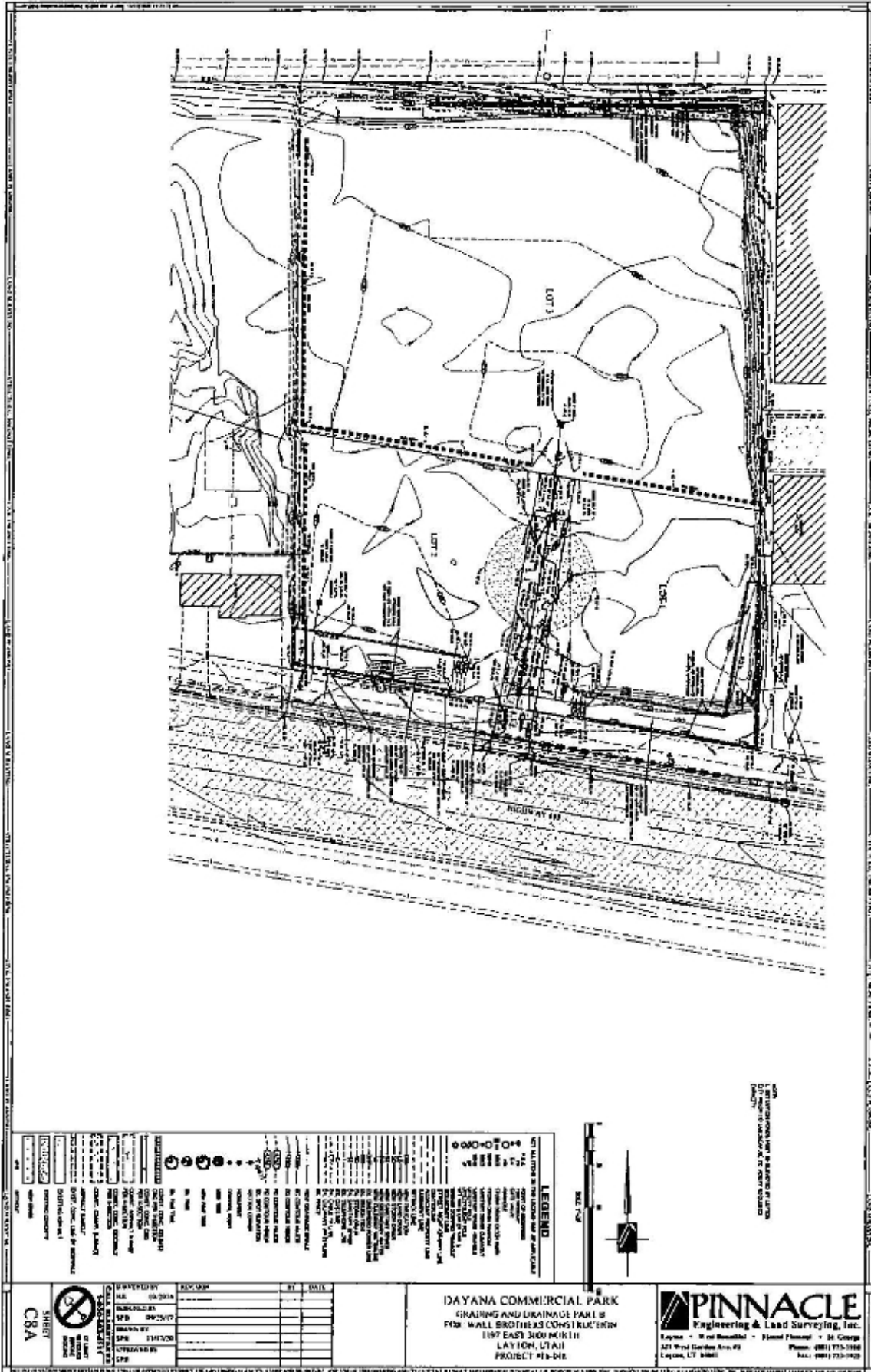
****IF ADDITIONAL SIGNERS AND/OR NOTORIAL WORDING ARE NECESSARY, PLEASE NOTATE ANY ADDITIONS ON THIS NOTARY PAGE AND ATTACH A STATE APPROVED NOTARIAL CERTIFICATE, WHICH IDENTIFIES THE DOCUMENT THE ATTACHED NOTARIAL CERTIFICATE RELATES TO, AS WELL AS, THE NUMBER OF PAGES IN THE DOCUMENT****

EXHIBIT "A"

LEGAL DESCRIPTION OF THE DAYANA COMMERCIAL CENTER

BEGINNING AT A POINT LOCATED SOUTH 89°39'25" EAST ALONG QUARTER SECTION LINE 546.00 FEET FROM THE NORTHWEST CORNER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°39'25" EAST ALONG QUARTER SECTION LINE 336.00 FEET; THENCE SOUTH 00°34'35" WEST 480.61 FEET TO THE NORTHERLY LINE OF HIGHWAY 193; THENCE NORTH 80°10'35" WEST ALONG THE NORTHERLY LINE OF SAID HIGHWAY 340.42 FEET; AND THENCE NORTH 00°34'35" EAST 424.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 152,063 SQ. FT. (3.49 ACRES)



LEGEND

	12" PIPE
	15" PIPE
	18" PIPE
	24" PIPE
	30" PIPE
	36" PIPE
	42" PIPE
	48" PIPE
	54" PIPE
	60" PIPE
	72" PIPE
	84" PIPE
	96" PIPE
	108" PIPE
	120" PIPE
	132" PIPE
	144" PIPE
	156" PIPE
	168" PIPE
	180" PIPE
	192" PIPE
	204" PIPE
	216" PIPE
	228" PIPE
	240" PIPE
	252" PIPE
	264" PIPE
	276" PIPE
	288" PIPE
	300" PIPE
	312" PIPE
	324" PIPE
	336" PIPE
	348" PIPE
	360" PIPE
	372" PIPE
	384" PIPE
	396" PIPE
	408" PIPE
	420" PIPE
	432" PIPE
	444" PIPE
	456" PIPE
	468" PIPE
	480" PIPE
	492" PIPE
	504" PIPE
	516" PIPE
	528" PIPE
	540" PIPE
	552" PIPE
	564" PIPE
	576" PIPE
	588" PIPE
	600" PIPE
	612" PIPE
	624" PIPE
	636" PIPE
	648" PIPE
	660" PIPE
	672" PIPE
	684" PIPE
	696" PIPE
	708" PIPE
	720" PIPE
	732" PIPE
	744" PIPE
	756" PIPE
	768" PIPE
	780" PIPE
	792" PIPE
	804" PIPE
	816" PIPE
	828" PIPE
	840" PIPE
	852" PIPE
	864" PIPE
	876" PIPE
	888" PIPE
	900" PIPE
	912" PIPE
	924" PIPE
	936" PIPE
	948" PIPE
	960" PIPE
	972" PIPE
	984" PIPE
	996" PIPE
	1008" PIPE
	1020" PIPE
	1032" PIPE
	1044" PIPE
	1056" PIPE
	1068" PIPE
	1080" PIPE
	1092" PIPE
	1104" PIPE
	1116" PIPE
	1128" PIPE
	1140" PIPE
	1152" PIPE
	1164" PIPE
	1176" PIPE
	1188" PIPE
	1200" PIPE
	1212" PIPE
	1224" PIPE
	1236" PIPE
	1248" PIPE
	1260" PIPE
	1272" PIPE
	1284" PIPE
	1296" PIPE
	1308" PIPE
	1320" PIPE
	1332" PIPE
	1344" PIPE
	1356" PIPE
	1368" PIPE
	1380" PIPE
	1392" PIPE
	1404" PIPE
	1416" PIPE
	1428" PIPE
	1440" PIPE
	1452" PIPE
	1464" PIPE
	1476" PIPE
	1488" PIPE
	1500" PIPE

REGISTERED PROFESSIONAL ENGINEER
 STATE OF CONNECTICUT
 No. 11456
 CBA

DATE	BY	REVISED
08/20/14	W.P.	1
08/20/14	W.P.	2
08/20/14	W.P.	3
08/20/14	W.P.	4
08/20/14	W.P.	5
08/20/14	W.P.	6
08/20/14	W.P.	7
08/20/14	W.P.	8
08/20/14	W.P.	9
08/20/14	W.P.	10
08/20/14	W.P.	11
08/20/14	W.P.	12
08/20/14	W.P.	13
08/20/14	W.P.	14
08/20/14	W.P.	15
08/20/14	W.P.	16
08/20/14	W.P.	17
08/20/14	W.P.	18
08/20/14	W.P.	19
08/20/14	W.P.	20

DAYANA COMMERCIAL PARK
GRADING AND DRAINAGE PART B
FOR WALL BROTHERS CONSTRUCTION
1197 EAST 300 NORTH
LAYTON, UT 84041
PROJECT #14-04

PINNACLE
 Engineering & Land Surveying, Inc.
 Layton • West Bennettsville • Grand Prismatic • St. George
 121 West Garden Ave. #2 Phone: (801) 733-1980
 Layton, UT 84041 Fax: (801) 733-1920