

Recorded at the Request of:
Brett Palmer
Stansbury Park Improvement District
10 Plaza
Stansbury Park, Utah 84074

Ent: 446233 - Pg 1 of 14
Date: 03/30/2017 12:01 PM
Fee: \$74.00
Filed By: cf
Jerry Houghton, Recorder
Tooele County Corporation
For: BRETT PALMER

Above Space for Recorder's Use Only

SEWER LINE COST ALLOCATION AGREEMENT
Wild Horse Ranch

THIS SEWER LINE COST ALLOCATION AGREEMENT ("Agreement"), is made and entered into effective as of this 28th day of March, 2017 (the "Effective Date"), by and between STANSBURY PARK IMPROVEMENT DISTRICT, a political subdivision of the State of Utah (the "District"), and PENELOPE ROSE, LLC, a Utah limited liability company (the "Penelope"). The District and the Penelope are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Penelope is the owner of a certain undeveloped real property situated within the boundaries of the District which has been master planned for development in connection with Penelope's proposed Wild Horse Ranch Subdivision Development (the "Development"), which land is more particularly described in EXHIBIT "A" hereto (the "Property").

B. In order for the District to have the capability of providing sanitary sewer service to the Property as it develops, and to other property being developed within the District, the District plans to construct and install a new underground main sanitary sewer collection pipeline, to include 2,735 lineal feet of 18-inch, 24-inch and 30-inch pipeline segments, sewer manholes and related equipment and facilities (the "Sewer Collection Line"), to be situated within, along and adjacent to the westerly side of Clark Drive (identified as Castlerock Drive under the Wild Horse Ranch Development Master Plan), in the area shown and as depicted on EXHIBIT "B" hereto.

C. The Parties acknowledge: (i) that based upon the current density and configuration of the proposed subdivision phases under the Wild Horse Ranch Development Master Plan, an 8-inch sanitary sewer collection line would be sufficient to serve the sanitary sewer demands of said development; (ii) that but for the District's construction of the Sewer Collection Line that Penelope would be obligated to construct and install an 8-inch sewer collection line, at its sole expense, and dedicate the same to the District as a condition to development approval by the District; and (iii) that the remaining capacity in the Sewer Collection Line, beyond that allocated to serve the Development, is to be utilized by the District in providing sanitary sewer service to the District as a whole.

D. In recognition of the relative benefits to be conferred upon the Parties through the District's construction and installation of the Sewer Collection Line, the Parties enter into this Agreement for the purpose of allocating between them the cost of constructing and developing the Sewer Collection Line relative and in proportion to the respective benefits of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the

Parties agree as follows:

AGREEMENT

1. Construction of the Sewer Collection Line; Ownership and Maintenance. The District shall contract for, administer, design, acquire materials for, and supervise, inspect and approve the construction of the Sewer Collection Line, and thereafter own and be responsible to operate, maintain, and repair the same, all at the District's sole cost and expense, subject to the payment by Penelope to the District of Penelope's allocated proportionate share of the cost of constructing the Sewer Collection Line, in conformance with the requirements of this Agreement.

2. Allocation of Construction Cost. Penelope shall pay, in conformance with the requirements of Section 3 below, the differential between the cost of materials acquisition, construction and installation of the Sewer Collection Line by the District, and the cost that would have been incurred by Penelope in the acquisition of materials, construction and installation of an 8-inch Sewer Collection Line (the "Equivalent 8-inch Line"), that Penelope would otherwise have been required to construct and install but for the construction by the District of the Sewer Collection Line. The Parties hereby acknowledge and agree that for the purpose of determining the cost share to be allocated between them, the cost to construct and install the Equivalent 8-inch Line is \$197,579.50, as set out and itemized in the Bid Estimate provided by RJT Excavating, dated May 31, 2016, a copy of which is attached as EXHIBIT "C" hereto, subject to the following:

(a) Penelope Allocated Cost Share. Penelope shall pay to the District, as its allocated share of the cost of constructing the Sewer Collection Line, the RJT Excavating bid amount of \$197,579.50 less \$65,670.00, being the identified line item bid cost for the "3" minus for trench import," which the District hereby agrees to pay as part of its allocated cost share, for a total amount due and payable by Penelope to the District of \$131,909.00.

(b) District Allocated Cost Share. The District shall pay the total cost of the Sewer Collection Line, less the allocated cost share paid by Penelope as set forth in Subsection 2(a) above.

3. Payment of Penelope's Allocated Cost Share.

(a) Installment Payments. Penelope's allocated cost share may be paid to the District in a maximum of four (4) equal installment payments of \$32,977 each, due and payable in connection with each development phase of the Development, with any final balance being due and payable in connection with whichever phase turns out to be the final development phase, using to the following methodology:

<u>No. of Development Phases</u>	<u>Amount Due / Development Phase</u>
If only one (1) Development Phase	\$131,909
If only two (2) Development Phases:	
Phase 1	\$32,977
Phase 2	\$98,932
If only three (3) Development Phases	
Phase 1	\$32,977

Phase 2	\$32,977
Phase 3	\$65,955

If four (4) Development Phases:

Phase 1	\$32,977
Phase 2	\$32,977
Phase 3	\$32,977
Phase 4	\$32,977

The installment payment due and owing in connection with each development phase pursuant to the methodology of the above table shall be payable by Penelope to the District prior and as a condition to the execution by the District of the final plat for such development phase.

4. Grant of Easement. Penelope shall grant to the District a permanent, non-exclusive, twenty-foot (20') wide underground utility easement, the centerline of which is more particularly described in Exhibit B hereto (the "Easement Property"), including the right of ingress and egress, over, under, across and through the Property for the construction, installation, ownership, operation, maintenance, repair and replacement of District water, sewer, storm drain and other utility lines and related facilities and equipment, including specifically, the Sewer Collection Line. The Parties acknowledge and agree that the Development has been designed so that the Easement Property will be within improved public rights of way, which will be dedicated by Penelope to Tooele County when final plats for the various phases of the Property in which the Easement Property are located are recorded (the "Final Plats"). The District agrees subject to compliance by Penelope with all applicable District standards, rules, regulations, policies and procedures, to execute each Final Plat, which will identify and confirm the area of the Easement Property as being within a public utility easement associated with a dedicated public right of way. The easement shall be granted in the form attached as EXHIBIT "D" hereto (the "Grant of Easement"), and in conformance with the following:

(a) The Grant of Easement shall be fully executed and acknowledged by Penelope, and be delivered by Penelope to the District for recording contemporaneously with the execution of this Agreement by the Parties.

(b) As consideration for the Grant of Easement, the District shall pay to Penelope the total sum of \$22,185, which amount shall be due and payable in full by the District to Penelope at the time of and in conjunction with the District's execution of the final plat for that phase of the Development that is first to be platted west of Clark Drive.

5. Miscellaneous Provisions.

(a) Incorporation of Recitals and Exhibits. The Recitals first set forth above and all Exhibits referenced herein are hereby incorporated into by and made a part of this Agreement.

(b) Notice. All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been given on the date of personal service upon the Party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, and addressed to the Parties at the following addresses:

TO THE DISTRICT:

Stansbury Park Improvement District
Attn: District Manager
#30 Plaza
Stansbury Park, UT 84074
Phone (435) 882-7922

TO PENELOPE:

Penelope Rose, LLC
Attn: Micah Peters
336 West Broadway, Suite 110
Salt Lake City, Utah 84101
Phone: (801) 599-1839
Email: micah@clearwaterhomesutah.com

Either Party may change its address for notice hereunder by giving written notice to the other Party in accordance with the provisions of this Section.

(c) Attorney's Fees. The Parties each agree that should they default in any of the covenants or agreements contained herein, the defaulting Party shall pay all costs and expenses, including reasonable attorney's fees and court costs, which may arise or accrue from the enforcement of this Agreement, or in pursuing any remedy provided for hereunder or by the statutes, or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

(d) Entire Agreement. This Agreement, together with the Exhibits attached hereto, and the documents referenced herein, contain the entire agreement by and between the Parties with respect to the subject matter hereof, and supersede any prior promises, representations, warranties, inducements or understanding between the Parties which are not contained herein.

(e) Binding Effect; Covenants Run with the Land; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and upon their respective officers, agents, employees, representatives, affiliates and assigns, including, without limitation, any separate affiliated entity of Penelope or assignee of Penelope which is involved with, assumes or undertakes to fulfill any responsibility or obligation imposed upon Penelope pursuant to this Agreement, and any city or other governmental agency or agencies that assumes jurisdiction over the Development should the District no longer have jurisdiction over the Development. The covenants contained herein shall be deemed to run with the Property, and the Parties agree that this Agreement shall be recorded in the office of the Tooele County Recorder, State of Utah. Penelope shall have the right to sell its rights in one or more of the phases comprising the Property and assign its rights hereunder to third parties unaffiliated with Penelope. In such an event, Penelope's assignees shall be required to pay that portion of Penelope's allocated cost share for such phase and otherwise comply with all other terms and provisions of this Agreement.

(f) No Waiver. Any Party's failure to enforce any of the provisions of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the Party intended to be benefitted by the provision, and a waiver by a Party of

a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provision.

(g) Severability. If any portion of this Agreement is held to be unenforceable, any enforceable portion thereof and the remaining provisions of this Agreement shall continue in full force and effect.

(h) Time of the Essence. Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.

(i) Knowledge. The Parties have each read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice.

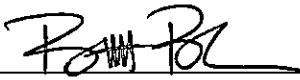
(j) No Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture, or other fiduciary relationship between the Parties.

(k) Amendment. This Agreement may be amended only in writing signed by the District and the Penelope.

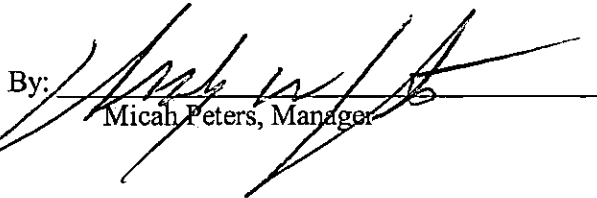
(l) Warranty of Authority. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

STANSBURY PARK IMPROVEMENT DISTRICT


By: 
Brett Palmer, District Manager

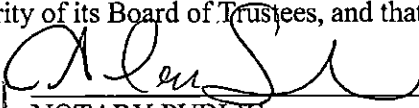
PENELOPE ROSE, LLC

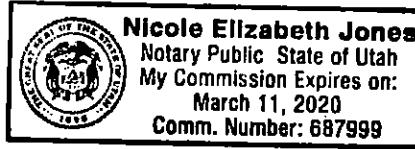
By: 
Micah Peters, Manager

STATE OF UTAH)
 : ss.
County of Tooele)

On the 30 day of March, 2017, appeared before me Brett Palmer, personally known to me, or proved to me on the basis of satisfactory evidence, to be Manager of the Stansbury Park Improvement District, who duly acknowledged that the within and foregoing instrument was signed on behalf of said District by authority of its Board of Trustees, and that said District executed the same.

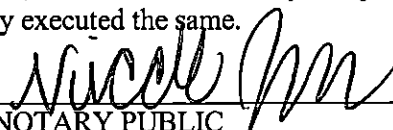
 ALEXA SLATER
NOTARY PUBLIC
STATE OF UTAH
COMMISSION #679395
My Commission Expires Sept. 24, 2018


NOTARY PUBLIC



STATE OF UTAH)
 :ss.
County of Salt Lake)

On the 29th day of March, 2017, personally appeared before me Micah Peters, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of Penelope Rose, LLC, a Utah limited liability company, who duly acknowledged to me that limited liability company executed the same.



NOTARY PUBLIC

EXHIBIT A

Legal Description of the Wild Horse Ranch Development Property

14-130 156 ACRES STANSBURY PARK

SURVEY DESCRIPTIONS

PARCEL 9G, 9H, & 9I

A portion of the NW1/4 and SW1/4 of Section 16, and the SE1/4 and NE1/4 of Section 17, Township 2 South, Range 4 West, Salt Lake Base & Meridian, located in Stansbury Park, Tooele County, State of Utah, more particularly described as follows:

Beginning at a point on the northerly right-of-way line of State Road 138 located S89°42'06"W along the Section line 683.44 feet and S0°17'54"E 2,577.82 feet from the North ¼ Corner of Section 16, T2S, R4W, S.L.B.& M.; thence along said right-of-way the following 3 (three) courses and distances: S63°21'12"W 1,572.95 feet; thence Southwesterly along the arc of an 11,540.21 foot radius non-tangent curve (radius bears: S26°39'05") 715.01 feet through a central angle of 3°33'00" (chord: S61°34'25"W 714.89); thence S59°47'37"W 345.51 feet; thence N30°06'40"W 1,642.17 feet along a fence line and the extension of Parcel 9 P.U.D. COMMERCIAL PHASE 1, according to the Official Plat thereof on file in the Office of the Tooele County Recorder to the northwest corner of said plat; thence N62°34'10"E along said plat and extension thereof 1,176.67 feet to the west line of that Real Property described in Deed Entry No. 362637 of the Official Records of Tooele County; thence along said deed the following 3 (three) courses and distances: S26°49'40"E 182.82 feet; thence N62°44'32"E 198.55 feet; thence N26°49'40"W 183.60 feet to the southerly line of that Real Property described in Deed Book 842 Page 297 of the Official Records of Tooele County; thence N62°34'26"E along said deed 802.78 feet; thence S30°36'02"E 681.46 feet; thence S78°28'14"E 472.92 feet; thence S85°50'46"E 113.66 feet; thence S30°14'40"E 596.27 feet to the point of beginning.

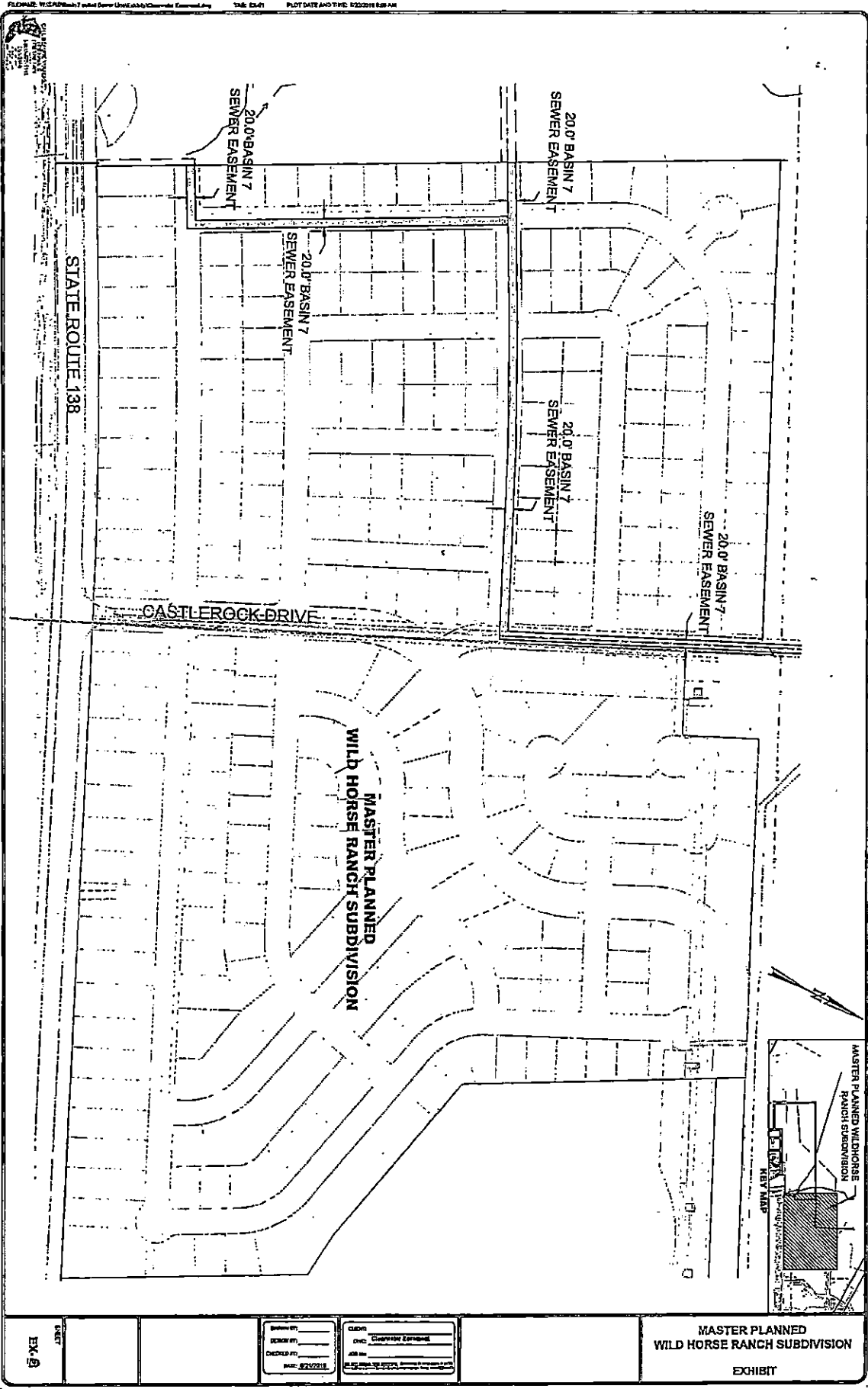
Contains: 88.16+/- acres

LESS AND EXCEPTING any public roadways lying within the bounds of PARCEL 9 P.U.D. COMMERCIAL Phase 1, according to the Official Plat thereof on file in the Office of the Tooele County Recorder.

EXHIBIT B

Centerline Legal Description and Depiction of the Location
of Sewer Collection Line

EXHIBIT B
APPLIES TO WEST SIDE OF CASTLEROCK DRIVE ONLY



EX - B

SHEET EX 9	DRAWN BY: _____ CHECKED BY: _____ DATE: 6/22/2011	CLIENT: _____ DVC: _____ ALL IN: _____ PROJECT: _____	MASTER PLANNED WILD HORSE RANCH SUBDIVISION EXHIBIT
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EXHIBIT C

**RJT Excavating Bid Proposal for the
Equivalent 8-inch Line**



P.O. Box 84
Willard, UT. 84340

EX "C"

Estimate

Date	Estimate #
5/31/2016	676

Name / Address
Stansbury Park Improvement District

				Project
Description	Qty	U/M	Cost	Total
Sewer Trunk Line Through Wildhorse Ranch				
8" Sewer Main	2,735	LF	37.70	103,109.50
3" Minus for trench import	4,975	TN	13.20	65,670.00
48" Sewer Manhole	7	EA	2,600.00	18,200.00
60" Sewer Manhole	2	EA	2,800.00	5,600.00
Dewatering			5,000.00	5,000.00
Subtotal				197,579.50
			Total	\$197,579.50

Customer Signature _____

EXHIBIT D

Form of Grant of Easement