

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STORM WATER FACILITIES MAINTENANCE COVENANT, LICENSE AND AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement ("Agreement") is made by and between LC Pflugerville, LLC, an Ohio limited liability company, the owners of a tract of land being more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes ("PROPERTY"), and City of Pflugerville, Texas ("CITY"), collectively referred to herein as the Parties. For purposes of this Agreement, the term OWNER refers to the current owner of the PROPERTY, and the OWNER's successors, heirs, and assigns.

WHEREAS, the OWNER of the PROPERTY possesses full authority to execute deeds, mortgages, and other covenants affecting the PROPERTY and desires to enter into this Agreement, as required by the City of Pflugerville's Code of Ordinances, including without limitation the Unified Development Code and associated Engineering Design and Construction Standards Manual, and the City's Texas Commission on Environmental Quality-issued Municipal Separate Storm Sewer System ("MS4") TPDES General Permit (TXR040000), collectively, the "Regulations"; and

WHEREAS, the OWNER acknowledges and agrees that, in order to ensure perpetual compliance with the Regulations, the PROPERTY must be impressed with certain covenants and restrictions;

WHEREAS, the Regulations generally and specifically require the design, construction and perpetual maintenance of permanent post construction storm water best management practices ("BMPs") developed and included within a Storm Water Management Site Plan ("SWMSP") required as a part of, and incident to, development, and OWNER acknowledges that compliance therewith by virtue of this Agreement and the terms hereof shall enable OWNER to develop the PROPERTY, which is accepted in consideration of this Agreement; and

WHEREAS, the CITY is charged with the responsibility of protecting the public health, safety and welfare through implementation of storm water pollution prevention measures, including ensuring that SWMSPs are developed, and post construction storm water BMPs are implemented and perpetually maintained by property owners.

NOW, THEREFORE, AND IN CONSIDERATION OF, the mutual covenants and obligations herein expressed, the Parties hereto agree as follows:

1. RECITALS INCORPORATED. The above Recitals and all terms defined therein are incorporated into this Agreement for all purposes.

2. DECLARATION OF COVENANTS AND RESTRICTIONS. It is declared that the OWNER of PROPERTY, shall hold, sell and convey the PROPERTY, subject to the following covenants and restrictions (the "Restrictive Covenants"), which are impressed upon the PROPERTY by this Agreement. OWNER further declares that these Restrictive Covenants shall run with the land, and shall be binding upon the OWNER, its heirs, successors and assigns, and that each contract, deed or conveyance of any kind conveying all or a portion of the PROPERTY will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance. The OWNER shall record this Agreement in the Official Land Records of Travis County, Texas.
 - (a) The OWNER covenants, declares and agrees that the OWNER shall perpetually preserve, protect, inspect and maintain the permanent post construction storm water BMPs developed by the OWNER in accordance with the SWMSP for the PROPERTY to ensure that the post construction storm water BMPs are and remain in proper condition in accordance with the SWMSP and the Regulations. The permanent post construction storm water BMPs solely consist of those provided in the SWMSP in **Exhibit B**, attached hereto and incorporated herein.

 - (b) The OWNER covenants and declares that OWNER shall maintain and inspect the permanent BMPs in accordance with the "Maintenance and Repair Plan" also provided in **Exhibit B** and the Regulations. OWNER acknowledges and agrees that the Maintenance and Repair Plan may not be modified without the CITY Development Director's, or designee's, written consent, which shall not be unreasonably withheld, conditioned or delayed. OWNER acknowledges and agrees that the CITY is a beneficiary of OWNER's obligations under this Agreement and that failure to preserve, protect, inspect and maintain the post construction storm water BMPs in accordance with this Agreement is a breach of this Agreement.

 - (c) OWNER covenants and declares that any maintenance or repair needs identified by OWNER through periodic inspection shall be performed by the OWNER within thirty (30) days of discovery or such longer period of time that is consistent with the Maintenance and Repair Plan, or upon notification from the CITY that OWNER has failed to comply with the Maintenance and Repair Plan together with a description of such failure. If maintenance and repair cannot be performed upon written notification by the CITY, the OWNER shall provide CITY with a schedule of activities to be completed, which shall be completed within a reasonable time as agreed to by the Parties. In the event the work is not performed within the specified time, the OWNER acknowledges and agrees that the CITY, or its employees, agents or contractors, may enter the PROPERTY and complete the required maintenance, as determined necessary in the CITY's sole discretion, at the OWNER's sole cost and expense. In the event that immediate maintenance and repair is necessary to protect public health, safety or welfare, as determined in the CITY'S sole discretion, CITY may enter and complete such maintenance and repair without prior notice to the

OWNER; however, the CITY may only perform such required maintenance and repair as is necessary to remedy the condition affecting public health, safety, or welfare, and only to the extent such maintenance and repair is within the scope of the Maintenance and Repair Plan. The OWNER shall reimburse the CITY for such costs incurred for the maintenance of the post construction storm water BMPs immediately upon demand. OWNER further acknowledges and agrees that failure to reimburse CITY for all such costs shall be deemed a breach of this Agreement and will subject OWNER to all actions at law or in equity as the CITY may deem prudent, including without limitation, the placement of a judicially enforceable lien on the PROPERTY to secure the payment of all CITY costs incurred, which lien shall attach to the PROPERTY when duly recorded.

(d) The OWNER covenants, declares and agrees to modify or increase the inspection and maintenance or repair requirements, as deemed reasonably necessary by the CITY upon receipt of written notification thereof to OWNER, to ensure proper functioning and maintenance of the said post construction storm water BMP's.

(e) Notwithstanding anything in this Agreement to the contrary, OWNER acknowledges and agrees that the CITY is under no obligation to maintain or repair said post construction storm water BMP's, and in no event shall this Agreement be construed to impose any such obligation, duty or liability upon the CITY.

3. EASEMENT RESERVATION. OWNER hereby reserves a perpetual access and maintenance easement to all post construction storm water BMPs shown on the SWMSP for the purpose of inspection, repair and perpetual maintenance.

4. LICENSE. OWNER hereby GRANTS, SELLS AND CONVEYS TO CITY A NON-EXCLUSIVE IRREVOCABLE LICENSE OVER, UPON, ACROSS AND THROUGHOUT THE SWMSP AND PORTIONS OF THE PROPERTY THAT ARE NECESSARY TO ACCESS THE SWMSP, BUT NOT OTHERWISE, FOR ACCESS, INSPECTION AND MAINTENANCE OF THE POST CONSTRUCTION STORM WATER BMPs, AS APPLICABLE AND NECESSARY, UNTIL SUCH TIME AS THIS AGREEMENT IS MODIFIED, AMENDED OR TERMINATED AS PROVIDED HEREIN.

5. INDEMNIFICATION. In the event of the OWNER's failure to maintain the post construction storm water BMPs or OWNER's creation of a hazard, and the City's subsequent maintenance of the post construction storm water BMPs, the OWNER, whether one or more, shall be jointly and severally liable to the City for any reasonable expenses incurred by the City while maintaining the post construction storm water BMPs and, TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS, OWNER, AND ITS HEIRS, SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, SAVE HARMLESS, AND DEFEND THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INSURERS, INCLUDING WITHOUT LIMITATION THE TEXAS MUNICIPAL INTERGOVERNMENTAL RISK POOL, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL DEMANDS, LIABILITIES, CLAIMS, PENALTIES, FORFEITURES, SUITS, AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT, AND REASONABLE ATTORNEY'S FEES), WHICH CITY MAY HEREAFTER INCUR, BECOME RESPONSIBLE

FOR, OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURIES TO ANY PERSON, DESTRUCTION OR DAMAGE TO ANY PROPERTY, CONTAMINATION OF OR ADVERSE EFFECTS ON THE ENVIRONMENT, OR ANY VIOLATION OF GOVERNMENTAL LAWS, REGULATIONS, OR RULES NOT RESULTING FROM THE CITY'S OWN NEGLIGENCE, BUT TO THE EXTENT CAUSED BY THE OWNER'S BREACH OF ANY WARRANTY, TERM OR PROVISION OF THIS AGREEMENT, OR ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE OWNER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN THE PERFORMANCE, OR OMISSION, OF ANY ACT CONTEMPLATED BY THIS AGREEMENT.

6. GENERAL PROVISIONS.

(a) Severability. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this Agreement shall remain in full effect.

(b) Non-Waiver. If at any time the CITY fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

(c) Modification and Amendment. The Restrictive Covenants and License provided by this Agreement may be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Real Property Records of Travis County, Texas, executed, acknowledged, and approved by (a) the Director of Planning of the City of Pflugerville, or successor department; (b) by the owner(s) of the property subject to the modification, amendment or termination at the time of such modification, amendment or termination, and (c) any mortgagees holding first lien security interests on any portion of the PROPERTY.

(d) Attorney's Fees. In the event the CITY brings an action or proceeding to enforce the terms hereof or declare rights hereunder, and is determined to be the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, CITY shall be entitled to reasonable attorneys' fees, costs and expert witness fees as the court shall determine. The term "Prevailing Party" shall mean a party who substantially obtains or defeats the relief sought, as the case may be, by the entering of a judgment or arbitration award in such party's favor.

(e) Governing Law. This Agreement and all rights and obligations created hereby will be governed by the laws of the State of Texas and venue shall be located in Travis County, Texas.

(f) Entire Agreement. This Agreement, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and the exhibits attached hereto. The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any party.

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

**LOT 2, BLOCK B, LIFESTYLE COMMUNITIES PFLUGERVILLE PHASE 1 FINAL
PLAT, ACCORDING TO PLAT RECORDED UNDER DOCUMENT NO. _____,
IN THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.**

EXHIBIT B
PERMANENT STORMWATER MAINTENANCE PLAN AND SWMSP

PERMANENT STORMWATER MAINTENANCE PLAN

TAKEN FROM TCEQ TECHNICAL GUIDANCE ON BEST MANAGEMENT PRACTICES (RG-348)

The owner shall provide a written report to the City's Development Services Center on or before December 31st of each subsequent year specifically detailing the inspection and maintenance obligations undertaken to maintain the Detention Pond facilities during the current calendar year. The owner shall confirm that the contact information for the point of contact for maintenance issues with each annual report and shall immediately notify the City of Pflugerville should the contact information change.

LIFESTYLE COMMUNITIES RESIDENTIAL DETENTION POND A

Extended detention basins have moderate to high maintenance requirements, depending on the extent to which future maintenance needs are anticipated during the design stage. Responsibilities for both routine and nonroutine maintenance tasks need to be clearly understood and enforced. If regular maintenance and inspections are not undertaken, the basin will not achieve its intended purposes.

There are many factors that may affect the basin's operation and that should be periodically checked. These factors can include mowing, control of pond vegetation, removal of accumulated bottom sediments, removal of debris from all inflow and outflow structures, unclogging of orifice perforations, and the upkeep of all physical structures that are within the detention pond area. One should conduct periodic inspections and after each significant storm. Remove floatables and correct erosion problems in the pond slopes and bottom. Pay particular attention to the outlet control perforations for signs of clogging. If the orifices are clogged, remove sediment and other debris. The generic aspects that must be considered in the maintenance plan for a detention facility are as follows:

Routine Maintenance

Inspections: Basins should be inspected at least twice a year (once during or immediately following wet weather) to evaluate facility operation. When possible, inspections should be conducted during wet weather to determine if the pond is meeting the target detention times. In particular, the extended detention control device should be regularly inspected for evidence of clogging, or conversely, for too rapid a release. If the design drawdown times are exceeded by more than 24 hours, then repairs should be scheduled immediately. The upper stage pilot channel, if any, and its flow path to the lower stage should be checked for erosion problems. During each inspection, erosion areas inside and downstream of the BMP should be identified and repaired or revegetated immediately.

Mowing: The upper stage, side slopes, embankment, and emergency spillway of an extended detention basin must be mowed regularly to discourage woody growth and control weeds. Grass areas in and around basins should be mowed at least twice annually to limit vegetation height to 18 inches. More frequent mowing to maintain aesthetic appeal may be necessary in landscaped areas. When mowing of grass is performed, a mulching mower should be used, or grass clippings should be caught and removed.

Debris and Litter Removal: Debris and litter will accumulate near the extended detention control device and should be removed during regular mowing operations and inspections. Particular attention should be paid to floating debris that can eventually clog the control device or riser.

Erosion Control: The pond side slopes, emergency spillway, and embankment all may periodically suffer from slumping and erosion, although this should not occur often if the soils are properly compacted during construction. Regrading and revegetation may be required to correct the problems. Similarly, the channel connecting an upper stage with a lower stage may periodically need to be replaced or repaired.

Non-routine maintenance

Structural Repairs and Replacement: With each inspection, any damage to the structural elements of the system (pipes, concrete drainage structures, retaining walls, etc.) should be identified and repaired immediately. These repairs should include patching of cracked concrete, sealing of voids, and removal of vegetation from cracks and joints. The various inlet/outlet and riser works in a basin will eventually deteriorate and must be replaced. Public works experts have estimated that corrugated metal pipe (CMP) has a useful life of about 25 yr, whereas reinforced concrete barrels and risers may last from 50 to 75 yr.

Nuisance Control: Standing water (not desired in an extended detention basin) or soggy conditions within the lower stage of the basin can create nuisance conditions for nearby residents. Odors, mosquitoes, weeds, and litter are all occasionally perceived to be problems. Most of these problems are generally a sign that regular inspections and maintenance are not being performed (e.g., mowing, debris removal, clearing the outlet control device).

Sediment Removal: When properly designed, dry extended detention basins will accumulate quantities of sediment over time. Sediment accumulation is a serious maintenance concern in extended detention dry ponds for several reasons. First, the sediment gradually reduces available stormwater management storage capacity within the basin. Second, unlike wet extended detention basins (which have a permanent pool to conceal deposited sediments), sediment accumulation can make dry extended detention basins very unsightly. Third, and perhaps most importantly, sediment tends to accumulate around the control device. Sediment deposition increases the risk that the orifice will become clogged, and gradually reduces storage capacity reserved for pollutant removal. Sediment can also be resuspended if allowed to accumulate over time and escape through the hydraulic control to downstream channels and streams. For these reasons, accumulated sediment needs to be removed from the lower stage when sediment buildup fills 20% of the volume of the basin or at least every 10 years.

Owner's Information

Lifestyle Real Estate Holdings, Ltd.
230 West Street, Suite 200
Columbus, Ohio 43215
Contact: Justin Scott, (512) 987-3805, justin.scott@lifestylecommunities.com

NO.	REVISIONS	DATE	BY

© 2021 KIMLEY-HORN AND ASSOCIATES, P.C.
 10814 JOYVABLE ROAD, SUITE 200, AUSTIN, TX 78758
 PHONE: 512-418-7333 FAX: 512-418-1999
 WWW.KIMLEY-HORN.COM

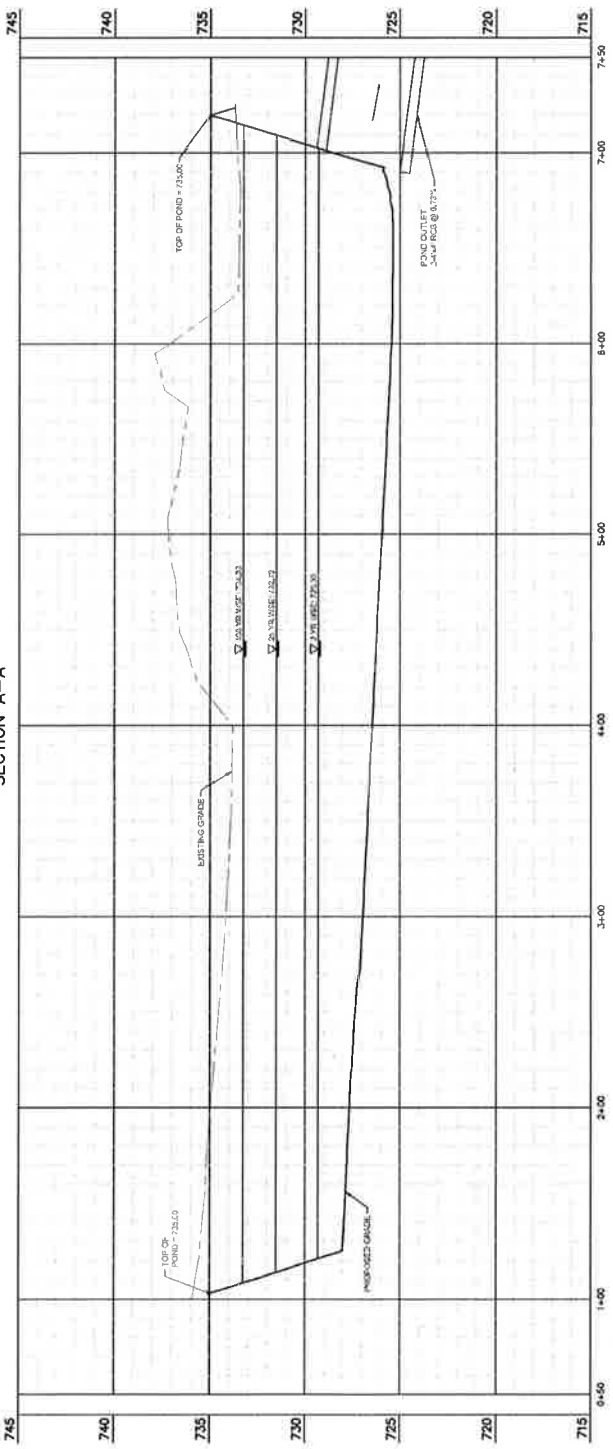


PROJECT: LIFESTYLE COMMUNITIES
 SHEET NUMBER: 31 OF 51
 DATE: JUNE 2021
 DRAWN BY: JCH
 CHECKED BY: JCH
 PROJECT: PFLUGER FARM LANE EXTENSION
 CITY OF Pflugerville, TEXAS
 CROSS-SECTIONS
 DETENTION POND

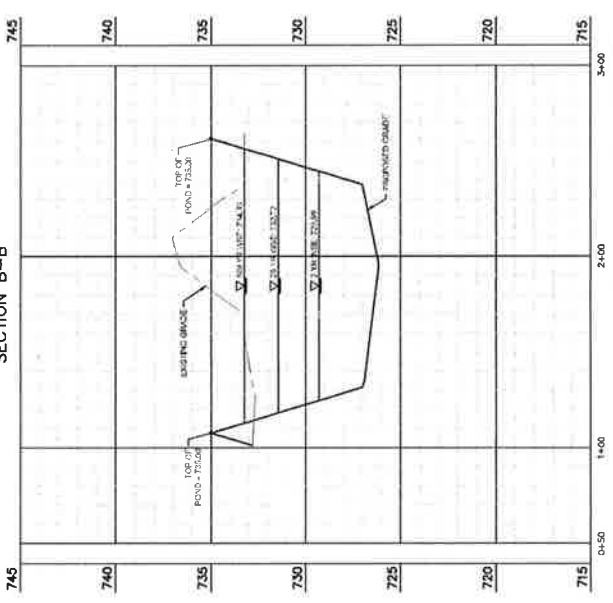
LIFESTYLE COMMUNITIES
 MASS GRADING &
 PFLUGER FARM LANE EXTENSION
 CITY OF PFLUGERVILLE
 TRAVIS COUNTY, TEXAS



SECTION A-A



SECTION B-B



NOTICE: THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF KIMLEY-HORN AND ASSOCIATES, P.C. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR DISTRIBUTION OF THIS INFORMATION WITHOUT THE WRITTEN CONSENT OF KIMLEY-HORN AND ASSOCIATES, P.C. IS STRICTLY PROHIBITED. THE USER OF THIS INFORMATION SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AUTHORITIES.

After recording, return to:

City of Pflugerville
Office of Development Services
201 E. Pecan St. Bldg. B
Pflugerville, TX. 78660

Attn: Jenna Goolsby / *Gordon Haws*