

STORMWATER FACILITY MAINTENANCE AGREEMENT

This Stormwater Facility Maintenance Agreement (“Agreement”) is entered into between the SOUTHEAST METRO STORMWATER AUTHORITY, a political subdivision of the State of Colorado (“SEMSWA”), and COVENANT COMMUNITY CHURCH OF AURORA, a Colorado nonprofit corporation (“CCC”). REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado (“RTD”), is executing this Agreement solely to evidence its intent to be bound by Sections 4,6 and 13 hereof, and AVB PICADILLY, LLC, an Arizona limited liability company (“AVB”), is executing this Agreement solely to evidence its intent to be bound by Sections 9, 11, and 13 hereof.

RECITALS

WHEREAS, RTD is the owner of that certain parcel of land known as:

Lots 5 and 6 and Tract A,
Huntington Smoky Hill Park and Ride, Filing No.1
City of Centennial
County of Arapahoe, State of Colorado

collectively referred to as the “RTD Property”, and Tract A of Lot 6 referred to as the “Property”; and

WHEREAS, CCC is the owner of that certain parcel of land known as:

Lot 1
Huntington Smoky Hill Park and Ride, Filing No. 1
City of Centennial
County of Arapahoe, State of Colorado

referred to as the “CCC Property”; and

WHEREAS, AVB is the owner of that certain parcel of land known as:

Lots 2, 3 and 4
Huntington Smoky Hill Park and Ride, Filing No. 1
City of Centennial
County of Arapahoe, State of Colorado

referred to as the “AVB Property”; and

WHEREAS, pursuant to (a) that certain Development Agreement between CCC and RTD, dated as of February 25, 2009 and recorded on February 25, 2009 at Reception No. B9018670 in the records of the County Clerk & Recorder of Arapahoe County, State of Colorado (the “Development Agreement”), as such Development Agreement was assigned by CCC to and assumed by AVB pursuant to that certain Assignment and Assumption of Development

Agreement between CCC and AVB, dated as of February 25, 2009 and recorded on February 25, 2009 at Reception No. B9018674 in the records of the County Clerk & Recorder of Arapahoe County, State of Colorado, and (b) that certain City of Centennial, Colorado Subdivision Improvement Agreement for Huntington-Smoky Hill Park N Ride Final Development Plan Case No. LU-0601-008, among the City of Centennial, a home rule municipality of the State of Colorado, CCC and RTD, dated as of February 25, 2009 and recorded on February 25, 2009 at Reception No. B9018669 in the records of the County Clerk & Recorder of Arapahoe County, State of Colorado (“SIA”), as such SIA was assigned by CCC to and assumed by AVB pursuant to that certain Assignment and Assumption of City of Centennial, Colorado Subdivision Improvement Agreement for Huntington-Smoky Hill Park N Ride Final Development Plan Case No. LU-0601-008, between CCC and AVB dated February 25, 2009 and recorded on February 25, 2009 at Reception No. B9018673 in the records of the County Clerk & Recorder of Arapahoe County, State of Colorado, AVB is responsible for the construction of the “Non RTD Improvements” as such term is defined and described in the SIA and the “CCC Improvements” as such term is defined and described in the Development Agreement, including without limitation, the detention pond and landscaping included within the definition of “Facilities” below; and

WHEREAS, pursuant to that certain Declaration of Reciprocal Easements and Agreements dated February 25, 2009 and recorded on February 25, 2009 at Reception No. B9018671 in the records of the County Clerk & Recorder of Arapahoe County, State of Colorado (“Declaration”), which encumbers the RTD Property (including the Property), the CCC Property and the AVB Property, maintenance obligations of the Facilities are as described therein, and, subject to Section 12 below, CCC (the “Maintenance Party”) shall perform the maintenance obligations related to the Facilities as set forth herein; and

WHEREAS, a Phase III Drainage Report and Plan known as Huntington Smoky Hill Park and Ride Case No. D07-1038 and also known as Case No. D08-1060 have been approved by the City of Centennial, State of Colorado (the “City”), referred to as the “Plan”; and

WHEREAS, said Plan provides for stormwater management facilities including drainage facilities intended to reduce, detain, convey, and manage stormwater runoff, “drainage facilities,” and facilities intended to provide water quality benefits or Best Management Practices (“BMP”), “water quality facilities,” within the confines of the property (drainage facilities and water quality facilities are collectively referred to as “Facilities”); and

WHEREAS, SEMSWA requires that the Facilities shown on the Plan be constructed and adequately maintained; and

WHEREAS, SEMSWA has required the submission of an Operation and Maintenance Manual as specified in the Arapahoe County/City of Centennial Stormwater Management Manual, hereinafter referred to as the “O&M Manual,”

NOW THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Maintenance Party shall provide maintenance for all the Facilities as described on the Plan to ensure that the Facilities are and remain in proper working condition in accordance with the City of Centennial Stormwater Management Manual, and other applicable SEMSWA approved standards, and applicable legal requirements. Maintenance shall include routine landscaping, sediment removal, repair, reconstruction, or replacement of the Facilities as necessary to meet the requirements of this Agreement.
2. The maintenance of the Facilities shall be performed in accordance with the O&M Manual for the specified Facilities.
3. The Maintenance Party shall cause inspections on the Facilities to be conducted as follows:
 - A. The Maintenance Party, at its expense, agrees to cause inspection of the Facilities by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.
 - B. An inspection report shall be submitted in writing to SEMSWA prior to January 15th of each year for the Facilities. The inspection report shall be in accordance with the requirements set forth in the O&M Manual.
 - C. The Maintenance Party agrees to perform promptly all needed maintenance and report maintenance activities in accordance with the requirements set forth in the O&M Manual.
4. Subject to all easements and restrictions of record, RTD hereby, grants, bargains and conveys to the Maintenance Party and to SEMSWA, and their respective agents and successors and assigns non-exclusive easements over the Property for access from public rights-of-way, abutting private roadways, and/or private driveways, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing and as necessary to ensure their proper working condition as provided in this Agreement.
5. In the event the Maintenance Party fails to inspect, report, or properly maintain the Facilities within fourteen (14) days after written notice by SEMSWA of such deficiencies to the Maintenance Party, SEMSWA may enter upon the Property and take whatever steps it deems necessary to maintain the Facilities. However, if the Maintenance Party's failures could cause damage to property, loss of life or a violation of a NPDES MS4 Permit, SEMSWA may take immediate action, without notice to the Maintenance Party, to alleviate that failure. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Facilities and in no event shall this Agreement be considered to impose any such obligation on SEMSWA.
6. RTD agrees that it will not at any time dedicate the Facilities to the public, to public use or to SEMSWA without SEMSWA's written consent and the consent of the owners of the CCC Property and the AVB Property, nor will it subdivide or convey the Property in

any manner unless the Property remains subject to this Agreement and the Declaration regarding obligations and duties related to the Facilities, including without limitation, the cost of maintenance thereof and/or any other related costs. If Lots 5 or 6 (excluding Tract A of Lot 6) are conveyed by RTD, the Lot(s) conveyed shall become subject to this Agreement according to the status of the new owner(s) as Maintenance Party or otherwise.

7. In an event of emergency involving Facilities, SEMSWA or its agents may enter immediately upon the Property and take whatever reasonable steps it deems necessary to meet the emergency. SEMSWA shall notify the Maintenance Party of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, SEMSWA may notify the Maintenance Party by phone to take whatever reasonable action is necessary within a specified period of time. Should the Maintenance Party fail to respond, or should the Maintenance Party inform SEMSWA that it intends to not respond within the specified period of time, SEMSWA or its agents may enter the Property immediately upon emergency.
8. SEMSWA shall not pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Facilities, including access to the Facilities.
9. In the event SEMSWA, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance of the Facilities, including labor, equipment, supplies and materials, the Maintenance Party shall reimburse SEMSWA for the reasonable costs and expenses incurred by SEMSWA within thirty (30) days after SEMSWA gives the Maintenance Party written notice of such expenditures, including evidence thereof. If the Maintenance Party or its successor or assigns fail to make timely payments as required herein, the Maintenance Party hereby authorizes SEMSWA to file a mechanics' lien on the property owned by the Maintenance Party or its successor or assigns as such property is described in the Recitals above in the amount of unpaid work, foreclose on that lien and request and be awarded its cost and attorneys' fees. In addition, any fines or assessments levied against SEMSWA by any governmental entity as a result of the Maintenance Party or its successor's or assign's failure to comply with the terms of this Paragraph shall be the sole and absolute responsibility of the Maintenance Party or its successors or assigns.

Notwithstanding the foregoing, in no event may a mechanics' lien be placed upon the RTD Property so long as the RTD Property is owned by RTD.

10. Any amounts owed to SEMSWA hereunder and not paid within ten (10) days of the date of notification shall be the obligation of the Maintenance Party on the date the liability arose and all of the Maintenance Party's successors and assigns.
11. The Maintenance Party, its successors and assigns, shall indemnify and hold SEMSWA, its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against SEMSWA arising out of or resulting from

the maintenance or use of the Facilities, expressly excluding matters related to the negligence or willful and wanton misconduct of SEMSWA and/or its agents and employees. For a period of one (1) year from SEMSWA's issuance of its Probationary Acceptance, as defined in the City of Centennial Stormwater Management Manual and as further defined in the City of Centennial Roadway Design and Construction Standards, of the Facilities, AVB, its successors and assigns, shall indemnify and hold SEMSWA, its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against SEMSWA arising out of or resulting from the initial construction of the Facilities, expressly excluding matters related to the negligence or willful and wanton misconduct of SEMSWA and/or its agents and employees.

12. The Maintenance Party shall notify SEMSWA when it transfers its interest in its property or any portion thereof. The Maintenance Party shall supply SEMSWA with a duly executed copy of any document of transfer. The Maintenance Party agrees to notify SEMSWA upon any change of legal address. Notwithstanding any provision contained in this Agreement, upon written notice thereof to SEMSWA (which notice shall include contact information for the new Maintenance Party and a duly executed copy of any document transfer), the Maintenance Party may assign its rights and delegate its duties under this Agreement to AVB or AVB's successors or assigns in connection with a change in ownership triggering a change in maintenance obligations as described in Section 3.3(b) of the Declaration, whereupon the assigning Maintenance Party shall no longer have any obligations hereunder except for those obligations arising or accruing prior to the date of such assignment. Notwithstanding the foregoing, in no event may the Maintenance Party assign its rights or delegate its duties hereunder to RTD.
13. The responsibilities and obligations hereunder shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners, their administrators, executors, assigns, heirs, and any other successors in interest of the RTD Property (including the Property), the CCC Property and the AVB Property, or any portion thereof served by the Facilities.
14. Failure to maintain the Facilities themselves by the Maintenance Party shall constitute a Zoning Violation, as defined in and pursuant to the City of Centennial Land Development Code, Sections 11.1.112 and 11.8.102 and City of Centennial Ordinance No. 2007-O-01.
15. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

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For the Board of Southeast Metro Stormwater Authority

Executive Director Authorization pursuant to Resolution No.

REGIONAL TRANSPORTATION
DISTRICT, a political subdivision of the State
of Colorado:

By: _____

Name: _____

Title: _____

Solely to evidence its intent to be bound by the
provisions of Sections 4, 6 and 13 above.

Approved as to legal form for
the Regional Transportation District

By: _____
Legal Counsel

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of
_____, 200__, by _____, as _____ of the
Regional Transportation District, a political subdivision of the State of Colorado.

My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary

**COVENANT COMMUNITY CHURCH OF
AURORA**, a Colorado nonprofit corporation:

By: _____

Name: Marc Huebl, President

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by Marc Huebl, as President of **Covenant Community Church of Aurora**, a Colorado nonprofit corporation.

My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary

AVB PICADILLY, LLC, an Arizona limited liability company:

By: _____

Name: _____

Title: _____

Solely to evidence its to be bound by the provisions of Sections 9, 11 and 13 above.

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____ of **AVB Picadilly, LLC**, an Arizona limited liability company.

My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary