ELM CREEK EAST PEARL/DETENTION SITE

STORMWATER DETENTION SITE LEASE AGREEMENT
BETWEEN
CITY OF TULSA, OKLAHOMA
AND
AMENOME LLC

This Lease Agreement ("Lease") is made this ________ day of ______, ______ (the "Effective Date") between the City of Tulsa, a municipal corporation of the State of Oklahoma located at 175 E. 2nd Street, Tulsa, Oklahoma 74103 ("City"), and AMENOME LLC, an Oklahoma limited liability company, ("Lessee") (collectively "the parties").

WITNESSETH:

WHEREAS, City owns a certain parcel of land ("City Lot") for the purpose of a stormwater detention site; and

WHEREAS, Lessee desires to use the City Lot for the permitted uses set forth below; and

WHEREAS, City is willing to enter into a lease agreement that would govern the use of the City Lot by Lessee.

NOW THEREFORE, for and in consideration of the terms, covenants and conditions herein contained, the parties agree as follows:

1. PREMISES: City hereby leases to Lessee and Lessee hereby leases from the City the following described property, to wit:

   EXHIBIT A (the "Leased Premises").

2. TERM:

   a. The term of this Lease shall be ninety-nine (99) years commencing on the date of the Closing of the purchase from TDA of the "Development Property" described on EXHIBIT B hereto, unless earlier terminated according to the terms of this Lease. City shall at all times retain the right to interrupt this Lease for the duration of any public emergency as declared by City’s Mayor.

   b. This lease shall terminate upon the City’s commencement of construction of storm water detention facilities upon the Leased Premises. Lessee shall surrender possession of the Leased Premises upon termination. City shall provide notice of intent to commence construction of its
storm water detention facilities as set forth in Section 6(b) of this Lease Agreement.

c. Upon completion of the City's facilities, Lessee shall have the option, upon giving City forty-five (45) days' written notice pursuant to Section 16, to renew this Lease for the remainder of the ninety-nine (99) year term (said remainder to be ninety-nine years less the original terms until termination and less the period between termination for construction and the date of renewal) pursuant to the terms and conditions set forth in this Lease or as otherwise mutually agreed upon by the parties. Provided, however, that in the event the storm water facilities constructed by the City is an open retention pond, then the City shall not be obligated to renew this Lease.

3. **RENTAL:** City shall charge Lessee, and Lessee agrees to pay City during the active term prior to termination and during the term of any renewal, rent in the amount of Five Dollars and No Cents ($5.00) per year. The annual rent is due and payable on or before January 1 of each calendar year. Lessee shall be permitted to prepay all rent for the entire term of the Lease in advance.

4. **MAINTENANCE:** Lessee shall, at its sole cost and expense, assume maintenance duties on the Leased Premises according to the minimum standards attached as EXHIBIT C. Lessee shall make no demand upon City for the furnishing of or payment for labor, material, or equipment necessary to maintain the Leased Premises during the term of this Lease nor any renewal term of this Lease. Lessee shall not be responsible for performing the maintenance duties set forth on EXHIBIT C, nor security duties, following termination of this Lease for and during the construction of the City Improvements.

5. **PLANS:**

   a. Lessee agrees that any material change within the Leased Premises must receive prior written approval from City, which shall not be unreasonably withheld. The proposed fencing to be constructed by Lessee as shown on EXHIBIT D hereto is acceptable to City and approved for use by Lessee; provided that Lessee shall not overlay fencing on the overland drainage easement at the northeast corner of the Leased Premises.

   b. All plans and specifications for Lessee’s improvements on the Leased Premises shall be prepared by Lessee in compliance with City Requirements.

   c. City will provide representatives of Lessee the opportunity to review and comment on the milestone plans provided that City shall not be bound to accept or adopt any comments or suggestions by Lessee in the preparation of the final plans for the City Improvements. Prior to commencement of construction, City shall provide Lessee with a copy of City’s Construction Plans for the City Improvements and any amendments thereto. The City’s Construction Plans for the City Improvements shall include maintaining a secure 6 foot high chain link fence with top rail around the entire open trench with warning signs every 10 feet that read “Danger” in both English and Spanish in addition to an Emergency/After Hours phone number and contact person to call in case of emergencies at the work site. The City shall make all reasonable
efforts to prioritize the safety of the general public.

6. **RESTRICTED USE:** Lessee's use of the Leased Premises is restricted to uses which do not interfere with its Primary Function.

   a. Prior to the City's planned construction of stormwater facilities on the Leased Premises, Lessee may not construct any structures with a footing or which are connected to City utilities on the Leased Premises, provided, however, that Lessee shall be permitted to use the Leased Premises for general and normal park uses with additional uses by Lessee to be approved by City on a case by case basis upon specific plans and details submitted by the Lessee, in compliance with City requirements.

   b. Prior to commencement of the City's construction activities, Lessee shall receive a minimum of two (2) years' written notice of the City's intent to commence construction of the City Improvements. Additionally, Lessee shall receive ninety (90) days' written notice to remove, at Lessee's sole risk and expense, any and all personal property and/or approved improvements located on the Leased Premises. In the event that such removal is not accomplished by Lessee in a timely fashion as herein provided, the personal property and/or improvements may be immediately removed by the City, its agents, servants or employees including, but not limited to, utility companies or independent contractors, at the exclusive expense of the Lessee or their successors in title and without liability to Lessee for the value, if any, of the removed personal property and/or improvements.

   c. At all times during the City's construction of the City Improvements, the City shall not allow its employees, agents, contractors, and other related parties to use or enter the Development Property for any reason, including without limitation, for ingress, egress, or operating equipment. Furthermore, City shall require any contractor to have Lessee named as an additional insured under any and all insurance policies required to be maintained by such contractor during the construction of the City Improvements. The additional insured coverage shall be primary and non-contributory to any of the Lessee's insurance policies and shall apply to both ongoing and completed operations. City shall further require any contractor performing the City Improvements to agree to indemnify, defend, and hold harmless Lessee from any and all claims, threatened claims, lawsuits, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising from or relating to the negligence, errors, omissions, or failure to perform by such contractors, their subcontractors, suppliers, and their employees, agents, and any persons or entities for whom they are responsible. The indemnification of any or all of the persons and/or entities indemnified in this Agreement shall, however, not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to such contractors, their subcontractors, suppliers, or their employees, agents, or consultants, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Nor shall their obligation to indemnify under this Agreement apply to any claim resulting solely from any act or omission of Lessee or other persons or entities for whose acts Lessee may be liable. The provisions of this Section 6(c) shall survive the completion of the City Improvements and any renewal or termination of this Lease.
d. Lessee shall not sublease the Leased Premises. However, in the event Lessee sells the Development Property, Lessee shall be permitted to assign this Lease to the purchaser of the Development Property. Any such assignment of the Lease shall also be subject to the terms, rights, obligations and conditions of the Contract for Sale of Land for Private Redevelopment between Lessee and the Tulsa Development Authority dated \[\text{date}\], 2020.

7. PROHIBITED ACTS: Lessee shall not commit any act, or permit any act to be committed, on the Leased Premises which violates any state or federal law or any City ordinance. At no time during the term of this Lease shall Lessee perform or permit the cutting down or injury to any tree on the Leased Premises or the removal, excavation or relocation of any surface or subsurface of the Leased Premises except with the permission in writing from the City. In its use of the Leased Premises, Lessee covenants not to discriminate on the basis of race, creed, color, nationality or national origin, gender, sexual orientation or identification, age or handicap status in its actions, including but not limited to hiring, firing, membership, participation in events, charging of fees, or admission to Lessee’s events.

8. RESTORATION: In the event any fixture or improvement (as in Section 5 above) or any cutting or relocation (as in Section 7 above) has been permitted by the City, upon termination of the Lease the City may request in writing that Lessees remove said fixture or improvement and repair any damage or replace and restore any surface. Lessee agrees to promptly comply with such written request and return the Leased Premises to its pre-lease condition, normal wear and tear excepted. Provided, the City shall reserve the rights to assume ownership, possession and control of said fixture or improvement upon termination of the Lease, without compensation to Lessee.

9. PUBLIC ACCESS: Upon reasonable prior request by City in writing, Lessee shall allow City to use the Leased Premises and the improvements thereon for special functions as mutually agreed upon. The parties agree that Lessee may establish reasonable restrictions on said special functions, including the times or types of use. The parties agree that Lessee is not required to give up any previously scheduled use of the Leased Premises.

10. EXCLUSIVITY: This Lease is exclusive to Lessee, and Lessee is granted the right to erect fences, gates, and/or signs to keep third parties off the Leased Premises. Prior to the installation of any fence, gate and/or sign, Lessee must obtain from City written approval of the design, location and installation of said fence, gate and/or sign. Lessee shall have the right to prevent uninvited entry onto the Leased Premises, to request trespassers to leave the Leased Premises and to participate in the prosecution of any trespass under Title 27 T.R.O. §§ 1800, 2106, etc. Nothing in this section shall be construed as permitting Lessee to discriminate against any person because of race, creed, color, nationality or national origin, gender, sexual orientation or identification, age or handicap status.

11. INSURANCE: Lessee shall obtain and shall maintain during the term of this Lease, a policy of general liability insurance, underwritten by an insurer authorized to do business in the State of
Oklahoma, and naming Lessee as insured. Said policy shall provide coverage for personal injury and property damage in the amount of One Million Dollars ($1,000,000.00) or the statutory requirement, whichever is greater. In the event Lessee operates, permits or licenses a concession for the sale of food, beverage or other items, Lessee agrees to obtain insurance, in the same amount as above, which provides coverage for product liability. Lessee agrees that any such concession shall comply with all laws, regulations, and codes pertaining to public health, public access, food handling, vendors, taxes, licenses, etc. Lessee shall provide a Certificate of Insurance (including renewals thereof) to the City.

As set forth in Section 6(c) above, City shall require any contractor to have Lessee named as an additional insured under any and all insurance policies required to be maintained by such contractor during the construction of the City Improvements. The additional insured coverage shall be primary and non-contributory to any of the Lessee’s insurance policies and shall apply to both ongoing and completed operations. The City shall require any contractor by endorsement or otherwise, to require all of their insurers to waive their respective claims and/or subrogation rights under all insurance policies whether primary or excess, against the Lessee, whether during ongoing operations or after operations are completed. Such insurance shall not prohibit the foregoing waiver. The City’s contractors shall provide certificates of insurance to the Lessee that evidence compliance with the requirements in this Section 11. City’s contractors shall provide Lessee with thirty (30) days’ written notice of termination or lapse of any policy required in this Section 11.

12. **INDEMNITY:** Lessee agrees to indemnify and hold City harmless from and against all claims, suits, actions, appeals or damage brought by any party or member of the public, arising from any cause, including but not limited to: permitted and non-permitted use of the Leased Premises, whether in programs and activities organized and supervised by a Lessee or not, claims by third parties, by-standers, vendors, fans, invitees, concessionaires, licensees, City employees, trespassers, participants in sporting events, coaches and contractors, employees and agents of each Lessee. Lessee’s indemnity obligations set forth herein shall be limited to the amount of insurance maintained by Lessee pursuant to Section 11 above. City shall be liable for torts committed by City and City’s employees acting within the scope of their employment, subject to the terms, conditions and exceptions contained in the Governmental Tort Claims Act, Title 51, Oklahoma Statutes, Section 151 et seq. Lessee’s obligation to indemnify the City as set forth in this paragraph shall be suspended as to any claims arising during the construction of the City Improvements during which time the Lease is deemed terminated pursuant to Section 2(b).

13. **TERMINATION / EVICTION:** If Lessee shall fail or default in the observance of any of the terms, conditions or covenants of this Lease, City shall notify Lessee in writing of said failure and Lessee shall have fourteen (14) calendar days following said notice to begin to correct such failure or default. If said correction is so made, City shall have no further right to terminate the Lease. In the event City elects to terminate the Lease following Lessee’s failure to begin to correct the default within fourteen (14) days following written notice, Lessee shall forthwith vacate the property, or City may use all means necessary to evict Lessee. The waiver by City of any breach shall not be construed to be a continuing waiver of any subsequent breach. Lessee shall have the right to
terminate this Lease upon providing City one (1) years’ prior written notice of its intent to terminate.

14. **MANAGING DEPARTMENT:** The department or entity responsible for the management of this Lease and of the property shall be the Asset Management Department.

15. **LESSEE ORGANIZATION UPDATE:** Lessee shall notify City in writing of any change in Lessee’s manager or authorized representative.

16. **NOTICE:** Any notice required to be given by the terms of this Lease shall be mailed, first class postage prepaid to the parties at the following addresses.

**As to City:**

City of Tulsa, Oklahoma  
Attn: City Clerk  
175 E. 2nd Street, Suite 260  
Tulsa, OK 74103

**With a copy to:**

City of Tulsa Asset Management Department  
175 E. 2nd Street, Suite 260  
Tulsa, OK 74103

**And a copy to:**

City of Tulsa Engineering Services Department  
2317 S. Jackson Ave., Suite 200  
Tulsa, OK 74107

**And a copy to:**

Tulsa Development Authority  
1216 N. Lansing Avenue, Suite D,  
Tulsa, Oklahoma, 74106

**As to Lessees:**

AMENOME LLC  
c/o Kevin Rice  
1218 East 29th Place  
Tulsa, OK 74114

17. **PRESERVATION OF THE STORMWATER SITE:** Lessee agrees that the primary function of the Leased Premises is as a stormwater site (“Primary Function”) and agrees to use its best efforts to preserve the integrity of the stormwater site. Lessee shall use its best efforts not to leave any object on the site that would impair the Primary Function. Failure by Lessee to preserve the Primary Function is an event of default. Failure by Lessee to begin to cure the default within fourteen (14) days of receipt of written notice from City shall result in immediate termination of this Lease. During weather-related or other emergencies, the City has the right to immediately remove any object or improvement from the site that would impair the Primary Function.
18. **RIGHT OF FIRST REFUSAL:** Except as to a sale or other transfer of the Leased Premises by City to a governmental entity, the City, in consideration for the receipt of One Hundred Dollars ($100.00) and other valuable consideration, hereby grants to Lessee the right of first refusal to purchase the Leased Premises should City ever decide to sell or transfer the Leased Premises. In such event, City shall notify Lessee in accordance with the notice provisions hereof of the intent to sell or transfer the Leased Premises and the proposed sale price of any bona fide offer (“Notice of Intent to Sell”). Lessee shall have thirty (30) days from the date of Notice of Intent to Sell to notify City of Lessee’s intent to enter into a contract with City at the proposed sale price and in a mutually agreeable form within a reasonable time. In the event of a transfer which is not a sale or there is no bona fide offer, the Lessee shall have the right to purchase the Leased Premises for the appraised fair market value determined within six months of the date of purchase. Any such appraisal shall be conducted in conformity with the policies and procedures of the City of Tulsa for disposition of real estate.

**IN WITNESS WHEREOF,** this Lease is executed by each of the parties on the dates set forth immediately below.

[Signature Page To Follow]
Dated this ____ day of ______________, 2020.

AMENOME LLC,
an Oklahoma limited liability company

By: __________________________
   Name: Kevin Rice
   Title: Manager

STATE OF OKLAHOMA )
 ) ss:
COUNTY OF TULSA )

Before me, the undersigned, a Notary Public, in and for said County and State on this ____
day of __________________, 2020, personally appeared ______________________, to me
known to be the identical person who subscribed the name of AMENOME LLC, an Oklahoma
limited liability company, to the foregoing as its Manager, and acknowledged to me that he/she
executed the same as his/her free and voluntary act and deed and as the free and voluntary act and
AMENOME LLC, an Oklahoma limited liability company, for the uses and purposes therein set
forth.

Given under my hand and seal the day and year last above written.

____________________________
Notary Public

My Commission Expires:

____________________________
APPROVED AS TO FORM:                            APPROVED AS TO SUBSTANCE:

Senior Assistant City Attorney

City Engineer

APPROVED BY MAYOR:

CITY OF TULSA, OKLAHOMA,
a municipal corporation

BY:_________________________

Name: G.T. Bynum
Title: Mayor

ATTEST:

City Clerk

STATE OF OKLAHOMA   )
) ss.
COUNTY OF TULSA    )

Before me, a Notary Public in and for said County and State, on the _____ day of _________________, 2020, personally appeared G. T. Bynum, to me known to be the identical person who approved the within and foregoing instrument as Mayor of the City of Tulsa, Oklahoma, and acknowledged to me that he approved the within and foregoing instrument as his free and voluntary act and deed and as the free and voluntary act and deed of the City of Tulsa, Oklahoma, for the uses and purposes therein set forth.

__________________________
Notary Public

My commission expires:
LEGAL DESCRIPTION

FEE SIMPLE

Fee Simple:

A part of Block Eleven (11) and Reserve in EAST LYNN ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma and a part of Block Eleven (11), in EAST LYNN ADDITION RESUB OF BLOCK ELEVEN (11), LOTS ONE (1) THRU FIVE (5), an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plats thereof, being more particularly described as follows:

BEGINNING at the Northeast corner of Lot Seven (7), Block Eleven (11), EAST LYNN ADDITION; thence South 01°19'31" East and along the East line of said Block 11, for a distance of 100.00 feet to the Southeast corner of Lot 6 same being the Northeast corner of Lot 5 in EAST LYNN ADDITION RESUB OF BLOCK ELEVEN (11), LOTS ONE (1) THRU FIVE (5); thence South 89°15'40" West and along the South line of said Lot 6, for a distance of 104.01 feet; thence South 01°19'31" East and parallel with said East line, for a distance of 165.53 feet to a point on the East line of Lot One (1) of said EAST LYNN ADDITION, RESUB BLOCK ELEVEN (11) LOTS ONE (1) THRU FIVE (5), thence South 88°53'44" West and parallel with the South line of said Block 11 and Reserve, for a distance of 218.63 feet; thence North 41°55'26" West, for a distance of 40.92 feet; thence North 01°09'08" West and parallel with the West line of said Reserve, for a distance of 229.12 feet; thence North 89°15'40" East and parallel with the North line of said Block 11 and Reserve, for a distance of 348.59 feet to the POINT OF BEGINNING. Containing 73,506.64 sq. ft., or 1.69 acres, more or less.

Bearings are based on Oklahoma State Plane Coordinate System, North 3501, NAD 83 (1993).

REAL PROPERTY CERTIFICATION:

I, Nathaniel J. Reed, certify that the attached legal description closes in accord with existing records, is a true representation of the real property as described, and meets the minimum technical standards for land surveying of the State of Oklahoma.

NATHANIEL J. REED
8-27-19 Stamps
Date of Signature

Certificate of Authorization No. 413
Expires Feb 30, 2013
LEGAL DESCRIPTION

FEESIMPLE

A part of Block Eleven (11) and Reserve in EAST LYNN ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma and a part of Block Eleven (11), in EAST LYNN ADDITION RESUB OF BLOCK ELEVEN (11), LOTS ONE (1) THRU FIVE (5), an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plats thereof, being more particularly described as follows:

BEGINNING at the Northeast corner of Lot Nine (9), Block Eleven (11), EAST LYNN ADDITION; thence South 01°09'31" East and along the East line of said Block 11, for a distance of 90.66 feet to the Southeast corner of Lot 8; thence South 89°15'40" West and along the South line of said Lot 8 also being parallel with the North line of said Block 11 and Reserve, for a distance of 348.59 feet; thence South 01°09'08" East and parallel with the West line of said Reserve, for a distance of 228.12 feet; thence South 41°55'26" East, for a distance of 40.92 feet; thence North 89°53'44" East and parallel with the South line of said Block 11 and Reserve, for a distance of 218.63 feet to a point on the East line of Lot 1 of said EAST LYNN ADDITION RESUB OF BLOCK ELEVEN (11), LOTS ONE (1) THRU FIVE (5); thence North 01°19'31" West and along said East line and being parallel with the East line of said Block 11, for a distance of 158.53 feet to a point on the North line of Lot 5 of said EAST LYNN ADDITION RESUB OF BLOCK ELEVEN (11), LOTS ONE (1) THRU FIVE (5); thence North 89°15'40" East and along said North line, for a distance of 104.01 feet to the Northeast corner of said Lot 5 same being the Southeast corner of Lot 6 in EAST LYNN ADDITION; thence South 01°19'31" East and along the East line of said Block 11, for a distance of 247.30 feet to the Southeast corner of said Block 11; thence South 88°33'44" West and along the South line of said Block 11 and Reserve, for a distance of 435.33 feet to the Southwest corner of said Reserve; thence North 01°09'08" West and along the West line of said Reserve, for a distance of 440.67 feet to the Northwest corner of said Reserve; thence North 89°15'40" East and along the North line of said Block 11 and Reserve, for a distance of 434.02 feet to the POINT OF BEGINNING. Containing 117,432.84 sq.ft., or 2.69 acres, more or less.

Bearings are based on Oklahoma State Plane Coordinate System, North 3501, NAD 83 (1993).

REAL PROPERTY CERTIFICATION:

I, Nathaniel J. Reed, certify that the attached legal description closes in accord with existing records, is a true representation of the real property as described, and meets the minimum technical standards for land surveying of the State of Oklahoma.

NATHANIEL J. REED
8-27-19
Date of Signature

NATIVE PLAINS
Surveying & Mapping, LLC
A Native American-Owned Business
167 South Governor Blvd, Tulsa, Oklahoma 74116
Phone: 918-249-5557 Fax: 918-249-5558
Certificate of Authority No. 461231
EXHIBIT C

Maintenance Requirements:

In accordance with these specifications and/or as directed by the City of Tulsa Engineering Services Department’s representative, the Lessee shall be responsible for:

A. Property Clean-Up: The property will be kept clean of litter, debris, dead limbs, etc.

B. Grounds Mowing: All turf must be mowed every fourteen (14) days during the months of April through October, at a height of 1 ½” to 2 ¼”, with a fine cut mowing blade.

C. Weeds/Grass Trimming: Remove or spray grass and weeds growing around trees, poles, sidewalks, trails, culverts or bridges at least once every fourteen (14) days. Edging must be performed along curb lines and sidewalks every four (4) weeks unless needed more often. Turf clippings that are heavy or smothering after mowing are to be removed.

D. Litter: All litter must be removed from the site before each mowing and at least once every fourteen (14) days. Litter receptacles are to be provided and emptied by the Lessee as needed. All grass and leaf clippings shall be swept and removed from sidewalks and street mowing as needed.

E. Hazard Removal/Hazard Notifications: Pick up and remove all broken glass from sidewalks and other hard surfaces and turf areas as needed, but at least once every fourteen (14) days, prior to mowing. Lessee must notify the City of Tulsa Engineering Services Department’s representative of all hazards found within the mowing area. Hazards which may affect the safety of the public and need to be corrected by the City of Tulsa should be brought to the attention of the City of Tulsa Engineering Services Department’s representative immediately.

F. Damage to Property: The Managing Department, Board, or Authority shall be notified of damaged plant materials resulting from mechanical injury or storm damage. Any hazardous conditions shall be reported to the City immediately. The Lessee will be responsible for repairs on all plant materials damaged by Lessee or its equipment during maintenance performance and be responsible for replacement of all trees, shrubs and groundcovers destroyed by Lessee and its equipment during performance of maintenance work. Turf damage will be corrected including reseeding of the damaged area at the Lessee’s expense. The Lessee will be responsible for repairs to all damage to irrigation systems which occurs due to mowing operations.

G. Any fertilizer or herbicides used and or applied shall be approved, and application supervised by the City of Tulsa.
EXHIBIT D

Approved Fence or Approved Equal

TOP/BOTTOM TRAC™
Specially rolled large lip U-channel rail. Added durability and strength.

INFILL MATERIAL
Choose desired privacy materials. Vertical or horizontal orientation.

POST MOUNT TRAC™
Adjustable Trac mount system allows multi-point connection of panel to post.
EXHIBIT D
(fence plan & profile)