



SF 2210

**PRIVATE DETENTION BASIN /
STORMWATER QUALITY BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

This PRIVATE DETENTION BASIN / STORMWATER QUALITY BEST MANAGEMENT PRACTICE MAINTENANCE AGREEMENT AND EASEMENT ("Agreement") is made by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, whose address is 200 S. Cascade Ave., Colorado Springs, CO 80903 ("County") and STORE Master Funding VIII, LLC, a Delaware limited liability company, whose address is 8377 E Hartford Dr, St 100, Scottsdale, AZ 85255 ("Owner"). The above may occasionally be referred to herein singularly as "Party" and collectively as "Parties."

Recitals

A. WHEREAS, Owner is the owner of certain real estate (the "Property") in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

B. WHEREAS, Owner desires to plat and develop on the Property a subdivision to be known as Cathedral Rock Commons Commercial (the "Subdivision"); and

C. WHEREAS, the development of this Property will increase the volume of water runoff and will decrease the quality of the stormwater runoff from the Property, and, therefore, it is in the best interest of public health, safety and welfare for the County to condition approval of this Subdivision on Owner's promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices ("BMPs") for the Subdivision; and

D. WHEREAS, Chapter 8, Section 8.4.5 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes (C.R.S.), requires the County to condition approval of all subdivisions on a landowner's promise to so construct adequate drainage, water runoff control facilities, and BMPs in subdivisions; and

E. WHEREAS, the Drainage Criteria Manual, Volume 2, as amended by Appendix I of the El Paso County Engineering Criteria Manual (ECM), as each may be periodically amended, promulgated pursuant to the County's Colorado Discharge Permit System General Permit (MS4 Permit) as required by Phase II of the National Pollutant Discharge Elimination System (NPDES), which MS4 Permit requires that the County take measures to protect the quality of stormwater from sediment and other contaminants, requires subdividers, developers, landowners, and owners of facilities located in the County's rights-of-way or easements to provide adequate permanent stormwater quality BMPs with new development or significant redevelopment; and

F. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer's promise to maintain a subdivision's drainage facilities in the event the County does not assume such responsibility; and

G. WHEREAS, landowners in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions, which basins, while effective, are less expensive for landowners to construct than other methods of providing drainage and water runoff control; and

H. WHEREAS, Owner desires to construct or have constructed for the subdivision improvements to the existing detention basin ("detention basin") as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County's MS4 Permit, and to operate, clean, maintain and repair such detention basin; and

I. WHEREAS, Owner desires to construct or have constructed such improvements to the detention basin on a portion of the Property that is or will be designated as a Private Detention Pond Easement within Lot 1, as indicated on the final plat of the Subdivision, attached hereto as Exhibit B; and

J. WHEREAS, Owner shall be charged with the duties of constructing, operating, maintaining and repairing the detention basin in the Private Detention Pond Easement depicted in Exhibit B as further provided herein; and

K. WHEREAS, it is the County's experience that subdivision developers and property owners historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins, and that these detention basins, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

L. WHEREAS, the County, in order to protect the public health, safety and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins when developers and property owners have failed in their responsibilities, and therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain and repair the detention basin serving this Subdivision due to the Owner's failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this Subdivision on the Owner's promise to so construct improvements to the detention basin, and conditions approval on the Owner's promise to reimburse the County in the event the burden falls upon the County to so clean, maintain and/or repair the detention basin serving this Subdivision, as further provided herein; and

N. WHEREAS, the County could condition subdivision approval on the Owner's promise to construct a different and more expensive drainage, water runoff control system and BMPs than those proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance and repair expenses falling on the County; however, the County is willing to forego such right upon the performance of Owner's promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Owner's grant herein of a perpetual Easement over a

portion of the Property for the purpose of allowing the County to periodically access, inspect, and, when so necessary, to clean, maintain and/or repair the detention basin.

Agreement

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement.
2. Covenants Running with the Land: Owner agrees that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Exhibit A attached hereto, and that this entire Agreement and the performance thereof shall be binding upon itself and its successors and assigns. The then current owners of each lot within the Subdivision shall be jointly and severally obligated to the County under this Agreement, but as between the then current owners, their obligations, including without limitation cost share and indemnification obligations, shall be as set forth in any Cost Sharing Agreement, as described in Section 14, the terms of which are incorporated herein by this reference.
3. Construction: Owner shall construct or cause to be constructed on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, improvements to the existing detention basin. Owner shall not commence construction of the detention basin until the El Paso County Planning and Community Development Department (“PCD”) has approved in writing the plans and specifications for the detention basin and this Agreement has been signed by all Parties and returned to the PCD. Owner shall complete construction of the detention basin in substantial compliance with the County-approved plans and specifications for the detention basin. Failure to meet these requirements shall be a material breach of this Agreement and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention basin shall be substantially completed within one (1) year (defined as 365 days), which one year period will commence to run on the date the approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. Rough grading of the detention basin must be completed and inspected by the PCD prior to commencing road construction.

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the detention basin and shall have the right to seek reimbursement from the Owner and its successors and assigns for its actual costs and expenses incurred in the process of completing construction. The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

4. Maintenance: The Owner agrees for itself and its successors and assigns that it will regularly and routinely inspect, clean and maintain the detention basin in compliance with the Operation and Maintenance Manual, Extended Detention Basin (EDB) for Cathedral Rock Commons Commercial reviewed by the County in connection with the subdivision, and otherwise keep the same in good repair,

all at its own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basin shall be planted or allowed to grow on the detention basin.

5. Creation of Easement: Owner hereby grants the County a non-exclusive perpetual easement upon and across that portion of the Property depicted as the Private Detention Pond Easement depicted and described in Exhibit B. The easement shall be solely for the purpose of allowing the County to access, inspect, clean, repair and maintain the detention basin; however, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin.

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Owner and its successors and assigns that the detention basin needs to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problems. Should the responsible parties fail to correct the specified problems within the time provided, the County may enter upon the Property to so correct the specified problems. Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin.

7. Reimbursement of County's Costs / Covenant Running with the Land: The Owner agrees and covenants, for itself and its successors and assigns, that if the Owner fails to clean, maintain or repair the detention basin within a reasonable time as provided in Section 6 above, the Owner will reimburse the County for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the detention basin pursuant to the provisions of this Agreement.

The term "actual costs and expenses" shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

8. Contingencies of Subdivision Approval: Owner's execution of this Agreement is a condition of Subdivision approval. The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it in connection with such Subdivision approval under the conditions of this Paragraph including but not limited to, any separate agreement or amendment, if applicable, identifying any specific maintenance responsibilities not addressed herein. The County's rejection of any documentation submitted hereunder prior to Subdivision approval shall mean that the appropriate condition of this Agreement has not been fulfilled and this Agreement shall not be effective until the Subdivision is approved.

9. Agreement Monitored by El Paso County Planning and Community Development Department and/or El Paso County Department of Public Works: Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be

submitted to and shall be made by the Director of the Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works.

10. Indemnification and Hold Harmless: To the extent authorized by law, Owner agrees, for itself and its successors and assigns, that they will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to its intentional or negligent acts, errors or omissions or that of its agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of the detention basin, and such obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law.

11. Severability: In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

12. Third Parties: This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County, the Owner, or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

13. Solid Waste or Hazardous Materials: Should any refuse from the detention basin be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Owner shall take all necessary and proper steps to characterize the solid waste or hazardous materials and properly dispose of it in accordance with applicable State and/or Federal environmental laws and regulations, including, but not limited to, the following: Solid Wastes Disposal Sites and Facilities Acts, §§ 30-20-100.5 – 30-20-119, C.R.S., Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, *et seq.*, Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, and Federal Solid Waste Regulations 40 CFR Ch. I. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid waste or hazardous materials. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid waste or hazardous materials, the Owner, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

14. Lot Owners: Cost Sharing Agreement: Owners’ Association. For purposes of this paragraph, the term Lot Owners shall mean the owners of the Lots within the Subdivision from time to time and shall refer to all such owners collectively at any time during which there are more than one of the Lots. Such Lot Owners may enter into a Cost-Sharing Agreement (the “Cost Sharing Agreement”) to allocate responsibility for the repair, maintenance, costs, and certain other obligations related to the stormwater improvements as among such Lot Owners. Notwithstanding the terms of any such Cost Sharing Agreement, this Agreement shall govern the obligations of such owners (as the Owner hereunder) to the County, and the obligations and liability of the Owner to the County hereunder shall not be construed to modify or alter the rights and obligations of such owners, as between themselves, under any Cost-Sharing Agreement. Lot Owners may, at their election, form an Owners’ Association, Special District, or

similar entity (an “Administrative Entity”) to administer the stormwater improvements and this Agreement, but the Lot Owners may not assign their rights and obligations hereunder to such Administrative Entity without obtaining the prior written consent of the County, which consent shall not be unreasonably withheld but may, at the County’s discretion, require amendments to this Agreement consistent with County regulations and standard practice.

15. Applicable Law and Venue: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be in the El Paso County District Court.

[Remainder of page intentionally left blank; signature page(s) follow]

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this 3rd day of October, 2023, by:

STORE MASTER FUNDING VIII, LLC,
a Delaware limited liability company

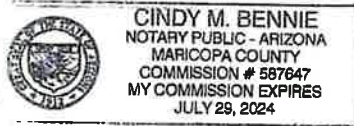
By: Angela Donahoe
Name: Angela Donahoe
Title: Senior Vice President

STATE OF ARIZONA
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 3rd day of October, 2023, by Angela Donahoe, as Senior VP, of STORE MASTER FUNDING VIII, LLC, a Delaware limited liability company.

Witness my hand and official seal.


My commission expires: July 29, 2024



Cindy M. Bennie
Notary Public

Executed this 20th day of October, 2023, by:

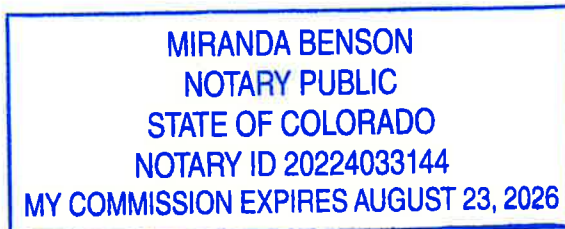
BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Meggan Herington, Executive Director
El Paso County Planning and Community Development
Authorized signatory pursuant to LDC

The foregoing instrument was acknowledged before me this 20th day of October, 2023, by Meggan Herington, Executive Director, El Paso County Planning and Community Development Department.

Witness my hand and official seal.

My commission expires: August 23, 2026.




Notary Public

Approved as to Content and Form:


Assistant County Attorney

EXHIBIT A
Legal Description
(Prior to Platting)

The Land referred to herein below is situated in the County of El Paso, State of Colorado, and is described as follows:

A tract of land in the Northeast quarter of the Southwest quarter in Section 36, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, described as follows:
Beginning at a point of intersection with the West line of said Northeast quarter of the Southwest quarter and the northeasterly line of a tract described by Deed to the Department of Highways, State of Colorado, recorded August 12, 1963 in Book 1969 at Page 746 under Reception No. 301954 of the records of El Paso County, Colorado; thence N00°39'12"E on said West line, 745.58 feet to the most westerly corner of Lot 28, Chaparral Hills, as recorded in Plat Book T2 at Page 2 in the records of El Paso County, Colorado; thence S89°20'48"E, 485.53 feet to an angle point on the southerly line of said Lot 28; thence S40°33'06"E, 471.44 feet to a point of intersection with the northwesterly line of Spanish Bit Drive as platted in Chaparral Hills; thence along said northwesterly line of Spanish Bit Drive for the following five courses; S49°26'54"W, 227.19 feet to a point of curve; thence on a curve to the left, through a central angle of 14°19'10", having a radius of 530.00 feet, an arc distance of 132.46 feet; thence S35°07'44"W, 167.67 feet to a point of curve; thence on a curve to the right through a central angle of 29°52'41", having a radius of 470.00 feet, an arc distance of 245.09 feet; thence S65°00'25"W, 166.60 feet to a point of intersection with said recorded Department of Highways northeasterly line; thence N24°59'35"W, 250.13 feet to the point of beginning, except that portion conveyed by Special Warranty Deed recorded January 2, 2007 under Reception No. 207000187, County of El Paso, State of Colorado.

BEING THE SAME AS THAT PROPERTY ON ALTA/ACSM SURVEY BY DANIEL L. BOYD, FOR ALTA SURVEYS OF COLORADO INC., JOB NO. S15-64, SIGNED DECEMBER 2, 2015, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A parcel of land located in the Northeast Quarter of the Southwest Quarter of Section 36, Township 11 South, Range 67 West of the Sixth P.M. in El Paso County Colorado, more particularly described as follows:

Commencing from the southwest corner of Lot 27 Chaparral Hills, recorded in Plat Book T2 at Page 2, El Paso County records being the True Point of Beginning; S49°26'54"W along the northwesterly right of way line of Spanish Bit Drive as platted in said Chaparral Hills Subdivision, a distance of 227.19 feet to a point of curve; Thence continuing along said northerly right of way of said Spanish Bit Drive on a curve to the left having a central angle of 14°19'10", a radius of 530.00 feet and a length of 131.27 feet; Thence continuing along said right of way line S35°07'44"W, a distance of 167.67 feet to a point of curve; Thence continuing on the said right of way line through a curve to the right having a central angle of 29°52'41", a radius of 470.00 feet and a length of 242.19 feet; Thence continuing along said right of way of Spanish Bit Drive S65°00'25"W, a distance of 6.60 feet to a point on the northeasterly line of Suthers Road as described in a Special Warranty Deed recorded January 2, 2007 under Reception No. 207000187, El Paso County records; Thence along the easterly line of said Suthers right of way the following four courses:

1. N69°59'25"W, a distance of 70.71 feet;
2. Thence N24°59'27", a distance of 115.63 feet;
3. Thence along a curve to the right having a central angle of 25°38'51", a radius of 880.00 feet and a length of 393.92 feet;
4. Thence N00°39'12"E, a distance of 392.80 feet to a point on the south line of Lot 28 of said Chaparral Hills;

Thence S89°20'48"E, a distance of 435.53 feet to an angle point on the southerly line of said Lot 28,
Thence S40°33'06"E along the southwesterly lines of said lots 28 and 27 a distance of 471.44 feet to the True Point of Beginning.

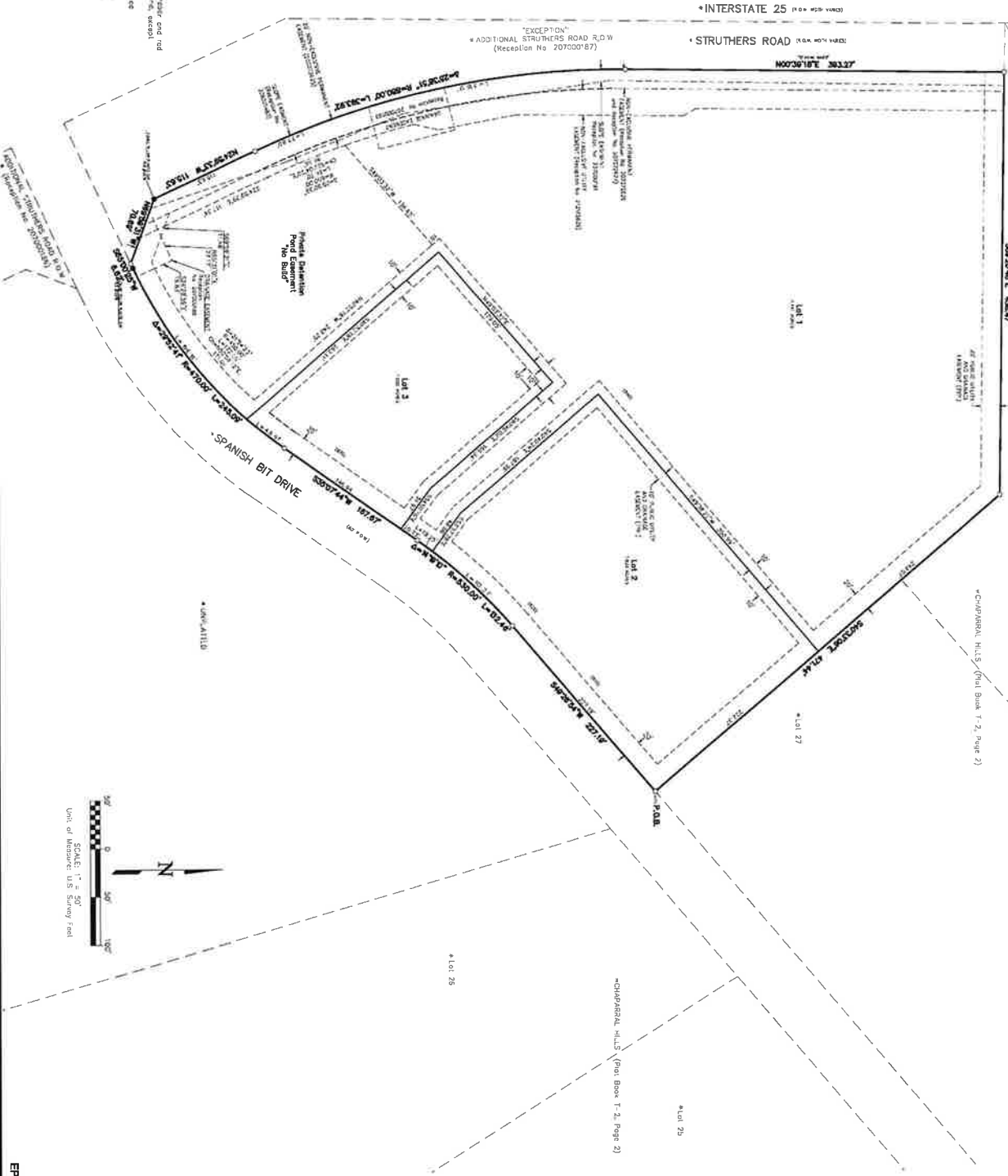
EXHIBIT B

Final Subdivision Plat

[TO BE ATTACHED]

CATHEDRAL ROCK COMMONS COMMERCIAL

A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 08, TOWNSHIP 11 SOUTH, RANGE 07 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO



EPC PCD File No. SF-2210

CATHEDRAL ROCK COMMONS COMMERCIAL - FINAL PLAT

Land Development Consultants, Inc.

PLANNING SURVEYING

www.landdev.com TEL: (719) 634-8181 FAX: (719) 634-6149

8889 MAZZELLAND ROAD COLORADO SPRINGS, CO 80906

Plat Date: 1/1/21
Scale: N/A
Designed By: N/A
Drawn By: DWH
Checked By: DWH
Date: 08/25/21

CALL BEFORE YOU DIG

811

DIAL 811

According to Colorado law, you must commence any local action based upon any defect in this survey within sixty days after you that discover such defect in no event, may any action based upon any defect in this survey be commenced more than 90 days from the date of the publication shown herein.

BE AWARE THAT THIS IS A FINAL PLAT. ANY DISCREPANCY FOR LOCATING AND MARKING THIS SURVEY, WATER AND UTILITIES