



**STORMWATER DRAINAGE
MAINTENANCE AGREEMENT AND EASEMENT**

This STORMWATER DRAINAGE 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 ("County"), Challenger Communities LLC (Developer) and BENT GRASS METROPOLITAN DISTRICT (Metro District), a quasi-municipal corporation and political subdivision of the State of Colorado. The above may occasionally be referred to herein singularly as "Party" and collectively as "Parties."

Recitals

A. WHEREAS, the Metro District provides various municipal services to certain real property in El Paso County, Colorado referred to as Falcon Meadows at Bent Grass Filing 1; and

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

C. WHEREAS, Developer desires to plat and develop on the Subject Property a Subdivision to be known as Falcon Meadows at Bent Grass Filing 1; and

D. 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

E. WHEREAS, Developer desires to meet requirements of the County's MS4 Permit, and to provide for operating, cleaning, maintaining and repairing certain of the subdivision's drainage facilities in cooperation with the District; and

F. WHEREAS, Metro District shall be charged with the duties of operating, maintaining and repairing the stormwater drainage channel and any appurtenant improvements within the Stormwater Facilities Area described in Exhibit B; and

G. WHEREAS, El Paso County has conditioned approval of this Subdivision on the Developer's promise to provide a stormwater drainage easement and maintenance agreement, and further conditions approval on the Metro District's promise to maintain and/or repair the drainage channel within the Stormwater Facilities Area serving this Subdivision; and

H. WHEREAS, the County could condition subdivision approval on the Developer'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 mitigate the discharge of stormwater at higher than historic rates; however, the County is willing to forego such right upon the performance of Developer's and the Metro District's promises contained herein; and

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

Stormwater Facilities Area as described in Exhibit B for the purposes of floodplain preservation, allowing the Metro District access to construct, upgrade, clean, maintain and/or repair the drainage channel, and allowing the County to periodically access and inspect the drainage channel.

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:** Developer 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.
3. **Maintenance:** The Metro District agrees for itself and its successors and assigns that it will regularly and routinely inspect, clean and maintain the stormwater drainage channel and any appurtenant improvements within the Stormwater Facilities Area described in Exhibit B, and otherwise keep the same in good repair, all at its own cost and expense.
4. **Creation of Easement:** Developer hereby grants the Metro District a non-exclusive perpetual easement upon and across the property described in Exhibit B for the purposes of access to and construction, cleaning, maintenance and repair of the stormwater drainage channel and any appurtenant improvements. Developer hereby grants the County a non-exclusive perpetual easement upon and across the property described in Exhibit B for the purposes of access to and inspection of the Stormwater Facilities Area. The creation of the County's easement does not expressly or implicitly impose on the County a duty to so inspect, nor to clean, repair or maintain the stormwater drainage channel or any appurtenant improvements.
5. **Restriction on Use of Stormwater Facilities Area:** Developer and the Metro District agree that the Stormwater Facilities Area shall be used for floodplain preservation purposes, which purpose shall have the same effect on Developer, the Metro District, and their respective successors and assigns as floodplain requirements imposed by the Federal Emergency Management Agency (FEMA). Developer, the Metro District, and their successor and assigns shall therefore be prohibited from building any structures, storing any materials, or causing any increase in floodplain elevations within the Stormwater Facilities Area. The restrictions contained in this paragraph shall continue until a Letter of Map Revision that includes the Stormwater Facilities Area is approved by FEMA, at which time they shall terminate automatically without further action of the Parties.
6. **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.
7. **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 Developer, the Metro District, or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

8. **Solid Waste or Hazardous Materials:** Should any refuse from the stormwater drainage channel within the Stormwater Facilities Area be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as "hazardous materials"), the Developer and the Metro District 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 for any reason be determined to be solid waste or hazardous materials, the Developer and the Metro District, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

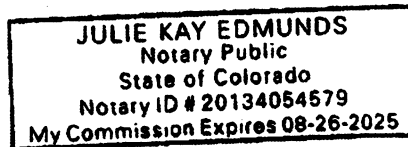
9. **Applicable Law and Venue:** The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be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

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this 16th day of December, 2021, by:

Challenger Communities LLC.

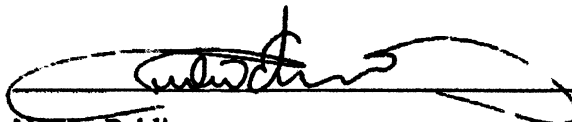
By: 
Jim Byers, VP of Community Development



The foregoing instrument was acknowledged before me this 16th day of December, 2021, by Jim Byers, VP of Community Development, Challenger Communities LLC.

Witness my hand and official seal.

My commission expires: 8.26.2025


Notary Public

Executed this 16th day of December, 2021, by:

BENT GRASS METROPOLITAN DISTRICT

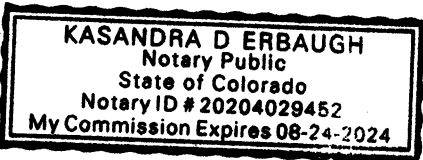
By: [Signature]
Randy Case II, President

Attest:
By: [Signature]
Kevin Walker, District Manager

The foregoing instrument was acknowledged before me this 16 day of December,

2021, by Randy Case II, President, and Kevin Walker, District Manager, BENT GRASS METROPOLITAN DISTRICT

Witness my hand and official seal.
My commission expires: 8-24-2024



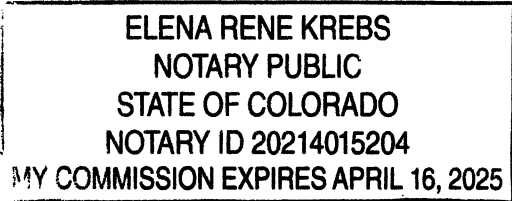
[Signature]
Notary Public

Executed this 22nd day of December, 2021, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: [Signature]
Craig Dossey, Executive Director
El Paso County Planning and Community Development Department
Authorized signatory pursuant to LDC

Notary: [Signature]



Witness my hand and official seal.
My commission expires: April 16, 2025

[Signature]
Notary Public

 Approved to Complete Form:

Steven Klaffky (Dec 22, 2021 09:35 MST)

Assistant County Attorney

Exhibit A (Legal Description of the Subject Property)

Exhibit B (Legal Description of the Stormwater Facilities Area)

EXHIBIT A

DESCRIPTION:

A PORTION OF TRACT J, TRACT K, TRACT L AND TRACT M, BENT GRASS RESIDENTIAL FILING NO. 2, AND A PORTION OF THAT PARCEL OF LAND DESCRIBED IN DEED AT RECEPTION NUMBER 219072805, ALL SITUATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: ALL BEARINGS ARE GRID BEARINGS OF THE COLORADO STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM 1983. THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1 BEARS $N00^{\circ}13'46''W$, MONUMENTED BY THE SOUTHWEST CORNER OF SAID SECTION 1, BEING A 2-1/2 INCH ALUMINUM CAP IN RANGE BOX STAMPED "PLS 17664", AND BY THE WEST QUARTER CORNER OF SAID SECTION 1, BEING A 2" ALUMINUM CAP STAMPED "PLS 28651", WITH ALL BEARINGS HEREIN RELATIVE THERETO;

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1;

THENCE WITH THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, $S00^{\circ}13'46''E$, A DISTANCE OF 706.50 FEET;

THENCE WITH THE EXTENDED SOUTH LINE OF SAID PARCEL DESCRIBED IN DEED AT RECEPTION NUMBER 219072805, $N89^{\circ}47'22''E$, A DISTANCE OF 1,288.72 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING THE SOUTH LINE OF SAID PARCEL, $N01^{\circ}08'16''E$, A DISTANCE OF 523.77 FEET;

THENCE $N08^{\circ}44'20''W$, A DISTANCE OF 489.40 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF BENT GRASS MEADOWS DRIVE;

THENCE WITH THE SOUTH RIGHT OF WAY LINE OF SAID BENT GRASS MEADOWS DRIVE, $N89^{\circ}30'12''E$, A DISTANCE OF 275.18 FEET TO THE NORTHEAST CORNER OF SAID TRACT L;

THENCE WITH THE EAST LINE OF SAID TRACT L, $S04^{\circ}50'58''W$, A DISTANCE OF 80.18 FEET;

THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT L, $S03^{\circ}12'36''E$, A DISTANCE OF 153.39 FEET;

THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT L, $S03^{\circ}42'06''E$, A DISTANCE OF 84.68 FEET;

THENCE WITH THE EAST LINES OF SAID TRACTS L AND M, $S12^{\circ}32'06''E$, A DISTANCE OF 80.14 FEET;

THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT M, $S12^{\circ}59'08''E$, A DISTANCE OF 75.20 FEET;

THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT M, $S77^{\circ}46'36''W$, A DISTANCE OF 30.12 FEET;

THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT M, $S17^{\circ}37'13''E$, A DISTANCE OF 160.63 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT M AND SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 8°44'32", HAVING A RADIUS OF 1,840.12 FEET, AN ARC LENGTH OF 280.77, AND A CHORD BEARING S10°08'34"E, A CHORD DISTANCE OF 280.50 FEET;

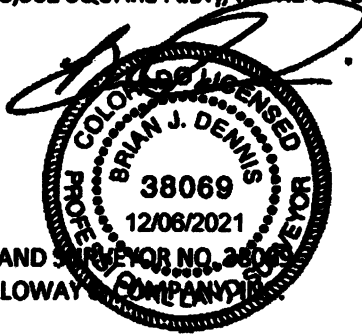
THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT M, S04°52'53"E, A DISTANCE OF 8.49 FEET;

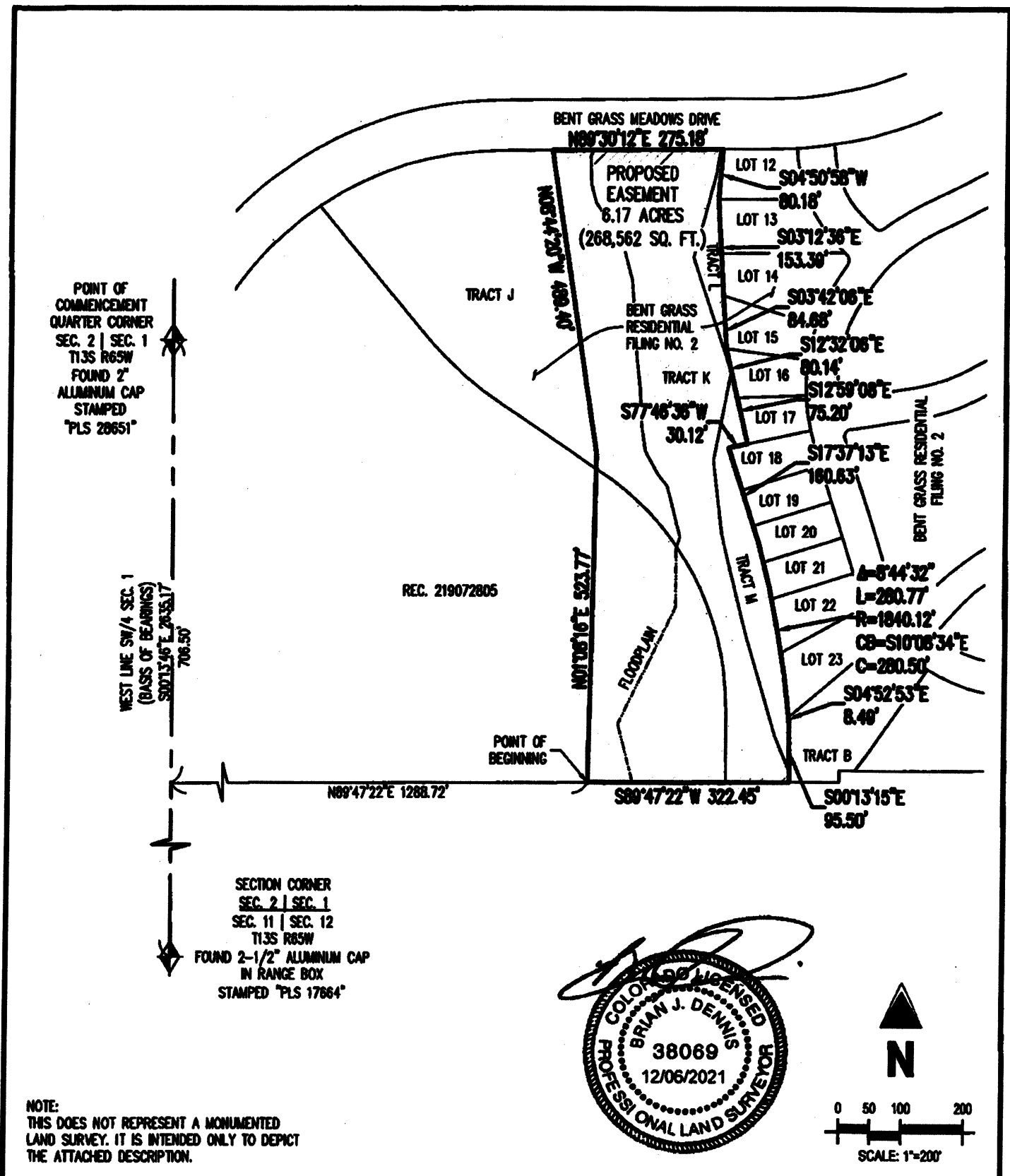
THENCE CONTINUING WITH THE EAST LINE OF SAID TRACT M AND SAID TRACT K, S00°13'15"E, A DISTANCE OF 95.50 FEET TO THE SOUTHEAST CORNER OF SAID TRACT K;

THENCE WITH THE SOUTH LINES OF SAID TRACT K AND SAID PARCEL DESCRIBED IN DEED AT RECEPTION NUMBER 219072805, S89°47'22"W, A DISTANCE OF 322.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.17 ACRES (268,562 SQUARE FEET), MORE OR LESS.

DESCRIPTION PREPARED BY:
BRIAN J. DENNIS
PROJECT NO. CLH000018.10
COLORADO PROFESSIONAL LAND SURVEYOR NO. 38069
FOR AND ON BEHALF OF GALLOWAY COMPANY





POINT OF COMMENCEMENT
 QUARTER CORNER
 SEC. 2 | SEC. 1
 T13S R65W
 FOUND 2" ALUMINUM CAP
 STAMPED "PLS 20651"

WEST LINE SW/4 SEC. 1
 (BASIS OF BEARINGS)
 S00°13'46"E L=2035.17
 706.50'

SECTION CORNER
 SEC. 2 | SEC. 1
 SEC. 11 | SEC. 12
 T13S R85W
 FOUND 2-1/2" ALUMINUM CAP
 IN RANGE BOX
 STAMPED "PLS 17664"

NOTE:
 THIS DOES NOT REPRESENT A MONUMENTED
 LAND SURVEY. IT IS INTENDED ONLY TO DEPICT
 THE ATTACHED DESCRIPTION.

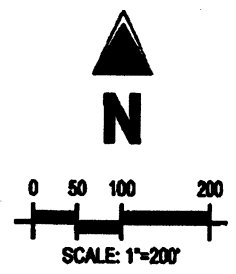


EXHIBIT
 BENT GRASS RESIDENTIAL FILING NO. 1
 EL PASO COUNTY, COLORADO

PAGE 3 OF 3

Project No: CLH000018.10
 Drawn By: EMV
 Checked By: BJD
 Date: 12/02/21

Galloway
 A SURVEYOR
 1125 Holly Johnson Blvd., Suite 200
 Colorado Springs, CO 80920
 719.500.7220 • GallowayUS.com