



**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), BENT GRASS METROPOLITAN DISTRICT (Metro District), a quasi-municipal corporation and political subdivision of the State of Colorado, Randall L. DeYoung (Upstream Owner) and Lena Gail Case (Owner). 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, 2, 3 and 4; 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.1 & A.2(s) attached hereto and incorporated herein by this reference; and

C. WHEREAS, Owner is the owner of certain real property adjacent to or downstream of the Subject Property onto which developed stormwater runoff will be discharged, which property is legally described in Exhibit B attached hereto and incorporated herein by this reference (the Case Downstream Property); and

D. WHEREAS, Upstream Owner is the owner of certain real property adjacent to and upstream of the Case Downstream Property (the DeYoung Upstream Property), which property is legally described in Exhibit C attached hereto, through which developed stormwater runoff will be discharged from the Subject Property and onto the Case Upstream Property; and

E. WHEREAS, Owner is also the owner of certain real property adjacent to and upstream of the Case Downstream Property, which property is legally described in Exhibit D attached hereto (the Case Upstream Property), through which developed stormwater runoff will be discharged from the Subject Property and the DeYoung Upstream Property and onto the Case Downstream Property; and

F. WHEREAS, Developer desires to plat and develop on the Subject Property a Subdivision to be known as Falcon Meadows at Bent Grass Filing 1, 2, 3 and 4; and

G. WHEREAS, the development of the Subject Property will substantially increase the volume of stormwater runoff that will discharge from the Subject Property, through the DeYoung Upstream Property and the Case Upstream Property and to the Case Downstream Property, and

H. 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

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

J. WHEREAS, Owner shall be charged herein with the duties of providing access to the stormwater drainage channel on the portion of the Case Downstream Property described in Exhibit E attached hereto and incorporated herein by this reference (the Stormwater Facilities Area); and

K. 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 E; and

L. WHEREAS, the Parties hereto anticipate that when the Case Downstream Property develops in the future, the location of the Stormwater Facilities Area will likely change to the area depicted in Exhibit F, attached hereto; and

M. 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

N. 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 onto the Downstream Property 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

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon Owner's grant herein of a perpetual Easement over the Stormwater Facilities Area as described in Exhibit E for the purpose of allowing the Metro District access to 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.

The Owner agrees that this entire Agreement and Owner's performance of its obligations hereunder shall become a covenant running with the land, which land is legally described in Exhibit B

attached hereto, and that this entire Agreement and Owner's performance of its obligations hereunder 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 first described in Exhibit E, and otherwise keep the same in good repair, all at its own cost and expense. Neither Developer nor Metro District shall suffer any mechanics' or materialmen's liens to be enforced against the Stormwater Facilities Area or other property of Owner for work done or materials furnished in connection with Metro District's obligations under this Agreement. Owner shall have no obligations with respect to the Stormwater Facilities Area other than to provide the property and access thereto, without obstruction, pursuant to the easement described in Section 4 of this Agreement.

4. **Creation of Easement:** Owner hereby grant Developer, Owner and Upstream Owner a non-exclusive perpetual easement upon and across the property described in Exhibit E for the discharge and flow of stormwater from the Subject Property, Case Upstream Property and DeYoung Upstream Property in higher than historic volumes and at higher than historic rates. Owner hereby grants the Metro District a non-exclusive perpetual easement upon and across the property described in Exhibit E for the purposes of access to and construction, cleaning, maintenance and repair of the stormwater drainage channel and any appurtenant improvements. Owner hereby grants the County a non-exclusive perpetual easement upon and across the property described in Exhibit E 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. **New Agreement:** Should the location of the Stormwater Facilities Area need to be modified in the future, due to the development of the Case Downstream Property or otherwise, then Owner shall be required to enter into a Private Detention Basin / Stormwater Quality Best Management Practice Maintenance Agreement and Easement (New Agreement) in connection with such development. Such New Agreement shall set forth the obligations for construction and maintenance of the new stormwater drainage channel and any appurtenant improvements and shall contain a provision terminating the perpetual easements created by this Agreement and establishing new perpetual easements over and across the new Stormwater Facilities Area.

6. **Indemnification:** Developer and Metro District shall indemnify, defend and hold Owner harmless from and against any and all obligations, liabilities, claims, liens, demands, loss, damage, injury, suit, causes of action, costs and expenses (including, without limitation, attorneys' fees) whatsoever in any way relating to or arising out of either (i) any stormwater runoff or drainage from the Subject Property and easement area shown in Exhibit E that enters or crosses the Case Downstream Property or other properties, or (ii) the activities or obligations of Developer, Metro District, or their respective agents or representatives under this Agreement. At all times during any construction or maintenance activities within the detention basin/BMP(s), Developer and Metro District shall maintain, or cause to be maintained, in full force and effect, a policy of comprehensive general liability insurance issued on a form and with an insurance company reasonably acceptable to Owner, and with such commercially reasonable coverage limits as Owner may from time to time require. Prior to any construction or maintenance activities, Developer and Metro District shall provide Owner with a certificate of insurance evidencing that Owner has been named as an additional insured under such

policy. Such certificate shall provide that such policy shall not be cancelled or amended without thirty (30) days' prior written notice to Owner.

7. **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.

8. **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, the Owner, or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

9. **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.

10. **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:

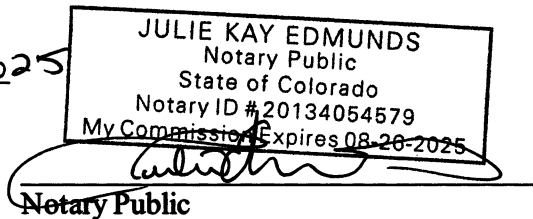
Challenger Communities, LLC

By: [Signature]
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



Executed this 15th day of December, 2021 by:

BENT GRASS METROPOLITAN DISTRICT

By: [Signature]
Randall W. Case II, President
[Name]

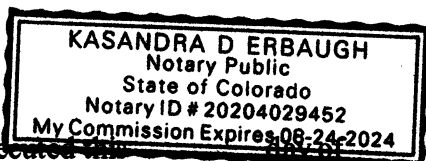
Attest:

By: [Signature]
Bryan T. Long, Secretary
[Name] [Title]

The foregoing instrument was acknowledged before me this 15 day of December, 2021, by Randall W Case II President, and Bryan T Long, Secretary, BENT GRASS METROPOLITAN DISTRICT

Witness my hand and official seal.

My commission expires: 8.24.2024



[Signature]
Notary Public

Executed this _____, 20____, by:

OWNER

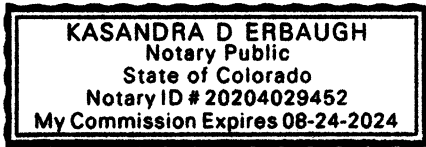
Lena Gail Case

By: Lena Gail Case

The foregoing instrument was acknowledged before me this 15 day of December, 2021, by _____, Lena Gail Case.

Witness my hand and official seal.

My commission expires: 8.24.2024



Kassandra D Erbaugh
Notary Public

Executed this _____ day of _____, 2020, by:

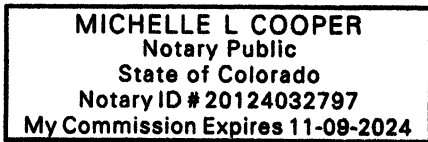
UPSTREAM OWNER:

Randall L DeYoung
Randall L. DeYoung

The foregoing instrument was acknowledged before me this 21st day of December, 2020, by Randall L. DeYoung.

Witness my hand and official seal.

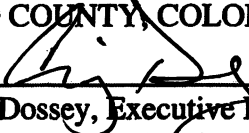
My commission expires: 11/09/2024



Michelle L Cooper
Notary Public

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

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

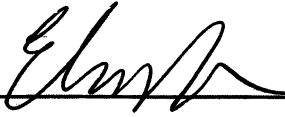
By: 

**Craig Dossey, Executive Director
El Paso County Planning and Community Development Department
Authorized signatory pursuant to LDC**


The foregoing instrument was acknowledged before me this ____ day of December, 2021, by Craig Dossey, Executive Director, El Paso County Planning and Community Development.

Witness my hand and official seal.

My commission expires: April 16, 2025


Notary Public

Approved as to Content and Form:


Steven Klaffky (Dec 22, 2021 09:34 MST)

Assistant County Attorney

ELENA RENE KREBS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214015204
MY COMMISSION EXPIRES APRIL 16, 2025

EXHIBIT A.1

NORTH PARCEL

A PARCEL OF LAND, BEING A PORTION OF THE WEST HALF OF SECTION 1, T.13S., R.65W., OF THE 6TH P.M., COLORADO SPRINGS, EL PASO COUNTY, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING:

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPLE MERIDIAN AND IS CONSIDERED TO BEAR N00°13'46"W:

COMMENCING AT THE SOUTHWEST QUARTER CORNER OF SAID SECTION 1; THENCE N00°13'46"E ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 2429.82 FEET TO A POINT ALONG SAID WEST LINE, ALSO BEING TO THE **POINT OF BEGINNING**:

THENCE N89°46'14"E, A DISTANCE OF 493.96 FEET TO A POINT ON THE NORTHWESTERLY LINE OF A PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 209061972;

THENCE ALONG SAID NORTHWESTERLY LINE FOUR (4) COURSES:

1. THENCE N23°44'26"E, A DISTANCE OF 247.83 FEET TO A POINT OF CURVATURE;
2. THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 605.00 FEET, A CENTRAL ANGLE OF 65°45'46", A DISTANCE OF 694.40 FEET, A CHORD BEARING OF N56°37'18"E WITH A CHORD DISTANCE OF 656.91 FEET;
3. THENCE N89°30'12"E, A DISTANCE OF 448.12 FEET TO A POINT OF CURVATURE;
4. THENCE ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 09°25'11", A DISTANCE OF 86.31 FEET, A CHORD BEARING OF N84°47'37"E WITH A CHORD DISTANCE OF 86.21 FEET;

THENCE N07°58'52"W, A DISTANCE OF 126.91 FEET;

THENCE N07°51'55"E, A DISTANCE OF 62.94 FEET;

THENCE N01°11'11"W, A DISTANCE OF 107.15 FEET;

THENCE N88°48'49"E, A DISTANCE OF 14.56 FEET;

THENCE N65°21'22"E, A DISTANCE OF 4.05 FEET;

THENCE N09°11'31"W, A DISTANCE OF 158.90 FEET TO A POINT OF NON-TANGENT CURVATURE;

THENCE ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 16°15'39", A DISTANCE OF 49.67 FEET, A CHORD BEARING OF N72°40'39"E WITH A CHORD DISTANCE OF 49.50 FEET;

THENCE N64°32'49"E, A DISTANCE OF 36.42 FEET;

THENCE N00°30'24"W, A DISTANCE OF 446.99 FEET TO A POINT ON THE SOUTH LINE OF THE MEADOWS FILING NO. 4, RECORDED AT RECEPTION NO. 200135677;

THENCE WITH THE SAID SOUTH LINE, S89°36'34"W, A DISTANCE OF 1740.37 FEET TO THE NORTH 1/16 CORNER OF SAID SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST;

THENCE WITH THE WEST LINE OF SAID SECTION 1 S00°14'14"E, A DISTANCE OF 1316.12 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST;

THENCE WITH THE WEST LINE OF SAID SECTION 1 S00°13'46"E, A DISTANCE OF 205.35 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS 1,991,949 SQUARE FEET OR 45.729 ACRES, MORE OR LESS.

EXHIBIT A.2

SOUTH PARCEL

A PARCEL OF LAND, BEING A PORTION OF THE WEST HALF OF SECTION 1, T.13S., R.65W., OF THE 6TH P.M., COLORADO SPRINGS, EL PASO COUNTY, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING:

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPLE MERIDIAN AND IS CONSIDERED TO BEAR N00°13'46"W:

COMMENCING AT THE SOUTHWEST QUARTER CORNER OF SAID SECTION 1; THENCE N00°13'46"E ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 1928.67 FEET TO A POINT ALONG SAID WEST LINE, ALSO BEING THE SOUTHWEST CORNER OF A PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 21303554; THENCE WITH THE SOUTH LINE OF SAID PROPERTY DESCRIBED AT RECEPTION NUMBER 21303554, N89°47'22"E A DISTANCE OF 499.98 FEET TO A POINT ON THE EASTERLY LINE OF A PROPERTY DESCRIBED BY QUITCLAIM DEED, RECORDED AT RECEPTION NO. 209061972 THE **POINT OF BEGINNING**:

THENCE ALONG SAID EASTERLY AND THE SOUTHERLY LINE SAID RECEPTION NO. 209061972 THE FOLLOWING FIVE (5) COURSES:

1. THENCE N00°13'46"W, A DISTANCE OF 206.50 FEET TO A POINT OF CURVATURE;
2. THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 23°58'12", A DISTANCE OF 219.64 FEET, A CHORD BEARING OF N11°45'20"E WITH A CHORD DISTANCE OF 218.04 FEET;
3. THENCE N23°44'26"E, A DISTANCE OF 301.49 FEET TO A POINT OF CURVATURE;
4. THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 65°45'45", A DISTANCE OF 602.57 FEET, A CHORD BEARING OF N56°37'18"E WITH A CHORD DISTANCE OF 570.04 FEET;
5. THENCE N89°30'12"E, A DISTANCE OF 358.96 FEET;

THENCE S04°50'58"W, A DISTANCE OF 80.18 FEET;

THENCE S03°12'36"E, A DISTANCE OF 153.39 FEET;

THENCE S03°42'06"E, A DISTANCE OF 84.68 FEET;

THENCE S12°32'06"E, A DISTANCE OF 80.14 FEET;

THENCE S12°59'08"E, A DISTANCE OF 75.20 FEET;

THENCE S77°46'36"W, A DISTANCE OF 30.12 FEET;

THENCE S17°37'13"E, A DISTANCE OF 160.63 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 1840.12 FEET, A CENTRAL ANGLE OF 08°44'32", A DISTANCE OF 280.77 FEET, A CHORD BEARING OF S10°08'34"E WITH A CHORD DISTANCE OF 280.50 FEET;

THENCE S04°52'53"E, A DISTANCE OF 8.49 FEET;

THENCE S00°13'15"E, A DISTANCE OF 95.50 FEET;

THENCE S89°47'22"W, A DISTANCE OF 1111.19 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS 927,083 SQUARE FEET OR 21.283 ACRES, MORE OR LESS.

