

**PRIVATE DETENTION BASIN CONSTRUCTION, MAINTENANCE AND COST
RECOVERY AGREEMENT AND COVENANTS**

THIS PRIVATE DETENTION BASIN CONSTRUCTION, MAINTENANCE AND COST RECOVERY AGREEMENT AND COVENANTS (the "*Agreement*" or "*Covenants*") is made and entered into as of the date shown below by and between **LC PARTNERS LLLP**, a Colorado limited liability company, and **BRADLEY CROSSROADS, LLC**, a Colorado limited liability company, (hereinafter respectively "*LC PARTNERS*" and "*BC*", or individually a "*Declarant*", and collectively the "*Declarants*") for themselves their successors, and assigns.

WITNESSETH:

A. LC PARTNERS is the owner of that certain real property consisting of approximately 5.15 acres and located in El Paso County, Colorado, as more particularly described on Exhibit A, attached hereto and by this reference incorporated herein (the "*LC PARTNERS Property*").

B. BC is the owner of that certain real property consisting of approximately 11 acres and located in El Paso County, Colorado, as more particularly described on Exhibit B, attached hereto and by this reference incorporated herein (the "*BC Property*"). The LC PARTNERS Property and the BC Property together shall be known as the "*Properties*".

C. The development of both the LC PARTNERS Property and the BC Property will require, inter alia, the installation of certain private improvements, including without limitation a private detention basin to be located on the LC PARTNERS Property but which will benefit both the LC PARTNERS Property and the BC Property and which is important to all future Owners (as defined herein) of both the LC PARTNERS Property and the BC Property.

D. El Paso County, LC Partners LLLP, and the Lincoln Commons Townhome Owners Association have entered into the Detention Basin Agreement (as defined below) whereby LC PARTNERS and the Association take responsibility for constructing and maintaining a private water runoff detention basin and for properly cleaning, maintaining, inspecting and repairing the detention basin.

E. This Agreement is a material inducement to LC PARTNERS and Association agreeing to enter into the Detention Basin Agreement.

F. Ensuring that the costs of constructing and maintaining the private detention basin are equitably shared by the Owners of the Properties is important to all future Owners of the Properties. Therefore, the purpose of this Agreement is to govern the timely and equitable completion of the detention basin and provide for its maintenance all as required by the Detention Basin Agreement, the County and this Agreement.

G. Towards this end, each Declarant makes these Covenants, in their capacity as a "Declarant" and not in its capacity as an "Owner", to govern, control and regulate certain aspects of the future development, use and operation of the Properties in accordance with and subject to all the provisions of these Covenants.

NOW, THEREFORE, each Declarant hereby declares and agrees as follows:

I. GENERAL APPLICATION.

1. Declarants desire to provide for the orderly development of the Properties and the equitable sharing of the costs arising from the Detention Basin Agreement and the private detention basin and to this end, hereby subject the Properties to these Covenants, each and all of which is and are for the benefit of the Properties and each Owner thereof.

2. Declarants, therefore, now adopt these Covenants and place them on the Properties for the preservation of the Properties and for the benefit of the Properties and the future Owners. Declarants declare that the Properties are and shall be held, transferred, sold, conveyed, used, and occupied and subject to the covenants, conditions, restrictions, easements, charges and liens set forth in these Covenants, all of which shall be covenants running with the land included herein and shall be binding on all parties having any right, title, or interest in the Properties or any portions thereof, except as herein set forth, their heirs, successors and assigns, and shall inure to the benefit of each owner. Owners, by accepting a deed for a tract, parcel or other portion of the Properties, covenant and agree to be bound by the terms and conditions of these Covenants.

II. SPECIFIC COVENANTS, CONDITIONS AND RESTRICTIONS.

1. PROPERTY SUBJECT TO DECLARATION.

a. The LC PARTNERS Property and the BC Property are each hereby submitted and made subject to the provisions of these Covenants.

b. For purposes of these Covenants, the capitalized terms used and not otherwise defined herein shall have the following meanings:

(i) "*Constructing Party*" shall mean the party constructing any of the Private Improvements (as defined below).

(ii) "*Detention Basin Agreement*" shall mean that certain private detention basin agreement and easement entered into by and between El Paso County (the "*County*"), LC PARTNERS, and the Lincoln Commons Townhome Owners Association (the "*Association*") dated _____, 2007, whereby LC PARTNERS and the Association agree to take responsibility for constructing a private water runoff detention basin for the benefit of the Properties and for properly cleaning, maintaining, inspecting and repairing the detention basin.

(iii) "*First Mortgage*" shall mean a mortgage or deed of trust upon all or any portion of either the LC PARTNERS Property or the BC Property or any tract, parcel or townhome within the Properties having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgagee" means a Mortgagee whose encumbrance is a First Mortgage.

(iv) "*Mortgagee*" means any person or entity, or any successor or assign thereof, which holds or owns a mortgage or deed of trust. The term shall also include the Administrator of Veteran's Affairs, an officer of the United States of America, and its assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not but if not recorded, then written notice thereof shall be delivered to the respective Owner (as defined below).

(v) "*Owner*" shall mean and refer to: (1) any person, corporation, partnership, association, limited liability company, contract seller or other legal entity or any combination thereof, including BC, who owns the record fee simple interest in all or any portion of the BC Property; and (2) LC PARTNERS until LC PARTNERS no longer has voting control over the Association at which time "Owner" shall no longer include LC PARTNERS but shall then include the Association. The term "Owner" shall also include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assignee of any Owner, but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Tract merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(vi) "*Pro Rata Share*" as attributable to the LC PARTNERS Property shall mean thirty-five percent (35%) and as attribute to the BC Property shall mean sixty-five percent (65%). The Pro Rata Share attributable to the BC Property may be further prorated based upon subdivision of the BC Property and the subsequent transfer or sale of Tracts to Owners other than BC so that the Pro Rata Share of the Owner of each subdivided Tract within the BC Property shall be a prorated share of BC Property's initial 65% Pro Rata Share of the entire Costs based on a fraction, the numerator of which is the total number of square feet of the Tract and the denominator of which shall be the total number of square feet comprising the BC Property.

(vii) "*Private Improvements*" shall mean the private improvements, including but not necessarily limited to the private detention basin required to be constructed and maintained pursuant to the Detention Basin Agreement.

(viii) "*Successor*" shall mean any and all grantees or transferees of any Owner hereto who receives a conveyance of the Properties or any portion thereof.

(vix) "*Tract(s)*" or "*Parcel(s)*" shall mean any portion of the BC Property together with all appurtenances thereto and improvements now or hereafter thereon.

2. PRIVATE IMPROVEMENTS: ADDITIONAL IMPROVEMENTS. Each Owner shall pay its Pro Rata Share of all the Costs (as defined below). In addition, each Owner shall dedicate such rights-of-way and grant such easements as may be required for any extension or improvements to or expansion of the detention basin required by the Detention Basin Agreement or any other governmental agency and as a condition of approval of a final plat for all or a portion of the LC PARTNERS Property.

3. OTHER IMPROVEMENTS.

a. Other Improvements. Except as set forth above in Section 2, each Owner shall be responsible for all other costs, requirements or obligations necessary to develop the Owner's Tract or either Properties generally, including without limitation the cost of additional public or private improvements and fees or other assessments required upon recording a final plat.

b. Other Utilities. Each Owner is responsible for its own utilities including without limitation, water, waste water disposal, gas, electric and communications. Each Owner agrees to reserve adequate right-of-way for the installation of gas, electric and communications necessary to serve the Properties and will make that right-of-way available to the other Owners without charge therefore.

c. Drainage. Except as otherwise set forth in Section 2, each Owner shall be responsible for its own drainage improvements.

d. Easements for Private Improvements and Roads. All Owners are obligated, upon request and without payment of any additional consideration therefore, to grant to any other Owner or to El Paso County reasonable easements and/or dedications required by these Covenants and as more specifically identified on a final plat.

e. Grading Cooperation. All Owners agree to share the development plans they have for their Tracts with the other Owners and work cooperatively to minimize grading costs for the overall Properties and to plan for the most efficient grading for roads. This cooperation will include, but not be limited to, endeavoring whenever possible to complete overlot grading of one or more Tracts and/or the LC PARTNERS Property at a time and planning with an objective of dirt balancing the Properties in order to minimize the need to import or export fill from or to the Properties, including for construction of the drainage detention ponds. When dirt balancing the Properties, Owners will not charge other Owners for excess material, other than for costs to transport the material.

f. Construction and Cooperation. To ensure the timely development of the Properties and so that no Owner is delayed in its development, the Private Improvements provided for herein may be constructed by any Owner at such time as needed by the Owner to commence with development of its Property or Tract, initially at the constructing Owner's expense but subject to the obligation of all other Owners to pay Cost recoveries as provided for herein. To avoid delaying development, all Owners shall be responsible for cooperating with the Constructing Party's efforts to complete construction of the Private Improvements and infrastructure as provided for herein. In this regard, all Owners shall (a) provide the Constructing Party with all requested information needed for planning and construction of the Private Improvements, (b) provide needed access to an Owner's Tract for the Constructing Party as may be reasonably necessary to complete the planning, engineering and construction of the Private Improvements as provided for herein, and (c) execute any and all documents reasonably requested by the Constructing Party to further document the easements and other rights provided herein as may be required by governmental authorities or any lenders. In addition, each Owner hereby grants to the Constructing Party who may be completing construction of the Private Improvements such reasonable temporary construction easements over, on and across the Owner's Tract as may be necessary to complete the engineering and construction of the Private Improvements contemplated herein.

4. DEVELOPMENT COOPERATION. All Owners shall cooperate with Declarants to obtain approval of preliminary and final plats and development plans necessary to develop the Properties, including taking such action and executing and delivering such documents as may be requested by Declarants and Owners, El Paso County or any other governmental agency.

5. COST RECOVERY.

a. Costs. For purposes of these Covenants, the term "*Costs*" for Private Improvements will include all costs incurred by an Owner and arising from the Detention Basin Agreement or related requirements of El Paso County including without limitation proper maintenance which shall include but not be limited to cleaning, repairing, inspecting and replacing the Private Improvements. Costs shall also include any and all reasonable expenses incurred for preliminary studies and planning for the Private Improvements, for design, planning and engineering fees, and for actual costs for labor, services, materials, and supplies used or furnished for the construction of the Private Improvements to El Paso County standards. Costs will also include expense for acquisition of any rights-of-way or easements for the Private Improvements off the Properties, if necessary, and any non-refundable application fees and expenses for sureties given to governmental agencies to approve, authorize or permit the construction. Cost will not include amounts for right-of-way or easements for Private Improvements within the Properties, as all Owners will be required to dedicate those rights-of-way to the extent they have not already been reserved by Declarants.

b. Interest on Costs. Interest on all Costs will be accrued from the date of the final inspection as to the construction of the Private Improvements and from the date of expenditure as to all maintenance of the Private Improvements for which recovery is sought, through the date

through the date that the Cost recovery is paid by the respective Owner(s). Interest will accrue at the rate of ten percent (10%) per annum, compounded annually.

c. Collection of Cost Recoveries. With respect to Costs incurred by the Constructing Party, Owners of Tracts shall be responsible for reimbursing the Constructing Party who is entitled to a Cost recovery hereunder on or before the later to occur of the following: (1) thirty (30) days after the County and any other applicable governmental or quasi governmental authority has approved the private detention basin as complete and in compliance with the Detention Basin Agreement; and (2) thirty (30) days after the Owner(s) responsible for reimbursement have received notice from the Constructing Party that the Private Improvements have been completed and approved by the County and any other applicable governmental or quasi governmental authorities. With respect to maintenance costs incurred from obligations required pursuant to the Detention Basin Agreement or the County or this Agreement, Owners shall be responsible for reimbursing other Owners who are entitled to Cost recovery hereunder within thirty (30) days after the reimbursing Owner receives notice along with reasonable documentation of costs incurred from the Owner entitled to the reimbursement.

6. NONPAYMENT BY OWNER.

a. General Any Cost recovery by an Owner when due shall be delinquent and shall be subject to a one-time late fee of five percent (5%) of the amount past due and shall bear interest from the due date at the rate of twelve percent (12%) per annum, and the Declarant or Owner which is due the recovery may bring an action at law against the Owner obligated to pay the same, and/or foreclose the lien against such Owner's Tract. In the event a judgment is obtained, such judgment shall include interest on the Cost recovery and the late charge as above provided, late charges, and reasonable attorneys' fees to be fixed by the court, together with the expense and costs of the action.

b. Lien Any unpaid Cost recovery assessed against an Owner or its Tract, with interest thereon at the rate of twelve percent (12%) per annum, the late charge set forth above, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien, from and after the levy or assessment thereof, in favor of the Declarant or the Owner to whom the Cost recovery is due, upon the Tract or Property against which each such Cost recovery and other sums is made. All payments on account shall be first applied to interest, then to late charges, any costs or fees, and then to the Cost recovery assessment that is past-due. The Declarant and any Owner may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Tract, setting forth the Owner's name, the legal description of the Tract, the name of the claiming party, citing these Covenants, and indicating the amount of delinquent Cost recovery assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the claiming party, and notice thereof shall be mailed to the Owner of the Tract, at the address that the claiming party may then have in its records for the Owner of the Tract or from the notice address provided on the deed in the real property records for El Paso County. Such a claim of lien shall also secure all Cost recovery assessments which come due thereafter until the lien, together with all costs, attorneys'

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together with all costs, attorneys' fees, administrative charges and interest, have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the claiming party may proceed to foreclose the liens under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the claiming party of the lien shall not be deemed to estop or otherwise preclude the claiming party from suing the Owner personally liable therefore or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums which are not fully paid when due. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the party holding the lien.

c. Authority. Each Owner, by acceptance of a deed to a Tract, hereby expressly vests in the Declarants and the other Owners or their agents the right and power: (a) to bring all actions against such Owner personally for the collection of such charges as a debt, and (b) to enforce the aforesaid lien by all methods available for the enforcement of such liens. Such enforcement may include, but is not limited to, foreclosure by an action brought in the name of the party entitled to the Cost recovery hereunder, in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Declarant and all other Owners a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Declarant or Owner entitled to the Cost recovery hereunder. The Declarant or the Owner entitled to Cost recovery, acting on its behalf, shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey a Tract.

d. No Subordination. The lien for delinquent Cost recoveries provided for herein shall have priority over and not be subordinate to the lien of a First Mortgage against the BC Property or a Tract or any other mortgage or deed of trust against the BC Property or a Tract recorded before or after the delinquent Cost recovery was due or to any other lien except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). Sale or transfer of the BC Property or any Tract shall not affect the lien for said Cost recovery assessment charges except that sale or transfer of the BC Property or any Tract pursuant to foreclosure of any such mortgage shall extinguish the lien of assessment charges which became due prior to any acquisition of title to the BC Property or such Tract by the First Mortgagee pursuant to any such foreclosure. No such sale, transfer, foreclosure, or any above described proceeding in lieu or in cancellation thereof, shall relieve the BC Property or any Tract from liability for any assessment charges for Cost recoveries becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of the BC Property or such Tract for assessments that became due and payable during the period of that Owner's ownership.

7. PLATTING; DEVELOPMENT. Each Owner hereby agrees to complete any platting and development work of its Tract(s) pursuant to all applicable laws, rules and regulations.

8. ENFORCEMENT. Enforcement of these Covenants shall be at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain

violation or to recover damages. These Covenants are for the use, convenience and protection of all Owners in the Property. The Declarants and individual Owners may act to enforce these Covenants; none of the foregoing, however, are obligated to do so. Declarants directly or through an Owner, or other authorized agents or employees, further reserves the right, whenever there shall have been an apparent violation of one or more of the provisions of these Covenants, and after ten (10) days' written notice to the Owner, to either (1) enter upon the Tract or property where such violation exists and summarily abate or remove the same at the Owner's expense, and such entry and abatement or reversal shall not constitute nor be deemed a trespass, or (2) pursue an action at law or in equity in a court of law to enforce these Covenants. Owners expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy Covenant violations. In addition, the violator(s) of these Covenants shall pay all costs of any enforcement efforts or proceedings, including reasonable attorneys' fees. The failure to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or violation.

9. LIABILITY. No Declarant and no officers, directors, stockholders, managers or members of any Declarant shall be liable in damages to any person or entity by reason of any action, failure to act, or any other circumstance taken in good faith to meet the intent of these Covenants.

10. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS. Notwithstanding any contrary provision of these Covenants, Declarants, and their successors or assigns, expressly reserve the right, without vote of the Owners or Mortgagees, to make such amendments to these Covenants as may be deemed necessary by mutual written agreement between the Declarants to: (1) correct typographical errors or to clarify the meaning and intent of these Covenants; and (2) enhance the rights and protections of the Owners, or as may be authorized and approved in writing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Department of Veterans Affairs so as to induce such organization to make, purchase, sell, insure or guaranty mortgages within the LC PARTNERS Property, provided, however, that no such amendments will change the development intent of these Covenants. Each Owner and Mortgagee, by accepting a deed or mortgage, appoints the Constructing Party as its attorney in fact to execute any such amendments.

11. TERM OF COVENANTS. These Covenants are to run with the land and shall remain in full force and effect so long as the Detention Basin Agreement remains in full force and effect beginning from the date of recording of these Covenants, after which time these Covenants shall be automatically terminated unless extended by an instrument signed by a simple majority of the then Owners of a Tract or Tracts who represent at least fifty-one percent (51%) of the Pro Rata Shares then subject to these Covenants has been recorded. These Covenants may be amended at any time by a vote of the Owners who represent at least two-thirds of the Pro Rata Shares of the

