

**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 (Board or County) and ELECTRONIC STORAGE (Developer), a Colorado corporation. The above may occasionally be referred to herein singularly as "Party" and collectively as "Parties."

Recitals

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

B. WHEREAS, Developer desires to plat and develop on the Property a land use to be known as Electronic Storage; and

C. WHEREAS, the development of this Property will substantially 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 Developer's promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices ("BMPs") for the land use; 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 developer'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, developers 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 developers to construct than other methods of providing drainage and water runoff control; and

H. WHEREAS, Developer desires to construct for the land use one detention basin/stormwater quality BMP(s) (“detention basin/BMP(s)”) as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County’s MS4 Permit, and to provide for operating, cleaning, maintaining and repairing such detention basin/BMP(s); and

I. WHEREAS, Developer desires to construct the detention basin/BMP(s) on property that will be platted as Lot 2, Mountain States Pipe and Supply, as indicated on the final plat of the subdivision, and as set forth on Exhibit B attached hereto; and

J. WHEREAS, Developer shall be charged with the duty of constructing the detention basin/BMP(s) and with the duties of operating, maintaining and repairing the detention basin/BMP(s) on the Property described in Exhibit B; and

K. WHEREAS, it is the County’s experience that developers historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins/BMPs, and that these detention basins/BMPs, 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/BMPs when developers 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/BMP(s) serving this land use due to the Developer’s failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this land use on the Developer’s promise to so construct the detention basin/BMP(s), and further conditions approval on the Developer’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/BMP(s) serving this land use; and

N. WHEREAS, the County could condition land use 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 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 Developer’s promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this land use upon the Developer’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/BMP(s); and

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. Construction: Developer shall construct on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, one detention basin/BMP(s). Developer shall not commence construction of the detention basin/BMP(s) until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention basin/BMP(s) and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the detention basin/BMP(s) in substantial compliance with the County-approved plans and specifications for the detention basin/BMP(s). 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/BMP(s) shall be substantially completed within one (1) year (defined as 365 days), which one-year period will commence to run on the date the Erosion and Stormwater Quality Control Permit (ESQCP) is issued. Rough grading of the detention basin/BMP(s) must be completed and inspected by the El Paso County Development Services Department 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 project, and shall have the right to seek reimbursement from the Developer 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 Developer agrees for itself and its successors and assigns that it will regularly and routinely inspect, clean and maintain the detention basin/BMP(s), and otherwise keep the same in good repair, all at their own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basin/BMP(s) shall be planted or allowed to grow on the detention basin/BMP(s).

5. Creation of Easement: Developer hereby grants the County a non-exclusive perpetual easement upon and across that portion of the Property described in Exhibit A. The purpose of the easement is to allow the County to access, inspect, clean, repair and maintain the detention basin/BMP(s); 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/BMP(s).

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin/BMP(s) is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer and its successors and assigns that the detention basin/BMP(s) needs to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem(s). Should the responsible parties fail to correct the specified problem(s), the County may enter upon the Property to so correct the specified problem(s). 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/BMP(s).

7. Reimbursement of County's Costs / Covenant Running With the Land: The Developer agrees and covenants, for itself and its successors and assigns, that they will reimburse the County for its costs and expenses incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the detention basin/BMP(s) 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: Developer's execution of this Agreement is a condition of land use approval.

The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it 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 shall mean that the appropriate condition of this Agreement has not been fulfilled.

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, Developer 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 their respective intentional or negligent acts, errors or omissions or that of their 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/BMP(s), 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 Developer, 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/BMP(s) be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as "hazardous materials"), the Developer 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 Developer, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

14. 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 15th day of September, 2021, by:

ELECTRONIC STORAGE

By: David Stefano, Manager
David Stefano, Manager

The foregoing instrument was acknowledged before me this 15th day of September, 2021, by David Stefano, Authorized Signing Agent, Electronic Storage.

Witness my hand and official seal.

My commission expires: 09/31/25

Jordan Asher Barlow
Notary Public

Executed this 15th day of September, 2021, by:

Jordan Asher Barlow
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7758854
My Commission Expires 5/31/2025

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Craig Dossey, Executive Director
El Paso County Planning and Community Development
Authorized signatory pursuant to LDC

Attest:

County Clerk and Recorder

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, Executive Director of the El Paso County Planning and Community Development Department, as Attested to by _____, County Clerk and Recorder.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Approved as to Content and Form:

Assistant County Attorney

Exhibit A – Legal Description

LOT 2 MOUNTAIN STATES PIPE AND SUPPLY

Exhibit B – Plat

KNOW ALL MEN BY THESE PRESENTS:

That BBR-740, LLC, a Colorado limited liability company, being the owner of the following described tract of land to wit:

That portion of the East Half of Lot 5 in Aker's Acres Subdivision No. 1, El Paso County, Colorado described as follows:

Commencing at the southeast corner of said Lot 5, thence North 89 Degrees 37 Minutes 59 Seconds West, along the south line of said Lot 5 a distance of 50.36 feet to the point of beginning at the southwest corner of a parcel of land described in a document recorded at Reception Number 210051876;

- thence North 89 Degrees 37 Minutes 59 Seconds West, continuing along said south line 578.14 feet to the southwest corner of said East Half;
- thence North 0 degrees 22 minutes 01 second East along the west line of said East Half 337.04 feet to the east corner of said East Half;
- thence South 89 degrees 37 minutes 59 seconds East along the north line of said Lot 5 a distance of 551.66 feet to the northwest corner of said parcel described at Reception Number 210051876;
- thence South 29 degrees 41 minutes 39 seconds East along the west line of said parcel 52.26 feet;
- thence South 0 degrees 18 minutes 21 seconds West, continuing along said west line 291.81 feet to the point of beginning.

Containing a calculated area of 194,206 square feet (4.4584 acres), more or less.

OWNERS CERTIFICATION:

The undersigned, being all the owners, mortgages, beneficiaries of deeds of trust and holders of other interests in the land described herein, have laid out, subdivided, and platted said lands into lots and easements as shown hereon under the name and subdivision of **MOUNTAIN STATES PIPE AND SUPPLY**. The utility easements shown hereon are hereby dedicated for public utilities and communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established as shown granted the perpetual right of ingress and egress from and to adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

Elizabeth L. Carroll
 Elizabeth L. Carroll, Manager of BBR-740, LLC, a Colorado limited liability company
 STATE OF COLORADO }
 COUNTY OF EL PASO } SS
 Acknowledged before me this 14 day of July 2021, ~~2020~~ by Elizabeth L. Carroll as Manager of BBR-740, LLC

My commission expires 8-20-2024
 Witness my hand and official seal Notary Public *[Signature]*

LIEN HOLDER:
 The Eastern Colorado Bank, has executed this instrument this 14 day of July 2021, 2021, A.D.

By: *[Signature]* Vincent E. Crowell as Chief Credit Officer of The Eastern Colorado Bank.

NOTARIAL:
 STATE OF COLORADO }
 COUNTY OF EL PASO } SS
 LYN R HAHN
 Notary Public
 My Commission Expires 08-20-2024

The above and aforementioned was acknowledged before me this 14 day of July 2021, by Vincent E. Crowell as Chief Credit Officer of The Eastern Colorado Bank

Witness my hand and seal *[Signature]*
 Address _____
 My Commission expires 8-20-2024

BOARD OF COUNTY COMMISSIONERS CERTIFICATE:

This plat for **MOUNTAIN STATES PIPE AND SUPPLY** was approved for filing by the El Paso County Board of County Commissioners on the 8/3/2021 day of August, 2021, subject to any notes specified hereon and any conditions included in the resolution of approval. The dedications of public utility and drainage easements are accepted, but the public improvements thereon will not become the maintenance responsibility of the County until the County has received notice of completion from the applicant. The applicant shall be responsible for the maintenance of the easements until the County has received notice of completion from the applicant. The applicant shall also be responsible for the maintenance of the easements until the County has received notice of completion from the applicant. The applicant shall also be responsible for the maintenance of the easements until the County has received notice of completion from the applicant.

[Signature]
 Chair, Board of County Commissioners Date 8/3/2021

PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR CERTIFICATE:

This plat for **MOUNTAIN STATES PIPE AND SUPPLY** was approved for filing by the El Paso County, Colorado Planning and Community Development Department Director on the 2-7-21 day of May, 2021, subject to any notes or conditions specified hereon.

[Signature]
 Planning and Community Development Director

SURVEYOR'S CERTIFICATION

I, Mark S. Johannes, a duly registered Professional Land Surveyor in the State of Colorado, do hereby certify that this plat truly and correctly represents the results of a survey made on the date of survey shown hereon, by me or under my direct supervision and that all monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and all applicable provisions of the El Paso County Land Development Code.

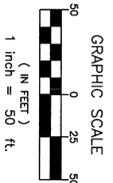
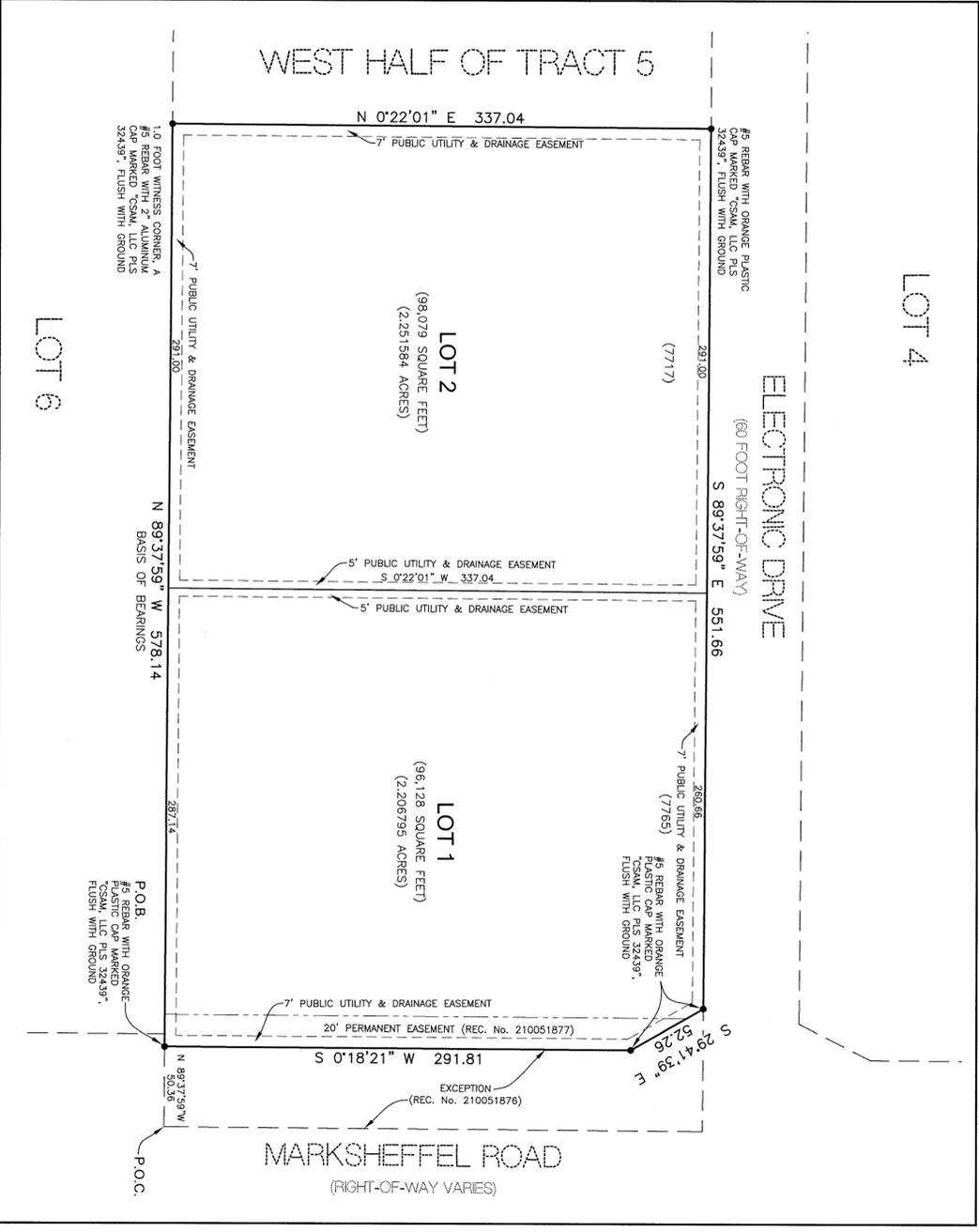
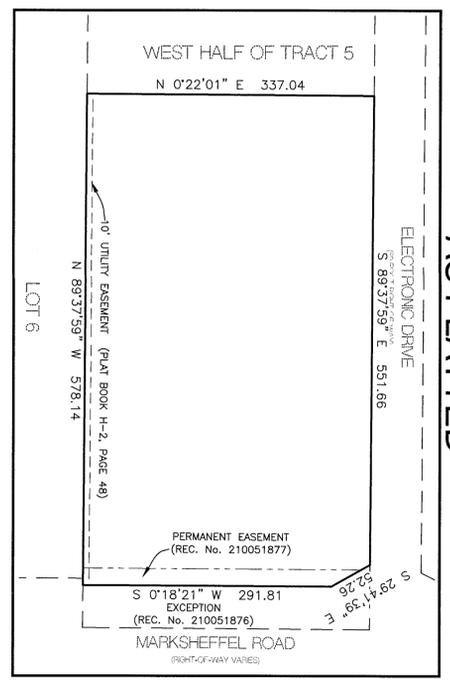
This certification is neither a warranty nor guarantee, either expressed or implied.
 I attest the above on this 13th day of July, 2021.

Mark S. Johannes
 Colorado Professional Land Surveyor No. 32439
 For and on behalf of Compass Surveying and Mapping, LLC
COMPASS SURVEYING & MAPPING, LLC
 3249 WEST CARBREE CIRCLE
 COLORADO SPRINGS, CO 80917
 719-554-4120
 WWW.CSAMILLC.COM



MOUNTAIN STATES PIPE AND SUPPLY

A VACATION AND REPLAT OF A PORTION OF THE EAST HALF OF TRACT 5 IN AKER'S ACRES SUBDIVISION NO. 1 LOCATED IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO



14797

NOTES:

- 1) - Denotes found monument, marked as noted
 (7785) - Denotes street address.
- 2) This survey does not constitute a title search by Compass Surveying & Mapping, LLC to determine ownership or easements of record. For all information regarding title, rights of way and title of record, Compass Surveying & Mapping, LLC relies upon a Commitment for the Insurance prepared by Land Title Guarantee Company, Order No. SC50509164-7 with an effective date of 05/19/2018 at 7:30 A.M.
- 3) Basis of bearings is the south line of the property, monumented as shown and assumed to bear North 89 degrees 37 minutes 59 seconds West.
- 4) This property is located within Zone X (areas determined to be outside the 500-year floodplain) as established by FEMA per FIRM panel 0804100756G, effective date, December 7, 2018.
- 5) Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within the time period specified. Any action based upon any defect in this survey may be commenced more than ten years from the date of the certification shown hereon.
- 6) The linear units used in this drawing are U.S. Survey Feet.
- 7) Water is to be provided by the Cherokee Metropolitan District.
- 8) Sewage treatment is the responsibility of the property owner. The El Paso County Department of Health and Environment must approve each system and in some areas and in some cases the Department may require an engineer designed system prior to permit approval.
- 9) Unless otherwise indicated, all side, front, and rear lot lines are hereby platted on each side with a 5 foot public utility and drainage easement, unless otherwise indicated. All exterior subdivision boundaries are hereby platted with a 7 foot public utility and drainage easement. The sole responsibility for maintenance of these easements is hereby vested with the individual property owners.
- 10) Mailboxes shall be installed in accordance with all El Paso County Department of Transportation and United States Postal Service regulations.
- 11) All structural foundations shall be located and designed by a Professional Engineer, currently registered in the State of Colorado.
- 12) All property owners are responsible for maintaining proper storm water drainage in and through their property. Public drainage easements as specifically noted on the plat shall be maintained by the individual lot owners unless otherwise indicated. Structures, fences, materials or landscaping that could impede the flow or runoff shall not be placed in drainage easements.
- 13) The addresses exhibited on this plat are for informational purposes only. They are not the legal description and are subject to change.
- 14) The approval of this replat vacates all prior plats for the area described by this replat.
- 15) No driveway shall be established unless an access permit has been granted by El Paso County.
- 16) There shall be no direct lot access to Marksheffel Road.
- 17) NOTICE OF POTENTIAL AIRCRAFT OVERFLIGHT AND NOISE IMPACT ASSOCIATED WITH AIRPORT: This serves as notice of potential aircraft overflight and noise impacts on this property, due to its close proximity to an airport, which is being disclosed to all prospective purchasers considering the use of this property for residential and other purposes. This property is subject to the overflight and associated noise of arriving and departing aircraft during the course of normal airport operations.
- 18) The Subdivider(s) agrees on behalf of him/herself and any developer or builder, successors and assigns that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 19-471), or any amendments thereto, at or prior to the time of building permit submissions. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
- 20) All easements that are dedicated hereon for public utility purposes shall be subject to those terms and conditions as specified in the instrument recorded at Reception Number 21212596 of the records of El Paso County, Colorado. All other easements or interests in the property, including but not limited to the property depicted hereon shall not be affected and shall remain in full force and effect.

RECORDING:
 STATE OF COLORADO }
 COUNTY OF EL PASO } SS
 I hereby certify that this instrument was filed for record in my office of 8:24 o'clock P.M., this 24 day of August, 2021, A.D., and is duly recorded under Reception No. 22111797 of the records of El Paso County, Colorado.

CHUCK BROERMAN, RECORDER
 By: *[Signature]*
 Deputy

SURCHARGE: \$3-
 FEE: \$10-

DRAWING: \$51,672.00 (Small Units)
 BONUS: \$15,409.00 (Small Units)

REVISIONS:		
1	9/01/20	County comments
2	10/26/20	County comments
3	12/05/20	County comments
PROJECT NO. 19196		DECEMBER 18, 2019
PCD FILE NO. VR204		SHEET 1 OF 1