

G. 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

H. 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

I. WHEREAS, Developer desires to construct for the subdivision two 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
and XX sand filter basin BMPs

J. WHEREAS, Developer desires to construct the detention basin/BMP(s) on property that is or will be platted as Homestead Sterling Ranch Filing No. 2, Lots 24-27 and Tract B, and as set forth on Exhibit B attached hereto; and
and the SFBs on Lots 13-24 and 28-41

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

L. 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/BMPs, and that these detention basins/BMPs, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

M. 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 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/BMP(s) serving this Subdivision due to the Developer's or the District's failure to meet its obligations to do the same; and

N. WHEREAS, the County conditions approval of this Subdivision on the Developer's promise to so construct the detention basin/BMP(s), and further conditions approval on the District'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 Subdivision; and

O. 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 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 and the District's promises contained herein; and

P. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision 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

Q. WHEREAS, Pursuant to Colorado Constitution, Article XIV, Section 18(2) and Section 29-1-203, Colorado Revised Statutes, governmental entities may cooperate and contract with each other to provide any function, services, or facilities lawfully authorized to each.

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows: this is an old template - should be PCD

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement. add another if needed

2. Covenants Running with the Land: Developer and the District agree 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 themselves, their respective successors and assigns. include the SFB easements

3. Construction: Developer or the District shall construct on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, a detention basins/BMP(s). Developer or the District shall not commence construction of the detention basin/BMP(s) until the El Paso County Development Services Department (DSD) 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 DSD. Developer or the District 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 approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. 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 or the District and their respective 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.

- b. A copy of the Covenants of the Subdivision, if applicable, establishing that the District is obligated to inspect, clean, maintain, and repair the detention basin/BMP(s).

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 Development Services Department and/or El Paso County Department of Transportation: Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Development Services Department and/or the Director of the El Paso County Department of Transportation. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Director of the Development Services Department and/or the Director of the El Paso County Department of Transportation.

10. Indemnification and Hold Harmless: To the extent authorized by law, Developer and the District agree, for themselves, their respective 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, the District, 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 and the 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



20 Boulder Crescent, STE 110
Colorado Springs, CO 80903
Mail to: PO Box 1360
Colorado Springs, CO 80901
719.955.5485

**POND 1 – HOMESTEAD AT STERLING RANCH FILING NO. 2
MAINTENANCE AGREEMENT
EXHIBIT “A”**

M&S Job No. 09-007
FEBRUARY 22, 2019

A PARCEL OF LAND LOCATED IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO;

BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPLE MERIDIAN, THE SECTION CORNER COMMON TO SECTIONS 33, 34, 3, AND 4 BEING MONUMENTED WITH A 2-1/2” ALUMINUM CAP STAMPED “LS 11624” AND AT THE QUARTER CORNER COMMON TO SECTIONS 34 AND 3 WITH A 2-1/2” ALUMINUM CAP STAMPED “LS 11624”, SAID LINE BEARS N89°14’14” E, A DISTANCE OF 2,722.56 FEET.

COMMENCING AT SAID SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER (SW1/4) OF SAID SECTION 34; THENCE N31°01’13” W, A DISTANCE OF 4121.66 FEET TO A POINT A POINT ON THE WESTERLY LINE OF TRACT D AS SHOWN ON THE PLAT OF “STERLING RANCH FILING NO. 1” UNDER RECEPTION NUMBER 218714151 OF THE RECORDS OF EL PASO COUNTY, COLORADO, AND THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE ALONG SAID WESTERLY LINES OF TRACT D THE FOLLOWING THREE (3) COURSES):

- 1) THENCE S69°43’31”W A DISTANCE OF 88.65 FEET;
- 2) THENCE S81°55’47”W A DISTANCE OF 111.14 FEET;
- 3) THENCE N71°56’55”W, A DISTANCE OF 75.60 FEET TO THE NORTHEAST CORNER OF TRACT F OF AFORESAID “STERLING RANCH FILING NO. 1”;

THENCE ALONG THE NORTHERLY LINES OF SAID TRACT F THE FOLLOWING THREE (3) COURSES):

- 1) THENCE N71°56’55”W, A DISTANCE OF 80.38 FEET;
- 2) THENCE N54°41’05”W, A DISTANCE OF 37.80 FEET;
- 3) THENCE N31°24’46”W, A DISTANCE OF 36.61 FEET;

THENCE N35°18’43”E A DISTANCE OF 131.72 FEET;

THENCE 268.18 FEET ON THE ARC OF A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVE A RADIUS OF 225.00 FEET, A CENTRAL ANGLE OF 68°17’28” (THE CHORD OF WHICH BEARS S76°07’45”E A DISTANCE OF 252.58 FEET) TO A POINT OF TANGENT;

THENCE N69°43’31”E A DISTANCE OF 30.37 FEET;

THENCE S20°16’29”E A DISTANCE OF 120.00 FEET TO THE POINT OF BEGINNING;

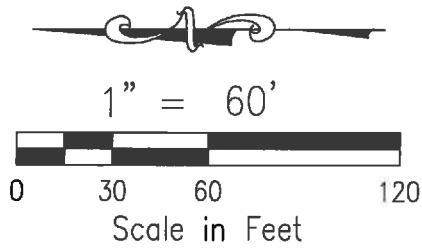
CONTAINING A CALCULATED AREA OF 47,128 SQUARE FEET (1.082 ACRES) MORE OR LESS.

PREPARED BY:

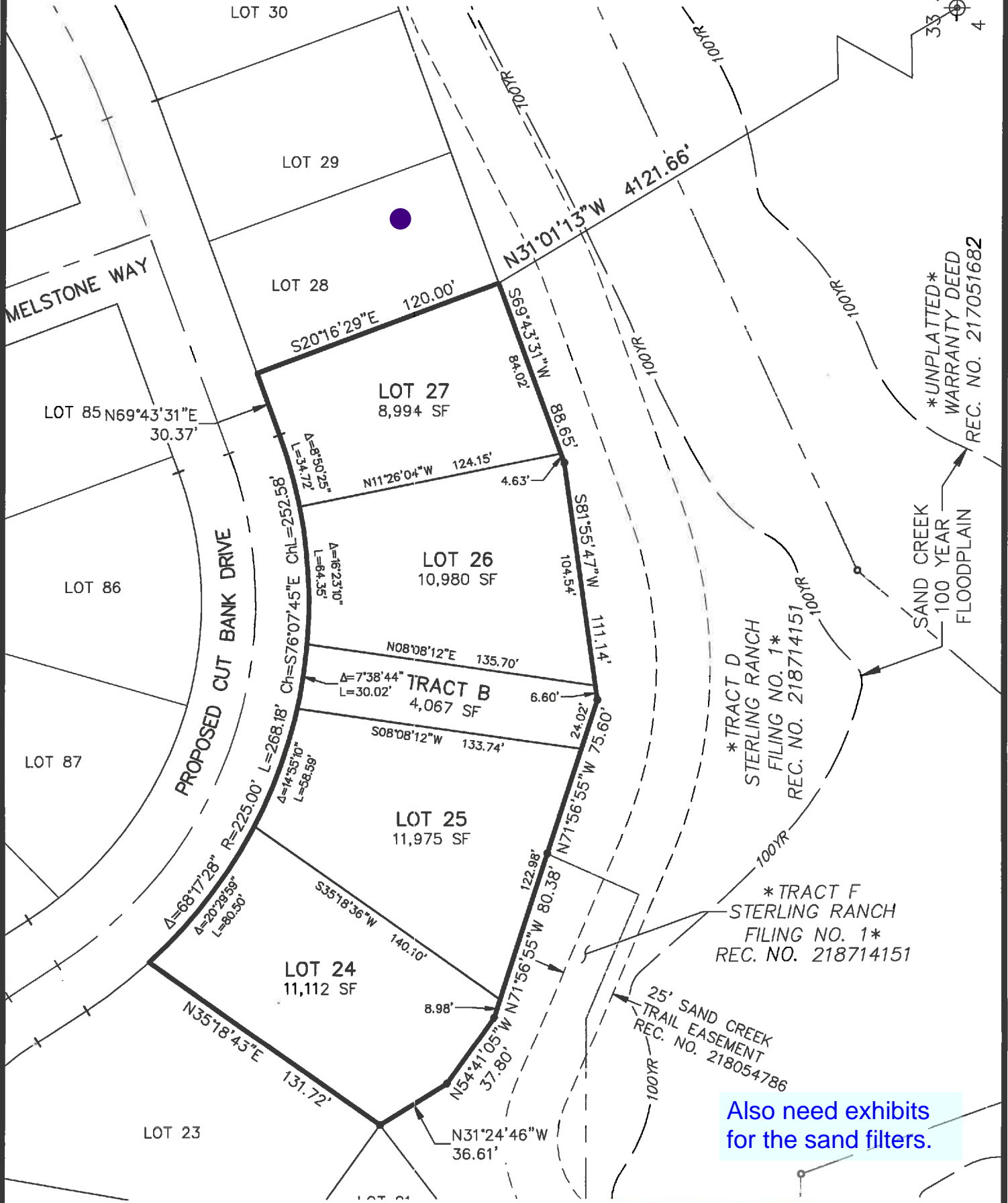
Add easement for SFBs.

VERNON P. TAYLOR, COLORADO PLS NO. 25966 DATE
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC
20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903

POND 1 - HOMESTEAD AT STERLING RANCH FILING NO. 2 MAINTENANCE AGREEMENT EXHIBIT "B"



NOTE;
LOTS AND TRACTS SHOWN HEREON ARE
PROPOSED UNLESS OTHERWISE INDICATED.



S89°14'14"W
BASIS OF BEARING

UNPLATTED
WARRANTY DEED
REC. NO. 217051682

*TRACT D
STERLING RANCH
FILING NO. 1*
REC. NO. 218714151

*TRACT F
STERLING RANCH
FILING NO. 1*
REC. NO. 218714151

25' SAND CREEK
TRAIL EASEMENT
REC. NO. 218054786

Also need exhibits
for the sand filters.

POND 1 - HOMESTEAD AT
STERLING RANCH FILING NO. 2
MAINTENANCE AGREEMENT
EXHIBIT "B"
JOB NO. 09-007
DATE PREPARED: 02/22/2019



20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903
PHONE: 719.955.5485

THIS DRAWING DOES NOT REPRESENT
A MONUMENTED LAND SURVEY AND
IS ONLY INTENDED TO DEPICT THE
LEGAL DESCRIPTION.