

PRE-DEVELOPMENT SITE GRADING ACKNOWLEDGEMENT
AND RIGHT OF ACCESS AGREEMENT

The undersigned (“Applicant”) owns and holds legal title to the real property to be known as Riverbend Crossing Filing No. 1 & 2 (“Property”), which Property is legally described on Exhibit A attached hereto and incorporated herein by this reference.

Applicant seeks approval for Pre-Development Site Grading under Section 6.2.6 of the El Paso County Land Development Code. As a condition of approval and issuance of Construction Permit No. _____, Applicant must complete and submit this Pre-Development Site Grading Acknowledgement and Right of Access Agreement (“Agreement”). In compliance therewith, by signing below, Applicant hereby acknowledges and agrees as follows:

1. The approval and issuance of the Construction Permit does not guarantee or create a right in, or a right of expectation in, Applicant that the El Paso County Planning Commission will recommend or the Board of County Commissioners of El Paso County will approve Applicant’s final plat for the Property. Applicant may proceed with grading under the Construction Permit at Applicant’s sole risk.
2. The Construction Permit shall be personal to the Applicant and shall not run with the land. Any successors and/or assigns of the Applicant desiring to proceed or continue with the Pre-Development Site Grading approval shall execute their own Pre-Development Site Grading Acknowledgement and Right of Access Agreement, obtain their own Construction Permit and provide replacement financial guarantees.
3. Applicant hereby grants to El Paso County, its employees, agents, contractors, and/or subcontractors free access to enter upon the Property at all reasonable hours for the following purposes in accordance with requirements of the El Paso County Engineering Criteria Manual (ECM), Section I.5:
 - a. To inspect and investigate for compliance with Construction Permit requirements, including, but not limited to, proper installation and maintenance of erosion and sediment control measures; and
 - b. To inspect and investigate for completion of grading activities and soil stabilization requirements; and
 - c. In the event of noncompliance with either of the above, to identify deficiencies, which may result in issuance of a Letter of Noncompliance which includes such deficiencies to be corrected by Applicant; and
 - d. In the event the Applicant does not correct deficiencies identified in a Letter of Noncompliance, to draw on collateral provided and perform the

work in order to correct said deficiencies pursuant to ECM Section I.6.1.H.

4. Applicant shall indemnify, defend, and forever hold harmless the Board of County Commissioners of El Paso County, their officers, employees, agents, contractors, and subcontractors, from any and all claim, demand, action, cause of action, loss, damage, injury, property damage, personal injury, death, liability, duty, obligation, costs and expenses (including attorney fees) arising out of or related to such entry on the Property. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to the Board of County Commissioners pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
5. In accordance with ECM Sections 5.3.15 and I.4.1.A.3, Applicant is obligated to provide security or collateral sufficient to make reasonable provision for completion of the grading, erosion control and final stabilization measures, in the amount set forth on Exhibit B attached hereto. Collateral shall be in the form of cash, cashier's check, or letter of credit issued by a financial institution authorized to do business in the State of Colorado. Collateral in the form of _____, issued by _____ in the amount of \$ 948,035.03 has been provided as security to guarantee completion of the proposed grading, erosion control and final stabilization measures.
6. Applicant is responsible for providing any renewals of collateral to ensure that there is never a lapse in security coverage. Applicant shall procure renewal/extension/replacement collateral at least fifteen (15) days prior to the expiration of the original or renewal/extension/replacement collateral then in effect. Failure to procure renewal/extension/replacement collateral within this time limit shall allow the County to execute on the collateral.
7. All of those certain grading, erosion control and final stabilization measures to be completed as identified on Exhibit B shall be constructed in compliance with the following:
 - a. All laws, resolutions and regulations of the United States, State of Colorado, El Paso County and its various agencies, affected special districts and/or servicing authorities.
 - b. Such other designs, drawings, maps, specifications, sketches and other matter submitted to and approved by any of the above-stated governmental entities.
8. All grading, erosion control and final stabilization measures shall be completed by the Applicant within 12 (twelve) months from the date of notice to proceed in the Construction Permit. If Applicant determines that the completion date needs to be extended, Applicant shall submit a written request for a change in the completion date to the ECM Administrator at least 90 days in advance of the required completion date. The request shall include the reasons for the requested change in completion date, the proposed new completion date, and prove collateral is in place to cover the

extension time requested. The completion date for the Construction Permit may be extended at the discretion of the ECM Administrator. The completion date for the grading, erosion control, and final stabilization measures may be extended one time, for a period no longer than 6 months at the discretion of the ECM Administrator. Any additional requests for extension of the completion date will be scheduled for hearing by the Board of County Commissioners. The ECM Administrator or the Board of County Commissioners may require an adjustment in the amount of collateral to take into account any increase in cost due to the delay including inflation. Failure to meet the original or extended completion date, as applicable, shall allow the County to execute on the collateral.

9. At any time the County determines, in its sole discretion, that Applicant has failed to comply with any of the terms or conditions of this Agreement or to complete the required grading, erosion and sediment control measures, or final site stabilization, it may draw on the collateral provided, up to the total amount, to complete such work.

IN WITNESS WHEREOF, the Applicant hereby executes this Pre-Development Site Grading Acknowledgement and Right of Access Agreement this _____ day of _____, 20____.

APPLICANT:

(Alan Toth, partner
Avatar Fountain LLP

STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Craig Dossey, Executive Director
Planning and Community Development Department

Date

Approved as to Content and Form:

Assistant County Attorney

BARRON LAND, LLC

A tract of land being a portion of the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of Section 14, Township 15 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado, described as follows:

Bearings based on the West line of the Northeast Quarter (NE 1/4) of Section 14, Township 15 South, Range 66 West of the 6th P.M., monumented at the North Quarter (N 1/4) corner with a 3 1/4" aluminum cap, stamped "BARRON LAND 2018 PLS 38141" and at the Center Quarter (C 1/4) corner with a 3 1/4" aluminum cap, stamped "OLIVER E. WATTS 2000 PE-LS 9853" and bears S 00°24'11" E, 2640.42 feet.

COMMENCING at said North Quarter (N 1/4) corner; thence S 00°24'11" E, along the West line of the Northeast Quarter (NE 1/4), a distance of 638.79 feet; thence N 89°35'49" E, a distance of 265.00 feet to the POINT OF BEGINNING.

Thence N 89°35'49" E, a distance of 175.85 feet;

Thence 105.86 feet along the arc of a 170.00 foot radius tangent curve to the left, having a central angle of 35°40'40" with a chord that bears N 71°45'30" E, 104.16 feet;

Thence N 50°00'24" E, a distance of 142.79 feet to a point on the Southwest line of the land described in Warranty Deed recorded in Book 2472 at Page 228, El Paso County Records;

Thence S 36°04'35" E, along said Southwest line and its Southeasterly extension, a distance of 1,091.60 feet to a point on the West right of way line of Southmoor Drive;

Thence S 00°07'59" E, along said West line, a distance of 306.67 feet to an angle point in said Southmoor Drive;

Thence S 34°27'20" E, along the Southwest line of said Southmoor Drive, a distance of 53.43 feet to the Northwest corner of a tract of land described at Reception No. 202040629, El Paso County Records;

Thence S 00°11'18" E along the West line of said tract of land, a distance of 813.74 feet to the Southeasterly end of the common boundary line described in the Boundary Agreement and Quit Claim deed recorded at Reception No. 206153355, El Paso County Records;

Thence N 64°47'25" W, along said boundary line, a distance of 1,396.33 feet;

BARRON LAND, LLC

Thence N 45°18'53" E, a distance of 105.75 feet;

Thence 54.46 feet along the arc of a 55.00 foot radius non-tangent curve to the right, having a central angle of 56°44'10" with a chord that bears N 16°19'02" W, 52.26 feet;

Thence 6.52 feet along the arc of a 30.00 foot radius reverse curve to the left, having a central angle of 12°27'13" with a chord that bears N 05°49'26" E, 6.51 feet, to a point 115.00 feet East of the West line of said Northeast Quarter;

Thence N 00°24'11" W, parallel with and 115.00 feet East of said West line, a distance of 164.35 feet;

Thence N 89°35'49" E, a distance of 150.00 feet to a point 265.00 feet East of said West line;

Thence N 00°24'11" W, parallel with and 265.00 feet East of said West line, a distance of 1,030.00 feet to the POINT OF BEGINNING.

Containing a total calculated area of 1,591,987 square feet (36.547 acres) of land, more or less.