

**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 The Citizen on Constitution, LLC. (Developer). 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 develop on the Property a subdivision to be known as Citizen at Constitution Filing No. 1; 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/land use on Developer’s promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices (“BMPs”) for the subdivision/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 subdivision one (1) 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 operate, clean, maintain and repair such detention basin/BMP(s); and

I. WHEREAS, Developer desires to construct the detention basin/BMP(s) on the portion of the Property that is described in Exhibit B attached hereto; and

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

K. 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

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 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/land use due to the Owner’s failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this subdivision on the Developer’s promise to so construct the detention basin/BMP(s), and conditions approval on the Owner’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

N. WHEREAS, the County could condition subdivision/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 Owner’s promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this subdivision/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).

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: Owner 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, 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 (1) 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 approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. In cases where a subdivision is not required, the 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 PCD 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 Owner 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 Owner 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 its 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: Owner hereby grants the County a nonexclusive perpetual easement upon and across that portion of the Property described in Exhibit B. 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 Owner 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 Owner agrees and covenants, for itself, its successors, and assigns, that it 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 Land Use/Land Disturbance Approval: Owner's execution of this Agreement is a condition of land use/land disturbance 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, Owner agrees, for itself, its successors and assigns, that it 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 its intentional or negligent acts, errors or omissions or that of its 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 Owner, 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 Owner 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 Owner, 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 19th day of December, 2022, by:

The Citizen on Constitution, LLC.

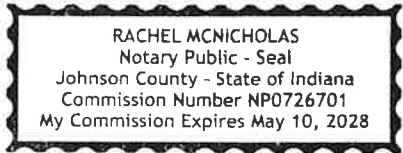
By: _____
Eric Garrett, Manager

The foregoing instrument was acknowledged before me this 19th day of December, 2022 by Eric Garrett, Manager, The Citizen on Constitution, LLC.

Witness my hand and official seal.

My commission expires: May 10, 2028


Notary Public



Executed this _____ day of _____, 20____, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Stan VanderWerf, Chair

Attest:

Chuck Broerman
County Clerk & Recorder

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, Chair of the Board of County Commissioners of El Paso County, Colorado, as Attested to by _____, County Clerk and Recorder.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Approved as to Form:

County Attorney's Office

EXHIBIT A
LEGAL DESCRIPTION

TRACT M AND TRACT N, URBAN COLLECTION AT PALMER VILLAGE RECORDED OCTOBER 8, 2021 UNDER
RECEPTION NO. 221714832, COUNTY OF EL PASO, STATE OF COLORADO.

EXHIBIT B
LEGAL DESCRIPTION OF EASEMENT

A PARCEL OF LAND LOCATED IN A PORTION OF TRACT N, URBAN COLLECTION AT PALMER VILLAGE, LYING WITHIN THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF CONSTITUTION AVENUE, AS MONUMENTED BY A #4 REBAR WITH YELLOW PLASTIC CAP, STAMPED "PLS 4842", WHENCE THE NORTHEASTERLY CORNER OF SAID TRACT N, AS MONUMENTED BY A #5 REBAR WITH YELLOW PLASTIC CAP, STAMPED "AZTEC PLS 36567", ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SAID CONSTITUTION AVENUE, BEARS N 89°53'50" E, A DISTANCE OF 1691.84 FEET, FORMING THE BASIS OF BEARINGS USED IN THIS DESCRIPTION;

THENCE S 88°35'17" E, A DISTANCE OF 756.58 FEET TO THE **POINT OF BEGINNING**;

THENCE N89°53'50"E, A DISTANCE OF 108.03 FEET;

THENCE S00°04'05"E, A DISTANCE OF 309.31 FEET;

THENCE S89°55'55"W, A DISTANCE OF 48.57 FEET;

THENCE N57°40'47"W, A DISTANCE OF 60.83 FEET;

THENCE N43°19'23"W, A DISTANCE OF 21.36 FEET TO A POINT OF CURVATURE;

THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 23°46'32", A RADIUS OF 40.73 FEET, AN ARC LENGTH OF 16.90 FEET, AND A CHORD BEARING AND DISTANCE OF N23°08'03"W, 16.78 FEET;

THENCE N05°35'34"W, A DISTANCE OF 4.01 FEET TO A POINT OF CURVATURE;

THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 12°36'09", A RADIUS OF 230.50 FEET, AN ARC LENGTH OF 50.70 FEET, AND A CHORD BEARING AND DISTANCE OF N06°19'39"E, 50.60 FEET;

THENCE N13°13'19"E, A DISTANCE OF 4.96 FEET;

THENCE N10°13'47"E, A DISTANCE OF 24.45 FEET TO A POINT OF CURVATURE;

THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 06°56'49", A RADIUS OF 24.00 FEET, AN ARC LENGTH OF 2.91 FEET, AND A CHORD BEARING AND DISTANCE OF N13°42'11"E, 2.91 FEET;

THENCE ALONG A REVERSE CURVE TO THE LEFT WITH A CENTRAL ANGLE OF 17°16'46", A RADIUS OF 141.50 FEET, AN ARC LENGTH OF 42.67 FEET, AND A CHORD BEARING AND DISTANCE OF N08°32'13"E, 42.51 FEET;

THENCE N00°06'10"W, A DISTANCE OF 113.82 FEET TO THE **POINT OF BEGINNING**;

CONTAINING AN AREA OF 33,849 SQ. FT. OR 0.777 ACRES, MORE OR LESS.

TO BE KNOWN AS TRACT B OF CITIZEN ON CONSTITUTION FILING NO. 1 POST PLAT RECORDATION.

