

DEVELOPMENT AGREEMENT FALCON RANCHETTES FILING 1A

THIS DEVELOPMENT AGREEMENT (“Agreement”), is made this ___ day of _____, 2024, between EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY COLORADO, whose street address is 200 South Cascade Avenue, Colorado Springs, CO 80903 (“County”), and MIKE TEXER and BRITTANY TEXER, whose mailing address is 6780 Horseshoe Road, Colorado Springs, CO 80923 (collectively, “Developer”). The County and the Developer may be singularly referred to herein as the Party or collectively referred to herein as the Parties.

RECITALS

WHEREAS, Developer plans to develop on the Property legally described in Exhibit A, attached hereto and incorporate herein by reference, a subdivision to be known as Falcon Ranchettes Filing 1A; and

WHEREAS, County owns certain rights-of-way known as Meridian Road adjacent to the Property; and

WHEREAS, in connection with development of the Property, Developer is required to dedicate additional right-of-way to County for Meridian Road and to construct a drainage channel and appurtenant improvements (“Drainage Channel”) within that additional right-of-way and an easement adjacent to the right-of-way; and

WHEREAS, the Parties wish to memorialize their mutual understanding regarding ongoing maintenance of the Drainage Channel.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.
2. Obligations Run with the Land: Developer agrees that this 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. Location of Drainage Channel. The location of the Drainage Channel that is the subject of this Agreement is depicted in Exhibit B, attached hereto and incorporated herein by reference.

4. Maintenance: Developer shall perform the specific maintenance activities identified herein in the manner and at the frequency described. County hereby grants permission to Developer to enter the portion of the Drainage Channel within County right-of-way to perform such maintenance.

- a. Mowing, vegetation management, and lawn care: Developer shall occasionally mow the Drainage Channel to limit unwanted vegetation and maintain irrigated turf grass at 2 to 4 inches tall and non-irrigated native grasses at 4 to 6 inches tall.
- b. Debris and litter removal: Developer shall routinely remove and appropriately dispose of debris and litter from the Drainage Channel. At a minimum, such removal shall be done every April or May before storm season and following significant rainfall events.

5. Reimbursement to County for Failure to Maintain. Any time County determines, in the sole exercise of its discretion, that Developer has failed to maintain the Drainage Channel in accordance with the above provisions, County shall give notice via first-class mail to Developer of such failure and give a reasonable time to perform the maintenance. If the maintenance is not performed within the specified period, County may perform the required maintenance. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose upon County a duty to inspect or perform Developer's maintenance obligations for the Drainage Channel.

Developer agrees that it will reimburse County for its actual costs and expenses incurred in performing Developer's maintenance obligations. The term "actual costs and expenses" shall be liberally construed in favor of 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.

The reimbursement process described in this paragraph 5 shall be in addition to any other remedies available to County for Developer's breach of this Agreement.

6. Additional Agreement Terms:

a. Utilities. Developer shall ensure no damage occurs to existing utility and other installations that may be present in or on County right-of-way during maintenance of the Drainage Channel.

b. Damage. Developer is responsible for reimbursing County for the repair of any damage to fences, signs, delineators, guardrails, landscape plantings of County, or any other right-of-way improvements resulting from Developer's operations. Developer shall hold County,

its elected officials, appointees, officers, and employees free and harmless from all risk of injury or damage to Developer, property of Developer, and Developer's agents, employees, assigns and successors or others which may result from debris, foreign objects, or chemical contamination resulting from normal maintenance activities performed by County. Developer is responsible for reimbursing County for the repair and re-survey of any damage and disturbance to any survey monuments resulting from Developer's activities within the right-of-way.

7. Termination: This Agreement may only be terminated 1) in writing signed by both Parties, or 2) without further action by either Party upon Developer's conveyance at County's request of the Public Improvement, Utility & Drainage Easement adjacent to Meridian Road within which a portion of the Drainage Channel lies and which is depicted on the plat for Falcon Ranchettes Filing 1A.

8. Indemnification/Hold Harmless: Developer shall indemnify and hold County and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with, Developer's, its contractors', agents', or employees' activities in County right-of-way or failure to comply with the terms of this Agreement. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to County pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

9. Assignment: Developer shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of County.

10. Remedies: The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity.

11. No Third-Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party hereto for any breach or other failure to perform this Agreement.

12. Entire Agreement: This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing and executed by duly authorized representatives of the Parties hereto.

13. Binding: Developer and County hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of County and Developer in the event the County agrees to an assignment of the Agreement.

15. Authority: The undersigned hereby acknowledge and represent that they have legal authority to bind the Party for whom they are executing this Agreement.

16. Applicable Law: 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. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

17. Execution: This Agreement, including facsimile copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

18. Recording: This Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

IN WITNESS WHEREOF, Developer and County have executed this Agreement as of the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Steve Schleiker
County Clerk and Recorder

By: _____
Cami Bremer, Chair

APPROVED AS TO FORM:

By: _____
County Attorney's Office

EXHIBIT A

Lots 1 and 2, Falcon Ranchettes

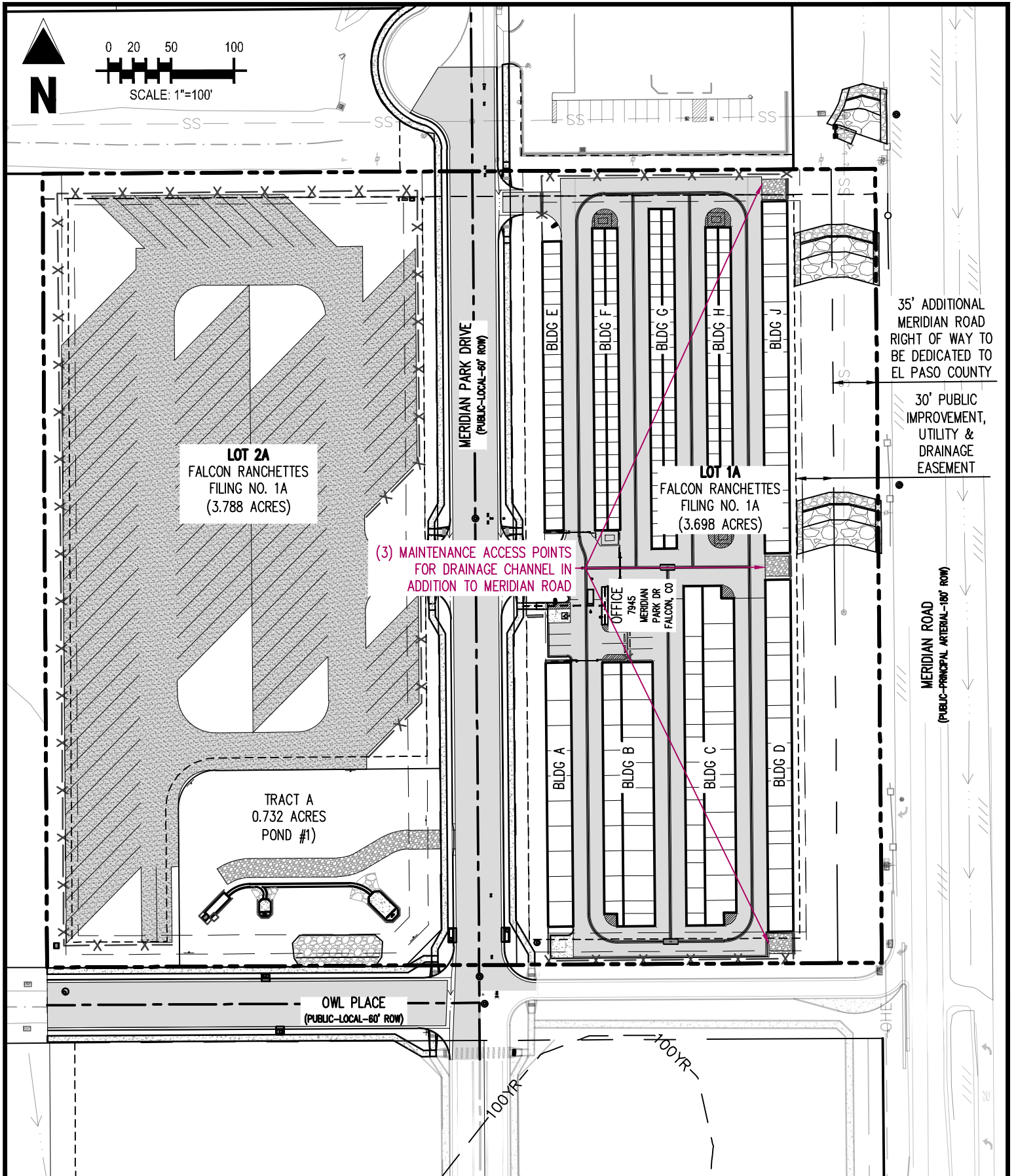
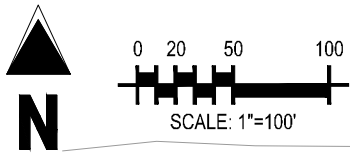
LEGAL DESCRIPTION: Falcon Ranchettes Filing No. 1a

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 1 & 2, FALCON RANCHETTES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK V-2, PAGE 15, OF THE RECORDS OF EL PASO COUNTY, COLORADO.

CONTAINING 9.604 ACRES, MORE OR LESS.

EXHIBIT B



LOT 2A
 FALCON RANCHETTES
 FILING NO. 1A
 (3.788 ACRES)

LOT 1A
 FALCON RANCHETTES
 FILING NO. 1A
 (3.698 ACRES)

(3) MAINTENANCE ACCESS POINTS
 FOR DRAINAGE CHANNEL IN
 ADDITION TO MERIDIAN ROAD

TRACT A
 0.732 ACRES
 POND #1

OWL PLACE
 (PUBLIC-LOCAL-60' ROW)

MERIDIAN PARK DRIVE
 (PUBLIC-LOCAL-60' ROW)

35' ADDITIONAL
 MERIDIAN ROAD
 RIGHT OF WAY TO
 BE DEDICATED TO
 EL PASO COUNTY

30' PUBLIC
 IMPROVEMENT,
 UTILITY &
 DRAINAGE
 EASEMENT

MERIDIAN ROAD
 (PUBLIC-PRINCIPAL ARTERIAL-180' ROW)

MERIDIAN STORAGE
 FALCON RANCHETTES FILING NO. 1A

CHANNEL EXHIBIT

Project No:	MRS000002
Drawn By:	CMWJ
Checked By:	BAS
Date:	07/12/2024

Galloway

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 Colorado Springs, CO 80920
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