

**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 Avatar Equities. 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 subdivision to be known as Riverbend Crossing Filings No. 1 & 2; 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 subdivision; 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 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 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 is or will be platted as Lot 1, 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 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 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 due to the Developer’s or the Metro District’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 further conditions approval on the Metro 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

N. 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/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 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 and the Metro 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.

3. Construction: Developer shall construct on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, 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 (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 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 Planning and Community Development 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 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.

4. Maintenance: The Developer/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: Developer/Owner hereby grants the County a non-exclusive 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 Developer/Owner and their respective

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/Owner agrees and covenant, for themselves, their respective 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/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 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 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 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/Owner agrees, for itself, 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/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 Developer/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 Developer/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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by:

Avatar Equities

By: Alan Toth, Owner

By: \_\_\_\_\_  
Alan Toth, Owner

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Alan Toth, Avatar Equities

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by:

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By: \_\_\_\_\_  
Craig Dossey, Executive Director  
Planning and Community Development  
Authorized signatory pursuant to LDC

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Executive Director of Planning and Community Development of El Paso County, Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Approved as to Content and Form:

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Assistant County Attorney

# BARRON LAND, LLC

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Tract D, Riverbend Residential Filing No. 1, County of El Paso, State of Colorado.

Containing a total calculated area of 546,173 square feet (12.538 acres) of land, more or less.

Spencer J. Barron

State of Colorado Professional Land Surveyor No. 38141

For and on behalf of Barron Land, LLC



**FINAL PLAT**

That \_\_\_\_\_, being the owners of the following described tract of land to wit:

A tract of land being a portion of the West Half (W 1/2) of the Northeast Quarter (NE

Bearings based on the West line of the Northeast Quarter (NE 1/4) of Section 14, Township 15 South, Range 66 West of the 5th D.V. measured at the North Quarter (N 1/4) corner with 2 1/2" aluminum one element "BAGON" and 2018

PLS 38141" and at the Center Quarter (C 1/4) corner with a 3 1/4" aluminum cap, stamped "OLIVER E. WATTS 2000  
E-S 9853" and bears S 00°24'11" E, 2640.42 feet.

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 50°00'24" E, a distance of 142.79 feet to a point on the Southwest line of the land described in Warranty Deed with a chord that bears N 71°45'30" E, 104.16 feet;  
Recorded in Book 2472 at Page 228, El Paso County Records;

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

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 Southeastly end of the Thence S 34°27'20" E, along the Southwest line of said Southmoor Drive, a distance of 53.43 feet to the Northwest corner

Thence N 64°47'25" W, along said boundary line, a distance of 1,396.33 feet;  
Thence N 45°18'53" E, a distance of 105.75 feet;

66°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 1°27'13"; with

Then N 00°24'11" W, parallel with and 115.00 feet East of said West line, a distance of 164.35 feet; a chord that bears N 03°49'26" E, 6.31 feet, to a point 113.00 feet East of the west line of said Northeast Quarter; Then N 89°35'49" E, a distance of 150.00 feet to a point 265.00 feet East of said West line.

Containing a total calculated area of 159,987 square feet (36.547 acres) of land, more or less.

**Owners Certificate**  
The undersigned, being all the owners, mortgagees, beneficiaries of deeds of trust and holders of other interests in the land hereinafter described, do hereby acknowledge and place on record the following: **REVEREND AND ESSENTIAL (FLING NO. 2)**. All public improvements so planned are hereby dedicated to public use and said owner does hereby covenant and agree that the public improvements will be constructed to El Paso County, Colorado, and that the expense of the same shall be paid by the County of El Paso County, Colorado. Upon acceptance by resolution of the Board of County Commissioners of El Paso County, Colorado, the public improvements so dedicated will become matters of maintenance by El Paso County, Colorado, and the same shall be maintained by the County of El Paso County, Colorado. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress to and adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

By: \_\_\_\_\_

WITTEST: (if corporation)

Downloaded At: 11:53 11 September 2009

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COUNTY OF \_\_\_\_\_ )

SD

Witness my hand and official seal

This plat for (name of subdivision or plat) was approved for filing by the El Paso County, Colorado Board of County Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to any notes specified herein, and any conditions included in the resolution of approval. The dedications of land to the public (streets, tracts, easements; list those applicable) are accepted, but public improvements thereon will not become the responsibility of El Paso County until preliminary acceptance of the public improvements in accordance with the requirements of the Land Development Code and Engineering Criteria Manual, and the Subdivision Improvements Agreement.

Spencer J. Barron, 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 date of survey, by me, or under my direct supervision and that all monuments exist as shown herein; 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.

1. NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

3. The lineal units used in this drawing are U.S. Survey Feet.

- [illegible]

6. This survey does not constitute a title search by Barron Land, LLC to determine ownership or easements of record. For information regarding easements, rights-of-way

7. 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.

9. 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 of runoff shall not be placed in drainage easements.

111. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of

12. The addresses exhibited on this plat are for informational purposes only. They are not the legal description and are subject to change.

14. No lot or interest therein, shall be sold, conveyed, or transferred whether by deed or by contract, nor shall building permits be issued, until and unless either the required

- This plat restriction may be removed or rescinded by the Board of County Commissioners, at their discretion, upon the submission of a Subdivision Improvements Agreement, by the Development Services Department Director upon either approval of an alternative form of collateral or completion and preliminary acceptance by the El Paso Board of County Commissioners of all Subdivision Improvements required to be constructed and completed in accordance with said Subdivision Improvements Agreement. The partial release of lots for sale, conveyance or transfer may only be granted in accordance with any planned partial release of lots authorized by the Subdivision Improvements Agreement.

16. Security Water and Sanitation district will maintain both the sewer and water for the lots within the subdivision.

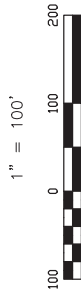
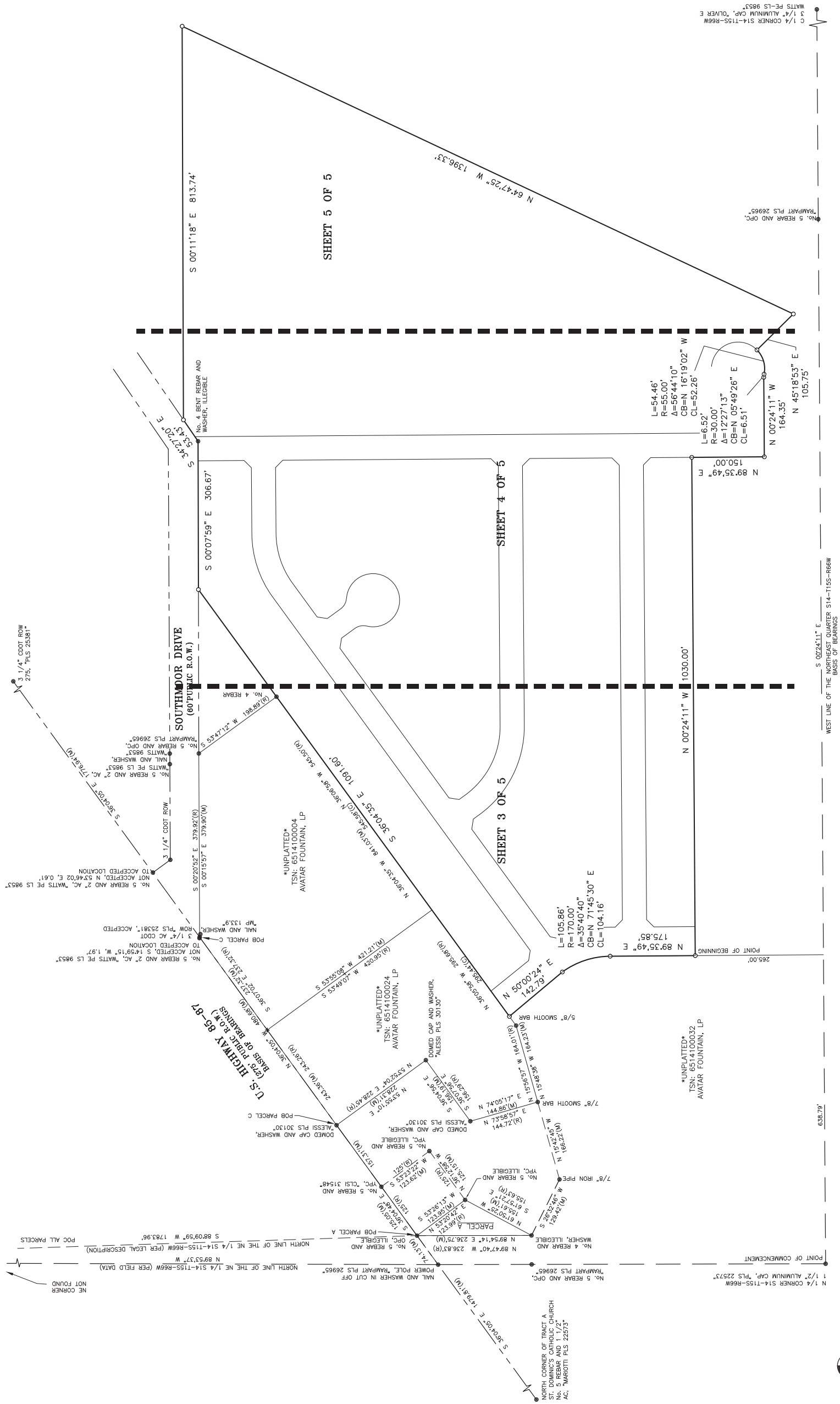
18. Tract A is hereby dedicated to the County of El Paso for public use. Tracts B, C and

19. Mailboxes shall be installed in accordance with all El Paso County Department of Transportation and United States Postal Service regulations.

DATE: 08/30/2018		REVISIONS		<div style="display: flex; align-items: center;"> <div> <b>BARRON LAND</b>            BOUNDARY &amp; MAPPING &amp; SURVEYING &amp; CONSTRUCTION            P: 719.360.6857            2790 N. Academy Blvd. Suite 311            Colorado Springs, CO 80917            P: 719.466.6527  <a href="http://www.BARRONLAND.com">www.BARRONLAND.com</a> </div> </div>	
No.	Remarks	Date	By		
				PROJECT No.: 17-054	
				SHEET 1 OF 5	

# FINAL PLAT

# OVERALL PARCEL MAP

[illegible]

FINAL PLAT



**BARRON**  **LAND**  
BOUNDARY Δ MAPPING Δ SURVEYING Δ CONSTRUCTION  
2790 N. Academy Blvd., Suite 311  
Colorado Springs, CO 80917  
P: 719.360.6827  
F: 719.466.6527  
[www.BARRONLAND.com](http://www.BARRONLAND.com)

PROJECT No.: 17-054  
SHEET 3 OF 5



# FINAL PLAT

# A PORTION OF THE NORTHEAST QUARTER OF



DATE: 08/30/2018			REVISIONS	
No.	Remarks	Date	By	

# FINAL PLAT



S 00°11'18" E 813.74' \*UNPLATED\*



**\*UNPLATTED\***

[illegible]