

**STORMWATER DRAINAGE
MAINTENANCE AGREEMENT AND EASEMENT**

This STORMWATER DRAINAGE 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 ("County"), Challenger Communities, LLC (Developer), BENT GRASS METROPOLITAN DISTRICT (Metro District), a quasi-municipal corporation and political subdivision of the State of Colorado and Randall L DeYoung (Owner). The above may occasionally be referred to herein singularly as "Party" and collectively as "Parties."

Recitals

A. WHEREAS, the Metro District provides various municipal services to certain real property in El Paso County, Colorado referred to as Bent Grass Residential Filing 2; and

B. WHEREAS, Developer is the owner of certain real estate (the Subject Property) in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

C. WHEREAS, Owner is the owner of certain real property adjacent to or downstream of the Subject Property onto which developed stormwater runoff will be discharged, which property is legally described in Exhibit B attached hereto and incorporated herein by this reference (the Downstream Property); and

D. WHEREAS, Developer desires to plat and develop on the Subject Property a Subdivision to be known as Bent Grass Residential Filing 2; and

E. WHEREAS, the development of the Subject Property will substantially increase the volume of stormwater runoff that will discharge from the Subject Property to the Downstream Property, 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, Developer desires to meet requirements of the County's MS4 Permit, and to provide for operating, cleaning, maintaining and repairing the downstream drainage facilities in cooperation with the District; and

H. WHEREAS, Owner shall be charged herein with the duties of providing access to the stormwater drainage channel on the portion of the Downstream Property described in Exhibit C attached hereto and incorporated herein by this reference (the Stormwater Facilities Area); and

I. WHEREAS, Metro District shall be charged with the duties of operating, maintaining and repairing the stormwater drainage channel and any appurtenant improvements within the Stormwater Facilities Area described in Exhibit C; and

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El Paso County, CO



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J. WHEREAS, the Parties hereto anticipate that when the Downstream Property develops in the future, the location of the Stormwater Facilities Area will likely change to the area depicted in Exhibit D, attached hereto; and

K. WHEREAS, El Paso County has conditioned approval of this Subdivision on the Developer's promise to provide a stormwater drainage easement and maintenance agreement, and further conditions approval on the Metro District's promise to maintain and/or repair the drainage channel within the Stormwater Facilities Area serving this Subdivision; and

L. 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 mitigate the discharge of stormwater onto the Downstream Property at higher than historic rates; however, the County is willing to forego such right upon the performance of Developer's and the Metro District's promises contained herein; and

M. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon Owner's grant herein of a perpetual Easement over the Stormwater Facilities Area as described in Exhibit C for the purpose of allowing the Metro District access to construct, upgrade, clean, maintain and/or repair the drainage channel, and allowing the County to periodically access and inspect the drainage channel.

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 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 and its successors and assigns.

The Owner agrees that this entire Agreement and Owner's performance of its obligations hereunder shall become a covenant running with the land, which land is legally described in Exhibit B attached hereto, and that this entire Agreement and Owner's performance of its obligations hereunder shall be binding upon itself and its successors and assigns.

3. Maintenance: The Metro District agrees for itself and its successors and assigns that it will regularly and routinely inspect, clean and maintain the stormwater drainage channel and any appurtenant improvements within the Stormwater Facilities Area described in Exhibit C, and otherwise keep the same in good repair, all at its own cost and expense. Neither Developer nor Metro District shall suffer any mechanics' or materialmen's liens to be enforced against the Stormwater Facilities Area or other property of Owner for work done or materials furnished in connection with Metro District's obligations under this Agreement. Owner shall have no obligations with respect to the Stormwater Facilities Area other than to provide the property and access thereto, without obstruction, pursuant to the easement described in Section 4 of this Agreement.

4. **Creation of Easement:** Owner hereby grants Developer a non-exclusive perpetual easement upon and across the property described in Exhibit C for the discharge and flow of stormwater from the Subject Property in higher than historic volumes and at higher than historic rates. Owner hereby grants the Metro District a non-exclusive perpetual easement upon and across the property described in Exhibit C for the purposes of access to and construction, cleaning, maintenance and repair of the stormwater drainage channel and any appurtenant improvements. Owner hereby grants the County a non-exclusive perpetual easement upon and across the property described in Exhibit C for the purposes of access to and inspection of the Stormwater Facilities Area. The creation of the County's easement does not expressly or implicitly impose on the County a duty to so inspect, nor to clean, repair or maintain the stormwater drainage channel or any appurtenant improvements.

5. **New Agreement:** Should the location of the Stormwater Facilities Area need to be modified in the future, due to the development of the Downstream Property or otherwise, then Owner shall be required to enter into a Private Detention Basin / Stormwater Quality Best Management Practice Maintenance Agreement and Easement ("New Agreement") in connection with such development. Such New Agreement shall set forth the obligations for construction and maintenance of the new stormwater drainage channel and any appurtenant improvements and shall contain a provision terminating the perpetual easements created by this Agreement and establishing new perpetual easements over and across the new Stormwater Facilities Area.

6. **Indemnification:** Developer and Metro District shall indemnify, defend and hold Owner harmless from and against any and all obligations, liabilities, claims, liens, demands, loss, damage, injury, suit, causes of action, costs and expenses (including, without limitation, attorneys' fees) whatsoever in any way relating to or arising out of either (i) any stormwater runoff or drainage from the Subject Property and easement area shown in Exhibit C that enters or crosses the Downstream Property or other properties, or (ii) the activities or obligations of Developer, Metro District, or their respective agents or representatives under this Agreement. At all times during any construction or maintenance activities within the detention basin/BMP(s), Developer and Metro District shall maintain, or cause to be maintained, in full force and effect, a policy of comprehensive general liability insurance issued on a form and with an insurance company reasonably acceptable to Owner, and with such commercially reasonable coverage limits as Owner may from time to time require. Prior to any construction or maintenance activities, Developer and Metro District shall provide Owner with a certificate of insurance evidencing that Owner has been named as an additional insured under such policy. Such certificate shall provide that such policy shall not be cancelled or amended without thirty (30) days' prior written notice to Owner.

7. **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.

8. **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 Metro District, the Owner, or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

9. **Solid Waste or Hazardous Materials:** Should any refuse from the stormwater drainage channel within the Stormwater Facilities Area 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 Metro 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 the previous sentence, should any refuse cleaned up and disposed of by the County for any reason be determined to be solid waste or hazardous materials, the Developer and the Metro District, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

10. 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 22nd day of July, 2020 by:

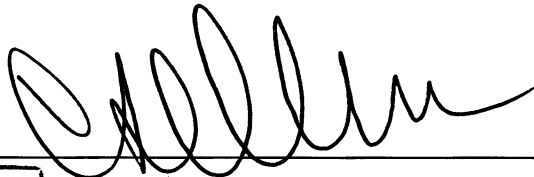
Challenger Communities, LLC

By: 
Jim Byers, VP of Community Development

The foregoing instrument was acknowledged before me this 22 day of July, 2020 by Jim Byers, VP of Community Development, Challenger Communities, LLC

Witness my hand and official seal.

My commission expires: 11/1/20



CHRISTINE DAWN HOPPER Notary Public
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124070882
MY COMMISSION EXPIRES 11/01/2020

Executed this 23rd day of July, 2020, by:

BENT GRASS METROPOLITAN DISTRICT

By: *Randle W. Case II*
Randle W. Case II, President
[Name]

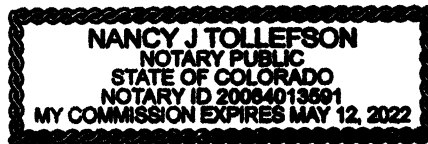
Attest:

By: *Lena Gail Case*
Lena Gail Case, Board Member
[Name] [Title]

The foregoing instrument was acknowledged before me this 23 day of July, 2020, by Randle W. Case II President, and Lena Gail Case, Board Member
BENT GRASS METROPOLITAN DISTRICT

Witness my hand and official seal.

My commission expires: May 12, 2022



N. J. Tollefson
Notary Public

Executed this 21st day of July, 2020, by:

OWNER

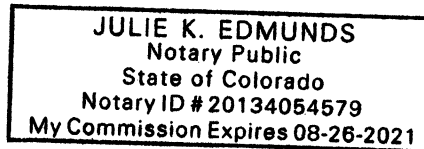
Randall L DeYoung

By: *Randall L DeYoung*

The foregoing instrument was acknowledged before me this 21st day of July, 2020, by Randall L. DeYoung, Randall L DeYoung.

Witness my hand and official seal.

My commission expires: 8.26.21



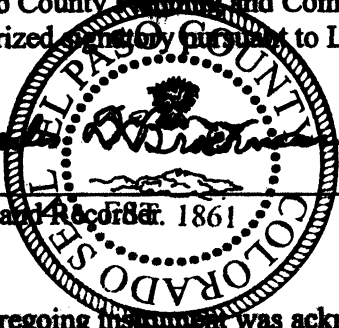
Julie K. Edmunds
Notary Public

Executed this 29th day of July, 2020, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: [Signature]
Craig Dossey, Executive Director
El Paso County Planning and Community Development Department
Authorized signatory pursuant to LDC

Attest: [Signature]
County Clerk and Recorder. 1861



The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Craig Dossey, Executive Director of the El Paso County Planning and Community Development Department, as Attested to by _____, County Clerk and Recorder.

Witness my hand and official seal.

My commission expires: 9-16-2022

[Signature]

Notary Public

Approved as to Content and Form:

[Signature]
Assistant County Attorney

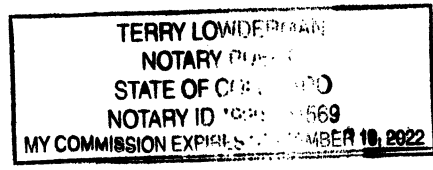


EXHIBIT A

PARCELS OF LAND AS DESCRIBED IN WARRANTY DEEDS RECORDED AT RECEPTION NO. 219074560 AND 219074561 OF THE EL PASO COUNTY CLERK AND RECORDER OFFICE, BEING A PORTION OF THE WEST HALF OF SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE 6TH/ PRINCIPAL MERIDIAN, LOCATED IN EL PASO COUNTY, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS:

ALL BEARINGS ARE GRID BEARINGS OF THE COLORADO STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM 1983. THE BEARING OF THE LINE BETWEEN THE SOUTHWEST CORNER OF SECTION 1, T13S, R65W AND THE WEST QUARTER CORNER OF SECTION 1, T13S, R65W IS N00°13'46"W AND MONUMENTED AS SHOWN:

COMMENCING AT THE SOUTHWEST QUARTER CORNER OF SAID SECTION 1; THENCE N00°13'46"W WITH THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 1928.67 FEET TO THE SOUTHWEST CORNER OF A PARCEL DESCRIBED IN WARRANTY DEED RECORDED AT RECEPTION NO. 21303554 OF THE EL PASO COUNTY CLERK AND RECORDER OFFICE; THENCE WITH THE SOUTH LINE OF SAID PARCEL, N89°47'22"E A DISTANCE OF 419.98 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL AND BEING THE SOUTHWEST CORNER OF A STRIP OF LAND DESCRIBED IN QUIT CLAIM DEED AT RECEPTION NO. 209061972 AND ALSO BEING THE **POINT OF BEGINNING**:

THENCE N00°13'46"W, A DISTANCE OF 206.47 FEET TO A POINT OF CURVATURE;
THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 605.00 FEET, A CENTRAL ANGLE OF 23°58'12", A DISTANCE OF 253.10 FEET, A CHORD BEARING OF N11°45'20"E WITH A CHORD DISTANCE OF 251.26 FEET;
THENCE N23°44'26"E, A DISTANCE OF 301.49 FEET TO A POINT OF CURVATURE;
THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 605.00 FEET, A CENTRAL ANGLE OF 65°45'45", A DISTANCE OF 694.40 FEET, A CHORD BEARING OF N56°37'18"E WITH A CHORD DISTANCE OF 656.91 FEET;
THENCE N89°30'12"E, A DISTANCE OF 62.90 FEET;
THENCE N00°14'14"W, A DISTANCE OF 938.90 FEET TO A POINT ON THE SOUTH LINE OF THE MEADOWS FILING NO. 3, RECORDED AT RECEPTION NO. 200135677 AND ALSO BEING A POINT ON THE SOUTH LINE OF THE NORTH 1/16TH OF SAID SECTION 1;
THENCE WITH SAID SOUTH LINE, N89°36'34"E, A DISTANCE OF 1431.39 FEET TO THE NORTH 1/16TH CORNER OF SAID SECTION 1;
THENCE N89°36'02"E, A DISTANCE OF 28.34 FEET;
THENCE S00°22'19"E, DISTANCE OF 619.54 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF BENT GRASS MEADOWS DRIVE (AN 80' PUBLIC RIGHT OF WAY) AND BEING A POINT ON THE NORTH LINE OF BENT GRASS RESIDENTIAL FILING NO. 1, RECORDED AT RECEPTION NO. 215713636;
THENCE WITH SAID NORTH RIGHT OF WAY LINE AND THE NORTH LINE OF SAID BENT GRASS RESIDENTIAL FILING NO.1, S89°38'09"W, A DISTANCE OF 28.48 FEET TO THE NORTHWEST CORNER OF SAID BENT GRASS MEADOWS DRIVE RIGHT OF WAY AND BEING A POINT ON THE EAST 1/16 LINE OF SAID SECTION 1;
THENCE WITH SAID EAST 1/16 LINE, S00°21'34"E, A DISTANCE OF 699.51 FEET;
THENCE CONTINUING WITH SAID EAST 1/16 LINE, S00°21'50"E, A DISTANCE OF 693.63 FEET TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED IN DEED AT BOOK 3233, PAGE 824 OF THE EL PASO COUNTY CLERK & RECORDER;
THENCE WITH THE NORTH OF LINE OF SAID PARCEL, S89°47'22"W, A DISTANCE OF 952.75 FEET TO THE NORTHWEST CORNER OF SAID PARCEL DESCRIBED IN BOOK 3233 AT PAGE 824;
THENCE ALONG THE WEST LINE OF SAID PARCEL, S00°22'01"E, A DISTANCE OF 18.25 FEET TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED IN DEED AT RECEPTION NO. 208053974;
THENCE WITH THE NORTH LINE OF SAID PARCEL DESCRIBED AT RECEPTION NO. 208053974, S89°47'22"W, A DISTANCE OF 179.94 FEET;
THENCE N00°12'38"W, A DISTANCE OF 119.39 FEET TO A POINT OF CURVE;

THENCE ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 55°58'18", A DISTANCE OF 439.60 FEET, A CHORD BEARING OF N28°11'47"W WITH A CHORD DISTANCE OF 422.33 FEET;
THENCE N56°10'56"W, A DISTANCE OF 198.31 FEET TO A POINT OF CURVE;
THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 540.00 FEET, A CENTRAL ANGLE OF 16°06'20", A DISTANCE OF 151.79 FEET, A CHORD BEARING OF N48°07'46"W WITH A CHORD DISTANCE OF 151.29 FEET;
THENCE N40°04'36"W, A DISTANCE OF 279.73 FEET TO A POINT OF NON-TANGENT CURVE;
THENCE ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 32°26'00", A DISTANCE OF 297.18 FEET, A CHORD BEARING OF S39°57'26"W WITH A CHORD DISTANCE OF 293.23 FEET;
THENCE S23°44'26"W, A DISTANCE OF 301.49 FEET TO A POINT OF CURVATURE;
THENCE ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 23°58'12", A DISTANCE OF 219.64 FEET, A CHORD BEARING OF S11°45'20"W WITH A CHORD DISTANCE OF 218.04 FEET;
THENCE S00°13'46"E, A DISTANCE OF 206.50 FEET TO THE SOUTHEAST CORNER OF SAID STRIP OF LAND DESCRIBED IN QUITCLAIM DEED AT RECEPTION NO. 209061972;
THENCE WITH SOUTH LINE OF SAID STRIP OF LAND, S89°47'22"W, A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 2,985,862 SQUARE FEET OR 68.55 ACRES, MORE OR LESS.

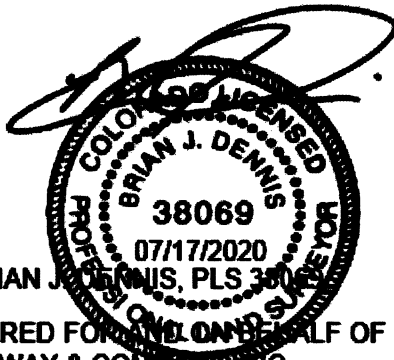
EXHIBIT B

PARCEL DESCRIPTION:

A PARCEL OF LAND AS DESCRIBED IN WARRANTY DEED RECORDED AT RECEPTION NO. 207122803 AND AFFIDAVIT OF CORRECTION RECORDED AT RECEPTION NO. 208053974 OF THE EL PASO COUNTY CLERK AND RECORDER OFFICE AND SITUATED IN THE WEST HALF OF SECTION 1, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE 6TH PRINCIPAL MERIDIAN, LOCATED WITHIN EL PASO COUNTY, STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED IN SAID AFFIDAVIT OF CORRECTION AS FOLLOWS:

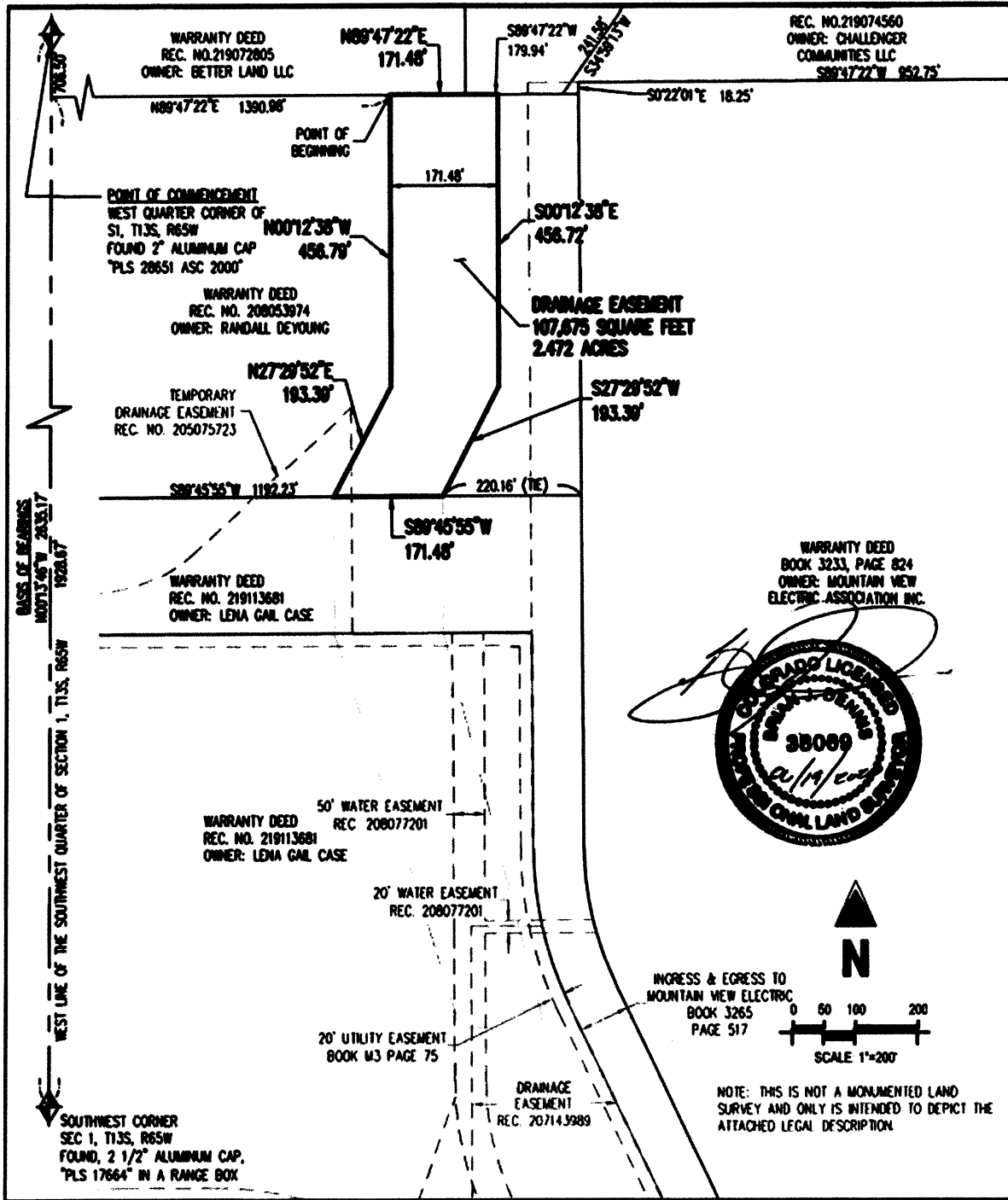
BEGINNING AT THE NORTHEAST CORNER OF LATIGO BUSINESS CENTER FILING NO. 1 (RECEPTION NO. 205075726, EL PASO COUNTY, COLORADO SPRINGS) (ALL BEARINGS IN THIS DESCRIPTION ARE RELATIVE TO THE NORTHERLY LINE OF SAID FILING, WHICH BEARS S DEGREES 42 MINUTES 50 SECONDS E ASSUMED); THENCE S 89 DEGREES 42 MINUTES 50 SECONDS E ALONG THE EASTERLY EXTENSION OF SAID FILING'S NORTHERLY LINE, 1190.72 FEET TO A POINT ON THE EASTERLY LINE OF THAT INGRESS/EGRESS AND UTILITY EASEMENT AS DESCRIBED BY DOCUMENT (BOOK 3265, PAGE 517, SAID EL PASO COUNTY RECORDS); THENCE S 00 DEGREES 07 MINUTES 47 SECONDS W ALONG SAID EASEMENT'S EASTERLY LINE, 627.84 FEET; THENCE N 89 DEGREES 42 MINUTES 50 SECONDS W, 1192.23 FEET TO A POINT ON THE EASTERLY LINE OF SAID FILING; THENCE N 00 DEGREES 16 MINUTES 02 SECONDS E ALONG SAID FILING'S EASTERLY LINE, 627.84 FEET TO THE POINT OF BEGINNING.

ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.



BY: BRIAN J. DENNIS, PLS 38069
PREPARED FOR AND ON BEHALF OF
GALLOWAY & COMPANY, INC
PRJ #: CLH0000017.10

EXHIBIT C



DRAINAGE EASEMENT

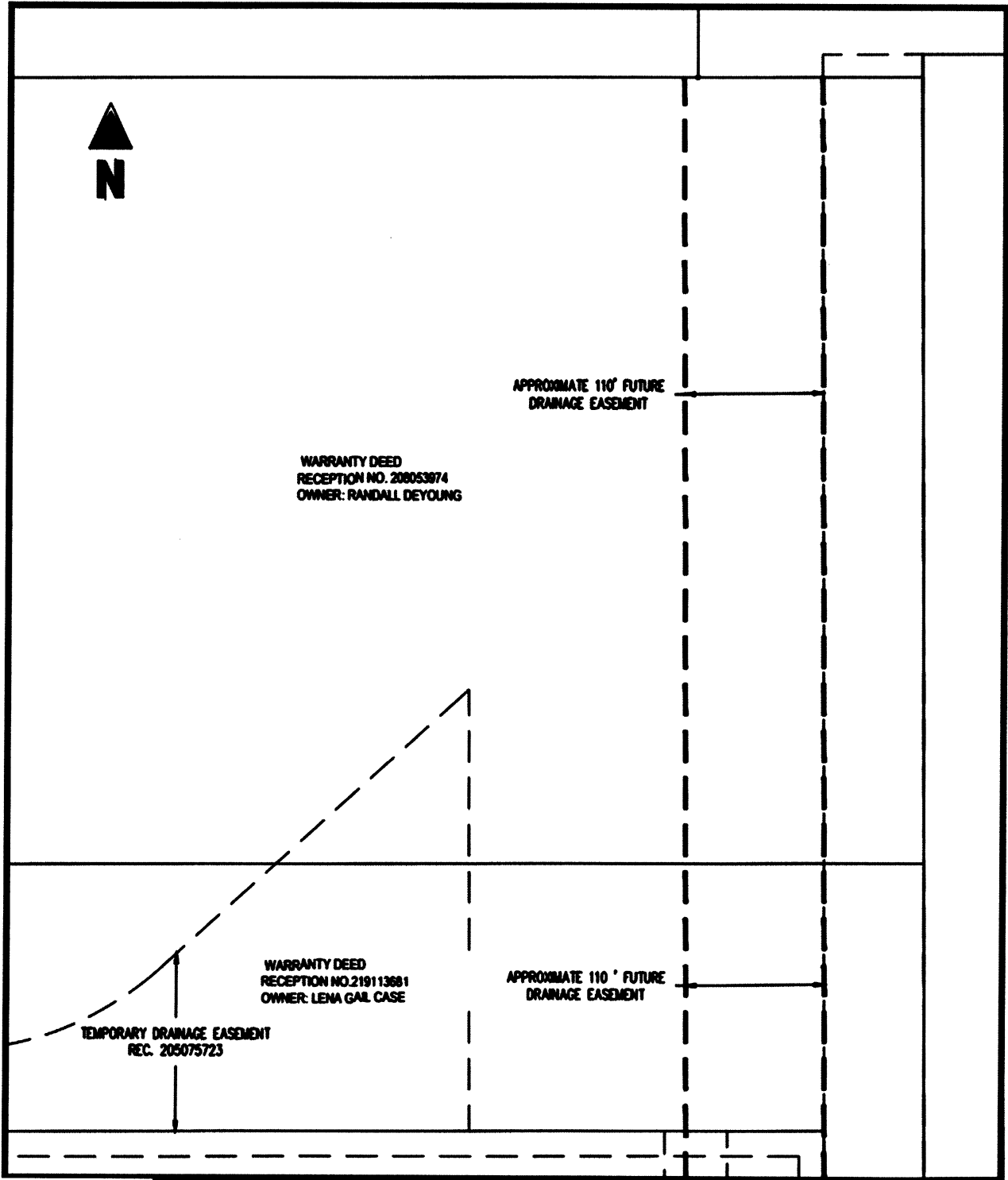
LOCATED IN THE WEST 1/2 OF SECTION 1, T13S, R65W OF THE 6TH P.M. COUNTY OF EL PASO, STATE OF COLORADO

Project No: CLH000014.10
 Drawn By: AAY
 Checked By: BJD
 Date: 08/19/2020

Galloway

1158 KELLY JOHNSON BLVD., STE 300
 COLORADO SPRINGS, CO 80918
 719.579.2228

EXHIBIT D



FUTURE DRAINAGE EASEMENT
 LOCATED IN THE WEST 1/2 OF SECTION 1, T13S, R65W OF THE 6TH P.M.
 COUNTY OF EL PASO, STATE OF COLORADO

Project No:	CLH00014.10
Drawn By:	RGD
Checked By:	NRP
Date:	06/24/2020

Galoway
INCORPORATED
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 Colorado Springs, CO 80902
 719.500.7220 • GalowayUSA.com