

## STORMWATER FACILITY MAINTENANCE AGREEMENT

This Stormwater Maintenance Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ , by and between the Board of County Commissioners of Arapahoe County, a political subdivision of the State of Colorado (the “County”), and \_\_\_\_\_ (the “Owner”), and collectively referred to as the “Parties.”

### RECITALS

WHEREAS, the above-named property owner is the owner of a certain parcel of land known as Lot \_\_, Block, Subdivision Name, Filing No. \_\_, County of Arapahoe, State of Colorado, a/k/a (street address), (hereinafter referred to as the “Property”); and

WHEREAS, a Phase III Drainage Report and Plan (“Plan”) for the Property have been approved by the County; and

WHEREAS, said Plan provides for stormwater management facilities including such facilities intended to reduce, detain, convey, and manage stormwater runoff and also water quality facilities (collectively referred to as “Facilities”); and

WHEREAS, the Facilities shown on the Plan shall be constructed and adequately maintained by the Owner; and

WHEREAS, the County requires that the Owner submit an Operation and Maintenance Manual (“O&M Manual”) as specified in the Arapahoe County Stormwater Management Manual; and

NOW, THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. The Owner shall maintain the Facilities as described in the Plan to ensure that such Facilities are and will remain in proper working condition in accordance with the Arapahoe County Stormwater Management Manual and other applicable legal requirements. Maintenance shall include, but not be limited to, routine landscaping, sediment removal, repair, reconstruction, or replacement of the Facilities as necessary to meet the requirements of this Agreement.
2. The maintenance of the Facilities shall be performed in accordance with the approved O&M Manual for the Facilities.
3. The Owner shall cause inspections of the Facilities to be conducted as follows:
  - a) The Owner agrees to cause inspection of the Facilities, at the Owner’s expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.

- b) An inspection report for the Facilities shall be submitted in writing to County, or its designated representative, for each calendar year by no later than May 31<sup>st</sup> of the following year. The inspection report shall be in accordance with the requirements set forth in the O&M Manual.
  - c) The Owner agrees to perform promptly all needed maintenance and repairs and report such activities to the County, or its designated representative, pursuant to the O&M Manual.
4. The Owner, hereby, grants, bargains and conveys to the County, officers, agents, and employees an easement over the Property for access from public rights-of-way, abutting private roadways, and/or private driveways, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing the Facilities to the extent that Owner fails to do so and as necessary to ensure their proper working condition as provided in paragraphs one and two above.
  5. In the event the Owner fails to inspect, report, or properly maintain the Facilities within thirty (30) days after written notice by the County of such deficiencies to the owner, the County, or its designated representative, may enter upon the Property and take whatever steps it deems necessary to maintain or repair the Facilities and bill the owner for such expense. However, if the Owner's failure to properly maintain the Facilities could cause damage to property, loss of life or a violation of a NPDES MS4 Permit, the County, or its designated representative, may take immediate action, without notice to the Owner, to maintain or repair the Facilities. It is expressly understood and agreed that the County, or its designated representative, is under no obligation to maintain or repair the Facilities, and in no event shall this Agreement be considered to impose any such obligation on the County.
  6. The Owner agrees that it will not at any time dedicate the Facilities to the public, to public use or to the County without the County's written consent, nor will it subdivide or convey the Property without a covenant providing that a proportionate share of the cost of maintenance and other costs associated with other of the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.
  7. In an event of emergency involving Facilities, the County, its officers, agents, and employees may enter immediately upon the Property and take whatever reasonable steps it deems necessary to meet the emergency. The County shall notify the Owner of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, the County may notify the Owner by phone to take whatever reasonable action is necessary within a specified period of time. Should the Owner fail to respond, or should the Owner inform the County that it intends to not respond within the specified period of time, the County, its officers, agents, and employees may enter immediately upon emergency.
  8. The County shall not pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Facilities, including access to the Facilities.

9. In the event the County, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or repair of the Facilities, including labor, equipment, supplies and materials, the Owner agrees to reimburse the County, or its designated representative, within thirty (30) days after the County gives the Owner written notice of such expense. If the Owner or its successors or assigns fails to make timely payment as required herein, interest on such payment shall accrue at the rate of 1½ % per month until paid in full.
10. Any amount owed to County and not paid within thirty (30) days of the date of notification shall be the joint and several obligation of any owner of record of the Property or any portion thereof served by the Facilities and any successors in interest to such owner on the date such maintenance or repair was performed.
11. The Owner, its successors, and assigns shall indemnify and hold harmless County, its officers, agents, and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County arising out of or resulting from the construction, presence, existence maintenance or use of the Facilities.
12. The Owner shall notify the County when the Owner transfers its interest in the Property or any portion thereof. The Owner shall provide the County with a copy of any such deed.
13. The responsibilities and obligations of the Owner shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners, their administrators, executors, assigns, heirs, and any other successors in interest so long as they own an interest in the Property of any portion thereof served by the Facilities.
14. The Owner acknowledges that any approved Final Development Plan, Administrative Site Plan, Location and Extent, Use by Special Review, Engineering Case, or other case process determined by Arapahoe County to be a final plan, shall include the following language:  
“The property owner, its successors, and assigns shall be responsible for maintenance of the Facilities pursuant to the Operations and Maintenance (O&M) Manual and all permanent Best Management Practices (BMP’S). Requirements include, but are not limited to, performing the specified BMP’s contained in the O&M Manual recorded on \_\_\_\_\_ in the Arapahoe County Clerk and Recorder’s Office at reception number \_\_\_\_\_, and maintaining the Facilities shown on the approved Phase III Drainage Report and the approved Construction Plans.” If the Facilities are not properly maintained, the County may provide necessary maintenance and assess the maintenance cost to the owner of the property. Failure to abide by the above note shall constitute a Zoning Violation, as defined in the Arapahoe County Land Development Code.
15. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder’s Office.
16. In the event either of the Parties hereto files a law suit to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

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