

STORMWATER MAINTENANCE AGREEMENT
BETWEEN
THE CITY OF COLORADO SPRINGS, a Colorado home rule city,
and

THIS STORMWATER MAINTENANCE AGREEMENT (the "Maintenance Agreement"), is made on the _____ day of _____ 201____, by and between the City of Colorado Springs, a Colorado home rule city and a Colorado municipal corporation (the "City"), and _____ (the "Owner").

The Owner and the City, for mutual consideration received, agree as follows:

Paragraph 1.

The Owner owns the parcel of land (the "Property"),

1. known as:

Lot. _____, block _____, _____ Subdivision, Parcel Number _____,
Subdivision Filing No. _____, County of El Paso, State of Colorado

Or

2. legally described as:

Paragraph 2. In accordance with the Drainage Criteria Manual, Volume II, the Owner shall submit an Inspection and Maintenance Plan (the "IM Plan") to be approved by the City. The Owner shall also submit an Erosion and Stormwater Quality Control Plan (the "ES Plan"), to be approved by the City.

Paragraph 3. The Owner shall install, or cause to be installed, upon the Property the permanent stormwater best management practices (the "BMPs") as required under the IM Plan.

The required maintenance activities for the BMPs installed on the Property, and under this Maintenance Agreement, are recorded in the El Paso County, Colorado, Clerk and Recorder's Office, at **Reception Number** _____. The Owner, shall, at his/its sole expense, inspect, maintain, and ensure proper functioning of the BMPs, in accord with, and as set out in, the IM Plan and the ES Plan, and as set forth herein below, in perpetuity.

Paragraph 4. In accordance with the Drainage Criteria Manual, Volume II, the Owner shall, upon completion of construction, submit to the City: (i) as-built plans of the BMPs and (ii) a Professional Engineer (“PE”) certification of the constructed BMPs. The Owner shall maintain copies of the as-built plans and PE certification for the life of the BMPs and this Maintenance Agreement; moreover, the Owner shall provide copies of the same to any subsequent purchaser or assignee of the Owner. The as-built plans and PE certification will be incorporated by reference hereto and made a part of this Agreement upon submission to the City.

Paragraph 5. The Owner shall inspect the BMPs at least once every calendar year, and shall submit written inspection reports to the City Engineer prior to May 31st of each calendar year. The City is under no obligation to notify the Owner of any obligation to submit such inspection reports.

Paragraph 6. The Owner shall promptly perform all required maintenance and shall report such maintenance activities to the City Engineer in accordance with the requirements set forth in the IM Plan.

Paragraph 7. In the event that the Owner fails to inspect, maintain, or repair any BMP, the City, in the City's sole discretion, shall have the right to enter upon the Property without warrant or further process of law and make whatever inspection, maintenance or repair which may be required, all at the Owner's sole cost. The City shall invoice the Owner for any such costs incurred by the City, including but not limited to personnel, contracting, labor, or materials, and the Owner shall pay those costs within fifteen (15) City business days from the date of the invoice. In the invoice is not timely paid, the City retains the right to take any legal action necessary to collect the same, and the Owner shall be responsible for all reasonable costs of collection, including attorney's fees. The City's rights and remedies hereunder shall be in addition to City Code 3.8.501 *et seq.* and City Code 7.7.1527, and the City may also proceed under applicable provisions of the City Code.

Paragraph 8. This Maintenance Agreement shall be binding upon the Owner and the Owner's heirs, successors, and assigns. This Agreement shall be recorded in the El Paso County, Colorado, Clerk and Recorder's Office. The benefits and burdens of this Maintenance Agreement shall run with the land.

Paragraph 9. This Maintenance Agreement is subject to, and shall be interpreted under, the laws of the State of Colorado, and the Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado. Court venue and jurisdiction shall exclusively be in the District Court for the Fourth Judicial District, El Paso County, Colorado. The Parties agree that this Maintenance Agreement shall be deemed to have been made and performed in the City of Colorado Springs, El Paso County, Colorado.

Paragraph 10. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, the performance of the City's obligations under this Maintenance Agreement is expressly subject to appropriation of funds by the City Council and the availability of those funds for expenditure.

Paragraph 11. It is expressly understood and agreed that enforcement of the terms and conditions of this Maintenance Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Maintenance Agreement shall give or allow any such claim or right of action by any other party, or third person or entity, on this Maintenance Agreement. It is the express intention of the parties hereto that any person or entity, other than the parties hereto, receiving services or benefits under this Maintenance Agreement, shall be deemed to be an incidental beneficiary only.

Paragraph 12. This Maintenance Agreement may be amended only by prior writing executed by duly authorized representatives of the Owner and the City, and recorded in the records of the El Paso County, Colorado, Clerk and Recorder's Office.

Paragraph 13. The headings of the several paragraphs of this Maintenance Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Maintenance Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Paragraph 14. This Maintenance Agreement, together with all exhibits attached hereto, and items incorporated herein by reference, constitutes the entire agreement between the parties, and all other representations or statements previously made, verbal or written, are merged herein.

Paragraph 15. No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Owner, shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Owner.

Paragraph 16. This Maintenance Agreement is for the benefit of the Owner. The Owner does hereby waive, remise, and release any claim, right, or cause of action the Owner may have, or which may accrue in the future, whether under theories of tort or contract, or any other cause of action, whatsoever, against the City arising in whole or in part from this Maintenance Agreement.

Paragraph 17. The Owner shall defend, protect and hold harmless the City and its officers, employees, and agents (collectively the "Indemnitees"), from and against all losses, claims, causes of action, liabilities, injuries, damages and expenses, including attorneys' fees and expenses (collectively, "Losses"), which the Indemnitees may incur by reason of any injury or damage sustained to any person or property arising out of the Owner's performance of its obligations under this Maintenance Agreement.

Paragraph 18. The provisions of this Maintenance Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions, so long as the primary purpose(s) of this Maintenance Agreement are effectuated by the remaining terms.

[remainder of page blank, signatures appearing in counterpart on subsequent page(s)]

CITY OF COLORADO SPRINGS:

By: _____ this ____ day of _____ 2013.

Steve Bach
Mayor

Attest:

City Clerk

Approved as to Form

Attorney
City of Colorado Springs

State of Colorado)
) ss
County of El Paso)

The foregoing instrument was acknowledged before me this ____ day of _____ 2013 by Steve Bach, Mayor, and _____, as _____, of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

Witness my hand and seal.

[seal]

Notary Public
My Commission Expires:

OWNER:

, a _____ (corp/llc, indicate)

By: _____
 , as

Or (if non corporate entity)

(The Acknowledgement (notarization) will vary for Owner depending on if Owner is an individual, corporation or partnership. Also, where there is a mortgage on the property, the mortgage holder must sign the Subordination section of this Agreement) An Affidavit of Authority/Incumbency to execute shall be supplied for any entity.

ACKNOWLEDGEMENT
(For an individual acting in his or her own right)

State of _____)
)ss
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201___
by _____ .

[seal]

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT
(For a Corporation)

State of _____)
)ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__
by _____ of _____,
a _____ corporation, on behalf of the corporation.

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT
(For a partnership)

State of _____)
)ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__
by _____, as _____ on behalf
of _____, a partnership.

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT

(For an individual acting as principal by an attorney in fact)

State of _____)
)ss
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 201__ by
_____ as attorney in fact on behalf of
_____.

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT
 (By any public officer, trustee, or personal representative)

State of _____)
)ss
 County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by
 _____ as
 _____ for the Owner, _____.

 Notary Public
 My Commission Expires:

SUBORDINATION

, as holder of a mortgage or other lien or interest upon the parcel of land under reception number _____ dated _____ .

1. known as:

Lot. _____ , block _____ , Subdivision, Parcel Number _____ , Subdivision Filing No. _____ , County of El Paso, State of Colorado:

Or

2. legally described as:

hereby intentionally and unconditionally subordinates that mortgage or other lien or interest in favor of this Stormwater Maintenance Agreement.

By: _____ this _____ day of _____, 201__

State of _____)
)ss
County of _____)

The foregoing Subordination was acknowledged before me this _____ day of _____, 201__ by _____ as the Authorized Agent of _____ on behalf of _____.

Notary Public
My commission expires _____

