

## Detention Pond Easement Agreement

This Detention Pond Easement Agreement (the "Agreement") is made as of \_\_\_\_\_, 2021 (the "Effective Date"), by and among the Town of Erie, Colorado, a Colorado municipal corporation with an address of P.O. Box 750, 645 Holbrook Street, Erie, CO 80516 (the "Town"), FS Erie Estates, LLC, a Colorado limited liability company with an address of 9754 Sunset Hill Drive, Lone Tree, CO 80124 ("FS Erie"), and Sunset Parks Metropolitan District, a political subdivision of the State of Colorado with an address of c/o Miller & Associates Law Offices, LLC, 1641 California Street, Denver, CO 80202 (the "District") (each a "Party" and collectively the "Parties").

Whereas, the Town is the owner of the real property located legally described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Easement Property");

Whereas, FS Erie is the owner of certain lands adjacent to the Easement Property, legally described on **Exhibit B**, on which FS Erie intends to construct a residential development ("Sunset");

Whereas, the District is a metropolitan district formed under C.R.S. § 32-1-101, *et seq.*, with the authority to finance, construct, reconstruct, own, operate, maintain, and remove on- and off-site public improvements serving Sunset;

Whereas, the District and FS Erie (each a "Grantee" and collectively "Grantees") wish to construct, install, use, operate, maintain and repair, for the benefit of Sunset, a detention pond on the Easement Property, as depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Detention Pond"); and

Whereas, pursuant to the terms and conditions of the Purchase and Sale Agreement pertaining to the Property, dated January 8, 2013, the Town has agreed to grant a perpetual, non-exclusive easement to Grantees for construction, operation, and maintenance of the Detention Pond, together with related stormwater conveyance facilities and related improvements.

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. The Town hereby grants to Grantees a perpetual non-exclusive easement (the "Easement") upon, over, across, and under the Easement Property for the purpose of constructing, operating and maintaining the Detention Pond, together with related stormwater conveyance facilities and related improvements (collectively, the "Improvements").
2. Reserved Rights. The Town hereby reserves all rights of ownership and use to the Property which are not inconsistent with the purposes of the Easement.

3. Maintenance. The District shall be solely responsible for owning, operating, and maintaining the Facilities and Improvements. If the District fails to properly maintain the Improvements, the Town will have the right to maintain Improvements, subject to reimbursement from the District.

4. Restoration. Promptly after a Grantee conducts any activities pursuant within the Easement Property which in any manner have disturbed the surface of the Easement Property, such Grantee shall restore said surface to the condition in which it was in prior to Grantee or Agent's activities, at Grantee's sole cost and expense, except as the surface may be permanently modified in a manner permitted by Section 0.

5. Compliance With Laws. All activities by or on behalf of either Grantee pursuant to this Agreement shall be conducted in compliance with and subject to all applicable local, state and federal statutes, ordinances, resolutions, regulations, policies, procedures and laws. Without limiting the foregoing, the District shall be responsible for any and all water quality measures associated with the Facilities and Improvements.

6. No Interference. The Town shall not construct or place any improvement or landscaping, whether temporary or permanent, of any kind or nature on the Easement Property that will interfere with or obstruct Grantees' access to the Easement Property.

7. Recordation. Except as otherwise expressly provided herein, all provisions of this Agreement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. FS Erie shall record this Agreement in timely fashion in the official records of Weld County and may re-record it at any time as may be required to preserve its rights in this Agreement.

8. No Merger. It is the express intent of the Parties that the doctrine of merger shall not apply to this Agreement and there will be no merger of estate between the Easement granted by this Agreement and the Property.

9. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

b. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

c. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

f. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Governmental Immunity.* The Parties and their officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties or their officers, attorneys or employees.

i. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

j. *Assignment.* Either Grantee may assign all or a portion of its rights under this Agreement to the other Grantee without approval from the Town, provided that such Grantee will provide the Town with written notice of such assignment. Any assignment to a non-Party by either of the Grantees shall require the prior written consent of the Town.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

**Town of Erie, Colorado**

\_\_\_\_\_  
Malcolm Fleming, Town Administrator

Attest:

\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**FS Erie:**

FS Erie Estates, LLC, a Colorado limited liability company

By: Stephen J. Foley  
Stephen J. Foley, Manager

State of Colorado )  
County of Douglas ) ss.

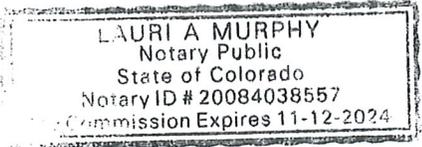
The foregoing Easement Agreement was acknowledged before me on Nov 22, 2021, by Stephen J. Foley as Manager of FS Erie Estates, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 11-12-2024

(Seal)

Lauri A. Murphy  
Notary Public



**District:**

Sunset Parks Metropolitan District, a political subdivision of the State of Colorado

By: Stephen J. Foley  
Name: STEPHEN J. FOLEY  
Title: President

State of Colorado )  
County of Douglas ) ss.

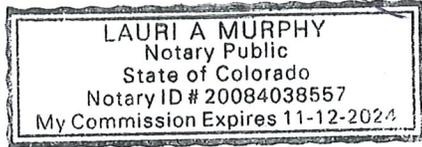
The foregoing Easement Agreement was acknowledged before me on Nov 22, 2021, by Stephen Foley as President of Sunset Parks Metropolitan District, a political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: 11-12-2024

(Seal)

[Signature]  
Notary Public



**Exhibit A**  
**Legal Description of the Easement Property**

A PARCEL OF LAND BEING A PORTION OF TRACT B, SUNSET – MINOR SUBDIVISION RECORDED AT RECEPTION NO. 3916652 IN THE OFFICIAL RECORDS OF THE CLERK AND RECORDER’S OFFICE, COUNTY OF WELD, STATE OF COLORADO, LYING IN THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF SAID TRACT B,

THENCE ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, SAID LINE ALSO BEING THE WEST LINE OF SAID TRACT B, SOUTH 00°24'42" EAST, A DISTANCE OF 32.09 FEET TO THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WEST LINE, ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTHERLY LINE OF SAID TRACT B, SOUTH 69°38'02" EAST, A DISTANCE OF 493.33 FEET;

THENCE DEPARTING SAID PARALLEL LINE, SOUTH 20°21'58" WEST, A DISTANCE OF 177.42 FEET;

THENCE SOUTH 89°35'18" WEST, A DISTANCE OF 398.31 FEET TO SAID WEST LINE;

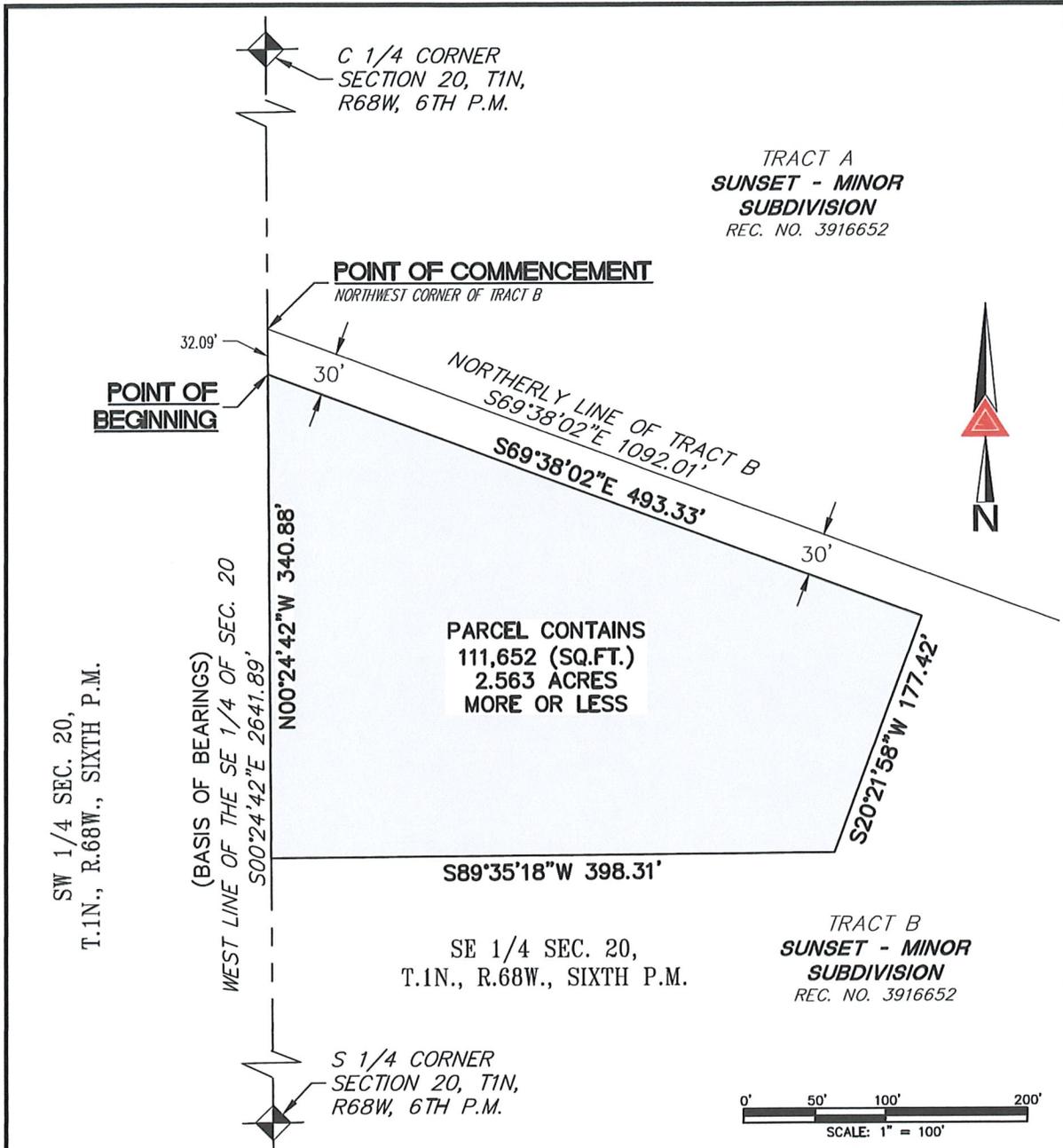
THENCE ALONG SAID WEST LINE, NORTH 00°24'42" WEST, A DISTANCE OF 340.88 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 2.563 ACRES, (111,652 SQUARE FEET), MORE OR LESS.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.

DANIEL E. DAVIS, PLS 38256  
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 E. MINERAL AVE., SUITE 1,  
LITTLETON, CO 80122





NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\23419-22\DWG\EXHIBITS\  
 DWG NAME: DRAINAGE EASE.DWG  
 DWG: AMB CHK: DED  
 DATE: 07/22/2021  
 SCALE: 1" = 100'

**AZTEC**  
 CONSULTANTS, INC.

300 East Mineral Ave,  
 Suite 1  
 Littleton, Colorado 80122  
 Phone: (303)713-1898  
 Fax: (303)713-1897  
 www.aztecconsultants.com

**DRAINAGE EASEMENT**  
 TRACT B, SUNSET - MINOR SUBDIVISION  
 WELD COUNTY, COLORADO

JOB NUMBER 23419-22 2 OF 2 SHEETS

**Exhibit B**  
**Legal Description of Sunset**

TRACT A, SUNSET – MINOR SUBDIVISION AS RECORDED ON MARCH 13, 2013 UNDER RECEPTION NO. 3916652 OF THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER'S OFFICE. LOCATED IN THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO.

CONTAINING AN AREA OF 103.832 ACRES, (4,522,901 SQUARE FEET), MORE OR LESS.