

REVOCABLE DRAINAGE IMPROVEMENT LICENSE AGREEMENT
(Direct Connection to Stormsewer)

This REVOCABLE DRAINAGE IMPROVEMENT LICENSE AGREEMENT (this “**Agreement**”) is entered into this ___ day of _____, 20___, by Arapahoe County Public Airport Authority, whose legal address is 7800 South Peoria St, Englewood, CO 80112, for itself and for its successors, tenants, licensees, heirs (if applicable) and assigns, (the “**Owner**”) and THE BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY, COLORADO, a body corporate and politic, whose legal address is 5334 South Prince Street, Littleton, Colorado 80166, (the “**County**”)

WITNESSETH:

WHEREAS, the above-named property owner is the Owner of a certain parcel of land known as ENTER LEGAL LOT, BLOCK & SUBDIVISION NAME FROM PLAT, County of Arapahoe, State of Colorado (hereinafter referred to as the “**Owner Property**”); and

WHEREAS, the County, or its assigns, owns and/or maintains a stormsewer facility and/or channel in **Lone Tree Creek** (the “**Stormsewer**”), which Stormsewer collects and transmits stormwater and surface runoff to a point of discharge in the drainageway; and

WHEREAS, Owner desires to make a direct connection to the Stormsewer and in connection therewith desires that the **County** grant a license to **Owner** setting forth, among other matters, the terms and conditions of a direct connection in accordance with Chapter 14 of the Arapahoe County Stormwater Management Manual; and

WHEREAS, Owner desires to utilize the **Stormsewer** as a conduit to transmit stormwater from the Owner Property into Lone Tree Creek via **undrain system** on the **Owner Property**, as approved by the County and its assigns in the Phase III Drainage Report and Construction Drawings for the **Owner Property**, where the location(s) of said connection is depicted in Exhibit A attached hereto and incorporated herein by this reference (the “**Direct Connection**”); and

WHEREAS, the **Direct Connection** shall not and will not compromise the capacity of the Stormsewer; and

WHEREAS, the County is willing to grant Owner a license for such **Direct Connection** on the terms and conditions contained herein; and

WHEREAS, Owner acknowledges and agrees that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the County, and that such matters are necessary to protect, promote, and enhance the public welfare.

NOW THEREFORE, in consideration of the foregoing recitals and their mutual covenants and agreements hereinafter set forth, the sufficiency of which consideration is hereby acknowledged by both parties, the parties agree as follows:

1. Subject to the terms and conditions hereof, the County hereby permits and licenses Owner to release discharges from the Owner Property to the Stormsewer via the Direct Connection as specified in the Arapahoe County Stormwater Management Manual and in accordance with and subject to the terms and conditions of County Ordinance No. 2012 –01, as amended from time to time.

2. Owner shall make reasonable commercial efforts not to cause any interference with or allow blockage of the flow of water within the Stormsewer. In no event shall Owner make any cross-connection of the Stormsewer to any other facility not expressly authorized herein, or divert any water from the Stormsewer for any purpose. Owner shall comply with all applicable regulations and requirements of the County and any other governmental entities having jurisdiction over the Stormsewer, with respect to the Stormsewer.

3. Owner acknowledges that the Stormsewer is an established conveyance system of stormwater flows and is therefore subject to occasional surcharged flow conditions, along with silt, dirt, debris and other potential contaminants. The County does not provide Owner any assurance or guarantee of the water quality within the Stormsewer system. Owner agrees to accept any liabilities to their system associated with inundation of the system, surcharged pressure flow conditions, and the quality of the stormwater being conveyed within the Stormsewer. The County, or its assigns, shall not perform maintenance of the Stormsewer in order to protect or facilitate Owner's use of the Stormsewer, nor should Owner rely on any maintenance of the Stormsewer by the County, or its assigns, in Owner's maintenance of the **underdrain system**.

4. The initial term of this Agreement shall expire on December 31 of the year in which this Agreement is made, and shall be subject to renewal on these or such other generally applicable terms as may be imposed by the County, or its assigns, pursuant to its regulations. If no notice of renewal or nonrenewal is recorded prior to the end of the initial term or any renewal term, this Agreement shall be automatically renewed for an additional one-year period without additional notice. Notwithstanding any contrary provision of this Agreement, this Agreement shall be automatically renewed for such one-year period from time to time without notice so long as, at the time of the commencement of the applicable renewal period, there is no uncured material breach of this Agreement after notice is given and the applicable cure period having expired in accordance with Paragraph 8. In the event of any nonrenewal pursuant to this Paragraph 4, the County, or its assigns, shall provide 90 days prior written notice to Owner.

5. Owner shall, at its sole cost and expense, maintain the **underdrain system** and Direct Connection in proper operating condition and shall make such repairs and replacements thereto as may be necessary to keep all components of such drainage system in proper operating condition. Owner shall be responsible for all costs and liabilities relating to such maintenance and repair. Owner shall cause inspections of the Direct Connection to be conducted as follows:

A. Owner shall cause inspection of the connection to the Stormsewer, 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 Direct Connection shall be submitted in writing to the County's assign prior to May 31 of each year. The inspection report shall be in the form of the inspection report attached hereto as Exhibit B and incorporated herein by this reference or such other form as mutually agreed upon by the parties (the "**Inspection Report**").

C. Owner shall promptly perform all needed maintenance and shall report maintenance activities as set forth on the Inspection Report within 30 days of their completion.

6. In the event the Owner fails to repair the Direct Connection within 30 days after written notice by the County, or its assigns, to Owner of a deficiency or defect with respect thereto, County, or its assigns, may enter upon the Owner Property and take whatever reasonable steps it deems necessary to repair the Direct Connection; provided, however, if such deficiency or defect is of a nature that it cannot reasonably be repaired within such 30-day period, so long as Owner diligently is pursuing the repair, Owner shall have such additional time as reasonably necessary to complete such repair. Notwithstanding the foregoing, if such deficiency or defect could cause damage to property, loss of life or a violation of a NPDES MS4 Permit, the County, or its assigns, may take immediate action without prior written notice to the Owner to correct such deficiency or defect, provided that the County, or its assigns, shall provide prompt notice to Owner of such action. It is expressly understood and agreed that the County is under no obligation to maintain or repair the Direct Connection and in no event shall this Agreement be construed to impose any such obligation on the County or its assigns.

7. To the extent permitted by law, Owner hereby indemnifies, and agrees to defend and hold harmless, the County, its officers, employees, and agents, from and against any and all claims, enforcement actions, fines or penalties arising from the discharge of the stormwater from the **underdrain system** situated upon the Owner Property to the Stormsewer, provided that such indemnification does not extend to claims, enforcement actions, fines or penalties resulting from the County's negligence or willful misconduct.

8. If the County determines in its reasonable discretion that Owner is in material breach of any provision of this Agreement, the County shall give Owner written notice of such breach and Owner shall have 30 days after such written notice to cure such breach; provided, however, if such breach is of a nature that it cannot reasonably be cured within such 30-day period, so long as Owner diligently is pursuing the cure, Owner shall have such additional time as reasonably necessary to complete the cure. If Owner does not complete the cure within the foregoing period, the County shall have the right to terminate this Agreement and remove the Direct Connection without liability therefor. Nothing herein shall prevent or preclude the County, without liability to Owner, from removing such Direct Connection without giving 30 days' prior written notice to Owner if the County reasonably determines that such disconnection is necessary for the public health, safety or welfare.

9. Owner shall maintain a policy of general liability insurance with respect to the Direct Connection. The amount of such insurance shall be no less than \$1,000,000.00. Such policy shall name the County as an additional insured and provide that it shall not be amended or terminated except upon at least 30 days' prior written notice to the County. Owner shall provide to the County a certificate of insurance evidencing the above insurance coverage meeting the

requirements of this Paragraph 9 within 30 days of written request therefor from the County to Owner.

10. Owner's rights under this Agreement may not be assigned or transferred to any person or entity without prior written consent of the County, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, the County's consent shall not be required with respect to any assignment to a successor owner of the Owner Property or any portion thereof. If the County's consent to Owner's assignment is required pursuant to this Paragraph 10, the County shall grant such consent if such assignee or transferee executes a formal written assumption of all obligations and undertakings of Owner under this Agreement, without exception, and provided that, at the time such consent is requested in writing by Owner, there are no uncured material breaches of this Agreement without regard to any applicable cure periods by Owner for which written notice thereof previously was given by the County to Owner.

11. 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 Owner Property of any portion thereof served by the Direct Connection.

12. This Agreement constitutes the complete agreement between the parties hereto with respect to the subject matter hereof. No other promises or representations have been made to or relied upon by Owner or the County, and no other consideration than that specified herein is involved in this Agreement. Each of the undersigned signatories represents that he/she has authority to bind the party for whom he/she is signing, and that it is the intent of each party that this Agreement is binding upon the parties and their successors, agents, employees, and assigns, and is contractual, and not merely an understanding or recital.

13. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.

14. 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.

[Signature Page Follows This Page]

Exhibit A
Approved Location(s) of Direct Connection

PRELIMINARY WEB DOCUMENT



Exhibit B

Annual Inspection and Maintenance Reporting Form
for
Direct Connections to the Stormsewer
(This form to be submitted to SEMSWA prior to May 31 of each year)

Date: _____

To: Southeast Metro Stormwater Authority
Attn: Stormwater Facility Operations and Maintenance Program
7437 South Fairplay Street
Centennial, CO 80112

Re: Certification of Inspection and Maintenance; Submittal of forms

Property/Subdivision Name: _____

Property Address: _____

Contact Name: _____

I verify that the required stormwater facility inspections and required maintenance have been completed in accordance with the Revocable Drainage Improvement License associated with the above referenced property.

The required Direct Connection to the Stormsewer Inspection and Maintenance forms are hereby provided.

Name of Party Responsible for Inspection
& Maintenance

Property Owner

Authorized Signature

Signature