

## DRAINAGE EASEMENT AGREEMENT (PRIVATE)

THIS DRAINAGE EASEMENT AGREEMENT (“*Easement*”) is made \_\_\_\_\_, 2020, by and between DIOCESE OF COLORADO SPRINGS, a Colorado Corporation Sole (“*Grantor*”), and BRYTAR PARKER CO LP, a Texas limited partnership (“*Grantee*”).

### RECITALS:

A. Grantor is the owner of certain real property located in the Town of Parker, Colorado, more particularly described on **Exhibit A** attached hereto, made a part hereof and incorporated herein by reference (the “*Grantor Parcel*”).

B. Grantee is the owner of certain real property located in Town of Parker, Colorado, more particularly described on **Exhibit B** attached hereto, made a part hereof and incorporated herein by reference (the “*Grantee Parcel*”).

C. Grantor desires to establish an easement upon a portion of the Grantor Parcel, as more particularly described on **Exhibit C-1** and depicted on **Exhibit C-2** attached hereto, made a part hereof and incorporated herein by reference (the “*Easement Property*”) for the benefit of Grantee Parcel subject to certain conditions.

D. Grantor desires to establish a temporary construction easement upon a portion of the Grantor Parcel, as more particularly described on **Exhibit D-1** and depicted on **Exhibit D-2** attached hereto, made a part hereof and incorporated herein by reference (the “*Temporary Construction Easement Property*”) for the benefit of Grantee Parcel subject to certain conditions.

### WITNESSETH:

FOR AND IN CONSIDERATION of the sum of 10 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. *Grant of Easement.*

(a) Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive and perpetual easement to enter, re-enter, occupy and use the Easement Property to construct, install, maintain, remove, repair, replace and operate, at Grantee sole cost and expense (except as set forth herein), storm drainage systems and facilities depicted on **Exhibit E** attached hereto, made a part hereof and incorporated by reference (the “*Grantee Improvements*”) in order to tie into and improve Grantor’s existing storm water drainage and detention improvements (“*Existing Detention Facility*”).

(b) Grantor hereby grants to Grantee, its successors and assigns, a Temporary Construction Easement to enter, re-enter, occupy and use the Temporary Construction Easement Property to construct, install, remove, repair, replace and operate, at Grantee sole cost and expense (except as set forth herein), Grantee Improvements.

(c) Grantee shall be required to obtain all necessary permits and approvals for the Grantee Improvements from all applicable governmental authorities for the installation of the Grantee Improvements (including all required drainage plans) (“Approvals”). Once the Approvals are obtained, Grantee may commence installation of the Grantee Improvements. Once Grantee commences the Grantee Improvements, all Grantee Improvements (and any maintenance, repairs and replacements thereof) shall be completed diligently and without unreasonable delay, in accordance and compliance with the Approvals. Grantee shall be responsible to obtain acceptance or other approvals by all necessary governmental authorities in connection with the installation of the Grantee Improvements.

(d) Subject to receipt of the Approvals for the Grantee Improvements by Grantee and the terms of such Approvals, Grantee shall be permitted to drain storm water from the Grantee Parcel into the Grantor’s detention pond located on Tract C and Grantor shall accept such storm water, it being understood that such storm water shall be the responsibility of Grantor once it enters the Existing Detention Facility. In the event of any development or redevelopment of the Grantor Parcel which alters the Existing Detention Facility or the Grantee’s Improvements, Grantor shall remain responsible for the drainage and detention of storm water coming from the Grantee Parcel until it enters the public storm water system and shall account for such storm water in Grantor’s drainage and detention plans.

(e) Grantor reserves the right (subject to any necessary approval of governmental authorities) to relocate the Easement Property and the related Grantee Improvements, at its sole cost and expense, to a location reasonably acceptable to Grantor and Grantee. In order to perform such relocation, Grantor shall (i) notify Grantee at least thirty (30) days prior to commencement of construction activities related to relocation of the Easement Property and the Grantee Improvements, (ii) shall diligently and continuously pursue relocation through completion, (iii) provide for accommodation of storm water drainage and detention from the Grantor Parcel during construction so as not to impair the use of the Grantor Parcel, and (iv) record a document reasonably acceptable to Grantee amending this Easement to set forth the relocated Easement Area. In the event of such relocation, the replaced Easement Property and Grantee Improvements shall function in a manner comparable to or better than the original Easement Property and Grantee Improvements.

(f) Grantee shall have the right of ingress and egress in, to, over, through, under and across the portion of the Grantor Parcel as reasonably necessary to construct, install, maintain, remove, repair, replace and operate the Grantee Improvements. In the event of any construction activities conducted by Grantee, Grantee shall immediately repair any damage to the surface improvements caused by such activities.

(g) In the event of any development or redevelopment of the Grantor Parcel which alters the storm water drainage and detention facilities on the Grantor Parcel, Grantor shall account for the storm water drainage and detention required to drain the storm water from the Grantee Parcel.

(h) Grantor hereby agrees to grant to Grantee (and any successor and assign thereof) or the Town of Parker, Colorado, as necessary, an easement over the Easement Property as may be required by the Town as the Town may require an overlay easement for various purposes, including allowing the Town the right to enter, re-enter, occupy and use the Easement Property to construct, install, maintain, remove, repair, replace and operate the Grantee Improvements only, at Grantee sole cost and expense. Such grant shall occur on the form required by the Town and Grantor shall return the signed easement to Grantee within fifteen (15) days of request thereof.

(i) As of the date of this Easement, the Town of Parker allocates funds to maintain the Existing Detention Facility of which work is completed by the Town of Parker. It is understood by the Grantor and Grantee that funding and maintenance completed by the Town will extend to the Grantee Improvements to the Existing Detention Facility and that the Town will continue to perform general maintenance of all drainage facilities. Should the Town no longer maintain the detention facility, the Grantee will be responsible for maintaining the Easement Area. The Grantee shall be responsible for a pro rata share of the cost to maintain the overall drainage facility (e.g, inlet/outlet structures, landscaping, etc.) based on the CFS generated from the Grantee property described in Exhibit B.

2. *Grantor Retained Rights.* Grantor retains the right to the use and occupancy of the Grantor Parcel and the Easement Property insofar as such use and occupancy is consistent with and does not impair any grant herein contained.

3. *Grantee Obligations; Indemnity.*

(a) Grantee, at its sole cost and expense, shall solely be obligated to operate, maintain, repair and replace the Grantee Improvements in good condition and repair, and Grantor shall have no obligation to operate, maintain, repair or replace the Grantee Improvements.

(b) Grantee hereby agrees to indemnify and hold Grantor (and its officers, members, managers, tenants, and successors and assigns) harmless from and against all claims, demands, losses, liabilities, damages and expenses incurred as a result of (a) Grantee's negligence or willful misconduct in operation, use or maintenance of the Grantee Improvements, and (b) Grantee's improper design or construction of the Grantee Improvements.

4. *Ownership.* Grantor warrants that at the time of delivery of this Easement, Grantor is well seized of the Easement Property, and has fee simple title to the Easement Property, and has full right, title, full power and lawful authority to grant and convey the same in the manner and form as set forth herein, and that the Easement Property is free and clear of all former and other grants, encumbrances or restrictions, except easements, restrictions, agreements and rights of way of record on the date hereof that would impair Grantor full use of Easement Property as contemplated herein.

5. *Benefits and Burdens.* Each and every one of the benefits and burdens hereunder shall be a benefit and a burden upon the Grantor Parcel and Grantee Parcel and inure to and be

binding upon the respective legal representatives, heirs, successors, executors, administrators, and assigns of the parties hereto. Notwithstanding the foregoing, each owner of the Grantor Parcel or Grantee Parcel shall be liable for the performance of all covenants, obligations and undertakings set forth herein during the period of its ownership of such real property, but it is expressly understood and agreed that such liability shall terminate subsequent to the transfer of ownership, only with respect to any costs, expenses, liabilities or obligations accruing after the date of a conveyance by such party of its ownership in the real property covered by this Easement.

6. *Notices.* Any notice to Grantor or Grantee will be in writing and given by delivering the same to Grantor or Grantee in person or by sending the same by United States registered, certified or express mail, return receipt requested, with postage prepaid, or by Federal Express or similar overnight delivery, to the then current mailing address of Grantor or Grantee given for the mailing of tax statements in the office of the tax assessor for Jefferson County, Colorado. All notices will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

7. *Governing Law.* This Easement shall be governed and construed in accordance with the laws of the State of Colorado.

8. *Enforcement Costs.* In any legal or equitable proceeding for the enforcement of this Easement, or any provision hereof, whether it be an action for damage, declaratory relief, injunctive relief, or any other action, the prevailing party in such action shall be entitled to recover from the other party all of its costs incurred in such action and interest thereon at the then applicable judgment rate after the date of entry of judgment. Costs for purposes of this paragraph shall include court costs and reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

9. *Waiver.* No provision of this Easement may be waived except by written instrument signed by the party to be charged with such waiver. Failure by any party to this Easement to enforce any provision of this Easement shall not constitute a waiver of such provision, and no waiver by any party to this Easement of any provision of this Easement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.

10. *Cumulative.* Except as otherwise provided herein, all rights, powers, and privileges conferred hereunder upon the parties shall be cumulative but not restrictive to those given by law. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate.

11. *Unenforceable Provisions.* If any provision of this Easement as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Easement, the application of any such provision in any other circumstances or the validity or enforceability of the Easement as a whole.

12. *No Oral Agreements.* The above and foregoing constitute all terms and conditions of this Easement and no additional or different oral representation, promise, or agreement shall be binding on Grantor or Grantee with respect to the subject matter of this Easement.

13. *Modifications.* Any modification or amendment to this Easement must be mutually agreed upon in writing and signed by an authorized representative of both parties, or their respective successors, duly acknowledged and recorded in the real property records of Jefferson County.

*[Remainder of Page Intentionally Blank]*

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IN WITNESS WHEREOF, the Grantor and Grantee have executed this Easement the day and year first above written.

**GRANTOR:**

DIOCESE OF COLORADO SPRINGS, a Colorado Corporation Sole

By: \_\_\_\_\_  
Name: Most Reverend Michael J. Sheridan  
Title: Bishop of Colorado Springs

STATE OF Colorado )

) ss.

COUNTY OF El Paso)

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Most Reverend Michael J. Sheridan as Bishop of Diocese of Colorado Springs.

WITNESS my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



EXHIBIT A

(Grantor Parcel)

LOT 1 BLOCK 2, HORSESHOE RIDGE 1<sup>ST</sup> AMENDMENT

TRACT C, HORSESHOE RIDGE 1<sup>ST</sup> AMENDMENT

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EXHIBIT B

(Grantee Parcel)

LOT 1 BLOCK 1, HORSEHOE RIDGE 1<sup>ST</sup> AMENDMENT

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EXHIBIT C-1

Easement Property - Legal Description

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EXHIBIT C-2

Easement Property Depiction

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EXHIBIT D-1

Temporary Construction Easement Property - Legal Description

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EXHIBIT D-2

Temporary Construction Easement Property Depiction

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EXHIBIT E

Grantee Improvements

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