



**PRIVATE DETENTION BASIN /
STORMWATER QUALITY BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

This PRIVATE DETENTION BASIN / STORMWATER QUALITY BEST MANAGEMENT PRACTICE MAINTENANCE AGREEMENT AND EASEMENT (Agreement) is made by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (Board or County) and G&S Development, Inc., a Colorado corporation (Owner). The above may occasionally be referred to herein singularly as "Party" and collectively as "Parties."

Recitals

A. WHEREAS, Owner is the owner of certain real estate (the Property or Subdivision) in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

B. WHEREAS, Owner desires to plat and develop on the Property a subdivision to be known as the Gleneagle Golf Course Residential Infill Development Filing No. 2; and

C. WHEREAS, the development of this Property will substantially increase the volume of water runoff and will decrease the quality of the stormwater runoff from the Property, and, therefore, it is in the best interest of public health, safety and welfare for the County to condition approval of this subdivision on Owner's promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices ("BMPs") for the subdivision; and

D. WHEREAS, Chapter 8, Section 8.4.5 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes (C.R.S.), requires the County to condition approval of all subdivisions on a developer's promise to so construct adequate drainage, water runoff control facilities, and BMPs in subdivisions; and

E. WHEREAS, the Drainage Criteria Manual, Volume 2, as amended by Appendix I of the El Paso County Engineering Criteria Manual (ECM), as each may be periodically amended, promulgated pursuant to the County's Colorado Discharge Permit System General Permit (MS4 Permit) as required by Phase II of the National Pollutant Discharge Elimination System (NPDES), which MS4 Permit requires that the County take measures to protect the quality of stormwater from sediment and other contaminants, requires subdividers, developers, landowners, and owners of facilities located in the County's rights-of-way or easements to provide adequate permanent stormwater quality BMPs with new development or significant redevelopment; and

F. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer's promise to maintain a subdivision's drainage facilities in the event the County does not assume such responsibility; and

G. WHEREAS, developers in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions, which basins, while effective, are less expensive for developers to construct than other methods of providing drainage and water runoff control; and

H. WHEREAS, Owner desires to construct for the Subdivision one (1) detention basin/stormwater quality BMP (“Detention Basin C”) and related drainage facilities (collectively with Detention Basin C, the “detention basin/BMPs”) as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County’s MS4 Permit, and to provide for operating, cleaning, maintaining and repairing such detention basin/BMP(s); and

I. WHEREAS, Owner desires to construct Detention Basin C on Tract A, Gleneagle Golf Course Residential Infill Development, and as set forth on Exhibit B attached hereto, for which Owner has obtained a construction easement from the Gleneagle Civic Association (“Association”), the owner of Tract A that allows Owner the right to construct Detention Basin C on Tract A; and

J. WHEREAS, Owner desires to construct related drainage facilities to serve the Subdivision within a drainage easement granted to Owner as legally described on Exhibit C attached hereto, and on property owned by Owner as legally described on Exhibit D attached hereto;

K. WHEREAS, Owner shall initially be charged with the duties of constructing, operating, maintaining and repairing all detention basin/BMP(s) within and for the Subdivision; and

L. WHEREAS, it is the County’s experience that subdivision developers and property owners historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins/BMPs, and that these detention basins/BMPs, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

M. WHEREAS, the County, in order to protect the public health, safety and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins/BMPs when developers and property owners have failed in their responsibilities, and therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain and repair the detention basin/BMP(s) serving this Subdivision due to the Owner’s failure to meet its obligations to do the same; and

N. WHEREAS, the County conditions approval of this Subdivision on the Owner’s promise to so construct the detention basin/BMP, and further conditions approval on the promise of the Owner and its successors or assigns to reimburse the County in the event the burden falls upon the County to so clean, maintain and/or repair the detention basin/BMP(s) serving this Subdivision; and

O. WHEREAS, the County could condition subdivision approval on the Owner’s promise to construct a different and more expensive drainage, water runoff control system and BMPs than those proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance and repair expenses falling on the County; however, the County is willing to forego such right upon the performance of Owner’s promises contained herein; and

P. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Owner’s grant herein of a perpetual Easement for the purpose of allowing the County to periodically access, inspect, and, when so necessary, to clean, maintain and/or repair the detention basin/BMP.

Q. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Owner's creation, by and through this Agreement, of a covenant running with the land upon each and every lot in the Subdivision.

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement.
2. Covenants Running with the Land: Owner agrees that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Exhibit A attached hereto, and that this entire Agreement and the performance thereof shall be binding upon itself and its successors and assigns, including the owners of the individual lots legally described in Exhibit E attached hereto and described as "Lots 1 through 12, Gleneagle Golf Course Residential Infill Development Filing No. 2". The obligation and liability of individual lot owners under this Agreement shall commence only upon recording of an assignment of Owner's obligations under this Agreement to the Association.

However, any liability imposed under this Agreement against an individual lot owner shall not be joint and several with the Owner or its successors or assigns, but shall be prorated on a per-lot basis as determined by the following formula and illustration: each individual lot owner(s) shall be liable for no more than the total monetary amount of liability multiplied by a fraction in which the numerator is the number of lots in the Subdivision owned by a particular lot owner, and the denominator is the total number of lots in the Subdivision. As to any lot(s) owned by more than one person or entity, the liability among co-owners shall be joint and several for the pro rata obligation of that lot. The application of this Paragraph is best illustrated by the following example. Assume the following parameters: total liability is \$10,000; total number of lots in the Subdivision is 12; Lot 1 is owned by persons A and B; person B also owns Lot 2. Liability is as follows: the Owner, \$10,000; the Association, \$10,000; Lot 1 is \$178.57 (\$10,000 divided by 12 lots); joint and several as to A and B, Lot 2 is \$178.57 owed solely by B. Thus person A's total liability is \$178.57 and person B's is \$357.14. Applying the principle that the County cannot collect more than it is owed, and assuming that the County cannot collect anything from the Owner or its successors or assigns if the County collected the whole \$357.14 from B, then it could not collect the \$178.57 from A. Likewise, if the County collected the \$178.57 from A, then it could only collect \$178.57 from B.

3. Construction: Owner shall construct Detention Basin C on that portion of the Property described in Recital I above and depicted in Exhibit B attached hereto and incorporated herein by this reference, and shall construct the related drainage facilities on the properties described in Exhibit C and Exhibit D. Owner shall not commence construction of the detention basin/BMPs until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention basin/BMPs and this Agreement has been signed by all Parties and returned to the PCD. Owner shall complete construction of the detention basin/BMPs in substantial compliance with the County-approved plans and specifications for the detention basin/BMPs. Failure to meet these requirements shall be a material breach of this Agreement, and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention basin/BMPs shall be substantially completed within one (1) year (defined as 365 days), which one-year period shall commence on the date the approved plat of this Subdivision is recorded in the records of the El Paso

County Clerk and Recorder. Rough grading of the detention basin/BMPs must be completed and inspected by the El Paso County Planning and Community Development prior to commencing road construction.

4. Maintenance: Owner agrees for itself and its successors and assigns, including individual lot owners within the Subdivision, that it will regularly and routinely inspect, clean and maintain the detention basin/BMPs, and otherwise keep the same in good repair, all at its own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basin/BMPs shall be planted or allowed to grow on the detention basin/BMPs.

5. Creation of Easement: The County has already been granted a non-exclusive perpetual easement upon and across Tract A, Gleneagle Golf Course Residential Infill Development, depicted in Exhibit B, by that certain *Private Detention Basin/Stormwater Quality Best Management Practice Maintenance Agreement and Easement* recorded on August 14, 2017 at Reception No. 217097158 of the El Paso County records. Owner hereby grants the County additional non-exclusive perpetual easements upon and across the property described in Exhibits C and D. The purpose of these easements is to allow the County to access, inspect, clean, repair and maintain the detention basin/BMPs; however, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMPs.

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin/BMPs are not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Owner and its successors and assigns that the detention basin/BMPs need to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem(s). Should the responsible parties fail to correct the specified problem(s), the County may enter upon the property depicted and described in Recital I and Exhibits B, C and D, as applicable, to so correct the specified problem(s). Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMPs.

7. Reimbursement of County's Costs / Covenant Running With the Land: The Owner agrees and covenants, for itself and its successors and assigns, including the owners of the individual lots legally described in Exhibit E, that it will reimburse the County for its actual costs and expenses (defined above) incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the detention basin/BMP pursuant to the provisions of this Agreement; however, the obligation and liability of the Owner hereunder shall only continue until such time as an assignment of Owner's obligations under this Agreement to the Association is recorded in the records of the El Paso County Clerk and Recorder. Thereafter, the Association shall assume the obligations under this paragraph.

The term "actual costs and expenses" shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

8. Contingencies of Subdivision Approval: Owner's execution of this Agreement is a condition of subdivision approval. Additional conditions of this Agreement include, but are not limited to, provision to the County of the following:

- a. An assignment of all rights and obligations under this Agreement from the Owner to the Association, signed by both parties and recorded in the records of the El Paso County Clerk and Recorder. The assignment must be reviewed by the County prior to execution and must contain an explicit acknowledgement by the Association that it shall be directly responsible to the County for performance of the obligations hereunder; and
- b. A copy of a recorded instrument of the Association, evidencing the Association's annexation of the Subdivision into the covenants.
- c. A grant of easement from the current owner of Lot 7, Block 3, Donala Subdivision Filing No. 1 to Owner, with a legal description consistent with that set forth in Exhibit C hereto, dated prior to the date of execution of this Agreement, signed by all parties and recorded in the records of the El Paso County Clerk and Recorder's Office.
- d. A deed in fee simple title from the current owner of Tract A, Muirfield subdivision to Owner, with a legal description consistent with that set forth in Exhibit D hereto, dated prior to the execution of this Agreement, signed by all parties and recorded in the records of the El Paso County Clerk and Recorder's Office.

9. Distribution to Lot Purchasers: Upon the initial sale of any lot within the Subdivision, prior to closing on such sale, the Owner shall ensure a potential buyer will be provided with a recorded copy of this Agreement.

10. Agreement Monitored by El Paso County Planning and Community Development and/or El Paso County Department of Public Works: Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Planning and Community Development and/or the Director of the El Paso County Department of Public Works. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Director of the Planning and Community Development and/or the Director of the El Paso County Department of Public Works.

11. Indemnification and Hold Harmless: Owner agrees for itself and its successors and assigns, that it will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to their respective intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of the detention basin/BMPs, and such obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law.

12. Severability: In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

13. Third Parties: This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County, the Owner, or their respective successors and assigns because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

14. Solid Waste or Hazardous Materials: Should any refuse from the detention basin/BMPs be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Owner shall take all necessary and proper steps to characterize the solid waste or hazardous materials and properly dispose of it in accordance with applicable State and/or Federal environmental laws and regulations, including, but not limited to, the following: Solid Wastes Disposal Sites and Facilities Acts, §§ 30-20-100.5 – 30-20-119, C.R.S., Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, *et seq.*, Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, and Federal Solid Waste Regulations 40 CFR Ch. I. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid waste or hazardous materials. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid waste or hazardous materials, the Owner but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

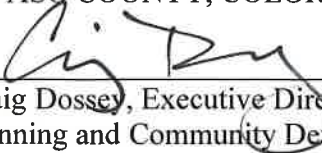
15. Applicable Law and Venue: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be in the El Paso County District Court.

IN WITNESS WHEREOF, the Parties affix their signatures below.

[SIGNATURES ON NEXT PAGES]

Executed this 4TH day of SEPTEMBER, 2019, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

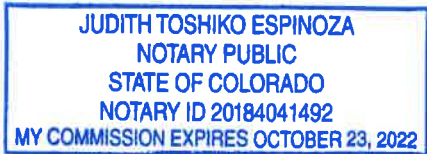
By: 
Craig Dossey, Executive Director
Planning and Community Development
Authorized signatory pursuant to LDC

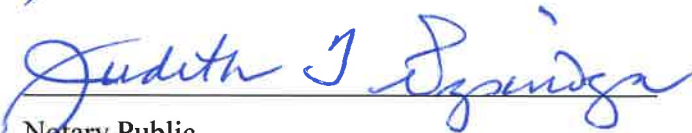
STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 4TH day of SEPTEMBER, 2019, by Craig Dossey, Executive Director of Planning and Community Development of El Paso County, Colorado.

Witness my hand and official seal.

My commission expires: OCTOBER 23, 2022




Notary Public

Approved as to Content and Form:


Assistant County Attorney

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

TRACT G, GLENEAGLE GOLF COURSE RESIDENTIAL INFILL DEVELOPMENT SUBDIVISION, EL PASO COUNTY, COLORADO, AS SHOWN ON THE SUBDIVISION PLAT THEREOF RECORDED AT RECEPTION NUMBER 217714016 OF THE EL PASO COUNTY RECORDS.

CONTAINING 7.621 ACRES, MORE OR LESS.

EXHIBIT B
MAP OF THE PROPERTY SHOWING TRACT A AND THE LOCATION OF THE
DETENTION BASIN FOR FILING NO. 2

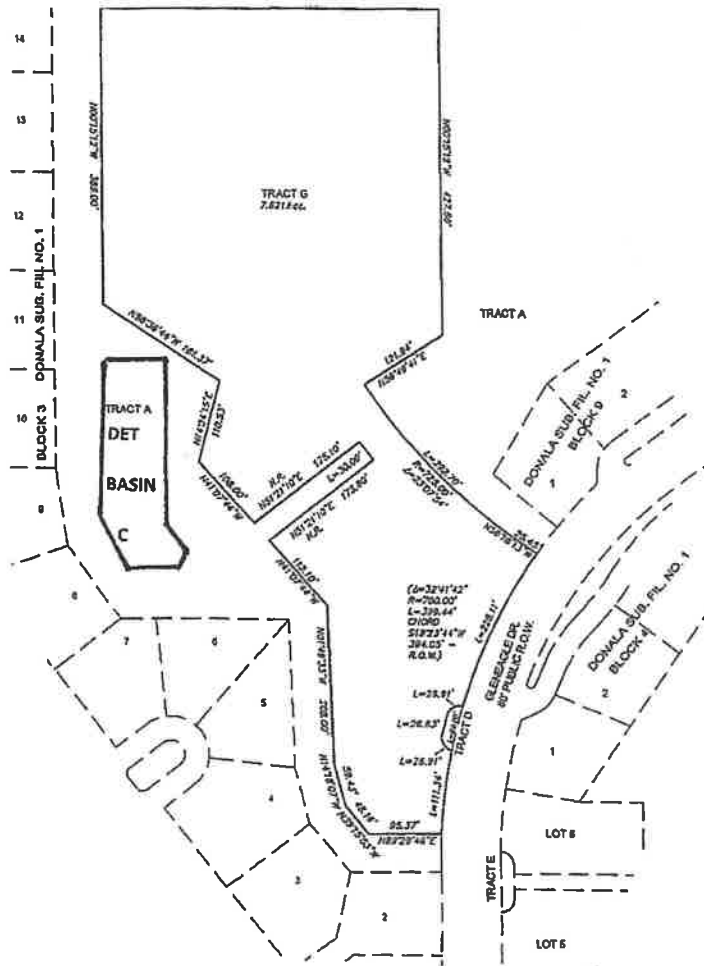


EXHIBIT C
LEGAL DESCRIPTION OF DRAINAGE EASEMENT
(Kerr Property)

THE NORTHWESTERLY TEN (10) FEET OF LOT 7, BLOCK 3, DONALA SUBDIVISION NO. 1, EL PASO COUNTY, COLORADO, AS SHOWN ON THE SUBDIVISION PLAT THEREOF RECORDED IN PLAT BOOK V-2 AT PAGE 79 OF THE EL PASO COUNTY RECORDS.

THE DESCRIBED TRACT CONTAINS 1,176 SQUARE FEET, MORE OR LESS.

EXHIBIT D
LEGAL DESCRIPTION OF DRAINAGE TRACT

Tract A, Muirfield
County of El Paso, State of Colorado
a/k/a 000 Nichlas Ct.

EXHIBIT E
LEGAL DESCRIPTION OF THE INDIVIDUAL LOTS

**LOTS 1 THROUGH 12, GLENEAGLE GOLF COURSE RESIDENTIAL INFILL DEVELOPMENT
FILING NO. 2, COUNTY OF EL PASO, STATE OF COLORADO**