



PRIVATE DETENTION BASIN MAINTENANCE AGREEMENT AND EASEMENT

This PRIVATE DETENTION BASIN MAINTENANCE AGREEMENT AND EASEMENT (this "Agreement") is executed as of August 4, 2011 (the "Effective Date") by and between THE CITY OF FOUNTAIN, (the "City of Fountain"), and MESA RIDGE NO. 1, LLLP (the "Owner"). The above may occasionally be referred to herein singularly as a "Party" and jointly, as the "Parties."

RECITALS:

A. WHEREAS, the Owner is the owner of certain real estate (the "Property" or "Subdivision") in El Paso County, Colorado, which Property is legally described as:

Mesa Ridge Sub Fil B, as recorded at Reception No. 211713153 of the records of the Clerk and Recorder's office of El Paso County, Colorado.

B. WHEREAS, the Owner, desires to plat and develop the Property; and

C. WHEREAS, the development of this Property will substantially increase the volume of the water runoff from the Property, and, therefore, it is in the interest of public health, safety and welfare for the City of Fountain, to condition approval of this Subdivision on the Owner's promise to construct adequate drainage and water runoff control facilities in the Subdivision; and

D. WHEREAS, the Owner, and the City of Fountain, desire that the Owner construct a series of detention basins, as means for providing adequate drainage and water runoff control in the Subdivision; and

E. WHEREAS, the City of Fountain wants to be in a position where it can clean and properly maintain and repair each of the detention basins, if not done so, by the Owner or its successors or assigns, and that a detention basin, if not so properly cleaned, maintained, and repaired, would threaten public health, safety and welfare; and

F. WHEREAS, the City of Fountain, in order to protect the public health, safety and welfare, is desirous of having the option to expend valuable and limited resources to properly clean, maintain and repair a detention basin when the Owner, or its successors or assigns, has failed in its responsibilities, and therefore, the City of Fountain desires a means to recover its costs incurred in the event the Owner, or its successors or assigns, fails to clean, maintain and repair one or more detention basins in the Subdivision as provided herein; and

G. WHEREAS, the City of Fountain, in order to secure performance of the promises contained herein, and in order to gain a perpetual easement over applicable portions of the Property for the purposes of allowing the City of Fountain to periodically access, inspect, and when so necessary, to clean, maintain or repair each detention basin; and

H. WHEREAS, the Parties are desirous of outlining said agreement in writing.

AGREEMENT:

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

1. The covenants as contained in this Agreement will run with the land, and if the land is subdivided into individual lots, there will be a pro rata liability upon the individual lot owners and the Owner, and the performance of this Agreement shall become a covenant running with the land, which land is legally described

in Paragraph A of the above Recitals.

2. Any liability imposed under this Agreement against an individual lot owner shall not be joint and several with the Owner, but shall be pro rated 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.

3. The Owner agrees that that there shall be constructed on the Property or to serve the Property as indicated on the final plat of the Subdivision and as described below, a private water runoff detention basin. .

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

5. As to each detention basin to be constructed, the Owner does hereby grant to the City of Fountain, a non-exclusive perpetual easement upon a portion of the Property; each such portion is legally described on Exhibit A, attached hereto and incorporated herein by this reference, and depicted on Exhibit B, attached hereto and incorporated herein by this reference. The purpose of each easement is to allow the City of Fountain to access, inspect, clean, repair and maintain the applicable detention basin; however, the creation of the easement does not expressly or implicitly impose on the City of Fountain a duty to so inspect, clean, repair or maintain each such detention basin.

6. At any time the City of Fountain determines, in the sole exercise of its discretion, that a detention basin is not properly cleaned, maintained and/or otherwise kept in good repair, the City of Fountain may give reasonable notice to the Owner, or its successors and assigns, including the individual lot owners within the Subdivision, that such detention basin needs 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 City of Fountain may enter upon the Property to so correct the specified problem(s). If, at the end of such time to cure, as provided in said notice, the defaulting party has not cured the breach, the City of Fountain may take any and all such action as provided by law, including the filing of a lawsuit seeking to compel performance of this Agreement, as well as recover all damages sustained to the City of Fountain, including, but not limited to, attorney's fees and cost. Notice shall be effective to the above by the City of Fountain's deposit of the same into the regular United States mail, postage pre-paid. However, this Agreement does not expressly impose on the City of Fountain a duty to so inspect, clean, repair or maintain any detention basin.

7. The Owner covenants and agrees, for itself, its successors and assigns, including any individual lot owners within the Subdivision, that it will reimburse the City of Fountain for all of the City of Fountain's costs and expenses incurred in the process of cleaning, maintaining, and/or repairing any such detention basin.

8. Upon the initial sale of any lot within the Subdivision, if the same is subdivided, prior to closing on such sale, the Owner shall give a copy of this Agreement and the Rider to Private Detention Basin Maintenance Agreement and Easement to the potential buyer.

9. 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 the Agreement.

right to claim damages or to bring any lawsuit, action or other proceeding against the City of Fountain, the Owner, or the Owner's respective successors and assigns, including, without limitation, any individual lot owners in the Subdivision, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

11. The laws, rules, and regulations of the State of Colorado and the City of Fountain, shall be applicable in the enforcement, interpretation, and execution of this Agreement. Venue shall be in the El Paso County District Court.


12. The Owner, for itself, its successors and assigns, expressly states and agrees, to the maximum extent permitted by law, that they will indemnify and hold harmless the City of Fountain, its council members, officers, directors, agents, successors, assigns and representatives, from any and all liability, damage, expense (including reasonable attorney fees, court costs, and all costs of investigation and discovery), causes of action, suits, claims or judgments arising from (a) the operation, maintenance or repair of any detention basin, or (b) injury to person or property or legal violations which occur on the Property and arise as a result of the maintenance, use, construction, repair, and operation of any detention basin, except to the extent caused by the City of Fountain's negligence or intentional acts, or the negligence or intentional acts of third-parties.

13. Nothing in this Agreement shall be deemed to waive or otherwise limit any and all defenses available to the City of Fountain pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.


14. This Agreement shall be recorded in the records of the El Paso County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties executed this Agreement as of the Effective Date.

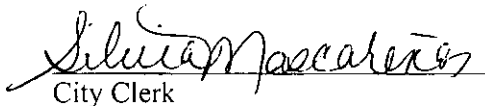
MESA RIDGE NO. 1, LLLP
By: NOR'WOOD LIMITED NO. 1, LLC, General
Partner

By: 
David D. Jenkins, Manager

THE CITY OF FOUNTAIN

By: 
Name: ~~Jeri Howells~~ David Smedsrud

Title: ~~Mayor~~ Subdivision Administrator
by Ordinance #1412 on April 22, 2008
ATTEST:


City Clerk



ACKNOWLEDGMENT

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 9th day of September, 2011, by David D. Jenkins, as Manager of Nor'wood Limited No. 1, LLC, a Colorado limited liability company, General Partner of Mesa Ridge No. 1, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My commission expires: 10-24-2013

Loretta D. Jibreen
Notary Public

Executed this _____ day of _____, 2011, by:

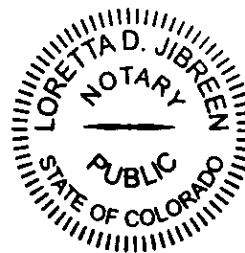


EXHIBIT A

LEGAL DESCRIPTION OF EACH PERPETUAL EASEMENT

(See Attached)

EXHIBIT "A"

LEGAL DESCRIPTION

A tract of land located in the Northeast quarter (NE1/4) of Section 29, Township 15 South, Range 65 West of the 6th P.M., El Paso County, Colorado, being more particularly described as follows:

Commencing at the intersection of the Southerly boundary line of the Fountain Mutual Irrigation Channel as recorded in Book 5506 at Page 1290 of the records of said El Paso County and the Northeasterly right-of-way line of Sneffels Street as described in Mesa Ridge Subdivision Filing No. 7 as recorded at Reception No. 208712837 of the records of said El Paso County, the following three (3) courses are on said Northeasterly right-of-way line; thence: 1) Southeasterly on a curve to the left having a central angle of 14°23'49", a radius of 340.00 feet for an arc distance of 85.43 feet, whose chord bears S43°48'32"E; 2) S51°00'26"E a distance of 416.18 feet to a point of curve; 3) on said curve to the right having a central angle of 11°07'42", a radius of 1040.00 feet for an arc distance of 202.00 feet, whose chord bears S45°26'35"E to the True POINT OF BEGINNING; thence N48°44'38"E a distance of 167.87 feet to a point of curve; thence on said curve to the right having a central angle of 15°30'59", a radius of 975.00 feet for an arc distance of 264.04 feet, whose chord bears N56°30'07"W; thence N64°15'37"E a distance of 19.72 feet; thence S34°36'52"E a distance of 316.42 feet to a point on the Northerly right-of-way line of Mesa Ridge Parkway as described in Book 6788 at Page 538 of the records of said El Paso County, the following three (3) courses are on the Northerly right-of-way of said Mesa Ridge Parkway; thence: 1) S50°45'14"W a distance of 323.24 feet to a point on a curve; 2) on a curve to the right having a central angle of 90°00'00", a radius of 100.00 feet for an arc distance of 157.08 feet, whose chord bears N84°14'46"W; 3) N39°14'46"W a distance of 5.12 feet to the Southeast right-of-way corner of said Sneffels Street, the following two (2) courses are on the Northeasterly right-of-way line of said Sneffels Street; thence: 1) N39°14'46"W a distance of 223.86 feet to a point of curve; 2) on a curve to the left having a central angle of 00°37'58", a radius of 1040.00 feet for an arc distance of 11.49 feet, whose chord bears N39°33'45"W to the True POINT OF BEGINNING and containing 3.359 acres of land, more or less.

JOB NO. 08-064

FILE: 08064EXJ.DWG
DATE: 09/12/11

LOCATED IN A PORTION OF THE
OF THE NE1/4 OF SECTION 29,
T-15-S, R-65-W OF THE 6th P.M.,
EL PASO COUNTY, COLORADO

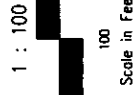


EXHIBIT B
DEPICTION OF EACH PERPETUAL EASEMENT

(See Attached)

EXHIBIT "B"

P.O.C.
 $\Delta=14'23.49"$
 $R=340.00'$
 $L=85.43'$
 $CB=S43'48.32"E$



$N64'15.37"E$
 $19.72'$

$\Delta=15'30.59"$
 $R=975.00'$
 $L=264.04'$
 $CB=N56'30.07"W$

$\Delta=11'07.42"$
 $R=1040.00'$
 $L=202.00'$
 $CB=S45'26.35"E$

$N48'44.38"E$
 $167.87'$

P.O.B.

$\Delta=00'37.58"$
 $R=1040.00'$
 $L=11.49'$
 $CB=N39'33.45"W$

$N39'14.46"W$
 $5.12'$
 $\Delta=90'00.00"$
 $R=100.00'$
 $L=157.08'$
 $CB=N84'14.46"W$

146,336 SF
 3.359 ACRES

$S34'36.52"E$
 $316.42'$

$S30'45.14"W$
 $323.24'$

MESA RIDGE PARKWAY
 BOOK 0788 PAGE 538

FILE: 08064EXJ.DWG
 DATE: 09/12/11

JOB NO. 08-064



ENGINEERING • SURVEYING
 1955 N. UNION BLVD., SUITE 200
 COLORADO SPRINGS, CO 80909
 (719) 475-2575 • FAX (719) 475-9223

LOCATED IN A PORTION OF THE
 OF THE NE1/4 OF SECTION 29,
 T-15-S, R-65-W OF THE 6th P.M.,
 EL PASO COUNTY, COLORADO

