

Replacement with correct form

PRIVATE DETENTION BASIN MAINTENANCE AGREEMENT AND EASEMENT

This PRIVATE DETENTION BASIN MAINTENANCE AGREEMENT AND EASEMENT (this “Agreement”) is executed as of _____, 20__ (the “Effective Date”) by and between EL PASO COUNTY, (the “City of Fountain”), and _____(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:

_____, as recorded at Reception No. _____, 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 El Paso County, 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 El Paso County, 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, El Paso County 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, El Paso County, 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, El Paso County 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, El Paso County, 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 El Paso County 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 they shall be construct 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 El Paso County, 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 El Paso County to access, inspect, clean, repair and maintain the applicable detention basin; however, the creation of the easement does not expressly or implicitly impose on El Paso County a duty to so inspect, clean, repair or maintain each such detention basin.

6. At any time El Paso County determines, in the sole exercise of its discretion, that a detention basin is not properly cleaned, maintained and/or otherwise kept in good repair, El Paso County 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), El Paso County 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, El Paso County 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 El Paso County, including, but not limited to, attorney's fees and cost. Notice shall be effective to the above by El Paso County's deposit of the same into the regular United States mail, postage pre-paid. However, this Agreement does not expressly impose on El Paso County a duty to so inspect, clean, repair or maintain any detention basin.

7. The Owner covenants and agrees, for itself, its her successors and assigns, including any individual lot owners within the Subdivision, that it will reimburse El Paso County for all of El Paso County'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.

10. 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 El Paso County, 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 El Paso County, 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 El Paso County, 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 El Paso County'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 El Paso County 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.

EL PASO COUNTY

Owner Name & Title

By: _____

Name: Todd Evans

Title: Subdivision Administrator

ATTEST:

City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF EACH PERPETUAL EASEMENT

EXHIBIT B

DEPICTION OF EACH PERPETUAL EASEMENT