



50-
100

DETENTION POND EASEMENT

This Detention Pond Easement Agreement ("Agreement") is entered into this 14th day of July, 2006, by and between Good Shepherd United Methodist Church (the "Grantor") and St. Andrews Homes, Ltd., a Colorado corporation ("Grantee").

RECITALS

WHEREAS, Grantor is the owner of that certain real property described on Exhibit A attached hereto and incorporated herein by this reference (the "Grantor Property").

WHEREAS, Grantee is the owner of the real property located west of the Grantor Property and described on Exhibit B attached hereto and incorporated herein by this reference (the "Grantee Property").

WHEREAS, Grantee intends to develop the Grantee Property into multi-family residential townhomes.

WHEREAS, in connection with Grantee's development of the Grantee Property, Grantee desires to obtain an easement over and across a portion of the Grantor Property in order to construct, and maintain detention pond facilities servicing the Grantee Property.

WHEREAS, subject to the express terms and provisions of this Agreement, the parties desire to create a perpetual, non-exclusive easement over and across a certain portion of the Grantor Property that will be utilized by Grantee to construct, reconstruct, inspect, alter, improve, remove, repair and maintain detention pond and drainage facilities that will provide storm water detention and conveyance for the Grantee Property.

NOW, THEREFORE, in consideration for the mutual promises contained herein and for other valuable consideration given and received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

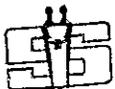
ARTICLE I

Creation and Use of Easement.

1.1 Incorporation. The Recitals set forth above are hereby incorporated herein as if fully set forth in this Article.

1.2 Grant of Access Easement/Scope of Use. Grantor does hereby sell, convey, grant, assign and transfer unto Grantee, and their respective successors and assigns, a perpetual, non-exclusive easement over and across that portion of the Grantor Property legally described on Exhibit C attached hereto and incorporated herein by this reference, and illustrated on Exhibit D attached hereto and incorporated herein by this reference (the "Detention Pond Easement"). The Detention Pond Easement shall be utilized solely for the purpose of providing storm water detention and conveyance for the Grantee Property. The Detention Pond Easement shall grant Grantee, its successors and assigns, the right and privilege to construct, reconstruct, inspect, alter, improve, remove, repair and maintain the Detention Pond Facilities (as defined below), including all rights and privileges necessary or convenient for the full enjoyment and

St. Andrew Homes
1529 Padua St
Colorado Springs CO 80915



20060609060

①

use thereof, including but not limited to the right of ingress and egress over adjoining lands of Grantor's Property for the purpose of exercising the easement rights granted herein.

1.3 No Barriers or Impediments. Grantor shall not construct, erect or install any fences, barriers, impediments, gates, landscaping, or other improvements ("Impediments") within the Detention Pond Easement which would impede the use of the Detention Pond Easement for storm water detention and conveyance. Grantee shall have the right to remove any Impediments from the Detention Pond Easement and shall have no liability to Grantor for any damage caused to such Impediment. The cost of such removal shall be paid by Grantor.

ARTICLE II

Construction; Maintenance and Repair; Indemnity

2.1 Construction of Detention Pond Facilities. Grantee shall, at Grantee's sole cost and expense, construct the detention pond improvements and facilities within the Detention Pond Easement in accordance with the construction drawings approved by El Paso County, Colorado (the "Detention Pond Facilities"). The Detention Pond Facilities shall include a locking 6' high cedar stake security fence that will enclose the Detention Pond Facilities.

2.2 Maintenance and Repair. During the period that the Grantor Property shall remain undeveloped, Grantee shall, at Grantee's sole cost and expense, maintain the Detention Pond Facilities in good working order, including but not limited to, maintaining the structures and side slopes of the Detention Pond Easement free of debris, impoundments or alterations to the flow of storm water drainage.

Subject to Section 3.7 below, in the event that the Grantor Property is later developed and, in connection with such development, the Detention Pond Facilities are utilized to provide storm water detention and conveyance for the Grantor Property, the costs to maintain, repair, improve, and/or replace the Detention Pond Facilities shall be split equally between the Grantor Property and the Grantee Property. Additionally, all costs and expenses relating to improvements to the Detention Pond Facilities that are necessitated by Grantor's development of the Grantor Property shall be paid by Grantor. Notwithstanding the foregoing, this obligation shall not apply in the event the Grantor Property is developed by Good Shepherd United Methodist Church and utilized for its own purposes. The cost sharing obligations with respect to future development shall only be binding on the successors and/or assigns acquiring title to the Grantor Property from Grantor.

Grantor shall remit payment to Grantee for its share of maintenance and improvement costs and expenses within (15) days following receipt of a statement detailing such costs and expenses. Any amounts not paid within such fifteen (15) day period shall bear interest at the rate of 18% per annum until paid. Failure to pay such amounts when due shall be deemed an event of default and shall entitle the Grantee to a judgment for an amount and for such relief as a court may deem proper to protect the rights and interests of the Grantee.

2.3 Indemnity. Grantee and their respective successors and assigns, hereby release, indemnify and hold Grantor harmless against and from any and all claims, causes of action, liabilities and damages (collectively "claims"), including attorney's fees, arising from any act or omission by Grantee or their

successors and assigns in connection with the use and operation of the Detention Pond Facilities. This indemnification shall not extend to any claims arising from the negligent actions of Grantor, their successors, assigns or invitees.

ARTICLE III
Miscellaneous.

3.1 Run with the Land. The provisions of this Agreement shall run with the Grantor Property and the Grantee Property and shall inure to the benefit of and be binding upon the owners, tenants, lessees thereof and their successors in interest and assigns, including their grantees, sublessees and assigns and all persons or entities claiming through them.

3.2 Amendment and Termination. This Agreement is perpetual and may only be amended or terminated by recordation of a written instrument in the official real property records of El Paso County, Colorado, executed by the owners of the Grantor Property and the Grantee Property.

3.3 Default; Attorneys' Fees. The failure of any party to this Agreement to comply with its responsibilities or obligations herein shall entitle the non-defaulting party to pursue any and all appropriate legal recourse, including the rights of injunction, damages, specific performance or any or all of the above. Should any party institute legal action or proceeding for the enforcement of the any responsibilities or obligations herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in the preparation and prosecution of such action or proceeding.

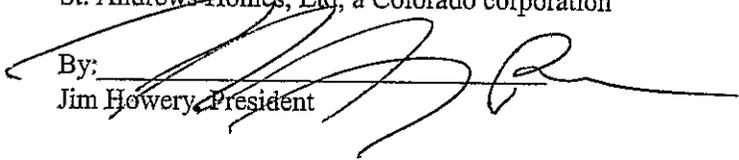
3.4 Governing Law; Venue. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue shall be in El Paso County, Colorado.

3.5 No Joint Venture. Nothing in this Agreement shall be deemed or construed to create the relationship of partnership, joint venture, principal and agent, or any other association between or among the parties.

3.6 No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to constitute a gift, grant or dedication of any portion of the Detention Pond Easement to the general public or for any public purpose. The provisions of this Agreement are for the exclusive benefit of the parties hereto (and their successors and assigns) and shall not be deemed to have conferred any rights, express or implied, upon any third person.

3.7 Assignment. Grantee may assign all of its right, title and interest in and under this Agreement to either El Paso County, Colorado ("County") or a homeowner's association formed in connection with Grantee's development of the Grantee Property. In the event that El Paso County accepts conveyance of the Detention Pond Facilities and the rights and obligations set forth in this Agreement, including but not limited to the right maintain and repair the Detention Pond Facilities, the parties obligations with respect to such maintenance and repair shall thereafter cease and become the obligations of the County.

St. Andrews Homes, Ltd, a Colorado corporation

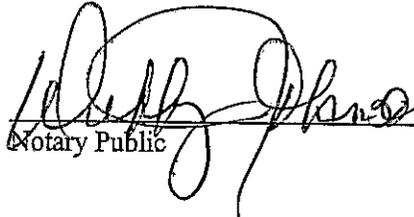
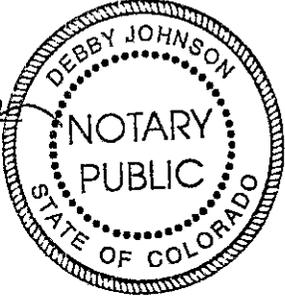
By: 
Jim Howery, President

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 14th day of July, 2006,
by Jim Howery, President of St. Andrews Homes, Ltd., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 10.11.07


Notary Public 

LENDER CONSENT AND SUBORDINATION

Norwest Bank Colorado, N.A., a National Association ("Lender"), is the beneficiary under that certain Deed of Trust dated December 17, 1998, recorded in the real property records for El Paso County, Colorado, on December 22, 1998, under Reception No. 98188327 ("Deed of Trust"), which Deed of Trust subjects the foregoing Agreement to the Lender's lien. Lender hereby consents to the terms, conditions, and intent of the foregoing Agreement and agrees that the lien represented by said Deed of Trust shall be held subject and subordinate to the easement granted in the Agreement. Lender joins in this Agreement to evidence and give effect to the subordination of said Deed of Trust to the Detention Pond Easement set forth in the Agreement.

**Norwest Bank Colorado, NA,
a National Association

By: Eva P. Munoz
Print Name: EVA P. MUNOZ
Title: Assistant Vice President

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 10th day of JULY, 2006, by ELVA MUNOZ, LAURA LEPPERT (NOTARY) of Norwest Bank Colorado, NA, a National Association.

Witness my hand and official seal.

My commission expires: MY COMMISSION EXPIRES
05/13/2008

Laura Leppert
Notary Public



**Wells Fargo Bank, N.A., successor in interest by merger with Norwest Bank Colorado, N.A. (Lender).

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR PROPERTY

That portion of the North Half of the Northwest Quarter of the Northwest Quarter of Section 12 in Township 15 South, Range 66 West of the 6th P.M., described as follows:

Beginning at the Northwest corner of said Section 12; thence Southerly on the West line thereof 664.73 feet to the South line of the North Half of the Northwest Quarter of said Northwest Quarter; thence angle left 89° 17' Easterly on said South line a distance of 540.25 feet; thence angle left 90° 45' Northerly 666.14 feet to a point on the north line of said Section 12 that is 539.85 feet Easterly on said North line from the point of beginning; thence angle left 89° 24' Westerly on said North line a distance of 539.85 feet to the POINT OF BEGINNING, EXCEPT right of way for a road as reserved in Warranty Deed in Book 1105 at Page 52 and EXCEPT rights of way for telephone lines, EXCEPT that portion conveyed to EL Paso County in Deed recorded in Book 3768 at Page 1506, El Paso County, Colorado

(Schedule No. 6512200003)

also known as 1201 Leta Drive, Colorado Springs, CO 80911

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE PROPERTY

The North Half of the Northwest Quarter of the Northwest Quarter of Section 12 in Township 15 South, Range 66 West of the 6th P.M., EXCEPT that portion conveyed in Warranty Deed recorded November 25, 1959 in Book 1779 at Page 409, and EXCEPT that portion lying within the existing right of way of former Bradley Road, now designated as Cable Lane.

EXHIBIT C

LEGAL DESCRIPTION:

AN EASEMENT OVER, UNDER AND ACROSS A PORTION OF THAT TRACT OF LAND AS DESCRIBED IN INSTRUMENT RECORDED IN BOOK 1779 AT PAGE 409 OF THE RECORDS OF THE EL PASO COUNTY, COLORADO, CLERK AND RECORDER AND LOCATED IN THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER (NW ¼ NW ¼) SECTION 12, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT AS DESCRIBED IN BOOK 1779 AT PAGE 409; THENCE N 00° 44' 31" W ALONG THE EASTERLY BOUNDARY OF SAID TRACT (AN ASSUMED BEARING TO WHICH ALL OTHERS HEREIN ARE RELATIVE), A DISTANCE OF 312.92 FEET; THENCE N 90° 00' 00" W, A DISTANCE OF 41.43 FEET; THENCE S 43° 47' 46" W, A DISTANCE OF 288.41 FEET. THENCE S 00° 02' 09" E, A DISTANCE OF 89.87 FEET; THENCE S 89° 57' 51" W, A DISTANCE OF 53.51 FEET; THENCE S 00° 02' 09" E, A DISTANCE OF 15.00 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID TRACT AS DESCRIBED IN BOOK 1779 AT PAGE 409; THENCE N 89° 57' 51" E. ALONG SAID SOUTHERLY BOUNDARY LINE, A DISTANCE OF 298.53 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 1.29 ACRES, MORE OR LESS.

PREPARED BY:

CHRISTOPHER THOMPSON, COLORADO P.L.S. NO 19825
FOR AND ON BEHALF OF ROCKY MOUNTAIN LAND SERVICES
1623 SOUTH TEJON STREET
COLORADO SPRINGS, COLORADO 80906
719-630-0559

J-H
C

EXHIBIT D

EXHIBIT FOR LEGAL DESCRIPTION

AN EASEMENT OVER A PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 12, TOWNSHIP 15 SOUTH, RANGE 66 WEST EL PASO COUNTY, COLORADO

PHEASANT RUN RANCH FILING NO. 1 PLAT BOOK X-3, PG. 18

BOOK 1875, PAGE 434 PLAT BOOK X-3, PG. 18

LETA 2.1 DRIVE 11.12

S 89°44'11" E 518.04'

NW 1/4 NW 1/4 SECTION 12

BOOK 1779, PG. 409

REFILING OF SECURITY ADDITION NO. 4 PLAT BOOK U, PG. 47

S 00°44'31" E 662.04'

ASSUMED BASIS OF BEARINGS

N 90°00'00" W 41.43'

S 00°02'09" E 89.87'

S 43°47'46" W 288.47'

N 00°44'31" W 312.92'

S 89°57'51" W 53.51'

779.83' N 89°57'51" E

S 00°02'09" E 15.00'

298.53' N 89°57'51" E

P.O.B.



JOB NO.: 24147 JANUARY 4, 2005

SUBDIVISION OF TRACT NO. 1 OF THE REFILING OF SECURITY ADDITION NO. 4

ROCKY MOUNTAIN LAND SERVICES 1022 SOUTH TEJAN STREET COLORADO SPRINGS, COLORADO