

AFTER RECORDING, RETURN TO: DGS Development, Ltd., 2335 Buttermilk Crossing, Suite 318, Crescent Springs, KY 41017

DECLARATION OF PERMANENT EASEMENTS AND MAINTENANCE TERMS

WHEREAS, **DGS DEVELOPMENT, LTD., a Kentucky limited partnership** (hereinafter referred to as “Developer”) is the owner and developer of the Mountain View Farms subdivision located in Owsley County, Kentucky, as shown on the plat recorded in Plat Book _____, Page _____ of the Owsley County Clerk’s records (the “Development”); and

WHEREAS, access to and from Tracts 11, 12, 46 and 47 in the Development is provided by virtue of an access easement as depicted on the recorded plat as an Ingress and Egress Easement for the benefit of those Tracts (“**Easement A**”); and

WHEREAS, access to and from Tracts 14 and 15 in the Development is provided by virtue of an access easement as depicted on the recorded plat as an Ingress and Egress Easement for the benefit of those Tracts (“**Easement B**”); and

WHEREAS, access to and from Tract 16 in the Development is provided by virtue of an access easement as depicted on the recorded plat as an Ingress and Egress Easement for the benefit of that Tract (“**Easement C**”); and

WHEREAS, access to and from Tracts 19, 20, and 42 in the Development is provided by virtue of an access easement as depicted on the recorded plat as an Ingress and Egress Easement for the benefit of those Tracts (“**Easement D**”); and

WHEREAS, access to and from Tracts 31 and 32 in the Development is provided by virtue of an access easement as depicted on the recorded plat as a 30’ Ingress and Egress Easement for the benefit of those Tracts (“**Easement E**”); and

WHEREAS, access to and from Tracts 49 and 51 in the Development is provided by virtue of an access easement as depicted on the recorded plat as an Ingress and Egress Easement for the benefit of those Tracts (“**Easement F**”); and

WHEREAS, the Developer finds it necessary to declare these permanent easements for ingress to and egress from said Tracts and to provide terms for the maintenance of said permanent easements.

NOW, THEREFORE, Developer hereby declares the following permanent easements as shown on the plat recorded in Plat Book _____, Page _____ and hereby sets out terms for maintenance of the same, which permanent easements shall run with the land and be for the benefit of the Tracts located within the Development as further set forth herein.

I. Easement A

1. **Grant of Easement.** Tracts 11, 12, 46 and 47 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as an Ingress and Egress Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement A shall be a private road, for ingress to and egress from Tracts 11, 12, 46 and 47, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Common Repair and Maintenance.** The cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to that portion of the private road located within Easement A, shall be allocated as follows:

A. Each of the grantees, owners, successors and/or assigns of Tracts 11 and 12 shall be responsible for forty percent (40%) of such costs and,

B. Each of the grantees owners, successors and/or assigns of Tracts 46 and 47 shall be responsible for ten percent (10%) of such costs.

3. **Approval and Authorization for Work.**

A. Prior to any repair, maintenance, construction or reconstruction of the portion of the private road located within Tracts 11, 12, 46 and 47 for which the respective owners, grantees, successors and/or assigns of the foregoing Tracts will be in part responsible, an estimate shall be obtained for such repair, maintenance, construction or reconstruction and submitted to the owners of such Tracts for their review. If any owner of Tracts 11, 12, 46 or 47 is dissatisfied with such estimate, then no work shall be commenced for thirty (30) days following delivery of the initial estimate, during which period the dissatisfied owner or owners shall have the right to obtain additional estimates from reputable contractors. At the end of the thirty (30) day period, the owners shall execute a contract based on the lowest estimate obtained. The signature of at least two of the owners of Tracts 11, 12, 46 or 47 shall be sufficient to bind all owners.

B. In the event of any bona fide emergency, as hereinafter defined, a Tract owner may contract for repairs to be performed without prior notice to the other owners and such contract shall be binding upon all owners, the same as if executed by or contracted by all owners. An emergency for purposes of this Declaration shall be defined as a situation in which essential services will be denied to any owner if repairs are not made immediately.

C. The foregoing notwithstanding, so long as the Developer owns any of Tracts 11, 12, 46 or 47, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the portion of the private road benefitting Tracts 11, 12, 46 or 47 in its sole discretion, and the owners of the Tracts shall be responsible for their respective shares of such costs.

4. **Payment of Approved Work.** Each owner shall pay their respective share within ten (10) days of receipt of the invoice from the contractor that performed the work. If the owner of any Tract fails to pay any amount which they are obligated to pay under this Declaration for repair, maintenance, construction or reconstruction or returning the premises to its original condition following repair, maintenance, construction or reconstruction, then in such event, the paying owners may pay, but are not obligated to do so, the amount owed by the nonpaying owner(s) and the paying owner(s) shall, in addition to any rights and remedies at law, be subrogated to the lien rights granted to third party contractors by statute or, in addition thereto, shall have a lien by virtue of this Declaration against the property of the nonpaying owner(s) to the extent of payments made on behalf of the

nonpaying owner(s), with interest thereon at eight percent (8%), per annum, on the unpaid balance and may institute foreclosure proceedings to enforce said lien rights.

II. Easement B

1. **Grant of Easement.** Tracts 14 and 15 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as an Ingress and Egress Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement B shall be a private road, for ingress to and egress from Tracts 14 and 15, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Common Repair and Maintenance.** The cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to that portion of the private road located within Easement B, shall be allocated as follows:

Each of the grantees, owners, successors and/or assigns of Tracts 14 and 15 shall be responsible for fifty percent (50%) of such costs.

3. **Approval and Authorization for Work.**

A. Prior to any repair, maintenance, construction or reconstruction of the portion of the private road located within Tracts 14 and 15 for which the respective owners, grantees, successors and/or assigns of the foregoing Tracts will be in part responsible, an estimate shall be obtained for such repair, maintenance, construction or reconstruction and submitted to the owners of such Tracts for their review. If any owner of Tracts 14 or 15 is dissatisfied with such estimate, then no work shall be commenced for thirty (30) days following delivery of the initial estimate, during which period the dissatisfied owner or owners shall have the right to obtain additional estimates from reputable contractors. At the end of the thirty (30) day period, the owners shall execute a contract based on the lowest estimate obtained. The signature of either owner of Tracts 14 or 15 shall be sufficient to bind all owners.

B. In the event of any bona fide emergency, as hereinafter defined, a Tract owner may contract for repairs to be performed without prior notice to the other owners and such contract shall be binding upon all owners, the same as if executed by or contracted by all owners. An emergency for purposes of this Declaration shall be defined as a situation in which essential services will be denied to any owner if repairs are not made immediately.

C. The foregoing notwithstanding, so long as the Developer owns any of Tracts 14 or 15, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the portion of the private road benefiting Tracts 14 and 15 in its sole discretion, and the owners of the Tracts shall be responsible for their respective shares of such costs.

4. **Payment of Approved Work.** Each owner shall pay their respective share within ten (10) days of receipt of the invoice from the contractor that performed the work. If the owner of any Tract fails to pay any amount which they are obligated to pay under this Declaration for repair, maintenance, construction or reconstruction or returning the premises to its original condition following repair, maintenance, construction or reconstruction, then in such event, the paying owners may pay, but are not obligated to do so, the amount owed by the nonpaying owner(s) and the paying owner(s) shall, in addition to any rights and remedies at law, be subrogated to the lien rights granted to third party contractors by statute or, in addition thereto, shall have a lien by virtue of this Declaration against the property of the nonpaying owner(s) to the extent of payments made on behalf of the nonpaying owner(s), with interest thereon at eight percent (8%), per annum, on the unpaid balance and may institute foreclosure proceedings to enforce said lien rights.

III. Easement C

1. **Grant of Easement.** Tract 16 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as an Ingress and Egress Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement C shall be a private road, for ingress to and egress from Tract 16, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Repair and Maintenance.** The grantee, owner, successor and or assign of Tract 16 shall be solely responsible for the cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to that portion of the private road located within Easement C.

IV. Easement D

1. **Grant of Easement.** Tracts 19, 20, and 42 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as an Ingress and Egress Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement D shall be a private road, for ingress to and egress from Tracts 19, 20, and 42, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Common Repair and Maintenance.** The cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to that portion of the private road located within the boundaries of Easement D, shall be allocated as follows:

Each of the grantees, owners, successors and/or assigns of Tracts 19, 20, and 42 shall be responsible for one-third (1/3) of such costs.

3. **Approval and Authorization for Work.**

A. Prior to any repair, maintenance, construction or reconstruction of the portion of the private road located within Tracts 19, 20, and 42 for which the respective owners, grantees, successors and/or assigns of the foregoing Tracts will be in part responsible, an estimate shall be obtained for such repair, maintenance, construction or reconstruction and submitted to the owners of such Tracts for their review. If any owner of Tracts 19, 20, or 42 is dissatisfied with such estimate, then no work shall be commenced for thirty (30) days following delivery of the initial estimate, during which period the dissatisfied owner or owners shall have the right to obtain additional estimates from reputable contractors. At the end of the thirty (30) day period, the owners shall execute a contract based on the lowest estimate obtained. The signature of at least two of the owners of Tracts 19, 20, or 42 shall be sufficient to bind all owners.

B. In the event of any bona fide emergency, as hereinafter defined, a Tract owner may contract for repairs to be performed without prior notice to the other owners and such contract shall be binding upon all owners, the same as if executed by or contracted by all owners. An emergency for purposes of this Declaration shall be defined as a situation in which essential services will be denied to any owner if repairs are not made immediately.

C. The foregoing notwithstanding, so long as the Developer owns any of Tracts 19, 20, or 42 it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the portion of the private road benefitting Tracts 19, 20, or 42 in its sole discretion, and the owners of the Tracts shall be responsible for their respective shares of such costs.

4. **Payment of Approved Work.** Each owner shall pay their respective share within ten (10) days of receipt of the invoice from the contractor that performed the work. If the owner of any Tract fails to pay any amount which they are obligated to pay under this Declaration for repair, maintenance, construction or reconstruction or returning the premises to its original condition following repair, maintenance, construction or

reconstruction, then in such event, the paying owners may pay, but are not obligated to do so, the amount owed by the nonpaying owner(s) and the paying owner(s) shall, in addition to any rights and remedies at law, be subrogated to the lien rights granted to third party contractors by statute or, in addition thereto, shall have a lien by virtue of this Declaration against the property of the nonpaying owner(s) to the extent of payments made on behalf of the nonpaying owner(s), with interest thereon at eight percent (8%), per annum, on the unpaid balance and may institute foreclosure proceedings to enforce said lien rights.

V. Easement E

1. **Grant of Easement.** Tracts 31, 32, and the cemetery located within Tract 32 (the “Cemetery”) shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as a 30’ Ingress and Egress Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement E shall be a private road, for ingress to and egress from Tracts 31, 32 and the Cemetery, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Common Repair and Maintenance.** The cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to that portion of the private road located within the boundaries of Easement E, shall be allocated as follows:

Each of the grantees, owners, successors and/or assigns of Tracts 31 and 32 shall be responsible for fifty percent (50%) of such costs.

3. **Approval and Authorization for Work.**

A. Prior to any repair, maintenance, construction or reconstruction of the portion of the private road located within Tracts 31 and 32 for which the respective owners, grantees, successors and/or assigns of the foregoing Tracts will be in part responsible, an estimate shall be obtained for such repair, maintenance, construction or reconstruction and submitted to the owners of such Tracts for their review. If any owner of Tracts 31 or 32 is dissatisfied with such estimate, then no work shall be commenced for thirty (30) days following delivery of the initial estimate, during which period the dissatisfied owner or owners shall have the right to obtain additional estimates from reputable contractors. At the end of the thirty (30) day period, the owners shall execute a contract based on the lowest estimate obtained. The signature of either owner of Tracts 31 or 32 shall be sufficient to bind all owners.

B. In the event of any bona fide emergency, as hereinafter defined, a Tract owner may contract for repairs to be performed without prior notice to the other owners and such contract shall be binding upon all owners, the same as if executed by or contracted by all owners. An emergency for purposes of this Declaration shall be defined as a situation in which essential services will be denied to any owner if repairs are not made immediately.

C. The foregoing notwithstanding, so long as the Developer owns any of Tracts 31 or 32, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the portion of the private road benefitting Tracts 31 or 32 in its sole discretion, and the owners of the Tracts shall be responsible for their respective shares of such costs.

4. **Payment of Approved Work.** Each owner shall pay their respective share within ten (10) days of receipt of the invoice from the contractor that performed the work. If the owner of any Tract fails to pay any amount which they are obligated to pay under this Declaration for repair, maintenance, construction or reconstruction or returning the premises to its original condition following repair, maintenance, construction or reconstruction, then in such event, the paying owners may pay, but are not obligated to do so, the amount owed by the nonpaying owner(s) and the paying owner(s) shall, in addition to any rights and remedies at law, be subrogated to the lien rights granted to third party contractors by statute or, in addition thereto, shall have a lien by virtue of this Declaration against the property of the nonpaying owner(s) to the extent of payments made on behalf of the

nonpaying owner(s), with interest thereon at eight percent (8%), per annum, on the unpaid balance and may institute foreclosure proceedings to enforce said lien rights.

VI. Easement F

1. **Grant of Easement.** Tracts 49 and 51 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as an Ingress and Egress Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement F shall be a private road, for ingress to and egress from Tracts 49 and 51, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Common Repair and Maintenance.** The cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to that portion of the private road located within the boundaries of Easement F, shall be allocated as follows:

Each of the grantees, owners, successors and/or assigns of Tracts 49 and 51 shall be responsible for fifty percent (50%) of such costs.

3. **Approval and Authorization for Work.**

A. Prior to any repair, maintenance, construction or reconstruction of the portion of the private road located within Tracts 49 and 51 for which the respective owners, grantees, successors and/or assigns of the foregoing Tracts will be in part responsible, an estimate shall be obtained for such repair, maintenance, construction or reconstruction and submitted to the owners of such Tracts for their review. If any owner of Tracts 49 or 51 is dissatisfied with such estimate, then no work shall be commenced for thirty (30) days following delivery of the initial estimate, during which period the dissatisfied owner or owners shall have the right to obtain additional estimates from reputable contractors. At the end of the thirty (30) day period, the owners shall execute a contract based on the lowest estimate obtained. The signature of either owner of Tracts 49 or 51 shall be sufficient to bind all owners.

B. In the event of any bona fide emergency, as hereinafter defined, a Tract owner may contract for repairs to be performed without prior notice to the other owners and such contract shall be binding upon all owners, the same as if executed by or contracted by all owners. An emergency for purposes of this Declaration shall be defined as a situation in which essential services will be denied to any owner if repairs are not made immediately.

C. The foregoing notwithstanding, so long as the Developer owns any of Tracts 49 or 51, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the portion of the private road benefitting Tracts 49 or 51 in its sole discretion, and the owners of the Tracts shall be responsible for their respective shares of such costs.

4. **Payment of Approved Work.** Each owner shall pay their respective share within ten (10) days of receipt of the invoice from the contractor that performed the work. If the owner of any Tract fails to pay any amount which they are obligated to pay under this Declaration for repair, maintenance, construction or reconstruction or returning the premises to its original condition following repair, maintenance, construction or reconstruction, then in such event, the paying owners may pay, but are not obligated to do so, the amount owed by the nonpaying owner(s) and the paying owner(s) shall, in addition to any rights and remedies at law, be subrogated to the lien rights granted to third party contractors by statute or, in addition thereto, shall have a lien by virtue of this Declaration against the property of the nonpaying owner(s) to the extent of payments made on behalf of the

nonpaying owner(s), with interest thereon at eight percent (8%), per annum, on the unpaid balance and may institute foreclosure proceedings to enforce said lien rights.

VII. General Provisions Applicable to Easements A Through F, Inclusive

1. **Use of the Easements.** The owners of the Tracts shall refrain from prohibiting, restricting, limiting or in any manner interfering with normal ingress and egress and use by any of the other owners over the Easements as described herein. Normal ingress and egress shall include use by family, guests, invitees, tradesmen and others bound to or returning from any of the benefitted Tracts. No recreational use of the Easements is permitted. By way of example, the Easements shall not be used for the recreational operation of dirt bikes, ATVs or other off-road vehicles. Recreational horseback riding or other recreational use of animals is not permitted upon the Easements, however, animals may be used for ordinary ingress and egress. The Easements described herein may not be used for, or in connection with, any commercial mining, logging, or other commercial enterprise. Provided, however, that if subsurface mineral rights in the Development were severed from surface rights prior to the date of this Declaration, then any parties having an interest in those subsurface rights shall not be restricted from using any access easements that existed prior to the date of this Declaration.

2. **Damage.** In the event any of the Easements are damaged by construction equipment in connection with the installation of public and/or private utilities for the benefit of a particular Tract or are damaged by equipment in connection with construction on a particular Tract, then the owner of the Tract benefiting from such utilities or construction or other such work shall be responsible for the damage and shall be obligated to promptly repair the Easement at the owner's expense and shall hold the owners of the other Tracts harmless from any liability in connection with such damage or repairs. Any owner that negligently or intentionally causes damage to any portion of the Easements shall be obligated to promptly repair the Easement at that owner's expense and shall hold the owners of the other Tracts harmless from any liability in connection with such damage or repairs.

3. **Successors and Assigns.** This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors, and assigns.

4. **Entire Understanding of the Parties.** This Declaration represents the entire understanding of the parties with respect to the matters contained herein and shall not be amended, altered or changed except by instrument in writing executed by all of the owners who would be affected by any such amendment, alteration or change.

5. **Enforcement.** Means of enforcement of the provisions contained herein shall include, but not be limited to, injunctive procedures. The foregoing declarations and covenants may be enforced by the following:

- A. As to Easement A, any owner of any interest in Tracts 11, 12, 46 and 47 of Mountain View Farms subdivision located in Owsley County, Kentucky, as shown on the plat recorded in Plat Book _____, Page _____ of the Owsley County, Kentucky Clerk's records (the "Subdivision"), his/her/its heirs, executors, administrators, successors or assigns;
- B. As to Easement B, any owner of any interest in Tracts 14 and 15 of the Subdivision, his/her/its heirs, executors, administrators, successors or assigns;
- C. As to Easement C, any owner of any interest in Tract 16 of the Subdivision, his/her/its heirs, executors, administrators, successors or assigns;
- D. As to Easement D, any owner of any interest in Tracts 19, 20, and 42 of the Subdivision, his/her/its heirs, executors, administrators, successors or assigns;

- E. As to Easement E, any owner of any interest in Tracts 31 and 32 of the Subdivision, and any owner, beneficiary, or interest holder in the Cemetery, and their heirs, executors, administrators, successors or assigns; and
- F. As to Easement F, any owner of any interest in Tracts 49 and 51 of the Subdivision, his/her/its heirs, executors, administrators, successors or assigns.

6. **Recording** – Because of the property rights conveyed herein, this Declaration shall be recorded with the **Owsley County Clerk's office**.

(THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the undersigned hereby sets its hand this ____ day of _____,
2023.

DGS DEVELOPMENT, LTD.
A Kentucky Limited Partnership

By: Schell Management, Inc.
A Kentucky Corporation
Its General Partner

By: _____
Jay Q. Schell
Its Authorized Representative

COMMONWEALTH OF KENTUCKY

COUNTY OF _____

The foregoing instrument was acknowledged before me, a Notary Public, by DGS Development, Ltd., a Kentucky limited partnership, by and through Schell Management, Inc., a Kentucky corporation, its General Partner, by and through Jay Q. Schell, its Authorized Representative, this ____ day of _____, 2023.

Notary Public
Print Name: _____
Commission Expires: _____
Notary ID Number: _____

This Instrument Prepared By:



Corey T. Gamm
Adams Law, PLLC, 40 West Pike Street, Covington, KY 41011 / 859-394-6200
[No Title Examination Performed by Preparer]