

## PERMANENT DRAINAGE EASEMENT AND AGREEMENT

THIS PERMANENT DRAINAGE EASEMENT AND AGREEMENT (“Agreement”) is made and entered into this 8<sup>th</sup> day of December, 2023, by and between the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, a political subdivision of the State of Colorado (hereinafter “County”), FLORIDA RIVER ESTATES HOMEOWNERS ASSOCIATION, Inc., a Colorado nonprofit corporation with a principal office street address of 494 Sortais Road, Durango, CO 81301 (hereinafter “HOA”); and RILEY AND BROOKE SEARLE, 20 Childers Lane, Durango, CO 81301 (hereinafter each and collectively, the “Grantor”);

WHEREAS, Grantor owns certain property located at 20 Childers Lane, Durango, CO 81301 also known as Lot 8 and a portion of Lot 9 of Block 6 of the Florida River Estates Resubdivision, according to the plat thereof filed for record February 5, 1965 at Reception No. 332288, County of La Plata, State of Colorado and as identified in the Special Warranty Deed recorded December 6, 2022 at Reception No. 1217794, and also known as Assessor’s Parcel No. 567108102006 (“Grantor’s Property”).

WHEREAS, work related to drainage is being and will be performed on, across and adjacent to Childers Lane, and the County and HOA have requested that Grantor grant to them a permanent drainage easement for purposes of installing, operating, and maintaining a drainage culvert, over, under, upon and across a portion of Grantor’s Property. The legal description of said permanent drainage easement is attached hereto as Exhibit ‘A’ (the “Drainage Easement”); and

WHEREAS, the location of said easement is more particularly described on Exhibit ‘A’ hereto attached, the contents of which are incorporated by reference herein; and

WHEREAS, the easement is adjacent to, and will benefit the County’s and HOA’s interest in Childers Lane;

WHEREAS, Grantor agrees to grant the described easement to the County and HOA, subject to the terms and conditions herein set forth; and

WHEREAS, it is the mutual desire of the parties to set forth in writing their understanding and agreement with respect to the matters herein set forth.

NOW, THEREFORE, in consideration of the following mutual covenants, conditions and obligations, the parties hereby agree as follows:

1. **GRANT OF PERMANENT, NON-EXCLUSIVE DRAINAGE EASEMENT.**  
In consideration of the payment of \$10.00, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey to the County and HOA:

- (a). A permanent, non-exclusive drainage easement on Grantor’s Property described and depicted on Exhibit ‘A’ hereto attached (the “Drainage Easement”), for the installation and maintenance of drainage improvements over, under, upon

and across a portion of Grantor's Property. The County's and HOA's use of the Drainage Easement includes: (1) the right to excavate for, install, construct, maintain, replace, repair, and use any drainage improvements and structures, including, but not limited to back slopes, pipelines, culverts and drainage ditches, (collectively, the "Drainage Improvements"), in a manner and design as the County or HOA may deem proper and sufficient to drain water and attending debris onto, over, under, upon and across the Drainage Easement; (2) the right to drain water and debris onto, over, under, upon and across the Drainage Easement; (3) the right of entry and access to and from the Drainage Easement; (4) the right to remove or trim trees and other vegetation on the Drainage Easement that may interfere with the County's or HOA's exercise of their rights under this Drainage Easement; and (5) the right of entry and access to and from the Drainage Easement to maintain the slopes of the easement area.

(b). The right to use the Drainage Improvements and Drainage Easement shall belong to the County, HOA, their employees, officials, contractors, and invitees and all those acting by or on behalf of them.

2. **TERM.** The term of the easement granted by this Agreement shall commence upon the date that all parties have signed this Agreement and shall run in perpetuity, unless and until expressly extinguished and disclaimed by the County and the HOA in writing with approval by the Board of County Commissioners of La Plata County, Colorado.

3. **SURVEY AND COMPENSATION.** County and HOA agree to provide Grantor with the following additional consideration for the grant of the Drainage Easement:

(a). HOA shall pay Grantor the sum of \$2,000.00 within 28 days of the date of the last party to execute this Agreement.

(b). HOA shall provide Grantor with an improvement location certificate survey for Grantor's Property within 56 days of the date of the last party to execute this Agreement. HOA shall be responsible for all costs associated with such survey.

(c). Within one year of the last party to execute this Agreement, HOA shall install a waterline under and across the Drainage Easement for Grantor's use. HOA intends to install such waterline at the time of performing excavation work within the Drainage Easement. Within 7 days of receipt of notice by Grantor, Grantor shall identify the precise location of the waterline for HOA. HOA shall be responsible for the costs of the work and materials for the waterline under and across the Drainage Easement. HOA shall not be responsible for connecting the waterline, extending the waterline, and does not warrant the installation of any work related to the waterline.

(d). County and HOA agree that the boundaries of the Drainage Easement shall be flagged prior to performing the initial work within the Drainage Easement.

(e). County shall pay Grantor the sum of \$2,500.00 within 28 days of the date of the last party to execute this Agreement.

4. **USE OF EASEMENT PREMISES.** Grantor retains all rights to Grantor's Property, including the area encumbered by this Drainage Easement, except as otherwise provided herein and provided that Grantor's exercise of such rights does not unreasonably interfere with the County's rights under this instrument. Unreasonable interference includes, but is not limited to, physically modifying any portion of the Drainage Improvements or Drainage Easement, such as altering topography, installing fences, structures or other like improvements, piling or storage of dirt, debris or other items or materials without prior written approval from the County and HOA. Grantor shall, upon written notice from the County, remove, cure and/or remedy cited interferences from the Drainage Easement that prevent or interfere with the proper use or enjoyment of the Drainage Easement. If after written notice (which may be delivered by electronic mail) and a reasonable time to act, Grantor fails to timely remove, cure and/or remedy cited interferences, the County or HOA may take such action as is necessary to remove, cure and/or remedy cited interferences at Grantor's expense and without liability to the County or HOA. HOA and Grantor acknowledge and agree that the HOA has the responsibility to maintain the Drainage Improvements and the Drainage Easement area, and the County does not have an obligation to maintain under this Agreement. Notwithstanding the foregoing, the County has the right, but not the obligation, to maintain the Drainage Improvements and Drainage Easement area and to exercise all of its rights granted herein. Any work by the County to excavate for, install, construct, maintain, replace, enlarge, repair, and use any Drainage Improvements or otherwise maintain the Drainage Easement area shall be at the HOA's sole cost and expense, and the County agrees to not perform any such work without first providing the HOA notice that work is required and allowing the HOA a reasonable time to perform such work.

5. **RUNNING OF BENEFITS AND BURDENS.** All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants, and personal representatives of the parties to this Agreement.

6. **OWNERSHIP.** Grantor covenants that it is the owner of Grantor's Property, that it has the right to convey the Drainage Easement, and that title to the Drainage Easement is free and clear of any and all encumbrances of record which may interfere with the rights granted herein, or, if the property is not free and clear of encumbrances, the written consent to, subordination and/or approval of this Agreement has been duly obtained from such encumbrance holders. Grantor hereby warrants and agrees to defend the County's and HOA's title in and right to use the Drainage Easement as against others who may claim otherwise.

7. **RECORDATION.** This Agreement shall be recorded in the office of the La Plata County Clerk and Recorder by the County within thirty (30) days of the date that the Agreement has been signed by all parties.

8. **RELATIONSHIP OF PARTIES.** Nothing contained in this Agreement shall be construed to create any partnership, joint venture, or agency relationship between the Parties for any purpose, action, or transaction, including those related to the performance of this Agreement.

9. **INDEMNIFICATION.** HOA shall indemnify and save harmless the County from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description that are caused by, arise from, or on account of the construction and installation of

the Drainage Improvements and subsequent maintenance of the same or exercise of rights under this Agreement within the Drainage Easement area. This indemnification shall not apply to claims arising from the negligent acts of the County. HOA shall pay any judgment rendered against the County on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the County defending such suit, action, or claim. The County shall, within fifteen (15) days after being served with any such claim, suit, or action, notify the HOA of its reliance upon this indemnification and provide HOA with a copy of all documents pertaining to the claim or cause of action. The HOA may provide proper legal representation for the County in said action provided such representation is approved by the County, in which case the HOA shall not be responsible for any additional legal fees incurred by the County. The County agrees that the HOA may also, on its own behalf, become a party to any such action and the County agrees to execute any documents as may be necessary to allow the HOA to be a party.

HOA shall indemnify and save harmless Grantor from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description that are caused by, arise from, or on account of the HOA's construction and installation of the Drainage Improvements and its subsequent maintenance of the same or exercise of rights under this Agreement within the Drainage Easement. This indemnification shall not apply to claims arising from the negligent acts of Grantor.

10. **INSURANCE.** HOA will procure and maintain, at its own cost and expense, the minimum insurance set forth below. HOA shall furnish certificates of insurance evidencing insurance, including copies of additional insured, waivers of subrogation and notice of cancellation endorsements or coverage forms providing this coverage. The bankruptcy, insolvency or denial of coverage by the insurance company shall not exonerate the Licensee from liability. HOA shall procure and maintain commercial general liability insurance with contractual liability coverage insuring HOA and the County from all claims, demands or actions for injury or death or property damage in or about the Drainage Improvements and Drainage Easement area in amounts which are from time-to-time reasonably required by the County. The insurance maintained by HOA as required by this Agreement shall be primary to any insurance of or available to the County; provide a waiver of subrogation in favor of the County; name the County as an additional insured; and be endorsed to provide the County with a thirty (30) day Notice of Cancellation for reasons other than nonpayment of premium, and a ten (10) day Notice of Cancellation for the reason of nonpayment of premium. Such endorsements shall be attached to the certificate of insurance. If any insurer does not make available such endorsement(s), as an alternative, HOA or its insurance agent or broker shall provide a written statement that the responsible party will endeavor to provide the required Notices of Cancellation. Acceptance of such alternative notice is subject to the sole discretion of the County.

## 11. **GENERAL PROVISIONS.**

A. **Binding Effect.** All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants, and personal representatives of the parties to this Agreement. The County's or HOA's failure to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the County's or HOA's

failure in any one or more instances to exercise any option, privilege, objection or right, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by the County or HOA of any default hereunder shall in any manner be construed as constituting a waiver of such default.

B. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties to confer a usable right of enjoyment on the County and HOA is carried out.

C. Notice. All notices concerning this Agreement shall be in writing and sent by U.S. mail to the addresses provided for in this Agreement. Any party may lodge written notice of change of address with the other. Notice to each party is currently provided as follows:

Grantor:  
Riley and Brooke Searle  
20 Childers Lane  
Durango, CO 81301  
Email: SearleRiley@gmail.com

County:  
Attn: Director of Public Works  
La Plata County  
1365 S. Camino del Rio  
Durango, CO 81303  
[JDavis@lpcgov.org](mailto:JDavis@lpcgov.org)

With a copy to:

Attn: County Attorney  
La Plata County  
1060 E. Second Ave., Suite 140  
Durango, CO 81301  
[powell@lpcattorney.org](mailto:powell@lpcattorney.org)

HOA:  
Attn: President  
Florida River Estates Home Owners Association  
PO Box 456  
Durango, CO 81301  
Email: \_\_\_\_\_

D. Governing Law; Venue. The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the applicable laws of the State of Colorado. If any legal action is necessary to enforce the terms and conditions of this

Agreement, the parties agree that the sole and exclusive jurisdiction and venue for bringing such action shall be in the state district court in La Plata County, Colorado.

E. Authorship. This Agreement's final form resulted from review and negotiations among the parties and/or their attorneys, and no part of this Agreement shall be construed against any party on the basis of authorship.

F. Signatory's Authority. Each person signing this Agreement in a representative capacity expressly represents that the signatory has the subject party's authority to so sign and that the subject party will be bound by the signatory's execution of this Agreement. Each party expressly represents that except as to approval specifically required by this Agreement, such party does not require any third party's consent to enter into this Agreement, including the consent of any spouse, insurer, assignee, licensee, secured lender, or regulatory agency, or that if such consent is required, it has been duly obtained in writing.

G. Attorney's Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties will recover reasonable attorney's fees (including, without limitation, all such fees incident to appeals) incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

H. No Third-Party Beneficiaries. No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the Drainage Improvements.

I. Amendment. No amendment or modification of this Agreement shall be binding unless expressed in writing and duly executed by the parties hereto.

J. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this Drainage Easement.

K. Counterparts. This Agreement may be executed in several counterparts, each of which taken together shall constitute the Agreement.

L. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

In witness whereof Grantor and the County have hereunto set their hands and seals as set forth below.

GRANTORS:

By: *Riley Searle*  
Riley Searle

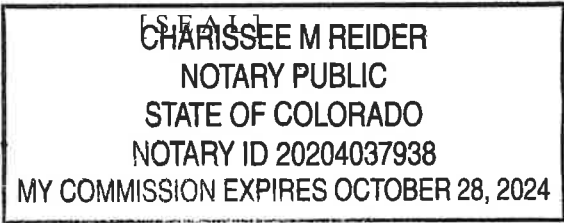
STATE OF Colorado )  
 ) ss.  
COUNTY OF La Plata )  
county

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of December, 2023, by **Riley Searle**.

Witness my hand and official seal.

*Charissee Reider*  
Notary Public

My commission expires: 10-28-24



By: *Brooke Searle*  
Brooke Searle

STATE OF Colorado )  
 ) ss.  
COUNTY OF La Plata )  
county

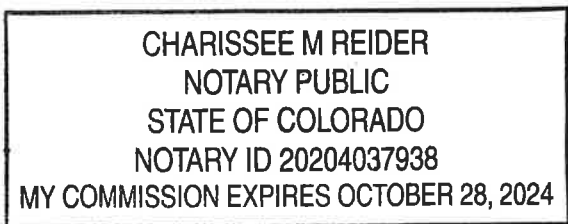
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of December, 2023, by **Brooke Searle**.

Witness my hand and official seal.

*Charissee Reider*  
Notary Public

My commission expires: Oct-28, 2024

[ S E A L ]



**BOARD OF COUNTY COMMISSIONERS  
OF LA PLATA COUNTY, COLORADO**

By: *Noel Stevens*  
Noel Stevens, La Plata County Manager

STATE OF COLORADO    )  
                                  ) ss.  
County of LA PLATA    )

The foregoing instrument was acknowledged before me this 8 day of December, 2023, by Noel Stevens as County Manager for La Plata County, Colorado.

Witness my hand and seal.

*Logan Kinser*  
Notary Public

LOGAN NICOLE KINSER  
Notary Public  
State of Colorado  
Notary ID # 20214025499  
My Commission Expires 06-28-2025

**FLORIDA RIVER ESTATES  
HOMEOWNERS ASSOCIATION, INC., a  
Colorado nonprofit corporation**

By: *John P. Bernazzani*  
Printed name: JOHN P. BERNAZZANI  
Title: PRESIDENT

STATE OF COLORADO    )  
                                  ) ss.  
County of LA PLATA    )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of December, 2023, by Charissee Reider as LPC notary for the Florida River Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and seal.

*Charissee Reider*  
Notary Public

CHARISSEE M REIDER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20204037938  
MY COMMISSION EXPIRES OCTOBER 28, 2024

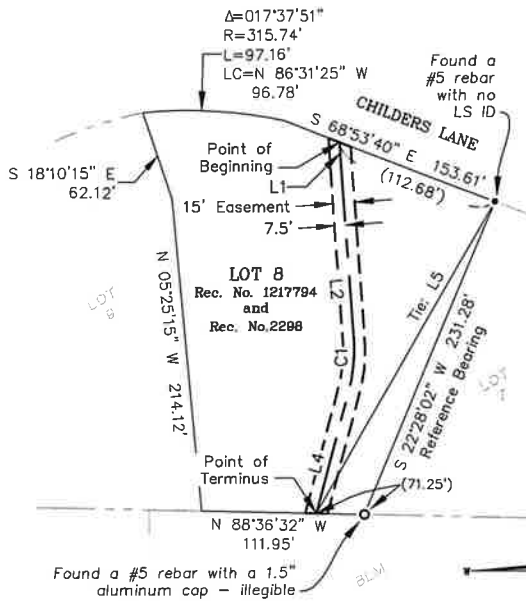
[END OF SIGNATURES]



Exhibit A  
Drainage Easement

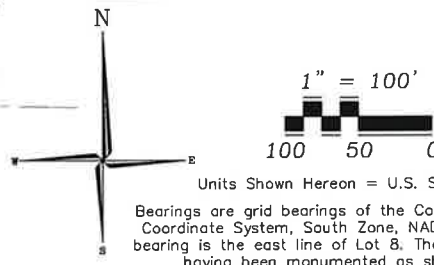
**EXHIBIT A  
DRAINAGE EASEMENT  
LOT 8, BLOCK 6, FLORIDA RIVER ESTATES RESUBDIVISION  
SEARLE, RILEY & BROOK**

LOCATED IN OF SECTION 8, T 35 N, R 8 W, N.M.P.M., LA PLATA COUNTY, COLORADO



LINE TABLE		
LINE	BEARING	LENGTH
L1	S 03°01'02" E	14.66'
L2	S 04°11'31" E	120.96'
L4	S 15°00'42" W	88.01'
Tie: L5	N 29°42'02" E	245.13'

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD	LENGTH
C1	19°12'13"	100.00	33.52	S 5°24'36" W	33.36'



Bearings are grid bearings of the Colorado State Plane Coordinate System, South Zone, NAD 1983. Reference bearing is the east line of Lot 8. The ends of said line having been monumented as shown hereon.  
(Reference bearing = S 22°28'02" W)

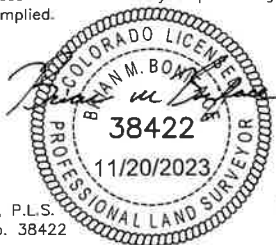
**EASEMENT DESCRIPTION:**

A fifteen (15) foot wide drainage easement, seven and one half (7.5) feet each side of a described centerline, over and across a parcel of land lying in Section 8, Township 35 North, Range 8 West, N.M.P.M., said parcel being Lot 8 of Block 6 of Florida River Estates Resubdivision according to a plat as deposited in the office of the La Plata County Clerk and Recorder, La Plata County, Colorado, Reception No. 2298 and a Special Warranty Deed as recorded at Reception No. 1217794, said easement and centerline being more particularly described as follows:

Beginning at a point on the north boundary line of said Lot 8, from which the northeast corner of Lot 8 bears S 68°53'40" E, a distance of 112.68 feet;  
Thence S 03°01'02" E, a distance of 14.66 feet;  
Thence S 04°11'31" E, a distance of 120.96 feet;  
Thence along the arc of a tangent curve to the right with a delta angle of 19°12'13" and a radius of 100.00 feet, a distance of 33.52 feet, the long chord bears S 5°24'36" W, a distance of 33.36 feet;  
Thence S 15°00'42" W, a distance of 88.01 feet; to the south boundary line of said Lot 8 and the point of terminus, from which said northeast corner of Lot 8 bears N 29°42'02" E, a distance of 245.13 feet.  
The sidelines of said easement being trimmed and extended to meet at angle points and said north and south boundary lines of Lot 8.  
Contains 0.089 acres, more or less.

**CERTIFICATE OF SURVEYOR:**

I hereby state that this easement exhibit was prepared from field notes of an actual survey performed by me or under my direct responsibility, supervision and checking, and from documents recorded in the Office of the La Plata County, Colorado, Clerk and Recorder, and that, in my professional opinion, they are true and correct to the best of my knowledge, belief and information based on the standards of care of Professional Land Surveyors practicing in the State of Colorado. This survey is not a guaranty or warranty, either expressed or implied.



Brian M. Boniface, P.L.S.  
Colorado Registration No. 38422

11/20/2023  
Date

**NOTICE:**

According to the laws of the State of Colorado, any legal action based upon any defect in this survey must commence within three years after such defect was first discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

 136 ROCK POINT DRIVE PO BOX 37 DURANGO, COLORADO 81302 970.247.1125	EXHIBIT A DRAINAGE EASEMENT LOT 8, BLOCK 6, FLORIDA RIVER ESTATES RESUBDIVISION SEARLE, RILEY & BROOK	1 OF 1
	PREPARED BY: [Signature] DATE: 11/20/2023 SCALE: AS SHOWN SHEET: 1 OF 1	Goff Engineering & Surveying, Inc. expressly reserves the copyright and other property rights in these plans. These plans are not to be changed or copied in any form or manner whatsoever nor are they to be subject to any third party without the written permission and consent of Goff Engineering & Surveying, Inc.