

PRIVATE DETENTION BASIN MAINTENANCE AGREEMENT

This PRIVATE DETENTION BASIN MAINTENANCE AGREEMENT (Agreement) is made by and between THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (County), SAMUEL FRANK SCHONINGER and ROMDOW INC, a Colorado Corporation ("Developer"), and HIGH PINES OWNER'S ASSOCIATION, INC (Association), a Colorado nonprofit corporation. The above occasionally be referred to herein singularly as "Party" and collectively as "Parties"

Recitals

1 WHEREAS, Developer is the owner of certain real estate (the High Pines Patio Homes subdivision) in El Paso County, Colorado, which property is legally described on "Schedule A"

2. WHEREAS, Developer desires to plat and develop on the Property a subdivision to be known as HIGH PINES PATIO HOMES

3 WHEREAS, the development of this subdivision will substantially increase the volume of water runoff from the property, and therefore it is in the interest of public health, safety, and welfare for the County to condition approval of the subdivision on Developer's promise to construct adequate drainage and water runoff control facilities in the subdivision; and,


4 WHEREAS, Chapter V, Section 49.2 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133 (1), Colorado Revised Statutes, 2000, as amended requires the County to condition approval of all subdivisions on a developer's promise to so construct adequate drainage and water runoff control facilities in subdivisions and,

5 WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer's promise to maintain a subdivision's drainage facility in the event the County does not assume such responsibility, and,

6. WHEREAS, developers in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions, which basins, while effective, are less expensive for developers to construct than other methods of providing drainage and water runoff control, and,

7 WHEREAS, Developer and the Association desire to construct detention basins as the means for providing adequate drainage and water runoff control in the Subdivision, and,

J. Patrick Kelly	El Paso Cty., CO	200154181
12/22/2000	11:27	
Doc	\$0.00	Page
Rec	\$50.00	1 of 10



8 WHEREAS, the Association shall be charged in the Subdivision's Covenants with the duty of maintaining all common areas and common structures within the Subdivision, including the detention basin, and,

9. WHEREAS, it is the County's experience that subdivision developers and homeowner's associations historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins, and that these detention basins, when not so properly cleaned, maintained, and repaired, threaten the public health, safety, and welfare, and,

10 WHEREAS, the County, in order to protect the public health, safety, and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins when developers and homeowner's associations have failed in their responsibilities, and therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain, and repair the detention basins in this subdivision, and,

11. WHEREAS, the County conditions approval of this Subdivision on the Developer and the Association's promise to so construct these detention basins, and conditions approval on the Associations's promise to reimburse the County in the event the burden falls on the County to so clean, maintain, and/or repair the detention basins in this Subdivision; and,

12. WHEREAS, the County could condition subdivision approval on the Developer's and Association's promise to construct a different and more expensive drainage and runoff control system than that proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance, and repair expenses falling on the County, however, the County is willing to forego such right upon the performance of the Developer and the Association's promises contained herein, and,

13 WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of the Subdivision upon the Developer's grant herein of a perpetual Easement over a portion of the Subdivision for the purpose of allowing the County to periodically access, inspect and, when so necessary, to clean, maintain, and/or repair the detention basins, and,

14 WHEREAS, given that the Association could potentially avoid liability hereunder by dissolving and reforming as a different entity, and given the difficulties inherent in collecting an unsecured promise, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Developer's creation, by and through this Agreement, of a covenant running with the land upon each and every lot in the Subdivision

J. Patrick Kelly	El Paso Cty, CO	200154181
12/22/2000	11:27	
2 Doc	\$0.00	Page
Rec	\$50.00	2 of 10

Agreement

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

1 Incorporation of recitals. The Parties incorporate the Recitals above into this Agreement.

2 Covenants Running with the Land and Pro Rata Liability upon Individual Lot Owners

Developer and the Homeowner's Association agree that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in attachment "A" of the Recitals set forth above, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns, including individual lot owners within the Subdivision

However any liability imposed under this Agreement against an individual lot owner shall not be joint and several with the Developer and the Association, but shall be pro rata 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 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. The application of the Paragraph is best illustrated by the following example: Assume the following parameters: total liability is \$10,000, total number of lots in the subdivision is 100, Lot 1 is owned by persons A and B, person B also owns Lot 2. Liability is as follows: the Developer, \$10,000, the Association, \$10,000, Lot 1 is \$100.00, joint and several as to A and B, Lot 2 is \$100.00 owned solely by B. Thus person A's total liability is \$100.00 and person B's liability is \$200.00. Applying the principle that the County cannot collect more than it is owed, and assuming that the County cannot collect anything from the Developer and the Association, if the County collected the whole \$200.00 from B, then it could not collect the \$100.00 from A. Likewise, if the County collected the \$100.00 for A, then it could only collect \$100.00 from B.

Construction. Developer and the Homeowners Association agree that they shall construct on Lot 1 as indicated on final plat of the subdivision and as described below a private water runoff detention basin, consisting of two detention ponds, both on one lot (detention basins). The Developer and Homeowner's Association shall not commence construction of the detention basins until the Planning Department and the El Paso County Department of Transportation have approved in writing the plans and specifications for the

J. Patrick Kelly El Paso Cty, CO		200154181
12/22/2000	11:27	
Doc	\$0.00	Page
Rec	\$50.00	3 of 10

detention basins Failure to obtain such approval shall be a material breach of this Agreement, and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same Construction of the detention basins shall be substantially completed within one (1) year (defined as 365 days), which one year period will commence to run on the date the approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder Rough grading of the detention basin must be completed and inspected by the El Paso County Department of Transportation prior to commencing road construction

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the project, and shall have the right to seek reimbursement from the Developer and the Homeowner's Association and their respective successors and assigns, including individual lot owners in the Subdivision, for its actual costs and expenses incurred in the process of completing construction The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment cost, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the Provisions anising herein, the County shall be entitled to its damages and costs, including reasonable attorneys fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same The scope of liability therefore for the Developer, the Association, and the individual lot owners shall be as set forth in paragraph Two (2) above

The detention basins (2 ponds) shall be located on Lot 1 as identified by the drainage easements.

4 Maintenance The Developer and the Association agree for themselves, their respective successors and assigns, including individual lot owners within the Subdivision, that they will regularly and routinely inspect, clean and maintain the detention basins, and otherwise keep the same in good repair, all at their own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basin shall be planted or allowed to grow on the detention basin

5 Creation of Easement Developer and the Association hereby grant the County a non-exclusive perpetual easement upon the entire lot described above. The purpose of the easement is to allow the County to access, inspect, clean, repair and maintain the detention basins; however, the creation of the easement does not expressly, or implicitly impose on the county a duty to so inspect, clean, repair or maintain the detention basin

6. County's Rights and Obligations Any time the County determines, in

J. Patrick Kelly El Paso Cty, CO 200154181
4 12/22/2000 11:27
Doc \$0.00 Page
Rec \$50.00 4 of 10

the sole exercise of its discretion, that either detention basin is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer, the Association, and their respective successors and assigns, including the individual lot owners within the Subdivision, that the detention basin needs to be cleaned, maintained, and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem(s), the County may enter upon the property to so correct the specified problem. Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. However, this Agreement does not expressly impose on the County a duty to so inspect, clean, repair or maintain either detention basin.

7 Reimbursement of County's Costs/Covenants Running with the Land

The Developer and the Association agree and covenant, for themselves, their respective successors and assigns, including individual lot owners within the Subdivision, that they will reimburse the County for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the detention basins. However, the obligation and liability of the Developer hereunder shall only continue until such time as the Developer transfers the entire management and operation of the Association to the individual lot owners within the Subdivision. Notwithstanding the previous sentence, the Association and the individual lot owners within the Subdivision shall always remain obligated and liable hereunder, and as per the provisions of Paragraph two (2) above.

The terms actual costs and expenses shall be liberally construed in favor of the County, and shall include, but not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether the company uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the Provisions arising herein, the County shall be entitled to its damages and costs including reasonable attorney fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same. The scope of liability therefore of the Developer, the Association, and the individual lot owners shall be as set forth in Paragraph Two (2) above.

8 Contingencies of Subdivision Approval Developer's and Association's execution of this Agreement is a condition of Subdivision approval. Additional conditions of this Agreement include, but are not limited to, the following:

a. Conveyance of easements on Lot 1 from the Developer to the Association and to the County for purposes of accessing, inspecting, cleaning, maintaining, and repairing the detention basin, and recording of appropriate conveyance documents, and

J. Patrick Kelly El Paso Cty., CO 200154181
12/22/2000 11:27
Doc \$0.00 Page
Rec \$50.00 5 of 10

b. The County's receipt of a copy of the Articles of Incorporation for the Association, as filed with the Colorado Secretary of State, receipt of the Certificate of Incorporation or other comparable proof for the same from the Colorado Secretary of State; a copy of the by-laws of the Association; a copy of the organizational minutes or other appropriate document of the Association, properly executed and attested, establishing that the Association has adopted this Agreement as an obligation of the Association; and,

c. A copy of the Covenants of the Subdivision establishing that the Association is obligated to inspect, clean, maintain, and repair the detention basins; that the Association has adopted this Agreement as an obligation of the Association; and that a funding mechanism is in place whereby individual lot owners within the Subdivision pay a regular fee to the Association for, among other matters, the inspection, cleaning, maintenance, and repair of the detention basins

d. A copy of the Covenants of the Subdivision establishing that this Agreement is incorporated into the Covenants, and that such Agreement touches and concerns each and every lot within the Subdivision

The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it under the conditions of this Paragraph. The County's rejection of any documentation submitted hereunder shall mean that the appropriate condition of this Agreement has not been fulfilled

9. Distribution to Lot Purchasers: Upon the initial sale of any lot within the Subdivision, prior to closing on such sale, the Developer shall give a copy of this Agreement to the potential Buyer

10. Agreement Monitored by Planning Department: Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Planning Department. Accordingly, any and all document submissions plan approval, inspections, etc. shall be submitted to and shall be made by the Director of the El Paso County Planning Department

11. Indemnification and Hold Harmless: To the extent authorized by law, Developer and the Association agree, for themselves, their respective successors and assigns, including the individual lot owners in the Subdivision, that they will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to their respective intentional or negligent acts, errors or omissions or that of its agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and Federal environmental law and regulations), maintenance, and repair of the detention basins, and such

J Patrick Kelly El Paso Cty, CO 200154181
12/22/2000 11:27
6 Doc \$0.00 Page
Rec \$50.00 6 of 10

obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S., 2000, as amended, or as otherwise approved by law. However, the obligation and liability of the Developer hereunder shall only continue until such time as the Developer transfers the entire management and operation of the Association to the individual lot owners within the Subdivision.

12. Severability. 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 this Agreement.

13. Third Parties: 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 either the County, the Developer or the Association, their respective successors and assigns, including any individual lot owners in the Subdivision, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

14. Solid or Hazardous Wastes. Should any refuse from the detention basin be suspected or identified as solid waste and/or hazardous waste, the Developer and the Association shall take all necessary and proper steps to characterize the waste and properly dispose of it in accordance with applicable state and/or federal environmental laws and regulations, including but not limited to the following: Solid Wastes Disposal Sites and Facilities Act, Section 30-20-100.5 - 30-20-119, C.R.S. (2000) as amended, Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, et seq., as amended, Solid Waste Disposal Act, 42 U.S.C. Section 6901-6992K (2000) as amended, and federal Solid Waste Regulations 40 CFR Ch. I (2000) as amended. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid and/or hazardous waste. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid and/or hazardous waste, the Developer and the Association, but not the County shall be responsible and liable as the owner, generator, and/or transporter of said solid and/or hazardous waste.

15. Prior Agreements: This agreement and the covenants contained herein supercede and replace the agreement dated 9/15/00 and recorded at Receipt # 200111958

16. Applicable Law and Venue. 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, except that federal law may be applicable regarding solid or hazardous wastes. Venue shall be in the El Paso County Court.

IN WITNESS WHEREOF, the parties affix their signatures below

J. Patrick Kelly El Paso Cty, CO 200154181
12/22/2000 11:27
7 Doc \$0.00 Page
Rec \$50.00 7 of 10

Executed this 29th day November 2000

Romdow, Inc

By [Signature]
Samuel Frank Schoningher its President

The foregoing instrument was acknowledged before me this 29th day of Nov, 2000 by Samuel Frank Schoningher President of Romdow, Inc, a Colorado corporation

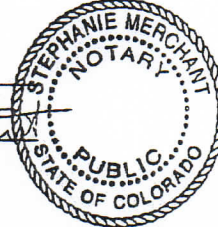
Witness my hand and official seal

My commission expires 5-5-2003

Stephanie Merchant
Notary Public

Executed this 29th day November 2000

[Signature]
Samuel Frank Schoningher



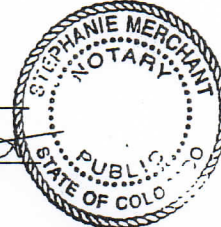
My Commission Expires 05/05/2003

The foregoing instrument was acknowledged before me This 29th day of Nov, 2000 by Samuel Frank Schoningher

Witness my hand and official seal

My commission expires. 5-5-2003

Stephanie Merchant
Notary Public



My Commission Expires 05/05/2003

High Pines Owners Association, Inc., a Colorado nonprofit corporation.

By [Signature]
Samuel Frank Schoningher its President

The foregoing instrument was acknowledged before me this 29th day of Nov, 2000 by Samuel Frank Schoningher President of High

J. Patrick Kelly El Paso Cty, CO
12/22/2000 11:27
Doc \$0.00 Page
Rec \$50.00 8 of 10

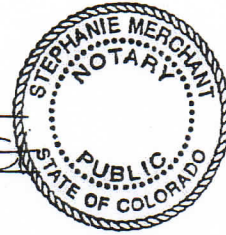
200154181

Pines Owners Association, Inc., a Colorado nonprofit corporation

Witness my hand and official seal.

My commission expires 5-5-2003

Stephanie Merchant
Notary Public



Executed this 29th day of June, 2000.

My Commission Expires 05/05/2003

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

[Signature], Chairperson
Board of County Commissioners of El Paso County

Attest:

[Signature]
Deputy Clerk

The foregoing instrument was acknowledged before me this ____ day of ____, 2000 by ____, Chairperson, Board of County Commissioners of El Paso County, Colorado, as Attested to by ____, Deputy Clerk to the Board of County Commissioners of El Paso County, Colorado

Witness my hand and official seal

My commission expires. _____

Notary Public

Approved as to Content and Form:

M. Cole Immons
Assistant County Attorney

J. Patrick Kelly El Paso Cty, CO
12/22/2000 11:27
Doc \$0.00 Page
Rec \$50.00 9 of 10

200154181

Schedule A

PROPERTY DESCRIPTION

That Samuel Frank Schoninger, individual, being the owner of Tract A and Lots 13, 56, 57 and 58, and that portion of Kenneth Lainer Drive (60' r.o.w.) adjacent to said Lots 56 and 57, HIGH PINES (Reception No. 200111554 El Paso County, Colorado records), in El Paso County, Colorado,

Has caused said lots and street and all easements thereon to be VACATED, and that no public expenses have been spent on said vacation and that no loss of access to any properties will be caused by said vacation,

And that Samuel Frank Schoninger, individual, and ROMDOW, INC being the owners of the following described tract of land to wit:

That part of the Northeast One-Quarter of Section 2, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado described as follows:

Commencing at the Northeast corner of said Section 2, thence S89°06'54"W on a straight line between the Northeast and Northwest corners of said Section 2, 1320.00 feet, thence S00°53'12"W, 30.00 feet to the Northeast corner of a tract described in Book 5852 at Page 323 (said El Paso County records), said point being the Point of Beginning of the parcel to be described, thence S89°06'54"W on a line 30.00 feet Southerly from and parallel to said straight line and along said tract, 1005.68 feet to the Northwest corner of said tract, thence S00°02'24"W along said tract, 270.30 feet to the Southwest corner of said tract and a point on the Northerly line of HEIGHTS FILING NO. 2 (Plat Book E-5, Page 228, said records), thence N89°05'50"E along said tract and said Northerly line, 678.20 feet to the Northeast corner of said FILING NO. 2, said point also being the Northwest corner of Lot 16, HIGH PINES (Reception No. 200111554, said records), thence N89°06'34"E along said tract and the Northerly line of Lots 16, 15 and 14, 331.85 feet to the Southeast corner of said tract; thence N89°06'54"E along the Northerly line of said Lot 14, 90.08 feet to the Northeast corner of said Lot 14, thence S00°02'06"W along the Easterly line of said Lot 14, 184.58 feet to a point on the Northerly right-of-way line of a sixty (60) foot wide right-of-way as platted in said HIGH PINES, thence N89°57'54"E along said Northerly right-of-way line, 102.23 feet to a point on the Northwestern right-of-way line of Kenneth Lainer Drive (60' r.o.w.) as platted in said HIGH PINES (the following three (3) courses are along the Northwestern and Northerly right-of-way line of said Kenneth Lainer Drive), 1) Northerly along the arc of a curve to the right, said curve having a central angle of 86°33'47", a radius of 230.00 feet, an arc distance of 347.49 feet (the chord to said curve bears N45°50'00"E, a distance of 315.37 feet), 2) N89°06'54"E, 259.43 feet, 3) along the arc of a curve to the right, said curve having a central angle of 17°43'24", a radius of 230.00 feet, an arc distance of 71.15 feet to a point on the Westerly right-of-way line of High Pines Drive (60' r.o.w.) as platted in said HIGH PINES (the following two (2) courses are along said Westerly right-of-way line); 1) Northerly along the arc of a curve to the left, said curve having a central angle of 26°06'21", a radius of 270.00 feet, an arc distance of 123.02 feet (the chord to said curve bears N12°10'05"E, a distance of 121.96 feet), 2) N00°53'06"W, 102.11 feet to a point on the Southerly right-of-way line of County Line Road (r.o.w. width varies) as platted in said HIGH PINES, thence S89°06'54"W along said Southerly right-of-way line, 775.92 feet to a point on a Westerly boundary line of said HIGH PINES, thence N00°53'13"W along said Westerly line, 30.00 feet to the Point of Beginning,

Containing 10.795 acres, more or less,

TOGETHER WITH

That part of the Northeast One-Quarter of Section 2, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, described as follows:

Commencing at the Northeast corner of said Section 2, thence S89°06'54"W on a straight line between the Northeast and Northwest corners of said Section 2, 368.51 feet, thence S01°09'15"W, 60.04 feet to a point on the Southerly right-of-way line of County Line Road (r.o.w. width varies) as platted in HIGH PINES (Reception No. 200111554, El Paso County, Colorado records) and the Point of Beginning of the parcel to be described, said point also being on the Easterly line of said HIGH PINES, thence S01°09'15"W along said Easterly line, 941.75 feet to the Northeast corner of Lot 55, said HIGH PINES, thence S89°03'54"W along the Northerly line of said Lot 55, 212.09 feet to a point on the Easterly right-of-way line of said High Pines Drive (60' r.o.w.) as platted in said HIGH PINES (the following five (5) courses are along said Easterly right-of-way line), 1) N00°02'06"E, 478.52 feet, 2) along the arc of a curve to the right, said curve having a central angle of 27°02'38", a radius of 270.00 feet, an arc distance of 127.44 feet; 3) N27°04'44"E, 94.83 feet, 4) along the arc of a curve to the left, said curve having a central angle of 27°57'50", a radius of 330.00 feet, an arc distance of 161.06 feet; 5) N00°53'06"W, 102.11 feet to a point on said County Line Road's Southerly right-of-way line, thence N89°06'54"E along said Southerly right-of-way line, 123.43 feet to the Point of Beginning;

Containing 4.058 acres, more or less, with a combined acreage of 14.854 acres, more or less

IN WITNESS WHEREOF,

The abovesigned has executed these presents this 3rd day of October, A.D., 2000


Samuel Frank Schoninger

STATE OF COLORADO
COUNTY OF EL PASO

J. Patrick Kelly El Paso Cty, CO
12/22/2000 11:27
Doc \$0.00 Page
Rec \$50.00 10 of 10

200154181

The above and foregoing statement was acknowledged before me this 22nd day of December, A.D., 2000 by Samuel Frank Schoninger.

Witness my Hand and Official Seal, Notary Public

