

APPENDIX F – STANDARD UNDERDRAIN AGREEMENT**UNDERDRAIN AGREEMENT**

THIS UNDERDRAIN AGREEMENT (herein “AGREEMENT”) is made this _____ day of _____, 2016, between **SOUTHGATE SANITATION DISTRICT**, Arapahoe and Douglas Counties, Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado (herein “DISTRICT”) whose legal address is 3722 East Orchard Road, Centennial, Colorado 80121, and **[PROPERTY OWNER]**, a [type of company] and any assigns or successors in interest (herein “DEVELOPER” whether singular or plural) whose legal address is [property owner’s legal address].

RECITALS

WHEREAS, DEVELOPER is the owner of a tract of land commonly known as **[Name of Development]** (hereinafter referred to as "PROPERTY"), located in [Arapahoe or Douglas] County, Colorado, and more particularly described on **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, for DEVELOPER’s convenience and for DEVELOPER's better enjoyment of the PROPERTY, DEVELOPER has requested permission to install and construct a private underdrain system in the same trench with sanitary sewer facilities owned and operated by, or subject to the control by DISTRICT, that will serve the PROPERTY; and

WHEREAS, the DISTRICT has determined that granting the DEVELOPER's request will be of a benefit to the future inhabitants of DISTRICT.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

1. Consent. DEVELOPER may, at DEVELOPER's sole expense and before or contemporaneously with installation of the sanitary sewer facilities intended to serve the PROPERTY, install DEVELOPER's underdrain (hereinafter "UNDERDRAIN") in the same trench with sanitary sewer lines that serve the PROPERTY. If such UNDERDRAIN is installed, DEVELOPER shall, at all times, have the obligation, enforceable at the demand of DISTRICT, to operate, maintain, repair, and replace said UNDERDRAIN as may be necessary or desirable from time to time to avoid or eliminate any adverse impact on sanitary sewer facilities, as determined by DISTRICT.

Before performing any maintenance on or repair or replacements of the UNDERDRAIN, DEVELOPER agrees to give DISTRICT at least five (5) days' written notice of the time and place where any such maintenance, repair, or replacement operations are to take place. All maintenance, repair or replacement operations shall be performed in a manner so as not to interfere with or endanger the physical condition or operation of sanitary sewer facilities.

In emergency situations, DEVELOPER need not give five (5) days' written notice before performing maintenance, repair, or replacement operations; however, DEVELOPER agrees to notify DISTRICT by telephone of emergency maintenance, repair, or replacement operations and to provide DISTRICT with written notice of the same as soon as practicable thereafter.

2. Ownership and Control. It is expressly understood and agreed that DISTRICT does not own and will not operate, manage, control, maintain, repair or replace the UNDERDRAIN contemplated herein; that DISTRICT shall have no obligation to operate, manage, control, maintain, repair, or replace the UNDERDRAIN; and that said UNDERDRAIN is and shall remain at all times private property, completely separate and apart from sanitary sewer facilities; and that DEVELOPER and its successor ,as provided below, shall own, operate, manage, control, maintain, repair and replace

the UNDERDRAIN contemplated herein. Nothing contained herein and nothing hereafter done by DEVELOPER, its successors and assigns, shall constitute a dedication of the UNDERDRAIN to DISTRICT. DISTRICT shall under no circumstances whatsoever accept the UNDERDRAIN, or be deemed to have accepted the UNDERDRAIN, as property of DISTRICT.

Notwithstanding anything contained in this AGREEMENT to the contrary, it is understood and agreed that if the physical condition or operation of sanitary sewer facilities is interfered with or endangered, or constitutes a risk to the health and safety of the public as a result of DEVELOPER's UNDERDRAIN, then in that event, DISTRICT shall have the right, but no obligation, at DEVELOPER's expense, to do whatever is reasonable and necessary under the circumstances to eliminate such condition.

3. Record Drawings. DEVELOPER agrees to furnish DISTRICT with a set of record drawings for the UNDERDRAIN the DEVELOPER installs per DISTRICT's Sanitary Sewer System Specifications.
4. Indemnification. DEVELOPER agrees to indemnify and save DISTRICT, its officers, Directors, agents, and employees harmless from and against every claim, demand, liability, cost, charge, suit, judgment, and expense of whatsoever kind or nature, including, but not limited to, interest, court costs, and attorneys' fees which DISTRICT, its officers, Directors, agents, or employees may pay or incur by reason of or which in any way arise out of: (1) this AGREEMENT, (2) the enforcement of this AGREEMENT, or (3) the UNDERDRAIN contemplated herein.

This indemnification shall extend to claims, demands, and liability for injury to persons and property and financial loss which occur off the job site as well as on, and for injury and damage to person and property and financial loss occurring after construction of the UNDERDRAIN contemplated herein, as well as for any such injury, damage, or loss occurring during the construction of the UNDERDRAIN.

5. No Reliance. DEVELOPER acknowledges that DEVELOPER has not relied upon DISTRICT to determine whether the UNDERDRAIN system and its various components will perform any certain function. DEVELOPER is relying solely upon DEVELOPER's professional engineer and contractor to: (1) prepare the design and plans for the UNDERDRAIN, (2) determine the material, specifications, and soil conditions with regard to the UNDERDRAIN, (3) incorporate DISTRICT minimum design standards as deemed necessary by DISTRICT, and (4) construct the UNDERDRAIN according to the DEVELOPER's plans and specifications.
6. Subdivision Documents. DEVELOPER agrees that the PROPERTY will be held, sold, and conveyed subject to recorded covenants, conditions and restrictions that, among other things, shall expressly:
 - a. Refer to this AGREEMENT and recite the book, page, and reception number at which said AGREEMENT is recorded in the office of the Clerk and Recorder of the County in which the PROPERTY is located;
 - b. Provide for an owners' association as part of the plan for the development of the PROPERTY, of which owner's association shall, among other things, assume and perform all of DEVELOPER's obligation hereunder, expressly including the indemnity stated in paragraph 4 above.
 - c. Permit DISTRICT to require the repair, reconstruction, replacement, or relocation of the UNDERDRAIN, or any portion thereof, if DISTRICT determines for any reason that sanitary sewer facilities are being damaged or endangered by the UNDERDRAIN;
 - d. Subordinate any easement granted to the owners' association for the operation and maintenance of the UNDERDRAIN to the rights granted to DISTRICT by recorded

easement deed or agreement, plat dedication, or platted easement for the operation and maintenance of DISTRICT's facilities;

- e. Require the owners' association to establish an adequate fund to cover the cost of predictable operation, maintenance, repair, replacement, and relocation costs, which fund shall be maintained by the assessment of sufficient fees against members of the association to satisfy said obligations;
 - f. Reaffirm that DISTRICT does not own, operate, manage, or control the UNDERDRAIN system, that the UNDERDRAIN system is private property and that DISTRICT shall not have any obligations for its operation, maintenance, repair, replacement, or relocation.
7. Continuance of Benefits and Obligations. This AGREEMENT shall inure to the benefit and shall be binding upon the successors and assigns of the parties hereto, including, but not limited to, the Grantees of the DEVELOPER. It is agreed that the conditions, covenants and restrictions, together with the owners' association referred to in paragraph 6 above, are vehicles for facilitating the performance of DEVELOPER's obligations hereunder and shall in no way supersede this AGREEMENT or relieve DEVELOPER or the Grantees of DEVELOPER from any obligation hereunder.
 8. Statement on Recorded Plat. DEVELOPER agrees that there shall be a statement on the recorded plat for the PROPERTY stating that the owners' association shall be responsible for the operation, maintenance, and repair of the UNDERDRAIN.
 9. Authority to Execute. Each person or persons executing this AGREEMENT on behalf of DEVELOPER personally warrants and covenants to DISTRICT that he or she has full and complete authority to bind the DEVELOPER in accordance with the terms of this AGREEMENT.

Special Provisions. DEVELOPER agrees that there shall be a statement on the recorded plat for the PROPERTY stating that the owner's association shall be responsible for the operation, maintenance, and repair of the UNDERDRAIN; however, PROPERTY (plat) having been previously recorded prior to this AGREEMENT, a variance to this requirement was requested by DEVELOPER to not re-record the PROPERTY plat, It is understood that the conditions referred to in paragraph 8, as described herein, remains in full effect and acknowledged as such by DEVELOPER. The variance, granted by DISTRICT, is accepted by both parties as part of this AGREEMENT.