

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 Jacks Creek Farms subdivision located in Whitley County, Kentucky, as shown on the plat recorded in Plat Book _____, Page _____ of the Whitley County, Kentucky Clerk’s records (the “Development”); and

WHEREAS, access to and from Tracts 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 in the Development is provided by virtue of an access easement as depicted on the recorded plat as a 70’ Ingress, Egress and Utility Easement for the benefit of those Tracts (“**Easement A**”); and

WHEREAS, access to and from Tracts 7, 8 and 9 in the Development is further provided by virtue of an access easement as depicted on the recorded plat as an Ingress, Egress and Utility Easement for the benefit of those Tracts (“**Easement B**”); and

WHEREAS, the Developer finds it necessary to declare these permanent easements for utilities and 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 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as the 70’ Ingress, Egress and Utility 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 the aforementioned Tracts, 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. The grantees, owners, successors and/or assigns of Tract 2 shall be responsible for five percent (5%) of the same;
- B. The grantees, owners, successors and/or assigns of Tract 3 shall be responsible for five percent (5%) of the same;
- C. The grantees, owners, successors and/or assigns of Tract 4 shall be responsible for ten percent (10%) of the same;
- D. The grantees, owners, successors and/or assigns of Tract 5 shall be responsible for ten percent (10%) of the same;
- E. The grantees, owners, successors and/or assigns of Tract 6 shall be responsible for ten percent (10%) of the same;
- F. The grantees, owners, successors and/or assigns of Tract 7 shall be responsible for ten percent (10%) of the same;
- G. The grantees, owners, successors and/or assigns of Tract 8 shall be responsible for fifteen percent (15%) of the same;
- H. The grantees, owners, successors and/or assigns of Tract 9 shall be responsible for fifteen percent (15%) of the same;
- I. The grantees, owners, successors and/or assigns of Tract 10 shall be responsible for ten percent (10%) of the same; and
- J. The grantees, owners, successors and/or assigns of Tract 11 shall be responsible for ten percent (10%) of the same.

Should any of the aforementioned Tracts be subdivided, the grantees, owners, successors, and/or assigns of the resulting tracts shall each be responsible for their pro-rata portion of maintenance costs attributable to the parent Tract based on the number tracts resulting from the subdivision.

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

A. Prior to commencement of any repair, maintenance, construction or reconstruction of the private road located within Easement A 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 the foregoing tracts 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 signatures of the owner(s) of a majority of the Tracts benefited by Easement A 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 2, 3, 4, 5, 6, 7, 8, 9, 10, or 11, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the private road lying in Easement A, in its sole discretion, and the owners of the foregoing 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 7, 8 and 9 shall be benefited by a nonexclusive, perpetual common access easement across, over and through that portion of the Development identified as the Ingress, Egress and Utility Easement as shown on the plat recorded in Plat Book _____, Page _____, which Easement B shall be a private driveway, for ingress to and egress from Tracts 7, 8 and 9, and for the construction, installation, repair, maintenance and inspection of public and/or private utilities and appurtenant structures and features.

2. **Construction of Driveway.** As of the date of this Declaration, a private driveway has not been constructed within Easement B. If such driveway is constructed in the future, the cost of such construction shall be allocated so that the grantees, owners, successors and/or assigns of Tracts 7, 8 and 9 shall be responsible for one-third (1/3) of such costs.

3. **Repair and Maintenance.** The cost of repair, maintenance, or reconstruction, including the costs of returning the premises to the prior condition, with respect to the private driveway located within Easement B shall be allocated as follows: Each of the grantees, owners, successors and/or assigns of Tracts 7, 8 and 9 shall be responsible for one-third (1/3) of such costs.

4. **Approval and Authorization for Work.**

A. Prior to construction of the private driveway or any subsequent repair, maintenance, construction or reconstruction of the driveway 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 construction, repair, maintenance, or reconstruction and submitted to the owners of such Tracts for their review. If any owner of Tracts 7, 8 and 9 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 signatures of the owner(s) of any two of Tracts 7, 8 and 9 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 7, 8 and 9, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the private driveway in its sole discretion, and the owners of the Tracts shall be responsible for their respective shares of such costs.

5. **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. General Provisions Applicable to Easements A and B

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 Tracts. No recreational use of the Easement is permitted. By way of example, the Easement 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 the parties hereto.

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 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Jacks Creek Farms subdivision located in Whitley County, Kentucky, as shown on the plat recorded in Plat Book _____, Page _____ of the Whitley County, Kentucky Clerk's records, his/her/its heirs, executors, administrators, successors or assigns;

B. As to Easement B, any owner of any interest in Tracts 7, 8 and 9 of Jacks Creek Farms subdivision located in Whitley County, Kentucky, as shown on the plat recorded in Plat Book _____, Page _____ of the Whitley County, Kentucky Clerk's records, 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 **Whitley County Clerk's office**.

IN WITNESS WHEREOF, the undersigned hereby sets its hand this _____ day of January, 2022.

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 _____, 2022.

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

This Instrument Prepared By:



Corey T. Gamm
Adams Law, PLLC, 40 West Pike Street, P.O. Box 861, Covington, Kentucky 41012-0861 / (859) 394-6200
[No Title Examination Performed by Preparer]