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

PRIVATE MAINTENANCE AGREEMENT

WHEREAS, **DGS DEVELOPMENT, LTD., a Kentucky limited partnership** (hereinafter referred to as "Developer") is the owner and developer of the Flora Ridge Farms subdivision located in Nicholas County, Kentucky, as shown on the plat recorded in Plat Book C, Page 21 of the Nicholas County Clerk's records (the "Development"); and

WHEREAS, access to and from Lots 5 though 9, inclusive, in the Development is provided by virtue of a right of way depicted on the recorded plat as a 40.0' Right of Way for the benefit of Lots 5 through 9, inclusive (the "Private Drive").

WHEREAS, the Developer finds it necessary to provide terms for the use and maintenance of said Private Drive.

NOW, THEREFORE, Developer hereby declares the right of way as shown on the plat recorded in Plat Book C, Page 21 and hereby sets out terms for maintenance and use of the same.

1. **Common Repair and Maintenance**. Each of the grantees, owners, successors and/or assigns of Lots 5, 6, 7, 8, and 9 in the Development shall be responsible for equal shares of the cost of repair, maintenance, construction or reconstruction, including the costs of returning the premises to the prior condition, with respect to the Private Drive. Should any Lot be subdivided, the grantees, owners, successors, and/or assigns of the resulting tracts shall each be responsible for their pro-rata portion of the maintenance costs attributable to the parent Lot based on the number of tracts resulting from the subdivision.

2. **Approval and Authorization for Work**.

A. Prior to any repair, maintenance, construction or reconstruction of the Private Drive for which the respective owners, grantees, successors and/or assigns of the Lots will be in part responsible, an estimate shall be obtained for such repair, maintenance, construction or reconstruction and submitted to the owners of the Lots for their review. If any owner of any of the Lots 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 at least three (3) Lots, or a simple majority of Lots in the event any Lot is further subdivided, shall be sufficient to bind all owners.

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B. In the event of any bona fide emergency, as hereinafter defined, a Lot 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 Agreement 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 Lots 5 through 9, it shall be entitled to perform, or have performed, any repair, maintenance, construction or reconstruction of the Private Drive in its sole discretion, and the owners of the Lots shall be responsible for their respective shares of such costs.

3. **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 Lot fails to pay any amount which they are obligated to pay under this Agreement, then in such event, the paying owner(s) 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 Agreement 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.

4. **Use of the Easement**. The owners of the Lots 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 Private Drive described herein. Normal ingress and egress shall include use by family, guests, invitees, tradesmen and others bound to or returning from the Lots. No recreational use of the Private Drive is permitted. By way of example, the Private Drive 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 Private Drive, however, animals may be used for ordinary ingress and egress. The Private Drive 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 Agreement, then any parties having an interest in those subsurface rights shall not be restricted from using any access easements or roads that existed prior to the date of this Agreement.

5. **Damage**. In the event the Private Drive is damaged by equipment in connection with construction on a particular Lot, then the owner of the Lot benefiting from such construction or other such work shall be responsible for the damage and shall be obligated to promptly repair the Private Drive at the owner's expense and shall hold the owners of the other Lots harmless from any liability in connection with such damage or repairs. Any owner that negligently or intentionally causes damage to any portion any of the Private Drive shall be obligated to promptly repair such damage or repairs.

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

7. **Entire Understanding of the Parties**. This Agreement 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.

8. **Enforcement.** Means of enforcement of the provisions contained herein shall include, but not be limited to, injunctive measures. The foregoing declarations and covenants may be enforced by any owner of any interest in Lots 5 though 9, inclusive, of Development, his/her/its heirs, executors, administrators, successors or assigns.

9. **Termination**. In the event the Private Drive is accepted by Nicholas County as a county road to be maintained by the County, then upon such acceptance, this Agreement shall terminate and be of no further force or effect.

10. **Recording** – Because of the property rights conveyed herein, this Agreement shall be recorded with the **Nicholas County Clerk's office**.

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IN WITNESS WHEREOF, the undersigned hereby sets its hand this 23 day of October, 2023.

DGS DEVELOPMENT, LTD.
A Kentucky Limited Partnership

By: SCHELL MANAGEMENT, INC.
A Kentucky Corporation (its General Partner)

By: Jay L Schell
JAY SCHELL (its Authorized Representative)

COMMONWEALTH OF KENTUCKY

COUNTY OF Kenton

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 SCHELL**, its Authorized Representative, this 23 day of October, 2023.

Maura Russell
Notary Public
Print Name: Maura Russell
Comm. Expires: 2/10/2024
I.D. Number: KYNP2290

Maura Russell
NOTARY PUBLIC
State at Large, Kentucky
ID # KYNP2290
My Commission Expires
February 10, 2024

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]

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RECORDED:November 03,2023 02:03:00 PM
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DEPUTY CLERK: DEPUTY CLERK
COUNTY: NICHOLAS COUNTY
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