

EASEMENT AGREEMENT

This Easement Agreement (the “Agreement”) is made and entered into this ____ day of _____, 2020, by and between WASHOE COUNTY, a political subdivision of the State of Nevada (“County”) and Mayberry Gardens, LLC, a Nevada limited liability company (“Grantee”).

WITNESSETH:

WHEREAS, County owns certain real property located in Washoe County, Nevada, known currently as Assessor’s Parcel Number 009-742-01, commonly known as Betsy Caughlin Donnelly Park (the “County Property”), a portion of which comprises the “Storm Drain Easement” as described in the attachment to Exhibit “1” (Easement Deed), attached hereto and incorporated herein;

WHEREAS, Mayberry Gardens, LLC is a private entity responsible for the development of land in the area and owner of real property located in Washoe County, known currently as Assessor’s Parcel Number 009-742-02 (“Grantee Property”);

WHEREAS, Mayberry Gardens, LLC desires from the County a 320 sf grant of a permanent, non-exclusive stormwater drainage easement (“Storm Drain Easement”) for the construction and maintenance of stormwater drainage facilities and County desires to grant the Storm Drain Easement;

NOW, THEREFORE, in consideration of the premises and mutual promises set forth below, County and Mayberry Gardens, LLC covenant and agree as follows:

1. Easement Mitigation. For and in consideration of the future Easement Mitigation (to include the installation of water and electrical lines for use on the County Property to serve the public interest), County hereby conveys to Mayberry Gardens, LLC and Mayberry Gardens, LLC accepts from County, the Storm Drain Easement more particularly described in Exhibit “1” (Easement Deed) attached hereto and incorporated herein (in accordance with the terms, and subject to the conditions of this Agreement). County and Mayberry Gardens, LLC agree that the Storm Drain Easement shall be located on the County Property as stated in Exhibit “A” to the Easement Deed.

2. Easement Utilization. The Storm Drain Easement shall be a permanent, non-exclusive easement for the area described in Exhibit “A” to the Easement Deed, used to access, construct, alter, maintain, inspect, repair, reconstruct, and operate storm drainage facilities as described in the Easement Deed (Exhibit “1”).

2.1 No Unreasonable Interference. County shall not (a) erect or place or permit to be erected or placed any buildings or improvements on the Storm Drain Easement that are inconsistent with or unreasonably interfere with Grantee’s full use and enjoyment of the rights granted herein; or (b) grant any other easements pertaining to or

make any other use of the Storm Drain Easement that is inconsistent with or interferes with Grantee's full use and enjoyment of the rights granted herein.

Grantee acknowledges by acceptance of the Storm Drain Easement that County's present and future public recreational uses of, and practices on, the surface area of the County Property are compatible with the purpose of this Storm Drain Easement. County reserves the right to use and enjoy the County Property and surface area of Storm Drain Easement in accordance with those present parks and recreational practices and uses now and in perpetuity. County and Grantee recognize that the future uses of, and practices on, the surface of the County Property may change over time as a result of development and the public's need for recreation. Grantee acknowledges that the County owns this property and that Grantee's use of the Storm Drain Easement shall be subject to and not interfere with any existing restrictions placed on the County Property.

3. Easements Locations. County and Mayberry Gardens, LLC agree that the Storm Drain Easement shall be located on the County Property as stated in Exhibit A to the Easement Deed, which is attached hereto as Exhibit "1" with Exhibit "A" thereto.

4. Construction of Storm Drain Facilities. Construction of the storm drain facilities will consist of the installation of a pipe from the detention basin on the Grantee Property to a flared end section on the County Property, along with the placement of ± 40 square feet of rip rap on the County Property. Mayberry Gardens, LLC shall install, operate, and repair any disturbances or damage caused by its operation, and maintain the Storm Drain Easement at its sole cost and expense. No work shall be performed in the Storm Drain Easement until County has been given at least five (5) business days prior written notice of the time during which the work will take place. All work shall be performed in compliance with all applicable laws and ordinances. The creek bank will be stabilized during construction using Best Management Practices and maintained until riparian vegetation is reestablished.

5. Revegetation. Mayberry Gardens, LLC will revegetate the disturbed area utilizing native riparian vegetation as approved by Washoe County Regional Parks and Open Space. Revegetation efforts shall be considered complete when the plant coverage of the disturbed area is equal to the coverage of adjacent undeveloped areas, as demonstrated by photo point documentation. If revegetation efforts are not on track to meet criteria after one (1) year, additional plantings and/or reseeding shall be required.

6. County's Representations and Warranties. As a material inducement to Mayberry Gardens, LLC, the County represents and warrants that:

6.1 Property, Title and Related Matters. County is and shall be at the Closing, the owner of all right, title and interest in the County Property and the Storm Drain Easement, and shall have and convey to Mayberry Gardens, LLC good and marketable title to the Storm Drain Easement free and clear of all security interests, mortgages, liens, pledges, charges, claims, or encumbrances of any kind or character. County is the owner of the County Property, more specifically set forth in Document No.

1606279. There is no lease affecting any portion of the Storm Drain Easement, and no person or entity has any right or option to purchase the County Property or any portion thereof.

6.2 Litigation. There is no litigation, proceeding, claim or investigation, including, without limitation, any condemnation proceeding, pending or, to the best of County's knowledge, threatened, which adversely affects the County Property or the Storm Drain Easement, in any court or before any federal, state, county, or municipal department, commission, board, bureau or agency or other governmental instrumentality.

6.3 No Misstatement. No representation, statement or warranty by County contained in this Agreement or in any exhibit hereto contains or will contain any untrue statements or omits, or will omit, any material fact necessary to make the statement of fact recited not misleading.

6.4 No Agreements. Neither the execution and delivery of this Agreement by County nor the consummation of the transactions contemplated hereby will result in any breach or violation of or default under any judgment, decree, order, mortgage, lease, agreement, indenture or other instrument to which County is a party, or to which it is bound.

7. Mayberry Garden LLC.'s Representations and Warranties. Mayberry Gardens, LLC represents and warrants to County as follows:

7.1 Status, Power and Authority. Mayberry Gardens, LLC is a Nevada limited liability company, validly existing under the Laws of the State of Nevada, and authorized to do business in Nevada, with all requisite power and authority to enter into and carry out its obligations under this Agreement.

7.2 Due Authorization, Execution and Delivery. The execution, delivery, and performance of this Agreement by the persons executing the same on behalf of Mayberry Gardens, LLC have been duly and validly authorized.

7.3 Legal, Valid, Binding and Enforceable. This Agreement and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of Mayberry Gardens, LLC, enforceable in accordance with their respective terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general applicability.

8. Indemnification for Breach of Representations and Warranties. The parties hereby make the following indemnifications:

8.1 Without waiving any defenses or liability limitations set forth in NRS Chapter 41, County agrees to indemnify and hold harmless Mayberry Gardens, LLC and its officers, directors, agents and employees from and against any and all claims,

damages, losses, liabilities, costs or expenses whatsoever which Mayberry Gardens, LLC may incur by reason of or in connection with any untrue statement in this Agreement made by County or the breach of any representation or warranty of County contained in this Agreement.

8.2 Mayberry Gardens, LLC agrees to indemnify and hold harmless County and its board members, agents and employees from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever which County may incur by reason of or in connection with any untrue statement in this Agreement made by Mayberry Gardens, LLC or the breach of any representation or warranty of Mayberry Gardens, LLC contained in this Agreement.

9. Covenants of Further Assurance. The parties to this Agreement covenant and agree to act in good faith and to take such further action as may be required to fully effectuate the intentions of the parties under this Agreement.

10. Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or delivered by U.S. mails, postage prepaid on the date posted, and addressed to the other party at the following addresses:

County: Washoe County
Attn: Community Services Department Director
1001 E. 9th Street
Reno, NV 89512

Mayberry Gardens, LLC:
Attn: Kurt Stitser
3636 Mayberry Dr.
Reno, Nevada 89509

11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Nevada, and venue shall be in Washoe County, Nevada.

12. Effectiveness and Counterparts. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Mayberry Gardens, LLC and County and their respective successors and assigns.

14. This Agreement constitutes the Parties' entire understanding concerning the subject matter of this Agreement and these understandings supersede all prior oral or

written understandings or discussions of any kind relating to this subject matter. No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective parties hereto. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, the provision shall be deleted and the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not determined to be illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

14.1. Agreement Precedence. In the event of conflict between this Agreement and the Easement Deed attached as Exhibit "1," this Agreement shall prevail. In the event of a conflict between this Agreement and the Gift Deed set forth in Document No. 1606279, Document No. 1606279, shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date first above written.

“COUNTY”

WASHOE COUNTY, a political subdivision
of the State of Nevada

By: _____

Bob Lucey, Chair
Washoe County Commission

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this _____ day of _____, 2020, _____
personally appeared before me, a Notary Public, and acknowledged to me that he/she executed
the above instrument for the purpose therein contained.

Notary Public

Mayberry Gardens, LLC
A Nevada Limited Company

By: _____

Print Name: Kurt Stitser
Title: Manager of Mayberry Gardens, LLC

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this _____ day of _____, 2020, _____,
personally appeared before me, a Notary Public, and acknowledged to me that he/she executed
the above instrument for the purpose therein contained.

Notary Public