

**RESOLUTION 2019-55**

**A RESOLUTION OF THE FRUITA CITY COUNCIL ENTERING INTO A TRAIL MAINTENANCE AGREEMENT WITH THE COUNTRY CREEK PATIO HOME ASSOCIATION FOR UP TO 15 YEARS.**

**WHEREAS**, the Contractor desires to construct a 5' wide soft surface trail within a 30' wide Trail Easement dedicated to the City located within Tract C, Village at Country Creek, Filing Six, as more particularly described in Exhibit A attached hereto (the "Trail"), and

**WHEREAS**, the City is aware that the Trail will be located within an easement that has been dedicated by plat to the City and the public for the purpose of a regional trail connection, and

**WHEREAS**, Country Creek Patio Home Association will be solely responsible for maintaining, repairing and cleaning the Trail for a period of 15 years or until such time a regional trail connection is constructed.

**NOW, THEREFORE, BE IT RESOLVED BY THE FRUITA CITY COUNCIL THAT:**

**Section 1:** Hereby authorizes the City Manager to sign the Trail Maintenance Agreement with the Country Creek Patio Home Association attached hereto as Exhibit A.

**Section 2:** This agreement expires 15 years from the date of signing of the agreement or until such time a regional trail connection is constructed, whichever comes first.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO THIS 15<sup>th</sup> DAY OF OCTOBER, 2019.**

ATTEST:

City of Fruita

\_\_\_\_\_  
Margaret Sell, City Clerk

\_\_\_\_\_  
Joel Kincaid, Mayor

## EXHIBIT A TO RESOLUTION 2019-55

### Maintenance Agreement between the City of Fruita and Country Creek Patio Home Association Inc.

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Fruita, herein after referred to as the “City”, and Country Creek Patio Home Association Inc., herein after referred to as the “Contractor”.

#### RECITALS:

**WHEREAS**, the Contractor desires to construct a 5’ wide soft surface trail within a 30’ wide Trail Easement dedicated to the City located within Tract C, Village at Country Creek, Filing Six, as more particularly described in Exhibit A attached hereto (the “Trail”), and

**WHEREAS**, the City is aware that the Trail will be located within an easement that has been dedicated by plat to the City and the public for the purpose of a regional trail connection, and

**WHEREAS**, Country Creek Patio Home Association will be solely responsible for maintaining, repairing and cleaning the Trail for a period of 15 years or until such time a regional trail connection is constructed.

**NOW THEREFORE**, in consideration of the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **TERMS**

- 1. Construction and Maintenance Responsibilities.** The Contractor shall be fully responsible for providing the labor and materials to construct a 5’ wide soft surface Trail for pedestrian use. The Contractor shall regularly inspect and be solely responsible for the maintenance required for said Trail. The Contractor shall be responsible for providing labor, material and equipment necessary to maintain the Trail in a safe, clean and functional condition.
- 2. Future Improvements.** The City will retain the right to construct additional amenities or improve the Trail and surrounding areas in the future. The Contractor shall not be responsible for providing materials, labor, or equipment for maintenance of such future improvements completed by others.
- 3. Inspection.** The Contractor acknowledges and expressly grants the City the right to enter onto the Trail as necessary to inspect the Trail to ensure that it is maintained in good repair and in accordance with this Agreement. In the event the City determines, in its sole reasonable discretion, that the Trail or any related infrastructure within the Trail is in need of non-emergency maintenance, repair or replacement work, the City shall so advise Contractor, and Contractor shall promptly undertake and complete such maintenance,

repair or replacement work, in a manner consistent with this Agreement. If Contractor does not undertake such work promptly, or complete it within a reasonable time, or if the City determines, in its sole discretion, that emergency maintenance, repair or replacement is required, the City may undertake any necessary action to maintain, repair or replace Trail or any infrastructure located on the Trail, and Contractor shall, within 30 days of billing, reimburse to the City all reasonable costs associated with such maintenance, repair or replacement.

4. **Successors and Assigns.** This Agreement shall be binding on the heirs, successors, receivers and assigns of all parties.
5. **Liability for Loss During Construction and Maintenance of Trail.** By virtue of entering into this Agreement, the City assumes no liability associated with construction of the Trail by Contractor or any third party. The Contractor hereby agrees to defend and indemnify the City from and against all claims, costs, and liability of every kind and nature for injury or damage received or sustained by any third party, in connection with construction and maintenance of the Trail. Contractor shall obtain general liability and property damage insurance with carriers authorized to do business in Colorado, which insurance shall have limits in the amount acceptable to the City, naming the City as an additional insured, and providing that the City shall be given thirty (30) days' notice of cancellation or termination of such insurance. A certificate evidencing such insurance shall be provided to the City during the construction of said Trail.
6. **Use of Trail.** The City agrees to assume full liability associated with the use of the Trail by the general public. The City hereby agrees to defend and indemnify the Contractor from and against all claims, costs, and liability of every kind and nature for injury or damage received or sustained by the general public, in connection with the use and enjoyment of the Trail. At no time shall anything within this Agreement be considered or interpreted to waive or diminish, in whole or in part, the rights or limitations bestowed upon the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or any other law, nor shall the indemnification obligation hereunder cover claims or losses or damages for which the City would not be liable, should this indemnification provision not have been in existence
7. **Term.** This agreement shall be effective from the execution date and shall expire within 15 years from the date of this agreement or when the regional trail connection is constructed and complete; provided, however, this Agreement may be terminated by the City at any time on thirty (30) days prior written notice.
8. **Choice of Law; Venue.** In the event of litigation arising from this Agreement, including, without limitation, its enforcement, the party substantially prevailing in said litigation shall be entitled to recover from the other party its reasonable attorneys' fees and costs. The parties agree that this Agreement is governed by Colorado law, and the forum for any such litigation shall be the Mesa County District Court.

**Counterparts.** This Agreement may be signed using counterpart signature pages, with the same force and effect as if all parties signed on the same signature page.

**MADE AND ENTERED into this \_\_\_\_\_ Day of \_\_\_\_\_, 2019.**

**City of Fruita, Colorado**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Contractor**

**Country Creek Patio Home Association Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF COLORADO            )  
  )ss  
COUNTY OF MESA            )

The above and foregoing signature on \_\_\_\_\_ was subscribed and sworn before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Witness my hand and official seal.

My commission expires of: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public

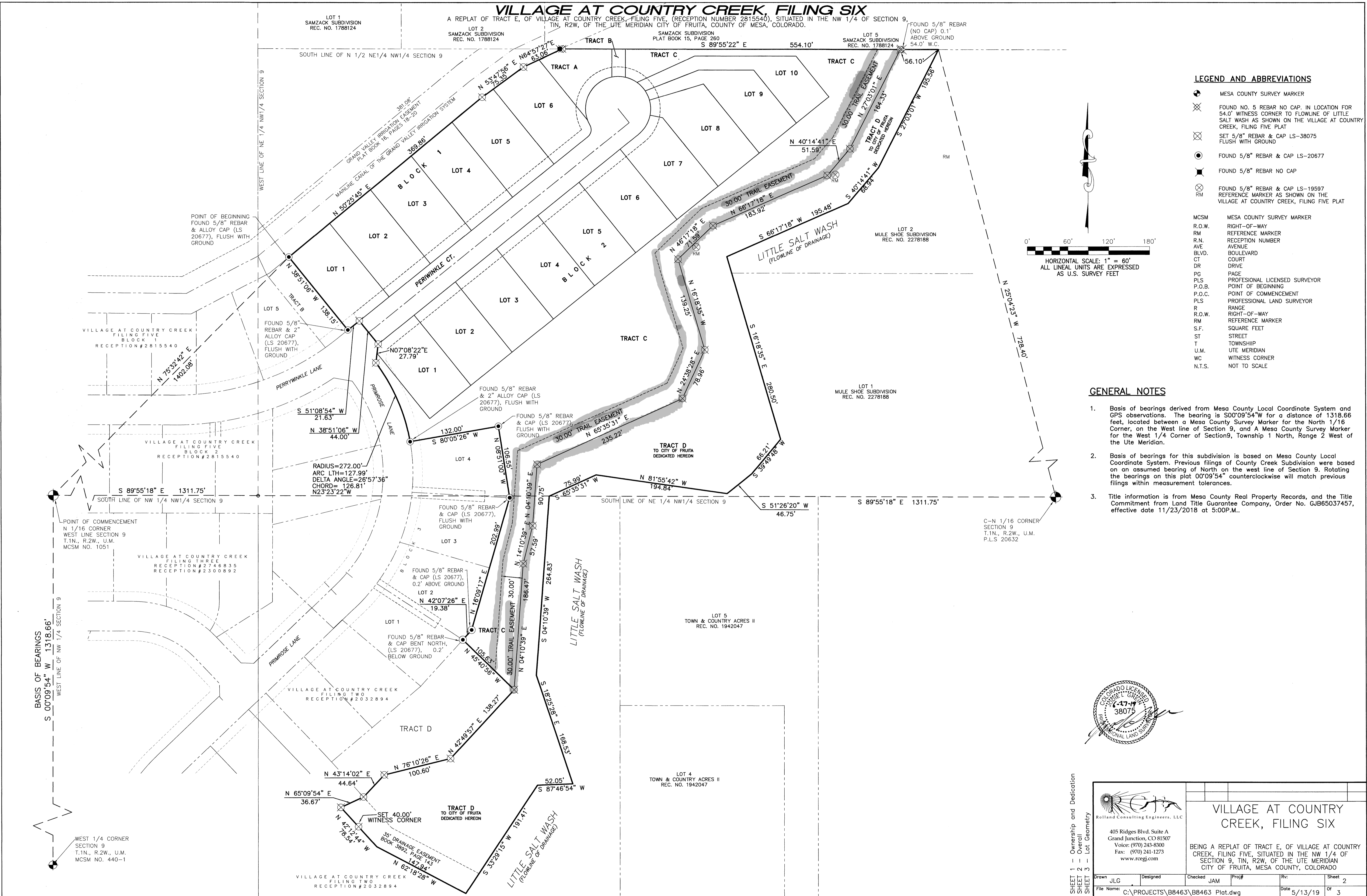
\_\_\_\_\_  
Address

\_\_\_\_\_

# EXHIBIT A TO TRAIL MAINTENANCE AGREEMENT

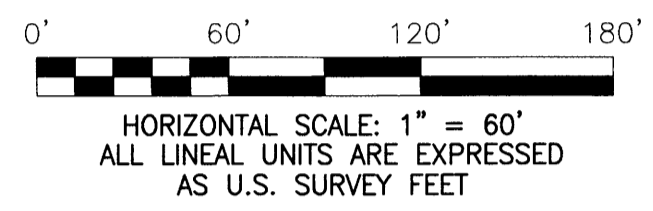
## VILLAGE AT COUNTRY CREEK, FILING SIX

A REPLAT OF TRACT E, OF VILLAGE AT COUNTRY CREEK, FILING FIVE, (RECEPTION NUMBER 2815540), SITUATED IN THE NW 1/4 OF SECTION 9, T.1N., R.2W., OF THE UTE MERIDIAN CITY OF FRUITA, COUNTY OF MESA, COLORADO.



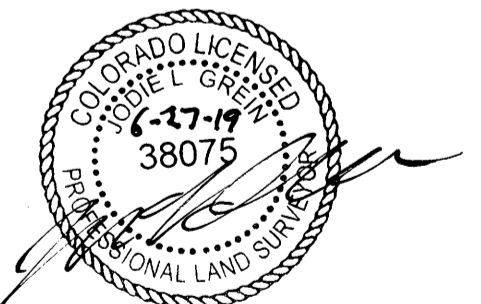
**LEGEND AND ABBREVIATIONS**

	MESA COUNTY SURVEY MARKER
	FOUND NO. 5 REBAR NO CAP. IN LOCATION FOR 54.0' WITNESS CORNER TO FLOWLINE OF LITTLE SALT WASH AS SHOWN ON THE VILLAGE AT COUNTRY CREEK, FILING FIVE PLAT
	SET 5/8" REBAR & CAP LS-38075 FLUSH WITH GROUND
	FOUND 5/8" REBAR & CAP LS-20677
	FOUND 5/8" REBAR NO CAP
	FOUND 5/8" REBAR & CAP LS-19597 REFERENCE MARKER AS SHOWN ON THE VILLAGE AT COUNTRY CREEK, FILING FIVE PLAT
	MESA COUNTY SURVEY MARKER
	RIGHT-OF-WAY
	REFERENCE MARKER
	RECEPTION NUMBER
	AVENUE
	BOULEVARD
	COURT
	DRIVE
	PAGE
	PROFESSIONAL LICENSED SURVEYOR
	POINT OF BEGINNING
	POINT OF COMMENCEMENT
	PROFESSIONAL LAND SURVEYOR
	RANGE
	RIGHT-OF-WAY
	REFERENCE MARKER
	SQUARE FEET
	STREET
	TOWNSHIP
	UTE MERIDIAN
	WITNESS CORNER
	NOT TO SCALE



**GENERAL NOTES**

1. Basis of bearings derived from Mesa County Local Coordinate System and GPS observations. The bearing is S00°09'54"W for a distance of 1318.66 feet, located between a Mesa County Survey Marker for the North 1/16 Corner, on the West line of Section 9, and A Mesa County Survey Marker for the West 1/4 Corner of Section 9, Township 1 North, Range 2 West of the Ute Meridian.
2. Basis of bearings for this subdivision is based on Mesa County Local Coordinate System. Previous filings of Country Creek Subdivision were based on an assumed bearing of North on the west line of Section 9. Rotating the bearings on this plat 00°09'54" counterclockwise will match previous filings within measurement tolerances.
3. Title information is from Mesa County Real Property Records, and the Title Commitment from Land Title Guarantee Company, Order No. GJB65037457, effective date 11/23/2018 at 5:00P.M..



Ownership and Dedication Overall 1 Lot Geometry 1 1 1 1 1 1 1 1 1 1 SHEET 2 SHEET 3	 405 Ridges Blvd, Suite A Grand Junction, CO 81507 Voice: (970) 243-8300 Fax: (970) 241-1273 www.rceg.com	<b>VILLAGE AT COUNTRY CREEK, FILING SIX</b> BEING A REPLAT OF TRACT E, OF VILLAGE AT COUNTRY CREEK, FILING FIVE, SITUATED IN THE NW 1/4 OF SECTION 9, T.1N., R.2W., OF THE UTE MERIDIAN CITY OF FRUITA, MESA COUNTY, COLORADO	
		Drawn JLG Designed Checked JAM Proj# Rv: File Name: C:\PROJECTS\BB463\BB463 Plat.dwg	Sheet 2 Of 3 Date 5/13/19