

BRT08ESM

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	BRIGHTSTAR GOLF REDLANDS MESA LLC
SUBJECT/PROJECT:	EASEMENT MAINTENANCE AGREEMENT
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2008
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

## EASEMENT MAINTENANCE AGREEMENT

THIS EASEMENT MAINTENANCE AGREEMENT (this “**Agreement**”) is made as of the 31st day of October, 2008, between BRIGHTSTAR GOLF REDLANDS MESA LLC, a Delaware limited liability company (“**Landowner**”); and the CITY OF GRAND JUNCTION, COLORADO, a Colorado Municipal Corporation (the “**City**”).

### RECITALS

- A. Landowner is the fee simple owner of certain real property located in Mesa County, Colorado, including, without limitation, Golf Block 14, Redlands Mesa Filing 1 (“**Landowner Property**”), which comprises a portion of the golf course commonly known as the Redlands Mesa Golf Course.
- B. In conjunction with the construction of the Redlands Mesa Golf Course, Landowner’s predecessor-in-interest constructed a restroom facility (the “**Structure**”) located on a utility easement area (“**Easement Area**”) on the Landowner Property as the Easement Area is described in that certain instrument recorded in the real property records of Mesa County, Colorado, in Book 1499 at Page 144 (“**Easement Instrument**”).
- C. The City, as successor-in-interest to Ridges Metropolitan District under the Easement Instrument, has a utility easement interest in the Easement Area.
- D. The Structure, as sited on the Easement Area, is generally depicted on the attached Exhibit A incorporated herein by this reference.
- E. There currently exists a sewer line within property owned by the City adjacent to the Easement Area, which sewer line is owned and operated by the City (“**Sewer Line**”). This Sewer Line is shown on Exhibit A.
- F. Landowner considers it unduly burdensome for the City to require Landowner to remove the Structure from the Easement Area at this time, when no present or regularly scheduled maintenance necessitates such removal.
- G. The City has agreed to allow the Structure to remain in its current location, as generally depicted on Exhibit A, subject to the terms and conditions of this Agreement as set forth below.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth below, the recitals above, which are hereby incorporated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The City hereby agrees to permit the Structure to remain in its current location as generally depicted on Exhibit A and to continue to be used for Redlands Mesa Golf Course restroom purposes subject to the conditions set forth herein.

2. The City may withdraw its consent to the Structure remaining in the Easement Area in the event that operation, maintenance, expansion, improvement, or repair of the Sewer Line (“**Future Operations**”) reasonably necessitates removal of the Structure.
3. Except in emergency circumstances necessitating immediate removal of the Structure, if the City exercises its right to withdraw its consent as provided in Section 2, it shall notify Landowner in writing, delivered by first class mail to Landowner, as indicated below. Landowner shall have 15 business days after receipt of the notice in which to remove the Structure from the City Property at Landowner’s expense, and if Landowner fails to so remove the Structure, the City is authorized, by virtue of its dedicated easement rights and by this Agreement, to enter such portion of the Landowner Property as is reasonably necessary to remove the Structure, and Landowner shall reimburse the City for all reasonable costs of the City’s removal of the Structure in accordance with this Agreement.
4. In emergency circumstances which necessitate the immediate removal of the Structure, the City is authorized, by virtue of its dedicated easement rights and by this Agreement, to enter such portion of the Landowner Property as is reasonably necessary to remove the Structure, and Landowner shall reimburse the City for all reasonable costs of the City’s removal of the Structure in accordance with this Agreement.
5. Landowner, its successors and assigns, agrees that it shall not hold, nor attempt to hold, the City, its officers, employees, or agents liable for costs and expenses related to any damage to the Structure (including the removal thereof) as a result of the City’s exercise of its rights hereunder or under the Easement Instrument. City agrees that it shall not exercise its discretion to remove the Structure arbitrarily, but that it shall make reasonable efforts to conduct Future Operations without removal of or damage to the Structure.
6. Landowner agrees that if the Structure is removed or destroyed under any circumstances, it shall not be replaced or reconstructed in whole or in part on the Easement Area, in which event, Landowner and the City agree to enter into and record in the real property records of Mesa County, Colorado, an instrument terminating this Agreement; provided, however, the parties’ remedies at law or in equity shall survive such termination for a period of one year.
7. Landowner shall not construct any additions or expansions to the Structure on the Easement Area; provided, however, Landowner shall have the right to operate, maintain, repair and remove the Structure within and without the Easement Area.
8. The operation, maintenance, repair or removal of the Structure by Landowner shall be performed with due care to avoid damaging any City sewer lines within the Easement Area or on the City’s property adjacent to the Easement Area, whether presently existing or installed in the future.

9. Landowner shall reimburse the City for any increase in reasonable costs and expenses incurred by the City in connection with the Future Operations, which costs and expenses are directly related to the location of the Structure on the Easement Area; provided, however, upon Landowner's written request, City shall provide to Landowner copies of supporting receipts, invoices and statements to verify such reimbursable costs and expenses.
10. Landowner agrees to indemnify and hold harmless the City for any and all claims, actions or judgments against the City arising from the Structure's presence on the Easement Area; provided, however, such indemnity and hold harmless shall not extend to any claims, actions or judgments resulting from the City's or its contractors', agents' or permittees' willful misconduct or negligence or failure to discharge any legal duties owed by the City or its contractors, agents and permittees; provided further, however, Landowner shall have a right of first defense of any and all such claims, actions or judgments against the City.
11. This Agreement shall be recorded in the real property records of Mesa County, Colorado, at the expense of Landowner. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
12. This Agreement is governed by and shall be constructed in accordance with the laws of the State of Colorado.
13. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts taken together shall constitute one and the same instrument.
14. Any notice required pursuant to or given in connection with this Agreement shall be in writing and shall be deemed given four business days after being deposited with the United States Postal Service, postage prepaid, for first class delivery. Notice to be given pursuant to this Agreement shall be delivered to the following addresses:

If to City:

Utility Engineer  
Department of Public Works and Planning  
City of Grand Junction  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

with copy to:

City Attorney  
City of Grand Junction  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

If to Landowner:

Brightstar Golf Redlands Mesa LLC  
2173 Salk Avenue, Suite 145  
Carlsbad, California 92008  
Attn: William Keogh

Any party may change its contact information for notice purposes by delivering notice of such change to the other party in the manner provided for above.

**[Signature Page Follows This Page]**



ACKNOWLEDGMENT

State of California  
County of San Diego

On October 31, 2008 before me, Pamela S. Montoya, Notary Public  
(insert name and title of the officer)

personally appeared William D. Keogh, Manager,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Pamela S. Montoya (Seal)

