

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Fairfield and Woods, P.C.
1801 California Street, Suite 2600
Denver, CO 80202
Attn: Karen V. Reutzel

Space above this line for Clerk and Recorder's Use

ACCESS EASEMENT AGREEMENT

This ACCESS EASEMENT AGREEMENT ("Agreement") is made as of the ____ day of _____, 2023 ("Effective Date"), by ADELAI DA ROMENS, TRUSTEE OF THE ROMENS LIVING TRUST, DATED DECEMBER 23, 2008, AS AMENDED, a trust organized in the state of Colorado ("Grantor"), whose address is 5135 Coneflower Lane, Colorado Springs, CO 80917, with respect to the following facts:

A. Grantor is the owner of that certain real property described as the NE/4NE/4 of Section 24, Township 11 South, Range 64 West, having an address of 17720 Cleese Court, Peyton, CO 80831, located in the County of El Paso, Colorado ("Property");

B. Grantor intends to subdivide the Property into seven (7) lots, described as Lot 1 through Lot 7, Block 1, Romens Subdivision;

C. The Property will contain certain private improvements, specifically being that certain 30' private shared access easement identified on **Exhibit A and Exhibit B** ("Access Road"); and

D. Grantor desires to grant an easement and set forth the obligations of the Lot 1, Lot 2, and Lot 3 owners (with Lot 1, Lot 2, and Lot 3 each referred to as a "Lot" and collectively referred to herein as the "Lots") insofar as such obligations relate to the use, construction, maintenance, repair, and replacement of the Access Road.

NOW THEREFORE, Grantor hereby declares that Lot 1, Lot 2, and Lot 3, and every portion thereof shall be held, sold, and conveyed subject to the following covenants and conditions, which are imposed on such Lots to run with the land and be binding on and inure to the benefit of all parties having any right, title, or interest in the Lots or any part thereof, their heirs, successors, and assigns for the purpose of development and operation of the Lots and to protect the value of such Lots:

1. Definitions. For purposes of this Agreement:

- a. "Owner" or "Owners" shall mean the Grantor and any and all future successors or assigns of the Grantor that are the owner or owners of fee simple title to all or any portion of the Lots, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure,

or otherwise, but not including the holder of any lien or encumbrance on such real property or on any improvements thereon.

- b. “Permittees” shall mean the tenant(s) or occupant(s) of a Lot and the respective employees, agents, contractors, customers, invitees, and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).
2. Grant of Easement. Grantor hereby grants, conveys, and assigns to the Owner(s) of Lot 1, Lot 2, and Lot 3, their heirs and assigns and Permittees (collectively “Owner Representatives”), a non-exclusive ingress and egress access easement over and across a portion of the Property, being that future road that runs east to west along Hopper Road on Exhibit B, defined as the “Access Road” in the foregoing recitals. The Access Road shall be used for all purposes necessary and at all times convenient and necessary for Owners and Owner Representatives to access the Lots, pursuant to the terms and conditions set forth herein. Owners and Owner Representatives shall have the right to use the Access Road via vehicular, pedestrian, and equestrian means.
 3. Construction. As of the Effective Date, the Access Road has not been constructed. After execution of this Agreement, Grantor may convey fee title to each Lot to subsequent Owners. The first Owner to purchase a Lot (“First Lot Purchaser”) shall be responsible for ensuring that the Access Road is constructed, pursuant to the final, approved plat covering the Property. The First Lot Purchaser shall complete or cause the construction of the Access Road to be completed in a timely manner. The purchaser(s) of the additional two Lots (“Additional Purchasers”) shall, upon purchasing the remaining Lots, reimburse the First Lot Purchaser for their respective costs, described below. Each Additional Purchaser shall, within thirty (30) days after receipt of an invoice from First Lot Purchaser detailing the total amount owed, pay First Lot Purchaser in full and using good funds for their respective costs. Notwithstanding the above, Grantor is hereby exempted from and shall not be obligated to reimburse the First Lot Purchaser for any of the costs associated with construction of the Access Road, unless and except Grantor retains ownership of a Lot and provides notice to the First Lot Purchaser of its intent to retain ownership. All costs associated with the construction of the Access Road, including labor, materials, and permitting, shall burden the Owners equally. For purposes of clarity, the costs shall be split so that each Lot bears a total of an undivided one-third (1/3) of the costs.
 4. Maintenance, Repair, and Replacement.
 - i. Maintenance, Repair, and Replacement Obligations. Each Owner shall maintain, repair, and replace the Access Road in good order and condition, including but not limited to removal of trash, litter, and refuse and repair and replacement of the road surface as necessary. The Owners agree to cooperate with each other in good faith with respect to said maintenance, repair, and replacement, and to the extent reasonably possible, coordinate such maintenance, repair, and replacement. All costs associated with maintenance, repair, and replacement of the Access Road shall burden the Owners equally, subject to the following. An Owner shall not be obligated to pay for any maintenance, repair, and/or replacement costs that were incurred prior to the Owner’s acquisition of title to the Lot(s). If Grantor has only conveyed one Lot, that First Lot Purchaser shall be solely responsible for all costs of maintenance, repair, and replacement of the Access Road. If there is one Additional Purchaser, the First Lot Purchaser and the Additional Purchaser

shall be responsible for bearing the costs equally in a 50/50 split. Once all three Lots have been conveyed, the costs shall be split so that each Lot bears a total of an undivided one-third (1/3) of the costs. Notwithstanding the above, Grantor is hereby exempted from and shall not be obligated to pay for any maintenance, repair, and replacements costs associated with the Access Road, unless and except Grantor retains ownership of a Lot and provides notice to the other Owners of its intent to retain ownership.

- ii. Road Maintenance Director. The Owners, by mutual, written agreement, may appoint one of the Lot owners or a third party to maintain, repair, and replace the Access Road in the manner as above outlined (the "Road Maintenance Director"). The Road Maintenance Director may receive for such agency a fee that is mutually acceptable to the Owners to cover supervision, management, accounting, and similar fees. The costs of all maintenance, repair, and replacement activities undertaken by the Road Maintenance Director, together with the agency fee, shall burden the Owners equally, and an Owner shall pay its share of all such costs within thirty (30) days following its receipt of a detailed invoice.
5. Insurance. Each Owner shall at all times maintain or cause to be maintained with respect to its Lot and all buildings and improvements thereon and by any contractor during any construction activity on such Lot, at least, the minimum insurance coverage set forth below:
 - a. Broad Form Property Damage, including Explosion, Collapse, and Underground Hazards, for the full replacement cost of any improvements thereon:
 - i. \$1,000,000.00 for bodily injury and property damage, per occurrence;
 - ii. \$2,000,000.00 for products and completed operations; and
 - iii. \$2,000,000.00 in the general aggregate.
6. Default. In the event that an Owner (the "Defaulting Party") fails in its obligations set forth herein, which failure continues for a period of thirty (30) days (ten [10] business days in the event of a failure to pay money) after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a default under this Agreement and any Owner (the "Curing Party") may thereafter perform such obligations, in addition to such party's other remedies. The Curing Party shall then invoice the Defaulting Party for the expenses incurred. The Defaulting Party shall have fifteen (15) days to pay the Curing Party after receipt of the invoice. If the Defaulting Party does not pay, the Curing Party shall have a lien on the Lot of the Defaulting Party for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid; provided, however, that if there is a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Defaulting Party's Lot until after such dispute is settled by a final court decree or mutual agreement and payment thereof to the Curing Party has not been made within ten (10) days.
7. Indemnification. Each Owner (the "Indemnitor") shall indemnify, defend, and hold harmless the other Owner(s) (the "Indemnitee") from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands, or judgments of any nature caused by the Indemnitor or its Permittees relating to the Indemnitor's performance or nonperformance of its responsibilities under this Agreement.

8. Liens. Costs and expenses accruing and/or assessed pursuant to the terms herein shall constitute a lien against the Defaulting Party's Lot. A lien under this section shall attach and take effect only upon recordation of a claim of lien in the applicable real estate records of the county in which the Property is located, by the Curing Party making the claim.
9. No Waiver. No waiver of any provisions of this Agreement shall be deemed to constitute a waiver of any other provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
10. No Termination for Breach. No breach, whether or not material, of the provisions of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Owner may have hereunder by reason of any breach of the provisions of this Agreement.
11. Limitation of Liability. Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Lot, or any portion thereof, shall be bound by this Agreement only as to the Lot or portion of the Lot acquired or possessed by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold Owner or occupant of such Lot or portion of the Lot; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this section, the covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Lots running with the land.
12. Term and Perpetuity; No Doctrine of Merger. The agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the Effective Date and shall continue in full force and effect, to the benefit of and being binding upon all Owners, their executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties unless terminated by the consent of all the Owners pursuant to a writing recorded in the real property records of the county and state in which the Lots are located. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this Agreement or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Notwithstanding the foregoing, the easements contained herein binding and benefiting the Lots shall be perpetual and shall run with the land. This Agreement may only be terminated by mutual, written agreement to terminate executed by all of the Lot Owners. If the Lots are acquired by the same Owner, this Agreement shall not terminate under the doctrine of merger. A singular Owner of all lots may only terminate this Agreement by executing a statement of termination. Any agreement or statement of termination must be recorded in the county in which the Property is located. Upon termination of the agreements, conditions, covenants and restrictions of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.
13. Notices. Any notice or invoice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified

Mail, Return Receipt Requested, postage prepaid or deposit with a nationally recognized overnight delivery service, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other parties):

The Romens Living Trust, dated December 23, 2008, as amended
c/o: Adelaida Romens, Trustee
5135 Coneflower Lane
Colorado Springs, CO 80917
Email: ajolly@msn, with a copy to: sievering4@hotmail.com
Phone: 719-232-4611

In the event of a change in Owner of any Lot, the new Owner shall provide written notice to the other Owner(s) of its designated address for notice purposes.

14. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.
15. Amendment. This Agreement may only be amended or modified by a written agreement executed by all Owners.
16. No Public Dedication. Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the Lots or any portions thereof, to the general public, or for any public use or purpose whatsoever. Except as may be specifically provided herein, no right, privileges or immunities of any Owner shall inure to the benefit of any third-party, nor shall any third-party be deemed or considered to be a beneficiary of any of the provisions herein contained.
17. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

[signature page to follow]

EXHIBIT A

A portion of land lying within the Northeast Quarter of the Northeast Quarter of Section 24, Township 11 South, Range 64 West of the 6th P.M., County of El Paso, State of Colorado, described as follows:

BASIS OF BEARINGS: Bearings are based upon, and is assumed to bear N 89°13'49" W, a distance of 2580.12 feet for the North line of the Northeast 1/4 of Section 24, Township 11 South, Range 64 West per Peyton Pines Filing No. 3, Book J-3 Page 67, El Paso County Records, monumented by a 3.25" aluminum cap stamped "PLS 13830" at the east end (Northeast corner Section 24) and a 1.5" aluminum cap stamped "JR DEV PLS 10377" at the west end (North 1/4 Corner Section 24).

Commencing at the Northeast corner of said Section 24;
thence N 89°13'49" W along said North line, a distance of 639.43 feet;
thence S 00°03'47" W, a distance of 45.00 feet to the POINT OF BEGINNING;
thence 229.97 feet along the arc of a 50.00 foot radius non-tangent curve to the right, having a central angle of 263°31'23" and a chord that bears S 41°49'29" W, 74.59 feet;
thence 43.36 feet along the arc of a 30.00 foot radius reverse curve to the left, having a central angle of 82°48'59" and a chord that bears N 47°49'19" W, 39.69 feet;
thence N 89°13'49" W, a distance of 282.51 feet;
thence N 00°03'47" E, a distance of 30.00 feet;
thence S 89°13'49" E, a distance of 361.63 feet to the Point of Beginning.

Containing a calculated area of 17,929 square feet (0.41 acres) of land, more or less.



Spencer J. Barron
State of Colorado Professional Land Surveyor No. 38141
For and on behalf of Barron Land, LLC

BARRON  **LAND**

BOUNDARY Δ MAPPING Δ SURVEYING Δ CONSTRUCTION

2790 N. Academy Blvd. Suite 311 P: 719.360.6827
Colorado Springs, CO 80917 F: 719.466.6527

www.BARRONLAND.com

DATE: 10/31/2023

REV. DATE:

PROJECT No.: 20-010

SHEET 1 OF 2

EXHIBIT B

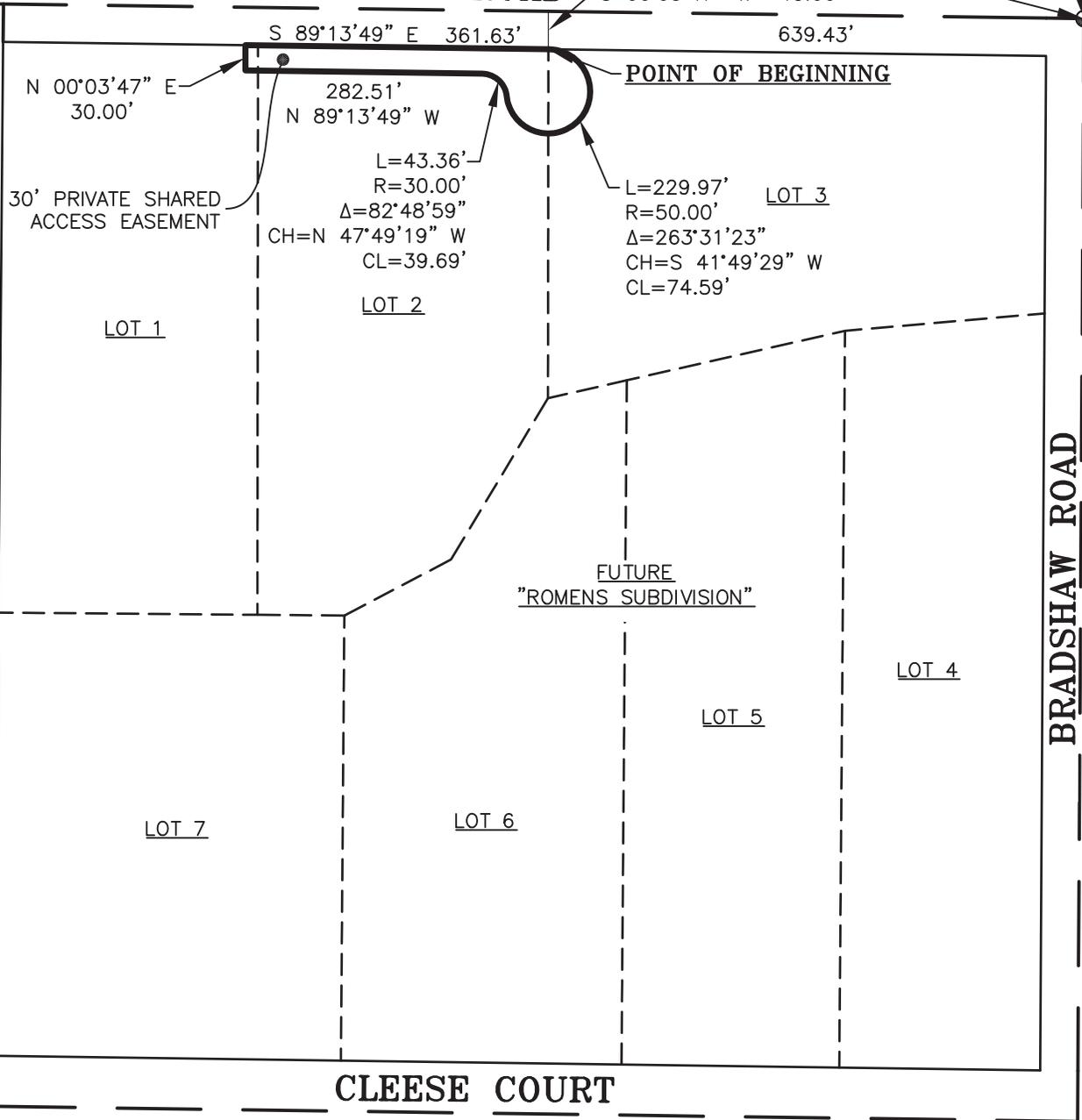
N 1/4 CORNER
 SEC. 24, T11S-R64W
 #5 REBAR w/ 1.5" ALUMINUM CAP
 STAMPED "JR DEV PLS 10377"

POINT OF COMMENCEMENT

NE CORNER
 SEC. 24, T11S-R64W
 3.25" ALUMINUM CAP
 STAMPED "PLS 13830"

BASIS OF BEARINGS
 N 89°13'49" W 2580.12'

HOPPER ROAD



1" = 200'



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