**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**AND GRANT OF EASEMENTS**

THIS DECLARATION, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 by Lena Gail Case, Jon Starr and Nancy Starr, hereinafter called “Declarants” for themselves, successors and assigns.

**RECITALS**

WHEREAS, Declarants own the tract of land legally described as Tract A, Claremont Business Park Filing No. 1C and consisting of 5.33 acres (the “Property”), which Property will be replatted as a portion of Claremont Business Park 2 Filing No. 1 and subdivided into three (3) commercial lots (the “Lots”) and a tract of land for a regional stormwater pond to service said Lots, as depicted on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, Declarants are desirous of imposing certain covenants, conditions and restrictions upon the Property which create the shared access road to provide access to the Lots, and a jointly owned regional stormwater pond to service the Lots, and other covenants, conditions and restrictions benefitting and burdening the Lots, subject to which each Lot shall be held, leased, sold, encumbered, developed and used, as covenants running with the land of each Lot, as hereinafter provided.

NOW, THEREFORE, Declarants hereby declares that all of the Property as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held subject to the following easements, reservations, uses, limitations, obligations, restrictions and covenants, all of which are for the purpose of enhancing and protecting the value of the Property, and all of which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns as follows:

**ARTICLE 1. DEFINITIONS**

1.1 **Access Easement Area**. "Access Easement Area" shall mean that certain area of land on each Lot devoted to a shared access road, curb cuts, driveways, access pans and drive aisles (collectively “Road Improvements”) as identified in Exhibit A.

1.2 **Drainage Easement Area**. "Drainage Easement Area” shall mean the area so identified on the Property as Tract A in Exhibit A which shall be used to construct, operate and maintain a shared regional stormwater pond and related infrastructure for the benefit of the Lots (collectively “Drainage Facilities”). The Drainage Easement Area and Drainage Facilities as hereinafter defined shall be Common Elements of the Property in which each Owner shall have an undivided interest, and which shall be utilized for the control of drainage to provide that post-development runoff from the Lots is routed safely and in a manner that satisfies the requirements set forth by El Paso County.

1.3 **Law**. "Law" shall mean any statute, decisional law, ordinance or regulation of any duly constituted governmental authority having jurisdiction over the particular subject matter.

1.4 **Occupant**. "Occupant" shall mean any Person (including an Owner) from time to time entitled to use and occupy a Lot under any deed, lease, or other instrument or agreement.

1.5 **Official Records**. "Official Records" shall mean the records of the County Clerk and Recorder of El Paso County, Colorado.

1.6 **Owner**. "Owner" shall mean the record owner of the fee simple title to a Lot.

1.7 **Lot**. "Lot" shall mean any Lot identified in Exhibit A.

1.8 **Drainage Easement Area**. "Drainage Easement Area" shall mean that certain area of land identified as Tract A in Exhibit A.

1.9 **Drainage Facilities**. “Drainage Facilities” shall mean drainage pond, drainage channels and related drainage infrastructure which may be constructed from time to time to manage the runoff from the Lots.

1.10 **Permittee**. "Permittee" shall mean any officer, director, member, manager, employee, agent, contractor, guest, customer, vendor, supplier, visitor or other invitee of the Owner or Occupant of a Lot insofar as their activities relate to the intended uses of a Lot.

1. 11 **Person**. "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or governmental entity.

1.12 **Common Elements**. "Common Elements" shall mean the Drainage Easement Area, the Drainage Facilities, and any other land and improvements so identified in Exhibit A. Each Owner of a Lot shall have an equal undivided ownership interest in the Common Elements. Common Elements shall be administered and maintained by the Owners.

**ARTICLE 2. ACCESS EASEMENT**

2.1 **Declaration of Access Easement**. Declarants, as the Owners of the Property, hereby declares, grants, conveys and establishes a perpetual, nonexclusive easement, appurtenant to the Property, for the purpose of constructing and maintaining a road and other Road Improvements to provide vehicular and pedestrian ingress and egress to and from any Lot located on the Property, and to provide public and private rights-of-way adjoining the Property, over, upon and across the Access Easement Area, for the benefit of the Owners, Occupants and Permittees of any Lot on the Property. Said easement shall also include access to Tract A for the purpose of maintenance by the Owners as may be required, and an easement to the Claremont Business Park Owners Association for the purpose of maintenance and repair of the Road Improvements as set forth in Section 2.3 below.

2.2 **No Obstructions**. No fence or other barrier which would prevent or obstruct the passage of pedestrians or vehicles for the purposes herein permitted shall be erected or permitted within or across the Access Easement Area.

2.3 **Construction. Repair and Maintenance**. The initial construction of the Road Improvements within the Access Easement Area shall be performed by the Declarant. After the initial construction, the Access Easement Area and Road Improvements shall become Common Elements of the Claremont Business Park Owners Association, and shall be maintained as part of the Common Expenses of said Association as set forth in the Declaration of Covenants, Conditions and Restrictions for Claremont Business Park recorded in the Office of the El Paso County Clerk & Recorder at Reception No. 206031585 as amended. The Access Easement Area and Road Improvements are purposely excluded from the definition of Common Elements set forth in Section 1.12 above.

**ARTICLE 3. DRAINAGE EASEMENT**

3. 1 **Declaration of Drainage Easement**. Declarant hereby declares, grants, conveys and establishes a perpetual, nonexclusive easement across all Lots and Tract A to provide post-development runoff on the Lots to be routed safely and in a manner that satisfies the requirements set forth by El Paso County, Colorado. The Drainage Easement shall permit post-development runoff from all Lots to enter onto Tract A utilizing the Drainage Facilities located within the Drainage Easement, and hereby permits access by representatives of El Paso County, Colorado, or other authorized governmental authorities, and any Lot Owner for the purpose of inspection, repair and maintenance of the Drainage Facilities.

3.2 **Construction, Repair and Maintenance of Drainage Facilities**. The initial construction of the Drainage Facilities for the benefit of the Lots shall be performed by and at the cost and expense of Declarants. After the initial construction of the Drainage Facilities, the Owners of each Lot shall share equally in the cost and expense of repairing and maintaining the Drainage Facilities in good condition at all times, and shall share equally in the cost and expense of constructing additional Drainage Facilities on the Lots and Tract A to comply with the Private Detention Basin/Storm Water Quality Best Management Practice Maintenance Agreement and other requirements of El Paso County, Colorado. The estimated annual cost for maintenance of the Drainage Facilities is $500.00 per Lot, subject to adjustment by the Owners in Sections 3.3. and 3.4 below.

3.3 **Owner Management.** After initial construction, the Owners shall jointly manage the repair and maintenance of the Drainage Facilities. The Owners shall meet at least annually, and more often as may be required, to inspect, maintain and repair the Drainage Facilities as set forth in Section 3.2 above. The Owners shall agree upon a Manager for the purpose of administrating repair and maintenance of the Drainage Facilities and invoicing each Owner for its proportionate share. In the absence of such agreement, the duties of Manager shall rotate annually among the Lot Owners.

3.4 **Failure to Perform Repair and Maintenance**. If the Owner of any Lot ("Defaulting Owner") shall fail to pay its share of the cost and expense set forth in Section 3.2 and 3.3 above, and such failure shall continue for thirty (30) days after written notice thereof from the Manager and any other Lot Owner ("Nondefaulting Owner"), then the Nondefaulting Owner or Manager shall have the right to cause such repair, maintenance or construction to be performed at the Defaulting Owner's expense, and the Defaulting Owner shall reimburse the Nondefaulting Owner or Manager for the cost and expense thereof within ten (10) days after written demand, accompanied by reasonable supporting documentation. The Nondefaulting Owner is hereby granted an easement to enter the Defaulting Owner's Lot for the purpose of causing such repair and maintenance to be performed. Any Nondefaulting Owner or Manager paying for a Defaulting Owner’s costs shall have a right to perfect a lien against the Nondefaulting Owner’s Property for all costs and expenses incurred in connection with the Defaulting Owner’s failure to pay, and have the right to foreclose as well as other mechanic’s lien rights provided to a lien claimant under Colorado law.

**ARTICLE 4. INDEMNITY; INSURANCE**

4.1 **Indemnity**. The Owner of each Lot hereby agrees to indemnify, protect, defend and hold harmless the Owners of other Lots and their respective partners, joint venturers, shareholders, members, mortgagees, affiliates and property managers, and their respective officers, directors, employees and agents (collectively, "Related Parties") from and against any and all claims, costs, loss, liability, damage or expense (collectively, "Claims") arising out of or in connection with loss of life, personal injury, property damage, economic loss or other damages arising from (a) the use, occupation, improvement or maintenance of the indemnifying Owner's Lot, or any work or activity in or about the indemnifying Owner's Lot by the indemnifying Owner or the Occupant of the indemnifying Owner's Lot, or their respective Permittees, (b) any activity, condition or occurrence in or about the indemnifying Owner's Lot, or (c) any act or omission of the indemnifying Owner or the Occupant of the indemnifying Owner's Lot, or their respective Permittees, but excluding, in each such instance, such Claims arising out of or in connection with the negligence or willful misconduct of the indemnified Owner or the Occupant of the indemnified Owner's Lot, or their respective Permittees. Upon notice and request from the indemnified Owner, the indemnifying Owner shall, at its sole cost and expense, and by counsel reasonably satisfactory to the indemnified Owner, defend any action or proceeding brought against the indemnified Owner or the Occupant of the indemnified Owner's Lot by reason of any such Claims. If the indemnified Owner or the Occupant of the indemnified Owner's Lot, or any of their respective Related Parties, without fault on their part, are made a party to any litigation commenced by or against the indemnifying Owner, then the indemnifying Owner shall indemnify, protect, defend and hold each of them harmless from and against any and all Claims arising out of or incurred or paid by any of them in connection with such litigation. The indemnifying Owner shall have the right to delegate its obligations under this Section 4.1 to any tenant of the indemnifying Owner's Lot in connection with a lease of such Lot, however, such delegation shall not relieve the indemnifying Owner of its obligations hereunder.

4.2 **Insurance**. The Owner of each Lot, at its sole cost and expense, shall obtain and keep in force at all times commercial general liability insurance covering its respective Lot in the amount

of at least Two Million Dollars ($2,000,000) Combined Single Limit for death or injury to one or more persons or property damage.

**ARTICLE 5. GENERAL PROVISIONS**

5.1 **Amendment**. The provisions of this Declaration may be amended, in whole or in part, only by an instrument in writing, executed and acknowledged by sixty-seven percent (67%) of the Owners and duly recorded in the Official Records. The provisions of this Declaration may not be amended or terminated without the written consent of the Board of County Commissioners of El Paso County, Colorado. Notwithstanding the foregoing, so long as a lease by an Owner of its respective Lot shall remain in full force and effect, the provisions of this Declaration shall not be amended or terminated, in whole or in part, without the prior written consent of the tenant thereunder, such consent not to be unreasonably withheld or delayed.

5.2 **Waiver of Default**. No waiver of any default by the Owner of a Lot shall be implied from any omission by the Owner of any other Lot to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration.

5.3 **Captions and Capitalized Terms**. The captions of each Article and Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

5.4 **Condemnation**. In the event any portion of the Property shall be condemned, the award shall be paid to any Owner owning the land or the improvements taken, including an Owner’s undivided interest in any of the Common Elements, exclusive of any severance damages awarded to the Owner of any other Lot, and no Owner shall be obligated to relocate, replace or restore such land or improvements.

5.5 **Breach Shall Not Defeat Mortgage**. A breach in any of the terms, conditions, covenants or restrictions of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but such terms, conditions, covenants or restrictions shall be binding upon and effective against any Owner whose interest in the Property or any portion thereof is acquired by foreclosure, trustee's sale or otherwise.

5.6 **Continuation Notwithstanding Breach**. It is expressly agreed that no breach of this Declaration shall entitle the Owner of any Lot to cancel, rescind or otherwise terminate this Declaration. However, such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of such breach.

5.7 **Counterparts**. This Declaration and any amendment thereto may be executed in several counterparts, each of which shall be deemed an original.

5.8 **Entire Agreement**. This Declaration and exhibits hereto contain the entire agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any party.

5.9 **Governing Law**. This Declaration shall be construed in accordance with the Laws of the State of Colorado.

5.10 **Injunctive Relief**. In the event of any violation or threatened violation of any provision of this Declaration by the Owner or Occupant of any Lot, the Owners or Occupants of the other Lots shall have the right to enjoin such violation or threatened violation in any court of competent jurisdiction. Declarant acknowledges and agrees that the aggrieved party's remedy at law for violation of this Declaration would be inadequate.

5.11 **Attorneys' Fees**. In the event the Owner or Occupant of a Lot institutes any action or proceeding against the Owners or Occupants of any of the other Lots relating to the interpretation or enforcement of the provisions of this Declaration or any violation hereunder, the non-prevailing party in such action or proceeding shall reimburse to the prevailing party its reasonable attorneys' fees and court costs.

5.12 **Estoppel Certificates**. Upon the request of the Owner of a Lot, the Owners of the other Lots shall issue to any party designated by the requesting party an appropriate certificate certifying whether the party to whom the request is made knows of any default under this Declaration or of any assignment, modification or amendment to this Declaration (and the nature and extent of any such default or other known matter) and whether, to that party's knowledge, this Declaration is in full force and effect. The certificate may be relied upon by a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary and shall constitute a waiver of any claim by the certifying party based upon facts contrary to the certificate of which that party had knowledge at the time of making the certificate. The certificate shall not subject the party furnishing the certificate to any liability for any inaccurate statement which such party in good faith believed was correct when made or any obligation to correct or disclose any change in the information certified.

5.13 **Interest**. Wherever and as often as the Owner of a Lot shall not have paid any sum payable hereunder within ten (10) days of receipt of written notice, the delinquent Owner shall pay interest on such amount from the due date to and including the date such payment is received by the Owner entitled thereto, at the lesser of (a) the highest rate permitted by law or (b) three percent (3%) per annum in excess of the Prime

Rate as published from time to time in The Wall Street Journal.

5.14 **No Partnership**. Neither this nor any act of the Owners shall be deemed or construed by the Owners to constitute an agreement to share profits and losses or to create the relationship of principal-agent, partnership, joint venture or any similar association between the Owners.

5.15 **No Third-Party Beneficiary**. The provisions of this Declaration are for the exclusive benefit of the Owners and their respective Occupants and not for the benefit of any other Person, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any other Person. No Person other than an Owner or an Occupant shall have the right to enforce any of the provisions of this Declaration.

5.16 **Not a Public Dedication**. Nothing in this Declaration shall be deemed to be a gift to the general public, or a dedication for any public purpose whatsoever, of any portion of the Property, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

5.17 **Notices**. All notices, demands, statements and requests (collectively, a "Notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given when received or when receipt is refused. Notices shall be sent by U.S. mail, registered or certified, or by a nationally recognized courier service (including FedEx, DHL, Express Mail, UPS or similar operation) to the address of the Person to whom it is directed, provided it is sent prepaid, return receipt requested.

5.18 **Severability**. If any term, covenant, restriction or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such term, covenant, restriction or condition to Persons or circumstances other than those with respect to which it is invalid or unenforceable) shall not be affected thereby.

5.19 **Singular and Plural**. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

5.20 **Successors: Binding Effect**. The provisions of this Declaration and all easements and restrictions granted hereunder shall run with the land with respect to both the benefits and burdens created herein and affecting the Property, and shall be binding upon and inure to the benefit of the signatories hereto and their respective successors and assigns. This Declaration and all the terms, covenants and conditions contained herein shall be enforceable as equitable servitudes and constitute covenants running with the land under applicable law.

5.21 **Rights Cumulative**. The rights and remedies given to the parties under this Declaration shall be deemed to be cumulative and none of such rights or remedies shall be exclusive of any others, or of any other right or remedy at law or in equity which such party might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any party shall not impair such party's standing to exercise any other right or remedy.

5.22 **No Merger of Rights**. No merger of rights shall occur because of the present or future common ownership or common right to possession of the dominant and servient estates created hereunder.

5.23 **Time**. Time is of the essence of this Declaration and every provision contained herein.

5.24 **Exhibits**. All references to Exhibits in this Declaration, unless otherwise provided, shall be understood to refer to the various Exhibits attached to this Declaration, which by said references are incorporated herein.

IN WITNESS WHEREOF, Declarants have caused this Declaration to be executed effective as of the day and year first above written.

**DECLARANTS**:

Lena Gail Case

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

Name Title

**STATE OF COLORADO )**

**) ss.**

**COUNTY OF EL PASO )**

Subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

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

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Notary Public

John Starr

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

Name Title

Nancy Barber Starr

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

Name Title

**STATE OF COLORADO )**

**) ss.**

**COUNTY OF EL PASO )**

Subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

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

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Notary Public

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