

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (“Agreement”) made and entered into as of the 25th day of April, 2023 by and between NSA PROPERTY HOLDINGS, LLC, a Delaware limited liability company, 8400 East Prentice Avenue, 9th Floor, Greenwood Village, CO, 80111 (the “**Grantor**”), and WIDEFIELD SCHOOL DISTRICT NO. 3, a public school district and political subdivision of the State of Colorado (the “**District**”). The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

WHEREAS, Grantor is the current fee simple owner of the property located at 671 Syracuse St., Colorado Springs, CO 80910, which includes a self-storage facility d/b/a Blue Sky Self-Storage Mesa Ridge (the “**Property**”), and more particularly described in Exhibit “A” attached hereto and made a part hereof.

WHEREAS, in January of 2022, the District contacted Grantor and discussions began concerning the District’s plans for the expansion of Webster Elementary School located at 445 Jersey Lane, Colorado Springs, CO 80911, which neighbors Grantor’s property.

WHEREAS, the District is required as part of its expansion project for Webster Elementary School to construct a detention pond. Thereby the District desires to acquire from Grantor a drainage easement for the purpose of constructing and maintaining an overflow drainage pipe that would drain into Grantor’s existing stormwater system.

WHEREAS, Grantor is willing to grant an easement to the District for the aforesaid purposes on the terms and conditions as set forth hereinbelow.

NOW THEREFORE, in consideration of the foregoing recitals, the benefits derived and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the aforesaid parties do agree as follows:

1. Incorporation of Recitals. The foregoing recitals form an integral part hereof and are hereby incorporated herein by reference.
2. Grant of Easement. Grantor hereby grants and conveys to the District, its successors and assigns, a permanent and non-exclusive right to enter, re-enter, and use the described property, for the limited purpose of constructing, installing, connecting, disconnecting, rerouting, removing, repairing, operating, monitoring, testing, and maintaining above ground, surface, and underground drainage and storm sewer facilities, and all underground and surface appurtenances thereto (“**Drainage Improvements**”), subject to any and all applicable permits and other governmental requirements, in, through, over and across the parcel of land situate, lying in and being in the County of El Paso and the State of Colorado, and more particularly described and depicted in Exhibit “B”, attached hereto and made part hereof (the “**Easement Area**”). The District shall also have the right of ingress and egress in, to, over, through and across the Easement Area for any purpose needful for the full enjoyment of any other right of occupancy or use provided for herein. The District further agrees all

construction, reconstruction, operation, maintenance, removal and any other activities which disturb the Easement Area will be coordinated with Grantor so as to minimize any disruption to Grantor's property.

3. Unencumbered Title. Grantor warrants that the Easement Area granted herein is granted free and clear of all liens and encumbrances.
4. Encroachments. The Grantor shall not construct or place any Encroachment within or upon any part of the Easement Area. The term "Encroachment" is defined as any structure or building, fence, earthen berm, retaining wall, other wall, concrete slab (e.g. driveway, patio, tennis court and the like) street light, power pole, yard light, mail box, sign, planter, traffic island, median, trash receptacle, temporary or permanent, or any tree, shrub, woody plant or nursery stock. Any Encroachment which is placed upon or within the Easement Area as of the date of this Easement Agreement and hereafter may be removed by the District without liability or damages arising there from.
5. Retained Rights. The Grantor shall have all rights to the Easement Area not granted hereby including the right to the undisturbed use and occupancy of the Easement Area insofar as such use and occupancy is consistent with and does not impair any rights granted herein.
6. Warranty of Title. The Grantor warrants title to the Easement Area against all persons claiming by, through, or under it.
7. Non-Exclusive Agreement. This is a non-exclusive easement agreement between the Parties. However, the Parties agree that no public or private utilities may be installed in, upon, or under the Easement Area.
8. Construction. All construction, installation shall be undertaken by the District, its agents, assigns, employees, contractors, or subcontractors at no cost to Grantor and in a manner as to minimize any interference with or adverse effect upon Grantor's Property. Promptly upon completion of construction of the Drainage Improvements, the District shall provide Grantor signed and sealed as-built drawings of the Drainage Improvements.
9. Liens. The District shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Drainage Improvements or the Easement Area.
10. Indemnity and Release. The District shall indemnify, release and hold harmless Grantor, and its affiliates and its and their respective affiliates, members, partners, trustees, employees and agents, from and against all liability, claims, damages, losses and expenses (including all costs and attorneys' fees) arising out of or resulting from the construction, operation or maintenance of the Drainage Improvements, or which are caused in whole or in part, directly or indirectly, by the District or any of its contractors, subcontractor or anyone directly employed by any of them in connection with the exercise of the District's rights under this Agreement. This provision shall survive termination of this Agreement. The foregoing indemnification obligation shall be limited by and subject to the rights, defenses and limitations upon liability available to the District pursuant to Article XI, Section 1 and/or Article X, Section 20 of the

Colorado constitution or pursuant to the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., and nothing herein shall be construed to waive or limit any such rights or defenses. The District shall not be required to defend, indemnify or hold harmless Grantor for any claims resulting, in whole or in part, from acts, infringements, omissions or negligence of Grantor, its subcontractors, agents, representatives, or employees.

11. Obligations. The District agrees that any rights granted hereunder and its use of the Easement Area and the Drainage Improvements installed therein shall be exercised only in full accordance and compliance with any and all governmental laws, rules, regulations, ordinances, permits, approvals and requirements, and any future modifications or amendments thereto. The District covenants and agrees that the District and its successors, assigns, agents, employees, contractors, subcontractors, lessees, invitees or guests shall not release or discharge into or within the Easement Area any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinances, rules, regulations and permits. In the event of such disposal or discharge, the District shall take prompt action to stop the disposal and shall pay all remedial costs and fines, penalties or other amounts imposed or incurred in connection with the cleanup and remediation associated therewith.
12. Conditions of Use. The right of the District to maintain an overflow drainage pipe that drains into Grantor's existing stormwater system is expressly conditioned on the run-off being of sufficient quality not to cause or contribute to any material harm, or to otherwise adversely impact the present or future use of Grantor's stormwater system. If at any time Grantor reasonably determines that the quality of storm water run-off has materially damaged or is materially damaging or overburdening the system, Grantor may demand that the District take such action as may be necessary to bring the stormwater system back to its original condition prior to the damage, or to compensate Grantor for such damages.
13. Insurance. The District shall purchase and maintain, and shall require its licensee(s), contractor(s), subcontractor(s) to purchase and maintain in full force and effect, commercial general liability insurance issued by solvent, reputable insurance company with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, which insurance shall include Grantor as an additional insured and a waiver of subrogation against Grantor.
14. Operation and Maintenance. The Grantor, at its expense, shall be solely responsible for the maintenance of the surface of the Easement Area, except as specified in this paragraph. When the District deems it necessary to install, construct, reconstruct, repair, relocate, remove, replace, operate, or in any way maintain its drainage pipe and/or appurtenances thereto, the District will backfill, compact, and resurface the area of excavation, to include replacement of any bark mulch, or other surface dressing of equivalent availability and cost, damaged by the District's activity, to the grade and condition existing immediately prior to excavation, as nearly as may reasonably be done. Topsoil shall be replaced in cultivated areas, and any excess earth resulting from the District's activities shall be removed at the District's sole expense. For a period of one year following disturbance of the surface of the ground by the District, the District will maintain the surface elevation by correcting any settling or subsiding

that may occur as a result of work done by the District. The District shall not be liable for the loss of any landscaping plants, lawns, or turf, or responsible for the replacement of such plants, lawns, or turf within the Easement Area. In the event and to the extent of damage caused by the District to the Easement Area and the improvements in the land adjacent to the Easement Area including but not limited to, curb, gutter, sidewalk, landscaping, retaining walls, light poles, mailboxes, and signage, the District, shall repair such damage at the District's sole cost and expense.

15. Abandonment. If the District abandons use and operation of the Drainage Improvements installed or laid within the Easement Area, such abandonment shall not constitute abandonment of its rights under this Easement Agreement. However, in the event of such abandonment and upon request by the Grantor, the District Board of Directors will determine whether the easement will be needed by the District in the future and, if at that time it is determined that the easement is surplus to the District's needs, the District will thereupon record a release of easement in the El Paso County real estate records.
16. Defaults. Failure by either Party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them, respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within thirty (30) days after the defaulting party receives written notice from the non-defaulting party specifying with particularity the alleged default, or (ii) if the defaulting party fails to commence to cure or remedy within such thirty (30) day period, and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity.
17. Binding Effect. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.
18. Entire Agreement. The above constitutes the whole agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this instrument. This Agreement shall not be modified, terminated or otherwise amended without the written consent of both Parties.
19. Notices. All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent as follows:

If to Grantor:

National Storage Affiliates
8400 E. Prentice Avenue, 9th Floor
Greenwood Village, CO 80111

If to the District:
Widefield School District No. 3
1820 Main Street
Colorado Springs, CO 80911
David Gish
Chief Operations Officer

20. Taxes. The District hereby agrees to reimburse Grantor for any personal property taxes and any increase in real property taxes levied against Grantor's property, to the extent both are directly attributable to the Drainage Improvements, provided, however, that Grantor must furnish to the District written documentation proving that such claimed increase in property taxes resulted from the Drainage Improvements, and associated calculations. The District shall make such reimbursement payment within forty-five (45) days of receipt of written reimbursement request and the above-described documentation and calculations from Grantor.
21. Miscellaneous.
- a. Nothing in this Agreement is intended or shall be deemed to establish any partnership, joint venture between the Parties, constitute either Party the agent of the other, nor authorize any Party to make or enter into any commitments on behalf of the other Party.
 - b. The failure of a Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such Party's rights or deprive such Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
 - c. The terms and provisions of this Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.
 - d. If any provision, or a portion thereof, of this Agreement is held invalid, inoperative, or unenforceable, the remainder of this Agreement or the application of such provision shall not be affected thereby and the remainder of this Agreement shall be given effect as if such invalid, inoperative or unenforceable provision has not been included.
 - e. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled.
 - f. This Agreement may be signed in counterparts, each of which shall be an original, but all of which shall constitute but one and the same agreement.
 - g. Each signatory below represents that he or she has the authority to bind the Party to this Drainage Easement Agreement on whose behalf the signatory is executing this Drainage Easement Agreement.
 - h. This Agreement shall be of no force and effect until this Agreement is duly and validly executed by both Parties hereto.

[Signature page follows.]

EXHIBIT "A"
(Legal Description of Grantor's Property)

Lot 1 and Tract A, Mesa Ridge Self Storage Filing No. I, County of El Paso State of Colorado.

EXHIBIT "B"
(Legal Description of the Easement Area & Site Plan)

EXHIBIT B
 LOCATED WITHIN THE SOUTHEAST QUARTER OF THE
 SOUTHWEST QUARTER OF SECTION 19,
 TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M.,
 CITY OF COLORADO SPRINGS, COUNTY OF EL PASO,
 STATE OF COLORADO

PARCEL DESCRIPTION

A PARCEL OF LAND LOCATED IN LOT 1 OF MESA RIDGE SELF STORAGE FILING NO. 1 AS RECORDED AT RECEPTION NUMBER 217713887 OF THE EL PASO COUNTY RECORDS, LYING WITHIN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1, AS MONUMENTED BY A #4 REBAR, WHENCE THE NORTHEAST CORNER OF SAID LOT 1, AS MONUMENTED BY #5 REBAR, BEARS N 89°04'51" E, A DISTANCE OF 418.06 FEET, FORMING THE BASIS OF BEARINGS USED IN THIS DESCRIPTION;

THENCE ALONG THE NORTH LINE OF SAID LOT 1, NORTH 89°04'51" EAST, A DISTANCE OF 23.02 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 89°04'51" EAST, A DISTANCE OF 10.36 FEET;

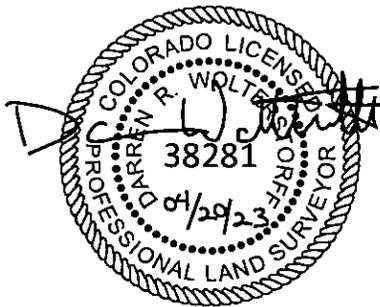
THENCE DEPARTING SAID NORTH LINE, SOUTH 14°16'46" WEST, A DISTANCE OF 26.53 FEET;

THENCE NORTH 75°43'14" WEST, A DISTANCE OF 10.00 FEET;

THENCE NORTH 14°16'46" EAST, A DISTANCE OF 23.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 252 SQ. FT. OR 0.006 ACRES, MORE OR LESS.

I, DARREN R. WOLTERSTORFF, BEING A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE AND IS ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. THIS CERTIFICATION IS NOT A GUARANTY OR WARRANTY, EITHER EXPRESSED OR IMPLIED.



 DARREN R. WOLTERSTORFF, PLS 38281
 FOR AND ON BEHALF OF KIMLEY-HORN AND ASSOCIATES, INC.

NOTES:

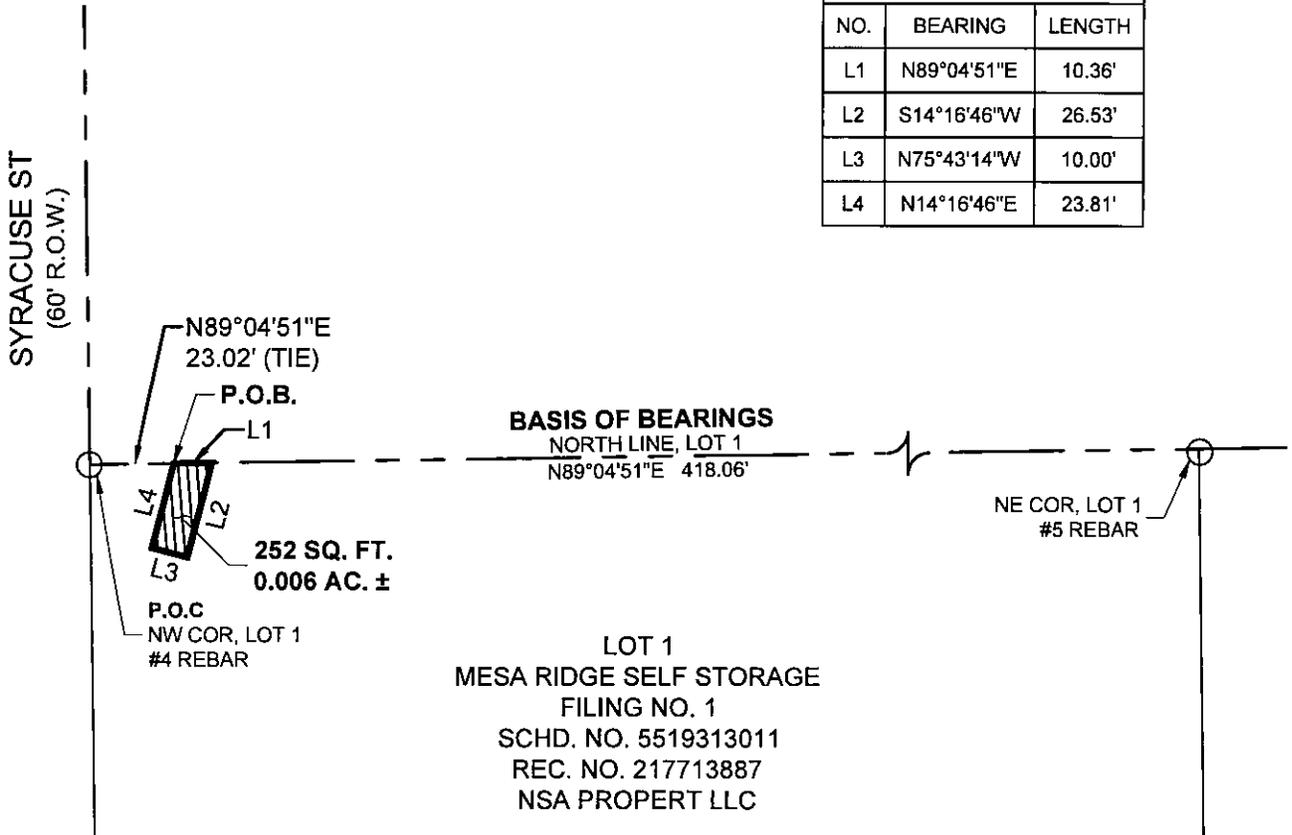
1. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

2. THIS DOCUMENT IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT AND DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS INTENDED TO DEPICT THE ATTACHED PARCEL DESCRIPTION ONLY.

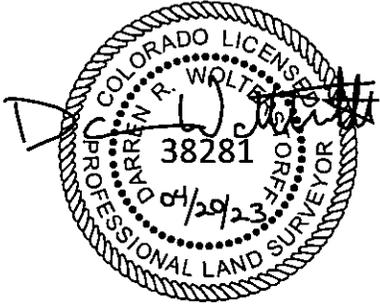
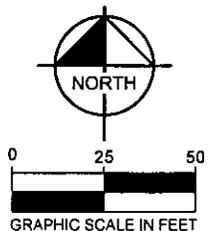
<h1 style="margin: 0;">Kimley»Horn</h1>		Tel. No. (303) 228-2300 www.kimley-horn.com	
4582 SOUTH ULSTER ST., # 1500 DENVER, COLORADO 80237			
<u>Scale</u>	<u>Drawn by</u>	<u>Checked by</u>	<u>Date</u>
N/A	CAD	DRW	4/20/2023
<u>Project No.</u>		<u>Sheet No.</u>	
096958001		1 OF 2	

EXHIBIT B
 LOCATED WITHIN THE SOUTHEAST QUARTER OF THE
 SOUTHWEST QUARTER OF SECTION 19,
 TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M.
 CITY OF COLORADO SPRINGS, COUNTY OF EL PASO,
 STATE OF COLORADO

LINE TABLE		
NO.	BEARING	LENGTH
L1	N89°04'51"E	10.36'
L2	S14°16'46"W	26.53'
L3	N75°43'14"W	10.00'
L4	N14°16'46"E	23.81'



LOT 1
 MESA RIDGE SELF STORAGE
 FILING NO. 1
 SCHD. NO. 5519313011
 REC. NO. 217713887
 NSA PROPERT LLC



LEGEND
 P.O.C. = POINT OF COMMENCEMENT
 P.O.B. = POINT OF BEGINNING

NOTES:
 1. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

2. THIS DOCUMENT IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT AND DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS INTENDED TO DEPICT THE ATTACHED PARCEL DESCRIPTION ONLY.

Kimley»Horn

4582 SOUTH ULSTER ST., # 1500 DENVER, COLORADO 80237

Tel. No. (303) 228-2300
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 50'	CAD	DRW	4/20/2023	096958001	2 OF 2