

## DECLARATION OF EASEMENT FOR ACCESS AND UTILITIES

This Declaration of Easement for Access and Utilities (the "Agreement") is made and executed as of the \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), by **Jacob Decoto** ("Grantor").

### Background and Purpose

Grantor is the owner of the real property legally described as *Lot 1 and Lot 2, Timber Ridge West, El Paso County, Colorado* (individually, "Lot 1" and "Lot 2" and together, the "Property"). Grantor desires to ensure that future owners of Lot 1 and Lot 2 have an easement for access and utilities to and from a public road over, under, through and across that portion of the Property legally described in the attached **Exhibit A** and graphically shown on the diagram attached as **Exhibit B**, subject to the terms and conditions of this Agreement.

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, Grantor establishes the following easement:

1. Grant of Easement #1. Grantor grants, for the benefit of each of Lot 1 and Lot 2, a perpetual, non-exclusive twenty-five foot wide easement across a portion of the Property (the "Easement #1 Property") in the location described as Easement #1 in Exhibit A and depicted in Exhibit B. Easement #1 is centered along the property line between Lot 1 and Lot 2 and is intended to be a shared driveway for Lot 1 and Lot 2 for access to Vollmer Road, a public roadway. Easement #1 is for the construction, maintenance and use of a road for vehicular and pedestrian ingress and egress and for utilities. Easement #1 is for the benefit of the owners of Lot 1 and Lot 2 and their successors and assigns (each, a "Lot owner" or collectively, the "Lot Owners").
2. Grant of Easement #2. Grantor grants, for the benefit of Lot 1, a perpetual, non-exclusive twenty-five foot wide easement across a portion of Lot 2 (the "Easement #2 Property") in the location described as Easement #2 in Exhibit A and depicted in Exhibit B. Easement #2 is wholly located on Lot 2 and is intended to be a shared driveway if, in the future, El Paso County requires Grantor, its successors or assigns, to close access to Vollmer Road provided by Easement #1 and relocate access through Tract A, Timber Ridge West, located north of the Property. Easement #2 is for the construction, maintenance and use of a road for vehicular and pedestrian ingress and egress and for utilities. Easement #2 is for the benefit of the owner of Lot 1 and their successors and assigns.
3. Use of Easements. Neither Lot owner may install any obstruction, barricade or fence, or allow the parking of vehicles on, along or across the Easement #1 Property or the Easement #2 Property (collectively, the "Easement Property") that interferes with the use and enjoyment of Easement #1 or Easement #2 (collectively, the "Easements") by the other Lot owner. However, the Lot owners may agree to the installation, maintenance and cost sharing for one or more gates within the Easement Property as long as the Lot owners affected by the gate(s) consent to such installation.
4. Easement Maintenance. A Lot owner will not be required to contribute its equitable share of costs for maintenance (e.g., grading and snow removal) and repair of the roadway on the Easement Property until the Lot owner commences use of the roadway for access to such owner's Lot (such as,

without limitation, commencement of construction of a residence or other structure on the Lot). When both Lot owners use the roadway, each Lot owner will contribute its equitable share to the costs of maintenance. A Lot owner may improve the roadway at its sole expense (or such expense may be shared if mutually agreed by the other Lot owner) by grading, graveling or paving, or by making such other improvements consistent with good roadway management.

5. Damage to Easement Property and Improvements. Neither Lot owner may cause damage to any improvements within the Easement Property, including the roadway. Each Lot owner shall be responsible for and shall promptly repair in a good and workmanlike manner any damage caused to the Easement Property during the construction of improvements or the installation of utilities within the Easement Property.

6. Default. The failure by a Lot owner to timely pay its share of the costs for maintenance of the roadway within the Easement Property within thirty (30) days after delivery of a written notice showing the Lot owner's share of the costs will constitute a default under this Agreement. The failure by a Lot owner to repair damage to the Easement Property or improvements that is a result of the activities of that owner, its contractors or invitees within a reasonable amount of time, not to exceed thirty (30) days after the occurrence of the activities causing such damage, shall also constitute a default under this Agreement. The defaulting Lot owner shall be liable to the other Lot owner for the amount due, plus interest, costs and expenses and reasonable attorney fees of the other Lot owner if a collection or enforcement action is necessary.

7. Mechanic's Liens. No Lot owner shall create or permit to be created or remain any mechanic's or materialman's lien or other lien or charge to attach against the Easement Property or the Property for materials supplied or work performed at the request of the Lot owner with respect to any construction, maintenance or use of the roadway within the Easement Property. If a mechanic's or materialman's lien or other lien or charge is filed against any portion of the Property owned by the other Lot owner arising from or as a result of materials supplied or work performed by or on behalf of a Lot owner, then the Lot owner responsible for the work, within thirty (30) days of such notice of lien, shall promptly discharge the same at its sole expense. The Lot owner shall indemnify and hold the other Lot owner harmless from any cost or expense (including reasonable attorney's fees and costs) incurred as a result of any such mechanic's or materialman's lien or other lien or charge recorded on the Property.

8. Indemnification. Each Lot owner agrees to release, indemnify, protect and hold the other Lot owner, and its heirs, personal representatives, successors and assigns, harmless from and against any liability, damage, claim, injury, cost or expense (including reasonable attorney fees and costs) arising out of or in connection with the acts or omissions of the Lot owner, its heirs, personal representatives, successors, assigns, contractors, representatives or agents, occurring on and within the Easement Property.

9. General Conditions.

a. Governing Law. This Agreement shall be governed by, and shall be construed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

b. Notices. All notices under this Agreement shall be given by certified mail, postage prepaid, by hand delivery, or by overnight courier service, to a party at its address listed with the El Paso County Assessor's Office. Notice shall be deemed effective upon the earlier of receipt by personal delivery, two days after mailing postage prepaid by a recognized overnight delivery service, or five days after mailing postage prepaid, certified mail, return receipt requested. A party, by notice given as above, may change the address to which future notices should be sent.

c. Covenant to Run with the Land. This Agreement shall run with the land in perpetuity, and shall be binding on and inure to the benefit of each Lot owner, their respective heirs, successors, and assigns.

d. Non-Merger. The Easements and the rights and obligations granted and created by this Agreement are for the mutual benefit and protection of the present and all future owners of Lot 1 and Lot 2. It is the intention of Grantor that for any time there is common ownership of Lot 1 and Lot 2, there shall be no merger of the Easement into the respective fee estate, but rather the Easements and all the rights, benefits, obligations, restrictions and burdens shall be separately preserved for the benefit of all future owners of Lot 1 and Lot 2.

e. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of any provision shall not affect the validity or enforceability of the remaining provisions.

f. Waivers. No waiver of any provision of this Agreement shall be effective unless in writing, or shall be deemed to be a waiver of any other provision of this Agreement or of any subsequent breach of the same or any other provision.

g. Attorney Fees and Costs. In the event of litigation between the parties arising out of the enforcement of or a default under this Agreement, the prevailing party shall be entitled to judgment for court costs and reasonable attorneys' fees in an amount to be determined by the court.

h. Entire Agreement. This Agreement, together with the exhibits, constitutes the entire agreement pertaining to the subject matter of this Agreement, and may not be amended in any manner except by an instrument in writing signed by the parties affected by such amendment.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

**GRANTOR:**

\_\_\_\_\_  
Jacob Decoto

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jacob Decoto.

Witness my hand and official seal.

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

[SEAL]

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