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El Paso County, CO



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When Recorded, Return To:
Winsome, LLC
1864 Woodmoor Drive, Suite 100
Monument, Colorado 80132

**AMENDED AND RESTATED
DECLARATION OF EASEMENT AND JOINT DRIVEWAY MAINTENANCE**

This Declaration of Easement and Joint Driveway Maintenance (“**Declaration**”) is made this 28th day of January, 2025 (“**Effective Date**”), by Winsome, LLC, a Colorado limited liability company (“**Declarant**”).

RECITALS

WHEREAS, Declarant executed and recorded that certain Declaration of Easement and Joint Driveway Maintenance recorded on May 1, 2024 at Reception No. 224032292 in the records of the El Paso County Clerk and Recorder (“**Original Declaration**”).

WHEREAS, Declarant desires to amend and restate the Original Declaration in its entirety as set forth below.

WHEREAS, Declarant owns that certain property known as Lot 6 (“**Lot 6**”), Lot 7 (“**Lot 7**”) and Lot 8 (“**Lot 8**”, collectively with Lot 6 and Lot 7, the “**Lots**”), pursuant to the final plat of Winsome Filing No. 3 (the “**Subdivision**”), El Paso County, Colorado recorded by Declarant May 1, 2024 at Reception No. 224715316, and as described on Exhibit A attached hereto.

WHEREAS, Declarant desires to provide Lot 6 and Lot 8 with access to Alamar Way over a portion of Lot 7 described on Exhibit B attached hereto (“**Access Easement Area**”) and to provide for the construction and maintenance of a shared driveway on the Access Easement Area (the “**Joint Driveway**”).

DECLARATION

NOW, THEREFORE, Declarant hereby declares, for itself, its successors and all subsequent owners of the Lots, that the Lots shall be held, sold, and conveyed subject to the following:

1. **Recitals.** The Recitals are hereby incorporated herein.
2. **Grant of Easement.** Subject to the terms, covenants, agreements and conditions of this Declaration, Declarant hereby establishes and grants a perpetual non-exclusive easement (the “**Access Easement**”) in and to, over, across, under and through the Access Easement Area as reasonably necessary for vehicular and pedestrian ingress and egress to Lot 6 and Lot 8. The Access Easement shall in perpetuity be appurtenant to and for the benefit of all owners of all or any portion of Lot 6 and Lot 8 (“**Lot 6 and Lot 8 Owners**”), and all of their respective successors, assigns, licensees, and invitees, and shall and run with the Lots.

3. Use of Easement.

3.1 Maintenance. Unless otherwise agreed upon by the Lot 6 and Lot 8 Owners and owners of Lot 7 (the "**Lot 7 Owners**," collectively with the Lot 6 and Lot 8 Owners, the "**Owners**"), the Owners shall share equally in the maintenance, repair, and/or replacement of the Joint Driveway, including, without limitation, any paving, cleaning, and snow removal, as follows: Declarant shall initially construct the Joint Driveway and the Lot 7 Owners shall maintain repair and replace the Joint Driveway. All construction and maintenance shall be performed in a good and workmanlike manner and shall comply with all laws, ordinances, building codes, permits, orders, rules, regulations and covenants applicable to the Lots. On or before January 30th of each year, the Lot 7 Owners shall provide the Lot 6 and Lot 8 Owners with a statement (which shall include any invoices, receipts or other reasonable evidence of costs actually paid) showing the actual, out-of-pocket costs incurred by the Lot 7 Owners for the maintenance, repair or replacement of the Joint Driveway for the preceding calendar year. The Lot 6 and Lot 8 Owners shall pay to the Lot 7 Owners a contribution towards the maintenance, repair or replacement of the Joint Driveway equal to one third of such costs actually incurred by the Lot 7 Owners in a single, annual payment due February 28th of each year. Notwithstanding the foregoing, to the extent any portion of the Joint Driveway is damaged or destroyed due to the negligence or intentional misconduct of an Owner or their licensees or invitees (the "**Responsible Owner**"), the Responsible Owner shall promptly repair such damage, replace the destroyed portion of the Joint Driveway or otherwise return the Joint Driveway to substantially the same condition existing prior to such damage, at the Responsible Owner's sole cost and expense. Any payments by the Owners not made when required under this Section shall bear interest at a rate of twelve percent (12%) per annum from the date such payment is due until the date such payment is made.

3.2 No Liens. The Owners shall not allow mechanics liens to be placed on the Joint Driveway in relation to any activities by or through the Owners pursuant to this Agreement. The Lot 6 and Lot 8 Owners shall indemnify and hold harmless the Lot 7 Owners from any and all mechanics liens arising from the Lot 6 and Lot 8 Owners use of the Joint Driveway pursuant to this Agreement, and shall cause the same to be removed of record within thirty (30) days after receipt of written notice of such lien.

4. Non-Interference. None of the Owners shall make any use of the Access Easement Area or Joint Driveway that would interfere with the other Owners' use and enjoyment of the Access Easement or Joint Driveway.

5. Default; Remedies. Any Owner may enforce the terms of this Declaration. In the event an Owner (a "**Defaulting Owner**") defaults on any maintenance or payment obligation under this Declaration, the any other Owner(s) ("**Non-Defaulting Owner(s)**") may serve the Defaulting Owner(s) with a written notice to cure setting forth the nature of the default. If within thirty (30) days of receipt of said notice the Defaulting Owner(s) fails to cure said default, or commence to cure and diligently pursue the same, then the Non-Defaulting Owner(s) may undertake the obligation itself and invoice the Defaulting Owner(s) for the costs incurred by the Non-Defaulting Owner(s) in curing the default ("**Costs**"), provided reasonable evidence of such Costs is provided to the Defaulting Owner(s). The Defaulting Owner(s) shall pay such Costs (in proportion to their maintenance payment obligation), plus ten percent (10%), to the Non-Defaulting Owner(s) within fourteen (14) days of the Defaulting Owner's receipt of the Non-Defaulting Owner's invoice and

reasonable evidence of the Costs incurred. Any sums not timely paid shall bear interest at the rate of twelve percent (12%) per year, compounded annually, from the date payment is due. The Non-Defaulting Owner(s) shall have any rights or remedies available in law or equity in the event of default, and such rights shall include the right to bring an action for damages, as well as any equitable action for the specific enforcement of any of the provisions contained herein. If collection proceedings are undertaken in connection with a default on any payment obligation incurred under this Declaration, the Non-Defaulting Owner(s) shall be entitled to such relief or damages as may be available under law, together with costs and reasonable attorneys' fees incurred in connection therewith. Should any action be brought in connection with this Declaration, including, without limitation, actions based on contract, tort or statute, the prevailing party (or parties) in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees.

6. No Waiver. No provision of this Agreement may be waived except by written instrument signed by the Owner to be charged with such waiver. Failure by any Owner to enforce any provision of this Declaration shall not constitute a waiver of such provision.

7. Binding Effect; Covenants Running With Land. This Declaration and each of the provisions of this Declaration touch and concern the Lots and shall be covenants running with the land, benefitting and binding on the Lots and the Owners, and their respective successors as Owners of the Lots and each part thereof. This Declaration shall inure to the benefit of and be enforceable by the Owners and their respective successors as Owners of the Lots and each part thereof. This Declaration and the easements established herein shall not be deemed waived, released, or terminated by any merger of title to any of the Lots. This Declaration shall be recorded in the real property records of El Paso County, Colorado and will serve as notice to all subsequent owners of the Lots or any portion thereof. This Declaration shall amend, restate and supersede the Original Declaration for all purposes such that the Original Declaration is released and is of no further force or effect.

8. Effect on Subdivision. This Declaration shall be binding only on the Lots described herein. Nothing contained herein shall be construed as affecting or as an encumbrance on any other lot or portion of the Subdivision, except Lots 6, 7 and 8, and any portion thereof.

9. Severability. If any clause or provision of this Declaration shall be held invalid or unenforceable, the remainder of this Declaration shall not be affected thereby.

10. Applicable Law; Venue. This Declaration shall be governed and interpreted under the laws of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

(Signatures on Following Pages)

EXHIBIT A

Lot 6, Lot 7, and Lot 8

Winsome Filing No. 3 according to the plat recorded on May 1, 2024

At Reception No. Reception No. 224715316, El Paso County, Colorado

EXHIBIT B
[See below]

EXHIBIT B

