

**Core Title Group LLC**  
101 S. Sahwatch Street, Suite 212  
Colorado Springs, CO 80903  
Phone: 719-219-8500  
Fax: 719-425-2725

**Transmittal Information**

Date: 05/07/2026  
File No: 8554COR  
Property Address: 17220 Mitchell Ave., Monument, CO 80132  
Buyer/Borrower: Nancy D. Milka  
Seller:

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For changes and updates please contact your Escrow officer(s):

<b>Escrow Officer:</b> Not Applicable Core Title Group LLC 101 S. Sahwatch Street, Suite 212 Colorado Springs, CO 80903 Phone: 719-219-8500	<b>Karina Low</b> Core Title Group LLC 101 S. Sahwatch Street, Suite 212 Colorado Springs, CO 80903 Phone: 719-219-8500
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E-Mail:  
Processor:  
E-Mail: [LPlank@coretitlegroupllc.com](mailto:LPlank@coretitlegroupllc.com)

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Copies Sent to:

**Buyer:**  
Nancy D. Milka

**Seller:**

**Buyer's Agent:**

**Seller's Agent:**

**Buyer's Attorney:**

**Seller's Attorney:**

**Lender:**

**Mortgage Broker:**

Phone: Fax:  
Attn:  
Email:

Phone: Fax:  
Attn:  
Email:

**Changes: Updated Effective Date / Deleted Exceptions.**  
Thank you for using Core Title Group LLC

**COLORADO NOTARIES MAY REMOTELY NOTARIZE REAL ESTATE DEEDS AND OTHER DOCUMENTS USING REAL-TIME AUDIO-VIDEO COMMUNICATION TECHNOLOGY. YOU MAY CHOOSE NOT TO USE REMOTE NOTARIZATION FOR ANY DOCUMENT.**

## Core Title Group LLC

101 S. Sahwatch Street, Suite 212, Colorado Springs, CO 80903  
Phone: 719-219-8500 Fax: 719-425-2725

### UNDERSTANDING YOUR TITLE COMMITMENT

#### SCHEDULE A:

**No. 1: Effective date:** This is the date our title plant is certified through. There will typically be a 1-2 week gap between the certification date and the date the commitment is issued.

**No. 2A: Owner's Policy Proposed Insured:** This is how the buyer's name(s) appear(s) on the Contract, all Closing documents and your Final Title Policy. If your name is appearing incorrectly, please advise your Realtor, Builder and/or Lender.

**No. 2B: Loan Policy Proposed Insured:** This is how your lender has requested their name appear. If you are working with a Mortgage Broker, then this name may be unfamiliar to you. If a determination has not yet been made on what lender will be providing your loan, then this may appear as 'TBD' (To Be Determined). If you are paying cash for this purchase, this item will be left blank.

**Charges: Title Premiums, Endorsements and Tax Certificates:** These are fees for the items that the Company has determined may be required by your Lender and/or to meet the terms of your contract. Your lender may request additional items. This does not include any closing fees.

**No. 3: The estate or interest in the land...:** This shows the type of ownership that is going to be insured.

**No. 4: The Title is, at the Commitment Date...:** This shows the name(s) of the current owner(s).

**No. 5: The land referred to in the Commitment...:** This is the 'legal' property description for the real estate you are buying or selling.

#### SCHEDULE B-SECTION 1:

These are Requirements that must be satisfied in order to provide clear title to the Buyer and/or Lender. The closer and/or processor for the Title Company, will generally take care of satisfying these requirements, however there may be times when your help will be needed as well. Some requirements will be met prior to closing, and others will be met at the time of closing.

#### SCHEDULE B-SECTION 2:

These items are Exceptions to your coverage. We are telling you these items exist (whether by recordation in the County Clerk and Recorder's office or because we have knowledge of them through other means). Since these items have been disclosed to you, you will not be provided any coverage for same. Owner's Extended Coverage will delete Items 1-5 of the pre-printed items on Residential Sale Commitments, provided that the coverage was requested by contract and collected at closing. Copies of the plat and covenants will be automatically sent to the buyer and/or Selling Agent. We are happy to also provide you with copies of any other exceptions as well.

**ALTA COMMITMENT FOR TITLE INSURANCE**  
issued by  
**WESTCOR LAND TITLE INSURANCE COMPANY**  
(ALTA Adopted 07-01-2021)

**NOTICE**

**IMPORTANT—READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

**COMMITMENT TO ISSUE POLICY**

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Westcor Land Title Insurance Company, a South Carolina Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within (6) months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

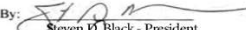

**Issued By:**

**WESTCOR LAND TITLE INSURANCE COMPANY**

**Core Title Group LLC**

101 S. Sahwatch Street, Suite 212  
Colorado Springs, CO 80903  
Phone: 719-219-8500



By:   
Steven B. Black - President  
Attest:   
Donald A. Berube - Secretary

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## COMMITMENT CONDITIONS

### 1. DEFINITIONS

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
  - b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
  - c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
  - d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
  - e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
  - f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
  - g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
  - h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
  - i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
  - j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.
2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- a. the Notice;
  - b. the Commitment to Issue Policy;
  - c. the Commitment Conditions;
  - d. Schedule A;
  - e. Schedule B, Part I—Requirements; and
  - f. Schedule B, Part II—Exceptions; and
  - g. a signature by the Company or its issuing agent that may be in electronic form.

### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

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**5. LIMITATIONS OF LIABILITY**

- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - i. comply with the Schedule B, Part I—Requirements;
  - ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
  - iii. acquire the Title or create the Mortgage covered by this Commitment.
- b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.
- e. The Company is not liable for the content of the Transaction Identification Data, if any.
- f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

**6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM**

- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
- c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- d. The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.

**8. PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

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**9. CLAIMS PROCEDURES**

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

**10. CLASS ACTION**

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

**11. ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of Insurance is \$2,000,000 or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

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## CONDITIONS AND STIPULATIONS

1. The term "mortgage", when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has acquired actual knowledge of any defect, lien encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

## STANDARD EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effect date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
3. Any discrepancies, conflicts in boundary lines, encroachments, easements, measurements, variations in area or content, party wells and/or other facts which a correct survey and/or a physical inspection of the premises would disclose.
4. Rights or claims of parties in possession not shown in the public records.
5. In the event this Commitment is issued with respect to a construction loan to be disbursed in future periodic installments, then the policy shall contain an additional exception which shall be as follows:

Pending disbursement of the full proceeds of the loan secured by the mortgage insured, this policy only insures the amount actually disbursed, but increases as proceeds are disbursed in good faith and without knowledge of any intervening lien or interest to or for the account of the mortgagor up to the amount of the policy. Such disbursement shall not extend the date of the policy or change any part thereof unless such change is specifically made by written endorsement duly issued on behalf of the Company. Upon request by the Insured (and payment of the proper charges thereof), the Company's agent or approved attorney will search the public records subsequent to the date of the policy and furnish the insured a continuation report showing such matters affecting title to the land as they have appeared in the public records subsequent to the date of the policy or date of the last preceding continuation report, and if such continuation report shows intervening lien, or liens, or interest to or for the account of the mortgagor, then in such event this policy does not increase in liability unless such matters as actually shown on such continuation report are removed from the public records by the insured.

File No: **8554COR**  
Amendment No: **8554COR-C2****SCHEDULE A**1. Commitment Date: **May 4, 2026, at 07:30 am**

2. Policy to be Issued:

(a) ALTA® 2021 Owner's Policy

Proposed Insured: **Nancy D. Milka**

Proposed Policy Amount:

(b) ALTA® 2021 Loan Policy

Proposed Insured:

Proposed Policy Amount:

<b><u>Working Commitment Search End</u></b>	<b>\$</b>	<b>250.00</b>
Total:	<b>\$</b>	<b>250.00</b>

3. The estate or interest in the Land at the Commitment Date is: **Fee Simple**

4. The Title is, at the Commitment Date, vested in:

**Nancy D. Milka**

5. The Land is described as follows:

**Lot 2, Block 3, Pine Hills, County of El Paso, State of Colorado**

For Informational Purposes Only:

**17220 Mitchell Ave., Monument, CO 80132**APN: **7122002095**Countersigned  
Core Title Group LLC

By:

**Karina Low**

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**SCHEDULE B, PART I - Requirements**

The following are the requirements to be complied with prior to the issuance of said policy or policies. Any other instrument recorded subsequent to the effective date hereof may appear as an exception under Schedule B of the policy to be issued. Unless otherwise noted, all documents must be recorded in the office of the clerk and recorded of the county in which said property is located.

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

**NOTE: This commitment has been issued for information purposes only and there are no requirements. The liability of the Company in terms of this Commitment is limited to the charges paid for the Commitment.**

**FOR INFORMATIONAL PURPOSES ONLY:**

Deed recorded June 14, 2024 at [Reception No. 224045482](#).

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**SCHEDULE B, PART II - Exceptions**

**Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.**

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements or claims of easements not shown in the Public Records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the land would disclose, and which are not shown by the public record.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
7. Any water rights or claims or title to water, in or under the land, whether or not shown by the public records.
8. Taxes due and payable; and any tax, special assessments, charge or lien imposed for water or sewer service, or for any other special taxing district. Note: Upon verification of payment of all taxes the above exception will be amended to read, "Taxes and assessments for the current year, and subsequent years, a lien not yet due and payable."
9. Any question, dispute or adverse claims as to any loss or gain of land as a result of any change in the river bed location by other than natural causes, or alteration through accretion, reliction, erosion or avulsion of the center thread, bank, channel or flow of waters in Monument Creek lying within subject land; and any question as to the location of such center thread, bed bank or channel as a legal description monument or marker for purposes of describing or locating subject lands.

NOTE: There are no documents in the land records of the office of the Clerk and Recorder of El Paso, accurately locating past or present location(s) of the center thread, bank, bed or channel of the above Monument Creek or indicating any alterations of the same as from time to time may have occurred.

10. Any rights, interest or easements in favor of the riparian owners, the State of Colorado, the United States of America, or the general public, which exist, have existed, or are claimed to exist in and over the waters and present and past bed and banks of Monument Creek.
11. Notes, easements and restrictions as shown on the plat of said subdivision recorded October 11, 1956 in Plat [Book Y at Page 44](#) and as amended by Supplemental Statement and Certificate recorded October 24, 1956 in [Book 1598 at Page 584](#).

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12. Covenants, conditions, restrictions and easements, if any, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in instrument recorded in [Book 1608 at Page 127](#) and any and all amendments and/or supplements thereto.
13. Terms, agreements, provisions, conditions, obligations and easements as contained in Deed recorded October 26, 1965 in [Book 2100 at Page 509](#) and Release and Deed recorded March 26, 1998 at [Reception No. 98037388](#).
14. Reservations made by Norman B. Bodinger and John F. Hughes, as described in Deed recorded November 30, 1966 in [Book 2157 at Page 342](#), and any interests therein or rights thereunder.
15. Terms, agreements, provisions, condition and obligations as contained in Grant of Right of Way to Mountain View Electric Association Inc., a Colorado Corporation recorded August 11, 1994 as [Reception No. 94163480](#).
16. ~~INTENTIONALLY DELETED. (Terms, agreements, provisions, conditions, obligations and easements as contained in Grant of Right of Way to Mountain View Electric Association, Inc., recorded April 7, 1995 at [Reception No. 95033551](#).)~~
17. Terms, agreements, provisions, conditions, obligations and easements as contained in Agreement for Easement recorded May 17, 1995 at [Reception No. 95047721](#).
18. Terms, agreements, provisions, conditions, obligations and easements as contained in Order for Inclusion recorded August 27, 1996 at [Reception No. 96108345](#).
19. Terms, agreements, provisions, conditions, obligations and easements as contained in Deed recorded August 27, 1997 at [Reception No. 97099588](#).
20. Terms, agreements, provisions, conditions and obligations as contained in Warranty Deed and Agreement to Easements and Release of Existing Easements recorded January 16, 1998 at [Reception No. 98006302](#).
21. Terms, agreements, provisions, conditions, obligations and easements as contained in Deed recorded February 19, 1998 at [Reception No. 98020282](#).
22. Terms, agreements, provisions, conditions and obligations as contained in Deed of Easement in Gross recorded March 20, 2002 at [Reception No. 202044073](#).
23. Terms, agreements, provisions, condition and obligations as contained in Resolution No. 08-414 recorded December 16, 2008 as [Reception No. 208132278](#).
24. Terms, agreements, provisions, condition and obligations as contained in Permanent Easement recorded July 27, 2009 as [Reception No. 209086754](#).
25. ~~INTENTIONALLY DELETED. (Terms, agreements, provisions, condition and obligations as contained in Memorandum of Lease recorded March 15, 2019 as [Reception No. 219026387](#). Amendment to Memorandum of Lease recorded January 29, 2020 as [Reception No. 220013107](#).)~~
26. ~~INTENTIONALLY DELETED. (Terms, agreements, provisions, condition and obligations as contained in Declaration of Reciprocal Easements and Agreements recorded September 12, 2019 as [Reception No. 219110534](#).)~~
27. ~~INTENTIONALLY DELETED. (Terms, agreements, provisions, condition and obligations as contained in~~

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Stormwater Maintenance Agreement recorded August 12, 2020 as [Reception No. 220121062](#).)

28. Deed of Trust from James S. Smith, for the use of Compass Bank, to secure \$605,000.00 dated December 14, 2017 recorded December 20, 2017 at [Reception No. 217153373](#).
29. Deed of Trust from James S Smith aka James Scott Smith to Compass Bank, to secure \$66,352.00 dated March 6, 2018 as [Reception No. 218031220](#).
30. UCC Filing Statement recorded July 18, 2022 as [Reception No. 222096633](#).

NOTE: The policy(s) of insurance may contain a clause permitting arbitration of claims at the request of either the Insured or the Company. Upon request, the Company will provide a copy of this clause and the accompanying arbitration rules prior to the closing of the transaction.

*This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Westcor Land Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; Schedule A; Schedule B, Part I-Requirements; and Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

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Core Title Group LLC  
Disclosures

All documents received for recording or filing in the Clerk and Recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The Clerk and Recorder will refuse to record or file any document that does not conform to the requirements of this section. Pursuant to C.R.S. 30-10-406(3)(a).

The company will not issue its policy or policies of title insurance contemplated by this commitment until it has been provided a Certificate of Taxes due or other equivalent documentation from the County Treasurer or the County Treasurer's authorized agent; or until the Proposed Insured has notified or instructed the company in writing to the contrary. Pursuant to C.R.S. 10-11-122.

No person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are available for immediate withdrawals as a matter of right. Pursuant to C.R.S. 38-35-125(2).

The Company hereby notifies the proposed buyer in the current transaction that there may be recorded evidence that the mineral estate, or portion thereof, has been severed, leased, or otherwise conveyed from the surface estate. If so, there is a substantial likelihood that a third party holds some or all interest in the oil, gas, other minerals, or geothermal energy in the subject property. Such mineral estate may include the right to enter and use the property without the surface owner's permission. Pursuant to C.R.S. 10-11-123.

If this transaction includes a sale of property and the sales price exceeds \$100,000.00, the seller must comply with the disclosure/withholding requirements of said section. (Nonresident withholding) Pursuant to C.R.S. 39-22-604.5.

Notice is hereby given that: The subject property may be located in a special taxing district. A Certificate of Taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent. Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor. Pursuant to C.R.S. 10-11-122.

Notice is hereby given that: Pursuant to Colorado Division of Insurance Regulation 8-1-2;

"Gap Protection" - When this Company conducts the closing and is responsible for recording or filing the legal documents resulting from the transaction, the Company shall be responsible for all matters which appear on the record prior to such time or recording or filing; and

"Mechanic's Lien Protection" - If you are the buyer of a single family residence, you may request mechanic's lien coverage to be issued on your policy of Insurance. If the property being purchased has not been the subject of construction, improvements or repairs in the last six months prior to the date of this commitment, the requirements will be payment of the appropriate premium and the completion of an Affidavit and Indemnity by the seller. If the property being purchased was constructed, improved or repaired within six months prior to the date of this commitment the requirements may involve disclosure of certain financial information, payment of premiums, and indemnity, among others. The general requirements stated above are subject to revision and approval by the Company. Pursuant to C.R.S. 10-11-122.

Notice is hereby given that an ALTA Closing Protection Letter is available, upon request, to certain parties to the transaction as noted in the title commitment. Pursuant to Colorado Division of Insurance Regulation 8-1.

Nothing herein contained will be deemed to obligate the Company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.

**Joint Notice of Privacy Policy**

**of**

**Westcor Land Title Insurance Company**

**and**

**Core Title Group LLC**

Westcor Land Title Insurance Company ("WLTIC") and **Core Title Group LLC** value their customers and are committed to protecting the privacy of personal information. In keeping with that philosophy, we each have developed a Privacy Policy, set out below, that will endure the continued protection of your nonpublic personal information and inform you about the measures WLTIC and **Core Title Group LLC** take to safeguard that information. This notice is issued jointly as a means of paperwork reduction and is not intended to create a joint privacy policy. Each company's privacy policy is separately instituted, executed, and maintained.

**Who is Covered**

We provide our Privacy Policy to each customer when they purchase a WLTIC title insurance policy. Generally, this means that the Privacy Policy is provided to the customer at the closing of the real estate transaction.

**Information Collected**

In the normal course of business and to provide the necessary services to our customers, we may obtain nonpublic personal information directly from the customer, from customer-related transactions, or from third parties such as our title insurance agent, lenders, appraisers, surveyors and other similar entities.

**Access to Information**

Access to all nonpublic personal information is limited to those employees who have a need to know in order to perform their jobs. These employees include, but are not limited to, those in departments such as closing, legal, underwriting, claims and administration and accounting.

**Information Sharing**

Generally, neither WLTIC nor **Core Title Group LLC** shares nonpublic personal information that it collects with anyone other than those individuals necessary needed to complete the real estate settlement services and issue its title insurance policy as requested by the consumer. WLTIC or **Core Title Group LLC** may share nonpublic personal information as permitted by law with entities with whom WLTIC or **Core Title Group LLC** has a joint marketing agreement. Entities with whom WLTIC or **Core Title Group LLC** have a joint marketing agreement have agreed to protect the privacy of our customer's nonpublic personal information by utilizing similar precautions and security measures as WLTIC and **Core Title Group LLC** use to protect this information and to use the information for lawful purposes. WLTIC or **Core Title Group LLC**, however, may share information as required by law in response to a subpoena, to a government regulatory agency or to prevent fraud.

**Information Security**

WLTIC and **Core Title Group LLC**, at all times, strive to maintain the confidentiality and integrity of the personal information in its possession and has instituted measures to guard against its unauthorized access. We maintain physical, electronic and procedural safeguards in compliance with federal standards to protect that information.

*The WLTIC Privacy Policy can be found on WLTIC's website at [www.wltic.com](http://www.wltic.com)*

## **Anti-Fraud Statement**

**NOTE: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.**

**This anti-fraud statement is affixed to and made a part of this policy.**

# PINE HILLS

EL PASO COUNTY, COLORADO

SCALE: 1"=200'

PIKE NATIONAL FOREST

PANORAMIC ACRES

RANGE 67 WEST OF THE 6TH P.M.

1C

2C

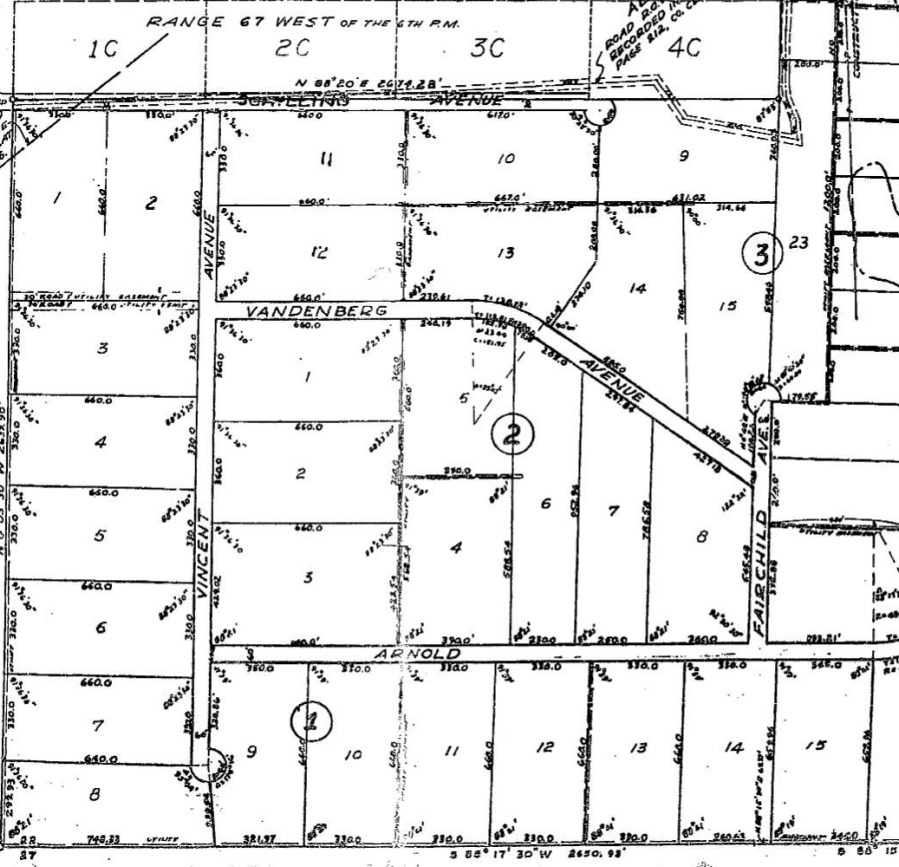
3C

4C

ABANDONED ROAD ROW DESCRIBED AND RECORDED IN BOOK 57 AT PAGE 812, CO. DEEDS & RECORDS.

UNCONSTRUCTED AND ABANDONED HIGHWAY PINE HILLS AS RECORDED IN BOOK D AT PAGE 16.

TOWNSHIP 11 SOUTH



HERMAN

MT

24

UNCONSTRUCTED ELECTRICAL LINE

23

3

2

8

2

28

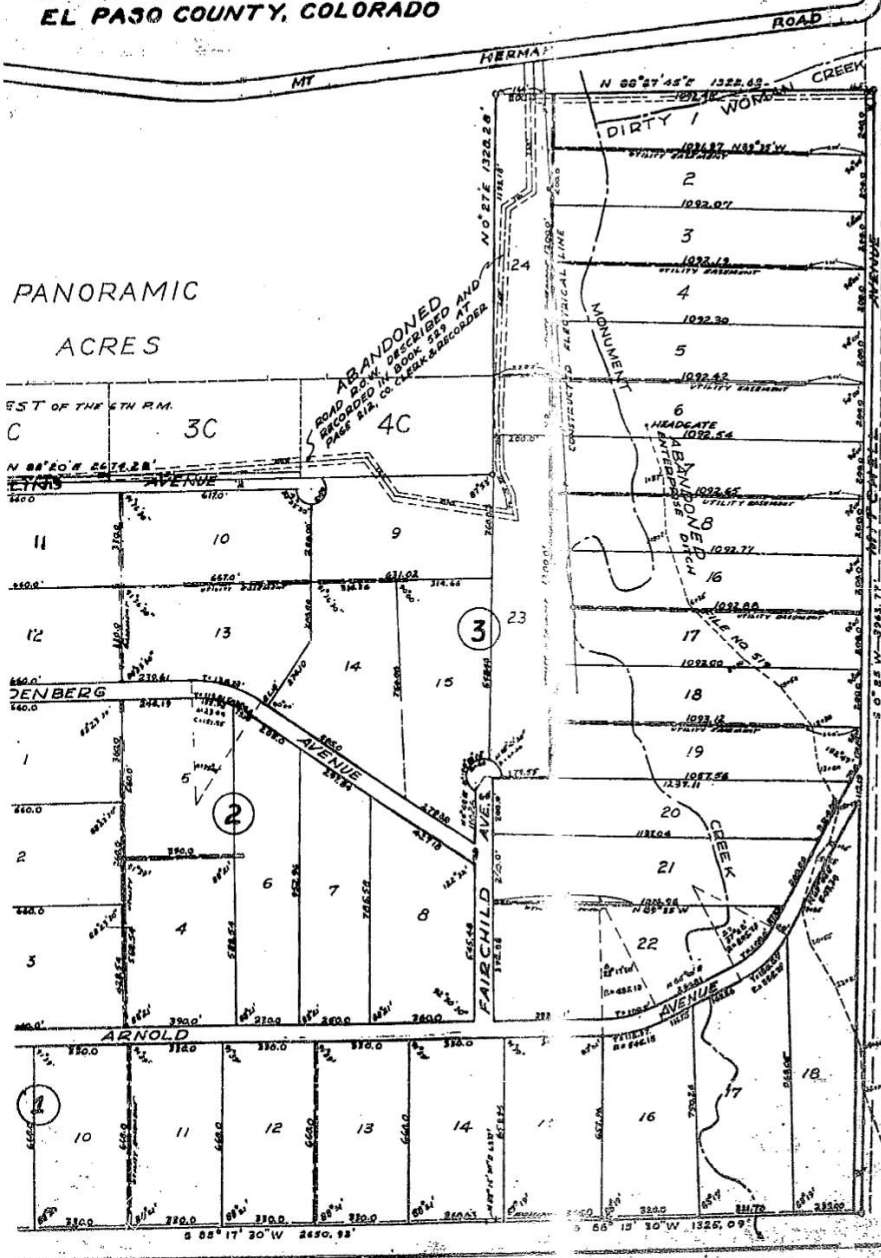
27

S 88° 17' 30" W 2650.93'

S 85° 12'

# PINE HILLS

EL PASO COUNTY, COLORADO



**KNOW ALL MEN BY THESE PRESENTS** THAT NORMAN B. BODINGER AND JOHN F. HUGHES, BEING OWNERS IN FEE THAT OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE WEST HALF OF THE OF THE SOUTHEAST QUARTER, ALL IN SECTION 22, TOWNSHIP 11 SOUTH, RANGE 27 WEST OF THE 6TH P.M. IN EL PASO COUNTY, COLORADO, HAVE CAUSED SAID LAND TO BE SURVEYED, SUBDIVIDED AND PLATTED INTO BLOCKS, LOTS, AND STREETS AS SHOWN BY THAT PLAT ATTACHED HERETO WHICH PLAT IS DRAWN TO A FINED SCALE AS INDICATED THEREON AND ACCURATELY SETS FORTH THE BOUNDARIES AND DIMENSIONS OF THE LAND AND SUBDIVISION THEREOF WHICH SUBDIVISION IS TO BE KNOWN AS PINE HILLS, EL PASO COUNTY, COLORADO; AND COVENANT AND AGREE TO LAY OUT GRADE AND GRAVEL ALL PLATTED STREETS AND TO PROVIDE PROPER DRAINAGE FOR SAME, ALL TO THE SATISFACTION OF THE COUNTY COMMISSIONERS, THE SAID STREETS AND PUBLIC UTILITY EASEMENTS INDICATED HEREON ARE DEDICATED TO PUBLIC USE.

**IN WITNESS WHEREOF** THE UNDERSIGNED HAVE HERE-  
INTO SET THEIR HANDS AND SEALS THIS 11 DAY OF NOVEMBER, 1956.

Norman B. Bodinger (SEAL)      John F. Hughes (SEAL)  
NORMAN B. BODINGER                      JOHN F. HUGHES

**STATE OF COLORADO } SS**  
**COUNTY OF EL PASO } SS**

THE FOREGOING PLAT AND STATEMENT WAS ACKNOWLEDGED BEFORE ME THIS 11 DAY OF NOVEMBER, 1956, BY NORMAN B. BODINGER, WITNESS MY HAND AND OFFICIAL SEAL.

John F. Smith  
NOTARY PUBLIC

**STATE OF COLORADO } SS**  
**COUNTY OF EL PASO } SS**

THE FOREGOING PLAT AND STATEMENT WAS ACKNOWLEDGED BEFORE ME THIS 11 DAY OF NOVEMBER, 1956, BY JOHN F. HUGHES, WITNESS MY HAND AND OFFICIAL SEAL.

John F. Smith  
NOTARY PUBLIC

I, WARREN R. MARRIAGE, REGISTERED LAND SURVEYOR NO. 1752, IN THE STATE OF COLORADO, HEREBY CERTIFY THAT THE TRACT SHOWN BY THE ANNEXED PLAT AND SUBDIVISION THEREOF WAS SURVEYED AND PLATTED UNDER MY SUPERVISION AND THAT SAID ANNEXED PLAT ACCURATELY SHOWS THE DESCRIBED TRACT AND SUBDIVISION THEREOF.

Warren R. Marriage  
REGISTERED LAND SURVEYOR

THE SUBDIVISION WAS APPROVED AS TO DRAINAGE AND RELATED MATTERS ON THIS 11 DAY OF NOVEMBER, 1956.

Bill J. Russell  
COUNTY ENGINEER

THE ANNEXED PLAT WAS APPROVED BY THE PLANNING COMMISSION OF EL PASO COUNTY, COLORADO, THIS 10 DAY OF NOVEMBER, 1956, AND THE DEDICATION TO PUBLIC USE OF THE STREETS SHOWN THEREON, ACCEPTED.

A. C. Dett  
CHAIRMAN

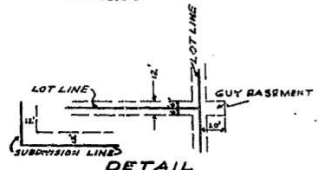
**NOTICE** IS HEREBY GIVEN THAT THE PURCHASER SHALL BE RESPONSIBLE FOR HIS OWN SOURCE OF WATER SUPPLY.

**STATE OF COLORADO } SS**  
**COUNTY OF EL PASO } SS**

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT 1:15 O'CLOCK P.M. THIS 11 DAY OF NOVEMBER, 1956, AND IS DULY RECORDED IN 27 BOOK 16607 AT PAGE 114, UNDER RECEPTION NUMBER 16607.

Fee \$18.50

COUNTY CLERK AND RECORDER  
BY Jenny Bailey  
DEPUTY

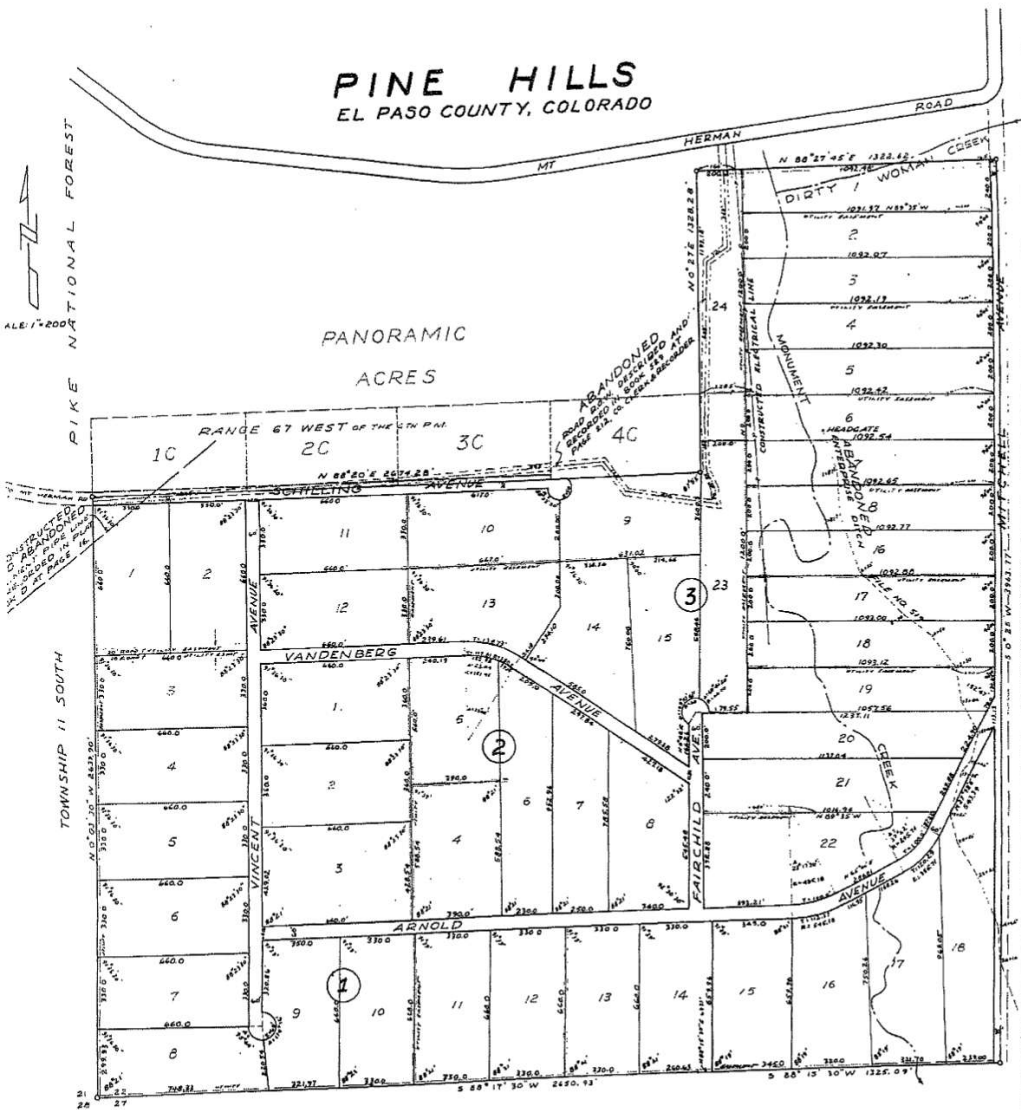


**DETAIL**  
UTILITY EASEMENT  
FOR POWER, TELEPHONE, SEWER,  
WATER AND GAS LINES AND MAINS.

**DOUGLAS JARDINE**  
ENGR.      DEPT.  
COLORADO SPRINGS, COLO.

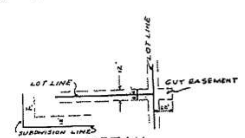
# PINE HILLS

EL PASO COUNTY, COLORADO



SCALE 1"=200'

TOWNSHIP 11 SOUTH



RECORDED 10/11/36 IN  
 BOOK Y AT PAGE 11  
 OR FILE NO. 1605  
 UNDER RECEIPTS NO. 15007  
 OF THE RECORDS OF EL PASO  
 COUNTY, COLORADO

DECLARATION OF RESTRICTIONS  
AND  
PROTECTIVE COVENANTS

23412

The undersigned NORMAN B. BODINGER and JOHN F. HUGHES, owners of the lots and blocks within PINE HILLS, El Paso County, Colorado, being desirous of establishing restrictions and protective covenants applicable to and for the benefit of each and every lot in said Pine Hills, and in consideration of the mutual declarations herein made and future purchases and conveyances of real property in said Pine Hills, declare that all of the real property embraced within said Pine Hills is and shall be used, held and transferred subject to the following restrictive and protective covenants, which are declared to run with the land:

DEC 26 1956

1. Dwellings erected upon said lots shall contain a minimum of 1100 square feet of floor space for each family dwelling unit, exclusive of basement, garage or detached outbuildings. This restriction shall also apply to temporary or seasonal dwellings or cottages.
2. No barn or animal shelter shall be erected within 50 feet of any property line of the owner erecting such barn or animal shelter. Livestock and domestic fowl shall be fenced or secured so that they shall not be able to wander at large at any time.
3. No use shall be made of nor any activity carried on upon any lot or portion of any lot which shall create an undesirable or objectionable condition to the use of adjoining property as a residence, whether by reason of unsightliness, noise or odors. No lot or portion thereof shall be used as a public or private dump and refuse, trash or garbage in any quantity shall not be deposited or dumped upon any lot unless it is the refuse or garbage of the dwelling, and in that event it must be completely buried and not left exposed to open air or sight at any time. No mechanical or automobile parts, machines or parts of machinery, any property held for sale or trade, building construction materials to be used off the premises, salvage items or property, old automobiles to be wrecked or any other chattel property of an unsightly nature shall be stored in the open, but such materials if kept or stored on the premises shall be entirely enclosed within a roofed building and not visible from the outside. Garbage shall not be burned on the premises in such manner as to create noticeable odors. It is the intent hereof to afford protection in addition to the protection afforded by the law relative to public or private nuisances and by the zoning laws.
4. No dwelling shall be built or placed on any lot or portion thereof having an area of less than one acre; no lot or portion thereof shall be used for purposes other than residential, unless a dwelling used as a residence shall also be maintained and so used upon the premises.
5. No structure of a temporary character, trailer, basement house, tent, garage, barn or outbuilding shall be used on any lot at any time as a human habitation, either temporarily or permanently.
6. No gravel pit or sand pit shall be maintained or operated on any lot.

IN WITNESS WHEREOF we have hereunto set our hands and seals, this 17th day of December 1956.

*Norman B. Bodinger* (REAL)  
Norman B. Bodinger

*John F. Hughes* (REAL)  
John F. Hughes

STATE OF COLORADO }  
COUNTY OF EL PASO } ss

Acknowledged before me December 17, 1956, by Norman B. Bodinger and John F. Hughes, as their free and voluntary act and deed.  
My commission expires January 5, 1959.

*John F. Bennett*  
Notary Public

NOV 30 1966

2157 PAGE 342

Filed for record the 30th day of November, 1966, at 2:35 P.M. in the County of ... State of ...

Record No. 511725

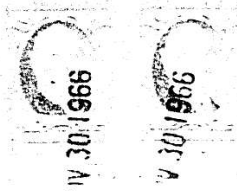
HARRIET BEALS

RECORDER

**This Deed,** Made this 30th day of October in the year of our Lord one thousand nine hundred and fifty six between JONAS B. BOULGON of the County of Bergen, New Jersey and JOSEPH LUGGIE of the County of Clark and State of Colorado, of the first part, and WILLIAM A. HUNTER and WENDELL H. JONES of the County of ... and State of Colorado, of the second part;

Witnesseth, That the said parties of the first part, for and in consideration of the sum of ... DOLLARS, to the said parties of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, not in tenancy in common but in joint tenancy, the survivor of them, their assigns and the heirs and assigns of such survivor forever, all the following described lot or parcel of land, situate, lying and being in the County of ... and State of Colorado, to-wit:

Subject to ...



Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all the estate, right, title, interest, claim and demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

To Have and to Hold the said premises above bargained and described, with the appurtenances, unto the said parties of the second part, the survivor of them, their assigns and the heirs and assigns of such survivor forever. And the said parties of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain and agree to and with the said parties of the second part, the survivor of them, their assigns and the heirs and assigns of such survivor, that at the time of the ensuing and delivery of these presents, they well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever.

and the above bargained premises in the quiet and peaceable possession of the said parties of the second part, the survivor of them, their assigns and the heirs and assigns of such survivor, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will WARRANT AND FOREVER DEFEND.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seal of the day and year first above written.

Signed, Sealed and Delivered in the Presence of  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

STATE OF COLORADO.

County of ... The foregoing instrument was acknowledged before me this ... day of ... 19 ... by ...

Witness my hand and official seal.  
 My commission expires ...





**RELEASE AND QUIT CLAIM  
OF EXISTING EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that MONUMENT SANITATION DISTRICT, whose physical address is 130 2nd Street, Monument, County of El Paso, State of Colorado, hereby releases and quit claims to CHARLES W. BURST and KAREN S. BURST, whose physical address is 16810 Mitchell Avenue, Monument, County of El Paso and State of Colorado, which is legally described as Lot 19, Block 3, Pine Hills Subdivision, the existing easement legally described in Exhibit A which is attached and incorporated herein by reference and conveyed by the Quit Claim Deed which is attached and incorporated herein by reference as Exhibit B.

ATTEST:

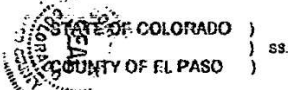
MONUMENT SANITATION DISTRICT

*Larrie McKesson*  
Larrie McKesson, Secretary

By *Leon W. Tenny*  
Leon W. Tenny, President

Dated 3-9 1998.

RECORDER NOTE: Legibility of  
writing, typing or printing  
UNSATISFACTORY in portions  
of this document when received



I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that Leon W. Tenny personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 9<sup>th</sup> day of March 1998.



*Michael W. Wicklund*  
Notary Public

My Commission Expires on:  
My Commission Expires September 23, 1999

24 x 11

32 x 11

**Exhibit B  
QUIT CLAIM DEED**

**KNOW ALL MEN BY THESE PRESENTS**, That MONUMENT SANITATION DISTRICT of the County of El Paso and State of Colorado, 130 2nd Street, Monument, for the consideration of One Dollar and other good and valuable consideration, in hand paid, hereby sells and QUIT-CLAIMS to CHARLES W. BURST and KAREN S. BURST, of the County of Monument and State of Colorado, whose mailing address is 16810 Mitchell Avenue, Monument, Colorado, as joint tenants, the following easement situated in the County of El Paso County and State of Colorado, and legally described as follows:

Easement as contained in the Right of Way Deed as recorded in Book 2100 at Page 509 (as it encumbers Lot 19, Block 3, PINE HILLS Subdivision) of the records of said El Paso County, Colorado, attached to this Exhibit A hereto.

**TO HAVE AND TO HOLD THE SAME**, together with all the appurtenances subject to the taxes for the current year and subsequent years, and subject to any restrictions, reservations, rights-of-way, and covenants of record.

SIGNED AND DELIVERED this 9<sup>th</sup> day of March, 1998.

ATTEST:

MONUMENT SANITATION DISTRICT

Larrie McKesson  
Larrie McKesson, Secretary

By Leon W. Tenney  
Leon W. Tenney, President

Dated 3-9, 1998.

STATE OF COLORADO )  
COUNTY OF EL PASO ) ss.

The foregoing QUIT CLAIM DEED was acknowledged before me this 9<sup>th</sup> day of March, 1998, by Leon W. Tenney

Witnessed and official seal.



Michael W. Richards  
Notary Public

My Commission Expires September 28, 1998

My Commission Expires: \_\_\_\_\_

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

I hereby certify that this QUIT CLAIM DEED was filed for record on the \_\_\_\_\_  
day of \_\_\_\_\_, 199\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ M., in  
my office, and duly recorded in Book \_\_\_\_\_ Page No. \_\_\_\_\_.

\_\_\_\_\_  
Recorder

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

Fees: \$ \_\_\_\_\_

**After recording, return to:**

Susan M. Grant, Esq.  
P.O. Box 1110  
Monument, CO 80132



Mapping

J. Patrick Kelly El Paso Cnty 03/26/1998 12:01  
#098037388 Doc \$ .00 Rec \$30.00 Pg 5/ 6

Received at 1:43 clock P.M. OCT 26 1965  
Reception No. 112280 HARRIET BEALS

BOOK 2100 PAGE 509

RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, That NORMAN D. HOISINGER, CLEO P. BODINGER, and JOHN F. HUGHES, of the County of El Paso and State of Colorado in consideration of the sum of Ten Dollars (\$10.00), to hand paid, the receipt whereof is hereby acknowledged, do hereby sell and quit claim unto MONUMENT SANITATION DISTRICT, existing under and by virtue of the laws of the State of Colorado, its successors and assigns, the following described easement in El Paso County, State of Colorado, to-wit:

Over, under and across a strip of ground 12 feet wide, it being 6 feet on either side of the following described center line:

Commencing at the Northwest corner of the Northwest quarter of the North half quarter of Section 22 in Township 11 South, Range 47 West of the 8th P.M., thence North 40° 20' East on the North line thereof, 272.97 feet to the point of beginning of the center line to be described hereby; thence angle to the right 87° 16' a distance of 308.83 feet to a point; thence angle to the right 50° 21' 21" a distance of 110.05 feet to a point; thence angle to the left 10° 45' 15" a distance of 257.29 feet to a point; thence angle to the right 30° 47' 55" a distance of 153.39 feet to a point; thence angle to the left 84° 00' 10" a distance of 212.18 feet to a point; thence angle to the right 90° a distance of 130.00 feet to a point; thence angle to the right 12° 36' 01" a distance of 309.40 feet to a point; thence angle to the right 2° 01' 23" a distance of 400 feet to a point; thence angle to the right 22° 14' a distance of 400 feet to a point; thence angle to the left 60° 32' 40" a distance of 400 feet to a point; thence angle to the left 6° 10' 30" a distance of 400 feet to a point; thence angle to the left 1° 12' a distance of 400 feet to a point; thence angle to the left 10° 11' 50" a distance of 316 feet to a point; thence angle to the left 24° 21' 20" a distance of 382.66 feet to a point; thence angle to the right 17° 37' 38" a distance of 363 feet on a line 11 feet East of the West line of way of Mitchell Avenue to a point; thence angle to the right 21° 19' 49" a distance of 628 feet to a point; thence angle to the left 53° 43' a distance of 310 feet to a point; thence angle to the left 60° 42' 40" a distance of 161.1 feet to a point; thence angle to the right 81° 10' 49" a distance of 100 feet to a point; thence angle to the right 2° 30' 60" a distance of 335.39 feet to a point; thence angle to the left 0° 33' 40" a distance

2100 610

of 368.27 feet to a point, thence angle to the right 99° 51' a distance  
of 45 feet to a point in Lot 3, Block 2, Pine Hills Addition No. 4  
to the Town of Mountain.

to have and to hold the same unto the said MONUMENT SANITATION DISTRICT and  
its successors or assigns, to lay, maintain, operate and remove a sewer pipe-line  
for the transportation of sewage.

IN WITNESS WHEREOF, they have hereunto set their hands and seals.  
Date 25<sup>th</sup> day of January 1965.

Signed, Sealed and Delivered in  
Presence of

H. W. [Signature]

[Signature] (SEAL)

[Signature] (SEAL)

[Signature] (SEAL)

STATE OF COLORADO  
COUNTY OF EL PASO

On this 25<sup>th</sup> day of January, A.D. 1965, before me,  
Robert W. Hanes a Notary Public  
duly appointed and qualified for and residing in said County,  
personally came Norman H. Dodinger, Glen P. Dodinger and John F. Hughes, to  
me known to be the identical persons described in and who executed the foregoing  
conveyance as grantors, and acknowledged this instrument to be their voluntary act  
and deed.



WITNESS My hand and official seal the day and year first above written.

[Signature]  
Notary Public

My commission expires: Oct. 3, 1965

ARDIS W. SCHMITT  
EL PASO COUNTY CLERK & RECORDER

5-

### GRANT OF RIGHT OF WAY

Charles W. and Karen S. Burst

of the County of El Paso State of Colorado, hereinafter called the "Grantor", in consideration of the sum of one dollar and other valuable considerations, hereby grants unto Mountain View Electric Association, Inc., a Colorado corporation, P.O. Box 1600 Limon, Colorado 80823, hereinafter called the "Grantee", its successors and assigns, and warrants title thereto, the easement and right of way to construct, maintain, change, renew, relocate, enlarge and operate its line or lines for the transmission and distribution of electrical energy, and as incident thereto, and in connection therewith, to construct, maintain, operate, relocate, and enlarge a telephone and/or telegraph line as may be found advisable including the necessary steel and wood pole towers, poles, wires, guys, stubs and other fixtures over, upon, under, and along a strip of land

Twenty (20) feet in width owned by the Grantor, situated in El Paso County, State of Colorado, described as follows:

Beginning at an electric pole currently numbered 135, thence in an Easterly direction parallel to the North Property line to the East property line.

This easement is for underground electric service.

Lot 19 Block 3, PINE HILLS SUBDIVISION, County of El Paso, State of Colorado

in Section 22 Township 11 South, Range 67 West

together with the right of ingress and egress and the right to trim or cut down any trees and shrubbery and to control the growth of same by chemical means, machinery, or otherwise, and remove and enjoy and restrain the placement of any objects which may interfere with the construction and operation of such lines and structures on or near said strip of land.

Grantor further grants unto the Grantee, the right, privilege and authority to grant, permit or license any other public utility, cable television or private communications company to occupy and maintain its facilities within, over, upon, under and along the above described strip of land.

TO HAVE AND TO HOLD said strip of land unto the Grantee, its successors and assigns forever.

The Grantor covenants and agrees for himself, his heirs, and assigns, not to erect any building or structure within the limits of said strip of land, and the Grantee, its successors and assigns, shall have the right to remove, at Grantee's expense, objects interfering with the construction, maintenance, operation, control and use of said lines.

The Grantor agrees that all poles, wires, cables, and other facilities including any main service entrance equipment, installed in, upon or under the above described easement and right-of-way by Grantee shall remain the property of Grantee, removable at the option of Grantee.

This grant is subject to the right of the Grantor, his heirs and assigns, to pass over said strip of land from one portion of his land to the other portion thereof, and to otherwise use, pasture and cultivate the surface of said strip of land consistent with the use of said strip of land by the Grantee, its successors and assigns, for the purposes aforesaid.

The Grantee, for itself, its successors and assigns, hereby agrees to pay any damage which may arise from constructing, maintaining, operating or removing said electric distribution and/or transmission line or lines so far as the same shall affect fences, irrigation or draining of ditches, or existing crops, said damage, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the Grantor, the other two and chosen, one by the Grantee, its successors or assigns, and the third person by the two persons aforesaid, the award of such three persons to be final and conclusive.

The word "Grantor", wherever used herein, shall include either one or more persons, and the masculine wherever used shall include the feminine.

DATED: 2-2-95

Charles W. Burst (SEAL)  
Karen S. Burst (SEAL)

STATE OF COLORADO )  
COUNTY OF El Paso ) ss.

The within instrument was acknowledged before me this 2nd day of January 19 95 by Charles W. Burst and Karen S. Burst  
(Print the name(s) signed above)

Notary Public and official seal.  
Expires May 31, 1995  
Account No. 100110  
Work Order No. CO 80-521  
yes

Jan M. McElhine  
Notary Public  
1849 Woodmoor Dr.  
Notary's Home or Business Address  
Monument CO 80132

25x11 32x11

96108345

96 AUG 27 PM 3: 51

ARDIS W. SCHMITT  
EL PASO COUNTY CLERK & RECORDER

182  
10<sup>00</sup>  
10<sup>00</sup>

DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO

Civil Action No. 43381

Division No.

**ORDER FOR INCLUSION**

IN THE MATTER OF

THE ORGANIZATION OF MONUMENT SANITATION DISTRICT

THIS MATTER coming on to be heard this 20 day of <sup>AUGUST</sup> ~~June~~, 1996, upon Petition of Monument Sanitation District, acting by and through its Board of Directors, said Petition being dated the 19 day of June, 1996, and praying for an Order providing for the inclusion of certain land within the boundaries of said District, the Court having considered said Petition, and being fully advised of the premises;

FINDS THAT properly executed Petitions were heretofore presented to the Board of Directors of the Monument Sanitation District, praying for the inclusion of the hereinafter described land within the boundaries of said District;

THAT said Petitions were executed by the owners of 100% of said property;

THAT proper notice of the filing of said Petitions was given and published as provided by law in such cases;

THAT said notice set forth the filing of said Petitions, the names of the Petitioners, the description of the lands mentioned in the prayer of said Petition, and gave notice to all persons interested to appear at Monument Sanitation District Offices, 130 Second Street, Monument, Colorado on May 8, 1996 at 6:30 p.m. in said District, at the time specified in said notice, to show cause in writing, if any, why the said Petitions should not be granted;

THAT pursuant to the filing of said Petitions and said notice, a regular meeting of the Board of Directors was held on May 8, 1996 which had been set for hearing on said Petitions;

THAT no person appeared at said meeting to object to the granting of the prayers of said Petitions or to show cause why said Petitions should not be granted;

THAT said Board of Directors did thereupon adopt the Resolution and Order including the hereinafter described lands within the boundaries of said Monument Sanitation District and that a duly certified copy of said Resolution and Order has been presented to this Court:

Gaddis, Kin & Herd

96108345-2

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the hereinafter described lands be, and the same hereby are, incorporated and included in and within the boundaries of the said Monument Sanitation District, and are hereby made a part of said District subject to all of the rights and liabilities of all of the land heretofore included in said District.

2. Those certain lands to be included in the District are described as follows:

Lots 1, 2, 3, 4, 5, 6, and 16, all in Block 3, Pinehills Subdivision, El Paso County, Colorado

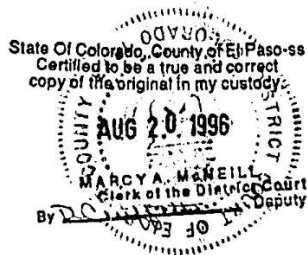
IT IS FURTHER ORDERED, that each and every act of the Board of Directors of Monument Sanitation District in the acceptance of the Petitions hereinabove referred to and the publication of Notice of Filing of said Petitions, and of the hearing held thereon and the inclusion of the hereinabove described land in said Monument Sanitation District is hereby ratified and confirmed.

IT IS FURTHER ORDERED, that nothing herein contained shall impair or affect the original organization of said Monument Sanitation District except for the inclusion of the land hereinabove described as provided by law.

DONE IN OPEN COURT this 20<sup>th</sup> day of Aug 1996

JANE LOONEY

District Judge





**WARRANTY DEED AND AGREEMENT TO EASEMENTS  
AND RELEASE OF EXISTING EASEMENTS**

KNOW ALL MEN BY THESE PRESENTS, that GEORGE R. DIESTELKAMP and DARIEL DODGE-DIESTELKAMP, whose physical address is 17220 Mitchell Avenue, Monument, County of El Paso and State of Colorado, for the consideration of the release and quitclaim of the existing easements legally described in EXHIBIT A which is attached hereto and incorporated herein by reference and other good and valuable consideration, hereby grant, bargain, sell and convey to PALMER LAKE SANITATION DISTRICT, whose physical address is 4 Highway 105, Palmer Lake, County of El Paso, State of Colorado, and MONUMENT SANITATION DISTRICT, whose physical address is 130 2nd Street, Monument, County of El Paso, State of Colorado, and WOODMOOR WATER AND SANITATION DISTRICT 1, whose physical address is 1845 Woodmoor Drive, Monument, County of El Paso, State of Colorado, a perpetual easement and right of way over, under, through and across that portion of Lots 1, 2, & 3, Block 3, Pine Hills Subdivision, situated in the County of El Paso and State of Colorado, as described in EXHIBIT B which is attached hereto and incorporated herein by reference, for the purpose of construction of underground sewer pipelines and facilities, to operate, maintain and replace such pipelines and facilities, for transportation of sewage and to replace any existing above ground manholes or facilities, and warrant the title to the same.

SIGNED this 18<sup>th</sup> day of December, 1997.

*George R. Diestelkamp*  
George R. Diestelkamp

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

RECORDER NOTE: Legibility of  
writing, typing or printing  
UNSATISFACTORY in portions  
of this document when received

I, the undersigned Notary Public in and for said County, in the State of Colorado do hereby certify that George R. Diestelkamp, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument a his free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal.

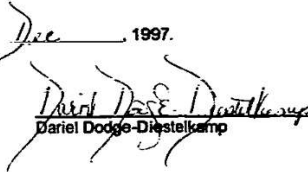
*Kimberly J. Culver*  
Notary Public  
My commission expires: \_\_\_\_\_



2007011

09/2/97

SIGNED this 18 day of Dec, 1997.

  
\_\_\_\_\_  
Darrel Dodge-Diestelkamp

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

I, the undersigned Notary Public in and for said County, in the State of Colorado do hereby certify that Darrel Dodge-Diestelkamp is personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal.



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

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

ATTEST:

MONUMENT SANITATION DISTRICT

Larrie McKesson  
Larrie McKesson, Secretary

By: Leon W. Tenney  
Leon W. Tenney, President

Dated 1-14, 1998



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


I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that Leon W. Tenney, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 14<sup>th</sup> day of January, 1998



Michael M. Wickling  
Notary Public

My Commission Expires on:  
September 29, 1999

ATTEST:  
  
Frank R. Kottke  
Frank R. Kottke, Secretary  
Dated Jan - 14 - 1998

PALMER LAKE SANITATION DISTRICT  
By: David James Wilson  
David James Wilson, President

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

I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that David James Wilson, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 14<sup>th</sup> day of January, 1997.

Annita Jo Hanson  
Notary Public  
My Commission Expires on: 10/30/99  


ATTEST:

WOODMOOR WATER AND SANITATION  
DISTRICT NO. 1

  
Billie J. Kennedy, Secretary

By:   
George A. Goddu, President

Dated Jan 16 1998



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

I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that George A. Goddu, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 16<sup>th</sup> day of January 1998  
1997.



  
Notary Public

My Commission Expires on:  
My Commission Expires September 28, 1993

**QUIT CLAIM DEED**

**KNOW ALL MEN BY THESE PRESENTS**, That MONUMENT SANITATION DISTRICT of the County of El Paso and State of Colorado, for the consideration of One Dollar and other good and valuable consideration, in hand paid, hereby releases and QUIT-CLAIMS to GEORGE R. DIESTELKAMP and DARIEL DODGE-DIESTELKAMP, of the County of El Paso and State of Colorado, whose mailing address is 17220 Mitchell Avenue, Monument, Colorado, as joint tenants, the following easements situated in the County of El Paso County and State of Colorado, and legally described as follows:

That property identified in the Grant of Easement as recorded in Book 6649 at Page 1497 of the records of El Paso County, Colorado, and

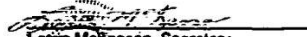
That property identified in the easement contained in the Right of Way Deed as recorded in Book 2100 at Page 509 (as it encumbers Lots 1, 2, and 3, Block 3 PINE HILLS Subdivision) of the records of said El Paso County, Colorado.

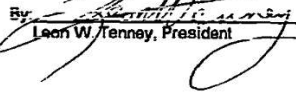
**TO HAVE AND TO HOLD THE SAME**, together with all the appurtenances subject to the taxes for the current year and subsequent years, and subject to any restrictions, reservations, rights-of-way, and covenants of record.

SIGNED AND DELIVERED this 14<sup>th</sup> day of January, 1998.

ATTEST:

MONUMENT SANITATION DISTRICT

  
Leona McResson, Secretary  
Dated: 1-14, 1998


By:   
Leon W. Tenney, President

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

The foregoing QUIT CLAIM DEED was acknowledged before me this 14<sup>th</sup> day of January, 1998, by Leon W. Tenney.

Witness my hand and official seal.



  
Notary Public  
My Commission Expires September 29, 1999  
My Commission Expires: \_\_\_\_\_

J. Patrick Kelly El Paso Cnty 01/16/1998 04:59  
#098006302 Doc \$ .00 Rec \$115.00 Pg 7 / 23

STATE OF COLORADO )  
COUNTY OF EL PASO ) ss.

I hereby certify that this QUIT CLAIM DEED was filed for record on the \_\_\_\_\_ day  
of \_\_\_\_\_ 199\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., in my office,  
and duly recorded in Book \_\_\_\_\_ Page No. \_\_\_\_\_.

Recorded \_\_\_\_\_

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

Fees: \$ \_\_\_\_\_

**After recording, return to:**

Susan M. Grant, Esq.  
PO Box 1110  
Monument, CO 80132

**QUIT CLAIM DEED**


**KNOW ALL MEN BY THESE PRESENTS**, That PALMER LAKE SANITATION DISTRICT of the County of El Paso and State of Colorado, for the consideration of One Dollar and other good and valuable consideration, in hand paid, hereby releases and QUIT-CLAIMS to GEORGE R. DIESTELKAMP and DARIEL DODGE-DIESTELKAMP, of the County of El Paso and State of Colorado, whose mailing address is 17220 Mitchell Avenue, Monument, Colorado, as joint tenants, the following easements situated in the County of El Paso County and State of Colorado, and legally described as follows:

That property identified in the easement described in the Warranty Deed as recorded in Book 5218 at Page 1227 (as it encumbers Lot 3, Block 3, PINE HILLS Subdivision), and

Any Claims of Easements situated on Lots 1 and 2 and Lot 3, Block 3, PINE HILLS Subdivision and which are not recorded in the records of said El Paso County, Colorado as described in 1) Agreement for Easement signed by Albert P. Samo and Josephine L. Samo and the Palmer Lake Sanitation District dated March 2, 1973, and 2) Agreement for Easement signed by Clifford W. Houy and James O. Johnson and the Palmer Lake Sanitation District dated May 25, 1973.

**TO HAVE AND TO HOLD THE SAME**, together with all the appurtenances subject to the taxes for the current year and subsequent years, and subject to any restrictions, reservations, rights-of-way, and covenants of record.

SIGNED AND DELIVERED this 14<sup>th</sup> day of January, 1998.

WITNESSETH:  
  
Kenneth R. Kottke, Secretary  
Dated Jan 14-1998, 1998

PALMER LAKE SANITATION DISTRICT

By David James Wilson  
David James Wilson, President

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

The foregoing QUIT CLAIM DEED was acknowledged before me this 14<sup>th</sup> day of January, 1998, by David James Wilson.

Witness my hand and official seal.

Bonita Jo Hanson  
Notary Public



[SEAL]

29 x 111

32 x 111

My Commission Expires: 10/30/99

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

I hereby certify that this QUIT CLAIM DEED was filed for record on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., in my office, and duly recorded in Book \_\_\_\_\_ Page No. \_\_\_\_\_.

\_\_\_\_\_  
Recorder  
By: \_\_\_\_\_  
Deputy  
Fees: \$ \_\_\_\_\_

**After recording, return to:**

Susan M. Grant, Esq.  
P.O. Box 1110  
Monument, CO 80132

J. PATRICK KALLY El Paso Cnty 01/16/1998 04:59  
#098006902 Doc \$ .00 Rec \$115.00 Pg 9 / 23

**Exhibit A**

**RELEASE OF EASEMENTS and RIGHT-OF-WAY**

over

Lots 1, 2 and 3, Block 3, PINE HILLS Subdivision

OWNER: Diestelkamp

DATE OF PREPARATION: December 11, 1997

PREPARED BY: GMS, Inc.

KNOW ALL MEN BY THESE PRESENTS: That the Monument Sanitation District and the Palmer Lake Sanitation District of the County of El Paso, State of Colorado, hereby quit claim, release and relinquish the following easements and claims of easements and all agreements appurtenant thereto all in El Paso County to George R. Diestelkamp and Darrel Dodge-Diestelkamp as described in the accompanying instruments:

**MONUMENT SANITATION DISTRICT**

Grant of Easement as recorded in Book 6649 at Page 1497 of the records of said El Paso County, Colorado, attached to this Exhibit A hereto as Page 15 of 23 through Page 16 of 23

Easement contained in the Right of Way Deed as recorded in Book 2100 at Page 509 (as it encumbers Lots 1, 2 and 3, Block 3 PINE HILLS Subdivision) of the records of said El Paso County, Colorado, attached to this Exhibit A hereto as Page 11 of 23 through Page 12 of 23

**PALMER LAKE SANITATION DISTRICT**

Easement in the Warranty Deed as recorded in Book 5216 at Page 1227 (as it encumbers Lot 3, Block 3, PINE HILLS Subdivision) of the records of said El Paso County, Colorado, attached to this Exhibit A hereto as page 13 of 23 through Page 14 of 23

Claims of Easements situate on Lots 1 and 2 and Lot 3 Block 3, PINE HILLS Subdivision and not recorded in the records of said El Paso County, Colorado

- 1) Agreement for Easement signed by Albert P. Sarno and Josephine L. Sarno and the Palmer Lake Sanitation District dated March 2, 1973 attached to this Exhibit A hereto as page 17 of 23 through Page 18 of 23
- 2) Agreement for Easement signed by Clifford W. Houy and James O. Johnson and the Palmer Lake Sanitation District dated May 25, 1973 attached to this Exhibit A hereto as Page 19 of 23 through Page 20 of 23

Mapping

Recorded at *C. C. Cook* M. 11726 1965  
Exception No. 112260 HARPIET BEALE

2100 out 509

RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, that ROHMAN H. LODGING, JR., CLEO P. BREKING, JR., and JAMES S. HUGHES, of the County of El Paso and State of Colorado in consideration of the sum of Ten Dollars (\$10.00), in hand paid, the receipt whereof is hereby acknowledged, do hereby sell and quit claim unto MOUNTAIN ADMINISTRATION DISTRICT 2, existing under and by virtue of the laws of the State of Colorado, its successors and assigns, the following described easement to El Paso County, State of Colorado, to-wit:

Over, under and across a strip of ground 12 feet wide, 41 being 0 feet on either side of the following described center line:

Commencing at the Northwest corner of the Northeast quarter of the Northeast quarter of Section 22 in Township 13 South, Range 07 West of the 40th P. M. Thence North 20° 18' East 100 feet to the North line thereof, 272.87 feet to the point of beginning of the center line to be described hereby thence angle to the right 72° 46' a distance of 206.93 feet to a point thence angle to the right 50° 31' 21" a distance of 247.50 feet to a point, thence angle to the left 60° 55' 15" a distance of 193.25 feet to a point, thence angle to the right 90° a distance of 125.40 feet to a point, thence angle to the right 71° 22' 01" a distance of 340.49 feet to a point, thence angle to the right 3° 01' 22" a distance of 400 feet to a point, thence angle to the right 23° 48' a distance of 400 feet to a point, thence angle to the left 63° 21' 40" a distance of 400 feet to a point, thence angle to the left 1° 10' 20" a distance of 400 feet to a point, thence angle to the left 33° 43' 30" a distance of 316 feet to a point, thence angle to the left 33° 43' 30" a distance of 352.64 feet to a point, thence angle to the right 68° 21' 50" a distance of 365 feet to a point, thence angle to the right 23° 18' 10" a distance of 628 feet to a point, thence angle to the left 53° 13' a distance of 370 feet to a point, thence angle to the left 68° 43' 40" a distance of 103.4 feet to a point, thence angle to the left 81° 10' 40" a distance of 400 feet to a point, thence angle to the right 2° 30' 00" a distance of 338.39 feet to a point, thence angle to the left 3° 21' 20" a distance

Page 1 of 2 pages

J. Patrick Kelly El Paso City 01/13/1998 04:59  
M098006302 Doc \$ .00 Rec \$115.00 Pg 11 / 23

2100 610

of 55 feet to a point in Lot 3, Block 2, Pipe Line Addition No. 4  
to the Town of Monmouth

to here and to hold the same unto the said MONUMENT SANITATION DISTRICT and  
its successors or assigns, to lay, maintain, operate and remove a sewer pipe-line  
for the transportation of sewage.

IN WITNESS WHEREOF, they have hereunto set their hands and seals,  
this 22<sup>nd</sup> day of January, 1965.

Signed, Sealed and Delivered in Presence of	<i>[Signature]</i> (SEAL)
	<i>[Signature]</i> (SEAL)
	<i>[Signature]</i> (SEAL)

STATE OF COLORADO )  
COUNTY OF EL PASO )

On this 22<sup>nd</sup> day of January, A.D. 1965, before me,  
*Norman D. Dodinger* a Justice of the Peace,  
personally came *Norman D. Dodinger, Cleo D. Dodinger and John F. Hughes*, to  
me known to be the identical persons described in and who executed the foregoing  
conveyance or grantors, and acknowledged this instrument to be their voluntary act  
and deed.

WITNESS My hand and official seal this day and year first above written.

*[Signature]*  
Notary Public

My commission expires: *Oct. 5, 1965*

Page 2 of 2 pages

01437874

REC 14 PM 2:00

001521801227

ANAS & SCHOFF  
El Paso County Clerk & Recorder

609  
Encl  
Plated

WARRANTY DEED TO EASEMENT

KNOW ALL MEN BY THESE PRESENTS, THAT WILLIAM G. and FRANCES E. BROACH, whose address is 19435 Indian Summer Lane, Monument, State of Colorado, for the consideration of One Dollar (\$1.00) and other good and valuable considerations, in hand paid, hereby grant, bargain, sell and convey to PALMER LAKE SANITATION DISTRICT, a governmental subdivision of the State of Colorado, whose address is 11 El Paso Road, Palmer Lake, County of El Paso, State of Colorado, a perpetual easement and right of way over, under, through and across that portion of Lot 3, Block 3, Pine Hills Subdivision, situate in the County of El Paso, State of Colorado, as described in Exhibit "A" attached hereto and incorporated herein by reference, for the purpose of construction, operation and maintenance (including replacement) of sanitary sewer pipelines and facilities, and warrant the title to the same subject to all prior encumbrances of record.

ADW/L

SIGNED this 7 day of February, 1998

STATE DOCUMENTARY

EUC 1 & 1965

PER         

William G. Broach Jr.  
William G. Broach  
Frances E. Broach  
Frances E. Broach

STATE OF Colo.  
COUNTY OF El Paso

I, William G. Broach Jr., a Notary Public in and for said County, in the State aforesaid, do hereby certify that WILLIAM G. and FRANCES E. BROACH personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal.  
My commission expires: February 22, 1996

(SEAL)



William G. Broach Jr.  
Notary Public  
Address: 19435 Indian Summer Lane  
Monument, Colorado 80131

257 011

30 2 5 11

NO. 5218 RE 1226

EXHIBIT "A"

UTILITY EASEMENT  
PINE HILLS SUBDIVISION

That portion of Section 22, Township 11 South,  
Range 87 West of the 6th Principal Meridian to be  
used as a 15.0' utility easement being more particu-  
larly described as follows:

Commencing at the southeast corner of Lot 3,  
Block 3 as platted in Pine Hills Subdivision plat  
book 7, Page 66, El Paso County, Colorado with all  
bearings herein being relative to said plat.

Thence North 89° 35' 00" West, 333.62 feet to the  
true point of beginning.

Thence North 01° 46' 58" East, 13.21 feet;

Thence North 02° 01' 15" East, 186.87 feet to a  
point on the northerly boundary of said Lot 3  
which line 330.02 feet West of the Northeast  
Corner of said Lot 3, thus describing the centerline  
of an easement which extends 7.5 feet perpendicularly  
on each side of said centerline.

It is intended that this easement description encompass  
an existing sewer line.

6849, 1497

**GRANT OF EASEMENT  
MONUMENT SANITATION DISTRICT**

KNOW ALL MEN BY THESE PRESENTS, That George R. Diestelkamp and Daniel Dodge-Diestelkamp, whose address is 3175 Gilroy Court, Colorado Springs, Colorado, 80918, for consideration of Ten Dollars and No/100 (\$10.00), and other good and valuable considerations in hand paid, hereinafter called the "Grantor", hereby grants, sells and conveys to the MONUMENT SANITATION DISTRICT, hereinafter called "Grantee", its successors and assigns, a perpetual right of way and easement for construction, maintenance and operation of sewer lines, including necessary pipes and other improvements, together with necessary fixtures and attachments, said right of way and easement being described in Exhibit "A" attached hereto and incorporated herein by reference.

Together with the right of ingress and egress to said right of way and easement in the exercising of rights herein granted. That no building or structure shall be constructed on said right of way and easement by Grantee (or property owner), without Grantee's written consent. Grantee shall have the right to trim or remove any trees or undergrowth within the right of way, which may interfere with construction, maintenance or operation of said lines, where necessary.

It is understood that the Grantee will reimburse the Grantor (or property owner) for any damage caused by entry upon the above-described right of way and easement for the purpose of construction, maintenance and operation of said lines.

IN WITNESS WHEREOF, the undersigned have set their hands and seal this 1<sup>st</sup> day of August, 1994.

*George R. Diestelkamp*  
George R. Diestelkamp

*Daniel Dodge-Diestelkamp*  
Daniel Dodge-Diestelkamp

STATE OF COLORADO )  
COUNTY OF EL PASO ) SS.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 1994, by George R. Diestelkamp and Daniel Dodge-Diestelkamp.

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_  
My business address is \_\_\_\_\_



6811-01-00-011

25 x 11

J. Patrick Kelly El Paso Cnty 01/16/1998 04:59  
#098006302 Doc \$ .00 Rec \$115.00 Pg 16/ 23

SIX PAGES  
6649 1498

EXHIBIT "A"

LEGAL DESCRIPTION: 120' SAN SEWER ESM'T - LOT 1, 2, AND 3, BLOCK 3 PINE HILLS SUBDIVISION

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., OF EL PASO COUNTY, COLORADO, TO WIT:

A STRIP OF LAND OVER AND ACROSS A PORTION OF LOTS 1, 2 AND 3, BLOCK 3, PINE HILLS SUBDIVISION AS RECORDED IN PLAT BOOK Y AT PAGE 44 OF THE RECORDS OF SAID COUNTY, SAID STRIP OF LAND BEING 20 FEET IN WIDTH, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1:

THENCE N49°33'00"W, 361.35 FEET ALONG THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING OF THE CENTERLINE OF SAID STRIP OF LAND HEREIN DESCRIBED;

THENCE S02°21'55"W, 53.46 FEET;

THENCE S31°15'52"W, 403.41 FEET;

THENCE ALONG THE ARC OF A CURVE TO LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 19°42'51", A RADIUS OF 190.00 FEET, FOR AN ARC DISTANCE OF 65.38 FEET TO THE POINT OF TERMINUS OF THE CENTERLINE HEREIN DESCRIBED, THE SIDE LINES OF WHICH ARE TO BE SHORTENED OR EXTENDED TO INTERSECT SAID NORTH LINE OF LOT 1.

J. Patrick Kelly El Paso Cnty 01/16/1998 04:59  
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*Copy filed  
of record  
(10/2)*

PRECEDENT FOR EASEMENT

IT IS AGREED and between Albert F. Sarno and Josephine L. Sarno

hereinafter referred to as Grantor(s), whose address is:  
Four 2, Box 3051, Frondillo, California 92026

and the Palmer Lake Sanitation District, a governmental subdivision of the State of Colorado, existing under and by virtue of the laws of the State of Colorado, hereinafter referred to as Grantee, as follows:

1. Grantor(s) hereby grant(s) unto the Grantee the right to enter, and to go upon and across, the following described real property situated in the County of El Paso, State of Colorado, to-wit:  
Lot 1 and Lot 2, Block 3, Pine Hills;

and hereby further grant(s) a 65 foot easement construction easement and right of way over, upon, in, and across, said property, for the purpose of laying out and installing a sanitary sewer line of the anticipated approximate length of 520 feet.

2. Upon completion of the sewer line installation (which installation shall at all times conform to the best engineering practices and be in accord with prevailing law and shall, among other things, include the return of the surface, so much as practicable, to its original condition) Grantor shall cause a survey to be made, at its expense, of the sewer line route as installed, and Grantor(s) agree(s) to execute and deliver a grant of easement and right of way conveying to Grantee a permanent easement and right of way 15 feet in width being 7 1/2 feet on either side of the sewer line route as installed.

3. In consideration of the easement and right of way herein granted and/or provided for Grantee agrees to pay to Grantor(s) the sum of approximately \$132.50

25 x 11

32 x 11

payable upon execution and delivery of the grant of easement and right of way. The sum so payable, which is the consideration for this agreement and said grant shall be the equivalent of 50.25 per linear foot of installed line (for single family residential properties) or 30.375 per linear foot of installed line (for other properties) whichever is applicable, and shall be payable in cash or as a credit against future services.

Dated this 2nd day of the month of March, 1973.

Albert F. Sarno  
Albert F. Sarno  
Joseph L. Sarno  
Joseph L. Sarno  
Grantor(s)

FAIRER LAKE SANITATION DISTRICT  
By: Joseph M. Cannon  
Authorized signature Chairman  
Grantee

El Paso County  
Parcel Number(s):

- 71220-02-001
- 71220-02-002
- \_\_\_\_\_

AGREEMENT FOR EASEMENT

It is agreed by and between Clifford W. Hoy and James O. Johnson

hereinafter referred to as Grantor(s), whose address is: \_\_\_\_\_  
2603 Fergien Drive, Austin, Texas 78704

and the Palmer Lake Sanitation District, a governmental subdivision of the State of Colorado, existing under and by virtue of the laws of the State of Colorado, hereinafter referred to as Grantee, as follows:

1. Grantor(s) hereby grant(s) unto the Grantee the right to enter, and to go upon and across, the following described real property situate in the County of El Paso, State of Colorado, to-wit:  
Lot 3, Block 3, Pine Hills:

and hereby further grant(s) a 45 foot temporary construction easement and right of way over, upon, in, and across, said property, for the purpose of laying out and installing a sanitary sewer line of the anticipated approximate length of 220 feet.

Upon completion of the sewer line installation (which installation shall at all times conform to the best engineering practices and be in accord with prevailing law and shall, among other things, include the return of the surface, as nearly as practicable, to its original condition) Grantee shall cause a survey to be made, at its expense, of the sewer line route as installed, and Grantor(s) agree(s) to execute and deliver a grant of easement and right of way conveying to Grantee a permanent easement and right of way 15 feet in width being 7½ feet on either side of the sewer line route as installed.

3. In consideration of the easement and right of way herein granted and/or provided for Grantee agrees to pay to Grantor(s) the sum of One Hundred and no/100 Dollars (\$100.00)

J. Patrick Kelly El Paso Cnty 01/16/1998 04:59  
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payable upon execution and delivery of the grant of easement and right of way. The sum so payable, which is the consideration for this agreement and said grant shall be the equivalent of \$0.25 per lineal foot of installed line (for single family residential properties) or \$0.375 per lineal foot of installed line (for other properties) whichever is applicable, and shall be payable in cash or as a credit against future services.

Dated this 15<sup>th</sup> day of the month of May, 1973.

Clifford B. Roy  
Clifford B. Roy

James R. Johnson  
James R. Johnson  
Grantor(s)

PALMER LAKE SANITATION DISTRICT  
By:

Joseph R. M. Cannon  
Authorized signature Chairman  
Contract

El Paso County  
Parcel Number(s):

71220-02-003

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**Exhibit B**

**LEGAL DESCRIPTION**

for

Sanitary Sewer Easement

over

Lots 1, 2 and 3, Block 3, PINE HILLS Subdivision

OWNER: Diastelkamp

DATE OF PREPARATION: December 11, 1997

PREPARED BY: GMS, Inc.

A variable width sanitary sewer easement over, under and across Lots 1, 2 and 3, Block 3, PINE HILLS Subdivision as recorded in Plat Book Y at Page 44 of the records of El Paso County, Colorado, said variable width utility easement center line being more particularly described as follows:

Commencing at the northeast corner of said Lot 1; thence S 00°25'00" W (said bearing and all others used in this legal description are relative to the north line of said Lot 1 which is platted to bear S 88°27'45" W and is monumented on each end with a 1-1/8 inch outside diameter iron pipe), along the east line of said Lot 1, a distance of 50.90 feet to the Point of Beginning of a 20.00 foot wide sanitary sewer easement;

thence S 44°00'03" W, along the center line of said 20.00 foot wide sanitary sewer easement, a distance of 335.32 feet;

thence S 65°26'34" W, along said center line thereof, a distance of 395.54 feet to a point hereinafter referred to as Point A, said point being the Point of Termination of said 20.00 foot wide sanitary sewer easement and the Point of Beginning of a 30.00 foot wide sanitary sewer easement;

thence S 02°04'59" W, along the center line of said 30.00 foot wide sanitary sewer easement, a distance of 176.33 feet to the Point of Termination of said 30.00 foot wide sanitary sewer easement, said point being on the south line of said Lot 3 from whence the Point of Commencement bears N 43°08'27" E, a distance of 871.19 feet.

The side lines of said 20.00 foot wide easement shall be prolonged or shortened to begin on said east line of Lot 1 and terminate on the east and west line of said 30.00 foot wide easement as prolonged or shortened. The side lines of said 30.00 foot wide easement shall be prolonged or shortened to begin on the north and south lines of said 20.00 foot wide easement as prolonged and shortened and terminate on said south line of Lot 3.

20/011

32/011

Together with the following:

Beginning at the aforementioned Point A, said point being the Point of Beginning of a 25.00 foot wide sanitary sewer easement; thence N 12°08'03" E, along the center line of said 25.00 foot wide sanitary sewer easement, a distance of 67.09 feet;

thence N 31°03'28" E, along said center line thereof, a distance of 399.45 feet to a point hereinafter referred to as Point B;

thence continue N 31°03'28", along said center line thereof, a distance of 12.92 feet,

thence N 02°17'53" E, along said center line thereof, a distance of 30.94 feet to the Point of Termination of said 25.00 foot wide sanitary sewer easement, said point being on the north line of said Lot 1 from whence the Point of Commencement bears N 88°27'45" E, a distance of 361.35 feet.

The side lines of said 25.00 foot wide easement shall be prolonged or shortened to begin on the north line of the aforementioned 20.00 foot wide sanitary sewer easement and terminate on said north line of Lot 1.

Together with the following:

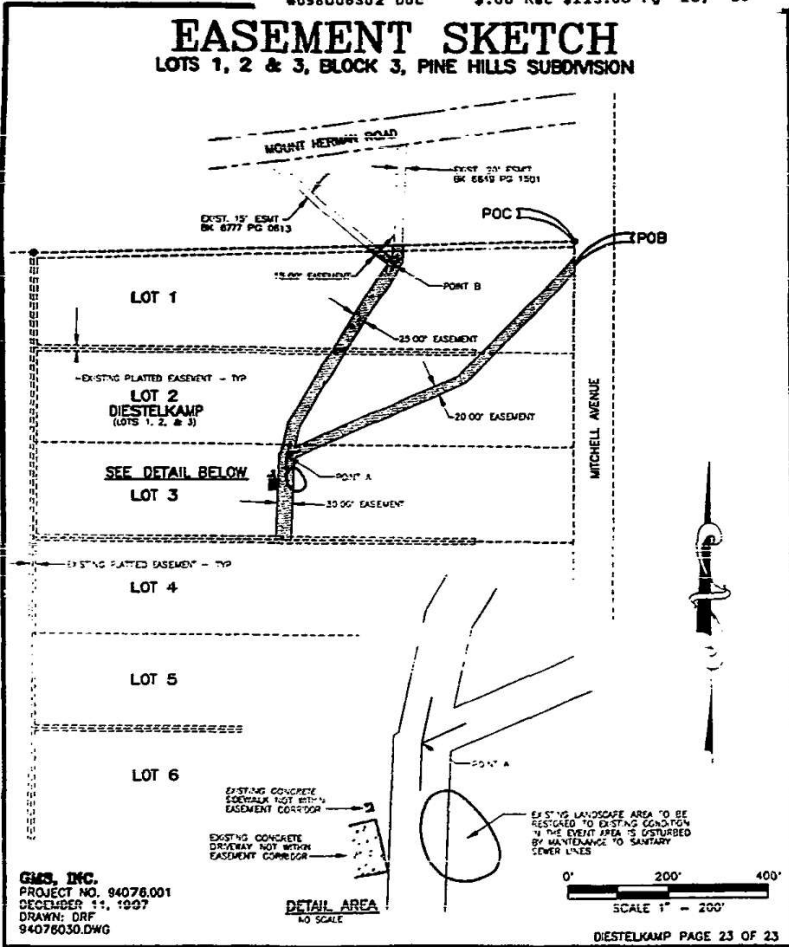
Beginning at the aforementioned Point B, said point being the Point of Beginning of a 15.00 foot wide sanitary sewer easement; thence N 49°20'19" W, along the center line of said 15.00 foot wide sanitary sewer easement, a distance of 62.19 feet to the Point of Termination of said 15.00 foot wide sanitary sewer easement, said point being on the north line of said Lot 1 from whence the Point of Commencement bears N 88°27'45" E, a distance of 416.25 feet.

The side lines of said 15.00 foot wide easement shall be prolonged or shortened to begin on the northwesterly line of the aforementioned 25.00 foot wide sanitary sewer easement and terminate on said north line of Lot 1.

The above described 15.00, 20.00, 25.00 and 30.00 foot wide sanitary sewer easements contain 0.76 acres of land, more or less, and are subject to any rights-of-way or other easements as granted or reserved by instruments of record or as now existing on said described parcel of land.

# EASEMENT SKETCH

LOTS 1, 2 & 3, BLOCK 3, PINE HILLS SUBDIVISION



25x11

32x11



**DEED OF EASEMENT IN GROSS**

THIS DEED OF CONSERVATION EASEMENT is made and entered into this 11<sup>th</sup> day of December, 2001, by and between **Paul E. Shingledecker**, and **Valerie Shingledecker** (hereinafter referred to as "Grantor") whose address is 17220 Mitchell Avenue, Monument, CO 80132 and the **Colorado Department of Transportation** (hereinafter referred to as "Grantee") whose address is 4201 East Arkansas, Denver Colorado 80222.

**WITNESSETH:**

**A.** Grantors are the owners in fee simple of certain real property located in El Paso County, Colorado, hereafter the "Property"; and

**B.** The Property contains Prebbles Meadow Jumping Mouse ("PMJM") habitat more particularly described in Exhibit A, Project Number SR-STR(CX) 105(4), Project Code 88175, Parcel Number PE - 45, and attached hereto and incorporated by reference (hereafter the "PMJM Habitat"). The U.S. Fish and Wildlife Service ("USFWS") listed PMJM as a threatened species under the Endangered Species Act on May 13, 1998; and

**C.** Grantee has reached agreement with USFWS by which preservation of PMJM habitat located within the Property will satisfy certain of Grantee's legal responsibilities under the Endangered Species Act

**D.** Grantors desires to protect in perpetuity the PMJM habitat located within the Property while making use of the Property consistent with protection of the PMJM and its habitat; and

**E.** Grantors further desire to convey to Grantee and its subsequent assigns the right to preserve and protect in perpetuity the PMJM habitat; and

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Grantors and Grantee hereby agree as follows:

1. Purpose. The purpose of this Agreement is to preserve the natural characteristics of the PMJM habitat that make it suitable for use by PMJM.
2. Payment. Grantee shall pay to Grantors the sum of Seventy One Thousand dollars (\$71,000.00) in immediately available funds upon the execution of this agreement.
3. Grant of Conservation Easement. Grantors hereby grant to Grantee a perpetual Conservation Easement in Gross pursuant to Section 38-30-30.5 - 101, et seq., of the Colorado Revised Statutes, as amended (hereinafter referred to as the "Easement"), over and across the property, subject to the terms and conditions set forth herein.

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2044082A01  
Security Title



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4. Rights of Grantee. Grantee shall have the right to enter upon the PMJM habitat for the purposes of:

- (a) Conducting research and monitoring of PMJM populations and habitat;
- (b) Determining whether Grantors are in compliance with the terms of the Agreement;

5. Prohibited Uses and Activities. Any activity on or use of the PMJM habitat inconsistent with the purpose of this Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Grazing, feeding, breeding, raising of animals (excluding horses) that damages woody riparian vegetation and reduces stubble cover below four to six inches;
- (b) removal or significant alteration of woody riparian vegetation;
- (c) spraying of pesticides;
- (d) construction of new roadways and trails;
- (e) New agricultural practices (plowing);
- (f) Rodent control measures; and
- (g) Motorized vehicle use in the riparian zone.

6. Reserved Rights. It is acknowledged and agreed that the following uses and practices by Grantors, though not an exhaustive recital, are consistent with the purposes of this Agreement and are not prohibited by this Agreement:

- (a) Grazing, feeding, breeding, raising, riding and managing of horses and other equine species outside of the defined PMJM habitat;
- (b) construction, repair and maintenance of new fences for the purpose of reasonable and customary management of horses and other equine species and repair and maintenance of existing fences, if any;
- (c) Mowing, cutting, raking and applying of herbicides, to the extent reasonably necessary to manage noxious and non-native weeds.

7. Reserved Rights. Grantors reserve to themselves, and their successors, and assigns, all rights accruing from their ownership of the Property, including the right to convey all or any portion of the Property, subject to this Agreement and

the restrictions contained herein, and the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Easement.

8. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

9. Cost and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Notwithstanding the foregoing, Grantors shall not be responsible for repairing the PMJM habitat located within the Property in the event the same is altered or destroyed by an act of nature, the acts of third parties other than Grantors' licensees and invitees or other acts beyond the control of Grantors.

10. Assignment of Grantee's Interest. This Agreement is assignable, but Grantee may assign its rights and obligations under this Agreement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under, and (b) authorized to acquire and hold conservation easements under Colorado law. Prior to Grantee assigning the Agreement, Grantee must give twenty (20) days notice to Grantors of the entity to which Grantee intends to assign this Agreement. As a condition of such assignment, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

11. Subsequent Transfers. Grantors agree to incorporate the terms of this Agreement in any deed or other legal instrument by which they divest themselves of any interest in all or portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at twenty (20) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Agreement of limit its enforceability in any way.

12. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connect with: injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the acts or omissions of the Grantee or its employees or agents.

13. Valuation. The Easement constitutes a real property interest immediately vested in Grantee which the parties stipulate does and shall always have a fair market value determined by (1) the fair market value of the Property encumbered by the Easement (minus any increase in value after the date of this Agreement

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attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deducting for the value of the Easement, at the time of this grant. In any event, it is the intent of Grantors and Grantee that the value of the Grantee's interest in the Property represented by the Easement shall be determined in conformity of 26 C.F.R. § 1.170A-14(g)(6)(ii), or any amendment or replacement thereof, concerning the fair market value of perpetual conservation restrictions.

14. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Agreement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interest in the Property subject to the taking, or in lieu, purchaser and all direct or incidental damages resulting there from. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 13.

15. Enforcement. If Grantee determines that Grantors are in violation of the terms of this Agreement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the PMJM habitat resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the PMJM habitat so injured. If Grantors fail to cure the violation and restore the PMJM habitat to the condition that existed prior to the violation within thirty (30) days after receipt of notice thereof from Grantee (or under circumstances where the violation reasonably can be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured) Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Agreement and to require the restoration of the PMJM habitat to the condition that existed prior to any such injury. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the PMJM habitat.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the PMJM habitat, Grantee may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Agreement, and Grantors agree that Grantee's remedies at law for any violation of the terms of this Agreement are inadequate and that Grantee shall be entitled to the injunction relief described in this paragraph, both prohibitive and mandatory, in addition to

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such other relief to which Grantee may be entitled, including specific performance of the terms of this Agreement, with the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

15.1 Grantees Discretion. Enforcement of the terms of the Agreement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Agreement or of any of Grantee's rights under this Agreement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

15.2 Acts Beyond Grantors' Control. Grantors hereby waive any defense of laches, estoppel, or prescription.

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

**TO GRANTORS:**

Paul E. and Valerie Shingledecker  
17220 Mitchell Avenue  
Monument, CO 80132

With copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
Attention: Thomas J. Ragonetti  
950 Seventeenth Street, Suite 1600  
Denver, CO 80202

**TO GRANTEE:**

Colorado Department of Transportation  
Chief Engineer  
4201 East Arkansas  
Denver, CO 80222

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With copy to:

Colorado Department of Transportation  
Region Transportation Director  
P.O. Box 536  
905 Erie Avenue  
Pueblo, CO 81001

17. Recordation. Grantee shall record this instrument in timely fashion in the official records of El Paso County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Agreement.

18. Amendment. If the circumstances arise under which an amendment to, modification of, or termination of this Agreement would be appropriate, Grantors and Grantee are free to jointly amend or terminate this instrument. Any amendment or termination must be in writing, signed and notarized by both parties, and recorded in the records of the Clerk and Recorder of El Paso County, Colorado. This Agreement shall automatically terminate when PMJM is no longer listed by USFWS as a threatened or endangered species.

19. Miscellaneous.

(a) Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Colorado.

(b) No Public Access Created. No right of access by the general public to any portion of the Property is conveyed or created by this Agreement.

(c) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and

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ATTEST:

COLORADO DEPARTMENT OF  
TRANSPORTATION

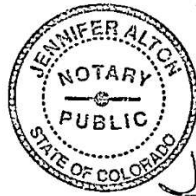
Douglas W. Bennett  
DOUGLAS W. BENNETT  
Chief Clerk for Right of Way

John M. Unbewust  
JOHN M. UNBEWUST  
Chief Engineer

STATE OF COLORADO        )  
  ) ss  
CITY AND COUNTY OF DENVER)

The foregoing instrument was subscribed and sworn to before me this 11<sup>th</sup> day of February,  
2002 by John M. Unbewust, Chief Engineer, Douglas W. Bennett, Chief Clerk for Right of Way  
Services, Department of Transportations, State of Colorado.

Witness my hand and official seal.  
My commission expires May 11, 2003



Jennifer Alton  
Notary Public

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**EXHIBIT "A"**  
PROJECT NUMBER: SR-STR(CX)105(4)  
PARCEL NUMBER: PE-45  
PROJECT CODE: 88175  
DATE REVISED: March 28, 2001

DESCRIPTION

A permanent easement No. PE-45 the Department of Transportation, State of Colorado Project No. SR-STR(CX)105(4) containing 2.573 hectares (6.357 acres) being a portion of Lots 1, 2 and 3, Block 3 of Pine hills Subdivision as recorded at Reception No. 15607 of the El Paso County records lying in Section 22, Township 11 South, Range 67 West of the Sixth Principal Meridian, El Paso County, State of Colorado, being more particularly described as follows:

Beginning at the Northwest Corner of said Lot 1;

1. Thence North 88°05'35" East, a distance of 333.022 meters (1092.59 feet), along the northerly line of said lot to the Northeast Corner of said Lot 1;
2. Thence South 00°12'06" West, a distance of 15.249 meters (50.03 feet), along the easterly line of said Lot 1;
3. Thence South 88°14'23" West, a distance of 211.004 meters (692.27 feet);
4. Thence South 00°13'34" West, a distance of 172.627 meters (566.36 feet), to a point on the southerly line of said Lot 3;
5. Thence North 89°47'55" West, a distance of 121.926 meters (400.02 feet), along said southerly line to the Southwest Corner of said Lot 3;
6. Thence North 00°13'38" East, a distance of 182.868 meters (599.96 feet), along the westerly line of said Lots 1, 2 and 3 to the TRUE POINT OF BEGINNING.

The above permanent easement contains 2.573 hectares/25726.8 square meters (6.3572 acres/276920 square feet), more or less.

The above described permanent easement is for the purpose of conservation.

**BASIS OF BEARING:** For the purpose of this description the bearings are based on the West Line of the Northwest Quarter of Section 22, Township 11 South, Range 67 West, and assumed to bear South 00°48'51" West, a distance of 2657.84 feet. Monumented as follows: a found 2 1/2" aluminum cap stamped "Powers Elevation Co., Inc. T11S, R67W, 10/11 15/14, LS23501" at the Northwest Corner of said Section 14, and a found 3/4" pipe at the West Quarter Corner of said Section 14.

I hereby certify that the above legal description was prepared under my direct supervision.



WSSI Job No.: 8557-016.2  
Date Revised: March 28, 2001  
For and on Behalf of  
WESTERN STATES SURVEYING, INC.  
19029 East Plaza Drive, Suite 252  
Parker, CO 80134  
(303) 841-7436  
Robert Buckley, Jr., PLS 22088

**PERMANENT EASEMENT**


KNOW ALL MEN BY THESE PRESENTS, that James S. Smith and Nancy D. Smith of EL PASO County, State of Colorado, Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), and other valuable consideration, in hand paid by DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO, Grantee, receipt of which is hereby acknowledged, has given and granted and by these presents does hereby give and grant unto the said Grantee, its heirs, successors, and assigns a PERPETUAL EASEMENT for conservation purposes, on, along, over and across the following described premises, to-wit:

See Attached Exhibit "A" dated MAY 20, 2009 for:

Project Number: SR-STR(CX)105(4)  
Permanent Easement No. PE-45 REV.  
Project Code: 88175

Signed this 20<sup>th</sup> day of July, 2009.

  
James S. Smith

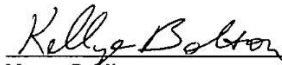
  
Nancy D. Smith

STATE OF COLORADO }  
COUNTY OF EL PASO } ss.

The foregoing instrument was acknowledged before me this 20 day of July, 2009 by James S. Smith and Nancy D. Smith.

Witness my hand and official seal.

My Commission Expires 11-27-10

  
Notary Public



ROBERT C. "BOB" BALINK El Paso County, CO  
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**EXHIBIT "A"**

PROJECT NUMBER: SR-STR (CX) 105(4)  
PARCEL NUMBER: PE 45 Rev  
PROJECT CODE: 88175  
DATE: May 20, 2009

**LEGAL DESCRIPTION**

A tract or parcel of land No. PE-45 Rev. of the Department of Transportation, State of Colorado Project No. SR-STR (CX) 105(4) containing 276,920 sq. ft. (6.357 acres), more or less, being a portion of Lots 1, 2, and 3, Block 3, of Pine Hills Subdivision as recorded at Reception No. 15607 of the El Paso County records lying in Section 22, Township 11 South, Range 67 West of the sixth principal meridian, El Paso County, State of Colorado, said tract or parcel being more particularly described as follows:

Commencing at the Northwest corner of said Lot 1, said point also being the TRUE POINT OF BEGINNING;

1. Thence N. 88°05'35" E., a distance of 1092.59 feet;
2. Thence S. 0°12'06" W., a distance of 50.03 feet;
3. Thence S. 88°14'23" W., a distance of 511.88 feet;
4. Thence S. 0°13'34" W., a distance of 37.13 feet;
5. Thence S. 88°22'13" W., a distance of 180.37 feet;
6. Thence S. 0°13'34" W., a distance of 347.62 feet;
7. Thence S. 75°28'12" W., a distance of 64.06 feet;
8. Thence S. 14°59'40" E., a distance of 154.24 feet;
9. Thence N. 76°57'33" E., a distance of 22.04 feet;
10. Thence S. 0°13'34" W., a distance of 22.00 feet;
11. Thence N. 89°47'55" W., a distance of 400.02 feet;
12. Thence N. 0°13'39" E., a distance of 599.96 feet, more or less to the point of beginning.

The above described Permanent Easement contains 276,920 sq. ft. (6.357 acres), more or less.

The purpose of the above-described Permanent Easement is for conservation.

Basis of Bearings: All bearings are based on the West Line of the Northwest Quarter of Section 14, Township 11 South, Range 67 West, and assumed to bear S. 00°48'51" W. a distance of 2657.84 feet. Monumented as follows: a found 2 ½" aluminum cap stamped "Powers Elevation Co., Inc. T11S, R67W, 10/11 15/14, LS23501" at the Northwest Corner of said Section 14, and a found ¾" pipe at the West Quarter corner of said Section 14.

For and on Behalf of the Colorado Department of Transportation  
Dennis R. Pirtle, PLS #33651  
905 Erie Avenue, Pueblo, CO 81002



PREPARED BY AND  
WHEN RECORDED MAIL TO:

7-Eleven, Inc.  
Attn: Corporate Real Estate  
3200 Hackberry Road  
Irving, Texas 75063  
Store #38633

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**SEC of Powers Boulevard  
and Aero plaza Drive  
Colorado Springs, CO  
7-Eleven Location No. 38633**

#### **AMENDMENT TO MEMORANDUM OF LEASE**

This Amendment to Memorandum of Lease ("Amendment") is entered into this 28<sup>th</sup> day of January, 2020, by and between WIKIUP LTD. LIABILITY COMPANY, a Colorado limited liability company ("Landlord"), with an address of 3781 Evergreen Parkway, Evergreen, Colorado 80439, and 7-ELEVEN, INC., a Texas corporation ("Tenant"), with principal offices at 3200 Hackberry Road, Irving, Texas 75063.

WHEREAS, previously hereto, Landlord and Tenant entered into a Freestanding Lease dated September 13, 2018, as amended (collectively, the "Lease"), evidenced by a Memorandum of Lease recorded March 15, 2019, as Document No. 219026387, with the El Paso County Clerk, Colorado Springs, Colorado, covering the property located at the southeast corner of Powers Boulevard and Aero plaza Drive, Colorado Springs, CO, more particularly described on Exhibit A attached hereto and made a part hereof ("Memorandum of Lease"); and

WHEREAS, the parties hereto desire to amend the Memorandum of Lease as set forth below. All of the capitalized terms contained herein are defined in the Lease.

NOW THEREFORE, for and in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term Commencement Date: October 1, 2019.
2. Legal Description of the Premises: After the Memorandum of Lease was recorded, the property containing the Premises was subdivided, and the legal description of the Premises has changed. The legal description of the Premises attached hereto as Exhibit A corrects and replaces the legal description of the Premises attached to Exhibit A of the Memorandum of Lease and the Project legal description is attached hereto as Exhibit B.
3. In all other respects, the Memorandum of Lease shall remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates set forth in their respective acknowledgments.

**LANDLORD:**

WIKIUP LTD. LIABILITY COMPANY  
a Colorado limited liability company

By: Jeanne Friedman  
Name: Jeanne Friedman  
Title: Managing Member

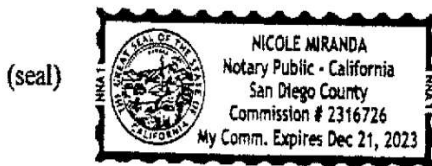
[corporate seal]

ACKNOWLEDGEMENT

STATE OF California §  
COUNTY OF San Diego §  
§

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Jeanne Friedman the Managing Member of Wikiup Ltd. Liability Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27<sup>th</sup> day of January, 2020.



Nicole Miranda  
(Notary signature)  
Nicole Miranda  
(typed or printed name)

My commission expires: Dec 21, 2023

WITNESS the following signatures and seals.

TENANT:

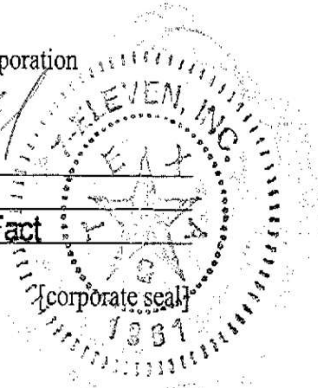
7-ELEVEN, INC., a Texas corporation

Attest:

Robin D. Bryant  
Name: Robin D. Bryant  
Title: Assistant Secretary

By:

Grant Distel  
Name: Grant Distel  
Title: Attorney-in-Fact



ACKNOWLEDGMENT

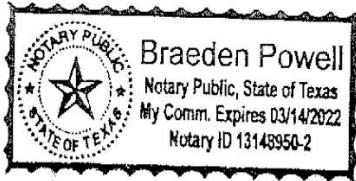
STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Grant Distel and Robin D. Bryant, a(n) Attorney-in-Fact and an Assistant Secretary, respectively, of **7-ELEVEN, INC.**, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation and that they each executed the same as the act of such corporation for the purposes therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22<sup>nd</sup> day of January, 2020.

Braeden Powell  
(Notary signature)  
Braeden Powell  
(typed or printed name)

(seal)



My commission expires: 3-14-2022

EXHIBIT A

Legal Description of the Premises

Lot 1, Block1, Newport Subdivision Filing No. 23, City of Colorado Springs, County of El Paso, State of Colorado.

EXHIBIT B

Legal Description of the Project

Lot 1, Block1, Lot 2, Block 1 and Tract A, Newport Subdivision Filing No. 23, City of Colorado Springs,  
County of El Paso, State of Colorado.

After Recording Return To:  
CHERRY CREEK MORTGAGE CO., INC.  
7600 E ORCHARD RD, #250 N  
GREENWOOD VILLAGE, CO 80111

Prepared By:  
WENDY VETO  
CHERRY CREEK MORTGAGE CO., INC.  
7600 E. ORCHARD RD #250-N  
GREENWOOD VILLAGE, CO 80111

[Space Above This Line For Recording Data]

## DEED OF TRUST

SHAFFER  
Loan #: 197938007  
MIN: 100030201979380074  
MERS Phone: 1-888-679-6377  
PIN: 61240-01-012

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JULY 31, 2020, together with all Riders to this document.

(B) "Borrower" is DARREN D SHAFFER. Borrower is the trustor under this Security Instrument. Borrower's current mailing address is 5321 ROUNDUP RIDGE DRIVE, COLORADO SPRINGS, CO 80908.

(C) "Lender" is CHERRY CREEK MORTGAGE CO., INC.. Lender is a CORPORATION organized and existing under the laws of THE STATE OF COLORADO. Lender's address is 7600 E. ORCHARD RD #250-N, GREENWOOD VILLAGE, CO 80111.

(D) "Trustee" is the Public Trustee of EL PASO County, Colorado.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.



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(F) "Note" means the promissory note signed by Borrower and dated JULY 31, 2020. The Note states that Borrower owes Lender ONE HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED AND 00/100 Dollars (U.S. \$181,100.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2035.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> Balloon Rider         | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Other(s) [specify]                        |   |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,

COLORADO-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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the Loan.

**(P) "Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

**(Q) "RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

**(R) "Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower, in consideration of the debt and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of EL PASO: **LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.** which currently has the address of 5321 ROUNDUP RIDGE RD, COLORADO SPRINGS, Colorado 80908 ("Property Address"):

**TOGETHER WITH** all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

**BORROWER COVENANTS** that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record and liens for taxes for the current year not yet due and payable.

COLORADO-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT  
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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be



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applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.



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If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any



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particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal



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residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or



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obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).



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As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the



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amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all



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of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect

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without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.



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**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of



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release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall mail a copy of the notice to Borrower as provided in Section 15. Trustee shall record a copy of the notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by Applicable Law and shall mail copies of the notice of sale in the manner prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's certificate describing the Property and the time the purchaser will be entitled to Trustee's deed. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall request



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that Trustee release this Security Instrument and shall produce for Trustee, duly cancelled, all notes evidencing debts secured by this Security Instrument. Trustee shall release this Security Instrument without further inquiry or liability. Borrower shall pay any recordation costs and the statutory Trustee's fees.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in Any Rider executed by Borrower and recorded with it.

*Darren D Shaffer*      7/31/2020

- BORROWER - DARREN D SHAFFER - DATE -

[Space Below This Line For Acknowledgment]

State of Colorado  
County of Arapahoe )

This record was acknowledged before me on July 31, 2020 by DARREN D SHAFFER.

LARRY CAMERON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20194006918  
MY COMMISSION EXPIRES 02/21/2023

*Larry Cameron*  
Notary Public

My Commission Expires: 2/21/2023

Individual Loan Originator: TODD M PRUITT, NMLSR ID: 128609  
Loan Originator Organization: CHERRY CREEK MORTGAGE CO., INC., NMLSR ID: 3001



**Exhibit "A"**  
**Legal Description**

**Exhibit A, in its entirety, documents the legal description of the land referenced in the document.  
The legal description may extend to multiple pages.**

The land referred to in this document is situated in the State of Colorado, County of El Paso, and is described as follows:

LOT 12, LONGVIEW ESTATES, COUNTY OF EL PASO, STATE OF COLORADO.

**PLANNED UNIT DEVELOPMENT RIDER**

**SHAFER**  
Loan #: 197938007  
MIN: 100030201979380074

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 31ST day of JULY, 2020, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to **CHERRY CREEK MORTGAGE CO., INC.**, (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

**5321 ROUNDUP RIDGE RD, COLORADO SPRINGS, CO 80908**  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in THE COVENANTS, CONDITIONS AND RESTRICTIONS FILED OF RECORD THAT AFFECT THE PROPERTY (the "Declaration"). The Property is a part of a planned unit development known as

**LONGVIEW ESTATES**  
[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**MULTISTATE PUD RIDER- Single Family -Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**

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**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituents Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to ensure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

**MULTISTATE PUD RIDER- Single Family -Fannie Mae/Freddie Mac UNIFORM INSTRUMENT**

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Form 3150 1/01 (page 2 of 3 pages)

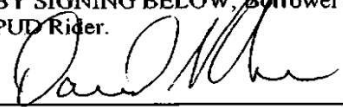


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(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

 7/31/2020  
- BORROWER - DARREN D SHAFER - DATE -

MULTISTATE PUD RIDER- Single Family -Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

34.33

Form 3150 1/01 (page 3 of 3 pages)



**RECORDATION REQUESTED BY:**

Compass Bank  
COLORADO SPRINGS TEJON  
102 S. TEJON ST STE 101  
COLORADO SPRINGS, CO 80903

RECORD & RETURN TO  
CT LIEN SOLUTIONS 23741  
P.O. BOX 29071  
Glendale, CA 91209-9071  
63130107-CO41-El Paso

**FOR RECORDER'S USE ONLY**



**DEED OF TRUST**

**MAXIMUM PRINCIPAL AMOUNT SECURED.** The Lien of this Deed of Trust shall not exceed at any one time \$66,352.00 except as allowed under applicable Colorado law.

**THIS DEED OF TRUST** is dated March 6, 2018, among **JAMES S SMITH AKA JAMES SCOTT SMITH, A MARRIED PERSON, WHOSE ADDRESS IS 17150 MITCHELL AVE MONUMENT CO 80132 ("Grantor");** **Compass Bank, whose address is COLORADO SPRINGS TEJON, 102 S. TEJON ST STE 101, COLORADO SPRINGS, CO 80903 (referred to below sometimes as "Lender" and sometimes as "Beneficiary");** and the **Public Trustee of El Paso County, Colorado (referred to below as "Trustee").**

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor hereby irrevocably grants, transfers and assigns to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, **(the "Real Property")** located in El Paso County, State of Colorado:

**SITUATED IN THE COUNTY OF EL PASO, STATE OF COLORADO. LOTS 2 AND 3. IN BLOCK 3, PINE HILLS, COUNTY OF EL PASO, STATE OF COLORADO. BEING THE SAME PROPERTY CONVEYED BY DEED RECORDED IN INSTRUMENT NO 217153372, OF THE EL PASO COUNTY, COLORADO RECORDS. SUBJECT TO ALL EASEMENTS, COVENANTS, CONDITIONS, RESERVATIONS, LEASES AND RESTRICTIONS OF RECORD, ALL LEGAL HIGHWAYS, ALL RIGHTS OF WAY, ALL ZONING, BUILDING AND OTHER LAWS, ORDINANCES AND REGULATIONS, ALL RIGHTS OF TENANTS IN POSSESSION, AND ALL REAL ESTATE TAXES AND ASSESSMENTS NOT YET DUE AND PAYABLE**  
Parcel: 7122002094

**The Real Property or its address is commonly known as 17150 MITCHELL AVE, Monument, CO 80132.**

**CROSS-COLLATERALIZATION.** In addition to the Credit Agreement, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Credit Agreement, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable. If the Lender is required to give notice of the right to cancel under Truth in Lending in connection with any additional loans, extensions of credit and other liabilities or obligations of Grantor to Lender, then this Deed of Trust shall not secure additional loans or obligations unless and until such notice is given.

**REVOLVING LINE OF CREDIT.** This Deed of Trust secures the indebtedness including, without limitation, a revolving line of credit, which obligates Lender to make advances to Grantor so long as Grantor complies with all the terms of the Credit Agreement. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in either the indebtedness paragraph or this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Deed of Trust secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in the Credit Agreement and any intermediate balance.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF EACH OF GRANTOR'S AGREEMENTS AND OBLIGATIONS UNDER THE CREDIT AGREEMENT, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Credit Agreement, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and

**DEED OF TRUST  
(Continued)**

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maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, hold harmless, and defend Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Property, or a breach or violation of any environmental laws on the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, involving the obligation to indemnify, hold harmless, and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Without otherwise limiting Grantor's covenants as provided herein, Grantor shall not without Lender's prior written consent, remove or permit the removal of sand, gravel or topsoil, or engage in borrow pit operations, or use or permit the use of the Property as a land fill or dump, or store, burn or bury or permit the storage, burning or burying of any material or product which may result in contamination of the Property or the groundwater or which may require the issuance of a permit by the Environmental Protection Agency or any state or local government agency governing the issuance of hazardous or toxic waste permits, or request or permit a change in zoning or land use classification, or cut or remove or suffer the cutting or removal of any trees or timber from the Property.

At its sole cost and expense, Grantor shall comply with and shall cause all occupants of the Property to comply with all Environmental Laws with respect to the disposal of industrial refuse or waste, and/or the discharge, processing, manufacture, generation, treatment, removal, transportation, storage and handling of Hazardous Substances, and pay immediately when due the cost of removal of any such wastes or substances from, and keep the Property free of any lien imposed pursuant to such laws, rules, regulations and orders.

Grantor shall not install or permit to be installed in or on the Property, friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. Grantor shall further not install or permit the installation of any machinery, equipment or fixtures containing polychlorinated biphenyls (PCBs) on or in the Property. With respect to any such material or materials currently present in or on the Property, Grantor shall promptly comply with all applicable Environmental Laws regarding the safe removal thereof, at Grantor's expense.

Grantor shall indemnify and defend Lender and hold Lender harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender of any claim relating to the presence or removal of any Hazardous Substance, or compliance with any Environmental Law. No notice from any governmental body has ever been served upon Grantor or, to Grantor's knowledge after due inquiry, upon any prior owner of the Property, claiming a violation of or under any Environmental Law or concerning the environmental state, condition or quality of the Property, or the use thereof, or requiring or calling attention to the need for any work, repairs, construction, removal, cleanup, alterations, demolition, renovation or installation on, or in connection with, the Property in order to comply with any Environmental Law; and upon receipt of any such notice, Grantor shall take any and all steps, and shall perform any and all actions necessary or appropriate to comply with the same, at Grantor's expense. In the event Grantor fails to do so, Lender may declare this Deed of Trust to be in default.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Colorado law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges

**DEED OF TRUST  
(Continued)**

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(including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the Existing Indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. All policies shall provide that the policies shall not be invalidated by any waiver of the right of subrogation by any insured and shall provide that the carrier shall have no right to be subrogated to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the maximum amount of Grantor's credit line and the full unpaid principal balance of any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

**Compliance with Existing Indebtedness.** During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Deed of Trust, to the extent compliance with the terms of this Deed of Trust would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Deed of Trust for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

**LENDER'S EXPENDITURES.** If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, (C) to make repairs to the Property or to comply with any obligation to maintain Existing Indebtedness in good standing as required below, then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Credit Agreement from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Credit Agreement and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Credit Agreement; or (C) be treated as a balloon payment which will be due and payable at the Credit Agreement's maturity. The Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing

**DEED OF TRUST  
(Continued)**

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applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Promises.** All promises, agreements, and statements Grantor has made in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature and shall remain in full force and effect until such time as Grantor's Indebtedness is paid in full.

**EXISTING INDEBTEDNESS.** The following provisions concerning Existing Indebtedness are a part of this Deed of Trust:

**Existing Lien.** The lien of this Deed of Trust securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Notice of Proceedings.** Grantor shall immediately notify Lender in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking of the mortgaged Property, or any part or parts of the Property. Grantor further agrees to promptly take such steps as may be necessary and proper within Lender's sole judgment and at Grantor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Grantor shall not agree to any settlement or compromise or any condemnation or expropriation claim without Lender's prior written consent.

**Lender's Participation.** Lender may, at Lender's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Lender's choice. Grantor agrees to provide Lender with such documentation as Lender may request to permit Lender to so participate and to reimburse Lender for Lender's costs associated with Lender's participation, including Lender's reasonable attorneys' fees.

**Conduct of Proceedings.** If Grantor fails to defend any such condemnation or expropriation proceedings to Lender's satisfaction, Lender may undertake the defense of such a proceeding for and on behalf of Grantor. To this end, Grantor irrevocably appoints Lender as Grantor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default (other than the condemnation or expropriation of the Property) then exists under this Deed of Trust, Lender will not agree to any final settlement or compromise of any such condemnation or expropriation claim without Grantor's prior approval, which approval shall not be unreasonably withheld.

**Application of Net Proceeds.** Lender shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("condemnation proceeds"). In the event that Grantor should receive any such condemnation proceeds, Grantor agrees to immediately turn over and to pay such proceeds to Lender. All condemnation proceeds, which are received by, or which are payable to either Grantor or Lender, shall be applied, at Lender's sole option and discretion, and in such manner as Lender may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Grantor and/or Lender), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property; or (b) reducing the then outstanding balance of the Indebtedness, together with interest thereon, with such payments being applied in the manner provided in this Deed of Trust. Lender's receipt of such condemnation proceeds and the application of such proceeds as provided in this Deed of Trust shall not affect the lien of this Deed of Trust.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Credit Agreement; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed,

**DEED OF TRUST  
(Continued)**

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recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Credit Agreement, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** Upon the full performance of all the obligations under the Credit Agreement and this Deed of Trust, Trustee may, upon production of documents and fees as required under applicable law, release this Deed of Trust, and such release shall constitute a release of the lien for all such additional sums and expenditures made pursuant to this Deed of Trust. Lender agrees to cooperate with Grantor in obtaining such release and releasing the other collateral securing the Indebtedness. Any release fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Grantor will be in default under this Deed of Trust if any of the following happen: (A) Grantor commits fraud or makes a material misrepresentation at any time in connection with the Credit Agreement. This can include, for example, a false statement about Grantor's income, assets, liabilities, or any other aspects of Grantor's financial condition. (B) Grantor does not meet the repayment terms of the Credit Agreement. (C) Grantor's action or inaction adversely affects the collateral or Lender's rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a senior lien on the dwelling without Lender's permission, foreclosure by the holder of another lien, or the use of funds or the dwelling for prohibited purposes.

**RIGHTS AND REMEDIES ON DEFAULT.** Subject to any applicable notice and cure provisions under Colorado law, if an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Deed of Trust, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable.

**Foreclosure.** Lender shall have the right to cause all or any part of the Real Property, and Personal Property, if Lender decides to proceed against it as if it were real property, to be sold by the Trustee according to the laws of the State of Colorado as respects foreclosures against real property. The Trustee shall give notice in accordance with the laws of Colorado. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including but not limited to Trustee's fees, attorneys' fees, and the cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled to the excess.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Receiver may be appointed by a court of competent jurisdiction upon ex parte application and without notice, notice being expressly waived.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Credit Agreement or available at law or in equity.

**Sale of the Property.** In exercising its rights and remedies, Lender shall be free to designate on or before it files a notice of election and demand with the Trustee, that the Trustee sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Upon any sale of the Property, whether made under a power of sale granted in this Deed of Trust or pursuant to judicial proceedings, if the holder of the Credit Agreement is a purchaser at such sale, it shall be entitled to use and apply all, or any portion of, the Indebtedness for or in settlement or payment of all, or any portion of, the purchase price of the Property purchased, and, in such case, this Deed of Trust, the Credit Agreement, and any documents evidencing expenditures secured by this Deed of Trust shall be presented to the person conducting the sale in order that the amount of Indebtedness so used or applied may be credited thereon as having been paid.

**Attorneys' Fees; Expenses.** If Lender forecloses or institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Credit Agreement rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees not in excess of fifteen percent (15%) of the unpaid debt after default and referral to an attorney not Lender's salaried employee whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will

**DEED OF TRUST  
(Continued)**

Page 6

pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** To the extent permitted by applicable law, Trustee shall have all of the rights and duties of Lender as set forth in this section.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any person may change his or her address for notices under this Deed of Trust by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender.

**APPLICATION OF PROCEEDS.** If Borrower is in default and Lender proceeds to enforce its rights hereunder, the proceeds from any sale or other disposition of the Property shall be applied as follows (unless applicable law provides otherwise, in which case the proceeds will be applied as required by applicable law): first, to the expense of advertising, preparing, selling, and conveying the Property, including reasonable attorney fees incurred by Lender in enforcing its rights, including any injunction proceeding, bankruptcy, appeal, or other proceeding challenging the Lender's rights; second, to the payment of any amounts expended or that may be necessary to expend to pay insurance, taxes, assessments, and other liens and Mortgages or Deeds of Trust; third, in full or partial payment of the Indebtedness in such order as Lender may elect; and fourth, the balance, if any, to be paid in accordance with the requirements of law.

**NO ASSIGNMENT.** Notwithstanding any other provisions herein to the contrary, each party signing below agrees not to assign any of the party's rights or obligations hereunder.

**NON-LIABILITY OF LENDER.** The relationship between Borrower and Lender created by this Agreement is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Lender and Borrower. Borrower is exercising Borrower's own judgment with respect to Borrower's business. All information supplied to Lender is for Lender's protection only and no other party is entitled to rely on such information. There is no duty for Lender to review, inspect, supervise or inform Borrower of any matter with respect to Borrower's business. Lender and Borrower intend that Lender may reasonably rely on all information supplied by Borrower and any investigation or failure to investigate will not diminish Lender's right to so rely.

**ADDITIONAL EVENTS OF DEFAULT.** Notwithstanding any other provisions herein to the contrary, any material adverse change in the financial condition of any guarantor also shall be an Event of Default hereunder.

**AUTHORIZATION TO OBTAIN PAYOFF INFORMATION.** Grantor authorizes any other party claiming an interest in the Property to disclose to Lender both information about that party's claim to the Property and the amount of Borrower's outstanding indebtedness to that party, including principal, interest and other fees and charges, that is secured by the Property.

**ERRORS AND OMISSIONS.** The parties agree that if deemed necessary by Lender or any agent closing the loan evidenced by the Note, Lender or the agent may correct and adjust this document and any Related Documents on behalf of any other party, as if such other party were making the correction or adjustment, in order to correct clerical errors. A clerical error is information in a document that is missing or that does not reflect accurately another party's agreement with Lender at the time the document was executed. If any such clerical errors are material changes, the other party agrees to fully cooperate in correcting such errors within 30 days of the date of mailing by Lender of a request to do that. Any change in the documents after they are signed to reflect a change in the agreement of the parties is an "alteration" or "amendment," which must be in writing and signed by the party that will be bound by the change.

**JURISDICTION.** Except as otherwise provided, any legal action or proceeding arising out of or relating to the loan or other extension of credit secured by this instrument, or to enforce and defend any rights, remedies, or provisions contained in this instrument, (a "Proceeding") shall be instituted in the federal court for or the state court sitting in the county where Lender's office that made this loan is located. With respect to any Proceeding, brought by or against Lender, each of the other parties hereto, to the fullest extent permitted by law: (i) waives any objections that each such party may now or hereafter have based on venue and/or forum non conveniens of any Proceeding in such court; and (ii) irrevocably submits to the jurisdiction of any such court in any Proceeding. Notwithstanding anything to the contrary herein, Lender may commence legal proceedings or otherwise proceed against any other party in any other jurisdiction if determined by Lender to be necessary in order to fully enforce or exercise any right or remedy of Lender relating to this loan including without limitation realization upon collateral that secures this loan.

**CALIFORNIA REAL PROPERTY NOTICE OF DEFAULT.** The undersigned Trustor requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Trustor at the address set forth above.

**EARTHQUAKE INSURANCE.** If Grantor/Trustor currently has or obtains earthquake insurance coverage in the future, Grantor/Trustor agrees to have Compass Bank added to the policy as Mortgagee. Grantor/Trustor further agrees that the proceeds of any claim by Grantor/Trustor from earthquake insurance coverage on the property, shall be assigned to Lender and shall be subject to the Application of Proceeds section of the Deed of Trust and/or other Security Instruments.

**DEFINITION OF GRANTOR AND TRUSTOR.** As used in this document, Grantor and Trustor shall have the same meaning.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** What is written in this Deed of Trust and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Deed of Trust. To be effective, any change or amendment to this Deed of Trust must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Colorado.

**No Waiver by Lender.** Grantor understands Lender will not give up any of Lender's rights under this Deed of Trust unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Deed of Trust. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor. In the event Lender institutes legal process to obtain possession of the Property and to the extent permitted by law, Grantor hereby knowingly and voluntarily waives any right to a hearing prior to a court order granting Lender the right to take possession of the Property. Grantor waives all rights of exemption from execution or similar law in the Property, and Grantor agrees that the rights of Lender

**DEED OF TRUST  
(Continued)**

Page 7

in the Property under this Deed of Trust are prior to Grantor's rights while this Deed of Trust remains in effect.

**Severability.** If a court finds that any provision of this Deed of Trust is not valid or should not be enforced, that fact by itself will not mean that the rest of this Deed of Trust will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Deed of Trust even if a provision of this Deed of Trust may be found to be invalid or unenforceable.

**Non-Liability of Lender.** The relationship between Grantor and Lender created by this Deed of Trust is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Lender and Grantor. Grantor is exercising Grantor's own judgment with respect to Grantor's business. All information supplied to Lender is for Lender's protection only and no other party is entitled to rely on such information. There is no duty for Lender to review, inspect, supervise or inform Grantor of any matter with respect to Grantor's business. Lender and Grantor intend that Lender may reasonably rely on all information supplied by Grantor to Lender, together with all representations and warranties given by Grantor to Lender, without investigation or confirmation by Lender and that any investigation or failure to investigate will not diminish Lender's right to so rely.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Colorado as to all Indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust:

**Beneficiary.** The word "Beneficiary" means Compass Bank, and its successors and assigns.

**Borrower.** The word "Borrower" means JAMES SCOTT SMITH and includes all co-signers and co-makers signing the Credit Agreement and all their successors and assigns.

**Credit Agreement.** The words "Credit Agreement" mean the note or credit agreement executed by Borrower(s) in the principal amount of \$66,352.00, dated March 06, 2018, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or agreement. Indebtedness 'evidenced by the Note or Related Documents' or 'payable under the Credit Agreement and Related Documents,' as this phrase is used in the definition of 'Indebtedness,' includes amounts indirectly secured by any Cross-Collateralization provision in this document. The maturity date of the Credit Agreement is March 6, 2043. **NOTICE TO GRANTOR: THE CREDIT AGREEMENT CONTAINS A VARIABLE INTEREST RATE.**

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean individually, collectively, and interchangeably any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

**Grantor.** The word "Grantor" means JAMES SCOTT SMITH.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Credit Agreement or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Credit Agreement or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

**Lender.** The word "Lender" means Compass Bank, its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Credit Agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

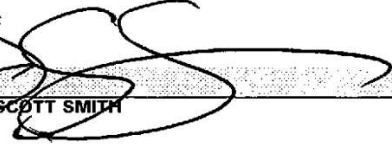
**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

DEED OF TRUST  
(Continued)

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

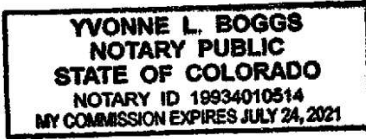
GRANTOR:

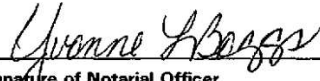
X   
JAMES SCOTT SMITH

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Colorado )  
 )  
COUNTY OF EL PASO ) SS  
 )

This record was acknowledged before me on 6th March, 2018 by JAMES SCOTT SMITH.



  
Signature of Notarial Officer  
Notary Public in and for the State of Colorado  
My commission expires 7-24-2021

WARREN R. MARRIAGE,  
Registered Land Surveyor 1752,

INSTRUMENT

SUPPLEMENTAL STATEMENT  
AND CERTIFICATE.

16928

to

Acknowledged October 24, 1956,  
before Sadie E. Hinch, Notary Public  
in El Paso County, Colorado. (Seal)  
Recorded October 24, 1956.

Book  
1598

WHOM IT MAY CONCERN.

Page  
584

Whereas there is a plat filed for record in Plat Book Y at Page 44 of the El Paso County Records; showing the subdivision of a tract of land known as Pine Hills, and,

Whereas Warren R. Marriage, Registered Land Surveyor No. 1752 of the State of Colorado did survey or cause to be surveyed under his supervision the said Pine Hills, and,

Whereas supplemental information will make certain dimensions more clear and definite, and,

Whereas the said plat of Pine Hills is drawn to a fixed scale and accurately sets forth the boundaries and locations of all lots and avenues and such supplemental information as hereinafter written does not change the location or boundaries of any lot or avenue.

Now therefore, I, Warren R. Marriage, registered land surveyor in the State of Colorado do hereby certify that at all times during the survey of Pine Hills I was a registered land surveyor, and that certain dimensions as indicated upon the plat filed for record are not clear or definite as to whether said dimensions are the lengths of lot lines or the distances to utility easements or other points, and that the following supplementary information will clarify and make more definite the dimensions involved: Dimensions along all lot lines are the distances in feet and hundredths of feet between lot corners as measured on the line shown by the plat with the following exceptions: The side lot dimensions for Lots 8 to 18 inclusive of Block 1, as shown by the plat were calculated to terminate at a proposed utility easement line that parallels the South line of said lots and 20 feet Northerly therefrom. However, the utility easement as shown by the plat is 12 feet in width along and including the Southerly portion of said Lots and the distance from the Southerly line of Arnold Avenue to the Southerly line of said lots as measured on the lot lines and including the distance across the utility easement is 680.00 feet between Lots 9 and 10, between Lots 10 and 11, between Lots 11 and 12, between Lots 13 and 14 and 679.76 feet between Lots 14 and 15 and 769.93 feet between Lots 16 and 17 and 989.05 feet between Lots 17 and 18. The distance from the Southerly end of Vincent Avenue to the Southerly line of Lots 8 and 9, Block 1, as measured on the line common to said Lots 8 and 9, is 240.87 feet. The distance shown along the Southerly line of Lot 23 of Block 3, Pine Hills, is the distance in a straight line from the Southeast corner of said Lot 23 (which is on the North line of Lot 20, Block 3) to the Northwest corner of Lot 20, Block 3, the distance from the most Easterly line of the Northerly end of Fairchild Avenue to the Southeast corner of Lot 23 is 151.86 feet. The hereinbefore mentioned dimensions and distances are set forth as supplemental information only and indicate true lot dimensions as staked upon the ground and are not intended to alter the recorded plat of Pine Hills.

Received at 10:43'clock A.M., OCT. 26, 1965  
Reception No. 412280 HARRIET BEALS

BOOK 2100 PAGE 509

RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, That NORMAN B. BODINGER, CLEO P. BODINGER, and JOHN F. HUGHES, of the County of El Paso and State of Colorado in consideration of the sum of Ten Dollars (\$10.00), in hand paid, the receipt whereof is hereby acknowledged, do hereby sell and quit claim unto MONUMENT SANITATION DISTRICT, existing under and by virtue of the laws of the State of Colorado, its successors and assigns, the following described easement in El Paso County, State of Colorado, to-wit:

Over, under and across a strip of ground 12 feet wide, it being 6 feet on either side of the following described center line:

Commencing at the Northwest corner of the Northeast quarter of the Northeast quarter of Section 22 in Township 11 South, Range 67 West of the 6th P.M.: thence North 88° 20' East on the North line thereof, 272.97 feet for the point of beginning of the center line to be described hereby: thence angle to the right 87° 46' a distance of 306.83 feet to a point: thence angle to the right 50° 21' 24" a distance of 140.65 feet to a point: thence angle to the left 46° 35' 15" a distance of 257.90 feet to a point: thence angle to the right 30° 47' 55" a distance of 153.39 feet to a point: thence angle to the left 89° 00' 10" a distance of 272.18 feet to a point: thence angle to the right 90° a distance of 130.00 feet to a point: thence angle to the right 12° 38' 01" a distance of 380.40 feet to a point: thence angle to the right 3° 01' 23" a distance of 400 feet to a point: thence angle to the right 22° 48' a distance of 400 feet to a point: thence angle to the left 63° 32' 40" a distance of 400 feet to a point: thence angle to the left 6° 10' 20" a distance of 400 feet to a point: thence angle to the left 1° 12' a distance of 400 feet to a point: thence angle to the left 30° 43' 30" a distance of 316 feet to a point: thence angle to the left 33° 34' 50" a distance of 352.66 feet to a point: thence angle to the right 69° 37' 50" a distance of 365 feet on a line 14 feet East of the West right of way of Mitchell Avenue to a point: thence angle to the right 27° 15' 40" a distance of 526 feet to a point: thence angle to the left 53° 43' a distance of 370 feet to a point: thence angle to the left 60° 43' 40" a distance of 101.1 feet to a point: thence angle to the right 87° 10' 40" a distance of 400 feet to a point: thence angle to the right 2° 30' 50" a distance of 339.39 feet to a point: thence angle to the left 3° 23' 20" a distance

of 360.37 feet to a point; thence angle to the right 89° 51' a distance of 85 feet to a point in Lot 3, Block 2, Pine Hills Addition No. 4 to the Town of Monument,

to have and to hold the same unto the said MONUMENT SANITATION DISTRICT and its successors or assigns, to lay, maintain, operate and remove a sewer pipe-line for the transportation of sewage.

IN WITNESS WHEREOF, they have hereunto set their hands and seals, this 25<sup>th</sup> day of January, 1965.

Signed, Sealed and Delivered in Presence of

[Signature]

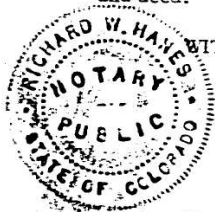
John F. Hughes (SEAL)

Norman B. Bodinger (SEAL)

Cleo P. Bodinger (SEAL)

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

On this 25<sup>th</sup> day of January, A.D. 1965, before me, Richard W. Hanes a Notary Public duly Appointed and qualified for and residing in said County, personally came Norman B. Bodinger, Cleo P. Bodinger and John F. Hughes, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and acknowledged this instrument to be their voluntary act and deed.



WITNESS My hand and official seal the day and year last above written.

Richard W. Hanes  
Notary Public

My commission expires: Oct. 5, 1965

**QUIT CLAIM DEED**

**THIS DEED**, Made this 29 day of MAY, 2024, between **James S. Smith** of the county of El Paso and state of COLORADO, whose legal address is 17150 Mitchell Ave, Monument, CO 80132 of the County of El Paso and State of Colorado, grantor(s), and **Nancy D. Milka**, grantee(s), whose legal address is 1774 Willow Park Way, Monument, CO 80132 of the County of El Paso and State of Colorado, grantee(s).

Steve Schleiker  
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Doc \$0.00 1  
Rec \$13.00 Page

El Paso County, CO



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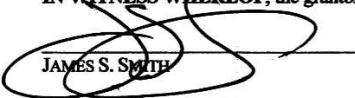
**WITNESS**, that the grantor(s), for and in consideration of the sum of no dollars and no cent pursuant to a Decree of Dissolution of Marriage, Case No. 2017 DR 30975, El Paso County, State of Colorado, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise release, sell and QUITCLAIM unto the grantee(s), her heirs, successors and assigns, forever, all the right, title, interest, claim and demand which the grantor have in and to the real property, together with improvements, if any, situate, lying and being in the County of El Paso and State of Colorado, described as follows:

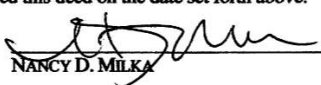
LOT 2, IN BLOCK 3, PINE HILLS, COUNTY OF EL PASO, STATE OF COLORADO

Also known by street and number as: **17220 Mitchell Avenue, Monument, CO 80132.**

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever or the grantor(s), either in law or equity, to the only proper use, benefit and behoof of the grantee her heirs and assigns forever.

**IN WITNESS WHEREOF**, the grantor(s) have executed this deed on the date set forth above.

  
JAMES S. SMITH

  
NANCY D. MILKA

STATE OF COLORADO )  
COUNTY OF El Paso ) SS

STATE OF COLORADO )  
COUNTY OF El Paso ) SS

The foregoing instrument was acknowledged before me this 29 day of May, 2024, by JAMES D SMITH.

Witness by hand and official seal.

  
Notary Public



The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2024, by Nancy D. Milka.

Witness by hand and official seal.

  
Notary Public



# GRANT OF RIGHT OF WAY

5

George R. & Darrel Dodge Diestelkamp

of the County of \_\_\_\_\_ State of Colorado, hereinafter called the "Grantor", in consideration of the sum of one dollar and other valuable considerations hereby grants unto Mountain View Electric Association, Inc., a Colorado corporation, P.O. Box 1600 Limon Colorado 80628 hereinafter called the "Grantee" its successors and assigns, and warrants title thereto, the easement and right of way to construct, maintain, change, renew, relocate, enlarge, and operate its line or lines for the transmission and distribution of electrical energy, and as incident thereto and in connection therewith to construct, maintain, operate, relocate, and enlarge a telephone and/or telegraph line as may be found advisable including the necessary steel and wood poles, towers, poles, wires, guys, stubs and other fixtures over, upon, under, and along a strip of land twenty (20) feet in width owned by the Grantor situate in \_\_\_\_\_ El Paso \_\_\_\_\_ County State of Colorado described as follows:

An easement for future underground electric line to be placed on Lot 3 and Lot 2 of the Pine Hills Subdivision, County of El Paso, State of Colorado.

Lot 2 & 3 PINE HILLS SUBDIVISION, County of El Paso, State of Colorado  
in Pt. Section 22 Township 11 South Range 67 West.

together with the right of ingress and egress and the right to trim or cut down any trees and shrubbery and to control the growth of same by chemical means, machinery, or otherwise, and remove and enclose and restrain the placement of any objects which may interfere with the construction and operation of such lines and structures on or near said strip of land.

Grantor further grants unto the Grantee, the right, privilege and authority to grant, permit or license any other public utility, cable television or private communications company to occupy and maintain its facilities within, over, upon, under and along the above described strip of land.

TO HAVE AND TO HOLD said strip of land unto the Grantee, its successors and assigns forever.

The Grantor covenants and agrees for himself, his heirs, and assigns, not to erect any building or structure within the limits of said strip of land and the Grantee, its successors and assigns, shall have the right to remove, at Grantee's expense, objects interfering with the construction, maintenance, operation, control and use of said lines.

The Grantor agrees that all poles, wires, cables and other facilities including any main service entrance equipment installed in, upon or under the above described easement and right of way by Grantee, shall remain the property of Grantee, removable at the option of Grantee.

This grant is subject to the right of the Grantor, his heirs and assigns, to pass over said strip of land from one portion of his land to the other portion thereof and to otherwise use, pasture and cultivate the surface of said strip of land consistent with the use of said strip of land by the Grantee, its successors and assigns, for the purposes aforesaid.

The Grantee for itself, its successors and assigns hereby agrees to pay any damage which may arise from constructing, maintaining, operating or removing said electric distribution and/or transmission line or lines so far as the same shall affect fences, irrigation or draining ditches, or growing crops, said damage, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the Grantor, his heirs and assigns, one by the Grantee, its successors or assigns, and the third person by the two persons aforesaid, the award of such three persons to be final and conclusive.

The word "Grantor" wherever used herein, shall include either one or more persons, and the masculine wherever used shall include the feminine.

DATED Aug. 11, 1994

George R. & Darrel Dodge Diestelkamp (SEAL)  
Darrel Dodge Diestelkamp (SEAL)

STATE OF COLORADO )  
COUNTY OF El Paso ) ss

The within instrument was acknowledged before me this eleventh day of August 1994 by George R. & Darrel Dodge Diestelkamp

WITNESS my hand and official seal

My Commission Expires My commission expires October 8, 1995

Account No \_\_\_\_\_

Work Order No 94-1188



Margaret M. Canby  
Notary Public  
30 East Pike Peak Ave.  
Notary's Home or Business Address  
Colorado Springs, CO 80903

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BOOK PAGE  
6649 1495

ARDIS W. SCHMIDT  
EL PASO COUNTY CLERK & RECORDER

**AGREEMENT FOR EASEMENT**

2000

It is AGREED by and between George R. Diestelkamp and Darrel Dodge-Diestelkamp hereinafter referred to as Grantors, whose address is 3275 Galena Court, Colorado Springs, Colorado 80918 and the Monument Sanitation District, hereinafter referred to as Grantee, as follows:

1. Grantors hereby grant unto the Grantee the right to enter, and to go upon and across, the following described real property situate in the County of El Paso, State of Colorado, to-wit:

Lot 1, and Lot 2, Lot 3, Block 3, Pine Hills;

and hereby further grants a 45 foot temporary construction easement and right of way over, upon, in, and across, said property, for the purpose of laying out and installing a sanitary sewer line of the anticipated approximate length of 523 feet.

2. Upon completion of the sewer line installation (which installation shall at all times conform to the best engineering practices and be in accord with prevailing law) Grantee shall, among other things include the return of the surface, as nearly as practicable, to its original condition. Grantee shall cause a survey to be made, at its expense, of the sewer line route as installed, and Grantors agree to execute and deliver a grant of easement and right of way conveying to Grantee a permanent easement and right of way 20 feet in width being 10 feet on either side of the sewer line route as installed.

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3. In consideration of the easement and right of way herein granted and/or provided for  
Grantee agrees to providing one (1) commercial Sanitary  
sewer Tap for Lot 1 , one (1) residential  
sanitary sewer Tap for Lot 2 , and one (1) residential  
sanitary sewer Tap for Lot 3, PINE HILLS.

which is the consideration for this agreement.

Dated this 1<sup>ST</sup> day of the month of August 1994.

George B. Diestelkamp  
George B. Diestelkamp

Daniel Dodge Diestelkamp  
Daniel Dodge Diestelkamp

MONUMENT SANITATION DISTRICT  
By:

[Signature]  
Authorized signature

Grantee

El Paso County  
Parcel Numbers:

71220-02-001

71220-02-002

71220-02-003

0051546.00 d28

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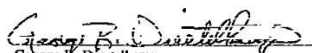
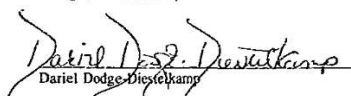
**GRANT OF EASEMENT  
MONUMENT SANITATION DISTRICT**

KNOW ALL MEN BY THESE PRESENTS, That George R. Diestelkamp and Darrel Dodge-Diestelkamp whose address is 3275 Galena Court, Colorado Springs, Colorado, 80912, for consideration of Ten Dollars and No/100 (\$10.00), and other good and valuable considerations in hand paid, hereinafter called the "Grantor", hereby grants, sells and conveys to the MONUMENT SANITATION DISTRICT, hereinafter called "Grantee", its successors and assigns, a perpetual right of way and easement for construction, maintenance and operation of sewer lines, including necessary pipes and other improvements, together with necessary fixtures and attachments, said right of way and easement being described in Exhibit "A" attached hereto and incorporated herein by reference.

Together with the right of ingress and egress to said right of way and easement in the exercising of rights herein granted. That no building or structures shall be constructed on said right of way and easement by Grantor (or property owner), without Grantee's written consent. Grantee shall have the right to trim or remove any trees or undergrowth within the right of way, which may interfere with construction, maintenance or operation of said lines, where necessary.

It is understood that the Grantee will reimburse the Grantor (or property owner) for any damages caused by entry upon the above-described right of way and easement for the purpose of construction, maintenance and operation of said lines.

IN WITNESS WHEREOF, the undersigned have set their hands and seal this 15<sup>th</sup> day of August, 1994.

  
George R. Diestelkamp  
  
Darrel Dodge-Diestelkamp

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

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 1994, by George R. Diestelkamp and Darrel Dodge-Diestelkamp.

WITNESS my hand and official seal.

My commission expires  
My business address is

  
11 Street  
Colorado Springs, Co. 80909  
R. Curry

BOOK PAGE  
6649 1498

EXHIBIT "A"

LEGAL DESCRIPTION: (20' SAN SEWER ESM'T - LOT 1, 2, AND 3, BLOCK 3 PINE HILLS SUBDIVISION)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., OF EL PASO COUNTY, COLORADO, TO WIT:

A STRIP OF LAND OVER AND ACROSS A PORTION OF LOTS 1, 2 AND 3, BLOCK 3, PINE HILLS SUBDIVISION AS RECORDED IN PLAT BOOK Y AT PAGE 44 OF THE RECORDS OF SAID COUNTY, SAID STRIP OF LAND BEING 20 FEET IN WIDTH, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1;

THENCE N89°35'00"W, 361.35 FEET ALONG THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING OF THE CENTERLINE OF SAID STRIP OF LAND HEREIN DESCRIBED;

THENCE S02°21'56"W, 53.46 FEET;

THENCE S31°15'52"W, 403.41 FEET;

THENCE ALONG THE ARC OF A CURVE TO LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 19°42'51", A RADIUS OF 190.00 FEET, FOR AN ARC DISTANCE OF 65.38 FEET TO THE POINT OF TERMINUS OF THE CENTERLINE HEREIN DESCRIBED, THE SIDE LINES OF WHICH ARE TO BE SHORTENED OR EXTENDED TO INTERSECT SAID NORTH LINE OF LOT 1.

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STATE DOCUMENTARY

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97 AUG 27 PM 1: 22

J. P. PETERSON  
EL PASO COUNTY CLERK & RECORDER, CO.

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1.00

WARRANTY DEED AND AGREEMENT TO EASEMENT  
AND RELEASE OF EXISTING EASEMENTS

AUG 27 1997

FEE None

KNOW ALL MEN BY THESE PRESENTS, that CAROLYN SUE WHEAT, whose physical address is 16950 Mitchell Avenue, Monument, County of El Paso and State of Colorado, for the consideration of the release and quitclaim of the existing easements legally described in Exhibit "A" (consisting of A-1 and A-2) attached hereto and incorporated herein by reference and other good and valuable consideration, hereby grants, bargains, sells and conveys to PALMER LAKE SANITATION DISTRICT, whose physical address is 4 Highway 105, Palmer Lake, County of El Paso, State of Colorado, and MONUMENT SANITATION DISTRICT, whose physical address is 130 2nd Street, Monument, County of El Paso, State of Colorado, and WOODMOOR WATER AND SANITATION DISTRICT 1, whose physical address is 1845 Woodmoor Drive, Monument, County of El Paso, State of Colorado, a perpetual easement and right of way over, under, through and across that portion of Lot 16 in Block 3 of the Pine Hills Subdivision, situated in the County of El Paso and State of Colorado, as described in Exhibit "B" which is attached hereto and incorporated herein by reference, for the purpose of construction, operation, maintenance, and replacement of sanitary sewer pipelines and facilities, and warrants the title to the same. The parties agree that the recordation of the release and quit claim of the existing Palmer Lake easement identified in Exhibit A-2 herein shall not take place unless and until construction of lines in the new easement identified in Exhibit B herein in the Monument Sanitation District, Palmer Lake Sanitation District, and Woodmoor Water and Sanitation District is

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97099586-2

complete and flow is diverted as determined by the Joint Use Committee Executive Agency.

SIGNED this 6th day of August, 1997.

Carolyn Sue Wheat  
CAROLYN SUE WHEAT

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

I, the undersigned Notary Public in and for said County, in the State of Colorado do hereby certify that CAROLYN SUE WHEAT, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act and deed, for the uses and purposes therein



in my hand and official seal.

Kimberly S. Gilman  
Notary Public

My Commission Expires April 15, 2001

ATTEST:

MONUMENT SANITATION DISTRICT

David McKeon  
Secretary

By: [Signature]  
President

Dated 8-11, 1997.



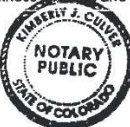
97099588-3

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

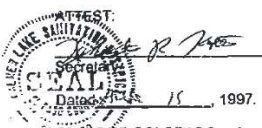
I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that Lee Tenney <sup>President of Palmer Lake Sanitation District</sup> personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 11 day of August

1997.



Kimberly J. Culver  
Notary Public  
My Commission Expires April 15, 2001  
My Commission Expires on: \_\_\_\_\_



PALMER LAKE SANITATION DISTRICT  
By: David James Wilcox  
President

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

I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that David James Wilcox personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

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97099588-4

Witness my hand and official seal this 18<sup>th</sup> day of August 1997.

Christa J. Johnson  
Notary Public  
My Commission Expires 08/10/2000



ATTEST  
[Signature]  
Secretary

Dated 18<sup>th</sup>, 1997.

WOODMOOR WATER AND SANITATION DISTRICT NO. 1

By George A. Golder  
President

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

I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that George A. Golder personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 17 day of August 1997.

Hope Winkler  
Notary Public  
My Commission Expires on: 1-11-2000

97099588-5

EXHIBIT "A" (2)

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That the Monument Sanitation District of the County of El Paso and State of Colorado, for the consideration of One Dollar and other good and valuable consideration, in hand paid, hereby releases and QUIT-CLAIMS to CAROLYN SUE WHEAT of the County of El Paso and State of Colorado, whose mailing address is P. O. Box 772, Monument, Colorado 80132, the following easement situated in the County of El Paso County and State of Colorado, to wit:

A 12 foot wide strip of land lying 6 feet on each side of the centerline described herein, being a portion of Lot 16, Block 3, "Pine Hills" as platted in El Paso County, Colorado and recorded in Plat Book Y at page 44 under reception number 15607 of the records of said county, more particularly described as follows:

Commencing at the southeast corner of said Lot 16, Block 3;  
Thence along the southerly line of said lot, a distance of 509.36 feet to the point of beginning;  
Thence on an angle to the right of 57°52'45", 230.04 feet, more or less to intersect the northerly line of said lot and the terminus of said easement;  
Extending and foreshortening the side lines of said strip of land to intersect the lot lines described herein;  
Containing 0.07 Acres, more or less.

TO HAVE AND TO HOLD THE SAME, together with all the appurtenances subject to the taxes for the current year and subsequent years, and except for easements, restrictions, reservations, rights-of-way, and covenants of record, if any;

SIGNED AND DELIVERED this 11 day of August, 1997.

ATTEST:

MONUMENT SANITATION DISTRICT

*Carole M. Kemmer*  
Secretary  
Date: 8-11, 1997

By *Scott Kinney*  
President



97099588-6

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

The foregoing QUIT CLAIM DEED was acknowledged before me this 11  
day of August, 1997, by Lea Terney, Pres. and Lamm Jefferson  
Secretary

Witness my hand and official seal.



Kimberly J. Cuijck  
Notary Public  
565 Jefferson  
Address Monte Vista, CO 80132

My Commission Expires: My Commission Expires April 15, 2001

97099588-7

EXHIBIT "B"  
NEW EASEMENT  
LOT 17, BLOCK 3 "PINE HILLS"

A 30 foot wide strip of land lying 15 feet on each side of the centerline described herein, being a portion of Lot 17, Block 3, "Pine Hills" as platted in El Paso County, Colorado and recorded in Plat Book Y at page 44 under reception number 15607 of the records of said county, more particularly described as follows:

Commencing at the northeast corner of said Lot 17, Block 3,  
Thence along the northerly line of said lot, a distance of 345.48 feet to the point of beginning;  
Thence on an angle to the left of  $134^{\circ}01'32''$ , a distance of 1.40 feet,  
Thence on an angle to the right of  $19^{\circ}30'22''$ , a distance of 121.60 feet;  
Thence on an angle to the left of  $50^{\circ}34'44''$ , a distance of 304.92 feet, more or less, to intersect the easterly line of said lot and the westerly right-of-way line of Mitchell Avenue and the terminus of said easement;  
Extending and foreshortening the side lines of said strip of land to intersect the lot lines described herein;  
Containing 0.29 acres, more or less.

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J. Patrick Kelly El Paso Cnty 02/19/1998 04:15  
8098020282 Doc \$ .00 Rec \$50.00 Pg 1 / 10

**RECORDED TO CORRECT WARRANTY DEED AND AGREEMENT  
TO EASEMENT AND RELEASE OF EXISTING EASEMENTS TO THAT  
WARRANTY DEED AND AGREEMENT TO EASEMENT  
AND RELEASE OF EASEMENTS RECORDED ON AUGUST 27, 1997 AT  
RECEPTION NUMBER 97099588**

KNOW ALL MEN BY THESE PRESENTS, that CAROLYN SUE WHEAT, whose physical address is 16350 Mitchell Avenue, Monument, County of El Paso and State of Colorado, for the consideration of the release and quitclaim of the existing easements legally described in Exhibit "A" (consisting of A-1 and A-2) attached hereto and incorporated herein by reference and other good and valuable consideration, hereby grants, bargains, sells and conveys to MONUMENT SANITATION DISTRICT, whose physical address is 130 2nd Street, Monument, County of El Paso, State of Colorado and PALMER LAKE SANITATION DISTRICT, whose physical address is 4 Highway 105, Palmer Lake, County of El Paso, State of Colorado, and WOODMOOR WATER AND SANITATION DISTRICT 1, whose physical address is 1845 Woodmoor Drive, Monument, County of El Paso, State of Colorado, a perpetual easement and right of way over, under, through and across that portion of Lot 16 in Block 3 of the Pine Hills Subdivision, situated in the County of El Paso and State of Colorado, as described in Exhibit "B" which is attached hereto and incorporated herein by reference, for the purpose of construction of underground sewer pipelines and facilities to operate, maintain and replace such pipelines and facilities, for transportation of sewage and

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to replace any existing above ground manholes or facilities. The parties agree that the recodation of the release and quit claim of the existing Palmer Lake easement identified in Exhibit A-2 herein shall not take place unless and until construction of lines in the new easement identified in Exhibit B herein in the Monument Sanitation District, Palmer Lake Sanitation District, and Woodmoor Water and Sanitation District is complete and flow is diverted as determined by the Joint Use Committee. The Joint Use Committee is a joint venture of the Monument Sanitation District, the El Paso District and the Woodmoor Water and Sanitation District 1.

This Agreement makes null and void the previously recorded documents pertaining to this matter, at Reception No. 97099588, on August 27, 1997.

SIGNED this 22nd day of January, 1998.

Carolyn Sue Wheat  
CAROLYN SUE WHEAT

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

I, the undersigned Notary Public in and for said County, in the State of Colorado do hereby certify that Carolyn Sue Wheat, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal.

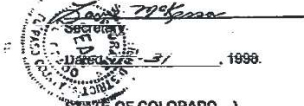


Michael H. Wickham  
Notary Public

My commission expires September 27, 1999

ATTEST:

MONUMENT SANITATION DISTRICT

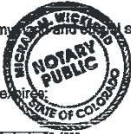


By: Lea W. Tenney  
President Lea W. Tenney

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

I, the undersigned Notary Public in and for said County, in the State of Colorado do hereby certify that Lea W. Tenney, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal.



Michael W. Wickert  
Notary Public

My commission expires:

My Commission Expires September 29, 1999

ATTEST:  
\_\_\_\_\_  
Secretary  
Filed FEB 11 1998  
SPL. CLERK

PALMER LAKE SANITATION DISTRICT  
By: David James Wilson  
President

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

I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that David James Wilson, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 11<sup>th</sup> day of February, 1998.



Bonita Jo Hanson  
Notary Public

My Commission Expires on: 10/30/99

ATTEST:

WOODMOOR WATER AND SANITATION  
DISTRICT NO. 1



By: George A. Gaddy  
President

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

I, the undersigned Notary Public in and for said County, in the State of Colorado, do hereby certify that George A. Gaddy, personally known to me to be the person whose name is subscribed to in the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed, and delivered the said instrument as his/her free and voluntary act and deed, for the uses and purposes therein specified.

Witness my hand and official seal this 17 day of February, 1998.



Kimberly J. Culver  
Notary Public  
My Commission Expires April 15, 2001

25 x 11

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**EXHIBIT "A" (1)**

**QUIT CLAIM DEED**

**KNOW ALL MEN BY THESE PRESENTS**, That the Monument Sanitation District of the County of El Paso and State of Colorado, for the consideration of One Dollar and other good and valuable consideration, in hand paid, hereby releases and **QUIT-CLAIMS** to CAROLYN SUE WHEAT of the County of El Paso and State of Colorado, whose mailing address is P. O. Box 772, Monument, Colorado 80132, the following easement situated in the County of El Paso County and State of Colorado, to wit:

A 12 foot wide strip of land lying 6 feet on each side of the centerline described herein, being a portion of Lot 16, Block 3, "Pine Hills" as platted in El Paso County, Colorado and recorded in Plat Book Y at page 44 under reception number 15607 of the records of said county, more particularly described as follows:

Commencing at the southeast corner of said Lot 16, Block 3;  
Thence along the southerly line of said lot, a distance of 509.38 feet to the point of beginning;  
Thence on an angle to the right of 57°52'45", 236.04 feet, more or less to intersect the northerly line of said lot and the terminus of said easement;  
Extending and foreshortening the side lines of said strip of land to intersect the lot lines described herein;  
Containing 0.07 Acres, more or less.

**TO HAVE AND TO HOLD THE SAME**, together with all the appurtenances subject to the taxes for the current year and subsequent years, and except for easements, restrictions, reservations, rights-of-way, and covenants of record, if any;

SIGNED AND DELIVERED this 22<sup>nd</sup> day of January, 1998.

ATTEST:

MONUMENT SANITATION DISTRICT

Secretary  
Dated: 1-21, 1998

By: Leon W. Tenney  
President

Page 6 of 10

25 x 11

32 x 11

STATE OF COLORADO )  
                                  ) 89.  
COUNTY OF EL PASO )

The foregoing QUIT CLAIM DEED was acknowledged before me this 22<sup>nd</sup>  
day of January, 1998, by Leslie W. Tenney

Witness my hand and official seal.



Michael M. Wickford  
Notary Public  
P.O. Box 506  
Mesquite, Co 80132  
Address  
My Commission Expires September 22, 1999  
My Commission Expires:

**EXHIBIT "A" (2)**

**QUIT CLAIM DEED**

**KNOW ALL MEN BY THESE PRESENTS**, That the Palmer Lake Sanitation District of the County of El Paso and State of Colorado, for the consideration of One Dollar and other good and valuable consideration, in hand paid, hereby releases and **QUIT CLAIMS** to **CAROLYN SUJE WHEAT** of the County of El Paso and State of Colorado, whose mailing address is P. O. Box 772, Monument, Colorado 80132, the following easement situated in the County of El Paso County and State of Colorado, to wit:


A 15 foot wide strip of land lying 7.5 feet on each side of the centerline described herein, being a portion of Lot 16, Block 3, "Pine Hills" as platted in El Paso County, Colorado and recorded in Plat Book Y at page 44 under reception number 15807 of the records of said county, more particularly described as follows:

Commencing at the southeast corner of said Lot 16, Block 3;  
Thence along the southerly line of said lot, a distance of 383.20 feet to the point of beginning;  
Thence on an angle to the right of 53°21'30", a distance of 223.49 feet;  
Thence on an angle to the right 30°04'29", a distance of 20.72 feet, more or less, to intersect the northerly line of said lot and the terminus of said easement;  
Extending and freshshortening the side lines of said strip of land to intersect the lot lines described herein;  
Containing 0.08 Acres, more or less.

**TO HAVE AND TO HOLD THE SAME**, together with all the appurtenances subject to the taxes for the current year and subsequent years, and except for easements, restrictions, reservations, rights-of-way, and covenants of record, if any;

SIGNED AND DELIVERED this 11<sup>th</sup> day of February, 1998.

PALMER LAKE SANITATION DISTRICT

  
J. Patrick Kelly  
Secretary  
Dated 11/19/98

By: David J. Wilson  
President

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

The foregoing QUIT CLAIM DEED was acknowledged before me this 11<sup>th</sup>  
day of February, 1998, by David James Wilson.

Witness my hand and official seal.

Louisa Jo Hanson  
Notary Public  
P.O. Box 709  
Silver Lake, CO 80130  
Address  
My Commission Expires: 10/30/99



**EXHIBIT "B"**  
**NEW EASEMENT**  
**LOT 18, BLOCK 3, "PINE HILLS"**

A 30 foot wide strip of land lying 15 feet on each side of the centerline described herein, being a portion of Lot 18, Block 3, "Pine Hills" as platted in El Paso County, Colorado and recorded in Plat Book Y at page 44 under reception number 15607 of the records of said county, more particularly described as follows:

Commencing at the southeast corner of said Lot 18, Block 3;  
Thence along the southerly line of said lot, a distance of 345.48 feet to the point of beginning;  
Thence on an angle to the right of 45°58'28" a distance of 278.03 feet, more or less, to intersect the northerly line of said lot and the terminus of said easement;  
Extending and foreshortening the side lines of said strip of land to intersect the lot lines described herein;  
Containing 0.19 Acres, more or less.

Return to:  
Susan M. Grant, Esquire  
P.O. Box 1110  
Monument, CO 80132

25x10

32x10

BoCC

RESOLUTION NO. 08-414

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO

APPROVE USE SUBJECT TO SPECIAL REVIEW TO ALLOW A KENNEL WITHIN THE RR-5 ZONE DISTRICT (AL-07-008)-JAMES AND NANCY SMITH

WHEREAS, James and Nancy Smith did file an application with the Development Services Division of El Paso County for approval of a Use Subject to Special Review to allow a kennel within the RR-5 (Residential Rural) Zone District; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on July 15, 2008, upon which did the Planning Commission did by formal resolution recommend approval of the subject application with conditions and notations; and

WHEREAS, a public hearing was held by this Board on September 25, 2008; and

WHEREAS, based on the evidence, testimony, exhibits, study of the master plan for the unincorporated area of the county, recommendations for the El Paso County Planning Commission, comments of the El Paso County Development Services Division, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. That proper posting, publication and public notice was provided as required by law for the hearings before the Planning Commission and Board of County Commissioners of El Paso County, Colorado.
2. That the hearings before the Planning Commission and Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at those hearings.
3. That the proposed special use conforms to Chapter 5, Use and Dimensional Standards, Section 5.3.2, Special Use, of the El Paso County Zoning Resolutions.
4. The special use is consistent with the applicable Master Plan.
5. That the special use is consistent with the intent and purposes of the zoning district where the use is proposed to be located or conforms to the approved development plan.
6. The special use will be in harmony with the character of the neighborhood, and compatible with the existing and allowable land uses in the surrounding area;

7. That the special use will not result in an over-intensive use of land.
8. The impact of the special use does not overburden or exceed the capacity of public facilities and services or, in the alternative, the special use application demonstrates that it will provide adequate public facilities in a timely and efficient manner.
9. That the special use will not create undue traffic congestion or traffic hazards in the surrounding area, and has adequate, legal access.
10. That the special use will not cause significant air, water, light, or noise pollution.
11. That the special use will not be otherwise detrimental to the public health, safety and welfare of the present or future residents of El Paso County.
12. That the special use conforms or will conform to all other applicable County rules, regulations or ordinances.
13. That the proposed land use does not permit the use of an area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.
14. That for the above-stated and other reasons, the proposed special use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of El Paso County, Colorado, hereby approves the petition of James and Nancy Smith for a Use Subject to Special Review to allow a kennel within the RR-5 (Residential Rural) Zone District for property located within the unincorporated area of El Paso County more particularly described in Exhibit A, which is attached hereto and incorporated by reference;

AND BE IT FURTHER RESOLVED that the following conditions and notations shall be placed upon this approval:

CONDITIONS:

1. The total number of dogs allowed overnight on site for the kennel operation shall not exceed twenty-four (24).

2. Dogs being kept overnight shall be kept inside except for necessary bathroom breaks to the fenced backyard area as depicted on the site plan.
3. All dogs shall be supervised while in the "backyard" and/or "play area".
4. Dogs shall not access the "play area" as depicted on the site plan prior to 7:00 a.m. and after the hour of 9:00 p.m.
5. The applicant shall be responsible for mitigating any noise impacts from dogs barking. If the applicant is unable to mitigate noise and complaints are received, the special use to allow the kennel may be revoked after proper posting and public hearing.
6. There shall be no commercial breeding of dogs occurring on the site.
7. All animal waste shall be disposed on in compliance with the regulations of the El Paso County Board of Health, Chapter 10 (Solid Waste), as adopted April 25, 2007.
8. The operation of the kennel, as approved by the Board of County Commissioners, shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Department of Wildlife, Colorado Department of Agriculture, Colorado Department of Transportation, U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and/or Colorado Department of Wildlife regarding the Endangered Species Act, particularly as it relates to the Preble's meadow jumping mouse as a listed, threatened species.
9. Animal drop off and pickup times are limited to 7:00 a.m. to 8:00 p.m.
10. A six-foot square opaque fence shall be maintained around the "backyard" area as depicted on the site plan. A cedar post and rail fence shall be maintained around the "play area".
11. Unleashed guest dogs shall be limited to the areas designated on the map.
12. The subject property shall be occupied as a primary residence.

NOTATIONS:

1. Special Use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification, or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or special use conditions/standards are being violated, preceded by notice and public hearing.
3. If the Special Use is discontinued or abandoned for two (2) years or longer, the Special Use shall be deemed abandoned and of no further force and effect.

AND BE IT FURTHER RESOLVED that the record and recommendations of the El Paso County Planning Commission be adopted.

DONE THIS 25<sup>th</sup> day of September 2008, at Colorado Springs, Colorado.



ATTEST:

By: Robert C. Bahil  
County Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS  
EL PASO COUNTY, COLORADO

By: Jim Hays  
Chair

Resolution No. 08-414  
Exhibit A

Lots 1,2, 3; Pine Hills Subdivision, El Paso County; Block 3, Section PT; 11 South 67  
West.

PREPARED BY AND  
WHEN RECORDED MAIL  
TO:

7-Eleven, Inc.  
Attn: Corporate Real Estate  
3200 Hackberry Road  
Irving, Texas 75063  
Store #38633

Return to: **ND7S 1002-89158**  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas Texas 75204

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

SEC of Powers Boulevard  
and Aeroplaaza Drive  
Colorado Springs, Colorado  
7-Eleven Location No. 38633

### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE shall evidence that there is in existence a Lease as herein described. It is executed by the parties hereto for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise affect the terms and provisions of said Lease. Terms used but not defined herein shall have the meaning set forth in the Lease.

Name of Document (the "Lease"): Freestanding Lease, as amended and assigned  
Date of Lease: September 13, 2018  
Name of Landlord: BV AEROPLAZA LLC, a Colorado limited liability company  
Name of Tenant: 7-ELEVEN, INC., a Texas corporation

Address of Landlord: BV Aeroplaza LLC  
6400 S. Fiddlers Green Circle, Suite 1820  
Greenwood Village, Colorado 80111

Address of Tenant: 7-Eleven, Inc.  
Attn: Corporate Real Estate; Store #38633  
3200 Hackberry Road  
Irving, Texas 75063

Premises: See Exhibit A attached hereto and made a part hereof.

Term Commencement Date: The Primary Term shall commence on the first day of the first calendar month following the earlier of (i) one hundred twenty (120) days after Landlord's Delivery Date (as defined within the Lease), or (ii) the date Tenant opens for business from the Premises.

Initial Lease Term: Fifteen (15) years.

Option to Extend: Four (4) successive options for a period of five (5) years for each option.

Exclusive Use Provisions: During the Term and any Extended Term of the Lease:

(1) no occupant of the Project other than Tenant shall operate a convenience store (defined as the operation of not more than 5,000 square feet which offers for sale grocery items, cigarettes and tobacco products, and other items commonly sold in 7-Eleven convenience stores) and no business in the Project shall offer for sale, in connection with all or any part of its business operations, any of the following items:

(A) beer and wine for off premises consumption; or

(B) motor fuels or petroleum products (provided that an use primarily operating as an auto parts retail store may sell motor oil and other petroleum products (but not motor fuels) from its premises);

(2) Landlord shall not sell any lot in the Project or enter into any lease or other occupancy arrangement for occupancy of any portion of the Project, for use as a Dunkin Donuts store;

(3) Landlord shall not sell any lot in the Project or enter into any lease or other occupancy arrangement for occupancy of any portion of the Project, for the use as a 'dollar store' (such as, by

way of example and not limitation, Dollar General or Family Dollar); and

(4) Landlord shall not sell any lot in the Project or enter into any lease or other occupancy arrangement for occupancy of any portion of the Project for occupancy by a “pot shop” or retail store selling marijuana or marijuana-derived products, unless sales of marijuana or marijuana derived products are legal under all Applicable Laws, including federal laws.

Landlord agrees to protect Tenant’s and Tenant’s franchisees at the Premises exclusive right to operate a convenience store (with or without a gas station) and sell the above listed items in any future sale or lease of all or any portion of the Project and Landlord shall not enter into any lease or sale/purchase agreement as to all or any portion of the Project that may permit the operation of a convenience store (with or without a gas station) and/or the sale of the above listed items and shall promptly, at its expense, take all appropriate legal action to stop any sales or rentals in violation of Tenant’s exclusive rights. If any of the above covenants are found by court of competent jurisdiction to be unreasonable or unenforceable, then such covenants shall be limited only to the extent that such court determines are reasonable and enforceable. Landlord hereby grants Tenant the right to institute an action, including an action for damages or injunctive relief, against any tenant of the Project which is operating in violation of the exclusives contained in Article 40 of the Lease, provided however that Tenant does not, by virtue of obtaining such right, waive any rights it may have against Landlord as a result of any such violation.

The rights granted to Tenant in Article 40 of the Lease (“Tenant’s Exclusive Rights”) shall remain in full force and effect until this Lease expires or is sooner terminated; provided however, that Tenant’s Exclusive Rights may be terminated by written notice of such termination by Landlord to Tenant if (i) Tenant ceases operating a convenience store (including as permitted in Section 5(a) of the Lease at the Premises); (ii) Tenant fails to open for business to the public at the Premises for three hundred sixty-five (365) consecutive days and such failure is not due to a casualty, exercise of condemnation or eminent domain rights, force majeure or repairs or rebuilding of the Building; and (iii) Landlord intends to enter into or permit a lease or occupancy agreement for a portion of the Project with a business that would infringe upon Tenant’s Exclusive Rights or any part thereof. In the event Landlord sends a termination notice to Tenant pursuant to Section 40(c) of the Lease, such notice shall be nullified and of no force or effect if Tenant notifies Landlord within thirty (30)

days following receipt of such notice that it intends to re-open in the Premises for the use described in Section 5(a) of the Lease, and in fact so re-opens within ninety (90) days following receipt of Landlord's termination notice.

**Permits/Licenses:**

Landlord grants to Tenant the right to apply for and obtain, in Landlord's name or otherwise, any permits or licenses required by applicable governmental authorities necessary or desirable for Tenant (i) to undertake any construction and/or perform maintenance, remodeling, alterations and repairs at the Premises, and (ii) to otherwise use the Premises in accordance with the terms and conditions of the Lease. Landlord agrees to execute any documents reasonably requested by Tenant in connection therewith.

**Right of First Offer:**

At any time after the first six (6) months of the Term, if Landlord decides to market the Premises for sale (the "Offer to Sell"), Landlord grants Tenant a one-time option to purchase the Premises on the same terms and conditions as provided in the Offer to Seller and in the Lease.

**Signage:**

Tenant, at its sole cost and expense, may fabricate, install and maintain the following (collectively, "Tenant's Signs"), subject to Tenant's receipt of any required local governmental approvals: (i) Tenant's standard fascia signage on the Premises, which may be installed on all sides of the Building in Tenant's sole discretion, and (ii) a logo and gasoline pricing sign on the canopy as well as at a mutually acceptable location as shown on the Final Site Plan, (iii) directional signage, (iv) monument sign(s) or panels on the Premises' monument sign to be located on the corner of Powers Boulevard and Aeroplaza Drive, including placing a logo and gasoline pricing on such monument sign(s), (v) promotional banners and awnings in and around the Premises and common areas of the Premises in connection with Tenant's grand opening programs during the first twelve (12) months of the Term. Landlord acknowledges that it is familiar with Tenant's retail operations and agrees that Tenant may install signage consistent with its then-current trade dress and standards, as they may change from time to time. Tenant's preliminary diagrams for Tenant's Signs are attached to the Lease as Exhibit E. Pursuant to Article 22(a) of the Lease, Landlord shall have the right to approve any material changes to the diagrams for Tenant's Signs attached to the Lease as Exhibit E, but following installation of Tenant's Signs pursuant to such diagrams, Tenant shall have the right to update and modify the panels on Tenant's Signs without Landlord's consent but subject to Tenant obtaining all approvals, consents and permits necessary for such updated and modified signage.

**Parking:**

For the duration of the Term and any Extended Term, Tenant shall have the exclusive use of all parking spaces located within the Premises, as shown on the Final Site Plan, and Tenant may designate such spaces for its exclusive use with appropriate signage, striping, curb painting or a combination thereof, subject to compliance with Applicable Law.

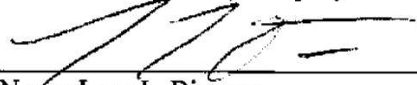
The purpose of this Memorandum of Lease is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed. A copy of the Lease is on file with Landlord and Tenant at their respective addresses set forth above.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgments.

**LANDLORD:**

BV Aeroplaza, LLC,  
a Colorado limited liability company

By:   
Name: Lucy L. Dinneen  
Title: Managing Director

[corporate seal]

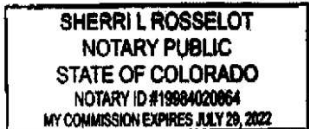
ACKNOWLEDGEMENT

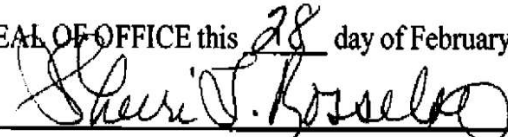
STATE OF COLORADO                    §  
  §  
COUNTY OF ARAPAHOE               §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Lucy L. Dinneen the Managing Director of BV Aeroplaza LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28 day of February, 2019.

(seal)



  
Sherril L. Rosselot

My commission expires: 7/29/2022

[SIGNATURE AND ACKNOWLEDGEMENT PAGE OF TENANT TO MEMORANDUM OF LEASE]

WITNESS the following signatures and seals.

TENANT: 7-ELEVEN, INC., a Texas corporation

Attest: Robin D. Bryant  
Name: Robin D. Bryant  
Title: Assistant Secretary

By: Grant Distel  
Name: Grant Distel  
Title: Attorney-in-Fact

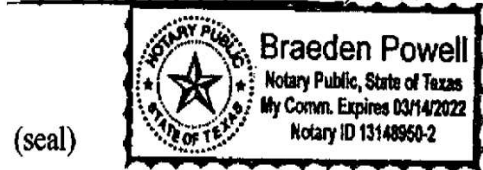
[corporate seal]

ACKNOWLEDGMENT

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Grant Distel and Robin D. Bryant, a(n) Attorney-in-Fact and an Assistant Secretary, respectively, of 7-ELEVEN, INC., known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation and that they each executed the same as the act of such corporation for the purposes therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8<sup>th</sup> day of March, 2019.



Braeden Powell  
(Notary signature)  
Braeden Powell  
(typed or printed name)

My commission expires: 3-14-2022

EXHIBIT A

Legal Description

LOT 4, NEWPORT SUBDIVISION FILING NO. 17, CITY OF COLORADO SPRINGS,  
COUNTY OF EL PASO, STATE OF COLORADO.

**“This document filed for record by  
Republic Title of Texas, Inc. as an  
accommodation only. It has not been  
examined as to its execution or as to  
its effect upon the title. No liability  
is assumed hereby.”**

Recording Requested By, And  
When Recorded, Mail To:

Chuck Broerman  
09/12/2019 02:23:47 PM  
Doc \$0.00 22  
Rec \$118.00 Pages

El Paso County, CO



219110534

BTS Aeroplaza SE LLC  
C/O Cadence Capital Investments LLC  
6400 S. Fiddlers Green Circle, Suite 1820  
Greenwood Village, CO 80111  
Attention: Lucy L. Dinneen

---

(Space Above For Recorder's Use)

### DECLARATION OF RECIPROCAL EASEMENTS AND AGREEMENTS

This DECLARATION OF RECIPROCAL EASEMENTS AND AGREEMENTS (this "Declaration") is made this 10<sup>th</sup> day of September, 2019 by BTS AEROPLAZA SE LLC, a Colorado limited liability company ("Declarant"), with its principal place of business at 6400 S. Fiddlers Green Circle, Suite 1820, Greenwood Village, CO 80111.

### RECITALS

A. The real property which is the subject of this Declaration is the land located in the City of Colorado Springs, County of El Paso, State of Colorado, legally described on Exhibit A attached hereto and made a part hereof ("Project").

B. Declarant replatted the Project into Lot 1, Lot 2 and Tract A pursuant to that certain Newport Subdivision Filing No. 23 recorded on September ~~12<sup>th</sup>~~ 2019 with the Clerk and Recorder of El Paso County, Colorado at Reception No. 219714402 herein referred to herein as the "Plat"). For purposes of this Declaration the terms "Lot 1", "Lot 2" and "Tract A" mean the respective lots and tract as subdivided pursuant to the Plat.

C. A current proposed site plan for the initial improvements proposed for the Project is attached hereto as Exhibit B and made a part hereof ("Site Plan"). Such Site Plan is not final and will change from time to time; provided, however, that, except as specifically set forth herein, the Restricted Access Drive shown thereon shall not change except by the written agreement of all Owners.

D. Declarant intends to develop and operate the Project as a multi-building commercial development, and Declarant may from time to time sell and/or lease portions of the Project to other persons and entities. To effectuate the common development, use and operation of the Project, Declarant desires to (1) declare and establish certain covenants, conditions, liens and restrictions as part of a general plan for development, use and operation of the Project, and (2) create easements in, on, across, through and over certain portions of the Project for the benefit of and burden to the Project, all as set forth herein.

## DECLARATION

NOW, THEREFORE, Declarant declares for itself, its successors and assigns, that the Project and each part thereof and interests therein will, during the term hereof, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, easements, equitable servitudes and other provisions set forth in this Declaration.

1. DEFINITIONS. The following terms will have the following definitions in this Declaration. Other terms are defined in this Declaration and will have the meanings given to them in this Declaration.

(a) "Building Area" means the area where buildings are constructed on a Lot from time to time. No Building Area may be located in the Restricted Access Drive.

(b) "City" means the City of Colorado Springs, Colorado, the city in which the Project is currently located, and any successor city or town to the City of Colorado Springs in which the Project may be located in the future.

(c) "Common Area" means all areas within the exterior boundaries of the Project, excluding, however, (1) any Building Area, (2) trash enclosures, (3) loading docks or areas serving a particular building, and (4) such other reasonable portions of the Project that are specific to a use being performed on a Lot (such as fuel dispenser areas on Lot 1 or fenced storage areas on Lot 2), provided that no portion of the Restricted Access Drive shall be excluded from Common Area.

(d) "County" means El Paso County, Colorado, the county in which the Project is currently located, and any successor to El Paso County, Colorado in which the Project may be located in the future.

(e) "Declarant" means BTS Aeroplaza SE LLC, a Colorado limited liability company, and its successors and assigns. A person or entity will be deemed a "successor and assign" of Declarant only if specifically designated in an instrument recorded in the official real estate records of the County identifying such person or entity as the successor or assign of Declarant under this Declaration, and will be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the recorded instrument. However, a successor to Declarant by consolidation, merger or similar transfer will automatically be deemed a successor or assign of Declarant under this Declaration.

(f) "Storm Water Easement Area" means Tract A and is depicted on the Site Plan as the "Storm Water Easement Area", as amended from time to time pursuant to this Declaration.

(g) “Storm Water Facilities” means the storm water drainage and detention improvements in the Storm Water Easement Area, including, without limitation, any retaining walls, underground piping, storm pipes, trickle channels, inlets, outlet structures, and underground drainage facilities.

(h) “Lot” means each of Lot 1 and Lot 2, and in the event a Lot is subdivided, the term Lot shall refer to each subdivided portion of the Lot. **The Owner of Lot 2 shall be and remain the owner of Tract A, and any transfer of Lot 2 shall include Tract A.**

(i) “Owner” means the record owner of the fee title to any portion of the Project, including a Lot. Owner will not mean or refer to the holder of a mortgage, deed of trust or deed to secure debt covering a Lot unless and until such holder has acquired fee title to a Lot pursuant to a foreclosure or any deed or other transfer in lieu of foreclosure.

(j) “Parking Lots” means the parking lot portions of Common Areas on each Lot now or hereafter serving the Project.

(k) “Permittees” means all Owners and their respective employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants, and concessionaires.

(l) “Restricted Access Drive” means the area depicted on the Site Plan as the “Restricted Access Drive”.

## 2. EASEMENTS.

(a) Establishment. The following easements are hereby created.

(1) Pedestrian Easement. Each Owner hereby grants and conveys to the other Owners, for their use and for the use of their Permittees, a perpetual, non-exclusive easement for pedestrian ingress and egress over the portion of the Common Areas that are improved with improvements designed for the use and passage of pedestrians and motor vehicles (including the Restricted Access Drive, Parking Lots and sidewalks) (“Pedestrian Easement”).

(2) Vehicular Easement. Each Owner hereby grants and conveys to the other Owners, for their use and for the use of their Permittees, a perpetual, non-exclusive easement for vehicular (including truck) ingress and egress over the portions of the Common Areas that are improved with improvements designed for the use and passage of motor vehicles (including the Restricted Access Drives and Parking Lots) (“Vehicular Easement”). The foregoing will not prevent an Owner or their Permittees from storing shopping carts, installing cart corrals or temporarily selling merchandise on a reasonable portion of the Common Area on such Owner’s Lot, provided vehicular movement (including truck movements) is not unreasonably impeded. No rights to cross parking are established by this Vehicular Easement or this Declaration.

(3) Easements for Utilities. Each Owner hereby grants and conveys to the other Owners, for their use and for the use of their Permittees, a perpetual, non-exclusive

easement over the Common Areas on its Lot for the construction, operation, maintenance, repair, relocation and replacement of sanitary sewer lines, storm sewer lines, water lines, gas lines, electrical power lines, telephone lines, cable services and other utility lines ("Utility Lines") to serve each Lot in the Project ("Utility Easement"). The Utility Easement will be subject to the following provisions:

(A) Each Owner will use reasonable efforts to locate all utilities serving its Lot on its Lot.

(B) All Utility Lines and related systems will be underground, except (i) as may be reasonably necessary during periods of repair or temporary service, and (ii) for those portions of such systems that are required to be above ground (such as transformers) [in which case such items will be of a size and in a location approved to the Owner of the burdened Lot (which approval will not be unreasonably conditioned, delayed or withheld)].

(C) The Owner installing Utility Lines on another Owner's Lot pursuant to this Section will pay all costs and expenses with respect thereto, and will cause all work in connection therewith to be completed free of liens, including general clean-up and surface restoration, as quickly as possible with a minimum of inconvenience to the business of the Project.

(D) Should any such Utility Line be installed by an Owner within another Owner's Lot, the installing Owner will be solely responsible to, and will pay all costs to, operate, maintain, repair, and replace the Utility Line.

(E) An Owner may relocate a Utility Line placed on its Lot by any other Owner (i) after at least thirty (30) calendar days' prior written notice delivered to the Owner of the Lot served by such Utility Line, and (ii) provided such relocation does not diminish or unduly interrupt utility service for the Lot served by such Utility Line.

(4) Sheet Flow. Each Owner hereby grants and conveys to the other Owners, for their use and for the use of their Permittees, a perpetual, non-exclusive easement over and across the Common Areas for sheet flow of surface water into the Storm Water Facilities located in the Storm Water Easement Area ("Sheet Flow Easement"). The Sheet Flow Easement will be subject to the following provisions:

(A) All improvements on a Lot will be constructed in substantial compliance with the drainage plans approved by the City and all Applicable Laws related to the sheet flow and drainage.

(B) No Owner will construct improvements on its Lot which would violate the approved overall drainage plans for the Project without obtaining revised drainage plans approved by the applicable governmental agencies and the Owner of any Lot that would be materially and detrimentally impacted by the revision to such drainage plans.

(5) Storm Water Detention Easement. The Owner of Tract A hereby grants and conveys to the other Owners, for their use and for the use of their Permittees, a perpetual, non-exclusive easement over and under the Storm Water Easement Area for (i) the flow of storm water from Lots 1 and 2 through the Storm Water Easement Area into public and/or private off-site storm water systems and (ii) reasonable detention of storm water from Lots 1 and 2 in the Storm Water Easement Area due to storm runoff ("Storm Water Easement")

(6) Construction and Maintenance. Each Owner hereby grants and conveys to the other Owners for their use and for the use of their Permittees, a perpetual, non-exclusive easement over the Common Areas on its Lot for the construction, operation, maintenance, repair, relocation and replacement of the Common Area Improvements (as defined below) and the construction, operation, maintenance repair, relocation and replacement of any buildings and improvements on an Owner's Lot and Tract A ("Construction Easement"). The Construction Easement will be subject to the following provisions:

(A) Each Owner will use commercially reasonable efforts to conduct all construction activities (other than the movement of vehicles) on its Lot and Tract A.

(B) All construction activities will be performed in such a manner as to not unreasonably disrupt the other Owners' (or their Permittees') business operations or use and enjoyment within their respective Lots and Tract A.

(C) The burdened Owner may reasonably designate areas within its Lot for access by construction trucks and vehicles and the timing and conduct of related activities; provided that no Owner will be entitled to store any materials on any other Lot or Tract A or park construction trucks, vehicles or trailers on another Lot without the prior written consent of the burdened Owner.

(D) The Owner causing such work to be performed will clean any Common Areas that are impacted by the construction work promptly after the need for such cleaning arises (including removing mud from construction traffic) and will promptly repair any damage on another Owner's Lot and Tract A caused by use of the Construction Easement.

(b) Unimpeded Access. No permanent barricade or other divider will be constructed between the Lots. No Owner will do anything to prohibit or discourage the free and uninterrupted flow of vehicular or pedestrian traffic through the Common Areas. Notwithstanding the foregoing, each Owner will have the right to (i) temporarily restrict ingress and egress on its Lot in order to prevent a prescriptive easement or public dedication from arising by continued public use of the same and (ii) modify the Common Areas on its Lot in accordance with Section 4(a) below. Any such restriction on ingress or egress under subsection (i) above will be limited to the minimum time necessary to prevent the creation of a prescriptive easement or public dedication, will occur at such times as to have minimum effect on the construction and operation of the Project and will be reasonably coordinated with the other Owners.

(c) Nature of Easements.

(1) Easements Appurtenant. Except as provided elsewhere herein to the contrary, each and all of the easements granted or created herein are appurtenances to the affected Lot, and may not be transferred, assigned or encumbered except as an appurtenance to such Lot. The Lots that are benefited by such easements and rights will constitute the dominant estate, and the Lots and Tract that are burdened by such easements and rights will constitute the servient estate.

(2) Reciprocal Easements; Run With Land. Except as provided elsewhere herein to the contrary, each and all of the easements contained in this Declaration (A) are made for the direct, mutual and reciprocal benefit of the Owners and Permittees of the respective Lots; (B) create mutual equitable servitudes upon each Lot and Tract A in favor of the other Lots; (C) constitute covenants running with the land; and (D) will bind every person or entity having any fee, leasehold or other interest in any portion of the Project at any time or from time to time to the extent that such portion is affected or bound by the easement or provision in question or to the extent that such easement or provision is to be performed on such portion.

(3) Transfer of Title. The acceptance of any transfer or conveyance of title from any Owner of all or any part of its interest in a Lot and Tract A will be an assumption and agreement by the new Owner to perform each and all of the obligations of the Owner under this Declaration with respect to any such Lot and Tract A or portion thereof commencing on the date of recordation of the deed of transfer or conveyance. Upon the recordation of the deed of transfer or conveyance, the transferring Owner will not be liable for any obligations or liabilities arising under this Declaration subsequent to the recordation of the deed of transfer or conveyance, with respect to the portion of land or interest transferred.

### 3. MAINTENANCE.

(a) Maintenance of Common Area. The Owner of each Lot will be responsible to operate, maintain, repair and replace the Common Areas (and all improvements thereon) (the "Common Area Improvements") on its Lot in a manner consistent with good shopping center industry standards for retail shopping centers and, if applicable, industrial projects of similar age and character in the metropolitan area in which the Project is located and in full compliance with Applicable Laws. All such operation, maintenance, repair and replacement will be performed in a manner which does not materially disrupt any Owner's or Permittee's business operations or the use and enjoyment of any Lot during normal business hours. The foregoing obligation will include:

(1) maintaining, repairing and replacing the Parking Lots, the Restricted Access Drive, roads, driveways, walkways, sidewalks, parking areas, landscaping and other improvements constructed, installed or planted within the Common Areas on an Owner's Lot.

(2) maintaining the surfaces of the Common Areas at such grades and levels that they may be used and enjoyed as contiguous and homogeneous common areas, and

maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or of similar quality, use and durability;

(3) removing all papers, debris, filth and refuse, and sweeping the areas to the extent reasonably necessary to keep said areas in a neat, clean and orderly condition;

(4) plowing snow in a timely manner into areas on its Lot designated for or reasonably receptive for snow piling and storage (and not in areas that will impede the flow of traffic);

(5) placing, keeping in repair, and replacing any necessary and appropriate directional signs, striping markers and lines, and operating, keeping in repair, and replacing when necessary, all artificial light facilities;

(6) maintaining all landscaped areas, making such replacements of trees, shrubs, plants and other landscaping as is necessary, and keeping said areas at all times adequately weeded, fertilized and watered; and

(7) paying all taxes and assessments applicable to the Common Areas on its Lot.

(b) Notwithstanding the foregoing, the Owner of Lot 1 (or a Permittee thereof) shall be fully responsible to maintain and repair the Restricted Access Drive until the first building permit is issued for work to commence on building improvements on Lot 2, or actual commencement of construction of a building on Lot 2 occurs, if earlier (in either case, the "Building Permit Date"). From and after the Building Permit Date, the Owner of Lot 1 (or a Permittee thereof) shall be fully responsible to operate, maintain, repair and replace the Restricted Access Drive to the extent located on Lot 1 and the Owner of Lot 2 (or a Permittee thereof) shall be fully responsible to operate, maintain, repair and replace the Restricted Access Drive to the extent located on Lot 2.

(c) Maintenance of Buildings.

(1) Each Owner will maintain all buildings on its Lot in a manner consistent with good shopping center industry standards for retail shopping centers or industrial projects, as applicable, of similar age and character in the metropolitan area in which the Project is located and in full compliance with Applicable Laws. Specifically, each Owner will perform regular maintenance on the buildings on its Lot, including promptly removing graffiti, repainting and patching of exterior surfacing, as may be necessary.

(2) In the event all or a portion of the buildings situated on a Lot are damaged or destroyed by a casualty, insured or uninsured, and the Owner thereof does not restore such damaged or destroyed building within a reasonable period of time after the occurrence thereof, such Owner will raze the portions of the building that are not restored or rehabilitated, clear away debris and take all other action (including paving and landscaping) required by good construction practices so that the Lot will be an attractive, safe and usable area;

provided, however, this provision will not prevent such Owner from subsequently rebuilding on the Lot, provided that any such subsequent construction will be in accordance with the provisions of this Declaration.

(d) Tract A as Detention; Maintenance of Storm Water Facilities in the Storm Water Easement Area; Shared Costs.

(1) Tract A shall be utilized for storm water drainage and detention.

(2) The Owner of Lot 2 will be responsible for the maintenance, repair and replacement (in the ordinary course of its maintenance and repair obligations) of the Storm Water Facilities in compliance with all Applicable Laws so that the Storm Water Facilities continue to operate as intended.

(3) Until the Building Permit Date, the Owner of Lot 1 (or its Permittee) shall contribute and pay all reasonable costs incurred by the Owner of Lot 2 to maintain, repair and replace (in the ordinary course of its maintenance and repair obligations) the Storm Water Facilities (including real estate taxes on Tract A).

(4) Starting on the Building Permit Date, the Owner of Lot 1 and the Owner of Lot 2 shall each contribute and share in the costs incurred to maintain, repair and replace (in the ordinary course of the maintenance and repair obligations) the Storm Water Facilities (including real estate taxes on Tract A) ("Maintenance Costs"), in accordance with the following.

(A) The Owner of Lot 1 and the Owner of Lot 2 each shall be responsible to contribute and pay for the percentage of Maintenance Costs equal to the percentage obtained by dividing (a) the number of square feet in Lot 1 or Lot 2, as applicable, by (b) the total square footage of Lot 1 and Lot 2 (each a "Share").

(B) On or before thirty (30) days prior to the end of each calendar year, the Owner of Lot 2 and Tract A shall submit to the other Owner a written budget for Maintenance Costs (including a commercially reasonable management fee) for the following year (the "Budget") for approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Owner of Lot 1 shall either approve or disapprove the Budget within thirty (30) days (and if disapproving, such disapproval must list the specific components of the Budget that are not approved and the reasons for the disapproval of such items). Each Lot shall have one (1) vote, for a total of two (2) votes. Unless the Budget is disapproved by the Owner of Lot 1 in a timely manner, the Budget shall be deemed approved by Owners. If the Owner of Lot 1 timely disapproves the Budget, the Owners shall use reasonable, good faith efforts to resolve any disputed expense items within ten (10) days, and all of the undisputed expense items shall be deemed approved. The Budget shall be deemed adopted when the Owners through their votes approve the Budget (or are deemed to have approved the Budget). Until such time as the Budget for any calendar year is approved in accordance with this Section,

the Budget shall be deemed to be equal to the Budget for the prior calendar year plus ten percent (10%).

(C) The Owner of Lot 1 shall contribute to and pay the Owner of Lot 2 for its Share of the incurred Maintenance Costs by contributing and paying such Share to the Owner of Lot 2 within thirty (30) days after such Owner's receipt of each invoice or statement from the Owner of Lot 2 (including back up documentation for all costs incurred as may be reasonably requested). Each Owner shall bear all costs of any repair or maintenance required as a direct result of any damage caused by such Owner or such Owner's negligence or willful misconduct. If any Owner fails to pay its monetary obligations under this Declaration when due (including reimbursement for any Corrective Work performed pursuant to subsection (D) below), the Owner of Lot 2 (or such other Owner to which any monetary obligation is due) shall have the right, through any means available to it by law or in equity, to collect the amount owed by the non-paying Owner, plus interest at the rate set forth in Section 7(d). In addition, all unpaid amounts plus accrued interest, shall constitute a lien on the non-paying Owner's Lot. To evidence such lien, the Owner of Lot 2 (or such other Owner as applicable) may prepare a lien notice in accordance with Section 7(d). Any such lien may be enforced as set forth in Section 7(d).

(D) If the Owner of Lot 2 fails to affect any repair or maintenance of the Storm Water Facilities in accordance with this Declaration, the Owner of Lot 1 may give the Owner of Lot 2 notice of such failure, specifically describing the repair or maintenance which the Owner of Lot 2 has failed to perform (the "Corrective Work"). If the Owner of Lot 2 fails to perform the Corrective Work or otherwise resolve the request within sixty (60) days of the Owner of Lot 2's receipt of such notice (the "Cure Period") (provided that if the Corrective Work reasonably requires more than sixty (60) days to complete, the Cure Period shall be extended for an additional reasonable period provided that the Owner of Lot 2 has commenced the Corrective Work within sixty (60) days and diligently pursues completion), the Owner of Lot 1 may (prior to the commencement of the Corrective Work by the Owner of Lot 2) perform the Corrective Work. Before performing the Corrective Work, the Owner of Lot 1 shall submit to the Owner of Lot 2 a written proposal from a qualified and licensed contractor setting forth the scope of the Corrective Work to be performed and the cost for same. Upon completion of and payment for the Corrective Work, the Owner of Lot 1 may invoice the Owner of Lot 2 for the costs of the Corrective Work in the manner set forth above, and the Owner of Lot 2 will reimburse the Owner of Lot 1 performing the Corrective Work within fifteen (15) days after its receipt of the invoice.

(e) No Handbills or Solicitation. No Owner or any of its Permittees will distribute any handbills in the Project, or solicit or canvass any occupant of the Project.

#### 4. CHANGES IN THE COMMON AREAS; RESTRICTED ACCESS DRIVE; SUBDIVISION.

(a) Common Area.

(1) Except as set forth below (including subsection (2) and (3) below), each Owner hereby reserves the right from time to time without obtaining the consent or approval of any other Owner, to make at its own expense any changes, modifications or alterations to the Common Area on its Lot, provided that:

(A) the accessibility of such Common Area for pedestrian and vehicular traffic and movement is not unreasonably, permanently restricted or hindered;

(B) no governmental rule, ordinance or regulation will be violated as a result of such action, especially if such action results in the other Owners being in violation of any such governmental rule, ordinance or regulation; and

(2) Other than the maintenance, repair and replacement required pursuant to Section 3(a), no Owner will be permitted to modify the Restricted Access Drive or the curb cut thereof on N. Newport Road without the prior written consent of every Owner, which may be withheld in such Owner's sole discretion.

(3) The Owner of Lot 1 shall be permitted to modify the all Common Areas on Lot 1 provided that reasonable access and vehicular movement between Aeroplaza Drive and Lot 2 is retained at all times.

(4) The Owner of Lot 2 may install a reasonable amount of fenced storage areas as part of the operation of a business on Lot 2 provided the use and enjoyment of the Restricted Access Drive on Lot 2 is retained and available to the Owner and occupant of Lot 1 at all times.

(5) Notwithstanding, the foregoing, no Owner will be in default hereof in the event the City, County, the Colorado Department of Transportation ("CDOT") or any other governmental entity (A) requires closure or relocation of any of the existing road access points, (B) restricts use of any existing road access points, (C) downgrades the type of access or (D) otherwise takes action to change any road access point, provided however, in any such instance related to the Restricted Access Drive, no Owner will consent approve or consent thereto (except in connection with final settlement and resolution of the applicable item acceptable to all parties) and will exert all reasonable efforts in good faith to prevent the foregoing.

(6) The Restricted Access Drive will not be used for promotions, sidewalk sales, merchandise displays, seasonal sales, commercial truck parking, inventory storage, do-it-yourself or demonstration areas, park and ride or carpool arrangements, or for any other purposes, except the common purposes for which such Restricted Access Drive was designed.

(b) Subdivision. An Owner may subdivide its Lot without consent of any other Owner or Permittee. Upon the recording of a plat confirming the legal subdivision, each Owner of each subdivided portion of the Lot shall be responsible for its Lot from and after the recordation of the applicable plat. If Lot 2 is subdivided, the portion thereof with the greatest

shared property line with Tract A shall be the property that is required to own Tract A and perform the obligations with respect to Tract A as established in this Declaration.

## 5. INSURANCE; INDEMNIFICATION

(a) Required Insurance. Each Owner with respect to its Lot and the operations thereon will, at all times during the term of this Declaration, maintain (or cause to be maintained) in full force and effect commercial general liability insurance insuring against bodily injury, death and property damage of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate. Such insurance will specifically extend to the contractual obligation of the insured Owner arising out of the indemnification obligation set forth in this Section. Any policy obtained in connection with this obligation may have reasonable and customary deductibles comparable to deductibles maintained by prudent owners of similar properties located in the market area of the Project.

(b) Blanket Policies; Self Insurance. The liability insurance described in Section 5(a) may be carried under a policy or policies covering other liabilities, properties and locations of such Owner (or the party carrying such insurance such as a sole occupant of a Lot), or a subsidiary, affiliate or controlling corporation of such Owner (or the party carrying such insurance such as a sole occupant of a Lot) ("Insuring Party"). In addition, such insurance may be carried under any plan of self-insurance from time to time maintained by the Insuring Party, on condition that the Insuring Party so self-insuring has and maintains the Required Net Worth (as defined below), and that any Insuring Party so self-insuring, will furnish to any other Owner requesting the same, evidence of the existence of said Required Net Worth. For purposes hereof, "Required Net Worth" means net worth of not less than Fifty Million Dollars (\$50,000,000).

(c) Indemnity. Each Owner ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless the other Owners ("Indemnitees") from and against all claims, costs, expenses and liabilities (including reasonable attorneys' fees and cost of suit incurred in connection with all claims) including any action or proceedings brought hereon, arising from or as a result of the death caused to any person, or any accident, injury, loss or damage whatsoever caused to any person or entity, which occurs on the Lot owned by such Indemnitor, except for claims caused by the negligence or willful misconduct (whether by act or omission) of such Indemnitee, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensee or concessionaire, wherever the same may occur.

(d) Waiver of Subrogation. Each Owner (the "Releasing Owner") hereby releases and waives, for itself and on behalf of its insurer (if legally possible), each other Owner (the "Released Owner") from any liability for any loss or damage to all property of such Releasing Owner located upon any portion of the Project, which loss or damage is of the type generally covered by the insurance required by Section 5(a) or by a standard form policy of comprehensive all risk insurance in an amount equal to one hundred percent (100%) of the full replacement cost, irrespective of any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance actually carried.

Each Releasing Owner will use reasonable efforts to obtain appropriate endorsements to its policies of insurance with respect to the foregoing release; it being understood, however, that failure to obtain such endorsements will not affect the release hereinabove given.

6. CONDEMNATION AND CASUALTY.

(a) Condemnation Proceeds. In the event of a taking under a right of eminent domain, whether in condemnation or by private sale in lieu thereof, of all or any portion of the Common Areas ("Taking"), the award or purchase price paid for such Taking will be paid to the Owner of the affected Lot, and the other parties will not have any right to any such proceeds except as follows:

(1) In the event the common access to N. Newport Rd. located in the Restricted Access Drive is taken or closed, each Owner will be permitted to join and participate in any proceedings applicable to such Taking. In such instance, the Owners will, in good faith, work together to obtain the highest award possible and will equitably allocate the proceeds among themselves (after deducting the reasonable costs incurred in obtaining such award).

(2) Nothing in this Section will prevent the other Owners or their Permittees (to the extent permitted under any applicable lease), from seeking separate awards or compensation for the loss of their easement rights, provided that such award will not reduce the amount payable to the Owner of the affected Lot.

(b) Restoration of Common Areas. To the extent that restoration of the Common Areas is then practical and permitted by law and to the extent that such awards or payments are sufficient to pay the cost of such restoration and repair, the Owner of the affected Lot will promptly repair and restore the remaining portion of the Common Areas within its Lot nearly as practicable to the condition of the same immediately prior to such taking.

(c) Waiver of Award. No Owner will have any right to claim any award or payment for a condemnation affecting the Common Areas located within the Lot of any other Owner except as set forth in Section 6(a) above.

(d) Repair of Damage. In the event of any damage or destruction to the Common Area on a Lot, the damage will be reasonably promptly remedied by the Owner of the Lot.

7. RIGHTS UPON DEFAULT.

(a) Right to Cure. If any Owner defaults in the performance of any of the obligations of this Declaration, in addition to any other rights and remedies herein provided, any other Owner will have the right, but not the obligation, upon thirty (30) days written notice, to cure such default for the account of and at the expense of the defaulting Owner; provided, however, that if emergency conditions constitute the default (which will include failure to promptly remove snow and ice from the Common Areas), any other Owner, acting in good faith, will have the right to cure such default upon such advance notice as is reasonably possible under

the circumstances or, if necessary, without advance notice, so long as notice is given as soon as reasonably possible thereafter. If such default is such that it cannot by its nature be cured in such thirty (30) day period or after such reasonable notice under emergency conditions, the defaulting Owner will not be in default if the defaulting Owner commences to cure such default within such thirty (30) day period or immediately after such advance notice under emergency conditions, and thereafter continuously and diligently prosecutes cure to completion. Each Owner will have the right to enter upon the Lot of the defaulting Owner to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. Each Owner will be responsible hereunder for the defaults of its Permittees.

(b) Legal and Equitable Relief. Each Owner will have the right to prosecute any proceedings at law or in equity against any Owner or Permittee violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration. The remedies available under this Section will include, but not be limited to, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions and actions for specific performance of such Owner's obligations.

(c) Costs of Cure. All costs and expenses reasonably incurred by any Owner to cure a default of a defaulting Owner under the provisions hereof, including reasonable attorneys' fees, and interest thereon at the rate set forth in Section 7(d) from the date such costs and expenses are incurred, will be assessed against and paid by the defaulting or violating Owner within thirty (30) days after the performing Owner delivers and invoice for such work to the defaulting Owner.

(d) Interest; Lien. Costs and expenses accruing or assessed against an Owner pursuant to the provisions of this Declaration will constitute a personal obligation of such Owner. If any such monetary obligation is not paid by an Owner when due, the same (together with interest from the date such costs and expenses are incurred at a rate equal to the lesser of 2% per annum over the prime rate of interest announced from time to time by Citibank, N.A. (or if such bank ceases to exist or to regularly announce a prime rate, by the largest bank headquartered in New York, New York which does then announce a prime rate); or the maximum rate allowed by Applicable Laws) will be a lien upon the applicable Lot. The lien will attach and take effect upon recordation of a claim of lien in the office of the recorder of the County. The claim of lien will include the following:

- (1) Name. The name of the lien claimant;
- (2) Basis of Claim. A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing party;
- (3) Identification of Owner. An identification of the Owner or reputed Owner of the Lot against which the lien is claimed;
- (4) Lot Description. A description of the Lot against which the lien is claimed;

(5) Work Performed. A description of the work performed and any delinquent obligation which has given rise to the claim of lien and a statement itemizing the amount thereof; and

(6) Statement of Claim. A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date and recording information hereof.

The notice will be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant hereto and by personal service at or mailing to the address given for the mailing of tax statements in the office of the County tax assessor for the Lot or interest against which the lien is claimed. The lien so claimed will attach from the date of recordation in the amount claimed thereby and may be enforced in any manner allowed by law, including, without limitation, suit in the nature of a suit to foreclose a mortgage or deed of trust under the applicable provisions of the laws of the State of Colorado.

(e) Removal of Lien. If the Owner against whom a lien is claimed posts either: (1) a bond executed by a corporate surety approved by the lien claimant in its reasonable discretion, or (2) an irrevocable letter of credit executed by a national banking association, which bond or letter of credit: (A) names as the principal or payee, and is in the form satisfactory to, the applicable Owner, (B) is in the amount of 1-1/2 times the claim of lien, and (C) unconditionally provides that it may be drawn upon by the party claiming the lien upon a final judgment entered by a court of competent jurisdiction in favor of the applicable Owner, then the applicable Owner will record a notice extinguishing the lien or take such action as may be reasonably required by a title insurance company requested to furnish a policy of title insurance relating to such Lot deleting the lien as an exception thereto. The Owner against whom the lien is claimed will post the bond or letter of credit by delivery to applicable Owner. All costs and expenses to obtain the bond or letter of credit, and all costs and expenses incurred by the applicable Owner required to extinguish a lien claim hereunder, will be borne by the Owner against whom the lien is claimed. Nothing contained in this subsection (e) will affect such Owner's obligation to pay costs of cure pursuant to Section 7(a).

(f) Waiver and Remedies Cumulative. No waiver by an Owner of any default under this Declaration will be effective or binding on any Owner unless made in writing by an Owner and no such waiver will be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default will affect any other default or cover any other period of time other than any default or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Declaration will not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provisions contained in this Declaration. All of the remedies permitted or available to an Owner under this Declaration or at law or in equity will be cumulative and not alternative, and invocation of any such right or remedy will not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(g) Estoppel Certificate. Any Owner (inclusive of Declarant) may, at any time and from time to time, in connection with the sale or transfer of such Owner's Lot, or in connection with the financing or refinancing of such Owner's Lot by mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to Declarant and to the other Owners requesting such Owners to certify in writing that to the knowledge of the certifying Owner, (1) the requesting Owner (and the applicable Lot) is not in default in the performance of its obligations under this Declaration, or, if in default, to describe therein the nature and amount of any and all defaults and (2) that this Declaration has not been amended or modified (or if so amended or modified, describing the amendment or modification). Each Owner receiving such request will execute and return such certificate within twenty (20) days following the receipt thereof. Failure by an Owner to execute and return such certificate within the specified period will be deemed an admission on such Owner's part that the Owner requesting the certificate is current and not in default in the performance of such Owner's obligations under this Declaration. The Owners acknowledge that such certificate may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback-lessors.

#### 8. EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES

(a) No Termination. The breach of this Declaration will not entitle any Owner to cancel, rescind or otherwise terminate this Declaration, or any conditions, covenants, easements or restrictions hereunder.

(b) Mortgagee Protection. This Declaration, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Owner and each Lot, will be superior and senior to any bona fide lien placed upon any Lot, including the first lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof will defeat, render invalid, diminish or impair the lien of any first mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Declaration will be binding upon and effective against any Owner (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Lot or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

(c) Subordination As To Encumbrance Prior To Lien Claim. Any lien created pursuant to the provisions of Section 7(d) will be subject and subordinate to the interests of any bona fide purchaser or encumbrancer of all or any part of a Lot, or any interest therein, for fair value, who acquired its interest prior to the date of recordation of the claim of lien, notwithstanding the fact that the claim of lien may be asserted with respect to work performed or costs incurred prior to the date the claim was duly recorded.

(d) Subordination As To Encumbrance Subsequent To Lien Claim. In addition, any lien created pursuant to the provisions of Section 7(d) will be subject and subordinate to the interest held by any bona fide first lien encumbrancer under a mortgage or deed of trust, or the holder of title under a sale and leaseback arrangement (which title is subject to no prior contractual encumbrance securing payment of money), contracted in good faith and

for fair value in connection with financing on customary and usual terms with respect to the Lot, or any portion thereof, which is the subject of the claim of lien, regardless of the date of filing thereof. For purposes of this mortgagee protection clause, a sale and leaseback will be entitled to the benefits of the clause provided for herein if title to a Lot (or portion thereof) is transferred by the Owner against whom the lien is claimed subject to no encumbrance securing an obligation for payment of money (other than a lien to secure payment of real estate taxes) and the Lot (or portion thereof) is leased back in its entirety by the Owner against whom the lien is claimed, which Owner assumes in the leaseback arrangement full responsibility for performance of all obligations to be performed hereunder.

9. TERM. The terms, covenants, provisions and conditions of this Declaration will be effective automatically upon the recordation of this Declaration in the Office of the Clerk and Recorder of the County. The covenants, conditions, limitations, restrictions, reservations, easements, liens, assessments, rights and privileges set forth in this Declaration will run with the Project, and will inure to the benefit of and be enforceable by the Declarant or the Owners as provided in this Declaration, for a term of ninety (90) years from the date on which this Declaration is recorded in the Office of the Clerk and Recorder of the County and will thereafter automatically renew for successive ten (10) year periods unless all Owners agree in writing not to renew this Declaration. All Owners may terminate this Declaration at any time by executing and recording with the Office of the Clerk and Recorder of the County an instrument evidencing their intent to terminate this Declaration.

10. MISCELLANEOUS.

(a) Negation of Partnership. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among Declarant or any Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended, nor will it be construed, to create any third-party beneficiary rights in any person who is not Declarant or an Owner, unless expressly otherwise provided.

(b) Amendment and Annexation.

(1) Except as otherwise specified in this Declaration, this Declaration may be canceled, changed, modified or amended in whole or in part only by written and recorded instrument executed by the Owners of all Lots in the Project, except that, prior to the Transfer Date, any amendments to this Declaration made by Declarant will be binding upon those Owners of any Lots within the Project not adversely affected thereby, and any such Owner, by acceptance of a deed, acknowledges and agrees that such permitted amendments hereunder will be in effect from the original date of recordation of this instrument, unless Declarant, by recorded instrument, indicates to the contrary.

(2) After Declarant has sold or permanently transferred fee title to all or substantially all of the Project (the date upon which the sale or transfer which causes Declarant to own no more of the Project is herein called the "Transfer Date"), any such cancellation, change, modification or amendment must be executed by the Owners of all Lots in

the Project, which approval will not be unreasonably conditioned, delayed or withheld with respect to a change, modification or amendment to this Declaration, and which may be withheld in an Owner's sole discretion with respect to any requested cancellation. Should an Owner desire a change, modification or amendment to this Declaration, such Owner will notify each other Owner and with such notice provide to each other Owner a draft of the proposed agreement changing, modifying or amending this Declaration ("Draft Modification"). Each Owner will have thirty (30) days from receipt of the notice and Draft Modification ("Response Period") to either approve or disapprove the Draft Modification in accordance with the forgoing reasonableness standard. Should an Owner fail to respond to the Draft Modification within the Response Period, such Non-Responding Owner will be deemed to have approved the Draft Modification as delivered in accordance with subsection (c) below.

(3) No Permittee will be required to join in the execution of or consent to any act of the Owners taken subject to this Section.

(c) Approvals. Unless provision is made for a specific time period, approval will be deemed given within thirty (30) days after receipt of the written request for approval, and if Declarant or an Owner neither approves nor disapproves within such thirty (30) day period, that party will then be deemed to have given its approval. Approval by Declarant or any Owner to or of any act or request by Declarant or any other Owner will not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

(d) Not A Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Project, or of any Lot, or any portion thereof, to the general public for the general public or for any public use or purpose whatsoever, it being the intention and understanding of Declarant that this Declaration will be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private shopping center and of private property solely for the benefit of Declarant and the other Owners.

(e) Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person, by judgment or court order will in no way affect any of the other provisions herein or the application thereof to any other person or circumstance, and the same will remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Declaration.

(f) Notices. Any notice to any Owner will be in writing and given by delivering the same to such Owner in person or by sending the same by United States registered, certified or express mail, return receipt requested, with postage prepaid, or by Federal Express or similar overnight delivery, to the then current mailing address of the Owner given for the mailing of tax statements in the Office of the County tax assessor. All notices under this Declaration will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

(g) Construction. The provisions of this Declaration will be construed as a whole according to their common meaning and not strictly for or against Declarant due to Declarant being the party drafting and recording this Declaration.

(h) Captions. The captions preceding the text of each Article, Section and Subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Declaration.

(i) Litigation Expenses.

(1) Payment to Prevailing Owner. If any Owner will bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Owner by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof, or to interpret, or otherwise arising out of, this Declaration, the Prevailing Owner in such action or proceeding will be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which will be payable whether or not such action is prosecuted to judgment. "Prevailing Owner" within the meaning of this Section will include, without limitation, any Owner who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

(2) Attorneys' Fees in Third Party Litigation. If any Owner is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third-party claim) because of another Owner's breach of or failure to enforce this Declaration, or otherwise arising out of this Declaration, then such Owner so initiating or defending will be entitled to reasonable attorneys' fees from such other Owner(s) if such Owner is the prevailing party.

(3) Scope of Fees. Attorneys' fees under this Section will include attorneys' fees before and during any litigation, arbitration or similar action and on any appeal, and, in addition, a party entitled to attorneys' fees will be entitled to all other reasonable costs and expenses incurred in connection with such action (inclusive of expert witness fees).

(j) Time. Time is of the essence of this Declaration and each and every provision hereof.

(k) Deemed to Constitute Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and will constitute a nuisance, and every public or private remedy allowed therefor by law or in equity against any Owner or Permittee will be applicable against every such violation and may be exercised by the same persons and under the same conditions as is provided for the exercise of the remedies set forth herein.

(l) Number and Gender. Words used herein, regardless of the number and gender specifically used, will be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter), all as the context requires.

(m) Applicable Law. This Declaration will be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Colorado.

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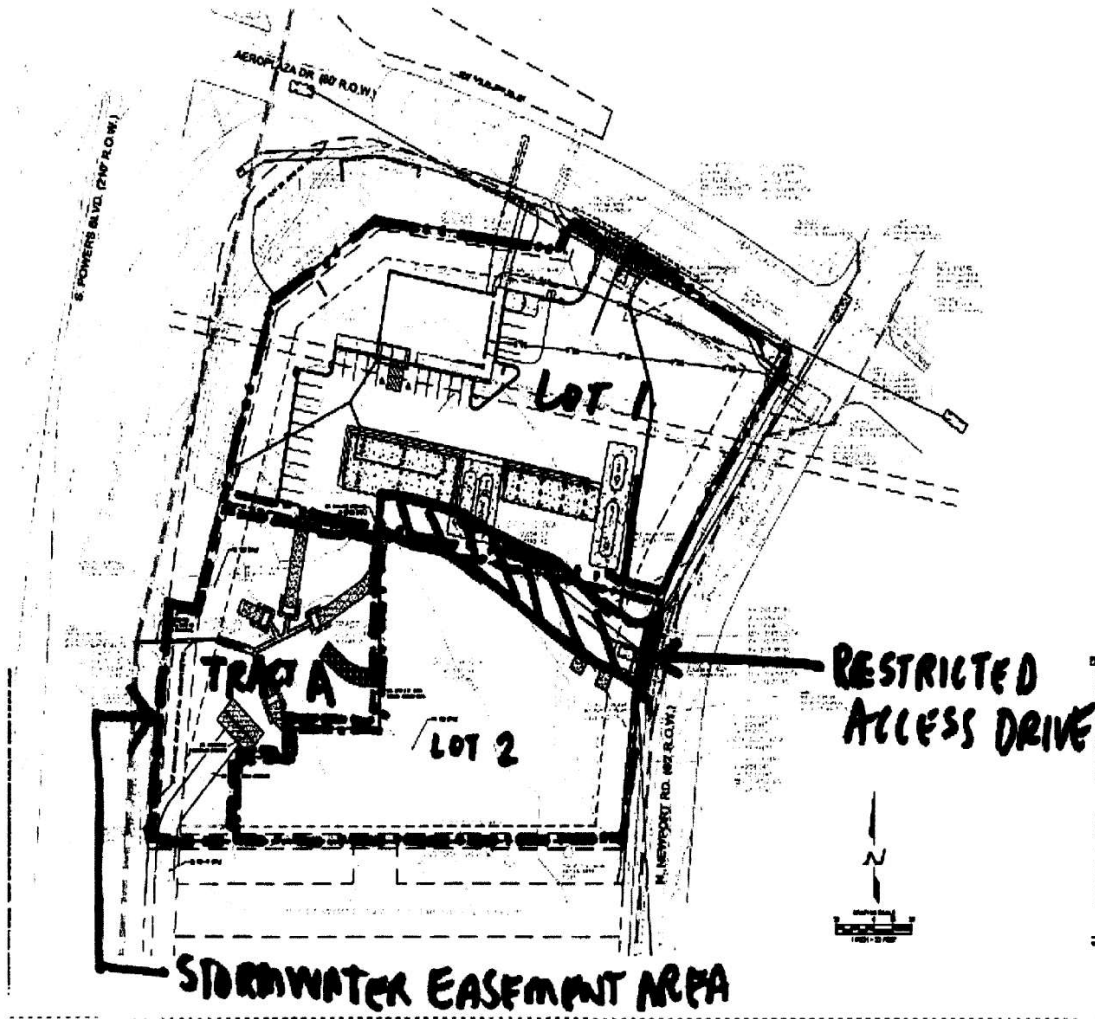
EXHIBIT A

LEGAL DESCRIPTION OF PROJECT

Lots 1 and 2 and Tract A  
Newport Subdivision Filing No. 23  
County of El Paso  
State of Colorado

EXHIBIT B

SITE PLAN



After Recording Return To:  
Compass Bank - Mail Code AL-BI-SC-LLE  
P.O. Box 10566  
Birmingham, AL 35296

Prepared By:  
Compass Bank  
P.O. Box 10687  
Birmingham, AL 35202

[Space Above This Line For Recording Data]

**DEED OF TRUST**

Loan #: 6754736893

**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated **December 14, 2017**, together with all Riders to this document.
- (B) "Borrower" is **JAMES S. SMITH, A MARRIED PERSON DEALING WITH HIS SOLE AND SEPARATE PROPERTY**. Borrower is the trustor under this Security Instrument.
- (C) "Lender" is **Compass Bank**. Lender is a **Corporation** organized and existing under the laws of **THE STATE OF ALABAMA**. Lender's address is **701 S. 32nd Street, AL-BI-SC-LLE, Birmingham, AL 35233**. Lender is the beneficiary under this Security Instrument.
- (D) "Trustee" is the Public Trustee of **EL PASO** County, Colorado.
- (E) "Note" means the promissory note signed by Borrower and dated **December 14, 2017**. The Note states that Borrower owes Lender **SIX HUNDRED FIVE THOUSAND AND NO/100 Dollars (U.S. \$605,000.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **January 01, 2048**.
- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> VA Rider           |
| <input type="checkbox"/> 1-4 Family Rider                 | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> Other(s) [specify] |



- (I) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (J) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
- (K) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (L) **"Escrow Items"** means those items that are described in Section 3.
- (M) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (N) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (O) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (P) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (Q) **"Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower, in consideration of the debt and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the **COUNTY of EL PASO**:

#### SEE ATTACHED EXHIBIT A FOR LONG LEGAL

**Parcel Number: 7122002094, 7122002093**

which currently has the address of **17150 MITCHELL AVE, MONUMENT, Colorado 80132** ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and



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additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record and liens for taxes for the current year not yet due and payable.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.**

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full



payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no



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more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies



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and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall



give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was



required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.**

**(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.**

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is camaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair



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market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain



all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.



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**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this



Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date



specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

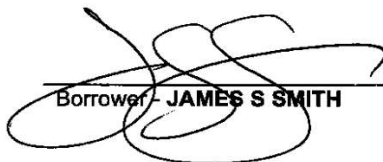
If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall mail a copy of the notice to Borrower as provided in Section 15. Trustee shall record a copy of the notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by Applicable Law and shall mail copies of the notice of sale in the manner prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's certificate describing the Property and the time the purchaser will be entitled to Trustee's deed. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall request that Trustee release this Security Instrument and shall produce for Trustee, duly cancelled, all notes evidencing debts secured by this Security Instrument. Trustee shall release this Security Instrument without further inquiry or liability. Borrower shall pay any recordation costs and the statutory Trustee's fees.

24. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

 \_\_\_\_\_ (Seal)  
Borrower **JAMES S SMITH**



[Space Below This Line For Acknowledgment]

State of Colorado

County El Paso

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of Dec, 2017.

by James S Smith

WITNESS my hand and official seal.

Title of Officer: EO

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

Signature [Handwritten Signature] (Seal)

<p><b>CHRISTINE DAWN HOPPER</b>  <b>NOTARY PUBLIC</b>  <b>STATE OF COLORADO</b>  <b>NOTARY ID 20124070862</b>  <b>MY COMMISSION EXPIRES 11/01/2020</b></p>
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Origination Company: **Compass Bank - Colorado Springs S Tejon St-Colorado Springs S Tejon St**  
 NMLSR ID: **402936**  
 Originator: **Scott Smith**  
 NMLSR ID: **203005**



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Escrow File No.: 21660LTG

**EXHIBIT "A"**

**Lots 2 and 3, in Block 3, Pine Hills, County of El Paso, State of Colorado.**

Loan #: 6754736893

**FIXED/ADJUSTABLE RATE RIDER**  
**(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)**

THIS FIXED/ADJUSTABLE RATE RIDER is made this **14th** day of **December, 2017**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **Compass Bank** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

**17150 MITCHELL AVE, MONUMENT, CO 80132**  
 [Property Address]

**THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MINIMUM AND MAXIMUM RATES BORROWER MUST PAY.**

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial fixed interest rate of **4.125%**. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **January, 2028**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."



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 Family— Fannie Mae Uniform Instrument  
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(Page 1 of 4)

**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index," provided that if the Current Index is less than zero, then the Current Index will be deemed to be zero for purposes of calculating my interest rate.

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding **TWO AND NO/1000** percentage points (**2.000%**) (the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than **9.125%** or less than **2.000%**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **9.125%** or less than the Margin.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by



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MULTISTATE FIXED/ADJUSTABLE RATE RIDER-WSJ One-Year: LIBOR—Single  
Family— Fannie Mae Uniform Instrument  
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law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender



\* 3 0 0 0 0 8 1 8 9 2 \*  
MULTISTATE FIXED/ADJUSTABLE RATE RIDER-WSJ One-Year LIBOR—Single  
Family—Fannie Mae Uniform Instrument  
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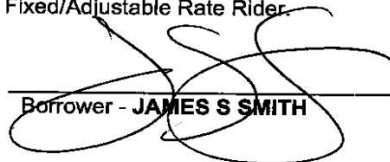
\* M C A D J R T R D R \*  
Form 3187 6/01 (rev. 6/16)

information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

 (Seal)  
Borrower - **JAMES S SMITH**

Origination Company: **Compass Bank - Colorado Springs S Tejon St-Colorado Springs S Tejon St**  
NMLSR ID: **402936**  
Originator: **Scott Smith**  
NMLSR ID: **203005**



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Form 3187 6/01 (rev. 6/16)

Record at the request of and  
when recorded return to:  
GoodLeap, LLC

Chuck Broerman  
07/18/2022 03:19:32 PM  
Doc \$0.00 2  
Rec \$13.00 Pages

El Paso County, CO



222096633

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)  
filings@goodleapsupport.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

GoodLeap, LLC  
PO Box # 981440  
El Paso, TX 79998- 1440

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
Smith	James			
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
17150 Mitchell Ave	MONUMENT	CO	80132-8156	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
				USA

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
GoodLeap, LLC				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
8781 Sierra College Boulevard	Roseville	CA	95746	USA

4. COLLATERAL: This financing statement covers the following collateral:

All of the debtors right, title and interest in the Photovoltaic Solar Energy Equipment or Energy Storage/Battery Equipment (If any), including but not limited to rooftop solar panels, solar roofing materials, wall mounted batteries, stand alone batteries, inverters, cables and wires, support brackets, roof mounted or ground mounted racking systems, related equipment, and additions or replacements of the same. In addition, the security interest includes all warranties issued with respect to the referenced collateral

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, Item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:

Acct # 2210081032

**UCC FINANCING STATEMENT ADDENDUM**

**FOLLOW INSTRUCTIONS**

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here

9a. ORGANIZATION'S NAME	
OR	
9b. INDIVIDUAL'S SURNAME	
Smith	
FIRST PERSONAL NAME	
James	
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME	
OR	
10b. INDIVIDUAL'S SURNAME	
INDIVIDUAL'S FIRST PERSONAL NAME	
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11.  ADDITIONAL SECURED PARTY'S NAME or  ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME				
OR				
11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:  covers timber to be cut  covers as-extracted collateral  is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

James Smith

16. Description of real estate:

County of: EL PASO  
 Address of Real Estate: 17150 Mitchell Ave, MONUMENT, CO, 80132-8156  
 APN: 7122002094  
 LOTS 2 & 3 BLK 3 PINE HILLS

17. MISCELLANEOUS: