

**PERMANENT PRIVATE DRAINAGE EASEMENT
AND MAINTENANCE AGREEMENT**

THIS PERMANENT PRIVATE DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT is made effective as of APRIL 9th, 2018 (the "Agreement"), by and between **7287 Cole View, LLC**, a Colorado limited liability company ("Grantor"), whose address is 7287 Cole View, Colorado Springs, CO 80915 and **Kamala, LLC** a Colorado limited liability company ("Grantee"), whose address is 6632 Lange Circle, Colorado Springs, CO 80918.

RECITALS

A. Grantor is the owner of real property located in El Paso County, Colorado as follows: Lot 35, Claremont Business Park Filing No. 2, a subdivision recorded at Reception No. 207718506 of the Records in the Office of the Clerk & Recorder of El Paso County, Colorado ("Lot 35").

B. Grantee is the owner of real property located in El Paso County, Colorado as follows: Lot 34, Claremont Business Park Filing No. 2, a subdivision recorded at Reception No. 207718506 of the Records in the Office of the Clerk & Recorder of El Paso County, Colorado ("Lot 34").

C. Grantee desires to obtain, and Grantor is willing to grant, an easement (the "Easement") on and through that portion of Grantor's Property described in the legal description set forth in **Exhibit A** attached hereto and incorporated herein by reference (the "Easement Area"), for the purpose of constructing and maintaining a drainage pond which shall be located on a portion of both Lot 34 and Lot 35.

D. Grantor and Grantee desire to set forth the terms under which the drainage pond shall be constructed and maintained.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** Grantor hereby grants and conveys to Grantee, a perpetual private drainage easement to construct (or cause to be constructed), reconstruct, use, operate, and maintain a drainage pond, which shall be located partially within the easement area on Lot 34 and partially on Lot 35. The location of the drainage pond is attached hereto as **Exhibit C**. The easement is for the benefit of Lot 35.

2. **Easement Map.** **Exhibit B** attached hereto contains a graphic representation of the Easement Area. The legal description set forth in **Exhibit A** describes, exclusively the Easement Area. In the event the legal description set forth on **Exhibit A** is inconsistent with the graphic representation in **Exhibit B**, said legal description shall control.

3. **Installation and Maintenance of Improvements.** Grantee shall install the drainage pond at its expense in accordance with all applicable El Paso County, Colorado (the "County") rules, regulations and requirements, and Grantee thereafter shall be responsible for all maintenance of the drainage pond, whether located on Lot 34 or Lot 35, and shall keep the drainage pond in good working condition at all time, all at Grantee's expense.

4. **Grantor's Use of Improvements.** Grantor shall have the right to benefit from the drainage pond from time to time as may be applicable.

5. **Surface Restoration of Land.** In constructing and maintaining the drainage pond within the Easement Area, any damage to Grantor's Property shall be repaired by Grantee, at its expense, and Grantor's Property shall be kept as close to its pre-construction condition as practicable while allowing the installation and maintenance of the drainage pond. Grantee shall utilize all reasonable measures to avoid disruption of any activities and operations on Grantor's Property.

6. **Ingress and Egress.** Grantee shall have and exercise the right of reasonable ingress and egress in, to, through, over, under and across Grantor's Property for access to and from any streets or any other point of Grantor's Property to the Easement Area in order to perform construction, reconstruction, operation, use maintenance, repair, replacement or removal of the drainage pond.

7. **Grantor's Rights.** Except as provided in this Paragraph 7, Grantor shall retain the right to make full use of the Easement Area, except for such use as might endanger or interfere with drainage control or the rights of Grantee in its use, operation and maintenance of the drainage pond. Grantor shall not construct or place any structure or building on any part of the Easement Area. Any such structure or building constructed or placed on the Easement Area after the date of this Agreement may be removed by Grantee without liability for damages arising therefrom. If Grantor constructs or places any structure or building within the Easement Area, Grantor shall reimburse Grantee for all expenses associated with removing such structure or building. In no event shall Grantor change the grade or ground level of the Easement Area, or construct or place, longitudinally along or otherwise within the Easement Area, any tree, underground pipeline, cable, wire, conduit or other utility without the prior written consent of Grantee, which shall not be unreasonably withheld or delayed.

8. **Insurance.** During the time period of installation of the drainage pond, Grantee shall obtain and maintain insurance with minimum coverage and limits to protect Grantor from any claims which may arise or result from such installation (such limits may be provided by an appropriate "umbrella" policy), including: workers' compensation and occupational disease insurance at the statutory limits provided for by the State of Colorado; employer's liability insurance at a limit of not less than \$1,000,000 for all damages arising from each accident or occupational disease; comprehensive general liability insurance covering completed operations, product liability, and broad form property damage endorsement and property damage caused by conditions otherwise subject to exclusion for explosion, collapse or underground damage. Prior

to any entry upon the Easement Area, Grantee shall provide Grantor evidence of such general liability insurance.

9. **Miscellaneous.**

A. **Enforcement.** The obligations set forth in this Agreement may be enforced by Grantor or Grantee. In the event of litigation between the parties concerning this Agreement, the prevailing party shall be awarded from the other party, in addition to the amount of any award or judgment, all costs and expenses, including reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive. Each party shall be responsible for any violation of this Agreement by such party's agents, employees, contractors, and subcontractors.

B. **No Waiver.** The failure of a party to enforce any of the conditions, covenants, restrictions or reservations contained herein shall in no event be deemed to be a waiver of the right to do so for subsequent violations or the right to enforce any other conditions, covenants, restrictions or reservations contained herein.

C. **Amendments and Termination.** This Agreement, and any provision hereof or any easement granted herein, may only be amended or terminated by the unanimous written consent of Grantor, El Paso County, and Grantee. No amendment or termination shall be effective until a written instrument setting forth the terms of such amendment or termination has been duly executed, acknowledged and recorded in the office of the El Paso County Clerk and Recorder's office.

D. **Binding Effect.** Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

E. **Indemnity.** Grantee shall fully protect, defend, indemnify and hold harmless Grantor from and against any and all claims, costs (including but not limited to reasonable attorneys' fees), losses, damages, causes of action, or liability resulting from any violation of this Agreement by Grantee or from Grantee's use of the Easement Area.

F. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The parties consent to venue and jurisdiction in the District Court in and for El Paso County, Colorado in any action commenced relating to this Agreement.

G. **Compliance with Laws.** Grantee shall give all notices and comply with all laws, ordinances, rules, regulations and orders relating to the installation, maintenance, and repair of the Improvements. Grantee shall comply with Federal, State and local workplace safety laws, unemployment compensation acts and such other acts and laws as are applicable to the installation, maintenance, repair, operation or use of the Improvements.

H. Mechanics Liens. In no event shall Grantee allow any mechanic's or materialman's liens to attach against Grantor's Property for materials supplied or work performed at Grantee's request with respect to the easements granted herein, and Grantee shall indemnify and hold Grantor harmless from any cost or expense incurred by Grantor to release any such mechanic's or materialmen's liens against Grantor's Property.

I. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of a provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

J. Notice. All notices necessary or required under this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested, to the address set forth on page 1 of this Agreement. Notice given by personal delivery shall be effective upon delivery. Notice given by mail shall be effective three days after depositing notice in the United States Postal Service mail, certified mail, return receipt requested with postage prepaid. The Parties may change any address to which Notice is to be given by giving notice as provided above of such change of address.

K. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

L. Recordation. Upon mutual execution of this Agreement, this Agreement shall be recorded in the real property records of the El Paso County Clerk and Recorder's office.

M. No Obstruction. No person or entity may place fences, obstructions, barricades or other structures on or across any portion of the Easement Area which would in any way alter or impede water storage or drainage control, except for temporary construction or maintenance.

N. Running with the Land. The easement rights granted hereby and the rights and obligations of each party hereto shall run with and be appurtenant to Lot 34 and Lot 35, for the benefit of Lot 34, Lot 35 and El Paso County, and for each owner of Lot 34 and Lot 35 and their respective heirs, successors and assigns. Any owner of Lot 34 or Lot 35 or any portion thereof, shall automatically be deemed by acceptance of the title to such property to have assumed all rights and obligations under this Agreement, to El Paso County and to the Cherokee Metropolitan Water District.

O. Term. This Agreement shall continue in full force and effect in perpetuity, subject to earlier termination, modification or amendment pursuant to the provisions hereof.

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

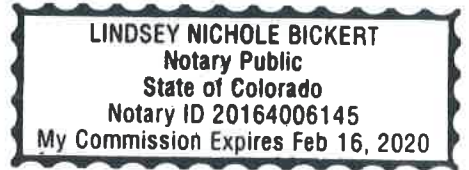
The foregoing instrument was acknowledged before me on APRIL 9TH, 2018, by DAVE DILLENGER, as PRESIDENT of Kamala, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires: February 16TH, 2020
(SEAL) Lindsey N. Bickert
Notary Public

LIST OF EXHIBITS

- Exhibit A - Legal Description of Easement Area**
- Exhibit B - Depiction of Easement Area**
- Exhibit C - Location of Drainage Pond**





20 Boulder Crescent, STE 110
Colorado Springs, CO 80903
Mail to: PO Box 1360
Colorado Springs, CO 80901
v 719.955.5485

LEGAL DESCRIPTION EXHIBIT A
LOT 34 DRAINAGE EASEMENT

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER (SW 1/4, NE 1/4) SECTION 8, T14S, R65W OF THE 6TH P.M. EL PASO COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 34, "CLAREMONT BUSINESS PARK FILING NO.2 AS RECORDED UNDER RECEPTION NO 207718506 IN THE EL PASO COUNTY, COLORADO RECORDS;

THENCE S56°31'58"E ALONG THE NORTHEASTERLY LINE OF SAID LOT 34, A DISTANCE OF 30.00 FEET;
THENCE S33°28'02"W A DISTANCE OF 25.00 FEET;
THENCE N56°31'58"W A DISTANCE OF 28.68 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 34;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 1020.00 FEET, A CENTRAL ANGLE OF 01°24'23", (THE CHORD OF WHICH BEARS N30°27'12"E 25.03 FEET), AN ARC DISTANCE OF 25.04 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 735 S.F. MORE OR LESS.

PREPARED BY:

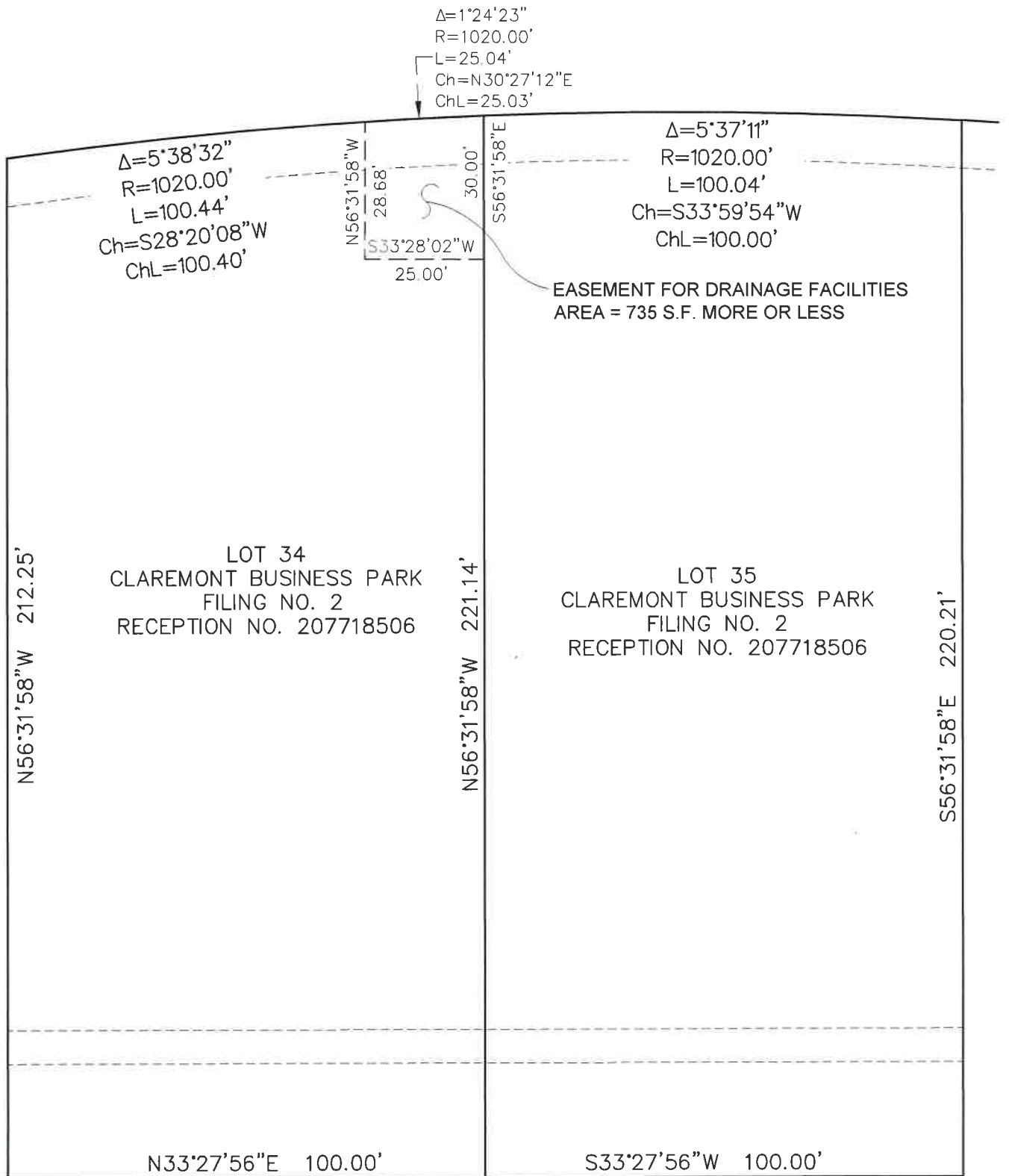
Vernon P Taylor 2/15/18

VERNON P. TAYLOR, COLORADO PLS NO. 25966
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC.
20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, COLORADO 80901
719-955-5485



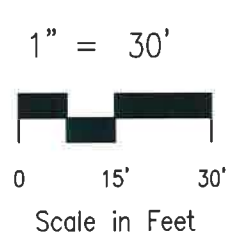
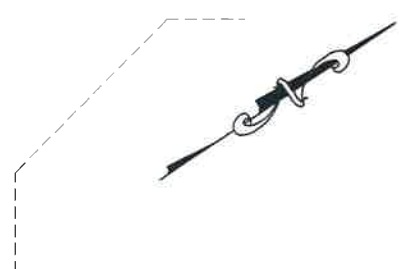
LEGAL DESCRIPTION SKETCH EXHIBIT B

LOT 34 DRAINAGE EASEMENT



COLE VIEW (47.66' PRIVATE)

McCLAIN POINT (47.66' PRIVATE)



THIS LEGAL DESCRIPTION SKETCH IS INTENDED FOR CLARIFICATION OF THE ATTACHED LEGAL DESCRIPTION ONLY. IT IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY PLAT NOR AN IMPROVEMENT LOCATION SURVEY PLAT.



20 BOULDER CRESCENT, SUITE 110
 COLORADO SPRINGS, CO 80903
 PHONE: 719.955.5485

