

# TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made and entered as of the date of the last signature hereto (the "Effective Date"), by and between Eagle Ranch Commercial Center Association, A Colorado non-profit corporation (the "Owner" or "Grantor") and Gold Dust Capital Partners, LLC, a Colorado limited liability company ("GDCP" or "Grantee").

## WITNESSETH:

WHEREAS, the Owner owns real property located at 0767 Sylvan Lake Road, Eagle, CO 81632 and described as: Tract A, Amended Final Plat, Eagle Ranch Filing No. 30, Eagle Ranch PUD (the "Owner Property" or "Grantor Property"); and

WHEREAS, GDCP is developing a mixed-use building at 1200 Capitol in Eagle Ranch (Lot 1, Amended Final Plat, Eagle Ranch Filing No. 30), adjacent to the Owner Property (the "Project");

WHEREAS, Owner wishes to grant GDCP a temporary construction easement over, under, and through the Owner Property to locate, stage, and use various construction equipment and materials needed for the Project; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are incorporated by reference herein.
2. Grant of Easement – Temporary Construction Easement – Grantor to the Grantee. Grantor hereby grants and conveys unto the Grantee, its successors and assigns, a temporary, non-exclusive easement over, under, across, and through that portion of the Grantor Property depicted and described in Exhibit A (the "Temporary Easement Area"), for the purposes of location, storage, and use of equipment and materials related to or arising from the Project, including but not limited to modular staging, crane placement, dirt and other material storage, porta-john placement, trailer and vehicle parking, and any other use reasonably necessary or related to the Project, including access thereto, subject to the following terms and conditions (the "Temporary Easement"):
  - a. Grantee shall obtain all approval required by the Town of Eagle (the "Town") or any other entity with jurisdiction over the Project prior to commencement of use of the Temporary Easement Area.
  - b. Prior to any work pursuant to this Agreement, Grantee shall provide Grantor with at least 24 hours advance notice.

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c. Grantee shall repair, restore, and reseed any disturbed area of the Temporary Easement Area similar to the remainder of the Grantor Property in Grantee's reasonable discretion.

d. This temporary construction easement shall automatically terminate upon completion of the Project, evidenced by receipt of a certificate of occupancy from the Town. Notwithstanding, the temporary easement shall terminate later than: Not later than October 31, 2024 except as expressly extended by the parties.

3. Default. If Grantee fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, and does not provide notice of intent to cure and undertake correction of such nonperformance or violation within 7 days of receipt of written notice of violation (and diligently complete such cure thereafter), Grantor shall have the right to terminate the Agreement for cause immediately upon written notice of termination. In the event the nonperformance or violation is one that cannot be corrected or Grantee otherwise disputes, Grantee shall provide notice therefor to Grantor within such 7-day period and the Parties shall promptly schedule a meeting to review such violation and determine if any alternate resolution is possible. If the Parties fail to agree on resolution of the notice upon meeting, Grantor may proceed to terminate the Agreement upon written notice of termination.

4. Insurance. At all times during the term of this Agreement, Grantee shall carry and maintain, in full force and effect, at its sole cost and expense, the following insurance policies with insurance companies satisfactory to Grantor. Grantor shall be named as an additional named insured as its interests may appear on the policies listed in Subparagraphs (a) and (b).

- a. Commercial general liability insurance in an occurrence format in an amount of \$1,000,000 per occurrence, including the following coverages: contractual liability, personal injury, broad form property damage, independent Grantee and Property operations.
- b. Comprehensive automobile liability insurance on all vehicles used connection with this Agreement, in an amount of \$500,000 combined single limits for bodily injury and property damage, per occurrence.
- c. Worker's Compensation insurance in accordance with the provisions of the Workers' Compensation Act of the State of Colorado for all its employees accessing the Property. Grantor requires sole proprietors who are excluded under the Act to carry Workers' Compensation insurance.

5. Costs and Indemnification.

- a. Grantee shall be responsible for all costs and expenses of all activities under the Temporary Easement on the Temporary Easement Area and Grantor shall have no obligation share in the same.

b. Grantee hereby covenants and agrees with Grantor to defend, indemnify and hold Grantor harmless from and against any and all losses, claims (including claims of mechanics' liens, personal injury, death or property damage), causes of actions, suits, damages, liabilities, expenses and costs of any kind (including reasonable attorneys' fees) arising or resulting from Grantee's entry upon the Grantor Property pursuant to the License and the activities of Grantee on the Grantor Property pursuant to this Agreement.

6. No Liens. The Grantee shall keep the Temporary Easement Area free and clear of any mechanics' or materialman's liens for labor performed or material furnished within the Temporary Easement Area at the instance or request of the Grantee or anyone claiming thereunder.

7. Warranty of Title. Grantor represents and warrants that she has good title to the Grantor Property, free and clear of any encumbrances that would affect this Agreement.

8. Professional Fees. Each party hereto shall pay its own costs and attorney fees incurred in the preparation of this Agreement and exhibits hereto.

9. Severability. Should any portion of this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in force and effect.

10. Entire Agreement. This Agreement is the entire agreement of the parties, and neither party has relied on any promises or representations except as expressly described herein. This Agreement may only be modified by a writing signed by all parties.

11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. The District Court in and for Eagle County, Colorado, shall be the exclusive venue for any dispute arising hereunder. In the event of such a dispute, the prevailing party shall be entitled to reasonable expenses, including attorney fees, to the extent the court with jurisdiction deems an award of such expenses and fees just and reasonable under all circumstances.

12. Easement Runs with the Land, Binding on Successors and Assigns. This Agreement shall run with the land and be binding upon and inure to the benefit and/or burden of Grantor and Grantee, and their respective heirs, successors and assigns.

13. Recordation. This Agreement shall be recorded in the public records of Eagle County, Colorado and shall be deemed to run with the land.

14. Authority. The parties represent and warrant that they have full right and lawful authority to enter into this Agreement.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one instrument.

16. Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to have been given upon personal service; or three (3) days after deposit in the U.S. mail, via registered or certified mail, postage prepaid and return receipt requested; or one day after deposit with an overnight courier service (which obtains a receipt evidencing delivery) and shall be addressed as follows:

To Grantor: PO Box 1988, Edwards, CO 81632

To Grantee: PO Box 1672, Eagle, CO 81631

Either party or their successors or assigns may designate a change of name or address by written notice given in the same manner as provided above.

14. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Grantor and the Grantee and their successors and assigns.

15. No Waiver. No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit shall constitute a waiver of any other or further right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligation shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

WHEREFORE, the parties have executed this Agreement effective as of the date first written above.

*~ Signature Pages Follow ~*

GRANTOR: EAGLE RANCH COMMERCIAL CENTER ASSOCIATION

Signature: SL

Name: Steve Lindstrom

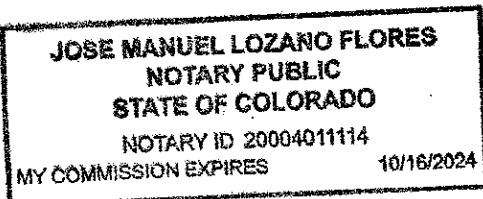
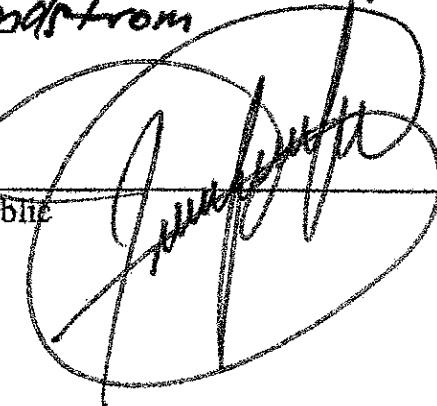
Date: Oct 12, 2022

STATE OF Colorado ) ss.  
COUNTY OF Boulder

The foregoing Agreement was acknowledged before me this 12 day of  
October, 2022 by Steve J Lindstrom

Witness my hand and official seal.

Notary Public



GRANTEE: GOLD DUST CAPITAL PARTNERS, LLC

Signature: 

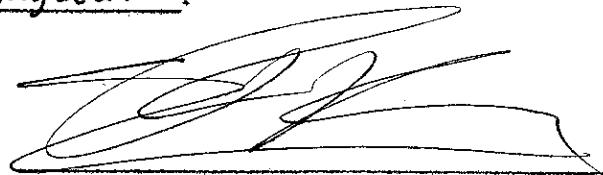
Name: Brad Hagedorn - Member

Date: 10/13/22

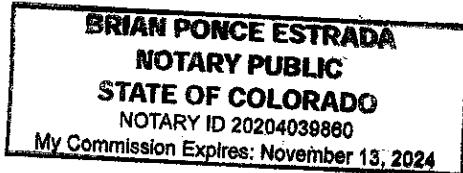
STATE OF Colorado )  
) ss.  
COUNTY OF Eagle

The foregoing Agreement was acknowledged before me this 13<sup>th</sup> day of  
October, 2022 by Brad Hagedorn.

Witness my hand and official seal.



Notary Public



## EXHIBIT A

On following page

