

RECORDING REQUESTED BY
AND AFTER RECORDING
RETURN TO:

Return To: **SP000058488-RAD**
FIDELITY NATIONAL TITLE INSURANCE CO.

Kaplan Central, LLC
17 Hogan Ct.
Sandia Park, NM 87047

DECLARATION OF EASEMENTS

STATE OF NEW MEXICO)
) KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF BERNALILLO)

This Declaration of Easements (this "**Agreement**") is made this 15th day of June, 2020, by Kaplan Central, LLC, a Colorado limited liability company ("**Declarant**").

WHEREAS, Declarant owns those certain tracts of land that are legally described on **Exhibit "A"** attached hereto and made a part hereof (the "**Property**"); and

WHEREAS, a site plan depicting the Property is attached hereto as **Exhibit "B"** and made a part hereof; and

WHEREAS, Declarant wishes to declare a cross access and ingress and egress easement over and across the drive aisles of the Property as they may exist from time to time; and

WHEREAS, Declarant wishes to declare a cross parking easement over and across the parking areas of the Property as they may exist from time to time.

NOW THEREFORE, Declarant makes the following declaration of easements and maintenance for said lots, which easements and obligations shall run with the land and shall be for the benefit and burden upon said lots as set forth below:

ARTICLE I
EASEMENTS COVENANTS AND RESTRICTIONS

1.1 Grant of Ingress/Egress and Cross Access Easement. Declarant does hereby dedicate, create, grant and establish, for the nonexclusive benefit of Parcel A and Parcel B and for the nonexclusive use and enjoyment of the owners of the properties, their successors and assigns and their employees, agents, contractors, tenants, lessees, customers, licensees, and invitees, a perpetual cross access easement over and across the drive aisles of Parcel A and Parcel B as they may exist from time to time (the "**Access Easement Area**") for cross access purposes in order to provide vehicular ingress and egress to and from Parcel A and Parcel B and connecting Parcel A and Parcel B to Manzano Street NE and Truman Street NE.

1.2 **Grant of Cross Parking Easement.** Declarant does hereby dedicate, create, grant and establish, for the nonexclusive benefit of Parcel A and Parcel B and for the nonexclusive use and enjoyment of the owners of the properties, their successors and assigns and their employees, agents, contractors, tenants, lessees, customers, licensees, and invitees, a perpetual cross parking easement over and across the parking areas of Parcel A and Parcel B as they may exist from time to time (the "**Parking Easement Area**") for cross parking purposes in order to provide parking for Parcel A and Parcel B.

1.3 **Maintenance of the Access Easement Area and the Parking Easement Area.** The owner of each Parcel A and Parcel B shall maintain the Access Easement Area and the Parking Easement Area (collectively "Easement Areas") in good order and condition at its sole cost and expense.

1.4 **Damage.** Each owner shall repair any damage to the Easement Areas caused by such owner or such owner's employees, contractors, tenants, subtenants, invitees, customers, licensees, agents or representatives.

1.5 **Maintenance Requirements.** Owners shall each be responsible for maintaining their own properties.

ARTICLE II **INSURANCE**

2.1 **Insurance.** Owners shall each continuously maintain or cause to be maintained a policy of commercial general liability insurance with limits of not less than one million dollars (\$1,000,000.00) and shall name the other owner(s), as additional insureds. Such policy shall be issued by entities with an A.M. Best Rating of A-VII or higher. Each Party shall supply a certificate of insurance evidencing such coverage within thirty (30) days after written request by the other Party.

ARTICLE III **DEFAULT**

3.1 **Event of Default.** In the event that a breach of the terms of this Agreement shall continue for a period of thirty (30) days after receipt by the defaulting party of written notice of the same, the non-defaulting party shall be entitled to cure such breach in addition to all remedies it may have at law or in equity, provided that such injured party furnishes prior written notice to the defaulting party. All reasonable expenses required to cure the breach shall be paid by the defaulting party within thirty (30) days after receipt of written evidence confirming the payment of such expenses. Any sums due from one party to another party hereunder which remain unpaid after expiration of such thirty (30) day period shall accrue interest from the date the defaulting party receives such written notice at the highest allowable rate, and shall be payable upon demand together with reasonable attorneys' fees incurred in connection with the collection of such sums. Further, if such sums remain unpaid for more than sixty (60) days after the due date, the party to which such sums are owing may seek any and all remedies available at law and all costs and expense (including, without limitation, court costs and the reasonable amount of attorney's fees) shall be payable by the party in default.

ARTICLE IV **MISCELLANEOUS**

4.1 **Term of this Agreement.** This Agreement shall be effective as of the date first written

4.9 **No Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any part of the property to the public, or for the public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

4.10 **Governing Law.** THIS AGREEMENT, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY THE LAW OF THE STATE OF NEW MEXICO (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

4.11 **Mechanics Liens.** The Easement Areas shall not be subjected to liens of any nature by reason of any construction, alteration, renovation, repair, restoration, replacement or reconstruction of any improvements on the Easement Areas, or by reason of any other act or omission of any party hereto (or of any person claiming by, through or under such party) including, but not limited to, mechanics' and materialmen's liens. If a lien, a claim of lien or an order for the payment of money shall be imposed against the Easement Areas on account of work performed, or alleged to have been performed, for or on behalf of any party hereto, said party shall, within thirty (30) days after written demand by any other party to do so, cause the Easement Areas to be released therefrom by the payment of the obligation secured thereby or by furnishing a bond or by any other method prescribed or permitted by law. Such party may, at its option, contest the validity of any lien or claim of lien if said party shall have first posted an appropriate and sufficient bond in favor of the claimant or paid the appropriate sum into court, if permitted by law, and thereby obtained the release of the Easement Areas from such lien. If judgment is obtained by the claimant under any lien, said party shall pay the same immediately after such judgment shall have become final and the time for appeal therefrom has expired without appeal having been taken and obtain a release of such lien in writing.

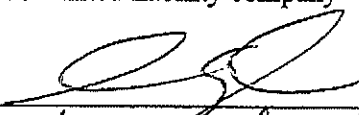
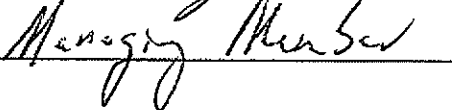
Executed and effective as of the date first written above.

DECLARANT:

Kaplan Central, LLC, a
Colorado limited liability company

By: _____

Its: _____

ACKNOWLEDGEMENT

State of New Mexico

County of Bernalillo

This instrument was acknowledged before me on June 15, 2020, by
Art Kaplan.



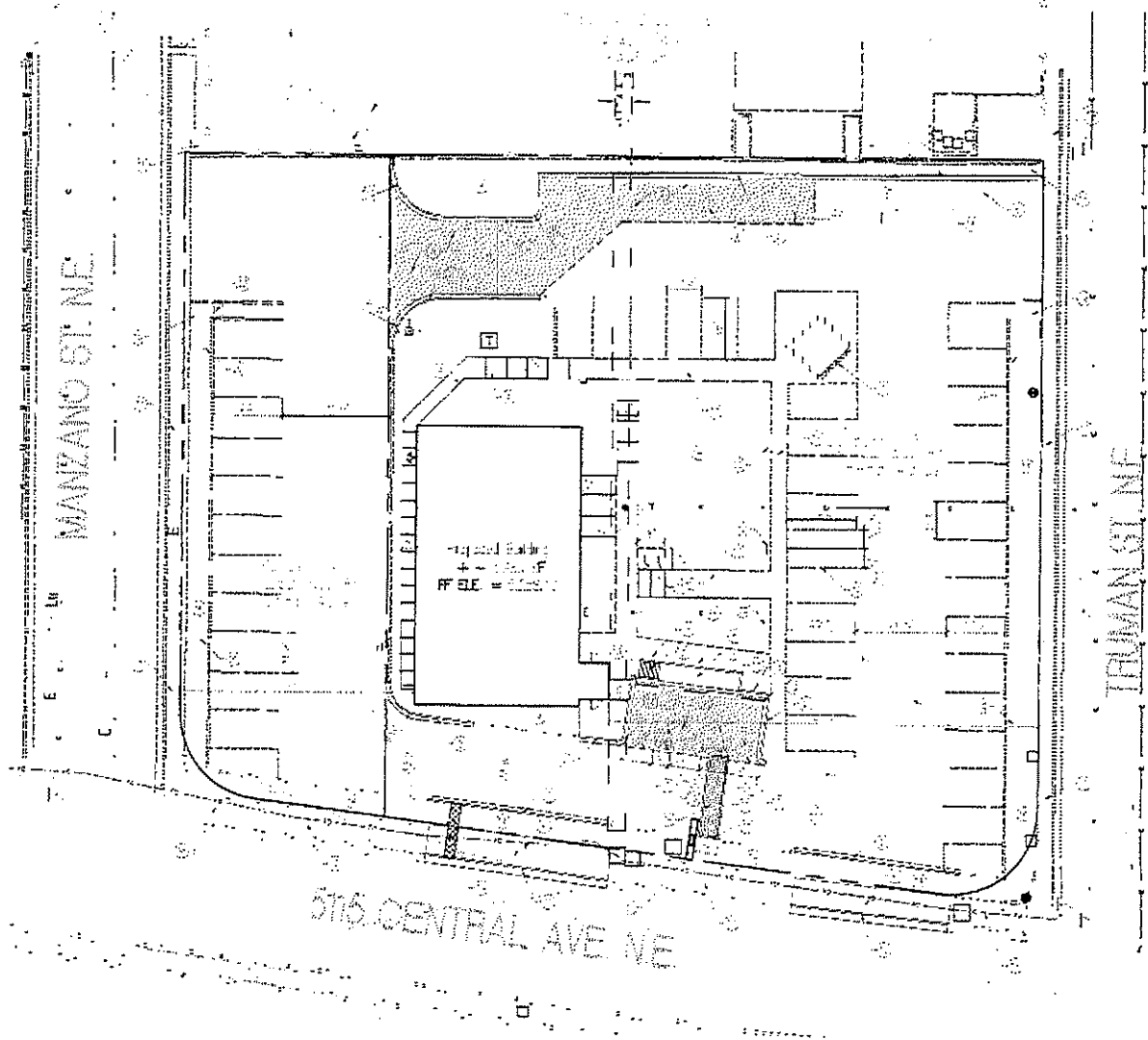
Danielle N. Montoya
Notary Public

Commission expiration: 2/25/22

EXHIBIT "A"
LEGAL DESCRIPTION

Parcels Lettered "A" and "B" in Block Numbered Thirty Eight (38) of Valley View Addition, an Addition to the City of Albuquerque, NM, as the Same are Shown and Designated on the Summary Replat Thereof, Filed in the Office of the County Clerk of Bernalillo County, NM on January 18, 1984 as Documented No. 84 3941 in Plat Book C23, Page 14.

EXHIBIT "B"
PROPERTY



RECORDING REQUESTED BY
AND AFTER RECORDING
RETURN TO:

Return To: SP000058488-RAD
FIDELITY NATIONAL TITLE INSURANCE CO.

Kaplan Central, LLC
17 Hogan Ct.
Sandia Park, NM 87047

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WHEREAS, a site plan depicting the Property is attached hereto as **Exhibit "B"** and made a part hereof; and

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2.1 Insurance. Owners shall each continuously maintain or cause to be maintained a policy of commercial general liability insurance with limits of not less than one million dollars (\$1,000,000.00) and shall name the other owner(s), as additional insureds. Such policy shall be issued by entities with an A.M. Best Rating of A-VII or higher. Each Party shall supply a certificate of insurance evidencing such coverage within thirty (30) days after written request by the other Party.

ARTICLE III **DEFAULT**

3.1 Event of Default. In the event that a breach of the terms of this Agreement shall continue for a period of thirty (30) days after receipt by the defaulting party of written notice of the same, the non-defaulting party shall be entitled to cure such breach in addition to all remedies it may have at law or in equity, provided that such injured party furnishes prior written notice to the defaulting party. All reasonable expenses required to cure the breach shall be paid by the defaulting party within thirty (30) days after receipt of written evidence confirming the payment of such expenses. Any sums due from one party to another party hereunder which remain unpaid after expiration of such thirty (30) day period shall accrue interest from the date the defaulting party receives such written notice at the highest allowable rate, and shall be payable upon demand together with reasonable attorneys' fees incurred in connection with the collection of such sums. Further, if such sums remain unpaid for more than sixty (60) days after the due date, the party to which such sums are owing may seek any and all remedies available at law and all costs and expense (including, without limitation, court costs and the reasonable amount of attorney's fees) shall be payable by the party in default.

ARTICLE IV **MISCELLANEOUS**

4.1 Term of this Agreement. This Agreement shall be effective as of the date first written

above and shall continue in full force and effect unless and until it is terminated by a recorded instrument signed by each of the fee simple owners.

4.2 Amendment. No part of this Agreement may be terminated or modified without the prior written consent of each of the fee simple owners.

4.3 Attorney's Fees. In the event of litigation by reason of this Agreement, or otherwise to enforce the terms hereof, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees in addition to all other expenses incurred by such litigation.

4.4 Waiver. A waiver of any provision of this Agreement or any default hereunder must be in writing. No failure to insist upon or to enforce any provision of this Agreement shall constitute or be interpreted as a waiver thereof. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

4.5 Severability. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

4.6 Notices. All notices and approvals required or permitted under this Agreement shall be served by certified mail, return receipt requested, or by nationally recognized overnight courier, to the applicable address set forth herein below and/or, as applicable, the address of any fee simple owner of the Project who has furnished notice in accordance with the terms hereof. Date of service of notice or approval shall be the earlier of the date such notice is actually received or refused.

Declarant: Kaplan Central, LLC
17 Hogan Ct.
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or such other addresses as an owner may designate upon prior written notice delivered in a manner authorized herein.

4.7 Run with the Land. All of the provisions hereof are and shall be real covenants running with the title to the property subject to this Agreement and shall burden and bind said property for the duration hereof. To that end, this Agreement shall be deemed incorporated into all deeds and conveyances hereinafter made by any party. Every person, including a mortgagee, acquiring or holding any interest or estate in any portion of the property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Agreement; and in accepting such interest or estate in, or a security interest with respect to, any portion of the property, such person shall be deemed to have assented to this Agreement and all of the terms and provisions hereof.

4.8 Successors and Assigns. All of the provisions hereof shall inure to the benefit of, and be enforceable by, the parties hereto and their respective legal representatives, heirs, successors, and assigns. If an owner (for purposes of this section, the "Transferring Party") hereto sells, transfers or otherwise conveys its/their interest in and to its/their property, then such Transferring Party (but not its/their property burdened hereby) shall be released from all further future duties, obligations and liabilities accruing under this Agreement from and after the date of such transfer and the purchaser or transferee of such property shall be deemed to have assumed and agreed to carry out any and all of the covenants and obligations under this Agreement of the Transferring Party.

4.9 No Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any part of the property to the public, or for the public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

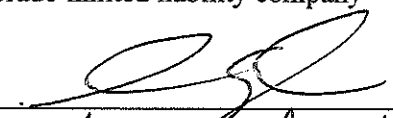

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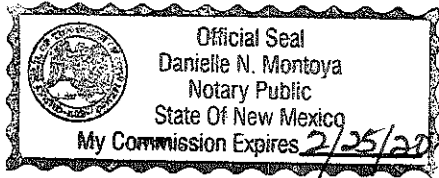
By: 
Its: 

ACKNOWLEDGEMENT

State of New Mexico

County of Bernalillo

This instrument was acknowledged before me on June 15, 2020, by
Art Kaplan.



Danielle N. Montoya
Notary Public

Commission expiration: 2/25/22

EXHIBIT "A"
LEGAL DESCRIPTION

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EXHIBIT "B"
PROPERTY

