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Suzanne Henderson

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Submitter: ACS

DECLARATION OF PRIVATE ACCESS EASEMENT

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF TARRANT §

This **DECLARATION OF PRIVATE ACCESS EASEMENT** (this "**Declaration**"), is made by **J&S REAL ESTATE INVESTMENT, L.P.**, a Texas limited partnership ("**Declarant**"), for the benefit of **NEPALI CULTURAL AND SPIRITUAL CENTER**, a Texas non-profit corporation (the "**Benefitted Tract Owners**").

WHEREAS, the **Benefitted Tract Owners** is the owner of that certain real property, being approximately 3.675 acres of land (the "**Benefitted Tract**"), as more particularly described by metes and bounds in **Exhibit "A"**, attached hereto and incorporated herein by reference;

WHEREAS, **Declarant** is the owner of that certain real property, being approximately 14,733 square feet of land (the "**Easement Tract**"), as more particularly described by metes and bounds in **Exhibit "B"**, attached hereto and incorporated herein by reference;

WHEREAS, the **Benefitted Tract** and the **Easement Tract** are collectively referred to herein as the "**Tracts**";

WHEREAS, **Declarant**, as owner of the **Easement Tract**, desires to dedicate and create a certain private access easement as herein set forth for the benefit of the **Benefitted Tract**, as covenants, burdens and benefits running with the title to the respective **Tracts**; and

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to **Declarant** paid by the **Benefitted Tract Owners**, the receipt and sufficiency of which is hereby acknowledged, the **Declarant** hereby imposes the following covenants, conditions, and easement on the **Burdened Tract**, as covenants, benefits, and burdens running with the title to the **Tracts**:

1. **Dedication of Easement.** There is hereby dedicated, created, and declared to be a non-exclusive, perpetual, private access easement for the Permitted Uses (as hereinafter defined) (the "**Easement**"), for the benefit of the owners, tenants, and other users of the **Benefitted Tract** from time to time (the "**Benefitted Parties**"), in, upon, over, along, across, under and within the **Easement Tract**. For purposes hereof, the owners from time to time of the **Easement Tract**, and any tenants or subtenants thereof are herein referred to as the "**Burdened Parties**".

2. **Permitted Use.** The **Easement** dedicated herein shall be usable by the owners, tenants, subtenants and other users from time to time of the **Benefitted Tract**, and their respective suppliers, employees and invitees, for (i) non-exclusive vehicular and pedestrian ingress and egress over and across the **Easement Tract** and (ii) the installation, construction, operation, maintenance, repair and replacement of all utility services reasonably necessary to serve the

Benefitted Tract, including, without limitation, electric, telephone, cable, and gas (the "Permitted Uses").

3. Conditions and Restrictions on Use; Maintenance.

(a) It is agreed that the entry onto the Easement Tract herein shall be at the sole risk of the owner, tenants or other users of the Benefitted Tract.

(b) The Benefitted Parties are not entitled to construct any improvements on the Easement Tract or impede the Burdened Parties' use and enjoyment thereof. The Benefitted Parties shall, at their sole cost and expense and except as otherwise provided herein, immediately repair any damage caused by the Benefitted Parties to the Easement Tract, including, without limitation any damage caused to paving or other improvements located from time to time on the Easement Tract. The Benefitted Tract Owners and the Benefitted Parties hereby accepts the Easement Tract in its "AS-IS" condition with all faults. Any repairs or maintenance to the Easement Tract shall be performed by the Benefitted Tract Owners and the Benefitted Parties at the Benefitted Tract Owners' and the Benefitted Parties' sole cost and expense.

(c) The Burdened Parties are hereby prohibited from erecting, constructing, or maintaining any structures, barricades, fences, landscaping or other obstructions that prevent or materially and adversely impede the use of the Easement Tract for the Permitted Uses.

4. Certain Reserved Rights. In addition to its rights reserved by implication by virtue of the Easement dedicated herein being non-exclusive, the Declarant hereby expressly reserves to the owners of the Burdened Tract the right to dedicate additional public or private easements for utility or access purposes in, across, upon, under and through the Easement Tract described herein so long as such easements do not prevent or materially and adversely impede the use of the Easement Tract for the Permitted Uses by the owners, tenants and other users of the Benefitted Tract.

5. Indemnity. The Benefitted Parties hereby agree to indemnify, defend and hold harmless the Burdened Parties from and against any and all claims, liabilities, losses, damages, suits, judgments, fines, costs, fees, and expenses (collectively, "Claims"), arising out of or resulting from any death of or bodily injury to persons and any loss or damage to property, occurring on the Burdened Tract in connection with any use of the Easement Tract by or on behalf of the Benefitted Parties or their respective officers, employees, agents, invitees or licensees pursuant to this Declaration; provided, however, that no tenant of the Benefitted Tract shall be responsible to indemnify the Burdened Parties hereunder for other than tenant's own acts, and the acts of such tenant's own employees, agents, servants, suppliers, customers, invitees and licensees, and not those of the owners from time to time of the Benefitted Tract or such other tenants of the Benefitted Tract. Such Claims specifically include, without limitation, reasonable attorneys' fees, costs of court and other defense costs incurred by the indemnified owner in defending any such Claims as well as those that may be incurred by the claimant if sought to be recovered by the claimant from the indemnified owner.

6. **Not a Mineral Conveyance.** This Declaration is not a conveyance of any interest in the minerals in or under the Easement Tract.

7. **Miscellaneous.**

(a) This Declaration will be interpreted, enforced and construed in accordance with the laws of the State of Texas.

(b) To the extent of a violation of any of the terms and provisions hereof, then the affected party shall be entitled to institute proceedings at law or in equity for full and adequate relief and/or damages from the consequences of such violation. The unsuccessful party in any such action shall pay to the prevailing owner a reasonable sum for its attorneys' fees.

(c) If any provision hereof shall be held invalid or unenforceable, then the provision in question shall be deemed deleted herefrom but the remaining provisions shall be enforced to the fullest extent allowed by law provided that the invalidated provision did not frustrate the essential purpose of this Declaration.

(d) This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

(e) The headings herein are for reference purposes only and shall have no substantive meaning or effect.

(f) The Easement established herein may be released and discharged at any time by execution of a written instrument to that effect by the owners of the Tracts affected thereby and recordation thereof in the Official Public Records of Real Property of Tarrant County, Texas.

(g) The Easement is a private easement for the Benefitted Tract and nothing herein shall be deemed a grant or dedication of any rights in or to the Easement or Easement Tract described herein in favor of the public or any public authority or private party except as expressly stated herein. The Easement is subject to all encumbrances affecting title to the Burdened Tract in which it is located, and which are created or evidenced by instruments recorded in the Official Public Records of Real Property of Tarrant County, Texas, to the extent the same are valid and enforceable; provided, however, that Declarant represents and warrants that there are no deeds of trust, mortgages or other voluntary liens or, to its knowledge, any involuntary liens (other than for real estate taxes not yet delinquent), which affect or encumber the Burdened Tract.

(h) The undersigned hereby represents that he has all capacity and authority to execute this Declaration on behalf of Declarant. This Declaration has been duly executed and delivered by Declarant, and no further action is necessary with respect to Declarant to make this Declaration a valid and binding obligation of Declarant, enforceable in accordance with its terms.

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EXHIBIT "A"

Legal Description of Benefitted Tract

Tract 1 of PARK CENTER ADDITION, an addition to the City of Euless, Tarrant County, Texas, according to the plat recorded in Volume 388-49, Page 63, Plat Records, Tarrant County, Texas, SAVE AND EXCEPT a tract of land situated in the City of Euless, Tarrant County, Texas, being a portion of Tract 1 of Park Center Addition, an addition to the City of Euless, Tarrant County, Texas, according to the plat recorded in Volume 388-49, Page 63, Plat Records, Tarrant County, Texas, said tract of land being more particularly described as follows:

Commencing at a set ½ inch capped rebar stamped "JPH LAND SURVEYING" at the northwest corner of said Tract 1;

Thence North 66° 55' 48" East, along the North line of said Tract 1, a distance of 205.63 feet to the Point of Beginning;

Thence North 66° 55' 48" East, along the North line of said Tract 1, a distance of 42.06 feet to a point, from said point, a found ½ inch rebar at the Northeast corner of said Tract 1, bears North 66° 55' 48" East, a distance of 229.00 feet;

Thence South 05° 02' 38" East, a distance of 398.33 feet to the South line of said Tract 1;

Thence South 66° 57' 00" West, along the South line of said Tract 1, a distance of 42.06 feet;

Thence North 05° 02' 38" West, a distance of 368.31 feet to the Point of Beginning, containing 14,733 square feet.

EXHIBIT "B"

Legal Description of Easement Tract

A tract of land situated in the City of Euless, Tarrant County, Texas, being a portion of Tract 1 of Park Center Addition, an addition to the City of Euless, Tarrant County, Texas, according to the plat recorded in Volume 388-49, Page 63, Plat Records, Tarrant County, Texas, said tract of land being more particularly described as follows:

Commencing at a set ½ inch capped rebar stamped "JPH LAND SURVEYING" at the northwest corner of said Tract 1;

Thence North 66° 55' 48" East, along the North line of said Tract 1, a distance of 205.63 feet to the Point of Beginning;

Thence North 66° 55' 48" East, along the North line of said Tract 1, a distance of 42.06 feet to a point, from said point, a found ½ inch rebar at the Northeast corner of said Tract 1, bears North 66° 55' 48" East, a distance of 229.00 feet;

Thence South 05° 02' 38" East, a distance of 398.33 feet to the South line of said Tract 1;

Thence South 66° 57' 00" West, along the South line of said Tract 1, a distance of 42.06 feet;

Thence North 05° 02' 38" West, a distance of 368.31 feet to the Point of Beginning, containing 14,733 square feet.