

GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT

THIS GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT, ("Agreement") made and entered into this 30 day of December, 2017, by and between Mary Alice Billing and Mary Alice Billings Trust, whose address is C/O GB & Trust Department, P.O.Box 1159, Longmont, CO 80502, "collectively referred to as" hereinafter referred to as the "Grantor," and the TOWN OF ERIE, a Colorado Municipal Corporation, whose address P.O. Box 750, 645 Holbrook Street, Erie, Colorado 80516, hereinafter referred to as the "Grantee," collectively, the "Parties".

WITNESSETH:

WHEREAS, Grantor is the owner of real property located in Weld County, State of Colorado, more particularly described on Exhibit "A," attached hereto and made a part hereof (the "Property").

WHEREAS, the Parties desire to provide for a permanent access and utilities easement across a portion of the Property in the location more particularly described on Exhibit "B," attached hereto and made a part hereof (the "Easement Property"), in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Grantor and Grantee mutually agree as follows:

1. *Grant of Easement.* Grantor hereby grants and conveys to Grantee, its successors and assigns, a permanent, perpetual non-exclusive easement to enter, occupy and use the Easement Property to construct, reconstruct, use, operate, maintain, repair, patrol, replace, enlarge and remove one storm drainage pipeline facility, conduit, vault, accessories, improvements, or manholes and all necessary underground wires and appurtenances thereto, including, but not limited to, electric or other control systems, video or other control systems, cables, wires, connections, conduits, and surface appurtenances associated with the storm drain pipeline (the "Improvements") in, through, over, across, under and above the Easement Property (the "Easement").

2. *Ingress and Egress.* The Grantee, its employees, agents, contractors, representatives, successors and assigns shall have and exercise the right of ingress and egress in, to, through, over, under, above and across the Easement Property for access to and from the Easement Property in order to perform construction, reconstruction, operation, installation, use, maintenance, repair, replacement, upkeep, monitoring, and removal of the Improvements.

3. *No Structures or Buildings to interfere with the Easement.* The Grantor shall not construct or place any structure or building, yard light, shrub, tree, woody plant or nursery stock, whether temporary or permanent, of any kind or nature situated on the Easement Property that will interfere with or obstruct the access or Easement granted herein. Any such structure or item placed on the Easement Property may be removed by the Grantee without liability for damages arising

there from. Grantor shall retain the right to make use of the servient property of the Easement Property, except for such prohibitions as are contained herein, and except for such use as might endanger or interfere with the rights of the Grantee in its use of the Easement. If Grantor constructs or places any structure or building or item prohibited herein on the Easement Property, Grantor shall reimburse the Grantee for Grantee's expenses in removing such structure or prohibited item from the Easement Property.

4. *Grantor's Warranty.* Grantor warrants that it has full right and lawful authority to make the grant of the Easement herein contained, and promises and agrees to defend against any defect in title to the Easement Property, the Easement or the right to make the grant of the Easement as herein contained.

5. *Non-exclusive Use.* Following written request from Grantor to Grantee, and approval by Grantee, that public utilities such as water, sanitary sewer, storm sewer, gas, electric lines, and other appropriate utilities may be installed in the Easement Property as long as such utilities do not interfere with the Grantee's rights as herein granted or the Grantee's use of the Easement and the Easement Property. All surface and subsurface uses of the Easement Property, excluding fences, must be approved in writing by the Grantee prior to installation.

6. *Damage, Maintenance of Grantor's Improvements.* The Grantor, at its expense, shall be solely responsible for the maintenance of all Grantor improvements which may be located within the Easement Property. In the event said Grantor improvements within the Easement Property are damaged due solely to Grantee's negligence, the Grantee will repair and or replace the said improvements at Grantee's expense.

7. *Ownership, Maintenance of Grantee's Improvements, Damage.* Following completion of the construction and installation of the Improvements, the Improvements shall be the property of the Grantee and shall be owned by the Grantee. The Grantee, at its expense, shall be solely responsible for the maintenance and repair of the Improvements, once installed by the Grantee. Repair and or replacement of the said Improvements shall be at Grantee's sole expense.

8. *Protection of Easement.* The Grantee is acquiring the Easement in order to ensure to the Grantee a dominant easement for the exercise of Grantee's functions, and the exercise of any rights in the subject Easement other than those retained by the Grantor shall be within the discretion of the Grantee.

9. *Inurement.* 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 hereto.

10. *Complete Agreement.* This Agreement represents the complete agreement between the parties hereto, and supersedes any and all other prior agreements, written and oral, between the parties.

11. *Indemnification.* In connection with its operations hereunder, to the extent

allowable under Colorado law, the Grantee shall indemnify and hold the Grantor harmless from any and all claims, demands, liabilities, actions, costs and expenses, including reasonable attorney's fees and expert witness fees, incurred by Grantor arising out of or in any way connected to the negligent operation of the Grantee on the Easement, except to the extent that any such claim, demand, liability, action, cost or expense is attributable to the acts or omissions of the Grantor. The Grantee does not waive or intend to waive the rights or protections guaranteed under the Governmental Immunity Act.

12. *Headings for Convenience Only.* The paragraph headings of this Agreement are for convenience only and the substantive portions hereof control without regard to the headings.

13. *Subjacent and Lateral Support.* The Grantor shall not impair the lateral or subjacent support for the Easement or the Improvements located therein.

14. *Cooperation.* The Grantor shall cooperate with the Grantee and shall not impair the Grantee's use of the Easement or the Improvements located therein.

15. *Modification.* This Agreement shall be modified in writing only, which writing must be executed by the parties hereto in order to be effective.

16. *Controlling Law.* This Agreement shall be governed under, and construed pursuant to, the laws of the State of Colorado, and the parties hereto agree to jurisdiction in the Courts of Weld County, Colorado.

17. *Annual Appropriations.* All financial obligations of Grantee set forth in this Agreement are subject to annual appropriation pursuant to C.R.S. § 29-1-110, as amended.

18. *Recordation of Agreement.* This Agreement shall be recorded by the Grantee in the real property records of the County of Weld, State of Colorado.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT as of the day and year first above written.

GRANTOR:

By: Mary Alice Billings
Mary Alice Billings

By: Mary Alice Billings
Mary Alice Billing Co-Trustee, for Mary Alice Billing Trust

By: Rebecca L. Deis
Guaranty Bank and Trust Company, Co-Trustee
For Mary Alice Billing Trust

STATE OF COLORADO)

) ss.

COUNTY OF Boulder

The foregoing instrument was acknowledged before me this 10th day of Jan, ~~2015~~ 2018
by Mary Alice Billings, Joint Co-TRUSTEE OF Mary Alice Billing Trust
and Rebecca L. Deis, GRANT Co. Co-TRUSTEE OF Mary Alice Billing Trust.

WITNESS my hand and official seal.

My commission expires 4/5/2018
SHELLY A. THOMAS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19944003730
MY COMMISSION EXPIRES 04/05/2018

Shelly A. Thomas
Notary Public

GRANTEE:

TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, Town Clerk

Exhibit A

[Legal Description of the Property]

The Northwest Quarter of Section 7, Township 1 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado, excepting therefrom that parcel described in Deed recorded at Reception No. 4346982 in the records of Weld County, Colorado.

Exhibit B

[Legal Description of the Easement Property]

EXHIBIT B

EASEMENT DESCRIPTION:

AN EASEMENT LOCATED IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER OF SAID SECTION 7 (3.5" BRASS CAP, BLM 1052) FROM WHENCE THE NORTHWEST CORNER OF SAID SECTION 7 LIES S89°50'02"W, 2,435.98 FEET (BASIS OF BEARINGS);

THENCE S89°50'02"W, 366.91 FEET ALONG THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 7 TO THE APPROXIMATE CENTERLINE OF THE COTTONWOOD EXTENSION IRRIGATION DITCH;

THENCE ALONG THE APPROXIMATE CENTERLINE OF SAID COTTONWOOD EXTENSION IRRIGATION DITCH THE FOLLOWING SEVEN COURSES:

- 1) S28°58'49"W, 15.57 FEET;
- 2) S53°02'56"W, 18.25 FEET;
- 3) S75°47'10"W, 52.30 FEET;
- 4) S82°06'59"W, 105.09 FEET;
- 5) S78°42'40"W, 123.21 FEET;
- 6) S60°37'03"W, 83.57 FEET;
- 7) S43°16'32"W, 46.24 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG APPROXIMATE CENTERLINE THE FOLLOWING TWO COURSES:

- 1) S43°16'32"W 16.37 FEET;
- 2) S01°16'55"W, 15.76 FEET;

THENCE N67°45'40"W, 53.43 FEET;

THENCE S90°00'00"W, 505.07 FEET;

THENCE S60°55'28"W, 254.53 FEET;

THENCE N61°50'35"W, 126.92 FEET;

THENCE N28°09'25"E, 30.00 FEET;

THENCE S61°50'35"E, 110.56 FEET;

THENCE N60°55'28"E, 245.95 FEET;

THENCE N90°00'00"E, 518.75 FEET;

THENCE S67°45'40"E, 59.57 FEET TO THE POINT OF BEGINNING, CONTAINING 28,034 SQUARE FEET, MORE OR LESS.

EASEMENT PREPARED BY:
BO BAIZE, COLORADO PLS 37990
FOR AND ON BEHALF OF
HURST & ASSOCIATES, INC.

STORM SEWER EASEMENT DESCRIPTION NW 1/4, SECTION 7, TIN, R68W WELD COUNTY, COLORADO

	1265 S Public Road, Suite B	SCALE HOR. N/A
	CIVIL ENGINEERING Lafayette, CO 80026	VERT. N/A
	PLANNING 303.449.9105	DESIGN/APPR. BO
	SURVEYING www.hurst-assoc.com	DRAWN BY BO
		DATE 11/22/17
		SHEET 1 OF 2
FILE OR \2020\24\SURVEY\LEGAL\NH NW STORM EASEMENT		

EXHIBIT B

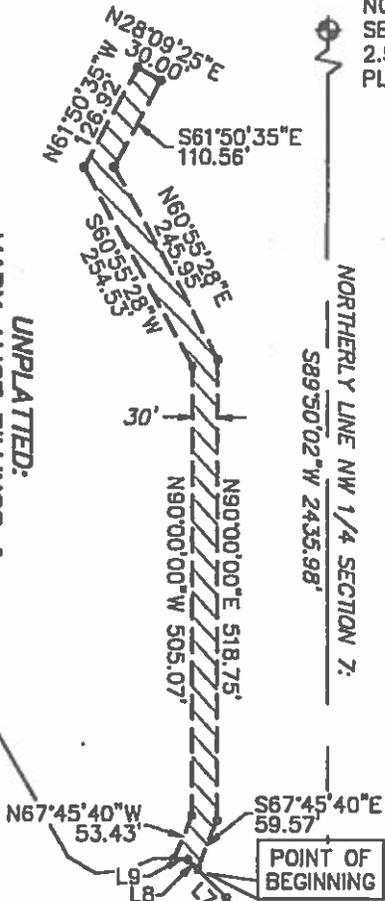
NORTHWEST CORNER
SECTION 7
2.5" ALUMINUM CAP
PLS 37971 2008

UNPLATTED:
MARY ALICE BILLINGS &
MARY ALICE BILLINGS TRUST

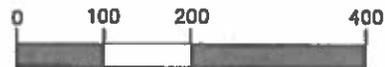
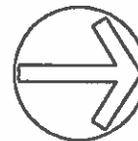
NORTHERLY LINE NW 1/4 SECTION 7:
S89°50'02"W 2435.98'

RECORDED EXEMPTION NO.
RE-3844 LOT B

LINE TABLE		
LINE	BEARING	LENGTH
L1	S28°58'49"W	15.57'
L2	S53°02'56"W	18.25'
L3	S75°47'10"W	52.30'
L4	S82°06'59"W	105.09'
L5	S78°42'40"W	123.21'
L6	S60°37'03"W	83.57'
L7	S43°16'32"W	46.24'
L8	S43°16'32"W	16.37'
L9	S01°16'55"W	15.76'



FUTURE MORGAN HILL SUBDIVISION



1 inch = 200 ft.

NOTE: THIS IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT. THIS EXHIBIT IS ONLY INTENDED TO DEPICT THE ACCOMPANYING DESCRIPTION.

STORM SEWER EASEMENT
NW 1/4, SECTION 7, T1N, R68W
WELD COUNTY, COLORADO

POINT OF COMMENCEMENT

NORTH QUARTER CORNER
SECTION 7
3.5" BRASS CAP, BLM 1952

	1265 S Public Road, Suite B	SCALE: HOR. 1" = 200'
	Lafayette, CO 80026	VERT. N/A
	DESIGN/APPR. BO	
	PLANNING 303.449.9105	DATE 11/22/17
	www.hurst-assoc.com	SHEET 2 OF 2