

GRANT OF TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS GRANT OF TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement"), made and entered into this 13 day of May, 2016, by and between **JUNELLE M. FITZGERALD AND KEVIN R. FITZGERALD**, whose address is 380 Baron Court, Erie, Colorado 80516 hereinafter referred to as the "Grantor," and the **TOWN OF ERIE**, a Colorado municipal corporation, whose address is 645 Holbrook Street, Erie, Colorado 80516, hereinafter referred to as the "Grantee."

WITNESSETH:

WHEREAS, Grantor owns the real property described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property") on which the Grantee wishes to acquire a Temporary Construction Easement (as defined in paragraph 1, below) for the construction and installation of the Improvements, defined and described in paragraph 1, below; and,

WHEREAS, the Improvements defined and described in paragraph 1, below, are being constructed by the Grantee, and once completed such Improvements shall become the property of the Grantee; and,

WHEREAS, the Grantor and the Grantee have agreed to terms and conditions for the grant of the Temporary Construction Easement to the Grantee and the Grantee's use and operation on the Property and within the Temporary Construction Easement; and,

WHEREAS, the Grantor and the Grantee hereby wish to set forth their agreement and enter into this Grant of Temporary Construction Easement Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the obligations, covenants and agreements herein set forth, the legal sufficiency of which the parties due hereby acknowledge, the parties hereto agree as follows:

1. *Grant of Temporary Construction Easement.* Grantor hereby grants and conveys to Grantee, its successors and assigns, a Temporary Construction Easement in the locations as set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "Temporary Construction Easement") one or more subsurface water lines, sanitary sewer lines, storm drainage facilities, pipelines, conduits, vaults, 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 and all necessary appurtenances thereto (the "Improvements") in, through, over, across, under and above the Property in the permanent easement location. Grantee must provide Grantor no less than SEVEN (7) day advance notice prior to commencing any activity in the Temporary Construction 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 Property for access to and from the Temporary Construction Easement in order to perform construction and installation of the Improvements.

3. *Term of Temporary Construction Easement.* The Temporary Construction Easement granted herein shall expire and be of no further force or effect one (1) year from the date of commencement of construction on the Property..

4. *No Structures or Buildings to interfere with the Temporary Construction 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 Temporary Construction Easement or the Property that will interfere with or obstruct the access or Temporary Construction Easement granted herein unless pre-approved and agreed upon by Grantee. Any such structure or item placed on the Temporary Construction Easement or Property may be removed by the Grantee without liability for damages arising there from unless such agreement is in place. Grantor shall retain the right to make use of the servient property of the Temporary Construction Easement, 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 Temporary Construction Easement. If Grantor constructs or places any structure or building or item prohibited herein on the Temporary Construction Easement or Property, Grantor shall reimburse the Grantee for Grantee's expenses in removing such structure or prohibited item from the Temporary Construction Easement or Property.

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

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 Temporary Construction Easement. In the event said Grantor improvements are damaged due to Grantee's acts or omissions, the Grantee will repair and or replace the said improvements at Grantee's expense. Grantee shall return the surface of the area described in **Exhibit "B"** to the condition that existed prior to commencement of the construction and installation of the Improvements, subject to the installation of the Improvements allowed herein. Grantor shall ensure that no encumbrances are placed against the Property by any person or entity acting by, through, or on behalf of Grantee.

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. *Inurement.* Each and everyone of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, executors, administrators, successors and assigns of the parties hereto.

9. *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.

10. *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.

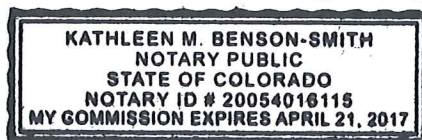
11. *Cooperation.* The Grantor shall cooperate with the Grantee and shall not impair the Grantee's construction of the Improvements.

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

13. *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.

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

[Signatures on next page]



GRANTEE:
TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, Town Clerk

3/20/15

Exhibit “A”

(Grantor’s Property)

Legal description

**Erie Air Park Subdivision B6 L7
Section 31, Township 1 North, Range 68 West of the 6th Prime Meridian, Weld County,
Colorado**

Also known as: 380 Baron Court, Erie Colorado

Exhibit “B”

(Temporary Construction Easement Description)

EXHIBIT "B"

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH,
RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO
SHEET 1 OF 2

A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT OVER AND ACROSS A PORTION OF LOT 7, BLOCK 6 OF THE ERIE AIRPARK SUBDIVISION DESCRIBED IN THE RECORDS OF WELD COUNTY AT RECEPTION NO. 1752380, DATED MAY 3, 1978, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF LOT 7, BLOCK 6, AND TRACT H OF SAID SUBDIVISION TO BEAR NORTH 89°41'31" EAST, A DISTANCE OF 612.80 FEET BETWEEN A FOUND NO. 4 REBAR WITH A YELLOW PLASTIC CAP AT THE SOUTHWEST CORNER OF LOT 7, BLOCK 6, ERIE AIRPARK SUBDIVISION AND A FOUND NO. 6 REBAR WITH A 2" ALUMINUM CAP STAMPED "LS14083", BEING THE CENTER SOUTH 1/16 CORNER OF SAID SECTION 31, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE CENTER SOUTH 1/16 CORNER OF SAID SECTION 31, THENCE ALONG THE SOUTH LINE OF TRACT H AND LOT 7, SOUTH 89°41'31" WEST, A DISTANCE OF 277.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTH LINE, SOUTH 89°41'31" WEST, A DISTANCE OF 20.50 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 13°00'23" WEST, A DISTANCE OF 461.64 FEET; THENCE SOUTH 81°53'02" WEST, A DISTANCE OF 91.38 FEET TO A POINT ON A NON TANGENT CURVE ON THE SOUTHERLY RIGHT-OF-WAY OF BARON COURT; THENCE ALONG SAID RIGHT-OF-WAY 32.18 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, AN INCLUDED ANGLE OF 36°52'23" AND SUBTENDED BY A CHORD BEARING NORTH 63°27'02" EAST, A DISTANCE OF 31.63 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY, NORTH 81°53'02" EAST, A DISTANCE OF 80.59 FEET; THENCE SOUTH 13°00'23" EAST, A DISTANCE OF 474.47 FEET TO THE POINT OF BEGINNING;

SAID EASEMENT CONTAINING 10,167 SQ.FT. OR 0.23 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 13-62,073

JOB NUMBER: 13-62,073 (D)
DRAWN BY: T. HENDERSON
DATE: JULY 25, 2013
REVISION: JANUARY 5, 2015
MARCH 27, 2015

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.



Flatirons, Inc.
Surveying, Engineering & Geomatics



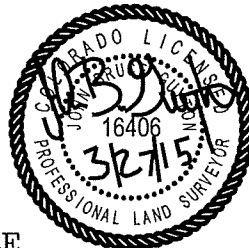
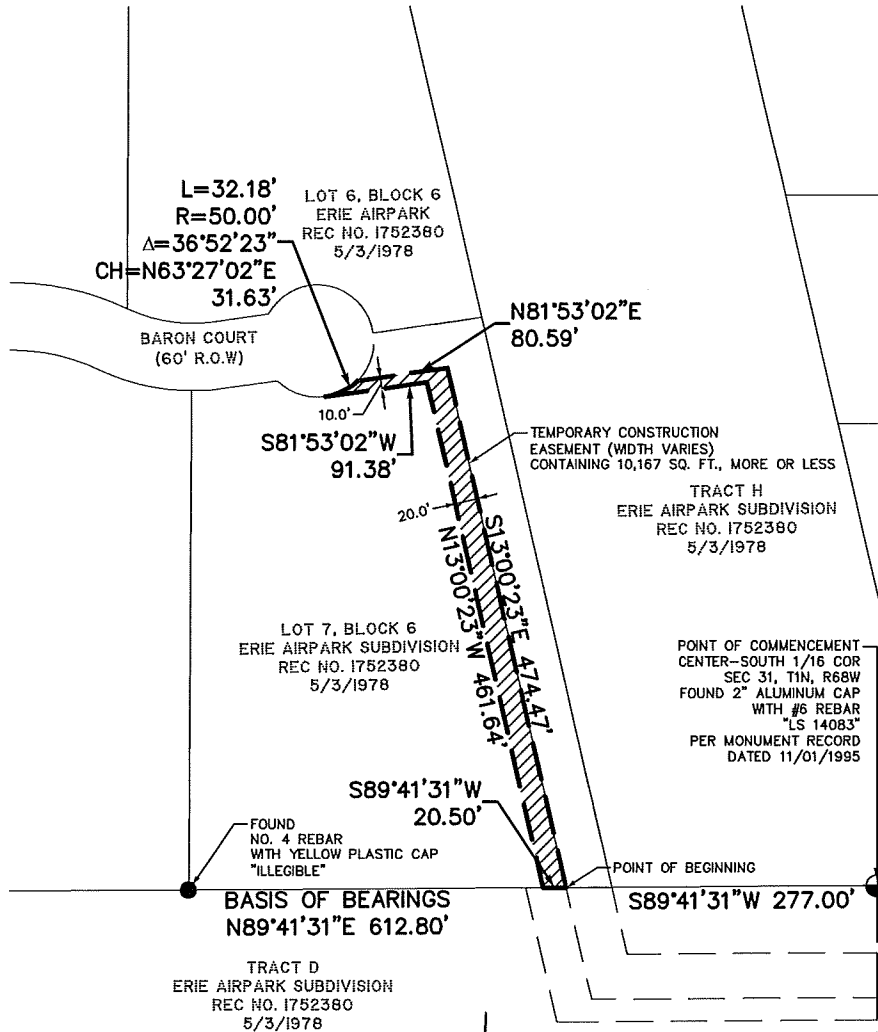
3825 IRIS AVE, STE 395
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PH: (303) 443-7001
FAX: (303) 443-9830
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BY:T.HENDERSON FILE:62073-DESC-C13-R3.DWG DATE:3/27/2015 12:45 PM

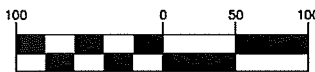
EXHIBIT "B"

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RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
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SHEET 2 OF 2



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

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