RESOLUTION NO. 18-____

A RESOLUTION BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO AUTHORIZING THE APPROPRIATE TOWN OFFICIAL TO SIGN THE SOUTH BOULDER CANON DITCH COMPANY, THE TOWN OF ERIE, AND MATTHEW T. AND KRISTEN R. STARR DITCH RELOCATION AGREEMENT; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town of Erie desires to relocate the existing South Boulder Canon Ditch into a new pipeline across the Town of Erie property and the Starr property for the development of Nine Mile Corner; and

WHEREAS, a ditch relocation agreement is required in order for the ditch facility to be constructed and for ditch water to be conveyed through the pipeline and appurtenant facilities; and

WHEREAS, The Town of Erie and the Starrs have agreed to grant an easement to the South Boulder Canon Ditch Company following the pipeline alignment; and

WHEREAS, the Starrs have agreed to grant a temporary construction easement to the Town of Erie for construction of the pipeline; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to execute the Ditch Relocation Agreement for the orderly development of Nine Mile Corner.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees of the Town of Erie hereby authorizes and directs the appropriate Town official to sign the South Boulder Canon Ditch Company, The Town of Erie, and Matthew T. and Kristen R. Starr Ditch Relocation Agreement as set forth in the Agreement copy attached hereto, marked "Exhibit A" and incorporated herein by this reference.

Section 2. That executing the Agreement is found to be in the best interest of the Town of Erie, and necessary for the preservation of public health and safety.

ADOPTED AND APPROVED THIS 14th DAY OF AUGUST, 2018, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Jennifer Carroll, Mayor

ATTEST:

By: _____
Jessica Koenig, Deputy Town Clerk

Exhibit A
Agreement

SOUTH BOULDER CANON DITCH COMPANY, THE TOWN OF ERIE, AND MATTHEW T. AND KRISTEN R. STARR DITCH EASEMENT RELOCATION AGREEMENT

1. **PARTIES**. The parties to this Easement Agreement ("Agreement") are the SOUTH BOULDER CANON DITCH COMPANY, a Colorado mutual ditch company ("Ditch Company"), the TOWN OF ERIE, a Colorado municipality ("Erie"), and MATTHEW T. STARR AND KRISTEN R. STARR, owners of the real property located at 1425 N. 111th Street, Lafayette, Colorado 80026 (collectively, "Starr"). The Ditch Company, Erie, and Starr are collectively referred to as theParties.

2. **RECITALS.**

2.1 Erie is a municipality through which a segment of the South Boulder Canon Ditch ("Ditch") is located ("First Ditch Segment"), which First Ditch Segment is described in **Exhibit A**.

2.2 Starr owns the real property located at 1425 N. 111th Street, Lafayette, Colorado 80026 ("Starr Property"), through which another segment of the Ditch is located ("Second Ditch Segment"), which Second Ditch Segment is described in **Exhibit B**.

2.3 The Ditch Company owns a prescriptive easement for the Ditch and an appurtenant prescriptive easement on either side of the Ditch for the operation, maintenance, repair, and replacement of the Ditch as and where the Ditch currently exists, including the First and Second Ditch Segments, all for purposes of transmitting water to its shareholders.

2.4 The Ditch Company delivers water to the Ditch Company's shareholders ("Shareholders") through the Ditch, including the First Ditch Segment and the Second Ditch Segment, downstream of the First Ditch Segment and Second Ditch Segment.

2.5 Erie has requested the Ditch Company to grant it the right to replace the First Ditch Segment to allow Erie to develop land which it and the Erie Urban Renewal Authority own.

2.6 In order to pipe the First Ditch Segment through Erie's property, the Second Ditch Segment also needs to be piped in order for the Ditch Company to continue to take delivery of water for conveyance to its shareholders.

2.7 Erie has agreed to take responsibility for the work and to pay all expenses of replacing the open ditch through the First Ditch Segment and the Second Ditch Segment with the pipeline in order for the Ditch Company to continue to deliver water to its shareholders.

2.8 The Parties desire that the Ditch Company convey all of its right, title, and interest in the First Ditch Segment to Erie and all of its right, title, and interest in the Second Ditch Segment to Starr.

2.9 The existing First Ditch Segment and Second Ditch Segment will be replaced by a pipeline that will run through Erie's and Starr's respective properties, and through which the Ditch Company's water will be delivered downstream to a point below the First Ditch Segment and Second Ditch Segment where the pipeline will connect with the existing ditch on the surface of the land. Erie will install and maintain the pipeline as provided herein. The Parties desire that Erie and Starr each convey to the Ditch Company a new easement for the pipeline and appurtenant facilities (collectively, the "Installations") over their respective properties within the area described and delineated below (the new "Ditch Easements").

2.10 The Parties also desire that Starr convey a temporary construction easement ("Construction Easement") within the area on the Starr Property described below (the "Construction Easement Parcel") to Erie for Erie and its contractors to install and construct the Installations, as more fully set forth and delineated below.

NOW THEREFORE, in and for the consideration set forth below, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

3. **CONTINGENCY**. This Agreement is expressly contingent upon Erie providing written notice to the Parties hereto that it will proceed with the work contemplated hereunder. If Erie does not deliver said written notice within two years of the execution hereof ("Notice"), this Agreement shall terminate and all rights and obligations hereunder shall become null and void. If Erie does provide the Notice within two years of the execution hereof, the Parties hereto agree to proceed hereunder pursuant to the terms hereof.

4. **CONVEYANCES BY QUITCLAIM DEEDS.** Upon execution and delivery of this Agreement, the Ditch Company agrees to execute and deliver into escrow pursuant to the Escrow Instructions (as defined below) two quitclaim deeds, the forms of which are attached as **Exhibits C** and **D**, to convey to Erie all of the Ditch Company's right, title, and interest in the First Ditch Segment, described in Exhibit A, and to convey to Starr all of the Ditch Company's right, title, and interest in the Second Ditch Segment, described in Exhibit B under the terms and conditions hereunder. For purposes hereof, "Escrow Instructions" means mutually agreeable escrow instructions with a title company that provides that (a) upon completion of the Installations by Erie, the title company will record the two quitclaim deeds described herein and the Ditch Easements (as defined below); or (b) if the Notice is not provided, the title company will return the two quitclaim deeds to the Ditch Company and return the new Ditch Easements to Starr and Erie, as applicable.

5. **NEW PERMANENT DITCH EASEMENTS.** Erie and Starr each agree to each execute a non-exclusive Easement Deed, each form of which is attached as **Exhibits E** and **F**, to convey to the Ditch Company two new easements, the areas of which shall each be 30 feet in width, being 15 feet on either side of the centerline of the pipeline that is part of the Installations. Erie will construct the Installations for the sole purpose of transmitting the Ditch Company's water through Erie's property and the Starr Property within such pipeline, under the terms and conditions hereunder. The new Ditch Easements shall run with the land for the benefit of the Ditch Company.

6. **RIGHTS RETAINED BY STARR.** Notwithstanding anything contained herein to the contrary, it is understood and agreed that Starr retains the right to use, access, and install utilities and services, landscaping, crops, cultivations, and other plantings, driveways, and to otherwise make use of the Starr Property for any purpose which does not unreasonably interfere with the Ditch Easement. Starr and Ditch Company agree to cooperate so as to minimize the extent to which either of them interferes with the use rights of the other within the area of the new Ditch Easement as it crosses the Starr Property. Starr agrees that Starr~~,~~ and/or any individual or entity acting at the request or direction of Starr, shall not take any action that results in physical penetration of the pipeline, any action that restricts the flow of water within the pipeline, and any subsurface action (including, without limitation, changing the overall design grade above or below the pipeline that would damage and/or destabilize the pipeline (collectively, the "Damage Covenants"). Starr shall be responsible for any damage to the pipeline that results from the breach of the Damage Covenants by Starr and/or any individual or entity acting at the request or direction of or on behalf of Starr. The installation of the pipeline shall be accomplished in such a manner that Starr's use of the Starr Property, including, by way of example, the passage of heavy vehicles or farm or other equipment on any

driveway or otherwise on the ground over the pipeline, shall be permitted upon completion of all construction activities and shall not be construed to be a violation of this Agreement unless Starr and/or any individual or entity acting at the request or direction or on behalf of Starr breaches the Damage Covenants.

7. **PLANS AND SPECIFICATIONS**. Erie shall submit plans and specifications ("Plans") to the Ditch Company and Starr for the Installations that it intends to install in the new Ditch Easements to deliver water to the Shareholders. The Ditch Company's engineer shall review the Plans for the Installations for the limited purpose of ensuring that the Installations will have adequate capacity to carry all water flowing in the Ditch at any given time and will have the ability to safely dispose of any excess water, over and above the Ditch Company's decreed flow rates, entering the Ditch ("Standards"), and Starr shall review the Plans to review and approve the precise location and depth of the pipeline and any unreasonable interference with the installation of utility lines hereafter, which approval shall not be unreasonably withheld, both within thirty (30) days of receipt of said Plans. Erie shall not commence work to relocate and/or pipe the Ditch until the Ditch Company's engineer has provided notice in writing that the Plans meet these Standards. Starr shall be deemed to have accepted the Plans unless reasonably objected to in writing within such thirty (30) day period. The Ditch Company's review of the Plans is solely for its own benefit and creates no obligation to or rights for Erie, Starr, and/or any third party. Starr's review of the Plans is solely for its own benefit and creates no obligation to or rights for Erie, the Ditch Company, and/or any third party.

8. **CONSTRUCTION AND MAINTENANCE**. Erie and its contractors, as specified below and on behalf of the Ditch Company, shall construct, maintain, repair and replace the Installations, and any damages caused as a consequence of leaking from, or other failures of, or damage to the Installations so that the Ditch Company can continue to deliver water to the Shareholders and so that the Installations continue to meet the Standards. The Parties hereto agree that the work on the First Ditch Segment and the Second Ditch Segment will be conducted pursuant to and in accordance with the authorization from the Army Corps of Engineers dated May 3, 2016, attached hereto as Exhibit H and incorporated by reference herein. Failure of Erie to construct, maintain, repair or replace the Installations shall constitute a breach of this Agreement as between Erie and Ditch Company. The Ditch Company reserves the right to itself to enter the new Ditch Easements to operate, maintain, repair and replace the Installations, if Erie fails to comply with this Paragraph 8. The First Ditch Segment and the Second Ditch Segment shall not be disconnected from the Ditch Company's facilities until such time as the Installations are complete and the Ditch Company has approved the Installations in writing. The Ditch Company hereby

agrees to inspect said Installations within three (3) days of receiving notice from Erie that said Installations have been completed. Until the Installations are completed and accepted by the Ditch Company, the Ditch Company also shall have the right to enter the First Ditch Segment and the Second Ditch Segment. Except in the event of an emergency, Erie shall schedule maintenance, repair, and replacement work on the new Ditch Easement across the Starr Property with Starr. Such scheduling shall consist of a door hanger provided at the residence of Starr at least one week in advance of such maintenance, repair or replacement work. While engaging in any maintenance, repair, or replacement of any portion of the Ditch Easement on the Starr Property, Erie and/or the Ditch Company will make reasonable efforts to avoid disturbing any crops or other plantings which may be cultivated by Starr in the Easement Area, including, but not necessarily limited to, scheduling work around the growing season (April 1 through July 31) where the same can reasonably be accommodated,except in an emergency. Erie and/or the Ditch Company agree to work around any installed utilities, and to repair any utility lines which may be damaged by maintenance, repair, or replacement work. Erie and/or the Ditch Company shall be responsible for any damages, repairs, remediation, costs, temporary alternative services or utilities, or other expenses caused to Starr or required by a utility or other right holder as a result thereof Erie shall indemnify and hold harmless Starr from reasonable expenses incurred hereunder by, or claim asserted against, Starr or the Starr Property as a result thereof, to the extent authorized under Colorado law for any actions taken by it or its contractors. If and to the extent reasonably necessary under the circumstances, Ditch Company or Erie shall arrange, provide for, and pay for alternative temporary services, utilities, and uses in the event any activities, including but not limited to the initial construction of the Installations or the subsequent maintenance, repair, or replacement of the Installations, shall interrupt such services, utilities, and uses, and shall restore the surface of the Starr Property to its condition existing prior to such work. Erie shall backfill and compact to common grade level of the surrounding land at least 20 feet beyond the upstream point where the pipeline to be installed will terminate and connect with the existing surface ditch on the Starr's Property to prevent backflow into the Second Ditch Segment and to afford Starr a means of crossing the ditch. For purposes of this Paragraph 8, the Ditch Company will not be held responsible for any damage that may result to the Starr Property or any expense caused to Starr, including but not limited to arranging, providing, and paying for any alternative temporary services, if services, utilities or uses are interrupted on the Starr Property as a result of any action taken by Erie or its contractors. Likewise, Erie will not be held responsible for any damage that may result to the Starr Property or any expense caused to Starr, including but not limited to arranging, providing, and paying for any alternative temporary services, if services, utilities or uses are interrupted on the Starr Property as a result of any action taken by the Ditch Company or its contractors.

9. **TEMPORARY CONSTRUCTION EASEMENT.** Starr agrees to execute a Temporary Construction Easement, the form of which is attached as **Exhibit G**, to convey to Erie and its contractors a temporary construction easement across the area of the new Ditch Easement on the Starr Property, of 60 feet in width, rather than the 30-foot-wide new Ditch Easement (the "Construction Easement Parcel"), in order to permit and assist Erie and its contractors in construction of the Installations on the Starr Property. To that end, Erie and its contractors shall have the right of access over and across the Construction Easement, the right to store materials and equipment used in the construction of the Installations thereon, and the right to operate construction equipment from the surface of the Construction Easement. Erie and its contractors shall not use the Construction Easement for any other use or purpose.

9.1 The term of the Temporary Construction Easement shall be from the date of the Notice until , 20__. Erie may extend the term of the Temporary Construction Easement for one additional six- month period upon written notice to Starr at least one month prior to the expiration of the then-current term. Upon the expiration of the term of the Temporary Construction Easement as set forth above, all rights of Erie thereunder shall cease and terminate and the Temporary Construction Easement shall be deemed released of all burden and covenants created pursuant to this Section 9 except for Erie's continuing obligations to Starr herein. Upon approval of the Plans, Erie shall provide Starr with a schedule for the Installations, which shall be approved by Starr prior to the commencement of the Installations, which approval shall not be unreasonably withheld, conditioned, or delayed.

9.2 Erie shall be solely responsible, after completion of the Installations, for recreating substantially the same surface condition on the Construction Easement as existed prior to construction of the Installations, including, without limitation, replacing top soil, trees, shrubs, and other landscaping with trees, shrubs, and landscaping of comparable or better quality, size, and condition to any of the trees, shrubs, and landscaping removed and/or damaged. Erie shall promptly repair or reinstall any existing utilities that are damaged or interrupted during the course of the work to the reasonable satisfaction of Starr and Erie shall make provision for alternative utility services to minimize the impact to Starr until permanent replacement services can be installed or restored. In the event that the construction process results in cutting, blocking, or otherwise interfering with Starr's access to their home, barn, or other outbuildings, Erie or its contractors shall provide Starr with a temporary crossing over or around such work to afford Starr with satisfactory

access to their home, barn, and other outbuildings. Starr shall have all rights and remedies available at law or in equity, for the failure of Erie or its contractors to restore the Starr property within a reasonable time after the Installations are completed. In addition and without limiting the foregoing, Starr shall have the right, but not the obligation, upon giving Erie at least 30 days prior written notice of its election to do so (except in the event of any emergency, in which case only reasonable prior notice, if any, taking into consideration the circumstances shall be required) to perform any restoration obligations Erie is required to perform, but has failed to do, on behalf of and for the account of Erie. In such event, Erie shall pay for Starr's costs and expenses, within 30 days after demand therefor, with interest from the date Starr performed such work until paid at 10% per annum, failing which, Starr shall have all rights and remedies available at law or in equity to collect the same. Erie and Starr agree to pay, upon demand, all of the other party's reasonable and actual costs, charges and expenses, including the reasonable fees and out-of-pocket expenses of counsel, agents and others retained, incurred in successfully enforcing the other party's obligations hereunder, and the obligation to reimburse such costs, charges and expenses may be enforced in, and shall be awarded by any arbitrator or court before which a claim is presented.

9.3 Starr agrees to not interfere with any work in progress within the Construction Easement Parcel. In the event that Starr has any concerns about the progress of the work, Starr will address such concerns either to Erie or to on site construction management personnel of Erie's general contractor, and, except in an emergency, will not address such concerns to the persons performing such work. After construction of the pipeline is completed, a set of as-built Plans showing the exact location of the Installations as installed on Starr's Property, both vertically and horizontally, shall be provided to Starr.

9.4 In connection with any work performed by Erie or its contractors on the Starr Property, Erie covenants and agrees that (a) once such work has commenced, it shall be pursued diligently to completion; (b) such work shall be performed in a good and workmanlike manner; (c) the performance of such work shall comply with all applicable laws; (d) all fees and expenses incurred in connection with such work shall be paid by Erie, at its sole cost and expense; and (e) such work shall be completed free of all liens and claims. In the event that any liens are filed upon the Starr Property arising from the work, Erie shall promptly take such action as may be necessary to cause the release of the Starr Property from the effect of such liens. In addition, in the event the work is

discontinued for any reason whatsoever prior to completion of the Installations within the time periods provided herein and in accordance with the Plans and specifications therefor, Erie shall remove any work completed prior to the date the work is discontinued and restore the Starr Property and the First Ditch Segment and Second Ditch Segments to their conditions existing prior to commencement of the work as provided hereinabove, including but not limited to removal of any pipe laid to the date work was discontinued. Starr shall have all available remedies as set forth in Section 9.2 above for the failure of Erie to protect the Starr Property from the filing of any liens, or to restore the Starr Property within a reasonable time after the work is discontinued.

9.5 Erie shall not use, deposit, store, transport, handle, or permit any hazardous materials, hazardous wastes, or toxic substances (as described in any applicable federal and/or state environmental laws) upon the Starr Property, and shall safeguard the Starr Property from any and all hazardous or toxic materials. Erie shall conduct and permit no activities to be undertaken on the Starr Property which are in violation of any applicable law, or use the Starr Property in violation of any federal, state, or local law, ordinance, or regulation. Erie shall promptly undertake any process of clean-up or remediation of the Construction Easement discovered to be necessary as a result of the work in the Construction Easement Parcel, and shall indemnify, defend and hold harmless, to the extent of applicable laws, from and against all claims, liabilities, damages, or losses, including attorneys' fees, inspection and investigation costs, and other expenses that Starr may incur or be exposed to, directly or indirectly, in the event that hazardous or toxic materials are discovered within the Construction Easement Parcel or leaching or migrating therefrom. Starr shall have all available remedies as set forth in Section 9.2 above for the he failure of Erie, promptly after notice by Starr, to defend any claim made upon Starr relating to or arising as a result of hazardous or toxic or suspected hazardous or toxic materials, and/or to promptly reimburse Starr for any liabilities, damages, losses, attorneys' fees, inspection and investigation costs, or other expenses incurred by Starr relating to or arising from any hazardous or toxic materials or suspected hazardous or toxic materials.

10. **INSURANCE.** Erie shall require its contractors to maintain commercial general liability insurance in the sum of not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate, insuring against any damages or liabilities which may occur as a result of the work performed and rights exercised under this Agreement. Starr shall be named as an additional insured on such insurance. In addition, Erie shall require its contractors to maintain worker's compensation insurance as required under applicable law and automobile insurance for any motor vehicle owned or leased by such party. Upon execution of this Agreement, Erie shall provide Starr with certificates of said insurance, on behalf of Erie's contractors, but in no event shall the failure of Starr to request or inspect such certificates of insurance relieve Erie of its obligations to maintain such insurance. To the fullest extent permitted by law, Erie shall further indemnify and hold harmless Starr from any claim which may be made against Starr by any person arising from or in connection, directly or indirectly, with the construction, use, operation, maintenance, repair, or replacement of the Installations.

11. **LIABILITY AND INDEMNIFICATION.**

11.1 By virtue of entering into this Agreement, the Parties agree that the Ditch Company: a) assumes no liability for Erie's use, operation or existence of the Installations; b) assumes no liability for Erie's construction, maintenance, repair or replacement of the Installations; and c) assumes no additional responsibilities or obligations related to Erie's future or additional activities within the area of the First Ditch Segment once the area is conveyed to Erie and the Ditch Company's retained rights in such area are terminated, or Starr's future or additional activities within the area of the Second Ditch Segment once the area is conveyed to Starr and the Ditch Company's retained rights in such area are terminated.

11.2 To the extent allowable under Colorado law, Erie shall indemnify and hold harmless the Ditch Company (including its officers, directors, shareholders, employees and agents) for any claims, demands, awards, judgments of any kind or nature, defense costs including reasonable attorneys' fees for damage or for injury to persons or property arising from or caused directly or indirectly by the following, except to the extent that any such claim, demand, liability, action, cost or expense is attributable to the acts or omissions of the Ditch Company: a) Erie's use, operation, construction, maintenance, repair or replacement of the Installations; and b) Erie's occupancy and use of the First Ditch Segment. Erie does not waive or intend to waive the rights or protections guaranteed under the Colorado Governmental Immunity Act. Erie does not waive the applicability of the Governmental Immunity Act

hereunder. Starr shall indemnify and hold harmless the Ditch Company (including its officers, directors, shareholders, employees and agents) for any claims, demands, awards, judgments of any kind or nature, defense costs including reasonable attorneys' fees for damage or for injury to persons or property arising from or caused directly or indirectly by Starr's breach of the Damage Covenants.

12. **LIQUIDATED DAMAGES**. Paragraph 8 above sets forth Erie's obligations for construction and maintenance of the Installations. If Erie's Installations, including construction, repair, or maintenance thereof, interrupt the Ditch Company's water supply at a time when the Ditch Company has water physically and legally available for delivery to Shareholders, Erie shall pay as liquidated damages $500.00 per day for any part of any day that the Ditch Company has a request for water from a Shareholder or Shareholders and cannot deliver water to that Shareholder or Shareholders as a result of the Installations, or any part thereof. The Parties acknowledge that it is difficult to ascertain the amount of actual damages that would result from a breach and agree that the amount for liquidated damages set forth in this Paragraph 12 is a reasonable estimate of presumed actual damages.

13. **NOTICES**. Any notice required or permitted by this Agreement shall be in writing. Notice shall be deemed to have been sufficiently given for all purposes when: a) sent by certified or registered mail, postage and fees prepaid, addressed to the party at the address listed below; or b) when hand-delivered to the party at the address listed below.

DITCH COMPANY:
South Boulder Canon
Ditch Company
Attn: Wilma Ormsbee, Secretary
P.O. Box 750
4539 Erie, Colorado 80516

COPY TO:
Lee Johnson, Esq.
Carlson, Hammond & Paddock, LLC
1900 Grant Street, Ste 1200
Denver, CO 80203-

ERIE:

Town Administrator
645 Holbrook
P.O. Box 750
Erie, CO 80516

COPY TO:

Paul J. Zilis, Esq.
Vranesh and Raisch, LLP
1720 14th Street, Suite 200
Boulder, CO 80302

STARR:

Matthew T. and Kristen R. Starr
1425 N. 111th St.
Lafayette, CO 80026
Lafayette, CO 80026

COPY TO:

Osgood & Osgood, LLC
Attention: Scott R. Osgood, Esq.
2586 Trailridge Dr. East, Suite 200

14. **REIMBURSEMENT OF EXPENSES.** Erie shall reimburse the Ditch Company (or pay directly) for the following costs and expenses: a) all reasonable attorneys' fees incurred by the Ditch Company in negotiating, preparing, approving and enforcing this Agreement; b) all reasonable engineers' fees incurred by the Ditch Company reviewing the Plans; c) all costs associated with billing and collecting these amounts for the Ditch Company; and d) costs incurred by the Ditch Company if Erie breaches its duties under Paragraph 8. Statements for the costs chargeable to Erie shall be paid to the Ditch Company within thirty (30) days of the billing date.

15. **THIRD-PARTY BENEFICIARIES.** The Parties acknowledge that the Shareholders, as owners of the water rights delivered by the Ditch, are intended to be third-party beneficiaries of Erie's obligations under this Agreement.

16. **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the Parties, their legal representatives, successors and assigns; however, nothing in this paragraph shall be construed to permit the assignment or delegation of this Agreement except as specifically authorized in this Agreement.

17. **ASSIGNMENT.** This Agreement shall not be assigned or delegated except with the prior written consent of all the Parties.

18. **RECORDING.** This Agreement, and the deeds and easements executed pursuant to this Agreement, shall be recorded in the real property records of Boulder County, Colorado at Erie's expense.

19. **ATTORNEYS' FEES.** If any Party breaches this Agreement, the breaching Party shall pay all of the non-breaching party's reasonable attorneys' fees and costs in enforcing this Agreement whether or not legal proceedings are instituted.

20. **WAIVER OF BREACH.** Any Party's waiver of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

21. **EXHIBITS.** All exhibits referred to in this Agreement are incorporated by reference in this Agreement for all purposes.

22. **SEVERABILITY.** If any clause, sentence, term, condition, covenant or provision of this Agreement is held to be illegal, null or void by a court of competent jurisdiction, then the remaining portions of this Agreement shall remain in full force and effect.

23. **CAPTIONS FOR CONVENIENCE.** All headings and captions are for convenience only and have no meaning in the interpretation or effect of this Agreement.

24. **MODIFICATIONS.** The Agreement can only be amended or modified in writing by both Parties.

Dated: _____

SOUTH BOULDER CANON DITCH COMPANY,
a Colorado mutual ditch company

By: _____
Jody Lambert, President

ATTEST:

By: _____
Wilma Ormsbee, Secretary

TOWN OF ERIE

By: _____
Jennifer Carroll, Mayor

ATTEST:

By: _____
Town Clerk

STARR

By: _____
Matthew T. Starr

By: _____
Kristen R. Starr

EXHIBIT A
LEGAL DESCRIPTION OF FIRST DITCH SEGMENT

EHRHART
LAND SURVEYING

EXHIBIT A

May 8, 2017

PROPERTY DESCRIPTION:

A STRIP OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTIES DESCRIBED IN THE FOLLOWING DEEDS: DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584, DEED RECORDED NOVEMBER 2, 1956 AT RECEPTION NO. 583830, DEED RECORDED APRIL 29, 1968 AT RECEPTION NO. 90877395, AND DEED RECORDED MARCH 1, 2012 AT RECEPTION NO. 3206319, COUNTY OF BOULDER, STATE OF COLORADO, SAID STRIP BEING THIRTY (30) FEET IN WIDTH, LYING FIFTEEN (15) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY AT RECEPTION NO. 3282584, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AS CONVEYED BY DEED RECORDED FEBRUARY 20, 1997 AT RECEPTION NO. 1678309; THENCE N00°23'01"W ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 632.82 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N05°03'58"W A DISTANCE OF 689.08 FEET, SAID POINT BEING ON THE CENTERLINE OF THE SOUTH BOULDER CAÑON DITCH; THENCE ALONG SAID CENTERLINE FOR THE FOLLOWING SEVENTEEN (17) COURSES:
1) S86°15'57"E A DISTANCE OF 62.09 FEET; 2) S74°23'24"E A DISTANCE OF 86.75 FEET;
3) S75°25'38"E A DISTANCE OF 85.68 FEET; 4) N88°37'21"E A DISTANCE OF 63.65 FEET;
5) N73°31'17"E A DISTANCE OF 144.26 FEET; 6) N75°31'21"E A DISTANCE OF 108.84 FEET;
7) N70°26'42"E A DISTANCE OF 261.93 FEET; 8) N72°36'35"E A DISTANCE OF 220.06 FEET;
9) N61°14'41"E A DISTANCE OF 140.98 FEET; 10) N60°09'19"E A DISTANCE OF 187.74 FEET;
11) N69°06'55"E A DISTANCE OF 155.86 FEET; 12) N62°07'11"E A DISTANCE OF 80.89 FEET;
13) S88°12'58"E A DISTANCE OF 42.37 FEET; 14) S47°24'28"E A DISTANCE OF 44.12 FEET;
15) S19°50'12"E A DISTANCE OF 43.07 FEET; 16) S27°03'51"E A DISTANCE OF 92.18 FEET;
17) S45°57'18"E A DISTANCE OF 8.49 FEET TO A POINT ON THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3206319, FROM WHENCE THE SOUTHEAST CORNER OF SAID PROPERTY BEARS S00°00'21"W A DISTANCE OF 53.58 FEET, SAID POINT BEING THE **POINT OF TERMINUS**, THE SIDELINES OF SAID STRIP BEING LENGTHENED OR SHORTENED TO TERMINATE AT THE SAID EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AND THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3206319;

CONTAINING 54,850 SQUARE FEET OR 1.259 ACRES, MORE OR LESS.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
JOHN P. EHRHART
29414
5/8/17

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

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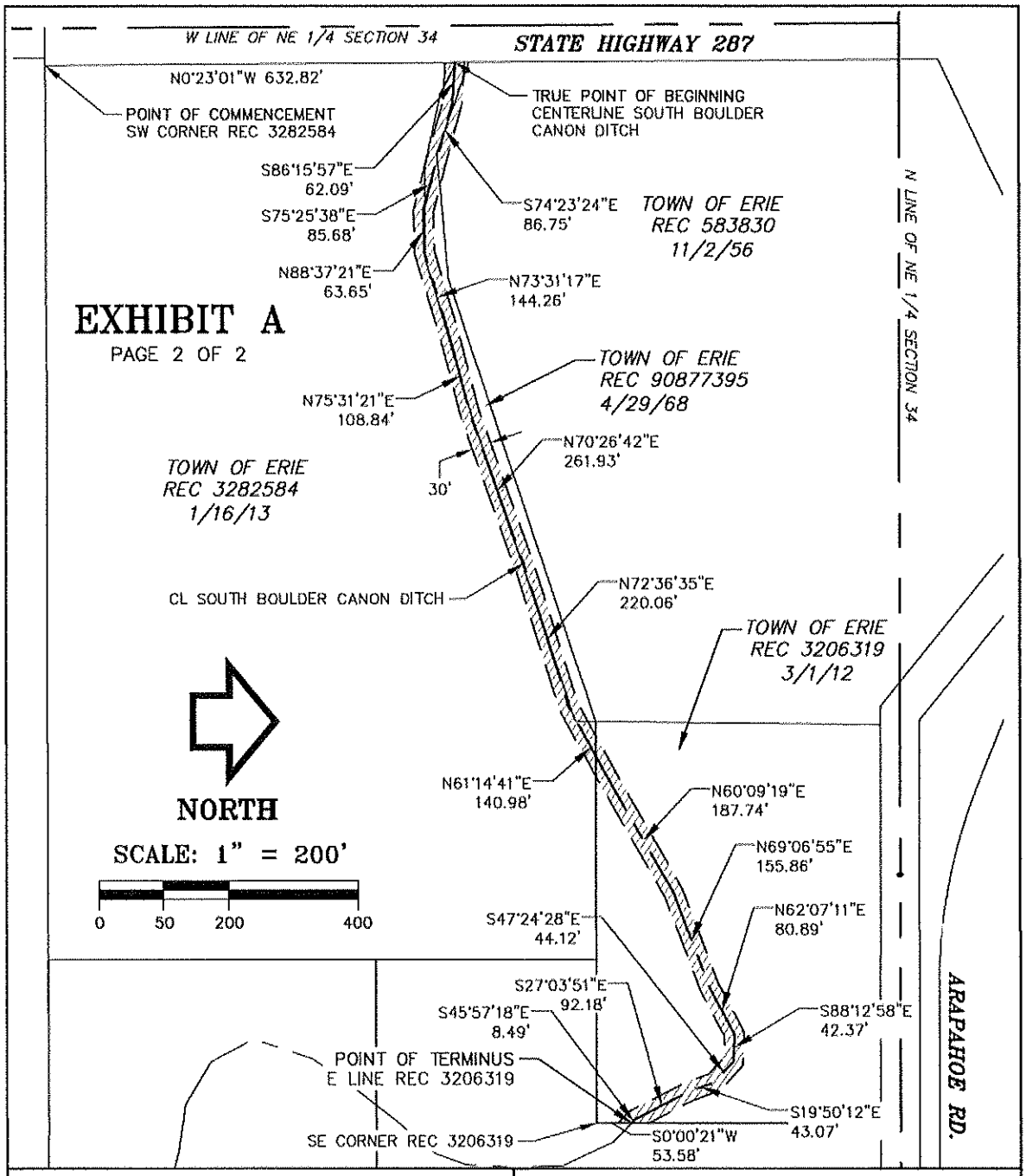

EHRHART
LAND SURVEYING

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TOWN OF ERIE
SITUATED IN THE NE 1/4 OF SEC. 34,
T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
5/8/17	1"=200'	S175051	JPE	MMS

EXHIBIT B
LEGAL DESCRIPTION OF SECOND DITCH SEGMENT

EHRHART
LAND SURVEYING

Exhibit B

May 8, 2017

PROPERTY DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTY DESCRIBED IN DEED RECORDED MAY 6, 2015 AT RECEPTION NO. 3443910, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF A PROPERTY DESCRIBED IN DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584; THENCE N00°01'03"W ALONG THE EAST LINE OF SAID PROPERTY A DISTANCE OF 92.76 FEET; THENCE N63°59'31"E A DISTANCE OF 239.61 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N55°59'07"W A DISTANCE OF 2000.09 FEET; THENCE N58°45'26"W A DISTANCE OF 80.73 FEET; THENCE N27°55'38"W A DISTANCE OF 85.40 FEET; THENCE N18°25'19"E A DISTANCE OF 84.68 FEET; THENCE N17°30'04"E A DISTANCE OF 17.18 FEET; THENCE N33°07'35"E A DISTANCE OF 58.64 FEET; THENCE N38°11'35"E A DISTANCE OF 56.94 FEET TO A POINT ON THE NORTH LINE OF SAID PROPERTY AT RECEPTION NO. 3443910; THENCE S89°57'13"E ALONG SAID NORTH LINE A DISTANCE OF 37.94 FEET; THENCE S37°38'19"W A DISTANCE OF 16.42 FEET; THENCE S38°11'35"W A DISTANCE OF 62.64 FEET; THENCE S33°07'35"W A DISTANCE OF 53.19 FEET; THENCE S17°30'04"W A DISTANCE OF 13.31 FEET; THENCE S18°25'19"W A DISTANCE OF 72.08 FEET; THENCE S27°55'38"E A DISTANCE OF 64.29 FEET; THENCE S58°45'26"E A DISTANCE OF 69.50 FEET; THENCE S81°20'20"E A DISTANCE OF 32.92 FEET; THENCE S63°59'52"W A DISTANCE OF 50.70 FEET TO THE **TRUE POINT OF BEGINNING**;

CONTAINING 11,500 SQUARE FEET OR 0.264 ACRE, MORE OR LESS.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
JOHN P. EHRHART
29414
5/8/17

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

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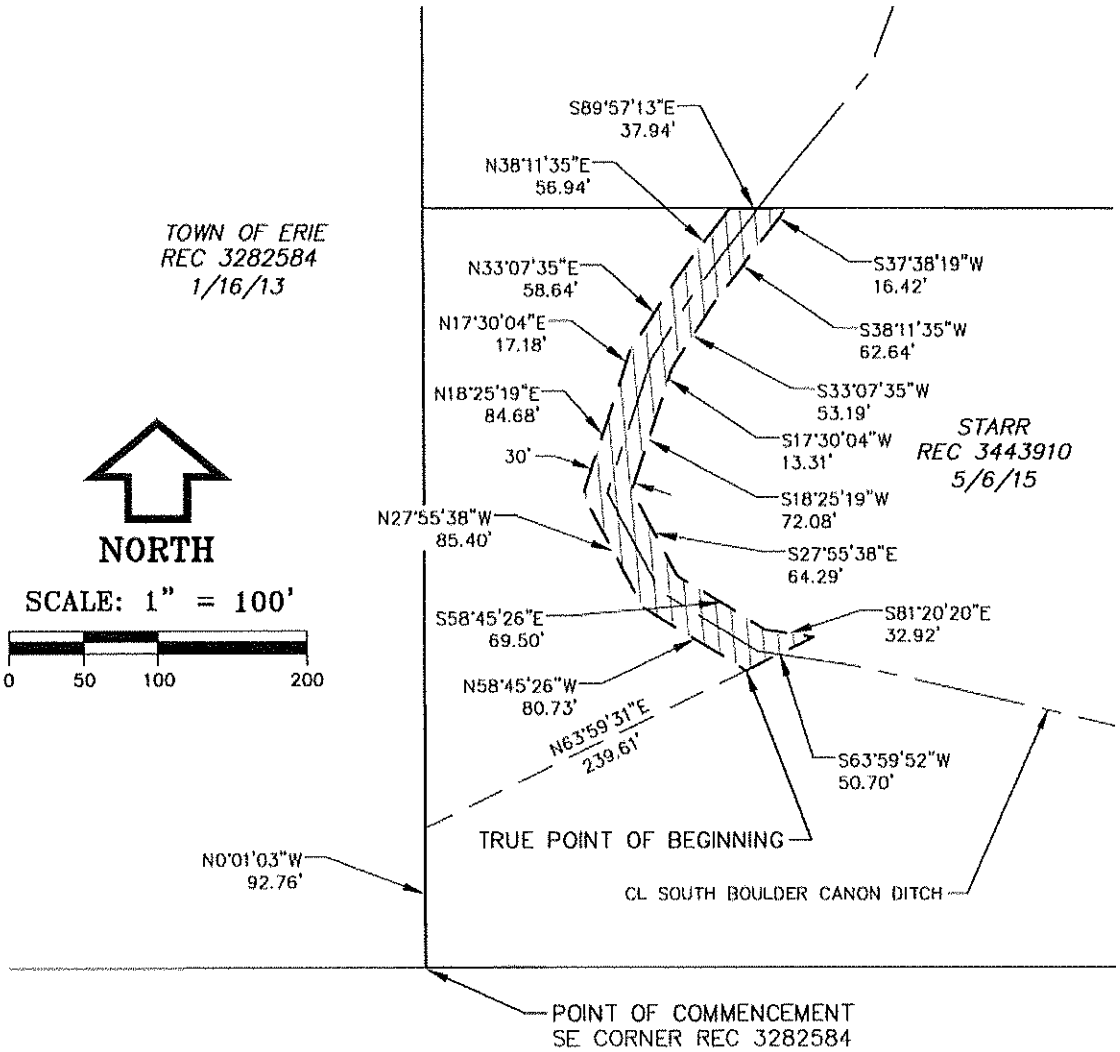
Exhibit B



A REPLAT OF BEACON HILL SUBDIVISION

EHRHART
LAND SURVEYING

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TOWN OF ERIE
SITUATED IN THE NE 1/4 OF SEC. 34, T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
5/8/17	1"=100'	S175051	JPE	MMS

EXHIBIT C
FORM OF QUITCLAIM DEED: DITCH COMPANY TO TOWN

QUITCLAIM DEED

THIS DEED is dated _____and is made between SOUTH BOULDER CANON DITCH COMPANY, a mutual ditch company duly organized and existing under and by virtue of the laws of the State of Colorado, the "Grantor," and the TOWN OF ERIE, a Colorado municipality duly organized and existing under and by virtue of the laws of the State of Colorado, the "Grantee," whose legal address is 645 Holbrook, P.O. Box 750, Erie, Colorado 80516.

WITNESS, that the Grantor, for and in consideration of the sum of TEN DOLLARS, ($10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, sell and QUITCLAIM unto the Grantee, its successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with any improvements thereon, located in the County of Boulder, State of Colorado, described as follows:

> The ditch easement containing the bottom, banks and ground on either side of the existing South Boulder Canon Ditch having a centerline with the legal description attached as Exhibit 1 through 3, and depicted in Exhibit 4; the intention of this deed is to convey all rights of Grantor in the ditch easement along the legally described centerline as attached;

also known by street address as: N/A
and assessor's schedule or parcel number: N/A

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, and its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereunto subscribed by its president, vice-president, or other head officer, and its corporate seal to be affixed, attested by its secretary or other appropriate officer on the date set forth above.

ATTEST:

_____
Wilma Ormsbee, Secretary

GRANTOR:

_____
Jody Lambert, President

STATE OF COLORADO)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this_____day of _____, 2018, by Jody Lambert as the President and Wilma Ormsbee as the Secretary of the Grantor, on behalf of the corporation.

Witness my hand and official seal.

My Commission Expires:_____.

(SEAL)

_____
Notary Public

EXHIBIT D
FORM OF QUITCLAIM DEED: DITCH COMPANY TO STARR

QUITCLAIM DEED

THIS DEED is dated _____and is made between SOUTH BOULDER CANON DITCH COMPANY, a mutual ditch company duly organized and existing under and by virtue of the laws of the State of Colorado, the "Grantor," and MATTHEW T. STARR AND KRISTEN R. STARR, whose address is 1425 N. 111th Street, Lafayette, Colorado 80026("Grantees").

WITNESS, that the Grantor, for and in consideration of the sum of TEN DOLLARS, ($10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, sell and QUITCLAIM unto the Grantees, their successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with any improvements thereon, located in the County of Boulder, State of Colorado, described as follows:

> The ditch easement containing the bottom, banks and ground on either side of the existing South Boulder Canon Ditch having a centerline with the legal description attached as Exhibit 1 through 3, and depicted in Exhibit 4; the intention of this deed is to convey all rights of Grantor in the ditch easement along the legally described centerline as attached;

also known by street address as: N/A
and assessor's schedule or parcel number: N/A

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantees, and their successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereunto subscribed by its president, vice-president, or other head officer, and its corporate seal to be affixed, attested by its secretary or other appropriate officer on the date set forth above.

ATTEST:

_____
Wilma Ormsbee, Secretary

GRANTOR:

_____
Jody Lambert, President

STATE OF COLORADO)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this_____day of _____, 2018, by Jody Lambert as the President and Wilma Ormsbee as the Secretary of the Grantor, on behalf of the corporation.

Witness my hand and official seal.

My Commission Expires:_____.

(SEAL)

_____
Notary Public

EXHIBIT E
FORM OF NEW EASEMENT: TOWN TO DITCH COMPANY

EASEMENT DEED
(TOWN OF ERIE AND SOUTH BOULDER CANON DITCH COMPANY)

THIS EASEMENT DEED is made this_____ day of_____, 2018, between the Town of Erie, a Colorado municipality, whose address is 645 Holbrook Avenue, Erie, Colorado 80516 ("Grantor") and the South Boulder Canon Ditch Company, a Colorado mutual ditch company, whose address is P.O. Box 750, Erie, Colorado 80516 ("Grantee"). Grantor and Grantee are referred to collectively as the "Parties."

RECITALS

WHEREAS, Grantor is a municipality through which a segment of the South Boulder Canon Ditch ("Ditch") is located ("Ditch Segment"), which is described on **Exhibit 1** hereto; and

WHEREAS, Grantee historically owned an appurtenant prescriptive easement for the operation, maintenance, repair, and replacement of the Ditch ("Prescriptive Easement") for the entire Ditch, including the Ditch Segment; and

WHEREAS, pursuant to the Easement Agreement between the Parties, executed _____ and recorded with the Clerk and Recorder of _____ County at_____on_____ ("Easement Agreement"), the Parties agreed that Grantee would convey the Prescriptive Easement for the Ditch Segment to Grantor in exchange for Grantor conveying to Grantee a new ditch easement in which the Ditch Company's water will be conveyed in a pipe, to be installed and maintained by Grantor, as further described below; and

WHEREAS, pursuant to Paragraph 3 of the Easement Agreement, Grantee executed a Quitclaim Deed on_____, as recorded with the Clerk and Recorder of_____County at_____on_____, conveying to Grantor all of the Ditch Company's interest in the Ditch Segment; and

WHEREAS, pursuant to Paragraph 4 of the Easement Agreement, Grantor agreed to execute this Easement Deed to convey to Grantee a new, 30-foot-wide easement in which Grantor will install and maintain a pipeline and other appurtenant facilities to convey Grantee's water through Grantor's property.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement**. Grantor hereby grants, bargains, sells, conveys, and confirms to Grantee, its successors and assigns, a permanent, non-exclusive, 30-foot- wide easement as further described on **Exhibit 2** hereto ("Easement"), for the purposes of accessing, using, and occupying the Easement for delivery of Grantee's water through the Easement and accessing, operating, inspecting, maintaining, repairing, and replacing the Ditch, including emergency access for such purposes.

2. **Easement Agreement.** This Easement Deed shall be subject to the terms of the Easement Agreement, including but not limited to Grantor's obligations to install a pipeline and other appurtenant facilities in the Easement to convey Grantee's water through Grantor's property, pursuant to Paragraphs 4, 5, and 7 of the Easement Agreement.

3. **Grantor's Access and Use.** Grantor reserves the right to access, occupy, and use the Easement for any purpose consistent with the rights and privileges granted herein that will not unreasonably interfere with Grantee's use of the Easement.

4. **Governmental Immunity**. Nothing herein shall be deemed to waive Grantor's governmental immunity.

5. **Binding Effect**. This Easement Deed shall run with the land and extend to and bind the Parties, their heirs, successors and assigns.

6. **Recordation**. This Easement Deed, including Exhibits 1 and 2, shall be recorded with the Clerk and Recorder of County, at Grantor's expense.

IN WITNESS WHEREOF, Grantor has executed this Easement Deed on the date set forth above.

TOWN OF ERIE

By: _____
Jennifer Carroll, Mayor

ATTEST:

By: _____
Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this_____day of _____, 2018, by Jennifer Carroll as the Mayor of the Town of Erie, on behalf of the Town of Erie.

Witness my hand and official seal.

My Commission Expires:_____.

(SEAL)

_____
Notary Public

EXHIBIT 1
LEGAL DESCRIPTION OF DITCH SEGMENT

EHRHART
LAND SURVEYING

EXHIBIT 1

May 8, 2017

PROPERTY DESCRIPTION:

A STRIP OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTIES DESCRIBED IN THE FOLLOWING DEEDS: DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584, DEED RECORDED NOVEMBER 2, 1956 AT RECEPTION NO. 583830, DEED RECORDED APRIL 29, 1968 AT RECEPTION NO. 90877395, AND DEED RECORDED MARCH 1, 2012 AT RECEPTION NO. 3206319, COUNTY OF BOULDER, STATE OF COLORADO, SAID STRIP BEING THIRTY (30) FEET IN WIDTH, LYING FIFTEEN (15) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY AT RECEPTION NO. 3282584, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AS CONVEYED BY DEED RECORDED FEBRUARY 20, 1997 AT RECEPTION NO. 1678309; THENCE N00°23'01"W ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 632.82 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N05°03'58"W A DISTANCE OF 689.08 FEET, SAID POINT BEING ON THE CENTERLINE OF THE SOUTH BOULDER CAÑON DITCH; THENCE ALONG SAID CENTERLINE FOR THE FOLLOWING SEVENTEEN (17) COURSES:
1) S86°15'57"E A DISTANCE OF 62.09 FEET; 2) S74°23'24"E A DISTANCE OF 86.75 FEET;
3) S75°25'38"E A DISTANCE OF 85.68 FEET; 4) N88°37'21"E A DISTANCE OF 63.65 FEET;
5) N73°31'17"E A DISTANCE OF 144.26 FEET; 6) N75°31'21"E A DISTANCE OF 108.84 FEET;
7) N70°26'42"E A DISTANCE OF 261.93 FEET; 8) N72°36'35"E A DISTANCE OF 220.06 FEET;
9) N61°14'41"E A DISTANCE OF 140.98 FEET; 10) N60°09'19"E A DISTANCE OF 187.74 FEET;
11) N69°06'55"E A DISTANCE OF 155.86 FEET; 12) N62°07'11"E A DISTANCE OF 80.89 FEET;
13) S88°12'58"E A DISTANCE OF 42.37 FEET; 14) S47°24'28"E A DISTANCE OF 44.12 FEET;
15) S19°50'12"E A DISTANCE OF 43.07 FEET; 16) S27°03'51"E A DISTANCE OF 92.18 FEET;
17) S45°57'18"E A DISTANCE OF 8.49 FEET TO A POINT ON THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3206319, FROM WHENCE THE SOUTHEAST CORNER OF SAID PROPERTY BEARS S00°00'21"W A DISTANCE OF 53.58 FEET, SAID POINT BEING THE **POINT OF TERMINUS**, THE SIDELINES OF SAID STRIP BEING LENGTHENED OR SHORTENED TO TERMINATE AT THE SAID EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AND THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3206319;

CONTAINING 54,850 SQUARE FEET OR 1.259 ACRES, MORE OR LESS.

COLORADO REGISTERED JOHN P. EHRHART 29414 5/8/17 PROFESSIONAL LAND SURVEYOR

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

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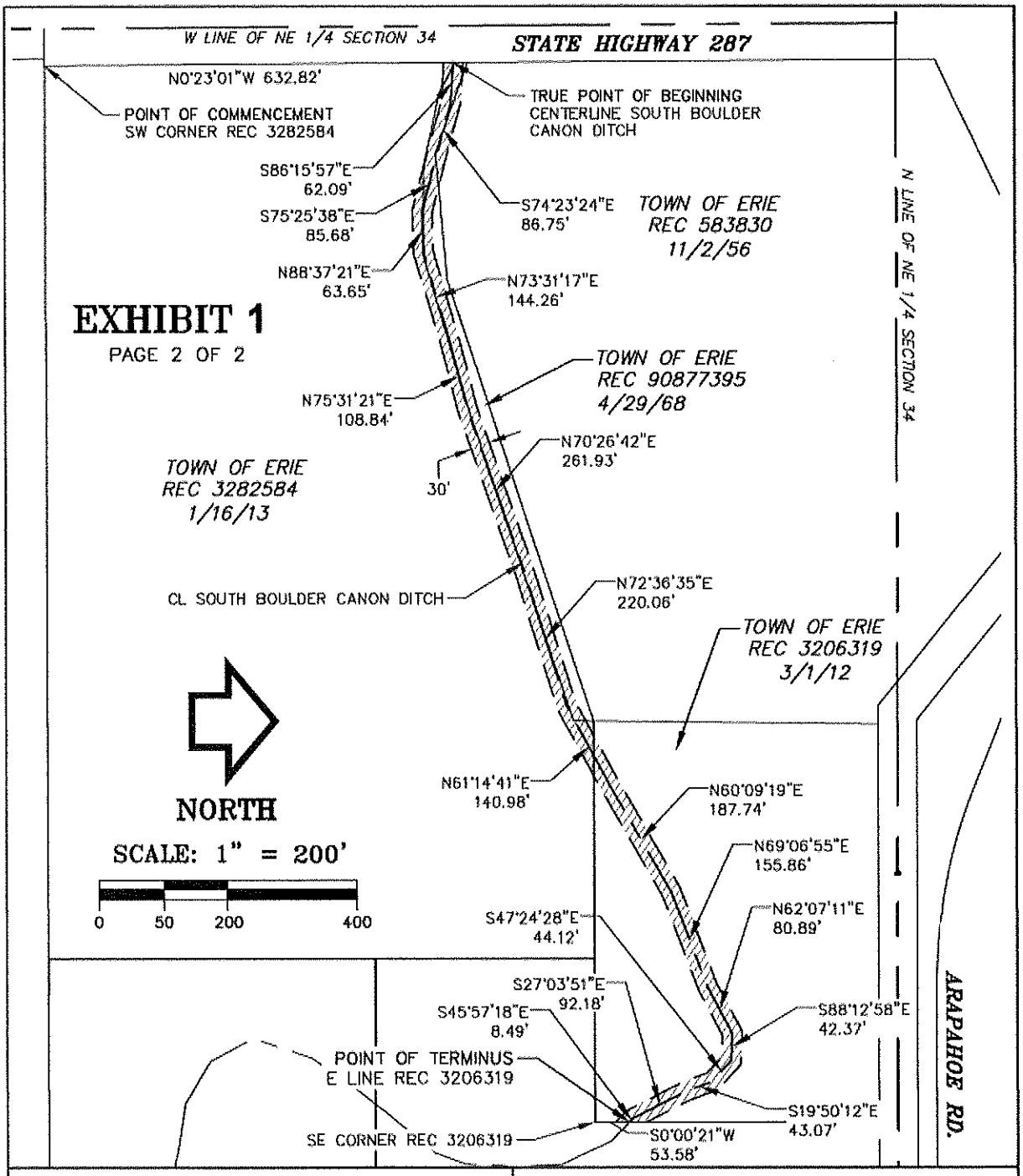

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TOWN OF ERIE
SITUATED IN THE NE 1/4 OF SEC. 34,
T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
5/8/17	1"=200'	S175051	JPE	MMS

EXHIBIT 2
LEGAL DESCRIPTION OF EASEMENT

EHRHART
LAND SURVEYING

EXHIBIT 2

May 8, 2017

PROPERTY DESCRIPTION:

A 30 FOOT STRIP OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTIES DESCRIBED IN THE FOLLOWING DEEDS: DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584, DEED RECORDED NOVEMBER 2, 1956 AT RECEPTION NO. 583830, AND DEED RECORDED APRIL 29, 1968 AT RECEPTION NO. 90877395, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY AT RECEPTION NO. 3282584, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AS CONVEYED BY DEED RECORDED FEBRUARY 20, 1997 AT RECEPTION NO. 1678309, SAID POINT ALSO BEING 57.29 FEET EAST OF THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE N00°23'01"W ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 64.00 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N02°56'56"W A DISTANCE OF 1256.86 FEET; THENCE N00°23'01"W CONTINUING ALONG SAID EAST LINE A DISTANCE OF 583.86 FEET TO A POINT ON THE NORTH LINE OF A 30 FOOT PRESCRIPTIVE DITCH EASEMENT; THENCE S86°15'57"E ALONG SAID NORTH LINE A DISTANCE OF 30.08 FEET; THENCE S00°23'01"E ALONG A LINE 30 FEET EAST OF AND PARALLEL WITH THE SAID EAST RIGHT OF WAY LINE OF HIGHWAY 287 A DISTANCE OF 551.70 FEET; THENCE N89°36'59"E A DISTANCE OF 1295.26 FEET; THENCE N63°59'38"E A DISTANCE OF 58.77 FEET TO A POINT ON THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3282584; THENCE S00°01'03"E ALONG SAID EAST LINE A DISTANCE OF 33.38 FEET TO A POINT FROM WENCE THE SOUTHEAST CORNER OF SAID PROPERTY AT RECEPTION NO. 3282584 BEARS S00°01'03"E A DISTANCE OF 92.76 FEET; THENCE S63°59'35"W A DISTANCE OF 50.96 FEET; THENCE S89°36'59"W A DISTANCE OF 1332.09 FEET TO THE **TRUE POINT OF BEGINNING;**

CONTAINING 58,090 SQUARE FEET OR 1.334 ACRES, MORE OR LESS.

COLORADO REGISTERED
JOHN P. EHRHART
29414
5/8/17
PROFESSIONAL LAND SURVEYOR

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

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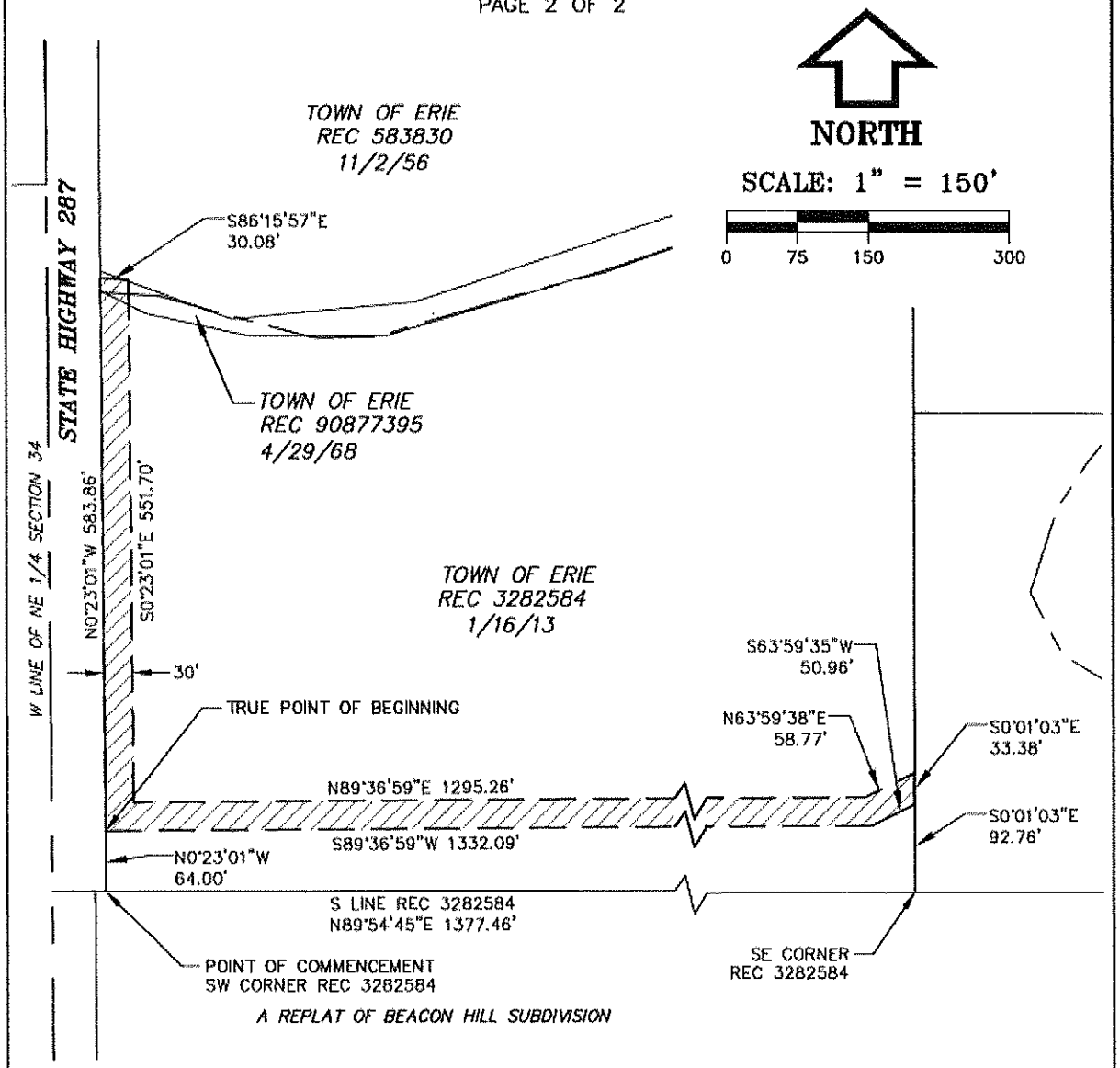
EXHIBIT 2

PAGE 2 OF 2



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LAND SURVEYING

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TOWN OF ERIE
SITUATED IN THE NE 1/4 OF SEC. 34,
T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
5/8/17	1"=150'	S175051	JPE	MMS

EXHIBIT F
FORM OF NEW EASEMENT: STARR TO DITCH COMPANY

EASEMENT DEED
(MATTHEW T. AND KRISTEN R. STARR AND
SOUTH BOULDER CANON DITCH COMPANY)

THIS EASEMENT DEED is made this_____ day of_____, 2018, between Matthew T. Starr and Kristen R. Starr, whose address is 1425 N. 111th Street, Lafayette, Colorado 80026 ("Grantors") and the South Boulder Canon Ditch Company, a Colorado mutual ditch company, whose address is P.O. Box 750, Erie, Colorado 80516 ("Grantee"). Grantors and Grantee are referred to collectively as the "Parties."

RECITALS

WHEREAS, Grantors own the property located at 1425 N. 111th Street, Lafayette, Colorado 80026 through which a segment of the South Boulder Canon Ditch ("Ditch") is located ("Ditch Segment"), which is described on **Exhibit 1** hereto; and

WHEREAS, Grantee historically owned an appurtenant prescriptive easement for the operation, maintenance, repair, and replacement of the Ditch ("Prescriptive Easement") for the entire Ditch, including the Ditch Segment; and

WHEREAS, pursuant to the Easement Agreement between the Parties, executed _____ and recorded with the Clerk and Recorder of _____ County at_____on_____("Easement Agreement"), the Parties agreed that Grantee would convey their rights in the Prescriptive Easement for the Ditch Segment to Grantors in exchange for Grantors conveying to Grantee a new ditch easement in which the Ditch Company's water will be conveyed in a pipe, to be installed and maintained the Town of Erie, pursuant to the terms of the Easement Agreement; and

WHEREAS, pursuant to Paragraph 3 of the Easement Agreement, Grantee executed a Quitclaim Deed on_____, as recorded with the Clerk and Recorder of_____County at_____on _____, conveying to Grantors all of the Ditch Company's interest in the Ditch Segment; and

WHEREAS, pursuant to Paragraph 4 of the Easement Agreement, Grantors agreed to execute this Easement Deed to convey to Grantee a new, 30-foot-wide easement in which the Town of Erie will install and maintain a pipeline and other appurtenant facilities pursuant to the Easement Agreement to convey Grantee's

water through Grantors' property.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement**. Grantors hereby grant, bargain, sell, convey, and confirm to Grantee, its successors and assigns, a permanent, non-exclusive, 30-foot-wide easement as further described on **Exhibit 2** hereto ("Easement"), for the purposes of accessing, using, and occupying the Easement for delivery of Grantee's water through the Easement and accessing, operating, inspecting, maintaining, repairing, and replacing the Ditch, including emergency access for such purposes.

2. **Easement Agreement.** This Easement Deed shall be subject to the terms of the Easement Agreement in all respects.

3. **Grantors' Access and Use.** Grantors reserve the right to access, occupy, and use the Easement for any purpose consistent with the rights and privileges granted herein that will not unreasonably interfere with Grantee's use of the Easement, as more fully set forth in the Easement Agreement.

4. **Binding Effect**. This Easement Deed shall run with the land and extend to and bind the Parties, their heirs, successors and assigns.

5. **Recordation**. This Easement Deed, including Exhibits 1 and 2, shall be recorded with the Clerk and Recorder of_____County, at Grantee's expense.

IN WITNESS WHEREOF, Grantors have executed this Easement Deed on the date set forth above.

GRANTORS:

Matthew T. Starr

Kristen R. Starr

(remainder of page intentionally left blank)

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 11th day of July, 2018, by Matthew T. Starr.

Witness my hand and official seal.

My Commission Expires: 4/25/20.

(SEAL)

MARY ELIZABETH COMMANDER
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20164015752
My Commission Expires 4/25/2020

Mary C
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 11th day of July, 2018, by Kristen R. Starr.

Witness my hand and official seal.

My Commission Expires: 4/25/20.

(SEAL)

MARY ELIZABETH COMMANDER
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20164015752
My Commission Expires 4/25/2020

MC

Mary C
Notary Public

MARY ELIZABETH COMMANDER
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20164015752
My Commission Expires 4/25/2020

EXHIBIT 1
LEGAL DESCRIPTION OF DITCH SEGMENT

EHRHART
LAND SURVEYING

EXHIBIT 1

May 8, 2017

PROPERTY DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTY DESCRIBED IN DEED RECORDED MAY 6, 2015 AT RECEPTION NO. 3443910, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF A PROPERTY DESCRIBED IN DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584; THENCE N00°01'03"W ALONG THE EAST LINE OF SAID PROPERTY A DISTANCE OF 92.76 FEET; THENCE N63°59'31"E A DISTANCE OF 239.61 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N55°59'07"W A DISTANCE OF 2000.09 FEET; THENCE N58°45'26"W A DISTANCE OF 80.73 FEET; THENCE N27°55'38"W A DISTANCE OF 85.40 FEET; THENCE N18°25'19"E A DISTANCE OF 84.68 FEET; THENCE N17°30'04"E A DISTANCE OF 17.18 FEET; THENCE N33°07'35"E A DISTANCE OF 58.64 FEET; THENCE N38°11'35"E A DISTANCE OF 56.94 FEET TO A POINT ON THE NORTH LINE OF SAID PROPERTY AT RECEPTION NO. 3443910; THENCE S89°57'13"E ALONG SAID NORTH LINE A DISTANCE OF 37.94 FEET; THENCE S37°38'19"W A DISTANCE OF 16.42 FEET; THENCE S38°11'35"W A DISTANCE OF 62.64 FEET; THENCE S33°07'35"W A DISTANCE OF 53.19 FEET; THENCE S17°30'04"W A DISTANCE OF 13.31 FEET; THENCE S18°25'19"W A DISTANCE OF 72.08 FEET; THENCE S27°55'38"E A DISTANCE OF 64.29 FEET; THENCE S58°45'26"E A DISTANCE OF 69.50 FEET; THENCE S81°20'20"E A DISTANCE OF 32.92 FEET; THENCE S63°59'52"W A DISTANCE OF 50.70 FEET TO THE **TRUE POINT OF BEGINNING**;

CONTAINING 11,500 SQUARE FEET OR 0.264 ACRE, MORE OR LESS.

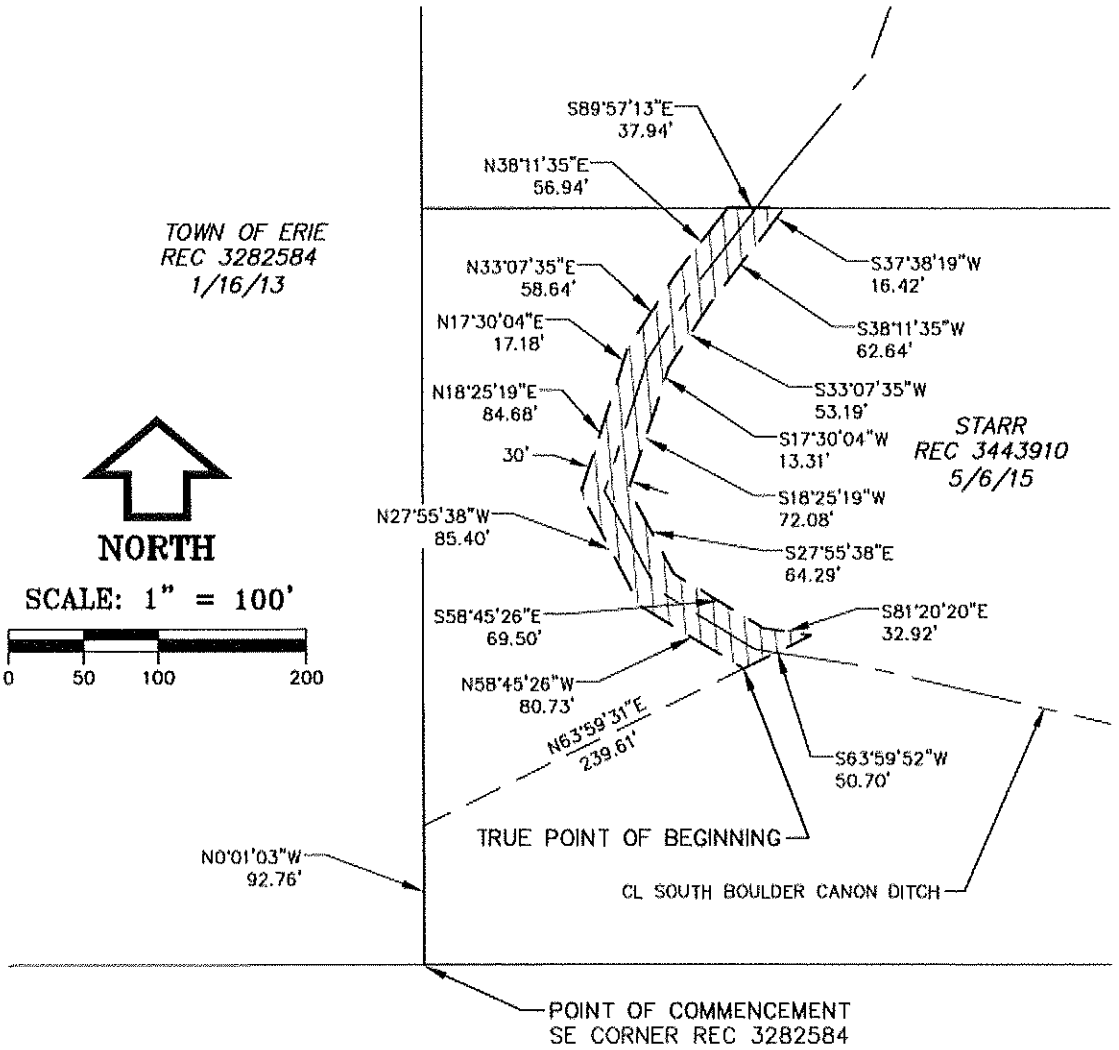
COLORADO REGISTERED JOHN P. EHRHART 29414 5/8/17 PROFESSIONAL LAND SURVEYOR

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

OFFICE: 303-828-3340 • P.O. Box 930 • Erie, Colorado 80516
www.coloradols.com • john@coloradols.com

EXHIBIT 1



A REPLAT OF BEACON HILL SUBDIVISION

EHRHART
LAND SURVEYING

P.O. Box 930 • Erie, Colorado 80516
(303) 828-3340 • www.coloradols.com

TOWN OF ERIE
SITUATED IN THE NE 1/4 OF SEC. 34, T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
5/8/17	1"=100'	S175051	JPE	MMS

EXHIBIT 2
LEGAL DESCRIPTION OF EASEMENT

EHRHART
LAND SURVEYING

EXHIBIT 2

May 8, 2017

PROPERTY DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTY DESCRIBED IN DEED RECORDED MAY 6, 2015 AT RECEPTION NO. 3443910, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF A PROPERTY DESCRIBED IN DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584; THENCE N00°01'03"W ALONG THE EAST LINE OF SAID PROPERTY A DISTANCE OF 92.76 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N49°41'11"W A DISTANCE OF 1891.79 FEET; THENCE N00°01'03"W CONTINUING ALONG SAID EAST LINE A DISTANCE OF 33.38 FEET; THENCE N63°59'35"E A DISTANCE OF 241.36 FEET TO A POINT ON THE NORTHERLY LINE OF A 30 FOOT PRESCRIPTIVE DITCH EASEMENT; THENCE S58°45'26"E ALONG SAID NORTHERLY LINE A DISTANCE OF 13.41 FEET; THENCE S81°20'20"E CONTINUING ALONG SAID NORTHERLY LINE A DISTANCE OF 32.92 FEET; THENCE S63°59'35"W A DISTANCE OF 290.31 FEET TO THE **TRUE POINT OF BEGINNING**;

CONTAINING 7,890 SQUARE FEET OR 0.181 ACRE, MORE OR LESS.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
JOHN P. EHRHART
29414
5/8/17

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

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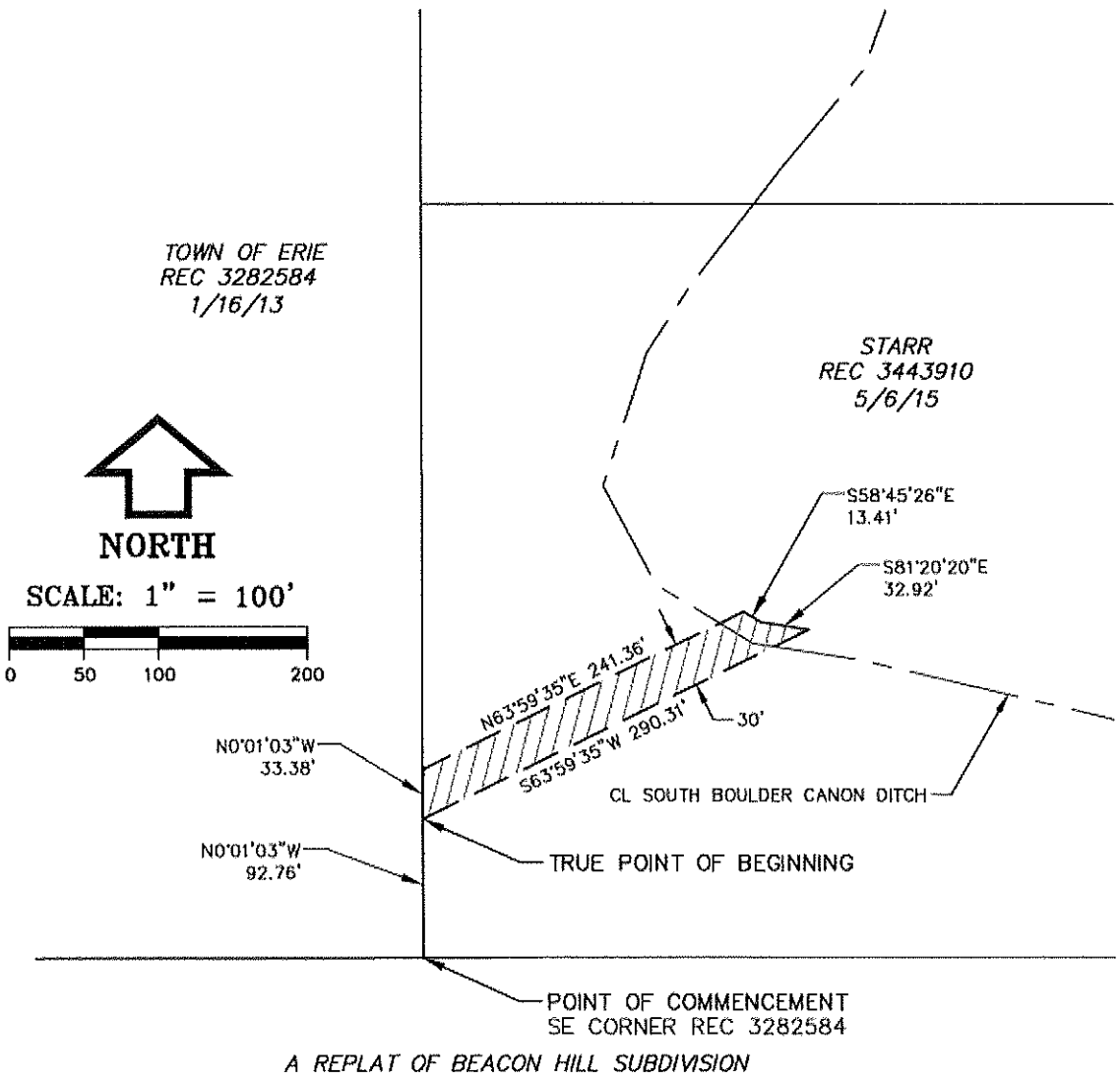
EXHIBIT 2

PAGE 2 OF 2



A REPLAT OF BEACON HILL SUBDIVISION

EHRHART
LAND SURVEYING

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(303) 828-3340 • www.coloradols.com

TOWN OF ERIE
SITUATED IN THE NE 1/4 OF SEC. 34,
T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
5/8/17	1"=100'	S175051	JPE	MMS

EXHIBIT G
TEMPORARY CONSTRUCTION EASEMENT DEED

This Temporary Construction Easement Deed is made this_____day of _____, 2018, by and between Matthew T. Starr and Kristen R. Starr, whose address is 1425 N. 111th Street, Lafayette, Colorado 80026, ("Grantors"), and the Town of Erie, a Colorado municipality ("Grantee").

Grantors, for and in consideration of the sum of Ten (10) Dollars, paid by Grantee to the Grantors, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and by this Temporary Construction Easement Deed does grant, bargain, sell, convey, and confirm to the Grantee, its contractors, successors and assigns, a temporary non-exclusive easement on and under the property described on **Exhibit A** attached hereto, except 60 feet wide rather than 30 feet wide, located in Boulder County, Colorado ("Property"), for the purposes of:

1. Surveying, locating, installing, and constructing a buried water pipe and other appurtenant facilities on the Property; and
2. Cutting and clearing trees, brush, debris, and other obstructions on the Property that might interfere with Grantee's activities on the Property; provided, that, prior to commencement of the work, Grantee or its contractor shall inform Grantors of the expected scope of such clearing of trees, brush, debris, and other obstructions, and will try to reasonably accommodate requests by Grantors to preserve certain trees or other objects.

The term of this Temporary Construction Easement shall begin on the date set forth above and shall terminate on_____201 .

During the term of this Temporary Construction Easement, Grantors shall not place, erect, install, or permit any above- or below-ground building, structure, or other obstruction on the Property that may interfere with the Grantee's activities on the Property hereunder.

Grantee shall:

1. Restore the surface of the ground to its condition prior to Grantee's activities on the Property as more fully set forth in the Easement Agreement;
2. Restore fences, landscaping, other improvements to the conditions existing prior to Grantee's activities on the Property as more fully set forth in the Easement Agreement; and
3. Pay the Grantor the actual damages to growing crops, livestock, and other

items caused by Grantee's activities on the Property.

Grantors and Grantee entered into an Easement Agreement with each other and the South Boulder Canon Ditch Company, dated , 2018 ("Easement Agreement"). Notwithstanding anything contained herein to the contrary, the Easement Agreement is incorporated herein by reference and in the event of any conflict between the terms hereof and the terms of the Easement Agreement, the terms and conditions of the Easement Agreement shall control in all respects.

Grantors warrant and will forever defend the title to the Property.

GRANTORS:

Matthew T. Starr

Kristen R. Starr

(remainder of page intentionally left blank)

STATE OF COLORADO)
) ss
COUNTY OF Boulder)

I hereby certify that the foregoing instrument was acknowledged before me on this 11th day of July, 2018, by Matthew T. Starr.

WITNESS my hand and official seal.

My commission expires: 4/25/20

(SEAL)

MARY ELIZABETH COMMANDER
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20164015752
My Commission Expires 4/25/2020

Mary Commander
Notary Public

STATE OF COLORADO)
) ss
COUNTY OF Boulder)

I hereby certify that the foregoing instrument was acknowledged before me on this 11th day of July, 2018, by Kristen R. Starr.

WITNESS my hand and official seal.

My commission expires: 4/25/20

(SEAL)

MARY ELIZABETH COMMANDER
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20164015752
My Commission Expires 4/25/2020

Mary Commander
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT

EHRHART
LAND SURVEYING

EXHIBIT A

June 7, 2018

PROPERTY DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTY DESCRIBED IN DEED RECORDED MAY 6, 2015 AT RECEPTION NO. 3443910, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF A PROPERTY DESCRIBED IN DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584; THENCE N00°01'03"W ALONG THE EAST LINE OF SAID PROPERTY A DISTANCE OF 76.08 FEET TO THE **TRUE POINT OF BEGINNING**, FROM WHENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N49°18'12"W A DISTANCE OF 1902.63 FEET; THENCE N00°01'03"W CONTINUING ALONG SAID EAST LINE A DISTANCE OF 66.75 FEET; THENCE N63°59'35"E A DISTANCE OF 242.23 FEET; THENCE S58°45'26"E A DISTANCE OF 18.60 FEET; THENCE S81°20'20"E CONTINUING ALONG SAID NORTHERLY LINE A DISTANCE OF 77.98 FEET; THENCE S63°59'35"W A DISTANCE OF 345.68 FEET TO THE **TRUE POINT OF BEGINNING**;

CONTAINING 17,359 SQUARE FEET OR 0.399 ACRE, MORE OR LESS.

COLORADO REGISTERED
JOHN P. EHRHART
29414
6/7/18
PROFESSIONAL LAND SURVEYOR

John P. Ehrhart P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP , LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

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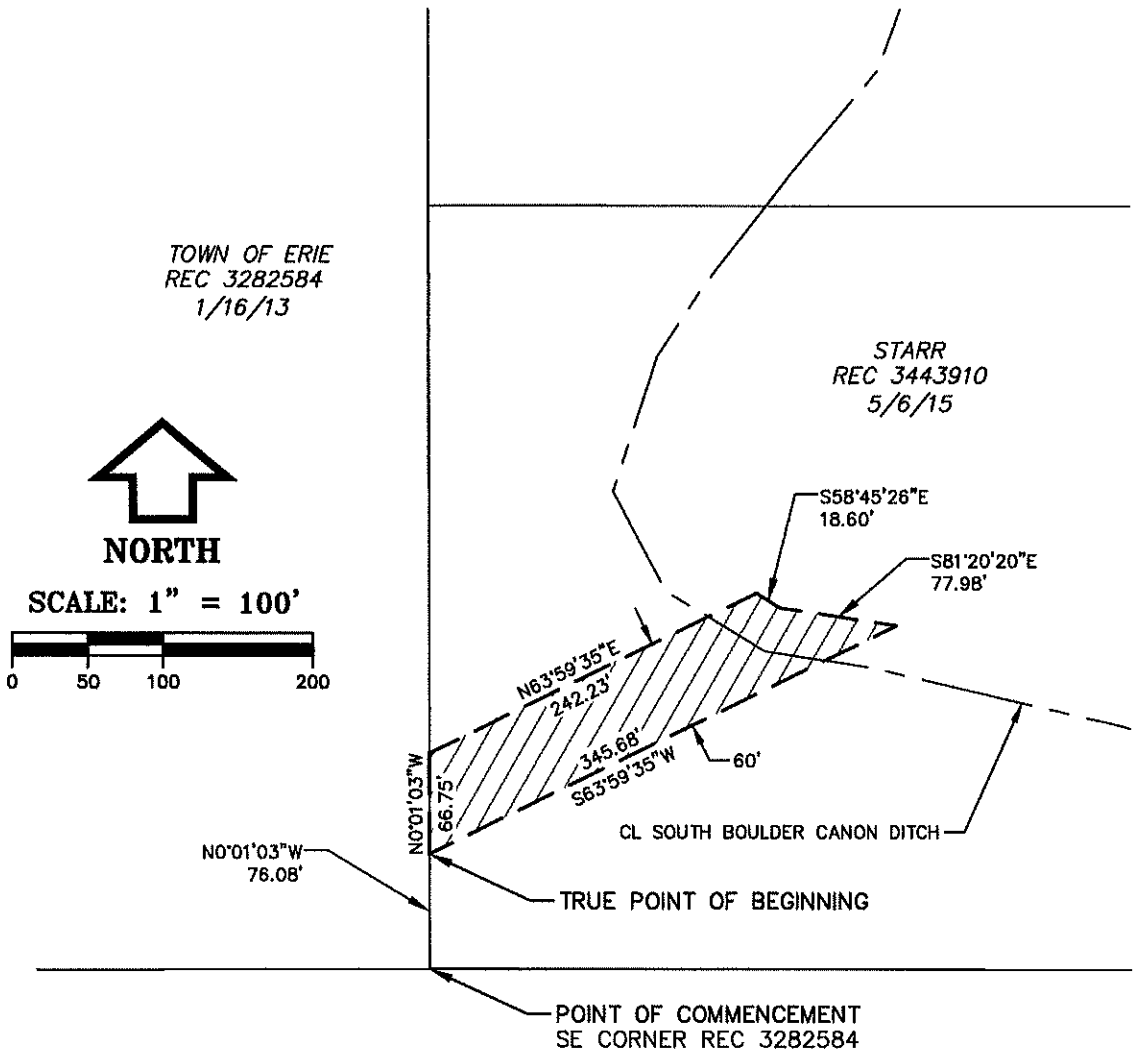
EXHIBIT A

PAGE 2 OF 2



A REPLAT OF BEACON HILL SUBDIVISION

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T1N, R69W OF THE 6TH P.M.
BOULDER COUNTY, COLORADO

DATE:	SCALE	JOB NO.:	DRAWN:	CHECKED:
6/7/18	1"=100'	S175051	JPE	MMS