

**GRANT OF PERMANENT ACCESS
AND UTILITIES EASEMENT AGREEMENT**

THIS GRANT OF PERMANENT ACCESS AND UTILITIES 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 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 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 (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 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.* Aside from the proposed driveway as described below, 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 unless pre-approved and agreed upon in writing by Grantee. Any unauthorized improvement or structure or item placed on the Easement 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 Easement Property, except for such prohibitions as are contained herein, and except for such use which would endanger or interfere with the rights of the Grantee in its use of the Easement. If Grantor constructs or places any unauthorized improvement, 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. Notwithstanding the above, Grantor shall have the right to construct a driveway across the Easement Property in conformance with all Town of Erie codes and requirements. Grantor's right to construct a driveway across the Easement Property shall not grant Grantor any rights of access to the Erie Airport. Access to the Erie Airport shall be dependent upon Town of Erie, Erie Airport and FAA codes and requirements.

5. *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.

6. *Non-exclusive Use.* The Grantee agrees, following written request to 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, including fences, must be approved in writing by the Grantee prior to installation.

7. *Damage, Maintenance of Grantor's Improvements.* Grantee shall restore the surface of the Easement Property in the same condition that existed on the date of grant of the Easement, subject to the Improvements allowed herein. 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 to Grantee's acts or omissions, the Grantee will repair and or replace the said improvements at Grantee's expense.

8. *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. Grantee shall provide ten (10) days notice to Grantor in the event of any Grantee scheduled maintenance or repair of the Improvements that limits Grantors use of said driveway. If said maintenance or repair is more than 7 days then Grantee will provide a reasonable alternative for use of driveway. Emergency repairs are exempt from this condition.

9. *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.

10. *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.

11. *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.

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 pages]

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: JUNELLE M. FITZGERALD AND KEVIN R. FITZGERALD

By: Junelle M. Fitzgerald
Junelle M. Fitzgerald

By: Kevin R. Fitzgerald
Kevin R. Fitzgerald

STATE OF COLORADO)
) ss.
COUNTY OF Mesa)

The foregoing instrument was acknowledged before me this 13 day of May, 2016, by Junelle M. Fitzgerald.

WITNESS my hand and official seal.

My commission expires: April 21, 2017

Kathleen M. Benson-Smith
Notary Public

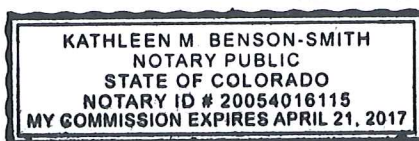
STATE OF COLORADO)
) ss.
COUNTY OF Mesa)

The foregoing instrument was acknowledged before me this 13 day of May, 2016, by Kevin R. Fitzgerald.

WITNESS my hand and official seal.

My commission expires: April 17, 2017

Notary Public



GRANTEE: TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, Town Clerk

7/17/15

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”

[Easement Property]

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 40 FOOT WIDE PERMANENT EASEMENT FOR UTILITY PURPOSES 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 SAID TRACT H, SOUTH 89°41'31" WEST, A DISTANCE OF 236.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7, AND THE POINT OF BEGINNING;

THENCE ALONG THE SOUTH LINE OF SAID LOT 7, SOUTH 89°41'31" WEST, A DISTANCE OF 41.00 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 13°00'23" WEST, A DISTANCE OF 474.47 FEET;

THENCE SOUTH 81°53'02" WEST, A DISTANCE OF 80.59 FEET, TO A POINT ON A

NON-TANGENT CURVE ON THE SOUTHEASTERLY RIGHT-OF-WAY OF BARON COURT;

THENCE ALONG SAID RIGHT-OF-WAY 46.36 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, AN INCLUDED ANGLE OF 53°07'48" AND SUBTENDED BY A CHORD BEARING NORTH 18°26'56" EAST, A DISTANCE OF 44.72 FEET, TO A POINT ON THE NORTHERLY LINE OF SAID LOT 7;

THENCE DEPARTING SAID RIGHT-OF-WAY, AND ALONG SAID NORTHERLY LINE, NORTH

81°53'02" EAST, A DISTANCE OF 97.31 FEET TO THE NORTHEAST CORNER OF SAID LOT 7;

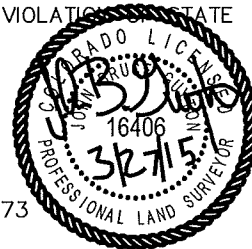
THENCE ALONG THE EASTERLY LINE OF SAID LOT 7, SOUTH 13°00'23" EAST, A DISTANCE OF 520.21 FEET, TO THE SOUTHEAST CORNER OF SAID LOT 7, AND THE POINT OF BEGINNING;

SAID EASEMENT CONTAINING 23,293 SQ.FT. OR 0.53 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 (C)
DRAWN BY: T. HENDERSON
DATE: JULY 25, 2013
REVISION: JANUARY 8, 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.

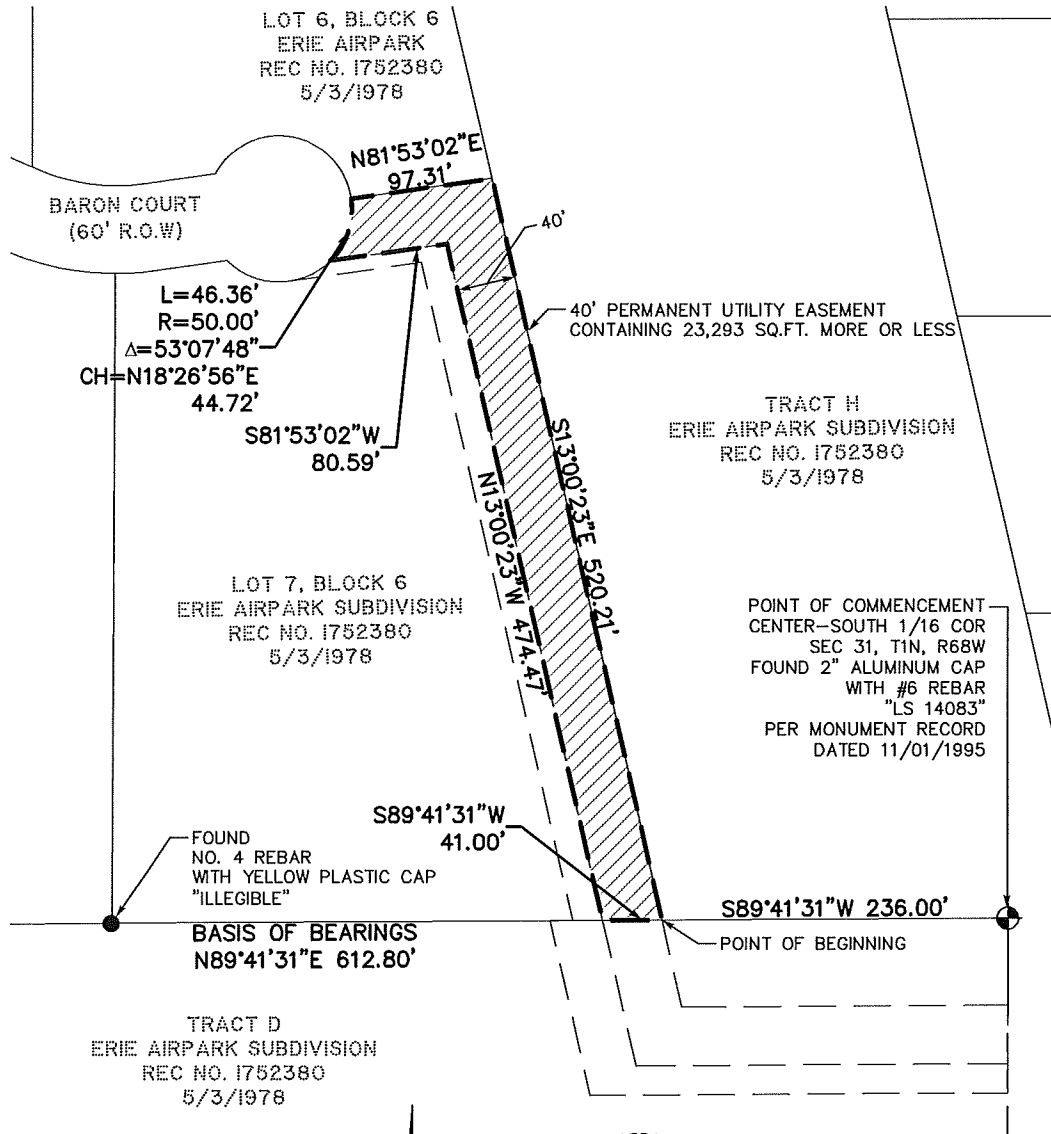
Flatirons, Inc.
Surveying, Engineering & Geomatics
3825 IRIS AVE, STE 395
BOULDER, CO 80301
PH: (303) 443-7001
FAX: (303) 443-9830
www.FlatironsInc.com

BY:THEHENDERSON FILE:62073-DESC-C13-R3.DWG DATE:3/27/2015 12:45 PM

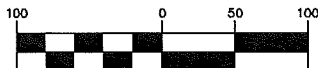
EXHIBIT "B"

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 2 OF 2

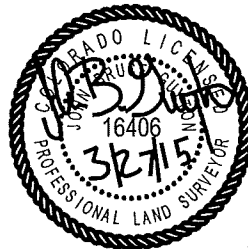


GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.



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BY:T.HENDERSON FILE:62073-DESCO-C13-R3.DWG DATE:3/27/2015 12:45 PM