

RESOLUTION NO. 18-_____

A RESOLUTION BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO AUTHORIZING THE APPROPRIATE TOWN OFFICIAL TO SIGN A LICENSE AGREEMENT, CONDITIONAL UPON VERIFICATION OF THE FINAL AGREEMENT FORM; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, HT Flatiron LP, a Delaware limited partnership, is required to construct an irrigation ditch culvert within N. 111th Street right-of-way for the proposed development of Flatiron Meadows Filing No. 11; and

WHEREAS, a license agreement is required in order for the irrigation ditch culvert to be constructed; and

WHEREAS, the ditch company, Leyner Cottonwood Consolidated Ditch Company, has agreed to grant construction access and maintenance obligations to HT Flatiron LP; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to accept assignment of long term maintenance of the culvert within N. 111th Street right-of-way from HT Flatiron LP.

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 License Agreement in substantially the form set forth in the Agreement copy attached hereto, marked "Exhibit A" and incorporated herein by this reference. The Board of Trustees further authorizes and directs the appropriate Town Official to sign said Agreement conditional upon approval of the final form for the Agreement by the Town Administrator.

Section 2. That accepting the License 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 23RD DAY OF JANUARY, 2018, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, CMC, Town Clerk

Exhibit A
License Agreement

**LICENSE AGREEMENT BETWEEN LEYNER COTTONWOOD CONSOLIDATED
DITCH COMPANY AND HT FLATIRON LP
FOR STORM SEWER CROSSINGS AND WASTEWAY CONSTRUCTION**

1. PARTIES. The parties to this License Agreement are the Leyner Cottonwood Consolidated Ditch Company (“Company”), a Colorado non-profit corporation (“**Company**”), HT Flatiron LP, a Delaware limited partnership authorized to do business in Colorado, (“**Licensee**”), and The Town of Erie (the “Town”). The Company and Licensee are jointly referred to herein as the “**Parties.**”

2. RECITALS.

- 2.1 The Company owns, operates and uses the Leyner Cottonwood Consolidated Ditch (the “Ditch”);
- 2.2 The Licensee desires to construct an 8” water crossing, sanitary sewer crossings, and a box crossing of the Ditch that will underlie or be located within the right-of-way of the Ditch at North 111th Street in Erie, Colorado, referred to as the “Crossings.”
- 2.3 The locations of the Crossings are depicted in **EXHIBIT A**, located in at N. 111th Street, in a portion of the Southwest 1/4 of Section 23, Township 1 North, Range 69 West of the 6th Principal Meridian, Town of Erie, County of Boulder, State of Colorado;
- 2.4 The Crossings shall be completed in accordance with the plans and specifications approved by the Company and Company’s engineer, attached as **EXHIBIT B** to this License Agreement. The initial excavation and installation of the Crossings together with subsequent activities of the Licensee and its contractors that are reasonably necessary for the use, operation, inspection, maintenance, repair and replacement of the Crossings, from time to time, are referred to collectively as the “Licensed Activity”; and
- 2.5 The Licensee does not anticipate that the Licensed Activity will affect the Ditch in any way, but is nonetheless willing to enter into this License Agreement.

Accordingly, in consideration of the mutual promises set forth in this License Agreement, the Parties covenant and agree as follows:

3. CONSTRUCTION.

- 3.1 Pursuant to the terms of this License Agreement, the Licensee is granted the right to perform the Licensed Activities for the Crossings, pursuant to the plans and specifications approved by the Ditch Company’s engineers

pursuant to **EXHIBIT B**. The Company's review of the plans and specifications is solely for its own benefit and creates no obligation on the Company.

- 3.2 In addition, the Licensee is granted the right to use, operate, inspect, maintain, repair, replace and improve the Crossings from time to time, using its own personnel or independent contractors.
- 3.3 In the event any Licensed Activity disturbs any portion of the Ditch, including bottoms, sides, banks, and other portions of the Company's easement for the Ditch, the Licensee shall, at its own expense, promptly repair or correct the disturbance so the flow of the water in the Ditch is equivalent to the original amount and velocity (the original amount and velocity can be determined based on an examination of upstream and downstream segments of the Ditch). If any fencing or other facilities appurtenant to the Company's easement are disturbed by any Licensed Activity, the Licensee shall repair or replace such facilities and appurtenances, at the Licensee's expense, so they are in a condition at least equal to the condition they were in before such Licensed Activity.
- 3.4 The Licensee agrees that the Licensed Activity under the Ditch shall proceed expeditiously and with reasonable diligence from commencement to completion. The initial installation of the Storm Sewer Lines shall be completed by April 1, 2018, which date may be extended in the Company's reasonable discretion to accommodate weather delays or other conditions outside of Licensee's control. If the installation of the Crossings are not substantially complete by the aforementioned date (as it may be extended), this Agreement shall be null and void and of no force or effect.
- 3.5 If the Licensee's Licensed Activity interrupts the Company's water supply for any reason, the Licensee shall be liable for any damages proximately caused by the interruption. Notice of any interruption shall be given to Licensee as soon as possible by the Company by telephone to David Klebba or Chad Murphy at 720-932-0522.
- 3.6 The Licensee shall clearly mark the Crossings along both sides of the ditch with the appropriate markings and color for this type of underground utility. All such markings shall bear the name of the Licensee and telephone contact information.

4. LICENSE FEE. The Licensee shall pay to the Company a one-time license fee of \$4,500, for the water line crossing, the sanitary sewer crossing and the box crossing. Licensee shall pay Company for its legal, engineering and other fees and expenses associated with review of the plans and specifications and this License Agreement. The Company shall provide reasonable backup documentation to substantiate the expenses associated with legal and

engineering fees. The license fee shall be paid upon execution of this License Agreement and prior to the commencement of the Crossings. This license fee shall be in addition to any other costs for which the Licensee is responsible pursuant to this License Agreement.

5. INSPECTION.

- 5.1 The Licensee shall notify the Company at least three (3) days prior to commencement of the Licensed Activity, and prior to replacement or repair of the Crossings, except for emergency repairs which are provided for in paragraph 7 of this License Agreement. The Company shall have its engineers present during construction at any time throughout construction for the Licensed Activities. The expense for the Company's engineer shall be a reimbursable expense by Licensee and to the extent it exceeds the legal and engineering fees stated in paragraph 4, the Company shall provide additional documentation substantiating such costs.
- 5.2 The Company's right to inspect the Crossing construction, replacements and repairs in no way relieves the Licensee of its liability for improper construction. Any inspection by the Company is solely for the benefit and at the risk of the Company and creates no obligation to the Company. The Company's inspectors shall comply with all reasonable safety precautions imposed by the Licensee or its contractors, or by prudent engineering practices.

6. REIMBURSEMENT OF EXPENSES.

- 6.1 Statements for the costs chargeable to the Licensee hereunder will be forwarded to the Licensee and the same shall be paid to the Company or directly to the provider as requested, within 30 days after the billing is received. If payment has not been received by the Company within 30 days, the Licensee shall have breached this License Agreement and the Company may institute legal proceedings to collect the amount due and owing. In such proceeding, the Company shall be entitled to its costs and reasonable attorneys' fees from the Licensee; however, Company shall not be entitled to terminate this License Agreement.
- 6.2 Any agreement related to the payment of the License Fee and/or Expenses between Licensee and a non-party to this Agreement, shall not relieve Licensee from the obligation to pay such fees and costs.

7. MAINTENANCE.

- 7.1 The Licensee specifically agrees that the Company is not required to maintain, repair or replace the Crossings. In the event the Licensee fails to maintain or repair the Crossings properly, it shall be held liable for any

loss, damage or injury to the Company except to the extent caused by the gross negligence of the Company or its agents or contractors.

- 7.2 In the event of an emergency, either Party may conduct maintenance or repair of that Party's facilities immediately, giving notice to the other Party as soon as possible at the emergency contacts identified below. Under no circumstances shall the Company be responsible or held liable for damages to the Crossings resulting from maintenance or repair to the Ditch except to the extent caused by the negligence or willful misconduct of the Company or its agents or contractors.
- 7.3 Upon the annexation and dedication of the roadway over this Crossing, to the Town of Erie, the Licensee is authorized to and shall assign its maintenance obligations to the Town of Erie, and the Town shall be responsible for the continued maintenance, repair or replacement of the Crossings as needed.

EMERGENCY CONTACTS:

Leyner Cottonwood Consolidated
Ditch Company:

Michael Schmidt
Office: (303) 828-2470
Cell: (303) 881-3822

HT Flatiron LP:

David Klebba
Office: 720-932-0522
Cell: 303-807-9005

Or

Chad Murphy
Office: 720-932-0522
Cell: 720-988-3995

Town of Erie

8. LIABILITY AND INDEMNIFICATION.

- 8.1 By virtue of entering into this License Agreement, the Company: (1) assumes no liability for use, operation, or existence of the Licensee's Crossings except to the extent it is damaged by the negligence or willful misconduct of the Company or its agents or contractors; and (2) assumes no additional responsibilities or obligations related to the Licensed Activity in the area described in **EXHIBIT A**, except any that are specifically required by this License Agreement.

8.2 The Licensee agrees to indemnify and hold harmless the Company, from all claims and liability for damage or injury to property or persons arising from the Licensee's construction, maintenance or repair of the Crossings, or the Licensee's failure to maintain the Crossings, except to the extent caused by the negligence or willful misconduct of the Company or its agents or contractors.

9. EASEMENT RIGHTS. The license granted to the Licensee herein in no way restricts the Company's right to the use of its easement to construct, operate, or maintain all existing structures and facilities of the Ditch. In exercising its rights, the Company shall not modify the Ditch in any way that reduces the vertical separation between the bottom of the Ditch and the top of the bore for the Crossings to less than four (4) feet.

10. NOTICES. Any notice required or permitted by this License Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended at the addresses set forth below, or at such other addresses as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given on the third business day after deposit in the U.S. mail.

COMPANY:

Kathy Schwartz
Leyner-Cottonwood Consolidated
Ditch Company
10503 Isabelle Road
Lafayette, CO 80026

COPY TO:

Eve I. Canfield
Lyons Gaddis Kahn Hall Jeffers
Dworak & Grant P.C.
P.O. Box 978
Longmont, CO 80501

LICENSEE:

Rob Witte
HT Flatiron LP
2200 Ross Avenue
Suite 4200W
Dallas, TX 75201

COPY TO:

Chad Murphy
HT Flatiron LP
1515 Wynkoop Street
Suite 800
Denver, CO 80202

TOWN OF ERIE

11. WAIVER OF BREACH. The waiver by any party to this License Agreement of a breach of any term or provision of this License Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

12. RECORDATION. This License Agreement shall be binding upon the Parties and their successors and assigns. This License Agreement shall be recorded at the cost of the Licensee and shall be binding on any successors of the Parties.

13. EXHIBITS. The following exhibits referred to in this License Agreement are, by reference, incorporated in this License Agreement for all purposes, as follows:

Exhibit A – Depiction of Location of Crossings

Exhibit B – Engineer’s Letter of Approval, Plans and Specifications

Dated: _____

**Leyner-Cottonwood Consolidated
Ditch Company**

By: _____
Michael Schmidt, President

ATTEST:

By: _____
Kathy Schwartz, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Michael Schmidt as President of the Leyner-Cottonwood Consolidated Ditch Company, a Colorado non-profit corporation.

Witness my hand and official seal.

My Commission expires: _____

Notary Public

HT FLATIRON LP

a Delaware limited partnership

By: Hines Flatiron Associates Limited Partnership,
a Texas limited partnership
its general partner

By: Hines Flatiron GP LLC,
a Delaware limited liability company,
its general partner

By: Hines Investment Management Holdings Limited
Partnership,
a Texas limited partnership,
its sole member

By: HIMH GP LLC,
a Delaware limited liability company,
its general partner

By: Hines Real Estate Holdings Limited
Partnership,
a Texas limited partnership,
its sole member

By: JCH Investments, Inc.,
a Texas corporation,
its general partner

By: _____



Name: Mark A. Cover
Title: Senior Managing Director /
Chief Executive Officer

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____ as _____ of HT Flatiron LP.

Witness my hand and official seal.

My Commission expires: _____

Notary Public

TOWN OF ERIE

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Park, Town Clerk

**EXHIBIT A
DEPICTION OF LOCATION OF CROSSINGS**

(See attached Sheet “X1” for Flatirons Meadows – Leyner Irrigation Crossings, prepared by Calibre Engineering, dated February 15, 2017)

**EXHIBIT B
APPROVAL OF PLANS AND SPECIFICATIONS**

**(See attached letters from Applegate Group, dated June 7 and June 9,
2017, regarding recommendations and approval of the Crossings)**