

**RESOLUTION NO. 18-\_\_\_\_\_**

**A RESOLUTION BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO ACCEPTING A GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT; AND, SETTING FORTH DETAILS IN RELATION THERETO.**

**WHEREAS**, SH7 Marketplace Inc. is required to construct a water service and meter for the proposed development on Lot 5A, Vista Ridge Filing No. 14, 4<sup>th</sup> Amendment; and

**WHEREAS**, in order for the water meter to be constructed consistent with the approved site plan, an additional easement is required adjacent to the Town's existing utility easement; and

**WHEREAS**, the owner of the property has agreed to grant an easement to the Town, and the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to accept the easement from the property owner.

**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 accepts the Grant of Permanent Access and Utilities Easement Agreement 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.

Section 2. That accepting the Grant of Permanent Access and Utilities Easement 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 13<sup>TH</sup> DAY OF FEBRUARY, 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: \_\_\_\_\_  
Town Clerk

Exhibit A  
Easement Agreement

## GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT

**THIS GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT**, ("Agreement") made and entered into this 8 day of November, 2017, by and between SH7 Marketplace Inc., whose address is 9750 W Cambridge Place Littleton, CO 80127, 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 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 Property for access to and from the Easement Property in order to perform construction, reconstruction, operation, installation, use, maintenance, repair, replacement, upkeep, monitoring, and removal of the Improvements.

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

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

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

5. *Non-exclusive Use.* 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.

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

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

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

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

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

11. *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.

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

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

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

15. *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.


16. *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.

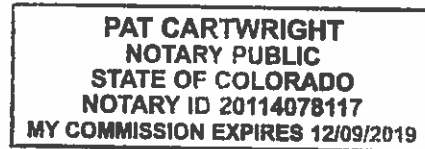
17. *Recordation of Agreement.* This Agreement shall be recorded by the Grantee in the real property records of the County of Weld, State of Colorado.

*[Signatures on following page]*

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

GRANTOR:

By:   
(Name) James Spachalski



STATE OF COLORADO)

COUNTY OF Arapahoe ) ss.

The foregoing instrument was acknowledged before me this 8 day of Nov., 2017  
by James Spachalski

WITNESS my hand and official seal.  
My commission expires:

  
Notary Public

GRANTEE:

TOWN OF ERIE, a Colorado municipal corporation

By: \_\_\_\_\_  
Tina Harris, Mayor

ATTEST:

By: \_\_\_\_\_  
Nancy Parker, Town Clerk

**Exhibit A**

**[Legal Description of the Property]**

LOT 5A of VISTA RIDGE FILING NO.14, SECOND AMENDMENT, MINOR SUBDIVISION AS RECORDED AT THE WELD COUNTY CLERK AND RECORDER OFFICE AND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN AND WITH THE TOWN OF ERIE, WELD COUNTY, COLORADO

**Exhibit B**

**[Legal Description of the Easement Property]**



# Utility Easement Description Exhibit

## DESCRIPTION:

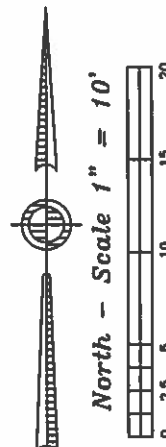
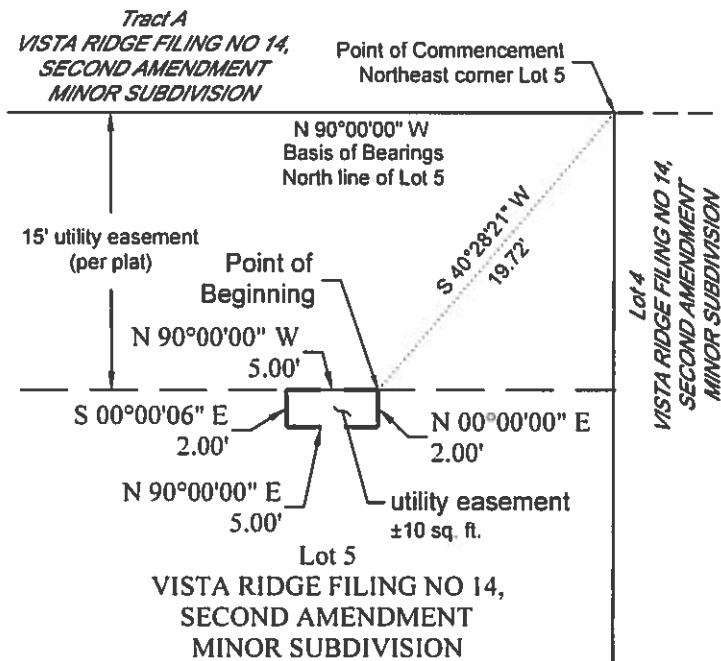
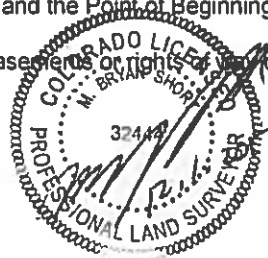
A portion of Lot 5, VISTA RIDGE FILING NO. 14, SECOND AMENDMENT MINOR SUBDIVISION, public records of Weld County, Colorado, being more particularly described as follows:

Considering the North line of Lot 5, VISTA RIDGE FILING NO. 14, SECOND AMENDMENT MINOR SUBDIVISION, public records of Weld County, Colorado, as bearing N 90°00'00" W with all bearings contained herein relative thereto.

COMMENCING at the Northeast corner of Lot 5, VISTA RIDGE FILING NO. 14, SECOND AMENDMENT MINOR SUBDIVISION, public records of Weld County, Colorado;  
thence S 40°28'21" W for a distance of 19.72 feet to the South line of a 15-foot utility easement per said plat and the POINT OF BEGINNING;  
thence N 90°00'00" W for a distance of 5.00 feet along said South line;  
thence S 00°00'00" E for a distance of 2.00 feet;  
thence N 90°00'00" E for a distance of 5.00 feet;  
thence N 00°00'00" E for a distance of 2.00 feet to aforesaid South line and the Point of Beginning.

CONTAINING 10 square feet, more or less, and being subject to any easements or rights of record.


Description prepared by M. Bryan Short, Colorado PLS 32444



**NOTICE:** According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

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sheet 1 of 2

#	Date	Revisions	Field Date N/A	Prepared for:	Project#: 17145.001UE
			Party Chief N/A	<b>Ridgetop Engineering</b>	
			Survey Tech MDG		
			Proj. Manager MBS	 <b>PLS Group</b> 6843 North Franklin Avenue Loveland, Colorado 80538 Office 970.669.2100 - Fax 970.669.3652	
			Scale 1"=40'		

# Utility Easement Description Exhibit

## Mapcheck 2: UE

### Closure Summary

Precision, 1 part in: 240642.274'  
 Error distance: 0.000'  
 Error direction: N89° 59' 57.00"E  
 Area: 10.000 Sq. Ft.  
 Square area: 10.000  
 Perimeter: 14.000'

### Point of Beginning

Easting: 1544.18593'  
 Northing: 30.69812'

### Side 1: Line

Direction: N90° 00' 00.00"W  
 Angle: [090.0000 (d)]  
 Deflection angle: [-090.0000 (d)]  
 Distance: 5.000'  
 Easting: 1539.18593'  
 Northing: 30.69812'

### Side 2: Line

Direction: S00° 00' 06.00"E  
 Angle: [089.9983 (d)]  
 Deflection angle: [-090.0017 (d)]  
 Distance: 2.000'  
 Easting: 1539.18598'  
 Northing: 28.69812'

### Side 3: Line

Direction: N90° 00' 00.00"E  
 Angle: [090.0017 (d)]  
 Deflection angle: [-089.9983 (d)]  
 Distance: 5.000'  
 Easting: 1544.18598'  
 Northing: 28.69812'



### Side 4: Line

Direction: N00° 00' 00.00"E  
 Angle: [090.0000 (d)]  
 Deflection angle: [-090.0000 (d)]  
 Distance: 2.000'  
 Easting: 1544.18598'  
 Northing: 30.69812'

**NOTICE:** According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

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sheet 2 of 2

#	Date	Revisions	Field Date	Prepared for:	Project#: 17145.001UE
			N/A	<b>Ridgetop Engineering</b>  <div>                     PLS Group                      6843 North Franklin Avenue                      Loveland, Colorado 80538                      Office 970.669.2100 - Fax 970.669.3652                 </div> 	
			Party Chief		
			N/A		
			Survey Tech		
			MDG		
			Proj. Manager		
			MBS		
			Scale		
			1"=40'		