

RESOLUTION NO. 18-_____

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

WHEREAS, Daybreak Recovery Acquisition, LLC, a Delaware limited liability company, and the Colliers Hill Metropolitan District No. 2 are required to construct off-site sanitary sewer facilities to service the proposed development of Colliers Hill Filings No. 4A, 4B, and 4C; and

WHEREAS, in order for the sanitary sewer facility to connect into the existing Town sanitary sewer facilities, an easement is required on the subject property; and

WHEREAS, the owners of the property and the Town of Erie have previously entered into a Grant of Permanent Non-Exclusive Access and Utilities Easement Agreement, dated March 28, 2017 and recorded March 30, 2017 at Reception No. 4290091, in the real estate records of Weld County, Colorado; and

WHEREAS, the alignment of the sanitary sewer facility has been redesigned and located outside of a portion of the existing easement; and

WHEREAS, the owners of the property and the Town of Erie desire to provide for the vacation of the existing easement and replace it with a new permanent, non-exclusive, access and utilities easement to accommodate the redesigned sanitary sewer facility; and,

WHEREAS, the owners of the property have 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 and Vacation of Easement 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 and Vacation of Easement 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 13TH 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: _____
Deputy Town Clerk

Exhibit A
Easement Agreement

**GRANT OF PERMANENT NON-EXCLUSIVE ACCESS
AND UTILITIES EASEMENT AGREEMENT
AND VACATION OF EASEMENT**

THIS GRANT OF PERMANENT NON-EXCLUSIVE ACCESS AND UTILITIES EASEMENT AGREEMENT AND VACATION OF EASEMENT, (“Agreement”) made and entered into this ____ day of February, 2018, by and between **I & J PARTNERSHIP, L.P.**, a California limited partnership (“I&J”), **K.A.C. HOLDINGS, LLC**, a Delaware limited liability company, **MIKE MORADI TRUST** dated November 28, 2006, **THE SHAHLA MORADI TRUST** dated November 28, 2006, **THE KATINA MORADI TRUST** dated December 16, 2005, **THE CAROLINE MORADI TRUST** dated December 16, 2005, **THE ALBERT MORADI TRUST** dated December 16, 2005 and **THE SAEED AND FOROUGH MORADI FAMILY TRUST**, (collectively the “Moradi Entities”), (I&J and the Moradi Entities are 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, I&J 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 “I&J Property”).

WHEREAS, The Moradi Entities are the owner of real property located in Weld County, State of Colorado, more particularly described on Exhibit “B,” attached hereto and made a part hereof (the “Moradi Entities Property”). The I&J Property and the Moradi Entities Property are collectively referred to herein as the “Property.”

WHEREAS, the Parties previously entered into that certain GRANT OF PERMANENT NON-EXCLUSIVE ACCESS AND UTILITIES EASEMENT AGREEMENT, dated March 28, 2017 and recorded March 30, 2017 at Reception No. 4290091, in the real estate records of Weld County, Colorado (the “2017 Easement”).

WHEREAS, Parties now desire to provide for the vacation of the easement granted in the 2017 Easement and replace it with a new permanent, non-exclusive, access and utilities easement across a portion of the Property in the location more particularly described on Exhibit “C,” 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. *Vacation of Easement.* Grantee hereby relinquishes all of its interest in and hereby vacates the easement granted in the 2017 Easement and Grantor hereby consents to such relinquishment and vacation.

2. *Grant of Easement.* Grantor hereby grants and conveys to Grantee, its successors and assigns, a new permanent, perpetual and 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 underground water lines, underground sanitary sewer lines and necessary appurtenances thereto (the "Improvements") in, through, over, across, under and above the Easement Property (the "Easement").

3. *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 existing roadways on 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.

4. *No Structures or Buildings to interfere with the Easement.* Without the prior written consent of the Grantee, 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 Easement Property to the extent not inconsistent with the rights granted herein and otherwise consistent with the terms of this Agreement. If Grantor constructs or places any structure or building or item prohibited herein on the Easement Property, and Grantee removes such prohibited item from the Easement Property, Grantor shall reimburse the Grantee for Grantee's expenses in removing such structure or prohibited item from the Easement Property.

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 and Grantee's right to use the Easement Property as set forth herein.

6. *Non-exclusive Use.* Following written request to and approval by Grantee, public utilities such as water, sanitary sewer, storm sewer, gas, electric lines, and other appropriate utilities may be installed in the Easement Property, provided such utilities do not interfere with the Grantee's rights set forth herein.

7. *Reserved Rights.* The Easement is subject to the following rights reserved by Grantor:

(a) Grantor reserves the right to use the Easement Property for any purposes that do not interfere with Grantee's use of the Easement as herein provided; and

(b) Grantor reserves the right to grant additional easements and other rights to third parties over, under and within Easement Property subject to Grantee's consent.

(c) The Grantor, its employees, agents, contractors, representatives, successors and assigns shall have and exercise the right to utilize the Easement Property for farming and may pass over and across the Easement Property in furtherance of the agricultural use of the Property.

8. *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.

9. *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.

10. *Temporary Construction Easement.* Grantee acknowledges the Temporary Construction Easement granted concurrently with this Easement by Grantor to Colliers Hill Metropolitan District No. 2 for the construction of the Improvements contemplated herein.

11. *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.

12. *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.

13. *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.

14. *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.

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

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

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

18. *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.

19. *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.

20. *Attorney Fees.* If any Party commences any action or proceeding against the other in order to enforce the provisions of this Agreement, the prevailing party in any such action will be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including all reasonable attorneys' fees and expenses.

21. *Recordation of Agreement.* This Agreement shall be recorded by the Grantee in the real property records of the County of Weld, State of Colorado and shall promptly provide Grantor with a copy of such recorded Agreement.

[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:

I & J Partnership, L.P., a California limited partnership

By: _____
Isaac Moradi, Managing Partner

Date: _____, 2018

K.A.C. Holdings, LLC
a Delaware limited liability company,

By: _____
Albert Moradi, Manager

Date: _____, 2018

The Mike Moradi Trust Dated November 28, 2006,
The Shahla Moradi Trust Dated November 2, 2006,
The Katina Moradi Trust dated December 16,
2005, **The Caroline Moradi Trust** dated December
16, 2005, **The Albert Moradi Trust** dated December
16, 2005 and **The Saeed and Forough Moradi
Family Trust**

By: _____
Isaac Moradi, Authorized Agent

Date: _____, 2018

GRANTEE:
TOWN OF ERIE, a Colorado municipal
corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Deputy Town Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____, 2018, before me, _____,
Here Insert Name and Title of the Officer
personally appeared _____,

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public
(SEAL)

EXHIBIT A

Legal Description of the I&J Property

LOT B OF "2ND AMENDED RECORDED EXEMPTION NO. 1467-06-2ND-AMRE-3402",
EXCEPT THAT PORTION DESCRIBED IN DEED OF DEDICATION RECORDED
07/30/2007 AT RECEPTION NO. 3493478

COUNTY OF WELD,

STATE OF COLORADO

EXHIBIT B

Legal Description of the Moradi Entity Property

LOTS A AND B OF "RECORDED EXEMPTION NO. 1467-06-4-RE-3378"

COUNTY OF WELD,

STATE OF COLORADO

EXHIBIT C

Legal Description of the Easement Property

[ATTACHED, CONSISTING OF 5 PAGES]

EXHIBIT C

EASEMENT DESCRIPTION:

AN EASEMENT ACROSS LOTS A AND B OF RECORDED EXEMPTION NO. RE-3378, AND LOT B OF 2ND AMENDED RECORDED EXEMPTION NO. AMRE-3402, LOCATED IN SECTION 6, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 6 (3.5" BRASS CAP, BLM 1952) FROM WHENCE THE EAST QUARTER CORNER (2.5" ALUMINUM CAP, PLS 25937) OF SECTION 6 LIES N00°59'09"E, 2,537.37 FEET (BASIS OF BEARINGS);

THENCE S89°42'31"W, 30.01 FEET ALONG THE SOUTHERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 6;

THENCE N00°59'09"E, 336.00 FEET ALONG A LINE PARALLEL WITH AND 30.00 FEET WEST OF THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 6 TO THE SOUTHEASTERLY CORNER OF LOT B OF RECORDED EXEMPTION NO. RE-3378 AND THE POINT OF BEGINNING;

THENCE S89°42'31"W, 15.00 FEET ALONG THE SOUTHERLY LINE OF SAID LOT B;

THENCE N00°59'09"E, 1,403.91 FEET ALONG A LINE PARALLEL WITH AND 45.00 FEET WEST OF THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 6

THENCE N69°46'12"W, 189.94 FEET;

THENCE N54°39'22"W, 259.13 FEET;

THENCE N68°07'34"W, 239.62 FEET;

THENCE N13°01'15"W, 257.40 FEET;

THENCE N22°01'56"W, 292.79 FEET;

THENCE N36°27'11"E, 212.36 FEET;

THENCE N53°32'49"W, 249.35 FEET;

THENCE N24°04'57"W, 308.71 FEET;

THENCE S87°51'41"W, 302.17 FEET;

THENCE N34°09'52"W, 180.43 FEET;

THENCE N85°34'36"W, 409.81 FEET ALONG A LINE PARALLEL WITH AND 60.00 FEET SOUTH OF THE SOUTHERLY LINE OF LOT A OF AMENDED RECORDED EXCEPTION NO. 1365;

THENCE N01°00'46"E, 469.73 FEET ALONG A LINE PARALLEL WITH AND 30.00 FEET WEST OF THE EXTENDED WESTERLY LINE OF SAID LOT A OF AMENDED RECORDED EXCEPTION NO. 1365;

THENCE N77°22'18"W, 210.67 FEET;

THENCE N63°38'36"W, 420.55 FEET;

THENCE N20°32'50"W, 80.24 FEET TO THE EASTERLY LINE OF A PERMANENT ACCESS AND PIPELINE EASEMENT DESCRIBED IN INSTRUMENT RECORDED 04/08/2009 AT RECEPTION NO. 3615408;

THENCE ALONG SAID EASTERLY EASEMENT LINE THE FOLLOWING TWO COURSES:

- 1) N24°50'40"E, 56.58 FEET;
- 2) N04°02'20"E, 12.43 FEET;

(DESCRIPTION CONTINUED)

SEWER EASEMENT DESCRIPTION (ANDALUSIA PARCEL) SECTION 6, T1N, R68W ERIE, COLORADO

HURST

**CIVIL ENGINEERING
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1265 S Public Road, Suite B
Lafayette, CO 80026
303.449.9105
www.hurst-assoc.com

SCALE	HOR. N/A VERT. N/A
DESIGN/APPR.	BO
DRAWN BY	BO
DATE	02/07/18
SHEET	1 OF 5

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EXHIBIT C

EASEMENT DESCRIPTION (CONTINUED):

THENCE S64°26'50"E, 22.83 FEET;

THENCE S18°23'27"W, 49.77 FEET;

THENCE S20°32'50"E, 64.26 FEET;

THENCE S63°38'36"E, 405.09 FEET;

THENCE S77°22'18"E, 231.52 FEET TO THE WESTERLY LINE OF SAID LOT A OF AMENDED RECORDED EXCEPTION NO. 1365;

THENCE S01°00'46"W, 435.88 FEET ALONG SAID WESTERLY LINE TO THE SOUTHWESTERLY CORNER OF SAID LOT A;

THENCE CONTINUING S01°00'46"W 30.05 FEET;

THENCE S85°34'36"E, 395.99 FEET ALONG A LINE PARALLEL WITH AND 30.00 FEET SOUTH OF THE SOUTHERLY LINE OF SAID LOT A;

THENCE S34°09'52"E, 178.25 FEET;

THENCE N87°51'41"E, 306.21 FEET;

THENCE S24°00'57"E, 320.93 FEET;

THENCE S53°32'49"E, 271.46 FEET;

THENCE S36°27'11"W, 225.56 FEET;

THENCE S22°01'56"E, 278.36 FEET;

THENCE S13°01'15"E, 244.11 FEET;

THENCE S68°07'34"E, 227.53 FEET;

THENCE S54°35'33"E, 257.63 FEET;

THENCE S69°46'12"E, 192.46 FEET;

THENCE S00°59'09"W, 1,430.12 FEET ALONG A LINE PARALLEL WITH AND 30.00 FEET WEST OF THE EASTERLY LINE OF SECTION 6 TO THE POINT OF BEGINNING, CONTAINING 3.32 ACRES, MORE OR LESS.

DESCRIPTION PREPARED BY:
BO BAIZE, COLORADO PLS 37990
FOR AND ON BEHALF OF
HURST & ASSOCIATES, INC.

**SEWER EASEMENT DESCRIPTION
(ANDALUSIA PARCEL)
SECTION 6, T1N, R68W
ERIE, COLORADO**

HURST

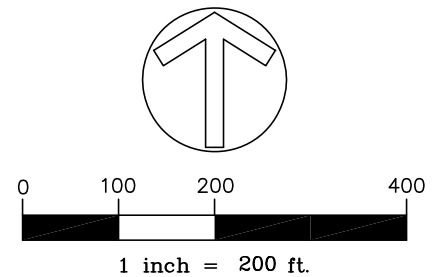
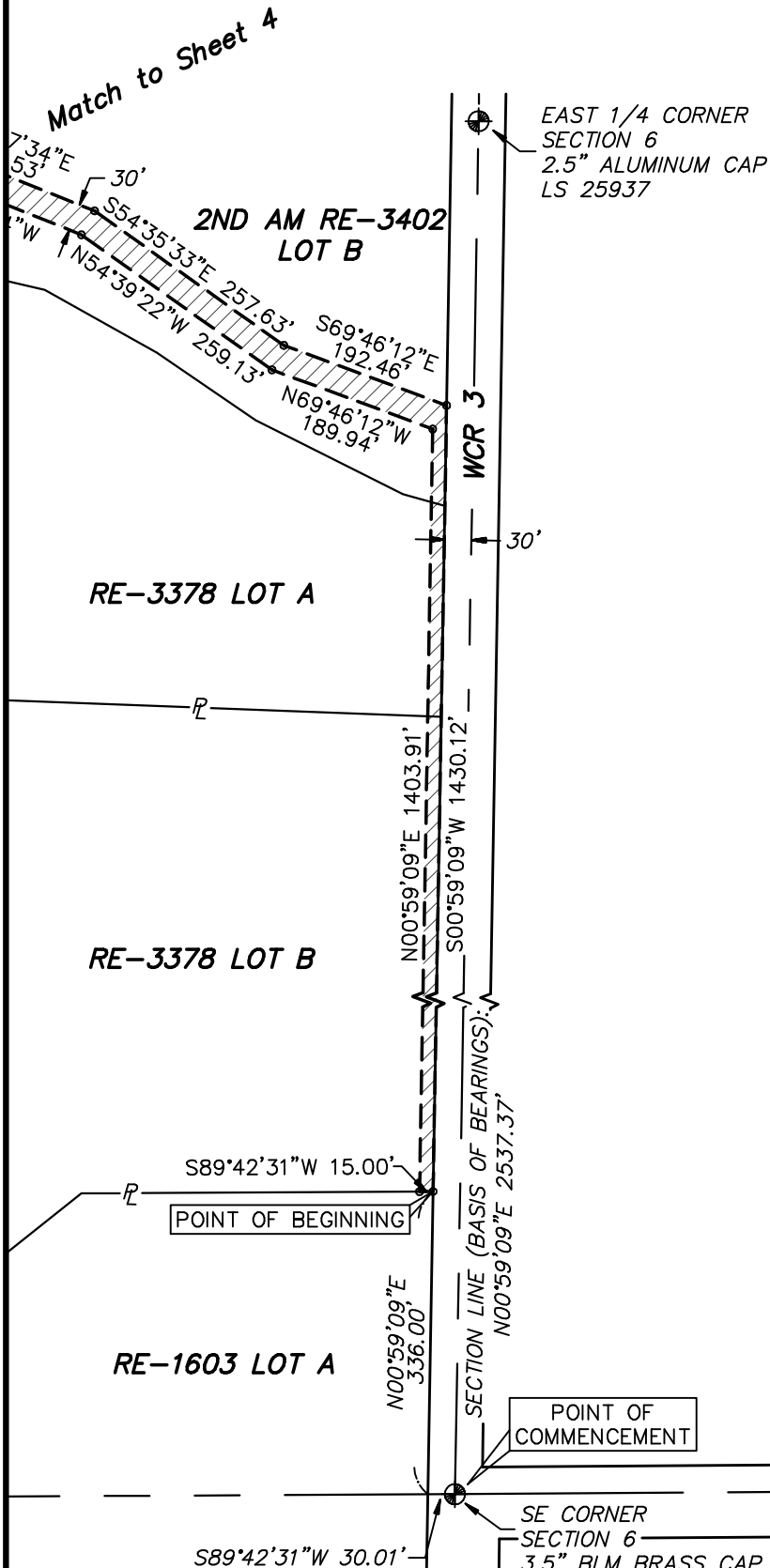
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EXHIBIT C



NOTE: THIS IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT. THIS EXHIBIT IS ONLY INTENDED TO DEPICT THE ACCOMPANYING DESCRIPTION.

SEWER EASEMENT DESCRIPTION (ANDALUSIA PARCEL) SECTION 6, T1N, R68W ERIE, COLORADO

HURST

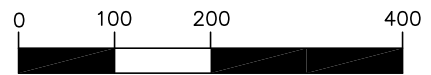
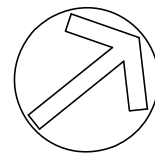
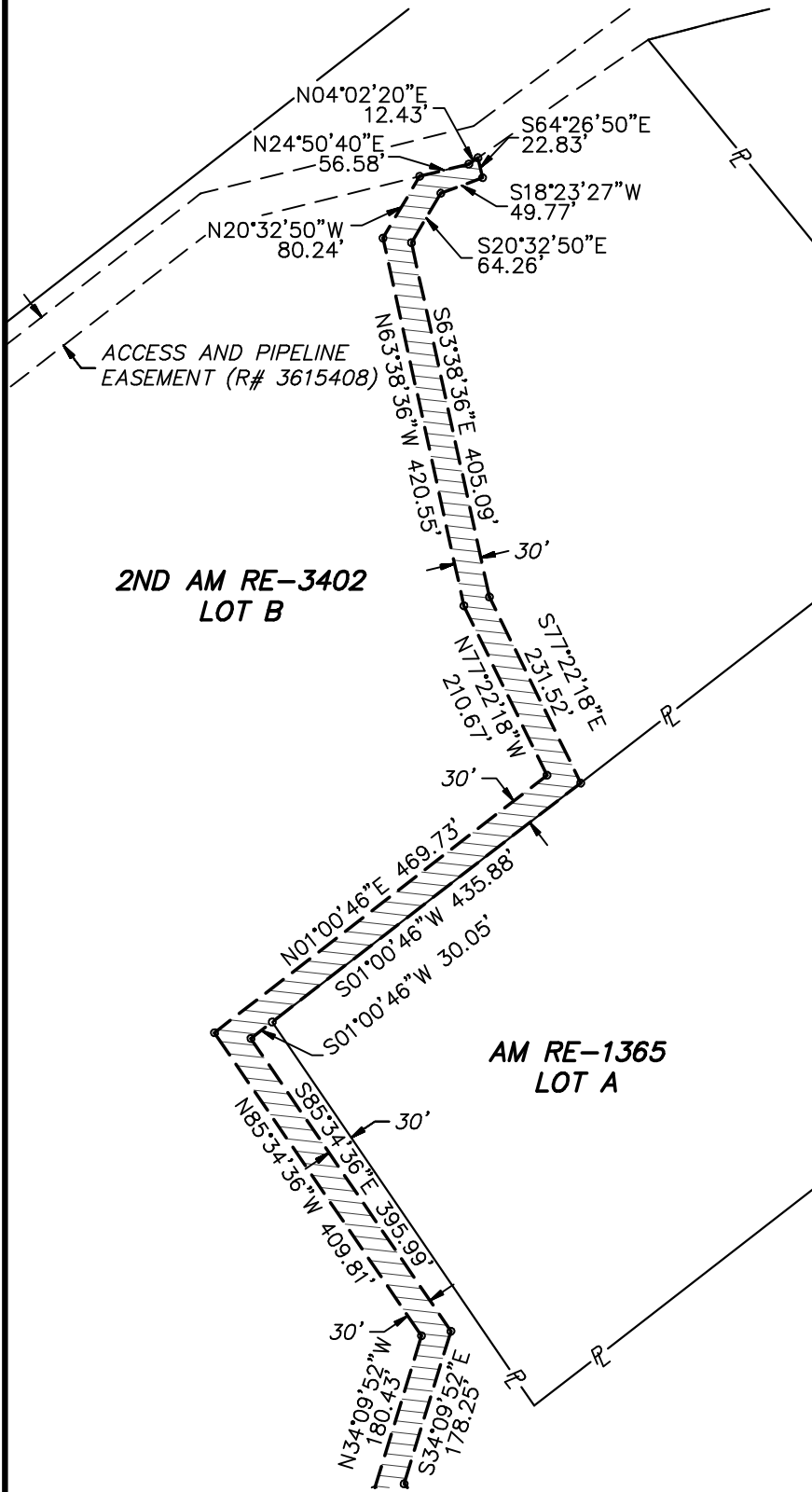
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EXHIBIT C



1 inch = 200 ft.

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SEWER EASEMENT DESCRIPTION (ANDALUSIA PARCEL) SECTION 6, T1N, R68W ERIE, COLORADO

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