

GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT

THIS GRANT OF PERMANENT ACCESS AND UTILITIES EASEMENT AGREEMENT, ("Agreement") made and entered into this ___ day of _____, 2018, by and between HT FLATIRON LP, a Delaware limited partnership, whose address is 1125 17th Street, Suite 700, Denver, Colorado 80202, 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 Boulder 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 as set forth below 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 and the same are not removed within thirty (30) days after written notice from Grantee, Grantor shall reimburse the Grantee for Grantee's expenses in removing such structure or prohibited item from the Easement Property. The notice may be waived if the Town solely determines the building or structure presents an immediate danger to the Town's access, Improvements, or use of the Easement.

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 Boulder, 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:

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: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____, THE _____ of JCH Investments, Inc., the general partner of Hines Real Estate Holdings Limited Partnership, the sole member of HIMH GP LLC, the general partner of Hines Investment Management Holdings Limited Partnership, the sole member of Hines Flatiron GP LLC, the general partner of Hines Flatiron Associates Limited Partnership, the general partner of HT Flatiron LP, on behalf of said entities.

Given under my hand and seal of office this _____.

Notary Public, State of _____

[SEAL]

GRANTEE:
TOWN OF ERIE, a Colorado municipal
corporation

By: _____
Jennifer Carroll, Mayor

ATTEST:

By: _____
Jessica Koenig, Deputy Town Clerk

2.10.14 rev. 5.21.15

Exhibit A

[Legal Description of the Property]

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26 AND CONSIDERING THE EAST LINE OF SAID NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26 TO BEAR SOUTH 00°19'39" EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 00°19'39" EAST, ALONG THE EAST LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26, A DISTANCE OF 446.43 FEET; THENCE SOUTH 89°41'36" WEST, A DISTANCE OF 30.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF NORTH 119TH STREET AS RECORDED IN BOOK 148 AT PAGE 135 AND A POINT ON THE TOWN OF ERIE TOWN LIMITS ACCORDING TO THE REX RANCH ANNEXATION MAP RECORDED AT RECEPTION NO. 2831557 OF THE RECORDS OF THE BOULDER COUNTY CLERK AND RECORDER, SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE ALONG SAID TOWN LIMITS THE FOLLOWING FOUR (4) COURSES:

- 1) SOUTH 00°19'39" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 349.87 FEET;
- 2) SOUTH 89°39'19" WEST A DISTANCE OF 467.58 FEET;
- 3) NORTH 00°18'19" WEST A DISTANCE OF 350.18 FEET;
- 4) NORTH 89°41'36" EAST A DISTANCE OF 467.45 FEET TO THE **POINT OF BEGINNING**;

SAID PARCEL CONTAINS A CALCULATED AREA OF 163,641 SQUARE FEET, OR 3.76 ACRES, MORE OR LESS.

Exhibit B

[Legal Description of the Easement Property]

EXHIBIT B

LEGAL DESCRIPTION:

A PARCEL OF LAND TWENTY (20) FEET IN WIDTH OVER AND ACROSS THAT PROPERTY RECORDED AT RECEPTION NO. 3653124 OF THE RECORDS OF THE BOULDER COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26 AND CONSIDERING THE NORTH LINE OF SAID NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26 TO BEAR NORTH 88°33'50" EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 03°30'59" WEST A DISTANCE OF 447.42 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID PROPERTY, SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE ALONG SAID PROPERTY THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 00°19'39" EAST A DISTANCE OF 349.87 FEET;
- 2) SOUTH 89°39'19" WEST A DISTANCE OF 20.00 FEET;

THENCE NORTH 00°19'39" WEST A DISTANCE OF 349.88 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF SAID PROPERTY;

THENCE NORTH 89°41'36" EAST ALONG SAID NORTHERLY BOUNDARY LINE A DISTANCE OF 20.00 FEET TO THE **POINT OF BEGINNING**;

SAID PARCEL CONTAINS AN AREA OF 6,998 SQUARE FEET, OR 0.161 ACRES, MORE OR LESS.

THE LINEAL DISTANCE UNIT USED IN THE PREPARATION OF THIS LEGAL DESCRIPTION IS THE UNITED STATES SURVEY FOOT. THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY DEFINES THE UNITED STATES SURVEY FOOT AS 1200/3937 METERS.

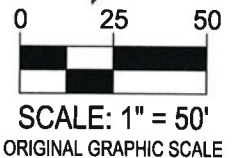
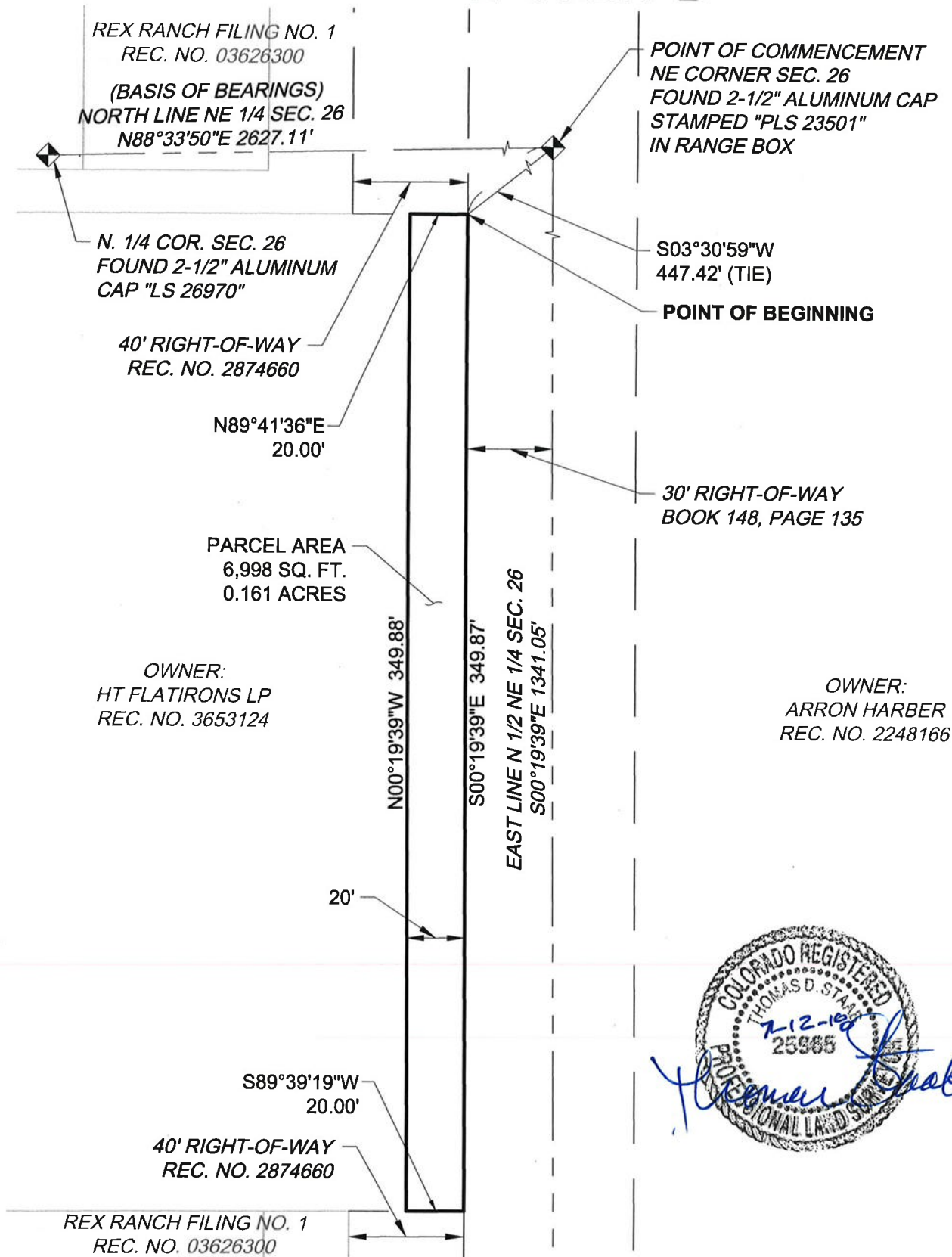
I, THOMAS D. STAAB, A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING, IS BASED ON MY KNOWLEDGE, INFORMATION AND BELIEF, IS IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE, AND DOES NOT REPRESENT A WARRANTY OR GUARANTY, EITHER EXPRESSED OR IMPLIED.

THOMAS D. STAAB, P.L.S. 25965
FOR AND ON BEHALF OF
WARE MALCOMB
990 SOUTH BROADWAY
SUITE 230
DENVER, COLORADO 80209
P 303.561.3333



990 south broadway suite 230 denver, co 80209 p 303.561.3333 waremalcomb.com WM WARE MALCOMB CIVIL ENGINEERING & SURVEYING	PROJECT NAME: REX RANCH FILING NO. 3			SHEET 1 OF 2
	JOB NO.: 17000		DATE : JUNE 26, 2018	
	DRAWN: IH	PA/PM: TS	SCALE: N/A	

EXHIBIT B



990 south broadway suite 230 denver, co 80209 p 303.561.3333 waremalcomb.com WM WARE MALCOMB CIVIL ENGINEERING & SURVEYING	PROJECT NAME: REX RANCH FILING NO. 3			SHEET 2 OF 2
	JOB NO.: 17000		DATE : JUNE 26, 2018	
	DRAWN: IH	PA/PM: TS	SCALE: 1" = 50'	