

PERMANENT UTILITY EASEMENT AGREEMENT

This PERMANENT UTILITY EASEMENT AGREEMENT (the "Agreement") is made and executed this 28th day of January, 2020 (the "Effective Date"), by and between HT FLATIRON LP, a Delaware limited partnership with an address of 1125 17th Street, Suite 700, Denver, Colorado 80202 ("Grantor"), and the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, 645 Holbrook Street, Erie, CO 80516 (the "Town") (each a "Party" and collectively the "Parties").

WHEREAS, Grantor is the owner of the real property in the Town of Erie, Boulder County, Colorado more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Easement Property");

WHEREAS, the Town wishes to construct and install, and thereafter use, operate, inspect, maintain and repair sewer, water and storm sewer facilities and related appurtenances and facilities on, over, across and under the Easement Property, as depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Facilities");

WHEREAS, for this purpose, Grantor is willing to convey this permanent easement to the Town, which allows the Town to install, operate, use, repair and maintain sewer, water and storm sewer facilities upon and beneath the surface of the property described in **Exhibit A**, as the Easement Property; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained here, Grantor and the Town mutually agree as follows:

1. Grant of Easement. Grantor hereby grants to the Town, its successors and assigns, lessees, licensees and agents, a permanent, perpetual, non-exclusive easement (the "Easement") to enter, re-enter, occupy and use the Easement Property to construct, reconstruct, use, operate, maintain, repair, patrol, replace, enlarge and remove water, sewer and storm sewer lines, conduits, vaults, accessories, improvements, or manholes and all necessary appurtenances thereto, (the "Improvements") in, through, over, across, under and above the Easement Property.
2. Town's Rights. The Town and 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 for access to perform construction, reconstruction, operation, installation, use, maintenance, repair, replacement, upkeep, monitoring, and removal of the Improvements.
3. Non-exclusive Use. The Town agrees, following written request to and approval by the Town, that other public utilities may be installed in the Easement Property if such utilities do not interfere with the Town's rights as herein granted or the Town's use of the Easement and Easement Property. All surface and subsurface uses of the Easement Property must be approved in writing by the Town prior to installation.
4. Maintenance. The Town shall be solely responsible for maintaining the Facilities and the Improvements. All Improvements installed by the Town on the Easement Property shall remain the Town's property.

5. No Interference. Grantor shall not construct or place any structure or building, 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 prohibited structure or item placed on the Easement Property may be removed by the Town at Grantor's expense and without liability to the Town for damages arising therefrom. Grantor shall retain the right to the use and occupancy of the Easement Property to the extent that it does not interfere with the Town's rights or its use of the Easement.
6. Maintenance of Grantor's Improvements. Grantor shall be solely responsible for the maintenance of all Grantor's improvements located within the Easement Property.
7. Retained Rights. Grantor shall have all rights to the Easement Property not granted hereby.
8. Warranty. Grantor warrants that it has the full right and legal authority to make the grant of this Easement.
9. Recordation. Except as otherwise expressly provided herein, all provisions of this Agreement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. The Town shall record this Agreement in timely fashion in the official records of Grand County and may re-record it at any time as may be required to preserve its rights in this Agreement.
10. No Merger. It is the express intent of the Parties that the doctrine of merger shall not apply to this Agreement and there will be no merger of estate between the Easement granted by this Agreement and the Property.
11. Miscellaneous.
 - a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.
 - b. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.
 - c. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.
 - d. Third Parties. There are no intended third-party beneficiaries to this Agreement.
 - e. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. Modification. This Agreement may only be modified upon written agreement of the Parties.

h. Governmental Immunity. The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town, its officers, attorneys or employees.

i. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Joanne Salser, Deputy Town Clerk

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 _____)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this
_____ day of _____, 2020, by _____ as _____
of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A

Legal Description of Easement Property

EXHIBIT

**REX RANCH FILING NO. 1
WATER EASEMENT 01**

PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF TRACT F, REX RANCH SUBDIVISION FILING NO. 1 RECORDED UNDER RECEPTION NO. 03626300 IN 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 6TH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER BY A 10' WITNESS CORNER BEING A 2-1/2" ALUMINUM CAP STAMPED "LS 29414" AND AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER BY A 70' WITNESS CORNER BEING A 3-1/4" ALUMINUM CAP STAMPED "PLS 28286", BEARING S88°46'04"W PER THE PLAT OF REX RANCH SUBDIVISION FILING NO. 1.

BEGINNING AT THE SOUTHWESTERLY CORNER OF TRACT F, REX RANCH SUBDIVISION FILING NO. 1 RECORDED UNDER RECEPTION NO. 03626300 IN THE RECORDS OF THE BOULDER COUNTY CLERK AND RECORDER;

THENCE ON THE WESTERLY LINE OF SAID TRACT F, N01°50'13"E A DISTANCE OF 297.57 FEET, TO THE NORTHWESTERLY CORNER OF SAID TRACT F;

THENCE ON THE NORTHERLY LINE OF SAID TRACT F, N88°34'13"E A DISTANCE OF 24.78 FEET, TO A POINT ON THE WESTERLY LINE OF A 20.00 FOOT WATER EASEMENT DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NO. 1698910;

THENCE ON SAID WESTERLY EASEMENT LINE OF, THE FOLLOWING TWO (2) COURSES:

1. S11°34'29"E A DISTANCE OF 9.79 FEET;
2. S03°16'33"W A DISTANCE OF 297.80 FEET, TO A POINT ON THE SOUTHERLY LINE OF SAID TRACT F;

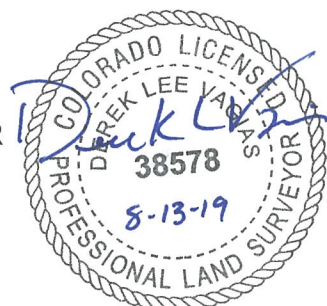
THENCE ON SAID SOUTHERLY LINE, N65°15'50"W A DISTANCE OF 21.20 FEET, TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 7,077 SQUARE FEET OR 0.1625 ACRES.

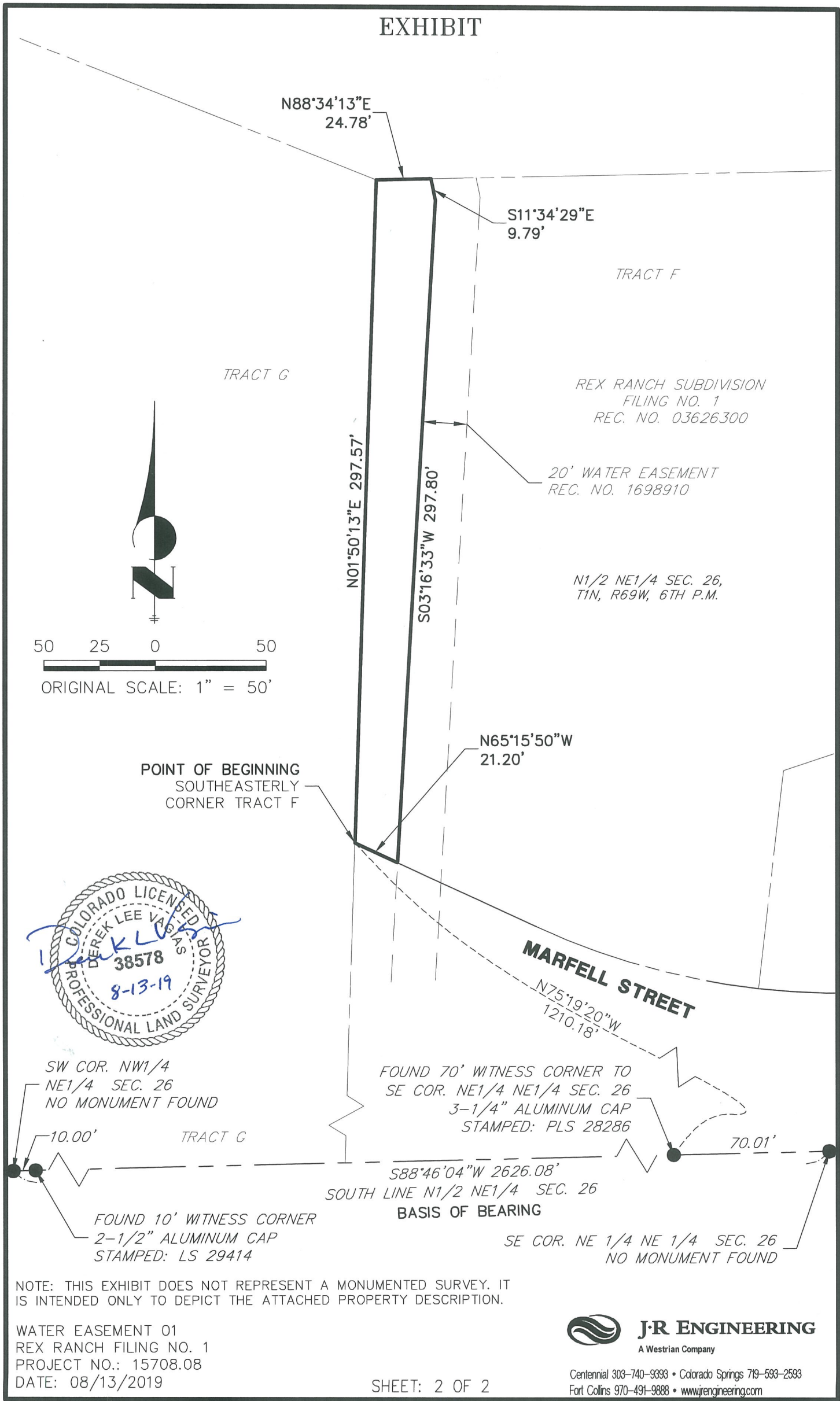
PROPERTY DESCRIPTION STATEMENT

I, DEREK LEE VAGIAS, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.

DEREK LEE VAGIAS, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38578
FOR AND ON BEHALF OF JR ENGINEERING, LLC



EXHIBIT



EXHIBIT

**REX RANCH FILING NO. 1
WATER EASEMENT 02**

PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF TRACT E, REX RANCH SUBDIVISION FILING NO. 1 RECORDED UNDER RECEPTION NO. 03626300 IN 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 6TH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER BY A 10' WITNESS CORNER BEING A 2-1/2" ALUMINUM CAP STAMPED "LS 29414" AND AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER BY A 70' WITNESS CORNER BEING A 3-1/4" ALUMINUM CAP STAMPED "PLS 28286", BEARING S88°46'04"W PER THE PLAT OF REX RANCH SUBDIVISION FILING NO. 1.

BEGINNING AT THE SOUTHEASTERLY CORNER OF TRACT E, REX RANCH SUBDIVISION FILING NO. 1 RECORDED UNDER RECEPTION NO. 03626300 IN THE RECORDS OF THE BOULDER COUNTY CLERK AND RECORDER;

THENCE ON THE SOUTHERLY LINE OF SAID TRACT E, S88°46'04"W A DISTANCE OF 1,181.61 FEET, TO SOUTHWESTERLY CORNER OF SAID TRACT E;

THENCE ON THE WESTERLY LINE OF SAID TRACT E, N01°50'13"E A DISTANCE OF 267.08 FEET, TO A POINT ON THE NORTHERLY LINE OF SAID TRACT;

THENCE ON SAID NORTHERLY LINE, S65°15'50"E A DISTANCE OF 19.45 FEET, TO A POINT ON THE WESTERLY LINE OF A 20 FOOT WATER EASEMENT DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NO. 1698910;

THENCE ON SAID WESTERLY EASEMENT LINE, S03°16'33"W A DISTANCE OF 178.73 FEET, TO A POINT ON THE NORTHERLY LINE OF AN 80 FOOT NORTHERN COLORADO WATER CONSERVANCY DISTRICT EASEMENT RECORDED UNDER RECEPTION NO. 1515050 AND 1619596;

THENCE ON SAID NORTHERLY EASEMENT LINE, N88°46'34"E A DISTANCE OF 20.13 FEET;

THENCE DEPARTING SAID NORTHERLY EASEMENT LINE, S01°13'56"E A DISTANCE OF 50.00 FEET;

THENCE ON A LINE BEING 30.00 FEET NORTHERLY OF AND PARALLEL WITH SAID SOUTHERLY LINE, N88°46'04"E A DISTANCE OF 561.83 FEET;

THENCE DEPARTING SAID LINE, THE FOLLOWING THREE (3) COURSES:

1. N01°13'56"W A DISTANCE OF 15.00 FEET;
2. N88°46'04"E A DISTANCE OF 160.00 FEET;
3. S01°13'56"E A DISTANCE OF 15.00 FEET;

THENCE ON A LINE BEING 30.00 FEET NORTHERLY OF AND PARALLEL WITH SAID SOUTHERLY LINE,
N88°46'04"E A DISTANCE OF 422.40 FEET, TO A POINT ON THE EASTERLY LINE OF SAID TRACT E;

THENCE ON SAID EASTERLY LINE, S00°19'39"E A DISTANCE OF 30.00 FEET, TO THE POINT OF
BEGINNING;

CONTAINING A CALCULATED AREA OF 42,449 SQUARE FEET OR 0.9745 ACRES.

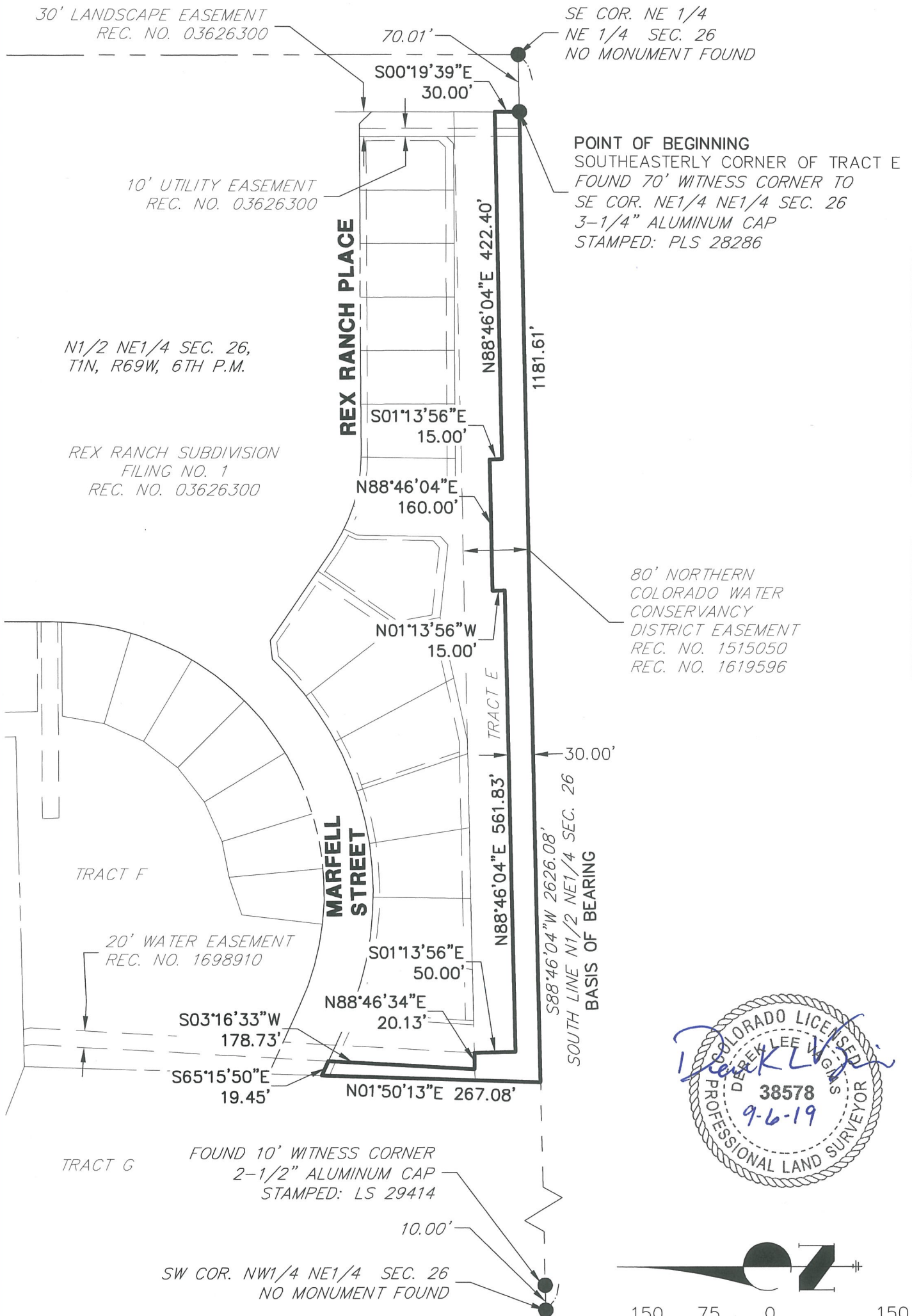
PROPERTY DESCRIPTION STATEMENT

I, DEREK LEE VAGIAS, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO,
DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE
PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE,
INFORMATION AND BELIEF, ARE CORRECT.

DEREK LEE VAGIAS, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38578
FOR AND ON BEHALF OF JR ENGINEERING, LLC



EXHIBIT



NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED PROPERTY DESCRIPTION.

WATER EASEMENT 02
 REX RANCH FILING NO. 1
 PROJECT NO.: 15708.08
 DATE: 09/06/19

SHEET: 3 OF 3



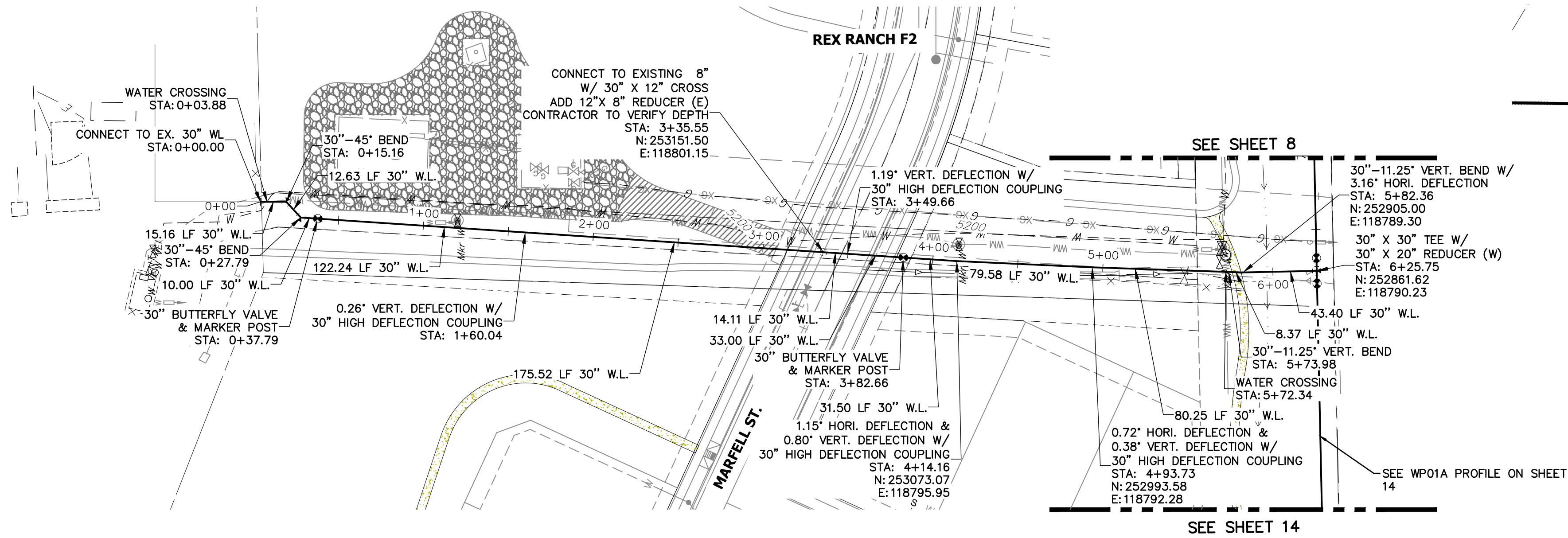
J.R. ENGINEERING
 A Westrian Company

Centennial 303-740-9393 • Colorado Springs 719-593-2593
 Fort Collins 970-491-9888 • www.jrengineering.com

EXHIBIT B

Depiction of Utilities

WATER
TREATMENT
PLANT



WP01 PROFILE (1)
STA 0+00.00 TO 6+00.00

