

TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT (this “Agreement”) is entered into this ____ day of _____, 2016, by **CRAIG FERGUSON (“Ferguson”), and MAMIE DAVIS and JERRY MOORE (“Davis & Moore”)**, whose legal address is 500 W. Main Street. Lyons, Colorado 80540 (collectively, the “Grantor”), and the **TOWN OF LYONS**, a statutory municipality of the State of Colorado, whose address is 432 5th Avenue, Lyons, CO 80540 (“Town” or “Grantee”) (collectively, the “Parties”).

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor hereby sells, conveys, transfers, and delivers to the Grantee its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns, a non-exclusive Temporary Construction Access Easement (the “Temporary Construction Easement”) for the real property described in **Exhibit A**, a copy of which is attached and incorporated by this reference (the “Temporary Easement Property”), to facilitate the Town’s construction of public utility lines and other related improvements in the vicinity of the Temporary Easement Property (the “Project”).

This Temporary Construction Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. The Temporary Construction Easement is granted for vehicular and pedestrian ingress and egress to and from the Temporary Easement Property and for Grantee’s use to do all things reasonably necessary to construct and install the Project including, but not limited to, the transport, stockpiling and storage of construction materials, soil, equipment and vehicles. Upon expiration of the Temporary Construction Easement, the Grantee, at its sole cost and expense, shall restore the Temporary Easement Property to substantially the same condition it was in prior to Grantee’s use. Grantee shall not leave any rubbish or debris on or about the Temporary Easement Property. The term of this Agreement shall begin upon the date of mutual execution hereof and shall extend until December 31, 2016 or until the Project has been completed, whichever first occurs. The Town may extend the Temporary Construction Easement for one (1) additional six (6) month period (or until June 30, 2017) by giving written notice to Grantor on or before December 15, 2016.

2. The Town agrees that all work associated with the Project on the Temporary Easement Property shall be completed by July 15, 2016. If not completed by July 15, 2016, work on the Project within the Temporary Easement Property shall stop and not recommence until August 29, 2016, or on such earlier date as Grantor may authorize in writing. If work is stopped in accordance with this Paragraph 2, Grantee shall comply with the restoration obligations set forth in Paragraph 1 until such time as the work is authorized to recommence.

3. Upon termination of this Agreement, all covenants in this instrument are released (other than Grantee's restoration obligations set forth in Paragraph 1, Grantee's indemnification obligations set forth in Paragraph 4, and the cost recovery provision set forth in Paragraph 13, all of which shall survive the expiration or termination of this Agreement) and the Temporary Easement Property shall be considered free and clear of any restriction or any right or privilege attaching to the grant of the Temporary Construction Easement set forth in this Agreement. Upon request by Grantor, Grantee shall execute any documents reasonably requested by Grantor to confirm the termination of this Agreement.

4. The Temporary Construction Easement shall allow the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns thereof to use the Temporary Easement Property during the completion of the Project. Grantee shall use the Temporary Easement Property solely for the purpose described in Paragraph 1 and for no other purpose. In no event may any use of the Temporary Easement Property by the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns thereof violate any applicable law, rule or regulation relating to the Temporary Easement Property or materially impact Grantor's normal business operations in the adjacent property. To the extent allowed by law, the Town shall indemnify and hold the Grantor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns thereof, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Grantor or its employees, contractors or agents.

5. Grantor covenants and agrees that it is the fee owner of the Temporary Easement Property and that it has the authority to grant this Temporary Construction Easement to the Town.

6. Grantor warrants that no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this Temporary Construction Easement is granted may be placed, erected, installed or permitted upon the Temporary Easement Property during the term hereof except for existing improvements, if any. The Grantor further agrees that in the event the terms of this Temporary Construction Easement are violated, that such violation shall immediately be corrected by the Grantor at Grantor's sole expense upon receipt of written notice from Grantee.

7. Grantor reserves all rights attendant to its ownership of the Temporary Easement Property, including but not limited to the use and enjoyment of the Temporary Easement Property for all purposes not inconsistent with the terms and conditions of this Agreement.

8. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return

receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to Grantor: Craig C. Ferguson
500 West Main Street
P.O. Box 769
Lyons, CO 80540

With a copy to: Erik Foster
Moye White LLP
1400 16th Street
6th Floor
Denver, CO 80202

If to Grantee: Town of Lyons
Attn: Town Administrator
432 5th Street
Lyons, CO 80540

With a copy to: Town of Lyons
Town Attorney
c/o Michow Cox & McAskin LLP
6530 S. Yosemite Street, Suite 200
Greenwood Village, CO 80111

9. This Agreement represents the entire agreement between the Grantor and the Town as relates to the Temporary Construction Easement and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and signed by both the Mayor and the Grantor.

10. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of Colorado law. Venue for any action arising out of this Agreement shall be in the District Court in the County of Boulder, Colorado.

11. The benefits and burdens of the Temporary Construction Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. This Agreement shall not be recorded, but shall nevertheless become effective upon full execution by all parties and delivery of same to the Town.

13. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive any termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:

Craig Ferguson

Mamie Davis

Jerry Moore

GRANTEE:

TOWN OF LYONS, COLORADO

By: _____
Connie Sullivan, Mayor, Authorized
pursuant to Resolution No. 16-47

LENDER:

Agreed and Consented to this ____ day of _____, 2016.

ALPINE BANK
A Colorado Banking Corporation

By: _____

Its: _____

[Notary blocks for all signatories to this document follow].

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed to and acknowledged before me this _____ day of _____, 2016, by Connie Sullivan as the Mayor of the TOWN OF LYONS, COLORADO, for and on behalf of the Town.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed to and acknowledged before me this _____ day of _____, 2016, by _____ as _____ of Alpine Bank, a Colorado Banking Corporation, for and on behalf of the Bank.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Craig Ferguson.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Mamie Davis.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Jerry Moore.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

EXHIBIT A

Temporary Easement Property

EXHIBIT "A"

**LOCATED IN THE WEST HALF OF SECTION 18, TOWNSHIP 3 NORTH, RANGE 70
WEST OF THE 6TH PRINCIPAL MERIDIAN,
TOWN OF LYONS, COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2**

A TEMPORARY CONSTRUCTION EASEMENT OVER AND ACROSS A PORTION OF LAND, LOCATED IN THE WEST HALF OF SECTION 18, TOWNSHIP 3 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF LYONS, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH-SOUTH CENTERLINE OF SECTION 18 TO BEAR NORTH 00°59'26" EAST, A DISTANCE OF 5210.98 FEET BETWEEN A FOUND CHISELED CROSS IN STONE AT THE NORTH QUARTER CORNER AND A FOUND 3½" ALUMINUM CAP ON 2" PIPE, MARKED "RLS 4846, 1992, ¼ COR., S18/S19, T3N, R70W" AT THE SOUTH QUARTER CORNER, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 18, THENCE NORTH 00°59'26" EAST, ALONG SAID NORTH-SOUTH SECTION CENTERLINE, A DISTANCE OF 2417.73 FEET, TO THE SOUTHERLY-MOST CORNER OF PARCEL DESCRIBED IN QUITCLAIM DEED WITH BOULDER COUNTY AT RECEPTION NO. 1704495, DATED JUNE 6, 1997; THENCE ALONG SAID PARCEL BOUNDARY NORTH 37°33'47" WEST, A DISTANCE OF 363.84 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID PARCEL BOUNDARY THE FOLLOWING THREE COURSES:

- 1) NORTH 37°33'47" WEST, A DISTANCE OF 79.50 FEET;
- 2) THENCE NORTH 51°35'47" WEST, A DISTANCE OF 206.20 FEET;
- 3) THENCE NORTH 37°33'47" WEST, A DISTANCE OF 39.75 FEET;

THENCE DEPARTING SAID BOUNDARY, NORTH 52°26'13" EAST, A DISTANCE OF 55.00 FEET; THENCE SOUTH 37°33'47" EAST, A DISTANCE OF 37.36 FEET; THENCE SOUTH 52°25'37" EAST, A DISTANCE OF 233.38 FEET; THENCE SOUTH 37°29'25" EAST, A DISTANCE OF 50.73 FEET; THENCE SOUTH 47°28'07" WEST, A DISTANCE OF 65.05 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 18,527 SQ.FT. OR 0.43 ACRES, MORE OR LESS.



JOB NUMBER: 13-62,753 TEMP
DRAWN BY: E. DAVIS
DATE: APRIL 25, 2016

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics



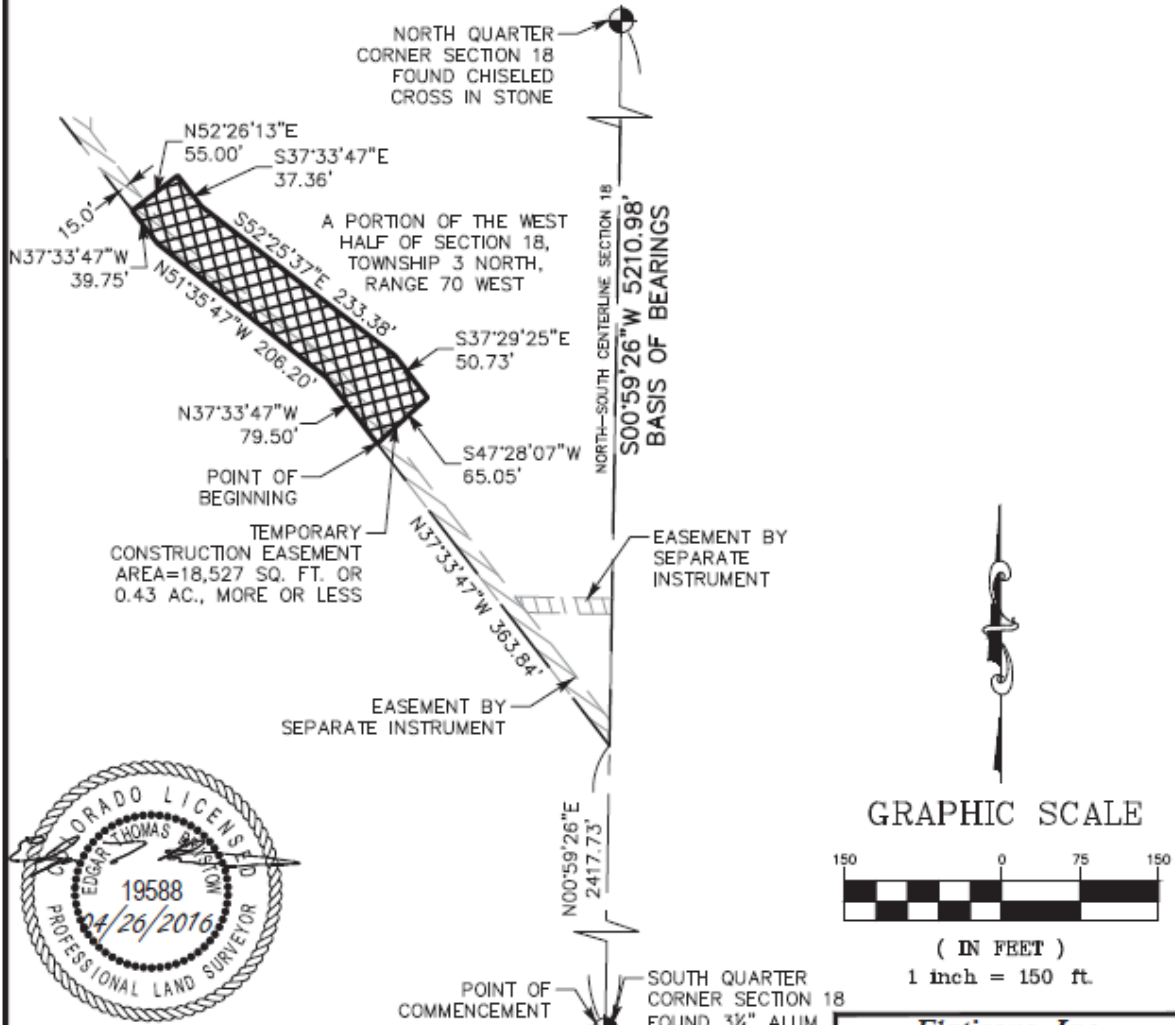
655 FOURTH AVE
 LONGMONT, CO 80501
 PH: (303) 776-1733
 FAX: (303) 776-4355
www.FlatironsInc.com

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EXHIBIT "A"

LOCATED IN THE WEST HALF OF SECTION 18, TOWNSHIP 3 NORTH, RANGE 70
WEST OF THE 6TH PRINCIPAL MERIDIAN,
TOWN OF LYONS, COUNTY OF BOULDER, STATE OF COLORADO

SHEET 2 OF 2

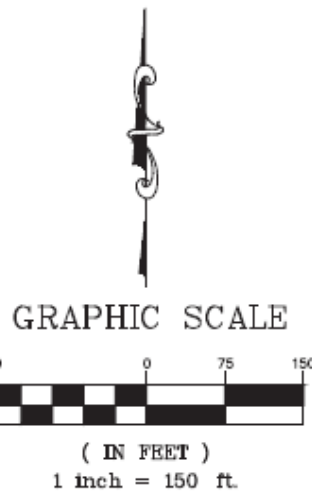


BY:EDAVIS FILE:62753-EASEMENTS.DWG DATE:4/26/2016 9:32 AM



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Surveying, Engineering & Geomatics



655 FOURTH AVE
LONGMONT, CO 80501
PH: (303) 776-1733
FAX: (303) 776-4355
www.FlatironsInc.com