

ACCESS EASEMENT AGREEMENT

DATE: _____, 2020.

GRANTOR: **DOUGLAS COUNTY SCHOOL DISTRICT RE-1**, 620 N. Wilcox Street, Castle Rock, Colorado 80104.

GRANTEE: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104.

RECITALS

Grantee has determined that it needs to acquire an access easement (the “Easement”) over property owned by Grantor, and the parties have agreed to the terms and consideration for the grant of the Easement.

GRANT

Grantor, in consideration of ten dollars and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, grants to Grantee, its successors and assigns, the Easement over the property located in Douglas County, Colorado described in the attached Exhibit (the “Easement Property”).

TERMS

1. Grantee is proposing to undertake construction of certain drainageway improvements along Hangmans Gulch adjacent to the Easement Property. The right to use this Easement shall belong to the Grantee and its agents, employees, designees, contractors, agents, and all those acting by or on behalf of it for the purposes set forth below:

A. ACCESS: To have a right of entry and access in, to, through, on, over, under, and across the Easement Property at any and all times deemed necessary by the Town for all purposes necessary and at all times convenient and necessary to exercise the rights acquired in this Easement and in the Drainage Easement conveyed concurrently herewith.

B. TEMPORARY STAGING & STORAGE: To construct and maintain stabilized staging and stockpile areas in accordance with Town of Castle Rock Temporary, Erosion and Sediment Control (“TESC”) requirements.

2. The purpose of the Easement is to allow Grantee, its employees, designees, contractors and agents access and staging over the Easement Property to construct and maintain improvements along Hangmans Gulch on the adjacent property owned by Grantor. The Easement shall commence upon the date set forth above and expire upon development of the Easement Property by the Grantor and no less than 60 day notice to the Grantee.

3. All activity permitted under this Easement shall be maintained within the Easement Property boundaries. If Grantee's use of the Easement Property disturbs the surface of the Easement Property, Grantee shall restore the surface of the Easement Property to the extent practicable, to its pre-existing condition. In restoring the surface of the Easement Property, Grantee shall comply with the Town of Castle Rock Municipal Code and the TESC Manual, shall obtain all required permits and shall reseed and landscape all disturbed areas in accordance with such permits. All such construction and maintenance undertaken by Grantee on the Easement Property shall be at the sole expense of the Grantee, and Grantee shall promptly pay all related costs and expenses.

4. Grantor reserves the right to use the Easement Property for any and all purposes which are not inconsistent with and do not unreasonably interfere with Grantee's use and enjoyment of the Easement hereby granted, specifically including, without limitation, the right to use the Easement Property to access Grantor's other property and the right to grant additional non-exclusive easements or other interests in the Easement Property upon, over, under, through and across the Easement Property as may be determined necessary or desirable by Grantor; provided, however, Grantor may not make grants that unreasonably interfere with the Easement hereby granted.

5. To the extent permitted by law, Grantee shall indemnify Grantor and hold Grantor harmless from any and all loss, liens, claims, liability, costs or expenses incurred as a result of Grantee's use of the Easement Property or exercise of the Easement (including any environmental contamination caused by Grantee, its agents, employees, contractors and other authorized representatives). Notwithstanding any provisions in this easement to the contrary, the Grantor acknowledges and agrees that Grantee's obligations under this easement may be subject to the following limitations under the Colorado Constitution, and, therefore, Grantee's performance of its obligations hereunder shall be subject to and in accordance with the following provisions: (1) those found in Article X, Section 20 of the Colorado Constitution, which provides that any multiple fiscal year debt or financial obligation of Grantee herein shall be subject to annual appropriation; and (2) those found in Article XI, Section 1 of the Colorado Constitution, which limits Grantee's legal authority to indemnify or be responsible for the liability of any private person or entity. Nevertheless, (A) Grantee agrees to be responsible hereunder to the full extent permitted by law for any Claims (as defined below) any other party may have against Grantee as the result of any act or omission by Grantee or any of its officers or employees in connection with the exercise of its rights as Grantee hereunder or as a result of Grantee's failure to perform any of its obligations under this Easement, excluding the acts or omissions of Grantee's officers and employees that were willful and wanton, that did not occur during the performance of their duties, or that were not within the scope of their employment; and (B) to the extent Grantee does not pay an obligation owed by it hereunder as the result of its failure to appropriate or indemnify for the same, such nonpayment shall nevertheless be considered a default hereunder, affording Grantor the right to pursue all rights and remedies hereunder for Grantee's nonpayment provided any such right or remedy is not otherwise subject to the limitations in the Colorado Constitution as described above. The term "Claims" means any and all claims, liabilities, actions, losses, proceedings, damages, costs, expenses, fines, fees, judgments and amounts whether foreseen or unforeseen, suffered, sustained or incurred, including reasonable attorneys' fees (including in-house attorneys), professional fees and other costs of litigation. This indemnification shall not constitute a waiver or release by Grantee of any immunity or limitation on liability under the Governmental Immunity

Act. Grantee shall obtain and keep in full force and effect general liability insurance covering its actions and activities permitted under the Easement in an amount not less than \$3,000,000 per occurrence. The liability insurance shall (A) provide coverage which is primary to, and not contributory to, any policies of Grantor, or its successors, assigns, and other parties reasonably requested by Grantor (the "Grantor Parties"), for any Claim occurring in, on or about the Easement Property, (B) name the Grantor Parties as named insureds, and (C) provide that the insurance is primary to the coverage of the Grantor Parties and may not be canceled or amended without at least thirty (30) days' prior written notice being given by the insurer to the Grantor Parties. Any insurance carried by the Grantor Parties with respect to its property or premises shall be "excess" and not "contributing" with respect to any Claim occurring in, on or about the Property.

6. Grantee shall pay or cause to be paid all costs for work done by or on behalf of Grantee, and Grantee shall keep the Easement Property free and clear of all mechanic's liens and other liens on account of work done or performed on behalf of Grantee or its contractors. Should any liens be filed or recorded against the Easement Property or any action affecting title thereto be commenced as a result of Grantee's exercise of the Easement or use of the Easement Property (which term includes the supply of materials), Grantee shall cause such liens to be removed of record within 30 days after receiving notice thereof. If Grantee desires to contest any such claim or lien, Grantee shall file a bond with the appropriate court and obtain a release of such lien pursuant to C.R.S. § 38-22-132, as amended. If a final judgment establishing the validity or existence of any lien for any amount is entered, Grantee shall immediately pay and satisfy the same. If Grantee is in default in paying any charge for which a mechanic's lien or suit to foreclose such lien has been recorded or filed, and Grantee has not bonded over such lien as provided above, Grantor may (but without being required to do so) pay such lien or claim, and any costs and amounts so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and payable from Grantee to Grantor.

7. Any breach of this agreement shall give rise to the non-breaching party's right to bring an action against the breaching party for injunctive or other equitable relief and/or damages. In the event of such action, the prevailing party shall be entitled to recover its reasonable attorney's fees from the other party. If Grantee breaches this agreement and fails to cure such breach within 30 days of receiving Grantor's written notice of such breach, Grantor shall have the right, but not the responsibility, to cure such breach without any liability to Grantee. Grantee shall reimburse Grantor for all of its costs in curing such breach within 30 days of receiving Grantor's written notice of such costs.

8. Grantee shall perform all work on the Easement Property in accordance with all applicable laws, rules and regulations, and in a manner and with such safeguards as are reasonably necessary to try to avoid any personal injury or property damage in connection therewith.

9. Neither party has made or authorized any agreement with respect to the subject matter of this instrument other than as expressly set forth herein, and no oral representation, promise, or consideration difference from the terms contained herein shall be binding on either party, or its agents or employees.

10. Grantee may not assign the Easement without the prior written consent of Grantor, which consent may not be unreasonably withheld.

11. This agreement may be amended only in a writing executed by Grantor and Grantee.

12. If any term, provision, covenant or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall continue in full force.

13. This agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action relating to this agreement shall lie in the district court in and for the County of Douglas, Colorado.

14. Recording of this agreement is prohibited.

(Signature pages follow)

GRANTOR:

DOUGLAS COUNTY SCHOOL DISTRICT RE-1

By: _____

Name: _____

Its: _____

GRANTEE:

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

David L. Corliss, Town Manager

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director, Castle Rock Water

Exhibit
Legal Description



ACCESS EASEMENT LEGAL DESCRIPTION

AN ACCESS EASEMENT LOCATED IN A PORTION OF BOOK 170 AT PAGE 204 IN THE DOUGLAS COUNTY CLERK AND RECORDERS OFFICE, LYING IN THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF DOUGLAS, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A EAST QUARTER CORNER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M., BEING MONUMENTED WITH A 2" ALUMINUM CAP STAMPED WESTERN STATES SURVEYING PLS 24960, WHENCE A LINE TO THE NORTHEAST CORNER OF SAID SECTION 2, BEING MONUMENTED WITH 2.5" ALUMINUM CAP STAMPED JF SATO & ASSOCIATES PLS 35585, BEARS N 03°31'55" E, A DISTANCE OF 2736.24 FEET ALL PER COLORADO STATE PLANE COORDINATES CENTRAL (NAD 83), SAID LINE BEING THE BASIS OF BEARINGS FOR THIS DESCRIPTION;

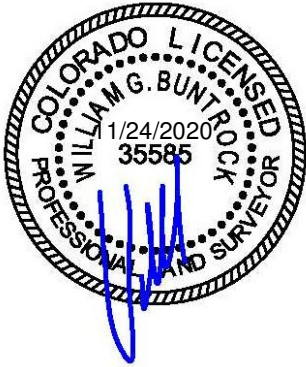
THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, N 03°31'55" E, A DISTANCE OF 1013.09 FEET TO THE COMMON CORNER OF SAID BOOK 170 AT PAGE 204, RECEPTION NO. 8623622, RECEPTION NO. 9351960 AND THE NORTHEAST CORNER OF CASTLE NORTH FILING NO.2 RECEPTION NO. 198344 ALL FILED IN SAID CLERK'S OFFICE, THENCE N 03°31'55" E, A DISTANCE OF 146.57 FEET TO THE **POINT OF BEGINNING**;

THENCE N 81°22'43" W, A DISTANCE OF 162.46 FEET; THENCE N 79°21'20" W, A DISTANCE OF 123.29 FEET; THENCE N 54°51'52" W, A DISTANCE OF 88.93 FEET; THENCE N 17°35'05" W, A DISTANCE OF 114.54 FEET TO A POINT ON THE COMMON LINE OF SAID BOOK 170 AT PAGE 204 AND LOT 3, SCOTT II FILING NO.1 AS RECORDED UNDER RECEPTION NO. 8800378 OF SAID CLERK'S OFFICE;

THENCE ALONG SAID COMMON LINE S 89°07'49" E, A DISTANCE OF 401.61 FEET TO THE NORTHEAST CORNER OF SAID BOOK 170 AT PAGE 204, SAID CORNER ALSO BEING THE NORTHWEST CORNER OF SAID RECEPTION NO. 9351960 ALSO BEING A POINT ON SAID EAST LINE OF SECTION 2; THENCE ALONG THE COMMON LINE OF SAID BOOK 170 AT PAGE 204, SAID RECEPTION NO. 9351960 AND SAID EAST LINE OF SECTION 2 S 03°31'55" W, A DISTANCE OF 201.79 FEET TO THE **POINT OF BEGINNING**.



THE ABOVE DESCRIPTION CONTAINS 63,982 SQUARE FEET OR 1.47 ACRES MORE OR LESS.



WILLIAM G BUNTROCK, PLS
COLORADO LICENSED LAND SURVEYOR NO. 35585
TRUE NORTH SURVEYING & MAPPING, LLC
TN 20028

ACCESS EASEMENT

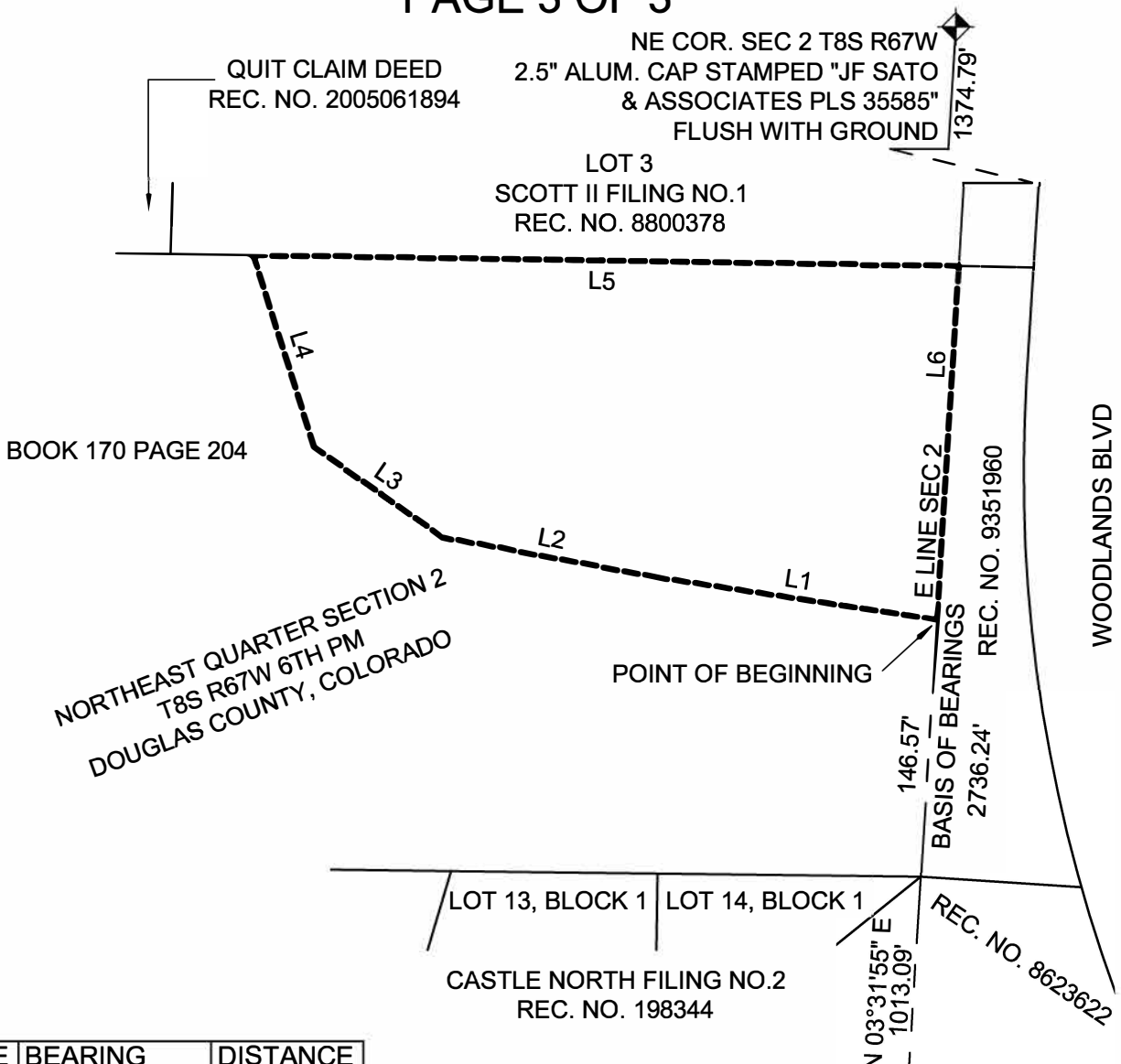
EXHIBIT A

63,982 SQUARE FEET
1.47 ACRES +/-

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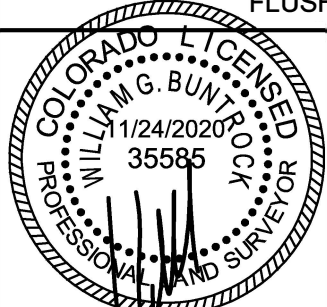
NOTICE - According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover the defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown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

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



LINE	BEARING	DISTANCE
L1	N 81°22'43" W	162.46'
L2	N 79°21'20" W	123.29'
L3	N 54°51'52" W	88.93'
L4	N 17°35'05" W	114.54'
L5	S 89°07'49" E	401.61'
L6	S 03°31'55" W	201.79'

POINT OF COMMENCEMENT
 E 1/4 COR. SEC 2 T8S R67W
 2" ALUM. CAP STAMPED "WESTERN STATES SURVEYING PLS 24960"
 FLUSH WITH GROUND



DATE	11/24/2020
DRAWN	BB
CHECKED	BB
APPROVED	BB
PROJECT NO.	TN 20028
HORZ. SCALE	1" = 100'