

TOWN OF SUPERIOR
RESOLUTION NO. R-46
SERIES 2018

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A UTILITY EASEMENT AGREEMENT BETWEEN THE TOWN OF SUPERIOR AND BOULDER CREEK CALMANTE II, LLC

WHEREAS, Boulder Creek Calmante II, LLC has requested a permanent utility easement spanning the southerly lot corner of Lot 5, Block 1 to the northeast of Lot 6, Block 1 of Calmante II.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:


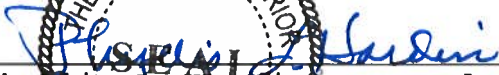
Section 1. The Utility Easement agreement between the Town and Boulder Creek Calmante II, LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 10th day of September, 2018.



Clint Folsom, Mayor

ATTEST

Phyllis L. Hardin, Town Clerk-Treasurer



UTILITY EASEMENT

This UTILITY EASEMENT (the "Easement") is made and executed this 21 day of September, 2018 (the "Effective Date"), by and between BOULDER CREEK CALMANTE II, LLC, an Colorado limited liability company with a legal address of 712 Main Street, Louisville, Colorado 80027 ("Grantor"), and the TOWN OF SUPERIOR, a Colorado municipal corporation with a legal address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town") (each a "Party" and collectively the "Parties").

WHEREAS, Grantor is the owner of certain real property in the Town of Superior, Colorado, more particularly described as Lot 6, Block 1, Calmante II, County of Boulder, State of Colorado (the "Property");

WHEREAS, the Town wishes to install a water meter pit and related appurtenances (the "Water Facilities") on the Property in the area depicted as the Utility Easement on **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, to accomplish this purpose, Grantor agrees to grant to the Town this Easement, which allows the Town to install the Water Facilities on the Property and to thereafter maintain the Water Facilities.

NOW THEREFORE, in and for the consideration of the sum of \$10.00 and other good and valuable consideration paid by the Town to Grantor, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Grantor hereby grants to the Town a perpetual easement to enter, re-enter and use the Property for the following purposes:
 - a. To install the Water Facilities in the Utility Easement depicted on **Exhibit A**.
 - b. To access the Water Facilities for inspection and maintenance purposes, including cleaning and the making of all necessary repairs thereto.
 - c. To perform any other acts necessary to protect the Water Facilities from damage.
2. **Town's Rights.** The Town shall have and exercise the right to ingress and egress in, to, over and across the Property for any lawful purpose needed for the full enjoyment of the rights granted by Grantor to the Town hereunder.
3. **Grantor's Rights.** Grantor retains the right to the undisturbed use and occupancy of the Property insofar as such use and occupancy is consistent with and does not impair any grant herein contained.
4. **Town's Obligations.** In exercising its rights under this Easement, the Town agrees to the following:
 - a. The Town shall cause any of the Property, including landscaping and fences, which is disturbed by the Town during the Town's activities on the Property to be returned to its original

condition, or as near thereto as may be reasonably accomplished, all at the expense of the Town or its contractors or agents.

b. The Town shall not use the Property as a staging area for repair or maintenance activities, and no equipment shall be stored on the Property.

c. The Town shall be solely responsible for the maintenance of the Water Facilities.

5. Grantor's Obligations. Grantor agrees to the following:

a. Grantor shall not interfere with the Town's exercise of any of its rights under this Easement, including without limitation the installation of the Water Facilities on the Property and the maintenance of those Water Facilities.

b. Grantor shall not install or permit the installation of any fence, wall, structure (above or below ground) or landscaping that would hinder the operation of the Water Facilities or impair the Town's rights of access pursuant to this Easement.

6. Indemnification. Grantor shall indemnify, hold harmless and defend the Town and its representatives, officers, employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter arising solely out of Grantor's negligent or intentional acts or omissions and related to or occurring on or about the Property under this Easement.

7. Warranty. Grantor warrants that it has the full right and legal authority to make the grant of this Easement.

8. Recordation. Except as otherwise expressly provided herein, all provisions in this Easement, 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 Easement in the official records of Boulder County, and may re-record it at any time as may be required to preserve its rights in this Easement.

9. Governing Law and Venue. This Easement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Boulder, State of Colorado.

10. Modification. This Easement may only be modified upon written agreement of the Parties.

11. Integration. The foregoing constitutes the entire agreement between the Parties regarding the Easement and no additional or different oral representation, promise or agreement shall be binding on any of the Parties with respect to the Easement.

12. 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 Easement, 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 and its officers or employees.

13. 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.


14. Third Parties. There are no intended third-party beneficiaries to this Easement.

15. Severability. If any provision of this Easement 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.

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

TOWN OF SUPERIOR

Clint Folsom
Clint Folsom, Mayor

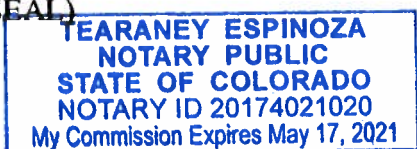
ATTEST:  Phyllis Hardin
Phyllis Hardin, Town Clerk

GRANTOR:
Boulder Creek Calmante II LLC
By: St. O. Erickson, Authorized Signer

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

Subscribed, sworn to and acknowledged before me this 21st day of September, 2018, by Steven A. Erickson as Authorized Signer of Boulder Creek Calmante II, LLC.

My Commission expires 5-17-21.

(SEAL) 

Teareney Espinoza
Notary Public

Exhibit A

Flagstaff Surveying, Inc.

Page 1 of 2

Utility Easement Description

An utility easement over a portion of Lot 6, Block 1, CALMANTE II, located within the Northwest Quarter of Section 31, Township 1 South, Range 69 West of the 6th P.M., said easement being more particularly described as follows:

Commencing at the southerly common lot corner of Lots 5 and 6, Block 1, CALMANTE II; Thence North $51^{\circ}04'30''$ West along the common line of said Lots 5 and 6, a distance of 6.00 feet to the boundary of an existing six (6) foot wide platted utility easement and the **Point of Beginning**;

Thence continuing North $51^{\circ}04'30''$ West along the common line of said Lots 5 and 6, a distance of 13.40 feet

Thence 30.24 feet along a curve to the left, having a radius of 449.40 feet, a delta angle of $03^{\circ}51'21''$, and being subtended by a chord bearing South $36^{\circ}59'51''$ West, 30.24 feet;

Thence South $52^{\circ}45'46''$ East, a distance of 13.41 feet to the boundary of said existing six (6) foot wide platted utility easement;

Thence 29.85 feet along the boundary of said existing six (6) foot wide platted easement, along a curve to the right, having a radius of 436.00 feet, a delta angle of $03^{\circ}55'21''$, and being subtended by a chord bearing North $36^{\circ}57'50''$ East, 29.84 feet, to the **Point of Beginning**.

County of Boulder, State of Colorado.

Said easement contains 403 square feet.



August 2, 2018
Steven J. Sellars
Colorado PL# 27615
17008_lot6.doc



EXHIBIT A

UTILITY EASEMENT

LOCATED IN THE NORTHWEST QUARTER OF SECTION 31,
TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M.,
COUNTY OF BOULDER, STATE OF COLORADO

Legend

 UTILITY EASEMENT
 AREA = 403 SF

Curve Table

CURVE	LENGTH	RADIUS	DELTA ANGLE	CHORD
C1	3.77'	449.40'	00°28'48" N 39°09'55" E	3.77'
C2	4.16'	436.00'	00°32'48" S 39°11'54" W	4.16'
C3	30.24'	449.40'	03°51'21" S 36°59'51" W	30.24'
C4	29.85'	436.00'	03°55'21" N 36°57'50" E	29.84'

BELLA PLACE
 $L=49.82'$

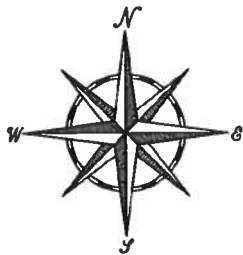
Block

1

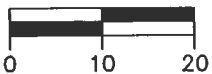
LOT 5

Line Table

LINE	BEARING & DISTANCE
L1	N 51°04'30" W 6.00'
L2	N 51°04'30" W 13.40'
L3	S 52°45'46" E 13.41'
L4	S 52°45'46" E 13.41'



SCALE: 1" = 20'



U.S. SURVEY FEET

UTILITY EASEMENT
 AREA = 403 SF

LOT 6

POINT OF BEGINNING

CALMANTE AVENUE

Flagstaff Surveying Inc.

Table Mesa Shopping Center
 637 South Broadway, Suite C
 Boulder, Colorado 80305
 303-499-9737

17008esmnt-1.DWG AUGUST 2, 2018

PREPARED BY STEVEN SELLARS
 COLORADO PLS 27615



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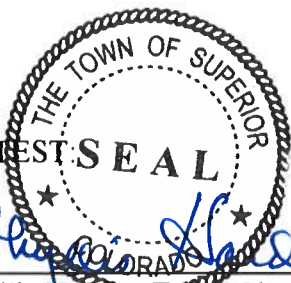
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IN WITNESS WHEREOF, the Parties have executed this Easement as of the Effective Date.

TOWN OF SUPERIOR

Clint Folsom
Clint Folsom, Mayor



Phyllis Hardin, Town Clerk

GRANTOR:

Boulder Creek Calmante II LLC
By: [Signature], Authorized Signer

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

Subscribed, sworn to and acknowledged before me this 21st day of September, 2018, by Steven A. Erickson as Authorized Signer of Boulder Creek Calmante II, LLC.

My Commission expires 5-17-21.



[Signature]
Notary Public

Exhibit A

Flagstaff Surveying, Inc.

Page 1 of 2

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Commencing at the southerly common lot corner of Lots 5 and 6, Block 1, CALMANTE II; Thence North $51^{\circ}04'30''$ West along the common line of said Lots 5 and 6, a distance of 6.00 feet to the boundary of an existing six (6) foot wide platted utility easement and the **Point of Beginning**;

Thence continuing North $51^{\circ}04'30''$ West along the common line of said Lots 5 and 6, a distance of 13.40 feet

Thence 3.77 feet along a curve to the right, having a radius of 449.40 feet, a delta angle of $00^{\circ}28'48''$, and being subtended by a chord bearing North $39^{\circ}09'55''$ East, 3.77 feet;

Thence South $52^{\circ}45'46''$ East, a distance of 13.41 feet to the boundary of said existing six (6) foot wide platted utility easement;

Thence 4.16 feet along the boundary of said existing six (6) foot wide platted easement, along a curve to the left, having a radius of 436.00 feet, a delta angle of $00^{\circ}32'48''$, and being subtended by a chord bearing South $39^{\circ}11'54''$ West, 4.16 feet, to the **Point of Beginning**.

County of Boulder, State of Colorado.

Said easement contains 53 square feet.



August 2, 2018
Steven J. Sellars
Colorado PLS #27615
7008_lot5.doc



EXHIBIT A

UTILITY EASEMENT

LOCATED IN THE NORTHWEST QUARTER OF SECTION 31,
TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH P.M.,
COUNTY OF BOULDER, STATE OF COLORADO

Legend

 UTILITY EASEMENT
 AREA = 53 SF

Curve Table

CURVE	LENGTH	RADIUS	DELTA ANGLE	CHORD
C1	3.77'	449.40'	00°28'48" N 39°09'55" E	3.77'
C2	4.16'	436.00'	00°32'48" S 39°11'54" W	4.16'
C3	30.24'	449.40'	03°51'21" S 36°59'51" W	30.24'
C4	29.85'	436.00'	03°55'21" N 36°57'50" E	29.84'

BELLA PLACE
 L=49.82'

Block

1

N 51°04'30" W 115.00'

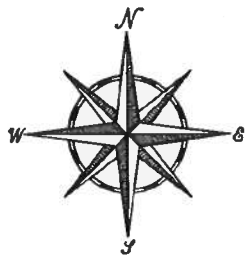
LOT 5

S 44°27'14" E 115.36'
 9.58'

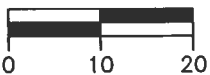
Line Table

LINE	BEARING & DISTANCE
L1	N 51°04'30" W 6.00'
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L3	S 52°45'46" E 13.41'
L4	S 52°45'46" E 13.41'

UTILITY EASEMENT
 AREA = 53 SF



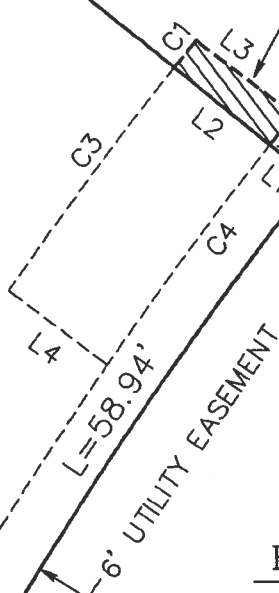
SCALE: 1" = 20'



U.S. SURVEY FEET

LOT 6

S 58°55'44" E 115.03'



POINT OF BEGINNING

CALMANTE AVENUE

Flagstaff Surveying Inc.

Table Mesa Shopping Center
 637 South Broadway, Suite C
 Boulder, Colorado 80305
 303-499-9737

17008esmnt-1.DWG AUGUST 2, 2018

PREPARED BY STEVEN SELLARS
 COLORADO PLS 27615