

TOWN OF SUPERIOR
RESOLUTION NO. R-46
SERIES 2019

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A UTILITY EASEMENT AGREEMENT BETWEEN THE TOWN OF SUPERIOR AND BRIXMOR HOLDINGS 11 SPE, LLC

WHEREAS, Brixmor Holdings 11 SPE, LLC has requested a permanent utility easement spanning the northerly face of Lot 6, Superior Marketplace, Filing 5.

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 Brixmor Holdings 11 SPE, LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 26th day of August, 2019.



Clint Folsom, Mayor

ATTEST:

The seal is circular with a double-line border. The outer ring contains the text "THE TOWN OF SUPERIOR" at the top and "COLORADO" at the bottom. In the center, the word "SEAL" is written in a bold, serif font. A handwritten signature in blue ink is written across the seal.


Phyllis L. Hardin, Town Clerk-Treasurer

UTILITY EASEMENT

This UTILITY FACILITIES EASEMENT (the "Easement") is made and executed this day of Aug 21, 2019, by and between Brixmor Holdings 11 SPE, LLC, a Delaware limited liability company with a legal address of 450 Lexington Avenue, 13th Floor, New York, New York 10017 with a copy to VP of Regional Legal Services 1525 Faraday, Suite 350, Carlsbad, CA 92008 ("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 individually a "Party" and collectively the "Parties").

WHEREAS, Grantor is the owner of certain real property in the Town of Superior, Colorado, a portion of which is more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, with an address of 600 Center Drive, Superior, Colorado 80027 (the "Property");

WHEREAS, the Town wishes to install a potable line and related appurtenances on the Property as depicted on **Exhibit B**, attached hereto and incorporated herein by this reference (the "Utility Facilities"); and

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

NOW THEREFORE, for good and valuable consideration, 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 Utility Facilities as depicted on **Exhibit B**.
- b. To access the Utility 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 Utility 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 install the Utility Facilities in such a manner as to minimally disrupt Grantor's Property or the use of Grantor's Property by Grantor and its tenants and guests.

b. 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.

c. 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.

d. The Town shall be solely responsible for the maintenance of the Utility Facilities including cleaning, snow and ice removal, repairs and general clean up.

e. The Utility Facilities shall be constructed and maintained in a commercially reasonable and expeditious manner in compliance with all applicable laws.

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 Utility Facilities on the Property and the maintenance of those Utility 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 Utility 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. Notice. Any Notice under this Easement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the party at the address set forth in the first page of this Easement.

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

16. 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 day and year first above set forth.

TOWN OF SUPERIOR

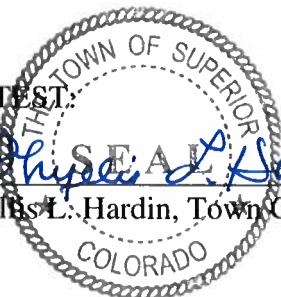


Clint Folsom, Mayor

ATTEST:



Phyllis L. Hardin, Town Clerk



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On Sept. 10, 2019 before me, Maria Maxie Whitfield, Notary Public

personally appeared Matthew Berger Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s), on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Maria Maxie Whitfield Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document:

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Signer's Name:

Corporate Officer - Title(s): Corporate Officer - Title(s):

Partner - Limited General Partner - Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian of Conservator Trustee Guardian of Conservator

Other: Other:

Signer is Representing: Signer is Representing:

Exhibit A

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOT 6, SUPERIOR MARKETPLACE FILING NO. 5 RECORDED AT RECEPTION NO. 2206916 IN THE OFFICIAL RECORDS OF THE CLERK AND RECORDER, COUNTY OF BOULDER, STATE OF COLORADO, SITUATED IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF SUPERIOR, SAID COUNTY AND STATE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 6, WHENCE THE NORTH LINE OF SAID LOT 6 BEARS NORTH 89°45'58" EAST, A DISTANCE OF 363.83 FEET, WITH ALL BEARINGS REFERENCED HEREIN RELATIVE THERETO;

THENCE SOUTH 57°08'48" EAST, A DISTANCE OF 612.73 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 44°41'45" EAST, A DISTANCE OF 3.39 FEET TO A LINE PARALLEL WITH, DISTANT 10.00 FEET NORTHERLY FROM THE NORTH FACE OF A ONE-STORY STUCCO/BRICK BUILDING;

THENCE ALONG SAID PARALLEL LINE, NORTH 89°44'57" EAST, A DISTANCE OF 123.96 FEET;

THENCE DEPARTING SAID PARALLEL LINE, SOUTH 00°15'03" EAST, A DISTANCE OF 10.00 FEET TO SAID NORTH FACE;

THENCE ALONG SAID NORTH FACE, SOUTH 89°44'57" WEST, A DISTANCE OF 128.16 FEET;

THENCE DEPARTING SAID NORTH FACE, NORTH 44°41'45" WEST, A DISTANCE OF 7.33 FEET;

THENCE NORTH 43°48'23" EAST, A DISTANCE OF 10.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 0.030 ACRES, (1,314 SQUARE FEET), MORE OR LESS.

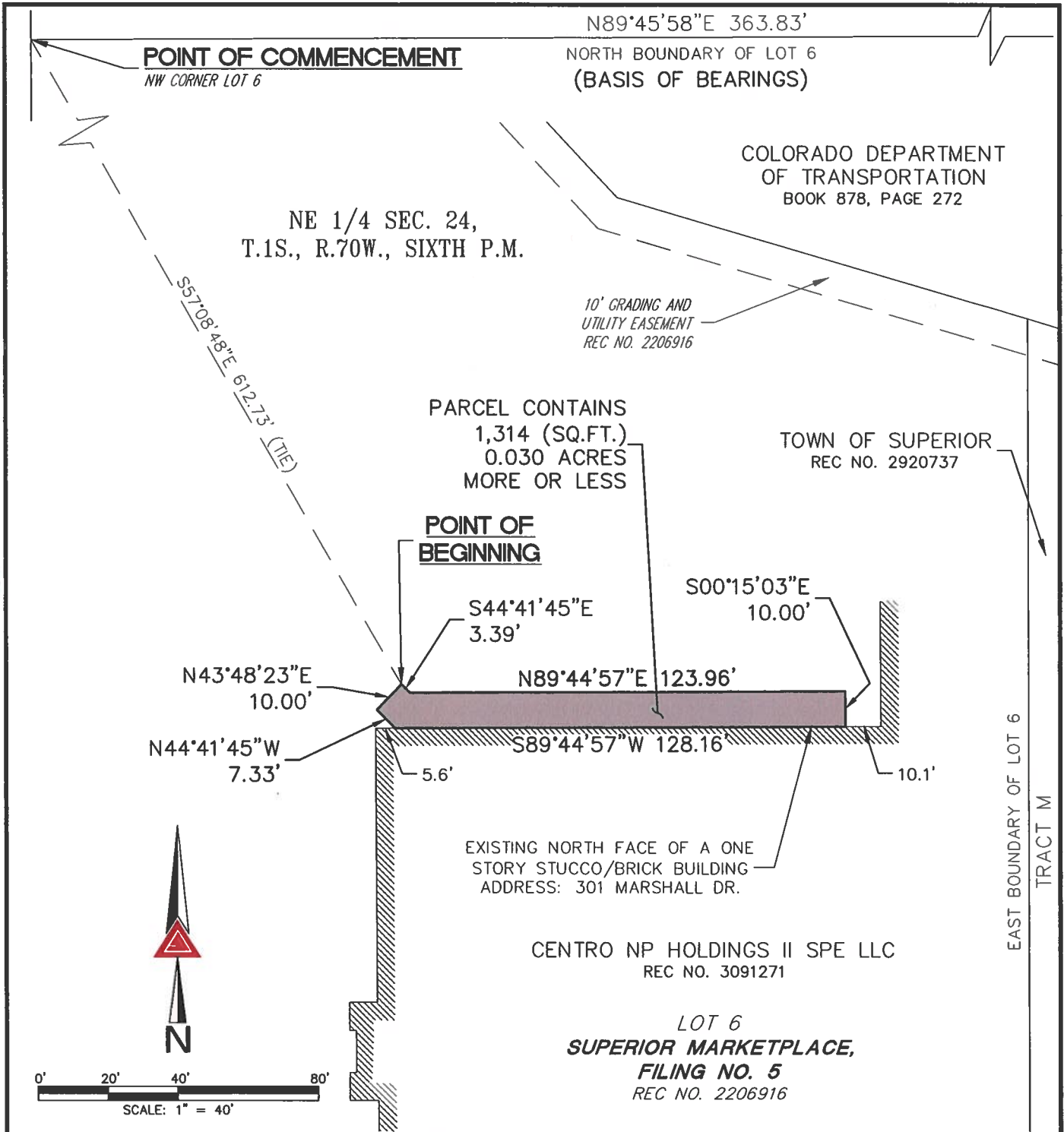
EXHIBIT ATTACHED AND MADE A PART HEREOF.



BRADY J. MOORHEAD, PLS 38668
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVENUE, SUITE 1
LITTLETON, CO 80122

Exhibit B

ILLUSTRATION TO LEGAL DESCRIPTION



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\DWG\EXHIBITS\
 DWG NAME: Utility Easement
 DWG: BJM CHK: JRW
 DATE: 4/2/19
 SCALE: 1" = 40'



300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com

EXHIBIT
 NE 1/4 SEC. 24, T1S, R70W, 6TH P.M.
 BOULDER COUNTY, COLORADO

JOB NUMBER 54819-18

2 OF 2 SHEETS