

TOWN OF SUPERIOR
RESOLUTION NO. R-54
SERIES 2019

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN EASEMENT AGREEMENT BETWEEN THE TOWN OF SUPERIOR AND HSRE-SUPERIOR MOB, LLC

WHEREAS, HSRE-Superior MOB, LLC has requested a permanent easement along the north wall of Tract C1, Superior Town Center, Filing No. 1B, Replat No. 3 to house a generator.

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

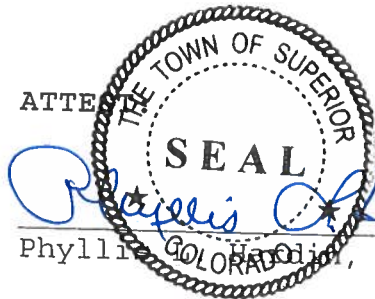
Section 1. The Easement Agreement between the Town and HSRE-Superior MOB, LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.


ADOPTED this 14th day of October, 2019.



Clint Folsom, Mayor

ATTEST




Phyllis Hardin, Town Clerk-Treasurer

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Agreement") is made and executed this 14th day of October, 2019 (the "Effective Date"), by and between HSRE-Superior MOB, LLC, a Delaware limited liability company with a legal address of 3394 Carmel Mountain Road, Suite 200, San Diego, California 92121 ("Grantee"), 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, the Town owns the real property in the Town more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Easement Property");

WHEREAS, Grantee wishes to construct, install, operate, inspect, maintain and repair a generator and related appurtenances and facilities on the Easement Property, as depicted in **Exhibits B** and **C**, attached hereto and incorporated herein by this reference; and

WHEREAS, for this purpose, the Town is willing to convey this permanent easement to Grantee.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. The Town hereby grants to Grantee, its successors and assigns, and their respective employees, agents, contractors, representatives, lessees and licensees, 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 a generator and related equipment, together with necessary facilities appurtenant thereto, including, but not limited to fences, lines, meters, fixtures, controls, and devices, (the "Improvements") in, through, over, across, under and above the Easement Property.
2. Grantee's Rights. Grantee and its, successors and assigns, and their respective employees, agents, contractors, representatives, lessees and, licensees 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. Grantee agrees that other utilities may be installed in the Easement Property if such utilities do not interfere with Grantee's rights as herein granted.
4. Maintenance. Grantee shall be solely responsible for maintaining the Improvements. All Improvements installed by Grantee on the Easement Property shall remain Grantee's property.
5. No Interference. The Town shall not construct or place any structure or building, whether temporary or permanent, on the Easement Property that will interfere with or obstruct the access or Easement granted herein. The Town shall retain the right to the use and occupancy of the Easement Property to the extent that it does not interfere with Grantee's rights or its use of the Easement.

6. Warranty. The Town warrants that it has the full right and legal authority to make the grant of this Easement.

7. 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. Grantee shall record this Agreement in timely fashion 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 Agreement.

8. 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.

9. 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.

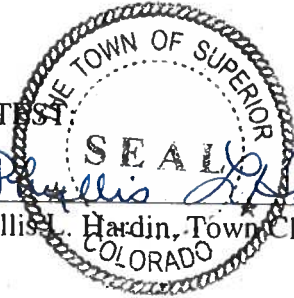
h. Governmental Immunity. The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101,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

Clint Folsom
 Clint Folsom, Mayor

ATTEST:

Phyllis L. Hardin
 Phyllis L. Hardin, Town Clerk

GRANTEE
Mark D. Toothacre
Mark D. Toothacre
Authorized Signatory

By:

STATE OF COLORADO)
) ss.
 COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2019 by _____, as _____ of HSRE-Superior MOB, LLC.

WITNESS my hand and official seal.

My Commission Expires:

 Notary Public

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 October 16, 2019 before me, Jose Arambula, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared MARK TOOTHACKER
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 _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is 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: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT A

Legal Description of Easement Property

EXHIBIT A

PROPERTY DESCRIPTION

A parcel of land for easement purposes, being a portion of Tract C of the Superior Town Center Filing No. 1B Replat No. 2 recorded December 2, 2014 as Reception No. 3415628 of the Records of Boulder County, located in the East Half of the Northwest Quarter of Section Nineteen (19), Township One South (T.1S.), Range Sixty-nine West (R.69W.), Sixth Principal Meridian (6th P.M.), Town of Superior, County of Boulder, State of Colorado and being more particularly described as follows:

COMMENCING at the Southwest corner of said Tract C and assuming the South line of said Tract C as bearing North 74°56'26" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 70.00 feet with all other bearings contained herein relative thereto;

THENCE North 74°56'26" East along the South line of said Tract C a distance of 2.00 feet to the **POINT OF BEGINNING**;

THENCE North 15°03'34" West a distance of 14.50 feet;
THENCE North 74°56'26" East a distance of 45.50 feet;
THENCE North 15°03'34" West a distance of 24.15 feet;
THENCE North 74°56'26" East a distance of 11.00 feet to the West line of an Utility Easement recorded March 13, 2018 as Reception No. 3645014 of the Records of Boulder County;

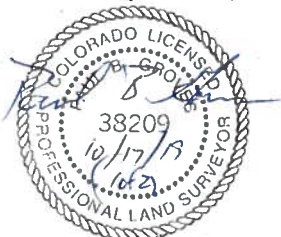
The following Two (2) courses are along the Westerly and Northerly lines of said Utility Easement;

THENCE South 15°03'34" East a distance of 27.65 feet;
THENCE South 74°56'26" West a distance of 53.50 feet;
THENCE South 15°03'34" East a distance of 11.00 feet to the South line of said Tract C;
THENCE South 74°56'26" West along said South line a distance of 3.00 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 497 Square Feet, more or less (\pm), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYORS STATEMENT

I, Paul B. Groves, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Paul B. Groves - on behalf of King Surveyors
Colorado Licensed Professional
Land Surveyor #38209

KING SURVEYORS
650 East Garden Drive
Windsor, Colorado 80550
(970) 686-5011

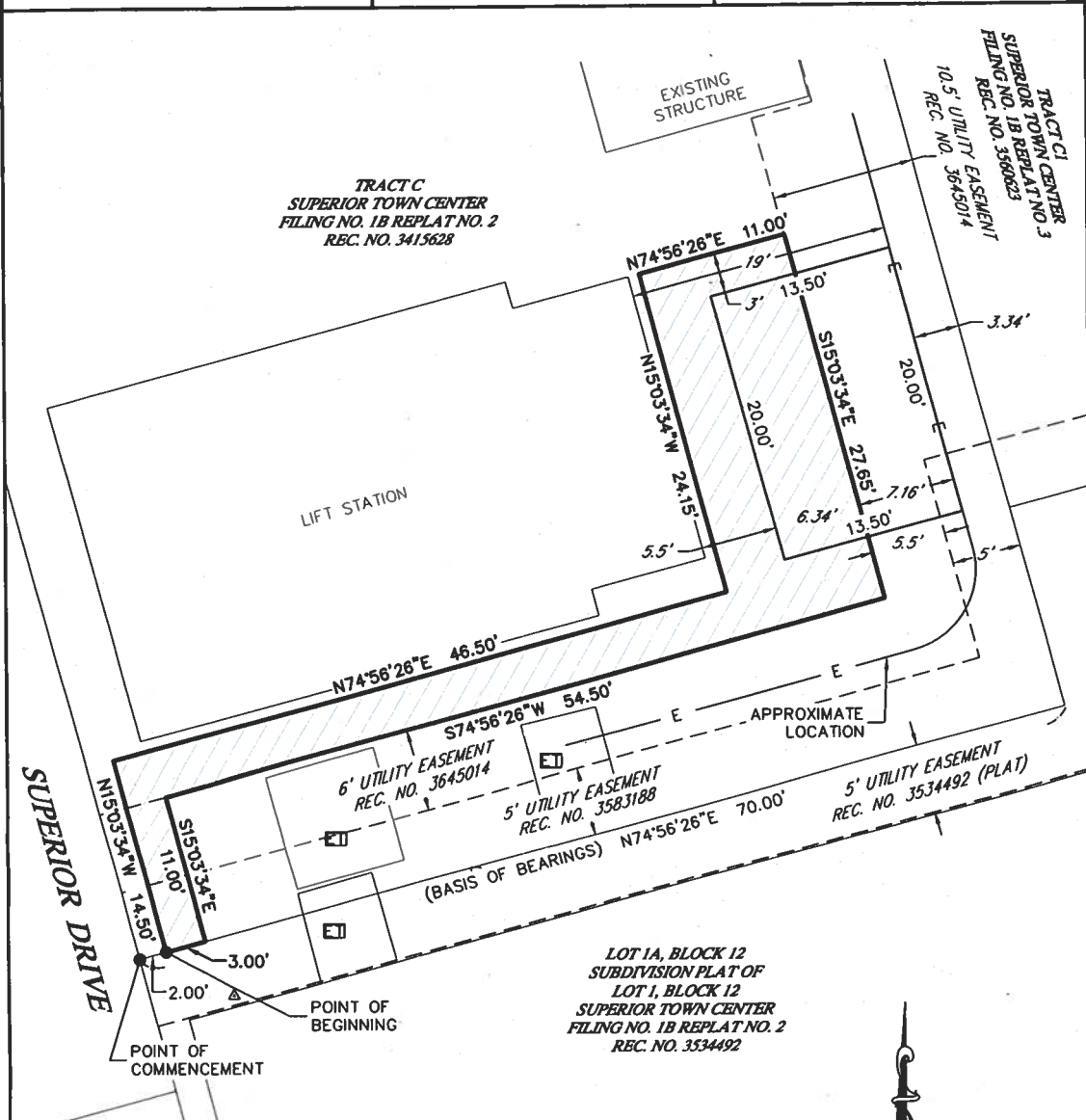
EXHIBIT B

Depiction of Utilities

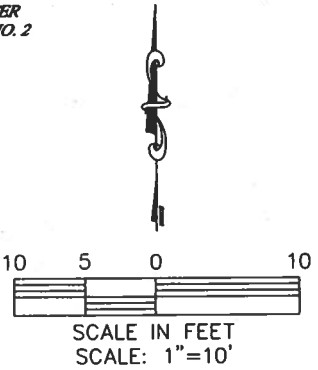
PROPERTY DESCRIPTION

EXHIBIT B

NORTHWEST QUARTER
SECTION 19, T.1S., R.69W.



LOT 1A, BLOCK 12
SUBDIVISION PLAT OF
LOT 1, BLOCK 12
SUPERIOR TOWN CENTER
FILING NO. 1B REPLAT NO. 2
REC. NO. 3534492



Paul B. Groves - On Behalf Of King Surveyors
Colorado Licensed Professional
Land Surveyor #38209

NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

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 such 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. (13-80-105 C.R.S. 2012)



KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | fax: (970) 686-5821
email: contact@KingSurveyors.com

PROJECT NO: 20190455
DATE: 10/16/2019
CLIENT: PMB
DWG: 20190455EXH
DRAWN: CSK CHECKED: PG