

GRANT OF EASEMENT
(Orchard Church – Northern Regional Drainage Easement)

THIS GRANT OF EASEMENT IS BEING RECORDED TO CORRECT DEFECTS CONTAINED ON PAGES 55-61 OF THAT CERTAIN DEVELOPMENT AGREEMENT DATED DECEMBER 12, 2016 AND RECORDED JANUARY 9, 2017 AT RECEPTION NO. 2017000002084 (THE "DEVELOPMENT AGREEMENT"). PAGE 58 OF THE DEVELOPMENT AGREEMENT CONTAINED THE SIGNATURE OF GRANTEE. IT WAS THE INTENTION OF THE PARTIES THAT PAGES 55-61 BE RECORDED AS A BLANK FORM TO THE DEVELOPMENT AGREEMENT WITH THE GRANT OF EASEMENT TO BE RECORDED AS A STAND-ALONE DOCUMENT AT A LATER DATE. THE SIGNATURE ON PAGE 58 OF THE DEVELOPMENT AGREEMENT IS OF NO FORCE OR EFFECT AND THIS GRANT OF EASEMENT SHALL SOLELY GOVERN THE MATTERS CONTAINED HEREIN.

This Grant of Easement (hereinafter "Easement Agreement") is entered into this 25th day of May, 2017, by and between ORCHARD CHURCH whose address is 12405 E. 120th Avenue, Henderson, Colorado 80640 (hereinafter "GRANTOR"), and THE CITY OF BRIGHTON, COLORADO, a Colorado home rule municipality having its address at 500 South 4th Avenue, Brighton, Colorado 80601 (hereinafter "CITY" or "GRANTEE"), as follows (GRANTOR and GRANTEE are sometimes referred to collectively as the "Parties"):

WHEREAS, the CITY is a Colorado home rule municipality existing under and by virtue of the laws of the State of Colorado, and is authorized, *inter alia*, to acquire easements in real property necessary to the public functions and operations of the CITY; and

WHEREAS, GRANTOR represents and warrants that GRANTOR is the owner in fee simple of that certain parcel of real property more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"), and that GRANTOR is authorized and empowered to grant and convey the easements and interests specified herein. The rights granted to GRANTEE hereunder are subject to easements of record; and

WHEREAS, CITY desires to acquire from GRANTOR, and GRANTOR desires to grant and convey unto the CITY, on the terms set forth herein, a non-exclusive drainage easement on, over, under, through, across and upon a portion of the Property, in order to provide for the construction, installation, and ongoing maintenance, operation, repair and replacement by the CITY of certain public drainage improvements including storm drainage pipelines, drainage channels, drainage facilities, drainage culverts and/or box culverts, and related appurtenances, (collectively, the "Drainage Improvements"), to be located on the portion of the Property described in Exhibit B, attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated by reference, and the payment to GRANTOR of Ten Dollars (\$10.00) and other valuable consideration, and for the mutual covenants herein exchanged, and for other good and valuable

When recorded return to:
Mehaffy Brubaker & Ernst LLC
21 N. 1st Avenue, Suite 290
Brighton, CO 80601

consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, GRANTOR hereby grants, bargains, sells, conveys, transfers and assigns to the CITY, its successors and assigns, a non-exclusive drainage easement on, over, under, through, and across a portion of the Property as described in Exhibit B (hereinafter, the "Easement") for the construction, installation, operation, maintenance, use, alteration, reconstruction, replacement, inspection, improvement, removal, cleaning and repair of the Drainage Improvements, together with all the rights and privileges reasonably necessary for the full use and enjoyment of the rights and purposes contemplated herein.

FURTHER, the Parties hereto mutually covenant and agree as follows:

1. CITY shall exercise the rights and privileges granted hereunder with due care and in accordance with all applicable laws, rules and regulations, and during construction or repair activities shall use reasonable efforts to minimize the actual area of the Easement disrupted; shall locate and protect any existing underground or above-ground utility lines and appurtenances; shall provide temporary construction fencing around all excavated areas during construction, maintenance or repair; and, within a commercially reasonable time after construction of the Drainage Improvements or any maintenance, repair or replacement thereof, shall clear the Easement of all construction debris, re-vegetate or re-pave the surface of the Easement as appropriate, restore any of GRANTOR'S pre-existing improvements, and replace and properly compact any soils that have been excavated from the Property or otherwise disturbed by such construction, maintenance, or repair.

2. GRANTOR shall not locate or place within the Easement any structure or other long-term, permanent or semi-permanent improvement, including but not limited to outbuildings, fences, walls or the like, such as would materially interfere with the ongoing operation, use and maintenance of the Drainage Improvements in any way, or such as would unreasonably interfere with the CITY's ongoing access, use and maintenance of the Drainage Improvements and Easement as provided herein; provided, however, GRANTOR reserves the right to design, construct, use, operate, and maintain an infiltration pond on and under that portion of the Property legally described as Tract A, Orchard Subdivision Filing 1, County of Adams, State of Colorado, in accordance with plans approved by the CITY ("Infiltration Pond") which Infiltration Pond shall serve as a drainage facility for the Property and will be located, in whole or in part, within the Easement. Notwithstanding anything contained in this Easement Agreement to the contrary, Grantor reserves the right to grant additional easement interests in the Easement to other grantees so long as such uses and interests do not materially or unreasonably interfere with Grantee's rights hereunder. In connection herewith, GRANTOR hereby grants to the CITY such temporary construction easements and temporary rights of access and use of the Property as may be reasonably necessary for the CITY to access the Easement from time to time for construction, repair and maintenance purposes.

3. At all times during construction or repair, CITY shall require its contractors or construction agents to provide and maintain all insurance required by Colorado law applicable to the CITY's public construction contracts, to cover risks associated with the intended use and occupancy of the Easement and the CITY's obligations hereunder.

4. CITY shall not suffer or permit any mechanic's lien, or other lien, to be filed against the Property, or any part thereof, by reason of work, labor, services, or materials supplied, or claimed to have been supplied, to CITY and/or its contractors or construction agents hereunder, or anyone claiming by, through or under CITY and/or its contractors or construction agents hereunder.

5. CITY is relying on, and does not waive nor intend to waive by any provision of this Easement Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, as amended from time to time ("Act"), or any other limitation, immunity or defense otherwise available to CITY.

6. SPECIAL CONDITIONS:

A. The Drainage Improvements shall be designed, constructed, operated, maintained, repaired, and replaced by the CITY, at the CITY's sole cost and expense, and GRANTOR shall have no responsibilities whatsoever with respect to the Drainage Improvements.

B. In the event the Drainage Improvements negatively impact, limit, or restrict the function and purpose of the Infiltration Pond, the CITY, at its sole cost and expense, shall design and construct the Drainage Improvements to accommodate drainage from the Property equal to the capacity of the Infiltration Pond.

7. This Easement Agreement shall extend to and bind the Parties and their respective agents, officers, employees, administrators, personal representatives, heirs, successors, and/or assigns.

8. This Easement Agreement is made in and shall be construed in accordance with the laws of the State of Colorado.

9. GRANTOR, for itself and its successors and assigns does hereby covenant and agree that this Easement Agreement shall attach to and run with the Property, and shall be binding upon GRANTOR and its heirs, personal representatives, successors and assigns, and any other person or entity claiming by, through or under GRANTOR. This Easement Agreement shall be recorded by the CITY at the CITY's expense in the real property records of Adams County, Colorado.

10. This Easement is granted pursuant to that certain Development Agreement between the parties dated December 12, 2016, and recorded in the real property records of Adams County, Colorado, at Reception No. 2017000002084 ("Development Agreement"). CITY is in the process of studying alternatives and developing a revised regional drainage plan for an area that includes the Property ("Regional Drainage Plan"). CITY anticipates that the Regional Drainage Plan, once adopted, will contemplate utilizing either the Easement created by this Easement Agreement ("Northern Easement") or the drainage easement created by that certain Grant of easement (Orchard Church – Southern Regional Drainage Easement) of even date herewith ("Southern Easement"), but not both. If the Regional Drainage Plan, as adopted by

CITY, contemplates utilizing the Southern Easement, or if the Regional Drainage Plan does not contemplate using the Northern Easement, then CITY shall, at GRANTOR's request, promptly abandon, vacate, and otherwise fully release and discharge all of CITY's right, title and interest in and to the Northern Easement.

11. Nothing contained herein is intended as a gift or dedication of any portion of the Easement to the general public or for the use of the general public for any purpose whatsoever. The Easement shall not constitute a public right-of-way or public easement for purposes of third-party utilities. The Easement may only be used by CITY for the purposes set forth herein. CITY shall not install signage or other structures or utilities or otherwise alter the Property without Grantor's prior written consent. CITY shall have no right to grant to any third party any rights in or to the Easement or the Drainage Improvements, except as expressly provided herein.

12. Grantee accepts the Easement in its as-is condition, with all faults, both known and unknown. Grantor makes no representations or warranties of any kind or nature to Grantee, except as expressly set forth herein.

13. The provisions of this Easement Agreement are for the sole benefit of the parties to this Easement Agreement and their successors and assigns, and shall not give rise to any rights or remedies by or on behalf of any other person or entity.

14. Grantee shall maintain, or cause to be maintained, at Grantee's expense, the Easement and the Drainage Improvements, in compliance with sound storm water and drainage management practices, and in accordance with all applicable laws, rules and regulations.

15. To the extent permitted by law, Grantee hereby agrees to protect, defend and hold Grantor harmless from and against any and all claims, demands, liabilities, losses, costs, damages or expenses (including, without limitation, reasonable attorney's fees and costs) arising out of relating to or resulting from this Easement Agreement or Grantee's use of the Easement or the Drainage Improvements, except to the extent such claims, demands, liabilities, losses, costs, damages, or expenses are caused by Grantor's gross negligence or willful misconduct.

16. This Easement Agreement may only be amended by written agreement executed by Grantor and Grantee or their respective successors-in-interest to the Easement and Property.

17. No waiver of any violation of this Easement Agreement shall be construed as, or constitute a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding violation of the same or any other provision of this Easement Agreement.

18. In the event of any litigation or other legal proceeding arising out of or related to this Easement Agreement, the Adams County Courts shall be the forum and such court shall award to the prevailing party in such action all reasonable costs and expenses of suit including, without limitation, reasonable attorneys' fees, expert witness fees and costs incurred.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That part of the South half of the Southwest quarter of Section 36, Township 1 South, Range 67 West of the Sixth Principal Meridian, County of Adams, State of Colorado, described as:

Commencing at the Southwest corner of the South one-half of the Southwest one-quarter; thence $N00^{\circ}41'12''W$ along the West line of said South one-half of the Southwest one-quarter, a distance of 60.00 feet; thence $N89^{\circ}48'22''E$ parallel with the South line of said South one-half of the Southwest one-quarter, a distance of 30.00 feet to the Northwest corner of a parcel of land described in Reception No. 20050711000730690, Adams County records, said corner also being the point of beginning; thence $N00^{\circ}41'12''W$ parallel with said West line, a distance of 1273.89 feet to a point on the North line of said South half of the Southwest quarter; thence $N89^{\circ}55'13''E$ along said North line, a distance of 1310.33 feet to the Northwest corner of a parcel of land described in Reception No. C1233937, Adams County records; thence $S00^{\circ}36'04''E$ along the West line as described in said Reception No. C1233937, a distance of 1271.26 feet to the Northeast corner of a parcel of land described in Reception No. 20050711000730690, Adams County records; thence $S89^{\circ}48'22''W$ along the North line of said parcel of land, a distance of 1308.41 feet to the point of beginning, County of Adams, State of Colorado

EXCEPT that portion conveyed to The City of Brighton in Deed recorded June 19, 2009 at Reception No. 2009000044646.

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT

EXHIBIT A LEGAL DESCRIPTION

A PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 36, THENCE NORTH 89°55'23" EAST, A DISTANCE OF 17.87 FEET TO THE NORTHEAST CORNER OF A PARCEL OF LAND OWNED BY THE ORCHARD CHURCH AS RECORDED AT RECEPTION NO. 2014000065122 IN THE CLERK AND RECORDER'S OFFICE OF ADAMS COUNTY, COLORADO;

THENCE SOUTH 00°35'53" EAST, ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 64.00 FEET;

THENCE DEPARTING SAID EAST LINE, SOUTH 89°55'23" WEST, A DISTANCE OF 17.87 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 36;

THENCE CONTINUING SOUTH 89°55'23" WEST, A DISTANCE OF 1322.36 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PEORIA STREET, BEING A 60.00 FOOT RIGHT-OF-WAY;

THENCE NORTH 00°41'00" WEST, ALONG SAID RIGHT-OF-WAY A DISTANCE OF 64.00 FEET TO NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36;

THENCE NORTH 89°55'23" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1322.48 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 117,565 SQUARE FEET (2.6845 ACRES), MORE OR LESS.

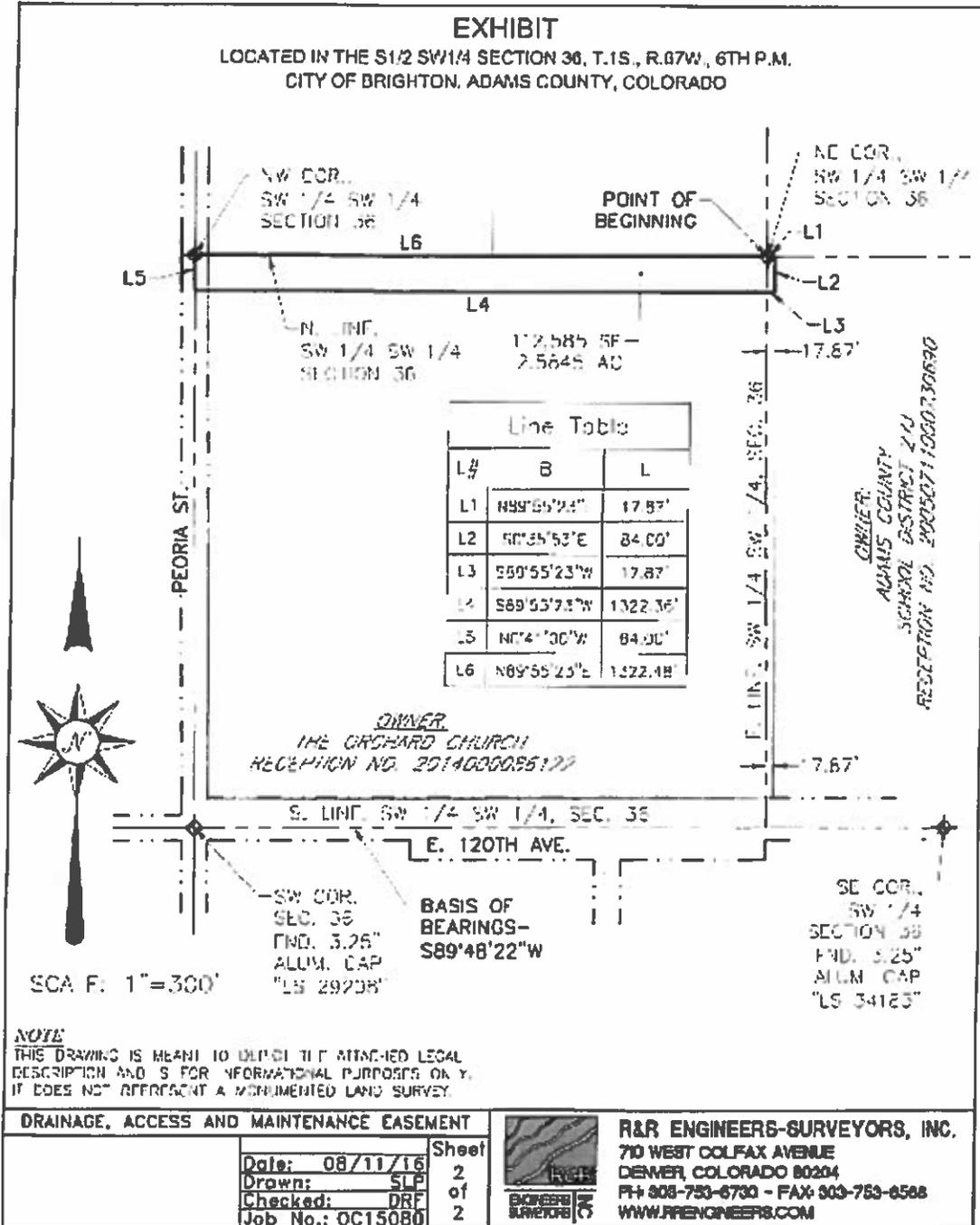
BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, MONUMENTED AT THE EAST END BY A 3.25" ALUMINUM CAP STAMPED "LS 34153" AND AT THE WEST END BY A 3.25" ALUMINUM CAP STAMPED "LS 29208", WITH THE LINE ASSUMED TO BEAR SOUTH 89°48'22" WEST.



PREPARED BY: ANTONIO W. SMITH, PLS #38320
FOR AND ON BEHALF OF R&L ENGINEERS-SURVEYORS, INC.
710 WEST COLFAX AVE.
DENVER, CO COLORADO 80204
August 11, 2016

EXHIBIT

LOCATED IN THE S1/2 SW1/4 SECTION 36, T.1S., R.07W., 6TH P.M.
CITY OF BRIGHTON, ADAMS COUNTY, COLORADO



SCALE: 1"=300'

CHIEF SURVEYOR
 ADAMS COUNTY
 SCHOOL DISTRICT 211
 RECEPTION NO. 2005071000730690

SW COR. SEC. 36
 FND. 3.25" ALUM. CAP
 "LS 29208"

BASIS OF BEARINGS-
S89°48'22"W

SE COR. SW 1/4 SECTION 36
 FND. 3.25" ALUM. CAP
 "LS 34123"