

TEMPORARY WATER DRAINAGE EASEMENT

This Water Drainage Easement ("Easement") is granted this ____ day of _____, 2020, by the City of Commerce City, a home rule Colorado municipal corporation, with a principal place of business at 7887 E. 60th Avenue, Commerce City, CO 80022 ("Grantor" or "City"), and HIP RINGSBY I-76, LLC, a Delaware limited liability company with a principal place of business at 385 Inverness Parkway, Ste 460, Englewood, Colorado 80112 ("Grantee"), and referred to collectively as Parties.

The Parties hereto, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the adequacy of which is acknowledged by the Parties, the following agreements and understandings are made:

1. **GRANT.** Grantor grants to Grantee, its agents, successors, and assigns, an easement for the temporary and nonexclusive right to the property described in Exhibit A ("Easement Property") strictly and exclusively for the installation and operation of drainage facilities ("Facilities") described as a pressurized storm pipe in the East 108th Avenue right-of-way for the limited purpose of conveying storm water from the real property located at Tract B and Tract C of Gruenewald Filing No. 1 ("Grantee's Property"), to a storm manhole in East 108th Avenue approximately three hundred sixty (360) feet west of the west property line of the Grantee's Property to be built as a part of the right of way improvements associated with the Gruenewald Filing 2 (IOV) development, subject to the conditions and limitations set forth herein. This Easement does not authorize the installation of any ancillary infrastructure or equipment, including pumps or pressurizing equipment, in the Easement Property or the right-of-way.
2. **RESERVATION OF USE AND OCCUPANCY.** Grantor retains the right to undisturbed use and occupancy of the Easement property insofar as such use and occupancy is consistent with and does not impair the Grantee's use of the Easement. The Grantor reserves the right to grant additional easements within the Easement Property, subject to the rights granted to Grantee hereunder. Notwithstanding any the foregoing, the Grantor and its agents and assigns may temporarily restrict Grantee's access to the Easement Property for reasonable periods of time, to perform maintenance or construction activities within the Easement Property; provided that storm water from Grantee's Property may continue to drain to the Easement Property.
3. **MAINTENANCE.** Grantee shall maintain the Facilities which shall be owned by Grantee and shall not be accepted as a public improvement by the Grantor. Grantee shall seek and receive written consent from the Grantor's City Engineer, which shall not be unreasonably withheld, prior to accessing the Easement Property for the purpose of conducting repair and replacement activities relating to the Facilities. Nothing in this Easement shall require the Grantor to construct, install, operate, maintain, repair, or replace the Facilities. Notwithstanding the foregoing, the Grantor may, in the event of an emergency, as determined by the Grantor in its sole discretion, clean, cure or correct any damage caused by the Grantee's failure to adequately maintain the Facilities located within the Easement Property, and the Grantee shall reimburse the Grantor for the cost of such actions within thirty (30) days after receipt of an invoice from the Grantor. In addition to any other remedies allowed by law, if Grantor undertakes maintenance of the Facilities, the Grantor shall have the right to place a lien on Grantee's Property for costs incurred by Grantor for such maintenance and Grantor is authorized to institute judicial proceedings to foreclose the lien and sell the Grantee's Property, together with all its appurtenances, as allowed by law. The Grantor shall be entitled to collect all expenses incurred in pursuing any remedies provided by this Easement, including without limitation reasonable costs and attorney fees.
4. **INTEGRITY OF EASEMENT PROPERTY.** Grantee shall not, intentionally or otherwise, cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous material, as defined below, to be dumped, spilled, released, permanently stored or deposited on, over, through, or beneath the Easement Property or any other lands owned by Grantor. The Grantee shall be responsible for and shall fully indemnify the Grantor for any corrective action (including risk assessment, active remediation, passive remediation, voluntary cleanup, investigation, and monitoring) of any

environmental contamination resulting from the Grantee's use of the Easement, including the discharge of any hazardous material, including but not limited to any substances defined as or included in the definition of "hazardous substance," "hazardous material," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or a standard of conduct concerning any hazardous, toxic or dangerous substance or material, as may be in effect now or at any time hereafter, and in the regulations adopted, published or promulgated pursuant to said laws.

5. RESPONSIBILITY FOR WORK. Grantee shall pay or cause to be paid all costs for work done by or on behalf of the Grantee or any of its designees, contractors, or assigns occupying or doing work in the Easement Property. The Grantee shall keep the Easement Property free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of the Grantee.

6. COMPLIANCE WITH LAWS. Grantee shall comply with all applicable laws, ordinances and regulations, including without limitation all applicable regulatory, environmental and safety requirements, at Grantee's sole cost and expense. Nothing herein shall be interpreted to waive any requirements of the City, including but not limited to any requirement to obtain permits, with regard to the Facilities or the Easement Property.

7. PROTECTION OF EASEMENT PROPERTY AND INSURANCE. Grantee shall cause all contractors and subcontractors performing work on or about the Easement Property to take all necessary safety measures with respect to the construction and maintenance activities. Before commencing any work in the Easement Property, the Grantee will secure and maintain general liability insurance sufficient to cover any liability for its actions on the Easement Property and its use of the Grantee and shall name the Grantor as an additional insured on any such insurance policies.

8. LIABILITY AND INDEMNIFICATION. Grantee shall be liable and responsible for any and all damages (except for ordinary wear and tear) to persons or property caused by or arising out of the actions, obligations or omissions of the Grantee or its employees, agents, representatives, contractors or other persons acting under the Grantee's direction or control in the exercise of Grantee's rights and obligations under this Easement (including the installation and use of the Facilities). The Grantee shall indemnify, hold harmless, and defend the Grantor, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, liens, damages, fines, fees, penalties, losses, judgments, costs or expenses, including, but not limited to, actual and reasonable attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the use by Grantee of the Easement or the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of the Grantee, its employees, agents or representatives or other persons for whom the Grantee is responsible, acting in relation to the Easement, the Easement Property, and Facilities. The provisions set forth in this paragraph shall survive the termination of this Easement.

9. WAIVER OF WARRANTIES AND REPRESENTATIONS. Grantee acknowledges and agrees that this Easement is subject to all prior rights, rights-of way, easements, and other encumbrances affecting the Easement Property. The Grantor makes no warranty of title as to the Easement Property. **THE GRANTOR HAS NOT AND DOES NOT MAKE ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OR REPRESENTATIONS OR GIVE ANY INDEMNIFICATION OF ANY KIND TO THE GRANTEE CONCERNING THE EASEMENT PROPERTY, THE GRANTOR'S TITLE TO THE EASEMENT PROPERTY, THE EASEMENT PROPERTY'S CONDITION OR SUITABILITY, OR THE GRANTEE'S USE OF THE EASEMENT PROPERTY BEING IN COMPLIANCE WITH ANY LAW OR REGULATION.** The Grantee hereby waives, releases, and forever discharges the Grantor, its directors, officers, and employees, of and from any and all claims the Grantee may have with respect to the condition, physical characteristics or environmental condition of the Easement Property.

10. EASEMENT TO RUN WITH LAND; RECORDATION. This Easement shall run with the land and apply to all interests now owned or hereafter acquired to the above-described property. The Grantee shall record this Easement within ten (10) days of execution.

11. TERMINATION. The Easement shall terminate automatically upon any of the following conditions:

- a. The determination is made by the City Engineer that the storm water flows from the Grantee's Property can be accepted through downstream drainage improvements in Henderson Draw without the need of the Facilities and notice of the same is provided to the Grantee.
- b. the abandonment of the Facilities, which shall occur as provided by law or at any time that the Grantee provides the Grantor with a written notice of abandonment. Abandonment shall include, but not be limited to, disconnecting the pressurized storm line from the pump system on private property and from the point of connection at the storm manhole described in paragraph 1, herein, and plugging the connection to said manhole.
- c. the Grantee's failure to maintain the Facilities or to perform any obligation under this Easement and does not cure such defect or default within thirty (30) days of written notice by the Grantor, unless such defect or default cannot reasonably be cured within a 30-day period, in which case the Easement shall not terminate so long as Grantee is diligently pursuing a cure to such defect or default;
- d. the Grantee ceases to use the Easement for the purposes granted for a continuous period of two (2) years;
- e. the Easement is no longer necessary because the storm water from the Grantee's Property is otherwise diverted or stored; or
- f. the Grantee allows storm water not originating on the Grantee's Property to be conveyed to the Facilities without the Grantor's express written permission.

Upon termination of the Easement, the Grantee shall restore the Easement Property to a condition that is satisfactory to and approved by the Grantor, which may include the removal of the Facilities within 6 months of such termination. Further, upon termination, Grantee shall execute and deliver to the Grantor an unconditional written release of this Easement in a recordable form.

g. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

h. **SEVERABILITY.** If a court of competent jurisdiction holds any provision of this Easement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Easement.

i. **NO WAIVER OF BREACH.** Neither the Grantor's nor the Grantee's failure to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the Grantor's or the Grantee's failure, in any one or more instances, to exercise any option, privilege, or right, shall in no way be construed to constitute a waiver, relinquishment, or release of such obligations, covenants, or agreements, nor forbearance by the Grantor or the Grantee of any default under this Easement shall in any manner be construed as a waiver of such default.

j. **HEADINGS.** Paragraph headings used in this Easement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Easement.

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the day and year first written herein.

CITY OF COMMERCE CITY

HIP RINGSBY I-76, LLC, LLC

Benjamin A. Huseman, Mayor



John W. Seiple, Jr., as Authorized Representative

ATTEST:

Dylan A. Gibson, City Clerk

Approved as to form:

City Attorney

STATE OF COLORADO)
) ss
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Benjamin A. Huseman, Mayor, and Dylan A. Gibson, as City Clerk, of the City of Commerce City, Colorado, a municipal corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 17 day of SEPTEMBER, 2020, by John W. Seiple, Jr. as Authorized Representative of HIP RINGSBY I-76, LLC, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: NOV 25, 2022



Notary Public

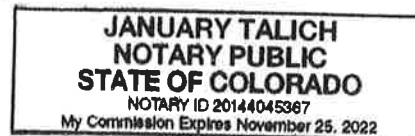


EXHIBIT A

LEGAL DESCRIPTION:

A PARCEL OF LAND TWENTY (20) FEET IN WIDTH BEING A PART OF EAST 108TH AVENUE RIGHT-OF-WAY DESCRIBED IN BOOK 207 AT PAGE 124 AND IN BOOK 207 AT PAGE 118 OF THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER, LOCATED IN THE NORTHWEST QUARTER AND SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 11 AND CONSIDERING THE NORTH LINE OF SAID SOUTHWEST QUARTER TO BEAR NORTH 89°43'31" EAST BETWEEN MONUMENTATION AS SHOWN HEREON, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 88°30'00" EAST A DISTANCE OF 467.67 FEET TO THE **POINT OF BEGINNING**;

THENCE NORTH 89°43'31" EAST A DISTANCE OF 804.28 FEET;

THENCE SOUTH 33°34'12" EAST A DISTANCE OF 47.86 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST 108TH AVENUE;

THENCE SOUTH 89°43'31" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 23.93 FEET;

THENCE NORTH 33°34'12" WEST A DISTANCE OF 23.93 FEET;

THENCE SOUTH 89°43'31" WEST A DISTANCE OF 793.49 FEET ;

THENCE NORTH 00°16'29" WEST A DISTANCE OF 20.00 FEET TO THE **POINT OF BEGINNING**;

SAID PARCEL CONTAINS AN AREA OF 16,696 SQUARE FEET, OR 0.383 ACRES, MORE OR LESS.

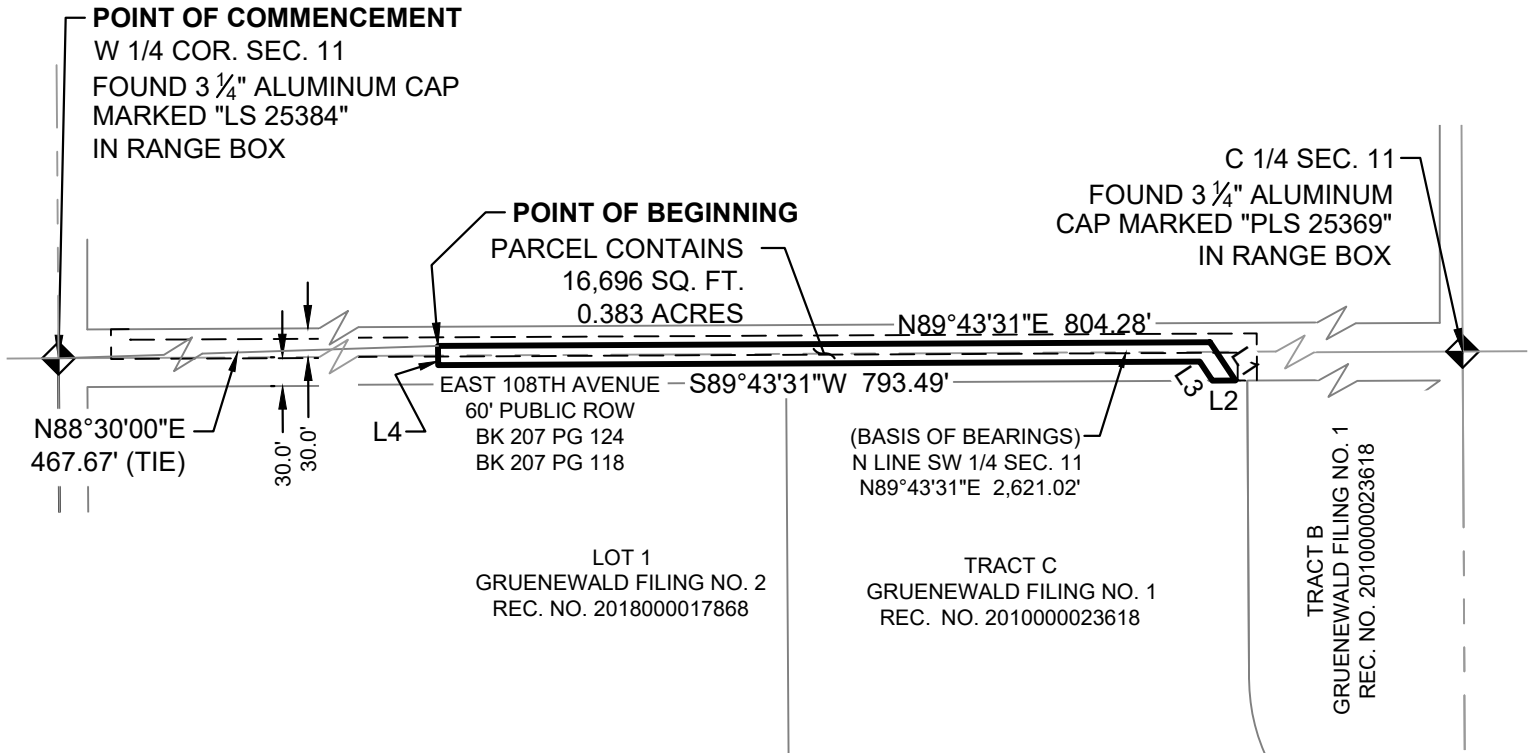
THE LINEAL DISTANCE UNIT USED IN THE PREPARATION OF THIS LEGAL DESCRIPTION IS THE UNITED STATES SURVEY FOOT. THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY DEFINES THE UNITED STATES SURVEY FOOT AS 1200/3937 METERS.

I, THOMAS D. STAAB, A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING, IS BASED ON MY KNOWLEDGE, INFORMATION AND BELIEF, AND IS IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE.

THOMAS D. STAAB, P.L.S. 25965
FOR AND ON BEHALF OF
WARE MALCOMB
990 SOUTH BROADWAY
SUITE 230
DENVER, COLORADO 80209
P 303.561.3333

990 south broadway suite 230 denver, co 80209 p 303.561.3333 waremalcomb.com <div><div>WM</div><div>WARE MALCOMB</div></div>	PROJECT NAME: GRUENEWALD			SHEET 1 OF 2
	JOB NO.: DEN18-0103		DATE : 06/16/2020	
	DRAWN: KMF	PA/PM: JCS	SCALE: N/A	
CIVIL ENGINEERING & SURVEYING				

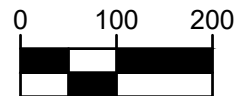
EXHIBIT A



LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S33°34'12"E	47.86'
L2	S89°43'31"W	23.93'
L3	N33°34'12"W	23.93'
L4	N00°16'29"W	20.00'

NOTE:

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



SCALE: 1" = 200'
ORIGINAL GRAPHIC SCALE

990 south broadway
suite 230
denver, co 80209
p 303.561.3333
waremalcomb.com



PROJECT NAME: GRUENEWALD

JOB NO.: DEN18-0103

DATE : 06/16/2020

DRAWN: KMF

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SCALE: 1" = 200'

SHEET

2 OF 2

CIVIL ENGINEERING & SURVEYING