

Drive Way, Cul-de-sac Easement and Maintenance Agreement

This Drive Way, Cul-de-sac Easement and Maintenance Agreement is executed this ____ day of November 2018 by and between the Owners who are identified below and have executed this Agreement below.

RECITALS

WHEREAS, the Owners are the current Owners of the lots 2, 3 4 and 5 (the "Lots") identified on Exhibit A attached hereto (collectively the "Property").

WHEREAS, the Owners are desirous of granting an easement for the drive way and cul-de-sac noted on exhibit A attached hereto by this reference.

WHEREAS, the Owners are desirous of granting a maintenance agreement for the drive way and cul-de-sac noted on exhibit A.

WHEREAS, subject to the express terms and provisions of this Agreement, the parties desire to (i) create a non-exclusive drive way and cul-de-sac easement over and across certain portions of the Property as noted on Exhibit A (ii) impose a maintenance agreement for the maintenance and upkeep of the drive way and Cul-de-sac with respect to the granted easement as provided herein.

NOW, THEREFORE, for valuable consideration given and received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I

Creation and Use of Easement

1.1 Incorporation. The Recitals set forth above are hereby incorporated herein as if fully set forth in this Article.

1.2 Grant of Drive way and cul-de-sac Easement. Each Owner does hereby sell, convey, grant, assign and transfer unto each other Owner, their agents, guests, invitees, and licensees, a non-exclusive easement for the accommodation of the **Drive Way, Cul-de-sac Easement** across that portion of the Properties that is delineated on Exhibit A herein as the "**Drive Way, Cul-de-sac Easement**" ("**Agreement**") in order to provide vehicular and pedestrian access on and off of Otero Avenue to and from Lots 2, 3, 4 and 5 as depicted on Exhibit A.

1.3 No Barriers or Impediments. No Owner or subsequent owners of any of the referenced lots construct, erect or install any fences, barriers, impediments, gates or other improvements ("Impediments") within the **Drive Way, Cul-de-sac Easement** Area which would impede the use of the Easement Area. Any original party to this Agreement or any Owner of a Lot if there is no original party (or its successor in interest) to this Agreement that still owns a Lot shall have the right to remove any Impediments from the **Drive Way, Cul-de-sac Easement** Area, and such party shall have any liability to the other party constructing, erecting or installing any Impediment for any damage caused to such Impediment. If a party has caused or allowed an Impediment to be constructed, erected, installed or maintained in either the **Drive Way, Cul-de-sac Easement** Area, such party shall bear the costs of the removal of such Impediment.

1.4 Individual Vehicular Entry ways. Each property owner shall be responsible to design,

construct, install and maintain their respective vehicular entryways for their lot/home site onto and off of the Driveway Easement area.

ARTICLE II

Maintenance and Repair

2.1 **Maintenance and Repair.** The owners of lots 2, 3, 4 and 5 as depicted on Exhibit A agree to exercise all ordinary and reasonable care in its use of the Easement and agrees to exercise all ordinary and reasonable care in its use of the **Drive Way, Cul-de-sac Easement Area**. The owners of lots 2, 3, 4 and 5 agree to pay to maintain and repair the Drive Way, Cul-de-sac Easement area in order to maintain the easement in a good and useable condition.

2.2 **Indemnity.** Each Owner shall indemnify, defend and hold the other Owners harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the indemnifying Owner's breach of this Agreement.

2.3 **Mechanics' Liens.** Nothing contained herein shall authorize any party, or any person or entity acting through, with, or on behalf of such parties, to subject another party's property, or any portion thereof, to mechanics liens. If any such lien shall be filed against another party's parcel the party causing such lien shall cause the lien to be discharged. In the event that the enforcement of such lien is not discharged within twenty (20) days after receipt of written notice of the lien by the party charged with causing the lien, then the party whose property is subject to the lien, at its option, and at the reasonable cost and expense of the other party, may enter into, defend, prosecute or pursue any effort or action (whether or not litigation is involved) which such party deems reasonably necessary to defend its property from and against such lien.

ARTICLE III

Default: Right to Cure: Liens

3.1 **Default: Right to Cure.** If any party defaults in the performance of any of its obligations under this Agreement, including but not limited to the obligation to maintain and repair the **Drive Way, Cul-de-sac Easement Area** as provided in paragraph 2.1 above, any non-defaulting party shall have the right, but not the obligation, upon fifteen (15) days written notice, to cure such default for the account of and at the expense of the defaulting party; provided, however, that in the event of emergency conditions constituting default, the non-defaulting party acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the non-defaulting party will take in order to cure the default, including but not limited to, entering upon the parcel of the defaulting party to cure such default.

3.2 **Legal and Equitable Relief.** Any party shall have the right to prosecute any proceedings at law or in equity against any other party, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or defaulting party, or any such person, from violating or attempting to violate or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Paragraph shall include, by way of illustration but not limitation, ex parte applications for temporary restraining order, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default.

3.3 **Costs of Cure.** All costs and expenses reasonably incurred by the non-defaulting party to cure a default of a defaulting party under this Agreement, together with interest thereon at the

rate of 18% per annum and all costs and expenses of any proceedings at law or in equity, including reasonable attorney's fees awarded by order of the court, shall be assessed against and be immediately due and payable by the defaulting or violating party.

3.4 **Lien.** Costs and expenses accruing and/or assessed pursuant to this Agreement shall constitute a lien against the defaulting party's property. The lien shall attach and take effect upon recordation of a claim of lien in the office of the El Paso County Recorder by the party making the claim. The claim of lien shall include (i) the name of the lien claimant; (ii) a statement concerning the basis for the claim of lien and identifying the lien claimant; (iii) an identification of the owner of the parcel or interest therein against which the lien is claimed; (iv) a description of the parcel against which the lien is claimed; (v) a description of the work performed or action taken which has given rise to the claim of lien and a statement itemizing the amount thereof; and (vi) a statement that the lien is claimed pursuant to the provisions of this Agreement. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, by personal service or mailing to the address given for the mailing of tax statements in the El Paso County Assessor's office for the parcel or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Colorado.

3.5 **Waiver and Remedies Cumulative.** No waiver by a party of any default under this Agreement shall be effective or binding on such party unless made in writing and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provisions contained in this Agreement. All of the remedies permitted or available to the parties under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

ARTICLE IV **Miscellaneous**

4.1 **Amendment and Termination.** This Agreement is perpetual and may only be amended or terminated by recordation of a written instrument in the official real property records of El Paso County, Colorado, mutually agreed (100% agreement of all of the then current owners of lots 2, 3, 4 and 5) to and executed by the Owners of Lots 2, 3, 4 and 5 as noted on exhibit A..

4.2 **Default; Attorneys' Fees.** The failure of any party to this Agreement to comply with its responsibilities or obligations herein shall entitle the non-defaulting party to pursue any and all appropriate legal recourse, including the rights of injunction, damages, specific performance or any or all of the above. Should any party institute legal action or proceeding for the enforcement of the any responsibilities or obligations herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in the preparation and prosecution of such action or proceeding.

4.3 **Governing Law; Venue.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue shall be in El Paso County, Colorado.

4.4 **No Joint Venture.** Nothing in this Agreement shall be deemed or construed to create the relationship of partnership, joint venture, principal and agent, or any other association between

or among the parties.

4.5 **No Third Party Beneficiaries.** Nothing in this Agreement shall be deemed to constitute a gift, grant or dedication of any portion of the **Drive Way, Cul-de-sac Easement** Area to the general public or for any public purpose. The provisions of this Agreement are for the exclusive benefit of the parties hereto (and their successors and assigns) and shall not be deemed to have conferred any rights, express or implied, upon any third person.

4.6 **Run With the Land.** The access easement and maintenance agreement granted in this document shall run with the land, shall be appurtenant to the Lots 2, 3, 4 and 5 and shall bind the Owners, and shall inure to the benefit of and be binding upon the Owners' heirs, personal representatives, successors and assigns.

4.7 **Exhibits.** Each of the exhibits referenced herein and attached hereto are made part of this Agreement as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement the day and year first above written.

OWNERS:

Lot s 2, 3, 4 and 5 per Exhibit A

Hunsinger Development Corporation

Steven Glenn Hunsinger, President

Date

HUNSINGER SUBDIVISION

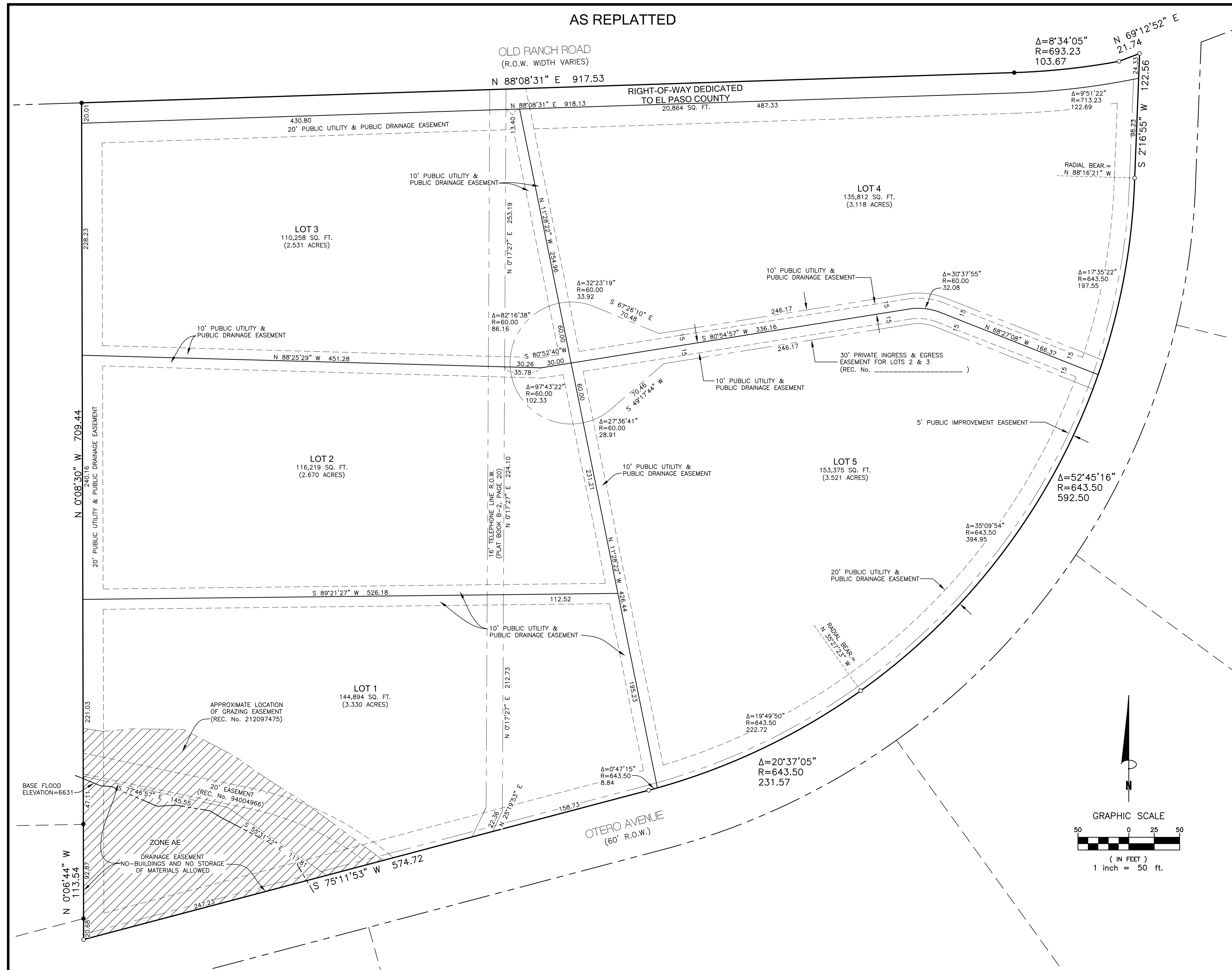
PROJECT No. 18029
MAY 23, 2018
SHEET 1 OF 2

EXHIBIT "A"

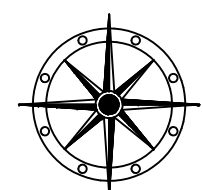
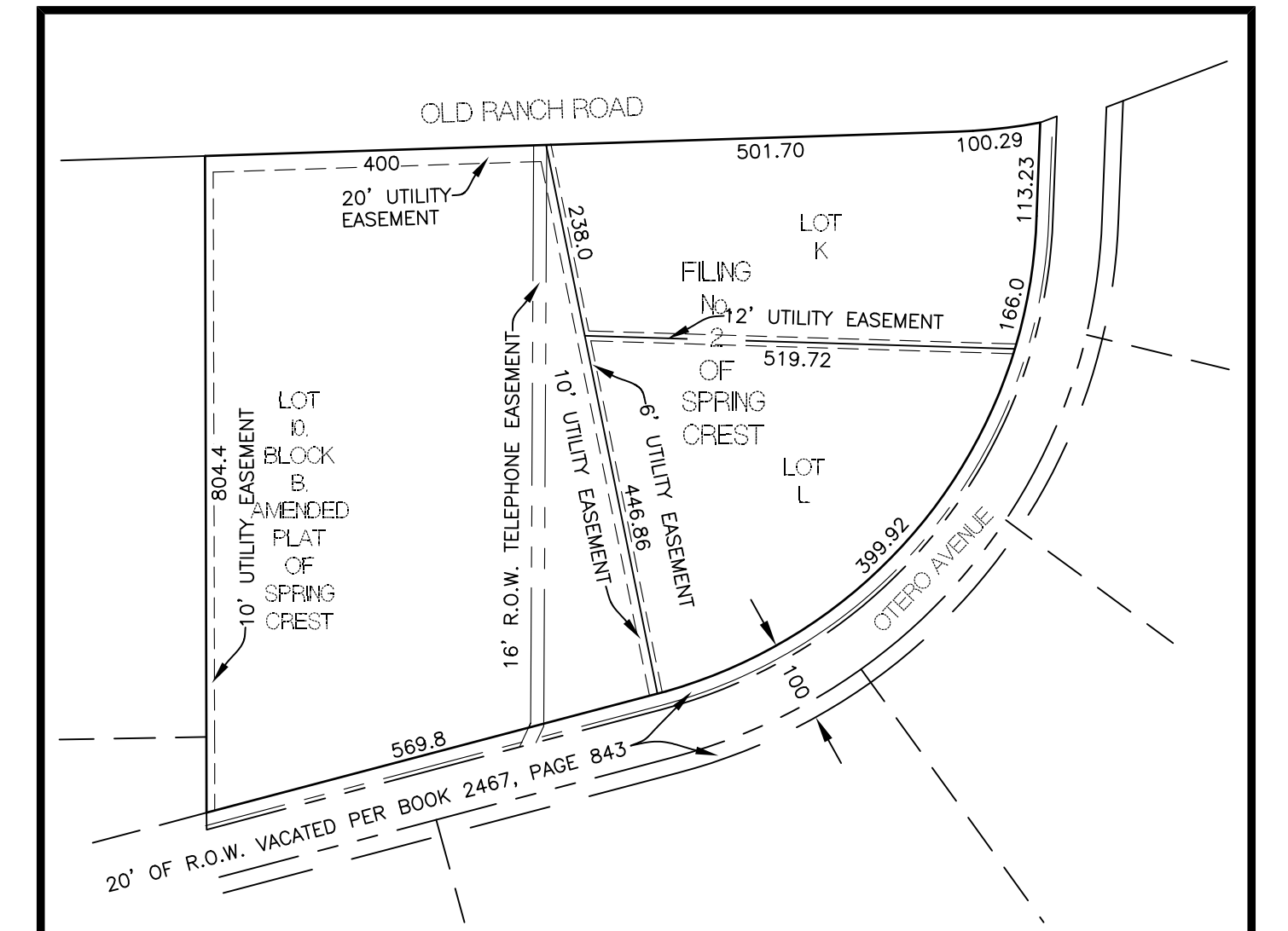
FINAL PLAT HUNSINGER SUBDIVISION

A VACATION AND REPLAT OF LOT 10, BLOCK B, AMENDED PLAT OF SPRING CREST AND OF
LOTS L AND K, BLOCK B, FILING No. 2 OF SPRING CREST
LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 28,
TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

AS REPLATTED



AS PLATTED



COMPASS SURVEYING & MAPPING, LLC
721 SOUTH 23RD STREET, SUITE B
COLORADO SPRINGS, CO 80904
719-354-4120
WWW.CSAMLIC.COM

PCD FILE NO. VR-18-014

REVISIONS:	
1	10/23/18 County comments.

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MAY 23, 2018
SHEET 2 OF 2