

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
(120' TCE for Rex Road)

THIS EASEMENT AGREEMENT ("Agreement") is made this 19 day of Aug, 2014, by and between EL PASO COUNTY, by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, STATE OF COLORADO, a body corporate and politic and a political subdivision of the State of Colorado, hereinafter referred to as the "County" or "Grantor," and GTL, INC., a California corporation ("GTL"), and MERIDIAN SERVICE METROPOLITAN DISTRICT, a Colorado metropolitan district (the "District"), hereinafter referred to collectively as "Grantees." Grantor and Grantees may be collectively referred to herein as the Parties.

Recitals

WHEREAS, the Grantor owns real property in unincorporated El Paso County which is legally described on **Exhibit A**, attached hereto and incorporated herein by reference (the "Property"), which Property was conveyed to Grantor by GTL through a separate instrument in order to fulfill open space dedication requirements for various Meridian Ranch subdivision filings; and

WHEREAS, GTL and/or the District must install and construct road and street improvements on the Property for future Rex Road, which will, upon final acceptance by Grantor, be operated and maintained by Grantor; and

WHEREAS, Grantor desires to convey an easement to Grantees for installation and construction of such road and street improvements on the Property.

Agreement

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.
2. Grant of Easement; Description of the Premises. Grantor hereby grants to Grantees and their successors and assigns a temporary construction easement ("Easement") in, over, across, upon, under and along that portion of the Property described in **Exhibit B**, attached hereto and incorporated by reference (the "Easement Area"), for the installation and construction of road and street improvements for Rex Road and related facilities and appurtenances thereto (collectively, the "Improvements"), along with the right of ingress to and egress from the Easement Area over and across the Property.
3. Ownership of Improvements; Termination of Easement. Upon preliminary acceptance of the Improvements by Grantor, Grantor shall own the Improvements and be responsible for operation and maintenance thereof. For the period between preliminary acceptance and final acceptance, Grantees shall be responsible for any necessary repair to the

County HTC

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County HTCO

Improvements. The definition and timing of “preliminary acceptance” and “final acceptance,” and the specific obligations of the Parties in relation thereto, shall be governed by relevant provisions of any subdivision improvements agreement, development agreement, the El Paso County Land Development Code and the El Paso County Engineering Criteria Manual (the “public improvement documents”). In the event of a conflict between this Agreement and the public improvement documents, the terms and provisions of the public improvement documents shall control. Upon final acceptance of the Improvements by Grantor, this Easement shall terminate and the Parties shall be released from all obligations hereunder.

4. Costs and Attorney Fees. In the event any Party initiates any litigation or engages the services of legal counsel in order to enforce the provisions of this Agreement, the prevailing Party shall be entitled to its damages and costs, including reasonable attorney fees. This paragraph applies to Grantees regardless of whether Grantor contracts with outside counsel or utilizes in-house legal counsel for the same.

5. Grantor’s Use of the Premises. Grantor retains the right to access and make full use of the Property, including the Easement Area, consistent with Grantees’ use of the Easement Area as permitted hereunder, for both itself and, to the extent allowed by Grantor, the public. Grantor shall not construct any structure on the Property that interferes with Grantees’ use of the Easement Area. During the term of the Easement, Grantor shall not plant or grow any trees, shrubs or other plants within or near the Easement Area that will impair the structural integrity of the Improvements.

6. Condition of the Property. Grantees agree and understand that they accept the Easement Area “AS IS” and without any warranties of any kind or nature, including without limitation any warranties as to the state of the Grantor’s title to the Property. Grantees acknowledge that the Property is a public facility and that the Parties cannot completely control or be responsible for the acts of the public (excluding the Parties’ respective employees, agents, and representatives) within the Property.

7. Workmanship. Grantees shall conduct all activities within the Easement Area in a neat and workmanlike manner so as not to unreasonably interfere with either Grantor’s or the public’s use and enjoyment of the Property, and without cost or liability to Grantor. Grantees shall take all reasonably necessary measures to protect Grantor, Grantor’s employees, and the general public from its activities within the Easement Area.

8. Surface Restoration of Land. Except as the Easement Area is necessarily modified to accommodate the Improvements, Grantees shall repair any physical damage done to the Property or the Easement Area by or resulting from its actions or operations. Grantees shall promptly restore, replace, re-vegetate, or repair the surface of the Easement Area to the original condition as near as may be reasonably possible. Such restoration, including seed mixture, topsoil, and ground preparation, shall be at Grantor’s reasonable direction.

9. Subjacent and Lateral Support. Neither Grantor nor Grantees shall impair the lateral or subjacent support of the Property or the Improvements located on or in the Easement Area.

10. Mechanics' and Materialmen's Liens. In no event shall Grantees allow any mechanics' or materialmen's liens to attach against the Easement Area or the Property for materials supplied or work performed at the request of, or for the benefit of, Grantees, and Grantees, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense incurred by Grantor to release any such mechanic's or materialmen's liens against the Easement Area or the Property.

11. Grantor Authority; Grantee's Responsibility to Obtain Other Approvals. Grantor covenants that it has the authority to grant the Easement as set forth herein. Grantees agree and understand that it is Grantees' responsibility to obtain any necessary approvals from, and/or address any applicable issues with, the following: the U.S. Army Corps of Engineers regarding wetlands impacts; the U.S. Fish and Wildlife Service regarding impacts to listed species including, but not limited to, Preble's Meadow Jumping Mouse; and the Regional Floodplain Administrator regarding floodplain issues. Grantees agree that all Improvements shall meet or exceed all El Paso County standards and be approved and finally accepted pursuant to the applicable El Paso County approval and final acceptance processes.

12. Compliance with Laws and Regulations. It shall be the sole responsibility of Grantees to ensure that the Improvements comply at all times with applicable federal, state and local laws and regulations.

13. Insurance. Grantees represent and warrant to Grantor that each Grantee carries general liability insurance and agrees that, during their respective periods of use of the Easement Area, each will provide proper certificates of insurance naming Grantor as an additional insured for all work within the Easement Area, and that, during their respective periods of use of the Easement Area, Grantees' contractors will carry general liability insurance, worker's compensation insurance and automotive insurance. Prior to Grantees' first access to the Easement Area under this Agreement, Grantees will provide the Grantor with the Certificates of Insurance evidencing the insurance coverage described herein.

14. Indemnification. To the extent authorized by law, each Grantee shall defend, indemnify and hold Grantor free and harmless from and against any and all liabilities, demands, claims, damages, suits, judgments and decrees, and court awards including costs, expenses and attorneys' fees, on account of injuries to or death of any person or persons or damage to any property arising out of or related to such Grantee's intentional or negligent acts, errors or omissions or that of its agents, officers, servants and employees, subcontractors or assignees, whether contractual or otherwise, related to such Grantee's use of the Easement Area and the Property, the construction and installation of the Improvements, and during the performance of this Agreement and pursuant to its terms. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to Grantor or the District pursuant to the Colorado Governmental Immunity Act or otherwise provided by law.

15. Grantor Representation. One or more Grantor representatives may be present on the Easement Area during any of the Grantees' activities under this Agreement.

16. Remedies. In the event of any breach of this Agreement, the non-breaching party may pursue and obtain any and all remedies or causes of action available to it at law or in equity.

17. Waiver. The failure of any Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of any Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by any Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

18. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement among the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

19. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

20. Binding. The Parties hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Grantor and Grantees.

21. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages, or to bring any legal action or other proceeding against any party for any breach or other failure to perform this Agreement.

22. Recording; Governing Law. This Agreement shall be recorded by the Grantor in the records of the El Paso County Clerk and Recorder's Office. This Agreement is made and shall be construed under the laws of the State of Colorado.

23. Notice. Notice shall be effective when sent certified mail, return receipt requested, addressed to the following:

Grantor Board of County Commissioners
200 S. Cascade
Colorado Springs, CO 80903

With copies by US mail or email to: Amy Folsom
El Paso County Attorney
County Attorney's Office
27 East Vermijo
Colorado Springs, CO 80903
Email: amyfolsom@elpasoco.com

Tim Wolken
Director, El Paso County
Community Services Department
2002 Creek Crossing
Colorado Springs, CO 80906
Email: timwolken@elpasoco.com

GTL:

GTL, Inc.
Attn: Theodore Tchang
3575 Kenyon Street, Suite 200
San Diego, CA 92110
Email: ted@techbilt.com

With a copy by US mail or email to: Jody Harper Alderman
Alderman Bernstein
101 University Blvd., Ste 350
Denver, CO 80206
Email: jha@ablawcolorado.com

District:

Meridian Service Metropolitan District
In care of Community Resource Services of Colorado, LLC
7995 E. Prentice Ave., Suite 103E
Greenwood Village, CO 80111

With a copy by US mail or email to: Matthew Dalton
Spencer Fane & Grimshaw
1700 Lincoln St, Ste. 2000
Denver, CO 80203
Email: mdalton@spencerfane.com

[The remainder of this page is intentionally left blank. Signature pages follow.]

Made and entered into as of the date first set forth above.

GRANTEES:

MERIDAN SERVICE METROPOLITAN DISTRICT:

By: 
Name and Title Douglas E. Woods, Director

Attest: _____

~~CALIFORNIA~~
STATE OF ~~COLORADO~~)
~~SAN DIEGO~~) s.s.
COUNTY OF ~~EL PASO~~)

The foregoing instrument was acknowledged before me this 18th day of September, 2014, by Douglas E. Woods, as Director of the Meridian Service Metropolitan District.

Witness my hand and official seal.


Notary Public



My Commission Expires: July 26, 2015

GTL, INC.,
a California corporation

By: 
Theodore Tchang, President

~~CALIFORNIA~~
STATE OF ~~COLORADO~~)
~~SAN DIEGO~~) s.s.
COUNTY OF ~~EL PASO~~)

The foregoing instrument was acknowledged before me this 18th day of September, 2014, by Theodore Tchang, as President of the GTL, Inc., a California corporation.

Witness my hand and official seal.


Notary Public



My Commission Expires: July 26, 2015

GRANTOR:

EL PASO COUNTY, COLORADO

By: *Dennis Hisey*
Dennis Hisey, Chair *14-313C*
Board of County Commissioners
El Paso County, Colorado

ATTEST:

Wayne W. Williams
County Clerk & Recorder

APPROVED AS TO FORM:

Lori L. Seago
Office of the County Attorney

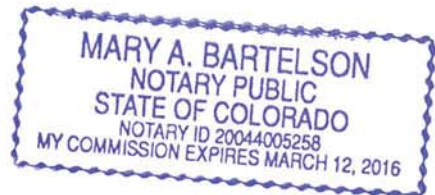
STATE OF COLORADO)
) s.s.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this *19th* day of *August*, 2014, by *Dennis Hisey*, as *Chair* of the Board of County Commissioners, and as attested to by *Wayne W. Williams*, County Clerk and Recorder.

Witness my hand and official seal.

Mary A. Bartelson
Notary Public

My Commission Expires: *3/12/2016*



LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN SECTIONS 20 AND 21, IN TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A 120' WIDE CONSTRUCTION EASEMENT DESCRIBED AS FOLLOWS:

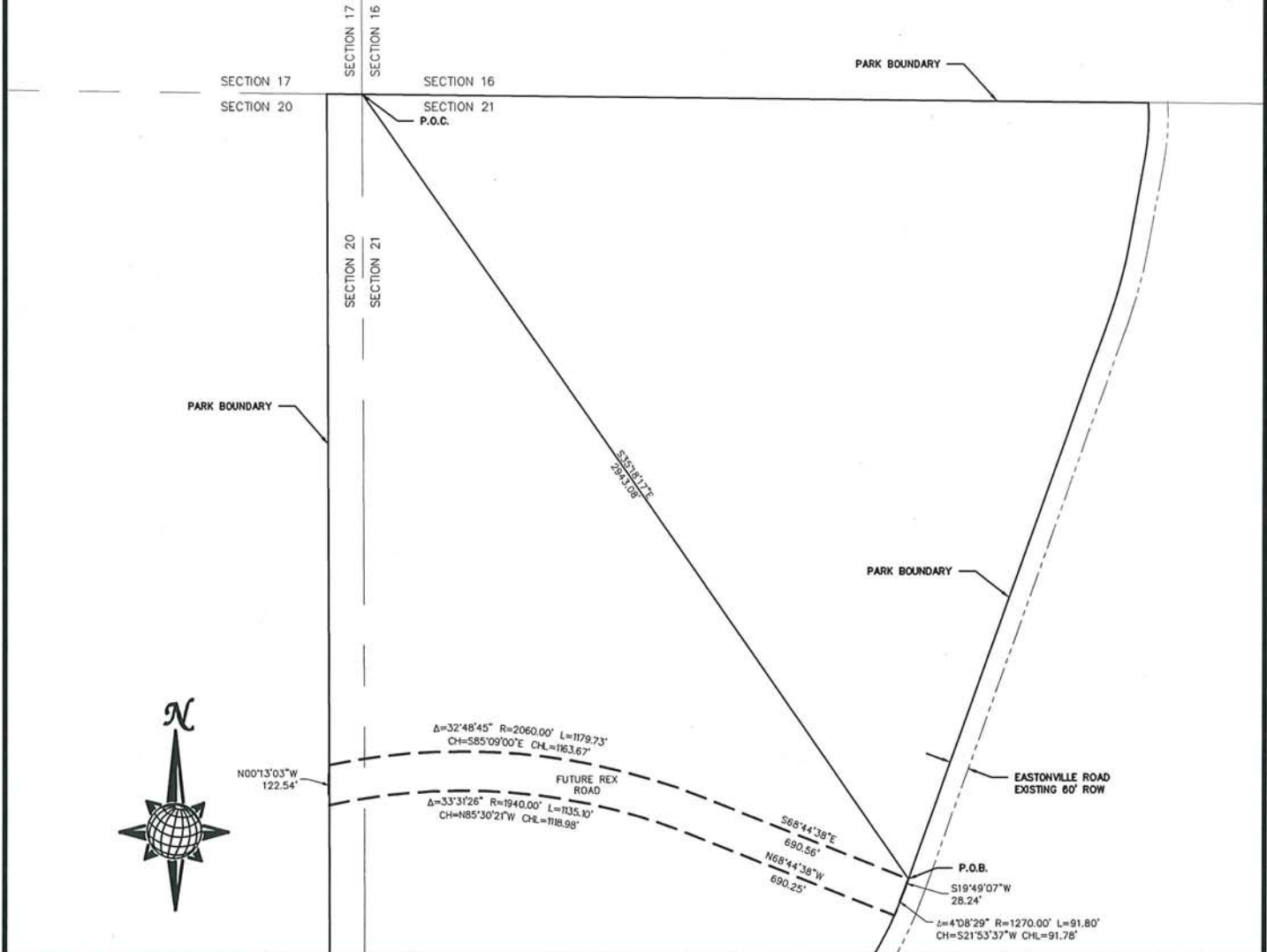
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 21, THENCE S35°18'17"E A DISTANCE OF 2943.08 FEET TO THE WESERLY RIGHT OF WAY OF EASTONVILLE ROAD AND THE POINT OF BEGINNING;

THE FOLLOWING TWO (2) COURSES ARE ON THE WESTERLY RIGHT OF WAY LINE OF EASTONVILLE ROAD;

1. THENCE S19°49'07"W ON SAID LINE 28.24 FEET TO A POINT OF CURVE TO THE RIGHT;
2. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 1270.00 FEET, A DELTA ANGLE OF 04°08'29", AN ARC LENGTH OF 91.80 FEET, WHOSE LONG CHORD BEARS S21°53'37"W A DISTANCE OF 91.78 FEET;
3. THENCE N68°44'38"W A DISTANCE OF 690.25 FEET TO A POINT OF CURVE TO THE LEFT;
4. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 1940.00 FEET, A DELTA ANGLE OF 33°31'26", AN ARC LENGTH OF 1135.10 FEET, WHOSE LONG CHORD BEARS N85°30'21"W A DISTANCE OF 1118.98 FEET TO THE WESTERN BOUNDARY OF MERIDIAN RANCH REGIONAL PARK;
5. THENCE N00°13'03"W ON SAID LINE A DISTANCE OF 122.54 FEET TO A NON-TANGENT POINT OF CURVE TO THE RIGHT;
6. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 2060.00 FEET, A DELTA ANGLE OF 32°48'45", AN ARC LENGTH OF 1179.73 FEET, WHOSE LONG CHORD BEARS S85°09'00"E A DISTANCE OF 1163.67 FEET;
7. THENCE S68°44'38"E A DISTANCE OF 690.56 FEET TO THE POINT OF BEGINNING;

THE ABOVE PARCELS OF LAND CONTAIN 5.09 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTH LINE OF THE SW ¼ OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., ASSUMED TO BEAR S89°25'42"E FROM THE SOUTHWEST CORNER OF SAID SECTION 29 (A STONE W/SCRIBED "X") TO THE SOUTH QUARTER CORNER OF SAID SECTION 29 (3.25" ALUM. CAP LS #30087).



1

SCALE: 1"=500'
 DATE: JUNE 2014
 DRAWN: LCG
 CHECK: RG

MERIDIAN RANCH REGIONAL PARK
 120' CONSTRUCTION EASEMENT FOR REX RD
 EXHIBIT B

TECH CONTRACTORS
 12311 REX ROAD
 FALCON, CO 80831
 TELEPHONE: 719.495.7444
 FAX: 719.495.2457