

After recording, return to:
Division of Real Estate
City and County of Denver
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

RAIL OPERATING EASEMENT
AND USE AGREEMENT
(DRIR Corridor at National Western Center)

THIS RAIL OPERATING EASEMENT (“Easement”) is granted as of the Effective Date, by the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city of the State of Colorado, with an address of 1437 Bannock, Denver, Colorado 80202 (“**Grantor**” or “**City**”) to **THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56th Avenue, Commerce City, Colorado 80022 (“**Grantee**” or “**DRIR**”).

1. **GRANT OF EASEMENT.** For and in consideration of **TEN DOLLARS AND ZERO CENTS (\$10.00)** and other good and valuable consideration enumerated in the Settlement Agreement of even date herewith, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys and warrants unto Grantee, its contractors, subcontractors, and its successors and assigns, a perpetual, non-exclusive easement on and through that real property, from 3’-0” feet below the bottom of railroad ties to 23’-6” feet above the top of rail, which is legally described and depicted in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Easement Area**”), which real property is located in the City and County of Denver, State of Colorado, for so long as such easement is used for rail purposes, for a right of way for the operation, maintenance, repair, renewal, and reconstruction of rail, ties, ballast, sub-ballast, drainage infrastructure located within the Easement Area, corridor security fencing and related items that are identified as DRIR’s responsibility in the Rail Construction, Operations and Maintenance Agreement of even date herewith (the “**Trackage**”). This grant of easement is subject to the terms and conditions contained within this Easement, as well as the terms and conditions of the Settlement Agreement, until terminated, and the Rail Construction, Operations and Maintenance Agreement, attached as **Exhibits B** and **C** hereto and incorporated herein by this reference, as such agreements may be amended from time to time. The Trackage includes the rail

and related items described in the bill of sale between Grantor and Grantee of even date herewith, the form of which is attached as **Exhibit D** hereto.

2. **RESERVATION OF RIGHTS**. Grantor reserves the right of ownership, use and occupancy of the Easement Area insofar as said ownership, use and occupancy does not impair the rights granted to Grantee hereunder. Grantee's rights hereunder shall be nonexclusive, but Grantor shall not grant other easements or rights to use the Easement Area except for rail use by other common carriers with federally-granted rights to this corridor. Grantor reserves the right to cross over and through the Easement Area only at the crossing designated in **Exhibit A**, specifically the at-grade crossing at the maintenance and operations buildings, subject to the requirements of Section 3. Subject to the terms and conditions set forth in the following sentence, Grantor reserves the right to place, maintain, remove, replace, install, and rehabilitate drainage facilities, signal equipment, walls, bridges, drainage and property within the Easement Area for which Grantor has responsibility pursuant to the Rail Construction, Operations and Maintenance Agreement. Should Grantor's activities within, above or below the Easement Area require any activities which will or may obstruct, endanger, interfere with or hinder or delay Grantee's operations, including but not limited to the placement of additional utilities, or cutting of the Trackage, such activities may be performed by Grantor or Grantor's contractor after presentation in writing to and approval by Grantee of a construction plan and schedule, the purpose of which is to determine that the proposed construction meets the applicable design and construction standards, such approval not to be unreasonably withheld. Grantor shall not materially interfere with Grantee's common carrier freight rail operations. Grantor shall perform, at no cost to Grantee, all track cutting and restoration work required to accommodate any utility installations or alterations affecting the Easement Area, and such track restoration shall, at a minimum, return the track to the condition it was in prior to cutting. Grantor and Grantee acknowledge that any impairment of the other's rights under this provision regarding the use and entry upon the Easement Area by Grantor as allowed herein cannot be adequately compensated by monetary damages and that injunctive relief may be appropriate. Grantor and Grantee are obligated to maintain and operate the Easement Area and Trackage in accordance with the Rail Construction, Operations and Maintenance Agreement attached as **Exhibit C**.

3. **MAINTENANCE AND OPERATIONS BUILDING AT-GRADE PRIVATE ROAD CROSSING.** The crossing identified on **Exhibit A** as the Maintenance and Operations building crossing (the “**Crossing**”) is essential for the operations of the National Western Center during certain high-volume or livestock events. Under this Easement DRIR has primary control over the use of the Crossing and may lock gates in the fencing at the Crossing and place additional devices to impede or prohibit the use of the Crossing, except as set forth herein.

a. Stock Show.

- i. During the month of January, rail operations will be conducted on the lines only during the hours between 10:00 a.m. and 5:00 p.m., and between 10:00 p.m. and 4:00 a.m., unless otherwise ordered by an applicable governmental entity. The excluded hours (4:00 a.m. to 10:00 a.m. and 5 p.m. to 10:00 p.m.) are those that typically involve significant activity, including moving animals, people, and equipment, in the area of the Crossing.
- ii. For a period of approximately 16 days in January of each year, to be identified in writing by the City or the Western Stock Show Association no later than December 1 of the previous year, no rail operations will be conducted on weekends or holidays during the identified 16 days unless otherwise ordered by an applicable governmental entity, and no construction shall take place in the Easement Area unless necessitated by an emergency. During this 16 day period, DRIR shall make best efforts to avoid deliveries of flammable liquids of category 2 or greater hazard pursuant to 29 C.F.R. 1910.106, as such regulation may be amended or replaced, will be made using the Easement Area. This is the period in which the National Western Stock Show and Rodeo is held annually, and especially large numbers of visitors, exhibitors, and animals are in the area.

b. Other. The National Western Center Authority (the “**NWCA**”) operates the National Western Center pursuant to a lease with the City. Annually, no later than December 1 for the following calendar year, and beginning on December 1, 2019, for events in 2020, the NWCA, at the City’s direction, will provide to DRIR dates of specific events, in addition to the schedule windows specified in Paragraph 3.a above, not to exceed a total of 10 weekdays and 10

weekends as specified per calendar year, or as otherwise agreed to by DRIR in writing, that will require that the Crossing be opened for the use of the NWCA. DRIR shall allow NWCA to use the Crossing during such events for a period of time not to exceed 11 hours in any 24 hour period, unless a longer period is specifically approved by DRIR.

4. **DEFENSE AND INDEMNIFICATION**

a. To the fullest extent permitted by law, Grantee agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to Grantee's activities or presence in the Easement Area under this Easement that are attributable to the negligence or fault of DRIR or DRIR's customers, agents, representatives, contractors, or suppliers ("**Claims**"). This indemnity shall be interpreted in the broadest possible manner consistent with applicable law to indemnify the City.

b. Grantee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Grantee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Grantee shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

d. Insurance coverage requirements specified in this Easement in no way lessen or limit the liability of the Grantee under the terms of this indemnification obligation. The Grantee is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Easement.

5. **DAMAGE TO PROPERTY.** By virtue of entering into this Easement, Grantor assumes no liability of use, operation or existence of the Easement Area and Grantee's use of the Easement Area and assumes no additional responsibilities or obligations related to the Easement Area, except as provided in the Rail Construction, Operation and Maintenance Agreement. DRIR acknowledges that the City is self-insured and immune from lawsuits in tort pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as amended. Nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended.

6. **INSURANCE.** DRIR shall maintain at a minimum the insurance requirements contained in the Rail Construction, Operations and Maintenance Agreement.

7. **TERMINATION.** All rights of Grantee under this Easement shall terminate on the effective date of an order of the Surface Transportation Board or successor agency authorizing DRIR or any successor railroad to discontinue service over the rail lines located on the easement granted hereunder. In the event the Surface Transportation Board or any successor agency authorizes the discontinuance of service over some but not all of the rail lines located on the Easement Area granted hereunder, the Easement granted hereunder will terminate with respect to the portion of the property on which such service has been discontinued. In the event of termination of the Easement in whole or part, Grantee shall have 30 days to remove all personal property and fixtures to which it has title from such property over which the Easement has terminated.

8. **NOTICES.** All notices, demands or consents required or permitted under this Easement shall be in writing and delivered as provided in this paragraph (unless the means of delivery is otherwise expressly specified in this Easement). Notices shall be deemed delivered upon receipt, if delivered personally or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the City:

Executive Director of the Mayor's
Office of the National Western Center
5125 Race Court
Denver, CO 80216

With a copy to:

City Attorney
Denver City and County Building
1435 Bannock St., Room 353
Denver, CO 80202

If to DRIR:

General Manager
Denver Rock Island Railroad
3400 E. 56th Ave.
Commerce City, CO 80022

With a copy to:

Corporate Secretary
The Denver Rock Island Railroad
3400 E. 56th Ave.
Commerce City, CO 80022

The address and designee for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

9. **NO THIRD-PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Easement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Easement shall give or allow any such claim or right of action by any other party or third person on such Easement. It is the express intention of the Parties that any person other than the parties hereto receiving services or benefits under this Easement shall be deemed to be an incidental beneficiary only.

10. **ASSIGNMENT AND ENCUMBRANCE OF INTERESTS.** Grantee may not assign, encumber, or otherwise transfer any rights or interests granted by this Easement, in whole or in part, without the written consent of the Grantor (except as the Easement runs with the land and extends to successors of Grantee). Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Easement, and Grantee's assignee must consent to be bound by the covenants of the Grantee set forth in this Easement and the insurance and indemnity provisions hereof, and such other reasonable conditions as Grantor may impose.

11. **NON-WAIVER.** A failure by any Party to take any action with respect to any default or violation by the other party of any of the terms, covenants, or conditions of this Easement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

12. **COMPLETE INTEGRATION; AMENDMENTS.** This Easement is intended as the complete integration of all understandings between the Parties with respect to the matters addressed in this Easement, except as set out in other documents contemplated or necessitated by this Agreement. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment to this Easement executed by the Parties, their successors, or assigns, approved and executed in the same manner as this Easement, and such amendment is recorded in the land records of the County of Denver.

13. **DEFAULT.** In the event the terms of this Easement are violated by either Party, such violation shall immediately be corrected by the offending Party upon receipt of written notice from the other Party or, if the offending Party does not correct the violation within the time designated in such notice, the other Party may elect to correct or eliminate such violation at the offending Party's expense. The offending Party shall promptly reimburse the other Party for all costs and expenses incurred by in enforcing the terms of this Easement; provided, however, that in any court action, each Party shall bear its own fees and costs.

14. **RUNS WITH LAND**. The terms, conditions, and provisions of this Easement are a covenant running with the land and shall extend to, and be binding upon, the successors and assigns of Grantor and Grantee.

15. **EFFECTIVE DATE**. The Effective Date of this Easement shall be the Cutover Date, as such term is defined in the Construction, Operations and Maintenance Agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number:
Contractor Name:

PWADM-201951167-00
THE DENVER ROCK ISLAND RAILROAD

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: _____

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

Assistant City Attorney

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

PWADM-201951167-00
THE DENVER ROCK ISLAND RAILROAD

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

**Exhibit A to the Rail Operating Easement and Use Agreement
Easement Area**

RAIL CORRIDOR EASEMENT

LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

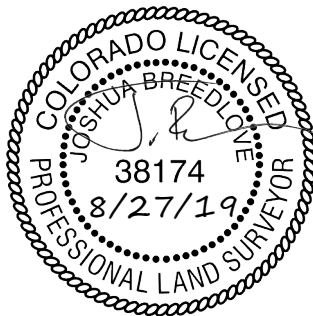
SHEET 1 OF 8

PARCELS OF LAND LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH-SOUTH CENTER LINE OF SECTION 14 TO BEAR NORTH 00°20'34" EAST, A DISTANCE OF 2,657.09 FEET BETWEEN A FOUND 3.25" ALUMINUM CAP STAMPED "COLO DEPT OF TRANSPORTATION T3S R68W 1/4 S14 S23 1994 PLS 23521" AT THE SOUTH QUARTER CORNER OF SECTION 14 AND A FOUND 2" BRASS CAP STAMPED "T3S R68W C 1/4 S14 1996 LS 17650" AT THE CENTER QUARTER CORNER OF SECTION 14, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT SAID CENTER QUARTER CORNER OF SECTION 14; THENCE SOUTH 06°38'12" EAST, A DISTANCE OF 293.35 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF RACE COURT PER ORDINANCE 18, SERIES 1919 AND THE POINT OF BEGINNING; THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RACE COURT, SOUTH 54°35'18" EAST, A DISTANCE OF 29.71 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE 188.51 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 592.80 FEET, AN INCLUDED ANGLE OF 18°13'13" AND SUBTENDED BY A CHORD BEARING SOUTH 16°53'28" EAST, A DISTANCE OF 187.72 FEET; THENCE SOUTH 26°00'04" EAST, A DISTANCE OF 340.47 FEET; THENCE SOUTH 32°21'39" EAST, A DISTANCE OF 125.43 FEET TO A POINT OF CURVATURE; THENCE 86.08 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 775.49 FEET, AN INCLUDED ANGLE OF 06°21'35" AND SUBTENDED BY A CHORD BEARING SOUTH 29°10'52" EAST, A DISTANCE OF 86.03 FEET; THENCE SOUTH 26°00'04" EAST, A DISTANCE OF 70.79 FEET TO A POINT OF CURVATURE; THENCE 758.21 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 685.69 FEET, AN INCLUDED ANGLE OF 63°21'20" AND SUBTENDED BY A CHORD BEARING SOUTH 05°40'35" WEST, A DISTANCE OF 720.17 FEET; THENCE SOUTH 36°53'00" WEST, A DISTANCE OF 248.33 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

(CONTINUED ON SHEET 2)



JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics



4501 LOGAN ST.
DENVER, CO 80216
PH: (303) 936-6997
FAX: (303) 923-3180
www.FlatironsInc.com

RAIL CORRIDOR EASEMENT

LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

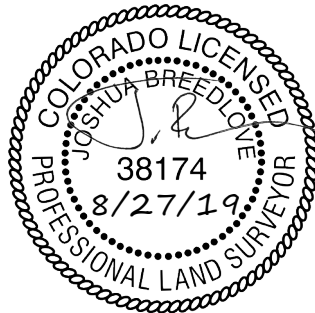
SHEET 2 OF 8

(CONTINUED FROM SHEET 1)

THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE THE FOLLOWING TEN (10)
COURSES:

- 1) SOUTH 37°21'38" WEST, A DISTANCE OF 462.92 FEET;
- 2) THENCE SOUTH 45°29'15" WEST, A DISTANCE OF 479.30 FEET;
- 3) THENCE SOUTH 45°29'43" WEST, A DISTANCE OF 568.94 FEET;
- 4) THENCE SOUTH 45°31'26" WEST, A DISTANCE OF 56.00 FEET;
- 5) THENCE SOUTH 45°29'43" WEST, A DISTANCE OF 73.80 FEET;
- 6) THENCE SOUTH 38°16'24" WEST, A DISTANCE OF 95.98 FEET;
- 7) THENCE SOUTH 45°29'01" WEST, A DISTANCE OF 534.04 FEET;
- 8) THENCE SOUTH 45°38'20" WEST, A DISTANCE OF 36.27 FEET;
- 9) THENCE SOUTH 45°26'32" WEST, A DISTANCE OF 101.56 FEET;
- 10) THENCE SOUTH 45°26'15" WEST, A DISTANCE OF 356.78 FEET TO A POINT ON THE
NORTHERLY RIGHT-OF-WAY LINE OF EAST 46TH AVENUE; THENCE ALONG SAID NORTHERLY
RIGHT-OF-WAY LINE, NORTH 89°56'11" WEST, A DISTANCE OF 55.54 FEET TO A POINT OF
NON-TANGENT CURVATURE BEING ON THE EASTERLY LINE OF THE BURLINGTON NORTHERN
RAILROAD RIGHT-OF-WAY; THENCE ALONG SAID EASTERLY LINE, 43.22 FEET ALONG THE
ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 640.66 FEET, AN INCLUDED ANGLE
OF 03°51'55" AND SUBTENDED BY A CHORD BEARING NORTH 15°58'46" EAST, A DISTANCE
OF 43.21 FEET; THENCE NORTH 45°28'51" EAST, A DISTANCE OF 879.82 FEET; THENCE
NORTH 51°34'45" WEST, A DISTANCE OF 1.51 FEET; THENCE NORTH 45°28'51" EAST, A
DISTANCE OF 57.77 FEET TO A POINT OF CURVATURE; THENCE 56.92 FEET ALONG THE
ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 599.30 FEET, AN INCLUDED ANGLE
OF 05°26'29" AND SUBTENDED BY A CHORD BEARING NORTH 42°45'36" EAST, A DISTANCE
OF 56.89 FEET; THENCE NORTH 40°02'21" EAST, A DISTANCE OF 68.33 FEET TO A POINT
OF CURVATURE; THENCE 60.31 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING
A RADIUS OF 633.30 FEET, AN INCLUDED ANGLE OF 05°27'24" AND SUBTENDED BY A
CHORD BEARING NORTH 42°46'04" EAST, A DISTANCE OF 60.29 FEET; THENCE NORTH
45°29'46" EAST, A DISTANCE OF 10.14 FEET; THENCE NORTH 44°30'15" WEST, A DISTANCE
OF 3.50 FEET;

(CONTINUED ON SHEET 3)



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SHEET 3 OF 8

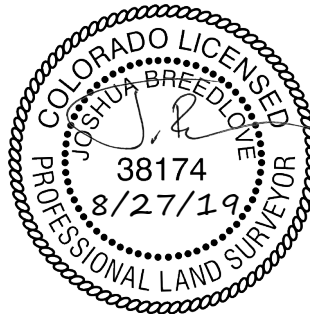
(CONTINUED FROM SHEET 2)

THENCE NORTH 45°29'46" EAST, A DISTANCE OF 6.50 FEET; THENCE SOUTH 44°30'15" EAST, A DISTANCE OF 3.50 FEET; THENCE NORTH 45°29'46" EAST, A DISTANCE OF 41.00 FEET; THENCE NORTH 44°30'15" WEST, A DISTANCE OF 3.50 FEET; THENCE NORTH 45°29'45" EAST, A DISTANCE OF 6.50 FEET; THENCE SOUTH 44°30'15" EAST, A DISTANCE OF 3.71 FEET; THENCE NORTH 45°29'46" EAST, A DISTANCE OF 85.97 FEET; THENCE NORTH 17°35'48" EAST, A DISTANCE OF 39.98 FEET; THENCE NORTH 45°29'46" EAST, A DISTANCE OF 893.07 FEET TO A POINT OF CURVATURE; THENCE 194.06 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1365.69 FEET, AN INCLUDED ANGLE OF 08°08'29" AND SUBTENDED BY A CHORD BEARING NORTH 41°25'31" EAST, A DISTANCE OF 193.89 FEET; THENCE NORTH 37°21'16" EAST, A DISTANCE OF 608.35 FEET TO A POINT OF CURVATURE; THENCE 671.96 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 607.69 FEET, AN INCLUDED ANGLE OF 63°21'21" AND SUBTENDED BY A CHORD BEARING NORTH 05°40'36" EAST, A DISTANCE OF 638.25 FEET; THENCE NORTH 26°00'04" WEST, A DISTANCE OF 126.22 FEET TO A POINT OF CURVATURE; THENCE 86.08 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 775.49 FEET, AN INCLUDED ANGLE OF 06°21'35" AND SUBTENDED BY A CHORD BEARING NORTH 22°49'17" WEST, A DISTANCE OF 86.03 FEET; THENCE NORTH 19°38'29" WEST, A DISTANCE OF 293.95 FEET; THENCE NORTH 26°00'04" WEST, A DISTANCE OF 117.56 FEET TO A POINT OF CURVATURE; THENCE 215.85 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 614.80 FEET, AN INCLUDED ANGLE OF 20°06'58" AND SUBTENDED BY A CHORD BEARING NORTH 15°56'35" WEST, A DISTANCE OF 214.74 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 307,482 SQ. FT. OR 7.06 ACRES, MORE OR LESS.

I, JOSHUA BREEDLOVE, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THESE PARCEL DESCRIPTIONS AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOSHUA BREEDLOVE
COLORADO P.L.S. #38174
BRANCH MANAGER, FLATIRONS, INC.



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SHEET 4 OF 8

POINT OF COMMENCEMENT
CENTER QUARTER CORNER OF
SECTION 14, TOWNSHIP 3 SOUTH,
RANGE 68 WEST OF THE 6TH P.M.
FOUND 2" BRASS CAP STAMPED "T3S
R68W C 1/4 S14 1996 LS 17650"

L=215.85'
R=614.80'
Δ=20°06'58"
CH=N15°56'35"W
214.74'

S06°38'12"E
293.35'

POINT OF BEGINNING
S54°35'18"E
29.71'

L=188.51'
R=592.80'
Δ=18°13'13"
CH=S16°53'28"E
187.72'

REC. NO. 2005159512

FRANKLIN STREET
(60' RIGHT-OF-WAY)

BASIS OF BEARINGS
N00°20'34"E 2657.09'

307,482 SQ. FT.
OR 7.06 AC ±

N26°00'04"W
177.56'
S26°00'04"E
340.47'
N19°38'29"W
293.99'

UNPLATTED
REC. NO. 2005020613

RACE COURT (60' RIGHT-OF-WAY)
PER ORD. 18, SERIES 1919

S32°21'39"E
125.43'

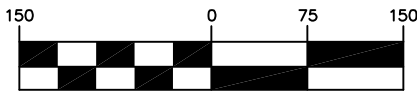
L=86.08'
R=775.49'
Δ=6°21'35"
CH=S29°10'52"E
86.03'

UNPLATTED
REC. NO. 2015148689

SEE SHEET 5

SEE SHEET 5

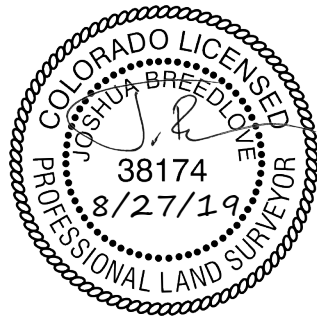
GRAPHIC SCALE



(IN FEET)

1 inch = 150 ft.

JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019



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Surveying, Engineering & Geomatics

4501 LOGAN ST.
DENVER, CO 80216
PH: (303) 936-6997
FAX: (303) 923-3180
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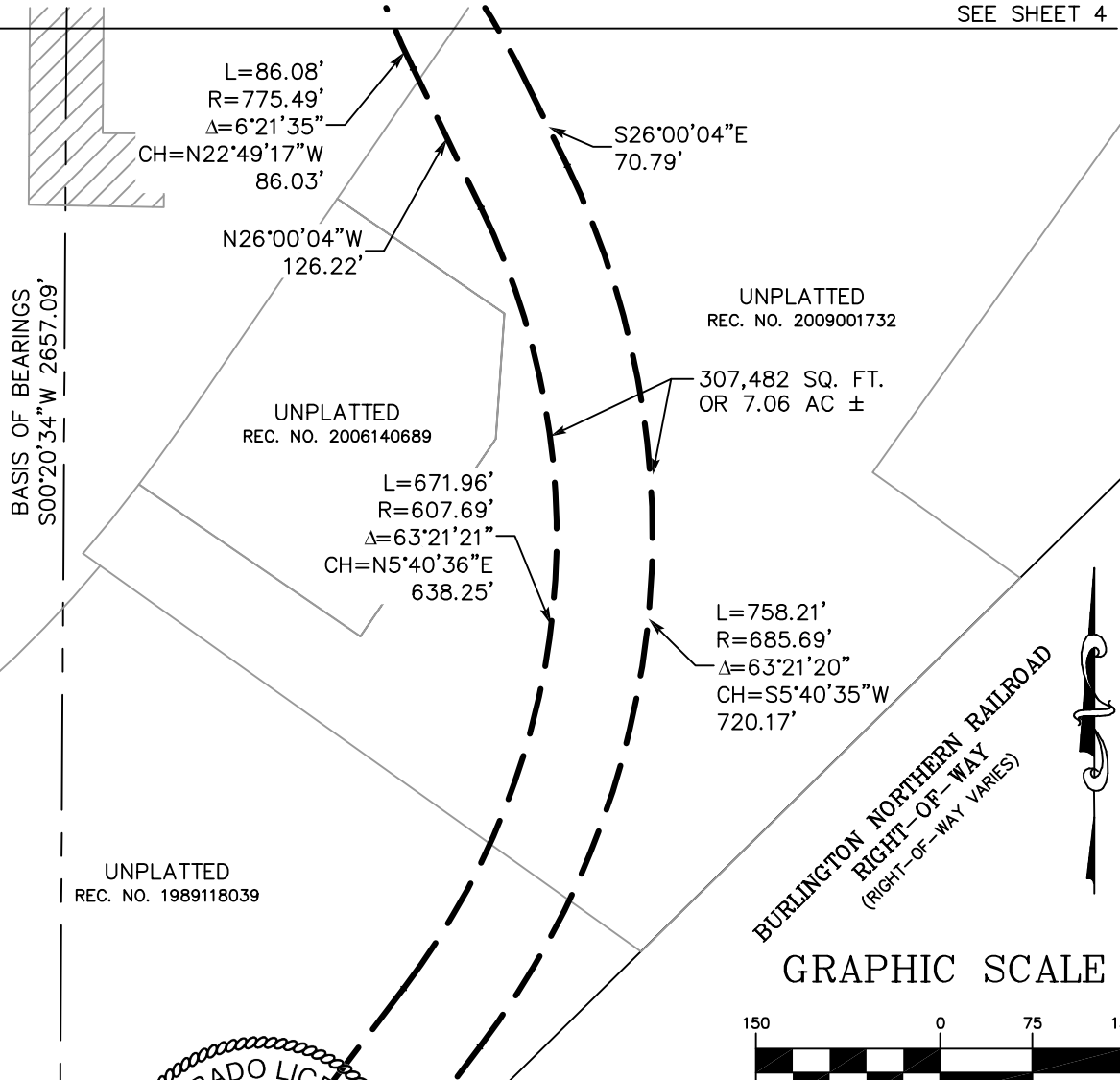
RAIL CORRIDOR EASEMENT

LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

SHEET 5 OF 8

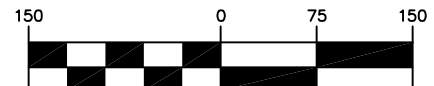
SEE SHEET 4

SEE SHEET 4

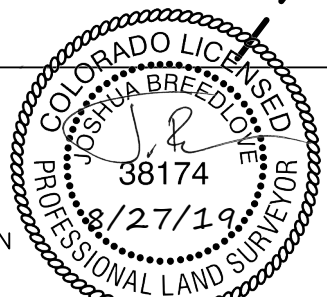


BURLINGTON NORTHERN RAILROAD
RIGHT-OF-WAY
(RIGHT-OF-WAY VARIES)

GRAPHIC SCALE



(IN FEET)
1 inch = 150 ft.



SEE SHEET 6

SEE SHEET 6

JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019

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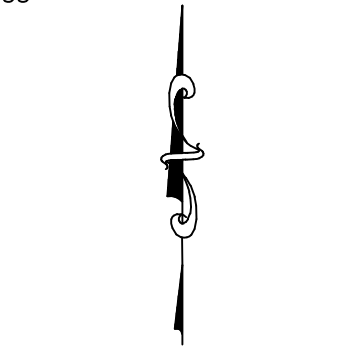
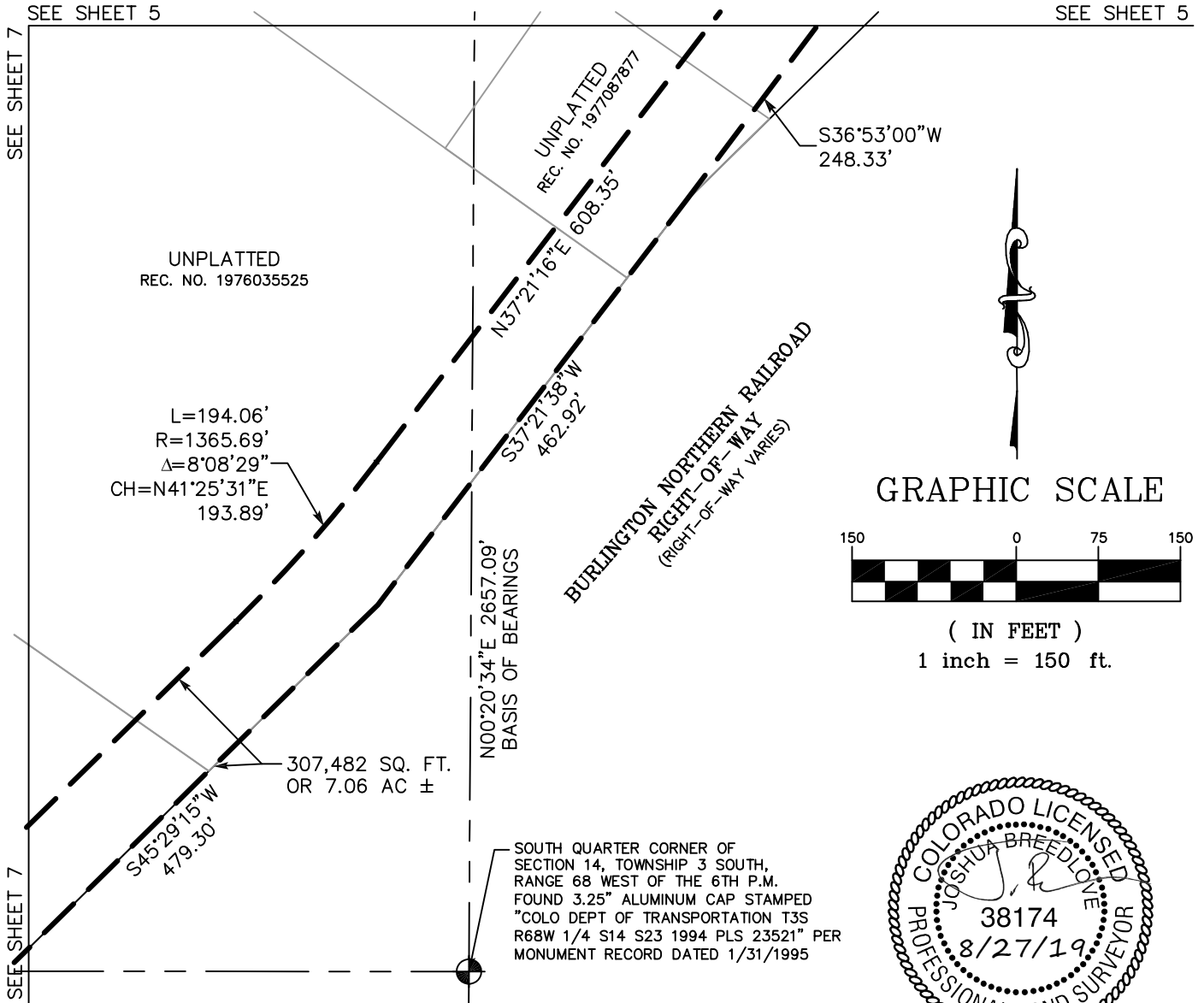
BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:18 AM

RAIL CORRIDOR EASEMENT

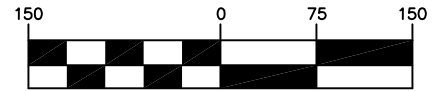
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CITY AND COUNTY OF DENVER, STATE OF COLORADO

SHEET 6 OF 8

BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:19 AM

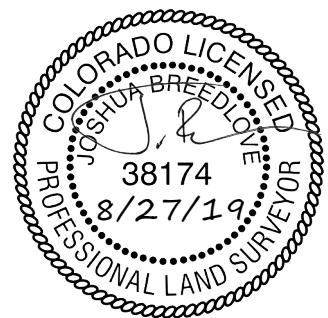


GRAPHIC SCALE



(IN FEET)

1 inch = 150 ft.



JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019

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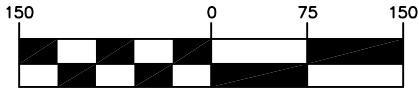
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CITY AND COUNTY OF DENVER, STATE OF COLORADO

SHEET 7 OF 8

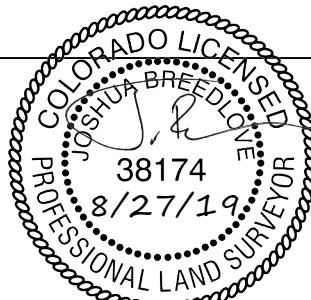
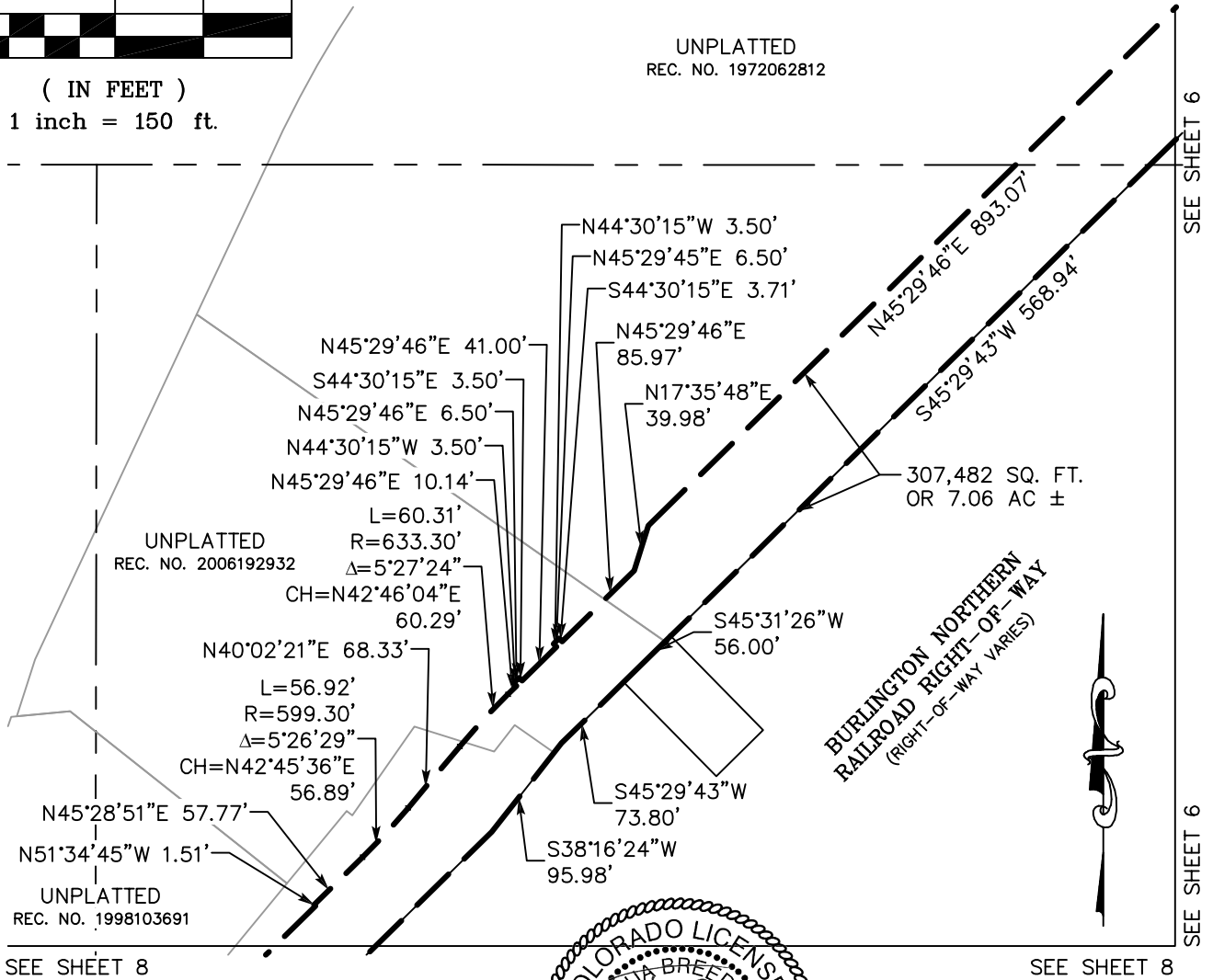
GRAPHIC SCALE



(IN FEET)

1 inch = 150 ft.

UNPLATTED
REC. NO. 1972062812



JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019

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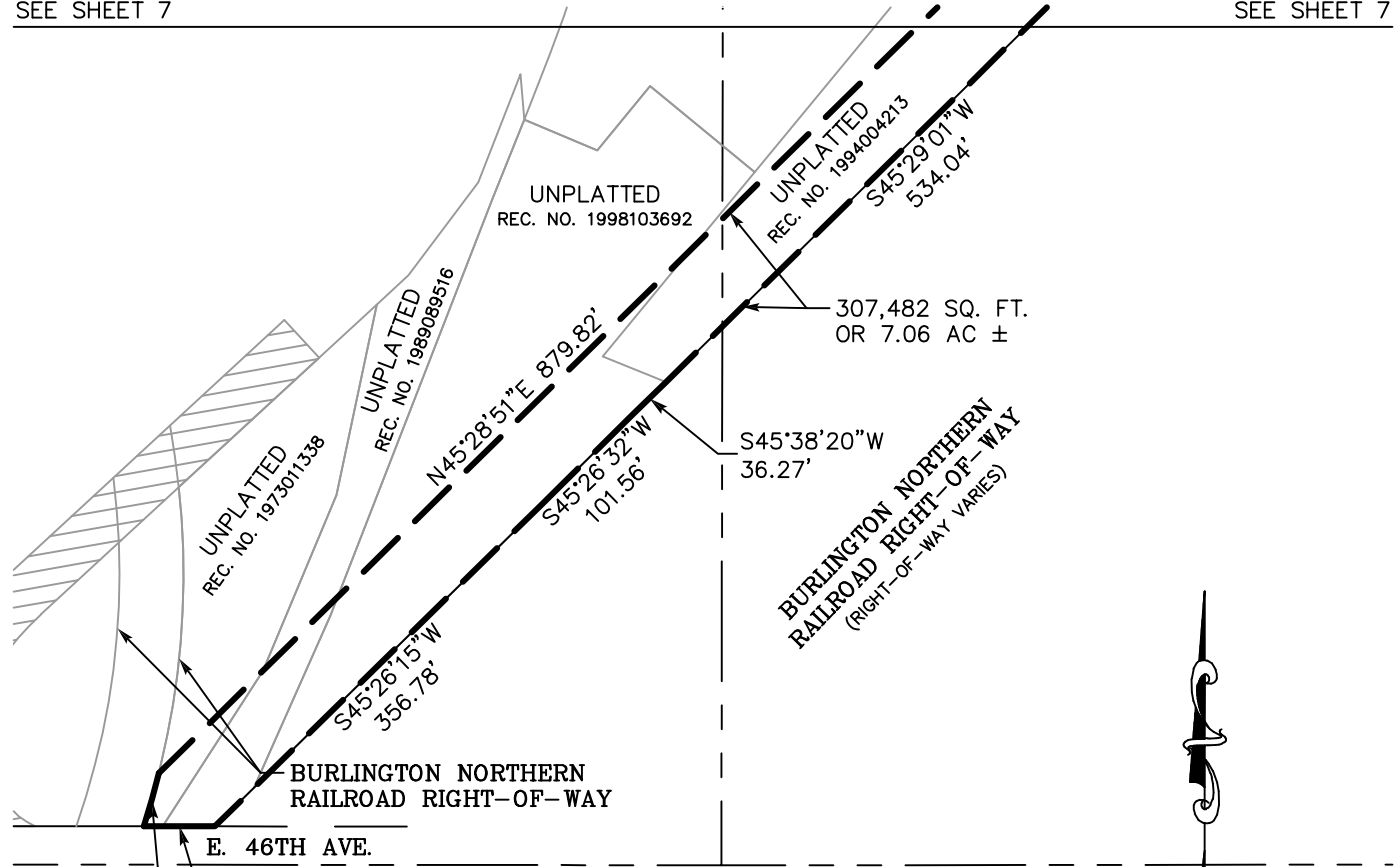
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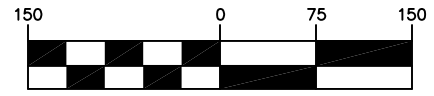
SHEET 8 OF 8

SEE SHEET 7

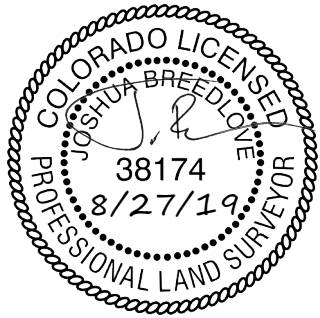
SEE SHEET 7



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BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:21 AM

**Exhibit B to the Rail Operating Easement and Use Agreement
Settlement Agreement**

SETTLEMENT AGREEMENT
Denver Rock Island Railroad and City and County of Denver
National Western Center Project

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the state of Colorado (the “**City**”) and **THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56th Avenue, Commerce City, Colorado 80022 (“**DRIR**”). The City and DRIR are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS:

1. The City, along with partners Colorado State University and the Western Stock Show Association, has undertaken an ambitious public project to build and operate a new two hundred fifty (250) acre state-of-the-art, multi-purpose campus (hereinafter referred to as the “**Campus**”). The Campus would (a) house the National Western Stock Show; (b) serve as a hub for year-round creative, experiential education for all ages and for research and commercial activity that promotes, supports, and helps to preserve the western lifestyle while highlighting innovation and global issues of health, food systems, food security, water, and the environment; and (c) provide an attractive environment for additional agricultural business and science investments that will increase other economic and workforce development activities in the surrounding neighborhoods, to encourage revitalization of those neighborhoods, and position Colorado as an agricultural innovations cluster leader (together, the City’s activities at the Campus are the “**Project**”).

2. DRIR is a Class III short line rail carrier that has for over twenty-five (25) years provided customers with rail service connections to two class I railroads. Freight railroads are fuel efficient, better for the environment than trucks, and help reduce highway gridlock. Rail has historically been and continues to be important to the businesses in the Globeville, Elyria, and Swansea neighborhoods in which the Campus is located.

3. DRIR owns land, and other property and rights, within the land area planned for the Campus, including a parcel located at 5055 West River Drive, Denver CO (the “**Cherokee Parcel**”), a sliver of real property located south of Race Court, and other real and personal property interests throughout the Campus (together, the “**DRIR Property**”).

4. In order for the City to undertake the construction of the Campus, it is necessary to relocate the existing rail corridors from the middle of the campus (the “**National Western Drive Corridor**”) and along the river (the “**River Corridor**”) from their current locations to the center of the Campus (the “**New Corridor**”), along the existing BNSF and RTD rail lines. The City is prepared to request approval from the state Public Utilities Commission (“**PUC**”) for crossings by the New Corridor over public rights-of-way. In addition, the City has planned to acquire from DRIR real and personal property currently located on the Campus, including the Cherokee Parcel.

5. In lieu of adverse proceedings between the Parties at the federal Surface Transportation Board (“**STB**”), PUC, and in state and federal court, the Parties have agreed to settle all claims between them regarding DRIR’s rail operations and real and personal property located on the Campus.

NOW, THEREFORE, it is mutually agreed by the City and DRIR as follows:

AGREEMENT

1. TERM. This Agreement shall commence as of the date shown on the executed City signature page (“**Effective Date**”), and shall terminate once all of the requirements of the Agreement have been fulfilled (“**Termination Date**”), unless otherwise terminated or extended as provided herein. Notwithstanding the foregoing, the Parties may amend this Agreement at any time to extend its term for such additional years as may be agreed upon by the Parties, provided that any such extension is approved and executed in the same manner as this Agreement.

2. CITY COMPLETION OF NEW RAIL LINE. The City shall construct and the Parties shall maintain and operate the New Corridor pursuant to the Rail Construction, Operations and Maintenance Agreement of even date herewith.

3. SETTLEMENT OF ALL CLAIMS. Upon execution of this Agreement, the City and DRIR shall coordinate to dismiss or achieve other mutually-agreed upon resolution of all pending litigation as follows:

(a) City v. DRIR 2018CV34300 (“**Quiet Title Action**”): DRIR shall stipulate to the dismissal with prejudice of its counterclaims and entry of judgment for the City

on its Quiet Title Claim. Said stipulation shall provide that regardless of the entry of the judgment, City shall not interfere with DRIR's rail operations along the National Western Drive tracks until the date of Closing, as identified herein.

(b) DRIR v. City 1:10-cv-00300 (“**Federal Action**”): The Parties shall enter into a stipulation dismissing the lawsuit with prejudice.

(c) City and County of Denver – Verified Petition for Declaratory Order, STB Docket No. FD 36263 (“**STB declaratory proceeding**”): The Parties shall jointly file a motion to dismiss the petition, and shall cooperate to obtain the support of Iron & Metals, Inc., and other parties who have commented in the proceeding, for such motion.

(d) DRIR v. City, STB Docket No. NOR 42162 (“**STB Complaint**”): DRIR shall stipulate to the dismissal with prejudice of its complaint.

(e) Each Party shall bear its own costs and fees for each action.

4. DISCONTINUANCE OF SERVICE ON CURRENT RAIL FACILITIES ON CAMPUS.

(a) The City may, at any time, demolish, remove or otherwise dispose of the rail facilities identified as tracks 420 and 421, as the same are located within the area covered by the Quiet Title Action. DRIR shall discontinue use of both the National Western Drive Corridor and the River Corridor upon the conclusion of Burn-In (as defined in Section 2.A. of the Rail Construction, Operations and Maintenance Agreement) and shall transfer ownership of the personal property comprising the tracks and adjacent rail facilities, except the switches salvaged pursuant to Section 4.G. of the Rail Construction, Operations and Maintenance Agreement, in the National Western Drive Corridor and the River Corridor to the City in a bill of sale in the form of **Exhibit A** (the “**Bill of Sale**”).

(b) DRIR acknowledges that it is the intent of the parties that DRIR's federally granted freight rail operating authority shall transfer to the New Corridor after Burn-In.

5. REAL PROPERTY TRANSFERS.

(a) To the City. Upon payment of the Cash Settlement, defined below, DRIR shall sign and provide to Land Title (the “**Title Company**”) a Special Warranty Deed in the form attached as **Exhibit B** for the DRIR Cherokee Property (the “**DRIR Warranty Deed**”). In addition and at the same time, DRIR shall sign and provide to the Title Company a Quitclaim Deed in the form attached as **Exhibit C** conveying all interests DRIR and related parties own or may own on the Campus (the “**DRIR Quitclaim Deed**”). DRIR agrees to execute any other deed or release necessary to transfer title of any fee-simple owned property, easement, or other real property interest to the City. The Parties shall execute an Escrow Agreement instructing the Title Company to record the DRIR Warranty Deed, the DRIR Quitclaim Deed, and any other deed or release that the Title Company may request to transfer to the City any DRIR interest in real property on the Campus upon the day after the conclusion of Burn-In (the “**Closing**”). General taxes and assessments for the year of closing and the most recent rents, water, sewer, other utility charges and any other customary items shall be prorated to the dates of Closing and shall be paid by DRIR at or before Closing.

(b) To DRIR. Upon completion of the construction of the New Corridor, the City will grant to DRIR easements in the form attached hereto as **Exhibit D**. These easements grant to DRIR (i) DRIR’s use of the City’s real property for the location and operation of their rail facilities in the New Corridor, (ii) access for DRIR to the New Corridor on the south end of the Campus, and (iii) an access lane adjacent to the New Corridor between the western property line of the BNSF right-of-way and the usable clear track limit to the north. The easement limits the City’s and its tenants use of the private road crossing shown on the Plans attached to the Rail Construction, Operation and Maintenance Agreement.

6. REAL PROPERTY OPERATIONS AND MAINTENANCE: From the Effective Date until the Closing or earlier termination of this Agreement, DRIR: (a) shall operate and maintain the DRIR Property in the manner in which the DRIR Property is currently being operated and maintained by DRIR; (b) shall not enter into any new lease, lease modification, lease extension or other occupancy or use agreement without obtaining City's prior written consent, which consent may be withheld or delayed in City's sole and absolute discretion; and (c) shall not enter into any contracts or commitments that will survive the Closing other than a contract that is terminated on less than thirty (30) days' notice.

7. CASH SETTLEMENT. In addition to the obligations contained herein, and in the Rail Construction, Operation and Maintenance Agreement and the Rail Operating Easement and Use Agreement, the City shall pay to DRIR a cash payment totaling Sixteen Million Seven Hundred Fifty Thousand Dollars (\$16,750,000.00) in full settlement of all claims by DRIR against the City related to the City's National Western Center project (the "**Cash Settlement**"). Specifically, DRIR is being reimbursed for the value of its real property interests on the Campus and the cost of relocation, as well as claims related to the costs associated with clear track replacement, administrative costs, professional services costs, and disruption and inconvenience, including lost business claims and operational changes incurring additional costs. Such payment shall be made by the City to DRIR as soon as is practicable, but in no event more than 21 days after full execution of this Agreement, acknowledging that this and related agreements must be approved by City Council prior to such payment.

8. COMMEMORATIVE DISPLAY. The City will provide a commemorative display describing the historic role of rail and DRIR on the Campus for permanent display in the grand lobby entrance of the historic 1916 Livestock Exchange building (the "**Livestock Exchange**"). Should the City transfer ownership of the Livestock Exchange, it shall require as a condition of sale the continued location of such a display within the grand lobby entrance.

9. WAIVER OF ALL CLAIMS. In consideration of the promises, covenants, and obligations set forth in this Agreement, upon full execution of this Agreement and the payment of the Cash Settlement, DRIR releases and discharges the City, and its successors, or assigns or any of them, including any departments, appointed or elected officials, officers, employees, members, representatives or agents from the date of execution of this Agreement of and from any and all present and known claims, demands, obligations, actions, and causes of action relating to the current acquisition of DRIR's Property and rights within the Campus and the

relocation of DRIR's rail operations within the NWC to the New Corridor and elsewhere as part of the Project. This waiver does not extend to any claims or actions arising under this Settlement Agreement, the Rail, Construction and Maintenance Agreement, or the Rail Operating Easement and Use Agreement.

In consideration of the promises, covenants, and obligations set forth in this Agreement, upon full execution of this Agreement the City releases and discharges DRIR, and its successors, or assigns or any of them, including any officials, officers, employees, members, representatives or agents from the date of execution of this Agreement of and from any and all present and known claims, demands, obligations, actions, and causes of action relating to DRIR's actions or activities within or related to the Campus on or before the effective date of this Agreement. This waiver does not extend to any claims or actions arising under this Settlement Agreement, the Rail, Construction and Maintenance Agreement, or the Rail Operating Easement and Use Agreement.

10. COOPERATION IN CITY'S REGULATORY ACTIONS. DRIR shall cooperate with and support the City's regulatory efforts, which may include proceedings before the STB for all matters concerning the discontinuance or relocation of rail facilities on the River Corridor and the National Western Drive Corridor, or before the Colorado PUC, regarding the closure, modification or opening of any rail/public road crossings as part of the Project. DRIR will not be responsible for securing the cooperation at the STB or PUC of any other rail entity.

11. APPROPRIATION. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

12. TAXES, DEBTS, LIENS & LICENSES. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* DRIR shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

13. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of DRIR involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

14. APPLICABLE LAW AND VENUE. The Parties acknowledge and agree that this Agreement shall be governed by and construed, to the extent applicable, in accordance with federal law, the laws of the state of Colorado and the Charter and Revised Municipal Code of the City and County of Denver, and that the Parties shall perform their obligations hereunder in accordance with applicable laws. In the event of any dispute regarding the enforcement of this Agreement, exclusive jurisdiction and venue shall lie in the District Court in and for the City and County of Denver, except to the extent that any such dispute implicates federal preemption, regulation or control of rail operations, in which event jurisdiction shall be in the Surface Transportation Board or the United States District Court for the District of Colorado.

15. ASSIGNMENT AND ENCUMBRANCE OF INTERESTS. Neither Party shall assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the written consent of the other Party. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

16. COMPLETE INTEGRATION; AMENDMENTS. This Agreement is intended as the complete integration of all understandings between the Parties with respect to the matters addressed in this Settlement Agreement. Except for other documents contemplated or necessitated by this Agreement, no prior or contemporaneous understanding, addition, deletion or other amendment hereto shall have any force or effect whatsoever unless embodied in this Agreement. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment to this Agreement executed by the Parties, their successors, or assigns, approved and executed in the same manner as this Agreement.

17. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating

to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other party or third person on such Agreement. It is the express intention of the Parties that any person other than the parties hereto receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. NON-WAIVER. A failure by any Party to take any action with respect to any default or violation by the other party of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

19. FORCE MAJEURE. If any Party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such Party, upon giving notice and reasonably full particulars to the other Parties, shall be relieved of such obligation or condition during the continuance of such inability. The term “force majeure” shall include acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, and any laws, orders, rules, regulations, acts, or restraints of any government or governmental body or authority, civil or military. Written notice of any claim of inability to perform or comply due to force majeure must be promptly given as provided in paragraph 31 below.

20. REMEDIES.

(a) The Parties acknowledge that rail relocation is on the critical path for the City’s project such that any failure by either Party to comply with this Agreement constitutes a threat of real, immediate, and irreparable injury to the other Party for which there is no plain, speedy, and adequate remedy at law and that the status quo under this Agreement requires completion of the City’s project, including the above described removal of the existing rail lines following completion and transfer of the New Corridor to DRIR. The Parties further acknowledge that the Parties are entitled to specific performance of all the other Party’s obligations under this Agreement.

(b) In no event will any payment or other action by a Party constitute or be construed to be a waiver by that Party of any breach of covenant or default that may then exist on the part of the other Party. No payment, other action, or inaction by a Party when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

(c) Costs. Expert Fees, Attorneys' Fees. If any legal action is filed or maintained by either Party in relation to this Agreement, each Party shall bear its own costs, expert fees, and reasonable attorneys' fees.

21. NOTICES. All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered as provided in this paragraph (unless the means of delivery is otherwise expressly specified in this Agreement). Notices shall be deemed delivered upon receipt, if delivered personally or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the City:

Executive Director of the Mayor's
Office of the National Western Center
Webb Municipal Office Building
5125 Race Court
Denver, CO 80216

With a copy to:

City Attorney
Denver City and County Building
1435 Bannock St., Room 353
Denver, CO 80202

If to DRIR:

General Manager
Denver Rock Island Railroad
3400 E. 56th Ave.
Commerce City, CO 80022

With a copy to:

Corporate Secretary
The Denver Rock Island Railroad

3400 E. 56th Ave.
Commerce City, CO 80022

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

22. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

23. LEGAL AUTHORITY.

(a) The Parties each warrant that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person(s) signing and executing this Agreement on behalf of the Parties do hereby warrant and guarantee that the signatory(ies) below has been fully authorized to execute this Agreement and to validly and legally bind such Parties to the obligation and performance of all the terms, covenants, and conditions herein set forth.

24. PARAGRAPH HEADINGS. The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

26. ORDER OF PRECEDENCE. In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INUREMENT. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

28. SURVIVAL OF CERTAIN PROVISIONS. The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein.

29. EXECUTION OF AGREEMENT. This Agreement shall not take effect until approved by Denver City Council and DRIR's Board of Directors, respectively, and signed by all authorized DRIR and City officials, including DRIR's General Manager and legal counsel, and, for the City, the Mayor, the Clerk and Recorder and the Auditor.

30. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Exhibit A **Bill of Sale**
Exhibit B **Special Warranty Deed**
Exhibit C **Quitclaim Deed**
Exhibit D **Rail Operating Easement and Use Agreement**

**Exhibit C to the Rail Operating Easement and Use Agreement
Rail Construction, Operations and Maintenance**

RAIL CONSTRUCTION, OPERATIONS AND MAINTENANCE AGREEMENT

THIS RAIL CONSTRUCTION, OPERATIONS AND MAINTENANCE AGREEMENT (this “**Agreement**”) is made and entered into, effective as of the date set forth on the City’s signature page (“**Effective Date**”) as defined herein, between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado, organized pursuant to Article XX of the Colorado Constitution (“**Denver**” or “**the City**”), and **THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56th Avenue, Commerce City, Colorado 80022 (“**DRIR**”). The City and DRIR are sometimes jointly referred to as the “**Parties.**”

RECITALS:

1. The Parties have entered into a Settlement Agreement of even date herewith (the “**Settlement Agreement**”), which provides for the Parties to cooperate in connection with the City’s relocation of existing rail lines through the National Western Center campus along a new alignment (the “**New Corridor**”) and to provide to DRIR, in settlement of its claims regarding the City’s activities affecting its rail operations, certain compensation as set forth in the Settlement Agreement.
2. As provided in the Settlement Agreement, the City will grant to DRIR such easements and other rights necessary for DRIR’s operations, including a rail operating easement over the rail corridor that is the subject of this Agreement (the “**Rail Operating Easement**”) and easements providing access to the New Corridor by DRIR over the City’s real property.
3. As of the Effective Date, DRIR conducts its operations over the existing rail lines on the National Western Center campus under various rights of way and trackage rights. The Parties intend that Rail Operating Easement will replace DRIR’s existing rights upon completion of Burn-In.
4. The Parties intend for DRIR to have continuous rail operations throughout the City’s construction of the New Corridor and for the transfer of DRIR’s operations to the New Corridor, as described in this Agreement.

5. The City will construct the rail improvements in the New Corridor, including any walls and retained fill, sub-ballast, bridges and abutments, drainage facilities, ballast, rail, ties, switches, signal equipment, grade separated and at-grade crossings, and corridor security fencing.

6. The Parties wish to establish the terms and conditions governing the Parties' respective rights and obligations in connection with the construction, ownership, operation and maintenance of the rail improvements in the New Corridor.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereinafter stated, the Parties agree as follows:

1. SCOPE OF AGREEMENT

A. This Agreement sets forth the general rights, duties and obligations of the Parties arising out of the construction, ownership, operation and maintenance of the New Corridor. The Parties agree to cooperate and coordinate with one another in all activities contemplated in or related to this Agreement. All federal, state and local laws, statutes, ordinances, rules, regulations, guidelines and directives that are referenced in this Agreement, together with all exhibits, attachments and addenda to this Agreement, are hereby incorporated as though fully set forth in this Agreement.

B. The Parties are entering into the following additional agreements that affect the New Corridor:

- (1.) The Settlement Agreement;
- (2.) Rail Operating Easement and Use Agreement;
- (3.) North Access Easement;
- (4.) South Access Easement

C. The above-named agreements shall remain in effect until terminated and shall not be voided by the termination of this Agreement. If there are any conflicts or inconsistencies between this Agreement and the above-named agreements, such conflicts or inconsistencies shall be resolved by reference to these documents in the following order of priority: (1) the Settlement

Agreement; (2) this Agreement; (3) the Rail Operating Easement and Use Agreement; and (4) the Access Easements.

2. **DEFINITIONS**

A. “**Burn-In**” means the 30-Day seasoning period between substantial completion and final completion of the New Corridor, during which the City will address construction punchlist items and correct any construction deficiencies identified on the punchlist, including those identified by DRIR. During the Burn-In DRIR will perform rail operation on the New Corridor tracks as a test of the adequacy of the construction of the New Corridor rail facilities. If circumstances arise during the Burn-In that cause an interruption of DRIR’s service of more than forty-eight hours, DRIR shall switch its operations off of the New Corridor, and the term of the Burn-In shall be extended for the period during which DRIR is unable to operate on the New Corridor. The existing track on the River Corridor and National Western Drive Corridor will remain in place and usable by DRIR during Burn-In, subject to temporary interruptions due to utility installations.

B. “**Cut-over Date**” means the date of substantial completion of the New Corridor and the date on which DRIR shall relocate its operations to the New Corridor. The Cut-over Date shall be the first day of Burn-In.

C. “**Day**” means a calendar Day.

D. “**Hazardous Substance**” means any and all materials or substances that are defined as “hazardous waste”, “extremely hazardous waste”, or a “hazardous substance” pursuant to state or federal law.

E. “**New Corridor Project**” means the construction of rail improvements comprising the New Corridor, consisting of the rail line and associated improvements constructed, as set forth in the construction plans attached as **Exhibit A** hereto.

F. “**PUC Maintenance Rules**” means Colorado Public Utilities Commission Rule 4 Code of Colorado Regulations (CCR) 723-7-7211, regarding the public road crossings.

3. **EXHIBITS**. The following documents are attached and/or incorporated herein and made a part of this Agreement:

Exhibit A: Approved Construction Plans for the New Corridor

Exhibit B: Construction Schedule

Exhibit C: New Corridor Maintenance Responsibility Matrix

4. CONSTRUCTION OF NEW CORRIDOR

A. Design. The City shall construct New Corridor improvements and rail substantially in accord with the 100% design plans attached hereto as **Exhibit A**. Once this Agreement is executed by either Party, the City will notify DRIR in writing of modifications to the Plans; provided, however, that the City shall obtain DRIR's approval of any proposed modifications to the track configuration or track materials. The City will provide any additional plans not yet completed at the time of signing of this Agreement for DRIR's review and comment. The City shall consider DRIR's comments related to rail industry design standards and criteria and rail operational efficiencies, and shall incorporate such comments unless doing so would be unreasonable or contrary to applicable design standards and criteria.

B. The City's plans and specifications for the replacement, repair, or maintenance of property on or within the New Corridor shall meet and/or exceed all applicable federal, state and local laws, statutes, ordinances, rules, regulations, standards, criteria, guidelines and directives and applicable AREMA standards, criteria and guidelines in use at the time of the design. Following Burn-In, DRIR's plans and specifications for the replacement, repair, or maintenance of property on or within the New Corridor shall meet and/or exceed all applicable federal and state laws, statutes, ordinances, rules, regulations, standards, criteria, guidelines and directives and applicable AREMA standards, criteria and guidelines in use at the time of the replacement, repair or maintenance.

C. Permitting. The City shall be responsible for obtaining all permits required to construct the New Corridor and to perform or cause to be performed any utility work in connection with the New Corridor or the development of the National Western Center campus. If the City so requests, DRIR shall cooperate in the City's application for any permits.

D. Construction Schedule. Attached as **Exhibit B** is a copy of the City's proposed construction schedule to DRIR, including the Cut-over Date, to be followed by Burn-In, and City shall provide DRIR with revisions as the construction schedule may be amended from time to time. Any anticipated service interruption or cutting of the existing track shall conform to the terms and

conditions of the Crossing Construction Agreement between DRIR and Ames dated June 14, 2019. Separate from the City's construction schedule, the City shall provide to DRIR the proposed dates for all utility installations or alterations affecting DRIR's existing right-of-way. The Cutover Date shall not be earlier than, and the City shall not require DRIR to vacate the Cherokee Maintenance Facility prior to, May 31, 2020 without DRIR's assent.

E. Preservation of existing DRIR operations. Throughout construction of the New Corridor, DRIR's existing operations shall continue without unreasonable interruption. The City shall perform, at no cost to DRIR, all track cutting and restoration work required to accommodate any utility installations or alterations affecting DRIR's existing track. Track restoration shall, at a minimum, return the track, ballast and subgrade to the condition it was in prior to cutting, except as approved by DRIR's General Manager in writing. Throughout construction, at least one of DRIR's existing rail corridors will be available for DRIR's operations at all times.

F. Cutover to the New Corridor. Not less than 30 Days prior to the Cut-over Date, the City shall confirm in writing to DRIR the date on which the New Corridor will be available to DRIR, and on which DRIR shall transfer all of its operations to the New Corridor. During Burn-In, the City may cause adjustments to be made to facilities in the New Corridor to accommodate DRIR's operations.

G. Salvage. Beginning on the Cut-over Date until 5 business days following the end of Burn-In, DRIR shall have access to the River Corridor and National Western Drive Corridor to salvage switches from the existing track. After DRIR's salvage period as described in the preceding sentence, the City shall commence all other salvage of track, equipment and other track materials from the existing right-of-way.

H. Transfer of track on New Corridor. Upon completion of the Burn-In period, the City shall transfer to DRIR via bill of sale the rail, ties, ballast, spikes, tie plates, bolts, angle irons, and signals the City will have constructed on the New Corridor.

I. Force Majeure. If any Party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such Party, upon giving notice and reasonably full particulars to the other Parties, shall be relieved of such obligation or condition during the continuance of such inability, and the timing of any obligation under this Agreement will be automatically extended for the term of such inability. The term "force majeure" shall

include acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, and any laws, orders, rules, regulations, acts, or restraints of any government or governmental body or authority, civil or military. Written notice of any claim of inability to perform or comply due to force majeure must be promptly given as provided in Section 12.C below.

5. OPERATION AND MAINTENANCE OF NEW CORRIDOR

A. The City or DRIR, as applicable, shall operate and maintain those elements of the New Corridor Project as set forth in this Agreement, and as identified as such Party's responsibility in **Exhibit C** and the additional terms of this Agreement. The Parties shall coordinate in connection with proposed maintenance activities and capital improvements and shall conduct any such work to comply with standards not less than those set forth in Section 8 below.

B. The City's maintenance of the items identified as the City's responsibility in this Agreement shall be in accordance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, guidelines and directives, and the requirements of this Agreement and **Exhibit C**.

C. DRIR's maintenance of the items identified as DRIR's responsibility in this Agreement shall be in accordance with the requirements of this Agreement, **Exhibit C**, and all applicable federal, state and local laws, statutes, ordinances, rules, regulations, guidelines and directives.

D. The City will maintain the master electronic copies of **Exhibit C** and will be responsible for updating the file to reflect any subsequent modifications approved by both Parties, and such modifications shall not constitute amendments to this Agreement. Electronic copies of any subsequent changes shall be forwarded to the officials noted above by the City. The maintenance responsibilities shown on **Exhibit C** may be modified from time to time. However, no modifications may be made without the written approval of the authorized representatives of DRIR and the City identified below. The undersigned signatories, by execution of this Agreement, specifically delegate to the persons identified as follows the requisite authority to execute any such modifications:

For DRIR: General Manager

Denver Rock Island Railroad
3400 E. 56th Ave.
Commerce City, CO 80022

For the City: Executive Director of the Mayor's Office of the National Western Center, or any successor agency
5125 Race Court
Denver, CO 80216

E. The Parties shall remove graffiti from all areas of the New Corridor which they are responsible to maintain in a timely manner consistent with applicable law. Notwithstanding this provision, DRIR will have no requirement to remove graffiti from railcars located on the New Corridor but may choose to do so.

F. The Parties agree to cooperate on all maintenance and replacement scheduling, and, except in the case of emergency repairs identified below, further agree to provide the other Party written notice of any maintenance, replacement or repair activities which may impact the other Party's property or activities at least 10 Days prior to commencing the maintenance, replacement or repair.

G. Prior to the City or any of City's contractors or subcontractors performing any work required under this Agreement within the Rail Operating Easement area, the City or its contractor and subcontractors, if any, shall coordinate with DRIR as set forth in the Rail Operating Easement.

H. In performing any construction or maintenance, the City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of DRIR tracks or rail facilities, or any communication or signal lines, installations or any of their appurtenances without first coordinating with DRIR as provided in the Rail Operating Easement.

6. RAIL OPERATING EASEMENT

DRIR shall comply with the requirements of the Rail Operating Easement regarding access for all maintenance work by DRIR under this Agreement taking place on, over or within the area governed by the Rail Operating Easement. In case of an emergency requiring access to the New Corridor from property owned or controlled by the City and not covered by an easement in favor

of DRIR, DRIR shall coordinate with the Manager, as defined in Section 12.A below, for access to the New Corridor. Any such use shall be governed by the standards contained in the Rail Operating Easement and Use Agreement addressing responsibility for damages and indemnification. To the extent such use damages the City's property, DRIR shall be responsible for restoring the property to the condition it was in prior to such damage.

7. PUBLIC ROAD CROSSINGS

A. DRIR will maintain and/or replace all damaged fencing, including prompt repair to fencing damaged as a result of a rail related incident, within the New Corridor.

B. Consistent with the PUC Maintenance Rules, DRIR shall maintain the road surface of the public road at-grade crossing at Race Ct. between the track and the tie ends, and the City will maintain the road surface up to the tie ends. If in the future the Parties choose to have the surfacing material between the track tie ends replaced, the City shall bear the cost of all materials and DRIR shall bear the cost of installation labor.

C. So long as DRIR uses the access road adjacent to the New Corridor between Race Ct and the western boundary of the BNSF right of way, DRIR, at its own expense, shall maintain the road surface of the at grade private road crossing within the New Corridor. The City will maintain the road surface up to the boundary of the New Corridor. Should DRIR relinquish the right to use the access road City will be responsible for the cost of all maintenance on the at grade private road crossing.

8. STANDARDS

A. DRIR shall maintain all tracks, at a minimum, to conform to the applicable track maintenance standards established by the Federal Railroad Administration (FRA) and the American Railway Engineering and Maintenance of Way Association ("AREMA").

B. At-grade public road crossings shall be maintained in accordance with the standards set forth in the PUC Maintenance Rules, unless superseded by a Colorado PUC Order.

9. ASSOCIATED COSTS

All costs associated with the respective maintenance responsibilities of each Party to this Agreement as shown on **Exhibit C** shall be the sole obligation of such Party unless apportioned

otherwise herein.

10. DAMAGE TO PROPERTY

A. Repairs or reconstruction necessary to correct all damages to the property of the respective Parties caused by the negligent or wrongful construction, maintenance or operation activities of the other Party shall be undertaken by the damaged Party on its own property. Said repairs or reconstruction shall place the damaged property, equipment or dedicated right-of-way to its original state prior to such damage in accordance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, standards and guidelines. The Party causing damage to the property of the other Party shall promptly pay the reasonable costs for such repairs or reconstruction.

B. DRIR acknowledges that the City is self-insured and immune from lawsuits in tort pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as amended. Nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended.

11. EMERGENCY REPAIRS

A. Repairs or improvements which are required due to an emergency or other exigent circumstance shall be undertaken whenever necessary to safeguard the public health, safety or welfare. The City shall notify DRIR of emergency maintenance, repair or replacement operations which will or may impede or impact DRIR operations as soon as possible after the City is aware that such operations are to be or have been initiated and will undertake all reasonable measures to ensure the safe flow of rail traffic during the emergency operations. DRIR shall notify the City of emergency maintenance, repair or replacement operations which will impede or impact the flow of vehicular or pedestrian traffic as soon as possible after DRIR is aware that such operations are to be or have been initiated and will undertake all reasonable measures to ensure the safe flow of vehicular and pedestrian traffic during the emergency operations. If the City should incur costs in responding to an emergency resulting from DRIR's operations those costs, other than fire and police protection, including but not limited to replacement of City traffic control equipment damaged as a result of the emergency repairs and the installation of temporary detours, shall be

reimbursed by DRIR. If DRIR should incur costs in responding to an emergency resulting from City's or its successors or assigns' activities, those costs shall be reimbursed by City. Hazardous waste remediation shall not be considered fire protection for purposes of this clause.

B. In the event a Party to this agreement believes that a defect in, or improper maintenance of, facilities constructed as a part of the New Corridor Project poses an immediate and substantial threat to the health or safety of the general public or may cause damage to the Party's property or dedicated right of way, the Party responsible for the maintenance shall be notified of the alleged deficiency. If the Parties cannot reach an agreement to correct the deficiency within a reasonable time, the claiming Party may elect to correct deficiencies on its property and if it is determined that the other Party is responsible will be entitled to be reimbursed by the responsible Party for actual costs incurred to correct the work.

12. COORDINATION AND LIAISON

A. The City's Executive Director of the Mayor's Office of the National Western Center or any successor agency (the "**Manager**") is vested with the City's authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager hereby designates the Program Director of the National Western Center as the Manager's authorized representative for purposes of coordinating, directing and administering the City's activities under this Agreement. DRIR hereby designates its General Manager as authorized representative for the purposes of coordinating, directing and administering DRIR's activities under this Agreement.

B. Each of the Parties may change their authorized representative at any time by providing written notice to the other party of such change. All communications relating to the Day-to-Day activities for the New Corridor Project shall be exchanged between the authorized representatives.

C. Any notice or communication given under this Agreement may be sent by first class mail. Any notices shall be addressed to:

For DRIR : General Manager
Denver Rock Island Railroad
3400 E. 56th Ave.
Commerce City, CO 80022
Phone: (303) 296-0900

With a copy to:

Corporate Secretary
The Denver Rock Island Railroad
3400 E. 56th Ave.
Commerce City, CO 80022
Phone: (303) 296-0900

For the City: Executive Director of the Mayor's
Office of the National Western Center
5125 Race Court
Denver, CO 80216

With a copy to:

City Attorney
Denver City and County Building
1435 Bannock St., Room 353
Denver, CO 80202

Each Party may change its address at any time by notice in writing to the other Party.

13. CONFLICT RESOLUTION The Parties shall attempt to resolve all disputes with regard to the Agreement by submitting in writing a description of the dispute to the Manager and the authorized representative for DRIR. The Parties shall negotiate in good faith to resolve any such disputes prior to seeking judicial relief.

14. HAZARDOUS SUBSTANCES

Except for the temporary placement of railcars, or as required for typical maintenance activities, DRIR shall not cause or permit Hazardous Substances to be used, stored, generated, or disposed of on City-owned property except as contemplated by the Rail Corridor Easement by DRIR, DRIR's agents, employees, contractors or invitees without first obtaining the City's written consent. If City property becomes contaminated by a Hazardous Substance due to the actions or inactions of the DRIR, DRIR shall indemnify and hold harmless the City from any and all claims,

damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the property, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorney's fees, consultant, and expert fees) arising during or after the Term of this agreement and arising as a result of those actions or inactions by DRIR. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if DRIR causes or permits the presence of any Hazardous Substance on the New Corridor which results in contamination of or on City property, DRIR shall promptly, at its sole expense, take any and all necessary actions to return the City property to a condition acceptable to the City and all applicable regulatory agencies. DRIR shall first obtain City's approval for any such remedial action.

15. BEST EFFORTS

The City and DRIR agree to work diligently together and in good faith, using their best efforts to resolve any unforeseen issues and disputes, meet the needs of the public, and effect an orderly provision of New Corridor maintenance.

16. DEFAULT AND REMEDIES

A. The following shall constitute an event of default under this Agreement by City (each, a "**City Default**"):

1. City shall fail to pay any sum of money due to DRIR as and when due, except to the extent such amount is the result of a good faith dispute; or
2. City shall fail to comply with any covenant or term described in this Agreement; City shall violate or fail to conform with any applicable statute, law, regulation, or other governmental directive that City fails to correct in accordance with the requirements of applicable law or regulation.

B. The following shall constitute an event of default under this Agreement by DRIR (each, a "**DRIR Default**"):

1. DRIR shall fail to pay any sum of money due to City as and when due, except to the extent such amount is the result of a good faith dispute; or

2. DRIR shall fail to comply with any covenant or term described in this Agreement; DRIR shall violate or fail to conform with any applicable statute, law, regulation, or other governmental directive that DRIR fails to correct in accordance with the requirements of applicable law or regulation.

C. Prior to the exercise of any remedy by any Party, the non-defaulting Party shall provide notice of the occurrence of the City Default or DRIR Default, as the case may be, which notice shall specify the nature of the City Default or DRIR Default. If the City Default or DRIR Default can be cured solely with the payment of money to the non-defaulting Party (a “**Monetary Default**”), then City shall have forty-five (45) days to cure the Monetary Default and DRIR shall have forty-five (45) days to cure the Monetary Default. If the City Default or DRIR Default cannot be cured solely with the payment of money to the non-defaulting Party (a “**Non-Monetary Default**”) then City shall have thirty (30) days to cure the Non-Monetary Default and DRIR shall have thirty (30) days to cure the Non-Monetary Default; provided, however, that if such Non-Monetary Default cannot be fully cured within thirty (30) days, upon advance written agreement of the parties, the thirty (30) day cure period may be extended but the defaulting party shall cure such Non-Monetary Default within agreed upon extended cure period. If the City Default or DRIR Default, as the case may be, is not timely cured, the non-defaulting Party may exercise the remedies provided in this Section 16.

D. City’s Remedies. Upon the occurrence of a DRIR Default, City shall have the following rights and remedies:

1. City may recover from DRIR any past due sums owed to City by DRIR.
2. In addition to the rights and remedies granted to City pursuant to subsection (1) and (2), City shall additionally have all rights and remedies available to it at law or in equity.
3. Each of City’s remedies shall be cumulative as to each other and not in the alternative of each other. City shall not be required to elect its remedy.

E. DRIR’s Remedies. Upon the occurrence of a City Default, DRIR shall have the following rights and remedies:

1. DRIR may recover from City any past due sums owed to DRIR by City.
2. In addition to the rights and remedies granted to DRIR pursuant to subsection (1), DRIR shall additionally have all rights and remedies available to it at law or in

equity.

3. Each of DRIR's remedies shall be cumulative as to each other and not in the alternative of each other. DRIR shall not be required to elect its remedy.

17. TERM, TERMINATION AND MODIFICATION

A. This Agreement may not be terminated unless by mutual written consent of both the City and DRIR, or unless (a) the Surface Transportation Board issues authority for the discontinuance of DRIR's common carrier obligation over the New Corridor or (b) a final judgment of court of competent jurisdiction, upon completion of appeals or the lapse of all applicable appeal periods, determines that the Agreement is invalid, ineffective or otherwise terminated.

B. This Agreement may be modified at any time by the mutual written consent of the Parties.

18. INSURANCE

A. **General Conditions:** DRIR agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations pursuant to this Agreement. DRIR shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof or for so long as DRIR or any successor railroad operates on the New Corridor. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, DRIR shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City

must be notified by the DRIR. DRIR shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the DRIR. The DRIR shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement. The City shall re-evaluate the limits of coverage required in this Agreement to maintain consistency with the insurance coverage limits typical among Class III railroads not more often than every five years.

B. **Proof of Insurance:** DRIR shall provide a copy of this Agreement to its insurance agent or broker. DRIR may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement and provision of a certificate of insurance to the City, preferably an ACORD certificate, that complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of DRIR's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability, Auto Liability, Excess Liability/Umbrella, and Environmental Liability, DRIR and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. **Waiver of Subrogation:** For all coverages required under this Agreement, with the exception of Professional Liability - if required, DRIR's insurer shall waive subrogation rights against the City.

E. **Contractors and Subcontractors:** All contractors and subcontractors performing work required by this Agreement, whether on behalf of DRIR or the City shall be subject to all of the insurance requirements herein and shall procure and maintain the same coverages required of the DRIR. The Parties shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors maintain the required coverages. The Parties agree to provide proof of insurance for all such subcontractors upon request by the other Party.

F. **Workers' Compensation/Employer's Liability Insurance:** DRIR is not subject to state Worker's Compensation Insurance requirements. DRIR shall maintain the coverage as required by the Federal Employers Liability Act (FELA). Contractors providing work for DRIR under this Agreement shall maintain Worker's Compensation Insurance required by statute and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. DRIR expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the DRIR's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date DRIR executes this Agreement.

G. **Commercial General Liability:** DRIR shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$5,000,000 policy aggregate. Aggregate limit may be met through a follow-form excess/umbrella policy.

H. **Business Automobile Liability:** DRIR shall maintain minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. If transporting wastes, hazardous material, or regulated substances, DRIR shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the DRIRs Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

I. **Environmental Legal Liability:** DRIR shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include coverage for bodily injury, property damage, emergency response, clean-up costs, defense costs including costs and expenses incurred during an investigation.

J. **Property Insurance:** DRIR shall maintain All Risk Property Insurance on a replacement cost basis covering all insurable property maintained by DRIR. Insurance shall include business interruption coverage.

K. **Additional Provisions:**

- (a) For Commercial General Liability, the policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
 - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) DRIR shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the DRIR will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

19. STATUS OF PARTIES

The Parties agree that the status of each Party shall be that of an independent entity, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, or agent of the other Party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

20. WHEN RIGHTS AND REMEDIES NOT WAIVED

In no event shall any performance by a Party hereunder constitute or be construed to be a waiver by that Party of any breach of term, covenant, or condition or any default which may then exist on

the part of the other Party, and the tender of any such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to a Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

21. EXAMINATION OF RECORDS

The Parties agree that any duly authorized representative of the City or DRIR, including the City Auditor, or any internal or external auditor of DRIR shall, until the expiration of three (3) years after the final reconciliation or payment, as applicable, under this Agreement, have access to and the right to examine any books, documents, papers and records, involving transactions directly related to this Agreement at the cost of the auditing Party.

22. ASSIGNMENT AND SUBCONTRACTING

A contractor or contractors may perform any or all of DRIR's or the City's obligations under this Agreement. Subject to the foregoing, the Party agrees that it will not otherwise assign or transfer any of its rights or obligations under this Agreement without first obtaining the prior written consent of the other Party; provided, however, that the City shall have the right to assign some or all of its rights or obligations under this Agreement to the National Western Center Authority ("**Authority**") upon written notice to DRIR; also provided, however, that upon assignment to the Authority the insurance provisions applicable to DRIR as contained in Section 18 shall also apply to the Authority; and also provided, however, that DRIR shall have the rights to assign some or all of its rights or obligations under this Agreement to a successor railroad taking over the rail operations of DRIR through the National Western campus upon written notice to the City not less than sixty days in advance of such proposed assignment. If this Agreement is lawfully assigned, all of the covenants and agreements contained in this Agreement shall bind and inure to the benefit of the successors and assigns of the Party assignor.

23. LIABILITY

As between the Parties, and without either Party waiving any of its rights, immunities or protections as against third parties under the Colorado Governmental Act, C.R.S. §§ 24-10-101 to -120, each Party shall be responsible for its own negligence and that of its agents, employees, invitees, and contractors in the performance of this Agreement. If either Party receives notice of claim or suit against or involving the other Party arising from this Agreement, the Party receiving such notice agrees to give the other Party prompt written notice of such claim or suit.

24. CONFLICT OF INTEREST

The Parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and DRIR further agrees not to hire, or contract for services with, any employee or officer of the City which would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq., or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

25. APPROPRIATIONS

The obligations of the City under this Agreement or any renewal shall extend only to monies appropriated for the purpose of this Agreement by Denver's City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. The Parties acknowledge that (i) they do not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Parties.

26. CHARGES AND PENALTIES

The Parties shall not be liable for the payment of any late charges or penalties of any nature to each other.

27. GOVERNING LAW; VENUE

Each and every term, provision, condition, of this Agreement is subject to the provisions of the laws of the United States, Colorado law, the Charter of the City and County of Denver and the ordinances and regulations enacted pursuant thereto, to the extent that such state and local laws are applicable to the operations of railroads and not pre-empted by federal law. Venue for any action arising hereunder shall be in the District Court for the City and County of Denver, Colorado, except for actions related to or implicating any federal law in which case venue shall be with the Surface Transportation Board or the United States District Court for the District of Colorado.

28. SEVERABILITY

The Parties expressly agree that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the United States, or the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

29. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

30. COMPLETE INTEGRATION; AMENDMENTS

This Agreement is intended as the complete integration of all understandings between the Parties with respect to construction, operations and maintenance of the New Corridor. No prior or contemporaneous understanding, addition, deletion or other amendment hereto shall have any force or effect whatsoever unless embodied in this Agreement, the Settlement Agreement between the Parties, or The Rail Operating Easement. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment

to this Agreement executed by the Parties, their successors, or assigns, approved and executed in the same manner as this Agreement.

31. NO THIRD-PARTY BENEFICIARIES

It is expressly understood and agreed that no third party beneficiary interests are created in this Agreement; provided, however, that the City may assign all or part of its interest in this Agreement to the Authority.

32. LEGAL AUTHORITY

A. The Parties each warrant that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person(s) signing and executing this Agreement on behalf of the Parties do hereby warrant and guarantee that the signatory(ies) below has been fully authorized to execute this Agreement and to validly and legally bind such Parties to the obligation and performance of all the terms, covenants, and conditions herein set forth.

33. PARAGRAPH HEADINGS

The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

34. NO CONSTRUCTION AGAINST DRAFTING PARTY

The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

35. ORDER OF PRECEDENCE

In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

36. INUREMENT

The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

37. SURVIVAL OF CERTAIN PROVISIONS

The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein.

38. EXECUTION OF AGREEMENT

This Agreement shall not take effect until approved by Denver City Council and DRIR's Board of Directors, respectively, and signed by all authorized DRIR and City officials, including DRIR's General Manager and legal counsel, and, for the City, the Mayor, the Clerk and Recorder and the Auditor.

39. COUNTERPARTS

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

40. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS

The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

41. TERMINATION OF OPERATING RIGHTS OF OTHER RAILROADS

If DRIR elects to seek the termination of operating authority that may be vested in one or more other railroads over the New Corridor, the City shall not oppose DRIR's efforts.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**Exhibit D to the Rail Operating Easement and Use Agreement
Bill of Sale**

BILL OF SALE

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“Seller”), for and in consideration of Ten Dollars, the receipt and sufficiency of which are hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto to **THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56th Avenue, Commerce City, Colorado 80022 (“Purchaser”), and Purchaser’s successors and assigns, all of Seller’s right title and interest in rail, ties, ballast, spikes, tie-plates, bolts, and angle irons (collectively, the “Tracks”) after the Effective Date of this Bill of Sale, all within the boundaries of the Rail Operating Easement and Use Agreement between the Denver Rock Island Railroad and the City and County of Denver, all as depicted and described in Exhibit A, Denver, Colorado (the “Property”):

See Exhibit A, attached hereto and incorporated herein.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale this ____ day of _____ (the “Effective Date”).

CITY AND COUNTY OF DENVER

BY: _____

RAIL CORRIDOR EASEMENT

LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

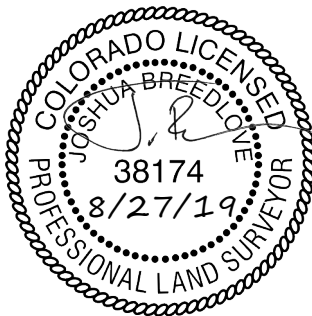
SHEET 1 OF 8

PARCELS OF LAND LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE NORTH-SOUTH CENTER LINE OF SECTION 14 TO BEAR NORTH 00°20'34" EAST, A DISTANCE OF 2,657.09 FEET BETWEEN A FOUND 3.25" ALUMINUM CAP STAMPED "COLO DEPT OF TRANSPORTATION T3S R68W 1/4 S14 S23 1994 PLS 23521" AT THE SOUTH QUARTER CORNER OF SECTION 14 AND A FOUND 2" BRASS CAP STAMPED "T3S R68W C 1/4 S14 1996 LS 17650" AT THE CENTER QUARTER CORNER OF SECTION 14, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT SAID CENTER QUARTER CORNER OF SECTION 14; THENCE SOUTH 06°38'12" EAST, A DISTANCE OF 293.35 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF RACE COURT PER ORDINANCE 18, SERIES 1919 AND THE POINT OF BEGINNING; THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF RACE COURT, SOUTH 54°35'18" EAST, A DISTANCE OF 29.71 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE 188.51 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 592.80 FEET, AN INCLUDED ANGLE OF 18°13'13" AND SUBTENDED BY A CHORD BEARING SOUTH 16°53'28" EAST, A DISTANCE OF 187.72 FEET; THENCE SOUTH 26°00'04" EAST, A DISTANCE OF 340.47 FEET; THENCE SOUTH 32°21'39" EAST, A DISTANCE OF 125.43 FEET TO A POINT OF CURVATURE; THENCE 86.08 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 775.49 FEET, AN INCLUDED ANGLE OF 06°21'35" AND SUBTENDED BY A CHORD BEARING SOUTH 29°10'52" EAST, A DISTANCE OF 86.03 FEET; THENCE SOUTH 26°00'04" EAST, A DISTANCE OF 70.79 FEET TO A POINT OF CURVATURE; THENCE 758.21 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 685.69 FEET, AN INCLUDED ANGLE OF 63°21'20" AND SUBTENDED BY A CHORD BEARING SOUTH 05°40'35" WEST, A DISTANCE OF 720.17 FEET; THENCE SOUTH 36°53'00" WEST, A DISTANCE OF 248.33 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

(CONTINUED ON SHEET 2)



JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019

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Flatirons, Inc.
Surveying, Engineering & Geomatics



4501 LOGAN ST.
 DENVER, CO 80216
 PH: (303) 936-6997
 FAX: (303) 923-3180
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BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:12 AM

RAIL CORRIDOR EASEMENT

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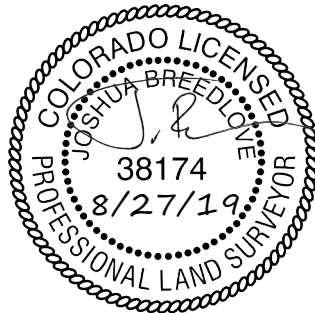
SHEET 2 OF 8

(CONTINUED FROM SHEET 1)

THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE THE FOLLOWING TEN (10)
COURSES:

- 1) SOUTH 37°21'38" WEST, A DISTANCE OF 462.92 FEET;
- 2) THENCE SOUTH 45°29'15" WEST, A DISTANCE OF 479.30 FEET;
- 3) THENCE SOUTH 45°29'43" WEST, A DISTANCE OF 568.94 FEET;
- 4) THENCE SOUTH 45°31'26" WEST, A DISTANCE OF 56.00 FEET;
- 5) THENCE SOUTH 45°29'43" WEST, A DISTANCE OF 73.80 FEET;
- 6) THENCE SOUTH 38°16'24" WEST, A DISTANCE OF 95.98 FEET;
- 7) THENCE SOUTH 45°29'01" WEST, A DISTANCE OF 534.04 FEET;
- 8) THENCE SOUTH 45°38'20" WEST, A DISTANCE OF 36.27 FEET;
- 9) THENCE SOUTH 45°26'32" WEST, A DISTANCE OF 101.56 FEET;
- 10) THENCE SOUTH 45°26'15" WEST, A DISTANCE OF 356.78 FEET TO A POINT ON THE
NORTHERLY RIGHT-OF-WAY LINE OF EAST 46TH AVENUE; THENCE ALONG SAID NORTHERLY
RIGHT-OF-WAY LINE, NORTH 89°56'11" WEST, A DISTANCE OF 55.54 FEET TO A POINT OF
NON-TANGENT CURVATURE BEING ON THE EASTERLY LINE OF THE BURLINGTON NORTHERN
RAILROAD RIGHT-OF-WAY; THENCE ALONG SAID EASTERLY LINE, 43.22 FEET ALONG THE
ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 640.66 FEET, AN INCLUDED ANGLE
OF 03°51'55" AND SUBTENDED BY A CHORD BEARING NORTH 15°58'46" EAST, A DISTANCE
OF 43.21 FEET; THENCE NORTH 45°28'51" EAST, A DISTANCE OF 879.82 FEET; THENCE
NORTH 51°34'45" WEST, A DISTANCE OF 1.51 FEET; THENCE NORTH 45°28'51" EAST, A
DISTANCE OF 57.77 FEET TO A POINT OF CURVATURE; THENCE 56.92 FEET ALONG THE
ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 599.30 FEET, AN INCLUDED ANGLE
OF 05°26'29" AND SUBTENDED BY A CHORD BEARING NORTH 42°45'36" EAST, A DISTANCE
OF 56.89 FEET; THENCE NORTH 40°02'21" EAST, A DISTANCE OF 68.33 FEET TO A POINT
OF CURVATURE; THENCE 60.31 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING
A RADIUS OF 633.30 FEET, AN INCLUDED ANGLE OF 05°27'24" AND SUBTENDED BY A
CHORD BEARING NORTH 42°46'04" EAST, A DISTANCE OF 60.29 FEET; THENCE NORTH
45°29'46" EAST, A DISTANCE OF 10.14 FEET; THENCE NORTH 44°30'15" WEST, A DISTANCE
OF 3.50 FEET;

(CONTINUED ON SHEET 3)



JOB NUMBER: 16-67,445
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DATE: AUGUST 26, 2019

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RAIL CORRIDOR EASEMENT

LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
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SHEET 3 OF 8

(CONTINUED FROM SHEET 2)

THENCE NORTH 45°29'46" EAST, A DISTANCE OF 6.50 FEET; THENCE SOUTH 44°30'15" EAST, A DISTANCE OF 3.50 FEET; THENCE NORTH 45°29'46" EAST, A DISTANCE OF 41.00 FEET; THENCE NORTH 44°30'15" WEST, A DISTANCE OF 3.50 FEET; THENCE NORTH 45°29'45" EAST, A DISTANCE OF 6.50 FEET; THENCE SOUTH 44°30'15" EAST, A DISTANCE OF 3.71 FEET; THENCE NORTH 45°29'46" EAST, A DISTANCE OF 85.97 FEET; THENCE NORTH 17°35'48" EAST, A DISTANCE OF 39.98 FEET; THENCE NORTH 45°29'46" EAST, A DISTANCE OF 893.07 FEET TO A POINT OF CURVATURE; THENCE 194.06 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1365.69 FEET, AN INCLUDED ANGLE OF 08°08'29" AND SUBTENDED BY A CHORD BEARING NORTH 41°25'31" EAST, A DISTANCE OF 193.89 FEET; THENCE NORTH 37°21'16" EAST, A DISTANCE OF 608.35 FEET TO A POINT OF CURVATURE; THENCE 671.96 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 607.69 FEET, AN INCLUDED ANGLE OF 63°21'21" AND SUBTENDED BY A CHORD BEARING NORTH 05°40'36" EAST, A DISTANCE OF 638.25 FEET; THENCE NORTH 26°00'04" WEST, A DISTANCE OF 126.22 FEET TO A POINT OF CURVATURE; THENCE 86.08 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 775.49 FEET, AN INCLUDED ANGLE OF 06°21'35" AND SUBTENDED BY A CHORD BEARING NORTH 22°49'17" WEST, A DISTANCE OF 86.03 FEET; THENCE NORTH 19°38'29" WEST, A DISTANCE OF 293.95 FEET; THENCE NORTH 26°00'04" WEST, A DISTANCE OF 117.56 FEET TO A POINT OF CURVATURE; THENCE 215.85 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 614.80 FEET, AN INCLUDED ANGLE OF 20°06'58" AND SUBTENDED BY A CHORD BEARING NORTH 15°56'35" WEST, A DISTANCE OF 214.74 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 307,482 SQ. FT. OR 7.06 ACRES, MORE OR LESS.

I, JOSHUA BREEDLOVE, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THESE PARCEL DESCRIPTIONS AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOSHUA BREEDLOVE
COLORADO P.L.S. #38174
BRANCH MANAGER, FLATIRONS, INC.



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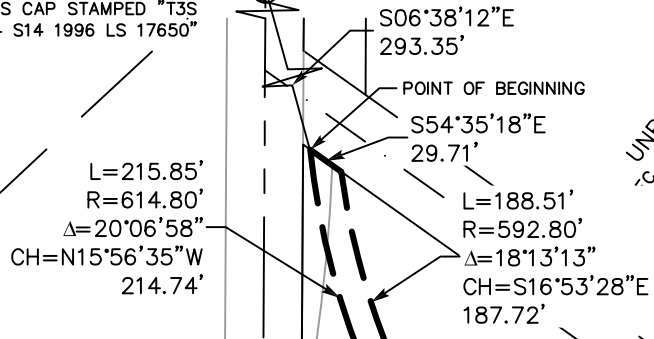
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SHEET 4 OF 8

POINT OF COMMENCEMENT
CENTER QUARTER CORNER OF
SECTION 14, TOWNSHIP 3 SOUTH,
RANGE 68 WEST OF THE 6TH P.M.
FOUND 2" BRASS CAP STAMPED "T3S
R68W C 1/4 S14 1996 LS 17650"



UNPLATTED
REC. NO. 2006147217

UNPLATTED
REC. NO. 2005020428

REC. NO. 2005159512

FRANKLIN STREET
(60' RIGHT-OF-WAY)

RACE COURT
PER ORD. 18, SERIES 1919
(60' RIGHT-OF-WAY)

UNPLATTED
REC. NO. 2005020613

UNPLATTED
REC. NO. 2015148689

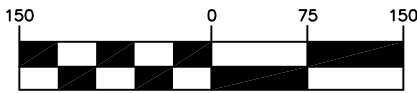
BASIS OF BEARINGS
N00°20'34"E 2657.09'

307,482 SQ. FT.
OR 7.06 AC ±

SEE SHEET 5

SEE SHEET 5

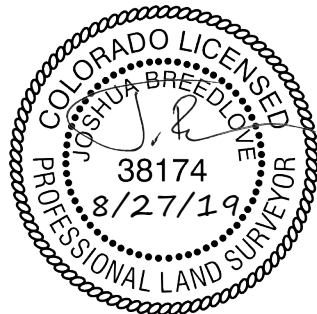
GRAPHIC SCALE



(IN FEET)

1 inch = 150 ft.

JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019



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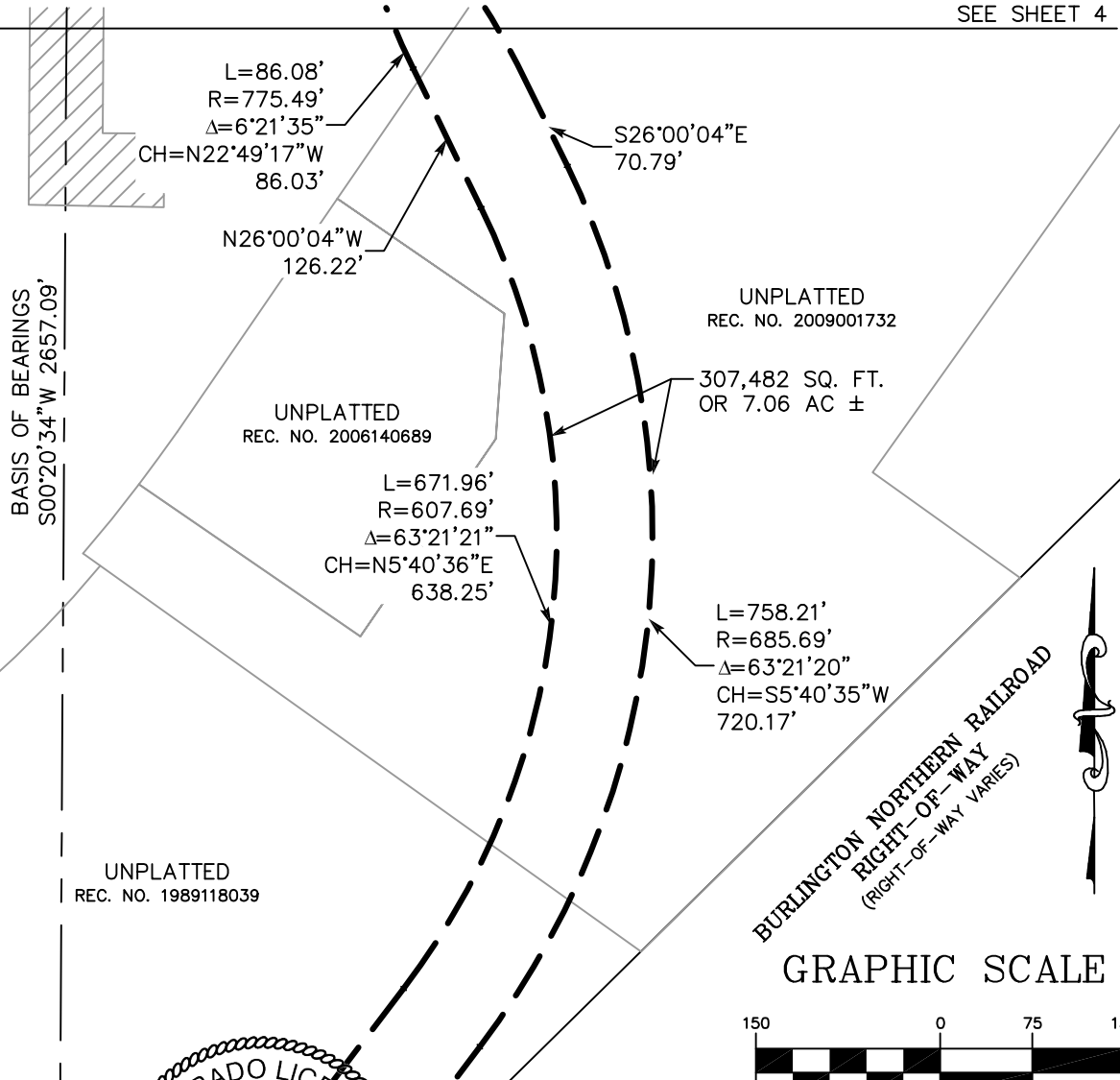
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SHEET 5 OF 8

SEE SHEET 4

SEE SHEET 4



BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:18 AM

BASIS OF BEARINGS
S00°20'34"W 2657.09'

UNPLATTED
REC. NO. 2006140689

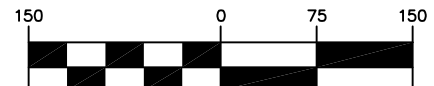
UNPLATTED
REC. NO. 2009001732

307,482 SQ. FT.
OR 7.06 AC ±

UNPLATTED
REC. NO. 1989118039

BURLINGTON NORTHERN RAILROAD
RIGHT-OF-WAY
(RIGHT-OF-WAY VARIES)

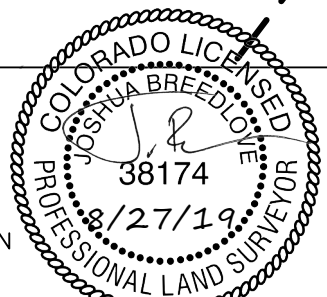
GRAPHIC SCALE



(IN FEET)
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SEE SHEET 6

SEE SHEET 6



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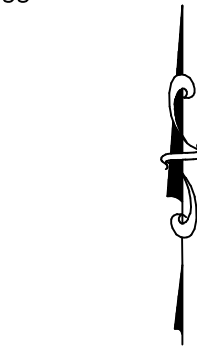
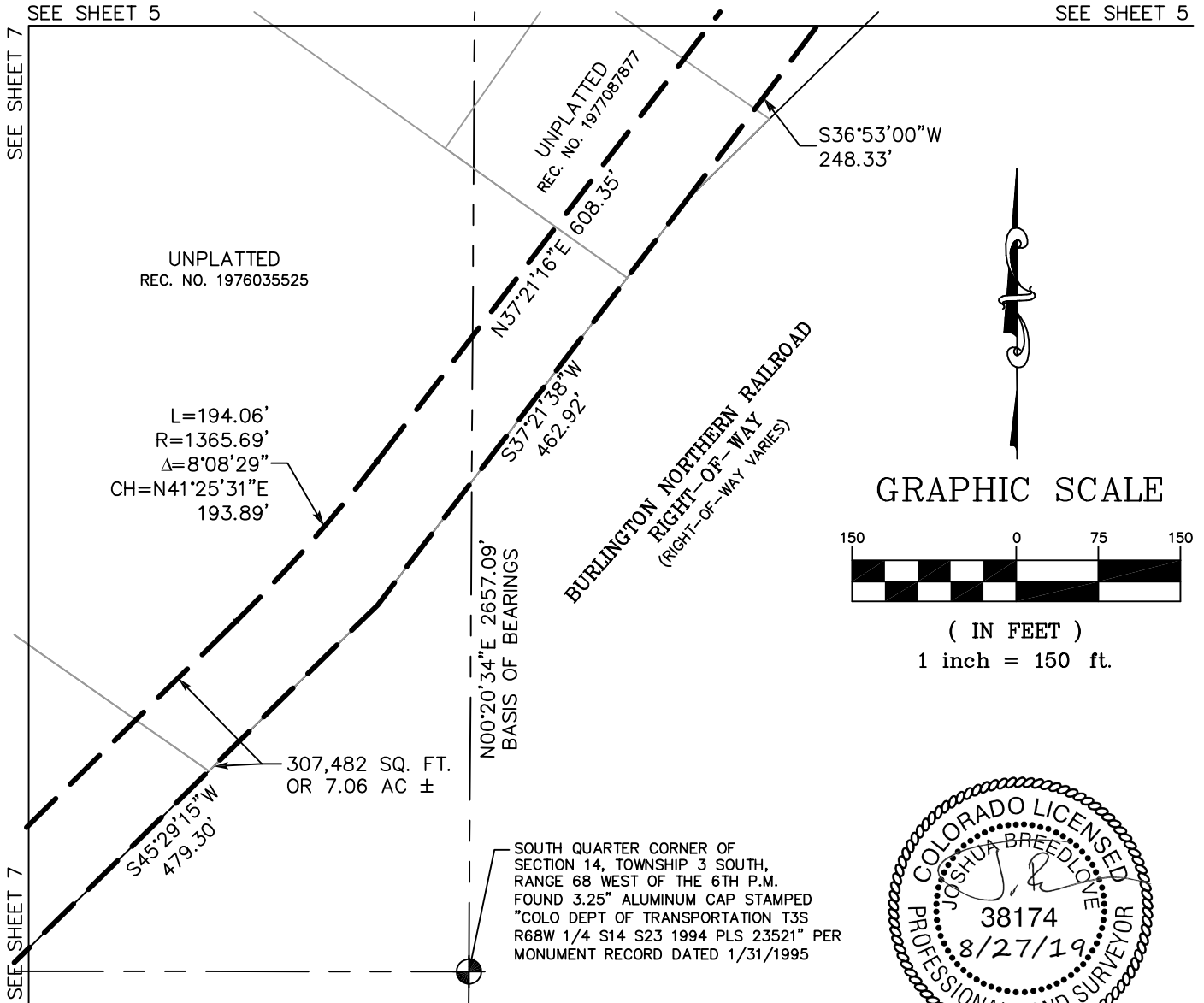
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RAIL CORRIDOR EASEMENT

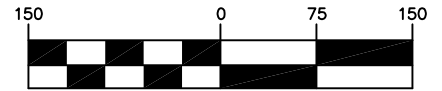
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SHEET 6 OF 8

BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:19 AM



GRAPHIC SCALE



(IN FEET)

1 inch = 150 ft.



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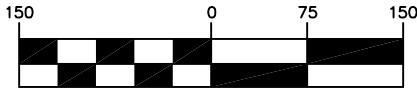
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FAX: (303) 923-3180
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RAIL CORRIDOR EASEMENT

LOCATED IN THE SOUTH HALF OF SECTION 14 & THE NORTH HALF OF SECTION 23,
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

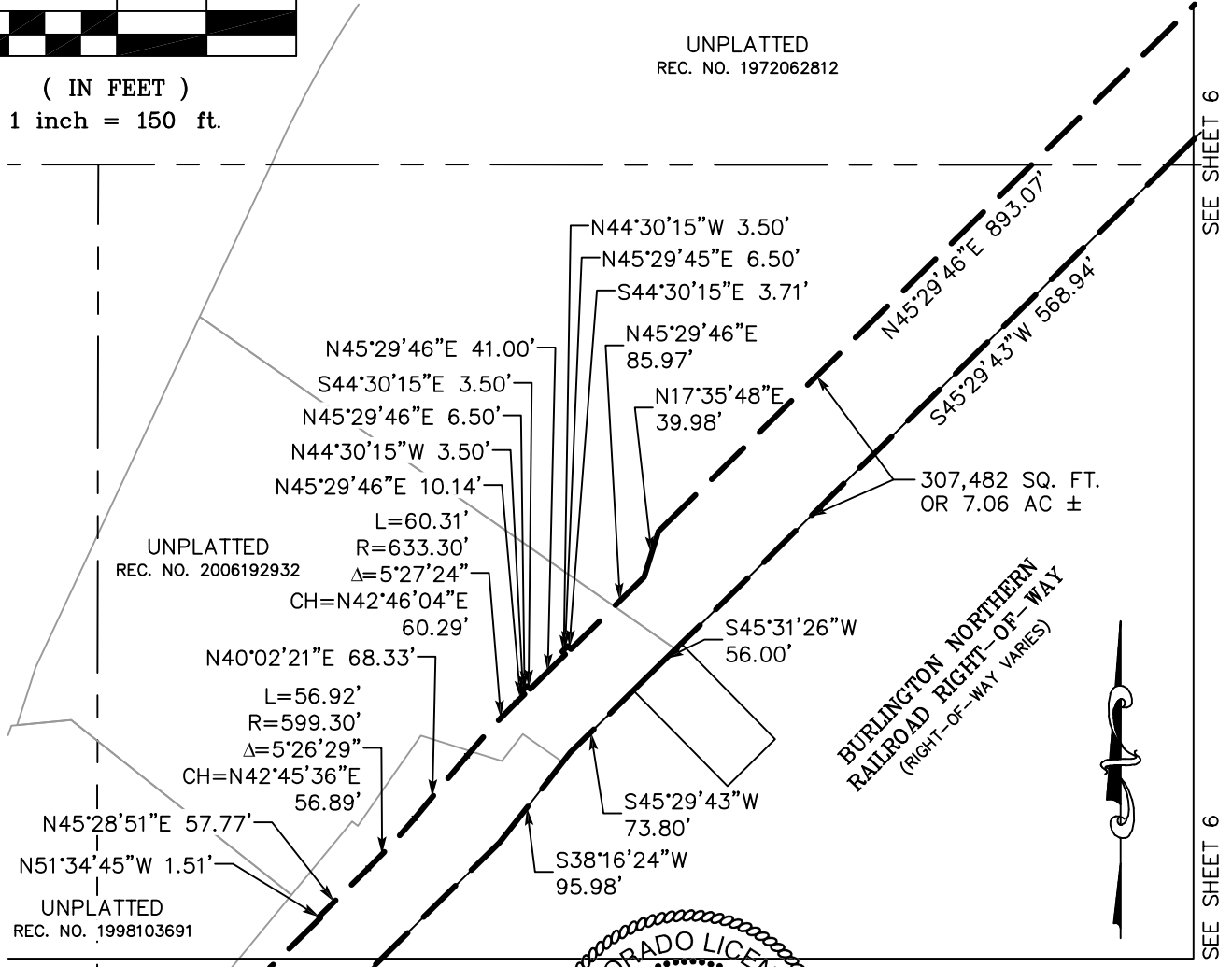
SHEET 7 OF 8

GRAPHIC SCALE



(IN FEET)
1 inch = 150 ft.

UNPLATTED
REC. NO. 1972062812

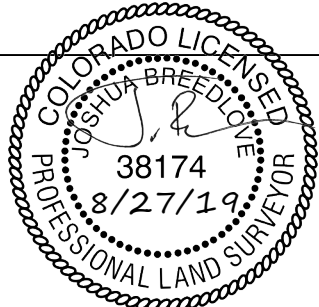


SEE SHEET 6

SEE SHEET 6

SEE SHEET 8

SEE SHEET 8



**BURLINGTON NORTHERN
RAILROAD RIGHT-OF-WAY**
(RIGHT-OF-WAY VARIES)



BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:20 AM

JOB NUMBER: 16-67,445
DRAWN BY: J. STEPHENSON
DATE: AUGUST 26, 2019

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

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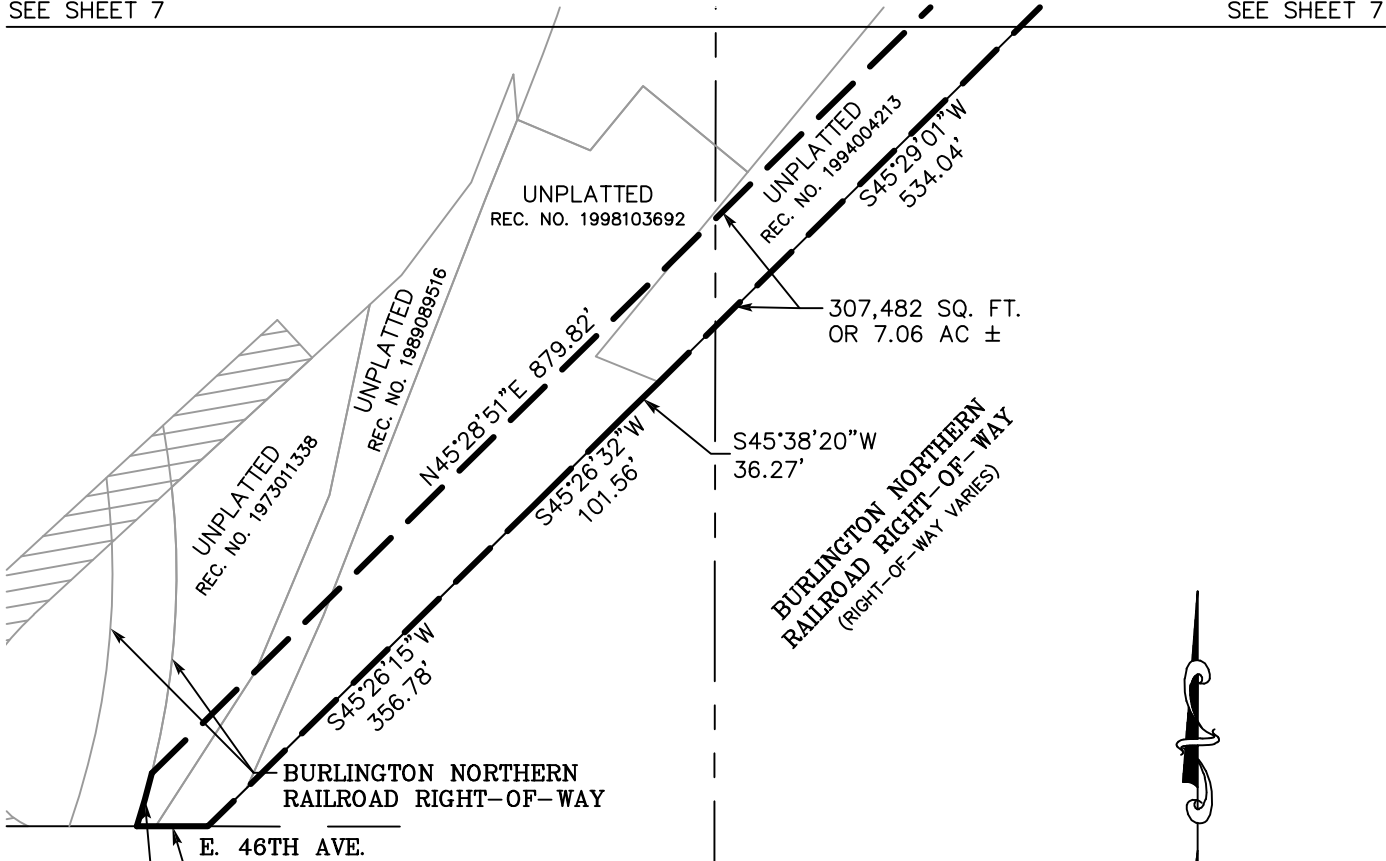
RAIL CORRIDOR EASEMENT

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TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

SHEET 8 OF 8

SEE SHEET 7

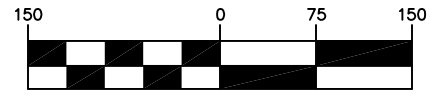
SEE SHEET 7



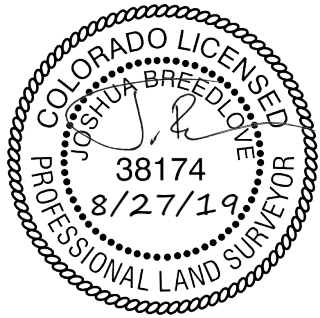
L=43.22'
R=640.66'
Δ=3°51'55"
CH=N15°58'46"E 43.21'



GRAPHIC SCALE



(IN FEET)
1 inch = 150 ft.



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BY:JSTEPHENSON FILE:67445 NWC RAIL DESCRIPTION_REV.1-C19.DWG DATE:8/26/2019 10:21 AM