

UPON RECORDING RETURN TO:

Evergreen Devco, Inc.
2390 East Camelback Road, Suite 410
Phoenix, Arizona 85016
Attention: Laura Ortiz

**FIRST AMENDMENT
TO SOUTH BOULDER CANON DITCH COMPANY,
TOWN OF ERIE, AND MATTHEW T. AND KRISTEN R. STARR
DITCH EASEMENT RELOCATION AGREEMENT**

THIS FIRST AMENDMENT TO SOUTH BOULDER CANON DITCH COMPANY, TOWN OF ERIE, AND MATTHEW T. AND KRISTEN R. STARR DITCH EASEMENT RELOCATION AGREEMENT (“First Amendment”) is entered into as of _____, 2020, by and among SOUTH BOULDER CANON DITCH COMPANY, a Colorado mutual ditch company (“Ditch Company”), the TOWN OF ERIE, a Colorado municipality (“Erie”), the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority (the “TOEURA”), and MATTHEW T. STARR AND KRISTEN R. STARR, owners of the real property located at 1425 N. 111th Street, Lafayette, Colorado 80026 (collectively, “Starr”). Ditch Company, Erie and Starr shall be termed individually a “Party” and collectively the “Parties”.

RECITALS

A. Ditch Company, Erie and Starr entered into that certain South Boulder Canon Ditch Company, Town of Erie, and Matthew T. and Kristen R. Starr Ditch Easement Relocation Agreement dated as of October 4, 2018 (the “Agreement”), pursuant to which the Parties agreed to, among other things, relocate segments of the Ditch (as defined in the Agreement).

B. Ditch Company, Erie, TOEURA and Starr desire to amend the terms of the Agreement in accordance with the terms and conditions of this First Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this First Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ditch Company, Erie, TOEURA and Starr agree as follows:

1. **Accuracy of Recitals.** The parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by this reference.

2. **Defined Terms.** All initially capitalized terms used herein, but not otherwise defined in this First Amendment, will have the meanings given to such terms in the Agreement.

3. **Ownership of First Ditch Segment.** Notwithstanding anything contained in the Agreement to the contrary, the Parties hereby acknowledge and agree that the TOEURA now owns a portion of the real property as described on Exhibit A to the Agreement through which a portion of the First Ditch Segment is located. As such, the TOEURA shall be a Party to the Agreement

for all purposes under the Agreement as the same relates to that portion of the property owned by the TOEURA through which a portion of the First Ditch Segment, the Installations and new Ditch Easements are located, including, without limitation, Section 4 and Section 5 of the Agreement (as more fully provided below). In furtherance thereof, Exhibit C of the Agreement is hereby deleted in its entirety and replaced with **Exhibit C** attached to this First Amendment.

4. **New Permanent Ditch Easements.** Notwithstanding anything contained in the Agreement to the contrary, Ditch Company, Erie, TOEURA and Starr hereby acknowledge and agree that Section 5 of the Agreement is hereby deleted in its entirety and replaced with the following:

“5. **NEW PERMANENT DITCH EASEMENTS.** Erie, TOEURA and Starr each agree to each execute a non-exclusive Easement Deed, the forms of which are attached hereto as **Exhibit E** (with respect to Erie and TOEURA) and **Exhibit F** (with respect to Starr), to convey to the Ditch Company two new easements, the areas of which shall be (a) 30 feet in width, being 15 feet on either side of the centerline of the pipeline that is part of the Installations with respect to the Second Ditch Segment (located on the Starr Property), and (b) 30 to 50 feet in width, being 15 to 25 feet on either side of the centerline of the pipeline that is part of the Installations with respect to the First Ditch Segment, each of which are defined by the legal descriptions attached to the Easement Deeds set forth on **Exhibit E** and **Exhibit F**. Erie will cause the construction of the Installations for the sole purpose of transmitting the Ditch Company’s water through Erie’s property, TOEURA’s property and the Starr Property within such pipeline, under the terms and conditions hereunder. The new Ditch Easements shall run with the land for the benefit of the Ditch Company.”

Accordingly, Exhibit E of the Agreement is hereby deleted in its entirety and replaced with **Exhibit E** attached to this First Amendment.

5. **Effect of Amendment.** Except as expressly amended hereby, the Agreement shall continue in full force and effect and unamended. In the event of any conflict or inconsistency between the provisions of the Agreement and this First Amendment, the provisions of this First Amendment shall control in all instances.

6. **Severability.** In the event that any one or more of the provisions of this First Amendment shall for any reason be held to be invalid or unenforceable, the remaining provisions of this First Amendment shall be unimpaired, and shall remain in full force and effect and be binding upon the parties hereto.

7. **Headings.** The paragraph headings that appear in this First Amendment are for purposes of convenience of reference only and are not in any sense to be construed as modifying the substance of the paragraphs in which they appear.

8. **Counterparts.** This First Amendment may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement.

9. **Rule of Construction.** Ditch Company, Erie, TOEURA and Starr have each read and fully understand the terms of this First Amendment, and each has had the opportunity to have this First Amendment reviewed by its own counsel. The rule of construction providing that ambiguities in an agreement shall be construed against the party drafting the same shall not apply.

10. **Recording.** This First Amendment, and the deeds and easements executed pursuant to the Agreement as amended hereby, shall be recorded in the real property records of Boulder County, Colorado, at Erie's expense.

11. **Governing Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first above written.

DITCH COMPANY:

**SOUTH BOULDER CANON DITCH
COMPANY**, a Colorado mutual ditch company

By: _____
Jody Lambert, President

TOWN OF ERIE:

By: _____
_____, Mayor

ATTEST:

By: _____
Town Clerk

TOEURA:

TOWN OF ERIE URBAN RENEWAL
AUTHORITY, a Colorado urban renewal authority

By: _____
Name: _____
Title: _____

STARR:

Matthew T. Starr

Kristen R. Starr

EXHIBIT C

FORM OF QUITCLAIM DEED: DITCH COMPANY TO TOWN AND TOEURA

QUITCLAIM DEED

THIS DEED is dated _____, 202__ and is made among SOUTH BOULDER CANON DITCH COMPANY, a mutual ditch company duly organized and existing under and by virtue of the laws of the State of Colorado, the "Grantor," the TOWN OF ERIE, a Colorado municipality duly organized and existing under and by virtue of the laws of the State of Colorado ("Erie"), and the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority (the "TOEURA"), collectively, as their interests appear, the "Grantee," whose legal address is 645 Holbrook, P.O. Box 750, Erie, Colorado 80516.

WITNESS, that the Grantor, for and in consideration of the sum of TEN DOLLARS, (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, sell and QUITCLAIM unto the Grantee, their successors and assigns, as each of Erie's and the TOEURA's interests appear in such real property, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with any improvements thereon, located in the County of Boulder, State of Colorado, described as follows:

The ditch easement containing the bottom, banks and ground on either side of the existing South Boulder Canon Ditch having a centerline with the legal description attached as Exhibit 1 through 3, and depicted in Exhibit 4; the intention of this deed is to convey all rights of Grantor in the ditch easement along the legally described centerline as attached;

also known by street address as: N/A
and assessor's schedule or parcel number: N/A

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, and their successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereunto subscribed by its president, vice-president, or other head officer, and its corporate seal to be affixed, attested by its secretary or other appropriate officer on the date set forth above.

Wilma Ormsbee, Secretary

Jody Lambert, President

The foregoing instrument was acknowledged before me this _____ day of _____, 202____, by Jody Lambert as the President and Wilma Ormsbee as the Secretary of the Grantor, on behalf of the corporation.

My Commission Expires: _____.

Notary Public

EXHIBIT E

FORM OF NEW EASEMENT: TOWN TO DITCH COMPANY

EASEMENT DEED (TOWN OF ERIE, TOEURA AND SOUTH BOULDER CANON DITCH COMPANY)

THIS EASEMENT DEED is made this ____ day of _____, 202__, among the Town of Erie, a Colorado municipality (“Erie”), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority, whose address is 645 Holbrook Avenue, Erie, Colorado 80516 (collectively, “Grantor”), and the South Boulder Canon Ditch Company, a Colorado mutual ditch company, whose address is P.O. Box 750, Erie, Colorado 80516 (“Grantee”). Grantor and Grantee are referred to collectively as the “Parties.”

RECITALS

WHEREAS, Grantor owns real property through which a segment of the South Boulder Canon Ditch (“Ditch”) is located (“Ditch Segment”), which is described on **Exhibit 1** hereto; and

WHEREAS, Grantee historically owned an appurtenant prescriptive easement for the operation, maintenance, repair, and replacement of the Ditch (“Prescriptive Easement”) for the entire Ditch, including the Ditch Segment; and

WHEREAS, pursuant to the Easement Agreement between the Parties, executed _____ and recorded with the Clerk and Recorder of _____ County at _____ on _____ (“Easement Agreement”), the Parties agreed that Grantee would convey the Prescriptive Easement for the Ditch Segment to Grantor in exchange for Grantor conveying to Grantee a new ditch easement in which the Ditch Company’s water will be conveyed in a pipe, to be installed and maintained by Grantor, as further described below; and

WHEREAS, pursuant to Paragraph 3 of the Easement Agreement, Grantee executed a Quitclaim Deed on _____, as recorded with the Clerk and Recorder of _____ County at _____ on _____, conveying to Grantor all of the Ditch Company’s interest in the Ditch Segment; and

WHEREAS, pursuant to Paragraph 4 of the Easement Agreement, Grantor agreed to execute this Easement Deed to convey to Grantee a new easement in which Grantor will install and maintain a pipeline and other appurtenant facilities to convey Grantee’s water through Grantor’s property.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Grantor hereby grants, bargains, sells, conveys, and confirms

to Grantee, its successors and assigns, a permanent, non-exclusive easement as further described on **Exhibit 2** hereto (“Easement”), for the purposes of accessing, using, and occupying the Easement for delivery of Grantee’s water through the Easement and accessing, operating, inspecting, maintaining, repairing, and replacing the Ditch, including emergency access for such purposes.

2. **Easement Agreement.** This Easement Deed shall be subject to the terms of the Easement Agreement, including but not limited to Erie’s obligations to cause the installation of a pipeline and other appurtenant facilities in the Easement to convey Grantee’s water through Grantor’s property, pursuant to Paragraphs 4, 5, and 7 of the Easement Agreement.

3. **Grantor’s Access and Use.** Grantor reserves the right to access, occupy, and use the Easement for any purpose consistent with the rights and privileges granted herein that will not unreasonably interfere with Grantee’s use of the Easement.

4. **Governmental Immunity.** Nothing herein shall be deemed to waive Grantor’s governmental immunity.

5. **Binding Effect.** This Easement Deed shall run with the land and extend to and bind the Parties, their heirs, successors and assigns.

6. **Recordation.** This Easement Deed, including Exhibits 1 and 2, shall be recorded with the Clerk and Recorder of _____ County, at Grantor’s expense.

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IN WITNESS WHEREOF, Grantor has executed this Easement Deed on the date set forth above.

TOWN OF ERIE

By: _____
_____, Mayor

ATTEST:

By: _____
_____, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____ as the Mayor of the Town of Erie, on behalf of the Town of Erie.

Witness my hand and official seal.

My Commission Expires:_____.

(SEAL)

Notary Public

TOEURA

TOWN OF ERIE URBAN RENEWAL
AUTHORITY, a Colorado urban renewal authority

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, 202__, by _____ as _____ on behalf of
the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority.

Witness my hand and official seal.

My Commission Expires:_____.

(SEAL)

Notary Public

EXHIBIT 1
LEGAL DESCRIPTION OF DITCH SEGMENT



EXHIBIT 1
Page 1 of 2

May 8, 2017


PROPERTY DESCRIPTION:

A STRIP OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF THE PROPERTIES DESCRIBED IN THE FOLLOWING DEEDS: DEED RECORDED JANUARY 16, 2013 AT RECEPTION NO. 3282584, DEED RECORDED NOVEMBER 2, 1956 AT RECEPTION NO. 583830, DEED RECORDED APRIL 29, 1968 AT RECEPTION NO. 90877395, AND DEED RECORDED MARCH 1, 2012 AT RECEPTION NO. 3206319, COUNTY OF BOULDER, STATE OF COLORADO, SAID STRIP BEING THIRTY (30) FEET IN WIDTH, LYING FIFTEEN (15) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;


COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY AT RECEPTION NO. 3282584, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AS CONVEYED BY DEED RECORDED FEBRUARY 20, 1997 AT RECEPTION NO. 1678309; THENCE N00°23'01"W ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 632.82 FEET TO THE TRUE POINT OF BEGINNING, FROM WHENCE THE NORTH QUARTER CORNER OF SAID SECTION 34 BEARS N05°03'58"W A DISTANCE OF 689.08 FEET, SAID POINT BEING ON THE CENTERLINE OF THE SOUTH BOULDER CAÑON DITCH; THENCE ALONG SAID CENTERLINE FOR THE FOLLOWING SEVENTEEN (17) COURSES:

1) S86°15'57"E A DISTANCE OF 62.09 FEET; 2) S74°23'24"E A DISTANCE OF 86.75 FEET;
3) S75°25'38"E A DISTANCE OF 85.68 FEET; 4) N88°37'21"E A DISTANCE OF 63.65 FEET;
5) N73°31'17"E A DISTANCE OF 144.26 FEET; 6) N75°31'21"E A DISTANCE OF 108.84 FEET;
7) N70°26'42"E A DISTANCE OF 261.93 FEET; 8) N72°36'35"E A DISTANCE OF 220.06 FEET;
9) N61°14'41"E A DISTANCE OF 140.98 FEET; 10) N60°09'19"E A DISTANCE OF 187.74 FEET;
11) N69°06'55"E A DISTANCE OF 155.86 FEET; 12) N62°07'11"E A DISTANCE OF 80.89 FEET;
13) S88°12'58"E A DISTANCE OF 42.37 FEET; 14) S47°24'28"E A DISTANCE OF 44.12 FEET;
15) S19°50'12"E A DISTANCE OF 43.07 FEET; 16) S27°03'51"E A DISTANCE OF 92.18 FEET;
17) S45°57'18"E A DISTANCE OF 8.49 FEET TO A POINT ON THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3206319, FROM WHENCE THE SOUTHEAST CORNER OF SAID PROPERTY BEARS S00°00'21"W A DISTANCE OF 53.58 FEET, SAID POINT BEING THE POINT OF TERMINUS, THE SIDELINES OF SAID STRIP BEING LENGTHENED OR SHORTENED TO TERMINATE AT THE SAID EAST RIGHT OF WAY LINE OF STATE HIGHWAY 287 AND THE EAST LINE OF SAID PROPERTY AT RECEPTION NO. 3206319;

CONTAINING 54,850 SQUARE FEET OR 1.259 ACRES, MORE OR LESS.



John P. Ehrhart


P.L.S. No. 29414

BASIS OF BEARINGS: N00°20'19"W (ASSUMED) A DISTANCE OF 2633.81 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, MONUMENTED BY A 3.25" ALUMINUM CAP, LS 29792 AT THE NORTH END, AND BY A 3.25" ALUMINUM CAP, LS 8141, AT THE SOUTH END.

OFFICE: 303-828-3340 • P.O. Box 930 • Erie, Colorado 80516
www.coloradols.com • john@coloradols.com

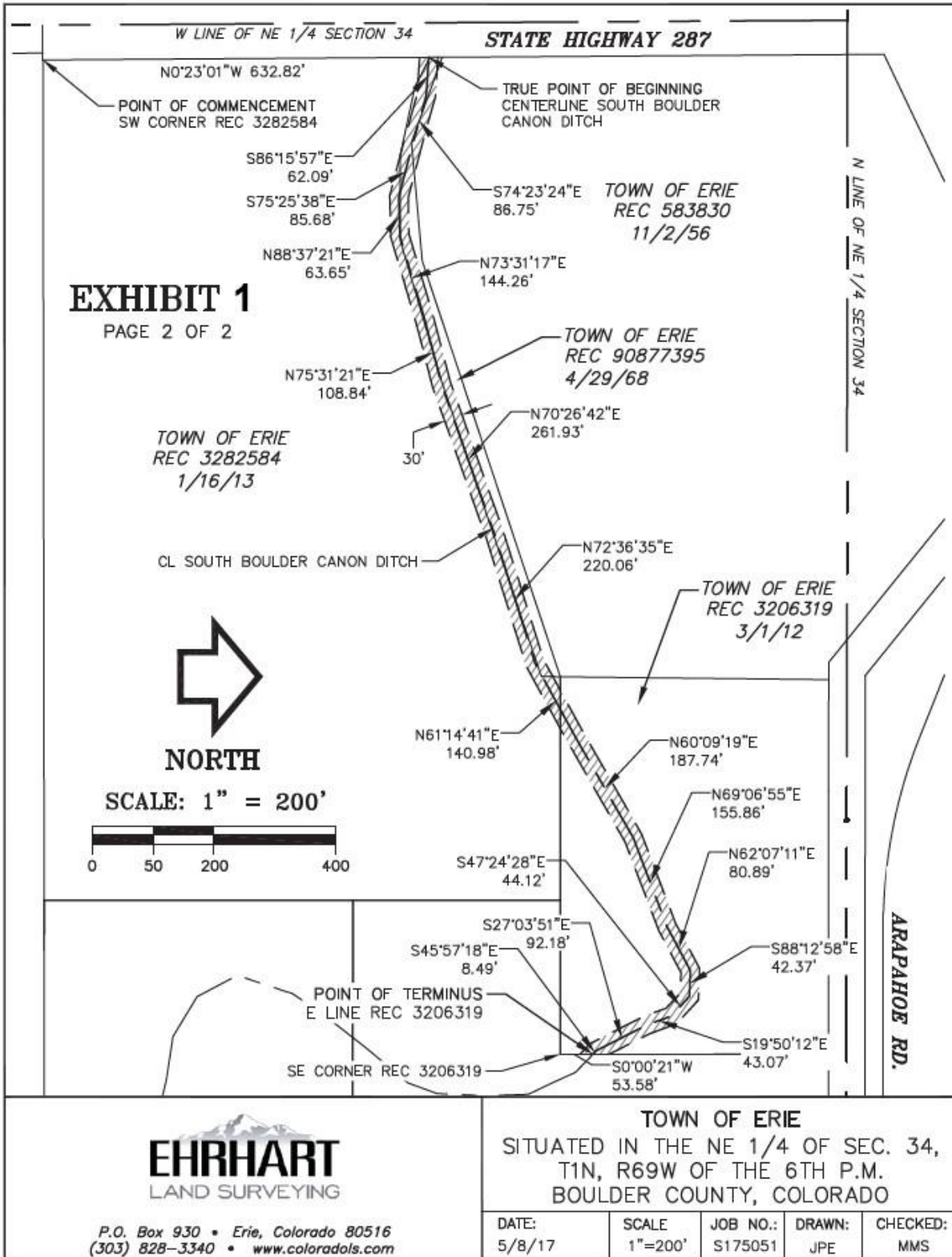


EXHIBIT 2
LEGAL DESCRIPTION OF EASEMENT

EXHIBIT 2

EASEMENT DESCRIPTION:

AN IRRIGATION EASEMENT BEING A PORTION OF THOSE PARCELS OF LAND AS DESCRIBED IN INSTRUMENTS RECORDED IN BOOK 1028, PAGE 471; RECEPTION NUMBER 877395, AND RECEPTION NUMBER 03191798, ALL SITUATED IN THE NORTHEAST QUARTER OF SECTION 34 AND THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 34 AND MONUMENTED ON THE WEST BY A 3-1/4" ALUMINUM CAP STAMPED "PLS 38064" IN A RANGE BOX FOR THE CENTER-NORTH 1/16 CORNER OF SECTION 34, AND MONUMENTED ON THE EAST BY A 3-1/4" ALUMINUM CAP STAMPED "PLS 16406" FOR THE NORTH 1/16TH CORNER COMMON TO SECTIONS 34 AND 35, AND IS ASSUMED TO BEAR N89°54'51"E.

COMMENCING AT SAID CENTER-NORTH 1/16 CORNER OF SAID SECTION 34;

THENCE WITH SAID SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 34, N89°54'51"E A DISTANCE OF 57.27 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE WITH SAID EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, N00°23'00"W A DISTANCE OF 653.67 FEET;

THENCE DEPARTING SAID EAST RIGHT OF WAY LINE, N89°37'00"E A DISTANCE OF 30.00 FEET;

THENCE PARALLEL TO SAID EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, S00°23'00"E A DISTANCE OF 232.14 FEET;

THENCE N89°37'00"E A DISTANCE OF 10.00 FEET;

THENCE PARALLEL TO SAID EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, S00°23'00"E A DISTANCE OF 140.00 FEET;

THENCE N89°37'00"E A DISTANCE OF 10.00 FEET;

THENCE PARALLEL TO SAID EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, S00°23'00"E A DISTANCE OF 231.79 FEET;

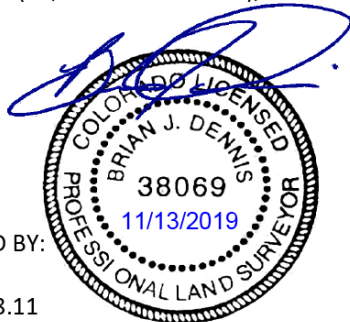
THENCE PARALLEL TO SAID SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 34, N89°54'51"E A DISTANCE OF 34.20 FEET;

THENCE N61°51'58"E A DISTANCE OF 212.67 FEET;

THENCE N89°54'51"E A DISTANCE OF 700.43 FEET;

THENCE S88°33'09"E A DISTANCE OF 405.69 FEET TO A POINT ON THE EAST LINE OF THAT PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 03191798;

THENCE WITH SAID EAST LINE OF SAID PARCEL, S00°00'29"E A DISTANCE OF 40.01 FEET;
THENCE DEPARTING SAID EAST LINE OF SAID PARCEL, N88°33'09"W A DISTANCE OF 87.26 FEET;
THENCE S01°26'51"W A DISTANCE OF 10.00 FEET;
THENCE N88°33'09"W A DISTANCE OF 318.77 FEET;
THENCE S89°33'09"W A DISTANCE OF 35.59 FEET;
THENCE N00°00'00"E A DISTANCE OF 10.00 FEET;
THENCE S89°54'51"W A DISTANCE OF 654.19 FEET;
THENCE S61°51'58"W A DISTANCE OF 31.70 FEET;
THENCE S28°08'02"E A DISTANCE OF 10.00 FEET;
THENCE S61°51'58"W A DISTANCE OF 183.47 FEET TO A POINT ON SAID SOUTH LINE OF THE NORTH
HALF OF THE NORTHEAST QUARTER OF SAID SECTION 34;
THENCE WITH SAID SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION
34, S89°54'51"W A DISTANCE OF 96.43 FEET;
CONTAINING 1.99 ACRES (86,580 SQUARE FEET), MORE OR LESS.



DESCRIPTION PREPARED BY:
BRIAN J. DENNIS
PROJECT NO. EDI000018.11
COLORADO PROFESSIONAL LAND SURVEYOR NO. 38069
FOR AND ON BEHALF OF GALLOWAY & COMPANY, INC.

