

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 18-21

Authorization to Dedicate Permanent Access Easements to Cherry Creek Basin Water Quality
Authority for the Piney Creek Ranches Reach 6 Phase 2 Channel Project

WHEREAS, Resolution No. 16-25 authorized SEMSWA to assume contract administration responsibilities for the completion of design and construction of the Piney Creek Improvements in partnership with Urban Drainage and Flood Control District (UDFCD) and Cherry Creek Basin Water Quality Authority (CCBWQA); and

WHEREAS, SEMSWA's Piney Creek Reach 6 Phase 2 Channel Project (Project) included construction of a flow measurement facility to be owned and maintained by CCBWQA located within land owned by SEMSWA;

WHEREAS, CCBWQA has requested that SEMSWA grant to CCBWQA two permanent access easements across a portion of Tract F, The Farm at Arapahoe County Filing No. 5 and across the Piney Creek Hollow Park parcel; and

WHEREAS, the proposed access easements are graphically displayed on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the proposed Permanent Access Easement Agreement is attached hereto and marked Exhibit "B".

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board authorizes granting permanent access easements to CCBWQA for access to its Flow Measurement Facility and authorizes the Executive Director to execute the easement and record the same in the records of the Clerk and Recorder of Arapahoe County, Colorado.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

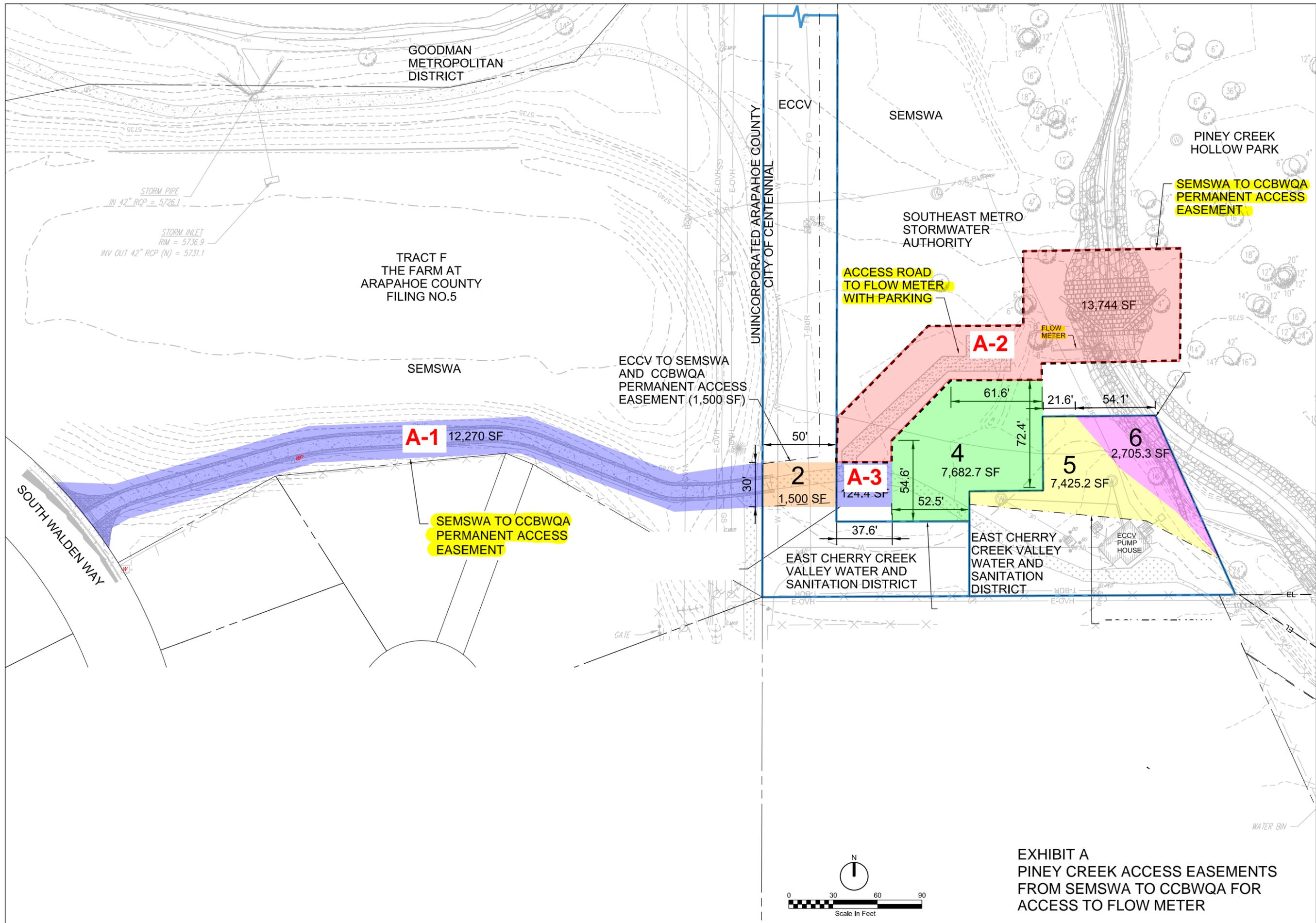


EXHIBIT B

PERMANENT ACCESS EASEMENT AGREEMENT

This PERMANENT ACCESS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this ___ day of _____, 2018, by and between **SOUTHEAST METRO STORMWATER AUTHORITY**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**SEMSWA**") and the **CHERRY CREEK BASIN WATER QUALITY AUTHORITY**, a quasi-municipal corporation and political subdivision of the State of Colorado ("**Authority**") The SEMSWA and the Authority shall be collectively referred to within this Agreement as the "**Parties.**"

RECITALS

A. The SEMSWA owns that certain real property located within Arapahoe County, Colorado used as an access road as more particularly described on Exhibit A-1, Exhibit A-2 and Exhibit A-3 attached hereto and incorporated herein by this reference (the "**Easement Property**").

B. The Authority wishes to access the Easement Property in order to access its flow meter and associated appurtenances (the "**Flow Meter Improvements**").

C. It is necessary for the Authority to utilize the Easement Property in order to access the Flow Meter Improvements.

D. The SEMSWA desires to grant to the Authority a non-exclusive, perpetual easement for the purpose of accessing the Flow Meter Improvements subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SEMSWA and the Authority covenant and agree as follows:

1. Grant of Easement. SEMSWA hereby grants, sells, bargains and conveys to the Authority, its successors, a perpetual, non-exclusive easement, to drive motor vehicles on, over, across and through the access road within the Easement Property for the purpose of ingress and egress for the construction, maintenance, operation and repair of the Flow Meter Improvements together with all rights and privileges as or are incidental to the Authority's full use and enjoyment of its easement rights, on, over, across, and through the Easement Property for the purpose of accessing the Flow Meter Improvements (the "**Easement**"). No other use of the Easement Property is granted by this Agreement. This Agreement may not be assigned. SEMSWA understands and agrees that, subject to the terms and conditions set forth in this Agreement, Authority may permit the Easement Property to be used by the Authority's employees, agents, contractors and sub-contractors solely for the purposes set forth herein.

2. Reservation of Rights. SEMSWA reserves the right to use, and to grant to others the right to use, the Easement Property for any and all purposes not inconsistent with and which do not interfere with the use of the Easement by the Authority, pursuant to the terms of this Agreement.

3. Restoration of Easement Property. Within thirty (30) days after any use of the Easement Property by the Authority, the Authority shall restore, to the extent reasonably practical, the surface, subsurface and any improvements, within the Easement Property to substantially the same condition immediately preceding the use of the Easement Property by the Authority. If the Authority fails to restore the Easement Property as set forth in this Section 3, SEMSWA shall provide written notice of such failure to the Authority. If the Authority fails to make such restorations as required by this Section 3 of this Agreement, to the reasonable satisfaction of SEMSWA, within thirty (30) days of receiving notice from SEMSWA of such failure to restore the Easement Property, SEMSWA may undertake such restorations at the sole reasonable cost and expense of the Authority, payment to be received by SEMSWA within sixty (60) days of delivering an invoice for such repairs. If the Authority fails to timely pay such invoice within sixty (60) days of delivery of the invoice, interest shall accrue on the outstanding balance at the rate of 6% per annum and SEMSWA may immediately suspend Authority's use of the Easement Property until the invoice is paid in full.

4. Subject to Appropriation. All financial obligations of the Parties under this Agreement are subject to annual appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement constitutes a pledge of the either Parties' credit or faith, directly or indirectly, to one another.

5. Limitation of Liability. SEMSWA shall not be liable to the Authority or any other person or entity whatsoever for any injury or damage to persons or property occasioned by reason of the use by the Authority and its contractors, subcontractors, agents, employees, licensees, or invitees of the Easement Property except to the extent caused by or arising out of the negligent or intentionally wrongful conduct of SEMSWA.

6. Indemnification. Authority shall, to the extent permitted by law, and subject to all of the immunities, defenses, limitations and other protections afforded Authority under the Colorado Governmental Immunity Act, which shall apply to any and all claims arising under this Agreement, indemnify and hold harmless SEMSWA, its officers, directors, employees, and agents, from any and all claims, demands, expenses, lawsuits, losses and damages, including without limitation personal injury, property damage, and attorney's fees, occurring as a result of Authority's negligent or intentionally wrongful use of the Easement Property, or negligent or intentionally wrongful exercise of the rights granted by this Agreement. This indemnity and covenant to hold harmless shall survive the termination of this Agreement for a period of three years. This Authority's indemnification shall not apply to the negligent or willful action or inaction of SEMSWA, its officers, directors, employees, and agents.

7. Inurement. This Agreement shall run with the land and each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the Parties, their respective legal representatives and successors.

8. No Joint Venture, Partnership, Agency, Etc. This Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between SEMSWA and the Authority.

9. Subject to Matters of Record. This Agreement and the rights granted hereunder shall be subject to any existing liens and/or encumbrances affecting the Easement Property.

10. Attorneys' Fees. Should any legal proceeding be brought in connection with this Agreement, including without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorney's fees. The provisions of this section shall survive the expiration or the termination of the Agreement.

11. Captions. The captions of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope, meaning, or intent of this Agreement.

12. Entire Agreement. This Agreement (including the exhibits attached hereto, which are incorporated herein) constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and supersedes all negotiations or previous understandings or agreements between the Parties with respect to all or any part of the subject matter hereof.

13. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver in whole or in part of any governmental immunity granted to the Parties by virtue of Section 24-10-101 *et seq.*, C.R.S., as it currently exists or may hereafter be amended.

14. Modification; Waiver. This Agreement may not be modified or discharged in any respect, except by a further agreement in writing duly executed by SEMSWA and the Authority or their successors. However, any consent, waiver, approval, or authorization will be effective if signed by the party granting or making such consent, waiver, approval, or authorization. No waiver shall be deemed a continuing waiver with respect to any breach or default, whether of similar or different nature, unless expressly stated in writing.

15. Governing Law. This Agreement, including all questions concerning the construction, validity and interpretation of this Agreement, and the exhibits hereto, will be governed and construed under the applicable laws of the State of Colorado.

16. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

17. Recording. This Agreement shall be recorded in the real property records of Arapahoe County, Colorado.

18. Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction will be applied against any Party hereto. This Agreement shall be given a reasonable construction so that the intention of the Parties can be carried out. The Parties hereby acknowledge they have both participated substantially in the negotiation, drafting and revision of this Agreement with representation by counsel and/or such other advisers as they have deemed appropriate. Accordingly, this Agreement shall be deemed to have been prepared jointly by the Parties and shall not be construed against any party as the drafter hereof.

19. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings. However, the copy of this Agreement which will be recorded in the real property records of Arapahoe County, Colorado shall contain only original signatures.

IN WITNESS WHEREOF, SEMSWA and the Authority have executed this Agreement as of the date first set forth above.

SEMSWA:

**SOUTHEAST METRO STORMWATER
AUTHORITY**

By _____
John A. McCarty, Executive Director

State of Colorado)
) s.s.
County of Arapahoe)

This instrument was acknowledged before me this _____ day of _____, 2018 by John A. McCarty as Executive Director of Southeast Metro Stormwater Authority.

Notary Public

My commission expires _____.

Witness my hand and official seal.

AUTHORITY:

CHERRY CREEK BASIN WATER QUALITY AUTHORITY,

By _____
Stephanie Piko, Chair

State of Colorado)
) s.s.
County of Arapahoe)

This instrument was acknowledged before me this _____ day of _____, 2018 by Stephanie Piko as Chair of Cherry Creek Basin Water Quality Authority.

Notary Public

My commission expires _____.

Witness my hand and official seal.

EXHIBIT A-1

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN TRACT F, THE FARM AT ARAPAHOE COUNTY FILING NO. 5, PER PLAT RECORDED AT RECEPTION NUMBER A9041524 IN THE RECORDS OF THE CLERK AND RECORDER OF ARAPAHOE COUNTY, COLORADO LOCATED IN THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST QUARTER CORNER OF SECTION 21, AND CONSIDERING THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 21 TO BEAR NORTH 00°08'54" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 00°08'54" EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE 60.97 FEET TO THE **POINT OF BEGINNING**:

THENCE SOUTH 86°40'48" WEST, A DISTANCE OF 59.73 FEET;

THENCE NORTH 71°10'26" WEST, A DISTANCE OF 12.41 FEET;

THENCE NORTH 69°01'20" WEST, A DISTANCE OF 98.95 FEET;

THENCE NORTH 89°03'39" WEST, A DISTANCE OF 21.39 FEET;

THENCE SOUTH 86°47'25" WEST, A DISTANCE OF 117.57 FEET;

THENCE SOUTH 73°22'34" WEST, A DISTANCE OF 131.37 FEET;

THENCE SOUTH 60°21'38" WEST, A DISTANCE OF 13.17 FEET;

THENCE SOUTH 08°22'42" WEST, A DISTANCE OF 14.60 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 325.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 56°13'26" WEST;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10°37'01", AN ARC LENGTH OF 60.22 FEET;

THENCE SOUTH 86°27'24" EAST, A DISTANCE OF 41.69 FEET;

THENCE NORTH 73°22'34" EAST, A DISTANCE OF 137.16 FEET;

THENCE NORTH 86°47'25" EAST, A DISTANCE OF 121.42 FEET;

THENCE SOUTH 89°03'39" EAST, A DISTANCE OF 26.71 FEET;

THENCE SOUTH 69°08'41" EAST, A DISTANCE OF 109.09 FEET;

THENCE NORTH 83°00'01" EAST, A DISTANCE OF 57.48 FEET, TO THE POINT ON THE EAST LINE OF SAID NORTHEAST QUARTER;

THENCE SOUTH 00°08'04" WEST, ALONG SAID EAST LINE, A DISTANCE OF 29.06 FEET;
TO THE POINT OF BEGINNING.

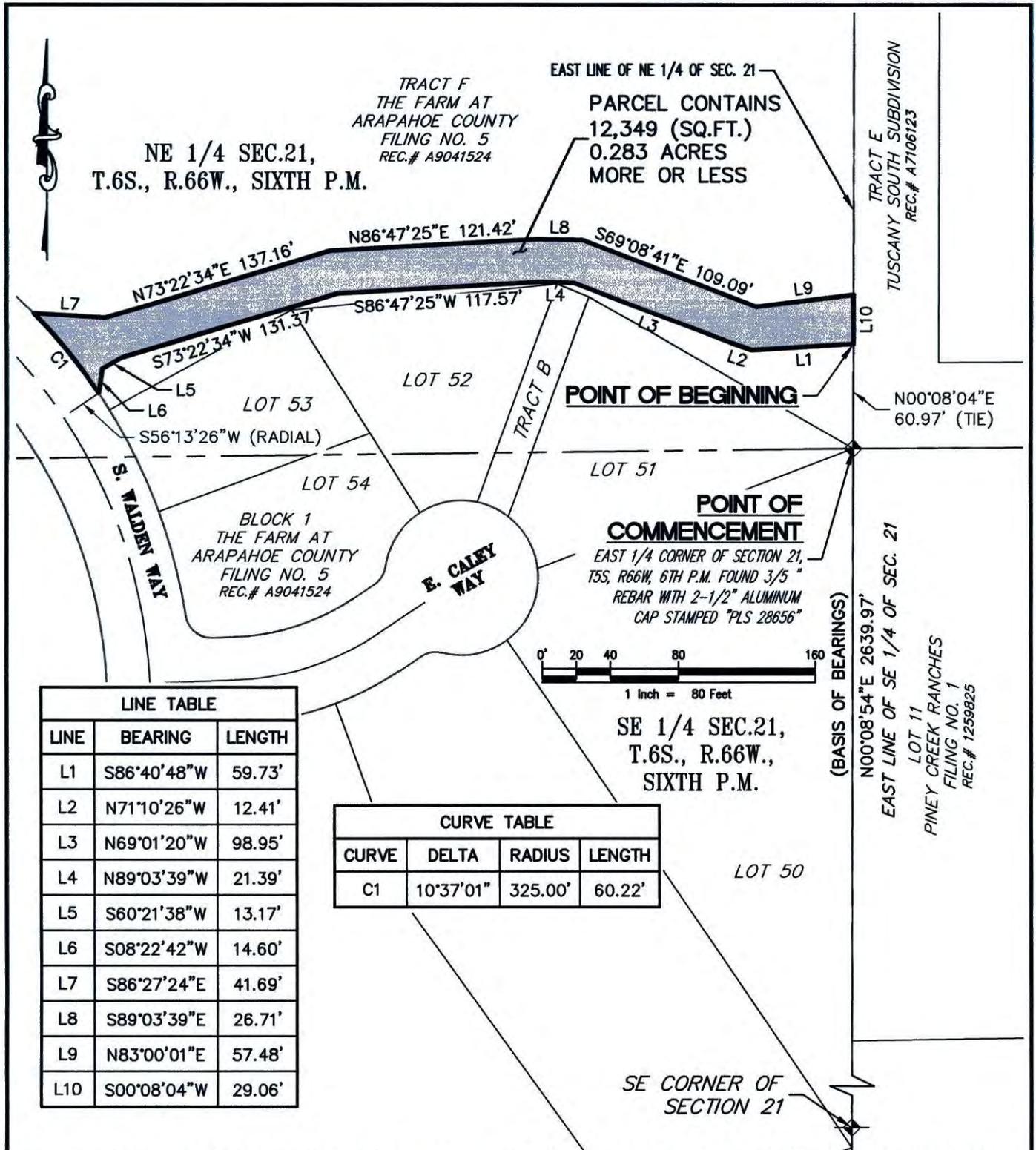
CONTAINING AN AREA OF 0.283 ACRES, (12,349 SQUARE FEET), MORE OR LESS.

ILLUSTRATION ATTACHED AND MADE PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A-1



LINE TABLE		
LINE	BEARING	LENGTH
L1	S86°40'48"W	59.73'
L2	N71°10'26"W	12.41'
L3	N69°01'20"W	98.95'
L4	N89°03'39"W	21.39'
L5	S60°21'38"W	13.17'
L6	S08°22'42"W	14.60'
L7	S86°27'24"E	41.69'
L8	S89°03'39"E	26.71'
L9	N83°00'01"E	57.48'
L10	S00°08'04"W	29.06'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	10°37'01"	325.00'	60.22'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\DWG\EXHIBITS\
 DWG NAME: PARCEL 1.DWG
 DWG: NAK CHK: JEL
 DATE: 2017-09-29
 SCALE: 1" = 80'

AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

ACCESS EASEMENT
 COUNTY OF ARAPAHOE
 STATE OF COLORADO

JOB NUMBER 16717-02 2 OF 2 SHEETS

EXHIBIT A-2

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN THAT PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER THE RECEPTION NUMBER A7106123 IN THE RECORDS OF THE CLERK AND RECORDER OF ARAPAHOE COUNTY, COLORADO; LOCATED IN THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF ARAPAHOE, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 22, AND CONSIDERING THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION TO BEAR SOUTH 00°08'54" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 29°09'15" EAST, A DISTANCE 103.07 FEET TO THE **POINT OF BEGINNING**, BEING A POINT ON THE WEST LINE OF SAID PARCEL DESCRIBED UNDER RECEPTION NUMBER A7106123;

THENCE NORTH 00°08'04" EAST, ALONG SAID WEST LINE, A DISTANCE OF 28.25 FEET;

THENCE THE FOLLOWING ELEVEN (11) COURSES

1. NORTH 43°59'09" EAST, A DISTANCE OF 89.83 FEET;
2. NORTH 89°44'27" EAST, A DISTANCE OF 60.61 FEET;
3. NORTH 00°19'19" WEST, A DISTANCE OF 50.17 FEET;
4. NORTH 88°57'09" EAST, A DISTANCE OF 106.83 FEET;
5. SOUTH 00°30'22" WEST, A DISTANCE OF 75.73 FEET;
6. SOUTH 88°46'55" WEST, A DISTANCE OF 88.79 FEET;
7. SOUTH 00°07'48" WEST, A DISTANCE OF 12.17 FEET;
8. NORTH 89°57'57" WEST, A DISTANCE OF 62.79 FEET;
9. SOUTH 43°59'09" WEST, A DISTANCE OF 57.63 FEET;
10. SOUTH 00°00'31" EAST, A DISTANCE OF 14.07 FEET;
11. NORTH 90°00'00" WEST, A DISTANCE OF 37.31 FEET TO THE **POINT OF BEGINNING**.

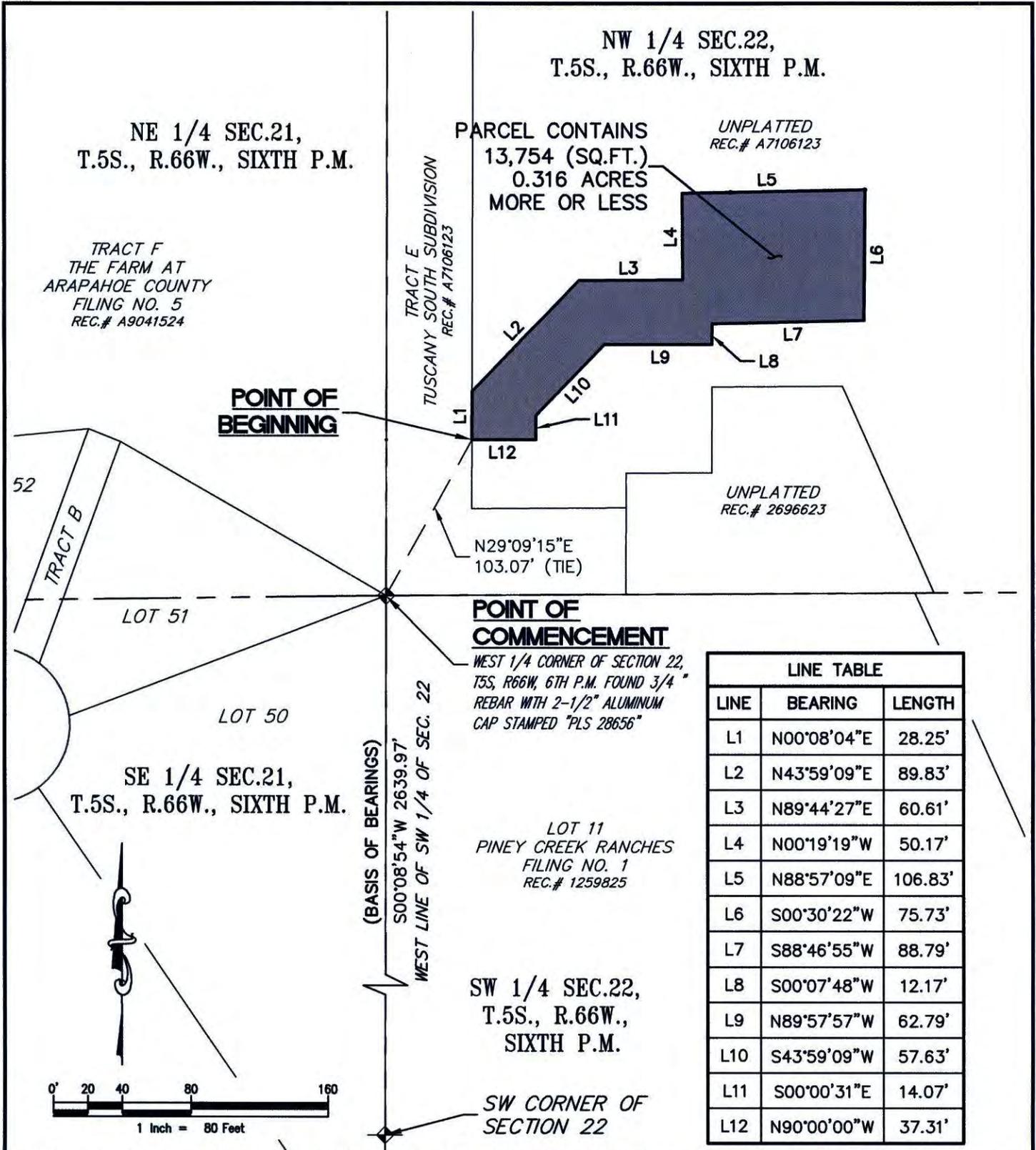
CONTAINING AN AREA OF 0.316 ACRES, (13,754 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A-2



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\DWG\EXHIBITS\
 DWG NAME: PARCEL 7.DWG
 DWG: JEL CHK: JRW
 DATE: 5/17/2018
 SCALE: 1" = 80'



300 East Mineral Ave,
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 www.aztecconsultants.com

ACCESS EASEMENT
 COUNTY OF ARAPAHOE
 STATE OF COLORADO

EXHIBIT A-3

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN THAT PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER THE RECEPTION NUMBER A7106123 IN THE RECORDS OF THE CLERK AND RECORDER OF ARAPAHOE COUNTY, COLORADO; LOCATED IN THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN; COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 22, AND CONSIDERING THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION TO BEAR NORTH 00°08'54" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 39°26'93" EAST, A DISTANCE 78.93 FEET TO THE **POINT OF BEGINNING** BEING A POINT ON THE WEST LINE OF SAID PARCEL DESCRIBED UNDER RECEPTION NUMBER A7106123;

THENCE NORTH 00°08'04" EAST, ALONG THE WEST LINE, A DISTANCE OF 29.06 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 37.31 FEET;

THENCE SOUTH 00°00'31" EAST, A DISTANCE OF 29.06 FEET;

THENCE NORTH 90°00'00" WEST, A DISTANCE OF 37.38 FEET TO THE **POINT OF BEGINNING**.

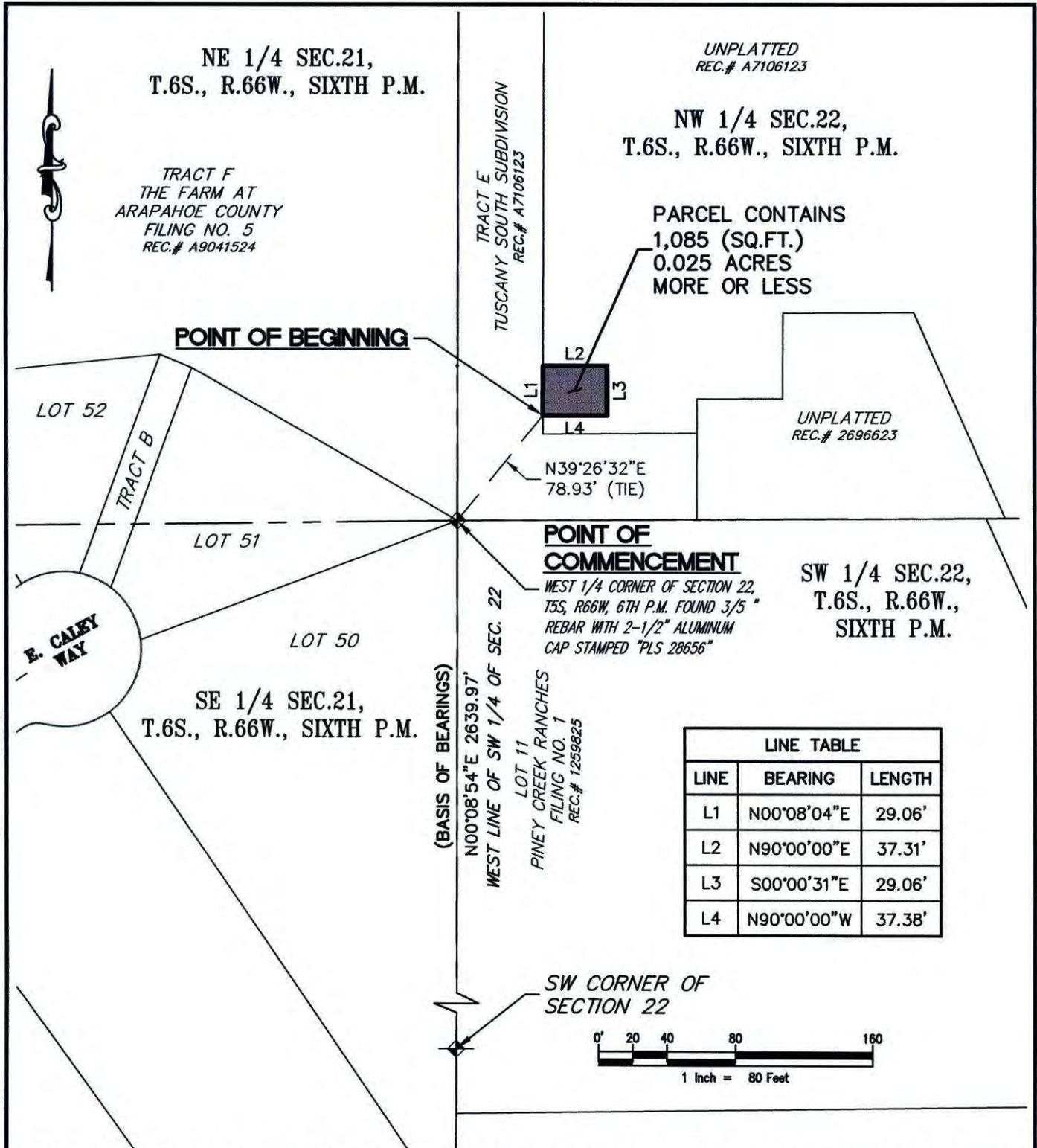
CONTAINING AN AREA OF 0.025 ACRES, (1,085 SQUARE FEET), MORE OR LESS.

ILLUSTRATION ATTACHED AND MADE PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A-3



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\DWG\EXHIBITS\
 DWG NAME: PARCEL 3.DWG
 DWG: NAK CHK: JEL
 DATE: 2017-09-29
 SCALE: 1" = 80'



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