

A RESOLUTION GRANTING AN EASEMENT TO THE SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT FOR SANITARY SEWER AND WATER PIPELINES ON CITY PROPERTY SOUTHWEST OF TOWER ROAD AND 120TH AVENUE

NO. 2022-69

WHEREAS, the South Adams County Water and Sanitation District ("SACWSD") has requested, and the City of Commerce City (the "City") has agreed to grant, a non-exclusive and perpetual easement to SACWSD for the installation and operation of sanitary sewer and water pipelines on City owned property, identified by PIN 172304100001, in the area southwest of Tower Road and E. 120th Avenue, on property; and

WHEREAS, SACWSD and the City have set forth terms and conditions of that easement and memorialized the same in the Easement Agreement, attached hereto and incorporated herein as Exhibit A, including the legal description of the property subject to the Easement Agreement; and

WHEREAS, pursuant to Section 2-4201 of the Commerce City Revised Municipal Code, as authorized by City Charter, any easement to use real property for a term longer than twelve months where such easement is not revocable at will requires approval of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

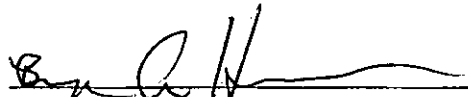
SECTION 1. Findings. The recitals to this resolution are incorporated as findings of the City Council. This resolution is found to be in the necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. The Easement Agreement is granted subject to and consistent with the terms and conditions set forth in the Easement Agreement.

SECTION 3. The Mayor and the City Clerk are authorized and directed to sign and attest the Easement Agreement on behalf of the City of Commerce City,


RESOLVED AND PASSED THIS 20th DAY OF June 2022.

CITY OF COMMERCE CITY, COLORADO

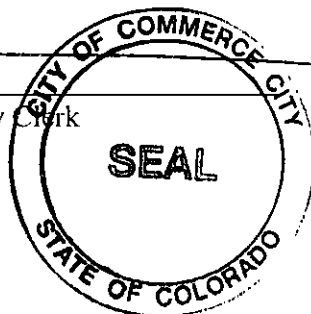


Benjamin A. Huseman, Mayor

ATTEST



Dylan A. Gibson, City Clerk



**EASEMENT AGREEMENT
(GRANT OF EASEMENT TO SOUTH ADAMS
COUNTY WATER AND SANITATION DISTRICT)**

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____, by and between the **City of Commerce City** ("Grantor") and the **South Adams County Water and Sanitation District** (the "District"), a special district and a quasi-municipal corporation of the State of Colorado, acting through its South Adams County Water and Sanitation District Activity Enterprise whose address is 6595 East 70th Avenue, Commerce City, Colorado 80037 ("District" or "Grantee").

WITNESSETH:

For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants, bargains, sells and conveys to the District, its successors and assigns, an easement (the "Easement") for the non-exclusive and perpetual right to enter, re-enter, occupy and use the hereinafter described property to install, construct, maintain, repair, replace, remove, enlarge, operate and/or inspect one or more sanitary sewer or water pipelines and all underground and surface facilities related thereto, including, but not limited to, the following: electric or other control systems, underground cables, wires, connections, mains and conduits, valves, vaults, manholes, pumps and pump stations, lift stations, wells, well housings, ventilators, transformers, lights and the like (collectively the "District Facilities") in, through, over and across the following described parcel of land situate, lying and being in the County of Adams and State of Colorado, to wit:

The property described in **Exhibit A** (the "Easement Property"), attached hereto and made a part hereof as if fully set forth herein.

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto as follows:

1. Grantor shall not stop, limit, hinder or impede the construction, operation, use and maintenance of the District Facilities, within the Easement Property.
2. The District shall have and exercise the right of ingress and egress in, to, over, through and across the Easement Property and any other adjoining premises of the Grantor for the full use of the Easement provided for herein.
3. The District shall have the right to cut, trim, control, and remove trees, brush and other obstructions located within the Easement or upon Grantor's adjacent property which injure or interfere with the District's use, occupation, or enjoyment of the Easement or the construction, operation, maintenance, repair, replacement, removal, enlargement, or inspection of the District Facilities, without liability for damages arising therefrom.
4. Grantor shall not construct any permanent building or similar structure on the Easement Property. If any such items are placed on the Easement Property, the District may

remove the items without liability for damages arising therefrom and bill Grantor for its actual costs for the removal. The District shall not be responsible to replace such items after it has exercised its rights under this Agreement. The Grantor shall pay the costs of removal within thirty (30) days of receiving a bill from the District.

5. Grantor may install temporary or removable and replaceable objects such as yard lights, mail boxes, signs, fences, and shrubs, flowers, or plants without deep root systems, on the Easement Property. If, in the process of exercising one or more of the rights described in this Agreement, the District finds it necessary to remove any of the previously described permitted items which have been placed or planted on the Easement Property by Grantor, the District shall do so at its own cost, and the District shall not be responsible to replace such items after it has exercised its rights under this Agreement.

6. In no event shall Grantor:

- (a) Construct or place, longitudinally along or otherwise within the Easement Property, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of the District; or
- (b) Change, by excavation or filling, the present grade or ground level of the Easement Property by more than one (1) foot without the prior written consent of the District.

7. The District shall have the right, upon reasonable notice to Grantor, to use so much of the adjoining premises of the Grantor during surveying, construction, reconstruction, use, maintenance, repair, replacement and/or removal of the District Facilities as may be reasonably required; provided, however, that such activities shall not interfere unreasonably with Grantor's use and enjoyment of such adjoining premises.

8. The District shall have and exercise the right of subjacent and lateral support for the full and complete use of the Easement. The Grantor shall take no action which would impair the earth cover over, or the lateral or subjacent support for, any of the District Facilities within the Easement Property; provided, however, that upon obtaining the specific written permission of the District, the earth cover over any pipeline or lines may be modified; except that permission normally will not be granted for modification resulting in cover of less than four and one half (4.5) feet, nor greater than ten (10) feet measured vertically from the top of any pipelines or other subsurface District Facilities.

9. After construction, repair, replacement or enlargement of any pipelines or District Facilities on the Easement Property, the general surface of the ground shall be restored as nearly as reasonably can be done, given the existence of these pipelines or District Facilities, to the grade and condition it was in immediately prior to construction. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installation by the District shall be removed from the Easement Property at the expense of the District. The District agrees

that for a period of one year following construction which involves disturbance of the surface of the ground, the District will maintain the surface elevation and quality of the soil by correcting any settling or subsiding that occurs as a result of the work done by the District within the Easement Property.

10. Grantor retains the right to the use and occupancy of the Easement Property insofar as such use and occupancy is consistent with the terms of this Agreement and does not impair the District's use of the Easement. Grantor and its successors, assigns, together with licensees, or guests, agree to release the District from any and all claims arising from the construction, installation, use, maintenance, repair replacement, operations or other acts associated with the District's facilities on the Property, except for claims arising from negligence on the part of the District. Grantor and its successors, assigns, together with licensees, or guests, agree to indemnify and hold harmless the District from any and all claims arising from the use of the Property or use of adjacent property by Grantor its successors, agents, licensees or guests.

11. It is mutually agreed by and between the parties hereto that the District may commence the exercise of its rights to the use of the Easement forthwith, or it may postpone the exercise of all or some part of its rights hereunder to some future time.

12. Grantor warrants that it has full right and lawful authority to make the grant herein contained, and promises and agrees to defend the District in the exercise of its rights hereunder.

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

14. If the District abandons use and operation of the District Facilities installed on the Easement Property, such abandonment shall not constitute abandonment of its rights under this Agreement or the Easement.

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

16. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto. In the event any party hereto or its successor or assign seeks to enforce its rights hereunder through litigation, arbitration or other administrative proceeding, the non-prevailing party shall be required to pay the reasonable attorney fees and costs of the prevailing party as part of any judgment, order, or award.

17. The Grantor reserves the right to grant further easement interests in the Easement Property to other utilities and grantees upon obtaining written consent from the District, which consent shall not be unreasonably withheld if the District's rights to the use of the Easement will not be materially impaired by such grant; provided, that:

- (a) Such further easement interests shall be no closer than ten (10) feet from the District's existing and any future planned District Facilities, except as stated in (b).
- (b) In the case of utilities crossing District lines or other District Facilities, crossings shall be perpendicular where possible and the other utilities shall be installed in accordance with the District's Rules and Regulations and Design Standards and buried at least one and one (1½) half feet below any existing or future planned District Facilities. The utility shall take reasonable measures required by the District to protect in place any existing District Facilities, and the District may require a representative of the District to be on-site for such installation, at the cost of the additional grantee.

18. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of Adams County, Colorado.

19. Unless special provisions are attached hereto, the above and foregoing constitute the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto, with respect to the subject matter of this Agreement.

SPECIAL PROVISIONS

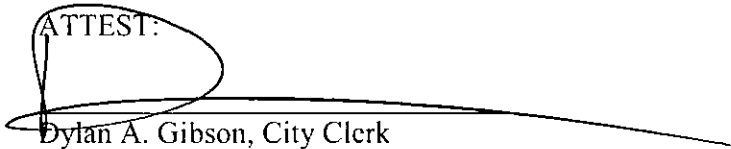
None.

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

GRANTOR:

CITY OF COMMERCE CITY

Benjamin A. Huseman, Mayor

ATTEST:

Dylan A. Gibson, City Clerk

APPROVED AS TO FORM

Matt Hader, Interim City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ of _____.

Witness my hand and official seal:

Notary Public

My commission expires: _____

GRANTEE:

**SOUTH ADAMS COUNTY WATER
AND SANITATION DISTRICT**

District Manager

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____
20____, by _____, as District Manager of South Adams County Water
and Sanitation District.

Witness my hand and official seal:

Notary Public

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 4, WHENCE THE EAST LINE OF SAID NORTHEAST QUARTER, BEARS NORTH 00°08'02" EAST, A DISTANCE OF 2582.85 FEET, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG SAID EAST LINE, NORTH 00°08'02" EAST, A DISTANCE OF 734.70 FEET;

THENCE DEPARTING SAID EAST LINE, NORTH 89°51'58" WEST, A DISTANCE OF 50.00 FEET TO THE WESTERLY RIGHT-OF-WAY OF TOWER ROAD RECORDED IN BOOK 3037, PAGE 988 RECORDED AT REC. NO. 593825 IN THE OFFICIAL RECORDS OF THE ADAMS COUNTY, COLORADO CLERK AND RECORDERS OFFICE AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY, ALONG THE SOUTHERLY BOUNDARY OF THE "POND AREA", A PARCEL OF LAND DESCRIBED IN THE QUITCLAIM DEED RECORDED UNDER RECEPTION NO. 2003031203676 IN SAID RECORDS, SOUTH 24°12'37" WEST, A DISTANCE OF 73.54 FEET;

THENCE NORTH 00°08'02" EAST, A DISTANCE OF 616.19 FEET;

THENCE SOUTH 89°29'02" WEST, A DISTANCE OF 692.06 FEET;

THENCE NORTH 00°08'12" EAST, A DISTANCE OF 1,211.98 FEET;

THENCE NORTH 18°59'48" WEST, A DISTANCE OF 27.74 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF EAST 120TH AVENUE RECORDED IN BOOK 3824 AT PAGE 214, RECEPTION NO. 1991021026874 IN SAID RECORDS;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY, NORTH 89°29'25" EAST, A DISTANCE OF 31.63 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY, SOUTH 18°59'48" EAST, A DISTANCE OF 22.76 FEET;

THENCE SOUTH 00°08'12" WEST, A DISTANCE OF 1,186.69 FEET TO THE WESTERLY PROLONGATION OF THAT CERTAIN SPECIAL WARRANTY DEED RECORDED AT REC. NO. 2016000060218 IN SAID RECORDS;

THENCE ALONG SAID PROLONGATION AND SOUTHERLY LINE OF SAID SPECIAL WARRANTY DEED, NORTH 89°29'02" EAST, A DISTANCE OF 692.05 FEET TO SAID WESTERLY RIGHT-OF-WAY OF TOWER ROAD;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, SOUTH 00°08'02" WEST, A DISTANCE OF 579.39 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 1.732 ACRES, (75,433 SQUARE FEET), MORE OR LESS.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.

SHAUN D. LEE, PLS 38158
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

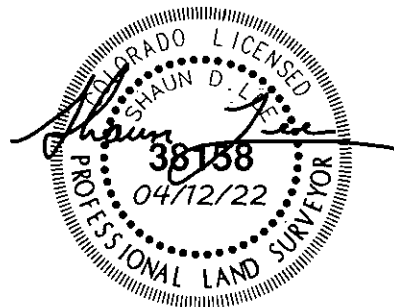
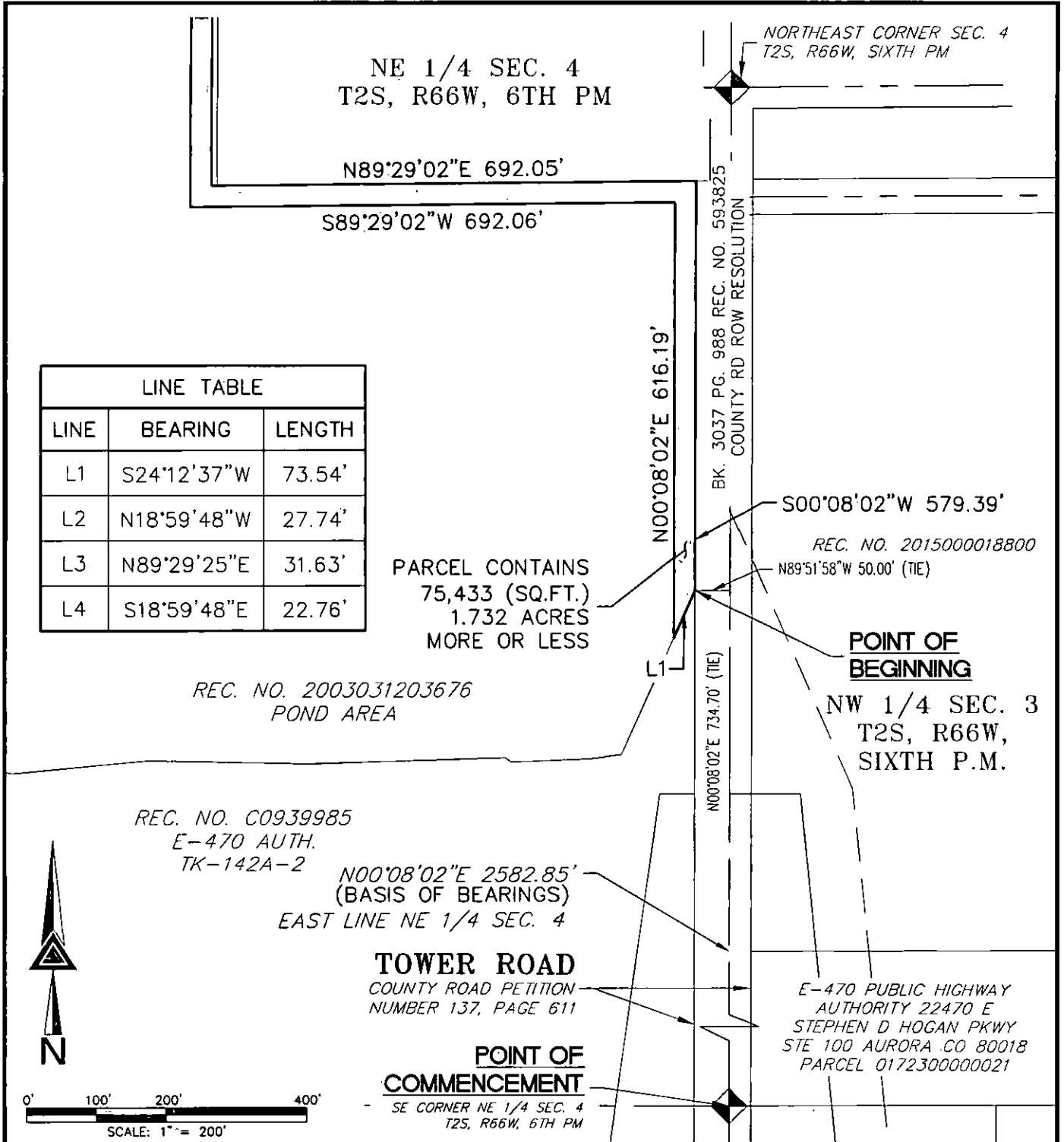


ILLUSTRATION TO EXHIBIT A



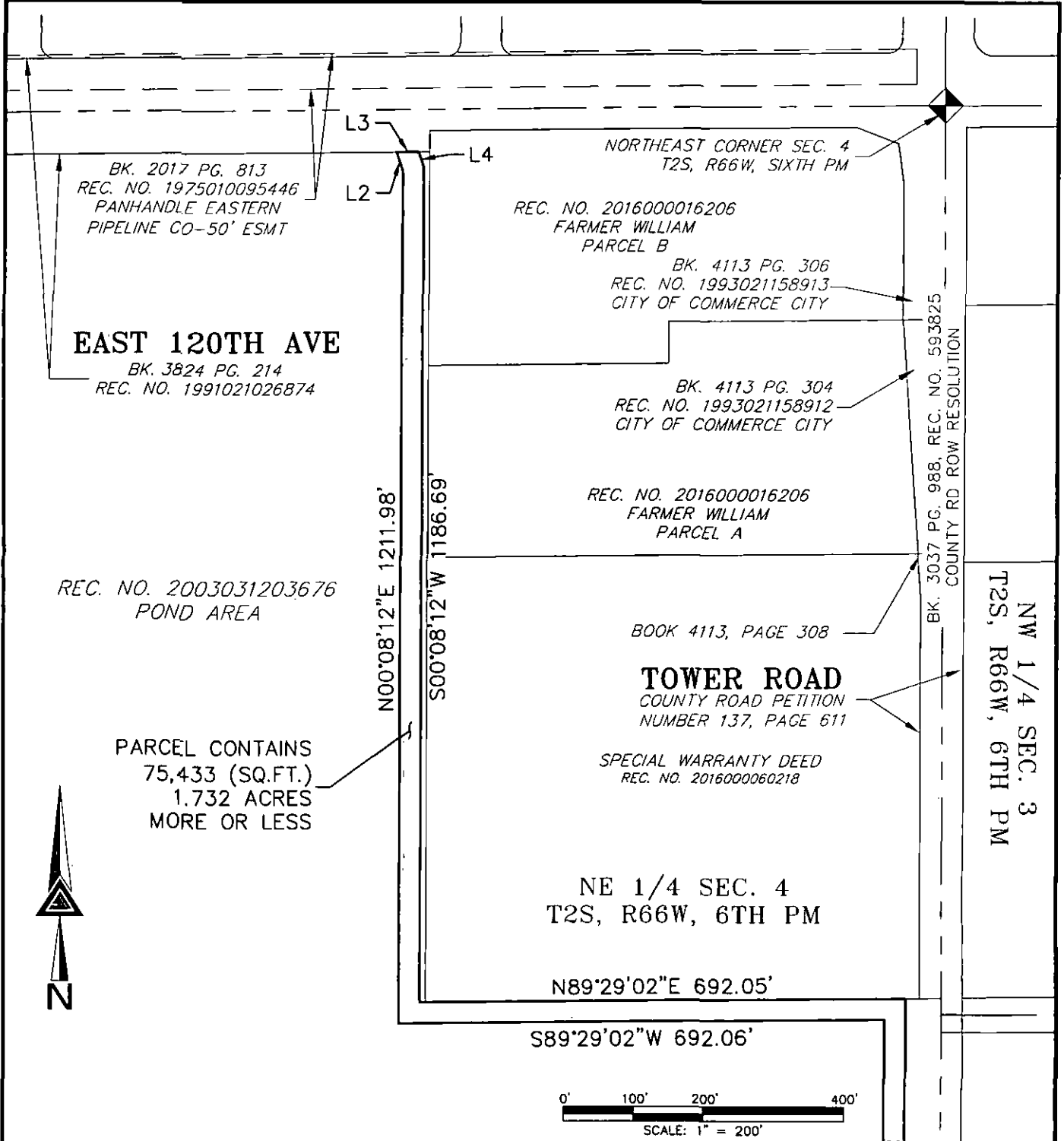
NOTE: THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: _____
 DWG NAME: _____
 DWG: HAS _____ CHK: SDL
 DATE: 04/06/2022
 SCALE: 1" = 200'

1-SANITARY EASEMENT.DWG
AZTEC
 CONSULTANTS, INC.
 300 East Mineral Ave.
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com
 Q:\54819-55 - Third Creek Off Site Mapping\Dwg\EXHIBITS

SANITARY EASEMENT
 NE 1/4 SEC. 4 T.2S., R.66W., SIXTH P.M.
 COMMERCE CITY, COLORADO
 JOB NUMBER 54819-55 2 OF 3 SHEETS

ILLUSTRATION TO EXHIBIT A



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

PATH: _____
 DWG NAME: _____
 DWG: HAS CHK: SDL
 DATE: 04/06/2022
 SCALE: 1" = 200'

-SANITARY ESMNT.DWG

AZTEC
 CONSULTANTS, INC.

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

0:\54819-55 - Third Creek Off Site Mapping\Dwg\EXHIBITS

SANITARY EASEMENT
 NE 1/4 SEC. 4 T.2S., R.66W., SIXTH P.M.
 COMMERCE CITY, COLORADO

JOB NUMBER 54819-55 3 OF 3 SHEETS