

## WATER DRAINAGE EASEMENT

This Water Drainage Easement (“Easement”) is granted this 7th day of August, 2023, by the City of Commerce City, a home rule Colorado municipal corporation, with a principal place of business at 7887 E. 60th Avenue, Commerce City, CO 80022 (“Grantor” or “City”), and Catellus CC Note, LLC, a Delaware limited liability company with a principal place of business at 2000 Powell Street, Suite 500, Emeryville, CA 94608 (“Grantee”), and referred to collectively as Parties.

The Parties hereto, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the adequacy of which is acknowledged by the Parties, the following agreements and understandings are made:

**1. GRANT.** Grantor grants to Grantee, its agents, successors, and assigns, an easement for the nonexclusive right to the property described in Exhibit A (“Easement Property”) strictly and exclusively for the installation and operation of drainage facilities (“Facilities”) as more particularly described in the design work referenced in the Pond Agreement (defined below) (“Description of Facilities”) and for the limited purpose of conveying storm water from the real property located at Turnberry Filing No. 7 (“Grantee’s Property”) and Grantor’s property commonly described as Adams County Parcel number 0172306301001, to Grantor’s property commonly described as Adams County Parcel number 0172306300001 and the Second Creek floodplain, subject to the conditions and limitations set forth herein. In this Easement, “Grantee” shall be interpreted to mean Grantee, its agents, successors, or assigns as the context requires at the time in question.

**2. CONSIDERATION.** This Easement is being granted pursuant to the terms of that certain Agreement for the Redesign, Construction and Maintenance of City Owned Pond in Support of Turnberry Filing 7 between the Parties (the “Pond Agreement”). In the event of any conflict between the terms of this Easement and the terms of the Pond Agreement, the Parties intend for the terms of the Pond Agreement to control.

**3. RESERVATION OF USE AND OCCUPANCY.** Grantor retains the right to undisturbed use and occupancy of the Easement property insofar as such use and occupancy is consistent with and does not impair the Grantee’s use of the Easement. The Grantor reserves the right to grant additional easements within the Easement Property, subject to the rights granted to Grantee hereunder. Notwithstanding any the foregoing, the Grantor may temporarily restrict Grantee’s access to the Easement Property for reasonable periods of time, to perform maintenance or construction activities within the Easement Property; provided that storm water from Grantee’s Property may continue to drain to the Easement Property.

**4. MAINTENANCE.** Grantee shall maintain the Facilities. It is expressly contemplated by the Parties that maintenance of the Facilities will be assigned to a homeowner’s association formed for Turnberry Filing No. 7, all in accordance with the terms of the Pond Agreement including the City’s consent rights. Grantee shall seek and receive written consent from the Grantor’s City Engineer, which shall not be unreasonably withheld, prior to accessing the Easement Property for the purpose of conducting repair and replacement activities relating to the Facilities. Nothing in this Easement shall require the Grantor to construct, install, operate, maintain, repair, or replace any drainage facilities, storm water detention facilities, or water quality facilities. Notwithstanding the foregoing, the Grantor may: (1) in the event of an emergency, as determined by the Grantor in its sole discretion, clean, cure or correct any damage caused by the Grantee’s failure to adequately maintain the Facilities located within the Easement Property, and the Grantee shall reimburse the Grantor for the cost of such actions within thirty (30) days after receipt of an invoice from the Grantor; and (2) directly or through Urban Drainage & Flood Control District perform maintenance or repair activities for the Facilities if the funding is made available for such activities and the City determines to conduct such activities, in which event, the Grantee shall only be responsible for costs in excess of the funding received for such activities.

**5. INTEGRITY OF EASEMENT PROPERTY.** Grantee shall not, intentionally or otherwise, cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous material, as defined below, to be dumped, spilled, released, permanently stored

or deposited on, over, through, or beneath the Easement Property or any other adjacent lands owned by Grantor. The Grantee shall be responsible for and shall fully indemnify the Grantor for any corrective action (including risk assessment, active remediation, passive remediation, voluntary cleanup, investigation, and monitoring) of any environmental contamination resulting from the Grantee's use of the Easement, including the discharge of any hazardous material, including but not limited to any substances defined as or included in the definition of "hazardous substance," "hazardous material," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or a standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published or promulgated pursuant to said laws.

**6. RESPONSIBILITY FOR WORK.** Grantee shall pay or cause to be paid all costs for work done by or on behalf of the Grantee or any of its designees, contractors, or assigns occupying or doing work in the Easement Property. The Grantee shall keep the Easement Property free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of the Grantee.

**7. COMPLIANCE WITH LAWS.** Grantee shall comply with all applicable laws, ordinances and regulations, including without limitation all applicable regulatory, environmental and safety requirements, at Grantee's sole cost and expense. Nothing herein shall be interpreted to waive any requirements of the City, including but not limited to any requirement to obtain permits, with regard to the Facilities or the Easement Property.

**8. PROTECTION OF EASEMENT PROPERTY AND INSURANCE.** Grantee shall cause all contractors and subcontractors performing work on or about the Easement Property to take all necessary safety measures with respect to the construction and maintenance activities. Before commencing any work in the Easement Property, the Grantee will secure and maintain general liability insurance sufficient to cover any liability for its actions on the Easement Property and its use by the Grantee and shall name the Grantor as an additional insured on any such insurance policies.

**9. LIABILITY AND INDEMNIFICATION.** Grantee shall be liable and responsible for any and all damages (except for ordinary wear and tear) to persons or property caused by or arising out of the actions, obligations or omissions of the Grantee or its employees, agents, representatives, contractors or other persons acting under the Grantee's direction or control in the exercise of Grantee's rights and obligations under this Easement (including the installation and use of the Facilities). The Grantee shall indemnify, hold harmless, and defend the Grantor, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, liens, damages, fines, fees, penalties, losses, judgments, costs or expenses, including, but not limited to, actual and reasonable attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the use by Grantee of the Easement or the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of the Grantee, its employees, agents or representatives or other persons for whom the Grantee is responsible, acting in relation to the Easement, the Easement Property, and Facilities. The provisions set forth in this paragraph shall survive the termination of this Easement.

**10. WAIVER OF WARRANTIES AND REPRESENTATIONS.** Grantee acknowledges and agrees that this Easement is subject to all prior rights, rights-of way, easements, and other encumbrances affecting the Easement Property. The Grantor makes no warranty of title as to the Easement Property. **THE GRANTOR HAS NOT AND DOES NOT MAKE ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OR REPRESENTATIONS OR GIVE ANY INDEMNIFICATION OF ANY KIND TO THE GRANTEE CONCERNING THE EASEMENT PROPERTY, THE GRANTOR'S TITLE TO THE EASEMENT PROPERTY, THE EASEMENT PROPERTY'S CONDITION OR SUITABILITY, OR THE GRANTEE'S USE OF THE EASEMENT PROPERTY BEING IN COMPLIANCE WITH ANY LAW OR REGULATION.** The Grantee hereby waives, releases, and forever discharges the Grantor, its directors, officers, and employees, of and

from any and all claims the Grantee may have with respect to the condition, physical characteristics or environmental condition of the Easement Property.

**11. EASEMENT TO RUN WITH LAND; RECORDATION.** This Easement shall run with the land and apply to all interests now owned or hereafter acquired to the above-described property. The Grantee shall record this Easement within ten (10) days of execution.

**12. TERMINATION.** The Easement shall terminate automatically upon (1) the abandonment of the Facilities, which shall occur as provided by law or at any time that the Grantee provides the Grantor with a written notice of abandonment; (2) the Grantee's failure to maintain the Facilities or to perform any obligation under this Easement and does not cure such defect or default within thirty (30) days of written notice by the Grantor, unless such defect or default cannot reasonably be cured within a 30-day period, in which case the Easement shall not terminate so long as Grantee is diligently pursuing a cure to such defect or default; (3) the Grantee ceases to use the Easement for the purposes granted for a continuous period of two (2) years; (4) the Easement is no longer necessary because the storm water from the Grantee's Property is otherwise diverted or stored; or (5) the Grantee allows storm water not originating on the Grantee's Property to be conveyed to the Facilities without the Grantor's express written permission. If the Easement terminates, the Grantee shall restore the Easement Property to a condition that is satisfactory to and approved by the Grantor and shall execute and deliver to the Grantor a written release of this Easement in a recordable form.

**13. NO WAIVER OF GOVERNMENTAL IMMUNITY.** No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

**14. SEVERABILITY.** If a court of competent jurisdiction holds any provision of this Easement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Easement.

**15. NO WAIVER OF BREACH.** Neither the Grantor's nor the Grantee's failure to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the Grantor's or the Grantee's failure, in any one or more instances, to exercise any option, privilege, or right, shall in no way be construed to constitute a waiver, relinquishment, or release of such obligations, covenants, or agreements, nor forbearance by the Grantor or the Grantee of any default under this Easement shall in any manner be construed as a waiver of such default.

**16. HEADINGS.** Paragraph headings used in this Easement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Easement.

**17. CONTINGENT APPROVAL.** The approval of this Easement is contingent upon the City's administrative approval of the Turnberry Subdivision Filing #7 final plat. Should said final plat not receive final approval by November 8, 2023, then this Easement shall be deemed null and void

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate as of the day and year first hereinabove written.

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Benjamin A. Huseman, Mayor

ATTEST:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**CATELLUS CC NOTE, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Thomas T. Marshall  
Executive Vice President

**ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, personally appeared Thomas T. Marshall, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Easement Property**

*(See attached)*



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LAND DEVELOPMENT  
SERVICES AND SOLUTIONS  
www.EMKC.com

7006 SOUTH ALTON WAY, BLDG. F

CENTENNIAL, COLORADO 80112-2019

(303)694-1520

## LEGAL DESCRIPTION

AN EASEMENT LYING IN THE SOUTHWEST QUARTER OF SECTION 6 AND THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO, ALSO BEING A PORTION OF LOT 1 OF BLOCK 13 OF TURNBERRY FILING NO. 1 RECORDED AT RECEPTION NO. 20050630000693950, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE BASED UPON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SOUTHWEST QUARTER OF SECTION 6, ASSUMED TO BEAR NORTH 89°01'24" EAST, A DISTANCE OF 1315.38 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 6 AS MONUMENTED BY A 2.5-INCH ALUMINUM CAP, STAMPED "T2S, R67W R66W, S1 S6 + S12 S7, 2017, LS 29425" TO THE WEST SIXTEENTH CORNER COMMON TO SECTIONS 6 AND 7 AS MONUMENTED BY A 3.25-INCH ALUMINUM CAP ON A #6 REBAR, STAMPED "MERRICK & CO. T2S R66W S6|S7 + W 1/16, 2019, PLS 38149";

COMMENCING AT SAID WEST SIXTEENTH CORNER COMMON TO SECTIONS 6 AND 7; THENCE NORTH 02°10'44" EAST, A DISTANCE OF 39.72 FEET TO THE EAST LINE OF SAID LOT 1, ALSO BEING THE POINT OF BEGINNING;

THENCE NORTH 90°00'00" WEST, A DISTANCE OF 16.05 FEET TO A POINT OF NON-TANGENT CURVATURE;

THENCE SOUTHERLY 9.06 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 05°11'25", SUBTENDED BY A CHORD WHICH BEARS SOUTH 15°20'39" WEST, A DISTANCE OF 9.06 FEET;

THENCE SOUTH 17°56'22" WEST, A DISTANCE OF 21.39 FEET;

THENCE NORTH 66°05'05" WEST, A DISTANCE OF 12.07 FEET;

THENCE NORTH 17°56'22" EAST, A DISTANCE OF 20.14 FEET TO A POINT OF TANGENT CURVATURE;

THENCE NORTHERLY 5.25 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 88.00 FEET AND A CENTRAL ANGLE OF 03°24'57";

THENCE NORTH 90°00'00" WEST, A DISTANCE OF 118.08 FEET;

THENCE SOUTH 09°23'16" WEST, A DISTANCE OF 273.96 FEET TO A POINT OF NON-TANGENT CURVATURE, ALSO BEING THE NORTHERLY RIGHT-OF-WAY LINE OF EAST 112TH AVENUE;

THENCE NORTHWESTERLY 35.48 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, ALSO ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,010.00 FEET AND A CENTRAL ANGLE OF 02°00'45", SUBTENDED BY A CHORD WHICH BEARS NORTH 48°21'09" WEST, A DISTANCE OF 35.48 FEET;

THENCE NORTH 09°23'16" EAST, A DISTANCE OF 250.07 FEET;

THENCE NORTH 90°00'00" WEST, A DISTANCE OF 73.82 FEET;

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 347.30 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 155.26 FEET TO SAID EAST LINE, ALSO BEING A POINT OF NON-TANGENT CURVATURE;

THENCE ALONG SAID EAST LINE THE FOLLOWING THREE (3) COURSES:

- 1) SOUTHERLY 21.94 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2,024.27 FEET AND A CENTRAL ANGLE OF 00°37'16", SUBTENDED BY A CHORD WHICH BEARS SOUTH 14°45'14" EAST, A DISTANCE OF 21.94 FEET;
- 2) SOUTH 14°26'29" EAST, A DISTANCE OF 200.00 FEET TO A POINT OF NON-TANGENT CURVATURE;
- 3) SOUTHERLY 138.37 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,359.43 FEET AND A CENTRAL ANGLE OF 05°49'55", SUBTENDED BY A CHORD WHICH BEARS SOUTH 16°48'09" EAST, A DISTANCE OF 138.31 FEET TO THE POINT OF BEGINNING;

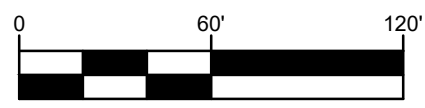
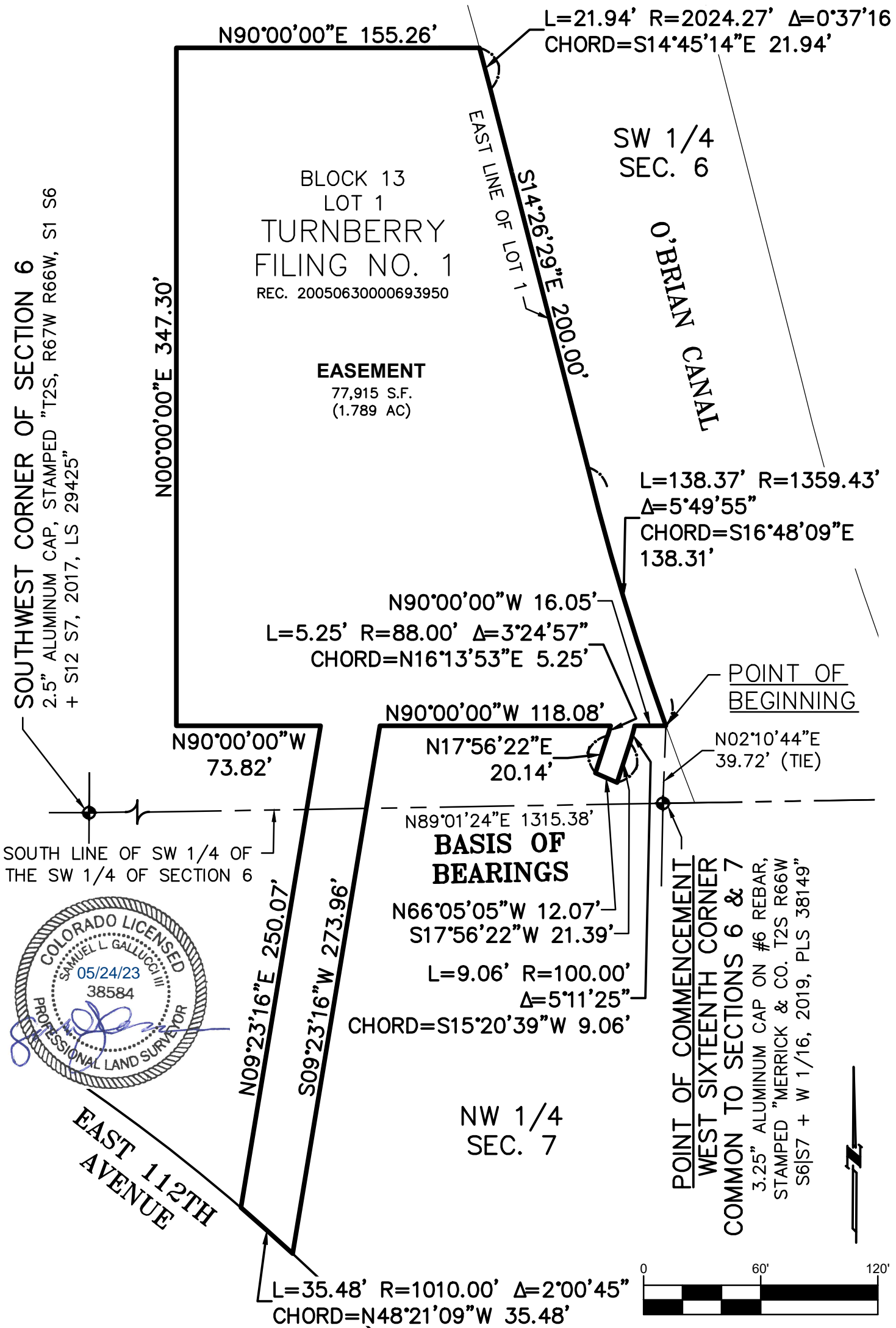
CONTAINING 77,915 SQUARE FEET (1.789 ACRES), MORE OR LESS.

PREPARED BY:  
SAMUEL L. GALLUCCI III, PLS 38584  
FOR AND ON BEHALF OF  
EMK CONSULTANTS, INC.





### LEGAL DESCRIPTION



1 inch = 60 ft.





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## LEGAL DESCRIPTION

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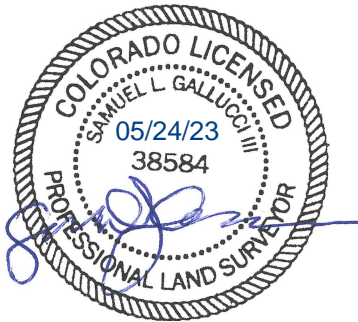
BEARINGS ARE BASED UPON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SOUTHWEST QUARTER OF SECTION 6, ASSUMED TO BEAR NORTH 89°01'24" EAST, A DISTANCE OF 1315.38 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 6 AS MONUMENTED BY A 2.5-INCH ALUMINUM CAP, STAMPED "T2S, R67W R66W, S1 S6 + S12 S7, 2017, LS 29425" TO THE WEST SIXTEENTH CORNER COMMON TO SECTIONS 6 AND 7 AS MONUMENTED BY A 3.25-INCH ALUMINUM CAP ON A #6 REBAR, STAMPED "MERRICK & CO. T2S R66W S6|S7 + W 1/16, 2019, PLS 38149";

COMMENCING AT SAID WEST SIXTEENTH CORNER COMMON TO SECTIONS 6 AND 7; THENCE NORTH 42°55'59" EAST, A DISTANCE OF 282.60 FEET TO THE EAST LINE OF LOT 2 OF FIORE INDUSTRIAL SUBDIVISION REPLAT, RECORDED AT RECEPTION NO. 2007000104743, ALSO BEING THE POINT OF BEGINNING;

THENCE NORTH 06°36'33" EAST ALONG SAID EAST LINE, A DISTANCE OF 54.69 FEET;  
THENCE SOUTH 82°45'05" EAST, A DISTANCE OF 3.41 FEET;  
THENCE SOUTH 06°36'20" WEST, A DISTANCE OF 53.44 FEET;  
THENCE SOUTH 77°07'55" WEST, A DISTANCE OF 3.63 FEET TO THE POINT OF BEGINNING;

CONTAINING 185 SQUARE FEET (0.004 ACRE), MORE OR LESS.

PREPARED BY:  
SAMUEL L. GALLUCCI III, PLS 38584  
FOR AND ON BEHALF OF  
EMK CONSULTANTS, INC.





### LEGAL DESCRIPTION

LOT 2  
FIORE INDUSTRIAL  
SUBDIVISION REPLAT  
REC. 2007000104743

SW 1/4  
SEC. 6

O'BRIAN CANYON

S82°45'05"E  
3.41'

N06°36'33"E  
54.69'

POINT OF  
BEGINNING

S06°36'20"W  
53.44'

EASEMENT  
185 S.F.  
(0.004 AC)

S77°07'55"W  
3.63'

UNPLATTED



N42°55'59"E 282.60' (TIE)

SOUTH LINE OF THE  
SW 1/4 OF THE  
SW 1/4 OF SECTION 6

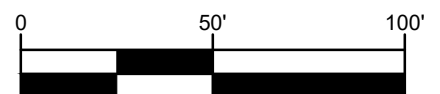
N89°01'24"E  
1315.38'

**BASIS OF  
BEARINGS**

**POINT OF COMMENCEMENT  
WEST SIXTEENTH CORNER  
COMMON TO SECTIONS 6 & 7**  
3.25" ALUMINUM CAP ON #6 REBAR,  
STAMPED "MERRICK & CO. T2S R66W  
S6|S7 + W 1/16, 2019, PLS 38149"

**SOUTHWEST CORNER OF SECTION 6**

2.5" ALUMINUM CAP, STAMPED "T2S, R67W R66W, S1 S6  
+ S12 S7, 2017, LS 29425"



1 inch = 50 ft.