

**RECORDING REQUESTED;
WHEN RECORDED MAIL
TO:**

Patrick A. Wheeler
Denver City Attorney's Office
Municipal Operations Section City
and County of Denver 201 West
Colfax Avenue, Dept. 1207
Denver, Colorado 80202

LICENSE AGREEMENT AND COVENANT

THIS LICENSE AGREEMENT AND COVENANT ("**License Agreement**") is entered into effective as of the date set forth below on the signature page for the City and County of Denver ("**Effective Date**"), by and between the Licensee, John Dunlop III Revocable Trust dated April 12, 2006 and Mary S. Dunlop Revocable Trust dated April 12, 2006 (collectively "**Licensee**") whose address is 4221 Myers Gulch Road, Evergreen, CO 80439, and the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation ("**Denver**") whose address is 1437 Bannock Street, Room 350, Denver, Colorado 80202 (jointly referred to as the "**Parties**").

Recitals

A. Licensee is the owner of a single family residential parcel of property located at 4221 Myers Gulch Road in Jefferson County, Colorado, and legally described as:

See Attached **Exhibit A**

(the "**Licensee's Property**").

B. The Licensee's Property is surrounded by O'Fallon Park, owned and operated by Denver as a Denver Mountain Park (the "**Park**").

C. The access drive, a gravel roadway legally described and depicted on the drawing in **Exhibit B** to this License Agreement (the "**Access Way**"), has provided the primary access from Myers Gulch Road, a Jefferson County public road, to the Licensee's Property, a single family residence property, since at least 1991.

D. In light of the landlocked condition of Licensee's Property, Denver is willing to allow the continued use of the Access Way in the same manner and configuration as it currently exists.

E. In return for allowing this continued use of the Access Way, the Licensee agrees on behalf of itself and its heirs, successors and assigns to abide by the covenants, promises, terms and conditions set forth in this License Agreement.

NOW THEREFORE, in consideration of the premises set out above and the covenants, promises, terms, and conditions set forth below, the Parties agree as follows:

1. LICENSE. Denver hereby grants a revocable, non-exclusive license to Licensee to operate and maintain the Access Way in its current location and configuration as depicted and described in **Exhibit B** to this License Agreement solely for the purpose of providing access to and from the Licensee's Property on Myers Gulch Road, subject to the terms, conditions, promises, and covenants of this License Agreement. This License shall include the right to place underground utilities within the Access Way. Notwithstanding any provision to the contrary, no property title, rights or interests, including leases or easements, are granted hereby.

2. RESTRICTED USE. The Licensee agrees and covenants that, other than as necessary to provide emergency access, no action will be taken by the Licensee to acknowledge or extend any access rights under this License Agreement for the benefit or use of any property other than the Licensee's Property or any persons other than the owners and tenants of the Licensee's Property. The Licensee also agrees and covenants that the Access Way: a) shall remain as depicted in **Exhibit B**; b) shall not be expanded or relocated and shall not be materially modified as to paving or construction without the written permission of Denver; and c) shall only be used to provide vehicular, pedestrian, and utility access for common and customary activities associated with the single family residential uses on the Licensee's Property, including the construction, maintenance, and repair of related improvements thereon, as allowed under Jefferson County zoning and building laws. In addition, Licensee agrees and covenants, as a condition of the License granted herein, that the Licensee shall not cause, permit or suffer any other encroachments or encumbrances on any portion of the adjoining Park through either unauthorized uses of the Access Way or any use of the Licensee's Property.

3. ACCESS LAWFUL. The Licensee represents and agrees that all permits, approvals, and other governmental authorizations required by law to be obtained for the construction, location, and operation of the Access Way, including access to Myers Gulch Road have been obtained and are current and, if any others are required in the future, the Licensee will diligently take all actions necessary to obtain such permits, approvals, or other governmental authorizations and to comply with the same and to make certain that the same are in compliance with this License Agreement. To the extent that there are any fees, charges, fines, penalties, or other costs or expenses associated with obtaining such permits, approvals, or other governmental authorizations or imposed for failure to obtain or comply with such permits, approvals, or other governmental authorizations, the Licensee shall be solely responsible and liable for paying such.

4. MAINTENANCE & REPAIR. The Licensee agrees and covenants to maintain and repair the Access Way, including any associated drainage, as necessary to assure that the Access Way is functional and safe for use by the public and to protect the Park from erosion or other damage resulting from the use or operation of the Access Way. Prior to initiating any substantial maintenance or repair work on the ground in the Park (except in an emergency), the Licensee agrees and promises to obtain from the Denver Department of Parks and Recreation the required permits or approvals allowing for such work to be performed on park property and to strictly comply with the terms and conditions of said permits or approvals. Should the

Licensee fail to perform any necessary maintenance or repair to the Access Way within the timeframe prescribed in any notice sent by Denver, Denver shall have the right to perform the necessary maintenance or repair and to seek recovery of damages, costs, expenses, and attorney's fees from the Licensee, jointly or individually, by whatever means available under law, including but not limited to the filing and foreclosure of liens against the Licensee's Property.

5. TERM & EFFECT. The License granted herein shall commence as of the Effective Date of this License Agreement and shall be in effect until revoked as provided herein. The covenants and promises made herein shall commence as of the Effective Date and shall remain in effect and shall be appurtenant to the Licensee's Property as long as the License is in effect and, even upon revocation of the License, until all covenants and promises are fully and faithfully performed, to the reasonable satisfaction of Denver and in accordance with this License Agreement.

6. REVOCATION OR OTHER TERMINATION. Denver has the right to revoke this License for a material violation of the terms, conditions, promises, and covenants of this License Agreement, provided the Licensee has not cured the violation within the reasonable timeframe specified in a written notice from Denver, or upon closure of the Access Way resulting from any lawful order, directive, or edict issued by any governmental entity (other than Denver) or court. Upon revocation by Denver or upon receipt of any lawful order, directive, or edict to close the Access Way, the Licensee shall be solely responsible and liable for complying with said notification of revocation or said order, directive, or edict and restoring, at Licensee's sole costs, Denver's property within the Park to a natural condition acceptable to Denver. Notice of violation and notice of revocation shall be in writing signed by the Manager of the Department of Parks and Recreation or the Manager's authorized representative (the "**Manager**").

7. DAMAGE. In the event that the Access Way is substantially damaged due to natural or man-made causes, the Access Way may be re-constructed upon submittal of complete and detailed construction plans to the Manager and the Manager's approval of said plans and issuance of such permits and approvals as may be required for the work on Denver property.

8. DAMAGE TO PARK PROPERTY. The Licensee agrees and promises that any real or personal property of Denver damaged or destroyed incident to the exercise of this License or upon revocation of this License and removal of the Access Way shall be promptly repaired or replaced by the Licensee to the satisfaction of the Manager, or in lieu of such repair or replacement, the Licensee agrees and promises, if so required by the Manager and at the Manager's option, and after reasonable written notification, to pay Denver money in an amount sufficient to compensate for the loss sustained or costs incurred by Denver for any damage that may result from any location, construction, repair, maintenance, operation, or removal of the Access Way. For failure or refusal by Licensee to substantially comply with this paragraph, Denver shall have the right to seek recovery of damages, costs, expenses, and reasonable attorney's fees from the Licensee by whatever means available under law, including but not limited to the filing and foreclosure of liens against the Licensee's Property.

9. INDEMNIFICATION & GOVERNMENTAL IMMUNITY. The Licensee hereby releases and indemnifies and saves harmless Denver, its officers, agents, and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of Denver, and shall defend, indemnify, and save harmless Denver, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liability, actions, penalties, or proceedings of any kind or nature whatsoever, including without limitations worker's compensation claims, of or by anyone whomsoever, which with respect to any of the foregoing in any way results from, or arises out of, directly or indirectly, the use, occupancy, or operation of any portion of the Access Way or performance of any work and other activities specified or allowed under this License Agreement, and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of the Licensee; provided, that the Licensee need not release, indemnify or save harmless Denver, its officers, agents, and employees from damages resulting from the sole negligence of the Denver's officers, agents, and employees. The scope of this indemnification is not limited to third party claims. Any minimum insurance policies held by the Licensee shall not be deemed to limit or define the obligations of the Licensee under this License Agreement. It is expressly understood and agreed that Denver is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protections provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.* and other applicable law.

10. CONVEYANCE, TRANSFER, OR ASSIGNMENT. The Licensee acknowledges and covenants that, should Licensee convey, transfer, or assign any right, title, or interest, in whole or part, to the Licensee's Property to another person or entity in the future for the purpose, among other things, of using, occupying, maintaining or operating the Licensee's Property, the Licensee shall include the unqualified and unlimited obligation of said person or entity to comply with and perform the duties and responsibilities of this License Agreement. All references to "Licensee" in this License Agreement shall hereafter be read to mean any person or entity receiving or holding any right, title, or interest in Licensee's Property.

11. NOTICES. All notices required to be given by or to the Parties herein shall be in writing and sent by certified mail, return receipt requested, to:

Licensee: John Dunlop III Revocable Trust dated April 12, 2006
Mary S. Dunlop Revocable Trust dated April 12, 2006
4221 Myers Gulch Road
Evergreen, CO 80439

Denver: Mayor
City and County of Denver
1437 Bannock Street, Room
350 Denver, CO 80202

Manager of Parks and Recreation
City and County of Denver

201 West Colfax, Dept. 601
Denver, CO 80202

Denver City Attorney
City and County of Denver
1437 Bannock Street, Room 353
Denver, Colorado 80202

Any party hereto may designate in writing from time to time the address of substitute or additional persons to receive such notices. The effective date of service of any such notice is the date it was mailed.

12. COMPLIANCE WITH LAWS. The Parties shall observe and comply with the applicable provisions of the Denver Charter, ordinances, and rules and regulations of Denver and with all applicable Colorado and federal laws.

13. APPLICABLE LAW; VENUE. The License Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the United States of America. Venue for any legal action relating to this License Agreement and Covenant shall lie solely in the District Court in and for the City and County of Denver.

14. AMENDMENT. This License Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein. Any representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this License Agreement and Covenant.

15. SEVERABILITY. The promises and covenants contained herein are several in nature. Should any one or more of the promises or covenants be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining promises or covenants. However, if the License should be deemed invalid or unenforceable, the License Agreement shall terminate subject to the terms set forth in paragraph 5 above.

16. NONDISCRIMINATION. In connection with this License Agreement, the Licensee agrees 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; and further agrees to insert the foregoing provision in all contracts and subcontracts hereunder.

17. THIRD PARTY CONTRACTS. The Licensee has no authority to bind Denver on any contractual matters. Denver shall have no liability or financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which Licensee contracts or

have a contractual arrangement with respect to any work on or associated with the Access Way or with respect to any other aspects of the Access Way or its use.

18. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS. The Licensee shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the use of the Access Way. The Licensee, in conducting activity or work of any kind on the Access Way, shall comply with all applicable local, state, and federal environmental rules, regulations, statutes, laws or orders (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-containing soils and asbestos-containing materials, polychlorinated biphenyls (PCBs), special wastes, any petroleum products, natural gas, radioactive source material, pesticides and any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

19. RECORDING; RUNS WITH THE LAND. This License Agreement shall be recorded in the office of the Clerk and Recorder of the County of Jefferson, State of Colorado, and shall be a covenant that runs with the Licensee’s Property and shall be binding upon the Licensee’s heirs, successors in interests and assignees and shall be enforceable by and inure to the benefit of Denver.

20. NO PERSONAL LIABILITY. No elected official, director, officer, agent, or employee of Denver shall be charged personally or held contractually liable by or to the Licensees under any term or provision of this License Agreement or because of any breach or violation thereof or because of the execution, approval, or attempted execution of this License Agreement.

21. EXECUTION. This License Agreement shall not be or become effective or binding on Denver until it has been fully executed by all signatories of the City and County of Denver.

22. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Licensee consents to the use of electronic signatures by Denver. The License Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Denver in the manner specified by Denver. The Parties agree not to deny the legal effect or enforceability of the License 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 License 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.

MARY S. DUNLOP REVOCABLE TRUST DATED APRIL 12, 2006

Mary S. Dunlop, Trustee
By: Mary S. Dunlop, Trustee

JOHN DUNLOP III REVOCABLE TRUST DATED APRIL 12, 2006

John Dunlop III, Trustee
By: John Dunlop III, Trustee

STATE OF COLORADO)
)
COUNTY OF JEFFERSON)

The foregoing License Agreement and Covenant was acknowledged before me this 11th day of April, 2014 by Mary S. Dunlop, Trustee of the Mary S. Dunlop Revocable Trust dated April 12, 2006.

Witness my hand and official seal.
My commission expires: 7-16-2016

SUSAN KARL
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 07-16-2016

Susan Karl
Notary Public

STATE OF COLORADO)
)
COUNTY OF JEFFERSON)

The foregoing License Agreement and Covenant was acknowledged before me this 11th day of April, 2014 by John Dunlop III, Trustee of the John Dunlop III Revocable Trust dated April 12, 2006.

Witness my hand and official seal.
My commission expires: 7-16-2016

SUSAN KARL
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 07-16-2016

Susan Karl
Notary Public



Contract Control Number:

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 _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



EXHIBIT A
TO
LICENSE AGREEMENT AND COVENANT

A parcel of land located in the SE1/4 of the SW1/4 of Section 1, Township 5 South, Range 71. West of the Sixth P.M., described as follows:

BEGINNING at Corner No. 1, whence the South Quarter (S1/4) Cor. of Section One (1), Township Five (5) South, Range Seventy-One (71) West of the Sixth P.M., bears South 13 degrees 8 minutes East Six Hundred Ninety-Eight and Three Tenths (698.3) feet,
thence North Three Hundred Thirteen and Five-Tenths (313.5) feet to Corner No. 2,
thence West Two Hundred Nine (209) feet to Corner No. 3,
thence South Three Hundred Thirteen and Five-Tenths (313.5) feet to Corner No. 4,
thence East Two Hundred Nine (209) feet to PLACE OF BEGINNING.
County of Jefferson, State of Colorado

EXHIBIT B

ACCESS ROAD EXHIBIT

LEGAL DESCRIPTION:

AN ACCESS ROAD OVER AND ACROSS A PORTION OF THE SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 5 SOUTH, RANGE 71 WEST OF THE 6TH P.M. FOR ACCESS TO MYERS GULCH ROAD FROM THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 91039241, JEFFERSON COUNTY, COLORADO RECORDS, SAID ACCESS ROAD BEING APPROXIMATELY 12 FEET WIDE ALONG THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED AT RECEPTION NO. 91039241 FROM WHENCE THE NORTHEAST CORNER THEREOF BEARS S.89°57'28"E. A DISTANCE OF 171.37 FEET, SAID POINT BEING A POINT ON A CURVE FROM WHENCE THE RADIAL POINT THEREOF BEARS S.42°24'02"W. A DISTANCE OF 144.16 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 43.86 FEET TO THE POINT OF TANGENCY; THENCE N.65°01'49"W. A DISTANCE OF 14.20 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 117.60 FEET, THROUGH A CENTRAL ANGLE OF 46°04'00"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 94.55 FEET TO THE POINT OF TANGENCY; THENCE N.18°57'49"W. A DISTANCE OF 104.03 FEET; THENCE N.22°40'43"W. A DISTANCE OF 43.91 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 125.80 FEET, THROUGH A CENTRAL ANGLE OF 61°16'14"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 134.52 FEET TO THE POINT OF TANGENCY; THENCE N.83°56'57"W. A DISTANCE OF 38.02 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 288.98 FEET, THROUGH A CENTRAL ANGLE OF 19°03'17"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 96.10 FEET TO THE POINT OF TANGENCY; THENCE N.64°53'39"W. A DISTANCE OF 56.76 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 319.02 FEET, THROUGH A CENTRAL ANGLE OF 22°10'10"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 123.44 FEET TO THE POINT OF TANGENCY; THENCE N.42°43'29"W. A DISTANCE OF 119.76 FEET; THENCE N.40°22'10"W. A DISTANCE OF 108.75 FEET; THENCE N.36°21'28"W. A DISTANCE OF 91.90 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 77.57 FEET, THROUGH A CENTRAL ANGLE OF 79°55'21"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 108.20 FEET TO THE POINT OF TANGENCY; THENCE N.43°33'53"E. A DISTANCE OF 25.67 FEET; THENCE N.46°46'46"E. A DISTANCE OF 93.46 FEET TO A POINT ON THE EDGE OF THE ASPHALT OF MYERS GULCH ROAD AS TRAVELED, SAID POINT BEING N.43°44'46"W. A DISTANCE OF 1200.63 FEET FROM THE NORTHEAST CORNER OF SAID TRACT OF LAND DESCRIBED AT RECEPTION NO. 91039241, SAID POINT BEING THE POINT OF TERMINUS OF THE CENTERLINE HEREON DESCRIBED.

COUNTY OF JEFFERSON, STATE OF COLORADO.

BEARINGS ARE BASED ON A LAND SURVEY PLAT BY BORMAN SURVEYING, INC. RECORDED AT RECEPTION NO. 2014014912, JEFFERSON COUNTY RECORDS.

DATE: 2/26/2014

JOB NO. 14-0206



BORMAN SURVEYING, INC.

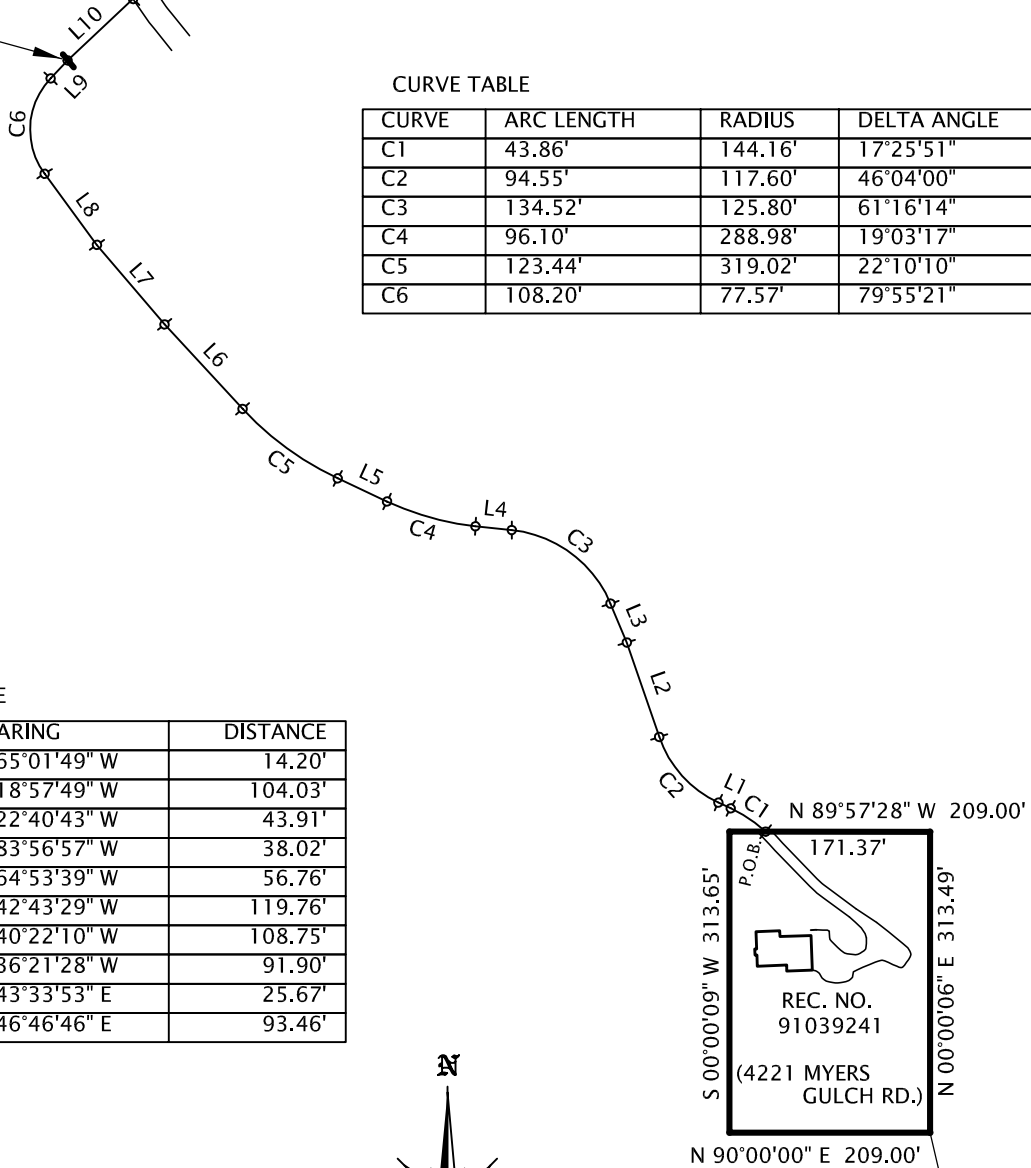
6079 PARK ST. EVERGREEN CO 80439

PHONE: 303-674-6065

ACCESS ROAD EXHIBIT

MYERS GULCH ROAD
AS TRAVELED

GATE

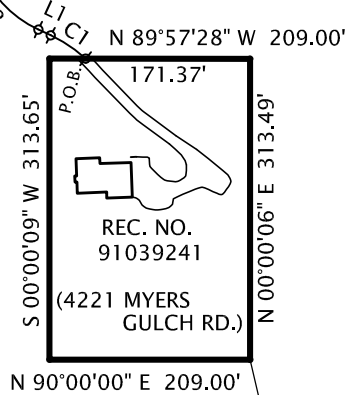
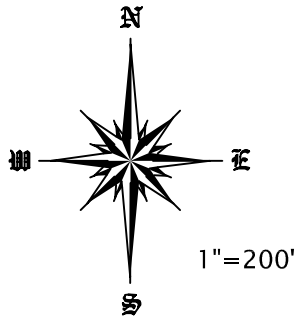


CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE
C1	43.86'	144.16'	17°25'51"
C2	94.55'	117.60'	46°04'00"
C3	134.52'	125.80'	61°16'14"
C4	96.10'	288.98'	19°03'17"
C5	123.44'	319.02'	22°10'10"
C6	108.20'	77.57'	79°55'21"

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 65°01'49" W	14.20'
L2	N 18°57'49" W	104.03'
L3	N 22°40'43" W	43.91'
L4	N 83°56'57" W	38.02'
L5	N 64°53'39" W	56.76'
L6	N 42°43'29" W	119.76'
L7	N 40°22'10" W	108.75'
L8	N 36°21'28" W	91.90'
L9	N 43°33'53" E	25.67'
L10	N 46°46'46" E	93.46'



DATE: 2/26/2014

JOB NO. 14-0206



BORMAN SURVEYING, INC.
6079 PARK ST. EVERGREEN CO 80439
PHONE: 303-674-6065

SEE REC. NO. 84072924

SW COR SEC 1

S 87°43'28" W 2545.97'

S 13°08' E 6983.3'

S 1/4 COR SEC 1