

**GRANT OF EASEMENT
STORM WATER SYSTEM**

THIS GRANT OF EASEMENT (“Grant”) is granted effective as of the ____ day of _____, 2014, by the CITY AND COUNTY OF DENVER, a Colorado municipal corporation (“Grantor”), to TOWN CENTER METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“Grantee”), whose address is 4908 Tower Road, Denver, Colorado, 80249.

RECITALS

A. Grantor is owner of certain real property located in the City and County of Denver, Colorado, which is part of the High Line Trail Corridor and more particularly described and depicted as Parcel 1 and Parcel 2 on **Exhibit A** attached hereto and incorporated herein by this reference (jointly referred to herein as the “**Easement Parcels**”).

B. Grantee desires to construct a storm sewer system to serve the development of the property adjacent to the Easement Parcels.

C. In order to complete the construction of the storm sewer system, Grantee has requested, and Grantor has agreed to grant Grantee, its successors and assigns, a perpetual easement on, over under and across the Easements Parcels, as more fully described herein and on the terms and conditions contained in this Easement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby grants to Grantee and Grantee hereby agrees to accept and comply with the terms hereof as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive easement (“**Easement**”) on, over, under, through and across the Easement Parcels for the use by Grantee and Grantee’s Permittees (as defined below) for purpose of constructing, reconstructing, operating, maintaining, repairing, inspecting, replacing, removing, and upgrading a storm sewer system and related facilities (“**Storm Water System**”). As used herein “**Permittees**” means, as the context requires, the respective successors, assigns, grantees, lessees, agents, employees and contractors of Grantee.

2. Restrictions During Construction, Repairs, Upgrading or Replacement. The construction and installation of the Storm Water System shall be in accordance with the construction plans submitted to and approved by the Denver Department of Parks and Recreation. Any construction on or about the Easement Parcels which impacts property owned by the City and County of Denver, including the operation and public use of the High Line Trail, shall be completed within 90 days from the start of construction, unless Grantor has extended such period in writing. For any subsequent construction, repairs, upgrading or replacement work on or about the Easement Parcels which impacts property owned by the City and County of Denver, the work shall be completed within the time frame specified in the Temporary Construction and Access Permit (see below). In the event such construction, repair, upgrading or replacement impacts any trail use of the High Line Trail, such work must comply with the guidelines set forth by the City and County of Denver publication known as the “Construction Detour Standards for Bikeways and Multi-use Trails.” If Grantee contemplates the need for one or more detours around existing trails, Grantee shall obtain the review and approval of the City and County of Denver prior to commencement of work in the Easement Parcels. Any construction, repair, upgrading or replacement on the Easement Parcels or involving the High Line Trail shall comply with the current Denver Parks and Recreation Standard Specifications and the Denver Parks and Recreation Planning, Design and Construction Standards. Any outfall structures for the Storm Water System shall be located no closer than twenty feet (20’) to the nearest

edge of the High Line Trail. Prior to the commencement of construction, repairs, upgrading, or replacement, the Grantee shall also obtain from the City and County of Denver a Temporary Construction and Access Permit. The Easement Parcels and any other City-owned property impacted by the Grantee's work shall be restored or improved, as prescribed in the Temporary Construction and Access Permit.

3. Grant Without Warranties. The Easement on the Easement Parcels is being granted in an "as-is, where-is" condition. Grantor makes no warranty of any kind in relation to the granted Easement and the Easement Parcels.

4. Reservation & Responsibilities.

(a) Reservation. Grantor reserves its right to use and enjoyment of the Easement Parcels not inconsistent with this Easement; provided, however, that the Grantee acknowledges and covenants that the operation and use of the Easement shall be conducted at all times in manner that protects and preserves the primary use of the property described in Exhibit A as a publicly used regional trail.

(b) Responsibilities. The Grantor shall have no responsibility for the operation, protection, care, maintenance, repair, upgrading or replacement of the Storm Water System. The Grantee shall be responsible for the operation, protection, care, maintenance, repair, upgrading or replacement of the Storm Water System and shall make such repairs or replacements to the High Line Trail or other City-owned property resulting from damage caused by or associated with the operation or failure of the Storm Water System.

5. Indemnification.

(a) Grantee shall neither hold nor attempt to hold Grantor liable for any injury or damage, either proximate or remote, occurring through or caused by injury, accident or other cause to the improvements or personal property of Grantee within the Easement Parcels or used for the purposes of the Easement, whether by reason of the negligence or fault of the Grantee or its Permittees thereof, or by any other person or otherwise, except resulting from the sole negligent acts or omission of Grantor or its employees, agents or contractors. Grantee hereby agrees to indemnify, defend and save Grantor harmless of and from all liability, loss, damages, costs, or expenses, including attorney's fees, on account of injuries to the person or property of Grantee or its Permittees for any cause whatsoever, except for injury to the person or property of such other person caused by the sole negligence of Grantor, its employees, agents, or contractors.

(b) Grantee hereby waives any and all rights of recovery, claim, action or cause of action against Grantor, its agents, officers or employees, for any loss or damage to the improvements and/or its personal property, or loss of use, occurring out of the use by Grantee or its Permittees of the Easement Parcels, except resulting from the sole negligent acts or omissions of Grantor or its employees, agents or contractors. Grantee covenants that no insurer shall hold any right of subrogation against Grantor or its agents, officers, employees or licensees.

6. Environmental Requirements.

(a) Grantee and its Permittees, in conducting any activity on any of the Easement Parcels, shall comply with all applicable local, state or 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. For purposes of this Easement, the term "Hazardous Materials" shall mean asbestos, asbestos-containing soil, and asbestos-containing

materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, herbicides 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, rule, regulation or order. Grantee and its Permittees shall obtain all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements relating to Grantee's use of the Easement Parcels.

(b) Grantee hereby agrees to indemnify, defend and hold harmless the Grantor from and against any and all Environmental Liabilities, whenever and by whomever asserted.

As used in this Paragraph 6, "Environmental Liabilities" shall mean any obligations or liabilities (including, without limitation, any claims, demands, actions, suits, enforcement actions, judgments, orders, writs, decrees, permits or injunctions imposed by any court, administrative agency, tribunal or otherwise, or other assertions of obligations and liabilities) that are:

(i) related to protection of the environment or human health or safety and involving the Easement or the Easement Parcels (including, but not limited to, on-site or off-site contamination by pollutants, whether known or unknown, and occupational safety and health); and

(ii) arising out of the use by Grantee of the Easement or the Easement Parcels and arising out of, based upon or related to (x) environmental protection laws, or (y) any judgment, order, writ, decree, permit or injunction imposed by any court, administrative agency, tribunal or otherwise.

The term "Environmental Liabilities" shall include, but not be limited to: (i) fines, penalties, judgments, awards, settlements, losses, damages (including foreseeable and unforeseeable consequential damages), costs, fees (including reasonable attorneys' and consultants' fees), expenses and disbursements; (ii) defense and other responses to any administrative or judicial action (including claims, notice letters, complaints, and other assertions of liability); and (iii) financial responsibility for (x) cleanup costs and injunctive relief, including any corrective action, removal, remedial or other response actions, and natural resources damages, (y) any other compliance or remedial measures, and (z) bodily injury, medical monitoring, wrongful death, and property damage.

The terms "removal", "remedial" and "response" shall include, without limitation, the types of activities covered by CERCLA, as amended, and whether the activities are those which might be taken by a government entity or those which a government entity might seek to require of waste generators, storers, treaters, owners, operators, transporters, disposers or other persons under "removal", "remedial", or other "response" actions.

7. Insurance.

(a) General Conditions. Grantee agrees to secure, at or before the execution of this Easement, general liability insurance in the amounts declared to be the limits of liability set forth in the Colorado Governmental Immunity Act (C.R.S. 24-10-101 et seq) as the same may be amended from time to time. Grantee shall keep the required insurance coverage in force at all times during the term of this Easement, and for three (3) years after termination of the Easement. The required insurance shall be underwritten by the Special District Liability Pool. The policy shall contain a valid provision or endorsement requiring

notification to the City in the event any of the required policies is cancelled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Easement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Grantee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notice section in accordance with the Notice section, referencing this Easement. The insurance coverages specified in this Easement are the minimum requirements, and these requirements do not lessen or limit the liability of the Grantee. The Grantee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Easement.

(b) **Proof of Insurance.** Grantee shall provide a copy of this Easement to its insurance agent or broker. Grantee may not commence services or work relating to this Easement prior to placement of the coverage required under this Easement. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Easement shall not act as a waiver of Grantee's breach of this Easement or of any of the City's rights or remedies under this Easement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(c) **Additional Insureds.** For General Liability coverage, Grantee's insurer shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) **Waiver of Subrogation.** Grantee's insurer shall waive subrogation rights against the City and its elected and appointed officials and employees.

(e) **Contractors and Consultants.** All contractors and consultants (including independent contractors, suppliers or other entities providing goods or services relating to the Easement, including construction, required by this Easement) shall be subject to all of the insurance requirements herein and shall procure and maintain the same coverages required of the Grantee. Grantee shall include all such contractors and consultants as an additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such contractors and consultants maintain the required coverages. Grantee agrees to provide proof of insurance for all such contractors and consultants upon request by the City.

8. **Default.**

(a) It shall be considered a "Default" or "Event of Default" hereunder if Grantee fails to perform any of the agreements, terms, conditions or covenants hereof required to be performed and such nonperformance shall continue for a period of thirty (30) days after notice from Grantor, or if such performance cannot reasonably be accomplished within such thirty (30) day period, or if Grantee shall not in good faith have commenced such performance within such thirty (30) day period and shall not diligently proceed therewith to completion.

(b) In the event of a Default by Grantee, Grantor shall have the right, at Grantor's option, to perform any such item at Grantee's expense and recover the cost of such performance plus interest thereon at the rate of eight percent (8%) per annum from the date paid by Grantor until reimbursed by Grantee. Grantor's rights hereunder shall be in addition to, and not in lieu of, any other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise including, but not limited to, suits for injunctive relief and specific performance.

(c) In the event of a Default by Grantor, Grantee hereby waives all rights and remedies it may have against Grantor in law or equity, except for specific performance or injunctive relief.

9. Notices. All notices, consents, requests or other communications (any of the foregoing, a "Notice") given hereunder shall be in writing sent by electronic email, followed by a hard copy via hand delivery or reputable overnight courier addressed to the party to be so notified at its address set forth below, or to such other address as such party may hereafter specify in accordance with the provisions of this Paragraph. Any Notice shall be deemed to have been received: (a) on the date of delivery by hand, if delivered during business hours on a business day (otherwise on the next business day), or (b) on the next business day, if sent by an overnight commercial courier, in each case addressed to the following parties:

Grantor:	Mayor City and County of Denver 1437 Bannock Street, Room 350 Denver, Colorado 80202
With a copy to:	Manager of Parks and Recreation 201 W. Colfax Avenue, Dept. 601 Denver, Colorado 80202
With a copy to:	Denver City Attorney 201 W. Colfax Avenue, Dept 1207 Denver, Colorado 80202 Attention: Municipal Operations Director
Grantee:	Town Center Metropolitan District 4908 Tower Road Denver, Colorado 80249 Attention: District President
With a copy to:	Mathew R. Dalton, Esq. Spencer Fane 1700 Lincoln Street #2000 Denver, Colorado 80203

10. Severability. In the event any clause, sentence or any portion of the terms, conditions, covenants and provisions of this Easement are deemed illegal, null or void for any reason, or are held by any court of competent jurisdiction to be so, the remaining portions of this Easement shall remain in full force and effect.

11. Choice of Law. This Easement shall be governed by the laws of the State of Colorado and the laws, rules and regulations of the City and County of Denver.

12. Captions for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Easement.

13. Exhibits. All exhibits to this Easement are incorporated herein and made a part hereto as if fully set forth herein.

14. Successors. This Easement shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto, their heirs, successors, or assigns.

15. Appropriation. Any obligations of Grantor and Grantee hereunder are subject to the prior appropriation of monies expressly made by the respective party for such purposes.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and official seals to be effective as of the date first set forth above.

ATTEST: CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation

Clerk and Recorder, Ex-Officio Clerk for the City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:

D. Scott Martinez, Attorney for the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Chief Financial Officer

By: _____
Auditor

STATE OF COLORADO)
)ss
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Michael B. Hancock, Mayor of the City and County of Denver.

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN CENTER METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision
of the State of Colorado

By: _____
Jerry A. Jacobs, Vice President

STATE OF COLORADO)
)ss
CITY AND COUNTY OF DENVER)

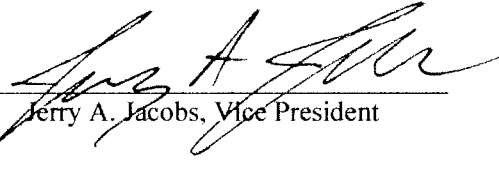
The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by Jerry A. Jacobs, as Vice President of Town Center Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN CENTER METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision
of the State of Colorado

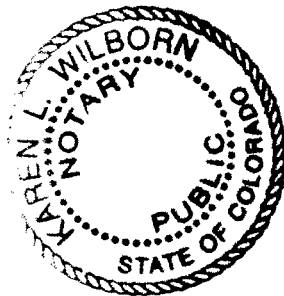
By: 
Jerry A. Jacobs, Vice President

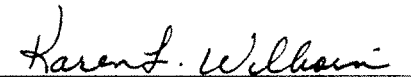
STATE OF COLORADO)
)ss
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 1st day of August, 2014, by Jerry A. Jacobs, as Vice President of Town Center Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: 6/17/2016




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"

TWO PARCELS OF LAND BEING A PART OF "PARCEL 5" AS RECORDED AT RECEPTION NO. 2002108637, CITY AND COUNTY OF DENVER RECORDS, ALSO BEING A PART OF THE SOUTH ONE-HALF (S 1/2) OF SECTION 14, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

COMMENCING AT THE SOUTH ONE-QUARTER (S 1/4) CORNER OF SAID SECTION 14; THENCE N26°16'49"W, A DISTANCE OF 1837.29 FEET TO A POINT ON THE SOUTHERLY LINE OF "PARCEL 5" AS RECORDED AT RECEPTION NO. 2002108637, CITY AND COUNTY OF DENVER RECORDS, SAID POINT BEING THE **POINT OF BEGINNING**; THENCE N00°18'06"E, A DISTANCE OF 30.06 FEET TO THE NORTHERLY LINE OF SAID PARCEL 5; THENCE ALONG SAID NORTHERLY LINE AND ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 01°08'52", A RADIUS OF 1000.00 FEET, AN ARC LENGTH OF 20.03 86 FEET, AND WHOSE CHORD BEARS S86°30'09"E, A DISTANCE OF 20.03 FEET; THENCE S00°18'06"W, A DISTANCE OF 30.03 FEET TO A POINT ON SAID SOUTHERLY LINE OF PARCEL 5; THENCE ALONG SAID SOUTHERLY LINE AND ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 01°06'51", A RADIUS OF 1030.00 FEET, AN ARC LENGTH OF 20.03 FEET, AND WHOSE CHORD BEARS N86°35'45"W, A DISTANCE OF 20.03 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 601 SQUARE FEET (0.014 ACRES) OF LAND, MORE OR LESS.

TOGETHER WITH PARCEL 2

COMMENCING AT THE SOUTH ONE-QUARTER (S 1/4) CORNER OF SAID SECTION 14; THENCE N03°58'06"E, A DISTANCE OF 1475.66 FEET TO A POINT OF THE SOUTHERLY LINE OF SAID PARCEL 5; SAID POINT ALSO BEING THE **POINT OF BEGINNING**; THENCE N11°12'42"W, A DISTANCE OF 56.76 FEET; THENCE N78°47'18"E, A DISTANCE OF 20.00 FEET; THENCE S11°12'43"E, A DISTANCE OF 60.53 FEET TO A POINT ON SAID SOUTHERLY LINE; THENCE S89°28'07"W, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 20.35 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1,173 SQUARE FEET (0.027 ACRES) OF LAND, MORE OR LESS.

THE BEARINGS ARE BASED UPON THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SECTION 14, T3S, R66W, 6TH P.M. AND IS ASSUMED TO BEAR N89°49'05"E AND IS MONUMENTED AS SHOWN ON THE ATTACHED EXHIBITS.

PREPARED BY:

JANET A. CALDWELL, P.L.S. 29027

FOR AND ON BEHALF OF THE LUND PARTNERSHIP, INC.

12265 W. BAYAUD AVE. SUITE 130

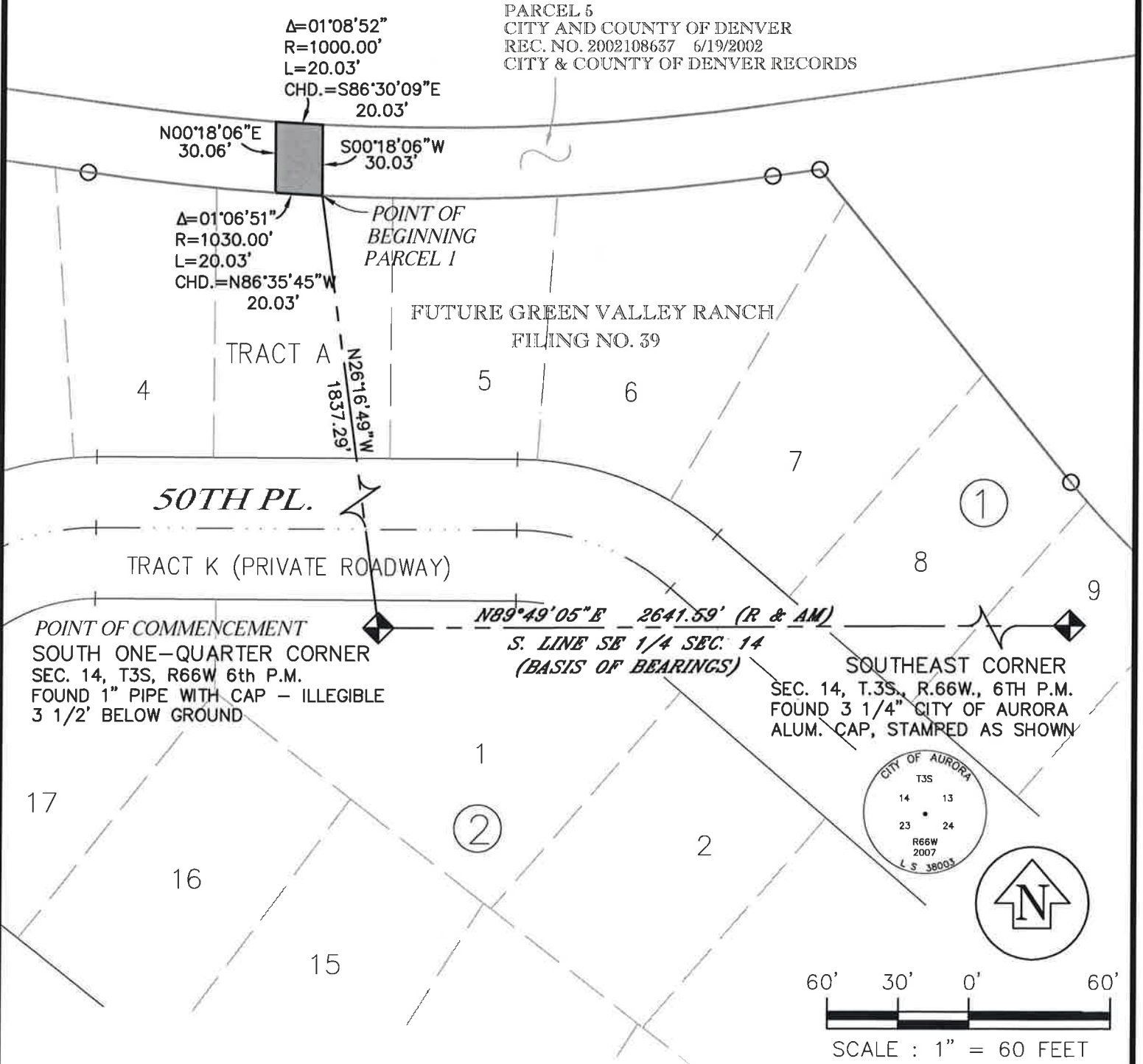
LAKWOOD, COLORADO 80228



EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE PARCEL DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION AND IS NOT INTENDED TO INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-106.

S 1/2 SECTION 14
T.3S., R.66W., 6TH P.M.



JOB NO.: 328-1203
SCALE: 1" = 60'
DATE: APRIL 9, 2014
PAGE: 2 OF 3
DRAWN BY: JAC

A PART OF PARCEL 5, RECEPTION NO. 2002108637
LOCATED IN THE SOUTH 1/2 SECTION 14
TOWNSHIP 3 SOUTH, RANGE 68 WEST, 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO

LUND
PARTNERSHIP

P: 303.989.1461 F: 303.989.4094
CIVIL ENGINEERING & SURVEYING

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

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S 1/2 SECTION 14
T.3S., R.66W., 6TH P.M.

PARCEL 5
CITY AND COUNTY OF DENVER
REC. NO. 2002108637 6/19/2002
CITY & COUNTY OF DENVER RECORDS

N78°47'18"E
20.00'
S117°42'E
60.53'
N117°42"W
56.76'
S89°28'07"W
20.35'

POINT OF BEGINNING
PARCEL 2

N03°58'06"E
1475.66'

FUTURE GREEN VALLEY RANCH
FILING NO. 39

1

30

TRACT C

31

14

N89°49'05"E 2641.59' (R & AM)

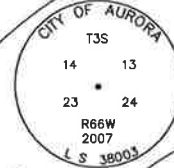
S. LINE SE 1/4 SEC. 14
(BASIS OF BEARINGS)

POINT OF COMMENCEMENT
SOUTH ONE-QUARTER CORNER
SEC. 14, T3S, R66W 6th P.M.
FOUND 1" PIPE WITH CAP - ILLEGIBLE
3 1/2' BELOW GROUND

SOUTHEAST CORNER
SEC. 14, T.3S., R.66W., 6TH P.M.
FOUND 3 1/4" CITY OF AURORA
ALUM. CAP, STAMPED AS SHOWN

15

29



SCALE : 1" = 60 FEET

AREA: 1,173 SQ.FT. (0.027 ACRES ±)

JOB NO.: 328-1203
SCALE: 1" = 60'
DATE: APRIL 9, 2014
PAGE: 2 OF 3
DRAWN BY: JAC

A PART OF PARCEL 5, RECEPTION NO. 2002108637
LOCATED IN THE SOUTH 1/2 SECTION 14
TOWNSHIP 3 SOUTH, RANGE 68 WEST, 6TH P.M.
CITY AND COUNTY OF DENVER, STATE OF COLORADO

LUND
PARTNERSHIP
P: 303.989.1461 F: 303.989.4094
CIVIL ENGINEERING & SURVEYING