

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

RESOLUTION 12-18

Approval of a Three Party Non-Standard Public Use Easement -
SEMSWA / Arapahoe County & Arapahoe Parks and Recreation District

WHEREAS, the Arapahoe Parks and Recreation District (Applicant), is developing a trail known as the Spring Creek Nature Trail, (Case No. L11-007/D11-2027), and the trail will provide public access along S. Himalaya Street through a parcel of land owned by SEMSWA (Owner), to the Spring Creek Park No.1; and

WHEREAS, the Applicant's engineer has designed an 8 foot wide concrete trail for public use within open space now owned by SEMSWA; and

WHEREAS, Arapahoe County has requested that SEMSWA convey an easement to it for access to the trail for maintenance purposes as well as for pedestrian use of the trail by the general public; and

WHEREAS, there are no adverse impacts or restrictions on SEMSWA as a result of granting the requested easement; and

WHEREAS, the standard Arapahoe County Public Use Easement has been modified to allow for a three party agreement between the Applicant, Arapahoe County, and SEMSWA as the Owner, in which the maintenance responsibilities are assigned to the Applicant; and

WHEREAS, the Three Party Non-Standard Public Use Easement has been prepared by Arapahoe County staff, SEMSWA staff and legal counsel and approved by the Applicant, Arapahoe County, and SEMSWA.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Three Party Non-Standard Public Use Easement attached hereto as Exhibit A and authorizes the Executive Director of SEMSWA to execute the Easement.

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

**PUBLIC USE
EASEMENT AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Southeast Metro Stormwater Authority whose legal address is 76 Inverness Drive East, Suite A, Englewood, CO 80112, (the "Grantor"), hereby grants, bargains, sells and conveys to the COUNTY OF ARAPAHOE, COLORADO, a body corporate and politic duly organized and existing under and by virtue of the laws of the state of Colorado, whose address is 5334 South Prince Street, Littleton, Colorado 80166 (the "Grantee"), its successors and permitted assigns, a perpetual non-exclusive easement (the "Easement") to construct and maintain a pedestrian trail or sidewalk (collectively the "Improvement") in, to, through, over, under and across a certain parcel of real property located in Arapahoe County, Colorado, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), pursuant to the following terms and conditions:

1. The Grantee, its agents, successors and permitted assigns, shall have and exercise the right of ingress and egress in, to, through, over, under and across the Premises for any purpose necessary for the construction, reconstruction, installation, operation, use, maintenance, repair, replacement and/or removal of the Improvements.
2. The Grantor retains the right to the undisturbed use and occupancy of the Premises insofar as such use or occupancy is consistent with and does not impair any grant herein contained. However, the Grantor shall not construct or place any structure or building, street light, power pole, yard light, mail box or sign, whether temporary or permanent, or plant any shrub, tree, woody plant, nursery stock, garden or other landscaping design feature on any part of the Premises which will interfere with the Improvement, except with the prior consent of the Grantee which shall not be unreasonably withheld. Any structure or building, street light, power pole, yard light, mail box or sign, whether temporary or permanent, or shrub, tree, woody plant, nursery stock, garden or other landscaping design feature of any kind situated on the Premises as of the date of this Easement or subsequently placed thereon that interferes with the Improvement may, except where the Grantee has consented thereto, be removed by the Grantee without

liability for damages arising therefrom.

3. Upon completion of its activities, the Grantee, to the extent practicable, shall restore the Premises, including the surface of the ground and all landscaping, reasonably to the condition it was in immediately prior to the initiation of construction, except as necessarily modified to accommodate the Improvements.

4. The Grantee shall have the right to enter upon the Premises and to survey, construct, reconstruct, operate, use, maintain, repair, replace, and remove the Improvements, and to remove objects interfering therewith, including but not limited to these items placed on the Premises under paragraph 2 hereof. In addition, the Grantee shall have the right, subject to the Grantor's approval, to use so much of the adjoining premises of the Grantor during surveying, construction, reconstruction, use, maintenance, repair, replacement and/or removal of the Improvements as may be reasonably required.

5. The Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the Improvements. It is specifically agreed between and among the parties that, except as provided in this Agreement, the Grantor shall not take any action which would impair the lateral or subjacent support for the Improvements.

6. It is expressly acknowledged and agreed that the Grantee shall have the right and authority to assign to any appropriate local governmental entity or to any public utility provider all rights to use, and all obligations associated with, the Easement as are granted to and assumed by the Grantee herein. In addition, the Grantee shall have the right and authority to grant temporary construction easements or license agreements to any appropriate local governmental entity or public utility provider for purposes authorized herein with respect to the Improvements.

7. The Grantee agrees that at such time and in the event that the Easement described herein be abandoned by the Grantee and any permitted assignee under paragraph 6 hereof, such Easement shall terminate and the real property interest represented by such Easement shall revert to the Grantor, its heirs, successors and/or assigns.

8. The Grantor warrants it has lawful authority to execute this *Public Use Easement Agreement*. The Grantee acknowledges that it is taking the Premises subject to all easements,

restrictions, rights of way of record and other matters of record.

9. The Grantee and its successors and assigns shall, to the extent permitted by law, defend, indemnify and hold the Grantor harmless from any and all liability resulting from the Grantee's construction, use and maintenance of the Improvement and the public's use thereof.

10. Arapahoe Park And Recreation District, a Colorado Special District ("APRD") whose address is 16799 East Lake Avenue, Centennial Colorado 80015 by execution of this *Public Use Easement Agreement* agrees to assume and does assume the Grantee's obligation hereunder to construct and maintain the Improvement so that the public may safely use the Improvement. APRD also agrees, the extent permitted by law and without waiving limitations contained in the Colorado Governmental Immunity Act, §§24-10-101, et seq, to defend, indemnify and hold the Grantor and Grantee harmless from any and all liability resulting from APRD's construction, maintenance of or failure to maintain the Improvement. If APRD shall fail to properly construct and maintain the Improvement, Grantee shall be responsible for such construction and maintenance.

11. Each and every one of the benefits and burdens of this Easement shall inure to and be binding upon the respective legal representatives, heirs, administrators, successors and permitted assigns of the Grantor and the Grantee.

12. Severability. If any portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the parties hereto that the remaining provisions of this Agreement shall be full force and effect.

13. Extent of Agreement. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representatives, or agreements, either written or oral.

14. Amendments. Any amendments to this Agreement shall be in writing and signed by both parties.

15. Attorney Fees. In the event of litigation between the parties hereto to enforce the terms of this Agreement, the prevailing party in such litigation shall be entitled to its own costs, including reasonable attorney fees and expert witness fees, from the opposing party.

GRANTOR: Southeast Metro Stormwater Authority

By: _____

Title: _____

State of Colorado }
 }ss
County of }

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as _____ of the Southeast Metro Stormwater Authority.

My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary

ACCEPTED BY GRANTEE:

For the Board of County Commissioners
Arapahoe County

David M. Schmit, P.E., Director, Public Works and Development
Authorization pursuant to Resolution No. _____

ONLY AS TO PARAGRAPH 10 OF THIS PUBLIC USE EASEMENT AGREEMENT:

ARAPAHOE PARK AND RECREATION
DISTRICT

By: _____

Name: Lynn Cornell

Title: District Manager

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
2012, by Lynn Cornell, District Manager of ARAPAHOE PARK AND RECREATION
DISTRICT.

Witness my hand and official seal.

My Commission expires: _____.

Notary Public

EXHIBIT A
PROPERTY DESCRIPTION
PUBLIC USE EASEMENTS

PARCEL 1

A STRIP OF LAND 16.00 FEET WIDE OVER THAT CERTAIN PORTION OF TRACT A, MESA FILING NO. 1, IN THE COUNTY OF ARAPAHOE, STATE OF COLORADO, PER PLAT RECORDED NOVEMBER 21, 1997, AT RECEPTION NO. A7147541, IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, LYING WITHIN THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 66 WEST, 6TH PRINCIPAL MERIDIAN, IN SAID COUNTY AND STATE, THE CENTERLINE OF SAID STRIP OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 2, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°12'28" WEST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID WEST LINE;
THENCE SOUTH 69°58'02" EAST, 959.95 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET AS SHOWN ON SAID PLAT OF MESA FILING NO. 1 AND THE **POINT OF BEGINNING**, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 100.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 47°09'38" WEST;
THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY, SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°44'31" AN ARC LENGTH OF 8.28 FEET;
THENCE TANGENT TO SAID CURVE, SOUTH 47°34'53" WEST, 40.66 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 100.00 FEET;
THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°37'39" AN ARC LENGTH OF 62.18 FEET;
THENCE TANGENT TO SAID CURVE, SOUTH 11°57'14" WEST, 34.05 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 250.00 FEET;
THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°22'32" AN ARC LENGTH OF 67.09 FEET;
THENCE TANGENT TO SAID CURVE, SOUTH 03°25'18" EAST, 80.19 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 400.00 FEET;
THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°39'46" AN ARC LENGTH OF 67.46 FEET;
THENCE TANGENT TO SAID CURVE, SOUTH 13°05'04" EAST, 21.71 FEET TO SAID WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET AND THE **POINT OF TERMINUS**;

CONTAINS 6,108 SQ. FT. OR 0.140 ACRES, MORE OR LESS.

THE SIDELINES OF SAID STRIP OF LAND ARE TO BE PROLONGED OR SHORTENED SO AS TO TERMINATE NORTHEASTERLY AND SOUTHEASTERLY AT SAID WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET.

PARCEL 2

THAT CERTAIN PORTION OF TRACT A, MESA FILING NO. 1, IN THE COUNTY OF ARAPAHOE, STATE OF COLORADO, PER PLAT RECORDED NOVEMBER 21, 1997, AT RECEPTION NO. A7147541, IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, LYING WITHIN THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 66 WEST, 6TH PRINCIPAL MERIDIAN, IN SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 2, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS SOUTH 00°12'28" WEST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID WEST LINE;

THENCE SOUTH 33°56'55" EAST, 1397.52 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET AS SHOWN ON SAID PLAT OF MESA FILING NO. 1 AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WESTERLY LINE, SOUTH 20°00'05" WEST, 23.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 83.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°30'49" AN ARC LENGTH OF 51.45 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 13°48'47" EAST, 32.67 FEET TO SAID WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, NORTH 02°00'00" EAST, 104.14 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 760 SQ. FT. OR 0.017 ACRES, MORE OR LESS.

PARCEL 3

THAT CERTAIN PORTION OF TRACT B, SPRING CREEK MEADOWS FILING NO. 1, IN THE COUNTY OF ARAPAHOE, STATE OF COLORADO, PER PLAT RECORDED NOVEMBER 21, 1985, AT RECEPTION NO. R2603699, IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, LYING WITHIN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 5 SOUTH, RANGE 66 WEST, 6TH PRINCIPAL MERIDIAN, IN SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 2, WHENCE THE WEST LINE OF SAID NORTHWEST QUARTER BEARS NORTH 00°12'28" EAST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO SAID WEST LINE;

THENCE SOUTH 70°50'13" EAST, 696.04 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET AS SHOWN ON SAID PLAT OF SPRING CREEK MEADOWS FILING NO. 1 AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY, SOUTH 22°46'18" EAST, 17.04 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 12.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38°58'46" AN ARC LENGTH OF 8.16 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 16°12'28" WEST, 22.24 FEET;

THENCE SOUTH 13°41'09" WEST, 7.51 FEET;

THENCE SOUTH 86°02'43" EAST, 16.23 FEET;

THENCE NORTH 13°41'09" EAST, 4.41 FEET;

THENCE NORTH 16°12'28" EAST, 10.62 FEET TO SAID WESTERLY RIGHT-OF-WAY OF SOUTH HIMALAYA STREET;

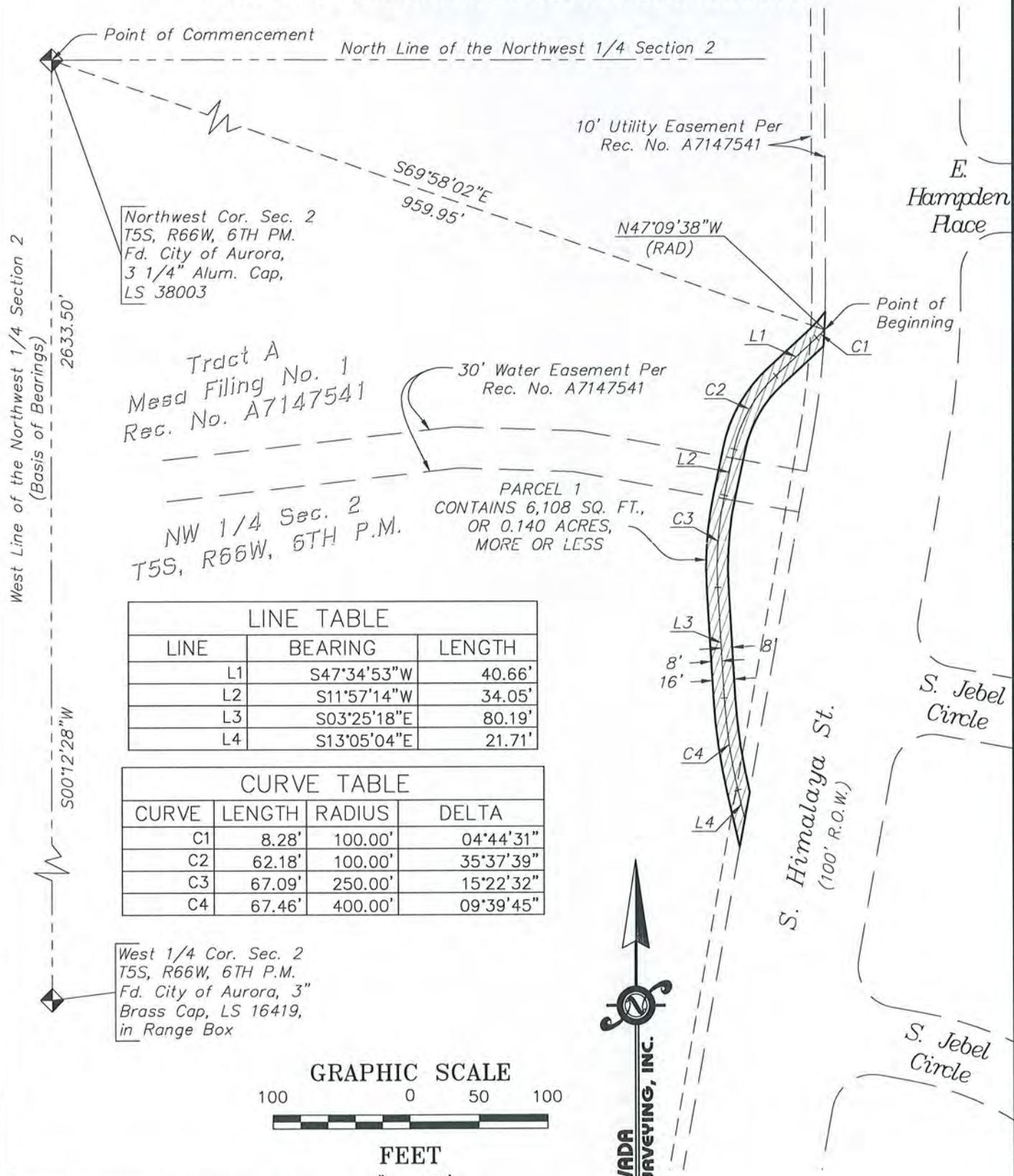
THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, NORTH 26°17'43" WEST, 43.50 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 423 SQ. FT. OR 0.010 ACRES, MORE OR LESS.

ALL AS SHOWN ON THE ATTACHED EXHIBIT TO ACCOMPANY PROPERTY DESCRIPTION.

ROBERT D. SNODGRASS, PLS 36580
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR
FOR AND BEHALF OF CALVADA SURVEYING, INC.

EXHIBIT TO ACCOMPANY PROPERTY DESCRIPTION



Northwest Cor. Sec. 2
T5S, R66W, 6TH PM.
Fd. City of Aurora,
3 1/4" Alum. Cap,
LS 38003

Tract A
Mesa Filing No. 1
Rec. No. A7147541

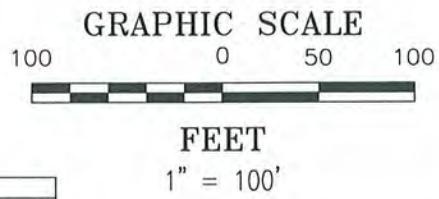
NW 1/4 Sec. 2
T5S, R66W, 6TH P.M.

PARCEL 1
CONTAINS 6,108 SQ. FT.,
OR 0.140 ACRES,
MORE OR LESS

LINE TABLE		
LINE	BEARING	LENGTH
L1	S47°34'53"W	40.66'
L2	S11°57'14"W	34.05'
L3	S03°25'18"E	80.19'
L4	S13°05'04"E	21.71'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	8.28'	100.00'	04°44'31"
C2	62.18'	100.00'	35°37'39"
C3	67.09'	250.00'	15°22'32"
C4	67.46'	400.00'	09°39'45"

West 1/4 Cor. Sec. 2
T5S, R66W, 6TH P.M.
Fd. City of Aurora, 3"
Brass Cap, LS 16419,
in Range Box

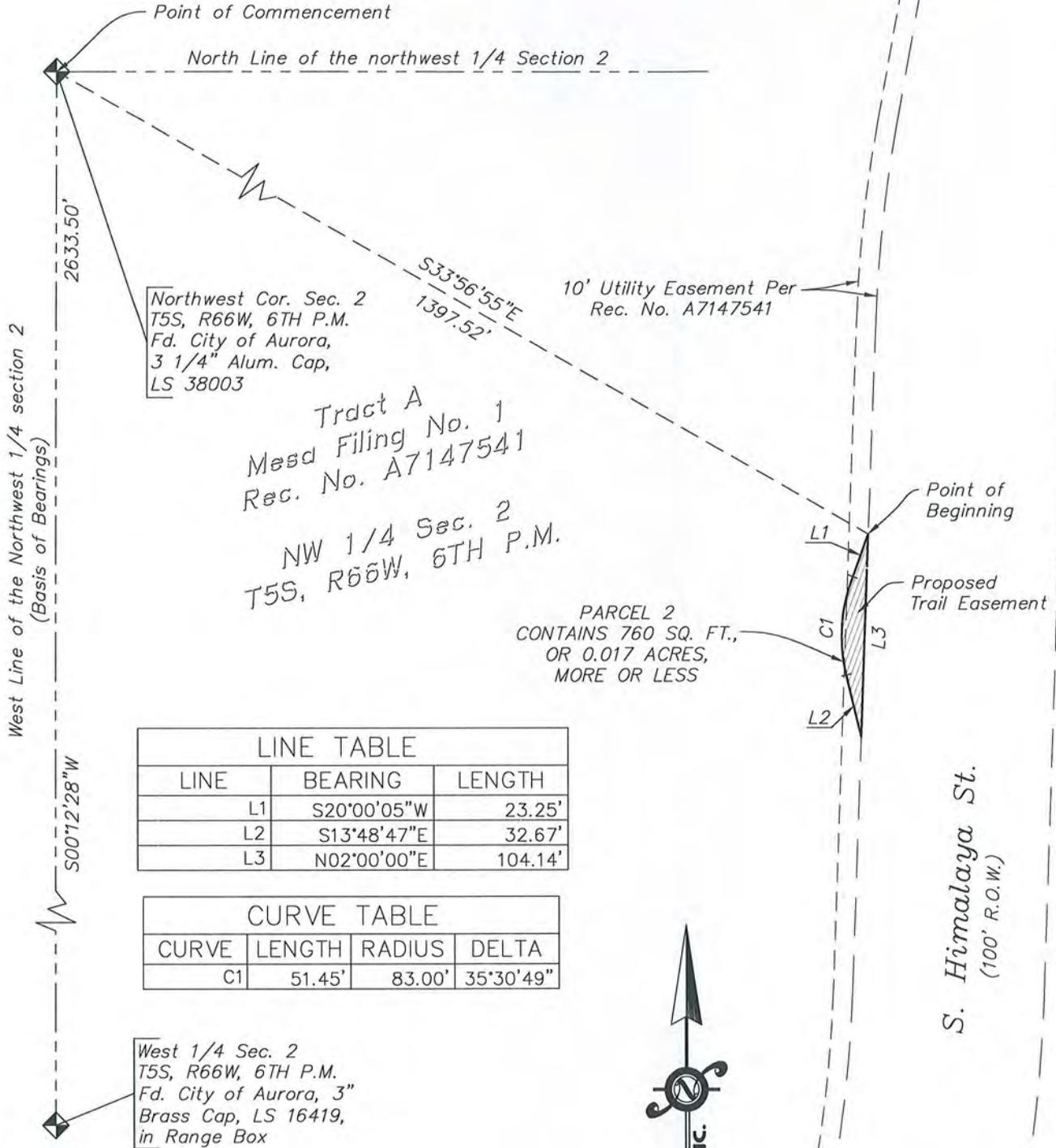


NOTE:
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. THE PURPOSE OF THIS EXHIBIT IS SOLELY TO DEPICT THE ATTACHED PROPERTY DESCRIPTION.



West Line of the Northwest 1/4 Section 2
(Basis of Bearings)
2633.50'
500'12'28" W

EXHIBIT TO ACCOMPANY PROPERTY DESCRIPTION



LINE TABLE		
LINE	BEARING	LENGTH
L1	S20°00'05"W	23.25'
L2	S13°48'47"E	32.67'
L3	N02°00'00"E	104.14'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	51.45'	83.00'	35°30'49"

West 1/4 Sec. 2
T5S, R66W, 6TH P.M.
Fd. City of Aurora, 3"
Brass Cap, LS 16419,
in Range Box

GRAPHIC SCALE



FEET
1" = 80'



NOTE:
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EXHIBIT TO ACCOMPANY PROPERTY DESCRIPTION

Tract G
Spring Creek
Meadows
Filing No. 5
Rec. No.
95017992

Northwest Cor. Sec. 2
T5S, R66W, 6TH P.M.
Fd. City of Aurora,
3 1/4" Alum. Cap,
LS 38003

LINE TABLE		
LINE	BEARING	LENGTH
L1	S22°46'18"E	17.04'
L2	S16°12'28"W	22.24'
L3	S13°41'09"W	7.51'
L4	S86°02'43"E	16.23'
L5	N13°41'09"E	4.41'
L6	N16°12'28"E	10.62'
L7	N26°17'43"W	43.50'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	8.16'	12.00'	38°58'46"

West Line of the Northwest 1/4 Section 2
(Basis of Bearings)
2633.50'
N00°12'28"E

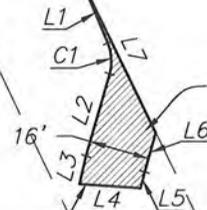
West 1/4 Cor. Sec. 2
T5S, R66W, 6TH P.M.
Fd. City of Aurora, 3"
Brass Cap, LS 16149,
in Range Box

S70°50'13"E
696.04'

Point of Commencement

S. Himalaya St.
(100' R.O.W.)

Point of Beginning



Proposed Trail Easement

PARCEL 3
CONTAINS 423 SQ. FT.,
OR 0.010 ACRES,
MORE OR LESS

30' Sanitary Sewer Easement per
Rec. No. R2603699

Tract B
Spring Creek Meadows
Filing No. 1
Rec. No. R2603699
SW 1/4 Sec. 2
T5S, R66W, 6TH P.M.



GRAPHIC SCALE

50 0 25 50



FEET

1" = 50'

NOTE:
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. THE PURPOSE OF THIS EXHIBIT IS SOLELY TO DEPICT THE ATTACHED PROPERTY DESCRIPTION.

CAL VADA
SURVEYING, INC.

SHEET 5 OF 5

JOB NO. 12049

DATE: 3/16/12

SCALE: 1" = 50'