

DRAINAGE EASEMENT AGREEMENT

DATE: _____, 2020.

GRANTOR: **DOUGLAS COUNTY SCHOOL DISTRICT RE-1**, 620 N. Wilcox Street, Castle Rock, Colorado 80104.

GRANTEE: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104.

RECITALS

Grantee has determined that it needs to acquire a non-exclusive permanent drainage easement over property owned by Grantor, and the parties have agreed to the terms and conditions for the grant and acceptance of such easement as set forth in this Drainage Easement Agreement (this "Agreement").

GRANT

Grantor, in consideration of ten dollars and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, grants to Grantee, its successors and assigns, a permanent, non-exclusive drainage easement, (as further described in Paragraph 2, the "Easement") in, over, and under certain property located in Douglas County, Colorado as described in the attached Exhibit incorporated herein by this reference (the "Easement Property").

TERMS

1. AUTHORITY. Grantor represents to Grantee that Grantor is the record owner of the Easement Property and that Grantor has the power and authority to grant the Easement.

2. USE OF EASEMENT BY GRANTEE. The right to use the Easement Property shall be for the following purposes, and such right shall belong to the Grantee and its agents, employees, designees and contractors, and all those acting by and on behalf of Grantee:

A. Ditches, Drainage Systems and Streams. To design, install, construct, reconstruct, relocate, maintain, enlarge, repair, use, operate, monitor and remove any and all grade control, water quality, and flood control structures, channel armoring, pipes, casings, wires, conduit, culverts, valves, ventilators, manholes, surface or subterranean streams, creeks, springs, seeps, wetlands, and riparian vegetation, river or other water courses either natural or manmade and any other appurtenances necessary for drainage, erosion control, bank protection, stormwater quality, flood control, stormwater conveyance, for ditches and canals for relocation of existing appurtenant and non-appurtenant utilities, and for the installation, construction, reconstruction, relocation, maintenance, enlargement, repair, use, operation, monitoring and removal of any equipment, conduit, facilities, or material necessary for the uses set forth in this paragraph (collectively, the "Drainage Improvements").

B. Access. For vehicular, pedestrian and equipment access through, on, over, under and across the Easement Property at any and all times deemed necessary by Grantee for the exercise of Grantee's rights under this Agreement.

3. USE OF EASEMENT BY GRANTOR. Grantor may use the Easement Property for any and all purposes not materially inconsistent with Grantee's rights in the Easement granted hereunder, specifically including, without limitation, the right to use the Easement Property to access Grantor's other property and the right to grant additional non-exclusive easements or other interests in the Easement Property upon, over, under, through and across the Easement Property as may be determined necessary or desirable by Grantor, subject to the terms of this Agreement.

4. NO INTERFERENCE. No building, structure, or other above or below ground obstructions that interferes with the purposes for which the Easement is granted may be placed, erected, installed or permitted upon the Easement Property without the prior written approval of the Grantee, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Grantor shall have the right to place, erect, construct, install and maintain fences, landscaping, trails, parks and drainage improvements within the Easement Property that do not cause or create impediments or alterations to the flow of ditches, drainage systems and streams without the prior written consent of Grantee. If Grantee believes Grantor is in breach of the terms of this paragraph, Grantee shall give written notice of such breach to Grantor and Grantor shall have 60 days from the date of such notice to cure the breach, provided that if the violation is of such a nature that it cannot reasonably be cured within such 60-day period, Grantor shall have such additional time as is necessary to cure the breach so long as Grantor is diligently pursuing such cure. If Grantor fails to cure the breach in the time provided in the preceding sentence, Grantee shall thereafter have the right to cure such breach at the sole expense of Grantor, and Grantor shall promptly reimburse Grantee for Grantee's reasonable expenses incurred in connection therewith. Notwithstanding the foregoing to the contrary, if such breach may result in an immediate health, safety and welfare threat to Grantee's drainage system, Grantee shall give Grantor written notice of such imminent threat and Grantor shall cure the breach immediately unless another designated period has been granted in such written notice to cure such breach. If Grantor fails to cure the breach in the time provided in the written notice, Grantee shall thereafter have the right to cure such breach at the sole expense of Grantor, and Grantor shall promptly reimburse Grantee for Grantee's reasonable expenses incurred in connection therewith. Grantor shall not in any manner interfere with the purposes for which the Easement is conveyed.

5. MAINTENANCE. Grantee shall maintain all facilities, structures, erosion control, landscaping, re-vegetation, tree mitigation and other Drainage Improvements Grantee constructs or installs, or causes to be constructed or installed, on the Easement Property (facilities and structures shall include, without limitation, municipal storm water drainage facilities and adjoining access roads). Except as provided in the preceding sentence or otherwise provided in this Agreement, Grantor, its successors or assigns, shall maintain the Easement Property.

6. RESTORATION. If Grantee's use of the Easement Property disturbs the surface of the Easement Property, Grantee shall restore said surface to the condition in which it was in prior to Grantee's use of the Easement Property, except as the surface may be permanently modified for the Drainage Improvements. In accordance with Paragraph 5, Grantee thereafter shall maintain such erosion control, landscaping, revegetation and tree mitigation improvements.

7. CONSTRUCTION. All construction activity under this Agreement by Grantee and its contractors, agents, employees, designees and all those acting by or on behalf of Grantee shall occur within the Easement Property. Grantee shall use all reasonable efforts to protect existing trees and existing vegetation from damage outside the limits of construction. Upon completion of construction, reconstruction, repair or other work performed by or on behalf of Grantee within the Easement Property, the surface of the Easement Property shall be contoured and stabilized and re-vegetated as set forth in Paragraph 6. Grantee promptly shall repair any damage to the Easement Property, improvements or Grantor's other property caused in connection with Grantee's use of the Easement Property or exercise of its rights under this Agreement. Except as otherwise provided in this Agreement with respect to Grantee's rights in the Easement and the Easement Property, the foregoing shall not be construed to grant, and shall not grant, any rights to Grantee to use or enter any of Grantor's property for any purpose whatsoever except to repair any such damage to the same.

8. CHANGES. All input and direction by Grantor regarding Grantee's use of the Easement Property shall be by written notice to the Grantee. The Grantor does not have the right to direct changes to the construction and restoration of the Drainage Improvements as set forth in this Agreement without the written consent of the Grantee. Any changes to the Drainage Improvements as requested by the Grantor solely for its purposes or preference that have a material increase to the cost of the Drainage Improvements shall be at the sole expense of the Grantor.

9. COMPLIANCE WITH LAWS; SAFETY MEASURES. Grantee shall design, construct, operate, maintain, repair, remove and replace the Drainage Improvements and perform all other activities related to this Agreement in accordance with all applicable laws, rules, ordinances, codes, permits and regulations, and in a manner and with such safeguards as are reasonably necessary to try to avoid any personal injury or property damage in connection therewith.

10. MECHANIC'S LIENS. All work undertaken by or on behalf of Grantee or its contractors shall be at the sole expense of the Grantee, and Grantee shall promptly pay all such costs and expenses. Grantee shall keep the Easement Property and Grantor's other property free and clear of all mechanic's liens and other liens on account of such work done or performed by or on behalf of Grantee or its contractors. Should any liens be filed or recorded against the Easement Property or Grantor's other property or any action affecting title thereto be commenced as a result of such work (which term includes the supply of materials), Grantee shall cause such liens to be removed of record within 30 days after receiving notice thereof. If Grantee desires to contest any such claim or lien, Grantee shall file security with the appropriate court and obtain a release of such lien pursuant to Section 38-22-131, C.R.S., as amended. If a final judgment establishing the validity or existence of any lien for any amount is entered, Grantee shall promptly pay and satisfy or cause to be paid and satisfied the same. If Grantee shall be in default in paying any charge for which a mechanic's lien or suit to foreclose such lien has been recorded or filed and Grantee shall not have bonded over such lien as provided above, Grantor may (but without being required to do so) pay such lien or claim and any costs and amounts so paid, together with reasonable attorney's fees incurred in connection therewith, shall be promptly due and payable from Grantee to Grantor.

11. INDEMNIFICATION. To the extent permitted by law, Grantee shall indemnify Grantor and hold Grantor harmless from any and all loss, liens, claims, liability, costs or expenses

incurred as a result of Grantee's use of the Easement Property or exercise of the Easement (including any environmental contamination caused by Grantee, its agents, employees, contractors and other authorized representatives). Notwithstanding any provisions in this easement to the contrary, the Grantor acknowledges and agrees that the Grantee's obligations under this Agreement may be subject to the following limitations under the Colorado Constitution, and, therefore, Grantee's performance of its obligations hereunder shall be subject to and in accordance with the following provisions: (1) those found in Article X, Section 20 of the Colorado Constitution, which provides that any multiple fiscal year debt or financial obligation of Grantee herein shall be subject to annual appropriation; and (2) those found in Article XI, Section 1 of the Colorado Constitution, which limits Grantee's legal authority to indemnify or be responsible for the liability of any private person or entity. Nevertheless, (A) Grantee agrees to be responsible hereunder to the full extent permitted by law for any Claims (as defined below) any other party may have against Grantee as the result of any act or omission by Grantee or any of its officers or employees in connection with the exercise of its rights as Grantee hereunder or as a result of Grantee's failure to perform any of its obligations under this Easement, excluding the acts or omissions of Grantee's officers and employees that were willful and wanton, that did not occur during the performance of their duties, or that were not within the scope of their employment; and (B) to the extent Grantee does not pay an obligation owed by it hereunder as the result of its failure to appropriate or indemnify for the same, such nonpayment shall nevertheless be considered a default hereunder, affording Grantor the right to pursue all rights and remedies hereunder for Grantee's nonpayment provided any such right or remedy is not otherwise subject to the limitations in the Colorado Constitution as described above. The term "Claims" means any and all claims, liabilities, actions, losses, proceedings, damages, costs, expenses, fines, fees, judgments and amounts whether foreseen or unforeseen, suffered, sustained or incurred, including reasonable attorneys' fees (including in-house attorneys), professional fees and other costs of litigation. This indemnification shall not constitute a waiver or release by Grantee of any immunity or limitation on liability under the Governmental Immunity Act. Grantee shall obtain and keep in full force and effect general liability insurance covering its actions and activities permitted under the Easement in an amount not less than \$3,000,000 per occurrence. The liability insurance shall (A) provide coverage which is primary to, and not contributory to, any policies of Grantor, or its successors, assigns, and other parties reasonably requested by Grantor (the "Grantor Parties"), for any Claim occurring in, on or about the Easement Property, (B) name the Grantor Parties as named insureds, and (C) provide that the insurance is primary to the coverage of the Grantor Parties and may not be canceled or amended without at least thirty (30) days' prior written notice being given by the insurer to the Grantor Parties. Any insurance carried by the Grantor Parties with respect to its property or premises shall be "excess" and not "contributing" with respect to any Claim occurring in, on or about the Property.

12. REMEDIES FOR BREACH. Subject to applicable cure periods as provided in this Agreement, any breach of this Easement Agreement shall give rise to the non-breaching party's right to bring an action against the breaching party for injunctive or other equitable relief and/or damages. In the event of such action, the prevailing party shall be entitled to recover its reasonable attorney's fees from the other party. If Grantee breaches this agreement and fails to cure such breach within 30 days of receiving Grantor's written notice of such breach, Grantor shall have the right, but not the responsibility, to cure such breach without any liability to Grantee. Grantee shall reimburse Grantor for all of its costs in curing such breach within 30 days of receiving Grantor's written notice of such costs.

13. NOTICE. Any notice, demand or election under this Easement Agreement shall be in writing and shall be given in person, or by means of overnight delivery service, or mailed by registered or certified mail, addressed as follows:

If to Grantor: Douglas County School District RE-1
620 N. Wilcox Street
Castle Rock, CO 80104

If to Grantee: Town of Castle Rock
Attn: Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104

or as otherwise provided by notice given as herein provided. All notices, demands or elections given in such manner shall be effective on the date of receipt thereof. The address to which notices are to be sent may be changed by providing notice as set forth in this paragraph.

14. HEADINGS. The paragraph headings that appear in this Agreement are for convenient reference only and are not to be construed as defining, modifying or limiting the substance of the paragraph in which they appear.

15. GENDER. Whenever used herein, the singular shall include the plural, the plural the singular; and the use of any gender shall be applicable to all genders.

16. ENTIRE AGREEMENT. This Agreement supersedes all prior agreements and understandings and sets forth the entire agreement between Grantor and Grantee with respect to the subject matter hereof. Any modification or amendment hereto must be in writing signed by both Grantor and Grantee.

17. SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force.

18. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

19. VENUE. Venue for any legal action relating to this Agreement shall lie in the district court in and for the County of Douglas, Colorado.

20. RECORDING; BINDING EFFECT. This Agreement shall be recorded by Grantee with the Douglas County Clerk and Recorder. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of Grantee and Grantor, and their respective heirs, assigns, successors and personal representatives. This Agreement shall run with title to the Easement Property and burden and benefit the Easement Property.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

[Remainder of page intentionally left blank]

GRANTOR:

DOUGLAS COUNTY SCHOOL DISTRICT RE-1

By: _____

Name:

Its:

STATE OF COLORADO)

) **ss.**

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ for Douglas County School District RE-1.

Witness my official hand and seal.

My commission expires: _____.

(S E A L)

Notary Public

ATTEST:

GRANTEE:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

David L. Corliss, Town Manager

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director of Castle Rock Water

STATE OF COLORADO)
) **ss.**
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by David L. Corliss as Town Manager for the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: _____.

(S E A L)

Notary Public

EXHIBIT

Legal Description



PERMANENT DRAINAGE EASEMENT LEGAL DESCRIPTION

A PERMANENT DRAINAGE EASEMENT LOCATED IN A PORTION OF BOOK 170 AT PAGE 204 IN THE DOUGLAS COUNTY CLERK AND RECORDERS OFFICE, LYING IN THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF DOUGLAS, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A EAST QUARTER CORNER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M., BEING MONUMENTED WITH A 2" ALUMINUM CAP STAMPED WESTERN STATES SURVEYING PLS 24960, WHENCE A LINE TO THE NORTHEAST CORNER OF SAID SECTION 2, BEING MONUMENTED WITH 2.5" ALUMINUM CAP STAMPED JF SATO & ASSOCIATES PLS 35585, BEARS N 03°31'55" E, A DISTANCE OF 2736.24 FEET ALL PER COLORADO STATE PLANE COORDINATES CENTRAL (NAD 83), SAID LINE BEING THE BASIS OF BEARINGS FOR THIS DESCRIPTION;

THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, N 03°31'55" E, A DISTANCE OF 1013.09 FEET TO THE COMMON CORNER OF SAID BOOK 170 AT PAGE 204, RECEPTION NO. 8623622, RECEPTION NO. 9351960 AND THE NORTHEAST CORNER OF CASTLE NORTH FILING NO.2 RECEPTION NO. 198344 ALL IN SAID CLERK'S OFFICE, SAID COMMON CORNER BEING THE **POINT OF BEGINNING**;

THENCE ALONG THE COMMON LINE OF SAID BOOK 170 AT PAGE 204 WITH LOT 14 AND LOT 13, BLOCK 1 OF SAID CASTLE NORTH FILING NO. 2 N 89°19'05" W, A DISTANCE OF 215.87 FEET;

THENCE N 48°18'24" W, A DISTANCE OF 137.62 FEET; THENCE N 37°20'53" W, A DISTANCE OF 115.70 FEET; THENCE N 34°39'59" W, A DISTANCE OF 71.30 FEET; THENCE N 15°34'50" W, A DISTANCE OF 66.11 FEET; THENCE N 13°08'05" W, A DISTANCE OF 47.72 FEET TO A POINT ON THE COMMON LINE OF SAID BOOK 170 AT PAGE 204 AND BOOK 128 AT PAGE 494 IN SAID CLERK'S OFFICE;

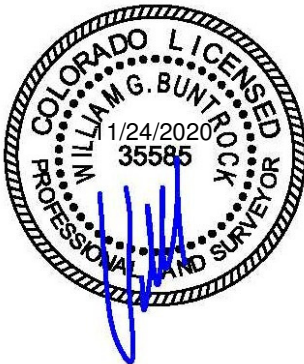
THENCE ALONG SAID COMMON LINE, S 89°18'15" E, A DISTANCE OF 7.19 FEET TO A COMMON CORNER OF SAID BOOK 170 AT PAGE 204, SAID BOOK 128 AT PAGE 494 AND RECEPTION NO. 2005061894 OF SAID CLERK'S OFFICE;



THENCE ALONG THE COMMON LINE OF SAID BOOK 170 AT PAGE 204, SAID RECEPTION NO. 2005061894 AND LOT 3, SCOTT II FILING NO.1 AS RECORDED UNDER RECEPTION NO. 8800378 OF SAID CLERK'S OFFICE, S 89°14'34" E, A DISTANCE OF 70.70 FEET;

THENCE DEPARTING SAID COMMON LINE, S 17°33'52" E, A DISTANCE OF 114.60 FEET; THENCE S 54°51'52" E, A DISTANCE OF 88.93 FEET; THENCE S 79°21'20" E, A DISTANCE OF 123.29 FEET; THENCE S 81°22'43" E, A DISTANCE OF 162.46 FEET TO A POINT ON COMMON LINE OF SAID BOOK 170 AT PAGE 204 AND SAID RECEPTION NO. 9351960, SAID COMMON LINE ALSO BEING SAID EAST LINE OF SECTION 2; THENCE ALONG SAID COMMON LINE S 03°31'55" W, A DISTANCE OF 146.57 FEET TO THE **POINT OF BEGINNING.**

THE ABOVE DESCRIPTION CONTAINS 68,406 SQUARE FEET OR 1.57 ACRES MORE OR LESS.



WILLIAM G BUNTROCK, PLS
COLORADO LICENSED LAND SURVEYOR NO. 35585
TRUE NORTH SURVEYING & MAPPING, LLC
TN 20028

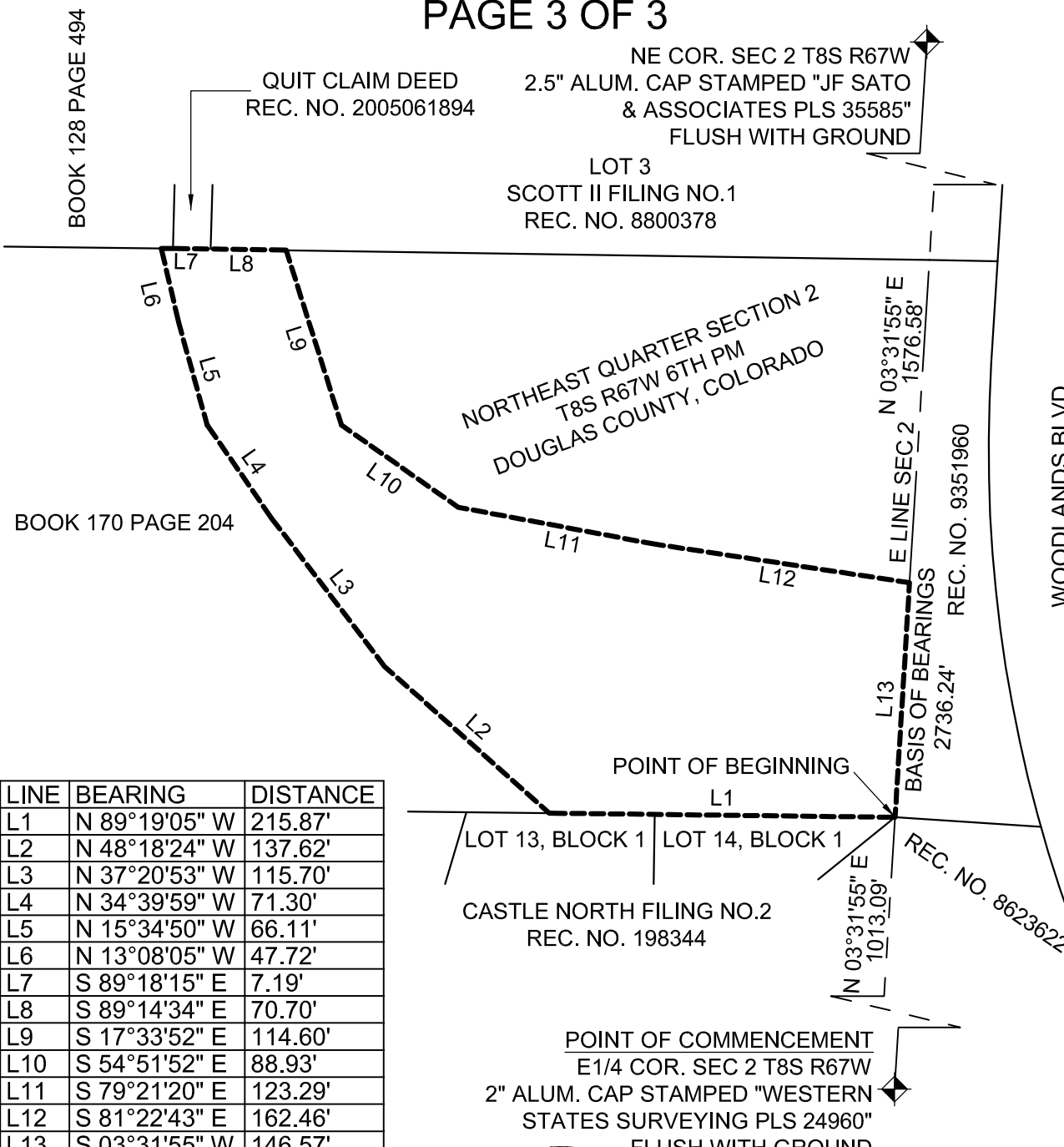
PERMANENT DRAINAGE
EASEMENT

EXHIBIT A
PAGE 3 OF 3

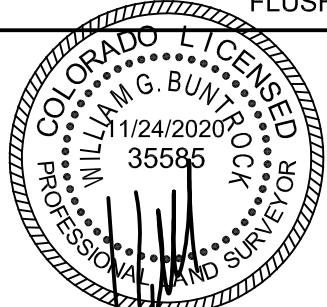
68,406 SQUARE FEET
1.57 ACRES +/-

NOTICE - According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



LINE	BEARING	DISTANCE
L1	N 89°19'05" W	215.87'
L2	N 48°18'24" W	137.62'
L3	N 37°20'53" W	115.70'
L4	N 34°39'59" W	71.30'
L5	N 15°34'50" W	66.11'
L6	N 13°08'05" W	47.72'
L7	S 89°18'15" E	7.19'
L8	S 89°14'34" E	70.70'
L9	S 17°33'52" E	114.60'
L10	S 54°51'52" E	88.93'
L11	S 79°21'20" E	123.29'
L12	S 81°22'43" E	162.46'
L13	S 03°31'55" W	146.57'



DATE	11/24/2020
DRAWN	BB
CHECKED	BB
APPROVED	BB
PROJECT NO.	TN 20028
HORIZ. SCALE	1" = 100'