

PERMANENT ACCESS AND UTILITY EASEMENT

THIS DEED OF ACCESS AND UTILITY EASEMENT AND AGREEMENT ("Easement") is granted this ____ day of _____, 2023, by **Ernest G. Sparks and Kathryn J. Sparks** (collectively the "Grantor") to **The Town of Lyons** (the "Grantee" or the "Town"). Grantor and Grantee may individually be referred to as "Party" or collectively as Parties.

RECITALS

WHEREAS, Grantor is the owner of all that certain real property located in the County of Boulder, and State of Colorado described in **Exhibit A** attached hereto and made a part hereof (the "Parcel"); and

WHEREAS, Grantee and its assignees have previously constructed an access road and certain utility improvements on the Parcel which it is required to maintain and operate; and

WHEREAS, Grantor wishes to grant Grantee with a non-exclusive permanent access and utility easement so that Grantee and its assignees may continue maintaining and operating the utility improvements on the adjacent property.

AGREEMENT

1. Recitals. The foregoing Recitals are incorporated into and constitute a part of this Agreement.

2. Grant of Easement.

- I. Conveyance of Permanent Utility Easements.** Grantor hereby grants to Grantee a perpetual, non-exclusive permanent easement to enter, occupy, and use the real property depicted in the legal descriptions and surveys attached hereto as "**Exhibits A and B**" (collectively the "Easement"), to construct, reconstruct, install, use, operate, maintain, repair, replace, upgrade, or remove the electrical and water infrastructure ("Improvements") and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across such real property.
- II. Use and Maintenance of Access Road.** Grantor recognizes the existence of an access road primarily used to access the utility improvements on the Parcel and on an adjacent parcel. Grantor grants to Grantee a perpetual, non-exclusive permanent access easement to enter, occupy, use, reconstruct, repair, and maintain the access road as depicted in **Exhibits A, B, and C**.
- III. Conveyance of Permanent Utility Easement Subject to Previous Conveyances by Grantee.** Grantee was the previous owner of the Parcel. Prior to conveying the Parcel to Grantor, Grantee granted certain access and use rights to the Permanent Easement area to Boulder County for the operation and maintenance of an emergency siren. Grantor expressly grants an exclusive access easement to

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Grantee for access to the emergency siren by Grantee and Boulder County. The access easement for the emergency siren is depicted in the legal description and survey attached hereto as "Exhibit C." Grantor specifically agrees to permit Grantee to continue to allow Boulder County to use the access road and operate and maintain its emergency siren within the Easement area granted to Grantee until such time as the emergency siren is relocated, or its use is permanently discontinued. To the extent the Grantee has granted access and use rights to the access road, or to the extent such rights are required by law, Grantor agrees to allow such rights and use to continue, provided no new rights are created or expanded to the existing assignees and that no new rights are granted to additional third parties by the Grantee.

3. Grantee's Obligations

I. Maintenance of Permanent Easement Area and Access Road

Grantee agrees to maintain the access road for as long as this Easement is in effect. Grantee shall provide snow and debris removal as reasonably necessary to use the access road. Grantee shall keep the access road free of noxious weeds and litter. Grantee shall provide maintenance to the access road as reasonably necessary.

II. Limited Use of the Access Road

Grantee agrees to limit use of the access roads to employees and contractors of Boulder County and the Town of Lyons. The Parties agree that Grantor will place a manually operated gate across the entrance of the access road with a combination padlock on it, restricting access to the access road by the public. The combination to the padlock will only be available to the Grantor, the Grantee and Boulder County. If another party asserts a valid access right to the access road, Grantor and Grantee agree to negotiate in good faith whether a combination should be provided to that additional party.

Grantee agrees that it will notify Boulder County that Boulder County is required to contact the Grantor before entering the Parcel unless emergency access is required.

III. Relocation of Emergency Siren

Grantee shall make reasonable efforts to assist with the Grantor's efforts to negotiate with Boulder County for relocation of the emergency siren from the Permanent Easement. If Boulder County agrees with Grantee to relocate the emergency siren, Grantee shall provide written notice of the same to Grantor.

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4. Insurance.

Grantee shall cause any contractors, subcontractors, or other agents of Grantee performing work within the Easement Area to maintain, at Grantee's cost or such contractor, subcontractor, or agent's cost, commercial general liability insurance with a primary limit of at least \$1,000,000 per occurrence, which shall include premises operations, personal injury, contractual liability, products/completed operations hazard and broad form property damage coverages as well as any other form of legally-required insurance. Grantee shall also ensure such parties maintain all legally-required worker's compensation coverage.

5. Effective Date. This Easement shall be effective on the date of mutual execution below. This Easement shall not terminate unless terminated in writing by mutual written agreement of the Parties or their successor in interest.

6. Restrictions. The Grantor reserves the right to impose reasonable restrictions on the use of the Easement Area to enable Grantor to repair and maintain the Parcel and improvements thereon provided that such restrictions do not substantially impair or diminish the rights of the public provided herein.

7. Reserved Rights. Grantor reserves the rights to conduct all legally permitted activities with the Easement Areas, and to alter and improve the Easement Areas, provided that such activities, alterations and/or improvements do not substantially interfere with the rights granted hereby.

8. Covenants Running with the Land. The Parties agree that the covenants and agreements set forth herein shall be binding upon and inure to the benefit of their respective successors, assigns, tenants, employees, licensees and invitees, and shall run with the land. This Agreement shall be recorded in the real property records of Boulder County, Colorado, and shall serve as notice to and shall be binding upon and inure to the benefit of the Parties and upon the successive owners of Grantor's property.

9. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Permanent Easement areas resulting from causes beyond Grantor's control, including, without limitation, fires, floods, storms, and earth movement, or from any prudent actions taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Areas or remainder of the Parcel resulting from such causes.

10. Notice. Any notice, request or demand under this Easement shall be in writing and shall be deemed given, received and served (a) upon personal delivery or upon transmission by telecopier or similar facsimile transmission device, or (b) on the third business day after mailing, postage prepaid, by registered or certified mail, return receipt requested, in each case addressed as follows:

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2023

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If Grantor:

Ernest G. Sparks and Kathryn J. Sparks
2169 Apple Valley Road
Lyons, CO 80540

If Grantee:

Town of Lyons
Attn: Town Administrator
PO Box 49, Lyons, CO 80540

11. Governing Law. The terms and provisions of this Easement shall be construed and enforced in accordance with the laws of the State of Colorado. Venue for any dispute arising from the Easement shall be deemed proper in the District Court for Boulder County.

12. Modification. This Easement may not be modified, terminated or otherwise amended without the written consent of the Parties.

13. Entire Agreement. The parties agree that neither of them has made or authorized any agreement with respect to the subject matter of this instrument other than expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either party.

14. Right to Enter into this Agreement. The Grantor covenants and agrees that, as of the date hereof, the Grantor is well seized of the property underlying the premises conveyed hereby and has full power and authority to grant and convey the same as aforesaid, and that the same are free and clear of all former grants, bargains, sales, liens, delinquent taxes or assessments, or any other encumbrances or restrictions of any kind.

[Signature Pages Follows]

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March 15 2023
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Ernest G. Sparks
ERNEST G. SPARKS

Kathryn J. Sparks
KATHRYN J. SPARKS

STATE OF COLORADO)
COUNTY OF Boulder)
) §

The foregoing instrument was acknowledged before me this 15 day of
March, 2023, by ERNEST G. SPARKS and KATHRYN J. SPARKS.

Witness my hand and seal.

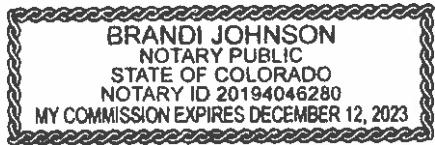
My commission expires: 12/12/2023

[S E A L]

Brandi Johnson

Notary Public

Notary Public



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The Town of Lyons, Colorado:

Hollie Rogin, Mayor

Date _____

ATTEST:

Dolores Vasquez, Town Clerk

Date _____

STATE OF COLORADO)
)
COUNTY OF _____)
) \$

The foregoing instrument was acknowledged before me this _____ day of
_____, 2023, by _____.

Witness my hand and seal.

My commission expires: _____

[S E A L]

Notary Public

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2023

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EXHIBIT A

See *following page*.



ENGINEERING
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info@civilarts.us
www.civilarts.us

1500 Kansas Avenue, Suite 2-E
Longmont, CO 80501

EXHIBIT "A"

November 4, 2022

A description of a 25-foot Access Easement for ingress and egress to the offsite water tank in the NE1/4 of Section 12, T3N, R71W of the 6th P.M., in Boulder County, Colorado. For: Town of Lyons.

LEGAL DESCRIPTION

A strip of land, 25.00 feet in width, located within that tract of land located in the NE1/4 of Section 12, T3N, R71W of the 6th P.M., County of Boulder, State of Colorado, conveyed to Town of Lyons as described in Warranty Deed recorded July 22, 1970, as Reception No. 949264 of the records of Boulder County, Colorado, said strip of land extending from the Westerly Right-of-way Line of Apple Valley Road to the Southerly Line of that tract of land as described as said Reception No. 949264, said strip of land being 12.50 feet on each side of the following described centerline:

COMMENCING at the N1/4 Corner of said Section 12, and considering the North Line of the NE1/4 of said Section 12 to bear N89°15'00"E (Basis of Bearing), thence S36°28'04"E, 1061.32 feet to the Northwesterly Corner of that tract of land conveyed to Calvin E. Schroeder & Betty L. Schroeder as described in Quit Claim Deed recorded April 5, 1968, as Reception No. 875435 of the records of Boulder County, Colorado, being a chiseled "X" on top of a rock; Thence S27°28'36"W, 45.86 feet to the Northeasterly Corner of that tract of land as described as said Reception No. 949264; Thence S6°43'48"E, 12.55 feet along the Easterly Line of that tract of land as described as said Reception No. 949264 to the mid-point thereof and the **POINT OF BEGINNING**;

Thence S88°16'12"W, 255.34 feet parallel with the Northerly Line of that tract of land as described as said Reception No. 949264 to a point of curve to the left;

Thence Southwesterly, 50.54 feet along the arc of said curve to the South Line of that tract of land as described as said Reception No. 949264 and the **POINT OF TERMINATION**, said arc having a radius of 100.00 feet, a central angle of 28°57'18", and being subtended by a chord that bears S73°47'33"W, 50.00 feet.

Area = 7,591 square feet (0.174 acres), more or less.

NOTICE: According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered 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.


Frank N. Drexel 24305
Colorado Professional Land
Surveyor No. 24305
1500 Kansas Avenue #2-E, Longmont, CO 80501
Date: November 4, 2022

File: 17380-1g11 doc

Project: 1738-0

EXHIBIT A
(Water Tank Access)

EXHIBIT "A"

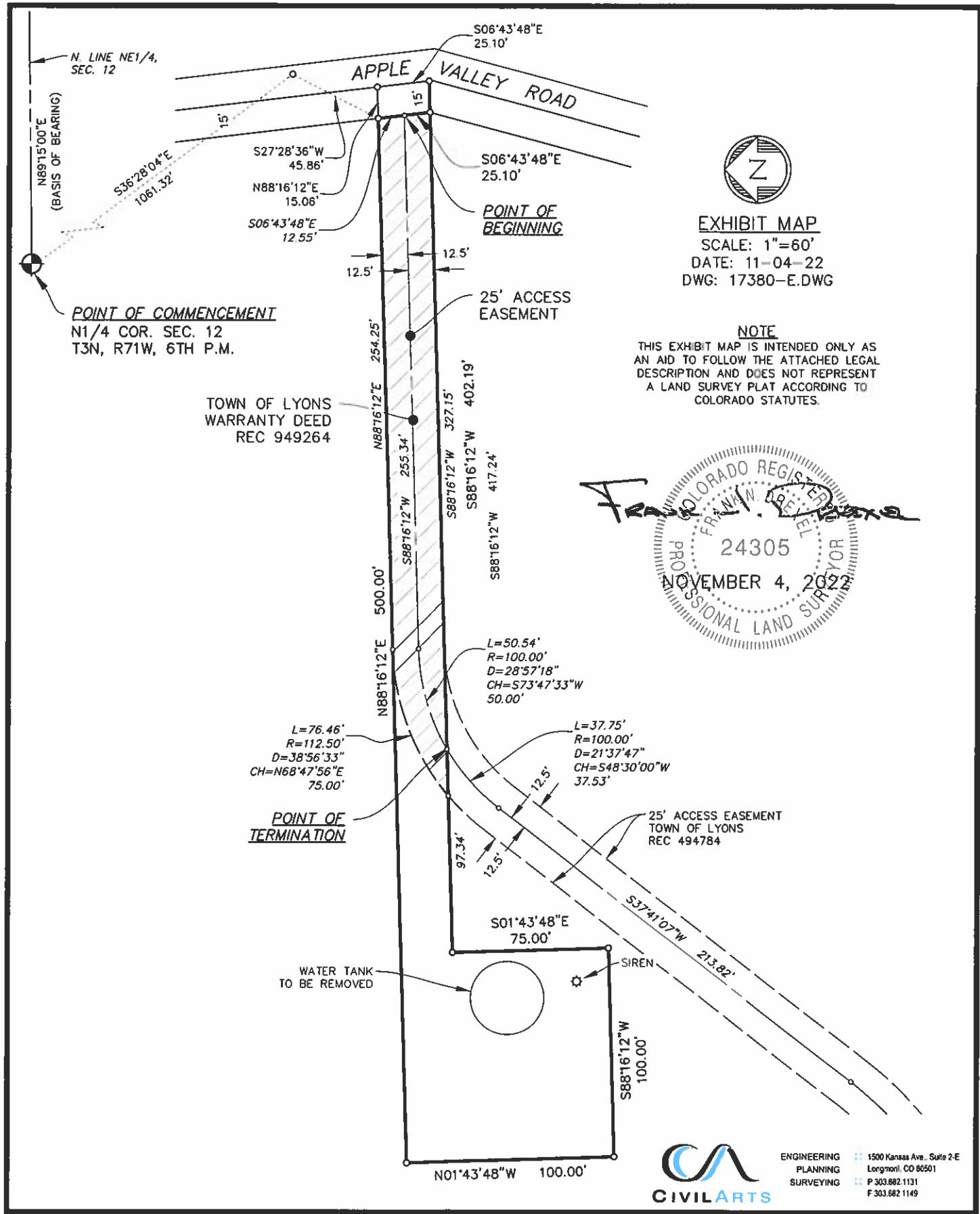


EXHIBIT MAP

SCALE: 1"=60'
DATE: 11-04-22
DWG: 17380-E.DWG

NOTE
THIS EXHIBIT MAP IS INTENDED ONLY AS
AN AID TO FOLLOW THE ATTACHED LEGAL
DESCRIPTION AND DOES NOT REPRESENT
A LAND SURVEY PLAT ACCORDING TO
COLORADO STATUTES.



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EXHIBIT B
See *following page*.



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COMMENCING at the N1/4 Corner of said Section 12, and considering the North Line of the NE1/4 of said Section 12 to bear N89°15'00"E (Basis of Bearing), thence S36°28'04"E, 1061.32 feet to the Northwesterly Corner of that tract of land conveyed to Calvin E. Schroeder & Betty L. Schroeder as described in Quit Claim Deed recorded April 5, 1968, as Reception No. 875435 of the records of Boulder County, Colorado, being a chiseled "X" on top of a rock; Thence S27°28'36"W, 45.86 feet to the Northeasterly Corner of that tract of land as described as said Reception No. 949264; Thence S6°43'48"E, 12.55 feet along the Easterly Line of that tract of land as described as said Reception No. 949264 to the mid-point thereof and the **POINT OF BEGINNING**:

Thence S88°16'12"W, 501.09 feet parallel with the Northerly Line of that tract of land as described as said Reception No. 949264 to the Westerly Line of that tract of land as described as said Reception No. 949264 and the **POINT OF TERMINATION**.

Area = 12,527 square feet (0.288 acres), more or less.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discovered 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.

Frank N. Drexel 24305
Colorado Professional Land
Surveyor No. 24305
1500 Kansas Avenue #2-E, Longmont, CO 80501
Date: 11/04/22

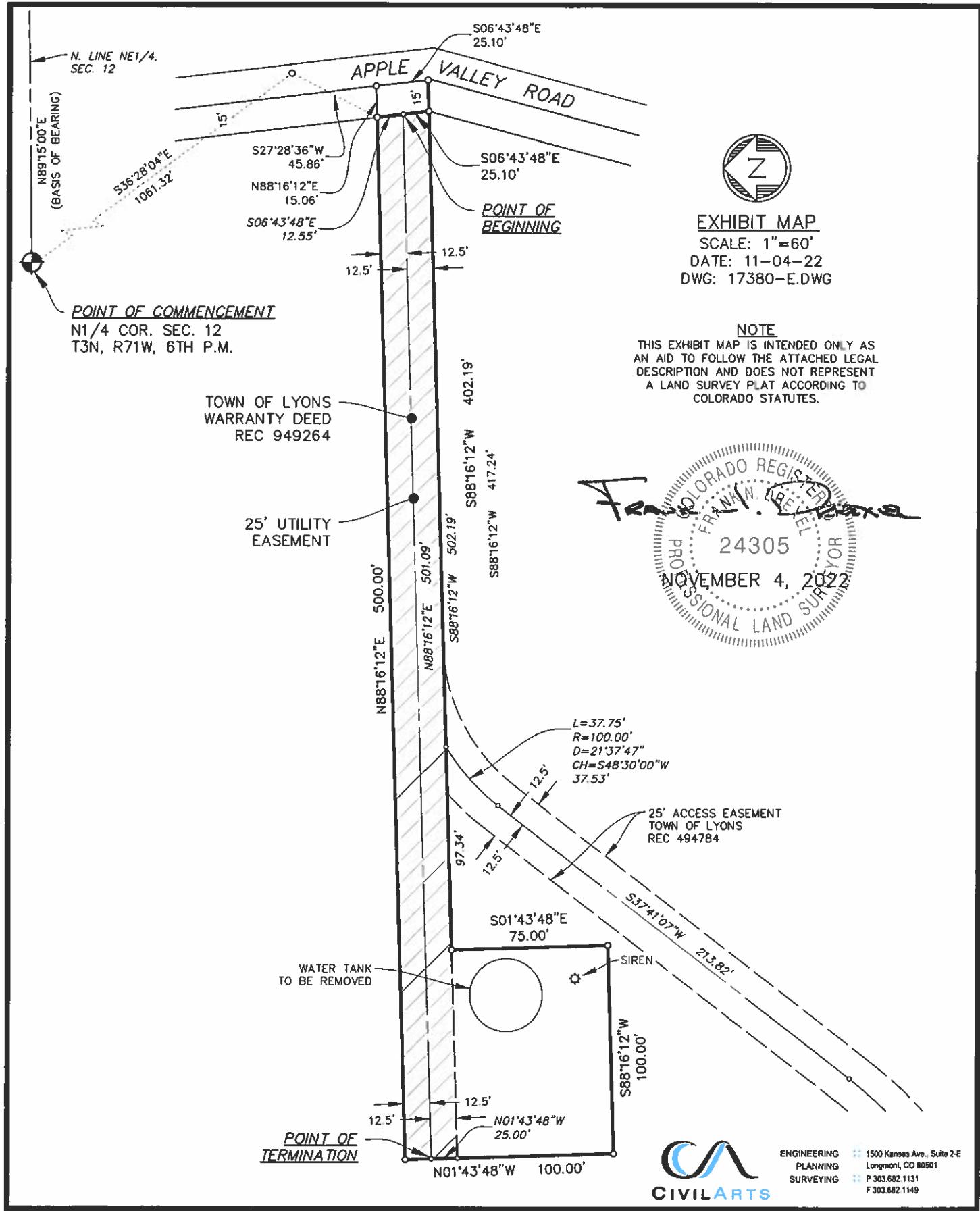
File: 17380-lgl3.doc

Project: 1738-0



Development Services for the Communities of the Future

EXHIBIT "A"



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EXHIBIT C

See *following page.*



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Thence S6°43'48"E, 25.10 feet along the Easterly Line of that tract of land as described as said Reception No. 949264 to the Southeasterly Corner thereof;

Thence S88°16'12"W, 402.19 feet along the Southerly Line of that tract of land as described as said Reception No. 949264 to an angle point thereof;

Thence S1°43'48"E, 75.00 feet along the Easterly Line of that tract of land as described as said Reception No. 949264 to an angle point thereof;

Thence S88°16'12"W, 35.00 feet along the Southerly Line of that tract of land as described as said Reception No. 949264;

Thence N1°43'48"W, 35.00 feet;

Thence N88°16'12"E, 10.00 feet;

Thence N1°43'48"W, 65.00 feet to the Northerly Line of that tract of land as described as said Reception No. 949264;



EXHIBIT "A"

Thence N88°16'12"E, 425.00 feet along the Northerly Line of that tract of land as described as said Reception No. 949264 to the POINT OF BEGINNING.

Area = 12,877 square feet (0.296 acres), more or less.

NOTICE: According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered 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.



File: 17380-1g12.doc

Project: 1738-0



EXHIBIT "A"

