

RESOLUTION NO. 10-538

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO**

A Resolution to Approve the Vacant Land Agreements between El Paso County by and through the Board of County Commissioners of El Paso County, Colorado and Marksheffel Business Center, LLC, a Colorado limited liability company, and El Paso County by and through the Board of County Commissioners of El Paso County, Colorado and BAN, LLC, a Colorado limited liability company.

**WHEREAS**, pursuant to §§30-11-101(1)(c), 30-11-102, 30-11-103, and 30-11-107(1)(a), C.R.S., the Board of County Commissioners of El Paso County, Colorado (hereinafter "BOCC") has the legislative authority to convey and exchange real and personal property for the use of the County, and to make such orders concerning the property when deemed by the Board to be in the best interests of the County; and

**WHEREAS**, Marksheffel Business Center, LLC, a Colorado limited liability company, (hereinafter "MBC") owns real estate located at 1930 Marksheffel Road North, Colorado Springs, Colorado 80951, and BAN, LLC, a Colorado limited liability company, (hereinafter "BAN") owns real estate located at 1816 Marksheffel Road North, Colorado Springs, CO 80951; and

**WHEREAS**, the Public Services Department desires to acquire certain real property for right-of-way and easement purposes for the Marksheffel Road improvement project from MBC and BAN; and

**WHEREAS** in furtherance of this project, the BOCC desires to acquire the properties from MBC and BAN and to enter into the two Vacant Land Agreements, subject to the terms and conditions in those Agreements; and

**WHEREAS**, the BOCC has determined that it is necessary to approve the proposed Vacant Land Agreements for these certain real properties more particularly described in said Agreements to effectuate the transaction described herein.

**NOW, THEREFORE, BE IT RESOLVED**, the Board of County Commissioners determined that it would serve the best interests of the County to approve the proposed Agreements described herein pursuant to the terms and conditions cited therein, which are attached hereto as Exhibits A and B.

**BE IT FURTHER RESOLVED**, that Dennis Hisey, duly elected, qualified member and Chair of the Board of County Commissioners, or Amy Lathen, duly elected, qualified member and Vice Chair of the Board of County Commissioners be and is hereby authorized on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein, including, but not limited to, all closing documents, deeds, and easement agreements.

ROBERT C. "BOB" BALINK El Paso County, CO  
12/27/2010 11:08:36 AM  
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Rec \$0.00 1 of 45 210131837



DONE THIS 16th day of December, 2010, at Colorado Springs,  
Colorado.

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

ATTEST

By: \_\_\_\_\_

County Clerk and Recorder



By: \_\_\_\_\_

Dennis Hisey, Chair

A handwritten signature in cursive script, appearing to read 'Dennis Hisey', is written over a horizontal line.

**VACANT LAND EXCHANGE AGREEMENT**  
**(Executed in Two (2) Originals)**

For and in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, El Paso County by and through the Board of County Commissioners of El Paso County, Colorado, (hereinafter "County"), whose address is 27 E. Vermijo Avenue, Colorado Springs, CO 80903, and Marksheffel Business Center, a Colorado limited liability company (hereinafter "Grantor"), whose address is 454 Riverview Circle, Coquitlam, British Columbia V3C 4X9, hereby enter into this Vacant Land Exchange Agreement (hereinafter "Agreement"). The County and Grantor may be referred to individually as a Party or collectively as the Parties.

1. Purpose of Agreement/Marksheffel Road Improvement Project: The County, in cooperation and consultation with the Constitution Heights Metropolitan District (hereinafter "District") and the Pikes Peak Rural Transportation Authority (hereinafter "PPRTA"), is in the process of designing road improvements that include the widening of Marksheffel Road. In order for the improvements to be completed it is necessary for additional right of way and easements to be acquired along Marksheffel Road. The transaction set forth herein will facilitate the acquisition of such additional right of way and easements.
  
2. Identification of Grantor's Property: Grantor owns commercial property on the west side of Marksheffel Road located at 1930 Marksheffel Road North, Colorado Springs, El Paso County, Colorado. The property that the County desires to acquire is part of a larger parcel, the larger parcel being referred to herein by El Paso County tax schedule number 5405000048.
  - a. The County desires to acquire in fee simple the following property: a parcel containing 20,956 square feet or 0.48 acres, more or less, which property is described with more particularity on the legal description attached hereto as Exhibit "A"- Special Warranty Deed and as illustrated on the engineered drawing attached hereto as Exhibit "B" – Special Warranty Deed, the property depicted on Exhibits "A" and "B" being referred to hereinafter as the Subject Property. The County shall take the property subject to Grantor's reservation therein of a non-exclusive easement appurtenant that shall permit Grantor to enter upon the property for the purpose of providing grading, said grading to occur only in connection with Grantor's construction of Colorado Tech Drive. The County shall also take the property subject to Grantor's reservation therein of a ten foot (10') wide non-exclusive easement in gross for all reasonable and necessary purposes associated with the location of utility lines therein. The easement shall not exceed ten feet (10') wide and shall run the entire southern boundary of the subject property.

b. The County desires to acquire, as other good and valuable consideration for this transaction, a mutually acceptable non-exclusive easement in gross for public right of way purposes over that part of the Grantor's Property containing 4000 square feet or 0.09 acres, more or less, which property is described with more particularity on the legal description attached hereto as Exhibit "A" – Access Easement and as illustrated on the engineered drawing attached hereto as Exhibit "B" – Access Easement, the property depicted on Exhibits "A" and "B" being referred to hereinafter as the Access Easement. The Access Easement shall merge into, and shall immediately cease to be a legally binding and enforceable instrument by operation of law upon the area occupied by the access easement becoming dedicated and accepted for public road right-of-way by means of the recording of a subdivision plat that contains the appropriate formalities for the dedication and acceptance thereof, and the easement shall provide that the owner thereof consents to the land underlying the Access Easement being dedicated for public road right-of-way without any further instrument or consent being required.

3. Purchase Price/Other Consideration/Acknowledgement of Appraisal: The Grantor agrees to convey the Access Easement as a donation to the County without consideration. Pursuant to the terms and conditions set forth herein, upon the County satisfying the non-monetary obligations as set forth herein and the Cost Recovery Agreement is entered into pursuant to the provisions of Section 4(c) below, Grantor agrees to convey and the County agrees to accept conveyance of the Subject Property as a donation for no monetary consideration. The County shall have 20 days from the Effective Date of this Agreement to obtain the Cost Recovery Agreement. In the event that the County is not able to obtain the entry into the Cost Recovery, County agrees to purchase and Grantor agrees upon the County satisfying the non-monetary obligations as set forth herein, except for the provisions of Section 4(c) below, to sell and convey the Subject Property and to perform their respective other obligations under this Agreement, including, but not limited to, the granting and acceptance of specific easements, for the purchase price of \$52,390 and for other good and valuable consideration, the details of which other good and valuable consideration are as set forth in more particularity in other parts of this Agreement, except that the County's obligations set forth in Section 4(a), below, shall be performed post-closing and not as a condition precedent to Grantor's obligation to close. The other good and valuable consideration as stated in this Agreement is equally material to the Parties' respective performance of their obligations under this Agreement as the purchase and sale price. Grantor acknowledges that the purchase price is supported by an appraisal obtained by a qualified eminent domain appraiser commissioned by the County and Grantor acknowledges that its Manager has received a copy thereof. Accordingly, neither Party requires an additional appraisal as a condition precedent to closing.

4. Other Consideration for Grantor: As other good and valuable consideration, which is material to Grantor's desire to perform its obligations under this Agreement, the County agrees to perform the following, which shall occur on or before Closing to Grantor's satisfaction or, if Grantor so consents in writing at closing, County shall perform any of the following as a post closing obligation, the satisfactory performance of which Grantor may determine in the sole exercise of its discretion.
- a. The County's vacation in accordance with Section 43-2-101, et seq. at its sole cost and expense, which vacation shall not become effective and/or shall not be recorded unless Closing occurs, of the following:
    - i. That portion of public right of way, which is described with more particularity on the legal description attached hereto as Exhibit "A" – ROW Vacation and as illustrated on the engineered drawing attached hereto as Exhibit "B" – ROW Vacation, that divides Grantor's property, which property is known by its tax schedule number set forth above in Section 2 of this Agreement.
    - ii. The unused portion of the Marksheffel Road right of way running along the eastern boundary of Grantor's parcel 5405000048, as described in more particularity on the legal description attached hereto as Exhibit "A" – ROW Vacation – Marksheffel and as illustrated on the engineered drawing attached hereto as Exhibit "B" – ROW Vacation – Marksheffel, and which vacation shall be subject to any easements of record, including an easement in favor of Mountain View Electric Association, and in which vacation the County shall reserve unto itself a non-exclusive easement in gross upon which the County or other government entity may install public right of way thereon, and that prohibits Grantor from erecting or installing any structures or fixtures of whatsoever kind or nature, except landscaping, sidewalk and parking area improvements, in the area to be vacated.
    - iii. That portion of public right of way that appears on the engineered drawing attached hereto as Exhibit B – ROW Vacation – Wilshire, except for those parts of public right of way that run across the dedicated rights of way as shown on the Exhibit for Short Grass Court, Colorado Tech Drive, and Reed Grass Way as depicted on the final plat for Wilshire Subdivision Filing No. 1.
  - b. The County's obtaining of a mutually acceptable non-exclusive easement appurtenant, over the forty feet east of the entire westerly boundary of the adjacent property known as El Paso County tax schedule number 5405000006 (the "Ban Property"). The easement shall be for the purpose of installing, constructing, inspecting, maintaining and repairing a drainage way, which drainage way shall not be limited to receive drainage only

from the benefitted (appurtenant) estate, but which may include drainage from other properties, provided that the drainage way shall be designed, installed, constructed, repaired and maintained so as to contain any such drainage arising from a 100-year event within the bounds of the easement.

- c. The County's development of a mutually acceptable Cost Recovery Agreement, said agreement to be in compliance with Section 8.7.2 of the El Paso County Land Development Code, as adopted April 2, 2007, and as may be amended from time to time, executed on or before Closing by the County, Grantor and the owner of the Ban Property, which agreement shall run with the land and be maintained and recognized in the records of the El Paso County Development Services Department, establishing that in the event the County requires the developer of El Paso County tax schedule number 5405000048 of some part thereof to construct at the developer's expense a collector road as the continuation of Colorado Tech Drive, the owner or developer of the Ban Property will consent to a cost recovery program for the cost of one half of such street as it runs from the intersection in a westerly direction on Colorado Tech Drive, as a condition of any subdivision or development approval of the Ban Property or any part thereof. However, at the time of execution of this Agreement County represents that it has conducted extensive negotiations with the owner of the Ban Property, and said owner has expressed to the County that it is not interested in entering into the Cost Recovery Agreement. Therefore, County anticipates that it will purchase, rather than receive by land exchange, Grantor's property as further provided in this Agreement.
- d. Furthermore, the Grantor shall require the County to enter into a development agreement that shall be maintained and recognized in the records of the El Paso County Development Services Department to the effect that upon the owner or developer of El Paso County tax schedule number 5405000048 or some part thereof constructing an extension of Colorado Tech Drive, the owner of the Ban Property shall be required to promptly close off its access to the Access Easement and move its access to the future intersection location proposed approximately 465 feet west of centerline of Marksheffel Road, and that such owner or developer of El Paso County tax schedule number 5405000048 or some part thereof shall not be required to bear any of the expense of closing off and moving the access point for the Ban Property.
- e. In order for Grantor to be able to provide the Subject Property free and clear of liens and encumbrances, and obtain a discharge of deed of trust from Peoples National Bank, the County shall release the letter of credit #2003-25 in the amount of \$159,510 issued by Peoples National Bank in favor of the County as security for the Grantor's obligations under County Subdivision Improvement Agreement for Marksheffel Business Center Filing No. 1 as recorded in the El Paso County Clerk and Recorder's

Office as Reception # 203232447. The property that shall be the subject of the first deed of trust is a parcel approximately 10.078 acres immediately south of the Ban LLC property at intersection of the Palmer Park right of way and Marksheffel Road. In exchange, in order to remain secured on Grantor's development obligations to the County, Grantor shall give the County a first deed of trust in the amount of \$159,510 as security for the Grantor's obligations under County Subdivision Improvement Agreement for Marksheffel Business Center Filing No. 1 as recorded in the El Paso County Clerk and Recorder's Office as Reception # 203232447. The County agrees that the Grantor's existing lender will have to subordinate to the County's first position. The County's and the Grantor's obligations under this Section 4(e) are contingent on reaching a mutually acceptable resolution of any unpaid property taxes on the remainder property, assuming any such unpaid taxes.

- f. County will give the Grantor an income tax receipt for the value of the Access Easement, and if the Subject Property is conveyed to the County without payment for the value of the Subject Property, provided that the County is satisfied in the exercise of its discretion, prior to closing, that Grantor is not under any obligation of whatsoever kind or nature to convey such Subject Property to the County. It shall be the County's post-closing obligation to execute a fully-prepared IRS Form 8283 for the donation, which form shall be prepared at Grantor's cost and expense.
5. Contingency for Additional Right of Way Acquisition: The County shall not have any obligation to perform its obligations under this Agreement unless on or before closing the County acquires by means of a land exchange, and not by the tender of monetary consideration, right of way in fee simple, a permanent easement and a temporary easement for right of way purposes for the Marksheffel Road Expansion Project from the owner of the property currently known as tax schedule number 5405000006.
6. Appurtenances and Other Interests: The property to be conveyed pursuant to this Agreement shall include any interests, easements, rights, benefits, improvements and fixtures incident and appurtenant thereto.
7. Mutual Promises Contract: The mutual promises contained herein are the only consideration for this Agreement, and the Parties hereby acknowledge the sufficiency of said consideration. Accordingly, the County is not paying earnest money as consideration for Grantor's entry into this Agreement.
8. Closing and Possession: Closing shall occur no later than ten (10) days from County's completion of its pre-closing obligations under this Agreement, and at a date, time, and place to be determined by the County. A Closing Agent shall conduct the Closing, and the County shall pay the Closing Agent's fees

at the County's sole cost and expense. The County shall be entitled to possession of the property acquired immediately upon Closing.

9. Method of Conveyance/ Pro-Rations: The conveyance of the Subject Property shall be made by a good and sufficient Special Warranty Deed to the County, subject to liens and encumbrances of record, if any, and free and clear of all taxes except for taxes accrued during the year 2010. Grantor shall pay the actual taxes and any unpaid assessments on the Property for all previous years other than the year of Closing, if said taxes and assessments have not already been paid by Closing. All taxes accrued but not yet paid for the year of Closing shall be prorated to the day of Closing. However, the Closing Agent shall not credit the Purchase Price, but shall directly collect the same from proceeds and pay them directly to the El Paso County Treasurer.
10. Title Commitment: The County shall, at its sole cost and expense, obtain a title commitment for owner's title insurance policy for the above-referenced property in an amount to be determined by the County. The title company used to provide such commitment and title insurance shall be the County's exclusive choice.
11. Title Review/Matters Not Shown By the Public Records: On or before ten (10) calendar days from the execution of this Agreement by the County (hereinafter referred to as the Disclosure Deadline), Grantor shall disclose to the County all easements, leases, liens, and any other title matters not shown by the public records and of which Grantor has actual knowledge. The County shall have the right to enter upon and inspect the property to be acquired from the other Party. On or before twenty (20) days from the execution of this Agreement by Grantor the County shall submit to the other Party any objections to any matters disclosed by the title commitment, to any matters in any public record, to any matters disclosed but not shown in the public record, and/or to any matters shown by an inspection of the property. After Grantor receives an objection it shall make reasonable efforts to cure the objection by the date set for Closing. In the event that any such objection shall not be cured in the exercise of a Party's subjective discretion, the objecting Party shall not have an obligation to close this Agreement, and this Agreement shall terminate without the need for any action by the Parties.
12. Mortgage/Deed of Trust: Grantor shall not have an obligation to convey the real property to the County unless and until any person or entity holding a mortgage, deed of trust, or other security interest therein shall provide a good and sufficient partial release of the same to the Closing Agent. The County shall pay any reasonable fee required by the holder or the Closing Agent for providing, processing, preparing, recording, and tracking the release. Grantor shall not have any obligation under this Agreement to pay any such fee and/or to pay any amount requested by the Lender as a requirement of providing said partial release. Such fee shall not be considered as an amount to pay or reduce

any part of the underlying indebtedness, including any interest accrued thereon. Execution of this Agreement by Grantor shall constitute Grantor's consent to both the County and the Closing Agent to contact the mortgage holder in order to obtain and work with the holder concerning satisfaction of the holder's requirements for providing said partial release.

13. Entire Agreement/Subsequent Modification/Survival: This Agreement constitutes the entire contract between the Parties relating to the subject hereof, and any prior agreements, if any, pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the Parties. Any obligation in this Agreement, which, by its terms, is intended to be performed after Closing, shall survive the same.
14. Creation of Binding Contract/Effective Date: This Agreement shall not become binding upon El Paso County unless and until it is approved by the Board of County Commissioners sitting in an open and public meeting. Grantor's obligation under this Agreement shall expire unless and until this Agreement is approved and executed by the Board of County Commissioners no later than fourteen (14) calendar days from the date of the Grantor execution of this Agreement. The Effective Date of this Agreement shall be the date that it is approved by the Board of County Commissioners in an open and public meeting.
15. No Obligation to Close Unless Contingencies Satisfied: No Party shall have an obligation to close this Agreement unless a Party shall be satisfied in the sole exercise of their discretion that the conditions precedents to their respective obligations to close have been satisfied.
16. Post-Closing Obligations: Any obligations as set forth in this Agreement that the Parties expressly state shall survive closing, as expressed in this Agreement or in a post-closing agreement executed on or before closing, shall survive closing. To the extent that any Party brings a claim or cause of action to enforce any post closing obligation, the party that a court of competent jurisdiction determines to be the party that substantially prevails in the litigation shall be entitled to receive its reasonable costs and attorney fees.
17. Choice of Law/Jurisdiction and Venue: In the event of any litigation arising under this Agreement, regardless whether pre-closing or post-closing, the applicable law shall be the law of the State of Colorado. Furthermore, the exclusive jurisdiction and venue for such litigation shall be in the District or County Courts in and for the Fourth Judicial District, State of Colorado, County of El Paso.

18. Temporary Construction Easement: Upon mutual execution of this Agreement Grantor shall provide the County with a temporary construction easement, for the parcel described with more particularity on the legal description attached hereto as Exhibit "A" – Temporary Construction Easement and as illustrated on the engineered drawing attached hereto as Exhibit "B" –Temporary Construction Easement which easement shall not be recorded. The temporary construction easement will be effective upon execution and will terminate upon closing of this Agreement. The temporary construction easement shall permit the County and/or the owner of the property referenced by El Paso County tax schedule number 5405000006, to commence construction of an access driveway to permit its customers, employees, agents, invitees and licensees, as well as members of the general public, to obtain access to the property from Marksheffel Road at the Colorado Tech Drive intersection.

DATED this 2 day of December, 2010.

MARKSHEFFEL BUSINESS CENTER, LLC,  
a Colorado Limited Liability Company

By:   
Grant Langdon, Manager

DATED this \_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By: \_\_\_\_\_  
County Clerk and Recorder

By: \_\_\_\_\_  
Dennis Hisey, Chairman

APPROVED AS TO FORM:

OFFICE OF THE COUNTY ATTORNEY  
OF EL PASO COUNTY, COLORADO

\_\_\_\_\_  
William H. Louis, County Attorney

**EXHIBIT A**  
**EL PASO COUNTY**  
**SPECIAL WARRANTY DEED**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,

1. THENCE SOUTH 89°38'12" WEST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 105.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD, SAID POINT BEING THE POINT OF BEGINNING;
2. THENCE, CONTINUING ALONG SAID NORTH LINE, SOUTH 89°38'12" WEST A DISTANCE OF 556.17 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND AS RECORDED UNDER RECEPTION NO. 095066134 IN BOOK 6676 AT PAGE 1356 IN THE RECORDS OF EL PASO COUNTY, COLORADO;
3. THENCE SOUTH 00°06'54" WEST A DISTANCE OF 35.34 FEET;
4. THENCE SOUTH 89°52'56" EAST A DISTANCE OF 556.16 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF MARKSHEFFEL ROAD;
5. THENCE NORTH 00°06'20" EAST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 40.01 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 20,955.57 SQUARE FEET, (0.48 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 89°38'12" WEST.

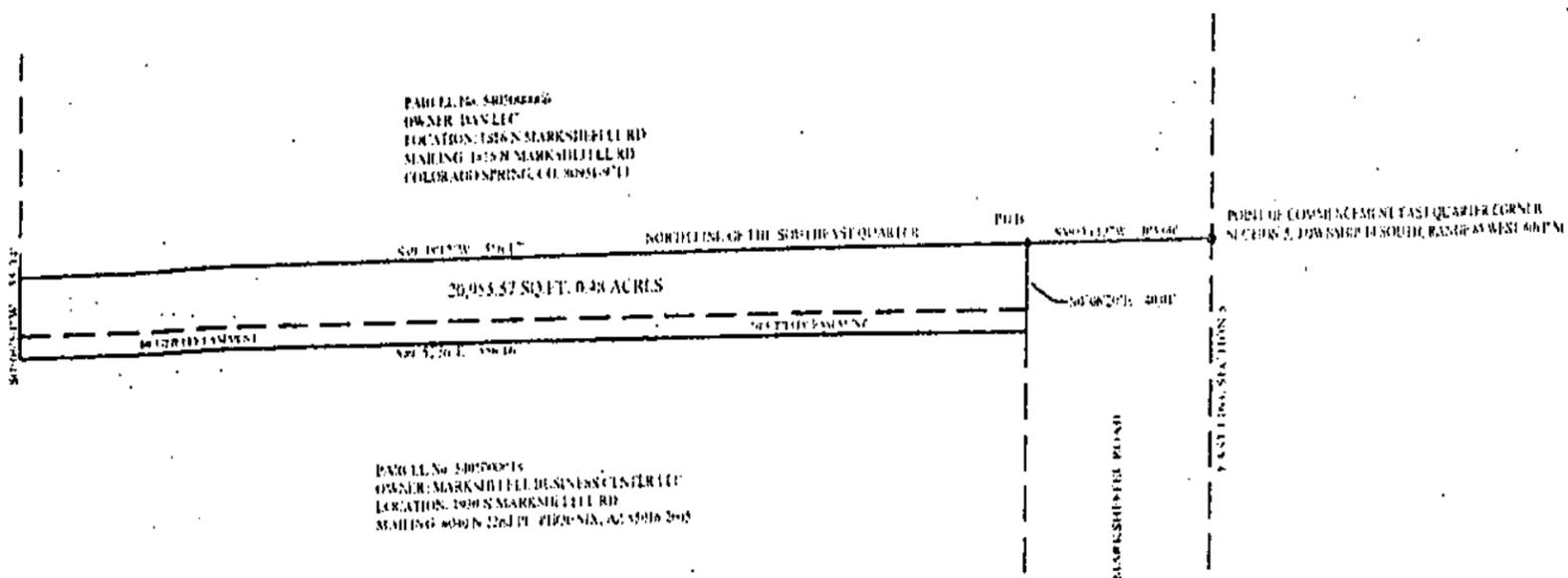
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: SWAPTRACT A    BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT B**  
**EL PASO COUNTY**  
**SPECIAL WARRANTY DEED**

SITUATE  
 THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
 EL PASO COUNTY, COLORADO



Carl R. McClellan  
 Professional Land Surveyor  
 LS NO. 17496

SCALE: 1"=125'    DATE: 09/21/10  
 DRAWING: SWAPTRACT B    BY: RLP

**EL PASO COUNTY**  
**PUBLIC SERVICES DEPARTMENT**

**EXHIBIT A**  
**EL PASO COUNTY**  
**ACCESS EASEMENT**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,

1. THENCE SOUTH 68°50' 10" WEST A DISTANCE OF 112.67 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD, SAID POINT BEING THE POINT OF BEGINNING;
2. THENCE SOUTH 00°06'20" WEST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 80.00 FEET;
3. THENCE NORTH 89°52'56" WEST A DISTANCE OF 50.00 FEET;
4. THENCE NORTH 00°06'20" EAST A DISTANCE OF 80.00 FEET;
5. THENCE SOUTH 89°52'56" EAST A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 4,000 SQUARE FEET, (0.09 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 00°31'41" WEST.

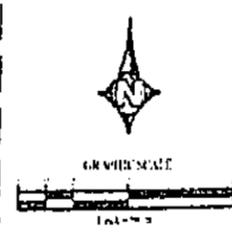
\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: TEACCESS MBC    BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

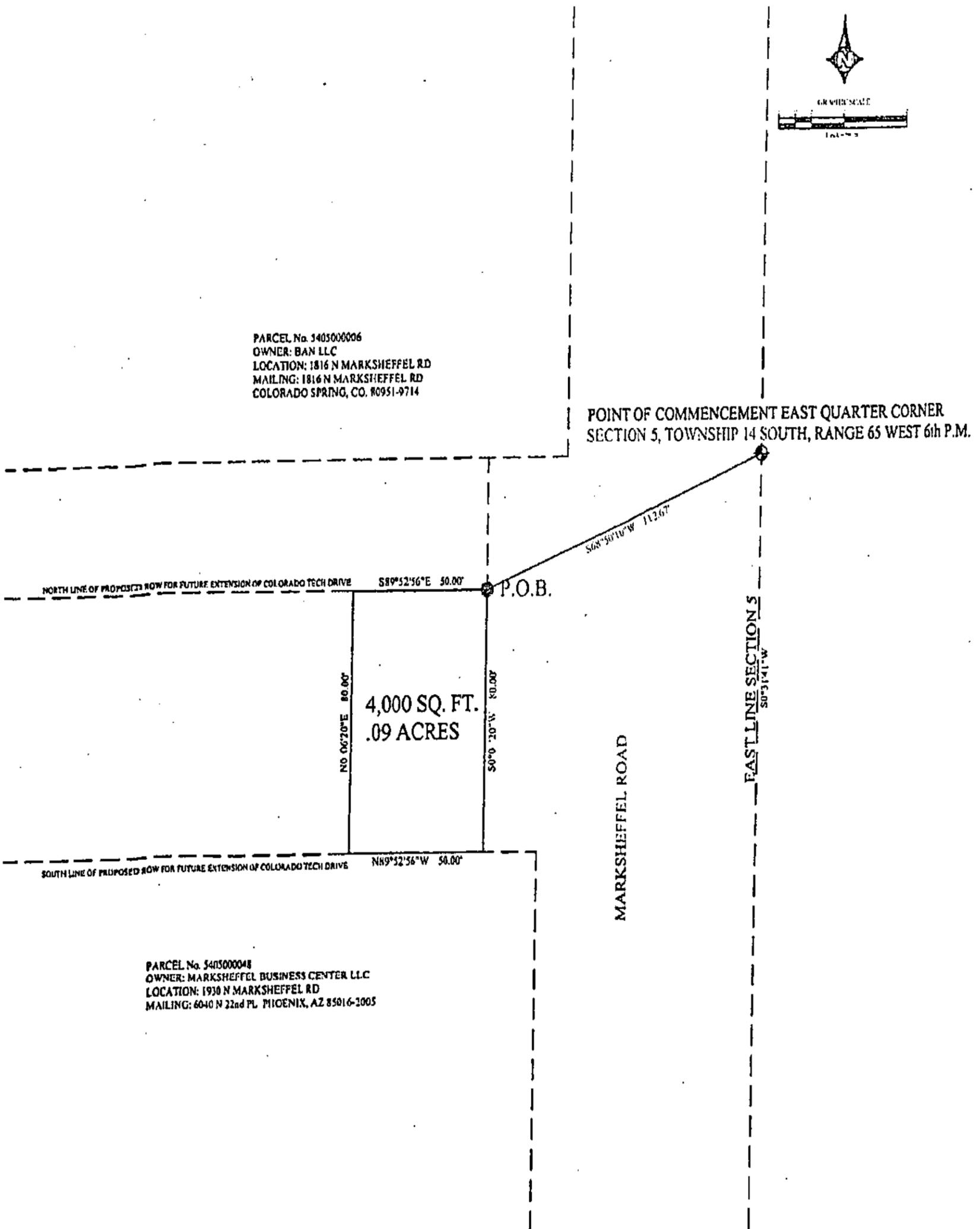
EXHIBIT B  
EL PASO COUNTY  
ACCESS EASEMENT

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO



PARCEL No. 540500006  
OWNER: BAN LLC  
LOCATION: 1816 N MARKSHEFFEL RD  
MAILING: 1816 N MARKSHEFFEL RD  
COLORADO SPRING, CO. 80951-9714

POINT OF COMMENCEMENT EAST QUARTER CORNER  
SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST 6th P.M.



PARCEL No. 540500004  
OWNER: MARKSHEFFEL BUSINESS CENTER LLC  
LOCATION: 1930 N MARKSHEFFEL RD  
MAILING: 6040 N 22nd PL PHOENIX, AZ 85016-2005

Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: 1"=50' DATE: 09/21/10  
DRAWING: TEACCESSMBC BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT A**  
**EL PASO COUNTY**  
**RIGHT-OF-WAY VACATION**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AS RECORDED IN BOOK 5485 AT PAGE 625 OF THE RECORDS OF EL PASO COUNTY, COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>TH</sup> P.M.,

1. THENCE NORTH 89°56'05" WEST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 105.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD;
2. THENCE SOUTH 00°31'41" WEST, ALONG SAID WEST RIGHT-OF-WAY A DISTANCE OF 250.01 FEET TO THE POINT OF BEGINNING;
3. THENCE SOUTH 00°31'41" WEST, CONTINUING ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 310.00 FEET;
4. THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 89°59'48", A RADIUS OF 115.00 FEET, AN ARC LENGTH OF 180.64 FEET, A CHORD BEARING OF NORTH 44°28'19" WEST, AND A CHORD LENGTH OF 162.63 FEET;
5. THENCE NORTH 89°28'19" WEST A DISTANCE OF 185.69 FEET;
6. THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°27'49", A RADIUS OF 270.00 FEET, AND AN ARC LENGTH OF 426.30 FEET;
7. THENCE SOUTH 00°03'55" WEST A DISTANCE OF 87.41 FEET;
8. THENCE NORTH 89°56'05" WEST A DISTANCE OF 80.00 FEET;
9. THENCE NORTH 00°03'55" EAST A DISTANCE OF 87.41 FEET;
10. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 90°27'49", A RADIUS OF 350.00 FEET, AND AN ARC LENGTH OF 552.61 FEET;
11. THENCE SOUTH 89°28'19" EAST A DISTANCE OF 185.69 FEET;
12. THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 89°59'57", A RADIUS OF 115.00 FEET, AND AN ARC LENGTH OF 180.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 75,877 SQUARE FEET, (1.63 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR NORTH 89°56'05" WEST.

\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: MBCRDVAC    BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT B**  
**EL PASO COUNTY**  
**RIGHT-OF-WAY VACATION**

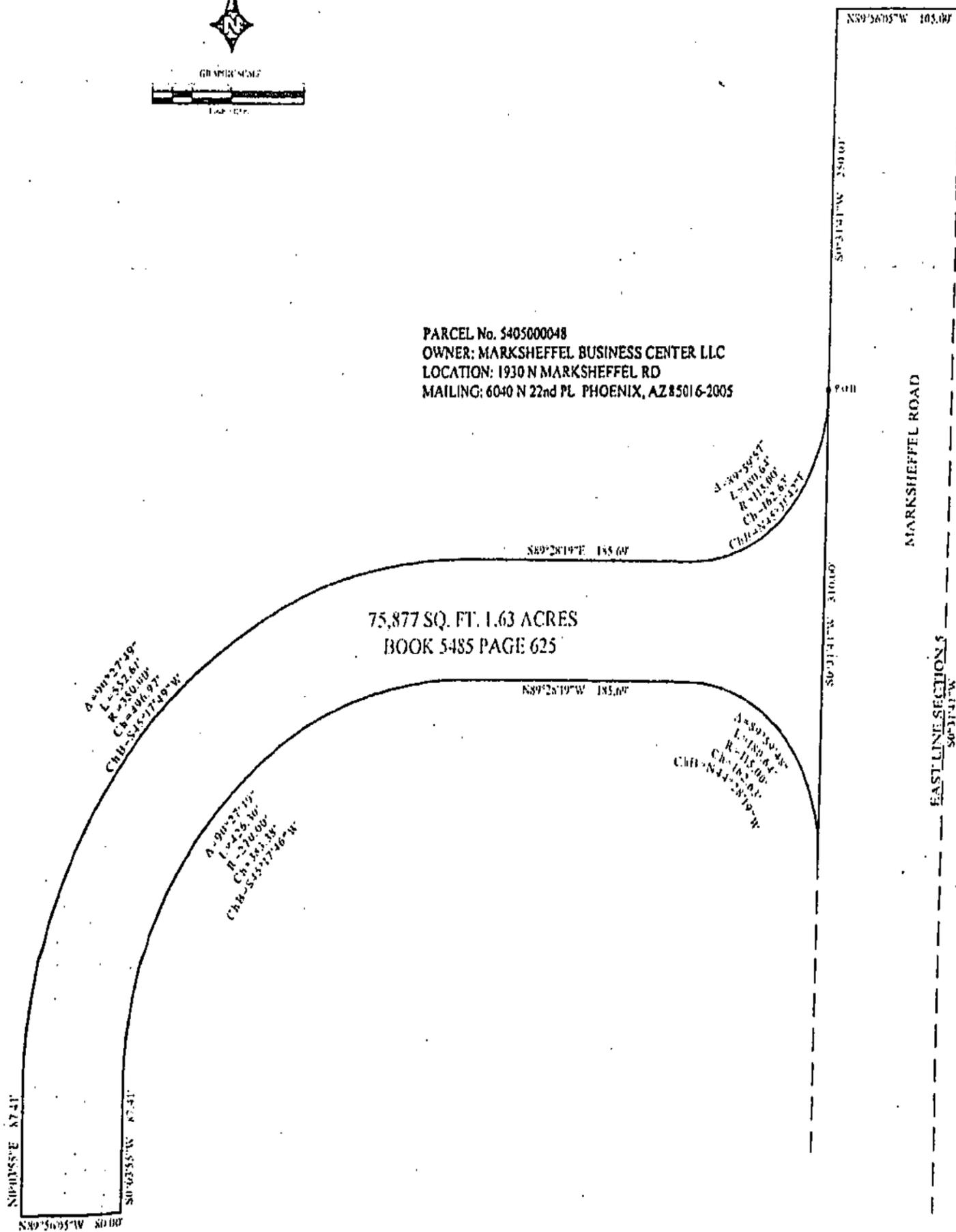
SITUATE  
 THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
 EL PASO COUNTY, COLORADO



POINT OF COMMENCEMENT EAST QUARTER CORNER  
 SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST 6th P.M.

PARCEL No. 5405000048  
 OWNER: MARKSHEFFEL BUSINESS CENTER LLC  
 LOCATION: 1930 N MARKSHEFFEL RD  
 MAILING: 6040 N 22nd PL PHOENIX, AZ 85016-2005

75,877 SQ. FT. 1.63 ACRES  
 BOOK 5485 PAGE 625



Carl R. McClellan  
 Professional Land Surveyor  
 LS NO. 17496

SCALE: 1"=125'    DATE: 09/21/10  
 DRAWING: MBCRDVAC BY: RLP

**EL PASO COUNTY**  
**PUBLIC SERVICES DEPARTMENT**

**EXHIBIT A**  
**EL PASO COUNTY**  
**RIGHT-OF-WAY VACATION - MARKSHEFFEL**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,

1. THENCE SOUTH 35°28'00" WEST A DISTANCE OF 148.40 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD, SAID POINT BEING THE POINT OF BEGINNING;
2. THENCE SOUTH 00°31'41" WEST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 679.84 FEET;
3. THENCE NORTH 89°28'19" WEST A DISTANCE OF 20.00 FEET, TO THE SOUTHEAST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN BOOK 5118 PAGE 952 IN THE RECORDS OF EL PASO COUNTY, COLORADO;
4. THENCE NORTH 00°31'41" EAST, ALONG THE EAST LINE OF SAID TRACT OF LAND, A DISTANCE OF 679.84 FEET;
5. THENCE SOUTH 89°28'19" EAST A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 13,586 SQUARE FEET, (0.31 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 00°31'41" WEST.

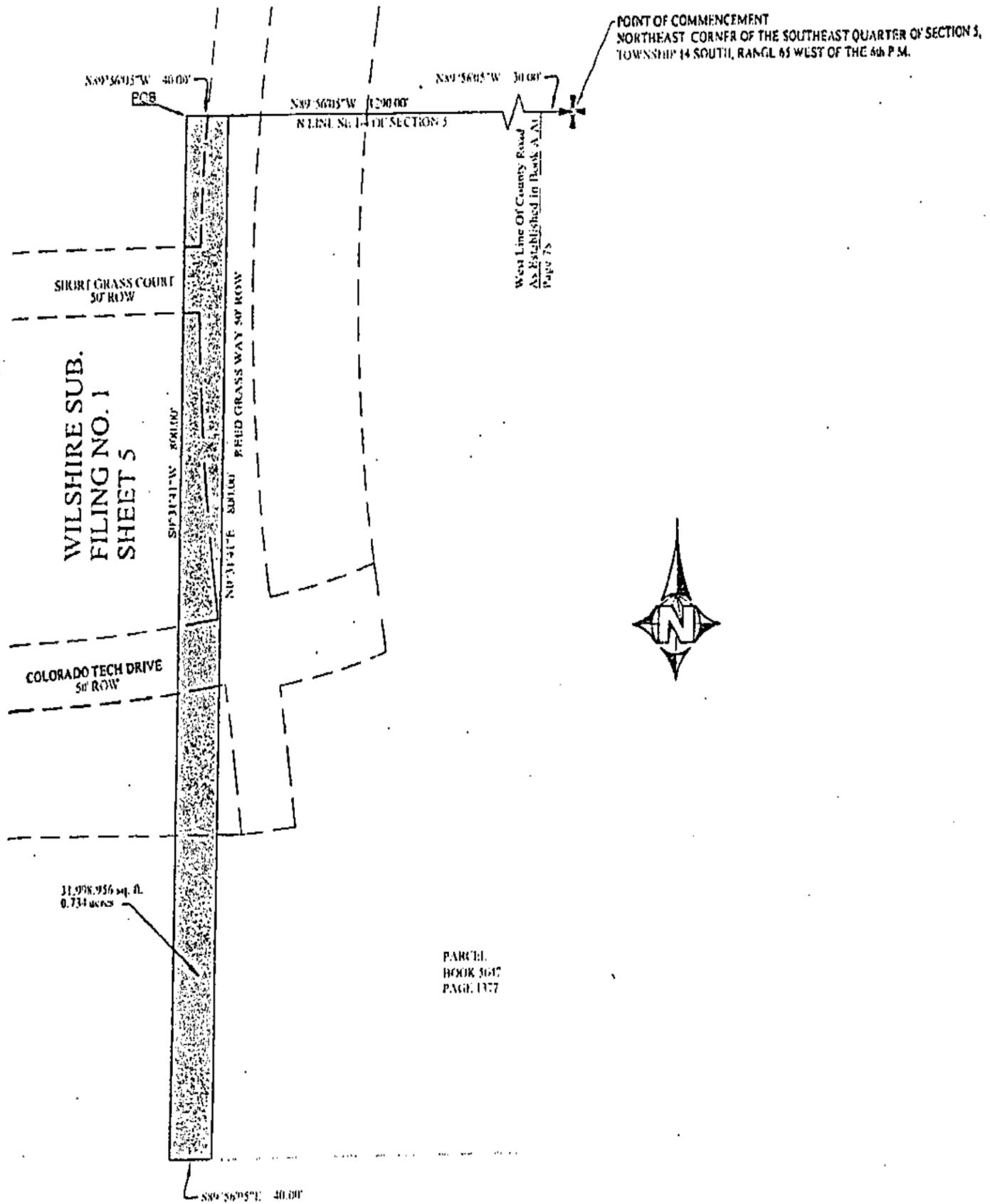
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: MBCROWVAC    BY: RLP

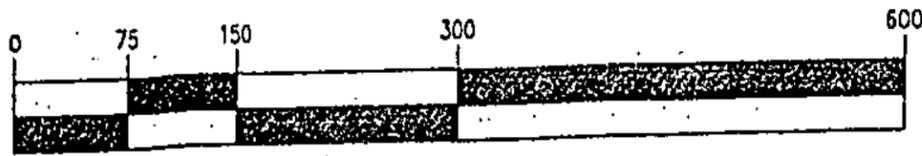
EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT B**  
**EL PASO COUNTY PROJECT**  
**RIGHT-OF-WAY VACATION-WILSHIRE**

SITUATE  
 THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
 EL PASO COUNTY, COLORADO



**ORIGINAL SCALE**



1 inch = 150 ft.  
 Vertical Scale: 1 inch = 0 ft.

Carl R. McClellan  
 Professional Land Surveyor  
 LS NO. 17496

SCALE: 1"=150' DATE: 12/02/10  
 DRAWING: Wilshirevacation BY: DPS

**EL PASO COUNTY**  
**PUBLIC SERVICES DEPARTMENT**

**EXHIBIT A**  
**TEMPORARY CONSTRUCTION EASEMENT**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M. EL PASO COUNTY, COLORADO

FROM THE POINT OF COMMENCEMENT (POB) AT THE EAST QUARTER CORNER OF SAID SECTION 5 THENCE; S89°38'12"W A DISTANCE OF 105.00 FEET TO THE POINT OF BEGINNING (POB) THENCE

1. SOUTH 89°38'12" WEST, A DISTANCE OF 50.00 FEET, THENCE;
2. SOUTH 00°06'20" WEST, A DISTANCE OF 119.59 FEET, THENCE;
3. SOUTH 89°52'56" EAST, A DISTANCE OF 50.00 FEET, THENCE;
4. NORTH 00°06'19" EAST, A DISTANCE OF 120.01 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 5990.22 SQUARE FEET, (0.14 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE EAST LINE OF SECTION 5, T14S, R65W OF THE 6TH P.M. AND ASSUMED TO BEAR NORTH 00°06'20" EAST.

\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 12/2/10  
DRAWING: BAN LLC    BY: jlg

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

EXHIBIT B  
**TEMPORARY CONSTRUCTION EASEMENT**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO



PARCEL NO: 5405000006  
OWNER NAME: BAN LLC  
LOCATION: 1816 N MARKSHEFFEL RD  
MAILING ADDRESS: 1816 N MARKSHEFFEL  
RD  
COLORADO SPRINGS CO 80951-9714

S89°38'12"W 50.00'    I'OB    I'OC  
EAST 1/4 CORNER OF SECTION 5, T14S, R65W  
S89°38'12"W 105.00'

Proposed 80' R.O.W. for future extension of Colorado Tech Drive

S0°06'20"W 119.59'  
N0°06'19"E 120.01'

TEMPORARY CONSTRUCTION  
EASEMENT

---COLORADO TECH DRIVE---

S89°52'56"E 50.00'

PARCEL NO: 5405000048  
OWNER NAME:  
MARKSHEFFEL BUSINESS CENTER LLC  
LOCATION: 1930 N MARKSHEFFEL RD  
MAILING ADDRESS:  
6040 N 22ND PL  
PHOENIX AZ 85016-2005

---MARKSHEFFEL RD.---

Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 12/2/10  
DRAWING: BAN LLC    BY: jlg

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**VACANT LAND EXCHANGE AGREEMENT****(Executed in Two (2) Originals)**

For and in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, El Paso County by and through the Board of County Commissioners of El Paso County, Colorado, (hereinafter "County"), whose address is 27 E. Vermijo Avenue, Colorado Springs, CO 80903, and BAN, LLC, a Colorado limited liability company authorized to transact business in Colorado (hereinafter "Grantor"), whose address is 1816 N. Marksheffel Road, Colorado Springs, CO 80951-9714, hereby enter into this Vacant Land Exchange Agreement (hereinafter "Agreement"). The County and Grantor may be referred to individually as a Party or collectively as the Parties.

1. Purpose of Agreement/Marksheffel Road Improvement Project: The County, in cooperation and consultation with the Constitution Heights Metropolitan District (hereinafter "District") and the Pikes Peak Rural Transportation Authority (hereinafter "PPRTA"), is in the process of designing road improvements that include the widening of Marksheffel Road. In order for the improvements to be completed it is necessary for additional right of way and easements to be acquired along Marksheffel Road. The transaction set forth herein will facilitate the acquisition of such additional right of way and easements.

2. Identification of Grantor's Property: Grantor owns commercial property on the west side of Marksheffel Road located at 1816 Marksheffel Road North, Colorado Springs, El Paso County, Colorado. The property that the County desires to acquire is part of a larger parcel, the larger parcel is referenced by its El Paso County tax schedule number 5405000006, and the larger parcel shall be hereinafter referred to herein as the Subject Property:

- a. The County desires to acquire the following part of the Subject Property in fee simple: a parcel containing 14,735 square feet or 0.3383 acres, more or less, which property is described more particularly on the legal description attached hereto as Exhibit A, Parcel Number 01, Description, Right of Way Dedication, and as illustrated on the engineered drawing attached hereto as Exhibit B, Sketch, Parcel 01 Right of Way, the property depicted on these exhibits will be referred to hereinafter as the Right of Way Property.
- b. The County desires to acquire the following part of the Subject Property as a non-exclusive permanent utility easement for the use and benefit of Mountain View Electric Association, as described with more particularity on the legal description attached hereto as Exhibit A, Permanent Easement Number PE-01, Non-Exclusive Permanent Utility Easement, and as illustrated on the engineered drawing attached hereto as Exhibit B, Sketch, Non Exclusive Permanent Easement PE-01, the property depicted on these exhibits will be referred to hereinafter as the Permanent Easement Property.

- c. The County desires to acquire the following part of the Subject Property as a non-exclusive temporary construction easement, which easement is described with more particularity on the legal description attached hereto as Exhibit A, Temporary Easement Number TE-01, Non-Exclusive Temporary Construction Easement, and as illustrated on the engineered drawing attached hereto as Exhibit B, Sketch, Non Exclusive Temporary Easement TE-01, the property depicted on these exhibits will be referred to hereinafter as the Temporary Construction Easement Property.
  
- d. The County desires to acquire the following part of the Subject Property as a non-exclusive easement appurtenant, which easement is described with more particularity on the legal description attached hereto as Exhibit A, Permanent Drainage Easement, and as illustrated on the engineered drawing attached hereto as Exhibit B, Permanent Drainage Easement. The easement shall be for the purpose of installing, constructing, inspecting, maintaining and repairing a drainage way, which drainage way shall not be limited to receive drainage only from the benefitted (appurtenant) estate, which benefitted estate may include an adjacent property, said adjacent property being referred to herein by its El Paso County tax schedule number 5405000048, but which may include drainage from other properties, provided that the drainage way shall be designed, installed, constructed, repaired and maintained so as to contain any such drainage arising from a 100-year event within the bounds of the easement. The easement shall contain a covenant that the owner of the servient estate shall not be responsible for the costs of installation, construction, inspection, maintenance and repair of the drainage way. However, such covenant shall not preclude the servient estate from incurring such obligations in the event the servient estate completes a land use process that requires the creation or dedication of an easement for similar purposes.

3. Other Consideration for Grantor: As other good and valuable consideration, and as condition precedent to Grantor's obligation to perform its promises under this Agreement, the County agrees to perform the following, which shall occur on or before Closing to Grantor's satisfaction or, if Grantor so consents in writing at Closing, then Grantee shall perform any of the following as a post closing obligation, the satisfactory performance of which Grantor may determine in the sole exercise of its discretion.

- a. The County shall acquire in fee simple from the owner of an adjacent property being referred to herein by its El Paso County tax schedule number 5405000048, the following property, and on or before closing convey said property to Grantor by means of a good and acceptable Special Warranty Deed and according to provisions of this Agreement pertaining to closing of the transaction: a parcel containing 20,956 square feet or 0.48 acres, more or less, which property is described with more

particularity on the legal description attached hereto as Exhibit A, Special Warranty Deed and as illustrated on the engineered drawing attached hereto as Exhibit B, Special Warranty Deed, the property depicted on these exhibits being referred to hereinafter as the Exchange Property. To the extent the County is not so able to acquire the Exchange Property, but is able to satisfy all other conditions precedent to its obligation to close, the County shall pay Grantor for the real estate interests that it desires to acquire from Grantor, and Grantor shall sell said real estate interest for public right of way purposes to the County, for the amount of \$61,048. The Parties do not require an additional appraisal as an obligation to close as both Parties agree that the purchase price was determined in an appraisal prepared by a duly qualified eminent domain appraisal, licensed and in good standing in the state of Colorado. The amount paid hereunder shall be in addition to the amount of special damages to be paid pursuant to Section 4, below.

- b. The County shall acquire from the owner of an adjacent property, said adjacent property being referred to herein by its El Paso County tax schedule number 5405000048, a non-exclusive easement appurtenant for ingress and egress purposes over that part of said adjacent property containing 4000 square feet or 0.09 acres, more or less, which property is described with more particularity on the legal description attached hereto as Exhibit A, Access Easement and as illustrated on the engineered drawing attached hereto as Exhibit B, Access Easement, the property depicted on these exhibits may be referred to herein as the Access Easement. In addition, in the event the County is not able to acquire the Exchange Property as set forth in Section 3(a), above, and therefore purchases the property for public right of way purposes from Grantor for the amount of \$61,048 as set forth in Section 3(a), above, the County shall acquire from the owner of El Paso County tax schedule number 5405000048 an additional non-exclusive, easement appurtenant for ingress and egress purposes over that part of the Exchange Property containing 1990 square feet or 0.046 acres, more or less, which property is described more particularity on the legal description attached hereto as Exhibit A, Access Easement – Exchange Property and as illustrated on the engineered drawing attached hereto as Exhibit B, Access Easement – Exchange Property.
- c. Prior to permanently closing off Grantor's property from direct access to Marksheffel Road, the County shall construct, as a post-closing obligation under this Agreement, adjacent to said Access Easement a full movement intersection at the intersection of Marksheffel Road and Colorado Tech Drive. The foregoing covenants do not prohibit the County from constructing a temporary access to Grantor's property. Such temporary access will be coordinated with the Grantor. The Access Easement shall merge into, and shall immediately cease to be a legally binding and

enforceable instrument by operation of law upon the area occupied by the access easement becoming dedicated and accepted for public road right-of-way by means of the recording of a subdivision plat that contains the appropriate formalities for the dedication and acceptance thereof, and the easement shall provide that the owner thereof consents to the land underlying the Access Easement being dedicated for public road right-of-way without any further instrument or consent being required.

- d. Grantor agrees and understands that it will take the property and easement conveyed to Grantor under subsections a. and b., above, subject to a reservation therein of a non-exclusive easement appurtenant that shall permit the owner of the property referenced by El Paso County tax schedule number 5405000048 to enter upon the property for the purpose of providing grading, said grading to occur only in connection with Grantor's construction of Colorado Tech Drive. Grantor agrees and understands that it shall also take the property subject to a reservation therein of a non-exclusive easement in gross for all reasonable and necessary purposes associated with the location of utility lines therein. The easement shall not exceed ten feet (10') wide and shall run the entire southern boundary of the subject property.
4. The County, on or before closing, shall pay Grantor the sum of \$134,205. This amount represents the amount of special damages Grantor estimates it would incur in the event this matter proceeded to acquisition by eminent domain. Grantor shall have discretion to use the proceeds as it deems appropriate. To the extent Grantor seeks to use the funds to relocate facilities and operations on its property, the County shall, upon notice from Grantor, prior to closing, prepare and provide at no cost and expense to Grantor site specific development plan, approved by the Director of the County's Development Services Department, that will be in compliance with all applicable State and County land use laws and regulations. Grantor shall cooperate with the County to develop the site specific development plan by providing the County with information concerning where it desires to locate on the Subject Property its facilities, structures, improvements, growing areas, etc. Furthermore, Grantor shall have a post-closing obligation to install the temporary access to its property on the easement that it is acquiring under this Agreement in Section 3(b), above, and it shall run from the County ROW at the intersection of Marksheffel and Colorado Tech Drive and enter into Grantor's property approximately 150 feet to the west of the centerline of Marksheffel Road. It shall be Grantor's obligation to complete the work so that it coincides with the County's determination to close off the Grantor's current or temporary direct access onto Marksheffel Road. The County shall have the right to close off Grantor's current direct access to Marksheffel Road upon 10 days advance written notice; however, unless the Marksheffel Road improvements are substantially completed, the County shall provide Grantor with temporary access to its property. The temporary access shall provide as a post closing obligation that upon the owner or developer of El Paso County tax schedule number 5405000048 of some part thereof constructing an extension of Colorado Tech Drive, the owner of the Subject Property

shall be required to promptly close off its access via the Access Easement and move its access to the future intersection location proposed approximately 465 feet west of the centerline of Marksheffel Road, and that the owner or developer of El Paso County tax schedule number 5405000048 of some part thereof shall not be required to bear any of the expense of closing off and moving the access point for the Ban Property. The Access Easement shall provide that it shall merge into, and shall immediately cease to be a legally binding and enforceable instrument by operation of law upon the area occupied by the access easement becoming dedicated and accepted for public road right-of-way by means of the recording of a subdivision plat by the owner or developer of El Paso County tax schedule number 5405000048 that contains the appropriate formalities for the dedication and acceptance thereof, and the easement shall provide that the owner thereof consents to the land underlying the Access Easement being dedicated for public road right-of-way without any further instrument or consent being required.

- a. The County, as part of the Marksheffel Road project and as post-closing obligation, shall construct a full movement intersection at the intersection of Marksheffel Road and the future Colorado Tech Drive.
- b. On or before Closing the County shall provide to Grantor an administrative determination, signed by the Director of the El Paso County Development Services Department (DSD), and assigned a file number and a file maintained and kept in DSD's records and database, that as a result of the transaction set forth in this Agreement, the Subject Property shall remain in the same state of land use compliance as existed prior to closing, including, but not limited to, a determination that the property is in compliance with the subdivision and the zoning regulations, including, but not limited to, compliance with the lot area and set back regulations of the zoning code. This determination shall incorporate the site specific development plan referenced in Section 4, above.
- c. On or before Closing the County shall provide to Grantor a subdivision exemption, signed by the Director of the El Paso County Development Services Department (DSD), and assigned a file number and a file maintained and kept in DSD's records and database, that as a result of the transaction set forth in this Agreement, the Subject Property shall not be in violation of the State and the County's subdivision laws and regulations. This determination shall incorporate the site specific development plan referenced in Section 4, above. In processing this administrative determination and the subdivision exemption set forth in this Subsection (c), the County/DSD shall include Grantor, and Grantor shall have the right to participate in, the development of the administrative determination and subdivision exemption, which administrative determination and subdivision exemption shall not be final without Grantor's express written consent thereto.

5. Contingency for Additional Right of Way Acquisition: The County shall not have any obligation to perform its obligations under this Agreement unless or until it closes its agreement with Marksheffel Business Center, LLC, the closing of which agreement will provide the County with the real estate interests necessary to complete its obligations under this Agreement.

6. Appurtenances and Other Interests: The property to be conveyed pursuant to this Agreement shall include any interests, easements, rights, benefits, improvements and fixtures incident and appurtenant thereto.

7. Mutual Promises Contract: The mutual promises contained herein are the only consideration for this Agreement, and the Parties hereby acknowledge the sufficiency of said consideration. Accordingly, the County is not paying earnest money as consideration for Grantor's entry into this Agreement.

8. Closing and Possession: Closing shall occur no later than ten (10) days from County's completion of its pre-closing obligations under this Agreement, and at a date, time, and place to be determined by the County. A Closing Agent shall conduct the Closing, and the County shall pay the Closing Agent's fees at the County's sole cost and expense. The County shall be entitled to possession of the property acquired immediately upon Closing.

9. Method of Conveyance/ Pro-Rations/Colorado Department of Transportation Right of Way Acquisition Form: The conveyance of the property under this Agreement shall be made by a good and sufficient Special Warranty Deed, subject to liens and encumbrances of record, if any, and free and clear of all taxes except for taxes accrued during the year 2010. Grantor shall pay the actual taxes and any unpaid assessments on the Subject Property for all previous years other than the year of Closing, if said taxes and assessments have not already been paid by Closing. All taxes accrued but not yet paid for the year of Closing shall be prorated to the day of Closing. However, the Closing Agent shall not credit the Purchase Price, but shall directly collect the same from proceeds and pay them directly to the El Paso County Treasurer. With respect to the Land Exchange Property, the Grantor will not receive a real estate tax pro-ration, as the taxes for the year of Closing shall have been paid directly to the Treasurer in the closing between the County and Marksheffel Business Center, LLC. Thus, Grantor will receive a credit for prepayment of the 2010 taxes payable in 2011 on the tax bill that Grantor will receive on the Exchange Property in 2011.

10. Title Commitment: The County shall, at its sole cost and expense, obtain a title commitment for owner's title insurance policy for the above-referenced properties in an amount to be determined by the County. The value of the title insurance for the Land Exchange Property that Grantor is to receive shall be \$57,000.00. The title company used to provide such commitment and title insurance shall be the County's exclusive choice.

11. Title Review/Matters Not Shown By the Public Records: On or before ten (10) calendar days from the execution of this Agreement by the County (hereinafter referred to as the Disclosure Deadline), each Party shall disclose to the other all easements, leases, liens, and any other title matters not shown by the public records and of which Grantor has actual

knowledge. Each shall have the right to enter upon and inspect the property to be acquired from the other Party. On or before twenty (20) days from the execution of this Agreement by Grantor, the each Party shall submit to the other Party any objections to any matters disclosed by the title commitment, to any matters in any public record, to any matters disclosed but not shown in the public record, and/or to any matters shown by an inspection of the property. After a Party receives an objection it shall make reasonable efforts to cure the objection by the date set for Closing. In the event that any such objection shall not be cured in the exercise of a Party's subjective discretion, the objecting Party shall not have an obligation to close this Agreement, and this Agreement shall terminate without the need for any action by the Parties.

12. Mortgage/Deed of Trust: Grantor shall not have an obligation to convey the real property to the County unless and until any person or entity holding a mortgage, deed of trust, or other security interest therein shall provide a good and sufficient partial release of the same to the Closing Agent. The County shall pay any reasonable fee required by the holder or the Closing Agent for providing, processing, preparing, recording, and tracking the release. Grantor shall not have any obligation under this Agreement to pay any such fee and/or to pay any amount requested by the Lender as a requirement of providing said partial release. Such fee shall not be considered as an amount to pay or reduce any part of the underlying indebtedness, including any interest accrued thereon. Execution of this Agreement by Grantor shall constitute Grantor's consent to both the County and the Closing Agent to contact the mortgage holder in order to obtain and work with the holder concerning satisfaction of the holder's requirements for providing said partial release.

13. Creation of Binding Contract/Effective Date: This Agreement shall not become binding upon El Paso County unless and until it is approved by the Board of County Commissioners sitting in an open and public meeting. Grantor's obligation under this Agreement shall expire unless and until this Agreement is approved and executed by the Board of County Commissioners no later than fourteen (14) calendar days from the date of the Grantor execution of this Agreement. The Effective Date of this Agreement shall be the date that it is approved by the Board of County Commissioners in an open and public meeting.

14. Entire Agreement/Subsequent Modification/Survival: This Agreement constitutes the entire contract between the Parties relating to the subject hereof, and any prior agreements, if any, pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the Parties. Any obligation in this Agreement, which, by its terms, is intended to be performed after Closing, shall survive the same.

15. No Obligation to Close Unless Contingencies Satisfied: No Party shall have an obligation to close this Agreement unless a Party shall be satisfied in the sole exercise of their discretion that the conditions precedents to their respective obligations to close have been satisfied.

16. Agreement Not Admissible in Eminent Domain Proceeding: In the event the County and Grantor proceed to litigation in eminent domain concerning the Subject Property, the Parties agree and understand that this Agreement has been entered into as an attempt to resolve a disputed matter and, accordingly, shall not be admissible in any such proceeding pursuant to Rule 408 of the Colorado Rules of Evidence.

17. Post Closing Obligations/Post Termination Obligation: Any obligation arising under this Agreement that is expressly identified or intended by the Parties to be a post closing obligation shall survive closing of this Agreement. Any obligation arising under this Agreement that is expressly identified or intended by the Parties to survive termination of this Agreement shall survive termination of this Agreement, including, but not limited to, the provisions of the Section 19, below.

18. Choice of Law/Jurisdiction/Venue: This Agreement shall be interpreted and construed according to the laws of the state of Colorado. In the event of any litigation arising under this Agreement the exclusive jurisdiction and venue shall be in the District or County Courts of the Fourth Judicial District in and for the County of El Paso, State of Colorado.

19. Immediate Possession Agreement: At mutual execution of this Agreement the County shall present to the Grantor a CDOT-approved Immediate Possession Agreement for the property that Grantor intends to exchange or sell to the County. The Immediate Possession Agreement shall provide cash consideration in the amount set forth in Section 4, above to Grantor at the time of execution, and shall contain a time provision that the transaction contemplated herein shall close or shall proceed to eminent domain no later than 180 days from the date of execution of this Immediate Possession Agreement. The Immediate Possession Agreement shall be effective upon execution and execution shall take place at a title company. The cash consideration shall exchange upon the County's satisfaction that the title company will issue a title insurance policy for the grant of possession insuring a value of \$47,889, and which policy shall be free and clear of all liens and encumbrances, except for taxes for the year of granting immediate possession. Any such taxes for the year of granting possession shall be handled at execution pursuant to the provisions of Section 8, above. The Immediate Possession Agreement shall provide for the temporary access to Grantor's property as set forth in Section 4, above. In the event this Agreement terminates prior to closing but following mutual execution of the Immediate Possession Agreement, the provisions of the Immediate Possession Agreement shall survive closing.

20. Additional Disclosure: In the event the County is not able to close its transaction with the adjacent property owner, the County discloses that, subject to receiving an additional approval from the Board of County Commissioners, it will have to initiate condemnation in order to convert the access from a temporary access easement to permanent access, either in the form of obtaining by condemnation public right of way in fee simple or in the form of a permanent easement. Furthermore, County discloses that it cannot lawfully leave Grantor without access to his property. Therefore, by executing this document Grantor does not waive any claim to damages it may have as a result of the County not being able to deliver permanent access to its property. Prior to initiating condemnation, if necessary, the

County preserves its ability to litigate with the owner of the adjacent property in quiet title, declaratory judgment or other action concerning whether the temporary access easement is sufficient to constitute a long-term or permanent access to Grantor's property.

DATED this 14<sup>th</sup> day of DECEMBER, 2010.

BAN, LLC,  
A Colorado Limited Liability Company

By: Kevin Moore Manager  
Kevin Moore, Manager

DATED this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By: \_\_\_\_\_  
County Clerk and Recorder

By: \_\_\_\_\_  
Dennis Hisey, Chairman

APPROVED AS TO FORM:

OFFICE OF THE COUNTY ATTORNEY  
OF EL PASO COUNTY, COLORADO

\_\_\_\_\_  
William H. Louis, County Attorney

October 09, 2009  
J.N.: 09.122.002  
Ban LLC, ROW Dedication

**EXHIBIT "A"**

**PARCEL NUMBER 01  
DESCRIPTION**

**RIGHT OF WAY DEDICATION**

That certain parcel of land situated in the Northeast One-Quarter of Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> Principal Meridian., County of El Paso, State of Colorado, being a portion of the parcel of land described in the Special Warranty Deed recorded on July 3, 1995 in Book 6676 at Page 1356 of the records in the Office of the Clerk and Recorder of said El Paso County, more particularly described as follows:

Commencing at the East One-Quarter Corner of said Section 5, being also the southeast corner of said parcel described in Book 6676: Thence South 89°41'32" West along the South line of said parcel, 30.00 feet to the POINT OF BEGINNING;

Thence South 89°41'32" West, along said South line, 45.00 feet;

Thence North 00°08'32" East, along a line 75.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 327.42 feet to the north line of said parcel described in Book 6676:

Thence North 89°37'07" East, along the said North line, 45.00 feet;

Thence South 00°08'32" West, along a line 30.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 327.48 feet to the POINT OF BEGINNING.

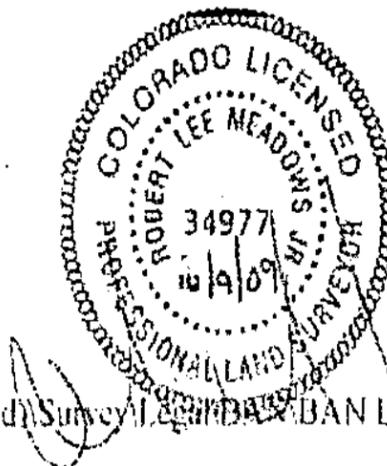
**CONTAINING:** 14,735 Square Feet or 0.3383 Acre, more or less.

**SUBJECT TO** all Covenants, Rights, Rights-of-Way and Easements of Record.

**EXHIBIT "B"** attached as a graphical depiction of the above described property as an aid in the visual interpretation of the written document.

The Basis of Bearings is the East line of the Northeast One-Quarter of Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, being monumented on the south end by a 3 1/4" aluminum cap stamped "El Paso County D.P.W., 1992, L.S. 17496" in Department of Public Works range box and on the north end by a 2" pipe with 3" aluminum cap stamped "W.K. Clark Assoc. Inc., L.S. 4842, 1985", which bears North 00°08'32" East, 2617.04 feet.

Robert L. Meadows, Jr. PLS 34977  
Prepared for and behalf of  
Matrix Design Group, Inc.  
2435 Research Parkway, Suite # 300  
Colorado Springs, CO 80920



DATE: Oct. 09, 2009

DRAWN BY: BRIAN KNUDSEN

CHECKED BY: dib

APPROVED BY: BOB MEADOWS

DRAWING: EAN-ROW.dwg

### EXHIBIT B SKETCH

PARCEL OF RIGHT-OF-WAY  
DEDICATION

PARCEL 5405000006

S 1/2 OF SE 1/4 OF SE 1/4 OF NE 1/4,  
SECTION 5, T 14 S, R 65 W, 6TH P.M.  
EL PASO COUNTY, COLORADO



MARKSHEFFEL BUSINESS CENTER  
FILING NO. 1  
LOT 3  
(RECEPTION NO. 203254741)



EAN LLC,  
A COLORADO LIMITED LIABILITY COMPANY  
SCH # 5405000006  
(BOOK 6676, PAGE 1358)

UNPLATTED  
(RECEPTION NO. 202006608)

MARKSHEFFEL ROAD  
(BASIS OF BEARINGS)

N 00°08'32" E 2817.04'

45.00'

N 00°08'32" E 327.42'

L3

S 00°08'32" W 327.48'

30.00'

L2

NE COR. SEC. 5, T 14 S,  
R 65 W, 6TH P.M.  
FOUND 2" PIPE WITH 3"  
ALUMINUM CAP STAMPED "W.K.  
CLARK ASSOC. INC. L.S. 4842  
1985" PER MONUMENT RECORD  
FILED 4/29/86

LINE TABLE		
LINE	LENGTH	BEARING
L1	30.00	S89°41'32"W
L2	45.00	S89°41'32"W
L3	45.00	N89°37'07"E

CLAREMONT RANCH  
FILING NO. 8

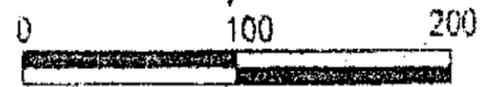
POINT OF COMMENCEMENT  
E1/4 COR. SEC. 5, T 14 S,  
R 65 W, 6TH P.M.  
FOUND 3 1/4" ALUMINUM  
CAP STAMPED "EL PASO  
COUNTY D.P.W., 1992, L.S.  
17496" IN DEPARTMENT OF  
PUBLIC WORKS RANGE BOX  
PER 1993 MONUMENT RECORD

POINT OF BEGINNING

UNPLATTED  
(RECEPTION NO. 203133561)

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

AREA: 14,735 s.f.



SCALE IN FEET  
ORIGINAL SCALE

October 09, 2009  
J.N.: 09.122.002  
Ban LLC, MVEA Easement

**EXHIBIT "A"**

PERMANENT EASEMENT NUMBER PE-01  
DESCRIPTION

NON-EXCLUSIVE PERMANENT UTILITY EASEMENT

That certain parcel of land situated in the Northeast One-Quarter of Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, County of El Paso, State of Colorado, being a portion of the parcel of land described in the Special Warranty Deed recorded on July 3, 1995 in Book 6676 at Page 1356 of the records in the Office of the Clerk and Recorder of said El Paso County, more particularly described as follows:

Commencing at the East One-Quarter Corner of said Section 5, being also the Southeast corner of said parcel described in Book 6676: Thence South 89°41'32" West, along the South line of said parcel, 75.00 feet to the POINT OF BEGINNING;

Thence South 89°41'32" West, along said South line, 30.00 feet:

Thence North 00°08'32" East, along a line 105.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 20.00 feet:

Thence North 89°41'32" East, 10.00 feet:

Thence North 00°08'32" East, along a line 95.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 307.40 feet to the North line of said parcel described in Book 6676:

Thence North 89°37'07" East, along the North line of said parcel, 20.00 feet:

Thence South 00°08'32" West, along a line 75.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 327.42 feet to the POINT OF BEGINNING.

**CONTAINING:** 6,748 Square Feet or 0.1549 Acre, more or less.

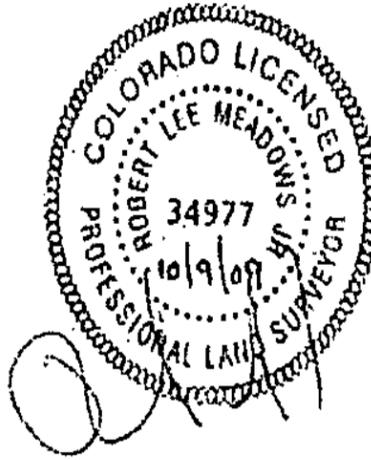
**SUBJECT TO** all Covenants, Rights, Rights-of-Way and Easements of Record.

**EXHIBIT "B"** attached as a graphical depiction of the above described property as an aid in the visual interpretation of the written document.

PERMANENT EASEMENT NUMBER PE-01  
DESCRIPTION

The Basis of Bearings is the East line of the Northeast One-Quarter of Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, being monumented on the south end by a 3 1/4" aluminum cap stamped "El Paso County D.P.W., 1992, L.S. 17496" in Department of Public Works range box and on the north end by a 2" pipe with 3" aluminum cap stamped "W.K. Clark Assoc. Inc., L.S. 4842, 1985", which bears North 00°08'32" East, 2617.04 feet.

Robert L. Meadows, Jr. PLS 34977  
Prepared for and behalf of  
Matrix Design Group, Inc.  
2435 Research Parkway, Suite # 300  
Colorado Springs, CO 80920



Matrix Design Group, Inc. 2009C



DATE: Oct. 09, 2009

DRAWN BY: BRIAN KNUDSEN

CHECKED BY: dib

APPROVED BY: BCB MEADOWS

DRAWING: BAN-ESMT MV.dwg

### EXHIBIT B SKETCH

NON-EXCLUSIVE  
PERMANENT EASEMENT PE-01  
PARCEL 5405000006

S 1/2 OF SE 1/4 OF SE 1/4 of NE 1/4,  
SECTION 5, T 14 S, R 65 W, 6TH P.M.  
EL PASO COUNTY, COLORADO



MARKSHEFFEL BUSINESS CENTER  
FILING NO. 1  
LOT 3  
(RECEPTION NO. 203254741)



BAN LLC  
A COLORADO LIMITED LIABILITY COMPANY  
SCH # 5405000006  
(BOOK 6676, PAGE 1356)

UNPLATTED  
(RECEPTION NO. 202006666)

MARKSHEFFEL ROAD  
(BASIS OF BEARINGS)

NE COR. SEC. 5, T 14 S,  
R 65 W, 6TH P.M.  
FOUND 2" PIPE WITH 3"  
ALUMINUM CAP STAMPED "W.K.  
CLARK ASSOC. INC. L.S. 4842  
1985" PER MONUMENT RECORD  
FILED 4/29/86

LINE TABLE		
LINE	LENGTH	BEARING
L1	75.00	S89°41'32"W
L2	30.00	S89°41'32"W
L3	20.00	N00°08'32"E
L4	10.00	N89°41'32"E
L5	20.00	N89°37'07"E

CLAREMONT RANCH  
FILING NO. 8

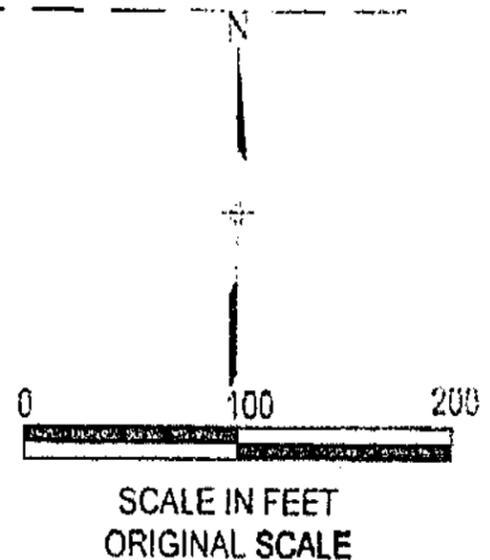
POINT OF COMMENCEMENT  
E1/4 COR. SEC. 5, T 14 S, R  
65 W, 6TH P.M.  
FOUND 3 1/4" ALUMINUM  
CAP STAMPED "EL PASO  
COUNTY D.P.W., 1992, L.S.  
17496" IN DEPARTMENT OF  
PUBLIC WORKS RANGE BOX  
PER 1993 MONUMENT RECORD

POINT OF BEGINNING

UNPLATTED  
(RECEPTION NO. 203133561)

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

AREA: 6,748 s.f.



November 11, 2009

J.N.: 09.122.002

Ban LLC, Temporary Easement

**EXHIBIT "A"**

TEMPORARY EASEMENT NUMBER TE-01  
DESCRIPTION

NON-EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT

That certain parcel of land situated in the Northeast One-Quarter of Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, County of El Paso, State of Colorado, being a portion of the parcel of land described in the Special Warranty Deed recorded on July 3, 1995 in Book 6676 at Page 1356 of the records in the Office of the Clerk and Recorder of said El Paso County, more particularly described as follows:

Commencing at the East One-Quarter Corner of said Section 5, being also the Southeast corner of said parcel described in Book 6676; Thence South  $89^{\circ}41'32''$  West, along the South line of said parcel, 75.00 feet to the POINT OF BEGINNING:

Thence South  $89^{\circ}41'32''$  West, along said South line, 30.00 feet;

Thence North  $00^{\circ}08'32''$  East, along a line 105.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 20.00 feet;

Thence North  $89^{\circ}41'32''$  East, 10.00 feet;

Thence North  $00^{\circ}08'32''$  East, along a line 95.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 307.40 feet to the North line of said parcel described in Book 6676;

Thence North  $89^{\circ}37'07''$  East, along the North line of said parcel, 20.00 feet;

Thence South  $00^{\circ}08'32''$  West, along a line 75.00 feet Westerly of and parallel to the East line of said Northeast One-Quarter, 327.42 feet to the POINT OF BEGINNING.

**CONTAINING:** 6,748 Square Feet or 0.1549 Acre, more or less.

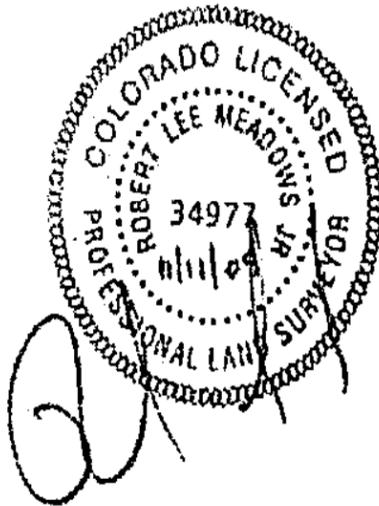
**SUBJECT TO** all Covenants, Rights, Rights-of-Way and Easements of Record.

**EXHIBIT "B"** attached as a graphical depiction of the above described property as an aid in the visual interpretation of the written document.

TEMPORARY EASEMENT NUMBER TE-01  
DESCRIPTION

The Basis of Bearings is the East line of the Northeast One-Quarter of Section 5, Township 14 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, being monumented on the south end by a 3 1/4" aluminum cap stamped "El Paso County D.P.W., 1992, L.S. 17496" in Department of Public Works range box and on the north end by a 2" pipe with 3" aluminum cap stamped "W.K. Clark Assoc. Inc., L.S. 4842, 1985", which bears North 00°08'32" East, 2617.04 feet.

Robert L. Meadows, Jr. PLS 34977  
Prepared for and behalf of  
Matrix Design Group, Inc.  
2435 Research Parkway, Suite # 300  
Colorado Springs, CO 80920



Matrix Design Group, Inc. 2009©

DATE: Nov. 11, 2009

DRAWN BY: dib

CHECKED BY: dib

APPROVED BY: BOB MEADOWS

DRAWING: BAN-ESMT TE.dwg

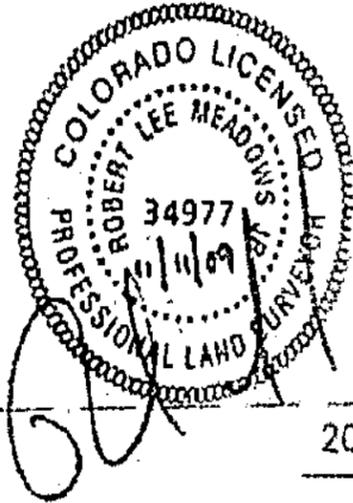
### EXHIBIT B SKETCH

NON-EXCLUSIVE  
TEMPORARY EASEMENT TE-01  
PARCEL 5405000006

S 1/2 OF SE 1/4 OF SE 1/4 of NE 1/4,  
SECTION 5, T 14 S, R 65 W, 6TH P.M.  
EL PASO COUNTY, COLORADO



MARKSHEFFEL BUSINESS CENTER  
FILING NO. 1  
LOT 3  
(RECEPTION NO. 203254741)



BAN LLC  
A COLORADO LIMITED LIABILITY COMPANY  
SCH # 5405000006  
(BOOK 6676, PAGE 1356)

UNPLATTED  
(RECEPTION NO. 202006608)

MARKSHEFFEL ROAD  
(BASIS OF BEARINGS)

NE COR. SEC. 5, T 14 S,  
R 65 W, 6TH P.M.  
FOUND 2" PIPE WITH 3"  
ALUMINUM CAP STAMPED "W.K.  
CLARK ASSOC. INC. L.S. 4842  
1985" PER MONUMENT RECORD  
FILED 4/29/86

LINE TABLE		
LINE	LENGTH	BEARING
L1	75.00	S89°41'32"W
L2	30.00	S89°41'32"W
L3	20.00	N00°08'32"E
L4	10.00	N89°41'32"E
L5	20.00	N89°37'07"E

CLAREMONT RANCH  
FILING NO. 8

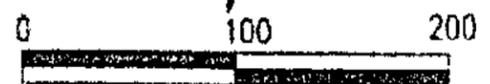
POINT OF COMMENCEMENT  
E1/4 COR. SEC. 5, T 14 S, R  
65 W, 6TH P.M.  
FOUND 3 1/4" ALUMINUM  
CAP STAMPED "EL PASO  
COUNTY D.P.W., 1992, L.S.  
17496" IN DEPARTMENT OF  
PUBLIC WORKS RANGE BOX  
PER 1993 MONUMENT RECORD

POINT OF BEGINNING

UNPLATTED  
(RECEPTION NO. 203133561)

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

AREA: 6.748 s.f.



SCALE IN FEET  
ORIGINAL SCALE

**EXHIBIT A**  
**EL PASO COUNTY**  
**PERMANENT DRAINAGE EASEMENT**

SITUATE  
THE EAST HALF OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE EAST HALF OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,**

1. **THENCE SOUTH 86°21'03" WEST A DISTANCE OF 622.50 FEET TO THE POINT OF BEGINNING;**
2. **THENCE NORTH 00°06'54" WEST A DISTANCE OF 362.45 FEET;**
3. **THENCE SOUTH 89°36'41" WEST A DISTANCE OF 40.00 FEET;**
4. **THENCE SOUTH 00°06'54" EAST A DISTANCE OF 362.45 FEET;**
5. **THENCE SOUTH 89°52'56" EAST A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.**

SAID TRACT OF LAND CONTAINS 14,505.16 SQUARE FEET, (0.333 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 89°38'12" WEST.

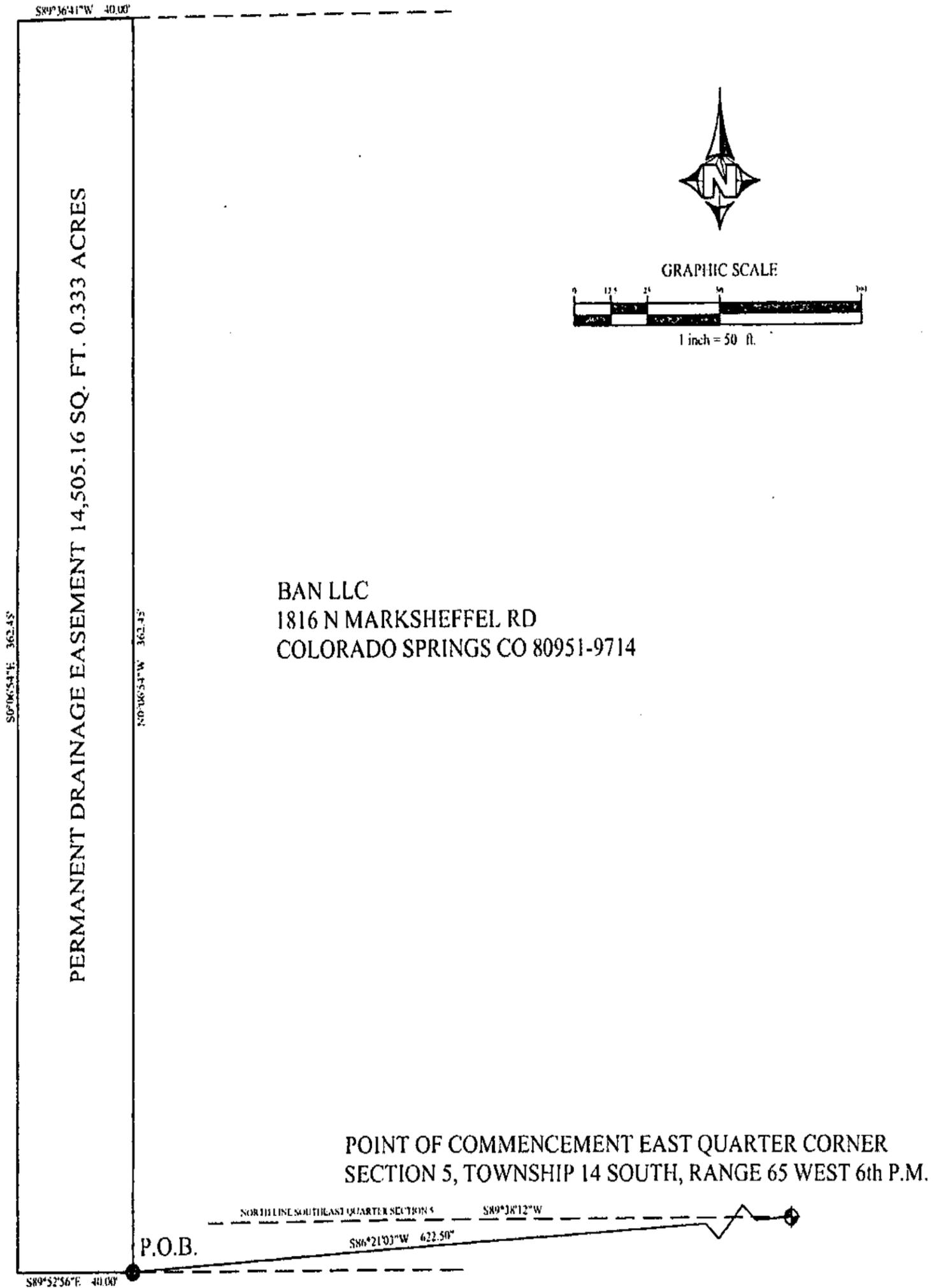
\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/22/10  
DRAWING: BANPEDRAIN    BY: RLP

**EL PASO COUNTY**  
**PUBLIC SERVICES DEPARTMENT**

EXHIBIT B  
EL PASO COUNTY  
PERMANENT DRAINAGE EASEMENT

SITUATE  
THE EAST HALF OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO



Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: 1"=50' DATE: 09/22/10  
DRAWING: BANPEDRAIN BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT A**  
**EL PASO COUNTY**  
**SPECIAL WARRANTY DEED**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,**

1. THENCE SOUTH 89°38'12" WEST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 105.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD, SAID POINT BEING THE **POINT OF BEGINNING**;
2. THENCE, CONTINUING ALONG SAID NORTH LINE, SOUTH 89°38'12" WEST A DISTANCE OF 556.17 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND AS RECORDED UNDER RECEPTION NO. 095066134 IN BOOK 6676 AT PAGE 1356 IN THE RECORDS OF EL PASO COUNTY, COLORADO;
3. THENCE SOUTH 00°06'54" WEST A DISTANCE OF 35.34 FEET;
4. THENCE SOUTH 89°52'56" EAST A DISTANCE OF 556.16 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF MARK SHEFFEL ROAD;
5. THENCE NORTH 00°06'20" EAST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 40.01 FEET TO THE **POINT OF BEGINNING**.

SAID TRACT OF LAND CONTAINS 20,955.57 SQUARE FEET, (0.48 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 89°38'12" WEST.

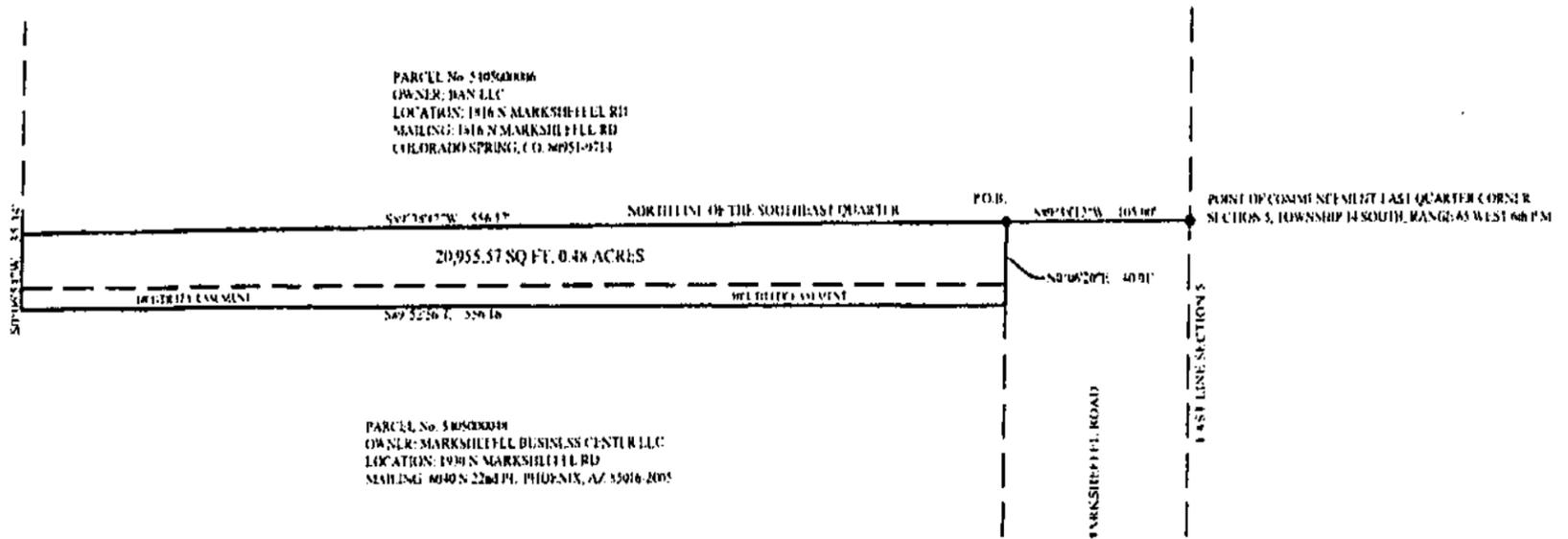
\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: SWAPTRACT A    BY: RLP

**EL PASO COUNTY**  
**PUBLIC SERVICES DEPARTMENT**

**EXHIBIT B**  
**EL PASO COUNTY**  
**SPECIAL WARRANTY DEED**

SITUATE  
 THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
 EL PASO COUNTY, COLORADO



Carl R. McClellan  
 Professional Land Surveyor  
 LS NO. 17496

SCALE: 1"=125'    DATE: 09/21/10  
 DRAWING: SWAPTRACT B    BY: RLP

**EL PASO COUNTY**  
**PUBLIC SERVICES DEPARTMENT**

**EXHIBIT A**  
**EL PASO COUNTY**  
**ACCESS EASEMENT**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,**

1. THENCE SOUTH 68°50' 10" WEST A DISTANCE OF 112.67 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD, SAID POINT BEING THE **POINT OF BEGINNING**;
2. THENCE SOUTH 00°06'20" WEST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 80.00 FEET;
3. THENCE NORTH 89°52'56" WEST A DISTANCE OF 50.00 FEET;
4. THENCE NORTH 00°06'20" EAST A DISTANCE OF 80.00 FEET;
5. THENCE SOUTH 89°52'56" EAST A DISTANCE OF 50.00 FEET TO THE **POINT OF BEGINNING**.

SAID TRACT OF LAND CONTAINS 4,000 SQUARE FEET, (0.09 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 00°31'41" WEST.

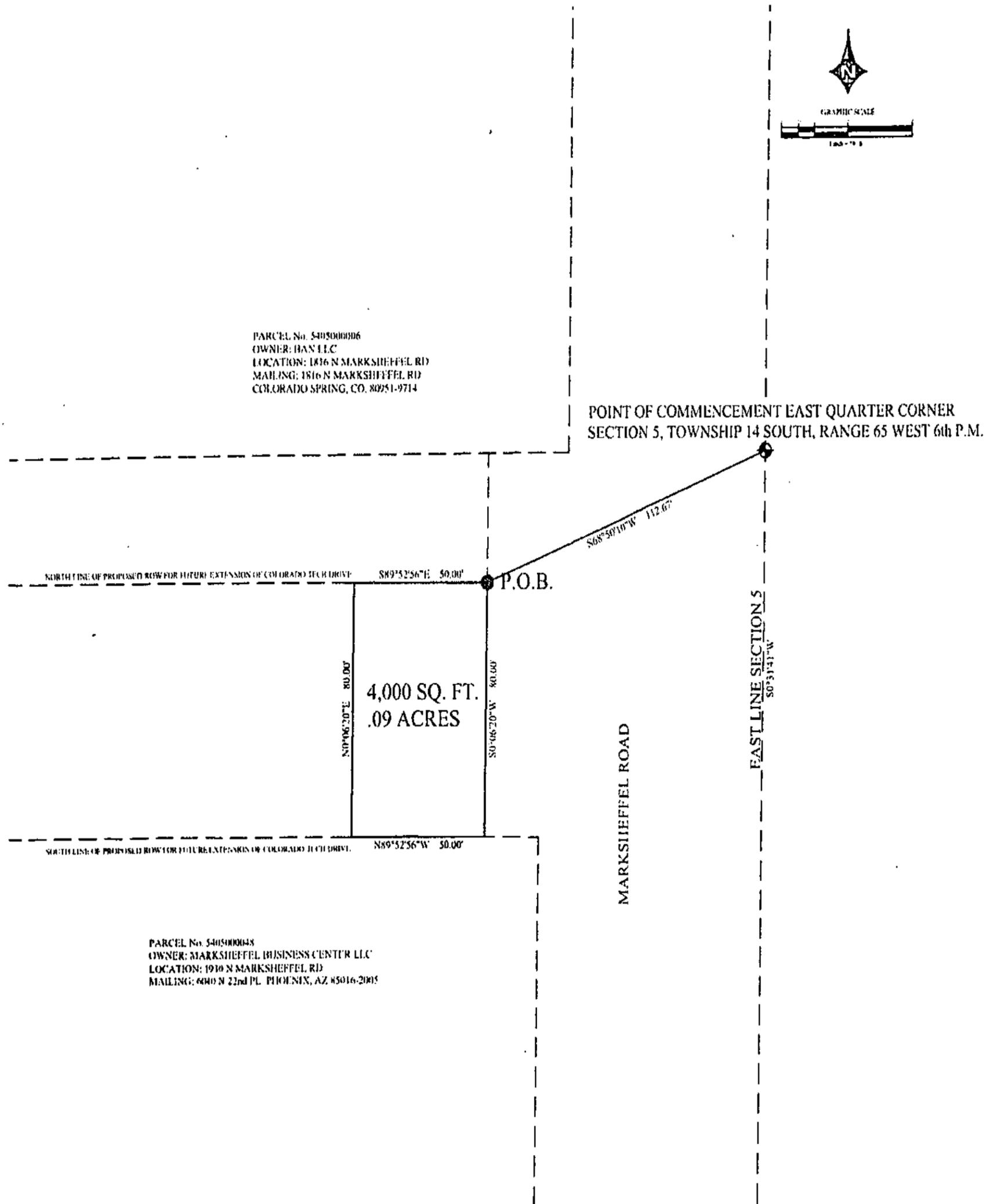
\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: TEACCESS MBC    BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT B**  
**EL PASO COUNTY**  
**ACCESS EASEMENT**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO



Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: 1"=50' DATE: 09/21/10  
DRAWING: TEACCESSMBC BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

**EXHIBIT A**  
**EL PASO COUNTY**  
**ACCESS EASEMENT - EXCHANGE PROPERTY**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING AT THE EAST QUARTER CORNER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST, OF THE 6<sup>th</sup> P.M.,**

1. THENCE SOUTH 89°38'12" WEST, ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 105.00 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD, SAID POINT BEING THE **POINT OF BEGINNING**;
2. THENCE SOUTH 00°06'20" WEST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF 40.01 FEET;
3. THENCE NORTH 89°52'56" WEST A DISTANCE OF 50.00 FEET;
4. THENCE NORTH 00°06'20" EAST A DISTANCE OF 39.59 FEET;
5. THENCE NORTH 89°38'12" EAST A DISTANCE OF 50.00 FEET TO THE **POINT OF BEGINNING**.

SAID TRACT OF LAND CONTAINS 1,990.2 SQUARE FEET, (0.046 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6<sup>th</sup> P.M. WHICH IS ASSUMED TO BEAR SOUTH 00°06'20" WEST.

\_\_\_\_\_  
Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: NONE    DATE: 09/21/10  
DRAWING: TEACCESSSvap    BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT

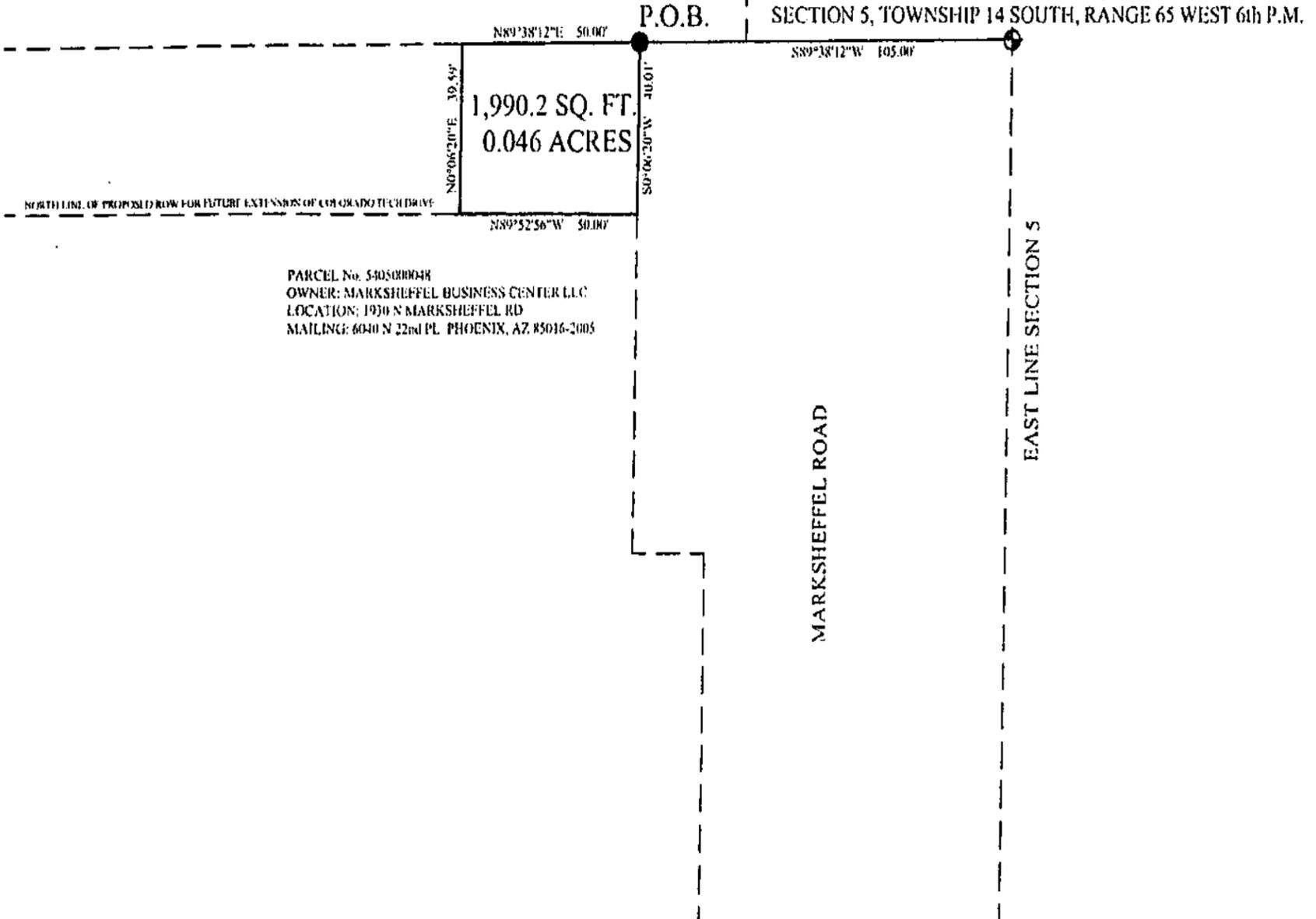
**EXHIBIT B**  
**EL PASO COUNTY**  
**ACCESS EASEMENT - EXCHANGE PROPERTY**

SITUATE  
THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th P.M.  
EL PASO COUNTY, COLORADO



PARCEL No. 540500006  
OWNER: BAN LLC  
LOCATION: 1816 N MARKSHEFFEL RD  
MAILING: 1816 N MARKSHEFFEL RD  
COLORADO SPRING, CO. 80951-9714

POINT OF COMMENCEMENT EAST QUARTER CORNER  
SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST 6th P.M.



PARCEL No. 540500048  
OWNER: MARKSHEFFEL BUSINESS CENTER LLC  
LOCATION: 1930 N MARKSHEFFEL RD  
MAILING: 6040 N 22nd PL PHOENIX, AZ 85016-2005

Carl R. McClellan  
Professional Land Surveyor  
LS NO. 17496

SCALE: 1"=50'    DATE: 09/21/10  
DRAWING: TEACCESSwap    BY: RLP

EL PASO COUNTY  
PUBLIC SERVICES DEPARTMENT