

## DECLARATION OF EASEMENT FOR ACCESS AND UTILITIES

This Declaration of Easement for Access and Utilities (the "Agreement") is made and executed as of the 1 day of OCT, 2019 ("Effective Date"), by **Mitchell Family Enterprises, LLC**, a Colorado limited liability company (the "Grantor"), whose address is P.O. Box 1827 Woodland Park, CO 80863.

### Background and Purpose

A. Grantor is the owner of the real property legally described as follows:

LOTS 8, 9, 13, 14 AND 15, TIMBER RIDGE SUBDIVISION FILING NO. 2, COUNTY OF EL PASO, STATE OF COLORADO

(each, a "Lot" or collectively, the "Lots")

B. Grantor desires to ensure that future owners of Lots 8, 9, 14 and 15 (the "Benefited Lots") have an easement for access and utilities to and from a public road on, over, under, through and across that portion of Lot 13, Timber Ridge Subdivision Filing No. 2 ("Lot 13"), as legally described and graphically shown in the attached **Exhibit A**, subject to the terms and conditions of this Agreement.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, Grantor establishes the following easement.

1. Grant of Easement. Grantor hereby grants and establishes a perpetual, non-exclusive easement of varying width ("Easement") for vehicular, equestrian and pedestrian ingress and egress and utilities on, in, to, through, over, under and across Lot 13 as legally described and graphically depicted in **Exhibit A** incorporated by this reference (the "Easement Property") for the benefit of the Benefited Lots, subject to the conditions and restrictions set forth in this Agreement.

2. Use and Benefit. The Easement shall be solely for vehicular, equestrian and pedestrian ingress to and egress from the Benefited Lots and for installation of above ground and/or below ground utilities to serve the Benefited Lots. The Benefited Lot owners shall at all times use and maintain the Easement Property in such a manner that its use of the Easement Property shall not in any way impair or damage any portion of Lot 13, including the Easement Property. The Easement shall solely be for the benefit of the owners of the Benefited Lots, their guests, family members, contractors, heirs, personal representatives, successors and assigns.

3. Improvements; No Obstructions. No owner of a Benefited Lot may improve the Easement Property, including, without limitation, widening and/or paving the existing gravel roadway within the Easement Property, without the prior written consent of the Lot 13 owner. No Lot owner will be responsible for contributing toward any improvements or upgrades to the roadway on the Easement Property sought by a Lot owner unless the other Lot owner agrees to share in the improvement costs. No Lot owner shall have the right to obstruct, impair or interfere with the reasonable use of the Easement Property by any other Lot owner, by installing a gate or otherwise, without the written consent of the Lot 13 owner and the other Benefited Lot owners.

4. Maintenance and Repair of the Easement Property. The Lot owners who use the Easement Property for access to their Lots will be responsible for paying a fair share contribution toward the maintenance and repair of the Easement Property, based on such owner's use of the roadway in proportion to the use by the other Lot owners. The Lot owners may agree to another method of calculating the fair share contribution of maintenance and repair expenses. The Lot owners agree to share in the performance

of any reasonable or appropriate maintenance work on the Easement Property so as to maintain the roadway in a good, clean and safe condition, which maintenance may include, without limitation, snow removal, graveling, clearing and grading, and repairing and maintaining any improvements (e.g., culverts, ditches) located on or within the Easement Property. Any damage caused to the Easement Property by a Lot owner or their family members, guests, contractors, agents, successors or assigns that interferes with the other Lot owners' use and enjoyment of the Easement Property will be promptly restored by the Lot owner responsible for causing the damage.

5. Mechanics Liens. No Lot owner may create or permit to be created or remain any mechanic's lien or other lien to attach against the Easement Property or Lot 13 for materials supplied or work performed at the request of a Lot owner with respect to any construction on or maintenance of the Easement Property. If a mechanic's lien or other lien is recorded against Lot 13 arising from or as a result of materials supplied or work performed by or on behalf of a Lot owner, then such Lot owner, within thirty (30) days of such notice of lien, shall promptly discharge the same at its sole expense. The Lot owner responsible for the lien shall indemnify and hold the Lot 13 owner and the other Benefited Lot owners harmless from any cost or expense (including reasonable attorney fees and costs) incurred by them as a result of any such mechanic's lien or other lien recorded on Lot 13.

6. Indemnification. Each Benefited Lot owner ("Indemnifying Party") agrees to release, indemnify, defend, protect and hold the Lot 13 owner, its heirs, personal representatives, successors and assigns, harmless from and against any liability, damage, claim, injury, cost or expense (including reasonable attorney fees and costs) arising out of or in connection with the acts or omissions of the Indemnifying Party, its family members, guests, contractors, agents, successors or assigns occurring on and within the Easement Property or Lot 13.

7. Default. A Lot owner's failure to timely pay its fair share of the costs for maintenance of the Easement Property within thirty (30) days after delivery of a written statement showing that Lot owner's share of the costs will constitute a default under this Agreement. A Lot owner's failure to repair damage to the Easement Property that is a result of that Lot owner's activities within a reasonable amount of time, not to exceed thirty (30) days after completion of the activities causing such damage, shall also constitute a default under this Agreement. Upon default, a non-defaulting Lot owner, after ten (10) days' advance written notice of default to the defaulting Lot owner, may pay the defaulting Lot owner's share of the maintenance costs or pay for the repair. The defaulting Lot owner shall promptly reimburse the non-defaulting owner upon receipt of notice from the non-defaulting Lot owner evidencing payment on behalf of the defaulting Lot owner. Any amount owed by a defaulting Lot owner that is not paid within thirty (30) days from receipt of the payment notice shall constitute a lien against the defaulting Lot owner's property, which lien may be enforced by recording a statement of lien against the defaulting owner's Lot. The lien may be foreclosed on in the manner provided for by Colorado law, and the defaulting Lot owner shall be liable for the amount due, plus statutory interest, costs and expenses and reasonable attorney fees. Such lien is in addition to any legal or equitable remedy allowed by law.

If a Lot owner defaults in its performance under this Agreement that does not involve the payment of money, a non-defaulting Lot owner shall provide written notice of the default to the defaulting Lot owner. The notice shall state the nature of the default, the corrective action to be taken to remedy the default, and the time period in which the corrective action must be taken, which shall be a reasonable period of time. The defaulting Lot owner's failure to timely cure the default shall entitle the non-defaulting Lot owner to take any legal or equitable action against the defaulting Lot owner allowed by law.

8. Notices. All notices under this Agreement shall be in writing and given by certified mail, postage prepaid; by hand delivery, or by recognized overnight delivery service, to a Lot owner at the address

listed with the El Paso County Assessor's Office. Notice shall be deemed effective upon the earlier of receipt by personal delivery, two days after mailing postage prepaid by a recognized overnight delivery service, or five days after mailing postage prepaid, certified mail, return receipt requested. A Lot owner, by notice given as above, may change the address to which future notices should be sent.

9. Governing Law; Attorney Fees. This Agreement shall be interpreted and enforced under the laws of Colorado. If a dispute arises out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses from the other party.

10. Amendment. Any amendment, termination, deletion or addition to this Agreement must be in writing and acknowledged by all of the then-current owners of the Benefited Lots and Lot 13 and recorded in the records of El Paso County, Colorado.

11. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of any provision shall not affect the validity or enforceability of the remaining provisions herein.

12. Waiver. No waiver of, or consent to depart from, the requirements of any of the provisions of this Agreement by any party shall be effective unless it is in writing signed by the party giving the waiver. No such waiver shall be construed as a waiver of any subsequent breach or any other agreement or obligation contained in this Agreement. No delay or omission on the part of any party to exercise any right shall be construed as a waiver of such right.

13. Benefits and Burdens. The benefits and burdens of the Easement shall run with the Benefited Lots and Lot 13 and shall be binding upon, and inure to the benefit of, the respective successors and assigns of the owners of the Benefited Lots and Lot 13.

14. Recording. This Agreement shall be recorded in the records of El Paso County, Colorado.

15. Counterparts. This Agreement may be executed in any number of counterparts and by parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

16. Mediation. If a non-monetary dispute arises relating to this Agreement, and is not resolved informally by the parties, the parties shall first proceed in good faith to submit the matter to mediation. Written notice of a request for mediation shall be given by the party requesting mediation to the other party or parties involved in the dispute. The parties will jointly appoint an impartial mediator with experience in the subject matter of the dispute. If the parties are unable to agree on a mediator, each of the parties will appoint a mediator, and the appointed mediators shall together appoint a sole mediator. The parties will share equally in the cost of mediation. If the dispute is not resolved through mediation in a reasonable time period, not to exceed sixty (60) calendar days from the date of delivery of the notice of a request for mediation, the mediation, unless otherwise agreed, shall terminate.

17. Non-Merger. The Easement and the rights and obligations granted and created by this Agreement are intended for the mutual benefit and protection of the owners of all of the Lots. It is the intention of Grantor that there be no merger of the Easement into the respective fee estate, but rather the Easement and all the rights, benefits, obligations, restrictions and burdens shall be separately preserved for the benefit of Grantor and its successors and assigns (the future Lot owners).

IN WITNESS WHEREOF, Grantor has executed this Agreement effective as of the date first above written.

**GRANTOR:**

**Mitchell Family Enterprises, LLC**  
a Colorado limited liability company

By: Larry Mitchell  
Larry Mitchell

Title: PRESIDENT

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF Teller        )

The foregoing instrument was acknowledged before me this 1 day of Oct., 2019, by Larry Mitchell, as President of Mitchell Family Enterprises, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: April 19, 2020

[SEAL]

Janet K. Brown  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE EASEMENT PROPERTY**

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES LYING OVER AND ACROSS A PORTION OF LOT 13 AND A PORTION OF LOGGER ROAD, TIMBER RIDGE SUBDIVISION FILING NO. 2, AS RECORDED IN PLAT BOOK H-6 AT PAGE 68 UNDER RECEPTION NO. 096066394 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (NE1/4 SW1/4) AND IN THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (NW1/4 SE1/4) OF SECTION 17, TOWNSHIP 12 SOUTH, RANGE 68 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 13, SAID POINT ALSO BE THE NORTHWEST CORNER OF LOT 12 OF SAID TIMBER RIDGE SUBDIVISION FILING NO. 2, AS MONUMENTED BY A REBAR AND YELLOW CAP STAMPED "WATTS 9853", FROM WHICH AN ANGLE POINT ON THE EASTERLY LINE OF SAID LOT 13, SAID POINT ALSO BEING AN ANGLE POINT ON THE WESTERLY LINE OF SAID LOT 12, AS MONUMENTED BY A REBAR AND YELLOW CAP STAMPED "WATTS 9853" BEARS S04°03'04"E (N04°01'15"W PER THE RECORDED PLAT), A DISTANCE OF 221.33 FEET (221.10 FEET OF RECORD) AND IS THE BASIS OF BEARINGS USED HEREIN;

THENCE S04°03'04"E ALONG THAT LINE COMMON TO SAID LOT 13 AND SAID LOT 12, A DISTANCE OF 88.35 FEET;

THENCE ALONG THE ARC OF A 35.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 13°35'15", AN ARC LENGTH OF 8.30 FEET (THE LONG CHORD OF WHICH BEARS N72°23'33"W, A LONG CHORD DISTANCE OF 8.28 FEET) TO A POINT OF COMPOUND CURVATURE;

THENCE ALONG THE ARC OF A 53.46 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 38°22'12", AN ARC LENGTH OF 35.80 FEET (THE LONG CHORD OF WHICH BEARS S81°37'39"W, A LONG CHORD DISTANCE OF 35.14 FEET) TO A POINT OF TANGENCY;

THENCE S62°26'37"W, A DISTANCE OF 33.82 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 89.18 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37°14'55", AN ARC LENGTH OF 57.98 FEET (THE LONG CHORD OF WHICH BEARS S81°04'04"W, A LONG CHORD DISTANCE OF 56.96 FEET) TO A POINT OF TANGENCY;

THENCE N80°18'29"W, A DISTANCE OF 25.74 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 26.10 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 105°27'03", AN ARC LENGTH OF 48.03 FEET (THE LONG CHORD OF WHICH BEARS S46°58'00"W, A LONG CHORD DISTANCE OF 41.54 FEET) TO A POINT OF COMPOUND CURVATURE;

THENCE ALONG THE ARC OF A 60.48 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 28°58'21", AN ARC LENGTH OF 30.58 FEET (THE LONG CHORD OF WHICH BEARS S20°14'42"E, A LONG CHORD DISTANCE OF 30.26 FEET) TO A POINT OF TANGENCY;

THENCE S34°43'52"E, A DISTANCE OF 37.42 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 50.11 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 69°59'40", AN ARC LENGTH OF 61.21 FEET (THE LONG CHORD OF WHICH BEARS S00°15'58"W, A LONG CHORD DISTANCE OF 57.48 FEET) TO A POINT OF TANGENCY;

THENCE S35°15'48"W, A DISTANCE OF 16.71 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 58.37 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 55°34'08", AN ARC LENGTH OF 56.61 FEET (THE LONG CHORD OF WHICH BEARS S63°00'19"W, A LONG CHORD DISTANCE OF 54.42 FEET) TO A POINT ON THE WESTERLY LINE OF SAID LOT 13, SAID POINT ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID LOGGER ROAD;

THENCE N89°16'24"W, A DISTANCE OF 30.00 FEET TO A POINT ON THE CENTERLINE OF SAID LOGGER ROAD;

THENCE N00°50'41"E ALONG SAID CENTERLINE, A DISTANCE OF 30.00 FEET TO THE NORTHERLY POINT OF TERMINUS OF SAID CENTERLINE, SAID POINT ALSO BEING A POINT ON THE SOUTHERLY LINE OF LOT 14 OF SAID TIMBER RIDGE SUBDIVISION FILING NO. 2;

THENCE S89°16'24"E ALONG THE NORTHERLY LINE OF SAID RIGHT-OF-WAY, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID LOT 14, A DISTANCE OF 30.01 FEET TO THE NORTHEAST CORNER OF THE TERMINUS OF SAID LOGGER ROAD, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 14;

THENCE ALONG THE ARC OF A 28.37 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 55°31'27", AN ARC LENGTH OF 27.49 FEET (THE LONG CHORD OF WHICH BEARS N62°57'53"E, A LONG CHORD DISTANCE OF 26.43 FEET) TO A POINT OF TANGENCY;

THENCE N35°15'48"E, A DISTANCE OF 16.73 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 20.11 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 69°59'40", AN ARC LENGTH OF 24.57 FEET (THE LONG CHORD OF WHICH BEARS N00°15'58"E, A LONG CHORD DISTANCE OF 23.07 FEET) TO A POINT OF TANGENCY;

THENCE N34°43'52"W, A DISTANCE OF 37.42 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 90.48 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 28°58'21", AN ARC LENGTH OF 45.75 FEET (THE LONG CHORD OF WHICH BEARS N20°14'42"W, A LONG CHORD DISTANCE OF 45.26 FEET) TO A POINT OF COMPOUND CURVATURE;

THENCE ALONG THE ARC OF A 56.10 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 39°20'07", AN ARC LENGTH OF 38.51 FEET (THE LONG CHORD OF WHICH BEARS N13°54'32"E, A LONG CHORD DISTANCE OF 37.76 FEET);

THENCE N57°44'39"W, A DISTANCE OF 78.40 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 86.22 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 25°19'26", AN ARC LENGTH OF 38.11 FEET (THE LONG CHORD OF WHICH BEARS N45°04'56"W, A LONG CHORD DISTANCE OF 37.80 FEET) TO A POINT OF TANGENCY;

THENCE N32°25'13"W, A DISTANCE OF 58.48 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 83.08 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 25°50'28", AN ARC LENGTH OF 37.47 FEET (THE LONG CHORD OF WHICH BEARS N45°20'27"W, A LONG CHORD DISTANCE OF 37.15 FEET) TO A POINT OF REVERSE CURVATURE;

THENCE ALONG THE ARC OF A 132.28 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 27°20'06", AN ARC LENGTH OF 63.11 FEET (THE LONG CHORD OF WHICH BEARS N44°35'38"W, A LONG CHORD DISTANCE OF 62.51 FEET) TO A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 13, SAID POINT ALSO BEING A POINT ON THE SOUTHEASTERLY LINE OF LOT 8 OF SAID TIMBER RIDGE SUBDIVISION FILING NO. 2;

THENCE ALONG THAT LINE COMMON TO SAID LOT 13 AND SAID LOT 8 AND ALONG THE ARC OF A 70.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 29°47'41", AN ARC

LENGTH OF 36.40 FEET (THE LONG CHORD OF WHICH BEARS N30°07'23"E, A LONG CHORD DISTANCE OF 35.99 FEET);

THENCE ALONG THE ARC OF A 102.28 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 37°08'31", AN ARC LENGTH OF 66.31 FEET (THE LONG CHORD OF WHICH BEARS S39°41'25"E, A LONG CHORD DISTANCE OF 65.15 FEET) TO A POINT OF REVERSE CURVATURE;

THENCE ALONG THE ARC OF A 113.08 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 25°50'28", AN ARC LENGTH OF 51.00 FEET (THE LONG CHORD OF WHICH BEARS S45°20'27"E, A LONG CHORD DISTANCE OF 50.57 FEET) TO A POINT OF TANGENCY;

THENCE S32°25'13"E, A DISTANCE OF 58.48 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A 56.22 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 25°19'26", AN ARC LENGTH OF 24.85 FEET (THE LONG CHORD OF WHICH BEARS S45°04'56"E, A LONG CHORD DISTANCE OF 24.65 FEET) TO A POINT OF TANGENCY;

THENCE S57°44'39"E, A DISTANCE OF 87.93 FEET;

THENCE ALONG THE ARC OF A 56.10 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 33°31'52", AN ARC LENGTH OF 32.83 FEET (THE LONG CHORD OF WHICH BEARS N82°55'35"E, A LONG CHORD DISTANCE OF 32.36 FEET) TO A POINT OF TANGENCY;

THENCE S80°18'29"E, A DISTANCE OF 25.74 FEET TO A POINT OF CURVATURE;

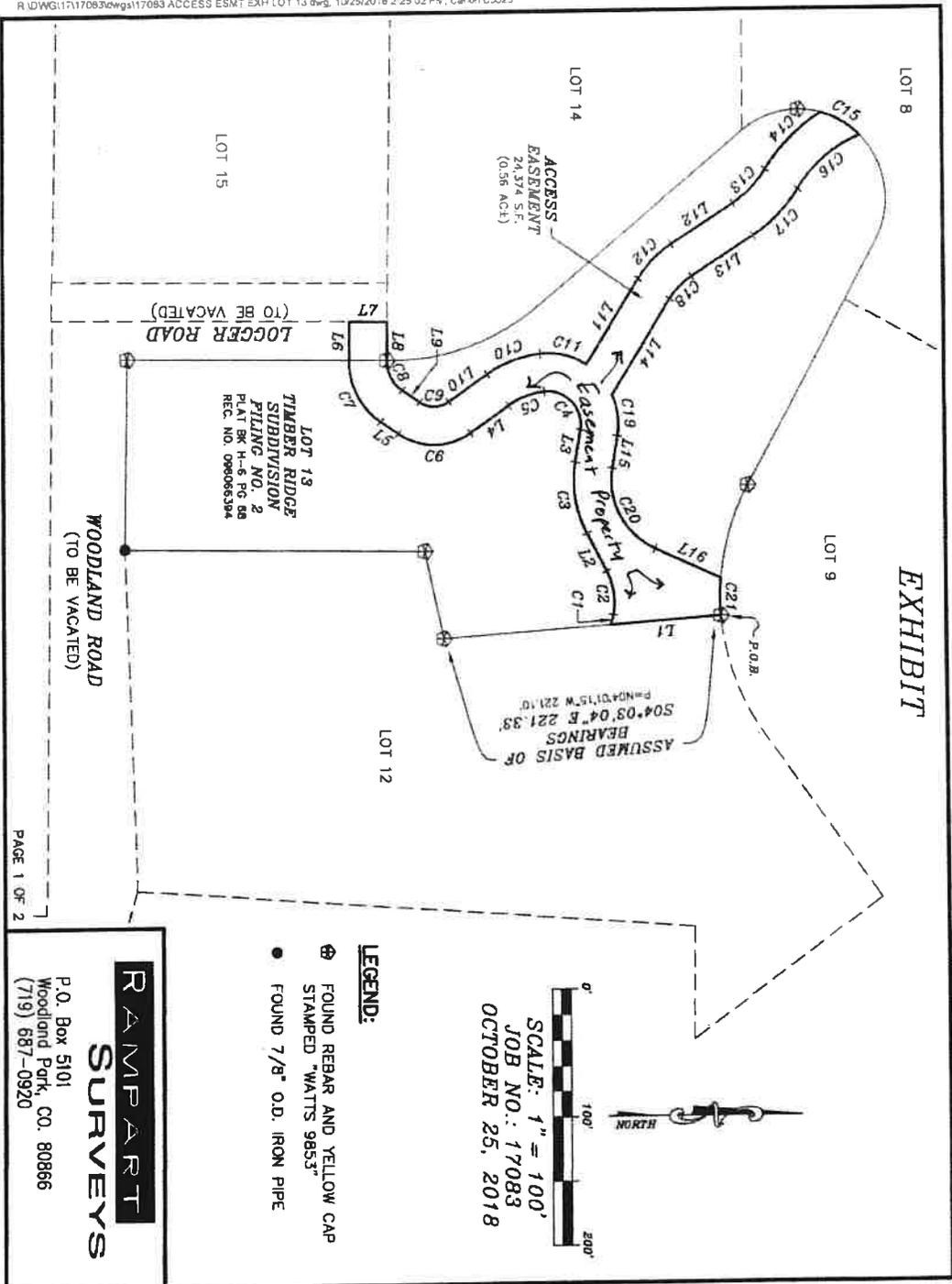
THENCE ALONG THE ARC OF A 59.18 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 75°06'17", AN ARC LENGTH OF 77.58 FEET (THE LONG CHORD OF WHICH BEARS N62°08'23"E, A LONG CHORD DISTANCE OF 72.14 FEET) TO A POINT OF TANGENCY;

THENCE N24°35'14"E, A DISTANCE OF 57.38 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 13, SAID POINT ALSO BEING A POINT ON THE SOUTHERLY LINE OF LOT 9 OF SAID TIMBER RIDGE SUBDIVISION FILING NO. 2;

THENCE ALONG THAT LINE COMMON TO SAID LOT 13 AND SAID LOT 9 AND ALONG THE ARC OF A 187.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 09°11'29", AN ARC LENGTH OF 30.00 FEET (THE LONG CHORD OF WHICH BEARS S89°33'55"E, A LONG CHORD DISTANCE OF 29.97 FEET) TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINS 24,374 SQUARE FEET (0.56 ACRES) OF LAND, MORE OR LESS.

PREPARED BY:  
ERIC R. SIMONSON, COLORADO P.L.S. NO. 38560  
FOR AND ON BEHALF OF RAMPART SURVEYS, LLC  
P.O. BOX 5101  
WOODLAND PARK, COLORADO 80866  
719-687-0920



**RAMPART**  
**SURVEYS**  
P.O. Box 5101  
Woodland Park, CO. 80866  
(719) 687-0920