

RESOLUTION NO. 1211

A RESOLUTION OF THE GOLDEN CITY COUNCIL  
AUTHORIZING A DONATION AGREEMENT WITH THE  
JEFFERSON CLAY AND INVESTMENT COMPANY, AND  
ACCEPTING THE DONATION OF REAL PROPERTY FOR THE  
CITY OF GOLDEN GOLF COURSE

WHEREAS, the Jefferson Clay and Investment Company has offered to donate real property for the City Golf Course project; and

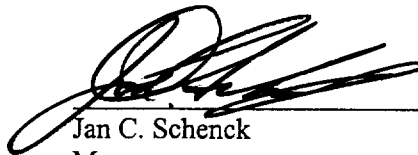
WHEREAS, the Golden City Council wishes to approve a donation agreement and accept the conveyance of the property.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:


Section 1. City Council hereby approves the Donation Agreement for real property, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute the Donation Agreement on behalf of the City.

Section 2. City Council hereby accepts the deeds conveying the donated property according to the provisions of the agreement.

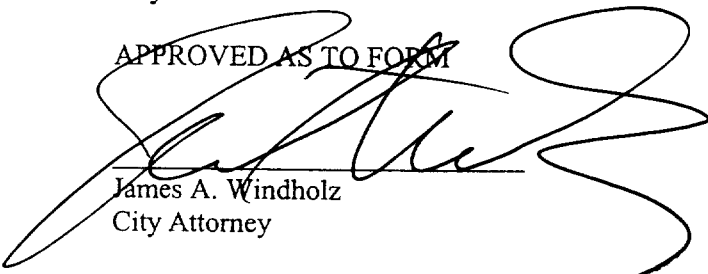
Adopted the 14<sup>th</sup> day of June, 2001.

  
Jan C. Schenck  
Mayor

ATTEST

  
Susan M. Brooks, MMC  
City Clerk

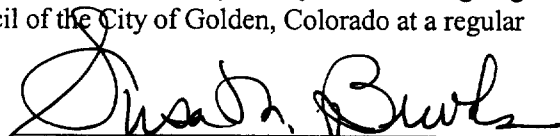
APPROVED AS TO FORM

  
James A. Windholz  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 14<sup>th</sup> day of June, A.D., 2001.

(SEAL)

ATTEST:

  
Susan M. Brooks, City Clerk of the City of  
Golden, Colorado

## AGREEMENT

**PARTIES AND PROPERTY.** This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2001, by and between the **City of Golden, Colorado, a Colorado Home Rule Municipality ("City")** and the **Jefferson Clay and Investment Company, a Colorado corporation ("Jefferson Clay")**.

### RECITALS

A. Jefferson Clay is the owner of certain real property located in the City of Golden, State of Colorado as is more particularly described in Exhibits A, B and C to this Agreement. Exhibit D to this Agreement depicts the relative locations of these properties.

B. The City intends to construct, operate and maintain a golf course, other recreational facilities, open space, trails and drainage facilities, part of which the City wishes to locate upon the property described in Exhibit A and is sometimes referenced herein as "Golf Course Parcel."

C. The City intends to extend a public street, Illinois Street, and requires the acquisition of the property described in Exhibit B.

D. Exhibit C describes three residual parcels that will remain in the ownership of Jefferson Clay following conveyance of the properties described in Exhibit A and B to the City, as provided in this Agreement. Jefferson Clay anticipates that the property described as Parcel 2 in Exhibit C will be developed for residential uses.

### AGREEMENT

1. **CONVEYANCE.** Jefferson Clay agrees to convey to the City on the terms and conditions set forth in this agreement, the following described real property located in the City of Golden, County of Jefferson, State of Colorado:

"Golf Course Parcel" as is more particularly described in Exhibit A attached hereto.

and

"Right-of-Way Parcel" as is more particularly described in Exhibit B attached hereto.

2. **CONSIDERATION.** Conveyance of the Golf Course Parcel and the Right-of-Way Parcel shall be by gift from Jefferson Clay and Investment Company to the City. Except for the obligations of the City provided herein, no consideration for this conveyance exists other than the gift from Jefferson Clay.

3. **GOLF COURSE PARCEL.** The following restrictions and obligations apply to the Golf Course Parcel:

(a) The Golf Course Parcel will be used by the City in conjunction with adjacent properties for the construction, operation and maintenance of a golf course, other

recreational facilities, open space, trails, and drainage facilities. If the City fails to develop the Golf Course Parcel for such use within 5 years of closing, title to the Golf Course Parcel shall revert to Jefferson Clay upon written notice within 6 years of closing.

(b) An existing transmitter/antenna facility is located on the western portion of the Golf Course Parcel in the area described on Exhibit E attached hereto. Conveyance of the Golf Course Parcel to the City shall be subject to the right of Jefferson Clay, its successors and assigns, to continued location, maintenance and operation of the transmitter and antenna facility. The existing transmitter/antenna facilities may be upgraded provided, however, that such transmitter/antenna facility may not be expanded in terms of its size and/or area. The City shall provide reasonable access to the transmitter/antenna site for the purpose of ongoing routine maintenance and operations provided that such access will not unreasonably interfere with the operations at the golf course. Said access shall be by way of a non-exclusive easement over and across an existing gravel road to the site as shown in Exhibit G, provided that the City shall have no obligation to maintain such road. Jefferson Clay retains the right to receive all rents, royalties and other income from the continued operations of the transmitter/antenna facility.

(c) The Golf Course Parcel is subject to certain closure and environmental clean-up obligations pursuant to a plan approved by the Colorado Department of Public Health and Environment on July 6, 1998. Upon acceptance by the Golden City Council of the deed conveying the Golf Course Parcel to the City, and in conjunction with the construction of the Golf Course, the City agrees to undertake completion of the closure plan as it affects the Golf Course Parcel. Jefferson Clay agrees to provide clay for creation of the "clay cap" as is required to fulfill the closure plan so long as clay material on Parcels 1 and 3 (of Exhibit C) is suitable for such use in its existing condition, location and quantity. Jefferson Clay is under no obligation to mine, transport, import, augment or enhance the clay materials.

(d) Construction of the Golf Course on the Golf Course Parcel will be such that it will reasonably accommodate sheet flow storm drainage onto the golf course from residential lots that will directly abut the Golf Course Parcel on Parcel 2 of Exhibit C. In conjunction with construction of the golf course, the City agrees to complete grading on a portion of Parcel 2 of Exhibit C in accordance with, and as depicted in, the grading plan attached hereto as Exhibit F. Excess materials of approximately 26, 000 cubic yards from such grading will be removed by the City and may be used in conjunction with the golf course construction. Jefferson Clay shall be responsible for all grading activities on the remainder of Parcel 2 and on residual parcels except as provided herein. The City will be responsible for reclamation and seeding for that portion of Parcel 2 that the City grades.

(e) In conjunction with the construction of the Golf Course and Illinois Street, the City will construct or otherwise provide for storm drainage detention adequate to accommodate the reasonable requirements of the anticipated flow from the Parcel 2 residential development that would reasonably be directed toward the Illinois Street right-of-way. Such obligation shall relate only to detention requirements and not to the construction or the transmission of storm drainage to the detention facility.

(f) An overhead power line currently traverses Parcel 2 of Exhibit C, said power

line generally traveling in a westerly direction from the west end of 24<sup>th</sup> Street. In conjunction with the construction of the Golf Course, the City will, at its option and expense, either:

1. Underground the power line for that portion that traverses Parcel 2 of Exhibit C, with Jefferson Clay providing appropriate easements in locations acceptable to both parties to accommodate the undergrounding; or
2. Relocate the power lines in a manner such that the power lines do not traverse Parcel 2 of Exhibit C; or
3. Cause for the abandonment of the power line to the end that it does not traverse Parcel 2 of Exhibit C.

(g) The foregoing provisions notwithstanding, the parties agree that the City's obligation as set forth in subparagraphs (c), (d), (e) and (f) above are contingent upon, and need only be performed by the City if the City actually constructs a golf course utilizing the Golf Course Parcel. In the event that the City, in its sole discretion, determines that it shall not construct a golf course utilizing the Golf Course Parcel, the City shall be relieved of all obligations described in subparagraph (c), (d), (e) and (f) above, and the City shall reconvey the Golf Course Parcel to Jefferson Clay.

(h) The City agrees that it will not construct, operate or maintain a public trail along the east side of the Golf Course Parcel where it abuts Parcel 2 of Exhibit C.

(i) In the event that Jefferson Clay subdivides Parcel 2 of Exhibit C for the purpose of developing said parcel into a residential subdivision within 10 years of the date of this Agreement, the parties agree that the conveyance of the Golf Course Parcel to the City pursuant to this Agreement shall satisfy the Park Land Dedication requirement, currently found in Section 17.60.040 of the Golden Municipal Code, with respect to the subdivision of Parcel 2 of Exhibit C, provided that there is no reconveyance as provided in subparagraph (g) above.

4. **RIGHT-OF-WAY PARCEL.** The Right-Of-Way Parcel shall be conveyed to the City for public right-of-way purposes. Jefferson Clay shall be entitled to access its mining and reclamation operations on its leased property to the south of the Golf Course Parcel (known as the Ruby Clay Mine) by means of existing and proposed Illinois Street to the east and south of Ruby Clay Mine, continuing south to Jefferson Parkway.

5. **TITLE REVIEW/CONDITION.**

(a) **Title Insurance.** The City shall, at its expense, obtain a commitment for owner's title insurance policy for its review prior to closing.

(b) **Matters Not Shown By Public Records.** Jefferson Clay shall deliver to the City within 10 days of the date of this Agreement, copies of all leases and surveys in Jefferson Clay's possession pertaining to the property described in Exhibits A and B and

shall disclose to the City all easements, liens, and other title matters not shown by the public records of which the Jefferson Clay has actual knowledge.

(c) **Right to Terminate.** If the City, in its sole discretion, determines that the physical condition is unsatisfactory or that title is unmerchantable or otherwise unsatisfactory, the City may, on or before the date of closing, terminate this agreement.

6. **CLOSING/TRANSFER OF TITLE.** The date of closing shall be June 25, 2001 unless the parties agree to an earlier closing. The hour and place of closing shall be as designated by the City. At closing, Jefferson Clay shall execute and deliver to the City a good and sufficient special warranty deed for the property described in Exhibits A and a quit claim deed for the property described in Exhibit B. Said deed shall convey the real property free and clear of all taxes, except general taxes for the year of closing. Title to the Golf Course Parcel shall be conveyed free and clear of all liens and encumbrances except those of record as of the date of closing that are not excluded in the next sentence, and those as provided for in this Agreement. The foregoing notwithstanding, title shall be conveyed free of 1) a lease agreement between Jefferson Clay and the Adolph Coors Company or successors as referenced by document recorded December 5, 1975 in Book 2795 at Page 395, and 2) a lease between Jefferson Clay and Denver Cellular Telephone Company, or successors, as evidenced by a Memorandum of Lease recorded August 2, 1988 at Reception No. 88074751 and August 10, 1988 at Reception No. 88078145. General taxes for the year of closing, based upon taxes for the calendar year immediately preceding closing, rents, water and sewer charges, if any, shall be pro-rated to the date of closing. The City will be responsible for all closing costs. Transfer of title shall not occur until the conveyance is formally accepted by action of the Golden City Council.

July 12, 2001 CP 6/8/01  
7. **POSSESSION.** Possession of the Property shall be delivered to the City at closing. Jefferson Clay shall have until ~~July 2, 2001~~, to remove from the Property any items of its personal property or equipment that it desires to retain. Any items of personal property or equipment remaining on the property on or after ~~July 3, 2001~~, shall be deemed abandoned by Jefferson Clay. All abandoned personal property and equipment shall be deemed to be conveyed to the City.

July 13, 2001 CP 6/8/01  
8. **AGREEMENT TO SURVIVE CLOSING.** The provisions of this Agreement, and the obligations of the parties with respect thereto, including, without limitation, the City's obligation regarding closure and cleanup as set forth in Paragraph 3(b), shall survive the closing. All rights and obligations granted herein shall inure to the benefit of the parties' respective successors and assigns.


9. **ENTIRE AGREEMENT/MODIFICATION OF AGREEMENT.** This Agreement constitutes the entire agreement of the parties related to the subject thereof, and prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. Subsequent modifications of any of the terms of this Agreement shall not be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first appearing above.

**THE CITY OF GOLDEN, A COLORADO  
MUNICIPAL CORPORATION**

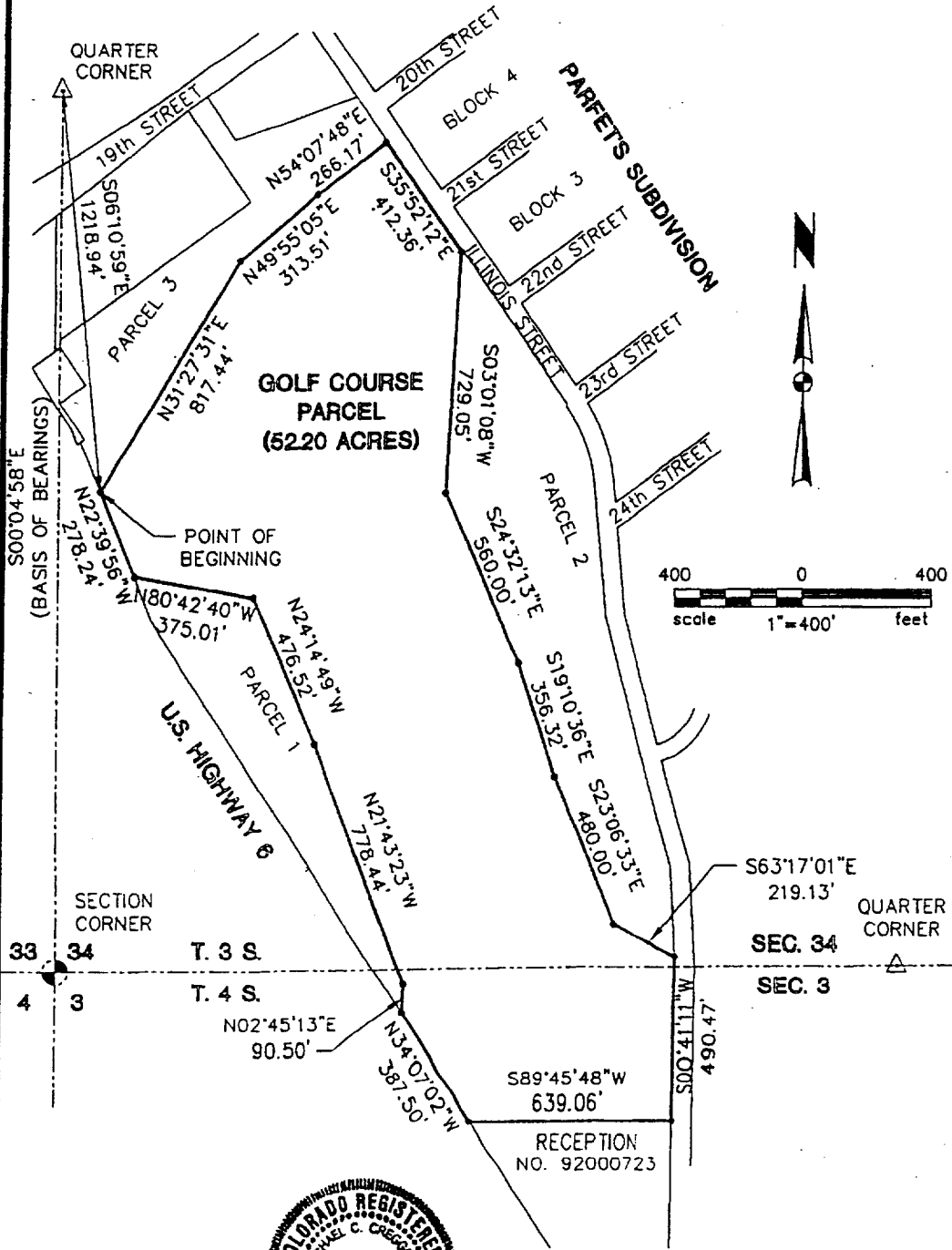
**JEFFERSON CLAY AND  
INVESTMENT COMPANY**

By: \_\_\_\_\_  
Jan Schenck, Mayor

By:   
William G. Parfet, Jr., President

Attest:  
By: \_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**PARFET GOLF COURSE PARCEL**  
 SW 1/4 SEC. 34, T.3 S. & NW 1/4 SEC. 3, T.4 S.,  
 R.70 W. OF 6th P.M., CITY OF GOLDEN,  
 JEFFERSON COUNTY, COLORADO



**TST**  
**TST INC. OF DENVER**  
 Consulting Engineers

*Michael C. Greger*  
 6/6/01

REVISED 6/6/01  
 REVISED 6/1/01  
 SHEET 1 OF 2

**EXHIBIT A**  
**PARFET GOLF COURSE PARCEL**  
**SW 1/4 SEC. 34, T.3 S. & NW 1/4 SEC. 3, T.4 S.,**  
**R.70 W. OF 6th P.M., CITY OF GOLDEN,**  
**JEFFERSON COUNTY, COLORADO**

**LEGAL DESCRIPTION - GOLF COURSE PARCEL**

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH AND A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, ALL IN RANGE 70 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

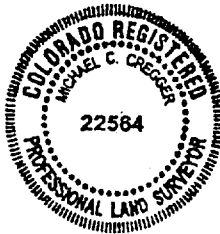
COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 34, AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR SOUTH 00°04'58"EAST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 06°10'59"EAST, 1218.94 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6 AS DESCRIBED IN THAT DEED RECORDED IN BOOK 1821 AT PAGE 18 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 31°27'31"EAST, 817.44 FEET; THENCE NORTH 49°55'05"EAST, 313.51 FEET; THENCE NORTH 54°07'48"EAST, 266.17 FEET, MORE OR LESS, TO A LINE WHICH IS 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF THE PAVEMENT OF ILLINOIS STREET AS IT CURRENTLY EXISTS; THENCE ALONG SAID PARALLEL LINE, SOUTH 35°52'12"EAST, 412.36 FEET; THENCE DEPARTING SAID PARALLEL LINE, SOUTH 03°01'08"WEST, 729.05 FEET; THENCE SOUTH 24°32'13"EAST, 560.00 FEET; THENCE SOUTH 19°10'36"EAST, 356.32 FEET; THENCE SOUTH 23°06'33"EAST, 480.00 FEET; THENCE SOUTH 63°17'01"EAST, 219.13 FEET TO THE INTERSECTION WITH THE NORTHERLY PROJECTION OF THE EAST LINE OF THAT PARCEL DESCRIBED IN THE DEED RECORDED AT RECEPTION NO. 92000723; THENCE SOUTHERLY ALONG SAID PROJECTED LINE, SOUTH 00°41'11"WEST, 490.47 FEET TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE ALONG THE NORTH LINE OF SAID PARCEL, SOUTH 89°45'48"WEST, 639.06 FEET TO THE NORTHWEST CORNER OF SAID PARCEL, LOCATED ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6; THENCE ALONG SAID RIGHT-OF-WAY LINE, NORTH 34°07'02"WEST, 387.50 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 02°45'13"EAST, 90.50 FEET; THENCE NORTH 21°43'23"WEST, 778.44 FEET; THENCE NORTH 24°14'49"WEST, 476.52 FEET; THENCE NORTH 80°42'40"WEST, 375.01 FEET TO SAID EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6 AS DESCRIBED IN THAT DEED RECORDED IN BOOK 1821 AT PAGE 18; THENCE ALONG SAID RIGHT-OF-WAY LINE, NORTH 22°39'56"WEST, 278.24 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 52.20 ACRES, MORE OR LESS.

**SURVEYOR'S CERTIFICATE**

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

DATE June 6, 2001

Michael C. Cregger  
PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTRATION NO. 22564



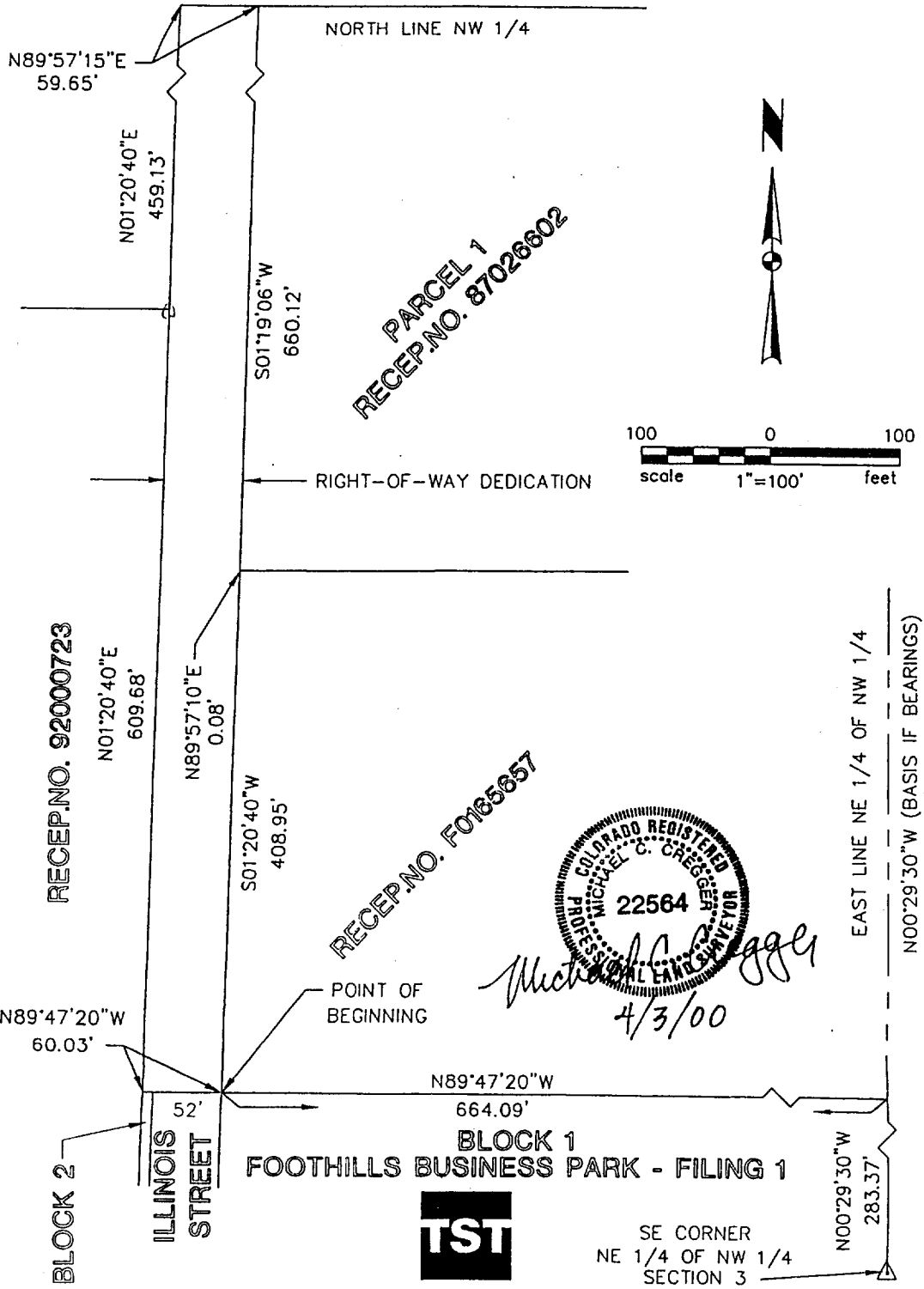
TST INC. OF DENVER  
Consulting Engineers

REVISED 6/6/01  
REVISED 6/1/01  
SHEET 2 OF 2



10/18/99

EXHIBIT A B  
RIGHT-OF-WAY DEDICATION  
N 1/2 OF NW 1/4, SECTION 3, T.4 S., R.70 W.  
OF 6th P.M., CITY OF GOLDEN,  
JEFFERSON COUNTY, COLORADO



10  
8/9

EXHIBIT AB  
RIGHT-OF-WAY DEDICATION  
N 1/2 OF NW 1/4, SECTION 3, T.4 S., R.70 W.  
OF 6th P.M., CITY OF GOLDEN,  
JEFFERSON COUNTY, COLORADO

LEGAL DESCRIPTION - Right-of-Way Dedication (Jefferson Clay and Investment Company)

A portion of the Northeast quarter of the Northwest quarter of Section 3, Township 4 South, Range 70 West of the 6th Principal Meridian, City of Golden, Jefferson County, Colorado, being described as follows:

Commencing at the Southeast corner of said Northeast quarter of the Northwest quarter and considering the East line of said Northeast quarter of the Northwest quarter to bear North 00°29'30" West, with all bearings contained herein relative thereto; thence along said East line, North 00°29'30" West, 283.37 feet to the Southeast corner of the metes and bounds legal description in the deed recorded at Reception No. F0165657; thence along the South line of said description, North 89°47'20" West, 664.09 feet to the Southwest corner of said description and the POINT OF BEGINNING of this description; thence along the North line of Foothills Business Park - Filing 1, according to the recorded plat thereof, North 89°47'20" West, 60.03 feet to the East line of that parcel described in the deed recorded at Reception No. 92000723; thence along said East line, North 01°20'40" East, 609.68 feet to the Northeast corner of said parcel; thence departing said East line North 01°20'40" East, 459.13 feet to the North line of said Northwest quarter; thence along said North line North 89°57'15" East, 59.65 feet to the Northwest corner of Parcel 1, described in the deed recorded at Reception No. 87026602; thence along the West line of said Parcel 1, South 01°19'06" West, 660.12 feet to the Southwest corner of said Parcel 1; thence along the South line of said Parcel 1, North 89°57'10" East, 0.08 feet to the Northwest corner of said legal description recorded at Reception No. F0165657; thence along the West line of said legal description, South 01°20'40" West, 408.95 feet to the POINT OF BEGINNING of this description, containing 1.47 acres, more or less.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, do hereby certify that this exhibit and legal description were prepared by me or under my direct supervision. This exhibit does not constitute a land survey as defined by Colorado statutes.

April 3, 2000

Date

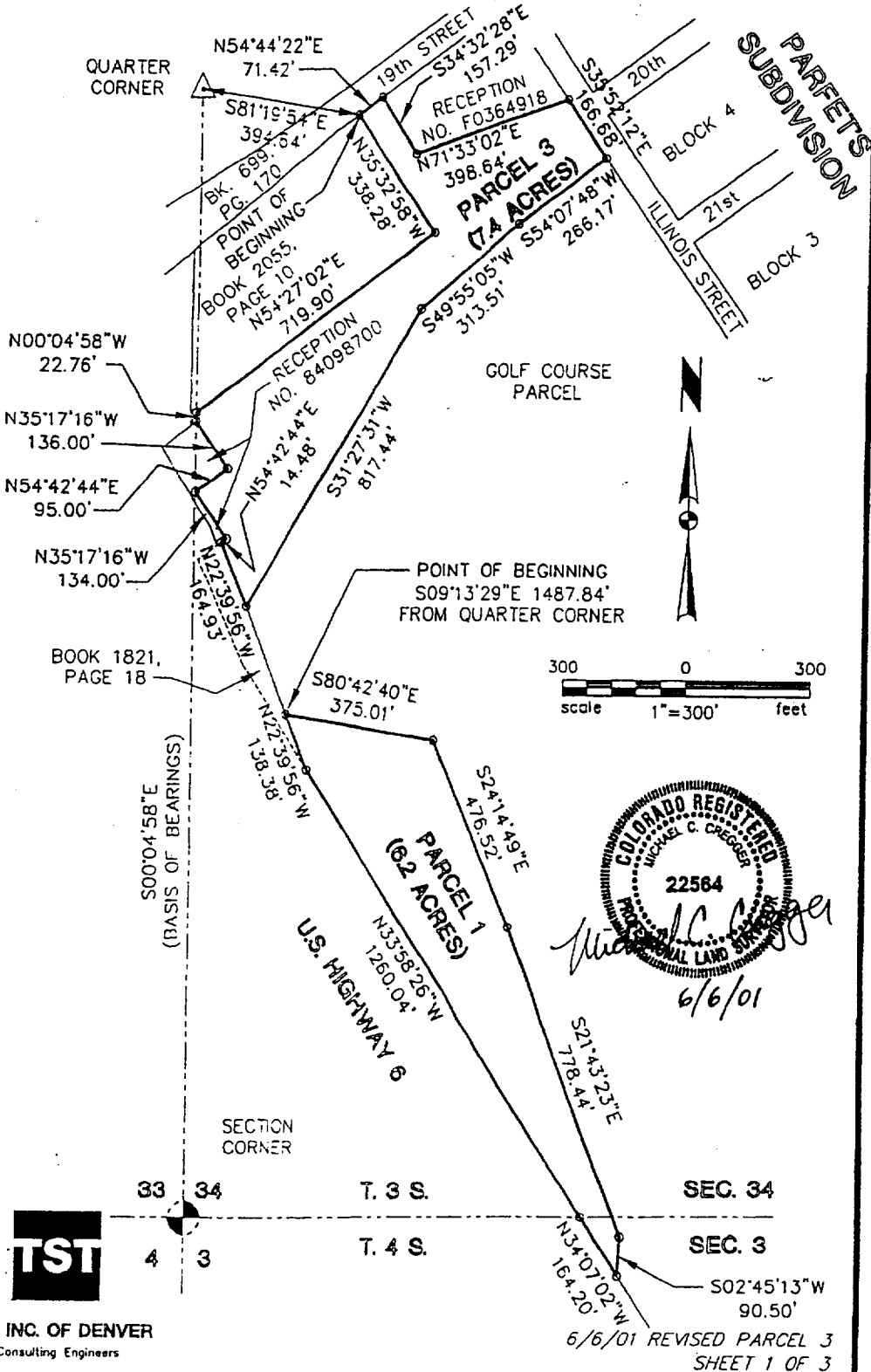
Michael C. Cregger

MICHAEL C. CREGGER  
Professional Land Surveyor  
Colorado Registration No. 22564



TST INC. OF DENVER  
Consulting Engineers

**EXHIBIT C**  
**PARFET PARCELS 1 AND 3**  
 SW 1/4 SEC. 34, T.3 S. & NW 1/4 SEC. 3, T.4 S.,  
 R.70 W. OF 6th P.M., CITY OF GOLDEN,  
 JEFFERSON COUNTY, COLORADO



**TST INC. OF DENVER**  
 Consulting Engineers

EXHIBIT C  
**PARFET PARCELS 1 AND 3**  
SW 1/4 SEC. 34, T.3 S. & NW 1/4 SEC. 3, T.4 S.,  
R.70 W. OF 6th P.M., CITY OF GOLDEN,  
JEFFERSON COUNTY, COLORADO

LEGAL DESCRIPTION - PARCEL 1

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH AND A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, ALL IN RANGE 70 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 34, AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR SOUTH 00°04'58"EAST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 09°13'29"EAST, 1487.84 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6 AS DESCRIBED IN THAT DEED RECORDED IN BOOK 1821 AT PAGE 18 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, SOUTH 80°42'40"EAST, 375.01 FEET; THENCE SOUTH 24°14'49"EAST, 476.52 FEET; THENCE SOUTH 21°43'23"EAST, 778.44 FEET; THENCE SOUTH 02°45'13"WEST, 90.50 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING COURSES: NORTH 34°07'02"WEST, 164.20 FEET TO THE SOUTH LINE OF SAID SECTION 34; THENCE NORTH 33°58'26"WEST, 1260.04 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL DESCRIBED IN BOOK 1821 AT PAGE 18; THENCE ALONG SAID EAST LINE OF SAID PARCEL, NORTH 22°39'56"WEST, 138.38 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 6.2 ACRES, MORE OR LESS.

LEGAL DESCRIPTION - PARCEL 3

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 70 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 34, AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR SOUTH 00°04'58"EAST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 81°19'54"EAST, 394.64 FEET TO THE MOST NORTHERLY CORNER OF THE PARCEL DESCRIBED IN THAT DEED RECORDED IN BOOK 2055 AT PAGE 10 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF 19TH STREET, NORTH 54°44'22"EAST, 71.42 FEET TO THE MOST WESTERLY CORNER OF THE PARCEL DESCRIBED IN THAT DEED RECORDED AT RECEPTION NO. F0364918; THENCE ALONG THE WESTERLY AND SOUTHERLY LIMITS OF SAID PARCEL THE FOLLOWING COURSES: SOUTH 34°32'28"EAST, 157.29 FEET; THENCE NORTH 71°33'02"EAST, 398.64 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE ALONG A LINE WHICH IS 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF THE PAVEMENT OF ILLINOIS STREET AS IT CURRENTLY EXISTS, SOUTH 35°52'12"EAST, 166.68 FEET; THENCE DEPARTING SAID PARALLEL LINE, SOUTH 54°07'48"WEST, 266.17 FEET; THENCE SOUTH 49°55'05"WEST, 313.51 FEET; THENCE SOUTH 31°27'31"WEST, 817.44 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6 AS DESCRIBED IN THAT DEED RECORDED IN BOOK 1821 AT PAGE 18; THENCE ALONG SAID RIGHT-OF-WAY LINE, NORTH 22°39'56"WEST, 164.93 FEET TO THE SOUTH LINE OF THE PARCEL DESCRIBED IN THAT DEED RECORDED AT RECEPTION NO. 84098700; THENCE ALONG THE SOUTHERLY AND



**TST INC. OF DENVER**  
Consulting Engineers

6/6/01 REVISED PARCEL 3  
SHEET 2 OF 3

EXHIBIT C  
PARFET PARCELS 1 AND 3  
SW 1/4 SEC. 34, T.3 S. & NW 1/4 SEC. 3, T.4 S.,  
R.70 W. OF 6th P.M., CITY OF GOLDEN,  
JEFFERSON COUNTY, COLORADO

EASTERLY LIMITS OF SAID PARCEL THE FOLLOWING COURSES: NORTH 54°42'44"EAST, 14.48 FEET; THENCE NORTH 35°17'16"WEST, 134.00 FEET; THENCE NORTH 54°42'44"EAST, 95.00 FEET; THENCE NORTH 35°17'16"WEST, 136.00 FEET TO THE WEST LINE OF SAID SECTION 34; THENCE ALONG SAID WEST LINE, NORTH 00°04'58"WEST, 22.76 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL DESCRIBED IN THE DEED RECORDED IN BOOK 2055 AT PAGE 10; THENCE ALONG THE SOUTHERLY AND EASTERLY LIMITS OF SAID PARCEL THE FOLLOWING COURSES: NORTH 54°27'02"EAST, 719.90 FEET; THENCE NORTH 35°32'58"WEST, 338.28 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 7.4 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTIONS WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

DATE June 6, 2001

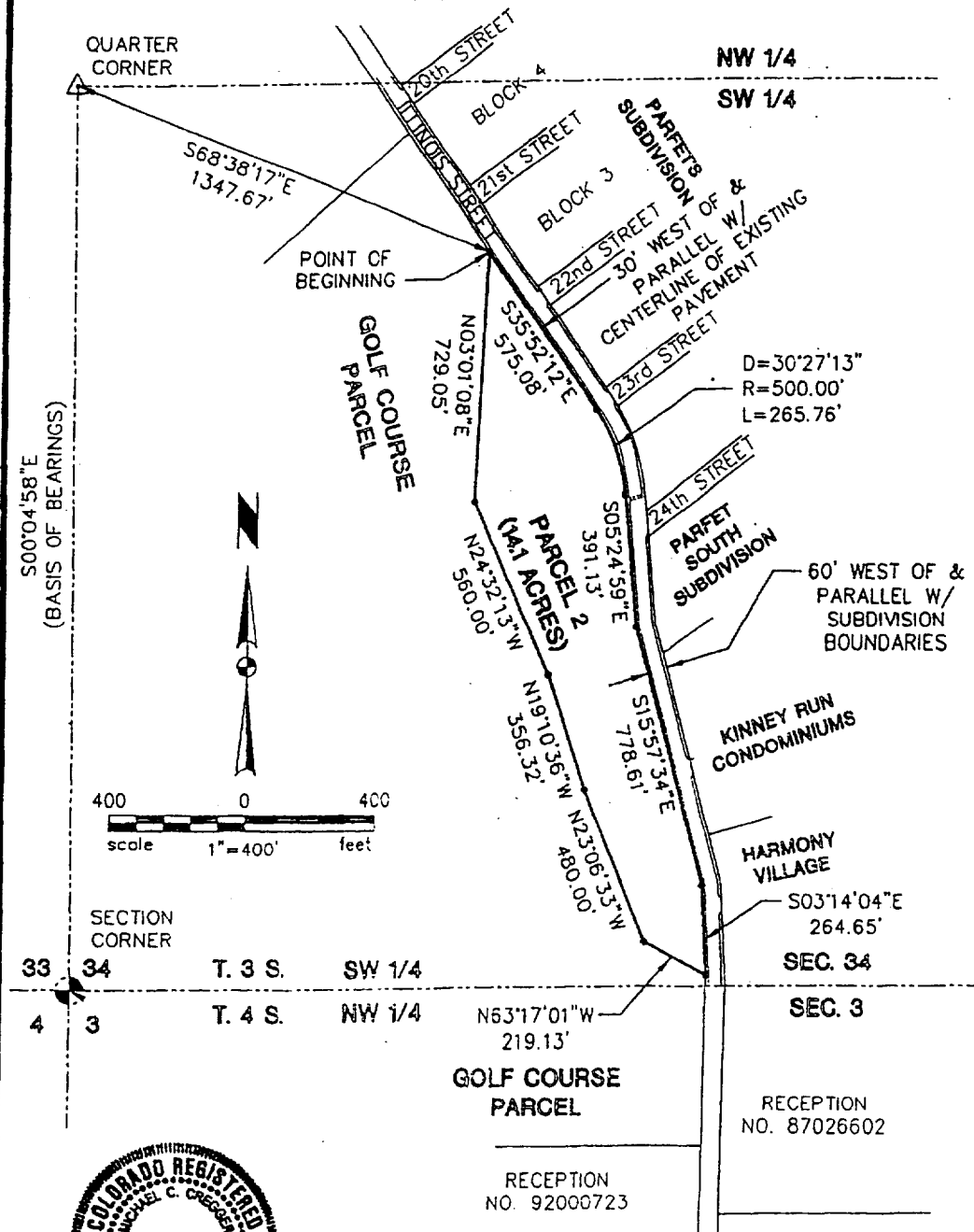
Michael C. Cregger  
PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTRATION NO. 22564



TST INC. OF DENVER  
Consulting Engineers

6/6/01 REVISED PARCEL 3  
SHEET 3 OF 3

**EXHIBIT C**  
**PARFET PARCEL 2**  
 SW 1/4 SEC. 34, T.3 S., R.70 W. OF 6th P.M.,  
 CITY OF GOLDEN, JEFFERSON COUNTY,  
 COLORADO



33	34	T. 3 S.	SW 1/4
4	3	T. 4 S.	NW 1/4

SECTION CORNER

QUARTER CORNER

POINT OF BEGINNING

GOLF COURSE PARCEL

RECEPTION NO. 92000723

RECEPTION NO. 87026602

**COLORADO REGISTERED**  
 MICHAEL C. CROGG  
 22584  
 PROFESSIONAL LAND SURVEYOR

*Michael C. Crogg*  
 6/1/01



**TST INC. OF DENVER**  
 Consulting Engineers

REVISED 6/1/01  
 SHEET 1 OF 2

**EXHIBIT C**  
**PARFET PARCEL 2**  
**SW 1/4 SEC. 34, T.3 S., R.70 W. OF 6th P.M.,**  
**CITY OF GOLDEN, JEFFERSON COUNTY,**  
**COLORADO**

**LEGAL DESCRIPTION - PARCEL 2**

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 70 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 34, AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR SOUTH 00°04'58"EAST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 68°38'17"EAST, 1347.67 FEET TO A LINE WHICH IS 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF THE PAVEMENT OF ILLINOIS STREET AS IT CURRENTLY EXISTS, AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG SAID PARALLEL LINE, THE FOLLOWING COURSES: SOUTH 35°52'12"EAST, 575.08 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 30°27'13", A RADIUS OF 500.00 FEET AND AN ARC OF 265.76 FEET TO THE NORTHERLY PROJECTION OF A LINE WHICH IS 60.00 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF PARFET SOUTH SUBDIVISION, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE ALONG SAID PARALLEL LINE, AND ALONG A LINE WHICH IS 60.00 FEET WEST OF AND PARALLEL WITH THE WEST LINES OF KINNEY RUN CONDOMINIUMS AND HARMONY VILLAGE, ACCORDING TO THE RECORDED PLATS THEREOF THE FOLLOWING COURSES: SOUTH 05°24'59"EAST, 391.13 FEET; THENCE SOUTH 15°57'34"EAST, 778.61 FEET; THENCE SOUTH 03°14'04"EAST, 264.65 FEET; THENCE DEPARTING SAID PARALLEL LINE, NORTH 63°17'01"WEST, 219.13 FEET; THENCE NORTH 23°06'33"WEST, 480.00 FEET; THENCE NORTH 19°10'36"WEST, 356.32 FEET; THENCE NORTH 24°32'13"WEST, 560.00 FEET; THENCE NORTH 03°01'08"EAST, 729.05 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 14.1 ACRES, MORE OR LESS.

**SURVEYOR'S CERTIFICATE**

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

June 1, 2001  
 DATE

Michael C. Cregger  
 PROFESSIONAL LAND SURVEYOR  
 COLORADO REGISTRATION NO. 22564



**TST INC. OF DENVER**  
 Consulting Engineers

REVISED 6/1/01  
 SHEET 2 OF 2

ORIGINAL

SITE NAME: GOLDEN  
SITE NO. CO0371011Z-1COMMUNICATIONS SITE LEASE  
(Colorado Ground Lease)

Dated October 24, 1995 between OneComm Corporation, N.A. a Delaware corporation ("OneComm"), and having its principal place of business at 4643 South Ulster Street, Suite 500, Denver, Colorado 80237 Attn: General Counsel, and JEFFERSON CLAY & INVESTMENT CO., a Colorado Corporation ("Lessor"), having its principal place of business at 1300 8th Street, Golden, Colorado 80401.

1. **The Property.** Lessor is the record owner of a certain parcel of real property located in the State of Colorado, County of Jefferson, City of Golden commonly known as a portion of the SW 1/4, Section 34, T3S, R70W, 6 P.M (the "Property"). A legal description of the Property is contained in Exhibit A to this Lease.

2. **Lease of the Premises.**

(a) **Premises.** Lessor hereby leases to OneComm and OneComm leases from Lessor that portion of the Property generally described as approximately Six Hundred (600') square feet of ground space, more particularly described as a twenty (20') foot by thirty (30') foot parcel of land on the Property upon which OneComm shall construct certain communications facilities consisting of one six foot (6') by ten foot (10') enclosed communications cabinet, a thirty five foot (35') monopole and three omni directional or nine panel antennas (the "Premises"). A description of the Premises which may be used for legal purposes is contained in Exhibit B to this Lease. Lessor and OneComm hereby agree that the Premises including any Access Areas (defined herein) may be surveyed by a licensed surveyor at the sole cost of OneComm, and such survey shall then supplement Exhibit B, and become a part hereof and shall control to describe the Premises and Access Areas in the event of any discrepancy between such survey and the description of the boundary of the Premises contained herein.

(b) **OneComm Improvements.** Following the Commencement Date, OneComm shall have the right to construct the Communications Site (defined herein) in accordance with the plans attached as Exhibit B which are hereby approved for construction by Lessor. Lessor acknowledges that certain modifications to the Premises not shown on Exhibit B may be required to accommodate construction of the Communications Site which do not require amendment of the building permit (such as orientation of the equipment shelter and tower or the number and type of antennas), which modifications OneComm may complete without further approval by Lessor. OneComm shall obtain the consent of Lessor, which consent shall not be unreasonably withheld, for any modifications required to accommodate the Communications Site not shown in Exhibit B which require an amendment to the building permit. OneComm shall obtain all necessary governmental approvals and permits prior to commencing construction and shall provide Lessor with five (5) days notice prior to the start of construction to permit Lessor to post notices of non-responsibility. All OneComm contractors and subcontractors shall be duly licensed in the state where the Property is located. Lessor shall provide OneComm in writing a six (6) month notification should Lessor need to mine the Premises OneComm is located on. Should such move occur, OneComm shall move their communications facilities to a mutually agreed location on the Property.

3. **Rent.**

(a) **Base Rent.** OneComm shall pay to Lessor as rent the sum of One Thousand Dollars (\$1,000.00) per month, due and payable on the first day of each month, in advance, commencing on the Commencement Date and continuing during the term with the following increases in the monthly base rent each five year renewal term:

- First five (5) year extension base rent will be: One Thousand Two Hundred Dollars (\$1,200.00) per month
- Second five (5) year extension base rent will be: One Thousand Four Hundred Forty Dollars (\$1,440.00) per month
- Third five (5) year extension base rent will be: One Thousand Seven Hundred Twenty-eight Dollars (\$1,728.00) per month
- Fourth five (5) year extension base rent will be: Two Thousand Seventy-Three Dollars (\$2,073.00) per month

(b) **Utility Charge.** OneComm shall install separate utility meters at the Premises and, when permitted by the serving utilities, OneComm shall be responsible directly to the serving utilities for all utilities required for OneComm's use of the Premises. ~~At parties:~~ OneComm shall install, or cause to be installed, a new electrical service line to the Communications Site. Said service line shall begin at a point where service is currently available adjacent to the Premises and shall run to the Communications Site to serve the requirements of OneComm's equipment. The size and capacity of the service line shall be as required and as determined by OneComm for its purposes, plus a 3-phase, 200 AMP service demand for Lessor's purposes, all in accordance with the serving utility company's policies. Such installation shall be at OneComm's sole expense. Lessor shall have the right to extend said electrical service beyond the communications Site to provide electrical service to his adjacent Property. Lessor shall install or cause to be installed a separate utility meter for his use and any such service extensions shall be at Lessor's sole expense.

4. **Term of Lease.** This Lease shall be for an initial term of five (5) years. OneComm shall have the right to extend its tenancy beyond the initial term for four (4) additional successive optional extension terms of five (5) years each.

5. **Commencement Date; Governmental Permits.** The initial term of this Lease shall commence on the earlier to occur of the first day of the first month following OneComm's notice to Lessor in writing that OneComm has obtained all permits and approvals necessary for OneComm to be legally entitled to construct the Communications Site for providing radio communications services at the Premises, or December 1, 1995 (the "Commencement Date"). OneComm shall be permitted to occupy the Premises and commence construction of the Communications Site upon receipt of all such permits and approvals and notice to Lessor as required in Section 2. Any such pre-Commencement Date occupancy by OneComm shall be under all the terms and conditions of this Lease and OneComm shall pay any portion of one month's rent due for such occupancy with the first month's rent due hereunder.



# EXHIBIT E

6. **Use of the Premises.** OneComm shall use the Premises as one of OneComm's radio communications sites (a "Communications Site") comprising OneComm's system (the "System") for providing radio and wireless telecommunications services to the public, including Enhanced Specialized Mobile Radio, Specialized Mobile Radio, short messaging, wireless data and any other radio service which OneComm is legally authorized to provide to the public during the term of this Lease. A Communications Site, for purposes of this Lease, is a site at which radio, telephone and communications equipment is installed and used to send and receive radio signals to and from wireless telephones and other radio devices and to connect those signals to radio, telephone or other communications facilities either directly, by means of cables, or indirectly, by means of transmitting and receiving facilities (including microwave antennas) located at the Communications Site. OneComm shall not use the Premises for any other purposes without the written consent of Lessor.

7. **Easement.** Lessor hereby grants to OneComm for the duration of this Lease, or any extensions thereof, an unimpaired, non-exclusive easement and right of way in and over the access roads shown in Exhibit B (if any) ("Access Road"), the overhead or underground cable and utility runs shown in Exhibit B (if any) ("Service Easement"), the common areas at the Property and all areas necessary to provide physical access by personnel and equipment from the nearest public right of way, and utilities from the nearest service, to or from the Premises (the "Access Areas"). The rights granted to OneComm herein are for the purpose of installing, constructing, maintaining, restoring, replacing, and operating OneComm's equipment located within or on the Premises or such Access Areas, including, in the case of an emergency, the right to temporarily install a fuel powered electrical generator. Such rights shall include the right of ingress and egress, twenty-four (24) hours per day, seven (7) days per week over such Access Areas for access to or from any of OneComm's equipment.

8. **Protections Against Interference.** Lessor will not grant a lease to any party for use of the Property, if such use would interfere with OneComm's operation of the System. Any future lease of the Property which permits the installation of communication equipment shall be conditioned upon not interfering with OneComm's operation of the Communications Site. Without limiting any other remedy in law or equity, OneComm shall have the right to terminate this Lease upon thirty (30) days' written notice in the event its reception or transmission is interfered with by other antenna equipment, or obstacles constructed or operated in OneComm's reception or transmission paths.

9. **Damage and Destruction.** If the Premises are, in whole or in part, damaged or destroyed then: (1) if wholly damaged or destroyed so that all of the Premises are rendered permanently unusable for reconstruction of a Communications Site, this Lease shall then terminate and OneComm shall be liable for the rent only up to the time of such destruction and any rent prepaid by OneComm shall be returned to OneComm; but (2) if only partially destroyed and still usable for construction of a Communications Site, OneComm shall, within a reasonable time, repair the Premises with a reasonable reduction of rent from the time of such partial destruction until the Premises are again as fully usable by OneComm as they were before such partial damage or destruction; provided, however, that OneComm shall not be required to rebuild the Communications Site if: (i) such partial damage or destruction shall occur within three (3) months prior to the termination of this Lease; (ii) OneComm continues to pay the rental amounts due hereunder and the Premises are maintained in a safe and sanitary condition; or (iii) such damage and destruction is directly caused by the negligence or misconduct of Lessor. A decision as to whether partially destroyed or partially condemned (for purposes of Section 10) Premises are still usable for reconstruction of a Communications Site, shall be made jointly by Lessor and OneComm, and, if they cannot agree, by an arbitrator reasonably acceptable to both parties.

10. **Condemnation.** If all or part of the Premises is taken by condemnation such that the Premises are no longer usable for reconstruction of a Communications Site, this Lease shall terminate unless OneComm's equipment and improvements can be relocated to another position at the Property acceptable to OneComm and Lessor. OneComm shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of OneComm's equipment and improvements and costs of relocation.

11. **Need to Prevent Unsupervised Access.** OneComm's communications equipment is highly sensitive and any entry onto the Premises which could damage or interfere with it must be controlled. Accordingly, although Lessor may have a key to the Premises, Lessor shall not enter the Premises (other than in an emergency) unless it has given OneComm twenty-four (24) hours' actual notice. In case of emergency, Lessor shall make reasonable efforts to notify OneComm prior to entering the Premises.

12. **Termination by OneComm.** OneComm may terminate this Lease for cause upon the giving of thirty (30) days' written notice to Lessor if any of the following events occur: (a) OneComm fails to obtain or loses any necessary permits, approvals or orders and is thereby unable to use the Premises as a Communications Site; (b) If OneComm determines at any time that the Property is not appropriate for locating OneComm's communication equipment for technological reasons, including, but not limited to, signal interference or (c) Lessor fails to comply with any term, condition or covenant of this Lease and does not cure such failure within thirty (30) days after written notice thereof or in the event of a cure which requires in excess of thirty (30) days to complete, if Lessor has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion. OneComm shall have the right to cure any default by Lessor following such notice and cure period and to deduct the cost of such cure from rent due hereunder upon presentation of an accounting of such costs to Lessor.

13. **Termination by Lessor.** Lessor may terminate this Lease upon the occurrence of any of the following: (a) failure by OneComm to pay any rent required hereunder when due if such failure shall continue for more than ten (10) calendar days after delivery to OneComm of notice of such failure to make timely payment; (b) failure by OneComm to comply with any material term, condition or covenant of this Lease, other than the payment of rent, if such failure is not cured within thirty (30) days after written notice thereof to OneComm, or in the event of a cure which requires in excess of thirty (30) days to complete, if OneComm has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion; or (c) if OneComm becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the Federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any

thereof, or is adjudged bankrupt or insolvent in proceedings filed against OneComm thereunder, or if a receiver or trustee is appointed for all or substantially all of the assets of OneComm due to OneComm's insolvency.

14. **Exercise of Options to Extend.** OneComm shall have successive options to extend the term of this Lease for the successive extension periods set forth in Section 4 of this Lease, on the same terms, covenants and conditions (except as to the number of remaining option terms) as are contained in this Lease. OneComm shall be deemed to have timely exercised each option without further notice to Lessor unless OneComm shall provide written notice to Lessor not less than ten (10) days prior to the expiration of the then current term of OneComm's intent to terminate the Lease at the end of that term.

15. **Warranties and Covenants of Lessor.** Lessor warrants and covenants that (a) Lessor has legal right to possession of the Premises and the power and the right to enter into this Lease and that OneComm, upon the faithful performance of all of the terms, conditions and obligations of OneComm contained in this Lease, shall peaceably and quietly hold and enjoy the Premises upon the terms, covenants and conditions set forth in this Lease throughout the term of this Lease and any extensions thereof; (b) Lessor shall deliver the Premises to OneComm clean and free of debris on the Commencement Date and shall maintain the Property in a manner which will not interfere with OneComm's use of the Premises as contemplated hereby; (c) Lessor shall make available to OneComm at the Premises, all presently existing utility services required by OneComm for purposes of the operation of OneComm's equipment at the Premises, provided that OneComm may at its own expense (or Lessor may, if OneComm so requests, at OneComm's expense), install any and all additional utilities service facilities which are so required; (d) Lessor shall, during the term hereof, make payment of all real property taxes and general and special assessments levied against the Property and the Premises which it has the duty to pay within the time allowed by the taxing authorities in order to avoid penalty and OneComm shall compensate Lessor for any real property taxes directly attributable to the value of improvements placed upon the Premises by OneComm; and (e) OneComm shall have access to the Premises from the nearest public way at all times and all security gates and access roads (if any) shall be operational.

16. **Warranties and Covenants of OneComm.** OneComm warrants and covenants that throughout the term of this Lease, OneComm shall maintain comprehensive liability insurance, naming Lessor as an additional insured, protecting and indemnifying Lessor and OneComm against claims and liabilities for injury, damage to persons or property, or for the loss of life or of property occurring upon the Premises resulting from any act or omission of OneComm, its employees, agents, contractors, and subcontractors. Such insurance shall afford minimum protection of not less than \$1,000,000 for injury to or death of any one person, \$2,000,000 for injury or death of two or more persons, and \$1,000,000 for property damage. OneComm shall furnish Lessor with a certificate indicating the applicable coverage, upon request. OneComm shall maintain the Premises in a clean, safe and sanitary condition throughout the Lease Term.

17. **Liability and Indemnification.** OneComm shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, height, location, use, operation, and removal of improvements authorized herein, and shall fully indemnify Lessor against any loss, cost or expense which may be sustained or incurred by Lessor as a result of the installation, operation or removal of such improvements. Except for the acts of Lessor and Lessor's agents or employees Lessor shall not be liable to OneComm for any loss or damages arising out of personal injuries or property damage on the Premises.

18. **Title To and Removal Of OneComm's Equipment.** Title to OneComm's equipment, and all improvements installed at and affixed to the Premises or Property by OneComm shall be and shall remain the property of OneComm. Lessor hereby waives any lien rights it may have or acquire with respect to such property and shall promptly execute any document, required by any supplier, lessor, or lender of such property which waives any rights Lessor may have or acquire with respect thereto. OneComm may, at any time, including any time it vacates the Premises, remove OneComm's improvements, equipment, fixtures, and all of OneComm's personal property from the Premises, but OneComm shall not be required to remove any foundations for the tower or equipment shelter nor any underground cable or conduit.

19. **Holding Over.** If OneComm holds over after this Lease has been terminated, the tenancy shall be month-to-month, subject to the provisions of this Lease.

20. **Surrender.** Upon termination of this Lease, OneComm shall remove the equipment and improvements installed at the Premises by OneComm except as set forth in Section 18, and shall surrender the Premises in as good order and condition as when first occupied by OneComm, ordinary wear and tear and damage by fire or other casualty excepted.

21. **Assignment and Subletting.** OneComm shall not assign, sublet or otherwise transfer or encumber all or any part of OneComm's interest in this Lease without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Notwithstanding the foregoing, OneComm may assign or sublet its interest in this Lease or may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any entity which controls, is controlled by, or is under the common control with OneComm, or to any entity resulting from any merger or consolidation with OneComm, or to any partner of OneComm or to any partnership in which OneComm is a general partner, or to any person or entity which acquires all of the assets of OneComm as a going concern, or to any entity which obtains a security interest in a substantial portion of OneComm's assets. Lessor hereby consents to: the assignment of OneComm of its rights under this Lease as collateral security to any entity which provides financing for the purchase of the equipment to be installed at the Premises; and the license of portions of the Premises to communications users similar to OneComm. Any such assignment, subletting or transfer shall not relieve OneComm of its obligations under this Lease. Should Lessor sell, lease, transfer or otherwise convey all or any part of the Property to any transferee other than OneComm, then such transfer shall be subject to this Lease and all of OneComm's rights hereunder and the easement rights of OneComm to the Access Areas.

22. **Notices and Other Communications.** Every notice required by this Lease shall be delivered either by (i) personal delivery, or (ii) postage prepaid return receipt requested certified mail addressed to the party for whom intended at the addresses

EXHIBIT E

...ing in the first paragraph of this lease or at such other address as the Intended recipient shall have designated by written notice. Copy of each notice sent to OneComm shall be sent to: Paul B. Albritton, Mackenzie & Albritton, One Post Street, Suite 500, San Francisco, CA 94101.

23. **Hazardous Substances.** OneComm agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor represents warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Property in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to, use generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Lessor and OneComm each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this Section. As used in this Section, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

24. **Waivers.** Any waiver of any right under this Lease must be in writing and signed by the waiving party.

25. **Written Agreement to Govern.** This Lease is the entire understanding between the parties relating to the subjects it covers. Lessor acknowledges that this Communications Site Lease, once executed by Lessor, constitutes an offer to OneComm which shall not be binding upon the parties until accepted by OneComm's authorized signature below.

26. **Attorneys' Fees.** The prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs, and expenses in connection with such action or proceeding from the other party.

27. **Further Assurances.** In addition to the actions specifically mentioned in this Lease, the parties shall each do whatever may be reasonably necessary to accomplish the transactions contemplated in this Agreement including, without limitation: execution of all applications, permits and approvals required of Lessor for construction of the Communications Site by OneComm; cooperation in obtaining Non-Disturbance Agreements from holders of senior encumbrances on the Property; and execution of a Short Form Lease and a Memorandum of Commencement hereof in form appropriate for recording in the county in which the Premises are situated.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

OneComm Corporation, N.A., a Delaware corporation

By: [Signature]  
Title: Vice President, Network Development  
Printed Name: DANNY E. STROUD  
Date: 11 28, 1995

Jefferson Clay & Investment Co.

By: [Signature]  
Title: President  
Printed Name: WILLIAM G. PAPER  
Date: 11/17, 1995  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_, 199\_\_  
Federal Tax I.D. No: 84-0237385

SCHEDULE OF EXHIBITS: Exhibit A (the "Property"); Exhibit B (the "Premises"); Short Form of Lease

EXHIBIT E

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

OneComm Corporation, N.A.  
4643 South Ulster Street, Suite 500  
Denver, Colorado 80237  
Attn: Michael R. Carper, Esq.

Golden, Co Ground Lease

**SHORT FORM OF LEASE**

THIS SHORT FORM OF LEASE is made and entered into as of this 28<sup>th</sup> day of November 1995, by and between **Jefferson Clay & Investment Co.**, a Colorado corporation ("Lessor") and **OneComm Corporation, N.A.**, a Delaware corporation ("OneComm").

**WITNESSETH:**

That Lessor hereby leases to OneComm and OneComm hereby leases from Lessor a portion of that certain real property in the City of Golden, County of Jefferson, State of Colorado, a legal description of which is shown in Exhibit A attached hereto and incorporated herein by reference, under the terms and conditions of the unrecorded Lease Agreement by and between Lessor and OneComm dated 11/28 1995, and incorporated herein by reference (the "Lease Agreement"), for an initial term of five (5) years, and four (4) subsequent optional extension terms of five (5) years each, with a term commencement date of no later than December 1, 1995, pursuant to the terms of the Lease Agreement. The portion of the real property leased by Lessor to OneComm is that portion depicted on Exhibit B attached hereto and incorporated herein by reference. The Lease agreement provides for access and utility easements during the term of the Lease over Access Areas defined therein and also states, "Any future lease of the Property which permits the installation of communication equipment shall be conditioned upon not interfering with OneComm's operation of the Communications Site." All of the Lessor's covenants under the Lease are intended to and shall inure to the benefit of OneComm and its successors.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

OneComm Corporation, N.A., a Delaware corporation

By: [Signature]  
Title: vice President, Network Development

(LESSOR)

By: [Signature]  
Title: President

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

(seal)

**ACKNOWLEDGMENTS**

State of Colorado }  
County of Denver }

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of November, 1995, by Danny E. Stroud as Vice President of OneComm, a Delaware corporation.

WITNESS my hand and official seal.

My commission expires: May 18, 1998

[Signature]  
Notary Public

EXHIBIT E

ACKNOWLEDGMENTS CONTINUED

State of Colorado )

County of JEFFERSON )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of NOV, 1995, by WILLIAM G. PARETT JR as PRESIDENT of JEFFERSON CLAY AND INVESTMENT CO. a Colorado Corporation

WITNESS my hand and official seal.

My commission expires: 6/9/96

Georgia Storms  
Notary Public

State of Colorado )

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, by \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT E

EXHIBIT A

LEGAL DESCRIPTION

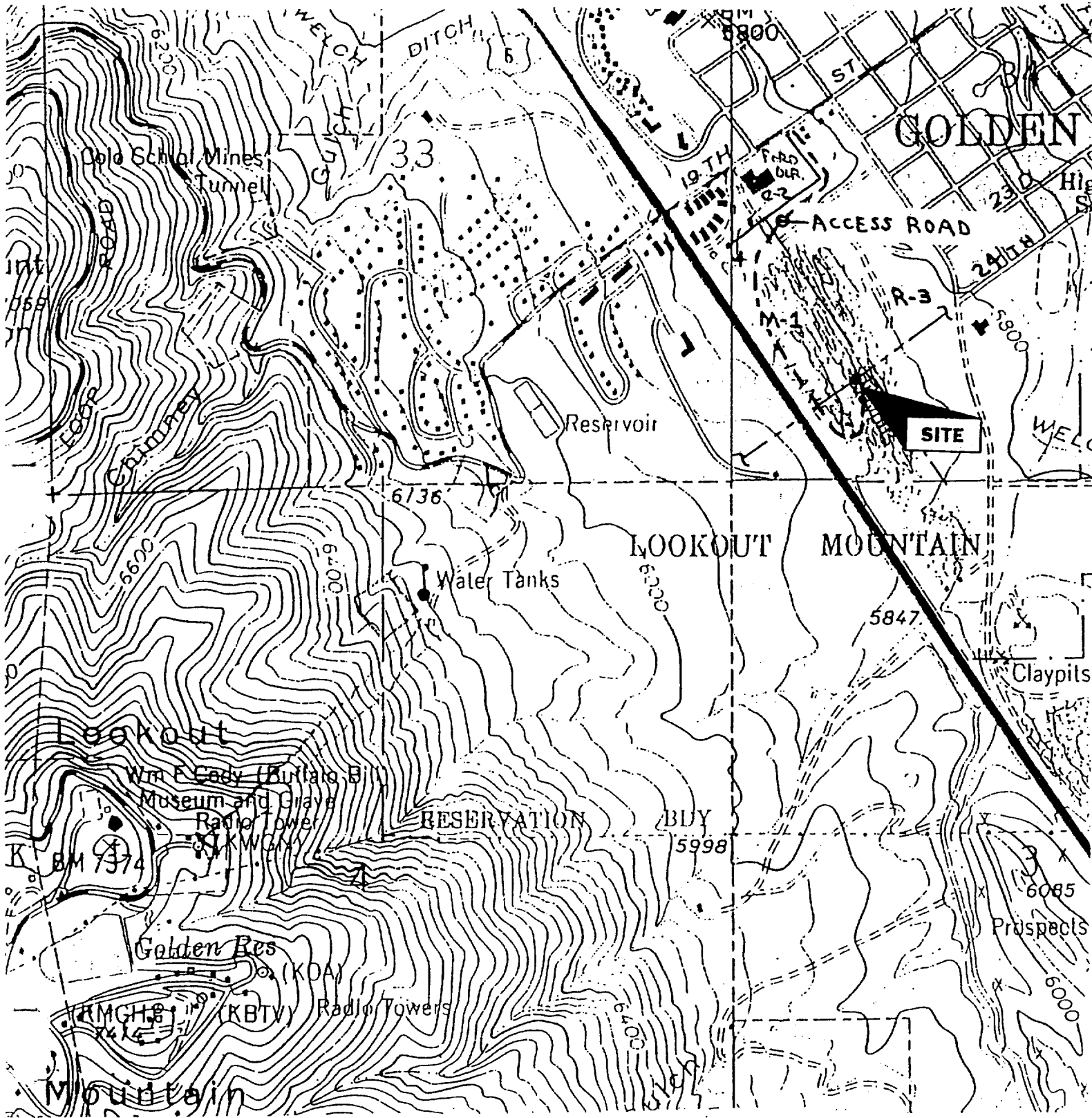
A portion of the SW 1/4 SW1/4 , Section 34, T3S, R70W, 6 P.M.

Jefferson County, CO

EXHIBIT E

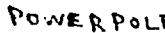

EXHIBIT B

The premises shall be 20 feet by 30 feet and located at the Site location depicted below. Prior to zoning approval by the City of Golden, the Site may be moved by mutual agreement of the parties.

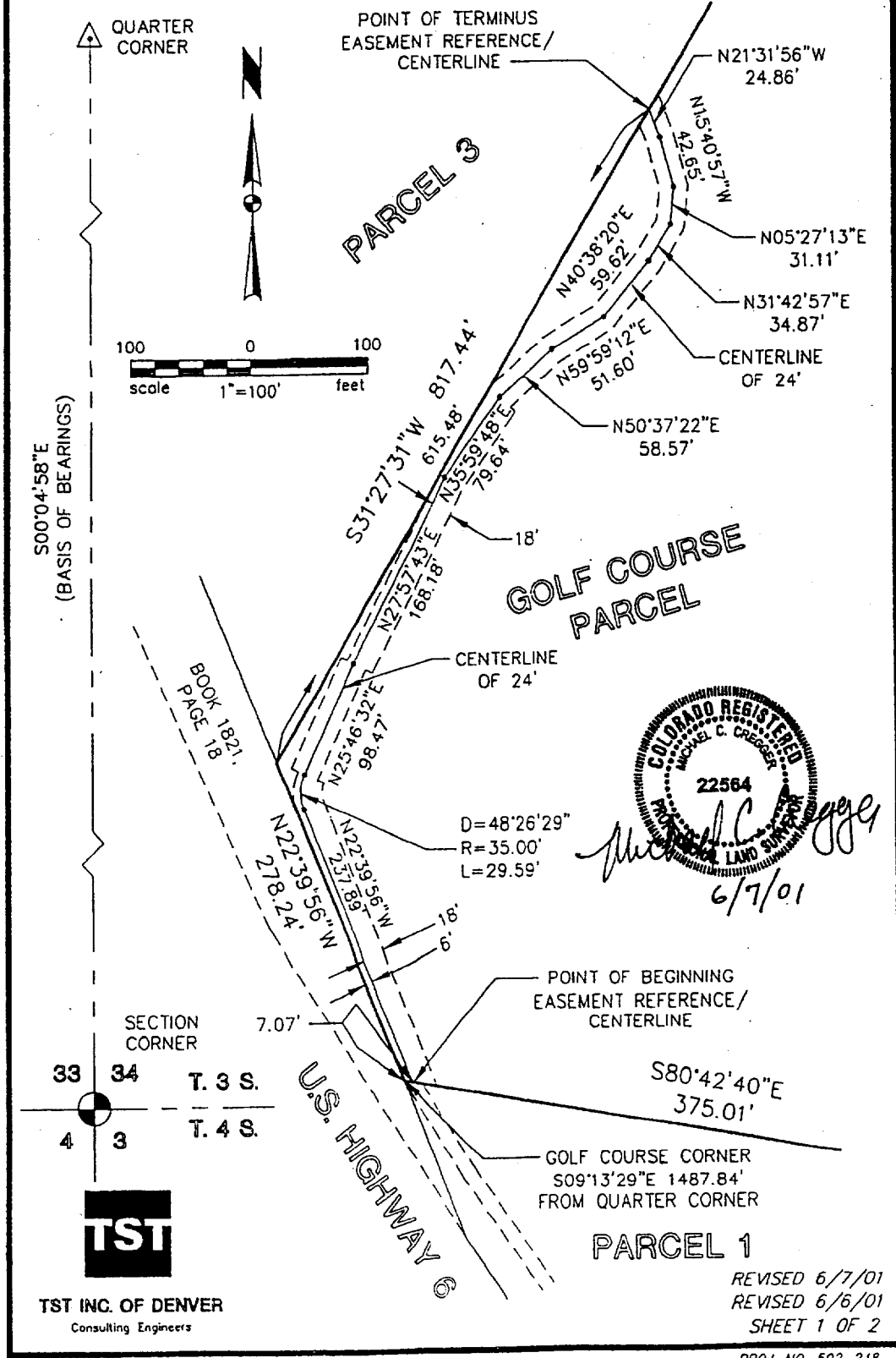


LEGEND:

  
1" = 1000'

 POWER POLE  
 POWERLINE

**EXHIBIT G**  
**24' EASEMENT - GOLF COURSE**  
 SW 1/4 SEC. 34, T.3 S. R.70 W. OF 6th P.M., CITY  
 OF GOLDEN, JEFFERSON COUNTY, COLORADO



**TST**  
 TST INC. OF DENVER  
 Consulting Engineers

REVISED 6/7/01  
 REVISED 6/6/01  
 SHEET 1 OF 2



**EXHIBIT G**  
**24 EASEMENT - GOLF COURSE**  
**SW 1/4 SEC. 34, T.3 S. R.70 W. OF 6th P.M., CITY**  
**OF GOLDEN, JEFFERSON COUNTY, COLORADO**

**LEGAL DESCRIPTION - 24' EASEMENT - GOLF COURSE**

A 24 FOOT WIDE STRIP OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 70 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF GOLDEN, JEFFERSON COUNTY, COLORADO, THE CENTERLINE/REFERENCE LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 34, AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR SOUTH 00°04'58"EAST, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 09°13'29"EAST, 1487.84 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 6 AS DESCRIBED IN THAT DEED RECORDED IN BOOK 1821 AT PAGE 18; THENCE ALONG THE PROPOSED BOUNDARY OF A GOLF COURSE, SOUTH 80°42'40"EAST, 7.07 FEET TO A LINE WHICH IS 6.00 FEET EAST OF AND PARALLEL WITH SAID EAST RIGHT-OF-WAY LINE AND THE POINT OF BEGINNING OF THE REFERENCE LINE, FROM WHICH THE EASTERLY LIMITS OF SAID 24 FOOT WIDE STRIP IS LOCATED 18.00 FEET EAST OF AND PARALLEL WITH SAID REFERENCE LINE; THENCE ALONG SAID PARALLEL LINE, NORTH 22°39'56"WEST, 237.89 FEET; THENCE DEPARTING SAID PARALLEL LINE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 48°26'29", A RADIUS OF 35.00 FEET AND AN ARC OF 29.59 FEET TO THE CENTERLINE OF SAID 24 FOOT WIDE STRIP; THENCE ALONG SAID CENTERLINE, NORTH 25°46'32"EAST, 98.47 FEET TO THE CENTERLINE OF AN EXISTING UNPAVED ROAD; THENCE ALONG SAID ROAD CENTERLINE AND SAID REFERENCE LINE, FROM WHICH THE EASTERLY LIMITS OF SAID 24 FOOT WIDE STRIP IS LOCATED 18.00 FEET EAST OF AND PARALLEL WITH SAID REFERENCE LINE, THE FOLLOWING COURSES: NORTH 27°57'43"EAST, 168.18 FEET; THENCE NORTH 35°59'48"EAST, 79.64 FEET; THENCE CONTINUING ALONG SAID ROAD CENTERLINE AND THE CENTERLINE OF SAID 24 FOOT WIDE STRIP, THE FOLLOWING COURSES: NORTH 50°37'22"EAST, 58.57 FEET; THENCE NORTH 59°39'12"EAST, 51.60 FEET; THENCE NORTH 40°38'20"EAST, 59.62 FEET; THENCE NORTH 31°42'57"EAST, 34.87 FEET; THENCE NORTH 05°27'13"EAST, 31.11 FEET; THENCE NORTH 15°40'57"WEST, 42.65 FEET; THENCE NORTH 21°31'56"WEST, 24.86 FEET TO THE PROPOSED BOUNDARY OF SAID GOLF COURSE, WHICH BEARS SOUTH 31°27'31"WEST, AND THE POINT OF TERMINUS OF THIS DESCRIPTION, WITH THE SIDELINES OF SAID STRIP OF LAND CONSIDERED TO BE SHORTENED OR LENGTHENED SO AS TO TERMINATE AT SAID GOLF COURSE BOUNDARY. THE ABOVE DESCRIBED STRIP OF LAND CONTAINS 22,100 SQUARE FEET (0.51 ACRES), MORE OR LESS.

**SURVEYOR'S CERTIFICATE**

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

DATE June 7, 2001

*Michael C. Cregger*  
 PROFESSIONAL LAND SURVEYOR  
 COLORADO REGISTRATION NO. 22564



TST INC. OF DENVER  
 Consulting Engineers

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 REVISED 6/6/01  
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