

RESOLUTION NO. 2226

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING AN ACCESS AGREEMENT WITH THE STATE OF
COLORADO PERTAINING TO CONTINUED ACCESS TO THE
COLORADO SCHOOL OF MINES RESEARCH INSTITUTE SITE**

WHEREAS, the Colorado School of Mines has for a lengthy period of time been undertaking investigation, clean-up, and monitoring activities at the Colorado School of Mines Research Institute (CSMRI), which activities require access across and over certain City owned land; and

WHEREAS, the Colorado School of Mines has requested continued access to the City's property adjacent to the CSMRI site, and to improve and maintain a longstanding access road partially on the City property; and

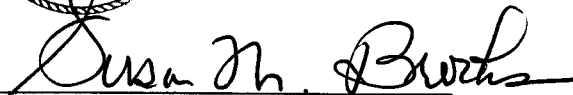
WHEREAS, City Council has considered the requested Access Agreement.

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

City Council approves the Access Agreement, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute such an agreement.

Adopted this 1st day of November, 2012.





Susan M. Brooks, MMC
City Clerk



Marjorie N. Sloan
Mayor

APPROVED AS TO FORM:


David S. Williamson
City Attorney

Resolution No. 2226

Page 2

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 rescheduled regular business meeting thereof held on the 1st day of November, A.D. 2012.



ATTEST:

A handwritten signature in black ink, which appears to read "Susan M. Brooks", is written over a horizontal line.

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

ACCESS AGREEMENT

THIS AGREEMENT is entered into by and between the State of Colorado acting by and through the Board of Trustees of the Colorado School of Mines ("State") and the City of Golden ("Owner") (collectively the "Parties").

WHEREAS, the Owner owns certain real property, as depicted on the attached Exhibit A ("Owner's Property"), located at the Colorado School of Mines Research Institute Site (the "CSMRI Site" or "Site") located at the west end of 12th Street in Golden, Colorado; and

WHEREAS, the State is investigating and assessing the Site for potential environmental contamination; and

WHEREAS, the State has undertaken and may undertake additional cleanup measures at the Site depending on the assessment and investigation results, among other factors; and

WHEREAS, the State would like to have access to Owner's Property to perform a Site assessment and investigation and possible cleanup and to improve and maintain the access road constructed on the property by the State ("the Road"); and

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Parties agree as follows:

1. Owner, pursuant to the terms and conditions stated herein, hereby gives authority to the State and its duly authorized representatives, contractors, and subcontractors (together, "School and its representatives"), to enter Owner's Property at the Site, as necessary, to investigate, assess, and possibly perform some cleanup measures at the Owner's Property and to improve and maintain the Road (the "Work").

2. The Work may consist of any one of, or a combination of: (a) drilling soil test borings; (b) installing ground water monitoring wells; (c) performing ground water inflow tests on wells; (d) obtaining surface water, soil, sediment, subsurface core and groundwater samples; (e) conducting maintenance and/or checking groundwater levels in wells periodically; (f) measuring surface readings of various constituents; (g) transport of materials across Owner's Property; (h) moving soil to different locations at the Owner's Property and/or removing soil from the Owner's Property; (i) bringing in soils and clays to replace removed soils or cover existing soils; (j) solidification of soils; (k) treatment of ground water; (l) treatment of soils; (m)

natural attenuation of materials in ground water and/or soils; (n) institutional controls; (o) any other reasonable cleanup activity, and (p) Road improvements and maintenance. The State will perform the Work in a manner that will not unreasonably interfere with the Owner's use of Owner's Property, specifically including, without limitation, use as a public pedestrian/recreation trail. Except in the case of an emergency, the State will provide the Owner with reasonable advance notice of activities associated with the Work that may impact the Owner's use. The Parties will work cooperatively to accommodate their respective uses of Owner's Property.

3. The State will repair any damage that may occur as a result of activities by the State and its representatives.

4. Unless otherwise agreed to by the Parties or lawfully required by local, state or federal regulatory agencies, all tools, equipment, improvements, and other property taken to or placed upon the lands by or at the direction of the State shall remain the property and responsibility of the State and its representatives. All such tools, equipment, improvements and other property shall not be stored on Owner's Property, but may remain on Owner's Property only as long as they are actively used in connection with the Work.

5. Owner shall be allowed by the State and its representatives to observe and photograph all field activities conducted at Owner's Property, so long as such observation does not unreasonably interfere with the implementation of such activities and complies with the Health and Safety Plan for the Work developed by the State or its representative.

6. The State shall provide Owner prompt notification of any emergency situation at Owner's Property of which the State or its representative becomes aware. The Owner shall promptly notify the State in the event of an emergency situation at Owner's Property of which Owner becomes aware.

7. The State shall comply with all applicable laws and regulations in performing the Work at Owner's Property. The State acknowledges the presence of a federally protected threatened species (Ute Ladies' Tresses Orchid) that is located upon the Owner's Property. In accessing the property and carrying out the Work, the State will use all necessary steps to comply with the Endangered Species Act (ESA) regarding the Ute Ladies' Tresses Orchid. The Parties acknowledge that the U.S. Fish and Wildlife Service has determined that a petition to remove the Ute Ladies' Tresses Orchid from federal protection under the Endangered Species Act provides substantial biological information to indicate that removal may be warranted, and if the federal

government removes the orchid from federal protection in the near future, the ESA will not apply to the orchid.

8. All documents and notices which the Parties are required to be provided under this Access Agreement shall be given to the Parties as follows:

To the State:

Mr. Linn Havelick
Director
Environmental Projects
Colorado School of Mines
1500 Illinois Street
Golden, Colorado 80401
Telephone: 303-273-3998

To Owner:

Director of Public Works
City of Golden
911 10th Street
Golden, CO 80401
Telephone: 303-384-8000

Any party to this Access Agreement may change the person or persons to whom notice is to be directed for purposes of this Agreement by giving advance written notice to the other Parties.

9. Access under this Agreement shall be available at all times, including evenings, weekends and holidays.

10. Nothing in this Access Agreement shall be construed as a waiver of any right, claim, or defense that the either Party may have against any other Party to this Agreement or any other person or entity under CERCLA or any other law. By entering into this Agreement or performing the Work under this Agreement, the State does not in any way accept liability or responsibility for performing the Work, or the costs related to the Work, or the cleanup (including ongoing obligations), if any, of Owner's Property or the Site, except as specifically provided by this Agreement.

11. Any alleged failure of the State to comply with the provisions of this Access Agreement which can be cured without prejudicing Owner shall not be deemed by Owner to be a breach of this Agreement until ten (10) days after written notice has been received by the State

notifying it of the alleged failure to comply with this Agreement. If the State cures the alleged failure to comply within the ten (10) day period, no breach shall be deemed by the Owner to have occurred. A failure to cure or to respond by the State within the ten (10) day period shall not be construed as an admission of any breach.

11. This Access Agreement shall terminate on March 1, 2022. If an extension of this Access Agreement is required to complete the Work, then the State will notify Owner in writing at least sixty (60) days prior to the expiration of this Agreement, so as to provide time for the negotiation and extension of this Agreement.

12. Nothing in this Agreement is intended or shall be construed to create any right in favor of any person or entity not a party hereto.

13. This Agreement constitutes the entire agreement between the Parties hereto, and, except as provided herein, no prior oral or written representation shall serve to modify or amend this Agreement.

14. This Agreement may only be amended by a written amendment properly executed by each party hereto or its heirs, assigns or successors in interest.

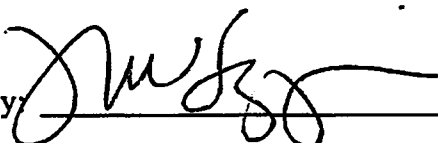
15. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto, their assignees and successors in interest.

16. The laws of the State of Colorado shall govern all interpretations of this Agreement.

DATED this ____ day of June, 2012.

STATE OF COLORADO
ACTING BY AND THROUGH
THE BOARD OF TRUSTEES OF THE
COLORADO SCHOOL OF MINES:

THE CITY OF GOLDEN:

By: 
M.W. Scoggins
President

By: _____

Date: 6/18/2012

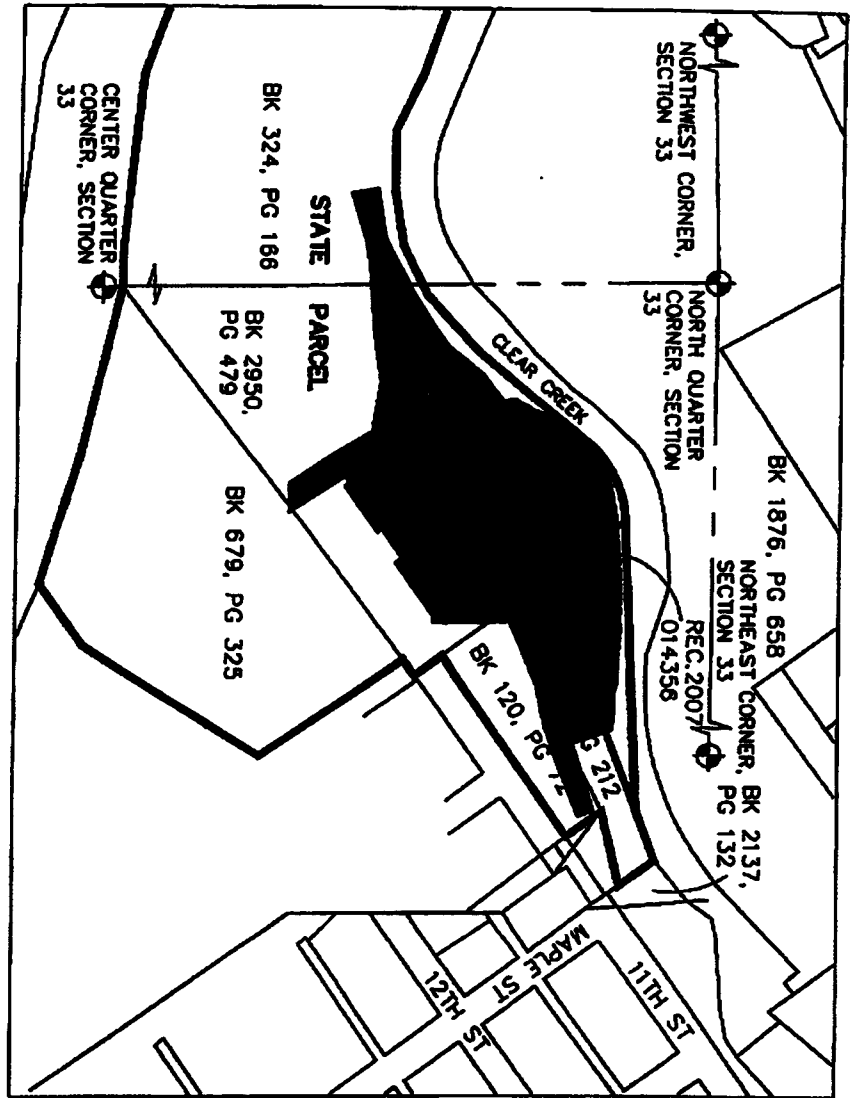
Date: _____

Attachment: Exhibit A (Schematic of Owner's Property)

OSMRI SITE FENCED AREA

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 33, TOWNSHIP 3 SOUTH,
RANGE 70 WEST OF THE 6TH P.M. CITY OF GOLDEN, COUNTY OF JEFFERSON, STATE OF COLORADO
SHEET 4 OF 5

L1	N60°47'19"E 24.33'	L31	S74°39'36"W 28.86'
L2	N56°46'17"E 89.32'	L32	S80°26'40"W 57.27'
L3	N51°49'12"E 38.77'	L33	S86°19'56"W 77.36'
L4	N38°56'19"E 92.64'	L34	S69°35'38"W 18.26'
L5	N02°32'33"E 69.22'	L35	S84°24'28"W 49.86'
L6	N08°35'50"W 26.00'	L36	S00°54'57"E 159.38'
L7	N33°34'09"E 12.94'	L37	S93°25'51"W 14.55'
L8	N20°36'36"E 13.02'	L38	S53°51'10"W 136.91'
L9	N32°49'46"E 20.55'	L39	N35°50'11"W 16.20'
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L13	N14°33'50"W 9.36'	L43	N36°14'38"W 12.11'
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L16	N79°41'15"E 95.09'	L46	S99°40'16"W 63.37'
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L18	N89°33'56"E 70.08'	L48	N30°30'02"W 85.16'
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L29	S69°47'06"W 80.76'		
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VICINITY MAP
Not to Scale

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS, RECORD INFORMATION SHOWN HEREON IS BASED ON DOCUMENTS PROVIDED BY CLIENT.

FSI JOB NO. 11-59,152



Flatiron Survey, Inc.
3825 18th Avenue, Suite 305
Boulder, CO 80501
PHONE: (303) 443-7001
FAX: (303) 443-9830
www.flatiron.com

CSMRI SITE FENCED AREA

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 RANGE 70 WEST OF THE 6TH P.M., CITY OF GOLDEN, COUNTY OF JEFFERSON, STATE OF COLORADO
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$S89^{\circ}32'28''W$ 2633.74'
 NORTHWEST CORNER,
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 FOUND 3 1/4" ALUM. CAP
 ON 2 1/2" ALUM. ROD, 9
 1/2" ABOVE GROUND "COLO.
 DEPT OF HIGHWAYS, 1992,
 PLS NO 22571" PER
 MONUMENT RECORD DATED
 JUNE 2, 1992

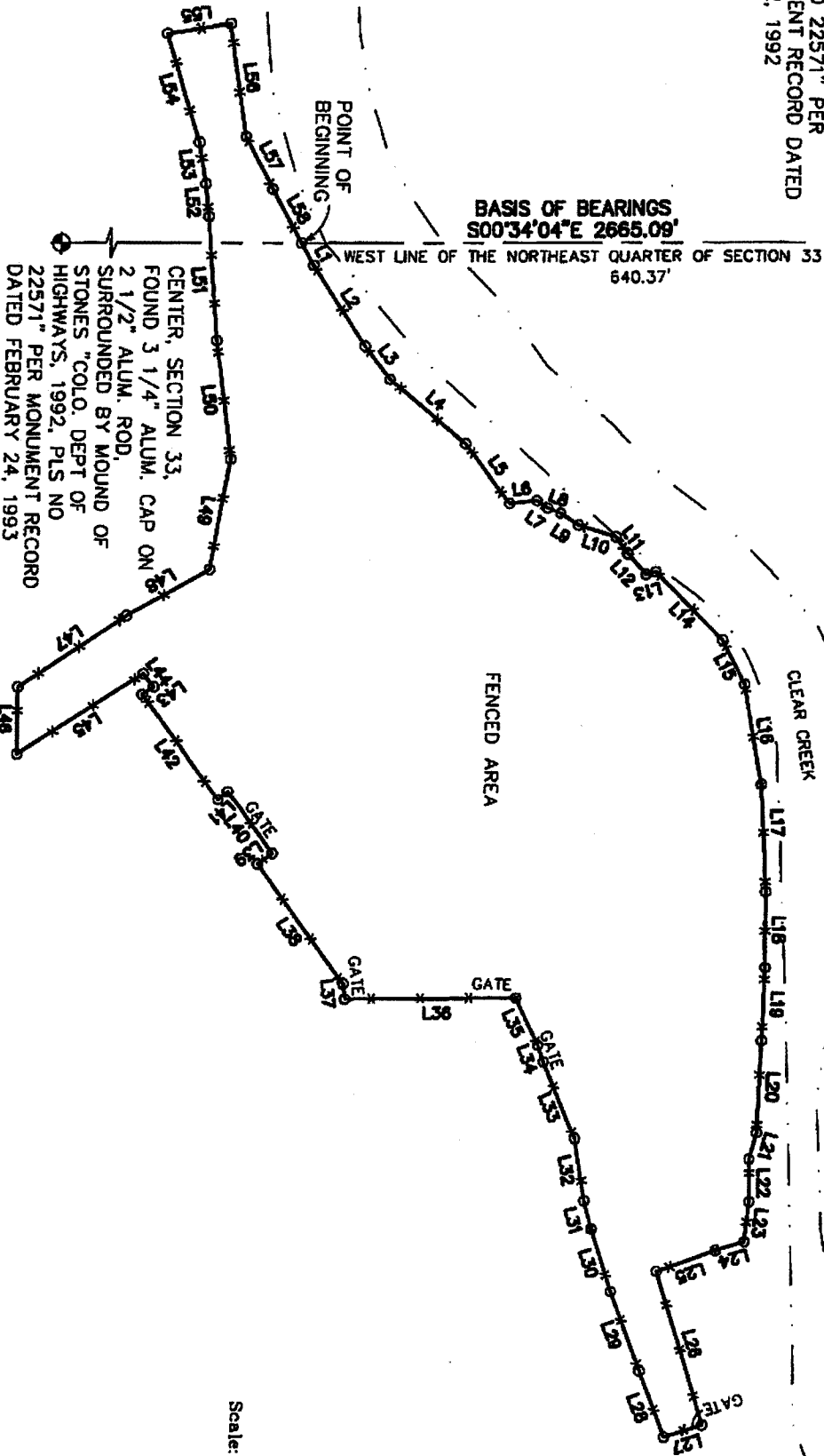
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 PER MONUMENT RECORD DATED
 AUGUST 10, 1998
 POINT OF COMMENCEMENT

$S89^{\circ}12'02''E$ 2623.31'

NORTHEAST CORNER, SECTION 33,
 FOUND 2" ALUM. CAP IN ASPHALT
 PARKING LOT FLUSH WITH GROUND
 "RMC, LS 9329" PER MONUMENT
 RECORD DATED NOVEMBER 11, 2002

BASIS OF BEARINGS
 $S00^{\circ}34'04''E$ 2665.09'

WEST LINE OF THE NORTHEAST QUARTER OF SECTION 33
 640.37'



Scale: 1" = 150'

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Platitrons, Inc.
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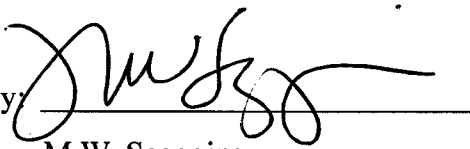
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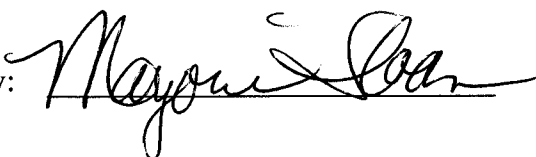
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DATED this ____ day of June, 2012.

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THE CITY OF GOLDEN:

By: 
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President

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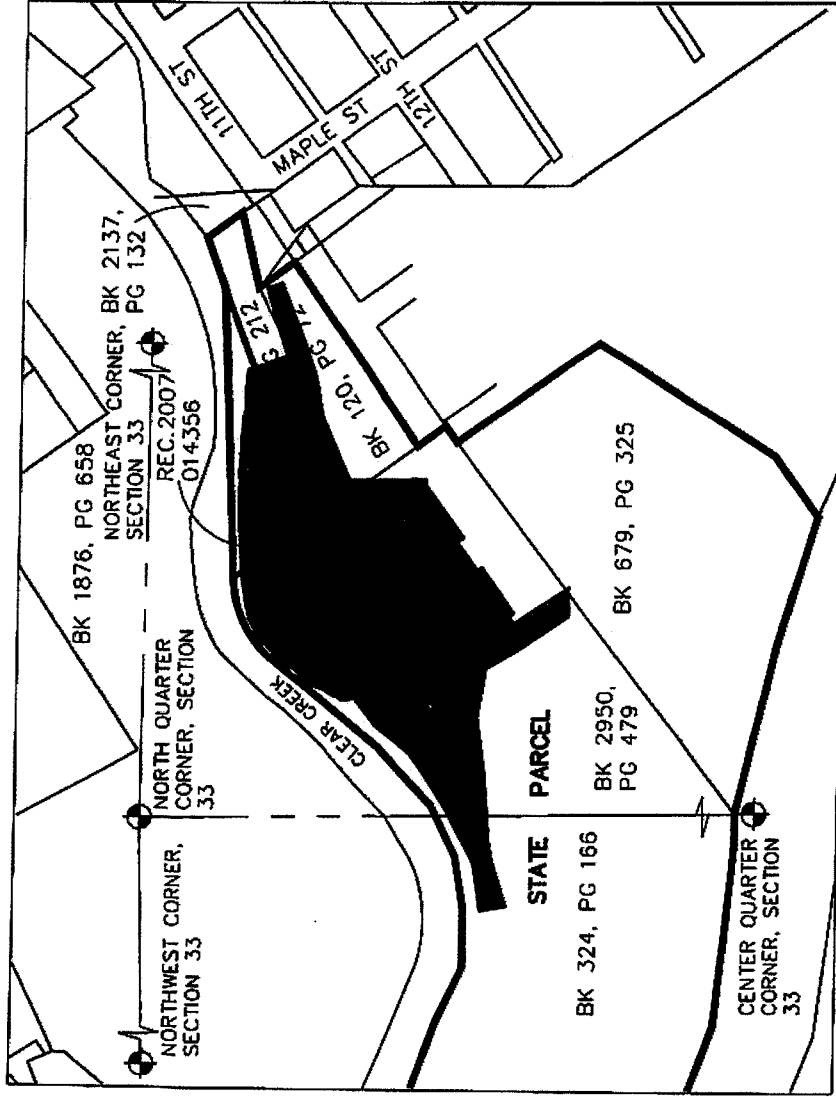
Date: 6/18/2012

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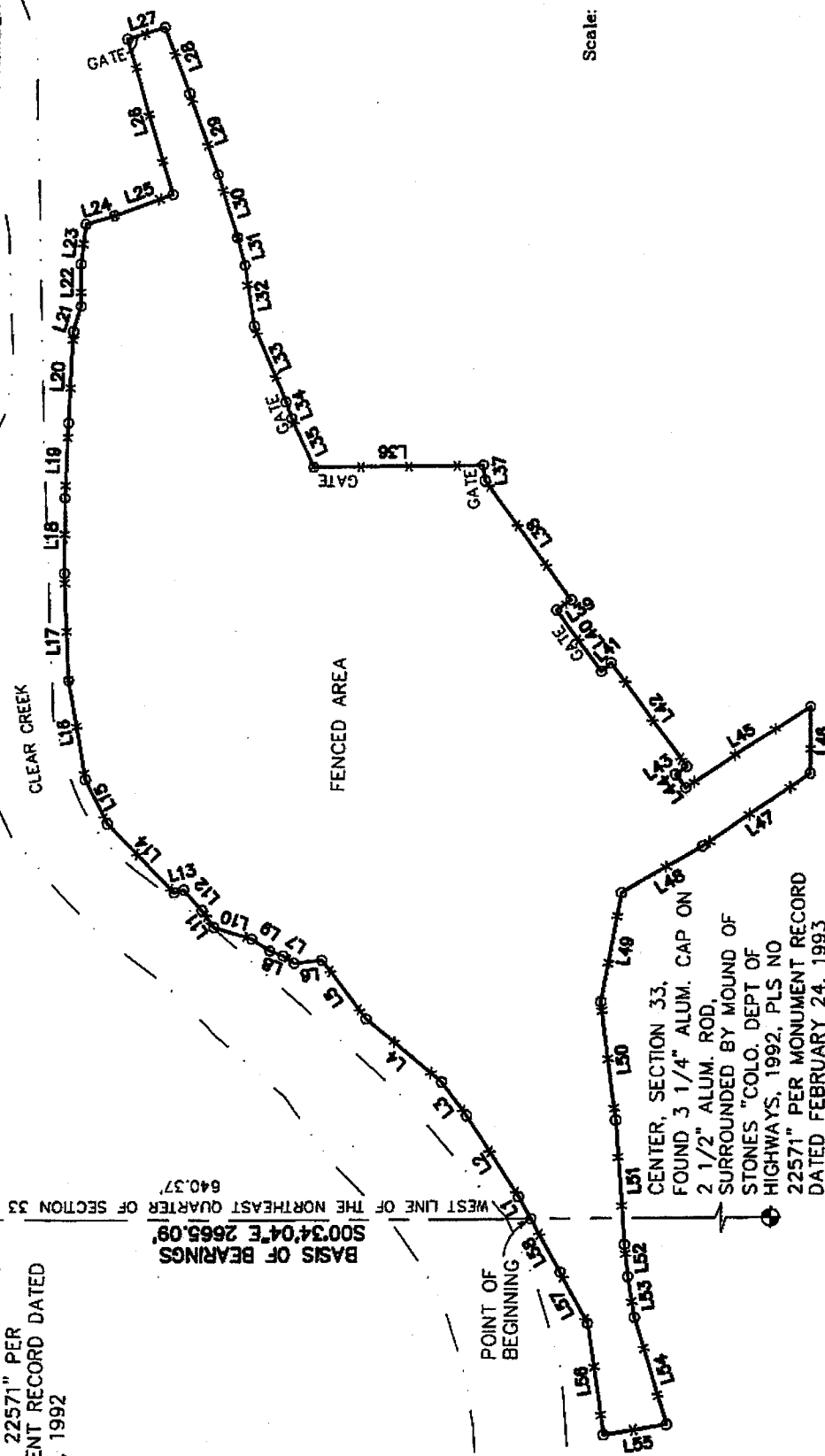
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NORTH QUARTER CORNER, SECTION 33, FOUND 2" ALUM. CAP IN RANGE BOX "KURT O. LINN INC., 1997, PLS 14112" PER MONUMENT RECORD DATED AUGUST 10, 1998 POINT OF COMMENCEMENT

NORTHEAST CORNER, SECTION 33, FOUND 2" ALUM. CAP IN ASPHALT PARKING LOT FLUSH WITH GROUND "RMC, LS 9329" PER MONUMENT RECORD DATED NOVEMBER 11, 2002

POINT OF BEGINNING
 WEST LINE OF THE NORTH EAST QUARTER OF SECTION 33
 BASIS OF BEARINGS
 S00°34'04"E 2665.09'
 640.37'



Scale: 1" = 150'

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS, RECORD INFORMATION SHOWN HEREON IS BASED ON DOCUMENTS PROVIDED BY CLIENT.



Flatirons, Inc.
 3825 IRIS AVENUE, SUITE 395
 BOULDER, CO 80501
 PHONE: (303) 443-7001
 FAX: (303) 443-9830
 www.flatirons.com

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