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RESOLUTION NO. 19- 251

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

RESOLUTION TO APPROVE A NON-EXCLUSIVE PERMANENT EASEMENT AGREEMENT WITH SAN MIGUEL VALLEY CORPORATION FOR PUBLIC ACCESS INTO THE PINERIES OPEN SPACE

WHEREAS, the mission of El Paso County Parks includes the acquisition, maintenance, and preservation of regional parks, trails, and open space, while providing responsible resource management for open space lands characterized by unique natural environments; and

WHEREAS, in May 2007, El Paso County acquired 1,070 acres of land through the execution of a Park Lands Agreement (Resolution No. 07-159, Reception No. 207064733) for the purpose of establishing an open space park; and

WHEREAS, El Paso County owns real property near the intersection of Vollmer Road and Shoup Road known as the Pineries Open Space; and

WHEREAS, El Paso County Parks completed the Pineries Open Space Master Plan in December 2010, setting forth the parameters for public access to and use of the property, and to create a vision for its preservation as a unique asset; and

WHEREAS, the San Miguel Valley Corporation owns real property immediately adjacent to Pineries Open Space; and

WHEREAS, San Miguel Valley Corporation owns real property containing the primary entrance road ("Road") from Vollmer Road that provides access to Pineries Open Space; and

WHEREAS, El Paso County is requesting a non-exclusive permanent easement agreement from San Miguel Valley Corporation for the construction and maintenance of the Road, as well as public access to Pineries Open Space; and

WHEREAS, San Miguel Valley Corporation has agreed to provide El Paso County with a non-exclusive permanent easement agreement for the construction, maintenance of the Road, as well as public access to Pineries Open Space; and

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves the attached Non-Exclusive Permanent Easement Agreement, attached hereto as Exhibit 1, subject to the terms and conditions cited therein.

BE IT FURTHER RESOLVED, that Mark Waller, duly elected, qualified member and Chair of the Board of County Commissioners, or Longinos Gonzales, Jr., duly elected, qualified member and Vice Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

Done this 9th day of July, 2019 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: Charles D Broerman
County Clerk and Recorder

By:
Mark Waller, Chair

NON-EXCLUSIVE PERMANENT EASEMENT AGREEMENT
Pineries Open Space Entrance Driveway

THIS NON-EXCLUSIVE EASEMENT AGREEMENT ("Agreement") is made this ____ day of _____, 20__, by and between San Miguel Valley Corporation, a Colorado corporation ("Grantor"), whose principal address is 7800 E Dorado Place, Suite 250, Englewood, CO 80111, and EL PASO COUNTY, by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, STATE OF COLORADO ("Grantee"), whose street address is 200 S. Cascade Avenue, Colorado Springs, CO 80903. Grantor and Grantee may hereinafter be referred to collectively as the "Parties."

Recitals

WHEREAS, Grantor owns real property located in El Paso County, Colorado along Vollmer Road, Black Forest CO, commonly referred to as The Sanctuary in the Pines and legally described as A TR OF LAND IN THE NW4 OF SEC 10-16-65, and A TR OF LAND IN SE4 SEC 3 & A PT OF SEC 10-12-65, at El Paso County Tax Schedule No. 5200000368, and Tax Schedule No. 5200000356 (hereinafter "Property"); and

WHEREAS, Grantee owns adjoining real property, commonly referred to as the Pineries Open Space, at El Paso County Tax Schedule No. 5200000366. Such property contains approximately 1,040 acres of Conservation Easement Property which is comprised of open space, trails and park purposes adjacent to the Sanctuary in the Pines; and

WHEREAS, Grantor is agreeable to dedicate a non-exclusive permanent easement to Grantee for the establishment of a driveway for general public ingress and egress and related improvements across the Property to the County-owned Pineries Open Space (the "Pineries Open Space") for purposes of allowing the general public to access recreational opportunities to include, but not limited to, trail use, picnic facilities, kiosks, trail head parking and trail shelters. These uses are subject to the restrictions set forth in the Amended Conservation Easement recorded August 27, 2007 in El Paso County, Colorado reception number 207112066, and El Paso County Board of County Commissioners Resolution No. 10-335, reception number 210083686.

Agreement

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.

2. Grant of Non-Exclusive Easement; Description of the Premises.

(a) Grantor hereby grants to Grantee and its successors and assigns a perpetual, non-exclusive public access easement ("Easement") over, upon and along a parcel of land located within Sanctuary in the Pines, which Easement is more particularly described by the attached legal description marked Exhibit A and depicted in the attached map marked Exhibit B, all of which are

EXHIBIT 1

incorporated herein by reference. Said Easement shall be for Grantee's construction, installation, use, operation, maintenance, repair, replacement, upgrading, or removal of an access drive and related improvements ("Roadway"), and for ingress and egress via the Roadway to the Pineries Open Space by Grantee and the general public. Neither the Grantee nor the general public may use any portion of the Easement for parking or any other purpose not specifically set forth in this Agreement; provided, however, that Grantee and its agents, officers, employees and contractors, may temporarily park on, upon and along the Easement when reasonably necessary for purposes of construction, installation, maintenance, repair, replacement, upgrading, or removal of the Roadway so long as such parking does not disrupt or interfere with Grantor's use of the Property.

(b) Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's land or its improvements (including, without limitation, fencing and gates) on the Property, whether or not within the Easement, to the extent liability or fault for such damage has been reasonably determined to be caused by Grantee's construction, installation, use, operation, maintenance, repair, replacement, upgrading, or removal of the Roadway, its patrol of the Easement or Pineries Open Space, or the general public's use of the Easement, by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Grantor and the Grantee. In the construction, installation, use, operation, maintenance, repair, replacement, upgrading, or removal of the Roadway, Grantee shall, at its sole cost and expense, promptly restore, replace, or repair the surface of any portion of the Property disturbed in connection therewith by Grantee or its agents, officers, servants, employees, contractors, invitees or licensees, to as close to its condition immediately prior to such work as may be reasonably possible including, without limitation, eradication of any noxious weeds (as defined by C.R.S. § 35-5.5-103(16)) reasonably proven to have been introduced to the Property by such activity. Despite anything contained herein to the contrary, Grantee shall not be liable for damage to, nor shall it be obligated to repair or replace any improvement whatsoever, which are constructed, installed, or otherwise existing within the Easement in violation of the terms of this Agreement including, but not limited to, any tree(s) or plant(s) that interfere with the Roadway or Grantee's rights in the Easement. Grantee shall not be liable nor shall it be obligated to repair or replace any improvement whatsoever, which are reasonably proven to be caused by Grantor's construction, installation, use, operation, maintenance, repair, replacement, upgrading, or removals within the Easement. Grantee assumes responsibility for reasonable maintenance and repair of damage caused by day to day use of the Easement area by park visitors. Grantee does not assume responsibility, nor will Grantee be obligated to repair damage to the Easement area caused by Grantor's use of heavy equipment within the Easement during inclement conditions. Should Grantor use heavy equipment on the Roadway during inclement conditions, Grantor assumes responsibility and is obligated to repair damage to the Roadway and to restore it to the condition existing prior to such use.

3. Grantor's Use of Easement. Except as provided in this Section 3, Grantor shall retain the right to make full use of the Property, including the Roadway. Grantor shall not construct improvements in the Easement without written consent from the Grantee, which shall not be unreasonably withheld, conditioned or delayed. Grantor shall make no use of the Easement incompatible with Grantee's rights, uses and activities within the Easement. Grantor shall not interfere with Grantee's or the public's use of the Roadway so long as such use is in compliance with this Agreement and all applicable laws, rules, and regulations of the State of Colorado and El Paso County. Grantor shall be liable and shall be obligated to repair or replace any improvement to the extent of liability or fault for such damage has been reasonably determined to be caused by

Grantor's construction, installation, use, operation, maintenance, repair, replacement, upgrading, or removals within the Easement, by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Grantor and the Grantee.

4. Maintenance of Roadway.

(a) Grantee shall be responsible, at its sole cost and expense, for maintaining the Roadway in a reasonably level and smooth condition to permit ingress and egress by vehicles and pedestrians as contemplated by this Agreement. Such maintenance shall include, without limitation, snow removal from the Roadway.

(b) Construction of the Roadway includes a culvert beneath the Roadway that connects to a drainage outfall and natural swale (collectively, the "Drainage Facilities"). Grantee shall be responsible, at its sole cost and expense, for maintaining the Drainage Facilities in a reasonable properly functioning manner, and any repair or replacement of such facilities in connection therewith.

5. Mechanic's Liens. In no event shall Grantee allow any mechanic's or materialmen's liens to attach against the Roadway for materials supplied or work performed at the request of, or for the benefit of, Grantee. If a mechanic's or materialman's lien or other lien or charge is filed against the Roadway or Grantor's property arising from or as a result of materials supplied or work performed by Grantee or at the request of Grantee, Grantee shall promptly discharge the same at its sole expense. If Grantee fails to discharge the lien or charge within thirty (30) days of filing, Grantor may proceed to discharge the lien or charge on the property and Grantee will be liable for all costs and expenses incurred by Grantor, including reasonable attorneys' fees.

6. Indemnity. Grantee is prohibited by Article XI, Section 1 of the Constitution of the State of Colorado and by Board of County Commissioners Resolution No. 10-219, from indemnifying Grantor. Nothing in this Section shall be deemed to waive or otherwise limit the defense available to Grantee pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law. Grantee shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and reasonable attorney fees and related costs, incurred as a result of any negligent acts or omissions solely caused by Grantee, its elected officials, employees, agents, or assignees arising from the Project that is the subject of this Agreement. Grantee is a self-insured political subdivision of the State of Colorado and maintains sufficient self-insurance as required by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

7. Limitation on Grantor's Liability. The non-exclusive permanent access easement granted herein to the general public for ingress and egress to the Pineries Open Space via the Roadway (for purposes of this Section 7, the "Public Access Easement") is within and limited to the scope of a non-exclusive permissive "recreational purpose" as defined in C.R.S. §§ 33-41-102(5) and 33-41-103(2)(e)(III), at all times prior to and following the effective date of this Agreement, individuals who traverse the Public Access Easement will do or have done so either as "invited guests" as defined in C.R.S. § 33-41-103(2)(e)(I) or, and only to the extent not construed to be invited guests, a "trespasser" as defined in C.R.S. § 13-21-115(5)(b). At no time has Grantor collected or received any fee or other revenue from such users, or from any other

party, in compensation for such users' entry onto that portion of the real property subject to the Public Access Easement. The Public Access Easement will be construed to be in the nature of a non-exclusive permanent interest benefiting Grantee to assure that the Pineries Open Space will remain open to public use for recreational purposes, pursuant to Resolution No. 10-335, approved by the Board of County Commissioners, reception number 210083686 in conjunction with Amended Conservation Easement recorded August 27, 2007 in El Paso County, Colorado reception number 207112066 subject to the following express limitations:

(a) No individuals who traverse the Roadway, or any other third parties, either individually or collectively, will be construed to have any legal or equitable right to enforce the Public Access Easement, such enforcement rights being expressly limited and reserved to the Parties.

(b) Any benefit under the Public Access Easement to individuals who traverse the Roadway (or any other third parties) is incidental to and arises solely through and derivative of Grantee's status as the governmental entity having jurisdiction with respect to such property, and only to the extent Grantee's rights constitute or are construed as constituting rights held in public trust.

The Public Access Easement burdens and encumbers the Roadway only and does not burden or encumber, and will not be construed to encumber title to, any other portion of Grantor's real property that is adjacent to the Roadway.

8. Remedies. In the event of any breach of this Agreement, the non-breaching party may pursue and obtain any and all remedies or causes of action available to it at law or in equity.

9. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

10. Binding. The Parties hereby agree that the covenants, stipulations and conditions as stated in this Agreement shall run with the land and shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Grantor and the Grantee.

11. Authority. The undersigned hereby acknowledge and represent that they have legal authority to bind their respective Party to this Agreement.

12. No Third-Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages, or to bring any legal action or other proceeding against any Party for any breach or other failure to perform this Agreement.

13. Cooperation. Grantor agrees to fully cooperate with Grantee in connection with, and throughout the performance of, Grantee's responsibilities pursuant to the Temporary Construction Easement Agreement (TE-1) and this Agreement to maintain, repair and/or replace the Roadway and Drainage Facilities, including reasonable access to adjacent property owned

and/or controlled by Grantor that is not within the Easements. The Parties agree to cooperate with each other in good faith in the performance of their obligations and requirements under this Agreement and to fulfill the intent and purposes of this Agreement.

14. Applicable Law. The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

15. Recording. This Agreement shall be recorded by the Grantee in the records of the El Paso County Clerk and Recorder's Office.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first written above.

GRANTOR:

SAN MIGUEL VALLEY CORPORATION

By: _____

Name: Barton S. Brundage

Title: Vice President

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 6th day of June, 2019 by Barton Brundage as Vice President of San Miguel Valley Corporation

WITNESS my hand and official seal.

My Commission Expires: August 19, 2022

Notary Public: Karen L Brady

KAREN L BRADY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19954018452
MY COMMISSION EXPIRES AUGUST 19, 2022

GRANTEE:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
_____, Chair

ATTEST:

_____
Chuck Broerman
County Clerk and Recorder

Approved as to form:
_____
County Attorney's Office

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, President of the Board of County Commissioners of the County of El Paso, State of Colorado, and as attested by Chuck Broerman, County Clerk and Recorder.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public: _____

EXHIBIT A

EL PASO COUNTY PROJECT NUMBER 431005

NON-EXCLUSIVE PERMANENT EASEMENT PE-1

IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6th P.M. EL PASO COUNTY, COLORADO

PERMANENT EASEMENT DESCRIPTION

A STRIP OF LAND LOCATED IN A TRACT OF LAND DEEDED TO SAN MIGUEL VALLEY CORP. IN SPECIAL WARRANTY DEED RECORDED AT RECEPTION No. 214052668 OF THE RECORDS OF THE CLERK AND RECORDER, EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 12 SOUTH, RANGER 65 WEST, OF THE 6TH P.M., THENCE N89°02'28"E, 30.00 FEET ALONG THE NORTH LINE THEREOF TO THE NORTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED AT SAID RECEPTION No. 214052668 AND THE POINT OF BEGINNING;

THENCE ALONG THE NORTH LINE OF THAT TRACT OF LAND AS DESCRIBED AT SAID RECEPTION No. 214052668 THE FOLLOWING TWO (2) COURSES;

1. N89°02'28"E, 630.38 FEET;
2. N88°57'51"E, 122.22 FEET;

THENCE S01°11'10"W, 72.74 FEET;

THENCE S88°01'41"W, 71.00 FEET;

THENCE S00°42'18"E, 6.14 FEET;

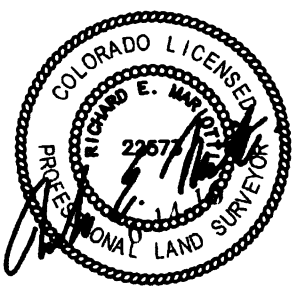
THENCE S88°57'51"W, 48.46 FEET;

THENCE S89°02'28"W, 631.55 FEET TO THE WEST LINE OF THAT TRACT OF LAND AS DESCRIBED AT SAID RECEPTION No. 214052668;

THENCE N00°08'22"W, 80.00 FEET ALONG THE WEST LINE OF THAT TRACT OF LAND AS DESCRIBED AT SAID RECEPTION No. 214052668 TO THE POINT OF BEGINNING.

AREA = 59,651 SQ.FT. OR (1.369 ACRES), MORE OR LESS.

BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., AS BEARING N89°02'28"E, 660.38 FEET. THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER BEING IDENTIFIED BY A 2 INCH ALUMINUM CAP PROPERLY STAMPED AND MARKED "MATRIX, PLS 34977" AND THE NORTHEAST CORNER BEING OF SAID SOUTHWEST QUARTER BEING IDENTIFIED BY A 2 INCH ALUMINUM CAP PROPERLY STAMPED AND MARKED "MATRIX, PLS 34977".



Richard E. Mariotti
Colorado Professional
Land Surveyor No. 22573

06/14/18, PREPARED BY: RICHARD E. MARIOTTI
3275 AKERS DR., COLORADO SPRINGS, CO 80922

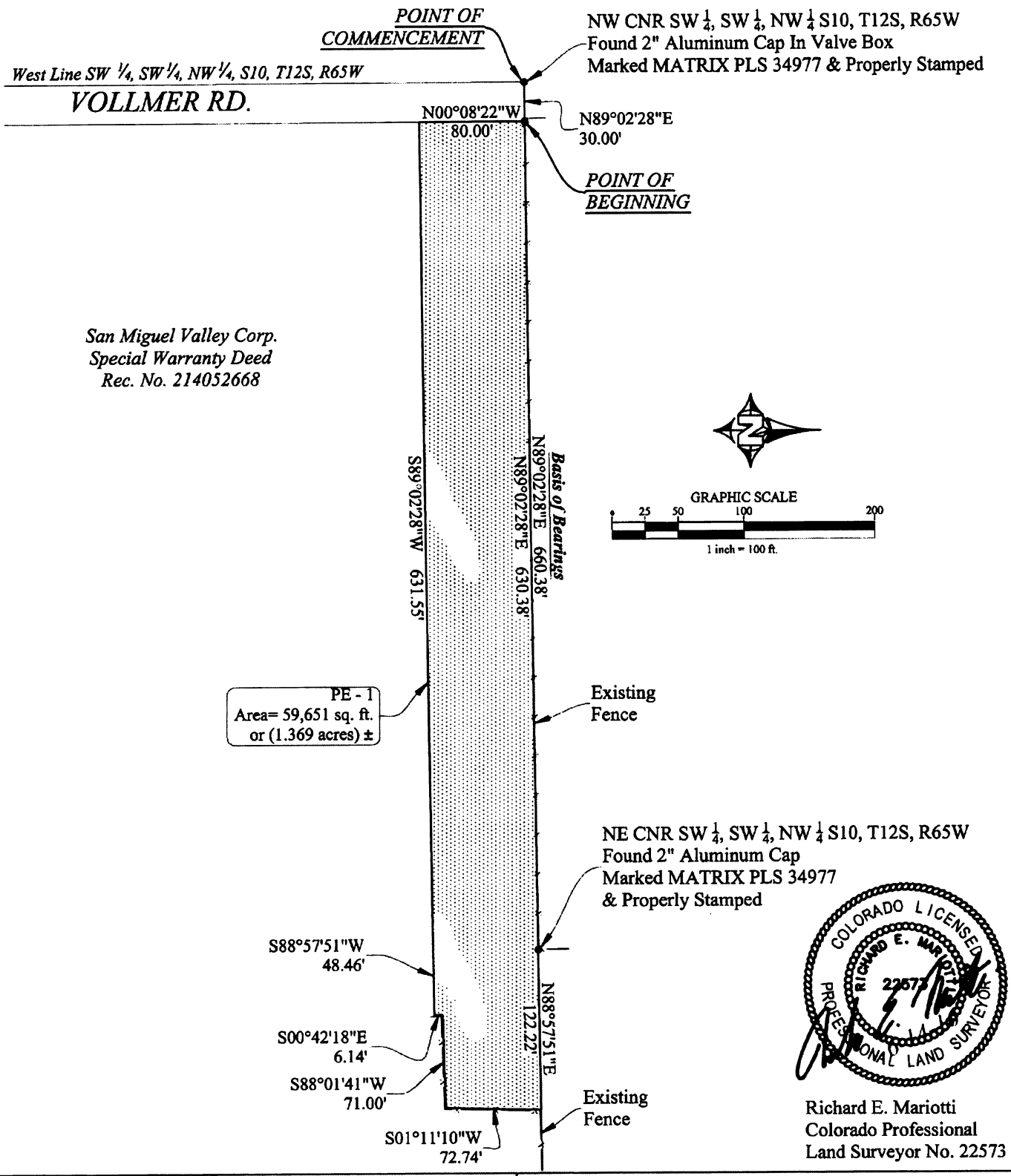
EL PASO COUNTY
DEPARTMENT OF PUBLIC WORKS

EXHIBIT B

EL PASO COUNTY PROJECT NUMBER 431005

NON-EXCLUSIVE PERMANENT EASEMENT PE-1

IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6th P.M. EL PASO COUNTY, COLORADO



Richard E. Mariotti
Colorado Professional
Land Surveyor No. 22573

SCALE: 1"=100' DATE: 06/14/18 PREPARED BY: REM	EL PASO COUNTY DEPARTMENT OF PUBLIC WORKS