

Exhibit '3'

Resolution 21-19, Series of 2019

Uptown 240 PUD Development Plan

Encroachment License Agreement

(Retaining Wall, Stair, and Railing)

ENCROACHMENT LICENSE AGREEMENT
(Retaining Wall, Stair, and Railing)

THIS ENCROACHMENT LICENSE AGREEMENT (“Agreement”) is made and entered into this 21st day of May, 2019, by and between the TOWN OF DILLON, a Colorado municipal corporation (“Town”) and UPTOWN 240 LLC, a Colorado Limited Liability Company (“Owner”).

RECITALS

A. Owner has received Town of Dillon approval to construct the Uptown 240 PUD Development Plan (“PUD Plan”) on Lot 1S, FINAL PLAT UPTOWN 240 PUD DEVELOPMENT PLAN, Town of Dillon, Count of Summit, State of Colorado, Reception No. _____, Summit County Records (the “Development”).

B. Town is the owner of the Lake Dillon Drive, formerly designated as Chief Colorow Street, W. Buffalo Street and the 40’ Rights-of-way, designated by the Plat of the New Town of Dillon, recorded March 19, 1962 as Reception No. 94749, County of Summit, State of Colorado, which plat is attached hereto and incorporated herein by this reference as Exhibit “A” (“Town's Property”).

C. A portion of the Development improvements consisting of a site retaining wall, stairs, and hand railings approved as part of the PUD Plan encroaches into and on that portion of the Town's Property identified, depicted, and described on the attached Exhibit “B”, which is incorporated herein by this reference (the “Encroachments”).

D. The Town has agreed to grant to Owner a personal privilege to maintain the Encroachments described above on the Town's Property, all in accordance with, and subject to the terms, conditions and limitations of, this Agreement.

AGREEMENT

1. **Grant of License.** The Town hereby grants to the Owner the personal privilege and permission to enter upon the Town's Property and to maintain the Encroachments described above on the Town's Property subject, however, to the terms, conditions and limitations of this Agreement (the “License”). The License herein granted shall be subject to all existing utility easements, if any, located on or under the Town's Property.

2. **Term.** This Agreement and the License granted to Owner hereunder shall commence as of the date of this Agreement and shall continue until terminated pursuant to Paragraph 9 of this Agreement.

3. **Consideration.** The consideration to be paid by the Owner to the Town for the License and privilege granted by this Agreement shall be TWO THOUSAND Dollars (\$2,000), receipt of which is hereby acknowledged by the Town, and other good and valuable consideration as herein provided.

4. **No Interest In Land.** Owner understands, acknowledges and agrees that the License and this Agreement do not create an interest or estate in Owner's favor in the Town's Property. The Town retains legal possession of the full boundaries of Town's Property and the License and this Agreement merely grant to the Owner the personal privilege to maintain the Encroachments described above throughout the term of this Agreement.

Notwithstanding the expenditure of time, money or labor by the Owner on the improvements which constitute the Encroachments, the License and this Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Owner. Owner shall expend any time, money or labor at Owner's own risk and peril.

5. Limited Scope of License. The License granted to the Owner is limited in scope to the following permitted use or uses: installation, construction and maintenance of a site retaining wall, stairs, and hand railings, in accordance with the PUD Plan and the Town's building regulations. Owner shall not have the right to alter, change, or expand the License, the Encroachments or Owner's use of the Town's Property.

6. Use of Licensed Premises By Others. Owner may permit Owner's employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others to use the portion of the Town's Property for which the License and this Agreement has been executed.

7. Transferability of License. The License granted to the Owner by this Agreement may be transferred to a subsequent owner of Owner's Property; provided, however, that such subsequent owner shall be required to assume in writing all of Owner's obligations hereunder (in a form acceptable to Town) and such subsequent owner shall acquire nothing more than the personal privilege herein granted to Owner. Further, the rights of any subsequent owner shall be subject to termination in accordance with the provisions of Paragraph 9 of this Agreement.

8. Default. In the event either party materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of the nature of such default. Within five (5) days following receipt of such notice the defaulting party shall correct such default; or, in the event of a default not capable of being corrected within five (5) days, the defaulting party shall commence correcting the default within five (5) days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting party fails to correct the default as provided hereinabove, the non-defaulting party, without further notice, shall have the right to declare that the License and this Agreement are terminated pursuant to Paragraph 9 hereof effective upon such date as the non-defaulting party shall designate. The rights and remedies provided for herein may be exercised singly or in combination.

9. Termination. This Agreement and the License herein granted to Owner is fully terminable in accordance with the following terms and conditions:

a. Termination Upon Redevelopment or Abandonment of PUD. This Agreement, and the License herein granted to Owner, shall terminate in the event that (i) Owner or its successor abandons development of the PUD Plan, or (ii) Owner's Property is redeveloped .

b. Termination Upon Destruction Or Removal Of Improvements. In the event that Owner's improvements which encroach onto the Town's Property are destroyed or are permanently removed, this Agreement, and the License herein granted to Owner, may be terminated by Town upon not less than thirty (30) days' advance written notice to Owner.

c. Termination Upon Default. This Agreement and the License herein granted to Owner may be terminated by either party upon the material default of the other party in the performance of the material covenants or agreements of this Agreement in accordance with the provisions of Paragraph 8 of this Agreement.

d. Recording Of Notice Of Termination. Upon termination of the License and this Agreement the Town may cause to be recorded with the Clerk and Recorder of Summit County, Colorado a written Notice of Termination.

e. No Compensation To Owner. In the event of termination of the License and this Agreement for any reason, Owner shall not be entitled to receive a refund of any portion of the consideration paid for the License and this Agreement, nor shall Owner be compensated for any improvements which must be removed from the Town's Property.

10. Permanent Removal Of Encroachments Upon Termination. At such time as this Agreement and the License herein granted to Owner is terminated the Owner shall remove, at Owner's sole expense, any and all

Encroachments owned or maintained by Owner on the Town's Property. If Owner should fail to remove such Encroachments within sixty (60) days of termination of this Agreement and the License, then the Town may cause the Encroachments to be removed at the Owner's expense.

11. Insurance. Owner shall obtain and maintain at all times during the term hereof, at Owner's sole cost, a policy or policies of comprehensive general liability insurance with limits of coverage of not less than \$1,000,000 for injuries, damages or losses sustained by any one person in any one accident or event, and not less than \$2,000,000 for injuries, damages or losses incurred by two or more persons in any one accident or event. The Town shall be named as an additional insured on all such policies and Owner shall furnish the Town with a copy of such policy or policies prior to the effective date hereof. Notwithstanding anything contained herein to the contrary, Town may terminate this Agreement, and the License herein granted to Owner, in accordance with the provisions of Paragraphs 8 and 9 of this Agreement, if Owner fails to procure and maintain the insurance required by this Paragraph 11. If at any time while the Agreement is in effect, the limits of liability for local governments under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., are raised above the limits of liability provided hereinabove, Owner's insurance requirement provided in this Paragraph 11 shall be increased accordingly.

12. Maintenance. During the term of this Agreement the Owner shall, at Owner's sole expense, maintain the improvements which encroach onto the Town's Property in safe and good condition.

13. Owner's Waiver Of Claims Against Town. As a part of the consideration paid by Owner for the License and this Agreement, Owner hereby waives any and all claims which Owner may or might hereafter have or acquire against Town for loss or damage to the Owner's improvements which encroach onto the Town's Property arising from the use by the Town, or the public, of the Town's Property for any purpose.

14. Indemnification. Owner agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and insurer, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the use of the Town's Property pursuant to the License and this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence of Owner, any contractor or subcontractor of the Owner, or any officer, employee, tenant, agent, customer, or representative of the Owner, or of any person permitted or allowed to use the Town's Property by Owner, or which arise out of any worker's compensation claim of any employee of the Owner or of any subcontractor of the Owner or of any tenant of Owner; except to the extent such liability, claim or demand arises through the negligence of Town, its officers, employees or agents. Owner agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Owner. Owner also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees.

15. Mechanics' Liens. Owner shall not allow any mechanics' or similar liens to be filed against the Town's Property arising from any work done by Owner on the Town's Property, and Owner shall indemnify and hold Town harmless with respect thereto, including any attorney's fees incurred by Town in connection with any such lien or claim. If any mechanics' or other liens shall be created or filed against the Town's Property by reason of labor performed by, or materials furnished for, the Owner, the Owner shall, within ten (10) days thereafter, at the Owner's own cost and expense, cause such lien or liens to be satisfied and discharged of record together with any Notices Of Intention To File Mechanic's Lien that may have been filed. Failure to do so shall constitute a default hereunder for which the Town may terminate this Agreement in accordance with the provisions of Paragraphs 8 and 9 of this Agreement.

16. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

If To The Town:

Town Manager

Town of Dillon
P.O. Box 8
Dillon, Colorado 80435

If To The Owner:

Danilo Ottoborgo
Uptown 240 LLC
2420 17th Street, Suite 3118
Denver, CO 80202

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may change its address by giving notice thereof to the other party in the manner provided in this Paragraph 16.

17. Attorney's Fees. If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

18. Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

19. Governmental Immunity. The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other law or limitations otherwise available to Town, its officers, or its employees.

20. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto, and supersedes any prior agreement or understanding, relating to the License granted hereunder. Any such prior agreement shall be deemed to be null and void and of no further effect.

21. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

22. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

23. Terminology. Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

24. Situs, Venue and Severability. This Agreement and the License shall be deemed entered into in Summit County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement or the License shall be filed in the District Court of Summit County of the State of Colorado, and in no other court. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

25. Authority Of Town. This Agreement is entered into pursuant to a Resolution of the Town Council of the Town of Dillon, Colorado adopted May 21, 2019.

IN WITNESS WHEREOF, the parties hereto have entered into this Encroachment License Agreement as of the day and year first set forth above.

EXHIBIT "A"

Plat of New Town of Dillon

PLAT OF NEW TOWN OF DILLON



Table with 4 columns: Lot No., Area (Acres), Area (Sq. Ft.), and Remarks. It lists individual lots within the plat and their corresponding measurements.

BOUNDARY DESCRIPTION

These parts of Sections 7 and 8, Township 3 South, Range 10 West, of the 10th Principal Meridian, T3S, R10W, are shown on the attached map as being owned by the State of Colorado, and are hereby dedicated to the public use of the State of Colorado as a public park and recreation area. The boundaries of the State-owned land are shown on the attached map by dotted lines. The boundaries of the land owned by the Town of Dillon are shown on the attached map by solid lines. The boundaries of the land owned by the State of Colorado are shown on the attached map by dashed lines. The boundaries of the land owned by the Town of Dillon are shown on the attached map by solid lines. The boundaries of the land owned by the State of Colorado are shown on the attached map by dashed lines.

GENERAL UTILITY EASEMENT RESERVATIONS INDICATED BY DOTTED LINES

Block 1 - 100' wide utility easement for water, gas, and electric lines. Block 2 - 100' wide utility easement for water, gas, and electric lines. Block 3 - 100' wide utility easement for water, gas, and electric lines. Block 4 - 100' wide utility easement for water, gas, and electric lines. Block 5 - 100' wide utility easement for water, gas, and electric lines. Block 6 - 100' wide utility easement for water, gas, and electric lines. Block 7 - 100' wide utility easement for water, gas, and electric lines. Block 8 - 100' wide utility easement for water, gas, and electric lines. Block 9 - 100' wide utility easement for water, gas, and electric lines. Block 10 - 100' wide utility easement for water, gas, and electric lines.

ACKNOWLEDGMENT

I, the undersigned, being duly qualified as a Surveyor under the laws of the State of Colorado, do hereby certify that the foregoing is a true and correct copy of the original plat of the New Town of Dillon, as shown to me by the Town of Dillon, and that the same has been duly recorded in the office of the County Clerk of the County of Summit, Colorado, on this 19th day of August, 2019.

DEDICATION

The undersigned, being duly qualified as a Surveyor under the laws of the State of Colorado, do hereby certify that the foregoing is a true and correct copy of the original plat of the New Town of Dillon, as shown to me by the Town of Dillon, and that the same has been duly recorded in the office of the County Clerk of the County of Summit, Colorado, on this 19th day of August, 2019.

SURVEYOR'S CERTIFICATE

I, the undersigned, being duly qualified as a Surveyor under the laws of the State of Colorado, do hereby certify that the foregoing is a true and correct copy of the original plat of the New Town of Dillon, as shown to me by the Town of Dillon, and that the same has been duly recorded in the office of the County Clerk of the County of Summit, Colorado, on this 19th day of August, 2019.

STATE OF COLORADO
COUNTY OF SUMMIT
TOWNSHIP 3 SOUTH
RANGE 10 WEST
SECTION 7 AND 8
T3S, R10W

Surveyor's Name: [Name]
Address: [Address]
City: [City]

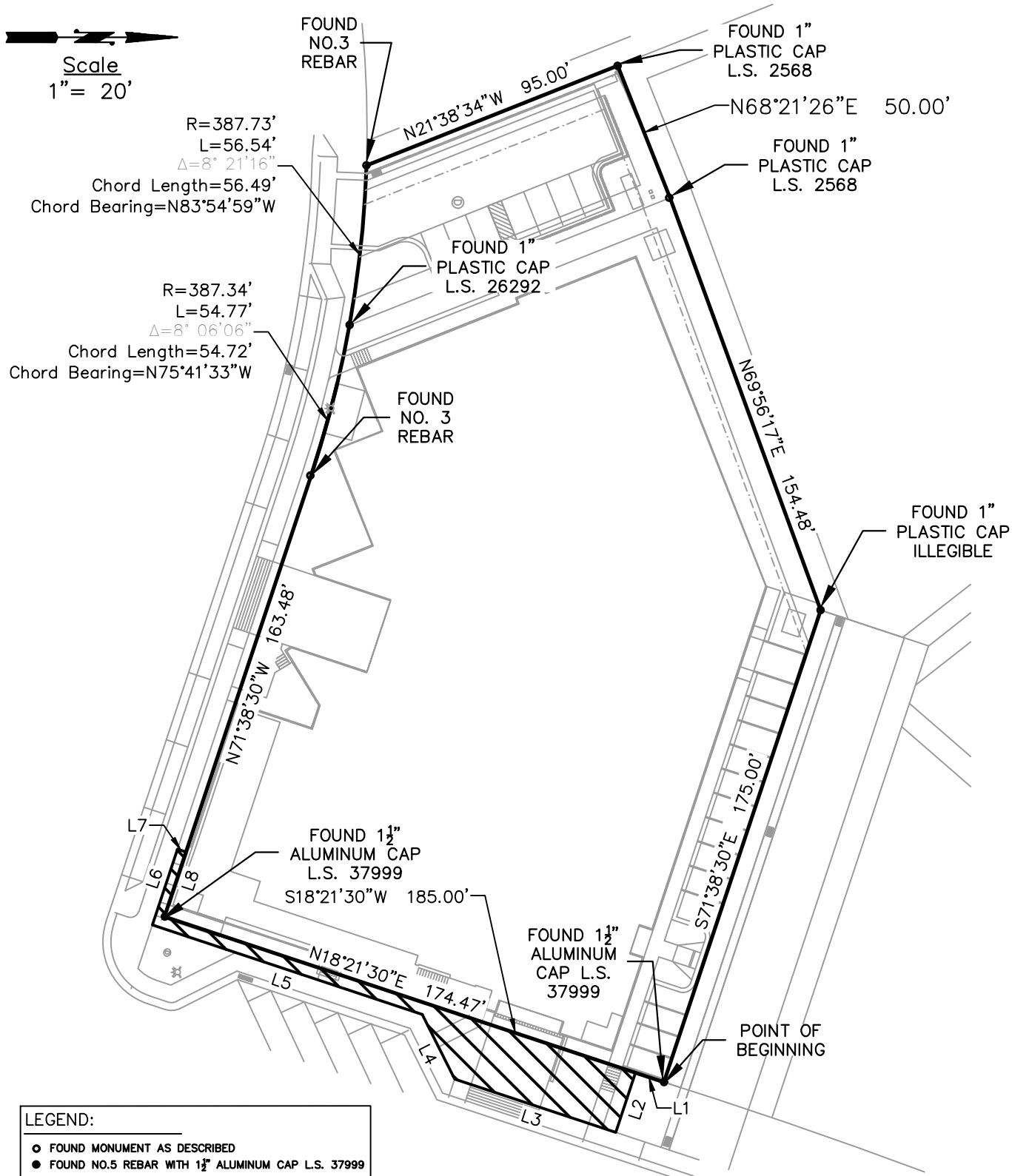
Surveyor's Name: [Name]
Address: [Address]
City: [City]

Surveyor's Name: [Name]
Address: [Address]
City: [City]

EXHIBIT "B"

Drawing and legal description of Wall, Stair & Railing Encroachment

Uptown 240 Wall, Stair, & Railing Encroachment Exhibit



CERTIFICATION

I, Thomas S. Marcin, a Professional Land Surveyor in the State of Colorado, do hereby certify that this Exhibit was prepared by me or under my direct supervision, responsibility and checking. I further certify this is not a monumented land survey, Land Survey Plat, Improvement Survey Plat, or an Improvement Location Certificate.
 Thomas S. Marcin, PLS 37999

Line Table		
Line #	Direction	Length
L1	S18° 21' 30"W	10.53'
L2	S71° 38' 30"E	22.09'
L3	S18° 19' 50"W	59.62'
L4	S63° 19' 41"W	25.45'
L5	S18° 19' 41"W	100.01'
L6	N71° 40' 19"W	28.15'
L7	N18° 21' 30"E	3.18'
L8	S71° 38' 30"E	23.97'

NOTICE: According to Colorado law you MUST commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



MARCIN ENGINEERING LLC

130 Ski Hill Road #235
 P.O. Box 60008
 Breckenridge, CO 80424
 (970) 771-3459

UPTOWN 240
WALL, STAIR, & RAILING ENCROACHMENT
LEGAL DESCRIPTION

A parcel of land situated in the Southeast one-quarter of Section 7, Township 5 South, Range 77 West of the Sixth Principal Meridian, Town of Dillon, County of Summit, State of Colorado, and being more particularly described as follows:

Commencing at the Northeast corner of Lot 1S of the Uptown 240 Development Plan being a 1 ½" rebar with an Aluminum Cap, stamped L.S. 37999 from which a 1 ½" rebar with an Aluminum Cap, stamped L.S. 37999 bears S18°21'30"W.

Thence S18°21'30"W along the easterly boundary of said Lot 1S, a distance of 10.53 feet, to the True Point of Beginning;

Thence S71°38'30"E, a distance of 22.09 feet;

Thence S18°19'50"W, a distance of 59.62 feet;

Thence S63°19'41"W, a distance of 25.45 feet;

Thence S18°19'41"W, a distance of 100.01 feet;

Thence N71°40'19"W, a distance of 28.15 feet;

Thence N18°21'30"E, a distance of 3.18 feet to a point on the southern boundary of said Lot 1S;

Thence S71°38'30"E, a distance of 23.97 feet to the Southeast corner of said Lot 1S, being an Aluminum Cap Stamped LS 37999;

Thence N18°21'30"E along the Easterly boundary of said Lot 1S, a distance of 174.47 feet to the True Point of Beginning;

Said Parcel contains 2045 square feet, more or less.