

AGREEMENT AND RESTRICTIVE COVENANT

THIS AGREEMENT AND RESTRICTIVE COVENANT ("Agreement"), made as of July 11, 2007 ("**Effective Date**"), is entered by and between The Brown Ranch Roads Maintenance Association, Inc., a Colorado nonprofit corporation ("**Brown Ranch Association**"), McKeough Land Company, Inc., an Illinois corporation ("**McKeough**") and The Brown Dog Ranch Property Owners Association, a Colorado nonprofit corporation ("**Brown Dog Ranch Association**"). Brown Ranch Association, McKeough and Brown Dog Ranch Association are sometimes individually referred to as a "**Party**" and sometimes collectively as the "**Parties**".

RECITALS

A. Brown Ranch Association is a duly formed and validly existing Colorado nonprofit corporation, organized to undertake the matters authorized by its governing documents ("**Brown Ranch Association Governing Documents**"), as the same may be amended from time to time.

B. Brown Ranch consists of certain property that has been duly included within Brown Ranch ("**Included Property**") in accordance with the Brown Ranch Association Governing Documents. The owner of each such Included Property is deemed a "Member" of Brown Ranch Association ("**Brown Ranch Association Member**").

C. McKeough has acquired and is developing certain property situated in San Miguel County, Colorado, commonly referred to as "**Brown Dog Ranch**" as the same is depicted and described in its governing documents ("**Brown Dog Ranch Governing Documents**"), including, without limitation: (a) The Brown Dog Ranch Declaration recorded on October 6, 2006 in Reception No. 387436 with the Clerk and Recorder for San Miguel County, Colorado ("**Official Records**"); and (b) The Brown Dog Ranch Plat recorded on October 6, 2006, in Plat Book 1, Page 3745, Reception No. 387435 in the Official Records. Brown Dog Ranch consists of fifteen Parcels as established, depicted and described in the Brown Dog Ranch Governing Documents.

D. Brown Ranch Association and Brown Dog Ranch have agreed to establish certain restrictions concerning the construction of structures on Parcel 3, Parcel 4 and Parcel 5, Brown Dog Ranch ("**Affected Brown Dog Ranch Parcels**") to fully address potential visual impacts to property owned by Brown Ranch Association Member.

COVENANTS/AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree to the following terms and conditions.

1. **Imposition of Covenants and Restrictions.** McKeough, as the current fee simple owner of the Affected Brown Dog Ranch Parcels, hereby declares, establishes and imposes the following covenants, conditions and restrictions on the Affected Brown Dog Ranch Parcels which shall run with and burden title to only the Affected Brown Dog Ranch Parcels ("**Affected Brown Dog Ranch Parcels Covenants**") and states and affirms that the Affected Brown Dog Ranch Parcels shall be held, sold, used and conveyed subject to the Affected Brown Dog Ranch Parcels Covenants:

1.1. **Limited Disturbance Area and Design Requirements.**

1.1.1. There is hereby established a certain "**Limited Building Disturbance Area**" on each of the Affected Brown Dog Ranch Parcels, as the same area is depicted and described on attached **Exhibit "A"**, prepared and paid for by Brown Ranch Association.

1.1.2. An owner of an Affected Brown Dog Ranch Parcel shall not construct any structures or improvements or materially alter the existing, natural grade of the land within the Limited Building Disturbance Area, except for porches, patios, decks, terrace features, trails, stairways, landscaping, or other similar features, provided that: (a) any such structures or improvements located in the Limited Building Disturbance Area are constructed only on the ground floor level of the main structure and which may extend to but not beyond the "Ridgeline" as depicted on attached **Exhibit "A"**; and (b) such elements must be unenclosed, meaning no roofs or sides, except for customary safety rails extending no higher than 42" from the deck.

1.1.3. The foregoing notwithstanding, it is agreed that stairways (with related handrails and landings), trails, and natural landscaping (including but not limited to gardens with rock walls) may be constructed or installed within the Limited Building Disturbance Area and/or beyond and on the down-hill side or western side of the "Ridgeline" as depicted on attached **Exhibit "A-1"** as to Parcel 3, Brown Dog Ranch, **Exhibit "A-2"** as to Parcel 4, Brown Dog Ranch, and **Exhibit "A-3"** as to Parcel 5, Brown Dog Ranch.

1.1.4. It is further understood and agreed that no other structures or improvements may be constructed or installed beyond and on the down-hill side of the "Ridgeline", except those particular structures described in Section 1.1.3 above.

1.2. **Limitations on Tree Removal.** There is hereby established a certain "**Limited Tree Removal Area**" on each of the Affected Brown Dog Ranch Parcels, as the same area is depicted on attached **Exhibit "B-1"** as to Parcel 3, Brown Dog Ranch, **Exhibit "B-2"** as to Parcel 4, Brown Dog Ranch, and **Exhibit "B-3"** as to Parcel 5, Brown Dog Ranch, prepared and paid for by Brown Ranch Association. In order to maintain reasonable vegetative screening to offset the visual impacts of improvements that can be constructed on each of the Affected Brown Dog Ranch Parcels, an owner of an Affected Brown Dog Ranch Parcel is authorized to remove not more than 25% of the existing trees with a diameter of 8" or greater within any one acre square portion of the Limited Tree Removal Area located on the owner's Affected Brown Dog Ranch Parcel.

2. **Enforcement of Affected Brown Dog Ranch Parcels Covenants.**

2.1. McKeough and Brown Dog Ranch Association agree to monitor and review compliance of the Affected Brown Dog Ranch Parcels Covenants by the owner of each Affected Brown Dog Ranch Parcel. After McKeough sells eight parcels within Brown Dog Ranch, such monitoring shall be conducted solely by the Brown Dog Ranch Association and McKeough shall be relieved of all monitoring responsibilities.

2.2. Brown Ranch Association and each Brown Ranch Association Member may together or separately pursue an action to enforce compliance of the Affected Brown Dog Ranch Parcels Covenants against the owner of each Affected Brown Dog Ranch Parcel, if the owner of each Affected Brown Dog Ranch Parcel fails to comply with the Affected Brown Dog Ranch Parcels Covenants. A party pursuing an action shall have the right to pursue specific performance, injunctive relief and/or for recovery of damages. In an action to enforce the Affected Brown Dog Ranch Parcels Covenants or any other term of this Agreement, the prevailing party shall recover their fees and costs, including reasonable attorney fees.

2.3. Except as expressly allowed under this Agreement, the Brown Ranch Association shall not attempt to regulate land use within Brown Dog Ranch, including but not limited to regulating or attempting to regulate the type, design and location of improvements within Brown Dog Ranch. This limitation shall not affect the rights, duties or obligations of the Brown Ranch Association to manage, operate and maintain roads and related improvements that fall under the jurisdiction of the Brown Ranch Association, which actions are not deemed to be the regulation of land uses.

3. **Miscellaneous.**

3.1. **Run With The Land.** This Agreement and the covenants established herein shall run with title to each of the three Affected Brown Dog Ranch Parcels and shall be binding upon and shall run to the benefit of each Party, including each subsequent owner of an Affected Brown Dog Ranch Parcels, including their respective heirs, successors or assigns.

3.2. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings or obligations with respect to the payment of consideration or agreements to undertake other actions regarding the subject matter hereof shall be of any force or effect unless in writing, executed by all Parties hereto and dated after the date hereof.

3.3. **Modifications and Waivers.** No change, modification or waiver of any provision of this Agreement shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by the Parties hereto. No waiver of any breach, term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition.

3.4. **Recordation.** This Agreement shall be recorded by Brown Ranch Association with the Clerk and Recorder for San Miguel County, Colorado.

3.5. **Governing Law. Severability.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Colorado. Venue for any actions hereunder is restricted to the courts of San Miguel County, Colorado, and if necessary, Colorado appellate courts. Except as may be expressly otherwise stated or provided, with respect to all required acts of the Parties, time is of the essence to this Agreement. If any provision of this Agreement shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Agreement, and the remaining provisions shall remain in full force and effect.

3.6. **Notices.** All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and either: (a) deposited in the United States mail, certified and postage pre-paid and addressed to the party at the following address, (b) sent by overnight courier and addressed to the party at the following address, or (c) faxed or emailed to the party at the following address :

Brown Ranch Association
C/O Thomas G. Kennedy
Mailing Address:
P.O. Box 3081
Telluride, Colorado 81435
Fax:: 970-728-9439
Email: tom@tklaw.net

McKeough
Mailing Address: c/o Mike McKeough
229 Washington
Grand Haven, MI 49417
Fax: 616-847-9893
Email: mike@mcKeough.com

Brown Dog Ranch Association

Mailing Address:

c/o Ivan Unkovsky

27 Long Hollow Ln.

Durango, CO 81301

Fax:

Email: ivan.unkovsky@mckeeugh.com

The address to which any notice, demand or writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

3.7. **Parties Representations.** In entering into this Agreement, the Parties acknowledge and agree that they will perform their duties and obligations in a commercially reasonable manner and in good faith and that this commitment is being relied upon by each other Party. The Parties hereto warrant that each party is a duly qualified and existing entity, capable of doing business in the state of Colorado and that the person(s) executing this Agreement are duly authorized to execute this Agreement and each Party has taken all actions necessary to obtain such authorization and that the terms and conditions of this Agreement constitute an enforceable agreement against such Party.

3.8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile and emailed copies of any Party's signature hereon shall be deemed an original for all purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**The Brown Ranch Roads Maintenance Association, Inc.,
a Colorado nonprofit corporation**

By: [Signature]

Date: 8/6/2007

Printed Name: DAVID JAYNES
Title: PRESIDENT

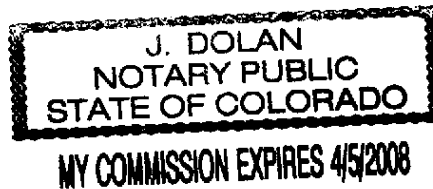
STATE OF Colorado)
COUNTY OF San Miguel) ss.

Acknowledged and subscribed to before me on August 6, 2007 by
David Jaynes as the President of The Brown Ranch Association
Roads Maintenance Association, Inc.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 4/5/08



McKeough Land Company, Inc.,
an Illinois corporation

By: [Signature]

Date: 7.24.2007

Printed Name: Michael A. McKeough
Title: President

STATE OF Michigan)
COUNTY OF Ottawa) ss.

Acknowledged and subscribed to before me on July 24, 2007 by
Michael A. McKeough as the President of McKeough Land Company, Inc.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: July 13, 2012

LEIGH R. LOUZON
Notary Public, Ottawa County, MI
Acting in Ottawa County
My Commission Expires July 13, 2012

The Brown Dog Ranch Property Owners Association,
a Colorado nonprofit corporation

By: Ivan Unkovskoy

Date: 7/31/07

Printed Name: IVAN UNKOVSKOY
Title: President BDRPOA

STATE OF Colorado)
) ss.
COUNTY OF La Plata)

Acknowledged and subscribed to before me on 7/31/07, 2007 by
Ivan Unkovskoy as the President of The Brown Dog Ranch Property
Owners Association

Witness my hand and official seal.

Geoffrey M. Craig
Notary Public

My commission expires: 10/20/09

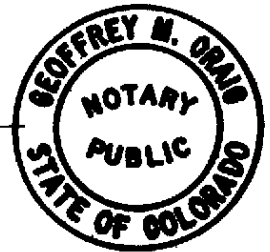
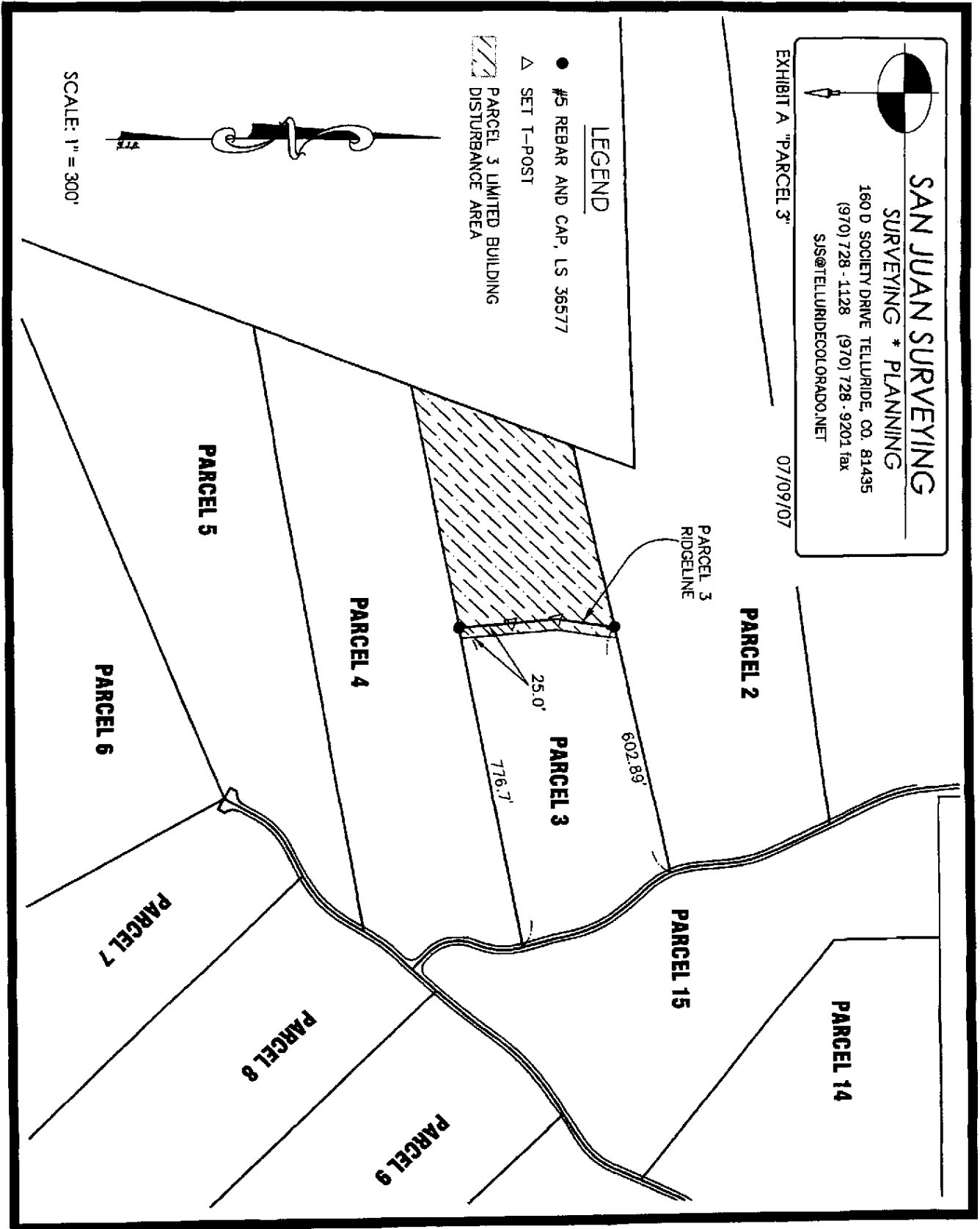
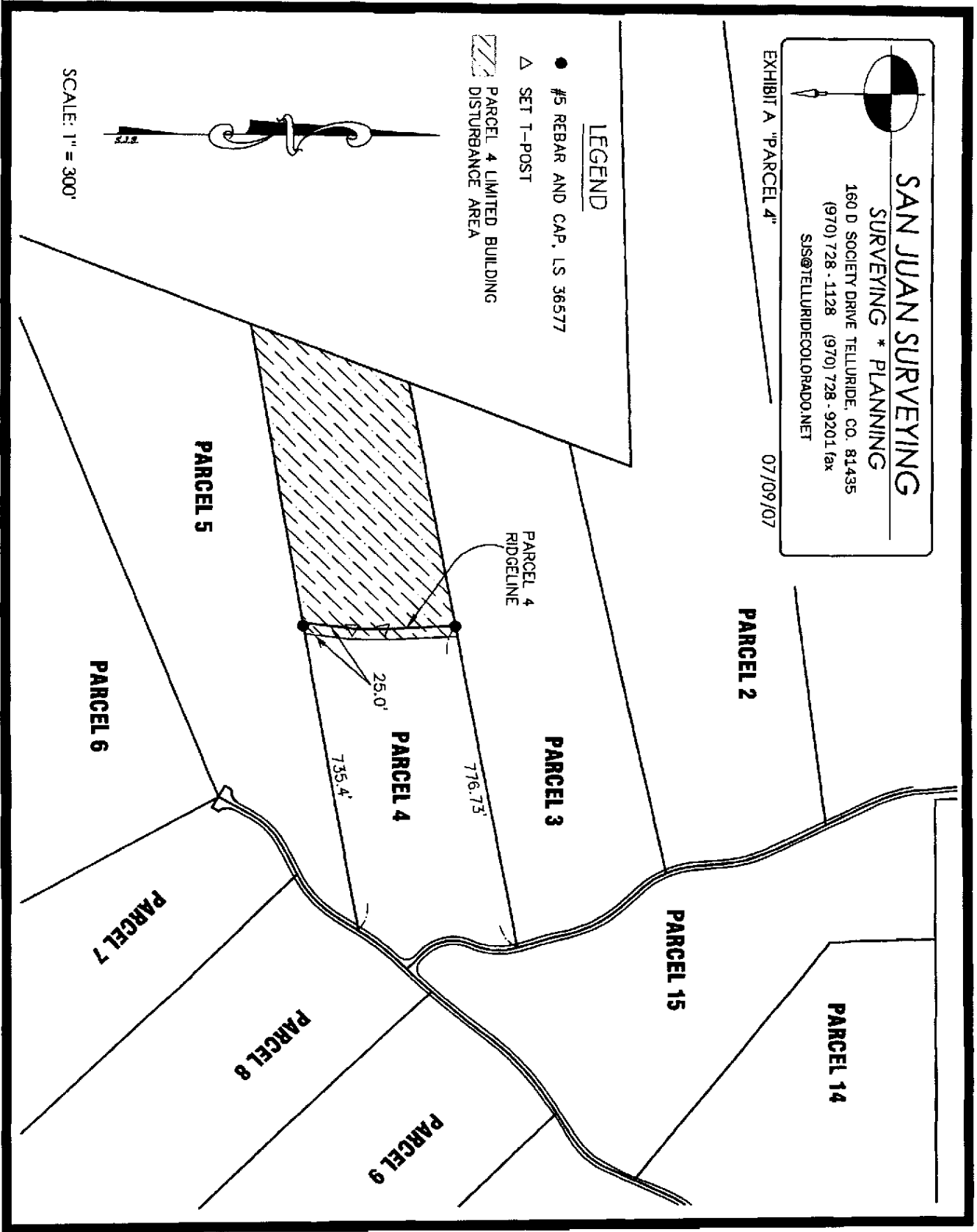


Exhibit "A"
(Limited Building Disturbance Area)

A-1



A-2



A-3

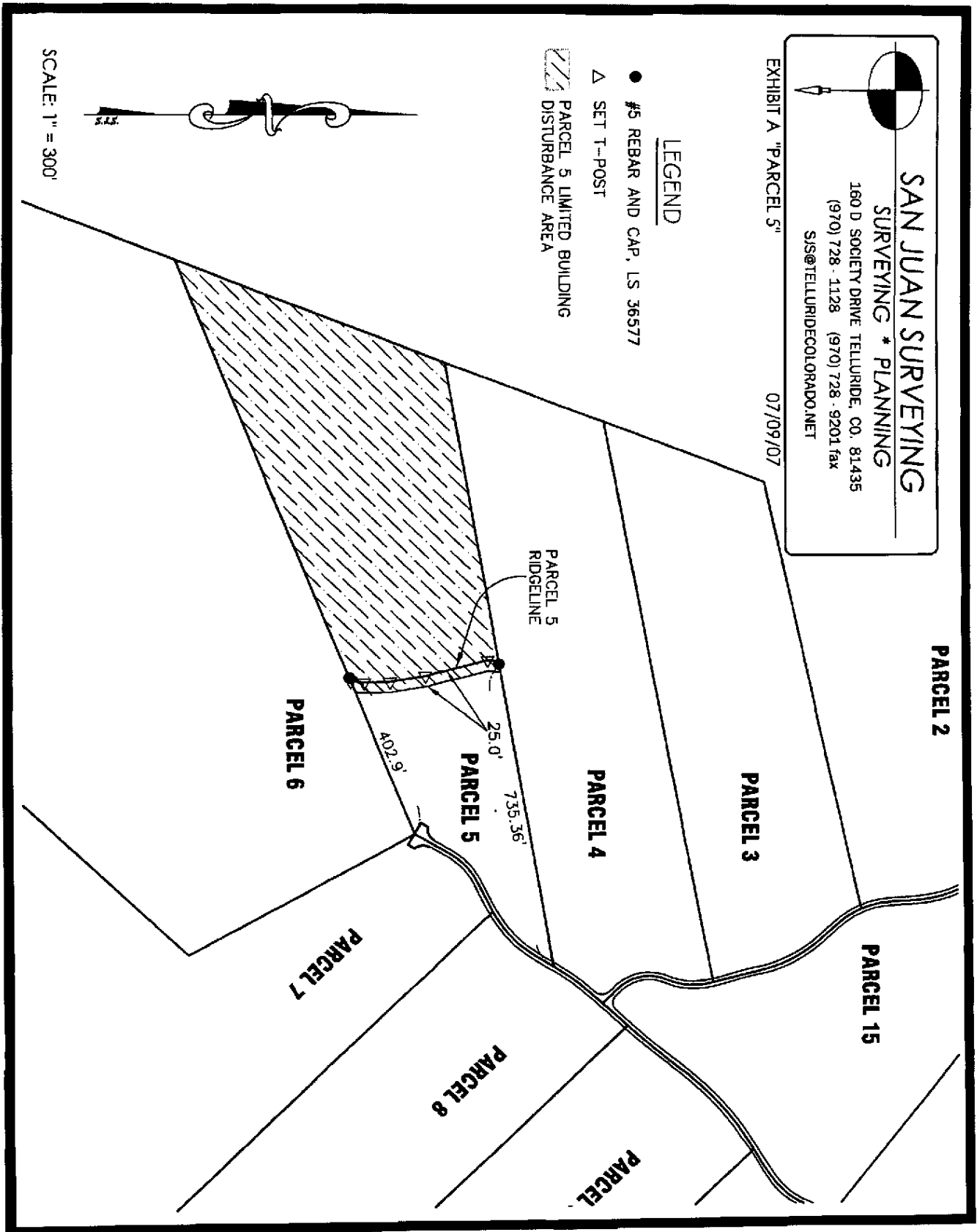
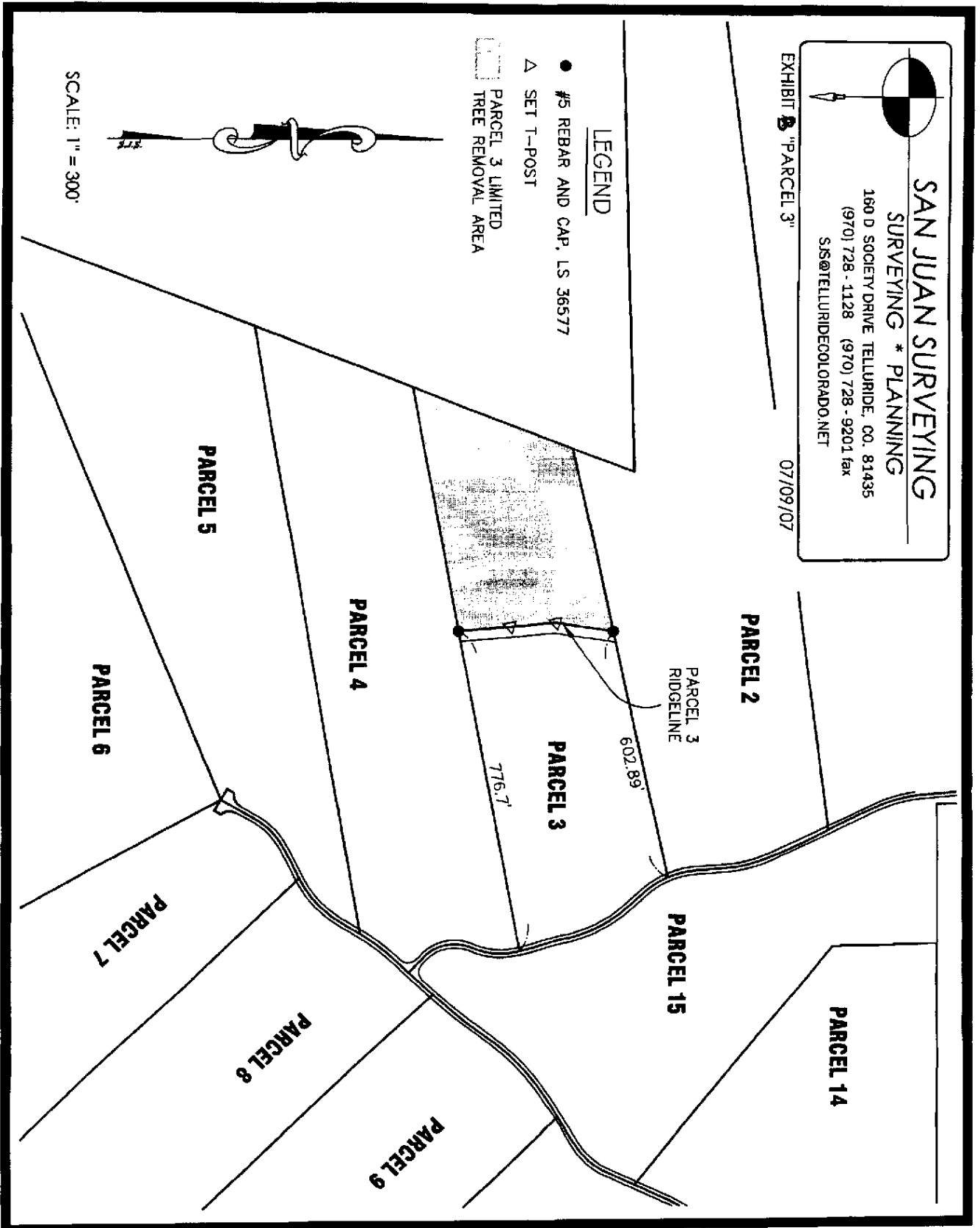
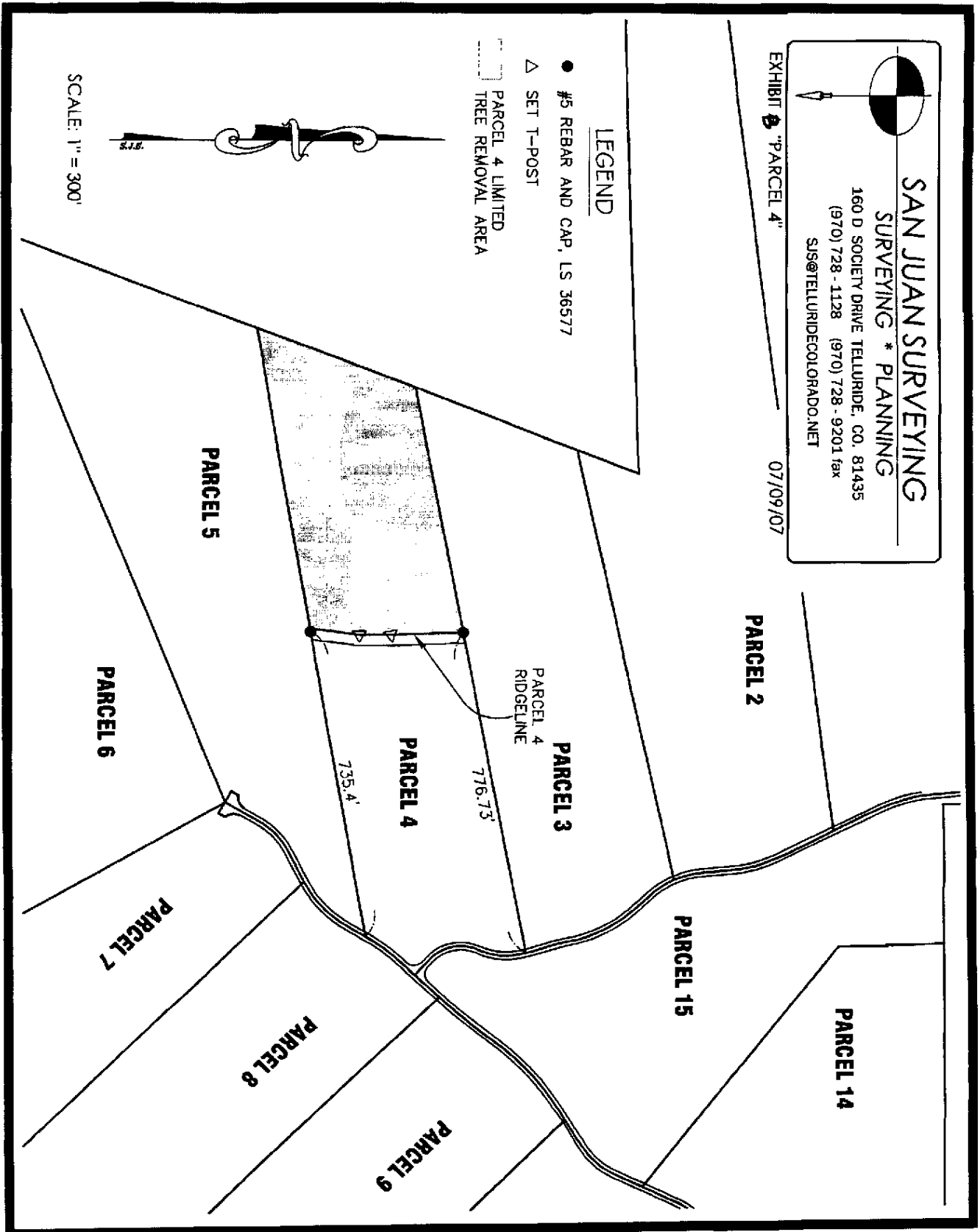


Exhibit "B"
(Limited Tree Removal Area)

B-1



B-2



B-3

