

SOUTHEAST METRO STORMWATER AUTHORITY
Acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 18-05

Authorization to Accept Easements from the Ladera Homeowners Association, Inc. and
The Willow Creek Homeowners Association

WHEREAS, SEMSWA has been organized to manage and maintain regional stormwater facilities within its boundaries; and

WHEREAS, Tract A, Block 3, Southcreek Subdivision Filing No. 7 is owned by the Ladera Homeowners Association, Inc. and the Plat for Southcreek Subdivision Filing No. 7 dedicates a non-exclusive drainage easement over Tract A for purposes of drainage and maintenance of drainage facilities; and

WHEREAS, Tract A, Willow Creek Filing No. 2 and Lots 175 and 176, Willow Creek Filing No. 1 are owned The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1 and the Plats for Willow Creek Filing No. 2 and Willow Creek Filing No. 1 dedicate easements over Tract A and Lots 175 and 176 for drainage of surface water and maintaining adequate ground water drainage structures and facilities; and

WHEREAS, Tract A, Block 3, Southcreek Subdivision Filing No. 7 contains a sub-regional detention basin that receives drainage flows from public property and other off-site properties, and its outlet works discharge directly into Happy Canyon Creek at the confluence with Cherry Creek; and

WHEREAS, Tract A, Willow Creek Filing No. 2 contains an open drainage channel – the Jamison Tributary and the Willow Creek East Tributary – that receives drainage flows from public property and other off-site properties, contains several storm drainage outfalls, and grade control structures; and

WHEREAS, Lots 175 and 176, Willow Creek Filing No. 1 contain open drainage channels that receive flows from public property and other off-site properties, and include culvert crossings of public roadways; and

WHEREAS, the owners of Tract A, Block 3, Southcreek Subdivision Filing No. 7, Tract A, Willow Creek Filing No. 2 and Lots 175 and 176, Willow Creek Filing No. 1, hereinafter “Properties”, are responsible for stormwater maintenance and improvements to the sub-regional detention basin, open drainage channels and the structures; and

WHEREAS, the sub-regional detention basin, open drainage channels and the structures serve the interests of the general public; and

WHEREAS, a permanent drainage easement on each of the Properties would enable SEMSWA to maintain the sub-regional detention basin, open drainage channels and structures and construct improvements, if necessary, more efficiently and effectively; and

WHEREAS, a permanent drainage easement on Tract A, Block 3, Southcreek Subdivision Filing No. 7 will be conveyed to SEMSWA by the Ladera Homeowners Association, Inc., at no cost to SEMSWA; and

WHEREAS, permanent drainage easements on Tract A, Willow Creek Filing No. 2 and Lots 175 and 176, Willow Creek Filing No. 1 were conveyed to SEMSWA in 2008 by The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1, at no cost to SEMSWA, through the recording of Permanent Drainage Easements with the Office of the Arapahoe County, CO Clerk and Recorder at Reception Nos. B8117660 (Tract A, Willow Creek Filing No. 2) and B8117659 (Lots 175 and 176, Willow Creek Filing No. 1); and

WHEREAS, the Ladera Homeowners Association, Inc., and The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1 have requested relief from the responsibility of having to maintain the sub-regional detention basin, open drainage channels and the structures; and

WHEREAS, it is in the best interest of SEMSWA to accept the permanent drainage easement from the Ladera Homeowners Association, Inc. and to ratify SEMSWA’s recording and acceptance of the permanent drainage easements from The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Board agrees to accept a permanent drainage easement over a portion of Tract A, Block 3 in Southcreek Subdivision Filing No. 7 from the Ladera Homeowners Association, Inc., and authorizes the Executive Director to record the Permanent Drainage Easement.
2. The Board agrees to ratify the recording and acceptance of the permanent drainage easements in Tract A, Willow Creek Filing No. 2 and Lots 175 and 176, Willow Creek Filing No. 1 from The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1, as recorded in the Office of the Arapahoe County, CO Clerk and Recorder at Reception Nos. B8117660 and B8117659, respectively.

SOUTHEAST METRO STORMWATER AUTHORITY
Acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

Non-Exclusive Permanent Drainage Easement Agreement

This PERMANENT DRAINAGE EASEMENT ("Easement") is granted this day of , 201 , by Ladera Homeowners Association, Inc., a non-profit corporation, located at Jordan Road and Broncos Parkway, Englewood CO 80112 (the "Grantor"), to the Southeast Metro Stormwater Authority, a political subdivision and a public corporation of the State of Colorado, whose legal address is 7437 S. Fairplay St, Centennial, CO, 80112 (the "Grantee"), its successors and permitted assigns.

For and in consideration of the sum of One Dollars (\$1.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants, bargains, sells and conveys to the Grantee, its transferees and successors in title or assigns, a perpetual non-exclusive permanent drainage easement and right-of-way (the "Easement") to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements and related appurtenances necessary for the retention, detention and conveyance of flood waters and drainage and compliance with the Clean Water Act (the "Drainage Improvements"), in, on, to, through, over, under and across a certain parcel of real property located in the Arapahoe County, Colorado, as more particularly described in Exhibit "A" (the "Easement Parcel"), together with the right of the Grantee to enter upon said property for the purposes of constructing, installing, operating, maintaining and replacing any Drainage Improvements for which this Easement is granted pursuant to the following terms and conditions:

1. Grantee, its' agents, successors, and permitted assigns, shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Parcel for any purpose necessary and, at any and all times necessary or convenient, for the full enjoyment of the rights granted it in the Easement. Including the right to cross adjacent property owned by Grantor, its transferees and successors in title or assigns, to access the above described Easement Parcel for purposes of inspection, repair and maintenance of the Drainage Improvements of Grantee on the Easement Parcel and any adjacent real property. Such access shall be at a mutually agreeable location. However, Grantor shall not unreasonably withhold its approval in regard to that access location.
2. Grantee shall have the right to enter upon the Easement Parcel and to survey, construct, reconstruct, operate, use, maintain, repair, upgrade, replace and remove the Drainage Improvements made within the Easement, and to remove objects interfering therewith.
3. Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the drainage Improvements. Grantor shall not take any action which would impair the lateral or subjacent support for the drainage Improvements.

4. Grantee shall have the right and authority to assign to any appropriate local governmental entity, any and all rights to use, and all rights and obligations associated with, the Easement as are granted to and accepted by the Grantee herein.
5. Grantee agrees that at such time and in the event that the Easement described herein be abandoned by the Grantee and any assignee, such Easement shall terminate and the real property interest represented by such Easement shall revert to the Grantor, its heirs, successors and/or assigns. Because of the potentially infrequent nature of the allowed use of the Easement Parcel, mere non-use of the Easement Parcel, notwithstanding the length of time of such non-use, shall not constitute abandonment.
6. The Grantor warrants, covenants, grants, bargains and agrees that, to the best of its knowledge, the Grantor is well seized of the Easement Parcel above conveyed and has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restriction of whatever kind or nature what so ever, except matters of record.
7. Each and every one of the benefits and burdens of the Easement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantor and the Grantee.
8. The consideration set forth above includes full and just compensation.
9. In further consideration hereof, Grantor for itself and its transferees and successors in title or assigns, covenants and agrees that no building, structure, fill of soils or other materials, or other above or below ground obstruction that will interfere with the established drainage or the purposes of this Easement, will be placed, erected, installed or permitted upon the Easement Parcel without written authorization of Grantee; and further covenants and agrees that in the event the terms of this paragraph are violated by Grantor, its transferees and successors in title or assigns, or any person or organization working directly or indirectly for Grantor, its transferees and successors in title or assigns, such violation shall be corrected and eliminated within ninety (90) calendar days after the receipt of notice from Grantee. If such corrections are not made by Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the Easement Parcel, if different from Grantor, within said ninety (90) day period, Grantee shall have the right to correct and eliminate such violation, and Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the real property described as the Easement Parcel, if different from Grantor shall promptly pay the actual costs thereof.
10. Although Grantee is granted herein the authority to maintain Drainage Improvements on Grantor's property, that grant shall in no way be construed to require Grantee to perform any maintenance on such Drainage Improvements. It is specifically understood and agreed to by and between Grantor and Grantee that any such maintenance of Drainage Improvements is contingent upon the approval of and

budgeting for such maintenance by the Board of Directors of Grantee, neither of which can be guaranteed.

11. As promptly as reasonable under the circumstances, after any construction or other operations by Grantee which disturb the surface of the property in or about the Easement Parcel, Grantee will restore the general surface of the ground, including authorized appurtenances as nearly as may reasonably be done to the grade and condition it was in immediately prior to construction, except as necessarily modified to accommodate Grantee's drainage facilities and improvements. Topsoil shall be replaced, and any excess earth resulting from installations by Grantee shall be removed from Grantor's property at the sole expense of Grantee.

12. Grantor represents that it has visually inspected the real property described in Exhibit "A" to determine whether or not any contamination exists on or under the surface of said real property in the form of any hazardous or dangerous substances, and represents to the best of the knowledge of Grantor, that no such contamination exists.

13. Grantor represents and warrants that it neither has nor will cause any contamination to the real property described in Exhibit "A" and warrants that, if it has caused or does cause any such contamination, it shall be the responsibility of Grantor to clean up and remediate such contamination and it shall be the obligation of Grantor to defend, indemnify and hold Grantee harmless in regard to such contamination.

14. Grantor warrants that it has full right and lawful authority to make the grant herein above contained, and promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the land involved or Grantor's right to make the grant herein above contained.

15. Each and every one of the benefits and burdens of this Easement Deed shall inure to and be binding upon the respective legal representative, heirs, executors, administrators, transferees, successors in title or assigns of the parties hereto.

16. Grantor retains the right to the undisturbed use and occupancy of the Easement Parcel insofar as such use and occupancy are consistent with and do not impair any grant or covenant herein contained.

17. The above and foregoing constitutes the whole agreement between the parties and no additional or different oral representation; promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument.

GRANTOR:

By: **Robyn Levine**
President – Ladera Homeowners Association

STATE OF COLORADO)
) ss.
County of Arapahoe)

The foregoing Non-Exclusive Permanent Drainage Easement was acknowledged before me this ____ day of __, 2__, by _____ as the President and _____ as Secretary of Grantor,

Witness my hand and official seal:

Notary Public _____

My commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION – DRAINAGE EASEMENT

A PARCEL OF LAND BEING A PART OF TRACT "A", SOUTHCREEK FILING NO. 7, A PLAT RECORDED AT RECEPTION NO. B5146538 IN THE OFFICE OF THE ARAPAHOE COUNTY, COLORADO CLERK AND RECORDER, LOCATED IN THE WEST HALF OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 66 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, IN SAID COUNTY AND STATE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTHERLY BOUNDARY OF SAID TRACT "A", AND THE SOUTHERLY RIGHT-OF-WAY OF EAST BRONCOS PARKWAY, AS SHOWN ON AND DEDICATED BY SAID PLAT, BEARS NORTH 48°24'42" EAST AND ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID TRACT "A", BEING COMMON TO THE NORTHWESTERLY CORNER TO LOT 22, BLOCK 3 OF SAID PLAT AND THE EASTERLY RIGHT-OF-WAY OF SOUTH JOPLIN COURT, AS SHOWN ON AND DEDICATED BY SAID PLAT, ON A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 127.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 83°11'49" WEST;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID TRACT "A", AND ALONG SAID EASTERLY RIGHT-OF-WAY NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°19'12", AN ARC LENGTH OF 18.51 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY, AND ALONG SAID EASTERLY RIGHT-OF-WAY, ON A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 127.50 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°32'07", AN ARC LENGTH OF 54.60 FEET;

THENCE DEPARTING SAID WESTERLY BOUNDARY, AND SAID EASTERLY RIGHT-OF-WAY, NORTH 70°59'08" EAST, A DISTANCE OF 24.92 FEET;

THENCE NORTH 03°43'36" EAST, A DISTANCE OF 37.09 FEET;

THENCE NORTH 52°14'32" EAST, A DISTANCE OF 279.77 FEET;

THENCE SOUTH 66°14'37" EAST, A DISTANCE OF 23.97 FEET TO THE EASTERLY BOUNDARY OF SAID TRACT "A";

THENCE ALONG SAID EASTERLY BOUNDARY, SOUTH 23°45'29" WEST, A DISTANCE OF 322.26 FEET;

THENCE DEPARTING SAID EASTERLY BOUNDARY, NORTH 62°03'05" WEST, A DISTANCE OF 92.98 FEET;

THENCE SOUTH 83°46'28" WEST, A DISTANCE OF 32.40 FEET TO THE POINT OF BEGINNING.

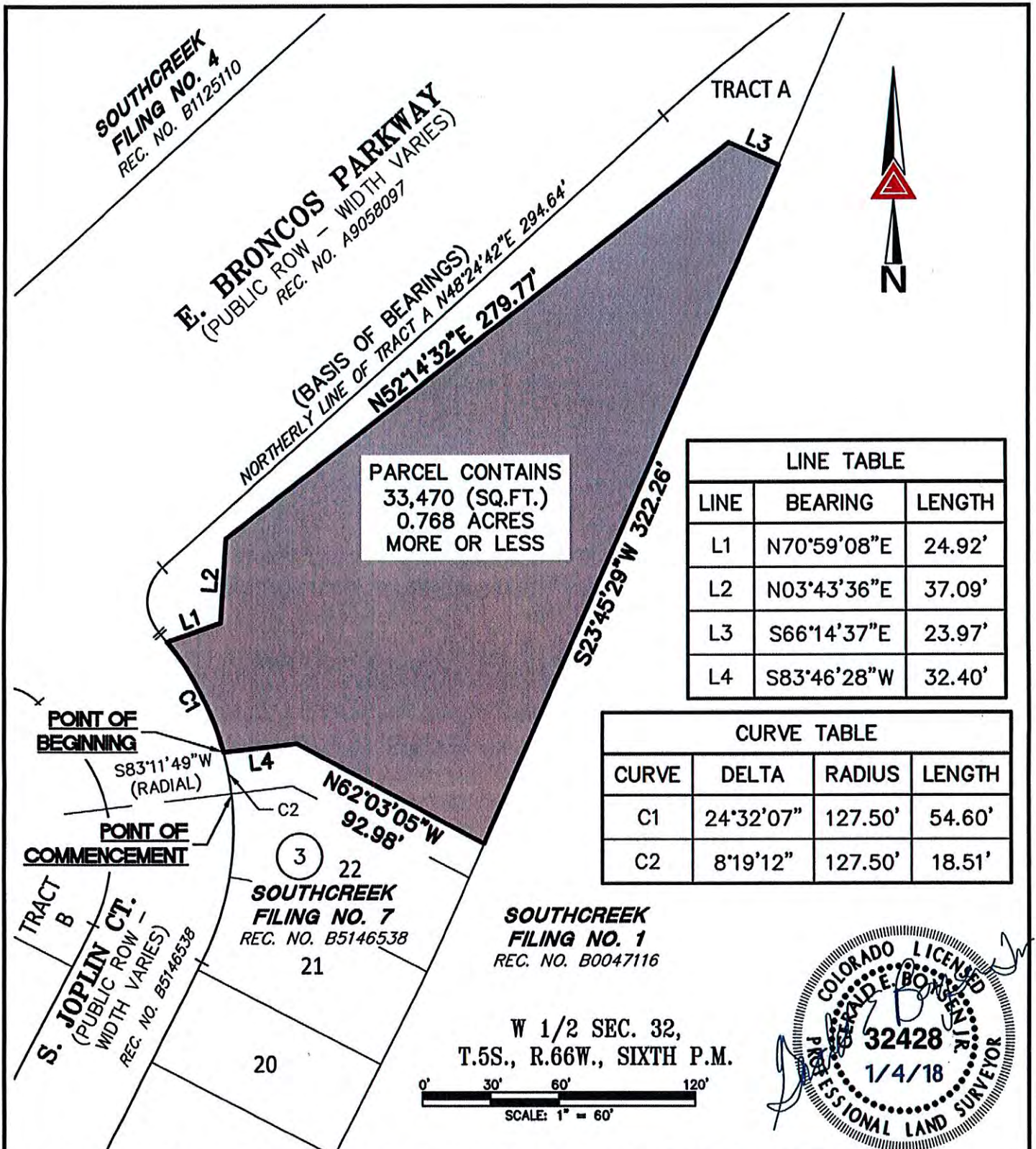
CONTAINING AN AREA OF 0.768 ACRES, (33470 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



GERALD E. BOYSEN, JR, PLS NO. 32428
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\DWG\EXHIBITS\
DWG NAME: _____
DWG: GB CHK: JRW
DATE: 01/04/2018
SCALE: 1" = 60'



AZTEC
CONSULTANTS, INC.

56517-08 - Big Dry Creek Otero Tributary DE.DWG

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

SOUTHCREEK FILING NO. 7, TRACT A
DRAINAGE EASEMENT
ARAPAHOE COUNTY, COLORADO

JOB NUMBER 56517-08

3 OF 3 SHEETS

Permanent Drainage Easement
Willow Creek 1 HOA
Lots 175 and 176, Willow Creek 1 Filing No. 1
Page 1 of 4

Permanent Drainage Easement

This clarification to the PERMANENT DRAINAGE EASEMENT ("Easement") is granted this 10th day of September, 2008, by The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1, whose legal address is c/o Colorado Association Services, 14062 Denver West Parkway, #250, Lakewood, CO 80401 ("The Grantor"), to the Southeast Metro Stormwater Authority, whose legal address is 76 Inverness Drive East, Suite. A, Englewood, CO, 80112 ("The Grantee").

- A. Grantor is the owner of the property referred to as Lots 175 and 176 in Willow Creek-Filing 1, Arapahoe County, Colorado.
- B. An easement presently exists over Lots 175 and 176 for "construction, maintenance and operation of all utilities and related services, and for drainage of surface water and for establishing and maintaining adequate ground water drainage structures and facilities" pursuant to the terms of the plat for Willow Creek Filing No. 1 filed in the office of the County Clerk and Recorder of Arapahoe County on September 26, 1972, in Book 23, Pages 3 and 4, at Reception No. 1315437.
- C. Grantee and Grantor desire to clarify the terms of this existing easement.

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants, bargains, sells and conveys to the Grantee, its transferees and successors in title or assigns, a Permanent Drainage Easement to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements, in, on, to, through, over, under and across a certain parcel of real property located in the Arapahoe County, Colorado, as more particularly described as Lots 175 and 176, Willow Creek-Filing No.1, Arapahoe County, Colorado, (the "Easement Parcel") pursuant to the following terms and conditions:

1. The Grantee, its contractors, agents, successors and permitted assigns shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Parcel for any purpose necessary and, at any and all times necessary or convenient, for the full enjoyment of the rights granted it in the Permanent Drainage Easement.

Return to:

Edward J. Krisor
3900 S. Wadsworth Blvd., #320
Lakewood, CO 80235

2. The Grantee, its contractors, agents, successors and permitted assigns, shall have the right to enter upon the Easement Parcel and to survey, construct, reconstruct, operate, use, maintain, repair, upgrade, replace and remove the improvements made within the Permanent Drainage Easement, and to remove objects interfering therewith.

3. The Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the drainage improvements. The Grantor shall not take any action which would impair the lateral or subjacent support for the drainage improvements.

4. The Grantee shall have the right and authority to assign to any appropriate local governmental entity, or to any public utility provider, any and all rights to use, and all rights and obligations associated with, the Permanent Drainage Easement as are granted to and accepted by the Grantee herein.

5. The Grantee agrees that at such time and in the event that the Permanent Drainage Easement described herein be abandoned by the Grantee and any assignee, such Permanent Drainage Easement shall terminate and the real property interest represented by such Permanent Drainage Easement shall revert to the Grantor, its heirs, successors and/or assigns. Because of the potentially infrequent nature of the allowed use of the Easement, mere non-use of the Easement Parcel notwithstanding, the length of time of such non-use shall not constitute abandonment.

6. The Grantor warrants, covenants, grants, bargains and agrees that, to the best of its knowledge, the Grantor is well seized of the Easement Parcel above conveyed and has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restriction of whatever kind or nature so ever, except matters of record.

7. Each and every one of the benefits and burdens of the Permanent Drainage Easement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantor and the Grantee.

8. The consideration set forth above includes full and just compensation.

9. In further consideration hereof, Grantor, for itself and its transferees and successors in title or assigns, covenants and agrees that no building, structure, fill of soils or other materials, or other above or below ground obstruction that will interfere with the established drainage or the purposes of this PERMANENT DRAINAGE EASEMENT, will be placed, erected, or installed on behalf of the Grantor on the Easement Parcel or permitted by Grantor without written authorization of Grantee, which will not be unreasonably withheld. Nothing in this Paragraph shall prohibit Grantor from maintaining, repairing and replacing existing buildings, structures, fill of soils or other materials, or other above or below ground obstructions in its normal course of business as long as the same does not interfere with the purposes of this PERMANENT DRAINAGE EASEMENT. Grantor covenants and agrees that in the event the terms of this paragraph are violated by Grantor, its transferees and successors in title or assigns, such violation shall be corrected and eliminated within ninety (90) calendar days after the receipt of notice from Grantee. If such corrections are not made or diligently pursued by Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the Easement Parcel, if different from Grantor, within said ninety day period, Grantee, after written notice to Grantor, shall have the right to correct and eliminate such violation, and Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the real property described as the Easement Parcel, if different from Grantor shall promptly pay the actual costs thereof.

10. Although Grantee is granted herein the authority to maintain drainage improvements on Grantor's property, that grant shall in no way be construed to require Grantee to perform any maintenance on such drainage improvements. It is specifically understood and agreed to by and between Grantor and Grantee that any such maintenance of drainage improvements is contingent upon the approval of and budgeting for such maintenance by the Board of Directors of Grantee, neither of which can be guaranteed. Notwithstanding anything herein, all easement rights and obligations as set forth on the plat for Willow Creek Filing No. 1, recorded on September 26th, 1973 at Reception No. 1315437, Arapahoe County records, shall remain in full force and effect.

[SIGNATURE ON FOLLOWING PAGE]

Permanent Drainage Easement
Willow Creek 1 HOA
Lots 175 and 176, Willow Creek 1 Filing No. 1
Page 4 of 4

**GRANTOR: The Willow Creek Homeowners Association
d/b/a Willow Creek Homeowners Association No. 1**

UNOFFICIAL COPY

By Sharon C. Samu
President

STATE OF COLORADO

)
) ss.
)

County of Arapahoe

The foregoing Permanent Drainage Easement was acknowledged before me this
10 day of Sept, 2008, by Sharon C. Samu as President
of The Willow Creek Homeowners Association d/b/a Willow Creek Homeowners
Association No. 1.

UNOFFICIAL COPY

Witness my hand and official seal:

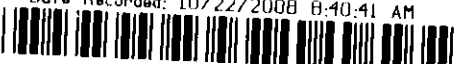
Notary Public

My commission expires:

5/2/2011

UNOFFICIAL COPY

Permanent Drainage Easements
Willow Creek 1 HOA
Tract A, Willow Creek Filing No. 2
Page 1 of 4

Arapahoe County Clerk & Recorder, Nancy A. Doty
Reception #: B8117660
Receipt #: 5431821
Pages Recorded: 4
Recording Fee: \$21.00
Date Recorded: 10/22/2008 8:40:41 AM


Permanent Drainage Easement

This clarification to the PERMANENT DRAINAGE EASEMENT ("Easement") is granted this 13th day of September, 2008, by The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1, whose legal address is c/o Colorado Association Services, 14062 Denver West Parkway, #250, Lakewood, CO 80401 ("The Grantor"), to the Southeast Metro Stormwater Authority, whose legal address is 76 Inverness Drive East, Suite. A, Englewood, CO, 80112 ("The Grantee").

- A. Grantor is the owner of the property referred to as Tract A in Willow Creek-Filing 2, Arapahoe County, Colorado.
- B. Easements presently exists over Tract A in Willow Creek-Filing 2 for "construction, maintenance and operation of all utilities and related services, and for drainage of surface water and for establishing and maintaining adequate ground water drainage structures and facilities" pursuant to the terms of the plat for Willow Creek Filing No. 2 filed in the office of the County Clerk and Recorder of Arapahoe County on April 9, 1974, in Book 26, Pages 38 and 39, at Reception No. 1416412.
- C. Grantee and Grantor desire to clarify the terms of this existing easement.

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants, bargains, sells and conveys to the Grantee, its transferees and successors in title or assigns, a Permanent Drainage Easement to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements, in, on, to, through, over, under and across a certain parcel of real property located in the Arapahoe County, Colorado, as more particularly described as Tract A in Willow Creek-Filing 2, Arapahoe County, Colorado, (the "Easement Parcel") pursuant to the following terms and conditions:

1. The Grantee, its contractors, agents, successors and permitted assigns shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Parcel for any purpose necessary and, at any and all times necessary or convenient, for the full enjoyment of the rights granted it in the Permanent Drainage Easement.

Return to:

Edward J. Krisor
3900 S. Wadsworth Blvd., #320
Lakewood, CO 80235

2. The Grantee, its contractors, agents, successors and permitted assigns, shall have the right to enter upon the Easement Parcel and to survey, construct, reconstruct, operate, use, maintain, repair, upgrade, replace and remove the improvements made within the Permanent Drainage Easement, and to remove objects interfering therewith.

3. The Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the drainage improvements. The Grantor shall not take any action which would impair the lateral or subjacent support for the drainage improvements.

4. The Grantee shall have the right and authority to assign to any appropriate local governmental entity, or to any public utility provider, any and all rights to use, and all rights and obligations associated with, the Permanent Drainage Easement as are granted to and accepted by the Grantee herein.

5. The Grantee agrees that at such time and in the event that the Permanent Drainage Easement described herein be abandoned by the Grantee and any assignee, such Permanent Drainage Easement shall terminate and the real property interest represented by such Permanent Drainage Easement shall revert to the Grantor, its heirs, successors and/or assigns. Because of the potentially infrequent nature of the allowed use of the Easement, mere non-use of the Easement Parcel notwithstanding, the length of time of such non-use shall not constitute abandonment.

6. The Grantor warrants, covenants, grants, bargains and agrees that, to the best of its knowledge, the Grantor is well seized of the Easement Parcel above conveyed and has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restriction of whatever kind or nature so ever, except matters of record.

7. Each and every one of the benefits and burdens of the Permanent Drainage Easement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantor and the Grantee.

8. The consideration set forth above includes full and just compensation.

9. In further consideration hereof, Grantor, for itself and its transferees and successors in title or assigns, covenants and agrees that no building,

structure, fill of soils or other materials, or other above or below ground obstruction that will interfere with the established drainage or the purposes of this PERMANENT DRAINAGE EASEMENT, will be placed, erected, or installed on behalf of the Grantor on the Easement Parcel or permitted by Grantor without written authorization of Grantee, which will not be unreasonably withheld. Nothing in this Paragraph shall prohibit Grantor from maintaining, repairing and replacing existing buildings, structures, fill of soils or other materials, or other above or below ground obstructions in its normal course of business as long as the same does not interfere with the purposes of this PERMANENT DRAINAGE EASEMENT. Grantor covenants and agrees that in the event the terms of this paragraph are violated by Grantor, its transferees and successors in title or assigns, such violation shall be corrected and eliminated within ninety (90) calendar days after the receipt of notice from Grantee. If such corrections are not made or diligently pursued by Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the Easement Parcel, if different from Grantor, within said ninety day period, Grantee, after written notice to Grantor, shall have the right to correct and eliminate such violation, and Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the real property described as the Easement Parcel, if different from Grantor shall promptly pay the actual costs thereof.

10. Although Grantee is granted herein the authority to maintain drainage improvements on Grantor's property, that grant shall in no way be construed to require Grantee to perform any maintenance on such drainage improvements. It is specifically understood and agreed to by and between Grantor and Grantee that any such maintenance of drainage improvements is contingent upon the approval of and budgeting for such maintenance by the Board of Directors of Grantee, neither of which can be guaranteed. Notwithstanding anything herein, all easement rights and obligations as set forth on the plats for Willow Creek Filing No. 2, recorded on April 9th, 1974 at Reception No. 1416412, Arapahoe County records, shall remain in full force and effect.

[SIGNATURE ON FOLLOWING PAGE]

Permanent Drainage Easements
Willow Creek 1 HOA
Tract A, Willow Creek Filing No. 2
Page 4 of 4

**GRANTOR: The Willow Creek Homeowners Association
d/b/a Willow Creek Homeowners Association No. 1**

By Sharon C. Samu
President

STATE OF COLORADO

Douglas
County of Arapahoe

ss.

The foregoing Permanent Drainage Easement was acknowledged before me this
13th day of September, 2008, by Sharon C. Samu as
President of The Willow Creek Homeowners Association d/b/a Willow Creek
Homeowners Association No. 1.

Witness my hand and official seal:

Notary Public

My commission expires:

6/12/2012

**JOY ABLUTZ
Notary Public
State of Colorado**