

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

RESOLUTION 12-19  
Approval of an Easement Deed -  
SEMSWA & Dove Valley Metropolitan District

WHEREAS, the Dove Valley Metropolitan District (Applicant), is developing a monument sign known as the Dove Valley Monument Phase 2, (case no. A10-007/D10-2030), on a parcel of land owned by SEMSWA (Owner); and

WHEREAS, the Applicant's engineer has designed a monument sign to be powered by solar energy, in which the solar panel is near the monument sign and also within open space owned by SEMSWA; and

WHEREAS, the monument sign is within an existing easement, but the solar panel is outside of the existing easement; and

WHEREAS, the subject Easement Deed will encompass the solar panel thereby allowing access to the solar panel for construction, maintenance, repair or replacement; and

WHEREAS, the Easement Deed requires the Applicant to maintain and repair the improvements located in the easement; and

WHEREAS, Applicant will, as a requirement of the Easement Deed, maintain a \$1,000,000 general liability insurance policy insuring both the easement as well as the improvements located in the easement; and

WHEREAS, the Easement Deed has been prepared by SEMSWA staff and legal counsel and approved by the Applicant, and SEMSWA.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Easement Deed attached hereto as Exhibit A and authorizes the Executive Director of SEMSWA to execute the Easement Deed.

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

## EASEMENT DEED

This EASEMENT DEED ( "Easement Deed") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between SOUTHEAST METRO STORMWATER AUTHORITY ("SEMSWA") a political subdivision and a public corporation of the State of Colorado and body corporate and politic, whose legal address is 76 Inverness Drive East, Suite A. Englewood, Colorado 80112, (the "Grantor"), and DOVE VALLEY METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Grantee").

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys to Grantee and its successors and assigns, subject to the terms and conditions provided herein, an easement ("Easement") in, over, and under the real property located within Arapahoe County, Colorado, and more particularly described below to enter, re-enter, occupy and use the Easement Property for the purpose of construction, maintenance, repair or replacement, and use of a solar panel along with any above ground and below ground appurtenances related to, thereto:

See **Exhibit A** attached hereto and incorporated herein by this reference ("Property").

Subject to easements, restrictions and reservations of record.

As further consideration for the grant of this Easement, Grantee, by acceptance of this Easement Deed, agrees, for itself and its successors and assigns, as follows:

1. Non-Exclusive Rights. The Easement shall be for the non-exclusive use and benefit of Grantee and its successors and assigns. Grantor reserves the right to use the Easement for any lawful purpose and to grant to others the rights to use the Easement, so long as such uses are not inconsistent with, and do not unreasonably interfere with, the use of the Easement by Grantee for the purposes set forth herein. Grantee acknowledges that Grantor may use the Easement to access other portions of Grantor's property and other property owned by Grantor.

Grantee's proposed use or uses of the Easement shall not cause damage to property, loss of life or a violation of SEMSWA's NPDES MS4 Permit. If Grantee's proposed use of the Easement may cause damage to property, loss of life or a violation of SEMSWA's NPDES MS4 Permit, SEMSWA may take immediate action to prevent the proposed use. In the event that use of the Easement does cause damage to property, loss of life or a violation of SEMSWA's NPDES MS4 Permit, SEMSWA may, but is not required to, take any and all actions necessary to address the damage to property, loss of life or a violation of SEMSWA's NPDES MS4 Permit and Grantee shall be responsible for reimbursing Grantor for all of Grantor's expenses associated therewith. Such reimbursement shall be within ten (10) days after Grantor gives the Grantee

written notice of such expenditures. Further, any work or improvements proposed on the Property must meet applicable SEMSWA requirements, including plan submittals, obtaining permits, and meeting the requirements set forth in the SEMSWA Grading, Erosion, and Sediment Control ("GESC") Manual and City of Centennial Stormwater Management Manual.

2. Limitations on Use. Grantee's use of the Easement shall be and hereby is limited to the following uses: construction, reconstruction, operation, use, maintenance, repair, replacement and/or removal of a solar panel and appurtenances thereto ("Improvements") to illuminate the sign located on the said Property and described in a Temporary Easement Agreement recorded in the Arapahoe County Clerk and Records Office on August 9, 2011 at Reception No. D1075672 for use by Grantee with the right of ingress and egress over, across, under, and through the Property for the purposes set forth above or incident thereto.

3. Subjacent and Lateral Support. 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 Improvements. Grantor shall not take any action which would impair the lateral or subjacent support for the Improvements.

4. Maintenance of Easement. The Improvements located in the Easement will be installed, constructed, operated, repaired, replaced and maintained by or at the direction of Grantee, at Grantee's sole cost and expense. Following any construction, maintenance, repair, replacement or other entry upon the Easement by Grantee, Grantee shall restore the surface of the land as nearly as may be practical to the same condition it was in immediately prior to such construction, maintenance, repair, replacement or other entry, and in accordance with any applicable SEMSWA permits, such as the GESC permit, Floodplain Development Permit, and/or Stormwater Public Improvement Permit. Grantor agrees to repair any damage to the Improvements caused by Grantor's use of the Easement to access other portions of Grantor's property and other property owned by Grantor in a timely manner. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Improvements.

5. Exercise of Rights. Grantee and all others permitted to use the Easement hereunder shall exercise the rights granted by this Easement Deed in a safe and orderly manner and in compliance with all applicable laws, ordinances, governmental regulations, covenants, conditions, and restrictions, and without unreasonably interfering with Grantor's use of property adjacent to and underlying the Easement.

Grantee, to the extent permitted by law, shall defend, indemnify and hold Grantor harmless in regard to the construction and maintenance of the Improvements.

6. Abandonment of Easement. Grantee agrees that at such time and in the event Grantor establishes that the Easement described herein is abandoned by Grantee, such Easement shall terminate and the real property interest represented by such Easement shall revert to Grantor, its successors and/or assigns.

7. Insurance. Grantee shall, at its own cost, procure and maintain comprehensive general liability insurance for the Property and Improvements, including coverage for bodily injury, property damage and personal injury with a single limit of liability of not less than \$1,000,000.00 for each occurrence of bodily injury and/or property damage. Grantor has the right, not to be exercised more than once during any 5-year period, to review the amount of the limit of liability insurance and require reasonable increases in such limit of liability caused by inflation, risk of loss, or similar factors.

8. Construction. The parties have participated jointly in the negotiation and drafting of this Easement Deed. No presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

9. Design. Grantor shall have the right to review and approve the design of the Improvements. However, approval shall not be unreasonably withheld, delayed, or conditioned. If no objection is raised within ten (10) days following receipt of design, the design shall be deemed approved.

10. Attorney Fees. In the event that legal action is instituted to enforce any of the provisions of this Easement Deed, the prevailing party shall recover from the losing party its reasonable attorney fees and costs.

11. Notices. All notices, demands, or other communications required or permitted to be given by any provision of this Easement Deed shall be given in writing, delivered personally or sent by certified or registered mail, postage prepaid and return receipt requested, addressed as follows:

To Grantor: Southeast Metro Stormwater Authority  
76 Inverness Drive East, Suite A  
Englewood, Colorado 80112,

To Grantee: Dove Valley Metropolitan District  
141 Union Blvd., Suite 150  
Lakewood, CO 80228  
Attn: Lisa A. Jacoby, District Manager

or at such other address as either party hereto may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given when personally delivered or mailed, and shall be considered received on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is given.

12. Binding Nature. The easements, covenants, conditions and agreements contained in this Easement Deed shall run with the Property and the Easement and be binding upon and inure to the benefit of all parties having any right, title, or interest in the Property or any portion

thereof, their heirs, successors and assigns, forever.

13. Severability. If any clause, provision, subparagraph, or paragraph set forth in this Easement Deed is illegal, invalid, or unenforceable under present or future applicable laws, then and in that event it is the intention of Grantor and Grantee hereto that the remainder of this Easement Deed shall not be affected thereby.

14. Applicable Law. The terms and provisions contained in this Easement Deed shall be governed and construed in accordance with the laws of the State of Colorado.

15. Enforcement. In addition to other rights and remedies afforded Grantor and Grantee herein, violation or breach of any covenant or agreement herein contained, or of the terms of any easement herein granted, by Grantor or Grantee, shall give to the nonbreaching Grantor or Grantee the right to enjoin or compel the cessation of such violation or breach, and to seek damages therefor. In addition, the violation of any covenant or agreement herein contained, or of the terms of any easement herein granted, is hereby acknowledged to constitute a nuisance, and every remedy allowed by law or equity shall be applicable against every such violation. All remedies provided herein at law and in equity shall be cumulative and nonexclusive.

16. Modification. Except as otherwise provided herein, this Easement Deed may be modified, altered or amended only by written agreement of all of the then owners of the Property and this Easement.

17. Merger. This Easement Deed 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 Easement Deed.

18. Authority. The Grantor warrants that it has full right and lawful authority to make the grant herein above contained.

19. No Waiver of Governmental Immunity. Nothing herein shall be deemed or construed to waive or otherwise impair any provision of the Colorado Governmental Immunity Act as applied to Grantor, Grantee, their personnel and their successors and assigns.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Easement Deed on the date first written above.

**GRANTOR:**  
**SOUTHEAST METRO STORMWATER**  
**AUTHORITY**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF COLORADO       )  
  ) ss.  
COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by John A. McCarty as Executive Director of Southeast Metro Stormwater Authority.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**GRANTEE:**  
**DOVE VALLEY METROPOLITAN DISTRICT**

\_\_\_\_\_  
By: Gregory L. Armstrong  
Its: President

ATTEST:\_\_\_\_\_

By: \_\_\_\_\_, Secretary

STATE OF COLORADO       )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Gregory L. Armstrong as President of Dove Valley Metropolitan District.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT FOR EASEMENT 9A – Sheet 1 of 2

LEGAL DESCRIPTION: EASEMENT 9A

PART OF TRACT A, DOVE VALLEY BUSINESS PARK SUBDIVISION FILING NO. 17, RECORDED IN BOOK 199 AT PAGES 39-40, RECEPTION NO. B1099938, ARAPAHOE COUNTY RECORDS, A SUBDIVISION OF A PART OF THE NORTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, DESCRIBED AS:  
COMMENCING AT THE MOST NORTHERLY CORNER OF SAID TRACT A, THENCE S45°57'06"W ALONG THE WESTERLY LINE OF SAID TRACT A, A DISTANCE OF 31.73 FEET TO THE POINT OF BEGINNING; THENCE ALONG THE LINE PROLONGED OF S45°57'06"W AND ALONG SAID WESTERLY LINE, A DISTANCE OF 10.59 FEET; THENCE S63°15'14"E A DISTANCE OF 23.40 FEET; THENCE N26°44'46"E A DISTANCE OF 10.00 FEET; THENCE N63°15'14"W A DISTANCE OF 19.92 FEET TO THE POINT OF BEGINNING. CONTAINS 217 SQUARE FEET OR 0.005 ACRES MORE OR LESS.

BASIS FOR BEARINGS:

THE WESTERLY LINE OF TRACT A, BEARS S45°57'06"W TAKEN FROM THE RECORDED PLAT OF DOVE VALLEY BUSINESS PARK SUBDIVISION FILING NO. 17, RECORDED IN BOOK 199 AT PAGES 39-40, RECEPTION NO. B1099938, ARAPAHOE COUNTY RECORDS, A SUBDIVISION OF A PART OF THE NORTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO,

CERTIFICATE OF SURVEY:

I HEREBY CERTIFY THAT THE MAP & LEGAL DESCRIPTION SHOWN HEREON WERE MADE BY ME OR UNDER MY DIRECTION AND ARE ACCURATELY SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF.

  
RAYMOND W. BAYER, LICENSE NO. 6973,  
WITHIN THE STATE OF COLORADO

DATE: May 11, 2012



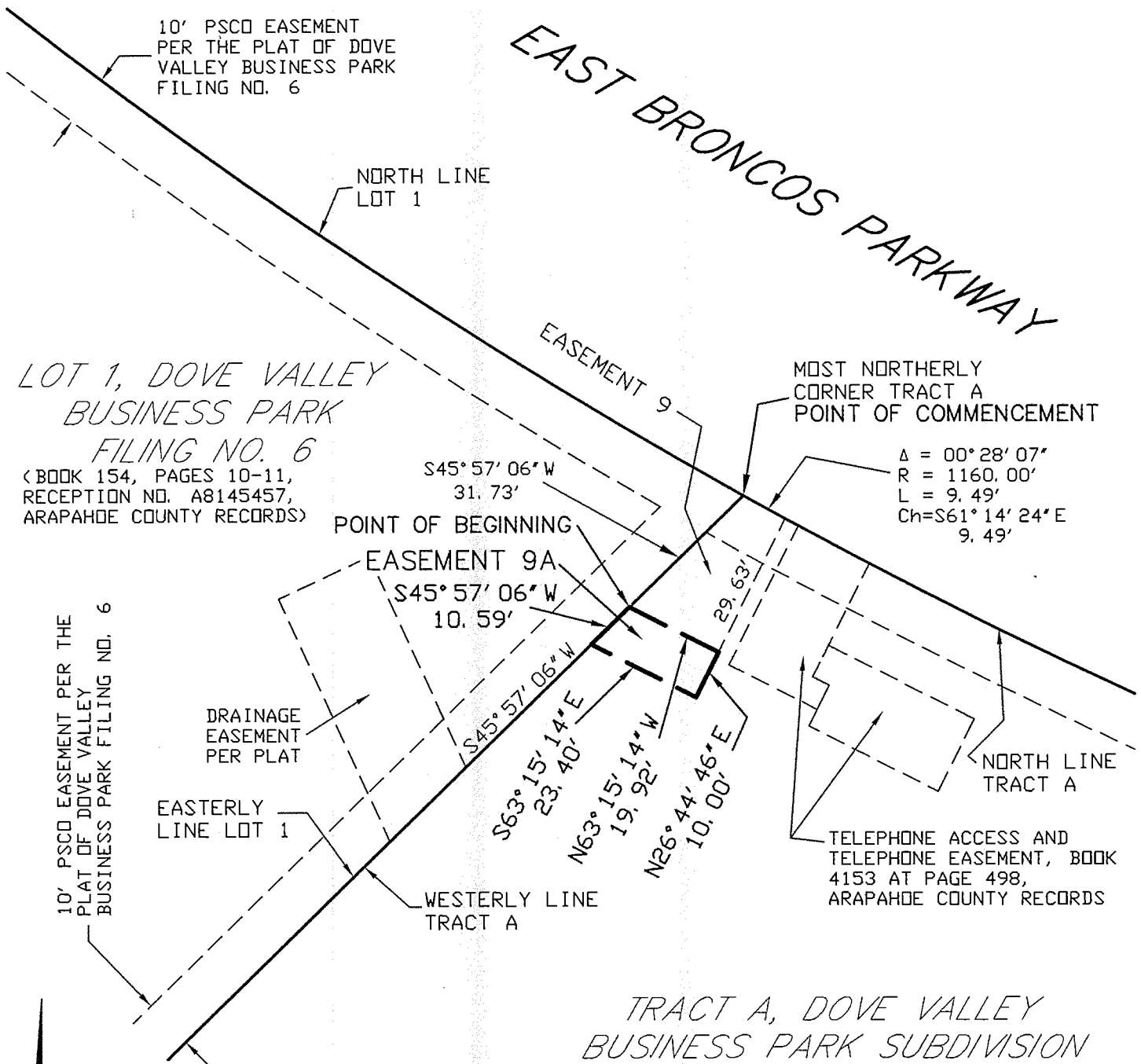
Prepared By:

R. W. BAYER & ASSOCIATES, INC.  
2090 EAST 104TH AVENUE, SUITE 200  
THORNTON, COLORADO 80233-4316  
(303) 452-4433 FAX: (720) 833-4216  
File: 36-5S.67-7S CAD: S12049.dwg

Date Prepared: MAY 01, 2012



# EXHIBIT FOR EASEMENT 9A - Sheet 2 of 2



NOTE: THIS MAP IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY OR LAND SURVEY PLAT. IT IS ONLY INTENDED TO DEPICT THE LEGAL DESCRIPTION ON SHEET 1 OF 2.



SCALE: 1"=30'