

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

RESOLUTION 12-45
Highfield Business Park Pond Transfer and Onetime SDF Offset

WHEREAS, the Southeast Metro Stormwater Authority (SEMSWA) adopted Resolution No. 22, Series of 2009, *Credit Policy* and Resolution No. 13, Series of 2011, *Amendment to the Credit Policy* (Credit Policy), in regard to SEMSWA credits for System Development Fees (SDFs), Annual Fees, and the Grant Program; and

WHEREAS, the Highfield Business Park, LLC (HBP), more particularly described as located north of Compark Blvd. and east of Highfield Parkway in unincorporated Douglas County, Colorado, has completed a Credit Policy Application in accordance with the Credit Policy; and

WHEREAS, HBP has requested from SEMSWA a SDF Credit as a onetime offset for the construction of a regional detention and water quality pond benefitting SEMSWA's stormwater management plan; and

WHEREAS, the SDF Credit requested meets the goals and objectives outlined in the Credit Policy; and

WHEREAS, HBP, prior to SEMSWA's formation, initiated the design with the intent to construct a regional detention and water quality pond (HBP Pond) to serve the development that occurred in HBP; and

WHEREAS, the HBP Pond is an online, regional facility in the Dove Creek Basin of SEMSWA's service area, as attached hereto as **Exhibit A** and as identified in the *Lone Tree, Windmill, and Dove Creek Master Plan* (Master Plan); and

WHEREAS, in coordination with the Master Plan, SEMSWA has further evaluated the cost benefit to SEMSWA assuming the HBP Pond parcel such that it can be a publicly owned and maintained by SEMSWA as a regional detention and water quality facility and recognized as part of the Master Plan; and

WHEREAS, a cost benefit evaluation of SEMSWA assuming ownership of the HBP Pond results in a savings to SEMSWA of \$147,735.00; and

WHEREAS, HBP Pond has been designed, constructed, and received acceptance from Douglas County as a regional detention and water quality pond; and

Resolution 12-45

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WHEREAS, HBP has executed a Regional Stormwater Agreement outlining the transfer of the HBP Pond and proposed onetime SDF offset totaling \$147,735.00, including a General Warranty Deed for the HBP Pond, which has been prepared by SEMSWA staff and reviewed and approved by legal counsel as attached hereto as **Exhibits B & C**, respectively.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute the Regional Stormwater Agreement, attached hereto as **Exhibit B** and authorizes:
 - (a) A onetime SDF Credit for HBP totaling \$ 147,735.00; and
 - (b) The acceptance of the transfer of the HBP Pond parcel to SEMSWA, as described in **Exhibit C**.

SOUTHEAST METRO STORMWATER AUTHORITY
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Date: _____

ATTEST:

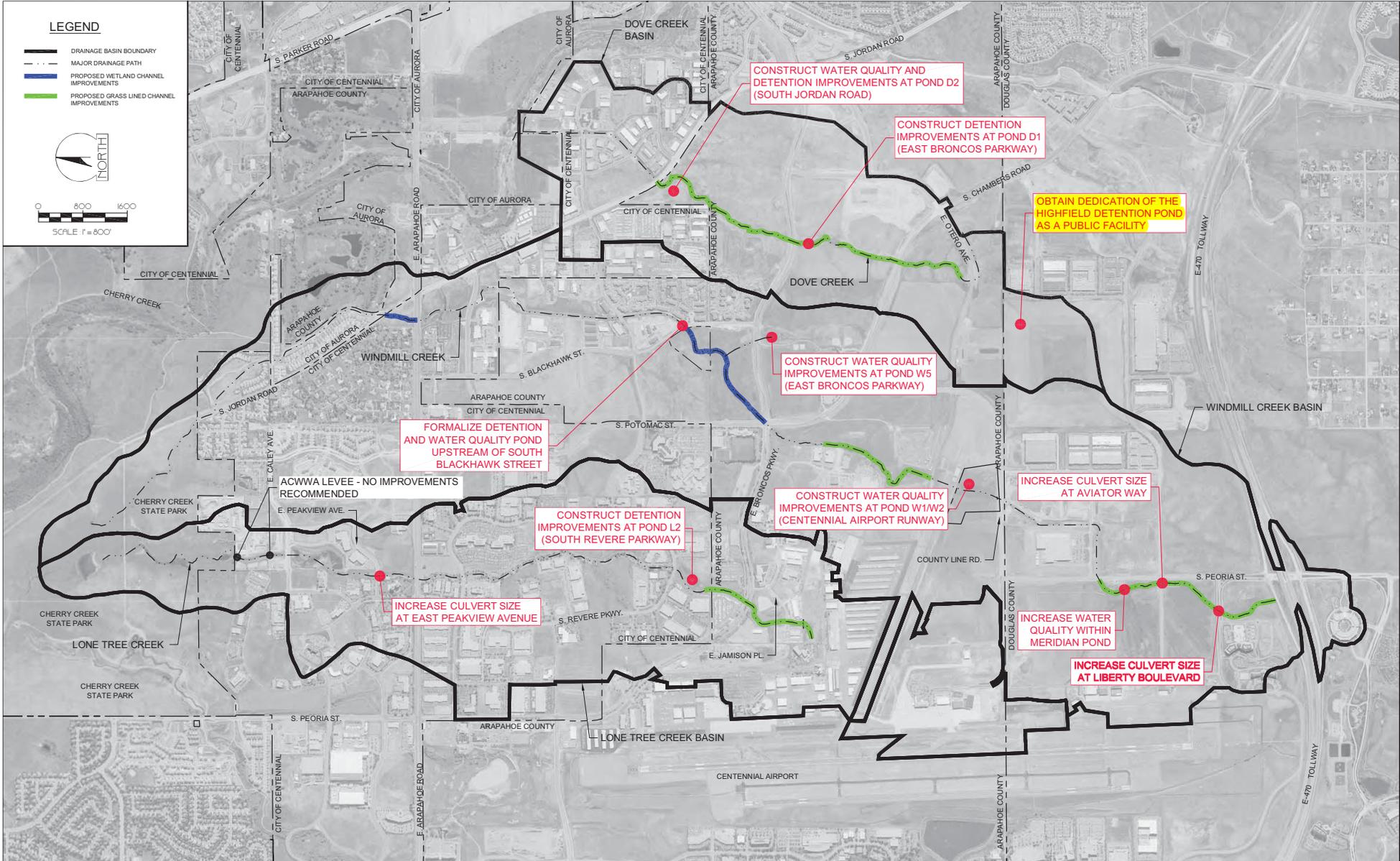
Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor



No. DATE REVISIONS APPR.		IMAGERY DATE: 2007 (UDFCD)	PLAN DRAWN BY DESIGNED B.L. CHECKED B.L.	UTILITIES RESEARCHED DRAWN CHECKED	URBAN DRAINAGE AND FLOOD CONTROL DISTRICT SOUTHEAST METRO STORMWATER AUTHORITY DOUGLAS COUNTY	ICON ENGINEERING, INC. <small>8000 South Platten Street, Suite 2000, Englewood, CO 80151 Phone: (303) 750-8200 / Fax: (303) 750-8209 www.iconeng.com</small>	LONE TREE CREEK, WINDMILL CREEK, AND DOVE CREEK MAJOR DRAINAGEWAY PLAN CONCEPTUAL DESIGN REPORT IMPROVEMENT ALTERNATIVES RECOMMENDED IMPROVEMENT PLAN	DATE APR 2010 FIGURE 5-1
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REGIONAL STORMWATER AGREEMENT

THIS REGIONAL STORMWATER AGREEMENT (the "Agreement"), is made and entered into this ____ day of November, 2012 (the "Effective Date") by and among the SOUTHEAST METROPOLITAN STORMWATER AUTHORITY, a separate governmental entity, political subdivision and public corporation of the State of Colorado ("SEMSWA"), HIGHFIELD METROPOLITAN DISTRICT, a quasi municipal corporation and political subdivision of the State of Colorado (the "Highfield District") and HIGHFIELD BUSINESS PARK, LLC, a Colorado limited liability company, ("HBP").

RECITALS

WHEREAS, certain property owned by HBP as more particularly described in **Exhibit A** attached hereto and incorporated by reference (the "Property") is included in the SEMSWA service area; and

WHEREAS, the Highfield District owns certain property described as Tract A, Highfield Business Park, County of Douglas, State of Colorado upon which the HBP Detention Pond (defined below) was constructed; and

WHEREAS, the Property straddles three stormwater drainage basins – the Dove Creek, Happy Canyon Creek and Windmill Creek. All three basins are part of SEMSWA's stormwater service area; and

WHEREAS, as part of the regional stormwater system, one of SEMSWA's missions is to provide water quality facilities for all development within a stormwater basin on a regional scale, regardless of whether onsite water quality improvements are provided at each individual development site; and

WHEREAS, on June 24, 2009, SEMSWA's Board of Directors adopted a System Development Fee (an "SDF") Policy, as amended (referred to herein as "SDF Policy") setting the SDF and Excess Capacity Fee ("ECF") for each basin within its service area and adopting certain procedures and policies for the collection of SDFs by SEMSWA; and

WHEREAS, a regional detention pond was constructed by HBP on Tract A of the Property to provide onsite detention and water quality facilities for the portion of the Property located in the Dove Creek basin and which SEMSWA has determined benefits the regional stormwater system (the "HBP Detention Pond"); and

WHEREAS, the parties hereto desire to establish an agreement whereby SEMSWA shall own Tract A and shall maintain and operate the HBP Detention Pond and related improvements in accordance with the O&M Manual attached hereto as **Exhibit B** and incorporated by reference; and

WHEREAS, the parties further desire to set forth the credits that shall be received by HBP against the SDF and ECF as a result of the construction of the HBP Detention Pond

NOW THEREFORE, in consideration of the mutual advantages accruing to the parties herein, and promises of performance of the obligations contained in this Agreement, the parties hereby agree as follows.

AGREEMENT

1. SDF and ECF. The Property shall be subject to applicable SDF and ECF Fees as set forth in the SDF Policy, as amended from time to time.
2. SDF Credit. In consideration of the costs of construction of the HBP Detention Pond, HBP shall receive a credit of \$147,735 against SDFs and ECFs applicable to the Property which credit may be used by HBP and/or assigned or transferred to purchasers and/or end users of the Property.
3. HBP and the Highfield District agree to the following:
 - a. The onsite stormwater facilities discharge into the regional system at or below historic rates for that portion of the Property draining into Dove Creek.
 - b. The onsite stormwater facilities are perpetually owned and maintained by SEMSWA.
 - c. The SEMSWA will maintain and operate the HBP Detention Pond in accordance with the approved O&M Manual, as amended from time to time. SEMSWA's ability to maintain and operate the HBP Detention Pond is subject to annual budget and appropriations of SEMSWA. No direct or indirect debt or multiple fiscal year financial obligation whatsoever is created by this Agreement.
 - d. Highfield District shall execute a general warranty deed in the form attached hereto as **Exhibit C** to SEMSWA.
 - e. High Field District shall obtain and pay for a title insurance policy issued by Land Title Guarantee insuring SEMSWA's ownership in Tract A, Highfield Business Park, County of Douglas, State of Colorado
4. Miscellaneous Provisions:
 - a. Enforcement of Agreement; Costs. Except as limited herein, the parties hereto acknowledge and agree that this Agreement may be enforced in law or equity, by a decree of specific performance, damages, or such other legal and equitable relief as may be available to either party. The prevailing party in any action to enforce this Agreement shall be entitled to receive reasonable attorneys' fees and costs.

- b. Binding Effect. This Agreement shall be binding on the parties and their successors and assigns.
- c. Notice. Notice shall be considered given when personally delivered or delivered to a nationally recognized overnight courier service and shall be considered received on the earlier of the day on which such notice is actually received by a party or the first business day after such notice is given if sent by overnight courier. A business day is Monday through Friday of each week excluding national holidays on which commercial banks in Denver, Colorado are closed. All notices or other communications required hereunder shall be addressed as follows:

HBP:
Highfield Business Park, LLC
Attention: Stephanie M. Stewart
4725 S. Monaco Street, Suite 205
Denver, Colorado 80237
Facsimile No. (303) 708-8819
sstewart@bradburyproperties.com

SEMSWA:
Southeast Metropolitan Stormwater Authority
Attention: John McCarty
76 Inverness Drive East, Suite A
Englewood, Colorado 80112
Facsimile No. (303) 267-9552

With a copy to:

Edward J. Krisor, Esq.
3900 S. Wadsworth Boulevard, #320
Lakewood, Colorado 80235
Facsimile No. (303) 985-2337

- d. Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the parties.
- e. Assignment. Except as provided for herein, neither this Agreement, nor any of either party's rights, obligations, duties or authority hereunder may be assigned in whole or in part by either party without the prior written consent of the other party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- f. Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, only by an agreement in writing executed

by all parties. No consent of any third party shall be required for the negotiation and execution of any such agreement.

- g. Waiver. The waiver of a breach of any of the provisions of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach by the breaching party of the same or another provision of this Agreement.
- h. Integration. This Agreement contains the entire agreement between the parties and no statement, promise or inducement made by any party or the agent of any party that is not contained in this Agreement shall be valid or binding.
- i. Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.
- j. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Further, the parties hereby agree that the District Court in and for Arapahoe County, Colorado shall have exclusive jurisdiction and venue to determine any disputes under this Agreement.
- k. Headings for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.
- l. Fair Dealing. In all cases where the consent or approval of one party is required before the other may act, or where the agreement or cooperation of either or both parties is separately or mutually required as a legal or practical matter, then in that event the parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on either party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arms length.
- m. Force Majeure. Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the government; war, or terrorism, or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or

facilities by the federal, state, or local government; national fuel shortage; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the party not performing.

- n. No Third Party Beneficiaries. There are no express or implied third party beneficiaries of this Agreement. No third party has any right to enforce this Agreement.
- o. Signatures. This Agreement may be executed in counterparts, and each counterpart will be considered an original. This Agreement may be executed by facsimile signature.

IN WITNESS WHEREOF, the parties hereto have caused their names and signatures to be affixed the date and year first above written.

HIGHFIELD BUSINESS PARK, LLC:

ATTEST:

HIGHFIELD METROPOLITAN DISTRICT:

a quasi municipal corporation and political
subdivision of the State of Colorado

By: _____

Name: _____

Title: _____

SEMSWA:

**SOUTHEAST METROPOLITAN
STORMWATER AUTHORITY**

By _____
Bart Miller, Chairperson

ATTEST:

Ron Weidmann, Secretary

Exhibit A

Legal Description and Map of the Property

Exhibit B
O&M Manual

Exhibit C
General Warranty Deed Form

After recording, return to:
Southeast Metro Stormwater Authority
Attention: Ashley Byerley
76 Inverness Drive East, Suite A
Englewood, CO 80112

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED is made as of this _____ day of November, 2012, between HIGHFIELD METROPOLITAN DISTRICT, a quasi municipal corporation and political subdivision of the State of Colorado whose address is 4725 S. Monaco Street, Suite 205, Denver, Colorado 80237 (“Grantor”) and SOUTHEAST METRO STORMWATER AUTHORITY, a quasi municipal corporation and political subdivision of the State of Colorado, whose address is 76 Inverness Drive East, Suite A, Englewood, Colorado 80112 (“Grantee”).

GRANTOR, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, sells, conveys and confirms unto Grantee, its successors, and assigns forever, all the real property, together with all improvements thereon, located in the County of Douglas and State of Colorado, described as follows:

Tract A, Highfield Business Park, Douglas County, Colorado (the “Property”).

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the above bargained Property, with the hereditaments and appurtenances excepting therefrom, any and all mineral and/or water rights appurtenant to, underlying or otherwise relating to the Property.

TO HAVE AND TO HOLD the Property above bargained and described unto Grantee, its successors and assigns forever. The Grantor, for the Grantor and the Grantor’s heirs and assigns, does covenant, grant, bargain, and agree to and with the Grantee, and the Grantee’s heirs and assigns: that Grantor is well seized of its interest in the Property above described; has good, sure, perfect, absolute and indefeasible estate of inheritance, in law and 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 restrictions except those matters set forth in **Exhibit A** attached hereto and incorporated by reference.

And the Grantor shall and will WARRANT THE TITLE AND DEFEND the above described Property in the quiet and peaceable possession of the Grantee and its successors and assigns, against all and every person or persons claiming the whole or any part thereof.

IN WITNESS WHEREOF, Grantor has executed this General Warranty Deed as of the day and year first above written.

EXHIBIT A

1. EXISTING LEASES AND TENANCIES, IF ANY.
2. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 10, 1897 IN BOOK X AT PAGE 323.
3. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 04, 1893 IN BOOK X AT PAGE 187.
4. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF GREEN ACRES SUBDIVISION RECORDED JUNE 05, 1959 IN BOOK G AT PAGE 7.
5. THE EFFECT OF AMENDMENT TO CERTIFICATE OF ORGANIZATION FOR THE E-470 PUBLIC HIGHWAY AUTHORITY RECORDED DECEMBER 19, 1995 IN BOOK 1307 AT PAGE 235.
6. TERMS, CONDITIONS AND PROVISIONS OF INCLUSION AGREEMENT RECORDED MARCH 05, 1996 IN BOOK 1323 AT PAGE 269, AND AS AMENDED IN INSTRUMENT RECORDED APRIL 2, 2007 UNDER RECEPTION NO. 2007026028.
7. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION #R-996-030 OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY RECORDED MARCH 13, 1996 IN BOOK 1325 AT PAGE 521.
8. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN PERMANENT EASEMENT (SLOPE) GRANTED TO THE E-470 BUSINESS METROPOLITAN DISTRICT RECORDED SEPTEMBER 07, 1999 IN BOOK 1753 AT PAGE 16.
9. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN SLOPE AND CONSTRUCTION EASEMENT AGREEMENT RECORDED FEBRUARY 11, 2002 IN BOOK 2261 AT PAGE 313.

10. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT DEED RECORDED FEBRUARY 11, 2002 IN BOOK 2261 AT PAGE 326.
11. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN STORMWATER FACILITY CONSTRUCTION AND REIMBURSEMENT AGREEMENT RECORDED SEPTEMBER 10, 2002 UNDER RECEPTION NO. 2002092227.
12. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION #R-003-159 RECORDED NOVEMBER 25, 2003 UNDER RECEPTION NO. 2003169117.
13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION #040147 RECORDED MARCH 10, 2004 UNDER RECEPTION NO. 2004024499 AND RECORDED JUNE 7, 2005 UNDER RECEPTION NO. 2005051018.
14. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE GREEN ACRES BUSINESS PARK PLANNED DEVELOPMENT MAP RECORDED DECEMBER 09, 2004 UNDER RECEPTION NO. 2004125456.
15. HIGHFIELD BUSINESS PARK PLANNED DEVELOPMENT FIRST AMENDMENT, AN ADMINISTRATIVE AMENDMENT TO THE GREEN ACRES BUSINESS PARK PD RECORDED MARCH 19, 2007 UNDER RECEPTION NO. 2007022587, SECOND AMENDMENT RECORDED JUNE 1, 2009 UNDER RECEPTION NO. 2009041171.
16. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF HIGHFIELD BUSINESS PARK RECORDED MAY 23, 2007 UNDER RECEPTION NO. 2007041581.
17. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN AVIGATION EASEMENT AGREEMENT RECORDED MAY 23, 2007 UNDER RECEPTION NO. 2007041610.
18. DECLARATION OF PROTECTIVE COVENANTS OF HIGHFIELD BUSINESS PARK, WHICH DOES NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED SEPTEMBER 04, 2007, UNDER RECEPTION NO. 2007070622.
19. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION IMPROVEMENTS AGREEMENT BY AND BETWEEN HIGHFIELD BUSINESS PARK, LLC AND THE BOARD OF COUNTY COMMISSIONERS

OF THE COUNTY OF DOUGLAS, AS EVIDENCED BY FIRST AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT RECORDED SEPTEMBER 04, 2007 UNDER RECEPTION NO. 2007070623.

20. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN STORM WATER AND DETENTION EASEMENT AGREEMENT RECORDED SEPTEMBER 04, 2007 UNDER RECEPTION NO. 2007070626.

21. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION #R-007-143 APPROVING THE SERVICE PLAN OF HIGHFIELD METROPOLITAN DISTRICT RECORDED SEPTEMBER 12, 2007 UNDER RECEPTION NO. 2007072875.

22. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN A158 DOVE VALLEY INTERCEPTOR LINE EXTENSION AGREEMENT ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY RECORDED SEPTEMBER 14, 2007 UNDER RECEPTION NO. B7119892 (ARAPAHOE COUNTY RECORDS).

23. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE HIGHFIELD METROPOLITAN DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED NOVEMBER 21, 2007, UNDER RECEPTION NO. 2007091070.

24. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DOUGLAS COUNTY PLANNING COMMISSION PUBLIC MEETING/HEARING AGENDA REGARDING APPROVAL OF SERVICE PLAN FOR HIGHFIELD METROPOLITAN DISTRICT RECORDED DECEMBER 14, 2007 UNDER RECEPTION NO. 2007096563.

25. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT RECORDED MARCH 04, 2011 UNDER RECEPTION NO. 2011015359.