

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

RESOLUTION 12-13

Authorization to Accept an Easement from Cherry Creek Farm HOA / Goldsmith Gulch Project

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

WHEREAS, Goldsmith Gulch, a regional stormwater conveyance channel, traverses through a parcel known as Outlot A in Cherry Creek Farm Filing No. Two Final Development Plan, which is further described in Exhibit A; and

WHEREAS, Outlot A is owned by Cherry Creek Farm Homeowners Association; and

WHEREAS, a permanent drainage easement on the Property would enable SEMSWA to maintain and construct improvements to the channel more effectively and efficiently; and

WHEREAS, the Private Property Committee of the SEMSWA Board has determined that this drainage way meets several of the criteria set forth in the Private Property Policy; and

WHEREAS, the Private Property Committee has recommended acceptance of the Easement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the acceptance of the Non-Exclusive Drainage Easement from Cherry Creek Farm Homeowner Association attached hereto as Exhibit A.
2. The Board authorizes the Executive Director to record the Non-Exclusive Drainage Easement in the records of the Clerk and Recorder of Arapahoe County, Colorado.

SOUTHEAST METRO STORMWATER AUTHORITY
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

EXHIBIT A

OUTLOT A
CHERRY CREEK FARM FILING NO. TWO
SE1/4 SECTION 22, T5S, R67W OF THE 6TH P.M.
ARAPAHOE COUNTY, COLORADO

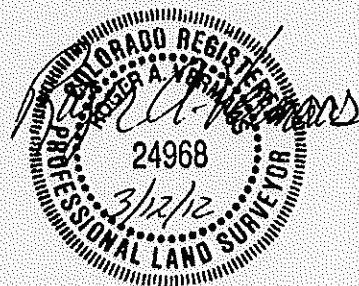
A PARCEL OF LAND LOCATED IN THE SE 1/4 OF SECTION 22, T 5 S, R 67 W OF THE 6TH P.M., BEING ALL OF OUTLOT A, CHERRY CREEK FARM FILING NO. TWO, RECORDED AT RECEPTION NUMBER 1596967, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT A; THENCE ALONG THE PERIMETER OF SAID OUTLOT A, THE FOLLOWING 10 (TEN) COURSES:

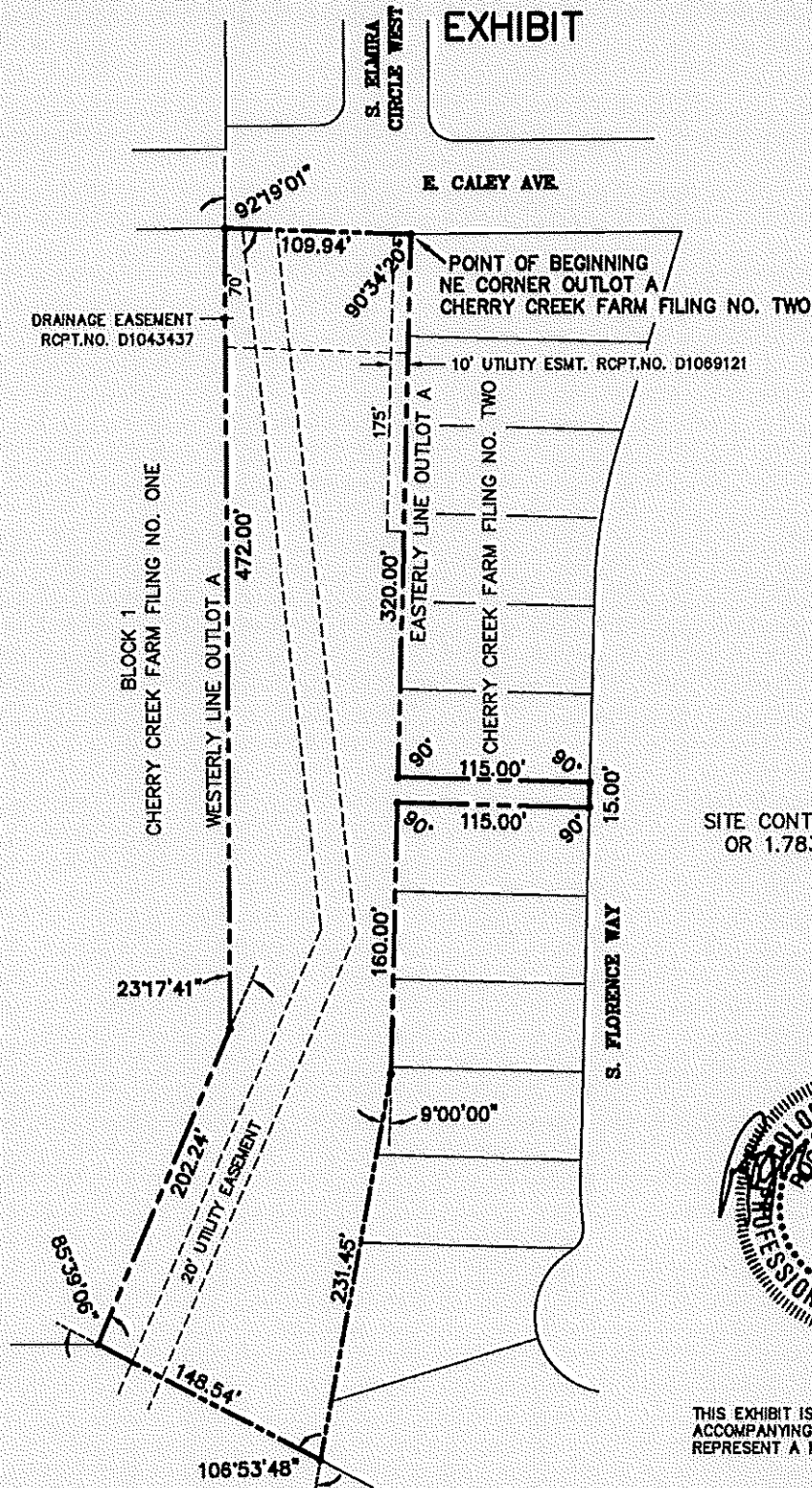
1. SOUTH, 320.00 FEET;
2. ON A DEFLECTION ANGLE TO THE LEFT OF 90°, 115.00 FEET;
3. ON A DEFLECTION ANGLE TO THE RIGHT OF 90°, 15.00 FEET;
4. ON A DEFLECTION ANGLE TO THE RIGHT OF 90°, 115.00 FEET;
5. ON A DEFLECTION ANGLE TO THE LEFT OF 90°, 160.00 FEET;
6. ON A DEFLECTION ANGLE TO THE RIGHT OF 9°00'00", 231.45 FEET;
7. ON A DEFLECTION ANGLE TO THE RIGHT OF 106°53'48", 148.54 FEET;
8. ON A DEFLECTION ANGLE TO THE RIGHT OF 85°39'06", 202.24 FEET;
9. ON A DEFLECTION ANGLE TO THE LEFT OF 23°14'41", 472.00 FEET;
10. ON A DEFLECTION ANGLE TO THE RIGHT OF 92°19'01", 109.94 FEET TO THE POINT OF BEGINNING,

COUNTY OF ARAPAHOE, STATE OF COLORADO.

SAID PARCEL CONTAINS 77,646 SQUARE FEET, OR 1.783 ACRES, MORE OR LESS.

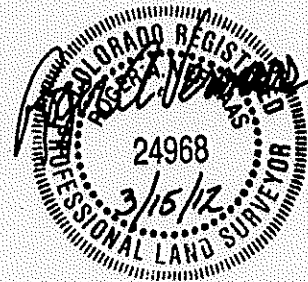


EXHIBIT



1" = 100'

SITE CONTAINS 77,646 SQUARE FEET,
OR 1.783 ACRES, MORE OR LESS.



THIS EXHIBIT IS INTENDED ONLY TO DEPICT THE
ACCOMPANYING LEGAL DESCRIPTION, AND DOES NOT
REPRESENT A MONUMENTED BOUNDARY SURVEY.

OUTLOT A, CHERRY CREEK FARM FILING NO. TWO

ICON

ENGINEERING, INC.

8100 South Alma Street, Suite 300, Englewood, CO 80112
Phone (303) 221-0802 / Fax (303) 221-4018

DRAWN
TPF

JOB NUMBER:

DESIGNED

DATE: 3/15/12

CHECKED
RAV

SHEET 1

Non-Exclusive Permanent Drainage Easement Agreement

This PERMANENT DRAINAGE EASEMENT ("Easement") is granted this _____ day of April, 2012, by Cherry Creek Farm Homeowners Association, a Colorado Nonprofit Corporation whose legal address is c/o Hammersmith Data Management, 5219 DTC Parkway, Suite 900, Greenwood Village, Colorado, 80111 (the "Grantor"), to the Southeast Metro Stormwater Authority, a political subdivision and a public corporation of the State of Colorado, whose legal address is 76 Inverness Drive East, Suite A, 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 Non-Exclusive Permanent Drainage Easement (the "Easement") to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove drainage improvements (the "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"), 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.
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 Improvements made within the Easement, and to remove objects interfering therewith. To the extent practicable, Grantee agrees to give Grantor notice prior to performing routine or emergency maintenance work and sixty (60) days' written notice prior to performing work which would modify existing improvements in the Easement Parcel, and consult with Grantor regarding access routes to perform such work. Grantee further agrees to consult with Grantor or its agents on aesthetic determinations in order to maintain an appearance that is consistent with the community and as required by the Grantor's Declaration of Covenants, Conditions and Restrictions for Cherry Creek Farm as recorded in the real property records of Arapahoe County on October 7, 1976, at Reception No. 1585981, and as may be amended in the future.
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 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 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, or installed on behalf of the Grantor on the Easement Parcel, 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 Easement. Grantor and Grantee agree that existing and replacement irrigation systems, trees, greenbelt paths and bridges of the Grantor do not interfere with Grantee's rights under this 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, however Grantee will make a good faith effort to budget for routine maintenance annually. Notwithstanding anything herein, all easement rights, obligations, limitations and conditions as set forth on the plats for Cherry Creek Farm Filing No. 2, recorded on November 30, 1976 at Reception No. 1596967, Arapahoe County records, shall remain in full force and effect.

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 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.

GRANTOR:

Cherry Creek Farm Homeowners Association

By _____
President

STATE OF COLORADO)
) ss.
County of Arapahoe)

The foregoing **Non-Exclusive Permanent Drainage Easement** was acknowledged before me this _____ day of April, 2012, by _____ as the President and _____ as Secretary of Grantor, Cherry Creek Farm Homeowners Association, on behalf of the Corporation.

Witness my hand and official seal:

Notary Public_____

My commission expires: _____