

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

RESOLUTION 13-20

Approval of Lincoln Executive Center Trail Easement and Authorization of the Executive Director to
Execute the Agreements

WHEREAS, SEMSWA owns the Cottonwood Creek channel within the Lincoln Executive Center development (Property), as further described in **Exhibit A**, attached hereto; and

WHEREAS, the Cherry Creek Vista Park and Recreation District (District) desires to construct a regional pedestrian trail in part across the Property; and

WHEREAS, the easement is restricted to the construction, operation, and use of a 10-foot wide pedestrian trail (Improvement) for use by the general public; and

WHEREAS, the Improvement is the obligation of the District to construct, maintain, and operate at no cost to SEMSWA; and

WHEREAS, the District has agreed, to the extent permitted by law, to defend, indemnify and hold SEMSWA harmless in regard to the construction and maintenance of the Improvement and the use of the Improvement by the general public; and

WHEREAS, the trail has been reviewed by SEMSWA staff for any potential conflicts with the intended stormwater use of the Property, and no conflicts were identified; and

WHEREAS, this District has agreed to construct and maintain the trail in accordance with all applicable SEMSWA permits.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Lincoln Executive Center Trail Easement, attached hereto as **Exhibit B**.
2. The Board authorizes the Executive Director to execute the Easement Agreement with minor non-substantial changes, attached hereto as **Exhibit B**.

SOUTHEAST METRO STORMWATER AUTHORITY
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Resolution 13-20
Page 1 of 2

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

EXHIBIT A

EASEMENT DESCRIPTION

SHEET 1 OF 2


EASEMENT DESCRIPTION

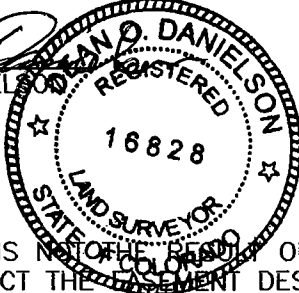
AN EASEMENT 30.00 FEET IN WIDTH OVER A PORTION OF TRACT A, LINCOLN EXECUTIVE CENTER A REPLAT OF FILING NO. 4 LOTS 1, 2, 4, & 5 EXCLUDING LOT 3, AS RECORDED IN THE RECORDS OF ARAPAHOE COUNTY AT RECEPTION NO. 2651491, SITUATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT A; THENCE S 89°59'28" E ALONG THE NORTH LINE OF SAID TRACT A, A DISTANCE OF 86.68 FEET; THENCE S 31°12'55" W A DISTANCE OF 35.08 FEET; THENCE N 89°59'28" W A DISTANCE OF 68.50 FEET TO A POINT ON THE WEST LINE OF SAID TRACT A; THENCE N 00°00'16" E ALONG SAID WEST LINE A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

FOR THE PURPOSE OF THIS DESCRIPTION THE BASIS OF BEARINGS IS THE NORTH LINE OF SAID TRACT A BEING N 89°59'28" W AS SHOWN ON THE RECORDED PLAT.

I, DEAN O. DANIELSON, A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF COLORADO, HEREBY CERTIFY THE ABOVE DESCRIBED DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.


DEAN O. DANIELSON
PLS 16828
8/15/11



THIS EXHIBIT IS NOT THE RESULT OF A MONUMENTED LAND SURVEY. IT IS INTENDED ONLY TO DEPICT THE EASEMENT DESCRIPTION HEREON.

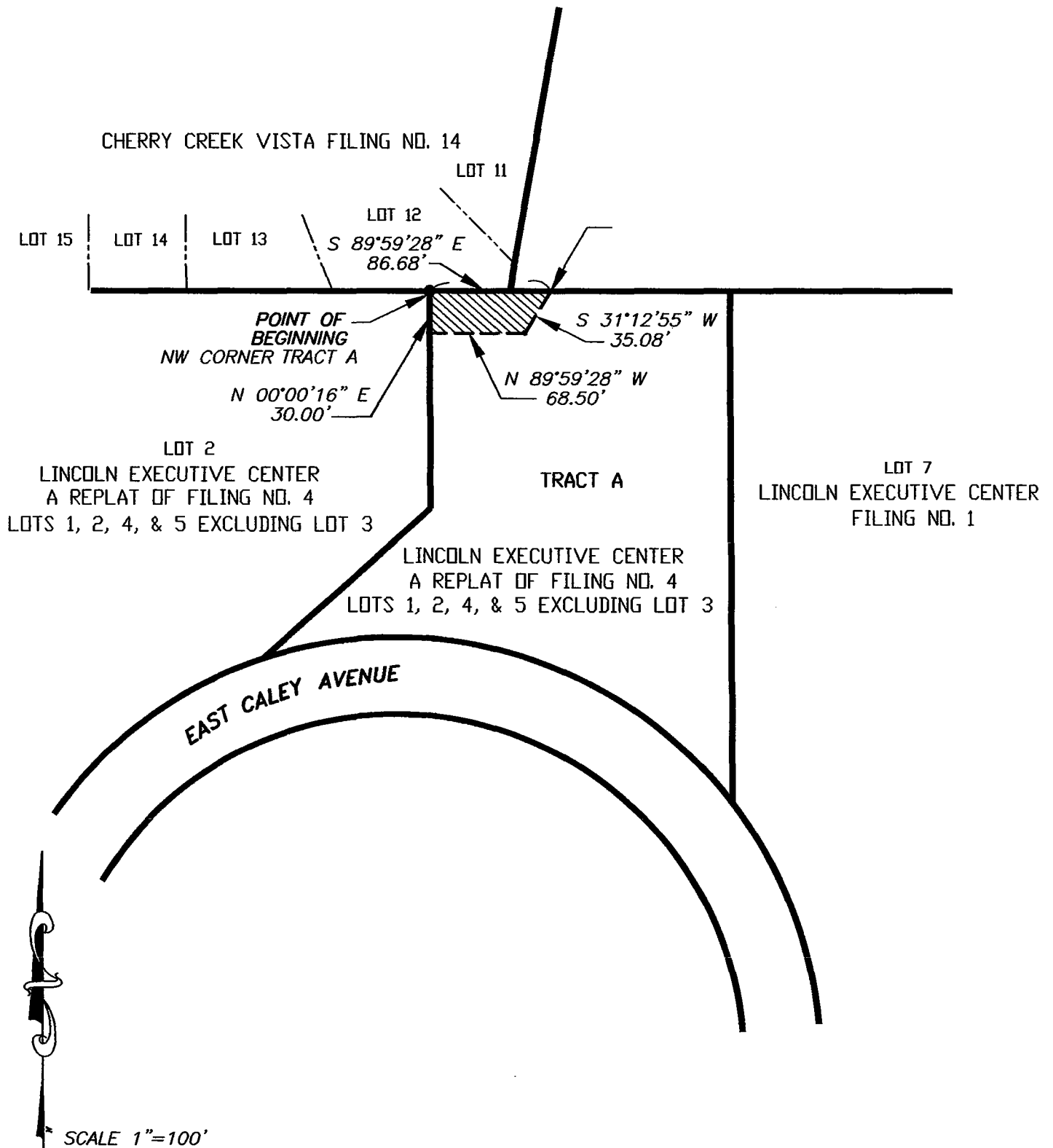


FILE: 1104-113-R-(SEMSWA) SHEET 1 OF 2
DATE: 5/11/11, REVISED: 8/15/11

BELL SURVEYING COMPANY • 500 KALAMATH ST. • DENVER, COLORADO 80204
303-629-0165

ILLUSTRATION FOR EXHIBIT A

SHEET 2 OF 2



EASEMENT DEED

This Easement Deed ("Easement Deed") is made and entered into this ____ day of _____, 2013, by and between SOUTHEAST METRO STORMWATER AUTHORITY ("SEMSWA") a body corporate and politic, whose legal address is 76 Inverness Drive East, Suite A, Englewood, Colorado 80112, (the "Grantor"), and CHERRY CREEK VISTA PARK AND RECREATION 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 are hereby acknowledged, hereby grants and conveys to Grantee and its successors and assigns, subject to the terms and conditions provided herein, a non-exclusive easement *in gross* ("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, and use of a pedestrian trail, along with any above ground and below ground appurtenances related thereto:

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

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 thirty (30) 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 ten (10) foot wide trail and appurtenances thereto ("Improvements") for use by the general public together with the right of ingress and egress over, across, under, and through the Property for the purposes set forth above or incident thereto. The Improvements may be constructed of concrete, crusher-fines, or other generally acceptable trail material, as approved by SEMSWA which approval shall not be unreasonably withheld.

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 and the use of the Improvements by the general public.

6. 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.

7. 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: Cherry Creek Vista Parks and Recreation District
c/o Grimshaw & Haring, P.C.
Attn: James M. Hunsaker
1700 Lincoln Street, Suite 3800
Denver, CO 80203

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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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.

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

16. 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 and their personnel.

[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 _____, 2011, by John A. McCarty as Executive Director of Southeast Metro Stormwater Authority.

Witness my hand and official seal.

My commission expires: _____

Notary Public

**GRANTEE:
CHERRY CREEK VISTA PARK AND
RECREATION DISTRICT**

By: _____

Its: _____

ATTEST: _____

By: _____, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____ as _____ of Cherry Creek Vista Park and Recreation District.

Witness my hand and official seal.

My commission expires: _____

Notary Public