Non-Exclusive Permanent Floodplain And Drainage Easement Agreement

This PERMANENT FLOODPLAIN AND DRAINAGE EASEMENT (“Easement”) is granted this day of \*, 20\_\_, by \* whose legal address is \*\_ (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 South Fairplay Street, 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 floodplain and drainage easement containing the 100 year floodplain of \_\**(e.g., Windmill Creek)*\_\_\_\_\_\_\_\_\_\_(the “Easement”), to construct, reconstruct, install, operate, use, inspect, 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 and the National Flood Insurance Program (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, reconstructing, installing, operating, using, inspecting, maintaining, repairing, replacing and/or removing 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 construction, reconstruction, installation, operation, use, inspection, maintenance, repair, replacement and/or removal 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. Grantor shall protect and preserve the Floodplain and Drainage Easement as Floodplain and a Special Flood Hazard Area (SFHA), and shall restrict uses within the Floodplain and Drainage Easement in accordance with all requirements of the City of Centennial, Colorado Land Development Code. The uses and restrictions are specifically described in the Land Development Code, Article 7, Open Space, Floodplain Management and Environmental Quality.

3. Grantee shall have the right to enter upon the Easement Parcel and to survey, construct, reconstruct, install, operate, use, inspect, maintain, repair, upgrade, replace and/or remove the Drainage Improvements made within the Easement, and to remove objects interfering therewith.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

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

10. In further consideration hereof, Grantor for itself and its transferees and successors in title or assigns, covenants and agrees that it shall not take any action in regard to the Easement Parcel including but not limited to the placing, erecting, storing, installing or permitting any building, structure, fill of soils or other materials, or other above or below ground obstruction in 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.

11. Grantee shall maintain the Drainage Improvements on Grantor's property subject to and on the condition that the Board of Directors of Grantee approves and adequately budgets for such maintenance, neither of which can be guaranteed.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President

STATE OF COLORADO )

) ss.

County of Arapahoe )

The foregoing Non-Exclusive Permanent Drainage Easement was acknowledged before me this \_\_\_\_\_day of \*, 20\_\_, by.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the President and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Secretary of Grantor, \*

Witness my hand and official seal:

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

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_