

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

RESOLUTION 16-16

Authorization to Accept an Easement from the Willow Creek Homeowners Association No. 1

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

WHEREAS, Tract A in Willow Creek - Filing No. 3 (Property) is owned by all of the individual homeowners within the subdivision owning real property; and

WHEREAS, Tract A contains a major tributary channel, the East Tributary to Willow Creek; and

WHEREAS, this Tract A contains an open drainage channel, a storm drainage outfall and a culvert crossing at S. Willow Way; and

WHEREAS, the owner of the Property is responsible for stormwater maintenance and improvements to the open drainage channel and the structures; and

WHEREAS, the open drainage channel and the structures serve the interests of the general public; and

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

WHEREAS, a permanent drainage easement on the property will be conveyed to SEMSWA by The Willow Creek Homeowners Association No. 1, acting in behalf of all individual homeowners within the subdivision owning real property, at no cost; and

WHEREAS, The Willow Creek Homeowners Association No. 1 has requested relief from the responsibility of having to maintain the open drainage channel and the structures.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Board agrees to accept a permanent drainage easement over Tract A in Willow Creek – Filing No. 3 from The Willow Creek Homeowners Association No. 1 and authorizes the Executive Director to record the Permanent Drainage Easement.

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Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast metro Stormwater Authority

By _____
Edward J. Krisor

Permanent Drainage Easement

This clarification to the PERMANENT DRAINAGE EASEMENT ("Easement") is granted this 23rd day of May, 2016, by The Willow Creek Homeowners Association d/b/a The Willow Creek Homeowners Association No. 1, whose legal address is c/o Spectrum Commercial Real Estate Solutions, 1873 S. Bellaire Street, Suite 300, Denver, Colorado 80222 ("The Grantor"), to the Southeast Metro Stormwater Authority, whose legal address is 7437 S. Fairplay Street, Centennial, Colorado 80112 ("The Grantee").

- A. Grantor is the owner of the property referred to as Tract A in Willow Creek - Filing No. 3, Arapahoe County, Colorado.
- B. Easements presently exists over Tract A in Willow Creek - Filing No. 3 for "construction, maintenance and operation of all utilities and related services, and for drainage of surface water and for establishing and maintaining adequate ground water drainage structures and facilities" pursuant to the terms of the plat for Willow Creek – Filing No. 3 filed in the office of the County Clerk and Recorder of Arapahoe County on September 23, 1975, in Book 28, Page 87, at Reception No. 1508854.
- C. Grantee and Grantor desire to clarify the terms of this existing easement.

For and in consideration of the sum of Ten Dollars (\$10.00) 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 Permanent Drainage Easement to construct, reconstruct, install, operate, use, maintain, repair, replace and/or remove 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 as Tract A in Willow Creek - Filing No. 3, Arapahoe County, Colorado, (the "Easement Parcel") pursuant to the following terms and conditions:

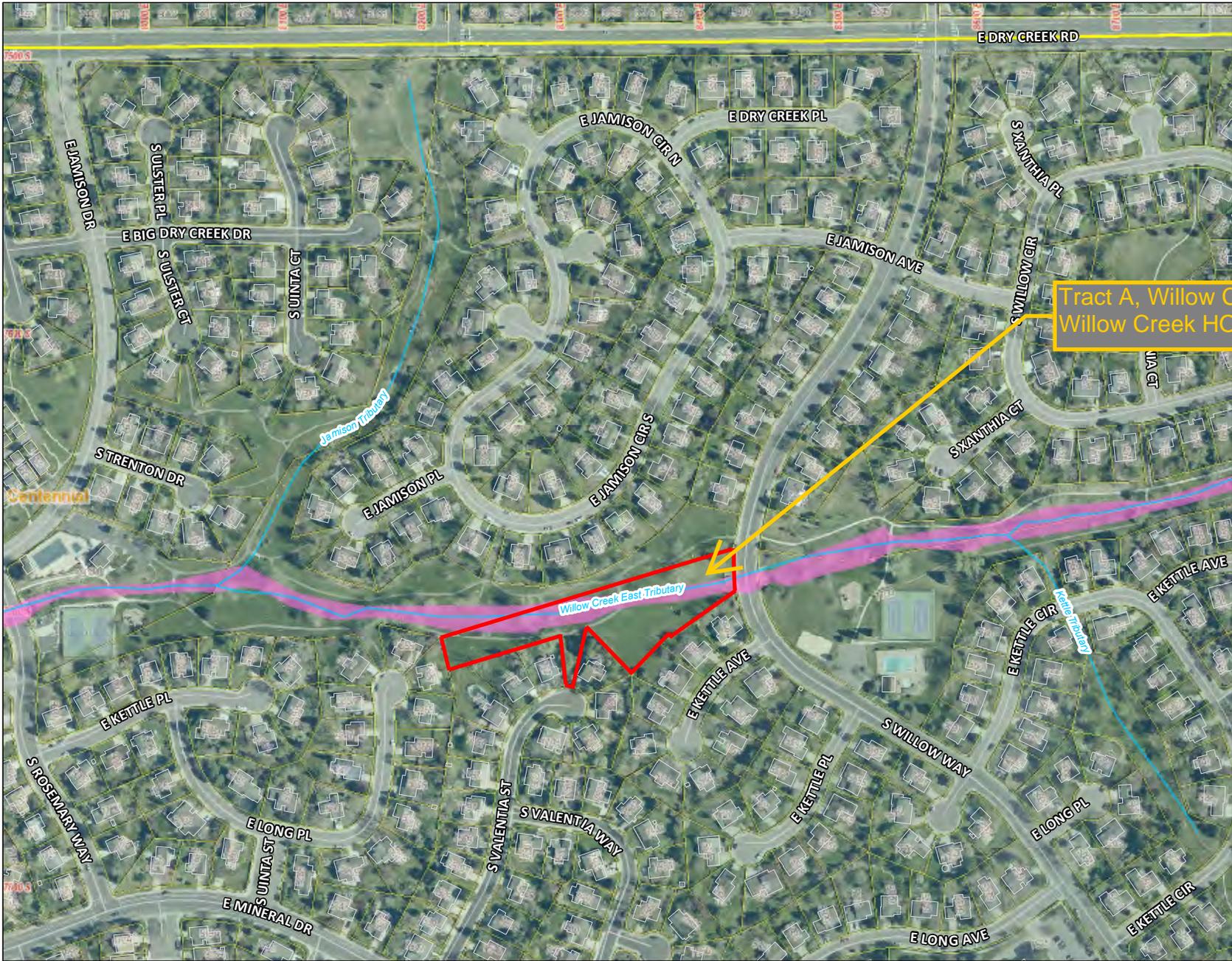
1. The Grantee, its contractors, agents, successors and permitted assigns shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Parcel for any purpose necessary and, at any and all times necessary or convenient, for the full enjoyment of the rights granted it in the Permanent Drainage Easement.

2. The Grantee, its contractors, agents, successors and permitted assigns, 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 Permanent Drainage Easement, and to remove objects interfering therewith.
3. 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 drainage improvements. The Grantor shall not take any action which would impair the lateral or subjacent support for the drainage improvements.
4. The Grantee shall have the right and authority to assign to any appropriate local governmental entity, or to any public utility provider, any and all rights to use, and all rights and obligations associated with, the Permanent Drainage Easement as are granted to and accepted by the Grantee herein.
5. The Grantee agrees that at such time and in the event that the Permanent Drainage Easement described herein be abandoned by the Grantee and any assignee, such Permanent Drainage Easement shall terminate and the real property interest represented by such Permanent Drainage 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, 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 Permanent Drainage 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, for itself and its transferees and successors in title or assigns, 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 PERMANENT DRAINAGE EASEMENT, will be placed, erected, or installed on behalf of the Grantor on the Easement Parcel or permitted by Grantor 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 PERMANENT DRAINAGE 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. Notwithstanding anything herein, all easement rights and obligations as set forth on the plat for Willow Creek - Filing No. 3, recorded on September 23rd, 1975 at Reception No. 1508854, Arapahoe County records, shall remain in full force and effect.

[SIGNATURE ON FOLLOWING PAGE]



Floodplain Map

Tract A, Willow Creek Fil. No. 3

Tract A, Willow Creek Filing No. 3
Willow Creek HOA No. 1

- Legend**
- PMR 2014 Piney, Cottonwood, Willow
ZONE
- A, AE, AH, AO, 100 YR
 - AE, FLOODWAY
 - Shaded X, 500 YR
 - Approximate Floodplains (130 Ac)



Date: 6/9/2016

Data Description:
-Floodplains: FEMA
-Aerial Photos: Spring 2014