

DEED OF CONSERVATION EASEMENT

[Lee Gulch Property]

NOTICE: THIS PROPERTY HAS BEEN ACQUIRED IN PART WITH GRANT #08675 ("GRANT") FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND ("BOARD") AND WITH FUNDS FROM THE ARAPAHOE COUNTY OPEN SPACE FUND. THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT is made this 17 day of June 2009, by the CITY OF LITTLETON, a Colorado municipal corporation, with an address of 2255 West Berry Ave., Littleton, Colorado 80165 ("Grantor"), in favor of South Metro Land Conservancy, a Colorado nonprofit corporation, having its address at P.O. Box 456, Littleton, Colorado 80160 ("Grantee").

RECITALS:

A. Grantor is the sole owner in fee simple of five and one half (5.44) acres, more or less of certain real property in Arapahoe County, Colorado, more particularly described in Exhibit A attached hereto and generally depicted on the map attached hereto as Exhibit B, both of which are incorporated herein by this reference (the "Property").

B. **Conservation Purposes.** According to Section 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations, the Conservation Purposes of a qualified conservation contribution must include one or more of the following: (1) to preserve land for outdoor recreation by or education of the general public; (2) to protect relatively natural habitat of fish, wildlife or plants; (3) to preserve open space; and (4) to preserve historically important land or structures. The Conservation Purposes set forth in this Section and referred to hereafter in this Deed are collectively referred to as the "Conservation Values." The Property possesses certain natural, aesthetic, open space, educational, and recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of the South Denver Metro Region, Arapahoe County, and the people of the State of Colorado. In particular the Property will provide public access for outdoor recreation and trail connections to the South Platte River valley for the use and enjoyment of the general public. Specifically, the Conservation Values of the Property are as follows:

Outdoor recreation and education of the general public [[§ 1.170A-14(d)(2)]. The Property will provide public access for passive outdoor recreation and education, and trail connections to the Lee Gulch trail and Mary Carter Greenway for the use and enjoyment of the general public.

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property is located within the South Platte River valley, which is a major river basin for Colorado. The South Platte River serves as a primary wildlife corridor in the Denver metropolitan area. The Property is primarily grassland, woodland, and shoreline habitat associated with the South Platte River and its

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tributaries. The Property also serves as wildlife habitat for several species including but not limited to coyote, fox, skunk, raccoon, beaver, raptors, migratory songbirds, small rodents, and deer.

Open Space [§ 1.170A-14(d)(4)]. The Property qualifies as Open Space because it is being preserved for the scenic enjoyment of the general public and pursuant to a clearly delineated federal, state or local governmental conservation policy and will yield a significant public benefit.

Scenic enjoyment. The Property adds to the scenic character of the local landscape including the South Platte River basin and, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A large portion of the Property is visible to the general public from Santa Fe Drive (State Highway 85), Lee Gulch trail, and the South Platte River trail (Mary Carter Greenway), which is open to and actively utilized by residents of Arapahoe County and the State of Colorado. The Property also provides the opportunity for the general public to view the Front Range of the Rocky Mountains, and serves as an overlook to the valley, providing significant opportunities year-round to view migratory waterfowl, raptors and songbirds below the Property, from a comfortable distance, in the large pond, located immediately west of the Property, and in the native tree groves and surrounding habitat along the riverbank of the South Platte River, which is also located immediately west of the Property.

Buffering and expansion of existing publicly-owned open space. The Property is immediately surrounded to the north and west by previously dedicated public open space, which is also owned by the Grantor. Protection of the Property enhances the conservation values of the greater area by expanding, buffering and establishing a contiguous landscape of managed open space.

Clearly delineated government policy.

Arapahoe County has recognized the importance of the preservation of fragile ecosystems, natural areas, scenic vistas, and wildlife habitats and corridors to enhance the quality of life of the citizens of the County. Specifically, the Arapahoe County Comprehensive Plan, adopted June 19, 2001, the Natural and Cultural Resources and the Environment Policies 1.2 and 1.3, provide in part that the County desires to "conserve wildlife habitat and corridors;" "maintain significant views and ridgelines;" "support agricultural activities;" and "conserve prime agricultural lands."

The City of Littleton COMPLAN contains several open space and natural features goals and policies. Goal A seeks to "preserve and enhance the major natural features in the Santa Fe Corridor [including...] Lee Gulch, South Platte River, and South Platte Park." Policy 1 under this goal further states, "preserve the presence and visibility of, and provide visual connections to the foothills/mountains and South Platte River corridor. Significant opportunities to accomplish this occur at: [...] Lee Gulch, [...]. Policy 2 states that the quality of these open spaces and natural features [should be preserved] utilizing selected acquisition, increased setbacks and/or land use controls."

Significant public benefit. There is a foreseeable trend of commercial and/or residential development in the immediate vicinity of the Property. If the Property were to be sold

and developed instead of being protected by this Easement (defined below), there is a strong likelihood that it would contribute to a degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

C. The voters of Arapahoe County, Colorado, by approval of a referred measure on November 4, 2003, authorized the imposition of a sales and use tax for the purposes set forth in Arapahoe County Resolution Number 030381, including, but not limited to, the acquisition of open space or interests in open space, the development of trails, environmental education and passive outdoor recreation.

D. Grantor intends that the Conservation Values of the Property be preserved and protected in perpetuity, and that any uses be prohibited that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of this Easement or with Arapahoe County Resolution Number 030381.

E. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

F. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, whose primary purpose is the preservation of natural areas within the urban landscape to foster open space, scenic, and recreational opportunities and ecological well-being.

G. Grantee is also a charitable organization as required under C.R.S. § 38-30.5-101, *et seq.*, which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, and other uses or conditions consistent with the protection of open land in Colorado.

H. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the State Board of the Great Outdoors Colorado Trust Fund (the "Board"), by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance. Specifically, this Property has been recently acquired as part of the South Platte Greenway Legacy Project which seeks to increase trail connectivity in the region, enhance the recreational experience along the Greenway, and conserve open space in the South Metro Region.

I. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to further the governmental policies stated herein by preserving and protecting the Conservation Values of the Property in perpetuity for the benefit of this and future generations;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in gross, in perpetuity, over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. The purpose of this Easement is to preserve and protect the Conservation Values of the Property, and to ensure that the Property is used in a manner consistent with this Easement and with Arapahoe County Resolution Number 030381, in perpetuity. To achieve this Purpose, Grantor intends to convey this Deed of Conservation Easement to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever. Subject to the purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property that do not substantially diminish or impair the Property's Conservation Values and to prohibit any use of the Property that will substantially impair or interfere with protecting the Property's Conservation Values. It is the intent of the Grantor to maintain the Property as primarily open space. Specifically, it is Grantor's intent to preserve and, where appropriate, to restore and enhance certain habitat values and natural attributes, scenic qualities, and outdoor recreational opportunities available to the general public.

2. Baseline Inventory: A written report has been prepared, reviewed, and approved by both parties, which documents the existing condition of the Property (the "Baseline Inventory Report"). A copy of the Baseline Inventory Report shall be kept on file with both parties and by this reference made a part hereof. The parties further agree that, in the event a controversy arises with respect to the condition of the Property as of the date of this grant, or compliance with or violation of any term or provision of this Easement, the parties shall not be precluded from using evidence in addition to the Baseline Inventory Report to assist in resolving the controversy.

3. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- a. To preserve and protect the Conservation Values of the Property;
- b. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor;
- c. To prevent any activity on or use of the Property that is inconsistent with the language or purpose of this Easement; and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent use.

4. Reserved Rights. Grantor reserves to itself, and to its agents, contractors, successors, and assigns, all rights to engage in the following uses of the Property and all activities reasonably incidental thereto provided that all uses of the Property shall be consistent with the purpose of this Easement and shall not substantially diminish or impair the Conservation Values of the Property. Any structures or improvements in this paragraph 4 are subject to the approval of the Grantee and will, with the exception of paragraph 4c, 4d, 4f, and 4g, be permitted only within an Improvement Envelope, as described in paragraph 4b.

a. The use and enjoyment of the Property by the general public for open space, environmental education and non-commercial, non-motorized passive outdoor recreational activities. For purposes of this Easement, the term "passive outdoor recreational activities" shall mean and include walking, running, biking, fishing, horseback riding, picnicking, relaxing, photography, wildlife and scenery viewing, and other similar activities, but shall specifically not include sports fields/courts or recreation centers.

b. To build and use minor structures within the Improvement Envelope, including picnic tables, informational kiosks, regulatory and interpretive signage and other minor structures reasonably appropriate for environmental education, maintenance of the Property or to facilitate passive outdoor recreational activities and use of adjacent trails. Prior to the placement or construction of any such minor structures, Grantor shall prepare a master plan ("Master Plan") that sets forth the size and location of the Improvement Envelope and the type, size and location of any minor structures proposed to be constructed or placed within the Improvement Envelope. The Master Plan shall be approved in writing by Grantee and a copy shall be provided to the Board. The combined square footage of the Improvement Envelope and the parking area described in paragraph 4g will not exceed 10% of the square footage of the entire Property. After approval of the Master Plan and the location of the Improvement Envelope, Grantor agrees to prepare an amendment to this Easement to document the location of the Improvement Envelope with a surveyed legal description, consistent with paragraph 26(l).

c. To construct, repair, maintain, and use trails, trailheads, and associated benches and signage in accordance with the Master Plan and the Management Plan (defined below).

d. To erect fencing for resource and recreation management purposes subject to reasonable limits set forth in the Master Plan.

e. To remove and manage noxious and nuisance weeds.

f. To install security lighting as necessary for the safety and welfare of recreational users, as long as such lighting shall not adversely impact wildlife or create adverse impacts upon night sky viewing on the Property or adjacent properties.

g. To construct and use a "parking area" as reasonably necessary to facilitate access to the Property for the uses allowed by this Paragraph 4. The parking area shall be limited to an area approximately 4,000 square feet in size located on the southeast corner of the Property, as shown in Exhibit B. The final boundaries of the parking area shall be set forth in the Master Plan.

h. To manage wildlife under circumstances where public health and safety are in jeopardy and for natural resource purposes in cooperation with the Colorado Division of Wildlife. Grantor may allow trapping as deemed necessary for permitted wildlife management goals, and/or to study threatened or endangered species or species proposed for listing; provided, however, that wildlife management on the Property shall not impair or significantly impact the Conservation Values, nor interfere with the public recreation use of the Property.

i. To stabilize embankments along Lee Gulch and/or to otherwise prevent control or manage soil erosion on the Property.

j. To maintain the existing driveway along the southeast edge of the Property for maintenance and management.

5. Prohibited and Restricted Uses. Any use of the Property not expressly allowed under Paragraph 4 of this Easement ("Reserved Rights") or not otherwise consistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted in the manner described below:

a. Development Rights. Grantor hereby grants to Grantee all development rights except as otherwise expressly reserved herein, and the parties agree that such rights are hereby released, terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise or used for the purpose of calculating permissible lot yield of the Property or any other property.

b. Construction of Buildings and Other Structures. The construction of any building, structure or other improvement is prohibited, except as may be allowed under Paragraph 4 above. No residential or commercial buildings, structures, or improvements shall be permitted.

c. New Structures. Construction of new structures is prohibited except for construction of those structures consistent with Paragraph 4(b) above.

d. Storage. Storage of materials is prohibited except for storage of certain materials reasonably necessary to facilitate the use of the Property for the uses allowed by Paragraph 4, for a reasonable period of time to facilitate construction and maintenance of the Property.

e. Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process, is prohibited.

f. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Commercial timber harvesting on the Property is prohibited. The cutting of any trees shall be conducted in a manner that does not impair the Property's Conservation Values or other significant conservation interests.

g. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited.

h. Paving and Trail Construction. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material except for the construction of trails consistent with Paragraph 4 above and the construction of a parking lot for uses consistent with the passive outdoor recreational and open-space uses of this Property and access to adjacent trails. The parking lot shall not exceed the parameters outlined in paragraph 4 and shall be located in accordance with the Master Plan and in a manner that minimizes the

impacts on the Conservation Values of the Property. Any paving permitted under this paragraph shall be completed in accordance with the Master Plan and the Management Plan. No paving shall occur without the prior written approval of Grantee. Grantee shall give such permission within a reasonable time, unless Grantee determines that the proposed paving or covering of the soil, or the location of any road or trail, will substantially diminish or impair the Conservation Values of the Property or is otherwise inconsistent with this Easement.

i. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals is prohibited. Trash containers used on the Property shall be wildlife resistant to prevent potential human-wildlife conflicts.

j. Motorized Vehicles. Motorized vehicles may only be used in a manner that does not substantially diminish or impair the Conservation Values of the Property. If motorized vehicles are used for maintenance in a manner that diminishes the Conservation Values, Grantor agrees, at its sole expense, to restore and promptly and diligently re-vegetate the Property with native seed or vegetation. Off road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited. Nothing in this paragraph is intended to prohibit the use of motorized vehicles for any other use that is permitted under this Easement.

k. Commercial or Industrial Activity. No commercial or industrial uses shall be allowed on the Property.

l. Signage or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property. Grantor shall erect and maintain one or more signs visible to the public, identifying the Board and Arapahoe County's Grants and investments in this Property to the public. Grantor may erect signs displaying environmental education related language and graphics, and other relevant interpretive signage. Grantor will consult with Grantee on the final signage parameters before installation.

m. Sports Fields/Courts. The Property shall not be used for sports fields or courts.

6. Five-Year Management Plan. The Property shall be operated and managed in accordance with a land management plan that is designed to protect the Conservation Values of the Property ("Management Plan"). The Management Plan shall be prepared by the Grantor and delivered to the Grantee within one year of the date of this Deed and shall be updated at least every five years. Grantor and Grantee must approve the final language of the Management Plan before it is adopted.

Grantor agrees that any vegetation used or planted on the Property shall be native to the South Platte corridor in Colorado.

7. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the

activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

8. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantors' written request therefore, in accordance with the notice requirements set forth in Section 7 above. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the language or purpose of this Easement.

9. Enforcement. If Grantee finds what it believes is a violation of this Easement, Grantee shall immediately notify Grantor and the Board in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (a) restore the Property to its condition prior to the violation or to take such other action as may be reasonable or necessary to eliminate the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. Except that, if in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action without resorting first to mediation. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

10. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorney fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor.

11. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. § 38-41-119, et seq.

12. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

13. Access. Grantor shall permit the general public to access the Property on such terms and conditions as Grantor deems appropriate.

14. Restoration and Maintenance. Grantor shall maintain the Property in good condition and in a manner consistent with the Conservation Values.

15. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, restoration, operation, upkeep, and maintenance of the Property, including weed control and eradication and including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

16. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and the Board, and their respective members, directors, officers, employees, agents, and contractors, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraph 9 herein; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee or the Board, nor shall Grantee or the Board have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

17. Real Property Interest. This Easement constitutes a real property interest immediately vested in Grantee. Further, it is the parties' intent that this interest shall "run with the land," and shall be enforceable against any and all subsequent owners of the Property or successors or assigns of Grantor.

18. Condemnation or Other Extinguishment. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other party and the Board in writing when it first learns of such circumstances. Grantee shall be entitled to compensation in accordance with applicable law, after the satisfaction of prior claims, from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or any portion of the Property subsequent to such termination or extinguishment. Grantee's compensation shall be determined by multiplying the fair market value of the Property as unencumbered by the Easement (minus any increase in value after the date of this Easement attributable to improvements) by the ratio of the value of the Easement to the value of the Property determined as of the date of this grant.

The Board shall be entitled to receive 58% of Grantee's compensation, and Arapahoe County (hereinafter "the County") shall be entitled to receive 8% of Grantee's compensation, which Grantee shall promptly remit to the Board and the County.

19. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that (a) is authorized to acquire and hold conservation easements under Colorado law, (b) agrees to assume the responsibility imposed on Grantee by this Easement, and (c) is approved in writing as a transferee by the Board in its sole discretion. Grantee shall provide the Board, the County and Grantor with a written request to assign the Easement at least forty-five (45) days prior to the date of the assignment transaction. Prior to making any final determination hereunder, the Board shall consult with the County and Grantor. The Board may disapprove of the transfer for any reason, including but not limited to, the holder's desire to sell its interest in the Property.

a. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee, but Grantor or the Board has refused to approve the transfer, a court with jurisdiction shall transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed, provided that Grantor and the Board shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

b. The Board, the Grantor and the County shall each have the right, with the concurrence of the others, to require Grantee to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist or becomes unqualified to hold the Easement, or if for any reason is unable or unwilling to enforce the terms and provisions of this Easement. If Grantee ceases to exist prior to an assignment of this Easement, then the Easement shall automatically revert to an organization designated by the Board, Grantor and the County, in agreement with each other, that is a) is authorized to acquire and hold conservation easements under Colorado law, and (b) agrees to assume the responsibility imposed on Grantee by this Easement.

20. Subsequent transfers. Grantor shall incorporate the terms and conditions of this Easement in any deed or other legal instrument by which it divest itself of any interest in all or a portion of the Property, except conveyance of a leasehold interest that is no longer than one year in duration and is otherwise consistent with the terms of this Easement. Grantor further agrees to give written notice to Grantee and the Board of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

21. Additional Board Refund. The Board's Grant will provide partial consideration for Grantor's acquisition of fee title to the Property, associated water rights, and/or partial real estate interest in the Property above and beyond the Easement; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the Property or associated water rights ("Sale"), excluding any lease of the Property or the water rights to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant,

plus administrative costs (the "Additional Board Refund"), in addition to any payment that the Board may be entitled to receive under Paragraph 16 above.

a. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale, which shall be defined as the fair market value of the property being sold in the Sale, minus direct transaction costs ("Net Proceeds"). The Additional Board Refund shall be determined by: a) first dividing the Board's Grant amount by the original purchase price for fee title to the Property; b) then by multiplying the resulting ratio by the Net Proceeds; and c) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale. The Additional Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale.

b. Possible Exception to Refund Requirement. If a Sale occurs to a third party which is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board. (For example, if the Grantor proposed that the Grant project would include public access to the Property, and the Sale will result in substantially the same amount and type of public access, the Board will deem that a material change in the Grant project's scope has not occurred, and Grantor shall not be required to pay the Board an Additional Board Refund, unless another aspect of the Grant project has changed that reduces the Grant project's scope from that of the original Grant as approved by the Board.)

22. Notices. Any notice, demand, request, consent, approval, or communication that either party or the Board is required to give to the other in writing shall be either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

City Manager
City of Littleton
2255 West Berry Ave.
Littleton, Colorado 80165

To Grantee:

South Metro Land Conservancy
P.O. Box 456
Littleton, Colorado 80160

with a copy to:

Arapahoe County Attorney
5334 S. Prince St.
Littleton, CO 80166

To the Board:

Executive Director
State Board of the Great Outdoors Colorado Trust Fund
1600 Broadway, Suite 1650
Denver, CO 80202

or to such other address as either party or the Board from time to time shall designate by written notice to the other.

23. Grantor's Title Warranty. Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through, or under Grantor.

24. Subsequent Liens on the Property. No provisions of this Easement shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Easement.

25. Recording. Grantee shall record this instrument in a timely fashion in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Easement.

26. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. §38-30.5-101, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

f. Joint Obligation. If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

g. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur and the parties have also obtained the prior written consent of the Board approving such merger of estates or interests.

h. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Termination of Rights and Obligations. Provided that a transfer is permitted by this Deed, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

j. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

k. No Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor, Grantee, the County, and the Board and their respective successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor, Grantee, the County, and the Board, or their successors and assigns.

l. Amendment. If circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee may jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws; and provided, further, that the prior written approval of the Board shall be required. Any amendment must be consistent with the conservation purposes of this Easement and shall not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of the County in which the Property is located.

m. Change of Conditions. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Easement.

n. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoors Colorado Trust

Fund, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

o. Authority to Execute. Each party represents to the other that such party has full power and authority to execute, deliver, and perform this Deed, that the individual executing this Deed on behalf of said party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first written above.

CITY OF LITTLETON

SOUTH METRO
LAND CONSERVANCY

By: [Signature]

By: [Signature]

Name: [Signature]

Name: Heather Poe

Title: Mayor

Title: President

Date: 6/16/09

Date: 06-16-09

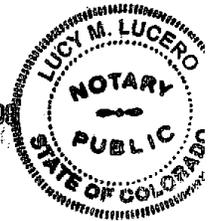
[acknowledgments]

City Clerk Attest
Wendy Neffner

Subscribed and sworn to
before me this 16th day of
June, 2009.
Lucy M. Lucero
Notary Public

APPROVED AS TO FORM
By: [Signature]
Littleton City Attorney
Date

My Commission Expires 7/02/09



UNOFFICIAL COPY

**Exhibit A
Property Description**

A PARCEL OF LAND SITUATED IN THE SE 1/4 OF SECTION 20, T.5S., R.68W., OF THE 6TH P.M., CITY OF LITTLETON, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING A PART OF LOT 1, BLOCK 1 SANTA FE HEIGHTS SUBDIVISION FILING NO. 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SAID LOT 1; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 1 THE FOLLOWING THREE (3) COURSES:

1. THENCE S89°02'25"W A DISTANCE OF 391.21 FEET;
2. THENCE S44°02'25"W A DISTANCE OF 172.00 FEET;
3. THENCE S89°05'14"W A DISTANCE OF 520.05 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 1;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 1 THE FOLLOWING TEN (10) COURSES:

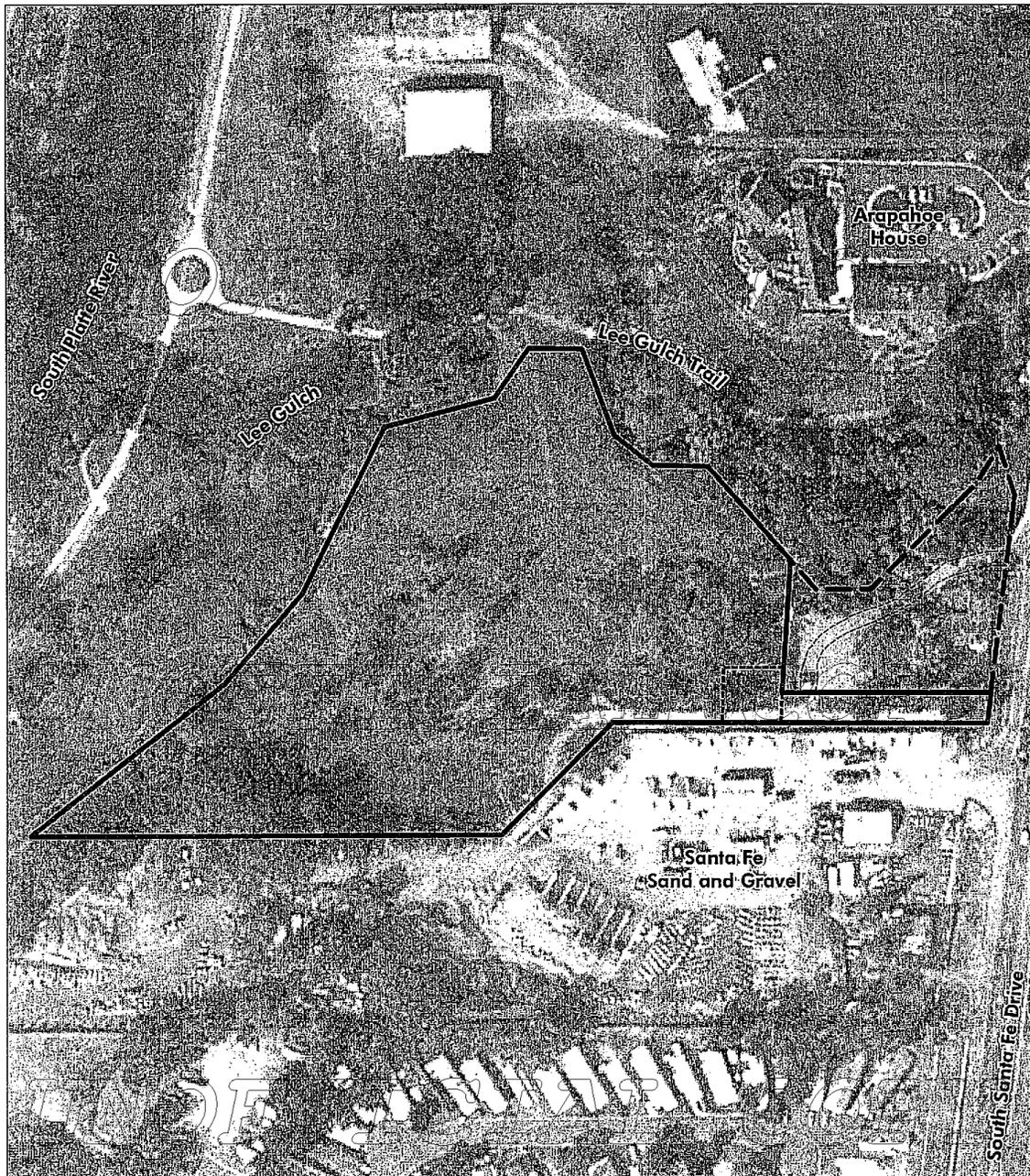
1. THENCE N50°50'15"E A DISTANCE OF 259.67 FEET;
2. THENCE N39°42'00"E A DISTANCE OF 135.00 FEET;
3. THENCE N25°24'08"E A DISTANCE OF 200.00 FEET
4. THENCE N74°49'20"E A DISTANCE OF 120.00 FEET;
5. THENCE N34°47'37"E A DISTANCE OF 68.72 FEET;
6. THENCE N89°02'25"E A DISTANCE OF 59.29 FEET;
7. THENCE S20°51'50"E A DISTANCE OF 99.04 FEET;
8. THENCE S51°57'15"E A DISTANCE OF 55.00 FEET;
9. THENCE N90°00'00"E A DISTANCE OF 60.00 FEET;
10. THENCE S42°20'51"E A DISTANCE OF 134.48 FEET;

THENCE S01°11'06"W A DISTANCE OF 146.48 FEET; THENCE N89°02'25"E PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 1 A DISTANCE OF 220.59 FEET TO A POINT LYING ON THE EASTERLY LINE OF SAID LOT 1 AND THE WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 85 (SOUTH SANTA FE DRIVE); THENCE S06°54'47"W ALONG SAID EASTERLY LINE AND SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 30.52 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS (236,721 SQUARE FEET) 5.4344 ACRES.

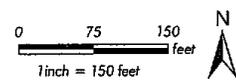
DATE PREPARED: MAY 18, 2009
DATE OF LAST REVISION: MAY 19, 2009
PREPARED BY: BRETT L. MILLER, PLS NO. 27609
FOR AND ON BEHALF OF
ENGINEERING SERVICE COMPANY
1300 SOUTH POTOMAC STREET, SUITE 126
AURORA, COLORADO 80012
PHONE: (303)337-1393

Exhibit B



Lee Gulch Property

-  Littleton Parcel
-  South Suburban Parcel
-  Access Easement
-  Parking Area



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