

RESOLUTION NO. 81-19

A RESOLUTION AUTHORIZING THE USE OF EMINENT DOMAIN TO ACQUIRE REAL PROPERTY INTERESTS OWNED BY GOETSCH PEACOCK, LLC FOR THE COTTONWOOD CREEK DETENTION BASIN PR-2 PROJECT

WHEREAS, the City of Colorado Springs ("City"), by and through its Department of Public Works and its Stormwater Enterprise, provides public roads, bridges, stormwater infrastructure and other works and ways, as authorized by Article 1, Section 1-20(d) of the Charter of the City of Colorado Springs; and

WHEREAS, the City entered into an Intergovernmental Agreement with Pueblo County, Colorado, on April 27, 2016 ("IGA") in which the City agreed to fund stormwater infrastructure and capital projects within an area that includes the City; and

WHEREAS, the IGA identifies the Cottonwood Creek Detention Basin PR-2 Project (the "Project") as a high priority project; and

WHEREAS, the Project consists of capital improvements to stormwater infrastructure for the purpose of managing stormwater flows, essential for the public health, safety and welfare of the City, which is a valid and necessary public purpose; and

WHEREAS, the Project necessitates removal of the existing Cowpoke Bridge and construction of a new crossing over Cottonwood Creek at Tutt Boulevard; and

WHEREAS, by Resolution 6-19 dated January 22, 2019, City Council authorized the acquisition of certain real property from Heriberto Lopez and Blanca F. Magallan Velasquez for \$100,000 for construction of the Project; and

WHEREAS, the City acquired the real property as described in deed dated January 28, 2019 from Heriberto Lopez and Blanca F. Magallan Velasquez to the City, attached hereto as Exhibit A, for the purpose of constructing the Project (the "City Property"); and

WHEREAS, Goetsch Peacock, LLC owns two easements, attached hereto as Exhibit B and Exhibit C (the "Interests"), which are encumbrances on the City's title to the City Property; and

WHEREAS, acquisition of the Interests is necessary for the construction of the Project because the terms of the Interests restrict the City's construction of the Project on the City Property; and

WHEREAS, despite attempts to negotiate an amicable acquisition of the Interests of Goetsch Peacock, LLC in the City Property, the City has been unable to negotiate an agreement for acquisition of the Interests; and

WHEREAS, pursuant to the provisions of Article XX, Section 1 of the Colorado Constitution and the City Charter, the City is empowered to acquire property interests within or without its territorial limits by lease, purchase, gift, bequest, dedication, or other suitable means of conveyance, or through institution of eminent domain proceedings, for all interests necessary for the City; and

WHEREAS, negotiations with Goetsch Peacock, LLC have reached an impasse and the City has an imminent need to unencumber the City Property of the Interests in order to allow the Project to proceed as scheduled and to avoid delays which could have a significant adverse impact on the City of Colorado Springs.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**


Section 1. City Council hereby finds it to be in the interest of the public health, safety, and welfare, and that the City has a need to, and it is necessary to, acquire all easement interests of Goetsch Peacock, LLC in the City Property for the public purpose of constructing the Project.

Section 2. The City Attorney is hereby authorized to take all action necessary to acquire the easement interests of Goetsch Peacock, LLC in the City Property and to seek immediate relief by a voluntary Possession and Use Agreement, eminent domain, or other appropriate proceedings.

Section 3. This Resolution shall be in full force and effect immediately upon its adoption.

DATED at Colorado Springs, Colorado this 27<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_  
Council President

ATTEST:   
  
Sarah B. Johnson, City Clerk

D.F. #0.00

GENERAL WARRANTY DEED

HERIBERTO LOPEZ and BLANCA F. MAGALLAN VELASQUEZ, whose address is 6045 Cowpoke Road, Colorado Springs, CO 80924, ("Grantor"), for the consideration of ninety nine thousand one hundred twenty two and no/100 Dollars (\$99,122.00) paid, does hereby grant and convey to the CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation, whose street address is 30 South Nevada Avenue, Suite 502, Colorado Springs, Colorado 80903, County of El Paso, State of Colorado, ("Grantee"), the following real property situated in the City of Colorado Springs, El Paso County, in the State of Colorado, to wit:

The property legally described on Exhibits A-1, A-2, B-1 and B-2 attached hereto and made a part hereof, also known as portions of El Paso County Tax Schedule Number 53060-00-053.

together with all of its appurtenances, and Grantor warrants the title to the same, subject to any easements, conditions, and restrictions of record.

Signed this 28 day of Jan, 2019.

Grantor:

Heriberto Lopez  
HERIBERTO LOPEZ

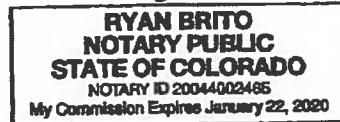
Blanca F. Magallan Velasquez  
BLANCA F. MAGALLAN VELASQUEZ

State of CO )  
County of El Paso ) ss.

The foregoing instrument was acknowledged before me this 28 day of Jan, 2019, by Heriberto Lopez and Blanca F. Magallan Velasquez.

Witness my hand and official seal.

My Commission expires: 1-22-20



Ryan Brito  
Notary Public



55074533

Grantee:

CITY OF COLORADO SPRINGS, COLORADO,  
a home rule city and Colorado municipal corporation

Accepted:

By:   
Darlene Kennedy, Real Estate Services Manager

Date: January 28, 2019

By:   
Travis Easton, Public Works Director

Approved as to Form:

  
Office of the City Attorney

**EXHIBIT A-1**

**LEGAL DESCRIPTION:**

A portion of the tract of land described in the Warranty Deed recorded at Reception No. 217058373 of the records of El Paso County, Colorado and located in a portion of the North 472 feet of the Southwest quarter of the Northwest quarter (SW1/4NW1/4) of Section 6, Township 13 South, Range 65 West of the 6th P.M., El Paso County, Colorado being more particularly described as follows:

COMMENCING at a No. 6 rebar with 3-1/4" aluminum cap stamped by PLS No. 19586 at the Northeast corner of Government Lot 4, being the Northwest quarter of the Northwest quarter (NW1/4NW1/4) of Section 6, Township 13 South, Range 65 West of the 6th P.M., from which a No. 6 rebar with 3-1/4" aluminum cap stamped by RLS No 10377 bears N00°28'36"W a distance of 1320.85 feet at the Northeast corner of the Southwest quarter of the Southwest quarter (SW1/4SW1/4) of Section 31, Township 12 South, Range 65 West of the 6th P.M, and is the basis of bearings used herein; thence S00°19'26"W on the East line of said Government Lot 4, a distance of 1303.18 feet to a 5/8" inside diameter iron pipe, at the Northeast corner of said SW1/4NW1/4; thence S00°19'26"W on the East line of said SW1/4NW1/4, a distance of 472.19 feet to the Southeast corner of said tract of land; thence S88°42'56"W on the South line of said tract of land, a distance of 50.02 feet to the POINT OF BEGINNING at a point fifty (50.00) feet West of said East line, as measured perpendicular thereto; thence continuing S88°42'56"W on said South line, a distance of 240.27 feet; thence N00°46'13"W a distance of 175.60 feet; thence N64°33'08"E a distance of 270.42 feet to a point fifty (50.00) feet West of said East line, as measured perpendicular thereto; thence S00°19'26"W parallel with said East line, a distance of 286.40 feet to the POINT OF BEGINNING and containing 1.285 acres or 55,968 square feet of land, more or less.

See Exhibit "B" attached.

Prepared by:  
John L. Bailey PLS #19586  
for and on behalf of  
Rockwell Consulting, Inc.  
January 25, 2018

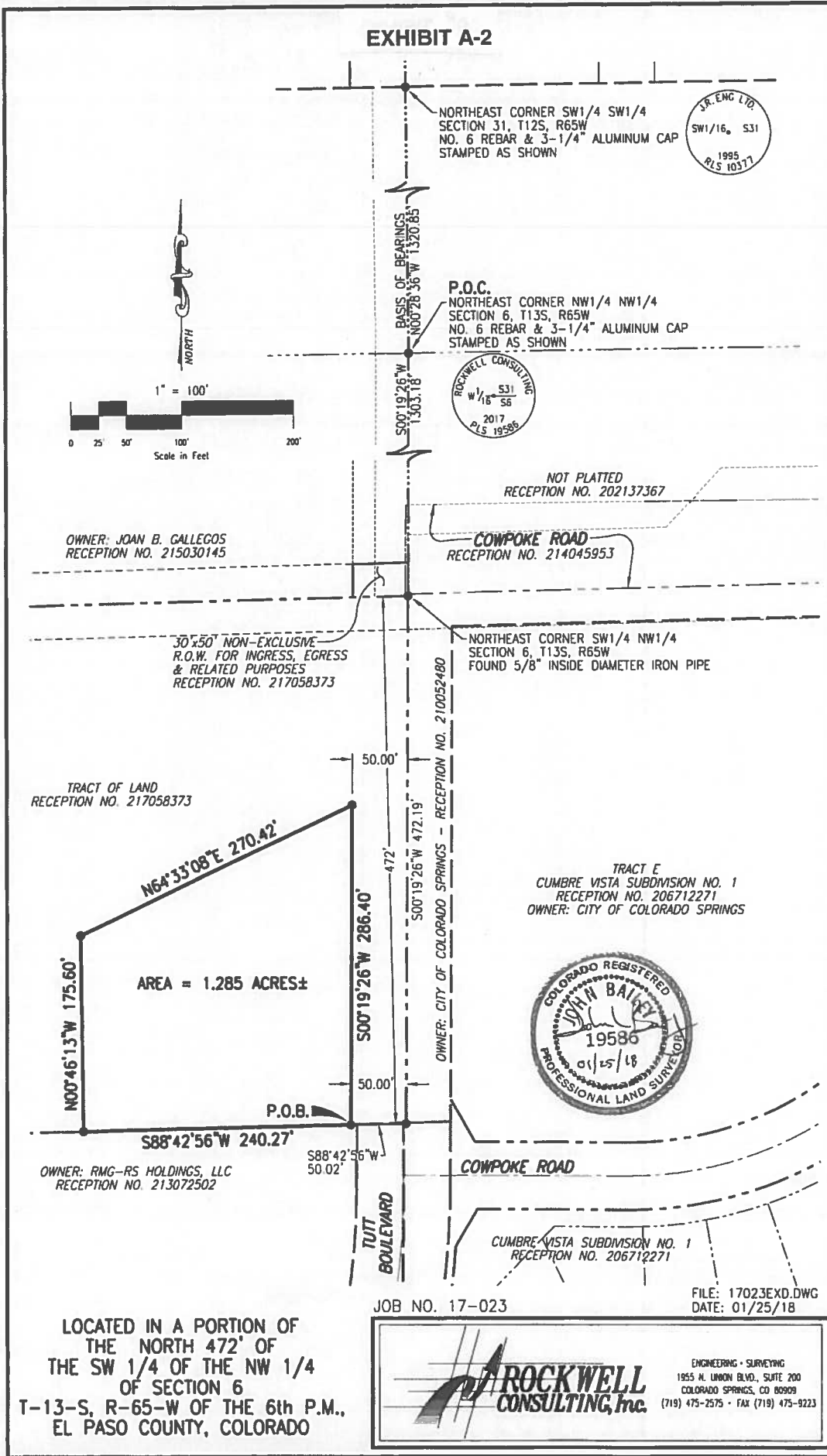


JOB NO. 17-023

FILE: 17023EXD.DWG  
DATE: 01/25/18



EXHIBIT A-2



LOCATED IN A PORTION OF THE NORTH 472' OF THE SW 1/4 OF THE NW 1/4 OF SECTION 6 T-13-S, R-65-W OF THE 6th P.M., EL PASO COUNTY, COLORADO

JOB NO. 17-023

FILE: 17023EXD.DWG  
DATE: 01/25/18

**ROCKWELL CONSULTING, Inc.**  
ENGINEERING • SURVEYING  
1955 N. UNION BLVD., SUITE 200  
COLORADO SPRINGS, CO 80909  
(719) 475-2575 • FAX (719) 475-9223

## EXHIBIT B-1

### LEGAL DESCRIPTION:

A portion of the tract of land described in the Warranty Deed recorded at Reception No. 217058373 of the records of El Paso County, Colorado and located in a portion of the North 472 feet of the Southwest quarter of the Northwest quarter (SW1/4NW1/4) of Section 6, Township 13 South, Range 65 West of the 6th P.M., El Paso County, Colorado being more particularly described as follows:

BEGINNING at the Northeast corner of said SW1/4NW1/4; thence S00°19'26"W on the East line of said SW1/4NW1/4, a distance of 472.19 feet to the Southeast corner of said tract of land; thence S88°42'56"W on the South line of said tract of land, a distance of 50.02 feet, to a point fifty (50.00) feet West of said East line, as measured perpendicular thereto; thence N00°19'26"E parallel with said East line, a distance of 286.40 feet; thence S89°40'34"E a distance of 19.50 feet to a point thirty and one-half (30.50) feet West of said East line, as measured perpendicular thereto; thence N00°19'26"E parallel with said East line, a distance of 186.33 feet to the North line of said SW1/4NW1/4; thence N88°42'56"E on said North line, a distance of 30.51 feet to the POINT OF BEGINNING and containing 0.459 acre or 19,981 square feet of land, more or less.

See Exhibit "B" attached.

Prepared by:  
John L. Bailey PLS #19586  
for and on behalf of  
Rockwell Consulting, Inc.  
December 04, 2017



JOB NO. 17-023

FILE: 17023EXB.DWG  
DATE: 12/04/17



Exhibit A

**EXHIBIT B-2**

NOT PLATTED  
RECEPTION NO. 202137367

OWNER: JOAN B. GALLEGOS  
RECEPTION NO. 215030145

**COWPOKE ROAD**  
RECEPTION NO. 214045953

N88°42'56"E, 30.51'

P.O.B.

30'x50' NON-EXCLUSIVE  
R.O.W. FOR INGRESS, EGRESS  
& RELATED PURPOSES  
RECEPTION NO. 217058373

30.50'

S89°40'34"E  
19.50'

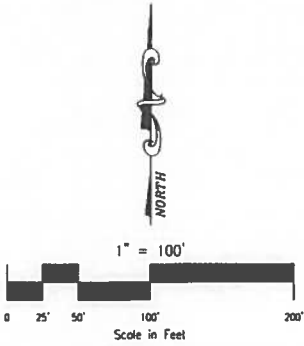
N00°19'26"E 186.33'

S00°19'26"W 472.19'

OWNER: CITY OF COLORADO SPRINGS - RECEPTION NO. 210052480

TRACT E  
CUMBRE VISTA SUBDIVISION NO. 1  
RECEPTION NO. 206712271  
OWNER: CITY OF COLORADO SPRINGS

TRACT OF LAND  
RECEPTION NO. 217058373



N00°19'26"E 286.40'

AREA = 0.459 ACRE ±

50.00'

S88°42'56"W  
50.02'

**COWPOKE ROAD**

OWNER: RMG-RS HOLDINGS, LLC  
RECEPTION NO. 213072502



LOCATED IN A PORTION OF  
THE NORTH 472' OF  
THE SW 1/4 OF THE NW 1/4  
OF SECTION 6  
T-13-S, R-65-W OF THE 6th P.M.,  
EL PASO COUNTY, COLORADO

JOB NO. 17-023

FILE: 17023EXB.DWG  
DATE: 12/04/17

**ROCKWELL  
CONSULTING, Inc.**

ENGINEERING • SURVEYING  
1955 N. UNION BLVD., SUITE 200  
COLORADO SPRINGS, CO 80909  
(719) 475-2575 • FAX (719) 475-9223



Return Originals to:  
Goetsch Peacock LLC  
8254 Crown Ln  
Colorado Springs Co. 80924

EXHIBIT B

GRANT OF EASEMENT

This Grant of Easement ("Easement") is made and entered into this 26<sup>th</sup> day of April, 2012 between Patricia L. Pedersen and Steven L. Pedersen whose address is 6045 Cowpoke Road, Colorado Springs, CO 80924 ("Collectively Grantor") and Goetsch Peacock LLC whose address is 8254 Crown Lane, Colorado Springs, CO 80924 ("Grantee"); (both Grantor and Grantee are hereinafter collectively referred to as the "Parties").

Recitals

WHEREAS, Grantor owns the real property (the "Property"), described in Exhibit A, attached hereto; and

WHEREAS, by deed dated May 4, 1968 and recorded in the El Paso County records in Book 2233 beginning at Page 711. There is reserved a 30 foot easement and right of way across the northern most 30 feet of Grantors' property and

WHEREAS, the Parties previously executed that certain agreement commonly known as the SWAT-X Easement and Agreement concerning the installation of certain utilities within Cowpoke Road which runs adjacent to the parties' properties and

WHEREAS, the Parties desire to provide for the eventual construction of Cowpoke Road as contemplated by the SWAT-X Agreement.

Easement

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, the Grantor hereby agrees as follows:

1. **Conveyance of Permanent Easement.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its successors and assigns a perpetual non-exclusive easement for a public roadway over and upon the northern thirty feet (30') of the Property, (the "Easement") to construct and maintain a road way and other associated structures (including, but not limited to street paving, curb and gutters, sidewalks, utility and stormwater lines and drainage culverts under and across Cowpoke Road to mitigate the ponding of water on said road created by the SWAT-X construction).

2. **Ingress and Egress.** Grantee shall have the right of uninhibited ingress and egress in, to, through, over, under and across the easement in order to perform construction, reconstruction, operation, use, maintenance, repair, replacement or removal of any improvements to be located thereon.

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El Paso County, CO



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## EXHIBIT B

3. **Cooperation.** In the event that the City of Colorado Springs or other governmental entity shall require the dedication of the easement property to either the City or other governmental entity (whether via platting or otherwise) then and in that event the parties agree to cooperate fully in said dedication or platting and to execute whatever documents may be reasonably required to effectuate the same.

4. **Construction by Grantor within.** Easement Grantor shall not construct or place any structure or building on any part of the Easement. Any such structure or building constructed or placed on the Easement after the date of this Easement, may be removed by Grantee without liability for damages arising therefrom. If Grantor constructs or places any structure or building within the Easement, Grantor shall reimburse Grantee for all expenses associated with removing such structure or building. Such structures or building, which are prohibited on the Easement, include, but are not limited to the following: dwellings, garages, barns, sheds, storage structures of any kind, outbuildings, concrete patios, decks, retaining wall, posts, fences or poles.

The foregoing notwithstanding, in no event shall Grantor change, by excavation or filling, the present grade or ground level of the Easement by more than one foot without the prior written consent of Grantee.

5. **Maintenance of Easement.** Grantee shall have the right, from time to time, but not the obligation to cut, trim, control, and remove trees, brush and other obstructions which injure or interfere with the Grantee's use, occupation or enjoyment of the Easement and the operation, maintenance and repair of the easement without liability for damages arising therefrom.

6. **Binding Effect.** Each and every one of the benefits and burdens of this agreement shall inure to and be binding upon the parties and their respective legal representative, heirs, executors, administrators, successors and assigns.

7. **Nature of Easement.** This Easement shall be permanent and run with the land. It shall also be deemed to touch and concern the land.

8. **Warranty of Title.** Grantor warrants that is has full right and lawful authority to make the grant contained herein, and promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in its title to the land involved or its right to make the grant contained herein.

9. **Waiver.** The failure of Grantee to insist, in any one or more instance, upon a strict performance on any of the obligation, covenants or agreements herein contained, or the failure of Grantee in any one or more instance to exercise any option, privilege or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligation, covenants or agreements, and no forbearance by the Grantee of any default hereunder shall in any manner be construed as constituting a waiver of such default.

EXHIBIT B

10. **Severability.** The provisions of this Easement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in the Easement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Easement as the day and year first above written.

GRANTOR:

Patricia L. Pedersen  
Patricia L. Pedersen

Steven L. Pedersen  
Steven L. Pedersen

STATE OF COLORADO            )  
  ) SS  
COUNTY OF EL PASO                 )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Patricia L. Pedersen.

Witness my hand and official seal.

My Commission Expires: 5/29/2012

**MATTHEW D RAMIREZ** [Signature]  
**NOTARY PUBLIC** Notary Public  
**STATE OF COLORADO**  
My Commission Expires May 29, 2012

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Steven L. Pedersen.

Witness my hand and official seal.

My Commission Expires: 5/29/12

**MATTHEW D RAMIREZ** [Signature]  
**NOTARY PUBLIC** Notary Public  
**STATE OF COLORADO**  
My Commission Expires May 29, 2012

## EXHIBIT B

### GRANT OF EASEMENT

This Grant of Easement ("Easement") is made and entered into this 26<sup>th</sup> day of April, 2012 between Patricia L. Pedersen and Steven L. Pedersen whose address is 6045 Cowpoke Road, Colorado Springs, CO 80924 ("Collectively Grantor") and Goetsch Peacock LLC whose address is 8254 Crown Lane, Colorado Springs, CO 80924 ("Grantee"); (both Grantor and Grantee are hereinafter collectively referred to as the "Parties").

#### Recitals

WHEREAS, Grantor owns the real property (the "Property or the "Pedersen Property"), described in Exhibit A, attached hereto; and

WHEREAS, the parties desire to provide for the future extension and construction of Tutt Blvd. including Tutt Crossing to the north across Grantor's property so as to serve the proposed development of Grantee's property and other adjacent properties.

#### Easement

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, the Grantor agrees as follows:

1. **Grant and Conveyance of Permanent Easement.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its successors and assigns a perpetual non-exclusive easement for a public roadway over, under and upon the eastern fifty feet (50') of the Property, (the "Easement") to construct and maintain a public road way and other associated structures (including, but not limited to street bridge construction and paving, curb and gutters, sidewalks, all utilities and any new stormwater facilities as may be required by the City of Colorado Springs).

2. **Ingress and Egress.** Grantee shall have the right of uninhibited ingress and egress in, to, through, over, under and across the easement in order to perform construction, reconstruction, operation, use, maintenance, repair, replacement or removal of any new or future improvements to be located thereon.

3. **Cooperation.** In the event that the City of Colorado Springs or other governmental entity shall require the dedication of the easement property to either the City or other governmental entity (whether via platting or otherwise) then and in that event the parties agree to cooperate fully in said dedication or platting and to execute whatever documents may be reasonably required to effectuate the same.

## EXHIBIT B

4. **Construction by Grantor within Easement.** Grantor shall not construct or place any structure or building on any part of the Easement. Any such structure or building constructed or placed on the Easement after the date of this Easement, may be removed by Grantee without liability for damages arising therefrom. If Grantor constructs or places any structure or building within the Easement, Grantor shall reimburse Grantee for all expenses associated with removing such structure or building. Such structures or building, which are prohibited on the Easement, include, but are not limited to the following: dwellings, garages, barns, sheds, storage structures of any kind, outbuildings, concrete patios, decks, retaining wall, posts, fences or poles.

The foregoing notwithstanding, in no event shall Grantor change, by excavation or filling, the present grade or ground level of the Easement by more than one foot without the prior written consent of Grantee.

5. **Notice of Construction.** In the event any of the proposed construction of the future extension of Tutt Blvd. across the Grantor's Property shall directly encroach upon Grantor's existing driveway, then and in that event only, Grantee shall give Grantor at least one (1) years written notice prior to commencing said construction. Said notice provision shall not include any construction work associated solely with the Tutt crossing.

6. **Maintenance of Easement.** Grantee shall have the right, from time to time, but not the obligation to cut, trim, control, and remove trees, brush and other obstructions which injure or interfere with the Grantee's use, occupation or enjoyment of the Easement and the operation, any maintenance and repair of the Easement without liability for damages arising therefrom. Grantee shall not be liable for the use, maintenance and repair of the Easement until such time as the actual construction of Tutt Blvd. has commenced in such specific area.

7. **Binding Effect.** Each and every one of the benefits and burdens of this Easement shall inure to and be binding upon the parties and their respective legal representative, heirs, executors, administrators, successors and assigns.

8. **Nature of Easement.** This Easement shall be permanent and run with the land. It shall also be deemed to touch and concern the land.

9. **Warranty of Title.** Grantor warrants that is has full right and lawful authority to make the grant contained herein, and promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in its title to the land involved or its right to make the grant contained herein.

10. **Waiver.** The failure of Grantee to insist, in any one or more instance, upon a strict performance on any of the obligation, covenants or agreements herein contained, or the failure of Grantee in any one or more instance to exercise any option, privilege or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligation, covenants or agreements, and no

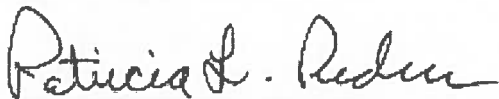
EXHIBIT B

forbearance by the Grantee of any default hereunder shall in any manner be construed as constituting a waiver of such default.

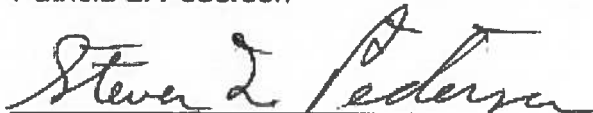
11. Severability. The provisions of this Easement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in the Easement.

IN WITNESS WHEREOF, the Grantor has executed this Easement as the day and year first above written.

GRANTOR:



Patricia L. Pedersen



Steven L. Pedersen

STATE OF COLORADO            )  
  ) ss  
COUNTY OF EL PASO         )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Patricia L. Pedersen.

Witness my hand and official seal.

My Commission Expires: 5/29/12

(SEAL)  
**MATTHEW D RAMIREZ** Notary Public  
**NOTARY PUBLIC**  
**STATE OF COLORADO**

My Commission Expires May 29, 2012

EXHIBIT B

STATE OF COLORADO        )  
  ) ss  
COUNTY OF EL PASO        )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Steven L. Pedersen.

Witness my hand and official seal.

My Commission Expires: 5/29/12

(SEAL)

**MATTHEW D RAMIREZ**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**

My Commission Expires May 29, 2012

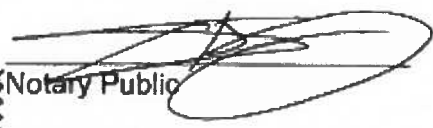
  
Notary Public

EXHIBIT C

**GRANT OF EASEMENT**

This Grant of Easement ("Easement") is made and entered into this 26<sup>th</sup> day of April, 2012 between Patricia L. Pedersen and Steven L. Pedersen whose address is 6045 Cowpoke Road, Colorado Springs, CO 80924 ("Collectively Grantor") and Goetsch Peacock LLC whose address is 8254 Crown Lane, Colorado Springs, CO 80924 ("Grantee"); (both Grantor and Grantee are hereinafter collectively referred to as the "Parties").

**Recitals**

WHEREAS, Grantor owns the real property (the "Property or the "Pedersen Property"), described in Exhibit A, attached hereto; and

WHEREAS, the parties desire to provide for the future extension and construction of Tutt Blvd. including Tutt Crossing to the north across Grantor's property so as to serve the proposed development of Grantee's property and other adjacent properties.

**Easement**

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, the Grantor agrees as follows:

1. **Grant and Conveyance of Permanent Easement.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its successors and assigns a perpetual non-exclusive easement for a public roadway over, under and upon the eastern fifty feet (50') of the Property, (the "Easement") to construct and maintain a public road way and other associated structures (including, but not limited to street bridge construction and paving, curb and gutters, sidewalks, all utilities and any new stormwater facilities as may be required by the City of Colorado Springs).

2. **Ingress and Egress.** Grantee shall have the right of uninhibited ingress and egress in, to, through, over, under and across the easement in order to perform construction, reconstruction, operation, use, maintenance, repair, replacement or removal of any new or future improvements to be located thereon.

3. **Cooperation.** In the event that the City of Colorado Springs or other governmental entity shall require the dedication of the easement property to either the City or other governmental entity (whether via platting or otherwise) then and in that event the parties agree to cooperate fully in said dedication or platting and to execute whatever documents may be reasonably required to effectuate the same.

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El Paso County, CO



212048281



EXHIBIT C

4. **Construction by Grantor within Easement.** Grantor shall not construct or place any structure or building on any part of the Easement. Any such structure or building constructed or placed on the Easement after the date of this Easement, may be removed by Grantee without liability for damages arising therefrom. If Grantor constructs or places any structure or building within the Easement, Grantor shall reimburse Grantee for all expenses associated with removing such structure or building. Such structures or building, which are prohibited on the Easement, include, but are not limited to the following: dwellings, garages, barns, sheds, storage structures of any kind, outbuildings, concrete patios, decks, retaining wall, posts, fences or poles.

The foregoing notwithstanding, in no event shall Grantor change, by excavation or filling, the present grade or ground level of the Easement by more than one foot without the prior written consent of Grantee.

5. **Notice of Construction.** In the event any of the proposed construction of the future extension of Tutt Blvd. across the Grantor's Property shall directly encroach upon Grantor's existing driveway, then and in that event only, Grantee shall give Grantor at least one (1) years written notice prior to commencing said construction. Said notice provision shall not include any construction work associated solely with the Tutt crossing.

6. **Maintenance of Easement.** Grantee shall have the right, from time to time, but not the obligation to cut, trim, control, and remove trees, brush and other obstructions which injure or interfere with the Grantee's use, occupation or enjoyment of the Easement and the operation, any maintenance and repair of the Easement without liability for damages arising therefrom. Grantee shall not be liable for the use, maintenance and repair of the Easement until such time as the actual construction of Tutt Blvd. has commenced in such specific area.

7. **Binding Effect.** Each and every one of the benefits and burdens of this Easement shall inure to and be binding upon the parties and their respective legal representative, heirs, executors, administrators, successors and assigns.

8. **Nature of Easement.** This Easement shall be permanent and run with the land. It shall also be deemed to touch and concern the land.

9. **Warranty of Title.** Grantor warrants that is has full right and lawful authority to make the grant contained herein, and promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in its title to the land involved or its right to make the grant contained herein.

10. **Waiver.** The failure of Grantee to insist, in any one or more instance, upon a strict performance on any of the obligation, covenants or agreements herein contained, or the failure of Grantee in any one or more instance to exercise any option, privilege or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligation, covenants or agreements, and no

EXHIBIT C

forbearance by the Grantee of any default hereunder shall in any manner be construed as constituting a waiver of such default.

11. **Severability.** The provisions of this Easement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in the Easement.

**IN WITNESS WHEREOF**, the Grantor has executed this Easement as the day and year first above written.

GRANTOR:

*Patricia L. Pedersen*

Patricia L. Pedersen

*Steven L. Pedersen*

Steven L. Pedersen

STATE OF COLORADO )  
 ) ss  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Patricia L. Pedersen.

Witness my hand and official seal.

My Commission Expires: 5/29/12

(SEAL)  
**MATTHEW D RAMIREZ** Notary Public  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
My Commission Expires May 29, 2012

EXHIBIT C

STATE OF COLORADO     )  
  ) ss  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2012 by Steven L. Pedersen.

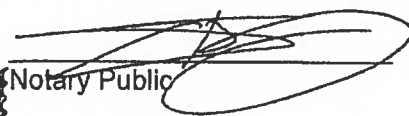
Witness my hand and official seal.

My Commission Expires: 5/29/12

(SEAL)

**MATTHEW D RAMIREZ**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**

My Commission Expires May 29, 2012

  
Notary Public