

RESOLUTION NO. 51-15

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A DONATION
TO THE CITY OF COLORADO SPRINGS OF A 9.46 ACRE PARCEL OF
PROPERTY FROM FIRSTBANK

WHEREAS, FirstBank owns approximately 9.46 acres of vacant land and known as Tax Schedule Number 6206100002 (the "Property"); and

WHEREAS, the City of Colorado Springs ("City") is the fee owner of that certain adjacent real property consisting of approximately 89 acres and known as Tax Schedule Number 6200000498, and identified as the Northgate Open Space; and

WHEREAS, on November 10, 2010, FirstBank conveyed to the Board of County Commissioners of El Paso County, Colorado ("El Paso County") a Deed of Conservation Easement, recorded as Instrument Number 210114261 in the El Paso County Office of the Clerk & Recorder, for the purpose of perpetual stewardship of the conservation values of the Property; and

WHEREAS, FirstBank desires to donate the Property to the City to enhance and extend the open space values of the existing Northgate Open Space; and

WHEREAS, the Property possesses natural, scenic, open space, aesthetic, ecological, and environmental values of great importance to the citizens of the City, El Paso County, and the State of Colorado which are worthy of preservation and protection; and

WHEREAS, the City's Trails, Open Space and Parks Advisory Committee and the City's Parks and Recreation Advisory Board both support the continued preservation of the Property and the acceptance of the Property into City ownership; and

WHEREAS, Pursuant to Section 4.4 of Chapter 4 of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* requires City Council authorization and acceptance of a donation of property if the donor elects to report the donation to the Internal Revenue Service; and

WHEREAS, the City's Parks, Recreation and Cultural Services Department recommends to City Council authorization and approval for the City's Real Estate Services Manager to enter into a contract, subject to the terms, conditions and restrictions listed below, for donation of the Property to the City.

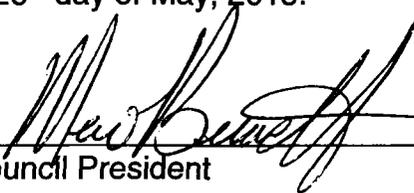
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS

Section 1. City Council finds that the Property has important natural, scenic, open space, aesthetic, ecological, and environmental values that will enhance and extend the open space values of the existing City owned-Northgate Open Space.

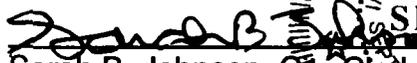
Section 2. In accord with Chapter 4, Section 4.4 of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests*, City Council hereby authorizes and accepts the donation of the Property to the City.

Section 3. The City's Real Estate Services Manager is authorized to execute all documents necessary to complete the Real Estate Donation of Property Agreement with FirstBank, and for City staff to prepare and execute any documentation required by the Internal Revenue Service in acknowledgement of the charitable contribution.

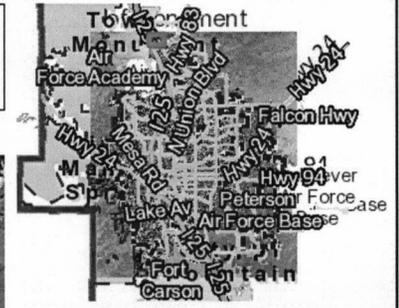
DATED at Colorado Springs, Colorado, this 26th day of May, 2015.


Council President

ATTEST:


Sarah B. Johnson, City Clerk

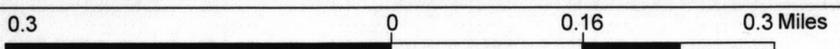




Legend

- National Forest
- Parks
- Military
- Towns
- Schools
- Park Trails
- Urban Paved
- Urban Gravel
- Urban Natural
- Golf Fairways
- Hospitals_2.5K
- Schools_2.5K
- Roadway_Patch_2.5K
 - Interstate
 - Major Roads
 - Local Roads
 - Ramps
- Roadway_2.5K
 - Interstate
 - Major Roads
 - Local Roads
 - Ramps
- Parcel_Boundary_2.5K
- Park_Labels_2.5K
- Airport_Labels_2.5K
- Military_Labels_2.5K

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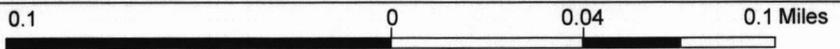
Notes



Legend

-  National Forest
-  Parks
-  Military
-  Towns
-  Bus Stops
-  Schools
-  Park Trails
-  Urban Paved
-  Urban Gravel
-  Urban Natural
-  Golf Fairways
-  Parcels
-  Hospitals_2.5K
-  Schools_2.5K
-  Roadway_Patch_2.5K
-  Interstate
-  Major Roads
-  Local Roads
-  Ramps
-  Roadway_2.5K
-  Interstate
-  Major Roads
-  Local Roads
-  Ramps
-  Parcel_Boundary_2.5K
-  Park_Labels_2.5K

1: 2,544 



Notes

CROSS REFERENCE: RECEPTION NO. 210114261

**AMENDMENT TO
DEED OF CONSERVATION EASEMENT
(El Paso County)**

THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT ("Amendment") is made this 1 day of July, 2015, by and between the CITY OF COLORADO SPRINGS, Colorado, a home rule city and Colorado municipal corporation, having an address at 30 South Nevada Avenue, Colorado Springs, Colorado, 80903, ("Grantor") and EL PASO COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, having an address at 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903, ("Grantee").

RECITALS

WHEREAS, Grantor's predecessor-in-interest, FIRSTBANK, a Colorado corporation as successor by merger to FirstBank of El Paso County, having an address at 2 North Cascade Avenue, Suite 130, Colorado Springs, CO 80903, ("FIRSTBANK") and Grantee entered into that certain Deed of Conservation Easement dated November 10, 2010, and recorded with the El Paso County, Colorado, Clerk and Recorder as reception number 210114261 on November 10, 2010 ("Conservation Easement") affecting certain real property consisting of approximately 9.46 acres which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property").

WHEREAS, pursuant to a certain Real Estate Donation of Property Agreement, dated of even date herewith, executed by and between FIRSTBANK and Grantor ("Donation Agreement"), FIRSTBANK conveyed to Grantor an interest in the Property which is subject to the Conservation Easement.

WHEREAS, Grantor acknowledges that, as owner of the Property in fee, it is bound by the Conservation Easement.

WHEREAS, Grantee acknowledges that Grantor cannot accept certain terms of the Conservation Easement and agrees to a modification of such terms in accordance with this Amendment.

WHEREAS, Grantee will benefit from the modifications to the Conservation Easement provided for in this Amendment.

WHEREAS, Grantee and Grantor expressly acknowledge that the perpetual term and duration of this Conservation Easement is not affected by and continues following the execution of this Amendment.

CROSS REFERENCE: RECEPTION NO. 210114261

**AMENDMENT TO
DEED OF CONSERVATION EASEMENT
(El Paso County)**

THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT ("Amendment") is made this 1 day of July, 2015, by and between the CITY OF COLORADO SPRINGS, Colorado, a home rule city and Colorado municipal corporation, having an address at 30 South Nevada Avenue, Colorado Springs, Colorado, 80903, ("Grantor") and EL PASO COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, having an address at 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903, ("Grantee").

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WHEREAS, pursuant to a certain Real Estate Donation of Property Agreement, dated of even date herewith, executed by and between FIRSTBANK and Grantor ("Donation Agreement"), FIRSTBANK conveyed to Grantor an interest in the Property which is subject to the Conservation Easement.

WHEREAS, Grantor acknowledges that, as owner of the Property in fee, it is bound by the Conservation Easement.

WHEREAS, Grantee acknowledges that Grantor cannot accept certain terms of the Conservation Easement and agrees to a modification of such terms in accordance with this Amendment.

WHEREAS, Grantee will benefit from the modifications to the Conservation Easement provided for in this Amendment.

WHEREAS, Grantee and Grantor expressly acknowledge that the perpetual term and duration of this Conservation Easement is not affected by and continues following the execution of this Amendment.

WHEREAS, pursuant to Section 25(j) of the Conservation Easement, the Grantor and Grantee may amend the Conservation Easement subject to the terms and conditions stated therein.

TERMS

NOW THEREFORE, in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, the sufficiency of which are hereby acknowledged and pursuant to the laws of the State of Colorado, and in particular Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, the parties hereby agree to modify the Conservation Easement as follows:

1. Paragraph 10 of the Conservation Easement is hereby completely amended, modified and replaced by the following new Paragraph 10:

10. **Costs of Enforcement.** Grantor and Grantee both agree, respectively, to be responsible for its own costs of enforcement pursuant to this Conservation Easement. Nothing in this Conservation Easement is intended to create any multi-fiscal year obligation for either Grantor or Grantee.

2. Paragraph 14 of the Conservation Easement is hereby completely amended, modified and replaced by the following new Paragraph 14:

14. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs related to the ownership, operation, upkeep, and maintenance of the Property. Each party agrees to be responsible for its own liability incurred as a result of its participation in this Conservation Easement. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Conservation Easement. No provision of this Conservation Easement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to the Grantor or the Grantee by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et. seq.* and Article XI of the Colorado Constitution.

3. Paragraph 23 of the Conservation Easement is hereby completely amended, modified and replaced by the following new Paragraph 23:

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

To Grantor:

City of Colorado Springs
30 S. Nevada Avenue

Suite 502
Colorado Springs, CO 80903

with a copy to:

City Attorney's Office
City of Colorado Springs
30 S. Nevada Avenue
Suite 501
Colorado Springs, CO 80903

To Grantee:

The Board of County Commissioners of El Paso County, Colorado
200 South Cascade
Suite 100
Colorado Springs, CO 80903

with a copy to:

El Paso County Community Services Department
Parks Division
2002 Creek Crossing
Colorado Springs, CO 80906

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

4. Ratification. Except as amended by this Amendment, all other terms and conditions, including the perpetual term, of the Conservation Easement are hereby ratified and shall remain in full force and effect.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first written above.

GRANTEE:

Dennis Hisey

ATTEST
Charles D. Broerman
 80700

STATE OF COLORADO)
)
 COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 29 day of June, 2015 by Dennis Hisey as Chair of the Board of County Commissioners of El Paso County, Colorado, as Grantee and attested to by Charles D. Broerman, County Clerk and Recorder.

Witness my hand and official seal.

NORMA JEAN DEHERRERA
 NOTARY PUBLIC
 STATE OF COLORADO
 NOTARY ID 2004-4332783
 MY COMMISSION EXPIRES NOVEMBER 7, 2016

Norma Jean DeHerrera
 Notary Public
 My commission expires: 11-7-16

Exhibit A

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING SOUTHERLY OF DONALA SUBDIVISION NO. 1, EXCEPT THAT PORTION CONVEYED IN BOOK 2612 AT PAGE 992, COUNTY OF EL PASO, STATE OF COLORADO.

REAL ESTATE DONATION OF PROPERTY AGREEMENT

FirstBank – Northgate Open Space

THIS REAL ESTATE DONATION AGREEMENT (“Agreement”), dated this 23 day of June, 2015, is between FIRSTBANK, a Colorado Corporation f/k/a FirstBank of El Paso County, having an address at 2 North Cascade Ave, Suite 130, Colorado Springs, CO 80903, “Grantor”, and the CITY OF COLORADO SPRINGS, Colorado, a home rule city and Colorado municipal corporation, having an address at 30 South Nevada Avenue, Colorado Springs, Colorado, 80903, “Grantee” or “City”. Grantor and Grantee may be collectively referred to as the “Parties” or singularly, a “Party”.

WHEREAS, Grantor is the fee owner of that certain real property located in El Paso County, Colorado, consisting of approximately 9.46 acres and known as Tax Schedule Number 6206100002, and legally described in the attached Exhibit A (the “Property”); and

WHEREAS, the Property possesses natural, scenic, open space, aesthetic, ecological, and environmental values of great importance to the citizens of the City of Colorado Springs, El Paso County, and the State of Colorado, which environmental values are worthy of preservation and protection; and

WHEREAS, Grantor has previously conveyed to the Board of County Commissioners of El Paso County, Colorado a Deed of Conservation Easement, recorded as Instrument Number 210114261, on November 10, 2010, in the El Paso County Clerk-Recorder Office (“Conservation Easement”), for the purpose of El Paso County's perpetual stewardship of the conservation values of the Property; and

WHEREAS, the City of Colorado Springs Trails, Open Space and Parks Advisory Committee and the City of Colorado Springs Parks and Recreation Advisory Board both support the continued preservation of the Property and acceptance of the Property into City ownership; and

WHEREAS, the Property provides opportunities for public access, including future extension of the Smith Creek Regional Trail; and

WHEREAS, the Property is adjacent to the 72 acre Lonnie C. Arnold Conservation Easement held by El Paso County, and on the South to approximately 90 acres of Northgate Open Space which is held by the City of Colorado Springs; and

WHEREAS, Grantor intends to convey the Property to Grantee for Grantee's stewardship of the environmental values of the Property and to enhance the open space value and management of the Property; and

WHEREAS, Pursuant to Section 4.4 of Chapter 4 of the *City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest*, Grantee agrees to accept this donation of land, subject to the Conservation Easement, for public purpose; to enhance the quality of life and well-being of the citizens of the City of Colorado Springs by acquiring, maintaining, preserving, and protecting open space and environmental values.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, Grantor and Grantee hereby agree as follows:

I. DONATION OF PROPERTY

- 1.1 **Property:** Grantor is the owner of certain real property located in the County of El Paso, State of Colorado, described in **Exhibit A** attached hereto and made a part hereof, also known as Tax Schedule Number 6206100002. Grantor intends to donate the Property to Grantee on the terms and conditions contained in this Agreement.
- 1.2 **Deposit:** No deposit is required.
- 1.3 **Donation:** Grantor will convey to Grantee at no cost and Grantee shall accept the Property on the terms and conditions of this Agreement. Grantee will accept the Property from Grantor in the form of an in kind donation from Grantor to the Grantee.
- 1.4 **Force and Effect:** If any provision of this Agreement shall be determined to be invalid, illegal or without force by a court of law or rendered so by legislative act, then the remaining provisions of this Agreement shall remain in full force and effect.
- 1.5 **Documentation of Donation.** At Grantor's request, Grantee will sign and deliver an IRS Form 8283 to Grantor, acknowledging receipt of the donation, but Grantor will be responsible for determining the value of the donated property.
- 1.6 **Property Sign.** Grantee agrees to install a sign on or adjacent an entrance to the Property, acknowledging Grantor as the donor of the Property.

II. CLOSING

- 2.1 Time and Place: The closing of the conveyance of the Property shall occur at the offices of Land Title Guarantee Company, located at 102 South Tejon Street, Suite 760, in Colorado Springs, in Colorado Springs, Colorado, at a date and time mutually agreed upon by the parties, but in no event later than December 31, 2015.
- 2.2 Procedure: At closing, the following shall occur:
- a. Conveyance: Grantor shall convey the Property to Grantee by Special Warranty Deed, as shown on Exhibit B, attached hereto and made a part hereof, free and clear of any liens or encumbrances whether recorded or unrecorded, but subject to easements, conditions and restrictions of record, insofar as to Grantee's satisfaction, and as they may lawfully affect the Property. Grantor shall convey and Grantee shall accept the Property in the form of an in kind donation and other good and valuable consideration with no monetary exchange. The in kind donation will be reflected in the Settlement Statements to be signed by Grantor and Grantee.
 - b. Real Property Taxes: Grantor shall be responsible for paying all real property taxes that have accrued through the date of closing.
 - c. Possession: Grantor shall deliver possession of the Property to Grantee at closing.
- 2.3 Closing Costs: Grantee shall pay all costs of closing including the title policy, recording fees and documentary fees, if any.
- 2.4 Title Commitment and Policy: Grantee shall instruct Land Title Guarantee Company to prepare a title commitment for Grantee's review. Grantee shall have the right to review the title commitment and approve or disapprove those items which may affect the title of the Property. Grantor shall use commercially reasonable efforts to cooperate with Land Title Guarantee Company to correct condition(s) that adversely affect the Property as determined by Grantee, in its discretion. Grantor shall have thirty (30) days from notification of disapproval to correct any condition. Both Parties agree to extend closing for Grantor to make corrections on title defects, conditions, requirements and/or exceptions (recorded and/or unrecorded) or known to Grantor. Grantor has the sole discretion to correct title

RES File # 18871

Grantor Int.: BM Grantee Int.: [Signature]
Date: 6/15/15 Date: 6.23.15

matters to Grantee's satisfaction. If Grantee is not satisfied with Grantor's actions, this Agreement may be terminated and the Parties will have no further obligations to each other under this Agreement. Closing is contingent on Grantee's satisfaction with the update of the title commitment prior to closing.

III. CONDITION OF PROPERTY

- 3.1 Physical Condition of Property: Grantee acknowledges that Grantor has made no representations or warranties concerning the condition of soils, drainage conditions or environmental conditions on the Property, and Grantee shall accept the Property in its "as is, where is, with all faults" condition.

IV. DEFAULT

- 4.1 Grantor Remedies: If Grantee is in default under this Agreement, Grantor may terminate this Agreement by written notice to Grantee and the Parties shall then be released from all obligations under this Agreement.
- 4.2 Grantee Remedies: If Grantor is in default under this Agreement, Grantee may terminate this Agreement by written notice to Grantor and the Parties shall then be released from all obligations under this Agreement.
- 4.3 Time: Time is of the essence in this Agreement.

V. NOTICES AND OTHER DELIVERIES

- 5.1 Notices and Other Deliveries: Any notice or other documents or materials required or permitted to be delivered by this Agreement shall be deemed properly delivered upon receipt by the Party to whom the documents or materials are to be delivered. Notices may be hand delivered, sent by first-class mail, return receipt requested, with postage prepaid, or transmitted by electronic facsimile. Notices shall be addressed and delivered as follows:

Grantor:	Grantee:
FirstBank Attn: Bobbie Moore, Senior Vice President 1010 West Baptist Road Colorado Springs, Colorado 80921 Phone: 719-638-4151 Fax: 719-638-4164	City of Colorado Springs Manager, Real Estate Services 30 South Nevada, Suite 502 Colorado Springs, CO 80903 Phone: (719) 385-5605 Fax: (719) 385-5610

Either Party may, by notice properly delivered, change the person or address to which future notices or delivered to that Party shall be made.

VI. INTERPERTATION OF AGREEMENT

- 6.1 Governing Law: This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, ordinances, rules and regulation of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado. The Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, the City of Colorado Springs, El Paso County, State of Colorado.
- 6.2 Headings: The article and section headings in the Agreement are for convenience only, and shall not be used in its interpretation or considered part of this Agreement.
- 6.3 Appropriation of Funds: In accord with Colorado Constitution, Article X, Section 20, and the City Charter, performance of the Grantee's obligations under this Agreement is expressly subject to appropriation of funds by City Council and the availability of those appropriated funds for expenditure. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the Grantee's obligations under the Agreement, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then the Grantee may terminate this Agreement without compensation to Grantor.
- 6.4 Special Provision: Grantor agrees that no new easements, liens or encumbrances shall be placed on the Property from the time of Agreement execution through closing, except any easement so designated by the Grantee.

RES File # 18871

Grantor Int.: PBM Grantee Int.: [Signature]
 Date: 6/15/15 Date: 6.23.15

- 6.5 City Council Approval: Pursuant to Section 4.4 of Chapter 4 of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* this Agreement and closing is contingent upon City Council approval as evidenced by a City Council resolution accepting the donation of the Property. If City Council declines to accept the Property by donation, this Agreement will automatically terminate with no compensation or remedies available to Grantor.
- 6.6 No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claims or right of action by any other or third person or entity on the Agreement. It is the express intention of the Parties that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.
- 6.7 Agreement: This Agreement shall inure to the benefit of and be binding upon the heirs, successors and assigns of Grantor and Grantee.
- 6.8 Assignment: Neither Grantor nor Grantee shall assign or otherwise transfer this Agreement or any right or obligation under this Agreement.
- 6.9 Entire Agreement, Modification, Survival: This Agreement constitutes the entire agreement between the Parties relating to the conveyance of the Property, and any prior agreements pertaining to the subject of this Agreement, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties. Any obligation or agreement set forth in this Agreement that, by its terms, is intended to be performed after termination or Closing shall survive closing.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

RES File # 18871

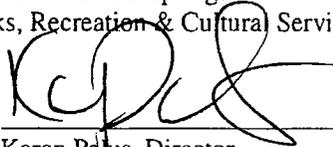
Grantor int.: PSM Grantee Int: @
Date: 6/15/15 Date: 6.23.15

Grantee:
City of Colorado Springs:

By: 
Ronn Carlentine, Manager
Office of Real Estate Services

6.23.15
Date

City of Colorado Springs
Parks, Recreation & Cultural Services Department

By: 
Karen Palus, Director
Parks, Recreation & Cultural Services Department

6/23/15
Date

Approved as to form:


City Attorney's Office

6/23/15
Date

**EXHIBIT A
LEGAL DESCRIPTION**

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6,
TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDAN, LYING SOUTHERLY OF
DONALA SUBDIVISON NO. 1, EXCEPT THAT PORTION CONVEYED IN BOOK 2612 AT PAGE 992,
COUNTY OF EL PASO, STATE OF COLORADO.

RES File # 18871

Grantor Int.: BM Grantee Int.: R
Date: 01/13/15 Date: 6-27-15

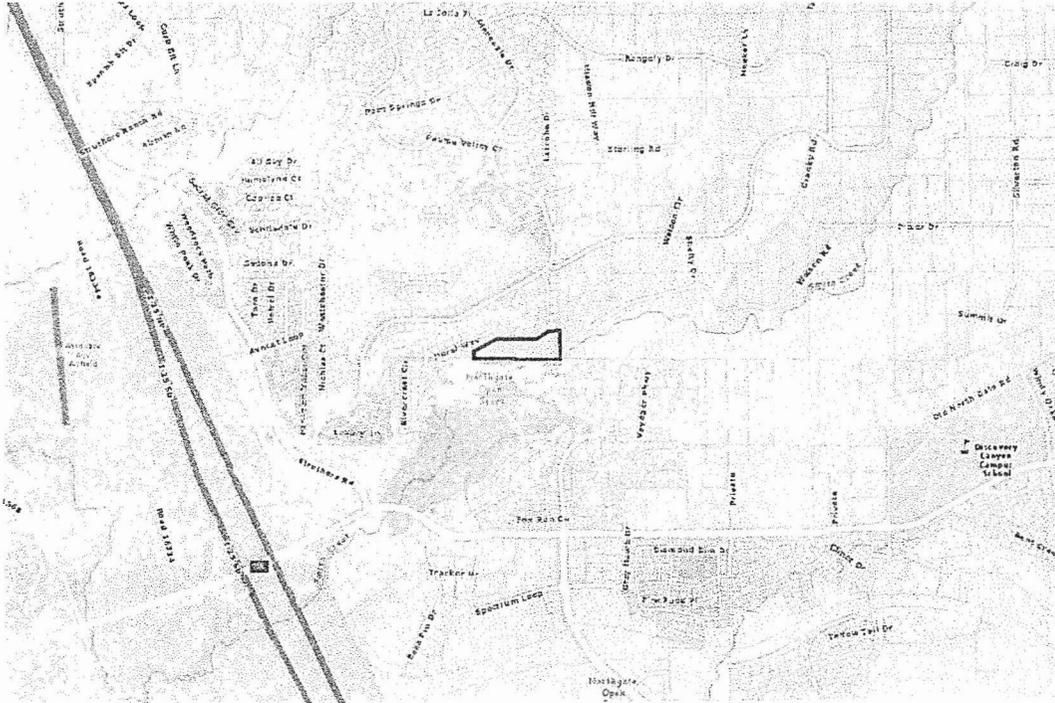
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COUNTY OF EL PASO, STATE OF COLORADO.

RES File # 18871

Grantor int.: BSM Grantee Int: Q
Date: 6/15/15 Date: 6.23.15

ATTACHMENT B
MAP DEPICTION



RES File # 18871

Grantor int.: PSM Grantee Int: @
Date: 6/13/15 Date: 6.23.15