

### **Department of Public Works**

Right-of-Way Services 201 W. Colfax Avenue, Dept. 507 Denver, CO 80202 720-865-3001 www.denvergov.org/survey

### REQUEST FOR ORDINANCE TO RELINQUISH EASEMENT

TO:

Caroline Martin, City Attorney's Office

FROM:

Robert J. Duncanson, P.E.

Manager 2, Development Engineering Services

**PROJECT NO:** 

2015-0169-01

**DATE:** 

April 9, 2015

**SUBJECT:** 

Request for an Ordinance to relinquish the easement on Tract A, Block 3 of Lionstone

Development Filing No. 1, recorded July 10, 2008 under Reception No. 2008095281.

It is requested that the above subject item be placed on the next available Mayor Council Agenda.

This office has investigated the request of Kaplan Kirsch & Rockwell, dated March 19, 2015, on behalf of LUI Denver Broadway, LLC for the relinquishment of said easements.

This matter has been checked by this office and has been coordinated with Asset Management; Comcast; the City Councilperson; CPD: Planning Services; Historic Preservation/Landmark; Denver Water; Denver Fire Department; City Forestry; Parks and Recreation; Engineering, Regulatory, and Analytics Transportation and Wastewater; Public Works: Construction Engineering; Public Works - Policy and Planning; Metro Wastewater Reclamation District; Office of Telecommunication; Survey; CenturyLink; and Xcel Energy, all of whom have returned our questionnaires indicating their agreement.

As a result of the investigations, it has been determined that there is no objection to relinquishing the subject easement.

Therefore, you are requested to initiate Council action to relinquish the easements in the following described areas:

### **INSERT PARCEL DESCRIPTION ROW 2015-0169-01-001 HERE**

A map of the area and a copy of the document creating the easement are attached.

RJD:aal

cc:

Asset Management - Steve Wirth City Councilperson & Aides City Council Staff - Shelley Smith Department of Law - Karen Aviles Department of Law - Brent Eisen Department of Law - Shaun Sullivan Public Works, Manager's Office - Alba Castro Public Works, Legislative Services - Angela Casias Public Works, Survey - Paul Rogalla

### **ORDINANCE/RESOLUTION REQUEST**

Please email requests to Angela Casias

at Angela.Casias@DenverGov.org by 12:00 pm on Monday.

Ple	ease mark one:	Bill Request	or		ion Request	Date of Request: April 9,	2015
					-	₩ N. 14	
Is t	this request:	A new contract*	A contract a	mendment*	or	Neither	
*If	this request is	s a contract or an amend	ment, is it:				
	☐ A re	evenue agreement or	☐ An expendi	ture agreement			
	Contrac Costs (if	t Control Number: t Terms/Dates: this is a contract amend mation may delay process		ude the original	cost, addition	nal cost and new total. <i>Failure to pro</i>	vide
1.		ontract, amendment, lease				n of the ordinance request. Describe in the her information that Council needs to	f the
	2015-0169-0 2008095281.	1: This is a request to relir	iquish an easemen	nt established by	documents rec	corded under reception number	
2.	Requesting A	Agency: Public Works -	Survey				
3.	Contact Person: (Subject Matter Expert on the request)  Name: Adrienne Lorantos, AICP Phone: 720-865-3119 Email: Adrienne.Lorantos@denvergov.org						
4.	Contact Person: (Please list the person who will read this item at Mayor Council and attend first and second reading to answer questions)  Name: Angela Casias Phone: 720-913-8529 Email: Angela.Casias@denvergov.org					'er	
5.	Background	on the request:					
		nest to relinquish a storm s ck 3 of Lionstone Develop			ater quality po	nd easement and indemnity agreemen	t on
6.	A. Loc		Street				
	B. Affe C. Ben		#7 – Chris Nevi	tt			
7.	Is there any No.	controversy surrounding	g this ordinance?	? Please explain.			
			To be completed	by Mayor's Legi	slative Team:		
SII	RE Tracking N	ıımher:			Date Enter	ed·	

# DENVER

## **EXECUTIVE SUMMARY**

Project Title: 2015-0169-01: Easement Relinquishment at Lionstone Development Filing No. 1

Description of Proposed Project: This is a proposal to relinquish an easement on Tract A, Block 3 of Lionstone Development Filing No. 1.

Explanation of why the public right-of-way must be utilized to accomplish the proposed project: N/A

Has a Temp MEP been issued, and if so, what work is underway: N/A

What is the known duration of an MEP: N/A

Will land be dedicated to the City if the vacation goes through: N/A

Will an easement be placed over a vacated area, and if so explain: N/A

Will an easement relinquishment be submitted at a later date: N/A

Additional information: None.



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1)



2008095281

97/10/2008 04:34

STORM SEWER AND PERMANENT DETENTION/WATER QUALITY POND EASEMENT AND INDEMNITY AGREEMENT

THIS EASEMENT AND INDEMNITY AGREEMENT ("Agreement") is made and entered into this 17<sup>+16</sup> day of 1000, 2008, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and LUI Denver Broadway, LLC, a Delaware limited liability company, whose address is 100 Waugh Drive, Suite 600, Houston, TX 77007, hereinafter referred to as the "Owner".

### WITNESSETH:

WHEREAS, the Owner is the owner of the property known as 200 East Tennessee Avenue, Denver, CO 80205 (the "Property"), described in EXHIBIT "A", attached hereto, and by this reference made a part hereof; and

WHEREAS, the Owner is constructing the project (the "Project") known as "Lionstone Phase 1" on the Property in the location as shown on EXHIBIT "B", attached hereto, and by this reference made a part hereof. The Project will contain buildings located within the legal description set forth on Exhibit "A" which will be served by one or more privately owned storm sewer and permanent detention/water quality pond facilities, which will render the Owner responsible for the maintenance and service of such privately owned storm sewer and permanent detention/water quality pond facilities, or in the event of Owner's failure to do so, by the City at its option; and

WHEREAS, the City is a municipal corporation within which the Property is located and which currently provides emergency and other municipal services to premises within the City using the publicly owned storm sewer facilities; and

WHEREAS, the Owner is desirous of providing ingress and egress to the City to enable the City to provide emergency and other municipal services in, to, and over the said Property and to assure the access of any other owner within the Property to the privately owned storm sewer and permanent detention/water quality pond facilities as necessary; and

WHEREAS, the Owner desires to provide that the Owner and the future owners of any interest in the Property (collectively, the "Owner(s)"), shall be bound to perform the obligations set forth herein, on the conditions set forth herein; and

WHEREAS, the Owner will cause this Agreement to be recorded.

NOW, THEREFORE, in consideration of the premises and in consideration of the Owner(s): (1) being excused from the lawful requirement to construct separate connections to publicly owned storm sewer facilities for each individual property, and (2) receiving the benefits of emergency and other municipal services from the City, the Parties hereto agree as follows:

RETURN TO:

MARK D. CARAPELLA, P.E.
PW/ENGINEERING-DES(SURVEY)
201 W. COLFAX AVE., DEPT. 507
DENVER, CO GOZOZ

Easement And Indemnity Agreement - Lionstone Phase 1 (Rev 11-29-2007) (3)

856-80

68-04-15.4

### SECTION ONE - CONVEYANCE OF EASEMENT.

- 1. The Owner(s) hereby grant(s) and convey(s) a non-exclusive easement to each of the Owner(s) and to the City, for ingress and egress over private property contained within the Project, above referred to, for purposes of providing in the Project emergency privately owned storm sewer and permanent detention/water quality pond facility repairs, together with any and all rights-of-way, easements or rights of ingress and egress, necessary or convenient to the Owner(s) and/or the City to accomplish such purposes. PROVIDED, HOWEVER, that in non-dedicated driveways or privately maintained systems existing within the Project, the City shall not be obligated or expected to perform any construction, re-construction, maintenance, repair, cleaning, snow removal, street lighting, traffic control or regulation or any other services on property contained within the Project which it does not or can not perform on any other private property within the City and County of Denver.
- It is the desire of the Owner(s) that the Owners and/or the City have the use of these
  private driveways, to provide emergency privately owned storm sewer and permanent
  detention/water quality pond facility repairs within the Project.
- 3. The term Owner(s) as used herein shall be deemed to include heirs, successors, and assigns of the original Owner(s). All duties and liabilities of the Owner(s) hereunder shall be joint and several among original Owner(s), their successors, and assigns; provided that if an occurrence giving rise to a claim hereunder is proven to be proximately caused by defined action or omission by Owner(s), its agents, servants or employees which occurred during a specific period of time, then only those Owner(s) holding fee title to the Project, or any portion thereof, during such specific period of time shall be jointly and severally liable hereunder.

### SECTION TWO - CONSTRUCTION AND MAINTENANCE.

- 4. It shall be the duty of the Owner(s) to construct, reconstruct, repair and maintain all private driveways and privately owned storm sewer and permanent detention/water quality pond facilities contained within the Project in such condition so as to be usable by the other Owner(s) and/or the City for provisions of services as set out herein.
- 5. If, in the sole opinion of the City, the private driveways or privately owned storm sewer and permanent detention/water quality pond facilities are not properly maintained or are closed, blocked or vacated, the City shall give notice to the Owner(s) and if repairs or corrections are not made within the time designated in such notice, the City is authorized to make or have made repairs or corrections and will charge and collect the cost thereof from the Owner(s).
- The Owner(s) shall in no way consider or hold the City or its personnel guilty of trespass in the performance of any of the municipal services, duties or responsibilities referred to herein

- 7. The Owner(s) shall neither (a) alter the Project nor (b) close, block or vacate the private driveways or privately owned storm sewer and permanent detention/water quality pond facilities contained within the Project so that as a result of (a) or (b) the provision of the above-stated services to the Project is rendered impassible or materially impaired.
- 8. The Owner(s) shall pay for and be responsible for all costs of installation and maintenance of the privately owned storm sewer and permanent detention/water quality pond facilities and their access fittings and associated facilities contained within the Project as determined necessary by and according to the specifications of the Department of Public Works of the City and County of Denver. While the City assumes no obligation for the maintenance or operation of such privately owned storm sewer and permanent detention/water quality pond facilities, in the event of a malfunction of such privately owned storm sewer and permanent detention/water quality pond facilities and the failure of the Owner(s) to correct the malfunction, the Owners(s) authorizes the City to make or have made the corrections or repairs and to charge and collect the cost thereof from the Owner(s), jointly and severally pursuant to Section Two, Article 5 hereof.

### SECTION THREE - INDEMNITY AGREEMENT.

- 9. The Owner(s) agree to: defend, indemnify, and hold harmless the City, its officers, agents, and employees against any and all claims for damage to property or injuries to or death of any person or persons which may result from the City service operations at the Project, provided, however that Owner(s) need not indemnify, defend, or hold harmless the City, its officers, agents, and employees from their own negligence, recklessness, or willful misconduct. By all claims for damages this Agreement specifically includes, but it is not limited to:
  - (A) Any driveway deterioration or damage on the Project.
  - (B) Any structural damage to buildings contained within the Project caused by City vehicle weight or size, by vibrations generated by City vehicles, or by any other cause not specifically described.
  - (C) Any damage to utilities such as water pipes, sewer pipes, gas pipes, electrical power lines, and any other communication lines, conduits, or cables.
  - (D) Any damage to landscaping including but not limited to shrubbery, trees and lawn.
  - (E) Any bodily injury to any person except a City employee, which is caused directly or indirectly by City service operations at the Project, or by delays or complication or prevention of provision of such services due to closure, blocking, vacation, disrepair of the private driveways or privately owned storm sewer and permanent detention/water quality pond facilities referred to herein.
- The Owner(s) further agrees jointly and severally to reimburse the City for any bodily
  injury to City personnel, or damages to the City property caused by defective and
  dangerous condition of the Project.

### SECTION FOUR - DISPUTES.

 Disputes regarding any aspect of this Agreement shall be resolved by administrative hearing pursuant to D.R.M.C. Section 56-106.

### SECTION FIVE - AGREEMENT TO RUN WITH THE LAND.

- 12. The grant of easement and duties contained herein shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto, their heirs, successors, or assigns, and the Owner(s) agrees to that upon sale of any portion of the above-described Property a copy of this Agreement will be given to the purchaser.
- 13. The Owner(s) agrees to the terms of this Agreement and gives evidence of its voluntary agreement by having the individual(s) below sign their name to this Agreement. The person or persons signing and executing this Agreement on behalf of the Owner(s) do hereby warrant and guarantee that he, she or they have been fully authorized by the Owner(s) to execute this Agreement on behalf of the Owner(s) and to validly and legally bind the Owner(s) to all terms, performances, provisions and conditions herein set forth.
- 14. This Agreement shall become effective upon its execution by the parties hereto.
- 15. This Agreement shall be binding upon any and all heirs, successors, assigns, or transferces of the Parties hereto and shall be considered a covenant running with the land.

# SECTION SIX – NO DISCRIMINATION IN EMPLOYMENT: NO THIRD PARTY BENEFICIARIES.

- 16. In connection with the performance of work under this Agreement, the Owner(s) agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and further agrees to insert the foregoing provision in all subcontracts hereunder.
- 17. It is expressly understood and agreed upon that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Owner(s), and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and Owner(s) that any person other than the City or

the Owners receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

REGISTERED AND COUNTERSIGNED:

Clerk and Recorder, Ex-Official Clerk of the City and County of

Denver

Manager of Figure Cumsles

Contract Control No. XC 7A069

APPROVED AS TO FORM:

David R. Fine, Attorney for the City and

County of Denver

By: Assistant City Attorney

CITY AND COUNTY OF BENYER

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RECOMMENDED AND APPROVED:

Manager of Public Works

### "OWNER(S)"

LUI Denver Broadway, LLC, a Delaware limited liability company

By: All Vin

Address

STATE OF TEXAS )							
CITY OF <u>Houston</u> )							
COUNTY OF Harris )							
The foregoing instrument was acknowledged before me this 5 day of JUNE,  2008, by Doubles C. McKinnon, as Executive Vice President							
LUI Denver Broadway, LLC, a Delaware limited liability company, as "Owner(s)".							
Witness my hand and official seal.							
My commission expires: April 03, 2011	Daniello R. Beone Notary Public						
DANIELLE R. BEENE	100 Waugh Drive, Suite 600						

# EXHIBIT "A" Property Legal Description

A PARCEL OF LAND LOCATED IN SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

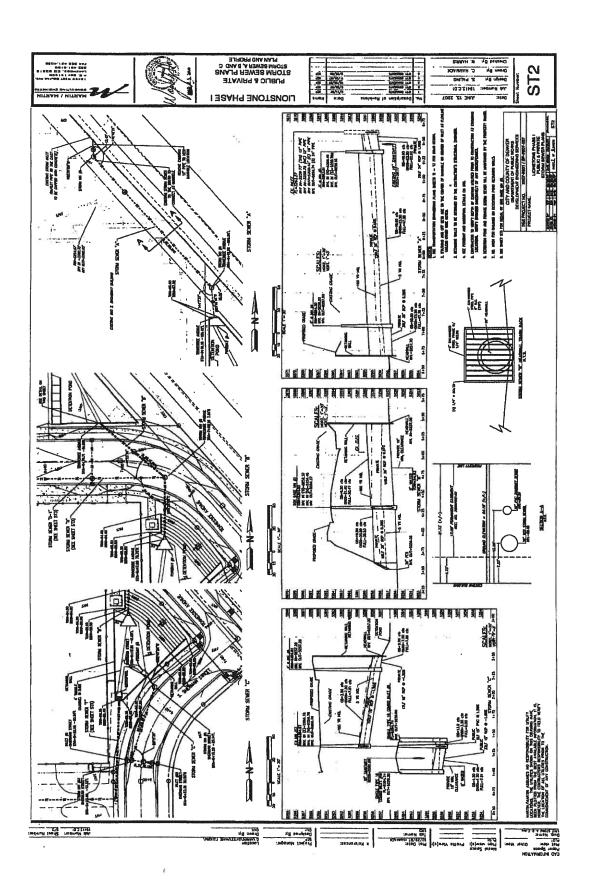
COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 15: THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER N89°46'25"E, 50.00 FEET; THENCE LEAVING SAID SOUTH LINE NO0°44'42"W, 29.13 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF EAST MISSISSIPPI AVENUE AND THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH BROADWAY AND THE TRUE POINT OF BEGINNING: THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID SOUTH BROADWAY BEING PARALLEL WITH AND 50.00 FEET NORMALLY DISTANCE EASTERLY FROM THE WEST LINE OF SAID SOUTHEAST QUARTER N00°44'42",W, 1,244.94 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST KENTUCKY AVENUE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE N89°12'15"E, 148.16 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF A PARCEL TAKEN BY THE REGIONAL TRANSPORTATION DISTRICT IN RULE AND ORDER RECORDED SEPTEMBER 14, 2004 UNDER RECEPTION NO. 2004192140; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) CONSECUTIVE COURSES: 1) THENCE S76°43'16"E, 23.12 FEET; 2) THENCE 61.96 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 11°50'01" AND A CHORD WHICH BEARS S47°27'56"E, 61.85 FEET TO A POINT OF TANGENCY; 3) THENCE \$41°32'57"E, 530.67 FEET; 4) THENCE 253.87 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 34,972.50 FEET, A CENTRAL ANGLE OF 00°24'57" AND A CHORD WHICH BEARS S41°20'28"E, 253.87 FEET; 5) THENCE ALONG A NON-TANGENT LINE S41°07'59"E, THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY LINE S89°46'25"W, 59.69 FEET; THENCE S48°52'01"W, 71.49 FEET TO A POINT OF CURVATURE; THENCE 108.24 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 125.00 FEET, A CENTRAL ANGLE OF 49°36'43" AND A CHORD WHICH BEARS \$24°03'40"W, 104.89 FEET TO A POINT OF TANGENCY; THENCE \$00°44'42"E, 367.95 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID EAST MISSISSIPPI AVENUE: THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE \$89°40'07"W, 653.17 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL OF LAND CONTAINS 700.871 SQUARE FEET (16.0898 ACRES), MORE OR LESS.

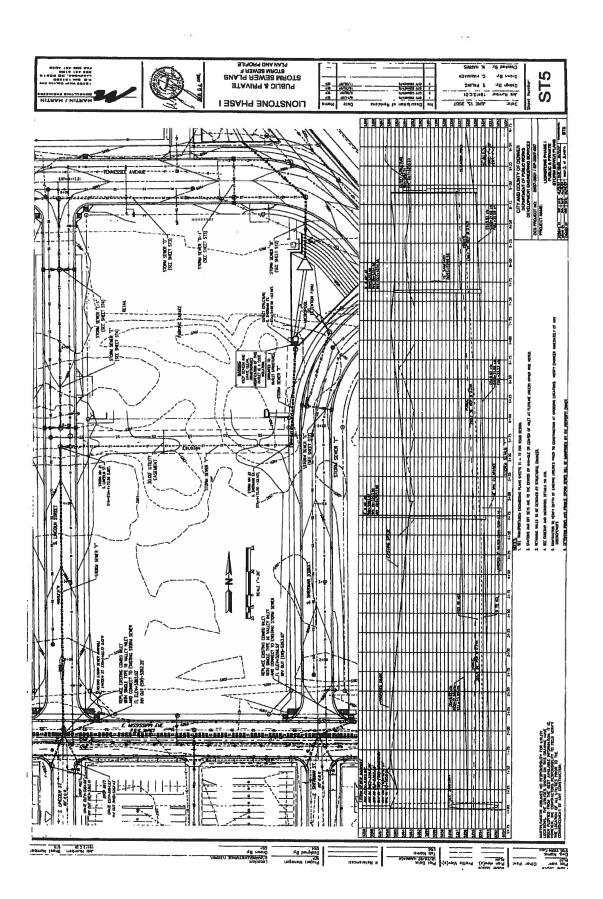
BASIS OF BEARINGS: BEARINGS ARE BASED ON THE CALCULATED BEARING OF S00°44′42″E ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTH QUARTER CORNER BY A 3-1/2″ BRASS CAP MARKED "L.S. # 19611" IN A RANGE BOX AND THE CENTER QUARTER CORNER BY FOUND STONE IN A RANGE BOX. ALL BEARINGS ARE BASED ON THE CHEROKEE REDEVELOPMENT SURVEY CONTROL DIAGRAM DATED 9/28/2006. ALL BEARINGS AND DISTANCES ARE BASED ON LOCAL GROUND CONTROL.

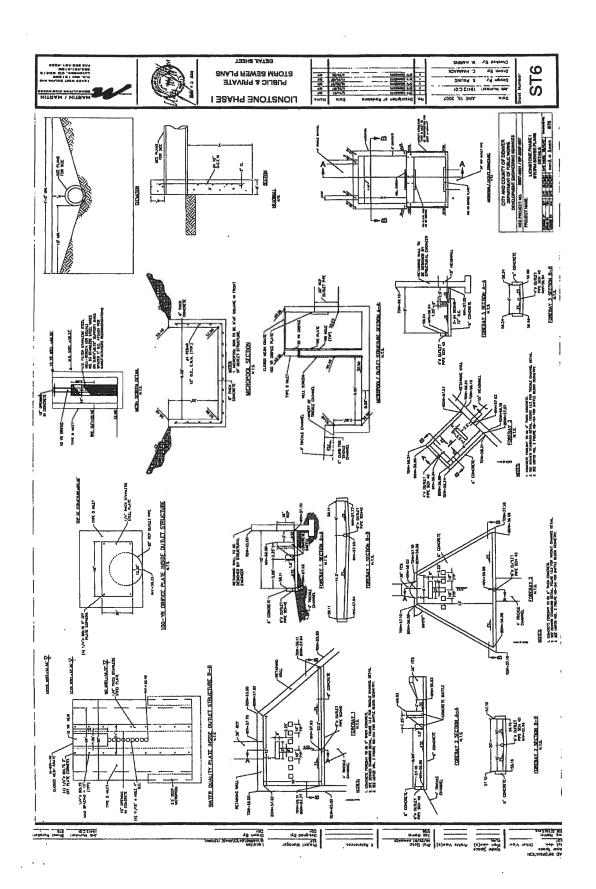
PREPARED BY: KYLE MESSMER
REVIEWED BY WAYNE WRAY HARRIS, P.E., P.L.S
FOR AND ON BEHALF OF MARTIN/MARTIN INC.
12499 W. COLFAX AVE.
LAKEWOOD, CO 80215
NOVEMBER 29, 2007

EXHIBIT "B" Project Site Plan

(See Attachments)







29

# LIONSTONE DEVELOPMENT FILING NO. 1

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN CITY AND COUNTY OF DENVER STATE OF COLORADO

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BY COMMISSION DIPINES: 7/4/01/ NESS NY HAND AND OFFICIAL SEAL













Jeremy Newson

Vice President

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MESSON DIVINES 3-11-2012









PROOFED BY THE MANAGER OF PUBLIC WORKS.

AMAZER OF PUBLIC WORKS S halos

By Mile 8 Hale ... PPROVED BY THE MANAGER OF COMMUNITY PLANSING AND DEVELOPMENT: S-6-402

WAGES OF PARES AND RECTEATION 5.7.08

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