

DEED OF CONSERVATION EASEMENT

Public Trail

Mesa County, Colorado

THIS DEED OF CONSERVATION EASEMENT is granted this 22nd day of December, 2006, by **DALE R. REECE**, (the “Grantor”) to and for the benefit of the **CITY OF GRAND JUNCTION, COLORADO** (the “Grantee”) as grantee, and the successors in interest and assigns of each, for the purpose of forever conserving a portion of the Property as a public trail corridor.

The following Exhibits are attached hereto and made a part of this Conservation Easement:

Exhibit A - Description of Property and Trail

Exhibit B - Sketch of Property and Trail

RECITALS

A. Grantor is the owner of approximately 26.21 acres of land, more or less, located along the Colorado River in Mesa County, Colorado, more particularly described in **Exhibit A** and depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the “Property”).

B. The Grantor wishes to convey this Deed of Conservation Easement (“Deed”) to create a public trail (“Trail”) along the northerly bank of the Colorado River across the Property as described in **Exhibit A** and depicted on the attached **Exhibit B** (the “Easement”) and to further restrict the development of the Property between the Trail and the Colorado River.

C. The Grantee is willing to accept this Easement.

D. The characteristics of the Property, its current use and state of improvement, are known to the Grantee. Grantee acknowledges receipt of a survey and information from the Mesa County Assessor concerning the Property and has inspected the Property and acknowledges such information is sufficient to establish the condition of the Property at the time of this Deed

E. The Trail will be preserved for the outdoor recreation of the general public as a nature, hiking, equestrian and bicycling trail and will be available for substantial and regular use by the general public, as described in Section 170(h)(4)(i) of the Code and Sections 1.170A-14(d)(1)(i) and 1.170A-14(d)(2) of the Treasury Regulations (collectively, the “Conservation Values”).

F. Preservation of the Conservation Values is of great importance to the Grantee, the people of Mesa County, the people of the State of Colorado, and the people of the United States of America, which are worthy of protection. This Deed will permit the general public to use the Trail as a nature, hiking, equestrian and bicycling trail along the northern bank of the Colorado River in an important scenic and natural area identified by the Grantee, the Town of Palisade, the Town of Fruita, and Mesa County in an Intergovernmental Agreement as the “Mesa County Community Separator Area,” as an area that is important for preserving open and undeveloped lands as buffer lands which separate developed areas of the Grand Valley, and the restrictions on the Property will

preserve the view of the Colorado River from the Trail.

G. The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, the following clearly delineated governmental conservation policies:

(1) Colorado Revised Statutes § 38-30.5-101, *et seq.*, providing for the establishment of conservation easements to maintain land “in a natural, scenic or open condition, or for wildlife habitat, or for agricultural...or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity.”

(2) The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes § 33-1-101, *et seq.*, which provide that “it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas, of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state.”

(3) Mesa Countywide Land Use Plan - Open Lands and Trails Goals: “to protect important open lands,” “new development should accommodate and protect wildlife habitats,” and “to assure that open land is recognized as a limited and valuable resource which must be conserved whenever possible.”

(4) Mesa County Land Use Plan - Mesa County Community Separator Area program and Mesa County Cooperative Planning Areas: “to establish and maintain a transition area between Grand Junction and Fruita, and Grand Junction and Palisade.”

(5) Mesa County’s East Grand Valley Final Parks Master Plan, dated February 23, 2000, “strongly endorses” the concept of a Riverfront Trail from Grand Junction east through Palisade.

(6) Mesa County Land Use Plan, 1996, includes Open Land and Trails Goal #4, “to identify and protect existing and future major trail linkages in the County.”

(7) Mesa County, the Cities of Grand Junction and Fruita, and the Town of Palisade have together established, provide funding for, and appoint members to the Riverfront Commission whose mission includes the creation of a continuous trail along the Colorado River from the Utah State Line to the Garfield County Line.

H. Grantee is a political subdivision of the State of Colorado and is a governmental unit as described in Section 170(b)(1)(A)(v) and (c)(1) of the Internal Revenue Code of 1986, as amended (the “Code”) and is a “qualified organization” as defined in Section 170(h)(3) of the Code, and a governmental entity as defined in § 38-30.5-104(2), C.R.S.

I. The Grantor desires to protect the Conservation Values of the Property in perpetuity by creation of a conservation easement in gross under Article 30.5 of Title 38, Colorado Revised Statutes.

J. Grantee accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever for exclusively charitable purposes.

K. The Grantor intends to make a donation to the Grantee of the value of the Easement and no consideration has passed to Grantee for the grant of this Deed.

NOW, THEREFORE, for reasons given, and in consideration of other good and valuable consideration, the above and 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, grants and conveys to the Grantee, its successors and assigns a Conservation Easement in perpetuity, consisting of the rights and restrictions enumerated herein, over and across the Property (the “**Easement**”), exclusively for the purpose of forever conserving the Easement as a public trail corridor.

1. Purpose. It is the purpose of this Deed to assure that the Trail will be available for use by the general public on a substantial and regular basis as a nature, hiking, equestrian and bicycling trail, and to prevent uses of the Property, as restricted herein, that will diminish, impair or interfere with the Conservation Values of this Easement. The parties intend that this Deed will confine the use of the Property to a public trail and associated uses permitted by this Deed.

2. Restrictions on Grantor’s Uses of the Trail and Property. Except as provided in Section 2.1, Grantor retains no right to use the Trail, except the rights allowed to the general public by Grantee. Grantor shall have full rights to utilize the Property, outside the Trail, except as restricted in Section 2.2.

2.1 Trail. The Grantor shall have the right to place along the Trail a bench and/or sign that is approved as to location and design by the Grantee in its reasonable discretion. The sign and/or bench may have a public interest message (such as, but not limited to, warning of the dangers of drinking and driving) and/or be a memorial to a named person; provided in no event shall commercial advertising be permitted in conjunction with the bench and/or sign.

2.2 Property. Grantor shall not erect any building, structure, commercial sign or billboard upon the Property between the Trail and the Colorado River in order to assure the public view of the Colorado River from the Trail will not be obstructed. The mining or extraction of soil, sand, gravel, rock, stone, decorative stone, oil, gas, fuel or any other type of mineral substance, of any kind or description, is prohibited upon the Property. The storage of vehicles, materials, implements or equipment, are prohibited upon the portion of the Property between the Trail and the Colorado River. The storage, dumping or other disposal

of any hazardous or toxic material, and the uncontained accumulation of trash or refuse anywhere upon the Property is prohibited.

3. Obligations and Rights of the Grantee. To accomplish the purpose of this Deed in addition to the rights described in C.R.S. § 38-30.5-101, *et seq.*, as amended from time to time, the following rights are granted to the Grantee:

3.1 To preserve and protect the Conservation Values;

3.2 To enter upon the Property in order to monitor compliance with and otherwise enforce the terms of this Deed;

3.3 To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement, or which may be reasonably expected to have material adverse impact on the Conservation Values, and to require the restoration of such areas or features of the Property that are materially damaged by any inconsistent activity or use.

3.4 The Trail may be used solely as a nature, hiking, equestrian and bicycling trail free of charge by the general public, on the terms and conditions described in this Deed. Grantee may construct, maintain, repair and replace trail accessories, such as signs, benches, educational kiosks, and other improvements which are accessory to the public use of the trail (“**Trail Accessories**”).

3.5 The Trail shall be for use of the general public, subject to reasonable rules and restrictions of the Grantee, such as closure prior to and during construction and maintenance of the Trail and Trail Accessories for safety and liability reasons, during times of emergency, for revegetation, etc.

4. Responsibilities of the Grantor and the Grantee. Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Property.

4.1 The Grantee shall be solely responsible for payment of all taxes and assessments levied against the Trail. Grantor shall remain responsible for payment of all taxes and assessments levied against the Property that are not assessed with respect to the value of the Easement rights.

4.2 Grantee shall be responsible for the upkeep and maintenance of the Trail and Trail Accessories. Any bench and/or sign erected by Grantor pursuant to Section 2.1 shall be maintained by Grantee.

5. Enforcement.

5.1 The Grantee shall have the right to prevent and correct violations of the terms of this Deed. If the Grantee finds what it believes is a violation, the Grantee shall immediately notify Grantor in writing of the nature of the alleged violation, and the Grantee in its discretion may take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the public recreation uses of the Trail, the Grantee will give the Grantor sixty (60) days to correct the violation before filing any legal action and the parties shall pursue resolution of the dispute through the mediation process (“**Mediation Process**”) described in this paragraph. For purposes of this Easement the Mediation Process is as follows: (a) Upon notice from the Grantee to the Grantor of a potential violation of this Deed, both parties agree to meet as soon as possible to resolve this difference; (b) if a resolution of this difference cannot be achieved at the meeting, both parties agree promptly to meet with a mutually acceptable mediator to attempt to resolve the dispute as early in the sixty (60) day period as possible; (c) Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process; and (d) should mediation fail to resolve the dispute, the Grantee may, in its sole discretion, take appropriate legal action. If a court with jurisdiction determines that issuance of a temporary or permanent injunction is appropriate the Grantee may obtain such an injunction. A court may also issue an injunction or order requiring the Grantor to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney’s fees. These rights are in addition to any rights as described in C.R.S. § 38-30.5-101, *et seq.*, as amended from time to time. The failure of the Grantee to take immediate action shall not bar it from doing so at a later time.

5.2 Enforcement of the terms of this Deed shall be at the sole discretion of the Grantee. Any forbearance by the Grantee to exercise its rights under this Deed shall not be deemed or construed to be a waiver by the Grantee of any term of this Deed or of any of the Grantee’s rights under this Deed. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach of the Grantor shall impair such right or remedy or be construed as a waiver.

6. Acts Beyond Grantor’s Control. Nothing contained in this Deed shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change to the Property resulting from causes beyond Grantor’s control, including, but not limited to, fire, flood, storm, accretion, reliction, avulsion, 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.

7. Transfer of Easement, Public Trail Easement. The Trail and the rights of Grantee under this Deed are only transferable together, and the Grantee may assign its rights and obligations

under this Deed, upon written notice to Grantor, but without further approval of Grantor, provided that such assignment shall be only to a Qualified Organization. As a condition of such transfer, the Grantee shall require that the conservation purposes that this Deed is intended to advance continue to be carried out. The Trail and the rights of the Grantee may only be assigned to a Qualified Organization that is a “**Public Entity**,” as defined in § 24-10-103(5), C.R.S., or other entity that affords the same protections as does assignment to a Public Entity under § 24-10-103(5), C.R.S., for strictly public or charitable purposes.

8. Transfer of Property. Grantor may transfer the Property itself, or any interest in it, to any third party, provided the document of conveyance shall expressly refer to this Deed and shall make the transfer subject to the provisions of this Deed. Upon any transfer of the Property, or any portion thereof, Grantor shall have no further liability or obligations under this Deed with respect to the portion of the Property which is transferred, except to the extent such liability arises from acts or omissions occurring prior to the date of transfer.

9. Amendment of Deed. This Deed may be amended only with the written consent of the Grantee and Grantor by an instrument duly executed and recorded in the real property records of Mesa County, Colorado. Any such instrument shall be consistent with the purposes of this Deed, shall not permit uses inconsistent with the Conservation Values of the Property, shall not affect the perpetual duration of this Easement, and shall comply with Section 170(h) of the Internal Revenue Code and any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Colorado Revised Statutes § 38-30.5-101, *et seq.*, and any regulations promulgated pursuant to that law. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of Mesa County, Colorado.

10. Indemnification.

10.1 Grantor’s Immunity. The parties expressly acknowledge that the Trail and this Easement are granted for a “recreational purpose” under C.R.S. § 33-41-101, *et seq.*, and that Grantor is entitled to the benefits, protections and limitations on liability afforded by Colorado law governing recreational easements, including without limitation said § 33-41-101, *et seq.* Grantor shall have no obligation to repair, clear or otherwise maintain the area within the Trail or to insure or indemnify Grantee or the public for any injury, claim or damage to any person or property, whether alleged to have occurred as a result of use of the Trail for public non-motorized travel or otherwise, or due to the condition of the Trail.

10.2 The Grantee shall hold harmless, indemnify, and defend any owner of the Property (collectively, “**Grantee Indemnified Parties**”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorney’s fees, arising from or in any way connected with the Trail, unless due to the negligence of the Grantee Indemnified Parties (in which case liability shall be apportioned in accordance with Colorado law) or the intentional act of the Grantee Indemnified Parties.

11. Termination of Easement.

11.1 This Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The parties agree that the Easement has a value of 100% of the fair market value of the mineral rights of the Property and 24.78% of the fair market value of the surface rights of the Property unencumbered by this Deed (the “**Grantee’s Percentage**”). If circumstances arise in the future such as render the purpose of this Deed impossible to accomplish, this Deed 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 when it first learns of such circumstances. The amount of the proceeds to which the Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with this paragraph 11.1.

11.2 If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill the conservation purpose of this Deed, the Deed may be terminated as described in paragraph 11.1 above. If the Property is sold or taken for public use such that the Deed is terminated, then, as required by Treasury Regulation Sec. 1.170A-14(g)(6), the Grantee shall be entitled to the Grantee’s Percentage of the gross sale proceeds or condemnation (the “**Grantee’s Proceeds**”). The Grantee shall use its portion of the Grantee’s Proceeds consistently with the conservation purpose of this Deed and solely for charitable purposes.

11.3 In making this Grant the Grantor has considered the possibility that uses prohibited by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed in whole or in part. In addition, the inability of the Grantor, or his heirs, successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for termination of this Deed in whole or in part. The termination of this Deed shall not affect the perpetual duration of the Trail.

12. Interpretation. This Deed shall be interpreted under the laws of the State of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes and protection of the Conservation Values. Grantor intends this donation to be the donation of a conservation easement qualifying for a deduction under Section

170(h) of the Code and for the credit under § 39-22-522, C.R.S.; all provisions of this Deed shall be interpreted to effectuate that intent, and a Court may reform this Deed as necessary to effectuate such intent, while preserving the Conservation Values of the Property.

13. Perpetual Duration. The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interest may appear.

14. Notices. Any notices required by this Deed shall be in writing and shall be personally delivered or sent by Federal Express or other similar courier service specifying the earliest available delivery, or by certified mail, return receipt requested, to the Grantor and the Grantee at the following addresses, or to such other address as either party from time to time shall designate by written notice to the other in the manner described in this paragraph:

To the Grantor:

Dale R. Reece
2065 Blue Water Drive
Fruita, CO 81521

and

To the Grantee:

City of Grand Junction
250 N. Fifth Street
Grand Junction, CO 81501

15. Grantor's Title Warranty. The Grantor warrants that he has good and sufficient title to the Property, subject only to matters of record, that the Grantee has access to the Property for the purposes described in this Deed, that any mortgages, deeds of trust or monetary liens encumbering the Property are subordinate to the terms of this Deed. The parties intend that this Deed encumber the Property (but not any water rights appurtenant to or associated with the Property), including any and all soil, sand, gravel, oil, natural gas, fuel, rock, stone or any other mineral substance of any type or character on or thereunder, whether any such interest is now owned or is later acquired by the Grantor.

16. Grantor's Environmental Warranty. The Grantor warrants that he has no knowledge of a release or threatened release of hazardous substances or wastes on the Property.

17. Recording. The Grantor shall record this instrument in timely fashion in the official records of Mesa County, Colorado, and Grantee may re-record it at any time as may be required to

preserve its rights under this Deed.

18. Non-Merger. Unless the parties expressly provide in writing that they intend a merger of estate or interests to occur, then no merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Deed, the Property or the Trail.

19. No Third-Party Beneficiary. This Deed is entered into by and between the Grantor and the Grantee, and except as provided herein, is solely for the benefit of the Grantor and the Grantee, and their respective successors in interest and assigns and does not create rights or responsibilities in any third parties beyond the Grantor and the Grantee.

20. Severability. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, 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.

21. Successors. The covenants, terms, conditions, and restrictions of this Deed 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.

22. Joint Obligation. In the event the Property is owned by more than one owner, all such owners shall be jointly and severally liable for the obligations imposed by this Deed upon Grantor.

23. Termination of Rights and Obligations. A party's rights and obligations under this Deed shall terminate upon transfer of the party's interest in the Deed, except that liability for acts or omissions occurring prior to the transfer shall survive the transfer.

24. Captions. The captions in this Deed 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.

25. Controlling Law. The interpretation and performance of this Deed shall be governed by the laws of the State of Colorado. Venue for any dispute concerning this Deed shall be Mesa County, Colorado.

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

TO HAVE AND TO HOLD this Deed of Conservation Easement unto the Grantee, its successor and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement on this 22nd day of December, 2006.

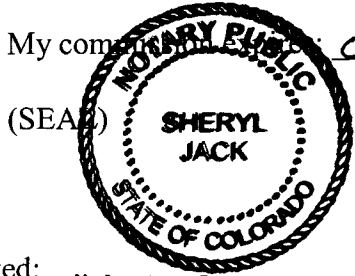
GRANTOR:

Dale R. Reece
Dale R. Reece

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 22nd day of December, 2006, by Dale R. Reece, Grantor.
WITNESS my hand and official seal.

My commission expires: 02/22/2008



Sheryl Jack
Notary Public

Accepted: My Commission Expires 02/22/2008

THE CITY OF GRAND JUNCTION, COLORADO

By: David Varley
City Manager

Attest: Stephanie Turner
City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF MESA)



The foregoing instrument was acknowledged before me this 27th day of December, 2006, by David Varley as City Manager of the City of Grand Junction, Colorado.
WITNESS my hand and official seal.

My commission expires: 3/13/09



Debra M. Kemp
Notary Public

Exhibit A

PROPERTY DESCRIPTION

The SE¼ SE¼ of Section 9, Township 1 South, Range 1 West of the Ute Meridian, EXCEPT Lots 11 and 12 of Riverside Subdivision, AND EXCEPT rights of way for railroad and highway.

TRAIL EASEMENT

A strip of land situate in the southeast ¼ of the southeast ¼ of Section 9, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, being more particularly described as follows:

Commencing at the southwest corner of Lot 1 of Ice Skating Subdivision as recorded in Book 4231 at Pages 304 & 305, at Reception No. 2334019, being a 3¼" aluminum cap stamped L.S. 24306, the basis of bearing being S89°46'10"E to the south ¼ corner of Section 10, being a 2½" aluminum cap stamped L.S. 17485;

thence N15°20'01"W along the westerly line of said Lot 1 a distance of 152.16 feet to the Point of Beginning;

thence N00°02'41"E along the said westerly line a distance of 119.87 feet;

thence N25°45'19"W a distance of 141.97 feet;

thence N23°21'17"W a distance of 226.38 feet;

thence N70°09'17"W a distance of 26.06 feet;

thence S23°56'54"E a distance of 378.31 feet;

thence S08°27'23"E a distance of 81.06 feet;

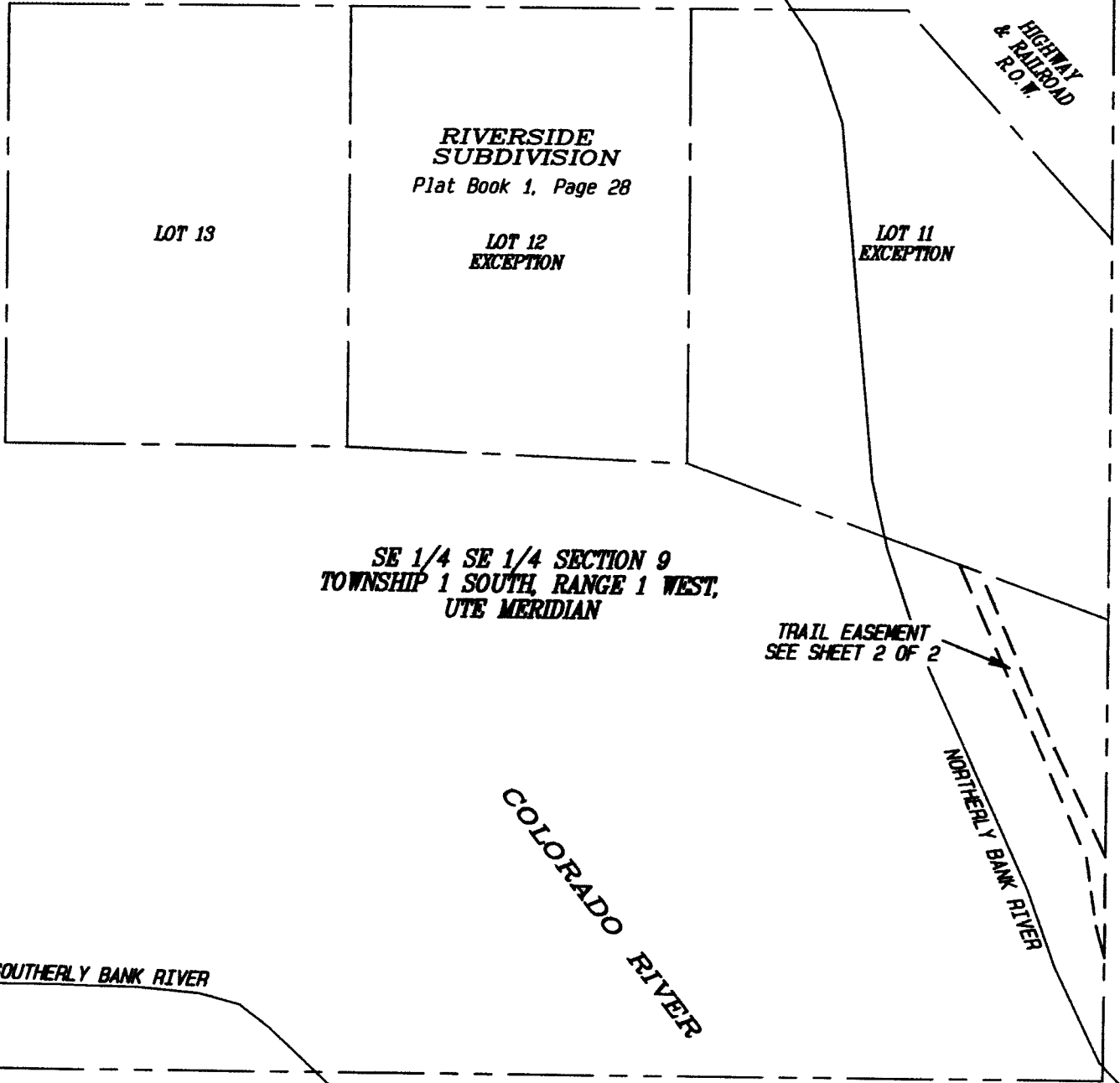
thence S15°20'01"E a distance of 39.92 feet to the Point of Beginning.

Said strip contains 0.19 acres more or less.

EXHIBIT B

SOUTHEAST
1/16 CORNER
SECTION 9

SOUTH 1/16
CORNER
SECTION 9



**RIVERSIDE
SUBDIVISION**
Plat Book 1, Page 28

LOT 13

LOT 12
EXCEPTION

LOT 11
EXCEPTION

HIGHWAY
& RAILROAD
R.O.W.

SE 1/4 SE 1/4 SECTION 9
TOWNSHIP 1 SOUTH, RANGE 1 WEST,
UTE MERIDIAN

TRAIL EASEMENT
SEE SHEET 2 OF 2

COLORADO RIVER

NORTHERLY BANK RIVER

SOUTHERLY BANK RIVER

EAST 1/16 CORNER
SOUTH LINE
SECTION 9

SOUTHEAST CORNER
SECTION 9



NOT TO SCALE

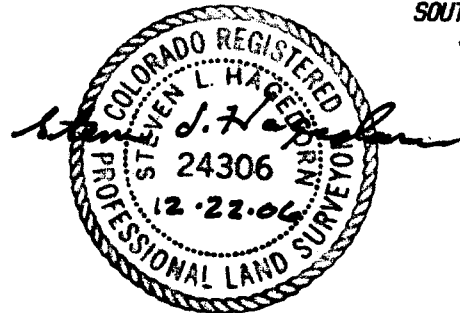


EXHIBIT B

N70°09'17"N
26.06'

South line Lot 11
Riverside Subdivision
Plat Book 1, Page 28

S23°56'54"E
N23°21'17"N
TRAIL EASEMENT

NORTHERLY BANK COLORADO RIVER

226.38'
50.19 ACRE

N25°45'19"N
378.31'
141.97'

508°27'23"E
81.05'
119.87'
E 41°02'41" N
100°02'41" N
515°20'01"E
39.92'

Point of Beginning

LOT 1

N15°02'51"N
152.16'

SOUTHWEST CORNER LOT 1
ICE SKATING SUBDIVISION
BOOK 4231, PAGES 304 & 306
RECEPTION NO. 2334019

SOUTH
1/4 CORNER
SECTION 10

S89°46'10"E
BASIS OF BEARING

Point of Commencement



NOT TO SCALE

