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City of Cherry Hills Village
2450 E. Quincy Ave.
Cherry Hills Village, CO 80113

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Arapahoe County Clerk & Recorder, Nancy A. Doty
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Page Recorded: 13
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105

ORDINANCE NO. 11
Series 2004

Barcode

November 16, 2004: Introduced as Council Bill 12 Series 2004 by Councilmember Bonnie Blum, seconded by Councilmember Doug Tisdale, and considered by the title only on first reading. Passed unanimously

December 14, 2004: Considered in full text on second reading. Passed unanimously.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
VACATING THE CITY'S INTEREST, IF ANY,
TO A PORTION OF A PLATTED RECREATIONAL TRAIL EASEMENT
AND UTILITY EASEMENT AT 21 SANDY LAKE ROAD

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village is expressly authorized to own, possess, and hold real property and to sell and dispose of such real property; and

WHEREAS, state law at Title 43, article 2, part 3, C.R.S., authorizes every municipal governing body to divest the municipality's interest in platted or designated public streets, roads, and other public ways in accordance with the municipality's charter and laws; and

WHEREAS, the vacation and disposition of municipal interests in public rights-of-way and other public property is identified by the appellate courts of the State of Colorado as a legislative and discretionary function of the local governing body; and

WHEREAS, pursuant to its Home Rule Charter, state law and local ordinances the City Council holds the power and authority to specify the terms and conditions under which the City will consider and dispose of public interests in rights-of-way, easements, and other property; and

WHEREAS, the owner of property addressed as 21 Sandy Lake Road (the "Owner") petitioned the City Council, through its authorized agent, for the City's vacation of a portion of a sixteen (16) foot wide trail easement (the "Trail Easement Vacation") and a portion of a ten (10) foot wide utility easement (the "Utility Easement Vacation"), each of which easements encumber certain real property known as Lot 4A, The Buell Mansion Subdivision, Filing 2, County of Arapahoe, State of Colorado; and

WHEREAS, the City Council finds that, if the Owner meets the conditions of this vacation ordinance by providing to the City (i) the original executed copy of the "Donation and Dedication of Easement for Non-Motorized Public Trail" that is attached to this ordinance as Exhibit B, and (ii) the written consent of Comcast, Qwest, Cherry Hills Village Sanitation District, Denver Water and Xcel Energy to the Utility Easement Vacation, then the Trail Easement Vacation serves the public interest because the new trail to be dedicated provides a less circuitous and more convenient route than the portion of the trail to be vacated and causes no disconnection nor discontinuity in the City's recreational trail system, and the Utility Easement Vacation serves the public interest because there is no public purpose to be served by the portion of the utility easement to be vacated; and

WHEREAS, the City and Owner provided public notice of the proposed easement vacations in accordance with law; and

WHEREAS, the Planning and Zoning Commission recommended that the proposed vacation be approved; subject to the condition that the Utility Easement Vacation be approved by the various utility service providers; and

WHEREAS, pursuant to the foregoing findings and subject to the conditions described below, the City desires to vacate certain portions of certain easements described below.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. The City Council finds that, if the Owner meets the conditions of this vacation ordinance by providing to the City, in accordance with Sections 2 hereof, (i) the original executed copy of the "Donation and Dedication of Easement for Non-Motorized Public Trail" that is attached to this ordinance as Exhibit B, and (ii) the written consent of Comcast, Qwest, Cherry Hills Village Sanitation District, Denver Water and Xcel Energy to the Utility Easement Vacation, then the Trail Easement Vacation serves the public interest because the new trail to be dedicated provides a less circuitous and more convenient route than the portion of the trail to be vacated and causes no disconnection nor discontinuity in the City's recreational trail system, and the Utility Easement Vacation serves the public interest because there is no public purpose to be served by the portion of the utility easement to be vacated. Based upon such findings, the City's title or claim to ownership of the easements described and depicted in Exhibit A hereto is hereby vacated subject to the conditions stated in Section 2 below.

Section 2. In accordance with Section 11-5-30(B) of the City Code for the City of Cherry Hills Village, the City Council conditions the vacations approved by this Ordinance upon the satisfaction of the following events:

- (A) The City's receipt of the original executed copy of the "Donation and Dedication of Easement for Non-Motorized Public Trail" that is attached to this ordinance as Exhibit B; and
- (B) The City's receipt of the written consent of Comcast, Qwest, Cherry Hills Village Sanitation District, Denver Water and Xcel Energy to the Utility Easement Vacation.

Section 3. The City's recording in the real property records for Arapahoe County, Colorado of (i) a fully executed copy of this ordinance, and (ii) a fully executed copy of the "Donation and Dedication of Easement for Non-Motorized Public Trail" that is attached to this ordinance as Exhibit B, shall be conclusive evidence of the fact that each of the conditions of Section 2 of this ordinance has been satisfied.

Section 4. Ownership of the City's interest in the vacated easements shall vest with the then current owners of the underlying fee simple estate, as their ownership interests may appear, only upon satisfaction of the conditions of approval set forth in Section 2 hereof.

Section 5. No Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall render the remaining portions or applications of this ordinance invalid. It is the express intent and declaration of the City Council that the Council would not approve the vacation of right-of-way without all provisions of this ordinance being valid and effective.

Adopted as Ordinance No. 11 Series 2004, by the City Council of the City of Cherry Hills Village, Colorado this 14th day of December, 2004.

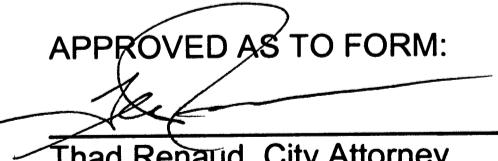


Douglas C. Scott, Mayor

ATTEST:


Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:


Thad Renaud, City Attorney

1100 W LITTLETON BLVD SUITE 210
LITTLETON CO 80120-2239



MILLER ENGINEERING
& SURVEYING, INC.
CIVIL AND LAND DEVELOPMENT ENGINEERING
LAND SURVEYING

PHONE: 303-770-2015
FAX: 303-770-1272

March 16, 2004

LEGAL DESCRIPTION: A 16.00 FOOT WIDE TRAIL EASEMENT TO BE VACATED

PART OF A 16.00 FOOT WIDE TRAIL EASEMENT OVER AND ACROSS A PORTION OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO, AND RECORDED AT RECEPTION NUMBER A8152106, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NW CORNER OF LOT 4A, THE BUELL MANSION SUBDIVISION FILING 2, AS FILED AT RECEPTION NO. B3176228, PLAT BOOK 246 AT PAGE 57, ARAPAHOE COUNTY, WHICH HAS A NORTH LINE THAT BEARS S89°14'40"E BETWEEN TWO MONUMENTS; THENCE S89°14'40"E ALONG SAID NORTH LINE A DISTANCE OF 247.97 FEET; TO A POINT ON THE NORTH LINE OF SAID LOT 4A; THENCE S42°55'37" A DISTANCE OF 15.59 FEET; THENCE S47°04'23"E A DISTANCE OF 6.62 FEET TO THE POINT OF BEGINNING; THENCE S47°04'23"E A DISTANCE OF 23.38 FEET; THENCE N42°55'37"E A DISTANCE OF 21.32 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 156.00 FEET, A CENTRAL ANGLE OF 05°56'39" AND A CHORD THAT BEARS S55°33'47"E A DISTANCE OF 16.18 FEET; THENCE S42°55'37"W A DISTANCE OF 39.71 FEET; THENCE N47°04'23"W A DISTANCE OF 57.04 FEET; THENCE S89°14'40"E A DISTANCE OF 23.83 FEET TO THE POINT OF BEGINNING. CONTAINING 1129 SQUARE FEET, 0.0259 ACRES.

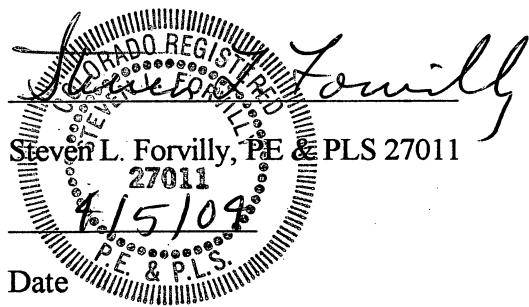


Exhibit A



MILLER ENGINEERING
& SURVEYING, INC.

CIVIL AND LAND DEVELOPMENT ENGINEERING
LAND SURVEYING

1100 W LITTLETON BLVD SUITE 210

303-770-2015
303-770-1272 FAX

LITTLETON, COLORADO 80120-2239

LOT 88
THE BUELL MANSION

50'
BUILDING BUFFER (PLAT)

247.97'

POB

SANDY LAKE RD.

LOT 87
THE BUELL MANSION

L=16.18'
R=156.00'
Δ=5°56'39"
S55°33'47"E
16.18

LOT 4A
THE BUELL MANSION
FILING 2

16' TRAIL EASEMENT
TO BE VACATED
1,129 sq. ft.
0.0259 acres

40' 0' 40' 80'
SCALE IN FEET

THIS DRAWING DOES NOT REPRESENT
A MONUMENTED SURVEY AND IS ONLY
INTENDED TO DEPICT THE ATTACHED DESCRIPTION

PREPARED UNDER MY DIRECT SUPERVISION

STEVEN L. FORVILLY, P.E. #27011
REGISTERED SURVEYOR

27011
STEVEN L. FORVILLY, P.E. #27011
REGISTERED SURVEYOR
P.E. & P.L.S. #27011

Exhibit A



1100 W LITTLETON BLVD SUITE 210
LITTLETON CO 80120-2239

MILLER ENGINEERING
& SURVEYING, INC.

CIVIL AND LAND DEVELOPMENT ENGINEERING
LAND SURVEYING

PHONE: 303-770-2015
FAX: 303-770-1272

February 18, 2004

LEGAL DESCRIPTION: A 10.00 FOOT WIDE UTILITY EASEMENT TO BE VACATED

PART OF A 10.00 FOOT WIDE UTILITY EASEMENT OVER AND ACROSS A PORTION OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO, AND RECORDED AT RECEPTION NUMBER A7161666, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NW CORNER OF LOT 4A, THE BUELL MANSION SUBDIVISION FILING 2, AS FILED AT RECEPTION NO. B3176228, PLAT BOOK 246 AT PAGE 57, ARAPAHOE COUNTY, WHICH HAS A NORTH LINE THAT BEARS S89°14'40"E BETWEEN TWO MONUMENTS; THENCE S89°14'40"E ALONG SAID NORTH LINE A DISTANCE OF 247.97 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 4A BEING THE POINT OF BEGINNING; THENCE S42°55'37"W A DISTANCE OF 15.59 FEET; THENCE S47°04'23"E A DISTANCE OF 30.00 FEET; THENCE N42°55'37"E A DISTANCE OF 27.35 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET, A CENTRAL ANGLE OF 03°51'18" AND A CHORD THAT BEARS S54°44'23"E A DISTANCE OF 10.09 FEET; THENCE S42°55'37"W A DISTANCE OF 38.70 FEET; THENCE N47°04'23"W A DISTANCE OF 50.00 FEET; THENCE N42°55'37"E A DISTANCE OF 16.53 FEET; THENCE S89°14'40"E A DISTANCE OF 13.49 FEET TO THE POINT OF BEGINNING. CONTAINING 890 SQUARE FEET, 0.0204 ACRES.

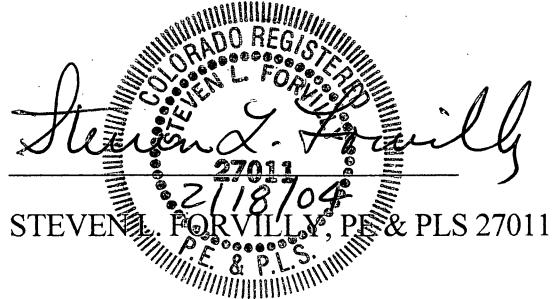

Steven L. Forville
27011
2/18/04
STEVEN L. FORVILLE, PE & PLS 27011

Exhibit A



MILLER ENGINEERING
& SURVEYING, INC.

CIVIL AND LAND DEVELOPMENT ENGINEERING
LAND SURVEYING

1100 W LITTLETON BLVD SUITE 210

303-770-2015
303-770-1272 FAX

LITTLETON, COLORADO 80120-2239

LOT 88
THE BUELL MANSION

LOT 87
THE BUELL MANSION

50'
BUILDING BUFFER (PLAT)

S 89°14'40" E
13.49

247.97'

L=10.09'
R=150.00'
Δ=3°51'18"
S54°44'23"E
10.09

LOT 4A
THE BUELL MANSION
FILING 2

10' UTILITY EASEMENT
TO BE VACATED
890 sq. ft.
0.0204 acres

THIS DRAWING DOES NOT REPRESENT
A MONUMENTED SURVEY AND IS ONLY

PREPARED UNDER MY DIRECT SUPERVISION

40' 0' 40' 80'
SCALE IN FEET

STEVEN L. FORVILL #27011
P.E. & PLS.
2/18/04
COLORADO REGISTERED
STEVEN L. FORVILL #27011
P.E. & PLS.

Exhibit A

DONATION AND DEDICATION OF EASEMENT FOR NON-MOTORIZED PUBLIC TRAIL

THIS DONATION AND DEDICATION OF EASEMENT FOR NON-MOTORIZED PUBLIC TRAIL EASEMENT, ("Easement Agreement") is entered into as of the date of execution of this Easement Agreement by the Grantor(s) as shown below, by and between **BUELL MANSION OWNER'S ASSOCIATION, INC.**, a unit owner's association organized under the Colorado Common Interest Ownership Act, whose address is 1 Buell Mansion Parkway, Englewood, Colorado 80113, hereinafter referred to as "Grantor(s)" and the **CITY OF CHERRY HILLS VILLAGE, COLORADO**, a home rule municipal corporation of the State of Colorado, whose address is 2450 East Quincy Avenue, Cherry Hills Village, Colorado, 80110 (hereinafter referred to as "City"). Both parties are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Grantor desires to voluntarily and generously donate and dedicate to the City the right of public access and use to a limited portion of the Grantor(s) real property in order to advance public recreational opportunities and to enhance the character and quality of life with the City of Cherry Hills Village; and

WHEREAS, the Grantor does not desire monetary compensation for such donation and desire only that the City of Cherry Hills Village use and maintain the Easement as described in this Easement Agreement; and

WHEREAS, the City desires to accept the Grantor's generous donation of the Easement,

NOW THEREFORE, and in consideration of the City's use and management of the Easement as provided below, the sufficiency of which is hereby acknowledged by Grantor, the Grantor hereby grants and dedicates to the City, its successors and assigns, the permanent and perpetual nonexclusive easement and right to occupy and use the real property described in **Attachment A** to this Easement Agreement and known for purposes of this Easement Agreement as the "Easement."

It is the primary purpose and intent of this Easement Agreement to permit and facilitate the City's installation, operation, maintenance, repair, and replacement of a public recreational trail for non-motorized use, including but not limited to pedestrian, equestrian, and bicycle uses together with such fencing, surface improvements, landscaping, retaining walls, and directional signage as may be deemed appropriate by the City to support such non-motorized use(s). The Easement granted by the Grantor shall be permanent and perpetual so long as the Easement is used by the City for the purposes described in this Easement Agreement.

TO HAVE AND TO HOLD said Easement unto Grantee and its successors forever, upon the following express terms and conditions;

1. The City shall have and exercise the right of ingress and egress in, to, over, on, through and across the Easement for the purpose of installation, operation, maintenance, repair, and replacement of a public recreational trail for public non-motorized use of the Easement. All improvements deemed necessary or desirable by the City for such use of the Easement shall be borne by the City at no cost of expense to the Grantor.

Exhibit B

2. The Grantor reserves and shall retain the right to the use and occupancy of such area lying below the Easement for underground utilities and underground drainage improvements insofar as such use and occupancy is consistent with and does not impair or damage the City's use of the Easement.
3. The City shall have and exercise the right of subjacent and lateral support only to the extent necessary for the support of City's improvements within the Easement. It is specifically agreed between the Parties that the Grantor shall take no action within the Easement that would impair the lateral or subjacent support for any improvement installed by the City within the Easement.
4. The City agrees that at such time and in the event that the Easement described in this Easement Agreement is vacated by the City after appropriate action by Council and after written notice to Grantor, such Easement shall terminate and the real property interest represented by such Easement shall revert to the Grantor, its heirs, successors and/or assigns.
5. Each and every one of the benefits and burdens of this Easement Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties to this Easement Agreement.
6. This Agreement shall be interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado.
7. This Easement Agreement constitutes the whole agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on the Parties with respect to the subject matter of this Easement Agreement.
8. Nothing in this Easement Agreement is intended to waive any protection afforded to the City, its officials, employees, and agents by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* or any other applicable law providing immunity to the City, its officials, employees, and agents.
9. Each provision of this Easement Agreement is intended to be severable. If any provision of this Easement Agreement is declared illegal or invalid for any reason, such illegality or invalidity shall not affect the remainder of this Easement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement Agreement as of the day and year written below.

Exhibit B

GRANTOR:
BUELL MANSION OWNER'S ASSOCIATION, INC.
A Unit Owner's Association Organized Under
The Colorado Common Interest Ownership Act

Russell O. Stewart
By: Russell O. Stewart
Its: President

STATE OF COLORADO)
COUNTY OF Denver) ss.
)

The foregoing instrument was acknowledged before me this 15th day of Sept, 2004, by
Russell A. Stewart as President of the **BUELL MANSION OWNER'S ASSOCIATION, INC.**, a unit
owner's association organized under the Colorado Common Interest Ownership Act.



Witness my hand and official seal.
My commission expires: 11/15/04

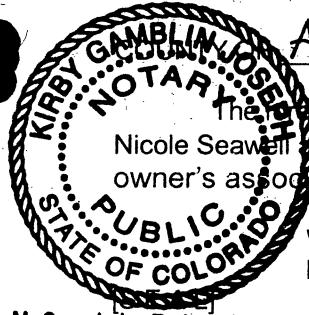
Marlene E. Beliveau
Notary Public

BUELL MANSION OWNER'S ASSOCIATION, INC.
A Unit Owner's Association Organized Under
The Colorado Common Interest Ownership Act

Nicole Seawell
By: Nicole Seawell
Its Secretary

STATE OF COLORADO)
COUNTY OF Arapahoe) ss.
)

The foregoing instrument was acknowledged before me this 24 day of Sept., 2004, by
Nicole Seawell as Secretary of the **BUELL MANSION OWNER'S ASSOCIATION, INC.**, a unit
owner's association organized under the Colorado Common Interest Ownership Act.



Witness my hand and official seal.
My commission expires: 09/26/2005

Kirby Gamblin
Notary Public

BUELL MANSION OWNER'S ASSOCIATION, INC. - BOARD MEMBERS

Jim Perkins 9-21-04
Jim Perkins Date

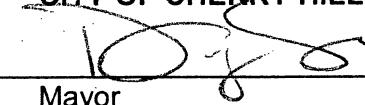
Larry Fisher 9/21/04
Larry Fisher Date

Jerry Masters 9/21/04
Jerry Masters Date

Exhibit B

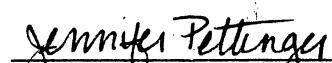
GRANTEE

CITY OF CHERRY HILLS VILLAGE



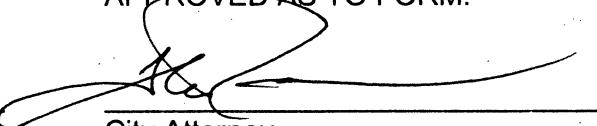
Mayor

ATTEST:



Jennifer Pettinger
City Clerk or Deputy City Clerk

APPROVED AS TO FORM:



City Attorney

Exhibit B

ATTACHMENT A
Description of Easement

Exhibit B



1100 W LITTLETON BLVD SUITE 210
LITTLETON CO 80120 -2239

MILLER ENGINEERING
& SURVEYING, INC.

CIVIL AND LAND DEVELOPMENT ENGINEERING
LAND SURVEYING

PHONE: 303-770-2015
FAX: 303-770-1272

February 18, 2004

LEGAL DESCRIPTION: A 16.00 FOOT WIDE TRAIL EASEMENT

A 16.00 FOOT WIDE TRAIL EASEMENT OVER AND ACROSS A PORTION OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CHERRY HILLS VILLAGE, COUNTY OF ARAPAHOE, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NW CORNER OF LOT 4A, THE BUELL MANSION SUBDIVISION FILING 2, AS FILED AT RECEPTION NO. B3176228, PLAT BOOK 246 AT PAGE 57, ARAPAHOE COUNTY, WHICH HAS A NORTH LINE THAT BEARS S89°14'40"E BETWEEN TWO MONUMENTS; THENCE S89°14'40"E ALONG SAID NORTH LINE A DISTANCE OF 247.97 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 4A BEING THE POINT OF BEGINNING; THENCE S89°14'40"E A DISTANCE OF 31.68 FEET; THENCE ALONG A CURVE TO THE LEFT A DISTANCE OF 6.55 FEET HAVING A RADIUS OF 140.00 FEET, A CENTRAL ANGLE OF 02°40'44" AND A CHORD THAT BEARS S51°53'03"E A DISTANCE OF 6.55 FEET; THENCE S42°55'37"W A DISTANCE OF 16.23 FEET; THENCE N89°14'40"W A DISTANCE OF 31.54 FEET; THENCE N47°04'23"W A DISTANCE OF 6.62 FEET; THENCE N42°55'37"E A DISTANCE OF 15.59 FEET TO THE POINT OF BEGINNING. CONTAINING 610 SQUARE FEET OR 0.0140 ACRES, MORE OR LESS.



Exhibit B

**MILLER ENGINEERING
& SURVEYING, INC.**

CIVIL AND LAND DEVELOPMENT ENGINEERING
LAND SURVEYING

1100 W LITTLETON BLVD SUITE 210

303-770-2015
303-770-1272 FAX

LITTLETON, COLORADO 80120-2239

LOT 88
THE BUELL MANSION

50'
BUILDING BUFFER (PLAT)

247.97'
183.35'

SANDY LAKE RD.

POB

LOT 87
THE BUELL MANSION

PROPOSED 16'
TRAIL EASEMENT
610 sq. ft.
0.0140 acres

L=6.55'
R=140.00'
 $\Delta=2^{\circ}40'44''$
S51°53'03"E
6.55

LOT 4A
THE BUELL MANSION
FILING 2

40' 0' 40' 80'
SCALE IN FEET

THIS DRAWING DOES NOT REPRESENT
A MONUMENTED SURVEY AND IS ONLY

PREPARED UNDER MY DIRECT SUPERVISION

STEVEN L. FORVILLE
COLORADO REGISTERED
SURVEYOR
#27011 & P.L.S. #27011
2/18/07
S. L. Forville
P.E. & P.L.S.