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DEVIATION REQUEST AND DECISION FORM

Updated: 6/26/2019

PROJECT INFORMATION

Project Name :	Forest Heights Estates
Schedule No.(s) :	52090-00-121, 52090-00-120
Legal Description:	See Attached.

APPLICANT INFORMATION

Company :	Jon P. Didleaux and Phyllis J. Didleau Revocable Trust		
Name :	Phyllis Didleau		
	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Consultant	<input type="checkbox"/> Contractor
Mailing Address :	7935 Forest Heights Cir, Colorado Springs, CO 80908		
Phone Number :	719-440-1949		
FAX Number :			
Email Address :	phyllis@pcisys.net		

ENGINEER INFORMATION

Company :	KCH Engineering Solutions, LLC	Colorado P.E. Number:	23635
Name :	Kenneth Harrison		
Mailing Address :	5228 Cracker Barrel Circle Colorado Springs, CO 80917		
Phone Number :	719-246-4471		
FAX Number :			
Email Address :	ksharrison5228@msn.com		

The deviation request has been revised from the previous 28' roadway cross section to a 24' wide cross section which staff does not support. After further discussion with the engineering manager, the County would be amenable to a 26' wide cross section (12' lanes w/ 1 ft. shoulders). Revise the deviation request and design documents accordingly.

OWNER, APPLICANT, AND ENGINEER DECLARATION

To the best of my knowledge, the information on this application and all additional or supplemental documentation is true, factual and complete. I am fully aware that any misrepresentation of any information on this application may be grounds for denial. I have familiarized myself with the rules, regulations and procedures with respect to preparing and filing this application. I also understand that an incorrect submittal will be cause to have the project removed from the agenda of the Planning Commission, Board of County Commissioners and/or Board of Adjustment or delay review until corrections are made, and that any approval of this application is based on the representations made in the application and may be revoked on any breach of representation or condition(s) of approval.

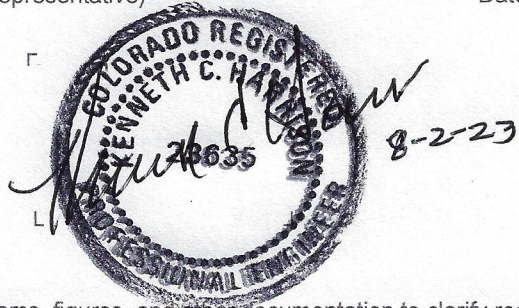
Thuy Chau

Signature of owner (or authorized representative)

8-2-23

Date

Engineer's Seal, Signature
And Date of Signature



DEVIATION REQUEST (Attach diagrams, figures, and other documentation to clarify request)

A deviation from the standards of or in Section 2.2.4 Roadway Functional Classifications, Section 6, Figure 2.8 and Appendix F SD 2-10 of the Engineering Criteria Manual (ECM) is requested. The request is to allow a private roadway section that differs from the DCM standards for Rural Gravel Roadway. Specifically, lane width of 10 feet, shoulder width of 2 feet, foreslope of 4:1 and elimination of the 5' Public Improvements Easement is requested in this deviation. A separate subdivision waiver is submitted with the Minor Subdivision application pursuant to LDC Section 8.4.4(E)(3) to allow private roadway having gravel surface, design speed of 20 mph and narrower R.O.W./road width. These items are included in the waiver and are not contained in this deviation request. Please refer to the attached exhibit.

Identify the specific ECM standard which a deviation is requested:

ECM, Appendix F, SD 2-10 Rural Gravel Local Roadway

The Rural Gravel Local Roadway standard cross section (SD_2-10) indicates:

- 12' wide travel lanes
- 4' wide gravel shoulders
- 6:1 fore slope extending from the gravel shoulder to the ditch centerline.

State the reason for the requested deviation:

Forest Heights Circle has been in service since the 1970s and has remained a private road since that time. The road currently serves 6 occupied lots. Four new rural residential (5 Acre minimum) lots are proposed with Forest Heights Estates minor subdivision on 32.6 acres. Including the proposed subdivision, the total number of lots to have access from Forest Heights Circle will be 10 lots. (Vacant parcel 5209000087 is addressed and has physical access to Herring Rd and is not a party to the maintenance agreement established by the applicants and adjacent lot owners for Forest Heights Circle. Therefore, it is not counted in the number of lots using Forest Height Circle for access.) Adherence to the ECM standard cross sections would extend disturbance outside of the tracts and easements set aside for access and into the existing occupied adjacent properties. The roadway is proposed to remain private. There is no need for 5' public improvement easements dedicated to El Paso County and adjacent owners using the existing private road are not inclined to grant new public easements. The requested deviation is to reduce lane width from 12' to 10' each way, reduce shoulder width from 4' to 2', modify the foreslope from 6:1 to 4:1, and eliminate the 5-foot Public Improvements Easement will limit disturbance of areas outside of the provided tracts and easements containing the roadway, preserve existing natural features and terrain and allow access to the four new lots without further burdening existing residents. The revised typical section was reviewed and approved by the Black Forest Fire Rescue Protection District (BFFD) in a letter dated May 4, 2020. The turnouts requested in the letter are included in the roadway design. The modified road section is attached.

Explain the proposed alternative and compare to the ECM standards (May provide applicable regional or national standards used as basis):

The proposed alternative Rural Local Gravel Roadway Section is attached.

The requested deviation is to:

- Reduce lane width from 12' to 10' each way;
- Reduce shoulder width from 4' to 2';
- Increase the foreslope from 6:1 to 4:1' ; and
- Eliminate the 5-foot Public Improvements Easement.

The other elements of ECM Appendix F, SD_2-10 will remain according to county standards.

LIMITS OF CONSIDERATION

(At least one of the conditions listed below must be met for this deviation request to be considered.)

- The ECM standard is inapplicable to the particular situation.
- Topography, right-of-way, or other geographical conditions or impediments impose an undue hardship and an equivalent alternative that can accomplish the same design objective is available and does not compromise public safety or accessibility.
- A change to a standard is required to address a specific design or construction problem, and if not modified, the standard will impose an undue hardship on the applicant with little or no material benefit to the public.

Provide justification:

1. Inapplicable Standard and Undue hardship - Adhering to the ECM standard would pose an undue hardship on the applicant since independent owners along both sides of the 60' wide access right-of-way are not inclined to grant additional right of way or easements for a wider roadway construction. Therefor adhering to the standard is problematic. The revisions to the Typical Section is the only practical and workable solution to the inability to obtain additional right of way and requiring construction outside the proposed tracts and existing easements set aside for access to the subdivision.
2. Topographical, Right-of-way and Geographical conditions – Adhering to the ECM standard section would expand the area of construction and disturbance outside of the proposed tracts and existing easements set aside for access to the subdivision and into private property. It would also unnecessarily destroy valuable existing natural features, terrain and trees along both sides of the road. With the low traffic volume of the private road, it is preferable to adopt the alternative road section.
3. Public Safety - The proposed typical section does not compromise public safety or accessibility since the anticipated vehicular traffic will remain low despite the addition of the four lots. Two turnout locations with wider drivable surface will be provided at the request of Black Forest Fire Department. Black Forest Fire which has consented to the roadway design in this subdivision. The Fire Department letter is attached. Also, the existing roadway is being improved from sub-par conditions to a more consistent, wider, and more drivable configuration. While narrower than the standard, 10' drive lanes and 2' shoulders on a gravel road are adequate to allow two-way traffic on the road. The existing road varies from 13' to 18' wide from edge of gravel to edge of gravel. The improved road will be a consistent 24' wide from shoulder to shoulder, an increase of 6' to 9' in width in most locations. The cul-de-sac bulb dimensions and layout will be improved from current sub-par conditions to match county standards per the ECM.

CRITERIA FOR APPROVAL

Per ECM section 5.8.7 the request for a deviation may be considered if the request is **not based exclusively on financial considerations**. The deviation must not be detrimental to public safety or surrounding property. The applicant must include supporting information demonstrating compliance with **all of the following criteria**:

The deviation will achieve the intended result with a comparable or superior design and quality of improvement.

Granting the proposed deviation will allow safe and reliable access to the four new lots as well as the six existing residences located on the existing private road (10 lots total).

The few number of lots will continue to produce low traffic volumes so the alternate road section will not hinder safety or usability of the roadway. The alternate road section fulfills the intended purpose of the roadway by providing safe and adequate access while preserving the existing natural features and terrain that make the site attractive for residential use. The private road will be privately owned and maintained by the Forest Heights Estates residents and adjacent land owners in accordance with the Access and Maintenance Agreement.

The alternate road section also eliminates the Public Improvements Easement granted to El Paso County which has no purpose or place on a private roadway and is not attainable from the existing property owners adjacent to the roadway tracts.

The deviation will not adversely affect safety or operations.

The requested alternative road section featuring travel lane width of 10' each way, shoulder width of 2', foreslope of 4:1 and no 5-foot Public Improvements Easement will not adversely affect safety or operations of the roadway.

The low traffic volume of the road together with the required stop sign for the road at the Herring Road intersection and Design/Posted speed of 20 mph as requested in the Private Road Waiver which is associated with the Minor Subdivision application, provides intended safety and use of the roadway.

The remaining standard cross sections features of 4% cross slopes, 60' right-of-way width, gravel surface over prepared subgrade, roadside drainage ditches as required, Maximum ADT of 199, maximum and minimum longitudinal slopes and horizontal alignment criteria continue to meet the county standards.

The deviation will not adversely affect maintenance and its associated cost.

- The deviation will not adversely affect maintenance cost. The road will be privately maintained by the residential lot owners in accordance with the Access and Maintenance Agreement. The road design is conducive to regular private maintenance. The proposed improvements will better direct storm flows off the roadway which will reduce maintenance. The roadway will include a County-standard cul-de-sac bulb constructed at the terminus of the road which will accommodate emergency vehicles and public or private snowplows.

The deviation will not adversely affect aesthetic appearance.

The allowance of this deviation will enhance, not adversely affect, aesthetic appearance of the roadway. The narrower road section will fit and blend into the existing natural terrain to a greater extent than the county standard section. The proposed improved road will feature a more consistent width and the surface will be uniform cross sloped gravel surface, an improvement over existing conditions.

The deviation meets the design intent and purpose of the ECM standards.

- The design intent of adequate and safe access is met with adequate travel surface area, and improvement over existing conditions as well as proper direction of storm drainage, and proper travel surface.
- The two turn-outs to be provided and spaced appropriately along the roadway length enhance mobility on the roadway in the event of emergency.
- The traffic volume on Forest Heights Circle will remain low with up to 10 residents using for access so the design fits the anticipated useage of the roadway.

The deviation meets the control measure requirements of Part I.E.3 and Part I.E.4 of the County's MS4 permit, as applicable.

- The proposed deviation request meets the control measure requirements specified by the County's MS4 Permit.
- Appropriate stormwater control measures will be implemented by the project in accordance with the approved Drainage Report Grading and Erosion Control Plans and Drainage Plans.

REVIEW AND RECOMMENDATION:

Approved by the ECM Administrator

This request has been determined to have met the criteria for approval. A deviation from Section _____ of the ECM is hereby granted based on the justification provided.

Γ

Γ

L

J

Denied by the ECM Administrator

This request has been determined not to have met criteria for approval. A deviation from Section _____ of the ECM is hereby denied.

Γ

Γ

L

J

ECM ADMINISTRATOR COMMENTS/CONDITIONS:

1.1. PURPOSE

The purpose of this resource is to provide a form for documenting the findings and decision by the ECM Administrator concerning a deviation request. The form is used to document the review and decision concerning a requested deviation. The request and decision concerning each deviation from a specific section of the ECM shall be recorded on a separate form.

1.2. BACKGROUND

A deviation is a critical aspect of the review process and needs to be documented to ensure that the deviations granted are applied to a specific development application in conformance with the criteria for approval and that the action is documented as such requests can point to potential needed revisions to the ECM.

1.3. APPLICABLE STATUTES AND REGULATIONS

Section 5.8 of the ECM establishes a mechanism whereby an engineering design standard can be modified when if strictly adhered to, would cause unnecessary hardship or unsafe design because of topographical or other conditions particular to the site, and that a departure may be made without destroying the intent of such provision.

1.4. APPLICABILITY

All provisions of the ECM are subject to deviation by the ECM Administrator provided that one of the following conditions is met:

- The ECM standard is inapplicable to a particular situation.
- Topography, right-of-way, or other geographical conditions or impediments impose an undue hardship on the applicant, and an equivalent alternative that can accomplish the same design objective is available and does not compromise public safety or accessibility.
- A change to a standard is required to address a specific design or construction problem, and if not modified, the standard will impose an undue hardship on the applicant with little or no material benefit to the public.

1.5. TECHNICAL GUIDANCE

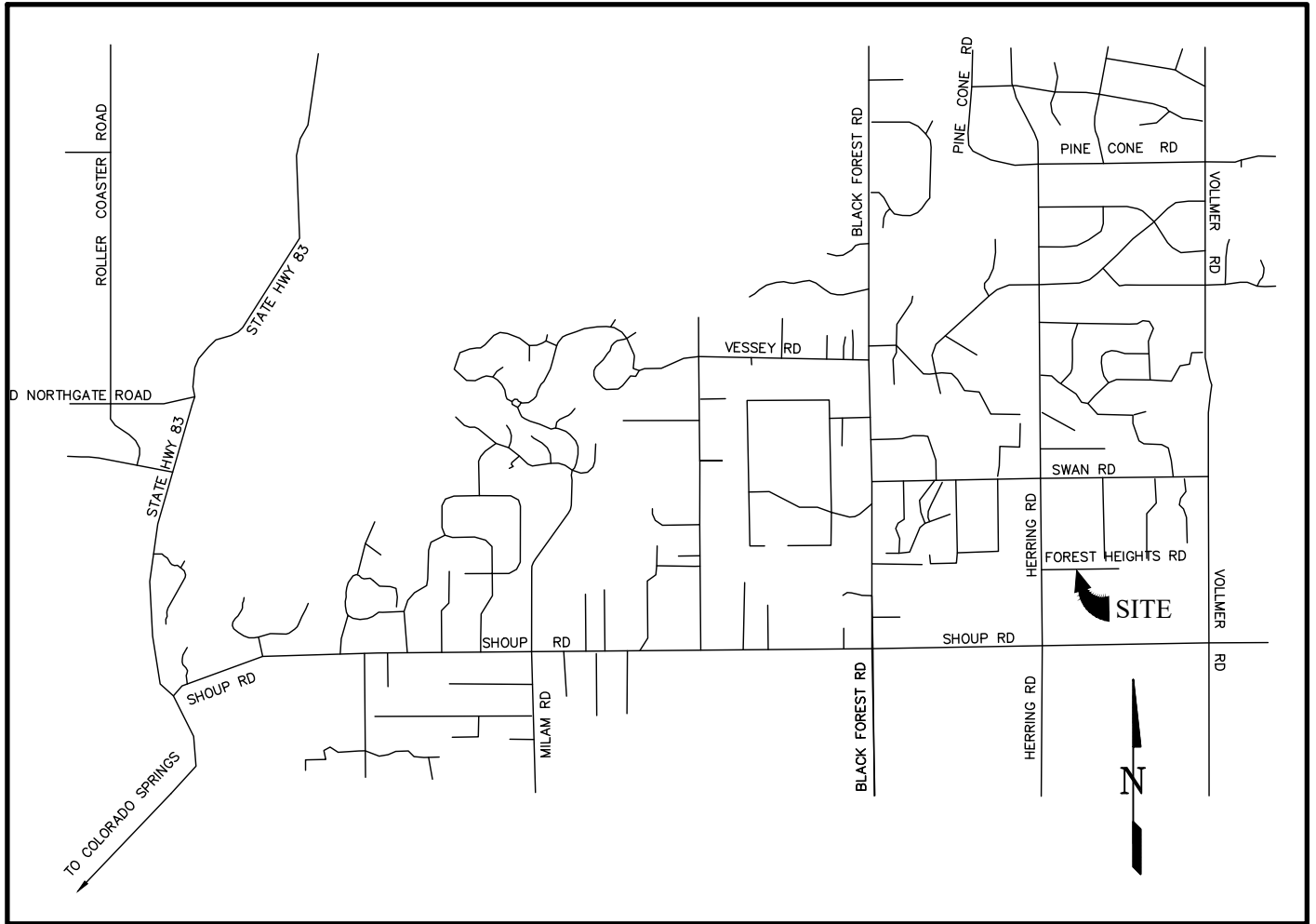
The review shall ensure all criteria for approval are adequately considered and that justification for the deviation is properly documented.

1.6. LIMITS OF APPROVAL

Whether a request for deviation is approved as proposed or with conditions, the approval is for project-specific use and shall not constitute a precedent or general deviation from these Standards.

1.7. REVIEW FEES

A Deviation Review Fee shall be paid in full at the time of submission of a request for deviation. The fee for Deviation Review shall be as determined by resolution of the BoCC.



VICINITY MAP
NOT TO SCALE

Land Description:

A Tract of land in the Southwest 1/4 of Section 9, Township 12 South, Range 65 West, of the 6th P.M. County of El Paso, State of Colorado, more specifically described as follows;

Commencing at the West 1/4 corner of Section 9,

Thence Along the North line of said Southwest 1/4, N89°55'03"E a distance of 1391.55 feet to the Point of Beginning of the parcel to be described hereby;

Thence continue along said North line, N89° 55'03"E a distance of 506.51 feet to the Northwest corner of that parcel described at Book 2318, Page 387, of the records of the El Paso County Clerk and Recorder;

Thence S00°03'25"W along the West line of said parcel a distance of 430.00 feet;

Thence N89°55'03"E parallel to said North line, a distance of 506.81 feet to the Northmost West line of the parcel described in Book 721, Page 970 of said records;

Thence S00°09'20"W a distance of 60.00 feet;

Thence S89°55'03"W along the line of said parcel 459.94 feet;

Thence S00°11'43"W along the West line of said parcel a distance of 829.47 feet;

Thence S89°54'44"W a distance of 1941.21 feet to a point on the East Right of Way line of Herring Road;

Thence N00°03'25"E" along said East line a distance of 327.80 feet to the South line of that parcel described in Book 2371 Page 388 of said records;

Thence N89°55'03"E along the South line of said parcel a distance of 434.00 feet;

Thence; N00°03'25"E along the East line of said parcel a distance of 215.85 feet to the Southeast corner of that parcel described in Book 1951 at Page 432 of said records;

Thence N89°55'03"E along the South line of said parcel a distance of 381.00 feet to the Southeast corner thereof;

Thence N00°11'21"E along the East line of said parcel a distance of 286.00 feet to a point on the South line of that parcel described in Book 2215 Page 559 of said records;

Thence along said South line N89°55'03"E along said South line a distance of 67.27 feet to the East line of said parcel;

Thence N00°03'25"E along said East line a distance of 60.00 feet;

Thence Thence N89°55'03"E a distance of 506.51 feet,

Thence; N00°03'25"E a distance of 430.00 feet to the Point of Beginning, except that parcel described in Book 2645, Page 207.

EXCEPTION PARCEL: Book 2645, Page 207 of the records of El Paso County, Colorado

A tract of land in the Southwest 1/4 of Section 9, Township 12 South, Range 65 West of the 6th p.m. County of El Paso, State of Colorado more particularly described as follows;

Commencing at the West 1/4 corner of said Section 9,

Thence along the West line of Section 9, S00°03'25"W a distance of 490.00 feet;

Thence N89°55'03"E a distance of 1090.00 feet to the Point of Beginning of the tract described hereby;

Thence N89°55'03"E a distance of 610.00 feet;

Thence S00°03'25"W a distance of 325.00 feet;

Thence S89°55'03"W a distance of 610.00 feet;

Thence N00°03'25"E a distance of 325.00 feet to the Point of Beginning.

This description contains 34.529 acres (not including the exception parcel).

TRACT A

Tract in Northwest quarter of the Southwest quarter of Section 9, Township 12 South, Range 65 West, of the 6th P.M. County of El Paso, State of Colorado, described as follows:

Commencing at the West 1/4 corner of said Section 9, Thence along the west line of said Section 9 S00°03'25"W a distance of 430.00 feet;

Thence N89°55'03"E 30.00 feet to a point on the West Right of Way line of Herring Road and the Point Of Beginning (P.O.B.) of the Tract described hereby;

Thence N89°55'03"E a distance of 435.00 feet;

Thence S01°00'46"W a distance of 60.01 feet;

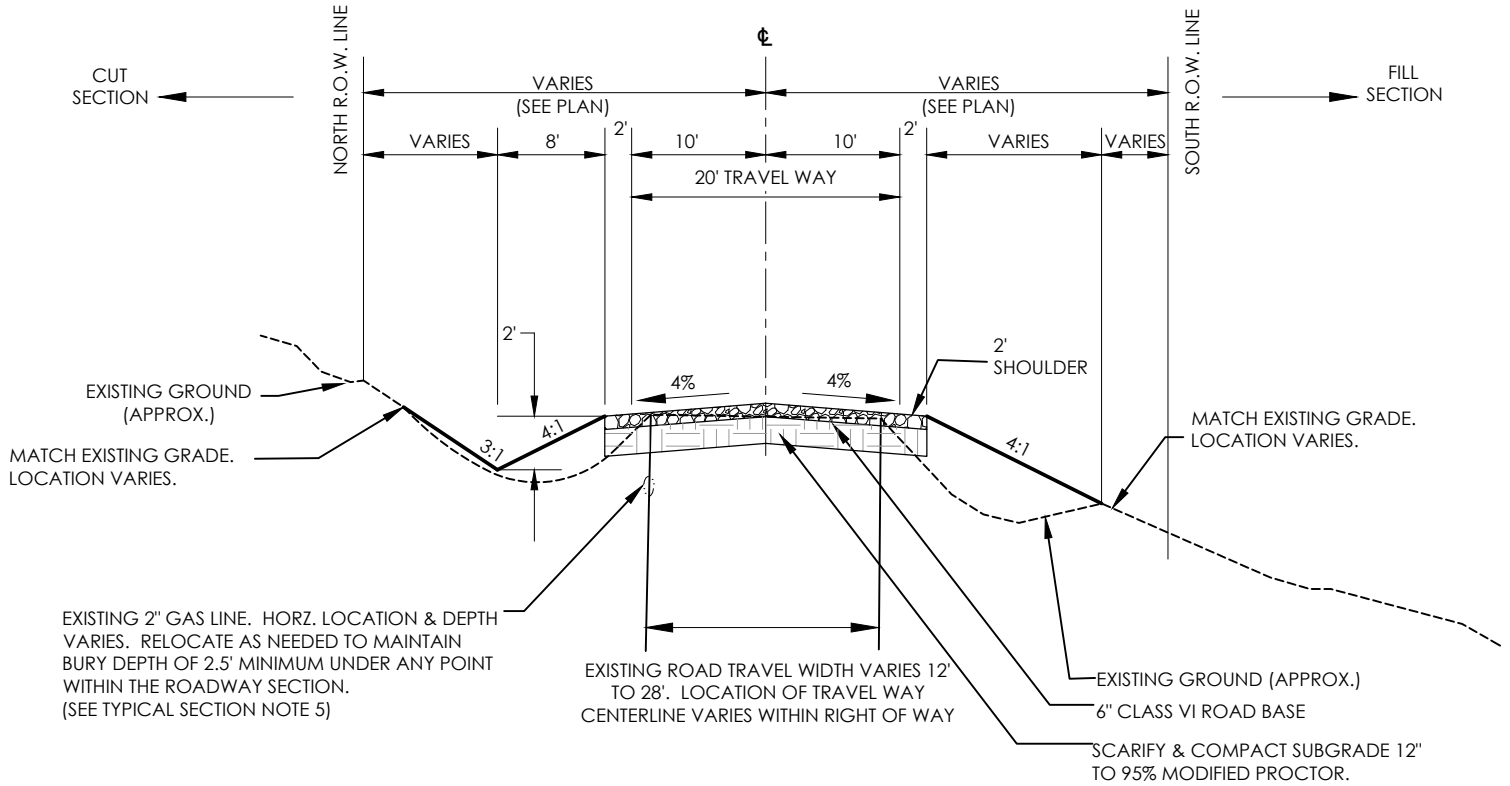
Thence S89°55'03"W a distance of 434.00 feet to a point on said West Right of Way line;

Thence N00°03'25"E a distance of 60.00 feet to the Point Of Beginning (POB).

Tract A contains 0.598 Acres, more or less.

THE TOTAL ACREAGE OF THIS SUBDIVISION PLAT IS 32.618 ACRES.

PROPOSED CENTERLINE GRADE PER PROFILE.
USE EXCAVATED MATERIAL FOR ROAD
SUBGRADE AS NEEDED.



TYPICAL PRIVATE RURAL ROADWAY SECTION RURAL GRAVEL LOCAL ROADWAY WITH A DESIGN AND POSTED SPEED OF 20 MPH

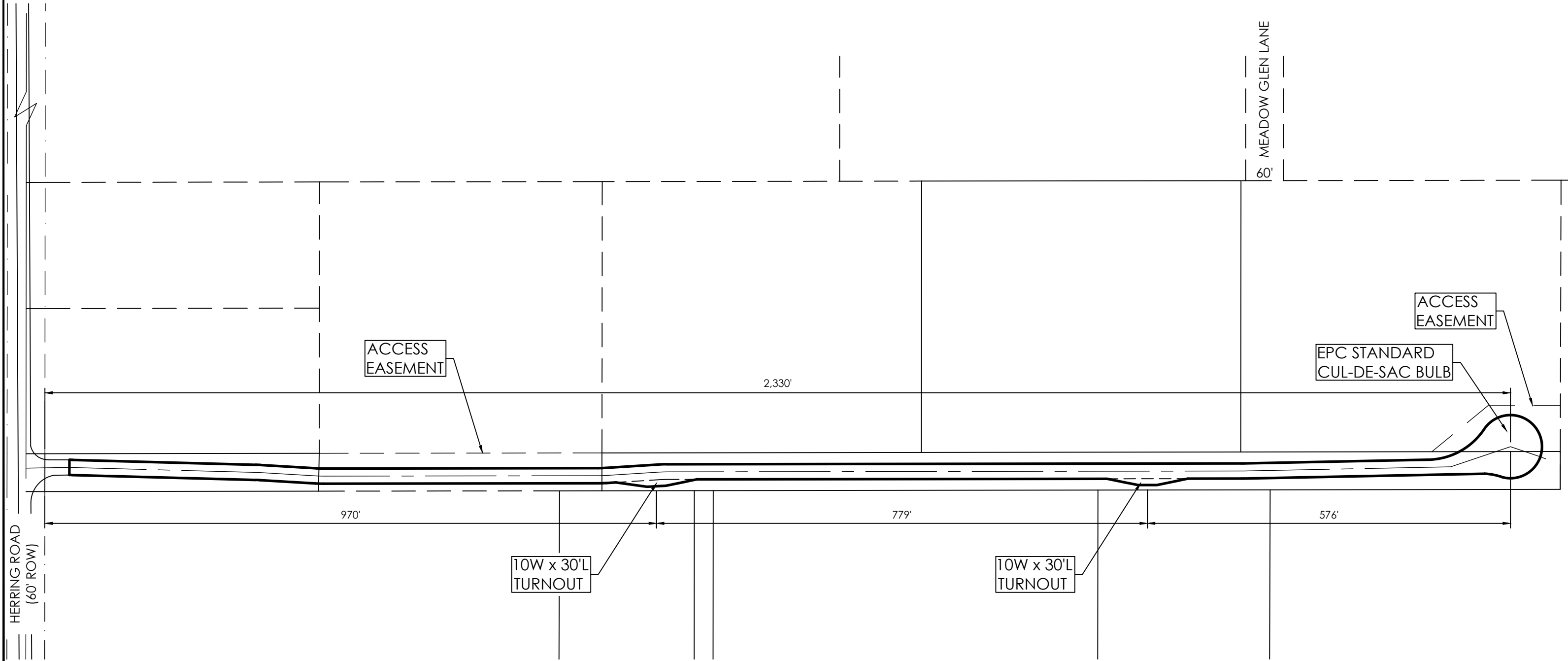
SCALE:
HORIZONTAL SCALE: 1" = 10'
VERTICAL SCALE: 1" = 5'

NOTES FOR TYPICAL SECTION

1. THE CENTERLINE OF THE PROPOSED ROADWAY VARIES WITHIN THE RIGHT-OF-WAY (R.O.W.). SEE PLANS FOR ROADWAY ALIGNMENT DATA.
2. THE CENTERLINE OF THE PROPOSED ROADWAY IS SHIFTED SOUTH IN THE R.O.W. ALONG PROPERTY OWNED BY FREDERICK YONCE TO PRESERVE EXISTING TREES AS MUCH AS PRACTICALLY POSSIBLE.
3. EXISTING TREES IN THE R.O.W. AFFECTED BY THE ROADWAY CONSTRUCTION SHALL BE RELOCATED OR REPLACED BY THE CONTRACTOR.
4. CONTRACTOR TO OBTAIN PERMISSION FROM EACH INDIVIDUAL PROPERTY OWNER WHEN CONSTRUCTION IS REQUIRED OUTSIDE THE ROADWAY TRACT/EASEMENT.
5. GAS LINE EXISTS ALONG THE ENTIRE LENGTH OF THE NORTH SIDE OF FOREST HEIGHTS CIRCLE. CONTRACTOR IS RESPONSIBLE FOR DETERMINING THE HORIZONTAL & VERTICAL LOCATION OF THE PIPE. CONTRACTOR TO COORDINATE RELOCATION OF GAS LINE.
6. PRIOR TO CONSTRUCTION, A GRAVEL PAVEMENT REPORT BY A GEOTECHNICAL ENGINEER SHALL BE SUBMITTED TO EL PASO COUNTY PCD FOR REVIEW AND APPROVAL. THE REPORT WILL INDICATE THE REQUIRED GRAVEL ROADWAY SPECIFICATIONS WHICH MAY ALTER THE THICKNESS OF GRAVEL SHOWN ON THE TYPICAL SECTION AND SUBGRADE TREATMENT.

DEVIATION EXHIBIT

(LOCAL LOW VOLUME PRIVATE GRAVEL ROAD)



HERRING ROAD
(60' ROW)

60' MEADOW GLEN LANE

ACCESS EASEMENT

EPC STANDARD CUL-DE-SAC BULB

ACCESS EASEMENT

10W x 30'L TURNOUT

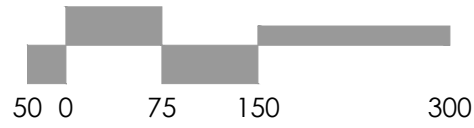
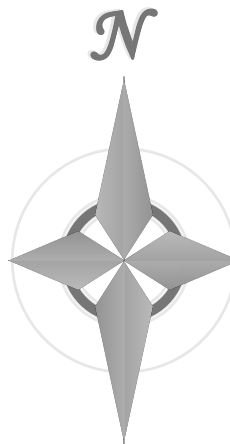
10W x 30'L TURNOUT

970'

779'

576'

2,330'



SCALE: 1"=150' 1:1800



Black Forest Fire Rescue Protection District
11445 Teachout Road
Colorado Springs, Colorado 80908
Ph-719.495.4300
Fax 719.495.7504
Web- www.bffire.org

"Always Ready, Always Forward, Always Learning."

Office of the Fire Marshal

Sunday, May 8, 2022

Dear Ms. Didleau

Thank you for reaching out to me regarding your future road needs for the Forest Heights Estates subdivision. Per our current code Black Forest Fire Rescue is requiring the following Fire Access to your sub.

1. **403.3 Fire apparatus access road. (2006 WUI code)** When required, fire apparatus access roads shall be all-weather roads with a minimum width of 20 feet (6096 mm) and a clear height of 13 feet 6 inches (4115 mm); shall be designed to accommodate the loads (75,000lbs) and turning radii for fire apparatus; and have a gradient negotiable by the specific fire apparatus normally used at that location within the jurisdiction. Dead-end roads in excess of 150 feet (45 720 mm) in length shall be provided with turnarounds as approved by the code official. An all-weather road surface shall be any surface material acceptable to the code official that would normally allow the passage of emergency service vehicle.
2. Per 2015 IFC (amended), sec D103.4. Requirements for Dead-End Fire Apparatus Access Roads we are requiring a minimum of an 80-foot diameter cul-de-sac with curb and gutter or a 100-foot diameter cul-de-sac without curb and gutter.
3. As the road length is approximately 2200 ft to cul-de-sac, we will require a minimum of two turnouts along the main access roadway for emergency vehicle turnarounds. These turnouts should be spaced and located for maximum efficiency and shall be no less than 30 ft in length and 10 ft deep.

As you begin development of your project please be advised that your project, if 5 or more homes, will require a firefighting water supply source which is generally a water cistern located with the project and accessible to all fire apparatus or departments working in our district. This information is found in the NFPA sec 1142 (Standard on Water Supplies for suburban and Rural Fire Fighting) chapters 7 & 8. I will be happy to sit down and go over these requirements with you as you progress in your project.

Thank you,

James Rebitski
Deputy Fire Chief

"Serving the citizens of Black Forest since 1945"

ACCESS EASEMENT GRANT AND MAINTENANCE
AGREEMENT
FOR FOREST HEIGHTS CIRCLE
AND
RESTRICTIVE COVENANTS FOR
FOREST HEIGHTS ESTATES SUBDIVISION

This Access Easement Grant And Maintenance Agreement For Forest Heights Circle And Restrictive Covenants For Forest Heights Estates Subdivision, dated for reference this _____ day of _____, 2022, (Agreement) is made among Phyllis J. Didleau Revocable Trust, J on P. Didleaux, Leilani A Ritchie, Charles F. Bauer and Shirley L. Bauer, and Frederick J. Yonce (each individually an "Owner" and collectively the "Owners").

RECITALS:

- A. Phyllis J. Didleau Revocable Trust and J on P. Didleaux are the owner of the real property situated in the County of El Paso, State of Colorado described on Exhibit A (Assessor Parcel #5209000121).
- B. Phyllis J. Didleau Revocable Trust is the owner of the real property situated in El Paso County State of Colorado described on Exhibit A-1 (Assessor Parcel 5209000081)
- C. Phyllis J. Didleau Revocable Trust and J on Didleaux are the owners of real property situated in the County of El Paso, State of Colorado described on Exhibit B (Assessor Parcel #5209000120).
- D. Phyllis J. Didleau Revocable Trust and J on P. Didleaux are the owners of the real property situated in the County of El Paso, State of Colorado described on Exhibit C (Assessor Parcel #5209000050).
- E. Leilani A Ritchie is the owner of the real estate situated in the County of El Paso, State of Colorado described on Exhibit D (Assessor Parcel # 5209000103).
- F. Charles, F. Bauer and Shirley L. Bauer are the owners of the real property situated in the County of El Paso, State of Colorado described on Exhibit E (Assessor Parcel #5209000100).

- G. Frederick J. Yonce is the owner of the real property situated in the County of El Paso, State of Colorado described on Exhibit F (Assessor Parcel # 5209000119).
- H. Judith P. Von Ahlefeldt is the owner of the real property situated in the County of El Paso, State of Colorado described on Exhibit G (Assessor Parcel # 5209000108).
- I. Phyllis J. Didleau Revocable Trust, Jon P. Didleaux (a/k/a Jon Didleaux) and Frederick J. Yonce, (collectively referred to herein as "Grantors") wish to grant an access easement to the Owners across the property described in Exhibits A, A-1, B, and F and to establish and provide for the maintenance of a private right of way and road within the access easement for the use and benefit of all Owners and Judith P. Von Ahlefeldt.
- J. The access easement within which the private right of way and road is located is legally described in Exhibit H (the "Private Road Land").
- K. The Owners understand that El Paso County does not maintain private roads such as the one subject to this Agreement.
- L. The Owners wish to provide for and set forth their understandings and agreement with respect to use and maintenance of the private road and improvements thereon.
- M. Phyllis J. Didleau Revocable Trust and Jon P. Didleaux have submitted an application to subdivide the property described in Exhibits A, B, and C with El Paso County and desire to have this Agreement meet the requirements of El Paso County for County approval of such subdivision.
- N. This Agreement shall become fully in force, as to all Owners who have signed, upon the recording of the Final Plat of Forest Heights Estates Subdivision in the real estate records of El Paso County, Colorado.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreement, covenants, declaration and restrictions are made:

PRIVATE ROAD – FOREST HEIGHTS CIRCLE

1. Grant of Easement. Each of the Grantors hereby grants to each Owner and to Judith P. Von Ahlefeldt and their successors and assigns, a nonexclusive easement for access, utilities and drainage for the benefit of each such landowner's respective parcel described above across the Private Road Land.
2. Use of the Owners' Real Estate. Use of the Private Road Land by the Owners is not confined to the present configuration of their respective properties, and the Owners or their successors may subdivide, reconfigure, construct improvements on or otherwise modify or use their property. However, the Owners agree to construct no fences or place any other obstructions on their respective properties in a manner which would prevent, or reasonably impede, vehicle or personnel travel, utility access or drainage across the Private Road Land. Otherwise, the respective Owners

each shall have full use and occupancy of their respective real estate which is subject to the easement set forth above.

3. Construction of the Private Road. After recording of the Final Plat submitted by Phyllis J Didleau Revocable Trust and J on Didleaux, without cost to the other Owners, Phyllis J Didleau Revocable Trust and J on Didleaux shall improve the road to meet the standards required by the County approval of the Final Plat and shall provide maintenance of the road until such improvements are substantially complete.
4. Maintenance of the Private Road. Following construction of the Private Road, as a general standard, the Owners agree that they shall provide maintenance sufficient to provide reasonable access for emergency vehicles and in no event less than has traditionally been the maintenance level of this access prior to the subdivision. The Owners may by majority vote adopt (and modify) specific standards for maintenance from time to time. The Owners of each residence shall collectively have one vote regardless of the number of Owners of that residence. The Owners agree to share the cost and expense of maintaining the improvements on the Private Road Land in good operating condition and to share equally the cost and expense of affecting any repair to said Improvements accruing from and after the date of this Agreement. For purposes of this cost sharing, each Owner shall pay a share for each residential dwelling unit on such Owner's real estate, including a dwelling unit under construction and a "mother-in-law" unit. For example, if there are seven parcels of real estate, and five residences (whether occupied or not), each Owner with a residence on such Owner's property shall pay one fifth (1/5th) of the cost of maintaining the improvements for each such residence on such Owner's property.
5. Maintenance Process. The Owners appoint J on P. Didleaux and Frederick J . Yonce as Co-Administrators for maintenance of the road under this Agreement. Whenever in the opinion of the Administrators the road requires such maintenance, on behalf of the Owners, the Administrators shall order and arrange for sufficient maintenance meet the standard above and to enable the Owners and emergency vehicles to use the roadway. Such maintenance shall include snow removal, grading, re-gravelling, cleaning culverts, weed treatment, tree and debris removal, and any other maintenance generally desired by Owners. The Administrators shall annually no later than September 30 submit to the Owners a budget for the succeeding 12 months. If the budget is approved by the majority of the Owners, each Owner shall by December 1 pay such Owner's share of the amount set forth in the budget into a fund run by the Administrators. The budget shall include a reasonable amount to build up a reserve to prevent the need for large expenditures in any one year. The Administrators shall use the fund to pay for maintenance to meet the standards above and any which may be adopted by the Owners. To the extent any Owner fails to pay such Owner's proportionate share of the adopted budget, the Administrators, on behalf of all the Owners, shall have a lien on each such Owner's respective real estate as set forth above until such Owner's share is paid in full with interest accruing on any unpaid amount at the rate of 10% per annum simple interest and

the Administrators shall be entitled to recover the costs of enforcing such lien and collecting such amount, including reasonable legal fees, expert witness fees and costs. The Administrators may refuse to order such maintenance until there is, in the Administrators' opinion, sufficient commitment or actual payment to pay for such maintenance. Each Owner's share shall be the proportion that the number of dwelling units (including dwelling units under construction) on such Owner's real estate above bears to the total number of dwelling units on the real estate above of all Owners. Owners of the real estate with 60% of the dwelling units accessing by the road may change who are the Co-Administrators. Administrators shall serve without compensation unless otherwise determined by Owners of the real estate with 60% of the dwelling units on the real estate of All Owners.

RESTRICTIVE COVENANTS FOR LOTS 1, 2 & 3 TO PRESERVE THE RURAL/RESIDENTIAL CHARACTER OF FOREST HEIGHTS ESTATES

6. Property Uses. Lots 1, 2, and 3 in Forest Heights Estates Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling. The construction of separate guest quarters and "mother-in-law" quarters may be allowed on a Lot on a case-by-case basis if approved by the appropriate zoning authority, subject to any conditions in such approvals.
7. Construction Type. All construction on Lots 1, 2 and 3 of Forest Heights Estates Subdivision shall be new.
8. Substantial Completion. A Structure shall not be occupied in the course of original construction until substantially completed and approved for occupancy by the appropriate governmental authorities.
9. Dwelling Area Requirements. No dwelling Structure shall be constructed unless the ground floor area, or footprint area, of the main Structure, exclusive of open porches, basements and garages, is more than 1,500 square feet.
10. Enforcement. Each Owner of a Lot in Forest Heights Estates Subdivision shall have the right to enforce these Covenants To Preserve The Rural/Residential Character Of Forest Heights Estates and no other persons shall gain any legal or equitable rights to enforce these Restrictive Covenants.

BINDING AGREEMENT

11. Agreement Runs With the Land. This Agreement shall be binding upon the undersigned Owners, and their respective successors, assigns, and personal representatives. This Agreement may not be revoked without the written unanimous consent of the affected Owners. This Agreement shall be recorded in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado, and

