

**JOINT USE & WELL SHARING AGREEMENT
LOTS 1 & 2, MCGEHEE SUBDIVISION**

This JOINT USE & WELLS HARING AGREEMENT (hereinafter "Agreement") is entered into this ____ day of _____, 2021, by and between DALE D. & STEPHANIE B. McGEHEE ("Grantors"), whose address is 10957 Mount Evans Dr., Falcon, CO 80831 and DALE D. & STEPHANIE B. McGEHEE ("Grantees"), whose address is 10957 Mount Evans Dr., Falcon, CO 80831. The Grantors and Grantees may be referred to herein individually as "Party" and collectively as the "Parties." This Agreement shall be identified in the final plat and in the deeds of Lots 1 and 2 in the McGehee subdivision and in any other recorded instrument relating to these lot(s) individually or to the subdivision as a whole.

RECITALS

A. Grantors are the owners of the real property located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, Township 11 South, Range 65 West of the 6th P.M., El Paso County, Colorado, described as Lot 2 of the McGehee Subdivision.

B. Grantees are the owners of the real property located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, Township 11 South, Range 65 West of the 6th P.M., El Paso County, Colorado, described as Lot 1 of the McGehee Subdivision.

C. The well, Well Permit No. 81469-F is located on the Grantors' property, being Lot 2 of the McGehee Subdivision and is subject to the approval and conditions set forth by the Colorado Division of Water Resources and state law, including the Augmentation Plan decreed by Water Court, Water Division 1 in Case No. 17CW3054 on August 31, 2017 ("Decree" or "Augmentation Plan"). A copy of the well permit is attached hereto as *Exhibit A* and a copy of the Decree is attached hereto as *Exhibit B*. The parties are desirous of entering into an agreement regarding their ownership and responsibilities concerning the well and water usage, the distribution system to supply domestic water to their respective properties, and for the sharing of the cost of operating and maintaining the well and distribution system.

NOW, THEREFORE, in consideration of the above recitals, and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Ownership. The Parties each own an equal (50%) undivided interest in the well, its water rights and entitlement thereunder, which shall be shared equally between them. The Parties' ownership interest in the well is coupled with their title to each lot and cannot be severed from ownership of their respective properties without the Parties agreeing in writing to terminate this Agreement or an owner setting forth in writing such owner's withdraw from the Agreement as set forth herein. The Well is subject to the conditions set forth in Well Permit No. 81469-F and shall include any wiring, electrical

and plumbing fixtures and fittings, pipe, meters, pressure or storage tank systems, equipment pit, pump, motor, and any other well equipment and appurtenances located within the well site as necessary for the delivery of the water hereunder. The individual water distribution lines to the Parties respective properties, as well as any appurtenance located outside of said easement, shall be considered the personal property and responsibility of the individual lot owner supplied water therefrom.

2. Maintenance. Each Party shall, at their own expense, keep their infrastructure from the well site to their property in good condition and repair for the receipt and delivery of water from the well. As each of the two lots commence use of the well, the lot owner shall pay his/her portion of the electric bill. Detailed written records concerning the shared portions of the well system, together with copies of all receipts pertinent thereto, shall be distributed to the Parties to document and establish the amounts to be paid to keep the well and shared system operational and in good repair. The Parties shall equally share in the costs and expenses for the maintenance, replacement, operation, repair, improvement, and redrilling of the well, pump, and other appurtenant well equipment and improvement necessary in order to effectively and efficiently provide water to their respective water delivery points at the well site. These expenses include any water quality treatment, water storage tanks, and well house. The typical ongoing maintenance and operational costs shall be coordinated between the parties and timely paid. Each lot owner shall be solely responsible for and shall immediately repair any and all physical damage that they may cause to the well, whether resulting from their connection to the well or otherwise. Upon reasonable notice, each Party shall be entitled, without liability or responsibility to the other Party, to temporarily interrupt the flow of water from the well as necessary for their connection to the well or for repairs.

a. Reimbursement. Work performed by a Party or at the direction of any Party that is a proper shared expense under the terms of this Agreement may, after ten (10) days written notice to the other Party, make an itemized demand on the other Party for the payment of that Party's proportionate share. Reimbursement for proper shared expenses shall then be due and payable upon such demand. Amounts due which are not paid within thirty (30) days after the due date shall bear interest at eighteen percent (18%) per annum. Should any Party fail or refuse to pay their proportionate share of the proper shared costs and expenses incurred under the terms of this Agreement, then the other Party paying the refusing Party's share shall be entitled to enforce that refusing Party's obligation for payment and obtain judgment therefore for the amounts due, plus reasonable attorney's fees, costs and expenses as provided herein. Any controversy, dispute, or question arising out of, in connection with, or in relation to this Agreement or its interpretation, performance of non-performance, or any breach thereof shall be determined by arbitration in Colorado Springs, Colorado, conducted in accordance with the existing rules of the Colorado Uniform Arbitration Act (§ 13-22-201, *et seq.*, C.R.S.) No Party shall be entitled to compensation from the other Party for administrative time or personal time expended in the management or operation of the well.

b. Emergency Maintenance. When any work is needed for the well beyond the typical ongoing maintenance and operational costs, the Parties shall first

attempt to agree on the scope, manner and expense of the work, unless an emergency exists. Emergency work to the well shall be limited to the extent necessary to meet the emergency of the situation. All construction, maintenance or other work to be performed hereunder, whether for the jointly or individually maintained and operated structures and equipment, shall be performed in a workmanlike manner and in compliance with all applicable laws, codes, rules and regulations. All such work shall be paid for in a timely manner.

3. Use and Operation. The Parties shall jointly operate and control the well for the distribution of water in accordance and compliance with this Agreement, the well permit, the Augmentation Plan decreed in Case No. 17CW3054, and all applicable laws, codes, rules and regulations. Water from the well shall be used by the Parties only for domestic use, lawn and garden irrigation, and for stock watering as allowed under the well permit, or as may be re-permitted pursuant to the Decree. The Parties shall comply with all terms, provisions and requirements of any issued well permit, including Well Permit No. 81469-F, and all applicable laws and regulations governing the use of the well. The pumping amount from the well shall be split equally between the lots, being 0.41 annual acre-feet of the total 0.82 annual acre-feet, consistent with the Augmentation Plan. Each Party shall use a non-evaporative septic tank and leach field for their wastewater disposal. Diversions under the well will be separately metered in order to keep total water usage properly allocated between the Parties. During any time of a physical shortage of water supply from the well, priority among the Parties shall first be given to their in-house domestic use, with curtailment of other permitted uses until each of their in-house domestic needs are adequately met. The Parties agree to comply with the terms and provisions of the well permit, unless further limited by this Agreement.

4. Duration. The term of this Agreement shall run in perpetuity unless terminated in writing by mutual agreement of the Parties, or until one of those Parties properly withdraws from this Agreement as set forth herein.

5. Termination. The Parties may terminate this Agreement by mutual agreement set forth in writing and signed by all Parties. After such termination, the Parties shall equally share in any costs associated with the ceasing of well operations including the dismantling of any well house, removal of equipment, and the capping of the well. Any costs for the removal of infrastructure from the well to the individual Party's lot shall be borne solely by that Party. The Parties shall execute and record the necessary deeds to eliminate any easements created to facilitate water provision from the well to the Parties.

6. Withdrawal. Either Party may withdraw from this Agreement in writing and have no further responsibility hereunder, except as provided below, upon obtaining a legal alternative source of water supply acceptable to El Paso County sufficient for their property and upon ceasing their use of the well and removing their separate pipeline and infrastructure. Prior to withdrawal, the Parties shall apply to the Colorado Division of Water Resources for a change of use of the well stating which lot the well is to serve. Upon receipt of written approval from the State, the Party withdrawing from the Agreement shall execute and record with the El Paso County Clerk and Recorder a quitclaim deed in favor of the Party whose lot will continue to be served by the well. Said deed shall identify this

Agreement, the Well Permit Number, and the intention of the Party to withdraw from the Agreement. Upon withdrawal by a Party, ownership of the well shall vest in the other Party, and any easements for the benefit of the remaining Party shall continue in place.

7. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter covered herein. All negotiations, considerations, representations and understanding between the Parties are incorporated and merged herein.

8. Amendment. This Agreement may be modified or altered at any time by a statement signed by all Parties hereto and recorded in the records of the El Paso County Clerk and Recorder.

9. Attorney's Fees. In the event of any dispute between the Parties concerning this Agreement, or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing Party shall be entitled to recover from the other Party, all costs and expenses, including reasonable attorneys' fees, incurred in such litigation as well as all additional costs of collecting any judgment rendered in such action.

10. Assignment. This Agreement may be assigned by either Party only to a purchaser or transferee of their respective properties. Upon such assignment and the assumption of this Agreement by the purchaser or transferee, the assignor shall be released from any future obligations hereunder. Such assignment and assumption shall be recorded in the records of the El Paso County Clerk and Recorder.

11. Severability. Unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement.

12. Binding Effect. All current and future record owners of the subject properties shall be bound by this Agreement. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit of the Parties hereto as well as their respective personal representatives, heirs, successors and assigns.

13. Recording. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties have entered into this Joint Use & Well Sharing Agreement on the date and year set forth above.

(signatures to follow)

GRANTORS

GRANTEES

STATE OF COLORADO)
)
COUNTY OF EL PASO)

Subscribed and sworn to and acknowledged before me this ____ day of _____, 2021, by Dale D. McGehee and Stephanie B. McGehee.

Witness my official hand and seal.

Notary Public

My Commission Expires: _____