



DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
ROLLIN RIDGE ESTATES

(ROLLIN RIDGE FILING NO. 1)

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Exhibits

- Exhibit A – Legal Description of Subdivision
- Exhibit B – Legal Description of Commercial Tract
- Exhibit C – Legal Description of Detention Areas
- Exhibit D – Water Decree/Augmentation Plan

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
ROLLIN RIDGE ESTATES

(Rollin Ridge Filing No. 1)

TC&C, LLC (hereinafter called "Declarant") is the sole owner of real property which is described on **Exhibit "A"** attached hereto and incorporated herein by this reference (hereinafter called the "Subdivision").

The Declarant desires to place protective covenants, conditions, restrictions, reservations liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value.

The Declarant hereby declares that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

ARTICLE I

COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE SUBDIVISION

Section 101. Property Uses.

(a) Residential. Except as provided herein, including the provisions in Section 201(b) regarding Lot 8, Lots 1 through 16 in the Subdivision shall be used exclusively for private, single family, residential purposes, and shall not be used or occupied for any purpose other than for a single family dwelling. No Lot shall be used or occupied for any group home, nursing home, half-way house or other occupancy by persons unrelated by blood or marriage as determined by the Association's Board of Directors in its discretion. No trade, business, profession, commercial activity or other activity conducted for gain shall be carried on or within any Lot, except as provided in Sections 107 or 201(b) and except that a home office for

professional business, such as architects, accountants, lawyers, or as otherwise defined by the Approving Authority, may be permitted within a dwelling on a Lot so long as the operation or activity must not be apparent or detectable by sight, sound or smell, must conform to zoning codes, must be conducted by the Owner or a family member of Owner, must not employ at any time more than two (2) persons who do not reside on the Lot, must not generate excessive traffic or parked vehicles, must not have any signs placed on the Lot, and must not involve any retail, manufacturing, distribution, wholesale, storage or repair business, and must have received the prior written approval of the Approving Authority. The home office must not involve the solicitation of the residents of the Subdivision and must not constitute an offensive use as determined by the Approving Authority in its sole discretion.

(b) Commercial. The Declarant hereby reserves the right to develop portion of the Subdivision for commercial purposes (the "Commercial Tract" which is described on **Exhibit "B"** attached hereto and incorporated herein by this reference). If the Declarant develops the Commercial Tract, the Declarant may terminate any or all provisions of this Declaration as to such Tract, impose new covenants and create a new owners association which shall be separate and apart from this Declaration and this Association, provided, however, the Commercial Tract may use the Detention Areas described in Section 111 hereof as well as other areas or facilities as determined by the Declarant. Each Owner covenants and agrees that he or she has been advised of such possibility and shall not oppose such development or any matter related to such development. Notwithstanding any provision hereof, no provision of this Declaration or other Association Document shall apply to the Commercial Tract unless and until the Declarant records a subsequent document making the provision applicable.

Section 102. Structures. No Structure shall be erected within the Subdivision except single family dwellings and those Accessory Buildings and other Structures which have been approved by the Approving Authority. Other than a dwelling, no Structure, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No Structure may be placed on any Lot except with the permission of the Approving Authority after its review and approval of the Structure's location on the Building Site and the Structure's compliance with these Covenants.

Section 103. Construction Type. All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or manufactured housing may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings (not to exceed 120 days).

Section 104. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a Structure or its alteration or improvement.

Section 105. 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. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 106. Construction Completion. The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without permission of the Approving Authority, the Approving Authority will give the Owner thereof Due Notice of such fact, and if construction on such Structure is not diligently commenced within thirty (30) days after such notice, the unfinished Structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. Erosion control Structures must be installed prior to the commencement of any construction upon any Lot. Erosion control Structures must remain in place until disturbed ground has been returned to its natural state.

Section 107. Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the written permission of the Approving Authority. Model homes may be used and exhibited only by Declarant or with the permission of the Approving Authority.

Section 108. Drilling Structures and Tanks. The only drilling Structures and tanks permitted shall be during the construction phase of a single family residential home, in order to place a household well and septic system in place. All tanks shall be installed underground and the surrounding area shall be left free and clear of debris and returned to its natural state, provided, however, propane tanks may be installed above ground if enclosed by a privacy fence approved by the Approving Authority.

Section 109. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each Lot along and adjoining each and all Lot Lines of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. Those easements and any other easements shall be shown on the Plat, the PUD Plans and/or any other recorded document.

Section 110. Underground Utilities. All utilities, except lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground.

Section 111. Detention Areas. The real property described on **Exhibit "C"** attached hereto and incorporated herein by this reference, shall be owned and used for private open space

and drainage detention purposes (“Detention Areas”). The Detention Areas shall be initially owned and maintained by the Association, but ownership and maintenance may be assigned and transferred to a commercial owners association if the Declarant develops the Commercial Tract described in Section 101(b) of this Declaration and Paragraph 16 of the Detention Agreement, provided, however, if the Drainage Areas are so transferred, the Owners and their Association shall continue to have a right to use the Detention Areas for their drainage and related purposes. The Declarant and the Association, their successors and assigns, hereby reserve an easement and right to enter upon any Lot or easement, or the Detention Areas, or related area for the purpose of fulfilling any drainage requirements under the Association Documents or El Paso County requirements. Unless and until so transferred, the Drainage Areas shall be maintained by the Association as required by the Private Detention Basin/Stormwater Quality Best Management Practice Maintenance Agreement and Easement recorded in Reception No. _____ (“Detention Agreement”).

ARTICLE II

DENSITY, SETBACK AND QUALITY STANDARDS

Section 201. Resubdivision.

(a) Restriction. No more than one dwelling Structure shall be erected or maintained within any Lot, together with one or more accessory buildings as follows: a detached guest house, detached garage or workshop, but only if the Structure meets the following conditions: (i) approved by the Approving Authority; (ii) approved by El Paso County; (iii) not exceeding thirty-two hundred (3,200) square feet; (iv) exterior appearance of Accessory Building shall be consistent with the main dwelling Structure; and (v) placement of Accessory Building shall not obstruct any views from adjoining Lots as determined in the sole and complete discretion of the Approving Authority. No Lot shall be subdivided into additional Lots without the prior written approval of the Approving Authority.

(b) Lot 8. Notwithstanding any provision hereof, Lot 8 contains an existing building and other Structures, none of which shall be subject to the architectural or other building or use restrictions or requirements of these Covenants or other Association or governmental documents. Lot 8 may be used to construct an additional main residential structure and the existing building on Lot 8 may be used as a guest house, caretaker house or similar use but shall not be rented separately from the main structure.

Section 202. Setback Areas. Structures and buildings, including Accessory Buildings shall generally be placed or erected as required by the Plat and/or PUD Plans from any Lot Line fronting a roadway. Buildings and Structures shall be placed or erected within the building envelopes and setbacks as shown on the Plat or PUD Plans. Variances from the suggested setback guidelines must be approved by the Approving Authority, but in no case shall setbacks

be less than required by El Paso County. Setbacks shall be measured perpendicularly from property line to the foundation line for any building. Except with approval of the Approving Authority, no building, porch, eaves, overhang, projection or other part of a building shall be located closer to Lot Lines than permitted by these Covenants or governmental requirements. The Approving Authority's approval may be given for: (a) fireplace projections integral with the building; (b) eaves and overhangs; and (c) construction which extends less than one foot (1') into the setback area and which the Approving Authority determines to be minor in nature and to be consistent with the Lot's shape, topography and in the interest of superior design.

Section 203. 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 as follows: more than twenty-two hundred (2,200) square feet for a one-story dwelling; more than eighteen hundred (1,800) square feet on the main level of a dwelling more than one story, whether split-level or otherwise; any minimum finished area for a multi-story home at least thirty-two hundred (3,200) square feet. Attached garages are required for all homes and shall be of size to accommodate not less than three (3) full-sized cars, except as provided in Section 201. Owners are encouraged to have a full basement whenever possible. Ranch styles must have a basement equal to at least three-fourths (3/4's) of the square footage of the main level.

Section 204. Height Restrictions. No dwelling or other Structure shall exceed thirty-four (34) feet in height or be more than two (2) stories high. Height shall be measured from the highest finished grade contour at any point adjoining the foundation perimeter of the Structure to the highest point on the Structure exclusive of standard chimneys. Finished grade contour shall mean the ground contour established by Declarant during development of the Lots and existing immediately prior to commencement of construction of any dwelling or other Structure, or such other finished grade as may be approved by the Approving Authority.

Section 205. Roofs. All roof areas shall be of tile, slate, copper and/or premium grade asphalt. Asphalt shingles such as T-lock or 3 tab will not be allowed. For asphalt shingles, the preferred color is weathered wood or other similar colored shingles as approved by the Approving Authority. Other roofing materials may also be used, but only if approved by the Approving Authority. In no event shall wood shake materials be used unless the Approving Authority finds that said materials are sufficiently fire-retardant, provided, however, no dwelling Structure shall be covered in one hundred percent (100%) stucco as determined by the Approving Authority, but must contain at least twenty percent (20%) brick, stone, or other materials.

Section 206. Building Material Standards. At least twenty percent (20%) of the front facade shall consist of stone, brick, or stucco or a combination of these materials. Siding such as aluminum, steel and vinyl, is not permitted. Lap siding shall be no more than six inches (6"). Aluminum, wood or vinyl clad windows are permitted; all aluminum windows shall be anodized

and painted or coated with a color to blend with or compliment the color of the dwelling. Gutters, if installed, shall be painted the same color as the adjoining trim color of the dwelling.

Section 207. Accessory Building and Yard Items. Accessory Buildings or Structures and yard items, whether movable or immovable, including children's play or swing sets, basketball hoops, equipment or appliances, fountains, yard ornaments or stone figures shall be permitted only if approved by the Approving Authority in its sole discretion. Metal and pre-manufactured storage sheds and outdoor trampolines or above-ground swimming pools shall not be allowed.

Section 208. Antennas. No aerial, antenna, satellite dish or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall they be maintained at any other exterior location unless screened in a manner approved by the Approving Authority or permitted by federal law subject to any Rules made by the Association. Plans for such Structures must be submitted to and approved by the Approving Authority prior to installation. If the Approving Authority disapproves, the party requesting approval may modify its plans to eliminate the Authority's objections and resubmit them for approval.

Section 209. Fire-Resistant Materials.

- (a) All roofing material shall be non-combustible or fire-resistive Class A, B, or C rated.
- (b) All exterior walls shall have a fire resistance rating as required by applicable governmental requirements. Materials such as stucco, rock and brick shall be encouraged.
- (c) All under-eaves vents shall be located near the roof line rather than near the wall. All eaves shall be boxed.
- (d) All windows and patio doors shall be made of tempered safety glass or double pane glass. Exterior fire-resistive shutters and interior fire-resistant drapes or blinds shall be encouraged.
- (e) Masonry patios and/or one-hour fire rated decks shall be encouraged to create a setback safety zone.
- (f) Builders shall be encouraged to minimize the number and size of windows and doors on the side of the house that would most likely be exposed to fire.

Section 210. Owner Maintenance. Each Owner shall maintain the Lot, the exterior of the dwelling, any Accessory Building and all other Structures, lawns and landscaping, walks and

driveways, in good, attractive, first class condition as determined by the Approving Authority, shall cause dead or diseased landscaping to be promptly replaced and shall cause such other items to be repaired or replaced as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted, sealed or stained periodically and before the surfacing has a weather-beaten or worn appearance as determined by the Approving Authority.

Section 211. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition; such rebuilding or restoration shall be completed with reasonable promptness and in any event within six (6) months from the time the damage occurred.

Section 212. Fences. The height, location and material of all fences, dog runs and other similar items must be approved by the Approving Authority. Split rails are encouraged as the primary fencing material. Chain link or similar wire or wire-mesh fencing shall not be allowed as the primary fencing material. No solid wood privacy fences or painted fencing shall be allowed. Dog runs may be allowed only if invisible fencing is impractical and may not exceed eight hundred (800) square feet, shall be constructed of a maximum five foot (5') high split rail with wire screen and shall not be located in front yards. All fencing shall comply with the requirements of El Paso County and shall be submitted for prior written approval by the Approving Authority. Perimeter fencing is not allowed. Fencing shall not impede flow in drainage ways.

Section 213. Chimneys. All fireplaces and chimneys or other devices for open flames will be equipped with a spark arresting screen or other similar device acceptable to the Approving Authority.

Section 214. Driveways. All drives, driveways and walks for vehicular or pedestrian ingress and egress shall be constructed of black asphalt, concrete, or decomposed crushed gravel.

Section 215. Approval by Approving Authority. Homes shall be subject to review and approval by the Approving Authority, which may require that a Two Hundred Fifty Dollar (\$250.00) non-refundable filing fee be paid with each submission, plus a One Thousand Dollar (\$1,000.00) refundable compliance fee. No home may begin construction until plans are approved in writing by the Approving Authority and erosion control Structures are in place. The Approving Authority may set forth design standards as Rules or decisions.

Section 216. Relief from Violations. If any object, including aerial, antenna, solar collection, satellite dish or other device or any fence, Accessory Building, improvements or vehicle, is installed or placed without the approval of the Approving Authority, or any action taken in violation of these Covenants, Declarant or the Approving Authority or both shall have

the right after Due Notice, but not the obligation, to enter the Lot in question and remove the object or correct the action. Declarant and the Approving Authority shall not be liable for any losses, costs or damages to any Owner of the Lot on account of such removal of the offending object or correcting action, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct. Declarant and the Approving Authority may delegate their entry and removal rights hereunder to agents and independent contractors. In the event Declarant or the Approving Authority elects to remove an object or correct the action pursuant to this section, Declarant or the Approving Authority will submit to the Owner of the Lot from which the object was removed, a written statement of the costs incurred by Declarant or the Approving Authority in removing the object or action corrected. These costs shall be paid to Declarant or the Approving Authority within twenty (20) days after receipt of such notice. If the costs of Declarant or the Approving Authority have not been paid after expiration of this twenty-day period, Declarant or the Approving Authority may thereafter record a lien against the Lot involved for all costs (including reasonable attorneys' fees) incurred by Declarant or the Approving Authority in removing the object or correcting the action and in collecting such costs and foreclosing upon the lien, which lien shall be junior to all other liens or encumbrances of records with respect to the Lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide that all sums expended by Declarant or the Approving Authority in foreclosing the lien and collecting the amount due Declarant or the Approving Authority (including reasonable attorneys' fees and other expenses) shall be additional indebtedness secured by the lien.

Section 217. Compliance with Zoning and Other Laws. In the construction of any Structure or use of any Lot, the Owner shall comply with any and all federal, state and local laws and regulations, all of which are incorporated herein by this reference and may be enforced as part of these Covenants. Such laws and regulations shall include the notes and restrictions of the recorded Plat and the subdivision regulations of El Paso County. All construction must also conform to the building codes, zoning codes and subdivision regulations of El Paso County and the Regional Building Department, which regulations may vary from the provisions of these Covenants; in the event of any conflict, the most restrictive requirements shall prevail and control. All development within the Subdivision shall comply with the PUD Development Plan and Development Guide (the "PUD Plans") as recorded in the records of the El Paso County Clerk and Recorder or otherwise amended following appropriate hearings.

ARTICLE III

LIVING ENVIRONMENT STANDARDS

Section 301. Building and Grounds Conditions. Each Owner shall not violate the provisions of these Covenants, including this Article III, and shall prevent the development of any unclean, unsightly or unkempt conditions on his or her Lot which tends to substantially

decrease the condition or beauty of the neighborhood as determined by the Approving Authority in its sole discretion.

Section 302. Garage Doors. All garage doors shall be equipped with automatic remote control openers and shall be kept closed except when being used to permit immediate ingress or egress to or from the garage.

Section 303. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. All Structures shall be approved by the Approving Authority.

Section 304. Clotheslines. All outdoor clothes poles, clotheslines or other facilities for drying or airing of clothing or household goods are prohibited, unless completely screened from view on adjoining Lots and public streets.

Section 305. Refuse. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside the residential dwelling or Accessory Building or so as to be visible from any neighboring property or street, except during refuse collections.

Section 306. Nuisances. No noxious or offensive activity shall be carried on upon any Lot or anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any Structure. No annoying lights, sounds or odors shall be permitted to emanate from any living units. No floor lights, spotlights or other bright lights shall be allowed which are visible from the roads or other Lots; indirect lighting shall be required. No noxious noise or polluting or otherwise offense activities or commercial business activities, or manufacturing activity shall be carried on upon any Lot. Any exterior lighting on any Lot shall either be indirect or of such controlled focus an intensity as not to unduly disturb resident of adjacent or nearby property. No activities shall be permitted which will generate a noise level sufficient to interfere with the peaceful and reasonable enjoyment of the persons on any or nearby Lots. No hunting of any kind by any form or device, nor the discharge of any type of firearm, explosive or fireworks devices shall be permitted. In no case shall any activity cause noxious or offensive odors, or undue vehicle traffic.

Section 307. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except for built-in speakers on the rear decks and for security devices used exclusively for security purposes, shall be located, used or placed on any Structure or within any Lot.

Section 308. Weeds. All yards and open spaces and the entire area of every Lot whether or not a Structure has been constructed thereon, shall be kept free from plants, thistle or weeds infected with noxious insects or plant diseases and from weeds or thistle, which in the reasonable

opinion of the Approving Authority or as specified by governmental authorities, are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Approving Authority causes danger of fire, pests or vermin. Open space areas must be mowed twice a year (spring and fall).

Section 309. Trees and Brush.

(a) In order to control pest, insect, weed and fire dangers and to prevent and remove nuisances, the Owner of any Lot whether or not a Structure has been constructed thereon, shall mow, cut, prune, clear and remove from the Lot any unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot. The Approving Authority has the right (but not the duty) to enter any Lot and perform this work after Due Notice to the Owner, at such Owner's expense.

(b) An Owner must obtain written approval from Declarant, or subsequently the Approving Authority, to cut down or clear any trees on any Lot, except dead trees, pruning or reasonable thinning of trees of four inch (4") diameter or less, or for infestation control. Owners of Lots shall dispose of such cleared trees in a way to prevent accumulations of brush, stumps, trash or other materials which may constitute a fire hazard or render a Lot unsightly, provided, however, that this shall not operate to restrict Owners from storing fireplace wood in neat stacks on their Lots behind fencing. Owners are responsible for prompt treatment or removal of trees infected by pine beetle or other insects which can kill trees within a year and might spread to adjacent trees and Lots, and to contain any trees with slow parasitic growth, such as mistletoe.

Section 310. Grading Patterns and Drainage. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by any development or drainage plan approved by El Paso County or the Approving Authority for said Lot. Erosion control Structures shall be required prior to commencement of construction. All Owners are responsible for maintaining proper storm water drainage in and through their property. Public drainage easements as specifically noted on the Plat shall be maintained by the individual Lot Owners unless otherwise indicated. Structures, fences, materials or landscaping that could impede the flow of runoff shall not be placed in drainage easements. All Owners shall maintain the portion of drainage and slope easements within their properties. Fences, materials or landscaping that could impede the flow of runoff shall not be placed in drainage and slope easements.

Section 311. Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined, and except an aggregate of not more than three (3) domesticated dogs, shall be maintained in or on any Lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Approving Authority makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes. No kennels

whether for breeding or sale shall be allowed. No farm animals shall be permitted. The Association may adopt reasonable Rules which may regulate, restrict or prohibit particular animals or animal related activities within the Subdivision. Barking dogs and loose dogs and cats may harm wildlife and disturb the peace of the Subdivision, and so are prohibited; the Association may require the immediate removal of any animal or pet which violates these Covenants or the Rules or both, or may require bark collars to be used by dog owners.

Section 312. Trailers, Campers, Boats and Other Vehicles. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, recreational vehicle, motorcycle, any towed trailer unit or truck, excepting only pickup trucks solely for the private use of the residents of a dwelling, shall be parked for more than four (4) days, as determined by the Approving Authority in its sole discretion, on any street or within any Lot, except in a completely enclosed Structure or Accessory Building duly approved by the Approving Authority. All such enclosed Structures shall require the approval of the Approving Authority. If any such vehicle is not removed from the Subdivision or placed in a completely enclosed Structure, within three (3) days after Due Notice is delivered to the Owner of the Lot on or adjacent to which the offending vehicle is parked, then Declarant or the Approving Authority or both shall have the right, but not the obligation to enter the Lot in question, remove or cause to be towed the offending vehicle and may store the same; any expenses thereof, including reasonable attorneys' fees, shall be paid by the owner of the offending vehicle. Declarant and the Approving Authority shall not be liable from any losses, costs or damages to any Owner of the Lot or the owner of the vehicle on account of such removal of the offending vehicle, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct.

Section 313. Vehicle Violations. No stripped down, abandoned, unlicensed, partially wrecked or junk motor vehicle or part thereof, as determined by the Approving Authority in its sole discretion, shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street. No vehicle shall be parked overnight, for more than three (3) nights each month, outside of garages, unless the owner of such vehicle obtains a written variance from the Approving Authority. Any vehicles violating this section may be removed as provided by Section 312 of these Covenants.

Section 314. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on within the Subdivision except within a completely enclosed Structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 315. Signs. Except for signs by the Declarant, the only signs permitted on any Lot or Structure shall be: (a) one sign of a maximum of five (5) square feet for offering the signed property for sale or for rent; (b) one sign of a maximum of one (1) square foot for identification of the occupant and address of any dwelling; (c) multiple signs for information,

sale, administration and directional purposes installed by, or with the permission of Declarant during development and sales of Lots and/or homes and project identification signs installed by Declarant or builders authorized by Declarant; (d) signs as may be necessary to advise of Rules or to caution or warn of danger; (e) such signs as may be required by law; or (f) signs approved by the Approving Authority. Except for permitted signs, there shall not be used or displayed on any Lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention whether for sale or rental or otherwise, unless approval thereof is granted by the Approving Authority. All permitted signs must be professionally painted, lettered and constructed.

Section 316. Mailboxes. Mailboxes will be initially installed by the Declarant in accordance with the U.S. Post Office design specifications and may be located on the Lots or in locations as required by the U.S. Post Office. Declarant hereby reserves easements for any mailboxes or signs located by Declarant upon any Lot which may be shown on the plat or any other document recorded by Declarant.

Section 317. Solar Collectors. Solar collectors or other devices are permitted so long as they are designed and installed to blend in with the overall architecture of other improvements on the Lot. Any roof or wall-mounted collectors or solar devices must be built-in to the roof or wall, be flush with, and of the same pitch as, the adjacent portions of the building, and be architecturally compatible with the building upon which they are affixed. Ground level freestanding solar collectors or devices will be permitted so long as they are designed or screened in a manner accepted by the Approving Authority so as to be visually compatible with the buildings and landscaping on the Lot involved and to not impact views from adjacent Lots. Plans for any such solar collectors or other devices must be submitted to the Approving Authority for its review and approval prior to installation. If the Approving Authority disapproves, the party requesting approval may modify its plans to eliminate the Approving Authority's objections and resubmit them for approval.

Section 318. Homeowners Association. The Association shall operate as a Colorado non-profit corporation pursuant to its Articles of Incorporation and Bylaws, which may include provisions for the indemnification of officers and directors. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded thereby. Members shall have the right to cast votes on all matters to be voted on by the Members, as provided in the Association's Articles of Incorporation and Bylaws, except as provided therein or herein. Each Lot in good standing shall be entitled to one vote, subject to the provisions of the Association Documents. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than the vote to be cast with respect to any Lot. The Association's Board of Directors shall appoint or may itself constitute the Approving Authority as provided by Section 501 of these Covenants. The Association's Board

of Directors may adopt Rules, including construction, use and design standards and procedures for architectural control appeals from the Approving Authority, and fines for violations of Rules and these Covenants, to supplement and interpret these Covenants, and any Rule or decision of the Board shall be final, conclusive and binding on all Owners and other persons or parties. Pursuant to C.R.S. § 38-33.3-116, the Association and the Property shall be subject only to C.R.S. §§ 38-33.3-105, 38-33.3-106 and 38-33.3-107, and no other sections of said Article 33. The Association shall be responsible for duties set forth in these Covenants and its Articles of Incorporation and/or Bylaws, including managing, operating, cleaning, maintaining, and repairing of the Detention Areas; administering and enforcing the covenants, conditions, restrictions, agreements, reservations and easements contained in any Detention Agreement; and levying, collecting and enforcing the assessments, charges, and liens imposed herein and under the Detention Agreement described in Section 111 of this Declaration.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 401. Building Approval. No Structure, Accessory Building, or other construction or improvement shall be commenced, erected or placed on any Lot, permitted to remain on any Lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include: the exterior appearance, material, color, height and location of each Structure, construction or improvement on any Lot. In granting or withholding approval, the Approving Authority shall consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the Structure, construction or improvement to the environment and to surrounding uses, the degree to which the proposed Structure preserves existing natural vegetation, the degree, if any, to which the proposed Structure or covering will cause intrusions of sound, light or other effect, including any blockages of view corridors established by the Declarant or the Approving Authority, on neighboring sites beyond those reasonably to be expected in a quality residential area from considerate neighbors. All structural foundations shall be located and designed by a professional engineer currently licensed in the State of Colorado. Notwithstanding the foregoing or any provision of these Covenants, the houses and improvements which exist on Lot 8 when these Covenants are recorded, or any subsequent Structures or improvements thereon, shall not be subject to architectural review and standards hereunder, as provided by Section 201(b) hereof.

Section 402. Development Approval. No Structure, construction or improvement shall be commenced, erected, or placed on any Lot nor shall any land be graded or otherwise disturbed for purposes of development or any other purpose unless such disturbance is undertaken in

accordance with a plan submitted to the Approving Authority and approved by the Approving Authority no more than one year before start of the disturbance and erosion control Structures are in place. The requirements for the plans, including grading plan, erosion control and reclamation, and landscaping plans, and any other requirements, may be set forth in Rules and design standards adopted by the Association's Board of Directors and must be consistent with the laws and regulations of El Paso County. The Lots shall be maintained in a state compatible with the natural forest surroundings, except as approved by the Approving Authority, and except that a reasonably-sized lawn and/or garden may be planted around the house. The objectives of such plans are:

- (a) To conserve the unique natural features and aesthetic qualities of the Subdivision;
- (b) To minimize land disturbance;
- (c) To protect natural plant and animal communities;
- (d) To minimize water runoff and soil erosion problems incurred in adjustment of the terrain to meet development needs.
- (e) To assure proper restoration of disturbed areas.
- (f) To avoid or reasonably mitigate visual impacts upon offsite areas. Mitigation measures may include:
 - (i) Alternative sitting of Structures so that there is a mount or hillside backdrop to the Structure from areas where the Structure is visible. However, this shall not preclude sitting of Structures on ridge lines where alternative sitting is not available.
 - (ii) Use of existing vegetation to soften structural mass when Building Sites are located in highly visible areas.
 - (iii) Use of supplementary native landscaping to soften structural mass when Building Sites are located in highly visible areas.
 - (iv) Use of visually compatible stabilization measures for cuts and fills.

Section 403. Tree Management and Landscaping Program. The Association may institute a tree management program to implement any wildfire, mistletoe, or other healthy forest programs. Homeowners are required to plant ten (10) six-foot (6') trees within one year of construction completion (Lots 6, 7 and 8 are excluded from this requirement).

Section 404. Wildfire Mitigation. All dwelling Structures shall have a thirty-foot (30') safety zone or primary fuel break in all directions. All brush within ten feet (10') of the dwelling Structure shall be removed and replaced with an irrigated greenbelt (including grasses, shrubs and/or flowers) or non-combustible materials such as rock or gravel mulches. All large trees within the thirty-foot (30') safety zone shall be thinned to eliminate overlapping crowns. Trees within two (2) tree heights of the dwelling Structure shall be pruned of all dead limbs, and Owners shall prune live branches to ten feet (10') from at least half of the trees within the thirty-foot (30') safety zone. All branches which extend over or under the eaves of the roof shall be trimmed. Owners shall be required to maintain the thirty-foot (30') safety zone by removing all fuels from beneath large trees. Owners shall keep grasses trimmed to two inches (2") and well watered; keep roofs and roof gutters clear of pine needles and leaves, stack firewood uphill and at least fifteen feet (15') from Structures, and remove dead limbs, leaves, and grass clippings from all areas. All driveways shall be readily identifiable and maintained unobstructed at all times and shall be constructed in a manner acceptable to governmental authorities. All house addresses shall be clearly visible from the street. All chimneys shall be equipped with a mesh spark arrestor and inspected and cleaned on a regular basis. On-site burning of trash, leaves and weeds shall be prohibited. Fireworks of any kind shall be prohibited. All motor vehicles shall be parked on non-combustible surfaces. All dwelling Structures shall be equipped with smoke detectors and a minimum of one 2.5 pound fire extinguisher maintained in accordance with the manufacturer's recommendations.

Section 405. Approval Process. All action required or permitted to be taken by the Approving Authority shall be in writing and any such written statement shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within thirty (30) days after delivery of all the required materials to the Approving Authority, the materials so delivered shall be deemed disapproved for the purpose of these Covenants. The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to these Covenants, exclusive of reimbursement to the members of the Approving Authority for their services. The Approving Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 406. Variances. The Approving Authority shall have the authority to grant from a Lot a variance from the terms of these Covenants, including Sections 106, 110, 202, 204, 205, 209, 210 and 212, subject to terms and conditions which may be fixed by the Approving Authority and which will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of any section will result in unnecessary hardship. Following an application for a variance:

(a) The Approving Authority should, within thirty (30) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the

Approving Authority fails to act on the request for a variance within this thirty (30) day period, the variance will be deemed disapproved.

(b) A variance granted thereunder shall run with the Lot for which granted.

(c) A variance shall not be granted unless the Approving Authority shall find, in its sole discretion, that all of the following conditions exist:

(i) The variance will not authorize the operation of a use other than private, single family residential use;

(ii) Owing to the exceptional and extraordinary circumstances, literal enforcement of the section above enumerated will result in unnecessary hardship.

(iii) The variance will not substantially or permanently injure the use of other property in the Subdivision;

(iv) The variance will not alter the essential character of the Subdivision;

(v) the variance will not weaken the general purposes of these Covenants;

(vi) the variance will be in harmony with the spirit and purpose of these Covenants;

(vii) the circumstances leading the applicant to seek a variance are unique to the Lot or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

(d) If the Approving Authority denies the request for a variance, the applicant may request a meeting of the Owners be held to reconsider the denial. In this case, the Approving Authority shall call a meeting of Owners of Lots in the Subdivision, to be held after Due Notice at the Approving Authority's principal office, at which meeting all Owners shall have an opportunity to appear and express their views. Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Approving Authority shall within one week after the meeting either grant or confirm its denial of the variance. The decision to grant or deny the variance shall always rest with the Approving Authority.

(e) If a variance is denied, another application for a substantially similar variance for the same Lot may not be made for a period of one year after submittal of the original request.

ARTICLE V

APPROVING AUTHORITY

Section 501. Composition of the Approving Authority. The Approving Authority shall consist of one or more individuals as determined by the Declarant. Declarant reserves the right, until January 1, 2039, to appoint all members of the Approving Authority. Thereafter or sooner with Declarant's written consent, the Board of Directors of the Association may, by majority vote, appoint or change the membership of the Approving Authority, so long as the members of the Approving Authority, which may consist of the Board itself, are Owners of Lots within the Subdivision. Whenever a member shall be deceased or unwilling or unqualified to act, the Board of Directors of the Association shall appoint an Owner of a Lot within the Subdivision as a member of the Approving Authority so as to fill the existing vacancies, except until January 1, 2039, any such vacancy may be filled by Declarant.

Section 502. Authority of Approving Authority. The Approving Authority is empowered to approve or disapprove in writing all matters delegated to it under these Covenants, including all plans for construction, site locations, clearing, plantings, fencing, additions to existing Structures, remodeling that alters the exterior, replacement of natural environment of Lots or appearance of homes in the Project. Disapproval of submissions by the Approving Authority may be based upon any grounds, including purely aesthetic grounds. If such submissions are disapproved, the Approving Authority shall give written reason for said requirements of the applicant including submission of additional plans, specifications, and material samples, and may require such changes as it deems necessary to conform to the overall intent as herein expressed.

The Approving Authority shall have the right to alter site locations as shown on the submitted site plan, or deny construction if, in the opinion of the Approving Authority, the proposed site locations will unduly interfere with adjoining Lots as to view, intrusions or sound or light, sanitation, proximity or type of construction, actual or proposed, or unduly damaged the natural growth and terrain.

The Approving Authority may prohibit the construction of fences, Structures, houses or any other improvements to any Lot, and is empowered to order their removal if written application was not made by the Owner, or if approval was not granted in accordance with these Covenants, or if actual construction is different from the approved plans.

The Approving Authority shall be the sole and exclusive judge of whether or not plans or Structures comply with these Covenants. It is the intent of these Covenants that the Approving Authority shall exercise broad discretionary powers hereunder. The Association's Board of Directors shall resolve all questions and interpretations of these Covenants which shall be interpreted in accordance with their general purpose and intent as herein expressed; the Board's decisions shall be final and conclusive.

Section 503. Delivery of Items. Any item required or permitted to be delivered to the Approving Authority shall be deemed properly delivered when actually received by the Approving Authority at such address as it may from time to time designate.

Section 504. Non-Liability. Members of the Approving Authority and the Association's Board of Directors shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to wanton and willful misconduct.

ARTICLE VI

WATER AND SEPTIC

Section 601. Water Augmentation Plan.

(a) All Lots in the Project shall be subject to the requirements as set forth in the decree and plan for augmentation in Consolidated Case No. 2017CW3076 (WD #1) and 2017CW3027 (WD #2), a copy of which is attached hereto as **Exhibit "D"** and incorporated herein by this reference (the "Augmentation Plan"). El Paso County has determined that the Augmentation Plan allows a permitted withdrawal of 13.2 acre-feet of water annually for 300 years for a total of 3,960 acre-feet from the Dawson aquifer which can be withdrawn to serve 16 residential Lots and a commercial tract through individual wells, including two (2) existing Dawson aquifer wells. The 16 Lots in this Subdivision will use 8.8 acre-feet/year total (2,640 acre-feet total for 300 years) and the commercial tract will use 4.4 acre-feet/year total (1,320 acre-feet total for 300 years). With a total available supply of Dawson aquifer water of 14.78 acre-feet of water per year (4,434 acre-feet total for 300 years) and based on the foregoing, the County has determined that there should be sufficient supply to meet the County's 300-year water supply rule. The conveyed groundwater is the water supply for the Lot, and will not be sold or leased for any other purpose, provided, however, the Declarant reserves and retains any water rights which are not conveyed to the Owners or the Association. The Owners and the Association shall have obligations under the decree and Augmentation Plan, including costs of operating the Augmentation Plan, which will include the costs for construction and pumping of the Dawson wells and pumping of the Arapahoe and Laramie-Fox aquifer wells to replace post-pumping depletions, and the responsibility for metering and collecting data regarding water withdrawals from said wells.

(b) Each Owner shall be responsible for obtaining a permit for a well to provide a water supply to his or her dwelling and for constructing and operating such well. All wells shall be constructed and operated in compliance with the Augmentation Plan and the permits for such wells.

(c) Each Owner may be required to log a well as it is constructed (unless a waiver is obtained) and a well meter, with an accessible, exterior read-out, shall be installed so as to

provide information necessary to the Augmentation Plan. Each Owner shall maintain the meter and the well and shall allow the Association or its agents to enter the Owner's Lot and read and inspect the meter.

(d) Each Owner shall provide any information necessary to enable any reports required under the Augmentation Plan to be filed in a timely manner. Each Owner shall provide to the Association the annual amount of water withdrawn during the previous calendar year (January 1 through December 31), by January 15th of the following year. The Association will collect said information and provide a summary of withdrawals for the previous calendar year to the Division Engineer (upon request) by January 30th for pumping during the previous calendar year. The Association may impose a fine upon any Owner who fails to provide such information or otherwise violates the Augmentation Plan.

(e) Declarant hereby assigns to the Association any and all right, interest and responsibilities under the Augmentation Plan, and the Association shall pay any cost imposed by the operation of the Augmentation Plan, including any replacement of post-pumping depletions and responsibility for metering and collecting data regarding water withdrawals from wells. By this assignment to the Association, Declarant shall be relieved of any responsibility for the administration or enforcement of the Augmentation Plan or the operation of the augmentation water supply, and the Association and Owners shall be obligated to perform the same pursuant to the provisions thereof. By such assignment, the Association shall hold such interest in the Augmentation Plan and augmentation water supply for the benefit of all Owners, shall assume the responsibility for administering and enforcing the Augmentation Plan, and shall take all necessary actions to ensure protection of water and well rights for all Owners pursuant to the Augmentation Plan, including pursuing and maintaining all further action required under the Augmentation Plan. Failure of the Association or the Owners to comply with the terms of the Augmentation Plan may result in an order from the Division Engineer's office to curtail or eliminate pumping of the Owners' wells.

(f) No changes or deletions to the foregoing provisions of this Paragraph may be made which may alter or in any manner compromise the Augmentation Plan or the water rights of either Declarant or the Owners without the prior written approval of said parties and the Water Court.

(g) The Colorado State Engineer has advised Owners regarding the potential limited water supplies in the Denver Basin as follows:

“Water in the Denver Basin aquifers is allocated based on a 100 year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300 year aquifer life, which is based on an allocation approach. Applicants, the Home Owners Association, and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less

than either the 100 years or 300 years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers, and Applicants and their successors and assigns, including individual lot owners in the subdivision and the HOA, may be required to acquire, develop, and incorporate alternative renewable water resources in a permanent water supply plan that provides future generations with a water supply.”

Section 602. Sanitary Facilities and Wells. Each Owner hereby acknowledges that each Lot within the Subdivision will require the installation of a septic system which is approved by the El Paso County Health Department and/or any other applicable governmental authority for sanitary sewer purposes. **ALL SEPTIC SYSTEMS SHALL BE NON-EVAPORATIVE SYSTEMS.** Each Owner further acknowledges that each Lot within the Subdivision will require the installation and applicable governmental approval of a domestic water well within the Lot for water service to the Lot which must comply with the requirements set forth in these Covenants. Each Owner shall be responsible for the installation, maintenance, repair and replacement of his or her well and ensuring compliance with all governmental restrictions and requirements related to such water use rights, including all required meter readings and reporting requirements related to spacing of such well from septic systems; no septic system shall interfere with the water supply of any adjoining property. The location of a well and septic system on any Lot shall be subject to the prior review and written approval by the Declarant and/or the Approving Authority and appropriate governmental agencies.

ARTICLE VII

COVENANTS FOR ASSESSMENTS

Section 701. Assessments. The Association shall assess the Owners for the costs of common expenses as determined by the Association’s Board of Directors. The assessments hereunder shall be imposed equally upon each Lot and each Owner, provided, however, notwithstanding any contrary provision, any assessments hereunder shall commence upon the earlier of: (a) the completion of a residential dwelling unit upon the Lot, as demonstrated by final governmental approval, or (b) twelve (12) months from the date on which the Lot is conveyed by the Declarant, and provided further, that the Association’s Board of Directors may impose an assessment which shall be applicable only to a particular Lot or particular Owner or both for any violation of the Association’s Rules or any violation or expense under these Covenants, including Section 216 hereof. The Declarant shall not be obligated to pay assessments on any Lots owned by it nor shall Declarant’s Lots be subject to lien hereunder.

Section 702. Purpose of Assessments. Assessments may also be levied by the Association’s Board of Directors for promoting the property values, welfare and convenience of the Members, including the enforcement of these Covenants, and to pay for the costs of the ownership, maintenance, watering, mowing, fertilization and landscaping of the common

property and activities, including (but only to the extent applicable) the following: the property boundary fences, if any, monument signs and related landscaping, street signs, maintenance and repair of drainage and detention facilities, tree inspection and thinning programs, as it may relate to the Approving Authority and other activities of the Association, and any other common expenses as determined by the Association's Board of Directors, including maintenance, administrative, legal and insurance. The Association shall perform any obligations required of it under any recorded Detention Agreement and any costs related thereto shall be included in the assessments levied by the Association.

Section 703. Assessments - Lien and Personal Obligation. Each Owner, by acceptance of a conveyance of his or her Lot, whether or not it shall be so expressed in the conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and other assessments authorized by these Covenants. Each such assessment and charge, together with the interest thereon and costs of collection, shall be a continuing lien upon the Lot against which it is made and shall also be the personal obligation of the person who owned the Lot at the time the assessment or charge fell due, except Declarant.

Section 704. Payment of Assessments. The foregoing assessments shall be payable in advance in annual or other installments as the Association's Board of Directors may fix. The Board may set the annual assessment in any amount which complies with the limitation set forth in C.R.S. § 38-33.3-116 as to the maximum annual assessment to be exempt from the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, et seq.) ("CCIOA"). The Association's Board of Directors shall give each Member written notice of each assessment at least ten (10) days in advance of the due date. Such notice shall state the amount of the assessment and if the assessment is payable in other than in a single payment, the amount and due dates of each installment as fixed by the Association's Board of Directors. Failure to give such notice shall not affect or impair the assessment, but shall postpone its effective date.

Section 705. Collection of Assessments.

(a) **Personal Liability.** Any assessment which is not paid when due shall be delinquent, and the Association may impose a late charge for each month any assessment is delinquent, and may also collect the attorneys' fees, costs and expenses of any collection. Additionally, the Association may bring an action at law against any Owner personally obligated to pay any assessment and, in the event of any lawsuit, the delinquent Owner shall pay all attorneys' fees, court costs and any expenses of such lawsuit.

(b) **Lien.** Additionally, any such unpaid assessment, together with all expenses of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment was made. The Association may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to said Lot, setting forth such information as the Association may deem appropriate. Said lien shall run with the land and shall

additionally secure all assessments and expenses which become due after its filing. Said lien may be foreclosed by the Association in the manner provided for foreclosures of mortgages under the laws and statutes of the State of Colorado. All rights and remedies of the Association are cumulative, and foreclosure of the lien shall not prevent a lawsuit against the Owner personally liable therefor whether taken before, after or during such foreclosure. Said lien may be released by recording an appropriate document executed by an officer or agent of the Association. Such lien is in addition to any statutory lien allowed to the Association by law or statute. Said lien shall be superior and prior to any homestead rights or similar exemption now or hereafter provided under state or federal law to any Owner, whose acceptance of a deed to a Lot shall constitute a waiver of such homestead or other rights.

Section 706. Protection of Lenders. The lien for any assessment provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the lien for said assessment except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of any assessment which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, of any proceeding in lieu thereof, including any deed in lieu of foreclosure. No such sale, transfer, foreclosure or any above-described proceeding in lieu thereof, shall relieve any Lot from liability for any assessment becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his or her ownership.

Section 707. Funding Fee. Upon conveyance from Declarant, or a builder, to the initial Owner, and upon each subsequent conveyance by an Owner, the initial and each subsequent Owner shall pay a funding fee of Two Hundred Fifty Dollars (\$250.00). This fee shall be paid to the Association to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

ARTICLE VIII

GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 801. Definitions. The following words and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

(a) **Accessory Building.** Detached garages, guest house, patios, swimming pools, covers, enclosures, dressing rooms or other similar Structures, spas, hot tubs, gazebos, recreation facilities and other buildings customarily used in connection with the single family residence.

(b) Approving Authority. The architectural review board established pursuant to Section 501 of these Covenants.

(c) Association. The Rollin Ridge Estates Owners Association, Inc., a Colorado non-profit corporation, which has been organized under the laws of the State of Colorado, its successors and assigns. "Association Documents" shall mean these Covenants, the Association's Articles of Incorporation, Bylaws, and Rules.

(d) Building Site. The location within a Lot on which a Structure may be erected with the prior written approval of the Approving Authority, including the "building envelope" described herein.

(e) Covenants. This Declaration of Covenants, Conditions, Restrictions and Easements and the provisions contained in it, and any amendments thereto.

(f) Declarant. TC&C, LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder.

(g) Lot. Each area designated as a Lot in any recorded Plat of the Subdivision.

(h) Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of El Paso County in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any public street. A side Lot Line is any boundary line which meets and forms an angle with a public street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street which affords the principal access to the Lot.

(i) Plat. The plat which has been or will be recorded for this Subdivision in the real property records of El Paso County, Colorado.

(j) Mortgagee. Any person or entity, or any successor or assign thereof, which holds or owns a deed of trust, mortgage or similar encumbrance. The term shall also include the Administrator of the Department of Veterans Affairs, an office of the United States of America, and his or her assigns under any executed land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not but if not recorded, then written notice thereof shall be delivered to the Board. "First Mortgage" shall mean a mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage.

(k) **Owner.** Person or entity having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as “Owner” and shall exercise their rights as an Owner through such one of them as they may designate from time to time. A vote of Owners shall be determined on the basis of one vote for each Lot.

(l) **Structure.** Any thing or device, including related improvements, such as Accessory Buildings, painting, fences, trees and landscaping, the placement of which upon any Building Site might affect its architectural appearance, including any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering, antenna, mailbox, solar collector or outdoor lighting. “Structure” shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(m) **The Subdivision.** The area described in **Exhibit “A”** hereto as shown on the recorded Plat.

(n) **Enumerations Inclusive.** A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

(o) **Terms.** Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to entities or corporations, singular to include plural and plural to include singular. The terms “include” and “including” shall mean “include without limitation” and “including without limitation”.

(p) **Due Notice.** Due Notice means written notice sent by the United States mail, either first class or certified mail, return receipt requested, or by hand delivery to the Lot or the Owner at least ten (10) days prior to the action required by the notice.

Section 802. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 803. Board Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intentment or meaning of any of these Covenants, except and excluding matters involving the Declarant, the Association’s Board of Directors shall determine the proper construction of the provision in question; the Board may set forth its decision in written instruments duly acknowledged and filed for record with the Clerk and Recorder of El Paso County; those decisions will thereafter be binding on all parties so long as they are not

arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this Section 803.

Section 804. Covenants Run with the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 805. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restriction. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision. Any and all rights and remedies of the Association and the Approving Authority are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity and may be exercised concurrently, independently or successively without affect or impairment upon one another.

Section 806. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 807. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, the Association, and the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Association, or the Approving Authority, or any combination of these. Until January 1, 2039, Declarant may also enforce these Covenants in any manner as Declarant is permitted herein or by law or statute. All costs, including reasonable attorneys' fees, incurred by the Association or by the Approving Authority in connection with any successful enforcement proceeding initiated by them (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated these Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 808. Duration of Restrictions. Unless sooner terminated as provided in Section 809, the restrictions and other provisions set forth in these Covenants shall remain in force until January 1, 2039, and shall be automatically renewed for successive periods of ten (10) years unless before January 1, 2039, or before the end of any ten-year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by Owners of at least two-thirds (2/3's) of the Lots in the Subdivision and approved by the Declarant during the period described in Section 814 hereof. However, the provisions of Section 601 shall not terminate except by order of the Water Court, which may amend, modify or change such provisions by judicial order.

Section 809. Amendment and Extensions. From time to time any one section of these Covenants (except Sections 109, 601, 810, 814 or other provision for Declarant's benefit, which may not be amended without the Declarant's prior written consent) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by the Declarant or after the period described in Section 814 hereof, by the Association's Board of Directors certifying approval by Owners of at least two-thirds (2/3's) of the Lots and filed for record with the Clerk and Records of El Paso County, provided, however, notwithstanding the foregoing, the Declarant shall have the rights of amendment or addition as set forth in Section 814 hereof.

Section 810. Termination. All sections of these Covenants (except Sections 109, 601 and 814) may be terminated at any time by an instrument signed and acknowledged by an instrument signed by the Declarant as provided in this Declaration or after the period described in Section 814 hereof, by the Association's Board certifying approval by Owners of at least two-thirds (2/3's) of the Lots and any such termination shall be filed for record with the Clerk and Recorder of El Paso County. Notwithstanding Sections 809, 810 or 814 or other provisions of these Covenants, no provision hereof for the benefit of the Declarant shall be amended, terminated or modified without the prior written approval of the Declarant. Notwithstanding the above, any provisions regarding the obligations of the Declarant, the Association and the Lot Owners with respect to the Detention Agreement shall neither terminate nor be amended except by written agreement of the Board of County Commissioners of El Paso County, Colorado, or except as otherwise provided in the Detention Agreement.

Section 811. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 812. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

Section 813. Notices. Any notice or writing described in these Covenants, including any communication from the Approving Authority to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situated on the Lot owned by the Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Association has a record.

Section 814. Rights of Declarant. Notwithstanding any contrary provision of these Covenants, until January 1, 2039 (unless prior thereto, the Declarant relinquishes any or all rights by a written recorded document) the Declarant, its successors or assigns, expressly reserves the following rights and privileges, which may or may not be exercised in Declarant's sole discretion:

(a) Declarant may amend or change the Plat to add additional property to the Subdivision, change Lot Lines or subdivide Lots into more Lots, combine Lots into fewer Lots, grant utility or other easements, or all of the foregoing.

(b) Declarant, or any builder authorized by Declarant, may construct and maintain sales offices, management offices, advertising signs, model homes, construction yards and construction materials within the Subdivision, including the development and construction of improvements and in commercial facilities within the Commercial Tract.

(c) Declarant may grant easements for utilities or public purposes through the Subdivision and make improvements or changes necessitated by such easements.

(d) Declarant may appoint or remove any officer or any director of the Board of Directors of the Association or the Approving Authority or both, and may increase or decrease the number of directors or Approving Authority. Following the relinquishment of control by Declarant, the Owners shall elect the Association's Board of Directors as provided in these Covenants, the Articles of Incorporation and the Bylaws.

(e) Notwithstanding any contrary provisions of these Covenants or any other document, the Declarant hereby reserves the right, but without approval or vote of the Members or Mortgagees, to amend these Covenants, the Articles of Incorporation and/or the Bylaws, as may be necessary or desirable: (i) to correct typographical errors or make clarifications in said documents or (ii) to implement the Declarant's rights under said documents, or (iii) to induce any lender or secondary lending entity to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Subdivision, and each Owner and Mortgagee by accepting a deed, mortgage or other instrument affecting a Lot appoints Declarant as his or her attorney-in-fact for purposes of executing in said Owner's or Mortgagee's name and recording any such amendments to these Covenants or other document, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and

acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments.

(f) Declarant may enter into agreements with the purchase of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth, and any such deviation which shall be manifested by agreement in writing shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots in the Subdivision, and the same shall remain fully enforceable on all other Lots located in the Subdivision by Declarant, its successors or assigns, and the Association or other Owners, except as against the Lot where such deviation is permitted.

(g) Until January 1, 2039, Declarant reserves the right to expand the Subdivision, without approval of the Owners or Mortgagees, to include additional real property and improvements and/or to withdraw real property and improvements, including the Commercial Tract and/or Drainage Areas described on **Exhibit "C"** to this Declaration. Such expansion and/or withdrawal may be accomplished by recording a supplement or supplements to these Covenants with the Clerk and Recorder of El Paso County, Colorado containing a legal description of the real property thereby annexed and/or withdrawn and any additional provisions deemed appropriate by Declarant, which may amend these Covenants to include the added and/or changed provisions, including any decrease and/or increase in expenses for additional maintenance, services and/or areas, and may annex and/or withdraw the applicable property in phases, but shall not be liable or obligated to annex and/or withdraw any property. Upon annexation, the additional property and the owners thereof shall be bound by these Covenants, the Association's Articles of Incorporation, Bylaws and Rules, and any additional provisions in the annexation supplement, which may include additional designations of additional residential areas. Upon withdrawal, the withdrawn property shall not be bound by any of such documents or obligations and the owners of the withdrawn property shall not be bound by said documents. By accepting a deed to any Lot or a Mortgage, each Owner and Mortgagee grants Declarant a right to expand and/or withdraw property from the Subdivision and consents to such annexation expanding the Subdivision and will not oppose or hinder Declarant's right to expand, annex and/or withdraw any real property and improvements or to develop adjoining properties and improvements. The right to annex and/or withdraw any property shall pass to the Association after the expiration of Declarant's rights stated above, and the Association may undertake such annexation and/or withdrawal upon approval of at least two-thirds (2/3's) of the Owners present at a meeting duly called for such purpose.

(h) Declarant, its successors or assigns, reserves the right to erect and maintain entrance signs or monuments on Lots at either side of the street at the entry point into the Subdivision, and may also erect gateways, fences, posts, walls, signs and other Structures both to permanently identify the Subdivision and to market it. In addition, Declarant reserves the right to place signs on any Lot in the subdivision as Declarant deems necessary for marketing or

traffic guidance, and Owners of such Lots in the Subdivision agree thereto. Easements are hereby created for all signs, gateways, fences, posts, walls and Structures installed by Declarant and for their maintenance. The Association shall maintain all entrance signs, fences, monuments and related Structures and pay all utilities and other expenses related thereto.

SECTION 815. RELEASES AND DISCLAIMERS. BY ACCEPTANCE OF A DEED, THE OWNER ACCEPTS THE SUBDIVISION IN “AS IS” CONDITION AND RELEASES THE DECLARANT, ITS SUCCESSORS, ASSIGNS, EMPLOYEES AND OWNERS FROM ANY AND ALL LIABILITY REGARDING ANY MATTER RELATED TO THE SUBDIVISION, INCLUDING ANY PHYSICAL OR ENVIRONMENTAL CONDITION, SOILS, DRAINAGE, WATER TABLE, WATER AVAILABILITY OR QUALITY, CONSTRUCTION OR IMPROVEMENTS, ZONING OR COMPLIANCE WITH ANY LAWS OR CODES, VALUE OR FUTURE RESALE OR DEVELOPMENT OF THE SUBDIVISION OR SURROUNDING PROPERTIES, CONTINUATION OF ANY VIEW OR NATURAL FEATURE, OR ANY MATTER REGARDING THE ASSOCIATION, ITS OPERATION, FINANCES, ASSESSMENTS, RESERVES, OR RELATED TO THE COVENANTS. THIS RELEASE SHALL BE A COMPLETE BAR AND WAIVER OF ANY RIGHT TO SUE AND THE OWNER SHALL INDEMNIFY THE DECLARANT FROM ANY DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS’ FEES ARISING FROM THE OWNER’S OR ASSOCIATION’S BREACH OF THIS SECTION.

Section 816. CCIOA Exemption. Notwithstanding any provision of the Covenants, it is hereby declared that the real property described in the Covenants known as the Subdivision, the Association, the Declarant and the Owners of Lots within Rollin Ridge Estates (“Owners”) shall be exempt from the Colorado Common Interest Ownership Act (called “CCIOA”, C.R.S. § 38-33.3-101, et seq.), pursuant to C.R.S. § 38-33.3-116, because the number of Lots in the Association does not exceed twenty (20) Lots and there shall be no “development rights” as defined by C.R.S. § 38-33.3-103(14). Any references herein to sections or provisions of CCIOA shall incorporate by reference those rights and privileges into the Covenants, but notwithstanding the foregoing, such incorporation by reference shall not incorporate, impose or require any procedures, requirements, restrictions, limitations, or other burdens of CCIOA; and the determination of any incorporation by reference or other application of CCIOA shall be made by the Board of Directors in its sole, absolute, final discretion.

IN WITNESS WHEREOF, Declarant has executed these Covenants this 23 day of February, 2021.

[Signature Page Follows]

EXHIBIT "A"

Legal Description of Subdivision

LEGAL DESCRIPTION – ROLLIN RIDGE FILING NO. 1

A TRACT OF LAND BEING ROLLIN RIDGE FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO.

SAID TRACT CONTAINS 57.01 ACRES OF LAND, MORE OR LESS.

EXHIBIT "B"

Legal Description of Commercial Tract

TRACT B, ROLLIN RIDGE FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

EXHIBIT "C"

Legal Description of Detention Areas

LEGAL DESCRIPTION – DRAINAGE AND DETENTION POND – TRACT "A":

A TRACT OF LAND FOR STORM DRAINAGE AND DETENTION PURPOSES, BEING TRACT A, ROLLIN RIDGE FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO.

SAID EASEMENT CONTAINS 30,877 SQUARE FEET (0.71 ACRES) OF LAND, MORE OR LESS.

LEGAL DESCRIPTION – DRAINAGE AND DETENTION AREA – LOT 3:

AN EASEMENT FOR STORM DRAINAGE AND DETENTION PURPOSES LYING OVER, UNDER AND ACROSS A PORTION OF LOT 3, ROLLIN RIDGE FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS STATEMENT – ALL BEARINGS USED HEREIN ARE ASSUMED TO BEAR N00°06'39"W, A DISTANCE OF 1262.77 FEET BETWEEN THE SOUTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED UNDER RECEPTION NO. 216022946, AS MONUMENTED BY A 5/8" REBAR (NO CAP), AND THE NORTHWEST CORNER OF SAID TRACT, AS MONUMENTED BY A 5/8" REBAR WITH ORANGE CAP STAMPED "PLS 32439".

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF THAT 40 FOOT ADDITIONAL RIGHT-OF-WAY AS SHOWN ON SAID PLAT OF ROLLIN RIDGE FILING NO. 1;
THENCE S88°54'09"E ALONG THE NORTHERLY LINE OF SAID LOT 3, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID ADDITIONAL RIGHT-OF-WAY, A DISTANCE OF 100.02 FEET;
THENCE S00°06'39"E, A DISTANCE OF 141.52 FEET;
THENCE S16°57'44"W, A DISTANCE OF 32.90 FEET;
THENCE S40°15'19"W, A DISTANCE OF 43.18 FEET;

THENCE S89°53'21"W, A DISTANCE OF 62.38 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3, SAID POINT ALSO BEING A POINT ON THE EASTERLY LINE OF THAT TRACT AS DESCRIBED UNDER SAID RECEPTION NO. 200156068.

THENCE N00°06'39"W ALONG THAT LINE COMMON TO SAID LOT 3 AND SAID TRACT, A DISTANCE OF 207.98 FEET TO THE POINT OF BEGINNING;

SAID EASEMENT CONTAINS 19,763 SQUARE FEET (0.45 ACRES) OF LAND, MORE OR LESS.

EXHIBIT "D"

Water Decree/Augmentation Plan

See attached.

<p>DISTRICT COURT, WATER DIVISION 1 COLORADO</p> <p>Court Addresses: Water Division 1 P.O. Box 2038 Greeley, CO 80632</p> <hr/> <p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>TC & C, LLC, Applicant,</p> <p>IN EL PASO COUNTY.</p>	<p>DATE FILED: January 29, 2018 10:04 AM CASE NUMBER: 2017CW3076</p> <p>σ COURT USE ONLY σ</p> <p>Consolidated Case Numbers: 17CW3076 WD#1 17CW3027 WD#2</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND JUDGMENT AND DECREE OF THE WATER COURT</p>	

A claim for approval of plan for augmentation was filed in this case on May 30, 2017. The case was also filed in Water Division 2. The cases were consolidated in Water Division 1. All matters contained in the application having been reviewed, testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein, the following is hereby the Ruling of the Referee and Judgment and Decree of the Court:

FINDINGS OF FACT

1. Name, Address and Telephone Number of Applicant:

TC & C, LLC
17572 Colonial Park Drive
Monument, CO 80132
(719) 651-4013

2. Objections: A statement of opposition was filed in Case No. 17CW3027 in Water Division 2 by Cherokee Metropolitan District. No other statements of opposition were filed and the time for filing such statements has expired.

3. Subject matter jurisdiction: Timely and adequate notice of the application was published as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over the parties affected hereby, whether they have appeared or not. The cases were consolidated in Case No. 17MD13 to be decreed by the Water Court, Water Division 1.

4. Plan for augmentation:

A. Groundwater to be augmented: 13.2 acre-feet per year for 300 years of not nontributary Dawson aquifer groundwater as decreed in Case No. 08CW164, District Court, Water Division 1. Applicant is the owner of the groundwater decreed in Case No. 08CW164, as evidenced by deed attached as Attachment A-1 hereto. The land which is the subject of Case No. 08CW164 and this decree is 58 acres of land, generally located in the N1/2 of Section 27, T11S, R66W of the 6th P.M., El Paso County, as described and shown on Attachment A-2 hereto (Subject Property).

B. Water rights to be used for augmentation: Return flows from the use of not nontributary Dawson aquifer groundwater and return flows and direct discharge of nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater as decreed in Case No. 08CW164. Applicant is the owner of 22.72 acre-feet per year of Arapahoe and 16.99 acre-feet per year of Laramie-Fox Hills aquifer groundwater.

C. Development and Consumptive Use: The Dawson aquifer groundwater will be used to serve 16 residential lots through individual wells, including through two existing Dawson aquifer wells as permitted in Well Permit Nos. 149714 and 225258 (8.8 acre-feet per year for 300 years), and to provide in building commercial use, and limited irrigation through one or more additional wells (4.4 acre-feet per year for 300 years). Each residential lot and well will use 0.55 acre-feet per year for 300 years for in house use (0.35 acre-feet) and irrigation of 3500 square feet of lawn, garden, and trees (0.2 acre-feet per year). The remaining 4.4 acre-feet per year may be used to provide in building commercial use (4 acre-feet) and irrigation of 7000 square feet of lawn, garden, and trees (0.4 acre-feet). Conservatively, water use in single family dwellings will equal at least 0.2 acre-feet of water annually, and that use of non-evaporative septic systems typically results in consumption of approximately 10% of such use, resulting in return flows of at least 0.18 acre-feet annually from those uses. Various components of this plan for augmentation are predicated on these estimations, and Applicant shall be required to use non-evaporative septic systems to treat and dispose of water used for in house use. 90% of the in building commercial use will be returned to the stream system, and no irrigation return flow is claimed for replacement of depletions in this plan.

D. Replacement of depletions during pumping: Based on annual pumping of 13.2 acre-feet per year over a 300 year pumping period, it is estimated that the total actual depletion to all stream systems is approximately 22.9% or 3.02 acre-feet (0.126 acre-feet for each residential well, and 1.01 acre-feet for the commercial use wells). Return flows from use of the Dawson aquifer groundwater from in house use in residences on each of the 16 residential lots (at least 0.18 acre-feet per year as described above or 2.88 acre-feet total) and from in building commercial use (3.6 acre-feet), are sufficient to replace actual depletions from pumping of 13.2 acre-feet per year for 300 years. Of the total actual depletion from pumping of 13.2 acre-feet per year after 300 years of pumping, it is estimated that approximately 12.2% occurs to the South Platte River stream systems and approximately 10.7% occurs to the Arkansas River stream systems. (The remaining percentages of actual depletions occur to streams in designated basins). Applicant does not have the physical ability to replace depletions to the Arkansas River and Monument Creek stream systems, but shall instead replace all such depletions to the South Platte

River via the Cherry Creek stream systems. During pumping of the Dawson aquifer, return flows from use of the groundwater are in excess of the total actual depletion of 3.02 acre-feet after 300 years of pumping.

E. **Replacement of Post-pumping Depletions:** Applicant agrees to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicant obtains water court approval for such modification; the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court on relevant cases; or until Applicant petitions the water court and after notice to parties in the case and prove that they have complied with all statutory requirements. The court finds that the provisions of this paragraph are adequate to comply with existing law and to prevent injury to others. It is estimated that maximum total actual depletion to all stream systems from pumping of 13.2 acre-feet per year for 300 years will be approximately 23.3% of average annual pumping in the 315th year. Applicant's replacement obligation will be the total stream depletion factor for all stream systems as shown on Attachment B for 300 years of pumping. That required amount of water will be pumped from the nontributary Arapahoe or Laramie-Fox Hills aquifers which are reserved for this purpose herein for diversion into the Cherry Creek stream systems. However, Applicant reserves the right to substitute the use of other nontributary groundwater, including from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.

F. Applicant will begin making post-pumping replacements when the earliest of the following events has occurred: the total amount of Dawson aquifer groundwater allowed to be withdrawn (3960 acre-feet) has been withdrawn from the wells; or the Applicant or successors in interest have acknowledged in writing that all withdrawals for beneficial use of the groundwater have permanently ceased; or for a period of 10 consecutive years no groundwater has been withdrawn; or accounting shows that return flows from the use of the water being withdrawn from the Dawson aquifer are insufficient to replace depletions that already occurred.

G. Applicant shall reserve and dedicate to this plan for augmentation 22.72 acre-feet per year of Arapahoe and 16.99 acre-feet per year of Laramie-Fox Hills aquifer groundwater decreed in Case No. 08CW164, for the purpose of replacing to the Cherry Creek stream systems all post-pumping depletions. If at some time replacement of post-pumping depletions is no longer required pursuant to paragraph 5.E above, said reservation will become null and void at such time as the obligation to replace post-pumping depletions terminates. Applicant will be required to construct a well into the Arapahoe and/or Laramie-Fox Hills aquifer to provide for post-pumping depletions herein.

5. Applicant or successors and assigns shall be responsible for the operation of this augmentation plan. Applicant shall reserve the nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater described in paragraph 5.F. for use in this plan. Failure of either the Applicant or successors and assigns to comply with the terms of the decree may result in an order of the Division Engineer's office to curtail or eliminate pumping of the well or wells. This decree shall be recorded in the real property records of El Paso County so that a title examination

of the property, or any part thereof, shall reveal to all future purchasers the existence of this decree.

6. Administration of plan for augmentation:

A. Applicant shall report to the Division Engineer for Water Division 1 upon request, a summary of the annual metered withdrawals of the subject wells from November 1 through October 31, on an accounting form acceptable to the Division Engineer.

B. All withdrawals which are the subject of this decree will be metered.

C. Pursuant to Section 37-92-305(8), C.R.S., the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

D. The Applicant or successor and assigns at the direction of the Division Engineer, shall make post-pumping replacements to the Cherry Creek stream system pursuant to the percentage of depletion referenced on the depletion curve attached hereto on Attachment B.

7. Retained jurisdiction for plan for augmentation:

A. Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also has jurisdiction for the purposes of determining compliance with the terms of the augmentation plan.

B. Any person seeking to invoke the retained jurisdiction of the Court shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the Decree shall set forth with particularity the factual basis and the requested decretal language to effect the petition. The party lodging the petition shall have the burden of going forward to establish prima facie facts alleged in the petition. If the Court finds those facts to be established, Applicant shall thereupon have the burden of proof to show: (1) that any modification sought by Applicant will avoid injury to other appropriators, or (2) that any modification sought by Objector is not required to avoid injury to other appropriators, or (3) that any term or condition proposed by Applicant in response to the Objector's petition does avoid injury to other appropriators.

C. The Court retains jurisdiction for the purpose of determining whether the continued reservation of the nontributary water for use on the property is required. After notice to the State Engineer's Office, if Applicant can demonstrate to the Court that post-pumping depletions need no longer be replaced, the Court may remove the requirement that the nontributary water must be reserved.

CONCLUSIONS OF LAW

8. The Water Court has jurisdiction over this proceeding pursuant to Section 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law pursuant to Sections 37-90-137(4) and (9)(c). The withdrawal of up to 13.2 acre-feet per year for 300 years and no more than 3960 acre-feet total of the Dawson aquifer in accordance with the terms of this decree will not result in material injury to vested water rights of others subject to the provisions of this decree.
9. This plan for augmentation satisfies the requirements of Section 37-90-137(9)(c), C.R.S., for replacement of actual depletions to the affected stream systems for withdrawals of the Dawson aquifer water.
10. Full and adequate notice of the application was given, and the Court has jurisdiction over the subject matter and over the parties whether they have appeared or not.

JUDGMENT AND DECREE

The Findings of Fact and Conclusions of Law set forth above are hereby incorporated into the terms of this Judgment and Decree as if the same were fully set forth herein.

11. Applicant may withdraw up to 13.2 acre-feet per year for 300 years and no more than 3960 acre-feet total of not nontributary ground water from the Dawson aquifer under the plan for augmentation decreed herein pursuant to Section 37-90-137(9)(c), C.R.S.
12. Applicant has complied with all requirements and met all standards and burdens of proof, including but not limited to Sections 37-90-137(9)(c), 37-92-103(9), 37-92-302, 37-92-304(6), 37-92-305(1), (2), (3), (4), (6), (8), (9), C.R.S., to adjudicate this plan for augmentation and is therefor entitled to a decree confirming and approving this plan for augmentation as described in the findings of fact.
13. Pursuant to Section 37-92-305(5), C.R.S., the replacement water herein shall be of a quality so as to meet the requirements for which the water of the senior appropriator has normally used.
14. The change of water rights and plan for augmentation as described in the findings of fact is hereby approved, confirmed, and adjudicated, including and subject to the terms and conditions specified herein.
15. No owners of or person entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by change of water rights and the operation of the plan for augmentation as decreed herein.
16. In considering applications for permits for wells to withdraw the groundwater which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with terms of this decree.

17. Continuing Jurisdiction:

Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

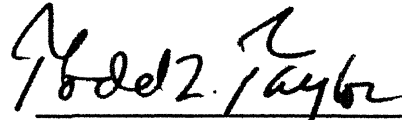
Date: January 5, 2018



John S. Cowan
Water Referee
Water Division 1

The court finds that no protest was filed in this matter. The foregoing ruling is confirmed and approved, and is made the judgment and decree of this Court.

Date: January 29, 2018



Todd L. Taylor
Alternate Water Judge
Water Division 1

QUITCLAIM DEED

THIS DEED, made this 25th day of May, 2017, by and between Kay T. Cooper and Michael D. Stowell, whose address is 3285 Hodgen Road, Colorado Springs, Colorado 80921, Grantors, and TC & C, LLC, Grantee; *them*

WITNESSETH, that the Grantors, for and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, have remised, released, sold and QUITCLAIMED, and by these presents do remise, release, sell and QUITCLAIM unto the Grantee and successors and assigns, forever, all the right, title, interest, claim and demand which the Grantors have in and to the following, located in El Paso County, State of Colorado.

All water and groundwater rights associated with or underlying the land described on Exhibit A hereto, including but not limited to all groundwater decreed in Case No. 08CW164, District Court, Water Division 1.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the Grantors, either in law or equity, to the only proper use, benefit and behoof of the Grantee and successors and assigns forever.

IN WITNESS WHEREOF, the Grantors have executed this deed on the date set forth above.

GRANTORS:

Kay T. Cooper

Kay T. Cooper
Michael D. Stowell

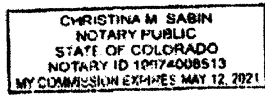
Michael D. Stowell

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 25th day of May, 2017, by Kay T. Cooper and Michael D. Stowell.

Witness my hand and official seal.

My commission expires: 5/12/21



Christina M. Sabin

Notary Public

Attached Legal Description

Parcel 1

That portion of the North Half of the North Half of Section 27, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado, described as follows:

Basis of Bearings is the North line of said Section 27, monumented at its West end with a 3 1/4 inch aluminum cap stamped with PLS 17496 and at its East end with an illegible 3 inch brass cap. Said line bears S 88 degrees 54 minutes 14 seconds E, 5264.06 feet.

Commencing at the Northwest corner of said Section 27,

- 1) thence South 88 degrees 54 minutes 14 seconds E., along the North line of said Section, 1974.02 feet to the Northwest corner of the East half of the Northeast Quarter of the Northwest Quarter of said Section 27;
- 2) thence South 0 degrees 06 minutes 40 seconds E., along the West line of said East Half, 1312.77 feet to the South line of said North Half of the North Half, said line being coincident with the North line of Rollin' Ridge Rancheros;
- 3) Thence South 89 degrees 30 minutes 26 seconds E., along said South line, 443.60 feet to the Point of Beginning of the parcel to be described;
- 4) Thence North 0 degrees 00 minutes 00 seconds W., 585.28 feet;
- 5) Thence South 90 degrees 00 minutes 00 seconds E., 454.78 feet;
- 6) Thence South 0 degrees 00 minutes 00 seconds E., 247.11 feet;
- 7) Thence North 90 degrees 00 minutes 00 seconds W., 127.15 feet;
- 8) Thence South 0 degrees 00 minutes 00 seconds W., 340.99 feet to said South line;
- 9) Thence North 89 degrees 30 minutes 26 seconds W., along said South line, 327.64 feet to the Point of Beginning,

County of El Paso,
State of Colorado

Parcel 2

Together with Access Easement described as follows in Easement Agreement recorded April 20, 2011 at Reception No. 211039534;

A 20 foot wide strip of land over and across a portion of the North Half of the North Half of Section 27, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado
The centerline of said strip is described as follows:

Basis of Bearings is the North line of said Section 27, monumented at its West end with a 3 1/4 inch aluminum cap stamped with PLS 17496 and at its East end with an illegible 3 inch brass cap. Said line bears S 88° 54' 14" E, 5264.06 feet.

Commencing at the Northwest corner of said Section 27,

- 1) Thence S 88° 54' 14" E, along the North line of said Section, 1974.02 feet to the Northwest corner of the East Half of the Northeast Quarter of the Northwest Quarter of said Section 27;
- 2) Thence S 0° 06' 40" E, along the West line of said East Half, 1312.77 feet to the South line of said North Half of the North Half, said line being coincident with the North line of Rollin' Ridge Rancheros;

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- 3) Thence S 89° 30' 26" E, along said South line, 443.60 feet;
- 4) Thence N 0° 00' 00" W, 585.28 feet to a point hereinafter referred to a Point A;
- 5) Thence S 90° 00' 00" E, 14.06 feet to the Point of Beginning of the centerline to be described;
- 6) Thence N 47° 42' 33" W, 49.71 feet to a point of curve;
- 7) Thence Northwesterly along a tangential curve to the Northeast, said curve having a central angle of 33° 59' 25", a radius of 400.00 feet for an arc length of 237.30 feet;
- 8) Thence N 13° 43' 08" W, tangent to said curve, 456.05 feet to the South line of Hodgen Road as described at Reception Number 206076668 and said centerline there terminating

The sidelines of said easement are to be lengthened and shortened to terminate at said Hodgen Road right of way and at a line drawn N 90° 00' 00" E and S 0° 00' 00" E from the above described Point A.
County of El Paso,
State of Colorado



EXHIBIT A

Legal Description

**NW1/4 NE1/4 AND THE E1/2 NE1/4 NW1/4 SECTION 27, T. 11 S., R. 66 W., 6TH P.M.,
EXCEPT THE NORTH 30 FEET THEREOF AND EXCEPT A PARCEL OF LAND
DESCRIBED AS FOLLOWS:**

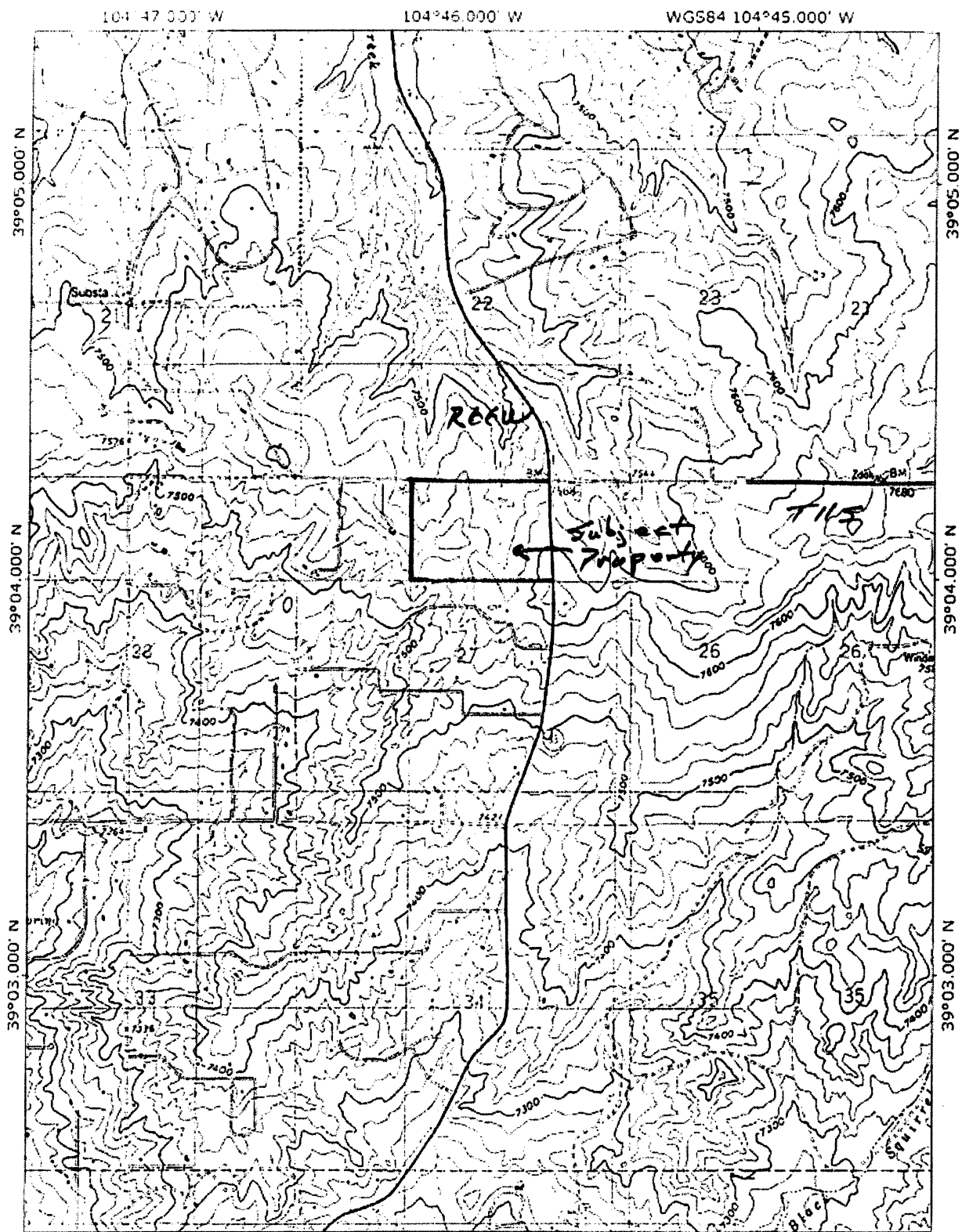
**A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHEAST
QUARTER OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL
MERIDIAN IN EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:**

**COMMENCING AT THE SOUTHEAST CORNER OF THE SUBDIVISION PLATTED AS CHERRY CREEK
CROSSING FILING No. 1, RECORDED ON THE 9TH DAY OF DECEMBER, 1999 UNDER RECEPTION
NUMBER 99185572, SAID CORNER ALSO BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF
COLORADO HIGHWAY 83 AND MONUMENTED AS SHOWN IN SAID PLAT, THENCE;**

- 1. ALONG SAID WESTERLY RIGHT-OF-WAY LINE SOUTH 02° 07' 34" EAST, A DISTANCE OF 60.10
FEET TO THE SOUTH RIGHT-OF-WAY LINE OF HOOGEN ROAD, THENCE;**
- 2. ALONG SAID SOUTH RIGHT-OF-WAY LINE NORTH 88° 52' 06" WEST, A DISTANCE OF 863.11
FEET TO THE POINT OF BEGINNING, THENCE;**
- 3. SOUTH 01° 07' 54" WEST, A DISTANCE OF 20.00 TO A LINE 20.00 FEET SOUTH OF AND
PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE, THENCE;**
- 4. ALONG SAID PARALLEL LINE NORTH 88° 52' 06" WEST, A DISTANCE OF 423.26 FEET TO
THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF
SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN,
THENCE;**
- 5. ALONG SAID WEST LINE NORTH 01° 07' 54" EAST, A DISTANCE OF 20.00 FEET, TO SAID
SOUTH RIGHT-OF-WAY LINE, THENCE;**
- 6. ALONG SAID SOUTH RIGHT-OF-WAY LINE SOUTH 88° 52' 06" EAST, A DISTANCE OF
423.26 FEET TO THE POINT OF BEGINNING**

SAID TRACT OF LAND CONTAINS 8,465 SQUARE FEET, (0.194 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON SAID PLAT OF CHERRY CREEK CROSSING FILING No. 1.



TC & C, LLC
17CW3076

ATTACHMENT A-5

17CW3076 Stream Depletion from Pumping 13.2 acre-feet in SEC 27 T11S R66W Dawson

