

Steve Schleiker
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El Paso County, CO



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OHANA ACRES MINOR SUBDIVISION

The G & D Hammann Ohana Trust, c/o Gary L. Hammann and Darlene C. Noel-Hammann as co-trustees (collectively "Declarant"), is the sole owner of real property more particularly described as being 19.31 acres, described as the NW1/4 of the NW1/4 of Section 30, Township 13 South, Range 63 West, 6th P.M., in El Paso County, State of Colorado; Lot 1 VIL Filing No. 1, also known as 17825 Jones Rd, Peyton, Colorado 80831 (the "Subdivision"), and depicted on attached **Exhibit A** plat map for Ohana Acres. The Declarant desires to place limited protective covenants, conditions, restrictions, and reservations upon the Subdivision to ensure compliance with all applicable Determinations concerning water and water rights utilized within the Subdivision.

The Declarant hereby declares that all of the Subdivision as hereinafter described, including each of the planned four (4) lots of Ohana Acres ("Lot" or "Lots"), 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 reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for assurance of legal water usage, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

Should Declarant convey, assign, or sell the Subdivision prior to subdividing the Property, then Declarant shall reserve in any deed for the entire property at least 600 acre-feet of the Arapahoe aquifer. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply.

Certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception numbers noted below, and referred to in this Declaration of Covenants as pertaining to the Subdivision.

NOW, THEREFORE, the following Declaration of Covenants is made:

1. Water Rights Determination.

A. Water Rights Ownership.

i. Declarant will transfer and assign to each owner of a Lot ("Lot Owner") their portion of all right, title, and interest in the water rights beneath their Lot. Declarant will transfer and assign to each Lot Owner at least 150 total acre-feet (0.5 acre-feet per year for 300 years) of the not-nontributary Arapahoe aquifer groundwater for use on their respective Lots. The Declarant will further transfer and assign to each Lot Owner a proportionate prorate-per-acre interest in the remaining portion of the Arapahoe aquifer, along with the not-nontributary Denver aquifer, and the nontributary Laramie-Fox Hills aquifer, which are subject of the Findings and Order in Determination No. 3714-BD, 3715-BD, and 3713-BD, respectively. Each of these Determinations is recorded with El Paso

County, Colorado, Clerk and Recorder at Reception Nos. 224060872 (Denver aquifer), 224060871 (Arapahoe aquifer), and 224060870 (Laramie-Fox Hills aquifer).

ii. The Declarant will further assign to each Lot Owner all obligations and responsibilities for compliance with the Determinations, including monitoring, accounting, and reporting obligations. By this assignment to the Lot Owners, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement, and compliance with the Colorado Ground Water Commission for each well. The Lot Owners shall maintain such obligations and responsibilities in perpetuity, unless relieved of such replacement responsibilities by properly entered administrative or judicial relief.

iii. The water rights referenced herein shall be explicitly conveyed with any transfer of the Property or a Lot; however, if a successor Lot Owner fails to explicitly convey water rights to the not-nontributary Denver and Arapahoe aquifers underlying their respective Lot, or the nontributary Laramie-Fox Hills aquifer, such water rights shall transfer automatically upon the transfer of title to each Lot as an appurtenance pursuant to such a clause in any deed conveying said Lot, whether or not Determination of Water Rights Nos. 3715-BD, 3714-BD, and 3713-BD and the water rights are separately deeded. Explicit conveyance of the water rights shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title. The groundwater rights in the Arapahoe aquifer cannot and shall not be severable from each respective Lot, and each Lot Owner covenants that it cannot sell, trade, barter, assign, encumber or transfer such groundwater rights to any party separate from the conveyance of the Lot.

B. Water Administration.

i. The Lot Owners shall limit the pumping of each their respective Arapahoe aquifer wells to a maximum of 0.5 acre-feet annually, for a combined maximum total of 2.0 acre-feet annually. Each Lot Owner shall further ensure that the allocations of use of water resulting from such pumping as approved by their well permits is maintained, as between in-house, irrigation, stock water, and other allowed uses. Each Lot Owner shall use non-evaporative septic systems in order to ensure that return flows from such systems are made to the stream system to replace depletions during pumping. Each lot shall provide a sufficient amount of return flows that is at least four percent (4%) of the amount of water withdrawn annually. Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned, or encumbered in whole or in part for any other purpose. Lot Owners must follow all applicable laws, rules, regulations, court orders, and permit conditions related to return flows. Each Lot served by an Arapahoe aquifer well must have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system prior to an application of water for any other use. The Lot Owners, as the Owners of all obligations and responsibilities under the Basin Determination, shall administer and enforce the obligations as applied to each Lot Owner's respective Lot and pumping from individual Arapahoe aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Ground Water Commission ("Commission") and the Upper Black Squirrel

Creek Ground Water Management District (“Management District”) and taking all necessary and required actions to protect and preserve the groundwater rights for all Lot Owners. Each Lot Owner has the right to specifically enforce, by injunction if necessary, the obligations of the Basin Determination against any other Lot Owner for failing to comply with the Lot Owner’s respective obligations under the Basin Determination, including the enforcement of the terms and conditions of well permits issued pursuant to the Basin Determination, and the reasonable legal costs and fees for such enforcement shall be borne by the party against whom such action is necessary. The use of the not-nontributary Arapahoe groundwater rights owned by each Lot Owner is restricted and regulated by the terms and conditions of this Declaration, including, without limitation, that the Owners of the Lots are each subject to the maximum annual well pumping of 0.5 acre-foot, for a combined total of 2.0 acre-feet annually. Failure of a Lot Owner to comply with the terms of the Basin Determination and these Covenants may result in an order from the Commission to curtail use of groundwater rights.

ii. Each Lot Owner shall promptly and fully account to the Commission and Management District for total pumping from the individual well to the not-nontributary Arapahoe aquifer on each Lot. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Commission. The Lot Owners shall submit records to the Commission and the Management District with accounting for pumping of their not-nontributary individual Arapahoe aquifer wells on each Lot on an annual basis for the previous calendar year, by April 15th of the following year, unless otherwise reasonably requested by the Commission or Management District.

C. Well Permits.

i. Each Lot Owner shall be responsible for obtaining a well permit for the individual well to the not-nontributary Arapahoe aquifer for provision of water supply to their respective Lot. All such Arapahoe aquifer wells shall be constructed and operated in compliance with the well permit obtained from the Colorado Division of Water Resources, and the applicable rules and regulations of the Colorado Division of Water Resources. The costs of the construction, operation, maintenance, and repair of such individual well, and delivery of water therefrom to the residence located on such Lot, shall be at each Lot Owner’s respective expense. Each Lot Owner shall comply with any and all requirements of the Division of Water Resources to log their well, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide the Division of Water Resources information necessary for accurate accounting of water pumped. It is acknowledged that well permits, and individual wells, may be in place on some of the Lot at the time sale, and by this Declaration no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

ii. No party guarantees to the Lot Owners the physical availability or the adequacy of water quality from any well to be drilled on the Lots. The Denver Basin aquifers are considered a nonrenewable water resource and due to anticipated water level declines the useful or economic life of the aquifers’ water supply may be less than the 100 years allocated by state statute or the 300 years of El Paso County water supply requirements, despite current groundwater modeling to the contrary.

2. Abandoned or Unlicensed Vehicles. No stripped down, abandoned, unlicensed, partially wrecked, or junk motor vehicle, or part thereof shall be permitted to be parked or left on any street or on any Lot within Ohana Acres in such a manner as to be visible at ground level from any neighboring Lot within Ohana Acres, or the street.

3. Dwellings and Buildings.

A. Construction Type. All construction shall be new. No building previously used at another location, nor any building or structure originally constructed as a "mobile home" type dwelling (to the extent such structures have the appearance of "mobile homes" or "doublewides"), may be moved onto any Lot. Panels and major house components may be manufactured off-site, provided that the assembly is conducted on-site and the resulting structure does not have the appearance generally associated with manufactured housing.

B. Dwelling Area Requirements. No dwelling structure shall be constructed unless the ground floor area, *i.e.* footprint area, of the main structure exclusive of open porches, basements, and garages, is greater than one thousand five hundred (1,500) square feet. Attached or separate garage structures are permitted and not included in the calculated 1,500 square feet requirement of the dwelling area. Any garage structure must be of a size to fit at least two full-sized cars.

4. Maintenance of Lots. It shall be the duty and obligation of each Lot Owner within the Subdivision, at such Owner's expense, to beautify and keep neat, attractive, and in good order such Owner's residence, the parcel of land surrounding the residence, and to maintain, repair, regularly perform upkeep, and replace the same.

5. Compliance. The Lot Owners shall perform and comply with all terms, conditions, and obligations of the Basin Determination, these Covenants, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources, the Determination of Water Right No. 3714-BD, C.R.S. § 37-90-137(4) and (10), and any other applicable statutory and regulatory authority.

6. Violations of Law. Any violation of any law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subdivision is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

7. Enforcement. Any aggrieved Lot Owner shall have the right, but not the obligation, to enforce any or all of the provisions, covenants, conditions, and restrictions contained in this Declaration against any Lot Owner who fails to comply with the provisions contained herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation or attempted violation of any provision, covenants, or restrictions within this Declaration and specific execution thereof, in addition to all other rights and remedies available at law or in equity. In any action maintained under this paragraph, the prevailing party shall be awarded its reasonable attorneys' fees and cost.

8. Dispute Resolution Process. Parties bringing any claim or action to enforce any covenant, condition, or restriction contained in this Declaration, or other disputes

arising from this Declaration, shall be subject to mediation as a condition precedent to other dispute resolution, if the parties have not resolved the dispute within thirty-five (35) days following the notice of claim through discussions and negotiations among or between the parties. Any and all parties involved in a claim, dispute, or other matter, shall endeavor to resolve all claims and disputes in good faith by mediation prior to any arbitration, litigation, or other dispute resolution proceeding. The parties shall share the mediator's fee and any associated fees equally, and the mediation shall be held in a mutually agreed upon place. All mediations shall be confidential based on the terms acceptable to the mediator and/or mediation service provider, and shall be conducted in compliance with the Colorado Dispute Resolution Act and all applicable Colorado Statutes, including C.R.S. §§ 13-22-302 to 13-22-308.

9. Governing Law. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Colorado, and venue shall be proper in a Court of competent jurisdiction in El Paso County, Colorado.

10. Amendments. No changes, amendments, alterations, or deletions to this Declaration may be made that would alter, impair, or in any manner compromise the requirements of the Determination of Water Right Nos. 3715-BD, 3714-BD, and 3713-BD and the water rights of the Lot Owners without the written approval of said parties, El Paso County, and Commission. Any amendments that would alter, impair, or in any manner compromise the requirements of the Determination of Water Right Nos. 3715-BD, 3714-BD, and 3713-BD and the water rights of the Lot Owners must be pursuant to the Colorado Ground Water Commission approving such amendment, with prior notice to El Paso County for an opportunity for the County to participate in such determination.

11. Terms of Covenants and Severability. These Covenants shall run with the land and shall remain in full force and effect until amended or terminated, in whole or in part, by the owners of the entirety of the Subdivision (i.e. all Lot Owners), and filed for record with the Clerk and Records of El Paso County. If any portion of this Declaration is held invalid or becomes unenforceable, the other Covenants shall not be affected or impaired but shall remain full force and effect. Notwithstanding the above, this Declaration shall not terminate unless the requirements of Determination of Water Right No. 3714-BD are also terminated by the Colorado Ground Water Commission and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.

12. Amendment of Declaration of Covenants. Except as expressly mandated by applicable law, and except for the provisions in Paragraph 1 (requirements and obligations of the Water Rights Determination), this Declaration and the Plat may be amended only by unanimous vote or agreement of the Lot Owners. An amendment may not create or increase the number of Lots, change the boundaries of a Lot, change the vested property interests of a Lot or Lot Owner, or the uses to which a Lot is restricted, except by unanimous consent of the Lot Owners. Further, all amendments are subject to Paragraph 10 above.

13. Recordation of Amendments. Each amendment to this Declaration must be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and the amendment is effective only upon recording.

KELLY M. HILLS
Notary Public
State of Colorado
Notary ID # 20014033687
My Commission Expires 01-13-2026

Witness my hand and seal.

Kelly M. Hills

Notary Public

EXHIBIT:
A – Plat Map of the Subdivision
B – Legal Description

Warranty Deed

Exhibit B

DOCUMENTARY TRANSFER TAX
\$0 (Transfer to trust)

Schedule: 3330001001
17825 Jones Rd., Peyton, CO 80831

For no consideration,

Gary Hammann and Darlene C. Noel-Hammann, as *joint tenants*

Intending this instrument to operate solely as to transfer to a trust for estate planning purposes, hereby transfer and convey to:

Gary L. Hammann and Darlene C. Noel-Hammann, Trustees, or their successors in interest, of the G & D Hammann Ohana Trust dated February 18, 2021, and any amendments thereto.

(17825 Jones Rd., Peyton, CO 80831)

(100% to this owner)

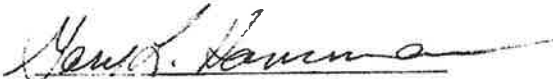
all that real property situated in City of Peyton, County of El Paso, State of Colorado, described as follows:

LOT 1 V I L SUB FIL NO 1 IN THE CITY OF PEYTON, COUNTY OF EL PASO, STATE OF COLORADO.

also known by number and street as: 17825 Jones Rd., Peyton, CO 80831.

Subject to all covenants, conditions, restrictions, exceptions, reservations, easements, and other limitations of record.

Executed and delivered February 18, 2021



Gary Hammann



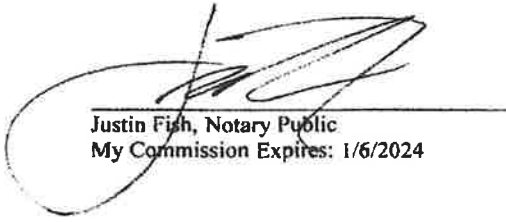
Darlene C. Noel-Hammann

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the 18th day of February, 2021, by Gary Hammann and Darlene C. Noel-Hammann

[Seal]





Justin Fish, Notary Public
My Commission Expires: 1/6/2024

