

Information regarding the wells is inconsistent in all documents.

The Water Resources Report states existing well is on Lot 2 and will share with Lot 1.

The Well Use Agreement states existing well is on Lot 1 and will share with lot 2.

Soils and Geology Report states existing well is on Lot 2 and a new well will be shared with Lots 1&3.

JOINT USE, WELL SHARING, AND EASEMENT

AGREEMENT AND DECLARATION

This Joint Use, Well Sharing, and Easement Agreement (hereinafter "Agreement") is executed and effective this _____ day of _____, 20__, by Jay and Jane Ohmes Trust, whose address is 10155 Hardy Road, Colorado Springs, Colorado 80908.

RECITALS

The final review of this project will be a completed as a first review to ensure consistency.

A. Jay and Jane Ohmes Trust owns the real property identified in attached **Exhibit A**, consisting of approximately 9.23 acres, also known as _____ Hardy Road, Colorado Springs, Colorado 80908 ("Lot 1").

B. Jay and Jane Ohmes Trust also owns the real property identified in attached **Exhibit B**, consisting of 5.06 acres, also known as _____ Hardy Road, Colorado Springs, Colorado 80908 ("Lot 2").

C. Lot 1 is adjacent to and west of Lot 2, and the two Lots collectively consist of approximately 14.29 acres.

D. There is an existing well (the "Well") located on Lot 1 with connected water distribution facilities for the purpose of supplying domestic water supply to Lot 2. The approximate location of the Well can be seen on attached **Exhibit C**.

E. The Well associated with Permit No. 171159, is subject to the approval and conditions set forth by the Colorado Division of Water Resources and state law. A copy of the well permit file for Permit No. 171159 is attached as **Exhibit D**.

F. Jay and Jane Ohmes Trust, through this document, creates an agreement regarding the ownership and responsibilities concerning the Well and water usage, the distribution system to supply domestic water to their respective properties, and for the sharing and costs of the Well, for the benefit of future owners of Lots 1 and 2, and is intended to be binding thereon.

NOW, THEREFORE, including without limitation the covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Jay and Jane Ohmes Trust hereby declares that Lot 1 and Lot 2 of the J and J Ranch Subdivision are and shall be subject to the following covenants and restrictions, 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 Lot 1 and Lot 2 or any part thereof, their heirs, successors and assigns:

1. **OWNERSHIP:** The owners of Lot 1 and Lot 2 ("Lot Owner") shall each own an equal interest (50%) in the Well, its water rights and entitlements, which shall be shared equally

between them, along with all necessary "Common Infrastructure" to operate the Well. Common Infrastructure includes, without limitation, any wiring, electrical and plumbing fixtures and fittings, pipe, meters (electric or water), pressure or storage tank systems, equipment pit, pump, motor, and any other well equipment and appurtenances necessary for the delivery of water from the Well to each Lot's separate water distribution line. Ownership interests in the Well are coupled with title to each Lot, and subject to this Agreement, cannot be severed from ownership of either Lot without an agreement in writing signed by all parties to terminate this Agreement. Regardless of whether each Lot is held in joint tenancy or tenancy in common by multiple parties, for purposes of any voting required under this Agreement, there shall only be one vote per Lot.

2. MAINTENANCE OF THE WELL: The Lot owners shall jointly operate and control the Well and its Common Infrastructure for the distribution of water to each Lot's own distribution infrastructure "Individual Infrastructure", in accordance and compliance with this Agreement, the well permit, and all applicable laws, codes, rules, and regulations. The Lot owners shall equally share in the costs and expenses for the maintenance, replacement, operation, repair, improvement, and redrilling of the well, pump, and other appurtenant well equipment and Common Infrastructure in order to effectively and efficiently provide water to their respective Lots through their Individual Infrastructure, including personal water distribution lines. In no instance shall one Lot Owner be responsible for any cost or expenditures associated with the Individual Infrastructure of the other. Common Infrastructure expenses include, but are not limited to, any water quality treatment, water storage tank utilized by both Lots, and well house construction, maintenance and repair. Each Lot Owner shall be solely responsible for and shall immediately repair any and all physical damage, which they may cause to the Well and Common Infrastructure, whether resulting from their connection to the Well or otherwise. Upon reasonable notice, each Lot Owner shall be entitled, without liability or responsibility to the other Lot Owner, to temporarily interrupt the flow of water from the well as necessary for their connection to the Well and Common Infrastructure or for repairs and replacement. When any work is needed for the Well and its Common Infrastructure beyond the typical ongoing maintenance and operational costs, the Lot Owners shall first attempt to agree on the scope, manner, and expense of the work, unless an emergency exists. Emergency work to the well shall be limited to the extent necessary to meet the emergency of the situation.

3. PAYMENT: Work performed by, or at the direction of, any Lot Owner that is a proper shared expense under the terms of this Agreement may, after ten (10) days written notice to the other Lot Owner, make an itemized demand on the other Lot Owner for the payment of that Lot Owner's proportionate share. Detailed written records concerning the Well and its Common Infrastructure, together with copies of all related receipts, shall be distributed to both Lot Owners to document and establish the amounts to be paid to keep the Well and Common Infrastructure operational and in good repair. Reimbursement for proper shared expenses shall then be due and payable upon such demand. Amounts due that are not paid within thirty (30) days after the due date shall bear at eighteen percent (18%) per annum. Should any Lot Owner fail or refuse to pay their proportionate share of the proper shared costs and expenses incurred under the terms of this Agreement, then the other Lot Owner paying the refusing Lot Owner's

share shall be entitled to seek and obtain judgment therefore for the amounts due, plus reasonable attorney's fees, costs, and expenses as provided herein. However, a non-delinquent Lot Owner expressly shall not have any right to disconnect or shut off the water supply to the lot of a delinquent Lot Owner at any time.

4. INDIVIDUAL INFRASTRUCTURE/DISTRIBUTION LINES: All Individual Infrastructure, including water distribution lines from the Well and its Common Infrastructure to either Lot shall be considered the personal property of the respective Lot Owner served by that Individual Infrastructure. Each Lot Owner shall be solely responsible for the maintenance, repair, improvement, and replacement of the Individual Infrastructure serving that owner's Lot, and for purposes of this Agreement the connection point between Common Infrastructure and Individual Infrastructure, itself, shall be considered Individual Infrastructure.

5. ELECTRIC: The Lot Owners shall equally share in the electric costs associated with pumping of the Well, regardless of amounts utilized by a particular Lot Owner, in relation to the other. Electric service shall be in the name of the owner of Lot 1. The owner of Lot 1 shall timely pay all electric service bills monthly or as otherwise required by the electric service provider. The owner of Lot 1 shall provide the invoice to the owner of Lot 2 upon payment to the electric company. The owner of Lot 2 shall timely pay the owner of Lot 1 for 50% of the electrical service bills in accordance with the payment procedures outlined in Paragraph 3 above.

6. USE OF WATER: Water from the Well shall be used only for domestic purposes and lawn and garden irrigation, as allowed under the terms and conditions for the well permit for the Well. The Lot owners shall comply with all terms, provisions, and requirements of Well Permit No. 171159, or as it may be otherwise known if it is lawfully re-permitted by the Colorado Division of Water Resources, and applicable laws and regulations governing the use of the well. Allowed uses under the well permit shall be allocated equally between the Lot. Each Lot Owner's diversions from the Well may be separately metered in order to keep total water usage properly allocated between the owners of Lots 1 and 2, though it is understood and acknowledged that on a month-to-month basis total pumping may not always be equally allocated based on changing demands on each of Lot 1 and Lot 2. In acknowledging this fact, the Lot Owners shall further agree to attempt to avoid long-term imbalances and to cooperate in ensuring an equal allocation of available water supplies. During any time of a physical shortage of water supply from the Well, priority among the Lot Owners shall first be given to their in-house domestic use, with curtailment of other permitted uses until each of their in-house domestic needs are adequately met. The Lot owners agree to comply with the terms and provisions of the well permit, unless further limited by this Agreement.

7. GRANT OF EASEMENT: The owners of Lot 1 hereby grant the owners of Lot 2 a nonexclusive, perpetual easement across Lot 1 for the following:

a. Location, installation, construction, maintenance, improvement, repair, and replacement of an underground water distribution pipeline/Individual Infrastructure from

the Well/Common Infrastructure to Lot 2. Said easement shall be for a width of 15 feet on each side of the centerline of the easement. Said easement also includes the right of access to the water distribution pipeline within the easement area for the above-described purposes. The approximate locations of the Well and water distribution pipelines are described in attached **Exhibit ____**.

b. Location, construction, installation, maintenance, operation, redrilling, and the redrilling and replacement of the Well, the pump and other appurtenant well equipment, improvements, and other Common Infrastructure as necessary to fulfill the terms of this Agreement. Said easement also includes the right of access to the water distribution pipeline within the easement area for the above-described purposes.

In the event that the Well is relocated in the future, then the easements provided herein shall likewise be relocated as necessary to accommodate the new well location and pipelines and distribution lines. Except for well equipment and improvements, neither Lot Owner shall place any landscaping or improvements within the easement areas.

8. TERM: The term of this Agreement shall run in perpetuity unless terminated in writing by mutual agreement of Lot Owners, or until one of the lot owners properly withdraws from this Agreement.

9. TERMINATION: The Lot Owners may terminate this Agreement by mutual agreement set forth in writing and signed by all Lot Owners. After such termination, the Lot Owners shall equally share in any costs associated with the ceasing of Well operations including the dismantling of any well house, removal of equipment and Common Infrastructure, and the capping of the Well. Any costs for the removal of Individual Infrastructure from the Well to the individual Lots shall be borne solely by that Lot Owner. The Lot Owners shall execute and record the necessary deeds to eliminate any easements created to facilitate water provision from the Well to the Lot Owners. Either Lot Owner may individually withdraw from this Agreement by provision of notice to the other Lot Owner, in writing, 60 days in advance of such withdrawal. Said withdrawing Lot Owner shall be solely responsible for all expense associated with disconnection from the Common Infrastructure, and for removal of Individual Infrastructure, which work shall be coordinated with the other Lot Owner as reasonably practicable. Should the owner of Lot 1 withdraw from this Agreement, all easements granted herein shall remain of full force and effect, allowing the owner of Lot 2 to continue beneficial use of the Well. Should the owner of Lot 2 withdraw, such easements shall terminate upon disconnection of all Individual Infrastructure from the Well and Common Infrastructure.

10. CONSTRUCTION: All construction, maintenance, or other work to be performed hereunder, whether for the jointly or individually maintained and operated structures and equipment, shall be performed in a workmanlike manner and in compliance with all applicable laws, codes, rules, and regulations. Any disturbance to the surface of the easement area shall be restored to its previously existing condition.

11. AMENDMENT: This Agreement may be modified or altered at any time by a statement signed by all Lot Owners hereto and recorded in the records of the El Paso County Clerk and Recorder.

12. ARBITRATION: Any controversy, dispute, or question arising out of, in connection with, or in relation to his Agreement or its interpretation, performance or non-performance, or any breach thereof shall be determined by arbitration in El Paso County, Colorado, conducted in accordance with the existing rules of the Colorado Uniform Arbitration Act (§ 13-22-201, et seq., C.R.S.). No owner shall be entitled to compensation from the other owner for administrative time or personal time expended in the management or operation of the Well.

13. ATTORNEY'S FEES: In the event of any dispute between the Lot Owners concerning this Agreement, or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing Lot Owner shall be entitled to recover from the other Lot Owner, all costs and expenses, including reasonable attorneys' fees, incurred in such litigation as well as all additional costs of collecting any judgment rendered in such action.

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

15. SEVERABILITY: Unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement.

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

17. HEADINGS: Headings and captions used in this Agreement are for reference only and should not have any effect on the interpretation of this Agreement.

18. RECORDING: The Agreement shall be recorded with the El Paso County Clerk and Recorder.

IN WITNESS WHEREOF, Jay and Jane Ohmes Trust, c/o Jay and Jane Ohmes, creates this Joint Use, Well Sharing, and Easement Agreement on the date and year set forth above.

OWNER OF LOT 1 AND LOT 2

Jay Ohmes, Co-Trustee of Jay and Jane Ohmes Trust

OWNER OF LOT 1 AND LOT 2

Jane Ohmes, Co-Trustee of Jay and Jane Ohmes Trust

STATE OF COLORADO)

)

COUNTY OF EL PASO)

Subscribed and sworn to and acknowledged before me this ____ day of _____,
2025, by Jay Ohmes, co-trustee of Jay and Jane Ohmes Trust.

Subscribed and sworn to and acknowledged before me this ____ day of _____,
2025, by Jane Ohmes, co-trustee of Jay and Jane Ohmes Trust.

Witness my official hand and seal.

Notary Public

My Commission Expires: _____