


**EL PASO COUNTY**  
**COLORADO**

COMMISSIONERS:  
 STAN VANDERWERF (CHAIR)  
 CAMI BREMER (VICE-CHAIR)

LONGINOS GONZALEZ, JR.  
 HOLLY WILLIAMS  
 CARRIE GEITNER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
 KEVIN MASTIN, INTERIM EXECUTIVE DIRECTOR

**TO: El Paso County Board of County Commissioners  
 Stan VanderWerf, Chair**

**FROM: Ryan Howser, AICP Planner II  
 Charene Durham, PE Engineer II  
 Craig Dossey, Executive Director**

**RE: Project File #: EX-21-001  
 Project Name: Spellman Subdivision Exemption  
 Parcel No.: 44000-00-444**

OWNER:	REPRESENTATIVE:
Justin & Tammy Spellman 2350 South Franceville Coal Mine Road Colorado Springs, CO, 80929	Land Development Consultants, Inc. 3898 Maizeland Road Colorado Springs, CO, 80909

**Commissioner District: 4**

Board of County Commissioners Hearing Date	5/3/2022
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**EXECUTIVE SUMMARY**

A request by Tammy and Justin Spellman, for approval of a subdivision exemption to recognize a court-ordered division of land to create two (2) single-family residential lots. The 63.59-acre property is zoned RR-5 (Residential Rural) and is located on the west side of Franceville Coal Mine Road, approximately 2.5 miles south of Colorado State Highway 94 and is within Section 30, Township 14 South, Range 64 West of the 6th P.M.

**A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION**

**Request:** A request by Tammy and Justin Spellman, for approval of a subdivision exemption to create two (2) single-family residential lots.

2880 INTERNATIONAL CIRCLE, SUITE 110  
 PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127  
 FAX: (719) 520-6695

[www.ELPASOCO.COM](http://www.ELPASOCO.COM)

**Waiver(s)/Deviation(s):** There are no waivers or deviations associated with this request.

**Authorization to Sign:** Exemption Plat

**B. PLANNING COMMISSION SUMMARY**

**Request Heard:** N/A

**Recommendation:** N/A

**Waiver Recommendation:** N/A

**Vote:** N/A

**Vote Rationale:** N/A

**Summary of Hearing:** N/A

**Legal Notice:** N/A

**C. APPROVAL CRITERIA**

In approving a subdivision exemption, the Board of County Commissioners shall find that the request meets the criteria for approval outlined in Section 7.2.1

(Subdivisions) of the El Paso County Land Development Code (2019):

- The subdivision is consistent with and conforms to this Code and the Master Plan;
- The exemption is a division of land determined not to be within the purpose of C.R.S. §§30-28-101, et seq;
- Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;
- The size, location, and availability of services to the proposed lots or parcels are reasonable, appropriate, and customary for the proposed use; and
- No beneficial purpose would be served by requiring the platting of the subject property.

**D. LOCATION**

North: RR-5 (Residential Rural)	Residential
South: RR-5 (Residential Rural)	Residential
East: PUD (Planned Unit Development)	Vacant
West: RR-5 (Residential Rural)	Residential

**E. BACKGROUND**

The property was zoned A-4 (Agricultural) on April 13, 1983, when zoning was first established for this area of the County. Due to changes in the nomenclature of the

Land Development Code, the A-4 zoning district is now known as the RR-5 (Residential Rural) zoning. There is an existing residence on the property which was constructed in 1969 and four (4) accessory structures which were all constructed in 1970. The existing structures are expected to remain on the proposed Lot 2 and meet all setbacks to the proposed lot lines.

The property is subject to a court ordered division of land approved by El Paso County District Court on January 8, 2021. The purpose of the subdivision exemption is to allow for conveyance of land to create two legal lots of record as a result of the court ordered division of land. The applicant will be required to submit and receive approval of a site plan prior to initiating construction of any additional structures on either of the proposed lots.

## **F. ANALYSIS**

### **1. Land Development Code Compliance**

Pursuant to Section 7.2.2(E)(5) of the Code, the Board of County Commissioners may exempt from the definition of "subdivision" any division of land the Board determines is not within the purposes of the definition of "subdivision."

Pursuant to Section 7.2.2(E)(6) of the Code, in approving an exemption, the Board shall find:

- *The exemption is consistent with and conforms to this Code and the Master Plan;*

The subdivision exemption request is consistent with and in conformance with the Code, including the submittal and review requirements set forth therein. Please see the Master Plan section below for an analysis regarding Master Plan consistency.

- *The exemption is a division of land determined not to be within the purpose of C.R.S. §§30-28-101, et seq.;*

The Board of County Commissioners, in adopting the provisions of the Code, determined that a division of land by court order may be considered outside of the definition of subdivision and not subject to subdivision.

- *Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;*

Physical access is provided to the property by South Franceville Coal Mine Road, an existing private road. Both properties are proposed to take access from South Franceville Coal Mine Road. Approval of a driveway permit will be required from the Planning and Community Development Department for the proposed Lot 1 to gain access prior to approval of a site plan.

- *The size, location, and availability of services to the proposed lots or parcels are reasonable, appropriate, and customary for the proposed use; and*

The property is proposed to be used for single-family residential purposes. The property is of adequate size to support the proposed use.

- *No beneficial purpose would be served by requiring the platting of the subject property.*

Platting the property would not serve a beneficial purpose that is not already addressed within the subdivision exemption application.

## **2. Zoning Compliance**

The subject property is zoned RR-5 (Residential Rural). The RR-5 zoning district is intended to accommodate low-density, rural, single family residential development. The density and dimensional standards for the RR-5 zoning district are as follows:

- Minimum lot size: 5 acres \*
- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 25 feet \*
- Maximum lot coverage: 25 percent
- Maximum height: 30 feet

\* In the event that the land to be partitioned, platted, sold or zoned abuts a section line County road, the minimum lot area for lots abutting the road shall be 4.75 acres and minimum lot width shall be 165 ft.



\*Agricultural stands shall be setback a minimum of 35 feet from all property lines.

Both of the proposed lots will exceed the minimum lot size of five (5) acres. Lot 1 is proposed to be 15.00 acres in size and Lot 2 is proposed to be 49.074 acres in size. The existing dwelling meets the required 25-foot setback from all proposed property lines and is under 30 feet in height.

The applicant is not proposing to construct any new structures at this time. Any proposed additional structures constructed in the future will require site plan review and approval and will need to include confirmation that all site improvements (existing and proposed) comply with the dimensional standards included in Chapter 5 as well as any applicable Development Standards of Chapter 6 of the Code.

## **G. MASTER PLAN ANALYSIS**

### **1. Your El Paso Master Plan**

#### **a. Placetype: Suburban Residential**

##### **Placetype Character:**

Suburban Residential is characterized by predominantly residential areas with mostly single-family detached housing. This placetype can also include limited single-family attached and multifamily housing, provided such development is not the dominant development type and is supportive of and compatible with the overall single-family character of the area. The Suburban Residential placetype generally supports accessory dwelling units. This placetype often deviates from the traditional grid pattern of streets and contains a more curvilinear pattern.

Although primarily a residential area, this placetype includes limited retail and service uses, typically located at major intersections or along perimeter streets. Utilities, such as water and wastewater services are consolidated and shared by clusters of developments, dependent on the subdivision or area of the County.

Some County suburban areas may be difficult to distinguish from suburban development within city limits. Examples of the Suburban Residential placetype in El Paso County are Security, Widefield, Woodmen Hills, and similar areas in Falcon.

**Recommended Land Uses:**

*Primary*

- Single-Family Detached Residential with lots sizes smaller than 2.5 acres per lot, up to 5 units per acre

*Supporting*

- Single-family Attached
- Multifamily Residential
- Parks/Open Space
- Commercial Retail
- Commercial Service
- Institutional

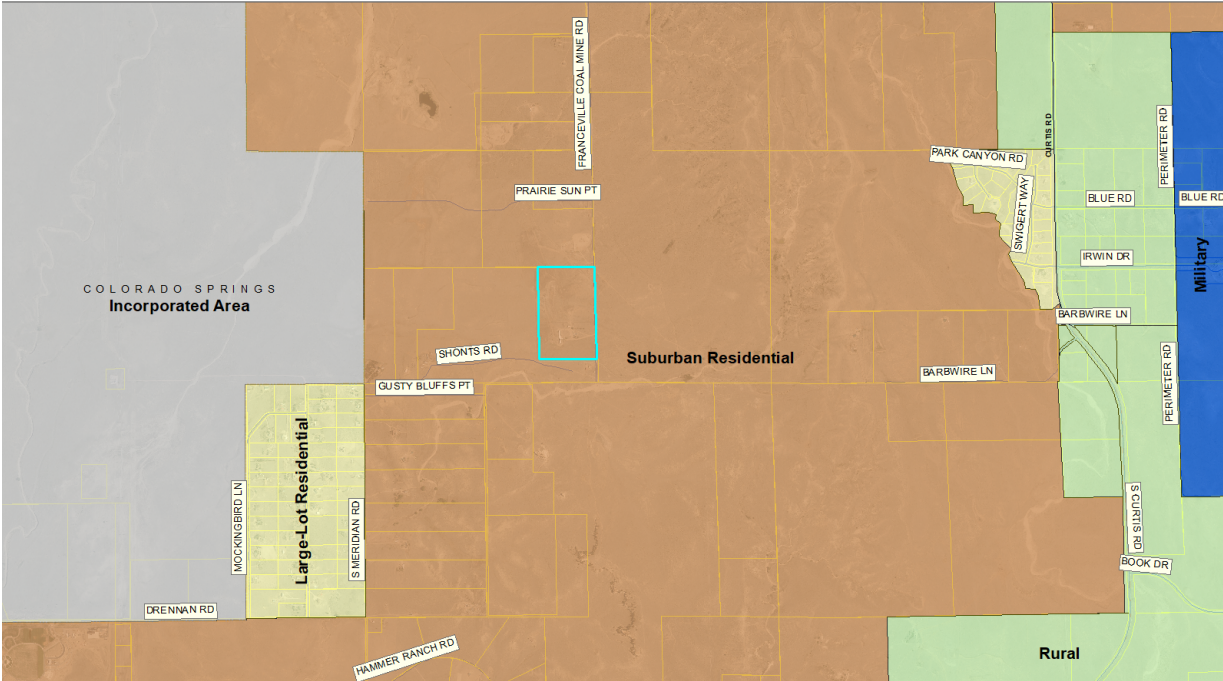


Figure G.1: Placetype Map

**Analysis:**

The property is located within the Suburban Residential placetype. The Suburban Residential placetype identifies single-family detached residential as a primary use. Relevant goals and objectives are as follows:

**Objective LU3-1** – *Development should be consistent with the allowable land uses set forth in the placetypes first and second to their built form guidelines.*

The proposed subdivision exemption would allow for one (1) additional dwelling unit to be constructed on the proposed Lot 1. The proposed lot sizes and single-family residential uses are consistent with the placetype.

**b. Area of Change Designation: New Development**

These areas will be significantly transformed as new development takes place on lands currently largely designated as undeveloped or agricultural areas. Undeveloped portions of the County that are adjacent to a built out area will be developed to match the character of that adjacent development or to a different supporting or otherwise complementary one such as an employment hub or business park adjacent to an urban neighborhood.

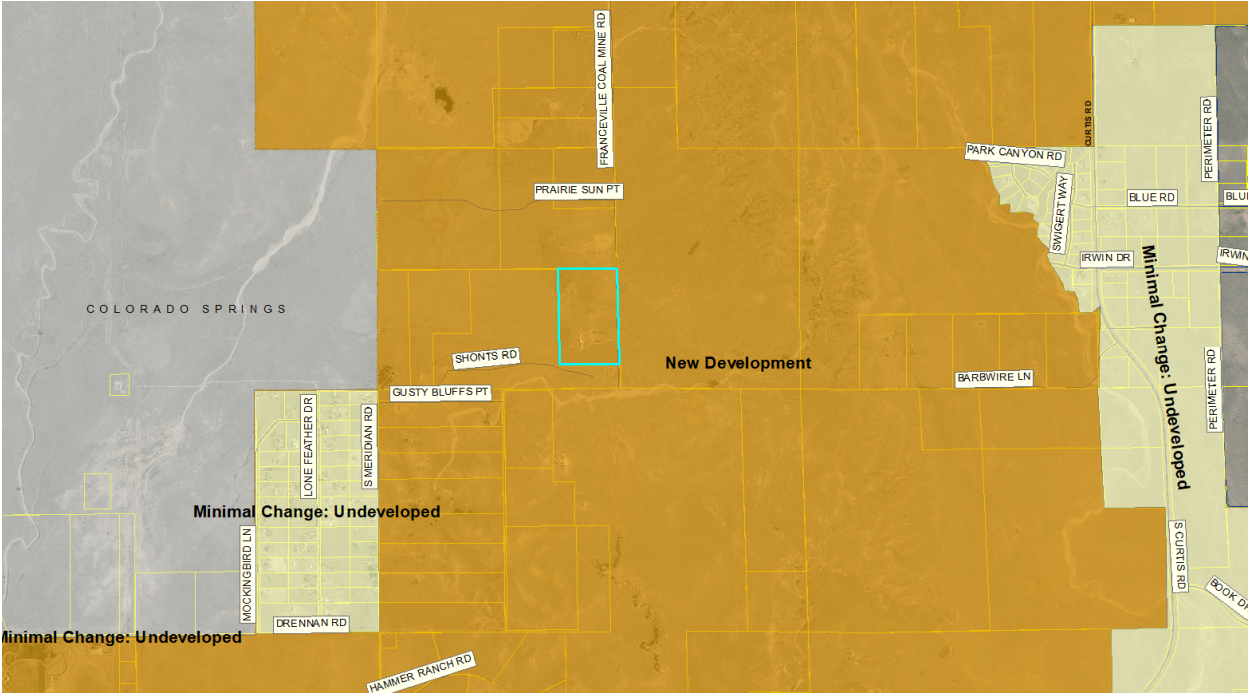


Figure G.2: Area of Change Map

**Analysis:**

The proposed subdivision exemption is located within an area which is expected to substantially change. The subject property is surrounded primarily by undeveloped land; however, due to the proximity to the City of Colorado Springs, it is likely that the character of the area will change in the future. The proposal is consistent with the Area of Change designation and with the current development pattern in the area; however, the proposal is not likely to significantly change the character of the area.

**c. Key Area Influences**

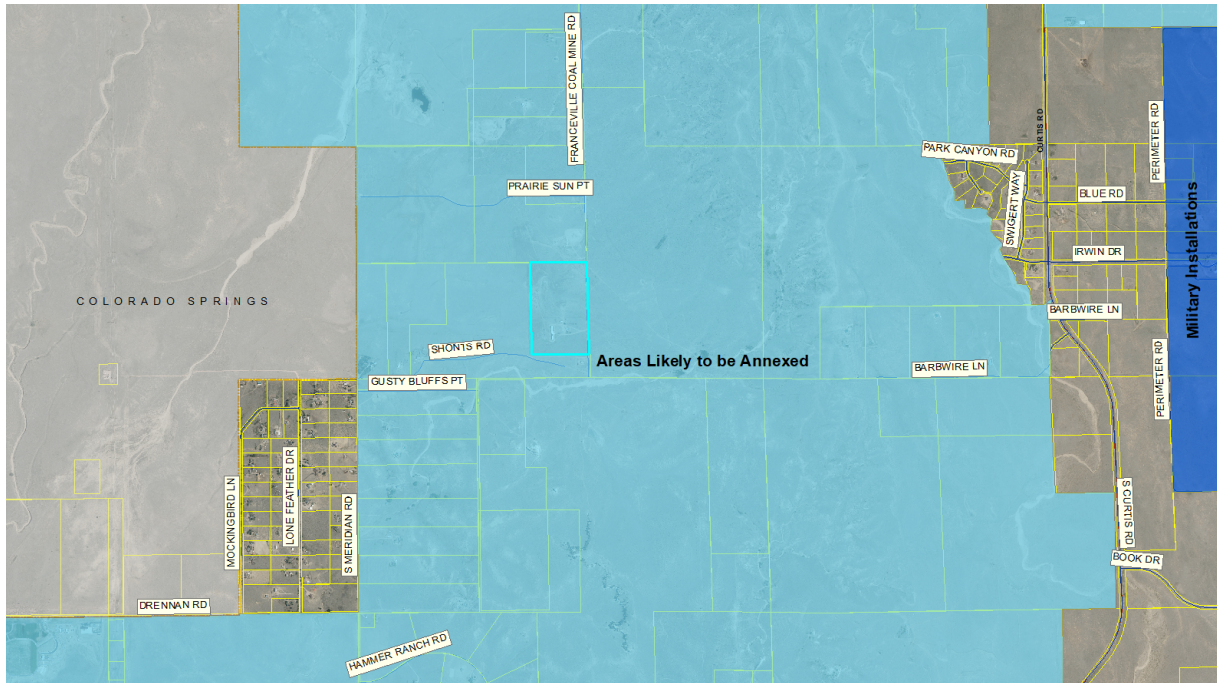
El Paso County represents a vast area composed of many distinct areas. These “Key Areas” have their own unique identities and are generally localized into smaller geographic areas with distinct characteristics that distinguish them from other areas of the County. The subject property is potentially influenced by the “Potential Areas for Annexation”.

**Potential Areas for Annexation**

“A significant portion of the County’s expected population growth will locate in one of the eight incorporated municipalities. As the largest municipality in El Paso County, Colorado Springs is expected to grow in population over the next several decades. As a result of this growth, Colorado Springs, and other municipalities including Fountain and Monument, will need to annex parts of unincorporated County to plan for and accommodate new development. This will either occur through new development within existing municipal limits or the annexation of subdivisions in unincorporated parts of the County.

This Key Area outlines the portions of the County that are anticipated to be annexed as development occurs. It is imperative that the County continue to coordinate with the individual cities and towns as they plan for growth. Collaboration with the individual communities will prevent the unnecessary duplication of efforts, overextension of resources, and spending of funds. The County should coordinate with each of the municipalities experiencing substantial growth the development of an intergovernmental agreement similar to that developed with Colorado Springs.”





**Figure G.3: Key Area Map**

**Analysis:**

The potential annexation key area has been identified as an area of El Paso County that is anticipated to experience significant growth. While the addition of one (1) additional single-family residential lot is not expected to substantially impact the character of the surrounding area, this area may significantly change in character if more surrounding properties annex into the City of Colorado Springs.

**d. Other Implications (Priority Development, Housing, etc.)**

The subject property is not located within a Priority Development Area.

**2. Water Master Plan Analysis**

The El Paso County Water Master Plan (2018) has three main purposes; better understand present conditions of water supply and demand; identify efficiencies that can be achieved; and encourage best practices for water demand management through the comprehensive planning and development review processes. Relevant policies are as follows:

***Goal 5.1 – Identify the potential water supply gap at projected full development build-out (2060).***

**Goal 5.5** – *Identify any water supply issues early on in the land development process.*

**Policy 6.0.11** – *Continue to limit urban level development to those areas served by centralized utilities.*

The property is located within Planning Region 8 of the Plan, which is not an area anticipated to experience growth by 2040. The Region is identified as potentially having issues regarding long term sustainable draw from the Denver Basin aquifer. The Plan identifies the current demands for Region 8 to be 299 acre-feet per year (AFY) (Figure 5.1) with a current supply of 299 AFY (Figure 5.2). The projected demand in 2040 is at 396 AFY (Figure 5.1) with a projected supply in 2040 of 299 AFY (Figure 5.2). The projected demand at build-out in 2060 is at 484 AFY (Figure 5.1) with a projected supply in 2060 of 299 AFY (Figure 5.2). This means that by 2060 a deficiency of 185 AFY is anticipated for Region 8.

A water sufficiency finding is not required with a subdivision exemption application. The impact of creating one (1) additional single-family residential lot is not anticipated to be substantial.

### **3. Other Master Plan Elements**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a moderate to high wildlife impact potential. El Paso County Conservation District was sent a referral and have no outstanding comments.

The Master Plan for Mineral Extraction (1996) identifies potential coal in the area of the subject parcels. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

Please see the Parks section below for information regarding conformance with The El Paso County Parks Master Plan (2013). No land dedication or fees in lieu of land dedication are required for a subdivision exemption application.

Please see the Transportation section below for information regarding conformance with the 2016 Major Transportation Corridor Plan (MTCP).

## **H. PHYSICAL SITE CHARACTERISTICS**

### **Hazards**

No hazards were identified during the review of the subdivision exemption.

## **Wildlife**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a moderate to high wildlife impact potential. El Paso County Conservation District was sent a referral and have no outstanding comments.

## **Floodplain**

FEMA Flood Insurance Rate Map (FIRM) panel number 08041CO790G, effective date December 7, 2018, shows the property is located outside the 500-year floodplain (Zone X).

## **Drainage and Erosion**

This parcel is located within the Jimmy Camp Creek Drainage basin, which is studied and part of the Drainage Basin Fee Program. Drainage and bridge fees are not applicable to subdivision exemptions.

A drainage report will be required for any site development plan applications. The drainage report will address both drainage and erosion impacts that would be caused by any new building or construction, as well as mitigate any of those impacts. A grading and erosion control plan may be required with the site development plan application.

## **Transportation**

A traffic impact study was not required for this project due to: 1) daily vehicle trip-end generation being less 100, 2) there are no additional proposed minor or major roadway intersections on major collectors, arterials, or State Highways, and 3) the change in the type of traffic to be generated does not adversely affect the traffic currently planned and accommodated within, and adjacent to, the property.

The existing driveway (Lot 2) will remain in place and connect to Franceville Coal Mine Road, which is a county maintained rural gravel road. ROW dedication has been provided for the ROW needed for Franceville Coal Mine Road. A new driveway access permit will be required for Lot 1 with residential site plan approval.

The El Paso County 2016 Major Transportation Corridors Plan Update (MTCP) (2016) does not identify any roadway improvements adjacent to the proposed subdivision exemption.

# **I. SERVICES**

## **1. Water**

A finding of sufficiency in terms of water quality, quantity and dependability is not required for a subdivision exemption. Water is provided by individual onsite wells.

**2. Sanitation**

Wastewater is provided by individual onsite wastewater treatment systems (OWTS). El Paso County Public Health was sent a referral and has no outstanding comments.

**3. Emergency Services**

The property is within the Ellicott Fire Protection District. The District was sent a referral and has no outstanding comments.

**4. Utilities**

Mountain View Electric Association (MVEA) provides electrical service to the area included within the subdivision exemption. MVEA was sent a referral and has no outstanding comments. Natural gas service is not available to this property.

**5. Metropolitan Districts**

The property is not located within the boundaries of a Metropolitan District.

**6. Parks/Trails**

No land dedication or fees in lieu of land dedication are required for a subdivision exemption application. No park lands or trails were identified in the vicinity of the subject property.

**7. Schools**

No land dedication or fees in lieu of land dedication are required for a subdivision exemption application.

**J. APPLICABLE RESOLUTIONS**

Approval Page 43

Disapproval Page 44

**K. STATUS OF MAJOR ISSUES**

There are no major issues.

**L. RECOMMENDED CONDITIONS AND NOTATIONS**

Should the Board of County Commissioners find that the request meets the criteria for approval outlined in Section 7.2.2 (Subdivision Exemptions) of the El Paso County Land Development Code (2021) staff recommends the following conditions and notations:



**CONDITIONS**

1. The Land survey Plat as approved by the Board of County Commissioners shall be deposited in the El Paso County Clerk and Recorder's Office.

**NOTATIONS**

1. Subdivision Exemption requests not forwarded to the 24 Board of County Commissioners for consideration within 180 days of Planning Commission action shall be deemed withdrawn and shall have to be resubmitted in their entirety.

**M. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified three (3) adjoining property owners on April 20, 2022, for the Board of County Commissioners meeting. Responses will be provided at the hearing.

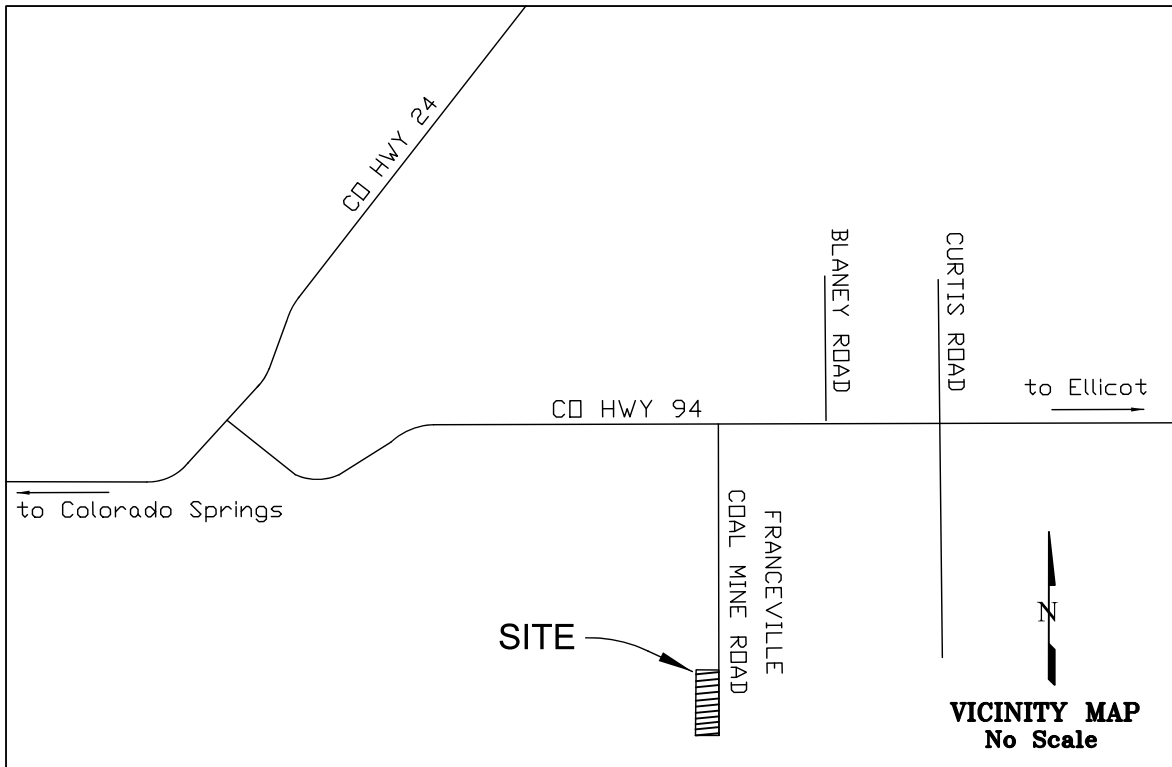
**N. ATTACHMENTS**

Vicinity Map

Letter of Intent

Land Survey Plat

Court Order



August 31, 2021 **REVISED 3-16-2022**

Spellman Subdivision Exemption Plat  
Project No. EA20170

## LETTER OF INTENT

RE: Spellman Subdivision Exemption Plat

LDC, Inc. is representing:  
Tammy Spellman  
2350 Franceville Coal Mine Road  
Colorado Springs, CO 80929

This is an application for approval of a Subdivision Exemption Plat. The property is 63.591 acres and is currently unplatted. The property is zoned RR-5, and two lots are proposed. Upon approval of the plat, Spellman Subdivision will contain two lots, 1 of which will be 15 acres in size, the second lot will be 48.59 acres which will include an existing residence, so there will only be 1 new home. The lots will not be listed for sale once the plat is approved. Each of these lots is proposed for a single-family residence with barns or other structures permitted by code.

We are asking for approval of a 2 lot Subdivision Exemption Plat. The property is fronted by Franceville Coal Mine Road an existing El Paso County road. this exemption request is consistent with Section 7.2.2.E(6)(b) Applicability: The division of land effected by a deed recorded in the Clerk and Recorder that the BoCC determines is not within the purposes of the definition of subdivision. The Divorce Decree awarding the 15 acres is in effect a deed for the purpose of this section.

Review criteria for a Subdivision Exemption Plat is as follows:

This application meets the Subdivision Exemption Plat submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivisions in Chapter 8 of the El Paso County Land Development Code (2016). Subdivision Exemption Plats are reviewed and approved in consideration of the review criteria found in the El Paso County Land Development Code. Each criteria is listed below followed by the appropriate justification.

1. *The subdivision is in conformance with the goals, objectives, and policies of the Master Plan. The Master Plan is comprised of several elements. One of the elements is the El Paso County Policy Plan (1998), which does not include site-specific land use policies, but establishes broad policies and goals which are intended to serve as a framework for decision-making regarding development of the County. The project satisfies the following policies from the Policy Plan as they specifically relate to this request:  
Goal 6.4 – “Develop and maintain rural residential areas in a manner which protects their integrity, addresses the carrying capacity of the natural environment and provides for an adequate level of non-urban facilities and services.” and “Policy 6.1.3*

- *Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use and access.*” The proposed Subdivision Exemption Plat will not create the need for additional roadways or public facilities. The site will remain rural residential and is surrounded by existing rural residential development on the north, south, east, and west sides.; *Policy 6.1.14 – “Support development which compliments the unique environmental conditions and established land use character of each sub-area of the County.”*; This area of the County is conducive to rural residential development. The five acres lots in the area have lot impact on environmental conditions.

The proposed Minor Plat is in compliance with the Parks Master Plan, which does not appear to call for trails or parks in the site vicinity. Any required Park Fees will be paid at the time of plating. The proposed subdivision is also in compliance with the 2040 Major Transportation Corridors Plan (MTCP) and Master Plan for Mineral Extraction as no separate mineral estate owners were found for the property and the existing development on surrounding properties is not compatible with any potential mineral extraction operations.

The proposed subdivision is in compliance with the El Paso County Water Master Plan (2018). The District Court, Water Division 2 Colorado, has decreed certain water rights and approved a plan for augmentation as necessary to allow use of the existing well and the drilling of a second well for the subdivision in Case No. 19CW3006 recorded under reception number 219086827 of the records of El Paso County. The owner seeks a finding of sufficiency from the Colorado Division of Water Resources and the eventual granting of the additional well permit based on the decreed water rights. A listing of some of the policies of the Water Master Plan that are supported by the proposed development follow: *Policy 4.1.3 – Support enhanced monitoring of sources of surface and tributary groundwater in the County.* The referenced decree requires use of metering for the wells to insure compliance with the terms of the permit; *Policy 6.2.1.2 – Encourage re- use of treated wastewater for irrigation and other acceptable uses when feasible.* Both the existing residence and the new single-family residence on the proposed 15 acre lot will utilize onsite wastewater treatment systems which will provide “Return Flows” the environment as a condition of the groundwater findings and order and the well permit.

2. *The subdivision is in substantial conformance with the approved preliminary plan.*  
This is a Subdivision Exemption and requires no Preliminary Plan for Plat approval. The subdivision will be developed in accordance with the currently proposed land use applications.
3. *The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials.*  
The proposed Subdivision Exemption Plat is prepared in accordance with applicable subdivision design standards. No public improvements are required for this subdivision.
4. *A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of*

*Chapter 8 of this Code.*

Water service is to be provided by individual on site wells.

5. *A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations, [C.R.S. §30-28- 133(6)(b)] and the requirements of Chapter 8 of this Code.*  
Waste water is intended to be treated via individual onsite septic systems designed, constructed and operated under State and County Health Department rules and regulations.
6. *All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)].*  
There are no known soil or topographical hazardous conditions.
7. *Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28- 133(3)(c)(VIII)] and the requirements of this Code and the ECM.*  
The proposed Minor Subdivision is creating one additional 15 acre lot and will not require any additional drainage improvements.
8. *Legal and physical access is provided to the parcels by public rights-of-way acceptable to the County in compliance with this Code and the ECM.*
9. *This property fronts on Franceville Coa Mine Road, a county owned and maintained road.*
10. *Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision.*  
The site is located within the jurisdiction of the El Paso County Sheriff's Office. The Sheriff's office currently provides police protection for the site and surrounding area. Spellman Subdivision Exemption is located within the Ellicott Fire Protection District which is providing fire protection for the site and has agreed to serve this subdivision. Water and sanitary sewer provisions are discussed in items 4 & 5 above. The property is located within the service areas of Mountain View Electric Association, Centurylink Telephone, and Ellicott School District 22, which will serve the subdivision. Transportation is being facilitated by the existing adjacent roadway system. Access is provided by the existing Franceville Coal Mine Road, an existing El Paso County road. Franceville Coal Mine Road accesses Colorado State Highway 94
11. *The Subdivision Exemption provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code.*  
Spellman Subdivision Exemption is located within the Ellicott Fire Protection District which is providing fire protection for the site and the surrounding area. The District has agreed to serve this subdivision. Building permits for each structure shall be in accordance with the requirements of the Fire District as administered by the Pikes Peak Regional Building Department.
11. *Off-site impacts were evaluated and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8.*  
All Offsite impacts are determined to be insignificant with the addition of one residence to

the site already containing one residence. The owner will be responsible to pay park, school, drainage and Traffic Impact fees.

12. *Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SIA so the impacts of the subdivision will be adequately mitigated.*

There are no public facilities or infrastructure required or proposed for this subdivision. The platting of the site will include the collection of the applicable School Fees, Park Fees, Drainage Fees and Traffic Impact fees due for this project.

13. *The subdivision meets other applicable sections of Chapter 6 and 8.*  
The subdivision meets the requirements of the Land Development Code.

14. *The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §§34-1-302(1), et seq.].* A search of the County Clerk and Recorder's records did not identify a separate mineral estates owner for this property.

- Conformance with approved preliminary plan:  
There is no preliminary plan for this area.
- Consistent with subdivision design standards and regulations and meets the requirements of the County for supporting materials:  
We are preparing the submittal requirements for a subdivision exemption in the RR5 Zone on an existing public road.

Thank you for your consideration of our request.

Respectfully:

Daniel L. Kupferer, PLS  
President, Land Development Consultants, Inc.



# SPELLMAN SUBDIVISION EXEMPTION PLAT

IN THE SOUTHEAST 1/4 OF SECTION 30 T14S R64W OF THE 6TH P.M.  
EL PASO COUNTY, COLORADO

**KNOW ALL MEN BY THESE PRESENTS:**

That JUSTIN SPELLMAN and TAMMY SPELLMAN, individuals, being the owners of the following described tract of land to wit:

**PROPERTY DESCRIPTION:**

PART OF THE SE1/4 OF SECTION 30, TOWNSHIP 14 SOUTH, RANGE 64 WEST OF THE 6TH P.M. COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 30 THENCE NORTH 82°27'42" EAST A DISTANCE OF 3932.10 FEET TO THE POINT OF BEGINNING.

THENCE NORTH 01°20'29" WEST A DISTANCE OF 2100.0 FEET.

THENCE SOUTH 89°10'29" EAST A DISTANCE OF 1333.03 FEET.

THENCE SOUTH 01°10'37" EAST A DISTANCE OF 2099.78 FEET.

THENCE NORTH 89°10'29" WEST A DISTANCE OF 1327.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 63.591 ACRES, MORE OR LESS.

EXCEPT THAT PART CONTAINED IN DEED RECORDED AT RECEPTION NUMBER 98052175 AND EXCEPT FOR THAT PART CONTAINED IN FRANCEVILLE COAL MINE ROAD, COUNTY OF EL PASO, STATE OF COLORADO

**DEDICATION:**

The above owners have caused said tract of land to be surveyed and subdivided into lots and easements as shown on the accompanying plat, which plat is drawn to a fixed scale as indicated hereon and accurately sets forth the boundaries and dimensions of said lots and easements, the easements shown hereon are dedicated for public use as shown, and which tract so platted shall be known as SPELLMAN SUBDIVISION EXEMPTION PLAT, El Paso County, Colorado.

**IN WITNESS WHEREOF:**

The aforementioned, TAMMY SPELLMAN, an individual, has executed this instrument this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D.

By \_\_\_\_\_  
Tammy Spellman

**NOTARIAL:**

STATE OF COLORADO } SS  
COUNTY OF EL PASO }

The above and aforementioned was acknowledged before me this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_ A.D., by \_\_\_\_\_

Witness my hand and seal \_\_\_\_\_

My commission expires \_\_\_\_\_

**IN WITNESS WHEREOF:**

The aforementioned, JUSTIN SPELLMAN, an individual, has executed this instrument this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D.

By \_\_\_\_\_  
Justin Spellman

**NOTARIAL:**

STATE OF COLORADO } SS  
COUNTY OF EL PASO }

The above and aforementioned was acknowledged before me this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_ A.D., by \_\_\_\_\_

Witness my hand and seal \_\_\_\_\_

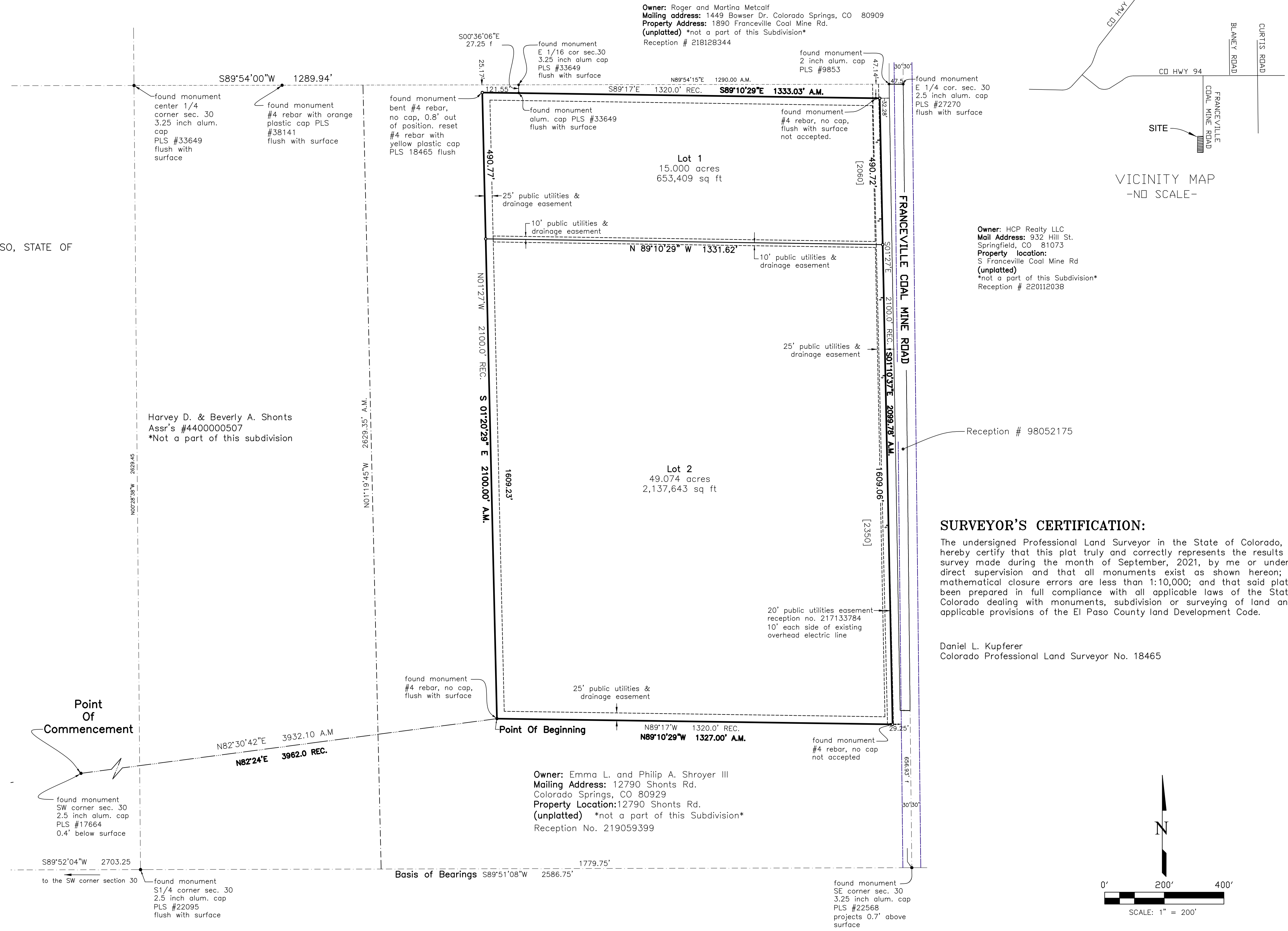
My commission expires \_\_\_\_\_

**NOTES:**

- - Indicates a #4 rebar with Surveyor's Cap, PLS #18465 set flush with ground.  
● - Indicates recovered survey monument as noted.
- This survey does not constitute a title search by LDC, Inc. to determine ownership or easements of record. For all information regarding easements, rights-of-way and title of record, LDC, Inc. relied upon a Commitment for Title Insurance, prepared by LAND TITLE GUARANTEE COMPANY on behalf of OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, Order No. RND55095617, effective date 6/14/2021 at 5:00 P.M.
- Basis of Bearings:** All bearings are based on the South line of the Southeast 1/4 of section 30 T14S R64W monumented on the West by a 2.5 inch aluminum cap LS #22095, and monumented on the East by a 3.25 inch aluminum cap LS #22568 as shown hereon. The monuments were observed for 3 minutes individually utilizing Survey Grade GPS equipment. The bearing of the line as observed is relative to GPS North, and accepted to be S 89°51'08" W.
- Easements:** Easements are for Public Utilities and Drainage only. Side lot lines: 10 feet on each side of the line. Exterior Subdivision Boundary lines: 25 feet to the interior side of the line; with the responsibility of maintenance of said easements being vested in the adjacent property owner.
- Notice:** Any person who knowingly removes, alters, or defaces any public Land Survey Monument, or Land Boundary Monument or accessory commits a Class Two (2) misdemeanor pursuant to C.R.S. § 18-4-508.
- FEDERAL EMERGENCY MANAGEMENT AGENCY, Flood Insurance Rate Map Number 08041C0790G, effective date December 7, 2018, indicates the area in the vicinity of this parcel of land to be a Zone X (area determined to be out of the 500 year flood plain).

**ADDRESSES**

The addresses [xxxx] exhibited on this plat are for informational purposes only. They are not the legal description and are subject to change.



**Owner:** Roger and Martina Metcalf  
**Mailing address:** 1449 Bowser Dr, Colorado Springs, CO 80909  
**Property Address:** 1890 Franceville Coal Mine Rd.  
**(unplatted)** \*not a part of this Subdivision\*  
Reception # 218128344

**Owner:** HCP Realty LLC  
**Mailing Address:** 932 Hill St, Springfield, CO 81073  
**Property location:** S Franceville Coal Mine Rd  
**(unplatted)**  
\*not a part of this Subdivision\*  
Reception # 220112038

**Owner:** Emma L. and Philip A. Shroyer III  
**Mailing Address:** 12790 Shonts Rd, Colorado Springs, CO 80929  
**Property Location:** 12790 Shonts Rd.  
**(unplatted)** \*not a part of this Subdivision\*  
Reception No. 219059399

**SURVEYOR'S CERTIFICATION:**

The undersigned Professional Land Surveyor in the State of Colorado, does hereby certify that this plat truly and correctly represents the results of a survey made during the month of September, 2021, by me or under my direct supervision and that all monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision or surveying of land and all applicable provisions of the El Paso County Land Development Code.

Daniel L. Kupferer  
Colorado Professional Land Surveyor No. 18465

**RECORDING:**

COUNTY OF EL PASO } SS  
STATE OF COLORADO }

I hereby certify that this instrument was filed for record in my office at \_\_\_\_\_ o'clock \_\_\_\_\_ M.,

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., and is duly recorded under

Reception No. \_\_\_\_\_ of the records of El Paso County, Colorado.

Chuck Broerman, Recorder

BY: \_\_\_\_\_  
Deputy

SURCHARGE: \_\_\_\_\_

FEES: \_\_\_\_\_

**APPROVALS:**

**BOARD OF COUNTY COMMISSIONERS CERTIFICATE:**

This subdivision exemption survey plat of SPELLMAN SUBDIVISION EXEMPTION PLAT was approved for filing by the EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., subject to any notes specified hereon and any conditions included in the resolution of approval.

\_\_\_\_\_  
CHAIR, BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Planning and Community Development Director

**NOTICE:**  
According to Colorado law you must commence any legal action based upon any defect in this survey within the time specified herein or you may be deemed to have accepted the survey. The time for any action based upon any defect in this survey shall commence on the date of the certification.

No.	Date	By	Description
1			
2			
3			
4			
5			
6			
7			
8			

H Scale:	1"=200'
V Scale:	NA
Designed By:	XXX
Drawn By:	JLG
Checked By:	DLK
Date:	9/5/2021

**Land Development Consultants, Inc.**  
PLANNING · SURVEYING  
www ldc inc com · TEL: (719) 528-6133 · FAX: (719) 528-8648  
3888 MARZLAND ROAD · COLORADO SPRINGS, CO 80909

**SPELLMAN SUBDIVISION EXEMPTION PLAT**  
IN THE SOUTHEAST 1/4 OF SECTION 30  
T14S R64W OF THE 6TH P.M.

Project No.: 21013

Sheet: 1 of 1



DISTRICT COURT, EL PASO COUNTY,  
STATE OF COLORADO  
270 S Tejon Street,  
Colorado Springs CO 80903

In re the Marriage of:

Petitioner: Tammy Spellman

and

Respondent: Justin Derek Spellman

▲ COURT USE ONLY ▲

Attorneys for Petitioner:  
ROBINSON & HENRY, P.C.  
Marlana A. Caruso | #41175  
Mark C. Smith #24794  
1975 Research Pkwy #100,  
Colorado Springs, CO 80920  
Phone: (303) 688-0944  
Email: [marlana@robinsonandhenry.com](mailto:marlana@robinsonandhenry.com)  
[Mark.Smith@robinsonandhenry.com](mailto:Mark.Smith@robinsonandhenry.com)

Case Number: 2020 DR 32226

Division : R/17 Courtroom

**AFFIDAVIT FOR DECREE WITHOUT APPEARANCE OF PARTIES (MARRIAGE)**

The Petitioner and Respondent file this Affidavit in support of a request for issuance of a Decree Dissolution of Marriage without appearance of the parties.

1. The Petition for Dissolution of Marriage was filed on October 29, 2020. On that date, Petitioner and Respondent had been domiciled in Colorado for more than 91 days immediately before the Petition for Dissolution of Marriage/Petition for Legal Separation was filed.
2. The Petition and Summons were a joint filing by the parties on October 6, 2020.
3. There are no minor children of this marriage under eighteen (18) years of age.
4. The parties have signed a written Separation Agreement. The parties have completed a Separation Agreement that provides for the division of all marital property and marital debts and addresses spousal support/maintenance. The parties agree that the Separation Agreement is fair and not unconscionable.
5. Petitioner and Co-Petitioner/Respondent acknowledge(s) that they have reviewed the maintenance guidelines contained in §14-10-114, C.R.S.
6. The parties agree that there are no genuine issues of material fact and the marriage is irretrievably broken.

The Petitioner and Co-Petitioner request that the attached Decree of Dissolution of Marriage be entered after the statutory waiting period has elapsed.



### VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the 7<sup>th</sup> day of January, 2021, at Colorado Springs, CO  
(date) (month) (year) (city or other location, and state OR country)

Tammy Marie Spellman  
(printed name of Petitioner)

[Signature]  
Signature

2350 S. Franceville Coal Mine Rd Colorado Springs, CO 80929  
Address City State Zip Code  
940-782-8282 940-782-8282  
Home Phone # Cell

### VERIFICATION

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the 7<sup>th</sup> day of Jan., 2021, at Colorado Springs, CO  
(date) (month) (year) (city or other location, and state OR country)

Justin Derck Spellman  
(printed name of Co-Petitioner/Respondent)

[Signature]  
Signature of Co-Petitioner/Respondent

2350 S. Franceville Coal Mine Rd Colorado Springs, CO 80925  
Address City State Zip Code  
719 229 7077 719 229 7077  
Home Phone # Cell

Approved:

ROBINSON AND HENRY, P.C.  
/s/ Mark C. Smith  
Mark C. Smith #24794  
Attorney for Petitioner

District Court, El Paso County, Colorado  
Court Address: 270 S. Tejon Street  
Colorado Springs, CO 80903

FILED-DISTRICT & COUNTY  
COURTS, EL PASO CO., CO  
DATE FILED: January 8, 2021 10:27 AM  
CASE NUMBER: 2020DR32226

JAN - 8 2021

In re the Marriage of:

Petitioner: Tammy Spellman

and

Respondent: Justin Derek Spellman

**DIVISION R**

**COURT USE ONLY**

Case Number: 2020 DR 32226

Division : R/17

Courtroom

**DECREE OF DISSOLUTION OF MARRIAGE**

This matter was reviewed by the Court on January 8, 2021 (date).

Petitioner signed a Non-Appearance Affidavit. Petitioner is represented by Attorneys Marlana Caruso, and Mark C. Smith, and Robinson and Henry, P.C.

Respondent signed a Non-Appearance Affidavit. Respondent is not represented by Counsel in this matter.

The Court has read the Non-Appearance Affidavit. The Court has considered any Financial Statements filed and makes the following findings and orders:

1. The Court has jurisdiction over the parties because of the joint Petition for Dissolution of Marriage, signed by the parties on September 13, 2020, and filed with the Court on October 6, 2020.
2. At least one party was domiciled in Colorado for more than 91 days before the Petition was filed.
3. At least 91 days have passed since the Court acquired jurisdiction over the Co-Petitioner or Respondent or since the Court acquired jurisdiction over the subject matter based on publication.
4. The marriage between the parties is irretrievably broken.
5. The Separation Agreement between the parties is found to be not unconscionable as to support, maintenance (spousal support), and division of property, and is incorporated herein.

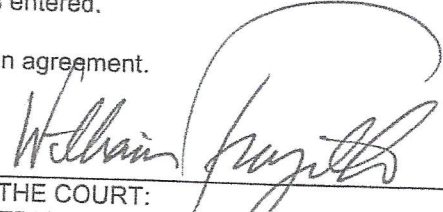
**The Court therefore orders:**

The marriage is dissolved, and a Decree of Dissolution of Marriage is entered.

Each party shall perform all the applicable provisions of the separation agreement.

Date:

January 8, 2021

  
BY THE COURT:  
DISTRICT COURT JUDGE/MAGISTRATE



District Court, El Paso County, Colorado Court Address: 270 S. Tejon Street Colorado Springs, CO 80903	FILED-DISTRICT & COUNTY COURTS EL PASO CO, CO DATE FILED: January 8, 2021 10:27 AM CASE NUMBER: 2020DR32226
In re the Marriage of:  Petitioner: Tammy Spellman  and  Respondent: Justin Derek Spellman	JAN - 8 2021  <b>DIVISION R</b> COURT USE ONLY Case Number: 2020 DR 32226  Division : R/17      Courtroom
<b>DECREE OF DISSOLUTION OF MARRIAGE</b>	

This matter was reviewed by the Court on January 8, 2021 (date).

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Respondent signed a Non-Appearance Affidavit. Respondent is not represented by Counsel in this matter.

The Court has read the Non-Appearance Affidavit. The Court has considered any Financial Statements filed and makes the following findings and orders:

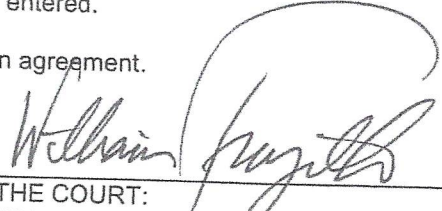
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5. The Separation Agreement between the parties is found to be not unconscionable as to support, maintenance (spousal support), and division of property, and is incorporated herein.

**The Court therefore orders:**

The marriage is dissolved, and a Decree of Dissolution of Marriage is entered.

Each party shall perform all the applicable provisions of the separation agreement.

Date: January 8, 2021

  
 BY THE COURT:  
 DISTRICT COURT JUDGE/MAGISTRATE





DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO 270 S Tejon Street, Colorado Springs CO 80903	▲ COURT USE ONLY ▲
In re the Marriage of:  Petitioner: Tammy Spellman  and  Respondent: Justin Derek Spellman	
Attorneys for Petitioner: ROBINSON & HENRY, P.C. Marlana A. Caruso   #41175 Mark C. Smith #24794 1975 Research Pkwy #100, Colorado Springs, CO 80920 Phone: (303) 688-0944 Email: <a href="mailto:marlana@robinsonandhenry.com">marlana@robinsonandhenry.com</a> <a href="mailto:Mark.Smith@robinsonandhenry.com">Mark.Smith@robinsonandhenry.com</a>	Case Number: 2020 DR 32226  Division : R/17      Courtroom
SEPARATION AGREEMENT	

THIS SEPARATION AGREEMENT was entered into this \_\_\_\_ day of \_\_\_\_\_ 2020, between Tammy Spellman, Petitioner, and Justin Spellman, Respondent. Its purposes are those authorized by C.R.S. §14-10-101 *et seq.*

**I. RECITALS**

1.1 General Considerations:

1.1.1 The parties married on August 13, 2007, in Rapid City, Pennington County, South Dakota . The parties separated on July 11, 2020.

1.1.2. The parties have no minor children born as issue to the parties under eighteen (18) years of age.

1.1.3. Petitioner and Respondent recognize that the Court must find that their marriage is irretrievably broken. The parties have determined that it is in the best interest of each of them that a settlement and determination be reached regarding division of marital assets, payment of

marital debts, and all other rights, duties and obligations they have toward one another and their children arising out of their marriage to one another.

1.1.4. Both parties have been domiciled in the State of Colorado for ninety-one (91) days immediately preceding the filing of this matter and that the Court has jurisdiction over both parties.

1.2 Disclosure:

This Agreement and stipulation of the parties is made upon the assumption that each of the parties has made a full, complete, honest, accurate and total disclosure to the other of the nature and extent of all assets and obligations of the parties. Pursuant to the Colorado Rules of Civil Procedure, Rule 16.2(e)(10), the parties agree that the Court shall retain jurisdiction over any non-disclosed asset for a period of 5 years from the date of the entry of the Decree of Dissolution of Marriage. The parties further agree that the Court shall, upon such subsequent discovery of any non-disclosed or materially misrepresented asset of either party, retain full jurisdiction to divide such additional asset as the Court deems fair. Specifically, this Agreement shall have no binding effect whatsoever, upon any property not disclosed by either party hereto, one to the other, and which property is neither described herein nor set forth on the parties' Sworn Financial Statements filed in connection with this matter. The parties agree that the date of value for such later discovered assets shall be as of the date of the hearing for the division of such assets, and not as of the date of the Decree of Dissolution of Marriage.

1.3 Advice of Counsel:

1.3.1. Petitioner party has been represented in this matter. Petitioner is represented by Attorney Mark C. Smith.

1.3.2 Respondent has not been represented in this matter.

1.3.3. The parties state and agree that each of them has had the benefit of consultation or the opportunity to consult with his or her own certified public accountant or other financial/tax expert, in connection with this case, and each is satisfied that they understand their own situation with regard to taxes. The parties acknowledge that their attorneys have advised them that counsel are not tax experts and that they should consult with and rely only on the advice of their certified public accountant or other financial advisor with respect to the tax and financial planning/ analyses aspects of this case and that of the provisions of this Agreement.

1.4 Understanding and Certification:

1.4.1. The parties state and agree that the within Agreement is entered into freely, voluntarily and upon mature consideration and not based on any duress, pressure or undue influence from any person or circumstance. Petitioner and Respondent state that each has read and understands the within Agreement, that it represents the entire understanding of and agreement between the parties, that there are no representations, warranties, promises, covenants or understandings between them other than those expressly set forth herein, and that each party



has sufficient knowledge of the character and value of their marital property and any separate property owned by either party.

1.4.2. The parties agree that the within Agreement is fair and not unconscionable in all its terms. If any provision of this Separation Agreement is held to be invalid, unconscionable, or unenforceable, all the rest of the provisions of this Separation Agreement shall nevertheless continue in full force and effect once approved by the Court. The parties request that the Court approve this Agreement and make it an Order of the Court.

1.4.3. Petitioner and Respondent each acknowledge and certify that they each have ascertained and weighted to his or her satisfaction all the facts and circumstances likely to influence his or her judgment herein, having obtained such legal advice independent of each other as they may have desired or deemed necessary that all the provisions hereof, as well as all questions pertinent hereto, have been explained to them and are understood by them to their satisfaction; that they have given separate due consideration to all of the provisions hereof, including those for division of property; and that they clearly understand and expressly agree to all of the provisions of this Agreement.

1.4.4. In consideration of these recitals and the subsequent agreements expressed in this document, the parties mutually agree as follows:

## II. MAINTENANCE

### 2.1 Waiver

2.1.1. Respondent waives any right he may have to receive maintenance from Petitioner now and in the future, knowing that he has the right to request the District Court having jurisdiction over this matter to award him maintenance and that a waiver by her of maintenance will forever extinguish any claims he may have to receive any other maintenance from Petitioner in this or any other Court. Respondent knows that and recognizes that this waiver is permanent and irrevocable and will forever relinquish any rights he may have thereto. In making this waiver, Respondent acknowledges that he may never return to this or any other court to seek maintenance no matter how his health or financial circumstances may have changed after the date of this Agreement and that the Court is divested of jurisdiction on this issue.

2.1.2 Petitioner waives any right she may have to receive any other or further maintenance from Respondent now and in the future, knowing that she has the right to request the District Court having jurisdiction over this matter to award her maintenance and that a waiver by her of maintenance will forever extinguish any claims he may have to receive any other maintenance from Petitioner in this or any other Court. Petitioner knows that and recognizes that this waiver is permanent and irrevocable and will forever relinquish any rights she may have thereto. In making this waiver, Petitioner acknowledges that she may never return to this or any other court to seek maintenance no matter how her health or financial circumstances may have changed after the date of this Agreement and that the Court is divested of jurisdiction on this issue.



### III. PROPERTY DIVISION

#### 3.1 General Provisions:

3.1.1. It is specifically understood and agreed between the Parties that all the property, both real and personal, herein distributed between the Parties is marital property unless specifically designated as separate property. The terms "marital property" and "separate property" as contained herein are defined by Colorado law. The distribution of property and debts herein is considered by the Parties to be an equitable and not unconscionable division of the marital property as defined by Colorado law, and no monies or property received by either party by virtue of the Agreement is considered by them to be spousal maintenance unless specifically designated herein as such.

3.1.2. The parties stipulate that it is their intention that all transfers of property by and between the parties in this Agreement, regardless of title to said property, are transfers of marital property and not transfers of separate property, and are in exchange for marital rights and considerations, and therefore, the transfers are not a taxable event and no capital gains have been declared or need be declared upon such transfer. Furthermore, each party covenants not to seek any increase or step-up in the basis of any property transferred hereunder as a result of said transfer.

3.1.3. All transfers of real and personal property between the parties are incident to this dissolution of marriage pursuant to Internal Revenue Code.

3.1.4 The parties agree to use the valuation of their assets as of December 1, 2020, for the purposes of division of marital assets.

3.1.5. The parties entered into a Postnuptial Property Agreement on January 31, 2020. The Postnuptial Property Agreement is attached hereto as Exhibit "1," and incorporated into and as part of this Separation Agreement as if fully set forth herein.

3.1.6. Petitioner Tammy Spellman shall retain as her sole and separate assets, the assets listed in Schedule A of the Postnuptial Property Agreement, including sole ownership of the Springs Armory. Respondent Justin Spellman shall retain as his sole and separate assets, the assets listed in Schedule B of the Postnuptial Property Agreement, including sole ownership of MOAB.

3.1.7. Attached hereto as Exhibit "2," is a list of the bank accounts allocated to the parties in Schedules A and B of the Postnuptial Property Agreement, listing the current values of the accounts.

#### 3.2 Separate Property:

3.2.1. Each party shall be awarded as their sole any separate property all property they owned prior to the marriage as well as any gifts they may have received during the marriage.

3.2.2. The party in possession of such separate property shall be solely and separately responsible for, and hold the other party harmless from, all unpaid debts, liabilities, and costs related to these assets.

3.2.3. The Postnuptial Property Agreement is attached hereto as Exhibit 1, sets out certain separate property agreements to which the parties have previously agreed and are bound.

### 3.3 Real Property:

3.3.1. The parties own 63.59 acres of land, parcel #4400000444. The land contains a home located at 2350 Franceville Coal Mine Road, Colorado Springs, CO 80929. The land also has a well.

3.3.2. The parties agree that the acreage will be divided between the parties. Petitioner Tammy Spellman will retain as her sole and separate property the fifteen (15) northern most acres of the land, exclusive of the portion on which the home and well are located. Respondent Justin Spellman will retain as his sole and separate property, the remaining portion of the land, in the amount of forty-eight and .59 (48.59) acres, including the portion of the land containing the home and the well.

3.3.3. The parties agree: if Petitioner Tammy Spellman elects to sell the property noted in paragraph 3.3.2, above, Petitioner shall offer and provide to Respondent the first right of refusal to purchase the property from her. The sales price at that time would be based on a current appraisal of the property. The cost of the appraisal shall be shared by the parties equally. Respondent would have the right to purchase the property from Petitioner at the sales price of half (50%) of the appraised value.

3.3.4. If Petitioner Tammy Spellman still owns the property at the time of her death, Petitioner shall pass the property to her heirs and beneficiaries without reservation. However, the parties agree to a restriction on the property: any heir of Petitioner whom inherits the property shall be bound by the same restriction on selling the property of the first right of refusal provided in paragraph 3.3.3, above.

### 3.4 Motor Vehicles:

3.4.1. The vehicles of the parties are allocated in Schedules A and B of the attached Postnuptial Property Agreement. Each party shall be responsible for any encumbrance associated with the vehicles allocated to the party in the Postnuptial Property Agreement and shall indemnify and hold the other party harmless thereon.

3.4.2. The parties agree to execute any necessary transfers of title to said vehicles within 30 days of the date of the entry of the decree of dissolution of marriage.



3.5 Bank Accounts:

3.5.1. The parties shall equally divide the balance of the Navy Federal Credit Union Account, account no. 7010667518; and the balance of Vectra Bank Account, account no. 4503004991.

3.5.2. All other bank accounts of the parties other than the two noted in paragraph 3.5.1, are allocated in Schedules A and B of the Postnuptial Property Agreement.

3.6 Brokerage Accounts, Pension, profit sharing or retirement accounts:

3.6.1 All brokerage accounts, pension accounts, profit sharing or retirement accounts of the parties are allocated in Schedules A and B of the Postnuptial Property Agreement.

3.7 Personal Property:

3.7.1. The parties have or will divide their personal property, furniture, artwork and furnishings without the need for court assistance. Each party will retain as their sole and separate property any wedding or engagement rings from this marriage.

#### IV. DISPOSITION OF DEBTS AND LIABILITIES

4.1 Debts:

4.1.1. Except as provided below, each party will retain as the party's sole and separate property, the debts listed on the party's financial affidavit filed with the Court in this matter, and any and all other debts incurred in the party's sole name. Except as otherwise specifically provided by this Separation Agreement, each party shall be solely responsible for and hold the other party harmless from, any and all unpaid debts and liabilities incurred by him or her since the parties' separation, the debts listed on his financial affidavit, any debt attached to an asset allocated to the party herein, and any debt incurred in his or her sole name.

4.2 Future debts:

Neither party shall create or attempt to create any indebtedness in the name of or against the other, or to utilize, or attempt to utilize the credit or financial circumstances of the other of the purposes of creating any indebtedness.

4.3 Indemnification:

With respect to the financial obligations which each party has agreed to assume or to be responsible for by this agreement, Respondent and Petitioner shall indemnify and hold the other harmless against any and all liability, including all court costs and reasonable attorney's fees, by reason of any default in performance or by reason of any claim resulting from the failure to perform their respective obligations.

## V. TAXES

### 5.1 2020 Income Tax Issues:

5.1.1 The parties will file separate income taxes for 2020. Any tax liability for 2020 shall be paid by the party whose income or action created the tax liability.

### 5.2 Prior Income Taxes:

The parties have jointly filed income tax returns during their marriage. To the best of their knowledge, all taxes have been filed properly. If a prior tax return is audited and if a liability or refund is owed, the parties shall equally divide such liability or refund.

### 5.3 Compliance:

From this time forward, neither party shall assert a position in the preparation or filing of tax returns, singly or jointly with another person, inconsistent with the terms and conditions of this Separation Agreement.

## VI. ATTORNEY FEES AND COSTS

Any attorney fees in this matter shall be addressed by the Court at the Permanent Orders hearing and are not addressed in this document.

## VII. MISCELLANEOUS

7.1 Probate Matter(s): Petitioner waives all rights as an interested party or otherwise in any probate matter related to the Respondent, including but not limited to 2020PR30319. Petitioner waives any right to (1) object to the appointment of a guardian or conservator for the Respondent and, (2) to object to or nominate a guardian or conservator. To the extent any probate matters related to Petitioner are filed, Respondent waives all rights as an interested party or otherwise to any such matter.

### 7.2 Satisfaction and Waiver:

Each party, for themselves and for their personal representatives and other successors, by signing this Agreement, agrees that this Agreement constitutes full and complete satisfaction of any and all claims and demands which each party now has against the other and is in full settlement of all of their respective marital rights and obligations, including property and maintenance rights. Except as otherwise specifically provided in this Agreement, each party waives all rights against the other and each releases and discharges the other from any and all claims, demands and interests known or unknown which either of them now has or might have, as of the date of the approval of this Agreement, against the other or the property and estate of the other, including, but not limited to, waiver of the right to a surviving spouse's election share, and the parties hereby waive their right to inherit from the other pursuant to the laws of the State of Colorado or any other state or nation, and waive the right to serve as personal representative



of the estate of the other. This paragraph shall not affect or control the right of either party to provide for the other by will or to accept benefits so provided.

7.3 Incorporation into Decree:

This Agreement shall, if approved by the District Court, be incorporated into and made part of the Decree of Dissolution of Marriage and shall there by become an Order of the Court.

7.4 Binding Effect:

The terms of this Agreement shall be binding upon the parties' heirs, executors, administrators, representatives, legatees, devisees, assigns and agents to the extent and in the manner in which it is binding upon the parties.

7.5 Governing Law:

This Agreement shall be interpreted, governed and enforced in accordance with the laws of the State of Colorado, and the District Court of El Paso County shall have exclusive and continuing jurisdiction over matters relating to the interpretation and enforcement of this agreement.

7.6 Entire Agreement:

This Agreement sets forth the parties' entire agreement and understanding with respect to the transactions contemplated in it and supersedes all prior agreements, arrangements and understandings relating to the subject matter in it.

7.7 No Waiver:

No waiver of any breach or default under this Agreement shall be considered valid unless in writing which is signed and dated by both parties, and no such waiver shall be deemed a waiver of any subsequent breach of default of the same or similar nature. No breach of this Agreement shall be claimed by either party in a court proceeding unless the party intending to make such a claim has given notice to the other party of such breach and given a reasonable time for cure.

7.8 Modification:

Except as where provided herein or by operation of law, the parties hereby agree that this Agreement shall not be modifiable by the Court, but shall be modified only by the parties, upon mutual written consent.

7.9 Indemnity for Failure to Perform:

The parties have in this Agreement made certain commitments to one another in the form of mutual promises to perform. In the event one party should fail to perform the provision to

which they have agreed in this Agreement, he or she hereby agrees to fully indemnify and save and hold the other harmless from any expenses which he or she incurs due to the other's failure to perform a provision of this Agreement. Furthermore, in the event either party should invoke this clause, he or she shall be entitled to reasonable attorney's fees and costs from the other if he or she is successful in seeking a claim for indemnification against the other who has failed to perform a provision under this Agreement.

7.10 Interpretation:

The section and subsection headings contained in this Agreement are for reference purposes only and shall not define, limit or prescribe the meaning or interpretation of the text of this Agreement. No provision of this Agreement shall be interpreted for or against either party because counsel for one party drafted the provision.

7.11 When Agreement Takes Effect:

The parties agree that this Agreement shall become effective the date the parties sign below.

7.12 Independent Contract:

This Separation Agreement shall not be extinguished by merger as a result of incorporation into any decree or otherwise, but shall in all events survive such decree and be binding upon the parties.

7.13 Right to Trial:

By signing below, each party expressly certifies that they have the right to proceed with a trial of this entire matter, but have determined that it is in each party's best interests to settle all aspects of the matter without trial as provided by the terms of this Agreement.

7.14 Access:

Except as provided elsewhere in this agreement or in the attached Parenting Plan, the parties hereafter shall live separate and apart from one another, and shall not harass, annoy, molest, or bother each other and each shall be free from the marital control and authority of the other. Neither party shall have access to the person or residence or property of the other in excess of that of a stranger, and the parties shall henceforth be strangers at law to one another. Neither shall have the authority to, nor shall either contract any debts, charges or other liabilities, either personal or financial, whatsoever, in the name of the other party or for which the other party may be presumed to be liable. The parties henceforth shall not be responsible for the action or debts of one another.

7.15 Execution of Documents, Titles, Deeds:

Respondent and Petitioner each agree that they will execute any and all documents, certificates of title, deeds, or other instruments and conveyances necessary to effectuate and carry out the terms and intent of this Agreement whenever called upon to do so by the other party, and within ten (10) days of being requested to do so by the other party. If either party shall fail to execute and deliver any such instruments to the other party, then this Agreement shall constitute an actual grant, assignment, and conveyance of such property and rights, in such manner and with such force and effect as shall be necessary to effectuate the terms hereof, including the execution of all necessary documents by the Clerk of the Court pursuant to Rule 70 C.R.C.P. Furthermore, in the event either party should invoke this clause, he or she shall be entitled to reasonable attorney's fees and costs from the other if he or she is successful in seeking a claim for indemnification against the other who has failed to perform a provision under this Agreement.

7.16. Incorporation of Exhibits:

Any exhibits attached hereto or tendered by the Parties at the time of this Agreement, shall be considered a part of this Agreement and made a part hereof.

The parties by signing below, hereby verify their agreement and acceptance of the terms of this Separation Agreement, and verify under penalty of perjury that the forgoing Agreement is true, correct, fair and not unconscionable.

Date: 1/7/2021

  
Respondent Justin Spellman

Date: 1/7/2021

  
Petitioner Tammy Spellman

Approved:

Robinson and Henry, P.C.

/s/ Mark C. Smith

Mark C. Smith #24794

Attorney for Petitioner