DECLARATION OF WATER COVENANTS AND EASEMENTS
FOR
HIGH FOREST ESTATES SUBDIVISION

Paula B. Donohoo, Mardelle L. Frazier, and Brian D. Frazier ("Declarants") are the sole owners of real property more particularly described as being 13.81 acres located in the SW¼ of the SW¼ of Section 10, Township 11 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, more particularly described as Lot 1, Block 7, Willow Springs Estates, also known as 8855 Walker Rd, Colorado Springs, CO 80908, and depicted on attached **Exhibit A** and incorporated by this reference known as the High Forest Estates Subdivision (the "Subdivision"). The Declarants desire to place limited protective covenants, conditions, restrictions, and reservations upon the Subdivision to protect the Subdivision's quality residential living environment, to protect its desirability, attractiveness, and value, and to ensure compliance with all applicable groundwater determinations concerning water and water rights to be utilized within the Subdivision.

The Declarants hereby declare that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and 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.

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. This includes the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree concerning underlying groundwater and approval of a Plan for Augmentation as entered by the Water Court, Water Division No. 1 in Case No. 20CW3077 recorded at Reception No. 221037735 ("Augmentation Plan" or "Water Decree") attached hereto as **Exhibit B**.

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

1. Water Decree and Augmentation Plan.

A. Decree/Summary. The Subdivision shall be subject to the obligations and requirements set forth in February 25, 2021 Judgment and Decree

affirming the February 2, 2021 Findings of Fact and Ruling of Referee granting underground water rights and approving a plan for augmentation, as entered by the District Court for Water Division 1, State of Colorado, in Case No. 20CW3077 as recorded at Reception No. 221037735 of the El Paso County Clerk and Recorder, which is incorporated by reference ("Augmentation Plan" or "Water Decree"). The Augmentation Plan concerns the water rights and water supply for the Subdivision and creates obligations upon the Subdivision and the Lot Owners, which run with the land. The water supply for the Subdivision shall be by individual wells to the not-nontributary Dawson aquifer, under the Augmentation Plan. The Augmentation Plan contemplates that each Lot owner will be responsible for any replacement well(s) to be constructed consistent with the terms of the Augmentation Plan, along with maintaining wastewater treatment through a non-evaporative individual septic disposal system ("ISDS"). "Lot Owners" will be the owners of the water within the aquifers underlying their lots, and also own the plan for augmentation. The Lot Owners will be responsible for reporting and administration based on pumping records, and eventually for replacement of any injurious post-pumping depletions requiring construction of deep wells to the nontributary Laramie-Fox Hills aquifer, and up to 610 acre-feet of water from the nontributary Arapahoe aquifer, at such time as all Dawson aquifer pumping ceases.

B. Water Rights Ownership.

i. Declarants will transfer and assign to each Lot Owner their portion of all right, title and interest in the Augmentation Plan and water rights thereunder. Those water rights assigned include ground water in the nontributary Arapahoe (at least 610 acre-feet total) and Laramie-Fox Hills aquifers (entire 380 acre-feet total) of the Denver Basin, as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions.

ii. Declarants will transfer and assign to the owner of Lot 1 interest in 480 acre feet of the not-nontributary Dawson aquifer, and the remaining 750 acre feet of the not-nontributary Dawson aquifer to the owner of Lot 2 as adjudicated in the Water Decree as the physical source of supply for each Lot. The Dawson aquifer well on each Lot shall be augmented per the Augmentation Plan as administered by the Lot Owners.

iii. The Declarants will further assign to each Lot Owner all obligations and responsibilities for compliance with the Augmentation Plan, including monitoring, accounting and reporting obligations. By this assignment to the Lot Owners, the Declarants are relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Augmentation Plan, except where the Declarants retain ownership of any Lot. Such conveyance shall be subject to the obligations and responsibilities of the Augmentation Plan

and said water rights may not be separately assigned, transferred or encumbered by the Lot owners. The Lot Owners shall maintain such obligations and responsibilities in perpetuity, unless relieved of such augmentation responsibilities by decree of the Water Court, or properly entered administrative relief.

iv. Each Lot Owner's water rights in the not-nontributary Dawson aquifer underlying their respective Lot shall remain subject to the Augmentation Plan, and shall transfer automatically upon the transfer of title to each Lot as an appurtenance, including the transfer by the Declarants to the initial owner of a Lot, whether or not separately deeded. The ground water rights in the Dawson aquifer subject to the Augmentation Plan cannot and shall not be severable from each respective Lot, and each Lot Owner covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the Lot.

v. All not-nontributary Denver Basin groundwater in the Dawson aquifer, and all groundwater in the nontributary Denver, Arapahoe and Laramie-Fox Hills aquifers underlying each Lot are likewise to be deeded, assigned and transferred to the overlying Lot Owner on a prorata-per-acre basis, and may be used in said Lot Owner's sole and complete discretion, subject to the terms and conditions of this Declaration and the Augmentation Plan.

vi. The not-nontributary Dawson, and the nontributary Denver, Arapahoe, and Laramie-Fox Hills water rights conveyed to each Lot Owner, as described in this Paragraph 1.B., and return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Augmentation Plan decreed in Case No. 20CW3077 and this Declaration, and shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered.

C. <u>Water Administration.</u>

i. Each Lot Owner shall limit the pumping of the Dawson aquifer wells. The Donohoo Wells, located on Lots 1 and 2, are limited to pumping 1.6 acre-feet annually, consistent with the Augmentation Plan. Should Lot 2 ever be subdivided into two lots, the existing wells on the existing Lots 1 and 2 shall be limited to 1.3 acre-feet annually, and pumping from the well on the newly created Lot 3 shall be limited to 0.6 acre-feet annually. Each Lot Owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Augmentation Plan is maintained, as between in-house, irrigation, stock water and other allowed uses. Each lot owner will be responsible for constructing of their well and providing adequate return flows through in-house use prior to utilizing water for other decreed 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 and shall not be sold, traded or used for any other purpose. The Lot Owners, as the owners of all obligations and responsibilities under the Augmentation Plan, shall administer and enforce the Augmentation Plan as applies to each Lot Owner's respective Lot and pumping from individual Dawson aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Augmentation Plan and taking all necessary and required actions under the Augmentation Plan to protect and preserve the ground water rights for all Lot owners. Each Lot Owner has the right to specifically enforce, by injunction if necessary, the Augmentation Plan against any other Lot Owner for failing to comply with the Lot Owner's respective obligations under the Augmentation Plan, including the enforcement of the terms and conditions of well permits issued pursuant to the Augmentation Plan, 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 Dawson ground water rights owned by each Lot Owner is restricted and regulated by the terms and conditions of the Augmentation Plan and this Declaration, including, without limitation, that each Lot Owner is subject to the maximum annual well pumping as stated in the Augmentation Plan. Failure of a Lot Owner to comply with the terms of the Augmentation Plan may result in an order from the Division of Water Resources under the Augmentation Plan to curtail use of ground water rights.

ii. Each Lot Owner shall promptly and fully account to the Division of Water Resources for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Lot, including for any irrigation, stockwater, or other permitted/allowed uses as may be required under the Augmentation Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources. The Lot Owners shall provide the Division of Water Resources with accounting for pumping of their not-nontributary individual Dawson aquifer wells on each Lot on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

iii. At such time as construction of the Laramie-Fox Hills and Arapahoe aquifer wells are required for replacement of post-pumping depletions under the Augmentation Plan, the Lot Owners shall be responsible for all cost and expense in the construction of said wells, as well as all reasonable reporting requirements of the Division of Water Resources associated therewith.

C. Well Permits.

i. Each Lot Owner shall be responsible for obtaining a well permit for the individual well to the not-nontributary Dawson aquifer for provision of water supply to their respective Lot. All such Dawson aquifer wells shall be constructed and operated in compliance with the Augmentation Plan, 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 diversion information necessary for the accounting and administration of the Augmentation Plan. It is acknowledged that well permits, and individual wells, may be in place on some of the Lots at the time of 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. The Lot Owners shall be jointly responsible for obtaining any well permits, rights, and authorities necessary for the construction of wells to the nontributary Arapahoe and Laramie Fox Hills aquifers, though such wells shall be constructed only for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and shall not be constructed unless and until such post-pumping depletions must be replaced. The Lot Owners shall comply with any and all requirements of the Division of Water Resources to log such wells, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide all necessary accounting under the Augmentation Plan.

iii. No party guarantees to the Lot Owners the physical availability or the adequacy of water quality from any well to be drilled under the Augmentation Plan. The Denver Basin aquifers which are the subject of the Augmentation Plan 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 statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

2. Access Easement. Lots 1 and 2 shall be accessed through a perpetual nonexclusive thirty-five foot (35') wide access easement ("Access Easement") over and across Lots 1 and 2, as depicted on the attached Plat. The Access Easement shall be for the purpose of vehicular, equestrian, and pedestrian ingress, egress, and easement maintenance upon, over, and through Lots 1 and 2 for the benefit of all Lots.

A. Right of Enjoyment. The Lot Owners shall have the right to use and fully enjoy the Access Easement; provided, however, that no Lot Owner shall cause to be constructed, built, or placed a building, structure, object, tree, shrub, fence, landscaping, or other improvement on or within the Access

Easement which restricts any Lot Owner's access or use and enjoyment of the Access Easement. The Lot Owners shall have the right to remove all improvements from the Access Easement which would act to endanger any of the other Lot Owners improvements and appurtenances thereto or otherwise interfere with the use and enjoyment of the Access Easement. If the Lot Owners are required to disturb the surface of the Access Easement for construction, maintenance, or operations, then they shall restore the surface to a reasonable pre-disturbance condition.

B. Maintenance of Access Easement. It shall be the duty and obligation of each Lot Owner to maintain the Access Easement. The Access Easement is jointly owned in fee by the Lot Owners, and shall be equally maintained by the Lot Owners benefiting therefrom, and each Lot Owner shall each pay an equal portion (50%) of maintenance and repair costs, unless the expense to repair is attributable to a specific Lot Owner. The costs of maintenance and repair will be allocated on an equal basis among the Parties. Should either of the Lots be lawfully subdivided, such maintenance cost allocation may change based upon the number of users/Owners of said Access Easement. "Maintenance" or "repair" includes, but is not limited to, graveling, paving, draining, removing snow, clearing, or providing any other maintenance or repair-type service however defined, on, or within, the Access Easement. The Access Easement shall, at a minimum, meet current county standards for gravel or paved roads, as applicable, though no Lot Owner shall have the ability or authority to require the other Lot Owner(s) to participate in an upgrade of the Access Easement from its current condition, or to repair or replace with other more costly materials. The Access Easement will, at all times, be kept in passable condition without potholes, sinkholes, obstructions, or other unstable or unpassable conditions. The Access Easement may be paved if the sharing parties agree to share the cost of paving, or if one party agrees to bear the total cost for the pavement. In no case shall the Access Easement fall below the county standard for access drives. The Lot Owners shall resolve any disputes concerning maintenance and repair of the Access Easement in the manner provided herein.

C. Determination of Necessary Maintenance. Access Easement maintenance and improvements will be made whenever necessary to maintain the Access Easement in good operating condition and to insure the provision of safe access by the undersigned, their guests, governmental agencies, utility providers, and emergency service providers and vehicles. The Access Easement must comply with the requirements of all local government ordinances and laws. The Lot Owners will designate a single representative ("Owner Representative") to seek out bids for the maintenance and improvements, and all Lot Owners must agree before accepting a bid for any maintenance or improvement. The Lot Owners shall cooperate in determining equitable allocation of Access Easement maintenance costs.

D. Prepayment. Prepayment of maintenance and improvement costs will be made to the Owner Representative prior to initiation of such maintenance and improvement work. The Owner Representative shall provide a written acceptance of payment for the maintenance and improvement costs to the pre-paying party upon receipt of the prepayment funds. Should one Lot Owner elect to undertake maintenance or repairs for which the other Lot Owners have not agreed or prepaid, such funding Lot Owner may seek reimbursement of the Lot Owners' equal allocation in any manner prescribed by law for dispute resolution, though such funding Lot Owner advances such funds at their own risk pending such resolution.

3. Shared Pond. Lots 1 and 2 shall share a pond that is predominantly on Lot 1. The Pond shall be accessed as it has predominantly been historically, via a foot path from the residence on Lot 2. Each resident will access the Shared Pond via a foot path from each respective residence.

A. Right of Enjoyment. The Parties shall have the right to use and fully enjoy the Shared Pond; provided, however, that no Lot Owner shall cause to be constructed, built, or placed a building, structure, object, tree, shrub, fence, landscaping, or other improvement beside, over, or directly beside the Shared Pond which restricts any Lot Owner's access or use and enjoyment of the Shared Pond. The Lot Owners shall have the right to remove all improvements from the Shared Pond which would act to endanger any of the other Lot Owners' improvements and appurtenances thereto, or otherwise interfere with the use and enjoyment of the Shared Pond. If the Lot Owners are required to disturb the surroundings or structure of the Shared Pond for construction, maintenance, or operations, then they shall restore the surface to a reasonable pre-disturbance condition.

B. Responsibility of Shared Pond. The Lot Owners shall participate in maintenance and repair of the Shared Pond in a fair and equal share, and shall equally participate in any costs needed for associated water rights or necessary water rights filings. Such expenses will be split evenly between two lot owners, or further divided equally should an additional lot owners come into ownership of a lot via further division of lot the lots herein referenced. The Lot Owners shall cooperate in determining equitable allocation of Shared Pond maintenance costs, and shall resolve any disputes concerning the same in the manner as provided herein.

C. Maintenance of Shared Pond. It shall be the duty and obligation of each Lot Owner to maintain the Shared Pond. The Shared Pond is jointly owned in fee by the Lot Owners, and shall be equally maintained by the Lot Owners benefiting therefrom, and each Lot Owner shall each pay an equal portion of maintenance and repair costs, unless the expense to repair is attributable to a

specific Lot Owner. The costs of maintenance and repair will be allocated on an equal basis among the Parties based upon each Lot Owners' access to the Shared Pond. Should any of the Lots be lawfully subdivided, such maintenance cost allocation may change based upon the number of users/Owners of said Shared Pond. "Maintenance" or "repair" includes, but is not limited to, draining, dredging, clearing, dam or spillway repair, refreshing water, cleaning water, cleaning surface in proximity to pond, wildlife control efforts, posting signage, erecting fencing, dock construction, algae removal, or providing any other maintenance or repair-type service however defined, on, or within, the Shared Pond. No Lot Owner shall have the ability or authority to require the other Lot Owner(s) to participate in an upgrade of the Shared Pond from its current condition, or to repair or replace with other more costly materials.

D. Determination of Necessary Maintenance. Shared Pond maintenance and improvements will be made whenever necessary to maintain the Shared Pond in good functioning, aesthetic, and safe conditions. The Lot Owners will designate a single representative ("Owner Representative") to seek out bids for the maintenance and improvements, should it be deemed necessary, and all Lot Owners must agree before accepting a bid for any maintenance or improvement. The Lot Owners shall cooperate in determining equitable allocation of Shared Pond maintenance costs.

E. Prepayment. Prepayment of maintenance and improvement costs will be made to the Owner Representative prior to initiation of such maintenance and improvement work. The Owner Representative shall provide a written acceptance of payment for the maintenance and improvement costs to the pre-paying party upon receipt of the prepayment funds. Should one Lot Owner elect to undertake maintenance or repairs for which the other Lot Owners have not agreed or prepaid, such funding Lot Owner may seek reimbursement of the Lot Owners' equal allocation in any manner prescribed by law for dispute resolution, though such funding Lot Owner advances such funds at their own risk pending such resolution.

4. Compliance. The Lot Owners shall perform and comply with all terms, conditions, and obligations of the Augmentation Plan, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources pursuant to the Augmentation Plan, as well as all applicable statutory and regulatory authority.

5. Cooperation Clause. The Parties shall cooperate with one another in good faith to accomplish and fulfill the terms of this Agreement, and each party shall timely execute any and all documents necessary to accomplish the same.

6. Notice of Action. Any notice required hereunder shall be in writing and shall be sufficient if delivered personally, by courier, by registered or certified U.S. Mail, postage prepaid, or by overnight delivery service providing document tracking services, and shall be sent to the addresses in the introductory paragraph of this Grant and Agreement, and effective upon receipt.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue shall be proper in the District Court for El Paso County, Colorado.

8. Amendments. No changes, amendments, alterations, or deletions to this Declaration may be made which would alter, impair, or in any manner compromise the Augmentation Plan, or the water rights of the Lot Owners without the written approval of said parties, El Paso County, and a Court with proper jurisdiction.

9. Termination 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 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 in full force and effect.

10. El Paso County Requirements. El Paso County may enforce the provisions regarding the Augmentation Plan as set forth in this Declaration, should the Lot Owners fail to adequately do so.

Executed on this the ____ day of _____, 2024.

BY: DECLARANTS

_____ _____

Paula B. Donohoo Mardelle L. Frazier

_____

Brian D. Frazier

STATE OF _____)
) ss
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2024 by Paula B. Donohoo, Mardelle L. Frazier, and Brian D. Frazier, as Declarants of the High Forest Estates Subdivision.

My commission expires: _____

Witness my hand and seal.

_____
Notary Public

EXHIBITS:
A – Plat Map of the Property
B – Case No. 20CW3077 Augmentation Plan

HIGH FOREST ESTATES SUBDIVISION FILING NO. 1

Exhibit A

A REPLAT OF LOT 1, BLOCK 7, WILLOW SPRINGS ESTATES

LOCATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN IN EL PASO COUNTY, COLORADO

COUNTY GOVERNMENT NOTES

1. NOTE REGARDING REPORTS ON FILE: THE FOLLOWING REPORTS HAVE BEEN SUBMITTED IN ASSOCIATION WITH THE FINAL PLAT FOR THIS SUBDIVISION AND ARE ON FILE AT THE COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT: FINAL DRAINAGE REPORT; WATER RESOURCES REPORT; OWTS WASTEWATER STUDY; GEOLOGY & SOILS REPORT; FIRE PROTECTION REPORT, AND NATURAL FEATURES REPORT.

2. DEVELOPER SHALL COMPLY WITH FEDERAL AND STATE LAWS, REGULATIONS, ORDINANCES, REVIEW AND PERMIT REQUIREMENTS, AND OTHER AGENCY REQUIREMENTS, IF ANY, OF APPLICABLE AGENCIES INCLUDING, BUT NOT LIMITED TO, THE COLORADO DIVISION OF WILDLIFE, COLORADO DEPARTMENT OF TRANSPORTATION, U.S. ARMY CORPS OF ENGINEERS AND THE U.S. FISH AND WILDLIFE SERVICE REGARDING THE ENDANGERED SPECIES ACT, PARTICULARLY AS IT RELATES TO THE LISTED SPECIES (E.G., PREBLE'S MEADOW JUMPING MOUSE).

3. THE ADDRESSES EXHIBITED ON THIS PLAT ARE FOR INFORMATIONAL PURPOSES ONLY. THEY ARE NOT THE LEGAL DESCRIPTION AND ARE SUBJECT TO CHANGE.

4. NO DRIVEWAY SHALL BE ESTABLISHED UNLESS AN ACCESS PERMIT HAS BEEN GRANTED BY EL PASO COUNTY.

5. MAILBOXES SHALL BE INSTALLED IN ACCORDANCE WITH ALL EL PASO COUNTY AND UNITED STATES POSTAL SERVICE REGULATIONS.

6. INDIVIDUAL LOT PURCHASERS ARE RESPONSIBLE FOR CONSTRUCTING DRIVEWAYS, INCLUDING NECESSARY DRAINAGE CULVERTS FROM WALKER ROAD PER LAND DEVELOPMENT CODE SECTION 6.3.3.C.2 AND 6.3.3.C.3. DUE TO THEIR LENGTH, SOME OF THE DRIVEWAYS WILL NEED TO BE SPECIFICALLY APPROVED BY THE ELBERT FIRE PROTECTION DISTRICT.

7. ALL PROPERTY WITHIN THIS SUBDIVISION IS SUBJECT TO A DECLARATION OF COVENANTS AS RECORDED AT RECEPTION NO. _____, OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER.

8. INDIVIDUAL WELLS ARE THE RESPONSIBILITY OF EACH PROPERTY OWNER. PERMITS FOR INDIVIDUAL WELLS MUST BE OBTAINED FROM THE STATE ENGINEER WHO BY LAW HAS THE AUTHORITY TO SET CONDITIONS FOR THE ISSUANCE OF THESE PERMITS. WATER IN THE DENVER BASIN AQUIFERS IS ALLOCATED BASED ON A 100-YEAR AQUIFER LIFE; HOWEVER, FOR EL PASO COUNTY PLANNING PURPOSES, WATER IN THE DENVER BASIN AQUIFERS IS EVALUATED BASED ON A 300-YEAR AQUIFER LIFE. APPLICANTS AND ALL FUTURE OWNERS OF THE SUBDIVISION SHOULD BE AWARE THAT THE ECONOMIC LIFE OF A WATER SUPPLY BASED ON WELLS IN A GIVEN DENVER BASIN AQUIFER MAY BE LESS THAN EITHER THE 100 YEARS OR 300 YEARS INDICATED DUE TO ANTICIPATED WATER LEVEL DECLINES. FURTHERMORE, THE WATER SUPPLY PLAN SHOULD NOT RELY SOLELY ON NON-RENEWABLE AQUIFERS. ALTERNATE RENEWABLE WATER RESOURCES SHOULD BE ACQUIRED AND INCORPORATED IN A PERMANENT WATER SUPPLY PLAN THAT PROVIDES FUTURE GENERATIONS WITH A WATER SUPPLY

9. SEWAGE TREATMENT IS THE RESPONSIBILITY OF EACH INDIVIDUAL PROPERTY OWNER. THE EL PASO COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT MUST APPROVE EACH SYSTEM AND, IN SOME CASES THE DEPARTMENT MAY REQUIRE AN ENGINEER DESIGNED SYSTEM PRIOR TO PERMIT APPROVAL. THESE SYSTEMS MAY COST MORE TO DESIGN, INSTALL, AND MAINTAIN.

10. THE SUBDIVIDER(S) AGREES ON BEHALF OF HIM/HERSELF AND ANY DEVELOPER OR BUILDER SUCCESSORS AND ASSIGNEES THAT SUBDIVIDER AND/OR SAID SUCCESSORS AND ASSIGNS SHALL BE REQUIRED TO PAY TRAFFIC IMPACT FEES IN ACCORDANCE WITH EL PASO COUNTY ROAD IMPACT FEE PROGRAM RESOLUTION (RESOLUTION NO. 19-471), OR ANY AMENDMENTS THERETO, AT OR PRIOR TO THE TIME OF BUILDING PERMIT SUBMITTALS. THE FEE OBLIGATION, IF NOT PAID AT FINAL PLAT RECORDING, SHALL BE DOCUMENTED ON ALL SALES DOCUMENTS AND ON PLAT NOTES TO ENSURE THAT A TITLE SEARCH WOULD FIND THE FEE OBLIGATION BEFORE SALE OF THE PROPERTY.

11. ACCESS TO LOT 2 FROM WALKER ROAD SHALL BE LOCATED WITHIN THE COMMON ACCESS EASEMENT SHOWN HEREON. THE RESPONSIBILITY FOR CONSTRUCTION AND MAINTENANCE OF SAID ACCESS IS DESCRIBED IN THE "DECLARATION OF WATER COVENANTS AND EASEMENTS FOR HIGH FOREST ESTATES SUBDIVISION" AS RECORDED IN RECEPTION NO._____, OF THE RECORDS OF EL PASO COUNTY, COLORADO.

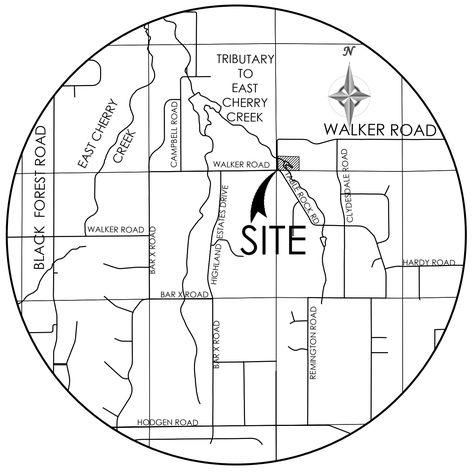
12. NOTICE: FUTURE PROPERTY OWNERS ARE ADVISED THAT EL PASO COUNTY'S APPROVAL OF THIS PLAT DOES NOT INCLUDE CERTIFICATION OF WATER RIGHTS OR THE STRUCTURAL STABILITY OF THE EXISTING STOCK POND LOCATED ON THE SUBJECT PROPERTY. THE STATE OF COLORADO HAS JURISDICTION REGARDING MODIFICATION OR ELIMINATION OF THE POND. EL PASO COUNTY SHALL NOT BE RESPONSIBLE OR LIABLE FOR SUCH MODIFICATIONS, REPAIRS, ENLARGEMENTS, OR REPLACEMENT AND THE COST THEREOF BY VIRTUE OF THIS SUBDIVISION APPROVAL.

13. ALL PROPERTY OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPER STORM WATER DRAINAGE IN AND THROUGH THEIR PROPERTY. PUBLIC DRAINAGE EASEMENTS AS SPECIFICALLY NOTED ON THE PLAT SHALL BE MAINTAINED BY THE INDIVIDUAL LOT OWNERS UNLESS OTHERWISE INDICATED. HOMEBUILDERS ARE RESPONSIBLE TO ENSURE PROPER DRAINAGE AROUND STRUCTURES, INCLUDING ELEVATIONS OF FOUNDATIONS AND WINDOW WELLS IN RELATION TO SIDE-LOT DRAINAGE EASEMENTS AND SWALES. HOMEOWNERS SHALL NOT CHANGE THE GRADE OF THE LOT OR DRAINAGE SWALES WITHIN SAID EASEMENTS, AS CONSTRUCTED BY THE BUILDER, IN A MANNER THAT WOULD CAUSE ADVERSE DRAINAGE IMPACTS TO PROPERTIES, STRUCTURES, FENCES, MATERIALS OR LANDSCAPING THAT COULD IMPEDE THE FLOW OF RUNOFF SHALL NOT BE PLACED IN DRAINAGE EASEMENTS.

14. THIS SUBDIVISION IS SURROUNDED BY AGRICULTURAL LAND. PROPERTY OWNERS MAY BE IMPACTED BY SOUNDS, SMELLS AND/OR ACTIVITIES ASSOCIATED WITH ACTIVE AGRICULTURAL PRACTICES, PURSUANT TO ARTICLE 3.5, TITLE 35, C.R.S., IT IS THE DECLARED POLICY OF THE STATE OF COLORADO TO CONSERVE, PROTECT, AND ENCOURAGE THE DEVELOPMENT AND IMPROVEMENT OF ITS AGRICULTURAL LAND FOR THE PRODUCTION OF FOOD AND OTHER AGRICULTURAL PRODUCTS. COLORADO IS A "RIGHT-TO-FARM" STATE PURSUANT TO C.R.S. 35-3.5-101, ET SEQ. LANDOWNERS, RESIDENTS AND VISITORS MUST BE PREPARED TO ACCEPT THE ACTIVITIES, SIGHTS, SOUNDS, AND SMELLS OF AGRICULTURAL OPERATIONS AS A NORMAL AND NECESSARY IMPACT OF LIVING IN A COUNTY WITH A STRONG RURAL CHARACTER AND A HEALTHY AGRICULTURAL SECTOR. STATE LAW PROVIDES THAT RANCHING, FARMING, OR OTHER AGRICULTURAL ACTIVITIES AND OPERATIONS SHALL NOT BE CONSIDERED TO BE NUISANCES SO LONG AS OPERATED IN CONFORMANCE WITH THE LAW AND IN A NON-NEGLIGENT MANNER. THEREFORE, ALL MUST BE PREPARED TO ENCOUNTER NOISES, ODORS, LIGHTS, MUD, DUST, SMOKE, CHEMICALS, MACHINERY ON PUBLIC ROADS, LIVESTOCK ON PUBLIC ROADS, STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES, AND PESTICIDES, AND ONE OR MORE OF WHICH MAY NATURALLY OCCUR AS A PART OF LEGAL AND NON-NEGLIGENT AGRICULTURAL OPERATIONS. (USED WHEN SUBDIVISION IS ADJACENT TO AN EXISTING AGRICULTURAL OPERATION SUCH AS FEEDLOT, FARMED FIELD, OR WHEN DETERMINED NECESSARY BY THE PROJECT MANAGER).

15. SOIL AND GEOLOGIC CONDITIONS: AREAS WITHIN THIS SUBDIVISION HAVE BEEN FOUND TO BE IMPACTED BY POTENTIAL GEOLOGIC CONSTRAINTS AS DETAILED IN THE SOIL, GEOLOGY, AND GEOLOGIC HAZARD STUDY FOR HIGH FOREST ESTATES SUBDIVISION FILING NO. 1 PREPARED BY ENTECH ENGINEERING, INC. AND DATED NOVEMBER 2, 2022. THE REPORT IS AVAILABLE IN THE EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT RECORDS (WWW.EPCDEVPLANREVIEW.COM) UNDER FILE NUMBER VR-23-011. THE REPORT INCLUDES MAPPING OF THE POTENTIAL HAZARD AREAS WITHIN THE SUBDIVISION. A DESCRIPTION OF THE AFFECTED LOTS, POTENTIAL CONSTRAINTS AND MITIGATION MEASURES ARE LISTED BELOW, NO AREAS OF THE SITE EXCEED 30% IN GRADE. INDIVIDUAL SOILS INVESTIGATIONS AND FOUNDATION DESIGNS FOR ALL NEW BUILDING SITES AND SEPTIC SYSTEMS ARE REQUIRED ONCE BUILDING LOCATIONS HAVE BEEN DETERMINED. SHOULD GROUNDWATER OR BEDROCK BE ENCOUNTERED WITHIN 6 FEET OF THE SURFACE, DESIGNED ONSITE WASTEWATER SYSTEMS WILL BE REQUIRED. DESIGNED ONSITE WASTEWATER SYSTEMS ARE ANTICIPATED ON THE LOT DUE TO SEASONAL SHALLOW GROUNDWATER, HIGH ROCK PERCENTAGE, AND RESTRICTIVE CLAY SOILS. WASTEWATER ABSORPTION FIELDS MUST BE LOCATED AT LEAST 100 FEET FROM ANY WELL, 50 FEET FROM DRAINAGES, FLOODPLAINES OR PONDED AREAS AND 25 FEET FROM DRY GULCHES. NO ELEMENTS OF WASTEWATER TREATMENT SYSTEMS SHOULD BE PLACED IN AREAS OF POTENTIALLY SEASONAL SHALLOW GROUNDWATER OR SEASONAL SHALLOW WATER.
   ARTIFICIAL FILL: LOT 1, MITIGATION MEASURES INCLUDE: OVEREXCAVATION, REPLACEMENT AND COMPACTION OF SOILS BENEATH FOUNDATIONS.
   EXPANSIVE SOILS: LOTS 1 & 2. MITIGATION MEASURES INCLUDE: SPECIAL FOUNDATION DESIGN, OVEREXCAVATION, REPLACEMENT AND COMPACTION OF SOILS BENEATH FOUNDATIONS.
   POTENTIALLY SEASONALLY HIGH GROUNDWATER: LOT 1 & 2. MITIGATION MEASURES INCLUDE: EXTENSION OF FOUNDATIONS A MINIMUM OF 30 INCHES BELOW GRADE, INSTALLATION OF FOUNDATION PERIMETER DRAINS AND GRADING TO DIRECT SURFACE FLOWS AWAY FROM STRUCTURES. ALL ORGANIC MATERIAL WOULD BE COMPLETELY REMOVED PRIOR TO ANY FILL PLACEMENT.
   SEASONAL SHALLOW WATER: LOTS 1 & 2 (DRAINAGE EASEMENT PROVIDED). MITIGATION MEASURES INCLUDE: MITIGATION MEASURES INCLUDE: EXTENSION OF FOUNDATIONS A MINIMUM OF 30 INCHES BELOW GRADE, INSTALLATION OF FOUNDATION PERIMETER DRAINS AND GRADING TO DIRECT SURFACE FLOWS AWAY FROM STRUCTURES, ALL ORGANIC MATERIAL WOULD BE COMPLETELY REMOVED PRIOR TO ANY FILL PLACEMENT.
   POTENTIALLY UNSTABLE SLOPES: LOT 1, MITIGATION MEASURES INCLUDE: ANY CUTS INTO THE HILLSIDE SHOULD BE NO STEEPER THAN 3:1 UNLESS HELD BY ENGINEER DESIGNED RETAINING WALLS.

16. LOT AND DENSITY DATA:
   - GROSS ACREAGE: 13.804 ACRES
   - TOTAL NUMBER OF LOTS IN THE SUBDIVISION: 2
   - GROSS DENSITY: 0.145 LOTS PER ACRE
   - ACREAGE DEDICATED TO PUBLIC STREETS: 0 ACRES
   - NET ACREAGE: 13.804 ACRES
   - NET DENSITY: 0.145 LOTS PER ACRE



VICINITY MAP

NOT TO SCALE

NOTES

1. BASIS OF BEARING: BEARINGS REFERRED TO HEREON ARE RELATIVE TO THE NORTH LINE OF LOT 1, BLOCK 7, WILLOW SPRINGS ESTATES BEARING S 88°05'30" E, MONUMENTED AS SHOWN HEREON.

2. ALL CORNERS SET WITH NO. 5 REBAR WITH SURVEYOR'S ALUMINUM CAP PLS 27605 AND FLUSH WITH THE GROUND, UNLESS OTHERWISE NOTED.

3. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY M.V.E., INC. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY AND TITLE OF RECORD, M.V.E., INC. RELIED UPON TITLE INSURANCE POLICY PREPARED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, ORDER NO. SR55111703 WITH EFFECTIVE DATE OF APRIL 17, 2023.

4. FLOODPLAIN STATEMENT: ACCORDING TO FEMA FLOOD INSURANCE RATE MAP NO. 08041C0310 G, DATED DECEMBER 7, 2018, THE PROPERTY IS LOCATED IN ZONE "X", (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).

5. LINEAL UNITS SHOWN HEREON ARE US SURVEY FEET.

6. PROPERTY IS SUBJECT TO TERMS THEREFORE GRANTED IN DECREE IN THE DISTRICT COURT, WATER DIVISION 1, STATE OF COLORADO RECORDED FEBRUARY 25, 2021, AT RECEPTION NO. 221037735.

7. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. (SECTION 13-80-105 C.R.S.).

8. 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.

9. LOT 1 IS SUBJECT TO A 15' RIGHT-OF-WAY RESERVATION TO EL PASO COUNTY. RIGHT-OF-WAY IS NOT BEING DEDICATED AT THIS TIME.

BE IT KNOWN BY THESE PRESENTS:

THAT PAULA B. DONOHOO, MARDELLE L. FRAZIER, AND BRIAN D. FRAZIER ARE THE OWNERS OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

LOT 1, BLOCK 7, WILLOW SPRINGS ESTATES, RECORDED IN PLAT BOOK H-2 AT PAGE 54 UNDER RECEPTION NO. 437944, RECORDS OF EL PASO COUNTY, STATE OF COLORADO.

SAID TRACT CONTAINS 601,308 SF (13.804 ACRES), MORE OR LESS.

SURVEYOR'S STATEMENT

I, RANDALL D. HENCY, A DULY REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT OF "HIGH FOREST ESTATES SUBDIVISION FILING NO. 1" TRULY AND CORRECTLY REPRESENTS THE RESULTS OF A SURVEY MADE ON 9/26/2022, 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 AND IS NOT A WARRANTY OR GUARANTEE EITHER EXPRESSED OR IMPLIED.

I ATTEST THE ABOVE ON THIS _____ DAY OF _____, 20____.

RANDALL D. HENCY
COLORADO REGISTERED PLS #27605
FOR AND ON BEHALF OF M.V.E., INC.

EASEMENTS

UNLESS OTHERWISE INDICATED, ALL SIDE, FRONT, AND REAR LOT LINES ARE HEREBY PLATTED ON EITHER SIDE WITH A 10 FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT UNLESS OTHERWISE INDICATED. ALL EXTERIOR SUBDIVISION BOUNDARIES ARE HEREBY PLATTED WITH A 20 FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT. THE SOLE RESPONSIBILITY FOR MAINTENANCE OF THESE EASEMENTS IS HEREBY VESTED WITH THE INDIVIDUAL PROPERTY OWNERS.

OWNER'S CERTIFICATE

THE UNDERSIGNED, BEING ALL THE OWNERS, MORTGAGEES, BENEFICIARIES OF DEEDS OF TRUST AND HOLDERS OF OTHER INTERESTS IN THE LAND DESCRIBED HEREIN, HAVE LAID OUT, SUBDIVIDED, AND PLATTED SAID LANDS INTO LOTS AND EASEMENTS AS SHOWN HEREON UNDER THE NAME AND SUBDIVISION OF HIGH FOREST ESTATES SUBDIVISION FILING NO. 1. THE UTILITY EASEMENTS SHOWN HEREON ARE HEREBY DEDICATED FOR PUBLIC UTILITIES AND COMMUNICATION SYSTEMS AND OTHER PURPOSES AS SHOWN HEREON. THE ENTITIES RESPONSIBLE FOR PROVIDING THE SERVICES FOR WHICH THE EASEMENTS ARE ESTABLISHED ARE HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTIES FOR INSTALLATION, MAINTENANCE, AND REPLACEMENT OF UTILITY LINES AND RELATED FACILITIES.

_____
PAULA B. DONOHOO, OWNER

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____ BY _____ AS _____.

MY COMMISSION EXPIRES _____

WITNESS MY HAND AND OFFICIAL SEAL _____
NOTARY PUBLIC

_____
MARDELLE L. FRAZIER , OWNER

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____ BY _____ AS _____.

MY COMMISSION EXPIRES _____

WITNESS MY HAND AND OFFICIAL SEAL _____
NOTARY PUBLIC

_____
BRIAN D. FRAZIER, OWNER

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____ BY _____ AS _____.

MY COMMISSION EXPIRES _____

WITNESS MY HAND AND OFFICIAL SEAL _____
NOTARY PUBLIC

BOARD OF COUNTY COMMISSIONERS CERTIFICATE

THIS PLAT FOR "HIGH FOREST ESTATES SUBDIVISION FILING NO. 1" WAS APPROVED FOR FILING BY THE EL PASO COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS ON THE _____ DAY OF _____, 20____, SUBJECT TO ANY NOTES SPECIFIED HEREON AND ANY CONDITIONS INCLUDED IN THE RESOLUTION OF APPROVAL. THE DEDICATIONS OF LAND TO THE PUBLIC (EASEMENTS) ARE ACCEPTED, BUT PUBLIC IMPROVEMENTS THEREON WILL NOT BECOME THE MAINTENANCE RESPONSIBILITY OF EL PASO COUNTY UNTIL PRELIMINARY ACCEPTANCE OF THE PUBLIC IMPROVEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAND DEVELOPMENT CODE AND ENGINEERING CRITERIA MANUAL.

_____
CHAIR, BOARD OF COUNTY COMMISSIONERS DATE

_____
PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR DATE

CLERK AND RECORDER

CLERK AND RECORDER:

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

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 AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY, COLORADO.

STEVE SCHLEIKER, RECORDER

BY: _____
DEPUTY

SCHOOL FEE: _____

BRIDGE FEE: _____

PARK FEE: _____

DRAINAGE FEE: _____

N

NOT TO SCALE

SUBMITTED:

1/16/2024

REVISIONS:

CONSULTANT
MVE, INC.
DAVID GORMAN, P.E.
1903 LELARAY STREET
COLORADO SPRINGS CO 80909
PH (719) 635-5736
FAX (719) 635-5450
DAVEG@MVECIVIL.COM

SURVEYOR
RANDALL D. HENCY
CO PLS NO. 27605
POLARIS SURVEYING, INC.
1903 LELARAY ST, STE 100
COLORADO SPRINGS, CO 80909
(719) 448-0844
DATE OF PREPARATION: 1/16/2024
DATE OF SURVEY: 9/26/2022

OWNERS OF RECORD
AT TIME OF PLATTING:
PAULA B. DONOHOO
MARDELLE L. FRAZIER
BRIAN D. FRAZIER
8855 WALKER ROAD
COLORADO SPRINGS CO 80908
(213) 792-7163

MINOR SUBDIVISION PLAT
HIGH FOREST ESTATES SUBDIVISION
FILING NO. 1

MVE, INC.
ENGINEERS SURVEYORS
1903 Lelaray Street, Suite 200
Colorado Springs CO 80909
719.635.5736 www.mvecivil.com

MVE PROJECT: 61188
MVE DRAWING: 61188-PLAT-CS
DATE: JANUARY 16, 2024
SHEET: 1 OF 2

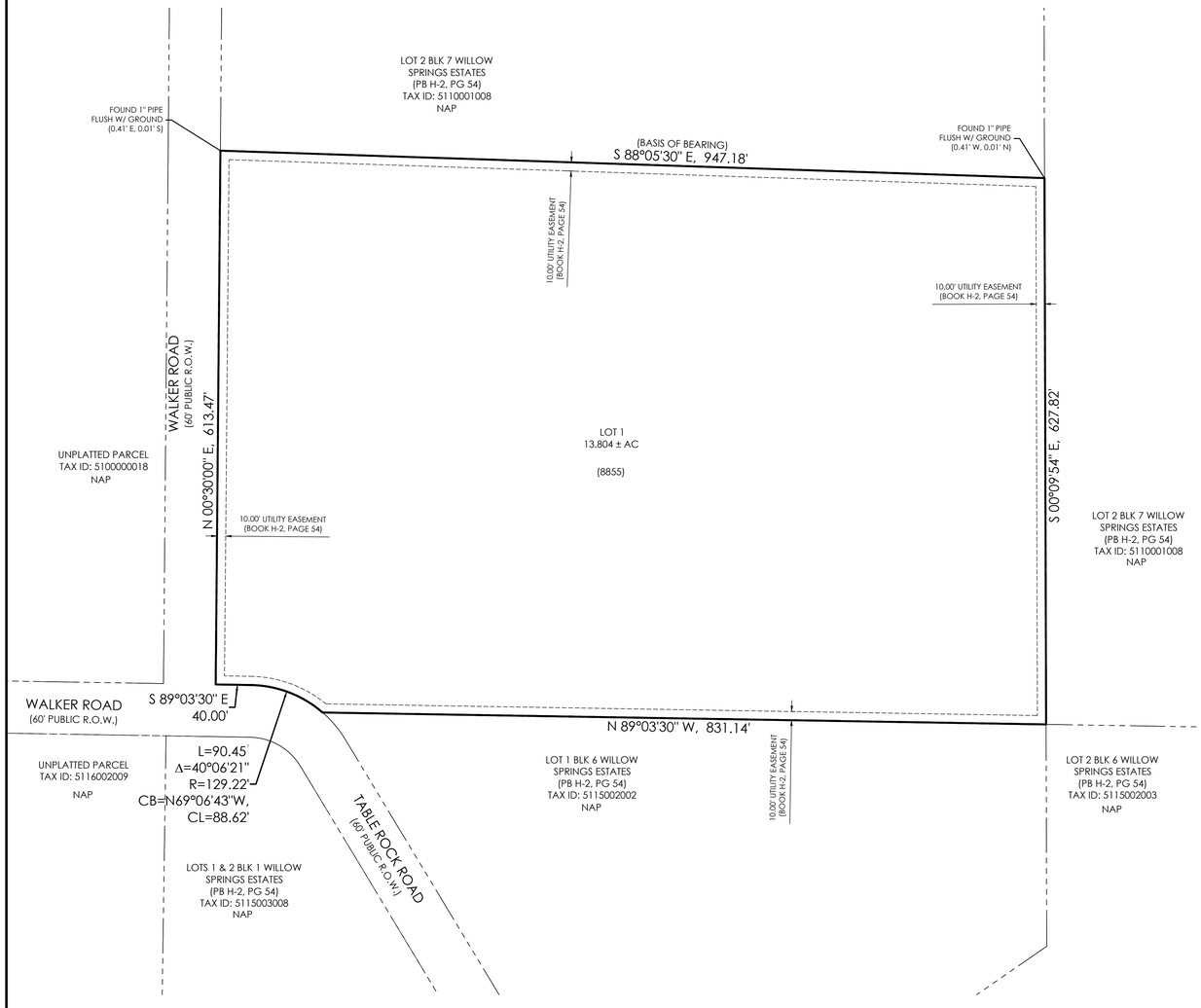
PCD FILE # VR-23-11

HIGH FOREST ESTATES SUBDIVISION FILING NO. 1

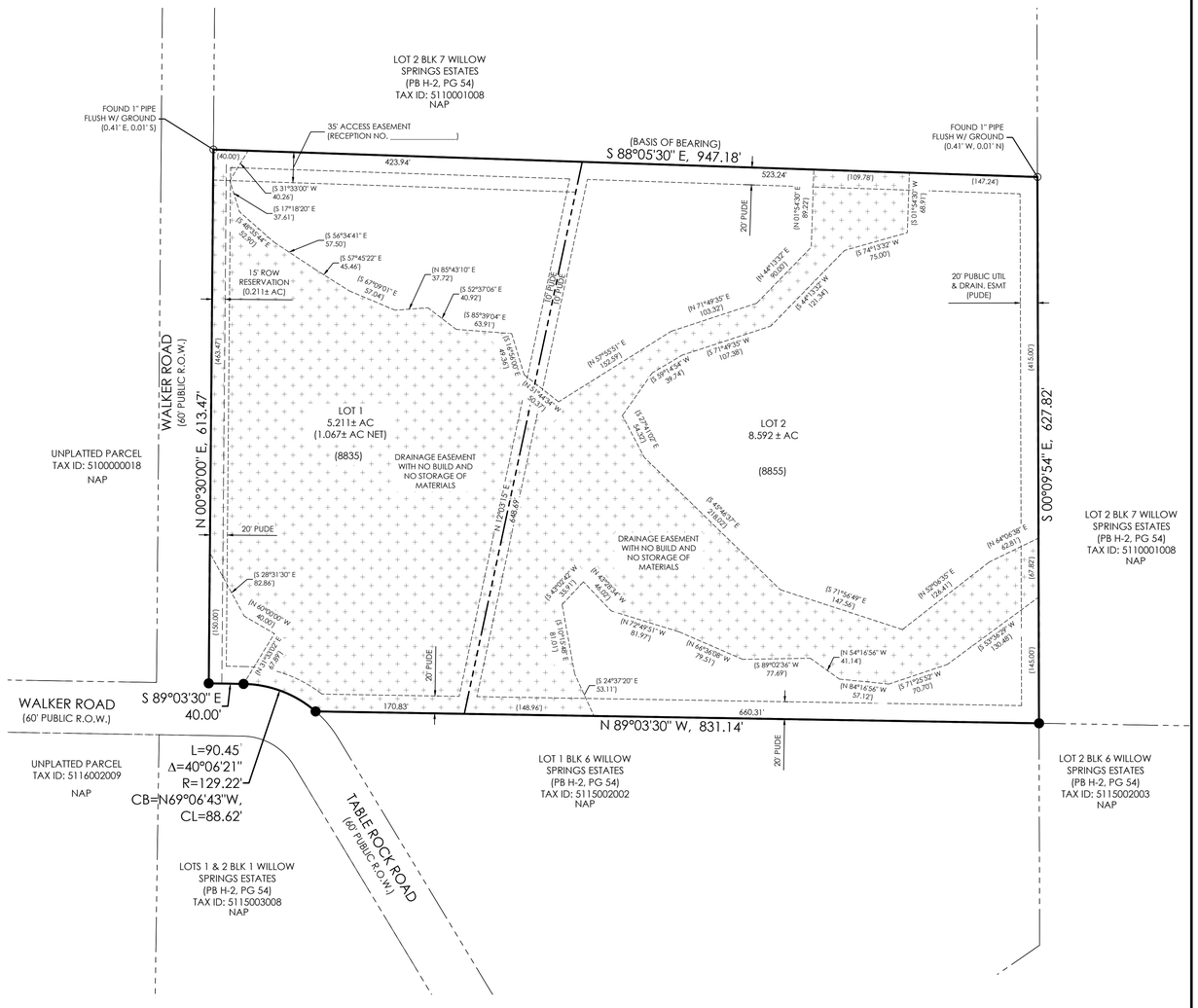
Exhibit A

A REPLAT OF LOT 1, BLOCK 7, WILLOW SPRINGS ESTATES

LOCATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN IN EL PASO COUNTY, COLORADO



"AS PLATTED"



"AS REPLATTED"

LEGEND

- PROPOSED SUBDIVISION BOUNDARY LINE
- PROPOSED LOT LINE
- SECTION LINE
- FOUND CORNER AS SHOWN
- SET #5 REBAR W/ ALUMINUM CAP MARKED "POLARIS, PLS 27605" FLUSH WITH THE GROUND
- (15980) ADDRESS NUMBER
- PUDE PUBLIC UTILITY AND DRAINAGE EASEMENT
- DRAINAGE EASEMENT WITH NO BUILD AND NO STORAGE OF MATERIALS
- NAP NOT A PART OF THIS SUBDIVISION (NO AREAS OUTSIDE OF THE SHOWN BOUNDARY ARE A PART OF THIS SUBDIVISION)

N

20 0 30 80 150

SCALE: 1"=80' 1:960

PCD FILE # VR2311

MINOR SUBDIVISION PLAT
HIGH FOREST ESTATES SUBDIVISION FILING NO. 1

MVE, INC.
ENGINEERS | SURVEYORS
1903 Lelaray Street, Suite 200
Colorado Springs CO 80909
719.635.5736 www.mvecivil.com

MVE PROJECT: 61188
MVE DRAWING: 61188-PLAT-PS
DATE: JANUARY 16, 2024
SHEET: 2 OF 2

221037735 2/25/2021 3:33 PM
PGS 12 $68.00 DF $0.00
Electronically Recorded Official Records El Paso County CO
Chuck Broerman, Clerk and Recorder
TD1000 N

Exhibit B

DISTRICT COURT, WATER DIVISION 1, CO Court Address: 901 9th Avenue, P.O. Box 2038 Greeley, CO 80632 Phone Number: (970) 475-2510	DATE FILED: February 25, 2021 6:34 AM CASE NUMBER: 2020CW3077
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: PAULA B. DONOHOO, MARDELLE L. FRAZIER, AND BRIAN D. FRAZIER IN EL PASO COUNTY	▲ COURT USE ONLY ▲ Case No.: 20CW3077 (Ref. 99CW119) (consolidated with Division 2 Case No. ~~20CW3027 pursuant to Order of~~ Panel on Multi-District Litigation 20MD15)

FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE

THIS MATTER comes before the Water Referee on the application filed by Paula B. Donohoo, Mardelle L. Frazier, and Brian D. Frazier on June 23, 2020. Having reviewed said application and other pleadings on file, and being fully advised on this matter, the Water Referee makes the following findings and orders:

FINDINGS OF FACT

1. The applicants in this case are Paula B. Donohoo, Mardelle L. Frazier, and Brian D. Frazier, whose address is 8855 Walker Rd., Colorado Springs, CO 80908 ("Applicants"). Applicants are the owners of the land totaling approximately 13.81 acres on which the structures sought to be adjudicated herein are and will be located, and are the owners of the place of use where the water will be put to beneficial use.

2. The Applicants filed this Application with the Water Courts for both Water Divisions 1 and 2 on June 23, 2020. The Applications was referred to the Water Referees in both Divisions 1 and 2 on or about June 23, 2020.

3. The time for filing statements of opposition to the Application expired on the last day of August 2020. No Statements of Opposition were timely filed.

4. A Motion for Consolidation of the Division 1 and Division 2 cases into Water Division 1 was filed with the Colorado Supreme Court on September 2, 2020. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on September 4, 2020. Chief Justice, Nathan B. Coats, granted the Motion for Consolidation by Order dated October 6, 2020.

5. On June 23, 2020, the Division 2 Water Court, on Motion from Applicants, ordered

that consolidated publication be made by only Division 1. On or near June 23, 2020, the Water Court, Division 1 ordered that publication occur in *The Transcript* within El Paso County.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On July 20, 2020 proof of publication in *The Transcript* was filed with Water Court Division 1. All notices of the Application have been given in the manner required by law.

7. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division No. 1 filed its Summary of Consultation Report dated September 30, 2020, and a Response to the Summary of Consultation Report was filed by the Applicants on October 6, 2020. Both the Summary of Consultation Report and Response have been considered by the Water Referee in the entry of this Ruling.

8. The Water Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties whether they have appeared or not. The land and water rights involved in this case are not within a designated groundwater basin.

GROUNDWATER RIGHTS

9. The Applicants requested the adjudication of underground water rights for the Donohoo Well Nos. 1 through 3, as constructed and as may be constructed to the Dawson aquifer, and additional or replacement wells associated therewith for withdrawal of Applicants' full entitlements of supply under the revised plan for augmentation decreed herein. The following findings are made with respect to such underground water rights:

10. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicants and consists of approximately 13.81 acres located in the SW¼ of Section 10, Township 11 South, Range 65 West of the 6th P.M., El Paso County, Colorado, as more particularly described as Lot 1, Block 7, Willow Springs Estates, also known as 8855 Walker Rd, Colorado Springs, CO, 80908. Applicants intend to subdivide the property into up to three (3) lots. All groundwater adjudicated herein shall be withdrawn from the overlying land.

11. In accordance with the notice requirements of C.R.S. § 37-92-302, lienholders of the Applicants' property were sent a Letter of Notice dated June 23, 2020. A Certificate of Notice was filed with the District Court, Water Divisions 1 and 2, on January 31, 2019.

12. Donohoo Wells Nos. 1 through 3: Donohoo Well Nos. 1 through 3 will be located on the Applicants' Property. Applicants are awarded the vested right to use Donohoo Well Nos. 1 through 3, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Revised Plan for Augmentation decreed herein. Upon entry of this decree and submittal by the Applicants of complete well permit applications and filing fees, the State Engineer shall issue new well permits for the Donohoo Well Nos. 1 through 3 pursuant to C.R.S. §37-90-

137(4), consistent with and references the Plan for Augmentation decreed herein.

13. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicants' Property. The Dawson aquifer underlying the Applicants' Property contains not-nontributary water, while the water of the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicants' Property are nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicants' Property that the Applicants have been deeded is as follows:

AQUIFER	Annual Average Withdrawal 100 Years (Acre Feet)	Annual Average Withdrawal 300 Years (Acre Feet)	Total Withdrawal (Acre Feet)
Dawson (NNT)	12.3	4.1	1,230
Denver (NT)	9.1	3.0	910
Arapahoe (NT)	6.3	2.1	630
Laramie-Fox Hills (NT)	3.8	1.26	380

14. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirements for wells in the Dawson aquifer require the replacement to the effected stream systems of actual stream depletions on an annual basis, to the extent necessary to prevent injurious effect, based upon actual aquifer conditions. Applicants shall not be entitled to construct a well or use water from the not-nontributary Dawson aquifer except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9)(c.5), including as decreed herein as concerns the Dawson aquifer.

15. Applicants shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicants' Property. Said amounts can be withdrawn over the 300-year life of the aquifers as set forth in El Paso County, Colorado Land Development Code §8.4.7(C)(1) which requirements also satisfy the 100-year life for the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or Applicants' water needs.

16. Applicants shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicants' Property, so long as the sum of the total withdrawals from wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of the decree herein, whichever comes first, and the annual volume of water which Applicants are entitled to withdraw from the aquifer underlying Applicants' Property, subject to the requirement that such banking and excess withdrawals do not violate the terms and conditions

of the plan for augmentation decreed herein and any other plan for augmentation decreed by the Court that authorizes withdrawal of the Denver Basin groundwater decreed herein.

17. Subject to the terms and conditions in the plan for augmentation decreed herein and final approval by the State Engineer's Office pursuant to the issuance of well permits in accordance with C.R.S. §§37-90-137(4) or 37-90-137(10), the Applicants shall have the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation, stock watering, and for storage and augmentation associated with such uses. The amount of groundwater decreed for such uses upon the Applicants' Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicants' Property and is to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided however, as set forth above, Applicants shall only be entitled to construct wells or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by the Court, including that revised plan for augmentation decreed herein.

18. Withdrawals of groundwater available from the nontributary aquifers beneath the Applicants' Property in the amounts determined in accordance with the provisions of this decree will not result in material injury to any other vested water rights or to any other owners or users of water.

PLAN FOR AUGMENTATION

19. The structures to be augmented are the Donohoo Well Nos. 1 through 3 as constructed, and to be constructed in the not-nontributary Dawson aquifer underlying the Applicants' Property, along with any additional or replacement wells associated therewith.

20. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation obligation for Donohoo Well Nos. 1 through 3, and any additional or replacement wells constructed to the Dawson aquifer requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary Donohoo Well Nos. 1 through 3, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are a reserved portion of Applicants' nontributary water rights in the Arapahoe and Laramie-Fox Hills aquifers. Applicants shall provide for the augmentation of stream depletions caused by pumping the Donohoo Well Nos. 1 through 3 as approved herein. Water use criteria as follows:

A. Use: The Donohoo Well Nos. 1 and 2 each pump up to1.3 acre feet of water per year, and the Donohoo Well No. 3 may pump up to 0.6 acre feet of water per year, or a maximum total of 3.2 acre feet being withdrawn from the Dawson aquifer annually, though should fewer than three lots be developed on Applicants' Property, each well thereon shall be entitled to

withdraw its proportional share of the total 3.2 acre feet available. Households will utilize an estimated 0.25 acre feet of water per year per residence, with remaining pumping entitlements available for other uses on the property, including, for example, irrigation of lawn and garden and the watering of up to eight horses or equivalent livestock, per residence The foregoing figures assume the use of three individual septic systems, with resulting return flows from each. Should Applicants subdivide Applicants' property into fewer than three lots, both depletions and return flows for the replacement of the same will be correspondingly reduced, though pumping for uses other than household use may be increased provided at all times septic return flows shall replace the maximum depletions resulting from pumping (19.25%) as described in this Paragraph 20.

B. Depletions: Maximum stream depletions over the 300-year pumping period will amount to approximately nineteen point two five percent (19.26%) of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.616 acre feet in year 300. Should Applicants' pumping be less than the total 3.2 annual acre feet described herein, or should fewer lots be developed, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. §37-90-137(9)(c.5), Applicants are required to replace actual stream depletions attributable to pumping of the maximum seven residential Dawson aquifer wells. Applicants have determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At the household use rate of 0.25 acre feet per residence per year, total of 0.75 acre feet (assuming three residences), 0.675 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented.

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Donohoo Well Nos. 1 through 3, Applicants will reserve the entirety of the nontributary Laramie-Fox Hills aquifer, and up to 610 acre-feet of water from the nontributary Arapahoe aquifer (subject to the 2% relinquishment requirement), accounting for actual stream depletions replaced during the plan pumping period as necessary to replace any injurious post pumping depletions. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be non-injurious. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive new well permits for the Donohoo Well Nos. 1 through 3 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

21. Because depletions occur to both the South Platte and Arkansas River systems

under the State's groundwater flow model, the Application in this case was filed in both Water Divisions 1 and 2. The return flows set forth above as augmentation will accrue to only the South Platte River system where most of the depletions will occur and where the Applicants' Property is located. Under this augmentation plan, the total amount of depletions will be replaced to the South Platte River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan subject to Paragraphs 40-44 herein.

22. This decree, upon recording, shall constitute a covenant running with Applicants' Property, benefitting and burdening said land, and requiring construction of well(s) to the nontributary Arapahoe and Laramie-Fox Hills aquifers and pumping of water to replace any injurious post-pumping depletions under this decree. Subject to the requirements of this decree, in order to determine the amount and timing of post-pumping replacement obligations, if any, under this augmentation plan, Applicants or their successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time. Pursuant to this covenant, the water from the nontributary Arapahoe and Laramie-Fox Hills aquifers reserved herein may not be severed in ownership from the overlying subject property. This covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights who would be materially injured by the failure to provide for the replacement of post-pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner of the Applicants' Property.

23. Applicants or their successors shall be required to initiate pumping from the Arapahoe and Laramie-Fox Hills aquifers for the replacement of post-pumping depletions when either: (i) the absolute total amount of water available from the Dawson aquifer allowed to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the Applicants or their successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Donohoo Well Nos. 1 through 3 have permanently ceased, (iii) a period of 10 consecutive years where either no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

24. Accounting and responsibility for post-pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (i) the period provided by statute; (ii) the period specified by any subsequent change in statute; (iii) the period required by the Court under its retained jurisdiction; (iv) the period determined by the State Engineer; or (v) the period as established by Colorado Supreme Court final decisions. Should Applicants' obligation hereunder to account for and replace such post-pumping stream depletions be abrogated for any reason, then the Laramie-Fox Hills aquifer groundwater reserved for such a purpose shall be free from the reservation herein and such groundwater may be used or conveyed by its owner without restriction for any post-pumping depletions.

25. The term of this augmentation plan is for a minimum of 300 years, however, the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated to such well or wells is not exceeded. Should the actual operation of

this augmentation plan depart from the planned diversions described in Paragraph 20 such that annual diversions are increased or the duration of the plan is extended, the Applicants must prepare and submit a revised model of stream depletions caused by the actual pumping schedule. This analysis must utilize depletion modeling acceptable to the State Engineer, and to this Court, and must represent the water use under the plan for the entire term of the plan to date. The analysis must show that return flows have equaled or exceeded actual stream depletions throughout the pumping period and that reserved nontributary water remains sufficient to replace post-pumping depletions.

26. Consideration has been given to the depletions from Applicants' use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicants, and the existence, if any, injury to any owner of or person entitled to use water under a vested water right.

27. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Donohoo Well Nos. 1 through 3. As a result of the operation of this plan for augmentation, the depletions from the Donohoo Well Nos. 1 through 3 and any additional or replacement wells associated therewith will not result in material injury to the vested water rights of others.

CONCLUSIONS OF LAW

28. The application for Revision of Plan for Augmentation was filed with the Water Clerks for Water Divisions 1 and 2, pursuant to C.R.S. §§37-92-302(1)(a) and 37-90-137(9)(c). These cases were properly consolidated before Water Division 1.

29. The Applicants' request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings pursuant C.R.S. §§37-92-302(1)(a), 37-92-203, and 37-92-305.

30. Subject to the terms of this decree, the Applicants are entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicants' Property, and the right to use that water to the exclusion of all others subject to the terms of this decree.

31. The Applicants have complied with C.R.S. §37-90-137(4), and the groundwater is legally available for withdrawal by the requested nontributary well(s), and legally available for withdrawal by the requested not-nontributary well(s) upon the entry of this decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). Applicants are entitled to a decree from this Court confirming its rights to withdraw groundwater pursuant to C.R.S. §37-90-137(4).

32. The Denver Basin water rights applied for in this case are not conditional water rights, but are vested water rights determined pursuant to C.R.S. §37-90-137(4). No applications for diligence are required. The claims for nontributary and not-nontributary groundwater meet the requirements of Colorado Law.

33. The determination and quantification of the nontributary and not-nontributary groundwater rights in the Denver Basin aquifers as set forth herein is contemplated and authorized by law pursuant to C.R.S. §§37-90-137, and 37-92-302 through 37-92-305.

34. The Applicants' request for Revision of Plan for Augmentation is contemplated and authorized by law. If administered in accordance with this decree, this revised plan for augmentation will permit the uninterrupted diversions from the Donohoo Well Nos. 1 through 3 without adversely affecting any other vested water rights in the Arkansas River and South Platte River or their tributaries and when curtailment would otherwise be required to meet a valid senior call for water pursuant to C.R.S. §§37-92-305(3),(5), and (8).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

35. All of the foregoing Findings of Fact and Conclusions of Law are incorporated herein by reference and are considered to be a part of this decretal portion as though set forth in full.

36. The Revision of Plan for Augmentation proposed by the Applicant is approved, subject to the terms of this decree.

37. The Applicants have furnished acceptable proof as to all claims and, therefore, the Revision of Plan for Augmentation Application, as requested by the Applicants, is granted and approved in accordance with the terms and conditions of this decree. Approval of this Application will not result in any material injury to senior vested water rights.

38. The Applicants shall comply with C.R.S. §37-90-137(9)(b), requiring the relinquishment of the right to consume two percent (2%) of the amount of the nontributary groundwater withdrawn. Ninety-eight percent (98%) of the nontributary groundwater withdrawn may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment.

39. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the Donohoo Well Nos. 1 through 3 so long as the return flows from the annual diversions associated with the Donohoo Well Nos. 1 through 3 accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicants or one of their successors or assigns is ever unable to provide the replacement water required, then the Donohoo Well Nos. 1 through 3 shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with

the laws, rules, and regulation of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein, as appropriate, shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

40. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristic, and that the Applicants need not refile, republish, or otherwise amend this application to request such adjustments. The Court further retains jurisdiction should the Applicants later seek to amend this decree by seeking to prove that post-pumping depletions are noninjurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 20.D.

A. At such time as adequate data may be available, Applicants or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 40 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to effect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicants, and the petitioning party.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty (60) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 40 concerning adjustments to the Denver Basin ground water rights based upon local aquifer conditions shall no longer be applicable. In the event of a protest being timely filed, or should the State Engineer's Office make no timely determination as provided in Paragraph 40.A., above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

41. Pursuant to C.R.S. §37-92-304(6), the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

42. As pertains to the Denver Basin groundwater supplies, the court shall retain continuing jurisdiction for so long as Applicants are required to replace depletions to the South Platte stream system, to determine whether the replacement of depletions to the South Platte stream system instead of the Arkansas stream system is causing material injury to water rights tributary to the Arkansas stream system.

43. Any person may invoke the Court's retained jurisdiction at any time that Applicants are causing depletions, including ongoing post-pumping depletions, to the Arkansas River system and is replacing such depletions to only the South Platte River system. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for the alleged material injury and to request that the Court reconsider material injury to petitioners' vested water rights associated with the above replacement of depletions under this decree, together with the proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof going forward to establish a prima facie case based on the facts alleged in the petition and that Applicants' failure to replace depletions to the Arkansas River system is causing material injury to water rights owned by that party invoking the Court's retained jurisdiction, except that the State and Division Engineer may invoke the Court's retained jurisdiction by establishing a prima facie case that material injury is occurring to any vested or conditionally decreed water rights in the Arkansas River system due to the location of Applicants' replacement water. If the Court finds that those facts are established, the Applicants shall thereupon have the burden of proof to show (i) that petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others.

44. Except as otherwise specifically provided in Paragraphs 40-43, above, pursuant to the provisions of C.R.S. §37-92-304(6), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of others, for a period of three years, except as otherwise provided herein. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court reconsider material injury to petitioner's vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicants shall thereupon have the burden of proof to show: (i) that the petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not

extended by the Court in accordance with the revisions of the statute, this matter shall become final under its own terms.

45. Pursuant to C.R.S. §37-92-502(5)(a), the Applicants shall install and maintain such water measurement devices and recording devices as are deemed essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicants are to install and maintain a totalizing flow meters on all Wells or any additional or replacement wells associated therewith. Applicants are also to maintain records and provide reports to the State Engineer or Division Engineers as instructed by said entities, on at least an annual basis.

46. The entire length of open bore holes shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicants may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement.

47. Groundwater production shall be limited to the subject aquifers. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

48. Each well shall be permanently identified by its permit number, this Water Court Case Number, and the name of the producing aquifer on the above-ground portion of the well casing or on the pump house.

49. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses which can be made of the groundwater to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the well permit application or which would be inconsistent with the requirements of this decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

50. This Ruling of Referee, when entered as a decree of the Water Court, shall be recorded in the real property records of El Paso County, Colorado. Copies of this ruling shall be mailed as provided by statute.

Date: February 2, 2021

John S. Cowan
Water Referee
Water Division One

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

Date: February 25, 2021

James F. Hartmann
Water Judge, Water Division 1