

RESOLUTION NO. 66-16

A RESOLUTION APPROVING AN AGREEMENT PROVIDING WATER AND WASTEWATER SERVICE TO LAND LOCATED OUTSIDE THE CITY LIMITS OF THE CITY OF COLORADO SPRINGS AND AGREEMENT TO ANNEX FOR THE PROPERTY LOCATED AT 5435 TURQUOISE DRIVE IN PARK VISTA ESTATES ADDITION

WHEREAS, Thomas A. Gustin and Joan M. Gustin as Trustees of the Thomas A. Gustin and Joan M. Gustin Living Trust ("Property Owner"), the owner of the property located at 5435 Turquoise Drive, (TSN: 6323104002), which is located in the Park Vista Estates Addition subdivision enclave, (the "Property") requested water and wastewater service for the Property directly from Colorado Springs Utilities for single-family residential use; and

WHEREAS, in accord with City Code section 7.6.210 City Council, in its legislative discretion, has the authority to authorize water and wastewater services outside the City without annexation; and

WHEREAS, "Residential Service – Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, requires prior City Council approval for Colorado Springs Utilities to provide end-use water service and wastewater service outside the corporate limits of the City of Colorado Springs in areas where water and wastewater service is available from Colorado Springs Utilities; and

WHEREAS, the Property is outside the City limits but within an enclave that is totally surrounded by the City of Colorado Springs and Colorado Springs Utilities' exclusive water and wastewater service territories; and

WHEREAS, Colorado Springs Utilities provided evidence to City Council that there is sufficient water capacity and pressure available to serve the Property and that there is sufficient wastewater treatment capacity available to serve the Property;

WHEREAS, water distribution facilities exist in the area and a main extension is not required to extend service to the Property; and

WHEREAS, wastewater collection facilities do not exist in the area and a main extension is required to extend service to the Property; and

WHEREAS, the Property Owner has executed an Agreement Providing Water and Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex ("Agreement to Annex"); and

WHEREAS, under the terms of the Agreement to Annex, as a condition of service, the Property Owner has irrevocably consented to, among other things, annex the Property to the City, transfer the groundwater rights associated with the Property to the City, and pay any costs associated with extending the wastewater main to the Property; and

WHEREAS, City Council has previously approved similar Agreements Providing Water and Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex for other residences in the Park Vista Estates Addition subdivision enclave and Colorado Springs Utilities is providing water and wastewater service for those other residences in accord with those agreements; and

WHEREAS, Colorado Springs Utilities recommends approval of the Agreement to Annex and the provision of water and wastewater service to the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

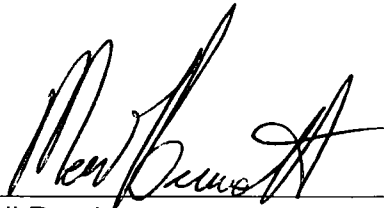
Section 1. The City Council finds that the request for water and wastewater service at the Property from Colorado Springs Utilities for single-family residential use is in the best interests of the City and meets all applicable requirements of the law.

Section 2. Pursuant to "Residential Service - Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, City Council hereby approves water and wastewater service outside the corporate limits of the City of Colorado Springs to the Property for single-family residential use in accord with the Agreement to Annex. The water and wastewater service may not be enlarged or the use changed without the prior written approval of the City. Any requests to enlarge service or change use shall be reviewed in accord with the then-current tariffs, rules, regulations, ordinances or other applicable law, and may require the Property Owner to execute a new Agreement to Annex.

Section 3. The City Council hereby approves the Agreement to Annex in the form attached hereto and authorizes the President of City Council to execute the

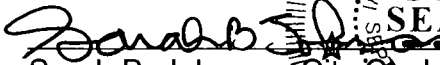
Agreement to Annex. The Chief Executive Officer of Utilities is authorized to administer the Agreement.


DATED at Colorado Springs, Colorado, this 28th day of June, 2016.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



**AGREEMENT PROVIDING
WATER AND WASTEWATER SERVICE TO LAND LOCATED
OUTSIDE THE CITY LIMITS
OF THE CITY OF COLORADO SPRINGS
AND
AGREEMENT TO ANNEX**

WHEREAS, the Thomas A. Gustin and Joan M. Gustin Living Trust ("Owner") is the owner of real property in El Paso County, Colorado, as shown on the location sketch map (to be done on 8 ½" x 11" paper) and as described and set forth in the attached Exhibit "A" (the "Property"); and

WHEREAS, the Property is subject to a deed of trust for which Ent Federal Credit Union, a federal credit union organized and existing under the laws of the United States of America, is the beneficiary ("Ent") recorded at Reception No. 214103938 of the records of the El Paso County Clerk and Recorder; and

WHEREAS, the Property is subject to a deed of trust for which Wells Fargo Bank, N.A., a bank organized and existing under the laws of the United States of America, is the beneficiary ("Wells Fargo") recorded at Reception No. 213019834 of the records of the El Paso County Clerk and Recorder; and

WHEREAS, the Ent and Wells Fargo are referred to herein collectively and individually as "financial institution;" and

WHEREAS, Owner owns upon the Property a building (or other structure(s)) used for residential purposes at 5435 Turquoise Drive (TSN: 6323104002) Colorado Springs, CO and has requested water and wastewater service from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the Property is located within an enclave, which enclave is surrounded by the corporate limits of the City and which enclave is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, § 30; and

WHEREAS, Thomas A. Gustin and Joan M. Gustin, as Trustees of and on behalf of Owner, have requested water and wastewater services from City; and

WHEREAS, the City has considered Owner's request for water and wastewater service, and has determined that the Property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex the Property at this time; and

WHEREAS, the City is under no obligation to furnish but is agreeable to furnishing water and wastewater service upon the terms and conditions set forth below because the City has determined that the extension of service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the premises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Water and Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex (the "Agreement") under the following terms and conditions:

1. The Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the Property to the City and the City shall not be required to seek legal action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the Property as if Owner had petitioned for annexation, whenever the Property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats, pay all required fees and execute any other documents the City determines are necessary to annex Owner's Property to the City. Owner agrees that the provisions of this Agreement are applicable to the Property described in Exhibit "A" or any portion of the Property. It is further agreed that Owner will not annex the Property or any portion, or incorporate the Property with any other municipality or special service district as described in Paragraph 10 without the prior written consent of the City.

2. It is specifically understood that the water and wastewater service to be furnished by the City is for only the single-family detached residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing water and wastewater outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner expressly agrees to be bound by and to comply with any and all City ordinances pertaining to water shortages, outdoor watering restrictions and water efficient landscaping. Owner understands and agrees that the City imposes charges for water and wastewater service for service provided outside of its corporate limits at a higher rate than applicable to the provision of services within the corporate limits of the City. Upon annexation of the Property to the City, charges for water and wastewater service subsequent to annexation shall be at the rate applicable to the provisions of service within the corporate limits of the City.

3. If Owner or Owner's successor in interest desires a different water or wastewater service than granted the Property in this Agreement, or desires to put the Property to a use other than that stated above, a change request shall be made to the City Council. If granted, the request shall be upon terms and conditions as may be

imposed by the Council. If the use of the Property for which the change request is made involves subdividing the Property or developing the Property for other residential, commercial or industrial purposes, the conditions for granting Owner's request shall include full compliance with the code, ordinances, rules, regulations and policies of the City.

4. If necessary, Owner will extend water and wastewater main lines or service lines to the Property, at Owner's expense, in accord with the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific water and wastewater request. A first-come, first-served policy will govern availability of supply.

5. In the event Owner is not required to extend water and wastewater service and lines and connect to the City's water and wastewater system at the time of entering into this Agreement, Owner shall connect to the City's water and wastewater system at Owner's expense when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for service. Capacity of the system or treatment facility is not guaranteed by this Agreement, but by availability of service at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay the pro-rata share of the water and wastewater treatment plant facility costs through the established water and wastewater system development charge. Owner will pay a pro-rata share of existing trunk sewer costs through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Collection facilities required to serve the site must be designed and constructed at Owner's expense and will be required to be oversized to serve adjacent undeveloped land within the basin planning area boundaries.

Owner agrees to participate with other developments on a fair share pro-rata basis in present and future off-site relief or other water and wastewater facilities.

6. Owner grants and conveys in perpetuity to the City the sole and exclusive right to use any and all ground water underlying or appurtenant to and used upon the Property. Owner irrevocably consents in perpetuity, personally and on behalf of any and all successors in title, pursuant to C.R.S. § 37-90-137(4), as now existing or later amended, to the withdrawal and use by the City of all ground water underlying said lands, and agrees to execute any additional or supplemental consents or instruments of conveyance thereof together with necessary rights of ingress and egress that may be required to vest in the City said right to appropriate, withdraw and use any and all ground water. Furthermore, if requested by the City, Owner agrees to convey to the City on or before the effective date of this Agreement, by a satisfactory irrevocable consent and/or a satisfactory instrument of conveyance, the right to withdraw for beneficial use any and all ground water underlying or appurtenant to and used upon the

Property. The City agrees that it shall obtain any and all easements necessary before construction and operation of any well on the Property. Wells constructed by the City outside the Property may withdraw ground water under Owner's Property without any additional consent. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the Property at the time of connection to the City's water system will be plugged and abandoned in accord with state rules and regulations. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accord with the permit or decree when the permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw this authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

7. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

8. Owner and the City acknowledge that if the Property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations and policies of the City including but not limited to the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, Utility Extension Policies as now existing or subsequently amended, except to the extent that compliance would be unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction. In the event compliance is unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or other governmental entity having jurisdiction over the Property, Owner shall post assurances to bring any improvements into compliance with City codes, ordinances, rules, regulations and policies.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require but shall not be limited to:

- a. Payment of all applicable water and wastewater fees or charges.
- b. Payment of required park and/or school fees in lieu of dedication to the City.
- c. Dedication, design and construction of required streets, sidewalks, curbs, gutters, drainage and utilities, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is more strict, or post acceptable financial assurances.
- d. Dedication of easements including but not limited to utility, drainage and other public improvements as required by the City Subdivision Code, or post acceptable financial assurances.

- e. Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
- f. Agreement to participate with other developments on a fair share pro-rata basis in present and future drainage and/or off-site relief or other water facilities.

9. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 8 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 8 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 8 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any water and wastewater service under this Agreement. This Agreement shall not be interpreted to require the City to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

10. Owner understands that certain infrastructure serving the Property may be required by the City to meet appropriate City standards at the time of utility service extension to the Property or at the time of annexation of the Property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects, including but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, drainage, water or wastewater systems necessary to serve the Property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may include, but are not limited to, special districts, general improvements districts, limited improvement districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the Property to the City or established prior to the annexation of the Property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the Property within any of the foregoing entities and assessing the Property a fair share of the cost of any improvements as determined by the City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute an agreement obligating Owner and the Property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

11. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. The financial institution expressly accepts and approves these covenants and agreements. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

12. As further consideration for the City providing water or wastewater service, if all or part of the Property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the services provided may be terminated by and at the sole option of the City.

13. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the Property specifically.

14. Owner will comply with all ordinances, codes, rules, regulations and policies of the City as now exist or may be amended or adopted in the future which are applicable to the Property under the terms of this Agreement, or are otherwise applicable to the Property after the annexation to the City.

15. Extension of water and wastewater service under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to extension of water and wastewater service to other similarly situated individuals or property.

16. As used in this Agreement, the term "Owner", shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns and shall also include the financial institution, if the financial institution, its successors, transferees, or assigns becomes owner of the Property through foreclosure or otherwise. A subsequent owner of the Property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the Property.

17. By executing this Agreement, each financial institution agrees that: (1) should it become owner of the Property through foreclosure or otherwise that it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

18. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may compel specific performance of this Agreement.

19. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.

Consent of Lien Holder

Wells Fargo Bank, N.A. ("Lien Holder") is the current holder of a Deed of Trust dated February 8, 2013 as recorded in Instrument No. 213019834 ("mortgage"), hereby consents to the Agreement Providing Water and Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex by the City of Colorado Springs to the Thomas A. Gustin and Joan M. Gustin Living Trust dated _____ ("Agreement") and joins in the execution of the Agreement solely as Lien Holder and hereby does agree that in the event of the foreclosure of said mortgage, or other sale of said property described in said mortgage under judicial or non-judicial proceedings, the same shall be sold subject to the Agreement.

Section 17 and the indemnity and hold harmless provisions of Section 9 of the Agreement will not be enforceable against Lien Holder.

SIGNED AND EXECUTED this 28 day of April, 2016.

By: *Ralph L. Hall*
Ralph L. Hall, Vice President

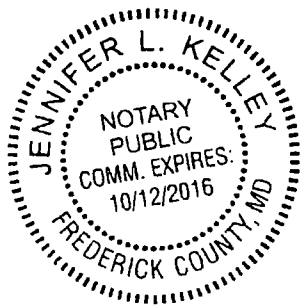
STATE of MARYLAND

COUNTY of FREDERICK

BEFORE ME, the undersigned authority, on this day personally appeared Ralph L. Hall, of Wells Fargo Bank, N.A. known to me to be the person and Officer whose name is subscribed to the foregoing instrument and who acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, as the act and deed of said Bank.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS

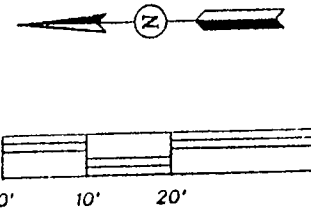
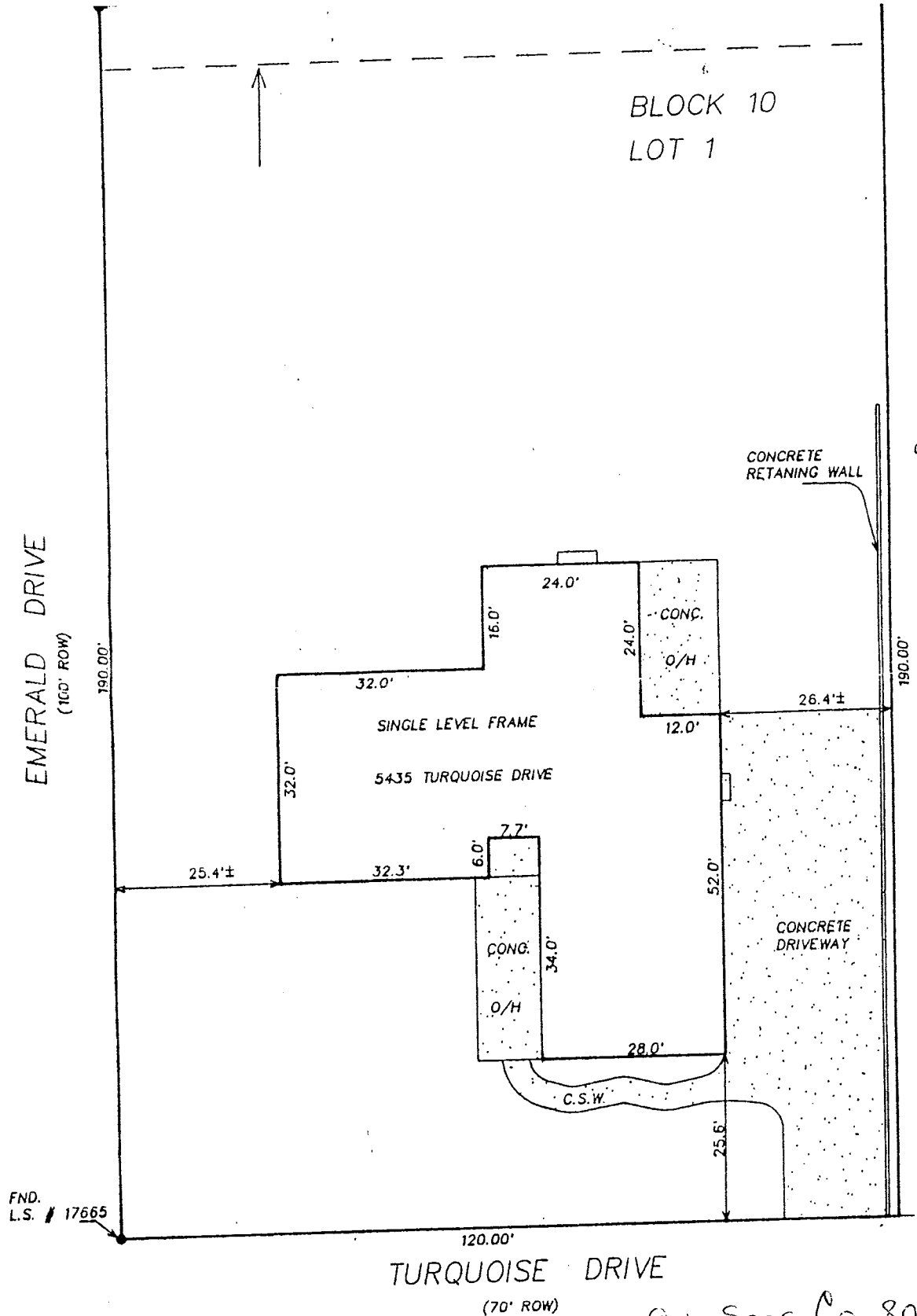
28th day of April, 2016.



Jennifer L. Kelley
Jennifer L. Kelley
Notary Public State of Maryland
My commission expires: 10/12/2016

EXHIBIT A

LOT 1, IN BLOCK 10, PARK VISTA ESTATES ADDITION, EL PASO COUNTY, COLORADO,
ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK Y AT PAGE 60, AS
AMENDED BY ENGINEERS STATEMENT RECORDED JUNE 20, 1957 IN BOOK 1635 AT
PAGE 191.



SCALE 1" = 20'

LOT 2

LEGAL:
LOT 10 BLOCK 1
PARK VISTA ESTATES ADD.

ADDRESS:
5435 TURQUOISE DRIVE

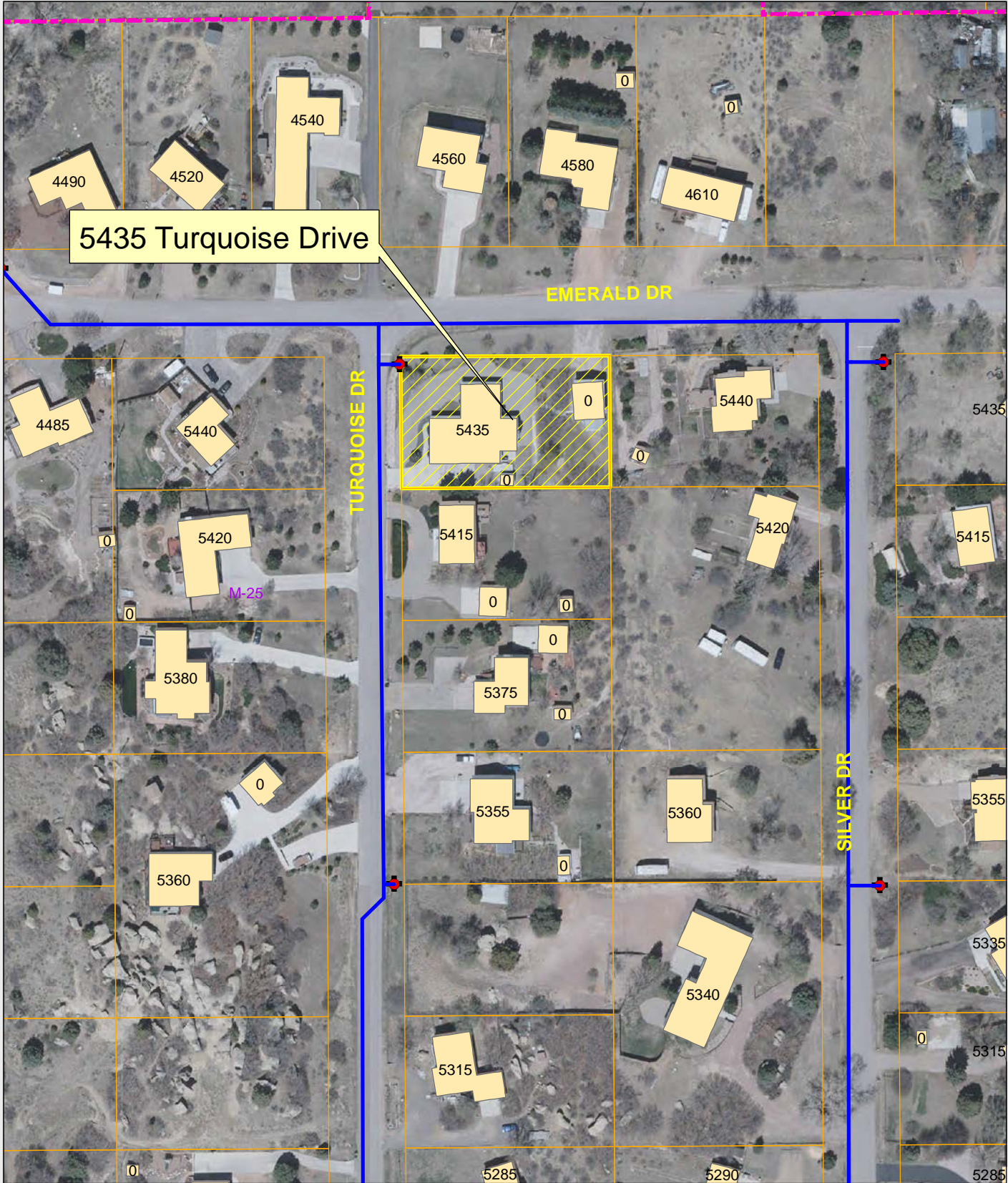
FLOOD CERTIFICATE:
THIS SITE IS NOT LOCATED
IN ANY DOCUMENTED FEMA
100 YEAR FLOOD PLAN.

FND.
L.S. # 17665

5435 TURQUOISE DR, Colo Spgs. Co 80918

LOT 1, IN BLOCK 10, PARK VISTA ESTATES ADDITION, EL PASO COUNTY,
COLORADO ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT
BOOK Y AT PAGE 60, AS AMENDED BY ENGINEERS STATEMENT
RECORDED JUNE 20, 1957 IN BOOK 1635 AT PAGE 191






Tax schedule 6323104002 / THOMAS GUSTIN and
Sloan GUSTIN (OWNERS)



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Legend

-  Manhole
-  Gravity Main
-  Water Main
-  Hydrant
-  5435 Turquoise Dr

**Water and Wastewater Service Request
Site Location**

**5435 Turquoise Drive
TSN: 6323104002**

Plot File Created: 10/26/2015