

ORDINANCE NO. 15-102

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS MOUNTAIN VALLEY PRESERVE CONSISTING OF 44.71 ACRES

WHEREAS, pursuant to Article II, Section 30 of the Colorado Constitution and Section 31-12-101, *et seq.*, C.R.S., known as the Municipal Annexation Act of 1965, as amended (the "Annexation Act"), persons comprising one hundred percent (100%) of the landowners and owning one hundred percent (100%) of that certain territory known as Mountain Valley Preserve, more specifically described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property") filed a Petition for Annexation with the City Clerk of the City of Colorado Springs; and

WHEREAS, the City Council of the City of Colorado Springs, after proper notice as required by Section 31-12-108 C.R.S., held a hearing on December 8, 2015 pertaining to the annexation of the Property in accord with Section 31-12-109; and

WHEREAS, in accord with Section 31-12-110 of the Annexation Act, the City Council determined, by resolution, that the applicable provisions of Section 30 of Article II of the Colorado Constitution and Section 31-12-104 and 105 of the Annexation Act have been met, an election is not required under Section 31-12-107(2) of the Annexation Act, and no additional terms and conditions are to be imposed on the annexation of the Property; and

WHEREAS, the City Council has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

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

Section 1. The Property, known as Mountain Valley Preserve and more specifically described on the attached Exhibit "A", is hereby annexed to the City of Colorado Springs.

Section 2. When this annexation is complete, the Property shall become

a part of the City of Colorado Springs for all intents and purposes on the effective date of this ordinance, provided that the conditions of Section 31-12-113(2) C.R.S. are satisfied, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

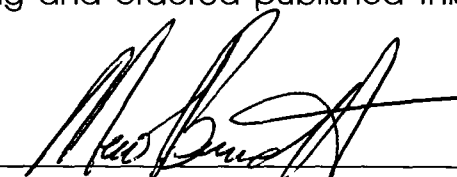
Section 3. The annexation agreement between the owners of the Property and the City, attached hereto as Exhibit "B" and incorporated herein by reference, (the "Annexation Agreement") is hereby approved.

Section 4. The Mayor is hereby authorized to execute the Annexation Agreement.

Section 5. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 8<sup>th</sup> day of December, 2015.

**Finally passed:** January 12, 2016

  
\_\_\_\_\_  
City Council President

**Mayor's Action:**

Approved on January 15, 2016

Disapproved on \_\_\_\_\_, based on the following objections:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

John W. Suthers  
Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
City Council President

ATTEST:

Sarah B. Johnson  
Sarah B. Johnson, City Clerk

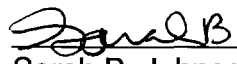



CPC A 14-00144 / MH

OK  
TS

I HEREBY CERTIFY, that the foregoing ordinance entitled **“AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS MOUNTAIN VALLEY PRESERVE CONSISTING OF 44.71 ACRES”** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on December 8, 2015; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 12<sup>th</sup> day of January, 2016, and that the same was published in full, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 15<sup>th</sup> day of January, 2016.

  
Sarah B. Johnson, City Clerk



1<sup>st</sup> Publication Date: December 11, 2015

2<sup>nd</sup> Publication Date: January 20, 2016

Effective Date: January 25, 2016

Initial: SBS  
City Clerk

# EXHIBIT A

LEGAL DESCRIPTION – Mountain Valley Preserve Annexation

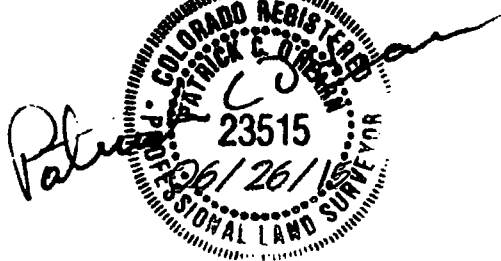
June 26, 2015

A TRACT OF LAND CONTAINING ALL THAT REAL PROPERTY DESCRIBED IN THOSE DEEDS RECORDED AS RECEPTION No. 099052711 AND AS RECEPTION No. 214089843 IN THE RECORDS OF THE OFFICE OF THE CLERK AND RECORDER OF EL PASO COUNTY COLORADO, TOGETHER WITH A PORTION OF THE RIGHT-OF-WAY OF NORTH MARKSHEFFEL ROAD, ALL LOCATED IN THE WEST HALF OF SECTION 16 AND THE EAST HALF OF SECTION 17, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, FURTHER DESCRIBED AS FOLLOWS:

“COMMENCING” AT THE SOUTHWEST CORNER OF SAID SECTION 16, AND CONSIDERING THE WEST LINE OF SAID SECTION 16 TO BEAR NORTH 00°21’12” WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE NORTH 00°21’12” WEST, ALONG SAID WEST LINE, A DISTANCE OF 1992.82 FEET TO THE “POINT OF BEGINNING”; THENCE SOUTH 89°10’48” WEST, ALONG THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID TRACT DESCRIBED AT RECEPTION No. 214089843, A DISTANCE OF 60.00 FEET TO A POINT ON THE EASTERLY LINE OF THE LIMITS OF THE CITY OF COLORADO SPRINGS AS DESCRIBED IN ANNEXATION ORDINANCE No. 85-82 AND RECORDED IN BOOK 5108 AT PAGE 198, SAID EL PASO COUNTY RECORDS; THENCE NORTH 00°21’12” WEST, ALONG SAID EASTERLY LINE AND ALONG A LINE LYING 60.00 FEET WESTERLY OF AND PARALLEL WITH SAID WEST LINE OF SECTION 16, A DISTANCE OF 2672.08 FEET TO A POINT ON THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID TRACT DESCRIBED AT RECEPTION No. 099052711; THENCE NORTH 88°54’34” EAST, ALONG SAID NORTHERLY LINE AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 729.95 FEET; THENCE SOUTH 00°15’22” EAST, A DISTANCE OF 1014.16 FEET TO THE NORTHEAST CORNER OF SAID TRACT DESCRIBED AT RECEPTION No. 214089843; THENCE SOUTH 00°21’12” EAST, ALONG THE EAST LINE OF SAID TRACT, A DISTANCE OF 1661.38 FEET; THENCE SOUTH 89°10’48” WEST, ALONG THE SOUTH LINE OF SAID TRACT AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 668.19 FEET TO THE “POINT OF BEGINNING”.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 44.716 ACRES OR 1,947,844 SQUARE FEET, MORE OR LESS.

I, PATRICK C. O’HEARN, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.



PATRICK C. O’HEARN PLS No. 23515  
for and on behalf of  
DREXEL, BARRELL & CO.  
3 SOUTH 7<sup>TH</sup> STREET  
COLORADO SPRINGS, COLORADO 80905  
719-260-0887

## MOUNTAIN VALLEY PRESERVE ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, dated this 12 day of January, 2015, is between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation ("City"), and Peakmark Heights, LLC, a Colorado limited liability company, The Dominic and Vivian M. Zazzaretti Trust, and The Walter Family Trust (collectively "Owner" or "Property Owner"). The City and the Owner are referred to herein collectively as the "Parties" and each individually as a "Party".

### I. INTRODUCTION

Owner owns all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A (the "Property"). All references to the "Property" or to the "Owner's Property" are to the property described in Exhibit A.

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. Owner will be required to expend substantial amounts for installation of infrastructure needed to service the Property and, therefore, desires to clarify Owner's obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Owner. Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the Parties, the City and Owner agree as follows.

### II. ANNEXATION

Owner has petitioned the City for annexation of the Property. The annexation will become effective upon the effective date of the ordinance documenting final approval by the City Council of the annexation (the "annexation ordinance") after satisfying all conditions precedent to annexation identified in this Agreement and the recording of (a) certified copies of the annexation ordinance and the annexation plat in accordance with C.R.S. § 31-12-113; (b) a fully-executed copy of this Agreement; and (c) fully-executed Special Warranty Deed(s) and Irrevocable Consent to the

Appropriation, Withdrawal, and Use of Groundwater, substantially in the same form as the attached Exhibit B, with the El Paso County Clerk and Recorder.

III.  
LAND USE

The Mountain Valley Preserve Concept Plan for the Property has been proposed and submitted to the City for approval. Once the Concept Plan has been approved by the City, Owner will comply with the approved Concept Plan or an amended Concept Plan approved in accord with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

IV.  
ZONING

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for the Owner's Property shall be Planned Unit Development with Airport Overlay (PUD/AO) upon annexation. Owner acknowledges and understands that the City Council determines what an appropriate zone is for the Property, and this recommendation does not bind the City Council to adopt a PUD/AO zone for the Property.

B. Change of Zoning. A change of zone request shall conform to the Concept Plan, as approved or as amended by the City in the future. Rezoning in accord with the zones reflected on the Concept Plan will occur prior to actual development of the site.

V.  
PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to the property which, after being constructed by Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: (1) Utilities for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and

telecommunications (Refer to Chapter 12 of the City Code, Section VI. Utilities and Section VII. Water Rights of this Agreement.); (2) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; (3) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; (4) Arterial roadway bridges; (5) Parks; (6) Schools; and (7) Other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall be under the provisions of the Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. N/A

C. Streets and Traffic Control. Unless agreed to elsewhere in this Agreement Owner agrees to construct, at the Owner's expense, those street and/or traffic improvements adjacent to or within the Property. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. Owner shall not be entitled to the benefits of provisions of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) for any streets and/or traffic improvements constructed in accordance with this Agreement. Owner shall not be entitled to City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property.

1. On-Site or Adjacent Streets. The obligations of Owner in this subsection are assignable to subsequent owners and/or developers of the Property.

a. Marksheffel Road: Where the property is adjacent to Marksheffel Road Owner shall dedicate twenty (20) feet of road right-of-way required for future Marksheffel Road improvements. Owner has no construction responsibilities for Marksheffel Road as this is a PPRTA 2 project.

2. Off-Site Streets: None

3. Traffic Control Devices. Owner shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City. The Owner of Dublin Towne Centre is specifically responsible for the one-time \$125,000.00 contribution for the signal at the intersection of Dublin Boulevard and the public collector street (Mountain Dale Drive) per the Dublin Towne Centre



Annexation Agreement. The one-time contribution shall be paid at the time of the first building permit approval within Dublin Towne Centre. The City is responsible to install said signal when the intersection warrants a traffic signal.

- a) The City reserves the right to restrict the proposed intersections on Marksheffel Road at Tarren Heights and Ryker Drive to a right-in/right-out or  $\frac{3}{4}$  movement if traffic operations safety warrants.

4. Street Cost Recovery. N/A

D. Drainage. A Master Development Drainage Plan shall be prepared and submitted by Owner to the City and approved by the City Engineer. Final Drainage Reports and Plans shall be prepared and submitted by Owner to the City and approved by the City Engineer, prior to recording subdivision plats. Owner shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge and detention pond fees and the reimbursement for drainage facilities constructed. Owner shall be responsible for conformance with the Sand Creek Drainage Basin Planning Study.

E. Parks  
Future residential uses are subject to standard parks fees.

F. Schools  
Future residential uses are subject to standard school fees.

G. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands dedicated within the Property will be built by Owner without reimbursement by the City or the School District.

VI.  
UTILITY SERVICES

A. Colorado Springs Utilities' (CSU) Services: CSU's water, non-potable water, wastewater, electric, streetlight, and gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant meets all applicable City ordinances and regulations, and applicable CSU tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services

is contingent upon the terms detailed herein and the dedication of public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU system facilities that currently exist or that may exist at the time of the proposed extension.

Owner shall ensure that the connection and/or extension of Utility Services to the Property are in accord with all codes and regulations in effect at the time of Utility Service connection and/or extension, including but not limited to CSU's tariffs, rules, and policies, City ordinances, resolutions, and policies, and Pikes Peak Regional Building Department codes. Further, as specified herein below, Owner acknowledges responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU.

CSU's connection requirements may require the Owner to provide a bond(s), or to execute a Revenue Guarantee Contract or other CSU-approved guarantee for the extension of any Utility Service before CSU authorizes the extension of Utility Services and/or other utility systems improvements, and/or any request for service connection to the Property by Owner. Owner acknowledges that such connection requirements shall include Owner's payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service, and any costs CSU incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below.

Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owner is responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owner acknowledges that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owner upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future.

**B. Dedications and Easements:** Notwithstanding anything contained in Section XI of this Agreement to the contrary, Owner, at Owner's sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that CSU determines are required for all utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system, including but not limited to, any access roads, gas

regulation or electric substation sites, electric transmission and distribution facilities, water storage reservoir/facility sites, and wastewater or water pump station sites. CSU shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owner shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU. Owner shall pay all fees and costs applicable to and/or associated with the platting of the real property to be dedicated to the City, and all fees and costs associated with the conveyance of real property interests by plat or by separate instrument, including but not limited to, Phase 1 and Phase 2 environmental assessments (a Phase 2 will be required only in the event the Phase 1 recommends it), 'closing' costs, title policy fees, and recording fees for any deeds, permanent or temporary easement documents, or other required documents. Dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and any applicable CSU policies and procedures, and shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form without modification or as approved by CSU.

If Owner, with prior written approval by CSU, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owner's sole cost and expense. If CSU determines that Owner's relocation or alteration requires new or updated easements, Owner shall convey those easements prior to relocating or altering the existing utility facilities using CSU's then-current Permanent Easement Agreement form without modification or as approved by CSU. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

C. Extension of Utility Facilities by CSU: Subject to the provisions of this Article, including sections A and B above, and all applicable CSU tariffs, rules, regulations, and standards, CSU will extend electric and gas service to the Property if CSU determines that there will be no adverse effect to any Utility Service or utility easement. Owner shall cooperate with CSU to ensure that any extension of gas or electric facilities to serve the Property will be in accord with CSU's Line Extension and Service Standards.

1. Natural Gas Facilities: If prior to annexation any portion of the Property is located outside CSU's gas service territory, then upon annexation, CSU will acquire the gas service territory within the Property from the then-current gas service provider. Accordingly, Owner shall be solely responsible for all costs and expenses, including but not limited to attorneys' fees that CSU incurs due to any Colorado Public Utilities Commission ("CPUC") filings made or arising from annexation of the Property. Owners shall support and make any CPUC filings necessary to support CSU's filings to the CPUC.
2. Electric Facilities:
  - A. If any portion of the Property is located outside CSU's electric service territory, then upon annexation:
    1. CSU will acquire the electric service territory within the Property that is not served by CSU from the then-current electric service provider in accordance with C.R.S. §§ 40-9.5-201 *et seq.*, or 31-15-707;
    2. Owners shall be solely responsible for providing the just compensation for electric distribution facilities and service rights specified in C.R.S. §§ 40-9.5-204 plus all costs and fees, including but not limited to attorneys' fees, that CSU incurs as a result of or associated with the acquisition of such electric service territory; and
    3. Owners shall be solely responsible for all costs: (a) to remove any existing electric distribution facilities within the Property that were previously installed by the then-current electric service provider ("Existing Facilities"); and (b) to convert any overhead electric lines to underground service lines ("Conversion").
  - B. Within 30 days of Owner's receipt of an invoice for the following:
    1. Owners shall pay the then-current electric service provider, directly, for the just compensation specified in C.R.S. §§ 40-9.5-204 (1) (a) and 40-9.5-204 (1) (b); and
    2. If the then-current electric service provider removes the Existing Facilities, then Owners shall pay the then-current electric service provider directly for the removal of any Existing Facilities.
  - C. Further, Owners shall pay CSU the just compensation specified in C.R.S. §§ 40-9.5-204 (1) (c) and 40-9.5-204 (1) (d) within 30 days of Owners' receipt of an invoice for such costs.
  - D. Owners shall also pay for any Conversion required by CSU as a result of such annexation concurrent with the execution of a contract between the Owners and CSU that specifies the terms of Conversion.
  - E. CSU, may require Owners to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities.
3. Water and Wastewater Facilities by CSU: The Owner shall pay any advance recovery-agreement charges, or other fees or charges that are not currently

approved by CSU for the Property, but which may become applicable as a result of any on-site or off-site water or wastewater system facilities that CSU or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, the Owner shall be subject to cost recovery for the engineering, materials and installation costs incurred by CSU in its design, construction, upgrade or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations or treatment facilities, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances that CSU, determines are necessary to serve the Property.

D. Water and Wastewater System Extensions by Owners: Owner must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owner's sole cost and expense in accord with all applicable CSU tariffs, rules, regulations, including CSU's Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for water or wastewater service. Consistent with City Code 7.7.1102 (B), Owner shall complete the design, installation and obtain preliminary acceptance of such utility facilities prior to CSU's approval of Owner's water and wastewater service requests.

Owner shall be solely responsible for all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by CSU. Further, Owner acknowledges that CSU may require that such water or wastewater system facilities be larger than necessary to serve the Property itself and may require the Owners to participate with other development projects on a fair-share, pro rata basis in any necessary off-site system facilities improvements. In the event CSU requires such water and wastewater systems to be larger than necessary to serve the Property itself, then Owner may seek reimbursement as provided in CSU's Utilities Rules and Regulations.

The plans, specifications and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances are each subject to CSU's inspection and written acceptance, and CSU shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until CSU provides written approval of Owner's water or wastewater construction plans and copies of such

approved plans are received by CSU. Owner may only connect newly-constructed facilities to CSU's existing water or wastewater system upon CSU's inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owner acknowledges that a Preliminary Utility Plan, Wastewater Master Facility Report, Hydraulic Grade Line Request Form, and Hydraulic Analysis Report (as determined by CSU) are required and must be completed and approved by CSU.

The water distribution system facilities must meet CSU's criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. Also, to ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by CSU.

Further, Owner recognizes that the extension of water system facilities may affect the quality of water in CSU's water system. Consequently, Owner acknowledges responsibility for any costs that CSU determines necessary to incur in order to maintain water quality in its system as a result of Owner's water system extensions, including but not limited to, the cost of any lost water, materials and labor from pipeline-flushing maintenance activities, temporary pipeline loop extensions, or other appurtenances and measures that CSU determines are necessary to minimize pipeline flushing and to maintain water quality (Water-quality Maintenance Costs). Owner shall reimburse CSU for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of CSU. Subject to the provisions of the Article of this Agreement that is labeled "WATER RIGHTS", CSU's tariffs, policies, and/or contract agreements, as may be modified from time to time, shall govern the use of all Utilities Services, including but not limited to, groundwater and non-potable water for irrigation use by the Owner for the Owner's exclusive use.

Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation, the Property is subject to subsequent inclusion into the

boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of the District. Further, notice is hereby provided that, after inclusion of the Property into the boundaries of the District, the Property shall be subject to a property tax mill levy for the purposes of meeting the financial obligations of the District. The Owners acknowledges that water service for the Property will not be made available by CSU until such time as the Property is formally included within the boundaries of the District. District inclusion requires consent by the Federal Bureau of Reclamation ("Reclamation"). The Owners shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain Reclamation's consent to include the Property into the District.

## VII. WATER RIGHTS

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as "the Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property. The Deed shall be recorded concurrent with the recording of the annexation agreement, annexation plat and annexation ordinance at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner.

Upon annexation of the Property, any wells or groundwater developed by Owner prior to annexation will become subject to CSU's applicable tariffs, Rules and Regulations, and rates as amended in the future. Owner's uses of groundwater shall be subject to approval by the City and CSU, and shall be consistent with CSU's standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future. Notwithstanding the foregoing, subject to the approval of City Council, Owner shall be permitted to continue using the existing wells on the Property and withdrawing and using the groundwater consistent with the terms and conditions of the Colorado Division of Water Resources Well Permit Nos. 52366, 38398 and 26235-A ("Well Permits") until such time as CSU's water supply system is extended to the Property.

At that time, the Owner shall: (1) disconnect the wells and connect to CSU's water supply system in accordance with CSU's Water Line Extension and Service Standards; (2) plug and abandon the wells in accordance with all applicable regulations; and (3) provide notice of such plugging and abandonment to CSU. If after connection to CSU's water supply system the Owner desires to continue use of the wells exclusively for nonpotable irrigation purposes in accordance with the terms and conditions of Well Permit No. 52366, 38398 and 26235-A, then the Owner shall provide CSU with prior written notification of such nonpotable irrigation use and provisions (2) and (3) of this section shall not apply to any wells being used for non-potable irrigation, provided however, that Owner makes such modifications to the wells as necessary to comply with CSU's cross-connection requirements and receives CSU's written confirmation that such nonpotable use complies with CSU's cross-connection requirements and is consistent with the terms and conditions of the Well Permits. No commingling of the wells and CSU's potable water supply will be permitted. City Council must consent to the terms of this paragraph by resolution as a condition precedent to this annexation of the Property.

## VIII. FIRE PROTECTION

Owner acknowledges that the Property is located within the boundaries of the Falcon Fire Protection District (the "Fire District") and is subject to property taxes payable to the Fire District for its services. Owner further acknowledges that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire District until such time as the Property is excluded from the boundaries of the Fire District. After annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire District unless and until the Property is excluded from the Fire District. After annexation, the Property will be assessed property taxes payable to both the City and the Fire District until such time as the Property is excluded from the boundaries of the Fire District.



Owner understands and acknowledges that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City after annexation, Owner, or if the Property has been transferred the person who owns the Property at the time of the City's request, agrees to apply to the Fire District for exclusion of the Property from the Fire District. Owner understands and acknowledges that Owner, its heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

IX.  
FIRE PROTECTION FEE

Owner agrees to pay a fee of \$1631.00 per gross acre of the entire annexed area as their share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation ("Fire Protection Fee"). Payment of the Fire Protection Fee for the gross acreage of each phase of development shall be made prior to issuance of the initial subdivision plat for that phase. The City agrees as future annexations occur within the service area of the proposed fire station the owner of future annexations will be required to pay a Fire Protection Fee to the City for the capital improvements to the fire station. The fee shall be payable at final plat recordation and based upon the platted acreage thereof.

X.  
POLICE SERVICE FEE

The Owner agrees to pay a fee of \$670.00 per gross acre of the entire annexed area as Owner's share of the capital cost of a new police station and the initial equipment purchase required to service this annexation as well as adjacent areas of future annexation ("Police Service Fee"). Payment of the Police Service Fee for the gross acreage of each phase of development shall be made prior to issuance of the initial subdivision plat for that phase. The City agrees as future annexations occur within the service area of the proposed police station the owner of future annexations will be required to pay a Police Service Fee to the City for the capital improvements to the police station. The fee shall be payable at final plat recordation and based upon the platted acreage thereof.

XI.  
PUBLIC LAND DEDICATION

Owner agrees that all land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be platted (unless the City agrees

otherwise) and all applicable development fee obligations paid.

Owner agrees that any land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owner. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Owner prior to conveyance, unless otherwise waived by the City. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement imposes an obligation or duty of the Owner to plat any portion of the Property by a certain date.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by General Warranty Deed.
- B. Owner shall convey the property to the City within 30 days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property shall be paid by the Owner through the date of conveyance to the City.
- E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

## XII. SPECIAL PROVISIONS

- A. Airport: An Avigation Easement or proof of previous filing (book/page or reception number) is required with or prior to the recordation of the final subdivision plat for the Property.
- B. Banning Lewis Ranch Annexation Agreement. This Property is adjacent to Banning Lewis Ranch property; as such, the City has certain obligations under the Banning Lewis Ranch Annexation Agreement ("BLR Agreement"), as recorded in Book 5557, beginning on Page 405, with respect to annexing the Property.

Therefore Owner and City agree that, because the Property is adjacent to the Banning Lewis Ranch property, Owner will be subject to any fees the City is obligated to pass through to adjacent property Owner under the BLR Agreement including, but not limited to, the following:

1. Off-Site Construction of the Banning-Lewis Parkway Fee. Owner agrees to pay a \$95.55 per acre fee as an equitable contribution for Owner's fair share portion of the benefit Owner will receive from the Banning-Lewis Parkway ("Banning-Lewis Parkway Fee"). This per acre fee is based upon the traffic analysis which was prepared by a traffic professional using ITE Manual methods and identifies a direct traffic impact on the Banning-Lewis Parkway. The City will not record the certified copies of the annexation map and annexation ordinance and the annexation will not be effective unless and until the Banning-Lewis Parkway Fee has been remitted to the City.
2. Construction of the Banning Lewis Ranch Radio Repeater Station. Owner agrees to pay an \$11.69 per acre fee ("Banning Lewis Ranch Repeater Station Fee") as an equitable contribution for Owner's portion of the benefit Owner will receive from the radio repeater station. The Banning Lewis Ranch Radio Repeater Station fee will be due prior to recordation of the annexation plat and this Agreement. The City will not record the certified copies of the annexation map and annexation ordinance and the annexation will not be effective unless and until the Banning Lewis Repeater Station Fee has been remitted to the City.

### XIII. ORDINANCE COMPLIANCE

Owner will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.  
ASSIGNS AND DEED OF TRUST HOLDERS

Whereas used in this Agreement, the terms "Owner" or "Property Owner," shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owner and all these parties shall have the right to enforce and are subject to enforcement under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to Owner unless specifically assigned to another person.

Owner affirmatively states that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property.

XV.  
RECORDING

This Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of Owner and all other persons who may purchase land within the Property from Owner or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to Owner and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XVI.  
AMENDMENTS

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City, by resolution, without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect and shall not apply to property owned by any non-amending party.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment."

XVII.  
HEADINGS

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

XVIII.  
DEFAULT AND REMEDIES

If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

XIX.  
GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided for and identified in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owner and City shall continue to be bound by all terms and provisions of this Agreement.

XX.  
SEVERABILITY

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals  
the day and year first written above.

CITY OF COLORADO SPRINGS

BY: John W. Suthers  
MAYOR JOHN W. SUTHERS

ATTEST:

BY: Sarah B. Johnson  
CITY CLERK SARAH B. JOHNSON



APPROVED AS TO FORM:

BY: Renee C  
CITY ATTORNEY

OWNER:

PEAKMARK HEIGHTS, LLC

By: \_\_\_\_\_  
Its: Manager

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this 5th day of November, 2015, by Robert C. Irwin, manager on behalf of Peakmark Heights, LLC, as Owner.

Witness my hand and notarial seal.

My commission expires: 11/13/2018

ERICA N DAVISON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20064000633  
MY COMMISSION EXPIRES JAN. 13, 2018

Erica N Davison  
Notary Public  
Address: 155 Lake Avenue  
Colorado Springs, CO 80906





OWNER:

THE WALTER FAMILY TRUST

By: Janette M Walter, TRUSTEE

Its: \_\_\_\_\_  
JANETTE M. WALTER, TRUSTEE  
ACKNOWLEDGMENT

STATE OF ~~COLORADO~~ ) Florida

COUNTY OF ~~EL PASO~~ ) <sup>ss.</sup> Sumter

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of October, 2015, by Janette M Walter on behalf of The Walter Family Trust, as Owner.

Witness my hand and notarial seal.

My commission expires: July 31, 2016

[Signature]  
Notary Public Ana M Morales  
Address: 2365 Pine Drive  
The Villages, FL 32162



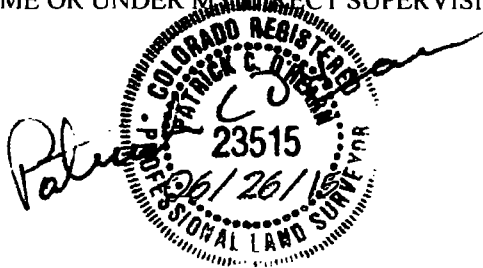
EXHIBIT A  
LEGAL DESCRIPTION

A TRACT OF LAND CONTAINING ALL THAT REAL PROPERTY DESCRIBED IN THOSE DEEDS RECORDED AS RECEPTION No. 099052711 AND AS RECEPTION No. 214089843 IN THE RECORDS OF THE OFFICE OF THE CLERK AND RECORDER OF EL PASO COUNTY COLORADO, TOGETHER WITH A PORTION OF THE RIGHT-OF-WAY OF NORTH MARKSHEFFEL ROAD, ALL LOCATED IN THE WEST HALF OF SECTION 16 AND THE EAST HALF OF SECTION 17, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, FURTHER DESCRIBED AS FOLLOWS:

“COMMENCING” AT THE SOUTHWEST CORNER OF SAID SECTION 16, AND CONSIDERING THE WEST LINE OF SAID SECTION 16 TO BEAR NORTH 00°21’12” WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE NORTH 00°21’12” WEST, ALONG SAID WEST LINE, A DISTANCE OF 1992.82 FEET TO THE “POINT OF BEGINNING”; THENCE SOUTH 89°10’48” WEST, ALONG THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID TRACT DESCRIBED AT RECEPTION No. 214089843, A DISTANCE OF 60.00 FEET TO A POINT ON THE EASTERLY LINE OF THE LIMITS OF THE CITY OF COLORADO SPRINGS AS DESCRIBED IN ANNEXATION ORDINANCE No. 85-82 AND RECORDED IN BOOK 5108 AT PAGE 198, SAID EL PASO COUNTY RECORDS; THENCE NORTH 00°21’12” WEST, ALONG SAID EASTERLY LINE AND ALONG A LINE LYING 60.00 FEET WESTERLY OF AND PARALLEL WITH SAID WEST LINE OF SECTION 16, A DISTANCE OF 2672.08 FEET TO A POINT ON THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID TRACT DESCRIBED AT RECEPTION No. 099052711; THENCE NORTH 88°54’34” EAST, ALONG SAID NORTHERLY LINE AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 729.95 FEET; THENCE SOUTH 00°15’22” EAST, A DISTANCE OF 1014.16 FEET TO THE NORTHEAST CORNER OF SAID TRACT DESCRIBED AT RECEPTION No. 214089843; THENCE SOUTH 00°21’12” EAST, ALONG THE EAST LINE OF SAID TRACT, A DISTANCE OF 1661.38 FEET; THENCE SOUTH 89°10’48” WEST, ALONG THE SOUTH LINE OF SAID TRACT AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 668.19 FEET TO THE “POINT OF BEGINNING”.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 44.716 ACRES OR 1,947,844 SQUARE FEET, MORE OR LESS.

I, PATRICK C. O’HEARN, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.



PATRICK C. O’HEARN PLS No. 23515  
for and on behalf of  
DREXEL, BARRELL & CO.  
3 SOUTH 7<sup>TH</sup> STREET  
COLORADO SPRINGS, COLORADO 80905  
719-260-0887

EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Mountain Valley Preserve Annexation

Peakmark Heights, LLC, a Colorado limited liability company, whose address is 1765 S. 8<sup>th</sup> Street, Suite T-1, Colorado Springs, CO 80905 (referred to herein as "Grantor") in consideration of the benefits received pursuant to the Mountain Valley Preserve Annexation Agreement dated \_\_\_\_\_ ("Annexation Agreement"), which is executed by Grantor concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights", together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor warrants title to the same against all claims arising by, through, or under said Grantor. The Water Rights include but are not limited to those described in Exhibit B.

Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be amended, Grantor, on behalf of Grantor and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this Fifth day of November, 2015.

GRANTOR:

By: [Signature]  
Name: Robert C. Irwin  
Its: Manager

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

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2015 by Robert C. Irwin, manager on behalf of,

Peakmark Heights, LLC as Grantor.

Witness my hand and official seal.

My Commission Expires: 1/13/2018

ERICA N DAVISON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20064000833  
MY COMMISSION EXPIRES JAN. 13, 2018

(SEAL)

*Erica N. Davison*  
Notary Public

Exhibit A

LEGAL DESCRIPTION

To the  
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use  
of Groundwater executed by, Peakmark Heights, LLC on \_\_\_\_\_.

*(provide legal description signed and stamped by Professional Licensed Surveyor)*



# Drexel, Barrell & Co.

October 20, 2015

LEGAL DESCRIPTION – 6005 Marksheffel Road

**Engineers/Surveyors**

**Boulder  
Colorado Springs  
Grand Junction  
Steamboat Springs**

3 S 7<sup>th</sup> Street  
Colorado Springs, CO 80905

719 260-0887  
719 260-8352 Fax

LOT 1, BLOCK 1, TOY RANCHES ESTATES, EXCEPT THE WESTERLY  
30 FEET THEREOF AS CONVEYED IN DEED FEBRUARY 16, 1977 IN  
BOOK 2896 AT PAGE 763, COUNTY OF EL PASO, STATE OF  
COLORADO.





## Drexel, Barrell & Co.

October 20, 2015

### LEGAL DESCRIPTION – 6085 Marksheffel Road

#### Engineers/Surveyors

**Boulder**  
**Colorado Springs**  
**Grand Junction**  
**Steamboat Springs**

3 S 7<sup>th</sup> Street  
Colorado Springs, CO 80905

719 260-0887  
719 260-8352 Fax

THAT PORTION OF THE WEST HALF OF SECTION 16, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 16, THENCE RUN IN A NORTHERLY DIRECTION ALONG THE WEST LINE OF SECTION 16 A DISTANCE OF 2,325.4 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE ALONG THE WEST LINE OF SAID SECTION 16 A DISTANCE OF 1,328.8 FEET; THENCE ANGLE RIGHT 89° 32' AND RUN IN AN EASTERLY DIRECTION 668.19 FEET; THENCE ANGLE RIGHT 90° 28' AND RUN IN A SOUTHERLY DIRECTION 1,328.8 FEET; THENCE ANGLE RIGHT 89° 32' AND RUN IN A WESTERLY DIRECTION 668.19 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THE WESTERLY 60 FEET CONVEYED FOR ROADWAY PURPOSES IN BOOK 2896 AT PAGES 764 AND 765. COUNTY OF EL PASO, STATE OF COLORADO

Exhibit B

To the  
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use  
of Groundwater executed by, Peakmark Heights, LLC, Grantor on  
\_\_\_\_\_.

Decreed Groundwater Rights

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

Permitted Groundwater

Permit No. 26235-A

Date of Permit: December 15, 2010

Source: Denver Aquifer

Amount: 1 acre foot per year at 15 GPM

Name of Owner:

Legal Description of Well or other structure:

Permitted Groundwater

Permit No. 38398

Date of Permit: June 27, 1969

Source: Denver Aquifer

Amount: 1 acre foot per year at 15 GPM

Name of Owner: Floyd Frame

Legal Description of Well or other structure:

Surface Water Rights

Name of Water Right:

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Mountain Valley Preserve Annexation

Accepted by the City of Colorado Springs

By: \_\_\_\_\_ this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_  
Real Estate Services Manager

Approved as to Form:

By:  \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Mountain Valley Preserve Annexation

The Walter Family Trust, whose address is 1537 BLEASE LOOP THE VILLAGES, FL  
(referred to herein as "Grantor") in consideration of the benefits received pursuant 3262  
to the Mountain Valley Preserve Annexation Agreement dated  
10/26/2015 ("Annexation Agreement"), which is executed by Grantor  
concurrently with this Special Warranty Deed, and other good and valuable  
consideration, the receipt and sufficiency of which is hereby acknowledged, sell  
and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address  
is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest  
in any and all groundwater underlying or appurtenant to and used upon the  
property described in Exhibit A ("Property") and any and all other water rights  
appurtenant to the Property collectively referred to as the "Water Rights", together  
with the sole and exclusive right to use the Water Rights and all rights of ingress  
and egress required by the Grantee to appropriate, withdraw and use the Water  
Rights; and Grantor warrants title to the same against all claims arising by, through,  
or under said Grantor. The Water Rights include but are not limited to those  
described in Exhibit B.

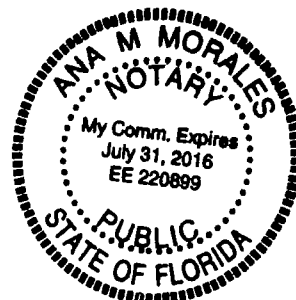
Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be  
amended, Grantor, on behalf of Grantor and any and all successors in title, hereby  
irrevocably consent in perpetuity to the appropriation, withdrawal and use by  
Grantee of all groundwater underlying or appurtenant to and used upon the  
Property.

This Special Warranty Deed and the consent granted herein shall be effective upon  
the date of the City of Colorado Springs-City Council's final approval of the  
Annexation Agreement.

Executed this 26th day of OCTOBER,  
2015.

The Walter Family Trust  
GRANTOR:

By: Janette M. Walter, TRUSTEE  
Name: JANETTE M. WALTER, TRUSTEE  
Its: \_\_\_\_\_

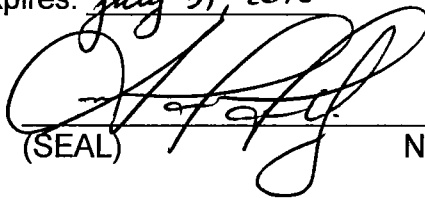


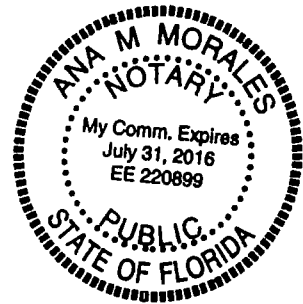
STATE OF Florida )  
 ) ss.  
COUNTY OF Sumter )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of October, 2015, by Janette Marie Walter, on behalf of, The Walter Family Trust, as Grantor.

Witness my hand and official seal.

My Commission Expires: July 31, 2016

  
(SEAL) Ana M. Morales  
Notary Public



SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Mountain Valley Preserve Annexation

The Dominic and Vivian M. Zazzaretti Trust, whose address is 4780 Vale Rd CSC0509 (referred to herein as "Grantor") in consideration of the benefits received pursuant to the Mountain Valley Preserve Annexation Agreement dated 11-04-15 ("Annexation Agreement"), which is executed by Grantor concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights", together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor warrants title to the same against all claims arising by, through, or under said Grantor. The Water Rights include but are not limited to those described in Exhibit B.

Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be amended, Grantor, on behalf of Grantor and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this 15<sup>TH</sup> day of NOVEMBER, 2015.

GRANTOR:

The Dominic and Vivian M. Zazzaretti Trust

By: Vivian M. Zazzaretti - Trustee

Name: Vivian M. Zazzaretti - Trustee

Its: \_\_\_\_\_

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, 2015 by Vivian Zazzaretti, on behalf of, The

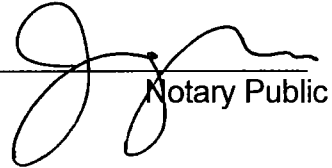
Dominic and Vivian M. Zazzaretti Trust, as Grantor.

Witness my hand and official seal.

My Commission Expires: 12/24/2018

JUNG LEE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144048392  
MY COMMISSION EXPIRES DECEMBER 24, 2018

(SEAL)



Notary Public



## Drexel, Barrell & Co.

October 20, 2015

### LEGAL DESCRIPTION – 6115 Marksheffel Road

#### Engineers/Surveyors

**Boulder**  
**Colorado Springs**  
**Grand Junction**  
**Steamboat Springs**

3 S 7<sup>th</sup> Street  
Colorado Springs, CO 80905

719 260-0887  
719 260-8352 Fax

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 16, IN TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., IN EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 16; THENCE SOUTHERLY ON THE WEST LINE THEREOF 647.54 FEET TO THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN DEED OF STANLEY S. FARR AND SANDRA R. FARR RECORDED IN BOOK 2306 AT PAGE 918 UNDER RECEPTION NO. 684360 AND THE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED HEREBY; THENCE CONTINUE SOUTHERLY ON THE WEST LINE OF SAID NORTHWEST QUARTER, 1,011.53 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN DEED TO FLOYD D. DEVITT AND MARY J. DEVITT RECORDED IN BOOK 2155 AT PAGE 70 UNDER RECEPTION NO. 508314; THENCE ANGLE LEFT 90°28' EASTERLY ON THE NORTHERLY LINE OF SAID DEVITT TRACT, 668.19 FEET; THENCE ANGLE LEFT NORTHERLY 1,014.90 FEET TO THE SOUTHEAST CORNER OF SAID FARR TRACT; THENCE ANGLE LEFT, WESTERLY ON THE SOUTHERLY LINE OF SAID FARR TRACT, 674.81 FEET TO THE POINT OF BEGINNING, EXCEPT THE WESTERLY 30 FEET THEREOF FOR ROAD PURPOSES, AND EXCEPT THOSE PORTIONS THEREOF DEEDED TO THE COUNTY OF EL PASO BY DEEDS RECORDED IN BOOK 2896 AT PAGE 756 AND IN BOOK 2896 AT PAGE 758.



**Exhibit B**

**To the  
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal  
and Use of Groundwater executed by, The Walter Family Trust, Grantor on**

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**Decreed Groundwater Rights**

**Case No.**

**Court:**

**Source:**

**Amount:**

**Date of Decree:**

**Name of Owner:**

**Permitted Groundwater**

**Permit No. 52366**

**Date of Permit: March 8, 1972**

**Source:**

**Amount:**

**Name of Owner:**

**Legal Description of Well or other structure:**

**Surface Water Rights**

**Name of Water Right:**

**Case No.**

**Court:**

**Source:**

**Amount:**

**Date of Decree:**

**Name of Owner:**

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Mountain Valley Preserve Annexation

Accepted by the City of Colorado Springs

By: \_\_\_\_\_ this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_  
Real Estate Services Manager

Approved as to Form:

By:  \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office