

**Agenda Item – Negotiations with and request from Water Company
to approve an Easement Agreement, Memorandum of
Understanding and Service Agreement**

****REVISED documents as of March 15, 2024 at 4:45pm MDT****

- 1) GRANT OF EASEMENTS FOR ACCESS AND WATER INFRASTRUCTURE - 8 pages
- 2) MEMORANDUM OF UNDERSTANDING – 10 pages
- 3) TERMS OF SERVICE – 10 pages

APPROVED 03/16/2024

Indexing Note:

Please index in the County's grantor index under "Arrowhead in Gunnison Country," "Arrowhead Improvements Association, Inc.," and in the grantee index under "Evergreen Lake Company"

**GRANT OF EASEMENTS FOR
ACCESS AND WATER INFRASTRUCTURE**

THIS GRANT OF EASEMENTS FOR ACCESS AND WATER INFRASTRUCTURE (this "Grant") is made and entered into this _____ day of _____, 2024, by ARROWHEAD IMPROVEMENTS ASSOCIATION, INC., a Colorado nonprofit corporation ("Grantor"), for the benefit of The Evergreen Lake Company, a Colorado nonprofit corporation ("Water Company"), the "Grantee").

RECITALS

A. Grantor is the association formed pursuant to that certain Arrowhead in Gunnison Country Subdivision Declaration of Protective Covenants and Restrictions recorded May 2, 1990 in Book 677 at Page 680 and under Reception No. 419911 (the "Original Declaration"), as amended by Amendments to Arrowhead in Gunnison Country Subdivision Declaration of Protective Covenants and Restrictions recorded October 30, 2003 under Reception No. 536257, and The Ridges at Arrowhead in Gunnison Country Declaration of Protective Covenants recorded August 24, 1993 in Book 729 at Page 372 and under Reception No. 444806 (collectively and as amended, the "Declaration") all in the real property records of the Gunnison County Clerk and Recorder (the "Clerk's Office").

B. The Declaration created a common interest community comprised of the property in the following subdivisions in the County of Gunnison, State of Colorado:

Arrowhead in Gunnison Country Filing No. 1 Amended recorded February 5, 1974 in Book 2 at Page No. 7 and under Reception No. 298784 in the Clerk's Office;

Arrowhead in Gunnison Country Filing No. 2 recorded January 26, 1979 under Reception No. 335299 in the Clerk's Office;

Arrowhead in Gunnison Country Filing No. 3 recorded May 20, 1980 under Reception No. 350190 in the Clerk's Office; and

The Ridges at Arrowhead in Gunnison Country recorded August 24, 1993 under Reception No. 444805 in the Clerk's Office

(collectively, the "Common Interest Community").

C. Grantor is the owner of those areas within the Common Interest Community that are located outside of the platted and numbered lots (which lots are referred to in the Declaration as “sites”) and which comprise the Common Interest Community “**Common Areas**” as defined in the Declaration. The Common Areas are owned by Grantor and held by the Grantor for the mutual use and benefit of site owners.

D. Water service to the Common Interest Community is provided by that certain central water system referenced in Article IV Section 24 of the Original Declaration (the “**Central Water System**”) which is operated by Grantee. The Central Water System also serves or will serve other parcels outside of the Common Interest Community. The Common Interest Community together with all parcels currently served or that may be served in the future by the Central Water System are referred to herein as the “**Service Area.**” The Service Area as located in Gunnison County, Colorado, consists of the Common Interest Community, the Water Company Parcels as defined below, the Arrowhead Commercial Area subdivision, and four additional legal parcels adjoining the Common Interest Community totaling approximately 291 acres. Such Service Area is depicted on the map attached as Exhibit B along with the Gunnison County Assessor parcel numbers for the four additional parcels.

E. Article V Section 6 of the Original Declaration reserves to the Association and to persons owning or maintaining a utility service an easement upon all of the Common Areas within the Common Interest Community for, among other things, water lines and installations as approved by the Association and ingress and egress to same, subject to the limitations and other provisions more fully set forth in Article V Section 6 of the Original Declaration (the “**Reserved Utility Easement**”).

F. In connection with the operation of the Central Water System and to provide water service to the Service Area, Grantee uses the Reserved Utility Easement for water lines and installations, certain parcels described on the attached Exhibit A (the “**Water Company Parcels**”), and the roads within the Common Interest Community to provide access to the water lines and installations and Water Company Parcels.

G. Grantor and Grantee agree that it is to their mutual benefit to establish of record the rights of Grantee relative to the Common Areas in connection with the operation of the Arrowhead Water System.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby states as follows:

AGREEMENT

1. **Grant.**

a. As contemplated in Article V Section 6 of the Original Declaration, Grantor hereby consents to Grantee’s use of the Reserved Utility Easement and grants to Grantee, and to their successors and assigns, a perpetual non-exclusive easement (the “**Water Infrastructure Easement**”) on, over, under, across and through the Common Areas for the installation,

maintenance, repair, replacement and operation of water lines and installations, and all underground and surface appurtenances thereto, including electric or other related control systems, underground cables, wires, connections, and surface appurtenances (collectively, the “**Water Infrastructure**”). By way of example and not by way of limitation, the parties intend to include within the terms “pipelines” and “appurtenances” the following: mains and conduits, valves, vaults, manholes, control systems, ventilators, and the like, in, through, over and across the Common Areas. The extension of infrastructure may from time to time require the expansion of the Water System into or across Common Areas, which expansions shall be subject to the approval of AIA’s board of directors with the exception that no AIA board approval is required for a connection through the portions of Common Areas not more than 250 feet in length that exist between sites and other sites or between sites and roads, such approval and permission being hereby herein given. AIA agrees to review such requests for Water System expansion on Common Areas in good faith and to not deny those requests if: (i) they are reasonably necessary to provide services to owners in the Common Interest Community and (ii) alternate locations for the expansion are either less aesthetically desirable or financially impracticable for the owner of the Water System.

b. Grantor hereby grants to Grantee a perpetual non-exclusive easement (the “**Access Easement**”) over and through those portions of the Common Areas improved with roads for the purpose of pedestrian and vehicular ingress and egress to the Water Company Parcels and the Water Infrastructure including construction vehicles (including but not limited to front end loaders, dump trucks, backhoes, compressors, bulldozers, construction trailers) and related equipment, snow groomers, piste machines, and snow machines including, but not limited to Snow Cats.

2. **Provisions Governing Use**. Grantee’s use of the Water Infrastructure Easement and Access Easement shall be subject to the following provisions:

a. All utility lines must be placed underground.

b. Grantee shall not permit any construction vehicle including but not limited to front end loaders, dump trucks, backhoes, compressors, bulldozers, construction trailers, and related equipment to be parked on the Common Areas except during active on-site construction while work is in progress and only in a manner approved by AIA personnel; provided, however, this shall not preclude the parking of Grantee’s equipment in an area approved by Grantor.

c. The Water Infrastructure Easement and Access Easement shall be utilized only in a reasonable and prudent manner and as approved by the Association.

d. Grantee shall, after construction, maintenance or repair of Water Infrastructure, leave the disturbed area in as good or better condition in all respects as it was in before the commencement of such construction, maintenance or repairs and is responsible for, and shall perform, any necessary seeding, re-vegetation, re-grading, and other roadwork necessary to restore disturbed areas.

3. **General Provisions**.

a. All provisions of this Grant, including the benefits and burdens, touch and concern and run with the land and shall bind and inure to the benefit of the successors and assigns of Grantor

and Grantee including, without limitation, any successor provider of water service to the Service Area and any successor in title to the Water Company Parcels and the Water Infrastructure.

b. This Grant may not be modified, amended, or terminated except by written instrument executed by both the Grantor and Grantee, or by their respective successors and assigns.

c. In the event of any action or proceeding brought by either party against the other under this Grant, the substantially prevailing party will be entitled to recover all costs and expenses, including reasonable attorneys' fees.

d. This Grant may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose. In the event of any conflict between this Grant and any Terms of Service, whether currently executed or adopted or later adopted or amended, this Grant shall supersede and prevail over the Terms of Service.

IN WITNESS WHEREOF, the parties hereto have executed this Grant as of the date first above written.

GRANTOR:

ARROWHEAD IMPROVEMENTS ASSOCIATION, INC.,
a Colorado nonprofit corporation

By: _____
Lowell Kindschy, President

STATE OF COLORADO)
)SS
COUNTY OF _____)

This record was acknowledged before me on _____, 2024 by Lowell Kindschy as President of Arrowhead Improvements Association, Inc., a Colorado nonprofit corporation, on behalf of the corporation.

By: _____
Title: _____
My Commission Expires: _____

(Notary Seal)

GRANTEE:

The Evergreen Lake Company, a Colorado nonprofit corporation

By: _____
Name: Robert A. Hernandez
Title: President

STATE OF COLORADO)
)SS
COUNTY OF _____)

This record was acknowledged before me on _____, 2024 by Robert A. Hernandez, as President of The Evergreen Lake Company, a Colorado nonprofit corporation, on behalf of the company.

By: _____
Title: _____
My Commission Expires: _____

(Notary Seal)

EXHIBIT A
WATER COMPANY PARCELS

Parcel 1 (the “**Switchback Parcel**”):

A parcel of land situated in Section 18 Township 47 North, Range 4 West of the New Mexico Principal Meridian, County of Gunnison, State of Colorado, more particularly described as follows:

Beginning at a point from which the South $\frac{1}{4}$ Corner of said Section 18 bears South $01^{\circ}34'34''$ East a distance of 2662.95 feet; thence North $89^{\circ}48'24''$ West a distance of 194.47 feet; thence North $55^{\circ}10'00''$ West a distance of 114.79 feet; thence North $34^{\circ}50'00''$ East a distance of 110.82 feet; thence South $55^{\circ}10'00''$ East a distance of 275.20 feet to the point of beginning;

Parcel 2 (the “**Lake Parcel**”):

A parcel of land in Section 18, Township 47 North, Range 4 West, N.M.P.M., more particularly described as follows:

Beginning at the South $\frac{1}{4}$ Corner of said Section 18; thence along the South line of the SW $\frac{1}{4}$ of said Section 18 S $89^{\circ}49'52''$ W 565.82 feet; thence N $21^{\circ}33'02''$ W 384.44 feet along the boundary of that property in Warranty Deed to Gerdin Family Investments, L.P., a Nebraska limited partnership recorded December 17, 1999 as Reception No. 498479; thence N $0^{\circ}00'00''$ E 655.00 feet along said boundary; thence N $21^{\circ}05'07''$ E 430.85 feet along said boundary; thence N $28^{\circ}44'06''$ E 661.46 feet along said boundary; thence N $34^{\circ}59'11''$ W 819.21 feet along said boundary; thence S $89^{\circ}48'24''$ E 740.36 feet to the westerly line of Arrowhead in Gunnison Country, Filing No. I; thence along said line S $0^{\circ}47'17''$ W 2661.83 feet to the Point of Beginning.

Parcel 3 (“**Lot 601**”):

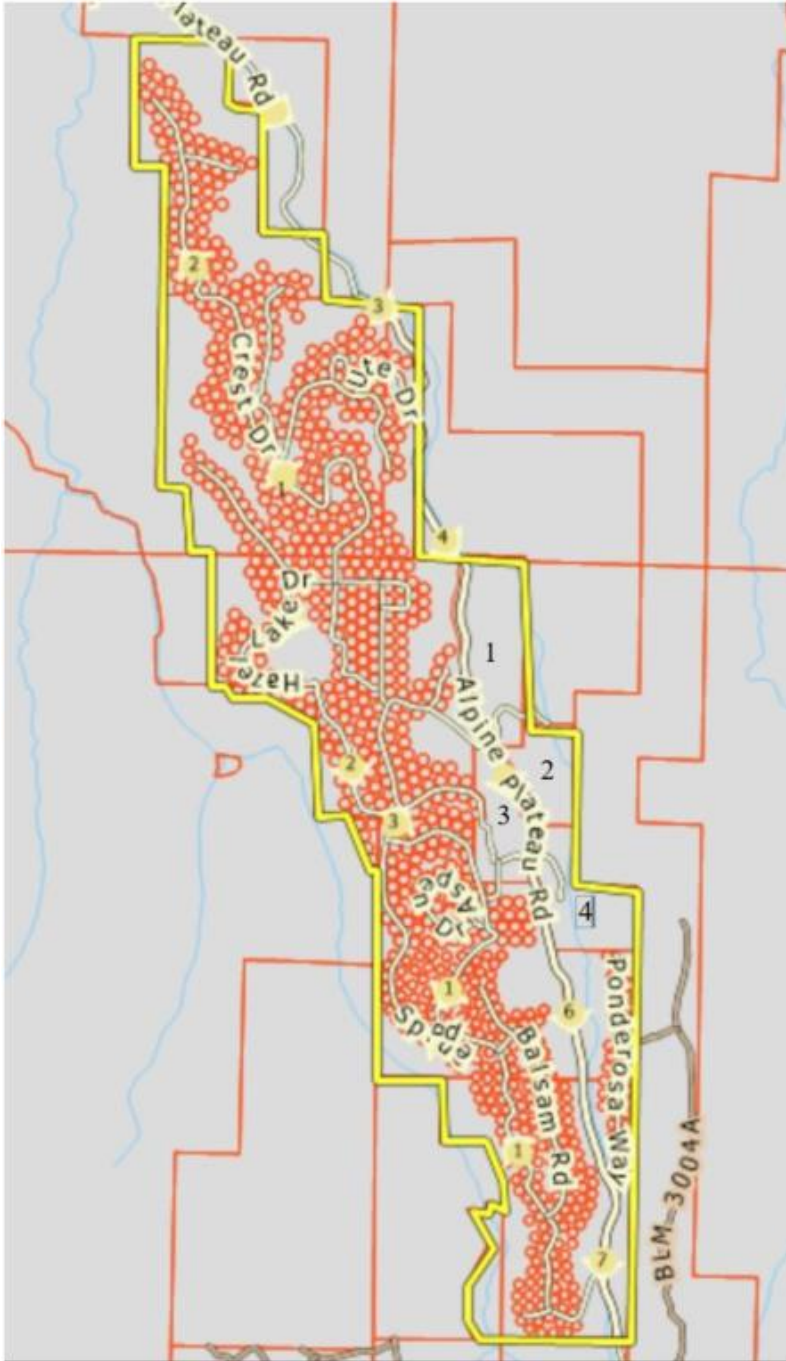
A parcel of land situated in Arrowhead in Gunnison Country Filing No. 1 Amended Subdivision, in Section 18, Township 47 North, Range 4 West, N.M.P.M., more particularly described as follows:

Beginning at a point on the Westerly right-of-way of Spruce Road whence the Southeast corner of said Section 18 bears S $36^{\circ}21'09''$ E 2589.69 feet; thence N $63^{\circ}13'50''$ W 160.00 feet; thence N $26^{\circ}46'10''$ E 211.22 feet returning to the Westerly right-of-way of Spruce Road; thence along the Westerly right-of-way S $34^{\circ}06'43''$ E 136.05 feet; then along a curve to the right with a central angle of $60^{\circ}52'52''$ and a radius of 80.15 feet, for 85.17 feet, the chord bears S $3^{\circ}40'16''$ E 81.22 feet; thence S $26^{\circ}46'10''$ W 75.00 feet to the Point of Beginning.

EXCEPTING THEREFROM any of the above described parcels within the platted lots or designated roads of Arrowhead in Gunnison Country Filing Number 1, Amended recorded February 5, 1974 as Reception No. 298784.

County of Gunnison,
State of Colorado.

EXHIBIT B SERVICE AREA



The four additional parcels are identified as of the date of this MOU by Gunnison County as parcel numbers:

1. 4049-000-00-153 (being approx. 103.31 acres shown as owned by Donald F. Squirrell and Pamela M. Squirrell);
2. 4049-000-00-158 (being approx. 48.50 acres shown as owned by Blue Mountain Arrowhead LLC);
3. 4049-000-00-169 (being approx. 58.56 acres in addition to Lots 9-21 and 23 Arrowhead Commercial Area shown as owned by Shultz Family Trust Investments LLC); and
4. 4049-000-00-159 (being approx. 80.29 acres shown as owned by William B. Hobson).

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this “MOU”) is entered into this ___ day of _____, 2024 by and between Arrowhead Improvements Association, Inc., a Colorado nonprofit corporation (“AIA”), and The Evergreen Lake Company, a Colorado nonprofit corporation (“ELC”). AIA and ELC are collectively referred to herein as the “Parties.”

I. Recitals

- a. AIA is the homeowners association for the Arrowhead in Gunnison Country Subdivision, Gunnison County, Colorado, which consists of the real property platted as Arrowhead in Gunnison Country Subdivision on those certain Arrowhead in Gunnison Country Filing Nos 1-3 and the Ridges at Arrowhead plats recorded in the office of the Gunnison County, Colorado Clerk and Recorder (the “Clerk’s Office”) at reception numbers 298784, 335299, 350190, and 444805, respectively (the “Subdivision”).
- b. The Subdivision is operated with a central water system (including all water rights, infrastructure, and other property, real or personal, used to operate central water system, the “Water System”) all of which are owned and operated by the Arrowhead Ranch Water Company (“ARWC”) or Donald and Pamela Squirrel. The Water System includes, without limitation, the water and water rights and all related improvements and structures located in Gunnison County, Colorado as identified on **Exhibit A**, which is attached hereto and incorporated herein.
- c. ELC has entered into a contract to purchase the Water System from ARWC. The acquisition of the Water System by the ELC is being funded by a loan (the “Loan”) from the Colorado Water Resources and Power Development Authority (the “Authority”), which will be secured by a deed of trust and fixture filing recorded in the Clerk’s Office and UCC-1 financing statement filed in the office of the Colorado Secretary of State (together with other documents evidencing the Loan, the “Loan Documents”).
- d. AIA’s primary interest in the Water System is limited to ensuring that it is primarily operated for the benefit of the Subdivision.
- e. The ELC intends to continue to operate the water for the primary benefit of the Subdivision and desires for AIA and the owner of the Water System to work collaboratively, where appropriate, given their separate and distinct interests in the Subdivision.
- f. The purpose of this MOU is to outline the understanding of the Parties regarding the Water System and the operations of the Subdivision in order to facilitate water services in the community while preserving and protecting the interests of the community as entrusted to AIA.

II. Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including the above recitals and the mutual promises and agreements set forth below, the Parties agree as follows:

- 1) *Priority of Use.* The Water System will be operated exclusively for the benefit of the service area as shown in **Exhibit B**, which service area is the Subdivision, certain parcels used as part of the Water System, the real property platted as Amended Arrowhead Commercial Area Unit 1 pursuant to subdivision plat recorded in the Clerk's Office May 15, 1990 under Reception No. 420146 (the "Arrowhead Commercial Area Subdivision"), and four additional legal parcels adjoining the Subdivision totaling approximately 291 acres which additional parcels are also identified by parcel number on **Exhibit B**. Any use of the Water System outside of, or for the benefit of property located outside of, the Subdivision will not impair or diminish the services provided in the Subdivision, including without limitation sufficient water supply and availability.
- 2) *Ownership.* Within 4 years of this MOU becoming effective, ELC shall afford the Subdivision, and any additional customers, an opportunity to vote to establish a special district that would own and operate the Water System and, if such special district is created, ELC shall transfer the Water System to such special district, provided it pays the costs associated with establishing the district, both parties' legal fees, transfer costs, all outstanding liabilities (including, except as provided in this Section 2 below, payment in full of the Loan), inventory, and equipment, and with the board of the district elected pursuant to Colorado law. Notwithstanding the foregoing, as an alternative to satisfying the Loan, the district may, with the Authority's consent and subject to all duties and requirements of the Loan Documents, assume all of ELC's obligations under the Loan Documents from and after the date of closing of the transfer to the district. In any event, it shall be a condition precedent to ELC's obligation to transfer the Water System to a special district formed pursuant to this section that such district shall either satisfy in full the amount of the Loan outstanding, including interest and penalties, at the time of the closing of the transfer, or alternatively, assume all ELC's outstanding obligations under the Loan from and after the date of transfer and, under the second alternative, the Authority shall have approved such assignment and assumption and released ELC from any obligations under the Loan from and after the date of the transfer.
- 3) If for any reason a special district is not the owner of the Water System within three years of this MOU becoming effective, ELC shall hold a vote in which all of its customers are permitted to vote to elect at least one member to the board of directors of ELC by a majority vote of the customers who cast a vote and such board position will thereafter be filled by the majority of the votes of ELC's customers in an election in which all customers are permitted to vote. ELC shall file with the Internal Revenue Service and use commercially reasonable efforts to obtain a tax exempt status under U.S. Internal Revenue Code Section 501(c)(3) or 501(c)(4) within three years of this MOU becoming effective.

- 4) *Communications.* The Parties agree that AIA is not an agent for the owner of the Water System and thus it is not appropriate for AIA to make announcements on behalf of the owner of the Water System. Nevertheless, AIA agrees that it is important for its members to be apprised of the operations and activities of the owner of the Water System. Accordingly, AIA will communicate to its membership through its website where the membership may go to get more information about the operations and activities of the Water System.
- 5) *Collaboration.*
- a. The Parties recognize that AIA interests at times overlap with the interests of the owner of the Water System. For example, AIA may stock fish in lakes for which the owner of the Water System holds the water rights. The Parties agree to work together in good faith on those matters in which their interests intersect, such as infrastructure improvements. However, nothing in this paragraph or MOU obligates either party to expend any funds or contribute any material, equipment or labor toward any project or improvement except to the extent that the party, collaborating in good faith, believes is in the best interests of the party.
- b. The owner of the Water System will exercise its commercially reasonable efforts in good faith to maintain existing fish habitat in the lakes in the Subdivision except when infeasible for reasons including, but not limited to, drought, maintenance or other infrastructure improvement for the Water System, or other legal or physical circumstances that prevent or diminish the water available to the owner of the Water System to levels that can no longer sustain the existing fish habitat at the lakes in the Subdivision.
- 6) *Other Agreements.* The Parties may have other agreements between them relating to the Water System. However, this MOU supersedes and replaces any prior agreements relating to the matters specifically addressed herein, including any right of first refusal as to the sale to ELC, which is treated as satisfied in February 2022 by the former owner, the Arrowhead Ranch Water Company, and is hereby terminated. There is no right of first refusal granted to the AIA for the sale of the Water System that applies to the ELC and its successors.
- 7) *Binding Nature.* This MOU shall be binding on the Parties and their respective successors and assigns.
- 8) *Contingencies.* Promptly following the date of this MOU first set forth above, AIA and ELC will execute counterparts of the Terms of Service (Arrowhead Ranch Water Company) in the form attached to this MOU as **Exhibit C** (the “Terms of Service”) and counterparts of the Grant of Easements for Access and Water Infrastructure in the form attached to this MOU as **Exhibit D** (the “Easement Agreement”) and transmit originals of same to Gunnison County Abstract Company (the “Title Company”) 504 N. Main

Street, Gunnison, CO 81230, Attention: Dillon Waggoner, with reference to File No. 2093, Commitment No. G22-111-1 (the “Commitment”) along with the fully executed copy of this MOU. The Terms of Service and Easement Agreement and MOU will be transmitted to the Title Company with instructions to hold the same in escrow pending the closing of the sale of the Water System to ELC under the Commitment (the “Closing”) at which time the Terms of Service and Easement Agreement and this MOU will be released from escrow and this MOU, the Terms of Service and Easement Agreement will be recorded in the Clerk’s Office immediately following the deed(s) to ELC for the real property component of the Water System. Nothing in the Terms of Service or Easement Agreement shall be construed to supersede or replace any provision of this MOU. In the event of any conflict between the Terms of Service or Easement Agreement and this MOU, this MOU and its terms and provisions shall supersede and prevail.

- 9) *Subordination.* This MOU and any amendments thereto shall be and are hereby subordinated, inferior and subject to and recorded after that certain Deed of Trust, Security Agreement and Fixture Filing granted by The Evergreen Lake Company, a Colorado limited liability company, to the Gunnison County Public Trustee for the benefit of the Colorado Water Resources and Power Development Authority (the “Authority”) dated _____, 2024 and recorded at reception number _____ of the real property records of Gunnison County, Colorado (the “Deed of Trust”), to secure a loan (the “Loan”) evidenced by that certain Loan Agreement, Promissory Note and other documents entered into in connection therewith (collectively and together with the Deed of Trust and all amendments, modifications, and extensions to the Loan Documents, the “Loan Documents”), and all indebtedness owned thereunder. This MOU shall not be binding upon the Authority, its successors or assigns. Without the prior written consent of the Authority, which may be granted or withheld by the Authority in its sole discretion, until such time as the Loan is repaid in full in accordance with the Loan Documents, AIA shall not do any of the following:
- (a) Bring any proceeding against the Borrower under any bankruptcy, reorganization, readjustment of debt, arrangement of debt, receivership, liquidation or insolvency law or statute of the federal or any state government;
 - (b) Commence any action or proceeding against any collateral for the Loan, including but not limited to those items listed on the attached Exhibit A. Such prohibited actions and proceedings shall include, but not be limited to, any action which may interfere with The Evergreen Lake Company’s possession, development, operation or management of such collateral and the Water System.

In the event the Authority has consented to accept a deed in lieu of foreclosure of the Deed of Trust following default by The Evergreen Lake Company and provides AIA with written notice of the Authority's intent ("Authority's Notice"), AIA shall within thirty (30) days after delivery of the Authority’s Notice cause a document to be recorded

in the real property records of Gunnison County, Colorado, terminating and releasing this MOA in its entirety.

AIA shall not take any action to contest (i) the validity of the liens or security interests granted to the Authority pursuant to the Loan Documents, or (ii) the enforceability of this Section or any of the Loan Documents.

This MOU may not be amended without the prior written consent of the Authority, which may be withheld in its sole discretion.

Executed effective as of the date first above written.

Arrowhead Improvements Association, Inc.,
a Colorado nonprofit corporation

By: _____
Lowell Kindschy, President
STATE OF COLORADO)
)SS
COUNTY OF _____)

This record was acknowledged before me on _____, 2024 by Lowell Kindschy as President of Arrowhead Improvements Association, Inc., a Colorado nonprofit corporation, on behalf of the corporation. Witness my hand and official seal.
My commission expires: _____.

(SEAL)

Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The Evergreen Lake Company,
a Colorado nonprofit corporation

By: _____
Robert A. Hernandez, President

STATE OF COLORADO)
)SS
COUNTY OF _____)

This record was acknowledged before me on _____, 2024 by Robert A. Hernandez, as President of The Evergreen Lake Company, a Colorado nonprofit corporation, on behalf of the company.
Witness my hand and official seal.
My commission expires: _____.

(SEAL)

Notary Public

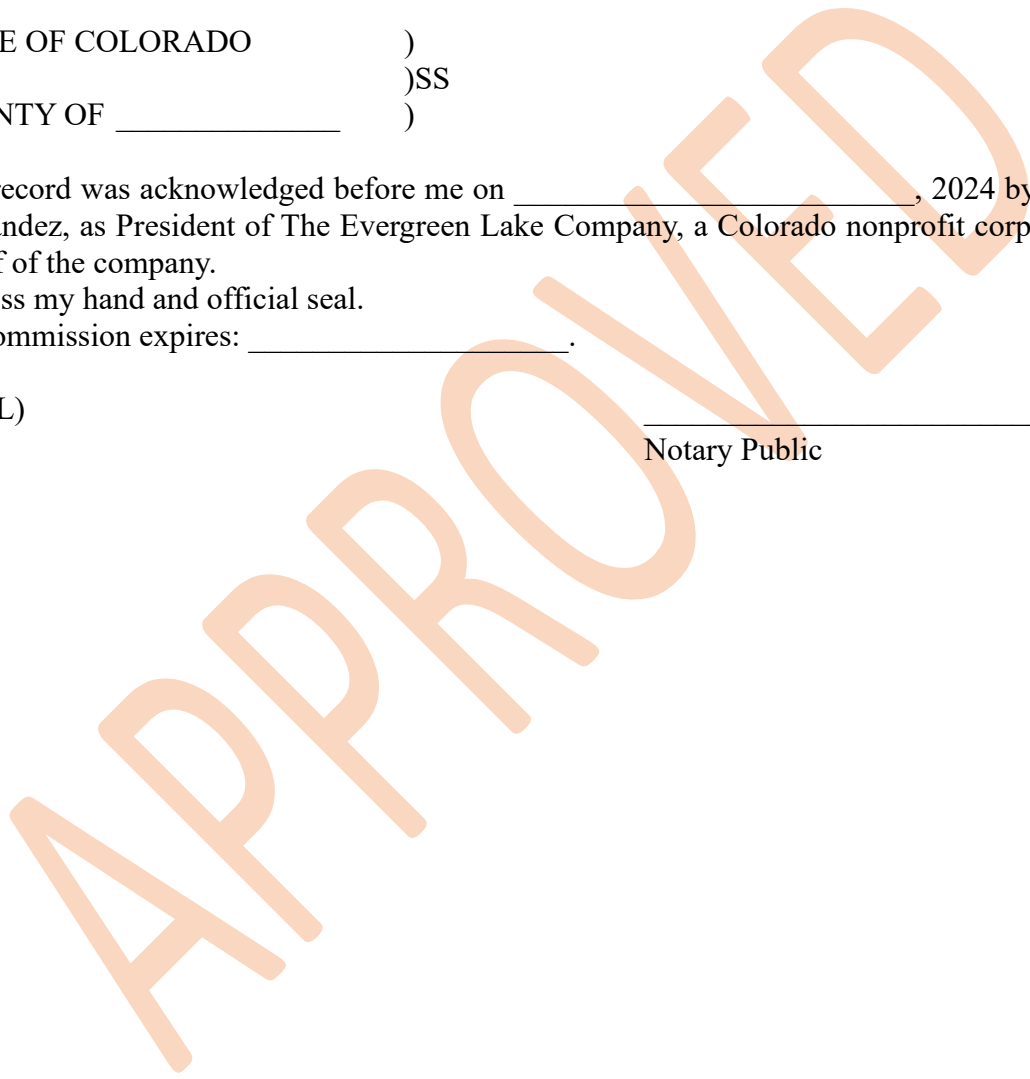
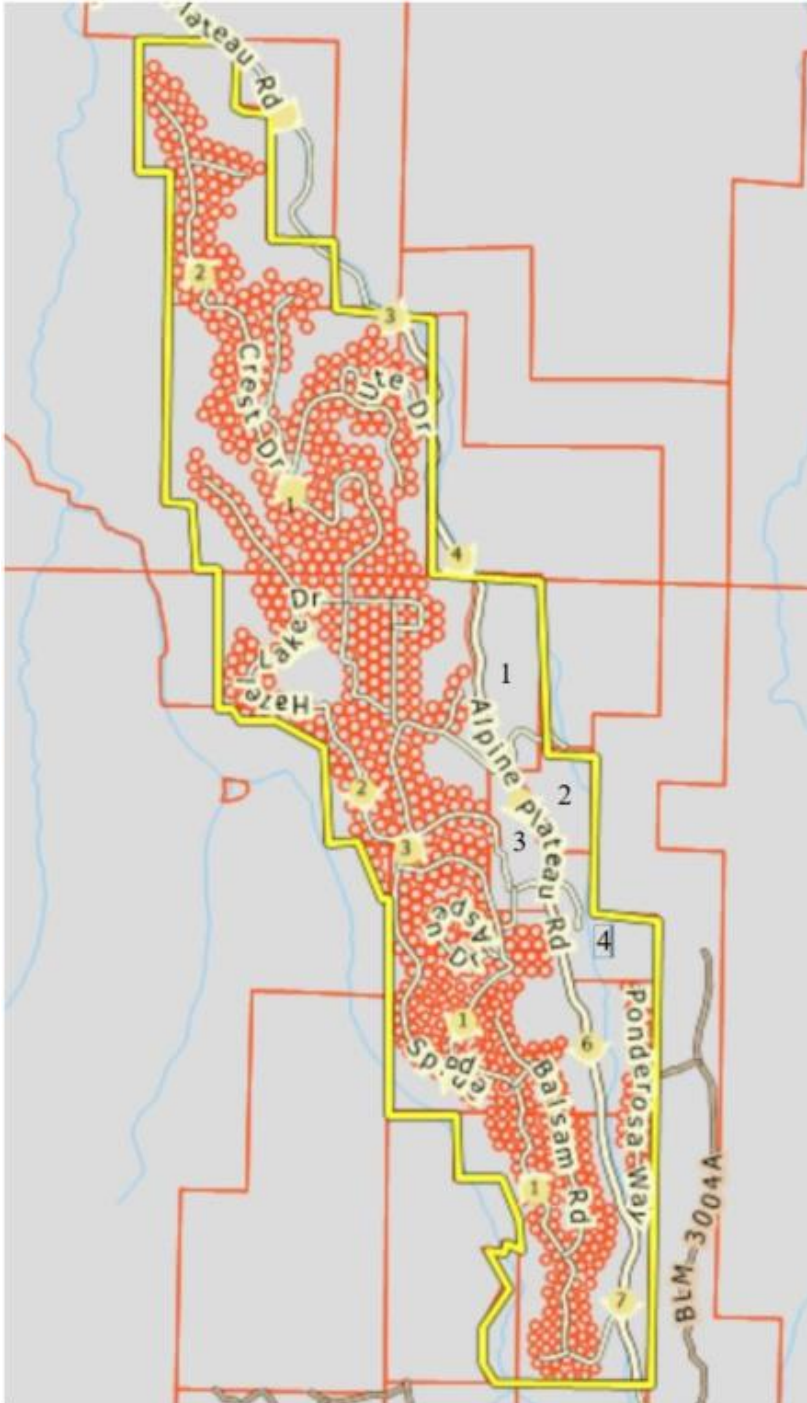


EXHIBIT A

Evergreen Lake decreed in 1997 in Case No. 97CW0223	7.05 acre feet
Evergreen Lake decreed 1976 in Case No. W2756	1.323 acre feet
Hazel Lake decreed in 1979 in Case No. 79CW0076 and 1984 in Case No. 83CW0244	200 acre feet
Arrowhead Lake decreed in 1976 in Case No. W2749 and in 1979 Case No. 79CW0062	300 acre feet
Upper Flint Lake decreed in 1976 in Case No. W2731 and 1979 in Case No. 79CW0060	10.29 acre feet
Lower Flint Lake decreed in 1976 in Case No. W2732 and 1979 in Case No. 79CW0061	26.30 acre feet
Flint Springs Nos. 1-3 decreed in 1998 in Case No. 98CW0203 and in 2021 Case No. 20CW3068	.2 cfs each
Ponderosa Spring decreed in 1998 in Case No. 98CW0203 and in 2021 Case No. 20CW3068	.3 cfs
Arrowhead Ditch No. 1 decreed in 1973 Case No. W1793 and 1979 in Case No. 79CW0055	2 cfs
Arrowhead Ditch No. 2 decreed in 1979 in Case No. 79CW0056 and 97CW223	3 cfs
Arrowhead Ditch No. 4 decreed in 1979 in Case No. 79CW0058	8 cfs
Arrowhead Ditch No. 5 decreed in 1976 in Case No. W2647 and 1979 in Case No. 79CW0059	3 cfs
Arrowhead Augmentation 1997 in Case No. 97CW0223 (required to maintain Evergreen Lake water rights)	---

**EXHIBIT B
SERVICE AREA**



The four additional parcels are identified as of the date of this MOU by Gunnison County as parcel numbers:

1. 4049-000-00-153 (being approx. 103.31 acres shown as owned by Donald F. Squirrell and Pamela M. Squirrell);
2. 4049-000-00-158 (being approx. 48.50 acres shown as owned by Blue Mountain Arrowhead LLC);
3. 4049-000-00-169 (being approx. 58.56 acres in addition to Lots 9-21 and 23 Arrowhead Commercial Area shown as owned by Shultz Family Trust Investments LLC); and
4. 4049-000-00-159 (being approx. 80.29 acres shown as owned by William B. Hobson).

EXHIBIT C
TERMS OF SERVICE

[See attached.]

APPROVED

**EXHIBIT D
EASEMENT AGREEMENT**

[See attached.]

APPROVED

Indexing Note:

Please index in the County's grantor index under "Arrowhead in Gunnison Country," "Arrowhead Improvements Association, Inc.," and in the grantee index under "EVERGREEN LAKE COMPANY"

TERMS OF SERVICE

EVERGREEN LAKE COMPANY

These Terms of Service (these "**Terms of Service**") dated this _____, 2024 govern the provision of water by The Evergreen Lake Company, a Colorado **nonprofit** corporation (the "**Company**"), to parcels within the following subdivisions in the County of Gunnison, State of Colorado:

Arrowhead in Gunnison Country Filing No. 1 Amended recorded February 5, 1974 in Book 2 at Page No. 7 and under Reception No. 298784 in the office of the Clerk and Recorder of the County of Gunnison, State of Colorado (the "**Clerk's Office**");

Arrowhead in Gunnison Country Filing No. 2 recorded January 26, 1979 under Reception No. 335299 in the Clerk's Office;

Arrowhead in Gunnison Country Filing No. 3 recorded May 20, 1980 under Reception No. 350190 in the Clerk's Office; and

The Ridges at Arrowhead in Gunnison Country recorded August 24, 1993 under Reception No. 444805 in the Clerk's Office;

(collectively, the "**Subdivisions**"). The Subdivisions together with all parcels currently served or that may be served in the future by the Central Water System are referred to herein as the "**Service Area**", which Service Area consists of the Subdivisions, certain parcels used as part of the Central Water System (defined below), parcels within Amended Arrowhead Commercial Area Unit 1 pursuant to subdivision plat recorded in the Clerk's Office May 15, 1990 under Reception No. 420146 and four additional legal parcels adjoining the Subdivisions totaling approximately 291 acres. The Service Area is depicted on the map attached as Exhibit A.

The sites (as referenced in the Declaration, defined below) within the Subdivisions are each referred to individually in these Terms of Service as a "**Property**" and, collectively together with all parcels currently served or served in the future by the Central Water System (defined below), the "**Service Area**". The Property does not include those areas within the Subdivisions that are located outside of the platted and numbered lots (which areas are referred to in the Declaration (defined below) as "sites" (the "**Common Areas**."))

RECITALS

WHEREAS, water service to each Property within the Service Area is or will be made available pursuant to these Terms of Service and in these Terms of Service each recipient thereof is referred to as a “**Customer**” and the system by which such water service is provided being referred to as the “**Central Water System**”;

WHEREAS, the Central Water System is the central water system referenced in Article IV Section 24 of the Arrowhead in Gunnison Country Subdivision Declaration of Protective Covenants and Restrictions recorded May 2, 1990 in Book 677 at page 680 and under Reception No. 419911 (the “**Original Declaration**”), as amended by Amendments to Arrowhead in Gunnison Country Subdivision Declaration of Protective Covenants and Restrictions recorded October 30, 2003 under Reception No. 536257, and The Ridges at Arrowhead in Gunnison Country Declaration of Protective Covenants recorded August 24, 1993 in Book 729 at Page 372 and under Reception No. 444806, all in the Clerk’s Office (collectively and as amended, the “**Declaration**”), which encumbers the Property within the Subdivisions;

WHEREAS, the Arrowhead Improvements Association, Inc., a Colorado nonprofit corporation (the “**Association**”) is the owners’ association formed relative to the Subdivisions pursuant to the Declaration to, among other things, take title to the Common Areas (and it has taken title to such Common Areas) and to regulate the use of sites and the Common Areas within the Subdivisions and is also a Customer;

WHEREAS, the Company must make improvements and perform regular (and potentially extraordinary) maintenance, including repairs and/or replacements, to ensure the Company’s ability to provide reliable water services to each Property and the Service Area;

WHEREAS, the Company owns and may purchase water rights and administer the augmentation plan affecting such rights in order to provide water services in compliance with new water quality standards;

WHEREAS, the Company’s duties with respect to the provision of water service within the Service Area, including to the Property, may require the Company to impose certain rules and regulations, including, but not limited to, volume limitations upon Customer’s water consumption, to ensure the provision of water to all residents within the Service Area in accordance with the terms of all applicable regulations and augmentation plans affecting the Service Area and the water rights used to provide such service;

WHEREAS, from time to time, the Company may be required to obtain outside funding in order to defray the expenses of obtaining water rights, making improvements, and performing regular and extraordinary maintenance, including repairs and/or replacements to the Central Water System; and

WHEREAS, it is in the best interests of the Customer, the Property and the Service Area, to ensure, to a reasonable extent, competent administration of plans designed to allocate water services equitably; to promote compliance with the obligations and duties upon which the provision of water service within the Service Area are conditioned; and to promote harmonious relations among owners of properties within the Service Area.

TERMS OF SERVICE

In view of the foregoing Recitals and in consideration of the provision of water service to the Service Area and each Customer's Property, the following Terms of Service shall govern:

1. **MAIN EXTENSIONS.** As necessary, in accordance with criteria established by the Company, Company has installed main extension lines from Company-owned water infrastructure and storage facilities to serve the properties within the Service Area. All utility lines must be placed underground.

2. **SERVICE LINES.** In connection with the installation, repair or replacement of any lateral lines to a Customer's Property, Customer shall timely acquire all necessary permits from the Association and governmental and other regulatory agencies (if and as applicable). All connections to the Company's mains shall be made in accordance with criteria established by Company. With respect to individual parcels of Property within the Subdivisions, water service shall be provided to only one meter on each such parcel served. All service lines shall be and remain the property of the owner of the Property served thereby.

3. **WATER PRESSURE.** Customer will accept water service at the pressure the Company is able to deliver to the above address with its existing facilities. If water pressure is not sufficient to serve Customer's improvements on the Property, Customer shall install pumps or similar equipment to provide adequate water pressure. All such equipment shall be and remain the property of the owner of the Property served thereby and shall thereafter be maintained by and at the sole expense of said owner unless otherwise permitted or required by separate agreement.

4. **FIRE PROTECTION.** Any fire hydrant located on the Central Water System may not provide sufficient flows for fire protection purposes. Nothing herein contained shall be construed to place Company in the position of guarantor of the supply or quantity of water service available for fire protection purposes, including but not limited to by reason of insufficient water pressure, or volume of water, intermittent supply, or interruption of service, and Customer hereby irrevocably waives any rights it may have against Company, its directors, officers and employees in connection with the availability or provision of water for fire protection services.

5. **METERING AND MONITORING.** Company has or shall equip each water service line with a shutoff valve and water meter (which may include a backflow prevention device) to measure water usage upon the Property. Customer hereby conveys to the Company an easement for the installation and maintenance of the water meter and for Company to obtain access to the water meter for the purposes of reading and maintaining the meter and for water testing. No obstructions shall be constructed on, over or around the meter or any other lines or appurtenances installed in connection with the Central Water System.

6. **MONTHLY METER READING.** Company may, at its election, read the water meter on the Property monthly to measure the volume of water delivered thereto and record the readings in a permanent manner. Utilizing said information, Company shall comply with all water augmentation plans affecting the Property and shall bill Customer for water treatment and usage according to Company's rate schedule as the same may be amended from time to time in the Company's sole discretion.

7. **OUTSIDE USAGE AND EXCESS USAGE PROHIBITED.** Water services obtained from the Company shall be for household uses only and usage of water for lawn and garden watering purposes is strictly prohibited. Customer also understands that the volume of water available to the Property is limited. The term “household use” as used in these Terms of Service means any use of the water in the living area or living quarters of a house or other place of residence, regardless of whether the type of residence or duration of residency is temporary or permanent.

8. **NEW SERVICE.** A new service connection will require a pre-paid water tap fee, in accordance with Company’s rate schedule, plus reimbursement of the costs to the Company for parts and materials used by the Company to make the actual connection to the water main after it has been uncovered by the Customer’s contractor (this connection has to be done by appointment made in advance). Customer’s contractor will also install the service line between the main and the residence. Company shall not be liable for any claim for damage, injury or loss to persons or property arising out of or in connection with Customer’s contractor’s installation of any service line.

9. **QUARTERLY BILLING.** Company shall bill Customer quarterly at the Customer’s (electronic or mailing) address on record with the Company or, if none, at the address of Customer’s Property, and Customer shall pay said quarterly bills on receipt at Company’s address as set forth below or as Company may otherwise direct in writing. Charges for all services as set forth in these Terms of Service may be billed together. Quarterly billing shall be for and include the following:

a. New service connection, commencement, or reconnection fees for each service provided hereunder, in accordance with Company’s rate schedule, as the same may be amended from time to time in the Company’s sole discretion;

b. A monthly charge in accordance with Company’s rate schedule, as the same may be amended from time to time in the Company’s sole discretion, for each service provided by Company;

c. A fixed sum representing a surcharge as a special assessment against Customer to aid Company in the recovery of compliance costs, drought related costs, costs related to legal proceedings, maintenance costs and costs of construction of main extensions and related facilities, improvements and replacements and all other capital improvements made by Company within the Property;

d. Any repayment of debt or related finance charges;¹ and

e. Any other charges or fees directly attributable to Customer pursuant to the terms and conditions of these Terms of Service.

¹ In some cases Customer will be able to pay his *pro rata* share in full rather than participate in a financing arrangement through the Company. If that is an option, and if the Customer pays in full, then Customer shall not be responsible for costs of that particular financing arrangement.

If Customer defaults in respect to the payment of any such bill for a period of more than thirty (30) days from the statement date, Company may, at its option, impose late fees and default interest as set by the Company's Board of Directors from time to time. If said payment remains unpaid for a period of sixty (60) days from the statement date, Company may, at its option, terminate water service to the Property until all amounts due for water services have been paid in full, along with all charges imposed by Company in connection with the disconnection and reconnection of water services, which may include a payment of the current reconnection fee and all other collection costs incurred by Company, including administrative and court costs and reasonable attorney's fees.

10. **LIEN RIGHTS.** By accepting water service, Customer covenants and agrees to pay to the Company all amounts due as set forth above and further agrees that all such charges shall be a charge on the land and shall be a continuing lien upon the Property until paid in full. All such liens shall be subject to foreclosure in accordance with applicable law. **IT IS SPECIFICALLY AGREED BY THE PARTIES THAT IF CUSTOMER PAYS ALL AMOUNTS AS THEY FALL DUE PURSUANT TO THESE TERMS OF SERVICE, INCLUDING ANY ASSESSMENT MADE BY THE COMPANY, THEN NO LIEN SHALL BE AVAILABLE TO THE COMPANY.**

11. **LIABILITY.** Customer shall indemnify and hold Company harmless from and against any claim, liability, damage, loss, surcharge, penalty and expense, including reasonable attorneys' fees, arising out of or resulting from Customer's performance of or failure to perform any duty or responsibility specified hereunder or arising out of Customer's negligence or other misuse of Company's facilities and assumes all responsibility for damages that may arise from breakage of or leakage from Customer's service line and facilities including damage by water. The Customer's service line and facilities commence at the Customer's meter, but do not include the meter.

12. **SERVICE INTERRUPTION.** Nothing herein contained shall be construed to place Company in the position of guarantor of the quantity or quality of water services and Company shall not be responsible for any claims of any kind whatsoever, occurring by reason of insufficient or excessive water pressure, or volume of water, intermittent supply, interruption of service, or any claims for damage or inconvenience of any kind whatsoever occurring on or within the Property or the Service Area relative to water service and Customer hereby irrevocably waives any rights it may have against Company, its directors, officers and employees in connection with the quality, quantity, interruption or termination of services. In case of interruption of services, Customer's remedy shall be strictly limited to a refund of pre-paid fees, if any, attributable to the period during which water services were not provided by the Company.

13. **RULES AND REGULATIONS.** Company has adopted, and reserves the right to amend from time to time, rules and regulations not in conflict with the terms of these Terms of Service, and Customer shall abide by such rules and regulations. Said rules and regulations may include the assessment of fines to deter conduct which jeopardizes the ability of owners of property within the Service Area to obtain water services or which increases the costs of those services. Any rules and regulations adopted by Company shall be provided in writing and shall remain on file in offices of Company for inspection during regular business hours.

14. **TERM OF TERMS OF SERVICE.** These Terms of Service shall be effective immediately and shall continue so long as water services remain available to Property from the Company. Customer may cancel these Terms of Service upon sixty (60) days' prior written notice to the Company. Upon cancellation of water service, Customer loses all rights to service from the Company; service will be immediately discontinued; and any future request to reattach to the water system will be treated as a new application for service which shall include a reconnection fee. Upon cancellation of water service, Customer shall pay all amounts owed by Customer as determined by the Company.

15. **BINDING EFFECT.** These Terms of Service shall be binding upon Customer during the terms hereof.

16. **NO WAIVER.** Failure of Company to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of Company to exercise at some future time said right or any other right it may have hereunder.

17. **SEVERABILITY.** If any provision of these Terms of Service shall be or become invalid or unenforceable, the remainder of the provisions shall not be affected thereby, and each and every provision shall be enforceable to the fullest extent permitted by law.

18. **AMENDMENT.** These Terms of Service may be amended by the Company's Board of Directors from time to time. Any such amendments shall be provided in writing and shall remain on file in offices of Company for inspection during regular business hours.

19. **NO ASSIGNMENT BY CUSTOMER.** Customer's right to receive water from Company pursuant to these Terms and Conditions may not be separately assigned from Customer's Property and may only be used in connection therewith. Notwithstanding the foregoing, however, upon sale of the Property, these Terms of Service shall be deemed assigned to the purchaser who shall be substituted for Customer for all purposes hereunder.

20. **ASSIGNMENT BY COMPANY.** Company may assign its rights and obligations under these Terms of Service to any successor provider of water service to the Service Area without the consent of any Customer or association of owners (such successor thereafter being the "**Company**" under these Terms of Service). The original Company will provide Customer with written notice of any such assignment and, thereafter, bills will be payable to the address directed by the successor to the original Company in writing.

21. **ENTIRE TERMS OF SERVICE.** These Terms of Service supersede and control over all prior written and oral agreements and representations of the Company and Customer and is the total integrated agreement among the parties governing the matters provided for herein.

22. **GOVERNING LAW; VENUE; ATTORNEYS' FEES.** These Terms of Service and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions arising under these Terms of Service shall be Gunnison County, Colorado. In the event Customer or Company pursues any legal remedy to resolve any dispute or conflict regarding the terms of these Terms of Service or the rights and obligations of the parties hereto, the prevailing party shall be entitled to recover

costs incurred in pursuing such remedies, including court costs and fees, expert witness fees, and reasonable attorneys' fees.

23. **RECORDING OF AGREEMENT.** These Terms of Service shall be recorded in the Clerk's Office and shall constitute covenants burdening all of the Property owned by the Association. The Association is not executing these Terms of Service on behalf of any other Customer, but only on behalf of the Association as a Customer. All service by the Company to Customers shall be upon the terms and other provisions set forth in this Agreement. In accepting service from the Company, Customers agree to be bound by the terms and other provisions in this Agreement.

24. **RELIANCE BY THE COMPANY.** The Company agrees to provide water to the Customers and the Service Area solely in accordance with the terms of this Agreement, in reliance of the covenants provided herein.

APPROVED

COMPANY:

The Evergreen Lake Company, a Colorado nonprofit corporation

By: _____
Name: Robert A. Hernandez
Title: President

STATE OF COLORADO)
)SS
COUNTY OF _____)

This record was acknowledged before me on _____, 2024 by Robert A. Hernandez, as President of The Evergreen Lake Company, a Colorado nonprofit corporation, on behalf of the company.

By: _____
Title: _____
My Commission Expires: _____

(Notary Seal)



CONFIRMED AND AGREED:

**ARROWHEAD IMPROVEMENTS
ASSOCIATION, INC.,**
a Colorado nonprofit corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
)SS
COUNTY OF _____)

This record was acknowledged before me on _____, 2024 by Lowell Kindschy as President of the Arrowhead Improvements Association, Inc., on behalf of the corporation.

By: _____
Title: _____
My Commission Expires: _____

(Notary Seal)

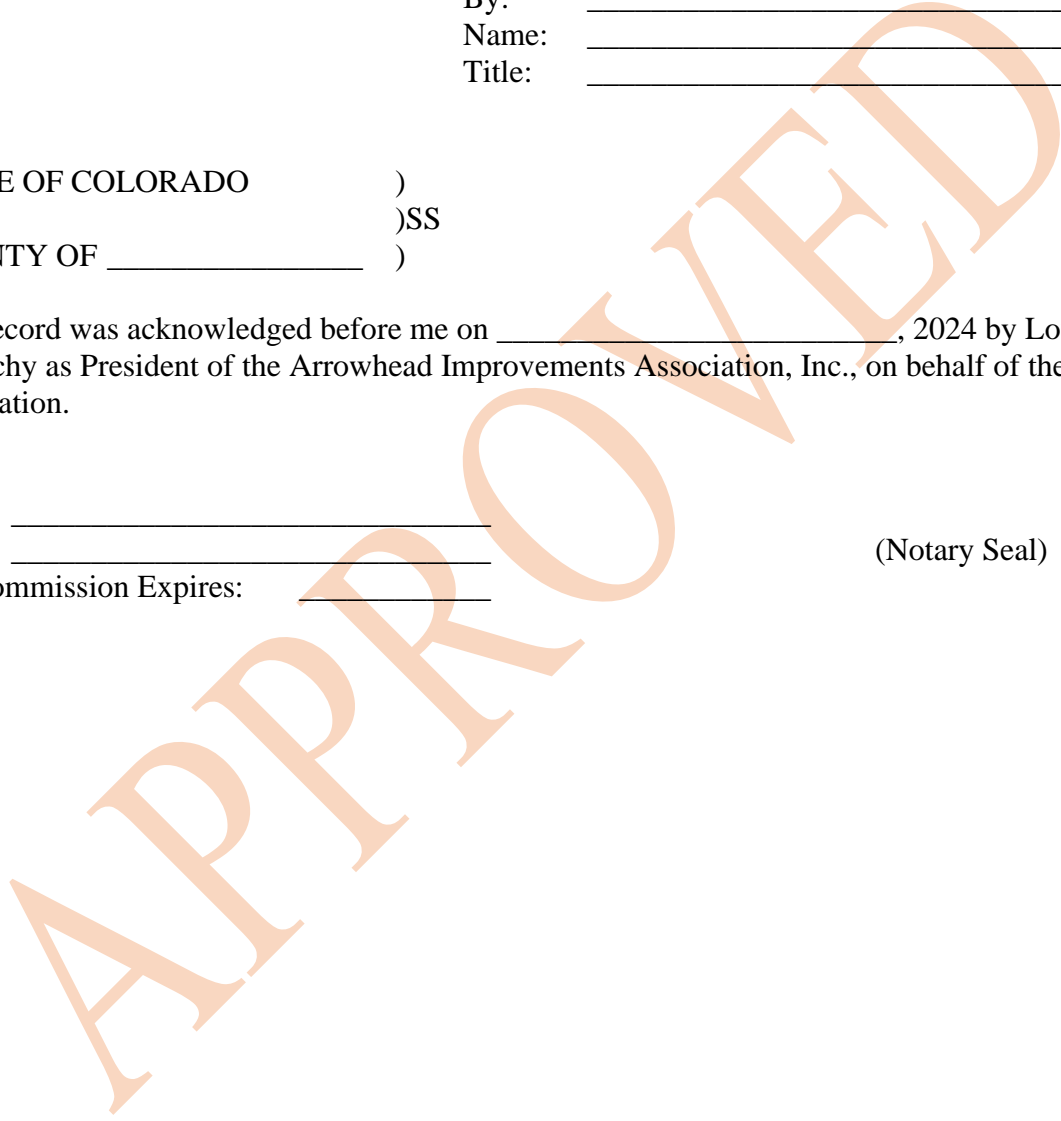
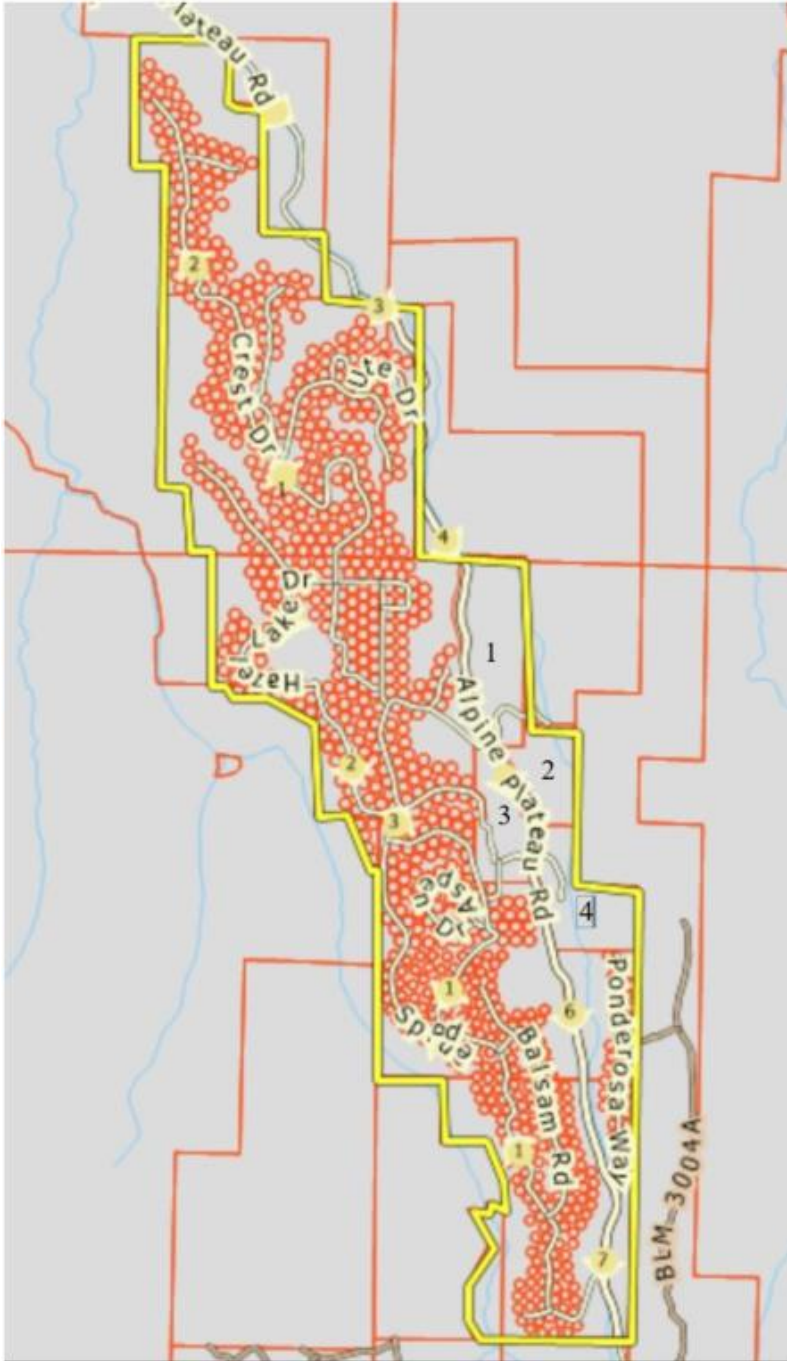


EXHIBIT A SERVICE AREA



The four additional parcels are identified as of the date of this MOU by Gunnison County as parcel numbers:

1. 4049-000-00-153 (being approx. 103.31 acres shown as owned by Donald F. Squirrell and Pamela M. Squirrell;
2. 4049-000-00-158 (being approx. 48.50 acres shown as owned by Blue Mountain Arrowhead LLC);
3. 4049-000-00-169 (being approx. 58.56 acres in addition to Lots 9-21 and 23 Arrowhead Commercial Area shown as owned by Shultz Family Trust Investments LLC); and
4. 4049-000-00-159 (being approx. 80.29 acres shown as owned by William B. Hobson).