



AGREEMENT

THIS AGREEMENT is made and entered into this 23rd day of June, 1998, by and between **Higby Project, L.L.C.**, A Colorado Limited Liability Company (hereinafter "Owner"), and the **Higby Estates Property Owners Association, Inc.**, a Colorado nonprofit corporation (hereinafter "Association").

RECITALS

A. Owner holds title to approximately 233 acres of property located in the East Half of the Southeast Quarter of Section 19 and the Southwest Quarter of Section 20, Township 11 South, Range 66 West of The 6th P.M., El Paso County, Colorado (the "Property").

B. Owner also holds title to the nontributary ground water in the Arapahoe Aquifer and the Laramie-Fox Hills Aquifer of the Denver Basin, which aquifers underlie the Property. The water rights were adjudicated by The District Court for Water Division No. 2 and a Decree entered by said Division No. 2 on December 1, 1997, under Consolidated Case Nos. 96CW232 (Water Division No. 2) and 96CW1133 (Water Division No. 1) (hereinafter the "Augmentation Decree") and amended April 7, 1998. Approximately 25.7 acre-feet per annum of Arapahoe water from Case 93CW68, and 68.4 acre-feet per annum of Laramie-Fox Hills Aquifer water from Case 96CW232, is decreed as available for withdrawal.

C. Owner is in the process of developing portions of the Property as a residential subdivision. Approximately eighty-three single family houses will be constructed on two and one-half acre lots. The Association has been created to enforce and administer the restrictive covenants which apply to the development.

D. The water supply for each lot will be from the not nontributary Dawson Aquifer of the Denver Basin.

E. In order to obtain permission to construct wells into the not nontributary Dawson Aquifer, Owner processed and obtained the Augmentation Decree.

F. One of the conditions of the Augmentation Decree is a requirement that Owner reserve and assign to the Association the amount of 9,410 acre-feet of Arapahoe and Laramie-Fox Hills Aquifer water (68.4 acre-feet per year of Laramie-Fox Hills Aquifer water and 25.7 acre-feet per year of Arapahoe Aquifer water as decreed in Case 93CW68 for possible use to address post-pumping depletions to the stream as provided in the Augmentation Decree.

G. In order to satisfy the obligations imposed by the Augmentation Decree, Owner and the Association have entered into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the adequacy of which is acknowledged, the parties agree as follows:

1. Reservations, and Assignment to the Association, of Arapahoe and Laramie-Fox Hills Aquifer Ground Water: In accordance with the Augmentation Decree, Owner hereby reserves and agrees to convey to the Association by recorded deed 6,840 acre-feet of Laramie-Fox Hills Aquifer water rights and 2,570 acre-feet of Arapahoe Aquifer water rights, said water as decreed to Owner per the terms of the Augmentation Decree (the "Association's Reserved Water Rights"). The Association's Reserved Water Rights are reserved for and will be conveyed to the Association for possible use by the Association to address post-pumping depletions to the stream as provided in the Augmentation Decree.

2. Duration of Ownership: The Association's Reserved Water Rights shall be conveyed to the Association and the Association shall continue to hold title to said water rights until such time as the issue of post-pumping depletions to the stream may be resolved by the District Court for Water Division No. 2 and the Augmentation Decree is appropriately amended or modified by Court order.

3. Use by Association: In the event that it is determined by the District Court for Water Division No. 2 that post-pumping depletions from the wells authorized to be constructed pursuant to the Augmentation Decree must be augmented, the Association shall have the right and the responsibility to use as much of the Association's Reserved Water Rights as is determined to be needed. However, it is agreed and understood that the Association's use of the water shall be subject to the conditions set forth in Paragraphs 4 and 5, below.

4. Association Responsibilities: The Association shall be responsible for all costs associated with drilling, equipping, operating and maintaining any well or wells, and associated infrastructure that may be required to deliver the reserved ground water to the South Platte River drainage basin, or other basin, as required by the Augmentation Decree. In addition, the Association shall be responsible for all of the obligations contained in the Augmentation Decree, as well as the obligations pertaining to the withdrawal of ground water from the Laramie-Fox Hills Aquifer and Arapahoe Aquifer contained in the Augmentation Decree.

5. Termination of Association's Reserved Water Rights: At such time as the District Court for Water Division No. 2 enters an order which establishes that less than 9,410 acre-feet of the reserved water conveyed hereby is required to augment

post-pumping depletions, the Association's Reserved Water Rights will be automatically reduced by the volume of water represented by the difference between 9,410 acre-feet and the amount established by the Court to be needed, and the ownership of the difference shall revert to Owner, who shall be free to use, sell, assign, convey, or otherwise disperse the volume of water represented by said difference without any limitation whatsoever. In addition, if the post-pumping replacement obligations are ever deemed to have been fully satisfied under the Augmentation Decree, then all ownership and rights to the Association's Reserved Water Rights shall automatically revert to Owner, or Owner's heirs, personal representatives, successors, or assigns.

6. Conveyance of Association's Reserved Water Rights: Owner shall convey to the Association by recorded deed the Association's Reserved Water Rights. Said deed shall contain rights of reversion in the event the water, or portions thereof, are not required for post-pumping depletions to the stream, as hereinabove set forth. Should said rights or portions thereof revert to Owner, the Association agrees to execute and deliver Quit Claim deeds to Owner regarding the unused portions of said water.

7. Reservation of Water Easements: Owner is reserving certain easements across the property to enable Owner to access, construct, maintain and use wells on the Property as may be desirable for Owner in conjunction with Owner's reserved water rights, and as may be necessary in support of the administration of the Augmentation Decree. If the Association should need to construct any wells pursuant to the requirements of the Decree, upon a request therefor, Owner covenants and agrees to supply Association with necessary easements therefor, Tract A, such easements to be selected by Owner in its reasonable discretion and in a manner reasonably determined to meet the Association's requirements under the Augmentation Decree. Should Owner convey or assign its rights to those easements, Owner covenants to require the person or entity acquiring Owner's interest to assume and perform Owner's obligations to the Association under this paragraph.

8. Miscellaneous: This Agreement shall be interpreted according to the laws of the State of Colorado and any amendment to this Agreement must be made in writing and signed by the parties.

ENTERED the day and year first above written.

HIGBY PROJECT, L.L.C.

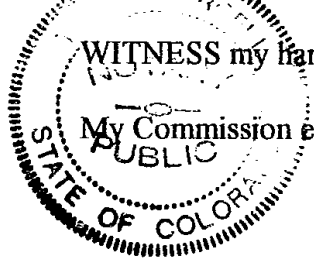
By: Carroll W. Turner
Manager

HIGBY ESTATES PROPERTY OWNERS
ASSOCIATION, INC.

By: Carroll W. Turner
President

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

Acknowledged before me this 8th day of June, 1998, by
CARL N. TURSE



WITNESS my hand and official seal.

My Commission expires: 8/15/2001

Tracy Russell
Notary Public

My Commission Expires 05/15/2001

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

The foregoing instrument was acknowledged before me this _____ day of _____, 1998, by _____.

WITNESS my hand and official seal.

My Commission expires: _____

Notary Public



**ASSIGNMENT OF RIGHTS AND ASSUMPTION OF RESPONSIBILITIES
UNDER AUGMENTATION DECREE**

This Assignment of Rights and Assumption of Responsibilities Under Augmentation Decree (the "Assignment") is made this 8 day of June, 1998, by and between **Higby Project, L.L.C.**, A Colorado Limited Liability Company (hereinafter "Owner"), and **Higby Estates Property Owners Association, Inc.**, a Colorado non-profit corporation (hereinafter "Association").

RECITALS

A. Owner holds title to approximately 233 acres of property located in the East Half of the Southeast Quarter of Section 19 and the Southwest Quarter of Section 20, Township 11 South, Range 66 West of The 6th P.M., El Paso County, Colorado (the "Property").

B. Owner is in the process of developing portions of the Property as a residential subdivision. Approximately eighty-three single family houses will be constructed on two and one-half acre lots (the "Subdivision"). The Association has been created to enforce and administer the Declaration of Protective Covenants, Conditions, Restrictions and Easements which apply to the Subdivision.

C. The water supply for each lot within the Subdivision will be from the not nontributary Dawson Aquifer of the Denver Basin.

D. In order to obtain permission to construct wells into the not nontributary Dawson Aquifer, Owner processed a plan for augmentation in the District Court for Water Division No. 1 and the District Court for Water Division No. 2. The matter was consolidated in the District Court for Water Division No. 2 and a decree was entered on December 1, 1997, under Consolidated Case Nos. 96CW232 (Water Division No. 2) and 96CW1133 (Water Division No. 1 (the "Decree")) and amended on April 7, 1998.

E. The Decree grants certain rights to and imposes certain responsibilities on Owner.

F. Owner and the Association are entering into this Assignment to document Owner's assignment of certain of Owner's rights under the Decree to the Association, and the Association's assumption of Owner's responsibilities under the Decree.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein, and other good and valuable consideration, the adequacy of which is hereby acknowledged by the parties, and in order to confirm the transfer of rights and responsibilities under the Decree to the Association, the parties to this Assignment hereby agree as follows:

1. Owner hereby assigns to the Association any and all rights, interests and responsibilities under the Decree, including without limitation, the rights under the Water Rights Purchase Agreement between Owner and the Northgate Company dated October 21, 1997 (the "Northgate Contract"), as described in the Decree, but only to the extent those rights are required for and related to the Subdivision, and expressly excluding assignment of any water right not required for the Subdivision or related to any of the Property which are retained by Owner for other uses, including, but not limited to, use as a commercial horse stable, horse ranch or otherwise. In addition, to other reservations by Owner, Owner specifically retains and reserves all rights, titles, interests and responsibilities under the Decree for those portions of the Property that are not included in the Subdivision.

2. Owner is reserving certain easements across the Property to enable Owner to access, construct, maintain and use wells within the Subdivision as may be desirable for Owner in conjunction with owner's reserved water rights, and as may be necessary in support of the administration of the Decree. If the Association should need to construct any wells pursuant to the requirements of the Decree, Owner covenants and agrees to supply Association with necessary easements therefor, such easements to be selected by Owner in its reasonable discretion and in a manner reasonably determined to meet the Association's requirements under the Decree.

3. As a result of this Assignment to the Association, and with the exception of the covenant in Paragraph 2 above, Owner shall be relieved of any responsibility for the administration or enforcement of the Decree or the operation of the Decree as to the Subdivision, and the Association shall be obligated to perform same.

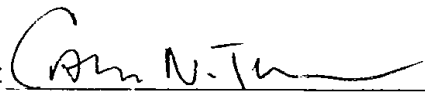
4. The Association shall hold the interest in the Decree and the augmentation water supply assigned herein for the benefit of all lot owners within the Subdivision. The Association hereby assumes the responsibility for administering and enforcing the Decree, and agrees to take all necessary actions to ensure protection of the water rights and well rights for all lot owners pursuant to the Decree.

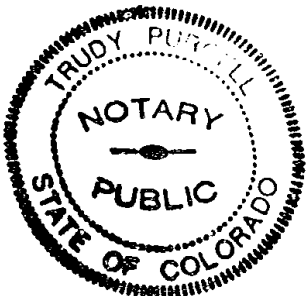
5. The Association acknowledges that the failure of the Association or the lot owners to comply with the terms of the Decree may result in an order from the State of Colorado Water Administration Officials to curtail or eliminate pumping of the lot owners' wells.

6. By executing this Assignment, the Association accepts the conditions, responsibilities and obligations set forth herein and hereby assumes and agrees to perform the Owner's responsibilities under the Decree and the Northgate Contract as assigned herein.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year first above written.

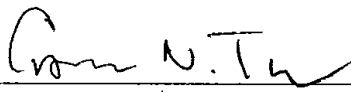
HIGBY PROJECT, L.L.C. a Colorado
Limited Liability Company

By: 
manager



My Commission Expires 09/15/2001

HIGBY ESTATES PROPERTY OWNERS
ASSOCIATION, INC.

By: 
President

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

Acknowledged before me this 8th day of June, 1998, by
CARL N. TURSE

WITNESS my hand and official seal

My Commission expires: 8/15/2001


Notary Public



QUIT CLAIM DEED

THIS DEED, Made this 5th day of June 1998, between

HIGBY PROJECT, L.L.C.

of the County of El Paso and State of Colorado, grantor(s), and

Higby Estates Homeowners Assoc.

whose legal address is

of the County of El Paso and State of Colorado, grantee(s),

WITNESSETH, That the grantor(s), for and in consideration of the sum of \$1.00 One Dollar and no/100 DOLLARS

the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, conveyed and QUIT CLAIMED, and by these presents do remise, release, sell, convey and QUIT CLAIM unto the grantee(s), heirs, successors and assigns, forever, all the right, title, interest, claim and demand which the grantor(s) has in and to the real property, together with improvements, if any, situate, lying and being in the County of El Paso and State of Colorado, described as follows:

Site referred to as Tract A on plat map for Higby Estates (East Half of the Southeast Quarter of Section 19 and the Southwest Quarter of Section 20) to Higby Estates Homeowners Association. The HEHOA also reserves the right to drill a post-pumping depletion well on this site at such time as required and specified by water decree Case 96CW232 or 96CW1133 or any subsequent ruling pertaining to such case.

also known by street and number as:

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the grantor(s), either in law or equity, to the only proper use, benefit and behoof of the grantee(s), heirs and assigns forever.

IN WITNESS WHEREOF, The grantor(s) has executed this deed on the date set forth above.

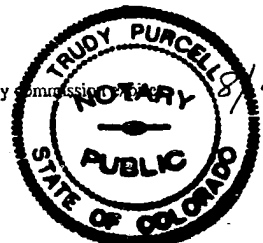
Caro U. Tu

STATE OF COLORADO,

County of El Paso } ss.

The foregoing instrument was acknowledged before me this 8th day of June, 1998

by
My Commission Expires 08/15/2001, 19 . Witness my hand and official seal.



Trudy Purcell

Notary Public

My Commission Expires 08/15/2001
*If in Denver, insert "City and."