

RESOLUTION 2021-11

RESOLUTION OF THE BOARD OF DIRECTORS OF TRIVIEW METROPOLITAN DISTRICT CONCERNING THE PETITION OF WOODED VISTA, LLC, REGARDING TEMPORARY INDIVIDUAL WELL AND SEPTIC SERVICE FOR PROPERTY WITHIN THE HOMEPLACE RANCH – 100-ACRE WOODS

WHEREAS, Triview Metropolitan District ("District") has received a Petition from Wooded Vista, LLC ("100-Acre Woods") requesting temporary use of District-owned Dawson aquifer water resources, and for the use of non-District water and wastewater facilities on a property previously included within the District.

WHEREAS, 100-Acre Woods has specifically requested that the District allow for the temporary use of several existing exempt well and individual septic disposal systems ("ISDS"), as opposed to utilizing District water/wastewater services, to service an approximately 109-acre parcel, which has two captive lots currently platted within the larger parcel and currently located within Home Place Ranch property (collectively, the "Lot"), as described and depicted on Exhibit A hereto.

WHEREAS, the Home Place Ranch property, including the Lot, was the subject of a Petition for Inclusion within the District dated July 14, 2006, and said Petition was subsequently approved by the District by Order of the District Board of Directors dated August 23, 2006. The owner of the Home Place Ranch, Home Place, LLC ("HP"), subsequently entered into an Infrastructure Agreement with the District, largely replacing the terms and conditions of the prior Petition and Order, dated November 15, 2019.

WHEREAS, the 100-Acre Woods Lot has likewise previously been annexed into the Town of Monument, and for purposes of this Resolution and Agreement the Lot remains a part of the Home Place Ranch property as described in the District's Order including the same and the Infrastructure Agreement.

WHEREAS, the District has considered the 100-Acre Woods Petition, and has determined that it is appropriate to approve the 100-Acre Woods Petition, subject to the terms and conditions herein.

WHEREAS, in light of the unique nature of this Resolution and mutual rights and responsibilities accruing not only to the District, but also to 100-Acre Woods, it is the District's intent that this Resolution, when agreed and acknowledged by all parties, shall be enforceable as a contract;

WHEREAS, pursuant to C.R.S. §32-1-1001(m) and (n), this Board has the power to adopt, amend and enforce bylaws and rules and regulations for the District that are not in conflict with the constitution and laws of the State of Colorado, for the carrying on of the business of the District, and may exercise all rights and powers necessary or incident to or implied from its specific powers.

NOW, THEREFORE, pursuant to the District's authority and the power under Title 32 of Colorado Revised Statutes, the 100-Acre Woods Petition concerning the following exceptions to the established District policy concerning use of non-District services upon lands included within the District, as specifically concerns only the Lot, and as concerns the use of the District-owned not-nontributary Dawson aquifer resource, as described and defined herein, is hereby approved, subject to the following terms and conditions:

1. 100-Acre Woods Temporary Infrastructure. The District shall allow for 100-Acre Woods's temporary utilization of Well Permit No. 016013-F, as well as two (2) unpermitted wells which currently exist on the property (collectively the "100-Acre Wells") to provide a domestic water supply to the Lot. The one permitted well as currently permitted to Higby Cattle Company, and the two (2) unpermitted wells are constructed to the District-owned Dawson Aquifer, and provided all such uses remain consistent with any and all applicable regulations, including the terms and conditions stated in the above described well permit documents, the District shall allow the continued use and operations of such wells, consistent with the terms and conditions herein. 100-Acre Woods shall be solely and completely responsible for all maintenance, repair, replacement and abandonment of the 100-Acre Wells, including all cost and expense thereof, and further including responsibility for all regulatory compliance, including water quality. The District shall allow the existing residence and outbuildings on site to continue to utilize water produced by the 100-Acre Wells, and further allow for 100-Acre Woods's construction, repair, maintenance and temporary utilization of 2 existing Individual Septic Disposal Systems on the Lot for a maximum of three (3) single family residences, including one primary residence and two (2) guest facilities, to be constructed thereon (the "100-Acre ISDS"). 100-Acre Woods shall similarly be solely and completely responsible for all maintenance, repair, replacement and abandonment of the 100-Acre ISDS, including all cost and expense thereof, and further including responsibility for all regulatory compliance. The 100-Acre Wells and 100-Acre ISDS are collectively the "Temporary Infrastructure". All Temporary Infrastructure shall be constructed and operated in compliance with all applicable State, County or local laws, ordinances and regulations, and 100-Acre Woods shall be solely and completely responsible for ensuring such compliance and hereby covenants to fully indemnify the District for any costs incurred by the District as a result of any non-compliance. 100-Acre Woods expressly waives and releases the District from any liability associated with such regulatory compliance, and the parties agree that the 100-Acre Woods Temporary Infrastructure, and the 100-Acre ISDS in particular, shall at no time be considered infrastructure owned, operated or controlled by the District, unless otherwise expressly provided herein.

2. Temporary. 100-Acre Woods's use of the Temporary Infrastructure shall be strictly of a temporary nature, and shall only be for such period as District water and wastewater services are not available to the Lot. Notwithstanding the foregoing, for so long as no land use proceedings or further subdivision of the 100-Acre Woods Lot is sought, the District shall allow the use of the Temporary Infrastructure regardless of whether District water and sewer services have become physically available to the Lot.

District services shall be considered available at such time as District main water and/or wastewater lines are constructed to a location adjacent to the Lot, as specifically provided herein. As specifically provided herein, unless no changes in land use or platting of the 100-Acre Wood Lot are sought, under no circumstances may 100-Acre Woods, or its successors, be entitled to continue to utilize the Temporary Infrastructure once District services are available for the same.

3. Notice of District Service Availability. The District shall advise 100-Acre Woods in writing at such time as the District and/or entities constructing such infrastructure for District use, have constructed main water and/or wastewater infrastructure to a point within 400 feet of any portion of the Lot, which shall be considered the point in time at which District services have been "constructed to a location adjacent to the Lot" for purposes of this Resolution and Agreement.

4. 100-Acre Woods Water Improvements/Connection. 100-Acre Woods shall, within 180 days of written notice from the District of water service availability, cause the residential structures/facilities constructed on the Lot to be connected to the District's water service infrastructure and thereafter obtain such services from the District exclusively, unless no changes in platting or land use of the 100-Acre Woods has occurred, in which instance the 100-Acre Woods may continue to utilize the Temporary Infrastructure. 100-Acre Woods shall, within said 180 days, construct and pay for all costs associated with connection to the District's water delivery and distribution system mains adjacent to the Lot as necessary to properly supply and distribute water from the District's water facilities to the Lot ("Water Utility Improvements"), the sufficiency of which shall be acceptable to the District in its sole and complete discretion. Prior to construction of such Water Utility Improvements, 100-Acre Woods shall first obtain final design approval of the Water Utility Improvements by the District, in writing, that such improvements are in accordance with the District's design criteria and construction standards. The District shall approve any design plan, or provide reasons for any disapproval within 30 days of submission by 100-Acre Woods. 100-Acre Woods shall be solely responsible for ensuring that the infrastructure as designed and constructed is adequate to properly service the Lot in accordance with the District's design criteria, construction standards, and construction oversight observations. 100-Acre Woods shall further be responsible for, and bear all costs associated with, coordination with HP or their successors in interests to the balance of the Home Place Ranch property, to ensure that 100-Acre Woods's Water Utility Improvements are consistent with and complimentary to, as may be necessary, HP's own water utility improvements for the Home Place Ranch property. As a result, the District shall bear no responsibility to 100-Acre Woods for the adequacy of design or construction. 100-Acre Woods shall be responsible for all costs and expenditures associated with the design and construction of the Water Utility Improvements, and shall likewise be responsible for ensuring that all District approvals, design, and construction of the same is completed within the 180 day period provided herein.

5. 100-Acre Woods Wastewater Improvements/Connection. 100-Acre Woods

shall, within 180 days of written notice from the District of sewer service availability, cause the structures/facilities constructed on the Lot to be connected to the District's sewer service infrastructure and thereafter obtain such services from the District exclusively, unless no changes in platting or land use of the 100-Acre Woods has occurred, in which instance the 100-Acre Woods may continue to utilize the Temporary Infrastructure. 100-Acre Woods shall, within said 180 days, construct and pay for the wastewater collection lines as necessary to properly collect the wastewater from the Lot and connect to the District's wastewater main ("Wastewater Utility Improvements"), the sufficiency of which shall be acceptable to the District in its discretion. 100-Acre Woods shall obtain final design approval of the Wastewater Utility Improvements by the District, in writing, that such improvements are in accordance with the District's design criteria and construction standards. The District shall approve any design plan, or provide reasons for any disapproval within 30 days of submission 100-Acre Woods. 100-Acre Woods shall be solely responsible for ensuring that the infrastructure as designed and constructed is adequate to properly service the Lot in accordance with the District's design criteria, construction standards, and construction oversight observations. 100-Acre Woods shall further be responsible for, and bear all costs associated with, coordination with HP or their successors in interests to the balance of the Home Place Ranch property, to ensure that 100-Acre Woods's Wastewater Utility Improvements are consistent with and complimentary to, as may be necessary, HP's own wastewater utility improvements for the Home Place Ranch property. As a result, the District shall bear no responsibility to 100-Acre Woods for the sufficiency of design or construction. 100-Acre Woods shall be responsible for all costs and expenditures associated with the design and construction of the Wastewater Utility Improvements, and shall likewise be responsible for ensuring that all District approvals, design, and construction of the same is completed within the 180 day period provided herein.

6. Plan Approval. Prior to construction of any Water Utility Improvements or Wastewater Utility Improvements, 100-Acre Woods shall submit detailed construction plans to the District for final design approval. Construction shall not begin until 100-Acre Woods has obtained the prior written approval by the District of such final design construction plans, which approval shall be in the District's discretion as to whether such plans comply with this Resolution and Agreement, the District's design criteria and construction standards, and all other rules, regulations and policies of the District. The District shall approve the final design plan, or provide reasons for any disapproval within 30 days of submission by 100-Acre Woods.

7. Design and Construction Standards. The design criteria and construction standards to be applied under this Agreement shall be guided by the District's applicable rules and regulations, however the parties realize that the rules and regulations will not address all of the requirements and circumstances that may arise and that the District's staff and engineering consultants will apply generally accepted construction and engineering standards for municipal type water and wastewater infrastructure.

8. Tap Fees. Upon connection of the Lot through the Utility Infrastructure

discussed in Paragraphs 4 and 5, above, to District water and/or wastewater services, 100-Acre Woods shall pay to the District the then applicable "tap fee" for a water and/or wastewater tap, along with any and all other applicable tap and impact fees. Payment in full of said tap fees shall be a prerequisite to 100-Acre Woods's receipt of water and/or wastewater service to the Lot from the District.

9. 100-Acre Woods Abandonment of Temporary Infrastructure. Within 90 days of connection of the Lot through the Utility Infrastructure discussed in Paragraphs 4 and 5, above, to District water and/or wastewater services, 100-Acre Woods shall cause all applicable portions of the 100-Acre Woods Temporary Infrastructure, including the 100-Acre ISDS and 100-Acre Wells, to be properly abandoned, de-commissioned, or capped, in conformance to all applicable District, County or State regulations. In the alternative, as concerns the 100-Acre Wells, the District may in its discretion advise 100-Acre Woods in writing of its intent to take ownership of such well structures all associated infrastructure, and such notice shall discharge 100-Acre Woods of any abandonment/capping obligations, as pertains only to such wells for which the District accepts ownership, in writing.

10. Easements. In order to ensure compliance with the terms and conditions of this Resolution and Agreement, District personnel will require access to inspect and approve the infrastructure described herein, as well as for any maintenance, operation and inspection of the 100-Acre Wells, should the District elect to take possession and ownership thereof following connection of the Lot to District water services as provided herein. 100-Acre Woods agrees to specifically describe and grant to the District, in writing, such easement interests as are reasonably necessary for the District to facilitate such activities, upon written request by the District for the same. Absent such written grant of easements, 100-Acre Woods consents to the District's permissive entry to facilitate such activities, with reasonable advance notice by the District.

11. Reimbursement. As part of the District's requirements and consideration in providing this Resolution and Agreement, 100-Acre Woods shall reimburse the District for its reasonable attorney fees, engineering fees, and any District staff overtime incurred in connection with this Resolution and Agreement, review and analysis of the Petition, and activities associated with the terms and conditions of this Resolution and Agreement, together with all other direct costs incurred by the District that would not have been incurred if the 100-Acre Woods Petition had not been submitted. All such amounts shall constitute a charge relating to the Lot. Any amount not timely paid after appropriate itemized statements from the District shall constitute a lien upon the Lot until paid, and may be enforced in the same matter as the statutory lien upon the Lot for charges and services due to the District under C.R.S. 32-1-1001(j).

12. Payment for Use of District-Owned Dawson Aquifer Resource. For so long as 100-Acre Woods is utilizing any portion of the Temporary Infrastructure described above, 100-Acre Woods shall make an annual payment to the District, due on January 31 of each year, of \$1,000.00 (the "Water Use Fee"). The Water Use Fee shall be subject

to an annual escalator of 4%. By way of example, The Water Use Fee due on January 31, 2022 is \$1,000.00, the Water Use Fee due on January 31, 2023 shall be \$1,040.00 (\$1,000.00 X 1.04%).

13. Service Lines. The cost of 100-Acre Woods's connections to the water and the wastewater main lines and the cost of the service lines from the main lines to the improvements on the Lot shall be at the sole expense and obligation of 100-Acre Woods.

14. Nature of Work. All work to be performed by 100-Acre Woods under the terms of this Resolution and Agreement shall be performed using quality materials and shall be performed in a workmanlike manner in compliance with the rules, regulations, specifications, and requirements of the District. Compliance with such specifications and requirements shall be determined in accordance with standard procedures and the discretion of the District.

15. Water Quality. For so long as 100-Acre Woods utilizes Temporary Infrastructure for provision of water to the Lot, the District shall have no responsibility or liability for the quality of water produced through such Temporary Infrastructure, and 100-Acre Woods hereby expressly waives any and all claims concerning the same as to the District and agrees to indemnify the District for any and all expenses incurred as a result of water quality or other regulatory concerns. 100-Acre Woods shall be solely and completely responsible for maintenance of potable and adequate water quality, and for any regulatory or treatment costs.

16. Acceptance of Work/Warranties. The construction obligations of 100-Acre Woods herein shall not be complete until the District's inspection and written acceptance of the infrastructure as being in compliance with the District's specifications and this Resolution and Agreement. Such acceptance shall be in accordance with the standard policies and procedures and in the reasonable discretion of the District. 100-Acre Woods shall guarantee all infrastructure improvements for one year after determination of final completion by the District and until acceptance by the District. 100-Acre Woods shall maintain the improvements during said period of time and until acceptance by the District, and shall cure any nonconforming work or any failures in materials or workmanship. After said one year period of time and provided the improvements are in compliance with this Resolution and Agreement, 100-Acre Woods may request in writing that the District inspect and accept the infrastructure improvements. The District shall then promptly inspect the infrastructure and shall either accept the infrastructure as provided herein or detail to 100-Acre Woods in writing the reasons why the infrastructure is not acceptable and will not be accepted. 100-Acre Woods shall promptly cure such deficiencies and resubmit its request for inspection and acceptance. All infrastructure improvements performed by 100-Acre Woods, once accepted by the District, shall become the property of the District and shall be maintained and operated by the District. Upon acceptance of the infrastructure improvements by the District, 100-Acre Woods shall convey good and marketable title for the utility improvements to the District, free and clear of all liens and encumbrances.

17. Liability of the District. No portion of the Temporary Infrastructure shall at any time during its period of temporary use as described herein, and prior to the District's provision of District water and wastewater service to the Lot, be considered property or infrastructure of the District. The District shall not be responsible for any liabilities associated with the use or operation of such Temporary Infrastructure, and 100-Acre Woods agrees to fully defend and indemnify the District for any claims to the contrary. The District specifically shall at no time, prior to or after provision of District services to the Lot, be considered the owner or operator of the ISDS to be constructed by 100-Acre Woods, nor be responsible for any costs or responsibilities associated with the use, operation, disabling, or remediation of the same. The District shall further not be liable for any losses or damages resulting from the inability of the District to supply water or wastewater services due to governmental regulations, statutes or orders, electrical or other power failures, temporary shut down due to repairs, maintenance, construction, alterations, acts of God, or other occurrences beyond the direct control of the District, or resulting from the lack of availability or capacity of the District's facilities, once connection of the Lot to District services is established.

18. Assignment. This Resolution and Agreement shall be for the sole benefit of 100-Acre Woods and the District. 100-Acre Woods may, with the express written consent of the District, assign or otherwise transfer the rights and responsibilities expressed in this Resolution and Agreement to: (i) any parent, subsidiary, franchisee or affiliate corporation or entity of 100-Acre Woods or HP; (ii) any entity resulting from the consolidation or merger of 100-Acre Woods or HP into or with any other entity; or (iii) any other person, firm, entity or corporation to which the District consents (hereinafter, "Permitted Transfer"), provided that all such Permitted Transfers shall be subject to all terms and conditions herein, specifically including the condition that the 100-Acre Woods undergo no further land use planning in order to continue to utilize the Temporary Infrastructure, and further provided that any such assignment must be to the then-owner of the 100-Acre Woods property. This Resolution and Agreement shall be considered an appurtenance to such 100-Acre Woods property. The District shall not withhold consent to a Permitted Transfer provided they are provided with reasonable advance notice of such assignment, the assignee expressly assumes the obligations of this Resolution and Agreement, and the District is provided with full documentation of such assignment and assumption. No partial assignments shall be allowed.

19. Default/Remedies. A party shall be in default hereunder in the event it fails to perform its obligations as required hereunder, and if such noncompliance is not cured within 15 days after written notice by the other party of the nature of the alleged noncompliance. In the event of default, the non-defaulting party shall have all remedies available under Colorado law, including that the District shall have the right to injunctive relief and specific performance in order to require 100-Acre Woods to perform its obligations under this Resolution and Agreement. In addition, in the event of 100-Acre Woods's default and failure to cure the same upon written notice from the District, the District may elect to treat this Resolution and Agreement as null and void, and withdraw

all consent for use of non-District services (*i.e.* the Temporary Infrastructure) upon lands included within the District.

20. **Right to Cure.** After construction of the Water Utility Improvements and the Wastewater Utility Improvements begins, the District shall have the right, but not the obligation, to cure any default by 100-Acre Woods under this Resolution and Agreement and to recover from 100-Acre Woods the District's costs and expenses in curing such default and in performing 100-Acre Woods's obligations.

21. **Severability.** Unenforceability of any provision contained in this Resolution and Agreement shall not affect or impair the validity of any other provision of this Agreement, provided the core intent of this Resolution and Agreement remains unimpaired.

22. **Attorney's Fees.** In the event of any dispute between the parties concerning the rights and obligations under this Resolution and Agreement or in the event of any action to enforce said rights and obligations under this Resolution and Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney's fees, incurred in such litigation as well as all additional such costs and expenses incurred in enforcing and collecting any judgment rendered in such action.

23. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of rights and responsibilities under this Resolution and Agreement. Proper venue for any action shall be in the District Court of El Paso County, Colorado.

24. **Binding Effect/Covenant Upon the Lot.** The covenants, agreements, and obligations contained herein shall extend to, bind, and inure to the benefit of not only the parties hereto, but also their respective personal representatives, heirs, successors, and assigns. This Resolution and Agreement benefits and burdens the District, and also the Lot, and therefore shall constitute a covenant running with the land until all obligations are fully performed hereunder.

25. **Proper Action.** This action is taken by the Board at its regular public meeting after all required public notices and postings of the meeting have been made, with a quorum of the Board in attendance and taking proper action thereon.

THEREFORE, the above Resolution and Agreement concerning non-District infrastructure use on a temporary basis, including the use of the District-Owned non-tributary Dawson aquifer, as requested by Petitioner 100-Acre Woods was adopted by the Board of Directors of the District on this 21 day of Oct, 2021, to be effective immediately.

Mark Melville

Mark Melville, as President of the
Triview Metropolitan District

Date: 21 Oct 21

ATTEST

Marco Fiorito

Marco Fiorito, as Vice President of
the Triview Metropolitan District

Date: 21 Oct 21

Acknowledged and agreed by:

Brian Bahr

By: Brian Bahr, as Manager
of Wooded Vista, LLC

Date: 27/10/21

**EXHIBIT A
PROPERTY DESCRIPTION**

100 ACRE WOODS is an approximately 100 acre parcel with two separate captive lots totaling approximately 9 acres, platted in the interior of the larger parcel for a total of approximately 109 acres as described below:

- 1) An approximately 100.98 acre parcel known as 475 E. Higby Road, Monument CO 80132; with the following legal description:

A parcel of land located in the South half of Section 19, Township 11 South, Range 66 West of the 6th P.M., Town of Monument, County of El Paso, State of Colorado, described as follows:

Bearings are based on the West line of the East Half of the Southeast Quarter of Section 24, Township 11 South, Range 67 West of the 6th P.M., monumented at the Southwest corner of said East Half of Southeast Quarter of Section 24 with a 3.25" aluminum cap stamped "RLS 10377" and monumented at the North end by a 30.00' witness corner marking the Center-East 1/16th corner of said Section 24, being a 3.25" aluminum cap stamped "RLS 10377", and is assumed to bear N 00°08'32" W.

BEGINNING at the Southeast corner of the West Half of the Southeast Quarter of said Section 19; thence S 89°09'43" W along the South line of the West Half of the Southeast Quarter of said Section 19, a distance of 951.93 feet;

thence N 00°50'14" W, a distance of 540.36 feet;

thence N 63°36'54" W, a distance of 480.75 feet;

thence N 83°32'14" W, a distance of 647.26 feet;

thence N 44°42'09" W, a distance of 680.45 feet;

thence N 00°00'00" W, a distance of 653.63 feet;

thence N 90°00'00" E, a distance of 708.75 feet;

thence N 00°00'00" W, a distance of 670.76 feet to a point lying 50.00 feet South of the North line of the Southwest Quarter of said Section 19;

thence parallel with and 50.00 feet South of said North line, S 89°31'04" E, a distance of 226.03 feet to a point of curvature, said point lying 50.00 feet Southerly of Higby Road as described under Reception No. 205092635 and Reception No. 205092636 of the El Paso County records;

thence parallel with and 50.00 Southerly of the said Southerly line of Higby Road, the following two (2) courses:

- 1) **238.94 feet along the arc of a 1044.32 foot radius non-tangent curve to the left, having a central angle of 13°06'34" and a chord that bears S 82°51'45" E 238.42 feet;**

- 2) **S 89°25'00" E, a distance of 726.07 feet;**

- 2) An approximately 2.5 acre parcel described as Lot 1 100-Acre Wood Filing No. 1 also known as 499 Higby Road, Monument CO 80132; and
- 3) An approximately 4.02 acre parcel described as Lot 2 100-Acre Wood Filing No. 1 also known as 487 E. Higby Road, Monument CO 80132.

There are three (3) existing wells located within the bounds of the 100 Acre Woods.