

**DECLARATION OF WATER COVENANTS
FOR
FOREST HEIGHTS ESTATES SUBDIVISION**

Jon P. Didleaux and Phyllis J. Didleau Revocable Trust (“Declarant”) is the sole owner of real property more particularly described as being 32.5 acres located in the N½ of the SW¼ of Section 9, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, also known as 7935, Forest Heights Circle, Colorado Springs, Colorado 80908, and depicted on plat map attached **Exhibit A** and incorporated by this reference known as the Forest Heights Estates Subdivision (the “Subdivision”). The Declarant desires to place limited protective covenants, conditions, restrictions, and reservations upon the Subdivision to ensure compliance with all applicable court decrees concerning water and water rights to be utilized within the Subdivision.

The Declarant hereby declares that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for assurance of legal water usage, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

Certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception number noted below, and referred to in this Declaration of Covenants as pertaining to the Subdivision. This includes the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree concerning underlying groundwater and approval of a Plan for Augmentation as entered by the Water Court, Water Division No. 2 in Case No. 22CW3060 recorded at Reception No. 223022220 (“Augmentation Plan” or “Water Decree”), attached hereto as **Exhibit B**.

NOW, THEREFORE, the following Declaration of Covenants is made:

1. Water Decree and Augmentation Plan.

A. Decree/Summary. The subdivision shall be subject to the obligations and requirements set forth in the February 22, 2023 Judgment and Decree affirming the Findings of Fact and Ruling of Referee granting underground water rights and approving a plan for augmentation, as entered by the District Court for Water Division 2, State of Colorado, in Case No. 22CW3060 as recorded at

Reception No. 223022220 of the El Paso County Clerk and Recorder, which is incorporated by reference (“Augmentation Plan” or “Water Decree”). The Augmentation Plan concerns the water rights and water supply for the Subdivision and creates obligations upon the Subdivision and the Lot Owners, which run with the land. The water supply for the Subdivision shall be by individual wells to the not-nontributary Dawson aquifer, under the Augmentation Plan. The Augmentation Plan contemplates that each Lot Owner will be responsible for obtaining a permit from the Colorado Division of Water Resources and drilling an individual well for water service to their residence and lot to the Dawson aquifer and use of such well as consistent with the terms of the Augmentation Plan, including wastewater treatment through a non-evaporative individual septic disposal system (“ISDS”). Lot Owners will be the Owners of the water within the aquifers underlying their Lots, and also own the plan for augmentation. The lot Owners will be responsible for reporting and administration based on pumping records, and eventually for replacement of any injurious post-pumping depletions requiring construction of deep wells to the Laramie-Fox Hills aquifer at such time as all Dawson aquifer pumping ceases.

B. Water Rights Ownership.

i. Declarant will transfer and assign to each Lot Owner their portion of all right, title and interest in the Augmentation Plan and water rights thereunder. Those water rights assigned include ground water in the nontributary Laramie-Fox Hills aquifer (at least 943 acre-feet total) of the Denver Basin as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions. Specifically, Declarant will transfer and assign to each Owner(s) of Lots 1, 2, 3, and 4 a total of at least 235.75 acre-feet in the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions pursuant to the Augmentation Plan.

ii. Declarant will transfer and assign to each Owner of Lots 1, 2, 3 and 4 at least 231 total acre-feet (0.77 acre-feet per year for 300 years) of the not-nontributary Dawson aquifer groundwater for use on their respective Lots. The Declarant will further transfer and assign to each Lot Owner a proportionate prorata-per-acre interest in the not-nontributary Denver aquifer and the nontributary Arapahoe aquifer as adjudicated in the Water Decree as the physical source of supply for each Lot. The Dawson aquifer well on each Lot shall be augmented per the Augmentation Plan as administered by the Lot Owners.

iii. The Declarant will further assign to each Lot Owner all obligations and responsibilities for compliance with the Augmentation Plan, including monitoring, accounting and reporting obligations. By this assignment to the Lot Owners, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Augmentation

Plan. Such conveyance shall be subject to the obligations and responsibilities of the Augmentation Plan and said water rights may not be separately assigned, transferred or encumbered by the Lot Owners. The Lot Owners shall maintain such obligations and responsibilities in perpetuity, unless relieved of such augmentation responsibilities by decree of the Water Court, or properly entered administrative relief.

iv. Each Lot Owner's water rights in the not-nontributary Dawson aquifer underlying their respective Lot shall remain subject to the Augmentation Plan, and shall transfer automatically upon the transfer of title to each Lot as an appurtenance, including the transfer by the Declarant to the initial Owner of a Lot, whether or not separately deeded. The ground water rights in the Dawson and Laramie-Fox Hills aquifers subject to the Augmentation Plan cannot and shall not be severable from each respective Lot, and each Lot Owner covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the Lot.

v. All not-nontributary Denver Basin groundwater in the Denver aquifer, and groundwater in the nontributary Arapahoe aquifer underlying each Lot are likewise to be deeded, assigned and transferred to the overlying Lot Owner on a prorata-per-acre basis, and may be used in said Lot Owner's sole and complete discretion, subject to the terms and conditions of this Declaration and the Augmentation Plan.

vi. The Dawson aquifer water rights, the not-nontributary Denver aquifer, and the nontributary Arapahoe and Laramie-Fox Hills water rights conveyed to each Lot Owner, as described in this Paragraph 1.B., and return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Augmentation Plan decreed in Case No. 22CW3060 and these Covenants, and shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered.

C. Water Administration.

i. The Owners of Lots 1, 2, 3 and 4 shall limit the pumping of each their respective Dawson aquifer wells to a maximum of 0.77 acre-feet annually, or a combined total of 3.08 acre-feet annually, consistent with the Augmentation Plan. Each Lot Owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Augmentation Plan is maintained, as between in-house, irrigation, stock water and other allowed uses. Each Lot Owner shall use non-evaporative septic systems in order to ensure that return flows from such systems are made to the stream system to replace depletions during pumping and shall not be sold, traded or used for any other purpose. Each lot served by a Dawson aquifer well must have an occupied single-

family dwelling that is generating return flows from a non-evaporative septic system prior to any application of water for irrigation or animal watering. The Lot Owners, as the Owners of all obligations and responsibilities under the Augmentation Plan, shall administer and enforce the Augmentation Plan as applies to each Lot Owner's respective Lot and pumping from individual Dawson aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Augmentation Plan and taking all necessary and required actions under the Augmentation Plan to protect and preserve the ground water rights for all Lot Owners. Each Lot Owner has the right to specifically enforce, by injunction if necessary, the Augmentation Plan against any other Lot Owner for failing to comply with the Lot Owner's respective obligations under the Augmentation Plan, including the enforcement of the terms and conditions of well permits issued pursuant to the Augmentation Plan, and the reasonable legal costs and fees for such enforcement shall be borne by the party against whom such action is necessary. The use of the not-nontributary Dawson ground water rights owned by each Lot Owner is restricted and regulated by the terms and conditions of the Augmentation Plan and this Declaration, including, without limitation, that the Owners of Lots 1, 2, 3 and 4 are each subject to the maximum annual well pumping of 0.77 acre feet, for a combined total of 3.08 acre-feet annually, in accordance with the Augmentation Plan. Failure of a Lot Owner to comply with the terms of the Augmentation Plan may result in an order from the Division of Water Resources under the Augmentation Plan to curtail use of ground water rights.

ii. Each Lot Owner shall promptly and fully account to the Division of Water Resources for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Lot, including for any irrigation, stockwater or other permitted/allowed uses as may be required under the Augmentation Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division of Water Resources. The Lot Owners shall provide the Division of Water Resources with accounting for pumping of their not-nontributary individual Dawson aquifer wells on each Lot on a semi-annual basis, as stated in the Decree, unless otherwise reasonably requested by the Division of Water Resources.

iii. At such time as construction of a Laramie-Fox Hills aquifer well is required for replacement of post-pumping depletions under the Augmentation Plan, the Lot Owners shall be responsible for all costs and expenses in the construction of said well, as well as all reasonable reporting requirements of the Division of Water Resources associated therewith.

D. Well Permits.

i. Each Lot Owner shall be responsible for obtaining a

well permit for the individual well to the not-nontributary Dawson aquifer for provision of water supply to their respective Lot. All such Dawson aquifer wells shall be constructed and operated in compliance with the Augmentation Plan, the well permit obtained from the Colorado Division of Water Resources, and the applicable rules and regulations of the Colorado Division of Water Resources. The costs of the construction, operation, maintenance and repair of such individual well, and delivery of water therefrom to the residence located on such Lot, shall be at each Lot Owner's respective expense. Each Lot Owner shall comply with any and all requirements of the Division of Water Resources to log their well, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide the diversion information necessary for the accounting and administration of the Augmentation Plan. It is acknowledged that well permits, and individual wells, may be in place on some of the Lots at the time of sale, and by this Declaration no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

ii. The Lot Owners shall be responsible for obtaining any well permits, rights and authorities necessary for the construction of wells to the nontributary Laramie Fox Hills aquifer, though such wells shall be constructed only for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and shall not be constructed unless and until such post-pumping depletions must be replaced. The Lot Owners shall comply with any and all requirements of the Division of Water Resources to log such wells, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide all necessary accounting under the Augmentation Plan.

iii. No party guarantees to the Lot Owners the physical availability or the adequacy of water quality from any well to be drilled under the Augmentation Plan. The Denver Basin aquifers which are the subject of the Augmentation Plan are considered a nonrenewable water resource and due to anticipated water level declines the useful or economic life of the aquifers' water supply may be less than the 100 years allocated by state statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

2. Compliance. The Lot Owners shall perform and comply with all terms, conditions, and obligations of the Augmentation Plan, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources pursuant to the Augmentation Plan, as well as all applicable statutory and regulatory authority.

3. Violations of Law. Any violation of any law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within Forest Heights Estates is declared to be a violation of this Declaration and shall be

subject to any and all of the enforcement procedures set forth in this Declaration.

4. Enforcement. Any aggrieved Lot Owner shall have the right, but not the obligation, to enforce any or all of the provision, covenants, conditions, and restrictions contained in this Declaration against any Lot Owner who fails to comply with the provisions contained herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation or attempted violation of any provision, covenants, or restrictions within this Declaration and specific execution thereof, in addition to all other rights and remedies available at law or in equity. In any action maintained under this paragraph, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

5. Dispute Resolution Process. Parties bringing any claim or action to enforce any covenant, condition, or restriction contained in this Declaration, or other disputes arising from this Declaration, shall be subject to mediation as a condition precedent to other dispute resolution, if the parties have not resolved the dispute within thirty (30) days following the notice of claim through discussions and negotiations among or between the parties. Any and all parties involved in a claim, dispute, or other matter, shall endeavor to resolve all claims and disputes in good faith by mediation prior to an arbitration, litigation, or other dispute resolution proceeding. The parties shall share the mediator's fee and any associated fees equally, and the mediation shall be held in a mutually agreed upon place. All mediations shall be confidential based on terms acceptable to the mediator and/or mediation service provider, and shall be conducted in compliance with the Colorado Dispute Resolution Act and all applicable Colorado Statutes, including C.R.S. §§ 13-22-302 to 13-22-308.

6. El Paso County Requirements. El Paso County may enforce the provisions regarding the Replacement Plan as set forth in this Declaration, should the Lot Owners fail to adequately do so.

7. Governing Law. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Colorado, and venue shall be proper in a Court of competent jurisdiction in El Paso County, Colorado.

8. Amendments. No changes, amendments, alterations, or deletions to this Declaration may be made which would alter, impair, or in any manner compromise the Augmentation Plan, or the water rights of the Lot Owners without the written approval of said parties, El Paso County, and Court with proper jurisdiction.

9. Terms of Covenants and Severability. These Covenants shall run with the land and shall remain in full force and effect until amended or terminated,

in whole or in part, by the owners of the entirety of the Subdivision (i.e. all Lot Owners), and filed for record with the Clerk and Records of El Paso County. If any portion of this Declaration is held invalid or becomes unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

10. Amendment of Declaration of Covenants. Except as expressly mandated by applicable law, and except for the provisions in Paragraph 1 (requirements and obligations of the Water Decree and Augmentation Plan), this Declaration and the Plat may be amended only by unanimous vote or agreement of the Lot Owners. An amendment may not create or increase the number of Lots, change the boundaries of a Lot, change the vested property interests of a Lot or Lot Owner, or the uses to which a Lot is restricted, except by unanimous consent of the Lot Owners.

11. Recordation of Amendments. Each amendment to this Declaration must be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and the amendment is effective only upon recording.

12. Compliance with Documents. All Lot Owners, tenants, occupants of dwellings on Lots, and, to the extent they own Lots, mortgagees and the Declarant, shall comply with this Declaration, and shall be subject to all rights and duties under the Declaration. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of this Declaration are accepted and ratified by that Lot Owner, tenant, mortgagee, or occupant. All provisions recorded in this Declaration are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

13. Termination. These Covenants shall not terminate unless the requirements of the Findings of Facts, Conclusions of Law, Ruling of Referee and Decree in Case No. 22CW3060 are also terminated by order of the Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.

14. Captions. The captions contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Declaration or the intent of any provision thereof.

15. Waiver. No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

16. Conflict. This Declaration is not intended to comply with the requirements of the Colorado Common Interest Ownership Act, other than C.R.S.

SPECIAL WARRANTY DEED
(Water Rights)

THIS DEED is made this _____ day of _____, 202__ between JON P. DIDLEAUX and PHYLLIS J. DIDLEAU REVOCABLE TRUST, whose address is 7935 Forest Heights Circle, Colorado Springs, CO 80908 (“Grantors”), and _____ (“Grantee”).

WITNESS, that the Grantors, for and in consideration of funds paid in hand and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, its heirs and assigns forever, all right, title and interest in and to the following described water and water rights located in the County of El Paso, State of Colorado described as follows:

All of Grantors’ right, title and interest in and to the groundwater rights and rights to extract groundwater underlying that real property located in El Paso County, Colorado located in SW¼ of Section 9, Township 12 South, Range 65 West of the 6th P.M., recorded as Parcel No. 5209000050 containing a total of approximately 32.5 acres, specifically including the following water rights as decreed in Case No. 22CW3060, District Court, Water Division 2, recorded in El Paso County Clerk and Recorder’s Office reception no. 223022220:

0.77 annual acre-feet, based upon a 300-year aquifer life (231 acre-feet in total), from the Dawson Aquifer for domestic purposes, irrigation of lawn and garden, water for up to four (4) horses or equivalent livestock, and fire protection, pursuant to and subject of the terms and conditions set forth in Case No. 22CW3060, District Court, Water Division 2;

235.75 acre-feet from the Laramie-Fox Hills Aquifer for replacement of any injurious post-pumping depletions pursuant to the terms and conditions set forth in Case No. 22CW3060, District Court, Water Division 2.

TOGETHER WITH all easements and rights-of-way appurtenant thereto, all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of Grantor, either in law or equity, of, in and to the above bargained premises.

These water rights conveyed, and the return flows therefrom, are intended to provided a 300-year supply, replacement during pumping, and replacement of post-pumping depletions for each lot of Forest Heights Estates. The water rights so conveyed, and the return flows therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and

