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El Paso County, CO



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**DECLARATION OF COVENANTS
FOR
MOUNTAIN SHADOWS VACATE AND REPLAT OF LOT 3 - MCGEHEE
MINOR SUBDIVISION**

Dale and Stephanie McGehee ("Declarants") are the sole Owners of real property more particularly described as being 10.5 acres located in the NW¼ SW¼ of Section 19, Township 11 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, also known as 16860 Thompson Road, Colorado Springs, Colorado 80908, and depicted on plat map attached **Exhibit A** and incorporated by this reference known as the McGehee Minor Subdivision (the "Subdivision") which vacates and replats Lot 3 of the Mountain Shadows Ranch 2nd Phase The Declarants desire to place limited protective covenants, conditions, restrictions, and reservations upon the Subdivision to protect the Subdivision's quality residential living environment, to protect its desirability and value, and to ensure compliance with all applicable groundwater determinations concerning water and water rights to be utilized within the Subdivision.

The Declarants hereby declare 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 the purpose of enhancing and protecting the value and desirability of the Subdivision, and 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. 1 in Case No. 17CW3054 consolidated with Water Court, Water Division No. 2, Case No. 17CW3015 recorded at Reception No. 200072526 ("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 August 31, 2017 Judgment and Decree affirming the August 9, 2017 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 1, State of Colorado, in Case No. 17CW3054 as recorded at Reception No. 2000 725 26 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 an individual well to the not-nontributary Dawson aquifer, under the Augmentation Plan. The Augmentation Plan contemplates that that Lot Owners may divert 0.82 acre-feet annually from one existing well on the Property, and any supplemental or replacement wells as permitted by the Division of Water Resources. Well use and pumping shall be 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 a well to the Denver aquifer at such time as all Dawson aquifer pumping ceases.

B. Water Rights Ownership.

i. Declarants 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 Denver aquifer of the Denver Basin (at least 225 total acre-feet), as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions.

ii. Declarants will transfer and assign to each Lot Owner a proportionate prorata-per-acre interest in the not-nontributary Dawson aquifer (at least 123 acre-feet per lot), as well as the nontributary Arapahoe aquifer and the nontributary Laramie-Fox Hills aquifer as adjudicated in the Water Decree as the physical source of supply for each Lot. The Dawson aquifer well, and any supplemental or replacement wells in the Subdivision operating under the Water Decree, shall be augmented per the Augmentation Plan as administered by the

Lot Owners.

iii. The Declarants 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 Declarants are 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 and the nontributary Denver 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 Declarants to the initial Owner of a Lot, whether or not separately deeded. The ground water rights in the Dawson and Denver 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 nontributary Denver Basin groundwater in the Arapahoe and Laramie-Fox Hills aquifers 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 these Declarations and the Augmentation Plan.

vi. The Denver aquifer water rights, the not-nontributary Dawson aquifer, and the nontributary Denver aquifer 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. 17CW3054 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. Lot Owners shall limit the pumping of the Dawson aquifer well(s) to a maximum of 0.82 acre feet annually, or 0.41 acre-feet annually per lot, 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, or as otherwise dictated by a well sharing agreement for the Subdivision. 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 Dawson aquifer well(s). 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 permit(s) 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 Lot Owners are subject to the maximum annual well pumping of 0.82 acre-feet annually, 0.41 acre-feet annually per lot, 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. Lot Owners shall promptly and fully account to the Division of Water Resources for total pumping from the not-nontributary Dawson Aquifer within the Subdivision, 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 not-nontributary Dawson aquifer well(s) on each Lot as applicable on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

iii. At such time as construction of a Denver aquifer well is required for replacement of post-pumping depletions under the Augmentation Plan, the Lot Owners shall be responsible for all cost and expense 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. Lot Owners shall be responsible for obtaining well permit(s) for well(s) to the not-nontributary Dawson aquifer for provision of water supply to their respective Lot. The Dawson aquifer well(s) shall be constructed and operated in compliance with the Augmentation Plan, the well permit(s) 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 well(s), 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 permit(s), and well(s), may be in place on Lots at the time of sale, and by this Declaration no warranty as to the suitability or utility of such permit(s) or structure(s) 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 well(s) to the nontributary Denver aquifer, though such well(s) 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 well(s), and shall install and maintain in good working order an accurate totalizing flow meter on the well(s) 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.




Notary Public

EXHIBITS:

- A - Plat map of the Property
- B - Case No. 17CW3054 Decree

