

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BOYD SUBDIVISION No. 1

This declaration made on the 29 day of January 2023; by Christopher T. Boyd and Jessica M. Boyd (Declarant):

WITNESSETH:

WHEREAS, Christopher T. Boyd and Jessica M. Boyd are the owners of certain real property in the County of El Paso, State of Colorado, situate at South Half of Lot 2, Section 7, Township 11 South, Range 65 West of the 6th Principal Meridian, which is more particularly described in the Boyd Subdivision No. 1, Exhibit A which is attached hereto and made a part of this declaration; and

WHEREAS, Christopher T. Boyd and Jessica M. Boyd desire to protect and enhance the value, desirability and attractiveness of said property for all parties having or acquiring any right, title or interest in the property described in said Exhibit A; and to this end, will convey the real property described in Exhibit "A" subject to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

NOW THEREFORE, Christopher T. Boyd and Jessica M. Boyd, DECLARANT, hereby declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges, liens, and hereinafter sometimes referred to collectively as "covenants and restrictions", all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These covenants and restrictions shall run with said real property and shall be binding on all persons having or acquiring any right, title or interest in said property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section I. The following terms when used in this Declaration or any Supplement or Amendment thereto shall have the following meanings unless prohibited by the context:

- (a) "Properties" shall mean and refer to the real property described in Exhibit A and any other such properties which may be brought into the subdivision by annexation or further subdivision.
- (b) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties as heretofore defined and any additional future plots of land subdivided from those lots.
- (c) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee entered in any Lot which is a part of the Properties except an owner who holds title or interest in any said Lot merely as security for the performance of an obligation.

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(d) "Declarant" shall mean and refer to Christopher T. Boyd and Jessica M. Boyd.

ARTICLE II WATER RIGHTS

A. Water Court Decree and Augmentation Plan: Boyd Subdivision Filing No. 1 ("Subdivision") shall be subject to the obligations and requirements as set forth in the Findings of Fact, Conclusions of Law, Ruling of the Referee, and Judgment and Decree, decreed in Consolidated Case Nos. 2021CW3156, District Court, Water Division 1, and 2021CW3041, District Court, Water Division 2, decreed on March 11, 2022, as recorded at Reception No. 222137142 of the El Paso County Clerk and Recorder, which is incorporated by reference ("Water Court Decree"). The Water Court Decree adjudicated the Denver Basing groundwater rights underlying the Subdivision ("Adjudication") and adjudicated a plan for augmentation to allow for a lawful water supply for each lot within the Subdivision ("Augmentation Plan"). The Water Court Decree creates obligations upon the Subdivision and the Owners, which run with the land. Subject to the terms of this Declaration, the water supply for each lot within the Subdivision shall be by individual wells to the not-nontributary Dawson aquifer. Each Owner will be responsible for the costs of 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 not-nontributary Dawson aquifer and any other wells, and use of such well as consistent with the terms of the Water Court Decree, including wastewater treatment through a non-evaporative individual septic disposal system ("ISDS") for Dawson aquifer well pumping. Each lot served by a Dawson well shall have an occupied single-family dwelling generating return flows from an ISDS before any irrigation or animal watering is allowed from the wells. The 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 as required under the Water Court Decree and Augmentation Plan.

No party, including the Declarant, guarantees to the Owners the physical availability or the adequacy of water quality from any well to be drilled. The Denver Basin aquifers which are the subject of the Water Court Decree 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. Declarant makes no warranty that the Dawson aquifer contains an amount of water sufficient for a 300 year supply for each lot or Owner.

B. Water Rights Ownership: Declarant will transfer and assign to each Owner a pro rata amount of all Denver Basin groundwater subject of the Adjudication and shall retain none of the Denver Basin groundwater underlying the Subdivision. This transfer and assignment shall include Declarant's adjudicated interest to the following:

(a.) 0.75 acre-feet per year of Dawson groundwater for a 300 year water supply for a total of 225 acre-feet in the not-nontributary Dawson aquifer as the physical source of supply for each Owner's lot, for the following uses:

i. One (1) single-family residence.

ii. Up to 8,000 square-feet of irrigation, including law, garden, trees, and use in greenhouses.

iii. Watering of up to 4 large domestic animals.

Accordingly, Declarant shall convey to the Owners a total of at least 675 acre-feet (0.75 acre-feet/year x 3 lots x 300 years) of Dawson aquifer water.

(b.) No less than 675 acre-feet in the nontributary Laramie-Fox Hills is reserved for replacement of any injurious post-pumping depletions under the terms of the Water Court Decree and Augmentation Plan.

(c.) All obligations and responsibilities for compliance with the Water Court Decree and Augmentation Plan shall be transferred to the Owners, including monitoring, accounting and reporting obligations. By this assignment to the Owners, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Water Court Decree and Augmentation Plan. Such conveyance shall be subject to the obligations and responsibilities of the Water Court Decree and Augmentation Plan. The 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.

Each Owner's water rights in the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers underlying their respective lot shall be encumbered by, and subject to, the Augmentation Plan 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 groundwater rights in the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers conveyed to the Owners subject of the Augmentation Plan, including any return flows therefrom, cannot and shall be sold, leased or otherwise used for any purpose inconsistent with the Water Court Decree, Plan for Augmentation, and these Covenants, and shall not be separated from the transfer of title to the land of each lot, and shall not be separately conveyed, bartered or encumbered. The water rights dedicated to the Augmentation Plan (those portions of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills) cannot be severable from each respective lot, and each Owner covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the lot.

The water rights part of the Adjudication that are not dedicated to the Augmentation Plan can be severable from each respective lot. Any water transferred to the Owners not subject to the Augmentation Plan shall transfer automatically upon the transfer of title to each lot as an appurtenance, unless otherwise expressly reserved by the Owner at the time of conveyance.

C. Water Administration: Each Lot Owner shall limit the pumping of each individual Dawson aquifer well per lot to a maximum of 0.75 acre feet annually (assuming three lots), or a combined total of 2.25 acre feet annually from the Dawson aquifer. Each Owner shall further ensure that the allocations of use of water resulting from such Dawson aquifer pumping is maintained, as between in-house, irrigation, stock water and other allowed uses. Each Owner with a Dawson aquifer

well shall use an ISDS in order to ensure that return flows from Dawson aquifer well diversions are returned to the stream system to replace depletions during pumping of the Dawson aquifer well and shall not be sold, traded or used for any other purpose. The Owners, as the Owners of all obligations and responsibilities under the Water Court Decree and Augmentation Plan, shall administer and enforce the Water Court Decree and Augmentation Plan as applies to each 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 and taking all necessary and required actions under the Water Court Decree and Augmentation Plan to protect and preserve the groundwater rights for all Owners. Each Owner has the right to specifically enforce, by injunction, if necessary, the Water Court Decree and Augmentation Plan against any other Owner for failing to comply with the Owner's respective obligations thereunder, including the enforcement of the terms and conditions of well permits issued, and the reasonable legal costs and fees for such enforcement shall be borne by the party against whom such action is necessary. Failure of a Lot Owner to comply with the terms of the Water Court Decree and Augmentation Plan may result in an order from the Division of Water Resources under the Water Court Decree to curtail use of groundwater rights.

Each Owner shall promptly and fully account to the Division of Water Resources the amount of pumping from the individual well to the Dawson aquifer on each lot or any other wells, including for any irrigation, stockwatering or other permitted/allowed uses as may be required under the Water Court Decree, Augmentation Plan or Division Engineer. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources. The Owners shall provide the Division of Water Resources with accounting for pumping of all wells on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

At such time as construction of a Laramie-Fox Hills Aquifer well is required for replacement of post-pumping depletions, the 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: Each Owner shall be responsible for all costs associated with the individual well to the Dawson aquifer for the water supply to their respective lot, including the costs of obtaining a well permit for their lot. All such Dawson aquifer wells shall be constructed and operated in compliance with the Water Court Decree, 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 Owner's respective expense. Each 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 these Declarations no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

The Owners shall be responsible for obtaining any well permits, rights and authorities necessary for the construction of wells to the nontributary Arapahoe and Laramie Fox Hills aquifer for the replacement of any post-pumping depletions required under the Augmentation Plan and consistent with

the Water Court Decree. The 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.

E. Compliance: The owners shall perform and comply with all terms, conditions, and obligations of the Water Court Decree and Augmentation Plan and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources, as well as all applicable statutory and regulatory authority.

F. Amendments: Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply or Augmentation Plan, or the water rights of the Owners without the written approval of said parties, El Paso County, the Board of County Commissioners, and from the Court with proper jurisdiction.

G. Termination: The requirements of this Article shall not terminate unless the requirements of the Water Court Decree 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.

H. El Paso County Requirements: El Paso County may enforce the provisions of the Augmentation Plan as set forth in this Declaration, should the Lot owners fail to adequately do so.

ARTICLE III EASEMENTS

A. PRIVATE DRIVE:

The declarant has, concurrent with the filing of these Covenants, Conditions and Restrictions, filed a Declaration of Easements with the Clerk and Recorder of El Paso County setting forth a Private Drive easement for the benefit of the Platted Lots and a maintenance agreement pertaining to said easement. The Private Drive easement described therein, as well as all other areas encompassed by the Boyd Subdivision No. 1 shall not be considered a 'common area' or 'common land' under Colorado Law including but not limited to the Colorado Common Interest Ownership Act (CCIOA). Should any provision of these Covenants, Conditions and Restrictions, either now or in the future, conflict with the aforementioned Declaration of Easements, the Declaration of Easements shall control.

B. DRAINAGE EASEMENT:

That portion of the Properties which is described and marked as "drainage easement" on Boyd Subdivision Filing No. 1 shall remain unencumbered and allow for the free flow of drainage, discharge, snowmelt, rainwater for the common benefit of the Properties. The use of the "drainage easement" shall be restricted such that:

(a) The use of the drainage easement shall be limited solely to passive open or green space or landscaping which does not significantly impede drainage.

(b) No property shall be stored in the drainage easement.

(c) Fencing which is otherwise in conformity with these covenants shall be permitted to pass through the drainage easement provided that such fencing is open and allows for the free flow of water and run off.

ARTICLE IV RESTRICTIONS

A. RESIDENTIAL RESTRICTIONS

Use: Use shall be restricted to residential use. Halfway houses and group homes shall be considered non-residential uses. Home-based businesses shall be considered residential uses only if the public at large is not invited to the Property.

STRUCTURE:

Any residential home constructed must encompass at least 1,500 square feet of habitable space. Habitable space for this section means any finished, insulated and heated space; not including garages, cellars, crawlspaces, attics or unfinished basement areas. Only one residential home shall be permitted per lot.

No lot shall contain more than eight buildings. Buildings are defined as any residential or non-residential permanent structures including but not limited to houses, sheds, barns, detached garages, workshops, et cetera. Notwithstanding the foregoing, any owner shall not be in violation of this provision if he or she obtains prior written and signed permission from one-hundred percent of the lot owners with regard to the construction of buildings in excess of eight per lot.

For purposes of harmonious aesthetic consistency among the structures within the subdivision, all residential structures and outbuildings shall conform to consistent and complimentary exterior paint, stucco, shingle and door and fence coloring. White, earthtone, or natural material colors shall be encouraged. White, red and blue tones shall be permitted. Pink, purple, orange, rainbow or multicolored, fluorescent, or any very bright color(s) other than white, blue or red are disallowed. Notwithstanding the foregoing, any owner shall not be in violation of this provision if he or she obtains prior written and signed permission from one-hundred percent of the lot owners with regard to any color or color scheme.

FENCING:

Chain link fencing or privacy fencing is not permitted as a boundary perimeter fence. Barbed wire, razor wire, or any other fencing posing a potential safety hazard shall not be permitted. Notwithstanding the foregoing, any owner shall not be in violation of this provision if he or she obtains prior written and signed permission from one-hundred percent of the lot owners with regard to the construction of fences.

NUISANCES:

No noxious or offensive activity shall be carried on upon any lot, street, road, or driveway, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighboring lot owners.

TRASH:

No garbage, refuse, rubbish, trash or cuttings shall be deposited on any:

- (a) Lot unless placed in a suitable container;
- (b) street;
- (c) road; or
- (d) driveway.

INERT MATERIAL DISPOSAL:

Hardened concrete, masonry, asphalt, paving fragments, scrap lumber or plywood, drywall, shingles, or other demolition or construction wastes shall not be stored or disposed of on any lot, street, road, or driveway.

ANIMALS:

All animals shall be contained by fence or barn within the owner's lot and shall not be allowed free access to any neighboring lot, street, road, or driveway. No person shall operate a kennel on any lot. A kennel is defined as the keeping of more than 4 dogs or cats, in any combination, over 4 months of age on the same property. All other domestic animals shall be kept strictly for the purposes of small-scale hobby farming and not large-scale commercial farming.

TEMPORARY RESIDENCES:

No structure of temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any lot as a permanent residence. All structures used as a residence shall have been issued a certificate of occupancy prior to residential use.

EXTERIOR LIGHTING:

Exterior lighting must not create an annoyance to adjacent lots or roadways. Security lights should be installed behind eaves or otherwise screened and directed downward. All exterior light fixtures shall be screened so that the source of light is not visible from off site and does not directly illuminate an adjacent lot.

ARTICLE V GENERAL PROVISIONS

SECTION 1. Duration:

The covenants and restriction of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty years from the date

this Declaration is recorded, after which time, said covenants shall be automatically extended for successive periods of ten years.

SECTION 2. Amendments:

These covenants and restrictions of this Declaration may be amended during the first twenty years from the date of the Declaration, by an instrument signed by not less than one-hundred percent of the lot owners. Subsequent amendments may be enacted by not less than one-hundred percent of the lot owners.

SECTION 3. Enforcement:

Any owner shall have the right to enforce these covenants and any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure by any Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 4. Severability:

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 5. Notices:

Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postpaid, to the last known address of the record owner of the lot in which the member has an interest as shown on the records of the Association at the time of such mailing.

SECTION 7. Subdivision:

No lot may subdivide into more than three lots. Any subdivided lot must be at least 5 acres in size. No more than seven total subdivided lots shall be permitted in the subdivision. The covenants, conditions and restrictions herein run with the land and shall remain in full force and effect on any subdivided lots.

SECTION 6. Conflict with Zoning:

In the event the terms and conditions of this declaration conflict with the applicable zoning and subdivision laws, then the higher, more restrictive standard shall control.

EXHIBIT "A"

The land that is subject to this Declaration of Covenants, Conditions and Restrictions of Boyd Subdivision No. 1 is described more fully per the attached Minor Subdivision Plat Map which shall be signed and notarized by the Declarant and recorded separately.

IN WITNESS THEREOF, Declarant has hereunto set its hand and seal of the date and year provided above.

"DECLARANT"

Christopher T. Boyd and Jessica M. Boyd


By: _____
Christopher T. Boyd


By: _____
Jessica M. Boyd