

DECLARATION OF WATER COVENANTS
McLEAN MINOR SUBDIVISION

Susan McLean, (“Declarant”) is the sole owner of real property more particularly described as being 38.68 acres, described as the NE½ NE¼ of Section 28, Township 11 South, Range 66 West, 6th P.M., in El Paso County, State of Colorado, Parcel No. 6128100014, also known as 2415 Hodgen Road, Colorado Springs, Colorado 80921 (the “Subdivision”), and depicted on attached **Exhibit A** plat map. The Declarant desires 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, attractiveness, and value, and to ensure compliance with all applicable groundwater determinations 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 the purpose of enhancing and protecting the value, desirability and attractiveness 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.

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

1. Water Decree and Augmentation Plan

A. Summary

The McLean Minor Subdivision shall be subject to the obligations and requirements set forth in the June 14, 2024 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. 23CW3041, as recorded at Reception No. 224045664 of the El Paso County Clerk and Recorder, which is incorporated by reference (“Augmentation Plan” or “Water Decree”), attached as **Exhibit B**. The Augmentation Plan concerns the water rights and water supply for the Minor Subdivision and creates obligations upon the Minor Subdivision and the Lot Owners, which run with the land. The water supply for the Minor 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. 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. Lot 1, as depicted on **Exhibit A**, has an exempt well that is not subject to the Augmentation Plan described in **Exhibit B**.

B. Water Rights Ownership

i. Declarant will transfer and assign to each Lot Owner their pro-rata 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 524.2 acre-feet total) of the Denver Basin as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions.

ii. Declarant will transfer and assign to each Lot Owner at least 228 acre-feet (0.76 acre-feet per year for 300 years) of the not-nontributary Dawson aquifer groundwater for use on their respective Lots. The Declarant may also further transfer and assign to each Lot Owner a proportionate prorata-per-acre interest in the not-nontributary Denver aquifer and the not-nontributary Arapahoe aquifer as adjudicated in the Water Decree. The Dawson aquifer well on each Lot shall be augmented per the Augmentation Plan as administered by the Lot Owners.

iii. 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. Notwithstanding an assignment by the Declarant to the Lot Owners, as long as the Declarant is also a Lot Owner, the Declarant shall continue to bear all obligations and responsibilities for compliance with the Augmentation Plan. 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. Declarant has discretion to transfer the not-nontributary groundwater in the Denver and the Arapahoe aquifers to the overlying Lot Owner on a prorata-per-acre basis. Any groundwater from the Denver and Arapahoe aquifers that is transferred to Lot Owner 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 not-nontributary Dawson, Denver, and Arapahoe aquifer water rights, and the nontributary 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. 23CW3041 and this Declaration, 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. Each Lot owner shall limit the pumping of the individual Dawson aquifer well per Lot to a maximum of 0.76 acre-feet annually, for a potential combined total of 2.28 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 domestic, 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 each Lot Owner is subject to the maximum annual well pumping of 0.76 acre-feet, for a combined total of 2.28 acre-feet annually. 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 non-tributary 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 non-tributary individual Dawson aquifer wells on each Lot on an annual basis, 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 non-tributary 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 jointly responsible for obtaining any well permits, rights and authorities necessary for the construction of well(s) to the non-tributary Laramie Fox Hills aquifer, though such well(s) shall be constructed only for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and need 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. 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.

4. Termination of Covenants and Severability

These Covenants shall not terminate unless the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 23CW3041 are also terminated by the Division 2 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this _____ day of _____, 2024.

By: Susan McLean

