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El Paso County, CO



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SF-20-001

Declaration of Covenants, Conditions and Restrictions

Mountain's Edge Subdivision

County of El Paso State of Colorado

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN'S EDGE SUBDIVISION ("Covenants") is executed as of June 28, 2022 by The O'Neil Group Company, LLC, a Colorado limited liability company (the "Declarant").

WHEREAS, Declarant is the owner of lots one through five inclusive which is more particularly described on **Exhibit A**, and depicted on the **Exhibit B** draft Plat, attached hereto and incorporated by this reference generally known as Mountain's Edge Subdivision (the "Subdivision" or "Mountain's Edge Subdivision"), situated in the County of El Paso, State of Colorado. 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 and value, and to ensure compliance with all applicable court decrees concerning water and water rights to be utilized within the Subdivision.

WHEREAS, 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 easements, 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, in consideration of the acceptance hereof by the several purchasers and grantees (his, hers, their or its heirs, executors, administrators, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees), as an "Owner," of deeds to one of the five (5) lots in such tract of land, said Declarant hereby declares that the covenants, conditions, restrictions, easements and charges set forth herein shall run with the land constituting Mountain's Edge Subdivision and shall be binding upon the lots therein and all parties subsequently having or acquiring any right, title or interest in the real Property, the Subdivision, or any lot (including tenants), shall be for the benefit of each Owner, and shall inure to the benefit of and be binding upon each successor in interest of each and all of the Owners. Declarant furthermore declares, and agrees with each and every

person who shall be or shall become Owner of any of said lots, in addition to the ordinances of the County of El Paso, Colorado, that it shall be and hereby is bound by the covenants set forth in these presents and that the property described in these restrictions shall be held and enjoyed subject to the benefit and advantage of the following restrictions, limitations, conditions and agreements, to wit:

1. **Water Commission Findings and Order Determination.**

A. **Findings and Order Determination.** Mountain's Edge Subdivision shall be subject to the obligations and requirements as set forth in the Colorado Ground Water Commission Findings and Order Determination No. 1484-BD issued on March 12, 2008 and recorded in the records of the El Paso County Clerk and Recorder at Reception No. 208042039, which is incorporated by reference ("Determination"). The Determination adjudicated 1,326 acre-feet of Arapahoe aquifer water underlying the Subdivision to allow for a lawful water supply for each lot within the Mountain's Edge Subdivision. The Determination creates obligations upon the Mountain's Edge Subdivision and the Owners, which run with the land. Subject to the terms of these Covenants, the water supply for each lot within the Mountain's Edge Subdivision shall be by individual wells to the nontributary Arapahoe 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 nontributary Arapahoe aquifer and any other wells, and use of such well as consistent with the terms of the Determination.

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

i. 0.456 annual acre feet of water for a 300-year water supply for a total of 136.8 annual acre feet in the nontributary Arapahoe aquifer as the physical source of supply for each Owner's lot. Accordingly, Declarant shall convey to the Owners a total of at least 684 acre-feet (0.456 acre-feet/year x 5 lots x 300 years) of Arapahoe aquifer water.

iii. All obligations and responsibilities for compliance with the Determination 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 Determination. Such conveyance shall be subject to the obligations and responsibilities of the Determination. The Owners shall maintain such obligations and

responsibilities in perpetuity, unless relieved of such responsibilities in accordance with the Determination, or properly entered administrative relief.

The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not Determination No. 1484-BD and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.

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 Arapahoe Basin aquifers which are the subject of the Determination 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 Arapahoe aquifer contains an amount of water sufficient for a 300-year supply for each lot or Owner

C. Water Administration.

(i) Each Owner shall limit the pumping of each individual Arapahoe aquifer well per lot to a maximum of 0.456 acre feet annually (assuming five lots), or a combined total of 2.28 acre feet annually from the Arapahoe aquifer. Each Owner shall further ensure that the allocations of use of water resulting from such Arapahoe aquifer pumping is maintained, as between domestic, commercial, industrial, irrigation, stock watering and replacement supply. Each Owner, as the beneficiary of all obligations and responsibilities under the Determination, shall administer and enforce the Determination as applies to each Owner's respective lot and pumping from individual Arapahoe 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 Determination to protect and preserve the groundwater rights for all Owners. Each Owner has the right to specifically enforce, by injunction, if necessary, the Determination 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 Determination may result in an order from the Division of Water Resources to curtail use of groundwater rights.

(ii) Each Owner shall promptly and fully account to the Division of Water Resources the amount of pumping from the individual well to the Arapahoe aquifer on each lot or any other wells, including for any domestic, commercial, industrial, irrigation, stock water or other permitted/allowed uses as may be required under the Determination 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.

D. Well Permits.

(i) Each Owner shall be responsible for all costs associated with the individual well to the Arapahoe aquifer for the water supply to their respective lot, including the costs of obtaining a well permit for their lot. All such Arapahoe aquifer wells shall be constructed and operated in compliance with the Determination, 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 withdrawal information necessary for the accounting and administration of the Determination. 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 Covenants no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

(ii) Each Owner shall be responsible for obtaining individual well permits, rights and authorities necessary for the construction of wells to the nontributary Arapahoe aquifer. 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.

(iii) No party guarantees to the Owners the physical availability or the adequacy of water quality from any well. Due to 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 modeling to the contrary.

2. **Compliance.** The owners shall perform and comply with all terms, conditions, and obligations of the Determination 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.
3. **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 for the Mountain's Edge Subdivision pursuant to Determination No. 1484-BD. Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to a Determination from the Colorado Ground Water Commission approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication.
4. **Terms of Covenants and Severability.** These Declarations shall run with the land and shall remain in full force and effect until amended or terminated, in whole or part, by the Owners of the entirety of the Subdivision, and filed for record with the Clerk and Records of El Paso County. If any of these Covenants be held invalid or become unenforceable, the other covenants shall not be affected or impaired but shall remain in full force and effect.
5. **Amendment of Covenants.** Except as expressly mandated by applicable law, and except as limited by express provisions herein, these Covenants may be amended only by vote or agreement of at least 67 percent of the Owners. For purposes of this Paragraph 5, Declarant shall be deemed an owner of each lot until such time as such lot(s) are transferred to a third party.
6. **Amendment of Covenants by Declarant.** Except as provided in Paragraph 5 of these Covenants, until such time as Declarant has conveyed any lot to a third party, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in these Covenants may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Declarant reserves the right to unilaterally amend these Covenants in all circumstances permitted by law and which do not conflict with applicable statutes, rules or decrees. Notwithstanding anything contained within these Covenants, and to the extent permitted by law, if Declarant determines that any amendments to these Covenants shall be necessary in order for existing or future mortgages or other security instruments to be acceptable applicable authorities, then Declarant shall have and hereby specifically reserves the right and power to make, execute and record any such amendments without obtaining approval of Owners or mortgagees (or any percentage thereof).

7. **Limitation of Challenges.** An action to challenge the validity of an amendment adopted by the Declarant may not be brought more than one year after such amendment is recorded.
8. **Recordation of Amendments.** Each amendment to these Covenants must be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and the amendment is effective only upon recording.
9. **Termination.** Notwithstanding any provisions herein to the contrary, these Covenants shall not terminate unless the requirements of Determination No. 1484-BD are also terminated by the Colorado Ground Water Commission and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.
10. **Liability.** Neither the Declarant or any person acting therefor shall be liable in damages.
11. **Notices.** Any notice required to be given to any Owner or other person under the provisions of these covenants shall be deemed to have been properly given when mailed by certified mail to the Owner of record of the lot in which the member has an interest at his/her last known address.
12. **Waiver.** No provision contained in these Covenants are abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.
13. **Severability.** It is hereby declared to be the intention of the Declarant that the sentences, clauses and phrases of these covenants are severable and if any sentence, clause or phrase of these covenants be declared unconstitutional or invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sentences, clauses or phrases of these covenants since the same have been incorporated herein by the Declarant without the incorporation of any unconstitutional or invalid sentence, clause or phrase.
14. **Assignment.** Declarant, its successors or assigns, may assign any and all of its rights, powers, obligations, duties and privileges under this instrument to any other corporation, association, committee or person, subject to the Determination. No Owner shall be entitled to assign its rights and obligations under this instrument.
15. **Recordation.** The Declarant shall be entitled to duly record this instrument, and shall cause this instrument to be so recorded, in the property records of El Paso County. Such recordation shall be sufficient evidence that each Owner in the Subdivision is on notice of the restrictions and obligations contained herein, including but not limited to the right to declare and collect appropriate fees and assessments and filed liens on the real property of Owners that fail to timely meet their obligations.

16. **Headings**. The headings used in this instrument are for descriptive purposes only and shall not be construed to alter the substantive material contained thereunder.
17. **Presumptions**. The terms of this instrument shall not be construed against anyone party, and in favor of the other, if there is an ambiguity, by virtue of the fact that one party or the other drafted any part or all of the instrument.
18. **Binding Effect**. This instrument shall be binding upon and inure to the benefit of the Subdivision, each Owner, and their respective legal representatives. successors and assigns.
19. **Interpretation**. The conditions and restrictions set forth in this instrument shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to any choice of law rule. Venue for any dispute arising hereunder is proper within the county or district courts, county of El Paso, state of Colorado, in the United States of America.
20. **Conflict**. These Covenants are not intended to comply with the requirements of the Act, as the Community is exempt from the provisions of the Act. If there is any conflict between these Covenants other applicable statutes, the provisions of such statutes shall control. The Act is the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 to 38-33.3-402, as amended from time to time, which may provide a uniform and comprehensive framework for common interest communities. Notwithstanding anything else herein to the contrary, Mountain's Edge Subdivision is exempt from all provisions of the Act.

IN WITNESS WHEREOF, the Declarant has executed these Covenants as of the day and year first written above.

THE O'NEIL GROUP COMPANY, LLC,
a Colorado limited liability company

STATE OF COLORADO)

) ss.

COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared Kelli O'Neil, as Kelli O'Neil Manager of The O'Neil Group Company, LLC, a Colorado limited liability company, known to me to be the individual described in and who executed the foregoing instrument, and who acknowledged to and before me that he executed such instrument as her free act and deed.

WITNESS my hand and official seal this 28th day of ~~May~~ June 2022.

Lisa A. Smith
Notary Public

