

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND
RESTRICTIONS
for the
WARNER MINOR SUBDIVISION**

J Brian Warner and Luraly Warner, ("Declarants") are the sole owners of real property more particularly described a tract of land being a portion of the NW ¼ of Section 23, Township 11 South, Range 65 West of the 6th P.M. known by street address as 17350 W Goshawk Rd. Colorado Springs, CO 80908, and depicted on the **Exhibit A** draft Plat, attached hereto and incorporated by this reference generally known as the Warner Minor Subdivision ("Warner Minor Subdivision"). The Declarants desire to place limited protective covenants, conditions, restrictions, and reservations, upon the Warner Minor Subdivision to ensure compliance with all applicable groundwater determinations concerning water and water rights to be utilized within the Warner Minor Subdivision.

The Declarants hereby declare that all of the Warner Minor Subdivision as herein 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 Warner Minor 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 Warner Minor 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 numbers noted below, and referred to in this Declaration of Water Covenants as pertaining to the Warner Minor Subdivision. This includes the Basin Determinations of Water Rights 4022-BD, 4023-BD, 4024-BD, and 4025-BD and Replacement Plan 4025-RP for Determination of Water Right No. 4025-BD as entered by the Water court, Water Division No. 2 recorded at Reception Nos. 222007006, 222007007, 222007008, 222007009, 222007010 respectively, attached hereto as **Exhibit B**.

NOW, THEREFORE, the following Declarations of Water Covenants are made:

1. Basin Determination of Water Rights and Replacement Plan.

A. Summary. The Warner Minor Subdivision shall be subject to the obligations and requirements set forth in the Basin Determination of Water Rights and Replacement Plan, attached as **Exhibit B**. The water supply for the Warner Minor Subdivision shall be by individual wells constructed to the not-nontributary Dawson aquifer, as operated under the Replacement Plan. The Replacement Plan contemplates that each Lot Owner will be responsible for obtaining a permit from the

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Colorado Division of Water Resources and drilling an individual well for water service to their residence and lot to the Dawson aquifer, and the use of such well as consistent with the terms of the Replacement Plan, including wastewater treatment through individual on-lot non-evaporative septic systems constructed and operated in compliance with a permit issued by a local health agency. Lot Owners will be the owners of the water within the Dawson Basin aquifer underlying their respective lots, and also own a pro-rata portion of the Replacement Plan. The Lot Owners will be jointly responsible for operation, reporting and accounting of the Replacement Plan. In the event any permitted well or wells are not operated in accordance with the conditions of the Replacement Plan, they shall be subject to administration, including orders to cease diverting groundwater.

B. Water Rights Ownership.

i. Declarant will transfer and assign to each Lot Owner a proportionate *pro rata*-per-acre interest in the not-nontributary Dawson aquifer. The Dawson aquifer is adjudicated in the Determination of Water Rights as the physical source of supply for each Lot, and the Dawson aquifer well on each Lot shall be augmented per the Replacement Plan as administered by the Lot Owners.

ii. The Declarant will further assign to each Lot Owner all obligations and responsibilities for compliance with the Replacement 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 Replacement Plan. Such conveyance shall be subject to the obligations and responsibilities of the Replacement 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 Replacement responsibilities by decree of the Water Court, or properly entered administrative relief.

iii. Each Lot Owner's water rights in the not-nontributary Dawson aquifer underlying their respective Lot shall remain subject to the Replacement 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 each Lot, whether or not separately deeded. The ground water rights in the Dawson aquifer subject to the Replacement 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.

vi. The not-nontributary Dawson 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 Replacement Plan decreed in Replacement Plan 4025-RP 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. Each Lot owner shall limit the pumping of each individual Dawson aquifer well per Lot to a maximum of 1.0 acre feet annually, for a combined total of 4.0 acre feet annually, consistent with the Replacement Plan. Each Lot Owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Replacement 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. The Lot Owners, as the owners of all obligations and responsibilities under the Replacement Plan, shall administer and enforce the Replacement 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 Replacement Plan and taking all necessary and required actions under the Replacement 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 Replacement Plan against any other Lot Owner for failing to comply with the Lot Owner's respective obligations under the Replacement Plan, including the enforcement of the terms and conditions of well permits issued pursuant to the Replacement 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 Replacement Plan and these Declarations, including, without limitation, that each Lot Owner is subject to the maximum annual well pumping of 1.0 acre feet, for a combined total of 4.0 acre feet annually. Failure of a Lot Owner to comply with the terms of the Replacement Plan may result in an order from the Division of Water Resources under the Replacement 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 Replacement Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources.

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 Replacement 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 Replacement 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.

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

3. Amendments. No changes, amendments, alterations, or deletions to these Declarations may be made which would alter, impair, or in any manner compromise the Replacement Plan, or the water rights of the Lot owners without the written approval of said parties, El Paso County, and from the Division 2 Water Court.

4. El Paso County Requirements. El Paso County may enforce the provisions regarding the Replacement Plan as set forth in these Declarations, should the Lot owners fail to adequately do so.

IN WITNESS WHEREOF, the Declarants have caused these Declarations to be executed this 29 day of December, 2022.

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