

**DECLARATION OF WATER RIGHTS COVENANTS FOR GUNNER RIDGE SUBDIVISION**

A. Definitions:

1. Declarant: Andrew Makings and Emilee Makings.
2. Declaration: This Declaration of Water Rights Covenants for Gunner Ridge Subdivision.
3. Owner: The owner of a lot inside the Gunners Ridge Subdivision.
4. Owners: All the owners of the lots inside the Gunners Ridge Subdivision.
5. Subdivision: The Gunner Ridge Subdivision.

- B. Determinations and Replacement Plan: The Subdivision shall be subject to the obligations and requirements as set forth in the Colorado Ground Water Commission Findings and Order dated March 15, 2023, issued in Replacement Plan No. 463-RP for Determination of Water Right No. 463-BD, as recorded at Reception No. 223080320 of the El Paso County Clerk and Recorder, which is incorporated by reference (the "Replacement Plan"). The Replacement Plan approved a plan for augmentation to allow for a lawful water supply for each lot within the Subdivision, and the volumes in each of the Denver Basin aquifers were quantified in Determination Nos. 460-BD (Laramie-Fox Hills), as recorded at Reception No. 223080321 of the El Paso County Clerk and Recorder, 461-BD (Arapahoe), as recorded at Reception No. 223080322 of the El Paso County Clerk and Recorder, 462-BD (Denver), as recorded at Reception No. 223080323 of the El Paso County Clerk and Recorder, and 463-BD (Dawson), as recorded at Reception No. 223080324 of the El Paso County Clerk and Recorder (the "Determinations"). The Replacement Plan 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 Replacement Plan, 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 as required under the Replacement 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 Replacement 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. Declarant makes no warranty that the Dawson aquifer contains an amount of water sufficient for a 300-year supply for each lot or Owner.

C. Water Rights Ownership: Declarant will transfer and assign to each Owner a pro rata amount of all Denver Basin groundwater that was the subject of the Determinations and shall retain none of the Denver Basin groundwater underlying the Subdivision. The form of special warranty deed to convey the water rights is attached as **Exhibit A**. This transfer and assignment shall include Declarant's adjudicated interest to the following:

1. 6 acre-feet per year of not-nontributary Dawson Aquifer groundwater for a 300-year water supply for a total of 1,800 acre-feet as the physical source of supply for the Subdivision, for the following uses:
  - i. Lot 1: One well will withdraw 3.9 acre-feet annually for the following uses: in-house use in up to two (2) single-family residences; in-building commercial sanitary use; up to one (1) acre of irrigation of home lawn, garden, pasture, hay, and trees; and watering of up to eighty (80) large domestic animals.
  - ii. Lots 2-4: Three (3) wells, one per lot, will each withdraw 0.7 acre-feet annually for:
    - a. In-house use in one (1) single family residence;
    - b. Up to 6,000 square-feet of irrigation of home lawn, garden, pasture, hay and trees;
    - c. Watering of up to eight (8) large domestic animals.

Accordingly, Declarant shall convey to the Owners a total of at least 1,800 acre-feet  $((0.7 \text{ acre-feet/year} \times 3 \text{ lots}) + 3.9 \text{ acre-feet per year}) \times 300 \text{ years}$  of Dawson aquifer water.

2. All obligations and responsibilities for compliance with the Determinations and Replacement 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 Determinations and Replacement Plan. Such conveyance shall be subject to the obligations and responsibilities of the Determinations and Replacement Plan. The Owners shall maintain such obligations and responsibilities in perpetuity, unless relieved of such augmentation responsibilities by order of the Colorado Ground Water Commission, 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 Replacement Plan, 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 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 to the Replacement Plan, including any return flows therefrom, cannot and shall not be sold, leased or otherwise used for any purpose inconsistent with the Determinations, Replacement Plan, 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 Replacement 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 Determinations that are not dedicated to the Replacement Plan can be severable from each respective lot. Any water transferred to the Owners not subject to the Replacement 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.

- D. Water Administration: The Owner of Lots 2-4 shall limit the pumping of each individual Dawson aquifer well per lot to a maximum of 0.7 acre-feet annually (assuming three lots), and Lot 1 shall limit the pumping of one individual Dawson aquifer well to a maximum of 3.9 acre-feet annually or a combined total of 6 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 Determinations and Replacement Plan, shall administer and enforce the Determinations and Replacement 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 Determinations and Replacement Plan to protect and preserve the groundwater rights for all Owners. Each Owner has the right to specifically enforce, by injunction, if necessary, the Determinations and Replacement 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 Determinations and Replacement Plan may result in an order from the Division of Water Resources under the Determinations and Replacement Plan 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 Determinations, Replacement Plan, or the Division Engineer. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division of 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.

- E. 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 Determinations, 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 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 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.

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 Replacement Plan and consistent with the Determinations. 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.

- F. Compliance: The owners shall perform and comply with all terms, conditions, and obligations of the Determinations and Replacement 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.
- G. 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 Subdivision or Replacement 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 Colorado Ground Water Commission.
- H. Termination: The requirements of this these Covenants shall not terminate unless the requirements of the Determinations and Replacement Plan are also terminated by order of 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.

**[SIGNATURE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Declarant has executed these Water Rights Covenants as of the date set forth below.

**DECLARANT:**

Andrew Makings  
Andrew Makings

Emilee Makings  
Emilee Makings

State of Colorado     )  
                                  ) ss.  
County of El Paso     )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of November, 2023, by Andrew Makings and Emilee Makings.

Witness my hand and official seal.

My commission expires: 06/27/2026



Christina M. Zani  
Notary Public