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El Paso County, CO



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DECLARATION OF WATER COVENANTS
MCDANIELS ROAD SUBDIVISION

Z Investments, LLC, ("Declarant") is the sole owner of real property more particularly described as being 40 acres, described as the NE1/4 of the NE1/4 N1/2 of Section 11, Township 14 South, Range 63 West, 6th P.M., in El Paso County, State of Colorado, also known as 22755 McDaniels Road, Calhan, Colorado 80808 (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 ensure compliance with all applicable Determinations concerning water and water rights utilized within the Subdivision.

The Declarants hereby declare 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 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.

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 Covenants as pertaining to the Subdivision.

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

1. Water Replacement Plan and Water Rights Determination.

A. Water Replacement Plan. The Subdivision shall be subject to the obligations and requirements set forth in the November 3, 2021 Replacement Plan No. 4252-RP for the Arapahoe aquifer, as recorded at Reception No. 223089847 of the El Paso County, Colorado, Clerk and Recorder, which is incorporated by reference ("Replacement Plan") and which incorporates the November 3, 2021 Findings and Order in Determination No. 4252-BD for the Arapahoe aquifer, as recorded at Reception No. 223089846, El Paso County, Colorado, Clerk and Recorder. The Replacement Plan concerns the water rights and water supply for the Subdivision and creates an obligation upon the Subdivision and the Lot Owners, which run with the land. The water supply for the Subdivision shall be by individual wells to the not-nontributary Arapahoe aquifer, under the Replacement Plan. The Replacement 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 Arapahoe aquifer, 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"). Lot Owners will be the owners of the water within the aquifers underlying their Lots, and also own the Replacement Plan. The Lot Owners will be responsible for reporting and administration based on pumping records.

B. Water Rights Ownership.

i. Declarants will transfer and assign to each Lot Owner their portion of all right, title, and interest in the Replacement Plan and water rights thereunder. Declarants will transfer and assign to each Lot Owner at least 100.5 total acre-feet (0.335 acre-feet per year for 300 years) of the not-nontributary Arapahoe aquifer groundwater for use on their respective Lots. The Declarants will further transfer and assign to each Lot Owner a proportionate prorate-per-acre interest in the remaining portion of the Arapahoe aquifer not subject of the Replacement Plan along with the nontributary Laramie-Fox Hills aquifer, which was subject of the Findings and Order in Determination No. 4251-BD, as recorded at Reception No. 223089845, El Paso County, Colorado, Clerk and Recorder. The Arapahoe aquifer well on each Lot shall be replaced 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 properly entered administrative relief.

iii. Each Lot Owner's water rights in the not-nontributary Arapahoe 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 a Lot, whether or not separately deeded. The groundwater rights in the Arapahoe 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 groundwater rights to any party separate from the conveyance of the Lot.

C. Water Administration.

i. The Lot Owners shall limit the pumping of each their respective Arapahoe aquifer wells to a maximum of 0.335 acre-feet annually for a combined maximum total of 1.34 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. Each Lot served by an Arapahoe aquifer well must have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system prior to an application of water for any other use. The Lot Owners, as the Owners of all obligations and responsibilities under the Replacement Plan, shall administer and enforce the Replacement Plan as applied to each Lot Owner's

respective Lot and pumping from individual Arapahoe aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Ground Water Commission ("Commission") and the Upper Black Squirrel Creek Ground Water Management District ("Management District") under the Replacement Plan and taking all necessary and required actions under the Replacement Plan to protect and preserve the groundwater 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 Arapahoe groundwater rights owned by each Lot Owner is restricted and regulated by the terms and conditions of the Replacement Plan and this Declaration, including, without limitation, that the Owners of the Lots are each subject to the maximum annual well pumping of 0.335 acre-feet, for a combined total of 1.34 acre-feet annually, in accordance with the Replacement Plan. Failure of a Lot Owner to comply with the terms of the Replacement Plan may result in an order from the Commission under the Replacement Plan to curtail use of groundwater rights.

ii. Each Lot Owner shall promptly and fully account to the Commission and Management District for total pumping from the individual well to the not-nontributary Arapahoe aquifer on each Lot. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Commission. The Lot Owners shall submit records to the Commission and the Management District with accounting for pumping of their not-nontributary individual Arapahoe aquifer wells on each Lot on an annual basis for the previous calendar year, by February 15th of the following year, as stated in the Replacement Plan, unless otherwise reasonably requested by the Commission or Management District.

D. Well Permits.

i. Each Lot Owner shall be responsible for obtaining a well permit for the individual well to the not-nontributary Arapahoe aquifer for provision of water supply to their respective Lot. All such Arapahoe 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 Lot at the time 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. No party guarantees to the Lot Owners the physical availability or the adequacy of water quality from any well to be drilled under the Replacement Plan. 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 statute or the 300 years of El Paso County water supply requirements, despite current groundwater modeling to the contrary.

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. Violations of Law. Any violation of any law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subdivision is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

4. Enforcement. Any aggrieved Lot Owner shall have the right, but not the obligation, to enforce any or all of the provisions, covenants, conditions, and restrictions contained in this Declaration against any Lot Owner who fails to comply with the provisions contained herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation or attempted violation of any provision, covenants, or restrictions within this Declaration and specific execution thereof, in addition to all other rights and remedies available at law or in equity. In any action maintained under this paragraph, the prevailing party shall be awarded its reasonable attorneys' fees and cost.

5. Dispute Resolution Process. Parties bringing any claim or action to enforce any covenant, condition, or restriction contained in this Declaration, or other disputes arising from this Declaration, shall be subject to mediation as a condition precedent to other dispute resolution, if the parties have not resolved the dispute within thirty-five (35) days following the notice of claim through discussions and negotiations among or between the parties. Any and all parties involved in a claim, dispute, or other matter, shall endeavor to resolve all claims and disputes in good faith by mediation prior to an arbitration, litigation, or other dispute resolution proceeding. The parties shall share the mediator's fee and any associated fees equally, and the mediation shall be held in a mutually agreed upon place. All mediations shall be confidential based on the terms acceptable to the mediator and/or mediation service provider, and shall be conducted in compliance with the Colorado Dispute Resolution Act and all applicable Colorado Statutes, including C.R.S. §§ 13-22-302 to 13-22-308.

6. El Paso County Requirements. El Paso County may enforce the provisions regarding the Replacement Plan as set forth in this Declaration, should the Lot Owners fail to adequately do so.

7. Governing Law. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Colorado, and venue shall be proper in a Court of competent jurisdiction in El Paso County, Colorado.

8. Amendments. No changes, amendments, alterations, or deletions to this Declaration may be made that 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 Commission.

9. Terms of Covenants and Severability. These Covenants shall run with the land and shall remain in full force and effect until amended or terminated, in whole or in part, by the owners of the entirety of the Subdivision (i.e. all Lot Owners), and filed for record with the Clerk and Records of El Paso County. If any portion of this Declaration is held invalid or becomes unenforceable, the other Covenants shall not be affected or impaired but shall remain full force and effect. Notwithstanding the above, these Covenants shall not terminate unless the requirements of Determination of Water Right No. 4252-BD and the Replacement Plan No. 4252-RP 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. Amendment of Declaration of Covenants. Except as expressly mandated by applicable law, and except for the provisions in Paragraph 1 (requirements and obligations of the Water Replacement Plan and Water Rights Determination), this Declaration and the Plat may be amended only by unanimous vote or agreement of the Lot Owners. An amendment may not create or increase the number of Lots, change the boundaries of a Lot, change the vested property interests of a Lot or Lot Owner, or the uses to which a Lot is restricted, except by unanimous consent of the Lot Owners. Further, all amendments are subject to Paragraph 8 above.

11. Recordation of Amendments. Each amendment to this Declaration must be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and the amendment is effective only upon recording.


12. Compliance with Documents. All Lot Owners, tenants, occupants of dwellings on Lots, and, to the extent they own Lots, mortgagees and the Declarant, shall comply with this Declaration, and shall be subject to all rights and duties under the Declaration. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of this Declaration are accepted and ratified by that Lot Owner, tenant, mortgagee, or occupant. All provisions recorded in this Declaration are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

13. Captions. The captions contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Declaration or the intent of any provision thereof.

14. Waiver. No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

15. Conflict. This Declaration is not intended to comply with the requirements of the Colorado Common Interest Ownership Act, other than C.R.S. §§ 38-33.3-105 to 38-33.3-107, as the Subdivision is exempt from all other provisions of the Act. If there is any conflict between this Declaration and C.R.S. §§ 38-33.3-105 to 38-33.3-107, or any other applicable statutes, the provisions of such statutes shall control.

BY DECLARANT:
Z INVESTMENTS, LLC.



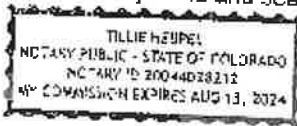
Greg Zindorf, Managing Member


STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Subscribed and sworn to before me this 4th day of Dec, 2023 by Greg Zindorf, managing member of Z Investments, LLC., as Declarant of the Subdivision.

My commission expires: 8-13-24

Witness my hand and seal.





Notary Public

EXHIBIT:
A – Plat Map of the Subdivision

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