

DECLARATION OF WATER COVENANTS
BERISFORD SUBDIVISION

Christopher Berisford and Amy Berisford (“Declarants”) jointly own the real property more particularly described as being 20 acres, described as the W½ of the NW¼ of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County, State of Colorado, more particularly described as E. Goshawk Rd, Colorado Springs, Colorado 80908 (the “Subdivision”), and depicted on attached **Exhibit A** plat map. The Declarants 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 February 27, 2024 Replacement Plan No. 4653-RP for the Dawson aquifer, as recorded at Reception No. 224013728 of the El Paso County, Colorado, Clerk and Recorder, which is incorporated by reference (“Replacement Plan”) and which incorporates the February 27, 2024 Findings and Order in Determination No. 4653-BD for the Dawson aquifer, as recorded at Reception No. 224013727, 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 Dawson 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 Dawson 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. 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 468.3 total acre-feet (1.561 acre-feet per year for 300 years) of the not-nontributary Dawson 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 Dawson aquifer.

ii. The Declarants 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 Declarants are 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. These Dawson aquifer water rights conveyed, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement during pumping, for each of the lots of the Berisford Subdivision. The water rights so conveyed and the return flows therefrom shall be appurtenant to each of the respective lots 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.

iv. The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to 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 the Basin Determinations or the Replacement Plan referenced above 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.

C. Water Administration.

i. The Lot Owners shall limit the pumping of each their respective Dawson aquifer wells to a maximum of 1.561 acre-feet annually for a combined maximum total of 6.244 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 of lawn garden and greenhouse, stock water and for domestic animals. 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 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 Dawson aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Ground Water Commission ("Commission") 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 Dawson aquifer 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 1.561 acre-feet, for a combined total of 6.244 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 for total pumping from the individual well to the not-nontributary Dawson 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 with accounting for pumping of their not-nontributary individual Dawson 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 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 Lot 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. 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. Shared Access Driveway. Lots 1 through 4 shall be accessed through a perpetual nonexclusive twenty-foot (20') wide access easement ("Shared Access Driveway") over and across Lots 1 through 4, as depicted on **Exhibit A**. The Shared Access Driveway shall be for the purpose of vehicular, equestrian, and pedestrian ingress, egress, and easement maintenance upon, over, and through Lots 1 through 4 for the benefit of Lots 1 through 4.
 - a. Right of Enjoyment. The Lot Owners shall have the right to use and fully enjoy the Shared Access Driveway; provided, however, that no Lot Owner shall cause to be constructed, built, or placed a building, structure, object, tree, shrub, fence, landscaping, or other improvement on or within the Shared Access Driveway which restricts any Lot Owner's access or use and enjoyment of the Shared Access Driveway. The Lot Owners shall have the right to remove all improvements from the Shared Access Driveway which would act to endanger any of the other Lot Owners improvements and appurtenances thereto or otherwise interfere with the use and enjoyment of the Shared Access Driveway. If the Lot Owners are required to disturb the surface of the Shared Access Driveway for construction, maintenance, or operations, they shall thereafter restore the surface to a reasonable pre-disturbance condition.
 - b. Responsibility of Shared Access Driveway. Lot Owners shall participate in maintenance and repair of the Shared Access Driveway. Lot Owners will each be responsible for 1/4th of the cost associated with the Shared Access Driveway. If the number of lots in the subdivision benefitting from the shared access driveway is less than four lots, the prorated cost will be split between the actual amount of lots; (e.g. for two lots the cost would be 1/2 for each lot owner). This responsibility of each Lot Owner will be in place regardless of development on the respective owner's property. Any disputes concerning

this arrangement, amounts due, or the timing of payment shall be resolved as provided herein.

- c. Maintenance of Shared Access Driveway. It shall be the duty and obligation of each Lot Owner to maintain the Shared Access Driveway. Each Lot Owner shall pay their proportionate share of maintenance and repair costs, unless the expense to repair is attributable to a specific Lot Owner; in which case such specific Lot Owner shall be solely responsible for the costs. Should any of the Lots be lawfully subdivided, such maintenance cost allocation shall change based upon the number of Lot Owners utilizing said Shared Access Driveway. "Maintenance" or "repair" includes, but is not limited to, graveling, paving, draining, removing snow, clearing, or providing any other maintenance or repair-type service however defined, on, or within, the Shared Access Driveway. The Shared Access Driveway shall, at a minimum, meet current county standards for gravel or paved roads, as applicable, though no Lot Owner shall have the ability or authority to require the other Lot Owner(s) to participate in an upgrade of the Shared Access Driveway from its current condition, or to repair or replace with other more costly materials. The Shared Access Driveway will, at all times, be kept in passable condition without potholes, sinkholes, obstructions, or other unstable or unpassable conditions. The Shared Access Driveway may be paved if the sharing parties agree to share the cost of paving, or if one party agrees to bear the total cost for the pavement. In no case shall the Shared Access Driveway fall below the county standard for access drives.
- d. Determination of Necessary Maintenance. Shared Access Driveway maintenance and improvements will be made whenever reasonably necessary to maintain the Shared Access Driveway in good operating condition and to insure the provision of safe access by the undersigned, their guests, governmental agencies, utility providers, and emergency service providers and vehicles. Whether maintenance is reasonably necessary will be at the discretion of any established Homeowners Association ("HOA"). The Shared Access Driveway must comply with the requirements of all local government ordinances and laws. The HOA will designate a single representative ("Owner Representative") to seek out bids for the maintenance and improvements, and the board of the HOA, as applicable, must agree before accepting a bid for any maintenance or improvement. The Lot Owners shall cooperate in determining equitable allocation of Shared Access Driveway maintenance costs.
- e. Prepayment. Prepayment of maintenance and improvement costs will be made to the Owner Representative prior to initiation of such maintenance and improvement work. The Owner Representative shall provide a written acceptance of payment for the maintenance and improvement costs to the pre-paying party upon receipt of the prepayment funds. Should one Lot Owner elect to undertake maintenance or repairs at reasonable and

competitive costs for which the other Lot Owners have not agreed or prepaid, but are responsible for, such funding Lot Owner may seek reimbursement from the Lot Owners of an equitable allocation in any manner prescribed by law, though such funding Lot Owner advances such funds at their own risk pending such resolution.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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. 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 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 determination.

10. 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. 4653-BD and the Replacement Plan No. 4653-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.

11. 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.

12. 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.

13. Compliance with Documents. All Lot Owners, tenants, occupants of dwellings on Lots, and, to the extent they own Lots, mortgagees and the Declarants, 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.

14. 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.

15. 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.

16. 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 DECLARANTS:

Christopher Berisford

Amy Berisford

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Subscribed and sworn to before me this ____ day of _____, 2024 by Christopher Berisford and Amy Berisford, as Declarants of the Subdivision.

My commission expires: _____

Witness my hand and seal.

Notary Public

EXHIBIT:
A – Plat Map of the Subdivision