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09/27/2023 10:09:51 AM  
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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
Kinch Minor Subdivision**

El Paso County, CO



223082068

Paul Kinch ("Declarant") is the sole owner of real property which is more particularly described on and depicted on the draft Plat, attached hereto and incorporated by this reference generally known as the Kinch Minor Subdivision and hereinafter referenced as the "Subdivision" or the "Community". The Declarant desires to place limited protective covenants, conditions, restrictions, reservations, liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment, to protect its desirability, attractiveness and value, and to ensure compliance with all applicable judicial decrees concerning water and water rights to be utilized within the Subdivision.

The 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.

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. These include the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree concerning underlying groundwater entered by the Water Court, Water Division No. 2 in Case No. 20CW3068, and the associated approval of a Plan for Augmentation as entered by the Water Court, Water Division No. 2 in Case No. 20CW3068. ("Augmentation Plan" or "Water Decree").

1. Definitions. The following terms utilized herein shall have the following definitions for purposes of these Declarations:

A. Act. 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, Kinch Minor Subdivision is exempt from all provisions of the Act.

B. Improvements. Improvements are any construction, structure, equipment, fixture, or facilities existing, or to be constructed on, the property that is included in the Subdivision, including, but not limited to, residences, buildings, trees, and shrubbery planted by Lot owners, or the Declarant, utility wires, pipes, poles, light poles, swimming pools, painting of the exterior surfaces of any structure, additions, outdoor sculptures or artwork, sprinkler pipes, garages, barns, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, porches, sheds, fixtures, signs, exterior tanks, tennis courts, solar equipment, exterior air conditioning and water softener fixtures, grading, excavation, filling, or similar disturbance to the land, including, change of grade, change of drainage pattern, change of ground level, or change of stream bed, and any change to previously approved Improvements.

C. Residential Rural Lot. As used in these Declarations, the term "Residential Rural Lot" shall mean the lots created through the El Paso County land use planning process for the Kinch Minor Subdivision (Lot 1, 2, 3 and 4). It is Declarant's intent that the lot numbers used herein, if at all, correspond to the lot numbers assigned on the Subdivision Plat (the Plat being recorded in conjunction with these Declarations).

D. Plat. Plat means that certain document entitled "Plat of Kinch Minor Subdivision," to be recorded in the Records of the Clerk and Recorder for El Paso County, Colorado.

E. Rules. The Rules are the regulations for the conduct of persons within the Community, as may be adopted by a simple majority of Residential Lot owners from time to time pursuant to these Declarations.

F. Owner. Owner means the owner of a Residential Rural Lot, including Declarant, as described herein.

2. Maintenance of Residential Rural Lots/Property.

A. Individual Residential Rural Lots. It shall be the duty and obligation of each Owner of a Residential Rural Lot or within the Subdivision, at such Owner's expense, to beautify and keep neat, attractive, and in good order such Owner's residence and the exterior portions of the dwelling thereon, and to maintain, repair, and replace the same.

3. Easements/Setbacks.

A. Existing Easements. All easements or licenses to which the Community is presently subject are shown on the Plat.

B. Granting of Future Easements. The Community may be subject to other easements or licenses granted by the Declarant if provided for by this Declaration.

C. Owner's Easement. Every Owner shall have an unrestricted right and easement for ingress to, and egress from, such owner's Residential Rural Lot over and across common elements, if any, which easement shall be appurtenant to and shall pass with the title to every Residential Rural Lot subject to the right of the Declarant to dedicate or transfer all or part of any common elements to any public agency, authority, or utility for such purposes.

D. Easements Reserved and Restrictions on Drainage Easements. Easements and rights of way are reserved on, over, and under any common elements and the Residential Rural Lots as shown on the Plat, for construction, maintenance, repair, replacement, and reconstruction of poles, wires, pipes and conduits for lighting, heating, air conditioning, electricity, gas, telephone, drainage and any other public or quasi-public utility service purposes, for sewer and pipes of various kinds, and for any other necessary maintenance or repair.

E. Easement for Emergency Access. There is hereby created a right of access across all portions of the Subdivision for the passage of emergency vehicles and police, fire, and other emergency service workers.

3. Maintenance of Natural Forest/Vegetation Along Residential Lot Lines.

The Kinch Minor Subdivision is located on the southern edges of the Black Forest, a natural environment of Ponderosa pine, Douglas fir and associated montane ecosystems. Stands of mature Ponderosa pine and Douglas fir trees may remain in portions of the subdivision as of the time of these Declarations, which may create natural visual/sight barriers between Residential Rural Lots as well as maintain the natural ecosystem for local flora and fauna. Except for purposes of disease and blight control, public safety, and to the extent necessary to prepare building sites for a primary residence upon a platted Residential Rural Lot, no portion of the remaining natural Ponderosa/Fir tree barrier located on a platted Residential Rural Lot may be removed, timbered, cut down, or otherwise materially altered, absent amendment of these covenants by a majority of Residential Lot owners, or by Declarant.

4. Construction Type. All construction on a Residential Rural Lot within the Subdivision shall be new. No building previously used at another location, nor any building or structure originally constructed as a "mobile home" type dwelling or manufactured housing (to the extent such structures have the appearance of "mobile homes" or "doublewides"), nor dome-type structures may be constructed or moved onto any Residential Rural Lot within the Subdivision. Panels and major house components may be manufactured off-site, provided that the assembly is conducted on-site and the resulting structure does not have the appearance generally associated with manufactured housing.

5. Underground Utilities. All future newly installed utilities, except for lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground. Small satellite dishes for tele-communications shall be permissible.

6. Wells and Mineral Excavation. No portion of any Residential Rural Lot within the Subdivision shall be used to explore for or to remove any water, soil, hydrocarbons, or other minerals of any kind, with the exception of properly permitted and authorized water wells consistent with the augmentation plan described in the Water Decree.

7. Maintaining of Drainage. There shall be no interference with the established drainage pattern as planned by Declarant for the entire Subdivision, including those drainage structures identified and included on the Plat.

8. Water Decree and Augmentation Plan.

A. Decree/Summary. The Subdivision shall be subject to the obligations and requirements as set forth by the Judgment and Decree affirming the Findings of Fact and Ruling of Referee approving a plan for augmentation, as entered by the District Court for Water Division 2, State of Colorado, in Case No. 20CW3068, as recorded at the El Paso County Clerk and Recorder. The Augmentation Plan concerns the water rights and water supply for the Subdivision and creates obligations upon the Residential Rural Lots which run with the land. Declarant shall reserve 423 acre-feet of Dawson aquifer water and 373 acre-feet of Laramie-Fox Hills aquifer water pursuant to the Augmentation Plan to satisfy El Paso County's 300-year water supply requirements for the Subdivision. The water supply for the Subdivision shall be by individual wells to the not-nontributary Dawson aquifer under the Augmentation Plan. The Augmentation Plan contemplates that each Residential Rural 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 Residential Rural Lot to the Dawson aquifer, and use of such well as consistent with the terms of the Augmentation Plan, including wastewater treatment through a non-evaporative individual septic disposal system ("ISDS"). Residential Rural Lot owners will be the owners of the Dawson aquifer underlying each of their respective properties and a pro-rata portion of the plan for augmentation, and be responsible for reporting and administration based on pumping records, and eventually for replacement of any injurious post-pumping depletions requiring construction of deep wells to the Laramie-Fox Hills aquifer at such time as all Dawson aquifer pumping ceases.

B. Water Rights Ownership.

i. Declarant will transfer and assign to each Residential Rural Lot owner 90 acre-feet (0.30 annual acre-foot interest/year) in the not-nontributary Dawson aquifer, and a 79.36 acre-foot (gross) allocation of the nontributary Laramie-Fox Hills aquifer, as adjudicated in the Water Decree as the physical source of supply for each Residential Rural Lot (Lots 1-3), and post-pumping augmentation water. The Dawson aquifer well on each Residential Rural Lot shall be augmented per the Augmentation Plan as jointly administered by the Residential Rural Lot Owners.

ii. Declarant will transfer and assign to the Owner of the Residential Rural Lot 4 153 acre-feet (0.51 annual acre-foot interest/year) in the not-nontributary Dawson aquifer, and a 134.92 acre-foot (gross) allocation of the nontributary Laramie-Fox Hills aquifer, as adjudicated in the Water Decree as the physical source of supply for the Rural Lot, and post-pumping augmentation water.

iii. The Declarant further assigns to the Residential Rural Lot Owners, collectively, all obligations and responsibilities for compliance with the Augmentation Plan, including monitoring, accounting and reporting obligations. By this assignment, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Augmentation Plan. Such conveyance shall be subject to the obligations and responsibilities of the Augmentation Plan and said water rights may not be separately assigned, transferred or encumbered by the Residential Rural Lot owners. The Residential Rural Lot Owners and their successors and assigns shall maintain such obligations and responsibilities in perpetuity, unless relieved of such augmentation responsibilities by decree of the Water Court, or properly entered administrative relief.

iv. Each Residential Rural Lot owner's water rights in the not-nontributary Dawson aquifer underlying their respective Residential Rural Lot shall remain subject to the Augmentation Plan, as may be amended, and shall transfer automatically upon the transfer of title to each Residential Rural Lot as an appurtenance, including the transfer by the Declarant to the initial owner of a Residential Rural Lot, whether or not explicitly deeded. The ground water rights in the Dawson and Laramie-Fox Hills aquifers subject to the Augmentation Plan cannot and shall not be severable from each respective Residential Rural Lot and each Residential Rural Lot owner covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the Residential Rural Lot, absent a decree of the Water Court approving the same.

v. All Denver Basin groundwater in the Denver and Arapahoe aquifers, and any portion of the Dawson and Laramie-fox Hills aquifers not described in Paragraph 24.B.i. and ii., above, are expressly reserved to Declarant and may be used, traded, sold, encumbered or otherwise disposed of in Declarant's discretion, consistent with all applicable law and regulations.

vi. The Dawson and Laramie-Fox Hills aquifer water rights conveyed to each Residential Rural Lot Owner, as described in Paragraph 24.B.i. and ii., and return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Augmentation Plan decreed in Case No. 20CW3068 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, absent a decree from the Water Court approving the same.

C. Water Administration.

i. Each Residential Rural Lot owner shall limit the pumping of each individual Dawson aquifer well per Residential Rural Lots 1-3 to a maximum of

0.30-acre feet annually, consistent with the Augmentation Plan, and the owner of the Residential Rural Lot 4 shall limit the pumping of an Augmented Dawson aquifer well to 0.51-acre feet annually, likewise consistent with the Augmentation Plan. Each Residential Lot owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Augmentation Plan is maintained, as between in-house, irrigation, stock water and other allowed uses. Each Residential Rural 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 Residential Rural Lot Owners shall cooperatively and jointly administer and enforce the Augmentation Plan as applies to each Residential Rural Lot owner's respective Residential Rural Lot and pumping from individual Dawson aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Augmentation Plan and taking all necessary and required actions under the Augmentation Plan to protect and preserve the ground water rights for all Residential Rural Lot owners. Each Residential Rural Lot owner has the right to specifically enforce, by injunction if necessary, the Augmentation Plan against any other Residential Rural Lot owner for failing to comply with the Residential Rural Lot owner's obligations under the Augmentation Plan, including the enforcement of the terms and conditions of well permits issued pursuant to the Augmentation 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 Residential Rural Lot owner is restricted and regulated by the terms and conditions of the Augmentation Plan and these Declarations, including, without limitation, that each Residential Rural Lot owner (lots 1-3) is subject to the maximum annual well pumping of 0.30 annual acre feet, and the Residential Rural Lot 4 owner is subject to maximum augmented well pumping of 0.51 annual acre feet. Failure of a Residential Rural Lot owner to comply with the terms of the Augmentation Plan may result in an order from the Division of Water Resources under the Augmentation Plan to curtail use of ground water rights.

ii. Each Residential Rural Lot owner shall promptly and fully account for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Residential Rural Lot, including for any irrigation, stockwater, or other permitted/allowed uses as may be required under the Augmentation Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division of Water Resources. Each Residential Rural Lot owner shall provide the Division of Water Resources with accounting for pumping of their respective not-nontributary individual Dawson aquifer wells on each Residential Rural Lot on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

iii. At such time as construction of a Laramie-Fox Hills aquifer well is required for replacement of post-pumping depletions under the Augmentation Plan, the Residential Rural Lot Owners shall be jointly and severally responsible for all cost and expense in the construction of said well, as well as all reasonable reporting requirements of the Division of Water Resources associated therewith.

#### D. Well Permits.

i. Each Residential Rural 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 dwellings upon their respective Residential Rural Lot. All such augmented Dawson aquifer wells shall be constructed and operated in compliance with the Augmentation 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 Residential Rural Lot shall be at each Residential Rural Lot owner's respective expense. Each Residential Rural Lot owner shall comply with any and all requirements of the Division of Water Resources to log their well, and shall, if requested by the Division of Water Resources, 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 Augmentation Plan. It is acknowledged that well permits, and individual wells, may be in place on some of the

Residential Rural 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.

ii. The Owners shall be jointly and severally responsible for obtaining any well permits, rights and authorities necessary for the construction of well(s) to the nontributary Laramie Fox Hills aquifer, though such well(s) shall be constructed only for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and shall not be constructed unless and until such post-pumping depletions must be replaced. The Owners shall cooperate in such efforts, and shall comply with any and all requirements of the Division of Water Resources to log such wells.

iii. No party guarantees to the Owners the physical availability or the adequacy of water quality from any well to be drilled under the Augmentation Plan. The Denver Basin aquifers which are the subject of the Augmentation 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 modeling to the contrary.

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

F. Amendments. Notwithstanding the provisions in Paragraph 12 to the contrary, no changes, amendments, alterations, or deletions to this Paragraph 8 of these Declarations may be made which would alter, impair, or in any manner compromise the Augmentation Plan, or the water rights of the Residential Rural Lot owners without the written approval of all Owners, prior written approval of the amendments by the EL Paso County Planning and Community Development Department and the County Attorney's Office, and pursuant to a Decree from the Water Court approving such amendment or alterations, with notice to El Paso County Planning and an opportunity to participate in any such adjudication.

G. El Paso County Requirements. El Paso County may enforce the provisions regarding the Augmentation Plan as set forth in these Declarations, should the Owners fail to adequately do so.

9. 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 Declarations be held invalid or become unenforceable, the other Declarations shall not be affected or impaired but shall remain in full force and effect.

10. Amendment of Declarations. Except as expressly mandated by applicable law, and except as limited by express provisions herein, these Declarations and the Plat may be amended only by vote or agreement of at least 75 percent of the Owners. For purposes of this Paragraph 26, Declarant shall be deemed an owner of each Residential Rural Lot until such time as such Residential Rural Lot are transferred to a third party.

A. Amendment of Declaration by Declarant. Until such time as Declarant has conveyed any Residential Rural Lots to a third party, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in these Declarations, except the provisions in Paragraph 24, 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 Declarations in all circumstances permitted by law and which do not conflict with applicable statutes, rules or decrees. Notwithstanding anything contained within these Declarations, and to the extent permitted by law, if Declarant determines that any amendments to these Declarations 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 Residential Rural Lot owners or mortgagees (or any percentage thereof).

B. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Declarant pursuant to this Paragraph 10 may not be brought more than one year after such amendment is recorded.

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

11. 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 Declarations be held invalid or become unenforceable, the other Declarations shall not be affected or impaired but shall remain in full force and effect.

12. Amendment of Declarations. Except as expressly mandated by applicable law, and except as limited by express provisions herein, these Declarations and the Plat may be amended only by vote or agreement of at least 75 percent of the Owners. For purposes of this Paragraph 12, Declarant shall be deemed an owner of each Residential Rural Lot until such time as such Residential Rural Lot are transferred to a third party.

A. Amendment of Declaration by Declarant. Until such time as Declarant has conveyed any Residential Rural Lots to a third party, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in these Declarations, except the provisions in Paragraph 11, 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 Declarations in all circumstances permitted by law and which do not conflict with applicable statutes, rules or decrees. Notwithstanding anything contained within these Declarations, and to the extent permitted by law, if Declarant determines that any amendments to these Declarations 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 Residential Rural Lot owners or mortgagees (or any percentage thereof).

B. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Declarant pursuant to this Paragraph 12 may not be brought more than one year after such amendment is recorded.

C. Recordation of Amendments. Each amendment to these Declarations 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. Termination. Termination of the Community may be accomplished by unanimous consent of the Owners; however, the covenants and restrictions herein regarding compliance with the Augmentation Plan shall not terminate unless the requirements of the Augmentation Plan are also terminated by order of the appropriate Water Court and a change of water supply is approved by El Paso County.

14. Persons and Residential Rural Lots Subject to Declarations. All Owners, tenants, occupants of dwellings on Residential Lots and, to the extent they own Residential Rural Lots, mortgagees and the Declarant, shall comply with these Declarations and shall be subject to all rights and duties under the Declarations. 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 Residential Rural Lot constitutes agreement that the provisions of these Declarations, and any Rules properly enacted by the Owners are accepted and ratified by that Residential Rural Lot owner, tenant, mortgagee, or occupant. All provisions recorded in the Documents are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Residential Rural Lot.

15. Enforcement. In the event that a dispute regarding an alleged violation of these Declarations cannot be resolved through discussion and negotiation of the parties, or subsequently by mediation, enforcement shall be by proceedings at law or in equity against any person(s) violating or attempting to violate any provision of these Declarations, including actions to restrain or enjoin such violation, and to recover damages. Venue shall be proper in the District Court for El Paso County, Colorado. The Owners shall abide by any injunctions so entered, without necessity of bond, in order to simplify judicial proceedings to remedy violations of these Declarations. In addition, if a judicial action is necessary to prohibit or correct a violation of these Declarations, the prevailing party shall be entitled to recovery of all costs of the enforcement proceeding, including reasonable attorney's fees.

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

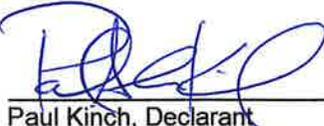
17. Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of these Declarations so require.

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

19. Invalidity. The invalidity of any provision of these Declarations does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of these Declarations shall continue in full force and effect.

20. Conflict. These Declarations 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 Declarations other applicable statutes, the provisions of such statutes shall control.

IN WITNESS WHEREOF, the Declarant has caused these Declarations to be executed this 19 day of August, 2023.

By:   
Paul Kinch, Declarant