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El Paso County, CO



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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WINSOME

Winsome, LLC, a Colorado limited liability company (the "Declarant"), executes this Amendment to Declaration of Covenants Conditions and Restrictions of Winsome (the "Amendment") as of the 29th day of December 2021

RECITALS

WHEREAS, that certain Declaration of Covenants Conditions and Restrictions of Winsome (as amended and supplemented, the "Declaration") was recorded by Declarant in the real property records of El Paso County, Colorado, on March 2, 2021 at Reception No. 221040908.

WHEREAS, pursuant to Section 10.3 of the Declaration, Declarant may annex additional property and subject such additional property to the terms of the Declaration.

WHEREAS, Declarant is the owner of the property set forth on **Exhibit A** to this Amendment (the "Annexed Property") and, subject to the terms hereof, desires to subject the Annexed Property to all covenants, conditions, restrictions and terms of the Declaration;

WHEREAS, Pursuant to section 10.3.2 of the Declaration, Declarant may subject the Annexed Property to such other provisions as Declarant may determine.

DECLARATION

NOW, THEREFORE, the Association hereby declares as follows:

1. Recitals and Definitions. The Recitals set forth above are true and correct, and incorporated herein as though fully restated herein. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Declaration.

2. Amendment. The Declaration is hereby amended such that the Annexed Property shall be annexed to and be a part of the Property, subject to all covenants, conditions, restrictions and terms of the Declaration for all purposes except as specifically set forth herein below.

3. Water Covenants. The Annexed Property shall be subject to the following water covenants which shall replace Sections 8.1, 8.2, 8.3, 8.4 , and 8.5 of Article 8 of the Declaration as to the Annexed Property:

Section 8.1. Water Replacement Plan.

8.1.1 The Annexed Property shall be subject to the obligations and requirements set forth in the February 3, 2020 Replacement Plan No. 2 – Determination of Water Right No. 1692-BD for the Dawson aquifer, as recorded at Reception No. 220124157 of the El Paso County Clerk and recorder, and the August 27, 2021 Replacement Plan No. 1692-RP, No. 4, as recorded at Reception No. 221170254 of the El Paso County Clerk and Recorder, which are incorporated by reference and all requirements of Replacement Plan No. 2 and Replacement Plan No. 4 thereunder (collectively the “Replacement Plan”). The Replacement Plan concerns the water rights and water supply for the Community and creates obligations upon the Community and the Lot owners, which run with the land. The water supply for the Community shall be by individual wells to the not-nontributary Dawson aquifer under the Replacement Plan.

8.1.2 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 (“ISDS”). Lot owners will be the owners of the Dawson aquifer underlying each of their lots, while the District will own the Replacement Plan and be responsible for reporting and administration based on pumping records provided by each Lot Owner.

Section 8.2. Water Rights Ownership.

8.2.1 Declarant will transfer and assign to the District all right, title and interest in the Replacement Plan and water rights thereunder, except as set forth herein. Declarant will transfer and assign to each Lot owner at least 180 acre-feet in the not-nontributary Dawson aquifer, as determined by the Ground Water Commission in the Determination of Water Right No. 1692-BD as the physical source of supply. Depletions resulting from the use of each Dawson aquifer well on each of the Lots shall be replaced per the terms of the Replacement Plan. Based on the Declarant’s intent expressed in these Covenants that each Lot owner will be able to withdraw water from the Dawson aquifer, in order to comply with El Paso County’s 300-year water supply requirement, Declarant shall convey to each Lot owner at least 180 acre-feet total (0.6 acre-feet/year x 300 years) of Dawson aquifer water.

8.2.2. The Declarant will further assign to the applicable Lot owners all obligations and responsibilities for compliance with the Replacement Plan, including monitoring, accounting and reporting obligations to the District. The owners shall assume and perform these obligations and responsibilities so that the District may comply with accounting and reporting obligations to the Ground Water Commission as required by the Replacement Plan. By this assignment to the Lot owners and the District, 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 determination of the Ground Water Commission, or other properly entered administrative relief.

8.2.3. 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 a 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.

8.2.4 The Dawson aquifer water rights conveyed to each Lot Owner, and return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Replacement Plan and this Declaration, and shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered.

Section 8.3. Water Administration.

8.3.1 Each Lot owner shall limit the pumping of each individual Dawson aquifer well per Lot to a maximum of 0.60 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 a Dawson aquifer well must have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system prior to any application of water for irrigation or animal watering. The District, as the owner 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, and the District, have the right to specifically enforce, by injunction if necessary, the Replacement Plan against any other Lot owner, or the District, for failing to comply with the Lot owner's and/or District'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 0.60 acre-feet. Failure of a Lot owner and/or the District 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.

8.3.2 Each Lot owner shall promptly and fully account to the District 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, as may be advised by the District. The District shall provide the Division of Water Resources with integrated accounting for pumping of all not-nontributary individual Dawson aquifer wells on each Lot on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

Section 8.4. Well Permits.

8.4.1 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 lots, consistent with the terms and conditions of the Replacement Plan. 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 each 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 geophysically 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 certain well permits, and individual wells, may be in place on certain of the Lots 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.

8.4.2 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 Dawson aquifer 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 modeling to the contrary.

Section 8.5 Commercial Lot.

8.5.1 The Declarant will convey a portion of the nontributary Denver aquifer, as determined by the Colorado Ground Water Commission in Determination of Water Right No. 1691-BD on June 25, 2008, as the physical source of supply for the commercial lot within the Annexed Property. In order to comply with El Paso County's 300-year water supply requirement, Declarant shall convey to the commercial lot at least 1,500 acre-feet total (5.0 acre-feet/year x 300 years) of Denver aquifer water. Pumping from the commercial lot shall be limited to 5.0 annual acre-feet annually, and is subject to the terms and conditions contained in that Determination of Water Right No. 1691-BD. The owner of the commercial lot shall be responsible for obtaining a well permit for the nontributary Denver aquifer well for provision of water supply to the lot, consistent with the terms and conditions this Section 8.2.2. and Determination No. 1691-BD. The Denver aquifer well(s) shall be constructed and operated in compliance with all applicable rules and regulations of the Colorado Division of Water Resources, including any requirements to geophysically log the well and install and maintain a totalizing flow meter on the well. The costs

of the construction, operation, maintenance, and repair of the Denver aquifer well, and delivery of water therefrom, shall be at the commercial lot owner's expense.

8.5.2. The commercial lot is not subject to any other portion of this Declaration except for the obligations and limitations concerning the commercial lot's water supply set forth in this Section 8.5 and Section 8.6.

General Water Provisions.

8.6.1 The Lot owners and the District, respectively, shall perform and comply with all terms, conditions, and obligations of the Replacement Plan, and shall further comply with the terms and conditions of this Declaration, and 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.

8.6.2 Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to this Article 8 of this Declaration may be made which would alter, impair, or in any manner compromise the water supply and/or the Replacement Plan, or the water rights of the Lot owners, without the written approval of said parties, El Paso County, and from the Ground Water Commission.

8.6.3 El Paso County may enforce the provisions regarding the Replacement Plan as set forth in this Declaration, should the Lot owners and/or District fail to adequately do so.

8.6.4 This Declaration 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 Community (i.e. all Lot owners and the District), and filed for record with the Clerk and Records of El Paso County. If any of these Covenants are held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

8.6.5 Except as expressly mandated by applicable law, and except as limited by express provisions herein, this Declaration and the Plat may be amended only by vote or agreement of at least 67 percent of the Lot Owners. For purposes of this Paragraph, Declarant shall be deemed an owner of each Lot until such time as such Lot(s) are transferred to a third party.

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

8.6.7 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.

8.6.8 An amendment to this Declaration is required to be recorded, as set forth herein, by the District, which has been adopted in accordance with this Declaration, must be prepared, executed, recorded, and certified on behalf of the District by an officer of the District designated for that purpose or, in the absence of designation, by the president of the District.

8.6.9 Termination of the Community may be accomplished by unanimous consent of the Lot owners; however, the covenants and restrictions herein regarding compliance with the Replacement Plan and Determination Nos. 1691-BD and 1692-BD, shall not terminate unless the requirements of the Replacement Plan are also terminated by order of the Ground Water commission and a change of water supply is approved by El Paso County.

4. Signs. With respect to the Annexed Property, Section 7.6.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

7.6.1 Subject to applicable laws and legal requirements, the District or Community Council, if delegated such authority by the District, may from time to time adopt, amend and repeal Rules and Regulations related to posting of signs and flags within the Annexed Property.

5. Renewal Energy Devices. The last sentence of section 4.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

If the Community Council fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such application or request for approval shall be deemed to have been denied by the Community Council, except in the case of a request for approval of renewal energy devices which are deemed approved if not denied or returned for modifications within sixty (60) days.

6. Conflict. In the event of any conflict between this Amendment and the Declaration, the terms of this Amendment shall control. Except as specifically modified herein, the terms of the Declaration shall remain unchanged.

IN WITNESS WHEREOF, the Association has executed this Amendment effective as of the date and year above written.

EXHIBIT A
(Annexed property)

Lots 2-62, inclusive
Winsome Filing No. 2 Final Plat
Recorded on _____
At Reception No. _____
El Paso County, Colorado

Solely as to Sections 8.5 and 8.6 of the Declaration

Lots 1
Winsome Filing No. 2 Final Plat
Recorded on _____
At Reception No. _____
El Paso County, Colorado