

DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS
(Pine View Estates Subdivision)

Alice J. Owens ("Declarant") is the sole owner of real property which is more particularly described as the SW ¼ of the NW ¼ of Section 13, Township 11 South, Range 64 West of the 6th P.M., and depicted on the Exhibit A map (the "Property").

The Declarant intends to subdivide the Property into seven (7) lots (each, a "Lot" and collectively, the "Lots") and such subdivision will be known and referred to herein as the "Pine View Estates Subdivision."

This Declaration is executed and recorded (a) in furtherance of a common and general plan for the Pine View Estates Subdivision, to include all Lot owners' compliance with the Replacement Plan (defined below) to insure legal water usage; (b) to protect and enhance the quality, value, desirability and attractiveness of the Property; (c) to provide for covenant enforcement within the Property; and (d) to define duties, powers and rights of Declarant and the owners of Lots within the Property.

The Declarant hereby declares that all of the Property shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the covenants set forth herein. The covenants set forth herein shall run with the Property and be binding on and inure to benefit of all parties having any right, title or interest in the Property, and said persons or entities shall hereby also be bound by the dedications, restrictions, easements and notes on the Pine View Estates Subdivision Final Plat, to be recorded in the records of the Clerk and Recorder of El Paso County, Colorado, as well as the regulations and ordinances of the County of El Paso, Colorado..

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 Pine View Estates Subdivision. These documents are the Colorado Ground Water Commission Determination of Water Right No. 1588-BD for the Dawson aquifer recorded at Reception No. 208078396 ("Dawson Determination") and associated Replacement Plan for the Dawson aquifer recorded at Reception No. 220016204 ("Replacement Plan"), all attached hereto as Exhibit B.

NOW, THEREFORE, the following Declarations of Protective and Restrictive Covenants are made:

A. WATER COVENANTS

1. Declarant sought the determination for Dawson aquifer water as set forth in the Dawson Determination. Additionally, the Declarant sought the approval of the Replacement Plan in order to use water from the Dawson aquifer to provide water to the Pine View Estates Subdivision. Pursuant to the Replacement Plan, a total supply of 1,008 acre-feet of not-nontributary Dawson aquifer water is available for use in the Pine

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View Estates Subdivision to satisfy El Paso County's 300 year water supply requirement for the seven (7) Lots. Pursuant to the Replacement Plan, each Lot will be served by an individual well and a non-evaporative septic system. Each individual well will be entitled to 0.48 annual acre-feet of withdrawal for use in one single-family dwelling, irrigation, stock watering, commercial use, and replacement purposes. All wells will be permitted pursuant to the Replacement Plan.

2. Each Lot owner will be conveyed 0.48 acre-feet per year of Dawson aquifer groundwater (the "Water Rights") to be withdrawn over a period of 300 years, and to be permitted pursuant to the Replacement Plan. All Lot owners shall be subject to the obligations and requirements of the Replacement Plan and Dawson Determination, as applicable. The Water Rights shall run with all seven (7) Lots of the Pine View Estates Subdivision and must be transferred to all successors and assigns of each grantee, may not be separated from transfer of title of each Lot on the Property, and may not be separately sold, traded, bartered, assigned, liened, or encumbered in whole or in part for any other purpose. The Water Rights shall be considered an appurtenance to said Lots and shall be conveyed as such with all future deeds to said Lots. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quality or quantity of water conveyed, only as to the title. No separate deed is required to effect a conveyance of the water rights.

3. Because the amount of water available from the Dawson aquifer will diminish over time, Declarant is not required to warrant the amount of water in the Dawson aquifer, but shall warrant title against all persons or entities claiming title under them.

4. Declarant and all subsequent owners of the Lots within the Pine View Estates Subdivision shall be subject to and shall carry out all provisions of the Replacement Plan and Dawson Determination, as applicable, including without limitation the following:

a. Pumping from each Dawson aquifer well may occur only if there is an occupied single-family dwelling that is generating return flows via a non-evaporative septic system on the Lot upon which the well is located. This will provide for in-house use return flows necessary to replace depletions during the pumping period through an individual, on-lot, non-evaporative septic system. The septic system shall be constructed in compliance with all applicable regulations. Each Lot owner shall ensure that return flows from such septic system are made to the stream system to replace depletions during pumping, and shall reserve said return flows to replace depletions during pumping.

b. Each lot may use a maximum of 0.48 acre-foot per year of Dawson aquifer groundwater pursuant to the Replacement Plan. Said groundwater is the water supply for the Lot and sale or use off the Lot is prohibited.

c. The return flows from the non-evaporative septic system on each Lot shall comply with the amounts, if any, set forth in the Replacement Plan. Such return flows shall only be used to replace groundwater depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose.

d. At least one Dawson aquifer well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation, stock watering, or commercial use is allowed to be served by any of the wells.

e. A totalizing flow meter must be installed on each well, and the Lot owner will maintain the meter in good working order. Annual withdrawal records shall be maintained for each well on a form acceptable to the Division Engineer, Water Division 2, Colorado Division of Water Resources.

5. Each Lot owner or its successors in interest are fully responsible for the operation, monitoring, and accounting required by the Replacement Plan for the well on their Lot. In the event the Lot is sold, evidence of the sale and notification to the new owner of their responsibility under the Replacement Plan shall accompany that year's accounting.

6. Each Lot owner shall be responsible for obtaining a well permit for the construction of an individual well to the Dawson aquifer for provision of water supply to their respective Lot. After issuance of a permit, each new Lot owner shall be responsible for updating the ownership information of the well permit with the Colorado Division of Water Resources.

7. The Water Rights herein shall be explicitly conveyed; however, if a successor Lot owner fails to so 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 Replacement Plan or Dawson Determination are specifically referenced in such deed.

8. Failure to comply with all terms of the Replacement Plan and applicable terms of the Dawson Determination may result in an order of the Division Engineer to curtail or eliminate pumping of the Dawson aquifer well of any non-complying Lot owner.

9. All the foregoing terms and conditions constitute covenants running with the Lots and shall be binding upon the owners of the Lots, their heirs and successors, and all subsequent owners of the Lots.

10. These Water Covenants shall not terminate unless the requirements of the Replacement Plan are also terminated by order of the Colorado Ground Water Commission or by an order of the Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County. No changes, amendments, alterations or deletions to these Water Covenants

may be made which would alter, impair or in any manner compromise the water supply for the Pine View Estates Subdivision pursuant to the Replacement Plan. Further, written approval of the 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 a Determination by the Colorado Ground Water Commission approving such amendment or by Water Court approval, with prior notice to El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication.

B. GENERAL COVENANTS

1. **Animals.** Except for horses and large livestock, which restrictions are set forth in Section B.2 below, a reasonable number of small livestock and poultry may be raised, bred or kept upon a Lot, provided that the livestock is adequately fenced and does not materially damage the existing vegetation on a Lot. However, pigs shall not be raised, bred, or kept upon a Lot. An aggregate number of not more than four cats or dogs may be kept on a Lot. No animal of any kind shall be permitted which makes an unreasonable amount of noise or odor or is otherwise a nuisance. No animals may be kept, bred or maintained on a Lot for any commercial purpose. All animals must be kept on a Lot in compliance with all El Paso County regulations and ordinances. The owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others. Owners are responsible for cleaning up after their animals on any portion of the Property. All animals kept or present on a Lot may not be allowed to run loose off the Lot. No dangerous dogs or other animals are allowed to be kept or be present on any Lot.

2. **Horses and Large Livestock.** No more than an aggregate of four (4) horses, cattle, llamas, alpacas, sheep, goats or similar livestock may be kept on a Lot. Horses and other livestock must be kept within an enclosure (corral, stable or barn) at all times when not being used and shall be supplementally fed. Grazing of horses or other livestock outside a corral, stable or barn must be limited to ensure that the natural vegetation on a Lot is not overgrazed. Corrals must have three (3) or more rails or be constructed of sturdy fencing to ensure retention of livestock. All stables and corrals shall be maintained in a sanitary condition.

3. **Use of Off Road Motorized Vehicles.** Off road motorized vehicles, including but not limited to, dirt bikes, off-road motorcycles, quads and ATVs, may not be operated on any shared driveway for recreational purposes. An owner may use such motorized vehicles on the owner's Lot, provided the use occurs only during daylight hours and does not create a nuisance such as excessive noise or dust.

4. **Construction Type.** All construction shall be new. No mobile home, pre-cut, manufactured or modular home may be placed on a Lot. No building previously used at another location, nor any building or Improvement originally constructed as a

mobile dwelling may be moved onto a Lot, except for temporary construction storage purposes (and not for a temporary residence) for a period not to exceed 12 months.

5. **Diseased Trees.** Each Lot owner is responsible for immediately removing any diseased trees which might contaminate or spread to adjacent trees and lots, and to meet any other Colorado State Forest Service recommendations or requirements pertaining to thinning of trees, or removal or treatment of pine beetle infested trees.

6. **Weeds and Insects.** All Lots must be kept free of noxious weeds, diseased vegetation and harmful insects.

7. **Abandoned/Project Vehicles.** No stripped down, abandoned, unlicensed, partially wrecked or junk motor vehicle or part thereof shall be permitted to be parked on any street or in any Lot within the Subdivision in such a manner as to be visible at ground level from any neighboring Lot within the Subdivision, or street.

8. **Nuisance.** No noxious or offensive activity shall be permitted upon any Lot, nor shall actions intended to or tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood be permitted on any Lot. No hazardous activities may be permitted upon any Lot. No annoying lights, sounds or odors shall be permitted to emanate from any Lot. Outdoor lighting will be permitted to the extent it does not create a visual nuisance to neighboring or nearby Lot owners. Any exterior lighting on any Lot shall either be indirect or of such controlled focus and intensity or in such a location as not to disturb residents of adjacent or nearby Lots within the Subdivision. Lighting designs consistent with the design provisions of the "International Dark-Sky Association" are encouraged, minimizing local and regional light pollution. No activities which pollute or have the potential to pollute any well, surface water right, groundwater aquifer, or other water resource shall be permitted within the Subdivision. No activity shall be permitted which will generate a noise level sufficient to interfere with the peaceful and reasonable quiet enjoyment of the persons on any adjoining or nearby Lots within the Subdivision.

9. **Marijuana Cultivation and Use.** No owner or occupant of a Lot may utilize any portion of a Lot, including the home or any other building or structure on the Lot, for the purpose of cultivation or production of marijuana, including medical marijuana, for other than their own personal use as allowed by applicable laws and ordinances. If an owner or occupant grows or produces marijuana for personal use only, the noise and odor arising from such operation must not emanate from the Lot and must be in full compliance with state and local laws and ordinances. No owner or occupant may use any portion of a Lot for the distribution or sale of marijuana.

10. **Persons Entitled to Enforce Declaration; Attorney Fees.** Declarant or any owner (acting on such owner's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of this

Declaration, and all other rights and remedies provided in this Declaration or available at law or in equity. In any action or proceeding to enforce any provision of this Declaration, the party who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, costs and expert witness fees.

11. Violations of Law. Any violation of any federal, state or county law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby 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.

12. Governing Law. This Declaration shall be interpreted and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

13. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

14. Notices. Except as may be otherwise provided in this Declaration, any notice must be in writing and may be served either personally, or by nationally recognized overnight delivery service or by U.S. certified mail. If served by mail or overnight delivery upon an Owner, notice shall be sent postage prepaid, addressed to the Owner's address shown in the El Paso County Assessor records.

15. Amendment of Declaration by Owners or Declarant. Except for any portion of the Water Covenants set forth above, any other covenant, condition or restriction contained in this Declaration may be amended, added, modified or repealed upon the unanimous approval of all owners, with each Lot having one vote. No amendment may be made to a provision that will eliminate any easement or government-required obligation, to include the Replacement Plan and the Water Covenants, or that will diminish the quality, value, desirability, and attractiveness of the Property. An approved amendment shall be evidenced in a written instrument acknowledged by all Owners and recorded in the records of El Paso County, Colorado.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this

1 day of June, 2020.


Alice J. Owens

