

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND
RESTRICTIONS OF WATER
FOR THE
RAPSON SUBDIVISION**

William Rapson and Andrea Rapson (“Declarants”) are the sole owners of real property more particularly described as the W ½ SE ¼ SE ¼ in Section 14, Township 11 South, Range 65 West of the 6th P.M., in El Paso County also known as 10675 Hardy Road, Colorado Springs, CO 80908, containing approximately 19.6 acres, and depicted on the **Exhibit A** draft Plat, attached hereto and incorporated by this reference generally known as the Rapson Subdivision (“Rapson Subdivision”). The Declarant desires to place limited protective covenants, conditions, restrictions, and reservations, upon the Rapson Subdivision to protect the Subdivision's quality residential living environment, to protect its desirability, attractiveness, and value, and to ensure compliance with all applicable groundwater determinations concerning water and water rights to be utilized within the Subdivision.

Verify acreage

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 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 Water Covenants as pertaining to the Subdivision. These include the Determinations of Water Rights for the underlying Denver Basin groundwater in Determination Nos. 3637-BD (Dawson), 3636-BD (Denver), 3635-BD (Arapahoe), and 3634-BD (Laramie-Fox Hills), and the associated Replacement Plan for 3637-BD (3637-RP), all attached hereto as **Exhibit B**.

This needs to be added to plat as
easement and terms of easement
submitted for review and approval

NOW, THEREFORE, the following Declarations are made:

1. Maintenance of Shared Access Driveway. It shall be the duty and obligation of each Owner of a Lot within the Subdivision to maintain the shared access driveway. The shared access driveway shall be equally maintained by the Lot owners benefiting from, and sharing, the respective driveway and shall each pay an equal portion of maintenance and repair costs, unless the expense to repair is attributable to a specific lot owner. “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 the shared access driveway. If a Lot Owner does not utilize or

benefit from the shared access driveway, then the Lot Owner is not responsible for maintenance and repair and associated costs. The driveway shall, at a minimum, meet current county standards for gravel or paved roads, as applicable. The 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 paved access driveway fall below the county standard for access drives.

2. Water Replacement Plan

A. Order. The subdivision shall be subject to the obligations and requirements set forth in the December 29, 2020 Replacement Plan No. 2 for the Dawson aquifer, as recorded at Reception No. 220049996 of the El Paso County Clerk and Recorder, which is incorporated by reference (“Replacement Plan”). The Replacement Plan concerns the water rights and water supply for the Rapson Subdivision and creates obligations upon the Rapson Subdivision and the Lot owners, which run with the land. The water supply for the Rapson Subdivision shall be by individual wells to the non-tributary Dawson aquifer under the Replacement Plan.

3. Water Rights Ownership.

A. Declarants will transfer and assign to each Lot owner a proportionate prorata-per-acre interest in the not-nontributary Dawson aquifer, as well as the nontributary Denver aquifer, the nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer, as determined in the Ground Water Determinations as the physical source of supply. The Dawson aquifer well on each of the Lots with shall be augmented per the Replacement Plan. Based on the Declarants’ 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 450 acre-feet total (1.5 acre-feet/year x 300 years) of Dawson aquifer water.

B. 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 as applied to each Lot. The owners shall assume and perform these obligations and responsibilities, and 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. Notwithstanding an assignment by the Declarants to the Lot Owners, as long as the Declarants are also Lot Owners, the Declarants shall continue to bear all obligations and responsibilities for compliance with the Replacement Plan. 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.

C. 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 Declarants to the initial owner of each 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.

D. All not-nontributary Denver Basin groundwater in the Denver aquifer, nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer underlying each Lot, are likewise to be deeded, assigned and transferred to the overlying Lot owner on a prorata-per-acre basis, and may be used in said Lot owner's sole and complete discretion, subject to the terms and conditions of these Declarations and the Replacement Plan.

E. The Dawson, Denver, Arapahoe, and Laramie-Fox Hills 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 these Covenants, and shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered.

4. Water Administration.

A. Each Lot owner shall limit the pumping of each individual Dawson aquifer well per Lot to a maximum of 1.5 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 permitted under the Replacement Plan. 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 owner shall administer the Replacement Plan and pumping of the 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 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 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 1.5 acre feet. Failure of a Lot owner 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, or further actions as deemed necessary by a Water Court or regulating authority with applicable jurisdiction.

B. Each Lot owner shall promptly and fully account to the Division of Water Resources for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Lot, including for any domestic, 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 of Water Resources.

5. Well Permits.

A. 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, to the extent quantities deeded to such Lot owner therein are sufficient for such Lot owner's needs or are responsible for ensuring an existing permit is in the Lot owners name. 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 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.

B. 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 statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

6. 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.

Declaration of Covenants (MS Word version required)_v1.pdf Markup Summary

Cloud+ (2)



Subject: Cloud+
Page Label: 1
Author: John Green
Date: 4/6/2021 11:11:58 AM
Status:
Color: ■
Layer:
Space:

This needs to be added to plat as easement and terms of easement submitted for review and approval

on("Declarants") are the sole owners of real pro
W 1/2 SE 1/4 SE 1/4 in Section 14, Township 11 S
El Paso County also known as 10675 Hardy F
aining approximately 1.0 acres, and depicted o
to and incorporated in reference generally to
psoon Subdivision"). The Declarant desires to i
sons, restrictions, and reservations upon the Pla
son's quality residential living environment to pr
value, and to ensure compliance with all appli
ming water and water rights to be utilized withi
Verify acreage

Subject: Cloud+
Page Label: 1
Author: John Green
Date: 4/6/2021 11:12:12 AM
Status:
Color: ■
Layer:
Space:

Verify acreage

are that all of the Subdivision as hereinafter descr
and incorporated in reference generally to