**El Paso County Clerk & Recorder: Index in Grantee Indexes as Pawel Posorski and under Grantor as Pawel Posorski**

# PRIVATE ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

This Private Access and Utility Easement and Maintenance Agreement ("Easement") dated for reference this _____ day of _____, 2022, is hereby reserved by Pawel Posorski ("Owner") as owner of

Lots 1-3, inclusive, Ivilo Subdivision, County of El Paso,
State of Colorado

(each of Lots 1 through 3, hereinafter referred to as a "Lot"). The Easement shall burden Lots 1, 2, and 3 (collectively, the "Servient Estate"), shall inure to the benefit of Lots 1, 2, and 3 (collectively, the "Dominant Estate"), and shall be located upon a portion of land located on the Servient Estate and more particularly described as follows:

**[legal description for shared access drive area]**

(the "Easement Area").

1. Reservation of Easement. This Easement is hereby reserved of record and shall become fully in force automatically upon severance of the unity of title in the Owner by the recording of any deed in the real estate records of El Paso County, Colorado transferring any ownership interest in any Lot. Any deed or other transfer of ownership shall be made subject to this reserved easement of record, without the necessity of further reservation or explicit incorporation to such future instrument. By acceptance of a deed to or interest in all or any portion of a Lot, each grantee and successor shall be deemed to have agreed, submitted to, and subordinated all rights to the provisions of this Easement.

2. Easement Appurtenant. The benefits and burdens of this Easement shall be appurtenant to the Dominant Estate and Servient Estate and shall "run with the land." References herein to owners shall include any owner of any Lot, together with the owner's grantees, heirs, lessees, agents, successors, guests, licensees, transferees, and assigns.

3. Purpose of the Easement. The Easement shall be solely for the location of a temporary and final Shared Access Drive and ingress, egress, access, utilities, overland flowage, and drainage over the same. Rights of the Dominant Estate shall be limited in scope and volume to those customarily associated with private residential use and occupancy and such uses as may be necessary and incidental thereto.

4. Terms of Use and Prohibitions. Subject to the terms of the Easement, the owner of the Servient Estate shall have full use and occupancy of the Easement Area.

    a. Unusual Use or Abuse. No owner shall cause unusual use or abuse of the improvements within the Easement Area. Notwithstanding the fact permissible residential use of the Shared Access Drive may necessitate occasional incidental traffic by agricultural vehicles, commercial vehicles, construction vehicles, utility vehicles, delivery vehicles, and any other vehicles over 6,000 pounds gross vehicle weight ("Heavy Traffic"), any damage to the improvements within the Easement Area resulting from Heavy Traffic shall constitute unusual use for the purposes of cost allocations.

    b. Impediments. No owner shall construct or permit fences or other obstructions, including trees, landscaping, vegetative growth, or parked vehicles, on the Easement Area in a manner which would prevent or unreasonably impede permissible uses of the Easement Area.

    c. No Grading. After construction of the final paved Shared Access Drive, no owner shall change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written unanimous consent of the owners of other Lots.

    d. Non Exclusive Use. Nothing in this Easement shall be construed to confer any exclusive rights of use or possession.

5. Initial Construction. The Lot owners shall be individually responsible for clearing existing vegetation from the Easement Area and conducting any initial grading and graveling necessary for temporary vehicular access to their Lot. The responsibility and cost of such initial construction and clearing shall be borne by the Lot owner seeking to create such initial access. Upon issuance of a certificate of occupancy for a dwelling on both Lot 2 and 3, the Administrator shall cause the final shared access drive (the "Shared Access Drive") to be constructed, which shall be a minimum of seventeen feet (17') wide and constructed of blacktop or concrete pavement with sand or gravel underlayment, with graded entry

points to intersecting private drives, and which shall otherwise meet the standards set forth herein.

6. Maintenance Standards. The Shared Access Drive shall, at a minimum, meet current county standards for gravel or paved private roads, as applicable, and shall continue from Vessey Road through the Easement Area such distance as necessary to meet the driveway serving the primary dwelling on each Lot. The Shared Access Drive will, at all times, be kept in passable condition without potholes, sinkholes, obstructions, or other unstable or unpassable conditions, and otherwise in all respects in a condition to enable the Owners and emergency vehicles to use the Easement Area for its intended purposes as set forth herein. "Maintenance" or "repair" includes, but is not limited to construction, paving or re-paving, draining, removing snow, clearing, grading, cleaning culverts, weed treatment, tree and debris removal, or providing any other maintenance or repair-type service, including replacement, however defined, on the Shared Access Drive, in order to meet the minimum standards set forth herein.

7. Maintenance Process. Decisions about maintenance shall be determined by the Administrator, and unless a majority of the Owners of Lots shall otherwise agree, the Administrator shall be the Owner of Lot 1. The Administrator shall arrange for final construction of the paved Shared Access Drive and any subsequent maintenance and repair. The Administrator shall either (i) pay for such maintenance directly and be reimbursed by each Lot owner according to each Lot's proportionate share; (ii) arrange to have each Lot owner directly pay the proportionate cost of such maintenance; (iii) require periodic payments into a fund to be held in trust and used for such maintenance; or (iv) use some combination of the foregoing. To the extent the Administrator pays for any Lot's share, the Administrator shall have a lien on each such Lot until such Lot's share is paid in full with interest accruing on any unpaid amount at the rate of 10% per annum simple interest and the Administrator shall be entitled to recover the costs of enforcing such lien and collecting such amount, including reasonable legal fees, expert witness fees and costs. The Administrator may refuse to order such maintenance until there is, in the Administrator's opinion, sufficient commitment or actual payment to reimburse the Administrator and pay for such maintenance.

8. Sharing Maintenance Costs. The cost and expense of constructing, maintaining in good operating condition, repairing, and replacing the improvements within the Easement Area shall be shared by the Lots and their respective owners upon the following terms. All costs shall be allocated among the Lots according to the following proportions:
    a. For the cost of initial construction of the temporary access drive, one hundred percent (100%) to the Lot seeking new access.
    b. The cost of any maintenance, repair, or replacement of any improvement caused by unusual use or abuse: 100% to the Lot whose owner occasioned such unusual use or abuse.
    c. For the cost of initial construction of the permanent Shared Access Drive and ALL other costs:

i. Lot 1: Twenty Percent (20%);
ii. Lot 2: Forty Percent (40%); and
iii. Lot 3: Forty Percent (40%).

9. Binding Agreement. The agreement for granting the Easement and for the maintenance of the Shared Access Drive on the Easement Area shall be binding upon the relevant Owners, and their respective successors, assigns, and personal representatives.

10. Amendment/Termination. This Agreement may not be amended or revoked without the written unanimous consent of the Owners of all Lots and of El Paso County.

11. Enforcement. This Easement shall be deemed to run with the land, and the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Easement, to enjoin its violation, or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs.

**Owner:**

_____
Pawel Posorski

STATE OF COLORADO )
) ss.
COUNTY OF EL PASO )

This instrument was acknowledged before me on _____, by Pawel Posorski.

[Seal] _____
_____ , Notary Public
My commission expires: _____

**El Paso County Clerk & Recorder: Index in Grantee Indexes under Ivilo Subdivision, and under Grantor as Pawel Posorski**

# DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS OF USE FOR THE IVILO SUBDIVISION

THIS DECLARATION, is made and entered into as of the date shown below, by Pawel Posorski ("Declarant"), his successors, and assigns.

WITNESSETH:

**WHEREAS**, Declarant is the sole owner of real property more particularly described as:

[FINAL PLAT LEGAL]

to be platted as:

Lots 1-3, inclusive, Ivilo Subdivision, County of El Paso, State of Colorado

(each of Lots 1 through 3, hereinafter referred to as a "Lot") as depicted on the **Exhibit A** draft Plat, attached hereto and incorporated by this reference, generally known as the Ivilo Subdivision ("Subdivision" or "Property").

**WHEREAS**, Declarant desires to submit the property to the limited covenants, terms, and conditions hereof, the Subdivision's quality residential living environment, to protect its desirability, attractiveness, and value,

**WHEREAS**, Declarant hereby declares that all of the Subdivision as herein defined, 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 of this Declaration, all of which are for the purpose of enhancing

and protecting the value, desirability and attractiveness of the Subdivision, 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.

**WHEREAS**, by acceptance of a deed to the Property, each successor shall be deemed to have agreed, submitted to, and subordinated all rights to the provisions of this Declaration;

**WHEREAS**, Declarant further declares that pursuant to C.R.S. § 38-33.3-103(8), the Subdivision is not a Common Interest Community Subject to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act (hereinafter called "**CCIOA**"), because the Declaration does not require by virtue of such person's ownership of property within the Subdivision, payment of real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. See C.R.S. § 38-33.3-103(8) (2021).

**NOW, THEREFORE**, the Declarant hereby declares as follows:

## I. DESIGNATION OF USE.

All Lots shall be known and described as residential lots and shall not be improved, used or developed for more than one single family dwelling on each such Lot. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the zoning ordinance of El Paso County.

## II. BUILDING RESTRICTIONS AND REQUIREMENTS.

A. No building or structure shall be constructed, altered, or maintained on any Building Lot other than one detached single family dwelling with an attached private garage, one outbuilding (being an enclosed, covered structure other than a dwelling or attached garage, such as a barn or garden shed), and such other structures customarily incidental and subordinate to a single family home.

B. No building or structure of any kind shall be moved onto any Lot.

C. The construction of any building or structure on any Lot shall be performed utilizing on-site "stick-built" construction methods and procedures and not off-site modular or panelized construction.

D. All dwellings construction on the Lots shall meet the following:

(1) One story dwellings must have not less than 3000 square feet of finished floor area.

(2) One and one-half story dwellings must have not less than 3500 square feet of finished floor area. This also applies to all split level and split entry dwellings.

(3) Two story dwellings must have not less than 4000 square feet of finished floor area.

(4) **In computation of finished floor area, the same shall not include porches, breezeways, attached or built-in garages, or finished basement areas**.

(5) All dwellings shall have at least a two car attached or detached garage.

(6) No less than six (6) inches[1] and no more than thirty (30) inches of concrete block or poured concrete foundation shall be exposed on any building, excepting the rear of a walkout basement type residence or of a daylight type residence, and any such exposed materials shall be painted or covered with brick or stone veneer.

(7) Pitched roof material shall be slate, tile, or composition shingles and may not be cedar shake. Flat roof materials shall be black or charcoal membrane. Composition shingles shall be architectural grade with a minimum of a twenty-five year warranty. Shingle colors shall be black, charcoal, or muted earth tones and be compatible with and complimentary to the exterior materials and colors. White or white blend roof shingles are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall closely match the colors of the surfaces to which they are attached.

(8) Decks attached to a single family dwelling must be built from cedar, redwood, treated lumber, composite decking material, concrete, or natural stone. Unpainted wood decks are not acceptable as front entry porches. All steps to front porches must be cast in place concrete. No wood steps or precast concrete steps to front porches are permitted.

(9) The finished grades for single family dwellings shall be established to permit positive drainage away from such dwelling and shall conform to

[1] Less than six (6) inches of vertical clearance between ground and home siding shall be considered a fire hazard.

the as built grades on file with the County, unless changes to such as built grades are approved by the County.

(10) No house shall be erected on any Lot outside of the building setback lines as shown on the recorded Plat.

(11) No new house, additional dwelling unit, outbuilding, structure, addition thereto, or other improvement shall be placed so as to directly obstruct all or any substantial portion of the existing view plane of or sightline to Pikes Peak as measured from the sightline of a six foot tall human located anywhere in or upon a prior existing primary dwelling belonging to any other Lot.

E. No Lot shall be subdivided so as to be reduced in size to be less than the greater of (a) the minimum lot size required under the applicable zoning ordinance of the City, or (b) 95% of the original platted Lot, unless all portions of such subdivided Lot are added to and made part of an adjacent Lot.

F. All structures built in the plat shall be of modern architectural style and shall not be predominantly colonial, adobe, or log style.

G. The use of natural materials is encouraged, i.e. stained wood, stone, brick, as well as soft earth tone colors. No house shall be painted in bright colors (for example, and not by way of limitation, orange, purple, mint green, bright blue or other colors that cannot be characterized as earth tone).

H. No fences shall be built forward of the centering line of the house built on a Lot or within eight (8) feet of any Lot boundary. All fences shall be black chain link, or vinyl that is natural in color, or wood that is stained or painted in soft earth tone colors so as to blend in with the terrain, and not more than six feet in height. Chain link may not be used for perimeter fencing or for any fencing visible from the common access off Vessey road. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. All fences shall be kept in good repair.

I. No satellite dish or parabolic device used to receive television signals from satellites shall be located on any Lot unless it meets the following requirements:

(1) It shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed pursuant to this Declaration;

(2) If at all possible, it shall be located so that no part of the dish is in front of the home it serves;

(3) It shall not exceed two feet in diameter;

(4) It shall be black or gray in color.

J. No exterior towers or antennas of any kind shall be constructed or permitted on the ground of any Lot. Reasonable television or radio antennas are permitted on the residential dwelling or garage.

K. To prevent light pollution, no light poles shall be used or placed upon any Lot that extend more than 10 feet above grade. All light poles shall be of residential design. All light poles, external security lighting and external decorative lighting shall be located, positioned and directed so that the light shines on the Lot on which the light is constructed and does not provide direct lighting or measurable indirect lighting onto adjoining Lots and does not constitute a nuisance to wildlife or any adjoining property Owner.

L. All utility connection facilities and services shall be underground. Utility meters shall be hidden architecturally or through the use of remote reading devices.

M. No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or Outbuilding unless hidden by an attractive screen or landscaping of suitable height and density and shall not be located closer than twenty (20) feet from any Lot boundary. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding at the place designate for trash pickup no earlier than the evening prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area, or inside a dwelling, garage or Outbuilding, within twelve (12) hours following the scheduled pick up of such trash.

N. Firewood shall not be stored on the front or side of a house. No more than one stack of firewood is allowed, which shall not be in excess of ten (10) feet long by three (3) feet high and must be stacked in the rear yard and at least twenty (20) feet from any side or rear lot line. No material of any kind whatsoever may be stored in the front yard or side yard of a dwelling, except that garden hoses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel. No material may be stored in a rear yard unless appropriately covered or screened from view by neighbors.

O. All swimming pools and hot tubs shall be located only in rear yards and screened by a privacy fence or hedge, and all outdoor hot tubs must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed.

P. No foil or other reflective materials visible from outside the house shall be used on any windows or on any sunscreens, blinds, shades or for any other purpose.

Q. All buildings, structures or improvements of any kind must be completed within eighteen (18) months of the commencement date of construction.

R. Solar or renewable energy devices shall be placed to the rear of the dwelling in such location as to be shielded from view of other Lots and from the common

access off Vessey Road. Wind devices shall further be located, shielded, or installed as to be inaudible from other Lots. The effect of this section shall be limited to the maximum restriction allowable by the requirements of C.R.S. § 38-30-168 (2022) or such similar law as may be in place from time to time.

## III. DRIVEWAYS.

All dwellings shall have an asphalt blacktop or portland cement concrete driveway not less than 17 feet in width and running from the right-of-way or public road access to the garage. All driveways shall provide off street parking for at least two vehicles outside of the garage.

## IV. TEMPORARY STRUCTURES; RECREATIONAL VEHICLES AND WORK EQUIPMENT.

No temporary building or structure shall be built or maintained on any Lot. No camper, motor home, watercraft, boat, trailer, unfinished dwelling, tent, shack, garage, or outbuilding shall be used at any time as a dwelling.

No vehicle with a gross vehicle weight greater than 7,000 pounds, and no camper, motor home, watercraft, boat, snowmobile, trailer, work van, work truck or mechanical equipment or similar property (hereafter referred to as "Recreational Vehicles and Work Equipment") may be parked or maintained on any Lot (except inside a garage) for more than thirty (30) consecutive days at any time or for more than thirty (30) days in aggregate during any calendar year, unless: located within a garage or outbuilding, parked in a side yard on a driveway extension and completely screened from view at ground level from other Lots by shrubbery (with or without leaves) or opaque fencing (otherwise in compliance with these covenants) which provide no gaps through which the object being screened can be seen; provided that this restriction shall not apply to what are customarily considered sport utility vehicles, passenger vans or "conversion vans," or to trucks, equipment or trailers used in connection with and during the construction or rebuilding of a dwelling or outbuilding on any Lot. At no time may any non-functioning, disabled, "junk" or unregistered Recreational Vehicles and Work Equipment, automobile, motorcycle, or other vehicle be parked or maintained in the yard of any Lot. At no time shall any Recreational Vehicles or Work Equipment, automobile, motorcycle, or other vehicle be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling

## V. CERTAIN ANIMALS PROHIBITED.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that :

A. Dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than a total of five (5) dogs and/or cats be kept at any one Lot at any one time.

B. Livestock not exceeding 2.0 livestock units in aggregate may be kept on a Lot as selected from of the below categories shall be permitted if not kept for commercial purposes and if fenced and enclosed by fences and enclosures otherwise in compliance with the Declaration:

(1) Each poultry bird (excepting rooster chickens, which are not allowed) = .1 unit

(2) Each Honeybee hive or colony - 0.1 unit

## VI. FIRE MITIGATION, WEED, RUBBISH, AND DEBRIS CONTROL AND MAINTENANCE

**The Owner of each Lot shall be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.**

**The Owner of each Lot, whether vacant or improved, shall keep the Lot free from dead, dying, diseased, or stressed trees, especially beetle kill, and shall keep the ground free from buildup of pine needles, pine cones, leaves, mulch, brush, rubbish, weeds, and debris.**

**Each owner of each Lot shall keep the lawn and landscaping well maintained and healthy, including (but not limited to) the following minimum maintenance standards: a fire break zone of five (5) feet around each dwelling free from all vegetation and flammable cover, e.g. wood mulch; mowing all grass and weeds within 30 feet of the dwelling to a height of 4 inches or less; mowing all grasses at least annually; and promptly removing all debris, yard waste, clippings, slash to off-site disposal.**

**The Owner of each Lot shall remedy a violation of this provision within ten (10) days after such Owner receives written notice given by certified mail, receipt return request, or delivered in person, from the Owner of any other Lot. If not cured within said ten (10) day period, then the person giving such notice shall have the right and easement to enter upon the premises and mow or cut the grass or weeds or remove the offending debris or otherwise cure the violation at the expense of the Owner of the Lot where such grass or weeds were not so mowed or where such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus reasonable costs, including reasonable attorney's fees, of collecting such amount, if it is not paid within three (3) days of demand for reimbursement, plus interest on all such amounts at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred until paid in full, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the El Paso County Clerk and Recorder, until such amount, the**

**reasonable costs of collection of the same, including, but not limited, to reasonable attorney's fees and the costs of filing such lien and any release of such lien upon payment, together with interest thereon at the rates stated in this section above, that are incurred by the lienholder, are paid in full.**

## VII. AMENDMENT

This document may be subsequently amended by written agreement of the owners of not less than 67% of the Lots.

## VIII. ENFORCEMENT

**This Declaration shall be deemed to run with the land, and the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration to enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs.**

IN WITNESS WHEREOF, the Declarant has caused these Declarations to be executed this __ day of _____, 2022.

By: _____
Pawel Posorski, Declarant

STATE OF COLORADO )
) ss
COUNTY OF EL PASO )

Subscribed and sworn to before me this ____ day of _____, 2022 by Pawel Posorski, as Declarant of the Ivilo Subdivison.

My commission expires: _____

Witness my hand and seal.

_____

Notary Public

**El Paso County Clerk & Recorder: Index in Grantee Indexes under Ivilo Subdivision, and under Grantor as Pawel Posorski**

# DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS OF USE AND WATER FOR THE IVILO SUBDIVISION

THIS DECLARATION, is made and entered into as of the date shown below, by Pawel Posorski ("Declarant"), his successors, and assigns.

WITNESSETH:

**WHEREAS**, Declarant is the sole owner of real property more particularly described as:

[FINAL PLAT LEGAL]

to be platted as:

Lots 1-3, inclusive, Ivilo Subdivision, County of El Paso, State of Colorado

(each of Lots 1 through 3, hereinafter referred to as a "Lot") as depicted on the **Exhibit A** draft Plat, attached hereto and incorporated by this reference, generally known as the Ivilo Subdivision ("Subdivision" or "Property").

**WHEREAS**, Declarant desires to submit the property to the limited covenants, terms, and conditions hereof, 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.

**WHEREAS**, Declarant hereby declares that all of the Subdivision as herein defined, 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 of this Declaration, 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.

**WHEREAS**, by acceptance of a deed to the Property, each successor shall be deemed to have agreed, submitted to, and subordinated all rights to the provisions of this Declaration;

**WHEREAS**, Declarant further declares that pursuant to C.R.S. § 38-33.3-103(8), the Subdivision is not a Common Interest Community Subject to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act (hereinafter called "**CCIOA**"), because the Declaration does not require by virtue of such person's ownership of property within the Subdivision, payment of real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. See C.R.S. § 38-33.3-103(8) (2021).

**WHEREAS**, 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 as pertaining to the Subdivision. These include:

- Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court dated November 19, 2018, as recorded November 20, 2018, at Reception No. 218134502

- Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Approving Plan for Augmentation, dated March 15, 2022, as recorded on March 15, 2022 at Reception No. 222037346

all attached hereto as **Exhibit B**.

**NOW, THEREFORE**, the following Declarations of Water Covenants are made:

1. Water Decree and Augmentation Plan

A. Decree/Summary. The subdivision shall be subject to the obligations and requirements set forth in the Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court dated November 19, 2018, as recorded November 20, 2018, at Reception No. 218134502 as amended and supplemented by the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Approving Plan for Augmentation, dated March 15, 2022, as recorded on March 15, 2022 at Reception No. 222037346 of the El Paso County Clerk and Recorder, which is incorporated by reference (together, the "Augmentation Plan").The

Augmentation Plan concerns the water rights and water supply for the Ivilo Subdivision and creates obligations upon the Ivilo Subdivision and the Lot owners, which run with the land. The water supply for the Ivilo Subdivision shall be by individual wells to the not-nontributary Dawson aquifer under the Augmentation Plan. The Augmentation 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 Augmentation Plan, including wastewater treatment through a non-evaporative individual septic disposal system ("ISDS"). Lot Owners will be the owners of the water within the aquifers underlying their lots, and also own the plan for augmentation. The Lot Owners will 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.

2. Water Rights Ownership. Water rights and obligations as set forth in this Declaration shall be appurtenant to the Property, shall be indivisible from, and shall run with the land, and the same may not be separately assigned, transferred, or encumbered by any Lot owner, as follows:

A. Declarant will transfer and assign to each Lot owner a proportionate prorata-per-acre interest in the not-nontributary Dawson aquifer, as well as the not-nontributary Denver aquifer, the nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer, as adjudicated in the Water Decree as the physical source of supply for each Lot. The Dawson aquifer well on each Lot shall be augmented per the Augmentation Plan as administered by the Lot Owners. Ground Water Determinations apply for Designated Basins Only. The water was quantified in Case No. 18CW3035, Water Court, Water Division 2. 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 300 acre-feet total (1.0 acre-feet/year x 300 years) of Dawson aquifer water.

B. Declarant will transfer and assign to each Lot Owner their portion of all right, title and interest in the Augmentation Plan and water rights thereunder. Those water rights assigned include ground water in the nontributary Laramie-Fox Hills aquifer of the Denver Basin, as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions. The Declarant will further transfer and assign to each Lot owner all obligations and responsibilities for compliance with the Augmentation 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 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 Lot owners. The Lot owners shall maintain such obligations and responsibilities in

perpetuity, unless relieved of such replacement responsibilities by Order of the Water Court or another Court with appropriate jurisdiction, rule, regulation, governmental authority, 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 Augmentation 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 each Lot, whether or not separately deeded. The ground water rights in the Dawson aquifer subject to the Augmentation 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 Denver Basin groundwater in the not-nontributary Denver aquifer, and nontributary Arapahoe and Laramie-Fox Hills aquifers 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 this Declaration and the Augmentation 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 Augmentation 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.

3. Water Administration.

A. Each Lot owner shall limit the pumping of each individual Dawson aquifer well per Lot to a maximum of 1.0 acre-feet annually, consistent with the Augmentation Plan. Each 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 of lawn and garden, watering of horses or equivalent livestock, and other allowed uses permitted under the Augmentation Plan, to-wit: 0.26 acre-feet of water per year per residence, with the remaining 0.74 acre-feet per year for other permissible 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. The Lot Owners, as the owners of all obligations and responsibilities under the Augmentation Plan, shall administer and enforce the Augmentation Plan as it applies to each Lot Owner's respective Lot and pumping from individual Dawson aquifer well(s). 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 Lot owners.

B. Each Lot owner has the right to specifically enforce, by injunction if necessary, the Augmentation Plan against any other Lot owner for failing to comply with the Lot owner's respective 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 nonprevailing party.

C. 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 Augmentation Plan and this Declaration, including, without limitation, that each Lot owner is subject to the maximum annual well pumping of 1.0 acre feet. Failure of a 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, or further actions as deemed necessary by a Water Court or regulating authority with applicable jurisdiction.

D. 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 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 or Water Resources.

4. 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 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 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 Augmentation 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 this Declaration no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

B. The Lot Owners shall be 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 wells 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 Lot Owners shall comply with any and all requirements of the Division of Water Resources to log such wells,

and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide all necessary accounting under the Augmentation Plan.

C. No party guarantees to the Lot 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 modelling to the contrary.

5. Continuing Jurisdiction. The Augmentation Plan issued is subject to the court's continuing jurisdiction over the plan for reconsideration and compliance. By acceptance of a deed or any interest in any part of the Property, each Lot owner or other grantee thereby consents to the continuing personal jurisdiction of the water court.

6. Compliance. The Lot 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.

7. Amendments. No changes, amendments, alterations, or deletions to these Water Covenants may be made which would alter, impair, or in any manner compromise the Augmentation Plan, or the water rights of the Lot owners without the written approval of said parties, El Paso County, and from the Water Court.

8. County Enforcement. El Paso County may enforce the provisions regarding the Augmentation Plan as set forth in this Declaration, should the Lot Owners fail to adequately do so.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this __ day of _____, 2022.

By: _____
Pawel Posorski, Declarant

STATE OF COLORADO )
) ss
COUNTY OF EL PASO )

Subscribed and sworn to before me this ____ day of _____, 2022 by Pawel Posorski, as Declarant of the Ivilo Subdivison.

My commission expires: _____

Witness my hand and seal.

_____
Notary Public