

DECLARATION OF WATER COVENANTS
for
AFT RANCH SUBDIVISION Filing Nos 1 & 2

AFT Ranch, LLC, a Colorado limited liability company, and the Charles R. and Nancy K. Shea Living Trust (collectively "Declarant"), are the owners of real property more particularly described as being approximately a total of 39.114 acres located in the S½ SE¼ of Section 15, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, El Paso County Assessor Parcel Nos. 6215401004 and 6215401003, depicted on attached **Exhibit A** and incorporated by reference, known for purposes of this Declaration as the AFT Ranch Subdivision (the "Subdivision") along with the water and water rights associated therewith¹. The Declarant desires to place limited protective covenants, conditions, restrictions, and reservations upon the Subdivision to ensure compliance with all applicable Water Court decrees and well permits, concerning water and water rights to be utilized within the Subdivision, and to establish in perpetuity certain Preservation/No-Build Easements upon the lots of the Subdivision.

The Declarant hereby declares that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and for assurance of legal water usage, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

Certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception numbers noted below, and referred to in this Declaration of Covenants as pertaining to the Subdivision. This includes the Decree of the Division 2 Water Court in Case No. 13CW2, adjudicating the Denver Basin groundwater beneath the Subdivision, and approving a Plan for Augmentation for the use of the not-nontributary Denver aquifer as the source of supply for wells servicing the Subdivision (the "Water Decree"), recorded at Reception No. 214049357, attached hereto as **Exhibit B**.

NOW, THEREFORE, the following Declaration of Covenants is made:

1. Water Decree.

A. Summary. The Subdivision shall be subject to the obligations and requirements set forth in Plan for Augmentation described in the Water Court for Water

¹ Parcel No. 6215401004, also known as Lot 2 of AFT Ranch Filing No. 1, is owned by Duncan J. McNabb and Linda W. McNabb, who have provided their consent via signatures on these Declarations so as to ensure that Lot 2, along with the remainder of the Subdivision, are properly bound and restricted by the declarations and covenants herein.

Division No. 2's Decree in Case No. 13CW2 dated March 28, 2014. The Plan for Augmentation concerns the water rights and water supply for the Subdivision and creates obligations and places responsibilities upon the Lot Owners, which run with the land. The water supply for the Subdivision shall be by individual wells to the not-nontributary Denver aquifer. The Plan for Augmentation contemplates that each Lot owner will be responsible for an individual well(s) (including replacement well(s)), on their respective lot, to be constructed consistent with the terms of the Plan for Augmentation, along with maintaining wastewater treatment through non-evaporative individual septic disposal system(s) in compliance with and permitted by the El Paso County Health Department. "Lot Owners" will be the owners of the water within the aquifers underlying their lots, who will also jointly own all of the rights, responsibilities and obligations under the Plan for Augmentation. The Lot Owners will be responsible for reporting and administration based on pumping records as described in the Water Decree.

B. Water Rights Ownership.

i. Declarant will transfer and assign to each Lot Owner their *pro rata* portion of all right, title and interest in the Plan for Augmentation and water rights in the Denver, Arapahoe and Laramie-Fox Hills aquifer underlying each lot, based on the ratio of the acreage of such Lot to the entirety of the Subdivision. The Denver aquifer allocations to each Lot Owner represent the physical source of supply to each Lot, subject to the terms and conditions of the Plan for Augmentation as described in the Water Decree, and these Declarations.

ii. The Declarant will further assign to each Lot Owner, jointly, all obligations and responsibilities for compliance with the Plan for Augmentation as set forth in the Water Decree, including monitoring, accounting and reporting obligations, and further including joint responsibility for all post-pumping depletion replacement, and the financing of the same. Owners are responsible for ensuring the proper operation of the Plan for Augmentation, including the continued pumping of Denver aquifer wells such that replacement obligations are met. 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 Plan for Augmentation, except to the Declarant retains ownership of any Lot and/or well entitlement. All present and future conveyances of Lots and well entitlements shall be subject to the obligations and responsibilities of the Plan for Augmentation, and all water rights and entitlements conveyed or assigned to Lot Owners 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 augmentation responsibilities by a new or amended decree approved by the Division 2 Water Court, or other properly entered administrative relief.

iii. The Denver aquifer water rights for use on Lots 1A, 1B and 2, shall be conveyed by recorded deed with the transfer of the overlying land, with each future lot owner conveying the same water rights to satisfy El Paso County's 300-year water supply requirement. The use of the Denver aquifer water rights on Lots 1A, 1B and 2 shall be restricted consistent with the terms and conditions of the Plan for Augmentation,

based upon the number of wells in use. As of the time of the recording of this Declaration, Lot 1A has two wells (and associated non-evaporative septic systems) in use, while Lot 1B is currently anticipated to utilize a single well, as does Lot 2, for a total of four (4) wells in operation. The Plan for Augmentation decreed in Case No. 13CW2 provides for the use of up to five (5) wells, with varying annual pumping entitlements dependent upon the number of wells in use, as described as follows.

The maximum annual amount per well which may be pumped will vary depending upon the number of wells ultimately constructed:

One, two or three wells: 1.094 acre feet (356,481 gallons) per well;

Four wells: 1.001 acre feet (326,177 gallons) per well;

Five wells: 0.801 acre foot (261,007 gallons) per well.

As such, with four (4) wells anticipated to be in production at present, each well shall be limited to 1.001 acre feet of annual production, and each well shall be permitted or re-permitted to comply with this pumping restriction. Further, Declarant reserves and retains control of the right to construct a fifth well, and should Declarant exercise that right, each well shall again be re-permitted and pumping further restricted, to a maximum of 0.801 acre feet annually. Each Lot Owner shall cooperate with and participate in so re-permitting their wells, consistent with these Declarations and the requirements of the Plan for Augmentation set forth in the Water Decree.

Each Lot Owner, and their respective successors and assigns, shall recite in any future conveyance document that this groundwater shall not be separated from transfer of title to the subject Lot and shall be used exclusively for primary and replacement supplies consistent with the 13CW2 Water Decree. Each Lot Owner and its successors and assigns shall convey at the time of any future Lot sale sufficient water rights in the Denver and Laramie-Fox Hills aquifers underlying the respective Lot to continue to satisfy El Paso County's 300-year water supply requirement.

iv. If any successor Lot Owner fails to explicitly convey such water rights, then such water rights shall be interpreted and implied as having been so conveyed pursuant to the appurtenance clause in any deed conveying said Lot, whether or not the water rights and/or the Water Decree are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the Lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.

v. All other not-nontributary and nontributary Denver Basin groundwater in the Arapahoe and Laramie-Fox Hills aquifers underlying each Lot shall likewise to be deeded, assigned and transferred to subsequent Lot Owners on a *pro rata*-

per-acre basis, and may be used in said Lot Owner's sole and complete discretion, subject to the terms and conditions of the Water Decree and any future Water Court decree allowing for the use of the not-nontributary Arapahoe aquifer.

vi. All nontributary Denver Basin groundwater in the Laramie-Fox Hills aquifer underlying each Lot is likewise to be deeded, assigned and transferred to the overlying Lot Owner on a *pro rata*-per-acre basis, and shall be reserved and dedicated to replacement of post pumping depletions, as described and required by the Plan for Augmentation set forth in the Water Decree.

vii. For the water rights and return flows conveyed from the Denver aquifer, the deed must state, "these water rights, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement of depletions during pumping, for each of the Lots of the AFT Ranch Subdivision. The water rights so conveyed and the return flows therefrom shall be appurtenant to each of the respective Lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned, or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

viii. Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned, or encumbered in whole or in part for any other purpose.

C. Water Administration.

i. Each Lot Owner shall limit the pumping of the Denver aquifer wells consistent with the terms and conditions of the Plan for Augmentation as set forth in the Water Decree. Annual well pumping shall be limited from each well based upon the maximum annual pumping entitlements decreed in Case No. 13CW2, and as set forth in Paragraph 1.B.iii., above. Each Lot Owner will be responsible for the construction of their own well(s) and for providing adequate return flows through in-house use prior to utilizing water for other decreed uses on their respective Lot. Each Lot Owner shall use a non-evaporative septic system associated with each well, 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, assigned, or used for any other purpose. At least one single family dwelling or ADU must be served by each well to generate return flows via a non-evaporative septic system before any Denver aquifer water is used for any other decreed use. The Lot Owners, as the owners of all obligations and responsibilities under the Plan for Augmentation Plan, shall administer and enforce the Plan for Augmentation as applies to each Lot Owner's respective Lot and pumping from individual Denver aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources and taking all necessary and required actions under the Plan for Augmentation to protect and preserve the groundwater rights for all Lot Owners. Each

Lot Owner has the right to specifically enforce, by injunction if necessary, the Plan for Augmentation against any other Lot Owner for failing to comply with the Lot Owner's respective obligations under the Plan for Augmentation, including the enforcement of the terms and conditions of well permits issued pursuant to the Plan for Augmentation, 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 Denver groundwater rights owned by each Lot Owner is restricted and regulated by the terms and conditions of the Plan for Augmentation and the covenants set forth in this Declaration, including, without limitation, that each Lot Owner is subject to the maximum annual well pumping as described in Paragraph 1.B.iii., above. Failure of a Lot Owner to comply with the terms of the Plan for Augmentation may result in an order from the Division of Water Resources to curtail use of ground water rights.

ii. Each Lot Owner shall promptly and fully account to the Division of Water Resources for total pumping from the individual well(s) to the not-nontributary Denver Aquifer on each Lot, including for any irrigation, stockwater, or other permitted/allowed uses as may be required under the Water Decree. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources.

C. Well Permits.

i. Each Lot Owner shall be responsible for obtaining a well permit for the individual well(s) to the not-nontributary Denver aquifer for provision of water supply to their respective Lot. All such Denver aquifer wells shall be constructed and operated in compliance with the Plan for Augmentation, the well permit(s) 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(s) 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 Plan for Augmentation. 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.

ii. No party guarantees to the Lot Owners the physical availability or the adequacy of water quality from any well to be drilled under the Water Decree. The Denver Basin aquifers which are the subject of the Plan for Augmentation and the Water Decree referenced herein 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.

2. Preservation/No-Build Easements. The following Preservation/No-Build Areas are established for the AFT Ranch Subdivision, and shall run with the land as a provision of these Declarations. The Preservation/No-Build Area for each lot is described by lineal footage, direction, and acreage, and if further depicted on the attached **Exhibit A** map, being the final plat for AFT Ranch Filing No. 2/Vacate and Replat. Such Preservation/No-Build Areas are intended to protect each landowner's privacy and views. The Preservation/No-Build Areas are to remain as pasture or open space, and are not to be used for any type of structure or storage, including but not limited to farm implements, vehicles, RV's, or horse/stock trailers. The Preservation/No-Build Areas may be used for agricultural purposes, including pasture for farm animals, crops, and vegetations such as trees native to the area. The Preservation/No-Build Areas described below are consistent with, but replace those descriptions included in the Addendum to Contract/Purchase Agreement dated 12/18/14 which were recorded as part of the General Warranty Deed for Lot 2, El Paso County Reception No. 216034424. The Preservation/No-Build Areas for each Lot are defined as follows:

A. Lot 1A AFT Ranch Subdivision Filing No. 2/Vacate and Replat, a/k/a 11520 Howells Road. Lot 1A shall have a Preservation/No-Build Area 140 feet west of the approximate 352 foot north/south western boundary of Lot 2, continuing approximately 725 feet south to the east/west boundary of Lot 1A AFT Ranch Subdivision. This Preservation/No-Build Area is approximately 113,500 square feet, or approximately 2.6 acres.

B. Lot 1B AFT Ranch Subdivision Filing No. 2/Vacate and Replat, a/k/a 11510 Howell's Road. The Preservation/No-Build Area for Lot 1B is located in its westerly portion, starting in the southwest corner and proceeding north approximately 375 feet, continuing east 230 feet, continuing south 375 feet, and then west 230 feet, to the point of origin. This Preservation/No-Build Area is approximately 86,250 square feet, or approximately 1.98 acres.

C. Lot 2 AFT Ranch Subdivision Filing No. 1, a/k/a 11550 Howells Road. Lot 2 has a Preservation/No-Build Area in the southwest corner of said Lot, beginning in the southwest corner and proceeding north 230 feet, continuing east 230 feet, continuing south 230 feet, and then west 230 feet to the point of origin. This Preservation/No-Build Area is approximately 52,900 square feet, or approximately 1.2 acres.

3. 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 Water Decree, as well as all applicable statutory and regulatory authority.

4. Cooperation Clause. The Parties shall cooperate with one another in good faith to accomplish and fulfill the terms of this Agreement, and each party shall timely execute any and all documents necessary to accomplish the same.

5. Notice of Action. Any notice required hereunder shall be in writing and shall be sufficient if delivered personally, by courier, by registered or certified U.S. Mail, postage prepaid, or by overnight delivery service providing document tracking services, and shall be sent to the addresses in the introductory paragraph of this Declaration, or as the property will be split up through El Paso County's subdivision process, and effective upon receipt.

6. Dispute Resolution Process. Lot Owners bringing any claim or action to enforce any covenant, condition, or restriction contained in this Declaration, or other disputes arising from this Declaration, shall be subject to mediation as a condition precedent to other dispute resolution if the parties have not resolved the dispute within thirty (30) days following the notice of claim through discussions and negotiations among or between the parties. Any and all parties involved in a claim, dispute, or other matter, shall endeavor to resolve all claims and disputes in good faith by mediation prior to any arbitration, litigation, or other dispute resolution proceeding. The parties shall share the mediator's fee and any associated fees equally, and the mediation shall be held in a mutually agreed upon place. All mediations shall be confidential based on terms acceptable to the mediator and/or mediation service provider, and shall be conducted in compliance with the Colorado Dispute Resolution Act and all applicable Colorado Statutes, including C.R.S. §§ 13-22-302 to 13-22-308.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue shall be proper in the District Court for El Paso County, Colorado.

8. Violations of Law. Any violation of any law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Subdivision is 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.

9. Amendment of Declaration of Covenants. Notwithstanding any provisions to the contrary, no changes, amendments, alterations, or deletions to these Declarations may be made which would alter, impair, or in any manner compromise the water supply for the AFT Ranch Subdivision pursuant to Water Decree and the Plan for Augmentation contained therein. Further, written approval of any such 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 the Division 2 Water Court decreeing such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudicative process.

10. Recordation of Amendments. 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.

11. Termination of Covenants. The covenants contained in these Declarations shall be perpetual, shall run with the land, and shall not terminate unless the requirements of the Plan for Augmentation and Water Decree are also terminated by the Division 2 Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.

12. Amendment Limitations. No changes, amendments, alterations, or deletions to this Declaration may be made which would alter, impair, or in any manner compromise the Plan for Augmentation, or the water rights of the Lot Owners without the written approval of said parties, El Paso County, and the Office of the State Engineer, the Division 2 Water Court, or other Colorado entity of proper jurisdiction.

13. Terms of Covenants and Severability. The covenants contained in these Declarations shall run with the land and shall remain in full force and effect until amended or terminated, in whole or part, by the Lot Owners of the entirety of the Subdivision (*i.e.* all Lot Owners), and filed for record with the Clerk and Recorder of El Paso County. If any portion of this Declaration is held invalid or becomes unenforceable, the other covenants contained herein shall not be affected or impaired but shall remain in full force and effect.

14. Compliance with Documents. All Lot Owners, tenants, occupants of dwellings on Lots, and, to the extent they own Lots, mortgagees and the Declarant, shall comply with this Declaration, and shall be subject to all rights and duties under the Declaration. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of this Declaration are accepted and ratified by that Lot Owner, tenant, mortgagee, or occupant. All provisions recorded in this Declaration are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

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

16. Conflict. This Declaration is not intended to comply with the requirements of the Colorado Common Interest Ownership Act, other than C.R.S. §§ 38-33.3-105 to 38-33.3-107, as the Subdivision is exempt from all other provisions of the Act.

Executed on this the ___ day of _____, 2026.

(remainder of page intentionally blank, signatures follow)

BY: DECLARANT

Charles R. and Nancy K. Shea Living Trust

Charles R. Shea, Trustee

Nancy K. Shea, Trustee

BY: DECLARANT

AFT Ranch, LLC, a Colorado limited liability company

Nancy K. Shea, Manager/Member

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Subscribed and sworn to before me this ___ day of _____, 2026 by Charles R. Shea and Nancy K. Shea as Trustees of the Charles R. and Nancy K. Shea Living Trust, and by Nancy K. Shea as the managing member of the AFT Ranch, LLC, a Colorado limited liability company.

My commission expires: _____

Witness my hand and seal.

Notary Public

RATIFIED BY:

Duncan J. McNabb, as Owner of
Lot 2, AFT Ranch Subdivision

Linda W. McNabb, as Owner of
Lot 2, AFT Ranch Subdivision

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Subscribed and sworn to before me this ___ day of _____, 2026 by Duncan J. McNabb and Linda W. McNabb as owners of Lot 2, AFT Ranch Subdivision Filing No. 1.

My commission expires: _____

Witness my hand and seal.

Notary Public