

STORM WATER DRAINAGE IMPACT AGREEMENT

This Storm Water Drainage Impact Agreement is entered into this ^{29th} ~~31~~ day of January 2015 by and between Fountain Mutual Irrigation Company, a Colorado mutual ditch company ("FMIC"), Waterview Investments, LLC, a Colorado limited liability company ("Waterview"), and Waterview Home Owner's Association, a Colorado nonprofit corporation ("HOA").

RECITALS

A. Waterview is the owner and developer of residential real property within El Paso County that is known as Painted Sky at Waterview Filing No. 6 and Filing No. 7 of Waterview Subdivision, as described further in the attached **Exhibit A** ("Waterview Property").

B. The HOA has been established for the administration of the homeowner's association and covenants within the Waterview Property. The HOA also is the homeowner's association for Filing Nos. 1 through 5 of the Waterview Subdivision, however those filings are not part of nor subject to this Agreement.

C. FMIC diverts decreed water rights from Fountain Creek and delivers that water to its shareholders for beneficial use by means of the FMIC Ditch system and Fountain Valley Reservoir No. 2, commonly known as the Big Johnson Reservoir (collectively, "FMIC Distribution System").

D. Waterview's development of the Waterview Property includes the management of historical storm water surface runoff from the Waterview Property in its natural, undeveloped condition ("Historical Storm Water Flows") and also developed storm water runoff from the Waterview Property as a result of the creation of impervious surfaces for roads and residential improvements ("Development Storm Water Flows").

E. The Historical Storm Water flows and Development Storm Water Flows from the Waterview Property drain into the FMIC Distribution System first going into Big Johnson Reservoir and from the reservoir outlet those flows enter the FMIC ditch and continue down the FMIC Distribution System.

F. Under Colorado water law, the storm water surface flows from the Waterview Property, (like all other such flows), are the tributary waters of the State of Colorado that cannot be retained and must be returned to the Fountain Creek system for in-priority diversion and beneficial use by decreed water in accordance with the Colorado prior appropriation systems.

G. FMIC has asserted that the Development Storm Water Flows from the Waterview Properties that enter the FMIC Distribution system cause additional impacts upon FMIC that are not within the historical drainage easement ("Developed Storm Water Impacts").

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H. Waterview and the HOA dispute the factual and legal basis of the mitigation claimed by FMIC due to any Development Storm Water Impacts. Waterview disputes the factual and legal basis for FMIC's assertions based on the position that FMIC's Distribution System has artificially and unlawfully interfered with the natural water course and easement enjoyed by an uphill property owner for the flow of surface water from its properties.

I. The parties now desire to resolve their disagreements over the extent of the Development Storm Water Impacts to FMIC as a result of the volume of the Development Storm Water Flows and the extent of mitigation to be provided to FMIC, without making admissions as to the foregoing assertions, the parties now desire to resolve their disagreements.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Drainage Plan. There has been a drainage plan approved by the El Paso County Board of County Commissioners in connection with the final plat and land use approvals obtained by Waterview for the development of the Waterview Property ("Drainage Plan"). The Drainage Plan includes, without limitation, collection of storm water runoff into a retention pond, discharge of water from the retention pond at rates not exceeding Historical Storm Water Flows, control of water quality and sediment loads from the pond discharges, and control of erosion for flows in and from the retention pond.

2. Mitigation. As mitigation to FMIC for the Development Storm Water Impacts upon the down gradient FMIC Distribution System, the following payments shall be made to FMIC:

A. An initial impact fee of \$15,000.00 to be paid by Waterview to FMIC upon the mutual execution of this Agreement ("Initial Impact Fee"). This Initial Impact Fee shall be considered as fully earned and non-refundable by FMIC as a result of the availability and use of the FMIC Distribution System for the disposition of the Developed Storm Water Flows from the Waterview Property.

B. An annual impact fee in the amount of \$15,000.00 to be paid in advance and on the same date hereafter of every year of the term of this Agreement ("Annual Impact Fee"). This Annual Impact Fee is to compensate FMIC for the ongoing and continuing acceptance of the administration, management, disposition of the Development Storm Water Flows from the Waterview Property, and the associated impact upon and use of the FMIC Distribution System. Waterview agrees that the Waterview Property shall be bound for the payment of the Annual Impact Fee and each of the owner(s) of the Waterview Property shall be responsible for their pro rata payment of the Annual Impact Fee as provided in this Agreement.

Handwritten initials/signature

3. Annual Adjustment. The amount of the Annual Impact Fee shall be adjusted every year, commencing with the 2015 payment, based upon and by the amount of the increase in the Producer Price Index of the U.S. Department of Labor for non-residential maintenance and repair construction costs within Colorado for the previous 12 months. If such Producer Price Index is no longer readily available, then a comparable index which adjusts for inflation and increased construction costs shall be used.

4. Historical Storm Water Flow. There is not any mitigation to be provided to FMIC for the volume of the Historical Storm Water Flows from the Waterview Property that enter the FMIC Distribution System as those historical flows are acknowledged to be within the scope and burden of the historical drainage easement and servitude upon FMIC as a down gradient property owner.

5. Term. The term of this Agreement shall be for as long as the Development Storm Water Flows from the Waterview Property are drained into Big Johnson Reservoir or other FMIC Distribution Facilities.

6. Collection and Payment of Annual Impact Fee. The HOA shall pay the Annual Impact fee to FMIC by means of including such obligation within the regular and/or special assessments made by the HOA upon each of the 216 residential lots and homeowners that are within the Waterview Property (i.e., for year one, \$15,000 divided by 216 lots equals 69.44/lot/year). The lot owners within the Waterview Property shall pay such assessments. The HOA agrees that it shall sufficiently assess and collect from the lot owners within the Waterview Property so that the Annual Impact Fees can be regularly and timely paid to FMIC. The monies owed to FMIC for the Annual Impact Fees shall be devoted to the actual payment, or establishment of a reserve fund for the future payment, owed to FMIC for the Annual Impact Fee. For the benefit of FMIC, the HOA shall assert and enforce its assessment lien rights upon the property of the lot owners within the Waterview Property as necessary for the collection and payment of the Annual Impact Fee to FMIC.

7. Enforcement. The provisions of this Agreement for the HOA's assessment and collection of assessments upon lot owners with the Waterview Property for the payment of the Annual Impact Fee to FMIC shall be specifically enforceable by FMIC by means of a writ of mandamus, mandatory injunction, or as otherwise necessary.

8. Acceptance of Flows. FMIC will accept the Development Storm Water Flows from the Waterview Property under the Drainage Plan along with the Historical Storm Water Flows, provided, there is compliance with the Drainage Plan. As those waters flow into Big Johnson Reservoir, FMIC will pass the Development Storm Water Flows and Historical Storm Water flows through the outlet works of Big Johnson Reservoir, with only a short period of retention as allowed by Colorado law, and into the FMIC Distribution System for delivery back to Fountain Creek by the most immediate practical means. At this time the means of diversion of those flows from the FMIC Ditch is through the McRae Reservoir augmentation station into

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Crews Gulch, a tributary to Fountain Creek.

9. No Impacted Flows. The only Development Storm Water Flows to drain into the FMIC Distribution System shall be those flows from the Waterview Property that naturally and historically drain toward Big Johnson Reservoir prior to the residential development. There shall be no imported drainage flows to Big Johnson Reservoir except water purchased from Security Water and Sanitation District for the domestic use of the residents of the Waterview Property.

10. Drainage Improvements. All drainage improvements under the County approved plan shall be completed in accordance with that approval drainage plan.

11. Drainage Plan Obligations. This Agreement shall not in any way reduce or modify those obligations owed by the Metro District and other parties for compliance with the Drainage Plan.

12. Authority. All parties to this Agreement represent that they have the full power and authority to enter into and perform this Agreement. Entity resolutions authorizing this Agreement shall be provided by each party.

13. Cooperation. The parties agree to cooperate with each other in good faith in the performance of their other obligations and requirements under this Agreement and to fulfill the intent and purposes of this Agreement.

14. Attorneys' Fees. In the event of any dispute between the parties concerning this Agreement or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing party shall be entitled to recover from the other party, all costs and expenses, including reasonable attorneys' fees, incurred in such litigation as well as all additional such costs and expenses incurred in enforcing and collecting any judgment rendered in such action.

15. No Third Party Beneficiary. This Agreement shall be for the sole benefit of the parties hereto, and no other party is entitled to have any rights or benefits by reason of this Agreement as a third party beneficiary or otherwise.

16. Severability. The unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement, so long as the primary purpose(s) of this Agreement are effectuated by the remaining terms.

17. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter covered herein. All negotiations, considerations, representations and understandings between the parties are incorporated and merged herein. This Agreement may be modified or altered only by the parties' written agreement.

18. Binding Effect. The covenants, agreements, and obligations contained herein



shall extend to, bind, and inure to the benefit of the parties hereto, as well as their respective personal representatives, heirs, successors, and assigns. This Agreement benefits and burdens the Waterview Property and shall run with the land.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above,

WATerview INVESTMENTS, LLC, a Colorado limited liability company

By: LB Holdings, LLC, Member

Its: Member

By: Larry S. Buckendorf




Member/Manager

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

The foregoing instrument was acknowledged before me this 20 day of January 2015, by Larry S. Buckendorf, Member/Manager of LB Holdings, LLC, Member of Waterview Investments, LLC, a Colorado limited liability company.

My commission expires: 1-21-2016
Witness my hand and official seal.



Notary Public

LAIRA L. ZIEGLER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19964000495
My Commission Expires January 21, 2016



WATERVIEW HOMEOWNER'S ASSOCIATION,
a Colorado non-profit corporation

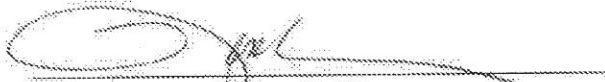
By: 
President

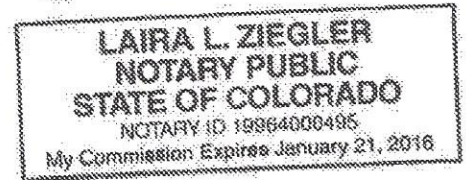
STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 20 day of January 2015,
by Larry Buckindos as President of Waterview Homeowner's Association, A Colorado non-
profit corporation.

My commission expires: 1-21-2016

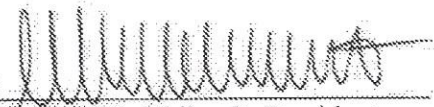
Witness my hand and official seal.


Notary Public





FOUNTAIN MUTUAL IRRIGATION COMPANY,
a Colorado mutual ditch company


By: 
Michael R. Thibault, President

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

The foregoing instrument was acknowledged before me this 29 day of JANUARY 2015,
by Michael R. Thibault, as President of Fountain Mutual Irrigation Company, a Colorado mutual ditch
company.

My commission expires: 12/19/2015

Witness my hand and official seal.



Notary Public

FAY M. WHITFIELD
Notary Public, State of Colorado
My Comm. Expires: 12/19/2015
Notary ID: 19854019931



EXHIBIT A

Lots 1 - 111 and Tracts A and D,
Painted Sky at Waterview Filing No. 6
A vacation and re-plat of a portion of Painted Sky at Waterview Filing No. 5
A subdivision of a portion of the North Half of Section 7,
Township 15 South, Range 65 West of the 6th P.M.
El Paso County, Colorado

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