

Shared Fire Cistern Agreement

This document proposes the creation of an agreement for the purpose of the equitable sharing of the design, use, and maintenance of a Fire Cistern or other authorized water storage facility for two proximate properties in the Hay Creek Valley. The agreement shall be a binding agreement, that fairly and proportionately agrees to the construction, maintenance and ongoing servicing and storage of extra water for fire mitigation.

This Agreement, made and entered into this _____ day of _____ by and between 3405 Hay Creek LLC, party of the first part, hereinafter referred to as the "supplying party", and Dunston Information, party of the second part, hereinafter referred to as the "second party":

WITNESSETH:

THAT WHEREAS, the supplying party is now the owner of property known as Dunston Property _____ (Parcel 1), located in the County of El Paso, State of Colorado, which property is more fully described as follows, to wit:

WHEREAS, the supplied party is the owner of 3405 Hay Creek LLC (Parcel 2), located in the County of El Paso, State of Colorado, which property is more fully described as follows, to wit:

and

WHEREAS, the undersigned parties deem it necessary to provide a fire cistern to service the parcels described herein, and an Agreement has been reached relative to supplying the fire cistern for use on both properties for the purpose of supplying water as necessary for the extinguishing of fires, to both properties described above.

WHEREAS, it is the intention and purpose of the undersigned parties that the cistern shall be used and operated to provide an adequate supply of water for each of the properties connected thereto, for the purpose of fire mitigation for the occupants of said properties, and to assure the continuous and satisfactory operation and maintenance of the cistern for the benefit of the present and future owners, their heirs, successors and assigns of the properties and

WHEREAS, the said cistern is deemed by the parties and the County of El Paso in the State of Colorado, hereto to be of adequate capacity to supply the requirements of the Fire Department and

WHEREAS, the proper assurance is given by the parties as demonstrated by execution of this Agreement, that the fire cistern shall have a continuous and satisfactory operation in accordance with the terms of this Agreement;
and

WHEREAS, the parties hereto desire to enter this Agreement for the purpose of reducing to writing their respective rights and obligations pertaining to said Fire Cistern system.

NOW THEREFORE, in consideration of the promises and covenants herein contained, it is agreed that the Fire Cistern system situated on Parcel 1 above shall be used by the parties to

this Agreement, as well as by all future owners and occupants of said parcels, upon the following terms and conditions:

1. That the parties hereto, their heirs, successors and assigns, for the exclusive benefit of the respective parcels of real estate, and for the exclusive use of the improvements residing thereon, are hereby granted the right in common with the other parties to this Agreement, to draw water from the fire cistern located on Dunston.

2. That the owners or residents of the dwellings located on _____ (Parcel 2), as of the date of this Agreement shall:

b. Pay or cause to be paid promptly, a proportionate share of all expenses for the construction, operation and maintenance of the cistern that may become necessary. Each respective share shall be determined by the proper proportion of the lots on each adjacent parcel.

5. That the consent of all parties to pay a proportionate share of costs shall be obtained prior to embarking upon expenditures for system maintenance, replacement or improvement, except in emergency situations. An arbitrator shall be chosen by the parties; shall be consulted in the event the parties cannot agree regarding the said expenditures; and the arbitrator's decision shall be definitive.

6. That it is the agreement of the parties that they shall permit a third party to cure a default of payment or other obligation.

9. That each of the parties to this Agreement does hereby grant to the other, his heirs, successors and assigns, such easements over, across and through the respective parcels as shall be reasonably necessary for the construction of the cistern, maintenance, equipment, consistent with the purposes of this Agreement. These easements are described below, to wit: (Describe easements, if any and cite Warranty Deed)

TBD

10. That no party may install landscaping or improvements that will impair the use of said easements.

11. That each party shall have the right to act to correct an emergency situation and shall have access to the pertinent parcel in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system to deliver water upon demand.

12. That only those parcels of real estate herein above described and the dwellings located thereon shall be permitted to receive water from said cistern; and each of the parties hereto does hereby covenant and agree that he/she will not allow or permit other persons, to take, draw, use or receive water from the cistern.

14. That the respective rights and obligations of the parties shall continue in perpetuity.

17. That the said well and this Agreement, if amended, shall serve no more than total# Lots, notwithstanding the ability of the parties to make other amendments to this Agreement.

18. That the parties may amend this Agreement to assure equitable distribution of shared costs and responsibilities.

19. That the term of this Agreement shall be perpetual, except as herein limited.

20. That the benefits and burdens of this Agreement shall constitute a covenant running with the parcels of land herein described and shall be binding upon the heirs, successors in title and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first above written.

BY _____ DATE _____

BY _____ DATE _____

County of))ss

State of)

Sworn and subscribed before me this _____ day of _____.

_____ Notary Public

My commission expires: _____.