



DITCH CROSSING AGREEMENT¹

This Ditch Crossing Agreement is entered into this 17 day of October, 2022 between Fountain Mutual Irrigation Company, a Colorado mutual ditch company whose address is P.O. Box 75292, Colorado Springs, CO 80970-5292 ("FMIC"), and Goodwin Knight, LLC, whose address is 8605 Explorer Dr., Suite 250, Colorado Springs, CO 80920 ("Grantee").

RECITALS

A. FMIC is a mutual ditch company operating within El Paso County, Colorado, and holding surface water rights and water storage rights for the benefit of its shareholders.

B. The FMIC uses a ditch for the transportation and delivery of its water rights ("FMIC Ditch") which runs through the property (Exhibit A & B) owned by Fountain Mutual Irrigation Company. An historical ditch easement recorded as Book 5506, Page 1290, exists for the benefit of FMIC for the operation, maintenance, and repair of the FMIC Ditch within and through the Property ("FMIC Ditch Easement").

C. Grantee is constructing a private street and sidewalks, including a private extension of Landover Lane, to be built to a required El Paso County Street standard that will cross over the FMIC Ditch Easement, for the purposes of vehicular and pedestrian access and utility line crossings to the adjacent proposed multi-family residential development (Cottages at Mesa Ridge). (See Exhibit A).

In addition, a portion of the FMIC property will be utilized for the purposes of providing a private secondary fire emergency access (to be built to the required Widefield Fire District standard) and storm line crossings to the adjacent proposed multi-family residential development (Cottages at Mesa Ridge). (See Exhibit B).

D. FMIC is willing to allow Grantee to cross the FMIC Ditch Easement, and Grantee is desirous of crossing the FMIC Ditch Easement for purposes of access and utility services for the Cottages at Mesa Ridge Multi-Family Residential Development, all in accordance with the terms and conditions of this Agreement.

¹Revisions can be made to have the Agreement address any ditch relocation or encasement.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Ditch Crossing. FMIC hereby grants to Grantee a permanent license for the construction, operation, maintenance and repair of the Cottages at Mesa Ridge Multi-Family Residential Development crossing over the FMIC Ditch Easement for a width of 55 feet across said ditch at the location as generally shown on the Exhibit A map (“Ditch Crossing”). The plans and specifications for the initial construction and placement of the Ditch Crossing, and any repair of the FMIC Ditch Easement, are attached hereto as Exhibit A and are incorporated herein by reference.

2. Construction. Grantee, at its expense, shall construct the Ditch Crossing and restore the FMIC Ditch to its previously existing condition or the condition set forth in Exhibit A as applicable. The Cottages at Mesa Ridge Multi-Family Residential Development utility crossings shall be installed by Goodwin Knight, LLC and buried to a sufficient depth below the ditch pipe so as to not interfere with the operation, maintenance and repair of the ditch as it presently exists or as it may reasonably exist in the future through an open ditch or a buried pipeline. All construction shall be coordinated with FMIC to be accomplished at a time within ¹⁶ days of the execution of this Agreement at a time when the FMIC Ditch is not being used by FMIC or when such construction shall not materially interfere with the operation of the FMIC Ditch. The construction of the Cottages at Mesa Ridge Multi-Family Residential Development shall not be considered complete until accepted by FMIC, in writing, as being in compliance with the terms of this Agreement, which approval shall not be unreasonably withheld.

3. Warranty. Grantee warrants the proper design and construction of the Cottages at Mesa Ridge Multi-Family Residential Development Crossing in accordance with the approved plans and specifications of Exhibit A for a period of two years after acceptance of the completed Cottages at Mesa Ridge Multi-Family Residential Development by FMIC. Said warranty shall include latent defects. During the warranty period Grantee at its expense shall promptly cure any nonconforming design, work and/or any failure in materials or workmanship in the Project that are not caused by any negligent or intentional wrongful act or omission of FMIC in its operation and maintenance of the ditch improvements.

4. Protection of Ditch. During construction of the Ditch Crossing, Grantee shall take all necessary measures to protect the ditch and to prevent interruption in the use of the ditch by FMIC. Any disturbance or damage to the FMIC Ditch shall be immediately repaired by

Grantee to the reasonable standards of FMIC. Grantee shall not place any trash, debris or obstructions in the FMIC Ditch.

5. Operation, Maintenance and Repair. Grantee shall repair and maintain the Project so that the integrity and use of the FMIC Ditch is not impaired.

6. Nature of Work. All work to be performed under the terms of this Agreement shall be performed using quality materials and shall be performed in a workmanlike manner in compliance with industry standards and all applicable rules, regulations and requirements. The ability to use the FMIC Ditch Easement for the transport of water as desired by FMIC shall be preserved and not impaired in any manner by such work, except as coordinated through FMIC. Any repair, maintenance, or initial construction requirements of this Agreement and the reconstruction of the FMIC Ditch shall be at least equivalent to the Exhibit C specifications.

7. Deposit. To assure the proper performance of all construction, maintenance, and repair to the existing the Transmission Line (FMIC's buried pipe) underneath or to cross the FMIC Ditch Easement, and to further assure any required restoration of the FMIC Ditch Easement, Grantee shall prior to the performance of any construction, maintenance, or repair under this Agreement, place a deposit or bond with FMIC in the amount of to properly restore the FMIC Ditch Easement and to perform Grantee's obligations hereunder should it fail to do so. Said deposit shall be returned by FMIC to Grantee, less any amount properly retained for repairs to the FMIC Ditch Easement, upon completion of improvements and acceptance by FMIC.

8. Crossing Fee. Upon application to FMIC for a ditch crossing or alteration of the FMIC Ditch, the Applicant shall pay a non-refundable crossing fee to FMIC of \$2,500.00, which shall be in addition to all other amounts due hereunder.

9. Existence of Ditch Easement. Grantee acknowledges the existence and validity of the FMIC Ditch Easement. Grantee shall not challenge, directly or indirectly, the existence and/or validity of the FMIC Ditch Easement or FMIC's right to use, access, and maintain such easement and distribute its water rights through said ditch. FMIC, in its discretion, may retain the FMIC Ditch in an open ditch or encase said ditch within a buried pipeline.

10. Ditch Seepage. The FMIC Ditch has been in continuous operation since inception of its water rights for the purpose of conveying water for the irrigation of lands authorized by its decrees. The parties acknowledge that as a natural phenomenon all ditches must of necessity

seep water along its route, as the FMIC Ditch has done, due to the character of the land through which the ditch passes and simply as a necessary result of the historical operations of the ditch. FMIC shall not be liable to Grantee or any owner(s) of the Property as a result of ditch seepage from the FMIC ditch as long as FMIC continues to properly maintain and operate the FMIC Ditch in accordance with the requirements of Colorado law as applied in light of historical operations of the ditch. FMIC shall have no obligation to line or encase the FMIC Ditch to prevent seepage.

11. Reimbursement of Attorney's Fees and Engineering Fees. Grantee shall reimburse FMIC its reasonable attorney's fees and engineering fees incurred by FMIC in entering into this Agreement which shall be a minimum amount of \$1,500.00 to be paid upon application to FMIC. Any additional attorney's fees and engineering fees over this amount incurred in the review and acceptance of the Project shall be paid before FMIC is obligated to give final written acceptance of the ditch crossing construction.

12. Indemnity. Grantee shall hold harmless and indemnify FMIC for any and all claims, damages, causes of action and expenses, including reasonable attorney fees and costs, that are asserted against or incurred by FMIC as a result of any claim by a third party from the use, operation or existence of the Ditch Crossing or the Project.

13. Remedies. In the event of a breach of this Agreement by a party, which is not cured within 30 days after written notice, such party shall be in default of this Agreement and the non-defaulting party shall have such remedies as are available under Colorado law. The parties agree that the remedies of specific performance and injunctive relief shall be available. In the event of a breach which cannot be reasonably cured within said 30 days, the nonperforming party shall have such additional time to cure the breach as reasonably necessary, up to a maximum of 90 days, provided such party at all times diligently pursues curing its breach. Provided, however, FMIC shall not have to await the expiration of any cure period before seeking injunctive relief if the alleged breach results in the interruption of water deliveries by the ditch.

14. Attorney's 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. 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.

16. 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.

17. Authority. All parties to this Agreement represent that they have the full power and authority to enter into and perform this Agreement.

18. 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.

19. Assignment. This Agreement may be assigned by Grantee to the other owner of the Project. Any other assignment by Grantee shall be only with the consent of FMIC, which consent shall not be unreasonably withheld. Upon any assignment, and in order for the assignment to be effective, the assignee shall accept and assume the provisions and obligations of this Agreement.

20. Recording. This Agreement shall be recorded with the El Paso County Clerk and Recorders Office.

21. 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 is executed the date and year set forth above.

FOUNTAIN MUTUAL IRRIGATION
COMPANY, a Colorado mutual
ditch company

Goodwin Knight, LLC, GRANTEE

By: _____

J. Mark Watson, President

By: _____

(Name, Title)

Bruce Rede, Manager

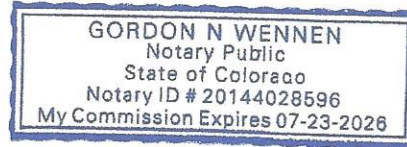
STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

Subscribed and sworn to before me this 22 day of September, 2022 by J. Mark Watson, as President of Fountain Mutual Irrigation Company, a Colorado mutual ditch company.

Witness my hand and seal.
(SEAL)

Gordon N. Wennen
Notary Public

My commission expires: July 23, 2026



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

Subscribed and sworn to before me this 12th day of October, 2022 by Bruce Peale, as Manager of Goodwin Knight, LLC (Grantee).

Witness my hand and seal.
(SEAL)

Nicole Brady
Notary Public

My commission expires: May 10, 2026

