

# MEMORANDUM OF UNDERSTANDING & Legal Agreement

## ~~State of: Colorado~~

This Memorandum of Understanding (~~this~~ "MOU") is made and entered into on the 12 day of June 2023 and is effective upon the signing by both HOA's authorized Officers by and between:

Hawk Ridge West HOA (HRW) residing/located at Hawk Ridge West, ~~Colorado~~ Springs, CO 80908 and Hawk Ridge HOA (HR) residing/located at Hawk Ridge, ~~Colorado~~ Springs, CO 80908

Both known collectively as the HOA's.

"MCSF" refers to Monson, Cummings, Shohert & Farr, LLC which is the law firm both HOA's have agreed to mutually engage to secure all water rights and chains of title as originally intended by the developers.

"GDWC" refers to Great Divide Water Company

## Background:

HW and HRW were both developed by the same developers; R.E Puckett, Chester A Pratt, R.C. Altrogge & Joy Altrogge under varies partnerships and ~~C~~companies. ~~The~~Said developments ~~occurred~~commenced in ~~from~~ 1993 and have continued over a period of 25+ years; ~~in subsections of the two HOA's~~HW was developed first followed by HRW. It has been brought to the attention of both HOA's that ~~During~~ said development, it appears that the developers, their partnerships, and ~~C~~companies may not have correctly documented and passed water rights titles and privileges to the ~~H~~homeowners and or the appropriate HOA's pursuant to the Augmentation Plans filed with and approved by the State of Colorado dated June 14th, 1993, to wit:

- A. ~~Case No.~~92CW57, and
- B. ~~Case No.~~ 92CW55 (Div. 2), and
- C. ~~Case No.~~ 92CW98 (Div. 1)-

The HOA's desire to enter into an agreement between them, setting out the working arrangements that each of the two agree are necessary to resolve these issues (referred to below as "the Project") as well as delineate their respective on-going obligations to remain in joint compliance with said Augmentation Plans. Heretofore the parties have a proven record of mutual cooperation with respect to their mutual Augmentation Plans obligations and seek to continue doing so in good faith.

## Purpose & Scope:

HRW and HR desire to enter into an agreement in which they will work together to:

1. Resolve the ~~W~~water ~~R~~rights and ~~T~~title issues as documented in the ~~17 Jan~~January 17th, 2023 letter from Douglas Barber, President Great Divide Water Company (GDWC) (attached as Exhibit "1" and hereinafter referred to as "the Project" below using the services of MCSF), and
2. Resolve any other ~~W~~water ~~R~~rights or ~~T~~title flaws as they relate to the HOA's or the Lots within each HOA that MCSF discovers in the course of their work, and

3. Work together in a mutually beneficial fashion to accurately and timely submit the Annual ~~w~~Water ~~u~~Usage Report to GDWC, and
4. Mutually and timely support the requests of the jointly agreed to law firm; Monson, Cummings, Shoheit & Farr, LLC (MCSF) ~~engaged to resolve the above Water Rights, Title Chain Issues and any other legal issues that may be discovered as it relates to Securing all Water Rights and chain of Titles as originally intended by the developers., and~~
5. ~~For this MOU Agreement to spell out~~Formalize the responsibility of each HOA with regards to their ~~respective~~ responsibilities to timely submit the Annual Water Usage by Lot/ Homeowner to GDWC and or El Paso County and or the State of Colorado, as required under applicable laws, ~~and~~ codes ~~and said Augmentation Plans.~~

Purposes:—

6. The purpose of this MOU Agreement is to provide the framework, the scope of work, terms and conditions, and responsibilities of the HOA's as defined below.

~~The obligations of the Parties will end concurrent with the termination of the Augmentation plans filed and approved in the State of Colorado (100 to 300 years) listed:—~~

- a. ~~Case No. 92CW57 on 14 June 1993 LQ?—~~
  - b. ~~Case No. 92CW55 (Div. 2) & 92CW98 (Div. 1) 14 June 1993 LQ?~~
7. As further agreed below, both HOA's will collaborate and work jointly in the best interest of their HOA's members to secure, document and protect the water rights as intended by the Developers of both HOA's.

### The Parties Obligations

~~8.~~ The HOA's desire and wish that this document creates both a clear MOU and a legal agreement between the HOA's to ensure that the above Purposes & Scope are accomplished in a cost effective and timely process. The HOA's agree to work together in such a manner that would promote a genuine atmosphere of collaboration in support of an effective and efficient partnership meant to maintain, safeguard, and sustain sound and optimal financial, managerial, and administrative objectives with regards to all matters related to the successful resolution of Water Rights and Chain of Title.

- a. ~~The HOA's desire and wish that this document creates both a clear MOU and a legal agreement between the HOA's to ensure that the above Purposes & Scope are accomplished in a cost effective and timely process. The HOA's agree to work together in such a manner that would promote a genuine atmosphere of collaboration in support of an effective and efficient partnership and leadership meant to maintain, safeguard, and sustain sound and optimal financial, managerial, and administrative objectives with regards to all matters related to the successful resolution of Water Rights and Chain of Title.—~~
- b. 9. Both HOA's will assign a representative to work directly with the other HOA and ~~the~~ agreed to law Firm, MCSF. The parties will:

- a. ~~Endeavour~~Endeavor to act timely with regards to all request for information, review, or actions from each other and with the MCSF, ~~and-~~and
- b. Work together to minimize all legal and other cost required to resolve the issues outlined in Background above, ~~and-~~
- c.
  1. Ensure the timely and accurate submittal of the Annual Water Usage Report to GDWC and or El Paso County and or the State of Colorado, as required under applicable laws and codes.
  1. ~~e.Ensure the timely and accurate submittal of the Annual Water Usage Report to GDWC and or El Pasco County and or the State of Colorado, as required under applicable laws and codes.-~~
8. With respect to the Water Rights and Title Issues documented in the January 17, 2023 letter from Douglas Barber noted above (the Project), eEach HOA will be individually responsible for their Pro-Rata Cost as determined by the number of lots in each HOA divided by the total number of lots for both HOA's.
  - a. HRW 35 lots/124 =28.2% of Costs
  - b. HR 89 lots/124 = 71.8% Costs
  - c. While MSCF has presented two estimated cost tracks, both HOA's understand that is only an estimate and cost will vary depending on the cooperation of third parties,. Notice requirements and the fact that the Partners, Heirs, or Corporations involved in the development may or may not be required to cooperate.
9. Cost are defined as:
  - a. All cost incurred by MCSF in the normal course of business, including any third-party cost, i.e., notices, filing fees, research etc.
  - b. MCSF agrees to provide estimates of all third-party cost greater than \$250 ~~or \$500,-~~ prior to incurring if reasonable possible.
10. Regardless of the cost-sharing provisions between the HOA's as outlined above, bBoth HOA's are separately and independently responsible for all cost related to the failure of their Homeowner Members to provide any required information requested by;
  - a. MCSF, third parties under the direction of MCSF, GDWC
  - b. All fines and penalties imposed by the El Paso County or the State of Colorado as those charges relates to the timely, accurate collection and submission annual water usage.
  - c. Any over usage charges or penalties that result from the information within the annual water usage report with GDWC, El Paso and Colorado State.

### Cooperation

11. The Parties represent that they will fully cooperate with all requests from the MCSF, the other HOA, GDWC and any third parties that MCSF or GDWC direct or require be involved to resolve issues.

## Responsibilities

12. HRW offers and agrees to take the lead on this Project, and to keep the HR designated representative fully informed. No substantial or major decisions – as defined by MCSF, will be made without the written agreement of both HOA's, via email or Memorandum.
13. HW agrees to be responsive to the reasonable requests of both HRW, MCSF, GDWC and any others engaged to resolve the water rights issues.
14. Both HOA's agree to have an Officer attend the other's HOA board meetings or annual meeting if invited by the that HOA, to answer any questions relative to this topic.

## Resources

15. Both HOA's will ~~endeavour~~ endeavor to insure timely payment of all related invoices pertaining to the Project.
16. Both HOA's will complete all reasonable information request by MCSF, GDWC or others in a timely fashion.
17. Both HOA's agree to provide the following: any material, financial, and labor resources ~~in-~~ with respect ~~o~~to the Project as required.

## Communication strategy

18. Both HOA's will copy each other's designated representative on all e-mail traffic with third parties related to this Project, to include but not be limited to MCSF, GDWC.
19. Where it does not breach any confidentiality protocols, a spirit of open and transparent communication should be adhered to.
20. Coordinated communications should be made with external organizations to elicit their support and further the aims of the Project.

## Dispute Resolution

21. The Parties to this MOU agree that if any dispute arises through any aspect of this agreement, including, but not limited to, any matters, disputes, or claims, the Parties shall confer in good faith to promptly resolve any dispute. In the event that the Parties are unable to resolve the issue or dispute between them, then the matter shall be:
  - a. Decided by the mutually agreed to law firm MCSF in the best and balanced interest of both HOA's and their Homeowner Members within 30 days-
  - b. If MCSF is unable or unwilling to resolve such dispute within said 30 days, the parties agree to mediate, in good faith, any claim arising hereunder and to refrain from pursuing arbitration or litigation until the parties have met with a mediator. If they cannot agree on a mediator within 30 days of the of the date MCSF advises them that MCSF is unable or unwilling to resolve the dispute, the parties authorize MCSF to choose a mediator for them (each party may suggest up to three (3) mediators to MCSF). If, within 30 days thereafter, MCSF has not chosen a mediator for the parties, the parties may retain individual counsel who will be tasked with jointly choosing a mediator to resolve said dispute.-

## Governing Law

26. This MOU shall be construed in accordance with the laws of the State of Colorado and the County of El Paso.

#### **Assignment**

27. Neither Party may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party.

#### **Amendment**

28. This MOU may be amended from time to time by mutual agreement of the parties in a written modification signed by both parties.

#### **Termination**

29. This MOU Agreement may not be terminated by either HOA, until and upon the legal expiration of the underlying water rights, Augmentation Plans and Cases No. sighted in-7 above.

30. This MOU Agreement shall automatically expire in connection with the expiration of applicable cases as referenced in-7 above.

#### **Prior Memorandum Superseded**

31. No Prior Memorandums, Agreements or understanding exist, in writing or orally. However, both HOA's have a history of successfully filing the required annual water usage reports, accurately and timely as required by GDWC, El Paso County and Colorado State.

#### **Understanding**

32. By signing this MOU Agreement, both HOA's of this MOU Agreement mutually agree and understand that:

- a. Each HOA will take finance and legal responsibility for the actions of its affiliates, officers, employees, independent contractors, agents, volunteers, and representatives.
- b. Each HOA shall carry insurance at its sole expense to cover its activities in connection with this MOU. Each Party shall also obtain and maintain insurance for general liability, workers' compensation, and other liability's adequate to cover any potential liabilities.
- c. ~~Each Party agrees to indemnify, defend and hold harmless the other to the fullest extent permitted by law from and against all actions, demands, claims, losses, liabilities, costs (including attorney's costs and fees), and damages. Each Party shall also be responsible for the proportionate cost of any damages arising from the fault of such Party, its officers, agents, employees, and independent contractors or Shared Pro-Rate per 12 above, as decided by the court.~~

#### **Notices**

33. All notices, demands, requests, and other communications given hereunder for purposes other than termination shall be made in writing and shall be deemed given if:

- a. Emailed to the other HOA and copied to MCSF.
  - b. Mailed by domestic registered or certified mail with prepaid postage, after 10 business days since the date postmarked.
34. Any notices, demands, requests, and other communications returned to the sending Party as non-delivered should be re-delivered or re-emailed to the forwarding address affixed thereto and copy to MCSF. ~~Such communications will be deemed delivered in the same way as those that had not been returned to the sending Party. — LQ? Do we need this?~~

**Severability**

35. Any part or provision of this MOU that is found to be unenforceable, illegal, void, or prohibited in any jurisdiction will be ineffective without invalidating the remaining provisions and parts of the MOU. In such a scenario, the Parties will use reasonable efforts to employ and find an alternative way to achieve the same or substantially the same result as contemplated by such part or provision.

**Authorization and Execution**

36. The signing of this MOU Agreement constitutes a formal understanding. Both HOA are responsible to make every effort resolve any disputes in a timely and cost-effective fashion.
37. The MOU Agreement shall be signed by:
- a. Hawk Ridge West, HOA Treasurer – Bradley Rosenberg
  - b. Hawk Ridge HOA President – Ken Witt

And shall be effective as of the date first written above.

**SIGNATURES**

<hr style="border: 0.5px solid black;"/> <p><b>Signature</b></p>	<p><b>Bradley Rosenberg</b></p> <hr style="border: 0.5px solid black;"/> <p><b>HWR HOA Treasurer Printed Name</b></p>
<hr style="border: 0.5px solid black;"/> <p><b>Signature</b></p>	<p><b>Jim Hopper</b></p> <hr style="border: 0.5px solid black;"/> <p><b>HRW HOA ARC Chair Printed Name</b></p>

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**Signature**

**Ken Witt**

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**HR President Printed Name**

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