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482817
1 of 3

8/25/2022 3:30 PM
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Lori A Mitchell
Chaffee County Clerk

AGREEMENT and COVENANT

This Agreement and Covenant (the "Covenant") is entered into as of this _____ day of August 2022 between Sunnyside CR 190 LLC, a Colorado limited liability company (the "Grantor") and Chaffee County (the "County").

WHEREAS, the Grantor is the owner of the following described parcel of real property located in Chaffee County, Colorado (the "Property"):

Lot 7 Peak View Subdivision RECEPTION # 482816

WHEREAS, the Grantor is the owner of one and half (1.5) shares of Sunnyside Ditch Company (the "Ditch Company") pursuant to the Special Warranty Deed recorded with Chaffee County on 10/10/2020 as Reception No. 463388 (the "Water Rights").

WHEREAS, there are approximately 4.89 acres (all within Lot 7 of the Peak View Subdivision) within the Property which have historically been partially irrigated with the Water Rights.

WHEREAS, the Grantor is willing, as part of the subdivision approval process, and in accordance with the terms and conditions of this Covenant, to permanently attach the Water Rights to Lot 7 of Peak View Subdivision and to provide for perpetual partial irrigation of Lot 7 Peak View-Subdivision with the Water Rights.

WHEREAS, perpetual partial irrigation of Lot 7 Peak View Subdivision shall mean the use of all the Water Rights on any or all of Lot 7 Peak View Subdivision in accordance with applicable law and any and all rules and regulations of the Colorado Division of Water Resources and this Covenant.

WHEREAS, the County in connection with the approval process for the Subdivision, requires the Grantor to permanently attach the Water Rights to the Irrigated Acres and provide for the perpetual partial irrigation of Lot 7 Peak View Subdivision as reasonably possible given the amount of water shares and availability of water in a given year. These 1.5 shares of Sunnyside Ditch Company cannot be severed from the land.

Grantor expressly covenants and agrees that this Covenant shall be perpetual and shall run with the title of the Water Rights, the Property and Lot 7 within the Peak View Subdivision. Grantor expressly covenants and agrees on behalf of Grantor and all future lot owners that the Water Rights may not be sold, conveyed, encumbered, loaned or otherwise directly or indirectly severed from the Irrigated Acres without the County's express written prior approval. Lot owner(s), by acceptance of title to Lot 7 Peak View Subdivision, agrees to be bound by the terms of this Covenant and the terms of this Covenant shall be binding upon and inure to the benefit of the transferees, heirs, successors and assigns of each party hereto of Lot 7 Peak View Subdivision.

Grantor and all future lot owners of Lot 7 Peak View Subdivision shall take all steps reasonably necessary to ensure the continued use of the Water Rights to partially irrigate Lot 7 Peak View Subdivision in accordance with applicable law and any and all rules and regulation of the Colorado Division of Water Resources and consistent with any legal and physical limitation on the water and reasonable water irrigation and water conservation practices. The Grantor and all future lot owners shall be required to do all things reasonably necessary, including employing personnel, to accomplish the intended irrigation and to achieve full use of the Water Rights as provided herein. Except as expressly stated in this Covenant, the Grantor and future lot owners shall ensure that Lot 7 Peak View Subdivision is being irrigated with the Water Rights at all times when the Water Rights are in priority during the irrigation season consistent

with legal and physical limitations on the water and reasonable water irrigation and water conservation practices. The Grantor and future lot owners are not required to irrigate Lot 7 of Peak View Subdivision with the Water Rights, or to ensure a lot owners' irrigation, during periods when the Water Rights are not in priority during the irrigation season, during wet periods when additional irrigation of the Irrigated Acres with the Water Rights is not necessary, or during other periods of time when for reasons outside of the control of the Grantor and future lot owners, the irrigation of Lot 7 of the Subidision with the Water Rights is rendered temporarily impossible or impractical.

In the event that the Grantor or future lot owners fail to fully accomplish the irrigation of Lot 7 of Peakv View Subdivision with the Water Rights as provided herein, or breaches any other provision of this Covenant, then the County shall have available to it all available remedies allowed by law, which shall be cumulative and not exclusive, and may be exercised alone or in conjunction with any other remedy, including but not limited to: injunctions, specific performance and damages, attorney fees and cost, lien and the filing of any Water Court Statement of Opposition in any case directly or indirectly involving the Water Rights.

The Grantor acknowledges that the terms of this Covenant are tantamount to a perpetual attachment of the Water Rights to the Irrigated Acres and an unequivocal waiver of all future rights to change the use, place of use or type of use of the Water Rights. The Grantor acknowledges and agrees that it has voluntarily entered into this Covenant, that the Grantor offered the perpetual irrigation of the Irrigated Acres to the County as part of its Subdivision application, that this Covenant is supported by full and adequate consideration, and that all parties to this Covenant have received substantial benefits, both private and public, from this Covenant and the perpetual attachment of the Water Rights to Lot 7 of Peak View Subdivision.

This Covenant represents the entire agreement between the parties and neither the County nor the Grantor has relied upon any fact or representation not expressly set forth herein.

This Covenant shall be recorded in the real property records of Chaffee County, Colorado.

If the Grantor records a declaration of restrictive covenants ("Declaration of Covenants") upon the Property, such Declaration of Covenants shall expressly incorporate the terms of this Covenant. The Declaration of Covenants shall state that the terms of this Covenant, and the lot owners' duty to partially irrigate Lot 7 with the Water Rights, is perpetual, and shall not expire regardless of any term of expiration contained in such Declaration.

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482817
3 of 3

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Lori A Mitchell
Chaffee County Clerk

GRANTOR:

By *Jeff A. Post*
Printed Name: JEFF A. POST
Title: MANAGER

By *Shawn Allison*
Printed Name: SHAWN ALLISON
Title: MANAGER

CHAFFEE COUNTY:

BOARD OF COMMISSIONERS OF CHAFFEE COUNTY

By *Craig Felt*
Chairman

ATTEST: *Lori Mitchell* by
Latake Luster Chief Deputy Clerk
Chaffee County Clerk and Recorder

