

**DRAFT**

**PRIVILEGED SETTLEMENT NEGOTIATIONS  
NOT ADMISSABLE**

## **CANAAN SPRINGS WATER RIGHTS AND DEVELOPMENT AGREEMENT**

THIS AGREEMENT (“Agreement”) is made by and between **BIG PLAINS WATER AND SEWER SPECIAL SERVICE DISTRICT, a Utah special service district** (“SSD”), and **KENSTAL, LLC** (“KENSTAL”) and or assigns (collectively “Parties”).

WHEREAS, the parties hereto, in an effort to resolve legal misunderstandings and disputes that have arisen between them, desire with this Agreement to resolve said issues; and

WHEREAS, KENSTAL owns or has a beneficial interest in certain water rights listed in Exhibit A (“Water Rights”) located within the service area of SSD and originating in the source area known as Canaan Springs (“Springs”); and

WHEREAS, SSD has recently acquired other water rights (“Canaan Springs Rights”) also originating in the Springs and has received federal funding to improve said Springs; and

WHEREAS, SSD desires to acquire title to Water Rights from KENSTAL in order to consolidate ownership and control of all water rights originating from the Springs; and,

WHEREAS, KENSTAL is willing to convey Water Rights to SSD together with Canaan Springs Water to hold as a “Water Bank” for present and future development of KENSTAL’s real property within SSD’s service area; and

WHEREAS, SSD desires to obtain additional federal financing to continue to improve said Springs and install infrastructure to bring Springs water into the SSD system; and

WHEREAS, KENSTAL desires to receive a proportionate share of any increase in the flow and capacity of Springs (formula to be determined) as partial consideration for KENSTAL’s conveyance of Water Rights; and

WHEREAS, PARTIES desire to determine the formula and criteria for receiving KENSTAL’s new water connections for development of all KENSTAL’s property based on Water Rights and Canaan Springs Water; and

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

- 1. Water Bank.** KENSTAL agrees to convey to SSD the Water Rights by deed

attached as Exhibit A for the exclusive benefit of KENSTAL, subject to the terms and conditions contained herein below. KENSTAL warrants that KENSTAL has good title to the Water Rights listed in Exhibit A, and that the Water Rights are free and clear of any liens or other encumbrances, except as specifically noted herein.

**2. Reciprocal Easements.** KENSTAL shall convey to SSD the easement described in Exhibit B. SSD shall assign to KENSTAL, rights of access under the BLM/Wilderness Land Lease Agreement, attached as exhibit C.

**3. Will Serve Letter.** Upon receipt of the conveyance of the Water Rights, SSD shall issue a Will Serve Letter to KENSTAL committing to provide residential connections for KENSTAL's proposed new subdivisions. The number of ERC's or equivalent residential connections committed by the SSD shall be based on the SSD's policies and KENSTAL demonstrating compliance with conservation and usage requirements as published by SSD. These requirements provide for one ERC per acre lot to .5 ERC for smaller than 1 acre lots. See Exhibit D.

**4. Canaan Springs Source Development.** SSD shall continue to develop and improve additional Spring sites where mutual Water Rights exist. KENSTAL will release Water Rights from the water bank to the SSD. The Water Rights released to the SSD will be committed to Kenstal in the form of will serve letter, adding allocation of water to service KENSTAL's development projects. The will serve commitment will, as stated in paragraph 3 of this agreement, be subject to the range of one ERC per acre lot to .5 ERC for smaller lots by adherence to the SSD conservation policy.

**5. Closing.** On or before February 25, 2021 KENSTAL shall transfer title to Water rights listed in Exhibit A to SSD and SSD shall deliver the will serve letter to KENSTAL.

**6. Springs Water Reservation.** SSD shall reserve all the Canaan Springs water ("Springs Water") including Water Rights, and the rights acquired from Canaan Spring Water Company, for use within the SSD service area and make such Water Rights available to be used exclusively to KENSTAL's additional real property holdings.

**7. Contingencies.** In the event that SSD shall be purchased, acquired or taken over by Washington County Water Conservancy District, or any other person or entity, KENSTAL shall be treated as a secured creditor in the amount of the number of unallocated acre feet of Springs Rights times the greater of fair market value or \$10,000.00 per acre foot and shall have the right to require payment in full upon the closing of any such transaction. In the event of dissolution of SSD, any Water Rights unallocated at that time shall be distributed back to KENSTAL, together with an assignment of the BLM lease agreement that provides access to the physical Springs.

**8. Settlement, Release and Indemnification.** Each party waives, releases, relinquishes and indemnifies for any actual or potential right, claim or cause of action against the other party, including or not limited to, asserting a claim against any employees, officers and directors of the other party as otherwise provided for in this agreement or arising hereunder.

**9. Dispute Resolution.** Any dispute arising between the parties under this agreement shall be governed by the laws of the State of Utah. The parties hereto agree to submit any such dispute to mediation prior to any judicial proceedings being commenced. The prevailing party in any such dispute, whether by mediation or judicial decree, shall be entitled to recover attorneys' fees and cost incurred in the enforcement of the terms of this agreement.

The foregoing constitutes the entire agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**KENSTAL:**

Kenstal LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kendra Webb Member Manager

**SSD:**

Big Plains Water and Sewer Special Service District

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Acknowledged and Agreed:**

Town of Apple Valley

By: \_\_\_\_\_ Date: \_\_\_\_\_

EXHIBIT A

Water Right #

Quantity (acre feet)

81-1526

15.41

81-2850

7.99

After Recording Mail To:  
ROGER J. SANDERS, P. C.  
55 South 300 West, Suite 3  
Hurricane, Utah 84737

EXHIBIT B

### WATER RIGHTS QUIT CLAIM DEED

FOR THE SUM of ten dollars (\$10.00) and other good and valuable consideration KENSTAL LLC., a Utah Limited Liability Company, GRANTOR, hereby Quitclaims all of Grantor's rights, title, and interest to Big Plains Water and Sewer Special Service District, Apple Valley, Utah the following described water rights in Washington County, State of Utah, to wit::

See Exhibit A

WITNESS the hand(s) of said grantor(s), this \_\_\_ day of January 2021.

KENSTAL LLC Utah Limited Liability Company

By: \_\_\_\_\_

Its:

State of Utah                    )  
  ) ss  
County of Washington        )

On the \_\_\_ day of January, 2021, personally appeared before me \_\_\_\_\_, signer of the within instrument, who duly acknowledged to me that he/she executed the same, and that the within instrument was signed in behalf of said corporation.

\_\_\_\_\_  
Notary Public.

EXHIBIT " C "

