

AMENDMENT TO NON-POTABLE IRRIGATION WATER AGREEMENT

THIS AMENDMENT TO NON-POTABLE IRRIGATION WATER AGREEMENT (the "Amendment") is made and entered into this ___ day of _____, 2021, by and among **THOMPSON RANCH, LLLP** and **GERRARD FAMILY LIMITED PARTNERSHIP** (hereinafter collectively referred to as the "Owners"), the **TOWN OF JOHNSTOWN**, a Colorado municipal corporation (hereinafter referred to as "the Town"), **2534 MASTER ASSOCIATION**, a Colorado nonprofit corporation ("the Association"), and Thompson Crossing Metropolitan District No. 2, a Colorado Special District ("District #2). Owners, the Town, the Association and District #2 are collectively referred to sometimes as "the Parties" or individually as a "Party").

WHEREAS, Owners and the Town entered into a Non-Potable Irrigation Water Agreement dated August 21, 2006 ("Non-Potable Agreement"), for the irrigation of certain lands located within the Town ("Subject Property"), described in the Non-Potable Agreement as approximately 420 acres located in portions of Sections 14 and 15, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado; and

WHEREAS, the Owners developed a mixed-use community on the Subject Property that is commonly referred to as the 2534 development and that is some or all of the Project described in the Non-Potable Agreement ("2534 Project"); and

WHEREAS, the non-potable irrigation system contemplated under the Non-Potable Agreement currently serves the 2534 Project and two contiguous developments known as 2534 West and Iron Horse ("Non-Potable Irrigation System"); and

WHEREAS, District #2 is the current owner of the Non-Potable Irrigation System and entered into an operating agreement with the Association so that the Association would operate the Non-Potable Irrigation System;

WHEREAS, the Association is the operator of the Non-Potable Irrigation System and is in the process of being assigned certain agreements, rights, and obligations associated with the Non-Potable Irrigation System; and

WHEREAS, after adjudicating a change of water rights in Case No. 07CW14 to serve the Non-Potable Irrigation System and after incurring approximately fifteen years of operating experience, the Parties desire to amend paragraphs 1 – 5, 7, and 8 of the Non-Potable Agreement to reflect current circumstances and current operations of the Non-Potable Irrigation System as described herein; and

WHEREAS, it is in the mutual interest of the Parties to have a viable and well-operated Non-Potable Irrigation System.

NOW THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Existing Non-Potable Agreement.** Except as expressly modified herein, the Non-Potable Agreement shall remain in full force and effect. All defined terms in the Non-Potable Agreement apply to this Amendment unless specifically defined otherwise herein.

2. **Non-Potable Water Supply.** The Non-Potable Irrigation System is currently supplied by the following water rights that constitute the “Non-Potable Water Supply”:

- A. **Priority #1.** The Non-Potable Water Supply primarily consists of 3 cfs of the Priority No. 1 Right on the Big Thompson River, originally part of the Big Thompson Ditch with an appropriation date of November 10, 1861 (“Priority #1”), which was changed by decree in Case No. 07CW14 (“07CW14 Decree”) as contemplated in the Non-Potable Agreement. The 3 cfs of Priority No. 1 was dedicated to the Town by special warranty deeds dated October 28, 2009 and June 12, 2012 and are committed to the Non-Potable Irrigation System.
- B. **Farmers’ Shares.** When in priority, 2.50 shares of the Reorganized Farmers Ditch Company (“Farmers’ Shares”) are used within the Non-Potable Irrigation System. These Farmers’ Shares are committed to the Non-Potable Irrigation System and only used to irrigate those lands historically irrigated as described in paragraph 4, below.
- C. **Augmented Junior Rights.** The Non-Potable Irrigation System contains two detention ponds for irrigation as described in the 07CW14 Decree. One pond has a junior water right previously decreed in Case No. 02CW305 and a junior water right is being sought for the other pond in Case No. 20CW3159. An augmentation plan is also being sought for both detention ponds in Case No. 20CW3159 to ensure proper administration if the ponds capture water out-of-priority. These junior water rights and augmentation plan are committed to the Non-Potable Irrigation System.

3. **Non-Potable Irrigation System Lands.** The Non-Potable Agreement contemplated a non-potable service area of approximately 420 acres of Subject Property. Exhibit A to the Non-Potable Agreement did not correctly reflect the Subject Property and that Exhibit A is hereby stricken from the Non-Potable Agreement. The current service area of the Non-Potable Irrigation System includes lands located within the Subject Property, but also includes lands outside but contiguous to the Subject Property in the Iron Horse and 2534 West developments (collectively the “Current Service Area”), as depicted in **Exhibit A** attached hereto. The 07CW14 Decree allows for a service area that includes the Current Service Area, plus additional lands outside both the Current Service Area and Subject Property for future service (“Future Service Lands”). The Non-Potable Agreement is hereby amended to allow irrigation of the combined Current Service Area and the Future Service Lands as those lands are depicted in **Exhibit B** attached hereto, subject to the provisions of this Amended Agreement.

4. **Non-Potable Irrigation Water Rights Dedication (Farmers’ Shares).** The Non-Potable Agreement identified 2.75 shares of the Reorganized Farmers Ditch Company to be dedicated to the Town for use within the Non-Potable Irrigation System and required such shares be changed in water court. Said shares are hereby reduced to 2.5 Farmers’ Shares, with 1.0 share

currently owned by 2534 West, 1.25 shares currently owned by Thompson Ranch LLLP, and 0.25 share owned by the Town after assignment by Thompson Ranch LLLP as part of the non-potable water rights dedication. The Farmers' Shares were removed from Case No. 07CW14 and are no longer required by the Parties to be changed in water court. Instead, the Parties agree that the 2.5 unchanged Farmers' Shares will be used only on the 2534 West property and the Thompson Crossing property, all as shown in **Exhibit B**.

5. Reusable Effluent Agreement. The Owners and the Town increased the efficiency of the Non-Potable Water Supply through a Non-Irrigation Season Reusable Effluent Designation Agreement dated September 8, 2010 ("Effluent Agreement"), which was included as a replacement source for maintaining historical return flows in the 07CW14 Decree. The Owners, Association, and Town entered into the Amendment to Non-Irrigation Season Reusable Effluent Designation Agreement dated November 2, 2020, which was included as a source in 20CW3159 ("Amended Effluent Agreement").

6. Finding of Water Supply Adequacy for Current Service Area. The Non-Potable Agreement was based upon projections and assumptions. Based upon a recent water rights engineering analysis by the Association dated March 17, 2021 ("Engineering"), the Parties agree that the Non-Potable Water Supply is adequate to meet the non-potable water demands on the 2534 Property, 2534 West Property, and Thompson Crossing Property at full buildout, and on the currently served lands at Iron Horse (*See Exhibit A*). This finding of water supply adequacy and the Engineering are based upon the actual water demands for the past 15 years, projected demands for remaining undeveloped area, volumetric limits and other conditions in the 07CW14 decree, the availability of the Effluent Agreement and Amended Effluent Agreement, and the actual design and operations of the Non-Potable Irrigation System. Based upon this water supply adequacy finding and the Engineering, the following additional changes to the Non-Potable Irrigation Agreement are hereby made and approved: (a) the analysis of non-potable irrigation supply and demand is replaced by the Engineering; (b) the additional water rights dedication requirement and the Unmet Irrigation Demand are hereby eliminated; and (c) the right of Owners to obtain transferable non-potable water credits for excess water dedicated to the Non-Potable Irrigation System is hereby eliminated.

7. Non-Potable Water Supply for Future Service Lands and Additional Iron Horse Lands. Before any connection to supply non-potable irrigation water to Future Service Lands or to serve any Iron Horse Property that is not part of the currently served lands at Iron Horse as shown in **Exhibit A**, the Association and Town must both first agree on the water supply adequacy for the Future Service Lands and additional Iron Horse Property service which may require new water supplies or other arrangements with the Town if the Non-Potable Water Supply is not adequate to supply the additional lands. The Association may update the Engineering from time to time to determine the excess Non-Potable Water Supply available for additional irrigation, but subject to Town approval of the updated Engineering.

8. Assignment and Conveyance to Association. The Owners agree that upon execution hereof, and not more than 60 days thereafter, they shall assign to the Association all of the agreements, rights, and obligations associated with the Non-Potable Irrigation System. This will include, but not be limited to, the following:

- A. The Non-Potable Agreement;
- B. The 07CW14 Decree;
- C. The Decree entered in Case No. 02CW305 by the District Court for Water Division No. 1; and
- D. The Effluent Agreement and Amended Effluent Agreement.

The Association agrees to the above-described assignment and agrees to incur all obligations and responsibilities associated with the assigned documents. The Town does hereby approve the above-described assignment from Owners to the Association and upon completion thereof, and upon acceptance by the Association, the Town does hereby relieve Owners of any and all obligations under the Non-Potable Agreement, 07CW14 Decree, and under the Effluent Agreement and Amended Effluent Agreement. Further, and consistent herewith, the Gerrard Family Limited Partnership LLP has by bargain and sale deed dated May 12, 2021 conveyed to the Association at no cost to the Association the water rights for the Gerrard Seepage Ditch No. 1, Gerrard Seepage Ditch No. 2, and the Gerrard Seepage Pond decreed in Case No. 02CW305.

10. Assignment and Commitment of Non-Potable Water Supply. The Owners do hereby agree to assign to the Town the 2.25 of the 2.5 Farmers Shares not yet assigned to the Town in a form acceptable to the Town but at no cost to the Owners. The Town covenants and agrees that the entire 2.5 Farmers Shares and the entire 3.0 cfs of Priority #1 that was changed in the 07CW14 Decree shall be committed to serve the Non-Potable Irrigation System in perpetuity so long as that Non-Potable Irrigation System continues to be operated consistent with this Amendment Agreement.

11. Modifications to Non-Potable Agreement. Paragraphs 2 – 10 above do hereby replace Paragraphs 1 – 5 of the Non-Potable Agreement in their entirety. Paragraph 7 is also replaced, except that the Parties agree no water court transfer fee shall be payable by any Party to the Town for any of the Non-Potable Water Supply.

12. Notices. The Notice provision in paragraph 8 of the Non-Potable Agreement is hereby updated with the following information for the Association:

2534 Master Association

Attn: Justin Morrison
2534 Master Association
375 E. Horsetooth Road, Building 3, Suite 100
Fort Collins, CO 80525
(970) 221-2323
justinm@mnpre.com

With Copy to:

Todd Williams
Williams & Weiss Consulting, LLC
5255 Ronald Reagan Blvd., #220
(303) 653-3940

tlwwater@msn.com

Town of Johnstown

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534

With Copy to:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264

The remainder of paragraph 8 of the Non-Potable Agreement remains unchanged.

13. Counterparts. This Amendment may be executed in several counterparts, and all such executed counterparts shall constitute the same Amendment. The Parties agree that signatures transmitted electronically shall be binding as if they were original signatures.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first written above.

TOWN OF JOHNSTOWN, a Colorado home rule municipality

By: Gary Lebsack, Mayor

ATTEST:

Diana Seele, Town Clerk

STATE OF COLORADO)

COUNTY OF _____) ss.
_____)

The foregoing Amendment was acknowledged before me this ____ day of _____, 2021, by Gary Lebsack as Mayor of the Town of Johnstown.

WITNESS my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public

2534 MASTER ASSOCIATION, a Colorado nonprofit corporation

Todd Williams

Name: Todd Williams
Title: President of Board of Directors

STATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing Amendment was acknowledged before me this 10th day of August, 2021, by Todd Williams, President of the 2534 Master Association Board of Directors.

WITNESS my hand and official seal.

My commission expires:

4/17/2025

Kristen Hansen
Notary Public

KRISTEN L HANSEN
Notary Public
State of Colorado
Notary ID # 20044024613
My Commission Expires 04-17-2025

THOMPSON RANCH, LLP

Dale Boehner

Name: Dale Boehner

Title: General Partner

STATE OF COLORADO)

) ss.

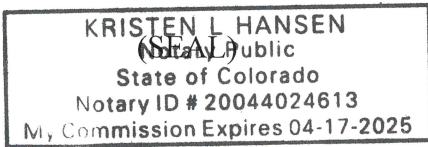
COUNTY OF Weld)

The foregoing Amendment was acknowledged before me this 6th day of August, 2021, by Dale Boehner, General Partner of the Thompson Ranch, LLP

WITNESS my hand and official seal.

My commission expires:

4/17/2025



Kristen Hansen

Notary Public

GERRARD FAMILY LIMITED PARTNERSHIP

[Signature]
Name: Nathan Gerrard
Title: General Partner

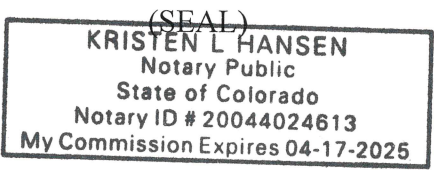
STATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing Amendment was acknowledged before me this 5th day of August, 2021, by Nathan Gerrard, General Partner of the Gerrard Family Limited Partnership.

WITNESS my hand and official seal.

My commission expires: 4/17/2025

[Signature]
Notary Public



THOMPSON CROSSING METROPOLITAN DISTRICT #2


Name: Gary Gerrard

Title: President

STATE OF COLORADO)

) ss.

COUNTY OF Weld)

The foregoing Amendment was acknowledged before me this 5th day of August, 2021, by Gary Gerrard, President of the Thompson Crossing Metropolitan District #2.

WITNESS my hand and official seal.

My commission expires:

4/17/2025


Notary Public

