

WATER DEDICATION AND WATER BANK AGREEMENT
BETWEEN TOWN OF JOHNSTOWN AND
PLATTE LAND & WATER, LLC

This Water Dedication and Water Bank Agreement (“Agreement”) is made and entered into on this ____ day of _____, 202__, by and between the Town of Johnstown, Colorado, a Colorado home rule municipal corporation (“Town”), and Platte Land & Water, LLC, a Delaware limited liability company (“PLW”).

RECITALS

WHEREAS, PLW is the owner of real property situated in the Town of Johnstown, County of Weld, State of Colorado, the description of which is set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, PLW or a successor in interest may seek to develop the Property (“Development”) in the future; and

WHEREAS, Article IV of Chapter 13 of the Johnstown Municipal Code requires PLW to dedicate water in a sufficient amount to satisfy the water demands projected for all proposed uses within the Development; and

WHEREAS, PLW is also the owner of two and one-half (2.5) shares of The Consolidated Hillsboro Ditch Company (“Water Shares”) represented by Certificate Number 949 (the “Stock Certificate”), a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference; and

WHEREAS, the Water Shares equate to 150 acre-feet of raw water credit; and

WHEREAS, PLW desires to dedicate the Water Shares to the Town to be used to satisfy the raw water demands of the Development, or a portion thereof, and to create a water bank, to be known as the “PLW Held Farm Water Bank,” in the form attached hereto as **Exhibit C** and incorporated herein by reference, and include the corresponding 150 acre-feet of raw water credit into the PLW Held Farm Water Bank; and

WHEREAS, PLW further desires to continue to dedicate raw water to the Town to be included in the PLW Held Farm Water Bank upon the additional acquisition of raw water and to create a mechanism to accomplish such transactions; and

WHEREAS, the Town agrees to accept the dedication of the Water Shares and, from time to time, the dedication of additional raw water and, upon each such dedication, to include the corresponding raw water credit in the PLW Held Farm Water Bank; and

WHEREAS, to effectuate and memorialize the foregoing, the parties desire to enter into this Agreement.

AGREEMENT

1. **Water Dedication.** Subsequent to the execution of this Agreement, PLW shall dedicate the Water Shares to the Town and shall assign the Stock Certificate to the Town pursuant to a stock assignment substantially in the form attached to this Agreement as **Exhibit D.**

2. **PLW Held Farm Water Bank.** Upon dedication of the Water Shares to the Town, the Town shall add 150 acre-feet of raw water credit to the PLW Held Farm Water Bank, which raw water credit may be used to satisfy projected water demands within the Development or a portion thereof.

3. **Subsequent Water Dedications.** At any date subsequent to the execution of this Agreement, PLW may dedicate additional raw water to the Town, of a type acceptable to the Town, to be included in the PLW Held Farm Water Bank, which raw water credit shall thereafter be available to satisfy projected water demands within the Development or a portion thereof. The Town shall determine the raw water credit attributable to such subsequent raw water dedications. Upon each such dedication, the Town and PLW shall execute the form of Acknowledgment of Raw Water Credit attached hereto and incorporated herein by reference as **Exhibit E.**

4. **Use of Raw Water Credits in PLW Held Farm Water Bank.**

a. Prior to issuance of any building permits for commercial or industrial development or recordation of a final plat for residential lots in any phase in the Development, the Town and PLW shall enter into a water and sewer service agreement setting forth the raw water demands for the portion of the Development that is the subject of the water and sewer service agreement and, if raw water credit is available, allocate water from the PLW Held Farm Water Bank to those uses.

b. Absent written notice from PLW and written approval from the Town, which approval shall not be unreasonably withheld, the water contained in the PLW Held Farm Water Bank shall not be allocated to any other properties or development or other use in the Town.

c. For the avoidance of doubt, the Town shall not authorize the water in the PLW Held Farm Water Bank to be used outside the municipal boundaries of the Town.

5. Water Court Transfer Fees. PLW recognizes and agrees that, at the time of execution of water and sewer service agreements allocating water from the PLW Held Farm Water Bank, PLW shall be required to pay the Water Court Transfer Fees as that term is defined in and required by the Johnstown Municipal Code.

6. Binding Effect. This Agreement shall benefit PLW, PLW's heirs, successors, assigns and transferees and any other person or entity acquiring or purchasing any interest in any of the Property.

7. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, Colorado.

8. No Presumption. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

9. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

10. Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below.

PLATTE LAND & WATER, LLC,

a Delaware limited liability company

By: _____

Name: Timothy B. Walsh

Title: President

STATE OF _____)

) ss.

COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 202__, by Timothy B. Walsh, as President of Platte Land & Water, LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

My commission expires:

Notary Public

TOWN OF JOHNSTOWN, COLORADO

a Colorado Home Rule Municipal Corporation

By: _____

Matthew LeCerf, Town Manager

ATTEST:

By: _____

Diana Seele, Town Clerk

EXHIBIT A

(Property)

THE N 1/2 OF THE SW 1/4 AND THE SE 1/4 OF THE SW 1/4 OF SECTION 4, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO;

EXCEPTING THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED RECORDED AUGUST 23, 1926 IN BOOK 807 AT PAGE 76 IN THE SW1/4 OF SECTION 4, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P. M., WELD COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY OF THE GREAT WESTERN RAILWAY, WHICH POINT IS LOCATED 123 FEET EAST AND 540 FEET SOUTH OF THE NORTHWEST CORNER OF THE SW1/4 OF SAID SECTION 4; THENCE SOUTH ALONG SAID RIGHT OF WAY LINE 123 FEET DISTANCE FROM AND PARALLEL TO THE WEST LINE OF SAID SECTION, FOR A DISTANCE OF 230 FEET, THENCE EAST FOR A DISTANCE OF 15 FEET, THENCE NORTH 138 FEET DISTANT FROM AND PARALLEL TO THE WEST LINE OF SAID SECTION, FOR A DISTANCE OF 230 FEET; THENCE WEST FOR A DISTANCE OF 15 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT THAT PORTION AS CONVEYED IN DEED RECORDED AUGUST 1, 1904 IN BOOK 218 AT PAGE 175,

ALSO EXCEPT THAT PORTION CONVEYED IN DEED RECORDED APRIL 8, 1905 IN BOOK 228 AT PAGE 4.

EXHIBIT B

(Copy of the Water Certificate)

No. 949	---2.5--- Shares
The Consolidated Millshoro Ditch Co. CAPITAL STOCK, \$11,800.	
This Certifies that <u>Platte Land & Water, LLC</u>	
is the	owner of <u>---two and one-half---</u> Shares of the Capital Stock of
The Consolidated Millshoro Ditch Company	
transferable only on the books of the Corporation by the holder hereof, or by attorney, upon surrender of this Certificate properly endorsed.	
In witness whereof, The said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the seal of the Corporation at Johnstown, Colorado, this <u>8th</u> day of <u>January</u> , A. D. 19 <u>2021</u>	
<u>Margaret S. Vetter</u> Secretary	<u>Dean Binda</u> President

EXHIBIT C
(PLW Held Farm Water Bank)

STOCK ASSIGNMENT
(The Consolidated Hillsboro Ditch Company – Certificate No. 949)

9

EXHIBIT E
(Acknowledgement of Raw Water Credit)

ACKNOWLEDGEMENT OF RAW WATER CREDIT

RECITALS

WHEREAS, on or about _____, 202____, the Town of Johnstown, Colorado, a Colorado home rule municipal corporation (“Town”), and Platte Land & Water, LLC, a Delaware limited liability company (“PLW”), entered into a Water Dedication and Water Bank Agreement (“Agreement”); and

WHEREAS, pursuant to the Agreement, PLW desires to dedicate additional raw water to the Town to be included in the PLW Held Farm Water Bank; and

WHEREAS, the Town desires to accept such additional dedication and provide a raw water credit in the PLW Held Farm Water Bank in the amount set forth below.

ACKNOWLEDGEMENT

1. PLW hereby dedicates, and the Town hereby accepts the dedication, of _____ (____) shares of _____ represented by Certificate Number(s) _____ (“Water Shares”).

2. The Water Shares equate to _____ acre-feet of raw water credit (“Water Credit”).

3. Upon the issuance of a new stock certificate in the name of the Town of Johnstown, the Town shall include the Water Credit into the PLW Held Farm Water Bank.

4. A revised copy of the PLW Held Farm Water Bank is attached hereto.

PLATTE LAND & WATER,

a Delaware limited liability company

By: _____

Name:

Title:

TOWN OF JOHNSTOWN, COLORADO

a Colorado Home Rule Municipal Corporation

By: _____

Matthew LeCerf, Town Manager