

**TOWN OF JOHNSTOWN
ANNEXATION AGREEMENT
THE HELD FARM ANNEXATION**

THIS ANNEXATION AGREEMENT (“Agreement”) is made and entered into this _____ day of September 2021, by and between PLATTE LAND & WATER, LLC, a Delaware limited liability company (“Owner”), and the TOWN OF JOHNSTOWN, a home-rule municipal corporation of the State of Colorado (“Town”).

WITNESSETH:

WHEREAS, Owner desires to annex real property into the Town, situated in the Southwest Quarter of Section 4, Township 4 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, known by site address as 8062 County Road 48 ½, County of Weld, State of Colorado, consisting of approximately 122.71 acres, being more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, Owner executed a Petition for Annexation, dated March 9, 2021, a copy of which petition is on file with the Town Clerk; and

WHEREAS, Owner has prepared a zoning map identifying and illustrating its request for H-A (Holding Agriculture) zoning, which would allow the Property to continue in its current state of agricultural uses until future development, at which time a change of zone will likely be required; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into this Agreement regarding annexation of the Property to the Town and other related matters as set forth herein; and

WHEREAS, Owner acknowledges that, upon annexation, the Property will be subject to all ordinances, resolutions and other regulations of the Town, as amended from time to time; and

WHEREAS, Owner acknowledges that the need for conveyances and dedication of certain property to the Town, including, but not limited to, property for rights-of-ways and easements, is directly related to and generated by the anticipated subsequent development within the Property.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. ***Incorporation of Recitals.*** The parties confirm and incorporate the foregoing recitals into this Agreement.
2. ***Purpose.*** The purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to the Town. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to all requirements concerning annexation

contained in the Johnstown Municipal Code, the Town's development regulations and Comprehensive Plan, and the Municipal Annexation Act of 1965, as amended, §§31-12-101, *et seq.*, C.R.S. (the "Act").

3. **Owner.** As used in this Agreement, the term "Owner" shall include any of the heirs, transferees, successors or assigns of Owner. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof. All such parties shall be subject to the terms of this Agreement as if they were the original parties thereto.

4. **Further Acts.** Owner agrees to execute promptly upon request of the Town any and all surveys and other documents necessary to effect the annexation of the Property and the other provisions of this Agreement. Owner agrees not to sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of the Town.

5. **Annexation Documents.** Owner agrees to provide legal documents, surveys, engineering work, newspaper publications, maps, and reports determined by the Town to be necessary to accomplish the annexation.

6. **Zoning and Land Use.** The parties recognize that, in the future, it is the intent and desire of Owner to develop the Property in a manner generally consistent with the surrounding zoning and land uses. Until that time, Owner seeks to zone the Property H-A (Holding-Agricultural). Owner shall take all action necessary to permit zoning by the Town of the annexed Property within the time prescribed by state statute.

7. **Non-Conforming Use.** The Town agrees to allow existing non-conforming agricultural use, if any, to continue until such time as the Property is platted, but not at a greater level than at its current level of activity and use. The current level of activity is generally characterized as follows: irrigated crop farming of approximately 123 acres.

8. **Water Rights Dedication.** Owner owns certain water rights and lateral ditch company rights appurtenant to the Property, including, without limitation, shares of capital stock in The Consolidated Hillsborough Ditch Company ("Hillsborough Ditch Water"), that are described on **Exhibit B** attached hereto and incorporated herein by reference (collectively, the "Water Rights"). Except for the Hillsborough Ditch Water, Owner shall dedicate the Water Rights to the Town no later than the date of approval of the final plat for the first phase of the development. Owner and the Town shall enter into an agreement regarding the Hillsborough Ditch Water (the "Water Agreement") and upon thirty (30) days written notice from the Town to Owner after execution of the Water Agreement, Owner shall dedicate the Hillsborough Ditch Water to the Town as set forth in the Water Agreement. Owner recognizes and agrees that the Town shall not, unless otherwise subsequently agreed in writing, accept the Hillsborough Ditch Water for development purposes. Owner specifically agrees that it has not sold or transferred any of the Water Rights appurtenant to the Property within the past year nor will it do so during the pendency of this annexation petition and, once annexed to the Town, will not sell or transfer any of the Water

Rights appurtenant to the Property, including the Hillsborough Ditch Water, without the prior written approval of the Town.

9. ***Municipal Services.*** The Town agrees to make available to the Property all of the usual municipal services provided by the Town in accordance with the ordinances and policies of the Town. Except as otherwise agreed by the Town, Owner shall bear the cost of the delivery of such services.

10. ***Public Improvements.*** Owner agrees to design and construct all required public improvements to Town standards at Owner's expense. Owner shall provide financial guarantees for construction of all required improvements as set forth in each phase or filing of the development and dedicate to the Town any or all of the improvements required by Town ordinances or as otherwise agreed. The public improvements and financial guarantees shall be set forth in a development agreement for each filing between the Town and Owner. All overhead utility lines shall be undergrounded.

11. ***Roadway Dedication.*** Within sixty (60) days of written request by the Town, Owner shall dedicate half-width rights-of-way to the Town to expand: (i) Parish Ave (Weld County Road 17) to a Town Major Arterial standard and Weld County Road 48 ½ to a Town Minor Arterial standard. If required by the Town, in its discretion, Owner shall dedicate additional rights-of-way to support development of the Property at no cost to the Town, which shall be set forth in a subsequent agreement between the Town and Owner.

12. ***Land Dedication.*** The dedication of parks and open space, public easements for utilities, rights-of-way for streets and other public ways and dedications for other public purposes shall be by general warranty deed (to include, except for public easements, any mineral interest owned by Owner at the time of annexation; provided, however, the general warranty of title or any other warranties of title shall not apply to such mineral interest) or another appropriate instrument of conveyance acceptable to the Town. Such dedications shall occur when required by the Town. The Town and Owner agree that such dedications are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

13. ***Water and Waste Water Utilities.*** Owner agrees to construct all on-site and required off-site water and waste water mains and appurtenances to Town standards at Owner's expense as may be required by development of the Property. The Town and Owner hereby agree to cooperate in good faith with respect to 1) determining reasonable oversizing requirements; 2) locating and securing approvals for installation of utility mains and appurtenances within public rights-of-way; and 3) facilitating installation of off-site infrastructure if Owner and the Town determine that such installation is necessary in connection with orderly development of the Property.

14. ***Sanitary Sewer Easement Dedication.*** Within sixty (60) days of written request by the Town, Owner agrees to dedicate a thirty-foot (30') exclusive sanitary sewer easement to the Town for the purposes of extending an oversized sanitary sewer interceptor along the south side of the ultimate Weld County Road 48 ½ right-of-way frontage. The Town and Owner agree that

such dedication is directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

15. ***Drainage.*** A drainage study of the entire annexation territory shall be provided by Owner to the Town no later than the date of Owner's filing of a preliminary plat with the Town. Improvements shall be made as required by the Town. Historical irrigation and drainage patterns shall be maintained on the property to the extent feasible including no change in the quality, quantity or point of discharge, except to the extent approved by the Town.

16. ***Limitation on Fee Impositions by the Town.*** Owner agrees that the Property shall be subject to development fees similar to those that are imposed on other comparable developments in the Town. Owner acknowledges that the Town has adopted, among other fees, impact fees that will apply to this development.

17. ***Conformity with Laws.*** Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all Town ordinances, resolutions and regulations including, without limitation, ordinances, resolutions, and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to Town streets, and flood control.

18. ***Disconnection.*** No right or remedy of disconnection of the Property from the Town shall accrue from this Agreement other than that provided by applicable state laws. In the event the Property or any portion thereof is disconnected at Owner's request, the Town shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof.

19. ***Special Districts.*** Within thirty (30) days after written request by the Town, Owner shall apply for inclusion of the Property within one or more special districts serving the Town and petition to exclude the Property from another special district. All costs, expenses, attorney fees and judgments for exclusion of the property from any special district shall be borne by Owner. Within thirty (30) days after written request by the Town, Owner shall be required to pay sums due owing from the Town to the Little Thompson Water District, if any, pursuant to an Intergovernmental Agreement between the Town of Johnstown and the Little Thompson Water District dated January 21, 2009.

20. ***Future Cooperation.*** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement and will execute such additional documents as necessary to effectuate the same.

21. ***No Joint Venture or Partnership/No Assumption of Liability.*** Nothing contained in this Agreement is intended to create a partnership or joint venture between the Town and Owner or between the Town and any one or more of the individual owners that may exist and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the parties of any activity, function or service, nor does it create a joint enterprise or an agency relationship. Except as specifically otherwise

provided in this Agreement, no party shall in any way assume any of the liability of any other party for any act or obligations of the other party.

22. ***Failure to Annex.*** This Agreement shall be null and void if the Town fails to approve the annexation of the Property.

23. ***No Warranties by the Town.*** The Town is entering into this Agreement in good faith and with the present intention, on the part of the present Town Council, to comply with this Agreement. Because certain of the provisions of this Agreement may involve areas of legal uncertainty or be subject to subsequent revisions to the law, the Town does not intend to provide any warranty.

24. ***Breach.***

(a) ***Breach by Owner.*** In the event of a default or breach by Owner of any term, condition, covenant, or obligation under this Agreement, the Town may take such action as it deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship. The Town's remedies include:

(I) The refusal to issue any development permit, building permit or certificate of occupancy. This remedy shall not affect sales to bona fide purchasers nor be applied to bona fide purchasers;

(II) A demand that the security given for the completion of the public improvements be paid or honored;

(III) The refusal to consider further development plans within the Property; and/or

(IV) Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide the Owner ten (10) days' written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action by the Town.

(b) ***Breach by Town.*** In the event of a breach by Town, Owner will have the right to seek all remedies provided by law.

25. ***Attorney's Fees.*** If Owner breaches this Agreement, Owner shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms and conditions of this Agreement. Should litigation occur by suit of a third party, Owner shall reimburse the Town for the Town's attorney's fees, court costs, and witness fees. Rather than require the Town to defend an action brought by a third party alleging that the Property is not subject to annexation or that the technical requirements of the Act were not met, Owner may withdraw the Petition for Annexation. In addition thereto, in the event that any person, corporation, special district, municipal or county government or any other entity asserts a claim against the Town, its officials, or employees pursuant to the provisions of the Act, Owner agrees to reimburse the Town all reasonable costs and attorney's fees incurred by the Town in defense of such claims whether or not such defense is

successful; provided, however, that nothing herein shall be interpreted as permitting Owner to act or participate in any manner whatsoever in the defense of such claims, including, but not limited to, selection of legal counsel or settlement of claims. Owner acknowledges and understands that the Town may, in its sole discretion, voluntarily elect not to defend against such an action and may consent to and permit the entry by the court of an order voiding the annexation or reach another means of settlement of claims. In such an event, Owner shall also reimburse to the Town any costs or attorney's fees assessed against the Town by the court, if any.

26. **Assignment, Sale or Transfer.** Within ten days after an assignment of this Agreement or a sale or transfer of the Property or any portion thereof, Owner shall provide written notice to the Town of the name, address, telephone number and related contact information of the assignee and/or new owner of the Property (for purposes of this paragraph, collectively "Assignee"). Unless otherwise agreed by the Town, the Owner's obligations under this Agreement shall not be diminished or reduced by virtue of an assignment or sale.

27. **Town Police Powers.** Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes, ordinances or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any fee which is of uniform or general application.

28. **Performance Standards (Design Guidelines).** If required by the Town, the Town and Owner shall jointly develop and agree to adopt performance standards addressing design considerations, including architectural, site planning, landscaping, streetscape, and sign elements for land uses within the Property. The performance standards shall be applied to all development projects within the Property. The performance standards shall not supersede any uniform code of the Town such as the Uniform Building Code, Uniform Fire Code, or any other like code which is applicable to all properties located within the Town.

28. **General Provisions.**

(a) **Cooperation.** The Town will (i) cause its staff to timely and promptly approve or disapprove submittal by the Owner of plans, specifications, drawings, details, or other pertinent data required in connection with any water line, sanitary sewer line, storm drainage, or other utility servicing the Property or any improvements within any dedication of a right-of-way on the Property, and any disapproval shall set forth the items disapproved together with the reasons for such disapproval; (ii) use its best efforts in securing, at the Owner's expense, agreement from other governmental or private entities other than the Town that are necessary or desirable by the Owner to allow the Owner to fulfill its obligation under this Agreement and develop the Property in a timely manner; (iii) cooperate with the Owner with any filings, applications, approvals, or other administrative procedures with governmental entities other than the Town that are necessary or desirable by the Owner to allow the Owner to fulfill its obligations under this Agreement and to develop the Property in a timely manner; and (iv) not unreasonably withhold its consent or approval when any consent or approval by the Town is required.

29. **Notice.** All notices required under this Agreement shall be in writing and shall be: (a) hand-delivered; or (b) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (c) sent by electronic mail return receipt requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party, by notice to be given, may change the address to which future notices shall be sent.

Notice to Town:

Town of Johnstown
Attn: Town Manager
450 S. Parish Avenue
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

Notice to Owner:

Platte Land & Water
Attn: Tim Walsh
210 University Boulevard, Suite 710
Denver, CO 80206
E-mail: tim@platteassets.com

30. **Voluntary Annexation; Election.** Owner agrees that it is voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to § 31-12-112, C.R.S., to approve the annexation or to impose terms and conditions upon the Property to be annexed, Owner owns one hundred percent (100%) of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein.

31. **Cost Reimbursement to Town.** Owner shall reimburse the Town for professional consultants such as engineers, testing companies, planners, and attorneys necessitated by processing and completion of this development.

32. **No Third Party Rights.** This Agreement is made solely for the benefit of the parties hereto and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

33. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

34. **Headings.** The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

35. **No Repeal of Laws.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the Town's ordinances or resolutions, or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the Town of any tax or fee.

36. **Amendments to Law.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any Town ordinances, resolution, regulations, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, regulations, or policy, and the parties agree such amendments or revision shall be binding upon Owner.

37. **No Vested Rights.** No vested rights shall accrue to Owner by virtue of annexation of the Property or this Annexation Agreement.

38. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all heirs, transferees, successors and assigns hereof, and shall constitute covenants running with the land. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof. This Agreement shall be recorded with the County Clerk and Recorder of Weld County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

39. **Entire Agreement.** This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties related to the subject matter herein.

40. **Amendment.** This Agreement may be amended only by mutual agreement of the Town and Owner. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land and shall be binding upon all persons or entities having an interest in the Property and/or an interest in water rights referenced in this Agreement.

41. **Severability.** The parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or any federal law, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

ATTEST:

**TOWN OF JOHNSTOWN, COLORADO,
A MUNICIPAL CORPORATION**

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

PLATTE LAND & WATER, LLC
Delaware limited liability company

By: *T.W.*
Name: Timothy Walsh
Title: President

STATE OF COLORADO)
)ss.
COUNTY OF)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021, by
_____, as _____ of Platte Land & Water, LLC.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A
PROPERTY

LEGAL DESCRIPTION:

A portion of the Southwest 1/4 of Section 4, Township 4 North, Range 67 West of the 6th P.M., Weld County, Colorado being more particularly described as follows:

Considering the East Line of the Southwest 1/4 of Section 4, Township 4 North, Range 67 West of the 6th P.M., Weld County, Colorado as bearing S 01°13'11" E, with all bearings contained herein, relative thereto.

COMMENCE at the Center 1/4 Corner (aka the Northeast corner of the Southwest 1/4) of Section 4, Township 4 North, Range 67 West of the 6th P.M., Weld County, Colorado.

thence N 01°13'11" W for a distance of 30.02 feet along the East line of said Southwest 1/4 to the South right of way line of Weld County Road 48-1/2, said point being the POINT OF BEGINNING;

thence S 01°13'11" E for a distance of 2581.00 feet continue along said East line of Southwest 1/4 to the North right of way line of the Great Western Railroad;

thence N 89°09'34" W for a distance of 1359.94 feet along said North right of way line to the East line of Book 228, Page 4, public records of Weld County, Colorado;

thence N 01°15'59" W for a distance of 1286.61 feet along said East line to the North line of said Book 228, Page 4;

thence S 89°05'51" W for a distance of 1391.47 feet along said North line to the West right of way line of North Parish Avenue;

thence N 01°13'27" W for a distance of 1340.18 feet along said West right of way line to the North right of way line of Weld County Road 48-1/2;

thence S 89°05'20" E for a distance of 2753.57 feet along said North right of way line to the Point of Beginning.

Excepting, that certain parcel of land described in deed recorded August 23, 1926 in Book 807 at Page 76.

Containing 122.71 acres, more or less.

Written by M. Bryan Short, Colorado LS 32444

EXHIBIT B
WATER RIGHTS

2.5 shares of The Consolidated Hillsborough Ditch Company as evidenced by Certificate No. 949.

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