

**RESTRICTIVE DRY-UP COVENANT; GRANT OF EASEMENT;  
WARRANTY OF FIRST RIGHT TO DRY-UP CREDIT;  
AND AGREEMENT TO ASSIST**

THIS COVENANT, Agreement, Warranty and Easement (“**Covenant**”) are made and given this \_\_\_ day of December, 2021, by Hartford Investments, LLC, a Colorado limited liability company (“**Developer**”), and accepted by the Town of Johnstown, a home rule municipal corporation of the State of Colorado (“**Town**”).

RECITALS

WHEREAS, Developer owns approximately 155.69 acres of property located in Weld County, identified as Weld County Assessor Parcel No. 105907400009 (the “**Property**”), as legally described on **Exhibit A**, attached hereto and incorporated herein by reference,

WHEREAS, Developer owns twenty-four (24) shares of The Consolidated Home Supply Ditch and Reservoir Co. (“**Home Supply**”) represented by share certificate No. 7093 (“**Water Rights**”), which it acquired from the Keto family;

WHEREAS, historically, there was 135 of acres of the Property irrigated from the Water Rights;

WHEREAS, Developer intends to dedicate the Water Rights to the Town to be used for municipal purposes, including augmentation and exchange purposes, and in order to effect such uses, the Water Rights will need to be changed permanently in an appropriate change of water rights proceeding before the District Court, Water Division No. 1, State of Colorado (“**Water Court**”), from irrigation to municipal, augmentation and/or exchange purposes;

WHEREAS, Developer understands and agrees that the Town, in its discretion, may request or the Water Court may require, as a term and condition of such change, that the Property be dried up and not used for irrigation;

WHEREAS, Developer intends to receive from the Town, and the Town intends to give to Developer, 8 acre-feet per share and 16 SFE per share credit for each of the 24 shares of Home Supply dedicated to the Town;

WHEREAS, Developer understands and agrees that, upon dedication of the Water Rights to the Town, the Town shall have the right to rely upon and enforce this Covenant.

AGREEMENT

NOW, THEREFORE, in consideration of the exchange for the Water Rights, and other good and valuable consideration, the receipt and sufficiency of which Developer acknowledges, Developer hereby covenants, agrees and grants as follows:

1. The Recitals are incorporated as if fully set forth herein.

2. From and after the date hereof, Developer covenants and agrees to permanently discontinue irrigation of the Property with any water diverted pursuant to the Water Rights. For the purposes of this Covenant, irrigation with water diverted pursuant to the Water Rights includes irrigation with wells augmented by the Water Rights. Developer further covenants and agrees that, except in compliance with the provisions of paragraph 5, below, the Property shall not be irrigated by any water tributary to the Big Thompson River.

3. Developer, at its sole expense, shall take any action necessary to accomplish the full and complete establishment of a self-sustaining dry land vegetative ground cover on all of the Property and eliminate any consumptive use of water for irrigation purposes on the Property as may be determined and/or required by a judgment and decree entered in any case involving the change or exchange of any of the Water Rights, or by the State Engineer, State of Colorado, in any approval by his office of a substitute water supply plan entered pursuant to the provisions of Section 37-92-308, Colorado Revised Statutes, as the same may be amended or replaced, during the duration of such plan. Developer further agrees that it will not take any actions that would violate such court order or decree.

4. Upon Developer's dedication of the Water Rights to the Town, Developer hereby grants to the Town a non-exclusive perpetual easement for the purpose of providing a reasonable means for the Town and its agents, as well as the State Engineer of the State of Colorado and agents thereof, to obtain access to and over the Property as may be necessary to monitor, conduct site inspections, install observation wells or lysimeters, perform soil evaporation and plant transpiration tests, vegetative studies and surveys, and take other reasonable actions to effectuate and enforce this Covenant and to confirm the dry-up and revegetation of the Property as may be required by the State Engineer or by any court or tribunal of competent jurisdiction.

5. Unless otherwise required by any decree changing the Water Rights, or allowing such rights to be exchanged, or by the conditions of any substitute water supply plan as may be approved by the State Engineer, this Covenant shall not prohibit the Developer or Developer's successors and assigns from irrigating the Property with water rights which may in the future be transferred to such Property and for such use through an appropriate Water Court proceeding, irrigating the Property with water from a well or wells to be constructed in the future that are authorized to pump pursuant to a Water Court-approved plan for augmentation, irrigating the Property with water that is not tributary to the Big Thompson River, to include not-nontributary water that is duly augmented, or irrigating the Property with treated water supplied by a municipality or a water district.

6. In the event that Developer or Developer's successors or assigns, defaults in its obligations to dry up and revegetate the Property as required by this Covenant, the easement described herein also shall entitle the Town, at Developer, or Developer's successors or assigns, to take all actions necessary to accomplish the dry-up and revegetation of the Property, including, but not limited to, the construction of drainage and conveyance ditches, monumenting dried up acreage, revegetating with drought resistance plants, and removing and filling in of all or portions of irrigation ditches or farm laterals. Developer, and Developer's successors or assigns, shall be

jointly and severally responsible for all direct and indirect costs incurred by Town to cure Developer's default.

7. The Property shall not be planted with, nor have upon it, any alfalfa or similar deep rooted crop, and any alfalfa or similar deep rooted crop presently existing, or which may exist in the future, shall be eradicated by Developer by deep tilling, chemical treatment or other means, unless otherwise allowed by the Town in a signed writing.

8. This Covenant shall burden, attach to and run with the Property, and shall be binding not only upon the Developer, but also upon Developer's successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of the Property. This Covenant shall also run with and benefit the Water Rights. The terms and provisions of this Covenant shall not expire and shall be perpetual unless specifically released in writing by the Town. This Covenant may be enforced by the Town or by any party having any right, title or interest in the Water Rights or by the State Engineer of the State of Colorado, at any time in any action at law or in equity.

9. Developer further warrants and represents that this Covenant shall entitle the Town to the first and prior right to claim credit for the dry-up or nonirrigation of the Property. Developer shall reasonably cooperate with the Town to demonstrate the dry up and revegetation of the Property. Developer agrees to provide the Town with all assistance the Town may reasonably require in regard to the above-referenced change of the Water Rights, including but not limited to providing affidavits and testimony before the Water Court, at no cost to the Town.

10. Notwithstanding the provisions of this Covenant, prior to establishing dry up of the Property as set forth herein, the Town may, in its discretion, enter into a written lease agreement with the Developer for irrigation of the Property for a limited duration. During the term of said lease agreement, the requirements of paragraphs 2-7, above, shall be suspended. The lease agreement shall not be valid, under any circumstances, once the Water Rights are used for municipal, augmentation and/or exchange purposes by the Town.

11. This Covenant may be enforced by the Town or by any party having any right, title or interest in the Water Rights or by the State Engineer of the State of Colorado, at any time in any action at law or in equity.

12. This Covenant shall be recorded in the real property records in the office of the Weld County Clerk and Recorder.

DEVELOPER

HARTFORD INVESTMENTS, LLC, a  
Colorado limited liability company

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

Patrick McMeekin  
President of Land

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 2021, by Patrick McMeekin, President of Land, Hartford Investments, LLC, for and on behalf of Developer.

WITNESS my hand and official seal.

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

My commission expires: \_\_\_\_\_

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## **EXHIBIT A**

### **Legal Description of the Property**

The SE1/4 of Section 7, in Township 4 North, of Range 67 West of the 6<sup>th</sup> P.M., County of Weld, State of Colorado excepting therefrom Right of Way conveyed to The Great Western Construction Company by Deed recorded in Book 194, Page 290 and Right of Way conveyed to The Great Western Railway Company by Deed recorded in Book 163, Page 246, Weld County Records, also except reservations contained in Patent recorded in Book 153, Page 40, and in Deed recorded in Book 50, Page 233, Weld County records.

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