

***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 \_\_\_\_\_, 2021, by Denise Hoover, owner of real property in Larimer County, Colorado (collectively, “Owner”), and accepted by the Town of Johnstown, a home rule municipal corporation of the State of Colorado (“Town”).

**RECITALS**

WHEREAS, Owner entered into an agreement with Centerra Commercial, LLC a Colorado limited liability company (“Developer”), dated on or about October 29th, 2021, whereby Owner agreed to sell, transfer and assign and Developer agreed to accept one (1) share of the Capital Stock of The Consolidated Home Supply Ditch and Reservoir Company represented by stock certificate number(s) number 5880 (“Water Rights”);

WHEREAS, Owner has historically used the Water Rights to irrigate approximately 5.91 acres of real property located in Larimer County, Colorado, depicted on Exhibit A, attached hereto and incorporated herein by reference;

WHEREAS, Owner recognizes, acknowledges and agrees that 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, for purposes of this Covenant, the term “Property” shall include all the real property described in Exhibit B, attached hereto and incorporated herein by reference, which includes the real property depicted on Exhibit A;

WHEREAS, Owner 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; and

WHEREAS, Owner 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 purchase of the Water Rights by Developer, and other good and valuable consideration, the receipt and sufficiency of which Owner acknowledges, Owner 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, Owner 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. Owner 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 South Platte River.

3. Owner, 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. Owner 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, Owner 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 Owner or Owner'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 South Platte 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 Owner, or Owner'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 Owner, or Owner'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. Owner, and Owner's successors or assigns, shall be jointly and severally responsible for all direct and indirect costs incurred by Town to cure Owner'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 Owner 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 Owner, but also upon Owner's heirs, 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. Owner 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. Owner shall reasonably cooperate with the Town to demonstrate the dry up and revegetation of the Property. Owner 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 Owner 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 Larimer County Clerk and Recorder.

OWNER

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By: Denise Hoover



**EXHIBIT A**  
**Depiction of Irrigated Parcels**



**EXHIBIT B**  
**Legal Description of Property**

EXHIBIT B  
Legal Description of Property

PROPERTY DESCRIPTION: 6231 E. Co. Rd. 18, Loveland, CO  
File No.: I-92-3554

A portion of the SE 1/4 of the SE 1/4 of Section 22, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado, being more particularly described as follows:

Considering the South line of the SE 1/4 of said Section 22 as bearing S 89°57'30" W and with all bearings contained herein relative thereto; BEGINNING at a point on the South line of the SE 1/4 of said Section 22 which bears S 89°57'30" W 650.76 feet from the SE corner of said Section 22; thence continuing along said Section line S 89°57'30" W 325.38 feet; thence N 00°05'30" E 1327.76 feet more or less to the North line of the SE 1/4 of the SE 1/4; thence along said North line N 89°54'40" E 325.38 feet; thence S 00°05'30" E 1328.03 feet to the POINT OF BEGINNING. EXCEPT the South 50 feet as dedicated for County Road purposes.



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