

**AGREEMENT CONCERNING DEDICATION OF RAW WATER
AND ESTABLISHMENT OF WATER BANK BETWEEN
TOWN OF JOHNSTOWN AND CENTERRA COMMERCIAL, LLC**

This Agreement Concerning Dedication of Raw Water and Establishment of Water Bank (“Agreement”), is made and entered into on this _____ day of _____, 2020, by and between the Town of Johnstown, Colorado, a Colorado home rule municipal corporation (“Town”), and Centerra Commercial, LLC, a Colorado limited liability company (“Developer”), collectively sometimes referred to as the “Parties.”

RECITALS

WHEREAS, Developer desires to dedicate raw water to the Town and establish a water bank account, to be known as the “Iron Horse Water Bank,” for the purpose of satisfying the water dedication requirements for that certain commercial development project known as “Iron Horse,” comprised of approximately 165 acres of property located in the Town of Johnstown and formerly known as the Spreng Annexation (the “Development”);

WHEREAS, for the initial deposit into the Iron Horse Water Bank, Developer owns and proposes to dedicate one (1) share of capital stock in the Consolidated Home Supply Ditch and Reservoir Company (the “Company”) from the two shares available in Stock Certificate No. 6649 (the “Ditch Share”); and

WHEREAS, the Town agrees, upon receipt of the conveyance of the Ditch Share, to provide Developer with a dedication credit in the amount of 6.4 acre-feet per year of raw water in the Iron Horse Water Bank; and

WHEREAS, subsequent to the execution of this Agreement, Developer may dedicate additional raw water to the Town for deposit into the Iron Horse Water Bank and, upon acceptance by the Town, obtain additional raw water credits in the Iron Horse Water Bank; and

WHEREAS, to effectuate the foregoing and create the Iron Horse Water Bank, the Parties desire to enter into this Agreement.

AGREEMENT

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. **Recitals.** The Recitals are incorporated as if fully set forth herein.
2. **Water Dedication.** On or before November 30, 2020, Developer shall contact the Company and commence the process to dedicate the Ditch Share to the Town. Developer shall take all action required by the Company and pay the fees, if any, that are required by the Company to effectuate the assignment and dedication of the Ditch Share to the Town.

3. Water Bank.

a. Creation. The Parties agree that, upon the completed dedication of the Ditch Share, there shall be created a water bank for the Development to be known as the “Iron Horse Water Bank.” The raw water credit in the Iron Horse Water Bank may be used to satisfy the water rights dedication requirements of the Development. Absent written notice from Developer and written approval of the Town, the water contained in the Iron Horse Water Bank shall not be allocated to any other use in the Town. The Town and the Developer, in its discretion, shall keep an accounting of the raw water in the Iron Horse Water Bank.

b. Initial Raw Water Credit. The Parties recognize and agree that the Ditch Share has not been adjudicated for municipal purposes. Upon Developer’s dedication to the Town of the Ditch Share, the Town agrees to credit the Iron Horse Water Bank with 6.4 acre-feet of raw water per year.

c. Subsequent Raw Water Credits. Developer may deposit additional shares of the Company, or other water shares acceptable to the Town, and the Town shall thereafter, upon acceptance, provide additional raw water credits in the Iron Horse Water Bank. The amount of the credit shall be based upon the parameters set forth in Article IV of Chapter 13 of the Johnstown Municipal Code. Upon each completed dedication of Company share(s), or of other acceptable water, the Town shall issue an “Acknowledgement of Deposit,” in the form attached as **Exhibit A**, that confirms the raw water credits issued for the dedication.

4. Water and Sewer Service Agreement. When the developer of all or a portion of the property within the Development (the “Served Property”) desires to use water from the Iron Horse Water Bank to meet the water dedication requirements associated with approved development plans and land uses for that portion of the property, said developer shall provide a water demand estimate to the Town for review by the Town’s water engineer, subject to a separate developer cost reimbursement or funds deposit agreement. Upon approval of the water demand estimate and verification of available and sufficient banked water credit by the Town’s water engineer, the Town and the developer of the Served Property shall execute a water and sewer service agreement wherein, and upon consent of the Developer, such developer shall be entitled to use raw water from the Iron Horse Water Bank. Developer’s consent to the use of the water by a developer of the Served Property shall be provided in the form of an acknowledgment attached hereto and incorporated herein by reference as **Exhibit B**.

5. Water Court Transfer Fee. At the time of, or prior to, dedication of the Ditch Share and dedication of additional raw water, Developer shall pay to the Town the then-current water court transfer fee required by Article IV of Chapter 13 of the Johnstown Municipal Code.

6. Water Assessments. Prior to dedication of the Ditch Share and prior to all subsequent raw water dedications to the Town, Developer shall have paid all water assessments

due and owing to the Company, to the Gard Lateral Ditch Company and/or to others, if any, up to the date of the dedication. The Town shall thereafter be obligated to pay future assessments on water shares assigned and dedicated to it.

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 Larimer or 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. Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be: (i) personally delivered, (ii) sent by electronic mail delivery on the condition that the recipient acknowledges receipt of the electronic mail; or (iii) mailed postage prepaid, certified mail, return receipt requested, as follows:

TO THE TOWN:

Town of Johnstown
Attn: Town Manager
450 S. Parish Ave.
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

TO DEVELOPER:

Centerra Commercial, LLC
c/o McWhinney Real Estate Services, Inc.
Attn: General Manager of Centerra
2725 Rocky Mountain Avenue, Ste. 200
Loveland, CO 80538
Email: dcrowder@mcwhinney.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

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

10. Amendment or Modification. No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

TOWN OF JOHNSTOWN, COLORADO,
a Colorado home rule municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

EXHIBIT A
Form of Acknowledgement of Deposit

**IRON HORSE WATER BANK
ACKNOWLEDGEMENT OF DEPOSIT**

This is to acknowledge and agree that Centerra Commercial, LLC, a Colorado limited liability Company, has assigned and dedicated __ shares of capital stock in the _____ Company, represented by Certificate No. __, to the Town. Based upon the dedication and in accordance with the Johnstown Municipal Code, the Town shall deposit __ acre feet of water per year into the Iron Horse Water Bank for use in connection with the development known as Iron Horse, described as follows: _____.

TOWN OF JOHNSTOWN, COLORADO,
a Colorado home rule municipal corporation

By: _____
Matt, LeCerf, Town Manager

ATTEST:

By: _____
Diana Seele, Town Clerk

