

## NON-POTABLE SYSTEM OPERATING AGREEMENT

THIS NON-POTABLE SYSTEM OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 25th day of April, 2016 by and between 2534 MASTER ASSOCIATION, , a Colorado nonprofit corporation (the "Master Association"), and the THOMPSON CROSSING METROPOLITAN DISTRICT NO. 2, a Political Subdivision of the State of Colorado ("District No. 2").

### RECITALS

A. District No. 2 has designed and constructed a non-potable irrigation system (the "System") for providing non-potable irrigation water to properties located within the 2534 Development (the "Properties") and other adjacent properties including Thompson Crossing PUD, Iron Horse, Miracle, and Thompson Crossing 2.

B. The parties have been cooperating with each other for the operation and maintenance of the System and desire to memorialize their current understanding and responsibilities in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the promise of the parties and the recitals set forth above which are incorporated herein, the parties agree as follows:

1. District No. 2 will maintain ownership of the System and all real property used by the System owned by District No. 2. The System owned by District No. 2 includes the ponds, pumps, pump houses, irrigation lines and other irrigation system improvements upstream from the water meters of the property owners served by the System, but does not include the irrigation system controllers and timers which are owned by the Master Association.

2. District No. 2 will provide liability and property insurance for the System and the operation thereof in the amount and coverages currently maintained by District No. 2. The Master Association will annually reimburse District No. 2 for the cost of this insurance.

3. The Master Association will have the following duties and responsibilities with regard to the provision of non-potable irrigation water through the System:

- a. The Master Association will perform all preventive maintenance and repairs to the System including annual winterization.
- b. The Master Association will provide water accounting for the use of non-potable water in the System as required by State Engineer's Office of the State of Colorado.
- c. The Master Association will operate controllers and timers to provide the non-potable irrigation water to the Properties.

- d. The Master Association will be responsible for operation of the System including all personnel costs and all necessary personnel for the operation and maintenance of the System.
- e. The Master Association will annually set the rates for each coming calendar year during its annual budget process. The rates shall be based on cost of service not to exceed 80% of the published non-potable rate of the Town of Johnstown, Colorado ("Town").
- f. In the event there is need for additional capital expense for the System, District No. 2 shall be responsible for providing the funds for the capital expense. The Master Association shall reimburse District No. 2 for said capital expenses out of assessments levied against its members in accordance with the Master Association's governing documents. District No. 2 will notify the Master Association of any expected capital expense at least thirty (30) days prior to incurring the expense, except in emergency circumstances.
- g. All required payments and reimbursements by the Master Association to District No. 2 shall be paid within forty-five (45) days of receipt of invoice from District No. 2 detailing the required payment and/or reimbursement except that the Master Association's reimbursement of District No. 2 for capital expenses shall be made at such time as the Master Association has received payment of the assessments levied against its members to pay such capital expenses.

4. Time of the Essence. The parties agree that time is of the essence of this Agreement and each and every term and condition hereof.

5. Default Remedies. Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either party fails to perform according to the terms of this Agreement, such party may be declared in default by written notice from the non-defaulting party to the defaulting party specifying the nature of such default and allowing a period of thirty (30) days from receipt of such notice within which to cure such default. In the event such default remains uncorrected, the party declaring the default may elect to terminate this Agreement and seek damages, treat the Agreement as continuing and require specific performance and/or damages, or avail itself of any other remedy at law or in equity.

In the event of any default hereunder by either party which shall require the party not in default to commence legal or equitable action against said defaulting party, the defaulting party shall also be liable to the non-defaulting party for all reasonable attorneys' fees and costs incurred by the non-defaulting party by reason of such default.

6. Governing Law. This Agreement shall be governed by and its terms construed under the laws of the State of Colorado.

7. No Waiver. The failure by any party to enforce any provision of this Agreement at any time shall not constitute a waiver of the right thereafter to enforce such provision or any other provision hereof.

8. Notices. Any notice or other communication given by any party to any other party relating to this Agreement shall be in writing, and shall be delivered in person, sent by certified mail, return receipt requested, sent by reputable overnight courier, or sent by facsimile transmission (with evidence of such transmission received) to such other party at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by certified mail, return receipt requested, such notice shall be deemed given on the second business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, shall be deemed effective on the first business day following deposit with such courier; and if delivered by facsimile transmission, shall be deemed effective when received:

If to the Master Association, to:

2534 Master Association  
c/o Mountain-n-Plains, Inc.  
ATTN: Justin M. Morrison  
375 E. Horsetooth Rd., Bldg. B, #100  
Fort Collins, CO 80525

If to District No. 2, to:

Thompson Crossing Metropolitan District No. 2  
ATTN: Gary Gerrard, President  
27486 County Road 13  
Loveland, Colorado 80534

9. Headings. Paragraph headings used herein are for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto.

10. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and may not be changed except by written document signed by all parties hereto. There should be deemed to be no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning this Agreement unless set forth in writing and signed by all parties hereto.

11. Further Assurances. Each of the parties agree to execute and deliver such additional instrument or instruments as the other parties hereto may from time to time request in order to carry out the intent, and effectuate the provisions, of this Agreement.

12. Third Parties. This Agreement shall not be construed as creating any rights for the benefit of any other persons or entities which are not parties to this Agreement, including, without limitation, the Town.

13. Benefit and Binding Effect. This Agreement and all of the terms and provision hereof shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns.

14. Annual Appropriations. Any financial obligation of District No. 2 shall be subject to the annual budgeting and appropriation of funds by District No. 2.

15. Town Approval. Under Article 4.1 of the Non-Potable Irrigation System Intergovernmental Agreement ("IGA") dated August 21, 2006 between the Town and District No. 2, District No. 2 is responsible for operating and maintaining the System until the System is transferred to the Town. Transfer of District No. 2's System operation and maintenance responsibility to the Master Association under this Agreement requires the written consent of the Town under Article 6.1.10 of the IGA. This Agreement is contingent upon District No. 2 obtaining and providing to the Master Association not later than 60 days after this Agreement is executed by both parties, the written consent of the Town to the transfer of the System operation and maintenance responsibility to the Master Association. If such consent is not obtained by the referenced deadline, this Agreement shall be null and void, and of no further effect.

IN WITNESS WHEREOF, the parties have executed this Non-Potable Irrigation System Development Agreement as of the day and year first above written.

2534 MASTER ASSOCIATION, a  
Colorado nonprofit corporation

By:



Todd Williams, President

THOMPSON CROSSING METROPOLITAN  
DISTRICT NO. 2, a Political Subdivision of the  
State of Colorado

By:



Gary Gerrard, President

**UNANIMOUS CONSENT TO ACTION OF THE BOARD OF DIRECTORS  
OF  
2534 MASTER ASSOCIATION  
(Non-Potable System Operating Agreement and Cost Reimbursement)**

The undersigned, being all of the Directors of 2534 Master Association, a Colorado nonprofit corporation ("Association"), acting pursuant to the Colorado Revised Nonprofit Corporation Act, unanimously consent to the following resolutions effective as of April 25, 2016:

**1. Non-Potable System Operating Agreement.**

RESOLVED that the attached Non-Potable System Operating Agreement ("Agreement") between the Association and the Thompson Crossing Metropolitan District No. 2 ("District") is approved by the Board.

FURTHER RESOLVED, that Todd Williams, as Association President, and Nathan Gerrard, as Association Secretary, are authorized and directed to sign the Agreement where their signatures are required.

**2. Reimbursement of Irrigation System Costs to District.**

WHEREAS, without funding and coordination by the District, completion of the non-potable irrigation system infrastructure and improvements for 2534 would not have been possible;

WHEREAS, Non-potable irrigation system funding and services provided were paid by the District without charging interest to or otherwise burdening the Association;

WHEREAS, the District has requested that the Association reimburse it for certain irrigation system costs incurred by the District detailed on the attached cost itemization ("Costs").

RESOLVED, that the Association will reimburse the District for the Costs with such reimbursement to be paid out of the Association's water account in accordance with a payment plan adopted and approved by the Board; and

FURTHER RESOLVED, that reimbursement of the Costs by the Association will not be paid through a Special Assessment.

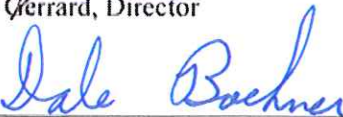
Effective as of the date set forth above.

  
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Ryan Schaefer, Director

  
\_\_\_\_\_  
Todd Williams, Director

  
\_\_\_\_\_  
Nathan Gerrard, Director

  
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Gary M. Gerrard, Director

  
\_\_\_\_\_  
Dale Boehner, Director

Town of

Johnstown

July 18, 2016

Thompson Crossing Metropolitan District No. 2  
Attn: Mr. Gary Gerrard  
1739 S. County Road 13C  
Loveland, CO 80537

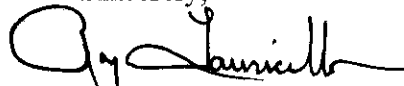
Re: Non-Potable Irrigation System Intergovernmental Agreement

Dear Mr. Gerrard,

The Non-Potable Irrigation System Intergovernmental Agreement, dated August 21, 2016, provides that Thompson Crossing Metropolitan District No. 2 ("District No. 2") is obligated to operate and maintain the non-potable irrigation system until the system is transferred to the Town of Johnstown. *See* Paragraph 4.1. The Town understands that District No. 2 desires to assign those obligations to the 2534 Master Association.

Without limiting or waiving any other rights that the Town may have under the Non-Potable Irrigation System Intergovernmental Agreement or releasing District No. 2 from any other obligations, the Town hereby approves the assignment of District No. 2's obligation to operate and maintain the non-potable irrigation system to the 2534 Master Association.

Sincerely,



Roy Lauricello  
Town Manager