

***TOWN COUNCIL***

***MEETING***

***PACKET***

**June 2, 2014**



*Town Council*

*Agenda*

**Monday, June 2, 2014**  
**Town Hall, Council Chambers**  
**450 So. Parish Avenue**  
**7:00 PM**



---

**MISSION STATEMENT**-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

---

*Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position. If you wish to speak at the Town Council meeting, please fill out a sign-up sheet and present it to the Town Clerk.*

- 1) **CALL TO ORDER**
  - A) Pledge of Allegiance
- 2) **ROLL CALL**
- 3) **AGENDA APPROVAL**
- 4) **RECOGNITIONS AND PROCLAMATIONS**
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

---

*The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to have an item discussed or if there is public comment on those ordinances marked with an \*asterisk. The Council member may then move to have the subject item removed from the Consent Agenda for discussion separately.*

---

- 6) **CONSENT AGENDA**
  - A) Town Council Meeting – May 19, 2014
  - B) Resolution No. 2014-05, Approving the Preliminary Plat with Conditions for Thompson Crossing II
- 7) **STAFF REPORTS**
- 8) **OLD BUSINESS**
- 9) **NEW BUSINESS**
  - A) Consider Water and Sewer Service Agreement for Gateway Apartments at 2534
- 11) **COUNCIL REPORTS AND COMMENTS**
- 12) **MAYOR'S COMMENTS**
- 13) **ADJOURN**

---

**WORKSESSION**

- 1) Discussion of Proposed Non-Irrigation Season Reusable Effluent Designation Agreement



**NOTICE OF ACCOMODATION**

If you need special assistance to participate in the meeting, please contact the Town Clerk at (970) 587-4664. Notification at least 72 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to the meeting.

**AGENDA ITEM 6A-B**

**CONSENT**

**AGENDA**

- **Council Minutes – May 19, 2014**
  - **Resolution No. 2014-05**  
**(Approving Preliminary Plat with**  
**Conditions)**  
**(Thompson Crossing II)**

**TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** June 2, 2014

**ITEM NUMBER:** 6A-B

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk

---

**AGENDA ITEM DESCRIPTION:** The following items are included on the Consent Agenda, which may be approved by a single motion approving the Consent Agenda:

- A) Town Council Minutes – May 19, 2014
- B) \*Resolution No. 2014-05, Approving the Preliminary Plat with Conditions for Thompson Crossing II

\*The attached Resolution approves with conditions the Preliminary Plat for Thompson Crossing II as discussed at the May 19th Council meeting.

---

**LEGAL ADVICE:** The entire Consent Agenda may be approved by a motion of the Town Council approving the Consent Agenda, which automatically approves each and every item listed on the Consent Agenda. If a Council member wishes to have a specific discussion on an individual item included with the Consent Agenda, they may move to remove the item from the Consent Agenda for discussion.

---

**FINANCIAL ADVICE:** N/A

---

**RECOMMENDED ACTION:** Approve Consent Agenda

---

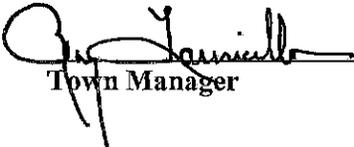
**SUGGESTED MOTION:**

**For Approval:** I move to approve the Consent Agenda.

**For Denial:**

---

**Reviewed:**

  
Town Manager

**COUNCIL  
MINUTES**

The Town Council of the Town of Johnstown met on Monday, May 19, 2014 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Romanowski led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Bert, James, Lebsack, Molinar Jr. and Townsend

Those absent were: Councilmember Mellon

Also present: Avi Rocklin, Town Attorney, Roy Lauricello, Town Manager. John Franklin, Town Planner, Brian Phillips, Chief of Police, Tom Hellen, Public Works Director and Diana Seele, Town Clerk

Agenda Approval

Councilmember Lebsack made a motion seconded by Councilmember James to approve the Agenda as submitted. Motion carried with a unanimous vote.

Consent Agenda

Councilmember James made a motion seconded by Councilmember Berg to approve the Consent Agenda with the following items included:

- May 5, 2014 - Town Council Meeting Minutes
- Payment of Bills
- April Financial Statements
- Consent for Inclusion of Property in the Johnstown Farm Metropolitan District

Motion carried with a unanimous vote.

Old Business

A. Discussion of Draft Resolution No. 2014-05, Approving the Preliminary Plat with Conditions for Thompson Crossing II. The final resolution will be considered at the June 2, 2014 meeting.

New Business

A. Consider Tavern Liquor License Renewal – Candlelight Dinner Playhouse – Councilmember James made a motion seconded by Councilmember Townsend to approve the tavern liquor license renewal for Candlelight Dinner Playhouse. Motion carried with a unanimous vote.

Executive Session

A. Conference with the Town Attorney for the Purpose of Developing Strategy for Negotiations and Instructing Negotiators Pursuant to C.R.S. 24-6-402 (4) (e) – Councilmember Townsend made a motion seconded by Councilmember Molinar Jr. to recess into Executive Session.

Johnstown, Colorado

-2-

May 19, 2014

Motion carried with a unanimous vote.

Mayor Romanowski reopened the meeting at 8:15 p.m. and the town attorney stated there was no formal action taken and the only item discussed was what was previously stated.

There being no further business to come before the Council the meeting adjourned at 8:21 p.m.

Mayor

Town Clerk/Treasurer

**RESOLUTION**

**No. 2014-05**

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO.2014-05**

**APPROVING THE THOMPSON CROSSING II  
PRELIMINARY PLAT BASED ON THE CONDITIONS  
SET FORTH HEREIN**

**WHEREAS**, TC Phase 2, LLC submitted an application for approval of a Preliminary Plat for a single family detached residential development on a 76±-acre parcel of land generally located east of Thompson Crossing residential neighborhood and adjoining Larimer County Road 3, which proposed development is referred to as Thompson Crossing II;

**WHEREAS**, on March 12, 2004, the Planning and Zoning Commission held a hearing and voted to recommend approval of the Thompson Crossing II Preliminary Plat with the following conditions:

1. Referral comments shall be resolved or addressed as special development provisions with the final plat.

2. Prior to final plat approval, the developer shall investigate neighborhood impacts of opening Tarragon Drive in adjoining Thompson Crossing to through traffic, and alternatives including emergency-only access, roadway constrictions and speed management.

3. The developer shall dedicate at final plat 30' of additional right of way for High Plains Blvd. adjoining the property, and the roadway shall be improved to at least an Interim Arterial standard. The paved roadway shall extend to the nearest paved roadway Ronald Reagan Blvd., including railroad crossing improvements. The developer may also be required to participate in a proportionate share of design and construction of access improvements on LCR3 at US Hwy 34.

and

**WHEREAS**, on May 5, 2014, the Town Council held a public hearing to consider approval of the Thompson Crossing II Design Guidelines and Preliminary Plat; and

**WHEREAS**, during such public hearing, the Town Council heard a presentation by the applicant and comments by citizens; and

**WHEREAS**, after considering all the evidence, the Town Council approved the Thompson Crossing II Design Guidelines; and

**WHEREAS**, after considering all the evidence, the Town Council approved the Thompson Crossing II Preliminary Plat contingent upon the passage of a Resolution containing conditions related to the Preliminary Plat; and

**WHEREAS**, the Thompson Crossing II Preliminary Plat is approved subject to the following conditions:

1. Referral comments shall be resolved or addressed as special development provisions with the final plat.

2. Prior to final plat approval, the developer shall work with Town staff and the Loveland Fire Authority to investigate neighborhood impacts of opening Tarragon Dr. in adjoining Thompson Crossing to through traffic, and alternatives including emergency-only access, roadway constrictions, and/or speed management, such as speed tables and digital speed signage.

3. The developer shall dedicate at final plat 30' of additional right of way for High Plains Blvd. adjoining the property, and the roadway shall be improved to at least an Interim Arterial standard. The paved roadway shall extend to the nearest paved roadway (Ronald Reagan Blvd.), including railroad crossing improvements. The developer may also be required to participate in a proportionate share of design and construction of access improvements on LCR3 at US Hwy 34.

4. The developer shall also be required to determine the cost of widening the Big Thompson River Bridge, and pay a proportionate share of that cost at the time of approval of the Thompson Crossing II Final Plat.

5. The primary access road from Larimer County Road 3 shall be placed on the north side of the Coonrad property, if such location is acceptable to the Town Traffic Engineer and meets Public Utilities Commission and Great Western Railway requirements for separation from the railroad crossing.

6. The applicant shall, in good faith, endeavor to resolve all boundary survey disputes with neighboring properties.

7. The proposed detention pond(s) shall employ water quality control measures acceptable to the Town.

8. The developer shall ensure that the Colorado Division of Wildlife reviews the relationship of the proposed development to the Big Thompson River wildlife corridor, and that the development reflects the requirements or recommendations of the Division for wildlife protection.

9. The proposed development shall minimize potential conflicts with adjoining rural properties through open space buffers, perimeter fencing and landscape screening of improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO:**

Section 1. That the Town Council hereby approves the Thompson Crossing II Preliminary Plat, subject to the above conditions.

PASSED, SIGNED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Mark Romanowski, Mayor



**AGENDA ITEM 9A**

**WATER**

**AND**

**SEWER**

**SERVICE AGREEMENT**

**(Gateway Apartments at 2534)**

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** June 2, 2014

**ITEM NUMBER:** 9A

**SUBJECT:** Consider Water and Sewer Service Agreement for Gateway Apartments at 2534

**ACTION PROPOSED:** Consider Approval of Water and Sewer Service Agreement for Gateway Apartments at 2534

**PRESENTED BY:** Town Attorney

---

**AGENDA ITEM DESCRIPTION:** In compliance with the Town's water rights dedication ordinance, the Developer, The Spanos Corporation submitted to the Town a Water and Sewer Demand Analysis on or about December 18, 2013, and it has been accepted by the Town upon a review by the Town's Water Resources Engineer. Based upon the analysis with the proposed construction of multi-family residential with clubhouse and pool, the average water demand for Gateway Apartments at 2534 with 10.5 ± acres is calculated to be 74.53 acre feet per year. Landscaping (raw water) irrigation is provided by the Thompson Crossing Metropolitan District.

The agreement is contingent upon Spanos Corporation purchasing the property and conveying the water shares to the Town.

The water requirement for this filing is 74.53 acre-feet per year. Water credits will come from Gerrard Family Limited Partnership LLLP and Thompson Ranch LLLP who previously dedicated water rights into a "water bank" under a prior agreement with the Town.

---

**LEGAL ADVICE:** The attached Water and Sewer Service Agreement was drafted by the Town's Water Attorney, Peter Ampe.

---

**FINANCIAL ADVICE:** Upon execution of the Agreement, within ten days the Town will receive water court transfer fees in the amount of \$14,900.00

---

**RECOMMENDED ACTION:** Approve the Water and Sewer Service Agreement as drafted.

---

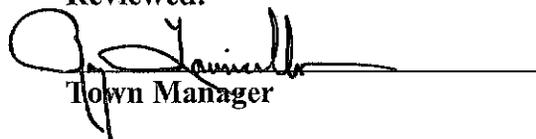
**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Water and Sewer Service Agreement for Gateway Apartments at 2534

**For Denial:** I move to deny approval of the Water and Sewer Service Agreement for Gateway Apartments at 2534

---

**Reviewed:**

  
Town Manager

# AGREEMENT

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_ day of May, 2014, by and between **THE SPANOS CORPORATION**, a California Corporation (hereinafter referred to as the "Developer") and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (hereinafter referred to as the "Town"), collectively sometimes referred to as the "Parties".

### WITNESSETH:

WHEREAS, the Developer is under contract to purchase approximately 10.47 acres of land described as Lot 1 and 2, Block 1, 2534 Filing No. 2, Town of Johnstown, Larimer County, Colorado (the "Subject Property"); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement dated December 18, 2000; and

WHEREAS, the Subject Property is being developed as an apartment complex known as Gateway Apartments at 2534 (the "Project") the location of which is more particularly described in Exhibit "A"; and

WHEREAS, on March 7, 2005, the Board of Trustees of the Town of Johnstown adopted Resolution No. 2005-08 which approved the Preliminary PUD Plan, Design Guidelines, and Preliminary Plat for the Thompson River Ranch, and, on November 4, 2013, by Resolution No. 2013-14, the Town approved an amendment to the 2534 Design Guidelines to allow the Project to be developed on the Subject Property (the "Project Approval"); and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Project.

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. **Water and Sewer Demand Studies.** In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code ("the Ordinance"), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis. Said analysis is dated December 18, 2013 and is on file with the Town and is hereby accepted by the Town. The analysis addresses all of the projected water demands for the Project on the Subject Property. Said analysis indicates that the water dedication set forth in paragraph 2 will meet the estimated potable and non-potable water supply needs for the Project as follows:

<b>Development Component</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
Apartments (in-house only)	74.24	3.71
Clubhouse and swimming pool	0.29	0.06

<b>Total</b>	<b>74.53</b>	<b>3.77</b>
--------------	--------------	-------------

It is understood that the water rights dedication for the in-building uses will be assigned to the 2534 Water Bank and that the non-potable irrigation water will be supplied by Gerrard Family Partnership LLLP and Thompson Ranch LLLP through the Farmers Ditch. The irrigation water demand is estimated at 7.87 acre-feet annually.

**2. Water Rights Dedication.** Due to previous dedications, there were 36.34 acre-feet of credit balance in the 2534 Water Bank. Two (2) shares of Consolidated Home Supply Ditch and Reservoir Company stock were conveyed to the Town of Johnstown on February 19, 2014 and an additional 7.5 shares on February 25, 2014, having Certificate Nos. 6756 and 6759, respectively, to provide the water necessary for the Project. These shares represent 76 acre-feet of raw water credit of which 74.53 acre-feet are assigned to this Project and 1.76 acre-feet remain available and added to the 2534 Water Bank for future projects.

**3. Surplus Dedication Credit.** The use of the dedication credit of 74.53 acre-feet per year will provide to Developer Raw Water Credits in excess of the water demand projected for the uses described in paragraph 1, above. The credit is calculated as follows:

Remaining Surplus Credit:	<u>112.34</u> acre-feet
LESS:	
Estimated demand:	<u>74.53</u> acre-feet
<b>Net surplus credit:</b>	<b><u>37.81</u> acre-feet</b>

**4. Commitment to Serve Water and Sewer.**

Subject to (a) the conveyance of water to the Town, as described in paragraph 2, above (the "Water Rights") and (b) Developer's payment of all required fees, the Town commits to provide to the Subject Property water service up to 74.53 acre-feet per year of water supply and the corresponding sewer service.

**5. Future review of water usage and dedication requirements.** In accordance with Section 13-68(h) of the Ordinance, the Town reserves the right to review actual water usage within the Subject Property at one point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payment if necessary based on actual water usage. If an additional water rights dedication and/or cash-in-lieu payment is required, this Agreement will be amended to detail the increased acre-feet per year of water supply that is dedicated to the Subject Property as a result of such dedication and/or cash-in-lieu payment. If such additional dedication and/or cash-in-lieu payment is required, the Town agrees that it shall not discontinue water or sewer service for a reasonable period of time, not to exceed six (6) months, to allow Developer to make such dedication or payment. If additional dedication of water is required, Developer will be subject to additional Water Court Transfer fees per the then existing Town Ordinance.

6. **Payment of Water Court Transfer fees.** Upon Developer's acquisition of fee title to the Subject Property, but before the Town issues any building permits to construct the Project, Developer shall pay to the Town the sum of Fourteen thousand nine-hundred dollars (\$14,900.00) as payment of the Water Court Transfer Fees required by the Ordinance. This payment is only for the required dedication of 74.53 acre-feet per year of estimated water demand and estimated consumptive use of 3.77 acre-feet per year (149 SFE) for the Subject Property. If a downward adjustment in demand for the Subject Property is agreed to in the future, the Water Court Transfer Fee will be adjusted/credited proportionately. Conversely, if an upward adjustment in demand is warranted based on actual water usage as described in paragraph 5, above, the Water Court Transfer Fee shall also be increased proportionately.

7. **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 personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

The Spanos Corporation  
ATTN: Peter J. Rosick  
300 S. Jackson Street, Suite 210  
Denver, CO 80209

WITH A COPY TO:

Jerri L. Jenkins  
Foster Graham Milstein & Calisher, LLP  
360 S. Garfield St. #600  
Denver, CO 80209

TO THE TOWN:

Town of Johnstown  
c/o Town Clerk  
P.O. Box 609  
101 Charlotte  
Johnstown, CO 80534

WITH A COPY TO  
THE TOWN ATTORNEYS:

Avi Rocklin  
Johnstown Town Attorney  
19 Old Town Square, Suite 238  
Fort Collins, CO 80524

Peter J. Ampe  
Hill & Robbins, P.C.  
1660 Lincoln St., Suite 2720  
Denver, CO 80264

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

8. **Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**9. Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

**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.

**11. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the prevailing Party shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

**12. Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

**13. Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

**14. Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

**15. Choice of laws.** This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

**16. Entire agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

**17. Condition Precedent.** The obligations of Developer herein are conditioned upon Developer's acquisition of fee title to the Subject Property. If (a) fee title to the Subject Property has not been conveyed to Developer and (b) the Water Rights have not been conveyed to the Town by September 30, 2014, this agreement will terminate and become null and void as to both Parties' obligations.

**18. Recordation.** After Developer's acquisition of fee title interest in the Subject Property, this Agreement may be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and, effective as of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall constitute notice of this Agreement to all persons or entities not parties hereto.

**\*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.**

*Signatures follow on separate pages*

The Spanos Corporation

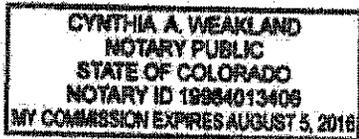
By: [Signature]  
Print Name: Alexandros Economou

Title: Regional Vice President

STATE OF COLORADO )  
 ) ss  
CITY AND COUNTY OF DENVER)

SUBSCRIBED AND SWORN to before me this 7th day of May, 2014 by Alexandros Economou of the Spanos Corporation.

Witness my hand and official seal.



[Signature]  
Notary Public  
360 So. Garfield St. 6th Floor  
Denver, CO 80209  
Address  
303-377-9810  
Telephone

My Commission Expires: 8/5/2016

TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

By: \_\_\_\_\_  
Mark Romanowski, Mayor

ATTEST:

By: \_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Avi Rocklin  
Johnstown Town Attorney

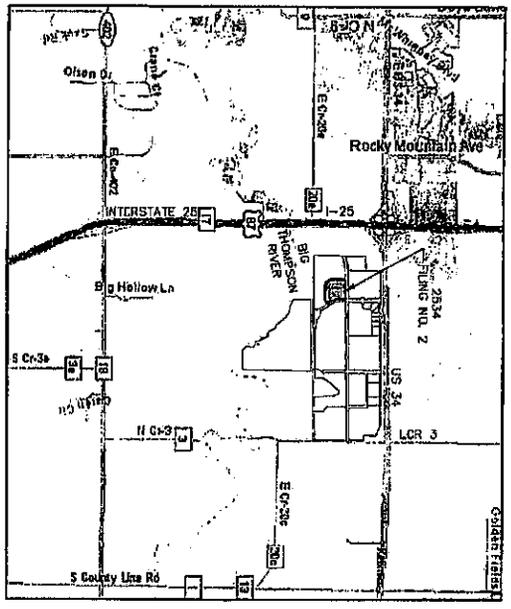
2534 FILING NO. 2  
 BEING A REPLAT OF LOT 1, BLOCK 11, 2534,  
 LOCATED IN THE NORTHEAST QUARTER OF SECTION 15, AND THE NORTHWEST QUARTER OF SECTION 14,  
 TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
 TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO

T-298 1/2

**DISCLAIMER STATEMENT**  
 THE PLANNING AND ENGINEERING FIRM HAS CONDUCTED VISUAL AND PHOTOGRAPHIC SURVEYS OF THE PROJECT AREA AND HAS FOUND THAT THE PROJECT AREA IS NOT SUBJECT TO ANY OF THE FOLLOWING DISASTERS: EARTHQUAKE, FLOODING, FIRE, COLLAPSE OF LAND, OR OTHER DISASTERS. THE PLANNING AND ENGINEERING FIRM HAS CONDUCTED VISUAL AND PHOTOGRAPHIC SURVEYS OF THE PROJECT AREA AND HAS FOUND THAT THE PROJECT AREA IS NOT SUBJECT TO ANY OF THE FOLLOWING DISASTERS: EARTHQUAKE, FLOODING, FIRE, COLLAPSE OF LAND, OR OTHER DISASTERS.

THOMPSON RANCH DEVELOPMENT CO., A DENVER CORPORATION  
 BY: *[Signature]*  
 DATE: 02-06-2006

APPROVED FOR THE STATE OF COLORADO  
 STATE OF COLORADO  
 COUNTY OF LARIMER  
 BY: *[Signature]*  
 DATE: 02-06-2006



VICINITY MAP  
 SCALE: 1" = 2000'

**SURVEYOR'S CERTIFICATE:**

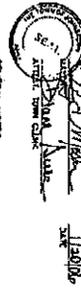
I, *[Signature]*, a duly licensed and registered professional land surveyor in the State of Colorado, do hereby certify that the survey of said plat has been made by me or under my direct supervision and that the same is correct and true in accordance with the laws of the State of Colorado.

**PLANNING APPROVAL:**

*[Signature]*  
 DATE: 02-06-2006

**LANDOWNER'S CERTIFICATE:**

THIS IS TO CERTIFY THAT I, *[Signature]*, the owner of the above described property, have approved the replat of the same and that the replat is correct and true in accordance with the laws of the State of Colorado.



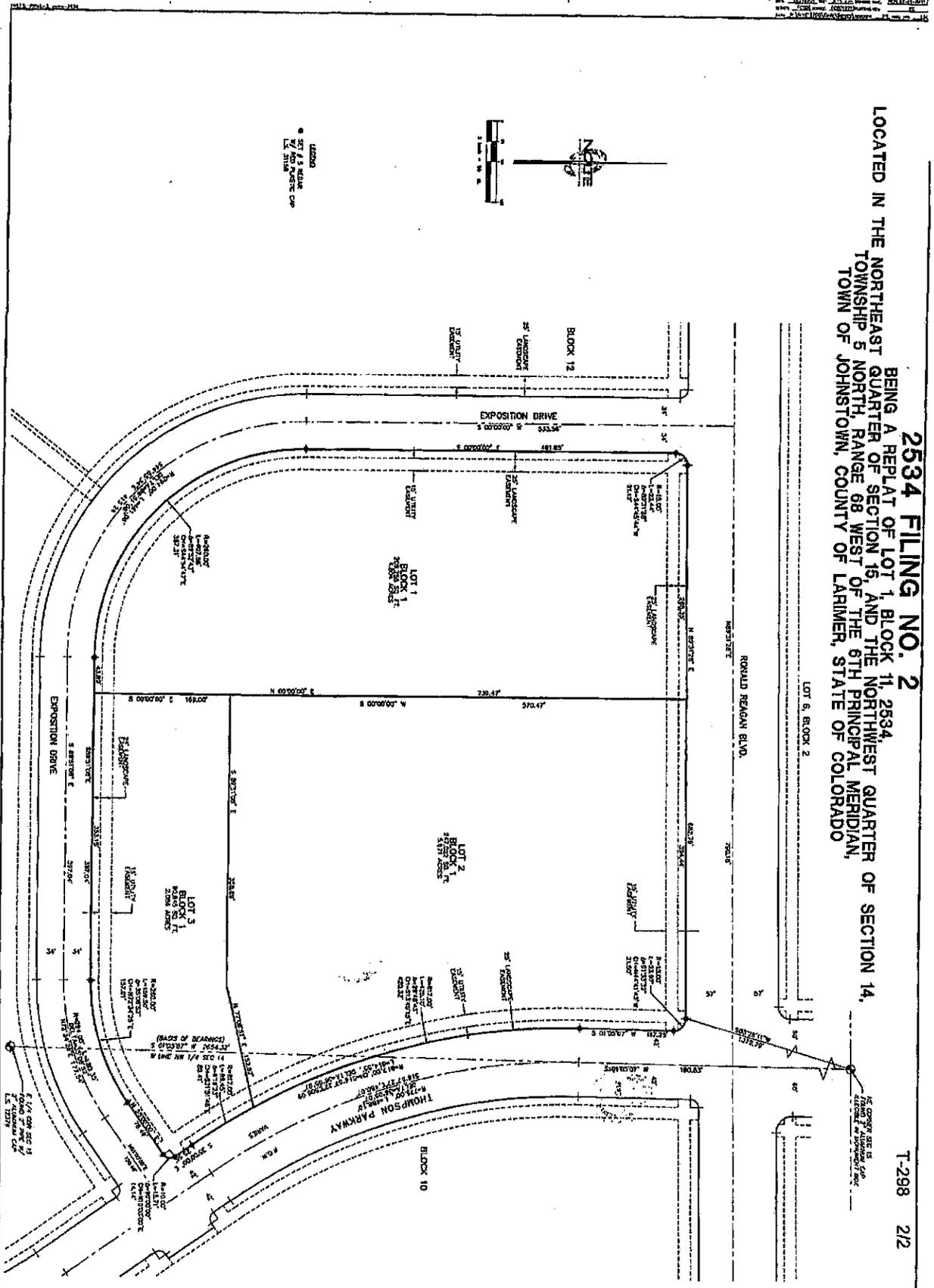
**GENERAL NOTES:**  
 1. ALL SURVEYS AND RECORDS SHALL BE OPEN TO THE PUBLIC FOR INSPECTION AT ALL REASONABLE TIMES AND AT THE OFFICE OF THE SURVEYOR.  
 2. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SURVEY AND THE CORRECTNESS OF THE RECORDS.  
 3. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE RECORDS.

 1000 SHARP POINT DRIVE, SUITE A FORT COLLINS, CO 80501 970.221.1100 FAX 970.221.1100	2534 FILING NO. 2 A REPLAT OF LOT 1, BLOCK 11, 2534 JOHNSTOWN, COLORADO	PREPARED FOR: THOMPSON RANCH DEVELOPMENT CO. DATE SUBMITTED: 02/16/06
	THE PLANNING AND ENGINEERING FIRM HAS CONDUCTED VISUAL AND PHOTOGRAPHIC SURVEYS OF THE PROJECT AREA AND HAS FOUND THAT THE PROJECT AREA IS NOT SUBJECT TO ANY OF THE FOLLOWING DISASTERS: EARTHQUAKE, FLOODING, FIRE, COLLAPSE OF LAND, OR OTHER DISASTERS.	

LOCATED IN THE NORTHEAST QUARTER OF SECTION 15, BLOCK 11, 2534 TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO

**2534 FILING NO. 2**

T-298 212



<p><b>NOLTE</b> BEYOND ENGINEERING</p> <p>100 SHAW POINT DRIVE, SUITE A, FORT COLLINS, CO 80504 970.221.5910 TEL 970.221.4910 FAX WWW.NOLTE.COM</p>	<p><b>2534 FILING NO. 2</b> REPLAT OF LOT 1, BLOCK 11, 2534 JOHNSTOWN, COLORADO</p>		<p>DATE SUBMITTED: 09/18/08</p>
	<p>PREPARED FOR: THOMPSON RANCH DEVELOPMENT CO.</p>		



# **WORKSESSION**

**(Discussion of Proposed Non-Irrigation  
Season Reusable Effluent Designation  
Agreement)**

**PROPOSED  
NON-IRRIGATION SEASON  
REUSABLE EFFLUENT  
DESIGNATION AGREEMENT**

**NON-IRRIGATION SEASON REUSABLE EFFLUENT DESIGNATION AGREEMENT**

THIS AGREEMENT is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between WR Investment, LLC (hereinafter referred to as the "Owner"), and the TOWN OF JOHNSTOWN, a Colorado municipal corporation, (hereinafter referred to as "the Town").

**RECITALS**

A. WR Investment, LLC and the Town entered into the Water and Sewer Service Agreement on January 4, 2006 (the "WSSA") for the purpose of setting forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand, and a commitment by the Town for water and sewer service for the Thompson River Ranch Project (hereinafter referred to as the "Project").

B. Owner plans to provide non-potable irrigation water for the Project.

C. Pursuant to the terms and conditions of the WSSA, certain water rights were dedicated to the Town for the purpose of providing potable and non-potable water for anticipated water needs for the Project which water rights are more fully set forth in Paragraph 2 of the WSSA.

D. In order to provide augmentation water supplies to the Project during that period of time when the Hillsborough Ditch is not running water, it is necessary for the Owner to acquire augmentation water from the Town.

E. The Town, in order to maximize yield of the Town's municipal water system, needs wholly consumable water in July and August of any given year.

F. Owner intends to file an application in the District Court, Water Division No. 1 (the "Water Rights Case") for purposes which include determining and quantifying the historical return flows attributable to the use of the Priority No. 1 Right transferred to the Town pursuant to the terms and conditions of the WSSA, including the amount of predicted shortages of historical return flows during the non-irrigation season after taking into account the uses of water and return flows associated with the Project ("Non-Irrigation Season Depletions").

G. The Parties desire to enter into this Agreement to maximize the provision of non-potable water to the Project by the Owner and provide wholly consumable water to the Town to provide greater efficiency in the Town's municipal water system.

**NOW, THEREFORE**, the parties agree as follows:

## **AGREEMENT**

**1. Points of Delivery.** The Town delivers municipal effluent to the Big Thompson and Little Thompson Rivers through facilities owned and operated by the Town including the following:

(i) Low Point Waste Water Treatment Plant Outfall. Located in NW ¼ of NW ¼ of Section 24, T5N, Range 68 West, 6th PM, 1250 feet from the West Section line and 445 feet from the North Section line.

(ii) Town of Johnstown, Central Waste Water Treatment Plant: Located in NE/4 of NE/4 of Section 10, Township 4 North, Range 67 West of the 6th P.M.

**2. Prior Decrees.** The Town is entitled to reuse to extinction a certain portion of its municipal effluent accruing to the Little Thompson and Big Thompson Rivers through the structures described above by virtue of the decrees in Case Nos. 90CW202 and 98CW410.

**3. Monthly and Annual Amounts of Delivery - Town.** The Town hereby agrees to designate and deliver to the Big Thompson River a portion of its reusable effluent in amounts necessary to replicate Non-Irrigation Season Depletions attributable to use of the Priority No. 1 Right for the Project as determined by a decree entered in the Water Rights Case up to maximum monthly amount of up to 22.7 acre-feet for each month, September through May, provided that the combined total of such deliveries shall not exceed 147.6 acre-feet in any September through May period.

**4. Delivery By Owner.** The Owner hereby agrees to allocate to the Town in July and August, from the water rights dedicated to the Town under the WSSA, a corresponding amount of wholly consumable water immediately following the applicable September through May period.

**5. Records.** The Parties shall keep records of the deliveries described in Paragraphs 3 and 4, and provide copies of such records to each other and the Division Engineer on a monthly basis.

**6. Satisfaction of Requirements under Water Agreement;** Unless and until Owner files an application and obtain a decree of the District Court, Water Division 1 approving such application on terms acceptable to the Town quantifying the Non-Irrigation Season Depletions, the Town shall have no obligation to provide reusable effluent to Owner under paragraph 3 of this Agreement.

**7. Term.** This Agreement is perpetual, and binds and benefits the Parties, their respective successors, and assigns.

**8. 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 personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO OWNER:

WR Investment, LLC  
Attn: Tim Wiens  
8001 Arista Place, Suite 600  
Broomfield, CO 80021

TO THE TOWN:

Town of Johnstown  
c/o Town Clerk  
P.O. Box 609  
101 Charlotte  
Johnstown, CO 80534

WITH A COPY TO:

Gregory A. White  
1423 W 29<sup>th</sup> Street  
Loveland, CO 80538

WITH A COPY TO  
THE TOWN ATTORNEY:

Avi S. Rocklin  
Johnstown Town Attorney  
19 Old Town Square Suite 238  
Fort Collins, CO 80524

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

**9. Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**10. Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

**11. 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.

**12. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the prevailing Party shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

**13. Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

**14. Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

**15. Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

**16. Choice of laws.** This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

**17. Entire agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

**18. Recordation.** This Agreement shall be recorded by the Town at Owner's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and shall constitute notice of this Agreement to all persons or entities not parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.



TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

By: \_\_\_\_\_  
Mark Romanowski, Mayor

ATTEST:

By: \_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Avi S. Rocklin  
Johnstown Town Attorney

**2006**

**WATER/SEWER**

**SERVICE AGREEMENT**

**(WR INVESTMENT, LLC)**

RCPTN# 2006-0014939  
PAGES - 13 FEE \$66.00 DOC \$0.00

SCOTT DOYLE, CLERK  
LARIMER COUNTY CO  
03/02/2006  
08:00:00  
#571644

RCPTN# 2006-0007252  
PAGES - 9 FEE \$46.00 DOC \$0.00

SCOTT DOYLE, CLERK  
LARIMER COUNTY CO  
01/30/2006  
16:52:00  
#562587

### WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 14 day of January, 2006, by and between **WR INVESTMENT, LLC**, a Colorado limited liability company (hereinafter referred to as the "Owner") and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (hereinafter referred to as "the Town"), collectively sometimes referred to as "the Parties",

**WORK SESSION**

#### WITNESSETH:

WHEREAS, the Owner owns an interest in a portion of approximately 1109.18 acres of land located in portions of Sections 14, 15, 22, 23, and 24, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., Larimer County, Colorado and described more particularly in Exhibit "A", attached hereto and incorporated herein by this reference ("the Subject Property"); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement between Thompson Ranch, LLLP, The Gerrard Family Limited Partnership, Joel H. Wiens, and Rite-A-Way Industries, Inc., as Owner, and the Town dated December 18, 2000; and

WHEREAS, approximately 661 acres of the Subject Property are being developed as the Thompson River Ranch Project (the "Project") the location of which is more particularly described in Exhibit "B"; and

WHEREAS, on March 7, 2005, the Board of Trustees of the Town of Johnstown adopted Resolution No. 2005-08 which approved the Preliminary PUD Plan, Design Guidelines, and Preliminary Plat for the Thompson River Ranch (the "Project Approval"); and

WHEREAS, the parties entered into a Water and Sewer Service Agreement dated the 19<sup>th</sup> day of July 2005 for Filing No. 1 of the Project; and

WHEREAS, at the time of entering into the Water and Sewer Service Agreement, the parties contemplated reaching an agreement for the dedication of the water rights set forth herein for the purpose of providing the necessary amount of water rights for the entire Thompson River Ranch Project; and

WHEREAS, the Owner and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Thompson River Ranch Project.

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. **Water and Sewer Demand Studies.** In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown

TOWN OF JOHNSTOWN  
PO BOX 609  
JOHNSTOWN CO 80534

Municipal Code ("the Ordinance"), Owner has submitted to the Town a preliminary Water and Sewer Demand Analysis. Said analysis is dated November 5, 2003. That analysis was supplemented by additional information requested by the Town as to consumptive use, water supply, water demand, and other related information on March 10, 2004, April 8, 2004, January 27, 2005, March 11, 2005, and April 14, 2005, and is on file with the Town and is hereby accepted by the Town. The analysis addresses all of the projected water demands for the Thompson River Ranch Project on the Subject Property. Said analysis indicates that the water dedication set forth in paragraph 2 will meet the estimated potable and non-potable water supply needs for the Thompson River Ranch Project as follows:

<b>Development Component</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
1539 Single Family Residences (in-house only)	507.9	25.40
100 Multi-Family Units (in-house only)	29.0	1.45
1 Community Center (in-building use only)	6.3	0.32
Church(es) (in-building use only)	1.8	0.09
Residential Landscape Irrigation (77.7 acres)	200.1	170.08
Common Areas Irrigation (186.3 acres)	399.1	339.24
<b>Total</b>	<b>1144.2</b>	<b>536.58</b>

**2. Water Rights Dedication.** Within thirty (30) days following execution of this Agreement, Owner shall dedicate to the Town the following described water rights (hereinafter collectively referred to as "the Hillsborough Water Rights"):

- A. 4.695 cubic feet per second (c.f.s) out of 63.31 c.f.s. originally decreed to the Big Thompson Ditch as Priority No. 1 in former Water District No. 4 and subsequently transferred to the Hillsborough Ditch, having an appropriation date of November 10, 1861 and an adjudication date of May 28, 1883 as decreed by the District Court, Boulder County.
- B. 1.65 c.f.s. out of 8.25 c.f.s. decreed to the Hillsborough Ditch as Priority No. 25 in former Water District No. 4, having an appropriation date of Oct 15, 1874 and an adjudication date of May 28, 1883 as decreed by the District Court, Boulder County.

Dedication of the Hillsborough Water Rights shall be by special warranty deed accompanied by an attorney's title opinion, on which the Town can rely, stating that the Owner owns good and marketable title to the Hillsborough Water Rights proposed for dedication, free and clear of all encumbrances.

The parties acknowledge that pursuant to the previous Water and Sewer Service Agreement Owner has dedicated 34 shares of stock in the Consolidated Home Supply Ditch and Reservoir Company and 20/120<sup>th</sup> shares of the Big Thompson Ditch and Manufacturing Company. Within ten (10) days of the dedication of the Hillsborough Water Rights set forth in Paragraph 2 (a) and (b) above, the Town shall reassign 24 shares of the Consolidated Home Supply Ditch and Reservoir Company to Owner by good and sufficient assignment, free and clear of all encumbrances. The Town shall retain ten (10) shares of the Consolidated Home Supply Ditch and Reservoir Company and 20/120<sup>th</sup> shares of the Big Thompson Ditch and Manufacturing

Company which, along with the Hillsborough Water Rights, are necessary to meet the projected water demands for the Thompson River Ranch Project.

3. **Transfer Case and Storage.** The Hillsborough Water Rights described above are not presently adjudicated for municipal use. Owner, shall therefore, at its own cost, and in consultation with the Town water attorney, cause such rights to be lawfully changed pursuant to a valid decree issued by the District Court, Water Division 1 having terms and conditions that are acceptable to the Town. Owner may assign its obligation to prosecute the said water rights change case to the Thompson Crossing Metropolitan District No. 1 or No. 3. The decree shall, among other things, provide for the following.

- A. The ability for the Town to divert water attributable to the above-described Hillsborough Water Rights from the Big Thompson River through the Hillsborough Ditch into the Town's water system treatment plant and store and use such diverted water for all municipal uses within the Town's service area subject to the terms and conditions of the decree; provided that any such terms and conditions included in any decree obtained by Owner are acceptable to the Town.
- B. A dependable supply sufficient in quantity to meet the potable and non-potable needs of the Project not satisfied by the other water rights previously dedicated to the Town. The decree shall also provide for an exchange of reusable effluent from the outfall of the Low Point Waste Water Treatment Plant to the Hillsborough Ditch headgate.
- C. The parties agree that in the event Owner is unable, within two and one-half (2½) years of this Agreement, or such other time period mutually agreed to by the parties, which agreement shall not be unreasonably withheld, to secure a Final Decree acceptable to the Town pursuant to paragraph 3A. and B., or if any such Final Decree does not authorize diversion of the Hillsborough Water Rights for municipal use in a quantity sufficient to meet the necessary raw water right dedication requirements for the Project as the same is set forth in paragraph 1, above, or if the total number of taps issued for the development exceeds 205 prior to completion of the pipeline described in paragraph 5, Owner shall be responsible for providing the necessary amount of raw water rights acceptable to Johnstown, to meet the raw water dedication requirements for any additional taps in the form of either Consolidated Home Supply shares or C-BT Units. Said raw water rights shall be dedicated to the Town within sixty (60) days after either (1) the expiration of the two and one-half year deadline, or any mutually agreed upon extension thereof, (2) entry of the insufficient Final Decree; or (3) the Town provides notice to the Owner that 205 taps have been issued for the development and the pipeline described in paragraph 5 has not yet been completed, whichever is applicable. In the event that subsequent to such dedication a Final Decree is entered which meets the requirements of paragraph 3 A. and B. and the pipeline has been completed, or the Town has determined not to build the pipeline, the Town shall re-convey to Owner any water dedicated to the Town pursuant to this subparagraph C.

4. **Storage Facilities.** It is recognized that to fully utilize the Hillsborough Water Rights for municipal purpose and meet return flow obligations, approximately 103 acre-feet of additional storage capacity will be required. Accordingly, Owner, at its sole expense, shall

create lined storage facilities at a location to be approved by the Town. It is agreed that an acceptable location for the said storage facilities may be on land on which the Low Point Wastewater Treatment Plant is located, subject to the Town removing certain clouds on the title to a portion of such land. If the Town proceeds to remove such clouds on title, the Owner shall also reimburse the Town for all costs involved in that effort over and above \$125,000.00. The plans and specifications for such storage facilities shall be subject to approval by the Town. In conjunction with the start of Phase II of the Project, no less than 103 acre-feet of such storage shall be constructed by the Owner or, the Thompson Crossing Metropolitan District No. 1 or No. 3, if, and to the extent, that such obligation is assigned to the said District(s). The regulatable storage of other ponds constructed by the Owner within the Subject Property shall count toward this storage obligation. Upon completion, such storage facilities shall be conveyed to the Town.

**5. Pipeline Cost.** To fully utilize the Hillsborough Water Rights described in Paragraphs 2 (a) and (b), the Town may need to construct a pipeline from a location on the Hillsborough Ditch to the Town's municipal water system. The Town anticipates construction of such a pipeline within one (1) year after entry of a final decree in substantial compliance with the requirements of paragraph 3. A and B, above. The Town shall make the decision to construct the pipeline within sixty (60) days of the entry of the above referenced Final Decree. In the event that the Town determines not to build the pipeline within the one (1) year period referenced above, the Town shall re-convey to Owner any additional water dedicated to the Town pursuant to subparagraph 3 (C) of this Agreement. Owner, in consultation with the Town's consultants, has prepared and submitted a Memorandum dated October 20, 2005 which estimates the cost of a pipeline from the Hillsborough Ditch to the Town's municipal water system as \$1,335,000. The Town has reviewed said Memorandum and has accepted the cost of the pipeline as stated therein.

Owner has agreed, as more fully stated in Paragraph 3 of this Agreement, to adjudicate the Hillsborough Water Rights for municipal use. The Final Decree will contain an average annual yield of the Hillsborough Water Rights available for diversion. The Water and Sewer Demand Studies, as more fully set forth in Section 1 of this Agreement, indicate an average annual yield of 1240 acre-feet a year. The Water and Sewer Demand Studies also show that the average annual yield of the Hillsborough Water Rights required for buildout of the Project is 1,013 acre-feet a year resulting in a surplus average annual yield of 227 acre-feet of fully consumable water that is divertible only during the irrigation season. The actual average annual yield in the Final Decree may be a greater or lesser amount.

The Town's Water Rights Dedication Ordinance specifies that 0.5 acre-feet per year is required for each SFE. The actual annual average acre-feet yield in the Final Decree over and above the 1,013 acre-feet average annual yield per year required for the Project shall be valued based on the fair market value ("fmv") per acre foot of yield of the Hillsborough Water Rights as determined by an appraiser to be selected within sixty (60) days of the date of this Agreement by mutual agreement of the Town and the Owner. The appraiser's determination of fair market value shall be based on the highest and best use of the Hillsborough Water Rights. This is not necessarily the current use of the Hillsborough Water Rights. Rather, it is the highest and most profitable use that is reasonably probable and not based on speculation or conjecture. The Town and the Owner shall each be responsible for payment of 50% of the appraiser's fee. For

example, if the Final Decree contains the same average annual yield as the Water and Sewer Demand Studies, the following calculation would be made:

$$227 \text{ acre-feet/year surplus} \times \text{fmv per acre-foot}$$

In the event the value of the surplus average annual yield of Hillsborough Water Rights set forth in the Final Decree as calculated above is less than \$1,335,000 (the cost of the pipeline), the Owner shall pay to the Town in cash or certified funds the difference within ninety (90) days of the date of issuance of the Final Decree by the Water Court for the Hillsborough Water Rights.

In the event that the amount of the surplus average annual yield as calculated above is greater than \$1,335,000, the Owner shall be entitled a SFE credit, which the Owner may transfer to third party for use by said third party as a raw water dedication credit to the Town's municipal water system. For example, using the same average annual yield as the Water and Sewer Demand Studies, the following calculation would be made:

$$(227 \times \text{fmv per acre-foot}) - \$1,335,000 = \$X / \text{fmv per acre-foot} \times 2 = \text{SFE credit}$$

**6. Commitment to serve water and sewer.**

- A. Subject to Owner's performance of all the covenants contained herein and payment of all required fees including, but not limited to, the Raw Water Development Fee, the Town commits to provide to the Thompson River Ranch Project municipal water service and water supply and the corresponding sewer service for the proposed development as set forth in paragraph 1, above..
- B. Water taps shall be issued by the Town upon delivery of the appropriate number of Water Certificates pursuant to the terms and conditions of Article 5 of the Water Service Intergovernmental Agreement dated January 5, 2004, between the Town and Thompson Crossing Metropolitan District No. 1. Sewer taps shall be issued by the Town upon delivery of the appropriate number of Low Point Plant Investment Fee Certificates pursuant to the terms and conditions of Article V of the Low Point Wastewater Service Intergovernmental Agreement dated November 18, 2002, between the Town and the Thompson Crossing Metropolitan District No. 1.

**7. Water Court Transfer and Ditch fees.** Pursuant to the provisions of Paragraph 3 herein, the Owner shall be responsible for the adjudication of all the Hillsborough Water Rights for municipal use. The cost of said water court adjudication shall be the sole responsibility of Owner. As such, the water court transfer fees required by the Town's Water Rights Dedication Ordinance are hereby waived for the Hillsborough Water Rights. Owner has previously paid the sum of FIFTY-EIGHT THOUSAND NINE HUNDRED SEVENTEEN DOLLARS (\$58,917.00) as payment of water court transfer fees for the previously dedicated 34 shares of the Consolidated Home Supply Ditch and Reservoir Company and the 20 / 120<sup>th</sup> share of the Big Thompson Ditch and Manufacturing Company. Upon the dedication of the Hillsborough Water Rights as set forth in Paragraph 2 above, Johnstown shall reimburse Owner the sum of THIRTY-EIGHT THOUSAND FOUR HUNDRED DOLLARS (\$38,400.00) for

water court transfer fees previously paid by Owner attributable to the 24 shares of Consolidated Home Supply Ditch and Reservoir stock being reassigned to Owner pursuant to the terms and provisions of this Agreement. Owner shall also be responsible for payment of any fee that the owner of the Hillsborough Ditch may charge for conveyance of water for use by the Town pursuant to any decree entered in the decree contemplated in paragraph 3, above.

**8. 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 personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO OWNER:

WR Investment, LLC  
Attn: Mike Byrne  
555 Eldorado Blvd, Suite 200  
Broomfield, CO 80021

WITH A COPY TO:

Gregory A. White, Esq.  
1423 W 29<sup>th</sup> Street  
Loveland, CO 80538

TO THE TOWN:

Town of Johnstown  
c/o Town Clerk  
P.O. Box 609  
101 Charlotte  
Johnstown, CO 80534

WITH A COPY TO  
THE TOWN ATTORNEY:

R. Russell Anson  
Johnstown Town Attorney  
P O Box 336155  
Greeley, CO 80633

Mark J. Wagner  
Hill & Robbins, P.C.  
1441 18<sup>th</sup> Street, Suite 100  
Denver, CO 80202

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

**9. Default.** In the event of default by either Party hereunder the non defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**10. Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be; binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

11. **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.

12. **Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the prevailing Party shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

13. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

14. **Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

15. **Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

16. **Choice of laws.** This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

17. **Entire agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

18. **Recordation.** This Agreement shall be recorded by the Town at Owner's expense in the office of the Clerk and Recorder of Larimer County, Colorado, shall run with the Subject property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Owner and shall constitute notice of this Agreement to all persons or entities not parties hereto.

19. **Previous Agreement.** Upon the execution of this Water and Sewer Service Agreement by the parties, the terms and conditions of the Water and Sewer Service Agreement dated July 19, 2005 between the parties shall terminate and be in no further force and effect, and the provisions of this Water and Sewer Service Agreement shall govern all of the matters stated herein.

\*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

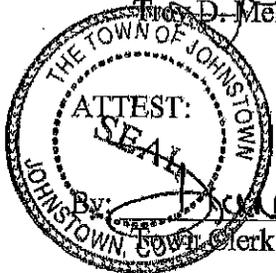
*Signatures follow on separate pages*



52/9

TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

By: [Signature]  
Fred D. Mellon, Mayor



By: [Signature]  
Town Clerk

APPROVED AS TO FORM:

[Signature]  
R. Russell Anson  
Johnstown Town Attorney

