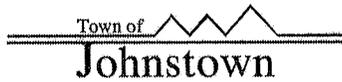


***TOWN COUNCIL***

***MEETING***

***PACKET***

**June 6, 2016**



*Town Council*

*Agenda*  
Monday, June 6, 2016  
Town Hall, Council Chambers  
450 So. Parish Avenue  
7:00 PM



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**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."*

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*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)

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*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.*

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- 6) **CONSENT AGENDA**
    - A) Town Council Meeting Minutes –May 16, 2016
  - 7) **STAFF REPORTS**
  - 8) **OLD BUSINESS**
  - 9) **NEW BUSINESS**
    - A) Administer Oath of Office to Newly Appointed Council Member
    - B) Consider Water and Sewer Service Agreement – Johnstown Plaza, LLC
  - 10) **EXECUTIVE SESSION**
    - A) For a Conference with the Town Attorney and the Town's Special Counsel for the Purpose of Receiving Legal Advice Pursuant to 24-6-402(4)(b), C.R.S.
  - 11) **COUNCIL REPORTS AND COMMENTS**
  - 12) **MAYOR'S COMMENTS**
  - 13) **ADJOURN**
- 

**WORK SESSION**

- 1) Discussion of Johnstown Plaza, LLC



**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**

**CONSENT**

**AGENDA**

- **Council Minutes – May 16, 2016**

**TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** June 6, 2016

**ITEM NUMBER:** 6A

**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 16, 2016

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**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.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve Consent Agenda

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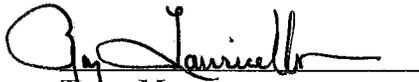
**SUGGESTED MOTION:**

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

**For Denial:**

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**Reviewed:**

  
Town Manager

**COUNCIL  
MINUTES**

The Town Council of the Town of Johnstown met on Monday, May 16, 2016 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor James led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Lebsack, Mitchell, Molinar Jr. and Young

Those absent were: Councilmember Mellon

Also present: Avi Rocklin, Town Attorney, Roy Lauricello, Town Manager, Brian Phillips, Chief of Police and Diana Seele, Town Clerk/Treasurer

Agenda Approval

Councilmember Lebsack made a motion seconded by Councilmember Molinar Jr. to approve the Agenda. Motion carried with a unanimous vote.

Consent Agenda

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

- May 2, 2016 Town Council meeting minutes
- Payment of Bills
- April Financial Statements

Motion carried with a unanimous vote.

New Business

A. Public Hearing – 2534 Filing No. 15, Replat of Lot 5, 2534 Filing No. 12 – The owner, Gerrard Family Limited Partnership submitted a request for approval of a final plat/re-plat of land located in the 2534 subdivision. The purpose of the replat is to dedicate a southern extension of Trade Street as a public right-of-way. The proposed street is currently platted as a private access easement with utility easement for public water and sewer. The replat contains 8.199 acres overall and includes the proposed Trade Street right-of-way and one lot of 6.783 acres. The zoning of the property is Planned Unit Development Mixed Use.

Mayor James opened the public hearing at 7:13 p.m. and heard from the applicant and from Mr. Ryan Schaffer supporting the plat/replat. Having no further comments Mayor James closed the hearing at 7:42 p.m.

Councilmember Mitchell made a motion seconded by Councilmember Young to approve maintaining the road known as Trade Street and approve the Final Plat for 2534 Filing No. 15 subject to the planning and zoning conditions: 1. The public improvements within the proposed Trade Street ROW shall be constructed by the Gerrard Family Limited Partnership, LLLP

(hereinafter "LLLP") or the Thompson Crossing Metropolitan District No. 1 (hereinafter "District") and shall be constructed in accordance with the Town of Johnstown's and the Loveland Fire Rescue Authority's standards and requirements with costs of conformance assurance incurred by the Town or the Authority reimbursed by the LLLP or the District, as appropriate; 2. The LLLP shall enter into a Public Improvements Development Agreement (hereinafter "PIDA") with the Town which should include, among other provisions, the schedule for the development, the Town's acceptance requirements, the maintenance requirements, the maintenance obligations and the delivery of a maintenance guarantee, all of which pertain to the public improvements within the proposed Trade Street ROW and collectively shall be referred to as the PIDA Provisions. Any proposed PIDA including any or all the proposed PIDA Provisions may be accepted or rejected at the sole discretion of the Town of Johnstown. Motion carried with a unanimous vote.

B. Consider Water and Sewer Service Agreement – Scheels All Sports Inc. – A water and sewer demand analysis was submitted and based upon the analysis the average in building water demand for Scheels is calculated to be 4.65 acre-feet per year and the irrigation demand is estimated to be 7.42 acre feet per year. Scheels will be purchasing the in-building water (0.58) shares of Home Supply from the Town's water supplies and agreed to pay \$49,300 for the use of the water. Councilmember Lebsack made a motion seconded by Councilmember Mitchell to approve the Water and Sewer Service Agreement for Scheels at 2534 and authorize the Mayor to sign it. Motion carried with a unanimous vote.

C.. Consider Resolution No. 2016-07, Financial Match Support for North I-25 TIGER and FASTLANE Grant Applications – Councilmember Molinar Jr made a motion seconded by Councilmember Lebsack to approve Resolution No. 2016-07. Motion carried with a unanimous vote.

D. Consider Award of Contract to A-1 Chipseal Company for 2016 Chip Seal Project - . Councilmember Young made a motion seconded by Councilmember Lebsack to award the contract for the 2016 Chip Seal Project to A-1 Chipseal Company for a total price not to exceed \$250,000 and authorize the Mayor to sign the agreement. Motion carried with a unanimous vote.

E. Consider Appointment of Councilmember – Councilmember Mitchell made a motion seconded by Councilmember Molinar Jr. to appoint Devin Davis as Councilmember to an unexpired term ending April, 2018. Motion carried with a unanimous vote.

There being no further business to come before the Council the meeting adjourned at 8:08 p.m.

Mayor

Town Clerk/Treasurer



**AGENDA ITEM 9A**

**ADMINISTER**

**OATH**

**OF**

**OFFICE**

**(Newly Appointed Council Member)**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** June 6, 2016

**ITEM NUMBER:** 9A

**SUBJECT:** Administer Oath of Office – Newly Appointed Council Member

**ACTION PROPOSED:** Administer Oath of Office to Newly Appointed Council Member

**PRESENTED BY:** Town Clerk

**AGENDA ITEM DESCRIPTION:** Section 2.4 C., (Term of Office; Time of Taking Office; Oath) of the Town Charter provides, in part, for the following:

*“Before taking office, the Mayor and each Council member shall take and file with the Town Clerk an oath or affirmation to support the United States Constitution, the Colorado Constitution, the Charter, ordinances and codes of the Town and to faithfully perform the duties of the office.”*

The Town Clerk will be administering the following oath of office to the newly appointed council member:

*“I (name of individual), do solemnly swear by the ever living God, that I will support the Constitution of the United States of America and of the State of Colorado, the Charter, ordinances and codes of the Town of Johnstown, and faithfully perform the duties of the office of (name of office) upon which I am about to enter.”*

**\*Note:** An affirmation is also available, if desired.

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**LEGAL ADVICE:** N/A

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**FINANCIAL ADVICE:** N/A

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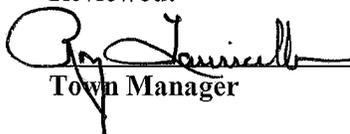
**RECOMMENDED ACTION:** Administer oath of office to the newly appointed council member

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**SUGGESTED MOTION:** N/A

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**Reviewed:**

  
Town Manager



**AGENDA ITEM 9B**

**WATER  
AND  
SEWER  
SERVICE AGREEMENT  
(Johnstown Plaza, LLC)**

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** June 6, 2016

**ITEM NUMBER:** 9B

**SUBJECT:** Consider Water and Sewer Service Agreement for Johnstown Plaza, LLC (“WSSA”)

**ACTION PROPOSED:** Consider Approval of Water and Sewer Service Agreement for Johnstown Plaza, LLC

**PRESENTED BY:** Town Attorney

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**AGENDA ITEM DESCRIPTION:** To facilitate the development of Johnstown Plaza, the developer, Johnstown Plaza, LLC, requested that the Town grant it the right to use water from the Town’s share of water supplies to serve the in-building water demands and the water fountain needs of the shopping center. The attached form of agreement creates a water bank, allowing the developer to use up to and including four and one-half (4.5) shares of the Consolidated Home Supply Ditch and Reservoir Company (up to 36 acre-feet per year) from the shares owned by the Town for the in-building water demands and the water fountain needs.

At this time, the developer does not know the precise water needs of the shopping center because it has not finished leasing the space or developing the fountain areas. (For example, a restaurant would require more water than a retail store.) When the developer seeks to develop any portion of the property, the developer would be required to submit a preliminary analysis with an estimated average annual water demand for that portion of the development. Upon approval of the preliminary analysis by the Town’s Water Resources Engineer, the Town Manager would be authorized to sign a “Water Use Authorization,” the form of which is attached as Exhibit B to the WSSA. The Water Use Authorization would allow the developer to obtain water from the water bank upon payment of the fair market value of the water. The fair market value of one share of the Consolidated Home Supply Ditch and Reservoir Company is currently estimated to be \$85,000.00.

The water bank terminates on December 31, 2018. Water that has not been allocated to the use of the developer by that date will revert back to the Town. The use of the water is also contingent on the developer obtaining a certificate of occupancy within one year of the issuance of a building permit for any portion of the development.

Notably, Council did not previously expressly discuss use of the water for the outdoor fountains, which use constitutes approximately 20% of the overall anticipated water needs. See Memorandum from Tom Williamsen dated May 24, 2016. Council may approve the agreement in the form attached and allow use of the water for the fountains or approve it subject to modification to omit or limit the availability of the water for the fountains.

With respect to non-potable water for irrigation and landscaping, the developer obtained the water from the 2534 non-potable water bank.

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

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**FINANCIAL ADVICE:** N/A

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

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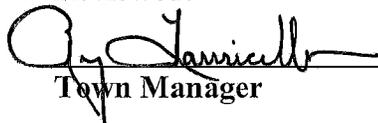
**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Water and Sewer Service Agreement for Johnstown Plaza, LLC and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the Water and Sewer Service Agreement for Johnstown Plaza, LLC.

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**Reviewed:**

  
Town Manager

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# AGREEMENT

## **WATER AND SEWER SERVICE AGREEMENT**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_\_\_ day of June, 2016, by and between JOHNSTOWN PLAZA, LLC, a Kansas limited liability company ("Developer"), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation, ("Town"), collectively sometimes referred to as "the Parties."

### **RECITALS:**

**WHEREAS**, Developer is the owner of approximately 59.12 acres of land located in Sections 14 and 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado, and described more particularly on Exhibit A, attached hereto and incorporated herein by this reference ("Property"); and

**WHEREAS**, the Property is being developed as a destination retail shopping center containing approximately 324,000 square feet of new retail uses, to be known as Johnstown Plaza Phase I Shopping Center ("Shopping Center"); and

**WHEREAS**, the Town obtained analysis from Ray Real Estate Services, Inc. and BBC Research and Consulting projecting that the Shopping Center will provide substantial economic benefits to the Town, including but not limited to, increased sales tax revenues and new employment opportunities; and

**WHEREAS**, to facilitate the development of the Shopping Center and subject to the terms of this Agreement, the Developer has requested that the Town grant it the right to use water from the Town's share of water supplies at the fair market value to serve the in-building water needs and the outdoor water fountain needs of the Shopping Center; and

**WHEREAS**, the Town has a sufficient supply of water to serve the in-building water needs and the outdoor water fountain needs of the Shopping Center as well as the long term needs of the Town; and

**WHEREAS**, Developer will obtain the necessary water for irrigation and landscaping from a different source than the Town's share of water supplies; and

**WHEREAS**, Colorado municipalities are entitled to encourage new and expanded retail development through inducements and incentives; and

**WHEREAS**, based on the anticipated economic benefits, the additional employment opportunities and the extraordinary opportunity presented by the location of the Shopping Center in the Town, the Town Council desires to accommodate the Developer's request and finds that this Agreement is in the best interests of the citizens of the Town; and

**WHEREAS**, Developer and Town desire to set forth their agreement concerning the creation of a water bank, the use of the Town's water, water demand and supply for irrigation and landscaping and a commitment by the Town for water and sewer service for the Property.

**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 into the Agreement as if fully set forth herein.

2. **Creation of a Water Bank**. To facilitate the development of the Shopping Center, Town agrees to allow Developer to use up to four and one-half (4.5) shares of the Consolidated Home Supply Ditch and Reservoir Company (up to 36 acre-feet per year) from the shares owned by the Town pursuant to the terms of this Agreement for the in-building water needs and the outdoor water fountain needs of the Shopping Center. The water may not be used for any other purpose. Upon the execution of this Agreement, the water shares shall be set aside and placed into a water bank ("Johnstown Plaza Water Bank"). The Town's Water Engineer shall manage the Johnstown Plaza Water Bank, and maintain an accurate accounting of the water that is used and the water that is still available for use by Developer.

The Johnstown Plaza Water Bank shall terminate on December 31, 2018. Water that has not been allocated to the use of Developer pursuant to the terms of this Agreement by December 31, 2018, shall revert back to the Town, shall be available for any and all uses deemed appropriate by the Town and shall not be available for any use by the Developer absent a written amendment to this Agreement signed by the Parties.

Notwithstanding anything contained herein, the Developer shall not be obligated to purchase the right to use water from the Johnstown Plaza Water Bank.

3. **Water Demand and Approval of Water Use**. Prior to the issuance of a building permit for any portion of the Property, Developer shall submit a preliminary water and sewer demand analysis to the Town in compliance with Section 13-65 of the Johnstown Municipal Code. The preliminary analysis shall provide an estimated average annual water demand for the in-building needs and the outdoor water fountain needs of such portion of the Property. Upon approval of the preliminary analysis, the Town shall provide the Developer with written authorization to use water from the Johnstown Plaza Water Bank as well as the applicable fees for such on the form attached as Exhibit B ("Water Use Authorization"). Each Water Use Authorization that is executed by the Town Manager shall be incorporated herein and become a part of this Agreement as if fully set forth herein.

4. **Price for Use of Water**. The Developer agrees to pay the fair market value for the use of the water. The Developer understands and agrees that the fair market value fluctuates and

shall be established by the Town, in its sole discretion, when the Developer submits a preliminary water and sewer demand analysis for any portion of the Property. For illustrative purposes only, the fair market value for one (1) share of the Consolidated Home Supply Ditch and Reservoir Company is currently Eighty-Five Thousand Dollars (\$85,000.00).

5. **Condition Subsequent; Certificate of Occupancy.** The Town's grant of the right to use water from the Johnstown Plaza Water Bank to the Developer for the in-building water needs and the outdoor water fountain needs of the Shopping Center is subject to the condition that, within one year of the issuance of a building permit, the Developer complete construction of the portion of the Property that is the subject of the building permit and obtain a certificate of occupancy. If the Developer does not obtain a certificate of occupancy within one year, the Town's agreement to allow the Developer to use water from the Johnstown Plaza Water Bank for the portion of the Property that is the subject of the building permit shall terminate. If the failure to obtain a timely certificate of occupancy is the result of excusable delays, as determined by the Town, the Town may, in its sole discretion, extend the time in which the Developer is required to obtain a certificate of occupancy.

Upon termination of the right to use water, the Town shall return the funds paid by the Developer for such use without the accrual of interest. The Developer shall thereafter be required, prior to the issuance of a certificate of occupancy for the portion of the Property that is the subject of the building permit, to enter into a new water and sewer service agreement with the Town and dedicate sufficient water to the Town to satisfy the water needs.

6. **Dedication of Water for Irrigation and Landscaping.** In compliance with the Section 13-65 of the Johnstown Municipal Code, the Developer submitted a preliminary water demand analysis for the irrigation and landscaping water needs of the Property. The preliminary analysis provides an estimated average annual water demand of 6.52 acre feet per year for the landscape irrigation needs of the Property as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Landscape Irrigation (6.52 acres)	16.3	13.85

The preliminary analysis for the irrigation and landscaping needs of the Property has been approved by the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP as a permissible credit from the 2534 Non-Potable Water Bank, and is hereby accepted by the Town.

The demand for irrigation and landscaping has been met by the Developer's dedication of 16.3 acre-feet per year from the non-potable supply of the 2534 Non-Potable Water Bank. Evidence of this dedication is attached as Exhibit C.

7. **Future review of water usage and dedication requirements.** In accordance with Section 13-68(h) of the Johnstown Municipal Code, the Town reserves the right to review actual water usage within the Property, or any portion thereof, at a point in time after water usage has

been established to confirm the adequacy of the water demand projections contained in the preliminary analyses. If the Town determines that the preliminary analyses, or any of them, underestimated the actual water demand for the in-building water needs or the outdoor water fountain needs, the Developer shall be required to pay for the use of additional water from the Johnstown Plaza Water Bank, if the Johnstown Plaza Water Bank has not terminated and water is still available, or dedicate additional water to the Town. If the Town determines that the preliminary analysis for the irrigation and landscaping demand underestimated the actual water demand, the Developer shall be required to dedicate additional water.

8. *Water and Sewer Taps.* 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.

9. *Payment of Water Court Transfer Fees.* Upon approval of a Water Use Authorization and prior to issuance of a building permit, the Developer shall pay to the Town the water court transfer fees required by Section 13-68 of the Johnstown Municipal Code. The Water Use Authorization shall contain the water court transfer fee. If the actual water demand increases, additional water court transfer fees shall be required. If a downward adjustment in water demand is agreed to in the future, the water court transfer fee shall also be adjusted and credited proportionately.

10. *Commitment to Provide Water and Sewer.* Subject to the Developer's performance of all the covenants contained herein, the issuance of a Water Use Authorization, payment of all required fees and issuance of a certificate of occupancy, the Town commits to provide to the Property, or any portion thereof, the committed water supply together with the corresponding sewer service.

11. *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 THE DEVELOPER:

Johnstown Plaza, LLC  
c/o A.D. Schlup Law, LLC  
6917 West 135<sup>th</sup> Street, Suite B-29

TO THE TOWN:

Town of Johnstown  
c/o Town Clerk  
450 S. Parish Ave.

Overland Park, KS 66223

Johnstown, CO 80534

WITH A COPY TO  
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.  
Law Office of Avi S. Rocklin, LLC  
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.

12. **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.

13. **Successors and Assigns.** The benefits of this Agreement and the burdens hereunder shall, with respect to the in-building water needs and/or the water fountain needs, inure to and be binding upon the successors and assigns of the Developer to the extent the successors and assigns occupy the Property. The benefits of this Agreement and the burdens hereunder shall, with respect to the irrigation and landscaping needs of the Property, inure to and be binding upon the Developer's successors and assigns.

14. **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.

15. **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.

16. **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.

17. *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.

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

19. *Choice of Laws and Venue.* This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

20. *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.

21. *Findings.* The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the laws, regulations and policies of the Town.

[The remainder of the page intentionally left blank.]

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

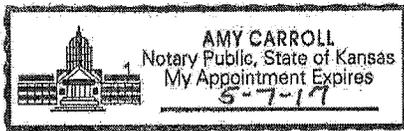
JOHNSTOWN PLAZA, LLC

By: *Allen Schlup*  
Allen Schlup, Authorized Member

STATE OF Kansas )  
 ) ss.  
COUNTY OF Johnson )

SUBSCRIBED AND SWORN to before me this 26 day of May, 2016,  
by Allen Schlup, as the authorized member of Johnstown Plaza, LLC.

WITNESS my hand and official seal.



*Amy Carroll*  
Notary Public

My commission expires:

137 nw 1501 Rd Urich, MO 64788  
Address

ATTEST:

TOWN OF JOHNSTOWN, COLORADO  
a municipal corporation

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

By: \_\_\_\_\_  
Scott James, Mayor

APPROVED AS TO FORM:

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

## EXHIBIT A

2534 Filing No. 13, being a Minor Re-Subdivision of Lot 1, A Portion of Lot 8, Block 3, 2534, Lot 2, Block 1, 2534 Filing 11, located in the Northwest Quarter of Section 14, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

2534 Filing No. 14, being a Minor Re-Subdivision of Lots 5 & 6, Block 2, 2534, located in the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Amended Plat of Lot 4, Block 1, being a Replat of Lot 2, Block 1, Replat of Lot 6, Block 1, 2534 Filing No. 4, located in the Northwest Quarter of Section 14, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Lot 1, 2534 Filing No. 16, being a Replat of Block 12, 2534, located in the Northwest Quarter of Section 14 and the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Said described parcels of land contain approximately 59.12 acres, more or less ( $\pm$ )

EXHIBIT B

WATER USE AUTHORIZATION

NO. \_\_\_\_

THIS WATER USE AUTHORIZATION supplements and is incorporated into the WATER AND SEWER SERVICE AGREEMENT (“WSSA”) made and entered into on \_\_\_\_\_, 2016, by and between JOHNSTOWN PLAZA, LLC, a Kansas limited liability company (“Developer”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation.

1. Water Demand. In compliance with the Section 13-65 of the Johnstown Municipal Code, Developer submitted a preliminary water and sewer demand analysis to the Town for the in-building water needs and/or the water fountain needs of \_\_\_\_ (legal description) \_\_\_\_\_ (“Subject Property”). The preliminary analysis provides an estimated average annual water demand of \_\_\_\_\_ acre feet per year for the in-building use and/or water fountain needs of the Subject Property (\_\_\_\_ SFE). Based on the approval of the Town’s water engineer, the preliminary analysis is hereby accepted by the Town as follows:

<b>Development</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
In-Building Use		
Water Fountain(s)		

This Water Demand will be satisfied by the use of \_\_\_\_ shares of the Consolidated Home Supply Ditch and Reservoir Company from the Johnstown Plaza Water Bank. Pursuant to Paragraph 6 of the WSSA and Section 13-68(h) of the Johnstown Municipal Code, the preliminary analysis is subject to subsequent adjustment based on the actual water usage.

2. Price for Use of Water. Pursuant to Paragraph 4 of the WSSA, the price for the use of the \_\_\_\_\_ acre feet per year is \$ \_\_\_\_ dollars (\$ \_\_\_\_ .00).

3. Water Court Transfer Fee. Pursuant to Paragraph 9 of the WSSA and Section 13-68 of the Johnstown Municipal Code, the water court transfer fee for the Subject Property is \$ \_\_\_\_ dollars (\$ \_\_\_\_ .00).

4. Surplus Credit. The Johnstown Plaza Water Bank contains the following surplus water credit:

Water Use Credit:	_____	acre-feet
LESS Estimated demand:	_____	acre-feet
Net current surplus credit:	_____	<b>acre-feet</b>

Dated: \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Roy Lauricello, Town Manager

Accepted by Johnstown Plaza, LLC

By: \_\_\_\_\_  
Allen Schlup, Authorized Member

EXHIBIT C

**RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT**

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP raw water credit account held by the Town of Johnstown, known as the "2534 Non-Potable Water Bank," to provide out-of-building, irrigation water to Johnstown Plaza, LLC for land legally described below, and any successor occupant of the land at the same location, pursuant to a Water and Sewer Service Agreement to be executed between Johnstown Plaza, LLC and the Town of Johnstown. The amount of such allocated raw water credit is calculated to be 16.3 acre-feet per year, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.

The land to which this Acknowledgment applies is legally described as follows:

2534 Filing No. 13, being a Minor Re-Subdivision of Lot 1, A Portion of Lot 8, Block 3, 2534, Lot 2, Block 1, 2534 Filing 11, located in the Northwest Quarter of Section 14, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

2534 Filing No. 14, being a Minor Re-Subdivision of Lots 5 & 6, Block 2, 2534, located in the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Amended Plat of Lot 4, Block 1, being a Replat of Lot 2, Block 1, Replat of Lot 6, Block 1, 2534 Filing No. 4, located in the Northwest Quarter of Section 14, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Lot 1, 2534 Filing No. 16, being a Replat of Block 12, 2534, located in the Northwest Quarter of Section 14 and the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

The undersigned certify that they are authorized to execute this Raw Water Allocation Acknowledgment on behalf of Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP.

GERRARD FAMILY LIMITED PARTNERSHIP, LLLP

\_\_\_\_\_  
Nathan Gerrard, Managing Partner  
Gerrard Family Limited Partnership, LLLP

Dated: \_\_\_\_\_

THOMPSON RANCH, LLLP

\_\_\_\_\_  
Todd Williams, Vice President  
Thompson Ranch, LLLP

Dated: \_\_\_\_\_

**MEMORANDUM**

**(Tom Williamsen)**

**(May 24, 2016)**

**Helton & Williamsen, P.C.**  
**Consulting Engineers in Water Resources**  
384 Inverness Parkway, Suite 144  
Englewood, Colorado 80112-5822  
Phone (303) 792-2161  
email: twilliamsen@helton-williamsen.com

May 24, 2016

**MEMORANDUM**

**To:** Pete Ampe & John Franklin

**From:** Tom Williamsen

**Subject:** Revised water demand estimate – Johnstown Plaza

This memorandum replaces my April 6 memorandum as the developer for the Johnstown Plaza project has revised the water uses and demands. The water demand estimate for the Johnstown Plaza dated December 10, 2015 was supplemented by email messages dated May 17 from Allen Schulp. The proposed project will consist of multiple buildings with a combined footprint of 250,000 ft<sup>2</sup>, 6.52 acres of irrigated sod and landscape, and water features and fountains. The developer has secured raw water for irrigation from Thompson Ranch Development Company.

Annual water usage records, excluding irrigation, for three comparable retail facilities in Kansas City were provided by the developer. The indoor water usage averaged 0.0076 gpd per ft<sup>2</sup>, 0.0196 gpd per ft<sup>2</sup>, and 0.0216 gpd per ft<sup>2</sup>. In a recent water demand estimate for a comparable retail center based on user-supplied records, we used 0.0166 gpd per ft<sup>2</sup> as the water use rate. I understand that the retailers for this project have not been identified.

The developer also provided information about the water features and fountains at their Kansas City facility. Those features contain 398,100 gallons of water and use approximately 7,400 gallons annually for replacement of evaporation and cleaning. The features are filled in the spring and drained in the fall and periodically evaporation is replaced. Details about the water features for the Johnstown facility have not been completed. I suggest using 398,000 gallons (1.22 acre-feet) for the annual fill and 25,000 gallons (0.08 acre-feet) for replacement of evaporation and cleaning.

The estimated annual water demands are:

In-building .....	4.65 acre-feet
Water features .....	1.30 acre-feet
Irrigation (raw) .....	<u>16.29 acre-feet</u>
Total .....	22.24 acre-feet

The estimated annual consumptive uses are:

In-building .....	0.23 acre-feet
Water features .....	0.08 acre-feet
Irrigation (raw) .....	<u>13.85 acre-feet</u>
Total .....	14.16 acre-feet

The potable water uses total 5.95 acre-feet of demand and 0.31 acre-feet of consumptive use annually. Water drained from the water features should be drained through Johnstown's central wastewater collection and treatment system. The developer did not provide any information pertaining to their proposed landscape plan but it is understood that the developer has obtained raw water for irrigation from the Thompson Ranch Development Company through the Farmers Ditch.

The Water Court transfer fee should be based on 18 sfe derived from the potable water demand. The water demands are estimates based on limited information about the proposed project. Accordingly the actual water demands should be re-evaluated when the design plans are better known or after a couple of years of occupancy to see if additional assignments of potable water are warranted. Attached is the information provided by the developer.

cc:Avi Rocklin w/enclosures

c:\2016-05-24 Memo to PAmpe & JFranklin re Johnstown Plaza.doc

