

LICENSE AGREEMENT
AND
CONFIRMATION, GRANT, AND CONVEYANCE
OF DITCH RIGHT-OF-WAY AND EASEMENT

THIS AGREEMENT (the "Agreement"), made this _____ day of _____, _____, between THE WANNAMAHER DITCH COMPANY, a Colorado Corporation (the "Licensor"), whose address is 17735 W.32nd Avenue, Building BC550, Golden CO 80401, and _____ (the "Licensee"), whose address is _____ (the "Lienholder"), whose address is _____, is executing this Agreement to acknowledge that it has subordinated its lien in the Licensee's Property to the lien of this Agreement.

Recitals

1. Licensor's Property. Licensor is the owner and operator of an existing ditch system, commonly known as the Wannamaker Ditch, that includes rights-of-way and easements to inspect, use, operate, maintain, and repair the Ditch (the "Ditch System"). Licensor also uses the rights-of-way and easements to divert, control, transport, carry, and deliver water and to inspect, use, operate, maintain, and repair the Ditch System.

2. Licensee's Property. Licensee, is the owner of certain land and property more particularly described as follows:

[INSERT OR ATTACH LEGAL DESCRIPTION]

located in _____ County, Colorado upon which a portion of Licensor's Ditch System, rights-of-way, and easements are located.

The street address of Licensee's Property is:

The _____ County Assessor's Office currently identifies Licensee's Property by Parcel/Schedule No. _____.

3. Relocation and/or Structures. Licensee desires to (1) relocate and/or confirm the nature and location of a portion of Licensor's existing Ditch System on Licensee's Property; (2) confirm Licensor's right-of-way and easement on Licensee's Property for its Ditch System; and (3) install, construct, maintain, and use certain structure(s) associated with Licensor's Ditch System on Licensee's Property and briefly described as follows:

[INSERT DESCRIPTION OF STRUCTURES]

In consideration of the promises and mutual covenants in this Agreement, as well as other good and valuable consideration, the Parties agree as follows:

Agreement

4. Confirmation of Licensor's Right-of-Way and Easement. Licensee hereby confirms Licensor's constitutional and statutory right-of-way under COLO. CONST. ART. XVI, § 7 and C.R.S. § 37-86-102 across the Licensee's Property for the purpose of transporting water for beneficial use. Licensee confirms Licensor's easement across Licensee's Property to inspect, use, operate, maintain, and repair that part of Licensor's Ditch System located on Licensee's Property.

5. Grant of Right-of-Way and Easement. Licensee grants, bargains, sells, conveys, assigns, and warrants and will forever defend unto Licensor, its successors and assigns, a perpetual, exclusive right-of-way and easement for the ditch, canal, lateral, or other structure on Licensee's Property that is used to transport, carry, and deliver water. The right-of-way and easement is _____ (_____) feet in width, _____ (_____) feet on the _____ side and _____ (_____) on the _____ side of a line described as follows:

[INSERT LEGAL DESCRIPTION]

TOGETHER WITH all singular rights, privileges, hereditaments, appurtenances, and easements thereunto belonging to in any way pertaining to the use, operation and enjoyment of the right-of-way and easement confirmed and granted under this Agreement.

The right-of-way and easement confirmed under paragraph 4 and the right-of-way and easement granted under paragraph 5 are collectively defined as the Right-of-Way and Easement.

6. Purpose of Right-of-Way and Easement. Licensor may use the Right-of-Way and Easement confirmed and granted under this Agreement for any purpose related to Licensor's use and enjoyment of its Ditch System, including but not limited to: (1) the flow of water through its Ditch System; (2) ingress and egress to its Ditch System (whether pedestrian or vehicular); and (3) the inspection, use, operation, construction, maintenance, repair, replacement, removal, and modification of its Ditch System and the Right-of-Way and Easement.

7. Restrictions on Licensee's Use of Right-of-Way and Easement. Licensee shall not take any action that inhibits the flow of water through the Ditch System. Licensee agrees not to construct or place any fence, building, or other structure (except as specifically allowed under this Agreement) within the Right-of-Way and Easement. Licensee agrees not to plant any shrub or tree on any part of the Right-of-Way and Easement. Licensee agrees not to make or permit any use of the Right-of-Way and Easement that would impair, impede, or interfere with Licensor's access to, access along, or full free use and exercise of its Ditch System or the Right-of-Way and Easement. Licensee agrees that if Licensee or any heir, successor, or assign of Licensee places or allows any obstruction within the Ditch System or Right-of-Way and

Easement, Licensor may immediately remove the obstruction without any liability for damages arising from the removal of the obstruction.

8. License. Licensor, without warranting the right, title or privilege, hereby grants Licensee the privilege of relocating a portion of Licensor's ditch located on Licensee's Property and constructing the above described structure(s) provided that (1) such relocation does not unreasonably interfere with the flow of water through the Ditch System; and (2) Licensee constructs the above-described structure(s) in accordance with engineering plans and specifications to be prepared and submitted to Licensor by Licensee subject to the following terms and conditions:

- a. Plans and Specifications.** Licensee shall hire a licensed professional engineer to prepare engineering plans and specifications for the purpose of relocating that part of the Licensor's Ditch System on the Licensee's Property and constructing the above-described structure(s). Licensee shall provide the engineering plans and specifications to Licensor for approval. Before Licensee may commence any construction work, Licensor must provide Licensee with written approval of the engineering plans and specifications. The engineering plans and specifications are incorporated by reference into this Agreement as Exhibit "_____."
- b. Costs and Liability.** Licensee shall pay all costs associated with the relocation of the Ditch System and the construction of the above-described structure(s). Licensee agrees that Licensor shall have no liability for the relocation of the Ditch System or for the construction, maintenance, use, existence, or removal of any structure covered by this Agreement, and Licensee expressly agrees to bear such liability.
- c. Supervision.** All construction work related to the relocation of the Ditch System and the construction of the above-described structure(s) shall be performed under the supervision of a licensed professional engineer and in accordance with the engineering plans and specifications approved by Licensor. At Licensor's request, Licensee shall supply Licensor with "as constructed" drawings.
- d. Commencement and Timing of Work.** Licensee shall not commence any construction on the Ditch System or within the Right-of-Way and Easement or any construction that might affect Ditch System operations without first notifying Licensor and obtaining Licensor's consent to the commencement and scheduling of such work. Such work may only take place during the non-irrigation season between November 1 and March 31. Licensee shall organize, commence, conduct, and complete all construction and maintenance activities with all necessary speed and diligence and in such a fashion as to avoid any interference with ditch operation or the full and free flow of water through the ditch. Licensee agrees to immediately level off any and all

excavations made and to immediately repair any damage to the ditches, canals, laterals, embankments, fences, roads or other improvements of Licensor at Licensee's sole cost to satisfaction of Licensor.

- e. Inspection and Completion.** Licensor shall have the right to inspect any relocation of the Ditch System or any construction, installation, or removal of any structure by Licensee to ensure that the relocation is performed in accordance with the approved engineering plans and specifications and will not interfere with the full free flow of water through, or otherwise impair operation or use of, the Ditch System and Right-of-Way and Easement.
- f. Mechanic's Liens.** Licensee agrees that all design, engineering, construction and installation or other work permitted under this Agreement is solely for the benefit of Licensee and Licensee's property. Licensee has no authority to create any lien for labor or material on or against Licensor's property, water rights or Ditch System. Licensee agrees to notify all materialmen, suppliers, contractors or laborers that they must look only to Licensee for payment and that Licensee has no authority whatsoever to bind Licensor or Licensor's property for any costs, charges, or expenses incurred by the work performed hereunder.

9. Construction of Structures. Licensee agrees to perform all work and to construct any structure permitted by this Agreement in a workmanlike manner and with materials that will safely perform the purpose for which the structure is installed. Licensee agrees to construct any structure permitted by this Agreement that encloses, bridges, or provides crossing over Licensor's Ditch System and Right-of-Way and Easement (if any) in a workmanlike manner and with material that will safely support and carry any weights, loads, or traffic that may at any time or in any manner be placed on the structure and that will ensure that the structure does not interfere with the full free flow of water through the Ditch System. Licensee shall restore to its pre-construction condition any portion of Licensor's Ditch System or the Right-of-Way and Easement that is disturbed by Licensee's construction.

10. Maintenance and Repair of Structures. Licensee owns and shall continue to own and bear full responsibility for the use, operation, maintenance, and if necessary, removal of any crossing or structure permitted under this Agreement. Licensee agrees to ensure that any structure permitted under this Agreement does not interfere with the full free flow of water through the Ditch System. Licensee agrees at all times to make, keep, and maintain any structure permitted under this Agreement in a good and safe condition. Licensee agrees to maintain any structure permitted under this Agreement so that it will safely support and carry any weights, loads, or traffic that may at any time or in any manner be placed on the structure. Licensee agrees to repair any deterioration, break, leak and/or damage to any structure permitted under this Agreement at Licensee's own expense. Licensee agrees that if by reason of any deterioration, break, leak or damage in or to any structure of Licensee, damage or injury is directly or indirectly caused Licensor, then Licensee will, with all due diligence, repair and place the property, Ditch System, and Right-of-Way and Easement of Licensor in the same condition

as it was prior to the injury and will pay any and all monetary damages sustained or incurred by Licensor, its stockholders, or its water users. Licensee agrees that it will restore any portion of Licensor's Ditch System or the Right-of-Way and Easement that is disturbed by Licensee's repair and maintenance activities to the same condition as it was prior to the repairs or maintenance. Other than maintenance and repairs that this paragraph requires, Licensees shall not make any alterations or modifications to either the structures permitted under this Agreement, the Right-of-Way and Easement, or the Ditch System without the prior written consent of Licensor.

11. Licensee's Failure to Act. In the event Licensee fails or refuses to promptly carry out or perform any covenant, duty, or obligation to be performed by Licensee under any paragraph of this Agreement, Licensor shall have full right, power and authority, but not the obligation, to perform the same at Licensee's cost and expense without releasing Licensee from any liability under this Agreement. Licensee agrees that it will reimburse Licensor for such costs and expenses within fifteen days of written demand from Licensor.

12. Debris. Licensee agrees to continuously and at all times keep that portion of Licensor's Ditch System, and Right-of-Way and Easement covered by this Agreement, free and clear of all debris, of every kind and nature whatsoever, so that use of the Right-of-Way and Easement and the full and free flow of water in the Ditch System shall not be interfered with at any time, including times of heavy rain or abnormally high water in the ditch caused in any manner whatsoever, and so that no damage can or will result to Licensor, Licensor's Ditch System, or to the person or property of others by the escape or overflow of water or in any manner whatsoever. Licensee agrees to continuously and at all times take whatever steps are necessary to prevent the escape or overflow of water, in any manner whatsoever, from the structures on Licensee's Property so that no damage can or will result to Licensor, Licensor's Ditch System, or to the person or property of others. If the escape or overflow of water causes any damage to Licensor, Licensor's Ditch System, or to the person or property of others, Licensee agrees that it shall be solely responsible for such damage.

13. Enclosure Grating. Licensee agrees that when, if ever, a grate, slat or lattice is required or should be installed, now or in the future, on the upstream side of any structure covered by this Agreement, Licensee shall bear full responsibility for the installation or failure to install such grate, slat or lattice, and if installed, for the design, construction, repair and maintenance of the grate, slate, or lattice. Licensee shall ensure that the grate, slate, or lattice does not interfere in any way with the full and free flow of water in the Ditch System. Licensee agrees that for any grate, slat or lattice required, now or in the future, on any structure covered by this Agreement, Licensee agrees to install, keep and maintain the grate, slat, or lattice free and clear of all debris of any kind and nature whatsoever.

14. Indemnification. Licensee agrees that in the event any penalty, loss, injury or damage is caused Licensor or any other person or persons or their property in any manner whatsoever arising out of the relocation of the Ditch System and Right-of-Way and Easement, and/or the construction, maintenance, use, existence or removal of the structure (if any) covered

by this Agreement, whether by failure of Licensee to fully carry out and perform any covenant or agreement to be carried out and performed by Licensee or otherwise, Licensee agrees to indemnify and hold Licensor and its successors or assigns harmless from any penalties, losses, damages and injuries including, but not limited to, actual damages, court costs, attorneys fees, and any other cost and expenses of any kind or nature whatsoever incurred directly or indirectly by Licensor as a result of the design, construction, maintenance, use, existence or removal (if necessary) of any structure hereunder.

15. Ditch Modifications. Licensee agrees that Licensor may enlarge, deepen, add to, or otherwise change or relocate its Ditch System within the Right-of-Way or Easement. If in the future Licensor should desire to enlarge, deepen, add to or otherwise change or relocate its Ditch System within the Right-of-Way and Easement, or to do any other thing incident to the operation and maintenance of its Ditch System, Right-of-Way and Easement, then Licensee agrees at Licensee's expense, with all due diligence, to change remove, relay and/or reconstruct any crossing or structure (if any) hereunder so as to comply with such plans and specifications as Licensor may prescribe as being necessary to permit the proper maintenance and operation of Licensor's Ditch System as altered by Licensor.

16. Term and Notice. The License and privileges herein granted Licensee for the use and maintenance of the structures and/or crossing under this Agreement shall continue for so long and only so long as Licensee, its successors and assigns comply with the provision hereof. Licensee agrees that in case of any failure on the part of Licensee to fully perform the covenants and agreements to be performed hereunder, this License may be immediately revoked and terminated and the task performed by Licensor at Licensor's sole election. Licensor agrees to give Licensee written notice of its election to Licensee addressed as follows:

[INSERT CONTACT INFORMATION]

or to such other person or persons as may be designated in writing by Licensee to receive such notice. Licensor's election to terminate this Agreement and performance of Licensee's task or removal of any crossing or structure hereunder shall not relieve Licensee of any liability hereunder for the costs and expenses to Licensor of Licensee's breach of this Agreement or the costs and expense of removal.

17. Covenants Run With Land. The covenants, terms and conditions of this Agreement are intended to run with the land and shall be binding upon and inure to the benefit of the parties to this Agreement and their respective agents, heirs, executors, administrators, personal representatives, successors and assigns.

18. Recitals and Exhibits. The Recitals listed above and all exhibits referenced in this Agreement are hereby incorporated into this Agreement.

19. Entire Agreement. This Agreement, together with any other instruments or agreements referred to herein, constitutes the entire agreement between the Parties with respect

to the subject matter of this Agreement, and there are no other representations, warranties, or agreements (whether written or oral) between the Parties except those contained in this Agreement.

20. Modification or Amendment. This Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

21. Lienholder and Subordination. Lienholder holds a [describe lien (deed of trust, etc.)] encumbering Licensee's Property. The Deed of Trust was recorded on _____ (in Book _____, Page _____) (at Reception No. _____), of the records of _____ County, Colorado. Lienholder subordinates the priority and superiority of its lien to the lien of this Agreement, confirms Licensor's constitutional and statutory right-of-way and the easement granted under this Agreement, and agrees not to challenge the priority of this Agreement.

22. Recording. Either party may record this Agreement with the Clerk and Recorder of _____ County, Colorado.

23. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

24. Venue and Jurisdiction. The Parties agree that any action to enforce this Agreement shall be brought in the District Court for _____ County, Colorado, with all Parties hereto hereby agreeing and stipulating that such Court has jurisdiction over them and over such an action.

25. Attorney Fees. In the event of any judicial or other adversarial proceeding among the Parties concerning this Agreement, Licensor, if it is the substantially prevailing party in such a proceeding, shall be entitled to recover all of its reasonable attorney fees and other costs, in addition to any other relief to which it may be entitled.

26. Additional Provisions. (if any)

