

WATER RIGHTS LEASE

THIS WATER RIGHTS LEASE (the “Lease”) is made and entered into as of the _____ day of _____, 2023, by and between the **TOWN OF CASTLE ROCK**, a Colorado home rule municipal corporation, acting by and through the **TOWN OF CASTLE ROCK WATER ENTERPRISE** (the “Lessor”), and **H&H FARMS**, a Colorado general partnership (the “Lessee”) (collectively, Lessor and Lessee are referred to as the “Parties”).

RECITALS:

A. Lessor is the owner of certain Water Rights and Equipment as defined in Section 1, below.

B. Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, the Water Rights and Equipment, as defined in Section 1, below, on the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

COVENANTS:

Section 1. Water Rights and Equipment Lease. Subject to the terms and conditions set forth herein, Lessor hereby leases to Lessee up to 275 acre feet (“Permitted Maximum”) of the water rights associated with the well permit number 31640-FP (“Well Permit”). The water rights associated with the Well Permit shall be referred to collectively as the “Water Rights.” The Water Rights, together with the well, pumping equipment, electrical equipment and other equipment and facilities associated with the Water Rights (collectively referred to as the “Equipment”) are further described in the attached *Exhibit A*.

Except as otherwise limited herein, Lessee shall use the well in accordance with the Well Permit and prevent degradation of the quality of the groundwater. Lessee is required to use the well and the well shall not be used in excess of its Permitted Maximum.

Any use of the Water Rights in excess of the Permitted Maximum shall constitute a default under Section 9 of this Lease. Lessee shall be liable for any and all damages caused to Lessor as a result of Lessee exceeding the Permitted Maximum. Lessor, in its sole and absolute discretion, shall be entitled to immediately terminate this Lease. In addition, should Lessee’s use of the Water Rights associated with the Well Permit exceed those quantities listed above, then Lessee shall pay to Lessor a \$60.00 per acre foot penalty.

Section 2. Rental Rate. The rental rate for the Water Rights and Equipment shall be \$36.50 per acre foot (“AF”) of water (an acre foot being equal to 325,851 U.S. gallons) pumped from the well associated with the Water Rights. As an upfront lease payment, Lessee shall pay to Lessor \$2,509.38, which represents 25% of the maximum total Rent due (\$36.50 x 275 AF) under this Lease (“Initial Rent Payment”). The Initial Rent Payment is due April 1, 2023. The

second and final rent payment shall be due November 15, 2023, which shall be calculated at \$36.50 per AF for all Water Rights pumped, less the Initial Rent Payment. In the event any payment required hereunder is not made within 30 days after the payment is due, a late charge in the amount of \$10.00 will be paid by Lessee. All payments shall be made to the address set forth in Section 11, below, or such other address specified by Lessor.

A. In order to calculate the total of rental payments, during the term of this Lease, Lessee shall report to Lessor the flowmeter readings or electric meter readings for the meter associated with the pump for the Well Permit on the reporting form attached as ***Exhibit B***. Reporting shall occur (i) at the commencement of this Lease with the initial meter reading, (ii) on the first of each month (usage from the previous month), and (iii) upon Lease termination on November 15, 2023. Lessee shall record the meter readings for the Well Permit number and shall report the readings to Lessor by emailing the completed reporting form to Lessor within 10 days of the reading to the email address listed in Section 11, below. Any failure to report use as outlined in this Section shall constitute a default under Section 9 of this Lease and Lessor, in its sole and absolute discretion, may immediately terminate this Lease for such Default.

B. In the event of termination of this Lease for any reason, any unpaid rent shall be paid no later than 10 days from the date of termination. Any rent due for the volume of water used, but unpaid, shall be calculated using the monthly flowmeter readings.

Section 3. Term. This Lease will be for a term commencing on _____, 2023 and ending on November 15, 2023 ("Term"), unless terminated sooner pursuant to this Lease. The term of the Lease can only be extended or renewed in writing signed by both parties, and there can be no implied renewal of this Lease.

Section 4. Use of Water Rights. Lessee shall use the Water Rights only for the irrigation of agriculture crops as historically done by Lessee in the SW1/4 of the NE1/4 of Section 34, T1N, R63W, 6th P.M. (a.k.a. Parcel M) (the "Property"). Lessee shall neither exceed the Permitted Maximum of water allowed under the Well Permit nor use any of the Water Rights to irrigate any other real property than the Property.

Section 5. United States Department of Agriculture. Lessee shall deliver to Lessor copies of all 2023 Farm Service Agency crop reports filed by Lessee, any 2023 aerial photos on record with the Farm Service Agency, and/or any other of Lessee's governmental farm records by no later than August 1, 2023. Lessee shall further deliver to Lessor any additional Farm Service Agency crop records filed by Lessee after such date and before expiration of this Lease.

Section 6. Maintenance of Equipment. Upon the effective date of this Lease, Lessee shall be solely responsible for the costs of operation, maintenance and repair of the Equipment and all other equipment necessary for the irrigation of the Property, which shall include the costs of all maintenance and repairs to the pumps and existing wells used for the Water Rights. During the term of this Lease, only the Lessee and/or its agents or employees shall use the Equipment, which Equipment shall only be used on the Property. In the event crops irrigated by the Water Rights are damaged because of Lessee's activities and/or failure to operate, maintain or repair the Equipment or any other equipment necessary for irrigation of the Property, Lessor shall have no liability for such damages to the crops or loss of crop revenue and Lessee shall have no recourse against Lessor

for such damages.

Upon discovery of an issue with the Equipment, Lessee shall notify Lessor immediately about the issue and what Lessee intends to do to maintain or repair the Equipment. In the event Lessee installs a part or other equipment that costs \$100.00 or more, Lessee may remove that part or equipment and take it when the Lease terminates. Prior to removal, however, Lessee shall provide Lessor with written notice of its intent to remove such part and/or equipment and Lessor shall have 10 days from the date of such notice to purchase said part or equipment at the amount Lessee paid for the part and its installation. As part of such notice, Lessee shall provide Lessor the receipt for the part and installation cost. If the Equipment, for any reason, fails to deliver the water from the well, and Lessee does not repair it and provides Lessor written notice of its intent not to repair, Lessor or Lessee may terminate this Lease upon 30 days' written notice to the other party, and Lessor shall have no liability for damages to the crops or loss of crop revenue. In the event of termination, rent shall be paid at the time of termination, If the rent due is for AF used, such amount shall be calculated using both the monthly flow meter readings and the KWh/AF conversion in Section 8, below.

Section 7. Utilities. Lessee shall pay any and all power and other utility costs associated with Lessee's use of the Water Rights. Lessee shall be responsible for all arrangements required for billing of the utilities directly to Lessee. Electrical charges not associated with Lessee's usage and billed for the period after the term of this Lease shall be the responsibility of Lessor.

Section 8. Power Records. Upon execution of this Lease and prior to use of the Water Rights and Equipment, Lessee shall execute the form of letter attached hereto as ***Exhibit C*** to request that Morgan County Rural Electric Association send a "duplicate" bill to Lessor each month during the term of the Lease. Lessee hereby grants permission to Morgan County Electric Association to release to Lessor and/or its agents power records associated with the wells located on the Property with the power meter number 136861893. While flowmeter readings shall be used for calculating monthly usage, the Power Consumption Coefficient (KWh/AF) shall be used to calculate water usage for each if no flowmeter readings are available. (Figures shall be based on accepted State and USGS methods.)

Section 9. Default and Termination. In addition to the other grounds for termination herein, Lessor may, at its option, elect to terminate this Lease upon the occurrence of an event of default by Lessee in the performance of their obligations hereunder. An event of default shall be deemed to occur if:

A. Lessee fails to pay any rental payments within 30 days of the due date. Lessor shall have no obligation to provide Lessee with notice of nonpayment or an opportunity to cure;

B. Lessee uses the Water Rights in a manner other than as permitted pursuant to this Lease or the Well Permit, and fails to cease such prohibited use within five days of receipt of notice of such default by Lessor;

C. Lessee fails to report meter readings within 10 days from the required date for readings.

- D. Lessee assigns this Lease to a third party in violation of Section 10, below; or
- E. Lessee commits a material breach of any provision of this Lease.

In the event Lessee defaults or otherwise commits a breach of this Lease, or any provision of this Lease, in addition to terminating the Lease, Lessor shall have the right to pursue (i) the remedies set forth herein, and (ii) any and all other remedies and damages, permitted in law or equity, caused by or arising from Lessee's default or breach. In the event of termination as a result of any default, rent shall be brought current by Lessee and any rent due for AF used but unpaid shall be paid at the time of termination, as calculated using the flow meter readings.

Section 10. Assignment and Assumption. Lessee may not assign its rights hereunder without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion. In the event that Lessor consents to an assignment of Lessee's rights hereunder, the assignee shall execute an assumption agreement pursuant to which it shall assume Lessee's obligations hereunder. The terms of such assumption agreement must be approved by Lessor.

Section 11. Notices. All notices shall be in writing, and shall be delivered by hand delivery or U.S. mail, postage prepaid, to the parties at the addresses set forth below. Notices shall be deemed received on the date hand delivered or, if mailed, three days after deposit in the U.S. mail, postage prepaid.

If to Lessor: Town of Castle Rock
 Castle Rock Water
 175 Kellogg Court
 Castle Rock, Colorado 80109
 Attn: Matt Benak, Water Resources Manager
 Phone: 720-733-6037 (direct)
 Email: mbenak@crgov.com

If to Lessee: H&H Farms
 49001 E. 144th Avenue
 Bennett, Colorado 80102
 Phone: 970-381-2051 (mobile)
 Fax: 303-644-5909
 Email: khelzer@aol.com

Section 12. Termination Upon Sale, Transfer, Exchange or Export. In the event the Water Rights are sold, transferred, or exchanged or exported by Lessor or its assigns, then Lessor may terminate this Lease, in whole or in part, upon 30 days' prior written notice. In the event that, prior to such termination by Lessor, Lessee has planted crops, Lessee shall use its best efforts to procure substitute water supplies to avoid crop loss. If Lessee is unable to reasonably procure a substitute water supply and the crops are lost, in whole or in part, as a result of Lessor's termination pursuant to this Section 12, Lessor shall compensate Lessee for such loss. For purposes of this Section 12, the value of crop loss shall be based upon crop insurance records for the Property. If crops have not yet been planted, in whole or in part, on the Property, Lessor shall reimburse Lessee

for expenses incurred in preparation for planting, if any. In such event, Lessee shall provide Lessor with receipts for any such expenses. In the event of termination by Lessor under this Section 12, rent shall be brought current by Lessee and any rent due for AF used but unpaid shall be paid at the time of termination, as calculated using the monthly flowmeter readings.

Lessee shall not be entitled to compensation or reimbursement under this Section 12 or otherwise for crop damage or loss in the event of termination due to any default by Lessee or for any other reason under this Lease.

In the event of termination under this Section 12, if Lessor and Lessee are unable to agree as to the value of any such crops, tillage work, labor and material and supplies, then each Party agrees to name an arbitrator, and the value arrived at by the arbitrators shall be controlling on both Parties. In the event the two arbitrators cannot agree, they shall appoint a third arbitrator, and the value arrived at by the majority of the arbitrators shall be controlling on both Parties. The Parties shall share equally in the cost of such arbitration.

Section 13. Insurance. At all times during the term of this Lease, Lessee shall procure at its own cost and maintain the following policies of insurance:

A. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$1,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a “severability of interests” provision.

B. Commercial Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 each occurrence and \$1,000,000 aggregate with respect to each of Lessor’s owned, hired and/or non-owned vehicles assigned to or used in on the Property. The policy shall contain a “severability of interests” provision.

C. Workers’ Compensation Insurance with limits in accordance with the provisions of the Workers’ Compensation Act, as amended, by the State of Colorado and Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

The policies required above shall be endorsed to include Lessor, its officers and employees, as an additional insured. Certificates of insurance shall be completed by Lessee’s insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by Lessor. Each certificate shall identify the Property and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days’ prior written notice has been given to Lessor. If the words “endeavor to” appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. Lessor reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

Failure on the part of Lessee to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by Lessor shall be repaid by Lessee to Lessor upon demand, or Lessor may offset the cost of the premiums against any monies due to Lessee from Lessor.

Section 14. Governmental Immunity. The Parties understand and agree that the Lessor is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations (presently \$424,000 per person, \$1,195,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to Lessor, its officers, and employees.

Section 15. Indemnification. Lessee shall indemnify and hold Lessor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the use of the Water Rights and Equipment by Lessee, its employees or agents, excepting, however, such claims or damages as may be due to or caused by the negligent or willful acts or omissions of Lessor, or its employees or agents.

Section 16. Binding Effect. This Lease constitutes the full agreement of the Parties and may not be modified except in writing signed by both Parties. This Lease shall be binding on the Parties and their respective successors and assigns.

Section 17 Loss, Destruction or Damage to the Water Rights and Equipment. Lessor leases the Water Rights and Equipment to Lessee in an “as is” condition, and Lessor expressly does not agree to any modification or change of the Water Rights, other than a change of use of the Water Rights pursuant to any application filed by Lessor for the export and change or use of the Water Rights.

Section 18. Attorney’s Fees. In the event that an attorney is engaged by either Party to (i) resolve any dispute arising under the terms of this Lease (except for the arbitration procedure described in Section 12, above), or (ii) collect payment of any sums due and owing under this Lease, the prevailing Party is entitled, in addition to other damages or costs, to receive reasonable attorney’s fees from the non-prevailing Party.

Section 19. Complete Agreement. This Lease Agreement supersedes any and all prior agreements, written and oral, between the Parties and constitutes the complete and entire agreement of the Parties.

Section 20. Headings for Convenience Only. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

Section 21. Modification. This Lease shall be modified in writing only, which writing must be executed by the Parties in order to be effective.

Section 22. Controlling Law. This Lease shall be governed under, and construed

pursuant to the laws of the State of Colorado.

(Signature page to follow)

LESSOR:

ATTEST:

TOWN OF CASTLE ROCK, acting by and
through the Town of Castle Rock Water Enterprise

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

LESSEE:

H&H FARMS

By: _____
Its: Authorized Partner

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument is acknowledged before me this ____ day of _____,
2023, by _____, as the authorized partner of H&H Farms.

Witness my official hand and seal.
My commission expires:

Notary Public