OPERATION AND MAINTENANCE AGREEMENT FOR THE PEARL DITCH AND POLE CREEK MEADOWS RESERVOIR NO. 1

THIS Agreement ("Agreement") is made and entered into this 11 day of July, 2023 between Tabernash Meadows Water and Sanitation District ("Tabernash"), Red Hawk Ranch at Winter Park, LLC, a Colorado limited liability company ("RHR at WP") and Scott Bradley ("Bradley"). Tabernash, RHR at WP, and Bradley are collectively referred to herein as the "Parties" and each individually as a "Party." The users of the Pearl Ditch and Pole Creek Meadows Reservoir No. 1 ("PCMR") identified herein who are not Parties hereto shall be referred to collectively as the "Non-Party Diverters." The Parties and the Non-Party Diverters may collectively be referred to as the "Diverters."

RECITALS

A. Tabernash is a Title 32 special district and quasi-municipal corporation organized to provide water and sewerage service in Grand County;

B. RHR at WP is the owner of 95-acres of real property known as Red Hawk Ranch, which is located along the Pearl Ditch and Crooked Creek,

C. Bradley is the owner of interests in the Rich Ditch, Pearl Ditch and PCMR, and is acting in his individual capacity;

D. Each of the Parties to this Agreement holds an interest in the Pearl Ditch Water Right as defined herein and a proportional interest in the Pearl Ditch and its carrying capacity, and each holds a right to store water in PCMR;

E. Pearl Ditch is the primary filling structure for PCMR;

F. Each of the Parties to this Agreement own interests in other water rights, including the Rich Ditch, that are decreed for diversion through the Pearl Ditch for storage in PCMR;

G. Pursuant to the August 1, 2007, Agreement between Tabernash and Pole Creek Valley Owners' Association (the "Association") recorded in the Grand County, Colorado real property records (the "Official Records") on October 16, 2007 at Reception No. 2007011622 (the "PCVOA Agreement"), and the executed deeds attached thereto as Exhibits A, B, and C (a) the Association is the owner of the land on which PCMR and a portion of the Pearl Ditch are located; (b) Tabernash owns certain water rights and water storage rights associated with PCMR; (c) the Association does not own any of the water rights associated with PCMR; (d) Tabernash reserved and/or was granted a perpetual, exclusive easement to access, use, maintain and repair PCMR and the Pearl Ditch on the Association's property; and (e) Tabernash granted to the Association a revocable license for use of the surface of PCMR for aesthetic and recreational uses, provided that Tabernash shall make the policy regarding and control the uses of PCMR and that any costs associated with the Association's permissive use of PCMR shall be the responsibility of the Association;

H. Tabernash and the Valley at Winter Park Water District ("VWPWD") entered into that certain "Intergovernmental Agreement between the Tabernash Meadows Water and Sanitation District and the Valley at Winter Park Water District" dated December 13, 2011 and recorded in the Official Records at Reception No. 2012000026, as amended by that certain "Amendment to Intergovernmental Agreement Between the Tabernash Meadows Water and Sanitation District and the Valley at Winter Park Water District" dated February 12, 2019 and recorded in the Official Records at Reception No. 2019001653 (collectively the "2011 IGA"), pursuant to which Tabernash granted VWPWD the following rights and interests in the Pearl Ditch and PCMR (collectively, the "VWPWD Rights"):

1. 10.5 acre feet of storage capacity in PCMR for storage of VWPWD's historical consumptive use allocations stemming from its ownership interests in the Pearl Ditch and the Rich Ditch, and

2. 25 percent of the safe capacity in the Pearl Ditch, up to 0.5 cfs, to convey VWPWD's historical consumptive use allocations into PCMR, plus the right to use any Pearl Ditch capacity owned by Tabernash which is at any given time not used by Tabernash;

I. The VWPWD Rights acquired from Tabernash are subject to the terms and conditions of the 2011 IGA;

J. VWPWD subsequently conveyed a portion of the VWPWD Rights to Highland Investment Company LLC ("Highland"), as set forth in Table 1 below;

K. The Pearl Ditch requires maintenance and periodic capital improvements in order to ensure that it is operable and able to divert and safely carry water to be stored in PCMR and under the Pearl Ditch and other decreed water rights;

L. PCMR requires maintenance and periodic capital improvements in order to ensure that it is operable and able to store and release water for the benefit of the Parties; and

M. Both the Pearl Ditch and PCMR require staffing to operate and measure diversions of water into and releases from PCMR; and

N. The Parties desire to enter into an agreement to define their financial obligations and other rights and responsibilities for operation, maintenance, and capital improvements of the Pearl Ditch and PCMR.

NOW, THEREFORE, in consideration of the promises set forth herein, the Parties agree as follows:

ARTICLE I - PURPOSE OF AGREEMENT

1.1. Purpose of Agreement. This Agreement is entered into by the Parties for the general purpose of defining their rights and responsibilities for the operation, maintenance, and capital improvements of the Pearl Ditch and PCMR.

ARTICLE II - DEFINITIONS

2.1. Pearl Ditch. "Pearl Ditch" refers to a ditch, headgate, and all appurtenant structures, the headgate of which is located on Pole Creek at a point whence the Southeast corner of Section 10, Township 1 South, Range 76 West of the 6th P.M., bears N35°15'W, 1,311 feet. A map generally depicting the location of the Pearl Ditch is attached hereto as **Exhibit A** and incorporated herein.

2.3 Pearl Ditch Water Right. "Pearl Ditch Water Right" refers to the water right decreed to the Pearl Ditch in the amount 2.0 c.f.s. under Priority No. 87, date May 5, 1892 as adjudicated in C.A. 112 in the District Court of the First Judicial District of Colorado in and for the County of Grand in the matter for adjudication of the priorities of right to the use of water for irrigation purposes in Water District No. 51, in the State of Colorado, dated August 11, 1906, later changed for storage in PCMR and for new uses in Case Nos. 80CW67 (consolidated with Case Nos. 80CW456 and 84CW175), 80CW298 (as modified and affirmed in the decrees in Cases Nos. 97CW218 and 2001CW176), 80CW299, 95CW354, and 16CW3036.

2.4 Pole Creek Meadows Reservoir No. 1. Pole Creek Meadows Reservoir No. 1, a/k/a PCMR, refers to a reservoir, inlet, outlet, and all appurtenant structures. The right abutment of the dam embankment for PCMR is located in the NE1/4 of the SE1/4 of Section 2, Township 1 South, Range 76 West of the 6th P.M., at a point whence the Southeast corner of Section 2 bears S24°00'E 1,740 feet. The current storage capacity of PCMR is approximately 42.0 acre-feet. The general location of PCMR is shown on **Exhibit A** hereto.

2.5 Rich Ditch Water Right. The "Rich Ditch Water Right" refers to that portion of the water right originally decreed to the Rich Ditch in C.A. No. 183 by the Grand County District Court on August 3, 1911, that was later changed to allow diversion at the Pearl Ditch for storage in PCMR for new uses in Case Nos. 80CW67 (consolidated with Case Nos. 80CW456 and 84CW175), 80CW298 (as modified and affirmed in the decrees in Cases Nos. 97CW218 and 2001CW176), 80CW299, 95CW354, 16CW3036, and 19CW3112.

ARTICLE III – USE OF STRUCTURES

3.1 Use of Pearl Ditch. The Parties shall share the actual safe carrying capacity of the Pearl Ditch to the extent such capacity exists from time to time based upon their respective "Pearl Ditch Ratio" (VWPWD's and Highland's interests in ditch capacity under the 2011 IGA are also reflected) as defined below:

Table 1 – Pearl Ditch Ratio		
Diverter	Maximum Flow Rate (c.f.s.)	Ratio Percentage (%)
Tabernash	1.231	61.6
RHR at WP	0.194	9.71
Bradley	0.075	3.74
VWPWD	0.262	13.1
Highland	0.238	11.9
Total:	**2.000**	**100.0**

3.1.1. The current estimated safe capacity of the Pearl Ditch is less than the 2.0 c.f.s. decreed to the Pearl Ditch Water Right. To the extent ditch capacity or water availability in Pole Creek limits the amount of water which can be safely delivered through the Pearl Ditch, each Party's entitlement to the capacity shall be set pursuant to the Pearl Ditch Ratio.

3.1.2. The following water rights may be diverted by the Diverters into the Pearl Ditch, including for storage in PCMR, up to each Diverter's entitlement of the safe carrying capacity pursuant to the Pearl Ditch Ratio:

3.1.2.1 Each Diverter's respective interests in the Pearl Ditch Water Right, as quantified and changed in their respective water court decrees.

3.1.2.2 Each Diverter's respective interests in the Rich Ditch Water Rights decreed to be diverted at the Pearl Ditch, to the extent permitted under their respective water court decrees.

3.1.3 In addition, the following water rights may be diverted by the Parties into the Pearl Ditch, including for storage in PCMR, up to their respective entitlement of the safe carrying capacity pursuant to the Pearl Ditch Ratio:

3.1.3.1 Free river water as may be available to the Parties from time to time in accordance with paragraph 3.2.2, below.

3.1.3.2 The Parties' respective interests in the water right decreed in Case No. 85CW148, District Court, Water Division No. 5, State of Colorado, issued October 30, 1985, in the amount of 52.2 acre-feet of storage and with an appropriation date of August 1972 (the "85CW148 Right"). The Parties agree that Bradley is the owner of 39.15 a.f. of the 85CW148 Right, or 75% of the right; and Tabernash is the owner of 13.05 a.f., or 25% of said right (the "85CW148 Ratios").

3.1.3.3 The Parties' respective interests in any other water pursuant to a decree of the water court or administrative approval under Colorado law.

3.1.4. To the extent the entitlement in the Pearl Ditch is unused by any Party to this Agreement at any given time, the other Party may utilize the unused capacity until such time that the Party whose capacity is so used subsequently has water available to divert in the capacity being utilized by the other Party. Upon notice given by the Party desiring to utilize its capacity being temporarily utilized by the other Party, such use by the other Party will immediately cease to the extent needed by the Party giving notice, up to the full capacity represented by said Party's Pearl Ditch Ratio, unless other arrangements are made by the Parties. The Parties agree to coordinate regarding the planned use or availability of unused diversion capacity to maximize the delivery and storage of water in PCMR. Pursuant to the 2011 IGA, if the Parties are using less than 75% of the capacity in the Pearl Ditch, the Non-Party Diverters may use any unused capacity for diversion of their HCU credits into PCMR.

3.1.5. Either Party to this Agreement shall have the option to enlarge the safe capacity of the Pearl Ditch at its own expense, and any such enlarged capacity shall be for the exclusive use of the Party or Parties funding the enlargement, absent consent of any such funding Party which allows another Party to use its proportion of the enlarged capacity. Each Party shall be given the opportunity to contribute funding for any enlargement up to its share of the Pearl Ditch Ratio unless otherwise agreed to by the Parties and any enlarged safe capacity shall be made available to all contributing Parties in proportion to the share of the funding contributed by each contributing Party ("Pearl Enlargement Ratio"). Before any enlargement is performed, the Parties shall confer and mutually agree upon the existing safe capacity and the intended enlargement thereto. All contributing Parties shall share in the cost of maintaining the enlargement in accordance with their Pearl Enlargement Ratio, to the extent not accounted for in the recalculation of Pearl Ditch Ratios as discussed below. Upon completion of any such enlargement, the Parties' respective Pearl Ditch Ratios shall be recalculated by factoring in the capacity of the enlargement and the Pearl Enlargement Ratio acquired by each Party contributing to the enlargement and the recalculated values shall replace the Pearl Ditch Ratio for purposes of this Agreement. Any enlargement of the Pearl Ditch by a Party shall be coordinated with the other Party to minimize disruption to the other Party's use of the Pearl Ditch.. Pursuant to the 2011 IGA, the Non-Party Diverters have the option to enlarge capacity of the Pearl Ditch at their own expense, and to the extent the Parties do not contribute to the expense of the enlargement any enlarged capacity shall be for the exclusive use of the Non-Party Diverters.

3.2. Use of PCMR. The Parties shall share the actual storage capacity of PCMR to the extent such capacity exists from time to time based upon the "PCMR Ratio" (including VWPWD's and Highland's interests under the 2011 IGA) as defined below:

Table 2 – PCMR Ratio

Party	Storage (a.f.)	Ratio Percentage (%)
Tabernash	18.75	44.6
RHR at WP	2.54	6.05
Bradley	10.21	24.30
VWPWD	5.50	13.1
Highland	5.00	11.9
Total:	**42.00**	**100.0**

The current estimated safe capacity of PCMR is 42 a.f. If any survey or other measurement of PCMR, prior to any enlargement under paragraph 3.2.5 below, shows a storage capacity greater or less than 42 a.f., the additional amount or reduction will be split equally between the Parties hereto, and the Parties' respective PCMR Ratios shall be recalculated accordingly.

3.2.1. The Non-Party Diverters' allocation of storage capacity is at all times limited to their respective storage capacities set forth in paragraph 3.2 above. However, to the extent any storage capacity in PCMR is unused by any Party at any given time, the other Party may temporarily utilize said unused capacity until such time as the Party whose capacity is so used subsequently has water available to store in the capacity being utilized by the other Party. Upon notice given by the Party desiring to store water in said Party's capacity being temporarily utilized by other Party, the water stored by the other Party in the notifying Party's capacity will either be actually released or will be paper released, or "booked over", (at the election of the Party whose water is occupying capacity of another Party); and said actual or paper release shall be to the extent of the capacity needed by the Party giving notice, up to the full capacity represented by the PCMR Ratio of the Party giving notice. If the water is actually released, the capacity so vacated shall be replaced by diversions of the water of the Party giving notice. If the combined need among the Diverters to physically release water at any point in time exceeds the capacity of the PCMR outlet works, the Parties shall share the available release capacity based on the PCMR Ratios provided in Table 2, above. If physical release is needed to evacuate storage space temporarily occupied by another Party, and the needed physical release exceeds the outlet works capacity, then the Party temporarily occupying storage space assigned to another must "book over" water to the Party assigned to that space. If the water is paper released, then the water occupying capacity of the Party giving notice shall be booked over to the account of the Party giving notice.

3.2.2. Non-Party Diverters are not allowed to store free river water in PCMR under the 2011 IGA. If free river conditions and PCMR storage capacity exists so that water may be stored in PCMR by either or both Parties to this Agreement free of a river call pursuant to paragraph 3.1.2.3 and subject to paragraph 3.2.1, then that free river water shall be allocated according to the Parties' respective PCMR Ratios. Whenever the 85CW148 Right is in priority and entitled to fill (*see, e.g.*, one-fill rule), then the Parties shall each decide whether to divert their respective 85CW148 water in lieu of free river water, provided however, that their respective Pearl Ditch Ratio and PCMR Ratio are not exceeded, except in circumstances where Pearl Ditch or PCMR capacity of the other Party is not being fully utilized in accordance with and subject to Paragraphs 3.1.2, 3.1.3 and 3.2.1 above. The Parties agree to cooperate regarding diversion and use of the 85CW148 water to prevent abandonment of the water right.

3.2.3. Tabernash will be responsible for operation of PCMR and Pearl Ditch to implement the Diverters' lawful storage and release of water. Such operations may include headgate diversions, ditch deliveries, flow measurements and recording, reservoir operations, storage volume measurements and recording, and reservoir releases. At such times as the Parties are simultaneously making releases from or storing water in PCMR, releases or storage shall be made pursuant to the PCMR Ratio and the Pearl Ditch Ratio, as may be applicable, unless otherwise agreed-. The Parties agree to use best efforts to agree on release and storage schedules that can be implemented with reasonable practicability, but the Parties recognize that additional or different releases or storage schedules may be required by state water administration officials.

3.2.4. Tabernash reserves the right to take such measures as may be necessary in the operation of PCMR to preserve life and/or property, including the option to forego additional storage diversion or downstream releases during such periods of time as are deemed necessary, in Tabernash's sole discretion, to prevent or minimize downstream flooding, damage prevention or to inspect, maintain or repair PCMR, provided, however, that Tabernash shall use reasonable efforts to undertake routine inspection, maintenance and repair operations in a manner that will not unreasonably impede releases or storage of water.

3.2.5 Subject to any necessary approval from Pole Creek Valley Owners' Association, any Party to this Agreement shall have the option to enlarge the capacity of PCMR at its own expense, and any enlarged capacity shall be for the exclusive use of the Party or Parties funding the enlargement, absent consent of any such funding Party which allows another Party to use its proportion of the enlarged capacity. Each Party shall be given the opportunity to contribute funding for any enlargement - and any enlarged capacity shall be made available to all contributing Parties in proportion to the share of the funding contributed by each contributing Party ("PCMR Enlargement Ratio"). Upon completion of any such enlargement, the Parties' respective PCMR Ratios shall be recalculated by factoring in the capacity of the enlargement and the PCMR Enlargement Ratios acquired by each Party contributing to the enlargement and the recalculated values shall thereafter replace the PCMR Ratio for purposes of this Agreement. Any enlargement of PCMR by any Party shall be coordinated with the other Party to minimize disruption to the use of PCMR.

3.3. Each Party shall be responsible for any water court approvals needed to divert its water into the Pearl Ditch and/or to store and release its water in PCMR. Each Party is solely responsible for diverting, storing and using water in the Pearl Ditch and PCMR in accordance with its decrees and with state laws, and for establishing and defending, if necessary, any and all of the water rights diverted and/or stored by said Party in the Pearl Ditch and PCMR.

3.4. Tabernash shall assess transit loss, evaporation loss, and seepage loss to each Diverter's storage account, as determined by the Division Engineer, other official of the State Engineer's Office or otherwise as required by decree or state law; and each Diverter will either offset the evaporation loss or seepage, or Tabernash will assess a reduction in the amount of water stored in each Diverter's account accordingly. Actual transit, seepage and evaporation losses will be allocated between the Parties as set forth in paragraph 3.8 below.

3.5. Tabernash shall be responsible for all Pearl Ditch diversion operations. As sole owner of PCMR, Tabernash shall be responsible for all PCMR storage operations, taking required measurements of diversions and storage volumes, as well as completing overall accounting for water diverted into the Pearl Ditch and stored in and released from PCMR.

3.6. On or before March 31st of every year, RHR at WP and Bradley will each provide to Tabernash an anticipated storage and release schedule for their respective storage accounts in

PCMR for the upcoming year, which shall be updated monthly or more as needed to address calls, diversions, demands or other changes. Tabernash shall endeavor to obtain the same information in the same general timeframe from the Non-Party Diverters regarding their anticipated use of PCMR for the upcoming year. Tabernash agrees to timely provide information regarding the status of diversions and storage upon request by RHR at WP and/or Bradley.

3.7. Each Party shall be responsible for giving notices and reports of its diversions, storage, and releases to the State Engineer, the Division Engineer, or the Water Commissioner as required by their respective decrees. Each Party's individual water accounting required by their decrees and/or as required by the State Engineer's Office shall track any separate 'pools' of water and assignment of losses as needed. Water losses in the Pearl Ditch and PCMR will be allocated to the Diverters in accordance with their use of those facilities per paragraph 3.8. RHR at WP and Bradley each agree to timely provide to Tabernash copies of their respective accounting records regarding diversion, storage and release of water and they will reconcile their accounting to the reservoir account on at least a monthly basis. Tabernash shall endeavor to obtain the same accounting information and reconciliations from the Non-Party Diverters regarding their use of PCMR.

3.8. Gross monthly water losses, including ditch transit losses, reservoir seepage and evaporation, with respect to PCMR will be allocated by Tabernash among the Diverters with water in PCMR on a basis proportional to each Party's amount of water in storage. Any seepage from the reservoir allocated to a Party's storage water which cannot be rediverted or claimed by said Party may be rediverted or claimed by the other Party.

3.9. A reservoir accounting fund will be maintained jointly by Tabernash to be used to pay for the costs associated with reservoir accounting. RHR at WP shall pay Tabernash $1,200 per year for this purpose, subject to an annual escalator based on C.P.I. (All Urban Consumers), for RHR at WP's and Bradley's respective shares of the reservoir accounting costs. RHR at WP and Bradley may adjust as between themselves their respective share of the $1,200 reservoir accounting fee (as it may be adjusted by C.P.I. from time to time) payable each year by RHR at WP, if and to the extent RHR at WP and Bradley desire to do so.

ARTICLE IV - FINANCIAL OBLIGATION OF THE PARTIES

4.1 General Operation and Maintenance Costs. Pursuant to the 2011 IGA, VWPWD agreed to make an annual payment of $1,000, subject to an annual escalator based on C.P.I. (All Urban Consumers) from December 2011, to Tabernash for general operation and maintenance costs for the Pearl Ditch and PCMR (the annual "VWPWD O&M Payment"). Highland is an assignee of a portion of VWPWD's rights and responsibilities under the 2011 IGA, and pays its share of the VWPWD O&M Payment directly to VWPWD pursuant to a separate agreement. Tabernash, RHR at WP and Bradley agree to be individually financially responsible for their respective share of general operation and maintenance costs for the Pearl Ditch and PCMR as follows:

4.1.1 The general operation and maintenance costs for Pearl Ditch shall be borne 9.71% by RHR at WP, 3.74% by Bradley and 86.6% by Tabernash.

4.1.2 The general operation and maintenance costs for PCMR shall be borne 6.05% by RHR at WP, 24.40% by Bradley and 69.6% by Tabernash.

4.1.3 The VWPWD O&M Payment shall be credited solely to Tabernash's share of Pearl Ditch and PCMR general operations and maintenance costs.

4.1.4 Tabernash will provide each of RHR at WP and Bradley annually with an invoice itemizing the total general operation and maintenance costs for the Pearl Ditch and PCMR attributable to RHR at WP and Bradley, respectively. RHR at WP and Bradley shall each pay their respective portion of the operation and maintenance costs within 30 days of the billing date.

4.2 Major Repairs. Major Repairs are defined as the repair, modification, or replacement of structures in excess of $10,000 (adjusted every five years for inflation based on C.P.I. (All Urban Consumers) required by the Colorado Division of Water Resources ("CDWR") for safety or for proper administration of the Parties' augmentation plans and other water rights, or as the Parties may otherwise mutually agree among themselves. The Parties will consult and must agree concerning the necessity of, extent of, and allocation of costs for any proposed Major Repairs. If agreement between the Parties cannot be reached as to the necessity for, extent of, cost of, or allocation of costs for any Major Repairs required for operation of the Pearl Ditch and/or PCMR, the Parties agree to engage in dispute resolution pursuant to Paragraph 6.3 below.

4.2.1 Tabernash shall coordinate, contract for and administer the construction of all Major Repairs, following consultation with RHR at WP and Bradley.

4.2.2 RHR at WP and Bradley shall each be provided with a copy of the construction contract executed by Tabernash associated with any Major Repairs.

4.2.3 Tabernash may seek contribution for Major Repairs from the Non-Party Diverters to the extent said Non-Party Diverters will benefit from the repairs.

4.2.4 Tabernash shall confer with each of RHR at WP and Bradley as to appropriate contributions to be sought from Pole Creek Valley Owners' Association for Major Repairs to PCMR in accordance with Paragraph 6.5 below.

4.2.5 Tabernash may also seek contribution from any other funding sources.

4.2.6 Any contributions received will be deducted from the cost of the Major Repairs, prior to calculating the amount of Parties' respective share of such costs.

4.2.7 The Parties shall use reasonable efforts to coordinate construction to minimize disruption to the Parties' operations.

4.2.8 All contractors shall be required to provide performance, payment and warranty bonds insuring completion of the project, payment of all subcontractors and a warranty thereof for two years following acceptance of the construction by the Parties.

4.2.9 Upon request made to Tabernash, RHR at WP and Bradley shall each have the right to review all applications for payment that are submitted for Major Repair costs by the general contractor and project engineer as well as all invoices and other documentation substantiating the amounts requested pursuant to such payment applications.

4.3 Performance of Work pursuant to this Agreement. If the Parties elect to retain the services of a third party to perform the routine operation or maintenance work contemplated in this Agreement, Tabernash will be individually and solely responsible for contracting for the work to be performed.

4.4 Failure to Reimburse for Financial Obligation. If any Party fails to reimburse another Party as required under this Agreement, the Party who has failed to pay their respective financial obligation for operation and maintenance costs within thirty (30) days of receiving written notice thereof, shall not be entitled to divert water or use any structures under the Pearl Ditch and/or to store water in PCMR until the required payment has been made unless there is an objection to the invoice that cannot be amicably resolved without mediation. The Non-Diverters' failure to meet any payment obligations under the 2011 IGA shall result in the refusal by Tabernash to convey or store water on behalf of the Non-Party Diverters until such payment obligations have been made.

4.5 Liability. RHR at WP and Bradley each agree to hold Tabernash harmless for any liability resulting from work performed or contracted by Tabernash pursuant to this Agreement. RHR at WP and Bradley each further agree that Tabernash owes no fiduciary duty to either of them with regard to the operation and maintenance of the Pearl Ditch or PCMR.

4.6 Insurance. Tabernash shall purchase and maintain casualty insurance on the reservoir structure with limits no less than the replacement value of the structure, or such other limits which the Parties jointly determine is economically practical. Such casualty insurance policy shall include each of RHR at WP and Bradley as a named insureds (certificate holders), to the extent of their respective insurable interests. Tabernash may in its discretion name any Non-Party Diverters as additional insureds on such casualty policy. Tabernash shall coordinate with RHR at WP and Bradley in regard to Tabernash's efforts to procure such casualty insurance and may coordinate with any Non-Party Diverters in Tabernash's discretion; so that each consulted entity may provide input in connection with the insurer's definition of its insurable interest. Tabernash shall purchase and maintain liability insurance in connection with reservoir operations, which shall name each of RHR at WP and Bradley as an additional insureds. Tabernash may in its discretion name any Non-Party Diverters as additional insureds on such liability policy. The Parties agree to work cooperatively to determine an equitable distribution of the costs of policy premiums for said casualty insurance, based upon the insurable interests of each. In addition, each Party shall maintain its own liability insurance coverage with respect to any responsibilities it might have under this Agreement. Nothing in this paragraph is intended to create any rights in or for any third party or to create any obligations or responsibilities on any Party to this Agreement as to any third party.

ARTICLE V -- MEETINGS

5.1 Meetings. The Parties or their proxies shall meet twice during each calendar year, once in the spring when the Pearl Ditch begins to divert water and once in the fall to assess the operations during the most recent irrigation season. Other meetings or on-site field visits may be held on an as-needed basis.

5.2 Notice of Meetings. Notice of meetings shall be provided in writing at least fourteen days in advance. Meetings may be held in person, virtually or by telephone.

ARTICLE VI – MISCELLANEOUS PROVISIONS

6.1 Assignment/conveyance of interests in the Pearl Ditch and/or PCMR: Any Party may lease, assign, or otherwise convey all or a portion of its interest in the Pearl Ditch and/or PCMR under this Agreement, provided the entity acquiring such interest affirmatively agrees in writing that it is bound by the terms and conditions of this Agreement and in accepting said assignment, also assumes all duties and obligations of its assignor hereunder; and further provided that if said interests are being conveyed by a Party separate from the land served by those interests then the other Party shall have a right of first refusal to acquire the interest offered on the terms proposed to any third party. In the event of such a conveyance, the above tables of Pearl Ditch and PCMR Ratios shall be revised to reflect new allocations based on ownership.

6.2 Water Court opposition. Each Party agrees not to initiate or take a position in any adjudication in the Colorado water courts seeking to reduce, abandon or compromise the other Party's water rights. Each Party agrees not to contest future applications or other actions initiated by the other Party in the Colorado water courts that seek to confirm and adjudicate changes in the water rights owned by the other Party, or that seeks to make water rights absolute and/or seeks findings of reasonable diligence for water rights owned by the other Party, provided such applications are not inconsistent with the terms herein. Either Party may participate in such water court actions involving the other Party to the extent deemed necessary to monitor compliance with this Agreement, support such actions, or jointly defend the water rights of each Party as against third parties.

6.3 Dispute Resolution. The Parties hereto agree if after written notice of any alleged default or material disagreement regarding this Agreement is provided to the other Party and the

Parties are unable to reach amicable resolution, prior to seeking relief in court regarding the dispute, the Parties shall resort to non-binding mediation with a mutually acceptable mediator with the cost of the mediator shared equally by the Parties. Unless agreed otherwise in writing, the mediator will be engaged within thirty days of the foregoing written notice and any mediated resolution will be achieved within 90 days of said written notice and, if such resolution is not achieved, the Parties may then seek such judicial relief as the circumstances may allow, including but not limited to, specific performance.

6.4 Rich Ditch operation and maintenance. The Parties each also claim an interest in the Rich Ditch, operation and maintenance of which ditch is subject to separate agreements between the Parties and the City and County of Denver, acting by and through its Board of Water Commissioners, as well as other third parties. Nothing herein in any way modifies or alters the terms of any agreement concerning the operation and maintenance of the Rich Ditch.

6.5 Other agreements unaffected. Nothing herein in any way modifies or alters the terms of the 2011 IGA or the PCVOA Agreement.

6.6 Recreational use of PCMR. The Parties acknowledge that Tabernash has granted Pole Creek Valley Owners' Association a revocable license for use of the surface of PCMR for recreational and aesthetic purposes pursuant to the terms and conditions of the PCVOA Agreement described in Recital F, above, and that the Parties' operation and use of PCMR is subject to said Agreement and revocable license, which require, without limitation, (a) that any costs associated with the Association's permissive use of PCMR shall be the responsibility of the Association and (b) that failure of the Association to pay such costs shall be grounds for Tabernash's revocation of the Association's license. The Parties further acknowledge and agree that Major Repairs needed to facilitate the Parties' continued effective use of PCMR for their purposes may be repairs also needed to facilitate the Association's continued use of its license; and, as such, the cost of Major Repairs constitute costs associated with the Association's permissive use of PCMR. Tabernash agrees to consult with RHR at WP and Bradley as to an appropriate share of such costs that Tabernash shall endeavor to assess to the Association.

6.7 No Third Party Beneficiaries. This Agreement is intended to benefit only the Parties to this Agreement, and no other person or entity is intended by the Parties to be a third-party beneficiary of this Agreement, specifically including, without limitation, the Non-Party Diverters and the Association. All provisions herein addressing issues related to the Non-Party diverters and the Association are included herein solely and exclusively for the benefit of the Parties hereto.

6.8 Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.

6.9 Venue and Governing Law. This Agreement shall be deemed performable in Grand County, Colorado. The sole venue for any dispute resulting in litigation shall be in the District

Court in and for Grand County, Colorado. This Agreement shall be governed by and construed under the laws of the State of Colorado.

6.10 Notice and Contact. The Parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

If to RHR at WP: c/o Mr. Scott Bradley, Manager
8301 Prentice Ave. Suite 303
Greenwood Village, CO 80111
Scott@scottsb.com
303-888-8900

If to Bradley: Mr. Scott Bradley
8301 Prentice Ave. Suite 303
Greenwood Village, CO 80111
Scott@scottsb.com
303-888-8900

With copy to: Stephen C. Larson
850 W. South Boulder Road, Suite !00
Louisville, CO 80027
sclarson@j-rlaw.com

If to Tabernash: Thom Yoder, Manager
P.O. Box 443
Tabernash, CO 80478
yothom@tmwsd.com
970-726-2839
Mobile 970-531-1407

With copy to: David L. Kueter
Holsinger Law LLC
1800 Glenarm St., Suite 500
Denver, CO 80202
dkueter@holsingerlaw.com

or such other persons or addresses as the Parties may have designated in writing.

6.11 Agreement Binding on Heirs, Successors, Assigns, and Lessees. This Agreement is binding on each Party's heirs, successors in interest, assigns, or lessees.

6.12 Governmental Immunity Act. The Parties understand and agree that Tabernash has not waived any or all rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

6.13 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and replaces all prior written or oral agreements and understandings thereto. It may be altered, amended, or repealed only by a duly executed written instrument executed by all Parties.

6.14 Agreement Subject to Appropriations. This agreement may be subject to annual appropriation by Tabernash.

6.15 Effective Date. Except as specifically amended in this Agreement and any previous amendments, the Agreement shall remain in full force and effect. This Agreement shall be effective as of the Effective Date set forth above.

6.16 Term. The term of this Agreement shall be perpetual.

6.17 No Partnership. This Agreement shall not be construed as creating a partnership or joint venture.

6.18 Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute one and the same Agreement.

THEREFORE, the Parties have executed this Agreement. This Agreement must have the signature of an authorized representative of each Party.

TABERNASH MEADOWS WATER AND
SANITATION DISTRICT

By:____________________________

7-11-2023
Date

Attest:

____
Secretary

RED HAWK RANCH at WINTER PARK, LLC

Scott Bradley

By: Scott Bradley, Manager

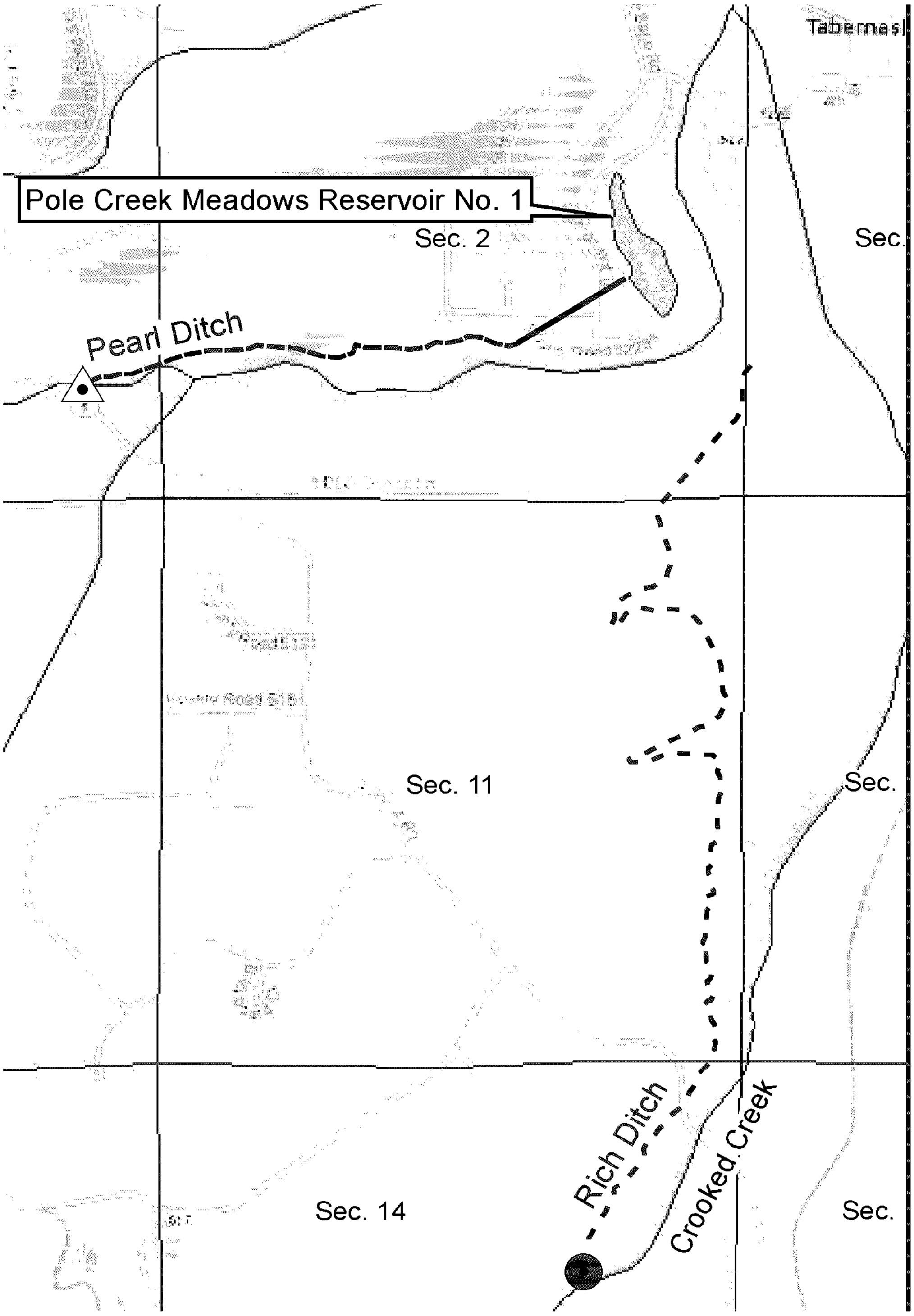
~~SCOTT BRADLEY~~

By: Scott Bradley

July 7, 2023

Date

EXHIBIT A


Tabernash
Pole Creek Meadows Reservoir No. 1
Sec. 2
Sec.
Pearl Ditch
Sec. 11
Sec.
Rich Ditch
Crooked Creek
Sec. 14
Sec.