

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-19
Series of 2014

Series of 2014

A RESOLUTION APPROVING THE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND THE FARMERS HIGH LINE LATERAL DITCH COMPANY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Agreement between the City of Northglenn and the Farmers High Line Lateral Ditch Company is hereby approved and the Mayor is authorized to execute the same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2014.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT

THIS AGREEMENT is entered into this 29th day of January, 2014, by and between The Farmers High Line Lateral Ditch Company, a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, whose address is 11701 Community Center Drive, Northglenn, County of Adams, State of Colorado 80233 (the "Company") and the City of Northglenn, a Colorado municipal corporation whose address is 11701 Community Center Drive, Northglenn, County of Adams, State of Colorado 80233 ("Northglenn").

RECITALS

A. The Company is a mutual ditch company consistent with C.R.S. §7-42-101, *et seq.*, in the ownership, operation, repair and maintenance of a lateral canal or ditch off of the Farmers Highline Ditch, which is owned by the Farmers' Highline Canal and Reservoir Company. The lateral is known as The Farmers' High Line Lateral Canal and is commonly referred to as the Tuck Lateral (hereinafter called the "Ditch").

B. Shareholders in the Company also own shares of stock in the Farmers' Highline Canal and Reservoir Company, which entitles them to the delivery of water through the Ditch.

C. The Ditch passes through lands located to the west of Interstate-25 ("I-25"), including lands primarily existing in Northglenn, and then continues to the east of I-25 in the City of Thornton ("Thornton"). The lands through which the Ditch runs, and which are located to the west of I-25, shall be referred to herein as the "Property." The Company also has an easement to allow the Company to fully enjoy and utilize the Ditch (the "Ditch Easement"). A portion of the Ditch Easement is generally located within the Property, as approximately shown on **Exhibit A**, attached hereto. The portions of the Ditch and Ditch Easement on the east side of I-25 were previously transferred to Thornton per an agreement between the Company and Thornton dated June 20, 2008, and a quit claim deed dated July 8, 2008, recorded in the Adams County Recorder's office on July 10, 2008, at reception number 2008000055186 ("Thornton Quit Claim Deed").

D. Northglenn owns 4.5 shares of stock in the Company ("Northglenn Shares").

E. Northglenn desires to sell and remit its Northglenn Shares back to the Company. In exchange, Northglenn consents to the abandonment by the Company, and conveyance by the Company to Northglenn, of the section of the Ditch and Ditch Easement that is generally located on the portions of the Property within Section 15, Township 2 South, Range 68 West, 6th P.M., Adams County, Colorado between the Olinger Highland Mortuary's point of diversion off of the Ditch and into a lateral privately owned and maintained by Olinger Highland Mortuary, and the Badding Splitter, as described in the Thornton Quit Claim Deed. It is the parties intent that all of

the Ditch below the Olinger Highland Mortuary's point of diversion off of the Ditch be the responsibility of Northglenn, and Thornton, as set forth in this Agreement, the June 20, 2008 Thornton Agreement, and the Thornton Quit Claim Deed. This portion of the Ditch, Ditch Easement and any and all structures, facilities and/or appurtenances related thereto is referred to herein as "Segment 3", and is shown and depicted on **Exhibit A** attached hereto. Notwithstanding the foregoing, Northglenn accepts no and has no responsibilities and/or obligations for the portion of the Ditch at the Badding Splitter and below, which is described in the June 20, 2008 Thornton Agreement and the Thornton Quit Claim Deed.

F. Northglenn owns the portions of the Property located within Segment 3.

G. In accordance with the provisions of this Agreement, the Company agrees to Northglenn's remittance and return of the Northglenn Shares and, in exchange, Northglenn consents to the Company's abandonment and conveyance to Northglenn of Segment 3.

NOW THEREFORE, in consideration of the promises and conditions contained herein, the Parties hereto agree as follows:

1. Recitals. The above Recitals are incorporated herein as if fully set forth herein.
2. Agreement. For good and valuable consideration, the receipt of which is hereby acknowledged by the parties, Northglenn shall remit and return the Northglenn Shares to the Company and, in exchange, Northglenn shall consent to the Company's abandonment and conveyance to Northglenn of Segment 3.
3. Special Meeting Date. A special meeting of the Stockholders of the Company occurred on Thursday, January 16, 2014 at the offices of the City of Northglenn, to discuss and approve this Agreement (the "Special Meeting").
4. Special Meeting. At the Special Meeting, the following occurred:
 - a. The Parties approved Northglenn's remittance and return of the Northglenn Shares to the Company and the Company's abandonment and conveyance to Northglenn of Segment 3, as set out in this Agreement.
 - b. Northglenn shall deliver to the Company a Stock Certificate for the Northglenn Shares, properly endorsed by Northglenn, together with any assignment thereof, giving Northglenn the authority to transfer the ownership of the right to carry water evidenced by the stock certificate from Northglenn back to the Company on the records of the Company.
 - c. Northglenn approved the Company's abandonment of Segment 3 of the Ditch and conveyance of Segment 3 by the Company to Northglenn.
5. Parties Remaining Obligations. Except as otherwise set forth herein, Northglenn shall no longer have any shareholder obligations and responsibilities related to the ownership, operation, repair, maintenance and/or liability of the Ditch and Ditch Easement and any related

facilities, structures, and/or appurtenances thereto, including without limitation the payment of any costs, fees and/or past or future dues and/or assessments related to the Ditch and/or Ditch Easement and/or any rights, obligations and/or liabilities related to the delivery of water to the remaining shareholders and/or other water users that have obtained permission to use the Ditch. The Company shall no longer have any shareholder obligations and responsibilities related to the ownership, operation, repair, maintenance and/or liability of the Ditch and Ditch Easement within Segment 3 and any related facilities, structures, and/or appurtenances thereto, including without limitation the payment of any costs, fees and/or past or future dues and/or assessments related to Segment 3 and/or any rights, obligations and/or liabilities related to the delivery of water to the remaining shareholders and/or other water users that have obtained permission from Northglenn to use Segment 3 of the Ditch. Except for Segment 3, nothing in this Agreement shall affect or alter the rights, obligations and/or liabilities of the Company and its remaining shareholders related to the ownership, operation repair and maintenance of the Ditch and Ditch Easement and any related facilities, structures and/or appurtenances thereto, including any rights, obligations and/or liabilities related to the delivery of water to the Company's shareholders and/or other water users that have obtained permission to use the Ditch [if any]. Northglenn is also releasing its rights as a stockholder of the Company for carriage of its water rights in the first two sections of the lateral unless written approval is received by the Company. However, nothing in this Agreement shall be construed to effect historical storm water drainage that flows into the Ditch.

6. Quitclaim Deed. Following the approval required in Section 13, the Company shall convey to Northglenn the portions of the Ditch and Ditch Easement that make up Segment 3 by quitclaim deed.

7. Cooperation of the Parties. The parties agree to cooperate in good faith in the preparation and execution of any documents that are required to carry out the intent of this Agreement.

8. Reimbursement of Reasonable Legal Fees. Northglenn agrees to reimburse the Company for any reasonable attorneys' fees and costs it incurs by having independent legal counsel review this Agreement and consult with the Company concerning its contents and effect prior to execution of the Agreement.

9. Fees and Costs Related to Enforcement of Agreement. In the event that legal services are used by either party and/or a shareholder of the Company in the enforcement of this Agreement, each party shall bear its own attorneys' fees and costs.

10. Successors and Assigns. This Agreement and all the terms and conditions thereof shall extend to and be binding upon the successors and assigns of each of the parties hereto, including, but not limited to, any owners of the Property.

11. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

12. Authority to Sign. The Parties hereto represent and affirm the signatories to this Agreement are legally authorized to bind the Parties.

13. Council Approval. This Agreement is contingent upon, and shall not take effect until, the approval of the Agreement by the City Council for the City of Northglenn.

14. Recordation. Following the approval required in Section 13, Northglenn shall promptly record this Agreement and the Quitclaim Deed with the Clerk and Recorder of Adams County, Colorado and tender a copy of the original recorded Agreement to the Company with the recording information set forth on the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed by the proper officers, and have affixed their seals hereto on the day and year first above written.

**THE FARMERS HIGH LINE LATERAL
DITCH COMPANY, a Colorado non-profit
corporation**

By: John Chalupa
John Chalupa, President

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss
COUNTY OF Adams)

The foregoing instrument was acknowledged before me this 27th day of January, 2014 by John Chalupa, as President of The Farmers High Line Lateral Ditch Company, a Colorado non-profit corporation.

Witness my hand and official seal:

A circular notary seal for the State of Colorado. The outer ring contains the text 'NOTARY PUBLIC STATE OF COLORADO'. The inner ring contains the text 'BRETT BARNETT'. The center of the seal is blank.

Brett Barnett
Notary Public
My Commission Expires: 9/23/2017

**THE CITY OF NORTHGLENN, a Colorado
municipal corporation**

By: _____
Joyce Downing, Mayor of the City of
Northglenn

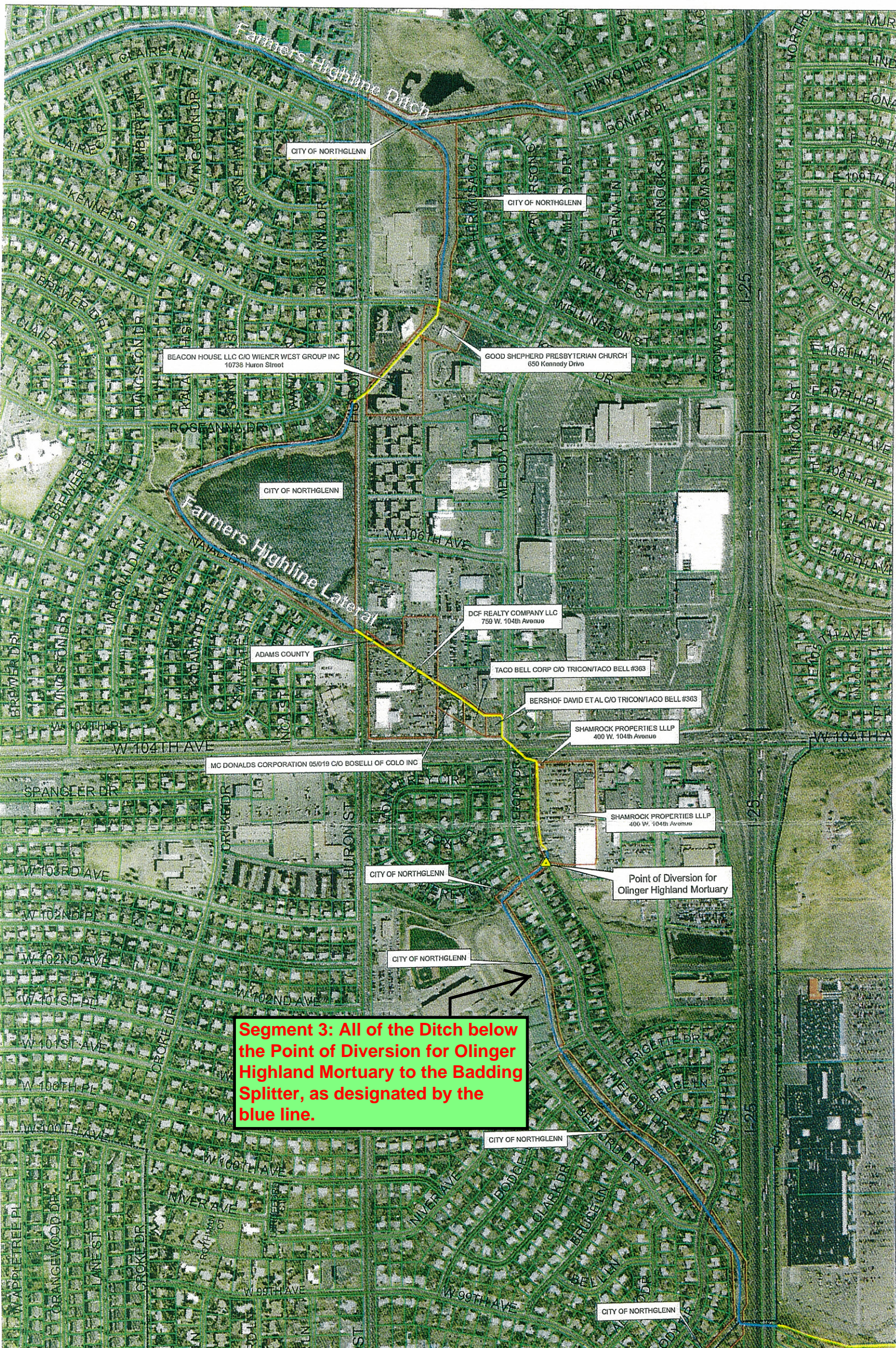
ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Joyce Downing, Mayor for the City of Northglenn.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____



BEACON HOUSE LLC C/O WIENER WEST GROUP INC
10738 Huron Street

GOOD SHEPHERD PRESBYTERIAN CHURCH
650 Kennedy Drive

DCF REALTY COMPANY LLC
759 W. 104th Avenue

TACO BELL CORP C/O TRICON/TACO BELL #363

BERSHOF DAVID ET AL C/O TRICON/TACO BELL #363

SHAMROCK PROPERTIES LLLP
400 W. 104th Avenue

MC DONALDS CORPORATION 05/019 C/O BOSELLI OF COLO INC

SHAMROCK PROPERTIES LLLP
400 W. 104th Avenue

Point of Diversion for
Olinger Highland Mortuary

**Segment 3: All of the Ditch below
the Point of Diversion for Olinger
Highland Mortuary to the Badding
Splitter, as designated by the
blue line.**