

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____ 2022, by and between **6037 JOHNSTOWN, LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in land located in in the South Half of Section 6, Township 4 North, Range 67 West, 6th PM., Weld County, Colorado, described more particularly on Exhibit “A” (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town; and

WHEREAS, the Subject Property is being developed by Developer as Purvis Farm, containing 232 single family detached lots with 10.8 acres of residential irrigated landscape, 150 single family attached units with 6.6 acres of residential irrigated landscape, and common use landscape with 8.8 spray-irrigated acres and 0.5 drip irrigated acres (“Project”); and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Project.

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. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), Developer has submitted to the Town a preliminary water and sewer demand analysis for the Project. Said analysis was received by the Town, is on file with the Town and, as modified by the Town’s Water Engineer by memorandum dated March 28, 2022, is hereby accepted by the Town. The analysis provided by Developer addresses the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-Building	120.1	6.0
Residential Landscape Irrigation	66.3	56.4
Total	186.4	62.4

2. Water Rights Dedication and Dry-Up Covenants. Within 45 days of the date of this Agreement, Developer will dedicate twenty-two (22) shares of the Consolidated Home Supply Ditch & Reservoir Company (“Home Supply”) to the Town, represented by Certificate No. 6997

(11 shares, 88 acre-feet); Certificate No. 6401 (3 shares, 24 acre-feet); and Certificate No. 6990 (8 shares, 51.2 acre-feet). Developer will also dedicate 5.02 acre-feet that will be assigned from RV Boatel, LLC (“RV Boatel”) to Post Modern Development, LLC (“Post Modern”) pursuant to an Assignment and Allocation of Raw Water Credit to be executed by and among the Town, RV Boatel and Post Modern, which water credit will then be assigned from Post Modern to Developer. In total, Developer currently has, or will have, 168.22 acre-feet of raw water under its control that is available to be dedicated to the Town, which is less than the raw water necessary for the Project.

In addition, within 45 days of the date of this Agreement, in order to receive 8 acre-feet of raw water credit per share of Home Supply for Certificate No. 6997 and Certificate 6401, Developer will provide executed and recorded dry-up covenants to the Town, in a form acceptable to the Town, with respect to the water associated with Certificate No. 6997 and Certificate 6401. If such dry-up covenants are not provided to the Town, unless otherwise agreed by the Parties in writing, this Agreement will be void and without any effect under its own terms and without any action by the Town.

3. Water Rights Dedication Shortage. The dedication of the 168.22 acre-feet described in Paragraph 2, above, will result in a raw water shortage of 18.18 acre-feet. The shortage is calculated as follows:

Dedication Credit:	168.22 acre-feet
LESS estimated demand:	186.4 acre-feet
Net current shortage:	-18.18 acre-feet

Within 45 days of the date of this Agreement, Developer must dedicate to the Town at least an additional 18.18 acre-feet of raw water credit. Until said 18.18 acre-feet is dedicated to and accepted by the Town, the Town will not issue water or sewer taps, building permits, or any other approvals or acceptances for the Project. If Developer does not dedicate the additional 18.18 acre-feet within said 45 days, this Agreement will be void and without any effect under its own terms and without any action by the Town. If Developer dedicates such water to the Town and the Town accepts such dedication, the Parties will enter into an addendum to this Agreement memorializing the dedication and any surplus credit available.

4. Commitment to serve. Subject to Developer’s performance of all the covenants contained herein, including the dedication of an additional 18.18 acre-feet of raw water credit, and payment of all required fees, the Town commits to provide to the Project up to 120.1 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and 66.3 acre-feet for irrigation as described above.

5. Future review of water usage and dedication requirements. In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Project at a point in time after water usage has been established to confirm the adequacy of the water demand

projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

6. Payment of Water Court Transfer fees. Upon Developer dedicating an additional 18.18 acre-feet of raw water credit to the Town, the Town will calculate the water court transfer fee for the entire dedication of water, based on the dedication of 186.4 acre feet (373 SFE). The water court transfer fee will be memorialized in an addendum to this Agreement and will be due upon execution of said addendum. Pursuant to Paragraph 5, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication. Further, in accordance with the Ordinance, additional water court transfer fees will be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the Parties in accordance with the Ordinance and this Agreement.

7. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO DEVELOPER:

JD Padilla
144 N. Mason, Ste 4
Fort Collins, CO 80524
Email:
jd@postmoderndevelopment.com

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
Email: dseele@townofjohnstown.com

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538
Email: avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264
Email: peterampe@hillandrobbs.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

8. 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 and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after ninety (90) days, either Party may then commence an action in a court of competent jurisdiction and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

9. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

10. 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.

11. 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 Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

12. 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.

13. 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.

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

15. 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 legal action shall be in the County of Weld, State of Colorado.

16. 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.

17. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with

respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

18. Recordation. This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject Property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

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

Signatures follow.

EXHIBIT A
LEGAL DESCRIPTION

A parcel of land situate in the South Half of Section Six (6), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

ALL OF THE N 1/2 OF THE SW 1/4 AND ALL OF THE SW 1/4 OF THE SW 1/4 OF SECTION 6, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

EXCEPT THAT PART OF THE SW 1/4 OF THE SW 1/4 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 6, 519 FEET NORTH OF THE SW CORNER THEREOF; THENCE EAST 252 FEET;

THENCE NORTH 346 FEET;

THENCE WEST 252 FEET;

THENCE SOUTH 346 FEET TO THE PLACE OF BEGINNING, AND AS CONVEYED BY DEED RECORDED MARCH 12, 1907 IN BOOK 273 AT PAGE 300, WELD COUNTY RECORDS:

AND FURTHER EXCEPTING CONVEYANCES TO THE DEPARTMENT OF HIGHWAYS, STATE OF COLORADO, AS RECORDED MAY 10, 1957 IN BOOK 1477 AT PAGE 299, 301 AND 303, WELD COUNTY RECORDS; AND TO PERMANENT EASEMENTS FOR IRRIGATION DITCH AS CONVEYED TO DEPARTMENT OF HIGHWAYS, STATE OF COLORADO BY INSTRUMENTS RECORDED MAY 10, 1957 IN BOOK 1477 AT PAGE 307, 308 AND 309, WELD COUNTY RECORDS; AND FURTHER EXCEPTING THAT PART OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 6 CONVEYED BY DEED RECORDED FEBRUARY 23, 1951 IN BOOK 1295 AT PAGE 477, WELD COUNTY RECORDS

AND

THAT PORTION OF THE SE 1/4 OF SECTION 6, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS: CONSIDERING THE SOUTH LINE OF SAID SE 1/4 OF SECTION 6 AS BEARING N 81° 06' 55" W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO:

COMMENCING AT THE SW CORNER OF THE SE 1/4 OF SAID SECTION 6;

THENCE N 03° 23' 56" E ALONG THE WEST LINE OF THE SE 1/4 OF SAID SECTION 6, A DISTANCE OF 1326.67 FEET TO THE NW CORNER OF ROLLING HILLS RANCH PHASE-1 SAID POINT BEING THE POINT OF BEGINNING:

THENCE S 80° 54' 20" E, ALONG THE NORTH LINE OF SAID PHASE-1 A DISTANCE OF 47.06 FEET;

THENCE N 02° 47' 49" E, A DISTANCE OF 1328.21 FEET TO A POINT ON THE NORTH LINE OF THE SE 1/4 OF SAID SECTION 6;

THENCE N 81° 12' 35" W, A DISTANCE OF 33.02 FEET TO THE NW CORNER OF SAID SE 1/4;

THENCE S 03° 23' 56" W, ALONG THE WEST LINE OF SAID SE 1/4, A DISTANCE OF 1326.57 FEET TO THE POINT OF BEGINNING.