

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 3rd day of JUNE, 2021, by and between **JOHNSTOWN 2 INDUSTRIAL OWNER, LLC**, a Minnesota limited liability company (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Developer owns an interest in land within the Northeast ¼ of Section 14, Township 5 North, Range 67 West of the 6th P.M., also known as Replat of Lot 4, Block 7, 2534 Filing No. 9, Lot 2, more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement dated November 3, 2006; and

WHEREAS, the Subject Property is being developed as a warehouse and office facilities with a floor space of 144,511 ft², known as United Properties Trade at 2534 Lot 2 (“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 dated February 15, 2021. Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated March 31, 2021, 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)
In-Building	0.44	0.02
Landscape Irrigation (non-potable)	1.38	1.17
Total	1.82	1.19

2. Water Rights Dedication.

a. Potable Supply. As a result of prior dedications of raw water credit, there is currently a surplus dedication credit with the Town sufficient to supply the potable water demands of the Project from the 2534 Master Association Water Bank. The Gerrard Family Partnership, LLLP and Thompson Ranch Development Company have agreed that this credit shall be applied to meet the potable water demands of the Project. Evidence of the agreement is attached hereto and incorporated herein by reference as Exhibit B.

b. Non-Potable Supply. As a result of prior dedications of raw water credit, there is currently a surplus dedication credit with the Town sufficient to supply the non-potable water demands of the Project from the 2534 Master Association Water Bank. The Gerrard Family Partnership, LLLP and Thompson Ranch Development Company have agreed that this credit shall be applied to meet the non-potable water demands of the Project. Evidence of the agreement is attached hereto and incorporated herein by reference as Exhibit B.

3. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Project up to 0.44 acre-feet per year of potable water supply together with the corresponding sewer service and up to 1.38 acre-feet per year non-potable water supply for landscape irrigation.

4. 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 based on actual water usage.

5. Payment of Water Court Transfer fees. The Water Court transfer fee for both the potable water supply and non-potable water supply was previously paid to the Town as part of the 2534 Master Association Water Bank. However, in accordance with the Ordinance, additional fees may 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 Town's Ordinance.

6. Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

Ms. Megan Turner
Johnstown 2 Industrial Owner, LLC
1331 17th St., #604
Denver, CO 80202

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264

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 a ninety-day period, 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. 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 claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

16. Entire agreement and Authorization. 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. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

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 may be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and, effective as of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall 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

JOHNSTOWN 2 INDUSTRIAL OWNER, LLC

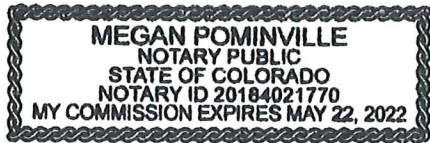
By: Megan Turner
Megan E. Turner

Title: Executive Vice-President

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

SUBSCRIBED AND SWORN to before me this 3RD day of JUNE, 2021 by Megan E. Turner

Witness my hand and official seal.



Megan Pominville
Notary Public
3109 N. ELIZABETH ST.
DENVER CO 80205
Address
051-303-5833
Telephone

My Commission Expires: MAY 22, 2022

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

Lot 2, 2534 Filing No. 9, 1st Replat, recorded 4/29/2021, at Reception No. 20210043112, County of Larimer, State of Colorado, and re-recorded 5/4/2021, at Reception No. 20210044493, County of Larimer, State of Colorado.


EXHIBIT B

RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company raw water credit account held by the Town of Johnstown, known as the "2534 Master Association Water Bank," to provide water service to Johnstown 2 Industrial Owner, LLC, a Minnesota limited liability company ("Owner"), for the development known as the United Properties Trade at 2534 Lot 2 (the "Development") and any successor occupant of the premises pursuant to a Water and Sewer Service Agreement ("WSSA") to be executed between Owner and the Town. The amount of such allocated raw water credit is calculated to be 0.44 acre-feet per year for potable in-building use and 1.38 acre-feet per year for non-potable irrigation use, subject to adjustment pursuant to the terms of the WSSA and the Johnstown Municipal Code.

The undersigned certify that they are authorized to execute this Raw Water Allocation Acknowledgment on behalf of Gerrard Family Partnership, LLLP and Thompson Ranch Development Company.

THE GERRARD FAMILY PARTNERSHIP, LLLP



Nathan Gerrard, Managing Partner
The Gerrard Family Limited Partnership, LLLP

Dated: 6/9/2021

THOMPSON RANCH DEVELOPMENT COMPANY



Todd Williams, Vice President
Thompson Ranch Development Company

Dated: 6/9/2021