

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this _____ day of _____, 2021 (the "Effective Date"), by and between **IH INDUSTRIAL ONE, LLC**, a Delaware limited liability company ("Developer"), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (the "Town"), collectively sometimes referred to as the "Parties."

WITNESSETH:

WHEREAS, the Developer owns an interest in land in the N1/2, Section 13, Township 5 North, Range 68 West of the 6th P.M., generally known as Iron Horse Filing 2, Lot 2, Town of Johnstown, County of Larimer, comprising approximately 6.599 acres, more specifically described in the attached Exhibit A (the "Subject Property"); and

WHEREAS, the Subject Property is being developed as a 68,617 square-foot metal industrial/flex spec building that could be leased to up to 7 tenants, with 0.578 acre of spray irrigated turf, 0.22 acre of xeric landscape, and 0.083 acre that will be re-vegetated to native species and temporarily irrigated until the vegetation is successfully established (the "Temporary Irrigation Area"), at which time the irrigation system for the Temporary Irrigation Area will be disconnected (collectively, the "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.

AGREEMENT

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, and incorporating the foregoing recitals into the agreement, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance set forth in the Johnstown Municipal Code and in effect at the time of the execution of this Agreement (the "Ordinance"), Developer has submitted to the Town two preliminary Water and Sewer Demand Analyses for the Project, dated September 23, 2020 and December 11, 2020, respectively. Said analyses were received by the Town and are on file with the Town and as modified by the Town's Water Engineer by memorandum dated January 12, 2021 are hereby accepted by the Town. The analyses provided by Developer, as modified by the Town's Water Engineer as necessary, address the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	4.61	0.23
Landscape Irrigation	1.67	1.42
Total	6.28	1.65

2. **Water Rights Dedication.** As a result of prior dedications of raw water credit, there is currently a surplus dedication credit with the Town sufficient to supply the water demands of the Project from the Iron Horse Water Bank. Centerra Commercial, LLC has agreed that this credit shall be applied to meet the water demands of the Project. Evidence of the agreement is attached hereto and incorporated herein by reference as Exhibit B.

3. **Temporary Irrigation of Native Grasses.** As a material term of this Agreement, Developer agrees to cease irrigating the Temporary Irrigation Area within two years of the Effective Date or once the vegetation is successfully established, whichever is earlier. To irrigate the native grasses within the Temporary Irrigation Area, Developer shall install an above ground, temporary irrigation system that can be physically separated from the irrigation system for the remaining portion of the Subject Property (the "Temporary Irrigation System"). If Developer does not disconnect the Temporary Irrigation System within two (2) years, the Town, after providing written notice and a ten (10) day opportunity to cure, may disconnect the Temporary Irrigation System and submit an invoice to Developer, along with a ten percent (10%) administrative fee, for the Town's costs and expenses incurred as a result of such disconnection. Developer agrees to pay such invoice within thirty (30) days of receipt.

4. **Commitment to serve.** Upon the payment of all fees required to obtain the issuance of building permits for the Project, the Town commits to provide to the Project a permanent water supply of up to 4.61 acre-feet per year of potable water supply together with the corresponding sewer service for in-building use and up to 1.67 acre-feet per year water supply for landscape irrigation as detailed 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 based on actual water usage.

6. **Payment of Water Court Transfer fees.** The Water Court transfer fee for the water supply was previously paid to the Town as part of the Iron Horse 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 Ordinance.

7. **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, sent by electronic mail (effective upon

acknowledgment of receipt), or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

IH Industrial One, LLC
Attn: VP of Commercial Development,
Northern Colorado
2725 Rocky Mountain Ave, Suite 200
Loveland, CO 80538
Email: clyde.wood@mcwhinney.com

TO THE TOWN:

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

WITH A COPY TO:

McWhinney Real Estate Services, Inc.
Attn: Legal Department
2725 Rocky Mountain Ave., Suite 200
Loveland, CO 80538
Email: legalnotices@mcwhinney.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

AND TO :

Polsinelli PC
Attn: Amy K. Hansen, Esq.;
Andréa G. Horvath
1401 Lawrence St., Suite 2300
Denver, CO 80202
Email: ahansen@polsinelli.com;
ahorvath@polsinelli.com

Peter J. Ampe
Hill & Robbins, P.C.
1660 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 of receipt of such notice 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 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.

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

EXHIBIT A
THE SUBJECT PROPERTY

Lot 2, IRON HORSE FILING TWO, Town of Johnstown, County of Larimer, State of Colorado,
according to the plat recorded May 22, 2012 at Reception No. 20120033427.

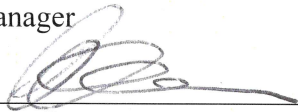
RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Centerra Commercial, LLC raw water credit account held by the Town of Johnstown, known as the "Iron Horse Water Bank," to provide water service to IH Industrial One, LLC for the development known as Iron Horse Filing 2, Lot 2 Industrial/Flex Spec, and any successor occupant of the premises at the same location, pursuant to a Water and Sewer Service Agreement to be executed between IH Industrial One, LLC and the Town of Johnstown. The amount of such allocated raw water credit is calculated to be 6.28 acre-feet per year as specified in the Water and Sewer Service Agreement, subject to adjustment pursuant to the Water Sewer Service Agreement and the Johnstown Municipal Code. No such adjustment shall allow additional water to be used from the Iron Horse Water Bank absent the written consent of Centerra Commercial, LLC, or its successor in interest.

The undersigned certify that he/she is authorized to execute this Raw Water Allocation Acknowledgment on behalf of the Centerra Commercial, LLC.

CENTERRA COMMERCIAL, LLC,
a Colorado limited liability company

By: McWhinney Real Estate Services, Inc.,
a Colorado corporation,
its Manager

By: 
Peter Lauener
EVP, Master Planned Communities

MRES Legal
Digitally signed
by Abby
Kirkbride
Date:
2021.01.27
12:53:47 -0700
A.Kirkbride

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

SUBSCRIBED AND SWORN to before me this 27th day of January, 2021, by Peter Lauener, as EVP, Master Planned Communities of McWhinney Real Estate Services, Inc., as Manager of Centerra Commercial, LLC, a Colorado limited liability company.

Witness my hand and official seal.



Notary Public

My Commission Expires: 6-30-2021

SHERYL A HANEBRINK
Notary Public
State of Colorado
Notary ID # 20054025846
My Commission Expires 06-30-2021