

**WATER AND SEWER SERVICE AGREEMENT  
(THE GRANARY FILING NO. 3)**

**THIS WATER AND SEWER SERVICE AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between **GRANARY DEVELOPMENT, LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado home-rule municipal corporation (“Town”), collectively sometimes referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Developer owns an interest in land in the SE1/2 of Section 7, T04N, R67W, 6<sup>th</sup> PM, and 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 known as the Keto 161 Annexation dated September 18, 2006; and

WHEREAS, the Subject Property is being developed and will consist of 122 single family detached homes, 1 swimming pool, and 1 pool house with restrooms, office space, and equipment storage along with 7.17 acres of residential irrigated landscape, irrigated and common use areas consisting of 1.45 acres of spray-irrigated area and 0.47 acre of drip-irrigated area, and 5.51 acres of temporarily irrigated native grasses. After successful establishment of cover, irrigation will be discontinued on the 5.51 acres of native grasses. Together the project is known as known as The Granary Filing No. 3 (“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 January 26, 2024. Said analysis was received by the Town and as modified by the Town’s Water Engineer by memorandum dated February 22, 2024 is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Project as follows:

Permanent Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	40.94	2.05
Pool	0.72	0.27
Irrigation	22.27	18.93

Total	63.93	21.25
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Temporary Development Component	Demand (AF/YR)	Consumption (AF/YR)
Native Grasses	5.51	4.68
Total	5.51	4.68

**2. Water Rights Dedication.**

**a. Dedication.** The Developer must dedicate raw water to Johnstown to meet the total annual water demand of 69.44 acre-feet for the Project. Upon establishment and permanent disabling of the irrigation system providing water to the temporarily irrigated native grasses, Developer may provide written notice to the Town of such act. Upon written notice from the Town to Developer that the Town has accepted the permanent disabling of the irrigation system, Developer may, with the Town’s written consent, assign the 5.51 acre-feet to another project or development within the Town’s boundaries.

**b. Surplus dedication credit.** Developer has a previous surplus credit of 2.79 acre-feet from the Granary Filing No. 1. In addition, within ten (10) days of the execution of this Agreement, Developer shall dedicate nine (9) shares of the Consolidated Home Supply Ditch & Reservoir Company represented by share Certificate No. 7139, and 7 of the 11 shares represented by share Certificate No. 7137 to the Town. Developer’s dedication of the nine (9) shares will provide to Developer raw water credits in excess of the water demand projected for the Project. As a result of said dedication, Developer will have a surplus dedication credit with the Town of 5.35 acre-feet. The credit is calculated as follows:

Previous Surplus Credit	2.79 acre-feet
Dedication Credit:	72.00 acre-feet
LESS Estimated demand:	69.44 acre-feet
<b>Net current surplus credit:</b>	<b>5.35 acre-feet</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 41.66 acre-feet per year as a permanent water supply for residential and pool use together with the corresponding sewer service, up to 22.27 acre-feet per year as a permanent water supply for common area irrigation, and up to 5.51 acre-feet per year temporarily to establish native grasses as stated in Paragraph 2.a, above.

**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.** At the time Developer dedicates the water rights and shares as shown in Paragraph 2.b., above, Developer shall pay to the Town the sum of **Thirty-Six Thousand Nine-Hundred dollars (\$36,900.00)** as payment of the water court transfer fees required by the Ordinance. This payment is for the dedication of 69.44 acre-feet per year of estimated temporary and permanent water demand (139 SFE) for the Project. This water court transfer fee applies only to the 69.44 acre-feet of water demand and not to any excess water credits described by Paragraph 2.b., above. Pursuant to Paragraph 4, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication.

**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, mailed postage prepaid, certified mail, return receipt requested, or sent by electronic mail on the condition that the recipient acknowledges receipt thereof, as follows:

**TO DEVELOPER:**

Granary Development, LLC  
Attention: Landon Hoover  
4801 Goodman Rd.  
Timnath, CO 80547

**TO THE TOWN:**

Town of Johnstown  
c/o Town Clerk  
450 S. Parish Ave.  
Johnstown, CO 80534  
hhill@johnstownco.gov  
notices@johnstownco.gov

**WITH A COPY TO  
THE TOWN ATTORNEYS:**

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

Peter J. Ampe  
Hill & Robbins, P.C.  
3401 Quebec St., Suite 3400  
Denver, CO 80207  
peterampe@hillandrobbins.com

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

**7. 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 a legal action, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**8. 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.

**9. 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.

**10. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought by the Town to enforce any of the provisions hereof, including an action for specific performance and/or damages, against the Developer, 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.

**11. 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.

**12. 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.

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

**14. Choice of Law 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 claim, proceeding or action shall be in Weld County, State of Colorado.

**15. 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.

**16. 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 Weld 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*

GRANARY DEVELOPMENT, LLC  
a Colorado limited liability company

By: Hartford Homes, LLC,  
A Colorado limited liability company, Manager  
By: Landon Hoover

Title: \_\_\_\_\_

STATE OF COLORADO    )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2024 by  
\_\_\_\_\_ as \_\_\_\_\_ for Hartford Homes, LLC, Manager of Granary  
Development, LLC

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

My Commission Expires: \_\_\_\_\_  
TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

By: \_\_\_\_\_  
Michael P. Duncan, Mayor

ATTEST:

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION**

TRACT A, OUTLOTS I, J, K AND L, THE GRANARY FILING ONE RECORDED AT RECEPTION NO. 4827067, LOT B, RECORDED EXEMPTION NO. 1059-7-3-RE-135 RECORDED AT RECEPTION NO. 16309 AND LOT B, RECORDED EXEMPTION NO. 1059-7-3-RE3403 RECORDED AT RECEPTION NO. 3011360 ALL IN THE WELD COUNTY CLERK AND RECORDERS OFFICE, LOCATED IN PART OF THE SOUTH HALF OF SECTION 7, T. 4 N., R. 67 W. OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO