

**WATER AND SEWER SERVICE AGREEMENT
FOR
SUNBELT RENTALS SITE DEVELOPMENT PLAN
AT 3767 RONALD REAGAN BLVD.**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this _____ day of _____, 2023, by and between **MPV SBR INVESTORS III, LLC**, a North Carolina 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 located in a portion of Lots 2 and 3, Iron Horse Filing 2, Lot 1 Amended Subdivision more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed as Sunbelt Rentals and will consist of 2,728 ft² of general office space and 7,387 ft² of light industrial/flex use space together with 0.04 acre of spray-irrigated landscape, 0.15 acre of drip-irrigated landscape, and 0.29 acre of xeric-irrigated landscape (collectively, the “Project”); and

WHEREAS, 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, 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 (“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 October 24, 2022, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	0.99	0.05
Landscape Irrigation (Permanent)	0.62	0.53
Total	1.61	0.58

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 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.

3. Commitment to Serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, and the Developer's foregoing agreement, the Town commits to provide to the Project up to 0.99 acre-feet per year of water supply together with the corresponding sewer service for in-building use and up to 0.62 acre-feet per year water supply for landscape irrigation as detailed above.

4. Payment of Water Court Transfer fees. The Water Court transfer fee for both the 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 portion of the Subject Property.

5. 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, or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

MPV SBR Investors III, LLC
2400 South Boulevard, Ste 300
Charlotte, NC 28203-5773
Email: bmurr@mpvre.com

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
PO Box 609
450 S. Parish Ave.
Johnstown, CO 80534
Email: Hhill@johnstownco.gov

**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.
3401 Quebec St., Suite 3400
Denver, CO 80207
Email: peterampe@hillandrobbs.com

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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 on separate pages

MPV SBR INVESTORS III, LLC, a North
Carolina limited liability company

By: MPV Properties, LLC, its Manager

By: J. Bradley Murr

Print Name: J. Bradley Murr

Title: Manager

STATE OF NORTH CAROLINA)
) ss
COUNTY OF MECKLENBURG)

SUBSCRIBED AND SWORN to before me this 29 day of March, 2023 by Brad Murr,
as the Manager of MPV SBR Investors III, LLC.

Witness my hand and official seal.

Kimberly B Young
Notary Public
Kimberly B Young

2400 South Blvd #300 Charlotte NC 28203
Address

704-561-5204
Telephone

My Commission Expires: 12/01/2023

Kimberly B Young
NOTARY PUBLIC
Mecklenburg County, NC
My Commission Expires 12/01/2023

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT A
SUBJECT PROPERTY

LOT 2, OF AMENDMENT TO LOTS 2 & 3, IRON HORSE FILING TWO, LOT 1
AMENDED SUBDIVISION, TOWN OF JOHNSTOWN, 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 Limited Partnership, LLLP, and Thompson Ranch Development Company raw water credit account held by the Town of Johnstown, known as the "2534 Water Bank," to provide water service to the development known as Sunbelt Site Development Plan (DEV21-0011) and any successor occupant of the premises at the same location, pursuant to the Water and Sewer Service Agreement between MVP SBR INVESTORS III, LLC a North Carolina limited liability company, and the Town of Johnstown dated 3-23-2023.

The amount of such allocated raw water credit is calculated to be 1.61 acre-feet per year, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.


THE GERRARD FAMILY LIMITED PARTNERSHIP, LLLP



Nathan Gerrard, Partner
The Gerrard Family Limited Partnership, LLLP

Dated: 3-21-2023

THOMPSON RANCH DEVELOPMENT COMPANY



Todd Williams, Vice President
Thompson Ranch Development Company

Dated: 3-23-2023