

## ATTACHMENT 1

### WATER AND SEWER SERVICE AGREEMENT (The Ridge at Johnstown, Filing No. 2)

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of December 2020, by, between and among **J-25 Land Holdings, LLC**, a Delaware Limited Liability Company (“Developer”), the **Town of Johnstown**, a Colorado municipal corporation (“Town”) and the **Villages at Johnstown Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer is the owner of land situated in a portion of the S1/2NW1/4 of Section 26, T.5N, R.68 W. of the 6<sup>th</sup> P.M., Town of Johnstown, County of Larimer, State of Colorado County, known as The at Ridge Johnstown Filing No. 2, more specifically described on Exhibit A attached hereto and incorporate herein by reference (“Subject Property”); and

WHEREAS, the Developer and the Town entered into an Agreement Concerning Water Rights Dedication Between Town of Johnstown and J-25 Land Holdings LLC, dated August 3, 2020 (“Water Bank Agreement”), which, upon the dedication of certain shares of the Consolidated Home Supply Ditch & Reservoir Company by the Developer, established The Ridge Water Bank; and

WHEREAS, the Subject Property is being developed to include: 80 single-family detached homes with irrigated landscape averaging 2,404.5 square feet per lot and totaling 4.41 irrigated acres (“Project”); and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication and use of The Ridge Water Bank, 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, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended, (“Ordinance”), the Developer has submitted to the Town a preliminary water and sewer demand analysis for the Project dated August 18, 2020. 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 August 20, 2020, is hereby accepted by the Town as to the potable water demands. The analysis provided by Developer addresses the projected water and sewer demands for the Project as follows:

Development Component (Potable)	Demand (AF/YR)	Consumption (AF/YR)
In-house water use	26.40	1.32
Residential landscaping	7.73	6.57
Common area irrigation	0.65	0.55
<b>Total potable water use</b>	<b>34.78</b>	<b>8.44</b>

**2. Low Water Landscaping.** This Agreement is expressly based and contingent upon compliance with the following requirements: (i) the residential homes shall only be entitled to use irrigated turf in the backyards with landscape plans providing that not more than fifty percent (50%) of the total landscaping be irrigated with moderate to high water use vegetation and that the remainder of the landscaping follow xeric design principles; (ii) the residential homes shall use xeric design principles in the front yards; and (iii) the common area shall include at least 0.65 acres of xeric design principles (collectively, “Low Water Landscaping Requirements”). The Developer recognizes and agrees that the Low Water Landscaping Requirements are material terms of this Agreement. Subsequent to development, the obligation to meet and maintain the Low Water Landscaping Requirements shall continue and shall be a covenant running with the land. If, at any time, the Low Water Landscaping Requirements are not met and maintained, then the Developer, District or homeowners’ association, as appropriate, shall be dedicate additional water to the Town as further described in Paragraph 6.

**3. Water Rights Dedication.** The Developer has previously dedicated to the Town eighteen (18) shares of stock in the Consolidated Home Supply Ditch & Reservoir Company pursuant to the Water Bank Agreement, resulting in a surplus dedication credit with the Town of approximately 144.00 acre-feet per year of potable water, of which 94.62 acre-feet has been allocated to the at Ridge Johnstown Filing No. 1. Pursuant to Paragraph 5 of the Water Bank Agreement, prior to the issuance of any building permits for the Subject Property, the Town and the Developer must enter into a water and sewer service agreement. The Town and the Developer agree that they will apply the water held in The Ridge Water Bank to supply the necessary water for the Project.

**4. Water Bank Credit.** Subsequent to the use of the water for the Project, the Developer will have a credit in The Ridge Water Bank of approximately 14.60 acre-feet. The credit is calculated as follows:

Credit for potable water dedicated:	49.38 acre-feet
LESS:	
Estimated potable demand:	<u>34.78 acre-feet</u>
<b>Net current water bank credit:</b>	<b>14.60 acre-feet</b>

**5. 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 34.78 acre-feet per year of potable water supply together with the corresponding sewer service to include up to 26.40 acre-feet per year of potable water supply for in-home use together with the corresponding sewer service, 7.73 acre-feet of water supply for approximately 4.41 acres of

irrigated residential lawns and landscaping and 0.65 acre-feet of water supply for xeric irrigated common area.

**6. Future review of water usage and dedication requirements.** In accordance with Section 13-68(h) of 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. The additional water rights shall be dedicated from, and/or cash-in-lieu payments made by, the Developer or the District, as appropriate at the time. If the District has dissolved, then the additional water shall be dedicated by the metropolitan district providing covenant enforcement or by the operative homeowners' association. If, at a point in time after water usage has been established, the Town determines that the actual water usage is less than the water demand projection, upon written approval of the Town and execution of a subsequent agreement, the Developer may use the surplus water to satisfy the raw water demands associated with other phases of The Ridge at Johnstown development.

**7. Payment of Water Court Transfer fees.** The water court transfer fee for the water supply held in The Ridge Water Bank was previously paid to the Town. 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 subsequent mutual agreement of the Parties in accordance with the Town's Ordinance.

**8. Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery with receipt of 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. All notices shall be addressed as follows:

TO DEVELOPER:  
J-25 Land Holdings, LLC  
Attn: Roy Bade  
Copy: Courtney Bring  
8901 E Mountain View Rd, Suite 150  
Scottsdale, AZ 85258  
Email: [Roy.Bade@caliberco.com](mailto:Roy.Bade@caliberco.com)  
Email: [Courtney.Bring@Caliberco.com](mailto:Courtney.Bring@Caliberco.com)

WITH A COPY TO:  
Hunter & Goodhue, PLLC  
Attn: Mark F. Hunter  
4845 Pearl East Circle, Ste 101  
Boulder, CO 80302  
Email: [mark@huntgoodlaw.com](mailto:mark@huntgoodlaw.com)

TO THE TOWN:  
Town of Johnstown  
c/o Town Clerk  
450 S. Parish Ave.  
Johnstown, CO 80534  
Email: [dseele@townofjohnstown.com](mailto: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](mailto:avi@rocklinlaw.com)

Peter J. Ampe, Esq.  
Hill & Robbins, P.C.  
1660 Lincoln Street, Suite 2720  
Denver, CO 80264  
Email: [peterampe@hillandrobbs.com](mailto:peterampe@hillandrobbs.com)

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

**9. 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.

**10. 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.

**11. 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.

**12. 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.

**13. 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.

**14. 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.

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

**16. 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.

**17. 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.

**18. 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

**19. Recordation.** This Agreement may be recorded by the Town at the 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.

(Remainder of page intentionally left blank.)



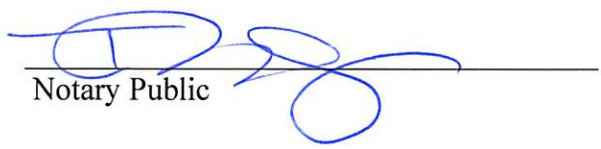
**Villages at Johnstown Metropolitan District No. 1**

By:   
Mark F. Hunter, President

STATE OF COLORADO            )  
  )ss.  
COUNTY OF BOULDER         )

The foregoing instrument was acknowledged before me this 15 day of December by Mark F. Hunter, President, Villages at Johnstown Metropolitan District No. 1.

WITNESS my hand and official seal.

  
Notary Public

My commission expires: 6/12/2024

TERRY RENEE BERGER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20204020644  
MY COMMISSION EXPIRES JUNE 12, 2024

**Town of Johnstown, Colorado**  
a municipal corporation

By: \_\_\_\_\_  
Gary Lebsack, Mayor

ATTEST:

By: \_\_\_\_\_  
Diana Seele, Town Clerk



**EXHIBIT A**  
Subject Property

PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 26,  
TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PM, LARIMER COUNTY,  
COLORADO, DESCRIBED AS FOLLOWS;

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 26,  
MONUMENTED WITH A 2 ½" ALUMINUM CAP IN RANGE BOX, STAMPED LS 38304,  
2014.

THENCE N89°44'19"W, A DISTANCE OF 1315.85 FEET ON THE SOUTH LINE OF THE  
SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER TO THE CENTER WEST  
1/16<sup>TH</sup> CORNER, MONUMENTED WITH A NUMBER 6 REBAR WITH A 2 ½" ALUMINUM  
CAP STAMPED 26512, 2018;

THENCE N89°43'42"W, A DISTANCE OF 235.59 FEET ON THE SOUTH LINE OF THE  
SOUTHWEST QUARTER OF SAID NORTHWEST QUARTER;

THENCE N00°10'22"E, A DISTANCE OF 109.03 FEET TO A NON-TANGENT POINT OF  
CURVATURE;

THENCE ON A SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 55.00 FEET, A  
CENTRAL ANGLE OF 106°28'13", A DISTANCE OF 102.20 FEET, A CHORD BEARING  
OF N03°17'04"W WITH A CHORD DISTANCE OF 88.12 FEET TO A REVERSE CURVE;

THENCE ON A SAID CURVE TO THE LEFT, HAVING A RADIUS OF 15.00 FEET, A  
CENTRAL ANGLE OF 49°46'41", A DISTANCE OF 13.03 FEET, A CHORD BEARING OF  
N25°03'42"E WITH A CHORD DISTANCE OF 12.63 FEET;

THENCE N00°10'22"E, A DISTANCE OF 263.90 FEET;

THENCE N09°27'44"W, A DISTANCE OF 65.41 FEET;

THENCE N00°00'00"E, A DISTANCE OF 75.42 FEET;

THENCE ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 160.00 FEET, A  
CENTRAL ANGLE OF 17°12'16", A DISTANCE OF 48.04 FEET, A CHORD BEARING OF  
N08°36'08"W WITH A CHORD DISTANCE OF 47.86 FEET TO THE NORTH LINE OF  
SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26;

THENCE S89°56'13"E, A DISTANCE OF 253.77 FEET ON SAID NORTH LINE TO THE  
CENTER 1/16<sup>TH</sup> CORNER OF THE NORTHWEST QUARTER, MONUMENTED BY A 2"  
IRON PIPE FILLED WITH CONCRETE AND A ¾" WASHER STAMPED LS 4845 SET IN  
THE CONCRETE;

THENCE S89°49'38"E, A DISTANCE OF 1262.67 FEET ON THE NORTH LINE OF THE  
SOUTH HALF OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO  
THE WEST RIGHT OF WAY LINE OF COUNTY ROAD 3E, MONUMENTED WITH A  
NUMBER 5 REBAR WITH A 1-1/4" PURPLE PLASTIC CAP STAMPED "PLS 37067";

THENCE S00°18'18"W, A DISTANCE OF 288.21 FEET ON SAID WEST RIGHT OF WAY LINE, MONUMENTED WITH A NUMBER 5 REBAR WITH A 1-1/4" PURPLE PLASTIC CAP STAMPED "PLS 37067";

THENCE S89°46'36"E, A DISTANCE OF 55.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, MONUMENTED WITH A NUMBER 5 REBAR WITH A 1-1/4" PURPLE PLASTIC CAP STAMPED "PLS 37067";

THENCE S00°18'18"W, A DISTANCE OF 374.22 FEET ON SAID EAST LINE TO THE POINT OF BEGINNING.

PARCEL CONTAINS 1,013,967 SQUARE FEET OR 23.777 ACRES.

**BASIS OF BEARING:**

BEARINGS ARE BASED ON THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, IN WHICH THE SOUTH LINE OF SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, T5N, R68W, 6<sup>TH</sup> PM, LARIMER COUNTY, CO; BEARS N89°44'19"W, A DISTANCE OF 1,315.85 FEET BETWEEN THE CENTER QUARTER CORNER OF SECTION 26, MONUMENTED A 2 1/2" ALUMINUM CAP IN RANGE BOX, STAMPED LS 38304, 2014. AND THE CENTER WEST 1/16<sup>TH</sup> CORNER, MONUMENTED WITH A NUMBER 6 REBAR WITH A 2 1/2" ALUMINUM CAP STAMPED 26512, 2018; WITH ALL OTHER BEARINGS RELATIVE THERETO.