

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this 20th day of August, 2021, by and between MOUNTAIN VIEW LAND DEVELOPERS, LLC, a Colorado limited liability company (“Developer”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as “Parties.”

RECITALS

WHEREAS, the Developer is the owner of a portion of Section 9, Township 4 North, Range 67 West of the Sixth Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, known as the 1st Replat of Block 1 Mountain View West Subdivision Replat, as more particularly described in Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed as multi-family residential units; and

WHEREAS, pursuant to that certain Water and Sewer Service Agreement, dated December 4, 2017, recorded in the Weld County Clerk and Recorder at Reception No. 4400702, Parish, LLC, a Colorado limited liability company (“Parish”), previously dedicated raw water to the Town for, among other property, the Subject Property; and

WHEREAS, Parish desires to assign a portion of the raw water credit to the Developer to supply the necessary water demand for the Subject Property, as evidenced by the First Amendment to Water and Sewer Service Agreement executed between the Town and Parish on _____, 2021, attached hereto and incorporated herein by reference as Exhibit B; and

WHEREAS, based on such assignment, the Developer and the Town desire to set forth their agreement concerning water rights dedication and use of the raw water, preliminary projections of water and sewer demand, and a current commitment by the Town for water and sewer service for the Subject Property.

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, the Parties hereto agree as follows:

1. **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.

2. **Water and Sewer Demand.** In compliance with the Johnstown Municipal Code (“Code”), the Developer submitted a water and sewer demand analysis to the Town for the anticipated water needs of the Subject Property. The analysis was reviewed and, as amended, if at all, approved by the Town Water Engineer pursuant to a Memorandum dated June 10, 2021, which is on file with the Town. Based on the foregoing, the estimated average annual water demand for the Subject Property is as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-Building Use	24.7	1.24
Sod Irrigation (.63 acres)	1.57	1.33
Xeric Irrigation (3.04 acres)	3.04	2.58
Total	29.31	5.15

3. **Water Rights Dedication.** Parish has assigned to the Subject Property 29.31 acre-feet of raw water credit, as shown in Exhibit B.

4. **Commitment to Provide Water and Sewer.** Subject to Developer’s performance of all the covenants contained herein, payment of all required fees and the issuance of a certificate of occupancy, the Town commits to provide to the Subject Property up to 29.31 acre-feet per year of water supply (24.70 acre-feet per year for in-building demand and 4.61 acre-feet per year for irrigation).

5. **Future review of water usage and dedication requirements.** In accordance with the Code, the Town reserves the right to review actual water usage within the Subject Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer. If the analysis is subsequently determined to understate the water demand, Developer or the homeowners’ association, as appropriate, shall be required to dedicate additional raw water to the Town.

6. **Payment of Water Court Transfer Fees.** For purposes of this Agreement, water court transfer fees are not required. However, if the actual water demand for the Subject Property increases based on actual water usage, Developer or the homeowners’ association, as appropriate, shall be required to pay water court transfer fees upon the dedication of additional water.

7. **Notices.** All notices required under this Agreement shall be in writing and shall be: (a) hand-delivered; or (b) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (c) sent by electronic mail return receipt requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by electronic mail shall be considered effective upon confirmation of receipt. Notices shall be sent to the following:

TO DEVELOPER:

Mountain View Land Developers, LLC
Attn: Andrew J. Gerk
3780 W. 10th St., Suite 200
Greeley, CO 80634
Email: agerk@baesslerhomes.com

TO THE TOWN:

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

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
Johnstown Town Attorney
19 Old Town Square, Suite 238
Fort Collins, CO 80524
avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264
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 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 against the Developer, 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 the County of Weld, 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 the 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.

19. **Findings.** The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the laws, regulations and policies of the Town.

MOUNTAIN VIEW LAND DEVELOPERS, LLC

By: [Signature]
Name: Andrew J. Gerk
Title: Authorized Agent

STATE OF Colorado)
) ss.
COUNTY OF Weld)

SUBSCRIBED AND SWORN to before me this 20 day of August, 2021,
by Andrew J. Gerk, as the Authorized Agent of Mountain View Land Developers,
LLC

WITNESS my hand and official seal.

[Signature]
Notary Public

My commission expires: 6/17/2023

MELISSA WHEELER
Notary Public
State of Colorado
Notary ID # 20194022905
My Commission Expires 06-17-2023

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

EXHIBIT A

PROPERTY DESCRIPTION

A parcel of land being Block One (1) Mountain View West Subdivision Replat, Amendment No. 1 recorded July 22, 2021 at Reception No. 4738024 within the records of the Weld County Clerk and Recorder, and a portion of the platted right-of-way of Molinar Street, situate in the Northwest Quarter (NW1/4) of Section Nine (9), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), Town of Johnstown, County of Weld, State of Colorado being more particularly described as follows;

COMMENCING at the North Sixteenth corner of Section 9 and assuming the West line of the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) of said Section 9, as monumented by a #6 rebar with a 3.25" aluminum cap stamped LS 30829 at the South end and by a #6 rebar with a 3.25" aluminum cap LS 24993 at the North end, as bearing North 00°51'26" West, being a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983, a distance of 1327.67 feet with all other bearings contained herein being relative thereto;

The linear dimensions as contained herein are based upon the "U.S. Survey Foot."

THENCE North 00°51'26" West along the West line of the NW1/4NW1/4 of said Section 9 a distance of 91.60 feet to the Westerly projection of the North right-of-way line of Molinar Street;

THENCE North 89°06'06" East along said Westerly projection and said North right-of-way line a distance of 391.49 feet to the West line of said Block One (1) Mountain View West Subdivision Replat, Amendment No. 1 and to the **POINT OF BEGINNING**;

THENCE North 00°34'00" West a distance of 501.47 feet;

THENCE South 89°06'08" East a distance of 1004.35 feet to the West right-of-way line of the Great Western Railway and to a Point on a Curve (POC);

THENCE along said West right-of-way line and the arc of a non-tangent curve concave to the Southwest a distance of 395.20 feet, said curve has a Radius of 1870.10 feet, a Delta of 12°06'29" and is subtended by a Chord bearing South 11°01'42" East a distance of 394.46 feet;

THENCE South 04°58'27" East a distance of 693.37 feet;

THENCE South 89°30'29" West a distance of 378.93 feet to a POC;

THENCE along the arc of a non-tangent curve concave to the Southwest a distance of 45.26 feet, said curve has a Radius of 74.50 feet, a Delta of 34°48'29" and is subtended by a Chord bearing North 25°35'25" West a distance of 44.57 feet to a Point of Reverse Curvature (PRC);

THENCE along the arc of a curve concave to the Northeast a distance of 36.86 feet, said curve has a Radius of 65.50 feet, a Delta of 32°14'48" and is subtended by a Chord bearing North 26°52'16" West a distance of 36.38 feet, to a Point of Compound Curvature (PCC);

THENCE along the arc of a curve concave to the East a distance of 97.58 feet, said curve has a Radius of 544.03 feet, a Delta of 10°16'37" and is subtended by a Chord bearing North 05°36'34" West a distance of 97.45 feet;

THENCE North 00°28'15" West a distance of 355.93 feet to a PC;

THENCE along the arc of a curve concave to the Southeast a distance of 19.51 feet, said curve has a Radius of 13.50 feet, a Delta of 82°47'53" and is subtended by a Chord bearing North 40°55'42" East a distance of 17.86 feet, to a POC;

THENCE along the arc of a non-tangent curve concave to the West a distance of 64.18 feet, said curve has a Radius of 51.50 feet, a Delta of 71°23'56" and is subtended by a Chord bearing North 00°26'31" West a distance of 60.10 feet;

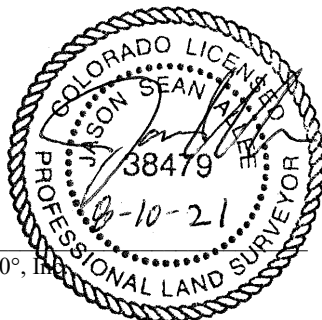
THENCE South 89°29'12" West a distance of 719.02 feet

THENCE North 00°34'00" West a distance of 2.78 feet to the to the **POINT OF BEGINNING**.

Said parcel of land contains 17.29 Acres (753,279 sq.ft.), more or less (+/-), and is subject to any rights-of-way or other easements of record as now existing on said described parcel of land.

SURVEYORS CERTIFICATE

I, Jason S. Allee, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared by me or under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Sheet 1 of 1

Jason S. Allee – on behalf of Lat40°, Inc.
Colorado Licensed Professional
Land Surveyor #38479

Lat40°, Inc.
Professional Land Surveyors
6250 W. 10th Street, Unit #2
Greeley, CO 80634
(970) 515-5294

EXHIBIT B

To be updated with final document, once executed.

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3780 W. 10th St., Suite 200
Greeley, CO 80634
Email: agerk@baesslerhomes.com

TO THE TOWN:

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

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
Johnstown Town Attorney
19 Old Town Square, Suite 238
Fort Collins, CO 80524
avi@rocklinlaw.com

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

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

19. **Findings.** The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the laws, regulations and policies of the Town.

MOUNTAIN VIEW LAND DEVELOPERS, LLC

By: [Signature]
Name: Andrew J. Gerk
Title: Authorized Agent

STATE OF Colorado)
) ss.
COUNTY OF Weld)

SUBSCRIBED AND SWORN to before me this 20 day of August, 2021,
by Andrew J. Gerk, as the Authorized Agent of Mountain View Land Developers,
LLC

WITNESS my hand and official seal.

[Signature]
Notary Public

My commission expires: 6/17/2023

MELISSA WHEELER
Notary Public
State of Colorado
Notary ID # 20194022905
My Commission Expires 06-17-2023

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

EXHIBIT A

PROPERTY DESCRIPTION

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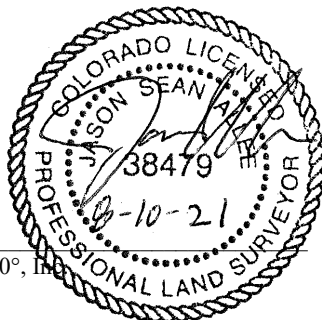
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Sheet 1 of 1

Jason S. Allee – on behalf of Lat40°, Inc.
Colorado Licensed Professional
Land Surveyor #38479

Lat40°, Inc.
Professional Land Surveyors
6250 W. 10th Street, Unit #2
Greeley, CO 80634
(970) 515-5294