

**WATER AND SEWER SERVICE AGREEMENT
FOR
GMX SITE DEVELOPMENT PLAN (DEV22-0010)**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____, 2023, by and between **JOHNSTOWN 3425, LLC**, an Illinois limited liability company duly authorized to conduct business in Colorado (“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 in Lot 1, Amended Lot 1, Block 1, 2534 Filing No. 4 and Lot 1, Amendment of Lot 2, Block 1, 2534 Filing No. 4 and Lot 1, 2534 Filing No. 4 Second Replat (Rec #20190028268), Larimer County known as 4884 Larimer Parkway, Johnstown, Colorado 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 dated November 3, 2006; and

WHEREAS, the Subject Property is being developed as an approximately 13,227 square-foot retail space with 0.034 acre of spray irrigated landscape and 0.232 acre of drip irrigated landscape, known as the GMX “Lot 1” 2534 Retail Building (“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. 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 January 18, 2023, is hereby accepted by the Town. The analysis provides that the projected water and sewer demand for the Project is as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	2.37	0.12
Landscape Irrigation (non-potable)	0.67	0.57
Total	3.04	0.69

2. Water Rights Dedication.

a. Potable Supply. 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.

b. Non-Potable Supply. As a result of prior dedications of raw water credit, there is currently a surplus dedication credit with the Town sufficient to supply the non-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 non-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, the Town commits to provide to the Project up to 2.37 acre-feet per year of potable water supply together with the corresponding sewer service, up to 0.67 acre-feet per year of non-potable water supply for landscape irrigation.

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 as measured by the water meter at the Project.

5. Payment of Water Court Transfer fees. The Water Court transfer fee for both the potable water supply and non-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.

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, or mailed postage prepaid, certified mail, return receipt requested, or mailed by reputable overnight mail courier for next business day delivery, or sent by electronic mail on the condition that the recipient acknowledges receipt thereof, as follows:

TO DEVELOPER:

Johnstown 3425, LLC
3000 Dundee Rd., Ste. 408
Northbrook, IL 60062-2422
Attention: Mr. Andrew S. Goodman
Email: asg@gmxre.com and
gmx@taftlaw.com

TO THE TOWN:

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

WITH A COPY TO:

Taft Stettinius & Hollister LLP
111 East Wacker Drive, Suite 2600
Chicago, Illinois 60601-3713
Attention: Kenneth Klassman, Esq.
Email: kklassman@taftlaw.com

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 Street, Suite 3400
Denver, CO 80207
peterampe@hillandrobbs.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 after receipt of notice from the non-defaulting Party (or, if such longer period is commercially reasonably needed, then if such cure is not commenced within 30-days' after the 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 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.

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 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.

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. Notwithstanding the foregoing, if any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, then the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected by such invalidity or unenforceability, and each term, covenant or condition of this Agreement will be valid and enforced to the fullest extent permitted by law.

14. 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.

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 shall be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado. This Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Parties and shall constitute notice of this Agreement to all persons or entities not parties hereto.

Signatures follow

EXHIBIT A

PROPERTY DESCRIPTION

The Land referred to below is situated in the County of Larimer, State of Colorado, and is described as follows:

Lot 1, Amended Plat of Lot 1, Block 1, 2534 Filing No. 4 and Lot 1, Amended Plat of L2, B1, 2534 Filing No. 4 & Lot 1, 2534 Filing No. 4, Second Replat, County of Larimer, State of Colorado.

For informational purposes only: APN: 8514233001


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 GMX RETAIL DEVELOPMENT (DEV22-0010) and any successor occupant of the premises at the same location, pursuant to the Water and Sewer Service Agreement between Johnstown 3435, LLC, an Illinois limited liability company, and the Town of Johnstown dated _____, 2023.

The amount of such allocated raw water credit is calculated to be 2.37 acre-feet per year for In-Building Use and 0.67 acre-feet per year for Irrigation Use, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.


GERRARD FAMILY LIMITED PARTNERSHIP, LLLP



Nathan Gerrard, Partner
Gerrard Family Limited Partnership, LLLP

Dated: 4/10/2023

THOMPSON RANCH DEVELOPMENT COMPANY



Todd Williams, Vice President
Thompson Ranch Development Company

Dated: 2/28/2023