

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____ 2022, by and between **TRIPLE COVID CONFIDENCE, LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in land located in Lot 3, replat of Lot 1, replat of Lot 3 of the amended plat of the Great Colorado Marketplace Subdivision, Town of Johnstown described more particularly on Exhibit “A” (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town; and

WHEREAS, the Subject Property is being developed by Developer as “**Evergreen Flex Industrial**” (**DEV21-0003**), a 39,125 ft² flex-style commercial building anticipated to have 3 to 5 tenants, with 8,676 ft² (0.19 acre) of permanent irrigated landscape and 59,850 ft² (1.37 acre) of temporary irrigated landscape (the “Temporary Irrigation Area”) (together, the “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 and is on file with the Town and, as modified by the Town’s Water Engineer by a revised memorandum dated August 26, 2021, 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	2.63	0.13
Permanent Landscape Irrigation	0.37	0.31
Temporary Landscape Irrigation	0.69	0.59
Total	3.69	1.03

2. Water Rights Dedication and Credits. Pursuant to that certain Water Service Agreement executed by and among the Town, VMJ Properties, LLC, a Colorado limited liability

company, and Johnson-Taylor Family Properties, LLLP, a Colorado limited liability limited partnership (collectively, “VMJ”), dated September 16, 2019, and recorded at reception #20190057364 in the Larimer County Clerk and Recorder’s office, VMJ has a surplus raw water credit with the Town in the amount of 34.04 acre-feet. As evidenced by the Raw Water Credit Allocation Acknowledgment, attached hereto and incorporated herein by reference as **Exhibit B**, VMJ has sold to Developer, and otherwise authorized Developer to use, one-half (1/2) share of the Consolidated Home Supply Ditch and Reservoir Company, representing 4.0 acre-feet, to satisfy the raw water demands of the Project.

3. Temporary Irrigation Area. Of the 3.69 acre-feet of raw water dedicated to the Town, .69 acre-feet will be used for temporary irrigation. When the landscaping associated with the Temporary Irrigation Area is established to Developer’s satisfaction, Developer shall permanently disable the irrigation system(s) used to irrigate the Temporary Irrigation Area and provide written notice to the Town of such act. Upon written notice from the Town that the Town has accepted the permanent disabling of the temporary irrigation system, Developer may, subject to written consent of the Town in a subsequent agreement(s), utilize the .69 acre-feet to offset increased demands, if any, which are not currently projected for the Project or assign the .69 acre-feet to another project or development within the Town’s boundaries.

4. Surplus dedication credit. The dedication of the one-half (1/2) share of the Consolidated Home Supply Ditch and Reservoir Company described in Paragraph 2, above, 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 0.31 acre-feet. The credit is calculated as follows:

Dedication Credit:	4.00 acre-feet
LESS estimated demand:	3.69 acre-feet
Net current surplus credit:	0.31 acre-feet

At such time as Developer permanently removes the irrigation system serving the Temporary Irrigation Area, provides written proof of such removal to the Town and obtains the Town’s written acceptance, as provided in Paragraph 3 above, the surplus dedication credit will increase to **1.0 acre-feet**.

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 2.63 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service, up to 0.37 acre-feet per year for permanent irrigation, and up to 0.69 acre-feet per year for temporary irrigation to establish permanent vegetation, as described above.

6. 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, if necessary, based on actual water usage.

7. Payment of Water Court Transfer fees. Upon execution of this Agreement, Developer shall pay to the Town the sum of **One thousand one hundred seven Dollars (\$1,107.00)** as payment of the water court transfer fees required by the Ordinance. This payment is for the dedication of 3.69 acre-feet per year of estimated water demand (7.38 SFE) for the Project. Pursuant to Paragraph 6, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication.

8. 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, as follows:

TO DEVELOPER:

Curt Brinker
Triple COVID Confidence, LLC
206 E 4th St., Suite 210
Loveland, CO 80537

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534

WITH A COPY TO
THE TOWN ATTORNEYS:

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

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264

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, the non-defaulting Party 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 by the Town to enforce any of the provisions hereof against 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.

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 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 legal action shall be in the County of Weld, State of Colorado.

17. Entire agreement. 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.

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 will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, shall run with the Subject Property, will be binding upon the Parties hereto and the permitted successors and

assigns of the Developer and will 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.

TRIPLE COVID CONFIDENCE, LLC

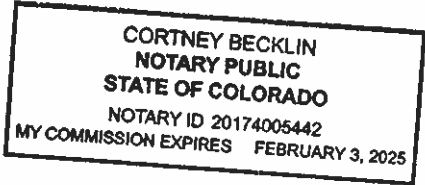
By: [Signature]
Julie Love Curt Brinker

Title: Registered Agent

STATE OF COLORADO)
) ss
COUNTY OF)

SUBSCRIBED AND SWORN to before me this 2nd day of August, 2022 by Julie Love as the Registered Agent of Triple COVID Confidence, LLC.

Witness my hand and official seal.



[Signature]
Notary Public
206 E. 4th Street Suite 210
Loveland, CO 80537
Address
731-206-8388
Telephone

My Commission Expires: February 3, 2025

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

LOT 3, IN REPLAT OF LOT 1, REPLAT OF LOT 3, OF THE AMENDED PLAT OF GREAT COLORADO MARKETPLACE SUBDIVISION, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO

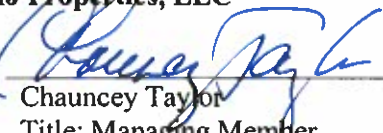
ACCORDING TO PLAT RECORDED OCTOBER 3, 2014 AT RECEPTION NO. 20140056818

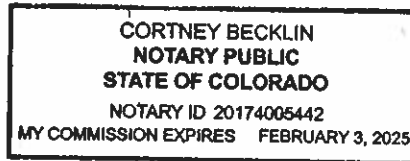
**EXHIBIT B
RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT**

VMJ Properties, LLC, a Colorado limited liability company, and Johnson-Taylor Family Properties, LLLP, a Colorado limited liability limited partnership (collectively, "VMJ"), hereby acknowledge and agree that the Town of Johnstown may transfer and allocate one-half (1/2) share of the Consolidated Home Supply Ditch and Reservoir Company to Triple Covid Confidence, LLC, a Colorado limited liability company, from the raw water credit available to VMJ pursuant to that certain Water Service Agreement executed between the Town and VMJ dated September 16, 2019, and recorded at reception #20190057364 in the Larimer County Clerk and Recorder's office.

The undersigned certifies that they are authorized to execute this Raw Water Allocation Acknowledgment on behalf of VMJ Properties, LLC and Johnson-Taylor Family Properties, LLLP.


VMJ Properties, LLC

By: 
Chauncey Taylor
Title: Managing Member

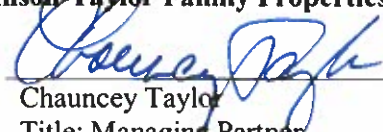


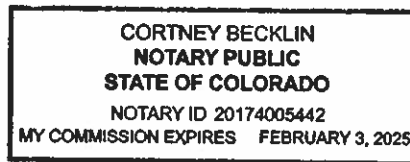
STATE OF COLORADO)
) ss
COUNTY OF Larimer)

SUBSCRIBED AND SWORN to before me this 2nd day of August, 2022 by
Chauncey Taylor, Managing Member of VMJ Properties, LLC.
Witness my hand and official seal.

 My Commission Expires: February 3, 2025
Notary Public

Johnson-Taylor Family Properties, LLLP

By: 
Chauncey Taylor
Title: Managing Partner



STATE OF COLORADO)
) ss
COUNTY OF Larimer)

SUBSCRIBED AND SWORN to before me this 2 day of August, 2022 by
Chauncey Taylor, Managing Partner of Johnson-Taylor Family Properties, LLLP.
Witness my hand and official seal.

 My Commission Expires: February 3, 2025
Notary Public