

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this 22<sup>nd</sup> day of April, 2024, by and between **BACKBONE PROPERTIES, LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipality (“Town”), collectively sometimes referred to as the “Parties”.

### WITNESSETH:

WHEREAS, the Developer owns an interest in land known as known as 208 Gateway Drive, within Lot 2, Replat B of the I-25 Gateway Center Filing #4, more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed as parking and yard space with 0.18 acre of spray-irrigated landscape and 0.2 acre of drip-irrigated landscape (“Project”).

WHEREAS, I-25 Gateway Center, LLC, a Colorado limited liability company, previously dedicated ten (10) shares of stock in the Consolidated Home Supply Ditch and Reservoir Company to the Town to supply the required water for those certain lands in the development known as the I-25 Gateway Center; and

WHEREAS, after execution of four separate water and sewer service agreements with the Town, on October 7, 2019, the Town and I-25 Gateway Center, LLC entered into an Addendum to Water Sewer Service Agreements with the Town, wherein the parties agreed that, based on the initial dedication of water and the then existing use of the water, I-25 Gateway Center, LLC had a surplus raw water credit with the Town in the amount of 33.917 acre-feet at that time; and

WHEREAS, I-25 Gateway Center, LLC desires to assign a portion of the raw water credit to the Developer to supply the necessary water demand for the Project, as evidenced in Exhibit B, attached hereto and incorporated herein by reference; 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 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, as set forth in the Johnstown Municipal Code, as amended, (“Ordinance”), Developer has submitted to the Town an amended preliminary water and sewer demand analysis for the Project, dated October 19, 2023. 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 March 22, 2024, is hereby accepted by the Town as to the potable water demands. Said analysis addresses the projected water and sewer demands for the Project as follows:

Development Component (Potable)	Demand (AF/YR)	Consumption (AF/YR)
Landscaping irrigation	0.74	0.63
<b>Total potable water use</b>	<b>0.74</b>	<b>0.63</b>

**2. Water Rights Dedication.** I-25 Gateway Center, LLC has dedicated to the Project 0.74 acre-feet of its existing raw water credit, as shown in 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 0.74 acre-feet per year of potable water supply for outdoor irrigation use.

**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.

**5. Payment of Water Court Transfer fees.** Water Court Transfer Fees required by the Ordinance were previously paid.

**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, sent by electronic mail or mailed postage prepaid, certified mail, return receipt requested, as follows:

**TO DEVELOPER:**  
 Solomon Howes  
 Backbone Properties, LLC  
 5700 E. County Road 20 E  
 Loveland, CO 80537

**TO THE TOWN:**  
 Town of Johnstown  
 c/o Town Clerk  
 450 S. Parish Ave.  
 Johnstown, CO 80534  
 Email: [notices@johnstowncolorado.gov](mailto:notices@johnstowncolorado.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.

**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 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.

**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. This Agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

**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.

**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 Weld 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.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

**[Signatures Follow on Separate Page]**

**BACKBONE PROPERTIES, LLC**

By: \_\_\_\_\_

Name: Solomon Howes  
Title: Registered Agent

STATE OF COLORADO    )  
  ) ss  
COUNTY OF Weld        )

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of April, 2024 by Soloman Howes as the Registered Agent of Backbone Properties, LLC.

Witness my hand and official seal.



Calvin Kelley  
Notary Public  
208 Gateway Dr  
Johnstown, CO 80534  
Address  
\_\_\_\_\_  
Telephone

My Commission Expires: 01/24/2027

**TOWN OF JOHNSTOWN, COLORADO,**  
a municipal corporation

By: \_\_\_\_\_  
Michael P. Duncan, Mayor

ATTEST:

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

THE UNIVERSITY OF CHICAGO  
LIBRARY  
5408 S. UNIVERSITY AVE.  
CHICAGO, ILL. 60637

WATER USE AUTHORIZATION  
from  
I-25 GATEWAY CENTER, LLC  
to  
BACKBONE PROPERTIES, LLC

THIS WATER USE AUTHORIZATION supplements and is incorporated into the WATER AND SEWER SERVICE AGREEMENT (“WSSA”) made and entered into on \_\_\_\_\_, 2024, by and between BACKBONE PROPERTIES, LLC. (“Developer”), and the TOWN OF JOHNSTOWN, a Colorado municipal corporation.

1. Water Demand. In compliance with the Section 13-65 of the Johnstown Municipal Code, Developer submitted a preliminary water and sewer demand analysis to the Town for the in-building and irrigation water needs of a parking lot and associated landscaping (“Project”), known as 208 Gateway Drive Parking. As approved by the Town’s water engineer by memorandum dated March 22, 2024, the estimated average annual water demand for the Project will be 0.74 acre-feet per year of potable water, equating to 3 single family equivalent units.

2. Water Assignment. Through this Water Use Authorization, I-25 Gateway Center, LLC, a Colorado limited liability company, hereby assigns to Developer, and allows Developer to use, 0.74 acre-feet of raw water per year from the existing raw water credit available to I-25 Gateway Center, LLC pursuant to that certain Addendum to Water Sewer Service Agreements dated October 7, 2019, to supply the required water for the Project. Said assignment is non-revocable.

3. Surplus Credit. The remaining raw water credit available to I-25 Gateway Center, LLC is shown in the Gateway Subdivision – Water Bank Allocation Worksheet (March 25, 2024) attached as Exhibit 1 and incorporated herein by reference.

Dated: \_\_\_\_\_ May 23, 2024.

TOWN OF JOHNSTOWN

By: Matt LeCerf Digitally signed by Matt LeCerf  
Date: 2024.05.23 16:37:47  
-06'00'  
Matthew LeCerf, Town Manager

I-25 GATEWAY CENTER, LLC

By:   
Dennis Saffel, Owner

STATE OF COLORADO     )  
  ) ss  
COUNTY OF Eagle )

SUBSCRIBED AND SWORN to before me this 2 day of May, 2024 by Dennis Saffel, Managing Member of I-25 Gateway Center, LLC.

Witness my hand and official seal.

JParetti  
Notary Public

My Commission Expires: May 11, 2025





**Gateway Subdivision - Water Bank Allocation Worksheet**  
3/25/2024

**Remaining Undeveloped Lots:**

Lot	Block	Filing	Number of Parcels	Developed	Business	Platted Acres	% of Undev. Area, 10/10/19	Prorata Credit Allocation, AF	Supply Demand, AF	Demand Shortage, AF	Credit Allocation used, AF	Allocation Excess, AF <sup>1</sup>
1	3	3	1		Larch Industrial Building	1.889	4.82%	1.635	1.350	0.000	1.350	0.285
2	3	3	1		Lockard Storage	1.889	4.82%	1.635	1.070	0.000	1.070	0.565
3	3	3	1			1.886	4.81%	1.632		0.000		
Outlot A	none	4	1			3.473	8.86%	3.006		0.000		
1	1	4	1			1.604	4.09%	1.388		0.000		
3	1	4	1			0.871	2.22%	0.754		0.000		
4	1	4	1			1.937	4.94%	1.677		0.000		
5	1	4	1			1.848	4.72%	1.600		0.000		
6	1	4	1			1.808	4.61%	1.565		0.000		
7	1	4	1			2.105	5.37%	1.822		0.000		
8	1	4	1			2.115	5.40%	1.831		0.000		
9	1	4	1			2.115	5.40%	1.831		0.000		
10	1	4	1			2.132	5.44%	1.845		0.000		
1	2	4	1	1	AC Ice	2.239	5.71%	1.938	1.620	0.000	1.620	0.318
1-4, 7, 8	3	4	6			5.942	15.16%	5.143		0.000		
5	3	4	1	1	Red Barn Liquor	1.082	2.76%	0.937	0.840	0.000	0.840	0.097
6	3	4	1			1.000	2.55%	0.866		0.000		
2	Replat B	4	1		208 Gateway Dr. Parking	1.290	3.29%	1.117	0.740	0.000	0.740	0.377
3	2	5	1			1.960	5.00%	1.696		0.000		
			Total Undeveloped Lots	22		39.185	100%	33.917			5.620	1.641
			Total Developed Lots	34						Allocation Used		
			Total Lots	56								

Raw water credit assigned to Gateway Center 100.000 AF  
Reserved Surplus 20.900 AF

<sup>1</sup>Portion of Allocation remaining that was in excess of demand. This is available for use, upon negotiation, by future lot developers in addition to their prorata credit allocation.

**Remaining AF from original 100 AF dedicated**  
**(CANNOT be sold, or transferred until audit is completed on 1st 51 lots of 56 lots are developed.)**

**Surplus 20.9 AF**

All water meters as of July 2019	45.183	AF
Oct. 2019 Addendum Allocation	33.917	AF
Allocation Used since Oct. 2019	5.620	AF
<b>Allocation remaining</b>	<b>28.297</b>	<b>AF</b>

