

WATER SERVICE AGREEMENT
(The Ridge at Johnstown, Filing No. 4)

THIS WATER SERVICE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, by and between **J-25 Land Holdings, LLC**, a Delaware limited liability company (“Developer”), the **Town of Johnstown**, a Colorado municipal corporation (“Town”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer is the owner of land situated in a portion of the West Half of Section 26 and the East Half of Section 27, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado, known as The Ridge at Johnstown Filing No. 4, more specifically described on Exhibit A, attached hereto and incorporate herein by reference (“Subject Property”); and

WHEREAS, on or about September 30, 2022, the Town and CaliberCos, Inc., a Delaware corporation (“Caliber”), among others, entered into a Water Dedication and Water Bank Agreement, which, upon the dedication of raw water to the Town, established the Caliber Water Bank and provided Caliber with the right to allocate the raw water from the Caliber Water Bank to uses within the Town; and

WHEREAS, the Developer is developing infrastructure in and around the Subject Property for The Ridge subdivision, which consists of, among other facets, right of way and storm water facility landscaping (“Project”); and

WHEREAS, the Developer seeks to use raw water from the Caliber Water Bank for the Project; and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning the use of the Caliber Water Bank, preliminary projections of water demand and a commitment by the Town for water 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 Demand Study. 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 demand analysis for the Project dated March 27, 2024. 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 April 19, 2024, is hereby accepted by the Town as to the irrigation water demands. The analysis sets forth the projected water demands for the Project as follows:

Development Component	Demand	Consumption
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	(AF/YR)	(AF/YR)
Irrigation (Permanent)	7.55	6.42
Irrigation (Temporary)	3.57	3.03
Total water use	11.12	9.45

2. Water Rights Dedication. Based on the consent of Caliber, as evidenced by Exhibit B, attached hereto and incorporated herein by reference, the Town agrees that the required 11.12 acre-feet of raw water credit for the Project will be allocated from the water stock contained in the Caliber Water Bank.

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 11.12 acre-feet per year of water supply for approximately 5.03 acres permanent drip-irrigation and approximately 3.57 acres of temporarily irrigated native grass. Upon the establishment of the native grasses, Developer may permanently disconnect the irrigation for the temporary irrigation area and, upon written notice to the Town with proof of the disconnection, in a form acceptable to the Town, obtain a raw water credit in the amount of 3.57 acre-feet per year, which credit will be added back to the Caliber Water Bank for future allocation and use within the Town.

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 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, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage. The additional water rights shall be dedicated by the Developer, a metropolitan district providing covenant enforcement or by the operative homeowners’ association.

5. Payment of Water Court Transfer fees. Upon execution of this Agreement, the Developer shall pay to the Town the sum of Three Thousand Three Hundred and Seventy-Five Dollars (\$3,375.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the dedication of 11.12 acre-feet per year of estimated water demand and estimated consumptive use of 9.45 acre-feet per year (22.5 SFE) for the Project. Pursuant to Paragraph 4, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication.

6. 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
Email: Courtney.Bring@Caliberco.com

WITH A COPY TO:
Coan, Payton & Payne, LLC
Attn: G. Brent Coa, Esq.
103 W. Mountain Ave., Suite 201
Fort Collins, CO 80524
Email: gbcogan@cp2law.com

TO THE TOWN:
Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534
Email: HHill@johnstownco.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, Esq.
Hill & Robbins, P.C.
3401 Quebec Street, Suite 3400
Denver, CO 80207
Email: peterampe@hillandrobbins.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 Larimer or 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 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.)

J-25 Land Holdings LLC

By: J-25 Development Group, LLC, a Delaware limited liability company, as Manager

By: Caliber Services, LLC, an Arizona limited liability company, as its sole Member

By: Caliber Companies, LLC, an Arizona limited liability company, as Manager

By: Caliberco, Inc., a Delaware corporation, as its sole Member

Jennifer Schrader, Director

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of May 2024, by Jennifer Schrader, as Authorized Signor, J-25 Land Holdings, LLC.

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Michael P. Duncan, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT A
Legal Description

THE RIDGE AT JOHNSTOWN FILING 4 LEGAL

A PARCEL OF LAND SITUATE IN THE NORTHWEST QUARTER OF SECTION 26 AND THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN; TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACTS A, B, C, AND D OF THE RIDGE AT JOHNSTOWN FILING NO. 3.

K:\1258\0001\05 Drawings\Exhibits\0001_Ridge Filing 4 Legal

EXHIBIT A
DATE: MAY 2024
JOB NO. 1258.0000.00
SHEET 1 OF 1



748 Whalers Way, Suite 200
Fort Collins, Colorado
Phone: 970.226.0557

**EXHIBIT B
RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT**

This is to acknowledge and agree that the Town of Johnstown may allocate 11.12 acre-feet of raw water from the Caliber Water Bank to J-25 Land Holdings, LLC, a Delaware limited liability company (“Developer”), for The Ridge at Johnstown, Filing No. 4, pursuant to that certain Water Service Agreement (“WSA”) to be executed between the Town and the Developer

The undersigned certify that he/she is authorized to execute this Raw Water Allocation Acknowledgment on behalf of CaliberCos, a Delaware limited liability company, the owner of the Caliber Water Bank.

CALIBERCOS INC., a Delaware Corporation

By: _____
Name: _____
Its: Chief Executive Officer

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2024, by _____, as Chief Executive Officer of CaliberCos, Inc.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public