

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2022, by and between **JOHNSTOWN VILLAGE, 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 Tract P of Johnstown Village Filing No. 1, Weld County, Colorado, described more particularly on Exhibit “A” (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town as a portion of the lands annexed to the Town in 2006 by Ordinance Number 2006-773 (“Massey Farms”); and

WHEREAS, the Subject Property is being developed by Developer as Johnstown Village, Filing No. 2, containing 150 single family attached dwellings units with 1.12 acres of residential irrigated area, 1.57 acres of spray-irrigated parks and open space, 1.04 acres of drip-irrigated parks and open space, and 0.83 acres of xeric irrigated parks and open space (“Project”); and

WHEREAS, 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 dated November 15, 2021. 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 March 30, 2022, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Project as follows:

<b>Development Component</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
Residential In-Building	43.50	2.18
Landscape Irrigation	9.13	7.76
<b>Total</b>	<b>52.63</b>	<b>9.94</b>

**2. Water Rights Dedication and Credits.**

**A. Allocation of Raw Water Credit from Prior Water and Sewer Service Agreements.** Developer desires to allocate, and hereby allocates, the following raw water credit to the Project:

1. Pursuant to the Water and Sewer Service Agreement executed by and between the Town and Developer on or about September 4, 2019, concerning Johnstown Village, Filing No. 1, Developer has a surplus raw water credit in the amount of 5.56 acre-feet that may be used within the Subject Property, which credit Developer hereby allocates to the Project; and
2. Pursuant to the Water and Sewer Service Agreement executed by and between the Town and Developer on or about December 13, 2021, concerning Johnstown Village, Filing No. 3, Developer has a surplus raw water credit in the amount of 1.33 acre-feet that may be used within the Subject Property, which credit Developer hereby allocates to the Project.

**B. Dedication of Additional Raw Water.** As a condition of this Agreement, within fourteen (14) days of the final execution of this Agreement, Developer shall dedicate the following Consolidated Home Supply Ditch and Reservoir Company (“Home Supply”) shares to the Town to supply the Project:

5 Home Supply shares (Cert. No. 6979 changed)	40.00 acre-feet
<u>1 Home Supply share (Cert. No. 7073 unchanged)</u>	<u>6.40 acre-feet</u>
<b>TOTAL</b>	<b>46.40 acre-feet</b>

For the avoidance of doubt, Home Supply Certificate No. 7073 represents four (4) unchanged shares, only one (1) of which shall be dedicated to the Town for the Project.

Failure of Developer to dedicate said Home Supply shares within fourteen (14) days will result in this Agreement being void without the need for any additional action by the Town.

**3. Surplus dedication credit.** The allocation of the surplus credit and the dedication of the Home Supply shares 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 in the amount of 0.66 acre-feet. The credit is calculated as follows:

Dedication Credit:	53.29 acre-feet
LESS estimated demand:	52.63 acre-feet
<b>Net current surplus credit:</b>	<b>0.66 acre-feet</b> (Unchanged)

The surplus credit shall be derived from Home Supply Certificate No. 7073, which has not been adjudicated through the water court process to include municipal uses. Upon notice and written approval of the Town, said credit may be utilized to offset increased demands, if any, which are not currently projected for the Project or may be used for other future development within the Town of Johnstown, subject to approval by the Town in subsequent agreement(s) in accordance with the requirements of the Ordinance.

**4. 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 43.50 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and 9.13 acre-feet of water supply for irrigation as described above.

**5. 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.

**6. Payment of Water Court Transfer fees.** Upon execution of this Agreement, Developer shall pay to the Town the sum of Seventeen Thousand Four Hundred and Seventy-Five dollars (\$17,475.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the dedication of 52.63 acre-feet per year of estimated water demand and estimated consumptive use of 9.94 acre-feet per year (105 SFE) for the Project. Pursuant to Paragraph 5, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication. Further, in accordance with the Ordinance, additional water court transfer fees will be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the Parties in accordance with the Ordinance and this Agreement.

**7. 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, mailed postage prepaid, certified mail, return receipt requested, or sent by electronic mail on the condition that the intended recipient acknowledges receipt thereof, as follows:

TO DEVELOPER:

Johnstown Village, LLC  
Attn: Managing Member  
143 Monroe Street  
Denver, CO 80206  
Email: \_\_\_\_\_

TO THE TOWN:

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

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.  
1160 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 litigation, 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 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.

**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 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.

**16. 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.

**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 will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld 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.

*(Signatures on following page.)*



**EXHIBIT A**

**LEGAL DESCRIPTION**

TRACT P, JOHNSTOWN VILAGE FILING NO. 1  
County of Weld, State of Colorado