

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 25 day of April 2024, by and between **SR JOHNSTOWN INVESTMENTS, 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 in the SW¼ Section 26, Township 5 North, Range 68 West, 6<sup>th</sup> PM., Larimer County, Colorado, 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 the Southridge Subdivision with 305 single family detached lots with residential irrigated landscaping consisting of 8.77 acres of sod and 0.44 acres of shrub beds, and additional common area irrigated landscaping consisting of 5.54 acres of sod, 0.89 acre of shrub beds, and 12.08 acres of native grasses ("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 memorandum dated November 17, 2023, is hereby accepted by the Town. The analysis provided by Developer addresses the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-Building	100.65	5.03
Residential Landscape Irrigation	49.86	42.38
<b>Total</b>	<b>150.51</b>	<b>47.41</b>

**2. Water Rights Dedication and Credits.** Developer states, confirms and agrees that it has the lawful right to use and allocate raw water from the Journey Homes Water Bank, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**, for the Project. The



Journey Homes Water Bank contains both changed and unchanged shares of raw water from the Consolidated Home Supply Ditch and Reservoir Company ("Home Supply"). Developer acknowledges the assignment of 150.51 acre-feet of raw water credit from the Journey Homes Water Bank to the Project.

**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 100.65 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and 49.86 acre-feet 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 for 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 Sixty-One Thousand Five Hundred dollars (\$61,500.00) as payment of the water court transfer fees required by the Ordinance, representing 12 changed Home Supply shares and 8.52 unchanged Home Supply shares. This payment is only for the dedication of 150.51 acre-feet per year of estimated water demand and estimated consumptive use of 47.41 acre-feet per year (301 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 or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

SR JOHNSTOWN INVESTMENTS,  
LLC  
Attention: Larry S. Buckendorf  
7251 W. 20<sup>th</sup> Street, L-200  
Greeley, CO 80634  
Email: Larry@journeyhomes.com

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.  
3401 Quebec St., Suite 3400  
Denver, CO 80207

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, the non-defaulting Party 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 concerning this Agreement, 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 Larimer, 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 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.

13

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

**SR JOHNSTOWN INVESTMENTS, LLC**

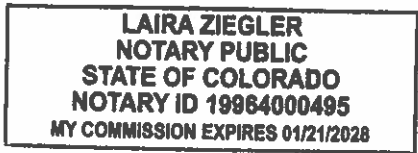
By: [Signature]  
Name: Larry Buckendorf  
Title: Managing Member

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF WELD                    )

SUBSCRIBED AND SWORN to before me this 25 day of April, 2024, by Larry Buckendorf, as the managing member of SR JOHNSTOWN INVESTMENTS, LLC.

WITNESS my hand and official seal.

My commission expires: 1-21-28



[Signature]  
Notary Public

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

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

ATTEST:

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

## EXHIBIT A

### LEGAL DESCRIPTION (Property)

A parcel of land being that portion of the Southwest Quarter (SW1/4) of Section Twenty-six (26), Township Five North (T.5N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado, being more particularly described as follows:

**BEGINNING** at the West Quarter Corner of Section 26 and assuming the North line of the Southwest Quarter of said Section 26 as bearing North 89° 57' 34" East a distance of 2631.73 feet and being monumented by a 2" diameter pipe with a 2" diameter aluminum cap, stamped "PLS 12374," on the West and being monumented by a No. 6 rebar with a 2.5" diameter aluminum cap stamped PLS 38304 on the East with all other bearings contained herein relative thereto;

THENCE North 89° 57' 34" East a distance of 2631.73 feet to the Center Quarter Corner of said Section 26

THENCE South 00° 00' 46" West along the East line of the Southwest Quarter of said Section 26 a distance of 1322.90 feet;

THENCE North 89° 56' 12" West a distance of 2629.13 feet to the West line of the Southwest Quarter of said Section 26;

THENCE North 00° 06' 06" West along said West line of the Southwest Quarter of Section 26 a distance of 1318.13 feet to the West Quarter Corner of said Section 26 and to the **POINT OF BEGINNING**.

Said parcel contains 3,473,516 square feet, or 79.74 acres, more or less (±).

13

EXHIBIT B

JOURNEY HOMES WATER BANK  
(Attached)

15

# Journey Homes Water Bank

•Pending

Home Supply Share Dedications & Raw Water Credit					Assignments of Raw Water Credit					Raw Water Bank Credit Balance (ac-ft)
Date	Dedication Type	No. of Shares	Johnstown Certificate No.	Share Status	Dedicated Raw Water Credit (ac-ft)	Assignment to:	SFE (Number)	In - Building Use (ac-ft)	Irrigation Use (ac-ft)	Total Use (ac-ft)
12/21/2023	Home Supply	9	7215	Changed	72					72.00
12/21/2023	Home Supply	7	7216	Unchanged	44.8					116.80
1/17/2024	Home Supply	2	7218	Unchanged	12.8					129.60
1/19/2024	Transfer from Min View Land Dev.	N/A	N/A	Unchanged	1.15					130.75
3/8/2024	Home Supply	1	7228	Unchanged	6.4					137.15
3/8/2024	Home Supply	0.5	7230	Unchanged	3.2					140.35
4/11/2024	Home Supply	2	7244	Unchanged	14.4					154.75
4/11/2024	Home Supply	2	7245	Changed	16					170.75
4/11/2024	Home Supply	1	7246	Changed	8					178.75
4/11/2024	Home Supply	1	7247	Unchanged	6.4					185.15
4/11/2024	Home Supply	4.5	7248	Unchanged	28.8					213.95
--						Southridge Subdivision	301	100.65	49.86	150.51
Total:	--	30			213.95	--	301.00	100.65	49.86	150.51
										--

## Notes:

1. Water bank established pursuant to Assignment and Allocation of Raw Water Credit from the Caliber Water Bank and Establishment of the Journey Homes Water Bank signed \_\_\_\_\_.