

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____ 2024, by and between **FORESTAR (USA) REAL ESTATE GROUP, INC.**, a Delaware corporation (“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 a portion of the SE1/4 of Section 35 and the SW1/4 of Section 36, all in T05N, R68W of the 6th P.M., Larimer County, Colorado, described more particularly on Exhibit “A” attached hereto and incorporated herein by this reference (“Subject Property”); and

WHEREAS, the Subject Property was annexed to the Town as part the Annexation Agreement dated September 16, 2002; and

WHEREAS, the Subject Property is being developed by Developer as Revere North Filing No. 2, a residential project that will include: 140 single family detached lots with residential landscaping totaling 3.89 acres of spray-irrigated area and 3.23 acres of drip-irrigated area. There will also be common area landscape irrigation consisting of 0.60 acres of spray-irrigated area, 0.41 acres of drip-irrigated area, and 4.49 acres of permanently irrigated native grass; 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 Subject Property.

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 Subject Property. 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 12, 2014, 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	46.20	2.31
Irrigation	21.18	18.00
Total	67.38	20.31

2. Water Rights Dedication and Credits. By executing this Agreement, Developer agrees to dedicate 67.38 acre-feet of raw water credit from the Forestar Water Bank. Raw water credit remaining in the Forestar Water Bank may be dedicated to the Town for future development pursuant to the Water Dedication and Water Bank Agreement Between Town of Johnstown and Forestar (USA) Real Estate Group, Inc ("Water Bank Agreement").

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 Subject Property up to 46.20 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service, and 21.18 acre-feet for residential and common area irrigation, as described above.

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.

5. Payment of Water Court Transfer fees. Upon execution of this Agreement, Developer shall pay to the Town the sum of Twenty Thousand, Two Hundred and Fifty dollars (\$20,250.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the required dedication of 67.38 acre-feet per year of estimated permanent water demand and estimated consumptive use of 30.31 acre-feet per year (135 SFE) for the Subject Property. 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. Further, in accordance with the Ordinance, additional 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.

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 or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

TO THE TOWN:

Town of Johnstown

Forestar (USA) Real Estate Group,
Inc.
c/o James A. Hayes
188 Inverness Drive West
Suite 420
Englewood, CO 80112

WITH A COPY TO ATTORNEYS:

Carrie Cappel
2221 E. Lamar Blvd.
Suite 790
Arlington, TX 76006

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.

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, the non-defaulting Party 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 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.

15. **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.

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 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

FORESTAR (USA) REAL ESTATE GROUP, INC.

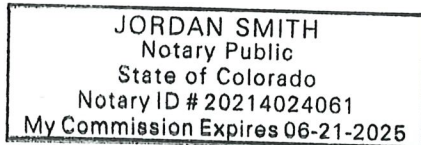
By: James A. Taylor
(name)

Title: VP OF LAND ACQ & ENTITLEMENTS

STATE OF COLORADO)
) ss
COUNTY OF Arapahoe)

SUBSCRIBED AND SWORN to before me this 26 day of April, 2024 by
James Taylor, as the VP of Forestar (USA) Real Estate Group,
Inc.

Witness my hand and official seal.



Jordan Smith
Notary Public

138 Inverness Dr W, #420, Englewood, CO 80112
Address
303 754 3282
Telephone

My Commission Expires: _____

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Micheal Duncan, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT A
LEGAL DESCRIPTION