

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 17th day of June, 2022, by and between **SECANT, LLC**, a Colorado limited liability company, d/b/a Adolfson & Peterson Construction (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer owns an interest in land in the NE¼ of Section 14, T05N, R68W, 6th PM, known as Lot 21, Block 10, 2534 Filing No. 6 comprising 2.51 acres, more-or less, and more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement dated November 3, 2006; and

WHEREAS, the Subject Property is being developed as approximately 6,485 square-feet of office space and approximately 20,207 square-feet of industrial/flex-use space with 0.10 acre of spray-irrigated landscape, 0.31 acre of drip irrigated landscape, and 0.17 acre of temporarily irrigated native grasses, known as the Secant Flex Building (“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, is on file with the Town and, as modified by the Town’s Water Engineer by memorandum dated May 20, 2022, is hereby accepted by the Town. The analysis provides that the projected water and sewer demand for the Project is as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	2.52	0.13
Permanent Landscape Irrigation (non-potable)	1.03	0.88
Total	3.55	1.01

2. Water Rights Dedication.

a. **Potable Supply.** As a result of prior dedications of raw water credit, there is currently a surplus dedication credit with the Town sufficient to supply the potable water demands of the Project from the 2534 Master Association Water Bank. The Gerrard Family Partnership, LLLP and Thompson Ranch Development Company have agreed that this credit shall be applied to meet the potable water demands of the Project. Evidence of the agreement is attached hereto and incorporated herein by reference as Exhibit B.

b. **Non-Potable Supply.** As a result of prior dedications of raw water credit, there is currently a surplus dedication credit with the Town sufficient to supply the non-potable water demands of the Project from the 2534 Master Association Water Bank. The Gerrard Family Partnership, LLLP and Thompson Ranch Development Company have agreed that this credit shall be applied to meet the non-potable water demands of the Project. Evidence of the agreement is attached hereto and incorporated herein by reference as Exhibit B.

c. **Temporary Non-Potable Supply.** The landscape plans submitted as part of the Project identify 0.17 acre of seeded grasses that will be temporarily irrigated with up to 0.17 acre-feet of non-potable water per year until growth can be sustained without irrigation ("Temporary Irrigation Area"). Pursuant to the Temporary Irrigation Agreement executed between the Developer and the 2534 Master Association, a Colorado nonprofit corporation, as evidenced by Exhibit C, the Developer shall be entitled to temporarily irrigate the Temporary Irrigation Area. Unless the Temporary Irrigation Agreement provides otherwise, Developer agrees to cease irrigating the Temporary Irrigation Area within two years of the date of this Agreement or once the vegetation is successfully established, whichever is earlier, and to disconnect the irrigation system at such time.

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 2.52 acre-feet per year of potable water supply together with the corresponding sewer service, up to 1.03 acre-feet per year of non-potable water supply for landscape irrigation and, on a temporary basis as provided in paragraph 2.c., above, up to 0.17 acre-feet of non-potable water supply for the Temporary Irrigation Area.

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.** The Water Court transfer fee for both the potable water supply and non-potable water supply was previously paid to the Town as part of the 2534 Master Association Water Bank. However, in accordance with the Ordinance, additional fees may be required in connection with future development of any portion of the Subject Property.

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, mailed postage prepaid, certified mail,

return receipt requested, or sent by electronic mail on the condition that the recipient acknowledges receipt thereof, as follows:

TO DEVELOPER:
Secant Holdings, LLC
280 Detroit Street
Denver, CO 80206
Attn: Doug Johnson
Email: djohnson@a-p.com

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534
dseele@townofjohnstown.com

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.
1660 Lincoln St., Suite 2720
Denver, CO 80264
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 a legal action, 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.

18. Recordation. This Agreement shall be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado. 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.

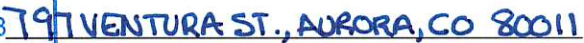
Signatures follow

BY (signature)

STATE OF COLORADO)
) ss
COUNTY OF Arapahoe)

Witness my hand and official seal.

Notary Public



Address

Telephone

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

ATTEST:

5

EXHIBIT A
LEGAL DESCRIPTION



July 19, 2021

Kristin Cote | Planner I
Town of Johnstown
p: 970.578.9605 | f: (970) 587-0141
450 S Parish Ave. PO Box 609 Johnstown, CO 80534

RE: Adolfson Peterson Construction – 2534 SDP Submittal

Hello,

Below you will find a legal description of this property.

LOT 21, BLOCK 10 2534 FILING NO 6
LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 14 TOWNSHIP 5
NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN
TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO

Cordially,

Jason R Oldham
Senior Project Manager
970.420.9555
jason@ndscolorado.com

EXHIBIT B

RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

EXHIBIT B


RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from The Gerrard Family Partnership, LLLP and Thompson Ranch Development Company raw water credit account held by the Town of Johnstown, known as the "2534 Water Bank," to provide water service to Secant Holdings, LLC, a Colorado limited liability company, ("Owner"), for 4660 Concord Ave. (Lot 21, Block 10, 2534 6th Filing), ("Development"), and to any successor occupant of the premises pursuant to a Water and Sewer Service Agreement ("WSSA") to be executed between Owner and the Town ("Permanent Water Service"); and to provide temporary non-potable water service to the Owner for the Development and any successor occupant of the premises for the temporary irrigation of native grasses pursuant to a separate agreement by and between the Owner and the 2534 Master Association, a Colorado nonprofit corporation ("Temporary Non-Potable Service"). The amount of such allocated raw water credit is calculated to be 2.52 acre-feet per year for potable in building use and 1.03 acre-feet per year for non-potable irrigation use, subject to adjustment pursuant to the terms of the WSSA and the Johnstown Municipal Code.

The premises referenced herein are described on Exhibit A to the WSSA.

The undersigned certify that they are authorized to execute this Raw Water Allocation Acknowledgment on behalf of The Gerrard Family Partnership, LLLP and Thompson Ranch Development Company.

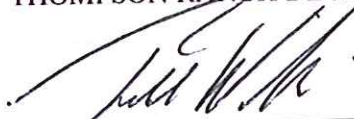
THE GERRARD FAMILY PARTNERSHIP, LLLP



Nathan Gerrard, Managing Partner
The Gerrard Family Limited Partnership, LLLP

Dated: 6/23/2022

THOMPSON RANCH DEVELOPMENT COMPANY



Todd Williams, Vice President
Thompson Ranch Development Company

Dated: 6/20/2022