

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this ____ day of December 2021, 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 in the NW¼ Section 7, Township 4 North, Range 67 West, 6th PM., Weld County, Colorado, more particularly described as a replat of Tracts M and N, Johnstown Village Filing No. 1, 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. 3** with 132 Townhomes with a total of 3.53 acres of irrigated area, of which 3.09 acres will be spray-irrigated and 0.44 acres will be drip-irrigated; 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 dated October 8, 2021. 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 October 12, 2021, is hereby accepted by the Town. The analysis provided by Developer addresses the projected water and sewer demands for the Subject Property as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-Building	38.28	1.91
Residential Landscape Irrigation	8.39	7.13
Total	46.67	9.04

2. Water Rights Dedication and Credits. Within forty-five (45) days of the execution of this Agreement, Developer shall dedicate six (6) shares of the Consolidated Home Supply Ditch and Reservoir Company, represented by Certificate No. 6978, to the Town (the "Dedication"). The water represented by Certificate No. 6978 has been changed to include municipal use in the District Court, Water Division No. 1, Case No. 98CW410. This Agreement is not valid until such Dedication is made and accepted by the Town.

3. Surplus dedication credit. The dedication of the six (6) shares of the Consolidated Home Supply Ditch and Reservoir Company described in Paragraph 2, above, will provide to Developer raw water credits in excess of the water demand projected for the Subject Property. As a result of said dedication, Developer will have a surplus dedication credit with the Town of 1.33 acre-feet. The credit is calculated as follows:

Dedication Credit:	48.00 acre-feet
LESS estimated demand:	46.67 acre-feet
Net current surplus credit:	1.33 acre-feet

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 Subject Property 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 Subject Property up to 38.28 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and 8.39 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 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.

6. Payment of Water Court Transfer fees. Upon execution of this Agreement, Developer shall pay to the Town the sum of Thirteen Thousand Nine Hundred and Fifty dollars (\$13,950.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the dedication of 46.67 acre-feet per year of estimated water demand and estimated consumptive use of 9.04 acre-feet per year (93 SFE) for the Subject Property. 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:

JOHNSTOWN VILLAGE LLC
Attention: Michael Blumenthal
17 Beacon Hill Lane
Greenwood Village, CO 80111
Email: michaelbent@msn.com

With copies to:
Bob Quinette
10221 Prestwick Trail
Lone Tree, CO 80124
Email: bobquinette@gmail.com

And
Harvey Deutsch
143 Monroe Street
Denver, CO 80206
Email: Harvey@prospectllc.com

And
Rumler Tarbox Lyden
1777 South Harrison Street, Suite 1250
Denver, CO 80210
Attn: Jean M. Gold, Esq.
Email: jgold@rumlerlaw.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.
1160 Lincoln St., Suite 2720
Denver, CO 80264

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. Notwithstanding the foregoing, the Town and Developer

acknowledge that Developer is under contract to sell the Property to LGI Homes – Colorado, LLC, a Colorado limited liability company (“LGI”). Upon the closing of the purchase and sale of the Property from Developer to LGI, as indicated by the recordation of a special warranty deed conveying the Property to LGI, and Developer’s performance of the Dedication (pursuant to Section 2 above), Developer’s obligations hereunder shall be deemed assigned to LGI, and LGI shall be deemed to have assumed all of Developer’s obligations under this Agreement. Upon such assignment and assumption of this Agreement, LGI’s address for the purposes of Section 7 is as follows:

LGI HOMES – COLORADO, LLC
Attn: Tracye Herrington
3401 Quebec Street, Suite 4060
Denver, CO 80207
tracye.herrington@lgihomes.com

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 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.

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.

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

Signatures follow.

EXHIBIT A

LEGAL DESCRIPTION

TRACTS M AND N, JOHNSTOWN VILLAGE FILING NO. 1, COUNTY OF WELD, STATE OF COLORADO, LOCATED IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M.