

**AMENDED AND RESTATED
WATER AND SEWER SERVICE AGREEMENT
(PURVIS FARM SUBDISIVION)**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____ 2023, by and between **6037 JOHNSTOWN, 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 South Half of Section 6, Township 4 North, Range 67 West, 6th PM., Weld 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 Purvis Farm, containing 232 single family detached lots with 10.8 acres of residential irrigated landscape, 150 single family attached units with 6.6 acres of residential irrigated landscape, and common use landscape with 8.8 spray-irrigated acres and 0.5 drip irrigated acres (“Project”); and

WHEREAS, Developer and the Town previously entered into a Water and Sewer Service Agreement dated June 6, 2022, which is now void under its own terms; and

WHEREAS, Developer and the Town desire to execute this Amended and Restated Water and Sewer Service Agreement 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 March 28, 2022, 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 | 120.1 | 6.0 |
| Residential Landscape Irrigation | 66.3 | 56.4 |
| Total | 186.4 | 62.4 |

2. Water Rights Dedication and Dry-Up Covenants. Developer has dedicated the equivalent of twenty-two (22) shares of the Consolidated Home Supply Ditch & Reservoir Company (“Home Supply”) to the Town, represented by:

- a. Certificate No. 7161 (11 shares, 88 acre-feet); and
- b. Certificate No. 7160 (3 shares, 24 acre-feet); and
- c. Certificate No. 7159 (8 shares, 51.2 acre-feet); and
- d. Five and Two Hundredths (5.02) acre-feet assigned from RV Boatel, LLC (“RV Boatel”) to Post Modern Development, LLC (“Post Modern”), pursuant to an Assignment and Allocation of Raw Water Credit executed by and among the Town, RV Boatel and Post Modern; and
- e. Eighteen and eighteen hundredths (18.18) acre-feet assigned from Southridge Holdco, LLC, and CaliberCos, Inc., pursuant to an Agreement and Assignment of Raw Water Credit dated February 28, 2023.

The Developer has provided and executed and dry-up covenants to the Town, in a form acceptable to the Town, with respect to the water associated with Certificate No. 7161 and Certificate 7160. The total raw water credit dedicated to the Town by Developer is 186.4 acre-feet, which satisfies the estimated demand.

3. Water Rights Credit. The dedication of the 186.4 acre-feet described in Paragraph 2, above, will result in satisfaction of required water dedication with no remaining credit to the Developer.

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 120.1 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and 66.3 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 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. Based on the dedication of 186.4 acre-feet (373 SFE) of raw water, as stated above, the Water Court Transfer fee is One Hundred Ten Thousand, Three Hundred and Thirty-Four dollars (\$110,334.00). 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.

7. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO DEVELOPER:

JD Padilla
144 N. Mason, Ste 4
Fort Collins, CO 80524
Email:
jd@postmoderndevelopment.com

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
Email: hhill@johnstownco.gov

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538
Email: avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264
Email: peterampe@hillandrobbins.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 ninety (90) days, either Party may then commence an action in a court of competent jurisdiction 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 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.

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.

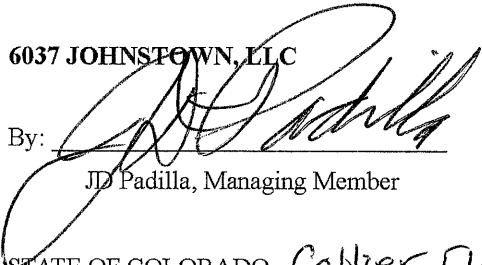
17. **No Presumption.** Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, 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.

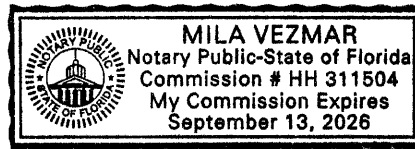
18. **Recordation.** This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject Property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute 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.

6037 JOHNSTOWN, LLC

By:


JD Padilla, Managing Member



STATE OF COLORADO Collier Florida

) ss

COUNTY OF Collier)

SUBSCRIBED AND SWORN to before me this 17 day of April, 2023 by Mila Vezmar as the Managing Member of 6037 Johnstown, LLC a Colorado limited liability company.

Witness my hand and official seal.



Notary Public

539 5th Ave S Naples FL 34102

Address

239-649-4441

Telephone

My Commission Expires: Sept 13, 2026

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Troy D. Mellon, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land situate in the South Half of Section Six (6), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.) being more particularly described as follows:

ALL OF THE N 1/2 OF THE SW 1/4 AND ALL OF THE SW 1/4 OF THE SW 1/4 OF SECTION 6, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

EXCEPT THAT PART OF THE SW 1/4 OF THE SW 1/4 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 6, 519 FEET NORTH OF THE SW CORNER THEREOF; THENCE EAST 252 FEET;

THENCE NORTH 346 FEET;

THENCE WEST 252 FEET;

THENCE SOUTH 346 FEET TO THE PLACE OF BEGINNING, AND AS CONVEYED BY DEED RECORDED MARCH 12, 1907 IN BOOK 273 AT PAGE 300, WELD COUNTY RECORDS:

AND FURTHER EXCEPTING CONVEYANCES TO THE DEPARTMENT OF HIGHWAYS, STATE OF COLORADO, AS RECORDED MAY 10, 1957 IN BOOK 1477 AT PAGE 299, 301 AND 303, WELD COUNTY RECORDS; AND TO PERMANENT EASEMENTS FOR IRRIGATION DITCH AS CONVEYED TO DEPARTMENT OF HIGHWAYS, STATE OF COLORADO BY INSTRUMENTS RECORDED MAY 10, 1957 IN BOOK 1477 AT PAGE 307, 308 AND 309, WELD COUNTY RECORDS; AND FURTHER EXCEPTING THAT PART OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 6 CONVEYED BY DEED RECORDED FEBRUARY 23, 1951 IN BOOK 1295 AT PAGE 477, WELD COUNTY RECORDS

AND

THAT PORTION OF THE SE 1/4 OF SECTION 6, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS: CONSIDERING THE SOUTH LINE OF SAID SE 1/4 OF SECTION 6 AS BEARING N 81° 06' 55" W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO:

COMMENCING AT THE SW CORNER OF THE SE 1/4 OF SAID SECTION 6;

THENCE N 03° 23' 56" E ALONG THE WEST LINE OF THE SE 1/4 OF SAID SECTION 6, A DISTANCE OF 1326.67 FEET TO THE NW CORNER OF ROLLING HILLS RANCH PHASE-1 SAID POINT BEING THE POINT OF BEGINNING:

THENCE S 80° 54' 20" E, ALONG THE NORTH LINE OF SAID PHASE-1 A DISTANCE OF 47.06 FEET;

THENCE N 02° 47' 49" E, A DISTANCE OF 1328.21 FEET TO A POINT ON THE NORTH LINE OF THE SE 1/4 OF SAID SECTION 6;

THENCE N 81° 12' 35" W, A DISTANCE OF 33.02 FEET TO THE NW CORNER OF SAID SE 1/4;

THENCE S 03° 23' 56" W, ALONG THE WEST LINE OF SAID SE 1/4, A DISTANCE OF 1326.57 FEET TO THE POINT OF BEGINNING.