

**WATER AND SEWER SERVICE AGREEMENT  
MOUNTAIN VIEW WEST THIRD REPLAT (TOWNHOMES PHASE II)**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2023, by and between **MOUNTAIN VIEW LAND DEVELOPERS, 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 within the NW1/4, Section 9, T04N, R67W of the 6<sup>th</sup> P.M., also known as Replat of Tract A, Block 3, 1st Replat of Block 1 Mountain View West Subdivision Replat, Lot 2 Block 2, Block 4, and Outlot C of Mountain View West Subdivision Replat Amendment No. 1., 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 a residential development that will contain 125 townhomes and irrigated landscaping that includes 0.69 acre of turf, 1.27 acres of shrub beds, and 4.37 acres of xeriscape (1.04 acres) and native grasses (3.33 acres) (“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 dated January 16, 2023. 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 February 10, 2023, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Project as follows:

<b>Development Component</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
Residential In-building	21.25	1.06
Landscape Irrigation	8.00	6.80
<b>Total</b>	<b>29.25</b>	<b>7.86</b>

**2. Water Rights Dedication and Credits.** Within 10 days of execution of this agreement, Developer will dedicate five (5) shares of the Consolidated Home Supply Ditch & Reservoir Company, represented by current Certificate Nos. 6934, 6966, and one of the three shares of No. 7124, to the Town. The water represented by Certificate No. 6934 has been changed to include municipal use by the District Court, Water Division No. 1. The water represented by Certificate Nos. 6966 and 7124 have not been so changed.

**3. Surplus dedication credit.** The dedication of the five (5) 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 Project. As a result of said dedication, Developer will have a surplus dedication credit with the Town of 5.95 acre-feet. The credit is calculated as follows:

Dedication Credit:	35.20 acre-feet
LESS estimated demand:	29.25 acre-feet
<b>Net current surplus credit:</b>	<b>5.95 acre-feet</b>

Developer seeks to assign 4.80 acre-feet of the net current surplus credit to Parish, LLC, a Colorado limited liability company, and the remaining 1.15 Acre-feet of surplus will be retained by Developer. The Town hereby approves such assignment. Upon notice and written approval of the Town, said credit may be utilized by Parish, LLC, to offset increased demands, if any, which are not currently projected for the Project 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 Project up to 21.25 acre-feet per year of water supply for in-building use together with the corresponding sewer service and up to 8.00 acre-feet for landscape 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.** Upon execution of this Agreement, Developer shall pay to the Town the sum of Twelve Thousand Seven Hundred and Fifty Dollars (\$12,750.00) as payment of the water court transfer fees required by the Ordinance as calculated by: 32 SFE (changed) x \$150.00 + 26.5 SFE (unchanged) x \$300.00 = \$4,800.00 + \$7,950 = \$12,750.00. This payment is for the dedication of 29.25 acre-feet per year of estimated permanent water demand and estimated permanent consumptive use of 7.86 acre-feet per year (58.5 SFE) for the Project. This water court transfer fee applies only to the 29.25 acre-feet of permanent water

demand. 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.

**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:

Mountain View Land Developers, LLC  
Attn: Andrew J Gerk  
33105 CR 33  
Greeley, CO 80631  
Email: agerk@baesslerhomes.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.

**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.

*Signatures follow.*

**MOUNTAIN VIEW LAND DEVELOPERS, LLC**

By: [Signature]  
AJG NP Development, LLC, Manager  
Andrew J. Gerk, Member

STATE OF COLORADO    )  
  ) ss  
COUNTY OF WELD        )

SUBSCRIBED AND SWORN to before me this 4 day of May, 2023 by Andrew J. Gerk as Member of AJG NP Development, LLC, Manager of Mountain View Land Developers, LLC.

Witness my hand and official seal.

MELISSA WHEELER  
Notary Public  
State of Colorado  
Notary ID # 20194022905  
My Commission Expires 06-17-2023

[Signature]  
Notary Public

My Commission Expires: 6/17/2023

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

By: \_\_\_\_\_  
Troy D. Mellon, Mayor

ATTEST:

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

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Lot Two (2) Block Two (2), Block Four (4) and Outlot C, Mountain View West Subdivision Replat, Amendment No.1 recorded July 22, 2021 at Reception No. 4738024 and Tract A, Block Three (3), 1<sup>st</sup> Replat of Block 1 Mountain View West Subdivision Replat recorded November 18, 2021 at Reception No. 4777371 and Cover Sheet re-recorded December 3, 2021 at reception No. 4781941 within the records of the Weld County Clerk and Recorder, situated in the Northwest Quarter (NW1/4) of Section Nine (9), Township Four North (T.4N), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6<sup>th</sup> P.M.) Town of Johnstown, County of Weld, State of Colorado.