

Reimbursement Agreement **(Vista Pointe HOA)**

This Reimbursement Agreement (the "Agreement") is made and entered into this 3rd day of May, 2023 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), and Vista Pointe Homeowners' Association, a Colorado nonprofit corporation with an address of c/o MSI, LLC 11002 Benton Street, Westminster, CO 80020 (the "HOA") (each a "Party" and collectively the "Parties").

Whereas, the HOA is the owner of the real property more particularly described as Tract H, Vista Pointe Final Plat, Town of Erie, County of Weld, State of Colorado (the "Property");

Whereas, the HOA is obligated to maintain the Property in perpetuity; and

Whereas, the Town is willing to provide reimbursement for certain expenditures made by the HOA to revitalize and improve the following improvements on the Property (the "Project").

Now, Therefore, in consideration of the promises and the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose and Scope. The purpose of this Agreement is to set forth the terms and conditions under which the HOA will obtain reimbursement from the Town for expenditures made to complete the Project. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), state law and other Town ordinances, and are not intended to supersede any requirements contained therein.
2. Project Requirements.
 - a. The Project shall be completed on or before December 31, 2023, provided that the Town may grant one extension, not to exceed 90 days, in the Town's reasonable discretion.
 - b. The HOA shall be solely responsible for managing the Project and overseeing all contracts related to the Project.
 - c. The Project shall comply with all applicable law, and the HOA shall obtain all required permits and approvals for completion of the Project.
3. Maximum Reimbursement. In exchange for completion of the Project in compliance with this Agreement, the Town shall reimburse the HOA in an amount not to exceed \$115,000. In no case shall the amount of reimbursement exceed the amount actually expended by the HOA.

4. Procedure. Upon the HOA's request, the Town will review the proposed agreement between the HOA and its contractor to determine if the work will be eligible for reimbursement; provided that this review shall not obligate the Town in any way. Upon completion of the Project in compliance with this Agreement, the HOA shall submit paid invoices and other documentation to support its request for reimbursement. The Town shall review all such documentation and if, in the Town's determination, the costs are appropriate, the Town shall authorize the reimbursement.

5. HOA's Representations and Warranties. The HOA hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date: this Agreement has been duly authorized and executed by the HOA as the legal, valid and binding obligation of the HOA, and is enforceable in accordance with its terms; the person executing this Agreement on behalf of the HOA is duly authorized and empowered to execute and deliver this Agreement on behalf of the HOA; to the best of the HOA's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against the HOA which, if decided or determined adversely, would have a material adverse effect on the ability of the HOA to undertake its obligations under this Agreement; and neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement or obligation to which the HOA is a party or by which the HOA is bound or affected.

6. Miscellaneous.

a. *Assignment.* This Agreement shall not be assigned by the HOA in whole or in part without the prior written authorization of the Town.

b. *Governing Law and Venue.* The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be in Weld County, Colorado.

c. *No Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement.

d. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

e. *Governmental Immunity.* Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

f. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this

Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

g. *Notice.* Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

h. *Integration.* This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

i. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

j. *Recordation.* This Agreement shall be recorded in the real estate records of the Weld County Clerk and Recorder, and shall be a covenant running with the Property.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Justin Brooks, Mayor

Attest:

Debbie Stamp, Town Clerk

Vista Pointe Homeowner Association

Charles Fuller

Charles Fuller, Secretary Treasurer

State of Colorado)
) ss.
County of ~~Weld~~ Boulder)

The foregoing instrument was subscribed, sworn to, and acknowledged before me
this 3 day of May, 2023, by Charles Herbert Fuller as the
Secretary of Treasury of Vista Pointe HOA.

My commission expires: 12/29/2024

(Seal)

Joleen Crespín
Notary Public

