

## **FIRST AMENDED AND RESTATED AGREEMENT**

THIS FIRST AMENDED AND RESTATED AGREEMENT ("First Amended and Restated Agreement") is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date") by and between the TOWN OF ERIE, a Colorado municipal corporation, whose address is P. O. Box 750, Erie, Colorado ("Town") and CANDLELIGHT RIDGE HOME OWNERS' ASSOCIATION, INC., a Colorado nonprofit corporation, whose address is c/o Flagship Properties, P. O. Box 254, Erie, Colorado 80516-0254 ("CRHOA").

WHEREAS, the owner of the Candlelight Ridge Subdivision and the Town entered into the Candlelight Ridge Subdivision Development Agreement, dated August 9, 2000, and recorded at Reception No. 2075338 with the Boulder County Clerk and Recorder on September 1, 2000 ("Development Agreement"); and

WHEREAS, the Town and the CRHOA previously entered into an agreement addressing maintenance responsibilities dated June 14, 2011, and recorded at Reception No. 03158053 with the Boulder County Clerk and Recorder on July 8, 2011 ("Original Agreement"); and

WHEREAS, the Town and the CRHOA by means of this First Amended and Restated Agreement supersede and terminate the Original Agreement; and

WHEREAS, the development agreement for Candlelight Ridge Subdivision (as defined and designated in the Plat), dated August 9, 2000, was approved and entered into by the owner of the Candlelight Ridge Subdivision and the Board of Trustees of the Town, and recorded with the Clerk and Recorder, Boulder County, Colorado on September 1, 2000, at Reception No. 2075338 ("Development Agreement"); and

WHEREAS, the plat map for Candlelight Ridge Subdivision was approved by the Board of Trustees of the Town on February 8, 2000, and recorded at Reception No. 2075349 with the Boulder County Clerk and Recorder on September 1, 2000 ("Plat"); and

WHEREAS, the Plat identifies the property known as the Candlelight Ridge Subdivision and includes Town-owned Tracts A, B, C and D, and the Plat further sets forth a description of the Town-owned Tracts A, B, C and D and their usage; and

WHEREAS, the Development Agreement (page 18 of 46) defines the usage of the Town Owned Tracts (as shown on Exhibit B of the Development Agreement) in the Candlelight Ridge subdivision as follows:

- Tract A – Open Space, Drainage and Landscape Buffer owned by the Town of Erie
- Tract B – Open Space, Drainage and Landscape Buffer owned by the Town of Erie
- Tract C – Open Space/Park, Drainage and Utilities owned by the Town of Erie
- Tract D – Open Space, Drainage and Utilities owned by the Town of Erie; and

WHEREAS, the Development Agreement addresses the maintenance duties and responsibilities for the landscape islands in the street right-of-ways within the Candlelight Ridge Subdivision and states that such landscape islands shall be maintained by the CRHOA and further states that the payment of the water bill associated with the landscape islands shall be the responsibility of the CRHOA; and

WHEREAS, other than the landscape islands, the Development Agreement does not address the maintenance duties and responsibilities for the open space, parks and landscaping features within the parks, open spaces and tracts defined therein, nor the watering responsibilities or snow removal responsibilities for the Candlelight Ridge Subdivision; and

WHEREAS, the Plat does not address maintenance duties and responsibilities for the open space, parks and landscaping features within the parks, open spaces and tracts defined therein, nor the watering responsibilities or snow removal responsibilities for the Candlelight Ridge Subdivision; and

WHEREAS, neither the Development Agreement nor the Plat clearly defines the boundaries of the Longs Peak Park; and

WHEREAS, there has been confusion regarding the maintenance duties and responsibilities of the parties hereto for the open space, parks and landscaping features within the Candlelight Ridge Subdivision, and for the watering responsibilities and snow removal responsibilities; and

WHEREAS, the Town and CRHOA desire to clarify and define the duties and responsibilities of the parties with regard to the maintenance for the open space, parks and landscaping features within the Candlelight Ridge Subdivision, and for the watering responsibilities and snow removal responsibilities; and

WHEREAS, the Town and CRHOA further desire to clarify and define responsibilities of the parties with regard to responsibilities for maintenance of the four (4) detention pond areas within the Candlelight Ridge Subdivision, as set forth **Exhibit “D,”** attached hereto and incorporated herein by this reference; and

WHEREAS, the Town and CRHOA set forth herein their agreement pertaining to the following within the Candlelight Ridge Subdivision:

- maintenance responsibilities for the open space,
- maintenance responsibilities for the parks and landscaping features,
- watering responsibilities,
- snow removal responsibilities, and
- detention pond maintenance.

NOW, THEREFORE, in consideration of the above and the mutual covenants and commitments made herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Town Responsibilities:** The Town shall be responsible for the following maintenance responsibilities and duties:

- A. The Town shall be responsible for the maintenance of the Longs Peak Park. The Longs Peak Park shall be defined as that area as set forth and referenced on **Exhibit “A,”** attached hereto and incorporated herein by this reference.
- B. The Town shall be responsible for the maintenance of the Open Space. The Open Space shall be defined as that area as set forth and referenced on **Exhibit “A”**. This Open Space maintenance area includes the northern portion of Detention Pond 2.

- C. The Town shall provide snow removal services for the Longs Peak Park and Open Space areas identified in **Exhibit “A”** in accordance with the then current Town Snow Removal Policy.
- D. The Town shall be responsible for the maintenance of the storm sewer portions of each of the four detention ponds as shown on **Exhibit “D.”** The storm sewer portions shall include all piping and concrete structures such as outlet structures, pipes, flared end sections, and metal grates.
- E. In addition to the storm sewer maintenance as set forth in Paragraph 1.D, above, the Town shall be responsible for the vegetation maintenance of the areas within Detention Pond No. 4, except for the native grass mowing which shall be a CRHOA responsibility as defined in paragraph 2.D.7. Detention Pond 4 is identified on **Exhibit “D”**.

**2. CRHOA Responsibilities:** CRHOA shall be responsible for the following maintenance responsibilities and duties:

- A. CRHOA shall be responsible for landscape maintenance activities associated with turf, sod, trees and/or shrubs areas in the following locations:
  - Tracts A, B and the southern portion of Tract C along Meadow View Parkway, starting at Irwin Place and terminating at the cross walk connection between the walk and the street at the southern end of the Longs Peak Park area,
  - the landscape islands located in the following street rights-of-way: Entrance Island, Shortridge Court, Marshall Court, Gorce Court, Block Court, Irwin Place, the Island in front of lots 10 and 11, Plumb Place, the Island in front of lots 68 and 69, and
  - the turf and sod portion of Tract D,all as more specifically set forth and described on **Exhibit “B,”** attached hereto and incorporated herein by this reference.

Landscape maintenance as required in this Paragraph 2.A. herein shall include the following:

- a. Watering and paying the cost for irrigation water.
  - b. Regular maintenance, care and repair of the irrigation distribution elements starting at the individual water meter connections through and including the sprinkler heads and control time equipment.
  - c. Care, weeding, fertilizing and mowing of turf areas and seeding and replacement as may be necessary.
  - d. Care of existing trees and shrubs, including trimming, pruning and/or replacement as may be necessary.
- B. CRHOA shall not be required to add additional trees, shrubs or irrigation in these areas referred to in Paragraph 2.A., above (beyond those replacement obligations as set forth herein), however, CRHOA may, with the prior written approval of the Town, install additional trees or shrubs in such areas. In addition, neither the Town of Erie nor the CRHOA shall not be required to expand the areas of irrigation beyond the existing areas or in the Erie Parkway Right of Way, between the concrete walk and pavement or curb.

- C. CRHOA shall be responsible for the landscape maintenance of the turf areas along the street right of way between the streets and sidewalks of Meadow View Parkway and Walters Drive, as more specifically set forth and described on **Exhibit "B."** The remaining streets of Candlelight Ridge have sidewalks that abut the street thus there is no turf area along these streets and no need of maintenance.

Landscape maintenance as required in this paragraph 2.C. shall include the following:

- a. Watering and paying the cost for irrigation water.
- b. Regular maintenance, care and repair of the irrigation distribution elements starting at the individual water meter connections through and including the sprinkler heads and control time equipment.
- c. Care, weeding, fertilizing and mowing of turf areas and seeding and replacement as may be necessary.

- D. CRHOA shall be responsible for the mowing and weed control of the Open Space areas. The Open Space areas for which the CRHOA is responsible is described as follows:

1. The area adjoining the southern portion of the Tract C sod and turf area and lying generally between the concrete walk along Meadow View Parkway and lots 75 through 78 and lots 82 through 86,
  - a. The mowing of the southern portion of Tract C includes the mowing of the southern half of Detention Pond 2. (The northern half of Detention Pond 2, closest to Longs Peak Park, is mowed as part of the Open Space mowing responsibility of the Town. (See Paragraph 1.B))
2. the portion of Tract C adjoining lots 37 through 51, and
3. the area bounded on the west by the western property line of the Candlelight Ridge Subdivision and on the north by the concrete trail, and
4. the Open Space area of Tract D, and
5. the mowing of the (weed control not required but may be performed) area in the ROW between Tracts A and B and the curb or pavement of Erie Parkway, and
6. the Open Space areas adjacent to Detention Ponds 1, 3 and 4 is to be mowed as close to the detention area as practical considering wet soil or mud conditions which would preclude closer operation of the Open Space mowing equipment. In addition tree or shrub growth may also preclude the use of the Open Space mowing equipment closer to lower elevation detention areas, and
7. the mowing of native grasses, surrounding Detention Pond 4, utilizing the same mowing equipment used for the other Open Space mowing. This mowing shall be performed at the times of the mowing of the other Open Space areas identified in this paragraph. The mowing of the area of native grasses surrounding Detention Pond 4 shall extend to the lowest levels of the detention pond area as practical, considering wet soil and mud conditions as may exist.
8. The mowing identified in this paragraph D, is to be performed two or three times per year.

all as more specifically set forth on and described **Exhibit "B."** These areas include non-irrigated areas of native grasses.

- E. The CRHOA shall be responsible for the removal of snow from sidewalks and trails located within the Candlelight Ridge Subdivision in the following areas:
- the sidewalks and trails on the southern side of Tracts A and B adjacent to the Erie Parkway right-of-way,
  - the sidewalks and trails in the southern portion of Tract C along Meadow View Parkway, starting at Irwin Place and terminating at the cross walk connection, between the walk and the street, at the southern end of the Longs Peak Park area,
  - the sidewalks and trails adjacent to Tract D, and
  - the sidewalks and trails in Tract C that are parallel to Meadow View Parkway in the area of lots 47 and 48,

all as more specifically set forth on and shown on **Exhibit “C,”** attached hereto and incorporated herein by this reference.

The parties hereto acknowledge and agree that individual property owners within the Candlelight Ridge Subdivision are responsible for snow removal from walks adjacent to their lot in accordance with the Municipal Code of the Town of Erie (“Town Code”).

- F. Snow removal as required herein shall be accomplished in accordance with the then current Town Snow Removal Policy

**G. Detention Pond Vegetation Maintenance.**

1. The CRHOA shall be responsible for the cutting and/or removal of vegetation, on an annual basis in the Fall of the year, for a minimum radius of approximately 10’ to fifteen 15’ from all detention pond inlets and outlets at the below-listed detention ponds in the Candlelight Ridge subdivision, as shown on **Exhibit “D.”**

a) Detention Pond No. 1 (Located in Tract C)

b) Detention Pond No. 3 (Located in Tract D)

Note: Detention Pond No.2 is mowed by CRHOA and Town as part of their Open Space maintenance activity. The southern half is mowed by the CRHOA and the northern half, closest to the Park area, is mowed by the Town.

3. **CRHOA Access.** The Town hereby grants CRHOA license to access the portions of Tracts A, B, C and D for maintenance activities as identified and required of CRHOA herein. This license to access includes access to effect repairs that may be necessary to the irrigation elements that lie beneath the surface of these Tracts.

4. **Maintenance Performance.** CRHOA shall use an experienced landscape maintenance contractor to perform the maintenance duties and activities that CRHOA is responsible for pursuant to this First Amended and Restated Agreement. The maintenance shall be performed in accordance with generally accepted landscape maintenance practices. The landscape contractor used by the CRHOA shall comply with all Town Codes, specifications, regulations and ordinances.

**5. Additional Maintenance Duties.** This First Amended and Restated Agreement specifically addresses landscape maintenance and snow removal responsibilities of both the Town and the CRHOA on Town of Erie owned property in the Candlelight Ridge Subdivision. Other Town responsibilities associated with Town accepted Public Improvements as identified in the Development Agreement are unaffected by this First Amended and Restated Agreement and shall be addressed in accordance with existing Town Code, policy and published organization mission statements.

Both parties acknowledge and agree neither the Town nor the CRHOA intends to assume any additional landscape maintenance or snow removal responsibilities in the Candlelight Ridge Subdivision other than those specific responsibilities identified in Paragraph 1, herein above. Any changes necessary to this First Amended and Restated Agreement shall be in accordance with Paragraph 11, below. Town approval, by Resolution, shall be the only method by which the Town shall assume any additional landscape maintenance or sidewalk/trail snow removal responsibilities in the Candlelight Ridge Subdivision.

**6. Effective Date.** The Effective Date of this Agreement shall be date defined in the initial paragraph of this First Amended and Restated Agreement, and this First Amended and Restated Agreement shall remain in effect until terminated by mutual agreement of the parties.

**7. Insurance.** CRHOA shall obtain and keep in effect liability insurance in an amount no less than One Million Dollars (\$1,000,000.00) to cover its activities and the activities of its agents, representatives and employees while carrying out its maintenance responsibilities as set forth herein on the Town's property in the Candlelight Ridge Subdivision.

**8. Indemnification.** CRHOA agrees to indemnify and hold harmless the Town and the Town's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorney's fees and court costs, which arise out of or are in any manner connected with CRHOA's maintenance of the Town's property in the Candlelight Ridge Subdivision unless arising out of the gross negligence or willful misconduct of the Town, or the Town's officers, employees, agents, and contractors.

**9. Representations and Warranties by CRHOA.** CRHOA represents and warrants to the Town as follows:

- A. Corporate Status. CRHOA is duly incorporated and in good standing under the laws of the state of Colorado.
- B. Corporate Actions. All actions required of CRHOA hereunder, including the execution of this Agreement and consummation of all transactions provided for herein, have been duly authorized by appropriate actions of its members and directors, and all such agreements and instruments executed pursuant to such authorization, including but not limited to this Agreement, will be valid and enforceable against the CRHOA in accordance with the terms hereof.

10. **Severability.** If any portion of this First Amended and Restated Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, such determination shall not affect the validity of the remainder of the First Amended and Restated Agreement. If the validity, legality or constitutionality or performance of any portion of this First Amended and Restated Agreement shall be impeded or otherwise affected by any change in pertinent law or order of court, it is the desire and intent of the parties to perform and comply with this First Amended and Restated Agreement as nearly as possible according to its spirit and expressed intent until the parties agree to changes consistent with and in accordance with the change in law or court order, as applicable.

11. **Amendment.** This First Amended and Restated Agreement, which includes the attached **Exhibits A, B, C and D**, shall only be modified or amended by written agreement duly signed by both parties.

12. **Binding Effect.** This First Amended and Restated Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns.

13. **Notices.** Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If to the Town:

Town of Erie

Attn: Town Administrator

P.O. Box 750

645 Holbrook Erie, CO 80516

If to CRHOA:

Candlelight Ridge Home Owners' Association, Inc.

c/o Flagship Properties

P. O. Box 254

Erie, CO 80516-0254

Notices personally delivered shall be effective upon delivery. Mailed notices shall be effective three (3) business days after mailing. Any changes in parties or addresses to receive notice shall be changed in accordance with the notice procedures set forth herein.

14. **No Assignment.** Neither party shall assign any of the rights, nor delegate any of the duties created by this First Amended and Restated Agreement without the prior written consent of the other party.

15. **Governing Law and Venue.** The laws of the State of Colorado shall govern this Agreement. Venue for any action arising under this Agreement, or for the enforcement of this Agreement, shall be in the appropriate court of Boulder County, Colorado.

16. **Fund Availability.** Financial obligations of the Town after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

17. **No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this First Amended and Restated Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to parties hereto and nothing contained in this First Amended and Restated Agreement shall give or allow any such claim or right of action by any other third party on such First Amended and Restated Agreement. It is the express intention of the parties hereto that any person other than the parties hereto receiving services or benefits under this First Amended and Restated Agreement shall be deemed to be an incidental beneficiary only.

18. **No Waiver of Immunity.** The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this First Amended and Restated Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law, protection or limitation otherwise available to the Town, its officers, or its employees.

19. **Enforcement.** Any one or more of the parties may enforce this First Amended and Restated Agreement by any legal or equitable means including specific performance, declaratory, and injunctive relief. No other person or entity shall have any right to enforce the provisions of this First Amended and Restated Agreement.

20. **Attorney's Fees.** In any action brought to enforce the provision(s) of this First Amended and Restated Agreement, the prevailing party shall be entitled to an award of all reasonable attorney's fees and costs, including expert witness' fees, expended or incurred, to be recovered as part of the costs therein.

21. **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants, and/or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

22. **Entire Agreement.** This First Amended and Restated Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the items addressed herein.

23. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this First Amended and Restated Agreement.

24. **Recordation.** This First Amended and Restated Agreement shall be recorded by the Town in the real property records of the Boulder County Clerk and Recorder at the cost of the Town.

25. **Termination of Original Agreement dated June 14, 2011.** This First Amended and Restated Agreement shall replace the Original Agreement, dated June 14, 2011, and the Original Agreement shall be and hereby is declared null and void and of no further force or effect as of the Effective Date of this First Amended and Restated Agreement.



26. **Exhibits.** The following exhibits are made apart of this First Amended and Restated Agreement:

<b>Exhibit “A”</b>	Longs Peak Park and Town Maintained Open Space
<b>Exhibit “B”</b>	CRHOA Turf-Sod-Tree-Shrub-Maintenance Areas and CRHOA Open Space Maintenance Areas
<b>Exhibit “C”</b>	CRHOA Snow Removal Areas
<b>Exhibit “D”</b>	Detention Pond Locations

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the parties have executed this First Amended and Restated Agreement as of the date first set forth above.

**TOWN OF ERIE,**  
**a Colorado municipal corporation**

By: \_\_\_\_\_  
Tina Harris, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Nancy Parker, Town Clerk

**CANDLELIGHT RIDGE HOME OWNERS' ASSOCIATION, INC.,**  
**a Colorado nonprofit corporation,**

By: \_\_\_\_\_  
\_\_\_\_\_, President

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

STATE OF COLORADO    )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018  
by \_\_\_\_\_, as President, and \_\_\_\_\_, as Secretary, of Candlelight  
Ridge Homeowners' Association, Inc.

My commission expires:  
Witness my hand and official seal.

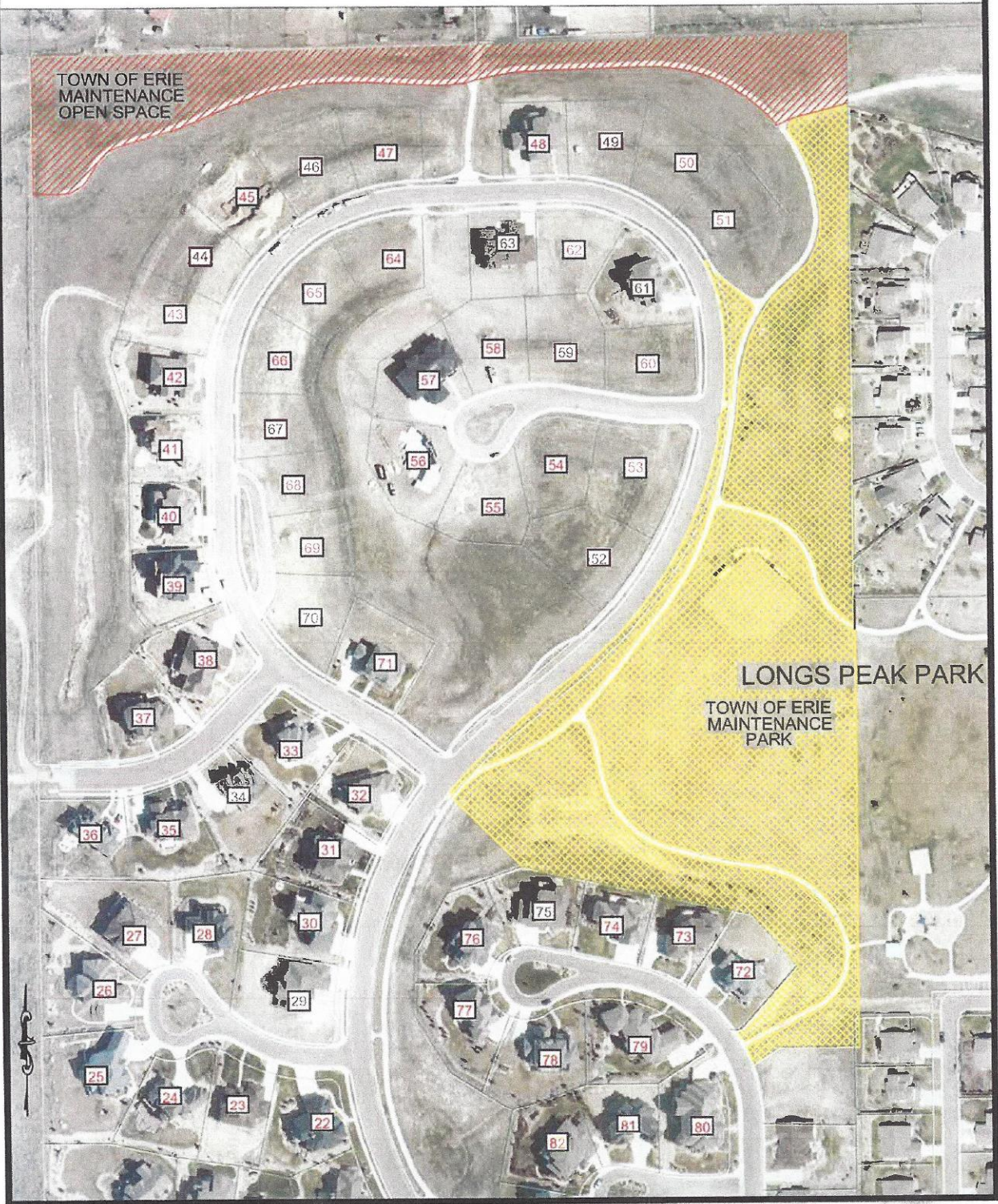
\_\_\_\_\_  
Notary Public

**Exhibit “A”**

**Town of Erie Areas of Responsibility**

**Turf – Open Space – Park**

## EXHIBIT A



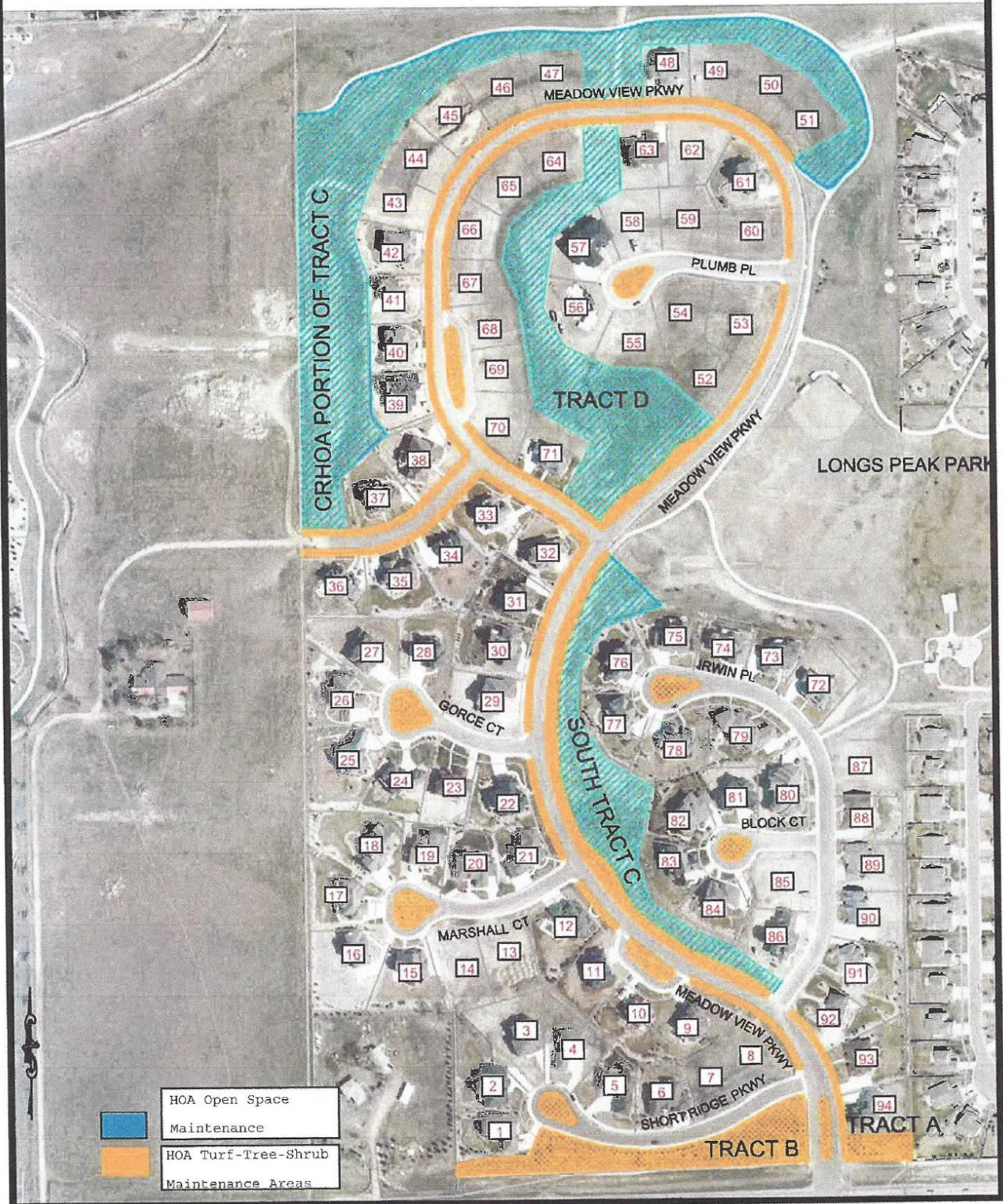
**Exhibit “B”**

**CRHOA Areas of Responsibility**

**Turf – Open Space – Trees – Shrubs**



# EXHIBIT B



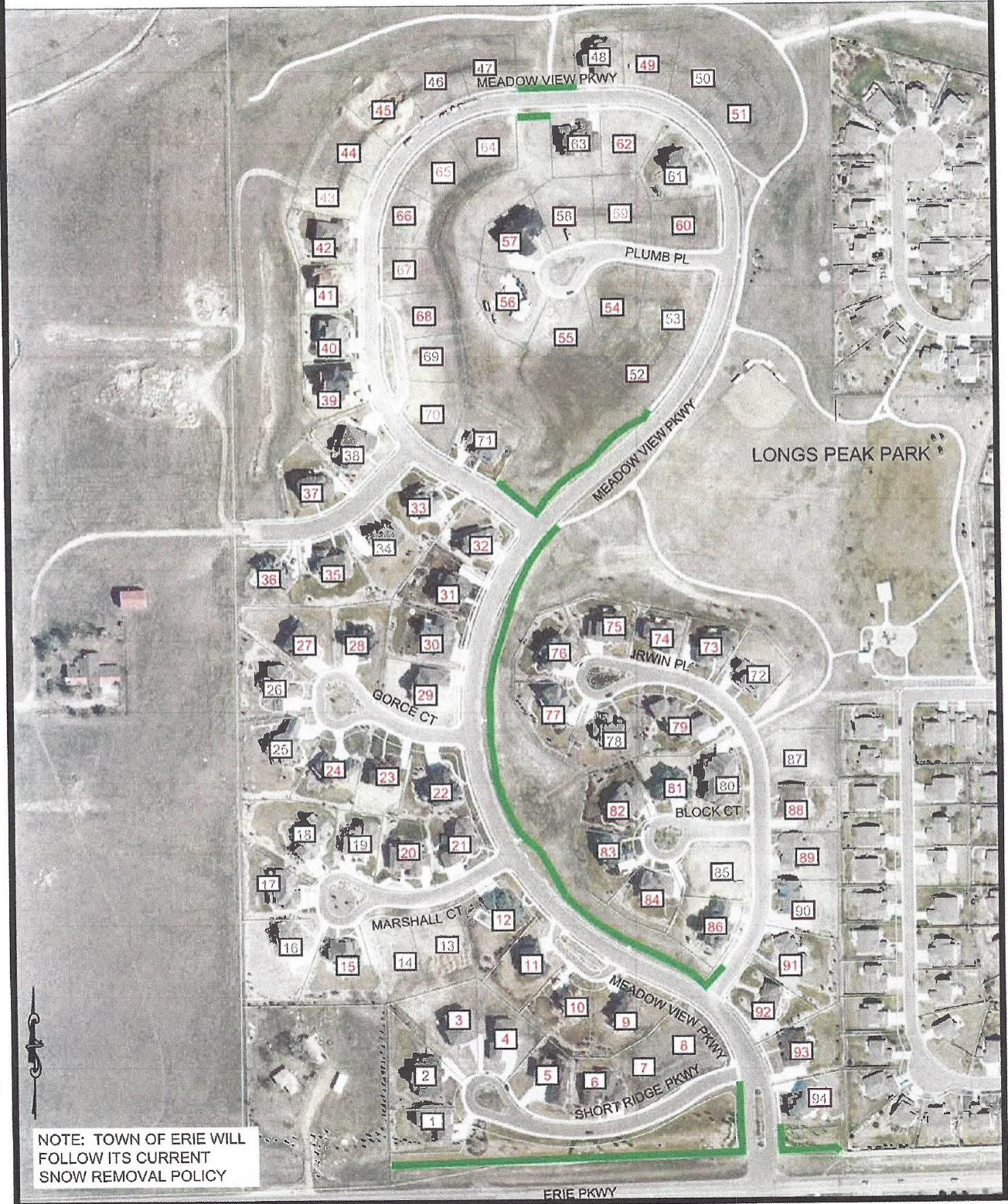
**Exhibit “C”**

**CRHOA Areas of Responsibility**

**Snow Removal**



## EXHIBIT C





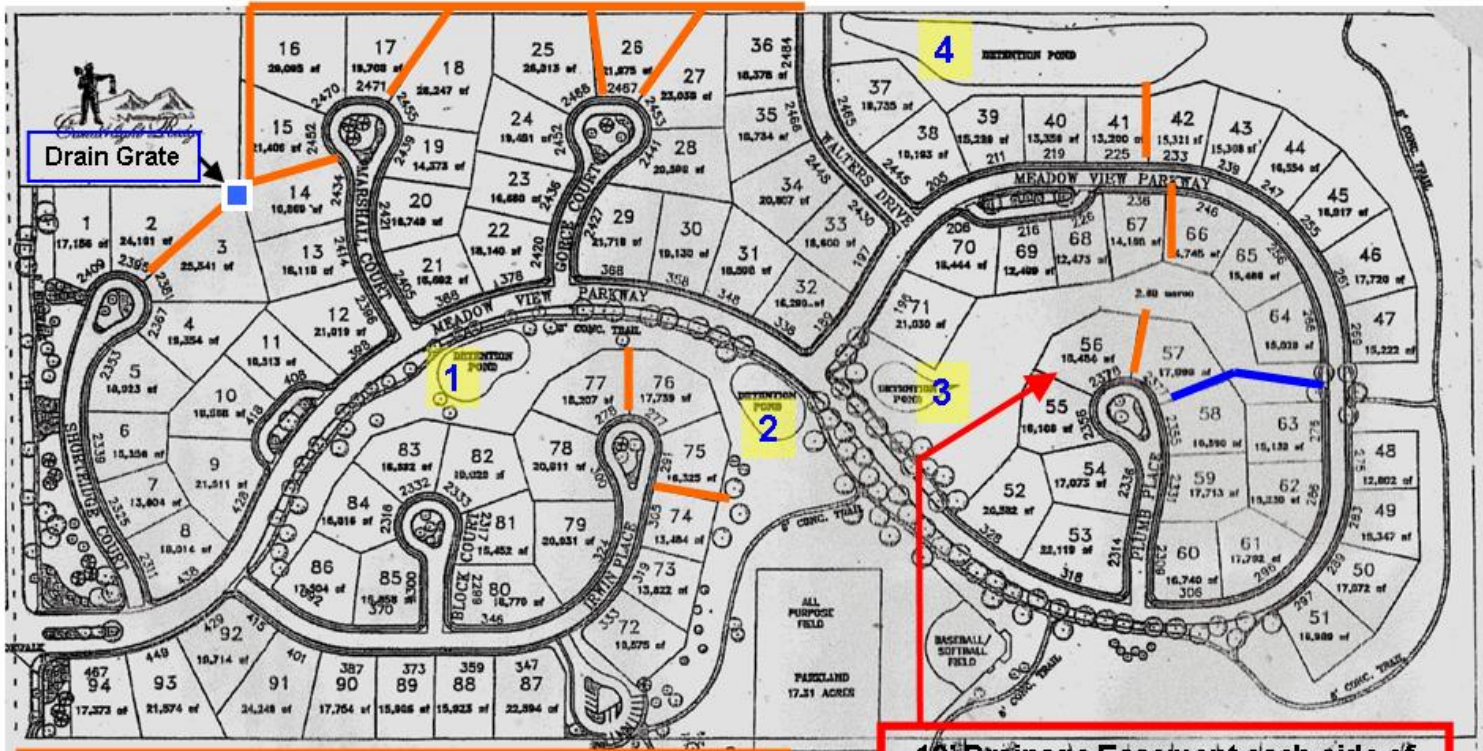
**Exhibit “D”**

**Location of Four Detention Ponds in the  
Candlelight Ridge Subdivision**

## Exhibit D

### Candlelight Ridge Development

1. South Tract C Detention Pond 2. South Park Detention Pond 3. Tract D Detention Pond 4. Western Detention Pond



**Fence Easement Restrictions Per Development Plan**

**10' Drainage Easement each side of 55/56 property line**

**1-1/2" Water Line – From Meadow View Pkwy Along Lot Line 57/58 to Plumb Island  
CC&R para 5.21 Easement for encroachments Protects this Installation.**

**A 10' Utility Easement exists at the rear of each lot to be addressed by owner with utility companies.**