

NEIGHBORHOOD PARK AGREEMENT

THIS NEIGHBORHOOD PARK AGREEMENT (the "Agreement") made and entered into this ____ day of _____, 2019 (the "Effective Date"), by and between THE TOWN OF ERIE, a Colorado municipal corporation with an address of P.O. Box 750, 645 Holbrook Street, Erie, Colorado 80516 (the "Town"), and CLAYTON PROPERTIES GROUP II, INC. d/b/a OAKWOOD HOMES, as the successor to Oakwood Homes LLC, a Colorado corporation with an address of 4908 Tower Road, Denver, Colorado 80249 ("Oakwood") (each a "Party" and collectively the "Parties").

WHEREAS, the Town and Oakwood entered into the Erie Highlands Filing No. 11 Development Agreement, dated February 28, 2017 and recorded April 6, 2017 at Reception No. 4291876, Weld County, Colorado, as subsequently amended (the "Development Agreement");

WHEREAS, Section IX.E.1 of the Development Agreement provides for a neighborhood park and the installation of landscaping improvements on Tract A (the "Property") as described in the Development Agreement;

WHEREAS, on November 13, 2018, the Board of Trustees approved the master plan for the Erie Highlands Neighborhood Park, which will be located on the Property (the "Park"); and

WHEREAS, the Parties wish to enter into this Agreement, which details how Oakwood shall convey the Property to the Town, and how the Town will construct the Park in accordance with the Park Design Plan approved by the Board of Trustees, with funding to be provided by Oakwood as described in this Agreement.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conveyance. On or before December 11, 2019, Oakwood shall convey the Property to the Town by special warranty deed.
2. Construction. Following the conveyance of the Property to the Town, the Town shall construct the Park in substantial compliance with the Park Design Plan and applicable law. The Park shall be completed on or before September 30, 2020. The Town agrees the Park Design Plan complies with the standards for a public accommodation in accordance with the Americans with Disabilities Act.
3. Payment.
 - a. *Installments*. Oakwood shall pay the Town in three installments totaling \$2,025,000, as follows: \$675,000 on or before December 31, 2019; \$675,000 on or before March 15, 2020; and \$675,000 on or before July 15, 2020. The Town agrees to use the foregoing installments for construction of the Park.
 - b. *Excess Costs*. Any costs in excess of the \$2,025,000 paid by Oakwood shall be the sole responsibility of the Town.

4. Maintenance and Ownership. Upon conveyance of the Property and thereafter, completion of construction of the Park, the Town shall maintain the Property and Park at the Town's cost, pursuant to the Town's applicable standards. Upon conveyance of the Property, Oakwood shall thereafter have no maintenance or ownership obligations related to the Property or Park under this Agreement.

5. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

b. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

f. *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.

g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

i. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

j. *Rights and Remedies.* The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

