

NEIGHBORHOOD PARK AGREEMENT

THIS NEIGHBORHOOD PARK AGREEMENT (the "Agreement") made and entered into this ____ day of _____, 2020 (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 CalAtlantic Group, Inc., a Colorado corporation with an address of 9193 South Jamaica Street, 4th Floor, Englewood, Colorado 80112 ("Developer")(each a "Party" and collectively the "Parties").

WHEREAS, the Town and Developer (or Developer's predecessor-in-interest, as applicable) entered into the Compass Filing No. 1 Development Agreement, dated February 10, 2015 and recorded on February 13, 2015 at Reception No. 03427561 ("Filing No. 1 DA") with the Boulder County Clerk, and the Compass Filing No. 4 Development Agreement, dated January 28, 2020 and recorded on October 6, 2020 at Reception No. E 03821825 with the Boulder County Clerk ("Filing No. 4 DA"), in each case as subsequently amended (collectively, the "DA");

WHEREAS, Section 9.d. of the Filing No. 1 DA provides that Owner shall be responsible for the cost of grading, grass, irrigation, and water taps and raw water fees for the future neighborhood park on Tract D (the "Park") as outlined in the Erie Municipal Code; and

WHEREAS, Section 8.d of the Filing 4 DA provides for a cost sharing agreement to be made for the Park.

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 31, 2020, Developer shall convey the Property to the Town by special warranty deed. Following the Town's acceptance of the deed for the Property, the Town shall maintain the Property at the Town's cost, pursuant to the Town's applicable standards, and Developer shall thereafter have no maintenance or ownership obligations related to the Property under the DA.
2. Costs.
 - a. *Developer Share of Costs.* On or before December 31, 2020, Developer shall pay the Town \$770,000, which funds shall be used by the Town for construction of the Park.
 - b. *Excess Costs.* Any costs in excess of the \$770,000 paid by the Developer shall be the sole responsibility of the Town.
3. Release of Developer's Obligations. Upon Developer's full compliance with this Agreement, Developer shall be released in its entirety from the Developer's obligations under Section 9.d. of the Filing 1 DA and Section 8.d of the Filing 4 DA, and Developer shall have no further obligations to the Town regarding the Park.

4. 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 Boulder 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.

k. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

