

**WATER AND SEWER SERVICE AGREEMENT
(NORTH RIDGE AT TRR)**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____, 2022, by and between **CLAYTON PROPERTIES GROUP II, INC.**, a Colorado corporation d/b/a Oakwood Homes (“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 in a portion of the NW1/4 SE1/4 Section 22, T.05N. R.68W., 6th P.M., Larimer County, Colorado, as shown on Exhibit “A” attached hereto and incorporated herein by this reference (“Subject Property”); and

WHEREAS, the Subject Property was annexed to the Town as part of a larger annexation of 1109.18 acres of land, which was the subject of an Annexation Agreement between Thompson Ranch, LLLP, The Gerrard Family Limited Partnership, LLLP, Joel H. Wiens, and Rite-A-Way Industries, Inc., as Developer, and the Town dated December 18, 2000; and

WHEREAS, the Subject Property is being developed by Developer as 196 single family detached homes with residential and open space irrigation totaling 7.74 acres, comprised of 2.29 acres of spray-irrigated landscape and 5.45 acres of xeriscape landscape, known as North Ridge at TRR (“Project”); and

WHEREAS, 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 February 11, 2022. Said analysis is on file with the Town and is hereby accepted by the Town, as modified by the Town’s Water Engineer by memorandum dated April 27, 2022. The analysis addresses all of the projected water demands for the Project. Said analysis indicates that the water dedication set forth in Paragraph 2 will meet the estimated water supply needs for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-building	64.68	3.23
Total Potable	64.68	3.23
Irrigated Landscape 7.74 acres	11.18	9.50
Total Non-Potable	11.18	9.50

2. Water Rights Dedication and Credits.

A. Preexisting Credit.

i. SFE Water Bank. Pursuant to an Assignment, Assumption and Bill of Sale from W.R. Investment, LLC (“WRI”) and Exit 223, LLC to Clayton Properties Group II, Inc. d/b/a Oakwood Homes, dated on or about September 19, 2018, Developer acquired a water bank containing 610 single family equivalent (“Clayton Property Group SFE Water Credit Bank”) from WRI. Prior to the use of water for the Project, the Developer has allocated 304.3 credits from the Clayton Property Group SFE Water Credit Bank to other filings in the Thompson River Ranch development.

ii. Common Area Landscape. Pursuant to the Water Agreement between the Town and WRI, dated on or about May 7, 2018, and the Assignment, Assumption and Bill of Sale from WRI and Exit 223, LLC to the Developer, the Town has agreed to provide non-potable water for up to 96 acres of common area irrigation (“Town Common Area Irrigation Supply”). Prior to the use of water for the Project, the Developer has irrigated 66.03 acres of common area from the Town Common Area Irrigation Supply.

B. Credit for the Project.

i. Residential In-Building and Residential Irrigation. The Parties agree that a portion of the now existing credit from the Clayton Property Group SFE Water Credit Bank described in paragraph 2.A.i., above, in the amount of 129.36 SFE, representing 64.68 acre-feet/year, will be used to supply the potable water needs for in-building use as set forth in paragraph 1, above.

ii. Common Area Landscape. The Parties agree that a portion of the now existing credit from the Town Common Area Irrigation Supply described in paragraph 2.A.ii., above, in the amount of 7.74 acres will be used to supply the irrigation needs as set forth in paragraph 1, above. Developer further agrees through a separate document to reduce the non-potable irrigated area on Thompson River Ranch Filing 5 by 8.42 acres.

3. Commitment to Serve Water and Sewer. 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 64.68 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service. The Town further agrees to provide sufficient non-potable water for irrigation of 7.74 acres as described above, estimated to be 11.18 acre-feet per year.

4. 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 Subject Property 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 the amount of non-potable irrigated acres, and to require additional potable water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage, and/or to require additional credit against the Developer's 96 acres of non-potable irrigation if more than 7.74 acres are irrigated.

5. Payment of Water Court Transfer fees. The water court transfer fee for the dedications of the above-described water supply was previously paid to the Town. However, in accordance with the Ordinance, additional fees may be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town's Ordinance.

6. 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, mailed postage prepaid, certified mail, return receipt requested, or sent by electronic mail on the condition that the recipient acknowledges receipt thereof, as follows:

TO DEVELOPER:

Clayton Properties Group II, Inc.
Attn: Brett Price
Vice President,
Land Development
4908 Tower Road
Denver, CO 80249

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
hhill@JohnstownCO.gov

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330

Loveland, CO 80538
avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264
peterampe@hillandrobbsins.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

7. 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.

8. 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.

9. 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.

10. Attorney's fees and costs. If the Town were to commence any judicial proceedings to enforce any of the provisions hereof against Developer, 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.

11. 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.

12. 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.

13. Non severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

14. Choice of laws. 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 claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

15. 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.

16. 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.

17. Recordation. This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer 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 on separate page

