

WATER AND SEWER SERVICE AGREEMENT

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 E1/2, Section 23, T.05N. R.68W., 6th P.M., Larimer County, Colorado, more particularly on Exhibit “A” attached hereto and incorporated herein by this reference, containing approximately 29.3 acres (“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 Thompson River Ranch Filing No. 15 and will consist of 38 single-family homes and 128 carriage homes with the associated residential irrigated landscape of 1.24 acres for the single-family homes and 1.08 acres for the carriage homes. There will also be 9.6 acres of common area landscape irrigation to be irrigated with non-potable water; 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 Subject Property dated November 25, 2020. 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 March 5, 2021. The analysis addresses all of the projected water demands for the Subject Property. Said analysis indicates that the water dedication set forth in Paragraph 2 will meet the estimated water supply needs for the Subject Property as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-building	49.66	2.48
Residential Irrigation	5.80	4.93
Total Potable	55.46	7.41
Common Area Landscape Irrigation (non-potable)	23.63	20.09
Total Non-Potable	23.63	20.09

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 (“Assignment”), Developer acquired a water bank containing 610 single family equivalent (“SFE”) from WRI.

ii. Common Area Landscape. Pursuant to the Water Agreement between the Town and WRI, dated on or about May 7, 2018, and the Assignment, the Town has agreed to provide non-potable water for up to 96 acres of common area irrigation in the Thompson River Ranch development (“Town Common Area Irrigation Supply. The Town Common Area Irrigation Supply is provided through the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System. Prior to the use of water for the Subject Property, the Developer has irrigated 64.85 acres of common area from the Town Common Area Irrigation Supply.

B. Credit for the Subject Property.

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 110.92 SFE, will be used to supply the potable residential in-building and residential irrigation requirements as set forth in paragraph 1, above.

ii. Common Area Landscape The Parties agree that the Subject Property will contain 9.6 acres of common area irrigation to be used from the Town Common Area Irrigation Supply described in paragraph 2.A.ii., above. The common area irrigation is equivalent to 23.63 acre-feet of water demand. After this dedication, 74.45 total acres will be irrigated

from the Town Common Area Irrigation Supply by the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System. Evidence of the agreement to use the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System is attached as Exhibit "B."

3. Surplus Dedication Credit. Use of the available credits from the two water credit banks described in paragraph 2 above, will provide to Developer water in excess of the demand for the subject property. Upon notice and written approval of the Town, authorization from Developer, and payment of the appropriate Water Court Transfer Fee, if necessary, said credit may be utilized within the Subject Property to offset increased demands, if any, which are not currently projected.

4. 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 Subject Property up to 55.46 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and for residential irrigation as described above. The Town further agrees to provide up to 23.63 acre-feet of non-potable water for 9.6 acres of common area irrigation as described above.

5. 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 to require additional water rights dedication and/or cash-in-lieu payments if necessary, based on actual water usage.

6. 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.

7. 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 or mailed postage prepaid, certified mail, return receipt requested, 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

WITH A COPY TO

THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

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

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

8. 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.

9. 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.

10. 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.

11. Attorney's fees and costs. If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, 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.

12. 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.

13. 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.

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

15. 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.

16. 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.

17. 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.

18. 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

Clayton Properties Group II, Inc.

By: [Signature]
Bruce Rau
Assistant Secretary

STATE OF COLORADO)
) ss
COUNTY OF Denver)

SUBSCRIBED AND SWORN to before me this 11 day of April, 2022 by Bruce Rau of Clayton Properties Group II, Inc.

Witness my hand and official seal.



[Signature]
Notary Public
4908 Tower Road
Denver CO 80249
Address
303-486-8739
Telephone

My Commission Expires: 01-19-2025

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Town Clerk
Diana Seele, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

TRACT A, THOMPSON RIVER RANCH FILING NO. 12 RECORDED IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE AT RECEPTION NUMBER 20210091806, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PM, LARIMER COUNTY COLORADO.

EXHIBIT B

RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System to serve 9.6 acres of land in Thompson River Ranch, Filing No. 15, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement and the Johnstown Municipal Code. The undersigned certifies that it is authorized to execute this Raw Water Allocation Acknowledgment.

THOMPSON CROSSING METROPOLITAN DISTRICT NO. 3

_____, Chair Dated: _____

ATTEST:

_____, Secretary