



**UNITY ON PARK STREET ATTAINABLE HOUSING  
FEE WAIVER AGREEMENT**

**DATE:** \_\_\_\_\_, 2023.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado home rule municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (the “Town”).

**UNITY ON PARK STREET, LLLP**, a Colorado limited liability limited partnership, 9350 Heritage Hills Circle, Lone Tree, CO 80124 (“Unity”);

**DOUGLAS COUNTY HOUSING PARTNERSHIP**, a multijurisdictional housing authority of the State of Colorado, 9350 Heritage Hills Circle, Lone Tree, CO 80124 (“DCHP”); and

**WELLSPRING HOUSING**, a Colorado nonprofit corporation, 826 Park Street, #200, Castle Rock, CO 80109 (“Wellspring”) (collectively, Unity, DCHP, and Wellspring shall be referred to as the “Developer”) (collectively, the Town and the Developer shall be referred to as the “Parties”).

**RECITALS:**

A. Unity on Park Street is a planned multi-family residential housing project, to be located in the Town southeast of the intersection of Wolfensberger Road and Park Street (the “Unity on Park Street Project” or “Project”).

B. The Project consists of the conversion of the former La Quinta Inn & Suites located at 884 Park Street into a 42-unit apartment complex, half of the units of which will be made available to individuals with intellectual and developmental disabilities, with the remaining half being offered at attainable rents to individuals earning between 30% and 80% of the Area Median Income for Douglas County, Colorado.

C. Unity, DCHP, and Wellspring are partnering to create this integrated housing development for individuals with intellectual and developmental disabilities.

D. The total costs for the Project are estimated to be \$11,392,069.00, including Town development impact fees.

E. The Developer has received tax-exempt financing for the Project from MidWestOne Bank in the amount of \$2,750,000.00, as well as funding commitments from the Colorado Division of Housing in the amount of \$4,000,000.00 and Douglas County in the amount of \$3,500,000.00.

F. According to Section 3.16.050 of the Castle Rock Municipal Code (the “Code”), a qualifying attainable housing project shall be eligible to receive up to a 100% reduction, per

qualifying attainable housing unit, in the amount of the otherwise applicable development impact fees.

G. For purposes of the Code, a qualifying attainable housing project and unit shall be defined as a housing project or unit participating in an attainable or affordable housing program through DCHP, the Colorado Housing and Finance Authority or other certified local, state or federal attainable housing program.

H. The Project meets the definition of qualifying attainable housing project within the meaning of Section 3.16.050 of the Code.

I. The Developer has applied to the Town for a waiver of \$661,635.00 in Town development impact fees in order to fully finance the Project, which fee waiver has been approved by the Town Council subject to the terms and conditions set forth in this Fee Waiver Agreement (the "Agreement").

#### **COVENANTS:**

**NOW, THEREFORE**, in consideration of these mutual promises, the Parties agree and covenant as follows:

**Section 1. Development Impact Fee Waiver.** The Town hereby agrees to waive payment of 100% of the total development impact fees due and owing on the Project pursuant to the authority granted by Section 3.16.050 of the Code, and in accordance with the schedule attached as ***Exhibit 1*** (the "Waived Fees"). To the extent that the total amount of development impact fees for the Project exceeds the estimated amount of \$661,635.00, the Town agrees to waive such excess fees. This fee waiver is subject to the following conditions:

A. The Developer shall fully comply with the provisions of the American Rescue Plan Act of 2021, Public Law 117-2 ("ARPA") and all applicable federal, state, and local rules and regulations promulgated thereunder governing the expenditure of ARPA funds.

B. The Developer shall fully comply with the terms and conditions of the grant awarded to the Developer by Douglas County of Developmental Disabilities Mill Levy funds.

C. The Developer shall fully comply with all covenants and agreements associated with the tax-exempt financing obtained by the Developer through MidWestOne Bank.

D. The Developer shall apply for and use commercially reasonable efforts to pursue receipt of a building permit for the Project by December 31, 2024.

E. The Developer shall operate the Project in such a manner so as to ensure that 100% of the units remain affordable to households at or below 80% of the Area Median Income (AMI) as defined by the US Department of Housing and Urban Development (HUD), and that 50% of the residential units are reserved for persons with disabilities, through and including December 31, 2034.



**Section 2. Default and Remedies.** In the event that either Party should default in the performance of its obligations under this Agreement, and such default shall remain uncured for more than 30 days after notice of default is given to the defaulting party (or in the event of a default for which the cure would, by its nature, take more than 30 days to cure, if the defaulting Party shall fail to commence such cure within 30 days after receipt of notice of such default, or fail to use commercially reasonable efforts to complete such cure), the non-defaulting party shall be entitled to pursue any and all legal and equitable remedies. Notwithstanding the foregoing, for any continued failure of the Developer to comply with any one more of the conditions of the fee waiver set forth in Section 1, following the applicable cure period set forth above, the Town's sole and exclusive remedy shall be to demand and receive payment of all Waived Fees within 30 days' written notice of demand from the Town; provided, however, that if Developer fails to timely pay such Waived Fees, the Town will deliver notice of such failure to any lender or investor entitled to notice of default pursuant to Section 5 (as applicable, a "Noticed Party"), and if such Noticed Party does not deliver such Waived Fees within an additional 30 days from receipt of such notice, the Town may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement. Without limiting the foregoing, no Noticed Party will have any obligation to cure any events of default under this Agreement, but the Town will accept any such cure as if made by the Developer hereunder.

**Section 3. Binding Effect; Term.** The obligations of the Developer under this Agreement shall be binding upon the Developer's successors and assigns to the Project. The term of this Agreement will commence upon the date first set forth above and continue until the earlier to occur of (a) Developer's or any Noticed Party's return of Waived Fees pursuant to Section 2, or waiver of any right to such Waived Fees, or (b) December 31, 2024; provided, however, that unless this Agreement terminates pursuant to clause (a) above, such termination shall not affect the Town's waiver of the Waived Fees set forth in Section 1.

**Section 4. Amendments.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the Parties and their successors and assigns, must be in writing executed by the Town and the then-current owner(s) of the Project.

**Section 5. Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

If to the Town:                      Town of Castle Rock  
    Attn: Director of Development Services  
    100 N. Wilcox Street  
    Castle Rock, Colorado 80104

If to the Developer:              Unity on Park Street, LLLP  
    9350 Heritage Hills Circle



Lone Tree, CO 8012

Douglas County Housing Partnership  
9350 Heritage Hills Circle  
Lone Tree, CO 80124

Wellspring Housing  
826 Park Street, #200  
Castle Rock, CO 80109

With copies of any notice of default to:

MidWestOne Bank  
Business Banking Division  
1899 Wynkoop Street, Suite 100  
Denver, CO 80202

Douglas County, Colorado  
Community Services Division  
100 Third Street, 2nd Floor  
Castle Rock, CO 80104

State of Colorado  
Division of Housing  
313 Sherman Street # 518  
Denver, CO 80203

**Section 6. Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof, and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.

**Section 7. Force Majeure.** Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

**Section 8. Subordination.** This Agreement and all amounts payable from time to time hereunder will at all times be, subordinate, subject and inferior to any indebtedness secured by the subject property and the rights of any lender or investor with respect thereto and in the event of a



foreclosure, deed in lieu of foreclosure, or similar disposition of subject property by a lender or investor, no consent will be required by the Town and this Agreement will automatically terminate.

(Signature pages to follow)



**IN WITNESS WHEREOF**, this Agreement is executed by the Parties hereto as of the date first written above.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Tara Vargish, Director of Development Services



**UNITY ON PARK STREET, LLLP**  
a Colorado limited liability limited partnership

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
[CITY AND] COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Unity on Park Street, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

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



**DOUGLAS COUNTY HOUSING PARTNERSHIP,**  
a multijurisdictional housing authority of the State of Colorado

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
[CITY AND] COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Douglas County Housing Partnership, a multijurisdictional housing authority of the State of Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

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





**WELLSPRING HOUSING,**  
a Colorado nonprofit corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
[CITY AND] COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Wellspring Housing, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

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

## EXHIBIT 1 FEE WAIVER SCHEDULE

	<u>Project Fees*</u>	<u>Fee Waiver</u>	<u>Revised Fees</u>
Permit & Other Fees	\$ 19,017	\$ (19,017)	\$ -
Parks & Recreation Impact Fee	249,060	(249,060)	-
Municipal Facilities Impact Fee	11,718	(11,718)	-
Fire Impact Fee	33,138	(33,138)	-
Police Impact Fee	19,026	(19,026)	-
Transportation Impact Fee	329,406	(329,406)	-
<b>Total</b>	<b>\$ 661,365</b>	<b>\$ (661,365)</b>	<b>\$ -</b>

\*Based on 2023 Development Fee Schedule