

**Development Agreement**  
**(Erie Highlands Filing No. 17)**

This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), and Evergreen-CR 5 & Erie Parkway, L.L.C., an Arizona limited liability company, with an address of 2390 East Camelback Road, Suite 410, Phoenix, AZ 85016 ("Developer") (each a "Party" and collectively the "Parties").

Whereas, Developer is the owner of the real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

Whereas, Developer wishes to develop the Property (the "Development"), and has filed an application for approval of a final plat for Erie Highlands Filing No. 17 (the "Final Plat");

Whereas, the Property is subject to the Development Agreement (Erie Highlands Filing No. 14 and Filing No. 15) dated April 28, 2020 and recorded in the real property records of Weld County, Colorado on May 1, 2020 at Reception No. 4587177 (as amended, the "Filing 14 DA");

Whereas, Developer's predecessor-in-interest in and to the Property satisfied all obligations of the Property under the Filing 14 DA as evidenced by letters from the Town dated February 14, 2023, and August 13, 2023;

Whereas, as of the Effective Date, this Agreement shall control the Property in lieu of the Filing 14 DA; and

Whereas, the Parties acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval of the Development, and that such matters are necessary to protect, promote and enhance the public health, safety and welfare.

Now, therefore, in consideration of the promises and the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions under which the Development may proceed. All provisions of this Agreement are in addition to, and not in lieu of, any requirements of the Erie Municipal Code (the "Code") and other applicable law.
2. District. The Town acknowledges that Developer has formed or may form one or more metropolitan districts (collectively the "District") for the purpose of providing facilities and services for the Development, either independently or as Developer's designee under this Agreement. Notwithstanding anything contained in this Agreement

to the contrary, any obligation of Developer under this Agreement may be performed by or on behalf of the District, provided that the District will be bound by this Agreement for any obligations that it undertakes on behalf of Developer.

3. Construction of Improvements.

a. *General.* Developer shall, at its own expense, design, construct and install all public improvements necessary for the Development, including without limitation streets, alleys, curbs, gutters, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage facilities, and trails and park improvements (collectively the "Improvements"). A list of the required Improvements is set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Omission of any necessary Improvement from **Exhibit B** does not relieve Developer from responsibility for furnishing, installing or constructing such Improvement.

b. *Construction Standards.* Developer shall construct the Improvements in accordance with plans approved by the Town (the "Plans"), as well as the Town's Standards and Specifications for Design and Construction of Public Improvements (the "Standards"). Developer shall furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Improvements. These services shall be performed by or under the supervision of a professional engineer licensed in the State of Colorado.

c. *Public Improvement Permit.* Before the construction of any Improvements, Developer shall obtain a Public Improvement Permit ("PIP") from the Town as provided in the Code. Developer shall reimburse the Town for any expenses incurred by the Town for review of the application or associated documents. Unless otherwise approved by Town, overlot grading shall not be initiated until the Town approves drainage plans by the issuance of the PIP.

d. *Testing and Inspection.* Developer shall employ, at its own expense, a licensed testing company to perform all testing of materials or construction reasonably required by the Town. Developer shall furnish copies of test results to the Town on a timely basis. At all times during construction, the Town shall have access to inspect materials and work, and all materials and work not conforming to the Plans or Standards shall be repaired or removed and replaced at Developer's expense.

e. *Rights-of-way and Easements.* Prior to construction of any Improvements that require additional rights-of-way or easements, Developer shall acquire at its own expense all such rights-of-way and easements. Any easements or rights-of-way conveyed to the Town shall be free and clear of liens, taxes and encumbrances and shall be conveyed on documents in a form acceptable to the Town.

f. *Permits.* Developer shall, at its own cost, obtain the following permits, as applicable:

- i. Any permits required by the United States Corps of Engineers.
- ii. Colorado Department of Health and Environment General Permit for Stormwater Discharges Associated with Construction Activity.
- iii. Grading, stormwater quality and right-of-way permits.
- iv. Air quality permit.
- g. *As-Built Drawings.* Upon completion of construction of the Improvements, Developer shall provide the Town with complete "as-built" drawings in the form required by the Standards.
- h. *Applicable Law.* Developer shall at all times comply with all applicable law, including all federal, state and local statutes, regulations, ordinances, decrees and rules relating to the emission, discharge, release or threatened release of a hazardous material into the air, surface water, groundwater or land, the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a hazardous material, and the protection of human health and safety, including without limitation the following, as amended: the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Solid Waste Disposal Act; the Davis Bacon Act; the Copeland Act; the Contract Work Hours and Safety Standards Act; the Byrd Anti-Lobbying Amendment; the Housing and Community Development Act; and the Energy Policy and Conservation Act.
- i. *Accessibility.* Developer shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Developer's noncompliance with such accessibility standards.

4. Acceptance of Improvements and Warranty.

a. *Initial Acceptance.* No later than 10 days after Improvements are substantially complete, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval. All Improvements shall receive Initial Acceptance on or before June 30, 2027, subject to force majeure.

- i. If the Improvements are satisfactory, the Town shall grant Initial Acceptance.

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Initial Acceptance. Developer shall complete all needed repairs, replacements, construction or other work within 30 days of said notice. After Developer completes the repairs, replacements, construction or other work required, Developer shall request of the Town a re-inspection of such work to determine if Initial Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement. The costs of re-inspection shall be borne by Developer.

b. *Final Acceptance.* At least 30 days before 2 years has elapsed from the issuance of Initial Acceptance, or as soon thereafter as weather permits, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval.

i. If the Improvements are satisfactory, the Town shall grant Final Acceptance.

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the work required to receive Final Acceptance. After Developer completes such work, Developer shall request a re-inspection, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work. If Developer does not complete the required work in an acceptable manner within 30 days, Developer shall be in breach of this Agreement.

c. *Warranty.* For all Improvements to be dedicated to the Town, Developer shall provide the Town with a 2-year warranty, commencing on the date of Initial Acceptance (the "Warranty Period"). Specifically, but not by way of limitation, Developer shall warrant that: the title is marketable and its transfer rightful; the Improvements are free from any security interest or other lien or encumbrance; and the Improvements are free of defects in materials or workmanship. During the Warranty Period, Developer shall, at its own expense, take all actions necessary to maintain the Improvements and make all necessary repairs or replacements.

## 5. Maintenance.

a. *Improvements.* Unless dedicated to and accepted in writing by the Town for maintenance, all Improvements shall be maintained by Developer. Acceptance by the Town of ownership of any Improvement does not constitute acceptance by the Town of maintenance for such Improvement. If Developer wishes to transfer maintenance

obligations to the District or any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

b. *Vacant Lots/Tracts.* Developer shall be responsible for maintenance, including without limitation weed control and debris removal, on all vacant lots/tracts until such time as such lots/tracts are developed or conveyed to another owner.

6. Improvement Guarantee.

a. *Amount and Form.* To secure the construction and installation of the Improvements, Developer shall provide a letter of credit or cash in an amount equal to 115% of the total costs listed in **Exhibit B** (the "Improvement Guarantee"), a form approved by the Town.

b. *Timing.* Developer shall not commence construction, including without limitation staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the Improvement Guarantee.

c. *Draw.* If the Improvements are not satisfactorily completed within the periods of time specified herein, the Town may draw on the Improvement Guarantee to complete the Improvements. If the Improvement Guarantee is to expire within 14 days and Developer has not yet provided a satisfactory replacement, or completed the Improvements, the Town may draw on the Improvement Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to finish the Improvements or correct problems with the Improvements as the Town deems appropriate. If the Town has drawn on the Improvement Guarantee, and a satisfactory replacement guarantee is provided or the Improvements have been completed, then the Town will release any funds received as a result of its draw within a reasonable period of time, or within 10 days of a request by Developer.

d. *Reduction.* Upon Initial Acceptance of Improvements, the Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of such Improvements. The reduced Improvement Guarantee shall be held by the Town during the Warranty Period.

7. Reimbursements.

a. *To the Town.* The required reimbursements for the North Water Reclamation Facility Interceptor and the Coal Creek Interceptor shall be calculated at the time of Site Plan application, and shall be due and payable at building permit.

b. *To Developer.*

i. Developer may request reimbursement for the oversize portion of utilities and other infrastructure and a *pro rata* portion of the cost of off-site Improvements, from other properties that benefit from such Improvements.



However, nothing contained in this Agreement shall create an obligation on the part of the Town to pay or reimburse any costs to Developer in the event such costs are not recovered by the Town, from the properties that use such Improvements.

ii. Subject to Section 14.j. hereof, the Town shall reimburse 135,462.25 to Developer, as the successor to Oakwood Homes LLC, for the traffic signal costs paid to the Town under the Erie Highlands Filing 16 Development Agreement. The reimbursement shall be made by the Town to Developer within 30 days of the Town's receipt of a written consent from Oakwood Homes LLC for such reimbursement.

8. Fees and Dedications. The Town agrees that any fees, reimbursements or payments to the St. Vrain Valley School District ("School District") attributable to the development of Erie Highlands and required to be paid to the School District pursuant to the annexation agreement between the School District and the Town of Erie, dated August 24, 2005, which was recorded on December 1, 2005 at Reception No. 3343854 of the records of the Clerk and Recorder of Weld County, Colorado, shall remain an obligation of Clayton Properties, Inc. ("Clayton"), and shall be included as an obligation of Clayton in the Erie Highlands Filing 18 Development Agreement. Any lack of payment by Clayton has no impact to Developer or Developer's ability to move forward with any entitlements, permits and/or construction.

9. Building Permits. Prior to the issuance of any building permits for the Development, all of the following Improvements shall be installed and shall have received preliminary approval from the Town, which requires a finding by the Town Engineer that such Improvements are safe to be used during construction: streets; street signage; water; wastewater; drainage facilities; and streetlights. Streetlights may be temporary at the time of issuance of building permits, but must be permanent prior to issuance of any certificates of occupancy.

10. Indemnification. Developer agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, attorneys heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by the omission, error, professional error, mistake, negligence, or other fault of Developer, or any officer, employee, representative, agent or subcontractor of Developer. In addition, Developer shall pay all property taxes on property underlying Improvements to be dedicated to the Town before acceptance by the Town, and shall indemnify and hold harmless the Town for any such property tax liability.

11. Developer's Representations and Warranties. Developer hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date: this Agreement has been duly authorized and executed by Developer as the legal, valid and binding obligation of Developer, and is enforceable as to Developer in accordance with its terms; the person executing this Agreement on behalf of Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of Developer; to the best of Developer's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against Developer which, if decided or determined adversely, would have a material adverse effect on the ability of Developer to undertake its obligations under this Agreement nor, to the best of Developer's knowledge, is there any fact or condition of the Property known to Developer that may have a material adverse effect on Developer's ability to Develop the Property as contemplated; and neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement or obligation to which Developer is a party or by which Developer is bound or affected.

12. Vested Rights. The Final Plat constitutes a site specific development plan as defined in C.R.S. § 24-68-101, *et seq.*, and Chapter 3 of Title 9 of the Erie Municipal Code, and shall create vested property rights for 3 years from the date of approval of the Final Plat, provided that all required procedures are followed. The Final Plat shall include the language required by C.R.S. § 24-68-102(4)(a). Developer shall be responsible for publication of the notice required by C.R.S. § 24-68-103(c).

13. Breach.

a. *Remedies.* If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The Town's remedies include without limitation:

- i. The refusal to issue any building permit or certificate of occupancy;
- ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- iii. A draw on the Improvement Guarantee; and
- iv. Any other remedy available at law or in equity.

b. *Notice.* Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to the Improvement Guarantee, the Town shall provide Developer 30 days' written notice of its intent to take any action under this Section, during which Developer may cure the breach.

c. *Nature of 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.

14. Miscellaneous.

a. *Assignment.* This Agreement shall not be assigned by Developer in whole or in part without the prior written authorization of the Town.

b. *Governing Law and Venue.* The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be in Weld County, Colorado.

c. *No Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement.

d. *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.

e. *Governmental Immunity.* Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

f. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

g. *Notice.* Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

h. *Integration.* This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

i. *Recordation.* This Agreement shall be recorded in the real estate records of the Weld County Clerk and Recorder, and shall be a covenant running with the Property.



j. *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.

k. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

**Town of Erie, Colorado**

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Andrew J. Moore, Mayor

Attest:

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Debbie Stamp, Town Clerk

**Developer:**

EVERGREEN-CR 5 & ERIE PARKWAY, L.L.C.,  
an Arizona limited liability company

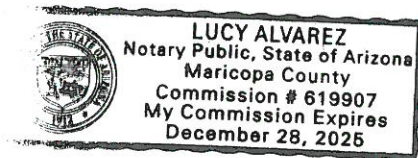
By: Evergreen Development Company-2024, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: Evergreen Devco, Inc., a California corporation  
Its: Manager

By: [Signature]  
Name: Laura Ortiz  
Its: President

STATE OF Arizona )  
 )ss  
County of Maricopa )

On this the 21 day of May, 2025, before me, the undersigned Notary Public in and for said County and State, personally appeared Laura Ortiz, the President of Evergreen Devco, Inc., a California corporation, Manager of Evergreen Development Company-2024, L.L.C., an Arizona limited liability company, Manager of Evergreen-CR 5 & Erie Parkway, L.L.C., an Arizona limited liability company, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the instrument in such person's authorized capacity, and that by his or her signature on the instrument the entity on behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]  
Notary Public

My Commission Expires:

12/28/25

## **Exhibits List**

**Exhibit A** – Legal Description

**Exhibit B** – Improvements

**Exhibit A**  
**Legal Description**

Tract H-1, Erie Highlands Filing No. 14, Amendment No. 1, County of Weld, State of Colorado

## Exhibit B Improvements

### Engineers Opinion of Probable Cost for Erie Highlands Filing 17 - Commercial

Public Improvements	Quantity	Units	Unit Cost	Total
<b>Street Costs @ WCR 5</b>				
H.B.P. 9" Full Depth, Minor Arterial - SBRT Lane along WCR 5	450	SY	\$26.00	\$11,700.00
Subgrade Prep.	450	SY	\$2.75	\$1,237.50
Curb, Gutter along WCR 5	395	LF	\$12.00	\$4,740.00
Relocation of Street Lights	1	EA	\$1,250.00	1250.00
Install New Arterial Street Light	1	EA	\$12,500.00	12500.00
<b>Sanitary</b>				
8" Sanitary	630	LF	\$23.00	14490.00
4' Manholes	6	EA	\$2,500.00	15000.00
<b>Water</b>				
8" Water line	1,100	LF	\$25.00	\$27,500.00
8" Valves	23	EA	\$1,300.00	\$29,900.00
Tees/Cross	7	EA	\$1,000.00	\$7,000.00
Bends	9	EA	\$350.00	\$3,150.00
Fire Hydrant Assembly	4	EA	\$3,600.00	\$14,400.00
<b>Street / Traffic Signal Costs @ Glacier Dr. &amp; Erie Parkway</b>				
Poliholing	1	LS	\$12,800.00	\$12,800.00
Traffic Signal Controller & Cabinet	1	EA	\$47,500.00	\$47,500.00
Ethernet Switch	1	EA	\$2,450.00	\$2,450.00
Ethernet Radio (Pair)	1	EA	\$6,250.00	\$6,250.00
Drilled Caisson 36"	15	LF	\$465.00	\$6,975.00
Drilled Caisson 42"	17	LF	\$580.00	\$9,860.00
Drilled Caisson 18"	16	LF	\$275.00	\$4,400.00
Pull Box	5	EA	\$1,550.00	\$7,750.00
Conduit 2" *	600	LF	\$25.00	\$15,000.00
Conduit 3" *	600	LF	\$27.00	\$16,200.00
Wiring	1	LS	\$21,500.00	\$21,500.00
Traffic Signal Pole with 45' Mast Arm & 15' Luminaire (LED)	1	EA	\$41,500.00	\$41,500.00
Traffic Signal Pole with 40' Mast Arm & 15' Luminaire (LED)	1	EA	\$23,500.00	\$23,500.00
Mast Arm 50'	1	EA	\$11,500.00	\$11,500.00
Pedestrian Pedestal Pole	5	EA	\$3,250.00	\$16,250.00
Signal Head 12-12-12 FYA (LED)	2	EA	\$2,000.00	\$4,000.00
Signal Head 12-12-12 (LED)	12	EA	\$1,500.00	\$18,000.00
Signal Head 16" Pedestrian (LED)	4	EA	\$965.00	\$3,860.00
Signal Head 12-12-12 Bike (LED)	2	EA	\$2,650.00	\$5,300.00
APC Pushbutton Assemblies with Signs	6	EA	\$2,500.00	\$15,000.00
Intersection Detection System (Camera)	3	EA	\$13,500.00	\$40,500.00
Left Turn Only 30"x36" (R3-5L)	2	EA	\$475.00	\$950.00
Right Turn Only 30"x36" (R3-5R)	2	EA	\$475.00	\$950.00
Yield to Bikes Sign (Special 30" x 36")	1	EA	\$650.00	\$650.00
Town Street Name Signs Illuminated	3	EA	\$3,500.00	\$10,500.00
Mobilization, Bonding & Insurance	1	LS	\$24,000.00	\$24,000.00
Erosion Control	1	LS	\$3,200.00	\$3,200.00
Traffic Control	1	LS	\$31,500.00	\$31,500.00
Existing Street Light Removal	1	LS	\$2,000.00	\$2,000.00
Curb and Gutter Remove and replace	145	LF	\$36.00	\$5,220.00
8' ADA Ramps	3	EA	\$6,500.00	\$19,500.00
Pedestrian Refuge Median	1	LS	\$30,000.00	\$30,000.00
8' Concrete Walk remove and Replace	90	LF	\$48.00	\$4,320.00
<b>Public Improvement Total =</b>				<b>\$605,752.50</b>
<b>Total Public Improvements =</b>				<b>\$605,752.50</b>