



Western Surety Company

SITE IMPROVEMENT Performance Bond

Bond # 72272036

KNOW ALL PERSONS BY THESE PRESENTS: That we _____

RTR Birdhouse Holdings LLC

Principal, and WESTERN SURETY COMPANY, a corporation authorized to do surety business in the State of Colorado as Surety, are held and firmly bound unto Town of Erie

as Obligee, in the sum of Ninety-Two Thousand Five Hundred and 00/100 Dollars (\$ \$92,500.00) lawful money of the United States of America, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns firmly by these presents.

WHEREAS, the Principal has entered into an agreement with the Obligee, guaranteeing only that the Principal will complete site improvements as per estimate prepared by: Colorado Excavating on March 10th 2020 pursuant to the development agreement dated Dec 10th 2019

attached to and made a part hereof at certain land known as 526 Briggs St. Erie, CO 80516

all of which improvements shall be completed on or before the date set forth in the agreement or any extension thereof, and the Principal provides this bond as security for such agreement.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal shall carry out all the terms of said agreement relating to the site improvements only and perform all such work as set forth in the attached agreement, then this obligation shall be null and void; otherwise, to remain in full force and effect.

No party other than the Obligee shall have any rights hereunder as against the Surety. The aggregate liability of the Surety on this bond obligation shall not exceed the sum stated above for any reason whatsoever.

SIGNED, SEALED AND DATED THIS 8th DAY OF June, 2020.

PRINCIPAL:

RTR Birdhouse Holdings LLC

By: [Signature]

SURETY:

WESTERN SURETY COMPANY

By: [Signature]
DWIGHT PETERSEN, Attorney-in-Fact

FIRST AMENDMENT TO BIRDHOUSE DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (the "First Amendment") is 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, Erie, CO 80516 (the "Town"), and RTR BIRDHOUSE HOLDINGS LLC, a Colorado limited liability company with a principal place of business at 11013 Circle Drive, Erie, CO 80403 ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, on December 10, 2019, the Parties entered into a Development Agreement (the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement as provided herein.

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. Section 2(b) of the Agreement is hereby amended to read as follows:
 - b. *Deadline.* All Improvements shall receive Initial Acceptance pursuant to Section 5 hereof on or before November 1, 2020.
2. Section 6(a) of the Agreement is hereby amended to read as follows:
 6. Improvement Guarantee.
 - a. *Amount.* To secure the construction and installation of the Improvements, Developer shall initially provide the Town with a surety bond in the amount of \$92,500. On or before October 31, 2020, Developer shall replace the surety bond with a letter of credit in the amount of 115% of the costs listed in **Exhibit B** (the "Estimated Costs"). The surety bond and letter of credit are collectively referred to herein as the "Improvement Guarantee." The Estimated Costs may increase in the future. Accordingly, the Town reserves the right to review and adjust the Estimated Costs on an annual basis. Adjustments shall be made according to changes in the Construction Costs Index as published by the Engineering News Record. If the Town adjusts the Estimated Costs, the Town shall give written notice to Developer, and Developer shall, within 30 days after receipt of said written notice, provide the Town with a new or amended Improvement Guarantee in the amount of the adjusted Estimated Costs.
3. Except as expressly modified herein, the Agreement shall remain in full force and effect.

