

**COLLIERS HILL  
METROPOLITAN DISTRICT DEVELOPMENT AGREEMENT NO. 3**

**THIS METROPOLITAN DISTRICT DEVELOPMENT AGREEMENT** (“Agreement” or “District Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2013, by and between the **TOWN OF ERIE, a Colorado municipal corporation**, PO Box 750, Erie, Colorado, 80516, hereinafter referred to as “Erie” or “Town,” and **DAYBREAK RECOVERY ACQUISITION, LLC., a Delaware limited liability company**, 7200 South Alton Way, Suite C-400, Centennial, Colorado, 80112, hereinafter referred to as “Owner;” and the **COLLIERS HILL METROPOLITAN DISTRICT NO. 2**, 7200 South Alton Way, Suite C-400, Centennial, Colorado, 80112, herein referred to as “District;” and

**WHEREAS**, the Bridgewater and Daybreak community has been renamed Colliers Hill.

**WHEREAS**, Erie and Owner previously entered into the Bridgewater Annexation Agreement, dated October 9, 2007, and recorded in the real property records of the Weld County Clerk and Recorder at Reception No. 3518317 hereinafter referred to as the “Bridgewater Annexation Agreement;” and

**WHEREAS**, Erie and Owner previously entered into the First Amendment to the Bridgewater Annexation Agreement, dated December 13, 2010, and recorded in the real property records of the Weld County Clerk and Recorder at Reception No. 3741841 hereinafter referred to as the “First Amendment to the Bridgewater Annexation Agreement;” and

**WHEREAS**, Erie and Owner previously entered into the Second Amendment to the Bridgewater Annexation Agreement, dated October 4, 2011, and recorded in the real property records of the Weld County Clerk and Recorder at Reception No. 3798317 hereinafter referred to as the “Second Amendment to the Bridgewater Annexation Agreement;” and

**WHEREAS**, Erie and Owner previously entered into the Third Amendment to the Bridgewater Annexation Agreement, dated January 8, 2013, and recorded in the real property records of the Weld County Clerk and Recorder at Reception No. 3904988 hereinafter referred to as the “Third Amendment to the Bridgewater Annexation Agreement;” and

**WHEREAS**, Erie and Owner previously entered into the Bridgewater PUD Overlay Map Amendment No. 1, dated August 31, 2011, and recorded in the real property records of the Weld County Clerk and Recorder at Reception No. 3789472 hereinafter referred to as the “PUD;” and

**WHEREAS**, three final plats for Colliers Hill (“Development”); Colliers Hill Filing No. 4A (“Filing 4A”), Colliers Hill Filing No. 4B (“Filing 4B”) and Colliers Hill Filing No. 4C (“Filing 4C”) all attached hereto as “Exhibit A” and incorporated herein by reference. Said final plats have been approved by Erie; and

**WHEREAS**, the regulations of Erie require that the District enter into an Agreement with Erie relative to improvements related to the development; and

**WHEREAS**, this standard agreement has been modified by the parties as indicated by the addition of certain special provisions, if any, in Section IX.

**NOW, THEREFORE**, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

**I. TOWN ADMINISTRATIVE OFFICIAL**

For the purposes of this Agreement, “Town Administrative Official” shall be defined as the Town Administrator or his or her designee.

**II. DEVELOPMENT OBLIGATION AND COORDINATION**

District shall be responsible for performance of the covenants set forth herein. Unless specifically provided in this Agreement to the contrary, all submittals to Erie and acceptances required of Erie in connection with this Agreement shall be submitted to, or rendered by, the Town Administrative Official, who shall have general responsibility for coordinating development with District.

**III. PUBLIC USE DEDICATION**

Owner shall convey to Erie certain lands as described as open space and park in “Exhibit A” attached hereto and incorporated herein by reference. Conveyance of these lands shall be by Warranty Deed in form and substance acceptable to Erie. If not already conveyed, conveyance shall be made within thirty (30) days of the date of this Agreement, except as otherwise provided in Section IX. Owner shall also furnish at the time of conveyance, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to acceptance by the Town of Erie. The property shall be free and clear of liens, taxes and encumbrances except for ad valorem real property taxes up to the date of dedication to the Town, but subject to all easements, rights-of-way, reservations, restrictions or other title burdens of record.

**IV. PUBLIC AND COMMON FACILITIES IMPROVEMENTS**

District agrees to design, construct and install according to Town accepted plans, all public improvements and common facilities specifically regulated necessary for the Development including, but not limited to, street, alley, curb, gutter, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage improvements, trails and park improvements on and off of the Development (hereinafter, “Public Improvements” and “Common Facilities”) and as described in “Exhibit B” attached hereto and made part hereof. District agrees to dedicate said improvements to Erie, or others for the common facilities, and give a two (2) year guarantee for all improvements constructed.

**A. Construction Standards**

District shall construct all improvements required by this Agreement, and any other improvements constructed in relation to the Development, in accordance with plans and specifications accepted in writing by Erie, and in full conformity with Erie's “Standards and Specifications for Design and Construction of Public Improvements,” ordinances and regulations.

**B. Engineering and Consulting Services**

District agrees to furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Development, including but not limited to, street, alleys, curb, gutter, sidewalks, landscaping, irrigation, fencing, street lights, signage, water, waste water, storm sewer and drainage improvements, trails and park improvements. Said engineering and consulting services shall conform to the standards and criteria for public improvements as established and accepted by Erie. These services shall be performed by or under the supervision of a Registered Professional Engineer and/or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law. The design services shall include inspection services deemed necessary by Erie.

**C. Plan Submission and Acceptance**

District shall furnish to the Town Administrative Official the required fees and complete plans for all improvements and development phases. Erie shall issue its written acceptance or rejection of said plans as expeditiously as reasonably possible. Said acceptance or rejection shall be based upon the standards and criteria for public improvements as established by Erie, and Erie shall notify District of all deficiencies which must be corrected prior to acceptance. All deficiencies shall be corrected and said plans shall be resubmitted to and accepted by Erie prior to construction. All acceptances required hereunder from Erie shall be made by the Town Administrative Official.

**D. Public Improvement Permits (“PIP”)**

Before the construction or installation of any improvements, District shall obtain a PIP from Erie as provided for in the Erie Municipal Code (“Code”). The PIP application, fees, plans, specifications and any other data filed by District will be reviewed by Erie. If found to be complete and in accordance with Erie’s “Standards and Specifications for Design and Construction of Public Improvements” and other pertinent requirements, Erie will issue District the PIP. District shall reimburse Erie for any additional expenses incurred by Erie for the review of plans or inspection of construction work by consultants engaged by Erie for that purpose. The District shall also apply and pay for a PIP for all common facilities.

**E. Testing and Inspection**

Testing and inspection of the construction and materials shall be in accordance with Erie’s “Standards and Specifications for Design and Construction of Public Improvements.” In addition, District shall employ, at its own expense, a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by Erie. District shall furnish copies of test results to the Town Administrative Official on a timely basis for review and acceptance prior to commencement or continuation of that particular phase of construction. At all times during said construction, Erie shall have access to inspect the materials and workmanship of said construction and all materials and work not conforming to the accepted plans and specifications shall be repaired or removed and replaced at District’s expense so as to conform to the accepted plans and specifications.

All work shown on the accepted public improvement plans requires inspection by the Public Works Department, Engineering Division. Except Town of Erie holidays, inspection services are provided Monday through Friday, from 7:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of 24 hours in advance with the Engineering Division. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance in writing to the Director of Public Works for acceptance. District shall reimburse the Town for all direct costs of the after-hours inspection services. If the request is denied, the work shall not proceed before or after the hours listed above.

Common facilities shall have inspections performed by a professional consulting service acceptable to Erie. At all times Erie shall have access to inspect the materials and workmanship of the common facilities if deemed necessary by Erie. Inspection services for landscaping will also include the selection and tagging of plant materials prior to delivery to the site. Landscape and irrigation inspection services shall conform to the Erie's "Standards and Specifications for Design and Construction of Public Improvements."

**F. Rights-of-way, Easements and Permits**

Prior to commencement of construction of Public Improvements that require additional rights-of-way to be acquired, District shall acquire at its own expense and convey to Erie, all necessary land, rights-of-way and easements required by Erie for the construction of the proposed improvements related to the Development. District is only obligated to acquire that portion of land, rights-of-way and easements necessary for the construction of Public Improvements, roads and utilities required by this Agreement.

All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed or easement in a form and substance acceptable to Erie. All title documents shall be recorded by Erie at District's expense. District shall also furnish, at its own expense, an ALTA title insurance policy for all interest(s) so conveyed, subject to acceptance by Erie.

District shall be responsible for obtaining the following to the extent applicable:

1. All permits as required by the United States Corps of Engineers.
2. Colorado Department of Health and Environment ("CDPHE") "General Permit for Stormwater Discharges Associated with Construction Activity", required during construction.
3. Town of Erie "Grading and Stormwater Quality Permit" per Erie "Standards and Specifications for Design and Construction of Public Improvements."
4. Air Quality Permit.

**G. Street Improvements**

District shall furnish and install, at its own expense, the street improvements in conformance with the drawings, plans and specifications accepted by Erie and in accordance with the PIP.

**H. Sidewalk Improvements**

District shall furnish and install, at its own expense, all sidewalk improvements in conformance with the drawings, plans and specifications accepted by Erie. To minimize construction damage, detached sidewalk construction may be delayed until Certificates of Occupancy are issued for 80% of the properties facing a specific street on which sidewalks are to be constructed. Erie may require earlier construction if it determines that such sidewalks are needed for the safe passage of residents.

**I. Street Signs, Traffic Signs, and Striping**

District will furnish and install at District's expense street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Manual of Uniform Traffic Control Devices, as from time to time amended, and other applicable legal requirements.

**J. Street Lights**

District shall furnish complete plans for street lighting to be reviewed and accepted by Erie. The total cost of street light installation shall be District's obligation. District shall cause, at its own expense, United Power to install all required street lighting pursuant to United Power plans and specifications as submitted to and accepted in writing by the Town Administrative Official. Said street lights shall be installed concurrently with the streets on which they are located. The type of street lights shall be accepted by Erie.

**K. Water Improvements**

District shall furnish and install all water mains, lines, and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

**L. Wastewater Improvements**

District shall furnish and install all sewer lines and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

**M. Drainage Improvements**

1. Drainage improvements for the Development shall be constructed by District in accordance with drawings, plans and specifications accepted by Erie. Unless otherwise approved by Town, over lot grading shall not be initiated by District until Erie approves drainage improvement plans by the issuance of the PIP. District shall provide temporary erosion control during and after over lot grading until the site is stabilized.
2. Drainage improvements for the Development shall be constructed by the District in accordance with accepted construction plans.

3. District shall be responsible for obtaining a CDPHE “General Permit for Stormwater Discharges Associated with Construction Activity” required during construction. A copy of this permit shall be submitted to Erie.
4. District shall be responsible for obtaining a Town of Erie “Grading and Stormwater Quality Permit” per Erie’s “Standards and Specifications for Design and Construction of Public Improvements.”

**N. Landscape Improvements**

For public lands, common facilities, and rights-of-way, District shall furnish Erie complete final landscape and irrigation plans for each phase and obtain acceptance by Erie prior to commencement of construction. District shall construct landscape improvements as required in the landscape plan before the constructed improvements are accepted by Erie. Landscape plans need not be provided for private landscaping on single-family residential lots. For all development and common facilities other than single-family detached development, District shall furnish final landscape and irrigation plans to the Town Administrative Official for acceptance prior to installation of landscape improvements.

**O. Utility Coordination and Installation**

District shall be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other such utilities. All utilities shall be placed underground as required by the Erie Municipal Code.

**V. IMPROVEMENT ACCEPTANCE**

**A. Construction Acceptance**

No later than ten (10) days after improvements are substantially complete, District shall request of the Town Administrative Official an inspection by Erie. If District does not request this inspection within ten (10) days of completion of improvements, Erie may conduct the inspection without the approval of District. District shall provide Erie with complete “as-built” drawings in a form as defined in the Town of Erie Construction Standards and Specifications. If District has not completed appropriate residential phase or commercial phase improvements as provided for in this Agreement, Erie may exercise its right to secure performance as provided in Section X.C of this Agreement. If improvements completed by District are satisfactory, the Town Administrative Official shall grant “construction acceptance”, which shall be subject to “final acceptance” as set forth herein. If improvements are not satisfactory, the Town Administrative Official shall provide written notice to District of the repairs, replacements, construction or other work required to receive “construction acceptance”. District shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After District completes the repairs, replacements, construction or other work required, District shall request of the Town Administrative Official a re-inspection of such work to determine if construction acceptance can be granted, and Erie shall provide written notice to District of the acceptability or unacceptability of such work prior to

proceeding to complete any such work at District's expense. If District does not complete the repairs, replacements, or other work required within thirty (30) days of said notice, Erie may exercise its rights to secure performance as provided in Section X.C. of this Agreement. Erie reserves the right to schedule re-inspections. No "Certificate of Occupancy" will be issued by Erie prior to Construction Acceptance.

Additionally, for Common Facilities, the District shall include the Colliers Hill Homeowners Association ("HOA"), maintenance district, or final property owner in the final inspection procedures and provide Erie with written acceptance of the common facility for maintenance from this final owner

### **Maintenance of Improvements**

#### **1. Warranty**

District shall provide Erie with a minimum two (2) year warranty, from the date of construction acceptance, on all Public Improvements and shall provide the two (2) year warranty to the final owner for the Common Facilities.

#### **2. Maintenance of Improvements**

For a two (2) year period from the date of "construction acceptance" of any public improvements related to the Development, District shall, at its own expense, take all actions necessary to maintain said public improvements and make all needed repairs or replacements which, in the reasonable opinion of Erie, shall become necessary, except that Erie shall be responsible for snow removal on public streets. If within thirty (30) days after District's receipt of written notice from Erie requesting such repairs or replacements, District has not completed such repairs, Erie may exercise its rights to secure performance as provided in Section X.C of this Agreement.

### **C. Final Acceptance**

At least thirty (30) days before two (2) years has elapsed from the issuance of "construction acceptance", or as soon thereafter as weather permits, District shall request a "final acceptance" inspection in writing. The request shall be made to the Town Administrative Official. The Town Administrative Official shall inspect the public improvements and shall notify District in writing of all deficiencies and necessary repairs. After District has corrected all deficiencies and made all necessary repairs identified in said written notice, the Town Administrative Official shall issue to District a letter of "final acceptance", as soon as reasonably possible thereafter. If District does not correct all deficiencies and make repairs identified in said inspection to Erie's satisfaction within thirty (30) days after receipt of said notice, weather permitting, Erie may exercise its rights to secure performance as is provided in Section X.C of this Agreement. If any mechanic's liens have been filed with respect to the public improvements, Erie may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If District fails to have public improvements finally accepted within two (2) years of the date of the issuance of construction acceptance or any public improvements are found not to

conform to this Agreement, and applicable Town “Standards and Specifications for Design and Construction of Public Improvements,” then the District shall be in default of the Agreement and Erie may exercise its rights under Section X.C of this Agreement.

**D. Reimbursement to Erie**

In the event it becomes necessary for Erie to complete the Public Improvements and/or Common Facility improvements due to the failure of District to complete said Public Improvements and/or Common Facility improvements, Erie may complete construction, repairs, replacements, or other work with funds other than the Improvement Guarantee, in which event District shall reimburse Erie within sixty (60) days after receipt of written demand and supporting documentation from the Town Administrative Official. If District fails to so reimburse Erie, then District shall be in default of this Agreement and Erie may exercise its rights under Section X.C of this Agreement.

**VI. IMPROVEMENT GUARANTEE**

**A. Public Improvement and Common Facilities Schedule**

District has submitted the certified Public Improvement and Common Facilities Schedule shown as “Exhibit B” attached hereto and incorporated herein by reference. Said exhibit generally identifies those public improvements to be furnished, installed or constructed relative to the Development. Omission of any improvement from “Exhibit B” does not relieve District from responsibility for furnishing, installing or constructing such improvement. The District shall list all Common Facilities separately and subtotal separately on “Exhibit B.”

**B. Improvement Guarantee**

District shall submit to Town Administrator an Improvement Guarantee consistent with Section 10.7.20 of the Town’s Unified Development Code for all Public Improvements and Common Facilities described on “Exhibit B.” to be constructed in the Development in conjunction with and separate from any public improvements and common facilities that shall be required as part of the Filing 4A, Filing 4B and Filing 4C final plats. Said guarantee may be in cash as set forth below.

1. Said Improvement Guarantee shall include, but not be limited to, street, curb, gutter, sidewalks, landscaping, fencing, street lights, water, sewer, storm sewer and drainage improvements, trails and park improvements on or off the Development.
2. The total amount of the guarantee for the Development shall be calculated as a percentage of the total estimated cost including labor and materials of all Public Improvements and Common Facilities to be constructed in the Development as described on “Exhibit B.” The total minimum amounts are as follows:
  - a) Prior to commencement of construction of Public Improvements and Common Facilities: 125% of the amount(s) shown on “Exhibit B.”

- b) Upon initial “construction acceptance” of the public improvements through “final acceptance”: 25% of the amount(s) shown on “Exhibit B.”
  - c) Upon “Construction Acceptance” of Common Facilities: 0%.
  - d) After Final Acceptance of Public Improvements: 0%.
3. In addition to any other remedies it may have, Erie may, at any time prior to Final Acceptance, draw on the Improvement Guarantee received pursuant to this Agreement.

- a) The District has adopted a resolution (the “Funding Resolution”) attached hereto as Exhibit E authorizing the District’s execution of this Agreement and providing for the appropriation, segregation and use of funds in an amount sufficient to guarantee the construction of the Public Improvements and Common Facilities Improvements set forth on Exhibit B. The estimated costs of completion of the Public Improvements and Common Facilities are set forth on Exhibit B attached hereto and incorporated herein by reference.

The Funding Resolution specifically provides that all funds referenced therein are unencumbered and free from claims of others such that, if necessary, any requests for payment approved by the Town may be promptly honored. As a condition to recordation of the Filing 4A, Filing 4B and Filing 4C final plats, the District shall provide the Town Administrator with evidence that the funds required and set forth in Exhibit B have been appropriated and segregated in a separate account (the “Security Account”) and identified for use in connection with this Agreement. The District shall renew the Funding Resolution at the beginning of each subsequent calendar year until all Public Improvements and Common Facilities have received final acceptance or until the District provides substitute collateral acceptable to the Town.

- b) The District may make progress payments to its contractors from the Security Account on a monthly basis upon the partial completion of itemized improvements which have been set forth on Exhibit B and upon twenty-one (21) day’s prior written notice including an itemized statement from the District’s Engineer to the Town. The District shall pay for the Town to hire an independent engineer, of the Town’s choosing, to review the District’s itemized statement and confirm the progress payments are accurate and

consistent with the Public Improvements and Common Facilities actually constructed. The District shall pay the cost of the Town's hired independent engineer from District funds separate and apart from the funds kept in the Security Account. The Town shall, in writing to the District, either approve, partially approve or deny each progress payment submitted for review. In the event the Town shall fail to respond to a progress payment request within such twenty-one (21) day period, then, in that event, the progress payment shall be deemed to be approved by the Town. In the event of a dispute regarding the amount of a progress payment, the District may disperse any undisputed amounts pending resolution. Disputed amounts shall not be paid by the District until the dispute is resolved. The District shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by each construction contract; provided however, when the value of work completed has progressed to fifty percent (50%) of the contract amount, the District shall not be required to withhold additional retainage for the remainder of the work under such contract. The (10%) ten percent retainage of the value of work completed may be reinstated if in the Town's opinion the lack of progress or other substantial reasons exist. In no event shall any progress payment cause the remaining sum to be available in the Security Account for subsequent disbursements to be less than one hundred twenty-five percent (125%) of the costs to complete all remaining Public Improvements and Common Facilities as estimated at the time of each progress payment. Upon completion of all work related to the Public Improvements and Common Facilities, the Town's acceptance of the Public Improvements and Common Facilities and the expiration of the Warranty Period set forth in paragraph V.A.2, the Town shall release any further interest in the Security Account.

- c) In the event of a default in whole or in part by the District, the Town shall be authorized to access the funds in the Security Account for the purpose of undertaking completion or remediation work on the Public Improvements and Common Facilities after providing thirty (30) days advance notice of default to any assignee of the development obligations under the Colliers Hill Filing 4A, 4B or 4C Development Agreement (a "Subdivider") and the District and providing an opportunity during such period for the District and/or the Subdivider to cure the default. The Town shall be entitled to draw on the Security Account by providing a written statement signed by the Town Administrator stating (i) that the District is in default, and (ii) the funds are required in order to complete or correct work on the Public Improvements and Common Facilities. District funds identified in the Funding

Resolution shall be held, whether by the District or the Town, in compliance with the requirements of C.R.S. 29-1-803(1) for the purpose of providing for the completion of the Public Improvements and Common Facilities.

In the event that the District defaults in whole or in part in the performance of this Agreement, and after the expiration of thirty (30) days after having given written notice to Subdivider and the District of such default during which period of time the Subdivider or the District failed to correct said default, the Town may, at its sole discretion, proceed with the construction or completion of the Public Improvements and Common Facilities specified on Exhibit B. All such costs paid by the Town for such Public Improvements and Common Facilities (or paid by Subdivider if it chooses, in its sole and exclusive discretion, to cure the District's default), together with all costs of personnel, equipment and other matters expended by the Town (or Subdivider in the event Subdivider undertakes a cure of the District's default as aforesaid) in furtherance of the construction responsibilities of the District, shall be paid by the District. In any event, the Town shall have no obligation to complete any or all of the Public Improvements and Common Facilities. District is further subject to the provisions of Section X.C of this Agreement, as well as the suspension of development activities by the Town including, but not limited to, the withholding of building permits and certificates of occupancy. Without limiting the foregoing, the Town and/or Subdivider may, but shall not be obligated to, bring a mandatory injunction action against the District to require installation and construction of the Public Improvements and Common Facilities, if not constructed within the time limits described in this Agreement. If any such action is brought by the Town and/or Subdivider, the Town or Subdivider, as applicable, shall be awarded its court costs and reasonable attorneys' fees.

- d) In the event that the cost of the Public Improvements and Common Facilities and construction is reasonably determined by the Town to be greater than the amount of the security guarantee provided by the District to the Town, then the Town shall furnish written notice to District of the condition, and within thirty (30) days of receipt of such notice District shall provide the Town with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance. If District fails to provide the Town with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance, then District is in default of this Agreement, without further notice, and is subject to

the provisions of Section X.C of this Agreement, as well as the suspension of development activities by the Town including, but not limited to, the withholding of building permits and certificates of occupancy.

**C. Phasing**

District's Phasing Plan is detailed on "Exhibit D." The improvements described herein shall be completed in one phase.

**VII. OVERSIZING AND REIMBURSEMENT**

Erie may require District to build utility lines and other infrastructure large enough to serve property other than District's (oversizing). Erie may also require District to construct or participate in the construction of certain off-site public improvements. Certain such improvements qualify for reimbursement pursuant to the policies of Erie.

**A. Reimbursement due to District for Qualifying Public Improvements Constructed by District**

District is entitled to reimbursement for the oversize part of utilities and other infrastructure and/or a pro-rata portion of the cost of off-site public improvements. At the time of final approval of a subdivision plat or other development plan for properties that use these utilities or public improvements, Erie will require as a condition of approval, a proportional reimbursement to District as described in "Exhibit C," attached hereto and incorporated herein by this reference. Nothing contained in this Agreement shall operate to create an obligation on the part of Erie to pay or reimburse any costs to District in the event such costs are not recovered by Erie as contemplated herein, for any reason, from the properties or property owners that use the utilities or public improvements, so long as Erie has made a good faith effort to recover such costs.

**B. Reimbursement due from District for Qualifying Public Improvements Constructed by Others**

District will be required to reimburse Erie or others who have constructed oversized utilities and other infrastructure that will be utilized by District's property. The amount of the reimbursement due, if any, is described in "Exhibit C."

**VIII. MISCELLANEOUS CONSTRUCTION STANDARDS**

**A. Trash, Debris, Mud**

District agrees that during construction of the Development and improvements described herein, District will take appropriate steps necessary to control trash, debris and wind or water erosion in the Development. If Erie determines that said trash, debris or wind or water erosion causes substantial damage or injury or creates a major nuisance, District agrees to abate said nuisance and/or to correct or commence to correct within 24 hours, any damage or injury, and complete within five (5) working days after notification by Erie. If District does not abate said nuisance, Erie may abate the nuisance and/or correct any drainage or injury without notice to District, at District's expense. District also agrees to take any and all reasonable steps necessary to prevent the transfer of mud or debris

from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by Erie. If District does not abate, or if an emergency exists, Erie may abate at District's expense.

**B. Operation of Construction Equipment**

The operation of construction equipment outside an enclosed structure shall be prohibited on weekdays between the hours of 7:00 p.m. and 7:00 a.m. On weekend days and legal holidays the operation of such equipment outside an enclosed structure shall be prohibited between the hours of 4:00 p.m. and 8:00 a.m. The Town Administrative Official may alter the hours of operation for good cause.

**IX. SPECIAL PROVISIONS**

**Transportation**

1. Horizon Boulevard, Colliers Boulevard, Weld County Road 5 (“WCR 5”), Weld County Road 10 (“WCR 10”).  
District shall construct Horizon Boulevard, Colliers Boulevard, WCR 5 and WCR 10, and all associated traffic, pedestrian, landscape, and drainage improvements as shown on the accepted construction plans.
2. The District shall be responsible for the design and construction of a mast arm traffic signal at WCR 5 and WCR 10 when warranted and as outlined in the Bridgewater Annexation Agreement.

**Phasing Map (“Exhibit D”)**

The improvements identified on “Exhibit D” will be installed in one phase.

**Dedication of Community Park**

The Owner shall, by Special Warranty Deed, convey Tract A of Filing 4A to the Town within 30 days of the Town providing written notice requesting said dedication.

**Dedication of Open Space**

1. The Owner shall, by Special Warranty Deed, convey Tracts B, C and D of Filing 4A to the Town at such time the Town issues Construction Acceptance of the improvements within these tracts or at a mutually agreed to time between Owner and Town.
2. Prior to the conveyance of these tracts, Owner and Town will mutually agree on the portion(s) of these tracts that qualify as dedicated open space per the Code.
3. The Town and Owner shall keep track of qualifying open space to verify compliance with the PUD and the Code.

**Installation of Open Space, Parks, Landscaping and Trails**

1. Pocket Park Filing 4A.

The District shall construct the Pocket Park in Tract O of Filing 4A. The Pocket Park shall meet the standards as outlined in the Code and the Bridgewater Annexation Agreement, and as shown on accepted construction plans. The District shall purchase a water tap and pay the necessary raw water dedication fees to the Town.

2. Open Space, Landscaping and Trails.

The District shall construct the open space, landscaping and trail improvements within Tracts B, C, D, E, F, G, H, I, K, L and M of Filing 4A as shown on the accepted construction plans.

The District shall construct the open space, landscaping and trail improvements within Tracts A, B, D and E of Filing 4B as shown on the accepted construction plans.

The District shall construct the open space, landscaping and trail improvements within Tracts A, C and D of Filing 4C as shown on the accepted construction plans.

**Maintenance of Open Space, Parks, Landscaping and Trails**

1. The District and/or HOA shall maintain Tracts B, C, D, E, F, G, H, I, J, K, L, M and N of Filing 4A.

The District and/or HOA shall maintain Tracts A, B, C, D and E of Filing 4B.

The District and/or HOA shall maintain Tracts A, B, C and D of Filing 4C.

2. The District and/or HOA shall maintain Tract A of Filing 4A until such time the tract is conveyed to the Town in accordance with Section IX.C of this Agreement.
3. The Spine Trail located within Tracts B, C and D of Filing 4A shall be maintained by the Town.

**Drainage Improvements**

1. On-Site

Subject to the Town's approval, Tracts B and C of Filing 4A will contain drainage facilities which the District shall incorporate within the open space as shown on the accepted construction plans. All drainage facilities located in Tracts B and C of Filing 4A shall be maintained by the District and/or HOA.

2. Off-Site

District shall construct the off-site drainage improvements north of WCR

10 as shown on the accepted construction plans. Said drainage improvements shall be owned and maintained by the District and/or HOA.

**Sewer**

The District shall construct the off-site sanitary sewer improvements north of WCR 10 to the Town’s NWRf Interceptor as shown on the accepted construction plans.

**Non-Potable Water**

1. The District shall construct the re-use water line, storage ponds, and associated improvements including but not limited to pump house, meters and communication equipment as shown on the accepted construction plans.

The Town will allow a temporary potable connection for irrigation of common landscape areas until such time the Non-Potable Water system is operational. The District will only be responsible for the cost of the meter, and will pay potable water rates for water consumed.

2. Owner agrees to dedicate a 30-foot easement to the Town to allow the Town to construct, access, and maintain a non-potable water line on Tract E of Colliers Hill Filing 4C generally from the Irrigation Pond on Tract B of Colliers Hill Filing 4A to WCR 5 and in the general alignment of the future Flora View Drive road extension to WCR 5. Dedication shall occur within 30 days of written request from the Town.

**Disclosure Statements**

No private ownership lots are associated with this Agreement and therefore the disclosure statements required by the Bridgewater Annexation Agreement, as may be amended are not applicable.

**X. MISCELLANEOUS TERMS**

**A. Vested Rights**

Erie agrees that the Filing 4A, Filing 4B and Filing 4C final plats for Colliers Hill each constitute a “site specific development plan” pursuant to C.R.S. 24-68-101 et. Seq. (the “Vested Rights Act”) for that portion so platted, and in addition, that the rights which vest pursuant to the Vested Rights Act shall vest for a period of three (3) years. This Development Agreement shall be deemed to be a “development agreement” pursuant to the Vested Rights Act.

**B. Ground Water Dedication**

As provided by Erie ordinances, all tributary and not non-tributary ground water rights not already transferred to Erie shall be dedicated to Erie at the time of Final Plat recordation. Transfer of the water rights shall be by Special Warranty Deed tendered to Erie prior to signatures being affixed to this agreement.

**C. Default**

If Owner or District fails to fulfill the terms and conditions of this Agreement, Erie, in its sole discretion, may declare Owner or District in default and may call the security and draw from the Security Account provided for in Section VI, and may further exercise all remedies available to Erie in law and equity. Erie may also, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services until the completion of the Public Improvements and Common Facilities and/or the default has been cured by Owner or District. Any costs incurred by Erie, including, but not limited to, reasonable administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by Owner or District shall be paid by Owner or District. Erie may deduct these costs from the Improvement Guarantee. Erie shall have the right to enforce the Owner's or District's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, or an action to recover damages. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

If Owner or District fails to fulfill the terms and conditions of Section VI of this Agreement, or any other monetary, security or surety default, Erie, in its sole discretion, may declare Owner or District in default and may immediately call the security due and draw from the Security Account provided for in Section VI in accordance with the terms of Article VI, and may further exercise all remedies available to Erie in law and equity and as provided for herein.

**D. Insurance and Safety**

District shall, through contract requirements and other normal means, guarantee and furnish to Erie proof thereof that all employees and contractors engaged in the construction of improvements are covered by adequate Workman's Compensation Insurance and Public Liability Insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

**E. Indemnification and Release of Liability**

District, to the extent permitted by law, and without waiving any immunity afforded under the Colorado Governmental Immunity Act, and Owner agree to indemnify and hold harmless Erie, its officers, employees, agents, or servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by arising from, or on account of acts or omissions by Owner and/or District, its officers, employees, agents, consultants, contractors, and subcontractors, and/or suit, action, or claim resulting from mineral right disputes and/or Owner's or District's failure to abide by the terms of this Agreement, and to pay to Erie and said persons their reasonable expenses, including but not limited to, reasonable attorney's fees and reasonable expert witness fees, incurred in defending any such suit, action or claim. Owner's or District's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents, or servants of Erie or conformance with requirements imposed by Erie, said obligation of Owner or District shall be limited to suits, actions, or claims based upon conduct prior to Final Acceptance by Erie of the

construction work. Owner or District acknowledges that Erie's review and acceptance of plans for development of the Development is done in furtherance of the general public's health, safety and welfare and that no immunity afforded under the Colorado Governmental Immunity Act is waived and no specific relationship with or duty of care to, Owner, District or third parties is created or assigned by such review acceptance.

**F. Recording Agreement**

Erie shall record this Agreement at District's expense in the office of the Clerk and Recorder, County of Weld, State of Colorado, and Erie shall retain the recorded Agreement.

**G. Binding Effect of Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the Development, and shall constitute covenants running with the land. Owner or District shall not be released from its obligations hereunder until written notice to the Erie Administrative Official of the assignment of said obligations to a successor, accompanied by written acceptance of such obligations by the successor, have been received by Erie and consent to such assignment by Erie as required by Paragraph X.H. has been granted. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at District's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

**H. Assignment, Delegation and Notice**

Owner or District shall provide to the Erie Administrative Official, for consent, written notice of: 1) any proposed transfer of title to all or any portion of the Development, 2) arrangements for delegation or transfer of the Improvement obligations hereunder to any successor, and 3) successor's written acceptance of such Improvement obligations. Notwithstanding the forgoing, Owner may sell developed lots or all of the multi-family tracts without Erie's consent, provided that the purchaser deposits with Erie all guaranties, security and sureties required under this Agreement. Until the Erie Administrative Official provides written consent to the assignment, Owner and Owner's successors and assigns shall be jointly and severally liable for the assigned Improvement obligations. Erie will not unreasonably withhold, delay or condition its consent to assignment. Erie may withhold its consent in the event it reasonably determines that the Improvement obligations or any constituent element of this Agreement may not be fulfilled through assignment or that the benefit of Erie's bargain under this Agreement may be materially and adversely impaired by such assignment.

**I. Modification and Waiver**

No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any sections of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

**J. Addresses for Notice**

Any notice or communication required or permitted thereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

Erie:	District:
Town of Erie	Colliers Hill Metropolitan District
Town Administrator	No. 2
P.O. Box 750	Jerry Richmond
Erie, Colorado 80516-0750	7200 South Alton Way, Suite C-400
	Denver, CO 80302
	Colliers Hill Metropolitan District
Mark Shapiro	No. 2
Mark R. Shapiro, PC	Jon Shumaker
1650 38 <sup>th</sup> Street, Suite 103	1251 Avenue of Americas, 50 <sup>th</sup> Floor
Boulder, CO 80301-2624	New York, NY 10020

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

**K. Force Majeure**

Whenever District is required to complete construction, maintenance, repair, or replacement of improvements by an agreed upon deadline, Erie shall grant a reasonable extension of time if the performance cannot, as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of District.

**L. Approvals**

Whenever approval or acceptance of a matter is required or requested of Erie pursuant to any provisions of the Agreement, Erie shall act reasonably in responding to such matter.

**M. Previous Agreements**

All previous written agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation, Pre-Annexation Agreement, or Development Agreement shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.

**N. Title and Authority**

Except for those portions of the Development previously conveyed to the Town, Owner warrants to Erie that Community Development Group of Erie, Inc. is the record owner for those portions of the property within the Development that the Public Improvement and Common Facilities are to be constructed upon. The undersigned further warrant

having full power and authority to enter into this Agreement.

**O. Severability**

If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have ratified this Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

**P. Legal Fees; Venue**

In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Weld, State of Colorado.

**Q. Agreement Status After Final Acceptance**

Upon Final Acceptance by Erie of all improvements and compliance by Owner with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall terminate and no longer be in effect.

**Enforceability**

This Agreement is made only between the Owner, the District and Erie, or their successors and assigns, and is not intended to benefit, and may not be enforced by, any third parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above.

[SIGNATURES ON FOLLOWING PAGE]

TOWN:  
**TOWN OF ERIE**  
a Colorado municipal corporation

\_\_\_\_\_  
Tina Harris, Mayor

ATTEST:

\_\_\_\_\_  
Nancy J. Parker, Town Clerk

OWNER:  
**DAYBREAK RECOVERY ACQUISITION, LLC.**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF                    )

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_ of Daybreak Recovery  
Acquisition, LLC.

Witness my hand and official seal.  
My Commission expires \_\_\_\_\_.

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



## **EXHIBITS LIST**

EXHIBIT A – COLLIERS HILL FILING 4A, FILING 4B, FILING 4C FINAL PLATS

EXHIBIT B – PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT C – PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

EXHIBIT D – PHASING PLAN

EXHIBIT A

COLLIERS HILL FINAL PLATS

EXHIBIT B

PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT C

PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

Reimbursements due Owner: None

Reimbursements due Erie: None

Reimbursements due Others: None

EXHIBIT D

PHASING PLAN

The Development shall be constructed in one phase.

EXHIBIT E

FUNDING RESOLUTION