

**Flatiron Meadows**  
**SECOND AMENDED AND RESTATED MASTER DEVELOPMENT**  
**AGREEMENT**

**THIS SECOND AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (“Agreement” or “Second Amended and Restated Master Development Agreement”)** is made and entered into this 8th day of ~~SEPTEMBER~~ 2015 (the “Effective Date”), by and between the **Town of Erie, a Colorado municipal corporation**, in the Counties of Weld and Boulder, State of Colorado, hereinafter referred to as “Erie” or “Town,” and **Bayou Development Corporation, a Colorado corporation**, hereinafter referred to as “Owner.”

**WHEREAS**, Erie and Owner previously entered into a First Amended and Restated Master Development Agreement, dated March 28, 2012, and recorded in the real property records of the Boulder County Clerk and Recorder at Reception No. 03212843 (herein after referred to as the “First Amended and Restated Master Development Agreement”); and,

**WHEREAS**, Erie and Flatiron Investors, LLC (the entity owning the Development – as “Development” is defined herein below – prior to the current Owner, and the predecessor to which Owner is the successor in interest), previously entered into a Master Development Agreement, dated January 26, 2009, and recorded in the real property records of the Boulder County Clerk and Recorder at Reception No. 2988917 (herein after referred to as the “Original Master Development Agreement”); and,

**WHEREAS**, Flatiron Investors, LLC has conveyed its interest in the Flatiron Meadows Development (“Development” or “Property”) to Owner through the recordation of a Quit Claim Deed, dated March 21, 2012, and recorded in the real property records of the Boulder County Clerk and Recorder at Reception No. 03211124; and,

**WHEREAS**, Erie, and Owner (as the successor in interest to Flatiron Investors, LLC) intend to terminate the First Amended and Restated Master Development Agreement as of the Effective Date of this Second Amended and Restated Master Development Agreement, as set forth herein, and to replace the First Amended and Restated Master Development Agreement with this Second Amended and Restated Master Development Agreement; and,

**WHEREAS**, Owner has submitted a master Final Plat for the Development attached hereto as “Exhibit A” and incorporated herein by reference. Said master Final Plat has been approved by the Community Development Director and Public Works Director of Erie; and

**WHEREAS**, the regulations of Erie require that the Owner enter into a Development Agreement with Erie relative to improvements related to the Development. This Agreement shall serve as the Second Amended and Restated Master Development Agreement for the Development; and

**WHEREAS**, this Second Amended and Restated Master Development Agreement anticipates that Erie and Owner will enter into separate Development Agreements for each phase

or filing of the Development, which phase or filing Development Agreement will set forth Public Improvements and Common Facilities required to be completed for that phase or filing (“Phase Development Agreement”).

**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**

Owner 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 Owner.

**III. PUBLIC USE DEDICATION**

Owner shall convey to Erie certain lands as generally described in “Exhibit A-2” attached hereto and incorporated herein by reference. Conveyance of these lands shall be by Special Warranty Deed in form and substance acceptable to Erie. If not already conveyed, conveyance shall be made in accordance with “Exhibit A-2.” Owner shall also furnish at the time of conveyance, at its own expense, an ALTA title insurance policy for all interest(s) so conveyed, subject to acceptance by Erie. The property shall be free and clear of mortgages, debts, liens, taxes and encumbrances except for ad valorem real property taxes up to the date of dedication to Erie, but subject to all easements, rights-of-way, reservations, restrictions of record.

**IV. PUBLIC AND COMMON FACILITIES IMPROVEMENTS**

Owner 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 the Property as required for the Development (“Public Improvements” and “Common Facilities”). Owner agrees to dedicate said Public Improvements to Erie, or others for the Common Facilities, in accordance with Section’s V and IX, and give a two (2) year guarantee for all improvements constructed as required under this Agreement and each Phase Development Agreement.

Construction and installment of all Public Improvements and Common Facilities required for the Development shall be addressed in the Phase Development Agreements required for each separate Phase (“Phase” as defined in Section IX.A) of the Development.

**A. Construction Standards.**

Owner 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," (the "Standards"), ordinances and regulations. The Standards, and the Erie Municipal Code (the "Code") applicable to each Phase of development shall be those in effect at the time application is made for final plat on each such Phase.

**B. Engineering and Consulting Services.**

Owner 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 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.**

Owner shall furnish to the Town Administrative Official the required fees and complete plans for all improvements and each development Phase. 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 as established by Erie, and Erie shall notify Owner 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, Owner shall obtain a Public Improvement Permit ("PIP") from Erie as provided in the Code. The PIP application, fees, plans, specifications and any other data filed by Owner will be reviewed by Erie. If found to be complete and in accordance with Erie Standards and other pertinent requirements, Erie will issue Owner the Public Improvement Permit. Owner 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 Owner 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 the Town Standards. In addition, Owner 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. Owner 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 Owner'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. Owner shall reimburse Erie 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. Copies of inspection documents shall be made available upon request of the Town. 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 Standards as established and accepted by Erie.

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

Prior to commencement of construction of Public Improvements that require additional rights-of-way to be acquired, Owner 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. Owner 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. Erie will assist in acquiring the necessary easements and right-of-way, however if condemnation is required the Town may authorize the Metro District to use eminent domain to complete the acquisition.

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 Owner's expense. Owner shall also furnish, at its own expense, an ALTA title insurance policy for all interest(s) so conveyed, subject to acceptance by Erie.

Owner shall be responsible for obtaining the following:

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

**G. Street Improvements.**

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

**H. Sidewalk Improvements.**

Owner 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.**

Owner will furnish and install at Owner’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.**

Owner shall furnish complete plans for street lighting to be reviewed and accepted by Erie. The total cost of street light installation shall be Owner's obligation. Owner shall cause, at its own expense, Xcel Energy to install all required street lighting pursuant to Xcel Energy 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. Street lights and associated infrastructure shall be owned and maintained by Xcel.

**K. Water Improvements.**

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

**L. Wastewater Improvements.**

Owner 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 Owner in accordance with drawings, plans and specifications accepted by Erie. Unless otherwise approved by Erie, over lot grading shall not be initiated by Owner until Erie approves drainage improvement plans by the issuance of the PIP. Owner shall provide temporary erosion control during and after over lot grading until the site is stabilized.

2. Drainage improvements for each lot shall be constructed by the owner of said lot in accordance with accepted construction plans. Owner shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of lots within the Development.

3. Owner shall be responsible for obtaining a Colorado Department of Public Health and Environment "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction. A copy of this permit shall be submitted to Erie.

4. Owner shall be responsible for obtaining a Town of Erie "Grading and Stormwater Quality Permit" per Erie Standards.

**N. Landscape Improvements.**

For public lands, Common Facilities, and rights-of-way, Owner shall furnish Erie complete final landscape and irrigation plans in conformance with Erie's Standards for each Phase and obtain approval by Erie prior to commencement of construction. Owner 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 (each a "Lot"). For all development and common facilities other than single-family detached development, Owner 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.**

Owner 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 Title 10 of the Code.

**V. IMPROVEMENT ACCEPTANCE**

The Improvement Acceptance requirements contained herein shall apply and be a part of each Phase Development Agreement.

**A. Construction Acceptance.**

No later than ten (10) days after improvements are substantially complete, Owner shall request of the Town Administrative Official an inspection by Eric. If Owner does not request this inspection within ten (10) days of completion of improvements, Eric may conduct the inspection without the approval of Owner. Owner shall provide Eric with complete “as-built” drawings in a form as defined in the Town of Erie Standards. If Owner has not completed appropriate residential Phase or commercial Phase improvements as provided for in this Agreement, Eric may exercise its right to secure performance as provided in Section X.C of this Agreement. If improvements completed by Owner 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 Owner of the repairs, replacements, construction or other work required to receive “construction acceptance”. Owner shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Owner completes the repairs, replacements, construction or other work required, Owner shall request of the Town Administrative Official a re-inspection of such work to determine if construction acceptance can be granted, and Eric shall provide written notice to Owner of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Owner's expense. If Owner does not complete the repairs, replacements, or other work required within thirty (30) days of said notice, Eric may exercise its rights to secure performance as provided in Section X.C. of this Agreement. Eric reserves the right to schedule re-inspections. No “Certificate of Occupancy” will be issued by Eric prior to Construction Acceptance.

Additionally, for Common Facilities, the Owner shall include the HOA, metropolitan district, or final property owner in the final inspection procedures and provide Eric with written acceptance of the Common Facility for maintenance from this final owner.

**B. Maintenance of Improvements.**

**1. Warranty**

Owner shall provide Eric 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, Owner 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 Eric, shall become necessary, except that Eric shall be responsible for snow removal on public streets. If within thirty (30) days after Owner's receipt of

written notice from Erie requesting such repairs or replacements, Owner has not completed such repairs, Erie may exercise its rights to secure performance as provided in Section X.C of this Agreement.

**3. North Portion of Erie Parkway**

Notwithstanding Sections (1) and (2) above or anything to the contrary in this Agreement, Owner shall have no responsibility to provide any surety (including any guarantee or letter of credit as may be contemplated by Section VI(B) below), nor shall Owner have an obligation to maintain, the North Portion of Erie Parkway (defined below) after Final Acceptance.

**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, Owner 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 Owner in writing of all deficiencies and necessary repairs. After Owner has corrected all deficiencies and made all necessary repairs identified in said written notice, the Town Administrative Official shall issue to Owner a letter of “final acceptance”, as soon as reasonably possible thereafter. If Owner 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 Owner 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 of Erie Standards, then the Owner 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 Owner 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 Owner shall reimburse Erie within sixty (60) days after receipt of written demand and supporting documentation from the Town Administrative Official. If Owner fails to so reimburse Erie, then Owner shall be in default of the Agreement and Erie may exercise its rights under Section X.C of this Agreement.

**VI. IMPROVEMENT GUARANTEE**

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

This Agreement sets forth the general terms and obligations for the Owner's completion of the Public Improvement and Common Facilities required for the Development. Certain Public Improvement and Common Facilities as required for the Development are set forth in Section IX, herein below. Additional Public Improvement and Common Facilities as may be required for each Phase (or as are required in Section IX and are located in that Phase) shall be contained in the Phase Development Agreements entered into for each Phase. Each Phase Development Agreement shall list all Public Improvement and Common Facilities required for that Phase separately, along with a total cost for the Public Improvement and Common Facilities for the purpose of establishing the Improvement Guarantee for that Phase Development Agreement. The requirements as set forth in this Section VI shall apply to and be a part of each Phase Development Agreement.

**B. Improvement Guarantee.**

Owner shall submit to Town Administrative Official an Improvement Guarantee for all Public Improvements and Common Facilities for the Final Plat of that Phase. Said guarantee may be in cash or a letter of credit, and, if a letter of credit, shall be in the form as set forth on "Exhibit B-1."

1. Said guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1), shall renew automatically unless written notice of non-renewal is received at least 60 days prior to expiration. 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 Phase pursuant to the master Final Plat and the plat for that Phase shall be calculated as the total estimated cost including labor and materials of all Public Improvements and Common Facilities to be constructed in that Phase of the Development. The total minimum amounts are as follows:
  - a) Prior to commencement of construction of Public Improvements and Common Facilities improvements in each Phase: 115% of the amount(s) required for that Phase.
  - b) Upon "substantial completion construction acceptance" of the public improvements in that Phase through "final acceptance": 25% of the amount(s) required for that Phase. The Town will release the guarantees for the wet utilities separate from the roadway improvements on a phased basis as shown in the Phase Development Agreement.
  - c) Upon "substantial completion construction acceptance" of common facilities: 0%.
  - d) After Final Acceptance of Public Improvements: 0%.
  - e) Upon completion and final acceptance of some, but not all Public Improvements and Common Facilities, the letter of credit may be partially

reduced to reflect the completion and final acceptance of such improvements and/or facilities.

3. In the event the Public Improvements and Common Facilities are not completed by the Owner within the time period set forth in this Agreement or in the manner as required by this Agreement, Owner shall be in default of this Agreement.

In addition to any other remedies it may have, Erie may, at any time prior to Final Acceptance, draw on any letter of credit or Improvement Guarantee received pursuant to this Agreement and/or any Phase Development Agreement.

Prior to drawing on any letter of credit or Improvement Guarantee received pursuant to this Agreement and/or any Phase Development Agreement, Erie shall provide the Owner written notice as provided for in Section X.C., with the exception that in the event that a.) the Owner fails to extend or replace the letter of credit at least sixty (60) days prior to expiration of such letter of credit, b.) the letter of credit is set to expire, c.) Erie receives notice that the letter of credit will not be renewed, d.) the entity issuing the letter of credit becomes non-qualifying, or e.) the letter of credit, in the sole determination of Erie, is at risk of being lost as a guarantee, then, in any of these events, the Owner shall be in default of this Agreement and Erie may immediately draw on the letter of credit for the full amount of the letter of credit. In such event as identified herein, no notice or prior notice shall be required prior to drawing on the letter of credit.

The Town may hold the funds obtained from the letter of credit until the public improvements and common facilities as set forth on "Exhibit B" are completed and accepted by the Town. In the event the public improvements and common facilities are not completed by the Owner within the time period set forth in this Agreement, the Town may, at its sole discretion, use any or all of the funds to complete some or all of the Public Improvements and Common Facilities. In any event, the Town shall have no requirement to complete any or all of the Public Improvements and Common Facilities. Owner is further subject to the provisions of Section X.C. of this Agreement, as well as the suspension of development activities by Erie including, but not limited to, the withholding of building permits and certificates of occupancy.

In the event that the cost of the Public Improvements and Common Facilities and construction is reasonably determined by Erie to be greater than the amount of the security guarantee provided by the Owner to the Town, then Erie shall furnish written notice to Owner of the condition, and within thirty (30) days of receipt of such notice Owner shall provide Erie with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance. If Owner fails to provide Erie

with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance, then Owner 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 Erie including, but not limited to, the withholding of building permits and certificates of occupancy

If Erie draws on the letter of credit to correct deficiencies or complete Public Improvements and Common Facilities, any portion of said guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Owner within thirty (30) days after Final Acceptance of said Public Improvements and Common Facilities.

**C. Phasing.**

The completion of each Phase of Development, including public, common facilities, and private improvements, shall be in accordance with said plan and completion schedules or Erie approved modifications thereof. All modifications shall be in writing and signed by the Town Administrative Official.

**VII. OVERSIZING AND REIMBURSEMENT**

Erie may require Owner to build utility lines and other infrastructure large enough to serve property other than Owner’s (oversizing). Erie may also require Owner 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 Owner for Qualifying Public Improvements Constructed by Owner.**

Owner 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 use its best efforts to require as a condition of approval, a proportional reimbursement to Owner as will be described in a future Phase Development Agreement. Nothing contained in this Agreement or in a Phase Development Agreement shall operate to create an obligation on the part of Erie to pay or reimburse any costs to Owner 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 as provided above.

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

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

## VIII. MISCELLANEOUS CONSTRUCTION STANDARDS

### A. **Trash, Debris, Mud.**

Owner agrees that during construction of the Development and improvements described herein, Owner 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, Owner 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 Owner does not abate said nuisance, Erie may abate the nuisance and/or correct any drainage or injury without notice to Owner, at Owner's expense. Owner 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 Owner does not abate, or if an emergency exists, Erie may abate at Owner'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.

### C. **Construction Traffic Routing Plan.**

Owner shall submit a Construction Traffic Routing Plan for each Phase of the Development for inclusion in each respective development agreement.

## IX. SPECIAL PROVISIONS

### A. **Phasing.**

The Owner may develop the Property in separate filings or phases (each such filing or phase being a "Phase" hereunder), and the Owner shall determine the sequence of development of each Phase in accordance with the provisions of the Agreement. The final plat for each Phase shall be in general conformance with the approved preliminary plat for the property.

1. A maximum of eight hundred seventy-five (875) dwelling units may be constructed on the Property.
2. The Owner and Erie shall enter into a Phase Development Agreement and/or site plan agreement simultaneously with the recordation of a final plat and/or site plan for each Phase with respect to Public Improvements and Common Facilities. The Public Improvements and Common Facilities shall be described in each Phase Development Agreement.

- 3. Access acceptable to Erie and the Mountain View Fire Protection District shall be maintained at all times during construction.
- 4. All construction traffic shall enter the site from Erie Parkway. No construction traffic shall utilize Arapahoe Road for access purposes unless directed otherwise by the Public Works Director.

**B. Flatiron Meadows Planned Unit Development (“PUD”)**

The Owner and Erie acknowledge the PUD approved concurrent with the preliminary plat. The Owner shall be responsible for recording the PUD prior to the first final plat allowing residential development. In the event there is any discrepancy between the PUD or the Agreement and the Code, the provisions of the Code shall govern. Any provisions that are not specifically addressed in the PUD or the Agreement, shall comply with the Code.

The master Final Plat is in compliance with the PUD and all final plats for each Phase shall be in compliance with the approved PUD.

**C. Overlot Grading**

Overlot grading may be initiated by Owner at such time as Erie approves overlot grading plans by the issuance of grading and storm water permits.

**D. [Reserved].**

**E. Transportation.**

**1. Erie Parkway**

The Owner shall be responsible for the design and construction of Erie Parkway from 119<sup>th</sup> Street to 109<sup>th</sup> Street in accordance with the requirements as set forth herein below in this Paragraph IX. E.1. The Town shall allow the issuance of up to a maximum of 39 residential building permits for Phase 1 of the Development. No further residential building permits shall be issued for any subsequent Phase of the Development until items IX. E.1.a, c. and e. have been constructed and completed. The reimbursement due Owner is outlined in “Exhibit C.”

The Traffic Impact Analysis referenced below is the Flatiron Meadows Traffic Impact Analysis (Revised), dated July 8, 2008, created by LSC Transportation Consultants, Inc. and as amended by the Traffic Analysis Report completed by Aldridge Consultants, Inc. dated February 14, 2014.

- a. Improvements from the existing roundabout at 119<sup>th</sup> Street west to the east side of Meadow View Parkway shall be completed with Phase 1, shall include:
  - i. Detached 8-foot sidewalk on both sides;
  - ii. Minimal left turn lanes at Harvest Point Drive and Meadow View



Owner's obligations for such construction, the Town shall deposit with a title company selected by Owner an amount equal to 100% of the estimated cost to complete the North Portion of Eric Parkway. Such amount shall be evidenced by the final and accepted bid for the work. Such 100% shall be held in escrow pursuant to an escrow agreement reasonably acceptable to the Town, Owner and such third party title company. Such escrow agreement shall provide that Owner may draw upon the escrowed funds from time to time (but no more often than once each calendar month) to pay bills and invoices incurred by Owner in completing the work; provided, however, that no such draws shall be disbursed by such title company until (i) after the Town's approval (not to be unreasonably withheld) of the draw request (which shall be delivered to the Town concurrently with its delivery to title company by Owner) (the "**Draw Request**"); provided, however, if the Town does not disapprove of the Draw Request within ten (10) business days after receipt it shall be deemed approved, and (ii) the Draw Request is accompanied by copies of invoices, receipts, cancelled checks, remittance advices or other such evidence of the costs paid (or to be paid out of escrow) or incurred by Owner.

- e. Improvements from the existing 111<sup>th</sup> Street to 109<sup>th</sup> Street shall be completed with Phase 1, shall include:
  - i. Widening and/or replacement of the two Leyner-Cottonwood Ditch crossing bridges;
  - ii. A roadside ditch and/or stormwater system to convey stormwater to existing stormwater facilities;
  - iii. Re-vegetation of disturbed areas with a Town approved native seed mix;
  - iv. Striping.
- f. Improvements from the existing 111<sup>th</sup> Street to 109<sup>th</sup> Street to be completed prior to the issuance of the 200<sup>th</sup> building permit or as determined by a level of service D, shall include:
  - i. One 12-foot through lane in each direction;
  - ii. 4-foot asphalt shoulder in each direction;
  - iii. Relocation and piping of the Leyner-Cottonwood Ditch to accomplish items f.i and f.ii above;
  - iv. A roadside ditch and/or stormwater system to convey stormwater to existing stormwater facilities;
  - v. Re-vegetation of disturbed areas with a Town approved native seed mix;
  - vi. Striping.

The Town acknowledges that the foregoing subsections (a), (b), (c), (e) and (f) have received Construction Acceptance prior to the Effective Date.

## 2. Flatiron Meadows Boulevard

The Owner shall be responsible for the design and construction of the full

pavement section, including landscaping and landscaping within the adjacent landscape buffer, of an 80-foot wide collector roadway for Flatiron Meadows Boulevard from Erie Parkway to the southern boundary of the Property.

Flatiron Meadows Boulevard is currently constructed from Erie Parkway to Front Range Road. The remaining unbuilt portion of Flatiron Meadows Boulevard (from Front Range Road to the southern boundary of the property) shall be constructed in its entirety, concurrent with any future phase of the Development lying east of the unbuilt portion of Flatiron Meadows Boulevard. No building permits shall be issued for phases lying east of the unbuilt portion of Flatiron Meadows Boulevard prior to Construction Acceptance of this remaining portion of Flatiron Meadows Boulevard.

### **3. 111<sup>th</sup> Street**

- a. Owner shall be responsible for the design and construction of 111<sup>th</sup> Street from Erie Parkway to the southern end of the property in conjunction with any development west of the Prince Tributary. 111<sup>th</sup> Street will be constructed as a Rural Arterial with the addition of a five foot wide sidewalk on the west side.
- b. The Owner shall be responsible for the design and construction of 12-foot turn lanes at the intersection of 111<sup>th</sup> Street and Arapahoe Avenue as identified by the Traffic Impact Analysis. The Owner shall also be responsible for the design and construction of all modifications to the existing traffic signal (of whatever nature) and all geometric and operational improvements (turning lanes, extensions of lanes, median modifications, etc.) that are caused by the extra traffic generated from Flatiron Meadows development at the intersection of 111<sup>th</sup> Street and Arapahoe Avenue. All improvements to the intersection as required herein shall be constructed prior to the issuance of the 700<sup>th</sup> residential building permit for the Development or when warranted by a traffic study, whichever occurs first.

### **4. Vertical Curb**

The location of Vertical curb shall be shown in each Phased Development Agreement.

## **F. Public and Private Land Provisions.**

### **1. Parks and Open Space**

The park and open space land dedications required in the Code will be met by Owner at subdivision based on the number of units approved with the preliminary plat. All parks and open space costs discussed in this Section shall escalate according to the ENR Construction Cost Index, which escalation shall start upon recordation of this Agreement. Owner shall receive parks and open space credit for lands that comply with the Code.

Public access easements shall be granted on the plat or by separate document at the time of final plat approval for pocket parks and private open space areas (excluding private amenity facilities) that are held in private ownership and used for public purposes.

**a. Community Park.**

The Owner shall provide a fee in-lieu of land dedication for 4.33 acres of Community Park to Erie in compliance with the approved preliminary plat and the Code. The fee in-lieu payment shall be based on the number of residential units permitted by each final plat and shall be paid prior to the recordation of each final plat allowing residential development.

**b. Neighborhood Park.**

The Owner shall be responsible for the dedication of 7.3 acres of land for a Neighborhood Park in the general location as shown on the Preliminary Plat. Erie shall be responsible for approving the amenities/program of facilities within the park. Dedication can occur at the time of the first plat or up to the required time line below for the below stated construction timing.

Prior to the completion of the fourth phase or the 250<sup>th</sup> unit, the Owner shall grade (to the satisfaction of Erie), seed with Town approved seed mix, provide a temporary irrigation system to establish grass per Town Standards, and stub out water and sanitary sewer lines. The Owner shall provide and implement a tree protection plan for the existing mature trees on the site, prior to commencement of overlot grading of the property.

Prior to commencement of construction of the Neighborhood Park, and following notice by the Erie, the Owner shall pay for the following: water tap fees, sewer tap fees, and raw water dedication fees necessary for the construction, maintenance and upkeep of the park. At the same time, the Owner shall also pay all costs associated with the following: final grading; soil preparation; the purchase and installation of grass; the purchase and installation a permanent irrigation system (including electrical facilities for said system); landscaping within all adjacent right-of-ways; and, landscape buffers. All landscaping and landscape buffers shall be in conformance with approved landscape construction plans, the Standards and the Code.

**c. Pocket Parks.**

The Owner shall be responsible for the design, construction and dedication of Pocket Parks on the Property in accordance with the Code. The improvements required for each Pocket Park will be determined at the time of final plat approval for the Phase of the Property in which each Pocket Park is located. The minimum cost of each Pocket Park shall be \$175,000 including all active and passive improvements, landscaping and

hardscape. The minimum cost shall not include land value, design fees, water tap and raw water fees.

The improvements within the Pocket Park(s) located in any one Phase shall be substantially complete prior to the issuance of fifty percent of the building permits in the respective Phase.

Lots abutting Pocket Parks shall not be issued building permits until Erie determines the installation of the Pocket Park improvements has been completed to the Erie's satisfaction.

**d. Open Space (Town Dedicated).**

The Owner shall be responsible for the design, construction and improvements to Town dedicated Open Space, including but not limited to; finished grade, water tap and raw water fees, installation of temporary and/or permanent irrigation systems, landscaping (including replacement trees), a minimum of one pedestrian bridge or low water crossing of the Prince Tributary, construction of the spine trail (8-foot concrete + 4-foot crusher fines) connecting Arapahoe Ridge with the spine trail within the 30-foot landscape buffer along the south side of Erie Parkway, and the construction of other connecting trails.

Construction of the spine trail shall be completed in phases contemporaneously with the installation of the infrastructure for the Phase within which the trail is situated. Owner shall make reasonable efforts to complete construction of the spine trail prior to the issuance of the 350<sup>th</sup> building permit. Owner shall dedicate an easement for the spine trail to the Town upon 30 days notice by the Town. All trails shall be constructed to Town Standards.

Lots backing onto Town dedicated Open Space shall not be issued building permits until improvements, including landscaping have been completed to Erie's satisfaction.

**e. Erie Parkway 30-Foot Landscape Buffer**

The Owner shall install landscaping within the 30-foot landscape buffer in general conformance with the approved Landscape Plan.

Installation of 150 lineal feet of landscaping on the east side of the entrance (the relocated 111<sup>th</sup> Street) to the Development shall be concurrent with the first Phase of development. Installation of the balance of the 30-foot landscape buffer shall be concurrent with the adjacent Phase of development.

**2. Private Amenity Facilities**

Owner may construct one or more private amenity facilities on the Property.

These facilities may include pools, clubhouses, a recreation center, parking lots, landscaping, etc., to be determined at the Owner's discretion at the time of any final plat approval. These facilities and related improvements shall be owned and maintained by the Metro District or a Homeowner's Association ("HOA") and shall not receive any credit towards meeting Erie's dedication requirements for parks and open space.

**a. Improvements to Private Tracts.**

The Owner shall be responsible for all improvements to be located on all privately owned (Metro District/HOA) tracts. Trails and landscaping within these tracts shall be constructed to Erie Standards. Owner shall be responsible for water tap and raw water fees, installation of temporary and/or permanent irrigation systems and landscaping (including replacement trees).

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

The maintenance of public and private landscape, park, open space, trail, and irrigation improvement areas that will be maintained by Erie and/or the Metro District/HOA shall be determined with each Phase and be described in each Phase Development Agreement.

**H. Fire Protection District Tract.**

The fire facility tract shall be deeded to the Mountain View Fire Protection District, in a form acceptable to the district and concurrent with the recordation of the final plat in which the fire facility tract is located.

The Owner shall overlot grade, re-vegetate with native grasses, and stub out water and sanitary sewer service lines to said tract. The Owner shall be responsible for maintenance of said tract until ownership has been transferred to the fire district.

**I. School District Tract.**

Except as otherwise agreed to between the Owner and the Boulder Valley School District, RE-2, the Owner acknowledges and agrees to comply with the Intergovernmental Agreement dated June 28, 2011 between Erie and the Boulder Valley School District, RE-2, as the same may be amended from time to time.

1. The school tract shall be deeded to the Boulder Valley School District, RE-2, in a form acceptable to the district and concurrent with the recordation of the final plat in which the school tract is located. The Owner shall overlot grade, re-vegetate with native grasses, stub out water and sanitary sewer service lines, and provide the raw water fees for the school as approved by the Public Works Director.
2. The Owner shall be responsible for maintenance of said tract until ownership has been deeded to the school district.

**J. Maintenance of Property.**

The Owner shall be responsible for erosion control and vegetation and weed management on the Property.

**K. Fencing and Screening.**

If fencing is installed on any single-family residential lots or multi-family tracts adjacent to parks and open spaces, the fencing shall be limited to low (4 foot high) open (50 percent) fencing. The finished side of the fence shall face the park and/or open space.

**L. Sanitary Sewer.**

**1. West Side Interceptor**

Owner understands that the West Side Interceptor constructed by Erie is due cost recovery at a rate of \$1,500 for each Single Family Equivalent (“SFE”). Owner shall reimburse Erie prior to recordation of a final plat for each Phase allowing single family residential Development. Reimbursement for the multi-family tracts shall be collected prior to Site Plan approvals. The amount for the school tract and fire protection district tract shall be collected when a water and sewer tap application is made. The reimbursement is outlined in “Exhibit C.”

**2. Extension to adjacent properties**

The design of the onsite sanitary sewer system will take into account all adjacent properties. The sanitary sewer mains shall be extended to insure that development of adjacent properties can connect to the sanitary sewer system. In the event the sewer mains within the development must be oversized (greater than 8-inches) to account for the development on adjacent properties, Erie will assist with cost recovery when those other properties develop. Erie has no obligation to reimburse Owner for oversizing sanitary sewer lines.

**3. Onsite Sanitary Sewer System**

The onsite sanitary sewer system will be designed to provide sanitary sewer to all lots and tracts within the development. The phasing of construction shall insure that each development Phase has sanitary sewer.

**4. Lift Station**

The Owner shall be responsible for the demolition and removal of the Town owned lift station located adjacent to Erie Parkway. The property on which the lift station is located shall be incorporated into the adjacent right-of-way, 30-foot landscape buffer and open space area to the satisfaction of Erie. Erie shall provide the CDPHE permit. Owner shall provide all other permits, a Phase I environmental study, an engineering report and costs as may be required for demolition and removal of the lift station. Owner shall demolish and remove the lift station and reclaim the site. Owner shall not be deemed to have assumed any environmental risk for the demolition, disposal and removal of the lift station, unless due to the acts of Owner.

### **5. North Water Reclamation Facility Interceptor**

Owner understands that the North Water Reclamation Facility Interceptor constructed by Erie is due cost recovery at a rate of \$410.00 for each Single Family Equivalent (“SFE”). Owner shall reimburse Erie prior to recordation of a final plat for each Phase allowing single family residential Development. Reimbursement for the multi-family tracts shall be collected prior to Site Plan approvals. The amount for the school tract and fire protection district tract shall be collected when a water and sewer tap application is made. The reimbursement is outlined in “Exhibit C.”

### **M. Utilities.**

The Owner shall be responsible for placing all existing and proposed utilities on or adjacent to the Property underground.

### **N. Drainage Improvements.**

#### **1. Prince Lake # 2**

Only to the extent that the Development has a direct impact on the following shall each of the following be completed (as no development of adjacent or other lands shall require the following to be completed). The Drainage Report submitted with the Preliminary Plat identified the need for improvements to Prince Lake #2 to insure the safety of the Development due to the cascading effect of potential upstream dam failures. This reservoir has a jurisdictional dam which requires the State Engineer’s Office review and approval prior to any building permits being issued within the dam breach limits and improvements made to the reservoir. Prince Lake #2 is owned and operated by Boulder County Open Space. Erie, Urban Drainage and Flood Control District (“UDFCD”), and Boulder County Open Space have been working on an Intergovernmental Agreement to allow improvements to be made to Prince Lake #2 to incorporate the needs of the Development and to include storm water detention. This Intergovernmental Agreement is contingent upon Owner funding the improvements, to the extent required by the State Engineer’s Office in any update of the Drainage Report. If required, these improvements will be required with the Phase that abuts and is effected by the upstream dam. Owner is responsible for the cost of the improvements. The construction of the improvements will be contracted through UDFCD based upon an agreement between Erie and UDFCD. The Owner will be notified prior to advertising for construction bids with an estimated engineers cost estimate. Owner will provide funding for the entire engineering and construction cost, including testing and engineering services during construction. Notwithstanding anything to the contrary set forth in this paragraph, Erie shall be satisfied with the improvement plans for Prince Lake #2 upon approval of such plans by the State Engineer’s Office and/or UDFCD.

#### **2. Prince Tributary Improvements**

Prince Tributary is within a regulated flood plain, and is identified as a regional drainage channel on Erie's Outfall Systems Plan. Owner is responsible for improvements to the channel which passes historic flows through the Property. The channel must be constructed as a natural channel with drop structures to control erosion that have a natural appearance. The channel must meet both UDFCD requirements to qualify for maintenance eligibility and Federal Emergency Management Agency ("FEMA") requirements. A Conditional Letter of Map Revision ("CLOMR") has been approved by FEMA. After improvements are complete a Letter of Map Revision ("LOMR") must be approved by FEMA prior to any lots being final platted that may be impacted by the existing flood plain, however, Erie will allow infrastructure improvements within the CLOMR area at the owners risk.

### **3. Regional Detention Ponds**

There are two regional detention ponds identified in Erie's outfall Systems Plan within the Property, one on the north end of the site and the other approximately in the middle of the site, east of the Prince Tributary. The northern pond only serves the site, and is solely the responsibility of the Owner; the one near the middle of the site will also serve a drainage basin including a portion of the proposed Rex Ranch subdivision and existing development in unincorporated Boulder County. Cost recovery for this pond will be based on the proportional area contributing from the Property and the proposed Rex Ranch subdivision, the area tributary from existing unincorporated Boulder County development will not be used for cost recovery calculations. Cost recovery from the proposed Rex Ranch subdivision will be incorporated into a final plat development agreement. The reimbursement is outlined in "Exhibit C."

Both ponds must be designed and constructed in accordance with Erie's Outfall Systems Plan and meet UDFCD requirements to qualify for maintenance eligibility. Any additional maintenance required shall be provided by the Owner. The size and number of ponds may be adjusted with Erie and UDFCD approval.

## **O. Water.**

### **1. Onsite Water Distribution System**

Based on the water distribution analysis for the Property, the Owner is responsible for constructing the water distribution system for the development to insure that fire flows and peak water demand is met. The construction of the system will be phased to insure that the system is looped during all Phases of Development.

### **2. New Offsite Improvements**

Offsite improvements required to serve the development will be the responsibility of the Owner. In the event other developments benefit from the offsite improvements, Erie will assist with cost recovery when such water

lines are oversized (greater than 12-inches) when other properties benefiting from the oversized lines develop. Erie has no obligation to reimburse Owner for oversizing water lines.

**3. Existing Offsite Improvements**

Owner shall reimburse Erie \$51,274.87 for the construction of the existing 12-inch waterline within Erie Parkway. Reimbursement shall be made prior to the recordation of the second final plat allowing residential development. The reimbursement is outlined in "Exhibit C." The Town acknowledges that such \$51,274.87 has been paid prior to the Effective Date.

**P. Entry Monuments.**

Owner shall be allowed to construct entry monuments in accordance with Title 10 of the Code.

**Q. Oil and Gas Well Sites.**

All existing oil and gas well sites/facilities and all future oil and gas well sites/facilities on the Property shall meet access requirements, be screened and integrated into open space and park areas within the Property in accordance with the Code. Per the approved Preliminary Plat, the setback to any single-family residential lot has been reduced to 250-feet from proposed oil/gas wells and their associated production facilities.

**R. Oil and Gas Disclosure**

The Oil and Gas Well Disclosure statement "Exhibit E" shall be signed by individual lot owners with the execution of the sales contract for the property.

**S. Avigation Easements.**

Owner agrees to provide Erie with an executed avigation easement, "Exhibit F." prior to the Mayor's signature to this Agreement, which provides Erie an easement for the operation of aircraft to and from the Erie Municipal Airport, and which provides the residents of Parkland Estates, a Weld County Subdivision, an easement for the operation of aircraft to and from the private landing strip in Parkland Estates within the airspace of the Owner's Property.

**T. Northern Colorado Water Conservancy District Water Transmission Line.**

The existing Northern Colorado Water Conservancy District Water transmission line that crosses the site may be relocated, and placed into a new easement, and the existing 80-foot wide easement at Rec. # 1468332 shall be vacated, prior to recordation of any final plat affected by the line relocation.

Any relocation or work to the transmission line or within the existing easement shall require approval by the Northern Colorado Water Conservancy District prior to any final plat approval involving the relocation of the transmission line and/or easement.

**U. Leyner-Cottonwood Ditch.**

1. The Owner is responsible for obtaining necessary approvals and/or authorizations from the Leyner-Cottonwood Consolidated Ditch Company prior to working in and adjacent to said ditch.
2. The Owner shall not utilize the Leyner-Cottonwood Ditch for waste and/or storm water conveyance purposes.
3. Preservation of trees identified along the Leyner-Cottonwood Ditch shall be reserved to the maximum extent practicable.
4. The Owner shall be responsible for maintaining all lateral connections from the Leyner-Cottonwood Ditch improvements associated with the construction of Erie Parkway improvements.

**X. MISCELLANEOUS TERMS**

**A. Vested Rights.**

Erie agrees that the Final Subdivision Plat for the Flatiron Meadows constitutes 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 twelve (12) 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 master 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 either party fails to fulfill the terms and conditions of this Agreement, the other party may declare such party in default. Other than a default by the Owner under Section VI of this Agreement (or the “Improvement Guarantee” section of any subsequent Phase Development Agreement) or any other monetary, security or surety default by Owner, in the event of a non-monetary, security or surety default by either party under this Agreement the non-defaulting party shall deliver written notice to the defaulting party of such default, and the defaulting party shall have ten (10) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such ten (10) day period and the defaulting party gives written notice to the non-defaulting party within such ten (10) day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such ten (10) day period to cure such default,

provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

In the case notice has already been given by Erie pursuant to Section V.A., Section V.C., Section VIII.A., or as required by any other Section of this Agreement, the ten (10) day notice required in this Section X.C. shall be waived and no further notice shall be required.

If any default under this Agreement is not cured as described above or in Section V.A., Section V.C., or Section VIII.A., or pursuant to any other provision, the non-defaulting party shall have the right to enforce the defaulting party's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, or an action to recover damages. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement.

In the event of a default by Owner in relation to any Phase, Erie may also withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services within such Phase until the completion of the Public Improvements and Common Facilities within such Phase or the default has been cured by Owner. Any costs incurred by Erie, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by Owner shall be paid by Owner. Erie may deduct these costs from the Improvement Guarantee.

If Owner 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 in default and may immediately call the security due and draw on the letter of credit provided for in Section VI (or the "Improvement Guarantee" section of any subsequent Phase Development Agreement), as provided for therein, without notice to Owner, and may further exercise all remedies available to Erie in law and equity and as provided for herein.

**D. Insurance and Safety.**

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

**E. Indemnification and Release of Liability.**

Owner agrees 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, its officers, employees, agents,

consultants, contractors, and subcontractors (collectively, the “Owner Parties”), and/or suit, action, or claim resulting from Owner’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 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 its employees, agents, consultants, contractors, and subcontractors, or conformance with requirements imposed by Erie. Said obligation of Owner shall be limited to suits, actions, or claims based upon conduct prior to Final Acceptance by Erie of the construction work. Owner acknowledges that Erie’s review and acceptance of plans for development of the property is done in furtherance of the general public’s health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, Owner or third parties is assigned by such review acceptance.

**F. Town Consultants.**

Erie may engage consultants as reasonably required to timely process development applications for the Development, including but not limited to review of plans and inspections. The Owner shall reimburse Erie for these expenses in a timely manner.

**G. Recording Agreement.**

Erie shall record this Agreement at Owner’s expense in the office of the Clerk and Recorder, County of Boulder, State of Colorado, and Erie shall retain the recorded Agreement.

**H. 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 Property, and shall constitute covenants running with the land (provided, however, notwithstanding the foregoing, no homeowner that takes title to a residential lot or residential home shall be liable for any obligations of Owner under this Agreement). Owner shall not be released from its obligations hereunder until written notice to Erie 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. I. has been granted. This Agreement shall be recorded with the County Clerk & Recorder of Boulder County, Colorado, at Owner’s expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

**I. Assignment, Delegation and Notice.**

Owner shall provide to Erie, for consent, written notice of: 1) any proposed transfer of title to all or any portion of the Development, 2) arrangements for any

delegation or transfer of the Master Development Agreement obligations hereunder to any successor, and 3) successor's written acceptance of such Master Development Agreement 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 Second Amended and Restated Master Development Agreement and the Phase Development Agreement with respect to each such Phase in place of Owner's guaranties, security and sureties and purchaser expressly agrees to assume all obligations under this Second Amended and Restated Master Development Agreement and the Phase Development Agreement with respect to such Phase (provided, however, notwithstanding the foregoing, no homeowner that takes title to a residential lot or residential home shall be liable for any obligations of Owner under this Agreement). Until the Town provides its written consent to assignment, Owner and Owner's successors and assigns shall be jointly and severally liable for the assigned 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 obligations under this Master Development Agreement or any constituent element hereof 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.

**J. 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.

**K. 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:

Town of Erie  
Town Administrator  
645 Holbrook Street  
P.O. Box 750  
Erie, Colorado 80516-0750

Mark Shapiro  
Mark R. Shapiro, PC  
1650 38<sup>th</sup> Street, Suite 103  
Boulder, CO 80301-2624

Owner:

Bayou Development Corp.  
H. Hunter White  
38 St. Lucia Avenue  
Santa Rosa, FL 32459

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.

**L. Force Majeure.**

Whenever Owner 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 Owner.

**M. 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.

**N. Previous Agreements.**

All previous written agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation, Pre-Annexation Agreement, shall remain in full force and effect and shall control this Development, but excepting therefrom the First Amended and Restated Master Development Agreement which shall be null and void upon the Effective Date of this Second Amended and Restated Master Development Agreement. If any prior agreements conflict with this Agreement, then this Agreement controls.

**O. Title and Authority.**

Owner warrants to Erie that Bayou Development Corporation, is the record owner for the property within the Development. The undersigned further warrant to have full power and authority to enter into this Agreement.

**P. 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.

**Q. Attorney Fees.**

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.

**R. Agreement Status After Final Acceptance.**

Upon Final Acceptance by Erie of all improvements, issuance of all building permits and certificates of occupancy for the approved units authorized under the PUD, payment of all reimbursements due to Owner, release of all sureties and guaranties, completion of all Phases of the Development 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.

**S. Formation of Special District.**

Erie acknowledges the formation of the Flatiron Meadows Metropolitan District (the "District") to facilitate financing and development of the infrastructure improvements and Public Improvements for the Development, including, without limitation, development of the road and utility improvements contemplated by the development approvals. Upon Erie's approval of the master Final Plat for the Development and this Agreement, the first of the conditions precedent described in the Service Plan for the District approved by the Town on September 12, 2006, will be satisfied.

**T. Binding Obligation.**

This Agreement constitutes a valid and binding obligation of the Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditor rights.

**U. Recitals; Exhibits.**

All exhibits referred to in this Agreement are incorporated into the Agreement and are made a part hereof by this reference. The recitals set forth at the beginning of the Agreement are true and correct and are hereby incorporated into the Agreement as if fully set forth herein.

**XI. TERMINATION OF FIRST AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT DATED MARCH 28, 2012.**

This Second Amended and Restated Master Development Agreement shall replace the First Amended and Restated Master Development Agreement, dated March 28, 2012, and the First Amended and Restated Master Development Agreement shall be and hereby is declared null and void and of no further force or effect as of the Effective Date of this Second Amended and Restated Master Development Agreement.

Any references to the Original Master Development Agreement and/or First Amended and Restated Master Development Agreement contained within any Phase Development Agreement shall now refer to the Second Amended and Restated Development Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

TOWN:

OWNER:

Town of Erie, a Colorado municipal corporation

Bayou Development Corporation, a Colorado corporation

By: [Signature]  
Tina Harris, Mayor



[Signature]  
Hunter H. White III

ATTEST:

By: [Signature]  
Nancy J. Parker, Town Clerk

STATE OF COLORADO )  
                                  ) SS.  
COUNTY OF Arapahoe

Subscribed and sworn to before me this 8<sup>th</sup> day of September 2015, by H. Hunter White, III as President of Bayou Development Corporation.

Witness my hand and official seal.  
My Commission expires 3-6-17

[Signature]  
Notary Public



## EXHIBITS LIST

EXHIBIT A – MASTER FINAL PLAT

EXHIBIT A-1 – (Exhibit left intentionally blank as no Exhibit A-1 is provided with this agreement)

EXHIBIT A-2 – PUBLIC LAND DEDICATION SUMMARY

EXHIBIT B – PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT B-1 – LETTER OF CREDIT FORM

EXHIBIT C – PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

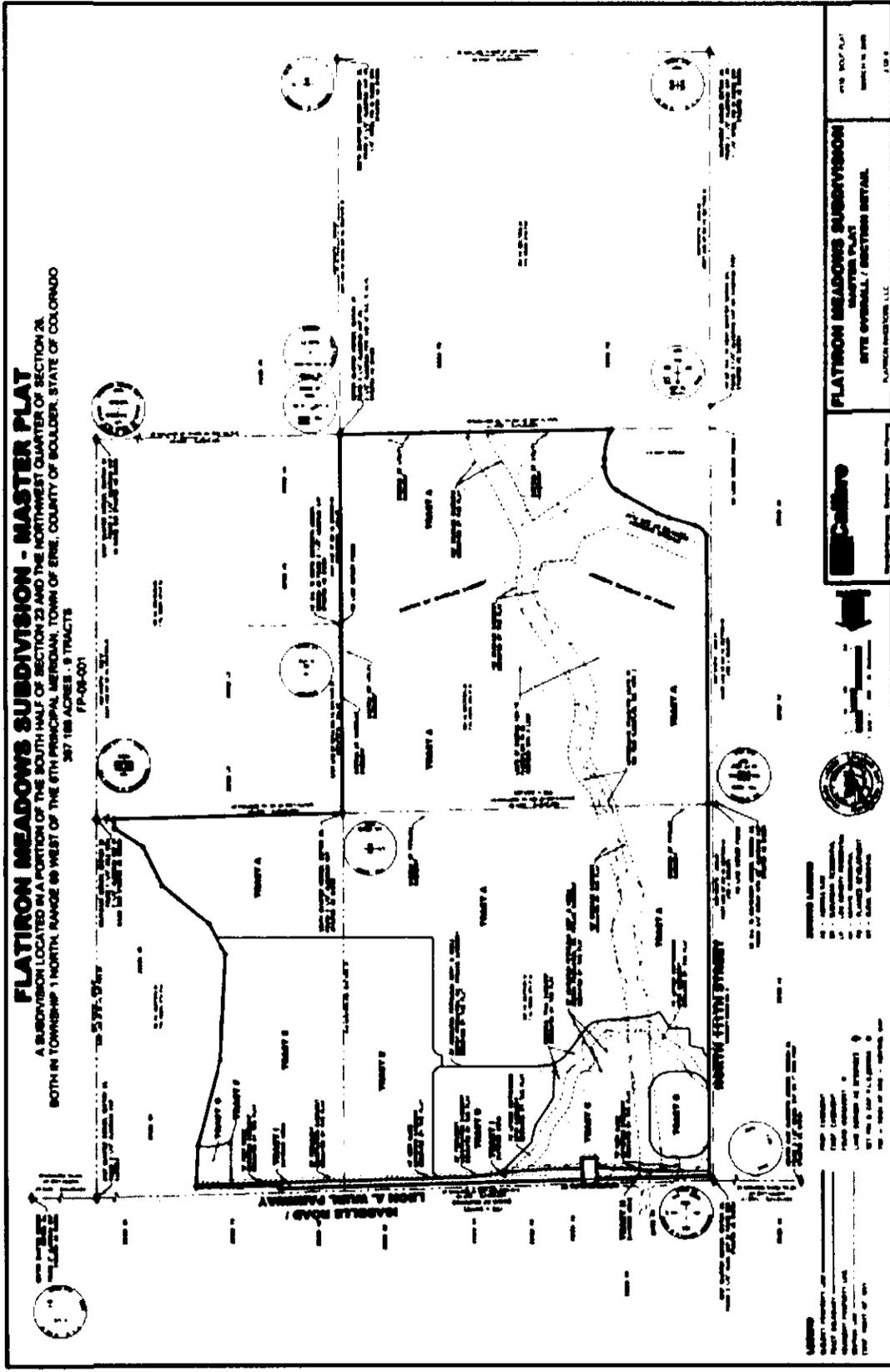
EXHIBIT D – PHASING PLAN

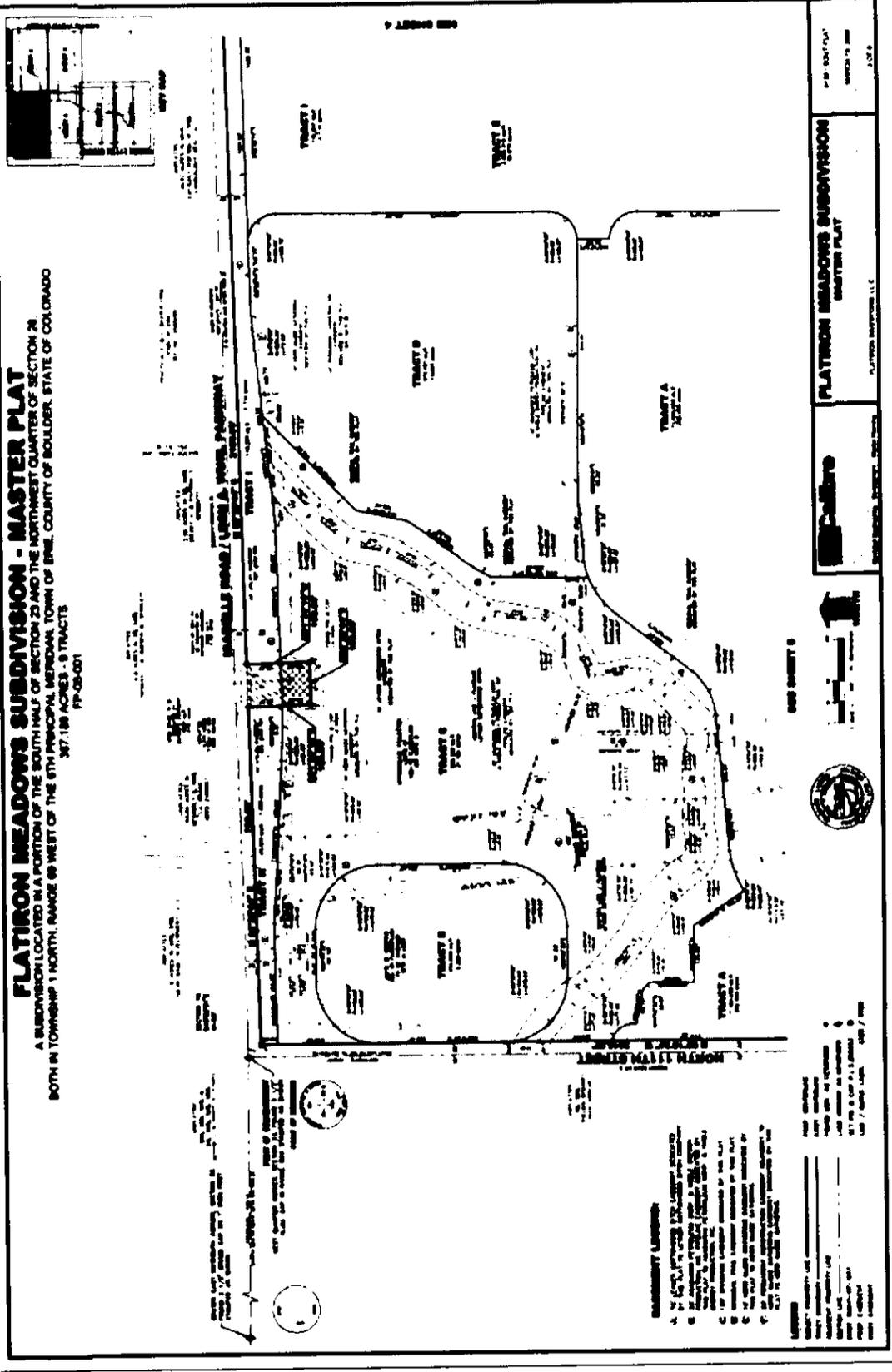
EXHIBIT E – OIL AND GAS DISCLOSURE

EXHIBIT F – AVIGATION EASEMENT

EXHIBIT G – ERIE PARKWAY CONSTRUCTION DOCUMENTS

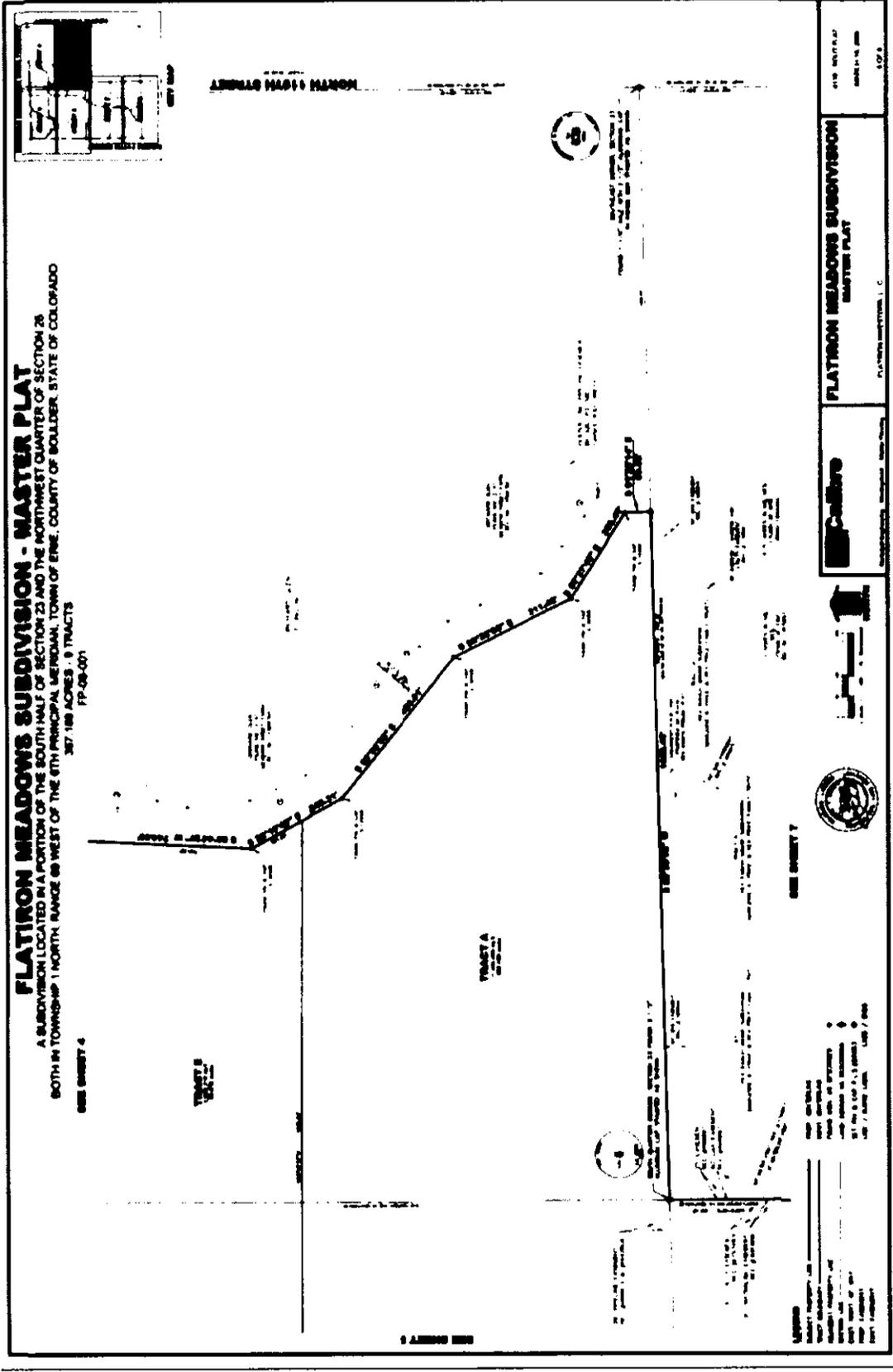












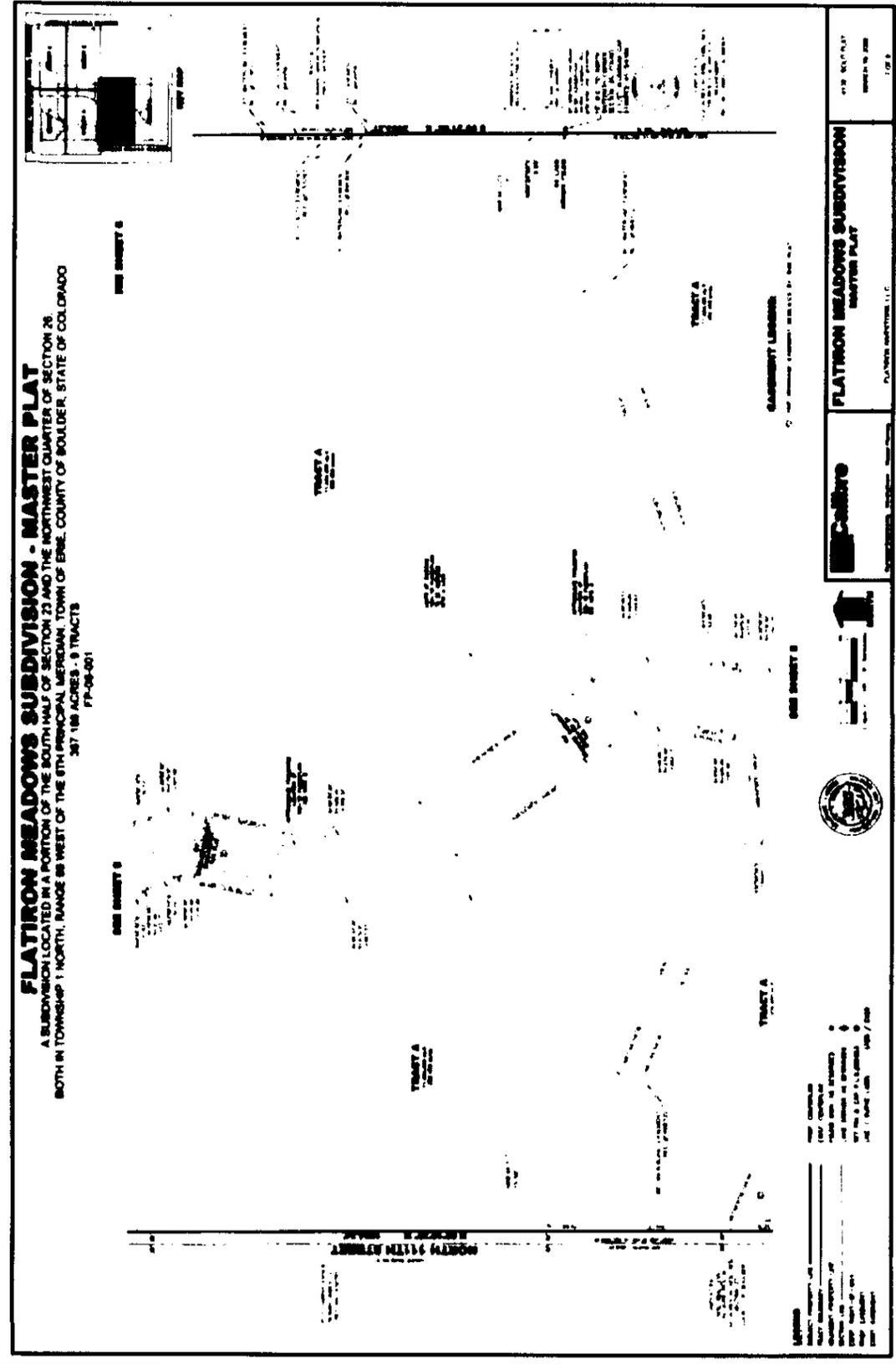




EXHIBIT A-1

(Exhibit left intentionally blank as no Exhibit A-1 is provided with this agreement)

EXHIBIT A-2  
PUBLIC LAND DEDICATION SUMMARY

(Public Land Dedications per the Flatiron Meadows Master Plat)

EXHIBIT B  
PUBLIC IMPROVEMENT SCHEDULE

(Page left intentionally blank as no public improvements are approved with this agreement)

EXHIBIT B-1  
LETTER OF CREDIT FORM  
LETTER OF CREDIT

**INSERT PROPERTY IDENTIFICATION**  
**(IF FOR 2 YEAR WARRANTY ADD APPROPRIATE ITEM: LANDSCAPING OR**  
**HARDSCAPE OR TOTAL SUBDIVISION IMPROVEMENTS)**

Town of Erie  
645 Holbrook Street  
P.O. Box 750  
Erie, CO 80516

No.  
Issue Date:  
Expiration:

Gentlemen:

We hereby authorize you to draw on us for the account of \_\_\_\_\_ up to an aggregate amount of \$\_\_\_\_\_ available by your drafts at sight accompanied by your signed statement that the above is drawn for payment of public improvements pursuant to: Town of Erie Development Agreement dated \_\_\_\_\_, entered into between the Town of Erie, Colorado and \_\_\_\_\_ (Include name of subdivision and filing number [if applicable]).

Partial Drawings are permitted. In the event of a partial drawing, the original Letter of Credit will be returned to the Town of Erie by the issuing Bank after endorsement.

Drafts must be drawn and negotiated on or before \_\_\_\_\_ (expiration date). Each draft presented under this letter of credit must state that it is drawn under (Title of Bank and identification of the Letter of Credit) and the amount endorsed on this letter of credit.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit that such drafts will be duly honored upon the presentation to the drawee.

This Letter of Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof unless at least sixty (60) days prior to any such date we shall notify you in writing by overnight courier service that we elect not to so renew this Letter of Credit.

Except as expressly provided herein, this Letter of Credit is subject governed by the Uniform Commercial Code of the State of Colorado.

Yours very truly,

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

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

Attest:

EXHIBIT C  
PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

Reimbursements due Erie:

1. The Town shall collect from the Owner, prior to the recordation of the second final plat allowing residential development, Fifty One Thousand Two Hundred Seventy Four and 87/100 Dollars (\$51,274.87) as reimbursement for the construction of the existing 12-inch waterline within Erie Parkway.
2. The Town shall collect from the Owner One Thousand Five Hundred Dollars (\$1,500) for each Single Family Equivalent as reimbursement for the Town constructed West Side Interceptor. Reimbursement shall be collected before recordation of a final plat for each Phase allowing single family residential Development. Reimbursement for the multi-family tracts shall be collected prior to Site Plan approvals. The amount for the school tract and fire protection district tract shall be collected when a water and sewer tap application is made. Owner (Fire and School District) shall be responsible for reimbursements.
3. The Town shall collect from the Owner Four Hundred and Ten Dollars (\$410.00) for each Single Family Equivalent as reimbursement for the North Water Reclamation Facility Interceptor. Reimbursement shall be collected before recordation of a final plat for each Phase allowing single family residential Development. Reimbursement for the multi-family tracts shall be collected prior to Site Plan approvals. The amount for the school tract and fire protection district tract shall be collected when a water and sewer tap application is made. Owner (Fire and School District) shall be responsible for reimbursements.

Reimbursements due Owner:

1. If any, reimbursement shall be determined with each Phase of the Development and be incorporated into each Phase Development Agreement.
2. Based on the June 2008 Master Utility Report for Flatiron Meadows there will be a total of 697 single family units contributing to the sanitary sewer when it changes size from an 8" to a 10" line. Of the 697 units, 122 are from off-site upstream properties. Owner should expect a maximum reimbursement of 17.5% for the cost of constructing the 10-inch line. This should be updated and included in the development agreement that constructs this line.
3. The Town will reimburse the Owner up to \$221,091 for Erie improvements from Meadow View Parkway to 119<sup>th</sup> Street, up to \$759,623 for improvements of Erie from 111<sup>th</sup> Street to 109<sup>th</sup> Street and up to \$140,000 for a traffic signal on Erie if warranted and constructed. The Town of Erie will pay the Owner on the following schedule up to \$670,008 at the end of year 1 after construction acceptance of the improvements, and up

to \$450,707 in year 9. The Owner will provide detailed invoices to the Town on work performed.

4. Owner may be reimbursed the proportional costs of drainage improvements from the benefited Rex Ranch property pursuant with Section IX.N.3 of this Agreement.
5. The Town will reimburse the Owner up to a maximum of \$1,400,000.00 for the North Portion of Erie Parkway improvements as defined in Section IX.E.1.d of this Agreement. Said reimbursement shall cover construction costs through Final Acceptance.

Reimbursements due others:

None.

EXHIBIT D  
PHASING PLAN

This exhibit is intentionally left blank as there is no phasing plan.

EXHIBIT E

**OIL AND GAS DISCLOSURE**

The undersigned, being the purchasers identified in that certain \_\_\_\_\_ (“Purchase Contract”) dated \_\_\_\_\_, 20\_\_, between \_\_\_\_\_, a \_\_\_\_\_, as seller, and the undersigned, as purchaser, with respect to Block \_\_, Lot \_\_, Flatiron Meadows Filing No. \_\_, Town of Erie, County of Boulder, State of Colorado (the “Lot”) do hereby acknowledge and agree as follows, which acknowledgments and agreements are given in consideration of and as a condition to Seller’s agreement to sell to the undersigned the Lot and the home to be constructed thereon:

The undersigned hereby acknowledges the current existence of oil and gas wells and related well facilities (and the possibility of additional future wells and facilities) located within the real property encompassed by Flatiron Meadows plat(s) (“Plat”). The locations of the current and possible future oil and gas wells and related well facilities are identified on Plat or Plats of the Community, recorded \_\_\_\_\_, 20\_\_, under Reception No. \_\_\_\_\_, as amended from time to time. In addition to the foregoing, other oil and gas interests affecting the property may exist which may or may not be recorded in the real property records. The oil and gas leases and other interests generally permit certain surface activity on the premises which activity may include drill sites, gathering pipelines, production sites and facilities, and access roads, all as further described in the oil and gas leases and other documents affecting the premises.

EXHIBIT F

**GRANT OF PERMANENT AVIGATION EASEMENT AGREEMENT**

**THIS GRANT OF PERMANENT AVIGATION EASEMENT AGREEMENT** is made and entered into this \_\_\_day of \_\_\_\_\_, 20\_\_\_, by and between **Bayou Development Corporation, a Colorado corporation**, whose address is, 38 St. Lucia Avenue, Santa Rosa, FL 32459, hereinafter called “Grantor” and the **TOWN OF ERIE, COLORADO, a Colorado municipal corporation**, whose address is P.O. Box 750, Erie, CO 80516, hereinafter called “Grantee”;

**WITNESSETH:**

**WHEREAS**, Grantor owns the real property (hereinafter referred to as the “Property”) over, across and through which the Grantee wishes to acquire a permanent, perpetual non-exclusive easement for avigation and aviation purposes, as described in paragraph 1, below;

**WHEREAS**, the Grantor and the Grantee have agreed to terms and conditions for the grant of the easement to the Grantee and the Grantee’s use and operation of the easement; and,

**WHEREAS**, the Grantor and the Grantee hereby wish to set forth their agreement and enter into this Grant of Permanent Avigation Easement Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the obligations, covenants and agreements herein set forth, the legal sufficiency of which the parties due hereby acknowledge, the parties hereto agree as follows:

**1. Grant of Easement.** The Grantor hereby grants to the Grantee an easement and right-of-way for the use and benefit of the Grantee and of the public appurtenant to, over, across and through the property described on “Exhibit A,” which exhibit is attached hereto and incorporated herein by this reference (herein referred to as the “Property”), for the passage of all aircraft (“aircraft” being defined for the purposes of this instrument as any device now know or hereinafter invented, used or designated for navigation of or flight in the air) by whomsoever owned and operated, in the airspace above the surface of Grantor’s Property to an infinite height above said Grantor’s Property, together with the right to cause in said airspace such noise, vibration, and all other effects that may be caused by the operation of aircraft using said airspace for landing at, taking off from, or operating at the Erie Municipal Airport and/or the Parkland Estates airport (herein after referred to as the “Avigation Easement”); and Grantor hereby waives, remises and releases the Grantee from any and all rights or causes of action which Grantor now has or which Grantor may have in the future against the Grantee, its successors and assigns, due to such noise, vibration, and other effects that may be caused by the operation of aircraft landing at, taking off from, or operating at the Erie Municipal Airport and/or the Parkland Estates airport, or the use in general of the Avigation Easement as granted herein.

**2. No Structure to Interfere with the Avigation Easement.** This Avigation Easement grants and conveys unto the Grantee, its agents, servants and employees, a continuing right and

easement to take any action necessary to prevent the erection or growth of any structure, tree or other object into the airspace, or to mark or light as obstructions to air navigation any and all structures, trees or other objects, that may interfere with the use of the Erie Municipal Airport and/or the Parkland Estates airport, together with the right of ingress to, egress from, and passage over the Grantor's Property for such purpose.

**3. No Electrical Interference.** The Grantor further agrees that this Avigation Easement and the Property described hereon is subject to a covenant whereby the Property will not hereafter be used or permitted or suffered to use in such a manner as to create electrical interference with navigational signals or radio communications at the Erie Municipal Airport and/or the Parkland Estates airport and aircraft, or which mimics airport lights, or which results in glare affecting aircraft using the Erie Municipal Airport and/or the Parkland Estates airport, or which otherwise endangers the landing, take-off, and passage of aircraft in the vicinity of the Grantor's Property.

**4. Grantor's Warranty.** Grantor warrants that he has full right and lawful authority to make the Grant of Easement herein contained, and promises and agrees to defend against any defect in title to the Property or the right to make the Grant of Easement as herein contained.

**5. Inurement.** Each and everyone of the benefits and burdens of this Permanent Grant of Avigation Easement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto.

**6. Complete Agreement.** This Permanent Grant of Avigation Easement represents the complete agreement between the parties hereto, and supersedes any and all other prior agreements, written and oral, between the parties.

**7. Headings for Convenience Only.** The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

**8. Modification.** This Permanent Grant of Avigation Easement shall be modified by a writing only, which writing must be only executed by the parties hereto in order to be effective.

**9. Controlling Law.** This Permanent Grant of Avigation Easement shall be governed under, and construed pursuant to, the laws of the State of Colorado, and the parties hereto agree to jurisdiction in the Courts of Weld County, Colorado.

**IN WITNESS WHEREOF,** the parties hereto have executed this PERMANENT GRANT OF AVIGATION EASEMENT as of the day and year first above written.

**GRANTOR:**

\_\_\_\_\_

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

(Name) \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

WITNESS my hand and official seal.

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

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

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

By: \_\_\_\_\_  
Tina Harris, Mayor

ATTEST:

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

EXHIBIT G  
ERIE PARKWAY CONSTRUCTION DOCUMENTS

