

**FLATIRON MEADOWS FILING NO. 12
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____ 2019, by and between the **TOWN OF ERIE, a Colorado municipal corporation**, PO Box 750, Erie, CO 80516, (“Erie”) and **HT Flatiron LP, a Delaware limited partnership**, 1515 Wynkoop Street, Suite 800, Denver, CO 80202 (“Owner”).

WHEREAS, Owner has submitted an application for the Flatiron Meadows Filing No. 12 (the “Final Plat”); and Said Final Plat has been approved by Erie;

WHEREAS, the Town has reviewed its Water Supply Plan, which addresses the Town's existing water obligations and its present and future water supplies. The Town has also reviewed its Conservation Plan and its Municipal Code regarding water dedications, and has determined, at its sole discretion, that it will be able to provide an adequate water supply to serve the Development water needs at full build out pursuant to C.R.S. § 29-20-301, *et seq.* As a term and condition of providing said water, Owner hereby agrees to comply with the Town's Municipal Code regarding water dedications and cash in lieu of water dedications;

WHEREAS, the regulations of Erie require that Owner enter into this 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

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 described as open space and park in “Exhibit A” 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 within thirty (30) days of the approval of the Plat. 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

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 of the Development as described in “Exhibit B” attached hereto and made part hereof (hereinafter, “Public Improvements” and “Common Facilities”). Owner agrees to dedicate said Public Improvements to Erie, or others for the common facilities, and give a two (2) year guarantee from Construction Acceptance for all Public Improvements and Common Facilities constructed.

A. Construction Standards

Owner shall construct all Public Improvements required by this Agreement in accordance with plans and specifications accepted in writing by Erie, and in full conformity with the accepted plans, Erie's “Standards and Specifications for Design and Construction of Public Improvements” (the “Standards”) ordinances and regulations. The Standards shall be those in effect on the date of the issuance of a PIP (defined below).

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. 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 Public 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 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 Public Improvements, Owner shall obtain a PIP from Erie as provided in the Code (defined below). 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 the Standards and other pertinent requirements, Erie will issue Owner the PIP. 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. 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 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 are 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 Improvements 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 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 Standards.

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. 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 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 the 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 and in accordance with 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.

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. Owner 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 Owner in accordance with accepted construction plans.
3. Owner 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. Owner shall be responsible for obtaining a Town of Erie “Grading and Stormwater Quality Permit” per the Standards.
5. All drainage improvements not located on Town owned property shall be maintained by Owner, Flatiron Meadows Homeowners Association (“HOA”), a maintenance or metropolitan district, or the final property owner (the “Obligated Entity”). Drainage improvements may include, but are not limited to: landscaping, open areas, grass, shrubs, trees, retaining walls, sidewalks, ponds, pipes, underdrains, swales, drain pans, and inlet grates.
6. Owner shall include the Obligated Entity in the final inspection procedures for the drainage improvements and shall provide Erie with the Obligated Entity’s written acceptance of the maintenance responsibility for the drainage improvements.

N. Landscape Improvements

For public lands, common facilities, and rights-of-way, Owner shall furnish Erie complete final landscape and irrigation plans for each phase and obtain acceptance 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. 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 the Erie Municipal Code (“Code”).

P. Underdrains

Owner may choose to install foundation underdrains and a site wide underdrain collection system under the Town owned sanitary sewer system. The Town grants the use of Town owned right-of-way for these facilities but the Town assumes no maintenance responsibility for the facilities. These underdrain systems shall be maintained by Owner or Obligated Entity. Owner shall install a curb underdrain system pursuant to the Standards and as shown on the Town accepted construction plans. This system shall be maintained by the Town.

Q. Maintenance Definition

Maintenance is the process of preserving capital improvements, structures, development, or systems to meet its function or original intent of the facility. This is the preservation, conservation, keeping in good conditions, operating safely, operating efficiently, testing, inspection, servicing, repairing, grading, cleaning, picking up trash and debris, pest control, painting, mowing, pruning, and prolonging of these facilities. Maintenance also includes the provision of financial support to maintain the facilities as required by this Agreement. Facilities include but are not limited to: landscaping, open areas, grass, shrubs, trees, playgrounds, site furniture and fixtures, retaining walls, signs, sidewalks, drainage structures such as ponds, swales, drain pans, inlets, and outlet structures. Maintenance may involve many different number and types of companies, services, individuals to look after the facility and the ability to coordinate these efforts. Maintenance includes both routinely scheduled activities, as well as non-routine repairs that may be required. A maintenance plan should be prepared and submitted as part of the development review/approval process and be provided to the Obligated Entity responsible for maintenance activities.

V. IMPROVEMENT ACCEPTANCE

A. Construction Acceptance

No later than ten (10) days after Public Improvements and/or Common Facilities are substantially complete, Owner shall request of the Town Administrative Official an inspection by Erie. If Owner does not request this inspection within ten (10) days of completion of the Public Improvements and/or Common Facilities, Erie may conduct the inspection without the approval of Owner. Owner shall provide Erie with complete “as-built” drawings in a form as defined in the Standards. If Owner has not completed appropriate Public Improvements and/or Common Facilities as provided for in this Agreement, Erie may exercise its right to secure performance as provided in Section X.C of this Agreement. If Public Improvements and/or Common Facilities completed by Owner are satisfactory, the Town Administrative Official shall grant “Construction Acceptance,” which shall be subject to “Final Acceptance” as set forth herein. Upon Construction Acceptance, permits may be released to homebuilders. If Public Improvements and/or Common Facilities 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 Erie 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, 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. Additionally, for Common Facilities, Owner shall include the Obligated Entity in the final inspection procedures and provide Erie with written acceptance of the Common Facilities for maintenance from this final owner.

B. Maintenance of Improvements

1. Warranty

Owner shall provide Erie with a two (2) year warranty, from the date of Construction Acceptance, on all Public Improvements and shall provide a two (2) year warranty for the Common Facilities from the date of Construction Acceptance.

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 Erie, shall become necessary, except that Erie 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, subject to force majeure Owner 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, 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 the Standards, then 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 in accordance with this Agreement, Erie, in conformance with the requirements of Section X.C, 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 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

Owner 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 Owner from responsibility for furnishing, installing or constructing such improvement. Owner shall list all Common Facilities separately and subtotal separately on Exhibit B.

B. Improvement Guarantee

Owner shall submit to Town Administrative Official an Improvement Guarantee for all Public Improvements for the Final Plat. Said guarantee may be in cash or a letter of credit in form and substance and when acceptable to the Town shall be the "Improvement Guarantee" as used in this Agreement.

1. Said guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1). Said Improvement Guarantee shall include, but not be limited to, each of the following to the extent they are part of the Public Improvements and Common Facilities to be installed pursuant to this Agreement: 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 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 improvements: 115% of the amount(s) shown on Exhibit B.

- b) Upon Construction Acceptance of the Public Improvements in each phase 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%.
- e) Upon completion and final acceptance of some, but not all Public Improvements and Common Facilities, the letter of credit may be partially reduced, at the Towns sole discretion, to reflect the completion and final acceptance of such improvements and/or facilities.

3. 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 to the extent Owner has defaulted under this Agreement after any applicable notice and/or cure periods. Prior to drawing on any letter of credit or Improvement Guarantee, Erie shall comply with the requirements in Section X.C., with the exception that in the event that, a) Owner fails to extend or replace the letter of credit at least sixty (60) days prior to expiration of such letter of credit, b) Erie receives notice that the letter of credit will not be renewed, or c) 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, 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 Owner within the time period set forth in this Agreement or in the manner as required by 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 obligation 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 on the Development by Erie including, but not limited to, the withholding of building permits and certificates of occupancy for the Development. 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 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 for the Development by Erie including, but not limited to, the withholding of building permits and certificates of occupancy for the Development.

4. 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 Development shall be constructed in one phase.

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. Any such oversizing shall be made known to Owner by Erie prior to this execution of this Agreement and determined in accepted plans.

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 require as a condition of approval, a proportional reimbursement to Owner 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 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.

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 (except for the foregoing 5-day notice), 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.

IX. SPECIAL PROVISIONS

A. Transportation

1. Traffic Barricades. Owner shall install traffic barricades as shown on the approved construction plans.
2. North 111th Street. North 111th Street shall be operational prior to the issuance of building permits within the Development.

B. Construction Access

All construction traffic for the Development shall enter the site from North 111th Street from the intersection of Erie Parkway.

C. Installation of Open Space, Parks, Landscaping and Trails

1. Tracts A, B and C. Owner shall be responsible for the installation and construction of landscaping and sidewalks within Tracts A, B and C, as shown on the final plat in accordance with the Standards and the approved landscape plan.
2. Native areas shown on the approved landscape plans shall be temporarily irrigated until established. Owner shall provide proof to the Town that after these areas are established that the temporary irrigation system is disconnected.

D. Maintenance of Parks, Trails, Open Space and Landscaping

Tracts A, B and C. The Obligated Entity shall be responsible for on-going maintenance of landscaping and hardscape improvements within Tracts A, B, and C as shown on final plat.

E. Oil and Gas Facilities

The oil and gas facilities located on Tract E shall meet the Town’s access drive standards as outlined in Section 10.6.14.A of the Code and as shown on the accepted construction plans.

F. Maintenance of Vacant Lots

Owner shall be responsible for maintenance, including weed control, on all lots until such time the lots are sold to a home builder.

G. Construction Trailers and Model Homes

Construction trailers and model homes are permitted provided they comply with standards outlined in Title 10 of the Code.

H. Fencing and Screening

Fencing within the Development shall be installed in accordance with Title 10 of the Code.

I. Utility and Drainage Easements

Owner shall provide the Town with all necessary permanent and temporary drainage and utility easements prior to construction.

J. Drainage Improvements

Drainage improvements shall be constructed to meet Urban Drainage and Flood Control District design standards.

K. Sanitary Sewer

1. West Side Sanitary Sewer Interceptor

The Town is due cost recovery at a rate of \$1,500.00 for each Single Family Equivalent (“SFE”). The reimbursement is outlined in “Exhibit C.”

2. NWRF Interceptor

The Town is due cost recovery at a rate of \$410.00 for each SFE. The reimbursement is outlined in “Exhibit C.”

L. Water

Owner shall pay raw water fees for all permanently irrigated Tracts and right-of ways prior to the installation of landscaping within said Tracts and right-of-ways. Native seeded areas not permanently irrigated may be temporarily irrigated until establishment without paying raw water fees. The establishment period is generally two years.

X. MISCELLANEOUS TERMS

A. Vested Rights

Erie agrees that the Final Subdivision Plat for the Flatiron Meadows Filing No. 12 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 three (3) years.

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 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 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 an additional twenty (20) day period 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 event of a default by 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, Erie, in its sole discretion, may declare Owner in default and may call the security and draw on the letter of credit provided for in Section VI, and may further exercise all remedies available to Erie in law and equity. In the event of a default by Owner not cured as set forth above, Erie may also withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services, each relating to the Development only, until the completion of the Public Improvements and Common Facilities and/or the default has been cured by Owner. 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 shall be paid by Owner. Erie may deduct these costs from the Improvement Guarantee. Erie shall have the right to enforce Owner's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, or an action to recover actual 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 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 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, 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

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 under this Agreement, its officers, employees, agents, consultants, contractors, and subcontractors, and/or suit, action, or claim resulting from mineral right disputes and/or 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 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 Development 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. 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.

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 Property, and shall constitute covenants running with the land. Owner 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 Boulder County, Colorado, at Owner'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 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 Public Improvement and Common Facilities obligations. Notwithstanding the foregoing, 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 Public Improvement and Common Facilities 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 Public Improvement and Common Facilities 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. Neither notice or consent shall be required for an individual lot to the extent such lot is sold to a homebuilder on a non-bulk acreage sale and once that such homebuilder has obtained a building permit for such lot.

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:	Owner:
Town of Erie	HT Flatiron LP
Town Administrator	Attn: Chad Murphy
P.O. Box 750	1515 Wynkoop Street, Suite 800
Erie, Colorado 80516-0750	Denver, Colorado 80202
Town of Erie	Thompson & Knight LLP
Town Attorney	1722 Routh Street
P.O. Box 750	Dallas, Texas 75201
Erie, Colorado 80516-0750	Attn: Rick Haan

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 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.

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

Owner warrants to Erie that HT Flatiron LP, a Delaware limited partnership, is the record owner for the property within the Development. 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. 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.

Q. Enforceability

This Agreement is made only between Owner 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.

TOWN OF ERIE

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

OWNER
HT FLATIRON LP,
a Delaware limited partnership

By: Hines Flatiron Associates Limited Partnership, a Texas limited partnership
its general partner

By: Hines Flatiron GP LLC, a Delaware limited liability company,
its general partner

By: Hines Investment Management Holdings Limited Partnership,
a Texas limited partnership, its sole member

By: HIMH GP LLC, a Delaware limited liability company,
its general partner

By: Hines Real Estate Holdings Limited Partnership,
a Texas limited partnership, its sole member

By: JCH Investments, Inc., a Texas corporation,
its general partner

By: _____
Robert W. Witte
Senior Managing Director

STATE OF TEXAS)
) ss.
COUNTY OF)

Subscribed and sworn to before me this ____ day of _____, 20__, by Robert W. Witte, the Senior Managing Director of JCH Investments, Inc., in its capacity as general partner of Hines Real Estate Holdings Limited Partnership, in its capacity as sole member of HIMH GP LLC, in its capacity as general partner of Hines Investment Management Holdings Limited Partnership, in its capacity as sole member of Hines Flatiron GP LLC, in its capacity as general partner of Hines Flatiron Associates Limited Partnership, in its capacity as general partner of HT Flatiron LP, a Delaware limited partnership, on behalf of said entities.

Witness my hand and official seal.
My Commission expires _____.

Notary Public

EXHIBITS LIST

EXHIBIT A – FLATIRON MEADOWS FILING NO. 12 LEGAL

EXHIBIT B – PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT C – PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

EXHIBIT A

Legal Description:

Tract F, Flatiron Meadows Filing No. 11

EXHIBIT B
Public Improvement Schedule

EXHIBIT B
ENGINEER'S PROJECTION OF PROBABLE COSTS
FLATIRON MEADOWS - FILING 12
MARCH 27, 2019

DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL
WATER				
CONNECT TO EXISTING WATER LINE	3	EA	\$ 950.00	\$ 2,850.00
8" PVC	708	LF	\$ 28.50	\$ 20,178.00
8" HORIZONTAL BENDS	3	EA	\$ 425.00	\$ 1,275.00
8" VERTICAL LOWERING	1	EA	\$ 4,700.00	\$ 4,700.00
8" GATE VALVE	2	EA	\$ 1,460.00	\$ 2,920.00
12" PVC	2,062	LF	\$ 40.00	\$ 82,480.00
12" HORIZONTAL BENDS	14	EA	\$ 825.00	\$ 11,550.00
12" GATE VALVE	7	EA	\$ 3,000.00	\$ 21,000.00
12"X12" TEE	2	EA	\$ 1,250.00	\$ 2,500.00
12"X8" TEE	1	EA	\$ 1,000.00	\$ 1,000.00
FIRE HYDRANT ASSEMBLY	5	EA	\$ 5,300.00	\$ 26,500.00
WATER SERVICES	38	EA	\$ 1,230.00	\$ 46,740.00
IRRIGATION SERVICE	1	EA	\$ 3,200.00	\$ 3,200.00
WATER SUBTOTAL				\$ 226,893.00
SANITARY				
CONNECT TO EXISTING SANITARY STUB	2	EA	\$ 1,000.00	\$ 2,000.00
8" PVC SEWER PIPE	1,609	LF	\$ 31.00	\$ 49,879.00
4" PVC UNDERDRAIN	1,609	LF	\$ 5.40	\$ 8,688.60
4' DIAMETER MANHOLE	10	EA	\$ 2,500.00	\$ 25,000.00
SANITARY SERVICES	27	EA	\$ 1,100.00	\$ 29,700.00
SANITARY SEWER SUBTOTAL				\$ 115,267.60
STREETS				
MOUNTABLE CURB AND GUTTER	3,411	LF	\$ 15.50	\$ 52,870.50
6" VERTICAL CURB AND GUTTER	360	LF	\$ 14.75	\$ 5,310.00
CONCRETE SIDEWALK (5')	18,855	SF	\$ 4.00	\$ 75,420.00
CONCRETE SIDEWALK (6')	2,280	sf	\$ 4.00	\$ 9,120.00
CONCRETE CROSSSPAN	1	EA	\$ 2,300.00	\$ 2,300.00
CONCRETE CURB RAMP	2	EA	\$ 1,200.00	\$ 2,400.00
CONCRETE MID BLOCK RAMP	3	EA	\$ 850.00	\$ 2,550.00
8" AGGREGATE BASE COURSE (LOCAL ROADS)	7,933	SY	\$ 8.00	\$ 63,464.00
4" HMA (LOCAL ROADS)	7,159	SY	\$ 16.00	\$ 114,544.00
SIGNS	1	LS	\$ 4,000.00	\$ 4,000.00
STREET LIGHTS	6	EA	\$ 2,000.00	\$ 12,000.00
STREETS SUBTOTAL				\$ 343,978.50
STORM				
18" RCP	189	LF	\$ 70.00	\$ 13,230.00
18" FES	2	EA	\$ 2,000.00	\$ 4,000.00
5' TYPE R INLET	3	EA	\$ 4,500.00	\$ 13,500.00
4" PERFORATED PVC BACK OF CURB DRAIN	3,771	LF	\$ 5.40	\$ 20,363.40
RIPRAP	380	SF	\$ 7.13	\$ 2,709.40
STORM DRAINAGE SUBTOTAL				\$ 53,802.80

EXHIBIT B
ENGINEER'S PROJECTION OF PROBABLE COSTS
FLATIRON MEADOWS - FILING 12
MARCH 27, 2019

DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL
COMMON FACILITIES				
CANOPY TREES	51	EA	\$ 375.00	\$ 19,125.00
ORNAMENTAL TREES	12	EA	\$ 375.00	\$ 4,500.00
EVERGREEN TREES	9	EA	\$ 375.00	\$ 3,375.00
DECIDUOUS SHRUBS	122	EA	\$ 45.00	\$ 5,490.00
EVERGREEN SHRUBS	28	EA	\$ 45.00	\$ 1,260.00
ORNAMENTAL GRASSES	93	EA	\$ 18.00	\$ 1,674.00
PERENNIALS	203	EA	\$ 18.00	\$ 3,654.00
STEEL EDGER	111	LF	\$ 3.00	\$ 333.00
ROCK MULCH	5,145	SF	\$ 2.50	\$ 12,862.50
SOD	5,320	SF	\$ 0.70	\$ 3,724.00
NATIVE SEED WITH WILDFLOWERS	14,501	SF	\$ 0.30	\$ 4,350.30
COMPOST	37	CY	\$ 100.00	\$ 3,700.00
WEED CONTROL FABRIC	5,145	SF	\$ 0.45	\$ 2,315.25
POST AND RAIL FENCE	2,620	LF	\$ 8.00	\$ 20,960.00
STONE FENCE COLUMNS	6	EA	\$ 1,000.00	\$ 6,000.00
COMMON FACILITIES SUBTOTAL				\$ 93,323.05
EROSION CONTROL				
SILT FENCE	1,023	LF	\$ 1.10	\$ 1,125.30
ROUGH CUT STREET CONTROL	5	EA	\$ 100.00	\$ 500.00
INLET/OUTLET PROTECTION	5	EA	\$ 300.00	\$ 1,500.00
CONCRETE WASHOUT AREA	1	EA	\$ 2,500.00	\$ 2,500.00
VEHICLE TRACKING PAD	1	EA	\$ 2,500.00	\$ 2,500.00
SEEDING AND MULCH	8	AC	\$ 850.00	\$ 6,800.00
EROSION CONTROL SUBTOTAL				\$ 14,925.30
TOTAL				\$ 848,190.25
CONTINGENCY (15%)				\$ 127,228.54
TOTAL WITH CONTINGENCY				\$ 975,418.79

EXHIBIT C
Public Improvement Reimbursement Schedule

Reimbursements due to others:

None.

Reimbursements due Erie:

1. The Town shall collect from Owner, prior to recordation of this Agreement, Fifty-Seven Thousand & No/100 Dollars (\$57,000.00) as reimbursement for 38 lots (\$1,500.00 per lot) within the Development connecting to the West Side Sanitary Sewer Interceptor line that the Town constructed.
2. The Town shall collect from Owner, prior to recordation of this Agreement, Fifteen Thousand Five Hundred Eighty & No/100 Dollars (\$15,580.00) as reimbursement for 38 lots (\$410.00 per lot) within the Development connecting to the NWRP Sanitary Sewer Interceptor line that the Town constructed.

Reimbursements due Owner:

None.