

DEVELOPMENT AGREEMENT
(Canyon Creek Subdivision Filing No. 10)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of January, 2019 (the "Effective Date"), by and between the TOWN OF ERIE, a Colorado municipal corporation with an address of P.O. Box 750, the Town, CO 80516 (the "Town"), Erie Four Corners, LLC, a Colorado limited liability company with an address of 1209 Pearl Street, Suite 14, Boulder, CO 80302 ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, the Town has approved a Final Plat for the first phase of Canyon Creek Subdivision Filing No. 10 (the "Development"); and

WHEREAS, the Town's regulations require that Developer enter into this Agreement with the Town to govern to improvements related to the Development.

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

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by Developer in connection with the Improvements for the Development. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), state law and other Town ordinances, and are not intended to supersede any requirements contained therein.

2. Construction of Improvements.

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

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

c. *Public Improvement Permit.* Before the construction of any Improvements, Developer shall obtain a Public Improvement Permit ("PIP") from the Town as provided in the

Code. If the application is complete and complies with the approved plans and the Standards, the Town will issue the PIP. Developer shall reimburse the Town for any expenses incurred by the Town for consultant review of the application or associated documents. Unless otherwise approved by Town, overlot grading shall not be initiated until the Town approves drainage improvement plans by the issuance of the PIP.

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

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

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

i. Any permits required by the United States Corps of Engineers.

ii. Colorado Department of Health and Environment ("CDPHE") General Permit for Stormwater Discharges Associated with Construction Activity.

iii. Town Grading and Stormwater Quality Permit.

iv. Air Quality Permit.

g. *Phasing.* The Development shall be completed in one phase.

h. *As-Built Drawings.* Upon completion of construction of the Improvements, Developer shall provide the Town with complete "as-built" drawings in the form required by the Standards.

j. *Applicable Law.* Developer shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances

Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

4. Specific Improvements. Developer shall cause to be constructed or furnished and installed, at Developer's own expense and in conformance with Town-approved plans and Standards, all of the following Improvements:

a. *Streets*. All required streets. improvements in conformance with the drawings, plans and specifications accepted by the Town and in accordance with the PIP.

b. *Sidewalks*. All required sidewalk improvements; provided that, to minimize construction damage, detached sidewalk construction may be delayed, in the Town's discretion, until Certificates of Occupancy are issued for 80% of the properties facing a specific street on which sidewalks are to be constructed.

b. *Signs and Striping*. 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 amended, and other applicable legal requirements.

c. *Street Lights*. Street lights, of a type and in accordance with plans approved by the Town, to be installed by Xcel Energy concurrently with the construction of the streets on which they are located.

d. *Water Improvements*. All required water mains, lines, and appurtenances.

e. *Wastewater Improvements*. All required sewer lines and appurtenances.

f. *Drainage Facilities*. All required drainage facilities, in compliance with Urban Drainage and Flood Control District design standards.

g. *Underdrains*. If selected by Developer and approved by the Town, foundation underdrains and a site wide underdrain collection system under the Town-owned sanitary sewer system.

h. *Curb Underdrains*. A curb underdrain system.

i. *Landscaping*. Landscaping as required by the Town-approved landscape plan.

j. *Utilities*. All on-site and off-site electric, natural gas, telephone, cable other utilities, underground as required by the Code.

5. Special Provisions. The following special provisions shall apply to the Development, and shall control in the event of a conflict with other provisions of this Agreement:

a. *Transportation.*

i. Developer shall construct vertical curb as indicated on **Exhibit E**, attached hereto and incorporated herein by this reference.

ii. Developer shall construct the sidewalk on the west side of County Line Road from Austin Avenue to Erie Parkway pursuant to the Town-approved construction plans and Standards. The sidewalk shall be operational for its intended use prior to issuance of any building permit in the Development.

iii. Developer shall construct Austin Avenue and Pinnacle Boulevard and all related roadway improvements pursuant to Town-approved construction plans and the Standards. Austin Avenue shall be operational for its intended use prior to the issuance of any building permit in the Development.

iv. Developer shall construct the Private Access Drive pursuant to Town-approved construction plans and the Standards. The Private Access Drive shall be operational for its intended use prior to the issuance of any building permit in the Development.

b. *Private Tracts.* Tracts A and B on the Final Plat are designated for future development. Developer shall be responsible for maintenance, including without limitation weed control, on said tracts until the tracts are future subdivided for development.

c. *Vacant Lot.* Developer shall be responsible for maintenance, including weed control, on Block 1, Lot 2 until such time as the lot is developed.

d. *Water.* Developer shall pay raw water fees for all permanently irrigated tracts and rights-of-way prior to the installation of landscaping in said tracts and rights-of-way. Native seeded areas not permanently irrigated may be temporarily irrigated until establishment without paying raw water fees. The establishment period is generally two years.

e. *Temporary Stormwater Detention Facility.* Developer shall construct a temporary facility to serve Lots 1 and 2, to be located on Tract A.

6. Acceptance of Improvements.

a. *Construction Acceptance.* No later than 10 days after Improvements are substantially complete, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval.

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

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Construction Acceptance. Developer shall complete all needed repairs, replacements, construction or other work within 30 days of said notice. After Developer completes the repairs, replacements, construction or other work required, Developer shall request of the

Town a re-inspection of such work to determine if Construction Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement.

iii. For Common Facilities, Developer be responsible for maintenance, unless otherwise approved by the Town in writing.

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

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

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

iii. For Common Facilities, Developer be responsible for maintenance, unless otherwise approved by the Town in writing.

c. Maintenance Prior to Final Acceptance. During the 2-year period after Construction Acceptance, Developer shall, at its own expense, take all actions necessary to maintain all Improvements and make all necessary repairs or replacements, except that the Town shall be responsible for snow removal on public streets.

7. Warranty. For all Improvements to be dedicated to the Town, Developer shall provide the Town with a 2-year warranty, commencing on the date of Construction Acceptance. Specifically, but not by way of limitation, Developer shall warrant that: the title is marketable and its transfer rightful; the Improvements are free from any security interest or other lien or encumbrance; and the Improvements are free of defects in materials or workmanship.

8. Maintenance.

a. *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 includes the

provision of financial support to maintain facilities, including without limitation: 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 and non-routine repairs.

b. *Specific Improvements.* Unless dedicated to and accepted by the Town for maintenance, all Improvements shall be maintained by Developer. If Developer wishes to transfer maintenance obligations to the Four Corners Business Improvement District or any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

9. Improvement Guarantee.

a. *Amount and Timing.* To secure the construction and installation of the Improvements, Developer shall provide a letter of credit or cash in an amount equal to 115% of the total costs listed in **Exhibit B** (the "Improvement Guarantee"). Developer shall not commence construction on the Property, including without limitation staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the Improvement Guarantee.

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

c. *Reduction.* Upon Construction Acceptance, the Improvement Guarantee may be reduced to the amount of 25% of the total actual cost of construction and installation of the Improvements. The reduced Improvement Guarantee shall be held by the Town during the 2-year warranty period.

10. Oversizing and Reimbursement. The Town may require Developer to build utility lines and other infrastructure large enough to serve property other than Developer's (oversizing). The Town may also require Developer to construct or participate in the construction of certain off-site Public Improvements. Some of these activities may qualify for reimbursement.

a. *Qualifying Public Improvements Constructed by Developer.* Developer is entitled to reimbursement for the oversize part of utilities and other infrastructure 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, the Town will require as a condition of approval, a proportional reimbursement to Developer as described in

Exhibit C, attached hereto and incorporated herein by this reference. Nothing contained herein shall operate to create an obligation on the part of the Town to pay or reimburse any costs to Developer in the event such costs are not recovered by the Town for any reason, so long as the Town has made a good faith effort to recover such costs.

b. *Qualifying Public Improvements Constructed by Others.* Developer will be required to reimburse the Town or others who have constructed oversized utilities and other infrastructure that will be utilized by the Development. The amount of the reimbursement due, if any, is described in **Exhibit C**.

11. Indemnification.

a. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to Claims.

b. Developer shall pay all property taxes on property underlying the Public Improvements to be dedicated to the Town before acceptance by the Town, and shall indemnify and hold harmless the Town for any such property tax liability.

12. Developer's Representations and Warranties. Developer hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date:

a. This Agreement has been duly authorized and executed by Developer as the legal, valid and binding obligation of Developer, and is enforceable as to Developer in accordance with its terms.

b. The person executing this Agreement on behalf of Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of Developer.

c. To the best of Developer's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against Developer which, if decided or determined adversely, would have a material adverse effect on the ability of Developer to undertake its obligations under this Agreement nor, to the best of Developer's knowledge, is there any fact or condition of the Property known to Developer that may have a material adverse effect on Developer's ability to Develop the Property as contemplated.

d. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement or obligation to which Developer is a party or by which Developer is bound or affected.

13. Breach and Remedies.

a. If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include, but are not limited to:

- i. The refusal to issue any building permit or certificate of occupancy;
- ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- iii. A demand that the security given for the completion of the Public Improvements be paid or honored; or
- iv. Any other remedy available at law or in equity.

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

c. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

14. Miscellaneous.

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

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

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

d. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

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

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

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

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

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

DEVELOPER

By: _____
[Signature]

STATE OF Colorado)
) ss.
COUNTY OF Boulder)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 15th day of March, 2019, by Justin McClure as the Manager of Erie Four Corners, LLC.

My commission expires: 4.16.19

(S E A L)



[Signature]

Notary Public

EXHIBITS LIST

EXHIBIT B – Improvements

EXHIBIT C – Reimbursement Schedule

EXHIBIT E – Vertical Curb Location Map

EXHIBIT B
Improvements

EXHIBIT C
Public Improvement Reimbursement Schedule

Reimbursements due to others: None.

Reimbursements due to Erie:

1. Upon execution of this Agreement, Developer shall pay the Town \$57,316.00, as reimbursement for 25% of the cost of the Traffic Signal at Austin Avenue and County Line Road.
2. Prior to issuance of the first building permit for the Development, Developer shall pay the Town \$177.66 per single-family equivalent, as reimbursement for connecting to the 15" and 30" Coal Creek Sewer Interceptor.
3. Prior to issuance of the first building permit for the Development, Developer shall pay the Town \$410.00 per single-family equivalent, as reimbursement for connecting to the NWRP Sanitary Sewer Interceptor Line.

Reimbursements due to Developer: None.

EXHIBIT E
Vertical Curb

Canyon Creek Filing No. 10

Exhibit E – Vertical Curb

