

First Amendment to Development Agreement
(Parkdale Filing No. 2)

This First Amendment to Development Agreement (the "First Amendment") is made and entered into this ____ day of _____, 2020 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), and OEO, LLC, a Colorado limited liability company with a principal place of business at 7353 South Alton Way, Suite A-100, Centennial, CO 80112 ("Developer") (each a "Party and collectively the "Parties")

Whereas, on November 10, 2020, the Parties entered into a Development Agreement for Filing No. 2 of the Parkdale Development (the "Filing 2 DA");

Whereas, all capitalized terms used herein without definition shall have the meaning set forth in the Filing 2 DA;

Whereas, pursuant to Section 7 of the Filing 2 DA, to secure the construction and installation of the Improvements for the Parkdale Filing No. 2 subdivision, Developer must provide a letter of credit or cash in an amount as an Improvement Guarantee; and

Whereas, the Parties desire to amend Section 7 of the Filing 2 DA.

Now, therefore, in consideration of the mutual covenants and promises expressed herein, the Parties hereby agree as follows:

1. Amendment to Agreement. Section 7 of the Filing 2 DA is hereby deleted in its entirety and replaced with the following:

7. Improvement Guarantee.

a. *Amount and Form.* 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"). The form letter of credit is attached hereto as **Exhibit C** and incorporated herein by this reference.

i. Developer may provide the Town with up to a maximum of three letters of credit or deposits of cash for each Phase (each a "Phase Improvement Guarantee"). The Parties may mutually agree in writing to increase the number of Phase Improvement Guarantees in each Phase, and no amendment to this Agreement shall be necessary for any such agreed-upon increase.

ii. Each Phase Improvement Guarantee may be split into two, one for the Landscape Improvements (each a "Landscape Guarantee"), and one for the General Improvements (each a "General Guarantee").

iii. Developer shall pay to the Town an administrative fee of \$1,500 per Phase Improvement Guarantee to reimburse the Town for costs associated with processing and tracking multiple Phase Improvement Guarantees.

b. *Timing.* Developer shall not commence construction on any Phase, 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 Phase Improvement Guarantee for that Phase.

c. *Draw.*

i. If the Improvements are not constructed or completed within the periods of time specified herein, the Town may draw on the Improvement Guarantee or any Phase Improvement Guarantee.

ii. If any letter of credit is to expire within 14 days and Developer has not yet provided a satisfactory replacement, or completed the Improvements, the Town may draw on the letter of credit 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 Improvements as the Town deems appropriate.

iii. If the Town has drawn on the Improvement Guarantee or any Phase 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 days of a request by Developer.

iv. If the Town is entitled to draw on the Improvement Guarantee or any Phase Improvement Guarantee, the Town may elect to either draw the full amounts of the Improvement Guarantee or partially draw on each Phase Improvement Guarantee, in amounts determined reasonable by the Town.

d. *Reduction.* Upon Initial Acceptance of all of the General Improvements for a particular Phase, the associated General Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of such Improvements. The reduced General Improvement Guarantee shall be held by the Town during the Warranty Period. Upon Initial Acceptance of all of the Landscape Improvements for a particular Phase, the associated Landscaping Performance Guarantee shall be reduced to the amount of 25% of the total actual cost of such Improvements.

2. Prior Provisions Effective. Except as expressly modified by this First Amendment, all other provisions of the Filing 2 DA shall remain in full force and effect.

In Witness Whereof, the Parties have executed this First Amendment as of the Effective Date.

Town of Erie, Colorado

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk

Developer

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me
this ____ day of _____, 2020, by _____ as the
_____ of OEO, LLC.

My commission expires:

(S E A L)

Notary Public