

**LOT 1A, BLOCK 6, TOWN OF ERIE PARK WEST AMENDMENT
NON RESIDENTIAL DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 20____, by and between the **TOWN OF ERIE**, a Colorado municipal corporation, PO Box 750, Erie, Colorado, 80516, hereinafter referred to as "Erie" or "Town," and **D & H ERIE, LLC, a Colorado limited liability company**, 4472 Hogan Court, Longmont, Colorado, 80503, hereinafter referred to as "Owner;" and

WHEREAS, Owner has submitted a final plat for the Lot 1A, Block 6, Town of Erie Park West Amendment ("Development") attached hereto as "Exhibit A" and incorporated herein by reference. Said Development has been approved by Erie; and

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 Properties water needs at full build out pursuant to Section 29-20-301 C.R.S. et seq. As a term and condition of providing said water, the 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 the Owner enter into an Agreement with Erie relative to improvements related to the development; and

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

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

A. Construction Standards

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,” ordinances and regulations.

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 and criteria for public improvements as established and accepted by Erie. These services shall be performed by or under the supervision of a Registered Professional Engineer and/or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law. The design services shall include inspection services deemed necessary by Erie.

C. Plan Submission and Acceptance

Owner shall furnish to the Town Administrative Official the required fees and complete plans for all improvements and development phases. Erie shall issue its written acceptance or rejection of said plans as expeditiously as reasonably possible. Said acceptance or rejection shall be based upon the standards and criteria for public improvements as established by Erie, and Erie shall notify 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 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's “Standards and Specifications for Design and Construction of Public Improvements” 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. The Developer shall also apply and pay for a PIP for all common facilities.

E. Testing and Inspection

Testing and inspection of the construction and materials shall be in accordance with Erie's "Standards and Specifications for Design and Construction of Public Improvements." In addition, 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 the Town for all direct costs of the after hours inspection services. If the request is denied, the work shall not proceed before or after the hours listed above.

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

F. Rights-of-way, Easements and Permits

Prior to commencement of construction of Public Improvements that require additional rights-of-way to be acquired, 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 Erie “Standards and Specifications for Design and Construction of Public Improvements.”
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.

I. Street Signs, Traffic Signs, and Striping

Owner will furnish and install at Owners 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. Unless otherwise approved by Town, 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 the Development shall be constructed by the 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 Erie’s “Standards and Specifications for Design and Construction of Public Improvements.”
5. Owner shall include the Business Association, maintenance district, or final property owner in the final inspection procedures and provide Erie with written acceptance of the drainage facilities for maintenance from this final owner.

N. Landscape Improvements

For 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.

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 Code.

P. Underdrains

The 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 the Owner, Business Association, or maintenance district.

The Owner shall install a curb underdrain system pursuant to the Towns “Standards and Specifications for Design and Construction of Public Improvements” 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. 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 Business Association or District responsible for maintenance activities.

IV. IMPROVEMENT ACCEPTANCE

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 Erie. If Owner does not request this inspection within ten (10) days of completion of improvements, 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 Town of Erie Construction Standards and Specifications. If Owner has not completed appropriate residential phase or commercial phase improvements as provided for in this Agreement, Erie may exercise its right to secure performance as provided in Section IX.B 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 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 IX.B of this Agreement. Erie reserves the right to schedule re-inspections.

Additionally, for Common Facilities, the Owner shall include the Business Association, maintenance district, or final property owner in the final inspection procedures and provide Erie with written acceptance of the common facility for maintenance from this final owner.

B. Maintenance of Improvements

1. Warranty

Owner shall provide Erie with a minimum two (2) year warranty, from the

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

2. Maintenance of Improvements

For a two (2) year period from the date of “construction acceptance” of any public improvements related to the Development, 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, Owner has not completed such repairs, Erie may exercise its rights to secure performance as provided in Section IX.B 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 IX.B 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 “Standards and Specifications for Design and Construction of Public Improvements,” then the Owner shall be in default of the Agreement and Erie may exercise its rights under Section IX.B 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 this Agreement and Erie may exercise its rights under Section IX.B of this Agreement.

V. 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. The 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.

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, 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 and Common Facilities improvements: 115% of the amount(s) shown on “Exhibit B.” The guarantees will be provided on a phased basis as shown on “Exhibit B.”
 - b) Upon “substantial completion construction acceptance” of the public improvements in each phase through “final acceptance”: 25% of the amount(s) shown on “Exhibit B.” The Town will release the guarantees for the wet utilities separate from the roadway improvements on a phased basis as shown on “Exhibit B.”
 - c) Upon “substantial completion construction acceptance” of common facilities: 0%.
 - d) After Final Acceptance of Public Facilities: 0%.
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.

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 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 IX.B 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 IX.B 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.

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 is to be constructed in one phase.

VI. 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 require as a condition of approval, a proportional reimbursement to Owner as described in "Exhibit D," 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."

VII. 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.

VIII. SPECIAL PROVISIONS

A. Transportation

Owner shall be responsible for the paving of the alley as outlined on the Town accepted construction plans.

B. Sanitary Sewer

1. NWRF Interceptor

Owner acknowledges that the NWRF Interceptor constructed by the Town is due cost recovery at a rate of \$410.00 for each SFE. The reimbursement shall be collected prior to the issuance of a building permits within the Development. Owner shall receive a credit of \$1,230.00 for the three existing three quarter (3/4) inch water taps.

2. Owner shall receive a Sewer Tap Fee credit of \$15,600.00 for the three existing three quarter (3/4) inch water taps.

C. Water

1. Owner shall pay raw water fees for all permanently irrigated areas of the Development and adjacent right-of-ways prior to the issuance of building permits or irrigation taps.

2. Owner shall receive a Raw Water Fee credit of \$45,900.00 for the three existing three quarter (3/4) inch water taps.

3. Owner shall receive a Water Tap Fee credit of \$21,000.00 for the three existing three quarter (3/4) inch water taps.

D. Drainage Improvements

1. Owner shall be responsible for the construction of drainage improvements as outlined on the Town accepted construction plans.

2. Owner shall be responsible for maintenance of all drainage improvements.

IX. MISCELLANEOUS TERMS

A. Vested Rights

Erie agrees that the Final Subdivision Plat for Lot 1A, Block 6, Town of Erie Park West Amendment 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. This Agreement shall be deemed to be a “development agreement” pursuant to the Vested Rights Act.

B. Default

If Owner fails to fulfill the terms and conditions of this Agreement, 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 V, and may further exercise all remedies available to Erie in law and equity. Erie may also, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services until the completion of the Public Improvements and Common Facilities and/or the default has been cured by Owner. 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 the Owner's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, or an action to recover damages. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

If Owner fails to fulfill the terms and conditions of Section V 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 V without notice to Owner, and may further exercise all remedies available to Erie in law and equity and as provided for herein.

C. 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).

D. 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, 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.

E. Recording Agreement

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

F. Binding Effect of Agreement

This Agreement shall run with the land included within the Development and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

G. Assignment, Delegation and Notice

Owner shall provide to the Town Administrative Official, for approval, written notice of: 1) any proposed transfer of title to all or any portion of the Development to any successor, 2) arrangements for delegation or transfer of the Improvement obligations hereunder to any successor, and 3) any successor's written acceptance of such Improvement obligations. Owner and Owner's successor shall be jointly and severally liable for the Improvement obligations of Owner under this Agreement until written approval by the Town Administrative Official of the proposed transfer of title, delegation and acceptance of Improvement obligations, which approval shall not be unreasonably withheld or delayed.

H. 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.

I. 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
P.O. Box 750
Erie, Colorado 80516-0750

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

Owner:

D & H Erie, LLC
Rich Hiegel
4472 Hogan Court
Longmont, Colorado, 80503

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.

J. 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.

K. 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.

L. 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.

M. Title and Authority

Owner warrants to Erie that D & H Erie, LLC, 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.

N. 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.

O. Legal Fees; Venue

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

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 the Owner and Erie, or their successors and assigns, and is not intended to benefit, and may not be enforced by, any third parties.

[SIGNATURES ON FOLLOWING PAGE]

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

TOWN:

TOWN OF ERIE

a Colorado municipal corporation

Tina Harris, Mayor

ATTEST:

Nancy J. Parker, Town Clerk

OWNER:

D & H ERIE, LLC

a Colorado limited liability company

Rich Hiegel

Title:_____

STATE OF COLORADO)
) ss.
COUNTY OF)

Subscribed and sworn to before me this ____ day of _____, 20__, by Rich Hiegel as _____ of D & H Erie, LLC.

Witness my hand and official seal.

My Commission expires _____.

Notary Public

EXHIBITS LIST

EXHIBIT A – LOT 1A, BLOCK 6, TOWN OF ERIE PARK WEST AMENDMENT FINAL PLAT

EXHIBIT B – PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT C – PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

LOT 1A, BLOCK 6, TOWN OF ERIE PARK WEST AMENDMENT FINAL PLAT

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EXHIBIT B

PUBLIC IMPROVEMENT SCHEDULE



EXHIBIT B
PUBLIC IMPROVEMENT SCHEDULE

105 WELLS STREET
LOT 1A, BLOCK 6, TOWN OF ERIE - PARK WEST AMENDMENT
TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO
OCTOBER 30, 2017

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL COST
PUBLIC IMPROVEMENTS				
<u>STREETS</u>				
Alley Improvements	2,200.0	SF	\$ 4.50	\$ 9,900
Sidewalk	2,430.0	SF	\$ 4.50	\$ 10,935
Decorative Paving	850.0	SF	\$ 11.00	\$ 9,350
Street Lighting	3.0	EA	\$ 2,500.00	\$ 7,500
SUBTOTAL STREETS:				\$ 37,685
 <u>LANDSCAPING</u>				
ROW Landscape & Drip Irrigation	1.0	LS	\$ 9,500.00	\$ 9,500
SUBTOTAL LANDSCAPING:				\$ 9,500
SUBTOTAL ALL PUBLIC IMPROVEMENTS:				\$ 47,185
Contingency:			15%	\$ 7,078
TOTAL:				\$ 54,263

EXHIBIT C

PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

Reimbursements due Owner:

None.

Reimbursements due Erie:

None.

Reimbursements due Others:

None.