

DEVELOPMENT AGREEMENT
(Erie Self Storage)

THIS DEVELOPMENT AGREEMENT (the "Agreement") 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 BONANZA – 7 LLC, a Colorado limited liability company, with a principal place of business at 12460 1st Street, Eastlake, Colorado 80614, Attention: Taylor R. Carlson ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, Developer is the owner of the real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Developer wishes to develop the Property (the "Development"), and has filed an application for approval of a site plan (the "Site Plan"); and

WHEREAS, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval of the Development, and that such matters are necessary to protect, promote and enhance the public health, safety and welfare of the Town.

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 improvements 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. Omission of any necessary Improvement from **Exhibit B** does not relieve Developer from responsibility for furnishing, installing or constructing such Improvement. The Improvements include two categories: General Improvements and Landscaping Improvements, as listed in **Exhibit B**.

b. *Construction Standards*. Developer shall construct the Improvements in accordance with plans and specifications approved by the Town (the "Plans") 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 shall be repaired or removed and replaced at Developer's expense.

e. *Rights-of-way and Easements.* Prior to construction of 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 all monetary 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 General Permit for Stormwater Discharges Associated with Construction Activity.
- iii. Town grading, stormwater quality and right-of-way permits.
- iv. Air quality permit.

g. *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.

h. *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.

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

a. *Streets and Sidewalks.* Developer shall construct all required street and sidewalk Improvements in conformance with the Plans and Standards and in accordance with the PIP.

b. *Signs and Striping.* Developer shall install 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.* Developer shall install street lights, of a type and in accordance with the Plans and Standards concurrently with the construction of the streets on which they are located.

d. *Water.* Developer shall install all required water mains, lines, and appurtenances. Developer shall pay raw water dedication 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 dedication fees, for a period not to exceed 2 years.

e. *Wastewater.* Developer shall install all required sewer lines and appurtenances.

f. *Drainage Facilities.* Developer shall install all required drainage facilities, in compliance with Mile High Flood District design standards.

g. *Landscaping.* Developer shall install all required landscaping, structures, trails and sidewalk improvements in accordance with a Town-approved landscape plan..

h. *Utilities.* Developer shall install all on-site and off-site electric, natural gas, telephone, cable other utilities, underground as required by the Code.

i. *Fencing.* Developer shall install fencing in accordance with the PUD and the Code. Fencing adjacent to parks and open space shall be limited to low (4') open (50%) fencing. The finished side of the fence shall face the open space.

4. Acceptance of Improvements and Warranty.

a. *Initial 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. All Improvements shall receive Initial Acceptance on or before September 30, 2022.

- i. If the Improvements are satisfactory, the Town shall grant Initial 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 Initial 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 Initial 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. The costs of re-inspection shall be borne by Developer.

b. *Final Acceptance.* At least 30 days before 2 years has elapsed from the issuance of Initial 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 as 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 whether or not the Improvements are in conformity with the Plans and Standards within 30 days. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement.

c. *Warranty.* For all Improvements being conveyed to the Town, Developer shall provide the Town with a 2-year warranty (the "Warranty Period"), commencing on the date of Initial Acceptance and continuing for a period of 2 years. Specifically, but not by way of limitation, Developer shall warrant that, subject to the terms of this Agreement: the title is marketable and its transfer rightful; the Improvements are free from any security interest or other monetary lien or encumbrance; and the Improvements are free of defects in materials or workmanship. During the Warranty Period, Developer shall, at its own expense, take all actions necessary to maintain the Improvements and make all necessary repairs or replacements.

5. Maintenance.

a. *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 a district or any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

b. *Vacant Lots.* Developer shall be responsible for landscaping maintenance, including weed control, on all vacant lots until such time as the lot is developed and conveyed to an individual owner.

6. 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 of the Improvements listed in **Exhibit B** (the "Improvement Guarantee"). Other than earth work, overlot grading and Improvements for fire suppression, temporary access and temporary storm water mitigation in accordance with the Plans, Developer shall not commence construction on the Property of any Improvements (unless otherwise agreed to by the Town) or the erection of any structure, 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 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 for the amount of incomplete work 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 reasonably 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 Initial Acceptance of all of the Improvements, the Improvement Guarantee shall 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.

7. Reimbursement.

a. *To the Town.* Upon final approval of the Site Plan, Developer shall reimburse the Town for a proportional cost of improvements previously constructed by the Town that benefit the Property. The amounts shall be as follows:

i. For connection to the Coal Creek Sanitary Sewer Interceptor line constructed by the Town, \$55.00 per single-family equivalent ("SFE"), or \$220.00 (4 SFE x \$55.00).

ii. For connection to the North Water Reclamation Facility Interceptor line constructed by the Town, \$410.00 per SFE, or \$1,640.00 (4 SFE x \$410.00).

b. *To Developer.* Developer may seek reimbursement for the oversize portion of utilities and other infrastructure and a pro rata portion of the cost of off-site Improvements required under this Agreement. At the time of final approval of a subdivision plat or other development plan for properties that use these Improvements, the Town may require, as a condition of approval,

a proportional reimbursement to Developer. Nothing contained in this Agreement 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 as contemplated herein, for any reason, from the properties or property owners that use the Improvements.

c. *To Others.* Developer acknowledges that Bonanza Drive Development Corporation ("Bonanza") is installing a water line and associated water facilities and structures adjacent to Bonanza Drive from Commons Drive to Sunset Drive (collectively, the "Water Improvements"), and that the Water Improvements will benefit the Development. Developer and Bonanza have or will enter into a separate written agreement concerning, among other items, the Water Improvements, pursuant to which Developer shall reimburse Bonanza for 100% of the cost of installing the Water Improvements constructed between the south property line of the Property and the north property line of the Property, and 50% of the cost of the Water Improvements constructed between the north property line of the Property and Sunset Drive.

8. Indemnification. 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 the Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any such 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. In addition, Developer shall pay all property taxes on property underlying the 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.

9. 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: 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; the person executing this Agreement on behalf of Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of Developer; 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; and 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.

10. Breach.

a. *Remedies.* 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 Improvement Guarantee be paid or honored; or
- iv. Any other remedy available at law or in equity.

b. *Notice.* 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. *Nature of Remedies.* 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.

11. 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 Weld County Clerk and Recorder, and shall be a covenant running with the Property.

j. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

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

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Heidi Leatherwood, Town Clerk

DEVELOPER

BONANZA - 7 LLC
a Colorado limited liability company

By: Cory J. Thornton
Its: Manager

STATE OF COLORADO)
) ss.
COUNTY OF Adair)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 24th day of September, 2020, by Cory J. Thornton as the Manager of Bonanza – 7 LLC.

My commission expires: 02/09/2024

(S E A L)

Notary Public

EXHIBITS LIST

EXHIBIT A – Legal Description

EXHIBIT B – Improvements

EXHIBIT A
Legal Description

Lot 1, Vista Ridge Filing No. 6 Minor Subdivision

Exhibit A

EXHIBIT B Improvements

Engineer's Estimate of Probable Cost				
Erie Storage				
6/25/2020				
Item	Quantity	Units	Unit Price	Total Price
General				
Clearing & Grubbing in Bonanza	1	LS	\$2,000.00	\$2,000.00
Material Testing in Bonanza & Commons Drive	1	LS	\$5,000.00	\$5,000.00
Mobilization 3%	1	LS	3%	
Traffic Control	1	LS	\$5,000.00	\$5,000.00
			Subtotal	\$12,000.00
Water				
Fire Hydrant Assembly	6	EA	\$6,500.00	\$39,000.00
Irrigation Service	1	EA	\$1,500.00	\$1,500.00
Testing & Disinfection	1	LS	\$2,000.00	\$2,000.00
8" Line Valve	10	EA	\$2,400.00	\$24,000.00
8" PVC water main	1516	LF	\$65.00	\$98,540.00
			Subtotal	\$165,040.00
Sanitary				
Jet/Clean, TV, Test Mains/MHs	1	LS	\$2,000.00	\$2,000.00
Manhole	4	EA	\$4,500.00	\$18,000.00
8" PVC main	336	LF	\$60.00	\$20,160.00
Sewer Service	1	EA	\$600.00	\$600.00
			Subtotal	\$40,760.00
Storm Sewer				
18" RCP Culvert under driveway	48	LF	\$95.00	\$4,560.00
Riprap at culvert outfall	3	CY	\$100.00	\$300.00
			Subtotal	\$4,860.00
Streets				
Asphalt - Patch work at Commons Dr.	14	TONS	\$110.00	\$1,540.00
Asphalt - Site Driveway	70	TONS	\$110.00	\$7,700.00
Asphalt - North Bonanza Drive	10	TONS	\$110.00	\$1,100.00
Saw Cut at Commons Drive san.	40	LF	\$2.00	\$80.00
Saw Cut at Bonanza driveway	63	LF	\$2.00	\$126.00
Concrete sidewalk Bonanza ROW	430	SY	\$90.00	\$38,700.00
Concrete Drive at Bonanza	138	Y	\$100.00	\$13,800.00
Curb Ramp	2	EA	\$1,000.00	\$2,000.00
Signing - Stop Sign	1	EA	\$250.00	\$250.00
Subgrade Preparation	3118	SY	\$2.20	\$6,859.60
Vertical Curb & Gutter	160	LF	\$20.00	\$3,200.00
			Subtotal	\$75,355.60
Landscaping				
Revegetation for Bonanza Drive is in SWMP estimate		LF		
			Subtotal	\$ -
			Subtotal	\$286,015.60
			15% Contingency	\$42,902.34
			Total	\$328,917.94

Exhibit B