

SEVENTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Seventh Amendment to the Disposition and Development Agreement (this “**Seventh Amendment**”) is made as of this ____ day of _____, 2020 (the “**Effective Date**”), by and among the TOWN OF ERIE, a Colorado statutory municipality (the “**Town**”), the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company (the “**Developer**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement dated March 22, 2016 (the “**Original Agreement**”), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the “**First Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the “**Second Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12th, 2017 (the “**Third Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8th, 2018 (the “**Fourth Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the “**Fifth Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the “**Sixth Amendment**”) (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, are hereinafter collectively referred to as the “**Agreement**”);

WHEREAS, Erie and the Developer desire to further amend the Agreement pursuant to the terms of this Seventh Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Legal Descriptions. Notwithstanding anything contained in the Agreement to the contrary, Erie and Developer hereby agree that the legal descriptions of the Retail Property – Phase 1, Retail Property – Phase 2 and Residential Property shall be as follows, subject to change in nomenclature and possible addition of recording information as required by Title Company:

Retail Property – Phase 1:

Lots 1-9, inclusive, and Tracts A, B, C-1, C-2, D, E and F,
Nine Mile Corner
County of Boulder, State of Colorado

Retail Property – Phase 2:

Lot 10,
Nine Mile Corner
County of Boulder, State of Colorado

Residential Property:

Lot 11 and Tracts G and H,
Nine Mile Corner
County of Boulder, State of Colorado

As part of the Deed for the legal descriptions above, Erie shall provide a surface waiver for any owned minerals or oil and gas rights reasonably acceptable to the Title Company.

3. Definitions. Erie and Developer hereby agree that the definition of “Force Majeure” set forth in Section 1.1 of the Agreement is hereby amended to specifically include incidence of disease or other illness that reaches epidemic or pandemic proportions, including delays by the Anchor Tenant due to the COVID-19 pandemic and delays with the contemplated issuance of Bonds due to the COVID-19 pandemic.

4. Ditch Relocation. The second sentence of Section 5.2(e) of the Agreement is hereby deleted in its entirety and replaced with the following:

“In the event that Closing occurs, the amount of the Ditch Relocation Advance shall be repaid by the Developer or District to TOEURA on or before the date that is sixty (60) days after the Closing for the Retail Property – Phase 1 and the issuance of the Bonds, without

interest, but in no event shall the Ditch Relocation Advance be repaid later than 120 days after Closing for the Retail Property – Phase 1.”.”

5. Conveyance; Closing. Section 5.3(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Residential Property. The Residential Property shall be conveyed to the Developer or its designated Affiliate by the Deed upon the payment of the Residential Property Purchase Price for Lot 11 on a date agreed upon by Developer and Erie, which date shall be on or before the date that is one hundred twenty (120) days after the Closing on the Retail Property – Phase 1, subject to Force Majeure.”

6. Other Approvals. The phrase “no later than November 29, 2019” as the date for the finalization of the agreements as referenced in Section 5.3(e) of the Agreement is hereby deleted and replaced with the phrase “no later than the Closing on the Retail Property – Phase 1” for all purposes under the Agreement.

7. Closing Extensions. Erie and Developer hereby agree that Section 5.7 of the Agreement is hereby amended such that, in order to exercise such extensions, Developer shall deliver written notice to the Town and reasonable evidence of the need for such extension no less than five (5) days prior to the then-scheduled Closing, not thirty (30) days as originally set forth in the Agreement. Erie hereby agrees that Developer may exercise such applicable extensions to additionally accommodate the issuance of the Bonds and any Anchor Tenant delays.

8. Miscellaneous.

a. Full Force and Effect. Except as amended by this Seventh Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment and this Seventh Amendment, the terms and conditions of this Seventh Amendment shall control.

b. Successors and Assigns. This Seventh Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. Entire Agreement. This Seventh Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.

d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Seventh Amendment.

e. Counterparts. This Seventh Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f. Governing Law and Venue. This Seventh Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Seventh Amendment to be duly executed as of the Effective Date.

DEVELOPER:

EVERGREEN-287 & ARAPAHOE, L.L.C.,
an Arizona limited liability company

By: EVERGREEN DEVELOPMENT
COMPANY-2019, L.L.C.,
an Arizona limited liability company
Its: Manager

By: EVERGREEN DEVCO, INC., a
California corporation
Its: Manager

By: 
Name: Tyler Carlson
Its: Executive Vice President

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Heidi Leatherwood, Town Clerk

**TOWN OF ERIE URBAN
RENEWAL AUTHORITY**

Jennifer Carroll, Chair

ATTEST:

Heidi Leatherwood, Secretary