

**Town of Erie
Resolution No. 24-137**

**A Resolution of the Town Council of the Town of Erie Approving a
Disposition and Development Agreement with Evergreen-County
Line & Erie Parkway, L.L.C. for the Erie Town Center**

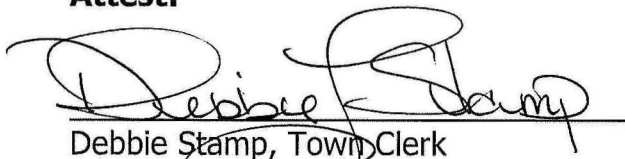
Whereas, the Town Council finds that it is in the best interest of the Town and the public health, safety and welfare to approve the Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C.


Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:

Section 1. The Town Council hereby approves the Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C. in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Disposition and Development Agreement on behalf of the Town.

Adopted this 8th day of October, 2024.

Attest:


Debbie Stamp, Town Clerk


Justin Brooks, Mayor



Disposition and Development Agreement
(Erie Town Center)

This Disposition and Development Agreement (this "Agreement") is made and entered into as of October 8th, 2024 (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 Evergreen-County Line & Erie Parkway, L.L.C., an Arizona limited liability company with an address of 1873 South Bellaire Street, Suite 1200, Denver, CO 80222 (Attention: Tyler Carlson) ("Developer") (each a "Party" and collectively the "Parties").

Whereas, the Town owns the Property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

Whereas, the Town desires that the Property be developed as part of the Erie Town Center Planned Development (the "Development");

Whereas, under the terms of this Agreement, the Town intends to convey ownership of portions of the Property to Developer; 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.

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 Development, and to establish the terms under which the Town will convey the Property to Developer. The Development will be subject to any requirements of the Erie Municipal Code (the "Code"), state law and other Town ordinances.

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Affiliate" means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Developer. For purposes of this definition, the term "control" means the power to direct or cause the direction of management and policies, through the ownership of voting rights, by contract or otherwise.

"AMI" means the current area median income for Boulder County, as established by the U.S. Department of Housing and Urban Development.

"Anchor Grocer" means a smaller format, specialty grocer, with not less than 8,000 square feet of building area and not more than 45,000 square feet of building area.

"Civic Property" means the portion of the Property that will contain the Civic Space and the Structured Parking Garage.

"Civic Space" means the building(s) that will be constructed on the Civic Property for public uses.

"Commercial Property" means the portion of the Property allocated for the Anchor Grocer and any other retail or commercial use.

"Residential Property" means the portion of the Property allocated for residential use.

"Structured Parking Garage" means an above-grade vertical parking structure with a minimum of two stories.

3. Due Diligence Materials.

a. *General.* Within 30 days after the Effective Date, the Town shall provide to Developer copies of any plans, specifications, drawings, surveys, reports, appraisals, environmental reports and assessments, including without limitation Phase I and Phase II Environmental Site Assessments, Asbestos and Lead Based Paint Surveys, if any, or other information for the Property in the Town's possession (the "Property Information").

b. *Subsidence.*

i. Developer acknowledges that the Town conducted a Phase I and Phase II coal mine subsidence evaluation with Lithos Engineering in March 2022 and May 2022, both of which studied historic coal mining of the Property. Developer further acknowledges that the Property is undermined by multiple Boulder-Weld County Coal Field mines, including the Garfield No. 1, Garfield No. 2 and Lister mines, with coal mining occurring from the late 1800s to the early 1900s, and the Phase II report concluded that conditions found do not preclude development of the Property, but that structure-specific investigations should be conducted over undermined zones to determine appropriate structural investigations that are required for all new development, which must be submitted to the Colorado Geological Survey ("CGS") prior to the issuance of any building permits.

ii. Developer shall, at Developer's sole cost (subject to the terms hereof), conduct such structure-specific investigations and all other geotechnical investigations for the Property during the Inspection Period (collectively the "Geotech Investigations").

iii. If this Agreement is terminated prior to the end of the Inspection Period or the Approvals Period, the Town shall reimburse Developer for 100% of its reasonable out-of-pocket expenses in connection with the Geotech Investigations, the Survey (as defined below) and any Phase I environmental assessment for the

Property within 30 days following invoice thereof, and Developer shall deliver to Town, without representation or warranty of any kind, the Survey, Phase I environmental assessment and copies of all studies, reports, plans and similar matters made by or for Developer concerning the Geotech Investigations. The terms hereof shall survive the termination of this Agreement, but shall at all times be subject to Section 20.i.

c. *Title Commitment.* Developer shall, at Developer's expense, obtain a title insurance commitment, together with legible copies of all instruments referred to in such commitment as conditions or exceptions (collectively, the "Commitment"), for the issuance of a 2006 ALTA form of an extended owner's title insurance policy for the Property.

d. *Survey.* Developer, at Developer's expense (subject to the terms hereof), shall obtain an ALTA survey (with topographic information) prepared by a certified Colorado surveyor showing all Property lines, improvements, if any, encroachments, setback lines, easements, adjoining roadways, proposed roads and proposed existing road extensions, and utility installments located therein and all other matters which are revealed by the Commitment (the "Survey").

4. Inspection Period.

a. *Time.* Developer shall have until February 15, 2025 (the "Inspection Period") to conduct due diligence and determine, in Developer's sole and absolute discretion, whether the Property is suitable for the Development. If the results of any of the matters referred to in this Section appear unsatisfactory to Developer for any reason, then Developer, in Developer's sole discretion, shall have the right to terminate this Agreement by giving written notice to the Town before the expiration of the Inspection Period.

b. *Testing.* During the Inspection Period, at its expense (except as provided in this Agreement), Developer may make any tests, surveys, inspections or obtain any audits, tests or studies of soils and subsurface conditions, including the Geotech Investigations and environmental tests on or about the Property to determine its suitability for construction of the Improvements and to determine if Hazardous Substances exist or have been stored on the Property.

c. *Access.* The Town shall permit Developer and its representatives access to the Property at reasonable times for the purpose of conducting such tests, inspections and surveys, provided that Developer reasonably restores the Property to the same condition, with the exception of any monitoring wells constructed during the Inspection Period, as prior to any such entry as is commercially reasonable, ordinary wear and tear excepted.

d. *Contingencies.* Prior to the expiration of the Inspection Period, the following contingencies (collectively the "Inspection Contingencies") shall be satisfied:

i. In consultation with the Town, Developer has drafted an overall plan for the Development (the "Overall Plan"), attached hereto as **Exhibit B** and incorporated herein by this reference. The Overall Plan shows the respective sizes and configurations of the various components of the Property (the Commercial Property, the Residential Property and the Civic Property), based on the concept plan agreed to by the Parties on April 17, 2024, and subject to the Town's development review process, and additional vetting by the Parties. The Overall Plan shall incorporate affordable housing options in the Residential Property, which affordable housing option shall include a minimum of 12% of the residential dwelling units to be affordable to households earning 80% AMI or less.

ii. Developer shall secure a commitment for an Anchor Grocer for the Commercial Property as evidenced by an executed letter of intent with the Anchor Grocer. Developer shall provide such executed letter of intent to the Town prior to the expiration of the Inspection Period. If the Town has any objections to the Anchor Grocer, the Town shall notify Developer in writing within 30 days after receipt of the letter, and the Parties shall have an additional 30 days to resolve such objections, and the Inspection Period shall be extended for an additional 30 days.

e. *Notice.* Prior to expiration of the Inspection Period, Developer shall deliver written notice to the Town indicating whether each of the Inspection Contingencies has been satisfied. If such notice states that any of the Inspection Contingencies have not been satisfied, this Agreement shall automatically terminate without further action of the Parties. If Developer fails to deliver such notice, Developer has waived its right to terminate this Agreement based on the Inspection Contingencies.

5. Approvals Period.

a. *Time.* Developer shall have until February 15, 2026 (the "Approvals Period") to obtain all necessary approvals from the Town and any other governmental or quasi-governmental entities having jurisdiction (the "Approvals"), with conditions reasonably acceptable to Developer, necessary for the construction and use of the first phase of the Commercial Property within the Development.

b. *Contingencies.* Prior to the expiration of the Approvals Period, the following contingencies (collectively, the "Approval Contingencies") shall be satisfied:

i. Developer shall secure a binding commitment with the Anchor Grocer, which such binding commitment shall include a commercially reasonable construction schedule indicating when the Anchor Grocer will open for business.

- ii. Developer shall obtain all necessary entitlements for the Development, including approval of the final plat(s) and site plan(s) and all construction/building permits. The Town, without waiving any of its legislative, regulatory and decision-making authority, agrees and covenants to reasonably cooperate in good faith with Developer in such a manner as to not circumvent the terms of this Agreement.
- c. *Marketing.* During the Approvals Period, Developer shall market the Property to attract quality retail and commercial tenants for the Commercial Property, which marketing shall include Developer's standard marketing efforts.
- d. *Notice.* Prior to expiration of the Approvals Period, Developer shall deliver written notice to the Town indicating whether each of the Approval Contingencies has been satisfied. If such notice states that any of the Approval Contingencies have not been satisfied, this Agreement shall automatically terminate without further action of the Parties. If Developer fails to deliver such notice, Developer has waived its right to terminate this Agreement based on the Approval Contingencies.
6. Hotel. Developer shall use good faith efforts to secure a commitment for a hotel as evidenced by an executed letter of intent with a hotelier prior to the end of the Approvals Period. If the Town has any objections to the selected hotelier, the Town shall notify Developer of such objections in writing within 30 days after receipt of the letter of intent, and the Parties shall have an additional 30 days to resolve such objections and the Approvals Period shall be extended 30 days. The area designated for the hotel shall be part of the Civic Property unless Developer secures a commitment for the hotel prior to the expiration of the Approvals Period and elects to proceed with the hotel as part of the Commercial Property, which such election shall be in writing prior to the expiration of the Approvals Period. Notwithstanding the foregoing and for avoidance of doubt, securing a hotelier shall not be a condition of the terms of this Agreement.
7. Colorado Open Records Act. Any confidential financial information provided to the Town under this Agreement shall be marked as confidential financial information, and if so marked, the Town shall treat the letter as confidential financial information under the Colorado Open Records Act, C.R.S § 24-72-200.1, *et seq.* ("CORA").
8. Site-Specific Development Agreements. With each Final Plat, Developer shall execute a Development Agreement in the Town's standard form subject to reasonable negotiation and revisions by the Parties.
9. Civic Property. The Parties shall determine the size and location of the Civic Property during the Inspection Period as part of the Overall Plan, subject to reasonable modification as part of the Approvals, for uses set forth herein. During the Approvals Period, the Parties shall determine whether Town or Developer will construct the improvements for the Civic Property, including the Civic Space and the Structured Parking Garage. If the Parties agree that Developer is responsible for the design and construction of any such improvements, then the Parties will enter into a separate agreement to

memorialize the terms and conditions concerning the construction of the improvements. In all events, the Civic Property, the Residential Property and the Commercial Property shall be subject to any development documents, reciprocal easement agreements, cross access/parking easement agreements and similar documents required to be recorded in connection with the first phase of the Development.

10. Financing Mechanisms.

a. *Urban Renewal.* Developer shall determine whether the Development will require the Town Council to consider a new urban renewal plan for the Property pursuant to the Colorado Urban Renewal Law, C.R.S. § 31-25-107, *et seq.* If Developer determines that a new urban renewal plan is necessary, the Town agrees to fund the costs associated with creating the new urban renewal plan, but Developer acknowledges that the Town cannot guarantee that a new urban renewal plan will be approved by the Town Council.

b. *District.* Developer may form one or more metropolitan districts (collectively the "District") for the purpose of providing financing or other assistance for the Development. Notwithstanding anything contained in this Agreement to the contrary, any obligation of Developer under this Agreement may be performed by or on behalf of the District, provided that the District will be bound by this Agreement for any obligations that it undertakes on behalf of Developer.

11. Purchase Price.

a. *Commercial Property.* The purchase price for the Commercial Property shall be an amount per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, in an amount determined by the Parties prior to the expiration of the Inspection Period.

b. *Residential Property.* The purchase price for the Residential Property shall be an amount per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, in an amount determined by the Parties prior to the expiration of the Inspection Period.

12. Closings.

a. *Conditions Precedent.* The Parties' obligation to close the transfer of any portion of the Commercial Property or Residential Property under this Agreement shall be subject to and conditioned upon the following conditions precedent:

i. The Town's approval of an amendment to the Town Center Planned Development ("PD");

ii. The Town's acceptance of the purchase price for the portion of the Property being conveyed under Section 10; and

iii. Satisfaction of the Approval Contingencies.

b. *Phases.* It is the intent of the Parties that the Commercial Property and the Residential Property may be conveyed to Developer in phases, to be determined in good faith prior to the expiration of the Approvals Period. To accommodate such separate conveyances and the Anchor Grocer's construction schedule, the Parties agree to execute commercially reasonable license agreements to enter the remaining Property not yet conveyed to Developer.

c. *Conveyance.* At each closing, the Town shall convey to Developer title to the applicable portion of the Property by special warranty deed. Title to the Property shall be free and clear of all liens, defects and encumbrances, except the following Permitted Exceptions: this Agreement; easements and rights-of-way that are part of the Development Plan, or are approved, accepted, or waived by Developer; and taxes and assessments not yet due and payable.

d. *Title Insurance.* Developer shall be responsible for all costs of the Title Policy and any title insurance commitments, policies or endorsements required by Developer or its mortgagees.

e. *Extensions.* Developer may, at its option, extend any closing for up to 2 periods of up to 120 days each if such extensions are necessary to accommodate the Anchor Grocer's construction schedule. To exercise such an extension, Developer shall deliver written notice to the Town and evidence of such Anchor Grocer's construction schedule no less than 30 days prior to the then-scheduled closing.

f. *Condition of Property.* The Town has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied, concerning or with respect to the presence of Hazardous Substances on the Property or compliance of the Property with any and all applicable Environmental Laws, or the value, nature, quality or condition of the water, soil and geology of the Property. Developer acknowledges and agrees that the sale of the Property is made on an "as-is" basis. Developer fully and irrevocably releases the Town from any and all claims that it may now have or hereafter acquire against the Town or its officials, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Property or any portion thereof, except claims arising out of breaches of the warranties contained herein.

13. Fees. All permit and other fees for the Development, including without limitation tap fees, permit fees and impact fees, shall be assessed and paid at the then-current rate, unless set forth in a separate agreement between the Parties.

14. Developer's Obligations.

a. *Construction.* Developer shall commence, diligently pursue and complete the construction of the Development in compliance with this Agreement and the PD.

b. *Entitlements.* Developer shall, at its sole cost and expense, obtain all necessary entitlements and approvals, including without limitation zoning, subdivision, site plan, and permits, to construct and complete the Development.

c. *Progress Reports.* Until the last certificate of occupancy is issued for the Development to be constructed by Developer, Developer shall, at the request of the Town, make quarterly reports in such commercially reasonable detail as may reasonably be requested by Town.

d. *Retail Uses.* Developer shall prioritize the marketing and solicitation of commercial space and pad sites to local and regional tenants and small business owners ("Local Tenants"). National chains and national brands are discouraged in the Development except the Grocery Anchor. Notwithstanding the foregoing, Developer shall not be precluded from leasing or selling to non-Local Tenants if good faith leasing efforts fail to attract qualified and economically competitive Local Tenants to the Development, to be determined at Developer's sole discretion, but after reasonably consulting with the Town in good faith. Developer shall lease or sell a minimum of 30% of the total leasable space in the first phase of development in the Commercial Property (after deducting the Anchor Grocer space) to food and beverage tenants, and shall not lease or sell more than 30% of the first phase of development in the Commercial Property to retail office professional tenants such as financial, real estate, title, insurance, medical, dental, chiropractic and similar office uses ("Retail Office Uses"). Retail Office Uses shall not include nail salons, hair salons, med spas, fitness, massage therapy or other similar personal service uses. No single building for commercial use, except for the Anchor Grocer and any hotelier, shall exceed 15,000 square feet.

e. *Applicable Law.* Developer shall at all times comply with all applicable law, including all federal, state and local statutes, regulations, ordinances, decrees 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 and safety, including without limitation the following, as amended: the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Solid Waste Disposal Act; the Davis Bacon Act; the Copeland Act; the Contract Work Hours and Safety Standards Act; the Byrd Anti-Lobbying Amendment; the Housing and Community Development Act; and the Energy Policy and Conservation Act.

15. Representations and Warranties.

a. Developer hereby represents and warrants to the Town that all of the following are true and correct in all material respects 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 actual knowledge of Developer, 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 actual knowledge of Developer, 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.

b. The Town covenants, represents and warrants as follows, to the best of its actual knowledge: there is no litigation or threatened litigation, proceeding or investigation contesting the powers of Town or its officials with respect to the Property, this Agreement or the improvements that has not been disclosed to Developer; the filing or service of any such suit affecting the Property prior to the delivery of a certificate of occupancy shall be disclosed immediately to Developer by the Town; and there are no leases, options, rights of first refusal or other encumbrances affecting title to or use of the Property except as set forth in the Commitment.

16. Indemnification. Developer agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, attorneys, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by the omission, error, professional error, mistake, negligence, or other fault of Developer, or any officer, employee, representative, agent or subcontractor of Developer. In addition, Developer shall pay all property taxes on property underlying 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.

17. Assignment. Developer agrees that it shall not make, create, or suffer to be made or created, any total or partial sale or transfer in any form of this Agreement or any part thereof or any interest therein, or any agreement to do the same, without the prior written

approval of the Town. Notwithstanding the foregoing, the following do not require the Town's consent, provided they comply with this Agreement and applicable law:

- i. Agreements concerning the leasing or sale of portions of the Commercial Property to retail users or the Anchor Grocer (except as provided herein);
- ii. Agreements for the sale of Residential Property to builders or developers, subject to a Deed Restriction Agreement for affordable housing; and
- iii. Concurrently with the first closing, the creation of an association and covenants, conditions and restrictions and recordation of documents in furtherance thereof.

18. Developer Default and Remedies.

a. *Default.* Each of the following is a Developer default of this Agreement:

- i. If Developer fails to perform any of its obligations under this Agreement and fails to remedy the same within 30 days after Developer is given a written notice specifying the same; provided that, if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and Developer provides evidence to the Town that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 120 days of the original notice of violation.
- ii. If an involuntary petition is filed against Developer under a bankruptcy or insolvency law or under the reorganization provisions of any law, or when a receiver of Developer, or of all or substantially all of the property of Developer, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within 90 days after the happening of such event.
- iii. If Developer makes an assignment of its property for the benefit of creditors or files a voluntary petition under a bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

b. *Notice.* Unless necessary to protect the immediate health, safety and welfare of the Town, the Town shall provide Developer at least 30 days' prior written notice of its intent to take any action under this Section, during which Developer may cure the default.

c. *Remedies.* If a Developer default occurs beyond applicable notice and cure, 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 Town's remedies include without limitation:

- i. The refusal to issue any building permit;

ii. The revocation of any building permit previously issued under which construction related to such building permit has not commenced; and

iii. Any other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy, and further provided that 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, provided that in no event shall Developer be liable to the Town or any other party for any indirect, special, consequential or punitive damages of any kind, whether in contract, tort or otherwise.

19. Town Default and Remedies.

a. *Default.* The following is a Town default of this Agreement: if the Town fails to observe or perform any covenant or obligation required of it under this Agreement or any representation or warranty made by Town under this Agreement is materially false when made and the Town fails to remedy the same within 30 days after the Town is given a written notice specifying the same; provided that, if the nature of the violation is such that it cannot reasonably be remedied within 30 days, and the Town provides evidence to Developer that the violation cannot reasonably be remedied within 30 days, then the violation shall be remedied as soon as reasonably practicable, but in any case, within 120 days of the original notice of violation

b. *Remedies.* If a Town default occurs, Developer shall have all remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy, provided that Developer shall not have the remedy of specific against the Town. Without limiting the generality of the foregoing, in the event a Town default occurs, Developer may terminate this Agreement upon notice given to the Town, without waiving any of its rights or remedies hereunder.

20. Miscellaneous

a. *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 in Boulder County, Colorado.

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

c. *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.

d. *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.

e. *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.

f. *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.

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

h. *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.

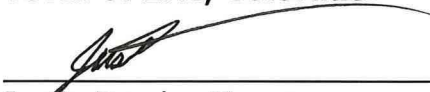
i. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year. The Town represents that it presently intends to appropriate the payments under this Agreement to the fullest extent permitted by law.

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 tornadoes, earthquakes, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, embargoes, pandemics, and the authority and orders of government.

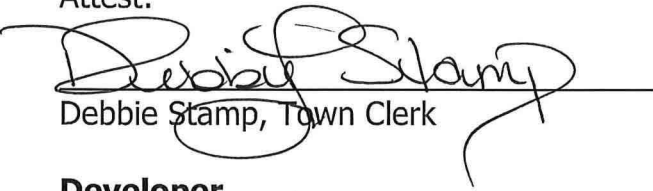
k. *Days.* If the day for any performance or event provided for herein is a Saturday, Sunday or other day on the Town is not open for the regular transaction of business, such day therefor shall be extended until the next day on which the Town is open for the transaction of business.

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

Town of Erie, Colorado


Justin Brooks, Mayor

Attest:


Debbie Stamp, Town Clerk

Developer

Evergreen-County Line & Erie Parkway, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2023, L.L.C.,
an Arizona limited liability company
Its: Manager

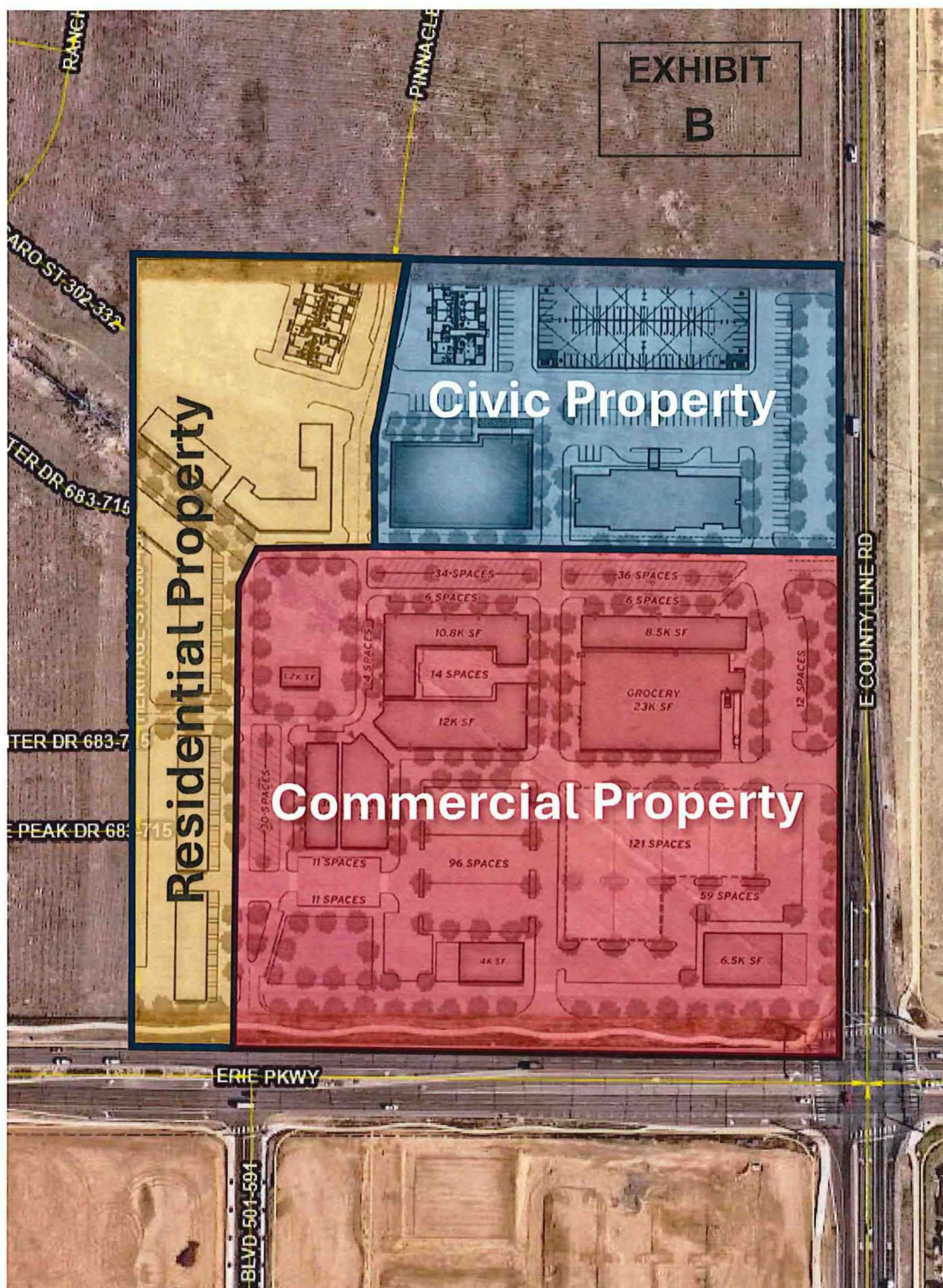
By: Evergreen Devco, Inc., a California corporation
Its: Manager

By: 
Name: Tyler Carlson
Its: CEO

Exhibit A
Legal Description

Tract A, Ranchwood Minor Subdivision. Located in the East Half of the Northeast Quarter of Section 24, Township 1 North, Range 69 West of the 6th Principal Meridian, Town of Erie, County of Boulder, State of Colorado.

FOR INFORMATIONAL PURPOSES ONLY: Assessor Parcel No. R0511537 /
146524110001



**Town of Erie
Resolution No. 25-024**

A Resolution of the Town Council of the Town of Erie Approving the First Amendment to Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C. for the Erie Town Center

Whereas, on October 8, 2024, the Town and Evergreen County Line & Erie Parkway, L.L.C. entered into a Disposition and Development Agreement;

Whereas, the Town and Evergreen County Line & Erie Parkway, L.L.C. wish to amend the Agreement; and

Whereas, the Town Council Finds that it is the best interest of the Town and the Public Health, Safety and Welfare to approve the First Amendment to Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C.

Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:

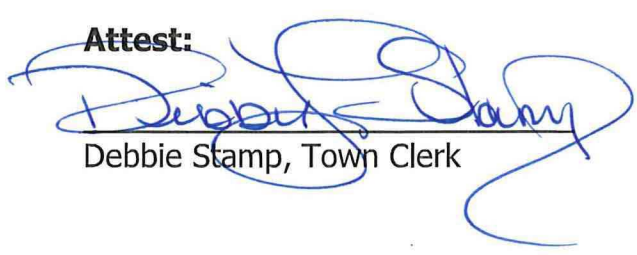
Section 1. The Town Council hereby approves the First Amendment to Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C. in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the First Amendment on behalf of the Town.

Adopted this 11th day of February, 2025.



Andrew J. Moore, Mayor

Attest:



Debbie Stamp, Town Clerk



First Amendment to Disposition and Development Agreement

This First Amendment to Disposition and Development Agreement (the "First Amendment") is made and entered into as of February 11, 2025 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation (the "Town"), and Evergreen-County Line & Erie Parkway, L.L.C., an Arizona limited liability company ("Developer") (each a "Party" and collectively the "Parties").

Whereas, the Parties entered into a Disposition and Development Agreement with an effective date of October 8, 2024 (the "DDA"); and

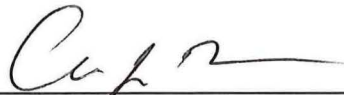
Whereas, the Parties wish to amend the DDA as provided herein.

Now, therefore, in consideration of the covenants and obligations contained in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Inspection Period. The Inspection Period in the DDA is hereby extended to expire on Friday, May 16, 2025.
2. Approvals Period. The Approvals Period in the DDA is hereby extended to expire on Monday, May 18, 2026.
3. Effect of Amendment. Except as expressly amended hereby, the DDA shall continue in full force and effect and unamended. In the event of any conflict or inconsistency between the DDA and this First Amendment, the provisions of this First Amendment shall control.

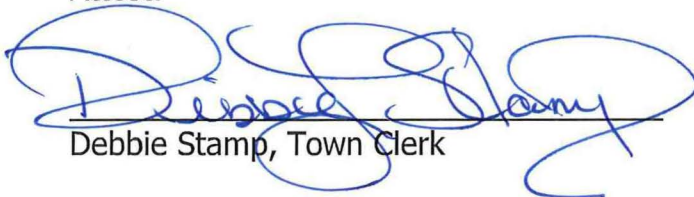
In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado



Andrew J. Moore, Mayor

Attest:



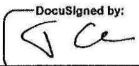
Debbie Stamp, Town Clerk

Developer

Evergreen-County Line & Erie Parkway, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2023, L.L.C.,
an Arizona limited liability company
Its: Manager

By: Evergreen Devco, Inc., a California corporation
Its: Manager

By:  _____
Name: Tyler Carlson
Its: CEO

**Town of Erie
Resolution No. 25-071**

**A Resolution of the Town Council of the Town of Erie Approving
the Second Amendment to Disposition and Development
Agreement with Evergreen-County Line & Erie Parkway, L.L.C. for
the Erie Town Center**

Whereas, on October 8, 2024, the Town and Evergreen County Line & Erie Parkway, L.L.C. entered into a Disposition and Development Agreement;

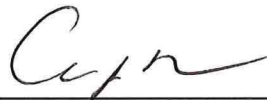
Whereas, on February 11, 2025, the Town and Evergreen County Line & Erie Parkway, L.L.C. amended the Agreement and wish to amend the Agreement again; and

Whereas, the Town Council finds that it is the best interest of the Town and the Public Health, Safety and Welfare to approve the Second Amendment to Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C.

Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:

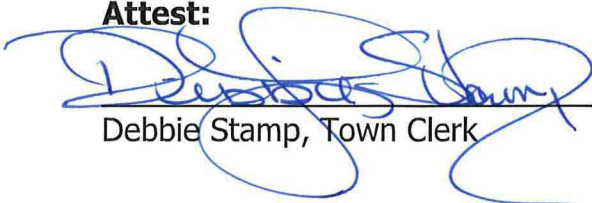
Section 1. The Town Council hereby approves the Second Amendment to Disposition and Development Agreement with Evergreen-County Line & Erie Parkway, L.L.C. in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Second Amendment on behalf of the Town.

Adopted this 13th day of May, 2025.



Andrew J. Moore, Mayor

Attest:


Debbie Stamp, Town Clerk

Second Amendment to Disposition and Development Agreement

This Second Amendment to Disposition and Development Agreement (the "Second Amendment") is made and entered into as of May 13, 2025 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation (the "Town"), and Evergreen-County Line & Erie Parkway, L.L.C., an Arizona limited liability company ("Developer") (each a "Party" and collectively the "Parties").

Whereas, on October 8, 2024, the Parties entered into a Disposition and Development Agreement (the "DDA");

Whereas, the Parties amended the DDA on February 11, 2025 (the "First Amendment"); and

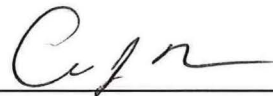
Whereas, the Parties wish to amend the DDA again as provided herein.

Now, therefore, in consideration of the covenants and obligations contained in this Second Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Inspection Period. The Inspection Period in the DDA is hereby further extended to expire on August 14, 2025.
2. Approvals Period. The Approvals Period in the DDA is hereby further extended to expire on August 14, 2026.
3. Effect of Amendment. Except as expressly amended hereby, the DDA, as amended by the First Amendment, shall continue in full force and effect and unamended. In the event of any conflict or inconsistency between the DDA and this Second Amendment, the provisions of this Second Amendment shall control.

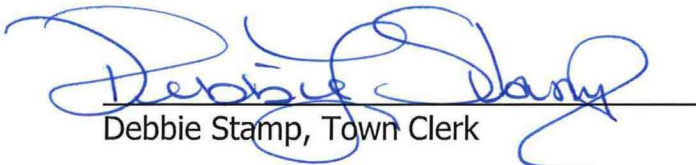
In Witness Whereof, the Parties have executed this Second Amendment as of the Effective Date.

Town of Erie, Colorado



Andrew J. Moore, Mayor

Attest:


Debbie Stamp, Town Clerk

Developer:

Evergreen-County Line & Erie Parkway, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2023, L.L.C.,
an Arizona limited liability company
Its: Manager

By: Evergreen Devco, Inc., a California corporation
Its: Manager

By: 
Name: Tyler Carlson
Its: CEO