

Development Agreement
(Four Corners Subdivision Filing No. 1, Lot 6, Block 4 and Lot 1, Block 6)

This Development Agreement (the "Agreement") is made and entered into this ____ day of _____, 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 FDG MEQ Erie, LLC, a Colorado limited liability company with an address of 240 Saint Paul Street, Suite 400, Denver, CO 80206 ("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 the final plat for Lot 6, Block 4 and Lot 1, Block 6, Erie Four Corners Subdivision Filing No. 1 Amendment 1 (the "Final Plat"); and

Whereas, the Town and Erie Four Corners, LLC entered into a Development Agreement dated August 29, 2022, recorded in the real property records of Boulder County, Colorado on August 30, 2022 under Reception No. 03978314, which was assigned to Toll Southwest LLC pursuant to the Assignment and Assumption of Development Agreement dated August 29, 2022, recorded in the real property records of Boulder County, Colorado on August 30, 2022 under Reception No. 03979161 (collectively the "Prior DA"); and

Whereas, this Agreement supersedes the Prior DA; and

Whereas, the Parties 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.

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 and conditions under which the Development may proceed. All provisions of this Agreement are in addition to, and not in lieu of, any requirements of the Erie Municipal Code (the "Code") and other applicable law.
2. District. The Town acknowledges that Developer has formed or may form one or more metropolitan districts (collectively the "District") for the purpose of providing facilities and services for the Development, either independently or as Developer's designee under this Agreement. 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.

3. Construction of Improvements.

a. *General.* Developer shall, at its own expense, design, construct and install all public 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.

b. *Construction Standards.* Developer shall construct the Improvements in accordance with plans 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 in 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. Developer shall reimburse the Town for any expenses incurred by the Town for review of the application or associated documents. Unless otherwise approved by Town, overlot grading shall not be initiated until the Town approves drainage 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 Plans or Standards 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 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. 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 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.

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 December 31, 2027.

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 work required to receive Final Acceptance. After Developer completes such work, Developer shall request a re-inspection, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work. If Developer does not complete the required work in an acceptable manner within 30 days, Developer shall be in breach of this Agreement.

c. *Warranty.* For all Improvements to be dedicated to the Town, Developer shall provide the Town with a 2-year warranty, commencing on the date of Initial Acceptance (the "Warranty Period"). Specifically, but not by way of limitation, Developer shall warrant that: the title is marketable and its transfer rightful; the Improvements dedicated to the Town are free from any security interest or other 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 in writing by the Town for maintenance, all Improvements shall be maintained by Developer. Acceptance by the Town of ownership of any Improvement does not constitute acceptance by the Town of maintenance for such Improvement. If Developer wishes to transfer maintenance obligations to the District or any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

b. *Vacant Lots/Tracts.* Developer shall be responsible for maintenance, including without limitation weed control and debris removal, on all vacant lots/tracts until such time as such lots/tracts are developed.

6. Improvement Guarantee.

a. *Amount and Form.* To secure the construction and installation of the Improvements, Developer shall provide a letter of credit or cash in an amount equal to

115% of the total costs listed in **Exhibit B** (the "Improvement Guarantee"), a form approved by the Town.

b. *Timing.* Developer shall not commence construction, including without limitation staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the Improvement Guarantee.

c. *Draw.* If the Improvements are not satisfactorily completed within the periods 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 days and Developer has not yet provided a satisfactory replacement, or completed the Improvements, the Town may draw on the Improvement Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to finish the Improvements or correct problems with the Improvements as the Town deems appropriate. 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 days of a request by Developer.

d. *Reduction.* Upon Initial Acceptance of Improvements, the Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of such Improvements. The reduced Improvement Guarantee shall be held by the Town during the Warranty Period.

7. Reimbursements.

a. *To the Town.* Developer shall reimburse the Town for a proportional cost of improvements previously constructed by the Town that benefit the Property, in the amounts and during the times set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

b. *To Developer.* Developer may request reimbursement for the oversize portion of utilities and other infrastructure and a *pro rata* portion of the cost of off-site Improvements, from other properties that benefit from such Improvements. However, nothing contained in this Agreement shall 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, from the properties that use such Improvements.

8. Fees and Dedications.

a. *Park and Open Space Fees.* Developer shall pay Park and Open Space Fees to the Town in the amounts and at the times set forth in **Exhibit C**.

b. *School Fees.* Pursuant to the Intergovernmental Agreement between the Town and St. Vrain Valley School District, Developer shall pay the fees set forth in **Exhibit C** to St. Vrain Valley School District, which shall be paid in a proportional amount for each

building permit for the Development. Proof of payment shall be provided with each building permit application for the Development.

9. 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.

10. 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.

11. Vested Rights. The Final Plat constitutes a site specific development plan as defined in C.R.S. § 24-68-101, *et seq.*, and Chapter 3 of Title 9 of the Erie Municipal Code, and shall create vested property rights for 3 years from the date of approval of the Final Plat, provided that all required procedures are followed. The Final Plat shall include the language required by C.R.S. § 24-68-102(4)(a). Developer shall be responsible for publication of the notice required by C.R.S. § 24-68-103(c).

12. 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 Town's remedies include without limitation:

- 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 draw on the Improvement Guarantee; and
- 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 Improvement 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.

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.

13. 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 in 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 Boulder County Clerk and Recorder, and shall be a covenant running with the Property.

j. *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.

k. *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

Justin Brooks, Mayor


Attest:

Debbie Stamp, Town Clerk

Developer:

FDG MEQ Erie, LLC,
a Colorado limited liability company

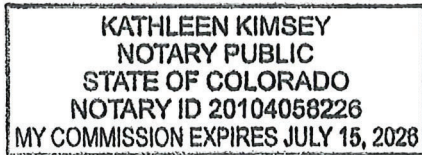
By: Forum Management, Inc.,
a Colorado corporation,
its Manager


By: 
Name: Edie M. Suhr
Title: Vice President

State of Colorado)
) ss.
City and County of Denver)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 18th day of October, 2024, by Edie M. Suhr as Vice President of Forum Management, Inc., a Colorado corporation, as Manager of FDG MEQ Erie, LLC, a Colorado limited liability company.

Witness my hand and official seal.




Notary Public

My commission expires: July 15, 2026

Exhibits List

Exhibit A – Legal Description

Exhibit B – Improvements

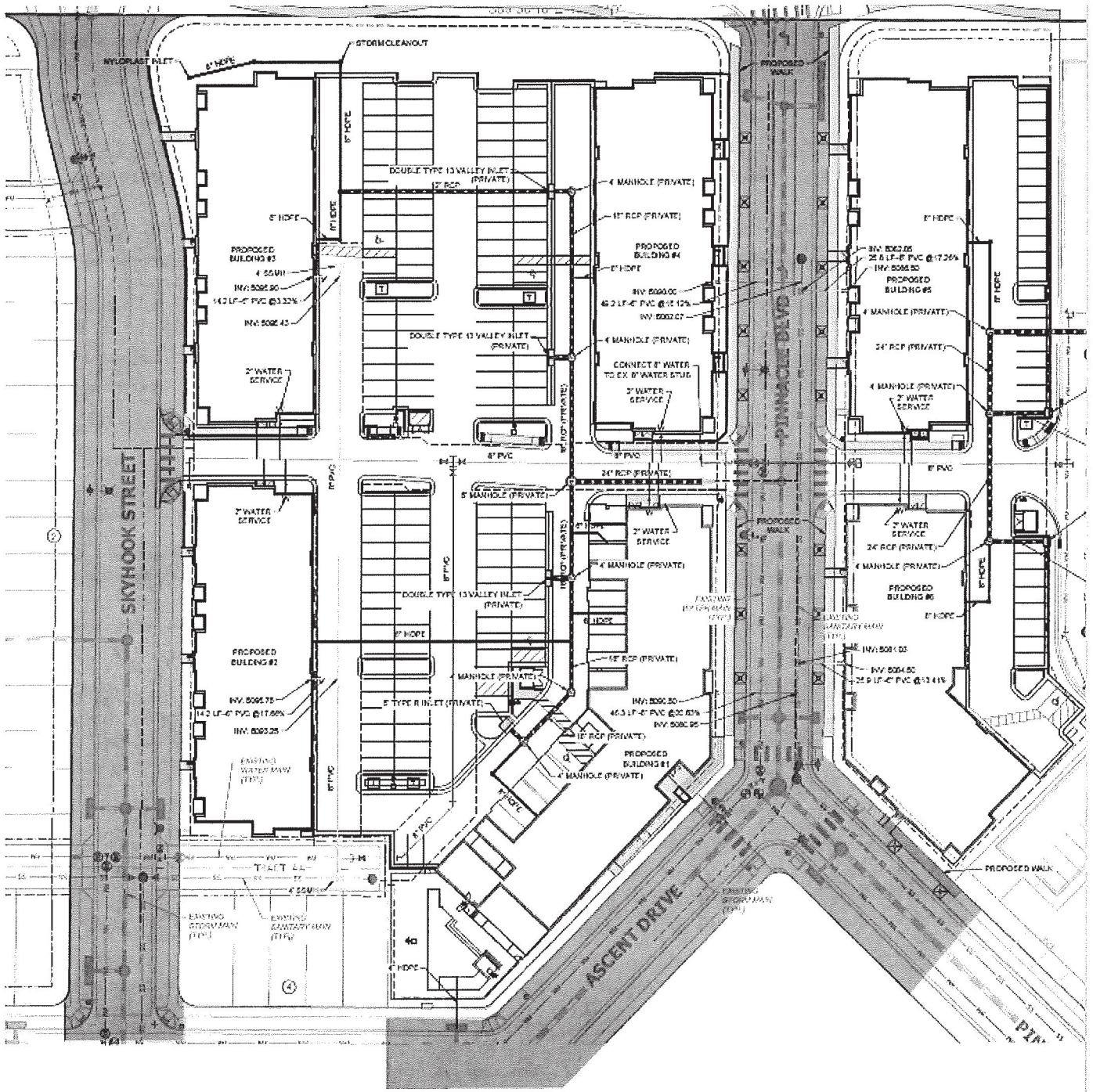
Exhibit C – Reimbursements and Fees

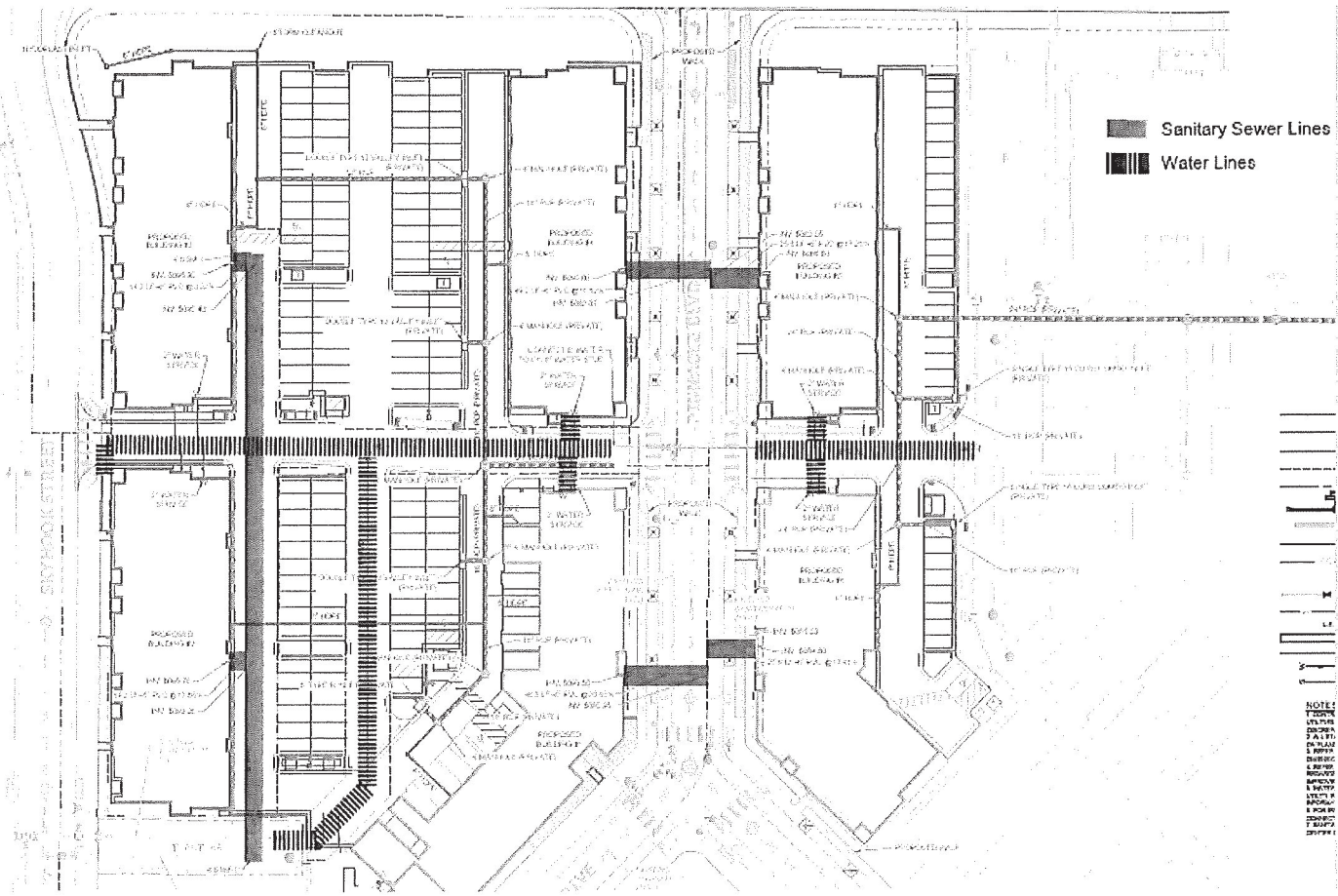
Exhibit A
Legal Description

LOT 6, BLOCK 4 AND LOT 1, BLOCK 6, ERIE FOUR CORNERS SUBDIVISION FILING NO.
1, COUNTY OF BOULDER, STATE OF COLORADO

Exhibit B Improvements

ITEM NO.	DESCRIPTION	QNTY	UNIT	UNIT COST	TOTAL COST
<u>I. SANITARY SEWER IMPROVEMENTS</u>					
3002	8" PVC	334	LF	\$45.00	\$ 15,030.00
3004	4' DIAM. SANITARY MANHOLE	2	EA	\$4,600.00	\$ 9,200.00
SUBTOTAL II					\$ 24,230.00
<u>II. WATER SYSTEM IMPROVEMENTS</u>					
4003	STD. FIRE HYDRANT ASSEMBLY	1	EA	\$5,500.00	\$ 5,500.00
4013	8" PVC, C900 WATERLINE	646	LF	\$45.00	\$ 29,070.00
4017	8" GATE VALVE	5	EA	\$1,900.00	\$ 9,500.00
4018	8" TEE	2	EA	\$550.00	\$ 1,100.00
4045	Bend w/ K.B.	3	EA	\$350.00	\$ 1,050.00
4050	CONNECT TO EXISTING WATERLINE	4	EA	\$2,500.00	\$ 10,000.00
SUBTOTAL II					\$ 56,220.00



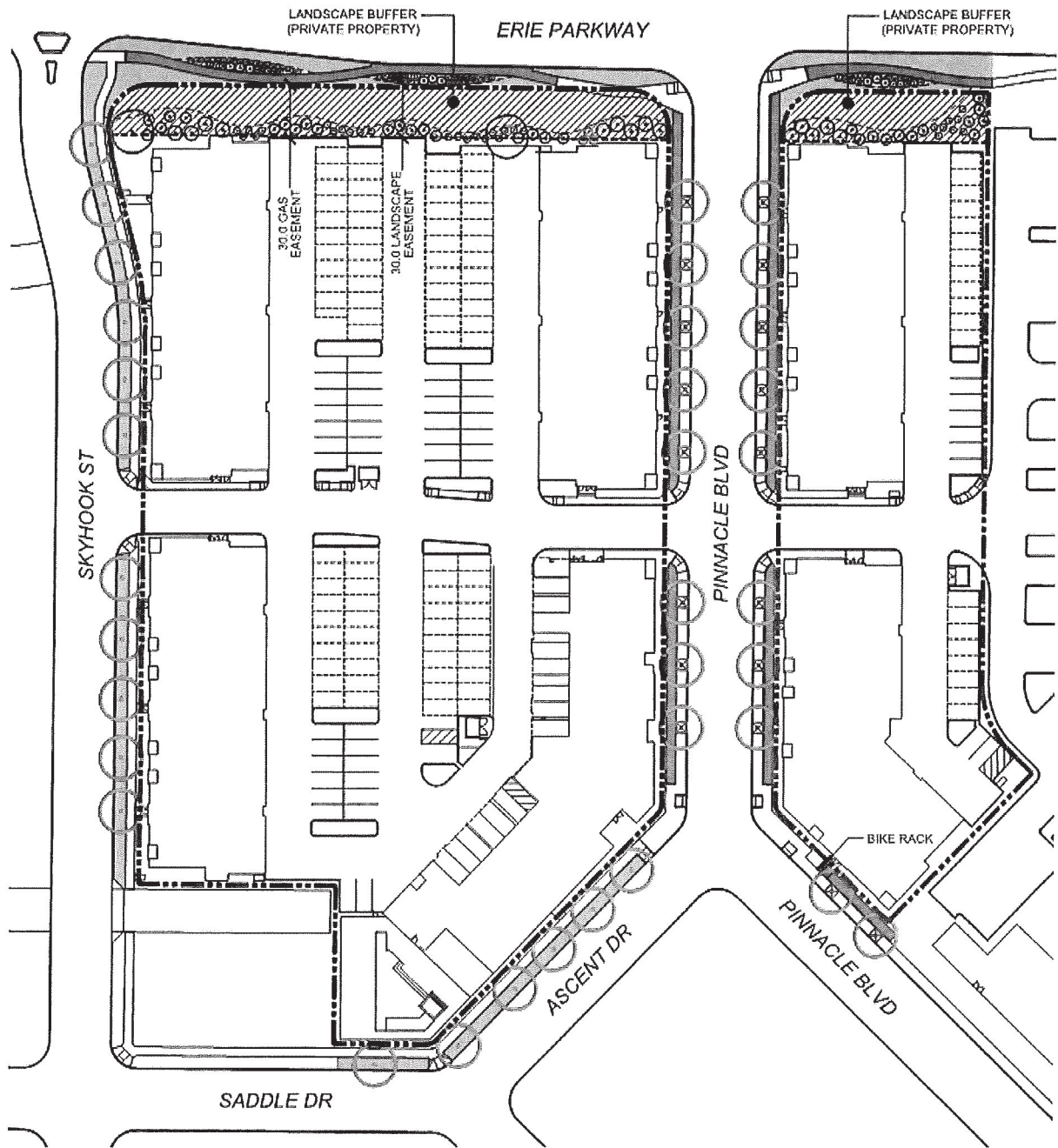


	Quantity	Units	Unit Cost	Total
Public Improvements				
Irrigation				
6" Pop-up Spray Head	284	EA	\$42.00	\$11,928.00
6" Pop-up Spray Head w/ RVAN nozzle	17	EA	\$47.00	\$799.00
Tree Bubblers	36	EA	\$40.00	\$1,440.00
Quick Coupling Valve	3	EA	\$195.00	\$585.00
Drip Line Blow-Out Stub	3	EA	\$67.00	\$201.00
Poly Drip Tubing	240	LF	\$1.90	\$456.00
Drip Emitters	168	EA	\$2.70	\$453.60
Drip Valve Assembly - 1" dia.	3	EA	\$450.00	\$1,350.00
Electric Control Valve - 1" dia.	6	EA	\$350.00	\$2,100.00
Irrigation Wiring	2,820	LF	\$0.30	\$846.00
PVC Mainline w/ fittings - 2" dia.	510	LF	\$5.00	\$2,550.00
PVC Mainline w/ fittings - 1-1/2" dia.	0	LF	\$4.00	\$0.00
PVC Lateral - 1 1/2" dia.	30	LF	\$3.20	\$96.00
PVC Lateral - 1" dia.	2,650	LF	\$2.20	\$5,830.00
Sleeve 4" dia.	120	70	\$15.00	\$1,800.00
Sleeve 2" dia.	450	LF	\$6.00	\$2,700.00
			Irrigation Subtotal =	\$33,134.60

Item	Qty.	Unit	RIGHT OF WAY		Extended Total
			Unit Cost		
Landscaping					
Turf Grass Sod	8135	SQ.FT.	\$ 1.50	\$	12,202.50
Mulch (Rock-Wood)	1100	SQ.FT.	\$ 2.20	\$	2,420.00
Steel Edger	226	LF	\$ 7.00	\$	1,582.00
Soil Amendment	37	CY	\$ 6.75	\$	249.75
Trees 2" Deciduous	35	EA	\$ 800.00	\$	28,000.00
Shrubs	85	EA	\$ 65.00	\$	5,525.00
Sub-Total Landscaping				\$	49,979.25
Site Features					
Tree Grates	18	EA	\$ 2,565.00	\$	46,170.00
Bike Rack	1	EA	\$ 200.00	\$	200.00
Sub-Total Site Features				\$	46,370.00
Total				\$	96,349.25

Grand Total Landscaping Improvements

\$129,483.85



LEGEND

- CONCRETE WALK
- SOD
- SHRUB BED
- LANDSCAPE BUFFER
- TREE
- X TREE GRATE
- PROPERTY BOUNDARY

**Exhibit C
Reimbursements and Fees**

Reimbursements

Improvement	Amount (\$)	Payment Timing
Connection to the North Water Reclamation Facility Interceptor line	84,460	Within 365 days from the date of Final Plat approval
Connection to the Coal Creek Sanitary Sewer Interceptor line	11,330	Within 365 days from the date of Final Plat approval
Connection to the 15-inch sanitary sewer line in Erie Parkway	25,338	Within 365 days from the date of Final Plat approval
Connection to the 8-inch sanitary sewer line in Erie Parkway	40,788	Within 365 days from the date of Final Plat approval

Fees

Type	Amount (\$)	Payment Timing
School Fees	143,170	At issuance of building permit
Neighborhood Park Fee-in-Lieu	307,012.76	Within 365 days from the date of Final Plat approval
Open Space Fee-in-Lieu	356,678.70	Within 365 days from the date of Final Plat approval