

## FIFTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Fifth Amendment to the Disposition and Development Agreement (“**Fifth Amendment**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and among the Town of Erie, a Colorado statutory town (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**”).

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement, dated March 22, 2016 (the “**Agreement**”), pursuant to which the 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 (“**First Amendment**”);

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

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

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

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

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each 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. Inspection Period Contingencies. Erie and the Developer hereby acknowledge the Inspection Period Contingencies in Sections 3.5(a), 3.5(b), 3.5(c), 3.5(d) and 3.5(g) have been waived or satisfied by the Parties and Erie waives its rights to terminate under Sections 3.5 and 14.2(a). The Inspection Period Contingencies in Sections 3.5(e) and 3.5(f) remain outstanding obligations of Erie to the Developer and Developer retains the right to terminate under Section 3.5 until Erie’s obligations under Sections 3.5(e) and 3.5(f) are satisfied.
3. Approvals Period. Section 4.1 of the Agreement is hereby amended to extend the Approvals Period until February 28<sup>th</sup>, 2020.

4. Exhibit A. Exhibit A to the Agreement, as amended by the First Amendment, is hereby further amended and restated as provided in the attached Exhibit A.

5. Miscellaneous.

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

b) Successors and Assigns. This Fifth Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

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

d) Power and Authority. Erie and the Developer have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Fifth Amendment.

e) Counterparts. This Fifth 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. Erie and the Developer agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f) Governing Law. This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

g) Notice Updates. The following shall be updated in Section 16.11(a) of the Agreement: the suite number for Developer's Colorado address is 1200 and the notice delivery for Developer's legal counsel is Jumps Law, Attention Brian Jumps, 2579 West Main Street, STE 201, Littleton, CO 80120, Email: [bjumps@jumpslaw.com](mailto:bjumps@jumpslaw.com). The following shall be updated in Section 16.11(b) of the Agreement: the Town of Erie Town Administrator notice shall be directed to Malcolm Fleming and the Town of Erie Town Attorney notice shall be directed to Kendra Carberry with an email address of [klc@hpcwclaw.com](mailto:klc@hpcwclaw.com).

*[Signature page follows.]*

IN WITNESS WHEREOF, Erie and the Developer have caused this Fifth 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-2016, 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:

\_\_\_\_\_  
Jessica Koenig, Town Clerk

TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A

- Legal Description -

PARCEL A:

PART OF THE NORTH HALF NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTH HALF NORTHEAST QUARTER FROM WHENCE THE NORTHWEST CORNER OF SAID NORTH HALF NORTHEAST QUARTER BEARS NORTH 00°04'00" EAST; THENCE SOUTH 89°48'30" EAST ALONG THE SOUTH LINE OF SAID NORTH HALF NORTHEAST QUARTER, A DISTANCE OF 1434.83 FEET; THENCE NORTH 00°14'20" EAST, 845.98 FEET TO THE SOUTH LINE OF THAT PROPERTY CONVEYED BY FLOYD E. HARRIS AND NEVADIA HARRIS TO LEONARD L. LANHAM AND NINA E. LANHAM, RECORDED MAY 15, 1968 ON FILM 635 AT RECEPTION NO. 879012; THENCE NORTH 89°41'50" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 366.57 FEET TO A POINT ON THE EAST LINE OF THAT PROPERTY CONVEYED BY DEED FROM FLOYD EUGENE HARRIS AND NEVADIA HARRIS TO THE TOWN OF ERIE, A MUNICIPAL CORPORATION, RECORDED APRIL 29, 1968 IN FILM 633 AT RECEPTION NO. 877395; THENCE SOUTH 00°58'00" WEST ALONG SAID EAST LINE, 31.12 FEET TO THE CENTERLINE OF THE SOUTH BOULDER CANYON IRRIGATION DITCH; THENCE TRAVERSING ALONG THE CENTERLINE OF SAID DITCH AND THE SOUTH LINE OF PROPERTY DESCRIBED ON FILM 633 AT RECEPTION NO. 877395, THE FOLLOWING COURSES AND DISTANCES: SOUTH 71°36'00" WEST 508.65 FEET; THENCE SOUTH 73°48'00" WEST, 241.52 FEET; THENCE NORTH 89°40'00" WEST, 140.82 FEET; THENCE NORTH 77°42'00" WEST, 114.23 FEET; THENCE NORTH 62°24'00" WEST, 118.52 FEET TO A POINT ON THE WEST LINE OF THE NORTH HALF NORTHEAST QUARTER OF SAID SECTION 34; SAID POINT BEING ALSO THE SOUTHWEST CORNER OF THAT PROPERTY DESCRIBED ON FILM 633 AT RECEPTION NO. 877395; THENCE SOUTH 00°04'00" WEST ALONG SAID WEST LINE OF THE NORTH HALF NORTHEAST QUARTER, A DISTANCE OF 675.12 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED RECORDED APRIL 15, 1983 AT RECEPTION NO. 543786, AND IN DEED RECORDED FEBRUARY 20, 1997 ON FILM NO. 2187 AT RECEPTION NO. 1678309, COUNTY OF BOULDER, STATE OF COLORADO.

PARCEL B:

A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID NORTHEAST  $\frac{1}{4}$ , 20 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE NORTH 89°41'50" WEST ALONG SAID NORTH LINE, 230.64 FEET; THENCE SOUTH 00°58' WEST, 469.96 FEET; THENCE SOUTH 89°41'50" EAST, 618.52; THENCE NORTH 00°14'20" EAST, 469.93 FEET TO THE NORTH LINE OF SAID NORTHEAST  $\frac{1}{4}$ ; THENCE NORTH 89°41'50" WEST, ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF BOULDER BY THE DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127,

COUNTY OF BOULDER, STATE OF COLORADO.

Exhibit A

- Legal Description Continued -

PARCEL C:

PARCEL I:

A PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH 1/4 CORNER OF SAID SECTION; THENCE SOUTH 0°09' WEST 642.7 FEET; THENCE SOUTH 69°45' EAST 211.4 FEET; THENCE NORTH 85° EAST 195 FEET; THENCE NORTH 71°53' EAST 718 FEET; THENCE NORTH 24°20' EAST 539 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION, 20 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4; THENCE WEST ALONG SAID NORTH LINE OF SAID SECTION TO THE PLACE OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF BOULDER BY THE DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127;  
AND EXCEPT THAT PORTION DESCRIBED IN DEED RECORDED APRIL 29, 1968 UNDER RECEPTION NO. 877396;  
AND EXCEPT THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, STATE OF COLORADO, BY THE DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.  
AND EXCEPT THAT PORTION CONVEYED TO THE DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO BY THE DEED RECORDED JANUARY 2, 1998 UNDER RECEPTION NO. 1759789.

PARCEL II:

A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE SOUTH 0°09' WEST, 642.7 FEET; THENCE SOUTH 69°45' EAST, 2.59 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, THE TRUE POINT OF BEGINNING; THENCE SOUTH 69°45' EAST, 208.81 FEET; THENCE NORTH 85°0' EAST, 195.00 FEET; THENCE NORTH 71°53' EAST, 718.00 FEET; THENCE SOUTH 0°58' WEST, 31.12 FEET TO A POINT ON THE CENTERLINE OF THE SOUTH BOULDER CANYON DITCH; THENCE WESTERLY, ALONG THE SAID DITCH CENTERLINE AS FOLLOWS: SOUTH 71°36' WEST, 508.65 FEET; SOUTH 73°48' WEST, 241.52 FEET; NORTH 89°40' WEST, 140.82 FEET; NORTH 77°42' WEST, 114.23 FEET; NORTH 62°24' WEST, 118.52 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34; THENCE NORTH 0°04' WEST, ALONG THE SAID WEST LINE OF THE NORTHEAST QUARTER, 11.00 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS DIVISION OF HIGHWAYS, STATE OF COLORADO BY DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.

PARCEL III:

THAT PORTION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, LYING SOUTH OF THE COUNTY ROAD AS DESCRIBED IN DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, STATE OF COLORADO, BY THE DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.

# Exhibit A

## - Graphic Depiction of Parcels A, B, C1, C2 and C3 -

