

SUPPLEMENTAL AGREEMENT TO REDEVELOPMENT PROJECT
REIMBURSEMENT AGREEMENT

This SUPPLEMENTAL AGREEMENT TO REDEVELOPMENT PROJECT REIMBURSEMENT AGREEMENT (the “Supplemental Agreement”) is made and entered into as of the ____ day of _____, 2019, by and between the TOWN OF ERIE URBAN RENEWAL AUTHORITY (“TOEURA”), the TOWN OF ERIE, a Colorado municipality (the “TOWN”), and RTR BIRDHOUSE HOLDINGS LLC, a Colorado limited liability company (the “Developer”) (each a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, TOEURA is a body corporate and has been duly created, organized, established, and authorized to transact business and exercise its powers as an urban renewal authority within the Town pursuant to the Colorado Urban Renewal Law, Section 31-25-101, *et seq.*, C.R.S., and the Town Board of Trustees Resolution No. 11-121, adopted October 11, 2011;

WHEREAS, the Developer is the owner of a parcel of land, known as 526 Briggs Street, Erie, Colorado 80516, generally bounded on the north by a commercial establishment, on the west by Briggs Street, on the south by commercial establishments, and on the east by an alley, and as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “Project Area”);

WHEREAS, the Project Area is one of 11 building lots on the 500 block of Briggs Street (the “500 block”) according to the Weld County Assessor;

WHEREAS, the Historic Old Town Erie Urban Renewal Plan (the “Plan”) designates the area delineated therein as an urban renewal area (the “Plan Area”) within the meaning of the Colorado Urban Renewal Law, designates the Plan Area as appropriate for urban renewal, and authorizes the use of property tax increment revenue, municipal sales tax increment revenue, and any other financing method authorized in the Colorado Urban Renewal Law in support of rehabilitation and redevelopment within the Plan Area;

WHEREAS, TOEURA and the Developer entered into that certain Redevelopment Project Reimbursement Agreement dated March 7, 2019 (the “Reimbursement Agreement”), pursuant to which, in furtherance of the Plan, the Developer has or will improve the Project Area by the construction of a one-story commercial building for restaurant use (the “Project”) and TOEURA will contribute financing to help partially offset the costs incurred by the Developer to complete the Project, all as more particularly described in the Reimbursement Agreement;

WHEREAS, the Developer is responsible for infrastructure costs and fees for providing storm water infrastructure to the 500 block including: (i) a 18” reinforced concrete pipe and alley drainage system; (ii) engineering and design; and (iii) a construction management fee for the stormwater infrastructure construction (the “Construction Management Fee”), all totaling \$57,306.54 (collectively the “Stormwater Infrastructure Expenses”);

WHEREAS, the Developer is responsible for other costs and fees for the Project including: (i) paving the alley on the east boundary of the Project Area; (ii) building permit fees (the “Building

Permit Fees”); (iii) a raw water fee (the “Raw Water Fee”); and (iv) a traffic impact fee (the “Traffic Impact Fee”) (all, together with the Stormwater Infrastructure Expenses, the “Remaining Costs and Fees”), as set forth more particularly in **Exhibit B** as attached hereto and incorporated herein by reference;

WHEREAS, in recognition that some Remaining Costs and Fees were unforeseen, the Developer has requested, and in furtherance of the Plan the Town has agreed, that the Town will not require paving the alley on the east boundary of the Project Area and that the Town will waive the Building Permit Fees;

WHEREAS, in furtherance of the Plan, the TOEURA and the Town desire to reimburse the Developer for a portion of the Stormwater Infrastructure Expenses, with the intention that any future developments in the 500 block shall reimburse the Town for their *pro rata* share of the cost of tapping into the storm water system;

WHEREAS, the Parties wish to set forth the terms of the reimbursement herein;

WHEREAS, Section 31-25-112, C.R.S., of the Colorado Urban Renewal Law expressly authorizes public bodies to do all things necessary to aid or cooperate with urban renewal authorities in or in connection with the planning or undertaking of any plans, projects, programs, works, operations, or activities, and to enter into agreements with such authorities respecting action to be taken pursuant to the exercise of the public bodies’ powers;

WHEREAS, Section 31-21-105, C.R.S., of the Colorado Urban Renewal Law expressly authorizes urban renewal authorities to enter into contracts necessary or convenient to the exercise of their powers.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Waiver of Requirements. In accordance with the terms of this Supplemental Agreement and in furtherance of the Plan, the Parties agree as follows:
 - a. The Town hereby waives the requirement that the Developer pave the alley on the east boundary of the Project Area; and
 - b. The Town, acknowledging that the Project is a TOEURA investment project in furtherance of the Plan, shall waive the Building Permit Fees.
2. Reimbursement for Stormwater Infrastructure Expenses.
 - a. The Stormwater Infrastructure Expenses shall be divided equally among the 11 building lots on the 500 block, one of which is the Project Area. The share for the Project Area shall thus be one-eleventh of the Storm Water Infrastructure Expenses, or \$5,209.68 (the “Developer’s Share of Stormwater Infrastructure Expenses”).

- b. The Town shall advance to TOEURA from the Town's General Fund the Stormwater Infrastructure Expenses attributable to the 10 building lots on the 500 block that do not include the Project Area, totaling \$52,096.86 (the "Reimbursement Amount").
 - c. TOEURA shall use the Reimbursement Amount to reimburse the Developer for the Stormwater Infrastructure Expenses not attributable to the Project Area.
 - d. The Developer shall apply the Reimbursement Amount to the following fees and costs, which total \$69,644.30 (the "Outstanding Fees"): (i) the Raw Water Fee, (ii) the Traffic Impact Fee, and (iii) the Developer's Share of Stormwater Infrastructure Expenses.
 - e. After the Developer applies the Reimbursement Amount to the Outstanding Fees pursuant to Section 2(d), a balance of \$12,337.76 (the "Remaining Fee Balance") shall remain to be paid by the Developer to the Town.
3. Assignment of Remaining Fee Balance.
- a. For the term of that Reimbursement Agreement, TOEURA incurred a Reimbursement Obligation, as defined in that Reimbursement Agreement, to reimburse the Developer for a portion of costs incurred to complete the Project, by paying municipal sales tax increment revenue to the Developer, subject to other conditions as described more particularly in the Reimbursement Agreement. To the extent conflict may exist between the Reimbursement Agreement and this Agreement regarding the Reimbursement Obligation, this Agreement shall control.
 - b. Notwithstanding the covenants, agreements, representations, and provisions in the Reimbursement Agreement the Developer hereby assigns and transfers to the Town all of the Developer's right, title, claim, and interest in and to the municipal sales tax increment revenue to which the Developer is entitled by the Reimbursement Agreement in an amount equal to the Remaining Fee Balance. The Developer's rights, title, claim, and interest to the municipal sales tax increment revenue in excess of the Remaining Fee Balance shall remain unmodified.
4. Representations and Warranties by the Developer. The Developer represents, warrants, and certifies to the Town and TOEURA as follows:
- a. The Developer is a Colorado limited liability company, validly existing, in good standing, and qualified to do business in the State of Colorado, and has the legal capacity and the authority to enter into and perform its obligations under this Supplemental Agreement.
 - b. The execution and delivery of this Supplemental Agreement, and the performance and observance of its terms, conditions, and obligations have been duly and validly authorized by all necessary action on the Developer's part.
 - c. The execution and delivery of this Supplemental Agreement and the consummation of the transactions contemplated by this Supplemental Agreement will not: (i) to

Developer's knowledge, conflict with or contravene any law, order, rule, or regulation applicable to the Developer, (ii) conflict with Developer's governing documents; (iii) result in the breach of any of the terms or provisions, or constitute a default under, any agreement or other instrument to which the Developer is a party or by which it may be bound or affected; or (iv) permit any Party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Developer.

- d. The Developer knows of no litigation, proceeding, initiative, referendum, or investigation, or threat of any of the same, contesting the power of the Town or TOEURA or the Developer or any of their representative principals or officials with respect to this Supplemental Agreement or any action taken by the Town or by TOEURA relating to the Project Area or the Plan.
- e. This Supplemental Agreement constitutes a valid and binding obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

5. Representations and Warranties by TOEURA. TOEURA represents, warrants, and certifies to the Town and the Developer as follows:

- a. TOEURA is a body corporate organized pursuant to the provisions of the Colorado Urban Renewal Law and is not a "district" within the meaning of Article X, Section 20 of the Colorado Constitution. As such, TOEURA has the power and legal right to enter into this Supplemental Agreement and has duly authorized the execution, delivery, and performance of this Supplemental Agreement by proper action, which Supplemental Agreement shall be a legal, valid, and binding obligation of TOEURA, enforceable in accordance with the Supplemental Agreement's terms against TOEURA.
- b. The consummation of the transactions contemplated by this Supplemental Agreement will not violate any provisions of any applicable law, rule, regulation or ordinance or the governing laws or formation documents of TOEURA or constitute a default or result in the breach of any term or provision of any contract or agreement to which TOEURA is a party or by which it is bound.
- c. TOEURA knows of no litigation, proceeding, initiative, referendum, or investigation, or threat of any of the same, contesting the power of TOEURA or the Developer or any of their representative principals or officials with respect to this Supplemental Agreement or any action taken by TOEURA relating to the Project Area or the Plan.
- d. The execution and delivery of this Supplemental Agreement, and the performance and observance of its terms, conditions, and obligations have been duly and validly authorized by all necessary action on TOEURA's part.

- e. TOEURA reasonably believes the Project is, for all purposes, a necessary and appropriate urban renewal project as contemplated under the Colorado Urban Renewal Law and the Plan.
6. Representations and Warranties by the Town. The Town represents, warrants, and certifies to TOEURA and the Developer as follows:
- a. The Town is a Colorado municipal corporation with the power and legal right to enter into this Supplemental Agreement and has duly authorized the execution, delivery, and performance of this Supplemental Agreement by proper action, which Supplemental Agreement shall be a legal, valid, and binding obligation of the Town, enforceable in accordance with the Supplemental Agreement's terms against the Town.
 - b. The consummation of the transactions contemplated by this Supplemental Agreement will not violate any provisions of any applicable law, rule, regulation or ordinance or the governing laws of the Town or constitute a default or result in the breach of any term or provision of any contract or agreement to which the Town is a party or by which it is bound.
 - c. The Town knows of no litigation, proceeding, initiative, referendum, or investigation, or threat of any of the same, contesting the power of the Town or the Developer or any of their representative principals or officials with respect to this Supplemental Agreement or any action taken by the Town relating to the Project Area or the Plan.
 - d. The execution and delivery of this Supplemental Agreement, and the performance and observance of its terms, conditions, and obligations have been duly and validly authorized by all necessary action on the Town's part.
7. Defaults by the Developer. Events of default hereunder by the Developer shall be limited to the following: (a) any representation, warranty, or certification made herein by the Developer that was materially and knowingly inaccurate when made; or (b) failure or refusal to perform or observe any of the covenants, agreements, or conditions made by the Developer herein.
8. Defaults by TOEURA. Events of default hereunder by TOEURA shall be limited to the following: (a) failure or refusal of TOEURA to account for, allocate, or pay the Reimbursement Amount to the Developer as provided herein; (b) any representation, warranty, or certification made herein by TOEURA that was materially and knowingly inaccurate when made; or (c) failure or refusal to perform or observe any of the material covenants, agreements, or conditions made by TOEURA herein.
9. Defaults by the Town. Events of default hereunder by the Town shall be limited to the following: (a) failure or refusal of the Town to advance the Reimbursement Amount to TOEURA as provided herein; (b) any representation, warranty, or certification made herein by the Town that was materially and knowingly inaccurate when made; or (c) failure or

refusal to perform or observe any of the material covenants, agreements, or conditions made by the Town herein.

10. Remedies. The following remedies shall be available for events of default hereunder:
 - a. The declaration of any default shall be subject to the giving of not less than thirty (30) days' notice in writing, specifying the nature of the default and requesting that it be corrected within thirty (30) days following notice. No act, event, or omission shall be considered default hereunder so long as efforts to correct the condition specified in such notice have in good faith commenced and are diligently being pursued.
 - b. In the case of default by TOEURA, the Developer or the Town or both may pursue a remedy for damages, except that in no event shall TOEURA be liable for special, consequential, or punitive damages, nor shall the Developer be entitled to specific performance against TOEURA.
 - c. In the case of default by the Town, the Developer or TOEURA or both may pursue a remedy for damages, except that in no event shall the Town be liable for special, consequential, or punitive damages, nor shall the Developer be entitled to specific performance against the Town.
 - d. In the case of default by the Developer, the Town or TOEURA or both may terminate this Agreement and seek out-of-pocket costs and attorney fees.
11. Force Majeure. None of the Parties shall be considered in default of its obligations under this Supplemental Agreement in the event of delay or failure to perform due to causes beyond its control and without its fault or negligence, including, without limitation: acts of God, acts of orders of the court, or acts of the federal, state, or local government; acts of the other Parties; acts of third parties, including litigation seeking to overturn or enjoin any approval granted by the Town, TOEURA, or any other governmental or quasi-governmental agency relating to the Project; strikes, lockouts, freight embargoes, or other major industrial disturbances; acts of public enemies, wars, terrorism, blockades, insurrections, riots, epidemics, quarantine restrictions, explosions, or other civil disturbances; landslides, lightning, earthquakes, fires, storms, floods, washouts, or other unusual and severe weather conditions; delays in work to be performed by others; or any other events beyond the reasonable control of the parties. If any Party is rendered unable, wholly or in part, by force majeure to carry out any or all of its obligations under this Supplemental Agreement, then the obligations of such Party, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, insofar as possible, be remedied within a reasonable time.
12. Notices. Unless otherwise notified in writing, all notices required or permitted by this Supplemental Agreement shall be in writing and shall be sufficiently given as follows: (a) if delivered in person, by prepaid overnight express mail or express courier; (b) or if delivered by mail, by certified mail with postage prepaid and return receipt requested.

In the case of notice to the Town, addressed to:

Town of Erie
ATTN: Malcolm Fleming
Erie Town Hall
645 Holbrook
Erie, Colorado 80516

with a copy to:

Town of Erie Town Attorney
ATTN: Kendra Carberry
Hoffman, Parker, Wilson & Carberry, P.C.
511 16th St., Suite 610
Denver, CO 80202

In the case of notice to TOEURA, addressed to:

Town of Erie Urban Renewal Authority
ATTN: Malcolm Fleming
Erie Town Hall
645 Holbrook
Erie, Colorado 80516

with copies addressed to:

Brownstein Hyatt Farber Schreck, LLP
ATTN: Carolynne C. White
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202

In the case of notice to the Developer, addressed to:

RTR Birdhouse Holdings LLC
ATTN: Scott Skiba
11013 Circle Drive
Golden, Colorado 80403

With copies addressed to:

Cerberus Law Group LLC
ATTN: Nate Miller, Esq.
740 35th Street
Boulder, Colorado 80302

13. Miscellaneous.

- a. Binding Effect and Further Assurances. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties, and their permitted successors and assigns, if any. Further, the Parties and any permitted successors and assigns agree to execute such additional instruments or documents and to take such other actions as shall be reasonably requested by the other party to implement this Supplemental Agreement. The Parties agree to execute such documents as reasonably requested by another Party to verify or confirm the status of this Supplemental Agreement and the performance of the obligations hereunder.
- b. Covenant of Good Faith. Each Party agrees to act reasonably and in good faith in performing or attempting to perform each and every condition, covenant, obligation, or duty required by this Supplemental Agreement, and each party shall not unreasonably, arbitrarily, or capriciously withhold any approval or action required by the Supplemental Agreement.
- c. No Implied Terms. No obligations, agreements, representations, warranties, or certificates shall be implied from this Supplemental Agreement, beyond those expressly stated herein.
- d. Entire Agreement and Amendments. This Supplemental Agreement is the entire Agreement of the parties as to the subject matter herein and supersedes and replaces all prior agreements with respect to the subject matter herein. This Supplemental Agreement may be amended only in writing fully subscribed by the parties or their permitted successors and assigns.
- e. Incorporation of Exhibits. All exhibits attached to the Supplemental Agreement are incorporated into and made part of this Supplemental Agreement.
- f. Counterparts. This Supplemental Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.
- g. Assignment. This Supplemental Agreement, or any rights or interest in this Supplemental Agreement, may not be assigned or transferred by any Party without the prior written approval of the other Parties, which shall not be unreasonably withheld.
- h. No Third-Party Beneficiaries. No third-party beneficiary rights are created in favor of any person not a party to this Supplemental Agreement.
- i. No Partnership or Joint Venture. Notwithstanding any language in this Supplemental Agreement, or any other agreement, representation, or warranty to the contrary, the parties shall not be deemed partners or joint venturers, and no party shall be responsible for any debt or liability of the other party.
- j. TOEURA Not an Affiliate of the Town. TOEURA is not an affiliate of the Town, or a department or agency of the Town, and is not authorized to bind or represent the Town or the position of the Town in any manner whatsoever, nor is the Town

authorized to bind or represent TOEURA or the position of TOEURA in any manner whatsoever.

- k. No Personal Obligations. No stipulation, obligation, or agreement contained in this Supplemental Agreement shall be deemed to be a stipulation, obligation, or agreement of any commissioner, officer, agent, or employee of any of the Parties in his or her individual capacity.
- l. Integrated Contract. This Supplemental Agreement is an integrated contract and invalidation of any of its provisions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect unless the Parties otherwise agree in writing to an amendment.
- m. Waiver. The waiver of any breach of any provision of this Supplemental Agreement by any Party shall not constitute a continuing waiver of any subsequent breach of any such Party, for either breach of the same or any other provision of this Supplemental Agreement.
- n. Venue and Applicable Law. Any action arising out of this Supplemental Agreement shall be brought in Weld County, Colorado, and the laws of the State of Colorado shall govern the interpretation and enforcement of this Supplemental Agreement.
- o. Days. If the day of performance or event provided for herein is a Saturday, Sunday, or other day on which bank located in the City of Denver, Colorado are not open for the regular transaction of business, such day therefor shall be extended until the next day on which such banks are open for the transaction of business.
- p. 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.
- q. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the Town and its officers, attorneys or employees.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

TOWN OF ERIE

Jennifer Carroll, Mayor

Attest: _____
Jessica Koenig, Town Clerk

TOWN OF ERIE URBAN RENEWAL AUTHORITY

By: _____
Jennifer Carroll, Chair

Attest: _____
Malcolm Fleming, Executive Director

RTR BIRDHOUSE HOLDINGS LLC,
a Colorado limited liability company

By: _____
Scott Skiba, Manager

Exhibit A

Project Area Legal Description

That certain real property located in Weld County, Colorado, legally described as:

Parcel 1:

ERI 24434 L6 & 7 BLK13

Parcel 2:

ERI 24435 L8 BLK13

EXHIBIT B

Remaining Costs and Fees

STORM WATER INFRASTRUCTURE EXPENSES	
18" Reinforced concrete pipe and alley drainage system	\$38,000.00
Hurst Engineering and design	\$7,190.00
Construction Management Fee	\$12,116.54
Total	\$57,306.54

OTHER FEES	
Building Permit Fee	\$21,365.19
Raw Water Fee	\$38,144.48
Traffic Impact Fee	\$26,290.14
Total	\$85,799.81