

DEVELOPMENT AGREEMENT
(Nine Mile)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of March, 2020 (the "Effective Date"), by and among the TOWN OF ERIE, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company, with a principal place of business at 2390 East Camelback Road, Suite 410, Phoenix, AZ 85016; Attention: Laura Ortiz ("Evergreen"), EVERGREEN-287 & ARAPAHOE APARTMENTS, L.L.C., an Arizona limited liability company, with a principal place of business at 2390 East Camelback Road, Suite 410, Phoenix, AZ 85016; Attention: Laura Ortiz ("Apartments") (Evergreen and Apartments are collectively "Developer"), the NINE MILE METROPOLITAN DISTRICT, a quasi-municipal corporation and a political subdivision duly organized and existing under the constitution and laws of the State of Colorado with an address of c/o McGeady Becher P.C., 450 East 17th Avenue, Suite 400, Denver, CO 80203 (the "District"), and the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority with an address of P.O. Box 750, Erie, CO 80516 ("TOEURA") (each a "Party" and collectively the "Parties").

WHEREAS, the Town and TOEURA own the real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Developer is under contract to purchase the Property from the Town and TOEURA;

WHEREAS, Developer wishes to develop the Property (the "Development"), and Developer has filed an application for approval of the final plat for Nine Mile Corner (the "Final Plat");

WHEREAS, the Parties recognize and agree that TOEURA will execute and record the Final Plat prior to the conveyance of the Property to Developer and that this Agreement will not be binding on Developer, or recorded in the real estate records of the Boulder County Clerk and Recorder, until such time as the Authority conveys the Property to Developer and its affiliates; 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 of the Town.

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 and Interpretation. The purpose of this Agreement is to set forth the terms and conditions under which the Development will occur. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), the Town's Standards and Specifications for Design and Construction of Public Improvements (the "Standards"), state law and other Town ordinances and are not intended to supersede any requirements contained therein. Notwithstanding anything contained in this Agreement to the contrary, in the case of any conflict between the terms of this Agreement and the Disposition and Development Agreement dated

March 22, 2016. as amended (the "DDA"), as to any fees to paid by Developer or its successors and assigns, then the DDA shall control in all respects.

2. District. The Town acknowledges that the District was formed 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*. Subject to Section 2, Developer shall, at its own expense, design, construct and install all 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. The Improvements to serve the Property are divided into two categories: (1) the Public Improvements, which include those improvements to be owned by the Town or the District; and (2) the Other Improvements, which include all other Improvements not to be owned by the Town or the District. The Town acknowledges and agrees that any Public Improvements constructed by or on behalf of or paid for by the District are not subject to the Town's use tax.

b. *Construction Standards*. The Improvements shall be constructed in accordance with plans and specifications approved by the Town (the "Plans"), as well as 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 by the State of Colorado. Developer shall complete the Plans for each portion of the Property prior to the closing of the sale of such portion of the Property under the DDA.

c. *Public Improvement Permit*. Before the construction of any Improvements, Developer shall obtain from the Town a Public Improvement Permit ("PIP"), if required. If the application is complete and complies with the Plans and the Standards, the Town will issue the PIP. Subject to the DDA and Section 2, Developer shall reimburse the Town for any expenses incurred by the Town for consultant review of the application or associated documents. Unless otherwise approved by Town, overlot grading for each Phase shall not be initiated until the Town approves drainage improvement plans as part of the Final Approvals and issues the PIP for such applicable Phase.

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 reasonable access to inspect materials and work, and all

materials and work not conforming to the Plans 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, as applicable, acquire at their 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 all monetary liens and encumbrances (other than real estate taxes which are not yet due and payable), and shall be conveyed on documents in a form reasonably acceptable to the Town.

f. *Permits.* Subject to the DDA, Developer at its own cost shall obtain the following permits, as applicable:

- i. Any permit 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. Town Grading and Stormwater Quality Permit.
- 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 without limitation all current and future federal, state and local statutes, regulations, ordinances 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, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

4. Specific Improvements. Subject to Section 2, Developer shall cause to be constructed or furnished and installed, at its own expense, subject to the DDA and in conformance with Plans and Standards, the following Improvements:

a. *Streets and Sidewalks.* Developer shall construct all required street and sidewalk Improvements in conformance with the Plans, Standards and the PIP.

b. *Signs and Striping.* Developer shall install street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Manual of Uniform Traffic Control Devices, as amended, and other applicable legal requirements.

c. *Street Lights.* Developer shall cause the installation of street lights, of a type and in accordance with the Plans and Standards, concurrently with the construction of the streets on which they are located.

d. *Water.* Developer shall install all required water mains, lines, and appurtenances. Developer shall pay raw water dedication fees for all permanently irrigated tracts and rights-of-way prior to the installation of landscaping in said tracts and rights-of-way. Native seeded areas not permanently irrigated may be temporarily irrigated until establishment without paying raw water dedication fees, for a period not to exceed 2 years.

e. *Wastewater.* Developer shall install all required sewer lines and appurtenances.

f. *Drainage Facilities.* Developer shall install all required drainage facilities, in compliance with Mile High Flood District design standards.

g. *Landscaping.* Developer shall install all required landscaping in accordance with a Town-approved landscape plan as part of the Final Approvals.

h. *Utilities.* Developer shall install all on-site and off-site electric, natural gas, telephone, cable other utilities, underground as required by the Code.

i. *Fencing.* Developer shall install all fencing in accordance with the PD and the Code. Fencing adjacent to parks and open space shall be limited to low (4') open (50%) fencing. The finished side of the fence shall face the open space.

j. *Water Line.* Subject to Section 2, Developer shall install, as part of the Public Improvements, a water line for the Town's future connection to an offsite main (the "Water Line"), within the easement shown on the Final Plat. As work progresses and within 30 days after submittal of complete and accurate invoices to the Town, the Town shall reimburse Developer for the actual expenses incurred in connection with the design and construction of the Water Line.

k. *Phasing.* The Development may be constructed in phases (each a "Phase"), as set forth in the Phasing Plan attached hereto as **Exhibit C** and incorporated herein by this reference. The Phase including any residential dwelling units shall be the Residential Phase. The Phasing Plan may be amended at any time upon mutual agreement of the Parties.

5. Acceptance of Improvements and Warranty.

a. *Initial Acceptance.* No later than 15 days after the 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.

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 whether or not the Public Improvements are in conformity with the Plans and Standards. If Developer does not complete the repairs, replacements, or other work required within the time periods herein specified above, Developer shall be in breach of this Agreement. The costs of re-inspection shall be borne by Developer.

iii. All Improvements shall receive initial acceptance on or before the date that is 2 years after the date Developer acquires the Property.

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 repairs, replacements, construction or other work required to receive Final Acceptance of the Public Improvements. After Developer completes the repairs, replacements, construction or other work as required, Developer shall request of the Town a re-inspection of such work to determine if Final Acceptance can be granted, and the Town shall provide written notice to Developer of whether or not the Improvements are in conformity with the Plans and Standards within 30 days. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement.

c. *Warranty.* For all Public Improvements being conveyed to the Town or owned by District, Developer shall provide the Town with a 2-year warranty (the "Warranty Period"), commencing on the date of Initial Acceptance and continuing for a period of 2 years. Specifically, but not by way of limitation, Developer shall warrant that, subject to the terms of this Agreement: the title is marketable and its transfer rightful; the Public Improvements are free from any security interest or other monetary lien or encumbrance; and the Public 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 Public Improvements and make all necessary repairs or replacements.

6. Issuance of Building Permits. Prior to the issuance of any building permits for any structure within a Phase, all of the following Improvements shall be installed in such Phase pursuant to the Plans and Standards and shall have received preliminary approval from the Town: the

Improvements for fire suppression, temporary access and temporary storm water mitigation in accordance with the Plans, with only such exceptions as shall be approved in advance by the Town Engineer, all as sufficient to comply with applicable law and requirements of the emergency service providers. Preliminary approval requires a finding by the Town Engineer that such delineated Improvements are safe to be used during construction, but preliminary approval shall not constitute the Town's acceptance of any Improvements.

7. Maintenance.

a. *Improvements.* Unless expressly accepted by the Town for maintenance, all Improvements shall be maintained by Developer or the District.

b. *Vacant Lots.* Developer or the District shall be responsible for landscaping maintenance, including weed control, on all vacant lots within the Property until such time as the lot is developed and conveyed to an individual owner.

8. Performance Guarantee.

a. To secure the construction and installation of the Public Improvements, District shall establish an escrow of the District bond proceeds associated with the Public Improvements pursuant to such documents as are reasonably acceptable to District and the Town (the "Escrow"). The amount of the Escrow shall be 115% of the cost of the Public Improvements set forth in **Exhibit B**.

b. The Parties hereby acknowledge and agree that the District shall be specifically permitted to draw from the Escrow for construction of the Public Improvements as construction progresses. Upon Initial Acceptance of all of the Public Improvements, 25% of the initial Escrow amount shall remain in the Escrow during the 2-year warranty period; provided, however, that, if the Escrow does not contain such 25%, then Developer shall provide a performance guarantee for any difference in a form required by the Code.

c. During the Warranty Period, if and to the extent Developer fails to make all corrections necessary to bring the Public Improvements into conformity with the Plans and Standards, the Town shall have the right to draw from the Escrow to complete the Public Improvements, in the Town's sole discretion.

9. Guarantee of Other Improvements. To secure the construction and installation of the Other Improvements, Developer and the Town agree as follows:

a. Prior to the issuance of the first certificate of occupancy for a structure in any Phase, the Other Improvements within such Phase shall have received Initial Acceptance pursuant to Section 5.

b. During the Warranty Period, if and to the extent Developer fails to make all corrections necessary to bring the Improvements into conformity with the Plans and Standards, the Town shall have the right to draw from the Escrow to complete the Improvements, in the Town's sole discretion.

10. Deferred Installation of Landscaping. Prior to issuance of any certificates of occupancy in any Phase, Developer shall post a performance bond in the amount of 115% of the estimated cost of installation of any landscaping or irrigation Improvements that, because of weather conditions, cannot be completed. The performance bond shall not be released until all planting and finish materials shown on the Plans are installed and accepted and the irrigation is installed and functional in compliance with the Plans and Standards. The Town shall have the right to draw on the performance bond for any landscaping or irrigation Improvements that are not installed in compliance with this Section. Any costs incurred by the Town in excess of the funds provided by the performance bond shall be payable by Developer within 30 days after receipt of invoices. If Developer fails to pay such amounts, the same may be recovered by the Town by any lawful means, including certification to the County Treasurer for collection in the same manner as real estate taxes.

11. Fees.

a. *Open Space Fees.* At the time of issuance of the first building permit for the Development, Developer shall pay the Open Space Fee of \$502,120.00. For purposes of this Agreement, "building permit" means a building permit for the construction of an above-ground structure.

b. *Neighborhood Park Fees.* At the time of issuance of the first building permit for the Residential Phase, Developer shall pay the Neighborhood Park Fee in the amount of \$496,784.00.

c. *School Site.* Prior to the issuance of the first building permit for the Residential Phase, Developer shall comply with the Town's intergovernmental agreement with the Boulder Valley School District ("BVSD") and the requirements of Code § 10.5.6.

d. *Community Park Fees.* No Community Parks fee shall be due and payable by Developer as Town and Developer hereby agree that such fee is offset by the residential impact fees payable by Developer for each unit of the Residential Phase at building permit for the Residential Phase.

e. *Raw Water Fees.* Because no open space or park will be dedicated to the Town, no raw water fees shall be due from Developer for any parks or open space.

12. Reimbursements.

a. *To the Town.* At the time of the closing of the sale of each portion of the Property as provided in the DDA, Developer shall reimburse the Town for a proportional cost of improvements previously constructed by the Town that benefit that portion of the Property, as follows:

i. For the Residential Phase: for connection to the West Side Sanitary Sewer: \$261,375.00; and for connection to the North Water Reclamation Facility Interceptor line constructed by the Town: \$71,442.50.

ii. For Lot 1 of the Property: for connection to the West Side Sanitary Sewer: \$66,510.00; and for connection to the North Water Reclamation Facility Interceptor line constructed by the Town: \$18,179.40.

iii. For Lot 3 of the Property: for connection to the West Side Sanitary Sewer: \$41,655.00; and for connection to the North Water Reclamation Facility Interceptor line constructed by the Town: \$11,385.70.

b. *To Developer.* Developer may seek reimbursement for the oversize portion of utilities and other infrastructure and a *pro rata* portion of the cost of any off-site Improvements required under this Agreement. At the time of final approval of a subdivision plat or other development plan for properties that use these Improvements, the Town may require, as a condition of approval, a proportional reimbursement to Developer. Except for the Water Line, nothing contained in this Agreement shall operate to 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 as contemplated herein, for any reason, from the properties or property owners that use the Improvements.

13. Easements.

a. If and to the extent the existing public right-of-way for State Highway 287 is insufficient to accommodate Bus Rapid Transit ("BRT"), Developer or the District, as applicable, agrees to dedicate to the Town sufficient easements to accommodate the BRT.

b. Developer or the District, as applicable, agrees to dedicate to the Town sufficient easements on the Property to accommodate the location of a water pump station that will be constructed, maintained and operated by the Town or the Town's designee at the Town's cost.

14. Indemnification. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description to the extent caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to the Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any such suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to Claims. In addition, Developer shall pay all property taxes on property underlying the 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.

15. Representations and Warranties.

a. *By Developer.* Developer hereby represents and warrant 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 are 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 actual knowledge of Developer, without inquiry, 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; 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. *By the District.* To the best of the District's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against the District which, if decided or determined adversely, would have a material adverse effect on the ability of the District to undertake its obligations under this Agreement nor, to the actual knowledge of the District, without inquiry, is there any fact or condition of the Property known to the District that may have a material adverse effect on the District'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 the District is a party or by which the District is bound or affected.

16. 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).

17. Breach.

a. *Remedies.* If Developer or District breaches this Agreement, the Town may, following the requisite notice and cure as provided below, 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 remedies include, but are not limited to:

- 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 demand under the Escrow for the completion of the Public Improvements; or
- 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, the Town shall provide Developer and District 30 days written notice of its intent to take any action under this Section during which 30 day period Developer or District, as applicable, may cure the breach described in the notice.

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.

18. Miscellaneous.

a. *Assignment.* Except as hereinafter provided, this Agreement shall not be assigned in whole or in part by Developer or the District without the prior written consent of the Town; provided, however, that the following assignments and transfers will not require any such consent: (i) subject to prior written notice to the Town from Developer, Developer may assign some or all of its rights, interests, and obligations under this Agreement to any successor owner of the Property or portions thereof provided that Developer directly or indirectly owns at least 50% of the equity interest in, or has managerial control over or the right to direct the day-to-day operations of, such successors owner(s); and (ii) subject to prior written notice to the Town from Developer, Developer may assign some or all of its rights, interests, and obligations under this Agreement to one or more entities who will develop, own or operate all or a portion of the Property or of the improvements to be constructed thereon and who are a subsidiary parent company, special purpose entity, affiliate directly or indirectly owned or controlled by or under common direct or indirect control or ownership with Developer, or a joint venture entity formed by Developer or with its investors or partners. Except as provided above, no other assignment of this Agreement shall be permitted without the consent 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 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. *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.

j. *Recordation.* Upon recordation in the real estate records of the Boulder County Clerk and Recorder, this Agreement shall be a covenant running with the Property.

k. *Joint and Several Liability.* Evergreen and Apartments shall be jointly and severally liable for all obligations of Developer under this Agreement.

l. *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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Heidi Leatherwood, Town Clerk

**TOWN OF ERIE URBAN
RENEWAL AUTHORITY**

Jennifer Carroll, Chair

ATTEST:

Secretary

DEVELOPER

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

By: Evergreen Development Company-
2019, L.L.C., an Arizona limited liability
company

Its: Manager

By: Evergreen Devco, Inc., a California
corporation

Its: Manager

By: _____

Name: _____

Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this the _____ day of _____, 2020, before me, the undersigned Notary Public
in and for said County and State, personally appeared _____, the
_____ of Evergreen Devco, Inc., a California corporation, as Manager for
Evergreen Development Company – 2019, L.L.C., an Arizona limited liability company, as
Manager for Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company, personally
known to me to be the person whose name is subscribed to the within instrument and
acknowledged to me that he or she executed the instrument in such person's authorized capacity,
and that by his or her signature on the instrument the entity on behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:

Notary Public

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

By: Evergreen Development Company-
2019, L.L.C., an Arizona limited liability
company

Its: Manager

By: Evergreen Devco, Inc., a California
corporation

Its: Manager

By: _____

Name: _____

Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this the _____ day of _____, 2020, before me, the undersigned Notary Public
in and for said County and State, personally appeared _____, the
_____ of Evergreen Devco, Inc., a California corporation, as Manager for
Evergreen Development Company – 2019, L.L.C., an Arizona limited liability company, as
Manager for Evergreen-287 & Arapahoe Apartments, L.L.C., an Arizona limited liability
company, personally known to me to be the person whose name is subscribed to the within
instrument and acknowledged to me that he or she executed the instrument in such person's
authorized capacity, and that by his or her signature on the instrument the entity on behalf of which
the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:
Notary Public

DISTRICT

NINE MILE METROPOLITAN DISTRICT, a
quasi-municipal corporation and a political
subdivision duly organized and existing under the
constitution and laws of the State of Colorado

By: _____
Name: _____
Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this the _____ day of _____, 2020, before me, the undersigned Notary Public
in and for said County and State, personally appeared _____, the
_____ of Nine Mile Metropolitan District, a quasi-municipal corporation
and a political subdivision duly organized and existing under the constitution and laws of the State
of Colorado, personally known to me to be the person whose name is subscribed to the within
instrument and acknowledged to me that he or she executed the instrument in such person's
authorized capacity, and that by his or her signature on the instrument the entity on behalf of which
the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBITS LIST

EXHIBIT A – Legal Description

EXHIBIT B – Public Improvements and Non-Acquired Improvements

EXHIBIT C – Phasing Plan

EXHIBIT A
Legal Description

DESCRIPTION:

A PORTION OF THE NORTHEAST QUARTER OF SECTION 34 AND THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 34 AND MONUMENTED ON THE WEST BY A 3-1/4" ALUMINUM CAP STAMPED "PLS 38064" IN A RANGE BOX FOR THE CENTER-NORTH 1/16 CORNER OF SECTION 34, AND MONUMENTED ON THE EAST BY A 3-1/4" ALUMINUM CAP STAMPED "PLS 16406" FOR THE NORTH 1/16TH CORNER COMMON TO SECTIONS 34 AND 35, AND IS ASSUMED TO BEAR S89°54'51"W.

COMMENCING AT SAID CENTER-NORTH 1/16 CORNER OF SAID SECTION 34; THENCE WITH SAID SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 34, N89°54'51"E A DISTANCE OF 57.27 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE WITH SAID EAST RIGHT OF WAY LINE OF NORTH 107TH STREET, N00°23'00"W A DISTANCE OF 1,388.64 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF ARAPAHOE ROAD AND A POINT OF NON-TANGENT CURVE TO THE RIGHT;

THENCE WITH SAID RIGHT OF WAY LINE OF ARAPAHOE ROAD AND SAID NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 23°39'37", HAVING A RADIUS OF 80.50 FEET, AN ARC LENGTH OF 33.24 FEET, AND WHOSE CHORD BEARS N66°05'34"E, A CHORD DISTANCE OF 33.01 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE, N77°55'23"E A DISTANCE OF 31.39 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE N64°30'37"E A DISTANCE OF 166.81 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE N87°36'30"E A DISTANCE OF 521.75 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE S50°58'13"E A DISTANCE OF 81.70 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE, S75°07'26"E A DISTANCE OF 67.64 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE, S68°54'48"E A DISTANCE OF 154.47 FEET;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE, S65°50'20"E A DISTANCE OF 12.93 FEET TO A POINT OF CURVATURE TO THE LEFT;

THENCE CONTINUING WITH SAID RIGHT OF WAY LINE AND SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 16°39'46", HAVING A RADIUS OF 960.68

FEET, AN ARC LENGTH OF 279.39 FEET, AND WHOSE CHORD BEARS S72°25'40"E, A CHORD DISTANCE OF 278.40 FEET;
THENCE CONTINUING WITH SAID RIGHT OF WAY LINE, S89°58'35"E A DISTANCE OF 355.68 FEET;
THENCE DEPARTING WITH SAID PROPOSED SOUTH RIGHT OF WAY LINE, S00°01'26"E A DISTANCE OF 439.93 FEET;
THENCE N89°58'23"W A DISTANCE OF 252.20 FEET;
THENCE S00°00'29"E A DISTANCE OF 846.36 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 34;
THENCE S89°54'51"W, ALONG SAID SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 34, A DISTANCE OF 1377.41 FEET TO THE POINT OF BEGINNING.
CONTAINING 47.63 ACRES (2,074,772 SQUARE FEET), MORE OR LESS.

EXCLUDING SPECIFICALLY, HOWEVER, THAT PORTION TO BE PLATTED AND KNOWN AS LOT 10, BLOCK 1, OF THE FINAL PLAT.

EXHIBIT B
Improvements

COST ESTIMATES OF PUBLIC IMPROVEMENTS:

Estimate of Costs		
		HARD COSTS
Earthwork/Grading/SWPPP		\$ 2,050,946
Paving/Concrete		\$ 590,824
Intersection/Traffic Signals		\$ 1,079,683
Sanitary Sewer		\$ 754,821
Water		\$ 375,465
Storm Sewer		\$ 716,028
Tracts (Landscape, Retaining Wall)		\$ 1,296,899
TOTAL		\$ 6,864,666

OTHER IMPROVEMENTS:

Estimate of Costs - Retail Other Improvements		
		HARD COSTS
Earthwork/Grading/SWPPP		\$ 353,086
Paving/Concrete		\$ 1,178,614
Site Electrical		\$ 374,100
Sanitary Sewer		\$ 34,394
Water		\$ 140,861
Storm Sewer		\$ 138,849
Landscaping		\$ 138,721
TOTAL		\$ 2,358,625

Estimate of Costs - Residential Other Improvements		
		HARD COSTS
Earthwork/Grading/SWPPP		\$ 801,800
Paving/Concrete		\$ 1,632,590
Site Electrical		\$ 75,000
Sanitary Sewer		\$ 302,132
Water		\$ 593,802
Storm Sewer		\$ 583,003
Landscaping		\$ 910,000
TOTAL		\$ 4,898,327

EXHIBIT C
Phasing Plan

