

DEVELOPMENT AGREEMENT
(Vista Ridge Filing 6, 2nd Amendment)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2020 (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 Bonanza Drive Development Corporation, a corporation with an address of 9750 West Cambridge Place, Littleton, CO 80127 ("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 for commercial uses (the "Development"), and has filed an application for approval of the Final Plat for Vista Ridge, Filing 6, 2nd Amendment (the "Final Plat");

WHEREAS, as a condition of approval of the Final Plat, the Town requires Developer to enter into a Development Agreement, to ensure the construction of necessary public improvements for the Development;

WHEREAS, the Development is also governed by the Non-residential Development Agreement dated February 5, 2014 and recorded in Weld County at Reception No. 3994402 (the "Original DA"); and

WHEREAS, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval of the Development, and that such matters are necessary to protect, promote and enhance the public health, safety and welfare of the Town.

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, conditions and fees to be paid by Developer in connection with the Improvements (as hereinafter defined) for the Development. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), state law, other Town ordinances and the Original DA and are not intended to supersede any requirements contained therein.

2. Construction of Improvements.

a. *General.* Developer shall, at its own expense, design, construct and install all public improvements and common facilities 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 necessary for the Development (collectively the "Improvements"). A list of the required Improvements is set forth in **Exhibit B**, attached hereto and incorporated herein by this reference,

provided that omission of any 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 and specifications approved by the Town (the "Approved 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 by 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. If the application is complete and complies with the Approved Plans and the Standards, the Town will issue the PIP. 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 the Town, overlot grading shall not be initiated until the Town approves drainage improvement plans by the issuance of the PIP. Grading shall not adversely impact the existing detention ponds in Vista Ridge Filing 14, and if any adverse impacts are caused, it shall be Developer's responsibility to resolve those impacts before any building permits will be issued for the Development.

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 Approved Plans or Standards shall be repaired or removed and replaced at Developer's expense.

e. *Rights-of-way and Easements.* Prior to construction 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. Town grading, stormwater and water quality 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 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 environment, 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.

3. Specific Improvements. Developer shall cause to be constructed or furnished and installed, at Developer's own expense and in conformance with the Approved Plans and the Standards, all of the following Improvements:

a. *Streets and Sidewalks.* Developer shall construct all required street and sidewalk improvements in accordance with 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 United Power to install street lights concurrently with the construction of the streets on which they are located.

d. *Water.* Developer shall install all required water mains, lines, and appurtenances, including without limitation the line adjacent to Bonanza Drive from Commons Drive to Sunset Drive. 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, but volume charges and service charges shall be due for all usage.

e. *Wastewater.* Developer shall install all required sewer lines and appurtenances. All sanitary sewer improvements shall have Initial Acceptance prior to the issuance of any certificates of occupancy for the Development.

f. *Drainage Facilities.* Developer shall install all required drainage facilities, in compliance with Urban Drainage and Flood Control District design standards. All drainage facilities shall have Initial Acceptance prior to the issuance of any certificates of occupancy for the Development. All drainage facilities shall be privately owned and maintained. Developer shall install all drainage facilities within Tracts C, E, and F of the Property. The commercial owner's association shall provide on-going maintenance of those facilities. Developer shall be responsible for the upsizing of the storm improvements under Bonanza Drive.

g. *Landscaping.* Developer shall install required landscaping, structures, trails and sidewalk improvements in accordance with a Town-approved landscape plan.

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

4. Acceptance of Improvements and Warranty.

a. *Initial Acceptance.* Within 10 days after the Improvements are substantially complete, but no later than December 31, 2022, 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 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.

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. 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 Final 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.

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 has been properly authorized; the Improvements 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.* With respect to all Improvements that have received Initial Acceptance and have been conveyed to the Town by Developer, all such Improvements shall be maintained by the Town. With respect to any Improvements that have not been conveyed to the Town by Developer, such Improvements shall be either: (i) maintained by Developer; or (ii) maintained by another entity including an owners' association, provided that Developer has requested and obtained prior written approval from the Town.

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

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") in a form approved by the Town.

b. *Timing.* Developer shall not commence construction on the Property, 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 constructed or completed within the period 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 calendar 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, the Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of the Improvements. The reduced Improvement Guarantee shall be held by the Town during the Warranty Period.

7. Reimbursement.

a. *West Side Improvements.* The Town acknowledges that the Improvements installed by Developer along the west side of Bonanza Drive pursuant to Section IX.A2.a of the Approved Plans, including without limitation grading, paving, curb and gutter, lane striping and traffic signal modifications (the "West Side Improvements"), are the shared responsibility of the owner of the real property (the "Sierra Vista Owner") described as Sierra Vista Minor Subdivision recorded at Reception Number 4431602 in the real property records of Weld County (the "Sierra Vista Property"). The Town shall use its best efforts to require the Sierra Vista Owner to reimburse Developer for a proportionate amount of the costs expended by Developer in connection with Developer's completion of the West Side Improvements. At completion of the installation of the West Side Improvements, Developer shall submit to the Town a summary of hard costs and soft costs incurred in connection with the completion of the West Side Improvements.

b. *Burying of Overhead Power Lines.* Developer has buried the Xcel and United Power overhead power lines located along Bonanza Drive frontage. The Town shall use its best efforts to require the Sierra Vista Owner to reimburse Developer for 50% of the cost to bury both overhead power lines located along Bonanza Drive frontage. At completion of the work by Developer, Developer shall submit to the Town a summary of hard costs and soft costs incurred burying the overhead power lines.

c. *Upsizing of Storm Drainage Improvements.* Developer shall upsize the storm drainage improvements under Bonanza Drive (the "Storm Drainage Improvements"). The Town acknowledges that the upsizing of the Storm Drainage Improvements under Bonanza Drive is the shared responsibility of the Sierra Vista Owner. The Town shall use its best efforts to require the Sierra Vista Owner to reimburse Developer for 50% of the cost of the Storm Drainage Improvements. At completion of installation of the Storm Drainage Improvements, Developer shall submit to the Town a summary of hard costs and soft costs incurred installing said improvements.

d. *Water Line Installation.* Developer shall install the water line adjacent to Bonanza Drive from Commons Drive to Sunset Drive and associated water facilities and structures (collectively, the "Water Improvements") in accordance with the Approved Plans. The Town acknowledges that the Water Improvements are the shared responsibility of Developer and the owner (the "Lot 1 Owner") of Lot 1, Vista Ridge Filing No. 6 ("Lot 1"). The Town shall use its best efforts to require the Lot 1 Owner to reimburse Developer for 100% of the cost of installing the Water Improvements fronting Lot 1, and 50% of the cost of the Water Improvements north of Lot 1 from the north property line of Lot 1 to Sunset Drive. At completion of installation of the Water Improvements, Developer shall submit to the Town a summary of hard cost and soft costs incurred installing the Water Improvements.

8. 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 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 construction of the Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any 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.

9. 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 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.

10. 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).

11. 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 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 that the Improvement Guarantee be paid or honored; 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, 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 and prevent further action by the Town.

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.

12. 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 Weld 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 Weld 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

EXHIBITS LIST

EXHIBIT A – Legal Description

EXHIBIT B – Improvements

EXHIBIT A
Legal Description

Final Plat for Vista Ridge Filing No. 6, 2nd Amendment, Weld County, Colorado.

EXHIBIT B
OPINION OF PROBABLE TOWN OF ERIE PUBLIC IMPROVEMENT COST
VISTA RIDGE FILING NO. 6, 2ND AMENDMENT
March 11, 2020

BONANZA DRIVE ROADWAY IMPROVEMENTS

	<u>No. of Units</u>		<u>Unit Cost</u>		<u>Total Cost</u>
1 Vertical Curb & Gutter	1,311 L.F.	\$	8.5	\$	11,144
2 5' Walk	310 L.F.	\$	20	\$	6,200
3 HC Ramps	2 Ea.	\$	1,500	\$	3,000
4 4' Concrete Pan	26 L.F.	\$	20	\$	520
5 Asphalt	1,973 S.Y.	\$	35	\$	69,055
6 Subgrade Preparation	1,973 S.Y.	\$	4.5	\$	8,879
7 Saw Cut Ex. E.O.A.	1,475 L.F.	\$	5.0	\$	7,375
8 2" Asphalt Overlay	4,660 S.Y.	\$	5.5	\$	25,630
9 Signing & Striping	1 L.S.	\$	15,000	\$	15,000
			Subtotal	\$	146,802

BLUE SKY WALK

	<u>No. of Units</u>		<u>Unit Cost</u>		<u>Total Cost</u>
1 8' Walk	960 L.F.	\$	35	\$	33,600
			Subtotal	\$	33,600

WATER

(Includes Waterline Connection to North and Fire Hydrant at East End of Commons Drive)

	<u>No. of Units</u>		<u>Unit Cost</u>		<u>Total Cost</u>
1 8" Waterline	1,244 L.F.	\$	30	\$	37,320
2 6" Water line	21 L.F.	\$	22	\$	462
3 8" Water Valve	3 Ea.	\$	2,000	\$	6,000
4 6" Water Valve	1 Ea.	\$	1,200	\$	1,200
5 8" 90-degree Bends	3 Ea.	\$	410	\$	1,230
6 8" x 6" Tee	1 Ea.	\$	850	\$	850
7 12" x 8" Tee	1 Ea.	\$	1,350	\$	1,350
8 Fire Hydrant Assembly	1 Ea.	\$	4,500	\$	4,500
9 Air Relief Valve	1 L.S.	\$	10,700	\$	10,700
10 Connect to Existing Waterline in Commons Drive	1 L.S.	\$	2,500	\$	2,500
			Subtotal	\$	66,112

SANITARY SEWER

*No proposed public sanitary sewer improvements.

STORM SEWER

	<u>No. of Units</u>		<u>Unit Cost</u>		<u>Total Cost</u>
1 18" RCP	384 L.F.	\$	50	\$	19,200
2 10' Type 'R' Inlet	1 Ea.	\$	8,200	\$	8,200
3 4' Diameter Manhole	1 Ea.	\$	1,296	\$	1,296
			Subtotal	\$	28,696
			SUBTOTAL	\$	275,210
			15% CONTINGENCY	\$	41,282
			TOTAL	\$	316,492