

## **Ninth Amendment to the Disposition and Development Agreement**

This Ninth Amendment to the Disposition and Development Agreement (this "**Ninth Amendment**") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "**Effective Date**"), by and among the Town of Erie, a Colorado statutory municipality (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**") (each a "**Party**" and collectively the "**Parties**").

Whereas, the Parties entered into that certain Disposition and Development Agreement dated March 22, 2016 (the "**Original Agreement**"), pursuant to which 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, the Parties entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the "**First Amendment**");

Whereas, the Parties entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the "**Second Amendment**");

Whereas, the Parties entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (the "**Third Amendment**");

Whereas, the Parties entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8<sup>th</sup>, 2018 (the "**Fourth Amendment**");

Whereas, the Parties entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the "**Fifth Amendment**");

Whereas, the Parties entered into that certain Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the "**Sixth Amendment**");

Whereas, the Parties entered into that certain Seventh Amendment to the Disposition and Development Agreement dated May 13, 2020 (the "**Seventh Amendment**");

Whereas, the Parties entered into that certain Eighth Amendment to the Disposition and Development Agreement dated September 30, 2020 (the "**Eighth Amendment**") (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and the Eighth Amendment, are hereinafter collectively referred to as the "**Agreement**");

Whereas, the Parties desire to further amend the Agreement pursuant to the terms of this Ninth Amendment.

Now, Therefore, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party 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. Controlled Fee Schedule. The Parties hereby acknowledge and agree that the Controlled Fee Schedule attached as Exhibit B to the Sixth Amendment contained a scrivener's error concerning the Boulder County Open Space Use Tax. The Parties hereby agree that the Boulder County Open Space Use Tax as listed on the Controlled Fee Schedule for all purposes under the Agreement shall be as follows:

Percentage: 0.985 percent of material costs or percent of job evaluation as determined by chief building official

3. Miscellaneous.

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

b. Successors and Assigns. This Ninth Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

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

d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Ninth Amendment.

e. Counterparts. This Ninth 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. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f. Governing Law and Venue. This Ninth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

In Witness Whereof, the Parties have caused this Ninth Amendment to be duly executed 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:

\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**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: \_\_\_\_\_

Its: \_\_\_\_\_