

DEVELOPMENT AGREEMENT
QuikTrip

THIS AGREEMENT is made and entered into this _____ day of February, 2022.

1. Parties.

The parties to this Agreement are the City of Evans, a Colorado home rule municipality (“the City”) and QuikTrip Corporation, an Oklahoma corporation (“Developer”).

2. Recitals.

- a. Developer is the owner of certain real property located in the City of Evans, Colorado, commonly known as 665 31st Street, legally described and depicted on Exhibit A (Legal Description) attached hereto and incorporated herein (the “Property”).
- b. Developer submitted to the City an application for approval of a Site Plan to be known as QuikTrip and shown on the Site Plan, (“the Site Plan”) attached as Exhibit B.
- c. The Development subject to this Agreement shall be titled QuikTrip. The Development is an approximately 9.53 -acre/square foot site located in the area depicted on Exhibit B. The Developer contemplates the Development will be used for an automotive fueling station and convenience store.
- d. Developer acknowledges that development of the Site Plan will necessitate providing infrastructure improvements and public services, will contribute to the economic growth of the City, and will increase future tax revenues received by the City, and falls within a general class of development projects for which economic incentives will serve a lawful public purpose.

NOW THEREFORE, in consideration of the premises, mutual covenants and obligations contained herein, the sufficiency of which is acknowledged, the parties mutually agree as follows:

3. Definitions.

As used in this Agreement, unless specifically stated otherwise, the words and phrases used shall have the meaning as defined in the City Code. For the purpose of this Agreement the following words and phrases shall have the definitions provided for below:

- a. The term “Agreement” refers to this Development Agreement.
- b. The term “City Code” refers to the Municipal Code of the City of Evans, as adopted and as amended from time to time by the City Council.

- c. The term “City Official” refers to and includes the City Manager, Assistant City Manager, City Attorney, City Treasurer, City Engineer, Community Development Director, and their designated representatives.
- d. The term “Developer” initially refers to QuikTrip, Corporation its agents, representatives, or any other party authorized by the City of Evans to provide services, construction, or maintenance of any Improvements, as well as any entity that subsequently acquires a fee simple interest of record in any portion of the Property as a transferee, grantee, assignee or successor of QuikTrip, Corporation. “Developer” shall collectively include all of the foregoing persons or entities, all of whom shall be jointly and severally liable for the obligations and liabilities of the Developer to the extent such liability relates to the portion of the Property they purchase or otherwise obtain.

Notwithstanding the foregoing, the term “Developer” shall not include (1) purchasers of individual subdivided lots or individual residential lots or units or individual non-residential space in an approved Final Plan or Final Plat, or (2) holders of a security interest in the Property or a portion thereof.

- e. The term “Development” refers to the overall plan of the Developer to develop the Property.
- f. The Term “Improvements” refers to the improvements more particularly described in Exhibit C, that the Developer is obligated to design, construct, and install at Developer’s sole cost in connection with the development of the Property.
- g. The term “Plans and Specifications” shall refer to the engineering and design documents that have been prepared by Galloway on 1/3/2022 and reviewed and approved by the City Engineer in connection with the Development on 1/4/2022. The Site Plan is referenced in Exhibit B.
- h. The term “Right of Way Landscape” shall refer to any perimeter fencing or walls, landscaping and landscaped areas, irrigation, and sidewalks between the property line and public roadways, as more particularly described in Exhibit C-4.

4. Effect of Agreement.

- a. Effective date. The effective date of this Agreement shall be the date the agreement is entered into by the City of Evans and reflected on page 1.
- b. This Agreement and the other provisions incorporated as part of the Site Plan are intended to prescribe a general plan for the use and development of the Property. However, except as expressly provided herein and in the Site Plan, they do not supplant the City’s land use regulations and other ordinances and regulations as they relate to the Property and shall not be construed to limit the authority of the City to adopt different ordinances, resolutions, regulations, rules, policies or codes so long as they apply throughout the City uniformly or to classes of individuals or

properties uniformly.

- c. The provisions of this Agreement, the Improvements identified in Exhibit C, the Site Plan, and the Plans and Specifications reflect the requirements of the City's utilities as of the effective date of the Agreement. These provisions shall not be construed as limitation upon the authority of the City to adopt different ordinances, rules, regulations, resolutions, policies or codes which change charges or costs for any service or class of service or any other charges so long as they apply throughout the City uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly.
- d. Except as otherwise expressly provided in this Agreement or the Site Plan, the establishment of vested property rights under this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes) as all of such regulations exist on the date of this Agreement or as they may be enacted or amended after the date of this Agreement. The Developer does not waive its right to oppose the enactment or amendment of any such ordinance, resolution or regulation on the same basis that any other member of the public could present such opposition.

5. Term of Agreement.

The term of this Agreement shall be five (5) years from the effective date. After the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect (a) any vested rights obtained prior to such termination and contemplated to continue after such termination; or (b) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and that were contemplated to continue after termination of this Agreement.

6. Vested Rights.

- a. Sections 24-68-101, et seq., C.R.S. (Vol. 7, 2002), "the Vested Rights Statute," provides for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Rights Statute has been implemented by the City through the procedures set forth in Sections 18.01.100 et seq., of the City Code.
- b. Pursuant to the provisions of the Vested Rights Statute and Sections 18.01.100 et seq., of the City Code, the parties find that the Site Plan is a site specific development plan for the purposes of developing the Property, vesting in the Developer the right to develop the Property in the manner depicted in the Final Plat.
- c. The vested rights associated with the Development, as set forth in this Section 6, expressly and by reference, shall run with the land and shall remain in effect

throughout the term of this Agreement. No other vested rights are created or intended to be created by this Agreement, the Site Plan, or any of the other documents relating to the Property. Upon expiration or termination of this Agreement all vested rights shall expire, except as otherwise specifically provided by Section 5 above.

- d. Any provisions of this Agreement or the Site Plan to the contrary notwithstanding, the City reserves the right to declare a moratorium upon a reasonable finding by the City Council that such moratorium is necessary to protect the public health, safety or welfare, but a moratorium cannot be declared with respect to the Development for planning purposes.
- e. The City finds the five (5) year duration of such vested property rights to be warranted in light of all relevant circumstances, including, but not limited to, the substantial size of the Property, the scale and phasing of the Development, economic cycles, and market conditions.

7. Improvements.

The public improvements associated with the development of the Property are described in Exhibit C (Developer Improvements). Exhibit C includes but is not limited to (1) description of Improvements, (2) Engineer's estimate of probable costs of Improvements, and (3) Schedule of completion of Improvements. From time to time and upon the City's request, Developer agrees to keep the City informed of the progress of its work and provide a projection of when Improvements will be installed as well as the approximate cost of the remaining Improvements.

8. Developer's Obligations to Construct Improvements.

Developer shall design, construct and install at its own expense, the Improvements on or before the Estimated Completion Date set forth in Exhibit C, subject to extension as provided for delays due to Force Majeure. Construction of the Improvements shall be in substantial and material conformance with the Plans and Specifications, as reviewed and approved by the City Engineer or a designated representative, and shall be in compliance with all policies, ordinances, standards and specifications adopted by the City relating thereto in effect at the time of such construction. The City's review and approval of the Plans and Specifications shall not impose any liability on the City and shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Improvements. Developer agrees to save and hold the City harmless from any claims, fault or negligence attributable to such design, construction and installation.

- a. Acquisition of rights-of-way and easements. Before commencing the construction of any Improvements the Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances except permitted encumbrances to which the City has consented in advance and in writing, on all lands and facilities, if any, traversed by the proposed improvements.
- b. Operation Standards during construction.
 - 1) Hours of operation of construction equipment. With regard to the construction and installation of the Improvements described in this

Agreement, the operation of construction equipment outside an enclosed structure (i.e. grading, other surface improvements, underground utilities, either public or private) shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. In situations of need, and upon written request, the hours of operation may be altered by the City Engineer or their designated representative.

- 2) Debris in public rights-of-way. With regard to the construction and installation of the Improvements described in this Agreement, the Developer shall, at all times, keep the public right-of-way free from accumulation of dirt, mud, waste material or rubbish caused by its operation. Developer shall remove such rubbish no less than weekly and, at the completion of its work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way caused by its operation.
- 3) Erosion control requirements. Developer shall install temporary and permanent erosion control in the Development to control erosion by both wind and water. Developer shall maintain said erosion controls on a routine basis. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions and/or other devices. In the event that the Developer fails to perform erosion control maintenance, Developer shall have 20 days upon receiving written notice to bring the Development into compliance.
- 4) Other nuisance mitigation. To the extent reasonably possible, Developer shall mitigate any nuisance caused by construction activities in connection with the installation and construction of the Improvements, including but not limited to noxious odors, excessive dust, particularly on days with high winds, and artificial light intrusion.
- 5) Standards for subcontractors. Developer hereby agrees that it shall require its subcontractors to comply with the Operations Standards as set forth in this Section, including but not limited to cooperating with the City's construction inspectors, and ceasing operations when winds are of sufficient velocity to create blowing dust which, in the City's construction inspector's opinion, is hazardous to the public health and welfare and ceasing such operations will not pose an immediate risk to health, safety, and welfare.
- 6) Remedies for failure to comply with Operation Standards. Failure to comply with the Operation Standards set forth in this Section shall be sufficient cause for the City to withhold building permits and/or certificates of occupancy or other approvals or permits until corrected to the satisfaction of the City Engineer or designee.

9. Development Standards.

Developer shall comply with all applicable standards related to the following items, and as reflected in the Plans and Specifications and Exhibit C-1 Description of Improvements.

10. Security for Construction of Improvements.

The Developer's construction and completion of the Improvements shall be assured by Developer providing a Performance Guarantee in the amount of 115% of the estimated cost of the Improvements prior to the earlier of (1) issuance of the first permit associated with the Development or (2) commencement of work on the Property. The Performance Guarantee shall consist of a Letter of Credit or bond in a form deemed acceptable by the City Attorney. The Developer shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee.

In the event that prior to the City's initial acceptance of the Improvements, the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying or the cost of the Improvements is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish the Developer with written notice of such condition, and within fifteen (15) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Performance Guarantee or augment the deficient security to achieve 115% of the cost of the Improvements.

If such Performance Guarantee is not timely furnished, then development activities, including but not limited to the issuance of building permits and certificates of occupancy, may be suspended by the City pending compliance with the provisions of this Section.

11. Testing and Inspection.

Developer shall employ (at its own expense) a qualified independent testing company to be approved by the City Engineer, or their designated representative, in its reasonable discretion, to perform all testing of materials or construction that may be reasonably required by the City. Developer shall furnish certified copies of test results to the City Engineer and, upon request by the City Engineer, release and authorize full access to the City Engineer of all work-up materials, procedures and documents used in preparing the test results.

At all times during construction of the Improvements and until final acceptance by the City, the City shall have the right, but not the duty, to inspect materials and workmanship utilized for the Improvements at Developer's cost, provided the City's inspector is accompanied by Developer or its designated representative. All materials and work must conform to the approved Plans and Specifications and all applicable regulations. Any material or work not conforming to the Plans and Specifications or other applicable regulations shall be promptly removed, repaired or replaced, at Developer's expense and to the reasonable satisfaction of the City Engineer.

12. Initial Acceptance of Improvements.

Developer shall make written application to the City Engineer or their designated representative, for initial acceptance of the Improvements ("Initial Acceptance") within 30 days of their completion. Such Improvements will be described on a "Developer's Contribution Worksheet" provided by the City Engineer. The Developer shall be responsible for the accuracy and completeness of all information provided. The affidavit, lien waivers and other materials may be

reviewed by the City, but the City assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided. Developer's application for initial acceptance shall be accompanied by the following information and materials:

- a. As Built Drawings: One (1) set of surveyed Mylar and one digital/CAD file of the "as built" drawings, certified as to accuracy by the Developer or its architect or Engineer;
- b. Engineer's Certification: Written certification by the Developer's Engineer that the Improvements for such Phase of development have been fully constructed and installed in substantial conformance with the Plans and Specifications;
- c. Cost Affidavit: A final affidavit of the Improvements' construction cost including verification reasonably satisfactory to the City Engineer;
- d. Improvements Affidavit: Developer shall provide a signed affidavit that the Improvements have been paid for in full;
- e. Lien Waivers: Developer shall provide lien waivers from its general contractor and from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the Improvements.

After the receipt of Developer's written application for initial acceptance, the City Engineer, or their designated representative, will use reasonable efforts to promptly inspect the Improvements and prepare a detailed written description of all Improvements that are not in compliance with the requirements of the City or the Plans and Specifications and deliver that description to the Developer. After curing such defects as are noted on the written statement provided by the City Engineer to the Developer, the Developer shall make written application to the City for re-inspection of the Improvements, and the City Engineer will use reasonable efforts to promptly re-inspect such Improvements. No Improvements shall be deemed to be initially accepted by the City until the City Engineer has certified, in writing, that the Improvements appear to have been completed in accordance with the applicable Plans and Specifications. This shall then constitute Initial Acceptance.

13. Warranty Period for Improvements Following Initial Acceptance.

Developer shall remain fully responsible for construction defects of all Public Improvements for a period of two (2) years after their Initial Acceptance by the City. If any of the Improvements fail, portions shall be replaced with similar Improvements deemed satisfactory by the City Engineer, or their designated representative, in the exercise of his reasonable discretion before final acceptance by the City. All roads and public spaces must be kept free of debris during construction and shall be properly cleaned following any required repair or replacement of Improvements.

14. Maintenance Guarantee During Warranty Period.

Developer's application for Initial Acceptance shall be accompanied by a Maintenance Guarantee in a form deemed acceptable to the City in the amount of fifteen percent (15%) of the total costs of the Improvements. The Maintenance Guarantee shall be subject to the same conditions as those set forth for the Performance Guarantee. The form and content of the Maintenance Guarantee shall be approved by the City prior to implementation, and shall include language that allows the City to extend the duration of coverage if necessary.

Until Final Acceptance of the Improvements by a Certificate of Completion reviewed and approved by the City Engineer or their designated representative, Developer agrees that (a) the

Maintenance Guarantee shall not be released; and (b) the Developer shall bear all risks and liability related to any loss, damage, or claims due to defects or failures of any of the Improvements; and (c) the Developer shall perform all maintenance and make all repairs and replacements of all defects or failure of Improvements at Developer's expense which, in the reasonable opinion of the City Engineer, may be necessary.

If, within fifteen (15) days after the Developer's receipt of written notice from a City Official requesting such reasonably required maintenance, repairs, and/or replacements of the Improvements, the Developer shall not have undertaken with due diligence to make same, the City, after providing written notice to Developer, may make such maintenance, repairs, and/or replacements at the Developer's expense. The City shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the City may charge the Developer for the costs thereof if such charges are not paid by the Maintenance Guarantee. In case of emergency, such written notice shall be waived and the City may proceed as it reasonably deems necessary, at the expense of the Developer or the issuers of the Maintenance Guarantee.

15. Final Acceptance of Improvements.

The Developer shall make a written request to the City Engineer, or their designated representative, for a final inspection of the Improvements no sooner than two (2) years after the City's Initial Acceptance of all of the Improvements for such Phase of Development. Upon receipt of such request the City may, but shall not be obligated to, conduct a final inspection of the Improvements. If the Developer fails to have the Improvements finally accepted as provided in this Section within two (2) years and six (6) months after the City's Initial Acceptance, the City shall have the right, but not the obligation, at any time thereafter to conduct a Final Inspection of the Improvements.

If, pursuant to a final inspection requested by the Developer or initiated by the City, any Improvement is found to not conform to this Agreement, the Plans and Specifications, or other applicable regulation or requirement, then the City shall have the rights set forth in Section 14 of this Agreement (Maintenance Guarantee During Warranty Period) to remedy such defects. Nothing herein shall be construed or deemed as requiring the City to finally accept and release from the Maintenance Guarantee any Improvement that is defective or damaged.

After receipt of satisfactory evidence that the Improvements fully conform to this Agreement, the Plans and Specifications, and all applicable regulations and requirements, and that all of the maintenance, repairs, and replacements requested by City Officials pursuant to the terms of this Agreement have been completed to the reasonable satisfaction of the City, the City Engineer shall issue a Certificate of Completion, evidencing completion and Final Acceptance of such Improvements. The Maintenance Guarantee provided by the Developer shall be released after the Final Acceptance of all of the Improvements has been granted and the Certificate of Completion has been issued by the City.

16. Conveyance of rights-of-way, easements and improvements to City.

All rights-of-way and easements associated with development of the Property, and the Improvements shall be conveyed to the City at the time of initial acceptance. The documents of conveyance shall be in a form acceptable to the City and shall be furnished to the City Engineer or their designee, for recording. Developer shall reimburse the City for all costs of recording. At

the City's request, the Developer shall provide, at its expense, a policy of title insurance insuring title in the City, free and clear of all liens and encumbrances, for all land, property, and easements dedicated or conveyed (except those easements that do not affect the City's use of the property) to the City or for public use.

17. Commitments to Serve from Service Providers.

Prior to commencement of construction, Developer shall provide will serve letters or other evidence deemed acceptable by the City's Director of Public Works, indicating the willingness and ability of service providers to supply their respective services to the Development in an amount reasonably needed for the Development, including but not limited to water, waste water, electrical, and natural gas service.

18. Developer Dedications and Impact fees.

Developer shall comply with the City Code regarding dedication of impact fees, including but not limited to Section 3.20 of the Evans Municipal Code.

19. Additional Developer Obligations.

In addition to its obligations related to the Improvements, Developer further agrees to fulfill its obligations with regard to the items and matters set forth in Exhibit E, attached.

20. Additional Developer Liabilities.

a. Indemnification. To the extent permitted by law, Developer hereby agrees to indemnify and hold the City, City Officials, its employees, agents, representatives, and insurers (collectively, "City Parties") harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees, and expenses (including reasonable attorney's fees) resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of the Developer, its employees, agents, consultants, representatives, or subcontractors except to the extent caused by negligence, gross negligence or willful misconduct of the City or one or more City Parties. Developer shall promptly investigate, handle, respond to and provide defense for and defend against any such liability, claims, or demands at the sole expense of Developer. Developer also agrees to bear all reasonable costs, expenses, and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent unless they are caused by negligence, gross negligence or willful misconduct of the City or one or more of its officers, agents or employees.

b. Insurance. Developer shall (for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements) maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability, worker's compensation insurance and sufficient public liability insurance as will protect the City, City Officials, City's employees, agents and representatives against any and all potential liability, claims, damage, demands, losses and expenses, that may be incurred or asserted. Liability insurance shall be in the minimum amount of three hundred thirty thousand dollars (\$330,000.00) for injury to one person, or nine hundred ninety-thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, as it may be amended. Whenever reasonably requested by City or City Officials, the Developer agrees to submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the City, City Officials, its employees, agents, and representatives as additional

insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

c. **Drainage Liability.** To the extent permitted by law, Developer shall indemnify and hold the City harmless from any liability the City may have on account of any change in the nature, direction, quantity or quality of drainage flow, resulting from the Development. In addition, Developer shall reimburse the City for any and all costs, fees, and expenses, including reasonable attorney's fees, that the City incurs in acquiring any rights of way or easements that the City deems necessary or is required to acquire or condemn or that the City is held to have acquired or condemned for drainage or as a result of or relating in any manner to the Development.

d. **Tax Liability.** Developer shall pay any outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the City prior to or at the time of such dedication or conveyance, and shall indemnify and hold the City harmless from any and all encumbrances, obligations, or tax liability incurred prior to the dedication or conveyance to the City. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

f. **Use Tax.** Any and all use tax due on construction and building materials for public facilities shall be paid as provided under Municipal Code including but not limited to Section 3.04.200.

g. **Cost Reimbursement to City.** Developer shall reimburse City for all reasonable costs incurred for professional consultants including but not limited to engineers, testing companies, contractors, and attorneys reasonably used by the City in connection with the preparation or implementation of this Agreement and in the review and processing of the Application, as well as the design, construction, review, testing, completion, repair, replacement, and approval of the Development.

21. Breach and Remedies

a. **Breach of Agreement by Developer.** If at any time this Agreement (or any part hereof) has been materially breached by Developer or if satisfactory progress substantially in accordance with Exhibit C-1, Description of Improvements), has not been made on the design, construction, installation, repair, replacement or maintenance of the Improvements the City may, after 30 days' prior written notice to Developer or such additional period as may reasonably be agreed to by the City in writing in light of the nature of the alleged breach, draw on the Performance Guarantee or Maintenance Guarantee and the City may withhold approval of any or all building permits, certificates of occupancy, water meters, or tap hook-ups for any area within the Development, or other approvals or permits, if Developer then fails to make reasonable progress as reasonably determined by the City, unless such failure is caused by circumstances which are outside the Developer's reasonable control, meaning that such circumstance is a result of an act of god (including fire, flood, earthquake, or other natural disaster) regionally recognized shortage of materials, strike, lockout or interruption of utility service or Force Majeure. Notwithstanding these rights and remedies, the City may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity, or pursuant to this Agreement. The City's remedies shall be cumulative.

b. **Breach of Agreement by City.** If at any time the Developer believes the City is in breach of this Agreement, the Developer shall provide the City with 20 days' prior written notice. In the event the City fails to remedy the alleged breach within 20 days or such additional period

as may be necessary in light of the nature of the alleged breach, then the Developer remedies are limited to specific performance of this Agreement and shall not include any claim for damages or other monetary relief.

22. Miscellaneous.

a. No Waiver. Delays by the City in enforcement or the waiver of any one or more breaches of this Development Agreement shall not constitute a waiver of any of the remaining terms or obligations or any future breaches.

b. Severability. If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair, or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

c. Recording of Agreement and Encumbrance on the Property. This Agreement shall be recorded with the Weld County Clerk and Recorder at Developer's expense and shall be a covenant running with and against all the Property, property rights, and improvements contained within the Development in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the Property on notice as to the terms and obligations herein.

d. Binding Effect. Unless otherwise provided herein, this Development Agreement shall be binding upon Developer's heirs, successors, assigns, transferees, and any other person or entity acquiring or purchasing any interest in any part of the Property.

e. Transfer or assignment. In the event of a sale or transfer of any portion of the Property, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Development Agreement unless, prior to the transfer or the sale, a written Agreement delineating and allocating the various rights and obligations for the Improvements, has been approved and executed by the City Council. Notwithstanding anything herein to the contrary, Developer shall have the right to transfer and/or assign its rights and interests in this Agreement to any entity that controls, is controlled by, or is under common control with Developer without the approval of the City or City Council, provided the City is given written notice within 10 days of such transfer.

f. Title and Authority. Developer expressly warrants and represents to the City that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Development Agreement. Developer understands that the City is relying on the representations and warranties contained herein, in its consideration of the application and in entering into this Agreement.

g. Notices. Any notice to Developer or the City, which may be given under the terms of this Agreement, shall be in writing and shall be deemed sufficiently given on the third (3rd) business day following the date such notice is sent by certified or registered U.S. Mail, postage prepaid, return receipt requested, or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

TO CITY:
Attention: City Manager
1100 37th Street
Evans, CO 80620-2036

TO DEVELOPER:
Attention: QuikTrip Corporation
Director of Real Estate
12000 N. Washington St. Suite 175
Thornton, CO. 80241

With a copy to
Scotty P. Krob
Krob Law Office LLC
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111

With a copy to:

Any party may change its notice address by providing the other party(ies) notice as set forth in this section.

h. Force Majeure. Whenever a period of time is herein prescribed for an action to be taken or performed by any Party, that Party will not be liable to so perform within such time period due to, and there will be excluded from the computation of such period of time, any delays due to, strikes, riots, acts of God, shortages of labor and materials, war, governmental laws, regulations or restriction or any other cause of any kind whatsoever which are beyond the reasonable control of the Party required to take or perform such action.

i. Cooperative drafting. This Agreement is the product of a cooperative drafting effort by the Town and the Developer and shall not be construed or interpreted against either party solely on the basis that one party or its attorney drafted this Agreement or any portion of it.

j. Amendment. This Agreement cannot be modified or revoked except by an instrument approved by the City Council and signed by the Mayor and the Developer or the then owner of the Property or any portion thereof if there has been an assignment as it relates to the specific Property.

k. No third party beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties.

[Signatures of the following page]

IN WITNESS THEREOF and agreeing to be fully bound by the terms of this Agreement the parties have set their hands below on the dates indicated.

CITY OF EVANS

By: _____
Brian Rudy, Mayor

ATTEST:

Julie Kamka, City Clerk

QUIKTRIP CORPORATION

By: _____

STATE OF COLORADO)

COUNTY OF ADAMS)

Acknowledged before me this 9th day of February, 2022 by Troy C. Devos _____,
as Director of Real Estate _____ of QuikTrip Corporation _____, an
Oklahoma corporation.

Witness my hand and official seal.

My commission expires: December 6, 2025

(Seal)

JESSICA GLAVAS NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20214047350 MY COMMISSION EXPIRES DECEMBER 06, 2025
--

Notary Public

Exhibits

A – Legal Description

B – Site Plan

C – Developer Improvements

 C-1 – Description of Improvements

 C-2 – Engineer’s estimate of probable costs of Improvements

 C-3 – Schedule of completion of Improvements

D – Performance Guarantee

EXHIBIT A

LEGAL DESCRIPTION AND RECORDING INFORMATION

Lot 2, Rush Subdivision Amended Plat



EXHIBIT B: SITE PLAN

Site plan has been recorded with the Weld County Clerk and Recorder at reception _____
and is also on file with the City of Evans.

EXHIBIT C: DEVELOPER IMPROVEMENTS

- C-1 – Description of Improvements to be made pursuant to the Development Agreement
- C-2 – Engineer’s estimate of probable costs of Improvements
- C-3 – Schedule of completion of Improvements
- D – Performance Guarantee

Exhibit C-1 Description of Improvements

DESCRIPTION OF IMPROVEMENTS TO BE MADE PURSUANT TO THE DEVELOPMENT AGREEMENT: Development Agreement between City of Evans, CO and QuikTrip Corporation

- a. Right-of-way Improvements and Dedications: Developer has dedicated appropriate right-of-way for all public streets in and adjacent to this development in accordance with the most current City standards for the same and agrees to pay for the site improvements shown on the approved public improvement plans, landscaping, irrigation, and bikeway/walkways.
 1. Bicycle and Pedestrian Trails: Developer shall install the trail along the US Highway-85 frontage with construction of the project. The Developer is responsible for the design, engineering, and installation of the trail for the extent of the US 85 project frontage. Developer shall provide engineered plans to the City upon request for review and approval. The trail shall consist of a minimum eight (8) foot landscaping strip with a concrete sidewalk that is a minimum of ten (10) feet wide. This commitment shall survive the term of the Development Agreement and a surety will be collected from the Developer by the City at the time the City approves the design and engineering presented by the Developer.
 2. Sidewalks: Developer shall install the sidewalk intended for pedestrian access into the site within the 31st Street Right-Of-Way as shown on the approved site plan. The concrete sidewalk along 31st Street shall be seven (7) feet wide.
 3. Streetlights: Developer shall install streetlights within the City Right-Of-Way along the 31st Street frontage as indicated on the approved Site Plan.
 4. Landscape improvements and maintenance: The Developer, the owners of the Property, their successors in interest and/or assigns, are responsible for implementation and maintenance of the landscaping, irrigation, fences and walls on the site as well as the Right of Way Landscape. The parties specifically understand and agree that the City is not responsible for any maintenance or upkeep of the same.
- b. Access and Egress Requirements: There shall be a minimum of two all-weather ingress and egress access points into the Development at all times for emergency vehicle access or as may otherwise be approved by the City. Points of ingress/egress shall be maintained and remain free and clear at all times.
- c. As-Built Drawings: All as-built construction drawings of the Improvements shall be submitted in mylar, print, and digital form conforming to the City's format and content requirements.

- d. Non-potable Water System and Raw Water Dedication: The Developer and the City agree the Development will be served by a non-potable water system for irrigation at the time that a non-potable system is available for the property. Until non-potable water is available to the site, the landscaping shall be irrigated with potable water.
- e. Sewer Lines: Developer will construct sewer lines serving the Property according to the approved Final Construction Plans.
- f. Water Lines: Developer will construct water lines serving the Property according to the approved Final Construction Plans.

Exhibit C-2 Engineer's estimate of probable costs of Improvements

<h1>Quiktrip</h1>				
Opinion of Probable Cost				11/15/2021
Evans, CO				Quiktrip
<i>Note: This Preliminary Opinion of Costs is based upon the Landscape Plan by Galloway dated 08/13/2021. Costs include landscape, irrigation, and other site features indicated below. Costs do not include retaining walls, sidewalks, & other site features not indicated below.</i>				
Size Item/Description	Quant.	Unit	Cost	Total
Landscape Improvements				
Deciduous Shade Trees - 2" cal. B&B	51	EA	500.00	\$ 25,500
Evergreen Trees - 6' ht. B&B	17	EA	375.00	\$ 6,375
Deciduous Shrubs - 5 gal (Including Amend. & Soil Prep)	226	EA	38.00	\$ 8,588
Evergreen Shrubs - 5 gal (Including Amend. & Soil Prep)	105	EA	48.00	\$ 5,040
Ornamental grasses - 1 gal.	41	EA	15.00	\$ 615
Texas Hybrid Bluegrass (2nd Generation or Newer)	14,389	SF	0.75	\$ 10,792
Seed (Wildflower Mix)	121,974	SF	0.30	\$ 36,592
Soil Amendments	17,701	SF	0.50	\$ 8,851
	Subtotal \$			102,352
			9% General Conditions	\$ 9,212
			6% Project Contingency	\$ 6,694
TOTAL LANDSCAPE IMPROVEMENTS \$				118,258
Site Improvements				
Steel Edging (6" x 12 Gauge Galv. Edging)	2,225	LF	4.75	\$ 10,569
River Rock/Cobble	17,701	SF	1.85	\$ 32,747
Weed Barrier Fabric	17,701	SF	0.15	\$ 2,655
IRRIGATION SYSTEM ESTIMATE	154,064	SF	4.00	\$ 616,256
	Subtotal \$			662,227
			9% General Conditions	\$ 59,600
			6% Project Contingency	\$ 43,310
TOTAL SITE IMPROVEMENTS \$				765,137
TOTAL IMPROVEMENTS \$				883,395
Prepared by: Eric Newell				
Galloway				
Planning, Architecture, Engineering				
<i>Disclaimer: This Opinion of Probable Cost represents a preliminary opinion of costs for the current project scope. Actual quantities and costs may vary based upon the bidding process, engineering requirements, site conditions, etc. Except where otherwise noted, all costs are said to be complete costs, including installation, labor, etc.. Water tap and meter fees and electrical service fees are not included in this Opinion.</i>				

Notes and Assumptions:

1. This Engineer's Estimate of Probable Costs is based upon the Construction Documents for QuikTrip Store #4231 prepared by Galloway & Company, Inc. dated 01/03/2022. The estimate only includes purchase and installation of the specifically listed items. Galloway has no control over costs or the price of labor, equipment, materials or the contractors method of pricing. Galloway makes no warranty, expressed or implied, as to the accuracy of such opinion as compared to bid or actual costs.
2. This Opinion of Probable Cost reflects only the public improvements located within the public right-of-way.
3. Dry utility quantities are preliminary estimates and may change once coordinated with the dry utility companies.
4. Landscape and Irrigation Cost Estimate provided separately.

Preliminary Opinion of Probable Cost

1	OFF-SITE IMPROVEMENTS	Total Quantity	Unit	Unit Cost	Total Cost
2	Paving				
3	Sawcut Edge of Pavement	237	L.F.	\$4.00	\$948.00
4	Curb and Gutter - Mountable	127	L.F.	\$20.00	\$2,540.00
5	Standard Duty Asphalt (6" Thick)	17	S.Y.	\$46.00	\$782.00
6	Heavy Duty Asphalt (8" Thick)	67	S.Y.	\$50.00	\$3,350.00
7	Concrete Cross-Pan (8" Thick)	952	S.F.	\$10.00	\$9,520.00
8	Concrete Handicap Ramp	4	EACH	\$757.50	\$3,030.00
9	Concrete Sidewalk Trail (6" Thick)	10263	S.F.	\$5.00	\$51,315.00
10	Concrete Sidewalk (6" Thick)	1938	S.F.	\$5.00	\$9,690.00
11	Storm Sewer				
12	Connect to Existing Manhole	1	EACH	\$2,000.00	\$2,000.00
13	Striping and Signage				
14	Crosswalk Striping (5' Long, 2' Wide)	105	L.F.	\$1.65	\$173.25
15	Street Lighting				
16	Base, Poles, Fixtures, Conduit and Wiring (Evans Arterial Ornamental Lights)	2	EA.	\$6,000.00	\$12,000.00
17	Sub-total - All Improvements				\$95,348.25
18	Contingency	20%			\$19,069.65
19	General Contractors General Conditions	3.0%			\$2,860.45
20	General Contractors OH & Profit	5%			\$4,767.41
21	TOTAL IMPROVEMENTS				\$122,045.76

Exhibit C-3 Schedule of Improvements



6162 S. Willow Dr., Ste 320
 Greenwood Village, CO 80111
 (303) 770-8884 (Phone)
 (303) 770-3636 (Fax)

Date: 1/20/2022
 Project: QuikTrip 4231
 Location: Evans, CO
 By: DLR

Notes and Assumptions:

1. This Schedule of Work is only an assumption, contractors performing work shall create their own work schedule.
2. Pavement cure time has been extended to account for cold weather curing.
3. It is assumed that the utility provider will furnish and install ornamental lighting, contractor shall coordinate installation with utility provider.

Preliminary Schedule of Work within R.O.W.

Tasks	2022											
	February			March			April			May		
1. Erosion Control												
2. Sawcut Pavement & Remove												
3. Excavate and Connect to Existing Storm Manhole												
4. Install Ornamental Light Poles												
5. Install New Curb and Gutter												
6. Install Irrigation Conduits and Equipment												
7. Install Sidewalk and Curb Ramps												
8. Install Concrete and Asphalt Pavements												
9. Install Crosswalk Striping												
10. Install Landscaping and Complete Irrigation												

Exhibit D Performance Guarantee



1(918) 588-6649 / 1(800)285-6829
INTERNATIONAL BANKING CENTER
ONE WILLIAMS CENTER, PLAZA EAST
TULSA, OKLAHOMA 74172

ADVICE OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:
JANUARY 31, 2022

OUR REFERENCE NUMBER:
20003545

DATE AND PLACE OF EXPIRY:
JANUARY 31, 2023 OUR COUNTERS

APPLICANT:
QUIKTRIP CORPORATION
4705 SOUTH 129TH E AVE
TULSA, OKLAHOMA 74134

BENEFICIARY:
CITY OF EVANS
1100 31ST STREET
EVANS, COLORADO 80620
C/O CITY MANAGER

AMOUNT: USD\$1,020,605.17

AT THE REQUEST OF THE APPLICANT WE HAVE ISSUED OUR IRREVOCABLE STANDBY LETTER OF CREDIT REFERENCED ABOVE; THE ORIGINAL IS HEREBY ATTACHED.

IF THE TERMS OF THE LETTER OF CREDIT ARE UNSATISFACTORY, WE SUGGEST YOU IMMEDIATELY COMMUNICATE WITH THE APPLICANT AND REQUEST THE APPROPRIATE AMENDMENT.

INQUIRIES DIRECTED TO OUR OFFICE MAY BE MADE TO TELEPHONE (918)588-6649 OR (800)285-6829. PLEASE SEND ALL CORRESPONDENCE DIRECTED TO OUR OFFICE TO THE ABOVE MENTIONED ADDRESS.

IF PRIOR TO THE EXPIRATION DATE, THE APPLICANT'S OBLIGATION WITH YOU HAS BEEN COMPLETED AND YOU NO LONGER AVAIL YOURSELF OF OUR LETTER OF CREDIT, WE KINDLY ASK YOU TO RETURN THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS ALONG WITH A LETTER GIVING US YOUR CONSENT TO CLOSE THE LETTER OF CREDIT SO THAT THE APPLICANT'S LIABILITY WITH THE BANK IS RELEASED.



1(918) 588-6649 / 1(800)285-6829
INTERNATIONAL BANKING CENTER
ONE WILLIAMS CENTER, PLAZA EAST
TULSA, OKLAHOMA 74172

DATE OF ISSUE:
JANUARY 31, 2022

IRREVOCABLE
LETTER OF CREDIT NUMBER:
20003545

DATE AND PLACE OF EXPIRY:
JANUARY 31, 2023 OUR COUNTERS

APPLICANT:
QUIKTRIP CORPORATION
4705 SOUTH 129TH E AVE
TULSA, OKLAHOMA 74134

BENEFICIARY:
CITY OF EVANS
1100 31ST STREET
EVANS, COLORADO 80620
C/O CITY MANAGER

AMOUNT: USD1,020,605.17

DEAR SIR OR MADAM:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR IN THE AMOUNT OF \$1,020,605.17 (USD ONE MILLION, TWENTY THOUSAND, SIX HUNDRED FIVE AND 17/100). THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT BOKF, NA, INTERNATIONAL DEPARTMENT, ONE WILLIAMS CENTER, PLAZA EAST, TULSA, OKLAHOMA, 74172. THE PURPOSE OF THIS LETTER OF CREDIT IS TO SECURE PERFORMANCE OF A SITE IMPROVEMENTS AGREEMENT FOR THE SITE PERTAINING TO STORE 4231 WHOSE LOCATION IS, 665 31ST ST, EVANS, CO 80620 BETWEEN THE CITY OF EVANS ("THE CITY") AND QUIKTRIP CORPORATION.

YOU ARE HEREBY AUTHORIZED TO DRAW ON SIGHT ON BOKF, NA, BY DRAFTS, UP TO THE AGGREGATE AMOUNT OF \$1,020,605.17. SUCH TOTAL AMOUNT MAY BE REDUCED, AT THE SOLE DISCRETION OF THE CITY, FROM TIME TO TIME, AS A RESULT OF THE COMPLETION OF A PORTION OF THE SITE IMPROVEMENTS BY QUIKTRIP CORPORATION.

THE SOLE CONDITION FOR PAYMENT OF ANY DRAFT DRAWN AGAINST THIS LETTER OF CREDIT IS THAT THE DRAFT BE ACCOMPANIED BY A LETTER, ON THE CITY'S LETTERHEAD, SIGNED BY THE CITY MANAGER, OR OTHER CITY DESIGNEE TO THE EFFECT THAT QUIKTRIP CORPORATION IS IN DEFAULT OF DEVELOPER'S OBLIGATIONS PURSUANT TO THE SITE IMPROVEMENT AGREEMENT. IN THE EVENT OF WRONGFUL DISHONOR, WE WILL REIMBURSE THE CITY FOR ALL COURT COSTS, INVESTIGATIVE COSTS AND REASONABLE ATTORNEY FEES INCURRED BY THE CITY IN ENFORCING THIS LETTER OF CREDIT. WE FURTHER AGREE THAT JURISDICTION AND VENUE FOR ANY LEGAL ACTION ENFORCING THIS LETTER OF CREDIT SHALL BE IN THE DISTRICT COURT OF WELD COUNTY, COLORADO.

WE HEREBY AGREE WITH DRAWERS AND ENDORSERS, AND BONA FIDE HOLDERS



OF DRAFTS NEGOTIATED UNDER THIS LETTER OF CREDIT THAT THE SAME SHALL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS AS SPECIFIED ABOVE.

MULTIPLE DRAFTS MAY BE PRESENTED.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENTS FOR ONE YEAR FROM THE PRESENT, AND EACH FUTURE EXPIRATION DATE THEREOF, UNLESS ISSUER GIVES WRITTEN NOTICE WITHIN NINETY(90) DAYS PRIOR TO ANY SUCH EXPIRATION DATE TO THE CITY OF EVANS OF ITS INTENTS NOT TO EXTEND THIS LETTER OF CREDIT. ANY SUCH NOTICE SHALL BE IN WRITING AND SHALL BE DELIVERED BY A FIRST CLASS COURIER.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERSTANDING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT, REFERRED TO HEREIN, EXCEPT FOR SUCH CERTIFICATE AND DRAFT(S) REFERRED TO HEREIN; AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT, OR AGREEMENT EXCEPT FOR SUCH CERTIFICATE AND DRAFT(S).

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED THEREIN, THIS LETTER OF CREDIT SHALL BE SUBJECT TO ARTICLE 5 OF THE STATE OF COLORADO UNIFORM COMMERCIAL CODE (UCC) AND THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600. TO THE EXTENT OF ANY CONFLICT BETWEEN THE UCC AND THE UCP, THE UCC SHALL CONTROL.

SIGNED THIS 31 DAY OF JANUARY, 2022 ON BEHALF OF BOKF,
NA



MELISSA LUSTER, VP INTL OPS
BOKF, NA