

## CONSENT TO ASSIGNMENT

### **Development Agreement (The Right Move Subdivision Replat A, 1<sup>st</sup> Amendment)**

**THIS CONSENT TO ASSIGNMENT** (the “**Consent**”), dated as of October 9, 2019 (the "Effective Date"), is entered into by and among the TOWN OF ERIE, COLORADO, a Colorado municipal corporation (the “**Town**”), CARBON, LLC, a Colorado limited liability company (“**Owner**”) and ERIE SELF STORAGE GROUP, LLC, a Colorado limited liability company (“**Assignee**”) (each a "Party" and collectively the "Parties").

WHEREAS, the Town and Owner entered into the Development Agreement (The Right Move Subdivision Replat A, 1<sup>st</sup> Amendment), dated October 9, 2019, and will submit the same to be recorded in the real property records of the Weld County Clerk and Recorder (the “**Development Agreement**”);

WHEREAS, the Development Agreement contains certain improvement obligations, covenants, promises, and requirements to be fulfilled by Owner;

WHEREAS, Owner desires to assign all of its improvement obligations, covenants, promises, and requirements under and pursuant to the Development Agreement to Assignee, and, in accordance with the requirements of the Development Agreement has requested the Town’s consent to such assignment;

WHEREAS, Assignee has agreed to be responsible for all of the improvement obligations, covenants, promises, and requirements under and pursuant to the Development Agreement, and agrees to be bound by the terms of the Development Agreement;

WHEREAS, Owner and Assignee have presented to the Town an assignment document wherein Owner has assigned all of its rights and duties to Assignee and Assignee has accepted such assignment, and which document sets forth the delegation of the improvement obligations, covenants, promises and requirements as required by the Development Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and obligations of the Parties contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Attachment of Assignment. A copy of the fully executed assignment and acceptance of assignment entered into between Owner and Assignee is attached to this Consent, marked Exhibit “A,” and incorporated herein by this reference.
  
2. Consent to Assignment. The Town hereby consents to the assignment of all of Owner’s improvement obligations, covenants, promises and requirements under and pursuant to the Development Agreement to Assignee, as specifically set forth in Exhibit “A,” subject to the following condition: no Improvement Guarantee as required by the Development Agreement

shall be released either in whole or in part by the Town until the Town receives a replacement Improvement Guarantee of equal or greater value, in form and amount acceptable to the Town.

3. Assignee's Obligations. Assignee hereby agrees to be bound by all terms of the Development Agreement. Assignee hereby accepts each and every provision of the Development Agreement and Assignee forever waives, on behalf of itself and any subsequent assignee of the Development Agreement, any right to challenge any provision of the Development Agreement.

Assignee acknowledges and reaffirms each of the obligations, covenants, promises and requirements of Owner to be fulfilled as set forth in the Development Agreement.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have executed this Consent to Assignment as of the date first above written.

**TOWN OF ERIE, COLORADO**

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Jennifer Carroll, Mayor

ATTEST:

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Jessica Koenig, Town Clerk

**Owner:**

Carbon, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  
Chris C. Jensen, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, by  
Chris C. Jensen, as Manager of Carbon, LLC, a Colorado limited liability company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**ASSIGNEE:**

Erie Self Storage Group, LLC,  
a Colorado limited liability company

By: GYS Erie, LLC, a Colorado limited liability  
company, Manager

By: \_\_\_\_\_  
Lee Fredrick, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, by  
Lee Fredrick, as Manager of GYS Erie, LLC, Manager of Erie Self Storage Group, LLC, a  
Colorado limited liability company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

[Executed Assignment between Owner and Assignee]

[Attached]

## **ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT RIGHTS AND OBLIGATIONS**

This Assignment and Assumption of Development Agreement Rights and Obligations (this “**Assignment**”) is made as of October 9th, 2019 (the “**Effective Date**”), by and between Carbon, LLC, a Colorado limited liability company (“**Assignor**”), and Erie Self Storage Group, LLC, a Colorado limited liability company (“**Assignee**”).

### **RECITALS**

Pursuant to that certain Purchase and Sale Agreement, dated as of May 7, 2018, as amended, by and between Assignor and Assignee concerning the purchase and sale of certain real property described therein, and more fully described in Exhibit A, attached hereto (the “**Property**”), Assignor sold to Assignee and Assignee acquired from Assignor the Property on the Effective Date.

In connection with Assignor obtaining from the Town of Erie, Colorado (the “**Town**”), certain entitlement approvals for the Property and certain other adjacent property, including a final plat, Assignor and the Town entered into that certain Development Agreement (The Right Move Subdivision Replat A, 1<sup>st</sup> Amendment), dated October 9, 2019, which agreement was recorded in the real property records of the Weld County Clerk prior to this Assignment (the “**Development Agreement**”).

In connection with the Assignee’s acquisition of the Property, Assignor desires to assign to Assignee all of Assignor’s rights under the Development Agreement (the “**Assigned Rights**”), and Assignee agreed to assume all of the obligations of Assignor under the Development Agreement, whether express or implied (the “**Assumed Obligations**”).

### **AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals and mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption. Assignor hereby expressly transfers, conveys and assigns to Assignee, and Assignee hereby accepts from Assignor, the Assigned Rights. Additionally, Assignor hereby expressly transfers, conveys and assigns to Assignee, and Assignee hereby accepts from Assignor, the Assumed Obligations, and agrees to perform the Assumed Obligations. As additional consideration for the purchase and sale of the Property, Assignee hereby indemnifies and holds Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to attorneys’ fees and expenses) asserted against or incurred by Assignor in connection with Assignee’s failure to satisfy the Assigned Rights.

2. Intentionally Blank.

3. General Provisions.

(a) No Implied Waiver. No failure by either party to insist upon the strict performance of any provision contained in this Assignment shall constitute a waiver of any such provision.

(b) No Oral Amendment or Modifications. No amendments, waivers or modifications of the terms and provisions contained in this Assignment, and no approvals, consents or waivers by either party under this Assignment, shall be valid or binding unless in writing and executed by the party to be bound thereby. No such termination, extension, modification or amendment shall be effective unless and until a proper instrument in writing has been executed and recorded in the Records.

(c) Severability. If any provision of this Assignment shall be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Assignment, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

(d) Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions contained in this Assignment shall be construed as covenants running with the Property.

(e) Construction; Captions for Convenience. The parties acknowledge and agree that both they and their counsel have reviewed this Assignment, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Assignment. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Assignment.

(f) Costs of Legal Proceedings. In the event either party institutes legal proceedings with respect to this Assignment, the prevailing party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceedings, including, without limitation, reasonable attorneys' fees.

(g) No Third Party Beneficiaries. None of the terms, conditions or covenants contained in this Assignment shall be deemed to be for the benefit of any person other than Assignee, its successors and assigns specifically designated as such in writing, and no other person shall be entitled to rely hereon in any manner.

(h) Relationship of Parties. Nothing in this Assignment shall be construed or deemed to make or constitute the parties as partners, joint venturers or any other form of joint participants in the development of the Property.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**ASSIGNOR:**

Carbon, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  
Chris C. Jensen, Manager

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, by Chris C. Jensen, as Manager of Carbon, LLC, a Colorado limited liability company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**ASSIGNEE:**

Erie Self Storage Group, LLC,  
a Colorado limited liability company

By: GYS Erie, LLC, a Colorado limited liability  
company, Manager

By: \_\_\_\_\_  
Lee Fredrick, Manager

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, by Lee Fredrick, as Manager of GYS Erie, LLC, Manager of Erie Self Storage Group, LLC, a Colorado limited liability company.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

Lot 7, The Right Move Subdivision Replay A, 1<sup>st</sup> Amendment, County of Weld, State of Colorado