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**THE RIGHT MOVE SUBDIVISION
DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made and entered into this 7th day of September, 1999, by and between the Town of Erie, a municipal corporation, in the Counties of Weld and Boulder, State of Colorado, hereinafter referred to as ("Erie"), and Bolder Enterprises, Ltd., represented by John Defilippi, P.O. Box 19888, Boulder, Colorado, hereinafter referred to as "Owner;" and

WHEREAS, Owner has submitted a Plat for the Right Move Subdivision, a Replat of Parcel 1 and 2 of Falcon Properties Subdivision ("Development") attached hereto as "Exhibit A" and incorporated herein by reference. Said Plat has been reviewed and approved by the Planning Commission and Board of Trustees of Erie; and

☒ **WHEREAS**, Owner has submitted a Development Plan for the Right Move Subdivision Development ("Development") attached hereto as "Exhibit A" and incorporated herein by reference. Said Plat has been reviewed and approved by the Planning Commission and Board of Trustees of Erie; and

WHEREAS, the regulations of Erie require that the Owner enter into a Development Agreement ("Agreement") with Erie relative to improvements related to the development; and

WHEREAS, this standard agreement has been modified by the parties as indicated by the deletions noted below and the addition of certain special provisions, if any, in Section XI;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereto promise, covenant and agree as follows:

GENERAL CONDITIONS

I. Definitions.

A. Town Administrative Official. For the purposes of this Agreement, "Town Administrative Official" shall be defined as the Town Administrator or his or her designee.

II. Development Obligation. Owner shall be responsible for performance of the covenants set forth herein.

III. Public Improvements. Owner agrees to design, construct and install according to Town approved plans, certain public improvements including but not limited to streets, curb, gutter, sidewalks, storm sewer lines, storm drainage improvements, sanitary sewers, water lines, trails and park improvements on or off the Property. Owner agrees to dedicate to Erie and give a two (2) year guarantee for all improvements constructed. The construction of public improvements

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shall be subject to any reimbursement that may be provided for in this Development Agreement.

- A. ☒ **Oversizing Utilities and Off-site Public Improvements.** Erie may require the Owner to build utility lines and other infrastructure large enough to serve property other than the Owner's (oversizing). Erie may also require the Owner to construct or participate in the construction of certain off-site public improvements.
- B. **Reimbursement for Oversizing and Off-site Public Improvements.**
The Owner is entitled to reimbursement for the oversize part of utilities and other infrastructure and/or a pro-rata portion of the cost of off-site public improvements. At the time of final approval of a subdivision plat or other development plan for properties that use these utilities or public improvements, the Town will require as a condition of approval, a proportional reimbursement to the Owner as provided by this Development Agreement.
- C. **Reimbursement for Oversizing and Off-site Public Improvements Constructed by Others.** The Owner will be required to reimburse the Town or others who have constructed oversized utilities and other infrastructure that will be utilized by the Owner's property. The amount of the reimbursement shall be determined by the Town.

IV. **Engineering Services.** Owner agrees to furnish, at its expense, all necessary engineering services relating to the design and construction of the Development and the Schedule of Improvements described in "Exhibit B", attached hereto and incorporated herein by this reference. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer and/or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for public improvements as established and approved by Erie.

- A. **Construction Standards.** Owner shall construct all improvements required by this Agreement, and any other improvements constructed in relation to the Development, in accordance with plans and specifications approved in writing by Erie, and in full conformity with Erie's construction specifications, ordinances and regulations.
- B. **Development Coordination.** Unless specifically provided in this Agreement to the contrary, all submittals to Erie or approvals required of Erie in connection with this Agreement shall be submitted to or rendered by the Town Administrative Official who shall have general responsibility for coordinating development, with Owner.
- C. **Plan Submission and Approval; Compliance with Ordinance No. 478 Governing Public Improvement Permits.** Owner shall furnish to the Town

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Administrative Official the required fees and complete plans for each public improvement phase and obtain a Public Improvement Permit for of each Phase prior to commencing any construction work thereon in accordance with Ordinance No. 478 of the Town. Erie shall issue its written approval or disapproval of said plans as expeditiously as reasonably possible, said approval or disapproval shall be based upon the standards and criteria for public improvements as established and approved by Erie, and Erie shall notify Owner of all deficiencies which must be corrected prior to approval. All Deficiencies shall be corrected and said plans shall be resubmitted to and approved by Erie prior to construction. All approvals required hereunder from Erie shall be by the Town Administrative Official and shall be in the form of a Public Improvement Permit.

D. Construction Acceptance and Warranty. No later than ten (10) days after improvements are completed, Owner shall request of the Town Administrative Official an inspection by Erie, if Owner does not request this inspection within ten (10) days of completion of improvements, Erie may conduct the inspection without the approval of Owner. Owner shall provide "as-built" drawings and a certified statement of construction costs no later than sixty (60) days after improvements are completed. If Owner has not completed appropriate residential phase or commercial phase improvements as provided for in this Agreement, Erie may exercise its right to secure performance as provided in Section 12.d of this Agreement. If improvements completed by Owner are in compliance with this Agreement or are satisfactory, the Town Administrative Official shall grant "construction acceptance", which shall be subject to "final acceptance" as set forth herein. If improvements are not in compliance with this Agreement or are unsatisfactory, the Town Administrative Official shall provide written notice to Owner of the repairs, replacements, construction or other work required to receive "construction acceptance". Owner shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Owner completes the repairs, replacements, construction or other work required, Owner shall request of the Town Administrative Official a re-inspection of such work to determine if construction acceptance can be granted, and Erie shall provide written notice to Owner of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Owner's expense. If Owner does not complete the repairs, replacements, or other work required within thirty (30) days of said notice, Erie may exercise its rights to secure performance as provided in Section 9.d of this Agreement. Erie reserves the right to schedule re-inspections, depending upon scope of deficiencies. No "Certificate of Occupancy" will be issued by Erie prior to Construction Acceptance.

E. Maintenance of Improvements. For a two (2) year period from the date of "construction acceptance" of any improvements related to the Development, Owner shall, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs or replacements which, in the reasonable opinion of Erie, shall become necessary, except that Erie shall be responsible for snow removal. If

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within thirty (30) days after Owner's receipt of written notice from Erie requesting such repairs or replacements, the Owner has not completed such repairs, Erie may exercise its rights to secure performance as provided in Section 12.d of this Agreement.

F. Final Acceptance. At least thirty (30) days before two (2) years has elapsed from the issuance of "construction acceptance", or as soon thereafter as weather permits, Owner shall request a "final acceptance" inspection in writing. The request shall be made to the Town Administrative Official. The Town Administrative Official shall inspect the improvements and shall notify the Owner in writing of all deficiencies and necessary repairs. After Owner has corrected all deficiencies and made all necessary repairs identified in said written notice, as soon as reasonably possible thereafter, the Town Administrative Official shall issue to Owner a letter of "final acceptance". If Owner does not correct all deficiencies and make repairs identified in said inspection to Erie's satisfaction within thirty (30) days after receipt of said notice, weather permitting, Erie may exercise its rights to secure performance as is provided in Section 12.d of this Agreement. If any mechanic's liens have been filed with respect to the public improvements, Erie may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If Owner fails to have improvements finally accepted within two (2) years of the date of the issuance of construction acceptance or any improvements are found not to conform to this Agreement, or to applicable Erie standards and specifications, then Owner shall be in default of the Agreement and Erie may exercise its rights under Section 9.d of this Agreement.

G. Reimbursement to Erie. Erie may complete construction, repairs, replacements, or other work for Owner pursuant to Sections 1.h, 1.i, 1.j, or 12.d of this Agreement with funds other than the Improvement Guarantee, in which event Owner shall reimburse Erie within sixty (60) days after receipt of written demand and supporting documentation from the Town Administrative Official. If Owner fails to so reimburse Erie, then Owner shall be in default of the Agreement and Erie may exercise its rights under Section 12.d of this Agreement.

H. Testing and Inspection.

1. Testing and inspection of the construction and materials shall be in accordance with the provisions of the Public Improvements Permit. In addition, Owner shall employ, at its own expense, a licensed and registered testing company, previously approved by Erie in writing, to perform all testing of materials or construction that may be reasonably required by Erie, and shall furnish copies of test results to the Town Administrative Official on a timely basis for review and approval prior to commencement or continuation of that particular phase of construction. In addition, at all times during said construction Erie shall have access to inspect the materials and workmanship of said construction and all materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so

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as to conform to the approved plans and specifications.

2. All work shown on the approved public improvement plans requires inspection by the Public Works Department, Engineering Division. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 4:00 p.m., November 1 through March 31, and from 7:00 a.m. to 6:00 p.m., April 1 through October 31. During the hours listed above, inspections shall be scheduled a minimum of 24 hours in advance with the Engineering Division. Requests for inspection services beyond the hours listed above, shall be submitted a minimum of 48 hours in advance to the Director of Public Works for approval. All requests for after hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the Town for all direct costs of the after hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.

I. Improvement Guarantees. Owner shall submit to the Town Administrative Official an Improvement Guarantee for all public improvements related to each Phase of the Development. Said guarantee may be in cash or a letter of credit in form and substance as shown on "Exhibit C" as provided by the Town attached hereto and incorporated herein by reference.

1. Said guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1). Said Improvement Guarantee shall include, but not by way of limitation, street construction, landscaping, fencing, street lights, water, sewer, storm sewer and drainage improvements. Building permits shall be issued for only that phase of the Development for which said guarantees have been furnished. The total amount of the guarantee for each phase shall be calculated as a percentage of the total estimated cost including labor and materials of all public improvements to be constructed in said Phase of the Development as described on "Exhibit B." The total minimum amounts are as follows:

- a) Prior to commencement of construction of public improvements in each phase, - 115% of the amount(s) shown on "Exhibit B" for that phase.
- b) Upon "construction acceptance" of the public improvements in each phase through "final acceptance" - 25% of the amount(s) shown on "Exhibit B" for that phase.
- c) After Final Acceptance - 0%

In addition to any other remedies it may have, the Town may, at any time prior to Final Acceptance, draw on any Improvement Guarantee issued pursuant to this Agreement if Owner fails to extend or replace any such Improvement Guarantee at least thirty (30) days prior to expiration of such Improvement Guarantee. If the

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town draws on the guarantee to correct deficiencies and complete improvements, any portion of said guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Owner within thirty (30) days after said final acceptance. In the event that the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of improvements and construction is reasonably determined by the Town to be greater than the amount of the security provided, then the Town shall furnish written notice to the Owner of the condition, and within thirty (30) days of receipt of such notice the Owner shall provide the Town with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section IV.m. If such an Improvement Guarantee is not submitted or maintained, then Owner is in default of this Agreement and is subject to the provisions of Section 12.d of this Agreement, as well as the suspension of development activities by the Town including, but not limited to, the issuance of building permits and certificates of occupancy.

2. ☐ Indemnification and Release of Liability. Owner agrees to indemnify and hold harmless Erie, its officers, employees, agents, or servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by, arising from, or on account of acts or omissions by the Owner, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to Erie and said persons their reasonable expenses, including but not limited to, reasonable attorney's fees and reasonable expert witness fees, incurred in defending any such suit, action or claim. Provided however, that Owner's obligation herein shall not apply to the extent said Suit, action or claim results from any acts or omissions of officers, employees, agents, or servants of Erie or conformance with requirements imposed by Erie, said obligation of Owner shall be limited to suits, actions, or claims based upon conduct prior to "final acceptance" by Erie of the construction work. Owner acknowledges that Erie's review and approval of plans for development of the property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Owner or third parties is assigned by such review approval.

J. Insurance and Safety. Owner shall, through contract requirements and other normal means, guarantee and furnish to Erie proof thereof that all employees and contractors engaged in the construction of improvements are covered by adequate Workman's Compensation Insurance and Public Liability Insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

K. Phasing. Erie hereby approves Developer's Phasing Plan, which is a part of the attached Exhibit "B". The completion of each Phase of the Development,

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including public and private improvements, shall be in accordance with said plan and completion schedules or Erie approved modifications thereof. All modifications shall be in writing and signed by the Town Administrator or the Administrator's designee.

V. CONSTRUCTION OF IMPROVEMENTS:

- A. **Public Improvement Permits (PIP).** Before the construction or installation of any improvements listed on the "Schedule of Improvements" attached as Exhibit "B", the Owner shall obtain a Public Improvement Permit from the Town as provided by Ordinance No. 478. The PIP application, fees, plans, specifications and any other data filed by the Owner will be reviewed by the Town. If found to be complete and in accordance with the Town Standards and Specifications and other pertinent requirements, the Town will issue the Owner the Public Improvement Permit. The Owner shall reimburse the Town for any additional expenses incurred by the Town for the review of plans or inspection of construction work by consultants engaged by the Town for that purpose.
- B. **Rights-of-way, Easements and Permits.** Before the Town approves the Public Improvement Permit, Owner shall acquire at its own expense and convey to Erie, all necessary land, rights-of-way and easements required by Erie for the construction of the proposed improvements related to the Development. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed in form and substance acceptable to the Town of Erie. All title documents shall be recorded by Erie at the Owner's expense. The Owner shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the Town of Erie.
- C. **Construction.** Owner shall furnish and install, at its own expense, the improvements listed on the "Schedule of Improvements" attached as Exhibit "B", in conformance with the drawings, plans and specifications approved by Erie prior to construction. If Owner does not meet the above obligations, the Owner shall be in default of the Agreement and Erie may exercise its rights under Section 9.d of this Agreement.
- D. **Utility Coordination and Installation.** In addition to the improvements described on "Exhibit B", Owner shall also be responsible for coordination of and

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payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and utilities. All utilities shall be placed underground as required by Erie Code.

VI. STREET IMPROVEMENTS:

- A. **Streets.** The Owner shall furnish and install, at its own expense, the street improvements listed on the "Schedule of Improvements" attached as "Exhibit B", in conformance with the drawings, plans and specifications approved by Erie by the Public Improvement Permit (PIP).
- B. **Sidewalks.** The Owner shall furnish and install, at its own expense, the sidewalk improvements listed on the "Schedule of Improvements" attached as Exhibit "B", in conformance with the drawings, plans and specifications approved by Erie by the Public Improvement Permit (PIP). To minimize construction damage, detached sidewalk construction may be delayed until Certificates of Occupancy are issued for 80% of the properties facing a specific street on which sidewalks are platted. Erie may require earlier construction if it determines that such sidewalks are needed for the safe passage of residents.
- C. **Street Signs, Traffic Signs, and Striping.** Owner will install, at Owner's expense, street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.
- D. **Street Lights.** Owner shall furnish complete plans for street lighting to be reviewed and approved by the Town. The total cost of street light installation shall be the Owner's obligation. Owner shall cause, at its own expense, Public Service Company of Colorado to install all required street lighting pursuant to Public Service plans and specifications as submitted to and approved in writing by the Town Administrative Official. Said street lights shall be installed concurrently with the streets on which they are located. The type of street lights shall be chosen by Erie.

VII. PUBLIC USE DEDICATION AND LANDSCAPING:

- A. **Public Use Dedication.** Owner shall convey to Erie certain lands as described as open space and park in Exhibit "A" attached hereto and incorporated herein by reference. Conveyance of these lands shall be free and clear of liens, taxes and encumbrances and shall be by Warranty Deed in form and substance

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acceptable to the Town. Conveyance shall be made within thirty (30) days after the platting. The Owner shall also furnish at the time of conveyance, at his own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the Town of Erie. The property shall be free and clear of liens, taxes and encumbrances except for ad valorem real property taxes up to the date of dedication to Town, but subject to all easements, rights-of-way, reservations, restrictions or other title burdens of record.

- B. Landscape Improvements.** For public lands, easements and rights-of-way, Owner shall furnish Erie complete final landscape and irrigation plans for each phase and obtain approval by the Town of Erie prior to commencement of construction. Owner shall construct landscape improvements as required in the landscape plan before the public lands and rights-of-way are accepted by the Town. Landscape plans need not be provided for private landscaping on single family residential lots. For commercial areas, Owner shall furnish a final landscape plan to the Town Administrative Official for approval prior to installation of landscape improvements.

VIII. WATER MAINS.

- A. Specifications.** All water mains, lines, and appurtenances thereto shall be constructed and installed pursuant to Erie's approved plans, specifications, and the Schedule of Improvements attached as "Exhibit B", including both on-site and off-site improvements.
- B. Oversizing.** Erie may require Owner to build water lines large enough (over 12") to serve properties adjacent to the Development. Oversize water lines are anticipated as follows:
1. None
- C. Reimbursement for Oversizing.** Owner is entitled to reimbursement for the oversize part of these line extensions. At time of final approval of a Development plat or other development plan on properties that utilize these lines, the Town will require as a condition of final approval, a proportional reimbursement to Owner as provided by "Exhibit D".

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IX. SEWER LINES:

- A. Specifications.** All sewer lines and appurtenances thereto shall be constructed and installed, pursuant to the Town of Erie's approved plans, specifications, and the Schedule of Improvements attached as "Exhibit B", including both on-site and off-site improvements.
- B. Oversizing.** Erie may require Owner to build sewer interceptor lines, sewer force mains and sewer lift station(s) large enough to serve properties adjacent to the Development. Oversize sewer interceptor lines, sewer force mains and sewer lift station(s) are anticipated as follows:
1. The line in Bonnell Street will be a 12" line.
- C. Reimbursement for Oversizing.** Owner is entitled to reimbursement for the oversize part of sewer interceptor lines, sewer force mains and sewer lift station(s). At time of final approval of a subdivision plat or other development plan on adjacent properties that utilize these facilities, the town will require as a condition of final approval a proportional reimbursement to Owner as provided by "Exhibit D".
- D. ☒ Sewer Lift Station(s).** Until such time as gravity sewer trunk lines between The Right Move Subdivision and the Town's sewage treatment plant are available, The Right Move Subdivision may be served by sewer lift station(s) and sewer force main(s). The Town shall be responsible for the design and construction of the lift station(s) and obtaining the required site permit(s) from the Colorado Department of Health. Owner shall escrow cash sufficient to pay for the entire cost of design and construction of the lift station(s). Owner shall at his cost build sewer force main(s) constructed and installed pursuant to the Town of Erie's approved plans and specifications.

X. OTHER IMPROVEMENTS:

A. Drainage Improvements.

1. Drainage improvements for the Development shall be constructed

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by Owner in accordance with plans and specifications approved by Erie. No over lot grading shall be initiated by Owner until Erie approves drainage improvement plans by the issuance of the Public Improvement Permit. Owner shall provide temporary erosion control during over lot grading until drainage improvements are installed.

2. Drainage improvements for each lot shall be constructed by the owner of said lot in accordance with plans approved at the time of plat approval. Said plans shall conform to Erie's then existing drainage and flood plain regulations. Owner shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of lots within the development.
3. Owner shall be responsible for the obtaining a CDPS "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction.

B. Oversizing. Erie may require Owner to build storm sewer interceptor lines, and storm sewer mains large enough to serve properties adjacent to the Development. Oversize storm sewer interceptor lines are anticipated as follows:

1. Lines in Bonnell extending from county Line road to offsite detention pond.
2. Outfall line from detention pond to Coal Creek.

C. Reimbursement for Oversizing. Owner is entitled to reimbursement for the oversize part of storm sewer interceptor lines and storm sewer mains. At time of final approval of a subdivision plat or other development plan on adjacent properties that utilize these facilities, the town will require as a condition of final approval a proportional reimbursement to Owner as provided by "Exhibit D".

D. Trash, Debris, Mud. Owner agrees that during construction of the Development and improvements described herein, Owner will take appropriate steps necessary to control trash, debris and wind or water erosion in the Development. If Erie determines that said trash, debris or wind or water erosion causes substantial damage or injury or creates a major nuisance, Owner agrees to abate said nuisance and/or to correct or commence to correct, any damage or injury, within five (5) working days after notification by Erie. If Owner does not abate said nuisance, Erie may abate the nuisance and/or correct any drainage or

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injury without notice to Developer, at Owner's expense. Owner also agrees to take any and all reasonable steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by Erie. If Owner does not abate, or if an emergency exists, Erie may abate at Owner's expense.

E. Operation of Construction Equipment.

1. The operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 8:00 p.m. and, on weekdays, the hour of 7:00 a.m. or, on legal holidays and weekends, the hour of 8:00 a.m. The Town Administrator may, upon written application, alter the hours of operation for good cause.
2. The operation of construction equipment for the purpose of grading or constructing either surface improvements or 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. Upon written request, the hours of operations may be altered by the Town Administrator.

XI. SPECIAL PROVISIONS.

- A. **Lot Sales and Letter of Credit.** No lot sales shall occur until the Letter of Credit guaranteeing construction of all public improvements has been accepted by the Town.
- B. **Timing of Public Improvements.** Construction of public improvements shall begin as soon as possible, but no later than the sale of one vacant lot.
- C. **Bonnell Street Improvements.** In conjunction with the improvement of Hunter Court, Owner shall improve the north one-half of Bonnell Street to Town standards the entire distance from County Line Road to Austin Industrial Park. Owner shall make a good faith effort to coordinate such improvements with the owner of the land immediately south of Bonnell in an effort to construct the entire street at once. Similarly, if another party is constructing an accel/decel lane along County Line Road at Bonnell, Owner shall make a good faith effort to coordinate such improvements with that party.
- D. **Bonnell Water, Sanitary Sewer and Storm Sewer Improvements.** If Owner constructs Bonnell Street prior to the owner of the land immediately south of Bonnell, Owner shall install all required water and sanitary sewer improvements

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to Town standards the entire distance from County Line Road to Austin Industrial Park. Recovery of the cost of those improvements shall be recoverable as provided in this Agreement. In the event these utilities have been previously installed by others, Owner shall make recovery payments as provided herein.

E. County Line Road Improvements

1. Overall. Except as provided herein, Owner's responsibility for improvement of County Line Road shall be met through payment of a fee collected from individual lot owners at the time of building permit issuance for individual lots in accordance with Ordinance No. 653 as may be amended.
2. County Line Road Access. Access to all lots shall be from Bonnell Avenue and Hunter Court, except that the two temporary access drives off County Line Road serving Lots 1 and 2 will be permitted to continue until the construction of Hunter Court. Immediately upon completion of Hunter Court and Bonnell Avenue, the temporary access drives serving Lots 1 & 2 shall be removed and site landscaping appropriately restored.
3. Left Turn into Bonnell. Owner's improvement of County Line Road shall include construction of a left turn bay into Bonnell to Town standards. Recovery of the cost of said improvement shall be recoverable as provided in this Agreement.

F. Landscaping along County Line Road. Landscaping of the 30' landscape buffer shall be required at the time of Site Improvement Plan approval for individual lots abutting County Line Road. In the case of Lot 1, said landscaping shall be required at the time of Hunter Court construction or August 31, 2000, whichever first occurs.

G. Storm Drainage.

1. Detention. Building permits for Lots 3-6 shall not be issued until engineering plans and documented easements or right-of-way for on-site or off-site detention and outfall to Coal Creek have been submitted to, and approved by, the Town.
2. Bonnell Storm Sewer. Owner shall not be responsible for construction of storm sewer improvements in Bonnell Avenue; however, in the event another party constructs such storm sewer in Bonnell, Owner shall be responsible for recovery payment as provided herein in accordance with Town policy regarding such payments. Buildings on Lots 3-6 shall be constructed at an elevation to avoid building damage from runoff overtopping County Line Road.

H. Connection to Sanitary Sewer – Removal of Septic Systems. At such time as

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sanitary sewer is constructed in Hunter Court, at Owner's expense, improvements on Lots 1 and 2 shall be connected to the sanitary sewer, the existing septic system appropriately removed and affected landscaping restored. **The Owner shall record a disclosure with all lots sold verifying that it shall be the responsibility of the fee title owner of the land to bear the cost of extending Town sewer lines to the Property, should the State of Colorado or any other governmental agency require Town sewer service to be provided to this property.**

XII. MISCELLANEOUS TERMS.

- A. **Vested Rights.** Erie agrees that the Final Subdivision Plat (s) for the Right Move Subdivision constitutes a "site specific development plan" pursuant to C.R.S. 24-68-101 et. seq. (the "Vested Rights Act") for that portion so platted, and in addition, that the rights which vest pursuant to the Vested Rights Act shall vest for a period of twenty (20) years. This Development Agreement shall be deemed to be a "development agreement" pursuant to the Vested Rights Act.
- B. **Water Dedication.** As provided by the subdivision regulations, all non-tributary and ground water rights not already transferred to the Town at the time of annexation shall be dedicated to the Town at the time of Final Plat. Transfer of the water rights shall be by deed tendered to the Town prior to signatures being affixed to this agreement.
- C. ☒ **Access to Adjacent Property.** The Owner agrees to provide street access to property to the (Insert direction) of (Insert name of development) through (Insert the name of the street) to provide one or two access routes over planned streets in subsequent filings.
- D. **Default.** If the Owner fails to fulfill the terms and conditions of this agreement, the Town of Erie, in its sole discretion, may declare the Owner in default and after giving thirty (30) days notice to the Owner as provided herein, may call the security provided in Section 4.i and exercise all remedies available to the Town. Erie may also, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services until the completion of the improvements. Any costs incurred by Erie, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by the Owner shall be paid by the Owner. Erie may deduct these costs from the Improvement Guarantee.
- E. **Recording Agreement.** Erie shall record this Agreement at the Owner's expense in the office of the Clerk and Recorder, County of Weld, State of

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Colorado, and Erie shall retain the recorded Agreement.

- F. Binding Effect of Agreement.** This Agreement shall run with the land included within the Development and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- G. Assignment, Delegation and Notice.** Owner has optioned the entire property for development but beyond that shall provide to Erie's Town Administrator for approval, written notice of any proposed transfer of title to all or any portion of the Development except that Owner may sell developed lots, commercial lots or all of the multi-family land without Erie's permission and of the Development Agreement obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. Owner and successor shall, until written approval by Erie's Town Administrator's of the proposed transfer of title and delegation of obligations, which shall not be unreasonably withheld, be jointly and severally liable for the obligations of Owner under this Agreement.
- H. Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any sections of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.
- 1. Addresses for Notice.** Any notice or communication required or permitted thereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:
- | | |
|------------------------------|--------------------------|
| ERIE: | Owner: |
| Town of Erie | Bolder Enterprises, Ltd. |
| Town Administrator | John Defilippi |
| P.O. Box 750 | PO Box 19888 |
| Erie, Colorado 80516 | Boulder, CO 80301 |
| Mark Shapiro | |
| Doty & Shapiro, PC | |
| 1720 Fourteenth Street, #105 | |
| Boulder, CO 80302-6353 | |
- With a copy to: such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this

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procedure.

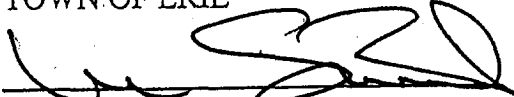
2. ☐ Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- I. ☐ **Force Majeure.** Whenever Owner is required to complete construction, maintenance, repair, or replacement of improvements by an agreed upon deadline, Erie shall grant a reasonable extension of time if the performance cannot, as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Owner.
- J. **Approvals.** Whenever approval or acceptance of a matter is required or requested of Erie pursuant to any provisions of the Agreement, Erie shall act reasonably in responding to such matter.
- K. ☐ **Previous Agreements.** All previous written agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation, Pre-Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.
- L. **Title and Authority.** Owner warrants to Erie that Bolder Enterprises, Ltd. is the record owner for the property within the Development or is acting in accordance with the currently valid, and unrevoked power of attorney of the record owner hereto attached as Exhibit E. The undersigned further warrant to have full power and authority to enter into this Agreement.
- M. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have ratified this Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.
- N. **Attorney Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.
- O. **Agreement Status After Final Acceptance.** Upon Final Acceptance by Erie of all improvements and compliance by Owner with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall terminate and no longer be in effect.


DELETED
IF BOX
MARKED

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

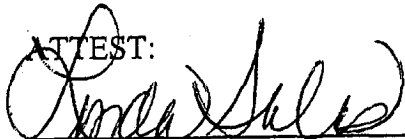
TOWN OF ERIE


Victor F. Smith, Mayor

OWNER


Bolder Enterprises, Ltd. by
John Defilippi

ATTEST:

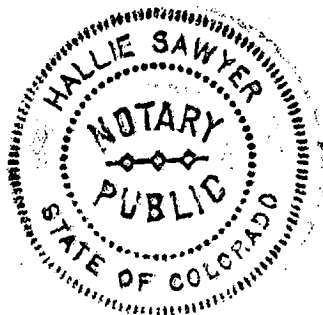

Linda Salas, Town Clerk

STATE OF COLORADO)
) SS.
COUNTY OF WELD)

Subscribed and sworn to before me this 3rd day of September, 1999, by
John Defilippi.

Witness my hand and official seal.

My Commission expires January 3, 2003.



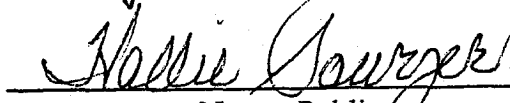

Notary Public

Exhibit "B"
The Right Move Subdivision
Public Improvements
Page 1 of 2

| | | |
|---|-----------|------------------|
| Water Off-Site | | |
| 12" Line in Bonnell Ave: 780 LF @ \$20.00 | \$15,600 | |
| Off-site Water Subtotal | | \$15,600 |
| Water On-Site | | |
| 8" Line in Hunter Court: 540 LF @ \$16.50 | \$8,910 | |
| Fire Hydrants: 2 @ \$2200 | \$4,400 | |
| On-Site Water Subtotal | | \$13,310 |
| Sewer Off-Site | | |
| 12" Line: 780 LF @ \$17.50 | \$13,650 | |
| Manholes: 3 @ \$1500 | \$4,500 | |
| Off-Site Sewer Subtotal | | \$18,150 |
| Sewer On-Site | | |
| 8" Line: 560 LF @ \$12.00 | \$6,720 | |
| Manholes: 2 @ \$1500 | \$3,000 | |
| On-Site Sewer Subtotal | | \$9,720 |
| Streets | | |
| Asphalt: 6760 SY @ \$15.00 | \$101,400 | |
| 24" Curb & Gutter: 1840 LF @ \$12.00 | \$22,080 | |
| Crosspans: 350 SF @ \$3.00 | \$1050 | |
| Street Subtotal | | \$124,530 |
| Left Turn Lane | | |
| Asphalt: 497 SY @ \$15.00 | \$7,455 | |
| Grading: 662 CY @ \$2.00 | \$1,324 | |
| Stripping and Signage @ \$1,000 | \$1,000 | |
| Off-Site Street Subtotal | | \$9,779 |
| Sidewalks | | |
| Sidewalk 5' Wide: 1840 LF @ \$15.00 | \$27,600 | |
| Sidewalk Subtotal | | \$27,600 |

Exhibit "B"
The Right Move Subdivision
Page 2 of 2

Miscellaneous

Street Lights: 2 @ \$2000 \$4,000

| | |
|-------------------------------|----------------|
| Miscellaneous Subtotal | \$4,000 |
|-------------------------------|----------------|

| | |
|--|------------------|
| Total of Public Improvements advanced by The Right Move | \$222,689 |
|--|------------------|

Costs incurred for the benefit of others (south of Bonnell Ave.):

Off-Site Water: \$15,600

| | |
|----------------|----------|
| Off-Site Sewer | \$18,150 |
|----------------|----------|

Off-Site Streets **\$ 9,779**

Street Lights **\$ 4,000**

$$\underline{\$47,529 / 2 = \$23,765}$$

| | |
|------------------------------------|------------------|
| Total of Pubic Improvements | \$198,924 |
|------------------------------------|------------------|

August 30, 1999