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**THE RIGHT MOVE SUBDIVISION REPLAT A  
DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into this 11<sup>th</sup> day of October, 2005 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, LLLP, PO Box 18977, Boulder, CO 80308-1977 hereinafter referred to as "Owner;" and

**WHEREAS**, Owner has submitted a Plat for The Right Move Subdivision Replat A ("Development") attached hereto as "Exhibit A" and incorporated herein by reference. Said Plat has been 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 addition of certain special provisions, if any, in Section VIII.

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

**I. 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 AND COORDINATION**

Owner shall be responsible for performance of the covenants set forth herein. Unless specifically provided in this Agreement to the contrary, all submittals to Erie and acceptances 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.

**III. 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 by Warranty Deed in form and substance acceptable to Erie. If not already conveyed, conveyance shall be made within thirty (30) days of the date of this Agreement. Owner shall also furnish at the time of conveyance, at its own expense, an ALTA title policy for all interest(s) so conveyed,

subject to acceptance 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.

#### **IV. PUBLIC IMPROVEMENTS**

Owner agrees to design, construct and install according to Town accepted plans, all public improvements necessary for the Development including, but not limited to, street, curb, gutter, sidewalks, landscaping, fencing, street lights, water, waste water, storm sewer and drainage improvements, trails and park improvements on and off the Property. Owner agrees to dedicate said improvements to Erie and give a two (2) year guarantee for all improvements constructed.

##### **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 accepted in writing by Erie, and in full conformity with Erie's construction specifications, ordinances and regulations.

##### **B. Engineering Services**

Owner agrees to furnish, at its expense, all necessary engineering services relating to the design and construction of the Development. Said engineering services shall conform to the standards and criteria for public improvements as established and accepted by Erie. These 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.

##### **C. Plan Submission and Acceptance**

Owner shall furnish to the Town Administrative Official the required fees and complete plans for all improvements and development phases. Erie shall issue its written acceptance or rejection of said plans as expeditiously as reasonably possible. Said acceptance or rejection shall be based upon the standards and criteria for public improvements as established by Erie, and Erie shall notify Owner of all deficiencies which must be corrected prior to acceptance. All deficiencies shall be corrected and said plans shall be resubmitted to and accepted by Erie prior to construction. All acceptances required hereunder from Erie shall be made by the Town Administrative Official.

##### **D. Public Improvement Permits (PIP)**

Before the construction or installation of any improvements, Owner shall obtain a Public Improvement Permit from Erie as provided in Town of Erie Ordinance No. 478. The PIP application, fees, plans, specifications and any other data filed by Owner will be reviewed by Erie. If found to be complete and in accordance with the Town standards and

specifications and other pertinent requirements, Erie will issue Owner the Public Improvement Permit. Owner shall reimburse Erie for any additional expenses incurred by Erie for the review of plans or inspection of construction work by consultants engaged by Erie for that purpose.

**E. Testing and Inspection**

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, to perform all testing of materials or construction that may be reasonably required by Erie. Owner shall furnish copies of test results to the Town Administrative Official on a timely basis for review and acceptance prior to commencement or continuation of that particular phase of construction. 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 accepted plans and specifications shall be repaired or removed and replaced at Owner's expense so as to conform to the accepted plans and specifications.

All work shown on the accepted public improvement plans requires inspection by the Public Works Department, Engineering Division. Except Town of Erie holidays, inspection services are provided Monday through Friday, from 7:00 a.m. to 4:00 p.m. 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 in writing to the Director of Public Works for acceptance. Owner shall reimburse the Town for all direct costs of the after hours inspection services. If the request is denied, the work shall not proceed before or after the hours listed above.

**F. Rights-of-way, Easements and Permits**

Before Erie 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 Warranty Deed or easement in a form and substance acceptable to Erie. All title documents shall be recorded by Erie at Owner's expense. Owner shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to acceptance by the Town of Erie.

1. All permits as required by the United States Corps of Engineers.
2. Owner shall be responsible for obtaining a CDPHE "General Permit for Stormwater Discharges Associated with Construction Activity", required during construction.
3. Air Quality Permit.

**G. Street Improvements**

Owner shall furnish and install, at its own expense, the street improvements in conformance with the drawings, plans and specifications accepted by Erie by the Public Improvement Permit (PIP).

**H. Sidewalk Improvements**

Owner shall furnish and install, at its own expense, all sidewalk improvements in conformance with the drawings, plans and specifications accepted by Erie. 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.

**I. Street Signs, Traffic Signs, and Striping**

Owner will furnish and install at owners expense street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Manual of Uniform Traffic Control Devices, as from time to time amended, and other applicable legal requirements.

**J. Street Lights**

Owner shall furnish complete plans for street lighting to be reviewed and accepted by Erie. The total cost of street light installation shall be Owner's obligation. Owner shall cause, at its own expense, Xcel Energy to install all required street lighting pursuant to Xcel Energy plans and specifications as submitted to and accepted 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 accepted by Erie.

**K. Water Improvements**

Owner shall furnish and install all water mains, lines, and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

**L. Wastewater Improvements**

Owner shall furnish and install all sewer lines and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

**M. Drainage Improvements**

1. Drainage improvements for the Development shall be constructed by Owner in accordance with drawings, plans and specifications accepted by Erie. Unless otherwise approved by Town, over lot grading shall not 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 and after over lot grading until drainage improvements are completed.

2. Drainage improvements for each lot shall be constructed by the owner of said lot in accordance with accepted construction plans. Owner shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of lots within the development.
3. Owner shall be responsible for obtaining a CDPS "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction. A copy of this permit shall be submitted to Erie.

**N. Landscape Improvements**

For public lands and rights-of-way, Owner shall furnish Erie complete final landscape and irrigation plans for each phase and obtain acceptance by Erie prior to commencement of construction. Owner shall construct landscape improvements as required in the landscape plan before the constructed improvements are accepted by Erie. Landscape plans need not be provided for private landscaping on single family residential lots. For all development other than single family detached development, Owner shall furnish final landscape plans to the Town Administrative Official for acceptance prior to installation of landscape improvements.

**O. Utility Coordination and Installation**

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

**V. IMPROVEMENT ACCEPTANCE**

**A. Construction Acceptance**

No later than ten (10) days after improvements are substantially complete, 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 Erie with complete "as-built" drawings in a form as defined in the Town of Erie Construction Standards and Specifications. 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 X.C of this Agreement. If improvements completed by Owner 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 satisfactory, 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 IX.C. of this Agreement. Erie reserves the right to schedule re-inspections. No "Certificate of Occupancy" will be issued by Erie prior to Construction Acceptance.

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

**C. 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 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, the Town Administrative Official shall issue to Owner a letter of "final acceptance", as soon as reasonably possible thereafter. 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 X.C 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, and applicable Town of Erie Construction Standards and Specifications, then the Owner shall be in default of the Agreement and Erie may exercise its rights under

Section X.C of this Agreement.

**D. Reimbursement to Erie**

Erie may complete construction, repairs, replacements, or other work 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 X.C of this Agreement.

**VI. IMPROVEMENT GUARANTEE**

**A. Public Improvement Schedule**

Owner has submitted the certified Public Improvement Schedule shown as "Exhibit B" attached hereto and incorporated herein by reference. Said exhibit generally identifies those public improvements to be furnished, installed or constructed relative to the Development. Omission of any improvement from Exhibit B does not relieve Owner from responsibility for furnishing, installing or constructing such improvement.

**B. Improvement Guarantee**

Owner shall submit to Town Administrative Official an Improvement Guarantee for all public improvements for the Final Plat. Said guarantee may be in a letter of credit in form and substance.

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 be limited to, street, curb, gutter, sidewalks, landscaping, fencing, street lights, water, sewer, storm sewer and drainage improvements, trails and park improvements on or off the Property.
2. The total amount of the guarantee for the development shall be calculated as a percentage of the total estimated cost including labor and materials of all public improvements to be constructed in the Development as described on "Exhibit B." The total minimum amounts are as follows:
  - a) Prior to commencement of construction of public improvements: 115% of the amount(s) shown on "Exhibit B".
  - b) Upon "substantial completion construction acceptance" of the public improvements in each phase through "final acceptance": 25% of the amount(s) shown on "Exhibit B".

c) After Final Acceptance: 0%

3. In addition to any other remedies it may have, Erie 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 an such Improvement Guarantee at least thirty (30) days prior to expiration of such Improvement Guarantee. If Erie 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 Erie to be greater than the amount of the security provided, then Erie shall furnish written notice to Owner of the condition, and within thirty (30) days of receipt of such notice Owner shall provide Erie with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance. 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 X.D of this Agreement, as well as the suspension of development activities by Erie including, but not limited to, the issuance of building permits and certificates of occupancy.

#### **C. Phasing**

Owner's Phasing Plan is detailed on "Exhibit B." The completion of each phase of Development, 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 Administrative Official.

### **VII. OVERSIZING AND REIMBURSEMENT**

Erie may require Owner to build utility lines and other infrastructure large enough to serve property other than Owner's (oversizing). Erie may also require Owner to construct or participate in the construction of certain off-site public improvements. Certain such improvements qualify for reimbursement pursuant to the policies of Erie.

#### **A. Reimbursement due to Owner for Qualifying Public Improvements Constructed by Owner**

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, Erie will require as a condition of approval, a proportional reimbursement to Owner as described in "Exhibit C", attached hereto and



incorporated herein by this reference. Nothing contained in this Agreement shall operate to create an obligation on the part of Erie to pay or reimburse any costs to Owner in the event such costs are not recovered by Erie as contemplated herein, for any reason, from the properties or property owners that use the utilities or public improvements.

**B. Reimbursement due from Owner for Qualifying Public Improvements Constructed by Others**

Owner will be required to reimburse Erie or others who have constructed oversized utilities and other infrastructure that will be utilized by Owner's property. The amount of the reimbursement due, if any, is described in "Exhibit C".

**VIII. MISCELLANEOUS CONSTRUCTION STANDARDS**

**A. 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 within 24 hours, any damage or injury, and complete 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 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.

**B. Operation of Construction Equipment**

The operation of construction equipment outside an enclosed structure shall be prohibited on weekdays between the hours of 7:00 p.m. and 7:00 a.m. On weekend days and legal holidays the operation of such equipment outside an enclosed structure shall be prohibited between the hours of 4:00 p.m. and 8:00 a.m. The Town Administrative Official may alter the hours of operation for good cause.

**IX. SPECIAL PROVISIONS**

**A. Off-Site Construction**

1. Off-site construction for storm drainage improvements shall only commence once the Owner has obtained an agreement with the property owner for the off-site work.
2. All areas off-site that are disturbed by construction shall be re-vegetated with native grasses and/or plant materials. Owner is responsible for weed control of seeded/planted areas until plant materials are established.

**B. Demolition Work Identified in the Site Improvement Plan**

1. All demolition work identified on Sheet 2 of 8 of the 1010 Carbon Court, Lot 1, The Right Move Subdivision, Site Improvement Plan shall be completed before a tenant finish building permit for 1010 Carbon Court can be issued.
2. All areas disturbed by demolition work shall be stabilized in conformance with a state issued storm water management permit.

**C. Storm Water Facilities**

1. The storm water facilities required for the 1010 Carbon Court, Lot 1, The Right Move Subdivision, Site Improvement Plan shall be installed in conjunction with the demolition work for the site.

**D. Water Taps**

1. Lot 7 shall have a water tap installed to provide water for the irrigated landscaping on Lot 7. The water fee shall be based on the Town standard water calculation form for the irrigated landscaping to be installed along County Line Road on Lot 7 and in the right-of-way of County Line Road. When the Lot 7 owner applies for further development of the property, the owner shall be subject to a re-evaluation of water use by the Town and may be subject to additional water fees by the Town.
2. Town standard water calculation forms shall be completed and accepted by the Town for both Lot 1 and Lot 7 within 30 days of approval of the Replat. The water calculation forms shall be the bases of any water fees due by the Owner for Lot 1 and 7. Credit for the existing one inch water tap will be given toward the Lot 1 raw water fee. The water fees for Lot 1 and 7 and any tap fees shall be collected by the Town at the time of building permit for renovation of the building on Lot 1.

**E. Tenant Finish Permits for Lot 1, 1010 Carbon Court.**

1. The following list of items shall be completed by the Owner before a tenant finish permit is granted by the Town of Erie.
  - a. Demolition work on Lot 1 and 7 is complete.
  - b. Utilities have been rerouted into new easement alignments.
  - c. Utility Storm water facilities have been installed.
  - d. Water fees for Lot 1, Lot 7 and irrigation in County Line right-of-way have been paid to the Town.
  - e. The new asphalt paving and parking on Lot 1 and 7 is installed

**F. Certificate of Occupancy for Lot 1, 1010 Carbon Court.**

1. The demolition, improvements and relocations identified on the 1010 Carbon Court, Lot 1, The Right Move Subdivision, Site Improvement Plan which include all work identified on Lot 2, Lot 7, County Line Road right-of-way

and Carbon Court right-of-way shall be completed by the Owner, in conformance with our Municipal Code and this agreement, before a Certificate of Occupancy is granted by the Town of Erie.

**G. Maintenance of Facilities and Construction of Improvements at 1010 Carbon Court.**

1. The owner shall create a business association or similar type of agency. The business association shall be responsible for the following list of responsibilities.
  - a. Maintenance of the common facilities (trash enclosures, parking, lighting, landscaping, storm drainage, etc.).
  - b. Providing the Building Department with a parking calculation (per Town of Erie parking requirements), for the entire building at 1010 Carbon Court, at the time of each tenant finish/ new business occupancy for the building.
  - c. When the parking calculation, verified by the Town, identifies that more parking is needed than provided in the first phase of the 1010 Carbon Court, Lot 1, The Right Move Subdivision, Site Improvement Plan, then the Phase 2 parking area shall be constructed by the Building Association to accommodate the parking requirement.
  - d. The Business Association shall be required to submit any Town applications/permits required, prior to the construction of the additional parking area.
2. When Lot 7 develops, the owner shall provide for a pedestrian connection between the sidewalk on County Line Road and the sidewalk on Carbon Court; a pedestrian easement for this facility is identified on the Replat.

**H. Avigation Easement**

1. Owner shall submit to the Town a Deed of Avigation Easement in the Town's standard format to be recorded by the Town Clerk.

**I. Construction Deficiencies from the 1999 Right Move Subdivision Development Agreement**

1. Owner entered into a Development Agreement in September 1999 for The Right Move Replat. Several development construction elements were identified in the agreement and not completed by the Owner (who is the same Owner as this Replat A). The Owner shall provide a new Exhibit B reflecting current costs for improvements and a Letter of Credit on the Town's standard form for all public improvements identified by the Town after receiving a formal Town inspection of the Subdivision.
2. The items identified in Exhibit B shall be completed by the Owner before June 1, 2006. The Town may exercise its right to call the letter of credit and install

the improvements if the Owner does not complete the subdivision improvements by June 1, 2006.

**X. MISCELLANEOUS TERMS**

**A. Vested Rights**

Erie agrees that the Subdivision Plat for The Right Move Subdivision Replat A 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 three (3) years. This Development Agreement shall be deemed to be a "development agreement" pursuant to the Vested Rights Act.

**B. Water Dedication**

As provided by Erie ordinances, all tributary and not non-tributary ground water rights not already transferred to Erie shall be dedicated to Erie at the time of Final Plat recordation. Transfer of the water rights shall be by Special Warranty Deed tendered to Erie prior to signatures being affixed to this agreement.

**C. Default**

If Owner fails to fulfill the terms and conditions of this agreement, Erie, in its sole discretion, may declare Owner in default and after giving thirty (30) days notice to Owner as provided herein, may call the security provided in Section VI and exercise all remedies available to Erie. 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 Owner shall be paid by Owner. Erie may deduct these costs from the Improvement Guarantee.

**D. 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).

**E. 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 Owner, its officers, employees, agents, consultants, contractors, and subcontractors,

and/or suit, action, or claim resulting from mineral right disputes, 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. 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 acceptance 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, Owner or third parties is assigned by such review acceptance.

**F. Recording Agreement**

Erie shall record this Agreement at Owner's expense in the office of the Clerk and Recorder, County of Weld, State of Colorado, and Erie shall retain the recorded Agreement.

**G. 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.

**H. Assignment, Delegation and Notice**

Owner has optioned the entire property for development but beyond that shall provide to the Town Administrative Official for acceptance, 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 acceptance by the Town Administrative Official 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.

**I. 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.

**J. 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:
ERIE:	
Town of Erie	John DeFilippi
Town Administrator	Bolder Enterprises, LLLP
P.O. Box 750	PO Box 18977
Erie, Colorado 80516-0750	Boulder, CO 80308-1977
Mark Shapiro	
Mark R. Shapiro, PC	
1650 38th Street, Suite 103	
Boulder, CO 80301-2624	

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

**K. 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.

**L. 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.

**M. 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.

**N. Title and Authority**

Owner warrants to Erie that Bolder Enterprises, LLLP, is the record owner for the property within the Development. The undersigned further warrant to have full power and authority to enter into this Agreement.

**O. 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.

**P. 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.

**Q. 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.

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

TOWN OF ERIE

  
\_\_\_\_\_  
Andrew Moore, Mayor

OWNER

  
\_\_\_\_\_

By: JOHN DEFILIPPI

ATTEST:

Teresa H. Andrews  
Teresa Andrews, Town Clerk



STATE OF COLORADO     )  
                                      ) SS.  
COUNTY OF Weld     )

Subscribed and sworn to before me this 11<sup>th</sup> day of October, 2005, by John  
DeFilippi.

Witness my hand and official seal.  
My Commission expires January 3, 2007.

Harris Sawyer  
Notary Public



EXHIBIT A

SUBDIVISION PLAT (11"X17")

PART OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 1 NORTH, RANGE 68  
WEST OF THE 6TH P.M., TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO  
SHEET 2 OF 2

SHEET 2 OF 2



## MONUMENTS

- FOUND
- SET 1/2" REBAR & ALUMINUM CAP PLS 15315



GRAPHIC SCALE



THE RIGHT MOVE REPLAY A  
FINAL PLAT



**EXHIBIT B**

**SCHEDULE OF PUBLIC IMPROVEMENTS**

**EXHIBIT B**  
**REPLAT LOT 1 RIGHT MOVE**  
**PUBLIC IMPROVEMENT COST ESTIMATE**  
**OCTOBER 10, 2005**

ITEM	NO. OF UNITS	UNIT COST	TOTAL COST
<b>WELD COUNTY RD. NO. 1 LEFT TURN LANE</b>			
Full Depth Asphalt (11")	1260 S.Y.	\$ 23.50	\$ 29,610.00
Subgrade Preparation	1260 S.Y.	1.50	1,890.00
Grading	1 L.S.	15,000	15,000.00
Gravel Shoulder (6")	530 S.Y.	4.50	2,385.00
Traffic Control	1 L.S.	8,250	8,250.00
Striping	1 L.S.	3,500	3,500.00
Erosion Control	1 L.S.	6,500	6,500.00
		<b>Subtotal</b>	<b>\$ 67,135.00</b>
<b>RIGHT MOVE FILING 1</b>			
Carbon Court Overlay (1 1/2")	2275 S.Y.	\$ 4.00	\$ 9,100.00
Weld Co. Road Landscaping	15000 S.F.	2.50	37,500.00
Grading for Landscaping	1 L.S.	3,500	3,500.00
5' Walk (WCR #1 & Bonnell)	250 L.F.	17.50	4,375.00
Bonnell Overlay (1 1/2")	1720 S.Y.	4.00	6,880.00
Clean & TV existing S/C (8" & 12'	1270 L.F.	1.50	1,905.00
Remove & Replace Curb & Gutter	30 L.F.	20.00	600.00
Riprap	4 C.Y.	60.00	240.00
Rasie Manholes	4 Ea.	350.00	1,400.00
Raise Values	6 Ea.	125.00	750.00
Clean inlets & stormline	1 L.S.	1500.00	1,500.00
Reconstruct drive & patch trench	1 L.S.	4500.00	4,500.00
		<b>Subtotal</b>	<b>\$ 72,250.00</b>
<b>LOT 1 REPLAT</b>			
5' Walk (Carbon Ct. to WCR #1)	130 L.F.	\$ 17.50	\$ 2,275.00
8" Waterline	277 L.F.	22.00	6,094.00
6" Waterline	11 L.F.	30	330.00
8"x8" Tee Wet Tap w/Valve	1 Ea.	3,500	3,500.00
8"x6" Tee	1 Ea.	260	260.00
8" Valve	1 Ea.	800	800.00
6" Valve	1 Ea.	610	610.00
Fire Hydrant	1 Ea.	2500	2,500.00
8" Waterline Plug	1 Ea.	160	160.00
Water Service	3 Ea.	550	1,650.00
8" Sewerline	400 L.F.	21	8,400.00
Sewer Manhole	2 Ea.	1,650	3,300.00
Sewer Service	3 Ea.	250	750.00
18" Stormline	345 L.F.	25	8,625.00
Grated Inlet & Box	1 L.S.	1,700	1,700.00
Tie to Existing Manhole	1 L.S.	950	950.00
Modify Existing Box Culvert	1 L.S.	3,750	3,750.00
		<b>Subtotal</b>	<b>\$ 45,654.00</b>
		<b>TOTAL</b>	<b>\$ 185,039.00</b>

## EXHIBIT C

### **PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE**

#### Reimbursements due Owner:

Storm sewer improvements, installed by the Owner, along County Line Road from the existing box culvert to the existing manhole adjacent to Lot 7 shall be due recovery from the Town.

Recovery costs shall be for 50 percent of the construction costs, for this portion of the storm sewer, at a maximum recovery cost of \$20,000. The Owner shall submit certified construction costs to the Town for acceptance before repayment can commence.

Reimbursements due Erie: None