

DEVELOPMENT AGREEMENT
(The Right Move Subdivision Replat A, 1st Amendment)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 9th day of October, 2019 (the "Effective Date"), by and between the TOWN OF ERIE, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), and Carbon, LLC, a Colorado limited liability company, with a principal place of business at 130 Old Laramie Trail, Suite 200, Lafayette, CO 80026 ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, Developer is the owner of the real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Developer wishes to develop the Property (the "Development"), and has filed an application for approval of a subdivision replat;

WHEREAS, the Property is subject to The Right Move Subdivision Development Agreement recorded September 8, 1999 at Reception No. 2719061, and The Right Move Subdivision Replat A Development Agreement recorded December 1, 2005 at Reception No. 3343862 (collectively the "Previous Development Agreements");

WHEREAS, the Parties agree that, except as specifically provided herein, the Previous Development Agreements are superseded by this Agreement and shall be of no further force or effect; and

WHEREAS, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval of the Development, and that such matters are necessary to protect, promote and enhance the public health, safety and welfare of the Town.

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

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by Developer in connection with the Improvements for the Development. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), state law and other Town ordinances, and are not intended to supersede any requirements contained therein. The foregoing recitals are incorporated into this Agreement as substantive provisions.

2. Construction of Improvements.

a. *General.* Developer shall, at its own expense, design, construct and install all public improvements necessary for the Development, including without limitation streets, alleys, curbs, gutters, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage facilities, and trails and park improvements (collectively the "Improvements"). A list of the required Improvements is set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Omission of any necessary Improvement from

Exhibit B does not relieve Developer from responsibility for furnishing, installing or constructing such Improvement.

b. *Construction Standards.* Developer shall construct the Improvements in accordance with plans and specifications approved by the Town, as well as the Town's Standards and Specifications for Design and Construction of Public Improvements (the "Standards"). Developer shall furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Improvements. These services shall be performed by or under the supervision of a professional engineer licensed by the State of Colorado.

c. *Public Improvement Permit.* Before the construction of any Improvements, Developer shall obtain a Public Improvement Permit ("PIP") from the Town as provided in the Code. If the application is complete and complies with the approved plans and the Standards, the Town will issue the PIP. Developer shall reimburse the Town for any expenses incurred by the Town for consultant review of the application or associated documents. Unless otherwise approved by the Town, overlot grading shall not be initiated until the Town approves drainage improvement plans by the issuance of the PIP.

d. *Testing and Inspection.* Developer shall employ, at its own expense, a licensed testing company to perform all testing of materials or construction reasonably required by the Town. Developer shall furnish copies of test results to the Town on a timely basis. At all times during construction, the Town shall have access to inspect materials and work, and all materials and work not conforming to the approved plans or Standards shall be repaired or removed and replaced at Developer's expense.

e. *Rights-of-way and Easements.* Prior to construction any Improvements that require additional rights-of-way or easements, Developer shall acquire at its own expense all such rights-of-way and easements. Any easements or rights-of-way conveyed to the Town shall be free and clear of liens, taxes and encumbrances (other than any accepted by the Town in its sole discretion in any title report) and shall be conveyed on documents in a form acceptable to the Town.

f. *Permits.* Developer shall, at its own cost, obtain the following permits, as applicable:

- i. Any permits required by the United States Corps of Engineers.
- ii. Colorado Department of Health and Environment General Permit for Stormwater Discharges Associated with Construction Activity.
- iii. Town Grading and Stormwater Quality Permit.
- iv. Air Quality Permit.

g. *As-Built Drawings.* Upon completion of construction of the Improvements, Developer shall provide the Town with complete "as-built" drawings in the form required by the Standards.

h. *Applicable Law.* Developer shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

3. Specific Improvements. Developer shall cause to be constructed or furnished and installed, at Developer's own expense and in conformance with Town-approved plans and Standards, all of the following Improvements:

a. *Streets and Sidewalks.* Developer shall construct all required street and sidewalk improvements in conformance with the drawings, plans and specifications accepted by the Town and in accordance with the PIP.

b. *Signs and Striping.* Developer shall install 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 amended, and other applicable legal requirements.

c. *Street Lights.* Developer shall install street lights, of a type and in accordance with the plans approved by the Town, to be installed by Xcel Energy concurrently with the construction of the streets on which they are located.

d. *Water.* Developer shall install all required water mains, lines, and appurtenances in accordance with the plans approved by the Town. Developer shall pay raw water dedication fees for all permanently irrigated tracts and rights-of-way prior to the installation of landscaping in said tracts and rights-of-way. Native seeded areas not permanently irrigated may be temporarily irrigated until establishment without paying raw water dedication fees, for a period not to exceed 2 years.

e. *Wastewater.* Developer shall install all required sewer lines and appurtenances in accordance with the plans approved by the Town. Prior to the issuance of any building permits for the Development, all sanitary sewer improvements shall be substantially completed as determined by the Town.

f. *Drainage Facilities.* Developer shall install all required drainage facilities, in compliance with Urban Drainage and Flood Control District design standards.

g. *Landscaping.* Developer shall install required landscaping in accordance with a Town-approved landscape plan.

h. *Utilities.* Developer shall install or cause to be installed by the appropriate provider all on-site and off-site electric, natural gas, telephone, cable and other utilities, in accordance with the plans approved by the Town, which will be installed underground as required by the Code.

i. *Fencing.* Developer shall install fencing in accordance with the plans approved by the Town and the Code. Fencing adjacent to parks and open space shall be limited to low (4') open (50%) fencing. The finished side of the fence shall face the open space.

j. *County Line Road Access.* Developer may construct an access drive off of County Line Road for access to the Property; provided, however, any access drive from County Line Road shall be limited to a right-in/right-out intersection.

4. Acceptance of Improvements and Warranty.

a. *Initial Acceptance.* No later than 10 days after Improvements are substantially complete, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval.

i. If the Improvements are satisfactory, the Town shall grant Initial Acceptance.

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Initial Acceptance. Developer shall complete all needed repairs, replacements, construction or other work within 30 days of said notice. After Developer completes the repairs, replacements, construction or other work required, Developer shall request of the Town a re-inspection of such work to determine if Initial Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement. The costs of re-inspection shall be borne by Developer.

iii. All Improvements shall receive Initial Acceptance on or before October 1, 2020.

b. *Final Acceptance.* At least 30 days before 2 years has elapsed from the issuance of Initial Acceptance, or as soon thereafter as weather permits, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval.

i. If the Improvements are satisfactory, the Town shall grant Final Acceptance.

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Final Acceptance. After Developer completes the repairs, replacements, construction or

other work required, Developer shall request of the Town a re-inspection of such work to determine if Final Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement.

c. *Warranty.* For all Improvements to be dedicated to the Town, Developer shall provide the Town with a 2-year warranty, commencing on the date of Initial Acceptance. Specifically, but not by way of limitation, Developer shall warrant that: the title is marketable and its transfer rightful; the Improvements are free from any security interest or other lien or encumbrance; and the Improvements are free of defects in materials or workmanship. During the warranty period, Developer shall, at its own expense, take all actions necessary to maintain the Improvements and make all necessary repairs or replacements.

5. Issuance of Building Permits. Prior to the issuance of any building permits for the Development, all of the following Improvements shall be installed and shall have received preliminary approval from the Town, which requires a finding by the Town Engineer that such Improvements are safe to be used during construction: streets, street signage, water, wastewater, drainage facilities and streetlights.

6. Maintenance.

a. *Improvements.* Unless dedicated to and accepted by the Town for maintenance, all Improvements shall be maintained by Developer. If Developer wishes to transfer maintenance obligations to the District or any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

b. *Vacant Lots.* Developer shall be responsible for landscaping maintenance, including weed control, on all vacant lots until such time as the lot is developed and conveyed to an individual owner.

7. Improvement Guarantee.

a. *Amount and Timing.* To secure the construction and installation of the Improvements, Developer shall provide a letter of credit or cash in an amount equal to 115% of the total costs listed in **Exhibit B** (the "Improvement Guarantee"). Developer shall not commence construction on the Property, including without limitation staking, earth work, overlot grading (unless otherwise agreed to by the Town) or the erection of any structure, temporary or otherwise, until the Town has received and approved the Improvement Guarantee.

b. *Draw.* If the Improvements are not constructed or completed within the period of time specified herein, the Town may, after the notice and cure period described in Section 12(b), draw on the Improvement Guarantee to complete the Improvements. If the Improvement Guarantee is to expire within 14 calendar days and Developer has not yet provided a satisfactory replacement, or completed the Improvements, the Town may draw on the Improvement Guarantee for the amount of incomplete work and either hold such funds as security for performance of this Agreement or spend such funds to finish the Improvements or correct

problems with the Improvements as the Town deems appropriate. If the Town has drawn on the Improvement Guarantee, and a satisfactory replacement guarantee is provided or the Improvements have been completed, then the Town will release any funds received as a result of its draw within a reasonable period of time, not to exceed 10 calendar days after a request by Developer.

c. *Reduction.* Upon Initial Acceptance of all of the Improvements, the Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of the Improvements. The reduced Improvement Guarantee shall be held by the Town during the 2-year warranty period.

8. Reimbursement. Prior to recordation of this Agreement, Developer shall reimburse the Town for a proportional cost of improvements previously constructed by the Town that benefit the Development. The amount of reimbursement shall be: (i) \$282.70 as reimbursement for 5.14 Single Family Equivalents in the Development for connecting to the Coal Creek Sanitary Sewer Interceptor line constructed by the Town; and (ii) \$2,107.40 as reimbursement for 5014 Single Family Equivalents in the Development for connecting to the NWRP Sanitary Sewer Interceptor line constructed by the Town.

9. Indemnification. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any such suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to Claims. In addition, Developer shall pay all property taxes on property underlying the Improvements to be dedicated to the Town before acceptance by the Town, and shall indemnify and hold harmless the Town for any such property tax liability.

10. Developer's Representations and Warranties. Developer hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date: this Agreement has been duly authorized and executed by Developer as the legal, valid and binding obligation of Developer, and is enforceable as to Developer in accordance with its terms; the person executing this Agreement on behalf of Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of Developer; to the best of Developer's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against Developer which, if decided or determined adversely, would have a material adverse effect on the ability of Developer to undertake its obligations under this Agreement nor, to the best of Developer's knowledge, is there any fact or condition of the Property known to Developer that may have a material adverse effect on Developer's ability to develop the Property as contemplated; and neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement or obligation to which Developer is a party or by which Developer is bound or affected.

11. Vested Rights. The Final Plat constitutes a site specific development plan as defined in C.R.S. § 24-68-101, *et seq.*, and Chapter 3 of Title 9 of the Erie Municipal Code, and shall create vested property rights for 3 years from the date of approval of the Final Plat, provided that all required procedures are followed. The Final Plat shall include the language required by C.R.S. § 24-68-102(4)(a). Developer shall be responsible for publication of the notice required by C.R.S. § 24-68-103(c).

12. Breach.

a. *Remedies*. If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include, but are not limited to:

- i. The refusal to issue any building permit or certificate of occupancy;
- ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- iii. A demand that the security given for the completion of the Improvements be paid or honored; or
- iv. Any other remedy available at law or in equity.

b. *Notice*. Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to the Performance Guarantee, the Town shall provide Developer 30 days' written notice of its intent to take any action under this Section, during which Developer may cure the breach and prevent further action by the Town.

c. *Nature of Remedies*. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

13. Miscellaneous.

a. *Assignment*. This Agreement shall not be assigned by Developer in whole or in part without the prior written authorization of the Town, which will not be unreasonably withheld.

b. *Governing Law and Venue*. The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be Boulder County, Colorado.

c. *No Third-Party Beneficiaries*. There are no intended third-party beneficiaries to this Agreement.

d. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

e. *Governmental Immunity.* Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

f. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

g. *Notice.* Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

h. *Integration.* This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

i. *Recordation.* This Agreement shall be recorded in the real estate records of the Boulder County Clerk and Recorder, and shall be a covenant running with the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

DEVELOPER

By: _____
Chris C. Jensen, Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day of October, 2019, by Chris C. Jensen as the Manager of Carbon, LLC, a Colorado limited liability company.

My commission expires:

(S E A L)

Notary Public

EXHIBITS LIST

EXHIBIT A – Legal Description

EXHIBIT B – Improvements

EXHIBIT A
Legal Description

Lot 7, The Right Move Subdivision Replat A, 1st Amendment, County of Weld, State of Colorado.

EXHIBIT B

Contractor Cost Estimate

Project: Erie Business Park and Storage

Date: 7/31/19



Public Improvement Costs

Description	Unit of measure	Quantity	Unit Price	Subtotal
Asphalt and Concrete				
Asphalt drive	SY	225.44	\$27.70	\$6,244.81
Curb and gutter	LF	42.00	\$18.00	\$756.00
sidewalk	SF	816.00	\$4.75	\$3,876.00
ADA ramps	EA	3.00	\$2,000.00	\$6,000.00
SUBTOTAL: \$16,876.81				
Water				
6" fire line pipe	LF	124.00	\$40.00	\$4,960.00
18" Butterfly Valve	EA	1.00	\$2,500.00	\$2,500.00
6" x 18" Tee	EA	1.00	\$1,750.00	\$1,750.00
6" x 8" Tee	EA	1.00	\$850.00	\$850.00
6" gate valve	EA	3.00	\$1,800.00	\$5,400.00
8" Gate Valve	EA	2.00	\$2,010.00	\$4,020.00
8" fire line pipe	LF	232.00	\$45.00	\$10,440.00
8" x 1" reducer	EA	1.00	\$550.00	\$550.00
8" x 6" 45	EA	1.00	\$850.00	\$850.00
8" x 4" Tee	EA	1.00	\$755.00	\$755.00
8" x 8" Tee	EA	1.00	\$1,600.00	\$1,600.00
Fire hydrants with tees valves etc	EA	3.00	\$6,525.67	\$19,577.00
SUBTOTAL: \$53,252.00				
Landscape				
Deciduous trees- 1-1/2" caliper	EA	5.00	\$381.88	\$1,909.40
Deciduous trees- 2" caliper	EA	5.00	\$490.73	\$2,453.65
Shrubs & Grasses- 1 gallon	EA	207.00	\$20.55	\$4,253.85
Soil preparation/fine grade- sod	SF	9800.00	\$0.33	\$3,234.00
Tall Fescue Sod w/installation	SF	9800.00	\$0.70	\$6,860.00
Planting bed prep/rock mulch/fabric	SF	9090.00	\$1.47	\$13,362.30
Edging, rolltop green	LF	440.00	\$2.68	\$1,179.20
Irrigation	LS	1.00	\$29,638.00	\$29,638.00
SUBTOTAL: \$62,890.40				
			TOTAL:	\$133,019.21