

## PERMANENT UTILITY EASEMENT AGREEMENT

This PERMANENT UTILITY EASEMENT AGREEMENT (the "Agreement") is made and executed this 13<sup>th</sup> day of October, 2020 (the "Effective Date"), by and between Bonanza – 7 LLC, a Limited Liability Company with an address of 12460 First Street (P.O. Box 247) Eastlake CO 80614 ("Grantor"), and the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, 645 Holbrook Street, Erie, CO 80516 (the "Town") (each a "Party" and collectively the "Parties").

WHEREAS, Grantor is the owner of the real property in the Town of Erie, Weld County, Colorado more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Easement Property");

WHEREAS, the Town wishes to use, operate, inspect, maintain and repair sanitary sewer and water - facilities and related appurtenances and facilities on, over, across and under the Easement Property, as depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Facilities");

WHEREAS, for this purpose, Grantor is willing to convey this permanent easement to the Town, which allows the Town to install, operate, use, repair and maintain sanitary sewer and water facilities upon and beneath the surface of the property described in **Exhibit A**, as the Easement Property; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained here, Grantor and the Town mutually agree as follows:

1. Grant of Easement. Grantor hereby grants to the Town, its successors and assigns, lessees, licensees and agents, a permanent, perpetual, non-exclusive easement (the "Easement") to enter, re-enter, occupy and use the Easement Property to construct, reconstruct, use, operate, maintain, repair, patrol, replace, enlarge and remove water and sewer lines, conduits, vaults, accessories, improvements, or manholes and all necessary appurtenances thereto, (the "Improvements") in, through, over, across, under and above the Easement Property.
2. Town's Rights. The Town and its employees, agents, contractors, representatives, successors and assigns shall have and exercise the right of ingress and egress in, to, through, over, under, above and across the Easement Property for access to perform construction, reconstruction, operation, installation, use, maintenance, repair, replacement, upkeep, monitoring, and removal of the Improvements.
3. Non-exclusive Use. The Town agrees, following written request to and approval by the Town, that other public utilities may be installed in the Easement Property if such utilities do not interfere with the Town's rights as herein granted or the Town's use of the Easement and Easement Property. All surface and subsurface uses of the Easement Property must be approved in writing by the Town prior to installation.
4. Maintenance. The Town shall be solely responsible for maintaining the Facilities and the Improvements. All Improvements installed by the Town on the Easement Property shall remain the Town's property.

5. No Interference. Grantor shall not construct or place any structure or building, shrub, tree, woody plant or nursery stock, whether temporary or permanent, of any kind or nature situated on the Easement Property that will interfere with or obstruct the access or Easement granted herein. Any such prohibited structure or item placed on the Easement Property may be removed by the Town at Grantor's expense and without liability to the Town for damages arising therefrom. Grantor shall retain the right to the use and occupancy of the Easement Property to the extent that it does not interfere with the Town's rights or its use of the Easement.
6. Maintenance of Grantor's Improvements. Grantor shall be solely responsible for the maintenance of all Grantor's improvements located within the Easement Property.
7. Retained Rights. Grantor shall have all rights to the Easement Property not granted hereby.
8. Warranty. Grantor warrants that it has the full right and legal authority to make the grant of this Easement.
9. Recordation. Except as otherwise expressly provided herein, all provisions of this Agreement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. The Town shall record this Agreement in timely fashion in the official records of Weld County and may re-record it at any time as may be required to preserve its rights in this Agreement.
10. No Merger. It is the express intent of the Parties that the doctrine of merger shall not apply to this Agreement and there will be no merger of estate between the Easement granted by this Agreement and the Property.
11. Miscellaneous.
  - a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.
  - b. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.
  - c. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.
  - d. Third Parties. There are no intended third-party beneficiaries to this Agreement.
  - e. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

f. 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.

g. Modification. This Agreement may only be modified upon written agreement of the Parties.

h. Governmental Immunity. The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town, its officers, attorneys or employees.

i. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

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

**TOWN OF ERIE, COLORADO**

\_\_\_\_\_  
Jennifer Carroll, Mayor

ATTEST:

\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**GRANTOR**

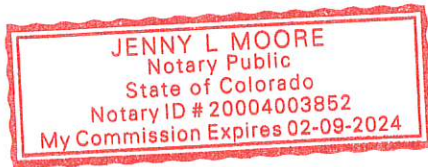
\_\_\_\_\_  
*C*  
Cory J Thornton  
Manager, Bonanza-7, LLC

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this  
7<sup>th</sup> day of September, 2020, by Cory J Thornton as Manager  
of Bonanza - 7 LLC.

My commission expires: 02/09/2024

(S E A L)



Jenny L. Moore  
Notary Public

## EXHIBIT A

### Legal Description of Easement Property

A UTILITY EASEMENT BEING A PORTION OF LOT 1, VISTA RIDGE FILING NO. 6 RECORDED MAY 19, 2008 AT RECEPTION NO. 3555044, SITUATED IN THE IN THE SOUTHWEST ONE-QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, VISTA RIDGE FILING NO. 6 AND CONSIDERING THE SOUTH LINE OF SAID LOT 1 TO BEAR S89°33'40"E WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE ALONG THE WEST LINE OF SAID LOT 1, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY FOR WELD COUNTY ROAD NO. 3 (BONANZA DRIVE), N00°15'14"E, A DISTANCE OF 61.83 FEET;  
THENCE S89°34'35"E, A DISTANCE OF 307.49 FEET;  
THENCE N58°28'15"E, A DISTANCE OF 19.84 FEET;  
THENCE S89°34'35"E, A DISTANCE OF 302.36 FEET;  
THENCE N00°25'25"E, A DISTANCE OF 147.75 FEET;  
THENCE N89°34'35"W, A DISTANCE OF 627.15 FEET TO A POINT ON THE SAID WEST LINE OF LOT 1 AND EAST RIGHT-OF-WAY;  
THENCE ALONG SAID WEST AND EAST LINE, N00°15'14"E, A DISTANCE OF 32.87 FEET TO THE NORTHWEST CORNER OF SAID LOT 1;  
THENCE ALONG THE NORTH LINE OF SAID LOT 1, S89°34'35"E, A DISTANCE OF 657.25 FEET;  
THENCE S00°25'25"W, A DISTANCE OF 186.25 FEET;  
THENCE S89°34'35"E, A DISTANCE OF 6.00 FEET;  
THENCE S00°25'25"W, A DISTANCE OF 16.00 FEET;  
THENCE N89°34'35"W, A DISTANCE OF 6.00 FEET;  
THENCE S00°25'25"W, A DISTANCE OF 8.50 FEET;  
THENCE N89°34'35"W, A DISTANCE OF 297.64 FEET;  
THENCE S00°25'25"W, A DISTANCE OF 8.00 FEET;  
THENCE N89°34'35"W, A DISTANCE OF 15.40 FEET;  
THENCE S49°09'19"W, A DISTANCE OF 4.47 FEET;  
THENCE N89°21'22"W, A DISTANCE OF 46.74 FEET;  
THENCE S00°26'20"W, A DISTANCE OF 31.64 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1;  
THENCE ALONG SAID SOUTH LINE, N89°33'40"W, A DISTANCE OF 20.00 FEET;  
THENCE N00°26'20"E, A DISTANCE OF 31.71 FEET;  
THENCE N89°29'56"W, A DISTANCE OF 141.98 FEET;  
THENCE S00°25'25"W, A DISTANCE OF 12.00 FEET;  
THENCE N89°34'35"W, A DISTANCE OF 20.00 FEET;  
THENCE N00°25'25"E, A DISTANCE OF 12.00 FEET;  
THENCE N89°34'35"W, A DISTANCE OF 48.93 FEET;  
THENCE S00°26'20"W, A DISTANCE OF 31.85 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1;  
THENCE ALONG SAID SOUTH LINE, N89°33'40"W, A DISTANCE OF 62.44 FEET TO THE POINT OF BEGINNING.

CONTAINING 49,183 SQUARE FEET OR 1.129 ACRES, MORE OR LESS.

## **EXHIBIT B**

Depiction of Utilities

See attached Drawing