

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (“Agreement”) is made and entered into this 9th day of April, 2013 by and between **AARON HARBER**, hereinafter referred to as the “Owner”, and **TOWN OF ERIE**, a Colorado municipal corporation, hereinafter referred to as the “Town.”

WHEREAS, Owner owns the real property know as 2500 North 119th Street, Lafayette, Colorado 80026-9216 and 2601 Northeast County Line Road, Erie, Colorado 80516, more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the “Property”); and,

WHEREAS, the Town desires to obtain from Owner and Owner desires to grant to the Town a right of first refusal to purchase the Property on terms as set forth hereinafter (the “Right of First Refusal”).

NOW, THEREFORE, in consideration of the mutual promises, covenants, payment, and obligations of the parties hereto, the terms, covenants and conditions hereof, and intending to be legally bound, the parties agree as follows:

1. Grant of Right of First Refusal to Purchase. Owner hereby grants the Town a one-time Right of First Refusal in regard to any sale of the Property (defined as including any portion representing a majority or all of the Property’s +/-320 acres).

2. Right of First Refusal. In the event the Owner receives and accepts a *bona fide* offer for the purchase of the Property (the “purchase contract” or “contract”), they shall immediately notify the Town and provide the Town with a complete copy of the contract. The Town will have thirty (30) days from the receipt of said notice from the Owner to give notice to the Owner that it has decided to exercise its Right of First Refusal. In the event the Town gives notice to the Owner that it is not exercising its Right of First Refusal or in the event no timely notice is given by the Town to the Owner, this Right of First Refusal shall expire. In the event the Property is not sold prior to the January 1, 2015 Expiration Date (as defined below), the Town’s Right of First Refusal shall end on that date. In the event the Town exercises its Right of First Refusal, it shall be bound by and required to timely perform all of the terms of the purchase contract (i.e., as if it had been the party making the original offer) or else the purchase contract between the Town and the Owner can be voided at the sole discretion of the Owner. In such an instance, the Right of First Refusal will have been permanently terminated. Once so terminated, the Owner will have the right to reinstate the purchase contract with the original buyer or seek any subsequent buyer. Hence, in the event the Town fails to timely and fully perform one or more terms of the contract, its Right of First Refusal may be terminated by the Owner as of the date of its failure to timely or fully perform.



2. Right of First Refusal Period. The Right of First Refusal shall be effective immediately upon approval of the Pre-Annexation Agreement entered into by and between the Town and the Owner, dated April 9, 2013 (the "Pre-Annexation Agreement"), and shall expire on January 1, 2015 (the "Expiration Date") (the "Right of First Refusal Period").

3. Survival of Right of First Refusal. This Right of First Refusal shall survive the termination of the Pre-Annexation Agreement and will remain in effect regardless of whether or not the parties complete, approve, and/or execute an annexation agreement for the annexation of the Property. The Right of First Refusal may be extended by mutual written agreement of the parties but neither party is under any obligation to give its consent to any such extension.

4. Attorneys Fees; Jurisdiction. In the event of any litigation arising out of this Agreement, the court shall award to the substantially prevailing party all reasonable costs and expenses including attorney fees. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the courts of the County of Weld, State of Colorado.

5. Assignment. This Agreement and the Right of First Refusal contained herein may be assigned by the Town, subject to the prior written approval of the Owner, which may be withheld at Owner's sole discretion.

6. Failure to Exercise Right of First Refusal. If the Town fails to exercise the Right of First Refusal within the Right of First Refusal Period, this Right of First Refusal shall automatically terminate.

7. Right of First Refusal Period. Owner shall not sell or exchange the Property or any part thereof (that constitutes a majority or all of the Property), nor shall the Owner enter into any sale, option, exchange or trade agreement or contract for any majority portion or all of the Property for the duration of the Right of First Refusal Period without first complying with the Right of First Refusal as granted to the Town herein.

8. Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or sent by certified mail, return receipt, addressed as follows:

If to Owner:

Aaron Harber
Golden Run Estates, LLC
2500 North 119th Street
Lafayette, Colorado 80026-9216
Telephone: (303) 666-6161
Email: aharber@msn.com

with a copy (which shall not constitute notice) to:

Carl Oldham, General Manager



GOLDEN RUN ESTATES, LLC
2338 Walnut Street
Boulder, CO 80302
Email: carl@goldenrun.com

If to Town:

Town of Erie
P.O. Box 8
Erie, Colorado 80516
Attn: Town Administrator
Telephone: (303) 926-2700
Email: ajkrieger@erieco.gov

with a copy (which shall not constitute notice) to:

Mark R. Shapiro
Mark R. Shapiro, P.C.
1650 38th Street, Suite 103
Boulder, Colorado 80301
Telephone: (303) 443-3234
Email: mark@mshapirolaw.com

Notice personally delivered shall be effective upon delivery. Mail notice shall be effective three (3) business days after mailing.

9. Recording of Agreement. The Town may record this Agreement, at the sole decision of the Town, in the office of the Clerk and Recorder, County of Boulder, State of Colorado, and the Town shall retain the recorded Agreement.

10. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

11. Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.

[Signatures on following page]



IN WITNESS WHEREOF, the parties have executed this Right of First Refusal Agreement on the date and year first above written.

OWNER:



Aaron Harber

TOWN:

TOWN OF ERIE, a Colorado municipal corporation



By: _____

Joseph A. Wilson, Mayor

ATTEST:

By: _____

Nancy Parker, Town Clerk

4/8/13

EXHIBIT "A"

[Property description]

The Northern Half of Section 25, Township 1 North, Range 69 West, at the 6th Prime Meridian, Boulder County, Colorado, U.S.A., constituting +/-320 acres.

AA