



**GOLDEN RUN  
PRE-ANNEXATION AGREEMENT**

**THIS PRE-ANNEXATION AGREEMENT** (“Pre-Annexation Agreement”) is made and entered into this 9<sup>th</sup> day of April, 2013, by and between Golden Run Estates, LLC, and Aaron Harber, hereinafter referred to as the “Owner,” and the TOWN OF ERIE, a Colorado municipal corporation, hereinafter referred to as “Erie” or the “Town.”

**WITNESSETH**

**WHEREAS**, the Owner desires to annex to Erie the property more particularly described on “Exhibit A,” attached hereto and incorporated herein by this reference, and known as Golden Run (such property is hereinafter referred to as the (“Property”)) in the immediate future; and,

**WHEREAS**, the Town and the Owner seek to work together in unique and collaborative manner which allows the Town to be involved in the design and development of the Property from the ground up in an effort to create a neighborhood which provides a national model for sustainability while promoting the sustained Economic Development of the entire Town; and,

**WHEREAS**, Owner desires to develop the Property as a master planned community, a portion of which is intended to be mixed use, multi-generational, truly sustainable development, with public and private open spaces, emphasizing the development of local, regional, and national business opportunities as a result of the creation of a preeminent sustainable community for lifestyle and technology (with a special focus on the needs of those in key demographics from 18 to 30 years of age and +55 years of age) along with creating a national center for health, fitness, and sports, as well as create a development which incorporates environmental sensitivities in a manner which creates a model helping to set national and international standards, all in conformance with the desired Golden Run Annexation Agreement to be negotiated with the Town and in conformance with the desired PD – Planned Development zoning and PD Development Plan (“PD-DP”), all of which will be negotiated with the Town; and,

**WHEREAS**, because the Property is believed to be the only remaining 320-acre parcel in Boulder County which has been designated for high density development; and,

**WHEREAS**, the Property represents an opportunity to provide long-term diversification for housing in Erie and the immediate multiple county region (Adams, Boulder, Broomfield, and Weld Counties); and,

**WHEREAS**, the primary two demographic targets for the Property’s development (ages 18 to 30 and those 55 years and older) are sought by the Town as part of its long-term goal of diversification, and also are recognized as key demographics for robust and sustained Economic Development, when added to the Town’s current demographics and those already projected for the next three decades; and,

**WHEREAS**, the Town and Owner recognize the Property represents an important

opportunity for Economic Development within the Town's central core (with special benefits to current businesses and future business opportunities along the County Line Road corridor) and anticipates the development of Golden Run, as described herein, will benefit a wide range of businesses and other properties throughout the Town as well as benefit the residents of the Town of Erie; and,

**WHEREAS**, the Town wishes to exercise a maximum degree of control over the Property, especially given the Property's Economic Development potential and valuable location for the Town; and,

**WHEREAS**, the Owner's desired Metropolitan District Service Plan(s) ("Service Plan(s)") will be incorporated into the Annexation Agreement; and,

**WHEREAS**, the Owner desires to have the ability and option to withdraw the Annexation Petition without penalty, in the sole discretion of Owner, in the event the Annexation Agreement, PD – Planned Development zoning, PD-DP, and Service Plan are not approved by the Town in a form desired by the Owner by August 1, 2013; and,

**WHEREAS**, it is to the mutual benefit of the parties hereto to enter into the following Pre-Annexation Agreement.

**NOW, THEREFORE**, in consideration of the above premises and the covenants as hereinafter set forth, it is agreed by and between the parties as follows:

**1. Annexation Petition Submittal.** Owner shall fully execute and submit to the Town the Annexation Petition, in the form as set forth on "Exhibit B," within fifteen (15) business days of the Town's execution of this Pre-Annexation Agreement.

**2. Annexation Petition Conditions.**

A. The Owner's submission of the Annexation Petition to the Town is specifically conditioned upon the zoning classification for the Property being approved as the PD – Planned Development zoning and Golden Run PD-DP, as the Golden Run PD-DP may be mutually amended by the parties hereto, the Town's execution of the Golden Run Annexation Agreement, as it may be mutually amended by the parties hereto, and the Town's approval of the Service Plan, all of which shall occur within 90 days of the submission of the Annexation Petition to the Town.

B. The Town and Owner have agreed to the following initial terms and conditions, which the parties anticipate shall be incorporated into the final Annexation Agreement, pending final approval of the Annexation Agreement by both parties:

- (1) The Property shall be entitled to a specific total number of units, as detailed by the Owner but said number, in total for the entire Property, shall not exceed the maximum which otherwise currently would be allowed by the current Town of Erie Comprehensive Plan (as approved in 2005). Subject to the Town's legal requirements and the terms of the

Golden Run PD-DP, the Owner may distribute and/or allocate the total number of units throughout the Property as it sees fit as long as the cumulative maximum number of units does not exceed that allowed for the entire Property by the restrictions, if any, of the Comprehensive Plan.

- (2) For purposes of all calculations done by the Town and/or the Owner for all aspects of the Property, both parties shall presume each non-traditional residential unit in the Golden Run PD-DP will average 1.25 persons. Traditional single-family residential units shall adhere to the Town's current per unit calculation which is 2.79 persons.

### **3. Special Grants to the Town.**

**A.** In part, as a demonstration of its commitment to the unique collaborative process, as described herein, and in consideration of the other grants provided by the Town, the Owner hereby grants the Town a one-time Right of First Refusal in regard to any sale of the Property (including any portion representing a majority of the Property's +/-320 acres), attached hereto as "Exhibit C." This Right shall be effective immediately upon approval of this Pre-Annexation Agreement and shall expire on January 1, 2015 (the expiration date). In the event the Owner receives and accepts a *bona fide* offer for the Property (the "purchase contract" or "contract"), it 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 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, 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. This Right of First Refusal shall survive this Pre-Annexation Agreement and will remain in effect regardless of whether or not the parties complete, approve, and/or execute an Annexation Agreement. It also may be extended by mutual written agreement but neither party is under any obligation to give its consent to any such extension.

**B.** In part, as a further demonstration of its commitment to the unique collaborative process, as described herein, in exchange for the considerations herein, the Owner hereby separately grants the Town an Option to purchase the Property (excluding the portion currently serving as the Owner's residence, 2500 North 119<sup>th</sup> Street, Lafayette, CO 80026-9216, also known as the southwest quarter of the northwest quarter of Section 25, Township 1 North, Range 69 West, at the 6<sup>th</sup> P.M., Boulder County, Colorado, as defined by the Improvement Location Certificate dated February 10, 1999, formally provided to Boulder County and attached hereto as "Exhibit D." and currently the only mortgaged portion of the Property) for a cash price of

Seventy-Two Million Five Hundred Thousand Dollars (\$72,500,000). This Purchase Contract is attached hereto as "Exhibit E" and shall be effective immediately upon approval of this Pre-Annexation Agreement. To exercise this Purchase Contract, the Town must give notice to the Owner at least sixty (60) days in advance of when it has proposed the Closing Date. This Purchase Contract shall expire on January 1, 2014, and any Closing Date must occur prior to that expiration date. This Purchase Contract shall survive this Pre-Annexation Agreement and will remain in effect regardless of whether or not the parties complete, approve, and/or execute an Annexation Agreement. This Purchase Contract may be extended by mutual written agreement but neither party is under any obligation to give its consent to any such extension.

C. In the event Owner wishes to change or otherwise alter the name of the project currently known as "Golden Run," it shall work in cooperation with the Town to decide any such change(s). The Town Administrator will have the right to approve any such changes proposed by the Owner and such approval (1) shall come in the form of a writing confirming said approval, and (2) shall not be unreasonably withheld.

**4. Remedies for Owner.**

A. At any time on or after August 1, 2013, in the event the Golden Run Annexation Agreement proposed by the Owner, as it may be mutually amended by the parties hereto, is not approved by the Town at the same time as the Town approves the annexation of the Property, then, in that event, at the Owner's sole option, the Owner may retroactively withdraw the Annexation Petition without penalty or further obligation by written notice delivered to the Town and the Property shall not be annexed by the Town, regardless of annexation approval or any other actions taken by the Town.

B. At any time on or after August 1, 2013, in the event the PD – Planned Development zoning and Golden Run PD-DP proposed by the Owner as may be mutually amended by the parties hereto, are not approved by the Town following the Town's approval of the annexation of the Property, then, in that event, at the Owner's sole option, the Owner may retroactively withdraw the Annexation Petition without penalty or further obligation by written notice delivered to the Town and the Property shall not be annexed by the Town, regardless of annexation approval(s) or any other actions taken by the Town.

**5. Remedies for Town.** In the event the Owner fails to perform any of its obligations as contained herein or defaults hereunder, the Town shall have available to it all remedies at law and in equity.

**6. Cooperation.** The parties agree they will cooperate with one another in accomplishing the terms, conditions, and provisions of this Pre-Annexation Agreement, and will execute such additional documents as necessary to effectuate the same.

**7. Binding Effect of Pre-Annexation Agreement.** This Pre-Annexation Agreement shall run with the Property and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Furthermore, the parties recognize that the option terms set forth in Paragraph 3. A. and B. of this Agreement shall remain in force in the event (a)

no annexation occurs or (b) the annexation is withdrawn or otherwise cancelled or terminated. The terms and condition agreed to herein will be incorporated into any final Annexation Agreement, should one be approved by both the Town and the Owner. Either party may record this document at any time in 2013 with the Boulder County Clerk and Recorder.

**8. Assignment.** Each party's duties and obligations pursuant to this Pre-Annexation Agreement may not be assigned to any third party or agency without the express written consent of the other party, which consent may be withheld at the sole discretion of the other party without penalty.

**9. Modification and Waiver.** No modification of the terms of this Pre-Annexation Agreement shall be valid unless in writing and executed with the same formality as this Pre-Annexation Agreement, and no waiver of the breach of the provisions of any sections of this Pre-Annexation Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein. In the event a party breaches this Pre-Annexation Agreement, the party claiming one or more breaches have occurred shall notify the allegedly breaching party in writing of the specific breaches and the party allegedly in breach, upon receipt of the detail of the breach claims, shall have thirty (30) days to remedy any breaches.

**10. Addresses for Notice.** Any notice or communication required or permitted hereunder 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:

Town Administrator  
Town of Erie  
Post Office Box 750  
Erie, Colorado 80516-0750  
(AJKrieger@ErieCO.gov)

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

Mark R. Shapiro  
Mark R. Shapiro, PC  
1650 38th Street, Suite 103  
Boulder, CO 80301-2624  
(Mark@MShapiroLaw.com)

Owner:

Aaron Harber, Owner  
GOLDEN RUN ESTATES, LLC  
2500 North 119<sup>th</sup> Street  
Lafayette, CO 80026-9216  
(Aaron@GoldenRun.com)

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

Carl Oldham, General Manager  
GOLDEN RUN ESTATES, LLC  
2338 Walnut Street  
Boulder, CO 80302  
(Carl@GoldenRun.com)

with a copy to such other addresses or to 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. A courtesy copy of all notices also shall be sent via e-mail to all of the above-listed parties at the same time any notice is mailed or otherwise delivered but such copies shall not constitute notice.



**11. Previous Agreements.** This Pre-Annexation Agreement shall constitute the entire agreement between the parties hereto and shall supersede and replace all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Property. The condition and terms of this Pre-Annexation Agreement shall be incorporated into the final Annexation Agreement, which final Annexation Agreement shall be subject to the approval of both parties. As noted herein, the option terms set forth in Paragraph 3. A. and B. of this Agreement shall survive the expiration or termination of this Pre-Annexation Agreement.

**12. Title and Authority.** Owner warrants to Erie that Owner is the record owner of the Property. The undersigned parties representing the Town and the Owner further warrant that each has the full power and authority to enter into this Pre-Annexation Agreement. Separately and in addition, as Guarantor, Aaron Harber hereby personally guarantees the performance of Golden Run Estates, LLC, per the terms and conditions of this Agreement and, for purposes of this Pre-Annexation Agreement, also is defined as the Owner of the Property.

**13. Severability.** If any part, section, subsection, sentence, clause or phrase of this Pre-Annexation Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Pre-Annexation Agreement. The parties hereby declare they would have ratified this Pre-Annexation Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

**14. Attorney Fees and Costs.** In the event 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 Pre-Annexation Agreement, once an award has been made per the Alternative Dispute Resolution process detailed herein or by a court, the defaulting party shall pay the other's reasonable attorney's fees and other costs incurred in enforcing the provisions of this Pre-Annexation Agreement. Any amounts due as a result of a breach of this Agreement shall accrue interest, compounded daily, at a rate of one percent (1%) per month.

**15. Governing Law.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Pre-Annexation Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Boulder, State of Colorado.

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

*[Signatures on following page]*




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

**TOWN: TOWN OF ERIE, a municipal corporation**


By:   
Joseph A. Wilson, Mayor



ATTEST:  
By:   
Nancy Parker, Town Clerk

**OWNER & GUARANTOR:  
AARON HARBER**

**GOLDEN RUN ESTATES, LLC**

By:   
Aaron Harber

  
Carl Oldham, General Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Weld    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of April, 2013 by Joseph A. Wilson, Nancy Parker, Aaron Harber, and Carl Oldham.

My commission expires: March 7, 2016  
Witness my hand and official seal.

  
Notary Public



**EXHIBIT A**

[Golden Run Property Legal Description]

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

CAA

**EXHIBIT B**

[Annexation Petition Form]

TO: THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

RE:

DATE:

I, \_\_\_\_\_, the undersigned landowner, in accordance with Colorado law, hereby petition the Town of Erie and its Board of Trustees for annexation to the Town of Erie of the following described unincorporated territory located in the County of Boulder and State of Colorado, to-wit:

*See Attached Legal Description "Exhibit A"*

As part of this petition, your petitioner further states to the Board of Trustees of Erie, Colorado, that:

1. It is desirable and necessary that the territory described above be annexed to the Town of Erie.
2. The requirements of C.R.S. sections 31-12-104 and 31-12-105, as amended, exist or have been met in that:
  - a. Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the Town of Erie or will be contiguous with the Town of Erie within such time as required by 31-12-104.
  - b. A community of interest exists between the area proposed to be annexed and the Town of Erie.
  - c. The area proposed to be annexed is urban or will be urbanized in the near future.
  - d. The area proposed to be annexed is integrated with or is capable of being integrated with the Town of Erie.
  - e. No land within the boundary of the territory proposed to be annexed which is held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels were separated by a dedicated street, road or other public way.
  - f. No land within the boundary of the area proposed to be annexed which is held in identical ownership, comprises twenty acres or more, and which, together with the buildings and improvements situated thereon has an assessed value in excess of two hundred thousand dollars (\$200,000.00) for ad valorem tax purposes for the year next preceding the annexation, has been



included within the area proposed to be annexed without the written consent of the landowner or landowners.

- g. No annexation proceedings have been commenced for any portion of the territory proposed to be annexed for the annexation of such territory to another municipality.
  - h. The annexation of the territory proposed to be annexed will not result in the detachment of area from any school district.
  - i. The annexation of the territory proposed to be annexed will not have the effect of extending the boundary of the Town of Erie more than three miles in any direction from any point of the boundary of the Town of Erie in any one year.
  - j. Prior to completion of the annexation of the territory proposed to be annexed, the Town of Erie will have in place a plan for that area, which generally describes the proposed: Location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the Town of Erie; and the proposed land uses for the area; such plan to be updated at least once annually.
  - k. In establishing the boundary of the territory proposed to be annexed, if a portion of a platted street or alley is to be annexed, the entire width of the street or alley has been included within the territory to be annexed. The Town of Erie will not deny reasonable access to any landowners, owners of any easement, or the owners of any franchise adjoining any platted street or alley which is to be annexed to the Town of Erie but is not bounded on both sides by the Town of Erie.
3. The owners of more than fifty percent of the area proposed to be annexed, exclusive of dedicated streets and alleys, have signed this petition and hereby petition for annexation of such territory.
4. Accompanying this petition are four copies of an annexation map containing the following information:
- a. A written legal description of the boundaries of the area proposed to be annexed;
  - b. A map showing the boundary or the area proposed to be annexed, said map prepared and containing the seal of a registered engineer;
  - c. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;
  - d. Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the Town of Erie and the contiguous boundary of



any other municipality abutting the area proposed to be annexed, and a showing of the dimensions of such contiguous boundaries.

- 5. Upon the Annexation Ordinance becoming effective, all lands within the area proposed to be annexed will become subject to all ordinances, rules and regulations of the Town of Erie, except for general property taxes of the Town of Erie which shall become effective as the January 1 next ensuing.
- 6. This petition is conditioned upon the zoning classification for the area proposed to annexed being approved for PD-Planned Development and approval by the petitioner of an annexation agreement acceptable to the petitioner.

WHEREFORE, the following petitioner respectfully requests that the Town of Erie, acting through its Board of Trustees, approve the annexation of the area proposed to be annexed. By this acknowledgment, the undersigned hereby certify that the above information is complete and true.

Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
20 \_\_\_ by \_\_\_\_\_.

My commission expires:  
Witness My hand and official seal.

Notary Public



RECORD OF  
LAND OWNERSHIP AND DATE SIGNED

Landowner/Petitioner  
Mailing Address

Date Signed

Legal Description  
of Land Owned

See "Exhibit A"



AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn upon oath, deposes and says that he was the circulator of this Petition for Annexation of lands to the Town of Erie, Colorado, consisting of 6 pages including this page and that each signature hereon was witnessed by your affiant and is the signature of the person whose name it purports to be.

Circulator

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_.

My commission expires:  
Witness My hand and official seal.

Notary Public

“EXHIBIT A”

A handwritten signature in blue ink, consisting of stylized cursive letters, likely initials or a name, located in the bottom right corner of the page.

**EXHIBIT C**

[Right of First Refusal]

AA

## RIGHT OF FIRST REFUSAL AGREEMENT

**THIS RIGHT OF FIRST REFUSAL AGREEMENT** ("Agreement") is made and entered into this 9<sup>th</sup> 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 119<sup>th</sup> 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 119<sup>th</sup> Street  
Lafayette, Colorado 80026-9216  
Telephone: (303) 666-6161  
Email: [aharber@msn.com](mailto: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](mailto: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](mailto: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](mailto: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

*AW*

**EXHIBIT "A"**

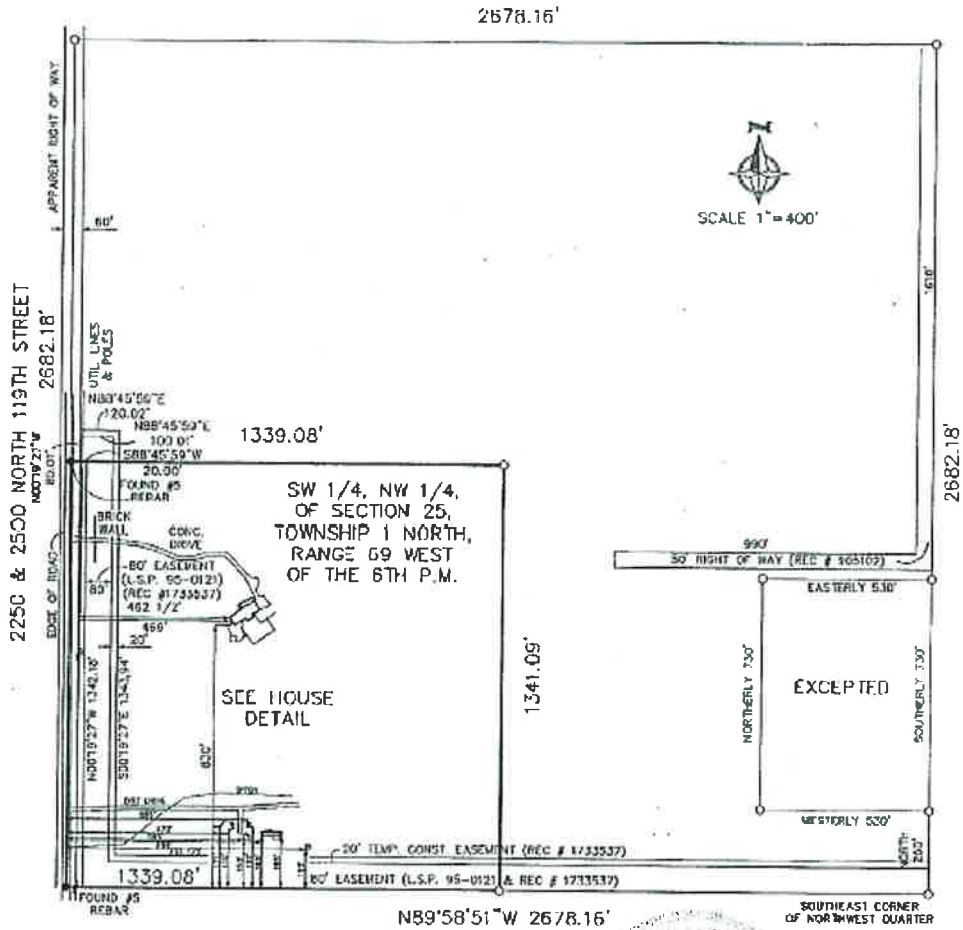
[Property description]

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

WA

# EXHIBIT D

## [Improvement Location Certificate]



*John B. Guyton*

John B. Guyton, Civil Engineer, No. 110

### IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this improvement location certificate was prepared for COMPASS MORTGAGE and CHERRY CREEK TITLE that it is not a land survey plat or improvement survey plat, and that it is not to be relied upon for the establishment of fence, building or other future improvement lines. I further certify that the improvements on the above described parcel on this date, February 10, 1998, except utility connections, are entirely within the boundaries of the parcel, except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.

NOTICE: This Improvement Location Certificate is prepared for the sole purpose of use by the parties stated herein. It is not a Land Survey Plat as defined by C.R.S. 38-51-102(2) or an Improvement Survey Plat as defined by C.R.S. 38-51-102(9). It does not establish property corners. A more precise relationship of the improvements to the boundary lines can be determined by a Land Survey or Improvement Survey. The improvements are generally situated as shown and only apparent (visible at the time of fieldwork) improvements and encroachments are noted. Ration's Surveying, Inc. and John B. Guyton, will not be liable for more than the cost of this Improvement Location Certificate, and then only to the parties specifically shown herein. Acceptance and/or use of this Improvement Location Certificate for any purpose constitutes acknowledgement and agreement to all terms stated herein.

Title Co. No. 13-116-021-89 Borrower Harbor  
 Platbook No. 99-33-720 4-1 Cost \$600.00

*CAA*

**EXHIBIT E**

[Purchase Contract]

AMA

**PURCHASE AND SALE AGREEMENT**  
**(Vacant Land)**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between AARON HARBER, having an address at 2500 North 119<sup>th</sup> Street, Lafayette, Colorado 80026-9216 ("Seller"), and TOWN OF ERIE, a Colorado municipal corporation, having an address at 645 Holbrook Street, P.O. Box 750, Erie, Colorado, 80516 ("Purchaser").

**RECITALS**

A. Seller is the fee owner of that certain parcel of real property located in the County of Boulder, State of Colorado, and which is more particularly described on Exhibit A attached hereto and made a part hereof.

B. As used in this Agreement, the term "Property" includes all of the following: (1) the real property described on Exhibit A together with all reversions, remainders, easements, rights-of-way, appurtenances, agreements, licenses, tenements and hereditaments appertaining to or otherwise benefiting or used in connection with said real property or the Improvements (as defined below), together with all of Seller's right, title and interest in and to any strips of land, streets and alleys abutting or adjoining such real property, and together with any and all water and water rights, including Five (5) shares of South Boulder Canon Ditch Company, (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, appropriated or unappropriated, permitted or unpermitted), water wells, water well rights, and water well permits, water and sewer taps and any water service agreements which shall be assigned to Purchaser or sanitary or storm sewer capacity appurtenant or appertaining to or otherwise benefiting or used in connection with the real property, but specifically excluding therefrom any mineral interests, (the "Land"); (2) the existing buildings and other improvements, structures, open parking facilities and fixtures placed, constructed, installed or located on the Land, if any, and all plants, trees, sculptures and other appurtenances located upon, over or under the Land, but specifically excluding therefrom the Valley Pivot System and related irrigation equipment, (collectively, the "Improvements;" the Land and Improvements are sometimes hereinafter collectively referred to as the "Real Property"); (3) all right, title and interest of Seller as landlord, under all leases, tenancies or occupancy arrangements affecting any portion of the Real Property (the "Tenant Leases"), all prepaid rents under the Tenant Leases applicable to the period from and after the Closing (as defined below), and security and other deposits under the Tenant Leases; (4) all right, title and interest of Seller in and to all contracts, agreements or commitments, oral or written, other than the Tenant Leases, relating to the Real Property, if any (the "Contracts"), to the extent that they are assignable; (5) all right, title and interest of Seller in and to all unexpired warranties, guaranties and bonds, including, without limitation, contractors' and manufacturers' warranties or guaranties, relating to the Real Property to the extent that they are assignable, if any (the "Warranties"); (6) all right, title and interest of Seller in and to all governmental or quasi-governmental permits, agreements, licenses, certificates and authorizations, including, without limitation, certificates of occupancy, relating to the construction, use or operation of the Real Property to the extent that they are assignable, if any (the "Permits"); (7) all right, title and interest of Seller in and to all surveys, soil and substratus studies, architectural drawings and environmental studies or reports if existing and in Seller's possession or control that relate to the Real Property (the "Plans"); and (8) any and all other rights, privileges, and appurtenances owned by Seller and in any way related to, or used in connection with the operation of the Real Property to the extent that they are assignable (the "Intangible Property").

C. Seller now desires to sell and Purchaser now desires to purchase all of Seller's right, title and interest in and to the Property, upon the terms and covenants and subject to the conditions set forth below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

**ARTICLE I**  
**Purchase and Sale of the Property**

1.1 Purchase. For the consideration hereinafter set forth, but subject to the terms, provisions, covenants and conditions contained herein, Seller hereby agrees to sell, assign and convey to Purchaser, and Purchaser agrees to purchase from Seller, all of the Property.

1.2 Purchase Price. The total purchase price (the "Purchase Price") for the Property shall be Seventy-two Million Five Hundred Thousand Dollars (\$72,500,000.00), adjusted as set forth herein, below. The Purchase Price shall be payable as follows:

(a) Deposit. Within five Business Days (as hereinafter defined) after the Effective Date (as hereinafter defined in Section 13.4), Purchaser will deliver an earnest money deposit in the amount of One Hundred Dollars (\$100.00) to Stewart Title Company, 1739 Terry Street, Longmont, CO 80501 (the "Title Company"). The Title Company will hold such One Hundred Dollars (\$100.00) as an earnest money deposit hereunder pursuant to the terms and provisions hereof (the "Deposit"). The Title Company will deposit such cash amount in an interest-bearing, insured account and continue hold such money as the Deposit hereunder pursuant to the terms and provisions hereof. The Deposit shall earn interest which shall be credited to the Purchaser and the full amount shall be applied to the Purchase Price at Closing. The Deposit shall be fully refundable to the Purchaser during the Inspection Period and after such shall constitute liquidated damages in the event of Purchaser's default.

(b) Balance. The balance of the Purchase Price, subject to prorations and adjustments in accordance with Article XI hereof, will be paid in good funds in compliance with laws on the Closing Date (as hereinafter defined in Article VIII), in such manner, place and account as Seller may, by prior notice, instruct.

(c) Adjustment of Purchase Price. The Purchase Price shall be adjusted downward in the event the Land is shown by Survey (as hereinafter defined in Section 2.4) to be less than Two Hundred Eighty (280) acres. If the Land is shown by survey to be less than Two Hundred Eighty (280) acres, the Purchase Price shall be reduced by Two Hundred fifty-eight Thousand Nine Hundred Twenty-eight and 57/100 Dollars (\$258,928.57) for each acre, or pro-rata for any portion of acre thereof, that the Land is less than Two Hundred Eighty (280) acres.

**ARTICLE II**  
**Seller's Deliveries**

It is understood by the parties that Purchaser will be relying on Seller's Deliveries (as defined herein) in order to conduct Purchaser's inspection and due diligence investigation of the Property. Except as otherwise provided below, Seller will, within Ten (10) days after the Effective Date (as defined below), at Seller's expense, deliver, or cause to be delivered to Purchaser, the following (collectively, the "Seller's Deliveries"):

2.1 Title Insurance Commitment. A current title insurance commitment issued by the Title Company, including the best available copies of all recorded exceptions to title referred to therein (collectively, the "Title Commitment"), showing marketable title to the Real Property to be vested in Seller and committing to insure such title to the Real Property in Purchaser by the issuance of a 2006 ALTA form of extended coverage policy of owner's title insurance, with the standard printed exceptions deleted, in the amount of the Purchase Price, subject to the satisfaction of the requirements of the instruments to be delivered at the Closing as contemplated hereby and any affidavits and agreements of Purchaser and Seller which the Title Company requires in connection with deletion of the standard printed exceptions. Purchaser will review the Title Commitment as part of its investigation of the Property during the Inspection Period. Purchaser will have the right to negotiate with Title Company in order to cause Title Company to modify the Title Commitment to reflect only those exceptions to title that are acceptable to Purchaser. Seller hereby agrees to cooperate with any of Purchaser's negotiations with the Title Company. If Purchaser does not terminate this Agreement pursuant to Section 3.2 hereof, then the exceptions to title disclosed in the Title Commitment and approved by Purchaser in writing, excluding (a) any delinquent taxes or assessments, (b) any monetary liens or encumbrances which are not a result of the action of Purchaser, its representatives, agents or contractors, and (c) any standard printed exceptions, will be the "Permitted Exceptions" hereunder.

2.2 Environmental Studies. Without in any way limiting any other duties of Seller hereunder to provide information to Purchaser, copies of all environmental studies, reports and information in Seller's possession or control, including, without limitation, correspondence from any governmental or quasi-governmental authorities having jurisdiction over the Property (a "Governmental Authority"), concerning the environmental condition of the Property (all of the foregoing being hereinafter referred to as "Seller's Environmental Information"). In addition, without in any way limiting the preceding sentence, Seller shall provide Purchaser with a current Phase I Environmental Site Assessment Report for the Property and, in the event an environmental hazard or a potential contamination of any sort, in the sole discretion of Purchaser, has been identified on the Property, a current Phase II Environmental Site Assessment Report for the Property, in each case issued by an environmental firm reasonably approved by Purchaser (collectively, the "Environmental Reports") within Thirty (30) days of the Effective Date. Seller shall pay all costs associated with the Environmental Reports.

2.3 Other Information. True, accurate and complete copies of all documents in any way related to the prior development, usage, operation or marketability of the Property which are in the possession or control of Seller, including, without limitation, information related to utilities to the Property and adverse conditions. Such documents shall include, without limitation, surveys, all environmental, soils and engineering tests, appraisals, reports and other studies ordered or performed at the direction of Seller.

2.4 Survey. Seller shall provide to Purchaser a current pinned survey of Property. The survey will be an ALTA/ASCM Land Title Survey complying with the minimum requirements of such a survey and shall also constitute a boundary survey and an improvement survey in accordance with the Colorado Revised Statutes ("Survey"). The Survey shall at a minimum show the dimensions of the property, any and all improvements, fence locations, easements, rights-of-way and adjacent roadways, on and/or to the Property and shall also provide additional information and items typically shown for ALTA/ASCM surveys for commercial real estate in locations in the Denver, Colorado metropolitan area. The Survey shall certify the accuracy of the legal description and the size of the Property and the legal description set forth in the survey shall be identical to that contained in the Title commitment. Seller shall provide to Purchaser the Survey within Thirty (30) days of the Effective Date. Seller shall pay all costs associated with the Survey.

2.5 Disclosure. A written disclosure from Seller to Purchaser of all easements, liens or other title matters not shown by public records of which Seller has current actual knowledge.

### **ARTICLE III** **Investigation of the Property**

3.1 Inspection of Property. Purchaser will have until 5:00 p.m., Mountain Time, on the date that is Ninety (90) days after the Effective Date (as it may be extended, as set forth below, the "Inspection Period"), to investigate and evaluate the Property, the zoning and other governmental limitations applicable to the Property, Seller's Deliveries and all other documents and/or information provided to Purchaser pursuant to Article II, and any other aspects or characteristics of the Property which may affect its acquisition, ownership, development, usage, operation, marketability or economic viability. Such right of investigation will include, without limitation, the right to enter the Property and have made, at Purchaser's expense, any studies, inspections or plans of the Property as Purchaser may deem necessary or appropriate, including environmental studies and/or flood plain studies. Seller agrees to cooperate reasonably with any such investigations, inspections or studies made by or at Purchaser's direction so long as such cooperation is at no expense to Seller. Seller agrees that, during the Inspection Period, Purchaser will have access at all reasonable times upon reasonable prior notice to Seller's books and records concerning the Property, and will be permitted to make copies of such books and records at Purchaser's expense. Purchaser will indemnify, defend and hold Seller harmless from any expenses, damages and liabilities, including reasonable attorneys' fees that Seller may suffer or incur arising out of any claims for property damage, personal injury or claims from materialmen, or laborers which arise from Purchaser's investigations under this Section 3.1. The provisions of this Section shall survive the Closing or termination of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Inspection Period shall be extended for a period of thirty (30) days in the event Seller fails to deliver to Purchaser the Seller's Deliveries as and when required by Article II, including, without limitation the Environmental Reports. Such thirty (30) day extension period shall be repeated, as necessary, in the event the Seller fails to deliver to Purchaser the Seller's Deliveries prior to one week before the termination of said extension period.

3.2 Termination. If on or before the expiration of the Inspection Period, Purchaser gives Seller written notice of Purchaser's decision to terminate the Agreement, in Purchaser's sole discretion, for any reason whatsoever, then this Agreement shall terminate, the Deposit shall be returned to Purchaser and both parties shall be relieved from any further liability hereunder, except for any liabilities and obligations which by their terms survive any termination of this Agreement. If Purchaser does not terminate this Agreement as described in the preceding sentence, then this Agreement shall remain in full force and effect in accordance with its terms.

#### **ARTICLE IV** **Condition Precedent to Closing**

4.1 Subdivision. In the event the Property is already annexed to the Town of Erie, Colorado in conjunction with the adjacent 40 acre parcel containing Seller's home at the Effective Date, then, in that event, within Thirty (30) days of the Effective Date, Seller shall subdivide the Property in accordance with the Municipal Code of the Town of Erie, Colorado, the Unified Development Code of the Town of Erie, Colorado, and all applicable laws, ordinances and requirements so as to create a legal, merchantable, subdivided parcel consisting of the Property. Notwithstanding anything contained herein to the contrary, Purchaser's obligation to proceed to Closing hereunder is expressly conditioned upon the subdivision of the Property as required herein. In the event the Property is not subdivided as required herein, this Agreement shall, at the sole discretion and decision of Purchaser, terminate, the Deposit shall be returned to Purchaser and both parties shall be relieved from any further liability hereunder, except for any liabilities and obligations which by their terms survive any termination of this Agreement.

4.2 Compliance with Laws. In the event the Property is not annexed to the Town of Erie, Colorado, but remains in Boulder County at the Effective Date, the Seller shall comply with all Boulder County and State of Colorado laws regarding division of property so as to ensure that the Property is a legal parcel capable of being transferred to Purchaser as provided for herein. Purchaser's obligation to proceed to Closing hereunder is expressly conditioned upon the Property complying with all Boulder County and State of Colorado laws regarding division of property, and the Property being a legal parcel capable of being transferred to Purchaser. In the event the Property is not a legal parcel in compliance with all Boulder County and State of Colorado laws as required herein, this Agreement shall, at the sole discretion and decision of Purchaser, terminate, the Deposit shall be returned to Purchaser and both parties shall be relieved from any further liability hereunder, except for any liabilities and obligations which by their terms survive any termination of this Agreement.

4.3 Termination of Purchaser's Right to Purchase. In the event Purchaser has not tendered a signed Agreement to the Seller on or prior to September 1, 2013, then, in that event, this Agreement shall be null and void and Purchaser shall no longer have the right to purchase the Property pursuant to the Option to Purchase the Property set forth and granted to the Purchaser in the Golden Run Pre-Annexation Agreement entered into by and between the Purchaser and Aaron Harber and Golden Run Estates, LLC, dated April 9, 2013.

#### **ARTICLE V** **Title**

At Closing hereunder, Seller will convey to Purchaser by General Warranty Deed good, marketable and insurable fee simple title to the Property, free and clear of all liens and encumbrances and subject only to the Permitted Exceptions. Seller will not, after the date hereof, sell, convey, option or contract to do any of the foregoing or otherwise convey, abandon, relinquish, cloud or encumber title to the Property or any part thereof or contract to do any of the foregoing in a manner which would survive Closing except as may be expressly provided for herein. At Closing, Seller will cause the Title Company to issue to Purchaser, or unconditionally commit to issue to Purchaser after Closing, a 2006 ALTA form of extended coverage owner's policy of title insurance insuring marketable, insurable title to the Property in Purchaser in the amount of the Purchase Price for such Property, subject only to the Permitted Exceptions (the "Title Policy"). At Closing, Seller will pay for the title insurance policy insuring the Purchaser's purchase. If any update of the Title Commitment issued after expiration of the Inspection Period shall show any exceptions which are not Permitted Exceptions or shall contain any additional requirements, which exceptions or additional requirements are caused by Seller (or anyone acting by, through or under Seller or its affiliates) without Purchaser's prior written consent (which may be withheld in Purchaser's sole discretion), Seller will, at its sole cost and expense, within the earlier of Thirty (30) days or the Closing Date, cure such exceptions and satisfy such requirements. Seller's obligation to cure such exceptions will, if such method is acceptable to Purchaser

as to any specific exception, include the obligation to obtain title insurance protection for Purchaser against such exception and to pay additional premiums or costs which the Title Company charges for such protection. If each of such exceptions has not been cured by Seller or waived by Purchaser within the earlier of Thirty (30) days or the Closing Date, and Purchaser does not elect to waive such exception or requirements, Purchaser will be entitled to all rights and remedies therefor, including, without limitation, specific performance with abatement and/or damages on account of the existence of any such exceptions which are not Permitted Exceptions or for any requirements which are not satisfied by Seller, or termination of this Agreement and the return of the Deposit. If a third party (not related to Seller or anyone acting by, through or under Seller or its affiliates) causes such new title exception or additional requirements, Seller will, at its sole cost and expense, within the earlier of Thirty (30) days or the Closing Date, cure such exceptions and satisfy such requirements; provided, however, that if Seller is unable cure such exceptions and satisfy such requirements using its best efforts, Purchaser's only right will be to either waive its objection thereto or to terminate this Agreement. In the event of any such termination, the Deposit will be returned to Purchaser and the parties will thereupon be relieved of all further liabilities and obligations hereunder, except for any liabilities and obligations which by their terms survive any termination of this Agreement.

## **ARTICLE VI**

### **Representations and Warranties**

6.1 Seller's Representations and Warranties. To Seller's current actual knowledge, without inquiry and without duty to inquire, Seller represents, warrants and covenants to Purchaser that the following are true and correct:

(a) No Possessory Rights; No Third Party Interests. Except for any parties in possession pursuant to, and any rights of possession granted under, the Permitted Exceptions, there are no parties in possession of any part of the Property, and there are no other rights of possession which have been granted to any third party or parties. Seller has not granted to any party any option, contract or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

(b) No Liens. There are no mechanics' or materialmen's liens of record against the Property, nor are there any unsatisfied charges, debts, liabilities, claims or obligations arising from the construction, ownership, maintenance or operation of or otherwise relating to the Property, which could give rise to any mechanics' or materialmen's or constitutional, statutory or common law lien against the Property, or any part thereof.

(c) Contracts and Tenant Leases. Seller is not in default of any of its obligations under the Permitted Exceptions, the Contracts or the Tenant Leases. There are no Tenant Leases other than those set forth on the list of Tenant Leases delivered by Seller to Purchaser hereunder. Seller shall terminate all Tenant Leases prior to Closing and deliver the Property to Purchaser free and clear of all Tenant Leases. There are no Contracts other than those set forth on the list of Contracts delivered by Seller to Purchaser hereunder.

(d) Compliance with Law. Except as otherwise disclosed to Purchaser as part of Seller's Deliveries, Seller has not received notice of any violation of any applicable statutes, ordinances, codes (including, but not limited to, zoning, building, subdivision, pollution, environmental protection, water disposal, health, fire and safety, and engineering codes), and the rules and regulations of, any Governmental Authority. With respect to the Property, there are no violations of any applicable statutes, ordinances, codes (including, but not limited to, zoning, building, subdivision, pollution, environmental protection, water disposal, health, fire and safety, and engineering codes), and the rules and regulations of, any Governmental Authority.

(e) No Actions. There are no actions, suits, proceedings or claims pending, or to Seller's knowledge, contemplated or threatened, with respect to or in any manner affecting the Property or the ability of the Seller to consummate the transaction contemplated by this Agreement. There are no pending condemnation or similar proceedings or special assessments affecting the Property, or any part thereof, and to the best of Seller's knowledge, no such proceeding or assessment is contemplated or threatened by any Governmental Authority. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

(f) Assumption of Obligations. Purchaser, by virtue of the purchase of the Property will not be required to satisfy any obligation of Seller other than those expressly assumed by Purchaser pursuant to this Agreement, any obligations imposed under the Permitted Exceptions or any obligations which may be incurred under any expressly assumed Permits or Contracts.

(g) Hazardous Material. To Seller's knowledge, except as disclosed in any environmental or engineering reports or studies delivered by Seller to Purchaser as part of the Seller's Environmental Information: (i) the Property has not at any time been used for the purpose of storing, manufacturing, releasing or dumping Hazardous Materials (as hereinafter defined), and there are no Hazardous Materials located at, on or under the Property, except for normal quantities of Hazardous Materials utilized in connection with the maintenance and operation of the Property in compliance with all Environmental Laws (as hereinafter defined), and (ii) no underground storage tanks, pipelines or clarifiers have been or are located on the Property. As used in this Agreement, "Hazardous Materials" shall mean any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, gasoline and any other petroleum products, polychlorinated biphenyls and urea formaldehyde insulation. As used in this Agreement, "Environmental Law" shall mean any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Governmental Authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or the release or threatened release of Hazardous Materials into the environment.

(h) Seller's Deliveries. The copies of any documents furnished to Purchaser pursuant to this Agreement are true, accurate and complete copies of the documents they purport to be. Seller has no knowledge of any misrepresentations or any material inaccuracy in any of Seller's Deliveries that have been provided to Purchaser pursuant to this Agreement.

(i) Authority. Seller has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. Seller has taken all requisite action in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Seller is authorized to do so. Seller will furnish to Purchaser any and all documents to evidence such authority as Purchaser shall reasonably request.

(j) Consents; Binding Obligations. No third party approval or consent is required to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

(k) No Representations; "As Is" Purchase.

Except as expressly set forth herein or called for herein or any conveyance documents delivered at Closing, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS of any kind or character, express or implied, with respect to the Property, its physical condition, income to be derived therefrom or expenses to be incurred with respect thereto, or with respect to information or documents previously furnished to Purchaser or furnished to Purchaser pursuant to this Agreement, or with respect to Seller's obligations or any other matter or thing relating to or affecting the same, and there are no oral agreements, warranties or representations collateral to or affecting the Property except as may otherwise be expressly set forth herein. Notwithstanding anything contained herein to the contrary, this Section shall survive the Closing or any termination of this Agreement.

(l) Materiality. Each of the representations and warranties contained in this Article are acknowledged by Seller to be material and to be relied upon by Purchaser in proceeding with this transaction, shall be deemed to have been remade by Seller as of the date of Closing, shall not be deemed merged into any instrument of conveyance delivered at Closing and shall survive the Closing.

6.2 Purchaser's Representations and Warranties. Purchaser represents, warrants and covenants to Seller that the following are true and correct:

(a) Authority. Purchaser has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. Purchaser has taken all requisite action in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Purchaser is authorized to do so. Purchaser will furnish to Seller any and all documents to evidence such authority as Seller shall reasonably request.

(b) Consents; Binding Obligations. No third party approval or consent is required to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

**ARTICLE VII**  
**Seller's Undertakings Pending Closing**

Seller agrees to terminate by written notice to the other party thereto, effective as of Closing, any of the Contracts that Purchaser, pursuant to written notice to Seller, requests Seller to terminate. Seller shall deliver copies of all notices of Contract termination given by Seller hereunder to Purchaser. Seller agrees to terminate by written notice to the other party thereto, effective prior to Closing, all of the Tenant Leases. Seller shall deliver copies of all notices of Tenant Lease termination given by Seller hereunder to Purchaser.

**ARTICLE VIII**  
**Purchaser's Obligation to Close**

Purchaser shall not be obligated to close hereunder unless each of the following conditions shall exist on the date of Closing (the "Closing Date"): (1) the Title Company shall be prepared to issue (or shall unconditionally commit to issue) the Title Policy as described in Article V; (2) the representations and warranties made by Seller in Article VI shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, and Seller will so certify; (3) Seller will have, in all material respects, (a) performed all covenants and obligations, and (b) complied with all conditions required by this Agreement to be performed or complied with by Seller on or before the Closing Date or each such covenant, obligation and condition shall be waived by Purchaser in writing prior to the Closing; and (4) no part of the Property shall be about to be acquired, or shall previously have been acquired, by authority of any governmental agency in the exercise of its power of eminent domain or by private purchase in lieu thereof. If any condition specified in this Article VIII is not satisfied on or before the Closing Date, Purchaser may, at its option, (a) extend the date for Closing to allow Seller a sufficient time (but not to exceed Thirty (30) days) within which to cure or satisfy such condition, and Seller will immediately commence prosecution of such cure or satisfaction and diligently pursue the same to completion, at which time a new Closing Date shall be scheduled within Ten (10) days from Purchaser's acceptance of such cure or satisfaction, (b) waive such condition either at the time originally established for Closing or at any time thereafter and proceed to Closing, (c) terminate this Agreement by written notice thereof to Seller, in which case the Deposit shall be returned to Purchaser, or (d) if the failure of the condition is due to a breach by Seller hereunder, pursue any of its remedies under Section 12.1 hereof. Notwithstanding the foregoing, if eminent domain proceedings are commenced against any portion of the Property, Seller shall immediately give notice thereof to Purchaser, and Purchaser at its option may either (i) exercise any of the remedies available to Purchaser in this Article VIII, or (ii) proceed to Closing and receive at Closing either a credit against the Purchase Price in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Purchaser.

**ARTICLE IX**  
**Seller's Obligation to Close**

Seller shall not be obligated to close hereunder unless Purchaser has delivered to the Title Company the Purchase Price as described in Article I hereof.

## ARTICLE X

### Closing

10.1 Time of Closing. The closing ("Closing") shall take place in the offices of the Title Company at the time specified by Purchaser in written notice to Seller. The Closing Date shall be the Tenth (10<sup>th</sup>) day after the expiration of the Inspection Period (as it may be extended) or such earlier date as may be mutually acceptable to the parties. If Closing does not occur, the Deposit shall be returned to Purchaser, paid to Seller or otherwise dealt with, all as provided elsewhere in this Agreement.

10.2 Deliveries. At Closing the following shall occur:

(a) Seller will deliver to Purchaser a duly executed and acknowledged General Warranty Deed, in form satisfactory to Purchaser, conveying good and marketable fee simple title to the Property (including the water and water rights) to Purchaser, free of all liens and encumbrances and subject only to the Permitted Exceptions.

(b) Purchaser will pay to Seller the Purchase Price as provided in Article I hereof, subject to the adjustments described in Article XI.

(c) Possession of the Property will be delivered to Purchaser and Seller shall deliver to Purchaser all keys to all locks on such Property within Seller's possession or control, if any.

(d) Seller will execute and deliver to Purchaser and the Title Company an affidavit that evidences that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(e) Seller will execute and deliver to Purchaser an assignment, in form and substance satisfactory to Purchaser, of all of Seller's right, title and interest in and to the Contracts, if any are approved by Purchaser, and will deliver to Purchaser, the originals of all of the Contracts, if any, including all amendments and modifications thereto.

(f) Seller will execute and deliver to Purchaser a bill of sale and assignment, in form satisfactory to Purchaser, of all of Seller's right, title and interest in and to the Warranties, Permits and Intangible Property, to the extent the same are assignable and will deliver to Purchaser the originals of any Warranties or Permits in Seller's possession or control.

(g) Seller will execute and deliver to Purchaser a bill of sale and assignment, or deed, as may be applicable, in form satisfactory to Purchaser, of all of Seller's right, title and interest in and to the Five (5) shares of South Boulder Canon Ditch Company and to water and sewer taps, if any.

(h) Public utility services shall be transferred or terminated as of the date of the Closing. The provisions of this Section shall survive Closing.

(i) Seller and Purchaser will each execute and deliver to the Title Company such agreements or statements concerning claims for mechanic's liens and any other documents as may be required by the Title Company in order to issue the applicable Title Policy.

(j) Immediately after the Closing, the originals of all Plans in Seller's possession or control and all other materials of whatever kind owned by Seller relating to the design, construction, development, ownership, maintenance and operation of the Property, if any, will be delivered to and become the property of Purchaser.

(k) Seller will, whenever and as often as it shall be reasonably requested to do so by Purchaser, and Purchaser will, whenever and as often as it shall be reasonably requested to do so by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances,

assignments and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement.

(l) In the event the sale contemplated herein does not close by January 1, 2014, for any reason not caused by or related to Seller or Seller's actions, Purchaser shall reimburse Seller for all its costs of the Phase I Environmental Site Assessment Report for the Property required by Paragraph 2.2, Phase II Environmental Site Assessment Report for the Property required by Paragraph 2.2 (if obtained in accordance with the terms of this Agreement) and the ALTA/ASCM Land Title Survey required by Paragraph 2.4.

## **ARTICLE XI**

### **Prorations and Closing Expenses**

11.1 Closing Adjustments. The cash due at Closing pursuant to Article I hereof shall be subject to adjustment as of the Closing Date in accordance with the following provisions:

(a) Taxes. Real and personal property taxes on the Property shall be prorated to the Closing Date based on the most recent assessed valuations and mill levy available, which proration shall be deemed a final settlement between the parties.

(b) Liens and Encumbrances. The amount of any lien, deed of trust or other monetary encumbrance (including all prepayment penalties) then affecting the Property other than as a result of the actions of the Purchaser, its representatives, agents or contractors shall be paid from the funds to which Seller shall otherwise be entitled. If such funds are insufficient to pay all such encumbrances, Seller shall pay the deficiency.

(c) Closing Costs. Seller shall pay for any transfer taxes, the cost of recording any instruments required to discharge any liens or encumbrances against the Property, the premium for the Title Policy as required by Article V, the cost of the Survey (if not earlier paid), the cost of subdivision of the Property (if necessary and if not earlier paid), Seller's attorneys' fees and one-half of the customary closing costs of the Title Company. Purchaser shall pay for recording Seller's deed, the state documentary fee, Purchaser's attorneys' fees and one-half of the customary closing costs of the Title Company.

11.2 Settlement Sheet. At the Closing, Seller and Purchaser shall execute a closing settlement sheet to reflect the credits, prorations and adjustments contemplated by or specifically provided for in this Agreement.

11.3 Post Closing Adjustments. In general, without limiting any of the foregoing, Seller shall be entitled to all income, and shall pay all expenses, relating to the operation of the Property for the period prior to the Closing Date and Purchaser shall be entitled to all income, and shall pay all expenses, relating to the operation of the Property for the period commencing on the Closing Date and thereafter. Purchaser and Seller shall undertake, following Closing, to adjust between themselves, as of the Closing Date, any income or expenses of the Property that are not adjusted on the settlement statement. Seller shall pay promptly upon receipt any bills relating to the operation of the Property for periods prior to the Closing. Seller shall also pay promptly upon receipt any so called "rollback taxes" imposed on the Property for periods from and after Closing. The terms, covenants and conditions of this Article XI will survive the Closing or termination of this Agreement without limitation as to time.

## **ARTICLE XII**

### **Remedies**

12.1 Breach by Seller. Time is of the essence of Seller's obligations hereunder. If Seller fails to comply with any of its obligations hereunder which are required to be performed at or prior to Closing, Purchaser, at Purchaser's option, shall be entitled to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and both parties shall be discharged from all duties and performance hereunder, except for any obligations which by their terms survive any termination of this Agreement. In the alternative, Purchaser shall be entitled to specific performance, or damages or both.

12.2 Breach by Purchaser. Time is of the essence of Purchaser's obligations hereunder. In the event that Purchaser is in default of any provision hereof, which shall include the failure to provide any notice required by this Agreement, Seller, as a condition precedent to the exercise of its remedies or termination of this Agreement, shall be required to give Purchaser written notice of the same. Purchaser shall have Ten (10) Business Days (as defined below) (or such longer period of time as is reasonably required so long as Purchaser is diligently pursuing said cure) from the receipt of such notice to cure the default or failure to provide notice. If Purchaser timely cures the default, the default shall be deemed waived and this Agreement shall continue in full force and effect. If Purchaser fails to timely cure such default, Seller, as its sole and exclusive remedy, shall be entitled to terminate this Agreement and have the Deposit paid to Seller as liquidated damages. The parties hereby agree that the amount of the Deposit is a fair and reasonable estimate of the total detriment that Seller would suffer in the event of Purchaser's default and failure to duly complete the acquisition hereunder.

12.3 Failure to Deliver Possession. If Seller, following Closing, fails to deliver possession of the Property to Purchaser at the time and date of Closing, Seller shall be subject to eviction and shall be additionally liable to Purchaser for payment of Twenty-five Thousand Dollars (\$25,000.00) per day (or any part of a day) from time and date of Closing until possession is delivered to Purchaser.

12.4 Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the prevailing party in such suit shall be awarded, in addition to all other remedies or damages, its reasonable attorneys' fees and expenses.

### **ARTICLE XIII** **Miscellaneous**

13.1 Brokers. Seller and Purchaser each hereby represent and warrant to the other that their sole contact with the other or with the Property has been made without the assistance of any broker or other third party. Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that no brokers or finders have been engaged by it, respectively, in connection with the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any such transactions. Seller and Purchaser agree to save and hold each other free, clear and harmless from any claim, cost or expense, including reasonable attorneys' fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein.

13.2 Interpleader. Seller and Purchaser mutually agree that, in the event of any controversy regarding the Deposit held by the Title Company, unless mutual written instructions for disposition of the Deposit are received by the Title Company, the Title Company shall not take any action, but instead shall wait any proceeding, or else shall interplead all parties and deposit the Deposit into a court of competent jurisdiction, in which case the Title Company may recover all court costs and reasonable attorney's fees incurred in connection therewith. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Title Company, as well as the attorney's fees of the prevailing party. By its execution of this Agreement, the Title Company hereby agrees to treat the Deposit in accordance with the foregoing provisions, which supersede any standard form or other escrow instructions of the Title Company.

13.3 1031 Exchange. Seller and Purchaser acknowledge and agree that the purchase and sale of the Property may be part of a tax-free exchange under Section 1031 of the Internal Revenue Code for either Purchaser or Seller. Each party hereby agrees to take all reasonable steps on or before the Closing Date to facilitate such exchange if requested by the other party, provided that no party making such accommodation shall be required to acquire any substitute property or incur any cost or expense in connection with such exchange.

13.4 General. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the party or parties to be bound. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement, and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as expressly herein set forth. Each of the parties hereto undertakes and agrees to execute and deliver such documents,

writings and further assurances as may be requisite to carry out the intent and purpose of this Agreement. This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement. Executed copies hereof may be delivered by facsimile or electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by facsimile, the parties will use their best efforts to deliver originals as promptly as possible after execution. If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the expiration of the Inspection Period or the Closing Date) should, under the terms hereof, fall on a day other than a Business Day, then such date shall be automatically extended to the next succeeding Business Day. For purposes of this Agreement, "Business Day" means each day of the year other than Saturdays, Sundays, holidays and days on which banking institutions are generally authorized or obligated by law or executive order to close in the State of Colorado. For purposes of this Agreement, "Effective Date" means the date that this Agreement has been executed by both Seller and Purchaser, as evidenced by later of the dates on the signature blocks below. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. The paragraph headings that appear in this Agreement are for purposes of convenience of reference only and are not in any sense to be construed as modifying the substance of the paragraphs in which they appear. Purchaser may assign this Agreement, provided that Purchaser provides Seller with prompt notice of the assignment, subject to the prior written approval of the Owner, which may be withheld at Owner's sole discretion. Any such assignee shall assume all obligations imposed on Purchaser as if the assignee were the original Purchaser under this Agreement. Any assignment of this Agreement by Purchaser shall relieve Purchaser of its obligations and liabilities hereunder. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns.

13.5 Notices. Any notice required or permitted to be sent pursuant to this Agreement shall be in writing and shall be deemed received (a) within the same Business Day when personally delivered; (b) within the same Business Day when sent by confirmed facsimile transmission or electronic delivery; (c) three (3) days after having been deposited in a U.S. Postal Service depository and sent by registered or certified mail, return receipt requested, with all required postage prepaid, and addressed; or (d) the next Business Day after deposit with Federal Express or a similar overnight courier service, with delivery charges for morning delivery on the next Business Day prepaid. Either party may change its address for notices by written notice to the other party in accordance with this Section 13.5:

If to Seller:

Aaron Harber  
2500 North 119<sup>th</sup> Street  
Lafayette, Colorado 80026-9216  
Telephone: (303) 666-6161  
Email: [aharber@msn.com](mailto: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](mailto:carl@goldenrun.com)

If to Purchaser:

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

Any address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 13.5.

**ARTICLE XIV**  
**Post-Closing Obligations**

In the event the Environmental Reports disclose the existence of Hazardous Materials on the Property, Seller hereby agrees to indemnify, defend, protect and hold Purchaser harmless, and each of Purchaser's successors, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including, without limitation, diminution in the value of the Property and damages for the loss of or restriction on the use of the Property), costs or expenses (including attorneys' fees, consultants' fees and experts' fees) caused in whole or in part, directly or indirectly, by (i) the presence in, on, under or about the Property or any discharge or release by Seller on or from the Property of any Hazardous Materials, (ii) the use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation by Seller or Hazardous Materials in, on, under, about or from the Property, and (iii) Seller's failure to comply with any Environmental Law. Seller's obligation under this indemnification shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation of any such condition, and any and all costs incurred in connection with any investigation of any such conditions, and any and all costs of any repair, cleanup, detoxification or decontamination of the Property (including, without limitation, the soil and ground water on, under or about the Property), and the preparation and implementation of any closure, remedial action, or other plans in connection therewith. This Article XIV shall survive the Closing and delivery of the deed.

**ARTICLE IV**  
**ACCEPTANCE DEADLINE**

This offer to purchase shall expire at 5:00 p.m. the Tenth (10<sup>th</sup>) day after the Date of Execution of the Agreement by Purchaser, as set forth below, unless accepted in writing by Seller, as evidenced by his signature, below, and this Agreement, fully executed, returned to Purchaser.

*[Signatures on following page]*

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

**SELLER:**

\_\_\_\_\_  
Aaron Harber

Date of Execution: \_\_\_\_\_

**PURCHASER:**

**TOWN OF ERIE**, a Colorado municipal corporation

By: \_\_\_\_\_  
Joseph A. Wilson, Mayor

Date of Execution: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Nancy Parker, Town Clerk

4/8/13

**RECEIPT AND ACKNOWLEDGEMENT BY  
TITLE COMPANY**

The undersigned Title Company, named in the foregoing Agreement, hereby acknowledges receipt of the Deposit and a fully executed copy of this Agreement as of the date set forth below. In addition, the Title Company agrees to hold and disburse the Deposit in accordance with the terms of the Agreement. While the Title Company holds in escrow any Deposit in the form of cash, it agrees to invest it in interest-bearing accounts as provided in the Agreement.

RECEIVED, ACKNOWLEDGED and AGREED TO by the Title Company on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

The Northern Half of Section 25, Township 1 North, Range 69 West, at the 6th Prime Meridian, Boulder County, Colorado, USA minus the Southwest Quarter of the Northwest Quarter of Section 25, Township 1 North, Range 69 West, at the 6th Prime Meridian, Boulder County, Colorado, USA (totaling 280 acres)