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Mary Ann Feuerstein Weld Co., Clerk & Recorder

ANNEXATION AGREEMENT

This agreement made and entered into on this 28th day of April, 1994, by and between the Town of Erie, a municipal corporation of the State of Colorado, whose address is P.O. Box 100, Erie, CO 80526 (hereinafter referred to as Erie or the Town) and Thomas S. Morton and James Norton, co-owners of the property to be annexed, whose business address is 3191 W. 151st Court, Broomfield, CO. 80020, (hereinafter referred to as Owners).

WITNESSETH

WHEREAS, the Owners of certain real property (hereinafter referred to as the Property), situated in the County of Weld, State of Colorado, which Property is more particularly described as follows:

SEE ATTACHED EXHIBIT A

WHEREAS, the owners desire to have the Property annexed to Erie and zoned at the time of annexation; and

WHEREAS, Erie desires to simultaneously annex and zone, the Property; and

WHEREAS, the parties desire to include in this agreement certain provisions, understandings, and agreements regarding the Property and its annexation and zoning.

NOW, THEREFORE, in consideration of the recitals, premises, mutual covenants and the promises of the parties to each other as herein contained, IT IS AGREED AS FOLLOWS:

1. ANNEXATION. The annexation of the Property shall be in conformance with the Colorado Municipal Annexation Act of 1965, as amended.

2. MASTER PLAN FOR PROPERTY. The Erie Comprehensive plan encompasses the entire Property. The Comprehensive Plan does not set out in detail the land uses for the Property. The plan attached as "Exhibit A" to the resolution passed simultaneously with this agreement complies with the requirements of C.R.S. 31-12-105 (1)(e). A Master Plan in specific will be provided during the subdivision process, which will be the Master Plan for the property.

3. ZONING & LAND USE. On the recommendation of the Erie Town staff and Planning & Zoning board the property will be zoned PD for mixed use. The land use generally will be as follows:

<u>Single Family Residential</u>
Approximately 109 acres.
<u>Estate Residential</u>
Approximately 53 acres.
<u>Commercial, Open Space, Potential School Site, or Park</u>
Various tracts totaling approximately 24 acres.

3A. LAND DEDICATION. The owners agree to either dedicate to the Town of Erie, at the Town's option and discretion, 10% of the total acreage (18.6 acres) as public land, or to pay an equivalent cash in kind to the Town <u>with the price to be determined as set forth in Chapter 5,</u>

where does irrigation ditch fall?

Section K. Paragraph 2. of the 1981 Subdivision Regulations of the Town of Erie. Any open space, parks, landscaped right-of-ways, or trails dedicated to the Town shall be maintained by the homeowners association, by covenant, until such time as the Town agrees to financially sustain the cost of maintaining those areas. (This does not include public land dedications for the purpose of new town facilities or other public entity facilities.) - ~~Tot lot Public land~~ - please refer to 3A previous

3B. EFFECTIVE DATE OF ZONING. All residential and commercial construction will be subject to the types and intensities of land use permitted pursuant to the Erie Zoning Code in effect on the date hereof or in effect on the date when building permit applications are filed.

3C. PHASING OF DEVELOPMENT. Erie and the Owners recognize that property development is subject to market conditions. To assure Erie that the development of the Property proceeds in an orderly manner, Owner shall phase the development. For each phase, a specific site plan will be submitted to the Erie Planning and Zoning Commission and the Board of Trustees for review and approval, which will be in conformance with a Master Development Plan, or as amended by approval of the Board of Trustees.

3D. PARK CONCEPTUAL PLANS. ~~Some public land as 3A above~~ Northridge Park **Owner agrees to provide three conceptual plans for development of the 18.6 acre, which plans will, if requested by the Town prior to final dedication, include at least one baseball field with night lights, as well as other recreational activities and facilities. The conceptual standards will be of a professional and workperson like nature. The size to be of a 1" to 50' scale. The general layout of facilities, landscaping, points of access to public rights-of-way, major off-street parking, loading areas, playgrounds and materials will be will be included. Grading and seeding will also be shown thereon.**

Owner agrees to grade and seed the park area as part of the first phase construction. Seeding will be appropriate for the grading and soil and equivalent to the cover provided by buffalo grass.

irrigation ditch?

3E. PARK IMPACT FEES. It is agreed that there will be a one time only, impact fee in the amount of $1,000.00 per lot, to be paid at the time of the issuance of a building permit on any given lot. This shall be an independent covenant that runs with the land, and the parties agree the Town at its sole option, may file a separate document with the Clerk and Recorder of Weld County reflecting this covenant. The purpose of this fee shall be for the exclusive maintenance and development of the dedicated park or other dedicated public lands and rights-of-way, exclusive of streets, within the annexed property.

repair town responsibility

3F. FOUR ACRE PARK. The four acre (public) park reflected on Exhibit "A" will be left natural with minor grading and seeding to match the grading of the lots surrounding it, in the same manner and at the same time as the park set forth in 3D above, at the expense of Owner. Further development will be at the expense of Town. - public land dedication

3G. TRAILS AND SIDEWALKS. Subject to warranties contained herein, all dedicated trails and sidewalks will be maintained by the immediate adjacent property owners or the homeowners association. All repairs, after the expiration of warranty periods will be done by the Town.

TOT lot? LOT?

4. UTILITY EASEMENTS. The Owners shall dedicate rights-of-way for all roads and utility easements to Erie, except sewer service easements shall be dedicated to the Erie Water

repair @ Town when does warranty end?

See 3E.

Sanitation District. The owner may complete any current obligations concerning such easements, but may not incur any new obligations. All utility easements, dedicated to Erie, shall be for the use and the benefit of the various entities furnishing utility services, i.e., electrical, telephone, gas, TV cable, water sewer. Said rights-of-way for all utilities, such as, water, sewer, electrical, telephone, gas, and TV cable may lie within the road or trails right-of-way and may be identical or overlapping. ALL UTILITIES WILL BE PLACED UNDERGROUND.

4A. WATER SERVICE EXTENSION OPTIONS. In order to ensure that adequate water service is available to the development at the time the developers are ready to receive such service, the following options shall be considered by the Town, and the best option shall be chosen by the Town of Erie to serve the development, prior to the final platting of the first phase, to ensure water service will occur. The options herein are listed in an order of preference to the Town.

OPTION 4A.1 EXTENSION OF THE TOWNS WATER SYSTEM. The Owners shall at the time of development of each phase, install at their sole cost and expense, all the utilities, including water lines, fire hydrants, and sewer lines to the Property necessary for that phase. For the first phase, this shall include a proportional and fair share of the cost of extending adequate water service to the property from the Town's water system. Potable water service shall be provided by Erie and tap fees paid to Erie. Water lines shall be constructed to meet the existing requirements of Erie. Water lines lying within the dedicated right-of-way shall be dedicated to Erie after construction. All lines will be underground, and all transfer of easements will be subject to existing leases only.

OPTION 4A.2 LEFT HAND WATER SERVICE. Left Hand Water service may be sought for the property via a master meter, and the owners shall pay all the costs involved in providing such service. The owner agrees to design the water system to allow for the eventual switch from Left Hand to the Town's water system, including but not limited to the placement of a line stub to the closest point of contact with the Town's water system.

OPTION 4A.3 OTHER REASONABLE SYSTEM OF CONVEYANCE. Upon agreement between the Town and the owners, any other reasonable water system may be sought to serve the development which is determined to be capable of adequately serving the development without a negative effect.

4B. WATER SERVICE AVAILABILITY. Erie does not warrant the availability of water service to the owners for any phase of development. A determination of water service availability by Erie shall be made by a water system analysis to be conducted in the near future, or at the time the owners request water taps. In the event that the Town determines that it has insufficient water service availability, no water taps shall be issued until such time as there is water service availability.

5. WATER TAP FEES. Water tap fees shall be the existing Town fees at the time which the applicant requests water taps. Water tap fees shall be paid when a building permit for a structure is requested from the Town.

6.A. WATER DEDICATION. Owner shall dedicate adjudicated water rights of sufficient priority that the rights will yield annually to the Town a quantity of water equal to one and one-half (1 & 1/2 or 1.5) times the water required to serve the development, as determined by the Town. Water dedication and any adjudication necessary to change the use of water to municipal use for each platting shall be completed by the owner at the time of the approval of

the final plat. application for any water taps for such platting. The adequacy of said dedication shall be determined by the Town.

6.B. GROUND WATER DEDICATION. All tributary and non-tributary ground water rights owned as of the date of this Agreement will be transferred to the Town by quit-claim deed no less than 61 days after the annexation is effective. This groundwater dedication is not a part of the required water dedication referred to in 6.A. above.

6C. PARK WATER DEDICATION. The total water dedication for the park, pursuant to Chapter V, Section 7-G-2 of the Town Subdivision Regulations, and in addition to any dedication in 6.A and 6.B. above, the adequacy of which will be determined by the Town Water Attorney and/or Water Engineer, will be prorated in time and amount based upon the size of the filing versus the overall size of the project. Eg. If the overall subdivision is 186 acres and a particular filing is 20 acres then 20/186th's of the total amount of water required for park dedication will be dedicated with said 20 acre filing.

7. SEWER SERVICE. Sewer Service to the Property shall be provided by the Erie Water and Sanitation District, so long as the Erie Water and Sanitation District, or its successors, exists and serves the Property. Sewer fees shall be governed solely by the district as long as the sewer district is in existence and serves the property.

8. OTHER FEES Erie agrees that no other development impact fees will be levied on any of the Property other than those which are already in effect or are reasonable and for the purpose of covering a cost or expense which Erie incurs in direct relation to the property. The developer/owner shall cover any third party costs necessary for the orderly and proper development of the property, including but not limited to planning, engineering, and extra legal work which is directly linked to the property, as required by the Town of Erie. Excluded from this section are any fees which may be levied by or for the benefit of the school district and fire district serving the Property.

9. ROAD RIGHT-OF-WAY All public road rights-of-ways within the Property shall be constructed to Town standards. In order to maintain a rural character in the development, curb and gutter is to be required only where areas of travel necessitate pedestrian safety and access to Town, or by mutual agreement between the owners and the Town. Trails shall be constructed as an integral feature of the development, in accordance with Town construction standards. After construction by the Owner, all public roads and right-of-ways shall be dedicated to Erie. Owner shall be responsible for purchase and installation of internal traffic and street signs, street lights and traffic control devices, if needed, within the Property. All such traffic devises will comply with the Town Subdivision Regulations, Ordinances and State Statutes, which ever are the most restrictive. Owner shall provide a two (2) year guarantee for all road construction from the time of dedication to Erie. - Road construction, slope ? drainage

10. APPLICATION OF TOWN POLICIES. Upon annexation, all subsequent development of the Property shall be subject to and bound by the applicable provisions of Erie Codes, as amended, including all Subdivision Regulations existing at the time of development and including public land dedications, provided however, that changes or amendments to the Charter or the code, after the date of this agreement shall in no way limit or impair Erie's obligation hereunder, except as specifically set forth in this agreement.

11. MISCELLANEOUS PROVISIONS. The Owner shall comply with all applicable State and Federal law and regulations. This agreement may be amended, at anytime, upon agreement of the parties hereto.

was this done?

11A. BRIDGE/FLOODPLAIN MITIGATION. The owners agree to be responsible for the cost of altering or replacing either or both of the two bridges and the culvert which are to be annexed, as well as any flood control mitigation triggered or otherwise necessary for the completion of the proposed subdivision in relation to this annexation, regardless of Town ownership of such bridges or crossings as a result of this annexation, providing replacement or alteration of a crossing is warranted by engineering, proposed usage, or structural defect or age, and providing flood control or mitigation becomes necessary for any part of the proposed project, and that any replacement or alterations warranted by engineering being subject to the final approval of the Town of Erie. Owners agree to not begin floodplain mitigation studies or actual physical improvements which would trigger floodplain mitigation on the those areas affected by the floodplain until such time that the Town's current floodplain project is completed and a final ruling is received from the proper agencies on the Town's project.

In the event any such bridge, crossing, or other structure directly linked to this project is wholly or substantially destroyed by flood and such destruction requires replacement of the structure or floodplain mitigation, this provision shall not apply.

It is noted herein that Weld County bridge maintenance schedules for the affected structures do not call for replacement of any of the structures, but does demonstrate safety improvements and other superficial alterations. Owners agree to bear the cost of these improvements and alterations.

11B. ROAD 10.5. Road 10.5 will not be annexed to the Town, and any improvement which the developer would be desirous of making to 10.5 will be at the developers sole expense.

where other?

11C. OIL ACCESS ROAD. All oil and gas access roads located on the property will remain where they are, and will be considered a current obligation between the property owners and the oil and gas company(s). The Town will not be responsible for any maintenance of any current oil and gas access road.

11D. AVIGATION EASEMENTS. The property owners agree to attach avigation easements to the property in order to protect the viability of the Erie Municipal Tri-County Airport if determined necessary by the Town. Such easements will run with the land. The owner also agrees to include an avigation easement for the Parkland Private Airport, provided that an FAA study to be conducted in the near future warrants such grant, and provided that the Town in its sole discretion agrees to the necessity of a grant of avigation easement to Parkland.

11E. CAP ON REPLACEMENT OR REPAIRS. It is a agreed that the maximum cost the Owner shall be responsible for with regards to programmed repairs, safety repairs, bridge replacement or any other required work and/or materials under paragraph 11A above is $90,000.00 in 1994 dollars, with any increase to be based upon and calculated using the consumer price index at the time of construction.

11F. SUBSEQUENT ANNEXATIONS BY THIRD PARTYS. In the event there are any additional annexations by any parties who use the south, east or southeast boundaries of the property described in Exhibit "A" to establish contiguity for an annexation to the Town of Erie, the Town agrees to place, as a condition of any such annexation, a requirement upon the annexing party or parties to proportionately reimburse the Owner a portion of Owner's expenses for road and/or bridge replacement or repairs that may be incurred on County Road 1.5 based upon the extent the additional property to be annexed adjoins County Road 1.5 directly across from Owner's property. Eg. If the entire contiguous boundary of the to-be-annexed property is adjacent to County Road 1.5 and 100% adjacent to the boundary of Owner's property (exclusive of County Road 1.5) then the party desiring annexation would pay 50% of the costs incurred by Owner, directly to Owner, as a condition of annexation. The owners may be allowed to enforce this

provision by injunctive relief provided any fees incurred by the Town are reimbursed. The estimated total cost of the road improvements is approximately $150,000, therefore the estimated reimbursement would be no more than $75,000.

11G. NOTICE BY OWNER. Owner agrees that the condition of 11F, above will be waived by Owner unless the Town of Erie is notified by Owner of its intent to enforce the provision under 11F, by certified mail, return receipt requested no later than fifteen (15) days after the date of the first publication of any such third party annexation pursuant to Colorado Revised Statutes 31-12-108(2). In the event such notice is not given by Owner than this paragraph shall be null and void and without any effect.

11H. 8 YEAR LIMITATION. It is further agreed that Owner's rights under paragraph 11F will expire after eight years from the commencement of any replacements, repairs, work or improvements required under this Agreement.

12. TERMINATION. If the annexation and zoning of the Property is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.

13. SEVERABILITY. The fact that any portion of this Agreement may be held to be unenforceable, by any court having jurisdiction thereof, shall not affect the enforceability of the remaining portions hereof.

14. BINDING EFFECT. This agreement, when executed by all parties hereto, shall inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including, but not limited to, all developers, purchasers and subsequent owners of any lots or parcels within the Property. The terms and conditions hereof shall be deemed covenants running with the land.

15. RECORDING OF AGREEMENT. This Agreement shall be recorded in the records of the Weld County Clerk and Recorder, at the Developer's Town's expense.

16. LEGAL DISCRETION IN THE CASE OF CHALLENGE. The Town of Erie reserves the right to not defend any legal challenge to this annexation. In the event such a challenge occurs prior to any expiration of any statute of limitation, Erie may, at it's discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the property owner from engaging the Town's legal representatives in such a defense, at no cost to the Town.

17. LEGAL COUNSEL. Owners understand and agree that the law firm of Thorburn, Sakol & Throne has exclusively represented the Town of Erie, Colorado and at no time has said firm acted in any capacity on behalf of Owners. All parties have been advised to have this document reviewed by their respective attorneys and have had the opportunity to have this document reviewed by their respective attorneys.

In witness whereof, the parties have executed this Agreement the date and year first above written.

Property Owners

Thomas S. Morton, Owner

James Norton, Owner

Town of Erie, a municipal corporation

My Commission Expires 01/02/1996
912 Briggs
Erie, CO 80516

Marvel L. Tittle

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By: _____
Victor F. Smith, Mayor

Attest:

_____
Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this ___ day of August, 1994 by Thomas S. Morton and James Norton.

Witness my hand and official seal.

My commission expires_____.

_____
Notary Public

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