

Annexation Agreement **(Erie Gateway South)**

This Annexation Agreement (the "Agreement") is made and entered into this _____ day of _____, 2022 (the "Effective Date") by and among the Town of Erie, a Colorado municipality with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), OEO 2, LLC, a Colorado limited liability company with a principal place of business at 7353 S. Alton Way, Suite A-100, Centennial, CO 80112 (the "Developer"), Bart Schichtel, an individual with an address of 12514 Arapahoe Road, Lafayette, CO 80026 ("Owner" and together with the Developer, collectively the "Owners") (each a "Party" and collectively the "Parties").

Whereas, the Owners own certain real properties located in unincorporated Boulder County and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Properties");

Whereas, the Owners wish to annex the Properties to the Town and thereafter the Developer will develop the Properties as part of the Parkdale Development (the "Development"); and

Whereas, the Town wishes to annex the Properties into the Town upon the terms and conditions set forth herein, and consistent with Owners' plans for the Properties set forth in their Annexation Petition, the Developer's Land Use Application, dated _____, 2021, which includes rezoning the Properties as Planned Development (PD), and the Pre-Annexation Agreement dated March 10, 2021.

Now, Therefore, in consideration of the foregoing recitals, mutual covenants, and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Parties hereby agree as follows:

1. **Annexation.** The annexation of the Properties shall be in accordance with the Colorado Municipal Annexation Act of 1965, as amended.
2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions of annexation of the Properties and the fees to be paid by the Owners upon annexation and initial development of the Properties. Unless otherwise expressly provided to the contrary herein, all conditions contained herein are in addition to any and all requirements of the Erie Municipal Code (the "Code"), as amended, and other applicable law.
3. **Water Rights.** The Owners have represented to the Town that the only water right appurtenant to the Properties are the following wells constructed under the respective permit numbers: Permit No. 190930; Permit No. 263047; Permit No. 133084; Permit No. 220176; Permit No. 152552; Permit No. 250511; Permit No. 218501; and Permit No. 147796; (collectively, the "Wells"). The Owners have offered the Wells for dedication to the Town as required by Code § 8-1-9-E, but following review of the Colorado Division of Water Resources permit file for the Wells, the Town has notified the Owners that it will

not require that the Wells be dedicated to the Town. Prior to receiving water service from the Town, the Developer shall plug and abandon the Wells pursuant to applicable State law and regulations. The Owners shall execute one or more Quitclaim Deeds to dedicate to the Town all non-tributary groundwater rights associated with the Properties.

4. Northern Colorado Water Conservancy District and its Municipal Subdistrict. On or before the Effective Date of Annexation, the Owners shall provide the Town with evidence that the Owners have petitioned to include the Properties within the Northern Colorado Water Conservancy District ("NCWCD"). At such time as the Town provides notice that water service will be provided to the Properties by the Town, the Owners shall include the Properties into the Municipal Subdistrict of NCWCD prior to receiving said water service from the Town. Notwithstanding the foregoing, the Developer reserves the right to develop the Properties in one or more phases and petition for inclusion of Properties within the NCWCD as set forth in the Development Agreement for the Properties.

5. Sewer Service. The Town shall provide sewer service to the Properties at its standard rates, provided that, to the extent sewer lines are constructed to connect to Town service, the construction of such lines shall be the obligation and at the sole expense of the Developer. The construction and extension of any such necessary lines and associated infrastructure shall be constructed in accordance with Town standards and specifications. The Town shall determine the sewer tap fees based on the Code. Sewer connections shall be required before acceptance of any application for a building permit for the construction of any new residential dwelling on the Properties. The Properties will connect to the sewer mains constructed by the Developer or the Developer's affiliate as a part of Parkdale Filing Nos. 1 & 2. To the extent that additional downstream improvements are necessary to serve the Properties, the Parties will determine such and the Development Agreement for the Properties will reflect what work is necessary to provide sewer service to the Properties. Notwithstanding the foregoing, the Developer reserves the right to develop the Properties in one or more phases and construct sewer lines to connect to Town services as set forth in the Development Agreement.

6. Easements. The Developer agrees to acquire at its own expense and to dedicate to the Town at the time of Final Plat, or at such later time as the Town requests, all utility easements within and offsite of the Properties necessary to provide for the location of water and wastewater distribution, collection and transmission lines and related facilities.

7. Zoning and Development.

a. The Owners hereby consent to the zoning of the Properties as Planned Development (PD), as defined by Code § 10.2.5(D). The Owners acknowledge that concept plans and the number of units proposed for the Properties to date are neither approved nor guaranteed to be approved through the annexation process. Many different factors will impact the ability of the Properties to be developed, including without

limitation undermining, geological constraints, landforms, drainage ways and other constraints, whether man-made or naturally occurring.

b. The development of the Properties shall be in accordance with this Agreement, the Development Agreement, Town ordinances and regulations and other applicable law.

8. Detention Pond. The Developer shall, at its sole cost, either: design and construct an off-site detention pond on the 7 North Property; or design and construct one or more on-site detention ponds on one of the Properties. All detention ponds shall be designed and constructed in compliance with all applicable law, and shall be constructed prior to application for any building permit for any of the Properties. Notwithstanding the foregoing, the Developer reserves the right to develop the Properties in one or more phases and the timing of construction of an off-site or one or more on-site detention ponds shall be set forth in the Development Agreement for the Properties.

9. Neighborhood Park Fee-in-Lieu. In lieu of dedicating land for a neighborhood park, the Developer shall pay the Town \$1,518,975.08 prior to the application for any building permit for a new residential dwelling unit on the Properties. No further land dedication for neighborhood parks or fee in lieu will be required unless the total residential dwelling unit count exceeds 539 units. The Town acknowledges the requirements for neighborhood parks or fee-in-lieu have previously been satisfied as it relates to Parkdale Filing Nos. 1-3 and the "Parkdale Preliminary Plat #3 (Masters Property)".

10. Open Space Fee-in-Lieu. In lieu of dedicating additional open space for future filings, the Developer shall pay the Town \$532,576.56 prior to the application for any building permit for a new residential dwelling unit on the Properties. No further fee in lieu for open space will be required unless the total residential dwelling unit count exceeds 539 units. The Town acknowledges the requirements for open space or fee-in-lieu have previously been satisfied as it relates to Parkdale Filing Nos. 1-3 and the "Parkdale Preliminary Plat #3 (Masters Property)".

11. Water Line. Prior to the issuance of any building permit for a new residential dwelling on the Properties, the Developer shall install a 12" water line connection to the existing water system in the Compass Subdivision, in compliance with the Town's Water Master Plan dated August 2020 and all other applicable Town regulations. Notwithstanding the foregoing, the Developer reserves the right to develop the Properties in one or more phases and the timing of installation of a 12" water line connection to the existing water system in the Compass Subdivision shall be set forth in the Development Agreement for the Properties.

12. Vested Rights. Upon annexation, the Owners waive any prior vested property rights that may have been acquired in Boulder County.

13. Authority of the Town. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of the Town or its inhabitants.

a. The Owners acknowledge that the annexation and subsequent zoning of the Properties is subject to the legislative discretion of the Board of Trustees of the Town and the terms of this Agreement. No assurances of annexation or zoning outside of the terms of this Agreement have been made or relied upon by the Owners.

b. In the event that the Town's Board of Trustees, in the exercise of its legislative discretion, does not take any action with respect to the Properties herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the withdrawal of the petition for annexation by the Owners prior to the adoption of the annexation ordinance, or disconnection from the Town in accordance with state law, as appropriate.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Owners, their successors in interest, their permitted assigns, and their legal representatives, including all developers, purchasers and subsequent owners of the Properties, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Boulder County, Colorado, at the Owners' expense.

15. Indemnification. The Owners agree to indemnify and hold harmless the Town and the Town's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorney's fees and court costs, which arise out of or are in any manner connected with the annexation of the Properties, or with any other annexation or other action determined necessary or desirable by the Town in order to effectuate the annexation of the Properties, or which are in any manner connected with the Town's enforcement of this Agreement. The Owners further agree to investigate, handle, respond to, and to provide defense for and defend against or at the Town's option to pay the attorney's fees for defense counsel of the Town's choice for, any such liability, claims, or demands. The Owners' liability under this Section shall be joint and several.

16. Termination. If the zoning as set forth herein is not approved by the Town, or if the annexation of the Properties is not completed, then this Agreement shall be null and void and of no force and effect whatsoever.

17. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

b. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent prepaid, first-class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

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

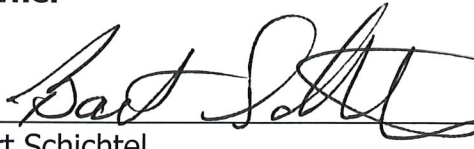
g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

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

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

Owner


Bart Schichtel

State of Colorado)
County of Boulder) ss.
)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 27th day of June, 2022, by Bart Schichtel.

My commission expires: October 12, 2022

(SEAL)


Notary Public



Exhibit A
Legal Description

ERIE GATEWAY SOUTH ANNEXATION NO. 9 TO THE TOWN OF ERIE

05.25.2022

A PARCEL OF LAND LOCATED IN THE NORTH 1/2 OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 36 BEING S 89°00'36" W AND MONUMENTED AS FOLLOWS:

-SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 36 BEING A FOUND 2.5" ALUMINUM CAP, RLS 4846,

-CENTER 1/4 CORNER OF SECTION 36 BEING A FOUND 2.5" ALUMINUM CAP, RLS 4846,

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 36, SAID POINT ALSO BEING ON THE NORTHERLY LINE OF ERIE GATEWAY SOUTH ANNEXATION NO. 2, TOWN OF ERIE ORDINANCE NO. 34-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573284;

THENCE ALONG THE NORTHERLY LINE OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 2, TOWN OF ERIE ORDINANCE NO. 34-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573284 THE FOLLOWING TWO (2) COURSES:

1) S 89°00'36" W A DISTANCE OF 1341.46 FEET;

2) N 89°56'15" W A DISTANCE OF 1319.94 FEET TO A POINT ON THE EASTERLY LINE OF ERIE GATEWAY SOUTH ANNEXATION NO. 3, TOWN OF ERIE ORDINANCE NO. 35-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573286;

THENCE N 00°04'29" E ALONG SAID EASTERLY LINE OF ERIE GATEWAY SOUTH ANNEXATION NO. 3, TOWN OF ERIE ORDINANCE NO. 35-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573286 AND THE EASTERLY LINE OF ERIE GATEWAY SOUTH ANNEXATION NO. 4, TOWN OF ERIE ORDINANCE NO. 36-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573288 A DISTANCE OF 1345.89 FEET TO THE NORTHEAST CORNER OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 4, TOWN OF ERIE ORDINANCE NO. 36-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573288, SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 36;

THENCE S 89°58'43" E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID NORTHWEST 1/4 OF SECTION 36 A DISTANCE OF 1332.41 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 36, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF TRACT R-4 OF A PLAT OF SURVEY RECORDED AT RECEPTION NO. 90807363;

THENCE N 00°00'45" W ALONG THE WESTERLY LINE OF SAID TRACT R-4 A DISTANCE OF 659.63 FEET TO THE SOUTHWEST CORNER OF DONLEY ANNEXATION, TOWN OF ERIE ORDINANCE NO. 658, RECORDED ON 6/20/2000 AT RN: 2054309;

THENCE ALONG THE SOUTHERLY AND EASTERLY LINE OF SAID DONLEY ANNEXATION, TOWN OF ERIE ORDINANCE NO. 658, RECORDED ON 6/20/2000 AT RN: 2054309 THE FOLLOWING

THREE (3) COURSES:

- 1) N 89°56'07" E A DISTANCE OF 659.86 FEET;
- 2) N 89°56'49" E A DISTANCE OF 660.11 FEET;
- 3) N 00°01'24" W A DISTANCE OF 634.63 FEET TO A POINT ON THE SOUTHERLY LINE OF ARAPAHOE ROAD ANNEXATION NO. 2, TOWN OF ERIE ORDINANCE NO. 551, RECORDED ON 9/4/1997 AT RN: 1727898;

THENCE S 89°57'39" E ALONG SAID SOUTHERLY LINE A DISTANCE OF 659.27 FEET TO A POINT ON THE WESTERLY LINE OF ZAHN ANNEXATION, TOWN OF ERIE ORDINANCE NO. 482, RECORDED ON 3/17/1997 AT RN: 1683819;

THENCE S 00°02'56" E ALONG SAID WESTERLY LINE A DISTANCE OF 1295.67 FEET TO THE NORTHEAST CORNER OF ERIE GATEWAY SOUTH ANNEXATION NO. 1, TOWN OF ERIE ORDINANCE NO. 33-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573282;

THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 1, TOWN OF ERIE ORDINANCE NO. 33-2016, SERIES 2016, RECORDED ON 2/3/2017 AT RN: 3573282 THE FOLLOWING TWO (2) COURSES:

- 1) S 89°59'59" W A DISTANCE OF 659.84 FEET;
- 2) S 00°18'01" E A DISTANCE OF 1323.17 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 5,288,656 SQUARE FEET, OR 121.4108 ACRES MORE OR LESS.