



**SUMMERFIELD  
ANNEXATION AGREEMENT**

**THIS ANNEXATION AGREEMENT** ("Agreement") is made and entered into this 8<sup>th</sup> day of January, 2013, by and between Section 4 Investors, LLC, a Colorado limited liability company, 2500 Arapahoe Avenue, Suite 220, Boulder, Colorado 80302, hereinafter referred to as the "Owner," and the Town of Erie, a municipal corporation of the State of Colorado, hereinafter referred to as "Erie" or "Town".

**WITNESSETH:**

**WHEREAS**, the Owner desires to annex to Erie the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein and known as Summerfield, and made a part hereof (such property is hereinafter referred to as the "Property"); and

**WHEREAS**, Owner has executed a petition to annex the Property ("Annexation Petition"), a copy of which petition is attached hereto as Exhibit "B" and is incorporated herein; and

**WHEREAS**, it is to the mutual benefit of the parties hereto to enter into the following Agreement; and

**WHEREAS**, Owner acknowledges that upon annexation the Property will be subject to all ordinances, resolutions, and other regulations of the Town of Erie, as they may be amended from time to time; and

**WHEREAS**, Owner acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-way and easements, parks and open space, utility facilities and improvements to Erie as contemplated in this Agreement are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation; and

**WHEREAS**, Owner desires to develop the Property as a master planned residential community, a portion of which is intended to be mixed use development, with public and private open spaces; and

**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:

- I. ANNEXATION AND ZONING.** The annexation of the Property shall be in conformance with the Colorado Municipal Annexation Act of 1965, as amended, and with the Town of Erie Municipal Code (hereinafter "Code" or "Municipal Code") and with applicable Town of Erie codes and regulations.

The Owner desires Planned Development ("PD") Zoning with a mix of Single-Family Detached (SFD), Single-Family Attached (SFA), Multi-Family (MF), and Mixed-Use (MU)

planning areas, as authorized by Title 10, of the Code. Owner acknowledges and accepts that no warranty, guarantee or promise is made on the part of the Town to so zone the Property as PD Zoning. Owner acknowledge and understand that the Town Board of Trustees determines what is an appropriate zoning for the Property, and the desired zoning as set forth herein does not in any way bind the Town Board of Trustees to adopt the zoning for the Property. The Owner states that granting of such PD zoning by the Town is a condition to annex the Property. Owner shall take all action necessary to permit zoning by the Town of Erie of the annexed area within the time prescribed by state statutes. In the event such PD zoning as requested by the Owner is not granted by the Town or the final wording of this Annexation Agreement is not acceptable to Owner, the Application for Annexation shall be withdrawn by Owner unless otherwise agreed to by Owner in writing and the Property shall be de-annexed. In the event the Town has not adopted the annexation ordinance for the annexation of the Property on or before February 20, 2013, the Application for Annexation shall be withdrawn by Owner unless otherwise agreed to by Owner in writing.

- A. **Land Use.** All residential and non-residential construction will be subject to the types and intensities of land use as permitted pursuant to the Municipal Code, this Agreement and the PD-DP Plan.

The parties recognize that the granting of PD zoning (“Zoning”) by the Town is a condition to the annexation of the Property. Owner and Town shall take all action necessary to permit zoning of the annexed Property within the time prescribed by state statutes. In addition to those uses permitted under the Zoning, Owner shall be permitted to continue those uses of the Property in existence at the time of annexation and permitted under the Agricultural Zone District pursuant to the Weld County Zoning Ordinance, as in effect on the date of the Town’s approval of this Agreement, which uses shall be recognized and grandfathered uses by right of the Property until such time as commencement of development of the Property.

- B. **PD Plan.** As stated herein above, Owner acknowledges and accepts that no warranty, guarantee or promise is made on the part of the Town to so zone the Property as PD Zoning. Concurrent with the annexation, the Owner has submitted a Planned Development – Development Plan (“PD-DP”) and attached as Exhibit “E”, for the Property which will describe the development of the Property in the event the Property is zoned PD as requested by the Owner. The PD-DP will define and illustrate allowed densities and uses, setbacks, landscape, and design guidelines. In the event the PD Zoning is not granted by the Town, the PD-DP attached as Exhibit “E” shall be null and void.

Erie and the Owner recognize that property development is subject to market conditions. To assure that the development of the Property proceeds in an orderly manner, Owner will phase the development. A preliminary and final plat for the Property will be provided for each phase during the subdivision process, as required by the Code. For each attached housing or commercial phase, a site plan shall be submitted to Erie for review and approval, as per the requirements of the Code. The site plan shall be in general conformance with the PD-DP for the Property, as may be



approved and/or amended by the Board of Trustees. Both Erie and Owner acknowledge and understand that pursuant to the terms of this Agreement, the Zoning of the Property is vested for a 30 year period. In the event of any conflict between the Town Code, ordinances, policies, including water or sewer, the PD-DP shall be determinative.

Development under the PD-DP shall not commence until Final Plats or Site plans are approved by the Town. Any and all future development on the Property shall generally conform to and be subject to the PD-DP and all applicable Town Code requirements, Town regulations, and ordinances not addressed by the PD-DP in effect at the time of the request for development of the Property.

**II. ANNEXATION MAP FOR PROPERTY.** The 2005 Erie Comprehensive Plan encompasses the entire Property. The "Annexation Map" incorporated and adopted as a portion of the ordinance annexing the Property and attached hereto as Exhibit "C" complies with the requirements of C.R.S. 31-12-105 (1)(e).

**III. LAND DEDICATION.** The dedication of parks and open space, public easements for utilities, rights-of-way for streets and other public ways and dedications for other public purposes shall be by Special Warranty Deed or appropriate instrument of conveyance acceptable to the Town. All such dedications shall be free and clear of any liens and encumbrances, and shall be provided along with title insurance in an amount determined by the Town. Such dedications as may be required by the Town shall occur immediately upon request of the Town except that internal rights-of-way shall be dedicated at the time of subdivision platting, unless the Town specifies another time. The Town and the Owner agree that such dedications are directly related to and generated by development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

**A. Roads and Utility Easements.** The Owner shall dedicate rights-of-way for all roads and utility easements to Erie at the time of platting of adjacent property or as required by a Traffic Impact Analysis. 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. The Owner shall retain the right to install and maintain reasonable landscape and hardscape improvements within all rights-of-way and utility easements subject to the approval of the Town and so long as such improvements do not interfere with the use of the rights-of-way and utility easements. All such improvements shall conform to Town Code requirements, regulations and ordinances. The Owner shall retain the right to make reasonable requirements for replacement of landscape, grading and hardscape that may be damaged within easements and rights-of-way. **ALL UTILITIES WILL BE PLACED UNDERGROUND.**

**IV. AVAILABILITY OF SERVICES.** Erie agrees to make available to the Property all of the usual municipal services in accordance with the ordinances and policies of the Town, which services include, but are not limited to, police protection and water and sewer services. Owner acknowledges that Town services do not include, as of the date of the execution of

this Agreement, fire protection or emergency medical services, but the Property is presently included within the boundaries of and is entitled to receive such services from the Mountain View Fire Protection District.

Any and all obligations of the Town for water, sewer, and drainage improvements shall be the sole obligation of the Town's water and sewer enterprises and as such, shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the Town within the meaning of any constitutional or statutory limitation. Any and all obligations of the Town for public improvements other than water, sewer, and storm drainage improvements shall be subject to annual appropriation by the Town.

V. **WATER SERVICE.** Water service to the Property shall be provided by the Town. If the Property is not already in the Northern Colorado Water Conservancy District and/or the Municipal Sub district, the Owner agrees to include the Property in said District(s) and to the payment of any fees and taxes levied by the District(s) as a condition of said inclusion prior to receiving water service from Erie. In addition, the Owner shall exclude the Property from the Left Hand Water District if the Property is currently within said District prior to receiving water service from Erie. Owner hereby acknowledges its receipt of a copy of Municipal Code, Titles 2 and 8, as amended, concerning Town policy with respect to obtaining water service from the Town, the dedication of water rights to the Town in connection with annexations and the extension of water lines and pumping facilities to the Property. Owner agrees to comply with said Municipal Code, Titles 2 and 8, and with any amendments thereto, including any applicable amendments adopted subsequent to the annexation of the Property. The Town and the Owner agree that such dedications are directly related to and generated by development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

A. **Extension of Water Services.** The extension of water mains or trunk lines shall be in accordance with the Municipal Code, Section 8-1-16. Owner shall install at its sole cost and expense, subject to reimbursement as described herein, all the water mains, trunk lines, pumping facilities and appurtenances necessary to provide service from the Town's system to the Property as described herein. These extensions may include the over sizing of lines and pumping facilities for future development of adjacent property. Owner shall install, at its sole cost and expense, subject to future metropolitan district reimbursement, all the water lines, fire hydrants and appurtenances within the Property. Water lines lying within the dedicated rights-of-way shall be dedicated to Erie after construction. Any reimbursements to the Owner for over sizing of water lines will be in conformance with this document and may be more fully described in a separate Development Agreement.

B. **Water Service Availability.** This Agreement is not a commitment to provide water service to the Property. Erie does not warrant the availability of water service to the Owner at a particular time for any phase of development. A determination of water service availability by Erie shall be made by a water system analysis with the first submittal of a master plan or preliminary plat, whichever comes first. 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, and, in addition, the vested rights period indicated in Section XI.O.1 shall be extended for the period of time elapsed until such time as water service and water taps are available.

- C. **Water Tap Fees and Water Dedication Fees.** Water tap and dedication fees shall be the existing Town water tap and dedication fees at the time which the applicant requests or is required to obtain a water tap. Water tap and dedication fees shall be paid when; (a) a building permit for a structure is requested from the Town; or (b) upon issuance of a landscape irrigation tap; or (c) as outlined in a subsequent Development Agreements.
- D. **Water Rights Dedication.** Owner represents to the Town that, to the current knowledge of Owner, the tributary and non-tributary water rights listed on Exhibit "D", attached hereto and incorporated herein by this reference, constitute all of the water rights appurtenant to the Property. In accordance with the Municipal Code, Title 8, as amended and existing Town policy, the Town shall have the right to purchase historical surface water rights from the land at fair market value. In addition, the Owner shall convey to the Town at the time of annexation all non-tributary and not non-tributary groundwater underlying the land to be served. Said ground water shall be in addition to any water dedication hereunder, and no credit shall be given to said water for dedication purposes in accordance with Municipal Code. Transfer of said water rights shall be accomplished prior to the recording of the annexation with the Weld County Clerk and Recorder.

VI. **SEWER SERVICE.** Sewer service to the Property shall be provided by the Town. Owner hereby acknowledges receipt of a copy of the Municipal Code, Title 8, concerning Town policy with respect to obtaining sewer service from the Town and the extension of sewer lines to the Property. Owner agrees to comply with the Municipal Code, Title 8 and with any amendments thereto, including any applicable amendments adopted subsequent to the annexation of the subject Property. The Town and the Owner agree that dedications required by the Municipal Code, Title 8 are directly related to and generated by development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

- A. **Extension of Sewer Services.** The extension of sewer mains or trunk lines shall be in accordance with the Municipal Code, Title 8. Owner shall install at his sole cost and expense, subject to reimbursement as described herein, all the sewer mains, trunk lines, sewer lift stations, and appurtenant facilities necessary to connect to the Town's system to serve this property as described herein. These line extensions may include the over sizing of lines for future development of adjacent property. Sewer lines lying within dedicated rights-of-way shall be dedicated to Erie after construction. Any reimbursements to the Owner for over sizing of sewer lines, sewer lift stations and appurtenant facilities will be in conformance with this document and may be more fully described in a separate Development Agreement.

- B. **Sewer Service Availability.** Erie does not warrant the availability of sewer service to the Owner for any phase of development. A determination of sewer service availability by Erie shall be made by a sewer system analysis at the time of the first submittal of a master plan or preliminary plat, whichever comes first. In the event that the Town determines that it has insufficient sewer service availability, no sewer taps shall be issued until such time as there is sewer service availability, and in addition, the vested rights period indicated in Section XI.O.1 shall be extended for the period of time elapsed until such time as sewer service and sewer taps is available.
  - C. **Sewer Tap Fees.** Sewer tap fees shall be the existing Town fees at the time which applicant requests or is required to obtain a sewer tap. Sewer tap fees shall be paid when a building permit for a structure is requested from the Town.
- VII. **STREETS, TRAILS AND PUBLIC RIGHTS-OF-WAY.** All public streets shall be constructed to the Town's Standards and Specifications for Design and Construction of Public Improvements ("Standards and Specifications") or as amended in Section XII of this Agreement. Trails shall be constructed as an integral feature of the development. Town maintained trails shall be constructed in accordance with the Town's Standards and Specifications. All public streets, trails and rights-of-way shall be dedicated to Erie. Owner will install, at Owner's expense, street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements. The total cost of street light installation shall be the Owner's obligation. The type of street lights shall be chosen by Owner, with approval from Erie, which approval shall not be unreasonably withheld. Owner shall provide a two (2) year guarantee for all improvements from the time of construction acceptance by Erie.
- VIII. **CONFORMANCE WITH TOWN REGULATIONS.** Owner agrees that the design, improvement, construction, development, and use of the Property shall be in general conformance with the PD-DP, which shall become part of the Town Zoning Codes, ordinances and resolutions, and the Town's "Standards and Specifications" including, without limitation, those pertaining to subdivision, zoning, streets, storm drainage, utilities, flood control, and parks for the Summerfield project. The Town and Owner agree that in the event of any conflict between Municipal Code and this Agreement or the PD Plan, as amended, the PD-DP shall be determinative.
- IX. **PUBLIC IMPROVEMENTS.**
- A. **Warranties and Guarantees.** Owner agrees to design, construct and install in accordance with Town approved plans, certain public improvements including but not limited to streets, curb, gutter, sidewalks, storm sewer lines, storm drainage improvements, sanitary sewer lines, water lines, trails, landscaping and park improvements within or adjacent to the Property. Owner agrees to warrant and guarantee construction of all required improvements for a period of 2 years from construction acceptance by the Town and to dedicate to the Town any or all other

required public improvements at the time of construction except in the case of improvements completed on the property by the Town. Owner agrees to enter into an agreement pertaining to such improvements and other matters prior to any development of the Property.

Owner agrees to provide Improvement Guarantees as required by the Municipal Code as in effect at the time of approval of subdivision of the Property, in the form of a Letter of Credit as set forth in Exhibit "G" attached hereto and incorporated by this reference. Such Improvement Guarantee can be posted by the Owner, its assigns, or a metropolitan district as part of its service plan. For any public improvement constructed or financed by the Summerfield Metropolitan Districts ("District"), the Town agrees to enter into an Inter-Governmental Agreement ("IGA") with the District requiring the District to guarantee the completion of each public improvement it starts. Town shall reduce the Improvement Guarantee by category of like improvements at the time each category of improvements are complete.

- B. Dispute Resolution.** In the event that Owner has submitted a request for final acceptance for any or all portion(s) of the public improvements and such final acceptance has not been granted within 90 days by the appropriate department within the Town or an agreement for work needed to achieve final acceptance has not been agreed to by Owner, the Town agrees that such acceptance shall then be determined by the Town Administrator. If the Town Administrator is unable to resolve the outstanding issues with Owner and enter into an agreement with Owner for work needed in order to grant such final acceptance, and such agreement is not agreed upon within the following 30 business days, the Owner or its assigns shall have the right to submit the disputed Final Acceptance to binding arbitration, where the Town and the Owner shall each select an independent professional engineer or architect experienced in the disputed subject and the two professionals shall select a third professional who shall either grant final acceptance or determine the scope of work required for final acceptance and the time period for completion of the work required. If such improvements are then not completed by the Owner within the required time limits, the Town may exercise its right to call and cash the guarantee for the amount of funds necessary for the Town to complete the work required for final acceptance. Following the Town's use of the guarantee funds to complete the work required for final acceptance, the balance of the guarantee earmarked to complete the work required for final acceptance as designated in arbitration, beyond the amount needed specifically for the work required for final acceptance of such work, if any, will be returned to the Owner in accordance with the terms of the Municipal Code. For any guarantee called and cashed by the Town to complete public improvements, the Owner shall remain obligated for the actual cost of the public improvement in the event the guarantee funds are insufficient to complete the work required for final acceptance. Following completion of the work required for final acceptance, and following full payment thereof by Owner, Owner will be released from any further obligation for such improvement(s). Any work required to be done by the Town hereunder must be completed by the Town in a prompt and efficient manner. For any improvements repaired or replaced to complete the

Town's warranty requirement that include an extended contractor warranty, Owner will transfer such contractor warranty to the Town upon final acceptance of improvements by the Town.

**X. EXCLUSIVITY OF ANNEXATION PETITION.** Owner agrees to not sign any other petition for annexation of the Property or any petition for an annexation election relating to the Property, unless this Annexation Agreement is not approved on or before February 20, 2013. In such event the Annexation Petition shall be withdrawn by the Owner and the Owner will not have any obligation of Exclusivity to the Town unless otherwise agreed to by Owner in writing.

**XI. SPECIAL PROVISIONS.** Where applicable the following special provisions amend and supersede any previous provisions regarding the same subject matter.

**A. Zoning.** Concurrent with this Annexation, the Town's Board of Trustees will review and consider the Summerfield PD-DP ("Zoning").

**1. Density.** Owner and Erie acknowledge that the maximum number of residential dwelling units that may be constructed on the Property is two thousand two hundred (2,200) dwelling units, which may be platted and constructed on the Property in accordance with the PD-DP and the Code.

**2. Age Targeted Housing.** The Owner may elect to develop significant portions of the Property for age restricted or age targeted home buyers. If the Owner, at the time of the Preliminary Plat or Plats, elects to construct 50% or more of the maximum number of dwelling units permitted on the Property, as an age restricted or age targeted community then a) the school site may not be required, if concurred to in writing by the St. Vrain Valley School District ("SVVSD"), and may become a residential planning area, and b) the Neighborhood Park located within the age targeted portion of the Property may have improvements designed to be appropriate for an age targeted community.

**B. Development Phasing/Processing.**

**1. Phasing.** Owner and Erie acknowledge that the Property is intended to be developed in phases and that all public and private improvements will be constructed at such time as adjacent lands are developed per the PD-DP.

**C. Off-Site Improvements.** The specific off-site improvements to be constructed by Owner are set forth in this Agreement.

**D. Oil and Gas Well Sites.** All existing and future oil and gas well sites/facilities on the Property shall be screened and integrated into open space, trails, roadways, and/or park areas within the Property in accordance with the PD-DP. Setbacks to existing and future oil and gas well sites/facilities shall be 200 feet from a well head



and any oil and gas facilities to a property line in accordance with the existing Agreement for Compatible Development and Surface Use Agreements on the property. School Buildings will be setback a minimum of 350' from wells and Oil and Gas facilities.

- E. Waterline Installation and Over sizing.** In the event that any water lines or facilities are extended or oversized within the Property or off site which serve other properties (the "Benefited Properties"), the Town agrees to: 1) Provide reimbursement for the proportionate share of all waterline costs as described herein serving Benefited Properties until all such costs have been returned to Owner, and 2) Enter into one or more reimbursement agreements with the owners of such Benefited Properties causing such owners to reimburse any incremental extension, proportionate share of extension, or over sizing costs, if it has not been fully reimbursed by the Town, or to the Town, if it has reimbursed the Owner, prior to recordation of a final plat or approval of a site plan for development of the Benefited Properties. The reimbursements shall be required to be paid by the owner(s) of such Benefited Properties at such time as the first final plat is approved for the benefit of the Benefited Property. At the time such reimbursement is collected from Benefited Properties, payment shall be made first to the Owner until fully reimbursed for such extensions, proportionate use by Benefited Properties or over sizing and thereafter to the Town to restore fund balances from revenues reimbursed to Owner. "Over sizing" shall mean any requirement by the Town to install a waterline, which is greater than 12 inches. "Incremental Costs" shall mean the cost difference of pipe and any related water system improvements. The Town agrees to pay or reimburse waterline costs to Owner as described in this Agreement. It is the express intention of this Agreement that the Owner shall be responsible for only its proportional share of any off site or on site extensions or over sizing and all other related costs. All costs funded by the owner above the Owner's proportional share of such improvements, shall be reimbursable as described herein.
1. **Installation Obligations.** Owner shall install, at its sole cost and expense subject to provisions of this Agreement, all the waterlines, pump stations, fire hydrants and other related facilities within the Property to serve the Property subject to the over sizing and reimbursement contributions as provided for herein. Waterlines lying within the dedicated rights-of-way or Town accepted easements shall be dedicated to the Town upon the Town's construction acceptance thereof.
  2. **Off-Site.**
    - a) Simultaneously with development of the first residential phase of the Property, unless previously constructed by others, the Owner shall install a 12 inch waterline extension within the right-of-way of Highway 52 from the existing 12 inch water main located at the intersection of Weld County Road 3 to the NW corner of the Property. This waterline may benefit other properties and shall be subject to reimbursement from Benefited Properties connecting to this line.

b) The Town agrees to: 1) Enter into an IGA with Left Hand Water District (“Left Hand”) to allow the Owner to connect to the existing 24” Left Hand water main in Colorado Highway 52. This metered connection shall provide a temporary pressure sensitive secondary water supply to the Property until such time as a 12 inch water main adjacent to the Property within or adjacent to WCR 7 ROW has been installed by the Town or others. Or 2) The Town will construct, at its expense, a 12” waterline within or adjacent to the WCR 7 ROW from Erie Parkway to Colorado Highway 52 or a point on WCR 7 that connects to an Owner installed internal 12 inch waterline approximately ½ mile South of Colorado Highway 52. The Owner will notify the Town a minimum of 9 months prior to requiring water. The Town will design the water line, competitively bid the project, and provide the bid results to the Owner. The Town, at its expense, will obtain all easements within a timely manner, however if easements cannot be obtained to meet the construction schedule of the Owner, or the easement requires condemnation, the Town will not be held libel for any costs due to delay.

c) A single internal 12 inch waterline within the Property shall be constructed by Owner to connect the 12 inch waterline constructed by the Town in WCR7 conforming to the Owner’s PD Plan and the most economical route to provide a permanent secondary water source to the Property. At the time of such connection, the secondary water source, if provided by Left Hand, will be abandoned.

3. **Future Waterline Improvements.** The Town and Owner agree that there shall not be any additional offsite or on site obligations to provide water service, looping or system improvements other than those described in Section XI.E of this Agreement unless mutually agreeable.

F. **Non-Potable Water.** The Town and Owner desire to utilize non-potable or raw water for the irrigation of parks, open space, and major street rights-of-ways.

1. **Irrigated Areas.** Concurrent with the issuance of the 400th building permit within the Property, Owner shall begin construction of a non-potable irrigation system within the Property, which shall serve parks, open space, and arterial and collector street rights-of-way. Until such system is operational, potable water may be temporarily used for landscape areas and any tap fees paid to the Town will be credited towards the reuse water rights payments. Potable water shall be used for the irrigation of residential lots and individual pocket parks which are less than one acre in size if they are not part of a larger open space or park area. The Owner shall be required to purchase only those water shares described below for the sodded areas, shrub areas, trees, and flower beds which will be shown on a non-potable irrigation plan. All native, drought tolerant landscaped areas using temporary irrigation shall be established utilizing leased reuse or leased potable water. The total



estimated demand is up to 72 acre feet per year of water. Owner shall pay the Town \$600,000 in three installments of \$200,000 each at the issuance of the 400<sup>th</sup> permit, the 800<sup>th</sup> permit, and the 1200<sup>th</sup> permit for all reuse water rights, tap fees, or any other fees associated with such reuse water except current usage fees. The Town shall convey to Owner permanent reuse water credit of no less than 72 acre feet as described below. In the event the Owner decides to purchase additional re use water shares, the Town agrees to sell such shares, if available, at the then current rate. Owner shall, at its expense, construct an eight inch re-use line from the existing 16 inch reuse line at Highway 52 between WCR1 and WCR 3 to the Property. In the event that other Benefited Properties connect or extend this re-use line, subject to approval by the Town and Owner of such usage, they shall reimburse the Owner their proportionate share of such off-site or on site costs as described herein. The Town may request the eight inch re-use line be oversized at the Towns costs difference.

2. **Non-Potable Irrigation Plan.** Owner shall submit to the Town a non-potable irrigation plan (“Non-Potable Irrigation Plan”) with each Final Plat, which shall identify the areas to be irrigated with the non-potable irrigation system, the types of vegetation to be irrigated and the facilities and control devices necessary to provide and control such water.
3. **Non-Potable Water Sources.** Water to be used for irrigation may include the following sources, subject to the terms and limitations within this Agreement. Any raw water acquired by Owner shall reduce Owner’s obligation to purchase, and the Town’s obligation to reserve, re-use water.
  - a. **Leyner-Cottonwood Consolidated Ditch Company shares (“Leyner-Cottonwood”).** This water source shall be used as a supplement to raw CBT water and the Town’s re-use water system. For purposes of this Agreement, Owner shall receive a credit of 0.21 acre feet per share of Leyner-Cottonwood, which is the dry year yield of said shares.
  - b. **Erie Coal Creek Reservoir and Ditch Company shares (“ECC”).** This water source shall be used as a supplement to raw CBT water and the Town’s re-use water system. For purposes of this Agreement, Owner shall receive a credit of 0.56 acre feet per share, which is the dry year yield of said shares.
  - c. **Other Native Water.** Lower Boulder, Community Ditch, FRICO or other native waters may be dedicated for the irrigation of sodded areas or as temporary irrigation for the establishment of native seeded areas. The associated yield for these waters shall be determined prior to dedication.



- d. **Re-use Water.** The Town will have reusable consumptive use credits available at the Town's wastewater treatment plant in the future. When re-use credits become available, they shall be made available to Owner at a cost described in F.1 above.
  - e. **Potable Water.** Owner shall use potable water for the irrigation of individual pocket parks which are less than one acre in size that are not part of a larger open space or park area, any areas which cannot be connected to the non-potable irrigation system in a cost effective manner and/or as a supplement to the non-potable water sources set forth above. The Owner shall pay water dedication fees for potable water used for irrigation in accordance with the Municipal Code.
  - f. **Raw CBT Units.** In the event the water sources discussed above are not available, raw CBT water for both establishment and temporary irrigation shall be leased by Town to Owner at the non-potable water rate in effect at the time of use for a period not to exceed two (2) years. Owner can elect to dedicate CBT Units to the Town, in which case raw CBT water for permanent irrigation will be made available in an amount of 0.5 acre feet/CBT Unit at the non-potable water rate in effect at the time of use.
4. **Water Dedications.** Any water shares conveyed by Owner to the Town as described above shall be conveyed by Special Warranty Deed, with an endorsement of the original share certificate and a stock assignment satisfactory to the applicable ditch company. Owner also hereby agrees to execute any additional documentation which may be necessary for transfer of said water rights.
5. **Water Court Proceedings.** The parties recognize that water court proceedings may be required for use of the raw water sources set forth above. The Town and Owner agree to cooperate in an effort to use the non-potable water sources in a manner which will not require water court proceedings. However, should water court proceedings be required, Owner shall be responsible for all costs of said proceedings and for any of the additional credits for the Leyner-Cottonwood and ECC shares required by the water court.
6. **State Engineer and Ditch Company Approvals.** Owner shall be solely responsible for acquiring all necessary approvals from the Office of the State Engineer and the ditch companies for use of Leyner-Cottonwood and ECC shares on the Property. The Town will cooperate with Owner in acquiring said approvals, at no cost to the Town.
7. **Phased Acquisition of Water Rights.** The parties agree that the acquisition of water rights for non-potable irrigation may be acquired on an as-needed

basis for irrigation within the Property.

- 8. **Irrigation Water Availability.** In the event that re-use water is not available when the Property is constructed, the Town will supply potable water in lieu of non-potable water for the Property on a temporary basis at potable water rates.
- 9. **Re-use Water Rates.** The parties recognize that the Town will charge re-use water rates for raw water used on the Property in accordance with the Municipal Code.

G. **Sewer Installation and Over sizing.** In the event that any sewer lines or facilities within the Property are extended or oversized within the Property or off site and serve other properties (the “Benefited Properties”), the Town agrees to provide reimbursement to the Owner until such Town or Benefited Properties’ proportionate use of such extension and or over sizing and or condemnation costs have been returned to Owner. The Town agrees to enter into reimbursement agreements with the owners of such Sewer Benefited Properties requiring such owners to reimburse any proportionate use of such extension, or over sizing costs, if not fully reimbursed, or the Town, if it has reimbursed the Owner, prior to recording the first final plat or approval of a site plan for development of the Sewer Benefited Properties, whichever is earlier. At the time such reimbursement is collected from Benefited Properties payment shall be made first to the Owner or its Assigns until fully reimbursed for such extensions or over sizing as described herein and thereafter to the Town to restore fund balances from tap fee revenues reimbursed to Owner. “Extension” shall mean any sewer line installed either on or off site that serves Benefited Properties or enhances the Town’s sewer system. “Over sizing” shall mean any requirement by the Town to install a sewer line which is greater than that which would otherwise be required to serve only the Property. “Incremental Costs” shall mean the cost difference of pipe and related facility over sizing. The Town agrees to reimburse Owner for all such over sizing or extension costs, all sewer main costs to Owner as contemplated herein. The Town will seek reimbursement from Sewer Benefited Properties or the owners of such Sewer Benefited Properties.

It is the express intention of this Agreement that the Owner shall be responsible for only its proportional share of any off site or on site extensions or over sizing and all related costs. All costs funded by the owner above the Owner’s proportional share of such improvements, on any advances used to fund such improvements, shall be reimbursable as described herein

- 1. **Installation Obligations.** Owner shall install, at its sole cost and expense subject to provisions of this Agreement, all the sewer lines and appurtenances located within the boundaries of the Property, subject to the over sizing and reimbursements provided for herein. Sewer lines lying within dedicated rights-of-way or Town approved easements shall be dedicated to the Town upon the Town’s construction acceptance thereof.

**2. Offsite Sewer Improvements.**

a) Western Phase Sewer Improvements. Simultaneously with development of the first residential phase of the Property, unless previously constructed by others, the Owner agrees to install a 30 inch gravity sewer line approximately 2 miles from the corner of Weld County Road 5 and State Highway 52 to the North Water Reclamation Facility. This sewer line will serve the Town sewer system and Benefited Properties. The Owner shall be responsible for 16.9% of the total costs of this sewer main and the Town shall reimburse the Owner for 83.1% of such costs. The Town will reimburse the Owner \$300,000 upon construction acceptance of the Western Phase Sewer Improvements. The Town will further reimburse the Owner in \$300,000 increments thereafter for every 100 building permits issued on the Property until the sewer line cost is reimbursed.

b) Eastern Phase Sewer Improvements. Simultaneously with development of the first residential phase of the Property, unless previously constructed by others, the Owner agrees to install a 24 inch gravity sewer line approximately 1 mile east from the corner of Weld County Road 5 and State Highway 52 to the corner of WCR 7. This sewer line will serve Benefited Properties and the Town sewer system. The Owner shall be responsible for 7.7% of the total costs of this sewer main and the Town shall reimburse the Owner for 92.3% of such costs. The Town will reimburse the Owner for the Eastern Phase Sewer Improvements, after the Western Phase Sewer Improvement has been reimbursed at the rate of \$300,000 upon construction acceptance of the Eastern Phase Sewer Improvements. The Town will further reimburse the Owner in \$300,000 increments thereafter for every 100 building permit issued on the Property until the sewer line cost is reimbursed.

c) The Owner and the Town agree that the Town will construct, or have constructed by others an extension of the 24 inch sewer main described above from the corner of Colorado Highway 52 and WCR 7 south within or adjacent to the WCR 7 and then East and South to the low point of the sewer basin. The Owner shall provide easements on the property for this sewer at no cost to the Town and if the Owner does not connect into this section of sewer the Owner shall have no obligation to construct or participate in the costs of such sewer main.

d) The Town agrees to allow commercial pad users within the Property to obtain temporary sewer service from the St. Vrain Sanitation District ("ST Vrain"), or a Weld County approved septic system if the Town's sewer mains are not in place to provide such service at the time of building permit.

e) In the event easements are required across other downstream properties to install the 24 inch sewer described herein. The Town agrees to assist Owner in obtaining such easements and rights-of-way. If required, the Town will



support condemnation. Any assistance the Town provides will be at the Town's expense.

3. **Future Sewer Line Improvements.** The Town and Owner agree that there shall not be any additional offsite or on site obligations to provide sewer service or system improvements not described in Section XI.G of this Agreement unless mutually agreeable.

**H. Storm Drainage Improvements.** Currently, none of the Property is included in a regional drainage authority.

1. **Criteria and Standards.** Owner shall meet all Town design criteria for drainage improvements within the Property, which improvements shall be set forth in a Phase II Drainage Report and Plan to be submitted and approved with each Preliminary Plat.
2. **On-Site.** In the event that constructed drainage facilities are oversized to benefit other properties during development of the Property by Owner, the Town agrees to enter into one or more reimbursement agreements with the owners of other properties benefiting from such over sizing, which shall allow Owner to be reimbursed for the incremental over sizing costs paid by Owner in the same format as described above for other utilities.. "Over sizing" for drainage purposes shall mean any requirement by the Town for any channel or other drainage facility within the Property to be a size greater than the size required to serve the Property. The Town will not include in the reimbursement the cost to convey historic flows through the Property. Owner will not be required to accept or accommodate more than historic flows from adjacent properties without a mutually acceptable reimbursement agreement between the Town, the adjacent owner and this Owner.
3. **Drainage Facilities.** Subject to the Town's approval, the Property will contain several water quality and storm water detention areas which Owner intends to incorporate within the open space and parks on the Property. This detention will ultimately release into the regional drainage basins in the area. Owner agrees that it will incorporate open, grass-lined channels where appropriate in place of concrete channels or underground piping.
4. **Off-Site Drainage Improvements.** The Owner shall release drainage from the Property at historic rates, which shall be mitigated prior to release from the Property. The Owner will provide a solution acceptable to the Town to return all discharges (all events, flood peaks, and volumes) to mimic existing hydrologic conditions or to safely channel flows to Boulder Creek, such that all drainage meets historic rates.
5. **Drainage Liability.** The Owner shall indemnify and hold the Town harmless from any liability the latter may have on account of any change in

the nature, direction, quantity and/or quality of historical drainage flow resulting from the development of this Property or from the construction of streets or storm sewers therein. In addition, the Owner agrees to reimburse the Town for any and all costs including, but not limited to, reasonable attorney's fees which the Town incurs in acquiring or condemning rights-of-way or easements which the Town is required to acquire or condemn or which the Town is held to have acquired or condemned, for drainage as a result of the development of the Property.

- I. **Off-Site Easements and Rights-of-Way.** In the event that Owner is unable to obtain off-site easements and rights-of-way which are necessary for the installation of water lines, raw water services, sanitary sewer services, storm drainage outfalls and roadways to serve the Property, the Town agrees to assist Owner in obtaining such easements and rights-of-way. If required, the Town will support condemnation. Any assistance the Town provides will be at the Town's expense.
  
- J. **Districts.** The Town acknowledges that the Owner intends to establish three or more metropolitan districts to service the Property ("Districts") for the purpose of financing, constructing, installing, acquiring and maintaining certain public improvements required for the development of the Property. The Districts can acquire property with its eminent domain powers with prior written permission of the Town. Any requirement of the Owner in this Agreement, including but not limited to the construction of improvements, reimbursement for improvements, letters of credit and the payment of fees, may be undertaken by the Districts, at the Owner's discretion, provided only that such activity is in accordance with the Municipal Code and a lawful activity of a special district under C.R.S. 32-1-101 et seq. Any reimbursements described herein for such improvements shall be payable to the entity which constructed such improvements. All offsite and major on site improvements will be constructed or financed by the Districts under the terms of their service plans.
  - 1. **Establishment.** Owner has submitted a Consolidated Service Plan for the Property to the Town for consideration pursuant to C.R.S. 32-1-101, et seq. The Board of Trustees shall hold a hearing on the submitted Consolidated Service Plan concurrent with the Annexation of the Property. The Districts will generally follow the Town's Ordinance regarding metropolitan districts. If the Metro District submittal made by the Owner is denied by the Town, the annexation of the Property by the Town will automatically become null and void.
  
- K. **Schools.** The Owner acknowledges and agrees to comply with the Intergovernmental Agreement ("IGA") dated June 8, 2011 between the Town of Erie and SVVSD, as the same may be amended from time to time.



1. **Elementary School Site.** Owner agrees to dedicate and deed to SVVSD the approximately 10-acre parcel identified in the PD-DP for an elementary school site in conformance with the terms and conditions of the IGA between Erie and the SVVSD. By mutual agreement between the Owner and SVVSD, the elementary school site may not be required if more than fifty percent (50%) of the Property is constructed as an age restricted community.
  
2. **School Cash-In-Lieu.** The dedication to the SVVSD of any portion of the 10-acre parcel identified above will create an equivalent number of dwelling unit credits under the IGA for the Owner for which no cash-in-lieu payment will be required.

**L. Public and Private Land Provisions.**

1. **Private Amenity Facilities.** Owner may construct one or more private amenity facilities on the Property. These facilities may include pools, clubhouses, a recreation center, parking lots, landscaping, etc., to be determined at the Owner's discretion at the time of Preliminary Plat or Site Plan. These facilities and related improvements shall be owned and maintained by the Districts and/or Home Owner's Association.
  
2. **Parks and Open Space.** The park and open space land dedications required will be in accordance with the PD-DP and as noted herein. The Town shall own the Neighborhood Parks in accordance with the Code and shall maintain the Neighborhood Parks and if applicable, any Town designated Spine Trails that run through the Property. Pocket parks, open space, and private amenity centers shall be owned and maintained by the Districts and/or Home Owners Association. Owner shall receive open space credit for oil and gas well sites, permanent water bodies, raw water storage ponds, detention ponds and water quality ponds so long as the ponds are organically graded into the adjacent open space in accordance with the PD-DP. Owner shall be allowed to continue to hunt geese on the Property in accordance with current Weld County Agricultural zone uses by right until development of the Property.
  - a. **Pocket Parks.** A total of eight (8) Pocket Parks shall be constructed on the Property distributed across the Property concurrent with adjacent development.
  
  - b. **Neighborhood Parks.** There will be two Neighborhood Parks dedicated on the Property in accordance with the PD-DP to be constructed by the Town. Such park usage shall be appropriate for the surrounding neighborhood and shall not have illuminated ball/recreational fields. The Town shall be responsible for construction of the Neighborhood Parks within the Property using the Park Impact Fees paid by the Homebuilders at the time of each



building permit within the Property which fees shall not be used for any other purpose. Any water storage and drainage facilities within the Neighborhood Park will be integrally designed in such park in accordance with the Code.

c. **Community Park.** The Town agrees the amount of acreage required for the Community Park shall be 25 acres. The Owner may dedicate 25 acres in an area acceptable to the Town which can include the area of the current eagles nest or may choose to pay Cash in Lieu of land for the community Park. If Cash in Lieu of lands, the fee shall be \$15,000 per acre, escalating at 3% per annum, until a total of 25 acres has been paid. Each fee in lieu payment shall be made at the time of each Final Plat shall be based on the number of dwelling units permitted by each Final Plat or Site Plan divided into the total approved units of 2200 and then multiplied by the required Community Park acreage (for example, if the plat included 220 units divided into 2200 total units equals 10%, multiplied by 25 acres would then require 2.5 acres to be paid), and shall be paid prior to the recordation of each Final Plat allowing residential development.

d. **Open Space.**

i. **Open Space.** Open Space shall be in accordance with the PD-DP. The Town agrees to provide potable water and leased CBT Units for temporary irrigation for establishment of native grasses, trees and shrubs until such time as the non-potable water system is available to the subject phase of the project. The Homeowners Association shall maintain these areas. Town designated Spine Trails shall be owned and maintained by the Town.

3. **Ditches.**

i. **Erie Coal Creek Ditch (“ECC Ditch”).** Owner may relocate, place the ECC Ditch in an underground pipe, or eliminate the ditch concurrent with development of the portion of the Property adjacent to the ECC Ditch. Owner shall formalize an agreement with the ditch company for any maintenance, improvements, piping or crossing within or across the ditch right-of-way. If necessary, the Town agrees to assist the Owner in condemnation of such ditch rights. All costs associated with such condemnation shall be the responsibility of the Owner. Any existing, healthy trees currently located along the ECC Ditch shall be incorporated into the parks and open space design, but may be removed and replaced where survival of the original trees is jeopardized by construction. Setbacks from the current eagles nest located in one of the trees along the ECC Ditch



will follow federal law.

ii. **Community Ditch.** The Community Ditch terminates at the north side of Weld County Road 12 and releases onto the Property. An agreement may be reached with the ditch company to accommodate the drainage flows from the terminus of the Community Ditch to convey the tail waters through the Property within the on-site drainage system. If necessary, the Town agrees to assist the Owner in condemnation of such ditch rights. All costs associated with such condemnation shall be the responsibility of the Owner. Any existing, healthy trees currently located along the Community Ditch shall be incorporated into the parks and open space design, but may be removed and replaced where survival of the original trees is jeopardized by construction.

M. **Entry Monuments.** Owner shall be allowed to construct entry monuments on one or both sides of any major entry into the Property along State Highway 52, Weld County Road 5 and Weld County Road 7 in accordance with the PD-DP.

N. **Mine Subsidence.** There is no known coal mining under this property. Owner shall cause a mine subsidence investigation report confirming the same to be completed and shall submit such report with the each Preliminary Plat, Final Plat, or Site Plan submitted for the Property.

O. **Land Use Vesting.**

1. **Vested Rights.** The Town acknowledges that the development of the Property, as contemplated by this Agreement, shall require the investment of substantial funds by Owner over a long period of time and that, due to the uncertainties of future market conditions and cycles, the full development of the Property might not be completed for many years. Further, the Town acknowledges that, as an inducement to Owner to agree to annex the Property to Erie, the Town has agreed to provide vested property rights to the fullest extent permitted by Colorado law. This Annexation Agreement is a "development agreement" pursuant to C.R.S. 24-68-104(2) and as authorized by the Erie Municipal Code. In accordance with and pursuant to C.R.S. 24-68-105, the Town agrees not to take any zoning or land use action, by action of the Town or through initiative measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the Property as set forth in this Annexation Agreement and on the Zoning Map. Vested rights are hereby established with respect to the zoning, land use and other terms of this Agreement to the fullest extent permitted by C.R.S. 24-68-101, *et seq.* The Property shall be vested for a period of thirty (30) years beginning with the recordation of the annexation map. However, the period of vested rights shall be extended for an equal period of time for any period of time during which the Town is unable to

supply water taps, sewer taps and/or building permits due to insufficient availability of any of these. Due to the scale of the development, the magnitude of the development costs and the possible duration of the development process, such property rights are vested from the date of the adoption of said ordinance. At such time as any portion of the Property receives final development plan or final plat approval, the development agreement for such final development plan or final plat approval shall include the vested rights granted herein. The provisions of this Section XI.O.1 shall also be incorporated in any Development Agreement with the Town pertaining to the Property.

2. **Enforcement.** The Town agrees that the foregoing vested rights provision may be specifically enforced. The Town acknowledges that, due to the substantial financial investment which Owner must make toward the development of the Property, the damages allowed under C.R.S. 24-68-105(1)(c) may be inadequate in the event Owner is unable to enforce this provision. Accordingly, Owner shall have the ability to waive its right to receive compensation pursuant to C.R.S. 24-68-105(1)(c) or any similar future statutory provision and to enforce the provisions of XI.O.1 above by obtaining relief in the form of specific performance, injunction or other appropriate declaratory or equitable relief.
  
3. **Processing.** The Town shall permit the development of the Property upon the submission of the plans, applications, plats and the payment of fees required by the Town ordinances and regulations, and upon compliance with the Town Code, regulations and ordinances. The Town agrees not to unduly delay or hinder the development of the Property (such as refusing to timely process, review and act upon development applications), nor shall the Town unreasonably withhold its consent to or approval of a development request or permit made in substantial compliance with the Town Code, regulations and ordinances, Annexation and Zoning Maps, PD-DP, and this Agreement. The Town agrees to cooperate with Owner any filings or applications before other governmental or quasi-governmental entities necessary for Owner to fulfill its obligations under this Agreement or to permit development of the Property.

In the event the Town does not have adequate staff for the timely review and processing of Owner's applications, at the Owner's request, the Town may contract for such services, and the Town shall charge Owner for the actual costs related thereto.

- P. **Naming Rights.** The Owner shall have the right to name the Property or portions of the Property at their sole discretion for marketing purposes. These naming rights shall include the right to reference marketing names from adjacent properties as long as the adjacent property owner consents to the name.



**XII. ROADWAY IMPROVEMENTS.** Owner shall only be required to complete the improvements identified herein and as shown on Exhibit “H”. Owner shall not be responsible for the construction of any roadway improvements not located on or immediately adjacent to the Property, other than those as set forth herein.

**A. Traffic Signalization.** Owner shall be responsible for not more than 25% of the cost of installing a mast arm traffic signal at the intersection of State Highway 52 and Weld County Road 7, which shall be paid to the Town at such time as the signal is warranted under MUTCD Standards and construction of the same commences or when the last Final Plat for the Property has been approved and recorded, whichever occurs first.

In the event a mast arm traffic signal at the Summerfield main entry along State Highway 52 is warranted under MUTCD Standards or desired by Owner, the Owner shall be responsible for not more than 50% of the cost of installing the signal, with the balance to be reimbursed from transportation fees collected within the Property, or other benefited property owners.

Owner will have no obligation to either share of the above traffic signalizations if such work is completed by CDOT.

**B. Roadway Maintenance.**

**1. Roadway.** After construction acceptance of any roadway improvements the Owner shall be responsible for maintenance of such roadway improvements and the landscape improvements, except snowplowing of the roadway surfaces, for a two year warranty period.

**2. Right-of-Way Landscaping.** The landscaping for the roadways described in Section XII.C below within the rights-of-way and any adjacent landscape tracts or easements shall be primarily irrigated native grasses with trees on drip irrigation. At the Owner’s discretion, sod, ornamental grasses or perennials shall be included at the intersection of the primary roadways. After the Town’s construction acceptance of the landscape improvements, the Districts shall be responsible for the maintenance of landscape improvements within all rights-of-way except for landscaped medians on arterial roadways which shall be the maintenance obligation of the Town after final construction acceptance.

**C. Roadway Section.**

**1. State Highway 52 (SH52).** Owner will add acceleration and deceleration lanes and if applicable dedicate additional ROW per CDOT to the existing SH52 roadway. The construction shall be completed with each development phase adjacent to SH52 that accesses SH52. The Owner’s landscape improvements in the right-of-way where future roadway improvements are



anticipated shall be limited to non-irrigated dry land seeding.

2. **Weld County Road 5 (WCR5).** The Owner agrees to dedicate an additional 60 foot ROW adjacent to the existing WCR 5 ROW and to construct two lanes (for a total of 24 feet of asphalt plus 4 foot bike lane on the east side only). The existing WCR 5 shall serve as the local access to the west side of WCR 5 as well as the bike lane and sidewalk for the west side of the new roadway. There will be a 30 foot roadside ditch separating the existing roadway and the new roadway, which roadside ditch shall accommodate gas pipelines as agreed by the Owner. There may be an open space buffer from the edge of the new 60 foot ROW and the sidewalk may meander within the ROW and any such buffer. The above ROW, sidewalks, and roadside ditches are described on Exhibit "H." Construction of WCR 5 improvements shall commence with the issuance of the 800<sup>th</sup> building permit in the western half of the Property and be completed by the issuance of the 1000<sup>th</sup> building permit in the western half of the Property. The new WCR 5 roadway to be constructed in the additional 60 foot ROW shall transition to the existing WCR 5 roadway commencing at the last existing driveway on both the north and south portions of WCR 5 adjacent to the Property as shown in Exhibit "I."
  
3. **Weld County Road 12 (WCR12).** It is the goal of the Owner and Town to minimize traffic impacts on this roadway, with the majority of the traffic being redirected to WCR5 and WCR 7. The Owner will chip seal the existing roadway between WCR5 and the existing WCR 7 at such time as the third entrance to WCR 12 is connected. No curb, gutter, bike lanes, sidewalk, acceleration, or deceleration lanes are required. Additional right of way dedication of 20 feet will be dedicated with adjacent plats.
  
4. **Weld County Road 7 (WCR7).** The Owner agrees to dedicate an additional 30' ROW along that portion of WCR 7 adjacent to the Property for the area prior to WCR 7 curving to the east until becoming WCR 7.5 as shown on the PD-DP. Owner will add pavement to each side of WCR 7 as a minor arterial roadway, retaining the existing pavement to the greatest extent possible. As the Owner is only responsible for the west half of this roadway, Owner shall be reimbursed for 50% of the roadway from transportation fees collected within the Property at construction acceptance by the Town. Owner's improvement guarantee and warranty shall be limited to its portion of the roadway. The section shall include widening the existing 24 feet of asphalt to 44 feet of pavement as follows: Owner will add 10 feet of asphalt to both the east and west side of the existing WCR 7 to create two travel lanes, a 4 foot bike lane on each side, a center 12 foot painted median, and a roadside ditch on the west side as described on Exhibit "H." Such improvements will extend from the intersection of WCR 7 and Hwy 52 south to the proposed internal collector road serving the Property. Along the same length of roadway, the Owner agrees to cooperate with the Town to accommodate the

North Commuter Light Rail proposed by the Regional Transportation District (“RTD”) provided such Light Rail does not interfere with access or development of the Property and the Town agrees to allow access from the Property to WCR 7 across the proposed Commuter Rail Line if constructed.

The portion of WCR 7 south of the curve to WCR7.5 will remain in its current condition for local traffic only with no additional right of way dedication or roadway improvements. The Town or RTD shall be responsible for obtaining any rights-of-way and constructing the roadway from the location where WCR7 curves to the east and becomes WCR 7.5 to its connection with WCR 12 at the north edge of Erie Corporate Center as shown on the PD-DP. The Town and Owner’s portion of the WCR 7 construction shall commence with the issuance of the 800<sup>th</sup> building permit in the east half of the Property and completed by the issuance of the 1000<sup>th</sup> building permit in the eastern half of the Property.

In the event the Town determines that WCR 7.5 will not be constructed and such decision is made prior to platting of the Southeastern portion of the Property, the Owner agrees to dedicate the 30 foot ROW along the Western edge of WCR 7 for the length of the Property. Since WCR 7 will remain in its current location adjacent to the Property, the Owner shall be responsible for only its portion on the western half of the roadway by widening the existing asphalt roadway 6 foot, adding a 4 foot bike lane and installing a roadside ditch for the length of the Property. This improvement will be completed in phases simultaneously with adjacent residential construction.

**D. Disclosure Statements.**

1. **Airport Acknowledgement.** The Owner acknowledges that the Property is located within close proximity of the Parkland Estates and Erie Municipal Airports. At the time of Preliminary Plat application, the Owner shall provide the Town the following documents for Town approval:
  - a. **Contract Disclosure Statement.** The Disclosure Statement will be an addendum to any Purchase Agreement that acknowledges the proximity of the Parkland Estates and Erie Municipal Airports and provides the mapped location of the Airports relative to the purchasers’ property.
  - b. **Land Use Covenant.** The Owner shall record a Land Use Covenant against the Property which states that the subject property is within close proximity to the Parkland Estates and Erie Municipal Airports.
2. **Weld County Road 7 Acknowledgement.** WCR 7 is currently constructed as two-lane Minor Arterial roadway. At the time of Preliminary Plat application, the Owner shall provide the Town the following document for

Town approval:

- a. **Contract Disclosure Statement.** The Disclosure Statement will be an addendum to any Purchase Agreement for any lot abutting or within close proximity to WCR7 that acknowledges that the Town may utilize the landscape buffer within the right-of-way to add two additional paved travel lanes to said road and/or a future commuter rail line in the future at the Town's sole discretion.
3. **Landfill Acknowledgement.** The Owner acknowledges that the Property is located within close proximity to several landfills. At the time of Preliminary Plat application, the Owner shall provide the Town the following documents for Town approval:
- a. **Contract Disclosure Statement.** The Disclosure Statement will be an addendum to any Purchase Agreement that acknowledges the proximity of landfills and provides the mapped location of the landfills relative to the purchasers' property.
  - b. **Land Use Covenant.** The Owner shall record a Land Use Covenant against the Property which states that the subject property is within proximity to several landfills.

### XIII. MISCELLANEOUS PROVISIONS.

- A. **Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the Town's ordinances or resolutions, or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the Town of any tax or fee.
- B. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have agreed to the Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.
- C. **Amendments to the Agreement.** This Agreement may be amended, at any time, upon agreement of the parties hereto. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property subject to the amendment unless otherwise specified in the amendment.

In addition, this Agreement may be amended by the Town and any Owner without





the consent of any other Owner as long as such amendment affects only that Owner's portion of the Property. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property subject to the amendment unless otherwise specified in the amendment.

- D. Indemnification.** Owner agrees 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 Property, or with any other annexation or other action determined necessary or desirable by the Town in order to effectuate the annexation of the Property or which are in any manner connected with Erie's enforcement of this Agreement. Owner further agrees 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.
- E. Termination.** If the annexation of the Property is, for any reason, not completed, this Agreement shall be null and void and of no force or effect whatsoever.
- F. No Right or Remedy of Disconnection.** No right or remedy of disconnection of the Property from the Town shall accrue from this Agreement, other than provided by applicable state laws or as provided for in this Agreement. In the event that the Property or any portion thereof is disconnected at Owner's request, the Town of Erie shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force or effect as to such property or portion thereof.
- G. Annexation and Zoning Subject to Legislative Discretion.** The Owner acknowledges that the annexation and subsequent zoning of the Property are subject to the legislative discretion of the Board of Trustees of the Town of Erie. No assurances of annexation or zoning have been made or relied upon by the Owner. In the event that the Town of Erie Board of Trustees, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, 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 Owner, or disconnection from the Town in accordance with state law, as may be appropriate and as described herein.
- H. 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 its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the Owner from engaging the Town's legal representatives in such a defense, at no cost to the Town.



- I. **Application of Town Code.** Upon annexation, all subsequent development of the Property shall be subject to and bound by the applicable provisions of Erie Municipal Code and ordinances, as amended, including public land dedications, provided, however, that changes or amendments to the Municipal 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. In the event of any conflict with Town Code and ordinances, the PD-DP shall be determinative with respect to land use and zoning.
- J. **Amendments to Governing Ordinances, Resolutions and Policies.** As used in this Agreement, unless otherwise provided herein, any reference to any provision of any Town ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution or policy, and the parties agree that such amendments or revisions shall be binding upon Owner.
- K. **Remedies.** It is understood and agreed by the parties that the Town shall have all available remedies for breach of this Agreement in law or in equity, including but not limited to specific performance and damages. In the event of breach or default by the Town, the sole remedy hereunder for Owner shall be the equitable remedies of specific performance or injunction. Owner, its successors and assigns, hereby waive any rights to money damages for any such breach or default.
- L. **Legal Fees.** In the event that 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 Agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.
- M. **Reimbursement for Other Costs.** The Owner shall reimburse the Town for any third party costs necessary for the orderly and proper development of the Property, including but not limited to consultant's fees for planning and engineering, and attorney's fees for legal services beyond the normal document review, which is directly linked to the Property.
- N. **Avigation Easements.** Owner agrees to provide the Town with an executed avigation easement, upon the Mayor's signature to this Annexation Agreement, which provides the Town of Erie an easement for the operation of aircraft to and from the Erie Municipal Airport, and which provides the residents of Parkland Estates, a Weld County Subdivision, an easement for the operation of aircraft to and from the private landing strip in Parkland Estates within the airspace of the Owner's Property.
- O. **Oil and Gas Access Roads.** All oil and gas access roads located on the Property will be considered a current obligation between the Owner and the oil and gas company(s). The Owner shall enter into Surface Use Agreement(s), which shall be recorded against the Property, with the oil and gas companies and mineral rights owners for a relocation plan of wells, future drilling sites, collector lines, tanks and

batteries, and access roads. The Owner shall be responsible for providing screening, fencing and road access, in conformance with the PD-DP. The Town will not be responsible for any maintenance of any current oil and gas access road.

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

**Q. Timely Submittal of Materials.** Owner agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, reports and other documents necessary to accomplish the annexation of the Property and the other provisions of this Agreement.

**R. Compliance with State Law.** The Owner shall comply with all applicable State law and regulations.

**S. Recording of Agreement.** This Agreement shall be recorded in the records of the Weld County Clerk and Recorder.

**T. Binding Effect of Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the Property, and shall constitute covenants running with the land. Owner shall not be released from its obligations hereunder until written notice to the Erie Administrative Official of the assignment of said obligations to a successor, accompanied by written acceptance of such obligations by the successor, have been received by Erie and consent to such assignment by Erie as required by Paragraph XIII. U. has been granted. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

**U. Assignment, Delegation and Notice.** Owner shall provide to the Erie Administrative Official, for consent, written notice of: 1) any proposed transfer of title to all or any portion of the Development, 2) arrangements for delegation or transfer of the Improvement obligations hereunder to any successor, and 3) successor's written acceptance of such Improvement obligations. Notwithstanding the forgoing, Owner may sell developed lots or all of the multi-family tracts without Erie's consent, provided that the purchaser deposits with Erie all guaranties, security and sureties required under this Agreement. Until the Erie Administrative Official provides written consent to the assignment, Owner and Owner's successors and assigns shall be jointly and severally liable for the assigned Improvement obligations. Erie will not unreasonably withhold, delay or condition its consent to assignment. Erie may withhold its consent in the event it reasonably determines that the Improvement obligations or any constituent element of this Agreement may not be fulfilled through assignment or that the benefit of Erie's bargain under this

Agreement may be materially and adversely impaired by such assignment.

**XIV. COMPLETE AGREEMENT.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.

[SIGNATURES ON FOLLOWING PAGE]





**EXHIBITS LIST**

- Exhibit A Property Legal Description
- Exhibit B Annexation Petition
- Exhibit C Annexation Map
- Exhibit D Tributary & Non-Tributary Water Rights
- Exhibit E Summerfield PD-DP
- Exhibit F Off-Site Improvements
- Exhibit G Form of Letter of Credit
- Exhibit H Right-of-Way Cross Sections
- Exhibit I WCR 5 frontage road



EXHIBIT "A"

Property Legal Description

SECTION 4 LEGAL DESCRIPTION

A PARCEL OF LAND ACROSS SECTION 4, THE EAST HALF OF SECTION 5, THE NORTHEAST QUARTER OF SECTION 8 AND THE NORTH HALF OF SECTION 9, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 4 FROM WHENCE THE SOUTH QUARTER CORNER LIES S89°44'56"W, 2,638.57 FEET;

THENCE S89°44'56"W, 30.00 FEET ALONG THE SOUTHERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 4 TO THE POINT OF BEGINNING;

THENCE S00°24'57"W, 30.00 FEET;

THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF WELD COUNTY ROAD 12 THE FOLLOWING SIX COURSES:

- 1) S89°44'56"W, 149.65 FEET;
- 2) S00°15'04"E, 20.00 FEET;
- 3) S89°44'56"W, 1,239.00 FEET;
- 4) N00°15'04"W, 20.00 FEET;
- 5) S89°44'56"W, 1,219.52 FEET;
- 6) S89°33'41"W, 2,666.63 FEET;

THENCE ALONG THE WESTERLY LINE OF WELD COUNTY ROAD 5 THE FOLLOWING SIX COURSES:

- 1) N00°02'03"E, 573.38 FEET;
- 2) S79°42'30"W, 20.33 FEET;
- 3) N00°02'03"E, 2,142.52 FEET;
- 4) N00°01'00"E, 992.79 FEET;
- 5) S89°59'00"E, 20.00 FEET;
- 6) N00°01'00"E, 1,426.29 FEET;

THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY 52 THE FOLLOWING FOUR COURSES:

- 1) S88°31'00"E, 30.01 FEET;
- 2) S89°59'00"E, 30.00 FEET;
- 3) N55°55'30"E, 60.40 FEET;
- 4) N88°34'43"E, 5,153.37 FEET;

THENCE ALONG THE WESTERLY RIGHT OF WAY LINE OF WELD COUNTY ROAD 7 THE FOLLOWING TWO COURSES:

- 1) S00°05'46"E, 2,658.01 FEET;
- 2) S00°08'21"E, 2,662.37 FEET TO THE POINT OF BEGINNING.



**EXHIBIT "B"**

**Annexation Petition**





TO: THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.  
RE: Petition Known As: Summerfield Annexation  
DATE: October 18, 2012

We, Section 4 Investors, LLC, 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 Weld and State of Colorado, to wit:

*See "Exhibit A" attached hereto*

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. The zoning classification requested for the area proposed to be annexed is Planned Development PD with a mix of Single Family Detached (SFD), Single Family Attached (SFA), Multi-Family (MF) and Mixed Use (MU) planning areas.

7. In the event the Annexation Ordinance for the described property has not been approved by the Town of Erie Board of Trustees on or prior to January 31, 2013, the Petition for Annexation may be withdrawn by written notice of Landowner delivered to the Town prior to further action by the Board of Trustees.





RECORD OF  
LAND OWNERSHIP AND DATE SIGNED

<u>Landowner/Petitioner Mailing Address</u>	<u>Date Signed</u>	<u>Legal Description of Land Owned</u>
Section 4 Investors, LLC 2500 Arapahoe Ave., Ste 220 Boulder, CO 80302	October 18, 2012	All of Section 4

AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

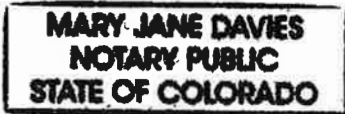
Jon Lee, being first duly sworn upon oath, deposes and says that he was the circulator of this Petition for Annexation of lands to the Town of Erie, Colorado, consisting of [7] pages including this page and that each signature hereon was witnessed by your affiant and is the signature of the person whose name it purports to be.

  
\_\_\_\_\_  
Circulator

STATE OF COLORADO )  
 ) SS.  
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2012 by Jon Lee.

My commission expires: 11-22-2014  
Witness my hand and official seal.



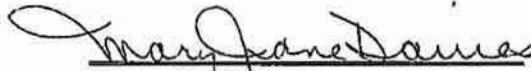
  
\_\_\_\_\_  
Notary Public

EXHIBIT "A"

**Legal description**

A PARCEL OF LAND ACROSS SECTION 4, THE EAST HALF OF SECTION 5, THE NORTHEAST QUARTER OF SECTION 8 AND THE NORTH HALF OF SECTION 9, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

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THENCE S89°44'56"W, 30.00 FEET ALONG THE SOUTHERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 4 TO THE POINT OF BEGINNING;

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THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF WELD COUNTY ROAD 12 THE FOLLOWING SIX COURSES:

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- 2) S79°42'30"W, 20.33 FEET;
- 3) N00°02'03"E, 2,142.52 FEET;
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- 3) N55°55'30"E, 60.40 FEET;
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- 1) S00°05'46"E, 2,658.01 FEET;
- 2) S00°08'21"E, 2,662.37 FEET TO THE POINT OF BEGINNING.

EXHIBIT "C"

Annexation Map







EXHIBIT "D"

Water Rights Appurtenant to Property  
(Listing of all tributary and non-tributary water rights  
attached to the property)

Water Rights (Ditch Company, groundwater, etc.)	Number of Shares	Certificate Number(s)	Yield (cfs or acre/ft)
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EXHIBIT "E"

Summerfield PD-DP





# SUMMERFIELD PD - DEVELOPMENT PLAN

LOCATED IN SECTION 4, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M.,  
 COUNTY OF WELD, STATE OF COLORADO  
 644.33 ACRES / PD-12-00001

## ARTICLE V - LAND USE REGULATIONS

### A. Residential Planning Areas - General

1. Intent - To provide for residential development and associated uses.
2. Housing Diversity - It is the intent of the PD-DP to meet the Town's Housing Diversity Requirement by providing 3 housing types and 2 housing type variations as defined by subsection 6.7.D of the UDC. This requirement applies to Summerfield in its entirety, not on a plat by plat basis.

### B. Low Density Residential Planning Area

1. Intent - To provide for low density residential development
2. Uses Permitted by Right - See LR Zone District uses in subsection 3.1.E of the UDC
3. Uses Permitted by Special Review - See LR Zone District uses in subsection 3.1.E of the UDC
4. Development Standards - See Dimensional Standards table herein

### C. Medium Density Residential Planning Area

1. Intent - To provide for medium density residential development
2. Uses Permitted by Right - See MR Zone District uses in subsection 3.1.E of the UDC
3. Uses Permitted by Special Review - See MR Zone District uses in subsection 3.1.E of the UDC
4. Development Standards - See Dimensional Standards table herein

### D. High Density Residential Planning Area

1. Intent - To provide for high density residential development
2. Uses Permitted by Right - See HR Zone District uses in subsection 3.1.E of the UDC
3. Uses Permitted by Special Review - See HR Zone District uses in subsection 3.1.E of the UDC
4. Development Standards - See Dimensional Standards table herein
  - a. Building Separation. Where Multi-Family Dwelling Units are directly adjacent to (not separated by a street) Single Family Dwelling Units or commercial uses, the minimum building separation between uses shall be fifty (50) feet. However, landscape and parking areas may be located within this fifty (50) feet but parking may not be located closer than thirty (30) feet to Single Family Detached residential.
  - b. Common Open Space. A minimum of twenty percent (20%) of each Multi-Family Planning Area shall be provided as common open space to be owned and maintained by a HOA. This twenty percent (20%) shall be landscaped in accordance with an approved Site Development Plan. Common open space includes all landscape areas as well as sidewalks and other paved pedestrian areas, i.e., pools and pool decks.
  - c. Buffer Requirements
    - c.1. Unless previously provided, where Multi-Family Dwelling Units are located directly adjacent to (not separated by a street) Single Family Dwelling Units or commercial uses, a minimum twenty (20) foot wide landscaped buffer shall be provided. Such landscape design shall be in accordance with a Town of Erie approved Site Development Plan.
    - c.2. Where Multi-Family uses are located adjacent to SH 52 or any major arterial, an additional twenty (20) foot wide landscaped buffer shall be provided to the twenty (20) foot building setback. The purpose of such buffer shall be to provide a visual relief to building lines that may be seen from the highway so as to break up a continuous view into these areas. However, "windows" into such areas may occur at intermittent points as appropriate along the frontage. Such buffer shall be designed in an undulating fashion to provide a varied setback for parking areas rather than a straight, unbroken line.

### E. Private Amenity Planning Area

1. Intent - To provide for a full range of community support facilities.
2. Uses Permitted by Right
  - a. Private recreational and parks uses, sales centers during development and construction, clubs, common recreational facilities including, but not limited to, tennis courts, swimming pools, and jogging, biking and hiking trails, and club support facilities such as restaurants and tennis shops.
  - b. Parks, playgrounds and other recreational uses.
  - c. Private and/or common open space.
  - d. Reuse water application for landscaping.
  - e. Common associated accessory uses incidental to principal use or building and located on the same site as the principal use or building including, but not limited to, properly screened storage sheds and similar uses.
  - f. Nursery schools and day/child care centers.
  - g. Any other uses consistent with the purposes of this section and compatible with the uses set forth herein may be allowed at the discretion of the Director of Community Development. Other uses not itemized or not reasonably similar to those listed shall not be allowed unless and until the use is approved by the Town of Erie according to the procedures for "Special Review Uses" contained in the UDC.
3. Development Standards - See Dimensional Standards table herein
  - a. Configuration of Individual Private Amenities shall be shown on final plats of adjacent residential developments. Such areas may occur within any designated Planning Area.

### F. Public Parks and Open Space

1. Intent - To provide for public and private park and open space uses which complement residential development.
2. Delineation of Parks and Open Space
  - a. Configuration - Sites for park and open space use shall be located within Summerfield in the general amounts and locations delineated on the PD-DP Map. Precise configuration of individual park sites shall be shown on final plats of adjacent residential developments. Such parks may occur within any designated Parks and Open Space Planning Area.
  - b. Qualifications. All parks and open space shall conform to the following provisions:
    - b.1. Be intended for passive and/or active recreation uses.
    - b.2. Be left in its natural unaltered state re-established to its natural state or landscaped creating an environment appropriate for recreation.
    - b.3. Be accessible and usable to the residents of Erie when not inconsistent with public safety objectives.
    - b.4. Areas which qualify as open space include, but are not limited to:
      - a) Walkways, pedestrian paths, equestrian trails, bicycle paths, open plazas and malls, concourses, terraces, natural drainage ways, open space buffers, playgrounds,
      - b) Areas used for design purposes such as planted or landscaped areas, flower beds and planters excluding landscaped areas within parking lots and landscaped medians.
      - c) Aquatic areas, ponds and lakes.
      - d) Stormwater detention or retention areas provided no conflicts exist with the active recreational uses.
      - e) Areas specifically designated as parks, lot-lots or playgrounds.
      - f) Oil and gas operations buffer areas and access drives.
3. Uses Permitted by Right
  - a. Parks, playgrounds and other recreational uses provided no sports lighting is incorporated.
  - b. Passive recreational uses.
  - c. Active recreation uses including, but not limited to, the following facilities: baseball diamonds, softball diamonds, soccer fields, tennis courts, volleyball courts, basketball courts, swimming pools, play apparatus, picnic areas, community centers, and jogging, hiking or biking trails provided no sports lighting is incorporated.
  - d. Reuse water application for landscaping is permitted within parks and open space areas.
  - e. Any other uses consistent with the purposes of this section and reasonably similar to the uses set forth herein may be allowed at the discretion of the Director of Community Development. Other uses not itemized or not reasonably similar to those listed shall not be allowed unless and until the use is approved by the Town of Erie according to the procedures for "Special Review Uses".
4. Uses Permitted by Special Review
  - a. Neighborhood public service, health and education facilities including, but not limited to, libraries, museums, community centers and performance centers.
  - b. Public and quasi-public buildings and structures including, but not limited to, police stations, fire stations.
5. Trails
  - a. Local Trails: trails including those devoted to jogging, riding, hiking and/or biking shall be a minimum of 6 feet wide and expanded to 8 feet wide in high traffic areas constructed of concrete, asphalt or crusher fines, accessible to the public and shall be owned, operated, maintained and controlled by the Metropolitan District or an HOA.
  - b. Spine Trails: shall be constructed to the Town's standards and specifications for design and construction of public improvements, and shall be owned, operated, maintained and controlled by the Town of Erie.
6. Development Standards - see dimensional table herein

### G. School Planning Area (Planning Area 13) This Planning Area provides for a proposed elementary school.

1. Uses By Right - Elementary school and ancillary recreational use uses
2. In the event more than 1,000 units are "age targeted" within Summerfield, a school site within Summerfield may not be required and the School Planning area may become a Medium Density Residential Planning Area. In no case shall Planning Area 13 be used for a purpose other than a school or residential area.

## DIMENSIONAL STANDARDS TABLE

PLANNING AREA	MINIMUM LOT STANDARDS		MINIMUM LOT SETBACKS (FT.)				MAX. HT.	MAX. DENSITY
	WIDTH (FT.)	AREA (S.F.)	FRONT	SIDE (IF SIDE FRONT YARD)	SIDE (IF REAR YARD)	REAR		
LOW DENSITY	40'	4,000	FRONT - 15' FRONT LOAD GARAGE - 20'	10'	5'	FRONT - 15' ACC. - 10' FROM ALLEY - 0'	35'	5 D.U./AC.
MEDIUM DENSITY	28'	1,800	FRONT - 15' FRONT PORCH - 10'	10'	5'	FRONT - 15' ACC. - 10' FROM ALLEY - 0'	35'	10 D.U./AC.
HIGH DENSITY	N/A	2,000/D.U.	20'	20'	20'	20'	45'	24 D.U./AC.
PRIVATE AMENITY	N/A	N/A	30'	30'	30'	30'	45'	N/A
PUBLIC OPEN SPACE	N/A	N/A	30'	30'	30'	30'	45'	N/A
SCHOOL	N/A	N/A	30'	30'	30'	30'	45'	N/A

(1) ZERO LOT LINE SETBACKS SHALL BE PERMITTED FOR ATTACHED AND DETACHED BUILDINGS PROVIDED THAT THE BUILDING MEETS THE ZONE DISTRICT INTERIOR LOT LINE SETBACK ON THE SIDE OF THE BUILDING THAT IS NOT ATTACHED

(2) MULTIPLE PRINCIPAL BUILDINGS ON A SINGLE LOT SHALL BE SEPARATED BY A DISTANCE EQUAL TO THE DISTANCE THAT WOULD BE REQUIRED IF THEY WERE SEPARATED BY A LOT LINE.

(3) FRONT, SIDE, AND REAR SETBACKS SHALL ALLOW FOR ENCROACHMENTS, PROVIDING THEY DO NOT EXTEND INTO EASEMENTS OR R.O.W. UP TO 2.5 FEET BEYOND THE BUILDING FOUNDATION FOR ABOVE-GRADE FEATURES INCLUDING EAVES, COUNTERTOPS, FIREPLACE BOX-OUT, STOOPS, BAY WINDOWS, ROOM CANTILEVERS, AND OVERHANGS PROVIDED THAT THE LIVING SPACE OF THE PROJECTION DOES NOT EXCEED 20 SQUARE FEET IN EACH INSTANCE AND EXTEND MORE THAN 2 FEET. THERE SHALL BE NO MORE THAN TWO (2) ABOVE GRADE LIVING SPACE ENCROACHMENTS PER ELEVATION.

(4) SIDE AND REAR SETBACKS SHALL ALLOW FOR ENCROACHMENTS, PROVIDING THEY DO NOT EXTEND INTO EASEMENTS OR R.O.W. UP TO 3 FEET BEYOND THE BUILDING FOUNDATION FOR BELOW-GRADE WINDOW WELLS.

(5) REAR SETBACKS SHALL ALLOW FOR AN ENCROACHMENT OF UP TO 6' FOR A COVERED PATIO (NOT ENCLOSED).

(6) REDUCTION OF FRONT SETBACK TO 15' IS ALLOWED WHEN A GARAGE SIDES TO THE R.O.W.

(7) PROPERTY LINES ABUTTING THE EXTERIOR BOUNDARY OF THIS PD SHALL ADHERE TO ALL REQUIRED SETBACKS OF THE UNDERLYING ZONE DISTRICT UNLESS OTHERWISE NOTED IN THE PD.

(8) MINIMUM LOT FRONTAGE SHALL BE 25' BUT A MINIMUM OF 40' AT THE FRONT SETBACK LINE EXCEPT FOR MEDIUM DENSITY AREAS.

(9) FLAG LOTS ARE ALLOWED SO LONG AS THE FRONT ELEVATION OF THE HOME IS NOT MORE THAN 150' FROM THE STREET R.O.W. WITHOUT ADDITIONAL FIRE LANE OR FIRE SPRINKLER PROVISIONS.

(10) PRIVATE STREETS, SHARED DRIVES, AND ALLEYS ARE ALLOWED IF PRIVATELY MAINTAINED.

(11) MAXIMUM HEIGHT OF SPIRES ON RELIGIOUS FACILITIES SHALL BE 60'.



APPLICANT/CLIENT  
 SECTION 4 INVESTORS INC.  
 200 W. WYOMING AVENUE SUITE 200  
 BOULDER CO 80502  
 PHONE: 303.440.2800  
 FAX: 303.440.2811

CIVIL ENGINEER  
 HURST & ASSOCIATES INC.  
 4800 PEARL EAST CIRCLE  
 SUITE 100  
 BOULDER CO 80504  
 PHONE: 303.440.0024  
 FAX: 303.440.0024

PROJECT NAME

SUMMERFIELD  
 TOWN OF ERIE, COLORADO  
 PD Development Plan

ISSUE RECORD  
 SUBMITTAL: 08/16/2011

PROJECT #: 11081  
 DATE: 08/16/2011  
 DRAWN BY: JH  
 CHECKED BY: MP

PD-DP  
 GUIDELINES

SHEET NUMBER

PD1.02







# SUMMERFIELD PD - DEVELOPMENT PLAN

LOCATED IN SECTION 4, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M.,  
COUNTY OF WELD, STATE OF COLORADO  
644.33 ACRES / PD-12-00001



APPLICANT/CLIENT  
SECTION 4 INVESTORS P.L.L.C.  
200 MADISON AVENUE, SUITE 100  
WILSON, CO. 80195  
PHONE: 303.442.2288  
FAX: 303.442.1517

DATE: 02/06/2013

PROJECT NAME

TYPE	AREA	UNITS/AREA	% OF TOTAL AREA
LOW DENSITY RES.	355.93 ac.	1,825 D.U.	55 %
MEDIUM DENSITY RES.	30.00 ac.	300 D.U.	5 %
HIGH DENSITY RES.	20.80 ac.	375 D.U.	3 %
MIXED-USE AREA	34.80 ac.	500,000 S.F.	6 %
SCHOOL AREA	10.00 ac.	NEA	1 %
PARKS & OPEN SPACE	175.90 ac.	NEA	27 %
PUBLIC RIGHT-OF-WAY	16.90 ac.	N/A	3 %
TOTAL ACREAGE	644.33 ac.	2,200 d.u. = 3.4 d.u./ac. - 500,000 S.F. COMMERCIAL	
GRSS DENSITY			

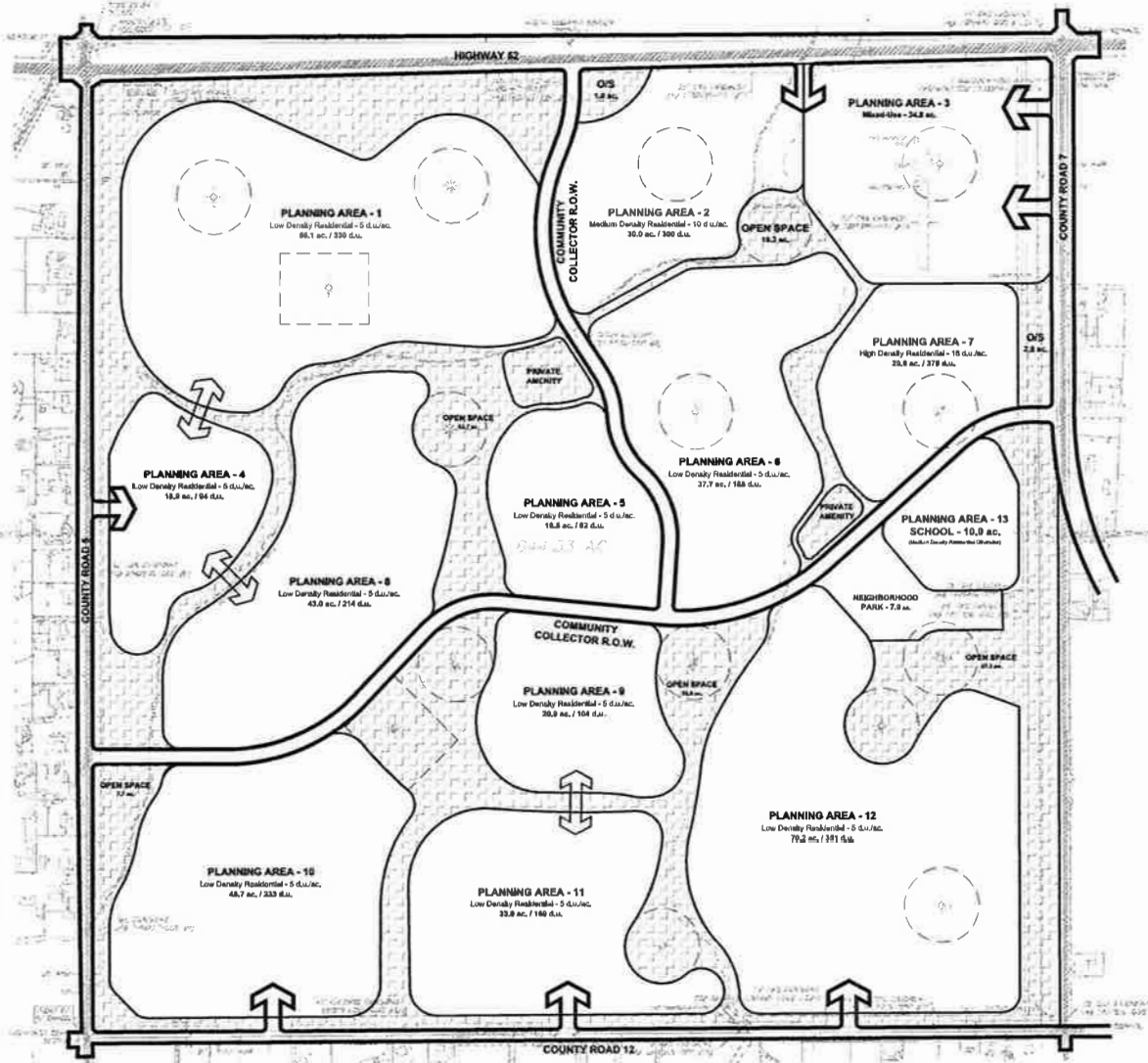
TRACT	AREA	USE	TARGET D.U.	ACTUAL D.U.	UNITS/AC
P.A. - 1	66.1 AC.	LOW DEN. RES.	330	-	-
P.A. - 2	30.0 AC.	MED. DEN. RES.	300	-	-
P.A. - 3	34.8 AC.	MIXED-USE	-	-	-
P.A. - 4	18.9 AC.	LOW DEN. RES.	94	-	-
P.A. - 5	18.5 AC.	LOW DEN. RES.	92	-	-
P.A. - 6	37.7 AC.	LOW DEN. RES.	188	-	-
P.A. - 7	20.8 AC.	HIGH DEN. RES.	375	-	-
P.A. - 8	43.0 AC.	LOW DEN. RES.	214	-	-
P.A. - 9	20.9 AC.	LOW DEN. RES.	104	-	-
P.A. - 10	46.7 AC.	LOW DEN. RES.	233	-	-
P.A. - 11	33.9 AC.	LOW DEN. RES.	169	-	-
P.A. - 12	70.2 AC.	LOW DEN. RES.	351	-	-

(MAX. D.U. ALLOWED) 2,200

1. D.U.'s may be transferred between P.A.'s in accordance with Article II.A  
2. P.A. boundaries are approximate and may be adjusted as long as the total area within each P.A. is adhered to.

3908281  
02/06/2013 11:53 AM R Fee:\$315.00  
Steve Moreno, Clerk and Recorder, Weld County, CO

Pages: 49 of 62



SUMMERFIELD  
TOWN OF ERIE, COLORADO  
PD Development Plan

ISSUE RECORD

DATE	DESCRIPTION
02/06/2013	01
	02
	03
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PROJECT # 11081  
DATE: 04/23/2013  
DRAWN BY: JS  
CHECKED BY: AP

SHEET TITLE

PD-DP  
MAP

SHEET NUMBER  
PD1.05

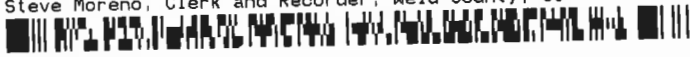
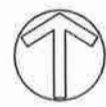
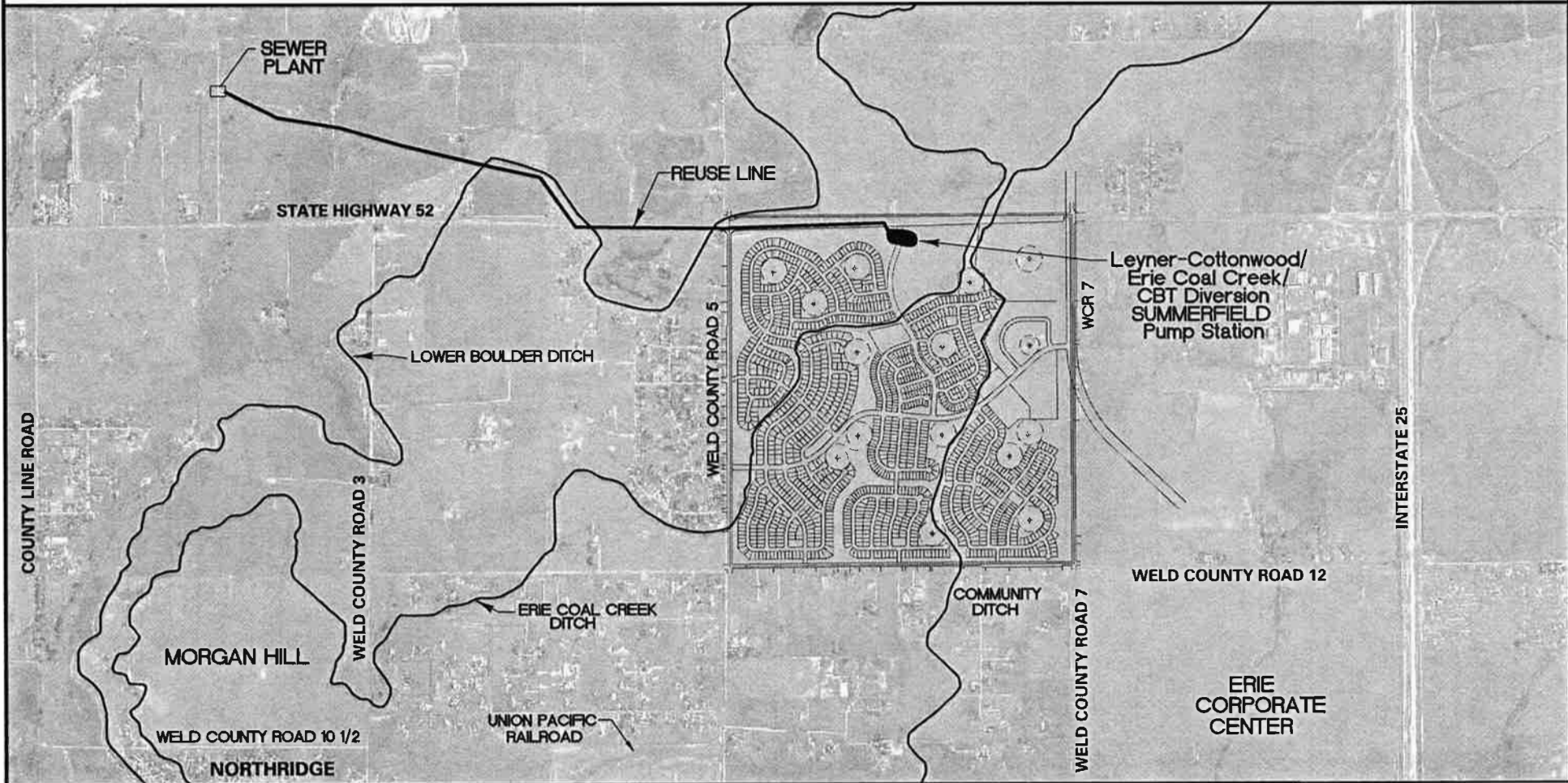


EXHIBIT "F"

Off-Site Improvements  
(Improvements as described herein)



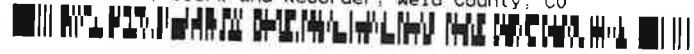
EXHIBIT



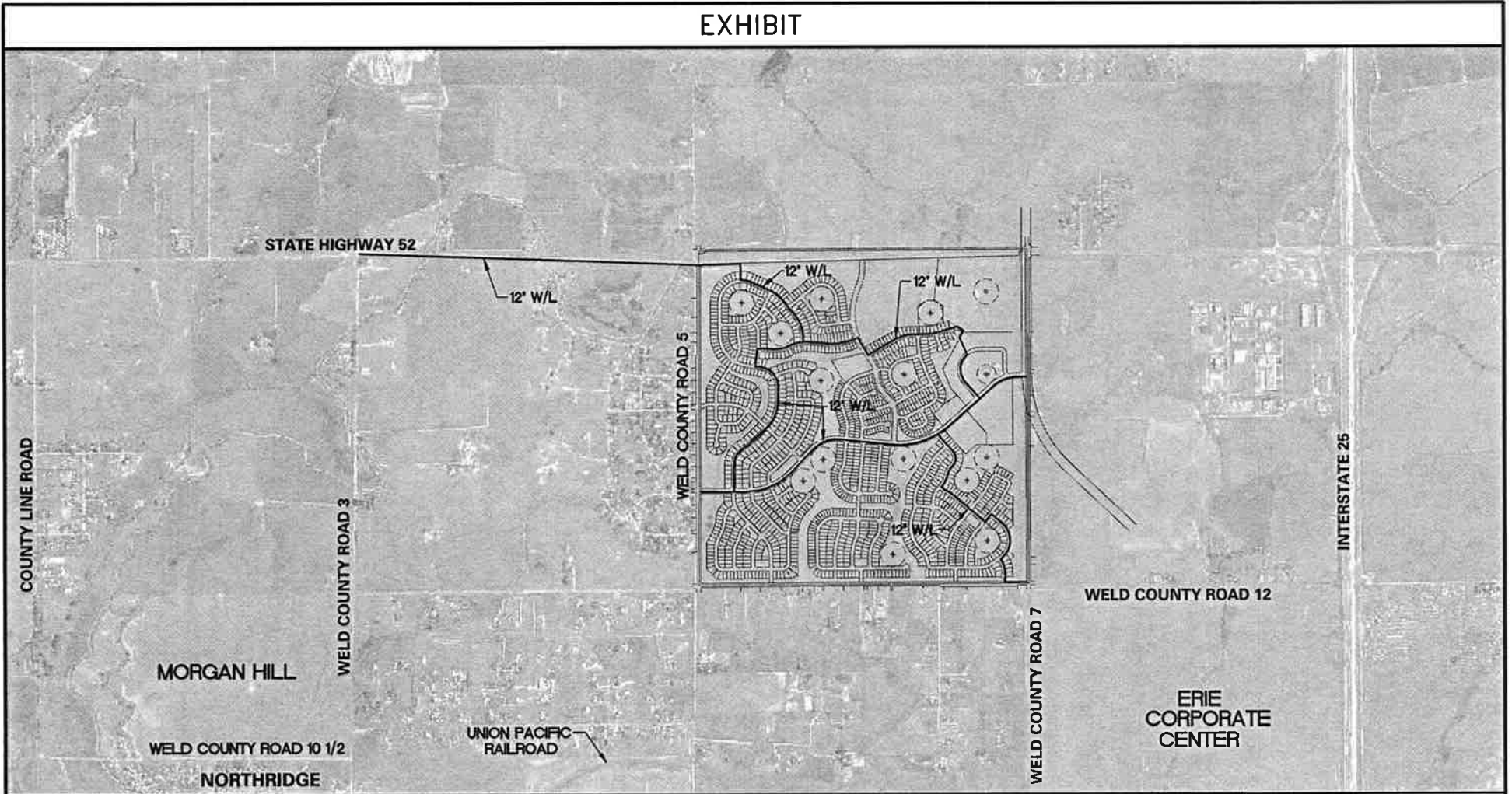
**NOTE:**  
 AS SHOWN ON THE COST SHARING EXHIBIT,  
 CONTAINED HEREIN, THE LOCAL REUSE  
 WATER LINE SHALL BE REIMBURSED  
 ON A PRO RATA BASIS

**SUMMERFIELD  
 IRRIGATION EXHIBIT**

<b>HURST</b> CIVIL CONSULTANTS PLANNERS ENGINEERS www.hurst-engineers.com	SCALE: HOR. 1" = 1000' VERT. N/A	DESIGN/APP'D: [Signature] DRAWN BY: TA/TKH DATE: 06/28/12 SHEET: 1 of 1
	2500 Broadway, Suite 8 Boulder, CO 80501	FILE: C:\201204\1\F08B15\201204-3882-EXHIBIT.DWG
	363.448.3-00	



EXHIBIT



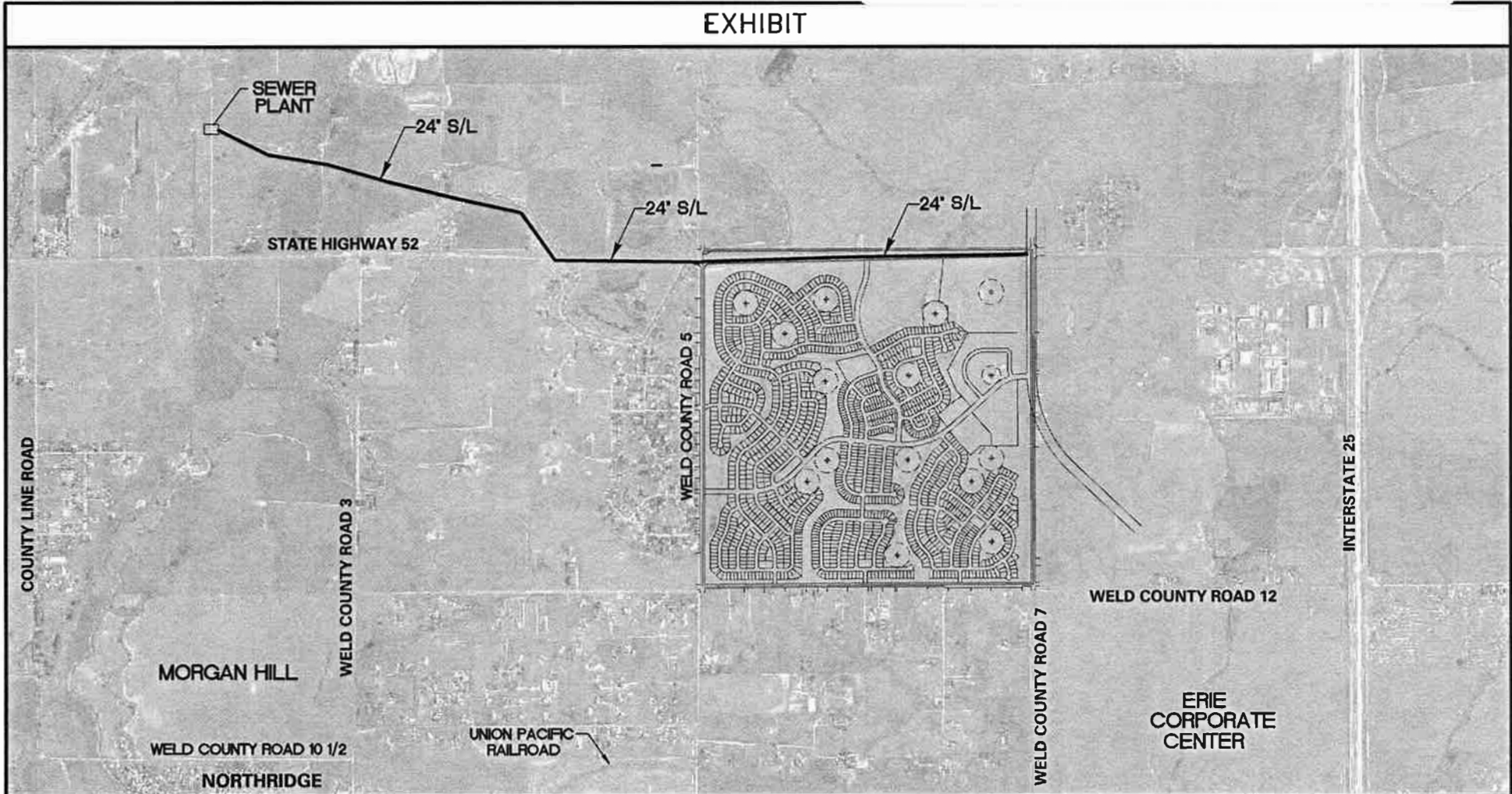
**NOTE:**  
 PER THIS ANNEXATION AGREEMENT,  
 SUMMERFIELD WILL BE REIMBURSED FOR  
 OVER SIZING FROM AN 8" WATERLINE

**SUMMERFIELD  
 POTABLE WATER EXHIBIT**

<b>HORST</b>	SCALE: 1" = 1000'
	2500 Broadway, Suite 8 Boulder, CO 80504 303.441.8100 www.horst-engineer.com
	DESIGNER/APPR: JJ
	DRAWN BY: TA/PH DATE: 02/29/12 SHEET 1 OF 1



EXHIBIT



**NOTE:**  
 AS SHOWN ON THE COST SHARING EXHIBIT,  
 CONTAINED HEREIN, THE LOCAL SANITARY  
 SEWER LINE SHALL BE REIMBURSED  
 ON A PRO RATA BASIS

**SUMMERFIELD  
 SANITARY SEWER EXHIBIT**

<b>HORST</b> CIVIL ENGINEERING 2500 Broadway, Suite 1 Boulder, CO 80504 303.440.5100 www.horstcivil.com	SCALE: HORIZ. 1" = 1500'
	VERT. N/A
	DESIGNER/APPR: JJ
	CHECKED BY: TA/2011
	DATE: 02/28/12
	SHEET: 1 OF 1
FILE: C:\WORK\44\EXHIBITS\20044-SAN_SEWER-EXHIBIT.DWG	

# EXHIBIT



## SUMMERFIELD OPEN SPACE, TRAILS & AMENITY EXHIBIT

**HURST**

CIVIL ENGINEERING  
PLANNING  
SURVEYING

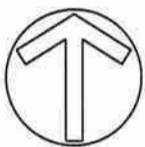
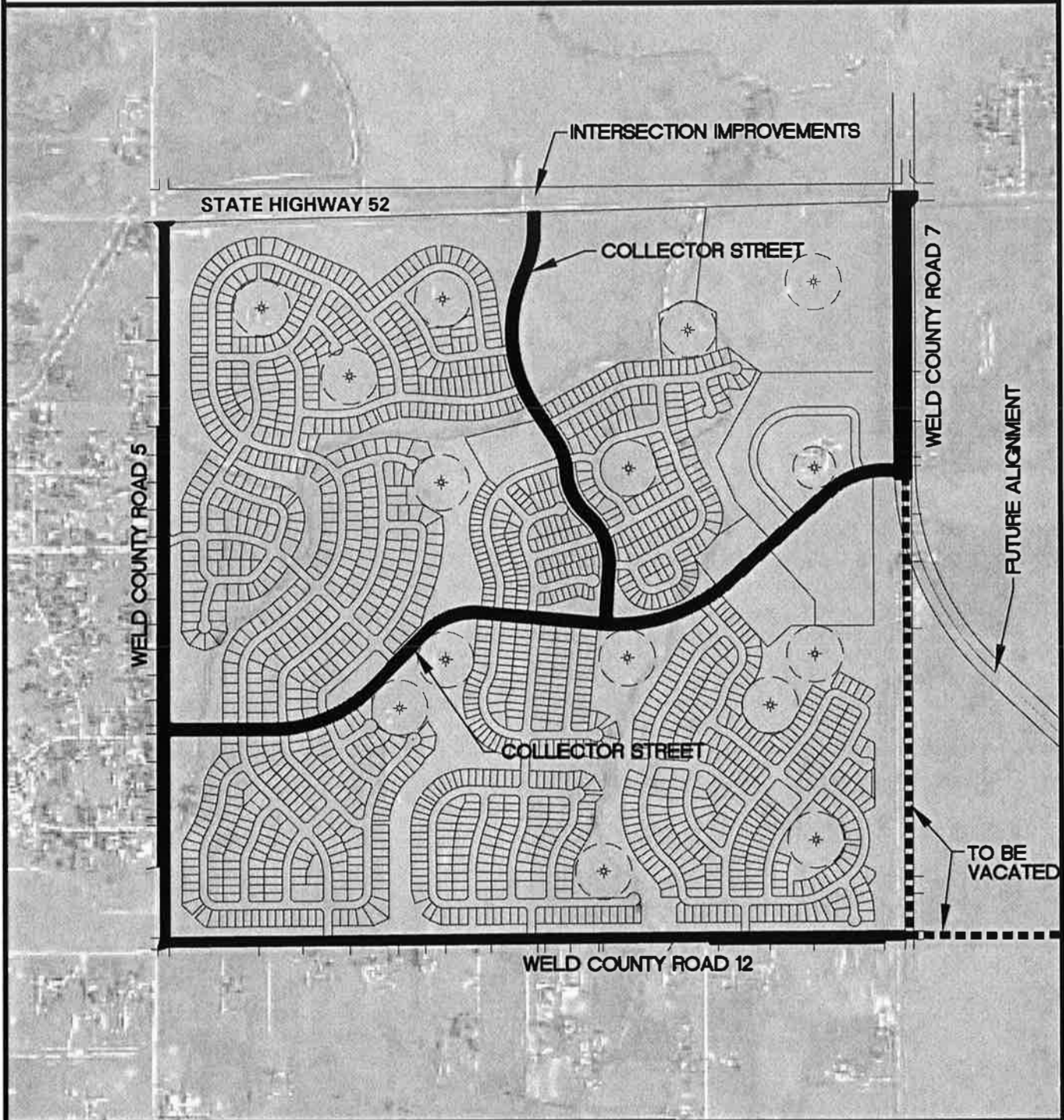
2500 Broadway, Suite B  
Boulder, CO 80304  
303.449.9105  
www.hurst-assoc.com

SCALE	HOR. 1" = 1000'
	VERT. N/A
DESIGN/APPR.	JJ
DRAWN BY	TA/RH
DATE	06/29/12
SHEET	1 OF 1

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# EXHIBIT



## SUMMERFIELD TRANSPORTATION EXHIBIT

**HURST**

CIVIL ENGINEERING  
PLANNING  
SURVEYING

2500 Broadway, Suite B  
Boulder, CO 80304  
303.449.9105  
www.hurst-assoc.com

SCALE	HOR. 1"=1000'
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DESIGN/APPR.	JJ
DRAWN BY	TA/RH
DATE	06/29/12
SHEET	1 OF 1

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**EXHIBIT 'F'**

**Off Site Improvements**

<b>Summerfield - Metro district</b>	<b>Total</b>
<b>Highway 52 improvements</b>	\$ 277,616.00
<b>WCR 5</b>	\$ 1,559,005.00
<b>WCR 7</b>	\$ 643,995.00
<b>WCR 12</b>	\$ 184,625.00
<b>Collector Streets</b>	\$ 3,212,790.00
<b>Water</b>	
12" Water Main along Hwy 52	\$ 443,436.00
Internal Water Mains 12'	\$ 1,131,200.00
8' Water Mains	\$ 187,914.00
<b>Sanitary Sewer</b>	
24" Sewer Main (NH of and along Hwy 52)	\$ 2,840,625.00
8' Sewer Mains in Collector Streets	\$ 263,500.00
<b>Raw Water</b>	\$ 765,800.00
<b>Raw Water Rights Payment</b>	\$ 600,000.00
<b>Storm Sewers</b>	\$ 5,985,925.00
<b>Parks, Open Space, and Trails</b>	
Amenity Centers allowance	\$ 5,000,000.00
Pocket Parks	\$ 800,000.00
Community Park Cash in Lieu	\$ 250,000.00
Trails	\$ 1,325,000.00
landscaping of trail corridors	\$ 2,650,000.00
misc. parks, trails and open spaces	\$ 1,300,000.00
<b>subtotal</b>	\$ 29,421,431.00
<b>Engineering/Planning at 10%</b>	\$ 2,942,143.10
<b>Surveying and Testing at 5%</b>	\$ 1,471,071.55
<b>Contingency at 10%</b>	\$ 2,942,143.10
<b>Total Offsite Improvement Costs</b>	\$ 36,776,788.75





EXHIBIT "G"

IRREVOCABLE LETTER OF CREDIT

INSERT PROPERTY IDENTIFICATION

(IF FOR 2 YEAR WARRANTY ADD APPROPRIATE ITEM: LANDSCAPING OR HARDSCAPE OR TOTAL SUBDIVISION IMPROVEMENTS)

Town of Erie  
645 Holbrook Street  
P.O. Box 750  
Erie, CO 80516

No.  
Issue Date:  
Expiration:

Gentlemen:

We hereby authorize you to draw on us for the account of \_\_\_\_\_ up to an aggregate amount of \$ \_\_\_\_\_ available by your drafts at sight accompanied by your signed statement that the above is drawn for payment of public improvements pursuant to:

Town of Erie Development Agreement dated \_\_\_\_\_, entered into between the Town of Erie, Colorado and \_\_\_\_\_ (Include name of subdivision and filing number [if applicable].

Partial Drawings are permitted. In the event of a partial drawing, the original Letter of Credit will be returned to the Town of Erie by the issuing Bank after endorsement.

Drafts must be drawn and negotiated on or before \_\_\_\_\_ (expiration date). Each draft presented under this letter of credit must state that it is drawn under \_\_\_\_\_ (Title of Bank and identification of the Letter of Credit) and the amount endorsed on this letter of credit.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit that such drafts will be duly honored upon the presentation to the drawee.

This Letter of Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof unless at least sixty (60) days prior to any such date we shall notify you in writing by overnight courier service that we elect not to so renew this Letter of Credit.

Except as expressly provided herein, this Letter of Credit is governed by the Uniform Commercial Code of the State of Colorado.

Yours very truly,

By: \_\_\_\_\_

Title: \_\_\_\_\_

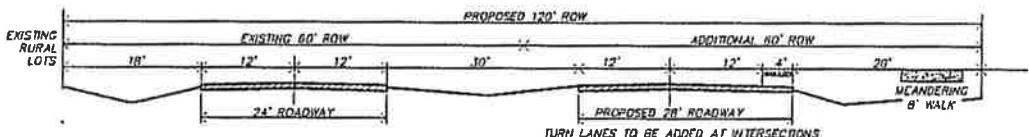
Attest: \_\_\_\_\_



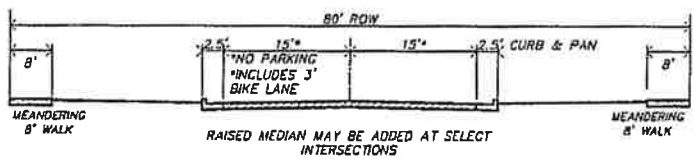
EXHIBIT "H"

Right of Way Cross Sections

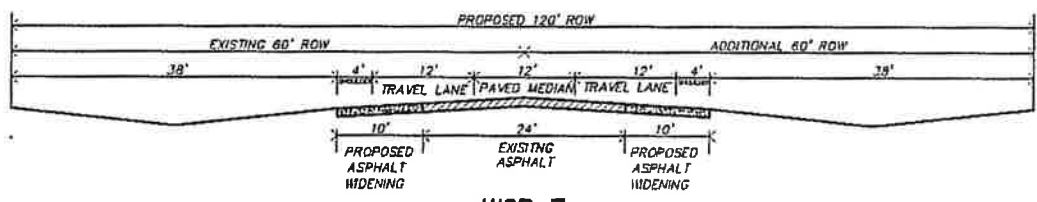
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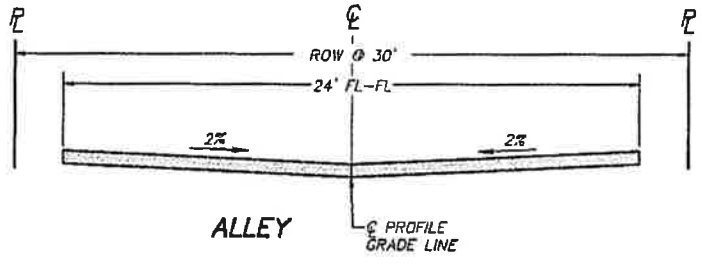
WCR 5



COLLECTOR



WCR 7



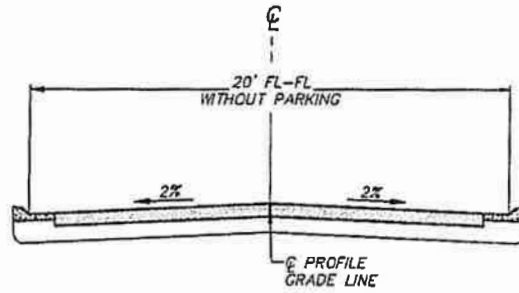
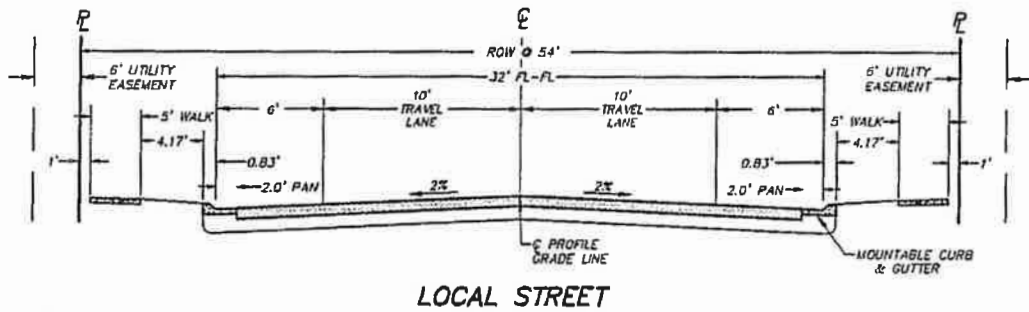
ALLEY

## SUMMERFIELD STREET SECTIONS EXHIBIT

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	PERMUNG	Denver, CO 80204	DESIGN/APPR. JJ
	SUNSHINE	303.499.9105	DRAWN BY TA/RH
		www.hurst-associates.com	DATE 10/15/12
		FILE G:\202044\EXHIBIT\202044-STREET-SEC-EXHIBIT	SHEET 1 OF 2



# EXHIBIT



## SUMMERFIELD STREET SECTIONS EXHIBIT

**HURST**

CIVIL ENGINEERING  
 PLANNING  
 SURVEYING

2580 Broadway, Suite 8  
 Golden, CO 80104  
 303.440.3105  
 www.hurst-engineers.com

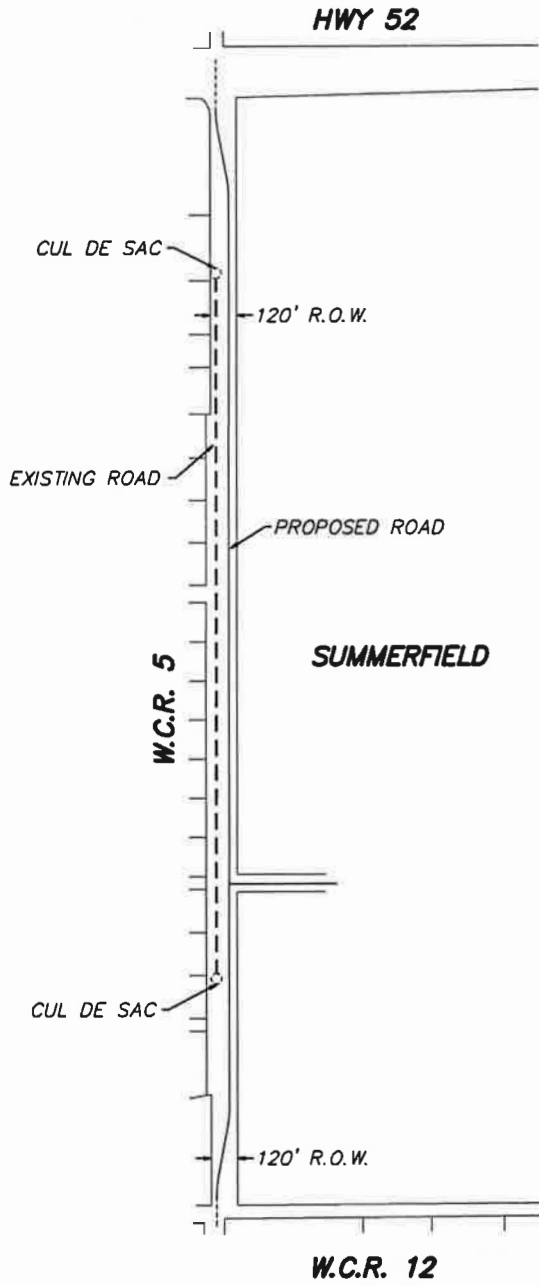
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DESIGN/APPR.	JJ
DRAWN BY	TA/RH
DATE	10/15/12
SHEET	2 OF 2



EXHIBIT "I"

WCR 5 Frontage Road

# EXHIBIT



## SUMMERFIELD W.C.R. 5 CONCEPT EXHIBIT

<b>HURST</b>	CIVIL ENGINEERING	2500 Broadway, Suite 8	SCALE: HOR: N/A VERT: N/A
	PLANNING	Boulder, CO 80304	DESIGN/APPR. JJ
	SURVEYING	303.449.9105	DRAWN BY HK
	www.hurst-assoc.com	DATE 10/15/12	SHEET 1 OF 1

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