

RESOLUTION NO. 16-___

A RESOLUTION FINDING SUBSTANTIAL COMPLIANCE OF PETITION FOR ANNEXATION OF CERTAIN REAL PROPERTY TO THE TOWN OF ERIE, SAID ANNEXATION TO BE KNOWN AS ERIE GATEWAY SOUTH ANNEXATION NO. 5

WHEREAS, a Petition for Annexation of certain real property has been filed with the Board of Trustees of the Town of Erie, Colorado by the landowner thereof: Millican Revocable Living Trust; and

WHEREAS, the Board of Trustees wishes to consider annexation of the subject real property; and

WHEREAS, the Board of Trustees has reviewed the Petition for Annexation and desires to adopt by Resolution its findings in regard to the Petition;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, as follows:

1. The Petition for Annexation of real property, whose legal description is attached hereto as "Exhibit A" and incorporated by reference herein, is in substantial compliance with the applicable requirements of C.R.S. §31-12-101 *et seq.*
2. The Board of Trustees, in accordance with C.R.S. §31-12-108, will hold a public hearing for the purpose of determining if the proposed annexation complies with the applicable provisions of Article II Section 20 of the Colorado Constitution and C.R.S. §31-12-104, and with C.R.S. §31-12-105, at the Erie Town Hall, 645 Holbrook Street, Erie, Colorado 80516, at the following time and date:

6:30 PM

September 27, 2016

3. Any person may appear at such hearing and present evidence relative to the proposed annexation.
4. Upon completion of the hearings, the Board of Trustees shall set forth, by resolution, its findings and conclusions with reference to the eligibility of the proposed annexation, and whether the constitutional and statutory requirements for the proposed annexation have been met.
5. The appropriate Town Officials are hereby authorized to sign and bind the Town to this Resolution.

INTRODUCED, READ, SIGNED AND APPROVED this 23rd day of August 2016.

TOWN OF ERIE

By: _____
Tina Harris, Mayor

ATTEST:

Nancy J. Parker, CMC, Town Clerk

Exhibit A

A PARCEL OF LAND LOCATED IN SECTIONS 35 AND 36, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 36 BEING N 00°18'39" W AND MONUMENTED AS FOLLOWS:

- SOUTHWEST CORNER OF SECTION 36, BEING A FOUND 2.5" ALUMINUM CAP, PLS 28656 IN RANGE BOX, AS NOTED ON MON. REC. DATED 12-2-93.

- NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 36, BEING A FOUND 3.25" ALUMINUM CAP, PLS 13155, AS NOTED ON MON. REC. DATED 3-30-98.

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 36;

THENCE N 13°10'46" E A DISTANCE OF 128.60 FEET TO A POINT ON THE NORTHERLY LINE OF ANNEXATION PLAT MAP CITY OF LAFAYETTE, ORD. NO. 29, SERIES 1988, RECEPTION NO. 959456 TO THE **POINT OF BEGINNING**;

THENCE S 88°35'44" W ALONG SAID NORTHERLY LINE OF ANNEXATION PLAT MAP CITY OF LAFAYETTE, ORD. NO. 29, SERIES 1988, RECEPTION NO. 959456 A DISTANCE OF 60.01 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF NORTH 119TH STREET;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF NORTH 119TH STREET THE FOLLOWING TWO (2) COURSES:

THENCE N 00°18'39" W A DISTANCE OF 1208.61 FEET;

THENCE N 00°12'21" W A DISTANCE OF 671.28 FEET TO THE SOUTHWEST CORNER OF THE ERIE GATEWAY SOUTH ANNEXATION NO. 2;

THENCE N 89°50'01" E ALONG THE SOUTHERLY LINE OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 2 TO THE TOWN OF ERIE A DISTANCE OF 1352.37 FEET;

THENCE S 00°14'20" E A DISTANCE OF 5.00 FEET;

THENCE S 89°50'01" W A DISTANCE OF 1292.37 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID NORTH 119TH STREET;

THENCE ALONG SAID RIGHT-OF-WAY LINE OF NORTH 119TH STREET THE FOLLOWING TWO (2) COURSES;

1) S 00°12'21" E A DISTANCE OF 666.19 FEET;

2) S 00°18'39" E A DISTANCE OF 1207.41 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 119,217 SQ. FT. OR 2.74 ACRES MORE OR LESS.

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

RE: PETITION FOR ANNEXATION FOR ERIE GATEWAY SOUTH ANNEXATION NO. 5 TO THE TOWN OF ERIE

The undersigned landowner(s) ("Petitioner(s)"), in accordance with it's the Municipal Annexation Act of 1965 as set forth in Article 12, Title 31, Colorado Revised Statutes, as amended and as in effect on the submission date set forth below ("Act"), hereby petitions the Board of Trustees of the Town of Erie for annexation to the Town of Erie ("Town") of the following unincorporated territory located in the County of Boulder, State of Colorado, the property being more particularly described by its legal description in "Exhibit A," which is attached hereto and incorporated herein by reference ("Property").

In support of this petition for annexation ("Petition"), Petitioner(s) further allege to the Board of Trustees of the Town that:

1. It is desirable and necessary that the territory described above be annexed to the Town.
2. The requirements of C.R.S. §§ 31-12-104 and 31-12-105 of the Act 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 or will be contiguous with the Town within such time as required by C.R.S. § 31-12-104 of the Act.
 - b) A community of interest exists between the area proposed to be annexed and the Town.
 - 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.
 - 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 (20) 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) The Property is not presently a part of any incorporated city, city and county, or town; nor have any proceedings been commenced for incorporation or annexation in an area that is part or all of the Property; nor has any election for annexation of the Property or substantially the same territory to the Town been held within the twelve (12) months immediately preceding the filing of this Petition.

- h) The annexation of the territory proposed to be annexed will not result in the detachment of area from any school district or attachment of same to another school district.
 - i) Except to the extent necessary to avoid dividing parcels within the Property held in identical ownership, at least fifty percent (50%) of which are within the three-mile limit, the proposed annexation will not extend the municipal boundary of the Town more than three (3) miles in any direction from any point of the current municipal boundary in any one year.
 - j) 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.
 - k) Reasonable access will not be denied 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 but is not bounded on both sides by the Town.
3. Petitioner(s) comprise more than fifty percent (50%) of the landowners in the Property owning more than fifty percent (50%) of the Property, excluding public streets, alleys and any land owned by the annexing municipality. The legal description of the portion(s) of the Property owned by each Petitioner is set forth in "Exhibit B," attached hereto and incorporated herein by reference.
 4. Accompanying this Petition are four (4) 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;
 - 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 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. The affidavit of the circulator of this Petition certifying that the signature(s) on this Petition is the signature of each person whose name it purports to be is attached hereto as "Exhibit C" and is incorporated herein by this reference.
 6. The proposed annexation of the Property complies with § 30(1)(b) of Article II of the Colorado Constitution.
 7. The Petitioner(s) signed this Petition no more than one hundred eighty (180) days prior to the date of the filing of this Petition with the Town.
 8. Upon the annexation ordinance becoming effective, the Property proposed to be annexed will become subject to all ordinances, rules and regulations of the Town, except for general property

taxes of the Town which shall become effective as the January 1 next ensuing following the effectiveness of the annexation.

9. Petitioner(s) have filed this Petition subject to the following conditions and the consent of Petitioner(s) to annexation of the Property to the Town is conditioned upon satisfaction of the following conditions, any one or more of which may be waived by OEO, LLC, a Colorado limited liability company (“Purchaser”), in its sole discretion:
 - a) Concurrently with its approval of annexation of the Property, the Town approves (i) zoning for the Property to the Low-Density Residential zone district under the Town’s Unified Development Code; and (ii) annexation of that certain property as set forth in those certain petitions for annexation to the Town and accompanying annexation maps for Erie Gateway South Annexation Nos. 1, 2 and 3 (the “Additional Annexation Property”); and (iii) zoning for the Additional Annexation Property to the Low-Density Residential zone district under the Town’s Unified Development Code.
 - b) Petitioner(s) hereby reserve the sole, exclusive and unilateral right, for the benefit of, and to be exercised solely by, Purchaser, to withdraw this Petition by Purchaser so notifying the Clerk of the Town in writing at any point prior to the later to occur of: (i) the latest final, non-appealable approval of the final ordinance(s) or other final approval(s) approving (A) annexation of the Property and the Additional Annexation Property to the Town; and (B) zoning of the Property and the Additional Annexation Property as contemplated herein; or (ii) final, non-appealable resolution of any “Legal Challenge.” For purposes of this Petition, “Legal Challenge” means either: (i) any third party commences any legal proceeding or other action that directly or indirectly challenges the annexation Property and/or any portion of the Additional Annexation Property, the approved zoning of the Property and/or any portion of the Additional Annexation Property, or any of the Town’s ordinances, resolutions or other approvals approving any of the foregoing; or (ii) any third party submits a petition for a referendum seeking to reverse or nullify any of such ordinances.
 - c) Prior to expiration of the period described in the foregoing subparagraph b) without Petitioner(s) having withdrawn this Petition, neither Petitioner(s) nor the Town shall cause or permit the occurrence of the conditions to effectiveness of the annexation as set forth in Section 31-12-113(2)(b) of the Act.
10. Except for the terms and conditions of this Petition, which terms and conditions Petitioner(s) expressly approve and therefore do not constitute an imposition of additional terms and conditions within the meaning of Sections 31-12-107(4), -110(2), -111 or -112(1) of the Act, Petitioner(s) requests that no additional terms and conditions be imposed upon annexation of the Property to the Town.

WHEREFORE, the following Petitioner(s) respectfully request that the Town, acting through its Board of Trustees, approve the annexation of the Property pursuant to the provisions of the Act.

[Signature Page(s) Follow]

Respectfully submitted this 9 day of August, 2016.

OWNER:

Name of Owner: Millican Revocable Living Trust

By: Linda Millican, Trustee
Linda Millican, Trustee

Date of Signature: Aug 9, 2016

Mailing Address:

3775 Highland St
Wheat Ridge, CO
80033

Resident of the Property:

STATE OF COLORADO)
COUNTY OF Jefferson) ss.

The foregoing instrument was acknowledged before me this 9th day of August, 2016 by Linda Millican as Trustee of Millican Revocable Living Trust.

My commission expires 4/21/2018

Witness My hand and official seal.

Danielle M Schofield

DANIELLE M SCHOFIELD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20054041406
MY COMMISSION EXPIRES APRIL 21, 2018

EXHIBIT A

Legal Description of Property to be Annexed

ERIE GATEWAY SOUTH ANNEXATION NO. 5 TO THE TOWN OF ERIE

A PARCEL OF LAND LOCATED IN SECTIONS 35 AND 36, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 36 BEING N 00°18'39" W AND MONUMENTED AS FOLLOWS:

- SOUTHWEST CORNER OF SECTION 36, BEING A FOUND 2.5" ALUMINUM CAP, PLS 28656 IN RANGE BOX, AS NOTED ON MON. REC. DATED 12-2-93.

- NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 36, BEING A FOUND 3.25" ALUMINUM CAP, PLS 13155, AS NOTED ON MON. REC. DATED 3-30-98.

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 36;

THENCE N 13°10'46" E A DISTANCE OF 128.60 FEET TO A POINT ON THE NORTHERLY LINE OF ANNEXATION PLAT MAP CITY OF LAFAYETTE, ORD. NO. 29, SERIES 1988, RECEPTION NO. 959456 TO THE **POINT OF BEGINNING**;

THENCE S 88°35'44" W ALONG SAID NORTHERLY LINE OF ANNEXATION PLAT MAP CITY OF LAFAYETTE, ORD. NO. 29, SERIES 1988, RECEPTION NO. 959456 A DISTANCE OF 60.01 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF NORTH 119TH STREET;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF NORTH 119TH STREET THE FOLLOWING TWO (2) COURSES:

THENCE N 00°18'39" W A DISTANCE OF 1208.61 FEET;

THENCE N 00°12'21" W A DISTANCE OF 671.28 FEET TO THE SOUTHWEST CORNER OF THE ERIE GATEWAY SOUTH ANNEXATION NO. 2 TO THE TOWN OF ERIE, ORD. NO. _____;

THENCE N 89°50'01" E ALONG THE SOUTHERLY LINE OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 2 TO THE TOWN OF ERIE A DISTANCE OF 1352.37 FEET;

THENCE S 00°14'20" E A DISTANCE OF 5.00 FEET;

THENCE S 89°50'01" W A DISTANCE OF 1292.37 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID NORTH 119TH STREET;

THENCE ALONG SAID RIGHT-OF-WAY LINE OF NORTH 119TH STREET THE FOLLOWING TWO (2) COURSES;

1) S 00°12'21" E A DISTANCE OF 666.19 FEET;

2) S 00°18'39" E A DISTANCE OF 1207.41 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 119,217 SQ. FT. OR 2.74 ACRES MORE OR LESS.

EXHIBIT B

Legal Description of the Land Owned By Each Petitioner

LEGAL DESCRIPTION OF THE LAND OWNED BY MILLICAN REVOCABLE LIVING TRUST:

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

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THENCE N 00°12'21" W A DISTANCE OF 671.28 FEET;

THENCE N 89°50'01" E A DISTANCE OF 30.00 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 36 AND THE **POINT OF BEGINNING**;

THENCE N 89°50'01" E A DISTANCE OF 1322.37 FEET;

THENCE S 00°14'20" E A DISTANCE OF 5.00 FEET;

THENCE S 89°50'01" W A DISTANCE OF 1322.37 FEET TO A POINT ON SAID WEST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 36;

THENCE N 00°12'21" W ALONG SAID WEST LINE A DISTANCE OF 5.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 6612 SQ. FT. OR 0.15 ACRES MORE OR LESS.

EXHIBIT C

Affidavit of Circulator

STATE OF COLORADO)
COUNTY OF Elkerson) ss.

Christian M. Janke, 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 seven (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

By: [Signature]
Name: Christian M. Janke

STATE OF COLORADO)
COUNTY OF Elkerson) ss.

The foregoing instrument was acknowledged before me this 9th day of August, 2016 by Christian Janke.

My commission expires: 4/20/2018

Witness My hand and official seal.

DANIELLE M SCHOFIELD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20054041406
MY COMMISSION EXPIRES APRIL 21, 2018

Notary Public

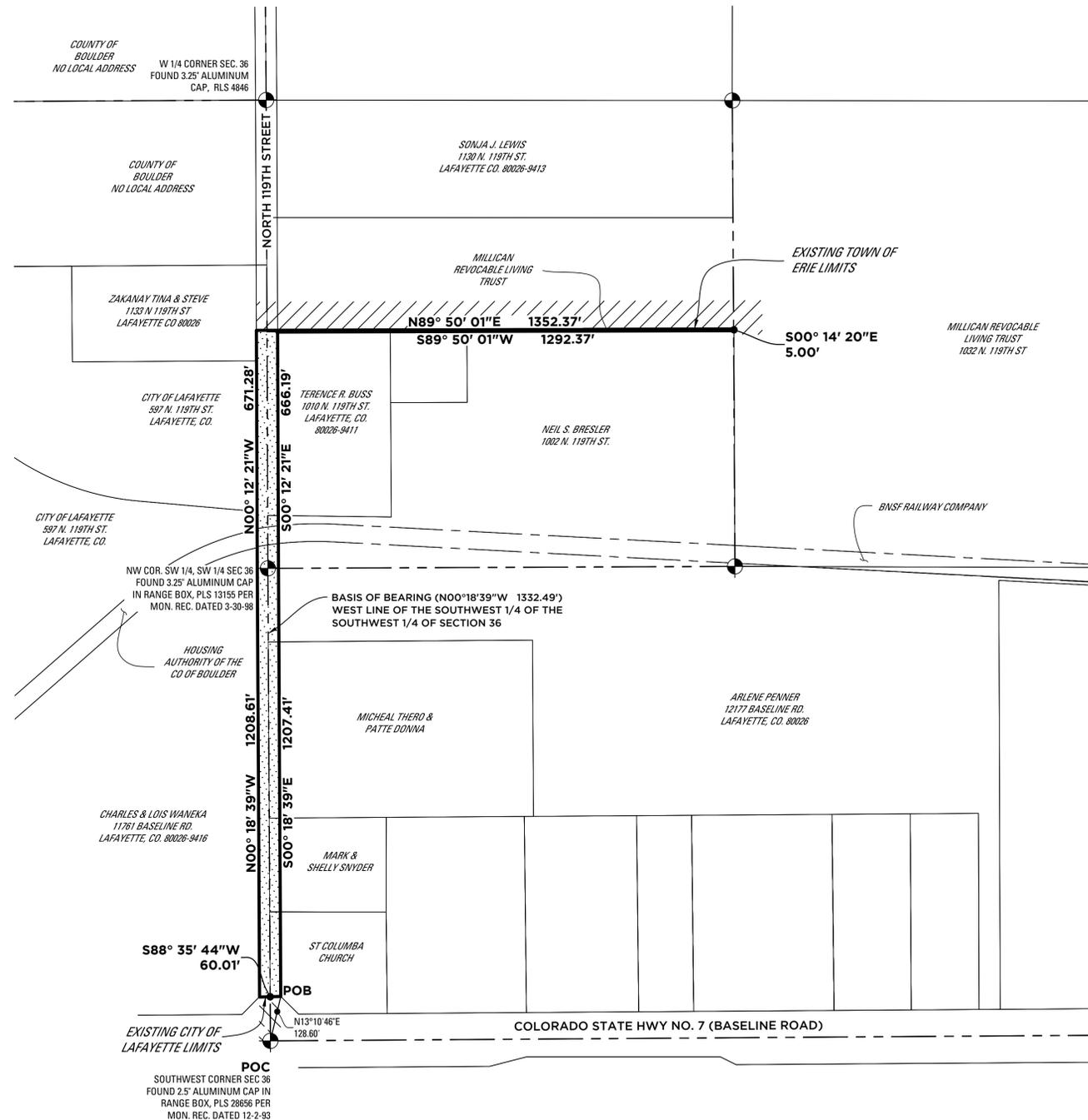
[Signature]

ERIE GATEWAY SOUTH ANNEXATION NO. 5 TO THE TOWN OF ERIE ANNEXATION MAP

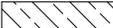
LOCATED IN SECTIONS 35 AND 36, TOWNSHIP 1 NORTH,
RANGE 69 WEST, 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO

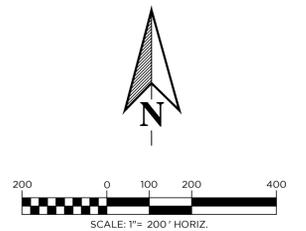
2.74 ACRES
AN-000758-2016

SHEET 2 OF 2



LEGEND

-  ANNEXATION PROPERTY BOUNDARY
-  ANNEXATION BOUNDARY CONTIGUOUS WITH THE TOWN OF ERIE
-  ANNEXATION BOUNDARY CONTIGUOUS WITH THE CITY OF LAFAYETTE
-  PROPERTY BOUNDARY
-  SECTION LINE
-  SECTION CORNER





KT ENGINEERING
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