

## **Annexation Agreement** **(Masters' Property)**

This Annexation Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") by and among the Town of Erie, a Colorado municipality with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and OEO 2, LLC, a Colorado limited liability company with a principal place of business at 7353 S. Alton Way, Suite A-100, Centennial, CO 80112 (the "Owner") (each a "Party" and collectively the "Parties").

Whereas, the Owner owns certain real property located in unincorporated Boulder County and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

Whereas, the Owner wishes to annex the Property to the Town and thereafter develop the Property as part of the Parkdale Development (the "Development"); and

Whereas, the Town wishes to annex the Property into the Town upon the terms and conditions set forth herein, and consistent with Owner's plans for the Property set forth in their Annexation Petition, and their Land Use Application, dated April 2, 2021, which include rezoning the Property as Planned Development (PD).

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

1. **Annexation.** The annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, as amended.
2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions of annexation of the Property and the fees to be paid by the Owner upon annexation and initial development of the Property. Unless otherwise expressly provided to the contrary herein, all conditions contained herein are in addition to any and all requirements of the Erie Municipal Code (the "Code"), as amended, and other applicable law.
3. **Water Rights.** The Owner has represented to the Town that the only water right appurtenant to the Property is a well constructed under Well Permit No. 20550-A (the "Well"). The Owner has offered the Well for dedication to the Town as required by Code § 8-1-9-E, but following review of the Colorado Division of Water Resources permit file for the Well, the Town has notified the Owner that it will not require that the Well be dedicated to the Town. Prior to receiving water service from the Town, the Owner shall plug and abandon the Well pursuant to applicable State law and regulations. Owner shall execute a Quitclaim Deed to dedicate to the Town all non-tributary groundwater rights associated with the Property.

4. Northern Colorado Water Conservancy District and its Municipal Subdistrict. On or before the Effective Date of Annexation, the Owner shall provide the Town with evidence that the Property is included within the Northern Colorado Water Conservancy District ("NCWCD"). At such time as the Town provides notice that water service will be provided to the Property by the Town, the Owner shall include the Property into the Municipal Subdistrict of NCWCD prior to receiving said water service from the Town.
5. Sewer Service. The Town shall provide sewer service to the Property at its standard rates. To the extent sewer lines are constructed to connect to municipal service, the construction of such lines shall be the obligation and at the sole expense of the Owner. The construction and extension of any such necessary lines and associated infrastructure shall be constructed in accordance with Town standards and specifications. The Town shall determine the sewer tap fees based on the Code. Sewer connections shall be required before the Town will issue a building permit for the construction of a new residential dwelling on the Property. The Property will connect to the sewer mains constructed by the Owner or the Owner's affiliate as a part of Parkdale Filing Nos. 1 & 2. To the extent that additional downstream improvements is necessary to serve the Property, the Parties will determine such and the Development Agreement for the Property will reflect what work is necessary to provide sewer service to the Property.
6. Easements. The Owner agrees to acquire at their own expense and to dedicate to the Town at the time of Final Plat, or at such later time as the Town requests, all utility easements within and offsite of the Property necessary to provide for the location of water and wastewater distribution, collection and transmission lines and related facilities.
7. Zoning and Development.
- a. The Owner hereby consents to the zoning of the Property as Planned Development (PD), as defined by Code § 10.2.5(D). The Owner acknowledges that concept plans and the number of units proposed for the Property to date are neither approved nor guaranteed to be approved through the annexation process. Many different factors will impact the ability of the Property to be developed, including without limitation undermining, geological constraints, landforms, drainage ways and other constraints, whether man-made or naturally occurring.
- b. The Owner may develop the Property in accordance with this Agreement, Town ordinances and regulations and other applicable law.
8. Vested Rights. Upon annexation, the Owner waives any prior vested property rights that may have been acquired in Boulder County.
9. Authority of the Town. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of the Town or its inhabitants.

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

b. 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, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the withdrawal of the petition for annexation by the Owner prior to the adoption of the annexation ordinance, or disconnection from the Town in accordance with state law, as appropriate.

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

11. Indemnification. The 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. The 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.

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

13. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

In Witness Whereof the Parties have executed this Agreement as of the Effective Date.

**Town of Erie, Colorado**

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Jennifer Carroll, Mayor

Attest:

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Heidi Leatherwood, Town Clerk

**Owner**  
OEO 2, LLC

\_\_\_\_\_  
Christopher Elliott

State of Colorado                    )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Christopher Elliott as the Manager of OEO 2, LLC.

My commission expires: \_\_\_\_\_

(SEAL)

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

## **Exhibit A**

### Legal Description

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

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 36 BEING S 89°36'44" W AND MONUMENTED AS FOLLOWS:

-SOUTHWEST CORNER OF SECTION 36, BEING A FOUND 2.25" ALUMINUM CAP IN RANGE BOX, PLS 28656 PER MON REC DATED 12-2-93.

-SOUTH 1/4 CORNER OF SECTION 36, BEING A FOUND 3.25" ALUMINUM CAP, AS A 75' WC. RLS 4846 PER MON REC DATED 9-10-08.

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 36;

THENCE N 00°20'01" W ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 36 A DISTANCE OF 75.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 7 (BASELINE ROAD) SAID POINT ALSO BEING THE SOUTHWEST CORNER OF ERIE GATEWAY SOUTH ANNEXATION NO. 1, ORD. NO. 330016, RECEPTION NO. 03573283 AND THE POINT OF BEGINNING;

THENCE S 89°36'44" W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 576.06 FEET TO THE SOUTHEAST CORNER OF ERIE GATEWAY SOUTH ANNEXATION NO. 7, ORD. NO. 05-2018, RECEPTION NO. 3649284;

THENCE ALONG THE EASTERLY AND SOUTHERLY BOUNDARY OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 7 THE FOLLOWING TWO (2) COURSES;

1. N 00°01'08" W A DISTANCE OF 1209.44 FEET;

2. S 87°03'19" E A DISTANCE OF 573.88 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID ERIE GATEWAY SOUTH ANNEXATION NO. 1, ORD. NO. 33-2016, RECEPTION NO. 03573283;

THENCE S 00°20'01" E ALONG SAID WESTERLY BOUNDARY A DISTANCE OF 1176.06 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 685,260 SQUARE FEET OR 15.7314 ACRES MORE OR LESS.