



City of Commerce City7887  
East 60<sup>th</sup> Avenue  
Commerce City, Colorado 80022  
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**PRE-ANNEXATION AGREEMENT**

THIS PRE-ANNEXATION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date, as defined below, by and between Edward L. Eberly, Loretta I. Stephen, Robert B. Stephen, Ronald P. Eberly, Darlene A. Thompson, Esther M. Richardson, Marilyn L. Steckel, Verlane M. Eberly, Robert E. Eberly, and the heirs and devisees of William D. Eberly, subject to administration in the Estate of William D. Eberly (“Owners”) and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado (“City”).

**WITNESSETH:**

WHEREAS, the Owner is the owner of the property described in Exhibit “A,” to this Agreement (“Property”), and has filed a petition to annex the Property into the City;

WHEREAS, the Owner desires, for the future development of the Property, that the City provide municipal services to the Property and that the Property be annexed to the City;

WHEREAS, the City desires that the Property be developed within the City’s boundaries and that the City provide municipal services and receive revenues from development occurring on the Property;

WHEREAS, the Owner acknowledges that the need for conveyance and dedication of public rights-of-way and other land as contemplated in this Agreement are directly related to and generated by development intended to occur within the Property and that no taking or damage to the remainder of the Property thereby will occur requiring any compensation;

WHEREAS, the Owner acknowledges that the development of the Property may require the design and construction of, or contribution to the design and construction of certain public improvements, by the Owner related both in nature and extent to the impact of the development of the Property; and

WHEREAS, the Owner and the City are entering into this Agreement in furtherance of the annexation of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below. “Effective Date” means the effective date of action by the City Council approving the ordinance annexing the Property except as expressly

specified in this Agreement.

“GID” means any General Improvement District organized within the boundaries of the City.

“Property” means the real property described and depicted on Exhibit “A”.

“SACFPD” means South Adams County Fire Protection District.

“SACWSD” means South Adams County Water and Sanitation District.

## **ARTICLE 2. RIGHTS-OF-WAY, PUBLIC LAND CONVEYANCE AND PUBLIC IMPROVEMENTS**

Conveyance of rights-of-way, easements and public land. At the request of the City, the Owner will convey from the Property at no cost to the City all rights-of-way, easements and public land reasonably required by the City, any GID, or any combination of those. All such conveyances shall be free and clear of liens and encumbrances, unless otherwise accepted by the City, and in such form as acceptable to the City. The City may require dedication of rights-of-way, easements and public land at any time construction thereof or thereon is deemed necessary in the public interest even if the Property is not being platted or developed at the time the City deems dedication of the rights-of-way, easements and/or public land is necessary.

Without limitation, the Owner specifically shall dedicate, upon request,

- (i) 25' right of way for Potomac Street;
- (ii) 26' right of way for Blackhawk Street. Tract B of Foxton Village shall be consolidated into the Eberly subdivision and platted as Blackhawk Street right of way. The City does not support platting this tract as right of way by separate instrument; and
- (iii) 54' right of way for East 101st Place, Road E, Road H, Road F, Road J, and Road C.

Public improvements. The Owner shall be responsible for the design and construction of off-site and on-site public improvements for the development of the Property, including without limitation transportation, water, sanitary sewer, storm sewer, and drainage improvements. Additional transportation improvements, and the acquisition of real property, may be required of the Owner for the development of the Property, including without limitation, off-site transitions, turn lanes, raised landscape medians, traffic signals, pedestrian crossings and underpasses, intersection improvements, roadway connections, or any other improvements required by the City for development of the Property. If any of the improvements are constructed by the City, which improvements the Owner otherwise would have been responsible for in whole or in part, at any time including prior to the development of the Property, the Owner will reimburse the City for the actual cost of the design and construction of such improvements brought to present day value at the time of payment (using the Construction Cost Index) and never less than the actual cost of the design and construction. Such reimbursement shall be payable at the time of development of the Property, unless deferred by separate agreement, or within one (1) year of the City's demand for payment, whichever is earlier. The cost of designing and constructing all of the aforementioned public improvements shall be borne by the Owner, and the construction thereof shall be at the sole cost, risk and expense of the Owner. All such public improvements must be built or completed in accordance with the public way permit requirements, City of Commerce City Engineering Construction Standards and Specifications and such other adopted standards, as applicable and as may be amended from time to time.

Without limitation, the Owner specifically is responsible for:

- The design and construction of the west half of Blackhawk Street to meet the minor collector roadway section as identified in the latest City of Commerce City Engineering Construction Standards and Specifications. This shall include any necessary offsite improvements to accommodate transition lanes and right and left turn auxiliary lanes.
- The design and construction of the east half of Potomac Street to meet a modified multimodal arterial as approved for the Reunion Ridge Filing 1 development. This shall include any necessary offsite improvements to accommodate transition lanes and right and left turn auxiliary lanes.
- The design and construction of an onsite storm water detention pond (“Eberly Pond”) to serve the proposed development. The Owners are responsible for constructing the outfall of the Eberly Pond to a City approved outfall. The Eberly Pond shall be designed and constructed in such a manner that it is capable of being expanded to fully function as the regional detention Pond B as planned and described in Henderson Creek Major Drainageway Plan dated December 2021, and prepared by Respec, the receipt of which is acknowledged by Owners. At the time of expansion, Owners shall dedicate the Eberly Pond to the City at no cost, and Owners shall cooperate to the fullest extent possible to facilitate the expansion, including the grant of all access and construction easements as may reasonably be required in the opinion of the City to allow for the design and construction of the regional facility. The City shall bear the reasonable costs required of the Owner’s grant of access and construction easements associated with the expansion to a regional pond, including those administrative and legal costs that may be associated with replatting and dedication of the Eberly Pond. The regional pond will be designed and constructed as an inline facility to attenuate stormwater flows within the Ragweed Draw drainageway. Water quality treatment will not be provided in the regional facility, therefore, water quality treatment from the developed Eberly property will need to occur prior to discharge to the Eberly Pond.
- A cash contribution of an amount equal to one hundred ninety seven five hundred thousand dollars (\$197,500) for a future traffic signal at East 96<sup>th</sup> Avenue and Potomac Street. Payment shall be prior to the issuance of a grading permit for the Property. If the City does not complete construction of the traffic signal at East 96<sup>th</sup> Avenue and Potomac Street within five years of date of the cash contribution, the City shall return the contribution to the Owner.
- A cash contribution of six hundred thousand dollars (\$600,000) toward the design and construction of the future buildout of Blackhawk Street north of the property toward East 104<sup>th</sup> Avenue (“City Blackhawk Street Improvements”). Payment shall be made prior to the issuance of a grading permit for the Property. If the City does not complete construction of the City Blackhawk Street Improvements within five years of date of the cash contribution, the City shall return the contribution to the Owner.
- Cash payment of thirty two thousand dollars (\$32,000) in lieu of design and construction of the sidewalk ramps on the east side of Blackhawk Street at East 100<sup>th</sup> Place, East 101<sup>st</sup> Place, East 101<sup>st</sup> Avenue, and Blackhawk Way (AKA, E 100<sup>th</sup> Way) to match the design and specifications of the sidewalk ramps approved for the Eberly Subdivision. Payment shall be made prior to the issuance of a grading permit for the Property. If the City does not complete construction of the City Blackhawk Street Improvements within five years of date of the cash contribution, the City shall return the contribution to the Owner.

Owner acknowledges and represents that they have directly benefited from some oversizing and extension of

utilities as contemplated by that certain Consolidated Development Agreement for Buffalo Hills Ranch PUD (the "CDA"), dated December 17, 2001, as set forth at Article 9, Section 9.1. Owner represents and warrants that they have agreed to reimburse the Reunion Metropolitan District through a cash payment to the Reunion Metro District the amount of \$145,000 for the benefits received as contemplated by Section 9.1 of the CDA.

#### Parks and Open Space

- All private parks within the Project as required for each applicable Phase.

Maintenance of rights-of-way, easements and dedicated public land in accordance with City ordinances. For the period during which any such rights-of-way, easements and/or public land has been conveyed but has not been improved, the Owner will maintain any such unimproved rights-of-way, easements and/or public land pursuant to maintenance requirements of the City.

To the extent public improvements (such as water, sewer lines, storm drainage facilities, street lighting or other public improvements) are oversized or extended onto adjacent property by the Owner for a benefit accruing to other parties, said improvements may be eligible for reimbursement. If said improvements qualify for reimbursement through the City, the Owner shall be required to enter into a Reimbursement Agreement with the City in accordance with the requirements of the City. In the case of water or sewer, eligibility for reimbursement, if any, must be coordinated and approved by SACWSD.

### **ARTICLE 3. REIMBURSEMENT AGREEMENTS**

To the extent public improvements (such as water, sewer lines, storm drainage facilities, street lighting or other public improvements) are oversized or extended onto adjacent property by the Owner for a benefit accruing to other parties, said improvements may be eligible for reimbursement. If said improvements qualify for reimbursement through the City, the Owner shall be required to enter into a Reimbursement Agreement with the City in accordance with the requirements of the City. In the case of water or sewer, eligibility for reimbursement, if any, must be coordinated and approved by SACWSD.

### **ARTICLE 4. PUBLIC IMPROVEMENT AGREEMENT**

At the time the Property is developed, the Owner shall execute a public improvement agreement with the City Owner defining roadway construction, storm drainage facilities, landscaping requirements and any other dedicated public improvements. Those streets, storm drainage, landscaping, and other dedicated public improvements constructed by the Owner, by any district, or party under contract with the Owner, shall initially be accepted by the City upon completion of construction in accordance with City standards or other adopted standards, or after correction pursuant to those standards of any defects in said streets, storm drainage, landscaping, or other public improvements, whichever date shall last occur. The Owner shall warrant construction of said streets, storm drainage, landscaping and other public improvements for one year after initial acceptance by the City at which time the City will commence maintenance of said streets, storm drainage, and other public improvements. The Owner shall maintain all landscaping improvements.

### **ARTICLE 5. STATUTORY DISTRICTS**

Creation of Districts. Subject to the City's rights of review and approval or denial under the laws of the State of Colorado, which approval shall not be unreasonably withheld, the City shall approve the creation of one or more

districts including, but not limited to, special districts, general improvements districts and metropolitan districts, authorized pursuant to Title 31 and Title 32 of the Colorado Revised Statutes as the same may be amended from time to time ("District" or "Districts"), as requested by the Owner for purpose of the acquisition, construction, installation, financing and/or maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. Such capital improvements and facilities may include all improvements permitted by said Titles 31 and 32 including, but not limited to: water and sanitary sewer lines; storm drainage and detention improvements; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, street lights, safety protection improvements and other transportation facilities; and parks, trails and recreation facilities. Any approval of such Districts, when required by the Owner, may include the following conditions, unless waived by the City, which waiver shall not be unreasonably withheld.

No District created as a consequence of this Agreement shall levy, charge, or collect a sales or use tax.

Districts shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.

All improvements constructed by any District shall be designed, constructed, and warranted in accordance with the standards and specifications of the City.

The City shall be the sole provider of municipal services to the Property, including police protection, street maintenance, zoning and code enforcement, and all other services as the City may customarily provide to the residents of the City; provided however, that the District may, at their option, provide supplemental street, median, landscape (including irrigation) and other facility maintenance services.

The City shall not incur any expense in the formation or operation of the District or in the retirement of capital obligations related thereto.

The Districts, when organized, shall not exceed the boundaries of the Property, nor have its powers altered in any way, without the prior approval of the City.

Maintenance Fee and Charges of District. Except as otherwise provided, nothing in this Agreement shall be construed to prohibit or preclude the Districts from establishing, fixing, levying, charging or collecting any rate, fee or charge, in addition to the rates, fees and charges to be collected by the City.

#### **ARTICLE 6. IMPACT FEES AND OTHER CITY FEES**

The Owner will pay City impact fees and other City fees adopted by the City and as may be amended from time to time, and uniformly charged for other property located in the general area for transportation, drainage, parks, trails and recreation facilities, water acquisition and other purposes authorized by law. All impact fees will be assessed in accordance with applicable law.

Road Impact Fee. The Owner will pay the City road impact fee in accordance with the requirements of the City, if the Property is located within the road impact fee area.

Drainage Impact Fee. The Owner will pay the City a drainage impact fee in the amount specified by City ordinance as applicable to the Property.

Parks, Trails and Recreation Facilities Impact Fee. The Owner will pay the City impact fee for parks, trails and recreation facilities or dedicate land for parks, trail, and recreation facilities in agreement with the City and in accordance with the requirements of the City.

Water Impact Fee. The Owner will pay the City impact fee for water in accordance with the requirements of the City.

School Capacity Fee. In accordance with the specifications of the School Capacity Fee, as established by School District 27J Capital Facilities Fee Foundation, the Owner will pay said fee for purposes of school capital construction. The Owner will execute a Participation Agreement providing for the payment of Capital Facility Fees. As said fees are adopted or amended by School District 27J Capital Facilities Fee Foundation or, as applicable, by the City of Commerce City, the Owner will pay the fee that is consistent with the adopted fee schedule.

Fees in Lieu of Land Dedication for Schools. In lieu of land dedication required by City ordinance for school purposes, the City may require the Owner to pay the fees in lieu of land dedication for schools according to the City's adopted schedule. As fees in lieu of land dedication for schools are adopted or amended by the City, the Owner will pay the fee that is consistent with the adopted fee schedule.

#### **ARTICLE 7. CITY OBLIGATIONS**

The City shall provide police and other municipal services to the Property to the same extent as those services are provided by the City elsewhere in the City, pursuant to the City's general and uniformly applied policies.

#### **ARTICLE 8. WATER AND SEWER**

Water and sewer services shall be provided by SACWSD and shall be agreed upon with SACWSD prior to development of the Property as a condition of development. The Owner must secure adequate water and sewer services and may be required to enter into a Water Resources Agreement with SACWSD to meet the contemplated requirements of the applicant's development prior to City approval of any development application. No development application shall receive approval from the City until such requirements have been met. Adequacy of water and sewer services shall be determined by the City and SACWSD. Future changes to the proposed development may require an amendment to the Water Resources Agreement in which event adequate water resources must be secured by the Owner prior to City approval of any permits for development.

Water and sewer services must be obtained in accordance with the rules and regulations of SACWSD as the same exist at the time application is made to SACWSD for water and sewer services.

#### **ARTICLE 9. URBAN GROWTH BOUNDARY**

By allowing annexation of the Property, the City does not guarantee that the Property is located within the Urban Growth Boundary/Area, as defined by the Denver Regional Council of Governments, or other boundaries legislatively determined.

#### **ARTICLE 10. FIRE PROTECTION**

The Owner agrees to cooperate with the City and SACFPD to incorporate the Property into the service area of the SACFPD within one hundred and eighty days (180 days) of the Effective Date. If the Property is included in another

fire district (other than the Greater Brighton Fire Protection District), the Owner shall also seek exclusion from such district.

#### **ARTICLE 11. ZONING**

Zoning of the Property shall be accomplished in accordance with the City's Codes, regulations, and standards and in accordance with Colorado Revised Statutes, as may be amended from time to time. The Property shall be subject to all applicable master plans adopted by the City at the time of subdivision or any future subdivision of the Property.

#### **ARTICLE 12. GENERAL IMPROVEMENT DISTRICT**

At the time of petition for annexation of the Property, if required by the City and if the Property is located within an applicable GID service area, the Owner must join the GID and pay the joinder fees associated with joining the GID.

#### **ARTICLE 13. CHALLENGES**

If the Property's annexation or any portion thereof is challenged by a third party, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the Final Outcome of the challenge except as specified herein. "Final Action" means an action from which no appeal can be made or the time to appeal has expired. If the challenge results in the disconnection of the Property from the City, then this Agreement shall be null and void and of no further effect except as specified herein. The Owner and the City shall cooperate to cure any legal defects that resulted in any challenge, including any challenge that results in disconnection of the Property.

#### **ARTICLE 14. APPROVAL CONDITIONED UPON APPROVAL OF METRO DISTRICT SERVICE PLAN**

Withdrawal of Annexation Petition. If the City fails to approve a District service plan for the Property as submitted for Council approval, or as otherwise agreed to between the City and applicant, then Owners have the right, in their sole discretion, to withdraw the annexation petition prior to recordation of the annexation map and annexation ordinance. Owner will notify the Clerk of the City in writing of its decision with regard to this section within seven (7) days of City Council final action on the District service plan. Pursuant to C.R.S. § 31-12-113, such withdrawal of the annexation petition will void the annexation of the Property and City will take any other necessary steps to formalize the nullification of the annexation. Neither the City nor Owners will cause or permit the occurrence of the conditions to effectiveness of the annexation of the Property as set forth in C.R.S. § 31-12-113(b) prior to the Owners written decision delivered to the Clerk of the City pursuant to this section.

#### **ARTICLE 15. MISCELLANEOUS**

Recordation; Covenants; Assignment. This Agreement shall be recorded with the Clerk and Recorder of Adams County. The provisions of this Agreement shall constitute covenants and servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the Property, the Owner, its heirs, successors and assigns (including subsequent owners of the Property or any portion thereof). Except as provided in this Agreement, Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located upon or within the Property. Owner

Costs. The Owner will bear all costs necessary for the annexation, zoning, inclusion in any district, and any development approval in connection with the Property, including without limitation the annexation petition, legal descriptions, maps, publication, notice, presentations, and recordation. The City shall not, in any event, be liable to the Owner for any costs associated with the annexation or the failure of the annexation. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

No Reliance. The Owner acknowledges that the annexation and zoning of the Property are subject to the plenary legislative discretion of the City Council of the City of Commerce City and the rights of initiative and referendum reserved to its citizens. No assurances of annexation or zoning, or any development approval, incentive, or other condition, have been made to or relied upon by the Owner. If, in the exercise of its legislative discretion, and prior to thesecond reading of the annexation ordinance, the City fails to approve any proposed zoning, the sole and exclusive remedy of the Owner shall be the withdrawal of the annexation petition. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

Police Power. The Owner acknowledges that upon annexation the Property shall be subject to the same ordinances, rules, regulations, and policies as applicable to all other property presently situated within the boundaries of the City. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental, or police powers to promote and protect the health, safety, morals, or general welfare of the City or its residents. This Agreement shall not prohibit the enactment by the City of any fee, charter provision, ordinance, resolution, rule, or regulation which is of uniform and general application.

Incorporation. Exhibit A to this Agreement is attached and incorporated in this Agreement by reference.

Amendment of Agreement. This Agreement may be amended or terminated only by mutual consent in writing by the City and the Owner, its heirs, successors or assigns following the public notice and public hearing procedures required for the original approval and execution of this Agreement.

Remedies. In the event of a breach of default in performance of this Agreement, the parties shall have all remedies in law or in equity including specific performance. In no event shall the City be deemed to waive any rights existing or accruing to the City under the Colorado Governmental Immunity Act, nor shall the City be required to exercise its discretion to annex or zone the Property except as provided by law. In addition to any other remedies, the Owner acknowledges that the City may withhold or revoke any permits, approvals, or certificates for the Property or any structure or improvement within the Property as provided by law or in the event of a breach of this Agreement by the Owner.

Costs & Attorney's Fees. If the Owner breaches this Agreement, the Owner shall pay the City's reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement. In the event of a challenge as defined in Article 13 of this Agreement, the Owner shall pay its own and the City's reasonable costs and attorneys' fees incurred in defending the challenge.

Titles of Sections. The titles of the several articles and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.



Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, shall not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

No Third-Party Beneficiary. No third-party beneficiary rights are created in favor of any person not party to this Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their heirs, successors and assigns, including successor owners of any lot(s) or any other portion(s) of the Property, and nothing contained in this Agreement shall give rise to or allow any claim or right of action under this Agreement by any other person or party. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that the right of the Owner to receive, and the obligation of the City to pay, any credits or reimbursements hereunder shall accrue exclusively to the original parties to this Agreement, and shall not be assignable without the City's express written consent, and to any statutorily empowered districts created by the Owner pursuant to this Agreement, but to no others.

Jurisdiction and Venue. Jurisdiction and venue for any action to enforce or interpret the terms of this agreement shall be in the District Court of Adams County, Colorado.

Applicable Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement.

Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

(Signatures contained on next page(s).)

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be duly executed as of the dayfirst above written.

**CITY OF COMMERCE CITY, COLORADO**

By: \_\_\_\_\_  
 Roger Tinklenburg, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
 Dylan Gibson, City Clerk

Approved as to form:

\_\_\_\_\_  
 Matt Hader, interim City Attorney

[City Staff: Require separate signature of all owners, from persons with legal authority.]

**OWNER:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

STATE OF )  
   ) ss.  
 COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by

\_\_\_\_\_  
 [Insert name of signer]  
 as \_

\_\_\_\_\_  
 [Insert title/authority of signer and name of Owner]  
 Witness my hand and official seal.      Notary Public: \_\_\_\_\_

Address: \_\_\_\_\_  
   Street Number/Name      City      State      Zip Code

(SEAL)

My Commission Expires: \_\_\_\_\_