

ANNEXATION AGREEMENT

THIS AGREEMENT, made and entered into the 15th day of July, 2008, by and between those individual property owners executing this Agreement, as set out below, hereinafter referred to collectively as "Annexor," and the City of Walsenburg, a Colorado municipal corporation, hereinafter referred to as "City."

RECITALS

WHEREAS, Annexor owns the property described in Exhibit "A," attached hereto (the "Property") and has filed a petition to annex the Property to the City; and

WHEREAS, the individual Annexors are members of the Northlands Improvement District (NID) which is an informal owner's association created by a group of landowners in Huerfano County with a business center at exit 52 of Interstate 25 and being north of the City of Walsenburg, Colorado. The NID created a Board of Directors along with a President, Vice-President, and Secretary/Treasurer. All board members are landowners within the Northlands geographic area.

WHEREAS, the NID was formed in the mid '90s with the common goal of providing sanitary sewer service to the Northlands area. Over the years, engineering and economic studies have been performed to demonstrate the need and feasibility of building sanitary sewer infrastructure.

The common goal was realized when the landowners recognized a threat to what they so highly valued; without development of sanitary sewer services their quality of life and business investments were at risk. In addition to the stagnation of business opportunity, the environmental issues of open lagoons (which are at risk of not meeting EPA standards), polluted groundwater and the accompanying odors are significant problems for the entire community of Walsenburg.

WHEREAS, the parties mutually agree that the annexation of the Property to the City should not create any additional cost or impose additional burden on the existing residents of the City to provide public facilities and services to the Property after annexation. If the proposed Annexation will result in new burdens on the City's existing public facilities and services, the Annexor shall be responsible for mitigating such impacts through compliance with codes, plans, requirements, ordinances, rules, regulations, comprehensive plan and standards ("Standards") adopted, and as may be amended or adopted, by the city council. The Standards will include fees calculated and imposed to provide adequate public facilities and services based on objective criteria.

WHEREAS, Annexor wishes to allow for future development of the Property for uses compatible with its objectives and those of City; and

WHEREAS, Annexor acknowledges that upon annexation, the Property will be subject to all Standards of the City, as they may be amended from time to time; and

WHEREAS, the parties mutually recognize and agree that it is necessary and desirable for current use and future orderly development that the City be the source of necessary urban services for property to be developed; and

WHEREAS, the parties agree that it is in the public interest of the parties hereto to enter into a written agreement as to the overall plan of any future development, including by illustration only, location and dedication of public ways and public areas, zoning, dedication of water rights and location and payment regarding roads, utilities and other improvements; and

WHEREAS, the City has imposed on Annexor conditions and requirements in connection with the annexation of the Property, and such conditions and requirements are necessary to protect, promote and enhance the public health, safety and welfare; and

WHEREAS, as a condition of approval of the annexation ordinance, the Annexor agrees to enter into this Agreement with the City.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and the annexation of the Property, the parties agree as follows:

1. **Intent.** The intent of this Agreement is to set forth the requirements for annexation, resolution of the sanitary sewer problem, and allow for future development of the Property. This Agreement shall be binding upon the parties and may not be modified except by further written agreement.
2. **Development.** The Property annexed shall not be subject to further development until the sanitary sewer problem is resolved, then the annexed property can be developed in general conformity with City's comprehensive plan, subdivision regulations, zoning code, building codes, and other applicable statutory and City Standards, as they may be amended from time-to-time.
3. **Standards/Statutes.** All terms and conditions herein are in addition to any and all requirements of the City Standards and any and all applicable state statutes. Annexor agrees the Property is and shall continue to be subject to all Standards of the City as the same may be amended from time to time, including the payment of any fees imposed thereby which are not specifically described herein.
4. **Conditional Annexation.** Annexation of the Property shall only be effective on complete execution and recordation of this Agreement, the filing by the City Clerk in the City's office of a copy of the Annexation Map and Annexation Ordinance, and the recordation of the Annexation Map and Annexation Ordinance with the Huerfano County Clerk and Recorder.
5. **No Vested Rights.** No vested rights shall accrue to Annexor by virtue of annexation of the Property or this Annexation Agreement. Any vested rights for the Property shall be

acquired only by compliance with Section 24-68-101, et seq., C.R.S., and approval by the City of a future site-specific development plan for the Property.

6. Zoning. The Annexor has requested that the initial zoning of each parcel within the Property be in accordance with the zoning districts set out in the City Code, as depicted on Exhibit B. The granting of such zoning by the City is a condition to annex the Property. Annexor shall take all action necessary to permit zoning by the City of the annexed area within the time prescribed by state statute. Rezoning of any parcels in the future shall not be precluded.

All future residential, commercial and industrial construction will be subject to the types and intensities of land use permitted pursuant to the City Zoning Code in effect on the date hereof, or in effect on the date when building permit applications are filed.

7. Municipal Services. Subject to the provision, construction and installation of required infrastructure and resources, as provided in this Agreement, and in the City Code, the City agrees to provide the Property with all of the usual municipal services in accordance with this agreement, and the Standards of the City, which services shall include, but are not limited to general government administration, police protection, natural gas, electricity, and water and sanitary sewer services and all other services customarily and currently provided by the City.

Nothing in this Agreement shall provide the Annexor with priority for utility, public safety, and other public services by the City. If utility, public safety or other public services are not available to coordinate with Annexor's development schedule, the Annexor shall either delay development until funding becomes available, or fully advance funds necessary to accelerate their availability and priority, according to the City's Standards, and the provisions of this Agreement.

The foregoing notwithstanding, the City affirms its intention to move forward with planned improvements to its sanitary sewer treatment plant so that the plant will be able to serve the Property, as currently developed and allowing for reasonable future development, after the outfall mains and associated infrastructure have been constructed and installed, as provided in this agreement.

8. Public Improvements/Standards. When required for future developments, the owner of the parcel for development agrees to design, construct and install at its sole cost and expense, in accordance with the City's approved standards, all public improvements within or adjacent to the property and serving the property, including, but not limited to, water distribution, sewage collection, gas service, electric service, street and trail lighting, streets, curb, gutter, sidewalks, storm sewer lines, storm drainage improvements, fire hydrants, pedestrian and non-motorized trails, street median/boulevard and subdivision entryway landscaping and park improvements as are necessary to serve the property. All the public improvements shall be constructed to City Standards, or where applicable, to the standards of the utility providing the service. All utilities will be placed underground.

(a) **Sizing of Improvements.** Utilities and streets shall be sized to provide for development of the property and to accommodate the development of adjacent properties. Over sizing of utilities and off-site improvements to utilities and transportation infrastructure benefiting the property or to accommodate future development within the area may be required by the City. Said over sizing of utilities and off-site improvements to utilities and transportation infrastructure may be eligible for reimbursement by the City, future developers, or users of the facilities. Any reimbursements to the developer will be subject to a separate Agreement for Public Improvements (API).

(b) **Warranty.** The developer will warrant all required and provided public improvements are free from defects and constructed and installed in accordance with all applicable plans and specifications. The developer will provide to the City a two (2) year (from the time of conditional acceptance of construction) warranty guarantee, the form and surety of which is subject to approval of the City. If requested by the City, the developer agrees to dedicate to the City any or all required improvements.

(c) **Water Rights.** The developer shall deed and transfer to City, at the time building permits are issued, any required raw water. The City may, in its sole discretion, accept the cash equivalent of raw water for the parcel for which the building permit is issued. The City agrees that the water requirement can include water that will not be treated but will be used for irrigation of open space and landscaping.

The developer shall, by Special Warranty Deed acceptable to the City, convey to the City all non-tributary and non-non-tributary groundwater as defined by C.R.S. § 37-90-103, whether adjudicated, unadjudicated, permitted or unpermitted, underlying the Property.

(d) **Water Service.** Water service to the property shall be provided by the City, except as may be allowed by separate agreement between the City and another public water provider. The Annexor hereby acknowledges the City Standards with respect to obtaining water service from the City, the dedication of water rights to the City in connection with the annexation, the extension of water lines to the Property and the provision of and pumping and storage facilities to serve the Property. The Annexor agrees to comply with City's Codes and Standards, including any applicable amendments adopted subsequent to the annexation of the Property. For future development within the property to occur, the developer shall install at its sole cost and expense, all the water mains, trunk lines, fire hydrants, pumping and storage facilities and appurtenances necessary to provide service from the City's system to the developer's property.

The City does not warrant the availability of water service for any future phase of development. A determination of water service availability by the City shall be made at the time requests for water taps are made. In the event that the City determines that it has insufficient water service availability, no "water taps" or "connections" shall be authorized until such time as there is water service capacity availability. "Water tap" ("connection") fees shall be paid when a building permit for a structure is requested from the City or as otherwise provided in the City Code.

(e) **Sanitary Sewer Service:** Sanitary sewer service to the Property shall be provided by the City, except as may be allowed by separate agreement between the City and another wastewater service provider. The Annexor hereby acknowledges the City's standards with respect to obtaining sanitary sewer service from the City, the extension of sanitary sewer outfall lines to serve the Property, and the provision of pumping and treatment facilities required to serve the Property. The Annexor agrees to comply with the City's Codes and Standards, including any applicable amendments adopted subsequent to the annexation of the Property.

The Annexor shall construct and install at its sole cost and expense all outfall mains, pumping facilities and appurtenances as are necessary to provide service to the Property from the City's existing system, including the provision of necessary easements. Annexor agrees that the provision of sanitary sewer service to the Property requires extraordinary equipment, maintenance and replacement costs, and acknowledges that the City may impose a "surcharge" with respect to "tap" or "connection" fees and monthly service fees with respect to the provision of service to the Property.

The City does not warrant the available sanitary sewer service capacity for any future phase of development. A determination of sanitary sewer service availability by the City shall be made at the time Annexor requests for connection to the sanitary sewer service are made. In the event the City determines that it has insufficient capacity available, no sanitary sewer "taps" or "connections" shall be authorized until such time as there is service available.

Sanitary sewer "tap" or "connection" fees shall be paid when a property applies for connection to the City's sanitary sewer system. If the connection is not authorized, the fee shall be refunded.

(f) **Transportation Improvements/On-Off Site.** For future development of the Property to occur, certain on-site and off-site transportation improvements, as identified in a traffic study approved by the City, may be necessary. The developer shall dedicate the necessary property rights and construct the improvements in a sequence acceptable to the City to meet the demands that development of each future phase of the Property will generate. The developer shall follow all applicable provisions of the City Standards. The developer agrees to construct or contribute to the construction of all on-site and off-site transportation improvements to accommodate needs that development of each phase of the Property will generate.

(g) **Parks and Open Space.** The City's Standards/Comprehensive Plan shall identify park and open space land within the planning area. Subject only to encumbrances acceptable to the City, the future developers shall preserve, construct, and dedicate to the City all park and open space areas within, crossing or bordering the Property as depicted in the City's Standards/Comprehensive Plan at the time of platting the Property.

(h) **Fire Protection.** The Annexor shall be solely responsible for installing all fire hydrants and other fire protection measures on the Property and its perimeter as may be required by the City.

(i) **Formation of Special Districts.** The City currently anticipates it will support the formation of a special district or special district(s) in accordance with C.R.S. Section 31-25-601, et seq., affecting all or part of the Property as well as other properties, as a means of financing the construction or installation of public improvements/infrastructure, for water, sewer and natural gas service, and the City shall take any action reasonably necessary to assist and cooperate in the formation of such districts. The parties anticipate the submission of a petition to form the "Northlands General Improvement District," which is intended to provide for many of the public improvements.

Nothing in this agreement shall prohibit the formation of additional governmental districts allowed by law to provide for public improvements or services.

9. **Development Impact Fees.** To the extent that the City has established, or shall establish, certain uniform development impact fees that directly address the affect of future development intended to occur within the Property upon the City's infrastructure, administration and delivery of governmental services, the Annexor acknowledges the obligation of the owners of the Property to pay these uniform development impact fees. The City and the Annexor further acknowledge that the City may amend the development impact fees from time to time as needed to address changing affects upon the City's infrastructure, administration and delivery of governmental services as a result of development occurring within the City. .

10. **Exclusivity of Annexation Petition.** The Annexor agrees to not sign any other petition for annexation of the Property or any petition for an annexation election relating to the Property, except upon request of the City.

11. **Miscellaneous Provisions.**

(a) **Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the City's Standards, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety and welfare of the City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the City of any tax, fee or rate charge.

(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 party, section, subsection, 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 and Recorder of Huerfano 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 City and any individual Annexor without the consent of any other individual annexors as long as such amendment affects only that individual Annexor's portion of the Property. Such amendments shall be in writing and shall be recorded with the County Clerk and Recorder of Huerfano, 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) *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchases and subsequent owners of any lots or parcels within the Property, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Huerfano County, Colorado at Annexor's expense.

(e) *Termination.* If the annexation of the Property is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.

(f) *No right or Remedy of Disconnection.* No right or remedy of disconnection of the Property from the City shall accrue from this Agreement, other than provided by applicable state laws. In the event the property or any portion thereof is disconnected at Annexor's request, the City shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.

(g) *Annexation and Zoning Subject to Legislative Discretion.* The Annexor acknowledges that the annexation and subsequent zoning of the Property are subject to the legislative discretion of the City Council of the City. No assurances of annexation or zoning have been made or relied upon by the Annexor. In the event that the City Council, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, then the exclusive remedy for the break hereof accompanied by the exercise of such discretion shall be the disconnection from the City in accordance with state law, as may be appropriate.

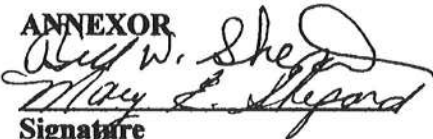
(h) The Annexor acknowledges and agrees that the City is considering amendments to its standards related to its zoning ordinances and that such amendments will affect and apply to the Property.

- (i) *Legal Description in the Case of Challenge.* The City 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, the City may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the Annexor from engaging the City's legal representatives in such a defense, at no cost to the City.
- (j) *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.
- (k) *Reimbursement for Other Costs.* The Annexor shall reimburse the City for any past and future third party costs incurred by the City that was, or will be 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 annexation or development of Property.
- (l) *Cooperation.* The parties agree that they will cooperate with each other in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
- (m) *Timely Submittal of Materials.* The Annexor 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.
- (n) *Compliance with State Law.* The Annexor shall comply with all applicable State law and regulations.
- (o) *Recording of Agreement.* This Agreement shall be recorded in the records of the County Clerk and Recorder, Huerfano County, Colorado.
- (p) *Choice of Law.* In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Huerfano County, Colorado.

The undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

CITY OF WALSENBURG

By: 
Edie Sheldon, Mayor

ANNEXOR

Signature

Bill Shepard
Printed Name

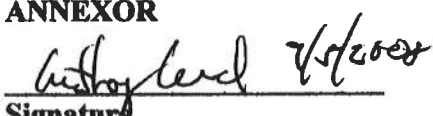
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ANNEXOR

Signature

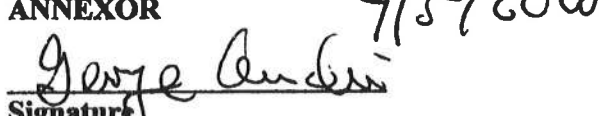
Mark Bayes
Printed Name

Date: 7-7-08

ANNEXOR

Signature

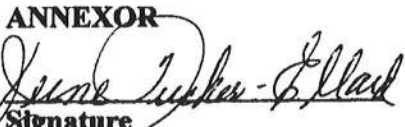
Anthony Amidei
Printed Name

Date: 7/5/2008

ANNEXOR

Signature

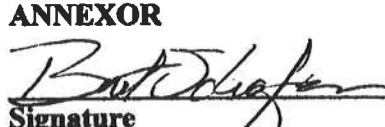
George Amidei
Printed Name

Date: 7/5/2008

ANNEXOR

Signature

June Tucker Ellard
Printed Name

Date: 7/02/08

ANNEXOR

Signature

Bret Schafer
Printed Name

Date: 7/4/08

ANNEXOR

Signature

William Schafer

Printed Name

Date: _____

ANNEXOR

Signature

Ernest Quintana

Printed Name

Date: 7-16-08

ANNEXOR

Signature

Lydia Quintana

Printed Name

Date: 7-16-08

ANNEXOR

Signature

PMP, LLC

Printed Name

Date: 7/8/08

ANNEXOR

Signature

George Birrer

Printed Name

Date: 7/3/08

ANNEXOR

Signature

HDT, LLC

Printed Name

Date: 7/9/08

ANNEXOR

Signature

Roun Ney

Printed Name

Date: 7-8-08

ANNEXOR

Signature

Shreeji, LLC

Printed Name

Date: 7/12/2008

Final: 7/2/08

10

ANNEXOR

Kenneth Rudolph
Signature

Kenneth Rudolph
Printed Name

Date: 7-2-08

ANNEXOR

Sharon L. Mitchell
Signature

Sharon Mitchell
Printed Name

Date: July 2, 2008

ANNEXOR

Kenneth P Ocker, Mgr.
Signature

VFP, LLC
Printed Name

Date: 7/8/08

ANNEXOR

Kenneth P Ocker, Mgr.
PCP KPO
DMP, LLC

7/8/08

The undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

ANNEXOR

Stener Carlson III
Signature

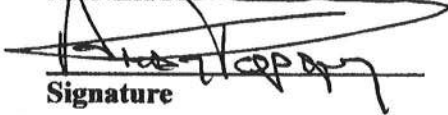
Stener Carlson
Printed Name

Date: 7/9/08

(12)

The undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

ANNEXOR


Signature

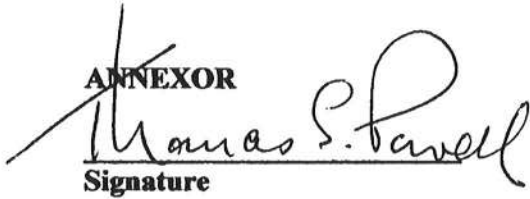
R & A Enterprises

Printed Name

Date: 7-15-08

(13)

ANNEXOR

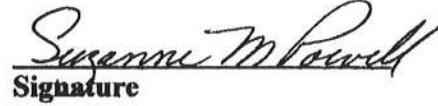

Signature

Thomas Powell

Printed Name

Date: 7.2.08

ANNEXOR


Signature

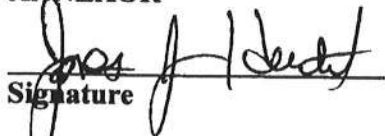
Suzanne Powell

Printed Name

Date: 7-2-08

The undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

ANNEXOR


Signature

J.P. Stoddard
Printed Name

Date: 7-8-08