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72/McIntyre

**ANNEXATION AGREEMENT
WEST WOODS RANCH PHASE 4**

1-9

THIS ANNEXATION AGREEMENT ("Agreement") is entered into and made between The Amherst Development Corporation, whose address is 7905 Ralston Rd., Arvada, CO 80002, hereinafter referred to as "Annexing Property Owner", and the City of Arvada, a Colorado municipal corporation whose address is 8101 Ralston Road, Arvada, Colorado 80002, hereinafter referred to as the "City." This Agreement shall be effective following execution by the Annexing Property Owner and immediately upon approval by the City Council of the City of Arvada as evidenced by the signature of the City's Mayor or Mayor Pro Tem.

RECITALS AND REPRESENTATIONS:

WHEREAS, The Annexing Property Owner represents that it comprises all owners of the following described property, located in the City of Arvada, County of Jefferson, State of Colorado.

A part of the south 1/2 of the southwest 1/4 of Section 36, Township 2 South, Range 70 West and a part of the North 1/2 of the northwest 1/4 of Section 1, Township 3 South, Range 70 West of the 6th P.M., Jefferson County, Colorado, more particularly described as follows:

Commencing at the north 1/4 corner of said Section 1; thence S00°11'28"E along the east line of said northwest 1/4 of said Section 1, 30.00 feet to the point of beginning; thence N89°35'07"W, 25.00 feet; thence S00°11'28"E, 291.04 feet along a line that is 25.00 feet westerly of and parallel to the east line of said northwest 1/4 of said Section 1, thence N88°39'26"W, 1454.98 feet along the north line of a parcel of land described in Book 1039 at Page 486 to a point on the easterly right-of-way line of the Church Ditch; thence along the easterly right-of-way line of the Church Ditch, the following three (3) courses: 1) N51°48'31"E, 225.39 feet; 2) along a curve to the left having a central angle of 95°10'47", a radius of 66.27 feet, an arc length of 110.09 feet and a chord which bears N04°13'08"E, 97.86 feet; 3) N42°56'25"W, 12.62 feet; thence N89°35'07"W, 1316.69 feet to the easterly right-of-way line of Quaker Street; thence N00°31'41"W, 50.01 feet along said easterly right-of-way line of Quaker Street to the north line of said Section 1; thence N00°36'07"W, 60.61 feet along the easterly line of West Woods Ranch Annexation Parcel No. 1 to the northeast corner of said West Woods Ranch Annexation Parcel No. 1; thence N89°23'53"E, 49.61 feet to a point on the north easterly right-of-way radius of W. 72nd Avenue and Quaker Street; thence along the northerly right-of-way of W. 72nd Avenue along a non-tangent curve to the left having a central angle of 29°29'48", a radius of 50.00 feet, an arc length of 25.74 feet and a chord which bears S74°50'13"E, a distance of 25.46 feet; thence continuing along said northerly right-of-way line of W. 72nd Avenue, S89°35'07"E, 690.88 feet; thence S00°24'53"W, 5.00 feet; thence S89°35'07"E, 480.60 feet to a point on the easterly

right-of-way line of the Church Ditch; thence along the easterly right-of-way line of the Church Ditch, the following seven (7) courses: 1) N15°57'20"W, 60.77 feet; 2) N05°20'16"E, 32.54 feet; 3) N73°49'11"E, 37.27 feet; 4) N66°56'18"E, 68.53 feet; 5) S89°04'28"E, 265.82 feet; 6) N74°28'25"E, 63.40 feet; 7) N61°47'49"E, 129.62 feet; Thence N89°41'20"E, 817.42 feet along the south line of that parcel described in Book 1111, Page 58 of the Jefferson County records, to a point 30.00 feet easterly of the north-south centerline of said Section 36; thence N89°43'59"E, 60.00 feet to the easterly right-of-way line of McIntyre Street; thence S00°16'01"E, 296.88 feet along the easterly right-of-way line of McIntyre Street; thence N89°35'00"W, 30.04 feet to the point of beginning, containing 19.97 acres.

This property is hereinafter referred to as the "Property."

WHEREAS the City is a home rule municipality of the state of Colorado and is authorized to enter into annexation agreements pursuant to C.R.S. § 31-12-121 and section 25-46 of the Arvada City Code.

WHEREAS, the Annexing Property Owner has filed with the City a petition for annexation pursuant to the Colorado Municipal Annexation Act, C.R.S. § 31-12-101 et seq. requesting that the City annex the Property into the corporate boundaries of the City;

WHEREAS, the Annexing Property Owner requests annexation of the Property to the City subject to the terms, conditions, and obligations set forth in this Agreement. The Annexing Property Owner agrees that conformance with the terms, conditions, and obligations set forth in this Agreement are necessary for the "integration" and "urbanization" of the Property with the incorporated areas of the City and are necessary to permit the Property to share a "community of interests" with the City pursuant to the Colorado Municipal Annexation Act, C.R.S. § 31-12-104.

WHEREAS, the Annexing Property Owner has submitted to the City an annexation map and a preliminary plat entitled "Preliminary Plat for West Woods Ranch Phase 4" in support of the requested annexation and zoning of the Property. These documents are public records on file for public inspection with the planning department, Arvada City Hall, 8101 Ralston Road, Arvada, Colorado 80001. The annexation map and preliminary plat are incorporated into this Agreement for purposes of illustration and interpretation of the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the City's annexation of the Property, **IT IS AGREED AS FOLLOWS:**

1. **DEDICATION OF PROPERTY AND CONSTRUCTION OF MCINTYRE STREET.** The Annexing Property Owner shall dedicate to the City a strip of land five (5) feet in width for a total of thirty five (35) feet in width measured from the centerline of the public right-of-way for McIntyre Street along the easterly boundary of the Property, north of West

72nd Avenue. The Annexing Property Owner shall design and construct the west one-half of Quaker Street adjacent to the Property to collector standards as described by the applicable City Code, ordinance, rule, regulation, or other City-adopted specifications.

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2. DEDICATION OF PROPERTY AND CONSTRUCTION OF WEST 72ND AVENUE. The Annexing Property Owner shall dedicate to the City a strip of land seventy (70) feet in width extending from the east property line of the Property to the west property line of the Property. This dedication is accurately depicted on the approved Preliminary Plat for West Woods Phase 4. The Annexing Property Owner shall use its best efforts to acquire that portion of the West 72nd Avenue right-of-way which will extend onto the property to the south. If the Annexing Property Owner is unable to acquire this right-of-way prior to the submission of a Final Plat application for the Property, the Annexing Property Owner shall amend the Preliminary Plat which illustrates the entire West 72nd Avenue right-of-way within the boundary of the Property. The Annexing Property Owner shall design and construct the entire width of West 72nd Avenue adjacent to the Property to collector standards as described by the applicable City Code, ordinance, rule, regulation, or other City-adopted specifications. The schedule under which the Annexing Property Owner shall complete West 72nd Avenue shall be mutually set between the City and the Annexing Property Owner and such deadline and schedule shall be included in a Subdivider's/Development Agreement entered into as part of the conditions of approval of development of the Property in accordance with City ordinances.

The Annexing Property Owner shall not be obligated by this Agreement to construct West 72nd Avenue from Quaker Street to the western-most portion of the Church Ditch bridge referenced in paragraph 3 below.

3. CHURCH DITCH BRIDGE. The Annexing Property Owner agrees to design, at the Annexing Property Owner's cost, the bridge over the Church Ditch immediately to the west of the Property and prepare construction plans to be reviewed and approved by the City Engineer at the time of final development plan for all or any part of the Property. The Annexing Property Owner shall install and the City agrees to finance the bridge improvements subject to repayment of principal and interest in the form of a bridge impact fee assessed against each lot within the Property. The amount of the bridge impact fee and the process by which the fee is assessed will be determined by the City at the time of final development plan based on cost estimates including interest prepared by the Annexing Property Owner and approved by the City Engineer. The repayment of the City's cost of financing will include the Annexing Property Owner's payment of a reasonable amount to compensate the City for interest which would have accrued on funds used by the City in the financing of the bridge improvements. Interest will be assessed at the average of the City's overnight rate for the previous month. This rate is the federal funds rate less 20 basis points. The federal funds rate is published every Tuesday in the Wall Street Journal. The rate will be adjusted monthly. Interest will be assessed on the total of outstanding principle and accrued interest. The bridge impact fee for a lot will be due at the time of application for the building permit.

4. CHURCH DITCH CROSSING PERMITS. The Annexing Property Owner agrees

to obtain all crossing permits necessary for the development of the Property including but not limited to crossing permits for roads or bridges, storm drainage, sanitary sewer, and potable water, and to pay all costs associated with the application process. The Annexing Property Owner further agrees to comply with all terms of the Memorandum of Understanding dated February 22, 1993 that the City has entered into with the Church Ditch Company. The Annexing Property Owner has received and reviewed the Memorandum of Understanding and this document as a public record available for inspection from the City Clerk, City Hall, 8101 Ralston Road, Arvada, Colorado.

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5. OVERLOT GRADING AND EROSION CONTROL. The Annexing Property Owner shall be responsible for all overlot grading on the Property in conformance with the grading plans prepared by the Annexing Property Owner and as approved by the City Engineer at the time of final development plan.

The Annexing Property Owner shall fully comply with the applicable sections of the City's Soil Erosion and Sediment Control Ordinance, sections 15-50 through and including 15-58 of the Arvada City Code, and in particular shall comply with section 15-54 pertaining to the use of reasonable practices to control soil erosion and sediment generated by the development of the Property. Compliance with the erosion control shall be a pre-condition of obtaining building permits or certificates of occupancy, as the case may be. The City may deny or revoke any permit issued to the Annexing Property Owner in the event of non-compliance with the state or City erosion control requirements, in addition to any other remedy that may be available.

6. DRAINAGE AND DETENTION FACILITIES. The Annexing Property Owner shall design and construct all necessary utility drainage and detention facilities for the Property as required by all City ordinances in effect and applicable to the Property at the time of approval of any final plat for all or any part of the Property. The City is not responsible for any construction or expenses incurred for any drainage facilities on the Property. The Annexing Property Owner shall maintain or shall create a homeowners' association which shall maintain and repair all drainage detention facilities.

7. GROUND WATER RIGHTS. The Annexing Property Owner hereby agrees to convey to the City within five (5) calendar days of City Council approval of the annexation, all groundwater water rights associated with or used on the Property to be annexed, including but not limited to rights represented by a well permit, well registration, or judicial decree for the diversion of water out of the Denver, Arapahoe, or Laramie-Fox Hills Aquifers, all well rights and all rights to other structures associated with the diversion of water out of the Denver, Arapahoe or Laramie-Fox Hills Aquifers underlying said property. By this Agreement, the Annexing Property Owner hereby conveys to the City at no cost its consent to the withdrawal by the City of all groundwater in the Denver, Arapahoe, or Laramie-Fox Hills Aquifers underlying the Property.

8. WATER LINES. Unless otherwise provided by this paragraph, the Annexing Property Owner shall be responsible for the design, financing and construction of the of the

water distribution system necessary to serve the Property, including but not limited to construction of stubs to the boundary lines of the Property and construction of a secondary source to loop the water system. The Annexing Property Owner's design of the looped system shall be reviewed and, if acceptable, approved by the City at the time of review and approval of a final development plan for all or any part of the Property. This water distribution system will include a twelve inch (12") water main from the western property line to the intersection of West 72nd Avenue and Quaker Street. The City agrees to finance the cost of the twelve inch (12") water main improvement from the western property line to the intersection of West 72nd Avenue and Quaker Street; provided, however, that the Annexing Property Owner shall reimburse to the City an amount equal to the cost of construction and installation of a water main, no smaller than eight inches (8") in size, which would have been sufficient to service the entire development of the Property. The Annexing Property Owner's reimbursement of the City's cost may be in the form of a water line impact fee assessed against each lot within the Property. The amount of the water line impact fee and the process by which the fee is assessed will be determined by the City at the time of final development plan based on cost estimates including interest prepared by the Annexing Property Owner and approved by the City Engineer. The repayment of the City's cost of financing will include the Annexing Property Owner's payment of a reasonable amount to compensate the City for interest which would have accrued on funds used by the City in the financing of the water line improvements. Interest will be assessed at the average of the City's overnight rate for the previous month. This rate is the federal funds rate less 20 basis points. The federal funds rate is published every Tuesday in the Wall Street Journal. The rate will be adjusted monthly. Interest will be assessed on the total of outstanding principle and accrued interest. The water line impact fee for a lot will be due at the time of application for the building permit.

9. SEWER LINES. The City has financed and has extended a portion of the existing City sanitary sewer services to service the Property. The Annexing Property Owner acknowledges and represents that these improvements significantly aid in the development of the Property and also acknowledge that the improvements are necessary for the development of the Property. The Annexing Property Owner agrees to repay the City for the costs of these improvements by the payment of an impact fee of \$181.00 per unit. The impact fee is a per unit fee which is due at the time of purchase of a sewer tap, and will be collected by the City until the City has recovered the costs of improvements. Such impact fee shall be in addition to other sewer tap fees typically and customarily charged property owners similarly situated who seek sewer service from the City.

The Annexing Property Owner shall be responsible for the design, financing and construction of the remainder of the sewer system necessary to serve the Property, including but not limited to stubs to the boundary lines of the Property and extensions to connect to the existing sewer system located south of the Property.

10. LAND DEDICATION. The Annexing Property Owner shall satisfy the required land dedication pursuant to Section 25-48 of the City Code by paying the City cash in lieu of actual land dedication in an amount equivalent to 6% of the market value of the Property (6%

of \$300,000). This dedication shall be made in conjunction with the annexation of the Property. The Annexing Property Owner hereby represents that \$300,000 is the fair market value of the Property on the date of this Agreement and that such value is not underinflated in order to decrease the amount to be paid to the City pursuant to Section 25-48 of the City Code.

11. PARK DEVELOPMENT FEE. Pursuant to Section 25-16 of the City Code, the Annexing Property Owner shall pay the City's Park Development Fee for all property being developed, as required and in effect by ordinance at the time of final plat.

12. COMPLIANCE WITH THE INTERIM GUIDELINES/OPEN SPACE. The Annexing Property Owner agrees to comply with the Interim Guidelines adopted by the City reserving a total of fourteen percent (14%) open space or park are within the Property which is in addition to any land dedication requirement referenced in paragraph 10 of this Agreement.

13. EQUESTRIAN TRAIL. The Annexing Property Owner agrees to dedicate to the City a sixteen (16) foot equestrian trail along the east property line of the Property, north of the West 72nd Avenue alignment.

14. SCHOOL IMPACT FEE. The Annexing Property Owner shall pay the City a school impact fee for all property being developed in the amount of \$3,006.78. This fee shall be paid on a per unit basis at the time of final plat. All school impact fees collected by the City shall be forwarded and assigned to the Jefferson County R-1 School District ("School District") to be held in escrow for future application by the School District.

15. STREET LIGHT INSTALLATION. The Annexing Property Owner agrees to pay all costs associated with the installation of street lights as required by the City and/or Public Service Company of Colorado.

16. PUBLICATION COSTS. The Annexing Property Owner agrees to reimburse to the City or to pay to the City all newspaper publication costs associated with the annexation of the property upon demand by the City.

17. WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

18. BINDING EFFECT. The parties hereto agree that this Annexation Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property. In the event that all or part of the Property is sold, transferred, or otherwise conveyed to additional or multiple parties, all owners shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.

19. NO THIRD PARTY BENEFICIARIES. 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 City and Annexing Property Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City and Annexing Property Owner that any person other than the City or Annexing Property Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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20. GOVERNING LAW, VENUE, AND ENFORCEMENT. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Contract between the parties shall be in the appropriate court of Jefferson County, Colorado. The parties agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, it is understood and agreed that the City may withhold or revoke any permits or certificates, including but not limited to building permits and certificates of occupancy, for any lot within the Property in the event of a breach of this Agreement by the Annexing Property Owner.

21. ATTORNEY'S FEES. If any party breaches this Agreement, the breaching party shall pay the non-breaching party's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

22. FORM OF PAYMENT OF ALL FEES AND CHARGES. Unless otherwise agree to by the City's Director of Public Works on a case by case basis, the Annexing Property Owner's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the City of Arvada, City Hall, 8101 Ralston Road, Arvada, Colorado 80001.

23. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

24. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

25. ASSIGNMENT. All or part of the obligations or responsibilities set forth in this Agreement shall not be assigned by the without the express written consent of the City of Arvada.

26. SEVERABILITY. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

27. RECORDATION OF AGREEMENT. This Agreement shall be recorded by the City with the Clerk and Recorder's Office of the appropriate county. The Annexing Property

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Owner shall pay the reasonable cost of recordation of this Agreement upon request by the City.

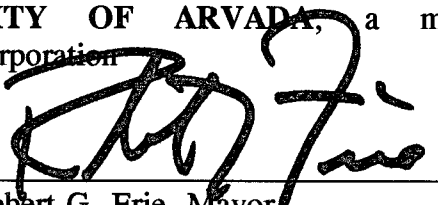
28. INCORPORATION OF EXHIBITS. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes.

29. REVIEW OF REFERENCED DOCUMENTS. The Annexing Property Owner hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Arvada City Code, Zoning Ordinance, Subdivision Regulations, and Engineering Specifications, were prior to the execution of this Agreement and are presently available for review and inspection at the Arvada City Hall, Engineering Department, 8101 Ralston Road, Arvada, Colorado, from 8:00 a.m. through 5:00 p.m., Monday through Friday.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above below.

DATED THIS 3rd DAY OF Oct, 1994.

CITY OF ARVADA, a municipal corporation



Robert G. Frie, Mayor
8101 Ralston Road
P.O. Box 8101
Arvada, Colorado 80001-8101



ATTEST:

Christine A Koch
City Clerk

APPROVED AS TO FORM:

R. Williams
for City Attorney

