

ANNEXATION AGREEMENT

(Standard Form May 6, 2002)

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between _____, hereinafter referred to as _____ or "Owner," and the TOWN OF FIRESTONE, a municipal corporation of the State of Colorado, hereinafter referred to as "Firestone" or "Town".

WITNESSETH:

WHEREAS, the Owner desires to annex to Firestone the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof (such property is hereinafter referred to as "the property"); and

WHEREAS, Owner has executed a petition to annex the property, a copy of which petition is on file with the Town Clerk; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Agreement; and

WHEREAS, Owner acknowledges that upon annexation, the property will be subject to all ordinances, resolutions, and other regulations of the Town of Firestone, as they may be amended from time to time; and

WHEREAS, Owner acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for ways and easements to Firestone as contemplated in this Agreement, are directly related to and generated by development intended to occur within the property and that no taking thereby will occur requiring any compensation.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Incorporation of Recitals.** The parties confirm and incorporate the foregoing recitals into this Agreement.
2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions of the annexation of the property to the Town. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to all requirements concerning annexation contained in the Firestone Municipal Code, Development Regulations and Comprehensive Plan, and the

Municipal Annexation Act of 1965, as amended, C.R.S. Section 31-12-101 et seq.

3. Further Acts. Owner agrees to execute, promptly upon request of Firestone, any and all surveys and other documents necessary to effect the annexation of the property and the other provisions of this Agreement. Owner 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 Firestone.

4. Annexation Documents. Owner agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, and reports determined by Firestone to be necessary to accomplish the annexation. Firestone shall at Owner's expense prepare the annexation impact report.

5. Action on Annexation Petition. Firestone shall act upon the annexation petition within six months of the date of filing thereof with the Town Clerk, unless Owner consents to later action.

6. Zoning and Development. The parties recognize that it is the intent and desire of Owner to develop the property in a manner generally consistent with the zoning requested and that the granting of such zoning by the Town of Firestone is a condition to annexation of the property. Owner shall take all action necessary to permit zoning by Firestone of the annexed property within the time prescribed by state statutes.

7. Dedications. Owner agrees to dedicate by General Warranty Deed or appropriate instrument of conveyance acceptable to the Town, ten percent of the territory to be annexed for public open space or pay an equivalent fee in lieu of dedication, in addition to easements and rights-of-way for streets and other public ways and for other public purposes, as required by Town ordinances and resolutions. Such dedications shall occur immediately upon request of the Town except that internal rights-of-way shall be dedicated at the time of subdivision platting, unless the Town specifies another time.

8. Public Improvements. Owner agrees to design, improve, and provide signage, lighting, and signalization for, all public streets and other public ways within or adjacent to the property in accordance with Town ordinances and resolutions and other applicable standards, subject to any reimbursement which may be provided for in such ordinances, resolutions, and standards, and to make such other improvements as required by Town ordinances and resolutions, to guarantee construction of all required improvements, and, if requested by Firestone, to dedicate to Firestone any or all other required improvements. If requested by Firestone, Owner agrees to enter into an agreement pertaining to such improvements and other matters prior to any development of the property.

9. Improvement Districts. If requested by Firestone, Owner agrees to include the property in one or more special improvement districts or other mechanisms established by Firestone for making improvements to streets and other public ways, or for making other public improvements authorized by law, and Owner hereby appoints the Town Clerk of Firestone as Owner's attorney-in-fact for the purpose of executing all documents determined by Firestone to be necessary for such inclusion. If requested by Owner, Firestone agrees to consider the establishment of one or more special improvement districts for making such improvements.

10. Conformity with Laws. Owner agrees that the design, improvement, construction, development, and use of the property shall be in conformance with, and that Owner shall comply with, all Town ordinances and resolutions including, without limitation, ordinances and resolutions pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to Town Streets and flood control.

11. No Repeal of Laws. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the Town's ordinances or resolutions, or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants; nor shall this Agreement prohibit the enactment or increase by the Town of any tax or fee.

12. Disconnection. No right or remedy of disconnection of the property from the Town shall accrue from this Agreement, other than that provided by applicable state laws. In the event the property or any portion thereof is disconnected at Owner's request, Firestone 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.

13. Severability. The parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

14. Municipal Services. Firestone agrees to make available to the property all of the usual municipal services in accordance with the ordinances and policies of the Town which services include, but are not limited to, police protection and water services. Water service to the property shall be obtained from and provided by the Town, subject to all ordinances, resolutions, rules, regulations, agreements and policies governing such use, as in effect from time to time. Owner acknowledges that Town services do not include, as of the date of the execution of this Agreement, fire protection, emergency medical services or sanitary sewer services, but the property is presently included within the boundaries of and is entitled to receive such services from the _____ Fire Protection District and the _____ Sanitation District.

15. Water Rights. Owner shall dedicate water rights as set forth in this section.

A. Residential Uses. Owner, as a prerequisite to annexation, agrees to furnish and transfer ownership to the Town of the minimum water rights as required under Section 1.08.050.A of the Firestone Municipal Code with respect to any residential development on the property. All such water transferred to the Town shall be Northern Colorado Water Conservancy District/Colorado Big-Thompson water shares or such other shares as the Town in its sole discretion may accept. Title to the required water rights, free and clear of all liens and encumbrances, shall be deliverable to the Town at the time of final subdivision platting of any residential area. No subdivision plat shall receive final approval until the Town becomes the titled owner of all water required for the platted area.

B. Commercial and Industrial Uses. Owner, as a prerequisite to annexation, agrees to furnish and transfer ownership to the Town of the minimum water rights as required under Section 1.08.050.B of the Firestone Municipal Code with respect to any portion of the property zoned commercial or industrial. This requirement shall be met at the time of annexation. If no portion of the property is zoned at the time of annexation for commercial or industrial use, the requirements of this subsection B shall be met at the time of rezoning of any portion of the property for commercial or industrial use.

C. Appurtenant Water Rights/Right of First Refusal. Owner represents that there are appurtenant to the Property certain surface and/or groundwater water rights owned by Owner and set forth on Exhibit "B", which is attached hereto, incorporated herein, and made a part hereof (hereinafter referred to as "the Water Rights"). Owner further represents that the Water Rights constitute all of the water rights appurtenant to the Property, that the Water Rights are and will be used in connection with current uses of the Property until the Property is developed.

If the Owner at any time determines to sell or transfer all or any portion of the Water Rights for any use other than a use upon the Property, then the Owner shall provide the Town with written notice of Owner's intent to make such a sale or transfer. The notice shall include a description of the Water Rights proposed for sale or transfer, the proposed sale or transfer price, and all other material terms and conditions of the proposed sale or transfer. For a period of sixty (60) days after receipt of such notice, the Town shall have the first right to purchase the Water Rights intended for sale or transfer.

The Town may purchase the Water Rights intended for sale or transfer upon terms and conditions that are mutually acceptable to Owner and the Town, but which are in no event less favorable than the terms and conditions of Owner's intended sale or transfer to any third party who is a bona fide purchaser for value. In the event the purchase price cannot be determined by reference to an offer by a bona fide purchaser, the purchase price to be paid by the Town shall be established by a qualified water rights appraiser selected by agreement of the Town and Owner within ten (10) days after Town receipt of Owner's notice of intent to sell or transfer the Water Rights. In the event the Town and Owner are unable to agree upon an appraiser, then each party shall within fifteen (15) days of Town receipt of such notice select its own appraiser, and the two of them shall appoint a

single appraiser within twenty (20) days of Town receipt of such notice. In the event Owner and the Town have not entered into an agreement within sixty (60) days of the Town's receipt of Owner's notice of intent to sell or transfer the Water Rights, then the Town's first right to purchase the Water Rights shall terminate. The Owner may thereafter proceed to sell or transfer the Water Rights on terms and conditions no more favorable than the terms and conditions last offered to the Town.

The Owner and Firestone agree that the above provisions shall apply in lieu of the requirement in Firestone Municipal Code Section 1.08.050.C, requiring the Owner offer to sell appurtenant water rights at the time of annexation. The right of first refusal under this Paragraph shall terminate upon the consummation of the sale to a third party of all or that portion of the Water Rights conveyed of the above-described Water Rights, but only as to the portion and interest so sold, and only after full compliance with the terms of this right of first refusal, and provided the sale is on the same terms and conditions and for the price set forth in the notice sent to the Town; however, if such sale is not consummated, this right of first refusal shall remain in effect. In any event, all rights under this Paragraph shall terminate ninety years from the date of this Agreement.

16. Special Provisions. [Leave blank for special provisions.]

17. Owners Association. If required by state law, Owner shall organize an appropriate unit owners association or associations for given parcels and/or unit types within the development of the Property. Owner shall form any such association(s) pursuant to the Colorado Common Interest Ownership Act ("Act"). C.R.S. Section 38-33.3-101 et seq. The Owner shall also execute and record covenants and instruments of conveyance which comply with the Act and which adequately provide for continuous ownership, operation, maintenance, repair and replacement of common elements of the development, including but not limited to any private roads, private common areas and private facilities. At least ten (10) days prior to recording any covenants or instruments of conveyance to the association(s), Owner shall provide such documents to the Town Attorney for review and comment.

18. Special District Inclusion. Within ten (10) days after written request by the Town, Owner shall apply for inclusion of the property within the Northern Colorado Water Conservancy District, the _____ Sanitation District, the Carbon Valley Recreation District (if the property is not yet within one or more of these district), and any other special districts as determined by the Town.

19. Future Cooperation. The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.

20. Amendment. This Agreement may be amended by the Town and any Owner without the consent of any other Owner as long as such amendment affects only that Owner's portion of the property. Such amendments shall be in writing, shall be recorded with the County

Clerk of Weld 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. Except as otherwise provided herein, this Agreement shall not be amended unless approved in writing by all parties hereto.

21. Entire Agreement. This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

22. Indemnification. 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 attorneys' 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 Firestone's enforcement of this Agreement. 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 attorneys' fees for defense counsel of the Town's choice for, any such liability, claims, or demands.

23. Owner. As used in this Agreement, the term "Owner" shall include any of the heirs, transferees, successors, or assigns of Owner, and all such parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement, as if they were the original parties thereto.

24. Amendments to Law. As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any Town ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon Owner.

25. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk of Weld County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

26. Failure to Annex. This Agreement shall be null and void if the Town fails to approve the annexation of the property.

27. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon

transmission receipt. All notices by mail shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town: Town of Firestone
P.O. Box 100
Firestone, CO 80520

With copy to: Griffiths, Tanoue, Light,
Harrington & Dawes, P.C.
1860 Blake Street, #550
Denver, CO 80202

Notice to Owner: _____

With copy to: _____

28. Election. Owner agrees that it is voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to C.R.S. 31-12-112, as amended, to approve the annexation or to impose terms and conditions upon the Property to be annexed, Owner owns 100 percent of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the annexation and the terms and conditions.

29. Legislative Discretion. The Owner acknowledges that the annexation and zoning of the property are subject to the legislative discretion of the Board of Trustees of the Town of Firestone. No assurances of annexation or zoning have been made or relied upon by Owner. In the event that, in the exercise of its legislative discretion, any action with respect to the property herein contemplated is not taken, then the sole and exclusive right of Owner with respect to such exercise of discretion shall be the withdrawal of the petition for annexation by the Owner, or disconnection from the Town in accordance with state law, as may be appropriate.

30. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

31. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action

for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

32. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

33. No Warranties by Town. The Town is entering into this Agreement in good faith and with the present intention, on the part of the present Town Board, that this Agreement will be complied with. However, because some of the provisions of this Agreement may involve areas of legal uncertainty, the Town makes no representation as to the validity or enforceability of this Agreement against the Town, and by entering into this Agreement the Owner acknowledges and accepts that no such warranty is made on the part of the Town.

OWNER

By: _____

TOWN OF FIRESTONE

By: _____

Rick Patterson, Mayor

ATTEST:

Town Clerk

ACKNOWLEDGEMENT (Owner)

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of _____
was subscribed and sworn to before me this _____ day of _____,
_____.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL)

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

DESCRIPTION OF APPURTENANT WATER RIGHTS

