

**ANNEXATION AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between Turn 2 Development, LLC (hereinafter referred to as the "Property Owner"), and the Town of Elizabeth, Colorado, (hereinafter referred to as the "Town").

**WITNESSETH:**

WHEREAS, a petition has been filed with the Town, pursuant to Section 31-12-107(1), C.R.S., for annexation of the unincorporated lands described in **Exhibit A** attached hereto and incorporated herein by reference (said lands being hereinafter referred to as the "Property"); and

WHEREAS, the Property Owner is the owner of one hundred percent (100%) of the Property; and

WHEREAS, the Property Owner desires to have the Property annexed into the Town in order to obtain from the Town such municipal services as the Town may now or in the future extend including, but not limited to, those described herein; and

WHEREAS, the Town has determined that it is in its best interest to annex the Property, to provide municipal services thereto, and to receive revenues from the development occurring thereon upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto to be kept and performed by each of them, the parties agree as follows:

1. Annexation. The annexation of the Property shall be in accordance with the Colorado Municipal Act of 1965, as amended.

2. Purpose. The purpose of this Agreement is to set forth the terms, conditions, and fees to be paid by the Property Owner upon annexation and development of the Property. Unless otherwise expressly provided to the contrary herein, all conditions contained herein are in addition to any and all requirements of the Town of Elizabeth Land Development Ordinance, as currently in effect, or as hereinafter amended, any and all applicable state statutes, and other ordinances of the Town of Elizabeth.

3. Zoning. The Property Owner hereby consents to zoning the Property Commercial Mixed Use (CMU), but the Parties agree as a condition of this annexation that the following uses in the CMU Zone District are prohibited on the Property:

EXHIBIT B

Amphitheater  
Bed and Breakfast Inns  
Boarding and Rooming Houses  
Miniature Golf Establishments  
Movie Theaters  
Museums, Exhibitions or Similar Facilities  
Public Transportation Terminals other than Truck Terminals; and  
Short Term Rentals (STRs)

4. Effective Date of Annexation. The annexation of the Property to the Town shall become effective upon the filing of the Annexation Ordinance and map with the Elbert County Clerk and Recorder pursuant to C.R.S. 31-12-113(2). The Town shall make such filing upon the last to occur of the following, and not otherwise:

a. Final approval of the Annexation Ordinance;

b. Final approval of the Zoning Ordinance; and

c. The expiration of forty-five (45) days from the last to occur of the foregoing occurrences listed at (a) through (b) above, provided however, that if a legal challenge occurs at any time prior to the expiration of the forty-five (45) day period, the Effective Date of Annexation shall be delayed, and the Annexation Ordinances and map shall not be filed with the Elbert County Clerk and Recorder, pursuant to C.R.S. § 31-12-113(2), unless and until such legal challenge is resolved to the satisfaction of both the Town and the Property Owner. Should the Annexation and/or Zoning Ordinance be challenged by citizen initiative, referendum, or otherwise, and should any such challenge result in the invalidity of the Annexation or Zoning Ordinance upon entry of a final order of court which is unappealable or which the parties have elected not to appeal, then the annexation of the Property and this Agreement shall be null, void and of no effect, and the Annexation Ordinances and map shall not be filed with the Elbert County Clerk and Recorder. In the event the Effective Date of Annexation does not occur within one (1) year after the dated of this Agreement, the Property Owner shall have the right to withdraw the annexation petition and terminate the annexation, and in that event, this Agreement shall be null, void and of no effect.

5. Water and Sewer Service. Property Owner shall be required at the Property Owner's sole cost and expense to construct necessary water and sewer infrastructure and connect all existing and new construction on the Property to the Town's water and sewer system. All such connections shall be at the Town's then current water and sewer tap fee rates, and Property Owner further consents and agrees to the following:

- a. Water Conveyance. Within thirty (30) days of successful completion by all parties of the terms set forth in paragraph 5(c) *infra*, Property Owner shall convey to the Town by special warranty deed, free and clear of all liens and encumbrances, all water rights to the Property, including but not limited to well and water rights associated with any existing wells located on the Property. The water rights to be conveyed to the Town are described in **Exhibit B** which is attached hereto and incorporated by this reference. To the extent that water rights have not been adjudicated, the conveyance of such water rights may be achieved by bargain and sale deed. Notwithstanding the foregoing it is understood that there are currently two (2) single family homes (“Units”) on the Property using a domestic well permit number 12718-A that will need to be abandoned as set forth below in subsection c. of this Section 5.
- b. Water and Sewer Line Easements. Property Owner shall dedicate to the Town, free and clear of all liens and encumbrances, the property necessary for any water and sewer mains constructed on the Property.
- c. Existing Well and Septic. The Town and Property Owner acknowledge that portions of the property are currently served by existing well and septic systems. Property Owner shall abandon all such well and septic systems upon Property Owner and the Town complying with all of the following requirements:
  - i. Completion of all annexation requirements as described in paragraph 4 *supra*; and
  - ii. Upon completion of all annexation requirements as described in paragraph 4 *supra*, both the Town and the Property Owner shall in good faith work one with the other and/or their agents, representatives, and attorneys, in a manner that avoids delaying the commercial development of the Property; and
  - iii. Upon or before the expiration of 90 days after annexation, Property Owner and/or its designated agent(s) shall schedule a pre-planning meeting with the Town where at such meeting Property Owner shall present the Town with a concept drawing/plan of how the Property Owner intends to develop the Property within the requirements and restrictions set forth herein; and
  - iv. the Town provides Property Owner with an executed non-binding written approval of Property Owner’s concept drawing; and
  - v. within 252 days of receiving the Town’s written approval of Property Owner’s concept, Property Owner shall provide the Town with a plat and site plan describing the development of the Property; and
  - vi. upon the Town’s approval of the plat, site plan, and issuance of all necessary permits that would allow Property Owner to proceed with demolition and commercial development upon the Property, Property Owner shall submit in

trust to the Town a \$25,000 performance payment that shall be utilized by the Town according to the terms set forth in paragraph 5(d) *infra*.

d. Noncompliance with the Terms in paragraph 5(c). If one year expires from the time of site plan approval of the Property and Property Owner has knowingly and willfully failed to comply with the terms set forth in paragraph 5(c) *supra*, then the Town may enter upon the property and cap the water well described in paragraph 5(a) *supra*. The Town may utilize the \$25,000.00 performance payment for any costs, expenses, and/or fees that the Town may incur for the capping of the water well. However, if one year expires from the time of site plan approval, and Property Owner has not received permits from the Town as set forth in paragraph 5(c)(vi) *supra*, at no fault of the Property Owner, then the Town may not enter upon the Property and cap the water well. *Fault* as utilized herein in shall mean one party's negligent and/or willful failure to comply with the terms of paragraph 5(c) *supra* as well as failing to timely file all applications, posting of public notices, and failing to comply with all applicable laws and ordinances required for the Town to issue approvals and permits as described in paragraph 5(c)(vi) and failure by the Town to timely issue such permits and/or approvals. Failure by Property Owner or the Town to comply with the terms set forth in paragraph 5(c) *supra* when such failures are not attributable to the actions of the Town and/or the Property Owner shall not be considered noncompliance with the terms in paragraph 5(c) as set forth in this paragraph.

6. Town Ordinances, Regulations, Codes, Policies and Procedures. Except as expressly provided herein, all Town ordinances, regulations, codes, policies, and procedures shall be applicable to the use and development of the Property.

7. Existing Special Districts. There are currently special districts serving the Property which provide fire and recreation services. Unless otherwise agreed to by the Town, no special district, general improvement district, metropolitan district, or special improvement district shall be formed to provide any financing for improvements to the Property.

8. Public Improvements Financed or Constructed by the Town. The Town has no obligation to construct or finance any public improvements under this Agreement for the benefit of the Property.

9. Road Improvements; Land Dedication; Access.

a. Land Dedication. Within thirty (30) days of the successful completion by all parties of the terms set forth in paragraph 5(c) *supra*, the Property Owner shall convey to the Town, free and clear of all liens and encumbrances, the property along South Elizabeth Street, a roadway classified as arterial in the Town of Elizabeth Transportation Plan, to constitute a 45-foot right-of-way width from centerline.

- b. Access. Property Owner understands and agrees that based on the location of the Property, access to the Property shall be limited to access from Elizabeth Street and Brooke Street.

10. Impact Fees. Property Owner shall be subject to all development impact fees of the Town as the same may exist from time to time, including but not limited to those development impact fees codified in Article VIII of Chapter 4 of the Elizabeth Municipal Code that exist as of the date of annexation of the Property.

11. Recordation of Agreement. This Agreement shall be recorded with the Clerk and Recorder of Elbert County, Colorado, shall run with the land, and shall be binding upon and shall inure to the benefit of the heirs, successors and permitted assigns of the parties hereto.

12. Assignment. Any and all of the rights, duties and obligations of the Property Owner hereunder may be assigned by the Property Owner to any person or entity that is financially responsible. The financial responsibility of such assignee shall be subject to the approval of the Town, which approval shall not be unreasonably withheld or delayed. Upon such approval the Town shall provide the Property Owner with written acknowledgment of such approval. In such event, the assignee shall assume all of the rights, duties and obligations of the Property Owner hereunder as to the portion of the Property so assigned, and the Property Owner shall be relieved from all further liabilities, duties and obligations as to the portion of the Property so assigned.

13. Cure of Legal Defects. In the event the annexation or zoning of the Property, or any portion of this Agreement, is declared void or unenforceable by order of a court of competent jurisdiction, the Town and the Property Owner shall cooperate to cure any legal defects cited by the court, and immediately upon such cure the Town shall reinstitute and complete proceedings to annex the Property subject to the terms of this Agreement.

14. Remedies. The remedies of the Property Owner against the Town under this Agreement shall be any remedy the Property Owner may be legally entitled to. The Town's remedies under this Agreement include, but are not limited to, the following:

- a. The refusal to issue any building permit or certificate of occupancy.
- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party.
- c. A demand that the security given for the completion of the public improvements be paid or honored.

d. Any other remedy available at law.

15. Town Fees. The Property Owner hereby agrees to pay the actual reasonable costs plus fifteen percent (15%) to defray the reasonable administrative and engineering expenses of the Town, to the Town for engineering, surveying, and legal services rendered in connection with the review of the annexation of the Property, which costs shall be determined by the Town Community Development Director. In addition, the Property Owner shall reimburse the Town for the actual cost of making corrections or additions to the official Town map, with a fee for recording such map, if necessary, and accompanying documents with the Elbert County Clerk and Recorder. The Property Owner acknowledges that all impact fees as established by Town ordinance shall be paid at the time of development of the Property.

16. Authority of the Town. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or abrogation of the Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any fee that is of uniform or general application.

17. Waiver of Prior Vested Rights. The Property Owner waives any prior vested property rights acquired in Elbert County so long as the Property remains annexed into the Town. Property Owner acknowledges and agrees that the vesting of property rights in the Town is governed by Section 16-5-30 of the Town of Elizabeth Municipal Code, as amended.

18. Indemnification. Deleted

19. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining 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, or provision held to be invalid, and the parties shall cooperate to cure any such defect as provided in paragraph 12 of this Agreement.

20. 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 venue of such suit or action shall be in Elbert County, Colorado.

21. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to

the addresses of the parties herein set forth. All notices so given shall be considered effective on the earlier of actual receipt or seventy-two (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.

To the Town:                      Town of Elizabeth  
   P.O. Box 159  
   151 South Banner Street  
   Elizabeth, Colorado 80107

Copy to:                                Corey Y. Hoffmann, Esq.  
   Hoffmann, Parker, Wilson & Carberry, P.C.  
   511 16th Street, Suite 610  
   Denver, Colorado 80202

To the Property Owner:        Turn 2 Development, LLC  
   PO Box 2586  
   Elizabeth Colorado 80107

Copy to:                                Todd Collins & Associates, LLC  
   Attn: Todd Collins, Esq.  
   724 E Kiowa Ave, Suite 5  
   PO Box 456  
   Elizabeth, Colorado 80107



22. Entire Agreement - Amendments. 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 shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement between the Property Owner and the Town acting pursuant to authorization of the Board of Trustees.

**PROPERTY OWNER:**

\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_.

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

(S E A L)

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

**TOWN OF ELIZABETH, COLORADO**

By: \_\_\_\_\_  
Tammy Payne, Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Oeser, Town Clerk

APPROVED AS TO FORM:

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Corey Y. Hoffmann, Town Attorney

**EXHIBIT A****889 SOUTH ELIZABETH STREET ANNEXATION  
LEGAL DESCRIPTION:**

A Tract of land situated in the Southeast quarter of the Northeast quarter of Section 13, Township 8 South, Range 65 West of the 6th P.M., County of Elbert, State of Colorado, more particularly described as follows:

Commencing at the Southeast corner of said Southeast quarter of the Northeast quarter thence North 89°21'41" West along the South line of said Southeast quarter of the Northeast quarter a distance of 370.75 feet to the West right of way line of Elizabeth Street and to the True Point of Beginning;

Thence North 89°21'41" West along South line a distance of 269.92 feet;

Thence North 2°10'53" West a distance of 315.98 feet;

Thence South 89°21'41" East, a distance of 282.18 feet to the West right of way line of Elizabeth Street;

Thence South 0°02'29" West along said West right of way line a distance of 315.62 feet to the Point of Beginning.

**EXHIBIT B**

Dedication of all water rights located on or under the Property.