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RESOLUTION NO. 1073

A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF AN ANNEXATION
AGREEMENT WITH EMICH DODGE INCORPORATED

WHEREAS, Emich Dodge Inc. (Annexor) has filed a petition to annex certain properties to the City of Golden, Colorado; and


WHEREAS, the City of Golden, Colorado is in the process of determining whether the annexation is appropriate, and if so, the zoning that should apply to the land; and

WHEREAS, the City and Annexor wish to agree as to certain conditions and provisions under which the property may be annexed in the event that the City determines annexation is appropriate.


THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. That the Mayor is authorized to execute on behalf of the City of Golden, an Annexation Agreement with Emich Dodge Inc, the substance of said annexation agreement substantially complying with the agreement attached hereto as Exhibit 1.

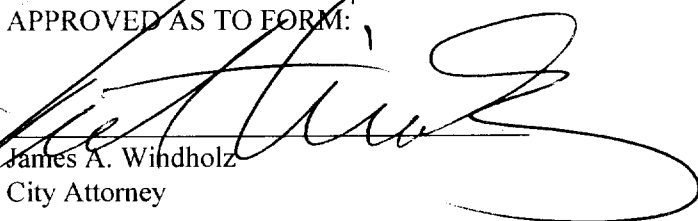
Adopted the 9th day of March, 2000.


Jan C. Schenck
Mayor

ATTEST:


Susan M. Brooks, CMC/AAE
City Clerk

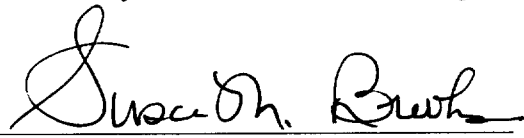
APPROVED AS TO FORM:


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 9th day of March, A.D., 2000.

(SEAL)

ATTEST:


Susan M. Brooks, City Clerk of the City of Golden, Colorado

35.00

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ANNEXATION AGREEMENT

This Agreement is effective the RD23RD day of MARCH, 2000, by and between Emich Dodge (Annexor) and the **City of Golden**, a Colorado municipal corporation of the County of Jefferson, State of Colorado (City).

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WHEREAS, the Annexor is the owner of one hundred percent of the property described in Exhibit A, attached hereto (Property); and

WHEREAS, the Annexor desires that the Property be annexed to and be subject to the jurisdiction of the City, upon and subject to the terms and conditions set forth herein, all of which conditions are agreeable to the Annexor; and

WHEREAS, the City has determined that it is in its best interest to annex the Property to provide municipal services thereto and to receive tax revenues from the development thereon, upon the terms and conditions set forth herein; and

WHEREAS, the Annexor has filed a petition to annex the Property to the City; and

WHEREAS, the parties mutually agree and recognize that it is desirable for the use of the Property by the Annexor that the Property be annexed to the City; and

WHEREAS, the parties desire to include in this Agreement certain provisions, understandings and agreements regarding the Property and its annexation; and

NOW THEREFORE, in consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Annexation. The annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, as amended, the Golden Municipal Code and all applicable laws.

2. Zoning. The Annexor has requested that the Property be zoned C-2 (General commercial) as described in the Golden Municipal Code, which zoning is in accordance with the comprehensive plan and the annexation plan of the City. Zoning of the Property shall be considered simultaneously with the petition for annexation by the City as allowed by the Colorado Municipal Annexation Act of 1965.

3. Application of City Laws - City Services. Except as expressly provided herein, all city ordinances, regulations, codes, policies and procedures in existence and as the same may change from time to time, shall be applicable to the use and development of the Property. The City shall provide all customary municipal services to the Property, to the same extent and upon the same terms and conditions as such services are provided to other properties throughout the City.

4. Fees and Costs. The Annexor shall prepare and pay the costs of the annexation petition, costs of the annexation survey of the Property, and rezoning application fees.

5. Special Districts - City Utilities.

- a. The Annexor shall initiate and be responsible for the legal proceedings and bear the related costs and legal fees for the exclusion of the Property from any and all special districts which provide municipal services to the Property of a type that the city provides to its citizens, except for the Pleasant View Water and Sanitation District. Upon exclusion the City agrees to serve the Property with like services. If requested by the Annexor, the City shall initiate actions necessary to assure exclusion of the Property from such special districts, provided that the Annexor shall bear the related costs and legal fees for said exclusion, including any amounts as may be required to pay to any special district to effectuate exclusion.
- b. The parties agree that for the present time, it is unnecessary to provide city water and wastewater services to the property, and that the property may continue to receive such services from the Pleasant View Water and Sanitation District.
- c. The parties reserve their respective rights to institute proceedings in the future to exclude the property from the Pleasant View Water and Sanitation District.

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6. Cooperation of Annexor. The City shall cooperate with the Annexor in all respects to effect the exclusion of the Property from special districts.

7. Assignment. The rights, duties and obligations of the Annexor hereunder may be assigned to another person or entity only with the consent of the City. In such event, the assignee shall assume all of the rights, duties and obligations of the Annexor hereunder and the Annexor shall be correspondingly relieved from all such liabilities, duties and obligations.

8. Notices. All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager
City of Golden
911 - 10th Street
Golden, CO 80401

Annexor: Emich Dodge, LLC
Attn: Bob Dwors
110 SE 6th St., Suite 1700
Fort Lauderdale, FL 33301

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9. Severability. If any covenant, stipulation or obligation of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the Agreement. The parties hereby declare that they would have entered into this Agreement and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

10. Binding Effect of Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and the assigns of the respective parties and shall run with the land. This Agreement shall be recorded in the records of the Clerk and Recorder of Jefferson County, State of Colorado, at the City's expense. The parties covenant and 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.

11. Third Parties. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended nor shall be construed of confer upon or give any other person any rights, remedy or claim under or by reason of the Agreement.

12. Police Power. Nothing contained in the 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 municipality or its inhabitants. This Agreement shall not prohibit the enactment by the City of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.

13. Remedies. It is understood and agreed by the parties that they shall have all available remedies for breach of this Agreement in law or in equity, including but not limited to specific performance and damages. In the event of litigation related to this Agreement, the prevailing party shall be awarded its costs, expert fees and legal fees.

14. No Vested Property Rights. It is understood and agreed by the parties that no vested property rights are granted by this Agreement. The Annexor represents to the City that there are no vested rights to the Property from the County of Jefferson or any other governmental entity and the Annexor hereby waives and releases any rights which may have been so granted.

15. Disconnection. No right or remedy of disconnection of the described Property from the City shall accrue from this Agreement, other than that provided by Section 31-12-119, C.R.S. In the event the Property or any portion thereof is disconnected at the Annexor's request, the City shall have no obligation to serve the disconnected Property and this Agreement shall be null and void and of no further force and effect as to such Property.

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16. Initiative. If the annexation of the Property or any portion thereof is voided by initiative, the City agrees to cooperate with the Annexor to continue providing water and sewer service to the Property so disconnected. The City and the Annexor agree to jointly pursue all reasonable methods to continue such service, including but not limited to extra-territorial water and sewer contracts. Such agreement to cooperate shall not constitute a legal obligation on the part of the City to continue service.

17. Referendum. If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of the Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Property from the City, then this Annexation Agreement shall be null and void and of no further effect. If the referendum challenge fails, then the Annexor and the City shall continue to be bound by the annexation of the Property.

18. Court Order. In the event that the annexation of the Property or any portion thereof is voided by final action ("final action" means that no appeal can be made or the time to appeal has expired) of a court of proper jurisdiction (such action not being associated with referendum or initiative matters), the City and the Annexor shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure the Annexation Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to the Colorado Municipal Annexation Act of 1965. The Annexor shall reapply for annexation when the Property becomes eligible for annexation as determined by the City.

19. Entire Agreement. This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

20. Venue. This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson.

21. Conditions. This Agreement is specifically subject to the adoption of an ordinance by the city council of the City approving the annexation petition and annexing the Property, said

adoption occurring no later than May 1, 2000. If this condition is not realized to the reasonable satisfaction of the Annexor, then this Agreement shall be null and void.

EMICH DODGE

By: _____

Newell L. Turpel

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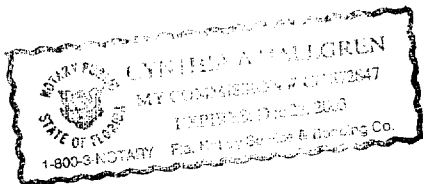
NEWELL L. TURPEL
AUTHORIZED AGENT

ATTEST:

STATE OF FLORIDA)
)ss.
COUNTY OF BROWARD)

The foregoing Petition for Annexation was signed and sworn to before me by Newell L. Turpel, this 15th day of MARCH, 2000.

Witness my hand and official seal.



Notary Public: Cynthia A. Hallgren
Address: 110 54th 6th ST
FT. LAUD FL 33301
My Commission Expires: 12/28/03

CITY OF GOLDEN:

By: _____

Jan C. Schenck

Jan C. Schenck
Mayor

ATTEST:

Susan Brooks

EXHIBIT A

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LEGAL DESCRIPTION

RECEPTION NO. F1046114

PARCEL 1

LOTS 1 THROUGH 10, INCLUSIVE, AND LOTS 41 THROUGH 48, INCLUSIVE, BLOCK 1, PLEASANT VIEW, AS RECORDED IN PLAT BOOK 2 AT PAGE 66 OF THE JEFFERSON COUNTY, COLORADO RECORDS, TOGETHER WITH THE ALLEY ADJACENT TO SAID LOTS AND THE WEST 10.00 FEET OF POPPY STREET ADJACENT TO SAID LOTS 41 THROUGH 48 AS VACATED BY INSTRUMENT RECORDED AT RECEPTION NO. 91031312 OF THE JEFFERSON COUNTY, COLORADO RECORDS.

PARCEL CONTAINS (63,150 SQUARE FEET) 1.4497 ACRES.

PARCEL 2

LOTS 19 THROUGH 21, INCLUSIVE, AND LOTS 30 THROUGH 36, BLOCK 1, PLEASANT VIEW, AS RECORDED IN PLAT BOOK 2 AT PAGE 66 OF THE JEFFERSON COUNTY, COLORADO RECORDS, TOGETHER WITH THE ALLEY ADJACENT TO SAID LOTS LYING WESTERLY AND NORTHERLY OF A DIAGONAL LINE BETWEEN THE SOUTHEAST CORNER OF SAID LOT 21 AND THE SOUTH WEST CORNER OF SAID LOT 30, AND THE WEST 10.00 FEET OF POPPY STREET ADJACENT TO SAID LOTS 41 THROUGH 48 AS VACATED BY INSTRUMENT RECORDED AT RECEPTION NO. 91031312 OF THE JEFFERSON COUNTY, COLORADO RECORDS.

PARCEL CONTAINS (36,700 SQUARE FEET) 0.8425 ACRES