

<p>DISTRICT COURT, ADAMS COUNTY, COLORADO  Court Address: 1100 Judicial Center Drive  Brighton, CO 80601  Telephone: (303) 659-1161  Facsimile: (303) 654-3216</p>	
<p><b>Plaintiffs:</b> BURCH FAMILY PARTNERSHIP, LLP, a Colorado Limited Liability Partnership; MURRAY FAMILY FARMS LLLP, a Colorado Limited Liability Limited Partnership; BLUE DOG LEASING, LLC, a Colorado Limited Liability Company; THOMAS H. WIELDE; LOG JAMMER, LLC, a Colorado Limited Liability Company; HUNT BROTHERS PROPERTIES, INC., a Colorado Limited Liability Company; K-W ENTERPRISES, a Colorado general partnership; 9985E104, LLC, a Colorado Limited Liability Company; CONTINENTAL WORLD LEASING REAL ESTATE, LLC, a Colorado Limited Liability Company; TL ELLIS ENTERPRISES, LLC, a Colorado Limited Liability Company; MARILINN SONNEMAN; ARTHUR CROCFER; MARY JANE CROCFER; BRUCE J. CROCFER; EUGENE A. KAPAUN; and MARY KAPAUN</p> <p><b>Defendants:</b> THE CITY OF COMMERCE CITY, COLORADO, a Home-Rule Colorado municipal corporation; THE CITY COUNCIL FOR THE CITY OF COMMERCE CITY COLORADO</p>	<p>▲ Court Use Only ▲</p>
<p>Attorneys for Plaintiffs:  Zakhem Atherton, LLC  John S. Zakhem, Esq. #30089  Ryan R. Call, Esq. #37207  Matthew J. Cassady, Esq. #37760  700 17<sup>th</sup> Street, Suite 2000  Denver, CO 80202  (303) 228-1200  (303) 228-1210  jzakhem@zakhematherton.com  rcall@zakhematherton.com  mcassady@zakhematherton.com</p>	<p>Case Number:</p>
<p><b>COMPLAINT FOR REVIEW PURSUANT TO COLO. REV. STAT. § 31-12-116(1)(a)</b></p>	

Plaintiffs, by and through undersigned counsel, pursuant to Colo. Rev. Stat. § 31-12-116(1)(a), hereby petition this Honorable Court for review of the Commerce City (the “City”) annexations of certain parcels of property previously situated in unincorporated Adams County. Plaintiffs respectfully request that this Honorable Court declare the

City's annexations, made pursuant to Annexation Ordinances AN-219-07 and AN-220-07, void and grant such further relief as deemed appropriate. As the basis for such request, Plaintiffs state and aver as follows:

### I. PARTIES

1. Plaintiff Burch Family Partnership, LLP, is a Colorado Limited Liability Partnership with its principal place of business at 10300 E. 107<sup>th</sup> Place, Brighton, CO, and owns land in the enclave annexed to the City of Commerce City (the "City") pursuant to Annexation Ordinance AN-220-07 ("AN-220 Property") located at the same address.
2. Plaintiff Murray Family Farms, LLLP is a Colorado Limited Liability Limited Partnership with principal place of business at 11010 Havana Street, Brighton, CO, and owns AN-220 Property located at the same address.
3. Plaintiff Blue Dog Leasing, LLC is a Colorado Limited Liability Company with principal place of business at 9885 Emporia Street, Henderson, CO, and owns AN-220 Property located at the same address.
4. Plaintiff Log Jammer, LLC is a Colorado Limited Liability Company with principal place of business at 10151 East 107<sup>th</sup> Place, Brighton, CO, and owns AN-220 Property located at the same address.
5. Plaintiff Hunt Brothers Properties, LLC is a Colorado Limited Liability Company with principal place of business at 10100 Dallas Street, Henderson, CO, and owns AN-220 Property located at the same address.
6. Plaintiff K-W Enterprises is a Colorado general partnership with principal place of business at 10381 E. 106<sup>th</sup> Avenue, Brighton, CO, and owns AN-220 Property located at the same address.
7. Plaintiff 9985E104LLC is a Colorado Limited Liability Company with principal place of business at 9985 E. 104<sup>th</sup> Avenue, Henderson, CO, and owns AN-220 Property located at the same address.
8. Plaintiff T L Ellis Enterprises, LLC is a Colorado Limited Liability Company with principal place of business at 10201 E. 107<sup>th</sup> Place, Brighton, CO, and owns AN-220 property located at the same address.
9. Plaintiff Eugene Kapaun is a Colorado resident who owns AN-220 Property located at 9339 E. 96<sup>th</sup> Avenue, Henderson, CO.
10. Plaintiff Mary Kapaun is a Colorado resident who owns AN-220 Property located at 9339 E. 96<sup>th</sup> Avenue, Henderson, CO.

11. Plaintiff Thomas H. Wiede is a Colorado resident who owns land in the enclave annexed to the City pursuant to Annexation Ordinance AN-219-07 (“AN-219 Property”) located at 8910 E. 89<sup>th</sup> Avenue, Henderson, CO.
12. Plaintiff Continental World Leasing Real Estate, LLC LLC is a Colorado Limited Liability Company with principal place of business at 8001 E. 88<sup>th</sup> Avenue, Henderson, CO, and owns AN-219 Property located at the same address.
13. Plaintiff Marilinn Sonneman is a Colorado resident who owns and resides at an AN-219 Property located at 8640 Xanthia Street, Commerce City, CO 80022.
14. Plaintiff Marilinn Sonneman is a qualified elector in the AN-219 Property.
15. Plaintiff Arthur Crocfer is a Colorado resident who owns and resides at an AN-219 Property located at 8696 Willow Street, Commerce City, CO 80022.
16. Plaintiff Arthur Crocfer is a qualified elector in the AN-219 Property.
17. Plaintiff Mary Jane Crocfer is a Colorado resident who owns and resides at an AN-219 Property located at 8696 Willow Street, Commerce City, CO 80022.
18. Plaintiff Mary Jane Crocfer is a qualified elector in the AN-219 Property.
19. Plaintiff Bruce Crocfer is a Colorado resident who owns and resides at an AN-219 Property located at 8660 Xanthia Street, Commerce City, CO 80022.
20. Plaintiff Bruce Crocfer is a qualified elector in the AN-219 Property.
21. Defendant City of Commerce City, Colorado is a Colorado Municipal Corporation, with principal office address located at 7887 East 60<sup>th</sup> Ave., Commerce City, Colorado, 80022.
22. Defendant City Council for the City of Commerce City is the governing body of the City of Commerce City (Plaintiff will refer to Defendants collectively herein as “the City”).

## II. JURISDICTION AND VENUE

23. This court has jurisdiction over this action pursuant to, Colo. Rev. Stat. § 31-12-116 (“Section 116”).
24. Defendant adopted ordinances AN-219-07 and AN-220-07 (the “Ordinances”) annexing two enclaves on December 17, 2007. Such ordinances have the effective date of December 31, 2007.

25. By filing this action on February 15, 2008, 46 days after the effective date of the Ordinances, Plaintiffs have satisfied the jurisdictional prerequisite set forth in Section 116, subsection (2)(a)(I).
26. Plaintiffs jointly filed a Motion to Reconsider on January 8, 2008, satisfying the jurisdictional prerequisite set forth in Section 116, subsection (2)(a)(II).
27. The City held a special meeting to consider Plaintiffs' and Sinclair Oil Corporation's separate Motions to Reconsider on January 28, 2008, at which time all such Motions were denied.
28. Venue is proper in Adams County District Court pursuant to Colo. Rev. Stat. § 31-12-116(1)(a), and—to the extent that the proper venue is dictated by compliance with the Colorado Rules of Civil Procedure as required by Colo. Rev. Stat. § 31-12-116(1)(a)—C.R.C.P. 98(a) & (c).

### III. GENERAL ALLEGATIONS

29. Plaintiffs hereby incorporate paragraphs 1 through 28 as though set forth fully herein.
30. On December 17, 2007, the City passed the Ordinances to annex two purported enclaves from what was, at that time, unincorporated Adams County.
31. The Ordinances cite Colo. Rev. Stat. § 31-12-106(1) (2007) (hereinafter "Subsection (1)") as the statutory authority for the annexations they seek to affect.
32. Subsection (1) states as follows:

(1) **Annexation of enclaves.** When any unincorporated area is entirely contained within the boundaries of a municipality, the governing body may by ordinance annex such territory to the municipality without complying with section 31-12-104, 31-12-105, 31-12-108, or 31-12-109 if said area has been so surrounded for a period of not less than three years; except that notice of the proposed annexation ordinance shall be given by publication as provided by section 31-12-108 (2) for notices of annexation petitions and resolutions initiating annexation proceedings, but no public hearing on the proposed annexation ordinance shall be required, and the first publication of notice shall be at least thirty days prior to the adoption of the ordinance.

Colo. Rev. Stat. § 31-12-106(1) (2007).

33. Defendants, therefore, annexed the property described in Paragraph 32 as “enclaves” pursuant to Subsection (1), and without a petition or an election pursuant to Colo. Rev. Stat. § 31-12-107.
34. Colo. Rev. Stat. § 31-12-106(1.1)(a) (hereinafter “Subsection 1.1(a)”) sets forth an “Exception to (the) annexation of enclaves” by the procedure set forth in Colo. Rev. Stat. § 31-12-106(1).
35. Subsection 1.1(a) precludes the annexation of enclaves when either of the following two conditions exist:

(I) Any part of the municipal boundary or territory surrounding such enclave consists at the time of the annexation of the enclave of public rights-of-way, including streets and alleys, that are not immediately adjacent to the municipality on the side of the right-of-way opposite to the enclave; or

(II) Any part of the territory surrounding the enclave was annexed to the municipality since December 19, 1980, without compliance with section 30 of article II of the state constitution.

#### **FIRST CLAIM FOR RELIEF**

**(by AN-219-07 Landowners and AN-219-07 Electors)**

36. Plaintiffs hereby incorporate paragraphs 1 through 35 as though set forth fully herein.
37. Plaintiffs described above in paragraphs 1-22 as owning AN-219 Property (“the AN-219-07 Landowners”) all own, in whole or in part, properties within the area annexed to the City pursuant to AN-219-07.
38. Plaintiffs described above in paragraphs 1-22 as being qualified electors in the AN-219 Property (“the AN-219-07 Electors”) are each qualified electors residing within the area annexed to the City pursuant to AN-219-07.
39. Such enclave is bordered on the east by a portion of the City annexed pursuant to annexation AN-57-85, recorded by File No. 16, Map No. 340, and Reception No. B608861 (“Annexation 57-85”).
40. Annexation 57-85 consists only of a public right-of-way within the meaning of Colo. Rev. Stat. § 31-12-106(1.1)(a)(I); to wit, the Burlington Northern Railroad Right of Way. (“ . . . THENCE SOUTHERLY ***ALONG SAID EASTERLY RIGHT-OF-WAY LINE*** THE FOLLOWING ELEVEN (11) COURSES: . . . .”)
41. Such right of way is clearly delineated “Public” on City Zoning Maps.

42. The land opposite the right of way from the enclave includes either unincorporated Adams County or the Rocky Mountain Arsenal, and not any portion of the City.
43. The land annexed to the City pursuant to AN-219-07 has one of its boundaries comprised of a public right-of-way in violation of Subsection 1.1(a)(I) and, therefore, cannot be annexed pursuant to Colo. Rev. Stat. § 31-12-106.
44. This specific allegation was contained in Plaintiffs' Motion to Reconsider and was noticed to the City prior to the enactment of AN-219-07.
45. The AN-219-07 Landowners believe themselves to be aggrieved by the AN-219-07 annexation and, therefore, challenge its propriety and validity pursuant to Colo. Rev. Stat. § 31-12-116(1)(a).
46. The AN-219-07 Electors believe themselves to be aggrieved by the AN-219-07 annexation and, therefore, challenge its propriety and validity pursuant to Colo. Rev. Stat. § 31-12-116(1)(a).
47. For all of the foregoing reasons, the AN-219-07 Landowners and Electors respectfully request that this Honorable Court exercise the authority granted to it pursuant to Section 116(1)(a) and declare:
  - a. Defendants exceeded their jurisdiction and/or abused their discretion by enacting AN-219-07;
  - b. the annexation set forth in AN-219-07 is void pursuant to Section 106(1.1)(a)(I); and
  - c. these Plaintiffs' property and residences are not within or under the jurisdiction of Commerce City, Colorado.

**SECOND CLAIM FOR RELIEF  
(by AN-220-07 Landowners)**

48. Plaintiffs hereby incorporate paragraphs 1 through 47 as though set forth fully herein.
49. Plaintiffs described above in paragraphs 1-22 as owning AN-220 Property ("the AN-220-07 Landowners") all own, in whole or in part, properties within the area annexed to the City pursuant to AN-220-07.
50. Such enclave is bordered on the west by a portion of the City of Commerce City annexed pursuant to annexation AN-112-91, recorded by File No. 16, Map No. 976, and Reception No. B998702 ("Annexation 112-91").

51. Comprising portions of the western boundary of the enclave annexed pursuant to AN-220-07, Annexation 112-91 consists only of a public right-of-way; to wit, the Union Pacific Railroad Right of Way.
52. Such right of way is clearly delineated “Public” on the City Zoning Map.
53. Portions of the land directly opposite the right of way from the enclave consist only of unincorporated Adams County, and not the City.
54. The land annexed to the City pursuant to AN-220-07 has one of its boundaries comprised of a public right-of-way within the meaning of Colo. Rev. Stat. § 31-12-106(1.1)(a)(I), the Union Pacific Railroad Right of Way, in violation of Subsection 1.1(a)(I) and, therefore, cannot be annexed pursuant to Colo. Rev. Stat. § 31-12-106.
55. This specific allegation was contained in Plaintiffs’ Motion to Reconsider and was noticed to the City prior to the enactment of AN-220-07.
56. The AN-220-07 Landowners believe themselves to be aggrieved by the AN-220-07 annexation, and therefore challenge its propriety and validity pursuant to Colo. Rev. Stat. § 31-12-116(1)(a).
57. For all of the foregoing reasons, the AN-220-07 Landowners respectfully request that this Honorable Court exercise the authority granted to it pursuant to Section 116(1)(a) and declare:
  - a. Defendant exceeded its jurisdiction and/or abused its discretion by enacting AN-220-07;
  - b. the annexation set forth in AN-220-07 is void pursuant to Section 106(1.1)(a)(I); and
  - c. these Plaintiffs’ property and residences are not within or under the jurisdiction of Commerce City, Colorado.

**THIRD CLAIM FOR RELIEF**  
**(by AN-219-07 Landowners and AN-219-07 Electors)**

58. Plaintiffs hereby incorporate paragraphs 1 through 57 as though set forth fully herein.
59. Section 116, subsection (2)(b), allows a district court reviewing an annexation undertaken by a municipality to review the propriety of prior annexations whose adoption, “in whole or in part, resulted in the creation of the enclave” whose annexation is in issue.

60. If such prior annexation resulting in the enclave “. . . occurred without compliance with Section 30 of article II of the state constitution . . . it shall declare the annexation of the enclave to be void . . . .” *Id.*

61. Colo. Const. art. II, § 30 states, in pertinent part:

(1) No unincorporated area may be annexed to a municipality unless one of the following conditions first has been met:

. . .

(b) The annexing municipality has received a petition for the annexation of such area signed by persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets, and alleys and any land owned by the annexing municipality....

62. Colo. Rev. Stat. § 31-12-107, enacted to implement Colo. Const. art. II, § 30, sets forth the requirements for a qualifying annexation petition under art. II, § 30 by “landowners of more than fifty percent of the area . . . meeting the requirements of sections 31-12-104 and 31-12-105 . . . .”

63. Colo. Rev. Stat. § 31-12-104(1)(a) declares an area eligible for annexation if “not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality.”

64. In 1991, the City adopted Ordinance AN-112-91 annexing certain property to the City (the “AN-112-91 Property”).

65. The AN-112-91 Property now constitutes a portion of the eastern boundary of the enclave annexed to the City by AN-219-07.

66. At the time of the annexation in 1991, the AN-112-91 Property lacked 1/6 contiguity with the then existing boundary of the City.

67. Therefore, such land was not eligible for petitioning pursuant to Colo. Rev. Stat. § 31-12-107(1)(a); and as a result, no qualifying petition could have been submitted as required by Colo. Const. art. II § 30.

68. Consequently, the annexation accomplished by AN-112-91 failed to comply with Colo. Const. art. II § 30.

69. This specific allegation was contained in Plaintiffs' Motion to Reconsider and was noticed to the City prior to the enactment of AN-219-07.
70. Thus, the AN-219-07 annexation violates Colo. Rev. Stat. § 31-12-106(1.1)(a)(II).
71. The AN-219-07 Landowners believe themselves to be aggrieved by the AN-219-07 annexation and, therefore, challenge its propriety pursuant to Colo. Rev. Stat. § 31-12-116(1)(a).
72. The AN-219-07 Electors believe themselves to be aggrieved by the AN-219-07 annexation and, therefore, challenge its propriety pursuant to Colo. Rev. Stat. § 31-12-116(1)(a).
73. Because a portion of one of the boundaries of the area annexed to the City pursuant to AN-219-07 was formed by an annexation achieved without compliance with Colo. Const. art. II § 30 in violation of Colo. Rev. Stat. § 31-12-106(1.1)(a)(II), the AN-219-07 Landowners and Electors respectfully request that this Honorable Court exercise the authority granted to it pursuant to Section 116(1)(a) and declare:
  - a. Defendants exceeded their jurisdiction and/or abused their discretion by enacting AN-219-07;
  - b. the annexation set forth in AN-219-07 is void pursuant to Section 116(2)(b); and
  - c. these Plaintiffs' property and residences are not within or under the jurisdiction of Commerce City, Colorado.

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

1. Advance this matter on the Court's docket as a matter of immediate public interest and concern and hear it at the earliest practical moment pursuant to Colo. Rev. Stat. § 31-12-116(2)(a)(VI)<sup>1</sup>;
2. Declare the annexations accomplished pursuant to AN-219-07 and AN-220-07 void;
3. Declare Defendants exceeded their jurisdiction and/or abused their discretion by enacting AN-219-07 and AN-220-07;
4. Declare these Plaintiffs' property and residences are not within or under the jurisdiction of Commerce City, Colorado;
5. Award Plaintiffs their reasonable attorneys' fees and costs; and
6. Grant to Plaintiffs any other award deemed reasonable and appropriate by the Court.

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<sup>1</sup> At the time of filing this Complaint, Plaintiffs believe another Complaint by Sinclair Oil Corporation will be (or has been) filed with this Court bringing substantially similar claims and seeking identical relief, born out of the same facts and applicable law as this matter. As a result, Plaintiffs believe that these cases should be consolidated.

Respectfully submitted this 15<sup>th</sup> day of February, 2008.

By: S/ John S. Zakhem (Signature on File)

Zakhem Atherton, LLC

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