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STATE OF WYOMING     )  
                                           ) ss.  
 COUNTY OF LARAMIE    )

IN THE DISTRICT COURT  
 FIRST JUDICIAL DISTRICT  
 Docket No. \_\_\_\_\_

Cox Ranches Limited Liability Company d.b.a.     )  
 Mark T. Cox III Ranches L.L.C., a Colorado     )  
 Limited Liability Company, Sam E. Galeotos,     )  
 as trustee of The Sam E. Galeotos Revocable     )  
 Trust, Otis Investments, LLC a Wyoming Limited   )  
 Liability Company, David A. Foose                 )

Plaintiffs/Appellants,                                 )

vs.                                                                 )

CITY OF CHEYENNE, A Wyoming                     )  
 Municipal Corporation;                                 )

Defendant/Appellee.                                    )

<b>APPEAL PURSUANT TO W.S. § 15-1-409 AND          COMPLAINT FOR DECLARATORY JUDGMENT</b>
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COME NOW the Petitioners/Appellants in the above-entitled action, by and through their counsel, Gay Woodhouse and Lori L. Brand of Gay Woodhouse Law Office, P.C. and in support of this action, allege and state as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This action is brought pursuant to the appeal procedures of W.S. § 15-1-409 and the Wyoming Declaratory Judgments Act, Wyo. Stat. § 1-37-101 *et seq.*

2. This action involves land located in Laramie County, Wyoming described in Ordinance No. 3689 as: Section 8, Township 14 North, Range 67 West; and portions of sections 9, 16, 15, 20, 21 and 22, Township 14 North, Range 67 West, 6<sup>th</sup> P.M., Laramie County, Wyoming (Land owned by the City of Cheyenne in and about the facility known as the USDA High Plains Grasslands Research Station and the Ware Pump Station. Attached as Exhibit 1 and incorporated herein by this reference is a map showing the location of the annexed area.

3. Plaintiffs are aggrieved by the actions of the City of Cheyenne (“City”) as a landowner and are Laramie County landowners who own rural land in Laramie County, Wyoming.

4. Plaintiff Otis Investments, LLC is a Wyoming Flexible Limited Liability Company in good standing and is an interested and aggrieved person as a City landowner of

property addressed at 3312 Capitol Avenue, who pays City taxes and receives City services, which City services as a result of the purported annexation will be constrained or made more costly because the City will begin to provide additional City services to the annexed property.

5. Plaintiff Sam E. Galeotos as trustee of The Sam E. Galeotos Revocable Trust, is a Wyoming revocable trust in good standing that is an interested and aggrieved person as a landowner whose land is contiguous and adjacent to the land described in ¶ 2 annexed by City Ordinance 3689. The annexation of the land above described enables the City to extend its control far beyond the current city limits and places Plaintiff Sam E. Galeotos, trustee of The Sam E. Galeotos Revocable Trust within the 1 mile boundary established by Wyoming statutes, W.S. § 15-1-411 and W.S. § 18-5-308.

6. Plaintiff Mark T. Cox III Ranches, L.L.C., is a Colorado Limited Liability Company in good standing authorized to do business in the State of Wyoming and is an interested and aggrieved person as a landowner whose land is contiguous and adjacent to the land described in ¶ 2 annexed by City Ordinance 3689. The annexation of the land above described enables the City to extend its control far beyond the current city limits and places Plaintiff Mark T. Cox III Ranches, L.L.C., within the 1 mile boundary established by Wyoming statutes, W.S. § 15-1-411 and W.S. § 18-5-308.

7. Plaintiff David A. Foose is an interested and aggrieved person as an owner of land pursuant to W.S. § 15-1-401(a)(ii) who holds rural land by a contract for deed recorded in the records of the Laramie County Clerk at Book 1320 Page 1240-1245 which land is adjacent to the land described in ¶ 2 annexed by City Ordinance 3689. The annexation of the land above described enables the City to extend its control far beyond the current city limits and places Plaintiff David A. Foose within the 1 mile boundary established by Wyoming statutes, W.S. § 15-1-411 and W.S. § 18-5-308.

8. The annexation of the land described in Ordinance No. 3689 places the rural Plaintiffs Mark T. Cox III Ranches, L.L.C., Sam E. Galeotos as trustee of The Sam E. Galeotos Revocable Trust, and David A. Foose under the purview of the City of Cheyenne for the development of subdivisions pursuant to Ordinance No. 3408 and Wyo. Stat. § 18-5-308(b). See City Map Exhibit 1. However, the rural Plaintiffs have no elected representatives within the governing body for the City of Cheyenne, are otherwise not entitled to vote for the governing

body of the City of Cheyenne, and thus have no political remedy for the acts committed by the City of Cheyenne.

9. The rural Plaintiffs will be subject to the 201 Memorandum of Agreement also referred to as the 201 Area Facilities Management Plan, which regulates whether the Plaintiffs will be able to repair or replace its existing septic system or will be forced to accept City water and sewer services and thereby subject the Plaintiff to City Code §§ 1.16.070 and 1.16.080 which requires Plaintiff and/or its successors in interest to expend funds to reimburse the City and any subsequent developers (plus interest at a rate of 7%), for their infrastructure costs should their properties be annexed in the future. The City has adopted a policy of requiring “voluntary annexation” for landowners who need to hook up to city sewer and water.

10. The activities undertaken on the land owned by the rural Plaintiffs are not permitted under City zoning ordinances. Plaintiff Mark T. Cox Ranches III currently owns land used as a working ranch. Plaintiff Mark T. Cox Ranches III raises livestock on its property, and houses other ranch animals including horses. Plaintiff Sam E. Galeotos, trustee of The Sam E. Galeotos Revocable Trust owns approximately 1500 acres of land on which livestock including horses and cattle are raised and kept. Hunting activities also take place on the Trust's real property.

11. The annexation of the land described in City Ordinance No. 3689 makes future annexation of the rural Plaintiffs' properties more likely and probable. Such annexation also makes more likely the interference with the quiet enjoyment of land owned by Plaintiffs as described in Paragraphs 9 and 10 above.

12. Plaintiffs are aggrieved because the City of Cheyenne has failed to properly follow the applicable statutes W.S. § 15-1-401 *et seq.*

13. Defendant City of Cheyenne (“City”), is a Municipal Corporation located in Laramie County, Wyoming that took government action and issued Ordinance No. 3689 annexing the land at issue in this case.

14. The property which is the subject of this action is located in Laramie County; the action by the City in annexing the land described in City Ordinance No. 3689 to the City took place in Laramie County, and the Plaintiffs own real property which is located in Laramie County; therefore, venue is proper in this Court.

15. The purpose of this lawsuit is to challenge the validity of City Ordinance No. 3689 which purportedly annexed the land described therein to the City of Cheyenne. City Ordinance No. 3689 was enacted on January 23, 2006 and became effective by publication on January 27, 2006 and has not yet been recorded with the Laramie County Clerk. City Ordinance No. 3689 is attached hereto as Exhibit 2 and by this reference made a part hereof.

#### **FACTS COMMON TO ALL CLAIMS**

16. Pursuant to Ordinance No. 3689, the land purportedly annexed by the City of Cheyenne described in ¶ 2 [hereinafter "the property"], includes approximately 2,200 acres.

17. The property does not currently touch or actually contact in any manner any of the boundaries of the City of Cheyenne. The closest City of Cheyenne boundary to the property is across the full width of Warren Air Force Base, about 1.5 miles as the crow flies and 5 miles when traveling by motor vehicle.

18. The property is isolated from the City of Cheyenne. The property cannot be directly accessed by any City road or City right-of-way. The property may only be accessed by traveling around the perimeter of Warren Air Force Base over state highways and county roads.

19. The Grasslands portion of the property (2168 acres) is leased to the United States Department of Agriculture (USDA), except for a small portion (35 acres) which is leased to the Girl Scouts and a small portion which contains the City of Cheyenne's secondary water treatment facility, the Roundtop Water Treatment Plant. The USDA uses and maintains several buildings including a greenhouse and a number of wood-framed houses which are used for staff housing, laboratories, storage areas and office space. The USDA uses the Grasslands portion to research the interaction of plants, animals, soil, water, air weather, and management on grazing lands. The Girl Scouts portion includes a trailer home as a caretaker's quarters, a large metal building and a wooded picnic area.

20. The Ware Pump station portion of the property (37 acres), houses a pump station which pumps water from Crow Creek when there is water in Crow Creek. No persons reside on this portion of the property. The Ware Pump station portion of the property is not an integral part of the property annexed by the City and its only apparent purpose is to further extend the City's sphere of influence into the surrounding unincorporated Laramie County. The City's intention to extend its control over the county boundary was demonstrated in statements made by a Cheyenne City Development Office staff member at a City Council meeting on November 14,

2005 and is shown in Exhibit 1 which shows a the black line drawn around the outer perimeter of the area and the red printing which states, “new 1-mile plat review boundary”.

21. There is no sanitary sewer available to any portions of the property. There is neither a City of Cheyenne police station nor a City of Cheyenne fire station on or near the property.

22. Upon information and belief, the City's publicly stated rationale for the annexation at issue, placement of the Botanic Gardens Arboretum, was used as a pretext for the City's real purpose, development and annexation of surrounding areas. The proposed Arboretum would encompass fewer than 62 acres of the nearly 2200 acres annexed.

23. At the first and second readings of Ordinance No. 3689 at the Cheyenne City Council on October 24, 2005, the Ordinance included a finding that the annexation satisfied the health, safety and welfare eligibility criteria in Wyo. Stat. § 15-1-402(a)(i). At the third and final reading, however, the finding that the annexation satisfied the health, safety and welfare eligibility criteria in Wyo. Stat. § 15-1-402(a)(i) was deleted from the final ordinance.

24. The final published version of Ordinance No. 3689 includes a finding which complies with the electric utility eligibility criteria in Wyo. Stat. § 15-1-402(a)(v).

25. The final published version of Ordinance No. 3689 exempts the City property from the City's own generally applied laws, ordinances, and regulations including a prohibition of raising livestock, of hunting, and exempting itself from the requirement that city property be hooked up to city sewer. The City's exemptions to generally applied laws, ordinances, and regulations are a violation of W.S. § 15-1-410. In addition, the fact that the City took the action to exempt itself from these requirements further demonstrates why the annexation of this “city island” in the county is inappropriate, unwarranted and contrary to the purpose of annexation statutes.

26. In the final annexation ordinance, Ordinance No. 3689, the City of Cheyenne did not find, determine, or procure any evidence to support, that (1) the annexation was for the protection of the health, safety and welfare of the persons residing in the area and in the city or town; (2) the urban development of the area sought to be annexed would constitute a natural, geographical, economical and social part of the annexing city or town; and (3) the area sought to be annexed is a logical and feasible addition to the annexing city or town and the extension of

basic and other services customarily available to residents of the city or town shall, within reason, be available to the area proposed to be annexed.

27. The City of Cheyenne owns additional properties scattered throughout Laramie and Albany Counties and perhaps elsewhere within the state of Wyoming. If the City of Cheyenne is not required to comply with the provisions of W.S. §§ 15-1-407, 402 and 404 as it has argued then these additional City properties are likewise subject to unilateral annexation by the City of Cheyenne and would place landowners within a one-mile perimeter subject to the purview of the City. See Map Attached hereto as Exhibit 3 and Map attached hereto as Exhibit 1.

**FIRST CLAIM FOR RELIEF**  
**Violation of W.S. §§15-1-407 and 15-1-402(a)**

28. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

29. W.S. § 15-1-407 provides:

If the city is the sole owner of any territory whether or not contiguous that it desires to annex, the governing body, by ordinance, may annex the territory to the city or town without notice or public hearing as provided in W.S. 15-1-405 and without preparing the annexation report or providing the estimates required by W.S. 15-1-402(c) and (e) and 15-1-404(a)(ii)(C) and (D). All ordinances annexing territory without notice and public hearing shall contain a statement that the territory is solely owned by the petitioning city or town.

30. W.S. § 15-1-407 by its plain language requires the City of Cheyenne to comply with the provisions of W.S. § 15-2-402 *except for* subsections (c) and (e).

31. Wyo. Stat. § 15-1-402(a) provides that before a property is "eligible" for annexation it must meet certain requirements. These requirements are conjunctive, thus necessitating that each subsection be met before the territory lawfully may be annexed.

32. The annexation of the land described in Ordinance No. 3689 is invalid because it does not comply with the statutory requirements established in W.S. § 15-1-402(a)(i). No findings supported by specific evidence in the record were made by the City that the annexation would protect the health, safety, and welfare of the area residents and the residents of the City of Cheyenne. This property is located a significant distance from the nearest existing supporting infrastructure for city services. No findings supported by record evidence were made that this annexation affirmatively protects the health, safety, and welfare of any party.

33. The annexation of the land described in Ordinance No. 3689 is invalid because it does not comply with the statutory requirements established in W.S. § 15-1-402(a)(ii). No findings supported by specific evidence in the record were made by the City that the territory

annexed shall constitute a natural, geographical, economical and social part of the annexing city or town as required by W.S. § 15-1-402(a)(ii). The land lies outside the city limits in a predominantly rural setting, surrounded by county land; it is not a natural outgrowth of the city, instead it will constitute an isolated pocket in an otherwise rural county setting.

34. The annexation of the land described in City Ordinance No. 3689 by the City is unlawful and invalid because it violates the statutory requirement of Wyo. Stat. § 15-1-402(a)(iii), that the area annexed shall be a logical and feasible addition to the annexing city or town, **and** the extension of basic and other services customarily available to residents of the city or town shall, within reason, be available to the area proposed to be annexed. It is not logical and feasible to annex land far from core City limits. It is not logical and feasible to create a city pocket so far removed from true City boundaries. The extension of basic and other services including, city water and sewer facilities are not available to the newly annexed area. It is not "within reason" as that term is used within the statute, to expend millions of dollars in funds to bring City services to what will become a City "island" surrounded by County property, when those funds will be borne by the City and/or its inhabitants and future inhabitants. The annexation further creates substantial county pockets between the subject area and the City boundary.

35. No findings supported by specific evidence in the record were made by the City that the area annexed shall be a logical and feasible addition to the annexing city or town, **and** the extension of basic and other services customarily available to residents of the city or town shall, within reason, be available to the area proposed to be annexed as required by W.S. § 15-1-402(a)(iii).

36. The failure to comply with the provisions of Wyo. Stat. § 15-1-402(a) renders City Ordinance No. 3689 void *ab initio*.

**SECOND CLAIM FOR RELIEF**  
**Violation of W.S. § 15-1-407 and W.S. § 15-1-404(a)(i),(ii)(A),(ii)(B)**

37. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

38. W.S. § 15-1-407 provides:

If the city is the sole owner of any territory whether or not contiguous that it desires to annex, the governing body, by ordinance, may annex the territory to the city or town without notice or public hearing as provided in W.S. 15-1-405 and without preparing the annexation report or providing the estimates required by W.S. 15-1-402(c) and (e) and 15-1-404(a)(ii)(C) and (D). All ordinances

annexing territory without notice and public hearing shall contain a statement that the territory is solely owned by the petitioning city or town.

39. W.S. § 15-1-407 by its plain language requires the City of Cheyenne to comply with the provisions of W.S. § 15-1-404 *except for* subsections (a)(ii)(C) and (D).

40. W.S. § 15-1-404(a)(i) provides:

(a) The governing body of any city or town may initiate proceedings to annex territory by the following procedure:

(i) Reasonable evidence shall be procured by the governing body indicating that a specific area meets the conditions and limitations of W.S. 15-1-402.

41. Upon information and belief, the City of Cheyenne did not procure reasonable evidence indicating that the property proposed for annexation as described in ¶ 2 met the conditions and limitations of W.S. § 15-1-402.

42. W.S. § 15-1-404(a)(ii)(B) provides:

(ii) The governing body shall:

(B) Determine if the area considered for annexation complies with W.S. 15-1-402.

43. Upon information and belief, the City of Cheyenne did not determine if the area considered for annexation as described in ¶ 2 complied with W.S. § 15-1-402.

44. The failure to comply with the provisions of Wyo. Stat. §§ 15-1-404(a)(i) and 15-1-401(a)(ii)(B) renders City Ordinance No. 3689 void *ab initio*.

**THIRD CLAIM FOR RELIEF**  
**Violation of W.S. § 15-1-410(a)**

45. Plaintiffs herein incorporate by reference all preceding paragraphs as if fully set forth herein.

46. W.S. § 15-1-410(a) provides in pertinent part:

**The territory and inhabitants of any annexed area are subject to all the laws, ordinances, rules and regulations of the city or town to which they are annexed** and are entitled to all the rights privileges and franchises or other services afforded the inhabitants thereof.

47. The City of Cheyenne in enacting City Ordinance No. 3689 expressly waived and/or exempted the annexed territory from the application of the City's own laws, ordinances, rules and regulations of general application.

48. City Ordinance No. 3689 Section 2 provides that this annexation is approved with the waiver of public improvements required under Sections 1.16.040 (Annexation, Off-site improvements)-required of the City of Cheyenne Code 2002 . . . See Exhibit 2.

49. City Ordinance No. 3689 Section 3 provides that this annexation is approved with the exemption from the following Section [sic] of the City of Cheyenne Code 8.60 (nuisance), 13.12.040 (septic systems), 9.24.030 (weapons discharge) and 6.08.020 (keeping livestock) . . . See Exhibit 2.

50. The City's attempt to make the annexed territory exempt from the cited laws, ordinances, rules, and regulations of the City of Cheyenne is a violation of W.S. § 15-1-410(a) and renders City Ordinance No. 3689 void *ab initio*.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs/Appellants and landowners pray that:

- a. The Court will interpret the Wyoming annexation statutes W.S. §§ 15-1-401 *et seq.*;
- b. The Court will enter an Order pursuant to Wyo. Stat. §15-1-409 and/or Wyo. Stat. §§ 1-37-101 *et seq.* declaring City Ordinance No. 3689 invalid and void *ab initio* for the City's failure to comply with the mandates of the Wyoming annexation statutes, Wyo. Stat. §§ 15-1-402, 404, 407 and 410.
- c. The Court will enter an order finding and concluding that the City of Cheyenne abused its discretion, acted arbitrarily, capriciously, unreasonably or not in accordance with law in annexing the property; and
- d. The Court will permanently enjoin the City from any attempt to re-annex the land described in ordinance No. 3689 until the mandatory provisions of Wyoming Statute are properly met.
- e. The Court will award Plaintiffs' all such costs and fees that are allowable by law, and;
- f. For such other and further relief as this Court may deem just and equitable under the circumstances.

DATED this \_\_\_\_\_ day of March, 2006.

Respectfully submitted,

GAY WOODHOUSE LAW OFFICE P.C.

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