



PRE-ANNEXATION AGREEMENT

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THIS PRE-ANNEXATION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20____, by and between _____ (“Annexor”) and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado, (“City”).

WITNESSETH:

WHEREAS, the Annexor is the owner of the property described in Exhibit “A” (Property) to this Agreement and has filed a petition to annex the Property into the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

“Agreement” means this Agreement.

“Effective Date” means the effective date of action by the City Council approving the execution of this Agreement. On such date, this Agreement shall become binding upon and enforceable by the parties.

“GID” means any General Improvement District organized within the boundaries of the City.

“Property” means the real property described and depicted on Exhibit “A”.

“SACWSD” means South Adams County Water and Sanitation District.

ARTICLE 2. RIGHTS-OF-WAY, PUBLIC LAND CONVEYANCE AND PUBLIC IMPROVEMENTS

Conveyance of rights-of-way, easements and public land. The Annexor shall convey from the Property at no cost to the City all rights-of-way, easements and public land reasonably required by the City and/or the GID. The City may require dedication of rights-of-ways, easements and public land at any time construction thereof or thereon is deemed necessary in the public interest even if the Property is not being platted or developed at the time the City deems dedication of the rights-of-way, easements and/or public land is necessary.

Public improvements. At the time the Property is developed, the Annexor agrees to design and fully improve to City standards, or pay for such design and improvements, as required by the City, all public streets or portions of public streets, as applicable, that are adjacent to and abutting the exterior boundaries of the Property, all public streets within the Property, storm drainage facilities, landscaping and other public improvements. The cost of designing and constructing all of the aforementioned public improvements shall be borne by the Annexor, and the construction thereof shall be at the sole cost, risk and expense of the Annexor. All such public improvements must be built or completed in accordance with the public way permit requirements and City of Commerce City Engineering Construction Standards and Specifications and such other adopted standards, as applicable and as may be amended from time to time.

Maintenance of rights-of-way, easements and dedicated public land in accordance with City ordinances. For the period during which any such rights-of-way, easements and/or public land has been conveyed but has not been improved, the Annexor agrees to maintain any such unimproved rights-of-way, easements and/or public land pursuant to maintenance requirements of the City.

ARTICLE 3. REIMBURSEMENT AGREEMENTS

To the extent public improvements (such as storm drainage facilities, street lighting, or other public improvements) are oversized or extended onto adjacent property by Annexor for a benefit accruing to other parties, said improvements may be eligible for reimbursement. If said improvements qualify for reimbursement through the City, Annexor shall be required to enter into a Reimbursement Agreement with the City in accordance with the requirements of the City. In the case of water or sewer, eligibility for reimbursement, if any, must be coordinated and approved by SACWSD.

ARTICLE 4. PUBLIC IMPROVEMENT AGREEMENT

At the time the Property is developed, a public improvement agreement shall be signed by the Annexor defining roadway construction, storm drainage facilities, landscaping requirements and any other dedicated public improvements. Those streets, storm drainage, landscaping, and other dedicated public improvements constructed by the Annexor, by any district, or party under contract with the Annexor, shall initially be accepted by the City upon completion of construction in accordance with City standards or other adopted standards, or after correction pursuant to those standards of any defects in said streets, storm drainage, landscaping, or other public improvements, whichever date shall last occur. The Annexor shall warrant construction of said streets, storm drainage, landscaping and other public improvements for one year after initial acceptance by the City at which time the City will commence maintenance of said streets, storm drainage, and other public improvements. The Annexor shall maintain all landscaping improvements.

ARTICLE 5. STATUTORY DISTRICTS

Creation of Districts. Subject to the City's rights of review and approval or denial under the laws of the state of Colorado, which approval shall not be unreasonably withheld, the City shall approve the creation of one or more districts including, but not limited to, special districts, general improvements districts and metropolitan districts, authorized pursuant to Title 31 and Title 32 of the Colorado Revised Statutes as the same may be amended from time to time ("Districts"), as requested by the Annexor for purpose of the acquisition, construction, installation, financing and/or maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. Such capital improvements and facilities may include all improvements permitted by said Titles 31 and 32 including, but not limited to: water and sanitary sewer lines; storm drainage and detention improvements; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, street lights, safety protection improvements and other transportation facilities; and parks, trails and recreation facilities. Any

approval of such Districts, when required by the Annexor, may include the following conditions, unless waived by the City, which waiver shall not be unreasonably withheld.

No District shall levy, charge, or collect a sales or use tax.

The Districts shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.

All improvements constructed by the Districts shall be designed, constructed, and warranted in accordance with the standards and specifications of the City.

The City shall be the sole provider of municipal services to the Property, including police protection, street maintenance, zoning and code enforcement, and all other services as the City may customarily provide to the residents of the City; provided however, that the District may, at their option, provide supplemental street, median, landscape (including irrigation) and other facility maintenance services.

The City shall not incur any expense in the formation or operation of the District or in the retirement of capital obligations related thereto.

The Districts, when organized, shall not exceed the boundaries of the Property, nor have its powers altered in any way, without the prior approval of the City.

Maintenance Fee and Charges of District. Except as otherwise provided, nothing in this Agreement shall be construed to prohibit or preclude the Districts from establishing, fixing, levying, charging or collecting any rate, fee or charge, in addition to the rates, fees and charges to be collected by the City.

ARTICLE 6. IMPACT FEES AND OTHER CITY FEES

The Annexor agrees to pay City impact fees and other City fees adopted by the City and as amended by City Council, and uniformly charged for other property located in the general area for transportation, drainage, parks, trails and recreation facilities, water acquisition and other purposes authorized by law.

Road Impact Fee. The Annexor agrees to pay the City road impact fee in accordance with the requirements of the City, if the Property is located within the road impact fee area.

Drainage Impact Fee. The Annexor agrees to pay the City a drainage impact fee in the amount specified by City ordinance as applicable to the Property.

Parks, Trails and Recreation Facilities Impact Fee. The Annexor agrees to pay the City impact fee for parks, trails and recreation facilities in accordance with the requirements of the City.

Water Impact Fee. The Annexor agrees to pay the City impact fee for water in accordance with the requirements of the City.

School Capacity Fee. In accordance with the specifications of the School Capacity Fee, as established by School District 27J Capital Facilities Fee Foundation, the Annexor agrees to pay said fee for purposes of school capital construction. The Annexor agrees to execute a Participation Agreement providing for the payment of Capital Facility Fees. As said fees are

adopted or amended by School District 27J Capital Facilities Fee Foundation or, as applicable, by the City of Commerce City, the Annexor agrees to pay the fee that is consistent with the adopted fee schedule.

Fees in Lieu of Land Dedication for Schools. In lieu of land dedication required by City ordinance for school purposes, the City may require any Annexor to pay the fees in lieu of land dedication for schools according to the City's adopted schedule. As fees in lieu of land dedication for schools are adopted or amended by the City, the Annexor agrees to pay the fee that is consistent with the adopted fee schedule.

Fees in Lieu of Land for Parks, Trails and Recreation Facilities. It is at the City's discretion to determine if the Annexor dedicates land or pays the impact fee for parks, trails, and recreation facilities set forth above in lieu of land dedication for parks, trails, and recreation facilities. If the Annexor does not dedicate the amount of land required by the City, the Annexor agrees to pay the fee in lieu of dedication of land for public parks, trails and recreation facilities in compliance with the City's adopted fee schedule. As fees in lieu of land for public parks, trails and recreation facilities are adopted or amended by the City, the Annexor agrees to pay such fee consistent with the adopted fee schedule.

ARTICLE 7. CITY OBLIGATIONS

In fulfillment of its obligations under this Agreement, the City shall provide police and other municipal services to the Property to the same extent as those services are provided by the City elsewhere in the City, pursuant to the City's general and uniformly applied policies.

ARTICLE 8. WATER AND SEWER

Water and sewer services shall be provided by SACWSD and shall be agreed upon with SACWSD prior to development of the Property as a condition of development. The Applicant must secure adequate water and sewer services and may be required to enter into a Water Resources Agreement with SACWSD at the time of annexation to meet the contemplated requirements of the applicant's development. No annexation shall receive approval from the City until such requirements have been met. Adequacy of water and sewer services shall be determined by the City and SACWSD. Future changes to the proposed development may require an amendment to the Water Resources Agreement in which event, adequate water resources must be secured by the Annexor prior to City approval of any permits for development.

Water and sewer services must be obtained in accordance with the rules and regulations of SACWSD as the same exist at the time application is made to SACWSD for water and sewer services.

ARTICLE 9. URBAN GROWTH BOUNDARY

By allowing annexation of the Property, the City does not guarantee that the Property is located within the Urban Growth Boundary/Area, as defined by the Denver Regional Council of Governments, or other boundaries legislatively determined.

ARTICLE 10. FIRE PROTECTION

The Annexor agrees to cooperate with the City and South Adams County Fire Protection District, the Brighton Fire Protection District or the Sable Altura Fire Protection District, as applicable, to incorporate the Property into the appropriate Fire Protection District's service area.

ARTICLE 11. ZONING

Zoning of the Property shall be accomplished in accordance with the City's codes, regulations, and standards and in accordance with Colorado Revised Statutes, as may be amended from time to time.

ARTICLE 12. GENERAL IMPROVEMENT DISTRICT

At the time of petition for annexation of the Property, if required by the City and if the Property is located within an applicable GID service area, the Annexor must join the GID and pay the joinder fees associated with joining the GID.

ARTICLE 13. MISCELLANEOUS

Covenants. The provisions of this Agreement shall constitute covenants and servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the Property, the Annexor, its heirs, successors and assigns including subsequent owners of the Property.

Assignment. Except as provided in the paragraph entitled, "No Third-Party Beneficiary" of this Article 13, this Agreement shall be binding upon and shall inure to the benefit of the successors in interest, assigns and the legal representatives of the parties. The Annexor shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located upon or within the Property.

Incorporation. Exhibit A to this Agreement is attached and incorporated in this Agreement by reference.

Amendment of Agreement. This Agreement may be amended or terminated only by mutual consent in writing by the City and the Annexor, its heirs, successors or assigns following the public notice and public hearing procedures required for the original approval and execution of this Agreement.

Remedies. In the event of a breach of default in performance of this Agreement, the parties shall have all remedies in law or in equity including, specific performance. However, in no event shall the City be deemed to waive any rights existing or accruing to the City under the Colorado Governmental Immunity Act.

Titles of Sections. The titles of the several articles and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

No Third-Party Beneficiary. No third-party beneficiary rights are created in favor of any person not party to this Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their heirs, successors and assigns, including successor owners of any lot(s) or any other portion(s) of the Property, and nothing contained in this Agreement shall give rise to or allow any claim or right of action under this Agreement by any other person or party. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that the right of the Annexor to receive, and the obligation of the City to pay, any credits or reimbursements hereunder shall accrue exclusively to the original parties to this Agreement and to any statutorily empowered districts created by the Annexor pursuant to this Agreement, but to no others.

Venue. Venue for any action to enforce or interpret the terms of this agreement shall be in the District Court of Adams County, Colorado.

Applicable Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement.

Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the Annexor have caused this Agreement to be duly executed as of the day first above written.

CITY OF COMMERCE CITY, COLORADO

By: _____
Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, MMC, City Clerk

Approved as to form:

City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

ANNEXOR:

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by

[Insert name of Annexor(s)]

as _____

Witness my hand and official seal. Notary Public: _____

Address: _____

(SEAL)

Street Number/Name City State Zip Code

My Commission Expires: _____