

**ANNEXATION AGREEMENT  
LIBERTY DRAW PROPERTY**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of August, 2022.

**1. PARTIES**

The parties to this Agreement are the City of Evans, a Colorado home rule municipality (“the City”), Gary W. Wiedeman (“Owner”) and Baessler Development, LLC, a Colorado Limited Liability Company, (“the Developer”).

**2. RECITALS**

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

- a. The City is a municipal corporation existing under the laws of the State of Colorado. Developer is a Limited Liability Company, duly organized, existing and in good standing under the laws of the State of Colorado.
- b. Gary W. Wiedeman is the owner of the real property described in Exhibit A, attached hereto and incorporated herein by reference (“the Property”).
- c. Developer is under contract with the Owner to purchase the Property.
- d. Owner and Developer desire to annex the Property to the City and for that purpose, have submitted to the City an Annexation Petition dated May 27, 2022 (“the Petition”). It is the contemplation of the Parties that this Agreement will be entered into at or before the date the City adopts an ordinance annexing the Property to the City and that the execution of this Agreement will be a condition of such annexation. However, this Agreement will not be effective until the latter of the following dates:
  - 1) Thirty (30) days after the ordinance approving this Agreement is published;
  - 2) Thirty (30) days after the ordinance zoning the Property has been published.
- e. The Developer desires to develop the Property as a Planned Unit Development (PUD) with various uses which may include, among other

- uses, single and multifamily residential, and other land uses.
- f. Overall, Developer contemplates developing the 75+/- acres included in the Property, to include, *inter alia*, a mixture of no more than 700 residential units and additional non-residential space, recreation facilities, and such support activities as are contemplated by the Zoning and to be finalized through the Final Plan process.
  - g. Development of the Property will necessitate providing infrastructure improvements and public services.
  - h. Sections 31-12-121, et seq., C.R.S., *inter alia*, authorizes the Parties to enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the City, the Owner, and the Developer, the Parties agree as follows:

### 3. **DEFINITIONS**

As used in this Agreement, unless specifically stated otherwise, the words and phrases used will have the meaning as defined in the ordinances of the City. For the purpose of this Agreement the following words and phrases will have the definitions provided for below:

- a. The term “Agreement” will refer to this Annexation Agreement.
- b. The term “Council” will refer to the City Council of Evans, Colorado, as that body may be constituted from time to time.
- c. The term “Developer” will initially refer to Baessler Development Company, LLC, as well as any entity that subsequently acquires a fee simple interest of record in any portion of the Property as a transferee, grantee, assignee or successor of Baessler Development Company, LLC. “Developer” will include, collectively, all of the foregoing persons or entities, all of whom will be jointly and severally liable for the obligations and liabilities of the Developer to the extent such liability relates to the portion of the Property they purchase or otherwise obtain. The liabilities and obligations of a transferee, grantee, assignee or successor of Baessler Development Company, LLC under this Agreement will extend only to liabilities and obligations that relate to the specific property acquired and

will not impose any liabilities or obligations relating to other portions of the Property. All such persons and entities will be deemed to have had actual and constructive notice of the provisions of this Agreement and of their obligations and liabilities arising under it, as a consequence of their purchase of all or a portion of the Property subsequent to the date of recording of this Agreement in the records of Weld County. Likewise, as the result of such sale or transfer by Baessler Development Company LLC, Baessler Development Company will be relieved of the liabilities and obligations relating solely to the specific site sold and that have no effect or impact, either direct or indirect, on any of the other portions of the Property over which Baessler Development Company LLC still has obligations or liabilities under this Agreement. Notwithstanding the foregoing, the term “Developer” will not include (1) purchasers of individual subdivided lots or individual residential lots or units or individual non-residential space in an approved Final Plat or (2) holders of a security interest in the Property or a portion thereof.

- d. The term “Development” will refer to the overall plan of the Developer to develop the Property as a planned unit development.
- e. The term “District No. 1” will refer to the Liberty Draw Metropolitan District No. 1 the parties anticipate will be established following annexation of the Property to the City.
- f. The term “District Nos. 2 through 7” will refer to the Liberty Draw Metropolitan District Nos. 2 through 7 the parties anticipate will be established following annexation of the Property to the City.
- g. The term “Districts” will refer collectively to District Nos. 1 through 7.
- h. The term “Final Plat” or “Plat” will refer to a final subdivision plat provided by the Developer and approved by Council as part of the subdivision process for any part of the Property, pursuant to the provisions of the City Code.
- i. The term “Master Plan” will refer to the City’s Comprehensive Master Plan approved April 19, 2022 through Ordinance 762-22 for guiding and controlling the physical development of land use and circulation in and around the City of Evans, as adopted pursuant to Sections 31-23-101, et seq., C.R.S. and any amendment or extension of such a plan.

- j. The term “PUD Plan” will refer to the Developer’s Planned Unit Development Guide as defined in the PUD Regulations as well as the Planned Unit Development Plan referred to in Section 18.01.100 of the City Code. Such PUD Plan for the Property includes the PUD Plan and such other graphic and written documents designated by the Council at the time of annexation of the Property and approval of the PUD Plan, with any and all conditions as may be attached to such approvals.
- k. The term “PUD Regulations” will refer Section 18.06.050 of the City Code, as well as all other sections of the City Code referred to therein.
- l. The term “City Code” will refer to the Municipal Code of the City of Evans, as adopted and as amended from time to time by the Council.
- m. The term “Zoning” will refer to the zoning set forth in the PUD Plan.

4. **CONDITIONS PRECEDENT, EFFECT OF AGREEMENT AND RELATIONSHIP OF AGREEMENT TO OTHER DOCUMENTS AND EVENTS**

- a. The effective date of this Agreement will be as provided in Section 2.c., above.
- b. This Agreement and the other provisions incorporated as part of the approved PUD Plan are intended to prescribe a general plan for the use and development of the Property. However, except as expressly provided herein and in the PUD Plan, they do not supplant the City’s land use regulations and other ordinances and regulations as they relate to the Property and will not be construed to limit the authority of the City to adopt different ordinances, resolutions, regulations, rules, policies or codes so long as they apply throughout the City uniformly or to classes of individuals or properties uniformly.
- c. The provisions of this Agreement and the PUD Plan reflect the requirements of the City’s utilities at the time of annexation of the Property. These provisions will not be construed as a limitation upon the authority of the City to adopt different ordinances, rules, regulations, resolutions, policies or codes which change charges or costs for any service or class of service or any other charges so long as they apply throughout the City uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly.

- d. Except as otherwise expressly provided in this Agreement or the PUD Plan, the establishment of vested property rights under this Agreement will not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes) as all of such regulations exist on the date of this Agreement or as they may be enacted or amended after the date of this Agreement. The Developer does not waive its right to oppose the enactment or amendment of any such ordinance, resolution or regulation on the same basis that any other member of the public could present such opposition.
- e. Nothing contained in this Agreement will constitute or be interpreted as a repeal of any provision of the existing City Code or as a waiver or abnegation of the City's legislative, executive, administrative, or judicial governmental or police powers to promote and protect the health, safety, or general welfare of the City or its inhabitants.

## 5. **TERM OF AGREEMENT**

The term of this Agreement will be five (5) years from the effective date of this Agreement as provided in Section 2.c. After the expiration of the term, this Agreement will be deemed terminated and of no further force and effect; provided, however, such termination will not affect (a) annexation of the Property into the City; (b) any vested rights obtained prior to such termination and contemplated to continue after such termination; or (c) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and that were contemplated to continue after termination of this Agreement.

## 6. **VESTED RIGHTS**

- a. Sections 24-68-101, et seq., C.R.S., "the Vested Rights Statute," provides for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Rights Statute has been implemented by the City through the procedures set forth in Sections 18.01.100, of the City Code.

- b. Pursuant to the provisions of the Vested Rights Statute and Sections 18.01.100 of the City Code, the parties find that the PUD Plan is a site specific development plan for the purposes of developing the Property.
- c. The vested rights associated with the Development, as set forth in this Section, will run with the land and will remain in effect throughout the term of this Agreement. No other vested rights are created or intended to be created by this Agreement, the PUD Plan or any of the other documents relating to the Property unless expressly noted in such other document and agreed to by City Council. Upon expiration or termination of this Agreement all vested rights will expire, except as otherwise provided by Section 5 above.
- d. Any provisions of this Agreement or the PUD Plan to the contrary notwithstanding, the City reserves the right to declare a moratorium upon a reasonable finding by the Council that such moratorium is necessary to protect the public health, safety or welfare.
- e. The City finds the five (5) year duration of such vested property rights to be warranted in light of all relevant circumstances, including, but not limited to, the substantial size of the Property, the scale and phasing of the Development, economic cycles and market conditions.

**7. PHASING OF DEVELOPMENT**

- a. Developer proposes to develop the Property in phases depending upon market demand. The City agrees such phased development is appropriate under the applicable terms of this Agreement and the PUD Plan.
- b. In the event that during any period of three (3) years, commencing on the effective date of this Agreement and continuing thereafter throughout the term of this Agreement, Developer fails to submit at least one application for a for a Final Plat, then the City, in its sole discretion, may terminate this Agreement and the PUD Plan and may record a resolution with the Weld County Clerk and Recorder evidencing such termination. Upon such termination, this Agreement and the PUD Plan will be deemed to have expired and ceased to exist as they relate to all lands within the Property for which a Final Plat has not been approved (“Undeveloped Lands”). Despite such expiration and notwithstanding any provision of the City Code to the contrary, the zoning of Undeveloped Lands will remain the same as it existed under the PUD Plan, except no further permits or approvals, including but not limited to Final Plat or building permit approvals, will be

granted by the City in connection with the Undeveloped Lands unless and until the City has approved a new or amended development plan for the Undeveloped Lands or a portion thereof. This Agreement and the PUD Plan will continue to exist and apply to all parts of the Property other than the Undeveloped Lands.

- c. After the expiration or termination of this Agreement, the zoning of all parts of the Property other than the Undeveloped Lands, will continue and remain in effect as provided in the PUD Plan unless and until rezoned by the Developer or the City as provided in the City Code.

## 8. ZONING AND DEVELOPMENT

### a. Permitted Uses

- 1) The proposed land uses will be specified in the PUD Plan. No different or additional uses will be permitted, unless approved by the City as provided in the PUD Plan or through an amendment to the PUD Plan pursuant to the provisions of the City Code.
- 2) The maximum number of dwelling units and non-residential square footage and corresponding densities will be established in the PUD Plan subject to adjustment by density transfers as provided in Section 8.b of this Agreement.

- b. Transfer of Densities. Transfer of densities will be permitted as provided in the PUD Plan.

- c. Dimensional Standards. Development within the Property will conform with the Dimensional Standards set forth in the PUD Plan and site-specific Development Guidelines to be issued final approval with the Final Plat.

- d. Continued use for agriculture during development. The Property is currently being used, in part, for agricultural, farm and ranch purposes. Developer may continue that use despite the Zoning until the particular parcels involved are developed. Developer and the City agree that even though portions of the Property may continue to be used in that manner, no part of the Property will be considered agricultural or farmland for purposes of Section 31-12-702, C.R.S. Developer waives any right to disconnection from the City pursuant to Section 31-12-701, et seq., C.R.S., based on agricultural use.

- e. Street Lighting. A lighting plan will be developed pursuant to the provisions of the PUD Plan. The Development Agreement executed at or before the time of each Final Plat approval will include provisions for the design and installation of street lighting.
- f. Landscaping. Landscaping plans will be developed pursuant to the provisions of the PUD Plan. The Development Agreement executed at or before the time of each Final Plat approval will include provisions for the design and installation of landscaping.
- g. Sign Standards. Development wide sign standards will be developed pursuant to the provisions of the PUD Plan and the City's Sign Code located in Title 18 of the Municipal Code.
- h. Streets and Arterial Roads. On-site and required off-site streets will be dedicated, designed, and constructed to City standards by Developer at Developer's expense. A traffic study for the proposed development will be completed by the Developer in accordance with City requirements. The Traffic Engineer will consider future signalization and a signal progression analysis. Developer will be responsible for payment of the cost related to the design and construction of such future signalization when it is determined that such infrastructure is warranted.

Developer has agreed to design the preliminary horizontal and vertical road alignment (full width) of Prairie View Parkway from the intersection of 35<sup>th</sup> Street to the intersection of Sienna Avenue.

All internal streets and alleys shall be designed in accordance with the City's designs and specification requirements.

- i. Water Service
  - 1) Water Rights Dedication. Developer will dedicate water rights as required by Title 13.08 of the Evans Municipal Code.
  - 2) Non-potable Water System. Developer will design and install a non-potable water system to provide irrigation water to all areas within the Property. The design and installation shall be in accordance with



the City standards and specifications. The non-potable water system will become an extension of the Evans water utility enterprise and will be owned, operated, and maintained by the City after acceptance by the City. Developer will install dual meters within in all residential and non-residential structures and such other meters as may be deemed by the City to be necessary in order to facilitate the operation and maintenance of the non-potable system. Developer will provide water rights and a water supply system deemed acceptable by the City to facilitate the non-potable system. All costs associated with the non-potable water system, including but not limited to acquisition by Developer and conveyance to City of acceptable water rights, carriage rights, and construction of all improvements, will be borne solely by Developer.

- j. Other Utilities. Developer will comply with the City Code as the same relates to utility suppliers including, but not necessarily limited to, the notice requirements and design requirements as they may be amended from time to time.
- k. Drainage
  - 1) Prior to submission of any Final Plat, Developer will provide at Developer's expense a comprehensive drainage study acceptable to the City of the entire Property. Improvements recommended by such study will be completed at or before the time of completion of each phase of development. Facilities necessary to address drainage from outside the Property will be designed for quantities in excess of those amounts historically discharged from the site. Such facilities will be developed in conformance with the comprehensive drainage study and all City regulations and ordinances.
  - 2) In the event that a discharge permit under the Clean Water Act (33 U.S.C. Sections 1251, et seq.) or any other discharge permit is required by a federal, state or local governmental agency, the Developer will be responsible for obtaining such permits at Developer's sole expense.
- l. Development Agreement. In a form provided by the City, Developer and the City will enter into a development agreement. The final form of the development agreement will be subject to mutual agreement of the parties on the terms and conditions of the same. Said form shall incorporate and

address the ownership and maintenance of all public and private improvements. The development agreement will be signed prior to or upon approval of the first Final Plat of lands within the Property.

- m. Rezoning Process. Upon submittal of required materials, Developer's rezoning request will be processed concurrently with the petition for annexation. This provision does not waive the authority of the Developer or the City of Evans to initiate rezoning of the land in accordance with the Charter and ordinances of the City of Evans. Land use is subject to the police power and legislative authority of the City of Evans.
- n. Public Dedications, Open Space and Trails
  - 1) Public Use Land Dedication. Developer agrees to dedicate, by General Warranty Deed or other appropriate instrument of conveyance acceptable to the City, or, at the request of the City, all of Developer's right, title and interest (subject to exceptions of record permitted by the City), in and to the applicable portion of the Property a portion for public open space or other public purposes as directed by the City, in addition to easements and rights-of-way for streets and other public ways and of other public purposes, all as required by City ordinances and resolutions in effect at the time of the dedication.
  - 2) Open Space and Trails
    - a) Open space and trails will be provided as set forth in the PUD Plan and, at a minimum, will include connectivity of trails within the Property to the City's existing and future planned trails system.
    - b) No area that has been designated as open space or trails will subsequently be subdivided unless other open space or trails acceptable to the City are provided in place thereof. The prohibition against subsequent subdivision of open space or trails will appear on the face of any Final Plat that contains open space or trails and will be indicated as a covenant running with such land.
  - 3) Schools. The Developer will comply with the requirements of Weld County School District Six to satisfy its obligations regarding dedication

of school lands and/or payment of fees in connection with schools.

4) Fire Protection. The Developer will comply with the requirements of the Evans Fire Protection District to satisfy its obligations associated with the development of the Property regarding dedication of lands and/or payment of fees in connection with fire protection.

## **9. SUBDIVISION**

Subdivision of all lands within the Development will be in compliance with the Subdivision Regulations, except where expressly provided to the contrary in this Agreement or the PUD Plan.

## **10. MUNICIPAL SERVICES**

Except as specifically provided in this Agreement with regard to municipal services the Developer has agreed need not be provided by the City or that may be provided on a limited basis, after the effective date of this Agreement, the City agrees to provide the Property such municipal services as are currently provided within the City and on terms and conditions on which such services are provided generally to other properties within the City. These provisions will not be construed as a limitation upon the authority of the City to adopt different ordinances, rules, regulations, resolutions, policies or codes which change charges or costs for any service or class of service or any other charges so long as they apply throughout the City uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly. Developer recognizes and acknowledges that the City does not provide fire protection services or emergency medical services, which may be provided by other entities.

## **11. FIRE PROTECTION DISTRICT EXCLUSION**

Developer will petition out of the LaSalle Fire Protection District and will take all steps necessary to include the Property in the Evans Fire Protection District.

## **12. NORTHERN COLORADO WATER CONSERVANCY MUNICIPAL SUBDISTRICT INCLUSION.**

Pursuant to Section 37-45-136(3.6), C.R.S., Developer consents to and agrees to take all steps necessary to accomplish inclusion of the Property into the Municipal Subdistrict, Northern Colorado Water Conservancy District at Developer's sole expense, when the annexation becomes effective.

### **13. SPECIAL DISTRICTS**

#### **a. District Service Plans**

The Developer has filed with the City for review and consideration in accordance with §32-1-204.5, C.R.S., service plans for Liberty Draw Metropolitan District Nos. 1 through 7, collectively called the "Districts," which service plans include the intergovernmental agreements between the Districts and the City and between and among the Districts, substantially in the form and substance currently on deposit in the office of the City Manager (the "Service Plans"). The City will promptly initiate and conduct to conclusion all proceedings required by state law for the consideration and approval or disapproval of same. All notices required by state law in connection with these proceedings will be given by and at the cost of Developer on behalf of the City. The Service Plans have been prepared by the Developer in close coordination with City staff and staff will support and recommend approval thereof. The Council is familiar with the Service Plans and is prepared following public hearing, subject to comments and input from interested persons and subject to applicable provisions of state law, to give favorable consideration to the approval of same. In the event the City fails to approve the service plans as provided in this Section, the sole remedy of the Developer will be to disconnect the Property from the City. The City agrees that if it fails to approve the service plans as provided in this Section, it will not oppose and consents to the disconnection of the Property.

### **14. OWNERS' ASSOCIATIONS**

Developer will organize a unit Owners' association or associations if appropriate for given parcels and/or unit types with the development of the Property. Developer will form the association(s) pursuant to the Colorado Common Interest Ownership Act ("Act"). C.R.S. §38-33.3-101, et seq. The Developer will also execute and record covenants and instruments of conveyance which comply with the Act and which adequately provide for continuous ownership, operation, maintenance, repair and replacement of common elements of the development, including but not limited to any private roads, private common areas and private facilities. At least thirty (30) days prior to recording any covenants or instruments of conveyance to the association(s), Developer will provide such documents to the City Attorney for review and comment.

## 15. DEFAULT AND REMEDIES

- a. If the City alleges that the Developer is in default under this Agreement and the Developer does not cure that default within thirty (30) days following written notice from the City, the City will be entitled to the following remedies which will be cumulative: (1) injunctive relief; (2) specific performance; (3) withholding of any pending applications or approvals, including but not limited to subdivision applications, building permits or certificates of occupancy, and (4) any other remedies permitted under the City Code or otherwise available at law or in equity, other than damages. The City will extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided Developer commences the corrective action within thirty (30) days and diligently pursues such correction thereafter. If Developer's default arises from the failure to grant any right of way, easement, park land or other property as required by this Agreement or the PUD Plan, then Developer agrees that the City may condemn that land pursuant to Section 38-6-102, C.R.S. Developer agrees that in any such condemnation proceeding, the fair and actual cash market value of all such property is zero since the property is subject to an irrevocable obligation to grant or dedicate it to the City pursuant to this Agreement, and the Developer is estopped from asserting otherwise. Developer agrees that it would have granted or dedicated such property upon execution of this Agreement without compensation if the location and legal description of those lands had been finally determined. The City is not requiring the grant or dedication of those lands at the time of annexation in consideration for the irrevocable agreement and obligation to grant or dedicate such property without compensation. The City would not have proceeded to annex the Property if at a later time it would be required to compensate the Developer, its predecessors or successors for any right of way, easement, park, open space or other real property that is to be granted or dedicated by the Developer under this Agreement. Developer agrees that all dedication and grants of rights of way, easements, park, open space or other real property are necessary for public health safety and welfare and that the requirements to make such grants or dedications is accomplished pursuant to the City's police and regulatory powers.
  
- b. If the Developer alleges the City is in default under this Agreement and the City does not cure this default within thirty (30) days following written notice from Developer, Developer will be entitled to the following remedies which will be cumulative: (1) injunctive relief; (2) specific performance;

and (3) any other remedies available at law or in equity, except damages or other monetary relief of any kind. Any remedies available to the Developer will be limited by the then existing governmental immunity act. The Developer will extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences corrective action within thirty (30) days and diligently pursues such correction thereafter.

## **16. MISCELLANEOUS**

- a. Time is of the essence with respect to the performance of each party's obligations hereunder. However, neither party will be liable for delays or failures to perform due to acts of God, strikes, civil commotions, epidemics, quarantines, freight embargoes, or other cause of similar nature not reasonably within such party's control.
- b. Whenever a grant, dedication or conveyance is required in this Agreement free and clear of encumbrances and liens, Developer may make such conveyance subject to encumbrances or liens that Developer is contesting in good faith provided that adequate assurances acceptable to the City are given to provide that the lien or encumbrance will be satisfied and released in the event Developer is not ultimately successful in its contest of the lien or encumbrance.
- c. Referendum

In the event that the ordinances to be considered by the City relative to the annexation and zoning of the Property become the subject of a citizen petitioned referendum, the ordinances subject to such referendum, and this Agreement will be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such annexation or zoning, all of the provisions contained herein will be null and void and of no effect, and such rejection will be deemed a "failure to serve" pursuant to Section 31-12-119, C.R.S., but will not be deemed to be a default by the City under Section 15.b., and remedies provided in Section 15.b. will not be available. Conversely, if the result of such referendum election is to affirm such annexation and zoning, the Property will be deemed finally annexed and zoned, whereupon this Agreement will become effective and the Parties will be bound by all of the terms and conditions contained herein as of the effective date of this Agreement. In the event of such referendum, the Parties agree to cooperate in the defense of the annexation and zoning of the Property. The Developer will reimburse the City for all costs and attorneys' fees in defending and participating in such referendum, including but not limited to the

costs of the referendum election.

d. Recording of Agreement and Binding Effect

This Agreement will be recorded with the Clerk and Recorder in Weld County, Colorado, will run with the land, and will be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto, provided, however, that no individual residential lot, individual residential unit or individual non-residential unit within the Property that has been subdivided and sold to an individual unit or lot owner and not a Developer, will have any obligation or liability of any kind under this Agreement. All individual residential lots or individual residential units or individual non-residential units that have been subdivided and sold to individuals and not to a Developer will be deemed automatically released from this Agreement upon the subdivision and individual sale of such individual lots or units and this Agreement will not constitute an encumbrance or cloud on title on any such individually owned lots or individually owned units.

e. Entire Agreement

This Agreement and the adopting ordinance of the City embodies the whole agreement of the Parties. This Agreement will supersede all previous communications, representations, or agreements either verbal or written between the parties hereto. If adopted by the City, the parties agree that the ordinances approving annexation of the Property and adoption of the PUD Plan may contain additional matters pertinent to the integration of the Property into the City and development of the Property. Therefore, this Agreement must be interpreted and applied in a manner consistent with such ordinances.

f. Assignment

Developer may assign its rights and duties hereunder in whole or in part to others who become fee title holders or ground lessees of the Property or any portion thereof with the City's permission, which permission will not be unreasonably withheld. No assignment will release the Property from any restrictions imposed upon the Property by this Agreement, unless a specific release has been given by the City in writing. The City may, but will not be obligated, to release the seller in such transactions, however, any such release must be executed in writing by the City and recorded with the Weld County Clerk in order to effective.

g. Notice

Any notice required or permitted under this Agreement will be deemed to

be received when delivered personally in writing or five (5) days after notice has been deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

To Developer:

with a copy to:

To City:

Evans City Manager  
1100 37<sup>th</sup> Street  
Evans, CO 80620

With a copy to:

Scotty P. Krob, Evans City Attorney  
8400 E. Prentice Ave., Penthouse  
Greenwood Village, CO 80111

Either Party may change the address to which notice is to be sent by providing notice in the manner set forth in this Section.

h. Cooperative Drafting

This Agreement is the product of a cooperative drafting effort by the City and the Developer and will not be construed or interpreted against either party solely on the basis that one party or its attorney drafted this Agreement or any portion of it.

i. Severability

The fact that any portion of this Agreement may be held to be unenforceable will not affect the enforceability of the remaining portions thereof.

j. Conformity with Laws. Developer agrees that the design, improvement, construction, development, and use of the Property will be in conformance with all applicable laws and ordinances and that Developer will comply with all City ordinances, resolutions and regulations including without



limitation, ordinances, resolutions, and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to City streets, and flood control.

- k. No Repeal of Laws. Nothing contained in this Agreement will constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor will this Agreement prohibit the enactment or increase by the City of any tax or fee.
- l. Amendment. This Agreement cannot be modified or revoked except by an instrument in writing signed by the City and the Developer or the then owner of the Property or any portion thereof if there has been an assignment as it relates to the specific Property.
- m. Election. Developer agrees that it is voluntarily entering into this Agreement. Developer represents and submits that to the extent an election would be required pursuant to Section 31-12-112, C.R.S., as amended, to approve the annexation or to impose terms and conditions upon the Property to be annexed, Developer owns 100 percent of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the annexation and the terms and conditions.
- n. Legislative Discretion. The Developer acknowledges that the annexation and zoning of the Property are subject to the legislative discretion of the Council. No assurances of annexation, zoning, or other approvals have been made or relied upon by the Developer. In the event that, in the exercise of its legislative discretion, any action with respect to the annexation, zoning or other approval for the Property, as contemplated herein and in the PUD Plan for the Property, is not taken or if once taken and Developer is in full compliance with such annexation, zoning or special use approvals is not maintained, then the Developer may withdraw the petition for annexation and seek disconnection from the City in accordance with state law, as may be appropriate and City agrees not to oppose.
- o. Cooperation Between the Parties
  - 1) The City will use reasonable efforts, at Developer's sole expense, to

cooperate with Developer in securing easements, licenses, rights-of-way, permits and agreements from governmental, utility or private entities in order to allow Developer to fulfill its obligations under this Agreement and proceed with development of the Property. The provisions of this subsection will not, in any manner, relieve Developer from its primary responsibility to secure such matters or to fulfill its obligations under this Agreement.

- 2) The City will cooperate with Developer in any filings, applications or other administrative procedures with governmental or utility entities other than the City which are necessary to allow Developer to fulfill its obligations under this Agreement and to develop the Property. The provisions of this subsection will not, in any manner, relieve Developer from its primary responsibility to secure such matters or to fulfill its obligations under this Agreement.

p. No Third-Party Beneficiaries.

Nothing expressed or implied in this Agreement is intended or will be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties will be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties.

- q. Cost Reimbursement to City. Developer will reimburse City for all expenses, fees, and charges incurred in connection with the drafting and processing of this Agreement and the completion of the Development, including but not limited to attorneys fees, engineering fees and costs, and testing fees.

**IN WITNESS WHEREOF**, the parties have hereunto subscribed their signatures.

ATTEST:

CITY OF EVANS, COLORADO  
A Municipal Corporation

By: \_\_\_\_\_  
City Clerk Mark C. Mayor

DEVELOPER

By: \_\_\_\_\_  
Signature \_\_\_\_\_ Title  
Date \_\_\_\_\_

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

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_,  
by

\_\_\_\_\_.

WITNESS my hand and official seal.

\_\_\_\_\_  
(SEAL) Notary Public in and for the State  
of Colorado; My \_\_\_\_\_ commission  
expires: \_\_\_\_\_

**ANNEXATION AGREEMENT  
EXHIBITS**

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A. Legal Description

**EXHIBIT A**

**PROPERTY DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, WELD COUNTY, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26, AND CONSIDERING THE NORTH LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26 TO BEAR SOUTH 89°16'27" WEST WITH ALL OTHER BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO;

THENCE SOUTH 89°16'27" WEST, ALONG THE NORTH LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26, A DISTANCE OF 1,987.58 FEET TO THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26;

THENCE SOUTH 04°04'33" EAST ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26 A DISTANCE OF 30.05 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 54, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE NORTH 89°16'27" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 34, A DISTANCE OF 460.82 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER DECEMBER 21, 2014 UNDER RECEPTION NUMBER 4072128;

THENCE SOUTH 00°43'33" EAST ALONG THE WEST LINE OF THAT PARCEL OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER DECEMBER 21, 2014 UNDER RECEPTION NUMBER 4072128, A DISTANCE OF 200.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL;

THENCE NORTH 89°16'27" EAST, ALONG THE SOUTH LINE OF THOSE PARCELS OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER DECEMBER 21, 2014 UNDER RECEPTIONS NUMBERS 4072128 AND 4072127, A DISTANCE OF 490.00 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL OF LAND DESCRIBED IN THE DEED RECORDED DECEMBER 14, 2014 UNDER SAID RECEPTION NUMBER 4072127, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER MAY 14, 2015 UNDER RECEPTION NUMBER 4107119;

THENCE SOUTH 69°03'00" EAST, ALONG THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER MAY 14, 2015 UNDER RECEPTION NUMBER 4107119, A DISTANCE OF 541.41 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL, SAID CORNER ALSO BEING A POINT LYING ON THE WEST LINE OF THAT PARCEL DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER DECEMBER 20, 1963 UNDER RECEPTION NUMBER 1424201;

THENCE ALONG THE WEST LINE OF THAT PARCEL OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER DECEMBER 20, 1963 UNDER RECEPTION NUMBER 1424201 THE FOLLOWING 5 COURSES: SOUTH 00°05'03" EAST A DISTANCE OF 1,052.67 FEET;

THENCE SOUTH 00°06'45" EAST A DISTANCE OF 99.97 FEET;

THENCE SOUTH 00°40'31" EAST A DISTANCE OF 191.95 FEET;

THENCE SOUTH 00°02'20" WEST A DISTANCE OF 525.99 FEET;

THENCE SOUTH 00°06'56" WEST A DISTANCE OF 254.06 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL;

THENCE NORTH 88°17'03" EAST, ALONG THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER DECEMBER 20, 1963 UNDER RECEPTION NUMBER 1424201, A DISTANCE OF 472.17 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 35TH AVENUE;

THENCE SOUTH 00°02'20" WEST, ALONG THE WEST RIGHT-OF-WAY LINE OF SAID 35TH AVENUE, A DISTANCE OF 15.76 FEET TO A POINT ON THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER SEPTEMBER 23, 2009 UNDER RECEPTION NUMBER 3650429;

THENCE ALONG THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER SEPTEMBER 23, 2009 UNDER RECEPTION NUMBER 3650429 THE FOLLOWING 9 COURSES: NORTH 88°44'53" WEST A DISTANCE OF 54.35 FEET;

THENCE SOUTH 87°53'12" WEST A DISTANCE OF 250.00 FEET;

THENCE SOUTH 88°15'33" WEST A DISTANCE OF 300.01 FEET;

THENCE SOUTH 89°08'19" WEST A DISTANCE OF 450.00 FEET;

THENCE SOUTH 82°53'24" WEST A DISTANCE OF 65.00 FEET;

THENCE SOUTH 88°28'57" WEST A DISTANCE OF 150.00 FEET;

THENCE SOUTH 89°33'24" WEST A DISTANCE OF 100.01 FEET;

THENCE SOUTH 88°48'01" WEST A DISTANCE OF 250.00 FEET;

THENCE SOUTH 85°47'21" WEST A DISTANCE OF 133.59 FEET TO THE NORTHWEST CORNER OF SAID PARCEL, SAID CORNER ALSO BEING ON THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26;

THENCE NORTH 04°04'33" WEST ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 26 A DISTANCE OF 2,566.01 FEET TO THE POINT OF BEGINNING.