

**ANNEXATION AGREEMENT
BLUE SPRUCE RIDGE ANNEXATION**

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between **Blue Spruce Ridge HoldCo, LLC**, a Colorado limited liability company (“Owner”), and the **Town of Johnstown**, a home-rule municipality of the State of Colorado (“Town”).

RECITALS

WHEREAS, Owner desires to annex real property into the Town, situated in the Southeast Quarter of Section 26, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, consisting of approximately 41.114 acres, being more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, Owner executed a Petition for Annexation, dated September 20, 2023, a copy of which petition is on file with the Town Clerk; and

WHEREAS, Owner prepared a zoning map identifying and illustrating its request for Mixed Density Neighborhood (R-2) zoning; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into this Agreement regarding annexation of the Property to the Town and other related matters as set forth herein; and

WHEREAS, Owner acknowledges that, upon annexation, the Property will be subject to all ordinances, resolutions and other regulations of the Town, as amended from time to time; and

WHEREAS, Owner acknowledges that, when development proceeds, the need for conveyances and dedication of certain property to the Town, including, but not limited to, property for rights-of-ways and easements, shall be directly related to and generated by the development within the Property.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. ***Incorporation of Recitals.*** The parties confirm and incorporate the foregoing recitals into this Agreement.

2. ***Purpose.*** The purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to the Town. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to all requirements concerning annexation contained in the Johnstown Municipal Code, the Town’s development regulations and

Comprehensive Plan, and the Municipal Annexation Act of 1965, as amended, §§31-12-101, *et seq.*, C.R.S. (the “Act”).

3. **Owner.** As used in this Agreement, the term “Owner” shall include any of the heirs, legal representatives, transferees, successors or assigns of Owner. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof. All such parties shall be subject to the terms of this Agreement as if they were the original parties thereto.

4. **Further Acts.** Owner agrees to execute promptly upon request of the Town any and all surveys and other documents necessary to effectuate the annexation of the Property and the other provisions of this Agreement. Owner agrees not to sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of the Town.

5. **Annexation Documents.** Owner agrees to provide legal documents, surveys, engineering work, newspaper publications, maps, and reports determined by the Town to be necessary to accomplish the annexation.

6. **Zoning and Land Use.** Owner shall take all action necessary to permit the Town to zone the annexed Property within the time prescribed by state statute. In the event that the Property is initially included in any other zone district than the Mixed Density Neighborhood (R-2) zone district, Owner shall be permitted to withdraw the Annexation Petition or otherwise disconnect the Property from the Town.

7. **Non-Conforming Use.** The Town agrees to allow existing non-conforming agricultural use, if any, to continue until such time as the Property is platted, but not at a greater level than at its current level of activity and use.

8. **Water Rights Dedication.** Owner owns the water rights and lateral ditch company rights appurtenant to the Property that are described on **Exhibit B** attached hereto and incorporated herein by reference. Owner shall dedicate all such water rights and lateral ditch company rights to the Town no later than the date of approval of the final plat of the first phase of development of the Property. Owner specifically agrees that it has not sold or transferred any water rights appurtenant to the Property within the past year nor will it do so during the pendency of this annexation petition and, once annexed to the Town, will not sell or transfer any water rights appurtenant to the Property without the prior written approval of the Town.

9. **Municipal Services.** The Town agrees to make available to the Property all of the usual municipal services provided by the Town in accordance with the ordinances and policies of the Town. Except as otherwise agreed by the Town, Owner shall bear the cost of the delivery of such services.

10. **Public Improvements.** Owner agrees to design and construct all required public improvements to Town standards at Owner’s expense. Owner shall provide financial guarantees for construction of all required improvements as set forth in each phase or filing of the development

and dedicate to the Town any or all of the improvements required by Town ordinances or as otherwise agreed. The public improvements and financial guarantees shall be set forth in a development agreement, or similar such agreement, for each filing, prior to development of the Property or any portion thereof. All overhead utility lines shall be undergrounded.

11. **Roadway Dedication.** At the time of approval of the final plat for the first development filing for the Property, Owner shall dedicate approximately twenty-five (25) feet of land adjacent to S. County Road 3E to the Town for right of way by deed of dedication in the form set forth on **Exhibit C** attached hereto and incorporated herein by this reference, which deed of dedication shall include a legal description of the property subject to the right of way dedication. If required by the Town, at its discretion, Owner shall dedicate additional rights of way to support development of the Property at no cost to the Town, which shall be set forth in a subsequent agreement between the Town and Owner. The Town and Owner agree that such dedications are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

12. **Land Dedication.** The dedication of parks and open space, flood plains, public easements for utilities, rights-of-way for streets and other public ways and dedications for other public purposes shall be by general warranty deed (to include, except for public easements, mineral interest owned by Owner at the time of annexation) or another appropriate instrument of conveyance acceptable to the Town. Such dedications shall occur when required by the Town. The Town and Owner agree that such dedications are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.

13. **Water and Waste Water Utilities.** Owner agrees to construct all on-site and required off-site water and wastewater mains and appurtenances to Town standards at Owner's expense as may be required by development of the Property. The Town and Owner hereby agree to cooperate in good faith with respect to 1) determining reasonable oversizing requirements and associated reimbursement to Owner for Owner's additional costs expended in design and construction of oversized utilities; 2) locating and securing approvals for installation of utility mains and appurtenances within public rights-of-way; and 3) facilitating installation of off-site infrastructure if the Town and Owner determine that such installation is necessary in connection with orderly development of the Property.

14. **Drainage.** A drainage study of the entire annexation territory shall be provided by Owner to the Town no later than the date of Owner's filing of a preliminary plat with the Town. Improvements shall be made as required by the Town. Historical irrigation and drainage patterns shall be maintained on the Property to the extent feasible including no change in the quality, quantity or point of discharge, except to the extent approved by the Town.

15. **Development Fees.** Owner recognizes and agrees that the Property shall be subject to the development fees imposed on other comparable developments in the Town pursuant to the Town's regulations and ordinances.

16. **Conformity with Laws.** Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all Town ordinances, resolutions and regulations including, without limitation, ordinances, resolutions, and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to Town streets, and flood control.

17. **Disconnection.** No right or remedy of disconnection of the Property from the Town shall accrue from this Agreement other than that provided by applicable state laws. In the event the Property or any portion thereof is disconnected at Owner's request, the Town shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof.

18. **Special Districts.** Within thirty (30) days after written request by the Town, Owner shall apply for inclusion of the Property within one or more special districts serving the Town and the Town may request Owner to petition to exclude the Property from another special district. All costs, expenses, attorney fees and judgments for exclusion of the property from any special district shall be borne by Owner.

19. **Future Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement and will execute such additional documents as necessary to effectuate the same.

20. **No Joint Venture or Partnership/No Assumption of Liability.** Nothing contained in this Agreement is intended to create a partnership or joint venture between the Town and Owner or between the Town and any one or more of the individual owners that may exist and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the parties of any activity, function or service, nor does it create a joint enterprise or an agency relationship. Except as specifically otherwise provided in this Agreement, no party shall in any way assume any of the liability of any other party for any act or obligations of the other party.

21. **Failure to Annex.** This Agreement shall be null and void if the Town fails to approve the annexation of the Property.

22. **No Warranties by the Town.** The Town is entering into this Agreement in good faith and with the intention on the part of the current Town Council to comply with this Agreement. Because certain of the provisions of this Agreement may involve areas of legal uncertainty or be subject to subsequent revisions to the law, the Town does not intend to provide any warranty.

23. **Breach.** In the event of a default or breach by Owner of any term, condition, covenant, or obligation under this Agreement, the Town may take such action as it deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship. The Town's remedies include:

- (I) The refusal to issue any development permit, building permit or certificate of occupancy. This remedy shall not affect sales to bona fide purchasers nor be applied to bona fide purchasers;
- (II) A demand that the security given for the completion of the public improvements be paid or honored;
- (III) The refusal to consider further development plans within the Property; and/or
- (IV) Any other remedy available at law.

Unless necessary to protect the immediate public health, safety and welfare, the Town shall provide Owner ten (10) days' written notice of its intent to take any action under this Paragraph during which ten-day period Owner may cure the breach described in said notice and prevent further action by the Town.

24. **Attorney's Fees.** If Owner breaches this Agreement, Owner shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms and conditions of this Agreement. Should litigation occur by suit of a third party, Owner shall reimburse the Town for the Town's attorney's fees, court costs, and witness fees. Rather than require the Town to defend an action brought by a third party alleging that the Property is not subject to annexation or that the technical requirements of the Act were not met, Owner may withdraw the Petition for Annexation. In addition thereto, in the event that any person, corporation, special district, municipal or county government or any other entity asserts a claim against the Town, its officials, or employees pursuant to the provisions of the Act, Owner agrees to reimburse the Town all reasonable costs and attorney's fees incurred by the Town in defense of such claims whether or not such defense is successful; provided, however, that nothing herein shall be interpreted as permitting Owner to act or participate in any manner whatsoever in the defense of such claims, including, but not limited to, selection of legal counsel or settlement of claims. Owner acknowledges and understands that the Town may, at its sole discretion, voluntarily elect not to defend against such an action and may consent to and permit the entry by the court of an order voiding the annexation or reach another means of settlement of claims. In such an event, Owner shall also reimburse to the Town any costs or attorney's fees assessed against the Town by the court, if any.

25. **Assignments.** Within ten days of an assignment, Owner shall provide written notice to the Town of the name, address and telephone number of the assignee and related contact information of the assignee and/or new owner of the Property. Unless otherwise agreed by the Town, Owner's obligations under this Agreement shall not be diminished or reduced by virtue of an assignment or sale.

26. **Design Review Guidelines.** If required by the Town, the Town and Owner shall jointly develop and agree to adopt design review guidelines addressing design considerations, including architectural, site planning, landscaping, streetscape, and sign elements for land uses within the Property. The design review guidelines shall be applied to all development projects within the Property. The design review guidelines shall not supersede any uniform code of the Town such as the Uniform Building Code, Uniform Fire Code, or any other like code which is applicable to all properties located within the Town.

27. **Notice.** All notices required under this Agreement shall be in writing and shall be; 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or 3) sent by electronic mail. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by electronic mail shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

Notice to Town:

Town of Johnstown
ATTN: Town Manager
450 S. Parish Avenue
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com
(automatically updated to current Town Manager)

Notice to Owner:

Blue Spruce Ridge HoldCo, LLC
Attention: Roy Bade
8901 E Mountain View Road, # 150
Scottsdale, AZ 85258
Email: Roy.Bade@caliberco.com

28. **Voluntary Annexation; Election.** Owner agrees that it is voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to § 31-12-112, C.R.S., to approve the annexation or to impose terms and conditions upon the Property to be annexed, Owner owns one hundred percent (100%) of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein.

29. **Cost Reimbursement to Town.** Owner agrees that Owner or a developer will reimburse the Town for professional consultants such as engineers, testing companies, planners, and attorneys necessitated by processing and completion of this development.

30. **No Third Party Rights.** This Agreement is made solely for the benefit of the parties hereto and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

31. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Larimer or Weld County, Colorado.

32. **Default.** In the event of default by either party hereunder, the non-defaulting party shall notify the defaulting party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting party desires to seek recourse, the parties shall participate in mediation at a location that is not more than sixty

miles from the Property, the costs of which shall be shared equally by the parties. If mediation is not successful after ninety (90) days, either party may then commence a legal action.

33. **Headings.** The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

34. **No Repeal of Laws.** Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes, ordinances or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any fee which is of uniform or general application.

35. **Amendments to Law.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any Town ordinances, resolution, regulations, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, regulations, or policy, and the parties agree such amendments or revision shall be binding upon Owner.

36. **No Vested Rights.** No vested rights shall accrue to Owner by virtue of annexation of the Property or this Annexation Agreement.

37. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all heirs, transferees, successors and assigns hereof, and shall constitute covenants running with the land. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof. This Agreement shall be recorded with the County Clerk and Recorder of Larimer County, Colorado, at Owner's expense.

38. **Entire Agreement.** This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties related to the subject matter herein.

39. **Amendment.** This Agreement may be amended only by mutual agreement of the Town and Owner. Such amendments shall be in writing, shall be recorded with the Larimer County Clerk and Recorder, shall be covenants running with the land and shall be binding upon all persons or entities having an interest in the Property.

40. **Severability.** The parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or any federal law, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

[Remainder of page intentionally left blank.]

ATTEST:

**TOWN OF JOHNSTOWN, COLORADO,
A MUNICIPAL CORPORATION**

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

BLUE SPRUCE RIDGE HOLDCO, LLC

By: _____
Name:
Title:

STATE OF COLORADO)
)ss.
COUNTY OF)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2024, by
_____, as the _____ of Blue Spruce Ridge HoldCo, LLC.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A
PROPERTY

EXHIBIT B
WATER RIGHTS

1.5 Shares of Harry Lateral Ditch Company, as represented by Share Certificate No. 460.

EXHIBIT C
DEED OF DEDICATION FOR RIGHT OF WAY
(_____)

KNOW ALL BY THESE PRESENTS, that Blue Spruce Ridge HoldCo, LLC, a Colorado limited liability company (“Grantor”), for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby dedicate, grant, transfer and convey to the Town of Johnstown, Colorado, a Colorado home rule municipality (“Grantee”), and Grantee does hereby accept on behalf of the public, for use as a public right-of-way for street, road and utility purposes, on, over, across, under, along, and within, the real property located in Larimer County, State of Colorado, as described on Exhibit 1 attached hereto and incorporated herein by this reference, containing a legal description and a depiction of the real property, with all appurtenances (the “Property”).

TO HAVE AND TO HOLD the above described dedicated, granted, transferred and conveyed Property unto said Grantee, its successors and assigns forever.

Grantor warrants and covenants to Grantee that Grantor is the lawful owner of the Property, has good sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has the right and authority to dedicate, grant and convey said Property as set forth herein, and that the Property is free from all encumbrances and restrictions of any kind, except general taxes for the current or subsequent years. Grantor, its successors and assigns, shall warrant and forever defend the Property in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

Acceptance of this conveyance by the Grantee shall not impose upon the Grantee any obligation for the opening, widening, installation, improvement or maintenance of the Property.

IN WITNESS WHEREOF, the parties have executed this document this ____ day of _____, 2024.

GRANTOR: Blue Spruce Ridge HoldCo, LLC

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20____, by _____ as the _____ of Blue Spruce Ridge HoldCo,
LLC.

WITNESS my hand and official seal.

My commission expires:

Notary Public

ACCEPTANCE

The Town of Johnstown, Colorado, hereby accepts the above Deed of Dedication for Right of Way for municipal purposes as defined herein.

Dated this ____ day of _____, 2024.

TOWN OF JOHNSTOWN, COLORADO
a Colorado municipality

By: _____
Matthew LeCerf, Town Manager

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT 1

Legal Description

That portion of the Southeast 1/4 of Section 26, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of said Southeast 1/4 as bearing North 89 degrees 55'23" East and with all bearings contained herein relative thereto: Beginning at the South 1/4 corner of said Section 26; thence along the West line of the Southeast 1/4 of said Section 26 North 1278.85 feet to the TRUE POINT OF BEGINNING; thence North 79 degrees 23'04" East 137.06 feet; thence North 63 degrees 47'08" East 215.02 feet; thence North 76 degrees 14'08" East 476.92 feet; thence North 61 degrees 50'06" East 141.76 feet; thence North 48 degrees 57'30" East 854.64 feet; thence North 75 degrees 42'25" East 215.91 feet; thence North 51 degrees 34'56" East 149.44 feet; thence North 60 degrees 19'55" East 81.69 feet; thence North 40 degrees 46'23" East 155.68 feet; thence North 21 degrees 09'42" East 214.18 feet, more or less, to a point on the North line of the Southeast 1/4 of said Section 26; thence along said North line South 89 degrees 56'21" West 2137.06 feet to the Northwest corner of said Southeast 1/4; thence along the West line of said Southeast 1/4 South 1363.96 feet, more or less, to the TRUE POINT OF BEGINNING