

**ANNEXATION AGREEMENT
PERTAINING TO THE
_____ ADDITION
TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20____, by and between _____ (the "Owner"), and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

RECITALS

WHEREAS, the Owner owns +/- _____ acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property";

WHEREAS, the Owner is requesting that the City annex and zone said Property to allow for the future coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the Owner has determined that it is desirable for future development of the Property, that the City provide municipal services, and that the Property be annexed to the City; and

WHEREAS, the City has determined that it is in the best interests of the residents of the City that the Property be developed within the boundaries of the City and that the City provide municipal services and receive revenues from development occurring on the Property; and

WHEREAS, the Owner acknowledges that the need for conveyance and dedication of public rights-of-way and other land as contemplated by this Agreement are directly related to and generated by development intended to occur within the Property and that no taking or damage to the remainder of the Property by such dedication will occur requiring any compensation; and

WHEREAS, the Owner and the City are entering into this Agreement in furtherance of annexation of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. GENERAL CONDITIONS

a. Consent to annexation. Owner has petitioned for the annexation of the Property described in the attached Exhibit A. The Owner hereby consents to the annexation of the Property subject to the terms and conditions set forth in the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developers' application is expressly conditioned upon such approval by the City Council and the execution, delivery and recording of this Agreement by all parties thereto.

b. Terms of annexation. The terms of this Agreement shall govern all development activities of the Owner and all subsequent development, re-development and use of land by subsequent owners pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, but not be limited to, the following: (a) the actual construction of improvements, (b) obtaining building permits for said improvements, or (c) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Owner with the intent to construct said improvements thereon.

c. Definition of Development. For the purpose of this agreement, "development" means any of the following:

i. Use of Land. The use of any building, structure, land, or water. This includes new uses or accessory uses, expansions of existing uses or accessory uses, and material changes to the operational characteristics of existing uses or accessory uses.

ii. Construction, Demolition, or Changes to Buildings or Structures. The demolition, construction, or modification of buildings or structures, except interior changes that do not increase floor area, increase residential density, or require a traffic study pursuant to the Loveland Municipal Code.

iii. Clearing, Grading, Re-Grading, Cutting, Filling of Land, and Other Disturbance or Alteration. Land clearing in anticipation of construction of infrastructure, structures, or buildings for non-agricultural purposes and re-construction or regrading of a previously approved site improvement, and any other disturbance of land, soil, vegetation, floodplains, or waterways, but not including agriculture, irrigation ditch or reservoir improvements or maintenance, gardening, or routine maintenance of landscape areas.

iv. Division, Subdivision, or Plat. Any division, subdivision, or platting of land for construction of infrastructure, structures, or buildings, for sale, or for lease, whether by metes and bounds, platting, or other technique.

d. Definition of Redevelopment. For the purpose of this agreement, “redevelopment” means renovation, modification, or reconstruction of a subject property in which:

i. More than 75 percent of the floor area of buildings on site are demolished and reconstructed;

ii. A cumulative increase in the gross floor area of a building or use by at least 50 percent from the effective date of the City of Loveland Unified Development Code; or

iii. The value of new building permits exceeds two times the appraised value of the existing land and improvements.

e. Responsibilities for Annexation.

i. The Owner agrees to prepare, at Owner’s expense, all materials necessary for the annexation and zoning of the Property, including, without limitation, the annexation petition, associated legal descriptions, and associated maps for the annexation and zoning. The Owner agrees to pay all fees and costs associated with the annexation.

ii. The City agrees to take any and all appropriate actions as are required by the Loveland Municipal Code and the annexation laws of Colorado applicable to annexing home rule cities which are necessary with respect to the subject annexation petition, including but not limited to the publication of all required notices and the holding of all required hearings regarding the same.

f. Master Plans. The Owner agrees that the Property shall be subject to all applicable master plans adopted by the City, as may be amended from time to time, including but not limited to the comprehensive plan, drainage, transportation, utilities, Airport, parks and open space.

g. City Council Discretion. The Owner acknowledges that the annexation and zoning of the Property are subject to the legislative discretion of the City Council of the City and the rights of initiative and referendum reserved unto its citizens. No assurances of annexation or zoning have been made or relied upon by the Owner.

h. Dedications. The Owner agrees to convey and dedicate free and clear of all liens and encumbrances, at no cost to the City, all right-of-way and easements necessary to serve the Property at the time of annexation and/or development or redevelopment of the Property.

i. Impact Fees and Other City Fees. The Owner will timely pay the City all applicable impact fees and other fees adopted by the City as may be amended from time to time, and uniformly charged for other property located in the general area.

j. Water Rights Dedication. Water rights required for development shall be calculated and owed as specified in Title 19 of the Loveland Municipal Code. At the time water rights are applied to satisfy water rights requirements, the Loveland Municipal Code then in effect shall apply. The Loveland Utilities Commission has the sole discretion to accept or reject the particular water rights proposed to transfer to the City.

k. Public Improvements. Required public improvements shall be designed and constructed to City standards by Owner at Owner's expense. Owner further agrees to provide financial guarantees for construction of all required improvements as set forth in each phase of the development, and to dedicate to the City any or all of the improvements as required by City ordinances. The public improvements and financial guarantee shall be set forth in a Development Agreement between the City and Owner.

l. Laws of the City. The Owner acknowledges that upon annexation, the Property shall be subject to the same ordinances, rules, regulations, and policies, as applicable to all other property presently situated within the city limits of the City, except as otherwise provided herein, and except for the imposition of general property taxes which shall be imposed pursuant to law.

m. Breach of Agreement.

i. By Owner. In the event of a default or breach by the Owner of any term, condition, covenant, or obligation under this Agreement, the City may take 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 City from hardship. Unless necessary to protect the immediate health, safety, and welfare of the City or City residents, the City shall provide the Owner ten (10) days written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action the City. The City's remedies include:

1. The refusal to issue to the Owner 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 (i.e. purchasers of individual lots by persons unrelated to Owner);
2. A demand that the security given for the completion of the public improvements be paid or honored;
3. The refusal to consider further development plans within the Property; and /or
4. Any other remedy available at law.

ii. By the City. The parties agree that in the event of a breach by the City, the Owner will have the right to seek all remedies provided by law.

2. SPECIAL CONDITIONS.

All special conditions applicable to the Property under this Agreement are set forth in Exhibit B attached hereto and incorporated herein.

3. MISCELLANEOUS

a. Waiver of Damages. In the future, the Developers may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the Property which would (a) change any term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developers would otherwise be entitled, the Developers agree to waive any right to damages against the City to which Developers may otherwise be entitled under the Vested Rights Statute.

b. Incorporation. The terms of this Agreement shall be deemed to be incorporated into the Developers' Petition for annexation of the Property.

c. Integration, Construction and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. This Agreement shall be construed according to its fair meaning, and as if prepared by all parties hereto. There are no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement. If any conflicts between the Annexation Conditions listed in the Staff Report for City Council on file with the City Clerk, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail.

d. Amendment. This Agreement may only be amended by written agreement signed by the Developers and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.

e. Effective Date. This Agreement shall become effective on the date that it is executed and delivered, has been approved by the City Council, and has been recorded. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be

liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.

f. Binding Effect and Recordation. The promises made in this Agreement by the Developers shall be deemed to have been made by any corporation or other business affiliated with Developers that acquires ownership or possession of all or any portion of the Property. This Agreement shall constitute equitable servitudes that run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement. The Final Annexation Map for the Property and this Agreement shall be recorded by the Developers within thirty (30) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developers agree to all promises made by the Developers, which shall constitute equitable servitudes that run with the land.

g. Notices. Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, electronic mailing, or by mailing same in the US Mail postage prepaid, to the party for whom it is intended. Notices to any of the parties shall be addressed as listed below. A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by mailing shall be deemed effective 3 days after it is deposited in the United States mail.

To City: City Clerk
City of Loveland
500 E. Third Street
Loveland, CO 80537

To Owners:

h. Waiver. No waiver by the City or Developers of any term of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

i. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado and venue shall be Larimer County. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to

such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.

j. Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument. Facsimile, electronic or PDF signatures, for purposes of this Agreement shall be deemed as original signatures

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

THE CITY OF LOVELAND, COLORADO

By: _____
Stephen C. Adams, City Manager

ATTEST:

City Clerk

APPROVED AS TO SUBSTANCE:

Brett Limbaugh, Development Services Director

APPROVED AS TO FORM:

Assistant City Attorney

TEMPLATE - DO NOT MODIFY

OWNER:

By: _____

STATE OF _____

County of _____

The foregoing Agreement was executed before me this _____ day of _____, 20__ by
as _____ of _____.

WITNESS my hand and official seal.

My commission expires _____.

SEAL

Notary Public

TEMPLATE - DO NOT MODIFY

EXHIBIT A
(Legal Description)

TEMPLATE - DO NOT MODIFY

EXHIBIT B
Special Conditions

The following special conditions apply to the Property:

TEMPLATE - DO NOT MODIFY