

NEFF REMAINDER PROPERTY ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between CW-Blue Sky, LLC, hereinafter referred to as the “Annexor”, and the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado, hereinafter referred to as the “City”.

WITNESSETH:

WHEREAS, Annexor acquired property subject to the Annexation Agreement for the Neff Property (the “Neff II Annexation Agreement”), more particularly described in Exhibit ‘A’ attached hereto and by this reference made a part hereof, and said Agreement was entered into on September 4, 2018 and recorded with Adams County, Colorado, reception #2018000086604; and

WHEREAS, Annexor is the successor and assign of said Neff II Annexation Agreement; and

WHEREAS, Annexor and City have identified a 0.488 acre parcel (the “Neff Remainder Property”), as more particularly set forth in Exhibit ‘B’, that was not included in the Neff II Annexation Agreement; and

WHEREAS, Annexor has filed a Petition for Annexation to the City of the unincorporated lands described in Exhibit ‘B’; and

WHEREAS, the Parties now desire to treat the Neff Remainder Property as if it were included in the Neff Annexation II Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, together with other good and sufficient consideration;

THE PARTIES AGREE AS FOLLOWS:

1. Annexor and the City agree that all obligations of each party as set forth in the Neff II Annexation Agreement (as more particularly set forth in Exhibit ‘A’) shall apply to the Neff Remainder Property.
2. In addition to the terms as set forth in the Neff II Annexation Agreement, the following terms shall apply:
 - a. **Baseline Road (E. 168th Avenue)** adjacent to the Neff Remainder Property to the north, is designated as a major arterial street by the City of Brighton. The Annexor agrees to dedicate to the City of Brighton, with the final plat, or at the time of final platting by other instrument of conveyance as reasonably determined by the City, forty (40) feet of right-of-way required for Baseline Road (E. 168th Avenue) as a major arterial street, to wit: as measured from the northern property line of the Neff Remainder Property, the Annexor shall dedicate a forty (40) foot wide right-of-way along the entire northern boundary of the Neff Remainder Property. Additional dedication may be required and will be determined at the time of final plat.
 - b. **Construction Requirements.** Annexor shall construct, or cause the construction of, the associated roadway improvements adjacent to the Neff Remainder Property, as more particularly set forth in the Final Plat.

- c. **City's Standards and Specifications.** Notwithstanding the provisions of Section II.G, of the Neff II Annexation Agreement, the standards and timing of public and private street improvements shall be set forth in the approved civil plans associated with the Final Plat.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

[Signatures begin on next page]

ANNEXOR:

CW-Blue Sky, LLC,
A Texas Limited Liability Company

By: CW-LT Management, LLC,
A Texas Limited Liability Company

Its: Manager

By: _____
Name: John Cork
Its: President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by
_____.

WITNESS my hand and official seal.

Notary Public
My commission expires: _____

CITY OF BRIGHTON, COLORADO

By: _____
Gregory Mills, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Jack D. Bajorek, City Attorney

EXHIBIT A
NEFF II ANNEXATION AGREEMENT

RECEPTION#: 2018000086604.
10/25/2018 at 2:57 PM, 1 OF 24.
REC: \$128.00
Stan Martin, Adams County, CO.

ANNEXATION AGREEMENT
NEFF II PROPERTY

THIS AGREEMENT made and entered into this 4th day of September, 2018, by and between Galaxy Land Company, LLC, a Colorado Limited Liability Company, hereinafter referred to as the "ANNEXOR," and Coronado West, LLC, a Delaware Limited Liability Company, hereinafter referred to as the "DEVELOPER," and the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado, hereinafter referred to as "CITY."

W I T N E S S E T H:

WHEREAS, ANNEXOR is the owner of a 9.040-acre parcel of land, more particularly described in Exhibit 'A' attached hereto and by this reference made a part hereof; and

WHEREAS, ANNEXOR has filed a Petition for Annexation to the CITY of the unincorporated lands described in Exhibit 'A' hereinafter referred to as the "Property"; and

WHEREAS, DEVELOPER is under contract to purchase the Property from ANNEXOR, and has provided its consent to the execution of this Annexation Agreement, as more particularly set forth in Exhibit 'B' attached hereto and by this reference made a part hereof; and

WHEREAS, because all or a portion of the Property may be conveyed by ANNEXOR to DEVELOPER upon annexation, and due to the need to reach agreement relating to the nature of the development application submitted in connection with the annexation, the parties agree that it is desirable to address certain development issues in this Agreement, with the understanding that a detailed Development or Subdivision Agreement between the DEVELOPER of the Property and the CITY will be required in connection with the platting of the Property; and

WHEREAS, CITY has determined that it is in the best interest of the residents of the CITY to annex the Property, that the Property be developed within the boundaries of CITY, and that the CITY provide municipal services and receive revenues from development occurring on the Property, as provided for herein; and

WHEREAS, the parties mutually agree that the annexation of the Property to the CITY shall not create any additional cost or impose any additional burden on the existing residents of the CITY to provide public facilities and services to the Property after annexation.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, together with other good and sufficient consideration;

THE PARTIES AGREE AS FOLLOWS:

Following recording return to:
City of Brighton, City Clerk
500 S. 4th Ave., Brighton, CO 80601

SECTION I DEFINITIONS

“ANNEXOR” as used in this Agreement shall mean Galaxy Land Company, LLC, a Colorado Limited Liability Company, its successors, assigns, and designees.

“DEVELOPER” as used in this Agreement shall mean Coronado West, LLC, a Delaware Limited Liability Company, its successors, assigns, and designees.

“Brighton Watershed Outfall Systems Plan” (“OSP”) shall mean the *Brighton Watershed Tributary to the South Platte River Outfall Systems Plan*, dated December 1998, as the same may be amended from time to time.

“Bromley Park Drainage Master Plan” shall mean the *Bromley Park Drainage Master Plan* dated December, 1999, as the same may be amended from time to time.

“Bromley Park Sanitary Sewer Master Plan” shall mean the *Bromley Park Sanitary Sewer Master Plan* dated December, 1999, as the same may be amended from time to time.

“Bromley Park Traffic Master Plan” shall mean the *Bromley Park Traffic Master Plan* dated December, 1999, as may be amended from time to time.

“Bromley Park Water Master Plan” shall mean the *Bromley Park Water Master Plan* dated December, 1999, as the same may be amended from time to time.

“Comprehensive Plan” shall mean the *Be Brighton Comprehensive Plan Update*, dated March 22, 2016, as the same may be amended from time to time.

“Crossing” shall mean and refer to all bridges, culverts or other types of facilities or structures used to cross roadways, irrigation canals and laterals, drainage channels or storm drainage areas. For bridge construction, “crossing” will include that land and improvements between touchdown and touchdown.

“Fees” shall mean all of the fees lawfully assessed by the CITY in effect at the time of building permit issuance, together with other applicable fees, including but not limited to:

- Crossing Fee;
- District 27J Foundation Capital Facility Fee.
- Drainage Fee;
- Open Space/Park Land Dedication/Fee in Lieu;
- Neighborhood and Community Park Development Fees;
- School Land Dedication/Fee in Lieu;
- Stormwater Impact Fee;
- Traffic Impact Fee;
- Wastewater Plant Investment Fee;
- Water Plant Investment Fee; and
- Water Resource Fee.

“Highway 85 Access Master Plan” shall mean the *US 85 Access Control Plan I-76 to WCR 80* dated December, 1999, as the same may be amended from time to time.

“Park and Open Space Master Plan” shall mean the *City of Brighton Parks and Recreation Master Plan* dated February 12, 2008, as the same may be amended from time to time.

“Property”/ “Annexed Area” shall mean the 9.040 acres parcel of land more particularly described in Exhibit ‘A’ attached hereto and by this reference made a part hereof.

“Public Works Standards and Specifications” shall mean the *City of Brighton Department of Public Works Standards and Specifications Manual* dated July 5, 2016, as the same may be amended from time to time.

“Reimbursement Agreement” shall mean and refer to a written Agreement between ANNEXOR/DEVELOPER and certain benefited landowners wherein either party shall be obligated to rebate or shall have rebated to the other party certain moneys advanced and expended by either party for over sizing water and sewer lines, streets, drainage, crossings, and other public improvements and facilities to be used by, or which are a benefit to, other developers or landowners.

“Storm Drainage Improvements” shall mean any storm drainage technique or facility that retards or detains runoff, including but not limited to, detention ponds, retention ponds, channels or pipes.

“Transportation Master Plan” shall mean the Brighton Transportation Master Plan dated March 1, 2016, as the same may be amended from time to time.

“Urban Renewal Plan” shall mean the Urban Renewal Plan approved and adopted by the City Council of the City of Brighton on April 16, 2002, by Ordinance No. 1740, pursuant to the provisions of the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, Colorado Revised Statutes.

“Water and Sewer (Wastewater) Master Plan” shall mean the *City of Brighton Water and Wastewater Systems Master Plan* dated March 6, 2008, as the same may be amended from time to time.

Definitions for any term used herein and not defined above shall be as stated in *The Zoning Dictionary*, 1996, as the same may be amended from time to time, by Lehman & Associates.

SECTION II STREETS

- A. ANNEXOR shall dedicate, at no cost to the CITY, all rights-of-way for public streets, including but not limited to, local, collector, and arterial streets, including E-470 and interchanges, as shown on the CITY's Transportation Master Plan and/or the Bromley Park Traffic Master Plan as applicable, the Comprehensive Plan, and Public Works Standards and Specifications, as the same may be amended from time to time, in effect at the time of final plat approval for all or any portion of the Property, or earlier if so requested by the CITY, for commencement of construction of street improvements or for the extension of utilities. The specific rights-of-way to be dedicated by ANNEXOR are set forth in Exhibit 'E' attached hereto and by this reference made a part hereof.
- B. ANNEXOR shall design and construct to CITY standards all public streets within the Property. ANNEXOR shall participate in the costs of the improvements of perimeter streets according to the CITY-wide policy in effect at the time of building permit application. In no event shall building permits be issued for any structure accessing a street not so improved.
- C. Existing aboveground utilities located within future rights-of-way will be considered public improvements required by the CITY, and will be placed underground by the utility provider at no cost to ANNEXOR if such language is provided in standard utility franchise agreements, or otherwise permitted by law.
- D. Upon the approval and signing of a final plat for all or any portion of the Property, or sale of all or any portion of the Property by ANNEXOR to DEVELOPER or its assigns, or the commencement of any subdivision development work on the Property, whichever occurs earlier, ANNEXOR agrees to deed to the CITY the rights-of-way for streets as outlined in Exhibit 'E'.
- E. ANNEXOR agrees to convey to CITY temporary easements in gross adjoining all streets to provide necessary cut and fill to establish the grade on a one-foot incline for every three feet of distance. Said easements shall be released to ANNEXOR at such time as the adjacent Property is filled and maintained at grade.
- F. ANNEXOR shall pay for installation of streetlights, traffic and street signs and traffic control devices for all streets within the Property. ANNEXOR will escrow funds required for signalization of perimeter streets when needs meet the required warrants as reasonably determined by CITY, subject to reimbursement on an equitable pro rata basis by other landowners contributing to the warranting of such signals, such reimbursement to be provided for by separate agreement between ANNEXOR and CITY or ANNEXOR and the benefited landowners, as applicable.
- G. All streets on the exterior boundaries and all public and private streets within the Property shall be improved in conformance with CITY's Public Works Standards and Specifications, in effect at the time of building permit issuance.

- H. ANNEXOR agrees to provide or assign to CITY a warranty for all street improvements for a period of twelve (12) months from the date of conditional acceptance by the CITY of such improvements. Upon expiration of the warranty period, the CITY shall accept the streets, rights-of-way and medians for maintenance provided that such street improvements are in accordance with CITY's Public Works Standards and Specifications.
- I. ANNEXOR agrees to pay the applicable Traffic Impact Fee at the time of building permit issuance for all or any portion of the Property, in an amount as set forth in the CITY'S annual Fee Resolution in effect at the time of payment.
- J. All lighting for site and facilities for the property shall conform to CITY's Public Works Standards and Specifications, in effect at the time of building permit issuance.

SECTION III WATER AND SEWER

- A. ANNEXOR agrees to construct and install, all water and sewer lines within the Property or which otherwise serve the Property in full compliance with the City of Brighton Water and Wastewater Master Plan or the Bromley Park Water Master Plan and Bromley Park Sanitary Master Plan as applicable, requirements and the CITY'S Public Works Standards and Specifications. ANNEXOR agrees to dedicate all necessary unobstructed right-of-way for utility easements needed for water and sewer lines to serve the Property, or for transmission through the Property, such easements measuring not less than twenty feet (20') in width for a sanitary sewer or water line, and not less than twenty-six feet (26') in width when a parallel water and sewer line must be installed.
- B. Subject to "A" above, upon ANNEXOR giving CITY one hundred twenty days (120) prior notice of its need for water and sewer service and submitting its plan for development and its timetable of development concurrently with said 120 days written notice, CITY agrees to provide water and sewer service at a point more particularly described in Exhibit 'E' attached hereto and incorporated herein by this reference.
- C. When the ANNEXOR completes construction of the sewer and water lines according to "A" above, pays the applicable fees, and meets all CITY standards and regulations, the CITY shall provide water and sewer service to the Property within five (5) business days after written verification of need by the ANNEXOR as required for development of the Property. However, no building permit shall be issued until all such lines are installed and accepted by CITY, or until ANNEXOR has provided a performance bond in an amount adequate to fully install such lines.
- D. ANNEXOR shall pay all fees and charges related to the provision of water and sewer service. Whether the "Water Resource Fee" portion of the Plant Investment Fee ("PIF") is satisfied by the dedication of water or by payment of cash in lieu thereof shall be determined at the sole discretion of the CITY, taking into consideration the best interests of the CITY at the time payment is due, and upon the recommendation of the City Manager.

1. "Without Water Rights PIF". The City may, at the recommendation of the City Manager, require that the Plant Investment Fees for this annexation be paid according to the then applicable "without water rights" fee schedule, in lieu of the dedication of water shares. In that event, ANNEXOR shall pay the appropriate "Water Resource Fee" in the amount in effect at the time payment is due.
2. "With Water Rights PIF". The City may, at the recommendation of the City Manager, require that the Plant Investment Fees for this annexation be paid according to the then applicable "with water rights" fee schedule, including the dedication of water shares. In that event, ANNEXOR shall satisfy the "Water Resource Fee" by the dedication of water. ANNEXOR shall pay the appropriate "Water Resource Fee" in the amount as calculated according to applicable "Water Dedication Worksheets" prepared by the Department of Utilities. The ANNEXOR shall satisfy said dedication with the specific types of water shares delineated in Resolution No. 01-160, as may be amended from time to time, or other approved water resources meeting acceptable criteria when these specific resources are deemed unattainable.
 - 2a. As a condition to the transfer of any ditch water to the City, the ANNEXOR, or property owner from whence the shares came, shall complete to the satisfaction of the City, a Dry-Up Covenant, in the form attached hereto as Exhibit "D", and that the ANNEXOR or property owner, shall complete the Covenant at the time of approval and signing of a final plat for all or any portion of the Property, and said Covenant shall be recorded in the appropriate county offices, and shall be a part of the corresponding development or subdivision improvement agreement.
3. The determination regarding the means by which the "Water Resource Fee" is satisfied shall be specifically addressed in the development agreement for the Property.
4. The CITY shall also be entitled to charge monthly user fees for the provision of water and sewer services to the Property.
- E. There shall be no duty or obligation upon CITY to furnish water and/or sanitary sewer facilities to the area sought to be annexed until such time as, in the sole discretion of CITY, such services for water and/or sanitary sewer can be economically and reasonably installed, so as to provide services to a sufficient number of inhabitants within the area so as to make the construction and establishment of such services feasible and at no additional cost for the same or similar type of services provided to inhabitants within the existing corporate limits of the CITY.
- F. The ANNEXOR agrees that the availability of water and/or sanitary sewer service anticipated by this Agreement is subject to any water and/or sewer tap allocation program, water management program, water conservation program or similar program of the CITY, and is subject to any other general restriction of the CITY, relating to the provision of water and/or sanitary sewer service.

- G. Within 30 days of final approval of the annexation ordinance for the Property, the ANNEXOR shall transfer by special warranty deed in the form attached hereto as Exhibit 'C' any rights it has to all water aquifers, sometimes called deep well aquifers, underlying the full area of the ANNEXOR's Property, together with all nontributary and not-nontributary water, and all rights thereto, as may be contained in said aquifers or elsewhere under ANNEXOR's Property. The aquifers to be included in the special warranty deed are the Dawson, Denver, Arapahoe, Laramie-Fox Hills and Dakota aquifers. The special warranty deed shall warrant title to the nontributary and not-nontributary water in perpetuity. The special warranty deed shall, in addition to standard warranties of a deed of this type, specifically warrant that the ANNEXOR (Grantor) has not divested itself of the subject aquifers, nor of any of the nontributary or not-nontributary waters underlying the Property, or the rights thereto, including the right to withdraw or use all or any portion of said nontributary or not-nontributary water, prior to their conveyance to CITY. If the ANNEXOR is unable to provide such a special warranty deed because it has previously conveyed or transferred all or any portion of said aquifers, nontributary or not-nontributary water, or the rights thereto, or if the CITY determines the ANNEXOR has or will knowingly violate the terms of the special warranty deed, ANNEXOR agrees to provide a pro rata amount calculated by determining the ratio of water from the aquifers which could be conveyed to the amount of water from the aquifers which is unavailable for conveyance to the CITY.
- H. The ANNEXOR grants in perpetuity to the CITY the sole and exclusive right to withdraw, appropriate, and use any and all groundwater within the Dawson, Denver, Arapahoe, Laramie-Fox Hills and Dakota aquifers, and the South Platte River and South Beebe Draw alluviums underlying the Property. The ANNEXOR irrevocably consents in perpetuity, on behalf of itself and any and all successors in title pursuant to Section 37-90-137(4) of the Colorado Revised Statutes, as now existing or later amended, to the withdrawal, appropriation, and use by the CITY of all such groundwater, and agrees to execute any additional or supplemental consents thereto that may be required for the CITY to withdraw, appropriate, or use said groundwater.
- I. If the CITY has adopted a non-potable water policy in effect at the time of final plat approval for all or any portion of the Property, the ANNEXOR agrees to abide by such policy and incorporate the same into the corresponding development or subdivision improvement agreement, in order to provide water for open space and park dedications within the final plat.

SECTION IV STORM DRAINAGE

- A. Storm drainage improvements shall be designed, constructed and installed by ANNEXOR in full conformity with the storm drainage regulations of the CITY and in conformity with the adopted Brighton Watershed Outfall Systems Plan (1999), the City's Storm Drainage Master Plan, or Bromley Park Drainage Master Plan, and/or other related master plans for drainage as applicable.

- B. ANNEXOR agrees to dedicate all necessary rights-of-way and/or easements for storm sewers and other storm drainage facilities to serve the area being annexed or for transmission through the area being annexed not to exceed the width required for passing the one hundred (100) year-storm in the fully developed state, plus sufficient width for maintenance vehicle access in said drainage facilities, in conformity with the CITY's approved plans. Such dedication of storm sewer rights-of-way shall occur at the time of final subdivision platting; however, ANNEXOR agrees to dedicate, without cost to the CITY, such rights-of-way at an earlier time when determined by CITY to be required for commencement of construction of such facilities or for extension of utilities. If ANNEXOR desires to construct said drainage improvements in a more costly manner than would otherwise be required to transmit storm waters through the annexed area, for purposes of removing land from floodplain designation within the annexed area, then the value of said land so removed from floodplain designation shall be credited against any financial obligation which the CITY may have incurred with respect to said drainage improvements.
- C. ANNEXOR shall provide an approved drainage plan at the time of final platting of all or any portion of the Property. In the event the ANNEXOR and/or DEVELOPER fails or refuses to provide a final drainage plan prior to final approval of a development plan, building permit or final plat, such failure or refusal shall be deemed sufficient justification for CITY to refuse to approve any development plan, building permit, or final plat. Under such circumstances the ANNEXOR and/or DEVELOPER, for themselves, their successors and assigns, hereby waive any right or equitable claims they may have against the CITY, its officers, agents, employees and elected officials, for failure to approve any such development plan, or building permit or final plat. Such waiver shall include any rights that may accrue to the ANNEXOR and/or DEVELOPER under any Colorado statute, which requires action on a final plat within a specified period of time.
- D. The storm drainage improvements shall be constructed concurrently with development of the annexed area and in a manner that will eliminate flooding in said developed area. The storm drainage shall be of sufficient width to pass drainage from all tributary areas in a developed state. Where channelization is deemed necessary or desirable for storm drainage, it shall be the responsibility of the ANNEXOR to reseed the drainage area with grass in conformance with the CITY's specifications. Storm drainage easements shall, wherever possible, conform to street patterns. ANNEXOR agrees to pay to the CITY appropriate Storm Drainage fees, as established by the CITY, in the amount as set forth in the CITY's Annual Fee Resolution in effect at the time of building permit issuance.

SECTION V CROSSINGS

- A. The parties mutually agree that crossings may be required on certain roadways within the boundaries of the Property, as required by CITY's Transportation Master Plan or the Bromley Park Traffic Master Plan as applicable and Public Works Standards and Specifications Manual. ANNEXOR shall pay the total cost of all crossings within the boundaries of the Property.

ANNEXOR shall also dedicate to the CITY any land required for the construction of said crossings.

- B. The parties agree that if a crossing is required on the exterior boundary of the Property, ANNEXOR shall be responsible for one-half (1/2) of the construction costs for said crossing. If the annexed area does not extend the full length of a major arterial on the exterior boundary, then the ANNEXOR shall be responsible for a proportionate share of the costs of the crossing structure, as determined by the Director of Streets and Fleet.
- C. All crossings shall be constructed in accordance with the requirements of the development and/or subdivision improvement agreement for the Property.

SECTION VI PUBLIC LAND DEDICATION

- A. At the time of approval of a final plat for all or any portion of the Property, ANNEXOR shall dedicate to the CITY certain lands to be used for public purposes. At the sole discretion of the CITY, and when it is determined to be in the best interests of the CITY to do so, the CITY may permit the ANNEXOR to pay cash in lieu of said land dedication or to dedicate land off site for public purposes. Lands dedicated for public purposes shall be acceptable to CITY and shall be platted by ANNEXOR in accordance with the CITY's Subdivision Regulations. ANNEXOR agrees that if between the time of annexation and subdividing, any of the Property is rezoned from a nonresidential to a residential classification, or a residentially-zoned area is rezoned to a higher density, additional land dedications may be required at the time of final plat approval.
- B. ANNEXOR agrees that lands to be dedicated for public purposes shall include all site and public improvements, including but not limited to, water, sewer, drainage, curb, gutter, streets and sidewalks, at the time of conveyance. No lands to be dedicated for public purposes shall be disturbed by ANNEXOR in any manner to disrupt the natural landscape, unless first approved in writing by the CITY. ANNEXOR agrees that all lands dedicated to the CITY shall not be used as a cut or fill area by the ANNEXOR.
- C. The ANNEXOR agrees to provide to the appropriate school district information regarding the projected number of school children to be generated by the proposed annexation, using the density factors supplied by the school district; the location of schools for said children, existing and proposed; the estimated assessed valuation tax yield for schools; and a comparison of the operating expense and cost to be experienced by the school district for accommodating said additional school population.
- D. ANNEXOR shall dedicate land required for schools or pay a fee in lieu of land dedication as required in the *Intergovernmental Agreement Concerning Fair Contribution for School Sites* between the City of Brighton and the Brighton 27J School District, and the *Methodology to Determine Fair Contribution for Public School Sites*, dated October 20, 2009 as same may be amended from time to time, the terms of which are incorporated herein by this reference.

- E. ANNEXOR agrees to execute a *Participant Agreement* with Brighton School District 27J and the Brighton School District Capital Facility Fee Foundation for payment of the applicable Capital Facility Fee in effect at the time payment is due.
- F. ANNEXOR shall dedicate land required for parks and open space or make payment of fee in lieu of land dedication as required for all new subdivisions in full conformity with CITY ordinances and regulations, as the same may be amended from time to time.
- G. ANNEXOR agrees to pay to CITY at time of building permit application a per-dwelling-unit Neighborhood Park Development Fee and Community Park Development Fees in the amounts in effect at the time payment is due.

SECTION VII ZONING AND DESIGN

- A. ANNEXOR agrees to develop the Property according to the Brighton Comprehensive Land Use Plan, the City of Brighton Zoning Ordinance, the City of Brighton Subdivision Regulations and all other regulations and administrative policies of the CITY. ANNEXOR will be requesting that the Property be re-zoned to a preliminary zoning designation in accordance with the type, nature, and extent of the land uses identified in the Comprehensive Plan. See special provisions under Exhibit 'E'.
- B. Final approval of the zoning of the Property by City Council must occur before any land may be platted. However, zoning and subdivision applications or a PUD application for all or any portion of the Property may be submitted to and processed simultaneously by the CITY. The present non-intensive, agricultural use of the land shall be maintained by the ANNEXOR and allowed by the CITY until the Property is zoned and development begins.
- C. ANNEXOR and CITY agree that consideration of zoning of the Property will proceed with the zoning of the sixty (60) acres of Neff property to the north of the subject Property, adjacent to Baseline Road. ANNEXOR has requested that the Property be zoned PUD. ANNEXOR acknowledges and agrees that in no event shall industrial zone districts be considered appropriate for the Property.

The present non-intensive, agricultural use of the land shall be maintained by the ANNEXOR and allowed by the CITY until development of the Property begins. ANNEXOR and CITY agree that the Property may be developed in one or more development phases with each phase consisting of a portion or sub parcel of the Property which may have one or more land use designations or classifications as set forth in the approved Overall Development Plan or approved PUD Plan. Prior to the development of any phase, a final subdivision plat and/or final PUD plan, as appropriate, must have been previously approved by the City Council for that phase of development. Nothing herein shall preclude the processing of an overall subdivision plat for the Property which divides the Property into development parcels for sale,

so long as such subdivision plat and all subsequent subdivisions thereof satisfy all the requirements, procedures, processes and conditions of the City's Subdivision Regulations.

SECTION VIII PUBLIC FACILITY EXTENSION

- A. Extension of water and sewer lines, streets, storm drainage, street lighting, traffic control devices and other public improvements from the developed areas of the CITY to the Property may be achieved according to a reimbursement agreement whereby owner(s) of lands abutting or benefited by such facilities or improvements shall reimburse the ANNEXOR for their proportionate share of ANNEXOR'S costs to extend public facilities which benefit such intervening lands. ANNEXOR and/or assigns assumes sole responsibility for the administration and collection of any and all moneys payable under such reimbursement agreements, unless otherwise set forth in the reimbursement agreement; provided, however, that the CITY agrees that it shall not approve a final plat, or issue building permits for intervening lands subject to such reimbursement agreements until all reimbursements due and owing hereunder are paid in full.

SECTION IX GENERAL PROVISIONS

- A. THIS AGREEMENT shall be recorded with the Clerk and Recorder in Adams County, Colorado, and shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.
- B. Nothing contained in this AGREEMENT shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of CITY'S legislative, governmental or police powers to promote and protect the health, safety or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment by CITY of any fee which is of uniform or general application.
- C. No right or remedy of disconnection of the described Property from the CITY shall accrue from this Agreement, other than that provided by Colorado Revised Statutes Section 31-12-119, Section 31-12-501 or other applicable state law. In the event the Property or any portion thereof is disconnected at ANNEXOR'S request, CITY shall have no obligation to serve the disconnected Property and this Agreement shall be void and of no further force and effect as to such Property. In the event the Property or any portion thereof is disconnected at ANNEXOR's request, CITY shall have no further obligation to continue to serve the disconnected Property and this Agreement shall be void and of no further force and effect as to such Property.
- D. If the annexation of the Property or any portion thereof is voided by initiative, referendum or the final action of any court, CITY agrees to cooperate with ANNEXOR to continue providing water and sewer service to the Property disconnected. CITY and ANNEXOR agree to jointly

pursue all reasonable methods to continue such service, including but not limited to extra-territorial water and sewer contracts. Such agreement to cooperate shall not constitute a legal obligation on the part of CITY to continue service.

- E. It is understood and agreed to by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining 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 or provision held to be invalid.
- F. All fees recited in this Agreement shall be subject to amendment by the City Council. Any amendment to fees shall be incorporated into this Agreement as if originally set forth herein.
- G. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.
- H. ANNEXOR shall develop the Property in full conformance with all CITY ordinances and regulations, as the same may be amended from time to time.

[Signature Pages Follow This Page]

ANNEXOR:

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EXHIBIT 'A': Legal Description of Property

EXHIBIT 'B': Consent of Developer to Annexation Agreement

EXHIBIT 'C': Special Warranty Deed

EXHIBIT 'D': Dry Up Covenant

EXHIBIT 'E': Special Provisions

EXHIBIT 'A'
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, LYING WESTERLY OF THE CENTERLINE OF ADAMS COUNTY ROAD NO. 122 (ABANDONED), MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 1, WHENCE THE WEST QUARTER CORNER THEREOF BEARS S00°46'49"E, 2331.28 FEET; THENCE S00°46'49"E, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 1889.48 FEET TO THE POINT OF BEGINNING; THENCE N89°13'12"E, A DISTANCE OF 988.29 FEET TO THE CENTERLINE OF SAID COUNTY ROAD NO. 122 (ABANDONED); THENCE S24°18'10"W, ALONG SAID CENTERLINE A DISTANCE OF 495.77 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1; THENCE S89°45'04"W, ALONG SAID SOUTH LINE, A DISTANCE OF 778.15 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 1; THENCE N00°46'49"W, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 441.80 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 9.040 ACRES.

EXHIBIT 'C'

TEMPLATE ONLY — ORIGINAL DEED TO BE RECORDED SEPARATELY AT TIME OF ANNEXATION
WITH THIS AGREEMENT AND ANNEXATION MAP

SPECIAL WARRANTY DEED

_____, whose street address is _____, City or
Town of _____, County of Adams/Weld and State of Colorado, for and in
consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt
of which is hereby acknowledged by Grantor, and which consideration includes the City of
Brighton's willingness to enter into an agreement with Grantor entitled (name of annexation
agreement), dated _____, and in accordance with the requirements of that agreement, hereby
sells and conveys to the City of Brighton, whose address is 500 South 4th Avenue, City of Brighton,
County of Adams and State of Colorado, the following property in the County of
_____ and State of Colorado, to wit:

The rights to all water aquifers, sometimes called deep well aquifers, containing
nontributary and/or not nontributary ground water, as those terms are defined in Sections 37-90-
103(10.5) and 37-90-103(10.7), Colorado Revised Statutes, or any successor or amended statutory
provisions defining such groundwater, together with all such nontributary and not nontributary
water as may be contained in the said aquifers or elsewhere within the boundaries of the real
property described on Exhibit 'A' hereof, which exhibit is incorporated fully herein by this
reference, being _____ acres, more or less. The aquifers referenced herein include the Dawson,
Denver, Arapahoe, Laramie-Fox Hills and Dakota.

Grantor hereby irrevocably consents, in perpetuity, for and on behalf of itself and any and
all successors in title, to the withdrawal of all of the above-described nontributary or not
nontributary ground water by the City of Brighton or its successors or assigns, and warrants the
title of all that is conveyed by this deed against all persons claiming under the Grantor. Grantor
further warrants that it has not divested itself of all or any portion of the aquifers described herein,
nor of any of the nontributary or not nontributary ground water that may underlie the land described
in Exhibit 'A', nor has it previously conveyed or transferred to any other person or entity all or
any portion of said aquifers, nontributary or not nontributary ground water, or the rights to
withdraw such ground water. Grantor further agrees to warrant and forever defend the rights to
all of the aquifers described herein, and the right to withdraw nontributary and not nontributary
ground water there from, as the same underlie the property described in Exhibit 'A', which aquifers
and rights are hereby conveyed to the City of Brighton, against all and every person claiming the
whole or any part thereof by or through the Grantor.

Signed this _____ day of _____, 20__.

Signature: _____

By: (Name, Title)

STATE OF COLORADO)

) ss.

COUNTY OF _____)

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

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT 'D'

TEMPLATE LANGUAGE ONLY FOR TIME OF PLATTING AS NECESSARY – NOT TO BE SIGNED WITH THIS AGREEMENT

**RESTRICTIVE DRY-UP COVENANT; GRANT OF EASEMENT;
WARRANTY OF FIRST RIGHT TO DRY-UP CREDIT;
AND AGREEMENT TO ASSIST**

THIS COVENANT, Agreement, Warranty and Easement are made and given this _____ day of _____, 20____, by _____ (hereinafter "Owner").

Owner has entered into an agreement with the City of Brighton, Colorado, a home-rule city ("Brighton") dated _____, 20____, whereby Owner has agreed to sell, and Brighton has agreed to purchase, _____ share(s) of the Capital Stock of the _____ Company ("Company") with certificate number(s) _____ (the "Water Rights"). The Owner acknowledges that the Water Rights are intended to be utilized by Brighton in or for its municipal water system, and/or for augmentation or exchange purchases, and that in order to effect such uses, the Water Rights will need to be changed in an appropriate proceeding before the District Court, Water Division No. 1 ("Water Court"), to change the use of the water to municipal, augmentation and/or exchange purposes.

The Water Rights have historically been used for the irrigation of lands owned by the Owner located in _____ County, Colorado. A description of the property where such irrigation use has historically occurred is attached to this covenant as Exhibit A, and is incorporated fully into this covenant by this reference. Owner further understands that the Water Court may require, as a term and condition of such change, that the lands historically irrigated as described in Exhibit A must be dried up and not further irrigated as a term and condition of allowing such change.

THEREFORE, in consideration of the willingness of Brighton to purchase the Water Rights, and the making of such purchase, as well as other good and valuable consideration, receipt of which is hereby acknowledged by Owner, Owner covenants and agrees as follows:

1. From and after the date hereof, neither the Water Rights nor any other water provided by the Company shall be used for irrigation in connection with the property described in Exhibit A without the written consent of Brighton, or its successors or assigns, having been first obtained, which consent may be withheld in Brighton's sole discretion.

2. Owner shall take any action necessary to eliminate any consumptive use of water for irrigation purposes on the property described in Exhibit A as may be determined and/or required by the Water Court or other court or tribunal of competent jurisdiction in the judgment and decree entered in any case involving the change or exchange of any of the Water Rights, and except as hereinafter may be specifically allowed, the property shall no longer be irrigated.

4. Unless otherwise required by any decree changing the Water Rights, or allowing such rights to be exchanged, this covenant shall not prohibit the Owner or Owner's successors and assigns from irrigating lands that are the subject of this covenant with water rights which may in the future be transferred to such lands and for such use through an appropriate Water Court proceeding, irrigating the lands with water from a well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation, irrigating the lands with water which is not tributary to the South Platte River basin, to include not-nontributary water that is duly augmented, or irrigating the lands with treated water supplied by a municipality or a water district. Unless so irrigated, the Owner agrees that the property subject to this covenant will not be planted with crops which are capable of extending roots into the underlying groundwater, including but not necessarily limited to the growing of alfalfa

6. Owner warrants that no other person or entity has any ownership or encumbrance interest in the Property except for those persons and entities that have signed below. Owner further warrants and represents that this covenant shall entitle Brighton to the first and prior right to claim credit for the dry-up or nonirrigation of the property described in Exhibit 'A', and agrees to provide Brighton with all assistance Brighton may reasonably require in regard to the above-referenced change of the Water Rights, including but not limited to the provision of testimony before the Water Court in any proceeding involving such change.

STATE OF COLORADO)
) ss.
COUNTY OF)

WITNESS my hand and official seal.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

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EXHIBIT 'E'
SPECIAL PROVISIONS

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THE CERTAIN NEFF II ANNEXATION AGREEMENT BETWEEN THE CITY OF BRIGHTON, COLORADO AND ANNEXORS. SHOULD THERE BE ANY CONFLICT BETWEEN THE PROVISIONS OF THE ANNEXATION AGREEMENT AND THIS EXHIBIT 'E', THE PROVISIONS OF THIS EXHIBIT 'E' SHALL CONTROL.

1. Rights-of-Way Dedication and Construction

A. North 60th Avenue adjacent to the Property to the west, is designated as a collector street by the City of Brighton. ANNEXOR/DEVELOPER agrees to dedicate to the City of Brighton, with the final plat, or at the time of final platting by other instrument of conveyance as determined by the City, twenty-five (25) feet of right of way required for North 60th Avenue as a collector street, to wit: as measured from the center line of the existing right-of-way, the ANNEXOR/DEVELOPER shall dedicate a twenty-five (25) foot wide right of way along the entire western boundary of the Property in accordance with the PUD Plan. Additional dedication may be required and will be determined at time of final plat.

B. Construction Requirements. ANNEXOR/DEVELOPER shall construct, or cause the construction of, one-half of North 60th Avenue adjacent to the Property as a collector, as more particularly set forth in the development agreement associated with final plat of the Property.

C. CITY's Standards and Specifications. Notwithstanding the provisions of Section II.G, the standards and timing of public and private street improvements shall be set forth in the approved civil plans associated with each final plat of the Property.

2. Water and Sewer. Section III, Paragraphs G and H, of the Agreement are hereby revised to acknowledge the severance of groundwater rights from the Property in 1986 as shown in the Water Rights Special Warranty Deed and Consent to Appropriate dated January 31, 1986, and recorded with the Adams County Clerk at Book 3128, Pages 14 through 21, and therefore ANNEXOR/DEVELOPER is not required to deliver a Special Warranty Deed pursuant to Section III, Paragraph G. For purposes of the last sentence of Section III, Paragraph III, ANNEXOR/DEVELOPER shall satisfy its obligation by the dedication to the CITY of a pro rata raw water allocation in phases at the time of each final plat, and no separate cash-in-lieu payment shall be required. CITY agrees to provide water service and sanitary sewer service to the Property. ANNEXOR/DEVELOPER assumes the sole responsibility for the construction of, and the connection to, all water, storm water and sanitary sewer facilities within the boundaries of the Property as necessary to serve the Property, and all costs associated therewith.

3. Zoning. ANNEXOR/DEVELOPER acknowledges and agrees that the approval of zoning for the Property is a separate and distinct procedure governed by the Land Use Code of the City and that this Agreement does not approve or otherwise guarantee how the subject Property will be zoned. Further, the ANNEXOR/DEVELOPER acknowledge and agree

that in no event shall mobile home, heavy industrial, or mineral extraction zone districts or uses be considered appropriate for this Property.

4. Applicable Master Plans to this Annexation.

A. Drainage-Bromley Park Drainage Master Plan

B. Water and Wastewater-Bromley Park Water Master Plan and Bromley Park Sanitary Master Plan

C. Transportation. City of Brighton Transportation Master Plan

5. Water Dedication. ANNEXOR/DEVELOPER shall satisfy the water dedication requirement for the Property by dedicating to the City at the time of final plat approval, and as a condition precedent thereof, a sufficient number of acre-feet of water that is acceptable to the City, in its sole discretion.

6. Special Districts. As may be applied for by ANNEXOR/DEVELOPER, the CITY shall consider and approve, deny, or condition the creation of one or more districts, including but not limited to special districts, general improvement districts and metropolitan districts, pursuant to Title 31 and Title 32, Colorado Revised Statutes, for any statutorily authorized purpose.

7. General Responsibilities of the City.

A. Ensure that the annexation of the Property shall be in conformance with the Colorado Municipal Annexation Act of 1965, as amended, and with applicable CITY ordinances.

B. Subject the Property only to ordinances, rules and regulations generally applicable through the City on a non-discriminatory basis. Provide municipal services to the Property to the same extent such services are provided throughout the CITY.

