

RESOLUTION NO. 2022-114

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE ANNEXATION AGREEMENT FOR THE APPROXIMATELY 95.105 ACRES OF CONTIGUOUS LAND, IN THE SOUTHWEST QUARTER OF SECTION 11, THE EAST ONE HALF OF SECTION 11, THE WEST ONE HALF OF SECTION 12, AND THE NORTH HALF OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO; TO BE KNOWN AS THE MAGPIE PROPERTY ANNEXATION

WHEREAS, the Owners of the Magpie Property Annexation property (the “Property”), are requesting approval of that certain Annexation Agreement, attached hereto as Exhibit A (the “Magpie Property Annexation Agreement”); and

WHEREAS, the Annexation Ordinance for the Property was approved by the City Council at a second and final reading on October 4, 2022; and

WHEREAS, the City Council has reviewed the Magpie Property Annexation Agreement and has determined that the terms of said Annexation Agreement are reasonable and that it is in the best interest of the citizens of the City of Brighton to approve the Agreement.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. That the Magpie Property Annexation Agreement, attached hereto as Exhibit A is hereby approved.

Section 2. This Resolution is effective as of the date of its adoption.

RESOLVED this 4th day of October, 2022.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

APPROVED AS TO FORM:

ALICIA CALDERÓN, City Attorney

EXHIBIT A

ANNEXATION AGREEMENT

[Annexation Agreement begins on the next page]

**ANNEXATION AGREEMENT
MAGPIE PROPERTY**

THIS AGREEMENT made and entered into this ____ day of _____, 2022, by and between MAGPIE RUN PROPERTIES LLC, a Colorado limited liability company, CONNIE SURABIAN, an individual, LAZARUS SURABIAN, an individual, RYAN STEEL, an individual, STACEY WENZEL STEEL, an individual, BETTY MATHIS, an individual (collectively, "ANNEXOR") and the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado ("CITY").

WITNESSETH:

WHEREAS, ANNEXOR is the owner of a 95.105-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' (the "Property"); 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 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
300 S. 4th Ave., Brighton, CO 80601*

SECTION I DEFINITIONS

“Annexed Area” – see “Property.”

“ANNEXOR” as used in this Agreement shall mean MAGPIE RUN PROPERTIES LLC, CONNIE SURABIAN, LAZARUS SURABIAN, RYAN STEEL, STACEY WENZEL STEEL, and BETTY MATHIS, or their successors, assigns, and designees.

“DEVELOPER” as used in this Agreement shall mean LOVETT INDUSTRIAL, or its successor in interest who intends to develop and use the Property.

“Brighton Watershed Outfall Systems Plan” 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.

“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” shall mean the +/- 95.105-acre 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 May 20, 2016, as the same may be amended from time to time.

“Reimbursement Agreement” shall mean and refer to a written Agreement between ANNEXOR 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 oversizing 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 as in the version in effect at the time the agreement is executed in *The Zoning Dictionary* 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 'D' 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 above-ground 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 the sole cost to ANNEXOR.
- 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 the commencement of any subdivision development work on the Property, whichever occurs earlier, ANNEXOR agrees to convey to the CITY the rights-of-way for streets as outlined in Exhibit 'D'.
- E. ANNEXOR agrees to convey to CITY as part of a final plat for the property, 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 identified at time of subdivision and/or final plat. ANNEXOR will escrow funds anticipated to be required for signalization of perimeter streets upon request of the CITY, to be used 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 twenty-four (24) months from the date of conditional acceptance by the CITY of such improvements as established by a development agreement at the time of final plat. 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 and required ancillary facilities within the Property or which otherwise serve the Property in full compliance with the City of Brighton Water and Wastewater Master Plan as applicable, requirements and the CITY'S Public Works Standards and Specifications. ANNEXOR agrees to dedicate all necessary unobstructed rights-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 this Section III, upon ANNEXOR giving CITY one hundred twenty (120) days 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 to the Property at a point more particularly described in Exhibit 'D' attached hereto and incorporated herein by this reference.
- C. When the ANNEXOR completes construction of the sewer and water lines according to Subsection III(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 as set forth in a development agreement.
- D. ANNEXOR shall pay all fees and charges related to the provision of water and sewer service. The Plant Investment Fee ("PIF") for this annexation shall be paid according to the then applicable fee schedule, including the dedication of water shares. 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 in the sole discretion of the City Manager or designee.
1. 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, template attached hereto as Exhibit 'C', and 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.
 2. 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 the CITY, such services for water and/or sanitary sewer can be economically and reasonably installed to the Property.
- 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 non-appealable approval of the annexation ordinance for the Property, the ANNEXOR shall transfer by special warranty deed, in the form attached as Exhibit "B", any rights it has to all water aquifers, also known as 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 pay 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, if any, 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, CITY Public Works Standards and Specifications ("CITY STANDARDS"), all Outfall Systems Plans, Drainage or Stormwater Master Plans, the Bromley Park Master Drainage Plan, Mile High Flood District Master Drainageway Plans and/or other related master plans for drainage or other City drainage studies (collectively "STORM DRAINAGE PLANS") as applicable and as may be amended, revised, or updated.
- B. ANNEXOR agrees to dedicate all necessary rights-of-way and/or easements for storm sewers and other storm drainage facilities to adequately serve the area being annexed, or for transmission through the area to be annexed at the time of final subdivision approval. All storm drainage systems shall be designed in accordance with CITY STANDARDS, as amended from time to time. ANNEXOR agrees to provide all necessary rights-of-way and/or easements for the construction of storm drainage facilities required for conformity to the STORM DRAINAGE PLANS, as amended from time to time, plus sufficient width for maintenance vehicle access to said storm drainage facilities. Such dedication of storm sewer rights-of-way and/or easements shall occur at the time of final subdivision platting; however, ANNEXOR agrees to dedicate, without cost to the CITY, such rights-of-way and/or easements at an earlier time when determined by CITY to be required for commencement of construction of such facilities or for extension of utilities.
- C. ANNEXOR shall provide a drainage study, per CITY STANDARDS, 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. 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 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 at the time of final plat.
- B. 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 Brighton Land Use and Development Code. 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 unless first specifically approved in writing by the CITY, which approval may include, without limitation, approval of development permits, final plats, final development plans and similar approvals with respect to such dedicated lands.
- 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.

SECTION VII ZONING AND DESIGN

ANNEXOR agrees to develop the Property according to the Brighton Comprehensive Land Use Plan, the Brighton Land Use and Development Code, the City of Brighton Zoning Code, the City of Brighton subdivision regulations and all other regulations and administrative policies of the CITY. The Parties acknowledge that ANNEXOR has submitted an application for rezoning to I-1 ("Light Industrial") to be heard contemporaneously with this Agreement. ANNEXOR reserves the right to withdraw the annexation petition if the City Council does not approve the I-1 zoning.

SECTION VIII PUBLIC FACILITY EXTENSION

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 in and shall run with the land, and shall be binding upon and insure 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 Colo. Rev. Stat. §§ 31-12-119 and 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 disconnected Property. 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 the 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. If provision of any services, including but not limited to water and sewer services, requires payment of fees or charges to regional or metropolitan service agencies or other third party authorities, ANNEXOR shall provide such funds as and when required by such service agency.
- H. 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.
- I. ANNEXOR shall develop the Property in full conformance with all CITY ordinances and regulations, as the same may be amended from time to time.
- J. ANNEXOR may assign all or a portion of its rights and obligations hereunder to Developer. CITY acknowledges this right to assign, and in so doing agrees to release ANNEXOR from any continuing obligations or liabilities arising under this Agreement upon notice of such assignment.

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.

ANNEXOR/DEVELOPER:

Land Owner(s)

Mailing Address

Date of Signing

Stacey Steel
Stacey Wenzel Steel

1237 SE Ash St.
Portland, OR 97214

9/20/22

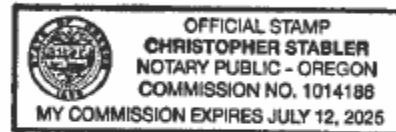
The foregoing signature(s) was/were subscribed and sworn to before me this 20th day of September, 2022, by Stacey Wenzel Steel.

Witness my hand and official seal.

My commission expires on

07/12/2025

[Signature]
Notary Public



Ryan Steel

1237 SE Ash St
Portland, OR 97214

9/20/22

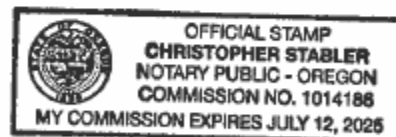
The foregoing signature(s) was/were subscribed and sworn to before me this 20th day of September, 2022, by Ryan Steel.

Witness my hand and official seal.

My commission expires on

07/12/2025

[Signature]
Notary Public



Connie Surabian
Connie Surabian

2760 Birchwood Rd
Cheboygan MI
49721

9-24-22

The foregoing signature(s) was/were subscribed and sworn to before me this 21th day of September, 2022, by Connie Surabian.

Witness my hand and official seal.

My commission expires on 7-20-28.

Judy Kay Jacalone
Notary Public

Judy Kay Jacalone
NOTARY PUBLIC - MICHIGAN
County of Cheboygan
ACTING IN THE COUNTY OF Cheboygan
MY COMMISSION EXPIRES July 20, 2028

Lazarus Surabian
Lazarus Surabian

2760 Birchwood Rd
Cheboygan MI
49721

9-24-22

The foregoing signature(s) was/were subscribed and sworn to before me this 24th day of September, 2022, by Lazarus Surabian.

Witness my hand and official seal.

My commission expires on 7-20-28.

Judy Kay Jacalone
Notary Public

Judy Kay Jacalone
NOTARY PUBLIC - MICHIGAN
County of Cheboygan
ACTING IN THE COUNTY OF Cheboygan
MY COMMISSION EXPIRES July 20, 2028

Roger Allgeier
Magpie Run Properties, LLC.

The foregoing signature(s) was/were subscribed and sworn to before me this _____ day of _____, 2022, by Roger Allgeier in his capacity as Manager of Magpie Run Properties, LLC.

Witness my hand and official seal.

My commission expires on _____.

Notary Public

Betty H. Mathis
Betty H. Mathis

9/21/2022

The foregoing signature(s) was/were subscribed and sworn to before me this 21st day of September, 2022, by Betty H. Mathis, in the County of Weld, State of Colorado.

Witness my hand and official seal.

My commission expires on 2/15/2024.

Tracey Duffey
Notary Public



CITY OF BRIGHTON, COLORADO

By: _____
Gregory Mills, Mayor

ATTEST:

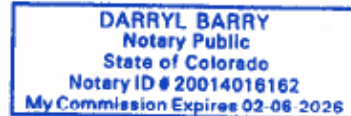
Magpie Run Properties, LLC Roger Allgeier 9/20/22
Roger Allgeier
Magpie Run Properties, LLC.

The foregoing signature(s) was/were subscribed and sworn to before me this 20 day of September, 2022, by Roger Allgeier in his capacity as Manager of Magpie Run Properties, LLC.

Witness my hand and official seal.

My commission expires on 02/06/2026.

[Signature]
Notary Public



Betty H. Mathis

The foregoing signature(s) was/were subscribed and sworn to before me this _____ day of _____, 2022, by Betty H. Mathis.

Witness my hand and official seal.

My commission expires on _____

Notary Public

CITY OF BRIGHTON, COLORADO

By: _____
Gregory Mills, Mayor

ATTEST:

RA
9/20/22

CITY OF BRIGHTON, COLORADO

By: _____
Gregory Mills, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Alicia Calderón, City Attorney

EXHIBIT 'A': Legal Description of Property

EXHIBIT 'B': Special Warranty Deed

EXHIBIT 'C': Dry Up Covenant

EXHIBIT 'D': Special Provisions

EXHIBIT 'A'

LEGAL DESCRIPTION

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF SECTION 11, THE EAST ONE HALF OF SECTION 11, THE WEST ONE HALF OF SECTION 12, AND THE NORTH HALF OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11 AND CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER TO BEAR SOUTH 89°57'07" EAST, WITH ALL BEARINGS HEREIN CONTAINED RELATIVE THERETO;

THENCE NORTH 00°44'02" WEST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 11 A DISTANCE OF 1,924.31 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 35°23'10" WEST A DISTANCE OF 2,395.50 FEET TO THE SOUTH RIGHT-OF WAY LINE OF EAST 152ND AVENUE;

THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE THE FOLLOWING SIX (6) COURSES:

- 1) NORTH 89°57'07" WEST A DISTANCE OF 1,223.38 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 14;
- 2) NORTH 89°58'27" WEST A DISTANCE OF 673.12 FEET;
- 3) SOUTH 02°48'49" WEST A DISTANCE OF 40.02 FEET;
- 4) NORTH 89°59'15" WEST ALSO BEING THE NORTH LINE OF WILLMANN-SMITH SUBDIVISION, RECORDED AT RECEPTION NO. 2002030976233 IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE, A DISTANCE OF 103.66 FEET;
- 5) NORTH 19°54'45" EAST A DISTANCE OF 42.54 FEET;
- 6) NORTH 89°58'27" WEST A DISTANCE OF 371.15 FEET TO A POINT ON THE EAST LINE OF BROMLEY HILL ANNEXATION PLAT, RECORDED AT RECEPTION NO. 2007000044279 IN SAID ADAMS COUNTY RECORDS;

THENCE NORTH 49°25'31" EAST ALONG SAID EAST LINE A DISTANCE OF 46.10 FEET TO A POINT ON THE BOUNDARY LINE OF ANNEXATION MAP RECORDED AT FILE 16, MAP 280 IN SAID ADAMS COUNTY RECORDS;

THENCE ALONG SAID BOUNDARY LINE OF ANNEXATION MAP THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 89°58'27" EAST A DISTANCE OF 76.49 FEET;
- 2) NORTH 49°24'03" EAST A DISTANCE OF 101.37 FEET;

THENCE SOUTH 89°58'27" EAST A DISTANCE OF 153.57 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN (C.B. AND Q.) RAILWAY;

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF WAY LINE THE FOLLOWING TWO (2) COURSES:

- 1) NORTH 49°24'57" EAST A DISTANCE OF 1,936.16 FEET;
- 2) NORTH 49°23'21" EAST A DISTANCE OF 2,396.86 FEET;

THENCE SOUTH 63°55'12" EAST A DISTANCE OF 619.38 FEET;

THENCE SOUTH 35°23'10" WEST A DISTANCE OF 765.39 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 11;

THENCE SOUTH 00°44'02" EAST ALONG SAID EAST LINE A DISTANCE OF 67.87 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS AN AREA OF 4,142,785 SQUARE FEET, OR 95.105 ACRES, MORE OR LESS.

EXHIBIT 'B'
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 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 22 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. 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 'C'
**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 _____ ("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.

5. This covenant shall burden, attach to and run with the property described in Exhibit 'A', and shall be binding not only upon the Owner, but also upon Owner's heirs, successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of the property described in Exhibit 'A'. The terms and provisions of this covenant shall not expire and shall be perpetual unless specifically released in writing by Brighton or its successors and assigns. This covenant may be enforced by Brighton or by any party having any right, title or interest in the Water Rights or by the State Engineer of the State of Colorado, at any time in any action at law or in equity. This covenant shall bind Owner, Owner's heirs, successors and assigns and shall run with and burden the property described in Exhibit 'A' and shall run with and benefit the Water Rights.

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.

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: _____

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: _____

The following persons or entities may also have a recorded interest in the property, and by their signatures hereto, for themselves and their heirs, personal representatives, successors and assigns, accept and agree to the terms and conditions of this document.

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'
SPECIAL PROVISIONS

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

1. Rights-of-Way Dedication and Construction.

- a. **East 152nd Avenue.**
 - i. ANNEXOR/DEVELOPER agrees that the entirety of East 152nd Avenue adjacent to the property particularly described in Exhibit 'A' will be annexed into the City of Brighton. Once annexed, the existing right of way described above will be known as East Bromley Lane. On any future subdivision plan or final plat document, East 152nd Avenue shall be labeled as East Bromley Lane. In addition, the annexation of right of way shall extend across the railroad tracks to the west to be adjacent with existing city limits.
 - b. **East Bromley Lane.**
 - i. DEVELOPER agrees to dedicate to the City of Brighton all right of way necessary for East Bromley Lane.
 - ii. DEVELOPER agrees to design and construct the northern half of East Bromley Lane, along the full frontage of the Property, from the eastern bounds of the property, through the railroad right of way, and to the existing city limits to the west, to the full design of a Major Arterial street as identified in the City's Transportation Master Plan, or otherwise identified by City Staff at the time of development.
 - iii. The timing of the dedication, design, and construction will be determined at time of subdivision plan. Details regarding the design and construction will be determined at the time of final plat/development agreement.
 - c. **CITY's Standards and Specifications.** Notwithstanding the provisions of this agreement, 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. Interstate 76 Flyover.** DEVELOPER agrees to financially contribute their pro rata share of the design and construction of the expansion of the bridge structure over Interstate 76, at an amount determined by an Engineering Estimate of Probable Costs, due to the CITY at time of subdivision plan.
- 3. Traffic Signal Design and Construction.**
- a. DEVELOPER agrees to design and construct signalized intersections to their interim conditions at the following locations. The timing of the design and construction will be determined at the time of subdivision plan. Details of design

and construction will be determined at the time of final plat(s)/development agreement(s).

- i. Intersection of East Bromley Lane and Frontage Road east of I-76;
 - ii. Associated ramps of northbound Interstate 76; and
 - iii. Associated ramps of southbound Interstate 76.
 - b. DEVELOPER may seek reimbursement from Traffic Impact Fees collected from this development by the CITY up to a total cost of the intersection improvements less the DEVELOPER'S impacts, determined by a Traffic Impact Study at the time of development.
 - c. DEVELOPER may seek reimbursement from traffic impact fees for the above noted improvements in accordance with City of Brighton Municipal Code, as may be amended, contingent upon necessary CITY approvals.
4. **Construction Requirements. Access Points.** DEVELOPER shall construct, or cause the construction of one or more access point(s) to the Property, as required to serve future development, which shall be reviewed and approved by the CITY, the details and timing of which shall be determined at the time of subdivision plan.
5. **Overhead Utility Lines.** As referenced in Subsection II. C., DEVELOPER shall be responsible for undergrounding overhead utility lines running adjacent to the Property.
6. **Street Lighting.** DEVELOPER shall be responsible for the installation of street lighting along all roads adjacent to the Property and any roads constructed at the time of development, the details and timing of which shall be determined at the time of final plat/development agreement.
7. **Water and Sewer Connection and Upsizing.**
 - a. CITY agrees to provide water service and sewer service to the Property. DEVELOPER assumes the sole responsibility for the construction, design and coordination of, and the connection to all additional water, stormwater and sanitary sewer facilities necessary to serve the Property, and all costs associated therewith. This will include looping of water lines and construction through railroad right-of-way.
 - b. At the time of development, DEVELOPER will confirm that the existing lift station needed for this Property is sized appropriately and/or has sufficient capacity. If not, DEVELOPER shall be responsible for all needed upgrades and/or improvements.
 - c. DEVELOPER will be responsible to upsize any existing utility infrastructure needed to serve the new development and annexed property.
 - d. At time of civil construction drawings, the CITY may request that DEVELOPER shall install additional encasements and/or upsizing for utilities crossing railroad right-of-way, ditches and/or highways.
 - e. The CITY will reimburse for cost of materials for any upsizing and encasements that the CITY requests.
8. **Stormwater Infrastructure.**
 - a. DEVELOPER agrees to safely convey stormwater runoff to the Beebe Seep.

- b. DEVELOPER agrees to implement all improvements to the Beebe Seep identified in the Master Drainageway Plan and Flood Hazard Area Delineation Study (MDP and FHAD) completed by Mile High Flood District and/or CITY, as it may be amended from time to time.
- c. DEVELOPER agrees to mitigate any impacts from runoff as it relates to the discharge to Beebe Seep.
- d. DEVELOPER is responsible for the cost, coordination, design and construction of any floodplain map revision or amendment proposed by the DEVELOPER and approved by the CITY and Mile High Flood District.
- e. DEVELOPER agrees to dedicate all floodplain areas, as shown in the MDP and FHAD, to the CITY. If changes to said floodplain are anticipated by the parties, said changes must be implemented by the map revision and/or amendment process prior to any platting of the PROPERTY.

9. Parks and Open Space

- a. DEVELOPER agrees to dedicate to the City of Brighton, with a final plat, all right of way as necessary for construction of any trails required at the discretion of the CITY.
- b. DEVELOPER agrees to dedicate and/or pay fee in lieu of open space dedication in an amount required by CITY at time of building permit issuance.
- c. DEVELOPER agrees that if the zoning of the Property is ever zoned and developed under a residential designation, all required park / open space dedications and/or fee in lieu of land dedication will be satisfied by the DEVELOPER at the discretion of the CITY.

10. Water Dedication. 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, source included, that is acceptable to the City, in its sole discretion.

11. 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 & Development Code* of the City and that this Agreement does not approve or otherwise guarantee how the subject Property will be zoned.

12. Zoning of Property. ANNEXOR has submitted an application for a zoning district of I-1 ("Light Industrial"), ("Zoning Application") in connection with ANNEXOR's petition for annexation of the Annexed Area to the City, which Zoning Application shall be considered concurrently with the annexation of the Annexed Area, as provided in the City's *Land Use & Development Code*. The Parties acknowledge the rights of ANNEXOR to void the annexation proceeding if zoning to I-1 is not granted pursuant to the annexation petition. Notwithstanding the foregoing, the CITY agrees to permit on-going agricultural activities on the Property as a legal nonconforming use until approval of a final plat.

13. Subsequent Land Development Applications. Before any platting can take place, a major subdivision plan must be approved and accepted by all applicable review entities.

14. **Development Agreement.** DEVELOPER agrees that one or more development agreement(s) will be completed at time of subdivision plan and/or final plat(s).
15. **CDOT and Railroad Permits and Permissions.** DEVELOPER agrees to coordinate with any and all applicable external agencies for their review and approval of dedication, design and construction permits.
16. **Access Easements.** DEVELOPER agrees to maintain and / or grant access to property owners and appropriate invested parties with any properties to the north and east of the Property, as such will be shown with recordation information on the subdivision plan / final plat.
17. **Addressing.** DEVELOPER agrees that the road adjacent to the Property is titled East Bromley Lane and should appear as such on any future subdivision and addressing documents.
18. **Applicable Master Plans to this Annexation.** Notwithstanding any provision of this Annexation Agreement to the contrary, the Master Plans applicable to the Property are those listed below, as amended:
 - a. **Drainage.**
 - i. Brighton Watershed Outfall Systems Plan (OSP)
 - b. **Water and Wastewater.**
 - i. Water and Wastewater Systems Master Plan
 - c. **Transportation.**
 - i. Transportation Master Plan
 - d. **Parks and Recreation.**
 - i. Park and Recreation Master Plan
 - e. **Community Development**
 - i. Be Brighton Comprehensive Plan
19. **Existing Water Wells.** Notwithstanding the provisions of Section III(H), CITY agrees to permit ANNEXOR and/or DEVELOPER to use existing water and water wells on the Property for the permitted purposes until the earlier of (i) three years from the date of this Agreement or (ii) upon the approval of a final plat.
20. **Development Obligations.** Any payment of fees, costs, or dedication of real property, as required by this Agreement, shall occur at such time as specified herein, including, without limitation, at the time of subdivision plan, final plat, development agreement, and/or site plan.