

VILLANI ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT "Agreement", dated this 19 day of JUNE, 2018 is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Villani Partnership LLP ("Owners" or "Property Owners").

I. INTRODUCTION

The Owners own all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A (the Property).

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owners will be required to expend substantial amounts of funds for the installation of infrastructure needed to service the Property and, therefore, desires to clarify Owners' obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Owners. Subject to the terms and conditions set forth in this Agreement, both the City and Owners wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the parties, the City and Owners agree as follows.

II. ANNEXATION

The Owners have petitioned the City for annexation of the Property as set forth in Exhibit A. The annexation will become effective upon final approval by the City Council and the recording of this Agreement, the annexation plat, this Agreement, special warranty deed and irrevocable consent to the appropriation, withdrawal, and use of groundwater as forth in Exhibit B and the annexation ordinance with the El Paso County Clerk and Recorder.

All references to the Property or to the Owners' Property are to the Property described in Exhibit A except as otherwise indicated.

III. LAND USE

As provided in the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code"), the Manager of the City Planning and Development Department has waived the requirement of submission of a land use master plan for this annexation because it meets the criteria in City Code § 7.5.403(B). Owners will comply with the future approved or amended Concept Plan, approved in accord with applicable provisions of the City Code.

IV. ZONING

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for the Owners' Property shall be Agricultural (A) upon annexation. While zoned Agricultural (A), a development plan shall be required for any use. Owners acknowledge the initial zoning of the Property shall also include an Avigation Easement over the entire Property. Owners acknowledge and understand that the City Council determines what an appropriate zone is for the Property, and this recommendation does not bind the Planning Commission or City Council to adopt the initial recommended zoning for the Property.



B. Change of Zoning. At the time of development, the Owners must apply to the the City for a change of zone district that is appropriate for the proposed development on the Property. At that time, a full public process will be required to discuss proposed or potential land uses. No proposed or potential land uses are established upon annexation and the initial Agricultural (A) zoning.

V.
PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: 1.) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (For water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section VI. "Utilities Services" and Section VII. "Water Rights" of this Agreement.); 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; 4.) Arterial roadway bridges; 5.) Parks; 6.) Schools; and 7.) Other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall be subject to the provisions of the Chapter 7, Article 7 of the City Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. N/A

C. 1. Streets, Bridge and Traffic Control. Unless agreed to elsewhere in this Agreement the Owners agree to construct, at the Owners' expense, those street, bridge and/or traffic improvements adjacent to or within the Property. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. The provisions of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) are excluded. City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

2. On-Site or Adjacent Streets: Owners agree to comply with timing and phasing of construction responsibilities outlined specifically on future development plans and any subsequent amendments. Owner agrees to work with the western adjacent property owners to provide a reasonable access location to their site.

D. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Owners to the City and approved by the City Engineer at the time of future development. Final Drainage Reports and Plans shall be prepared and submitted by the Owners to the City and approved by the City Engineer, prior to recording subdivision plats. Owners shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge and detention pond fees and the reimbursement for drainage facilities constructed. The Owners shall provide water quality and detention for all developed areas. Owners shall be responsible for conformance with the Cottonwood Creek Drainage Basin Planning Study.

E. Parks: Any residential uses are subject to fees in lieu of parkland dedication pursuant to City Code Chapter 7, Article 7, Part 12.

F. Schools: Any residential uses are subject to fees in lieu of school land dedication pursuant to City Code Chapter 7, Article 7, Part 12.

G. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands dedicated within the Property will be built by the Owners without reimbursement by the City or the School District.

VI. UTILITY SERVICES

A. Colorado Springs Utilities (CSU) Services: CSU's water, non-potable water, wastewater, electric, streetlight, and gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant meets all applicable City ordinances and regulations, and applicable CSU tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed in this Agreement and the dedication of public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU utility system facilities that currently exist or that may exist at the time of the proposed extension.

Owners shall ensure that the connection and extension of Utility Services to the Property are in accord with all codes and regulations in effect at the time of Utility Service connection and/or extension, including but not limited to CSU's tariffs, rules, and policies, City ordinances, resolutions, and policies, and the Pikes Peak Regional Building Department codes. Further, as specified in this Agreement below, Owners acknowledge responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU.

CSU's connection requirements may require the Owners to provide a bond(s) or to execute a Revenue Guarantee Contract or other CSU-approved guarantee for the extension of any Utility Service before CSU authorizes the extension of Utility Services and/or other utility systems improvements, or any request for a service connection to the Property by Owners. Owners acknowledge that such connection requirements shall include Owners' payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service, and any costs CSU incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owners are responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owners acknowledge that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owners upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future.

B. Dedications and Easements: Notwithstanding anything contained in Section XI of this Agreement to the contrary, Owners, at Owners' sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that CSU determines are required for any utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system, including but not limited to, any access roads, gas regulation or electric substation sites, electric transmission

and distribution facilities, water storage reservoir/facility sites, and wastewater or water pump station sites. CSU shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owners shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU. Owners shall pay all fees and costs applicable to and/or associated with the platting of the real property to be dedicated to the City, and all fees and costs associated with the conveyance of real property interests by plat or by separate instrument, including but not limited to, Phase 1 and Phase 2 environmental assessments, closing costs, title policy fees, recording fees for any deeds, permanent and temporary easement documents, and other required documents. Dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and any applicable CSU policies and procedures, and shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form without modification or as approved by CSU.

If Owners, with prior written approval by CSU, relocate, require relocation, or alter any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owners' sole cost and expense. If CSU determines that Owners' relocation or alteration requires new or updated easements, then Owners shall convey those easements prior to relocating or altering the existing utility facilities using CSU's then-current Permanent Easement Agreement form without modification or as approved by CSU. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

C. Extension of Utility Facilities by CSU: Subject to the provisions of this Article, including sections A and B above, and all applicable CSU tariffs, rules, regulations, and standards, CSU will extend electric and gas service to the Property if CSU determines that there will be no adverse effect to any Utility Service or utility easement. Owners shall cooperate with CSU to ensure that any extension of gas or electric facilities to serve the Property will be in accord with CSU's Line Extension and Service Standards.

1. Natural Gas Facilities: If prior to annexation any portion of the Property is located outside CSU's gas service territory, then upon annexation, CSU will acquire the gas service territory within the Property from the then-current gas service provider. Accordingly, Owners shall be solely responsible for all costs and expenses, including but not limited to, attorneys' fees that CSU incurs due to any Colorado Public Utilities Commission ("CPUC") filings made or arising from annexation of the Property. Owners shall support and make any CPUC filings necessary to support CSU's filings to the CPUC.

2. Electric Facilities:

A. If any portion of the Property is located outside CSU's electric service territory, then upon annexation:

1. CSU will acquire the electric service territory within the Property that is not served by CSU from the then-current electric service provider in accordance with C.R.S. §§ 40-9.5-201 *et seq.*, or 31-15-707;
2. Owners shall be solely responsible for providing the just compensation for electric distribution facilities and service rights specified in C.R.S. §§ 40-9.5-204 plus all costs and fees, including but not limited to, attorneys' fees that CSU incurs as a result of or associated with the acquisition of such electric service territory; and
3. Owners shall be solely responsible for all costs: (a) to remove any existing electric distribution facilities within the Property that were previously installed by the then-current electric service provider ("Existing Facilities"); and (b) to convert any overhead electric lines to underground service lines ("Conversion") as determined by CSU.

B. Within thirty (30) days of Owners' receipt of an invoice for the following:



1. Owners shall pay the then-current electric service provider, directly, for the just compensation specified in C.R.S. §§ 40-9.5-204(1)(a) and 40-9.5-204(1)(b); and
 2. If the then-current electric service provider removes the Existing Facilities, then Owners shall pay the then-current electric service provider directly for the removal of any Existing Facilities.
 - C. Further, Owners shall pay CSU the just compensation specified in C.R.S. §§ 40-9.5-204(1)(c) and 40-9.5-204(1)(d) within thirty (30) days of Owners' receipt of an invoice for such costs.
 - D. Owners shall also pay for any Conversion required by CSU as a result of such annexation concurrent with the execution of a contract between the Owners and CSU that specifies the terms of Conversion.
 - E. CSU, in its sole discretion, may require Owners to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities.
3. Water and Wastewater Facilities by CSU: The Owners shall pay any recovery-agreement charges or other fees or charges that are not currently approved by CSU for the Property, but which may become applicable as a result of any on-site or off-site water or wastewater system facilities that CSU or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, the Owners shall be subject to cost recovery for the engineering, materials and installation costs incurred by CSU in its design, construction, upgrade or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations or treatment facilities, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances that CSU, in its sole discretion, determines are necessary to serve the Property.

D. Water and Wastewater System Extensions by Owners: Owners must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owners' sole cost and expense in accord with all applicable CSU tariffs, rules, regulations, including CSU's Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for water or wastewater service. Consistent with City Code 7.7.1102(B), Owners shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to CSU's approval of Owners' water and wastewater service requests.

Owners shall be solely responsible for all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by CSU. Further, Owners acknowledge that CSU may require that such water or wastewater system facilities be larger than necessary to serve the Property itself, and may require the Owners to participate in other development projects, and any necessary off-site system facilities improvements, on a fair-share, pro rata basis. In the event CSU requires such water and wastewater systems to be larger than necessary to serve the Property itself, then Owners may seek reimbursement as provided in CSU's Utilities Rules and Regulations.

The plans, specifications, and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances, are each subject to CSU's inspection and written acceptance. CSU shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the utility system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until CSU provides written approval of Owners' water or wastewater construction plans and copies of such approved plans are received by CSU. Owners may only connect newly-constructed facilities to CSU's existing water or wastewater systems upon CSU's inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owners acknowledge that a Preliminary Utility Plan, Wastewater Master Facility Form, Hydraulic Grade Line Request Form, and Hydraulic Analysis Report (as determined by CSU) are required and must be completed and approved by CSU.

The water distribution system facilities must meet CSU's criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. Also, to ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by CSU.

Further, Owners recognize that the extension of water system facilities may affect the quality of water in CSU's water system. Consequently, Owners acknowledge responsibility for any costs that CSU determines necessary to incur in order to maintain water quality in its system as a result of Owners' water system extensions, including but not limited to, the cost of any lost water, materials and labor from pipeline-flushing maintenance activities, temporary pipeline loop extensions, or other appurtenances and measures that CSU determines are necessary to minimize pipeline flushing and to maintain water quality (Water-quality Maintenance Costs). Owners shall reimburse CSU for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these provisions apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of CSU. Subject to the provisions of the Article of this Agreement that is labeled "WATER RIGHTS", CSU's tariffs, policies, and/or contract agreements, as may be modified from time to time, shall govern the use of all Utilities Services, including but not limited to, groundwater and non-potable water for irrigation use by the Owners for the Owners' exclusive use.

F. Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation, the Property is subject to subsequent inclusion into the boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136(3.6) as may be amended, and the rules and procedures of the District. Further, notice is hereby provided that, after inclusion of the Property into the boundaries of the District, the Property shall be subject to a property tax mill levy for the purposes of meeting the financial obligations of the District. The Owners acknowledge that water service for the Property will not be made available by CSU until such time as the Property is formally included within the boundaries of the District. District inclusion requires consent by the Bureau of Reclamation ("Reclamation"). The Owners shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain Reclamation's consent to include the Property into the District.

VII. WATER RIGHTS

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owners grant to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as "the Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owners concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property. The Deed shall be recorded concurrent with the recording of the annexation agreement, annexation plat, and annexation ordinance at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owners and all successors in title, Owners irrevocably consent to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owners agree to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owners' Property without additional consent from Owners.

Upon annexation of the Property, any wells or groundwater developed by Owners prior to annexation will become subject to CSU's applicable tariffs, Rules and Regulations, and rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and CSU, and shall be consistent with CSU's standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future. No commingling of well and City water supply will be permitted.

VIII. FIRE PROTECTION

The Property being considered for annexation is not within a Fire Protection District. The Property would fall within the sole boundary of the City of Colorado Springs and be covered by the Colorado Springs Fire Department. The Owners understand and acknowledge that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire District for exclusion of the Property from the Fire District. The Owners understand and acknowledge that the Owners, Owners' heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

IX. FIRE PROTECTION FEE

The Owners agree to pay a fee of \$1,631.00 per gross acre of the entire annexed area as their share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation. The Fire Protection Fee will be due prior to recordation of the annexation plat and this agreement. The City agrees as future annexations occur within the service area of a proposed fire station, the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the fire station.

X. POLICE SERVICE FEE

The Owners agree to pay a fee of \$600.00 per gross acre of the entire annexed area as Owners' share of the capital cost of a new police station and the initial equipment purchase required to service this annexation as well as adjacent areas of future annexation. The Police Service Fee will be due prior to recordation of the annexation plat and this agreement. The City agrees as future annexations occur within the service area of a proposed police station, the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the police station.

XI. PUBLIC LAND DEDICATION

Owners agree that all land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid.

Owners agree that any land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owners. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Owners prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by General Warranty Deed.
- B. Owners shall convey the property to the City within thirty (30) days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property shall be paid by the Owners through the date of conveyance to the City.
- E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

XII.
SPECIAL PROVISIONS

Not applicable.

XIII.
ORDINANCE COMPLIANCE

Owners will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.
ASSIGNS AND DEED OF TRUST HOLDERS

Where as used in this Agreement, the term "the Owners" or "Property Owners," shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owners and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owners unless specifically assigned to another person.

Owners affirmatively state that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property

XV.
RECORDING

This Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Owners and all other



persons who may purchase land within the Property from the Owners or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Owners and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XVI.
AMENDMENTS

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the Property subject to the amendment unless otherwise specified in the amendment."

XVII.
HEADINGS

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

XVIII.
DEFAULT AND REMEDIES

If either the Owners or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

XIX.
GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owners and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owners and City shall continue to be bound by all terms and provisions of this Agreement.

XX.
SEVERABILITY



If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.



IN WITNESS WHEREOF, the parties hereto have set their hands and seals the _____ day and _____ year first written above.

CITY OF COLORADO SPRINGS

BY: _____
John Suthers, Mayor

ATTEST:

BY: _____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY: 
~~Wynetta Massey, City Attorney~~
Ben Bolinger, Senior Attorney



**EXHIBIT A
LEGAL DESCRIPTION**



LEGAL DESCRIPTION (VILLANI ANNEXATION)

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, WHOSE BEARINGS ARE RELATIVE TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 7 ASSUMED TO BEAR N 87°50'18" E. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF DUBLIN NORTH 3A ANNEXATION AS RECORDED IN RECEPTION NO. 207712723 OF THE RECORDS OF EL PASO COUNTY, COLORADO, THENCE N87°35'02"E, 547.54 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, S00°15'12"E, 702.31 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, S87°59'14"W, 965.56 FEET;

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, N59°48'55"W, 80.00 FEET;

THENCE N59°48'55"W, 14.53 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF TUTT BOULEVARD AS RECORDED IN RECEPTION NO. 208136391 AND RECEPTION NO. 209712964 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TUTT BOULEVARD 222.97 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS IS 654.00 FEET, HAS A CENTRAL ANGLE OF 19°32'02" AND WHOSE CHORD BEARS N10°37'46"E, 221.89 FEET;

THENCE CONTINUING ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TUTT BOULEVARD N00°09'31"W, 55.61 FEET TO A POINT ON THE SOUTHERLY LINE OF TEMPLETON ANNEXATION NO. 2 AS RECORDED IN RECEPTION NO. 20872804 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTH LINE OF SAID TEMPLETON ANNEXATION NO. 2, S82°21'08"E, 126.56 FEET;

THENCE ALONG THE SOUTH LINE OF SAID TEMPLETON ANNEXATION NO. 2, S59°48'54"E, 80.00 FEET TO THE SOUTHEAST CORNER THEREOF;

THENCE ALONG THE EAST LINE OF SAID TEMPLETON ANNEXATION NO. 2, N30°11'06"E, 519.41 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 13.10 ACRES (570,793 SF) MORE OR LESS.

Prepared By:

M.V.E., Inc.

1903 Lelaray Street, Suite 200

Colorado Springs, CO 80909

September 20, 2017

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A handwritten signature in blue ink, appearing to be 'MVE', is located in the bottom right corner of the page.

EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
VILLANI ANNEXATION

Villani Partnership LLP ("Grantor(s)"), whose address is 2809-B N Tejon St Colorado Springs,, Colorado, in consideration of the benefits received pursuant to the Villani Annexation Agreement dated 6/19/18 ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights", together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s). The Water Rights include but are not limited to those described in Exhibit B.

Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this 19th day of June, 2018.

GRANTOR(s):

By: [Signature]

Name: Rocco Villani

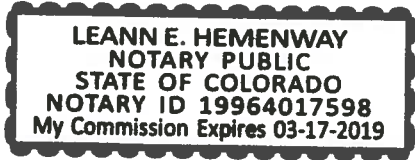
Its: PRESIDENT

STATE OF Colorado)

COUNTY OF El Paso) ss.

The foregoing instrument was acknowledged before me this 19th day of June, 2018, by Rocco Villani and President of Villani Partnership LLP, Grantor.


Witness my hand and official seal.
My Commission Expires:



[Signature]
(SEAL) Notary Public

[Handwritten mark]

Accepted by the City of Colorado Springs

By:  this 18 day of July, 20 18
Real Estate Services Manager

By:  this 26 day of June, 20 18
Colorado Springs Utilities Systems Extension Manager

Approved as to Form:

By: 
City Attorney's Office

Date: 8/9/18

Exhibit A
LEGAL DESCRIPTION

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater
executed by Villani Partnership LLP, Grantor(s) on 6/19/18.



LEGAL DESCRIPTION (VILLANI ANNEXATION)

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, WHOSE BEARINGS ARE RELATIVE TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 7 ASSUMED TO BEAR N 87°50'18" E, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF DUBLIN NORTH 3A ANNEXATION AS RECORDED IN RECEPTION NO. 207712723 OF THE RECORDS OF EL PASO COUNTY, COLORADO, THENCE N87°35'02"E, 547.54 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, S00°15'12"E, 702.31 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, S87°59'14"W, 965.56 FEET;

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, N59°48'55"W, 80.00 FEET;

THENCE N59°48'55"W, 14.53 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF TUTT BOULEVARD AS RECORDED IN RECEPTION NO. 208136391 AND RECEPTION NO. 209712964 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TUTT BOULEVARD 222.97 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS IS 654.00 FEET, HAS A CENTRAL ANGLE OF 19°32'02" AND WHOSE CHORD BEARS N10°37'46"E, 221.89 FEET;

THENCE CONTINUING ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TUTT BOULEVARD N00°09'31"W, 55.61 FEET TO A POINT ON THE SOUTHERLY LINE OF TEMPLETON ANNEXATION NO. 2 AS RECORDED IN RECEPTION NO. 20872804 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTH LINE OF SAID TEMPLETON ANNEXATION NO. 2, S82°21'08"E, 126.56 FEET;

THENCE ALONG THE SOUTH LINE OF SAID TEMPLETON ANNEXATION NO. 2, S59°48'54"E, 80.00 FEET TO THE SOUTHEAST CORNER THEREOF;

THENCE ALONG THE EAST LINE OF SAID TEMPLETON ANNEXATION NO. 2, N30°11'06"E, 519.41 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 13.10 ACRES (570,793 SF) MORE OR LESS.

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M.V.E., Inc.
1903 Lelaray Street, Suite 200
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September 20, 2017
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Exhibit B

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater
executed Villani Partnership LLP, Grantor(s) on 6/19/18.

Decreed Groundwater Rights

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

Permitted Groundwater

Permit No.

Date of Permit:

Source:

Amount:

Name of Owner:

Legal Description of Well or other structure:

Surface Water Rights

Name of Water Right:

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner: