

**THE SANDS ADDITION NO. 4
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT "Agreement", dated this 5th day of JUNE, 2018, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Babcock Land Corporation ("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. The annexation will become effective upon final approval by the City Council and the recording of this annexation agreement, the annexation plat, The Sands Addition No. 1 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.

This agreement is intended to as a subsequent annexation agreement as part of the overall Sands Annexation to include as a whole The Sands Additions No. 1 through 4 Annexation. The provisions contained in The Sands Addition No. 1 Annexation Agreement shall apply to the Property described herein and any pf the property described in The Sands Annexation. All provisions of The Sands Addition No. 1 Annexation Agreement will extend to the Property as part of the overall annexation and included in the Agreement.

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

The Sands Master Plan for the Property has been proposed and submitted to the City for approval. Owners will comply with the approved Master Plan or an amended Master Plan approved in accord with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

IV.
ZONING

A. Zoning. The Planning and Community Development Department of the City agrees to recommend that the initial zone for the Owners' Property shall include those portions of M-1/AO/SS (Light Industrial with Airport Overlay and Streamside Overlay; CPC ZC 17-00081), R1-6000/DFOZ/AO/SS (Single-family Residential with Design Flexibility Overlay, Airport Overlay and Streamside Overlay; CPC ZC 17-00082), and PBC/AO/SS (Planned Business Center with Airport Overlay and Streamside Overlay, CPC ZC 17-00083) as identified on The Sands Master Plan, CPC MP 17-00080, and The Sands Concept Plan, CPC CP 17-00084, upon annexation. A future development plan shall be required for any use. Owner acknowledges the Property shall also be zoned with Airport Overlay with an Avigation Easement over the entire Property. Owners acknowledge and understand that the City Council determines what an appropriate initial zone is for the Property, and the recommendation contained in this Agreement does not bind the Planning Commission or City Council to adopt the recommended zone for the Property.

B. Change of Zoning. Any future change of zone district request shall conform to The Sands Master Plan, CPC MP 17-00080, as approved or as amended by the City in the future. Rezoning in accord with the zones reflected on the Master Plan must occur prior to actual development of the site.

V.
PUBLIC FACILITIES

A. Streets. Streets shall be governed by Article V of The Sands Addition No. 1 Annexation Agreement.

B. Drainage. Drainage shall be governed by Article V of The Sands Addition No. 1 Annexation Agreement.

C. Metropolitan Districts. Metropolitan Districts shall be governed by Article V of The Sands Addition No. 1 Annexation Agreement.

D. Parks. Any residential uses are subject to park fees or park lands dedicated in lieu of park fees. Owners will dedicate 5.6 acres for parks and 5.13 acres shall be paid as fee in lieu. Owners shall be entitled to park credits for the trail to be constructed along the drainage channel.

E. Schools. No school site dedication will be required. Any residential uses are subject to school fees.

VI.
UTILITY SERVICES

Utilities shall be provided as set forth in Article VI of The Sands Addition No. 1 Annexation Agreement.

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 Owners understand and acknowledge that the Property is located within the boundaries of the Falcon Fire Protection District (the “Fire District”) and 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, their 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 that as future annexations occur within the service area of the 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 that as future annexations occur within the service area of the 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

Public land dedication shall be governed by Article XI of The Sands Addition No. 1 Annexation Agreement.

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 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 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 of _____, 20__.

CITY OF COLORADO SPRINGS

BY: _____
John W. Suthers, Mayor

ATTEST:

BY: _____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY: 
Office of the City Attorney

OWNER:

Babcock Land Corporation
212 N Wahsatch Avenue, Suite 301
Colorado Springs, CO 80903

By: [Signature]

Name: JEFF MARK

Title: VICE PRESIDENT
(Owner)

ACKNOWLEDGMENT

STATE OF Colorado)
) ss.
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 5th day of June, 2018,
by Jeff Mark as Owner(s).

Witness my hand and notarial seal.

My commission expires: 3-22-21

SUSAN L GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044004607
MY COMMISSION EXPIRES MARCH 22, 2021

[Signature]
Notary Public
Address: 765 Carlson Dr
Col Spgs CO 80917

DEED OF TRUST HOLDER:

By: _____

Name: _____

Title: _____

Financial Institution: _____

N/A

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

ss.

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

Witness my hand and notarial seal.

My commission expires: _____

Notary Public
Address: _____

EXHIBIT A

LEGAL DESCRIPTION

The Sands Addition No. 4 Annexation

A PARCEL OF LAND LYING WITHIN THE SOUTH HALF OF SECTION 33, TOWNSHIP 13 SOUTH, RANGE 65 WEST AND THE NORTH HALF OF SECTION 4, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD BEING COINCIDENT WITH A LINE BEING 80.00 FEET EASTERLY OF THE WESTERLY LINE OF SAID SECTION 33, BEING MONUMENTED AT THE SOUTH END BY A REBAR WITH A YELLOW PLASTIC CAP STAMPED "AZTEC LS 36567", AND AT THE NORTH END BY A NO. 5 REBAR, ASSUMED TO BEAR N00°10'57"E.

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 33;
THENCE S00°10'57"W, A DISTANCE OF 4801.25 FEET TO A POINT COINCIDENT WITH THE CENTERLINE OF MARKSHEFFEL ROAD;
THENCE S89°49'03"E, A DISTANCE OF 80.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID MARKSHEFFEL ROAD AS CONVEYED TO EL PASO COUNTY BY THE WARRANTY DEED AS RECORDED SEPTEMBER 14, 2010 UNDER RECEPTION NO. 210107562 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER SAID POINT BEING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED;

THENCE N89°55'04"E, A DISTANCE OF 669.99 FEET;
THENCE N00°05'10"E, A DISTANCE OF 716.59 FEET TO THE SOUTHWESTERLY CORNER OF LOT 7, BLOCK 2 AS PLATTED IN ROCKY MOUNTAIN INDUSTRIAL PARK FILING NO. 1, AS RECORDED UNDER RECEPTION NO. 202014735 OF SAID COUNTY RECORDS;
THENCE N89°58'07"E ALONG THE SOUTHERLY LINE OF BLOCK 2, AS PLATTED IN SAID ROCKY MOUNTAIN INDUSTRIAL PARK FILING NO. 1, A DISTANCE OF 1004.19 FEET TO THE NORTHWEST CORNER OF THE SPECIAL WARRANTY DEED, AS RECORDED UNDER RECEPTION NO. 216016072 OF SAID COUNTY RECORDS;
THENCE ALONG THE WESTERLY AND SOUTHERLY LINES OF SAID SPECIAL WARRANTY DEED THE FOLLOWING TWO (2) COURSES:

1. S00°01'38"E, A DISTANCE OF 250.00 FEET;
2. N89°58'07"E, A DISTANCE OF 200.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF CAPITAL DRIVE AS DESCRIBED IN THE RESOLUTION NO. 00-189, AS RECORDED UNDER RECEPTION NO. 200144328 OF SAID COUNTY RECORDS;

THENCE S00°01'38"E ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 974.05 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CONSTITUTION AVENUE AS RECORDED IN PLAT BOOK Y-3 AT PAGE 169 OF SAID COUNTY RECORDS;
THENCE N89°58'14"E ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 688.41 FEET TO THE SOUTHEASTERLY CORNER OF LOT 7, BLOCK 1 AS PLATTED IN SAID ROCKY MOUNTAIN INDUSTRIAL PARK FILING NO. 1;

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

1. N89°58'14"E, A DISTANCE 766.41 FEET TO A POINT ON CURVE;
2. ALONG THE ARC OF A 1,897.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 14°26'03", AN ARC LENGTH OF 477.90 FEET (THE LONG CHORD OF WHICH BEARS S82°47'56"E, A LONG CHORD DISTANCE OF 476.63 FEET;

THENCE S14°24'55"W ACROSS SAID CONSTITUTION AVENUE, A DISTANCE OF 120.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID CONSTITUTION AVENUE;

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

1. ALONG THE ARC OF A 1,777.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 14°27'53", AN ARC LENGTH OF 448.62 FEET (THE LONG CHORD OF WHICH BEARS N82°48'50"W, A LONG CHORD DISTANCE OF 447.42 FEET;
2. S89°58'14"W, A DISTANCE 3,491.75 FEET;

THENCE N00°10'57"E, A DISTANCE OF 627.40 FEET;

THENCE S89°49'03"E, A DISTANCE OF 160.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS A CALCULATED AREA OF 53.2874 ACRES OF LAND, MORE OR LESS.

EXHIBIT B

**SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
THE SANDS ADDITION NO. 4 ANNEXATION AGREEMENT**

(Owners) ("Grantor(s)"), whose address is PO Box 1204, Monument, Colorado, in consideration of the benefits received pursuant to The Sands Addition No. 4 Annexation Agreement dated JUNE 5, 2018 ("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 5th day of JUNE, 2018.

GRANTOR(s):

Babcock Land Corporation
212 N Wahsatch Avenue, Suite 301
Colorado Springs, CO 80903

By: [Signature]
Name: JEFF MARK
Title: VICE PRESIDENT

STATE OF Colorado)
COUNTY OF El Paso) ss.

The foregoing instrument was acknowledged before me this 5th day of June, 2018, by Jeff Marik, Grantor.

Witness my hand and official seal.
My Commission Expires:

SUSAN L GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044004607
MY COMMISSION EXPIRES MARCH 22, 2021

[Signature]
(SEAL) Notary Public

Accepted by the City of Colorado Springs

By: [Signature] this 5th day of June, 2018
Real Estate Services Manager

By: [Signature] this 5th day of June, 2018
Colorado Springs Utilities Systems Extension Manager

Approved as to Form:

By: [Signature]
City Attorney's Office

Date: 6/5/18

Exhibit A

To the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater executed by Babcock Land Corporation, Grantor(s) on JUNE 5, 2018.

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THENCE S00°01'38"E ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 974.05 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CONSTITUTION AVENUE AS RECORDED IN PLAT BOOK Y-3 AT PAGE 169 OF SAID COUNTY RECORDS;
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