

ORDINANCE NO. 17-106

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS THE 2864 SOUTH CIRCLE DRIVE ANNEXATION CONSISTING OF 5.754 ACRES

WHEREAS, pursuant to Article II, Section 30 of the Colorado Constitution and Section 31-12-101, *et seq.*, C.R.S., known as the Municipal Annexation Act of 1965, as amended (the "Annexation Act"), persons comprising one hundred percent (100%) of the landowners and owning one hundred percent (100%) of that certain territory known as the 2864 South Circle Drive Annexation, more specifically described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property") filed a Petition for Annexation with the City Clerk of the City of Colorado Springs; and

WHEREAS, the City Council of the City of Colorado Springs, after proper notice as required by Section 31-12-108 C.R.S., held a hearing on November 14, 2017 pertaining to the annexation of the Property in accord with Section 31-12-109; and

WHEREAS, in accord with Section 31-12-110 of the Annexation Act, the City Council determined, by resolution, that the applicable provisions of Section 30 of Article II of the Colorado Constitution and Section 31-12-104 and 105 of the Annexation Act have been met, an election is not required under Section 31-12-107(2) of the Annexation Act, and no additional terms and conditions are to be imposed on the annexation of the Property; and

WHEREAS, the City Council has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The Property, known as the 2864 South Circle Drive Annexation and more specifically described on the attached Exhibit "A", is hereby annexed to the City of Colorado Springs.

Section 2. When this annexation is complete, the Property shall become a part of the City of Colorado Springs for all intents and purposes on the

effective date of this ordinance, provided that the conditions of Section 31-12-113(2) C.R.S. are satisfied, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

Section 3. The annexation agreement between the owner of the Property and the City, attached hereto as Exhibit "B" and incorporated herein by reference, (the "Annexation Agreement") is hereby approved.

Section 4. The Mayor is hereby authorized to execute the Annexation Agreement.

Section 5. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 14th day of November 2017.

Finally passed: November 28th, 2017



Council President

Mayor's Action:

Approved on December 1, 2017

Disapproved on _____, based on the following objections:

John W. Suthers
Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President


ATTEST:

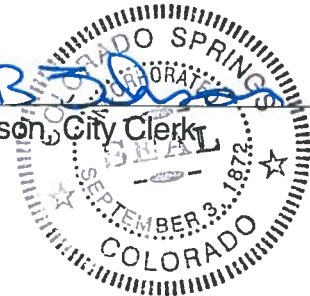
Sarah B. Johnson
Sarah B. Johnson, City Clerk



I HEREBY CERTIFY, that the foregoing ordinance entitled “AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS THE 2864 SOUTH CIRCLE DRIVE ANNEXATION CONSISTING OF 5.754 ACRES” was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on November 14th, 2017; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 28th day of November, 2017, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 1st day of December, 2017.


Sarah B. Johnson, City Clerk



1st Publication Date: November 17th, 2017

2nd Publication Date: December 6th, 2017

Effective Date: December 11th, 2017

Initial: SBS
City Clerk

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 SOUTH, RANGE 66 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTHERLY BOUNDARY OF LOT 1, BLOCK 1, AMOCO SUBDIVISION FILING NO. 1 RECORDED IN PLAT BOOK D-4 AT PAGE 65, RECORDS OF EL PASO COUNTY, COLORADO, MONUMENTED AT BOTH ENDS BY A 1-1/4" ALUMINUM SURVEYORS CAP "29749", IS ASSUMED TO BEAR S89°45'10"W, A DISTANCE OF 100.00 FEET.

COMMENCING AT THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK 1, AMOCO SUBDIVISION FILING NO. ONE RECORDED IN PLAT BOOK D-4 AT PAGE 65, RECORDS OF EL PASO COUNTY, COLORADO, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD AS PLATTED IN HARRISON SUBDIVISION FILING NO. 1 RECORDED IN PLAT BOOK A-3 AT PAGE 85, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE ON THE SOUTHERLY, EASTERLY AND NORTHERLY BOUNDARY OF SAID AMOCO SUBDIVISION FILING NO. ONE, THE FOLLOWING (3) THREE COURSES:

1. N89°45'10"E, A DISTANCE OF 100.00 FEET;
2. N00°14'50"W, A DISTANCE OF 100.00 FEET;
3. S89°45'10"W, A DISTANCE OF 100.00 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD;

THENCE N00°14'50"W, ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 565.40 FEET;

THENCE N89°45'10"E, A DISTANCE OF 367.14 FEET;

THENCE S01°37'10"W, A DISTANCE OF 769.22 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF HARRISON ANNEXATION PLAT AS RECORDED IN PLAT BOOK J-2 AT PAGE 58;

THENCE N78°25'30"W, ON SAID NORTHERLY BOUNDARY, A DISTANCE OF 291.33 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF CIRCLE DRIVE;

THENCE N87°06'50"W, ON SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 57.04 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD;

THENCE N00°14'50"W, ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 8.80 FEET TO A POINT ON SAID NORTHERLY BOUNDARY OF HARRISON ANNEXATION PLAT;

THENCE CONTINUING N00°14'50"W, ON SAID EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD AND THE EASTERLY BOUNDARY OF SAID HARRISON ANNEXATION PLAT, A DISTANCE OF 31.81 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 5.754 ACRES.

**2864 S. CIRCLE DRIVE ANNEXATION
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT ("Agreement"), dated this 22 day of August, 2017, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Toma Alliance Group, LLC, a Colorado limited liability company ("Owner" or "Property Owner").

I.
INTRODUCTION

The Owner owns 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 Owner will be required to expend substantial amounts of funds for the installation of infrastructure needed to service the Property and, therefore, desires to clarify Owner's 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 Owner. Subject to the terms and conditions set forth in this Agreement, both the City and Owner 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 Owner agree as follows.

II.
ANNEXATION

The Owner has 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 annexation agreement, the annexation plat, the Quitclaim 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 Owner's Property are to the Property described in Exhibit A except as otherwise indicated.

III.
LAND USE

As provided in 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 section 7.5.403B.

IV.
ZONING

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for the Owner's Property shall be zoned PBC (Planned Business Center) upon annexation. While zoned PBC, a development plan shall be required for any new use. Owner acknowledges and understands 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 recommended zone for the Property.

B. Change of Zoning. Any future change of zone request shall conform to the Comprehensive Plan, as approved or as amended by the City in the future.

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:

1. Streets, Bridge and Traffic Control. Unless agreed to elsewhere in this Agreement the Owner agrees to construct, at the Owner's 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.

a. On-Site or Adjacent Streets

Any development or redevelopment of the Property will require the installation of 5' detached or 6' attached sidewalk along Janitell Road adjacent to the Property.

- b. Off-Site Streets and Bridges: Not Applicable.
 - c. Traffic Control Devices. Not applicable
2. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Owner to the City and approved by the City Engineer. Final Drainage Reports and Plans shall be prepared and submitted by the Owner to the City and approved by the City Engineer, prior to recording subdivision plats. Owner 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 Owner shall provide detention and water quality for all developed areas; to be owned and maintained by the Owner. Owner shall be responsible for conformance with the Southwest Area Basin Drainage Basin Planning Study.

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 herein 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.

Owner 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 Pikes Peak Regional Building Department codes. Further, as specified herein below, Owner 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 Owner to provide a bond(s) or irrevocable Letter of Credit, and 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, and/or any request for a service connection to the Property by Owner. Owner acknowledge that such connection requirements shall include Owner' 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, Owner are responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owner 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 Owner 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, Owner, at Owner' sole cost and expense, shall dedicate by plat and/or convey by recorded document, all real property 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.

Owner shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU. Owner 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 or temporary easement documents, or 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, 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 Owner, with prior written approval by CSU, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owner's sole cost and expense. If CSU determines that Owner's relocation or alteration requires new or updated easements, then Owner 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: CSU currently provides electric and gas service to the Property. Subject to the provisions of this Article, including sections A and B above, and all applicable CSU tariffs, rules, regulations, and standards, CSU continue to provide electric and gas service to the Property. In the event of future development or redevelopment, 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. Owner 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.
- D. Water and Wastewater Facilities by CSU: The Owner 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 Owner 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.

- E. Water and Wastewater System Extensions by Owner: Owner 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 Owner' 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), Owner shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to CSU's approval of Owner's water and wastewater service requests.

Owner 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, Owner 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 Owner 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 Owner 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 Owner's water or wastewater construction plans and copies of such approved plans are received by CSU. Owner 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, Owner acknowledges 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, Owner recognizes that the extension of water system facilities may affect the quality of water in CSU's water system. Consequently, Owner acknowledge responsibility for any costs that CSU determines

necessary to incur in order to maintain water quality in its system as a result of Owner' 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). Owner shall reimburse CSU for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

- F. 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 Owner for the Owner' exclusive use.
- G. Southeastern Colorado Water Conservancy District: Owner and the City acknowledge that the Property is included within the boundaries of the Southeastern Colorado Water Conservancy District.
- H. Garden Valley Water and Sanitation District:

Water and wastewater service is currently provided to the Property by the Garden Valley Water and Sanitation District (the "District") and the Owner acknowledges that the Property is located within the boundaries of the District and is subject to property taxes payable to the District for its services. Unless the District grants the Owner's Petition for Exclusion from the District, Owner acknowledges that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the District and after annexation, the Property may be assessed property taxes payable to both the City and the District. Subject to the terms of this Agreement, the Owner agrees to connect to CSU's water and wastewater systems in order to receive water and wastewater service from CSU; and disconnect from the District's water and wastewater systems and CSU agrees to provide water and wastewater service to the Property upon annexation of the Property to the City. Owner further agrees to take all steps necessary or required by the District to disconnect from the District before connecting to CSU's systems. A CSU inspector must be present for this connection and disconnection process. After annexation of the Property into the City, CSU and Owner will coordinate the transition of providing water service to the Property from the District to CSU is as smooth as reasonably possible.

VII.
WATER RIGHTS

As provided in the Quitclaim Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property held by Owner, and any and all other water rights appurtenant to the Property held by Owner (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 Owner 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.

As reflected by the Judgement and Decree entered in District Court, Water Division 2, Case No. W-2694 on June 21, 1976, Janitell Farms, Inc. adjudicated water rights in the Fountain Creek Alluvial Aquifer underlying the Property associated with seven wells known as Janitell Well Nos. 101, 102, 105, 106, 107, 108, and 109 (the "Janitell Wells"). Through that certain Deed dated July 12, 1979, recorded at Book 3202 Page 341 of the records of the El Paso County, Colorado Clerk and Recorder, Ralph D. Janitell and Richard L. Janitell (the "Janitells") conveyed the Property to The Heritage Company but retained the ownership of the Janitell Wells and the associated water rights including all casings, water pumps, motors, distribution pipes, and electrical components used for operation of the wells. Since the water rights associated with the Janitell Wells were severed from the Property prior to Owner's ownership of the Property, Owner shall not be required to convey to the City any groundwater located in the Fountain Creek Alluvial Aquifer underlying the Property. Further, subject to approval by City Council, Owner shall not be required to compensate the City for the value of any groundwater located in the Fountain Creek Alluvial Aquifer underlying the Property. City Council approval of the annexation ordinance consenting to the terms of this paragraph is a condition precedent to annexation of the Property.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater in the Denver Basin Aquifers 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, Owner 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 Owner' Property without additional consent from Owner.

Upon annexation of the Property, any wells or groundwater developed and owned by Owner prior to annexation will become subject to CSU's applicable tariffs, Rules and Regulations, and rates as amended in the future. Owner' 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 Owner acknowledges that the Property is located within the boundaries of the Stratton Meadows Fire Protection District (the "Fire District") and is subject to property taxes payable to the Fire District for its services. The Owner further acknowledges that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire District until such time as the Property is excluded from the boundaries of the Fire District. After annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire District unless and until the Property is excluded from the Fire District. After annexation, the Property will be assessed property taxes payable to both the City and the Fire District until such time as the Property is excluded from the boundaries of the Fire District.

The Owner understands and acknowledges 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 Owner understands and acknowledges that the Owner, its 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 Owner agrees to pay a fee of \$1,985.00 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 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.

Within 90 days of the annexation being finalized, the Owner agrees to grant the Colorado Springs Fire Department access into any/all buildings, included as part of the annexation, for fire inspection purposes. The fire inspection is to determine the following but not limited to:

- 1- Presence and status of all fire protection systems to include but not limited to:
 - a. Fire sprinklers
 - b. Fire alarms
 - c. Standpipe systems
 - d. Fire hydrants
 - e. Water supply
 - f. Other specialized fire protection systems;
- 2- Presence, amounts, and locations of any/all hazardous materials;
- 3- Determination if any operational (annual) permits are required;
- 4- Status and adequacy of current fire lanes; and
- 5- Determination of compliance with all other fire code provisions as identified in the adopted Colorado Springs Fire Code at the time of annexation.

In the event the inspection reveals any deficiencies, Owners shall correct such deficiencies within a reasonable time and grant the Colorado Springs Fire Department access to re-inspect after such deficiencies have been corrected.

X.
POLICE SERVICE FEE

The Owner agrees to pay a fee of \$600.00 per gross acre of the entire annexed area as Owner's 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 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

Owner agrees 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.

Owner agrees 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 Owner. 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 Owner 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. Owner shall convey the property to the City within 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 Owner 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

N/A

XIII.

ORDINANCE COMPLIANCE

Owner 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 "Owner" or "Property Owner" shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owner 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 Owner unless specifically assigned to another person.

By executing this Agreement, the deed of trust holder agrees that: (1) should it become owner of the Property through foreclosure or otherwise that it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

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 Owner and all other persons who may purchase land within the Property from the Owner or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Owner 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 Owner 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 Owner 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 Owner 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 as of the day and year first written above.

CITY OF COLORADO SPRINGS

BY: John Sumners
John Sumners, Mayor

ATTEST:

BY: Sarah B. Johnson
Sarah B. Johnson, City Clerk



APPROVED AS TO FORM:

BY: Renice
Attorney, City Attorney's Office

EXHIBIT A
LEGAL DESCRIPTION



619 N Cascade Avenue, Suite 200
Colorado Springs, Colorado 80903
(719)785-0790 (719)785-0799(fax)

JOB NO 2424 00-02
APRIL 19, 2016
PAGE 1 OF 1

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 SOUTH, RANGE 66 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS THE NORTHERLY BOUNDARY OF LOT 1, BLOCK 1, AMOCO SUBDIVISION FILING NO. 1 RECORDED IN PLAT BOOK D-4 AT PAGE 65, RECORDS OF EL PASO COUNTY, COLORADO, MONUMENTED AT BOTH ENDS BY A 1-1/4" ALUMINUM SURVEYORS CAP "28749", IS ASSUMED TO BEAR S88°45'10"W, A DISTANCE OF 100.00 FEET.

COMMENCING AT THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK 1, AMOCO SUBDIVISION FILING NO. 1 RECORDED IN PLAT BOOK D-4 AT PAGE 65, RECORDS OF EL PASO COUNTY, COLORADO, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD AS PLATTED IN HARRISON SUBDIVISION FILING NO. 1 RECORDED IN PLAT BOOK A-3 AT PAGE 85, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE ON THE SOUTHERLY, EASTERLY AND NORTHERLY BOUNDARY OF SAID AMOCO SUBDIVISION FILING NO. ONE, THE FOLLOWING (3) THREE COURSES:

- 1 N89°45'10"E, A DISTANCE OF 100.00 FEET,
- 2 N00°14'50"W, A DISTANCE OF 100.00 FEET;
- 3 S89°45'10"W, A DISTANCE OF 100.00 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD,

THENCE N00°14'50"W, ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 565.40 FEET,
THENCE N89°45'10"E, A DISTANCE OF 367.14 FEET,
THENCE S01°37'10"W, A DISTANCE OF 750.20 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SOUTH CIRCLE DRIVE;

THENCE ON THE NORTHERLY RIGHT OF WAY LINE OF SAID SOUTH CIRCLE DRIVE THE FOLLOWING TWO (2) COURSES:



- 1 N80°14'20"W, A DISTANCE OF 208.80 FEET,
- 2 N87°06'50"W, A DISTANCE OF 137.30 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD;

THENCE N00°14'50"W, ON THE EASTERLY RIGHT OF WAY LINE OF SAID JANITELL ROAD, A DISTANCE OF 40.80 FEET TO THE POINT OF BEGINNING

CONTAINING A CALCULATED AREA OF 5.688 ACRES

LEGAL DESCRIPTION STATEMENT:

I, DOUGLAS P. REINELT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT



DOUGLAS P. REINELT, LICENSED PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. NO. 30113
FOR AND ON BEHALF OF CLASSIC CONSULTING
ENGINEERS AND SURVEYORS

APRIL 19, 2016
DATE

Accepted by the City of Colorado Springs

By: _____ this _____ day of _____, 20##
Real Estate Services Manager

By: _____ this _____ day of _____, 20##

Approved as to Form:

By: _____ Date: _____
City Attorney's Office

Exhibit A

LEGAL DESCRIPTION

To the

Quitclaim Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater executed by
Toma Alliance Group, LLC, Grantor(s) on _____.



619 N. Cascade Avenue, Suite 200
Colorado Springs, Colorado 80903
(719)785-0750 (719)785-0799(fax)

JOB NO. 2424.C0-02
APRIL 19, 2016
PAGE 1 OF 1

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3. S89°45'10"W, A DISTANCE OF 100.00 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF JANITELL ROAD;

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THENCE N00°14'50"W, ON THE EASTERLY RIGHT OF WAY LINE OF SAID JANITELL ROAD, A DISTANCE OF 40.80 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 5.668 ACRES

LEGAL DESCRIPTION STATEMENT:

I, DOUGLAS P. REINELT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.


 DOUGLAS P. REINELT, LICENSED PROFESSIONAL LAND SURVEYOR
 COLORADO P.L.S. NO. 30170
 FOR AND ON BEHALF OF CLASSIC CONSULTING
 ENGINEERS AND SURVEYORS



APRIL 19, 2016
DATE

Accepted by the City of Colorado Springs

By: *Darlene Henry* this 19th day of September, 20## 17 OK
Real Estate Services Manager

By: *[Signature]* this 21st day of September, 20## 17 OK
Colorado Springs Utilities
System Extensions Manager

Approved as to Form:

By: *[Signature]* Date: 9-19-17
City Attorney's Office