

RESOLUTION NO. 131 - 24

A RESOLUTION ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW BASED THEREON AND DETERMINING THE ELIGIBILITY FOR ANNEXATION OF PROPERTY KNOWN AS PARK VISTA ADDITION NO. 10 ANNEXATION HEREINAFTER MORE SPECIFICALLY DESCRIBED IN EXHIBIT "A"

WHEREAS, in accord with Section 31-12-101, *et seq.*, C.R.S., known as the Municipal Annexation Act of 1965, as amended (the "Annexation Act"), the City Clerk of the City of Colorado Springs received a petition for annexation and an annexation plat for certain territory known as the Park Vista Addition No. 10 Annexation, more specifically described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, said petition was signed by persons comprising one hundred percent (100%) of the landowners of the Property to be annexed and owning one hundred percent (100%) of the Property, excluding public streets and alleys, in compliance with the provisions of Article II, Section 30 of the Colorado Constitution, and Section 31-12-107(1) of the Annexation Act; and

WHEREAS, on August 27, 2024, the City Council, acting by resolution, found the petition for annexation to be in substantial compliance with Section 31-12-107(1) C.R.S. of the Annexation Act and Section 30 of Article II of the Colorado Constitution, set a hearing to consider the annexation of the Property to the City of Colorado Springs on October 8, 2024, in Council Chambers, City Hall, 107 North Nevada Avenue, Colorado Springs, Colorado, and directed the City Clerk to give notice of said hearing in the manner prescribed in Section 31-12-108 of the Annexation Act; and

WHEREAS, in support of the annexation the following affidavits were filed with City Council: the City Clerk's affidavit (the "Clerk's Affidavit"), an affidavit of Roland Sevigny, Planning Supervisor for the City of Colorado Springs (the "Planner's Affidavit"), and an affidavit from David V. Hostetler, a registered professional land surveyor (the "Surveyor's Affidavit").

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

Section 1. City Council finds:

(a) that the City Council of the City of Colorado Springs has conducted a hearing to consider the annexation of the Property, described in Exhibit "A" and commonly

known as the Park Vista Addition No. 10 Annexation, on October 8, 2024 at City of Colorado Springs, in Council Chambers, City Hall, 107 North Nevada Avenue, Colorado Springs, Colorado, in accord with the Annexation Act;

(b) that at said hearing, City Council considered the annexation petition and annexation plat, testimony presented, the Clerk's Affidavit, the Planner's Affidavit, the Surveyor's Affidavit, the record of the City Planning Commission's decision recommending annexation, all other relevant information presented;

(c) that the City Clerk has provided notice as directed and said notice complies with the requirements of Section 31-12-108 of the Annexation Act;

(d) that a Annexation Impact Report identified in Section 31-12-108.5 of the Annexation Act was not required as the Property proposed to be annexed is comprised of less than ten (10) acres;

(e) that the Property proposed to be annexed is unincorporated;

(f) that the legal description of the Property on Exhibit "A" is the same as the area described in the annexation petition and the annexation plat;

(g) that at least one-sixth (1/6th) of the boundary of the perimeter of the Property proposed to be annexed is contiguous with the existing boundary of the City of Colorado Springs;

(h) that a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality as provided for in Section 31-12-104(b) of the Annexation Act;

(i) no land held in identical ownership within the Property proposed to be annexed has been divided into separate parts or parcels by the boundaries of such annexation without the written consent of the landowner except as such tracts or parcels are separated by a dedicated street, road or other public way;

(j) no land held in identical ownership within the area proposed to be annexed, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising five (5) acres or more (which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the next year preceding the annexation), has been included within the boundary of the area proposed to be annexed without the written consent of the landowners;

(k) that no annexation of all or any part of the Property has been commenced by any other municipality;

(l) the proposed annexation will not result in the detachment of an area from any school district and attachment of the same area to another school district;

(m) the proposed annexation will not extend boundaries of the city limits of the City of Colorado Springs more than three (3) miles in any direction from the municipal boundary;

(n) in establishing the boundaries of the Property proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley is included within the Property proposed to be annexed;

(o) the applicable requirements of Section 31-12-105 of the Annexation Act have been satisfied;

(p) no petition for election has been received nor is an election otherwise required under the provisions of Section 31-12-107(2) of the Annexation Act;

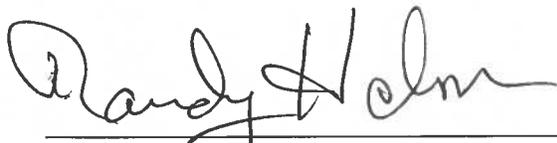
(q) the annexation of the Property, commonly known as the Park Vista Addition No. 10 Annexation and legally described in Exhibit "A" attached hereto, meets the requirements of and fully complies with Part 1 of Article 12 of Title 31 C.R.S., the Municipal Annexation Act of 1965 as amended, and Section 30 of Article II of the Colorado Constitution;

(r) the Property is eligible for annexation to the City of Colorado Springs.

Section 2. 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 3. The Mayor is hereby authorized to execute the Annexation Agreement.

Dated at Colorado Springs, Colorado this 8th day of October 2024.



Randy Helms, Council President

ATTEST:



Sarah B. Johnson, City Clerk



Exhibit A – Legal Description

LEGAL DESCRIPTION:

Lots 1, 2, 36, 37 and 38, Block Five, TOGETHER WITH portions of Orchid Street (60' public R.O.W.) lying Southeasterly, Rosalie Street (60' public R.O.W.) lying Northwesterly and Siferd Boulevard (60' public R.O.W.) lying Easterly of said Lots inclusive, and the adjacent intersection portions of said Siferd Boulevard, said Orchid Street and Hopeful Drive (60' public R.O.W.), all as platted within PARK VISTA ADDITION (Plat Book W, Page 69, El Paso County, Colorado records), described as follows:

Bearings are based on the Easterly right-of-way line of said Siferd Boulevard and is assumed to bear S 00°08'50" E;

BEGINNING at the most Westerly corner of said Lot 2; thence N43°03'30"E along the Northwestery line of said Lot 2, 60.00 feet to the most Northerly corner of said Lot 2, said corner also being the most Southerly corner of said Lot 36; thence N46°56'30"W along the Southwestery line of said Lot 36, 120.00 feet to the most Westerly corner of said Lot 36; thence N43°03'30"E along the Northwestery line of said Lot 36, said line also being coincident with the Southeastery right-of-way line of said Rosalie Street, 60.00 feet; thence N46°56'30"W, 60.00 feet to a point on the Northwestery right-of-way line of said Rosalie Street; thence N43°03'30"E along said Rosalie Street's Northwestery right-of-way line, 256.82 feet; thence on a curve to the left and along said Northwestery right-of-way line, said curve having a central angle of 43°12'20", a radius of 20.00 feet, an arc length of 15.08 feet to a point on the Westerly right-of-way line of said Siferd Boulevard; thence N00°08'50"W along said Siferd Boulevard's Westerly right-of-way line, 46.28 feet; thence N89°51'10"E, 60.00 feet to a point on the Easterly right-of-way line of said Siferd Boulevard; thence Southerly on a non-tangent curve to the left along said Siferd Boulevard's Easterly right-of-way line, said curve having a central angle of 90°00'00", a radius of 20.00 feet, an arc length of 31.42 feet (the chord to said curve bears S45°08'50"E, a distance of 28.28 feet) to a point on the Northerly right-of-way line of said Hopeful Drive; thence S00°08'50"E, 60.00 feet to a point on the Southerly right-of-way line of said Hopeful Drive; thence Westerly on a non-tangent curve to the left and along said Hopeful Drive's Southerly right-of-way line, said curve having a central angle of 90°00'00", a radius of 20.00 feet, an arc length of 31.42 feet (the chord to said curve bears S44°51'10"W, a distance of 28.28 feet) to a point on the Easterly right-of-way line of said Siferd Boulevard; thence S00°08'50"E along said Siferd Boulevard's Easterly right-of-way line, 530.55 feet; thence S89°51'10"W, 60.00 feet to a point on the Westerly right-of-way line of said Siferd Boulevard; thence on a non-tangent curve to the left, said curve having a central angle of 136°47'40", a radius of 20.00 feet, an arc length of 47.75 feet (the chord to said curve bears N88°32'40"W, a distance of 37.19 feet) to a point on the Southeastery right-of-way line of said Orchid Street; thence N43°03'30"E along the Northeastery extension of Orchid Street's Southeastery right-of-way line, 49.05 feet to a point on the Southeastery extension of the Southwestery line of said Lot 2; thence N46°56'30"W, 180.00 feet to the POINT OF BEGINNING;

Containing 2.178 acres (94,859 square feet), more or less.

Annexation- 3/15/2007 (10-11-2005 document)

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ANEX-22-0002

**PARK VISTA ADDITION NO. 10
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT "Agreement", dated this 1st day of March, 2024, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Orchid Lots LLC ("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 annexation agreement, the annexation plat, the Park Vista Addition No. 10, 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 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. The Park Vista Addition No. 10 Preliminary & Final Subdivision Plat for the Property, City file number SUBD-22-0021, (the "Concept Plan") has been proposed and submitted to the City for approval.

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 R5 (Multi-Family High) upon annexation. Owners acknowledge the Property shall also be established with an Airport Overlay and 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 recommended zone for the Property.

B. Change of Zoning. Any future change of zone request shall conform to the Concept Plan, as approved or as amended by the City in the future. Rezoning in accord with the zones reflected on the Concept Plan will occur prior to actual development of the site.

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 Owners 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 4, Part 3 of the Unified Development Code (the "Subdivision Standards"). 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.) Stormwater infrastructure to control, treat, detain, and convey stormwater; 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 4 of the City Subdivision Standards, 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. Streets, Bridges and Traffic Control. Unless agreed to elsewhere in this Agreement the Owners agrees to construct, at the Owners' expense, those streets, bridges 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 §§ 7.4.304.F (Reimbursements) and 7.4.305 (Arterial Roadway Bridges) are excluded. City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets: Owners agrees to comply with timing and phasing of construction responsibilities outlined specifically on the Concept Plan and any subsequent amendments.

- a. The Owners shall construct, at the Owners' expense, that portion of Siferd Boulevard adjacent to the Property a twenty-eight (28) feet wide pavement mat, with curb & gutter and five (5) feet detached sidewalk along the west side of Siferd Boulevard. Cost recovery can be filed against the adjacent properties for half of the improved pavement mat.
- b. The Owners shall construct, at the Owners' expense, that portion of Rosalie Street adjacent to the Property a thirty (30) feet wide pavement mat, with curb & gutter and five (5) feet detached sidewalk along the south side of Rosalie Street. Cost recovery can be filed against the adjacent properties for half of the improved pavement mat.
- c. The Owners shall construct, at the Owners' expense, that portion of Orchid Street adjacent to the Property a twenty-eight (28) feet wide pavement mat, with curb & gutter and five (5) feet detached sidewalk along the north side of Orchid Street.

2. Off-Site Streets and Bridges: N/A

3. Traffic Control Devices. Owners shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City.

D. Drainage. Final Drainage Reports and Plans shall be prepared and submitted by the Owners to the City and approved by the Stormwater Enterprise Manager. A Preliminary Drainage Report shall be prepared and submitted by the Owners to the City and approved by the Stormwater Enterprise Manager, 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 Owner shall comply with the 4 Step Process, as referenced in the Stormwater Enterprise Drainage Criteria Manual, for all developed areas, to be owned and maintained by the Owner. Water quality treatment and green infrastructure volume reduction must be provided onsite. The Owner shall be responsible for paying drainage fees. Owner shall obtain a City Grading and Erosion Control Permit prior to performing any ground disturbing activities.

E. Parks: Any residential uses are subject to applicable land dedication requirements for neighborhood and community park land as required by the City Code of the City of Colorado Springs.

F. Schools: Any residential uses are subject to school fees.

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' (UTILITIES) Services: UTILITIES' water, non-potable water, wastewater, electric, streetlight, and natural gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to UTILITIES' facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and UTILITIES determine that the applicant meets all applicable requirements of the City's Code of Ordinances ("City Code"), UTILITIES Tariffs, Utilities Rules and Regulations ("URRs"), and Line Extension and Service Standards ("Standards") for each Utility-Service application. In addition, the availability of Utility

Services is contingent upon the terms detailed herein and the dedication or conveyance of real and personal property, public rights-of-way, private rights-of-way, or easements that UTILITIES determines are required for the extension of any proposed Utility Service from UTILITIES' utility system facilities that currently exist or that may exist at the time of the proposed extension or connection.

Owners shall ensure that the connections and/or extensions of Utility Services to the Property are in accordance with this Agreement and with the requirements of City Code and UTILITIES' Tariffs, URRs, and Standards, and Pikes Peak Regional Building Department codes in effect at the time of Utility Service connection and/or extension. 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 UTILITIES.

Owners acknowledge that UTILITIES' 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. 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 UTILITIES' Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property in advance of development of the Property.

B. Dedications and Easements: Notwithstanding anything contained in Article 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 UTILITIES determines are required for any utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system. UTILITIES shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owners shall provide UTILITIES all written, executed conveyances prior to or at the time of platting or prior to the development of the Property as determined by UTILITIES.

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

If Owners, with prior written approval by UTILITIES, 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 UTILITIES 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 UTILITIES' then-current Permanent Easement Agreement form without modification unless approved by UTILITIES. UTILITIES will only relocate existing gas or electric facilities during time frames and in a manner that UTILITIES determines will minimize outages and loss of service.

C. Extension of Utility Facilities by UTILITIES:

1. Natural Gas and Electric Facilities: Subject to the provisions of this Article, City Code, and UTILITIES Tariffs, URRs, and Standards, UTILITIES will extend electric and gas service to the Property if UTILITIES, in its sole discretion, determines there will be no adverse effect to any Utility Service or utility easement. Owners shall cooperate with UTILITIES to ensure that any extension of gas or electric facilities to serve the Property will be in accordance with City Code and UTILITIES Tariffs, URRs, and Standards. UTILITIES, 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. If any portion of the Property is located outside UTILITIES' electric service territory prior to annexation, then upon annexation:
 - a. 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 UTILITIES incurs as a result of or associated with the acquisition of such electric service territory; and
 - b. Owners shall be solely responsible for all costs: (1) to remove any existing electric distribution facilities within the Property that were previously installed by the then-current electric service provider ("Existing Facilities"); and (2) to convert any overhead electric lines to underground service lines ("Conversion") as determined by UTILITIES.
 - c. Within 30 days of Owners' receipt of an invoice for the following:
 1. Owners shall pay the former 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 former electric service provider removes the Existing Facilities, then Owners shall pay the former electric service provider directly for the removal of any Existing Facilities.
 3. Further, Owners shall pay UTILITIES the just compensation specified in C.R.S. §§ 40-9.5-204 (1) (c) and 40-9.5-204 (1) (d) within 30 days of Owners' receipt of an invoice for such costs.
 4. Owners shall also pay for any Conversion required by UTILITIES as a result of such annexation concurrent with the execution of a contract between the Owners and UTILITIES that specifies the terms of Conversion.
 2. Water and Wastewater Facilities: In accordance with City Code, UTILITIES shall be responsible for the construction of centralized water and wastewater treatment facilities needed to serve the Property. In the event UTILITIES or other developers design and construct other water or wastewater system improvements UTILITIES determines are needed to ensure an integrated water or wastewater system is available to serve the Property, Owners shall be required to pay Owner's pro rata share of cost recovery for the engineering, materials, and installation costs incurred by UTILITIES or the other developer 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, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances.
- 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 accordance with City Code and UTILITIES' Tariffs, URRs, and Standards 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 UTILITIES' approval of Owners' water and wastewater service requests. Notwithstanding the above requirements, UTILITIES may enter into cost-sharing agreements with Owners for water and wastewater system expansions based on a determination of benefit to UTILITIES, in UTILITIES' sole discretion.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and UTILITIES in effect at the time of annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or UTILITIES 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 UTILITIES. City Code, UTILITIES' Tariffs, URRs and Standards shall govern the use of all Utilities Services.

F. Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation, and as a condition of receiving water service from UTILITIES, the Property must be included in 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 or other payment in lieu of taxes for the purposes of meeting the financial obligations of the District. Owners acknowledge that water service for the Property will not be made available by UTILITIES until the Property is formally included within the boundaries of the District. District inclusion requires consent by the Bureau of Reclamation ("Reclamation"). 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 UTILITIES' applicable Tariffs, URRs, Standards, and rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and UTILITIES, and shall be consistent with City Code, UTILITIES' Tariffs, URRs, Standards, and the City's 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 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 Owners understands and acknowledges that the Owners, 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 Owners shall be subject to the requirements of City Code § 7.5.532 regarding Citywide Development Impact Fees.

X.

POLICE SERVICE FEE

The Owners shall be subject to the requirements of City Code § 7.5.532 regarding Citywide Development Impact Fees.

XI.

PUBLIC LAND DEDICATION

Owners 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.

Owners 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 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 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 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 authorized pursuant to the City Code. Any fee provided for in this Agreement shall be in addition to, and not in lieu of, any impact fee or development requirement required by or authorized pursuant to 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 executed the Agreement as of the date first written above.

CITY OF COLORADO SPRINGS

BY: Yemi Mobolade
Yemi Mobolade, Mayor

ATTEST:

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



APPROVED AS TO FORM:

BY: CAW
Office of the City Attorney

OWNER:

By: ORCHID LOTS LLC, a Colorado Limited Liability Company

Name: Jeff A. Carter

Jeff A. Carter
Manager

Title: Manager
(Owner)

ACKNOWLEDGMENT

STATE OF Colorado) ss.
COUNTY OF El Paso

The foregoing instrument was acknowledged before me this 1 day of March, 2024 by Jeff A. Carter, as Manager for and on behalf of ORCHID LOTS LLC, a Colorado Limited Liability Company.

Witness my hand and notarial seal.
My commission expires: 07/28/27

K Tucker
Notary Public

**KIMBERLY KAY TUCKER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234028550
MY COMMISSION EXPIRES JULY 28, 2027**

EXHIBIT A
LEGAL DESCRIPTION

Accepted by the City of Colorado Springs:

By: Kellie Billorey this 22nd day of July, 2024
Real Estate Services Manager

Acting

By: John Street this 5 day of March, 2024.
Colorado Springs Utilities Customer Utility Connections Manager

Approved as to Form:

By: Renee
City Attorney's Office

Date: 3/12/24

Exhibit A

LEGAL DESCRIPTION

To the

Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater
executed by ORCHID LOTS LLC, a Colorado Limited Liability Company, Grantor(s) on 1 MARCH 2024