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ANNEXATION AGREEMENT

THIS AGREEMENT, "Agreement", made and entered into this 23<sup>rd</sup> day of September, A.D. 1988, by and among F & D ASSOCIATES, an Arizona general partnership; FRANK R. KREJCI, Individually; KVI COLORADO CORP., a Nebraska corporation; ARIES PROPERTIES INCORPORATED, a Colorado corporation; COLORADO SPRINGS LAND ASSOCIATES, a New York general partnership; THE SPRINGS COMPANY, an Arizona general partnership; SPRINGS CENTER LAND CORP., a Delaware corporation; H. PIKE OLIVER, Individually; JONATHAN ARIES, Individually; KATHRYN M. MOLLER, Individually; CHARLES J. FUHR, Individually; STEVEN A. DOUGLAS, Individually; A.C. ISRAEL ENTERPRISES, INC., a Delaware corporation; FEIT & AHRENS, a New York general partnership; FALCON TRUCKING COMPANY, a Michigan corporation; UNITED STATES OLYMPIC COMMITTEE, a non-profit corporation incorporated by an act of Congress; COLORADO CENTRE J.V., an Arizona general partnership; CS RANCH COMPANY, an Arizona general partnership; CCM DEVELOPMENT ASSOCIATES, an Arizona general partnership; all of whom hereinafter are collectively referred to an "ANNEXOR", and the CITY OF COLORADO SPRINGS, a home rule city and a Colorado municipal corporation of the County of El Paso, State of Colorado, hereinafter referred to as "CITY". BANNING LEWIS RANCH PLANNING ASSOCIATION, INC., a Colorado non-profit corporation has an interest in the property covered by this Agreement and consents to its terms as provided herein; and CHEROKEE WATER AND SANITATION DISTRICT and COLORADO CENTRE METROPOLITAN DISTRICT, Colorado quasi-municipal corporations, join this Agreement as an ANNEXOR to the extent that either of them owns property in the area to be annexed. Colorado Centre Metropolitan District further consents to the provisions of Article XVIII below.

W I T N E S S E T H:

WHEREAS, ANNEXOR is the owner of the property described in Exhibit "A", attached hereto and incorporated by reference herein and hereinafter the "Property", and

WHEREAS, ANNEXOR has filed petitions to annex approximately 24,311 acres to the CITY and this will constitute the single largest piece of property annexed to date to the CITY, and

WHEREAS, the proposed master plan for the Banning Lewis Ranch indicates a mixture of residential, commercial and industrial uses with approximately 76,000 residential units with an approximate population of 180,000 people at full development and approximately seventy-nine million square feet of commercial, office and industrial floor area at full development, and

WHEREAS, considerable study has been undertaken by the ANNEXOR and CITY to ensure fair and equitable annexation of the Property into the CITY, and

WHEREAS, the parties mutually agree and recognize that annexation is desirable for the development of the Property by ANNEXOR; and

WHEREAS, CITY has determined that it is a logical extension of and in the best interests of CITY to annex the Property and to provide municipal services and receive revenues from the development to occur on the Property; and

WHEREAS, it is the intent of the parties that the annexation and provision of public facilities and services to the Property not create additional cost or impose additional burdens on the existing residents and ratepayers of the CITY, as provided for by the terms of this Agreement; and

WHEREAS, annexation of the Property is in accord with Policy 2.1.1 of the Comprehensive Plan and the annexation will result in a community benefit.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them,

IT IS AGREED:

I

INTRODUCTION

"ANNEXOR" as used in this Agreement shall mean and refer collectively to ANNEXOR, its successors, assigns and designees. "Code" shall mean and refer to the Code of the City of Colorado Springs 1980, as may be amended from time to time. "Southern Area" shall mean those lands currently within the Colorado Centre Metropolitan District being annexed. "Banning Lewis Ranch Planning Association" or similar entity or entities shall mean and refer to the association of landowners within the Property designated to enforce and administer the covenants, conditions and restrictions of record, including this Agreement, applicable to the Property. "Master Plan" shall mean and refer to the approved Banning-Lewis Ranch Master Plan, as may be amended from time-to-time in accord with the Code. Parcel number references in this agreement are references to the parcels shown on the Master Plan.

Although the Property is currently being used for agricultural purposes it is within the Potential Urban Growth and Planning Area of the CITY, and the growth of the Colorado Springs Metropolitan area makes it likely that the Property will experience development. Both the CITY and ANNEXOR are desirous of providing for the annexation of the Property into the CITY in order to ensure its orderly development.

## II

## PLANNING, ZONING, AND BUILDING

A. The parties recognize that it is the intent of ANNEXOR to develop the Property in a manner consistent with the Master Plan. Zoning of the Property shall be as ultimately approved by City Council and such zoning may include conditions that must be complied with before building permit issuance. Those portions of the Property in the Corral Bluffs Area and Jimmy Camp Creek Regional Park which contain significant historical, archaeological and paleontological features will be identified and preserved in accordance with the terms of the zoning established for these areas.

B. Vesting of property rights shall occur as such vesting may be provided for in the Code and pursuant to applicable Colorado law.

C. The CITY shall allow ANNEXOR to sell off parcels of real property without platting or subdividing provided that no building permits shall be granted before compliance with the CITY Subdivision Code. Because of the detail of the Master Plan and the exactness of the legal descriptions of the zoning of parcels on the Property, ANNEXOR assures CITY that selling off of parcels without platting will not interfere with public infrastructure development as shown on the Master Plan.

D. ANNEXOR has provided CITY with a list of all current uses and the location of such uses on the Property establishing legal non-conforming uses. This list shall be Exhibit "B" to this Agreement. Any existing leases or tenancies on Exhibit "B" may continue in accordance with their terms, and may be extended at ANNEXOR'S discretion.

E. Banning Lewis Ranch Planning Association shall share with CITY any plans it may complete or adopt in order to coordinate the effective provision of municipal and utility services.

F. Farming and ranching uses in the Code's agricultural zone district shall be permitted on unplatted lands of the Property, subject to all zoning restrictions established for the agricultural zone district, notwithstanding that such properties are zoned otherwise.

G. CITY and ANNEXOR acknowledge that on or before August 15, 1989, Western States Properties, Inc. may acquire certain property formerly owned by the Chicago Pacific Corporation and used as a railroad right-of-way with associated facilities such property being described in a deed recorded on October 11, 1985 in Book 5074 at Page 0069 of the records of the Clerk and Recorder of El Paso County, Colorado. In the event such acquisition is completed, CITY and ANNEXOR agree to reconsider the land use and zoning adjacent to said right-of-way and associated properties to make such adjustments in land uses as are reasonably required to accommodate any legal rights of Western States Properties, Inc. and to provide for appropriate land uses and zoning adjacent to the railroad right-of-way. Nothing in this Agreement shall be construed as the CITY granting to Western States Properties, Inc., the right to operate a railroad either on or off the Property.

### III

#### STREETS

A. GENERAL - ANNEXOR shall dedicate all rights-of-way owned by ANNEXOR for public streets and interchanges for the full width thereof as required by CITY's Major Traffic Thoroughfare Plan or the Master Plan in accordance with whichever shows the greater width. The specific location of any streets or interchanges are subject to reasonable relocation as development plans are finalized, and as determined by the Director of Public Works. Except with regard to the Banning-Lewis Parkway, ANNEXOR shall design and construct all

public streets, and at-grade intersections that are entirely within the boundaries of the Property to CITY standards without cost to the CITY as such are contained in the Subdivision Design Manual as it now exists or is hereafter amended or the Master Plan, whichever standards are higher. Except for Marksheffel Road, public streets and at grade intersections one half of which are on the Property shall be fully constructed by ANNEXOR and ANNEXOR will be allowed cost recovery from adjacent developers in accord with CITY Subdivision Code. There shall be no partial reimbursement to ANNEXOR for arterial streets or arterial bridges within the Property as may otherwise be provided for in the City Code. Dedication of streets shall occur at the time of subdivision platting; however, the ANNEXOR agrees to dedicate rights-of-way owned by ANNEXOR at an earlier time when determined by CITY to be required for commencement of construction of such streets or for extension of utilities. Location of major streets on and off the Property shall be in accord with the Master Plan and the CITY'S Major Traffic Thoroughfare Plan as it now or in the future exists. Dedication shall be by plat, provided that ANNEXOR only shall be required to plat the boundary of any proposed street or interchange through unplatted land and ANNEXOR shall be responsible for all fees to the extent that the payment of such fees are the responsibility of ANNEXOR under the Code at the time such payments are to be made. ANNEXOR agrees to pay the CITY'S lawful share of any grade separations to accommodate any warranted railroad crossings on the Property.

B. BANNING LEWIS PARKWAY -

1. Generally. ANNEXOR shall dedicate the ultimate Banning-Lewis Parkway (B-L Pkwy) right-of-way and, over time, construct a four lane roadway with at-grade intersections (except at U.S. Highway 24), adequate associated turn lanes, and shall have grading and bridge abutment responsibilities as

specifically delineated below. Construction of the B-L Pkwy may be phased in accordance with the 25% absorption transportation analysis as updated and/or further refined from time-to-time.

2. Right-of-Way. ANNEXOR shall dedicate the right-of-way owned by ANNEXOR for the B-L Pkwy (typically three hundred feet in width), together with the right-of-way for associated interchanges and on and off ramps for the full width thereof as required by the ultimate design of the parkway, as set forth in the Conceptual Design Report for the B-L Pkwy (1988) prepared by Wilson & Company Engineers, (the "Design Report"), which is subject to the approval of the Director of Public Works.

3. Grade Separated Interchange. ANNEXOR shall construct an initial grade separated interchange at the intersection of U.S. Highway 24 and the B-L Pkwy in accordance with specifications to be approved by the Director of Public Works, using the Design Report for design guidance. ANNEXOR shall not be required to construct other grade separations or on and off ramps, nor shall ANNEXOR be responsible for expansion of the initial grade separated interchange.

4. Bridge Abutments. ANNEXOR shall be responsible for constructing bridge abutments at the creek banks to handle the ultimate bridge width when constructing initial bridges on the B-L Pkwy, generally as shown on Exhibit "C" attached hereto. It is anticipated that there will be dual bridges, and that each bridge will be designed to handle an initial two through lanes, anticipating ultimate construction of an eight lane roadway. Bridge piers, if any, and superstructure of the initial construction shall be designed and constructed to accommodate the final loads of the ultimate eight lanes.

Bridges shall be designed in accordance with the Colorado Department of Highways criteria. ANNEXOR shall design bridges for ease of expansion to the ultimate width.

5. Initial Grading and Construction between U.S. Highway 24 and State Highway 94. ANNEXOR shall grade the B-L Pkwy to accommodate a full eight lane facility between U.S. Highway 24 and State Highway 94 generally as shown on Exhibit "D". On this portion of the B-L Pkwy, ANNEXOR will construct four initial through lanes with adequate associated turn lanes, also as shown on Exhibit "D".

6. Grading and Construction Elsewhere. Except for that portion of B-L Pkwy located between U.S. Highway 24 and State Highway 94, ANNEXOR shall grade and initially construct two initial through lanes with adequate associated turn lanes generally as shown on Exhibit "E". ANNEXOR shall grade and construct two additional through lanes and associated turn lanes generally as shown on Exhibit "F" (typical B-L Pkwy cross-sections) when traffic volumes warrant, as determined by the Director of Public Works based on an analysis conducted in accord with the ITE Traffic and Transportation Engineering Manual (herein "ITE Manual"), or earlier at ANNEXOR'S discretion.

7. Drainage Structures. ANNEXOR shall construct the drainage structures for the ultimate width of the B-L Pkwy (eight lanes) between U.S. Highway 24 and State Highway 94, generally as shown on Exhibit "D" and shall construct such drainage structures for four lanes elsewhere, generally as shown on Exhibit "F".

8. Center Median. There will be no curbing of the center median on the B-L Pkwy. ANNEXOR shall be responsible for landscaping the median and maintaining such landscaping in accordance with landscaping standards in the Design Report.

9. Off-Site Construction of B-L Pkwy. CITY agrees that upon annexation of any unannexed property that abuts, adjoins or is in the vicinity of the Property and for which a study conducted in accord with the ITE Manual shows a direct traffic impact on the proposed B-L Pkwy, it will obligate the owners to dedicate, improve or enter into repayment agreements for their equitable proportion of benefit received from B-L Pkwy. This Agreement does not cover any lands owned by ANNEXOR off of the Property relative to construction of the B-L Pkwy, such interests to be governed by separate agreement. However, the Property's share of off-site traffic impacts on the B-L Pkwy are included in the Off-Site Roadway Improvement Fee considered below.

C. MARKSHEFFEL ROAD - Where the Property is adjacent to Marksheffel Road ANNEXOR shall dedicate all right-of-way for Marksheffel Road and associated at-grade intersections within the width of Marksheffel Road right-of-way as set forth in the Master Plan or as later determined by the Director of Public Works. The cost of improving Marksheffel Road to a four-lane street shall be borne as follows: First, ANNEXOR shall bear the full cost of improving the street where both sides of the right-of-way are located within the Property, without any partial reimbursement for arterial streets or arterial bridges as may otherwise be allowed by the Code. Second, where the Property abuts Marksheffel Road on its eastern right-of-way boundary, ANNEXOR shall bear the cost, as provided in the Code, of improving the street to a full four-lane width and shall be eligible for partial reimbursement for arterial streets or arterial bridges. Where Marksheffel Road abuts CITY'S gas propane plant property, ANNEXOR shall be responsible for the full cost of improving such to a four lane width without any recovery or reimbursement. ANNEXOR shall be entitled to recover a portion of its cost for full width construction in accordance with the CITY'S standard recovery agreements subject to any prior

agreements between the CITY and other adjacent property owners (METEX). Third, ANNEXOR shall be required to contribute Off-Site Roadway Improvement fees as set forth in Article III(E) below, for the Property's impact on those segments of Marksheffel Road between Woodmen Road on the north and U.S. Highway 24 on the south which are not located adjacent to or within the Property. The necessity and timing of the improvements to Marksheffel Road and associated at-grade intersections shall be constructed in phases as determined by the Director of Public Works based upon a study conducted in accord with the ITE Manual (up to four (4) lanes) as required to accommodate traffic generated by the first twenty-five (25%) percent development of the Property. Once Marksheffel Road has been improved in accordance with this Agreement, ANNEXOR shall not be required to contribute to any further improvements of Marksheffel Road.

D. BARNES ROAD - ANNEXOR agrees to construct Barnes Road to a four-lane width between the existing eastern terminus of Barnes east to Marksheffel Road and shall be eligible for partial reimbursement for arterial streets or bridges as provided for in the Code. ANNEXOR agrees to transition Barnes from its six lane width at its eastern terminus to four lanes in accordance with a design approved by Director of Public Works. ANNEXOR shall be entitled to recover a portion of its cost for the construction of Barnes Road in accordance with the CITY's standard recovery agreement. The CITY agrees to use its powers of condemnation for such Barnes Road right-of-way after ANNEXOR has made all reasonable negotiations with other property owners to obtain land for Barnes extended to the Property. ANNEXOR, subject to recovery from private parties, is responsible for all Barnes Road right-of-way costs.

E. OFF-SITE ROADWAY IMPROVEMENT FEE -

1. Generally. The 25% absorption transportation analysis of the Property and the region reflects that additional transportation facilities are needed off of the Property to serve development on the Property and elsewhere. Such transportation facilities and the cost thereof shall consist of the improvements shown on Exhibit "G", attached hereto and incorporated herein by reference. The necessity and timing of the designated improvements shall be as determined by the Director of Public Works based on an analysis conducted in accord with the ITE Manual. ANNEXOR agrees that an Off-Site Roadway Improvement Fee may be assessed by CITY to recover the Property's pro rata share of the improvement and extension of these designated off-site roadways. If the total cost of a designated improvement is greater than shown on Exhibit "G", ANNEXOR'S direct contributions and the fee revenues allocated for the improvement will not be adjusted. CITY agrees that it will require future developments to bear their pro rata share of such improvements based on the analysis above.

2. Computation of Fee. The Off-site Roadway Improvement Fee has been computed by CITY using the estimated cost of improvements and the pro rata share of such improvements allocable to the Property based on the 25% absorption transportation analysis. The Off-site Roadway Improvement Fee also includes a portion of the improvements to Marksheffel Road described in Article III(C) above, as set forth in Exhibit "G". The fee has taken into account the committed and known obligations of third parties to dedicate rights-of-way or construct street improvements pursuant to any existing annexation agreements or the Code, and has taken into account anticipated obligations of third parties or other governmental entities to dedicate rights-of-way and construct street improvements in connection with future

development within the CITY, and has taken into account arterial road or bridge reimbursements that are anticipated pursuant to the Code.

3. Assessment of Fee. The Off-Site Roadway Improvement Fee will be assessed on a one-time basis at the rate of \$.39 for each square foot of floor area as defined in the Code for buildings on the Property, but not to include parking garages associated with commercial, office or industrial buildings. The Off-Site Roadway Improvement Fee shall apply to all structures or new construction for which a building permit is issued, except for governmental, utility, municipal or quasi-municipal structures, and shall be due and payable when the building permit issues. The Off-Site Roadway Improvement Fee shall not exceed \$.39 per square foot of floor area, and will remain in effect until the Property's share of the designated improvements as described in Exhibit "G" has been financed and/or recovered, notwithstanding that such recovery may require extension of the fee beyond 25% development absorption. All Off-Site roadway improvement fees collected by the CITY shall be deposited in a separate account established by the CITY to be known as the "Banning-Lewis Ranch Off-Site Roadway Improvement Account" and shall only be expended for construction of the improvements described in Exhibit "G".

F. DIRECT CASH ADVANCES FOR OFF-SITE ROADWAY IMPROVEMENTS -

1. Generally. In the event that development on the Property necessitates a designated off-site improvement before revenues are available either from the Off-Site Roadway Improvement Fee, or from contributions by other landowners in accordance with the Code, ANNEXOR will make direct cash advances against future revenues of the difference between the estimated total cost and available revenues as provided herein.

2. Limited Construction. To the extent that ANNEXOR is required to make direct cash advances for a designated off-site roadway improvement due to a

lack of fee revenues or revenues from other developments, these improvements will be phased and shall be limited to essential roadway and related drainage facilities necessary to meet traffic flows attributable to the Property. The landscaping, sidewalks, and other improvements shall not be ANNEXOR'S responsibility.

3. Limited Obligation. ANNEXOR'S obligation to make direct cash advances for any of the designated off-site roadway improvements shall be limited to \$40.7 million, representing the total anticipated contributions from other properties as described in Exhibit "G". ANNEXOR shall not have the obligation to make cash advances for revenues that are anticipated from the State, El Paso County, the United States Government, or for construction costs that are the responsibility of the CITY pursuant to Exhibit "G".

4. Recovery of Direct Advances. If ANNEXOR is required to make direct advances for any of the designated off-site roadway improvements due to the lack of anticipated revenues from the Off-Site Roadway Improvement Fee or from other developments, ANNEXOR shall be entitled to recover such direct advances from other owners through recovery agreements established pursuant to the Code, or from Off-Site Roadway Improvement Fee revenues above the amounts needed to complete any remaining improvements shown in Exhibit "G". CITY shall cooperate in the establishment and administration of any such recovery agreements.

5. Delegation of Obligations. ANNEXOR may delegate any obligation for direct contributions of off-site roadway improvements to special districts or similar entities formed on the Property, subject to any limitations set forth in Article XVII of this Agreement, which districts shall have the right to issue bonds to satisfy any such obligation. Accordingly, any such district will be entitled to recovery from adjoining landowners and from fee revenues to the same extent as ANNEXOR would be allowed recovery. CITY will cooperate to

allow such districts to collect or recover fee revenues, and recover payments from adjoining landowners, and to pledge such future revenues as security for repayment of debt incurred in making such off-site roadway improvements.

6. Street Improvements. Once ANNEXOR has fulfilled its street dedication and improvement obligations described above, CITY shall not withhold development approval as to that portion of the Property served by the street dedication and improvements because of traffic constraints or the need for additional roadway improvements.

G. TRAFFIC CONTROL DEVICES AND STREET LIGHTS - ANNEXOR shall pay for installation of traffic and street signs and traffic control devices, permanent barriers, and street lights, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the Director of Public Works in accordance with uniformly applied criteria. Street lights will be required on minor streets only after homes have been completed along at least fifty (50%) percent of the street frontage as determined by the Director of Public Works. Street lights will be required on collector and larger streets or at intersections for public safety as determined necessary by the Director of Public Works. Traffic signals will be required at a specific intersection, only after the intersection meets at least one of the warrants as outlined in the manual on Uniform Traffic Control Devices in use at the time or other nationally accepted standards and only if the CITY is utilizing those standards for installation of traffic signals throughout the CITY. Once the intersection meets the criteria, CITY will notify ANNEXOR in writing and ANNEXOR will install the traffic signal within one hundred twenty (120) days. ANNEXOR will be responsible for all components of the signal, except the CITY will supply the controller equipment and cabinet to be reimbursed by ANNEXOR.

H. EXISTING STREETS - ANNEXOR shall be responsible for the maintenance of all roadways on and through the Property in accordance with Public Works standard maintenance categories through December 31, 1992, or as may be extended by the parties, as set forth in Exhibit "H", the Contract for Street Maintenance. The computation of ANNEXOR'S resurfacing obligation during the contracting period shall be solely on the existing streets as listed in Exhibit "H". City Administration will cooperate with ANNEXOR'S request to vacate Tamlin Road.

#### IV

#### STORM DRAINAGE

A. ANNEXOR shall at its sole expense be responsible for preparation and submittal of a drainage basin planning study for the Jimmy Camp Creek Drainage Basin. This drainage basin planning study must be approved by the City Council prior to any platting. It is understood this drainage basin planning study may be amended and ANNEXOR will comply with such amendments.

B. ANNEXOR shall prepare and submit a restudy of the Sand Creek Drainage Basin, which restudy is subject to approval by the Director of Public Works. When submitted and approved, the restudy shall govern ANNEXOR'S development within the Sand Creek Basin. ANNEXOR shall dedicate rights-of-way owned by ANNEXOR and shall design and construct storm drainage facilities within the Property in conformance with the regulations and ordinances of the CITY. ANNEXOR shall participate in the CITY Drainage Basin Program for the portion of the Property in the Sand Creek Drainage Basin, including payment of the per acre drainage basin fees for the basin-wide facilities established by the CITY'S Master Drainage Plan and ordinance for Sand Creek as updated by

ANNEXOR'S study and shall be responsible for conveying drainage flows from the Property to safe outflow points as determined by the City Engineer.

ANNEXOR may establish an overall flood control district to include the Property within either or both the Sand Creek Drainage Basin and Jimmy Camp Creek Drainage Basin, or any other basins within the Property, provided that such district will not adversely affect other property located within the basins. In accord with the drainage ordinances of the CITY, if ANNEXOR desires to complete the development of any portion of the Property prior to completion of the storm drainage improvements to major drainageways, ANNEXOR may make those improvements at its expense. CITY may at its option, agree to reimburse ANNEXOR at a future date from the Sand Creek Drainage Basin Fund for ANNEXOR'S cost for construction of said improvements. The manner in which CITY may repay such costs from the Sand Creek Drainage Basin Fund shall be agreed upon at the time such costs are to be incurred by ANNEXOR. If CITY does not elect to reimburse ANNEXOR for such improvements, ANNEXOR shall be entitled to a credit on a per-acre basis against the per-acre drainage basin fees for basin-wide facilities.

C. As to the Jimmy Camp Creek Drainage Basin ANNEXOR or a designated district shall dedicate rights-of-way owned by ANNEXOR and shall design, construct and maintain storm drainage facilities within the Property in conformance with the Jimmy Camp Creek Drainage Basin Study submitted by ANNEXOR and approved by CITY and final subdivision plats as approved by the CITY. ANNEXOR agrees to comply with the rules and regulations as adopted for the Jimmy Camp Creek Drainage Basin, including conveyance of surface water runoff to safe outflow points as determined by the City Engineer. CITY will not impose any drainage basin fees for portions of the Property located within the Jimmy Camp Creek Drainage Basin without the consent of ANNEXOR; provided

however, that upon request of ANNEXOR, CITY may impose a storm drainage utility fee and remit said fee to ANNEXOR'S designated District pursuant to an intergovernmental agreement between such District and CITY.

D. ANNEXOR shall be responsible for design and construction of all under drain systems for control of groundwater. All proposed systems shall be submitted to the Wastewater Division and the City Engineer for review and approval prior to construction. Groundwater drainage systems are not eligible for reimbursement from any drainage basin funds.

E. ANNEXOR shall be responsible for maintenance of all drainage facilities for five (5) years from the date of this Agreement. CITY shall not be responsible for maintenance of drainage facilities in the Jimmy Camp Creek basin during the term of the Agreement; provided however that the CITY Park and Recreation Department may, at its discretion, assume responsibility for maintenance of natural greenways or ponds.

#### V

#### AIRPORT

A. ANNEXOR agrees to provide an avigation easement to apply to all the Property which lies under the Part 77 approach surfaces as defined by the Federal Aviation Administration prior to platting any property impacted by aircraft traffic as determined by the Director of Aviation. CITY and ANNEXOR have agreed upon the form and content of the avigation easement and such is attached hereto as Exhibit "I", which will supersede any prior avigation easements on the Property.

B. ANNEXOR acknowledges that CITY is currently in the process of planning a new terminal for the Airport, the location of which is depicted on the CITY'S Airport Master Plan. If the new terminal is constructed the CITY will

construct a street from the new terminal directly south to existing Drennan Road. CITY also plans to construct a new runway for the Airport, as depicted on the CITY'S Airport Master Plan, that will necessitate the closure of existing Drennan Road from the intersection of the new terminal road east to Marksheffel Road. When this portion of Drennan Road is closed to accommodate the new runway, the CITY will extend the access street to the new terminal directly south to the southern edge of the Airport property if the new terminal is constructed. This entrance street, initially extending to existing Drennan Road and ultimately extending to the southern edge of the Airport property, will have a minimum width of two lanes, and shall have the capability of being expanded. The cost of constructing and maintaining this entrance street shall be borne by the Colorado Springs Municipal Airport Enterprise Fund.

C. The parties hereby understand and agree that no use of the Operational Areas of the Airport, as defined in Section 19-4-201 of the Code of the City of Colorado Springs 1980, as amended, directly from the Property to such Operational Areas (commonly known as "through the fence operations"), is granted by virtue of this Agreement, nor should any inference be drawn that such use will be granted in the future. The CITY will consider such requests for access and use by the ANNEXOR, or any other party, at any time on a case-by-case basis and the decision on such a request shall be within sole discretion of the City Council and subject to the requirements of the Federal Aviation Administration.

## VI

### PUBLIC LAND DEDICATION GENERALLY

ANNEXOR agrees to dedicate land owned by ANNEXOR for municipal and utility purposes as required by this Agreement or the Code at the time such lands are

needed for the intended public purpose. ANNEXOR agrees that all land dedicated or deeded to CITY for municipal or utility purposes including park and school sites shall be free and clear of liens and encumbrances that may adversely affect CITY'S use of the land. ANNEXOR shall, at its cost, extend all site and public improvements to the boundary of any property dedicated to the CITY including but not limited to, water, wastewater, gas, electric, and shall construct adjacent to the boundary of dedicated public property, curb, gutter, and streets where required. ANNEXOR shall not be responsible for site or public improvements, except as provided herein, within the boundaries of any such dedicated public property. Except as provided within this Agreement, ANNEXOR agrees to plat and, at the time of platting to pay all fees, including drainage, associated with development of the lands dedicated or deeded to CITY, but only to the extent that such platting and payments for publicly dedicated land are the responsibility of ANNEXOR under the Code at the time such payments are to be made.

## VII

### PARKS, SCHOOLS AND TRANSIT

A. ANNEXOR agrees to dedicate land for school and park purposes or pay cash in lieu thereof at the time of platting in accord with the CITY Subdivision Code. The land to be dedicated is generally shown on the Master Plan, and the exact location will be identified when the adjoining lands are platted. School and park sites shall be dedicated when such sites are ready to be used for construction of school or park facilities.

B. Jimmy Camp Creek Regional Park - Because of the size of ANNEXOR'S annexation and development ANNEXOR voluntarily agrees to give to CITY the approximately 693 gross acre site known as the Jimmy Camp Creek Regional Park

within five (5) years of the date of this Agreement, or upon final approval by the City Council of the Park Master Plan, whichever is sooner. CITY agrees that it will prepare a Park Master Plan within five years of annexation, which Park Master Plan shall be subject to ANNEXOR'S approval. CITY acknowledges that this donation is not required by City Code. CITY further acknowledges that planned uses in the park shall be primarily of a passive nature so as not to disturb natural site features unless otherwise provided for in the approved Park Master Plan. CITY shall be allowed to construct underground utility facilities through the park. ANNEXOR shall not be responsible for compliance with Article VI of this Agreement as to fees for the Jimmy Camp Creek Regional Park. The Jimmy Camp Creek Regional Park, because it shall be primarily of a passive nature, shall not be used in computation of any drainage fee as provided for in Article IV of this Agreement.

C. ANNEXOR agrees to provide by deed or easement sufficient right-of-way, to the extent owned by ANNEXOR, not to exceed thirty feet (30') in width for a multi-use trail in the Jimmy Camp Creek Drainage Basin and for the Rock Island loop as shown in the Master Plan.

D. ANNEXOR shall provide without cost to the CITY the land shown on the Master Plan as Parcel No. 267.08 for a park and ride site. ANNEXOR will participate in the provision of transit services as applied throughout the CITY.

## VIII

### ENVIRONMENTAL

A. ANNEXOR agrees to dedicate to CITY land for two (2) air quality monitoring stations at sites of sufficient size, not to each exceed .25 acres,

as may be mutually agreed upon between the Director of Utilities and ANNEXOR with dedicated access roads.

B. As a condition of obtaining development plan approval or building permits for land adjacent to major roadways noise impact assessments may be required to be submitted by ANNEXOR to Support Services Department in accord with zoning conditions applicable to the Property or as uniformly required by the Code. If the noise impact assessment determines a need for noise attenuation, ANNEXOR shall be responsible for providing noise attenuation features, subject to approval of Director of Support Services, as may be required by the zoning of the Property or the Code.

## IX

### SUPPORT SERVICES, FIRE, POLICE, AND CATV

A. CITY radio communication to ANNEXOR'S Property requires the construction of an eastern radio repeater station for police, fire, utilities and other communication networks related to the provision of essential CITY services. ANNEXOR shall provide the CITY with a sum of money not to exceed \$210,000.00 within ninety (90) days after demand by the CITY to be appropriated by the CITY for the purpose of acquiring property, equipping, and constructing the CITY'S eastern radio repeater station. The CITY shall not allow any commercial users to use the repeater station site. Because the site is on other than ANNEXOR'S Property, the CITY agrees to recover from other unannexed property owners who benefit from the service area of this repeater station upon annexation of those properties a pro rata cost of the repeater station assigned to those annexing properties on an acre for acre basis at time of annexation and remit such to ANNEXOR. The site dedication and construction shall be as determined by the Director of Support Services.

B. ANNEXOR agrees to dedicate the land shown generally on the Master Plan as Parcel Nos. 290.02 (a 22 acre site), and 329.01/329.04 (one site consisting of 26 acres which will include an electric service site) for satellite municipal service centers.

C. FIRE -

1. ANNEXOR agrees to provide the sites as shown on the Master Plan as Parcel Nos. 293.09, 307.04, 342.09, 331.11, and 270.14 for five (5) stations and such other uses as determined by the CITY. A dormitory at the fire station located on Parcel No. 342.09 (Southern Area) will be constructed and equipped and will be turned over as built and equipped to the CITY on January 2, 1992 or at such other date as may be mutually agreed upon. In addition a second fire station shall be constructed and equipped in 1992 or at such other date as is mutually agreed upon on Parcel No. 307.04. A third fire station is to be constructed and equipped in the year 2002 or at such other date as is mutually agreed upon. The location of the third fire station will be Parcel No. 293.09. All construction and equipment requirements shall meet Fire Department specifications and standards. Financing of construction and equipping of the fire stations shall be as set out in Article XI.

2. Based on projections of growth and geographic dispersion the first three (3) fire stations should be adequate to serve the Property until 2010 or beyond. If, however, the development of the area exceeds current projections, the additional (2) fire stations may need to be on-line sooner. The Fire Department's planning threshold for bringing stations on-line is 200 alarms per year (calls for service) in the area to be served from a fire station location. Financing and construction of such additional fire stations shall be as set out in Article XI.

3. Colorado Centre Metropolitan District shall provide or contract with Security Fire Department, or other established Fire Authority, for staffing of the fire station in the Southern Area through January 2, 1992.

D. POLICE -

1. The following sites shall be dedicated for police substations: Parcel Nos. 274.03/274.06 (one site), 310.10, 347.08 and 342.09 (an 8 acre site that may also contain a fire station).

2. Police Service. For police service through the year 1992, the El Paso County Sheriff's Department shall provide patrol services, and the Colorado Springs Police Department shall provide investigative and reporting services as shall be established by an intergovernmental agreement between El Paso County and the CITY attached as Exhibit "J". ANNEXOR shall bear the full cost of the services provided by the El Paso County Sheriff's Department, and shall remit quarterly payments for such services to the CITY by the fifteenth day of the month preceding the start of the new quarter. CITY will provide investigative service for crimes and traffic accidents, and the full time equivalent (FTE) cost thereof will be included in the annual fiscal impact analysis set forth in Article XI below. After 1992, CITY will assume responsibility for providing police services necessary to serve the Property and the cost of police services to be provided exclusively on the Property will be included in the fiscal impact analysis described in Article XI below.

E. CATV - Except to the extent required by the Code, or by state or federal law, or as may be required for the provision of essential CITY support services, such as police, fire, and utility services, the CITY shall not directly or indirectly engage in the construction, installation, operation, or maintenance of communication facilities on the Property. ANNEXOR acknowledges that before operating a cable television system for which a franchise is

required as set forth in Article XII of the City Charter and as set forth in *Community Telecommunications, Inc. v. The Heather Corporation*, 677 P.2d 330 (Colo. 1984), ANNEXOR will apply for and obtain such a franchise from the CITY, unless an agreement with any CITY franchisee or licensee is obtained.

Without limiting the foregoing, ANNEXOR shall have a non-exclusive right to use public rights-of-way and easements dedicated for compatible use in accordance with 47 U.S.C. 541 and utility easements within the Property boundary for ANNEXOR'S telecommunication facilities and shall retain private ownership of any such facilities on or under publicly dedicated land. Unless prohibited by law, ANNEXOR may adopt protective covenants that restrict the use of communications facilities on the Property provided that no restrictive covenant shall prohibit or limit the use of public rights-of-way, easements dedicated for compatible uses in accordance with 47 U.S.C. 541, or utility easements by a utility, cable television operator or provider of communications facilities or provider of communications services on public property. Use of public rights-of-way and easements conveyed to CITY shall be subject to all applicable CITY ordinances or regulations. ANNEXOR contemplates applying for zoning of certain "teleport" sites or other major telecommunication facilities on the Property, and CITY agrees to cooperate in the establishment of such zoning.

As used above, "communications facilities" include without limitation, all wires, lines, switches, transmitters, receivers, antennae, satellite reception and transmission equipment, hardware, electronics and all other equipment and facilities used in the provision of communications services as defined in the next sentence. As used above, "communications services" means and includes all services involving the conducting, transmission or transfer of information in any form (for example, without limitation, video, voice and

computer and other data) by electrical, electronic, or optical means between separate points; and "communications services" include, without limitation: telephone (including long distance telephone), television, radio, cable television, cable radio, cellular radio and telephone, fiber optic transmission, microwave transmission, data transmission, electrical or electronic security, videotext, satellite teleports and computer networking.

X

#### STREET DIVISION

ANNEXOR will dedicate Parcel Nos. 271.12, 338.12, and 338.08 for the dumping/disposal of CITY street sweeping waste as well as other CITY collected non-putrescible rubble and trash. Disposal shall be in accordance with CITY Environmental Service Division procedures. The use of such sites shall be primarily for non-putrescible rubble and trash generated on the Property. ANNEXOR shall not have any continuing obligation to make additional sites available to CITY when these sites are no longer usable. CITY shall not permit the dumping of any toxic or hazardous materials on such sites, and shall maintain and properly screen the sites to minimize adverse visual impacts and noxious odors. CITY agrees that such sites shall be properly reclaimed as determined by the CITY's Environmental Services Division. These sites when reclaimed will be offered to ANNEXOR at no cost to ANNEXOR. ANNEXOR, with CITY'S consent, shall have discretion to purchase similar sites within three (3) miles of the Property, dedicate and obtain permits for such disposal sites to CITY for purposes of this Article in lieu of the dedication requirement for on-site disposal locations.

## XI

## DEVELOPMENT SEQUENCING AND EXTENSION OF URBAN SERVICES

A. Development will be planned and conducted in an orderly fashion and may occur anywhere on the Property provided that essential municipal facilities are in place and essential municipal services are available in accordance with the terms of this Agreement or the Code.

B. Although the Property is contiguous to the present eastern boundary of the City of Colorado Springs, ANNEXOR acknowledges that the Property is located beyond the area of existing CITY services. In order to offset any cost of extending CITY services to the Property in excess of CITY revenues attributable to the Property, including police, fire, recreation, public works, support services, and other general CITY services (and on-site capital costs related thereto), ANNEXOR agrees to the following: first, ANNEXOR agrees to make certain capital improvements as provided in Article XI(C); second, an Urban Service Extension Fee as provided in Article XI(D), is hereby established to help offset such costs; and third, ANNEXOR agrees to make cash payments to offset any remaining deficits as provided in Article XI(F).

C. ANNEXOR agrees to construct all necessary capital improvements to the breakeven year as defined in Article XI(D) without any subsequent recovery of the cost thereof, and in some cases equip such capital improvements as provided for in Article XI(H). After the breakeven year as defined below, but prior to the termination of ANNEXOR'S obligation to make annual payments as provided in Article XI(F), ANNEXOR shall construct necessary capital improvements to reduce or eliminate the estimated annual deficit, which such costs shall be subject to recovery from future fee revenues as provided in Article XI(F). The appropriate CITY Department Head will determine the timing and sizing of such capital improvements. ANNEXOR may delegate its obligation to finance such capital improvements to properly authorized special districts.

D. The Urban Service Extension Fee shall be \$.11 for each square foot of floor area as defined in the Code for buildings on the Property, but not to include parking garages associated with commercial, office, or industrial buildings. The Urban Service Extension Fee shall apply to all structures or new construction for which a building permit is issued, except for governmental, utility, municipal or quasi-municipal structures, and shall be due and payable when the building permit issues.

For the purpose of this Article, the "breakeven year" will refer to the year that the General Fund revenues to be generated by development of the Property after December 31, 1992 will be equal to or exceed the cost of providing services to the Property in accordance with Articles XI(E) and XI(F). The Urban Service Extension Fee will continue until ANNEXOR'S obligation to make annual payments terminates and ANNEXOR has recovered all such payments, as provided in Article XI(F).

All Urban Service Extension fees collected by CITY shall be deposited in a separate account entitled "Banning Lewis Ranch Urban Service Extension Fee" and shall be transferred to the CITY General Fund to offset excessive costs only to the extent that the fiscal analysis described below identifies CITY General Fund expenditures in excess of General Fund revenues until ANNEXOR'S obligation to make annual payments as provided in Article XI(F) terminates. After ANNEXOR'S obligation to make annual payments terminates, all Urban Service Extension Fee revenues shall be transferred to ANNEXOR until such time as ANNEXOR has recovered all cash payments made as provided in Article XI(F) below. In the event that there are Urban Service Extension Fees in the account after ANNEXOR has recovered any annual cash payments made, such remaining fee revenues shall be transferred to the CITY General Fund.

E. Prior to the beginning of each year a fiscal analysis estimating CITY General Fund and fee revenues and expenditures attributable to the Property will be conducted by the CITY. ANNEXOR will have the opportunity to review and comment on the municipal service levels, revenue estimates, development absorption assumptions, etc. used by the CITY in the analysis. The analysis will include a retrospective analysis of revenues and expenditures for the previous year as well as a prospective analysis of the upcoming fiscal year. If ANNEXOR disagrees with the results of the fiscal analysis, it can request that an independent audit and review of the analysis be conducted. Such an audit will be conducted by a firm mutually acceptable to CITY and ANNEXOR and will be paid for from funds available in the Urban Service Extension Fee Account or by ANNEXOR if there are insufficient funds in the Urban Service Extension Fee account. Such a request for an independent audit must be addressed to the City Manager within 20 working days of ANNEXOR'S receipt of the analysis. The findings of the independent auditor will be subject to City Council review and approval. ;

F. If the combination of capital improvements to be made by the ANNEXOR, any funds available in the Urban Service Extension Fee account, and General Fund revenue attributable to the Property do not equal or exceed the CITY expenditures identified in the fiscal analysis, ANNEXOR will make cash payments, quarterly during the year to eliminate the deficit. This obligation of ANNEXOR to eliminate annual deficits shall continue for a period of each three (3) consecutive calendar years of General Fund revenues from the Property exceeding General Fund costs of services to the Property after 1992 (which may include the breakeven year), or the day and month of this Agreement in the year 2010, whichever occurs first. ANNEXOR shall receive a credit toward any annual deficit after the breakeven year for any annual surplus. ANNEXOR agrees that

it shall not be entitled to reimbursement from CITY'S General Fund but such sums shall be credited to ANNEXOR'S obligation as set forth above. To the extent ANNEXOR has made payments to eliminate annual deficits ANNEXOR shall recover such payments exclusively from the Urban Service Extension Fee account after its obligation to make annual payments terminates.

G. To guarantee to CITY that ANNEXOR will make necessary cash payments to mitigate revenue shortfalls identified in the CITY fiscal analysis, ANNEXOR agrees to place all proceeds of the sale to the CITY Utilities Department of the electrical transmission corridors [pursuant to Article XVI(G) below] identified in the Master Plan into an escrow account to be held in trust by a financial institution under terms and conditions mutually acceptable to ANNEXOR and CITY. This escrow account shall be utilized and drawn upon only if and to the extent that ANNEXOR is in default by failing to make annual payments as required in Article XI(F) above. Unless there is a default, ANNEXOR shall be entitled to all principal, interest or other income earned remaining in the account when the trust is dissolved. The trust will be dissolved when ANNEXOR has satisfied its obligation to make annual payments in accordance with Article XI(F) above. CITY and ANNEXOR will jointly establish this account. The account need only have such amount to reasonably secure the elimination of the annual deficits as described in this Article. Any excess may be drawn down by ANNEXOR upon written approval of CITY when no longer needed.

H. ANNEXOR agrees that near-term development will be concentrated in three development nodes. The nodes will be established in accordance with the CITY Fire Chief's standards for fire service as development occurs as uniformly applied throughout the CITY. If development occurs outside of these three nodes requiring additional fire stations and fire service prior to the breakeven year, ANNEXOR agrees to bear up to the breakeven year the total cost

of constructing, staffing, and operating those stations with the right to delegate this obligation to a properly authorized special district. If development occurs outside of the three nodes prior to the breakeven year, resulting in an increase in the number of miles of roads to be maintained by the CITY, ANNEXOR agrees to bear the total cost of the maintenance of such additional roads.

I. For purposes of administration of this Article Aries Properties Incorporated will administer the provisions hereof on behalf of ANNEXOR, including establishment of the trust account as set forth in Article XI(G), and shall be solely responsible for any annual cash payments to eliminate annual deficits as may be required pursuant to Article XI(F), and shall be solely entitled to recover any such annual cash payments made, unless such obligation and right of recovery is specifically delegated to another person, entity, or district.

## XII

### UTILITIES GENERALLY

A. Limitation of Applicability - The Utilities code, tariffs, regulations and policies as they exist or are hereinafter amended shall apply, and except as expressly provided herein, the provisions of this Agreement set forth the requirements of the CITY Department of Utilities 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 to adopt different ordinances, rules, regulations, resolutions, policies, tariffs, or codes which change any of the provisions set forth in this Agreement so long as these apply to the CITY generally.

B. Utility Recovery Agreements - Utility Recovery Agreements entered into by the CITY for recovery of monies expended by the ANNEXOR for oversized, both on and off site, utility facilities to be recovered from subsequent developers will be as provided for in the Code, Electric and Gas Tariffs, or as may be approved by the CITY.

C. Interim Utility Service - If interim utility service is required ANNEXOR shall dedicate such lands as are necessary to the CITY and pay all the cost of the facilities except as otherwise expressly provided. Such land shall revert to the ANNEXOR when the interim facilities are no longer needed, provided that such reversion shall not adversely affect CITY permanent facilities.

D. Southern Area - It is understood and agreed as to the Southern Area that no utility service will be provided by the CITY until debt restructuring is successfully completed as set forth in Article XVIII.

XIII

WATER

A. The CITY and/or ANNEXOR will extend water service facilities to the Property in accordance with the CITY'S ordinances, regulations and policies in effect at the time of specific water requests. Specific water requests are subject to the necessary improvements and facilities being constructed and available for use. Once the Property is annexed to the CITY the CITY will serve the Property with water so long as such water is available and facilities are in place to deliver the water. Allocation of supply is on the basis of first-come, first served throughout the CITY.

B. ANNEXOR shall dedicate to the CITY all necessary rights-of-way, owned by ANNEXOR for installation of mains and associated facilities within the

Property, which rights-of-way shall be free and clear of liens and encumbrances that may adversely affect CITY'S use of the land.

C. All pump stations and suction storage are to be paid fully by ANNEXOR; the distribution storage shall be paid by the CITY. Recovery agreements shall be entered into between ANNEXOR and CITY to provide that developments which receive benefit from the pump stations, suction storage and off-site improvements will reimburse ANNEXOR on a pro rata basis.

D. ANNEXOR grants in perpetuity to the CITY the sole and exclusive right to withdraw, appropriate and use any and all groundwater underlying ANNEXOR'S Property and all surface water rights located on the Property. Water in the Southern Area owned by ANNEXOR as of January 1, 1988 and water owned by Colorado Centre Metropolitan District as of January 1, 1988 shall be excluded from the provisions of this Article XIII and covered by Article XVIII. ANNEXOR irrevocably consents in perpetuity, on behalf of itself, and any and all successors in title, pursuant to Section 37-90-137(4) of the Colorado Revised Statutes, as now existing or later amended, to the withdrawal, appropriation and use by the CITY of all such groundwater and agrees to execute any additional or supplemental consents thereto that may be required to the CITY to withdraw, appropriate or use said groundwater. Wells constructed by the CITY outside the Property may withdraw groundwater under the Property without any additional consent. The CITY shall allow ANNEXOR to use groundwater under its Property for irrigation, cooling tower purposes and such similar non-potable uses subject to specific agreements entered into by and between ANNEXOR and CITY. If at any time the CITY deems it in the best interest of the CITY, the CITY may use the water underlying the Property for municipal and utility purposes by the CITY in the CITY.

E. ANNEXOR shall provide, without cost to the CITY, any and all necessary property not to exceed ten thousand (10,000) square feet per well site for

construction and operation of wells on the Property for which there are well applications pending or approved. Additionally, ANNEXOR shall provide reasonable access to said well sites. The well sites shall be within 200 feet of those sites as presently decreed unless the CITY and ANNEXOR agree otherwise.

F. ANNEXOR shall dedicate to the CITY the land generally shown on the Master Plan as Parcel Nos. 273.03, 293.07, 307.04, and 321.05 or at such other locations as mutually agreed upon between the CITY'S Water Division Manager and ANNEXOR, for four (4) water storage tank sites and such other uses as determined by CITY.

G. The CITY shall develop, subject to agreement by ANNEXOR, a Master Water Service Plan for providing water service to the Property which plan may be amended from time to time by the parties. The plan shall provide for alternative plans for development of water service for various scenarios and shall be revised and updated periodically as necessary. The CITY shall be responsible for engineering and design of all facilities required under the Master Water Service Plan under each scenario. ANNEXOR shall give to the CITY eighteen (18) months advance notice of its need for construction of facilities necessary to provide water service to areas to be developed in order that the CITY has time to budget, select, and design the specific facilities which shall be provided and to acquire necessary rights-of-way and to construct facilities prior to actual time that water service is required. The cost of such facilities shall be paid by the CITY and/or ANNEXOR as provided by applicable CITY ordinances, regulations, and policies in effect at the time of the request for water service. If the CITY is unable or unwilling to then pay its share of these costs, and ANNEXOR is willing to accelerate the 18 month notice

requirement subject to engineering constraints, ANNEXOR may pay the CITY'S share and shall be reimbursed for such share pursuant to a recovery agreement.

With respect to the proposed Banning-Lewis Parkway, it is understood and agreed that parcels of land adjacent to the parkway shall generally not receive water service directly from major distribution mains within the parkway right-of-way; individual services shall generally be connected to secondary mains within frontage or other secondary roads or in streets which intersect the parkway. Exceptions to this planning principle may be allowed on a specific basis by the Water Division Manager. Because installation of distribution water mains in Banning-Lewis Parkway may not be necessary for some time, payments pursuant to the CITY'S major main policy for distribution mains eventually required in Banning-Lewis Parkway are to be made as initial water service is extended to properties adjacent to Banning-Lewis Parkway; the CITY will then install the distribution water mains in Banning-Lewis Parkway, as they are needed, at no additional cost to the ANNEXOR.

H. Except as provided in Article XVIII, if the Property is de-annexed, the CITY will continue to serve the then existing customers at outside CITY rates, but no connections for new customers will be made without prior City Council approval.

I. ANNEXOR consents to the inclusion of the Property in the Southeastern Colorado Water Conservancy District on the terms and conditions set forth in the Decree of the District Court, Pueblo County, Colorado, in Case No. 40487.

J. Any provisions made for interim water service that is not a part of the Master Water Service Plan prior to the construction of water facilities as envisioned by the Master Water Service Plan, shall be at the sole expense of the ANNEXOR. Construction of interim service shall meet all standards of the Water Division.

## XIV

## WASTEWATER

A. General. CITY agrees to provide and extend wastewater service to and within the Property in accordance with the CITY'S ordinances and regulations in effect at the time of each specific wastewater request. Where such service is provided by the Lower Fountain Metropolitan Sewage Disposal District (hereafter "LFMSDD") service shall be governed by the LFMSDD Service Agreement or such agreement as may be negotiated between the CITY and LFMSDD.

B. Interim Service. It is recognized by the CITY and ANNEXOR that until such time as a new wastewater treatment facility is constructed, the Property may, by geographic and economic necessity, have interim wastewater service provided by either the CITY, providers other than CITY, or as may be otherwise permitted by the Code and Health Department regulations. Other providers include but are not limited to the Fountain Sanitation District and Cherokee Water and Sanitation District. ANNEXOR is responsible for costs associated with the design, construction and installation of all interim wastewater needs. These interim service needs will be identified by the Wastewater Service Master Plan described below. CITY acknowledges that Intergovernmental Agreement dated August 17, 1987, between the Colorado Centre Metropolitan District and the Fountain Sanitation District, described in Exhibit "K" attached hereto, wherein the Fountain Sanitation District agrees to provide wastewater services to the Colorado Centre Metropolitan District until a "regional wastewater treatment plant" or other long term treatment options that may be provided by the CITY or other governmental entity is constructed. Connection Charges shall be as determined in Paragraph C, of this Article XIV. Wastewater Service Charges shall be computed and charged in a similar manner as those of other customers inside the CITY limits.

C. Permanent Service.

1. Regional Wastewater Treatment Facility. The CITY and ANNEXOR agree that a new regional wastewater treatment facility will be constructed to serve that portion of the Property within the Jimmy Camp Creek Drainage Basin and that portion of the Property within the Sand Creek Drainage Basin if the latter can be more economically served by said new facility. Unless otherwise agreed between CITY and ANNEXOR, CITY and ANNEXOR agree that the new wastewater treatment facility shall be located on that site presently optioned by the LFMSDD southeast of the City of Fountain (Exhibit "L"), and that said plant will provide sewer service for governmental entities other than CITY as well as private contracting parties. It is contemplated that the terms and conditions of receiving wastewater treatment from said plant shall be governed by the LFMSDD Service Agreement, or such future agreement that may be reached between CITY and LFMSDD. The CITY agrees to use its best efforts in providing wastewater service to the Property in a timely manner when needed for development.

2. Interceptor. The CITY and ANNEXOR acknowledge that a new sewer interceptor line is required to be constructed both on and off the Property to connect the Property to the new wastewater treatment facility and that the use of the interceptor off the Property shall be governed by the LFMSDD Service Agreement or such future agreement that may be reached by the CITY and LFMSDD. It is also acknowledged that a second, parallel sewer interceptor may be required at future time to service the full development of the Property. Such interceptors shall be built to CITY standard specifications at request of CITY and to the extent ANNEXOR can comply. At the request of ANNEXOR, CITY will collect a recovery charge as provided by a recovery agreement from users all such sums to be rebated to ANNEXOR for the interceptor costs.

3. Costs. ANNEXOR is responsible for costs associated with the design, construction and installation of all wastewater facilities to serve the Property as may be provided in the Code, Article 5, Wastewater Treatment Code (12-5-601), including its share of the regional wastewater treatment facility and the interceptor. To the extent that portions of the Property (e.g. Sand Creek Basin) are not serviced by the new plant and interceptor, Connection Charges shall be assessed in accordance with the ordinances of the CITY then in effect. For that portion of the Property that is to be serviced by the new plant and interceptor, CITY shall establish and collect a Connection Charge based on actual costs. The CITY'S System Development Charge shall be established based upon the total cost of the regional wastewater treatment facility and interceptor and such other facilities as have been agreed upon by CITY and ANNEXOR. The CITY agrees that the System Development Charge will be calculated consistent with the manner in which said Charge is calculated for the balance of the CITY. The revenue realized from the collection of the System Development Charge shall be first utilized to reimburse ANNEXOR and/or any Districts which have been formed pursuant to Article XVII hereof, for total costs incurred in constructing the regional wastewater treatment plant, interceptor or other facilities as have been agreed upon by CITY and ANNEXOR and second, shall be set aside for any such future costs. All such revenue may be pledged by ANNEXOR and/or any Districts for the repayment of debt incurred to construct the interceptor and wastewater treatment plant.

The procedure for collecting the Connection Charges shall be as set forth in the CITY'S ordinances at the time of collection unless otherwise agreed by CITY and ANNEXOR. Wastewater Service Charges shall be computed and charged in a similar manner as those of other customers inside the CITY limits.

D. CITY and ANNEXOR shall jointly prepare a Wastewater Service Master Plan within a reasonable period of time after annexation of the Property. The Wastewater Service Master Plan shall show the general location and size of all required on-site and off-site pipelines, 15-inch and larger, lift stations, force mains and all proposed interim facilities.

E. ANNEXOR shall dedicate to the CITY all necessary rights-of-way owned by ANNEXOR for installation of wastewater lines and associated facilities within the Property, which rights-of-way shall be free and clear of liens and encumbrances that may adversely affect CITY'S use of the land.

F. The CITY agrees to take sewage sludge generated from LFMSDD wastewater treatment plant delivered to the Wastewater Division Solids Handling Facility located at the CITY'S Hanna Ranch. The cost of delivery facilities shall be the responsibility of LFMSDD and a per unit charge for handling said sludge shall be charged by the CITY, as may be agreed between LFMSDD and the CITY.

: XV

#### NATURAL GAS

A. The Property is substantially within the existing gas service area of the CITY as designated by the Colorado Public Utilities Commission. Annexation of any lands not in the currently existing gas service area shall be added to the gas service area and proper certification by the Public Utilities Commission shall be obtained by the CITY.

B. The CITY agrees that it will extend gas service to the Property under its tariffs, ordinances, and rules and regulations in effect at the time of any specific gas service request. Availability will be covered by tariffs, ordinances, and rules and regulations in effect at the time of request. Annexation does not imply a guarantee of gas service.

C. ANNEXOR shall dedicate to the CITY all necessary rights-of-way owned by ANNEXOR for installation of gas mains from existing off-site systems and gas mains and associated facilities within the development, which rights-of-way shall be free and clear of liens and encumbrances that may adversely affect CITY's use of the land.

D. ANNEXOR agrees to dedicate a number of 30-foot by 30-foot gas regulator station sites. The number and general location of these sites shall be determined by Gas Division and specific site location shall be by mutual agreement. The regulator station sites will be deeded at no cost to the CITY free and clear of all liens and encumbrances that may adversely affect CITY'S use of the land.

E. Portions of the Southern Area are currently in Peoples Natural Gas Company's service area. Peoples has installed facilities and is presently providing gas service to customers. Such portions of Peoples' service area that are annexed will become the CITY'S service area, and the CITY will purchase the appropriate facilities from Peoples Natural Gas Company and will install facilities necessary to deliver gas to this acquired system. Peoples Natural Gas Service will be disconnected except for the 6-inch and 4-inch mains which will be retained by Peoples. These mains will pass through Colorado Centre from the Colorado Interstate Gas Company meter station to Peoples' gas service area south of the Southern Area. Peoples will require the continued use of their right-of-way easements and/or the streets and roads for their mains.

The acquisition of Peoples' facilities by the CITY shall be done at no cost to the ANNEXOR.

F. ANNEXOR will execute all extension contracts required and will pay to the CITY an advance deposit equal to the cost of such facilities in accordance

with the CITY'S gas extension policy in effect at the time the service is requested. The CITY will make refunds of the deposit to ANNEXOR in accordance with prevailing citywide policy.

G. Reasonable and timely notice shall be provided to CITY in order to schedule gas service to the Property. It is understood and agreed as to Southern Area that no service will be provided until debt restructuring is successfully completed as set forth in Article XVIII.

XVI

ELECTRIC

A. Electric service will be provided to the Property in accordance with the CITY'S ordinances, tariffs, rules and regulations in effect at the time electric line extensions are requested. Recovery, if any, for on and off site electric facilities shall be in accord with the applicable electric tariff. Requests for such service shall conform to the Code and Tariffs of the City of Colorado Springs.

B. ANNEXOR shall dedicate to the CITY all necessary rights-of-way owned by ANNEXOR for installation of all electric transmission facilities, except the two (2) major transmission corridors set out in paragraph C. below, and distribution facilities to include substation sites and other associated facilities within the Property, which shall be free and clear of liens and encumbrances that may adversely affect CITY'S use of the dedicated Property.

C. Five major overhead electric transmission lines are planned within two (2) major transmission corridors. ANNEXOR'S needs may require additional lines in the future. All transmission lines will be constructed when the Electric T&D Division determines they are required. All transmission lines will be overhead and located in areas which will not conflict with airports.

D. All lines below 30,000 volts Phase-to-Phase will be installed underground in accordance with CITY code. Temporary lines may be overhead and will be paid for by ANNEXOR including cost of removal.

E. The CITY will not supply electric service to any area within the service territory of the Mountain View Electric Association until the area is annexed and service transferred in a phased manner according to the existing agreement between the CITY and Mountain View. ANNEXOR shall be responsible for all costs associated with the transfer of facilities and service territory. Such cost to include any facilities on land developed by the ANNEXOR prior to annexation and enclave lands not being annexed north of Drennan Road but for which due to annexation, the CITY is required to take over electric service. Disconnection from Mountain View and transfer of service to the Property shall be as follows:

1. The amount to be paid by ANNEXOR for transfer of territory shall be calculated when the final meter readings for the twelve months preceding the service territory transfer date are available. It is estimated that disconnection of the Southern Area from Mountain View shall cost approximately \$61,810, and disconnection of the remainder of the Property is estimated to cost \$53,710.

2. Five electric distribution areas (EDA's) have been established for disconnection from Mountain View and extension of electric service by CITY. The five EDA's are depicted on Exhibit M attached hereto and incorporated by reference. CITY shall endeavor to secure an agreement with Mountain View that would permit Mountain View to continue to serve existing and new users within a particular EDA until such time as one of the following conditions is met:

- (a) There exists two or more residential customers in a platted subdivision;

- (b) There exists two or more commercial/industrial customers in one building complex or platted subdivision;
- (c) There is demand from one or more customers for an ultimate connected load of five hundred kilowatts (kw) or more for any one EDA or one thousand kilowatts or more for two or more contiguous EDA's;
- (d) January 1, 1995 arrives regardless of load demands within the EDA.

3. When any one of the conditions in Paragraph 2 is met, or if CITY cannot secure an agreement with Mountain View to allow Mountain View to continue to serve the Property as provided above, CITY will supply electric service to the Property. ANNEXOR will bear the cost of all line extensions to the Property according to the tariffs and policies in effect at the time of the extension. Prior to reconnection, ANNEXOR may elect to terminate electric service to facilities then in service, or provide service with small generators for small uses, such as stock watering ponds.

4. CITY will enter into recovery agreements, as permitted by CITY's ordinances, tariffs, rules, and regulations to allow ANNEXOR to recover off-site improvements and expenses required to serve the Property.

5. Any labor and material cost for the installation of permanent facilities or the installation and removal of temporary facilities (except credits for any salvage value) required to serve new customers, beyond the existing customers on the Property whose service cost is included in the disconnect fees to be paid by ANNEXOR to Mountain View under Paragraph 1 above, must be paid by ANNEXOR or the user seeking service.

F. Road Improvements Adjacent to Utility Corridors - ANNEXOR shall be responsible for the cost of or construction of road improvements adjacent to

utility corridors. ANNEXOR shall also be responsible for required relocation of utility lines and facilities. The CITY Department of Utilities shall not be responsible for acquisition, dedication or contribution of land needed for road improvements, nor shall the CITY Department of Utilities or General City be responsible for road improvements where utility corridors are adjacent to such lands; however, CITY will permit road crossings and certain other public uses at utility corridors. This waiver of responsibility shall apply in all cases irrespective of the manner in which the CITY Department of Utilities acquires title, i.e., fee simple, easement, right-of-way, dedication by plat etc.

G. The CITY has determined the location of two corridors for a total of five major transmission lines through the Property generally shown on the Master Plan, and ANNEXOR shall deed the same to the CITY upon request. When these transmission line corridors are deeded to CITY, CITY will compensate ANNEXOR for the fair market value at the time of conveyance. Such compensation shall be distributed among ANNEXORS in accordance with their ownership interests. The time and manner of payment shall be established by separate agreement. The payments shall be used as security for ANNEXOR'S responsibility to cover any annual fiscal deficits as set forth in Article XI. ANNEXOR shall consent to the location of the transmission line corridor. Easements for distribution lines must be shown on the Master Plan and all final subdivision plats. The two (2) corridors for five major transmission lines would have been required even if ANNEXOR'S Property was not annexed.

H. All street right-of-way in residential subdivisions dedicated by ANNEXOR shall generally allow for the installation, operation and maintenance of electric facilities between sidewalk and property line or between curb and sidewalk for areas with detached sidewalks. ANNEXOR, with CITY approval, may set aside other areas for such facilities.

I. ANNEXOR shall dedicate to CITY the electric service site as shown on the Master Plan as a portion of Parcel No. 329.01/329.04 (one site) and six (6) ten (10) acre electric substation sites Parcel Nos. 295.02, 301.05, 309.02, 329.02/329.05 (one site), 338.09 and 344.02 for which the ANNEXOR will apply for the Public Facilities (PF) zone within eighteen (18) months of final annexation and which shall be dedicated for exclusive use by the Department of Utilities.

J. ANNEXOR shall provide on each side of all arterial or larger streets including state and U.S. highways and the Banning-Lewis Parkway a minimum of ten (10) feet within the street right-of-way but outside the ultimate paved portion exclusively for electric distribution facilities; landscaping shall be permitted in accordance with CITY Utility Department policy.

K. It is understood and agreed as to the Southern Area that no service will be provided until debt restructuring is successfully completed as set forth in Article XVIII.

## XVII

### DISTRICTS

A. The CITY shall approve the formation of one or more Districts ("Districts") or similar entities consistent with the intent of this Agreement, including but not limited to public building authorities, development authorities, general improvement districts (special districts), special improvement districts, maintenance districts, flood control conservancy districts, local improvement districts, and including metropolitan districts for non-residential land, for the purpose of the acquisition, design, construction, installation, financing and/or maintenance of capital improvements and facilities, and for the provision of certain services which may be required to develop the

Property; which capital improvements, facilities and services ANNEXOR is obligated or permitted under this Agreement to provide. To the extent that ANNEXOR is responsible therefor, such capital improvements and facilities would include, but not be limited to: water and wastewater lines and facilities; storm drainage and detention facilities, including irrigation; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, safety protection improvements; park and recreation facilities; police and fire protection facilities and equipment; and communication facilities and equipment. CITY will permit the formation of such districts so long as the CITY is not directly or indirectly liable for repayment of any indebtedness in connection therewith, and ANNEXOR has presented evidence satisfactory to the CITY that the proposed District has, or will have, the financial ability to discharge the proposed indebtedness. Any approval of such Districts, when requested by ANNEXOR, shall include the following conditions, unless waived by CITY:

- (1) No District shall levy, charge or collect a sales tax.
- (2) All services and improvement plans of the District(s) and amendments thereto shall be subject to review and approval by CITY.
- (3) The District(s) shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.
- (4) All improvements constructed by the District(s) shall be designed, constructed and warranted in accordance with the standards and specifications of CITY.
- (5) Unless otherwise provided in this Agreement, the CITY shall be the sole provider of municipal services to the Property, including water and wastewater services, fire and police protection, street maintenance, zoning and code enforcement, and all other services as CITY may provide to

the residents of CITY; provided, however, that the District(s) may, with the prior approval of the CITY, provide supplemental street, median, landscape (including irrigation), drainage and other facility maintenance services.

(6) CITY shall not incur any expense in the formation or operation of the proposed District(s) or its retirement of capital obligations, exclusive of ordinary administrative expenses such as review by CITY staff.

(7) Other conditions to the approval of any District may also be applied by the CITY as a matter of Citywide uniform policy, including consideration of whether the District will have an adverse impact upon the financial ability of the CITY or other governmental entities to enter into bonded indebtedness.

B. To the extent that ANNEXOR has any right or duty under this Agreement to engineer, furnish material for, install, construct, warrant, maintain, repair or otherwise provide for or maintain certain improvements and facilities (public or private) as defined in this Agreement or as otherwise required or desired by ANNEXOR in connection with development of the Property, all or any portion of that right or duty may, with the CITY's consent, be delegated by ANNEXOR to the District(s) so long as such responsibilities are within the scope of authority of said District(s). Notwithstanding any such delegation, the provisions of this Agreement shall run with the land, and the CITY may enforce against any such District any delegated obligations.

XVIII

COLORADO CENTRE METROPOLITAN DISTRICT

A. Within one year and seventy-five days following the date of this Agreement, ANNEXOR shall secure a restructuring of the existing Colorado Centre

Metropolitan District (CCMD) bonded indebtedness. CITY acknowledges that the restructuring of the CCMD debt is intended to take place in phases, and that CITY will cooperate to the extent necessary in the restructuring process. Upon restructuring of the debt within the following parameters ANNEXOR'S obligation hereunder will be satisfied:

1. The existing indebtedness, which is secured by water tap revenues, must be restructured to allow CITY to collect these water tap revenues.

2. The existing indebtedness will be shifted from a mill levy debt to an assessment lien debt through establishment of a building authority. Existing CITY residents shall not bear any responsibility for debt repayment. The Property subject to the assessment lien will be solely on the portion of the CCMD to be annexed (i.e. the Southern Area), plus the additional lands within the Property as provided below. As properties within that portion of the Property subject to the assessment lien are platted, ANNEXOR shall pay a pro rata share of the debt, and the assessment lien shall be released as to the platted land; subsequently constructed dwellings shall not be subject to the assessment lien.

3. CCMD may continue to assess a mill levy of a maximum of eight mills on the area currently included in the non-annexed portion of CCMD and will be permitted to collect up to a 10% water connection surcharge, which revenues may be applied either toward covering the costs of service CCMD will continue to provide or to prepay bonds of the building authority to the extent that there are surpluses.

4. Approximately 1,000 acres of additional lands within the Property may be added to the area to be included in the building authority as a source for assessments.

5. CITY acknowledges that it may take the building authority several bond issues to restructure the existing CCMD debt.

6. The CCMD service plan will be amended to restrict the district from borrowing before or after its current debt is restructured, until such time as the restructured debt is fully retired.

B. While the existing CCMD indebtedness is being restructured, CITY will not provide utility service or plat approval for that portion of the CCMD being annexed. CCMD will continue to provide services to the non-annexed area and the annexed area until the debt is restructured, and may continue to charge customary user fees or other fees for services that are provided by CCMD. CCMD shall be allowed to utilize Well No. 211A during the year and seventy-five day period in the event the non-annexed and annexed lands' existing water supplies are terminated.

C. If the restructuring of the existing CCMD debt is not completed within one year and seventy-five (75) days following the date of this Agreement. ANNEXOR will petition to disconnect the annexed portion of CCMD from the CITY in accordance with 31-12-501 et seq., C.R.S. In the event of disconnection, the ANNEXOR will retain ownership of the groundwater underlying the Southern Area. The CITY shall allow CCMD by separate intergovernmental agreement without charge utilization of Well No. 211A for the purpose of providing interim water service to the Southern Area for a period not to exceed five (5) years.

D. If the restructuring of the existing debt is completed as provided above CITY will provide all utility services to the Southern Area on same terms and conditions as to the balance of the Property. CCMD may contract consistent with CITY policies for CITY water and wastewater service for the non-annexed portion of CCMD. If CCMD does not contract with CITY for water service, CCMD

shall have the right to utilize Well No. 211A without cost for the purpose of providing interim water service to the non-annexed portion of CCMD for a period not to exceed five (5) years from date of this Agreement.

E. Subject to the provisions of Article XVIII(C) above, ANNEXOR grants in perpetuity to CITY the sole and exclusive right to withdraw, appropriate, and use any and all groundwater underlying the Southern Area and all surface water rights located in the Southern Area except for groundwater owned by CCMD as of January 1, 1988. ANNEXOR shall convey the remaining groundwater and groundwater rights by a consent and instrument of conveyance acceptable to CITY, which shall include the wells and historical water requirements associated with groundwater rights conveyed to CITY.

## XIX

### GENERAL PROVISIONS

A. This Agreement shall be recorded with the Clerk and Recorder in El Paso County, Colorado and shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto, and all persons or entities now or hereafter having an interest in the Property. Except as noted hereafter, any and all of the rights, duties and obligations of ANNEXOR or any of them hereunder may be assigned by ANNEXOR to any person or entity when portions of the Property are conveyed to such persons or entities. In such event, the assignee will assume all of the rights, duties and obligations of ANNEXOR hereunder as to the portion of the Property so assigned and ANNEXOR shall be relieved from all further liabilities, obligations and duties as to the portion of the Property so conveyed. Notwithstanding the foregoing, rights to specific reimbursements, refunds or credits provided for herein shall be placed in a fund, to be known as the Banning Lewis

Ranch Improvement Fund, held in trust by a bank mutually agreed upon by Aries Properties Incorporated and CITY, for equitable distribution by the Banning Lewis Ranch Planning Association or similar entity or entities among the parties bearing the costs to which such refunds, reimbursements and credits relate. The Banning Lewis Ranch Planning Association or a similar entity or entities created for the purpose of administering this Agreement, shall remain in existence until all terms and conditions of this Agreement have been complied with or until the Agreement terminates. Any future sale of the Property shall include specific reference to this Agreement and delegation of the obligations contained herein. Rights to the specific refunds contained herein shall always be to Aries Properties Incorporated unless specifically assigned to another person, entity, or district created in accord with Article XVII.

B. CITY acknowledges that ANNEXOR owns a number of small contiguous tracts that ANNEXOR will seek to annex upon completion of the annexation of the Property. Upon annexation of such additional tracts, the provisions of this Agreement will extend to such other tracts as if they originally had been included in this Agreement. In addition, the Master Plan shall be deemed sufficient to satisfy the "plan in place" requirements of the Municipal Annexation Act, as amended, for the purpose of annexing such tracts.

C. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing Codes or ordinances or as a waiver or abdication of the CITY'S legislative, governmental or police powers to promote and protect the public health, safety, or general welfare of the CITY or its inhabitants; nor shall this Agreement prohibit the enactment by the CITY of any fee which is of uniform or general application throughout the CITY. Except as specifically provided herein, CITY agrees to treat ANNEXOR and the Property in a

non-discriminatory manner relative to the rest of the CITY. In addition, any consent or approval require hereunder either from ANNEXOR or CITY shall not be unreasonably withheld. CITY will not impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits on ANNEXOR, or make any assessment on the Property that is not uniformly applied throughout the CITY, unless otherwise agreed to between CITY and ANNEXOR. Any fees to be paid by ANNEXOR will be paid at building permit issuance except as specifically may be provided in this Agreement or the Code.

D. No right or remedy of disconnection of the described Property from the CITY accrues from this Agreement, other than that provided by §31-12-119, C.R.S. In the event the Property or any portion thereof is disconnected at ANNEXOR'S request, the CITY shall have no obligation to serve the disconnected Property and this Agreement shall be void and of no further force and effect as to such Property.

E. If the annexation of the Property or any portion thereof 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 disconnection of the Property from the CITY, then this Agreement and all provisions contained herein shall be null and void and of no further effect. If the referendum challenge fails, then ANNEXOR and CITY shall continue to be bound by all terms and provisions of this Agreement.

F. If the annexation of the Property or any portion thereof is voided by initiative, the CITY agrees to cooperate with ANNEXOR to continue providing water, wastewater, electric and gas service to those properties actually served. The CITY and ANNEXOR agree to pursue all reasonable methods to

continue such service including but not limited to extraterritorial water and sewer contracts at outside CITY rates. Such agreement to cooperate shall not constitute a legal obligation on the part of the CITY to continue service.

G. In the event that the annexation of the Property or any portion thereof is voided by final action of any court (such action not being associated with a referendum or initiative action), CITY and ANNEXOR shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure this Agreement shall be deemed to be an agreement to annex the Property to the CITY pursuant to the Municipal Annexation Act. Any such agreement to annex shall be subject to the terms of this Agreement, Master Plan, and all other documents referenced herein. ANNEXOR shall reapply for annexation as and when the Property becomes eligible for annexation as determined by the CITY.

H. It is specifically understood and agreed that where this Agreement provides for a determination to be made by a CITY Department Head and such is approved by the City Manager, any such determination may be appealed to and reviewed by City Council. An appeal for review by City Council of any departmental determination shall automatically stay this matter until the City Council has completed its review.

I. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

J. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained

herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto except those specific agreements herein referred to. Except with consent of Aries Properties Incorporated, CITY, and the Banning Lewis Ranch Planning Association, there shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument and recorded as required in Article XIX(A) above. Subject to the conditions herein, this Agreement may be enforced in any court of competent jurisdiction.

K. ANNEXOR has obtained and filed with CITY consent to this Agreement from all parties who hold prior Deeds of Trust or other security instruments in the Property.

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

M. In the event either party alleges that the other is in default hereunder, the non-defaulting party shall first notify the defaulting party in writing of such default. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within said period by the defaulting party and be thereafter diligently pursued. If the default is not cured in a timely fashion, then the non-defaulting party may elect, at its discretion, either to cure the default and recover the cost thereof from the defaulting party, or seek to enjoin the default if of a continuing nature, or seek specific performance and/or damages. All of these remedies shall be considered cumulative, and shall not be exclusive of any other remedy provided for in this Agreement.

N. Because it is anticipated by CITY and ANNEXOR that development of the Property will be a long term endeavor, this Agreement shall be in force and effect for a period of sixty (60) years from the effective date hereof or until all terms and conditions contained herein have been complied with, whichever occurs first. Thereafter, so long as the Property is located within the municipal boundaries of CITY, it shall be subject to the uniform ordinances, rules and regulations of CITY generally applicable throughout CITY on a non-discriminatory basis.

O. CITY shall use its best efforts to determine that the Banning Lewis Ranch Planning Association or a similar entity or entities created by it has reviewed all platting, site development plans, concept plans and requests for building permits prior to their submittal to the CITY or Regional Building Department. The Banning Lewis Ranch Planning Association, or similar entity or entities created by it shall in general be responsible for facilitating and coordinating ANNEXOR'S compliance with this Agreement and the Code, but shall not have any liability for violation of the Code or the Agreement by others.

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

CITY OF COLORADO SPRINGS

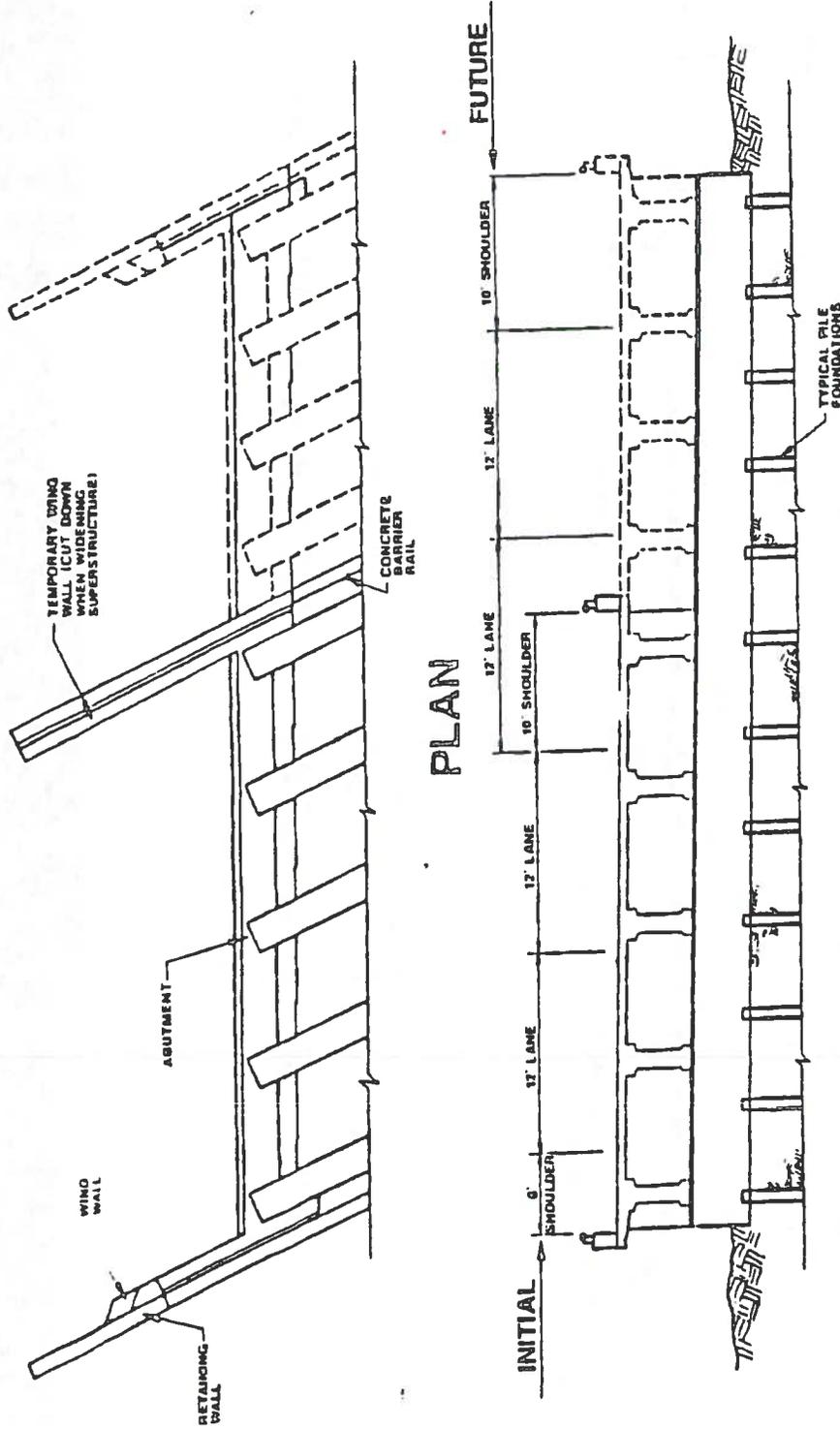
By: *[Signature]*  
Mayor



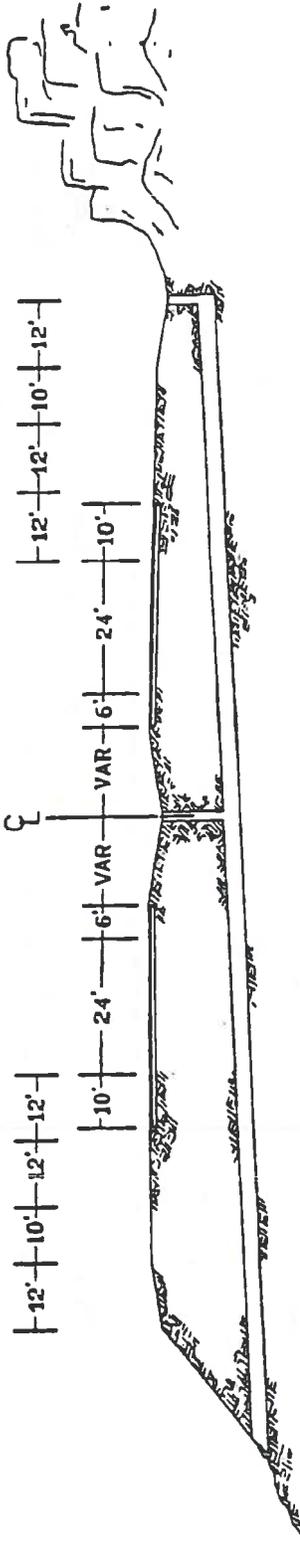
*[Signature]*  
City Clerk

APPROVED AS TO FORM:

*[Signature]*  
City Attorney *8/17/88*



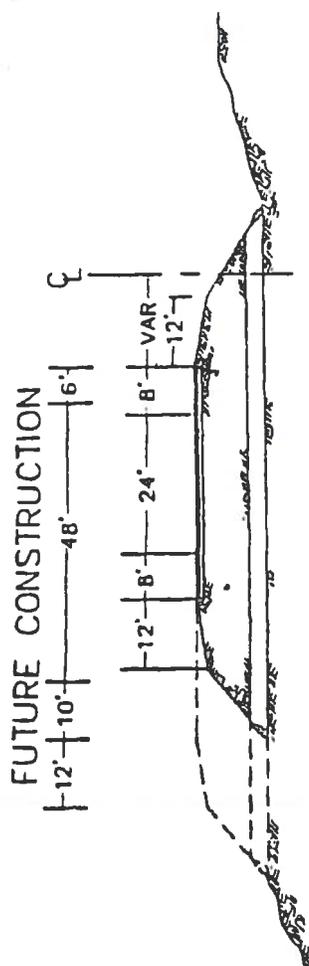
FUTURE CONSTRUCTION



FUTURE CONSTRUCTION

# BANNING—LEWIS PARKWAY

(FROM JUST SOUTH OF SH94 TO JUST NORTH OF US24)



BANNING-LEWIS PARKWAY

(FROM JUST SOUTH OF SH94 TO HIGH PLAINS DRIVE)  
(AND FROM JUST NORTH OF US24 TO JUST NORTH OF BARNES ROAD)

