

**AGREEMENT PROVIDING WASTEWATER SERVICE
TO LAND LOCATED OUTSIDE THE CITY LIMITS
OF THE CITY OF COLORADO SPRINGS
AND
AGREEMENT TO ANNEX**

WHEREAS, David Bang ("Owner") is the owner of real property in El Paso County, Colorado, as shown on the location sketch map (to be done on 8 1/2 x 11 paper) and as described and set forth in the attached Exhibit "A" (the "property"); and

WHEREAS, Owner owns or desires to construct upon the property a building (or other structure(s)) to be used for residential purposes at 7409 Tudor Road (Lot 35, Block 2, Pine Creek Estates (TSN: 6306003029) Colorado Springs, CO and has requested wastewater treatment service from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the property is located within an enclave, which enclave is surrounded by the corporate limits of the City and which enclave is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, section 30; and

WHEREAS, the City has considered Owner's application for wastewater service, and has determined that the property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex the property at this time; and

WHEREAS, the City is under no obligation to furnish but is agreeable to furnishing wastewater service upon the terms and conditions set forth below because the City has determined that the extension of service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the premises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Annexation Agreement (the "Agreement") subject to the following terms and conditions:

1. The Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the property to the City and the City shall not be required to seek legal action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the property as if Owner had petitioned for annexation, whenever the property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats,

and execute any other documents the City determines are necessary to annex Owner's property to the City. Owner agrees that the provisions of this Agreement are applicable to the property described in Exhibit "A" or any portion of the property. It is further agreed that Owner will not annex the property or any portion, or incorporate the property with any other municipality or special service district as described in Paragraph 10 without the prior written consent of the City.

2. It is specifically understood that the wastewater treatment services to be furnished by the City are for only the residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing wastewater treatment outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner understands and agrees that the City imposes charges for wastewater service for service provided outside of its corporate limits at a higher rate than applicable to the provision of services within the corporate limits of the City. Upon annexation of the property to the City, charges for wastewater service subsequent to annexation shall be at the rate applicable to the provisions of services within the corporate limits of the City.

3. If Owner or Owner's successor in interest desires a different wastewater service than granted the property in this Agreement, or desires to put the property to a use other than that stated above, a request shall be made to the City Council. If granted, the request shall be upon such terms and conditions as may be imposed by the Council. If the use of the property for which the request for the changed wastewater use is made involves subdividing the property or developing the property for residential, commercial or industrial purposes, the conditions for granting Owner's request shall include full compliance with the code, ordinances, rules, regulations and policies of the City.

4. Owner will extend wastewater main lines or service lines to the property and upon the property, at Owner's expense, in accordance with the provisions of the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific wastewater request. In the event Owner is not required to extend wastewater service and lines and connect to the City's wastewater system at the time of entering into this Agreement, Owner shall connect to the City's wastewater system at Owner's expense when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for service. Capacity of the system or treatment facility is not guaranteed by this Agreement, but by availability of service at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay the pro rata share of the wastewater treatment plant facility costs through the established wastewater system development charge. Owner will pay a pro-rata share of existing trunk sewer costs through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Collection facilities required to serve the site must be designed and constructed at

Owner's expense and will be required to be oversized to serve adjacent undeveloped land within the basin planning area boundaries.

Owner agrees to participate with other developments on a fair share pro rata basis in present and future off-site relief facilities.

5. Owner grants and conveys in perpetuity to the City the sole and exclusive right to use any and all groundwater underlying or appurtenant to and used upon the property. Owner irrevocably consents in perpetuity, personally and on behalf of any and all successors in title, pursuant to C.R.S. section 37-90-137(4), as now existing or later amended, to the withdrawal and use by the City of all ground water underlying said lands, and agrees to execute any additional or supplemental consents or instruments of conveyance thereof together with necessary rights of ingress and egress that may be required to vest in the City said right to appropriate, withdraw, and use any and all groundwater. Furthermore, if requested by the City, Owner agrees to convey to the City on or before the effective date of this Agreement, by a satisfactory irrevocable consent and/or a satisfactory instrument of conveyance, the right to withdraw for beneficial use any and all ground water underlying or appurtenant to and used upon the property. The City agrees that it shall obtain any and all easements necessary before construction and operation of any well on the property. Wells constructed by the City outside the property may withdraw groundwater under Owner's property without any additional consent. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the property at the time of connection to the City's water system will be capped and their use will cease. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accordance with the permit or decree when such permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw such authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

6. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

7. Owner and the City acknowledge that if the property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations, and policies of the City including but not limited to the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, Utility Extension Policies, and Comprehensive Land Development Plan as now existing or subsequently amended, except to the extent that such compliance would be unlawful under the applicable resolutions, codes, and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require but shall not be limited to:

- (1) Payment of all applicable wastewater fees or charges.
- (2) Provisions for required school/park sites or fees in lieu of dedication to the applicable jurisdiction.
- (3) Dedication, design, and construction of required streets, sidewalks, curbs, gutters and utilities, including telephone, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is stricter.
- (4) Dedication of easements including but not limited to utility, telephone and drainage easements as required by the City Subdivision Code.
- (5) Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
- (6) City requirements for off-street parking in connection with the property and improvements and submission for City approval plans for adequate off-street parking.

8. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 7 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations, and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 7 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 7 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any wastewater service under this Agreement. This Agreement shall not be interpreted to require the City to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

9. Owner understands that certain infrastructure serving the property may be required by the City to meet appropriate City standards at the time of utility service extension to the property or at the time of annexation of the property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects, including but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, drainage, water or wastewater systems necessary to serve the property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may include, but are not limited to, special districts, general improvements districts, limited improvement

districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the property to the City or established prior to the annexation of the property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the property within any of the foregoing entities and assessing the property a fair share of the cost of any improvements as determined by the City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute a time delay or other agreement obligating Owner and the property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

10. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. The financial institution expressly accepts and approves these covenants and agreements. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

11. Prior to annexation, nothing contained in this Agreement shall be interpreted to preclude Owner from obtaining wastewater services from another source acceptable to and meeting the requirements of the general governmental jurisdiction and the appropriate public health agency in which the property is located. In the event of disconnection from all City services, this Agreement shall terminate without expectation of any refund of fees or rates paid to the City pursuant to this Agreement.

12. As further consideration for the City providing wastewater services, if all or part of the property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the services provided may be terminated by and at the sole option of the City.

13. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the property specifically.

14. Owner will comply with all ordinances, codes, rules, regulations and policies of the City as now exist or may be amended or adopted in the future which are applicable to the property under the terms of this Agreement, or are otherwise applicable to the property after the annexation to the City.

15. Extension of wastewater services under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to

extension of wastewater service to other similarly situated individuals or property.

16. As used in this Agreement, the term "Owner", shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns. A subsequent owner of the property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the property.

17. This Agreement may be amended by Owner and the City. Any amendment shall be recorded in the records of El Paso County, shall run with the land and shall be binding upon all persons or entities now having or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment.

18. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.

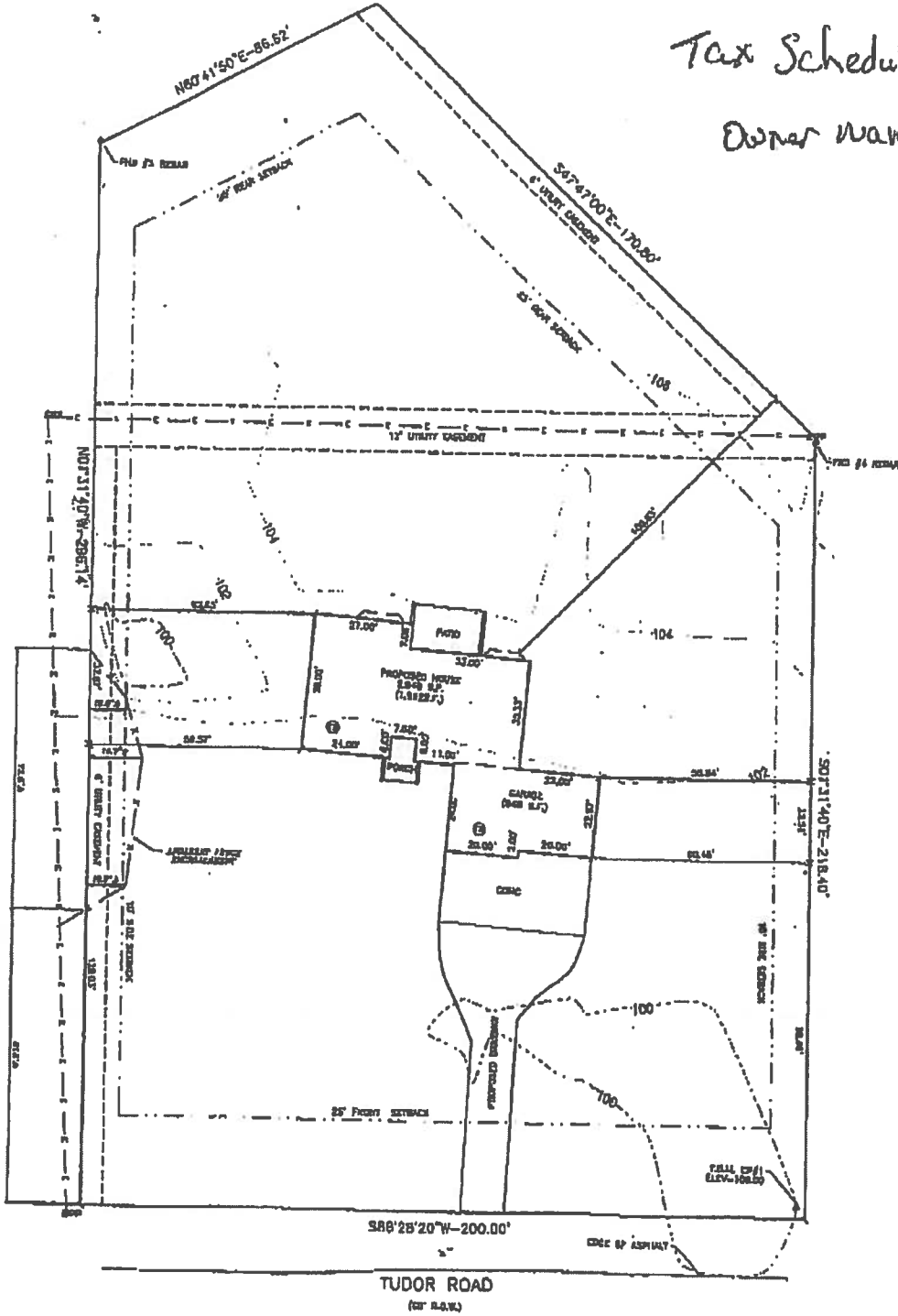
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SITE PLAN

LOT 35, BLOCK 2, PINE CREEK ESTATES
7409 TUDOR ROAD
COUNTY OF EL PASO, STATE OF COLORADO

Tax Schedule #6306003029

Owner name - David Berg



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