

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

**WHEREAS**, D Carps Investments, LLC, a Colorado limited liability company, (“Owner”) is the owner of the real property known as LOT 1, BLOCK 9, High Street Subdivision, (TSN: 7403327025) (3616 High Street West, Colorado Springs, Colorado 80904) and LOT 3, BLOCK 9, High Street Subdivision, (TSN: 7403327015) (225 Bellvue Avenue, Colorado Springs, Colorado 80904) in El Paso County, Colorado, both as shown on the location sketch map and as described and set forth in the attached Exhibit “A” (collectively the “Property”); and

**WHEREAS**, the Property is subject to a deed of trust for which The Bank at Broadmoor, The Bank at Broadmoor – Lake, 155 Lake Avenue, Colorado Springs, Colorado 80906, is the beneficiary (the “Bank at Broadmoor”) recorded at Reception No. 210078320 of the records of the El Paso County Clerk and Recorder; and

**WHEREAS**, the Property is subject to a deed of trust for which U.S. Small Business Administration, an agency of the United States, is the beneficiary (the “US SBA”) recorded at Reception No. 210096542 of the records of the El Paso County Clerk and Recorder, pursuant to an Assignment of Deed of Trust recorded at Reception No. 210096543; and

**WHEREAS**, Bank at Broadmoor and US SBA shall be referred to herein individually and collectively at “financial institution”.

**WHEREAS**, the Colorado Springs City Council has approved the provision of water and wastewater services to the Property from the City of Colorado Springs, a home rule city and Colorado municipal corporation, (the “City”) for residential purposes only; and

**WHEREAS**, Owner desires to construct upon the Property a building (or other structure(s)) to be used for commercial purposes and has requested water and wastewater services from the City for commercial purposes; and

**WHEREAS**, City Code section 7.6.207 states that “[a]ny request for a change of use of previously granted municipal services shall be considered and administered as a new application for such municipal service ...”; and

**WHEREAS**, the City has considered Owner’s application for water and wastewater services 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**, City is under no obligation to furnish but is agreeable to furnishing water and 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 for Water and Wastewater Services to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex (hereinafter "the Agreement") under 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 any part of the Property in the same manner as if Owner had petitioned therefore or as otherwise permitted by law at such time as the City in its sole discretion shall see fit whenever the Property shall become eligible for annexation and pursuant to the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S. (hereinafter "the Annexation Act") and Section 30 of Article 2 of the Colorado Constitution or any amendments thereof or subsequent annexation legislation then in effect in the State of Colorado. Upon request of the City Council of the City, Owner further agrees to execute a petition for annexation, execute annexation plats, and execute any other documents that the City determines are necessary to annex the Property to the City. Owner agrees that the provisions of this Agreement are applicable to the Property as described in Exhibit A or any portion thereof. It is further agreed that Owner will not annex the Property or any portion thereof, or incorporate the same with any other municipality or special service district without the prior written consent of the City.

2. It is specifically understood that the water and wastewater services to be furnished by the City are for the uses described in this Agreement and shall be in conformity with the regulations of the City in furnishing water and wastewater services outside its corporate limits as modified by this Agreement and except as expressly provided herein, will be in conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner expressly agrees to be bound by and to comply with any and all City ordinances pertaining to water shortages, outdoor watering restrictions and water efficient landscaping. Owner understands and agrees that the City imposes charges for water and wastewater 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 water and

wastewater service subsequent to annexation shall be at the rate applicable to the provisions of service within the corporate limits of the City.

3. If Owner or Owner's successor-in-interest desires a different water or wastewater service than granted the Property in this Agreement, or desires to put the Property to other than the uses provided for in this Agreement, a request therefore shall be made to the City Council of the City, and such request, if granted at all, 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 use is made involves the subdivision of the Property or development of the Property for multi-family residential, commercial or industrial purposes, the conditions for granting such request, if granted, shall include full compliance with the Code, Ordinances, Resolutions, Regulations and Policies of the City.

4. Owner will extend water and 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 water and wastewater request. In the event Owner is not required to extend water and wastewater service and lines and connect to the City's water and wastewater system at the time of entering into this Agreement, Owner shall connect to the City's water and 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 water and wastewater treatment plant facility costs through the established water and 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 ground water 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 ground water. 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 ground water 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 water and 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 water and 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 Owner's heirs, assigns, legal representatives and successors and Owner for Owner and Owner's 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 water or 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 water and 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 water and 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 water and 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 and shall also include the undersigned financial institution, if the financial institution, its successors, transferees, or assigns becomes Owner of the Property through foreclosure or otherwise. 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 with the concurrence of the financial institution. Should a financial institution no longer hold an interest in the Property and an affidavit to that effect is filed with the City and the El Paso County Clerk and Recorder, its concurrence with any amendment will not be required. 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. By executing this Agreement, each financial institution agrees that: (1) should it become Owner of the Property through foreclosure or otherwise that it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become Owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

19. 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.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the City, Owner and financial institution have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF COLORADO SPRINGS

BY: \_\_\_\_\_  
\_\_\_\_\_  
City Council President

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney's Office

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, President of the City Council of the City of Colorado Springs, on behalf of the City of Colorado Springs.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public







Exhibit A

Legal Description of Property