

ANNEXATION AGREEMENT

CASE NO. _____

MONUMENT RIDGE EAST

This Annexation Agreement (the “Annexation Agreement”) entered into as of _____, 2022, by and between the **Town of Monument**, a Municipal Corporation, (the “Town”) and **MONUMENT RIDGE EAST, LLC**, a Colorado limited liability company (“Petitioner”),
WITNESSETH

WHEREAS, Petitioner is the owner of the real property located in El Paso County, Colorado, depicted and described in **Exhibit “A”** attached hereto and incorporated herein (the “Property”);

WHEREAS, Petitioner has submitted a petition for the annexation of the Property to the Town; and

WHEREAS, as a condition precedent to the annexation of the Property, Petitioner has agreed to enter into an annexation agreement with the Town setting forth certain terms and conditions with respect to such annexation.

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions set forth herein, the Town and Petitioner agree as follows:

I. REPRESENTATION AND WARRANTIES OF PETITIONER

Petitioner hereby represents and warrants to, and covenants with, the Town as follows:

A. The Town is a municipal corporation duly organized and validly existing under the laws of Colorado, and MONUMENT RIDGE EAST, LLC is a Colorado limited liability company duly organized and validly existing under the laws of the State of Colorado.

B. Petitioner has good and marketable fee simple title to the Property subject only to the Permitted Encumbrances attached hereto as **Exhibit “B.”**

C. Petitioner is authorized to, and has taken all action required by it, (a) to annex the Property to the Town and (b) to execute, deliver and perform its obligations under this Annexation Agreement, and (c) to carry out and consummate all its transactions contemplated by this Annexation Agreement.

D. This Annexation Agreement when executed and delivered constitutes a valid and legally binding obligation of Petitioner enforceable against Petitioner according to its terms.

E. Neither the execution and delivery of this Annexation Agreement nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions or any restriction or any agreement or instrument to which Petitioner is bound or constitutes a default under any of the foregoing.

F. There is no litigation pending, or to the knowledge of Petitioner threatened, against Petitioner or any person affecting the right of Petitioner to execute this Annexation Agreement or to comply with the provisions hereof.

G. The representations and warranties of Petitioner contained herein will be true and correct in all material respects as of the date of recording of the annexation plat and Ordinance of the Town Board of Trustees approving the annexation of the Property, as if made on the date of such recording.

II. SKETCH DEVELOPMENT PLAN

Petitioner has prepared and will submit to the Planning Commission for the Town of Monument for approval a RESIDENTIAL Plan, using existing Town Residential Zoning Districts, for the Property dated _____ (the "Sketch Plan"). The Sketch Plan shall be prepared in consultation with the Town's Department of Planning and submitted in its entirety to the Planning Commission. The Sketch Plan will comply with the policies of the Monument Comprehensive Plan existing as of the date the Sketch Plan is approved and will be designed to identify and address all development, drainage, utilities, traffic and other infrastructure needs and requirements and the wide range of planning and development issues involved in and with respect to the development of the Property. If the Sketch Plan is ultimately not approved by the Town with conditions acceptable to Petitioner in Petitioner's sole discretion, Petitioner shall be entitled to withdraw this Annexation Agreement and its Petition for Annexation. The Sketch Plan as submitted and approved by the Board of Trustees will have the flexibility to adapt to changing conditions over the estimated time period for the development of the Property and shall consist of the following separate documents: (a) Development Sketch Plan; (b) Conceptual Drainage Plan; (c) Conceptual Water Supply and Sanitary Sewer Plan; (d) Transportation Plan; and (e) Wildfire Mitigation and Tree and Shrub Preservation Plan:

A. Development Sketch Plan. The Development Sketch Plan shall be prepared in accordance with the requirements of Planned Development Sketch Plan Sections 17.40.150 of the Monument Municipal Code, as amended. The Development Sketch Plan shall establish the overall densities, land uses, major roadways, major open spaces, and anticipated phasing of the development of the Property and shall be prepared as part of the Sketch Plan. Petitioner has agreed to the commitments made by the Development Sketch Plan notes as approved by the Board of Trustees.

B. Drainage Plan. The Conceptual Drainage Plan shall address surface water drainage within the Property and onto the Property from other areas, as well as the effects of the development of the Property upon downstream properties and drainage facilities. Water quality management and erosion control measures will be incorporated in the Drainage Plan to meet future NPDES requirements. Associated impacts on the Town's existing and proposed surface water drainage system and drainage infrastructure shall be identified in the Drainage Plan, and those impacts which are reasonably attributable to the development of the Property as determined by the Town, in its sole discretion, shall be mitigated through surface water drainage improvements installed by and at the expense of Petitioner. Storm water detention facilities may be used to mitigate the increased runoff due to development of the Property.

C. Water Supply and Distribution and Sanitary Sewer Plan. The Conceptual Water Supply and Distribution and Sanitary Sewer Plan shall be submitted to and approved by the Woodmoor Water And Sanitation District.

D. Transportation Plan. The Transportation Plan shall be prepared in accordance with the criteria specified by the Town. The Plan shall be supported by studies and reports prepared by Professional Engineers competent in the field of transportation and registered in the State of Colorado. Associated impacts on the Town's existing and proposed traffic and roadway systems shall be identified in the Transportation Plan and studies, and those impacts which are reasonably attributable to the development of the Property as determined by the Town, in its sole discretion, shall be mitigated through traffic improvements constructed and installed by and at the expense of Petitioner (such as, but not limited to, traffic signals, signal interconnect, roadway widening, conduit and wire, deceleration/acceleration lanes, and median islands). The Transportation Plan shall include a phasing plan or schedule of such traffic improvements unless otherwise provided for in this Annexation Agreement.

E. Wildfire Mitigation and Tree and Shrub Preservation Plan. Petitioner, at its expense, shall provide the Town with a Wildfire Mitigation and Tree and Shrub Preservation Plan for the Property prepared by a qualified consultant. Petitioner shall be responsible for complying with the recommendations set forth in that plan.

Petitioner may submit the Sketch Plan to the Planning Commission for approval any time after the Town Board of Trustees has found the petition for annexation of the Property to be valid in accordance with the provisions of section 31-12-107, C.R.S.; provided however, that the proposed Sketch Plan shall not be approved prior to the time the ordinance annexing the Property is approved, but it may be approved at a hearing conducted simultaneously with the Annexation Petition and Annexation Agreement hearing and voted upon in sequence.

III. ZONING AND SUBDIVISION

A. No application for subdivision of all or any part of the Property shall be approved by the Town until after the Sketch Plan has been approved by the Planning Commission and the Board of Trustees. No subdivision of the Property shall be approved prior to the time the ordinance annexing the Property is approved.

B. Concurrently with the ordinance annexing the Property, Petitioner shall cause the Property to be zoned Residential using the existing Town Residential Zoning Districts which constitutes the land use classification most nearly corresponding to the land use classification or will in the reasonable future be classified under the Town's Comprehensive Plan. The zoning classification becomes final with the adoption of the annexation and this Annexation Agreement. If the Property is not so zoned, no building or occupancy permit shall be approved by the Town or issued by the Pikes Peak Regional Building Department for any building or structure within any part of the Property.

C. Such zoning is not guaranteed, and the Town Board of Trustees retains its full discretion with respect to such zoning. Nothing contained in this Article III shall be construed to limit the normal legal authority and power of the Board of Trustees of the Town to rezone the Property or any part thereof after approval of the initial zoning of the Property after annexation. Notwithstanding the foregoing, the Town agrees that it will not unreasonably withhold consent to a future zoning request that is consistent with the Sketch Plan and the zoning contemplated by this Annexation Agreement and the Sketch Plan.

IV. PUBLIC FACILITIES

A. General. Petitioner shall dedicate or otherwise provide land and rights-of-way and easements necessary for public uses and facilities necessary and required to serve the Property or required as a result of the development of the Property as determined by the Town, in its reasonable discretion, including, but not limited to storm sewers, drainage ways and facilities, utilities, streets, roadways, trail systems, parks and open space. Water and Sanitary sewer systems are determined by the Woodmoor Water and Sanitation District. Petitioner, at its expense, shall construct and install all on-site improvements necessary and required to serve the Property or required as a result of the development of the Property as determined by the Town, in its sole discretion, including, but not limited to, trail systems, parks, streets, streetlights, curbs and gutters, sidewalks, bridges, traffic control devices, storm sewers, drainage and channel improvements and facilities. Water and Sanitary sewer systems are determined by the Woodmoor Water and Sanitation District. All such improvements shall meet and comply with applicable Town Ordinances in effect at the time of installation of such improvements and with the conditions of the Woodmoor Water & Sanitation District Inclusion Agreement described in **Exhibit "C."**

B. Metropolitan Districts. The Town understands and agrees that Petitioner will be forming one or more special districts in accordance with the Special District Act as a means of financing the construction, installation, and maintenance of infrastructure for the development of the Property (collectively, the "District"). The district will be responsible for the maintenance of all open space, parkland, and drainage systems within the Property. Additionally, the District will be responsible for construction and maintenance of the trails through the Property. The Town shall take

any actions reasonably necessary to assist and cooperate in the formation of such District. Petitioner agrees to submit a Service Plan for the proposed District to the Town for approval pursuant to C.R.S. Sections 32-1-101, et seq., concomitant with the Annexation Petition. The organizational documents and Service Plan for the District will include condemnation powers in favor of the District and the Town agrees to grant condemnation powers to the District. The annexation is specifically contingent upon the approval of the Service Plan by the Town at the time the annexation is effective. Petitioner shall have rights of de-annexation should the Town fail, at time of annexation, to approve a Service Plan acceptable to Petitioner, including incorporation of condemnation powers for the District. The Town agrees that the District may fulfill any of the Petitioner's obligations under this Annexation Agreement.

C. Streets. Petitioner agrees to construct, at Petitioner's expense, those streets and/or traffic improvements adjacent to or within the Property as listed below. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. Once the Town has accepted the internal streets based upon a final inspection by the Town that documents that the streets have been constructed to Town Standards, the Town shall assume responsibility for the maintenance of all internal streets within the Property. In conjunction with the Town's acceptance of the maintenance obligations for those internal streets, Petitioner or the District, as applicable, shall assign any warranties for those streets to the Town.

1. On-Site or Adjacent Streets.

a. Misty Acres Blvd. A collector street which runs south to north, which is an extension of Misty Acres Blvd bisecting the property on the east side of Interstate 25, as shown on the Sketch Plan, will need to be constructed by Petitioner at Petitioner's expense (the "Misty Acres Blvd"). Misty Acres Blvd is to be located within a future right-of-way which will extend from the existing right-of-way at the southerly end of the property north to an intersection with County Line Rd. Petitioner shall dedicate right-of-way that may be required for the construction of Misty Acres Blvd. Misty Acres Blvd shall be constructed to meet standards as a minor collector street with ___ feet of total right-of-way (with the horizontal alignment being generally as shown on the Sketch Plan). Provided that the annexation of the Property and this Annexation Agreement are approved by the Town, Petitioner's responsibility for the construction of Misty Acres Blvd and costs associated therewith shall be as follows. Misty Acres Blvd bisects the property, and the Property shall be responsible for building the Misty Acres Blvd at Petitioner's initial expense. The Town agrees that Petitioner will be provided with not less than four accesses from Misty Acres Blvd, generally in the locations shown on the Sketch Plan.

2. Off Site Street Network. The Town agrees that there are no off-site street improvements or financial contributions or cost recovery for off-site improvements that will be required of the Property.

3. Adjacent Street Construction and Slope Easements. The Town agrees to use all reasonable efforts to obtain from the owners of any properties adjacent to the Property, including from the Town and from Monument Sanitation District, if applicable, any temporary slope or construction easements that may be reasonably necessary to accommodate any of the road construction obligations assumed by Petitioner or the District under this Annexation Agreement.

V. UTILITIES

- A. Water and Wastewater. Service for the property will be provided by the Woodmoor Water & Sanitation District. Property is already annexed into the District.
- B. Electric Service. Electric service for the Property will be negotiated between Petitioner and Mountain View Electric.
- C. Gas Service. Gas service for the property will be negotiated between Petitioner and Black Hills Energy.

VI. PARKS AND SCHOOLS

- A. Parks. The Property shall pay fees in lieu of land dedication.
- B. Trails. Petitioner, directly or through the District, shall construct those trails within the Property as shown on the Sketch Plan (the “Trails”), with such construction to be consistent with the Town standards for trails. The plan for the Trails shall provide for connections to the Regional Trail system as shown on the Sketch Plan, provided, however, that Petitioner controls the property needed for the connection or the Town provides the needed easements therefor.
- C. Schools. The Town agrees that the Property will be entitled to pay school fees in lieu of any school land dedication requirements pursuant to Chapter 16 of the Town Code. The cash-in-lieu-of-land dedication fees shall be calculated based upon the average market value of vacant residential land within the School District determined generally at the time the fees are to be paid. Such fees shall be due and payable and shall be collected at the time a building permit is obtained for each individual residential dwelling unit within the Property.

VII. COMPLIANCE WITH ORDINANCES

The development, subdivision and zoning of the Property shall meet and comply with all applicable ordinances, resolutions, regulations, and standards of the Town now existing or hereinafter enacted or amended.

VIII. BINDING EFFECT

The covenants, restrictions, and agreements herein set forth are covenants running with the Property, shall run with and bind the Property, and shall extend to and be binding upon Petitioner and its legal representatives, successors, assigns and transferees. Petitioner expressly accepts and agrees to the covenants, restrictions, and agreements set forth herein by execution of this Annexation Agreement and by the filing of its petition for annexation. If Petitioner defaults in any of its obligations under this Annexation Agreement, including, without limitation, land dedication obligations, Town, upon notice given to Petitioner specifying the default, may withhold all subdivision, development plans, and other development approvals as well as building and occupancy permits for any building or structure within the Property until such default has been corrected to the

satisfaction of the Town.

IX. AMENDMENTS

Amendments to this Annexation Agreement may only be made through formal petition to and approval by Resolution of the Town Board of Trustees after such amendment has been submitted to and reviewed by the appropriate Town Departments and the Monument Sanitation District, if applicable, and such Boards and Departments have submitted their findings and recommendations to the Town Board of Trustees. All amendments to the Development Plans must be approved by the Planning Commission after review and recommendation by the appropriate Town Departments.

X. SEVERABILITY

If any section, clause, or other provision of this Annexation Agreement is for any reason determined to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect any of the remaining provisions of this Annexation Agreement.

XI. VESTED RIGHTS

As a condition of, and in consideration of the Town annexing the Property, Petitioner, for itself and its successors and assigns, waives and releases all previously acquired or existing vested property rights attached to or established with respect to the Property.

Petitioner acknowledges and agrees that neither this Annexation Agreement nor any provision hereof, nor the annexation of the Property to the Town, nor the approval of the Sketch Development Plan, zoning or subdivision, either separately or jointly (a) creates or establishes a vested property right in or for the benefit of Petitioner or its successors or assigns, or with respect to the Property; or (b) constitutes a site-specific development plan. The terms “vested property right” and “site-specific development plan” shall have the same meaning as set forth §24-68-101, et seq., C.R.S. Notwithstanding the foregoing, the Town agrees that (i) the terms of this Annexation Agreement shall be enforceable by Petitioner and its successors in interest to the Property for a period of twenty (20) years, and (ii) pursuant to Section 16.52.070 of the Monument Municipal Code, the final PD Site Plan, once approved, shall remain vested for a period of six (6) years following the date of that final approval.

XII. BUILDING PERMITS

No building or occupancy permit shall be approved by the Town or issued by the Pikes Peak Regional Building Department to occupy, construct or install any building, structure or other improvement on the Property except within a subdivision approved by the Town after adoption of the ordinance annexing the Property which meets and complies with this Annexation Agreement and Town’s ordinances, standards, and regulations.

XIII. DISCONNECTION

A. Disconnection by Petitioner. Petitioner acknowledges and agrees that upon Annexation of the Property, the Property shall become subject to this Annexation Agreement, ordinances, rules and regulations of the Town and that the Town shall not have any obligation to furnish or extend municipal services to the Property.

B. Disconnection by Town. If, for any reason, the Sketch Development Plan is not approved and adopted by the Board of Trustees within three (3) years from date of this Annexation Agreement, proceedings may be instituted by the Town, at its sole discretion, to disconnect the Property from the Town, and for such purpose, Petitioner irrevocably consents to such disconnection proceedings and waives any and all rights to contest such disconnection.

XIV. CONTRACTUAL NATURE OF ANNEXATION AGREEMENT

The terms, conditions and obligations of this Annexation Agreement are and shall be construed to be purely contractual in nature, as terms, conditions and obligations voluntarily agreed to by Town and Petitioner prior to annexation of the Property to the Town. The terms, conditions and obligations imposed on Petitioner and the Property by this Annexation Agreement are not intended to be, nor shall they individually or cumulatively be, construed to be conditions upon granting land-use approvals within the meaning of sections 29-20-201 to 29-20-204, C.R.S.

XV. SPECIAL IMPROVEMENTS, DEDICATIONS AND FEES

In addition to the on-site and off-site improvements and land dedications required to be made by the provisions of this Annexation Agreement, Petitioner will construct and install the improvements, dedicate the land, and pay or cause to be paid the fees described in **Exhibit "D"** attached hereto and incorporated herein. The improvements, dedication, and fees described in said **Exhibit "D"** are in addition to and not in substitution for any improvements or dedications otherwise required by this Annexation Agreement or in future required subdivision or land development improvements.

XVI. ASSIGNS AND DEED OF TRUST HOLDERS

A. Successors and Assigns. Whereas used in this Annexation Agreement, the term Petitioner or Property owner shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of Petitioner and all these parties shall have the right to enforce and be enforced under the terms of this Annexation Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Annexation Agreement shall always be to Petitioner unless specifically assigned to another person.

B. Deed of Trust Beneficiary. By executing or ratifying this Annexation Agreement, the deed of trust holder agrees that: (1) should it become owner of the Property through foreclosure or otherwise that it will be bound by the terms and conditions of this Annexation Agreement to the same extent as Petitioner; 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 Annexation Agreement shall be subordinate to and superseded by the provisions of this Annexation Agreement.

Notwithstanding the foregoing, the Town agrees that lenders will not be required to pay any monies to the Town or construct any improvements which may be required by this Annexation Agreement while the lenders merely hold title to the Property, and those lenders will only be required to pay money or construct improvements in connection with any platting of the Property or construction on the Property.

XVII. DEFAULT AND REMEDIES

If either Petitioner or the Town fails to perform any material obligation under this Annexation Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Annexation Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Annexation Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Annexation Agreement, as well as any other remedies provided by law.

XVIII. TERM

This Annexation Agreement shall be in force and effect for a period of twenty (20) years from its effective date or until all terms and conditions contained in this Annexation Agreement have been complied with, whichever occurs first. Thereafter, so long as the Property is located within the municipal boundaries of the Town, it shall be subject to the uniform ordinances, rules and regulations of the Town generally applicable throughout the Town on a non-discriminatory basis. Upon the request of Petitioner, the Town agrees from time to time to provide a statement upon which Petitioner or a purchaser of the Property can rely indicating whether there are any known defaults under this Annexation Agreement and whether there remain any obligations of Petitioner for installation or maintenance of any public improvements or any payment thereof.

XIX. GENERAL

Except as specifically provided in this Annexation Agreement, the Town agrees to treat Petitioner and the Property in a non-discriminatory manner relative to the rest of the Town. In addition, any consent or approval required in accord with this Annexation Agreement from the Town shall not be unreasonably withheld, conditioned or delayed. Town agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property or make any assessment on the Property that is not uniformly applied throughout the Town, except as specifically provided in this Annexation Agreement or the Town Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Annexation Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the Town, then this Annexation Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Petitioner and Town shall continue to be bound by all terms and provisions of this Annexation Agreement.

XX. MISCELLANEOUS

A. Notice. All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or mailed by registered or certified mail, postage prepaid, addressed as follows:

(a) if to the Town: Town of Monument
P.O. Box 325
Monument, Colorado 80132
Attention: Director of Development Services

(b) if to Petitioner: MONUMENT RIDGE EAST, LLC
5055 List Dr
Colorado Springs, CO 80919
Attention: Maria Larson

or to such other address as either party by written notice given hereunder may designate.

B. Governing Law and Venue. This Annexation Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles. Venue for any action arising out of this Annexation Agreement shall be El Paso County, Colorado.

C. Singular, Plural. Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular, and words of one gender may be construed as denoting the other gender, if applicable.

D. Entire Agreement. All prior discussions, representations, understandings and agreements, whether oral or written, between the parties with respect to the subject matter of this Annexation Agreement are merged in this Annexation Agreement, which constitutes the entire agreement between the parties.

Executed at Monument, Colorado as of the day and year first above written.

MONUMENT, a Municipal Corporation

[S E A L]

By _____
Mayor of the Town of Monument

Attest: _____
Town Clerk

APPROVED AS TO FORM:

Town Attorney

PETITIONER:
MONUMENT RIDGE EAST, LLC

By: _____
Maria Larson, Manager

[S E A L]

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____ as Mayor of the Town of Monument and _____ as Town Clerk of Monument, a Municipal Corporation.

Witness my hand and official seal.

My commission expires: _____

[S E A L]

Notary Public

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Maria Larson, as Manager of MONUMENT RIDGE EAST, LLC, a Colorado limited liability company.

Witness my hand and official seal

My commission expires: _____

[S E A L]

Notary Public

EXHIBIT A

LEGAL DESCRIPTION AND REDUCED PLAT

EXHIBIT B

TITLE TO PROPERTY

EXHIBIT C
INCLUSION AGREEMENTS

EXHIBIT D

DEVELOPMENT IMPROVEMENTS

1. Petitioner shall contribute their proportional share of the traffic signal(s) at County Line Rd and Interstate 25.

6. Petitioner shall be responsible for construction of the intersection of the Misty Acres Blvd & County Line Road