

**ANNEXATION & DEVELOPMENT AGREEMENT
BEACON LITE LLC. PROPERTY**

THIS AGREEMENT made and entered into this _____ day of _____
2022, by and between Beacon Lite, LLC., a Colorado company, hereinafter referred to as
"ANNEXOR", and the TOWN OF MONUMENT, a municipal corporation of the County of El
Paso, hereinafter referred to as "TOWN."

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RECITALS

1. ANNEXOR is the owner of the property described in Exhibit "A", attached hereto (the "Property") and has filed a petition to annex said property the TOWN; and
2. The parties mutually agree that pursuant to Town Code and Policies that the annexation of the Property to the Town shall not create any additional cost or impose additional burden on the existing residents of the Town to provide public facilities and services to the Property after annexation. If the proposed development will result in new burdens on the Town's existing public facilities and services, the development shall be responsible for mitigating such impacts through compliance with standards adopted by the Board of Trustees. The standards will include fees calculated and imposed to provide adequate public facilities and services based on the objective criteria.

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:

1.0 DEFINITIONS

- 1.1 "ANNEXOR" shall mean and refer to the Annexor and its heirs, successors, assigns, and designees.
- 1.2 "Crossings" shall mean and refer to all bridges, culverts, or other types of facilities or structures used to cross roadways, drainageways, or storm drainage areas.
- 1.3 "Development" shall mean the project shown on the Beacon Lite, LLC Property Sketch Plan attached as Exhibit B.
- 1.4 "Drainage Impact Fee" shall mean the Town's fee listed in the Ordinances of the Town Code for the basin or basins in which the Property is located, as such amount may be adjusted from time to time by the Board of Trustees. The purpose of the fee is to fund the planning, construction, and installation of major facilities in accordance with the Drainage Master Plan. For improvements on public land, public right-of-way or private property, the fee shall be payable at the time of issuance of a Land Use Permit.
- 1.5 "Fire District" shall mean the Tri Lakes Monument Fire Protection District.
- 1.6 "Land Use Permit" shall mean the permit issued by the TOWN for each individual structure that is a condition precedent to issuance of a Building Permit from Pikes Peak Regional Building Department.
- 1.7 "Park Fee" shall mean the cash in lieu of land dedication fee established by the TOWN Board of Trustees, as such amount may subsequently be adjusted by the Board of Trustees, payable at the time of issuance of a Land Use Permit for each individual home.
- 1.8 "Sanitation District" shall mean the Monument Sanitation District.

- 1.9** "Streets" shall mean and refer to residential, commercial, collector, minor, and principal arterial streets, highways, expressways, and roads.
- 1.10** "Town Code" shall mean the Municipal Code of the Town of Monument, including but not limited to the Zoning Ordinance and the Subdivision Ordinance.
- 1.11** "Traffic Impact Fee" shall mean the Town's fee listed in Town ordinances for the use or uses in the proposed development. The fee is payable at the time of the issuance of a land use permit. The purpose of the fee is to offset the proportionate share of the cost of Town wide road facilities required to address traffic impacts.

2.0 STREETS

- 2.1** ANNEXOR shall pay a Traffic Impact Fee per Section 1.11 above.

3.0 WATER AND SEWER

- 3.1** The TOWN acknowledges sanitary sewer service from the Property will be provided by the TOWN. TOWN has written a Commitment Letter for this service (see Exhibit D).
- 3.2** ANNEXOR must obtain water from a municipal water provider for the Development, such water provider constructs a water transmission line within 60 feet of the Property boundary, and allows ANNEXOR to connect to the water transmission line. The Property is subject to the water rights and plan for augmentation adjudicated in Case No. -, District Court in and for Water Division 2, State of Colorado.
- 3.3** ANNEXOR will pay service tap fees as required by the water provider.
- 3.5** At such time as municipal water service is made available to the Property, ANNEXOR shall deliver to the water provider (the TOWN) a fully executed water special warranty deed conveying all water rights associated with the Property, free and clear of all liens and encumbrances, together with a State Engineer Consent form for each of the four aquifers (Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills) under the Property, all in a form acceptable to the water provider. In addition to standard warranties of a deed of this type, the special warranty deed shall specifically warrant that the grantor has not divested himself of the subject non-tributary and not non-tributary groundwater prior to its conveyance to the water provider and shall be supported by a current title insurance commitment.

4.0 STORM DRAINAGE

- 4.1** ANNEXOR shall pay the drainage fee established by Town Code for the basin or basins in which the annexed lands are located. For development on public land, public right-of-way, or common private land, the fee shall be payable at the time of Town approval of a final plat, final plan, or improvement agreement for the development. For development on a lot, the fee shall be payable at time of Town approval of a Land Use Permit for construction on the lot.

4.2 In the event the ANNEXOR desires to complete the development of any portion of the annexed lands prior to completion of the regional storm drainage improvements to major drainageways in the Town, the ANNEXOR may make those improvements at its expense. At its option, and subject to a separate agreement, the TOWN may agree to reimburse the ANNEXOR at a future date for ANNEXOR'S cost for construction of said improvements.

5.0 PUBLIC LAND DEDICATION

5.1 TOWN Code §16.32.030 requires dedication of acres of park land per the Sketch Plan, TOWN requires payment of the cash in lieu fee as required in Section 16.32.30 (B) (2) of the Municipal Code, in lieu of said acres, dedication to be paid by ANNEXOR upon the issuing of Land Use Permits for building in the Development. ANNEXOR acknowledges that the fee shall be based upon the formula in place at the time of Land Use Permit issuance and may be adjusted by the Board of Trustees on a basis that is uniformly applied and assessed throughout the TOWN or by changes to the number of dwelling units in the development.

6.0 FEES

6.1 The proposed development may be subject to TOWN fees, including but not limited to the following.

- Application fees and special review fees
- Permit fees and special review fees
- School land fees in-lieu of public land dedication
- Traffic impact fees
- Drainage impact fees
- Park Land Dedication Fees
- Other impact fees as may be established by the TOWN

The Town may revise the fees from time to time to reflect changes in the cost to the TOWN associated with the fees.

7.0 URBAN SERVICES

7.1 The Town will provide Police protection to the Property in a manner as it does uniformly across the Town.

7.2 It is expressly understood that development of the annexed land is subject to a determination by the Fire District that there are available adequate fire protection facilities, including but not limited to fire hydrants, access for fire vehicles, and a looped water system. ANNEXOR shall confer with the Fire District to confirm provisions of fire protection services in compliance with established Fire District requirements.

7.3 If the area of the herein described annexation lies wholly or partially within a legally

constituted water, sanitation, or water and sanitation district, there shall be no obligation on the part of the TOWN to provide such utilities services to the areas within any such district, unless it be done by mutual agreement between the TOWN and such district.

8.0 PUBLIC FACILITY EXTENSION

8.1 Extension of water and sewer line, streets, storm drainage, street lighting, traffic control devices, and other public improvements from the developed areas of the TOWN to the Property may be pursuant to reimbursement as provided in the Town Code to reimburse ANNEXOR from lands abutting such facilities for ANNEXOR'S costs to extend public facilities which benefit such intervening lands.

9.0 LAND USES

9.1 ANNEXOR has submitted a completed application to the TOWN for zoning the Property as Planned Development (PD). Such zoning is not guaranteed, and the Board of Trustees of Town retains its full discretion with respect to such zoning. Nothing contained in this section shall be construed to limit the power of the Town Board of Trustees to rezone the Property or any part thereof after approval of the initial zoning of the Property after annexation. The attached Sketch Plan, required for approval of the PD Zoning District, provides for a construction yard, office building, potential residential and accessory uses.

9.2 TOWN agrees that if the Board of Trustees approval of the PD Zoning and the Sketch Plan is not in accordance with the submitted documents, or other form acceptable to the ANNEXOR, this Agreement becomes null and void.

10.0 GENERAL PROVISIONS

10.1 This agreement shall be recorded with the Clerk and Recorder in El Paso County, Colorado, 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. ANNEXOR shall notify TOWN of assignments and the names of assignees. Every part of the Property shall at all times remain subject to all the obligations of this agreement with respect to each and every part of the Property.

10.2 ANNEXOR 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 a PUD Plan, zoning or subdivision, either separately or jointly (a) creates or establishes a vested property right in or for the benefit of ANNEXOR 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 in the TOWN Code and §24-68-101, et seq., C.R.S.

10.3 Nothing contained in this agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of TOWN'S legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its

inhabitants; nor shall this agreement prohibit the enactment by TOWN of any fee which is of uniform or general application.

- 10.4** No right or remedy of disconnection of the described Property from the TOWN shall accrue from this agreement, other than that provided by Section 31-12-119, C.R.S., as amended. In the event the Property or any portion thereof is disconnected at ANNEXOR'S request, TOWN 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.
- 10.5** 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 TOWN, then this annexation agreement and all provisions contained herein shall be null and void and of no further effect. If the referendum challenge fails, then ANNEXOR and TOWN shall continue to be bound by all the terms and provisions of this annexation agreement.
- 10.6** In the event that the annexation of the Property or any portion thereof is voided by final action of any court, TOWN and ANNEXOR shall cooperate to cure the legal defect which resulted in disconnection of the property, and upon such cure this annexation agreement shall be deemed to be an agreement to annex the Property to TOWN pursuant to Section 31-12-121 of the Colorado Revised Statutes, 1973, and the Town Code. ANNEXOR shall reapply for annexation as when the Property becomes eligible for annexation as determined by TOWN.
- 10.7** 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.
- 10.8** All fees recited in this agreement shall be subject to amendment by the Board of Trustees. Any amendment to fees shall be incorporated into this agreement as if originally set forth herein. Nothing in this agreement shall prevent, prohibit, diminish, or impair the TOWN'S governmental authority to adopt fees or regulations to address the impacts of development.
- 10.9** ANNEXOR agrees to include the Property in public improvement districts as may be organized by the TOWN pursuant to the provisions of Title 31, Article 25, Part 6, of the Colorado Revised Statutes.
- 10.10** 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 as provided in Section 12.8, there

shall be no modification of this agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this agreement may be enforced in any court of competent jurisdiction.

10.11 This agreement shall terminate and expire upon the completion of the development of the Property and satisfaction of all the obligations herein. Thereafter, so long as the Property is located within the municipal boundaries of TOWN, it shall continue to be subject to the charter, ordinances, and rules and regulations of the TOWN.

10.12 It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, their successors and assigns, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

10.13 Any and all obligations of the TOWN for water and drainage improvements shall be the sole obligation of the TOWN'S Utility Enterprise and as such, shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the TOWN within the meaning of any constitutional, statutory, or charter limitation. Any, and all, obligations of the TOWN for public improvements other than water and storm drainage improvements shall be subject to annual appropriation by the Board of Trustees.

10.14 In the event of breach or default by the TOWN, the sole remedies hereunder shall be the equitable remedies of specific performance or injunction. ANNEXOR, its successors and assigns, hereby waive any rights to money damages for any such breach or default.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Beacon Lite LLC., ANNEXOR

By: _____

State of Colorado
County of El Paso

Subscribed before me this ____ day of _____, 2021,

By: _____

My commission expires:

Notary Public

TOWN OF MONUMENT, COLORADO

By: _____
Don Wilson, Mayor

EXHIBIT A

LEGAL DESCRIPTION/BEACON LITE LLC. PROPERTY

**LOT 2, SHATTUCK SUBDIVISION
CITY OF MONUMENT,
EL PASO COUNTY, COLORADO**

EXHIBIT C

AFTER RECORDING, RETURN TO:

DEVELOPMENT AGREEMENT (BEACON LITE LLC)

This Development Agreement ("Agreement") is entered into and made effective this ____ day of _____, 2022 among Beacon Lite LLC., a Colorado Limited Liability Corporation d/b/a Beacon Lite LLC ("BLL"), and the Town of Monument, a _____ (the "Town").

BACKGROUND AND PURPOSE

A. Beacon Lite LLC is the owner of approximately 5.02 acres of land in El Paso County, Colorado legally described in the attached **Exhibit A** incorporated by this reference (the "Beacon Lite LLC Property").

B. Beacon Lite LLC has submitted to the Town a petition for annexation and zoning of the BLL Property. Following approval of its petition for annexation and zoning, Beacon Lite LLC will submit its PD Site Plan and **Preliminary Plat** for a multi-use development to include office buildings, storage facilities and maintenance building, which will be a phased development of the BLL Property.

E. This Agreement is executed in conformance with Section 17.84.040 of the Monument Municipal Code.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Land Subject to this Agreement. The land subject to this Agreement is legally described in the attached **Exhibit A** (BLL Property).

2. Construction Timing.

A. Development phased per PD Plan with the first phase to be one of the two office buildings.

3. Miscellaneous.

A. No amendments to this Agreement shall be permitted except upon a signed writing approved by all Parties.

B. This Agreement shall not constitute a waiver or exemption from any other provision of the Town Code or other applicable Town regulations.

C. This Agreement shall be recorded in the real property records of El Paso County.

**EXHIBIT D to
ANNEXATION AGREEMENT**

**Forest Lakes Metropolitan District
2 North Cascade Avenue, Suite 1280
Colorado Springs, Colorado 80903
Telephone: (719) 633-4500
Fax: (719) 633-6258**

September 16, 2020

Native Sun Construction
3107 W. Colorado Avenue, #312
Colorado Springs, CO 80904

RE: Wastewater Service Commitment – Parcel # 7135000004

Dear Sirs:

The purpose of this letter is to provide you assurance that the Forest Lakes Metropolitan District is prepared to provide wastewater service to the property referenced above. It will be your responsibility to complete the wastewater tap and service line in accordance with Forest Lakes Metropolitan District construction standards and specifications. You will also be required to pay the appropriate wastewater development fee for an outside District customer and appropriate new tap and inspection charges. Once you have connected to our wastewater collection system, you will be charged monthly at the current wastewater services charges for an outside customer.

Please contact me if you need additional information on this matter.

Sincerely,



Ann E. Nichols
District Manager

cc: Board of Directors
Tom Blunk