

ANNEXATION AGREEMENT

CENTENNIAL LOT 1, LLC

CENTENNIAL EAST CORPORATE CENTER

CITY OF CENTENNIAL, COLORADO

**ANNEXATION AGREEMENT
CENTENNIAL LOT 1, LLC**

CITY OF CENTENNIAL, COLORADO

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into as of this 22nd day of December, 2013, by and between **CENTENNIAL LOT 1, LLC**, a Colorado limited liability company, with offices located at 8551 Aviator Lane, Englewood, Colorado 80112 (the "Owner") and the **CITY OF CENTENNIAL**, a Colorado home rule municipal corporation, with offices located at 13133 E. Arapahoe Road, Centennial, Colorado 80112 (the "City").

RECITALS AND REPRESENTATIONS

WHEREAS, the Owner represents that it is the owner of the real property more particularly described in **Exhibit A** which property is currently located in unincorporated Arapahoe County, Colorado (the "Property"); and

WHEREAS, the City and Owner recognize and agree that annexation of the Property into the City will ensure delivery of needed municipal services, protect rights of access, and other benefits to the Parties; and

WHEREAS, annexation and zoning of the Property is desired by the City and the Owner; and

WHEREAS, the Owner has previously executed and filed with the City Clerk a Petition for Annexation of the Property into the City (the "**Petition**") which Petition was found to be in substantial compliance with the Act (as such term is defined below); and

WHEREAS, the Owner and the City desire to set forth in this Agreement certain agreements relative to the annexation and future use or development of the Property; and

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

AGREEMENT

I. DEFINITIONS AND GENERAL PROVISIONS

A. Definitions. For purposes of this Agreement, the following terms and references shall have the following meanings:

"**Act**" means the Colorado Municipal Annexation Act, §§31-12-101, *et seq.*, C.R.S.

"**Agreement**" means this Annexation Agreement and any exhibits attached to this Agreement, all of which are incorporated by this reference.

"Annexation Ordinance" means the ordinance effecting the annexation of the Property in accordance with the Act.

"City Council" means the City Council of the City of Centennial.

"Effective Date" shall be the fortieth (40th) day after publication following final action by City Council to approve the latest of the ordinances by which City Council approves: (a) the annexation of the Property, (b) the zoning of the Property, or (c) this Agreement.

"2011 Land Development Code" or **"2011 LDC"** means the City of Centennial Land Development Code as initially adopted by reference on April 19, 2010 by Ordinance No. 2010-O-13, and readopted and made effective by Ordinance No. 2011-O-14, and as may be amended from time to time. Section references to the Land Development Code in this Agreement refer to the sections of the City of Centennial Land Development Code.

"Municipal Code" means the adopted laws and regulations of the City codified in the City of Centennial Municipal Code, and as may amended from time to time.

"Owner" means Centennial Lot 1, LLC, a Colorado limited liability company, and the Owner's successors and permitted assigns.

"Parties" means the Owner and the City. The use of the singular "Party" shall mean either the Owner or the City.

"Property" means the real property specifically described in the attached **Exhibit A** to be located in the City as a result of the annexation which is the subject of this Agreement.

II. GENERAL PROVISIONS

A. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until **11:59 p.m. on December 31, 2019**, provided that certain provisions of this Agreement may expire sooner than such date, as expressly provided in this Agreement. Nothing in this Agreement shall limit the ability of the Parties to enter into future amendments to this Agreement that have the effect of extending the term of this Agreement. After the expiration of the term and any authorized extensions or amendments, this Agreement shall be deemed terminated without further action of the Parties and of no further force and effect; provided, however, such termination shall not affect: (a) annexation of the Property into the City; (b) zoning of the Property; (c) any statutory or common law vested property rights established prior to such termination; (d) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the Effective Date; or (e) any obligation of the Owner set forth in Article IV below (Owner Obligations) which is not fully performed to the reasonable satisfaction of the City at the end of the term.

B. **Covenants.** The provisions of this Agreement shall constitute covenants or servitudes that shall touch, attach to and run with the Property. The burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the Parties to this Agreement, except as otherwise provided in this Agreement.

III. CITY OBLIGATIONS

A. City to Provide Municipal Services. The City agrees that, upon annexation of the Property, the City shall commence the provision to the Property of all applicable governmental services which the City provides to other similarly situated property in the City ("Municipal Services"), and shall continuously provide and charge for such Municipal Services in a uniform and nondiscriminatory manner.

B. Utilities. The City does not currently provide and shall have no obligation to provide any water, wastewater, emergency medical or fire protection service to the Property, all of which are provided through existing special districts.

C. Financial / Tax Incentives. The City agrees to reimburse the following taxes and/or fees levied and collected by the City against the Property, or otherwise received by the City related to Owner's activities (or Owner's tenants activities) on the Property:

1. One hundred percent (100%) of property taxes levied and received by the City for a term of five (5) years.
2. One hundred percent (100%) of business personal property taxes levied by the City for a term of five (5) years.
3. One hundred percent (100%) of construction use tax levied by the City on any building improvements made to the Property for a term of five (5) years.
4. One hundred percent (100%) of automobile use taxes received by the City, as part of any business vehicle purchase which is registered at the Property for a term of five (5) years.
5. One hundred percent (100%) of any business licensing fees received by the City from Owner (or any of Owner's tenants) in accordance with Article 1 of Chapter 6 of the Municipal Code, for a term of five (5) years.

The taxes and fees identified above will be reimbursed by the City to the Owner at the address set forth in paragraph X.P. below on or before March 30th of the calendar year following the year in which the tax was received by the City. The initial reimbursement will be made by the City on or before March 30, 2015 (for taxes/fees received during calendar year 2014), and shall continue for four (4) years thereafter as set forth below:

- March 30, 2016 (for taxes/fees received during calendar year 2015);
- March 30, 2017 (for taxes/fees received during calendar year 2016);
- March 30, 2018 (for taxes/fees received during calendar year 2017); and
- March 30, 2019 (for taxes/fees received during calendar year 2018).

IV. OWNER OBLIGATIONS

Upon the City's written request, the Owner agrees to fully cooperate with the City to document the proper amount of the reimbursements to be paid under paragraph III.C., including but not limited to providing the City's Finance Department with property tax statements or other documentation to support the City's determination of the proper amount(s) to be reimbursed pursuant to paragraph III.C. above.

V. ZONING

The Parties agree that the Property shall be zoned Industrial (I) under the 2011 Land Development Code, and shall be subject to the standards and regulations in the 2011 LDC, unless specifically modified by this Agreement. In addition, if the Property is subject to an approved site plan or final development plan of record with the County (the "Existing Site Plan"), the City agrees that this Agreement shall ratify the Existing Site Plan. To the extent of any conflict between the standards and regulations of the Industrial (I) zone district, as set forth in the 2011 LDC, or the Existing Site Plan, and the terms of this Agreement, the Parties specifically intend that the provisions of this Agreement shall control. Nothing in this Agreement shall preclude the Owner from seeking a rezoning of all or any part of the Property zoned I to another zone district classification under the 2011 LDC. Nothing in this Agreement shall be construed to affect the classification of the Property for real property taxation purposes.

VI. CITY CODES

Except as otherwise provided in this Agreement, all City ordinances, regulations, codes, policies and procedures now in existence, and as the same may be adopted or changed from time to time, shall be applicable to the use and development of the Property. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the City's legislative, governmental or police powers to promote and protect the health, safety, or general welfare of the City or its inhabitants; nor shall this Agreement prohibit the enactment by the City of any rate, fee, toll, charge or tax which is uniform or of general application.

VII. DEFAULTS AND REMEDIES

A. Event of Default Defined. The violation of any provision of this Agreement by either Party, the occurrence of any one or more of the following events, and/or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement:

1. The failure (a) to make any payment when the same shall become due and payable as provided in this Agreement and (b) to cure such failure within thirty (30) business days of receipt of notice from the other Party of such failure.

2. The failure (a) to perform or observe any other covenants, agreements, or conditions in this Agreement on the part of either Party and (b) to cure such failure within thirty (30) business days of receipt of notice from the other Party of such failure.

B. Remedies; Fees and Costs. Subject to the terms and conditions set forth in this Agreement, the Party asserting that an Event of Default has occurred shall be entitled to pursue all remedies available in the State of Colorado at law or in equity, including, but not limited to, specific performance and injunctive relief, both mandatory and/or prohibitory, and the prevailing Party shall be entitled to a recovery of all reasonable costs and expenses, including attorneys fees, incurred by the prevailing Party to enforce the terms and conditions of this Agreement.

C. Contests. In any proceeding wherein either Party shall pursue remedies for an Event of Default hereunder, nothing shall prevent the other party from contesting the existence or continuing nature of the alleged Event of Default.

VIII. REPRESENTATIONS

In addition to the other representations, warranties and covenants made by the Parties, the Parties make the following representations, warranties and covenants to each other, and may be held liable for any loss suffered as a consequence of any misrepresentation or breach under this Article VIII.

A. Full Authority. Each Party has the full right, power and authority to enter into, perform and observe this Agreement.

B. Other Instruments. Unless otherwise specified in this Agreement, neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the fulfillment of or the compliance with the terms and conditions of this Agreement by each Party will conflict with or result in a breach of any terms, conditions, or provisions of, or constitute a default under, or result in the imposition of any prohibited lien, charge, or encumbrance of any nature under any agreement, instrument, indenture, or any judgment, order, or decree to which either Party is a party or by which either Party is bound.

C. Binding Agreement. This Agreement is the valid, binding and legally enforceable obligation of the Parties and is enforceable in accordance with its terms. This Agreement shall extend to, inure to the benefit of, and be binding upon the City and its permitted successors and assigns and upon the Owner, its successors and assigns.

D. Covenants. The Parties shall keep and perform all of the covenants and agreements contained in this Agreement.

IX. RECORDING OF ANNEXATION AND DEVELOPMENT AGREEMENT

The Owner and the City agree and acknowledge that this Agreement shall be recorded by the City Clerk in the office of the Arapahoe County Clerk and Recorder, and that the provisions of this Agreement shall be binding upon and shall inure to the benefit of the beneficiaries, successors and assigns of the Parties as provided by this Agreement. Such recordation shall not occur prior to the Effective Date.

X. MISCELLANEOUS PROVISIONS

A. Ordinance Not Repealable. Conditioned upon the approval of the annexation of the Property, this Agreement shall be approved by ordinance of the City Council for the City of Centennial. After the Agreement has been approved by ordinance of the City Council, this Agreement shall constitute a contract between the Owner and the City as of the Effective Date.

B. Repealer. All orders, bylaws, ordinances, and resolutions of the City or parts thereof inconsistent or in conflict with this Agreement are hereby repealed to the extent only of such inconsistency or conflict.

C. No Third Party Beneficiaries. Except as provided in paragraph X.D. below: (i) nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party; (ii) absolutely no third party beneficiaries are intended by this Agreement; and (iii) any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

D. Rights of Lenders and Other Interested Parties. The City is aware that financing for development, construction and/or permanent financing of the Property may be provided in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders and purchasers of bonds. In the event of any asserted default by the Owner, the City will provide notice of such asserted default, at the same time notice is provided to the Owner, to any such lender, trustee for bond holders or other interested third party, if such party has been previously identified in writing to the City by the Owner. If such interested parties are permitted, under the terms of their agreement(s) with the Owner, to cure the default and/or to assume the Owner's position with respect to this Agreement, the City will recognize such rights of interested parties and otherwise permit such interested parties to cure the default and/or to assume all of the rights and obligations of the Owner under this Agreement.

E. Relationship of Parties: This Agreement does not and shall not be construed as creating a relationship of joint venture, partners, or employer-employee between the Parties. Neither Party shall, with respect to an activity, be considered as agent or employee of the other Party.

F. Third Party Challenges. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Agreement, the Parties agree to cooperate in the defense of such challenge and to bear their own costs and attorneys' fees. Unless otherwise provided in this Agreement, during the pendency of any legal challenge, the Parties agree to abide by and carry out all of the terms of this Agreement, unless otherwise ordered by a court of competent jurisdiction.

G. Governing Law, Venue, and Interpretation. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado. The Parties agree that the rule of construction and interpretation of contracts that provides that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.

H. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive termination and shall be enforceable in the event of a failure to perform or comply.

I. Assignment. The Owner may assign or delegate this Agreement to any purchaser or transferee of ownership of the Property or any portion thereof. A party shall be deemed a "successor" or "assign" of the Owner under this Agreement only if specifically designated in a written instrument referring to this Agreement and duly recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado, as a successor or assign of the Owner under this Agreement.

J. Waiver. No waiver of one or more of the terms of the Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances. No waiver shall be effective unless in writing signed by the party against whom such waiver is to be charged.

K. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

L. Integration. This Agreement represents the entire and integrated agreement between the City and the Owner and supersedes all prior negotiations, representations, or agreements, either written or oral.

M. Amendment. To be effective, any amendments to this Agreement must be in writing and be signed by both Parties.

N. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word in this Agreement or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

O. Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

P. Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if either: (a) hand delivered to the person(s) identified below; or (b) sent by certified mail or registered mail, postage and fees prepaid, or (c) sent by recognized overnight courier, for next business day delivery, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party.

<u>If to the City:</u>	<u>If to the Owner:</u>
City Manager City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112	Centennial Lot 1, LLC 8551 Aviator Lane Englewood, Colorado 80112
With Copy to: City Attorney City of Centennial 13133 E. Arapahoe Road, Ste 100 Centennial, Colorado 80112	

Q. Reasonable Efforts. Each Party shall use its reasonable efforts and shall cooperate, where prudent, with regard to any other action as may be reasonably required to effectuate the intention of this Agreement.

R. Time of the Essence. Time is of the essence of this Agreement; provided however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

S. Good Faith of Parties. In any situation under this Agreement where consent of one of the Parties is required, or where one of the Parties requests an extension of time, the

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Property owned by Owner (Centennial Lot 1, LLC):

**Lot 1, Block 3,
Centennial East Corporate Center Filing No. 2,
County of Arapahoe,
State of Colorado.**

Description of Annexation Parcel (which includes the Property described above) is set forth on the following page(s).

Annexation Parcel Description:

ALL THAT PROPERTY BEING A PORTION OF THE WEST HALF OF SECTION 30,
TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN,
ARAPAHOE COUNTY, STATE OF COLORADO, DESCRIBED AS FOLLOWS;

LOTS 6, 9, 10, 11, 12 AND 13, BLOCK 2, AND LOTS 1, 2, 7, 11, 15, 16, 17 AND 18, BLOCK
3, CENTENNIAL EAST CORPORATE CENTER FILING NO. 2, RECORDED MAY 28, 1999
UNDER RECEPTION NUMBER A9088934 IN THE RECORDS OF SAID ARAPAHOE
COUNTY,

EXCEPT THAT PORTION THEREOF CONVEYED TO ARAPAHOE COUNTY,
COLORADO, BY WARRANTY DEED RECORDED AUGUST 29, 2000 AT RECEPTION
NO. B0108781,

EXCEPT THAT PORTION THEREOF CONVEYED TO ARAPAHOE COUNTY,
COLORADO, BY WARRANTY DEED RECORDED AUGUST 29, 2000 AT RECEPTION
NO. B0108782,

ALONG WITH LOTS 1, 2, 3 AND 4, CENTENNIAL EAST CORPORATE CENTER FILING
NO. 7, RECORDED FEBRUARY 19, 2004 UNDER RECEPTION NUMBER B4031024 IN
THE RECORDS OF SAID ARAPAHOE COUNTY,

ALONG WITH ALL THOSE PORTIONS OF SOUTH BLACKHAWK STREET, EAST
DAVIES AVENUE, EAST EASTER AVENUE AND EAST EASTER PLACE AS
DEDICATED IN THE PLAT OF CENTENNIAL EAST CORPORATE CENTER FILING NO.
2, RECORDED MAY 28, 1999 UNDER RECEPTION NUMBER A9088934 IN THE
RECORDS OF SAID ARAPAHOE COUNTY

COUNTY OF ARAPAHOE

STATE OF COLORADO