



COUNCIL AGENDA ITEM

MEETING DATE: September 14, 2021 & September 21, 2021

TO: City Council

FROM: Sandra Llanes, Interim City Attorney & Erin Poe, Deputy City Attorney

DATE: September 9, 2021

AGENDA

ITEM: **Item 4A – CU South Re 1289 & Ord 8483**

Dear Council Members and Hotline followers,

A resolution, ordinance, and annexation agreement draft was presented to council on August 10, 2021 for introduction, first reading and consideration of a motion to order published by title only. That matter was passed on consent. Additional amendments to the agreement have been made in response to input from City Council members, the city's Planning Board, Boulder County staff and community members. A summary of the changes is provided below.

In addition, two documents are attached showing changes at recent stages of the annexation agreement negotiation process.

The first document is the redlined agreement from first reading to the preliminary packet (August 27th - September 2nd). This document has been previously released to the public.

The second document shows changes made between the preliminary packet and final packet (September 2nd - September 9th). Next steps in the review process include:

Sept. 14, 2021 at 6 p.m.: City Council Second Reading of the annexation ordinance and public hearing. Community members are encouraged to provide public testimony during this meeting.

Sept. 21, 2021 at 6 p.m.: City Council deliberation and possible decision on the annexation.

Summary of Changes Between First and Second Reading

Section I: Definitions

- Combined the general and use definitions into one list.
- Added cooperative housing definition.
- Added a sentence to the “Governmental Facilities” definition
- Added definitions of effective dates.

Section II: Regulatory Requirements Upon Transfer to a Subsequent Owner

- Paragraph 4: added an intent sentence to prohibit development of an isolated enclave of single - family home.
- Paragraph 5: Added a list of uses that would be allowed if the property (or portion thereof) is transferred to any owner other than a university affiliate. The intent of these uses is
- to encourage a 15-minute residential neighborhood. The subsequent owner(s) would be subject to
- other limitations of the agreement, as well as the city’s regulatory requirements, costs and review processes.
- Several uses will be required to undergo the city’s Use Review process (indicated with a “U” below), while the others will be allowed by right.

Section III: General Standards

- Paragraph 12.c: Clarified that the city will purchase open space on the property within one year following the “de-annexation period” (i.e., 3 – 5 years after the annexation).

Collaboration on Open Space Land

- Paragraph 14.a: The city and university will conduct an independent, third-party study of the
- existing light and noise conditions on the property prior to construction of any recreation facilities. The study will inform decisions on development to encourage the city and university to
- consider technological, operational, and locational options to mitigate light and noise impacts.
- The agreement will include a requirement that if the current conditions of noise and light degrade due to development by the university, the city and university will collaborate to mitigate impacts
- at the university’s expense.
- All lighted recreation facilities (including fields) or event facilities will be setback at least 250 feet from the state natural area (i.e., adjacent city open space)
- or any existing dwelling units on adjacent properties.

- Paragraph 14.b: The university will hold no more than 20 nighttime events each year at parks and recreation facilities that require pole lighting.
 - Paragraph 14.c: Plants and shrubs will be planted along the property boundary if any unlighted recreation facilities are constructed within 50 feet of the border between the Development Zone and Open Space Zone.
 - Paragraph 15.a: The university will only construct parks and recreation facilities and not be permitted to connect to city utilities during the “De-annexation Period” (i.e., 3 – 5 years after annexation).
 - Paragraph 15.d: If requested by the city, the university (or any owner) will construct fencing between its recreation facilities and adjacent city Open Space. Design goals for fencing were added to the agreement, including protection of sensitive habitat; prevention of social trails and access to active restoration sites; delineate property boundaries where different regulations may apply; wildlife passage; and limit cost to the extent possible.
 - Paragraph 16.c, 16.d: Future university master planning will look for opportunities to minimize and mitigate light and noise impacts from future development.
- Section IV: Zones of Consideration**
- Paragraph 20.h: The university will consider the city’s preferred planting list.
 - Paragraph 21.h: The university will prioritize consideration of shared facilities, like a running track and dog park, when developing a master plan for the property.
 - Paragraph 22.a: The city and university are each required to mitigate the impacts of development to receive federal permits (e.g., flood mitigation, university development). Both parties will pursue joint mitigation work in the Open Space Zone. The city will own the Open Space Zone and perform all mitigation work, while the university will pay the city for the actual cost of mitigation, if needed.

Section V: Transportation

- Paragraph 24.d: Language added specifying that the university will employ physical and technological measures, for example RFID-activated gates, to prevent use of the roadways on the property to be used as a roadway bypass between State Highway 93 and Foothills Parkway.
- Paragraph 25: Phasing language added that development will be phased from north to south. Later development phases on the southern portion of the property may include a new access point from State Highway 93. A complementary phasing line was added to Exhibit C.
- Paragraph 26.d: Trips via public transit will not count towards the trip cap limits.
- Paragraph 27: The university will consider real-time vehicle traffic monitoring in lieu traditional traffic counts.
- Paragraph 28: The agreement allows 12 special event days per year that may exceed the trip cap limits. A special event definition was added as: any university or community related outdoor gathering on the Remaining Land Interest of at least 25 individuals assembled with a common purpose for a period of one hour or longer.

- Paragraph 35.d, 35.e: The university will pay a transportation fee to the city, assessed at the time of development, for each residential unit and each square foot of non-residential space. The fee amount, shown below, would result in approximately \$3M if the property were completely built out. The city and university will jointly agree on allocating 50% of the fee to specific projects that benefit the CU South property. The remaining 50% will be allocated to network-wide impacts.
- Paragraph 35.a: Added language to state that Vision Zero Action Plan, 2019-21 will inform future design and construction of State Highway 93 access.

Section VII: Right of First Offer

- Paragraph 43.h: The amended agreement includes a Right of Second Refusal that provides the city with a second option to purchase within two years of declining an offer.
- This option is valid if an offer is made that is less than 90% of the offer the city previously declined. The time period for the city to exercise the second chance is extended up to 45 days.

Section VIII: Miscellaneous Provisions

- Paragraph 58: New language to address the parties' responsibilities in the event that annexation is challenged by referendum, initiative or judicially.

Grantor:

Grantee:

Case No. LUR2019-00010

ANNEXATION AGREEMENT

~~August~~ September _____, 2021

This Annexation Agreement (“Agreement”) is entered into this _____ day of _____ 2021 (the “**Effective Date**”) by and between the City of Boulder, a Colorado home rule city (the “City”), and The Regents of the University of Colorado, a body corporate (the “University”), on behalf of the University of Colorado Boulder (“CU Boulder”). The City and the University are hereafter collectively referred to as the “Parties” and individually as the “Party.”

RECITALS

The University is the owner of the real property consisting of approximately 308 acres located at the intersection of Table Mesa Drive and South Loop Drive, generally known as CU Boulder South or CU South (4886 Table Mesa Drive, 0 Highway 36, 5278 Table Mesa Drive, 718 Marshall Road and 4745 W. Moorhead Circle) and more particularly described on **Exhibit A (“Property” or “CU Boulder South”)**, attached hereto and incorporated herein by this reference.

- A. The University and the City are separate governmental agencies with a complementary relationship which allows for collaboration on mutually beneficial strategies and initiatives.
- B. In this matter, the City desires to construct public improvements to mitigate the risk of flood damage, such as the damage that occurred in the September 2013 flood.
- C. The University, through its partnership with the City to annex CU Boulder South, wishes to contribute positively and collaboratively to the good of future generations by not only supporting its educational mission but by, among other things, providing housing, engaging in environmental preservation and sustainability, and by contributing toward the safety of the greater Boulder and Colorado community.
- D. This Agreement provides the framework for future partnership to develop joint benefits such as public safety facilities, Open Space access and transportation improvements such as underpasses that will benefit the Boulder community and the Property.
- E. Annexation is a negotiated process which will provide the Parties with the natural resources to collaboratively develop the Property in ways which will protect the public health, safety and welfare as well as advance the educational mission of the University.

- F. The Parties expect that approximately 119 acres of land will be acquired by the City as Open Space land. The exact acreage may vary depending on the amount of land needed for flood mitigation and a final survey of the land verifying updated flood plains.
- G. In furtherance of these shared goals, on February 4, 2019, the University submitted to the City an application for annexation of the Property into the city limits of the City of Boulder.
- H. The Parties anticipate an initial zoning designation of Public.
- I. The University is entering into this Agreement with the understanding that the provisions of this Agreement set forth all the binding requirements for annexation and development of CU Boulder South, and any additional binding requirements imposed on the University and this Agreement are not permitted or consented to by the University.
- J. The Parties have agreed to these provisions to prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City and the University.

NOW, THEREFORE, in consideration of the Recitals, promises and Covenants herein set forth and other good and valuable consideration herein received for, the Parties agree as follows:

SECTION I - DEFINITIONS

1. General Definitions. As used in this Agreement, the following terms have the following meanings:

“Accessory Building” or “Accessory Structure” means a detached Building or Structure that is:

- a. subordinate to and customarily found with the principal Building, Structure, or use of the land;
- b. for residential uses, the Building coverage is no greater than the Building coverage for the existing or proposed principal Building;
- c. operated and maintained for the use, benefit or convenience of the occupants, employees, or customers of or visitors to the premises with the Principal Use; and
- d. not used as living or sleeping quarters.

Examples of Accessory Buildings or Accessory Structures include detached garages, sheds, bicycle storage and trash enclosures.

“Accessory Dwelling Unit” means a separate and complete single housekeeping unit within a Detached Dwelling Unit or within an Accessory Structure to the principal dwelling unit of the lot or parcel upon which the unit is located.

“Accessory Sales” means incidental Retail Sales where the floor area devoted to sales does not exceed 15 percent of the gross floor area of the Principal Use and if the products sold are directly related to the Principal Use. Examples are artwork sold at an artist’s studio, convenience goods in a hotel or motel, health care products sold by a healing arts practitioner, or a factory outlet store selling products manufactured on the site.

“Accessory Use” means a use located on the same area as the principal Building, Structure, or use to which it is related and that is subordinate to and consistent with or serving the Principal Use of the land; and operated and maintained for the benefit or convenience of the occupants, employees, and customers of or visitors to the premises with the Principal Use.

“Airport” means areas used for landing or take-off of aircraft, Airport buildings, tie down areas, and appurtenant areas, which the City has represented to the federal government as being held for Airport purposes.

“Appurtenances” means architectural features not used for human occupancy, consisting of spires, belfries, cupolas or dormers, silos, parapet walls, and cornices without windows; and necessary mechanical equipment usually carried above the roof level, including, without limitation, chimneys, ventilators, skylights, antennas, microwave dishes, and solar systems, and excluding wind energy conversion systems.

“Art or Craft Studio Space” means the workshop of an artist, sculptor, photographer, craftsperson, furniture maker, or cabinet maker primarily used for on-site production of unique custom goods by hand manufacturing involving the use of hand tools and small-scale equipment, which may include an accessory gallery.

“Brewpub” means an establishment that is primarily a Restaurant where malt liquor is manufactured on the premises as an Accessory Use. A Brewpub may include some off-site distribution of its malt liquor consistent with state law.

“Building” see **“Enclosed Structure”**

“Building Height” means the vertical distance from the lowest point within 25 horizontal feet of the tallest side of the Structure to the uppermost point of the roof or Structure. The lowest point will be calculated using the Natural Grade. The tallest side will be that side where the lowest exposed exterior point is lower in elevation than the lowest exposed exterior point of any other side of the Building.

“BVCP” means the 2015 Major Update of the Boulder Valley Comprehensive Plan.

“City Council” means the City of Boulder City Council.

“City Manager” means the City Manager of the City, or the City Manager’s authorized representative.

“Community Garden” means land or rooftops that are gardened by a group of people that may or may not reside on the property and where the garden activities are not commercial crop production or greenhouse, and plant nursery uses.

“Conceptual Design” means a phase of design which the University of Colorado Design Review Board (the **“Design Review Board”**) will evaluate the overall development of the Property that

includes without limitation an illustration of the land use, Building massing and design, and transportation concepts with accompanying descriptive text.

“Convenience Retail Sales” means a retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood.

“Cooperative Housing” means a housing arrangement in which residents share expenses, ownership or labor.

“CU Boulder South Master Plan” or **“CUBSMP”** means the planning document that will set forth a framework for development of the physical environment to address goals, objectives and design principles specific to the CU Boulder South Property.

“Daycare Center” means a facility providing care for children or adults who do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight, which may include some instruction, and is licensed by the state, if applicable.

“De-Annexation Period” means the period beginning with the effective date of the ordinance annexing the Property and ending with the three-year anniversary date of the Effective date of the Annexation Ordinance ~~the ordinance~~ annexing the Property, plus any extensions duly exercised under Section 56.

“Drive Alone Rate” means a single occupancy vehicle operated by one individual, compared over time with the intent of measuring shifts to different modes of transportation.

“Duplex” means a Structure containing two dwelling units.

“Dwelling Unit, Attached” means three or more dwelling units within a Structure.

“Dwelling Unit, Detached” means no more than one dwelling unit within a Structure.

“Efficiency Living Unit” means a dwelling unit that contains a bathroom and kitchen and does not exceed a maximum floor area of 475 square feet.

“Effective Date” means the effective date of this Agreement set forth in the introductory paragraph hereof.

“Effective Date of Annexation” means the date upon which the Annexation Ordinance and map are filed for Record with the Boulder County Clerk & Recorder pursuant to CRS 31-12-113(2).

“Effective Date of Annexation Ordinance” means the effective of the Ordinance annexing the Property, as such date is reflected in such Ordinance and established by the Home Rule Charter.

“Enclosed Structure” or **“Building”** means any Structure having one or more~~four~~ walls and a roof built for the support, shelter, or enclosure of persons, animals, or property of any kind. For purposes of this Agreement, portions of Buildings connected by fully enclosed attachments that are useable by the Buildings’ occupants will be treated as one Building.

“First-Year Student Housing” means housing leased by first-year undergraduate college students.

“Flood Mitigation Project” or **“Project”** means the City’s South Boulder Creek Flood Mitigation Project.

“Fraternity and Sorority” means a social Fraternity or Sorority consisting of university students and that is recognized as an active member by a national organization.

“Fraternity or Sorority House” means a house occupied exclusively by a Fraternity or Sorority, which often is equipped with a central kitchen or dining area maintained exclusively for members of the Fraternity or Sorority and guests or visitors.

“Governmental Facilities” means a (i) municipal, county, state, or federal Structure, Building, or use operated and maintained for the benefit or convenience of the occupants, employees, and

customers of, or visitors to, the property, or (ii) joint research institute or endeavor between or among the University and federal departments or agencies in support of the University's educational mission; but does not include academic Buildings. Governmental Facilities will be compatible with walkable 15-minute neighborhoods. Examples of Governmental Facilities include research facilities used jointly with the National Institute of Standards and Technology, fire station, and a postal annex; but do not include Airports.

“Guiding Principles” means the CU South Guiding Principles in the BVCP.

“Habitable Space” means space in a Structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered Habitable Space.

“Large-scale Sport or Event Venue” means an arena, stadium, or any other type of sports or event facility with fixed seating in excess of 3,000 people including without limitation a football stadium or a basketball arena.

“Mixed Use” means a Building that contains both residential uses and non-residential uses.

“MUTCD” means the then-applicable edition of the Manual on Uniform Traffic Control Devices used by the Colorado Department of Transportation.

“Natural Grade” means the existing grade or elevation of the ground surface as it exists following construction of the Project.

“Non-Residential Building, Large” means a Building that is accessory to a university use, including without limitation academic uses, research and development uses, and related educational operations provided by the University. Large Non-Residential Buildings have a floor area of 175,000 square feet or more.

“Open Space” means land owned by the City and managed by the City of Boulder Open Space and Mountain Parks Department.

“Owner” means the University's successors in interest, assignees, and all persons who may hereafter be Transferred any real property interest, including a fractional interest, in the Property. However, “Owner” does not include the University or University Affiliates, the City of Boulder or the City's Housing Authority.

“Parks and Recreation Uses” means uses which include playfields, playgrounds, and athletic and other recreational facilities or amenities, which are owned by the University or a public agency and are operated primarily for the benefit of the employees, guests, residents of the Development Zone (as defined herein below).

“Peak Hour” means the concept referring to the hour of a day when the highest volume of traffic occurs on a transportation facility.

“Personal Service Uses” means an establishment that provides personal services for the convenience of the neighborhood, including, without limitation, barber and beauty shops, shoe repair shops, bicycle repair shops, dry cleaners, laundries, self-service laundries, bakeries, travel agencies, newsstands, pharmacies, photographic studios, duplicating services, automatic teller machines, and the healing arts (health treatments or therapy generally not performed by a medical doctor or physician such as physical therapy, massage, acupuncture, aromatherapy, yoga, audiology, and homeopathy).

“Principal Use” means the primary or predominant use of any lot, Building or Structure.

“Remaining Land Interest” means the University’s remaining land interests on the Property after the consummation of all conveyances of real estate interests contemplated in this Agreement, including any future conveyances of ROFO Parcels (as defined herein below).

“Residence Hall” means a Building ~~intended or~~ used principally for long-term sleeping accommodations only by students at a college, university, or other public, quasi-public, or private institution. A common kitchen and common rooms for social, media, entertainment, and recreation purposes may also be provided.

“Restaurant” means an establishment provided with a food preparation area, dining room equipment, and persons to prepare and serve, in consideration of payment, food or drinks to guests.

“Retail Sales” means the selling of goods or merchandise directly to a consumer.

“Setback” means the minimum distance in linear feet measured on a horizontal plane between the outer perimeter of a Structure, above grade, and the adjacent property boundaries.

“Structure” means anything constructed or erected with a fixed location on the ground above grade, but the term does not include poles, lines, cables, or other transmission or distribution facilities of public utilities.

“Tavern” means an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where snacks are available for consumption on the premises.

“Townhouse” means an attached single-family dwelling unit ~~that located or capable of being located on its own lot and~~ ^{EEEP1} ^{KP2} is separated from adjoining dwelling units by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit.

“Transfer” means any sale, assignment or Transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee’s sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to fee simple interest, joint tenancy interest, tenancy in common, a life estate, leasehold interest, or any interest evidenced by a land contract by which possession of the Property is Transferred and grantor retains title; provided, however, that, notwithstanding any provision of this Agreement to the contrary, a Transfer specifically does not include any of the following: (i) conveyance of a leasehold interest or permit to individual units or areas in the ordinary course of business; (ii) collateral assignments for the benefit of lenders or equity providers; or (iii) the Transfer of interests to a partnership or similar business relationship in connection with (a) securing low income housing tax credit financing and the admission or departure of the low income housing tax credit financing, or contributing equity or imputed equity provider as a member or partner in the partnership or a similar relationship, or (b) the development and financing of University-related facilities or improvements through a public-private partnership arrangement. Notwithstanding the foregoing, a Transfer by the University to an affiliated entity, including, but not limited to the CU Boulder Enterprise Corporation, or subsidiary of such affiliated entity, will be a permitted Transfer under this Agreement.

“Transportation Demand Management” means any action or set of actions aimed at reducing the impact of automobile traffic by influencing people’s travel behavior.

“**Trip**” means each single ingress to or egress from the Property onto an adjacent roadway via a motor vehicle or motorcycle.

“**University**” means the University, or a University Affiliate (as defined herein below), including, but not limited to the CU Boulder Enterprise Corporation, or subsidiary of such affiliated entity.

“**University Affiliate**” means the CU Boulder Enterprise Corporation or any other Internal Revenue Service Type I, Type II or Type III supporting organization created on behalf of and to support and benefit the University, or any subsidiary of such supporting organization.

“**Vehicle Trip Rate**” means the actual number of vehicles determined by traffic monitoring at the points of ingress to and egress from the Property.

SECTION II - REGULATORY REQUIREMENTS UPON TRANSFER TO A SUBSEQUENT OWNER

2. Transfer of Property Interest by the University. This Agreement will remain in effect and continue to apply to a Transfer of the Property, or any portion thereof, by the University to a person or subsequent Owners otherwise subject to the City’s ordinances and regulations; and the respective obligations, rights, benefits, and duties of the City and the University under this Agreement will continue to apply during the term of this Agreement to the use and development of Property Transferred by the University. This Agreement runs with the land in perpetuity. If the Property is Transferred to any Owner other than a University Affiliate as contemplated herein or State of Colorado, such Owner will be subject to the City’s police powers, the authority to zone and regulate land uses for the public health, safety and general welfare of the public together with all review and approval processes associated with such regulatory authority. Subsequent Owners will be subject to the regulatory requirements of the Boulder Revised Code in effect at the time of development.

3. Use of the Terms “University” and “Owner”. To identify how the Remaining Land Interest will be regulated if owned by an entity other than the University, the term “Owner” is used to indicate those provisions which will apply to any Owner other than the University. Provisions that refer to “University” will apply to the Property held by the University of Colorado or a University Affiliate. This includes the five acres of land Transferred to a University Affiliate for the purposes of entering a joint venture with the City’s Housing Authority for the development of affordable housing as contemplated under this Agreement. The terms “Owner” and “University” are defined in Section I. Where neither is specified, the regulation in this Agreement applies regardless of ownership.

4. Acknowledgement of Intent. The Parties have negotiated the annexation of the Property with the understanding that the Property will be a public asset held by the University for the benefit of the community and used to further its education and research missions. The Parties agree that if the Remaining Land Interest or any portion thereof (defined in Section I as the Property or any portion that is owned by the University after land is Transferred to the City

under this Agreement) is Transferred by the University to a subsequent Owner, then the applicable real property will be regulated more strictly than if it was owned by the University. If Transferred by the University to a subsequent Owner, the Parties agree that such land be designed and regulated to support the creation of walkable 15-minute neighborhoods, as articulated in the 2020 BVCP, including policies: 2.14 Mix of Complementary Land Uses; 2.24 Commitment to a Walkable & Accessible City; and 6.19 Transportation Infrastructure to Support Walkable 15-Minute Neighborhoods.

5. Additional Regulations Upon Subsequent Owners. If the Remaining Land Interest or any portion thereof is Transferred by the University to a subsequent Owner, then the Transferred land will be subject to additional regulation as indicated in this Agreement. The additional regulations include:

- a. Any development will comply with the regulatory requirements, costs, and review processes of the Boulder Revised Code, 1981, including but not limited to applicable Building Height, noise, wetland, fire and safety building codes, and outdoor lighting regulations except as expressly modified in this Agreement;
- b. The Development Zone will have an initial zoning of Public. Unless and until rezoned to a new zoning district, development is further limited to the following Principal Uses; no other Principal Uses will~~shall~~ be allowed:
 - i. Residential uses, including:
 1. Efficiency Living Unit
 2. Dwelling Unit, Attached (U)
 3. Dwelling Unit, Detached
 4. Duplex
 5. Townhouse
 - ii. Non-residential uses that are intended to serve residents of the Property:
 1. Art or Craft Studio Space (U)
 2. Restaurants, Brewpubs and Taverns (U)
 3. Daycare Center
 4. Personal Service Uses
 5. Retail Sales, including: Accessory Sales, Convenience Retail Sales, Retail Sales
 6. Other uses, if, as part of a use review, the City, in its sole discretion, finds the proposed use consistent with the goal of establishing a development that is primarily residential in nature and furthers the implementation of a 15-minute walkable neighborhood (U).

Uses followed by a “(U)” are subject to review and approval under Section 9-2-15, “Use Review,” B.R.C. 1981; all other listed uses shall be uses allowed by right. Uses requiring a Use

Review under this Agreement will not be required to demonstrate consistency with the purpose of the Public zoning district (Paragraph 9-2-15(e)(1), B.R.C. 1981). Uses listed in this Section supersede uses otherwise allowed in a Public zone. The listed uses may be provided in one building as a mixed-use building. Accessory uses and structures to the listed uses are also permitted.

- c. The Development Zone development will be primarily residential in nature with a goal of implementing 15-minute walkable neighborhoods as articulated in the 2020 Boulder Valley Comprehensive Plan, including policies: 2.14 Mix of Complementary Land Uses; 2.24 Commitment to a Walkable & Accessible City; and 6.19 Transportation Infrastructure to Support Walkable 15-Minute Neighborhoods. The Development Zone ~~will~~ be developed in accordance with Section 20.i.iv. regarding the 750,000 square foot total non-residential cap for the whole Remaining Land Interest and the 2:1 ratio for residential to non-residential construction.
 - i. 45 percent or more of all dwelling units owned or constructed by the Owner ~~will~~ be permanently affordable units as defined meeting the requirements of Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981.
- d. Potential tax consequences associated with not being owned by a public university will be the responsibility of the Owner.

6. Restriction on Transfer of Property. The University agrees that it will not Transfer or otherwise alienate the Property for a period of 10 years following the effective date of an ordinance annexing the Property unless the Transfer is to the City of Boulder. Such 10-year period is referred to herein as the “**City’s Exclusive Option.**”

7. Land Valuation for Transfer to the City of Boulder. Except as specified in this Agreement for the Transfer of land to the City for Open Space or flood mitigation, the Parties agree that for any Transfer of the Remaining Land Interest or any portion thereof, during the City’s Exclusive Option the price will be capped at \$348,450 an acre increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties.

SECTION III - GENERAL STANDARDS

8. Acknowledgment of Consideration. The Parties have negotiated the rights and responsibilities of this Agreement in good faith based on projected costs. The Parties

acknowledge that actual costs may vary from projected costs, especially since development will not occur for several years. Therefore, the Parties agree that the projected costs will be considered final costs for this Agreement. The City and the University each acknowledge and agree that their respective rights and obligations under this Agreement are supported by good and valuable consideration.

9. Requirements Prior to First Reading. Prior to the first reading of the annexation ordinance before City Council, the University will:
- a. Sign this Agreement, subject to University of Colorado Board of Regents final approval.
 - b. Provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance or an attorney's memorandum that concludes or otherwise states that the University is the owner of the Property and authorized to execute this Agreement.
 - c. Sign and file a petition for inclusion in the Northern Colorado Water Conservancy District – Boulder Municipal Subdistrict and pay all applicable fees on land and improvements for inclusion in such subdistrict.

10. Access. The University will permit public access (subject to standard University access and use policies including the Campus Use of University Facilities policy) to recreational facilities, sidewalks, trails, Buildings and other amenities that are open to University guest use. Such public access includes use of any multi-use paths (“**MUPS**”) and trails connecting to Open Space land, use of recreation fields such as a possible running track, and any dog park. The Parties will collaborate on public access to the Property during development. The duty to collaborate applies to any Owner.

11. Addressing. The University will submit proposed street names and Building numbers (“**Addresses**”) to the City during its design development phase. Addresses will comply with the City of Boulder Addressing Policy, as amended. Provided that University-submitted Addresses comply with the City of Boulder Addressing Policy, the City will deliver timely written approval of same.

12. Conveyance of Land. The University will convey to the City by special warranty deed the applicable portions of the Property described below in accordance with the provisions of this Section 12. Conveyance will take place in a reasonable amount of time as mutually agreed to by the Parties.

- a. The University will convey to the City the applicable City Premises (as defined herein below) at no cost to the City (save and except City's costs associated with closing of the Transfer) within 45 days following the date the City has delivered both (a) written notice to the University that the City (i) has received the approvals for the Flood Mitigation Project described in Section 41, and (ii) is waiving all contingencies to the complete performance of its obligations set forth herein (the “**Waiver Notice**”), and (b) draft ALTA/NSPS Land Title Surveys, updated title

commitments and legal descriptions for said premises, draft special warranty deeds for each of the City Premises, and other documentation necessary to effectuate conveyance of such premises. The “**City Premises**” will consist of the following portions of the Property (as applicable) at no cost to the City:

- i. 80 acres to the City for flood mitigation purposes. If the City does not require the entire 80 acres for flood mitigation purposes, the remaining portion of the 80 acres (the “**Land Credit**”) conveyance will be applied to land in the Open Space Zone (as defined herein below).
 1. The City expects to use 36 acres for flood mitigation in the Flood Control Zone (as defined herein below).
 2. The Land Credit, expected to be 44 acres, not used for flood mitigation facilities, will be dedicated as Open Space within the Open Space Zone.
- b. In addition to the 80 acres, upon written request of the City, the University will convey two acres in a mutually agreed upon location on the Property to the City for public safety purposes at no cost to the City. The City will have the option of electing to have the land conveyed as either a fee simple conveyance or a long-term lease. The City will pay its pro rata share of costs of extending infrastructure to the two-acre site and all costs of improving the property. The Parties may enter into an intergovernmental agreement (“**IGA**”) to mutually provide public safety services based on the Parties’ public safety goals and planning processes.
- c. The City will have the option to purchase remaining land in the Open Space Zone, expected to be approximately 75 acres, for a price of \$37,500 per acre. The exact amount and location of land available to purchase will be determined by the Parties after the Flood Mitigation Project is designed. Unless an alternative timeline is agreed to by the Parties, if the City has not exercised its option to purchase this remaining Open Space Zone land on or before the date that is the one-year anniversary of delivery of the Waiver Notice, then this option will expire without any further action by the Parties.

13. Conveyance of Water Rights. Upon the City’s delivery of the Waiver Notice, the University agrees to convey the 30.2 shares of the Dry Creek No. 2 Ditch Company water rights (the “**Water Rights**”) that are historically associated with the Property. Recognizing that the Water Rights provide a perpetual value to the University for irrigating the Remaining Land Interest and that if the University disposes of and disclaims the use of such rights, the value of the Water Rights is the opportunity cost equal to the value of obtaining annually, in perpetuity, equivalent irrigable water to replace such rights from the City. The City agrees to: (i) credit the amount that the University would otherwise pay as an irrigation Plant Investment Fee (“**PIF**”) to the cost of the PIFs assessed to the Property (as specified in Section 16.h.iv.), and (ii) provide an

annual credit of 140 acre-feet of water that the University will be able to use for irrigation on its Remaining Land Interest, except during any water emergency declared by a governmental entity having jurisdiction over the Property pursuant to lawful authorization.

14. Collaboration on Open Space Land. The Parties acknowledge the value and importance of Open Space land and will collaborate on restoration and protection thereof. The Parties will share the goal of minimizing disturbance to protect Open Space area given its potential for high Open Space value and presence of sensitive species.

- a. The Parties agree to cooperate to execute an IGA to fund an independent, third-party study to understand and establish baseline light and noise conditions and impacts on the state natural area. The intent of the study ~~will~~ be to inform decisions on development to encourage the Parties to consider technological, operational, and locational options to minimize or mitigate light and noise impacts on the state natural area. No recreation or event facility or field will be constructed until the study is completed. When constructed, any lighted Parks and Recreation Use or event facility will comply with a Setback of 250 feet from the state natural area and all then-existing dwelling units on adjacent properties existing as of the Effective Date of this Agreement.
- b. The University will hold no more than 20 lighted -night events each calendar year at any lighted Parks and Recreation facilities or fields. The IGA will consider if lighted, night events should be limited during certain times of the year that are more sensitive for wildlife such as breeding or migration periods. The 20 night is limit may be increased in the IGA by mutual agreement.
- c. The IGA will include the requirement that if the current conditions of noise and light degrade relative to the baseline established by the study referenced above due to development by the University, the Parties will collaborate to mitigate the impacts at the University's expense. Upon commencing construction of Structures or lighted Parks and Recreation Uses within 50 feet of the border between the Open Space Zone and its Remaining Land Interest, the University will plant and maintain trees and shrubs along said boundary, to the reasonable and mutual satisfaction of the Parties. Additionally, the University will comply with ~~abide by~~ the City of ~~Boulder~~ noise and outdoor lighting standards applicable to uses on the Remaining Land Interest.
- d. ~~The~~is collaboration obligation and development limitations applies to subsequent Owners.

15. General Development Standards. The following general development standards will apply to the Property.

- a. Development Phasing. The University may only construct Parks and Recreation Uses that do not require connection to City utilities during the

De-Annexation Period. After the City's delivery of the Waiver Notice to the University, the University may begin construction for other uses and connect to City utilities (see Section 17.h).

- b. Building and Structure Setbacks. All Buildings and Structures will be Setback at least 20 feet from all property lines. Notwithstanding the foregoing, the Setbacks along the western property line are depicted in **Exhibit B**, attached hereto and incorporated herein by this reference.
- c. Existing Wells. The City will not restrict or otherwise prohibit use of existing wells on the Property for irrigation purposes, even if served by City water utility. Provided that the City provides and continues to provide domestic water to the Remaining Land Interest, under no circumstances may existing wells be used for domestic water purposes once the University or Owner has connected to City water utility. No person will make any cross connections to the City's municipal water supply system from any well on the Property.
- d. Fencing. If requested by the City, the University, or any Owner, will construct fencing between its ~~property recreation facilities~~ and City Open Space. Design goals for fencing include protection of sensitive habitat; prevention of social trails and access to active restoration sites; delineate property boundaries where different regulations may apply; wildlife passage; and limit cost to the extent possible. The fence will be designed and constructed as a typical Open Space boundary fence or such other design as the parties may mutually agree.

16. Site Planning Standards. The University will construct Buildings, Structures, or infrastructure in accordance with state fire codes and the following City of Boulder site planning standards.

- a. Fire Standards.
 - i. Fire Department access must, at a minimum, meet the City of Boulder Design and Construction Standard for emergency access concerning road widths, turn-arounds, and turning radius.
 - ii. Fire hydrants will be spaced and installed in accordance with the applicable City of Boulder Design and Construction Standard.
 - iii. All development will comply with State of Colorado primary and secondary emergency access requirements. Emergency access routes will not exceed eight percent grade. The University will develop an emergency access plan when it begins the development of a site plan for the Property. Owners other than the University will comply with City of Boulder emergency access requirements.
- b. Floodplains. Any University Buildings, Structures, or infrastructure constructed on the Remaining Land Interest will be built in accordance with the following flood plain safety standards.

- i. The University will apply for, and the City will issue, flood plain development permits for regulated activities performed in the 100-year floodplain or conveyance zone.
 - ii. No portion of Enclosed Structures that include Habitable Space, including offices and residential uses, will be constructed in the 500-year floodplain.
 - iii. Enclosed restrooms, locker rooms or other Accessory Uses serving visitors to the recreation fields/area are permitted in the 500-year floodplain.
- c. Lighting, Outdoor. The University agrees to comply with the City of Boulder 2021 Outdoor Lighting Standards attached hereto as **Exhibit E** and incorporated herein by this reference, irrespective of any exemption for state institution sovereignty, right or privilege that may be contained in that Exhibit.
 - i. Prior to the installation of outdoor lighting on the Property, the University will submit lighting plans, as required by the City's Outdoor Lighting Standards. The City will ~~administratively~~ review the lighting plans and provide the University a certification of compliance or notice of any deficiencies within 30 days following the University's submission. The University will correct any deficiencies prior to installation. The University will consider the impact of potential lighting on wildlife in the adjacent Open Space and Open Space Zone as it develops the master plan for the Remaining Land Interest and will look for opportunities to minimize or mitigate impacts from development.
- d. Noise Standards. The University agrees to comply with the 2021 City Noise Standards attached hereto as **Exhibit G**, irrespective of any exemption for state sovereignty, right or privilege that may be contained within that Exhibit, and incorporated herein by this reference. The University will consider the potential impacts of noise on wildlife in the adjacent Open Space and Open Space Zone as it develops the master plan for the Remaining Land Interest and will look for opportunities to minimize or mitigate impacts from development.
- e. Steep Slopes. No development except for roads, driveways, soil disturbance, MUPS, renewable energy Structures, and necessary utility infrastructure will be located on slopes of 15 percent or greater.
- f. Grades and Building Design. Where applicable, Buildings will be designed to conform to the natural contours of the land. The site plan will minimize erosion, slope instability, landslide, mudflow or subsidence, and minimize the potential threat to property caused by geological hazards. The University or Owner will consult a professional registered engineer to eliminate or control any problems of instability or inadequate drainage

prior to grading or the construction of any Buildings in areas with geological hazards.

- g. Wetlands. ~~Prior~~ Within 90 days of the Effective Date of Annexation Ordinance and in no event later than prior to any activity occurring on the Property that is regulated under Section 9-3-9, "Stream, Wetlands, and Water Body Protection," B.R.C. 1981, the Parties University will share the ~~cost to shall cause a~~ All ~~PH3~~ ~~EEP4~~ stream, wetland, water bodies and buffer areas on the Property ~~EEP5~~ ~~TJ6~~ ~~have been to be~~ mapped and functionally evaluated, meeting the requirements for such mapping and evaluation in Section 9-3-9, "Stream, Wetlands, and Water Body Protection," B.R.C. 1981, ~~subject to review and approval of the City., and attached hereto as~~ **Exhibit J ("Wetland Mapping")** and incorporated herein by this reference. The City may adopt the Wetland Mapping by ordinance following the ~~Effective date~~ Date of the a Annexation ordinance. The University will comply with the Stream, Wetland, and Water Body Requirements that are attached hereto as **Exhibit F** and incorporated herein by this reference based on the Wetland Mapping when performing any applicable development activity on the Property. If the Property is Transferred by the University, the Owner will comply with then-current City of Boulder regulatory requirements for streams, wetlands, or water bodies effective at the time of Transfer and as amended thereafter based on the Wetland Mapping, unless the Wetland Mapping was adopted by ordinance, then based on the then-current stream, wetland and water regulatory maps of the City.
- h. Utilities. All water, wastewater, storm water and flood management facilities within, adjacent to or otherwise necessary to serve the Property and dedicated to the City for ownership, operation, and maintenance will be constructed in a manner consistent with this Agreement and the applicable City of Boulder Design and Construction Standards and applicable rules and regulations of the water, wastewater, storm water and flood management utilities.-
- i. Prior to connecting to the City's water system, the following is required:
1. A water system distribution analysis is needed prior to connection to the City's water distribution system to assess the impacts and service demands of the proposed development. Conformance with the City's Treated Water Master Plan, October 2011 and the 2019 Water Transmission Study findings is necessary.
 2. A mutually agreeable water and wastewater service agreement between the City and University for the Property.

3. The University or Owner will connect applicable portions of the Remaining Land Interest to a portion of the City’s water system known as Zone 3. This Zone 3 has a pipeline in Broadway which is higher in water pressure and may require the University or Owner to install, own and maintain its own pressure reducing valves.
- ii. Prior to connecting to the City’s wastewater system, the following is required:
 1. A collection system analysis is needed prior to connection to the City’s wastewater collection system to determine any system impacts based on the proposed demands of the development. The analysis will need to show conformance with the City’s Wastewater Collection System Master Plan of July 2016.
 2. A water and wastewater service agreement between the City and University for the Property.
- iii. On-site and off-site water main and wastewater main construction per the applicable City of Boulder Design and Construction Standards (DCS) as necessary to serve the development, as well as maintain the overall system, may be required. All proposed public utilities for this Project will be designed in accordance with the DCS.
- iv. The University will be responsible for paying all applicable PIFs at the time of development and/or connection to City utilities, except for the credit provided in Section 13, and the stormwater PIF of \$437,500 which will be paid at the end of the De-Annexation Period.
- v. The Parties understand and agree that the requirements of this Section are the only requirements the University must satisfy for connection to City utilities.

SECTION IV - ZONES OF CONSIDERATION

17. Zones of Consideration. The Property includes three zones. These zones are shown on **Exhibit B**.

- a. The “**Development Zone**” (approximately 129 acres) is that portion of the Property within which development of Structures containing Habitable Space is permitted to occur, within the total discretion of the University, subject only to state and federal statutes and regulations and the limitations in this Agreement.
- b. The “**Flood Control Zone**” (approximately 60 acres) is that portion of the Property where the City intends to implement Phase I of the South Boulder Creek Major Drainageway Plan and the University intends to construct recreational facilities.

- c. The “**Open Space Zone**” (approximately 119 acres) is that portion of the Property where wetland mitigation for both the Flood Mitigation Project and for future University development will occur.

18. Zoning. The Property will be annexed to the City with an initial zoning classification of Public. Except as provided in this Agreement, if owned by the University, the Property is subject to the rights and restrictions associated with Public zoning, subject to the University’s status as a state sovereign entity. If the land is Transferred to an Owner other than the University, an application may be made to the City for re-zoning.

19. Subdivision Exemption. The Parties agree that no subdivision process is required pursuant to Title 9, “Land Use Code,” B.R.C. 1981, in connection with any conveyance of any portion of the Property from the University to the City.

20. The Development Zone. The following general development standards apply to the Development Zone portion of the Property:

- a. Permitted Uses. The Development Zone will be primarily residential in nature and supportive of the University’s educational mission. The Parties’ intent is that development [occur]EEP7] which supports the University’s academic mission or offers services to Property residents. Uses listed in this Section supersede uses otherwise allowed in a Public zone. The listed uses may be provided in one Building as a Mixed-Use Building. If owned by the University, the Development Zone may only be used for the following uses, unless those uses are prohibited by Subsection b. below:
 - i. Residential Uses, including:
 - 1. Efficiency Living Unit
 - 2. Dwelling Unit, Attached
 - 3. Dwelling Unit, Detached
 - 4. Duplexes
 - 5. Townhouse
 - 6. Student housing, including Residence Hall
 - 7. Cooperative Housing
 - ii. Non-residential Uses:
 - 1. Public Colleges and Universities
 - 2. Limited types of Governmental Facilities as defined in Section I.
 - 3. Parks and Recreation Uses including a sports field with fixed seating for attendance up to 3,000 people.
 - 4. Accessory Building and Accessory Structure
 - 5. Accessory Uses, including but not limited to: Accessory Dwelling Units, Restaurants, Brewpubs and Taverns; Daycare Center and Community Gardens
- b. Prohibited Uses. The Parties agree that some uses are not consistent with the shared goal of a 15-minute walkable neighborhood and the

University's educational mission. To that end, the following uses are expressly prohibited in the Development Zone or any portion of the Property:

- i. Non-Residential Building, Large
 - ii. First-Year Student Housing
 - iii. Fraternities and Sororities
 - iv. Fraternities or Sorority House
 - v. Airports
 - vi. Large-scale Sport or Event Venue;
or any combination of stadium, arena, or facility which would equal a fixed seating capacity equal or greater to 3,000.
- c. Building Height Limits. If owned by the University, all Buildings on the Property will be limited to a height not exceeding 55 feet. Buildings will vary in height and articulation.
- d. Exceptions. If the Property is owned by the University, the 55-foot height limit will not apply to:
- i. spires, belfries, cupolas, domes, or Building roof Structures with a pitch of 2:12 or greater and not exceeding 10 feet, not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical Appurtenances usually carried above the roof level so long as they do not take up more than 25 percent of the roof area;
 - ii. light poles at government-owned recreation facilities;
 - iii. light and traffic signal poles in the right-of-way, nor to service and transmission line electrical utility poles; or
 - iv. renewable energy improvements carried on or above the roof level.
- e. Appurtenances. All roof top mechanical equipment will be screened from the perspective of the adjacent public right-of-view or paths, regardless of the height of the Building, unless such screening conflicts with the function of the mechanical equipment. The University or Owner will consider the materials and color based on the following criteria:
- i. Screening is consistent with the Building design, colors and materials;
 - ii. Appurtenances are placed on the portion of the roof which is least visible from adjacent streets and properties;
 - iii. The height of the screen is at the minimum appropriate to adequately screen the mechanical equipment; and
 - iv. Screening does not increase the apparent height of the walls of the Building. The use of parapet walls to screen mechanical equipment is discouraged. The height of parapet walls should be at the minimum necessary to screen mechanical equipment.

- f. Building Height Ceiling. The Building Height ceiling is a plane over the Property in which no portion of a Building may exceed, except as permitted elsewhere in this Agreement. The plane is described as 5,493.0' North American Vertical Datum of 1988 (NAVD 88), based on field survey conducted June 30, 2021. The City of Boulder's benchmark used for this reference was #S-407-1, a found chiseled "+" located in the sidewalk between 1230 and 1240 Chambers Drive, at the southeast corner of Ludlow Street and Chambers Drive.
- g. Use Transition Zone. The intent of the Use Transition Zone is to promote residential development that is contextually appropriate to neighboring properties. The boundary of the Use Transition Zone is illustrated in **Exhibit C**, attached hereto and incorporated herein by this reference. The following uses are permitted in the Use Transition Zone:
 - i. Dwelling Unit, Attached
 - ii. Dwelling Unit, Detached
 - iii. Duplexes
 - iv. Efficiency Living Unit
 - v. Accessory Dwelling Unit
 - vi. Parks and Recreation Uses, private open space areas and private clubhouse intended for the benefit of on-site residents, and contextually appropriate to the adjacent neighborhood.
- h. Viewsheds and Landscaping. Building location, massing and height in the Development Zone will be designed and constructed to protect and complement views of the mountain backdrop from the Highway 36 bike path and the South Boulder Creek Trail. The University or Owner will plant trees and shrubs to screen Buildings and built infrastructure on the Remaining Land Interest from these viewsheds. The University or Owner will consider the City's preferred planting list. The City will augment this landscaping on the portions of the Property acquired by the City.
- i. Housing the Predominant Use. Housing will be the predominant use of the site for areas within the Development Zone, although the site may include a mix of residential and non-residential facilities. The site will emphasize housing units over non-residential space (jobs) to help balance jobs and housing in the community.
 - i. As of the Effective Date, the anticipated number of housing units is approximately 1,100 residential units, with the Parties acknowledging that additional housing may be desirable consistent with the terms of this Agreement. The final number of residential units within the Development Zone will be guided by transportation performance and other site constraints.
 - ii. No less than 150 residential units will be constructed prior to the construction of non-residential Buildings, except as exempted below. Exempted uses include:

1. A public safety facility;
 2. Accessory Uses limited to those neighborhood uses which will serve the 150 residential units provided that the units and the space for such uses are scheduled for contemporaneous construction;
 3. Replacement or reconstruction of existing facilities existing on the Property at the time of annexation; and
 4. Parks and Recreation Uses.
- iii. To establish residential units as the predominant use of the Property over non-residential uses and to contribute positively to the balance of jobs and housing in the community, a mix of uses will be phased according to a ratio of two square feet of enclosed residential floor area to one square foot of enclosed non-residential floor area. As a disincentive to building large dwelling units, residential units larger than 2,000 square feet will only receive a credit of 2,000 square feet. Residential and non-residential units may be constructed concurrently, consistent with this formula. After the first 150 units have been constructed the University or Owner may construct and occupy non-residential Buildings, notwithstanding the two to one ratio described in this Section, provided that the University or Owner commences construction of additional residential floor area necessary to maintain the two to one ratio within two years after the construction of the non-residential Buildings.
- iv. Limitation on non-residential Buildings. The cumulative floor area of all non-residential Buildings on the entirety of the Remaining Land Interest will not exceed 750,000 square feet, regardless of ownership or subdivision.
- j. Housing for University needs. Housing on the site will meet the needs of the University faculty, staff and non-freshmen students in order to address the fact that Boulder housing is currently unaffordable to faculty, staff and students. Providing housing for the University faculty, staff and non-freshmen students will contribute positively to the community's housing affordability goals and aid the University in its recruitment, retention, and equity goals. Housing should be mutually beneficial to the community and University and integrated with needs of the community rather than built as isolated enclaves.
- k. Affordable Housing. As of the Effective Date of this Agreement, the University has been engaged in discussions for an arrangement with the city's housing authority to continue the University's mission to provide much-needed housing. The goal of this arrangement will be to serve low- to moderate-income levels for the broader Boulder community.

- i. Prior to connecting to the City’s water or wastewater systems, the University will convey approximately five acres of the Development Zone to a University Affiliate to partner with the City’s housing authority for the development of permanent, deed-restricted affordable housing. While the intent of any potential partnership will be to pursue low- to moderate-income housing, the developer will maintain flexibility on targeted area median income levels based on then-current Boulder needs at the time of development, with priority consideration for the University’s community members.
 - ii. Based on the acreage, the University and the developer expect approximately 100-110 units will be available to the community through this arrangement. The University affiliate will provide the land through a long-term ground lease and the opportunity to develop within the Development Zone consistent with the University’s desire to help the City meet its affordable housing goals.
 - iii. Due to the requirements set forth in Section 21.1. below, the requirement of the University to dedicate five acres to affordable housing will not Transfer to a subsequent Owner.
- l. Affordable Housing Requirement upon Transfer. If the University Transfers the Development Zone, or any portion thereof to a subsequent Owner, the Transferred property will be subject to a requirement that 45 percent of any new dwelling units be permanently affordable. Except for the percent of units required to be affordable, all other aspects of the affordable housing will be as required by 9-13, “Inclusionary Housing,” B.R.C. 1981, or any successor ordinance. This percentage may be adjusted by mutual written agreement between the City Manager and Owner so long as the community benefit is equivalent to 45 percent of the residential development.
- m. Design Goals. Conceptual Design and Development Goals are shown as **Exhibit D**, attached hereto and incorporated herein by this reference. The University will incorporate the Conceptual Design and Development Goals (or similar goals), which include the University’s standard goals for environmental conservation, into the CU Boulder South Master Plan and other plans relating to the site, including but not limited to future design guidelines.

21. Flood Control Zone. The following terms, standards and conditions will apply to that portion of the Property designated as the Flood Control Zone. The City has determined that the site will provide adequate areas for construction, maintenance, and operation of city flood control dams, Appurtenances, and associated flood storage including freeboard to reduce flood risks. The Flood Control Zone will also provide opportunities for passive and active recreation activities, or other uses compatible with the floodwater mitigation system and where possible,

conserve and/or restore areas within the flood mitigation facilities with high ecological value and provide opportunities to minimize or mitigate impacts of the flood control project on habitat with high ecological values.

- a. Review of Engineering Details. The City will provide the University with digital copies of construction plans at the completion of 60 percent design of the preliminary design phase. The City will provide a period of 60 days for the University to review and provide comments on the Project. The City will consider the input in its refinement of engineering plans and respond in writing providing a rationale for material comments unable to be addressed.
- b. Permitting. The City will be responsible for all federal, state, and other governmental approvals for the Flood Mitigation Project, including approvals required for removal of the existing levee system and will otherwise design and construct the Project improvements in accordance with applicable regulations and law.
- c. Drainage in flood detention areas. The City will design the Project to ensure that flood detention areas will meet the following standards:
 - i. The detention area will be designed to meet applicable state water rights drain time requirements.
 - ii. Ponding will not occur during non-flooding periods.
 - iii. The detention area adequately drains following a flood event.
- d. Increases in Floodplain. The City will not increase the 100- or 500-year floodplain limits onto the Development Zone without prior approval from the University, which approval may be withheld in the University's sole discretion.
- e. Tennis Courts and Warehouse Building. Based on current Project design and plans, the existing tennis courts and warehouse building will be impacted by the Project. The City will demolish these facilities as part of the Flood Mitigation Project and will give the University written notice 90 days prior to the date that the City commences such demolition. Prior to demolition, the University will remove the contents of the facilities. Any items left in the facilities will be considered abandoned and the University agrees that such items may be removed or destroyed.
- f. Site Access. The City will reestablish access along South Loop Drive at a width of 80 feet. The reestablished road will follow an alignment that is subject to the University's prior written approval and be paved to approximately 24 feet.
- g. Parks and Recreation Uses in the Flood Control Zone. The following terms, standards and conditions will apply to recreation facilities located in the Flood Control Zone.
 - i. Parks and Recreation Uses in the Flood Control Zone. Any Parks and Recreation Uses proposed in the Flood Control Zone of the Project require the City's review and approval to ensure they do

not interfere with the functionality of the Project. The areas of the Flood Control Zone in which Parks and Recreation Uses may be constructed, subject to City review, are shown as **Exhibit I**, attached hereto and incorporated herein by this reference.

- ii. Construction. The University will be responsible for the design and construction of the recreational facilities. The University will coordinate the design of the recreation fields with the design of the drainage plan for the Flood Control Zone with the City. Use of City-owned land for recreational facilities will be contingent upon a license agreement executed by the Parties which addresses liability and community access.
- iii. Running Track. The Parties agree to jointly consider a formal running track with public access during future planning of the Property.
- iv. Dog Park. The Parties agree to jointly consider a multi-acre public dog park on the Property.
- h. Shared recreation facilities. The intent of the Parties is that shared recreation facilities, such as a running track, dog park and other recreation facility will be constructed and available to the public. The University agrees to prioritize consideration of construction of shared facilities when developing its master plan for the property. The Parties agree to jointly determine the appropriate uses of any shared parks and recreation facilities. Design standards for future park amenities will be mutually agreeable to the Parties. The University will consider incorporating City of Boulder Parks and Recreation Design Standards.

22. Open Space Zone. The following terms, standards and conditions will apply to that portion of the Property designated as the Open Space Zone.

- a. Mitigation. The City and University are each required to minimize or mitigate their respective impacts of development in order to receive federal permits allowing, respectively, the City's Flood Mitigation Project and the University's development to occur. Related to any University development that displaces wetlands within the Remaining Land Interest, the Parties may elect to pursue joint mitigation work and execute an IGA to that effect. If the Parties so decide, the City will construct any improvements associated with an approved mitigation plan ~~perform mitigation~~ and the University will pay for the actual cost of mitigation that will fulfill the University's local, state and federal permit obligations. Such an agreement will be optional by both Parties and dependent on operational limitations and business needs.
- b. Levee. The City may, at its expense, remove the existing levee system, an appurtenance of the land to be conveyed to the City, and will be

responsible for necessary permitting and other requirements associated therewith.

- c. Open Space Trail Connections. The City will coordinate with the University on the development of any new trail, or the designation or abandonment of any existing roads and trails, on land conveyed to the City. Any trail connection, construction, abandonment, use and maintenance will be at the City's sole discretion. No gates, trail connections or other pedestrian or vehicular access points (formal or informal) will be allowed from the Remaining Land Interest onto the City's Open Space without prior approval by the City and only in accordance with the Open Space and Mountain Parks Department's policies, processes, and plans, as amended. Within 10 years following the Effective Date of ~~the Annexation Ordinance~~this Agreement, the City will undertake a planning process to determine future uses within the Open Space Zone that are within City ownership, including but not limited to a consideration of future public access.
- d. Uses. The Open Space Zone will be maintained, preserved and used only in a manner consistent with the Open Space purposes identified for Open Space land in Section 176 of the Charter of the City of Boulder.

SECTION V - TRANSPORTATION

23. Access, Transportation, and Mobility – Generally. The intent of this Agreement is to ensure that the transportation needs generated by future development on the Property will not unduly adversely impact the transportation networks that serve the Property and surrounding area. Adverse impacts to local and regional networks will be minimized or mitigated through implementation of performance-based standards. The University has completed planning and transportation analyses to inform performance-based standards including, but not limited to, parking ratios, Trip Caps (as defined herein below), transit use, pedestrian and trail connections, and access to transit passes. The access, transportation, and mobility requirements of this Agreement are intended to:

- a. Continue and extend the ongoing collaboration between the Parties in other areas within the City of Boulder (such as the 30th and Colorado underpass project) to manage the off-site transportation impacts of future development on the Property by mitigating directly or collaborating and cost sharing with the City to mitigate material impacts on the City's transportation system.
- b. Ensure that future transportation performance of the Property is consistent with the University's Transportation Master Plan and generally consistent with the goals of the City's Transportation Master Plan.
- c. Inform University efforts to encourage daily transportation habits of future residents and employees of and visitors of the Property that are consistent with other CU Boulder campus locations.

24. Access. The University or Owner will provide vehicular access to the Property subject to the following requirements:

- a. Primary access to the Property will be Table Mesa Drive via South Loop Drive and a new roadway and access point to South Broadway (State Highway 93).
- b. Secondary access may be Table Mesa Drive via Tantra Drive. Access via Tantra Drive will be controlled through a physical method implemented at the sole discretion of the University and utilized for emergency access, maintenance vehicles, or by the University's transit. For any secondary access via Tantra Drive, the University will prioritize the use of electric-powered buses.
- c. The University or Owner will be responsible for obtaining necessary permits, design, right-of-way acquisition and construction necessary to establish vehicular access to the Property, including, but not limited to, applicable access permits from the City and Colorado Department of Transportation ("**CDOT**") for new or improved access to City streets and state highways and the construction of all necessary road improvements and traffic control infrastructure required by the City and CDOT (e.g., stop sign, acceleration/deceleration lanes, traffic signal). The University will be responsible for the cost of installing a new traffic signal on State Highway 93 at the new access point should the intersection meet the MUTCD warrants for signalization. For clarity, the University cannot install a traffic signal without the intersection meeting the requirements of CDOT for a signal; the installation of a signal can only proceed at the sole and absolute discretion of CDOT. The Trip Cap for each point of access, as established in this Agreement, will not change because of the University's or Owner's inability to obtain access permits.
- d. In order to protect the safety of residents and guests, the University or Owner will employ physical and technological measures, such as radio-frequency identification (RFID)-activated gates, to prevent use of the roadways of the Property as a Roadway Bypass (as herein defined below) similar to how the University manages traffic at other campus locations. "**Roadway Bypass**" means an uninterrupted roadway on the Property between State Highway 93 and State Highway 157 (Foothills Parkway), the design of which would incentivize its use as a "shortcut" between State Highway 93 and State Highway 157.

25. Phasing. The University will develop an initial phasing plan as part of a CU Boulder South Master Plan. The phasing plan will be consistent with this Agreement. The University may modify the phasing plan in the future in a manner consistent with the development goals in this Agreement and will notify the City in writing of such changes prior to carrying out any work based on the modified phasing plan. All on-site access improvements

(roads, trails, multi-modal hub) will be built, as applicable, at a level sufficient to accommodate, support, and serve each development phase. The University expects to first develop the northern portion of the Property with primary access from Table Mesa Drive and secondary access from Tantra Drive. A later development phase will be on the southern portion of the Property and may include a new access point from State Highway 93.

26. Trip Cap Program. The University or Owner will implement a Trip Cap program that establishes a maximum number of daily automobile Trips to and from the Property (the “**Trip Cap**”) as follows:

- a. South Loop Drive: No more than 5,550 daily Trips each day.
- b. State Highway 93: No more than 750 daily Trips each day.
- c. A Trip Cap for Tantra Drive is not established because it is reserved for transit, emergency and maintenance vehicle access.
- d. Trips via public transit will not count towards the Trip Cap limits. Public transit includes University, City or regional transit vehicles.

27. Trip Cap Monitoring. Traffic counts and determination of traffic volume will occur as described in this Agreement consisting of annual monitoring to gauge compliance and to understand the impacts of development. The University or Owner will consider the accuracy of available methods of monitoring traffic counts and will consider implementing methods that track real-time vehicle traffic.

- a. Recognizing that the initial phases of development will not approach the Trip Cap, the University or Owner will commence monitoring as follows:
 - i. A minimum of one count prior to commencing development phases of residential or Mixed-Use development.
 - ii. Annual monitoring commences following construction and occupancy of 900,000 square feet of floor area of development.
- b. The University or Owner will be responsible for annually monitoring daily Trips at times that coincide with the University’s academic calendar. All monitoring periods will be conducted during the academic year and will not include breaks or end-of-quarter finals, or other events that otherwise influence normal traffic patterns. Monitoring periods will consist of at least three weekday^[KP8] counts taken over a two-week period. No more than one monitoring period will be conducted annually.
- c. Prior to occupancy of 900,000 square feet of floor area of development, a monitoring period will be conducted between phases of development to verify compliance with Trip Cap requirements prior to proceeding with the following phase of development. Once 900,000 square feet of floor area is developed, one monitoring period will be conducted annually.
- d. Measurement points will include each vehicular access point.
- e. No later than 60 days following each monitoring period, the University or Owner will provide a written report at the conclusion of each monitoring period that, at a minimum, includes the following:

- i. Raw traffic count data;
 - ii. A summary of any anomalies in the data or Trip exemptions permitted under this Agreement and as a result, any necessary adjustments made to the final Trip counts;
 - iii. Any Special Event (as defined below) days that have occurred since the previous reporting period, with a brief description of the event; and
 - iv. Transportation Demand Management Monitoring, including but not limited to daily Peak Hour vehicle Trips, Drive Alone Rate; and Vehicle Trip Rate.
- f. The costs of all traffic counts conducted for determination of compliance with this Agreement will be paid for by the University or Owner and be performed by an independent consultant in consultation with the City.

28. Special Event Days/Outside Programming. The City recognizes that Special Events (as defined herein below), like visits from political candidates and small-scale sporting events, may occasionally exceed the Trip Caps. As such, the University may designate 12 Special Event days annually for the Property, whereas the traffic associated with such events will not count against the Trip Cap. No later than March 31 of each calendar year, the University ~~will~~shall submit to the City in writing the list of exempt Special Events for the preceding calendar year. Traffic counts for Special Events not so designated by the University ~~will~~shall count against the Trip Cap. The University will be responsible for security and traffic control for such events. A “**Special Event**” is defined as any University or community related outdoor gathering on the Remaining Land Interest of at least 25 individuals assembled with a common purpose for a period of one hour or longer. Events beyond control of the University transit such as the shared use of recreational fields with groups unaffiliated with the University or municipal groups will not count against the Trip Cap or count against Special Event days.

29. Compliance. The following actions will be taken if the Trips to the Property exceed the Trip Cap within a monitoring period:

- a. The University or Owner will identify and communicate to the City additional Transportation Demand Management (as defined herein below) strategies and/or infrastructure investments to lower the number of Trips to within the allowable threshold within 90 days from the date of delivery of a written report showing the Trip Cap has been exceeded.
- b. The University or Owner will implement the strategies and programs to reduce Trips to the Property within 180 days from the date of completion of the monitoring period (the “**Trip Cap Cure Period**”).
- c. Further phases of development not yet underway will be placed on hold until a minimum of two monitoring reports indicate compliance with this Agreement.
- d. After a determination that the Trip Cap has been exceeded, monitoring reports will be provided each quarter following the Trip Cap Cure Period

until a minimum of two consecutive reports indicate that Trips have been reduced below the Trip Cap. The University or Owner will revert to annual monitoring following two consecutive reports indicating compliance with this Agreement.

e. The University or Owner will take the following action if four consecutive quarterly reports indicate non-compliance with this Agreement:

i. The University or Owner will budget and reinvest funding into its transportation programs for the purpose of further reducing Trips to and from the Property. The University or Owner will provide the City with information in sufficient detail to demonstrate how the funds are invested and consider feedback from the City on expenditure. The University or Owner will consider utilizing the funds to lower the amount of funding provided by the City for underpass construction. For example, the University may use funds assessed due to ~~funding from non-compliance to fund~~ ~~may result in an underpass being funded~~ on a 49/51 cost share basis instead of 50/50.

ii. The amount of funding is calculated as an amount not to exceed the cost of a regional fare charged by the Regional Transportation District (“**RTD**”), per each Trip over the Trip Cap, applied daily (the “**Trip Cap Fee**”). If the daily fare is no longer offered by RTD, the amount of funding will be the last daily fare published and charged by RTD, increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties. However, in no event ~~will~~shall the Trip Cap Fee (a) be less than \$5.00 as increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties, or (b) exceed 103 percent of the prior year’s Trip Cap Fee.

30. Parking. The University will provide parking areas that meet the following requirements:

- a. Maximum parking for residential and non-residential development will be calculated at a ratio of one space for each Attached Dwelling Unit and one space for each 600 square feet of non-residential floor area.
- b. If tax credit financing for affordable units requires the provision of off-street parking with the affordable unit, then the parking space required for tax credit financing will be exempt from the parking cap.

- c. Detached Dwelling Units and Townhouses will provide parking within the respective premises and will not count against the maximum number of parking spaces.
- d. Residential parking allocated to a specific unit will be determined by residential type, at the sole discretion of the University, and be located off of streets to the maximum extent practical. Residential parking will include reasonable space for vehicles needed by residents for their employment or entrepreneurial activities. Such parking areas will not count against the parking cap.
- e. All parking areas will include the appropriate federally mandated spaces for accessibility and separation of pedestrian and cyclist movements from vehicular movements.
- f. Parking areas will be designed to incorporate measures to provide reasonable parking for private, ride hailing, and transit vehicles, repair vehicles, landscaping vehicles, and domestic service vehicles. Such parking areas will not count against the parking cap.
- g. Short-term bicycle parking is intended to offer a convenient and accessible area to park bicycles for customers and other visitors, and will be located on a public access level, within 50 feet of the main Building entrances and outside of a Building. Long-term bicycle parking will offer a secure and weather-protected place to park bicycles for employees, residents, commuters and other visitors who generally stay at a site for several hours. Long-term bicycle parking will be secured by a locked or monitored area or be visible by employees at work, located within 300 feet of the Building it serves, provide adequate lighting and adequate clearance around the rack to prevent conflicts with pedestrians or parked cars, and, if located in a parking garage, will be clearly marked as a bicycle parking space and separated from auto parking. Off-street bicycle parking spaces will be provided for all residential units and other facilities and meet the following minimum requirements:
 - i. Dwelling units without a private garage. Two spaces per unit, with 75 percent dedicated to long-term parking and 25 percent dedicated to short-term parking.
 - ii. Non-residential Buildings. One space per 1,500 square feet of floor area, with 50 percent dedicated to long-term parking and 50 percent dedicated to short-term parking.
 - iii. Accessory Uses. One space per 750 square feet of floor area, minimum of four.

31. Transportation Demand Management (“TDM”).

- a. The University will implement a transportation system that supports multi-modal mobility and transit connections between the Property and other campus locations to manage employee and resident access and mobility and to materially reduce car Trips between the Property and main campus.

- b. Alternatives to automobiles will be promoted by incorporating site design techniques, land use patterns and supporting infrastructure that encourages walking, biking, and other alternatives to the single-occupant vehicle.
- c. At a minimum, the University agrees to implement the following additional TDM measures:
 - i. Micro mobility program memberships.
 - ii. Carpool opportunity and a vanpool subsidy program.
 - iii. Incorporate neighborhood services, office and retail, into the development to the extent the market supports such services.
 - iv. Transportation Network Company loading zones.
 - v. Parking Management. The University agrees to manage the parking associated with the Development Zone in the following manner:
 - 1. Parking spaces will be shared by different uses to reduce the amount of built parking infrastructure.
 - 2. Any parking that is provided for Attached Dwelling Units will be charged at prices separate from the rent for the unit, except as prohibited by tax credit financing for affordable units. The University will charge market rates or rates that are similar to parking rates set at the main CU Boulder Campus.
 - 3. The University will actively evaluate, monitor, and enforce its parking policies.
 - 4. Except for Detached Dwelling Units and Townhouses, provided that parking for such units is included in a garage accompanying the unit, the University will charge for all parking in the Development Zone, including, without limitation, on-street or off-street parking areas, unless prohibited by low-income tax credit financing for affordable units.

32. Transportation Options Access. The University will establish and operate transit/shuttle service to its campuses and facilities, other commercial destinations (as determined by the University), transit routes and connection points to regional transit.

- a. Bike and pedestrian access to local and regional transit and the MUPS system will be improved.
- b. Multi-modal facilities will have direct connection to internal and external mobility options.

33. Mobility Hub. The University will construct a multi-modal mobility hub and implement transit connections between the Property and other University campus locations to manage employee and resident access and mobility. The initial hub improvements will be constructed prior to completion of the first non-residential Building, unless an alternative date is

requested by the University and approved by the City. The hub will be expanded over time to adequately meet the demand generated by development of the Property. The multi-modal mobility hub will be designed, constructed, and operated as follows:

- a. Integrate transit, pedestrian and bicycle facilities, car/ridesharing, and a context-appropriate parking supply compliant with applicable accessibility standards and regulations.
- b. Be designed at size and with services that are proportionate to development.
- c. Primarily support residents, visitors, and employees of the Property.
- d. Implement first and last mile connections to the hub, consistent with the University's TDM program.
- e. At a minimum, the hub will include the following improvements and services: frequent transit service and bus stop infrastructure; clearly identifiable and safe bicycle and pedestrian connections; bikeshare or micro-mobility services; managed curb for pick-up and drop-off; real-time information and a wayfinding kiosk; and, charging connections for mobility devices.
- f. The University will consider including vending services, retail and/or food service options to the hub.

34. On-site Improvements. Onsite improvements and the timing of delivery of the same will be determined within the micro-master planning of the Property and include trails and MUPS connections to public rights-of-way.

- a. The University will design and construct the internal transportation improvements including without limitation streets, curb, gutter, sidewalks, MUP's, trails and associated multi-modal features that, at a minimum, include the following:
 - i. Construct a 12-foot-wide Multi-Use path with two-foot-wide shoulders on each side of the path along the west boundary of the site on an alignment (and associated connections to local streets) consistent with what is in the City of Boulder Transportation Master Plan from State Highway 93 to Table Mesa Drive.
 - ii. When reconstructed by the University, South Loop Drive will include a detached Multi-Use path and buffered bicycle lanes.
- b. The University will maintain and allow public access to all trails and MUPS constructed on the Property.
- c. The University will provide the City the opportunity, pursuant to Section VI below to review and provide comments on the design of transportation improvements and coordinate the design and construction of on-site multi-modal improvements.

35. Off-Site Improvements. The University will construct the public transportation improvements necessary to serve the Property, including, but not limited to, engineering design,

right-of-way acquisition, construction and obtaining required permits. The City will review and approve the construction drawings. Public improvements will be constructed as needed by development on the site. For example, when the northern portion of the Property is developed, the University will construct the improvements needed for Table Mesa Drive. Only after the University begins development on the southern portion of the site will the University construct an access point to State Highway 93. The public improvements the University is required to construct are:

- a. Prior to the date that the University begins development of Buildings south of the phasing line shown on **Exhibit C** (note that the University intends to develop the Development Tract from north to south), the University will, subject to CDOT and City approval of design, construct a new access point onto State Highway 93 meeting the standards contained in the State Highway Access Code. The State Highway Access Permit Application for the new access point will include a revised traffic study with updated existing and projected traffic data. The City's Vision Zero Action Plan, 2019-21 and subsequent similar reports, will inform the University's future design and construction of the State Highway 93 access point and its related pedestrian/bicycle crossing to minimize or mitigate the risk of serious injury or death to pedestrians and bicyclists from motorists turning left onto southbound State Highway 93.
- b. Enter into an agreement with the City for a 50/50 cost sharing arrangement for the evaluation, and provided that, in the determination of the Parties, the evaluation indicates financial and technical feasibility of such a project, of the cost for a MUP underpass under Table Mesa connecting the RTD Park-n-Ride lot to Thunderbird Drive.
- c. ~~The r~~Reconstruction of the existing Table Mesa Drive / South Loop Drive / Highway 36 off-ramp intersection consistent with the design recommendations included in the CU Boulder South Traffic Impact Study dated May 27, 2021 (figures 5, 11 and 12), and meeting the standards contained in the State Highway Access Code and the City's Design and Construction Standards unless administratively amended by the City. The Parties may mutually agree to alternative intersection designs. The State Highway Access Permit Application for the land use changes on the Property will include a revised traffic study with updated existing and projected traffic data.
- d. The University will pay a transportation fee to the City (i) prior to occupancy of any new residential or non-residential Buildings, and (ii) whenever existing developed Property is expanded, for any subsequent net increase in floor area or number of dwelling units, as applicable. In a manner that is timely to when the fee is assessed, the Parties will discuss how the transportation fee will be allocated. The Parties will jointly agree on allocating 50 percent of the fee to specific projects which will provide a direct benefit to the Property with the remaining 50 percent dedicated to

network-wide impacts. The Parties will use good faith efforts to agree on reasonable uses for the 50 percent of the transportation fee that will be used for projects that provide a direct benefit to the Property. The transportation fee will be calculated based on the following rates (as adjusted annually for inflation as provided herein below):

- i. \$1.46 for new or additional square foot of floor area of non-residential development.
 - ii. \$2,307.08 for each new Detached Dwelling Unit.
 - iii. \$1,673.83 for each new Attached Dwelling Unit or mobile home.
- e. The transportation fee rates set forth in Section 35.d. above ~~will~~shall increase annually by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties; provided, however, that in no event ~~will~~shall such adjusted annual rates exceed 103 percent of the prior year's rates.

SECTION VI - REVIEW OF PLANS

36. CU Boulder South Master Plan. The University will provide the City opportunities to review the CU Boulder South Master Plan. Prior to any University development in the Development Zone, the University will submit a draft CUBSMP to the City for its review and comment. The City will review the draft CUBSMP and provide written comments to the University within 90 days following the University's submission of the CUBSMP.

37. Conceptual Design Reviews. For each active phase of development on the site, but prior to Design Review Board review of such plans, the University will submit 90 percent Conceptual Design plans to the City for development on the Property (the "**Concept Plans**"). The City will have a period of 60 days to review and provide comments following the University's delivery of the Concept Plans. The intent of the concept design phase is to apply the goals, objectives, priorities of the CUBSMP, observations of the specific project phase site characteristics, and the program summary for the applicable phase of development.

38. Conceptual Plan Requirements. Plan submittal requirements for conceptual building and site development review are the same as those required for consideration of the concept design phase by the University of Colorado Design Review Board as may be updated from time to time.

39. City Comments. The City's comments will pertain to two categories:
- a. Compliance review to verify that the proposed development activity complies with the terms of this Agreement.
 - b. Discretionary comments intended to further the City's goals and policies. The University will consider the City's discretionary comments and may

recommend associated conceptual plan amendments to the Design Review Board. The University will respond in writing providing a rationale for material City comments unable to be addressed.

40. Final Plans. Upon completion of any improvements on the Property, the University will provide the City with the final as-built construction documents in portable document format (PDF) or in other such formats mutually agreeable to the Parties.

41. Flood Mitigation Project.

- a. Development Phasing. The City is in the process of designing the Project for South Boulder Creek. Until the City obtains the approvals for the Project listed in Section 41.b. below, the only facilities constructed by the University will be for Parks and Recreation Uses, temporary access roads, parking, and renewable/alternative energy systems on the Property.
- b. Disconnection from the City. Prior to construction, the Project will require approvals from: the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, Colorado Department of Transportation, Colorado State Engineer's Office and City of Boulder. Necessary permits include: USACE/EPA 404 Individual Permit (this include USFWS Consultation), FEMA CLOMR, CDOT Right of Way Permit and Landowner Agreement, ~~and~~ Colorado Dam Safety Engineer Design Approval, and city of Boulder wetland and floodplain permits; which the City will use reasonable efforts to obtain. If the City does not receive such approvals by the end of the De-Annexation Period, the City, in its discretion, may require that the University apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. *et seq.* Upon written request by the City to commence the process to disconnect, the University will take action within 30 days to commence and complete the legislative process to disconnect. If so requested by the University the City will not charge the University for any cost associated with disconnection from the City. For the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. *et seq.* which will be the sole and exclusive procedure for disconnection, if the same is requested.
- c. Written Notice to Proceed. After the earlier of (i) the City has received all the required approvals described above, or (ii) after the De-Annexation Period, at the written request of the City, the University will convey to the City all the Property so agreed to by the Parties.

42. No Right or Remedy of Disconnection. No right or remedy of disconnection of the Property from the City will accrue, other than as provided for in this Agreement and applicable state laws.

SECTION VII –

RIGHT OF FIRST OFFER

43. Right of First Offer. If the University determines to sell the Remaining Land Interest or a portion thereof (the “**ROFO Parcel**”), whether after receiving an offer from a third-party or of its own volition, the University will first provide the City with an option to purchase the ROFO Parcel (the “**ROFO Option**”) as set forth below.

- a. **ROFO Notice and Option Notice.** Prior to entering negotiations with any third party, the University will deliver written notice of the ROFO Option no later than the next occurring April 1st (the “**ROFO Notice**”). Upon receipt of such notice, the City will have until June 1st of the same calendar year as the ROFO Notice (the “**Option Year**”) to notify the University in writing that it wishes to exercise its option to purchase the ROFO Parcel (the “**Option Notice**”).
- b. **ROFO Negotiation Period.** Provided that the City has duly exercised the ROFO Option by timely delivery of the Option Notice, the Parties will have until August 1st of the Option Year to negotiate and agree to terms of a contract for the City to purchase the ROFO Parcel.
- c. **Option Not Exercised.** If the City (i) fails to timely deliver the Option Notice, or (ii) declines to exercise the ROFO Option, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel.
- d. **Option Closing Deadline.** If the closing of the City’s acquisition of the ROFO Parcel does not occur on or before January 31st of the calendar year immediately following the Option Year, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel, unless otherwise agreed to by the Parties in writing.
- e. **Failed Ballot Measure to acquire ROFO Parcel.** If the acquisition of the ROFO Parcel appears as a ballot measure in a City of Boulder election, and the voters fail to approve the measure, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel.
- f. **Survival of City’s Exclusive Option.** Notwithstanding the provisions of Sections 43.c., d., and e. above, if the 10-year term of the City’s Exclusive Option has not yet expired, then such Exclusive Option will still have the effect of prohibiting a sale to a third-party until its expiration.
- g. **Right of First Offer Following Expiration of City’s Exclusive Option.** After expiration of the City’s Exclusive Option, and provided that the City has not failed or declined to exercise its ROFO Option during the City’s Exclusive Option under Sections 43.c., d., or e. above with respect to the then-offered ROFO Parcel, the City will maintain the right of first offer for previously unoffered ROFO Parcels in accordance with this Section 43.

- h. Right of Second Refusal. Notwithstanding anything in this Section 43 to the contrary, from and after the expiration of the City’s Exclusive Option, the City will have a right of second refusal option provided that:
- i. within the previous two years, the City has declined to exercise its ROFO Option on an applicable ROFO Parcel (for the purposes of this Section 43.h. such applicable parcel is referred to herein as the “**ROSR Parcel**”);
 - ii. the University has reached an acceptable purchase price, terms, and conditions of a sale to a third-party intent on consummating a purchase of the ROSR Parcel; and
 - iii. such third-party purchase price acceptable to the University is less than 90 percent (adjusted for increases in valuation of similar properties within the City of Boulder since the original ROFO Option) of the ROFO Option purchase price previously offered to the City, then, prior to executing a contract for sale to a third-party:
 1. the University will deliver written notice to the City offering the ROSR Parcel to the City at the same price and on similar terms and conditions as contained in the third-party offer (the “**ROSR Notice**”);
 2. the City will have 30 ~~45~~ days from its receipt of the ROSR Notice to accept or reject said offer in writing. This time period will be extended to 45 days, if needed to be able to schedule an agenda item for city council in keeping with standard city scheduling and public notice requirements.^[EPP9]
 3. if the City accepts the terms of the ROSR Notice, then, within 30 days, or as the Parties mutually agree with the provision of earnest money^[EPP10], the Parties will enter into a purchase and sale contract on the terms and conditions set forth in the ROFR Notice and the City will purchase the applicable ROFR Parcel on such terms and conditions; or
 4. if the City rejects the terms of the ROSR Notice, fails to timely respond to such notice, or, after having affirmatively responded to such notice, fails to timely enter into or close on a contract to acquire the ROSR Parcel, then the University’s obligations under this Section 43 will no longer apply to such parcel.

44. Determination of Fair Market Value. The Parties will determine the fair market value of the ROFO Parcel as set forth below:

- a. Sale of Raw Land Valuation. During the City’s Exclusive Option, provided that the ROFO Parcel is in the state of raw unimproved land, the purchase price for the ROFO Parcel will be determined in accordance with Section 7 above.

- b. Valuation of Improved Land or After Expiration of City's Exclusive Option. If at the time of offering the ROFO Option, the City's Exclusive Option has expired or the University has commenced constructing any infrastructure or vertical improvements on or to the ROFO Parcel, then the purchase price for the ROFO Parcel will be determined by the appraisal method set forth in this Section 44.b. The Parties will each select an appraiser. The selected appraisers will, within 45 days of being retained, provide their respective opinions of the fair market value of the ROFO Parcel ("**Appraised Value**"). In their determinations of the Appraised Value, each appraiser will determine the fair market value of the ROFO Parcel based on customary appraisal practices and methods most applicable to the ROFO Parcel. If the two Appraised Values are within 10 percent of each other, the purchase price will be the average of the two Appraised Values. If the two Appraised Values are not within 10 percent of each other, the two selected appraisers will mutually agree upon a third appraiser. The third appraiser will determine an opinion of the Appraised Value. The purchase price will be the average of the three Appraised Values obtained pursuant to this Section.

SECTION VIII - MISCELLANEOUS PROVISIONS

45. Provision of Utility Service. Upon adoption of an ordinance by the City Council annexing the Property, the City is obligated to provide utilities and other municipal services on the same general terms and conditions as the rest of the municipality receives.

46. Timeline of Responsibilities at Key Milestones. The Parties have agreed on the timeline of responsibilities at key milestones shown in **Exhibit H**, attached hereto and incorporated herein by this reference.

47. No Encumbrances. The University agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of the Property has occurred, the University will neither convey ownership nor further encumber the University's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, the University agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City.

48. Original Instruments. Prior to the first reading of the annexation ordinance, and subject to Board of Regents approval, the University will provide an original of this Agreement signed by the University, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council will constitute acceptance of such documents by the City. If the City does not annex the Property, all such documents will become null and void without further action and the City agrees to return all such documents to the University.

49. Waiver of Vested Rights. The University waives any vested property rights expressly superseded by annexation or this Agreement that may have arisen under Boulder County jurisdiction. This Agreement will replace any such rights that may have arisen under Boulder County jurisdiction.

50. Dedications. The University acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Remaining Land Interest as set forth in this Agreement.

51. Term and Future Interests. This Agreement and the covenants set forth herein will run with the land and be binding upon the University as set forth in this Agreement, the University's successors and assigns, Owners, and all persons who may hereafter acquire an interest in the Remaining Land Interest, or any part thereof. If any of the terms set forth in this Agreement are found to be void for violation of the rule against perpetuities or some other analogous provision, then such provisions will continue only for the period of the lives of current

duly elected City Council members, their now living descendants, if any, and the survivor of them, plus 20 years and 364 days.

52. Historic Drainage. The University agrees to convey drainage from the Remaining Land Interest in a historic manner that does not materially and adversely affect abutting properties.

53. Right to Withdraw. The University retains the right to withdraw ~~from the petition for annexation and, as a consequence thereof, withdraw from~~ this Agreement by providing written notice thereof to the City up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The University's right to withdraw will terminate upon the City Council's final legislative action approving the annexation. If the University withdraws ~~the petition from this Agreement~~ in the manner described above, this Agreement will be null and void, and, thereafter, the Parties will have no further rights or obligations hereunder. The City agrees, within 30 days of a written request by the University after a withdrawal, to return all previously submitted fees (other than annexation application and review fees), application, conveyance deeds, leases, licenses and easement and/or rights of way dedication documents which the University submitted or entered into with the City pursuant to this Agreement.

54. Failure to Annex. This Agreement and any document executed pursuant hereto will be null and void and of no consequence if the Property is not annexed to the City.

55. Breach of Agreement. If either Party breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, each Party acknowledges that the other Party may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for breach of contract or specific performance of the obligations described in this Agreement. The Parties agree that a failure to perform due to citizen petitions, citizen referendums, or litigation will not be considered a breach of this Agreement. In no event may either Party be entitled to claim or receive any form of damages, including without limitation compensatory, exemplary, punitive or economic, including lost profits.

56. Extension of the De-Annexation Period. The De-Annexation Period will automatically extend for up to two successive terms of one year in the absence of either Party giving notice of intent to not extend. Notice of the intent to not extend must be given at least 30 days prior to the end of the De-Annexation Period. This extension will apply to all references in this Agreement with a milestone or deadline based on the De-Annexation Period. The De-Annexation Period may be extended by mutual agreement of the Parties for five additional one-year terms (for a total period of 10 years) if the Parties are involved with litigation from third parties that prevent the Parties from satisfying the obligations of this Agreement. In no event will the De-Annexation Period extend beyond the 10th anniversary of the original Effective

~~the~~ Date of the ~~a~~ Annexation ~~o~~ Ordinance (without regard to a suspension thereof or stay imposed thereon) for the Property and will automatically terminate upon such 10th anniversary.

57. Force Majeure. In the event either Party is unable to perform its obligations under the terms of this Agreement due to a Force Majeure Event (as defined herein below), such Party ~~will~~ shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes. A “**Force Majeure Event**” includes pandemics and epidemics (provided that a governmental authority having jurisdiction over the Property has issued an order that requires the cessation of work or activities related to a Party’s performance under this Agreement), lockouts, labor disputes, failures of power, acts of God, acts of public enemies, terrorism, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, wildfire, citizen initiatives or referendum petitions, injunctions resulting from litigation, or similar cause, provided such similar cause is beyond the reasonable control of either the City or the University, as applicable; and further provided that the affected party must notify the other of the Force Majeure Event and exercise commercially reasonable efforts to attempt to overcome the impediment to performance, which performance will not be excused nor relief given unless the Party demonstrates that despite commercially reasonable efforts or that due to applicable law, performance remains impossible or unreasonably expensive.

58. Annexation Challenged by Referendum, Initiative or Judicially.

- a. If the annexation of the Property or any portion thereof is challenged by a referendum or initiative petition, which petition is referred to election, all provisions of this Agreement, together with the duties and obligations of the Parties, will be suspended pending the outcome of the election. If the election results in the disconnection of the Property or any portion thereof from the City, either by virtue of a successful election or the City Council acting to repeal the annexation ordinance under the referendum laws, or to adopt an initiated ordinance under the law of initiative, then this Agreement will be void and the Parties relieved from all obligations hereunder. If the referendum or initiative challenge fails, the Parties will continue to be bound by this Agreement, provided, however, that only this Agreement shall establish the binding requirements for annexation and development of the Remaining Land Interest, and no additional requirements shall be imposed on the University and this Agreement for annexation and development of the Remaining Land Interest, through referendum or otherwise, nor does the University consent to any such additional requirements. In the event the annexation of the Property or any portion thereof is voided by a final action of any court (such action not being associated with a referendum or initiative election) and the Parties are able to cure the legal defect, the University may, in its discretion, again petition to annex the Property pursuant to the terms hereof or other terms to which the Parties agree.
- b. If any measure is approved by the voters of the City that seeks to impose additional requirements for annexation and development of the Remaining Land Interest beyond those set forth in this Agreement, the University shall

have the option at any time by written notice to the City to void this Agreement and apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. et seq. Upon notice by the University that it is commencing such process, this Agreement shall become void, and the City will cooperate diligently with the University to commence and complete the legislative process to disconnect. If so requested by the University, the City will not charge the University for any cost associated with disconnection from the City. As provided in Section 41(b) above, for the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. et seq. which will be the sole and exclusive procedure for disconnection, if the same is requested.

57.—

58.59. Entire Agreement; Amendments. The Parties understand and agree that the University is entering into this Agreement with the understanding that the provisions of this Agreement set forth all the requirements for annexation and development of CU Boulder South, and any additional requirements imposed on the University or on this Agreement, other than by mutual agreement of the Parties, will render this Agreement void and the University will commence de-annexation proceedings. The Parties reserve the right to amend this Agreement by written instrument approved and executed by both Parties. The consent of the City to such amendment may be approved by the City Council by motion. Notwithstanding the above, in no event will the Property remain annexed without this Agreement being the regulatory land use instrument controlling use and development of the Property.

59.60. Dispute Resolution. The Parties have entered into this Agreement with the understanding and expectation that they will continue to collaborate on issues related to annexation. The Parties will attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between designees of the Parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written ‘invitation to negotiate,’ the Parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“**ADR**”) procedure, or in default of agreement, through an ADR procedure as recommended to the Parties by a mutually agreed upon mediator. Nothing in this clause will be construed as prohibiting a Party from applying to a court for interim injunctive relief.

61. Sovereign Status. Except as otherwise provided for in this Agreement, the University does not waive any state sovereignty right or privilege. Notwithstanding the above, where the University has agreed that provisions of the Boulder Revised Code apply to the Property, the University has waived the defense of sovereignty.

60.62. Future IGA for Construction Access^{EEPII}. Prior to any development on the Property, with the potential for shared liability, the Parties will execute an IGA that addresses issues of mutual concern such as liability, access, and construction staging.

EXECUTED on the day and year first above written.

(Signatures appear on following pages)

UNIVERSITY:

By: _____

Printed Name: _____

**CITY OF BOULDER,
a Colorado home rule city**

By: _____
Nuria Rivera-Vandermyde,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

_____ Date: _____
City Attorney's Office

EXHIBITS

- Exhibit A Legal Description of Property and Annexation Map**
- Exhibit B Zones of Consideration**
- Exhibit C Use Transition Zone and Buffer Map**
- Exhibit D Conceptual Design and Development Goals**
- Exhibit E Outdoor Lighting**
- Exhibit F Stream, Wetland and Water Body Requirements**
- Exhibit G Noise**
- Exhibit H Timeline of Responsibilities at Key Milestones**
- Exhibit I Location of Parks and Recreation Uses in the Flood Control Zone**

Grantor:

Grantee:

Case No. LUR2019-00010

ANNEXATION AGREEMENT

September ____, 2021

This Annexation Agreement (“Agreement”) is entered into this ____ day of _____ 2021 (the “**Effective Date**”) by and between the City of Boulder, a Colorado home rule city (the “City”), and The Regents of the University of Colorado, a body corporate (the “University”), on behalf of the University of Colorado Boulder (“CU Boulder”). The City and the University are hereafter collectively referred to as the “Parties” and individually as the “Party.”

RECITALS

The University is the owner of the real property consisting of approximately 308 acres located at the intersection of Table Mesa Drive and South Loop Drive, generally known as CU Boulder South or CU South (4886 Table Mesa Drive, 0 Highway 36, 5278 Table Mesa Drive, 718 Marshall Road and 4745 W. Moorhead Circle) and more particularly described on **Exhibit A (“Property” or “CU Boulder South”)**, attached hereto and incorporated herein by this reference.

- A. The University and the City are separate governmental agencies with a complementary relationship which allows for collaboration on mutually beneficial strategies and initiatives.
- B. In this matter, the City desires to construct public improvements to mitigate the risk of flood damage, such as the damage that occurred in the September 2013 flood.
- C. The University, through its partnership with the City to annex CU Boulder South, wishes to contribute positively and collaboratively to the good of future generations by not only supporting its educational mission but by, among other things, providing housing, engaging in environmental preservation and sustainability, and by contributing toward the safety of the greater Boulder and Colorado community.
- D. This Agreement provides the framework for future partnership to develop joint benefits such as public safety facilities, Open Space access and transportation improvements such as underpasses that will benefit the Boulder community and the Property.
- E. Annexation is a negotiated process which will provide the Parties with the natural resources to collaboratively develop the Property in ways which will protect the public health, safety and welfare as well as advance the educational mission of the University.

- F. The Parties expect that approximately 119 acres of land will be acquired by the City as Open Space land. The exact acreage may vary depending on the amount of land needed for flood mitigation and a final survey of the land verifying updated flood plains.
- G. In furtherance of these shared goals, on February 4, 2019, the University submitted to the City an application for annexation of the Property into the city limits of the City of Boulder.
- H. The Parties anticipate an initial zoning designation of Public.
- I. The University is entering into this Agreement with the understanding that the provisions of this Agreement set forth all the binding requirements for annexation and development of CU Boulder South, and any additional binding requirements imposed on the University and this Agreement are not permitted or consented to by the University.
- J. The Parties have agreed to these provisions to prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City and the University.

NOW, THEREFORE, in consideration of the Recitals, promises and Covenants herein set forth and other good and valuable consideration herein received for, the Parties agree as follows:

SECTION I - DEFINITIONS

1. General Definitions. As used in this Agreement, the following terms have the following meanings:
“Accessory Building” or “Accessory Structure” means a detached Building or Structure that is:

- a. subordinate to and customarily found with the principal Building, Structure, or use of the land;
- b. for residential uses, the Building coverage is no greater than the Building coverage for the existing or proposed principal Building;
- c. operated and maintained for the use, benefit or convenience of the occupants, employees, or customers of or visitors to the premises with the Principal Use; and
- d. not used as living or sleeping quarters.

Examples of Accessory Buildings or Accessory Structures include detached garages, sheds, bicycle storage and trash enclosures.

“Accessory Dwelling Unit” means a separate and complete single housekeeping unit within a Detached Dwelling Unit or within an Accessory Structure to the principal dwelling unit of the lot or parcel upon which the unit is located.

“Accessory Sales” means incidental Retail Sales where the floor area devoted to sales does not exceed 15 percent of the gross floor area of the Principal Use and if the products sold are directly related to the Principal Use. Examples are artwork sold at an artist’s studio, convenience goods in a hotel or motel, health care products sold by a healing arts practitioner, or a factory outlet store selling products manufactured on the site.

“Accessory Use” means a use located on the same area as the principal Building, Structure, or use to which it is related and that is subordinate to and consistent with or serving the Principal Use of the land; and operated and maintained for the benefit or convenience of the occupants, employees, and customers of or visitors to the premises with the Principal Use.

“Airport” means areas used for landing or take-off of aircraft, Airport buildings, tie down areas, and appurtenant areas, which the City has represented to the federal government as being held for Airport purposes.

“Appurtenances” means architectural features not used for human occupancy, consisting of spires, belfries, cupolas or dormers, silos, parapet walls, and cornices without windows; and necessary mechanical equipment usually carried above the roof level, including, without limitation, chimneys, ventilators, skylights, antennas, microwave dishes, and solar systems, and excluding wind energy conversion systems.

“Art or Craft Studio Space” means the workshop of an artist, sculptor, photographer, craftsman, furniture maker, or cabinet maker primarily used for on-site production of unique custom goods by hand manufacturing involving the use of hand tools and small-scale equipment, which may include an accessory gallery.

“Brewpub” means an establishment that is primarily a Restaurant where malt liquor is manufactured on the premises as an Accessory Use. A Brewpub may include some off-site distribution of its malt liquor consistent with state law.

“Building” see **“Enclosed Structure”**

“Building Height” means the vertical distance from the lowest point within 25 horizontal feet of the tallest side of the Structure to the uppermost point of the roof or Structure. The lowest point will be calculated using the Natural Grade. The tallest side will be that side where the lowest exposed exterior point is lower in elevation than the lowest exposed exterior point of any other side of the Building.

“BVCP” means the 2015 Major Update of the Boulder Valley Comprehensive Plan.

“City Council” means the City of Boulder City Council.

“City Manager” means the City Manager of the City, or the City Manager’s authorized representative.

“Community Garden” means land or rooftops that are gardened by a group of people that may or may not reside on the property and where the garden activities are not commercial crop production or greenhouse, and plant nursery uses.

“Conceptual Design” means a phase of design which the University of Colorado Design Review Board (the **“Design Review Board”**) will evaluate the overall development of the Property that includes without limitation an illustration of the land use, Building massing and design, and transportation concepts with accompanying descriptive text.

“Convenience Retail Sales” means a retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood.

“**Cooperative Housing**” means a housing arrangement in which residents share expenses, ownership or labor.

“**CU Boulder South Master Plan**” or “**CUBSMP**” means the planning document that will set forth a framework for development of the physical environment to address goals, objectives and design principles specific to the CU Boulder South Property.

“**Daycare Center**” means a facility providing care for children or adults who do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight, which may include some instruction, and is licensed by the state, if applicable.

“**De-Annexation Period**” means the period beginning with the effective date of the ordinance annexing the Property and ending with the three-year anniversary date of the Effective date of the Annexation Ordinance annexing the Property, plus any extensions duly exercised under Section 56.

“**Drive Alone Rate**” means a single occupancy vehicle operated by one individual, compared over time with the intent of measuring shifts to different modes of transportation.

“**Duplex**” means a Structure containing two dwelling units.

“**Dwelling Unit, Attached**” means three or more dwelling units within a Structure.

“**Dwelling Unit, Detached**” means no more than one dwelling unit within a Structure.

“**Efficiency Living Unit**” means a dwelling unit that contains a bathroom and kitchen and does not exceed a maximum floor area of 475 square feet.

“**Effective Date**” means the effective date of this Agreement set forth in the introductory paragraph hereof.

“**Effective Date of Annexation**” means the date upon which the Annexation Ordinance and map are filed for Record with the Boulder County Clerk & Recorder pursuant to CRS 31-12-113(2).

“**Effective Date of Annexation Ordinance**” means the effective date of the Ordinance annexing the Property, as such date is reflected in such Ordinance and established by the Home Rule Charter.

“**Enclosed Structure**” or “**Building**” means any Structure having one or more walls and a roof built for the support, shelter, or enclosure of persons, animals, or property of any kind. For purposes of this Agreement, portions of Buildings connected by fully enclosed attachments that are useable by the Buildings’ occupants will be treated as one Building.

“**First-Year Student Housing**” means housing leased by first-year undergraduate college students.

“**Flood Mitigation Project**” or “**Project**” means the City’s South Boulder Creek Flood Mitigation Project.

“**Fraternity and Sorority**” means a social Fraternity or Sorority consisting of university students and that is recognized as an active member by a national organization.

“**Fraternity or Sorority House**” means a house occupied exclusively by a Fraternity or Sorority, which often is equipped with a central kitchen or dining area maintained exclusively for members of the Fraternity or Sorority and guests or visitors.

“**Governmental Facilities**” means a (i) municipal, county, state, or federal Structure, Building, or use operated and maintained for the benefit or convenience of the occupants, employees, and customers of, or visitors to, the property, or (ii) joint research institute or endeavor between or among the University and federal departments or agencies in support of the University’s educational mission; but does not include academic Buildings. Governmental Facilities will be compatible with walkable 15-minute neighborhoods. Examples of Governmental Facilities

include research facilities used jointly with the National Institute of Standards and Technology, fire station, and a postal annex; but do not include Airports.

“Guiding Principles” means the CU South Guiding Principles in the BVCP.

“Habitable Space” means space in a Structure for living, sleeping, eating, or cooking.

Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered Habitable Space.

“Large-scale Sport or Event Venue” means an arena, stadium, or any other type of sports or event facility with fixed seating in excess of 3,000 people including without limitation a football stadium or a basketball arena.

“Mixed Use” means a Building that contains both residential uses and non-residential uses.

“MUTCD” means the then-applicable edition of the Manual on Uniform Traffic Control Devices used by the Colorado Department of Transportation.

“Natural Grade” means the existing grade or elevation of the ground surface as it exists following construction of the Project.

“Non-Residential Building, Large” means a Building that is accessory to a university use, including without limitation academic uses, research and development uses, and related educational operations provided by the University. Large Non-Residential Buildings have a floor area of 175,000 square feet or more.

“Open Space” means land owned by the City and managed by the City of Boulder Open Space and Mountain Parks Department.

“Owner” means the University’s successors in interest, assignees, and all persons who may hereafter be Transferred any real property interest, including a fractional interest, in the Property. However, “Owner” does not include the University or University Affiliates, the City of Boulder or the City’s Housing Authority.

“Parks and Recreation Uses” means uses which include playfields, playgrounds, and athletic and other recreational facilities or amenities, which are owned by the University or a public agency and are operated primarily for the benefit of the employees, guests, residents of the Development Zone (as defined herein below).

“Peak Hour” means the concept referring to the hour of a day when the highest volume of traffic occurs on a transportation facility.

“Personal Service Uses” means an establishment that provides personal services for the convenience of the neighborhood, including, without limitation, barber and beauty shops, shoe repair shops, bicycle repair shops, dry cleaners, laundries, self-service laundries, bakeries, travel agencies, newsstands, pharmacies, photographic studios, duplicating services, automatic teller machines, and the healing arts (health treatments or therapy generally not performed by a medical doctor or physician such as physical therapy, massage, acupuncture, aromatherapy, yoga, audiology, and homeopathy).

“Principal Use” means the primary or predominant use of any lot, Building or Structure.

“Remaining Land Interest” means the University’s remaining land interests on the Property after the consummation of all conveyances of real estate interests contemplated in this Agreement, including any future conveyances of ROFO Parcels (as defined herein below).

“Residence Hall” means a Building used principally for long-term sleeping accommodations only by students at a college, university, or other public, quasi-public, or private institution. A

common kitchen and common rooms for social, media, entertainment, and recreation purposes may also be provided.

“Restaurant” means an establishment provided with a food preparation area, dining room equipment, and persons to prepare and serve, in consideration of payment, food or drinks to guests.

“Retail Sales” means the selling of goods or merchandise directly to a consumer.#

“Setback” means the minimum distance in linear feet measured on a horizontal plane between the outer perimeter of a Structure, above grade, and the adjacent property boundaries.

“Structure” means anything constructed or erected with a fixed location on the ground above grade, but the term does not include poles, lines, cables, or other transmission or distribution facilities of public utilities.

“Tavern” means an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where snacks are available for consumption on the premises.

“Townhouse” means an attached single-family dwelling unit that is separated from adjoining dwelling units by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit.

“Transfer” means any sale, assignment or Transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee’s sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to fee simple interest, joint tenancy interest, tenancy in common, a life estate, leasehold interest, or any interest evidenced by a land contract by which possession of the Property is Transferred and grantor retains title; provided, however, that, notwithstanding any provision of this Agreement to the contrary, a Transfer specifically does not include any of the following: (i) conveyance of a leasehold interest or permit to individual units or areas in the ordinary course of business; (ii) collateral assignments for the benefit of lenders or equity providers; or (iii) the Transfer of interests to a partnership or similar business relationship in connection with (a) securing low income housing tax credit financing and the admission or departure of the low income housing tax credit financing, or contributing equity or imputed equity provider as a member or partner in the partnership or a similar relationship, or (b) the development and financing of University-related facilities or improvements through a public-private partnership arrangement.

Notwithstanding the foregoing, a Transfer by the University to an affiliated entity, including, but not limited to the CU Boulder Enterprise Corporation, or subsidiary of such affiliated entity, will be a permitted Transfer under this Agreement.

“Transportation Demand Management” means any action or set of actions aimed at reducing the impact of automobile traffic by influencing people’s travel behavior.

“Trip” means each single ingress to or egress from the Property onto an adjacent roadway via a motor vehicle or motorcycle.

“University” means the University, or a University Affiliate (as defined herein below), including, but not limited to the CU Boulder Enterprise Corporation, or subsidiary of such affiliated entity.

“University Affiliate” means the CU Boulder Enterprise Corporation or any other Internal Revenue Service Type I, Type II or Type III supporting organization created on behalf of and to support and benefit the University, or any subsidiary of such supporting organization.

“**Vehicle Trip Rate**” means the actual number of vehicles determined by traffic monitoring at the points of ingress to and egress from the Property.

**SECTION II -
REGULATORY REQUIREMENTS UPON TRANSFER
TO A SUBSEQUENT OWNER**

2. Transfer of Property Interest by the University. This Agreement will remain in effect and continue to apply to a Transfer of the Property, or any portion thereof, by the University to a person or subsequent Owners otherwise subject to the City’s ordinances and regulations; and the respective obligations, rights, benefits, and duties of the City and the University under this Agreement will continue to apply during the term of this Agreement to the use and development of Property Transferred by the University. This Agreement runs with the land in perpetuity. If the Property is Transferred to any Owner other than a University Affiliate as contemplated herein or State of Colorado, such Owner will be subject to the City’s police powers, the authority to zone and regulate land uses for the public health, safety and general welfare of the public together with all review and approval processes associated with such regulatory authority. Subsequent Owners will be subject to the regulatory requirements of the Boulder Revised Code in effect at the time of development.

3. Use of the Terms “University” and “Owner”. To identify how the Remaining Land Interest will be regulated if owned by an entity other than the University, the term “Owner” is used to indicate those provisions which will apply to any Owner other than the University. Provisions that refer to “University” will apply to the Property held by the University of Colorado or a University Affiliate. This includes the five acres of land Transferred to a University Affiliate for the purposes of entering a joint venture with the City’s Housing Authority for the development of affordable housing as contemplated under this Agreement. The terms “Owner” and “University” are defined in Section I. Where neither is specified, the regulation in this Agreement applies regardless of ownership.

4. Acknowledgement of Intent. The Parties have negotiated the annexation of the Property with the understanding that the Property will be a public asset held by the University for the benefit of the community and used to further its education and research missions. The Parties agree that if the Remaining Land Interest or any portion thereof (defined in Section I as the Property or any portion that is owned by the University after land is Transferred to the City under this Agreement) is Transferred by the University to a subsequent Owner, then the applicable real property will be regulated more strictly than if it was owned by the University. If Transferred by the University to a subsequent Owner, the Parties agree that such land is not intended for an isolated enclave of single-family detached homes. -The Parties intend that the land be designed and regulated to support the creation of walkable 15-minute neighborhoods, as articulated in the 2020 BVCP, including policies: 2.14 Mix of Complementary Land Uses; 2.24 Commitment to a Walkable & Accessible City; and 6.19 Transportation Infrastructure to Support Walkable 15-Minute Neighborhoods.

5. Additional Regulations Upon Subsequent Owners. If the Remaining Land Interest or any portion thereof is Transferred by the University to a subsequent Owner, then the Transferred land will be subject to additional regulation as indicated in this Agreement. The additional regulations include:

- a. Any development will comply with the regulatory requirements, costs, and review processes of the Boulder Revised Code, 1981, including but not limited to applicable Building Height, noise, wetland, fire and safety building codes, and outdoor lighting regulations except as expressly modified in this Agreement;
- b. The Development Zone will have an initial zoning of Public. Use Transition Zone restrictions will continue to apply. Unless and until rezoned to a new zoning district, development is further limited to the following Principal Uses; no other Principal Uses will be allowed:
 - i. Residential uses, including:
 1. Efficiency Living Unit
 2. Dwelling Unit, Attached (U)
 3. Dwelling Unit, Detached
 4. Duplex
 5. Townhouse
 - ii. Non-residential uses that are intended to serve residents of the Property:
 1. Art or Craft Studio Space (U)
 2. Restaurants, Brewpubs and Taverns (U)
 3. Daycare Center
 4. Personal Service Uses
 5. Retail Sales, including: Accessory Sales, Convenience Retail Sales, Retail Sales
 6. Other uses, if, as part of a use review, the City, in its sole discretion, finds the proposed use consistent with the goal of establishing a development that is primarily residential in nature and furthers the implementation of a 15-minute walkable neighborhood (U).

Uses followed by a “(U)” are subject to review and approval under Section 9-2-15, “Use Review,” B.R.C. 1981; all other listed uses shall be uses allowed by right. Uses requiring a Use Review under this Agreement will not be required to demonstrate consistency with the purpose of the Public zoning district (Paragraph 9-2-15(e)(1), B.R.C. 1981). Uses listed in this Section supersede uses otherwise allowed in a Public zone. The listed uses may be provided in one building as a mixed-use

building. Accessory uses and structures to the listed uses are also permitted.

- c. The Development Zone development will be primarily residential in nature with a goal of implementing 15-minute walkable neighborhoods as articulated in the 2020 Boulder Valley Comprehensive Plan, including policies: 2.14 Mix of Complementary Land Uses; 2.24 Commitment to a Walkable & Accessible City; and 6.19 Transportation Infrastructure to Support Walkable 15-Minute Neighborhoods. The Development Zone will be developed in accordance with Section 20.i.iv. regarding the 750,000 square foot total non-residential cap for the whole Remaining Land Interest and the 2:1 ratio for residential to non-residential construction.
 - i. 45 percent or more of all dwelling units owned or constructed by the Owner will be permanently affordable units as defined meeting the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.
- d. Potential tax consequences associated with not being owned by a public university will be the responsibility of the Owner.

6. Restriction on Transfer of Property. The University agrees that it will not Transfer or otherwise alienate the Property for a period of 10 years following the Effective Date of Annexation Ordinance ~~effective date of an ordinance annexing the Property~~ unless the Transfer is to the City of Boulder. Such 10-year period is referred to herein as the **"City's Exclusive Option."**

7. Land Valuation for Transfer to the City of Boulder. Except as specified in this Agreement for the Transfer of land to the City for Open Space or flood mitigation, the Parties agree that for any Transfer of the Remaining Land Interest or any portion thereof, during the City's Exclusive Option the price will be capped at \$348,450 an acre increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties.

SECTION III - GENERAL STANDARDS

8. Acknowledgment of Consideration. The Parties have negotiated the rights and responsibilities of this Agreement in good faith based on projected costs. The Parties acknowledge that actual costs may vary from projected costs, especially since development will not occur for several years. Therefore, the Parties agree that the projected costs will be considered final costs for this Agreement. The City and the University each acknowledge and

agree that their respective rights and obligations under this Agreement are supported by good and valuable consideration.

9. Requirements Prior to First Reading. Prior to the first reading of the annexation ordinance before City Council, the University will:
- a. Sign this Agreement, subject to University of Colorado Board of Regents final approval.
 - b. Provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance or an attorney's memorandum that concludes or otherwise states that the University is the owner of the Property and authorized to execute this Agreement.
 - c. Sign and file a petition for inclusion in the Northern Colorado Water Conservancy District – Boulder Municipal Subdistrict and pay all applicable fees on land and improvements for inclusion in such subdistrict.

10. Access. The University will permit public access (subject to standard University access and use policies including the Campus Use of University Facilities policy) to recreational facilities, sidewalks, trails, Buildings and other amenities that are open to University guest use. Such public access includes use of any multi-use paths (“**MUPS**”) and trails connecting to Open Space land, use of recreation fields such as a possible running track, and any dog park. The Parties will collaborate on public access to the Property during development. The duty to collaborate applies to any Owner.

11. Addressing. The University will submit proposed street names and Building numbers (“**Addresses**”) to the City during its design development phase. Addresses will comply with the City of Boulder Addressing Policy, as amended. Provided that University-submitted Addresses comply with the City of Boulder Addressing Policy, the City will deliver timely written approval of same.

12. Conveyance of Land. The University will convey to the City by special warranty deed the applicable portions of the Property described below in accordance with the provisions of this Section 12. Conveyance will take place in a reasonable amount of time as mutually agreed to by the Parties.

- a. The University will convey to the City the applicable City Premises (as defined herein below) at no cost to the City (save and except City's costs associated with closing of the Transfer) within 45 days following the date the City has delivered both (a) written notice to the University that the City (i) has received the approvals for the Flood Mitigation Project described in Section 41, and (ii) is waiving all contingencies to the complete performance of its obligations set forth herein (the “**Waiver Notice**”), and (b) draft ALTA/NSPS Land Title Surveys, updated title commitments and legal descriptions for said premises, draft special warranty deeds for each of the City Premises, and other documentation necessary to effectuate conveyance of such premises. The “**City**

Premises” will consist of the following portions of the Property (as applicable) at no cost to the City:

- i. 80 acres to the City for flood mitigation purposes. If the City does not require the entire 80 acres for flood mitigation purposes, the remaining portion of the 80 acres (the “**Land Credit**”) conveyance will be applied to land in the Open Space Zone (as defined herein below).
 1. The City expects to use 36 acres for flood mitigation in the Flood Control Zone (as defined herein below).
 2. The Land Credit, expected to be 44 acres, not used for flood mitigation facilities, will be dedicated as Open Space within the Open Space Zone.
- b. In addition to the 80 acres, upon written request of the City, the University will convey two acres in a mutually agreed upon location on the Property to the City for public safety purposes at no cost to the City. The City will have the option of electing to have the land conveyed as either a fee simple conveyance or a long-term lease. The City will pay its pro rata share of costs of extending infrastructure to the two-acre site and all costs of improving the property. The Parties may enter into an intergovernmental agreement (“**IGA**”) to mutually provide public safety services based on the Parties’ public safety goals and planning processes.
- c. The City will have the option to purchase remaining land in the Open Space Zone, expected to be approximately 75 acres, for a price of \$37,500 per acre. The exact amount and location of land available to purchase will be determined by the Parties after the Flood Mitigation Project is designed. Unless an alternative timeline is agreed to by the Parties, if the City has not exercised its option to purchase this remaining Open Space Zone land on or before the date that is the one-year anniversary of delivery of the Waiver Notice, then this option will expire without any further action by the Parties.

13. Conveyance of Water Rights. Upon the City’s delivery of the Waiver Notice, the University agrees to convey the 30.2 shares of the Dry Creek No. 2 Ditch Company water rights (the “**Water Rights**”) that are historically associated with the Property. Recognizing that the Water Rights provide a perpetual value to the University for irrigating the Remaining Land Interest and that if the University disposes of and disclaims the use of such rights, the value of the Water Rights is the opportunity cost equal to the value of obtaining annually, in perpetuity, equivalent irrigable water to replace such rights from the City. The City agrees to: (i) credit the amount that the University would otherwise pay as an irrigation Plant Investment Fee (“**PIF**”) to the cost of the PIFs assessed to the Property (as specified in Section 16.h.iv.), and (ii) provide an annual credit of 140 acre-feet of water that the University will be able to use for irrigation on its Remaining Land Interest, except during any water emergency declared by a governmental entity having jurisdiction over the Property pursuant to lawful authorization.

14. Collaboration on Open Space Land. The Parties acknowledge the value and importance of Open Space land and will collaborate on restoration and protection thereof. The Parties will share the goal of minimizing disturbance to protect Open Space area given its potential for high Open Space value and presence of sensitive species.

- a. The Parties agree to cooperate to execute an IGA to fund an independent, third-party study to understand and establish baseline light and noise conditions and impacts on the state natural area. The intent of the study will be to inform decisions on development to encourage the Parties to consider technological, operational, and locational options to minimize or mitigate light and noise impacts on the state natural area. No recreation or event facility or field will be constructed until the study is completed. When constructed, any lighted Parks and Recreation Use or event facility will comply with a Setback of 250 feet from the state natural area and all then-existing dwelling units on adjacent properties existing as of the Effective Date of this Agreement.
- b. The University will hold no more than 20 lighted night events each calendar year at any lighted Parks and Recreation facilities or fields. The IGA will consider if lighted, night events should be limited during certain times of the year that are more sensitive for wildlife such as breeding or migration periods. The 20-night limit may be increased in the IGA by mutual agreement.
- c. The IGA will include the requirement that if the current conditions of noise and light degrade relative to the baseline established by the study referenced above due to development by the University, the Parties will collaborate to mitigate the impacts at the University's expense. Upon commencing construction of Structures or lighted Parks and Recreation Uses within 50 feet of the border between the Open Space Zone and its Remaining Land Interest, the University will plant and maintain trees and shrubs along said boundary, to the reasonable and mutual satisfaction of the Parties. Additionally, the University will comply with the City noise and outdoor lighting standards applicable to uses on the Remaining Land Interest.
- d. The collaboration obligation and development limitations apply to subsequent Owners.

15. General Development Standards. The following general development standards will apply to the Property.

- a. Development Phasing. The University may only construct Parks and Recreation Uses that do not require connection to City utilities during the De-Annexation Period. After the City's delivery of the Waiver Notice to the University, the University may begin construction for other uses and connect to City utilities (see Section 16.h).

- b. Building and Structure Setbacks. All Buildings and Structures will be Setback at least 20 feet from all property lines. Notwithstanding the foregoing, the Setbacks along the western property line are depicted in **Exhibit B**, attached hereto and incorporated herein by this reference.
- c. Existing Wells. The City will not restrict or otherwise prohibit use of existing wells on the Property for irrigation purposes, even if served by City water utility. Provided that the City provides and continues to provide domestic water to the Remaining Land Interest, under no circumstances may existing wells be used for domestic water purposes once the University or Owner has connected to City water utility. No person will make any cross connections to the City's municipal water supply system from any well on the Property.
- d. Fencing. If requested by the City, the University, or any Owner, will construct fencing between its property and City Open Space. Design goals for fencing include protection of sensitive habitat; prevention of social trails and access to active restoration sites; delineate property boundaries where different regulations may apply; wildlife passage; and limit cost to the extent possible. The fence will be designed and constructed as a typical Open Space boundary fence or such other design as the parties may mutually agree.

16. Site Planning Standards. The University will construct Buildings, Structures, or infrastructure in accordance with state fire codes and the following City of Boulder site planning standards.

- a. Fire Standards.
 - i. Fire Department access must, at a minimum, meet the City of Boulder Design and Construction Standard for emergency access concerning road widths, turn-arounds, and turning radius.
 - ii. Fire hydrants will be spaced and installed in accordance with the applicable City of Boulder Design and Construction Standard.
 - iii. All development will comply with State of Colorado primary and secondary emergency access requirements. Emergency access routes will not exceed eight percent grade. The University will develop an emergency access plan when it begins the development of a site plan for the Property. Owners other than the University will comply with City of Boulder emergency access requirements.
- b. Floodplains. Any University Buildings, Structures, or infrastructure constructed on the Remaining Land Interest will be built in accordance with the following flood plain safety standards.
 - i. The University will apply for, and the City will issue, flood plain development permits for regulated activities performed in the 100-year floodplain or conveyance zone.

- ii. No portion of Enclosed Structures that include Habitable Space, including offices and residential uses, will be constructed in the 500-year floodplain.
 - iii. Enclosed restrooms, locker rooms or other Accessory Uses serving visitors to the recreation fields/area are permitted in the 500-year floodplain.
- c. Lighting, Outdoor. The University agrees to comply with the City of Boulder 2021 Outdoor Lighting Standards attached hereto as **Exhibit E** and incorporated herein by this reference, irrespective of any exemption for state institution sovereignty, right or privilege that may be contained in **Exhibit E**.
 - i. Prior to the installation of outdoor lighting on the Property, the University will submit lighting plans, as required by the City's Outdoor Lighting Standards. The City will review the lighting plans and provide the University a certification of compliance or notice of any deficiencies within 30 days following the University's submission. The University will correct any deficiencies prior to installation. The University will consider the impact of potential lighting on wildlife in the adjacent Open Space and Open Space Zone as it develops the master plan for the Remaining Land Interest and will look for opportunities to minimize or mitigate impacts from development.
- d. Noise Standards. The University agrees to comply with the 2021 City Noise Standards attached hereto as **Exhibit G**, and incorporated herein by this reference irrespective of any exemption for state sovereignty, right or privilege that may be contained within **Exhibit G**. The University will consider the potential impacts of noise on wildlife in the adjacent Open Space and Open Space Zone as it develops the master plan for the Remaining Land Interest and will look for opportunities to minimize or mitigate impacts from development.
- e. Steep Slopes. No development except for roads, driveways, soil disturbance, MUPS, renewable energy Structures, and necessary utility infrastructure will be located on slopes of 15 percent or greater.
- f. Grades and Building Design. Where applicable, Buildings will be designed to conform to the natural contours of the land. The site plan will minimize erosion, slope instability, landslide, mudflow or subsidence, and minimize the potential threat to property caused by geological hazards. The University or Owner will consult a professional registered engineer to eliminate or control any problems of instability or inadequate drainage prior to grading or the construction of any Buildings in areas with geological hazards.
- g. Wetlands. Prior to any activity occurring on the Property that is regulated under Section 9-3-9, "Stream, Wetlands, and Water Body Protection,"

B.R.C. 1981, the Parties will share the cost to cause all stream, wetland, water bodies and buffer areas on the Property to be mapped and functionally evaluated, meeting the requirements for such mapping and evaluation in Section 9-3-9, B.R.C. 1981. The City may adopt the Wetland Mapping by ordinance following the Effective Date of Annexation. The University will comply with the Stream, Wetland, and Water Body Requirements that are attached hereto as **Exhibit F** and incorporated herein by this reference based on the Wetland Mapping when performing any applicable development activity on the Property. If the Property is Transferred by the University, the Owner will comply with then-current City of Boulder regulatory requirements for streams, wetlands, or water bodies effective at the time of Transfer and as amended thereafter based on the Wetland Mapping, unless the Wetland Mapping was adopted by ordinance, then based on the then-current stream, wetland and water regulatory maps of the City.

- h. Utilities. All water, wastewater, storm water and flood management facilities within, adjacent to or otherwise necessary to serve the Property and dedicated to the City for ownership, operation, and maintenance will be constructed in a manner consistent with this Agreement and the applicable City of Boulder Design and Construction Standards and applicable rules and regulations of the water, wastewater, storm water and flood management utilities.
 - i. Prior to connecting to the City’s water system, the following is required:
 - 1. A water system distribution analysis is needed prior to connection to the City’s water distribution system to assess the impacts and service demands of the proposed development. Conformance with the City’s Treated Water Master Plan, October 2011 and the 2019 Water Transmission Study findings is necessary.
 - 2. A mutually agreeable water and wastewater service agreement between the City and University for the Property.
 - 3. The University or Owner will connect applicable portions of the Remaining Land Interest to a portion of the City’s water system known as Zone 3. This Zone 3 has a pipeline in Broadway which is higher in water pressure and may require the University or Owner to install, own and maintain its own pressure reducing valves.
 - ii. Prior to connecting to the City’s wastewater system, the following is required:
 - 1. A collection system analysis is needed prior to connection to the City’s wastewater collection system to determine any

system impacts based on the proposed demands of the development. The analysis will need to show conformance with the City's Wastewater Collection System Master Plan of July 2016.

2. A water and wastewater service agreement between the City and University for the Property.
- iii. On-site and off-site water main and wastewater main construction per the applicable City of Boulder Design and Construction Standards (DCS) as necessary to serve the development, as well as maintain the overall system, may be required. All proposed public utilities for this Project will be designed in accordance with the DCS.
- iv. The University will be responsible for paying all applicable PIFs at the time of development and/or connection to City utilities, except for the credit provided in Section 13, and the stormwater PIF of \$437,500 which will be paid at the end of the De-Annexation Period.
- v. The Parties understand and agree that the requirements of this Section are the only requirements the University must satisfy for connection to City utilities.

SECTION IV - ZONES OF CONSIDERATION

17. Zones of Consideration. The Property includes three zones. These zones are shown on **Exhibit B**.

- a. The "**Development Zone**" (approximately 129 acres) is that portion of the Property within which development of Structures containing Habitable Space is permitted to occur, within the total discretion of the University, subject only to state and federal statutes and regulations and the limitations in this Agreement.
- b. The "**Flood Control Zone**" (approximately 60 acres) is that portion of the Property where the City intends to implement Phase I of the South Boulder Creek Major Drainageway Plan and the University intends to construct recreational facilities.
- c. The "**Open Space Zone**" (approximately 119 acres) is that portion of the Property where wetland mitigation for both the Flood Mitigation Project and for future University development will occur.

18. Zoning. The Property will be annexed to the City with an initial zoning classification of Public. Except as provided in this Agreement, if owned by the University, the Property is subject to the rights and restrictions associated with Public zoning, subject to the University's status as a state sovereign entity. If the land is Transferred to an Owner other than the University, an application may be made to the City for re-zoning.

19. Subdivision Exemption. The Parties agree that no subdivision process is required pursuant to Title 9, “Land Use Code,” B.R.C. 1981, in connection with any conveyance of any portion of the Property from the University to the City.

20. The Development Zone. The following general development standards apply to the Development Zone portion of the Property:

- a. Permitted Uses. The Development Zone will be primarily residential in nature and supportive of the University’s educational mission. The Parties’ intent is that development occur which supports the University’s academic mission or offers services to Property residents. Uses listed in this Section supersede uses otherwise allowed in a Public zone. The listed uses may be provided in one Building as a Mixed-Use Building. If owned by the University, the Development Zone may only be used for the following uses, unless those uses are prohibited by Subsection b. below:
 - i. Residential Uses, including:
 1. Efficiency Living Unit
 2. Dwelling Unit, Attached
 3. Dwelling Unit, Detached
 4. Duplexes
 5. Townhouse
 6. Student housing, including Residence Hall
 7. Cooperative Housing
 - ii. Non-residential Uses:
 1. Public Colleges and Universities
 2. Limited types of Governmental Facilities as defined in Section I.
 3. Parks and Recreation Uses including a sports field with fixed seating for attendance up to 3,000 people.
 4. Accessory Building and Accessory Structure
 5. Accessory Uses, including but not limited to: Accessory Dwelling Units, Restaurants, Brewpubs and Taverns; Daycare Center and Community Gardens
- b. Prohibited Uses. The Parties agree that some uses are not consistent with the shared goal of a 15-minute walkable neighborhood and the University’s educational mission. To that end, the following uses are expressly prohibited in the Development Zone or any portion of the Property:
 - i. Non-Residential Building, Large
 - ii. First-Year Student Housing
 - iii. Fraternities and Sororities
 - iv. Fraternities or Sorority House
 - v. Airports
 - vi. Large-scale Sport or Event Venue;

- or any combination of stadium, arena, or facility which would equal a fixed seating capacity equal or greater to 3,000.
- c. Building Height Limits. If owned by the University, all Buildings on the Property will be limited to a height not exceeding 55 feet. Buildings will vary in height and articulation.
 - d. Exceptions. If the Property is owned by the University, the 55-foot height limit will not apply to:
 - i. spires, belfries, cupolas, domes, or Building roof Structures with a pitch of 2:12 or greater and not exceeding 10 feet, not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical Appurtenances usually carried above the roof level so long as they do not take up more than 25 percent of the roof area;
 - ii. light poles at government-owned recreation facilities;
 - iii. light and traffic signal poles in the right-of-way, nor to service and transmission line electrical utility poles; or
 - iv. renewable energy improvements carried on or above the roof level.
 - e. Appurtenances. All roof top mechanical equipment will be screened from the perspective of the adjacent public right-of-view or paths, regardless of the height of the Building, unless such screening conflicts with the function of the mechanical equipment. The University or Owner will consider the materials and color based on the following criteria:
 - i. Screening is consistent with the Building design, colors and materials;
 - ii. Appurtenances are placed on the portion of the roof which is least visible from adjacent streets and properties;
 - iii. The height of the screen is at the minimum appropriate to adequately screen the mechanical equipment; and
 - iv. Screening does not increase the apparent height of the walls of the Building. The use of parapet walls to screen mechanical equipment is discouraged. The height of parapet walls should be at the minimum necessary to screen mechanical equipment.
 - f. Building Height Ceiling. The Building Height ceiling is a plane over the Property in which no portion of a Building may exceed, except as permitted elsewhere in this Agreement. The plane is described as 5,493.0' North American Vertical Datum of 1988 (NAVD 88), based on field survey conducted June 30, 2021. The City of Boulder's benchmark used for this reference was #S-407-1, a found chiseled "+" located in the sidewalk between 1230 and 1240 Chambers Drive, at the southeast corner of Ludlow Street and Chambers Drive.
 - g. Use Transition Zone. The intent of the Use Transition Zone is to promote residential development that is contextually appropriate to neighboring

properties. The boundary of the Use Transition Zone is illustrated in **Exhibit C**, attached hereto and incorporated herein by this reference. The following uses are permitted in the Use Transition Zone:

- i. Dwelling Unit, Attached
 - ii. Dwelling Unit, Detached
 - iii. Duplexes
 - iv. Efficiency Living Unit
 - v. Accessory Dwelling Unit
 - vi. Parks and Recreation Uses, private open space areas and private clubhouse intended for the benefit of on-site residents, and contextually appropriate to the adjacent neighborhood.
- h. Viewsheds and Landscaping. Building location, massing and height in the Development Zone will be designed and constructed to protect and complement views of the mountain backdrop from the Highway 36 bike path and the South Boulder Creek Trail. The University or Owner will plant trees and shrubs to screen Buildings and built infrastructure on the Remaining Land Interest from these viewsheds. The University or Owner will consider the City's preferred planting list. The City will augment this landscaping on the portions of the Property acquired by the City.
- i. Housing the Predominant Use. Housing will be the predominant use of the site for areas within the Development Zone, although the site may include a mix of residential and non-residential facilities. The site will emphasize housing units over non-residential space (jobs) to help balance jobs and housing in the community.
- i. As of the Effective Date, the anticipated number of housing units is approximately 1,100 residential units, with the Parties acknowledging that additional housing may be desirable consistent with the terms of this Agreement. The final number of residential units within the Development Zone will be guided by transportation performance and other site constraints.
 - ii. No less than 150 residential units will be constructed prior to the construction of non-residential Buildings, except as exempted below. Exempted uses include:
 1. A public safety facility;
 2. Accessory Uses limited to those neighborhood uses which will serve the 150 residential units provided that the units and the space for such uses are scheduled for contemporaneous construction;
 3. Replacement or reconstruction of existing facilities existing on the Property at the time of annexation; and
 4. Parks and Recreation Uses.
 - iii. To establish residential units as the predominant use of the Property over non-residential uses and to contribute positively to

the balance of jobs and housing in the community, a mix of uses will be phased according to a ratio of two square feet of enclosed residential floor area to one square foot of enclosed non-residential floor area. As a disincentive to building large dwelling units, residential units larger than 2,000 square feet will only receive a credit of 2,000 square feet. Residential and non-residential units may be constructed concurrently, consistent with this formula. After the first 150 units have been constructed the University or Owner may construct and occupy non-residential Buildings, notwithstanding the two to one ratio described in this Section, provided that the University or Owner commences construction of additional residential floor area necessary to maintain the two to one ratio within two years after the construction of the non-residential Buildings.

- iv. Limitation on non-residential Buildings. The cumulative floor area of all non-residential Buildings on the entirety of the Remaining Land Interest will not exceed 750,000 square feet, regardless of ownership or subdivision.
- j. Housing for University needs. Housing on the site will meet the needs of the University faculty, staff and non-freshmen students in order to address the fact that Boulder housing is currently unaffordable to faculty, staff and students. Providing housing for the University faculty, staff and non-freshmen students will contribute positively to the community's housing affordability goals and aid the University in its recruitment, retention, and equity goals. Housing should be mutually beneficial to the community and University and integrated with needs of the community rather than built as isolated enclaves.
- k. Affordable Housing. As of the Effective Date of this Agreement, the University has been engaged in discussions for an arrangement with the city's housing authority to continue the University's mission to provide much-needed housing. The goal of this arrangement will be to serve low- to moderate-income levels for the broader Boulder community.
 - i. Prior to connecting to the City's water or wastewater systems, the University will convey approximately five acres of the Development Zone to a University Affiliate to partner with the City's housing authority for the development of permanent, deed-restricted affordable housing. While the intent of any potential partnership will be to pursue low- to moderate-income housing, the developer will maintain flexibility on targeted area median income levels based on then-current Boulder needs at the time of development, with priority consideration for the University's community members.

- ii. Based on the acreage, the University and the developer expect approximately 100-110 units will be available to the community through this arrangement. The University affiliate will provide the land through a long-term ground lease and the opportunity to develop within the Development Zone consistent with the University's desire to help the City meet its affordable housing goals.
- iii. Due to the requirements set forth in Section 21.1. below, the requirement of the University to dedicate five acres to affordable housing will not Transfer to a subsequent Owner.
- l. Affordable Housing Requirement upon Transfer. If the University Transfers the Development Zone, or any portion thereof to a subsequent Owner, the Transferred property will be subject to a requirement that 45 percent of any new dwelling units be permanently affordable. Except for the percent of units required to be affordable, all other aspects of the affordable housing will be as required by 9-13, "Inclusionary Housing," B.R.C. 1981, or any successor ordinance. This percentage may be adjusted by mutual written agreement between the City Manager and Owner so long as the community benefit is equivalent to 45 percent of the residential development.
- m. Design Goals. Conceptual Design and Development Goals are shown as **Exhibit D**, attached hereto and incorporated herein by this reference. The University will incorporate the Conceptual Design and Development Goals (or similar goals), which include the University's standard goals for environmental conservation, into the CU Boulder South Master Plan and other plans relating to the site, including but not limited to future design guidelines.

21. Flood Control Zone. The following terms, standards and conditions will apply to that portion of the Property designated as the Flood Control Zone. The City has determined that the site will provide adequate areas for construction, maintenance, and operation of city flood control dams, Appurtenances, and associated flood storage including freeboard to reduce flood risks. The Flood Control Zone will also provide opportunities for passive and active recreation activities, or other uses compatible with the floodwater mitigation system and where possible, conserve and/or restore areas within the flood mitigation facilities with high ecological value and provide opportunities to minimize or mitigate impacts of the flood control project on habitat with high ecological values.

- a. Review of Engineering Details. The City will provide the University with digital copies of construction plans at the completion of 60 percent design of the preliminary design phase. The City will provide a period of 60 days for the University to review and provide comments on the Project. The City will consider the input in its refinement of engineering plans and respond in writing providing a rationale for material comments unable to be addressed.

- b. Permitting. The City will be responsible for all federal, state, and other governmental approvals for the Flood Mitigation Project, including approvals required for removal of the existing levee system and will otherwise design and construct the Project improvements in accordance with applicable regulations and law.
- c. Drainage in flood detention areas. The City will design the Project to ensure that flood detention areas will meet the following standards:
 - i. The detention area will be designed to meet applicable state water rights drain time requirements.
 - ii. Ponding will not occur during non-flooding periods.
 - iii. The detention area adequately drains following a flood event.
- d. Increases in Floodplain. The City will not increase the 100- or 500-year floodplain limits onto the Development Zone without prior approval from the University, which approval may be withheld in the University's sole discretion.
- e. Tennis Courts and Warehouse Building. Based on current Project design and plans, the existing tennis courts and warehouse building will be impacted by the Project. The City will demolish these facilities as part of the Flood Mitigation Project and will give the University written notice 90 days prior to the date that the City commences such demolition. Prior to demolition, the University will remove the contents of the facilities. Any items left in the facilities will be considered abandoned and the University agrees that such items may be removed or destroyed.
- f. Site Access. The City will reestablish access along South Loop Drive at a width of 80 feet. The reestablished road will follow an alignment that is subject to the University's prior written approval and be paved to approximately 24 feet.
- g. Parks and Recreation Uses in the Flood Control Zone. The following terms, standards and conditions will apply to recreation facilities located in the Flood Control Zone.
 - i. Parks and Recreation Uses in the Flood Control Zone. Any Parks and Recreation Uses proposed in the Flood Control Zone of the Project require the City's review and approval to ensure they do not interfere with the functionality of the Project. The areas of the Flood Control Zone in which Parks and Recreation Uses may be constructed, subject to City review, are shown as **Exhibit I**, attached hereto and incorporated herein by this reference.
 - ii. Construction. The University will be responsible for the design and construction of the recreational facilities. The University will coordinate the design of the recreation fields with the design of the drainage plan for the Flood Control Zone with the City. Use of City-owned land for recreational facilities will be contingent upon

- a license agreement executed by the Parties which addresses liability and community access.
- iii. Running Track. The Parties agree to jointly consider a formal running track with public access during future planning of the Property.
 - iv. Dog Park. The Parties agree to jointly consider a multi-acre public dog park on the Property.
 - h. Shared recreation facilities. The intent of the Parties is that shared recreation facilities, such as a running track, dog park and other recreation facility will be constructed and available to the public. The University agrees to prioritize consideration of construction of shared facilities when developing its master plan for the property. The Parties agree to jointly determine the appropriate uses of any shared parks and recreation facilities. Design standards for future park amenities will be mutually agreeable to the Parties. The University will consider incorporating City of Boulder Parks and Recreation Design Standards.

22. Open Space Zone. The following terms, standards and conditions will apply to that portion of the Property designated as the Open Space Zone.

- a. Mitigation. The City and University are each required to minimize or mitigate their respective impacts of development in order to receive federal permits allowing, respectively, the City's Flood Mitigation Project and the University's development to occur. Related to any University development that displaces wetlands within the Remaining Land Interest, the Parties may elect to pursue joint mitigation work and execute an IGA to that effect. If the Parties so decide, the City will construct any improvements associated with an approved mitigation plan and the University will pay for the actual cost of mitigation that will fulfill the University's local, state and federal permit obligations. Such an agreement will be optional by both Parties and dependent on operational limitations and business needs.
- b. Levee. The City may, at its expense, remove the existing levee system, an appurtenance of the land to be conveyed to the City, and will be responsible for necessary permitting and other requirements associated therewith.
- c. Open Space Trail Connections. The City will coordinate with the University on the development of any new trail, or the designation or abandonment of any existing roads and trails, on land conveyed to the City. Any trail connection, construction, abandonment, use and maintenance will be at the City's sole discretion. No gates, trail connections or other pedestrian or vehicular access points (formal or informal) will be allowed from the Remaining Land Interest onto the City's Open Space without prior approval by the City and only in

accordance with the Open Space and Mountain Parks Department's policies, processes, and plans, as amended. Within 10 years following the Effective Date of the Annexation Ordinance, the City will undertake a planning process to determine future uses within the Open Space Zone that are within City ownership, including but not limited to a consideration of future public access.

- d. Uses. The Open Space Zone will be maintained, preserved and used only in a manner consistent with the Open Space purposes identified for Open Space land in Section 176 of the Charter of the City of Boulder.

SECTION V - TRANSPORTATION

23. Access, Transportation, and Mobility – Generally. The intent of this Agreement is to ensure that the transportation needs generated by future development on the Property will not unduly adversely impact the transportation networks that serve the Property and surrounding area. Adverse impacts to local and regional networks will be minimized or mitigated through implementation of performance-based standards. The University has completed planning and transportation analyses to inform performance-based standards including, but not limited to, parking ratios, Trip Caps (as defined herein below), transit use, pedestrian and trail connections, and access to transit passes. The access, transportation, and mobility requirements of this Agreement are intended to:

- a. Continue and extend the ongoing collaboration between the Parties in other areas within the City of Boulder (such as the 30th and Colorado underpass project) to manage the off-site transportation impacts of future development on the Property by mitigating directly or collaborating and cost sharing with the City to mitigate material impacts on the City's transportation system.
- b. Ensure that future transportation performance of the Property is consistent with the University's Transportation Master Plan and generally consistent with the goals of the City's Transportation Master Plan.
- c. Inform University efforts to encourage daily transportation habits of future residents and employees of and visitors of the Property that are consistent with other CU Boulder campus locations.

24. Access. The University or Owner will provide vehicular access to the Property subject to the following requirements:

- a. Primary access to the Property will be Table Mesa Drive via South Loop Drive and a new roadway and access point to South Broadway (State Highway 93).
- b. Secondary access may be Table Mesa Drive via Tantra Drive. Access via Tantra Drive will be controlled through a physical method implemented at the sole discretion of the University and utilized for emergency access, maintenance vehicles, or by the University's transit. For any secondary

access via Tantra Drive, the University will prioritize the use of electric-powered buses.

- c. The University or Owner will be responsible for obtaining necessary permits, design, right-of-way acquisition and construction necessary to establish vehicular access to the Property, including, but not limited to, applicable access permits from the City and Colorado Department of Transportation (“**CDOT**”) for new or improved access to City streets and state highways and the construction of all necessary road improvements and traffic control infrastructure required by the City and CDOT (e.g., stop sign, acceleration/deceleration lanes, traffic signal). The University will be responsible for the cost of installing a new traffic signal on State Highway 93 at the new access point should the intersection meet the MUTCD warrants for signalization. For clarity, the University cannot install a traffic signal without the intersection meeting the requirements of CDOT for a signal; the installation of a signal can only proceed at the sole and absolute discretion of CDOT. The Trip Cap for each point of access, as established in this Agreement, will not change because of the University’s or Owner’s inability to obtain access permits.
- d. In order to protect the safety of residents and guests, the University or Owner will employ physical and technological measures, such as radio-frequency identification (RFID)-activated gates, to prevent use of the roadways of the Property as a Roadway Bypass (as herein defined below) similar to how the University manages traffic at other campus locations. “**Roadway Bypass**” means an uninterrupted roadway on the Property between State Highway 93 and State Highway 157 (Foothills Parkway), the design of which would incentivize its use as a “shortcut” between State Highway 93 and State Highway 157.

25. Phasing. The University will develop an initial phasing plan as part of a CU Boulder South Master Plan. The phasing plan will be consistent with this Agreement. The University may modify the phasing plan in the future in a manner consistent with the development goals in this Agreement and will notify the City in writing of such changes prior to carrying out any work based on the modified phasing plan. All on-site access improvements (roads, trails, multi-modal hub) will be built, as applicable, at a level sufficient to accommodate, support, and serve each development phase. The University expects to first develop the northern portion of the Property with primary access from Table Mesa Drive and secondary access from Tantra Drive. A later development phase will be on the southern portion of the Property and may include a new access point from State Highway 93.

26. Trip Cap Program. The University or Owner will implement a Trip Cap program that establishes a maximum number of daily automobile Trips to and from the Property (the “**Trip Cap**”) as follows:

- a. South Loop Drive: No more than 5,550 daily Trips each day.

- b. State Highway 93: No more than 750 daily Trips each day.
- c. A Trip Cap for Tantra Drive is not established because it is reserved for transit, emergency and maintenance vehicle access.
- d. Trips via public transit will not count towards the Trip Cap limits. Public transit includes University, City or regional transit vehicles.

27. Trip Cap Monitoring. Traffic counts and determination of traffic volume will occur as described in this Agreement consisting of annual monitoring to gauge compliance and to understand the impacts of development. The University or Owner will consider the accuracy of available methods of monitoring traffic counts and will consider implementing methods that track real-time vehicle traffic.

- a. Recognizing that the initial phases of development will not approach the Trip Cap, the University or Owner will commence monitoring as follows:
 - i. A minimum of one count prior to commencing development phases of residential or Mixed-Use development.
 - ii. Annual monitoring commences following construction and occupancy of 900,000 square feet of floor area of development.
- b. The University or Owner will be responsible for annually monitoring daily Trips at times that coincide with the University's academic calendar. All monitoring periods will be conducted during the academic year and will not include breaks or end-of-quarter finals, or other events that otherwise influence normal traffic patterns. Monitoring periods will consist of at least three weekday counts taken over a two-week period. No more than one monitoring period will be conducted annually.
- c. Prior to occupancy of 900,000 square feet of floor area of development, a monitoring period will be conducted between phases of development to verify compliance with Trip Cap requirements prior to proceeding with the following phase of development. Once 900,000 square feet of floor area is developed, one monitoring period will be conducted annually.
- d. Measurement points will include each vehicular access point.
- e. No later than 60 days following each monitoring period, the University or Owner will provide a written report at the conclusion of each monitoring period that, at a minimum, includes the following:
 - i. Raw traffic count data;
 - ii. A summary of any anomalies in the data or Trip exemptions permitted under this Agreement and as a result, any necessary adjustments made to the final Trip counts;
 - iii. Any Special Event (as defined below) days that have occurred since the previous reporting period, with a brief description of the event; and
 - iv. Transportation Demand Management Monitoring, including but not limited to daily Peak Hour vehicle Trips, Drive Alone Rate; and Vehicle Trip Rate.

- f. The costs of all traffic counts conducted for determination of compliance with this Agreement will be paid for by the University or Owner and be performed by an independent consultant in consultation with the City.

28. Special Event Days/Outside Programming. The City recognizes that Special Events (as defined herein below), like visits from political candidates and small-scale sporting events, may occasionally exceed the Trip Caps. As such, the University may designate 12 Special Event days annually for the Property, whereas the traffic associated with such events will not count against the Trip Cap. No later than March 31 of each calendar year, the University will submit to the City in writing the list of exempt Special Events for the preceding calendar year. Traffic counts for Special Events not so designated by the University will count against the Trip Cap. The University will be responsible for security and traffic control for such events. A “**Special Event**” is defined as any University or community related outdoor gathering on the Remaining Land Interest of at least 25 individuals assembled with a common purpose for a period of one hour or longer. Events beyond control of the University transit such as the shared use of recreational fields with groups unaffiliated with the University or municipal groups will not count against the Trip Cap or count against Special Event days.

29. Compliance. The following actions will be taken if the Trips to the Property exceed the Trip Cap within a monitoring period:

- a. The University or Owner will identify and communicate to the City additional Transportation Demand Management (as defined herein below) strategies and/or infrastructure investments to lower the number of Trips to within the allowable threshold within 90 days from the date of delivery of a written report showing the Trip Cap has been exceeded.
- b. The University or Owner will implement the strategies and programs to reduce Trips to the Property within 180 days from the date of completion of the monitoring period (the “**Trip Cap Cure Period**”).
- c. Further phases of development not yet underway will be placed on hold until a minimum of two monitoring reports indicate compliance with this Agreement.
- d. After a determination that the Trip Cap has been exceeded, monitoring reports will be provided each quarter following the Trip Cap Cure Period until a minimum of two consecutive reports indicate that Trips have been reduced below the Trip Cap. The University or Owner will revert to annual monitoring following two consecutive reports indicating compliance with this Agreement.
- e. The University or Owner will take the following action if four consecutive quarterly reports indicate non-compliance with this Agreement:
 - i. The University or Owner will budget and reinvest funding into its transportation programs for the purpose of further reducing Trips to and from the Property. The University or Owner will provide the City with information in sufficient detail to demonstrate how

the funds are invested and consider feedback from the City on expenditure. The University or Owner will consider utilizing the funds to lower the amount of funding provided by the City for underpass construction. For example, the University may use funds assessed due to non-compliance to fund an underpass on a 49/51 cost share basis instead of 50/50.

- ii. The amount of funding is calculated as an amount not to exceed the cost of a regional fare charged by the Regional Transportation District (“RTD”), per each Trip over the Trip Cap, applied daily (the “Trip Cap Fee”). If the daily fare is no longer offered by RTD, the amount of funding will be the last daily fare published and charged by RTD, increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties. However, in no event will the Trip Cap Fee (a) be less than \$5.00 as increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties, or (b) exceed 103 percent of the prior year’s Trip Cap Fee.

30. Parking. The University will provide parking areas that meet the following requirements:

- a. Maximum parking for residential and non-residential development will be calculated at a ratio of one space for each Attached Dwelling Unit and one space for each 600 square feet of non-residential floor area.
- b. If tax credit financing for affordable units requires the provision of off-street parking with the affordable unit, then the parking space required for tax credit financing will be exempt from the parking cap.
- c. Detached Dwelling Units and Townhouses will provide parking within the respective premises and will not count against the maximum number of parking spaces.
- d. Residential parking allocated to a specific unit will be determined by residential type, at the sole discretion of the University, and be located off of streets to the maximum extent practical. Residential parking will include reasonable space for vehicles needed by residents for their employment or entrepreneurial activities. Such parking areas will not count against the parking cap.

- e. All parking areas will include the appropriate federally mandated spaces for accessibility and separation of pedestrian and cyclist movements from vehicular movements.
- f. Parking areas will be designed to incorporate measures to provide reasonable parking for ride hailing, transit vehicles, repair vehicles, landscaping vehicles, and domestic service vehicles. Such parking areas will not count against the parking cap.
- g. Short-term bicycle parking is intended to offer a convenient and accessible area to park bicycles for customers and other visitors, and will be located on a public access level, within 50 feet of the main Building entrances and outside of a Building. Long-term bicycle parking will offer a secure and weather-protected place to park bicycles for employees, residents, commuters and other visitors who generally stay at a site for several hours. Long-term bicycle parking will be secured by a locked or monitored area or be visible by employees at work, located within 300 feet of the Building it serves, provide adequate lighting and adequate clearance around the rack to prevent conflicts with pedestrians or parked cars, and, if located in a parking garage, will be clearly marked as a bicycle parking space and separated from auto parking. Off-street bicycle parking spaces will be provided for all residential units and other facilities and meet the following minimum requirements:
 - i. Dwelling units without a private garage. Two spaces per unit, with 75 percent dedicated to long-term parking and 25 percent dedicated to short-term parking.
 - ii. Non-residential Buildings. One space per 1,500 square feet of floor area, with 50 percent dedicated to long-term parking and 50 percent dedicated to short-term parking.
 - iii. Accessory Uses. One space per 750 square feet of floor area, minimum of four.

31. Transportation Demand Management (“TDM”).

- a. The University will implement a transportation system that supports multi-modal mobility and transit connections between the Property and other campus locations to manage employee and resident access and mobility and to materially reduce car Trips between the Property and main campus.
- b. Alternatives to automobiles will be promoted by incorporating site design techniques, land use patterns and supporting infrastructure that encourages walking, biking, and other alternatives to the single-occupant vehicle.
- c. At a minimum, the University agrees to implement the following additional TDM measures:
 - i. Micro mobility program memberships.
 - ii. Carpool opportunity and a vanpool subsidy program.
 - iii. Incorporate neighborhood services, office and retail, into the development to the extent the market supports such services.

- iv. Transportation Network Company loading zones.
- v. Parking Management. The University agrees to manage the parking associated with the Development Zone in the following manner:
 - 1. Parking spaces will be shared by different uses to reduce the amount of built parking infrastructure.
 - 2. Any parking that is provided for Attached Dwelling Units will be charged at prices separate from the rent for the unit, except as prohibited by tax credit financing for affordable units. The University will charge market rates or rates that are similar to parking rates set at the main CU Boulder Campus.
 - 3. The University will actively evaluate, monitor, and enforce its parking policies.
 - 4. Except for Detached Dwelling Units and Townhouses, provided that parking for such units is included in a garage accompanying the unit, the University will charge for all parking in the Development Zone, including, without limitation, on-street or off-street parking areas, unless prohibited by low-income tax credit financing for affordable units.

32. Transportation Options Access. The University will establish and operate transit/shuttle service to its campuses and facilities, other commercial destinations (as determined by the University), transit routes and connection points to regional transit.

- a. Bike and pedestrian access to local and regional transit and the MUPS system will be improved.
- b. Multi-modal facilities will have direct connection to internal and external mobility options.

33. Mobility Hub. The University will construct a multi-modal mobility hub and implement transit connections between the Property and other University campus locations to manage employee and resident access and mobility. The initial hub improvements will be constructed prior to completion of the first non-residential Building, unless an alternative date is requested by the University and approved by the City. The hub will be expanded over time to adequately meet the demand generated by development of the Property. The multi-modal mobility hub will be designed, constructed, and operated as follows:

- a. Integrate transit, pedestrian and bicycle facilities, car/ridesharing, and a context-appropriate parking supply compliant with applicable accessibility standards and regulations.
- b. Be designed at size and with services that are proportionate to development.
- c. Primarily support residents, visitors, and employees of the Property.

- d. Implement first and last mile connections to the hub, consistent with the University's TDM program.
- e. At a minimum, the hub will include the following improvements and services: frequent transit service and bus stop infrastructure; clearly identifiable and safe bicycle and pedestrian connections; bikeshare or micro-mobility services; managed curb for pick-up and drop-off; real-time information and a wayfinding kiosk; and, charging connections for mobility devices.
- f. The University will consider including vending services, retail and/or food service options to the hub.

34. On-site Improvements. Onsite improvements and the timing of delivery of the same will be determined within the micro-master planning of the Property and include trails and MUPS connections to public rights-of-way.

- a. The University will design and construct the internal transportation improvements including without limitation streets, curb, gutter, sidewalks, MUP's, trails and associated multi-modal features that, at a minimum, include the following:
 - i. Construct a 12-foot-wide Multi-Use path with two-foot-wide shoulders on each side of the path along the west boundary of the site on an alignment (and associated connections to local streets) consistent with what is in the City of Boulder Transportation Master Plan from State Highway 93 to Table Mesa Drive.
 - ii. When reconstructed by the University, South Loop Drive will include a detached Multi-Use path and buffered bicycle lanes.
- b. The University will maintain and allow public access to all trails and MUPS constructed on the Property.
- c. The University will provide the City the opportunity, pursuant to Section VI below to review and provide comments on the design of transportation improvements and coordinate the design and construction of on-site multi-modal improvements.

35. Off-Site Improvements. The University will construct the public transportation improvements necessary to serve the Property, including, but not limited to, engineering design, right-of-way acquisition, construction and obtaining required permits. The City will review and approve the construction drawings. Public improvements will be constructed as needed by development on the site. For example, when the northern portion of the Property is developed, the University will construct the improvements needed for Table Mesa Drive. Only after the University begins development on the southern portion of the site will the University construct an access point to State Highway 93. The public improvements the University is required to construct are:

- a. Prior to the date that the University begins development of Buildings south of the phasing line shown on **Exhibit C** (note that the University

intends to develop the Development Tract from north to south), the University will, subject to CDOT and City approval of design, construct a new access point onto State Highway 93 meeting the standards contained in the State Highway Access Code. The State Highway Access Permit Application for the new access point will include a revised traffic study with updated existing and projected traffic data. The City's Vision Zero Action Plan, 2019-21 and subsequent similar reports, will inform the University's future design and construction of the State Highway 93 access point and its related pedestrian/bicycle crossing to minimize or mitigate the risk of serious injury or death to pedestrians and bicyclists from motorists turning left onto southbound State Highway 93.

- b. Enter into an agreement with the City for a 50/50 cost sharing arrangement for the evaluation, and provided that, in the determination of the Parties, the evaluation indicates financial and technical feasibility of such a project, of the cost for a MUP underpass under Table Mesa connecting the RTD Park-n-Ride lot to Thunderbird Drive.
- c. Reconstruction of the existing Table Mesa Drive / South Loop Drive / Highway 36 off-ramp intersection consistent with the design recommendations included in the CU Boulder South Traffic Impact Study dated May 27, 2021 (figures 5, 11 and 12), and meeting the standards contained in the State Highway Access Code and the City's Design and Construction Standards unless administratively amended by the City. The Parties may mutually agree to alternative intersection designs. The State Highway Access Permit Application for the land use changes on the Property will include a revised traffic study with updated existing and projected traffic data.
- d. The University will pay a transportation fee to the City (i) prior to occupancy of any new residential or non-residential Buildings, and (ii) whenever existing developed Property is expanded, for any subsequent net increase in floor area or number of dwelling units, as applicable. In a manner that is timely to when the fee is assessed, the Parties will discuss how the transportation fee will be allocated. The Parties will jointly agree on allocating 50 percent of the fee to specific projects which will provide a direct benefit to the Property with the remaining 50 percent dedicated to network-wide impacts. The Parties will use good faith efforts to agree on reasonable uses for the 50 percent of the transportation fee that will be used for projects that provide a direct benefit to the Property. The transportation fee will be calculated based on the following rates (as adjusted annually for inflation as provided herein below):
 - i. \$1.46 for new or additional square foot of floor area of non-residential development.
 - ii. \$2,307.08 for each new Detached Dwelling Unit.
 - iii. \$1,673.83 for each new Attached Dwelling Unit or mobile home.

- e. The transportation fee rates set forth in Section 35.d. above will increase annually by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties; provided, however, that in no event will such adjusted annual rates exceed 103 percent of the prior year's rates.

SECTION VI - REVIEW OF PLANS

36. CU Boulder South Master Plan. The University will provide the City opportunities to review the CU Boulder South Master Plan. Prior to any University development in the Development Zone, the University will submit a draft CUBSMP to the City for its review and comment. The City will review the draft CUBSMP and provide written comments to the University within 90 days following the University's submission of the CUBSMP.

37. Conceptual Design Reviews. For each active phase of development on the site, but prior to Design Review Board review of such plans, the University will submit 90 percent Conceptual Design plans to the City for development on the Property (the "**Concept Plans**"). The City will have a period of 60 days to review and provide comments following the University's delivery of the Concept Plans. The intent of the concept design phase is to apply the goals, objectives, priorities of the CUBSMP, observations of the specific project phase site characteristics, and the program summary for the applicable phase of development.

38. Conceptual Plan Requirements. Plan submittal requirements for conceptual building and site development review are the same as those required for consideration of the concept design phase by the University of Colorado Design Review Board as may be updated from time to time.

39. City Comments. The City's comments will pertain to two categories:
- a. Compliance review to verify that the proposed development activity complies with the terms of this Agreement.
 - b. Discretionary comments intended to further the City's goals and policies. The University will consider the City's discretionary comments and may recommend associated conceptual plan amendments to the Design Review Board. The University will respond in writing providing a rationale for material City comments unable to be addressed.

40. Final Plans. Upon completion of any improvements on the Property, the University will provide the City with the final as-built construction documents in portable document format (PDF) or in other such formats mutually agreeable to the Parties.

41. Flood Mitigation Project.
- a. Development Phasing. The City is in the process of designing the Project for South Boulder Creek. Until the City obtains the approvals for the Project listed in Section 41.b. below, the only facilities constructed by the University will be for Parks and Recreation Uses, temporary access roads, parking, and renewable/alternative energy systems on the Property.
 - b. Disconnection from the City. Prior to construction, the Project will require approvals from: the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, Colorado Department of Transportation, Colorado State Engineer's Office and City of Boulder. Necessary permits include: USACE/EPA 404 Individual Permit (this include USFWS Consultation), FEMA CLOMR, CDOT Right of Way Permit and Landowner Agreement, Colorado Dam Safety Engineer Design Approval, and city of Boulder wetland and floodplain permits; which the City will use reasonable efforts to obtain. If the City does not receive such approvals by the end of the De-Annexation Period, the City, in its discretion, may require that the University apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. *et seq.* Upon written request by the City to commence the process to disconnect, the University will take action within 30 days to commence and complete the legislative process to disconnect. If so requested by the University the City will not charge the University for any cost associated with disconnection from the City. For the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. *et seq.* which will be the sole and exclusive procedure for disconnection, if the same is requested.
 - c. Written Notice to Proceed. After the earlier of (i) the City has received all the required approvals described above, or (ii) after the De-Annexation Period, at the written request of the City, the University will convey to the City all the Property so agreed to by the Parties.

42. No Right or Remedy of Disconnection. No right or remedy of disconnection of the Property from the City will accrue, other than as provided for in this Agreement and applicable state laws.

SECTION VII – RIGHT OF FIRST OFFER

43. Right of First Offer. If the University determines to sell the Remaining Land Interest or a portion thereof (the “**ROFO Parcel**”), whether after receiving an offer from a third-party or of its own volition, the University will first provide the City with an option to purchase the ROFO Parcel (the “**ROFO Option**”) as set forth below.

- a. ROFO Notice and Option Notice. Prior to entering negotiations with any third party, the University will deliver written notice of the ROFO Option

no later than the next occurring April 1st (the “**ROFO Notice**”). Upon receipt of such notice, the City will have until June 1st of the same calendar year as the ROFO Notice (the “**Option Year**”) to notify the University in writing that it wishes to exercise its option to purchase the ROFO Parcel (the “**Option Notice**”).

- b. ROFO Negotiation Period. Provided that the City has duly exercised the ROFO Option by timely delivery of the Option Notice, the Parties will have until August 1st of the Option Year to negotiate and agree to terms of a contract for the City to purchase the ROFO Parcel.
- c. Option Not Exercised. If the City (i) fails to timely deliver the Option Notice, or (ii) declines to exercise the ROFO Option, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel.
- d. Option Closing Deadline. If the closing of the City’s acquisition of the ROFO Parcel does not occur on or before January 31st of the calendar year immediately following the Option Year, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel, unless otherwise agreed to by the Parties in writing.
- e. Failed Ballot Measure to acquire ROFO Parcel. If the acquisition of the ROFO Parcel appears as a ballot measure in a City of Boulder election, and the voters fail to approve the measure, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel.
- f. Survival of City’s Exclusive Option. Notwithstanding the provisions of Sections 43.c., d., and e. above, if the 10-year term of the City’s Exclusive Option has not yet expired, then such Exclusive Option will still have the effect of prohibiting a sale to a third-party until its expiration.
- g. Right of First Offer Following Expiration of City’s Exclusive Option. After expiration of the City’s Exclusive Option, and provided that the City has not failed or declined to exercise its ROFO Option during the City’s Exclusive Option under Sections 43.c., d., or e. above with respect to the then-offered ROFO Parcel, the City will maintain the right of first offer for previously unoffered ROFO Parcels in accordance with this Section 43.
- h. Right of Second Refusal. Notwithstanding anything in this Section 43 to the contrary, from and after the expiration of the City’s Exclusive Option, the City will have a right of second refusal option provided that:
 - i. within the previous two years, the City has declined to exercise its ROFO Option on an applicable ROFO Parcel (for the purposes of this Section 43.h. such applicable parcel is referred to herein as the “**ROSR Parcel**”);

- ii. the University has reached an acceptable purchase price, terms, and conditions of a sale to a third-party intent on consummating a purchase of the ROSR Parcel; and
- iii. such third-party purchase price acceptable to the University is less than 90 percent (adjusted for increases in valuation of similar properties within the City of Boulder since the original ROFO Option) of the ROFO Option purchase price previously offered to the City, then, prior to executing a contract for sale to a third-party:
 - 1. the University will deliver written notice to the City offering the ROSR Parcel to the City at the same price and on similar terms and conditions as contained in the third-party offer (the “**ROSR Notice**”);
 - 2. the City will have 30 days from its receipt of the ROSR Notice to accept or reject said offer in writing. This time period will be extended to 45 days, if needed to be able to schedule an agenda item for city council in keeping with standard city scheduling and public notice requirements.
 - 3. if the City accepts the terms of the ROSR Notice, then, within 30 days, or as the Parties mutually agree with the provision of earnest money, the Parties will enter into a purchase and sale contract on the terms and conditions set forth in the ROFR Notice and the City will purchase the applicable ROFR Parcel on such terms and conditions; or
 - 4. if the City rejects the terms of the ROSR Notice, fails to timely respond to such notice, or, after having affirmatively responded to such notice, fails to timely enter into or close on a contract to acquire the ROSR Parcel, then the University’s obligations under this Section 43 will no longer apply to such parcel.

44. Determination of Fair Market Value. The Parties will determine the fair market value of the ROFO Parcel as set forth below:

- a. Sale of Raw Land Valuation. During the City’s Exclusive Option, provided that the ROFO Parcel is in the state of raw unimproved land, the purchase price for the ROFO Parcel will be determined in accordance with Section 7 above.
- b. Valuation of Improved Land or After Expiration of City’s Exclusive Option. If at the time of offering the ROFO Option, the City’s Exclusive Option has expired or the University has commenced constructing any infrastructure or vertical improvements on or to the ROFO Parcel, then the purchase price for the ROFO Parcel will be determined by the appraisal method set forth in this Section 44.b. The Parties will each select an appraiser. The selected appraisers will, within 45 days of being retained,

provide their respective opinions of the fair market value of the ROFO Parcel (“**Appraised Value**”). In their determinations of the Appraised Value, each appraiser will determine the fair market value of the ROFO Parcel based on customary appraisal practices and methods most applicable to the ROFO Parcel. If the two Appraised Values are within 10 percent of each other, the purchase price will be the average of the two Appraised Values. If the two Appraised Values are not within 10 percent of each other, the two selected appraisers will mutually agree upon a third appraiser. The third appraiser will determine an opinion of the Appraised Value. The purchase price will be the average of the three Appraised Values obtained pursuant to this Section.

SECTION VIII - MISCELLANEOUS PROVISIONS

45. Provision of Utility Service. Upon adoption of an ordinance by the City Council annexing the Property, the City is obligated to provide utilities and other municipal services on the same general terms and conditions as the rest of the municipality receives.

46. Timeline of Responsibilities at Key Milestones. The Parties have agreed on the timeline of responsibilities at key milestones shown in **Exhibit H**, attached hereto and incorporated herein by this reference.

47. No Encumbrances. The University agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of the Property has occurred, the University will neither convey ownership nor further encumber the University’s Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, the University agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City.

48. Original Instruments. Prior to the first reading of the annexation ordinance, and subject to Board of Regents approval, the University will provide an original of this Agreement signed by the University, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council will constitute acceptance of such documents by the City. If the City does not annex the Property, all such documents will become null and void without further action and the City agrees to return all such documents to the University.

49. Waiver of Vested Rights. The University waives any vested property rights expressly superseded by annexation or this Agreement that may have arisen under Boulder County jurisdiction. This Agreement will replace any such rights that may have arisen under Boulder County jurisdiction.

50. Dedications. The University acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Remaining Land Interest as set forth in this Agreement.

51. Term and Future Interests. This Agreement and the covenants set forth herein will run with the land and be binding upon the University as set forth in this Agreement, the University's successors and assigns, Owners, and all persons who may hereafter acquire an interest in the Remaining Land Interest, or any part thereof. If any of the terms set forth in this Agreement are found to be void for violation of the rule against perpetuities or some other analogous provision, then such provisions will continue only for the period of the lives of current duly elected City Council members, their now living descendants, if any, and the survivor of them, plus 20 years and 364 days.

52. Historic Drainage. The University agrees to convey drainage from the Remaining Land Interest in a historic manner that does not materially and adversely affect abutting properties.

53. Right to Withdraw. The University retains the right to withdraw the petition for annexation and, as a consequence thereof, withdraw from this Agreement by providing written notice thereof to the City up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The University's right to withdraw will terminate upon the City Council's final legislative action approving the annexation. If the University withdraws the petition in the manner described above, this Agreement will be null and void, and, thereafter, the Parties will have no further rights or obligations hereunder. The City agrees, within 30 days of a written request by the University after a withdrawal, to return all previously submitted fees (other than annexation application and review fees), application, conveyance deeds, leases, licenses and easement and/or rights of way dedication documents which the University submitted or entered into with the City pursuant to this Agreement.

54. Failure to Annex. This Agreement and any document executed pursuant hereto will be null and void and of no consequence if the Property is not annexed to the City.

55. Breach of Agreement. If either Party breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, each Party acknowledges that the other Party may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for breach of contract or specific performance of the obligations described in this Agreement. The Parties agree that a failure to perform due to citizen petitions, citizen referendums, or litigation will not be considered a breach of this Agreement. In no event may either Party be entitled to claim or receive any form of damages, including without limitation compensatory, exemplary, punitive or economic, including lost profits.

56. Extension of the De-Annexation Period. The De-Annexation Period will automatically extend for up to two successive terms of one year in the absence of either Party giving notice of intent to not extend. Notice of the intent to not extend must be given at least 30 days prior to the end of the De-Annexation Period. This extension will apply to all references in this Agreement with a milestone or deadline based on the De-Annexation Period. The De-Annexation Period may be extended by mutual agreement of the Parties for five additional one-year terms (for a total period of 10 years) if the Parties are involved with litigation from third parties that prevent the Parties from satisfying the obligations of this Agreement. In no event will the De-Annexation Period extend beyond the 10th anniversary of the original Effective Date of the Annexation Ordinance (without regard to a suspension thereof or stay imposed thereon) for the Property and will automatically terminate upon such 10th anniversary.

57. Force Majeure. In the event either Party is unable to perform its obligations under the terms of this Agreement due to a Force Majeure Event (as defined herein below), such Party will not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes. A “**Force Majeure Event**” includes pandemics and epidemics (provided that a governmental authority having jurisdiction over the Property has issued an order that requires the cessation of work or activities related to a Party’s performance under this Agreement), lockouts, labor disputes, failures of power, acts of God, acts of public enemies, terrorism, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, wildfire, citizen initiatives or referendum petitions, injunctions resulting from litigation, or similar cause, provided such similar cause is beyond the reasonable control of either the City or the University, as applicable; and further provided that the affected party must notify the other of the Force Majeure Event and exercise commercially reasonable efforts to attempt to overcome the impediment to performance, which performance will not be excused nor relief given unless the Party demonstrates that despite commercially reasonable efforts or that due to applicable law, performance remains impossible or unreasonably expensive.

58. Annexation Challenged by Referendum, Initiative or Judicially.

- a. If the annexation of the Property or any portion thereof is challenged or conditioned, by a referendum or initiative petition, the procedure required by the Charter and Colorado Revised Statutes, as applicable, will be followed. If a referendum or initiative petition results in the disconnection of the Property or any portion thereof from the City, then this Agreement will be void and the Parties relieved from all obligations hereunder. If not, the Parties will continue to be bound by this Agreement which petition is referred to election, all provisions of this Agreement, together with the duties and obligations of the Parties, will be suspended pending the outcome of the election. If the election results in the disconnection of the Property or any portion thereof from the City, either by virtue of a successful election or the City Council acting to repeal the Annexation Ordinance under the referendum laws, or to adopt an initiated ordinance under the law of initiative, then this Agreement will be void and the Parties relieved from all obligations hereunder. If the referendum or initiative challenge fails, the Parties will continue to be bound by this Agreement, provided, however, that only

this Agreement shall establish the binding requirements for annexation and development of the Property Remaining Land Interest, and no additional requirements will be imposed on the University and this Agreement for annexation and development of the Property Remaining Land Interest, through referendum or otherwise, nor does the University consent to any such additional requirements. In the event the annexation of the Property or any portion thereof is voided by a final action of any court (~~such action not being associated with a referendum or initiative election~~) and the Parties are able to cure the legal defect, the University may, in its discretion, again petition to annex the Property pursuant to the terms hereof or other terms to which the Parties agree.

- b. If any measure is approved by the voters of the City that seeks to impose additional requirements for annexation and development of the Property Remaining Land Interest beyond those set forth in this Agreement, the University will have the option at any time by written notice to the City to void this Agreement and apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. et seq. Upon notice by the University that it is commencing such process, this Agreement will become void, and the City will cooperate diligently with the University to commence and complete the legislative process to disconnect. If so requested by the University, the City will not charge the University for any cost associated with disconnection from the City. As provided in Section 41(b) above, for the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. et seq. which will be the sole and exclusive procedure for disconnection, if the same is requested.

59. Entire Agreement; Amendments. The Parties understand and agree that the University is entering into this Agreement with the understanding that the provisions of this Agreement set forth all the requirements for annexation and development of CU Boulder South, and any additional requirements imposed on the University or on this Agreement, other than by mutual agreement of the Parties, will trigger the provisions of Section 58.b. above. will render this Agreement void and the University will commence de-annexation proceedings. ~~The Parties reserve the right to amend this Agreement by written instrument approved and executed by both Parties. The consent of the City to such amendment may be approved by the City Council by motion.~~ Notwithstanding the above, in no event will the Property remain annexed without this Agreement being the regulatory land use instrument controlling use and development of the Property.

60. Dispute Resolution. The Parties have entered into this Agreement with the understanding and expectation that they will continue to collaborate on issues related to annexation. The Parties will attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between designees of the Parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written ‘invitation to negotiate,’ the Parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure, or in default of agreement, through

an ADR procedure as recommended to the Parties by a mutually agreed upon mediator. Nothing in this clause will be construed as prohibiting a Party from applying to a court for interim injunctive relief.

61. Sovereign Status. Except as otherwise provided for in this Agreement, the University does not waive any state sovereignty right or privilege. Notwithstanding the above, where the University has agreed that provisions of the Boulder Revised Code apply to the Property, the University has waived the defense of sovereignty.

62. Future IGA for Construction Access. Prior to any development on the Property, with the potential for shared liability, the Parties will execute an IGA that addresses issues of mutual concern such as liability, access, and construction staging.

EXECUTED on the day and year first above written.

(Signatures appear on following pages)

UNIVERSITY:

By: _____
Printed Name: _____

**CITY OF BOULDER,
a Colorado home rule city**

By: _____
Nuria Rivera-Vandermyde,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

_____ Date: _____
City Attorney's Office

EXHIBITS

- Exhibit A Legal Description of Property and Annexation Map**
- Exhibit B Zones of Consideration**
- Exhibit C Use Transition Zone and Buffer Map**
- Exhibit D Conceptual Design and Development Goals**
- Exhibit E Outdoor Lighting**
- Exhibit F Stream, Wetland and Water Body Requirements**
- Exhibit G Noise**
- Exhibit H Timeline of Responsibilities at Key Milestones**
- Exhibit I Location of Parks and Recreation Uses in the Flood Control Zone**