



ANNEXATION AGREEMENT

This Agreement, made this 23 day of Sept., 1997, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and Tally & Company, a Colorado general partnership, hereinafter referred to individually or collectively as "Applicant:"

WITNESSETH:

RECITALS

WHEREAS, the Applicant is the owner of Parcel #46, the real property described as:

Lots 1, 2, 3, 12, 13 and 14, Block 7, Moore's Subdivision as recorded in the offices of the Boulder County Clerk and Recorder at Book 5, pages 92-94, County of Boulder, State of Colorado,

also known as 1265 Sumac Avenue, which real property shall hereinafter be referred to as the "Subject Property;" and

WHEREAS, the Applicant is interested in obtaining approval from the City of the annexation of the Subject Property in order to provide adequate urban services to said area, particularly city water and sewer; and

WHEREAS, the parties anticipate that annexation, with an initial zoning designation of Low Density Residential - Developing (LR-D), will be consistent with the Boulder Valley Comprehensive Plan; and

WHEREAS, the City is interested in insuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth, and other good and valuable consideration herein receipted for, the parties agree as follows:

1. Definitions

"Redevelopment" shall be defined as the subdivision of a property to create a new lot, issuance of a building permit for a new dwelling unit, or issuance of a building permit for



additional square footage or other improvement which is twenty-five percent (25%) or more of the market value of the existing structure, except where twenty-five percent (25%) is less than Twenty-Five Thousand dollars (\$25,000) in which case redevelopment shall mean a building permit for a structure whose value is greater than or equal to Twenty-Five Thousand dollars (\$25,000). Successive building permits will be aggregated in determining whether redevelopment has occurred and will be cumulative over any three (3) year period.

Improvements to existing structures to the extent that the improvements are necessary to comply with City's rental housing requirements will not be counted against the twenty-five percent (25%) or Twenty-Five Thousand dollars (\$25,000) thresholds which define redevelopment and would trigger payment of outstanding fees.

"Basement" shall be defined as habitable or non-habitable areas below grade enclosed by a foundation wall where no part of the foundation wall exceeds two (2) feet in height above grade, as said grade existed at the time of this agreement. If any portion of the foundation wall projects more than two (2) feet above the grade, the basement area enclosed by the foundation shall count against the total Floor Area Ratio (FAR) permitted on the site and said basement shall be considered a story for purposes of determining the number of permitted stories in a structure.

2. Water

- A. Applicant shall connect the existing improvements on the Subject Property to the City's municipal water supply upon a finding by the Boulder County Health Department that groundwater contamination is present or upon redevelopment, whichever first occurs.
- B. All applicable fees and assessments will be collected from the Applicant at time of issuance of a connection permit. Plant Investment Fees (PIFs) and other connection fees will be determined at time of connection based on the then applicable fee schedule.
- C. Applicant may use existing wells for irrigation purposes. No person shall make any cross connections between a well and the City's municipal water supply system.

3. Sewer

- A. If the Subject Property is currently served by an adequate septic system, Applicant will not be required to connect to the City's sanitary sewer system. In order to demonstrate that the septic system is adequate, the Applicant must provide to the



City of Boulder confirmation of (1) a valid Boulder County ISDS Permit and (2) an inspection of the septic system confirming there is a four foot (4') separation between the absorption field and the seasonal high groundwater level. If the property does not meet these requirements, Applicant shall connect to the sanitary sewer system within 365 days of the effective date of the annexation ordinance.

- B. Assessments for the costs of construction of the sanitary sewer mains shall be paid by Applicant, as a lump sum, at time of connection or redevelopment, unless a property owner applies for connection to the City's sanitary sewer system within sixty (60) days of the effective date of the annexation ordinance. If the application is made within sixty (60) days and the connection made within 365 days after application, the property owner may elect to pay the outstanding assessment in a lump sum payment or pay the prorated amount in ten (10) equal, annual installments amortized at a rate of six and a half percent (6.5%) simple interest per annum beginning on the effective date of the annexation ordinance.

If the property owner does not apply for connection within sixty (60) days of the effective date of the annexation ordinance or fails to connect within 365 days after application, the outstanding balance will accrue interest at a rate of six and a half percent (6.5%) simple interest per annum and must be paid in full at time of connection.

- C. Plant Investment Fees (PIFs) and other connection fees will be determined at time of connection based on the then applicable fee schedule.
- D. Where the City is not required by an existing agreement to collect outstanding assessments for the construction of a sanitary sewer main, such prorated fees will not be collected by City.
- E. Sanitary sewer main assessments and PIFs for the Subject Property must be paid for the entire property at time of redevelopment or connection to the City sanitary sewer system, unless the City has recognized individual buildable lots as depicted on Exhibit A attached hereto. Sanitary sewer main assessments and PIFs for individual buildable lots, will be due at the time of redevelopment of each lot.
- F. Low-Income Deferral - Applicant shall be eligible for a low income deferral or payment schedule when a property is required to connect to the sanitary sewer system prior to redevelopment and the property owner meets the criteria set by the City of Boulder Housing Authority and applies in writing to the City Manager for a deferral prior to connection to the sanitary sewer system.



4. Transportation

- A. At or prior to the time of subdivision or redevelopment of the Subject Property, whichever first occurs, Applicant shall sign an agreement to participate in and not to remonstrate against the establishment of a Local Improvement District (LID). Applicant acknowledges that no subdivision will be approved and no redevelopment will be permitted until said agreement to participate is signed.

In the formation of such LID, the City shall pay fifty percent (50%) of the costs to improve the existing pavement sections of the following streets to City of Boulder standards:

- Upland from Broadway to 19th Street;
- Portions of Tamarack from Broadway to Crestview School;
- 13th Street from Upland to Violet; and
- Sumac from Broadway to 19th Street.

The costs of all new improvements, including but not limited to road base, pavement, curb, gutter, sidewalks, and drainage facilities, shall be paid for one hundred percent (100%) by the properties located in the LID for the following improvements:

- 13th Street, between Upland and Violet, as a standard rural residential street with sidewalks on one side;
- 15th Street, between Upland and Tamarack Avenue, as standard rural residential street with sidewalks on one side;
- Upland Avenue as a standard rural residential street with drainage improvements and a sidewalk on one side;
- Tamarack Avenue as a standard rural residential street with drainage improvements;
- Sumac Avenue as a standard rural residential street with drainage improvements and a sidewalk on one side; and



- 17th Street between Upland and Violet as a multi-use path for pedestrians, bicycles, and emergency access for police and fire.

Prior to the formation of any assessment district which includes the construction of 15th or 17th Street, the City will provide the opportunity for the Applicant to have input into the final designs for the street improvements to be built.

B. Prior to second reading of the annexation ordinance, the Applicant shall:

- Dedicate to the City of Boulder, in fee, and at no cost, right-of-way for Broadway such that there is a total of forty and one half feet (40.5') from the centerline which the City agrees is the Section line.

C. The Applicant acknowledges that access to existing and proposed streets shall be limited as follows:

- No new curb cuts or direct access to Broadway will be permitted;
- Existing curb cuts on Broadway shall be closed at time of redevelopment; and
- Shared driveways and curb cuts may be permitted and may be encouraged during subdivision or redevelopment of the Subject Property where such combined access is consistent with the adopted zoning and infrastructure plan.

5. Flood Control and Stormwater - At time of redevelopment or sale of the Subject Property, the Applicant shall pay the Stormwater and Flood Control Plant Investment Fee (SFCPIF). If the fee is paid within two (2) years of the effective date of the Annexation Ordinance, the fee will be the amount due on the effective date of the Annexation Ordinance. If the fee is paid later than two (2) years from the effective date of the Annexation Ordinance, the fee will be the amount due at time of payment. The Applicant acknowledges the use of a modified equation for the calculation of SFCPIFs that charges each property based on the developed (impervious area) of the site, as follows:

$$[X/7000 \times (C5-0.2)/0.2 \times \$1094.78]$$

where X=Total Lot Area in square feet;
 $C5=[0.9Y+0.2(X-Y)]/X$; and
 Y=Total Impervious Area in square feet



To accurately determine the SFCPIF due for the Subject Property, the Applicant shall submit an Improvement Location Certificate completed by a licensed surveyor to the Utilities Division of the Public Works Department, prior to sale or redevelopment.

6. Floodplain and Drainage

- A. The City has implemented a restudy of the Fourmile Canyon Creek Floodplain and if appropriate, will amend the location of the High Hazard and Conveyance Zones and the boundaries of the Floodplain when the study is complete.
- B. The City of Boulder floodplain regulations, Chapter 9-9, B.R.C., 1981, as amended, shall apply to all properties located within the regulatory One Hundred (100) Year Floodplain. Existing structures located in the floodplain of Fourmile Canyon Creek may remain, consistent with the aforementioned Section. All new structures, additions, or substantial improvements or modifications will be subject to the City's floodplain regulations.
- C. Properties shall convey drainage from the site in a manner which does not negatively impact abutting properties.
- D. At the time of redevelopment, Applicant acknowledges that the Subject Property shall provide drainage improvements needed to serve their property (including detention facilities and an adequate outfall to a major drainage system) in accordance with the City's design standards. Such detention or other drainage facilities shall be designed and constructed by property owners at time of redevelopment, if the improvements are needed in order to comply with "C" above.
- E. Applicant acknowledges that existing irrigation ditches and/or laterals shall not be used as an outfall point for developed storm water runoff if the storm water discharge is of increased quantity or frequency. The City agrees that there may be certain situations where such releases to ditches or ditch laterals may be appropriate if an adequate hydraulic engineering analysis acceptable to the City Manager is provided to show that the ditch/lateral has sufficient capacity and a positive outfall at a major drainage way. In those cases it will be necessary to obtain the consent of the ditch company to accept the stormwater discharge, in a form which is acceptable to the City Attorney.



7. Silver Lake Ditch Water Release and Existing Well

- A. At time of redevelopment or connection to the City's water system, the Applicant shall sell or offer a "First Right of Refusal", consistent with Section 11-1-19, B.R.C., 1981 for any water rights appurtenant to the Subject Property. Said right of refusal shall provide that the Applicant shall give the manager sixty (60) days' advance written notice of Applicant's desire to sell the ditch rights to the City. It is the City's desire to keep for use on the land any water or ditch rights appurtenant to property zoned ER-E and RR-E and for residential lots over 15,000 sq. ft. in size regardless of zoning.
- B. Properties abutting an existing irrigation ditch or lateral shall not relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.

8. Miscellaneous Fees / Taxes

- A. Park Fees - For residential dwelling units existing on July 1, 1997, the Applicant may defer the payment of park fees until redevelopment or sale of the Subject Property. The Applicant agrees to pay the then current park fees at the time redevelopment or sale occurs.
- B. Development Excise Tax - For buildings in existence on July 1, 1997, the Development Excise Tax (DET) that would normally be due upon annexation will be deferred until redevelopment or sale occurs. Applicant acknowledges that at the time of redevelopment or sale of the Subject Property, Applicant shall pay the DET for any existing building or buildings and the new building or addition at the time that a permit is requested for the new building or addition. The rates imposed for this tax will be the rates applicable at that time.

9. Northern Colorado Water Conservancy District

- A. Applicants shall execute the Petition for Inclusion of Lands in the NCWCD municipal subdistrict prior to first reading of the annexation ordinance.



10. City Codes and Policies:

A. Zoning and Allowed Uses - The Applicant agrees that the following design guidelines and criteria will apply to the Subject Property after annexation:

General

- Non-residential uses such as personal services, offices, medical and dental offices or clinics, automobile parking lots as a principal use, mobile home parks, convenience stores and outlets, antique stores, and village centers shall not be permitted;
- Site Review or Subdivision (platting, lot layout, housing types) shall not be used to reduce the density below six (6) platted lots;
- All lots must have frontage on a public street; and
- Flaglots shall not be permitted.

Landscaping

- Street trees shall be selected from among the "large maturing" varieties and planted as required by the City Forester at time of redevelopment; and
- Properties shall receive credit, if approved by the City Forester, for existing "large maturing" varieties of street trees.

Fences

- Fences and landscaping berms are permitted in required front yards and side yard abutting a public street (up to the front facade of the principal building and the side yard building envelope) so long as either or the combination of both does not exceed forty-eight inches (48") in height. However, in no event may a berm exceed thirty-six inches (36") in height;
- For properties abutting Broadway or Violet Avenue, a fence which shall not exceed thirty-six inches (36") in height may be located on the top of the thirty-six inches (36") berm; and



- Up to 7 foot fences permitted on interior sideyard or rearyard lot lines equal to or behind the front facade of the principal building.

Buildings

- Two-story maximum above basement;
- At least one "Entry" element including but not limited to, covered and uncovered porches and front doors shall be provided on facades abutting a public street;
- Porches may encroach within a required yard abutting a street consistent with §9-3.2-15(c) and (d), B.R.C., 1981; and
- Attached and detached garages shall be setback at least ten feet (10') from the front facade of the principal building; or if side-loaded, may not project beyond the front facade of the building.

B. Floor Area Ratios (FARs)

Redevelopment shall be consistent with the following FAR's which shall be defined as the total square footage of all levels within the outside walls of a building or portion thereof including attached and detached garages and detached accessory buildings, but which shall not include basements, unenclosed carports, and unenclosed porches and decks:

Lots 6500 - 15000 sq. ft.	0.30:1 FAR
Lots 15001 - 29999 sq. ft.	0.25:1 FAR
Lots >or = 30000 sq. ft.	0.20:1 FAR

Additionally, a 500 square foot increase to the total FAR is available for a detached or attached garage or a detached accessory building.

Properties, upon redevelopment, may transfer up to forty percent (40%) of the total permitted floor area of one lot to another lot within a development in order to create greater diversity of housing types within the development.



C. Non-conforming Buildings, Uses, Animals or Lots

- The City agrees that its ordinances generally are not applicable to pre-existing non-conforming structures and uses, with the exception of ordinances regarding fire and life safety hazards. This means that existing legal non-conforming uses will be allowed to continue and be modified or expanded in accordance with the City's non-conforming review provisions of the Code.
- The City acknowledges that non-standard buildings, established while under County jurisdiction, may be retained and may be modified consistent with the City's land use and other regulations.
- The City acknowledges that the application of the Uniform Building Code to Applicant's property will be the same as, and no greater than, its application to any other property in the City limits as of July 1, 1997.
- Signs which are legal under the existing County regulations as of the date of annexation may remain in place without meeting the City's amortization schedule for the removal of non-conforming signs. At the time of redevelopment of the Subject Property, signs shall meet the City Sign Code.

D. Rental Properties

Rental properties shall submit an application to the City for a rental housing license within ninety (90) days of the effective date of annexation; property owners shall comply with the immediate life safety requirements of the rental housing code within 180 days of the inspection report.

E. Design Standards

- The City shall work with utility providers such as Public Service Company and US West to review the design of the provision of services to the Crestview West Annexation Area. Property owners shall relocate or construct any overhead service lines consistent with a redesigned system upon redevelopment. The City and the respective utility companies may participate in the costs to construct the new distribution system.



- Existing fences not conforming with these guidelines may be retained until redevelopment of the Subject Property. However, new or replacement fences must conform to the standards for fences listed in this agreement.
- Non-residential uses shall be eligible for Site Review whether or not they meet the lot size or dwelling unit thresholds of the City's code.
- The City Manager may approve variances to the berm height, FARs, garage setbacks, fence standards, and the two (2) story limit upon a finding that a physical hardship or limitation exists, that the hardship or limitation was not of the Applicant's own making, that the proposed variance is the minimum necessary to reasonably utilize the property.

11. Fire and Life Safety Codes

The City's Fire and Life Safety Code is intended to be retroactive so that buildings and buildings' occupancies or uses should meet the Code shortly after annexation. However, existing buildings and their occupancies or uses will not be required to meet the Fire and Life Safety Code until redevelopment occurs or unless the use of the building is a hazardous use. At the time of redevelopment or change of occupancy to a hazardous use, the building or portion of the building being redeveloped or changed will be required to meet the Fire and Life Safety Code. Building uses that are classified as hazardous uses include those using flammable or combustible liquids, spray paint operations, woodworking shops and similar places generating combustible dusts, and restaurants.

12. Breach of Covenants

In the event the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under Covenants 1, 2, 4, or 7 of this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to the filing of an action for specific performance of the obligation to connect to the water and/or sewer system of the City. In the event the Applicant fails to pay any monies due under this agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant, and collect its costs in the manner herein provided. The Applicant agrees to waive any rights he or she may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt, or acknowledges that the adoption of the annexation ordinance is such enabling ordinance.



13. Vested Rights

The Applicant hereby waives any statutory vested rights that may have accrued under County jurisdiction, that have not been perfected as common law vested rights. The Applicant acknowledges that nothing herein may be construed as a waiver of the City's powers to zone and regulate land uses for the benefit of the citizens and residents of Boulder.

This Agreement and any documents executed pursuant hereto shall be null and void and of no consequence in the event the Subject Property is not annexed to the City of Boulder.

This Agreement and the covenant set forth herein shall run with the land and be binding upon the Applicant, its successors, and assigns and all persons who may hereafter acquire an interest in the Subject Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus twenty (20) years and 364 days.

APPLICANTS: Tally and Company, a Colorado general partnership

By: Roy H. Tally
Roy H. Tally, General Partner

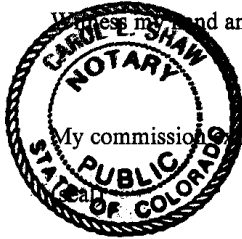
By: Ida May Tally
Ida May Tally, General Partner



STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a Notary Public, this 23rd day of September, 1997, by Roy H. Tally and Ida May Tally as General Partners of Tally and Company, a Colorado general partnership.

Witness my hand and official seal.



Carol L Shaw
Notary Public

CITY OF BOULDER

By: [Signature]
City Manager

Attest:

[Signature]
Director of Finance and Record
Ex-Officio City Clerk

Approved As To Form:

[Signature]
City Attorney 11-6-97



Boulder County Clerk, CO AA R 71.00

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EXHIBIT A

