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**PRAIRIE CENTER VILLAGE I SUBDIVISION FILING NO. 1
DEVELOPMENT AGREEMENT**

THIS PRAIRIE CENTER VILLAGE I SUBDIVISION FILING NO. 1 DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, 20__ by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado (the "City"); Prairie Center Metropolitan District No. 3, a quasi-municipal corporation and municipal subdivision of the State of Colorado ("District"); and THF Prairie Center Development, L.L.C., a Colorado limited liability company ("Developer").

WHEREAS, the Developer has submitted to the City a Final Plat (the "Plat"), Prairie Center Village I Subdivision Filing No. 1 (the "Development" or "Property"), attached hereto as **Exhibit A** and incorporated herein by reference. The Plat has been reviewed and approved by the City Council of the City of Brighton; and

WHEREAS, the Developer and the District are the owners collectively of the approximately 141.056-acre parcel of land, more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof; and

WHEREAS, the City's development regulations require that the public improvement obligations be guaranteed in a form acceptable to the City; and

WHEREAS, the City's development regulations require the Developer to execute a development agreement with the City relative to improvements related to the Development;

NOW THEREFORE, in consideration of the foregoing Agreement, the City, the District and the Developer (the "Parties") hereto promise, covenant, and agree as follows:

**SECTION 1
DEFINITIONS**

Definitions. The following terms and definitions shall apply to the Agreement and the exhibits and attachments hereto. If there is a conflict between the following definitions and a specific provision of the Agreement or any exhibit or attachment, the more restrictive shall apply.

"Benefited landowner" for reimbursement purposes means the landowner or developer that will directly benefit by the availability of an off-site public improvement constructed pursuant to the

Agreement for connection, protection and/or service for the proposed development of the benefited property, whether connected or not, and but for its prior construction the benefited landowner would have been required to build the public improvement.

The term, "**Civil Engineering Documents**" includes civil plans, construction plans, or any combinations thereof with drawings replacing the word "Plans," and shall mean any graphic representation of the following: demolition plans, grading plans, drainage plans, water system plans, sanitary sewer plans, streets plans, or any combination thereof. This list is not exhaustive in nature and should include any plans and reports included in the civil engineering scope.

The term, "**Common-Interest Management Association**" means a Unit Owners' Association created pursuant to Article 33.3, of Title 38, C.R.S. *Colorado Common Interest Ownership Act*, including a Home Owners Association (HOA) or other entity established for the purpose of owning and maintaining privately owned common-interest areas and infrastructure that are not maintained by individual property owners or the City. These common areas may include recreational amenities, parks, walkways, trails, drainage facilities, common area landscape tracts, subdivision signs, common area fencing, or any other privately owned common-interest areas and infrastructure that are not owned and maintained by individual property owners or the City. Common-Interest Management Associations may also provide common-interest services such as mail kiosks, trash collection, snow plowing, and other common-interest services that are not performed by individual property owners or the City.

"**Completion of Construction**" means the date the City has certified in writing that all three of the following have occurred:

- a) Construction is complete in accordance with the construction specifications and the requirements of the Agreement;
- b) The City has issued Final Acceptance; and
- c) The City can full occupy or utilize the work for the purpose for which it is intended.

"**Construction permit**" as used in the Agreement and the attachments hereto includes building permits, infrastructure permits, temporary use permit; and permits for grading, excavating, drainage, erosion and sediment control and the moving of structures.

"**Costs**" and "**Actual Costs**" as used to determine the costs of required Public Improvements, reimbursement agreements and shared reimbursement agreements means the actual costs of the improvement(s) including the cost of design and construction of the improvement(s), including the cost of over-sizing of utilities, and an adjustment for the current interest rate during the cost recovery period of the reimbursement agreement. The cost must be

- a) Reasonable, i.e., the cost is generally recognized as necessary for the performance of the project and is one that a prudent person would consider reasonable given the same set of circumstances;
- b) It must be allocable to the applicable improvement project, i.e., the cost is incurred for the benefit of only one project or the item can be easily assigned to multiple benefiting projects; and,

- c) A specific project may only be charged that portion of the cost which represents the direct benefit to that project.

The term “**Costs**” or “**Actual Costs**” shall not include indirect costs for overhead, administration and general staff expenses, equipment rental, maintenance, and similar expenses.

“**Developer**” means the landowner, person, firm, partnership, joint venture, Limited Liability Company, association, corporation, construction agent or other agent who has applied for approval of land development as reflected in the Agreement and the attachments hereto.

SECTION 2 GENERAL CONDITIONS

- 2.1. **Development Obligation.** Developer shall be responsible for the performance of the covenants set forth herein.
- 2.2. **Development Impact Fees and Other Fees.** Developer shall pay all fees related to development of the property described in the Plat(s) at the time of issuance of a building permit for any or all portions of the Development. The amount of the fees shall be the amount in effect at the time construction permits are issued. Any amendment to the kinds of fees or the amounts of said fees enacted by the City after the date of this Agreement are incorporated into this Agreement as if originally set forth herein.
- 2.3. **Schedule of Improvements.** For this Agreement, the term “Schedule of Improvements” and/or “Phasing Plan(s)” shall mean a detailed listing of all of the Public Improvements, the design, construction, installation, and phasing of which is the sole responsibility of the Developer. The “Schedule of Improvements” may be divided into Phases of the approved Final Plat(s) for the Development, and shall specify, as to each improvement listed below, the type, size, general location, and estimated cost of each improvement and the development Phase in which the Public Improvement is to be built:
- Water Lines
 - Sanitary Sewer Lines
 - Storm Sewer Lines
 - Drainage Retention/Detention Ponds
 - Streets/Alleys/Rights-of-Way
 - Curbs/Gutters
 - Sidewalks
 - Bridges and Other Crossings
 - Traffic Signal Lights
 - Street Lights
 - Signs
 - Fire Hydrants
 - Guard Rails
 - Neighborhood Parks/Community Parks
 - Open Space
 - Non-Potable Water System

- Trails and Paths
- Street Trees/Open Space and/or Common Area Landscaping
- Irrigation Systems
- Wells
- Fencing/Retaining Walls
- Parking Lots
- Permanent Easements
- Land Donated and/or Conveyed to the City
- Value of Land Beneath All Infrastructure Improvements
- Value of Water Donated and/or Conveyed to the City

- 2.4. **Engineering Services.** Developer agrees to furnish, at its sole expense, all necessary engineering services and Civil Engineering Documents relating to the design and construction of the Development and the Public Improvements set forth in the Schedule of Improvements and/or Phasing Plan(s) described in **Exhibit B**, attached hereto and incorporated herein by this reference (the “Improvements” and/or the “Schedule of Public Improvements” and/or the “Phasing Plan(s)”). Said engineering services shall be performed by, or under the supervision of, a Registered Professional Engineer, or a Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for Public Improvements as established and approved by the City as of the date of submittal to the City.
- 2.5. **Construction Standards.** Developer shall construct all Improvements required by this Agreement, and any other Improvements constructed in relation to the Development, in accordance with the plans and specifications approved in writing by the City, and with the approved Final Plat(s), and in full conformity with the City’s construction specifications applicable at the time of construction plan approval.
- 2.6. **Development Coordination.** Unless specifically provided in this Agreement to the contrary, all submittals to the City or approvals required of the City in connection with this Agreement, shall be submitted to or rendered by the City Manager or the Manager’s designee, who shall have general responsibility for coordinating development with the Developer.
- 2.7. **Plan Submission and Approval.** Developer shall furnish to the City complete Civil Engineering Documents and plans for all Improvements to be constructed in each Phase of the Development, as defined in Section 1.16 below, and obtain approval of the plans for each Phase prior to commencing any construction work thereon. The City shall issue its written approval or disapproval of said plan as expeditiously as reasonably possible. Said approval or disapproval shall be based upon standards and criteria for public improvements as established and approved by the City, and the City shall notify Developer of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the City prior to construction.
- 2.8. **Construction Acceptance and Warranty.**
- 2.8.1. No later than ten (10) days after construction of Public Improvements is completed, Developer shall request inspection of the Improvements by the City. If Developer does not request this inspection within ten (10) days of completion of the

Improvements, the City may conduct the inspection without approval of the Developer.

2.8.2. At the time of said request, and as a condition thereof, the Developer shall submit to the City a revised and updated Schedule of Improvements, delineating all modifications to the original Schedule of Improvements and specifying the actual costs, rather than the estimated costs, of all the completed Improvements listed on the Schedule of Improvements, including satisfactory documentation to support said actual costs.

2.8.3. Developer shall provide “as built” drawings and a certified statement of construction costs no later than thirty (30) days after an Improvement is completed, or prior to a reduction in the Improvement Guarantee (see Section 2.13 below), whichever occurs earlier.

2.8.4. If Developer has not completed the Improvements on or before the completion dates set forth in the Phasing Plan and/or Schedule of Public Improvements provided for in Section 2.16 herein, the City may exercise its rights to secure performance as provided in Section 10.1 of this Agreement.

2.8.5. If the Improvements completed by Developer are satisfactory, the City shall grant “construction acceptance,” which shall be subject to final acceptance as set forth herein. If the Improvements completed by Developer are unsatisfactory, the City shall provide written notice to Developer of the repairs, replacements, construction, or other work required to receive “construction acceptance.” Developer shall complete the work within thirty (30) days of said notice, weather permitting. After Developer completes the repairs, replacements, construction, or other work required, Developer shall request of the City a re-inspection of such work to determine if construction acceptance can be granted, and the City shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer’s expense. If Developer does not complete the repairs, replacements, construction, or other work required within thirty (30) days of said notice, the City may exercise its right to secure performance as provided in Section 9.1 of this Agreement. The City reserves the right to schedule re-inspections, depending upon the scope of deficiencies:

2.8.6. **No Residential Building Permits shall be issued by the Building Division of the Community Development Department prior to Construction Acceptance of Public Improvements unless expressly permitted in Exhibit G of this document. Notwithstanding the foregoing, residential building permits may be issued for individual Phases in which the only remaining Improvements to be completed are final asphalt lift for streets within that Phase, provided that a sufficient Improvement Guarantee is in place for these remaining Improvements. No Commercial Building Certificates of Occupancy shall be issued by the Administrative Division of the Community Development Department prior to Construction Acceptance of Public Improvements unless expressly permitted in Exhibit G of this document.**

2.9. Maintenance of Improvements. For a one (1) year period from the date of Construction Acceptance of any Improvements related to the Development, Developer shall, at its own

expense, take all actions necessary to maintain said Improvements and make all needed repairs and replacements, which, in the reasonable opinion of the City, shall become necessary. If within thirty (30) days after Developer's receipt of written notice from the City requesting such repairs or replacements the Developer has not completed such repairs, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement.

- 2.10. Final Acceptance.** At least thirty (30) days before one (1) year has elapsed from the issuance of Construction Acceptance, or as soon thereafter as weather permits, Developer shall request a "final acceptance" inspection. The City shall inspect the Improvements and shall notify the Developer in writing of all deficiencies and necessary repairs. After Developer has corrected all deficiencies and made all necessary repairs identified in said written notice, the City shall issue to Developer a letter of "final acceptance." If any mechanic's liens have been filed with respect to the public Improvements, the City may retain all or a portion of the Improvement Guarantee up to the amount of such liens.
- 2.11. Reimbursement to the City.** The City may complete construction, repairs, replacements, testing, maintenance or other work for Developer, pursuant to Sections 2.8, 2.9 or 2.10 of the Agreement, with funds other than the Improvements Guarantee, in which event Developer shall reimburse the City within thirty (30) days after receipt of written demand and supporting documentation from the City. If Developer fails to so reimburse the City, the Developer shall be in default of the Agreement and the City may exercise its rights under Section 10.1 of this Agreement.
- 2.12. Testing and Inspection.** Developer shall employ, at its own expense, a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City, on a timely basis, for City review and approval prior to commencement or continuation of that particular Phase of construction. In addition, at all times during said construction, the City shall have access to inspect the materials and workmanship of said construction. All materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications. All work shown on the approved Public Improvements Plans requires inspection by the appropriate department, such as the Streets & Fleet and Utilities Departments. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During the hours listed above, inspections shall be scheduled by 4:00 p.m. of the day prior to the requested inspection day. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance for approval. All requests for after-hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the City for all direct costs of the after-hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.
- 2.13. Improvement Guarantees.**
- 2.13.1.** Developer shall submit to the City an Improvement Guarantee for all Public Improvements related to each phase of the Development, as listed in Section 2.3 above and specified in **Exhibit B**. Said guarantee may be in cash, bond, or a letter of

credit in a format provided by the City. Infrastructure permits shall be issued for only that phase of the Development for which said guarantees have been furnished. The total amount of the guarantee for each phase of development shall be calculated as a percentage of the total estimated cost, including labor and materials, of all Public Improvements to be constructed in said Phase of the Development as described in **Exhibit B**. The total minimum amounts are as follows:

- A. Prior to City approval of Public Improvements Construction Plans – 115%
- B. Upon Construction Acceptance prior to Final Acceptance – 15%
- C. After Final Acceptance – 0%

2.13.2. In addition to any other remedies it may have, the City may, at any time prior to Final Acceptance, draw on any Improvement Guarantee issued, pursuant to this Agreement, if Developer fails to extend or replace any such Improvement Guarantee at least thirty (30) days prior to expiration of such Improvement Guarantee, or fails to otherwise comply with the Improvement Guarantee. If the City draws on the guarantee to correct deficiencies and complete any Improvements, any portion of said guarantee, not utilized in correcting the deficiencies and/or completing the Improvements, shall be returned to Developer within thirty (30) days after said Final Acceptance.

2.13.3. In the event the Improvement Guarantee expires, or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of the Improvements and related construction as reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish written notice to the Developer of the condition, and within thirty (30) days of receipt of such notice, the Developer shall provide the City with a substituted qualifying Improvements Guarantee or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 2.13. If such an Improvement Guarantee is not submitted or maintained, then Developer is in default of this Agreement and is subject to the provisions of Section 10.1 of this Agreement, as well as the suspension of the development activities by the City, including but not limited to the issuance of construction permits of any kind including infrastructure permits, building permits, and construction or final acceptance, or certificates of occupancy or completion.

2.14. Indemnification and Release of Liability.

2.14.1. Developer agrees to indemnify and hold harmless the City, its officers, employees, agents, or servants and to pay any and all judgments rendered against the City and/or said persons on account of any suit, action, or claim caused by, arising from, or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors, and to pay to the City and said persons their reasonable expenses, including, but not limited to, reasonable attorney's fees and reasonable expert witness fees incurred in defending any such suit, action, or claim; provided, however, that Developer's obligation herein shall not apply to the extent said action, suit, or claim results from any negligent or willful acts or omissions of officers, employees, agents or servants of the City or the conformance with the requirements imposed by the City. Said obligation of Developer shall be limited to

suits, actions, or claims based upon conduct prior to “final acceptance,” by the City, of the construction work.

2.14.2. Developer acknowledges that the City’s review and approval of plans for development is done in furtherance of the general public’s health, safety, and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Developer or third parties is assumed by such approval. The parties hereto understand and agree that the City of Brighton, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City of Brighton, its officers or its employees.

- 2.15. **Insurance OSHA.** Developer shall, through contract requirements and other normal means, guarantee and furnish to the City proof thereof that all employees and contractors engaged in the construction of Improvements are covered by adequate workmen’s compensation insurance and public liability insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).
- 2.16. **Phasing.** For purposes of this Agreement, the term “Phase” refers to a designated portion of property in the Development within which construction of all or designated Public Improvements specified in Section 2.3 above and set forth in **Exhibit B**, attached hereto, will be constructed as required in this Agreement. It is anticipated that the Development will be developed sequentially, in Phases, including the Public Improvements specified in **Exhibit B**. The City hereby approves Developer’s Phasing Plan for the Public Improvements, which is a part of the attached **Exhibit B**. The completion of each Phase of the Development, including public and private Improvements, shall be in accordance with said Phasing Plan and completion schedules, or City-approved modifications thereof. All modifications shall be in writing and signed by the City Manager or the Manager’s designee.

SECTION 3 CONSTRUCTION OF IMPROVEMENTS

- 3.1 **Rights-of-way, and Easements.** Before City may approve construction plans for any Improvements herein agreed upon, Developer shall acquire, at its own expense, and convey to the City all necessary land, rights-of-way and easements required by the City for the construction of the proposed Improvements related to the Development. All such conveyances shall be free and clear of liens, taxes, and encumbrances except for ad valorem real property taxes for the current year and thereafter and shall be by Special Warranty Deed in form and substance acceptable to the City Attorney. The City at the Developer’s expense shall record all title documents. The Developer shall also furnish, at its own expense, an ALTA title policy, for all interest(s) so conveyed, subject to approval by the City Attorney.
- 3.2 **Construction.** Developer shall furnish and install, at its own expense, all of the Improvements listed on the “Schedule of Improvements” attached as **Exhibit B**, in

conformance with the civil drawings, plans, and specifications approved by the City prior to construction and the applicable ordinances, regulations and specifications of the City. If Developer does not meet the above obligations, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.

3.3 Utility Coordination and Installation. In addition to the Improvements described in **Exhibit B**, Developer shall also be responsible for coordination of, and payment for, and the installation of on-site and off-site electric, street lights, natural gas, telephone, and other utilities. All utilities shall be placed underground, to the extent required by City Code or other applicable law.

3.4 Reimbursement. To the extent that roads, water lines, sewer lines, drainage channels, trails, crossings and other Public Improvements specified in **Exhibit B** are constructed by Developer, that will benefit landowners, developers, and persons other than the Developer (“Benefited Landowner”), the City, for a period of fifteen (15) years following the completion of construction of such Improvements, will withhold approval and recording of final plats of other benefited landowners, developers, and pending reimbursements payment or reimbursement agreement for a pro rata reimbursement to the Developer. The actual costs of these off-site Improvements shall be submitted to the City after the Improvements are constructed by the Developer and Final Acceptance is issued by the City. Property owners, Developers, and/or other persons submitting plats or development plans that are adjacent to or directly benefiting from these Improvements shall pay the required sums directly to the Developer before a final plat for any portion of their property is approved or recorded. The City agrees not to approve or record said Final plat until the payments are made, but assumes no responsibility for and hereby assigns to developer the right, if any, for collecting the reimbursements from the affected property owners.

3.5 Reimbursement-City. To the extent that Public Improvements are constructed by the Developer, that will benefit landowners, developers, and persons other than the Developer, the City, for a period of fifteen (15) years following the issuance of Final Acceptance of such improvements, will withhold approval and recording of final plats of other benefited landowners, developers, and persons pending reimbursement payment or reimbursement agreement for a pro rata reimbursement to the Developer as provided in Section 3.4 of this Agreement. All costs for the construction of the improvements must be fully paid by the Developer before the Developer is entitled to reimbursement under any agreement established hereunder pursuant to Sections 3.5 and 3.6, Shared Improvements. The actual costs of the improvement(s) includes the actual cost of design and construction of the improvement(s), including the cost of over-sizing of utilities, and an adjustment for the current interest rate during the cost recovery period of the reimbursement agreement. The amount of the reimbursement to be paid shall not exceed the actual cost of the improvement(s) paid by the Developer, plus reasonable interest, as agreed to by the City and the Developer.

A. After the improvements are constructed by the Developer and Final Acceptance is issued by the City, the Developer shall submit to the City Manager, or the Manager’s designee, within ninety (90) days from Final Acceptance for review and approval, documentation of the actual costs of these off-site improvements and a proposed plan for recovery of those costs, including the following:

1. Final invoices from all contractors, subcontractors, engineers, architects, and consultants, which contain a description of work done, prices, fees, and all charges invoiced and paid for by the Developer, unless previously submitted;
 2. Copies of paid receipts or other satisfactory evidence of payment of the costs claimed for the improvement(s), unless previously submitted;
 3. A verified statement from the Developer and/or contractor, subcontractor, engineer, architect, or consultant certifying that final payment has been paid and/or received;
 4. As-built map or plan satisfactory to the City which shows:
 - a. The location of the improvement(s) as constructed, unless previously submitted;
 - b. The name and address of the owner of each property which the Developer asserts has or will be benefited by the improvement(s);
 - c. The amount of frontage each property has adjacent to the improvement(s);
 - d. The acreage and parcel number of each property, which the Developer asserts has or will be benefited by the improvement(s);
 - e. A reference to the book and page and/or reception number from the county records where the information for each property was obtained;
 - f. A proposed manner by which the actual costs of the improvement(s) will be determined for reimbursement by the owners and/or developers of the benefited properties; and
 - g. Any other information deemed necessary by the City Manager, or the Manager's designee.
 5. If the foregoing information is not submitted by the Developer within the ninety (90) days after Final Acceptance, then all rights and claims for reimbursement shall be deemed waived, and reimbursement will thereafter be denied. If the information is submitted in a timely manner, the City Manager, or the Manager's designee, will review it and, if approved as submitted or modified by the City Manager, prepare a reimbursement agreement to be signed by the Developer and the City Manager. . If the Developer fails or refuses to sign the reimbursement agreement with the City within thirty (30) days of preparation by the City Manager, then all rights and claims for reimbursement shall be deemed waived, and reimbursement will thereafter be denied.
- B. The City Manager, or the Manager's designee, will review the reimbursement materials and plan for reasonableness and appropriateness of the costs claimed and the proposed cost recovery plan, and may request further documentation for any such costs. The City Manager, or the Manager's designee, may make such adjustments, as the Manager or the Manager's designee, in their sole discretion, determines to be necessary if the costs are deemed to be in excess of reasonable and necessary costs at then prevailing rates and/or the proposed cost recovery plan is

not appropriate or reasonable. If the City Manager, or the Manager's designee, does not notify the Developer in writing of any adjustments thereto within thirty (30) days after the materials and proposed plan were submitted, or if backup documentation is requested within thirty (30) days, within thirty (30) days after the requested back up documentation is submitted, then the costs and the recovery plan will be deemed approved as submitted and a reimbursement agreement shall prepared and executed as provided in subsection 5 above.

- C. The reimbursement agreement shall include, but not be limited to:
1. A description of the improvement(s) for which the Developer will be reimbursed;
 2. A recitation of all reimbursable costs;
 3. A list of properties, owners and descriptions that are or will be benefited by the improvement(s);
 4. The manner or formula that will be applied to determine the amount of reimbursement owed by the owners or developers of benefited properties;
 5. Property owners and/or developers submitting plats or development plans for the identified benefited properties shall pay the required sums directly to the Developer before a final plat for any portion of their property is approve or recorded;
 6. The City agrees not to approve a proposed development; approve or record a final subdivision plat, or issue a building permit for an identified benefited property until the payments are made to the Developer or a reimbursement agreement between the original Developer and benefited landowner, developer or other person has been executed, but assumes no responsibility therefore and hereby assigns to Developer the right, if any, for collecting the reimbursements from the benefited property owners and/or developers; If the benefited landowner, developer or other person fails or refuses to pay the reimbursement costs or execute the reimbursement agreement which reflects the reimbursement agreement terms with the City within sixty (60) days of submission of the agreement, no further approvals shall be granted by the City as more specifically set forth in Sections 3.4 and 3.5.
 7. The term of any reimbursement agreement, established hereunder, shall not exceed fifteen (15) years from Final Acceptance, regardless of whether or not the original costs have been fully reimbursed;
 8. The books and records of the Developer, relating to the actual costs of the improvement(s) for which the Developer seeks reimbursement, shall be open to the City at all reasonable times for the purpose of auditing and verifying the Developer's costs.
- D. The Developer will be responsible for notifying all property owners who will be affected by the reimbursement agreement, by regular mail, postage prepaid, that a reimbursement request, which may affect their property, has been submitted to the City Manager within 30 days of submission of the request to the City Manager.
- E. It is the responsibility of the Developer or its successors or assigns to notify the City in writing of any changes in address for notices and other matters under

Section 3.5 of this Agreement. Upon receipt of an application for development of a benefited property, the City shall mail a notice of application for development, building permit or final plat, to the Developer or assigns by regular mail using the Developer, its successors or assigns last known address provided to the City. If no response is received within thirty (30) days, after the date of the notice, then the City shall be authorized to approve the application for approval of the development, building permit, or final plat and release the owner, or developer, or other person of the benefited property from further reimbursement obligations and the Developer, its successor or assign will forfeit all rights to reimbursement from the owner and/or developer of the specified property.

3.6 Reimbursement - Shared Improvements. Construction of shared improvements and related facilities may be achieved according to a reimbursement agreement whereby owner(s) of property abutting or benefited by such improvements agree to reimburse the Developer for their proportionate share of Developer's costs to extend improvements which benefit such benefitted property, in a form and content acceptable to the City Manager or the Manager's designee.

- A. The Developer, agrees to use its best efforts and work in good faith to reach an agreement regarding reimbursement for such shared improvements, and assumes sole responsibility for the administration and collection of any and all moneys payable under shared improvements reimbursement agreement(s). A fully executed shared improvements reimbursement agreement shall be a condition precedent to the City's approval of an application for development, building permit, or approval and recording of a final plat, related to the benefitted property subject to such reimbursement agreement(s).
- B. If the Developer, is unable to secure a fully executed shared improvements reimbursement agreement prior to the issuance of Final Acceptance, the City may set the amount of the reimbursement obligation as provided in Section 3.5 of this Agreement.
- C. The cost recovery period in a shared improvement reimbursement obligation shall not exceed fifteen (15) years following the Final Acceptance of such improvement(s).

SECTION 4 STREET IMPROVEMENTS

4.1 Definitions. For the purposes of this Agreement, "street improvements" shall be defined to include, where applicable, but not limited to, all improvements within the right-of-way, such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping, and drainage improvements.

4.2 Street Signs, Traffic Signs and Striping. The Developer will install, at the Developer's expense, street name signs on local, collector, and arterial streets, and stop signs, speed limit, and other signs on local streets. Developer shall install, at its expense, signs and striping on collector and arterial streets in a manner reasonably approved by the City and

in accordance with the CDOT Manual on Uniform Traffic Control Devices (MUTCD), as from time to time amended, and other applicable legal requirements.

- 4.3 **Streets.** All internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time, and the approved construction Plans, and shall be constructed in accordance with the Public Improvements Phasing Plan, as set forth in **Exhibit B.**

SECTION 5 PUBLIC LAND CONVEYANCE AND LANDSCAPING

5.1 **Public Land Conveyance.**

5.1.1 Developer shall convey to the City all lands for public use as shown in the Final Plat(s), such as those listed in **Exhibit D.** Such conveyance of lands for public use shall be completed after the Final Plat for all or any portion of the Development is approved by the City and as a condition precedent to the recording of any such Final Plat. No Final Plat(s) shall be recorded or implemented until said conveyance is complete. Said conveyances shall be by special warranty deed in form and substance satisfactory to the City Attorney.

5.1.2 As part of its application for a final plat for all or any portion of the Development, the Developer shall also furnish, at its own expense, an ALTA title commitment, for all interest(s) to be conveyed, subject to approval by the City Attorney,. The City shall accept for public use only those lands which, pursuant to the title commitment, are free and clear of all liens, taxes, and encumbrances, except for ad valorem real property taxes for the current year and thereafter. The City shall not accept lands for public use with encumbrances, either surface or underground, as revealed on the title commitment or upon physical inspection, which limit the property for its intended public use. The Developer shall, at its sole expense, cause a title policy in conformance herewith to be delivered to the City at the time of the conveyance.

- 5.2 **Landscape Improvements.** For public lands and rights-of-way, Developer shall furnish to the City complete final landscape and irrigation plans for each Phase of development and obtain approval by the City Manager or the Manager's designee prior to commencement of construction.

SECTION 6 WATER

- 6.1 **Specifications.** All water mains, lines, and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications, and the Schedule of Improvements, attached hereto as **Exhibit B,** including both on-site and off-site improvements.

- 6.2 **Water Dedications.** Developer shall comply with all requirements associated with the dedication of water for the development, as applicable [See **Exhibits E & F attached hereto.**]

SECTION 7 SEWER LINES

- 7.1 **Specifications.** All sewer lines and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications and the Schedule of Improvements, attached hereto as **Exhibit B**, including both on-site and off-site improvements.

SECTION 8 OTHER IMPROVEMENTS

- 8.1 **Street Lights.** The total cost of street light installation, as shown on the approved construction plans for the Development, shall be the Developer's obligation. Developer shall cause, at its own expense, United Power, or the applicable utility company, to install all required street lighting pursuant to City plans and specifications. Said streetlights shall be consistent with the City standard streetlight and shall be installed concurrently with the streets on which they are located unless otherwise approved or required by the City.
- 8.2 **Drainage and Stormwater Improvements.**
- 8.2.1 Developer shall construct drainage and stormwater improvements and facilities, both on-site and off-site, as required to provide for, and to reasonably regulate, the proper drainage and control of flood and surface waters within the Development in order that storm and surface water may be properly drained and controlled, pollution may be reduced, and the environment protected and enhanced. Such drainage and stormwater improvements and facilities shall comply with Chapter 14, *Storm Drainage*, BMC, all applicable state and federal stormwater regulations, as additionally described in **Exhibit H** attached hereto and incorporated herein by this reference, all City-approved plans and specifications, and the Schedule of Improvements, attached hereto as **Exhibit B**.
- 8.2.2 Developer shall initiate no overlot grading until the City approves the required drainage improvement plans in writing and a permit is issued therefore. Drainage improvements shall not cause any damage to adjacent or downstream properties resulting from erosion, flood, or environmental impact during construction and/or after construction completion. Drainage improvements not constructed by the Developer and specific for each lot shall be constructed by the owner of said lot, at the minimum, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the City's then-existing drainage, stormwater and floodplain regulations.
- 8.3 **Post-Construction Stormwater Management.** Post construction stormwater management by the Developer shall comply with Chapter 14-8 Storm Drainage BMC, as additionally described in **Exhibit H and attachments H1-H4**. All private drainage facilities shall be operated, repaired, maintained, and replaced by the Developer according to the Maintenance Agreement for Private Drainage Structures, **Exhibit H and attachments H1-H4**, to ensure facilities continue serving their intended function in perpetuity, unless or until the City relieves the Developer of that responsibility in writing.

The Developer shall ensure access to drainage facilities at the site for the purpose of inspection and repair.

SECTION 9 SPECIAL PROVISIONS

- 9.1 Special Provisions.** Special provisions regarding the Development are described in Exhibit G of the Agreement, attached hereto and incorporated herein by this reference.

SECTION 10 MISCELLANEOUS TERMS

10.1 Breach of Agreement.

10.1.1 In the event that the Developer should fail to timely comply with any of the terms, conditions, covenants, and undertakings of this Agreement, or any provisions of the Brighton Municipal Code related to development, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach of the Developer by the City, unless the City in writing and in its sole discretion designates a longer period, then the City may draw upon the Improvement Guarantee and complete the Improvements at the Developer's expense. The Developer's expense shall be limited to the costs incurred by the City, as defined herein. Notice by the City to the Developer will specify the conditions of default.

10.1.2 In the event that no Improvement Guarantee has been posted, or the Improvement Guarantee has been exhausted or is insufficient, then the City has the right to begin work on the Improvements at the expense of the Developer.

10.1.3 If the City determines in its sole discretion that an emergency exists, such that the improvement must be completed in less than seven (7) days, the City may immediately draw upon the Improvement Guarantee and may complete the Improvements at Developer's expense.

10.1.4 In the event the Improvement Guarantee is not available or is in an insufficient amount, the City shall use its best efforts to notify Developer at the earliest practical date and time.

10.1.5 The City may also, during the cure period and until completion of the improvements in compliance with this Agreement, withhold any additional infrastructure permits, building permits, certificates of occupancy, or provision of new utilities fixtures or services.

10.1.6 Nothing herein shall be construed to limit the City from pursuing any other remedy at law or inequity, which may be appropriate under City, state, or federal law. Failure to timely complete construction of Improvements, which is solely due to inclement weather, shall not be considered a breach of this Agreement. All costs incurred by the City, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by the Developer, shall be the responsibility of the Developer. The City may deduct these costs from the Improvement Guarantee and seek

indemnification and reimbursement from the Developer if the Improvements Guarantee does not cover the same.

- 10.2 Recording of Agreement.** The City shall record this Agreement at Developer's expense in the office of the Clerk and Recorder in Adams County, Colorado, and the City shall retain the recorded Agreement.
- 10.3 Binding Effect of Agreement.** This Agreement shall run with the land included within the Development and shall inure to benefit of and be binding upon the successors and assigns of the parties hereto.
- 10.4 Assignment, Delegation and Notice.** Developer shall provide to the City, for approval, written notice of any proposed transfer of title to any portion of the Property and of the Agreement obligations to any successor, as well as arrangements, if any, for delegation of the Improvement obligations hereunder. Developer and its successors and assigns shall, until written City approval of the transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Developer under this Agreement.
- 10.5 Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.
- 10.6 Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:

City of Brighton
City Manager
500 South 4th Avenue
Brighton, CO 80601

Developer:

THF Prairie Center Development, L.L.C.
Attn: Manager
211 N. Stadium Blvd., Suite 201
Columbia, MO 65203-1161

With a copy to:
Margaret R. Brubaker, Esq.
Mehaffy Brubaker & Ernst, LLC
City Attorney
500 South 4th Avenue
Brighton, CO 80601

With a copy to:
THF Prairie Center Development, L.L.C.
Attn: Milan Green Management, L.L.C.
211 N. Stadium Blvd. Suite 201
Columbia, MO 65203-1161

District:
Prairie Center Metropolitan
District No. 3
Attn: Ann Finn
141 Union Blvd., Ste. 150
Lakewood, CO 80228

And a copy to:
Otten, Johnson, Robinson, Neff
and Ragonetti, P.C.
Attn: Kimberly Martin
950 17th Street, Ste. 1600
Denver, CO 80202

With a copy to:
McGeady Becher, P.C.
Attn: MaryAnn McGeady
450 E 17th Avenue, Ste. 400
Denver, CO 80203-1214

or to such other address or the attention of such person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 10.7 Force Majeure.** Whenever Developer is required to complete construction, maintenance, repair, or replacement of improvements by an agreed-upon deadline, the time for performance shall be extended for a reasonable period if the performance cannot as a practical matter be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer.
- 10.8 Approvals.** Whenever approval or acceptance of a matter is required or requested of the City, pursuant to any provisions of the Agreement, the City shall act reasonably in responding to such matter.
- 10.9 Previous Agreements.** All previous written and recorded agreements, between the Parties, their successors, and assigns, including, but not limited to, any amended and restated Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.
- 10.10 Title and Authority.** Developer warrants to the City that it is the record owner for the Property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant having full power and authority to enter into this Agreement.
- 10.11 Severability.** This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Developer or any agent thereof,

any provision of the Agreement is held to be violate of the city, state, or federal laws and hereby rendered unenforceable, the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

- 10.12 Agreement Status After Final Acceptance.** Upon Final Acceptance by the City of all improvements and compliance by Developer with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, and the applicable statute of limitations has tolled for any potential claim, this Agreement shall no longer be in effect.

[Signatures begin on the next page]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

DEVELOPER:

THF PRAIRIE CENTER DEVELOPMENT, L.L.C.,
a Colorado limited liability company

By: THF Prairie Center Investors, L.L.C., a Missouri
limited liability company, its Manager

By: Milan Green Management, L.L.C., its Manager

Signature: _____

By: Robert J. Jakubeck
Manager

STATE OF MISSOURI)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me appeared Robert J. Jakubeck, to me personally known, who, being by me duly sworn, did say that he is the Manager of Milan Green Management, L.L.C., a Missouri limited liability company, which is the Manager of THF Prairie Center Investors, L.L.C., a Missouri limited liability company, which is the Manager of THF Prairie Center Development, L.L.C., a Colorado limited liability company, and said Robert J. Jakubeck acknowledged that he executed this instrument on behalf of said limited liability company and acknowledged said instrument as the free act and deed of said limited liability companies.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal: in the County and State aforesaid on the day and year above written.

Notary Public
My Commission Expires: _____

DISTRICT:

PRAIRIE CENTER METROPOLITAN DISTRICT
NO. 3, a quasi-municipal corporation and political
subdivision of the State of Colorado

ATTEST:

Ann Finn, Secretary

By: _____
Michael Tamblyn, President

CITY OF BRIGHTON, COLORADO

By: Richard N. McLean, Mayor

ATTEST:

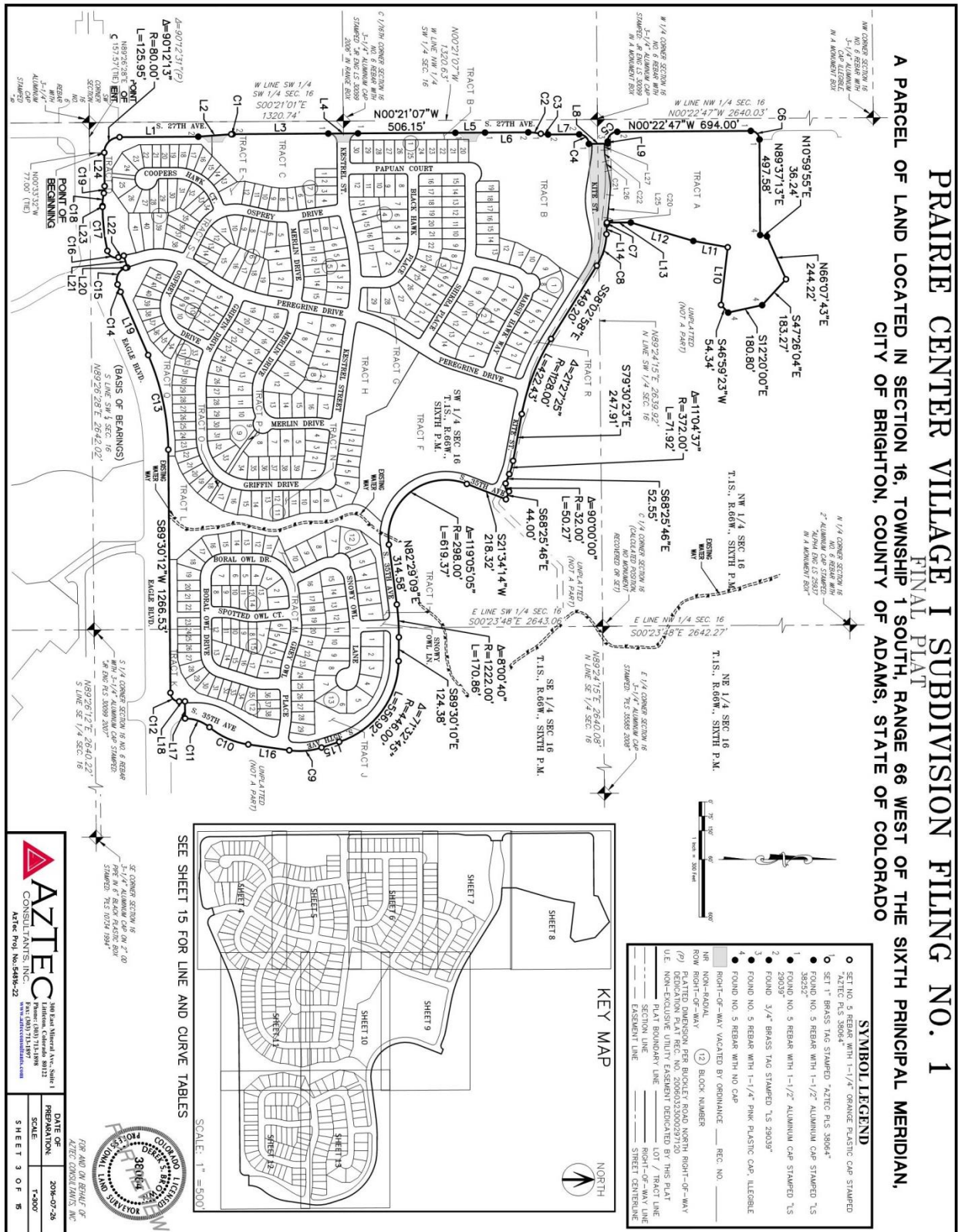
Natalie Hoel, City Clerk

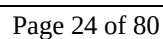
Approved as to Form:

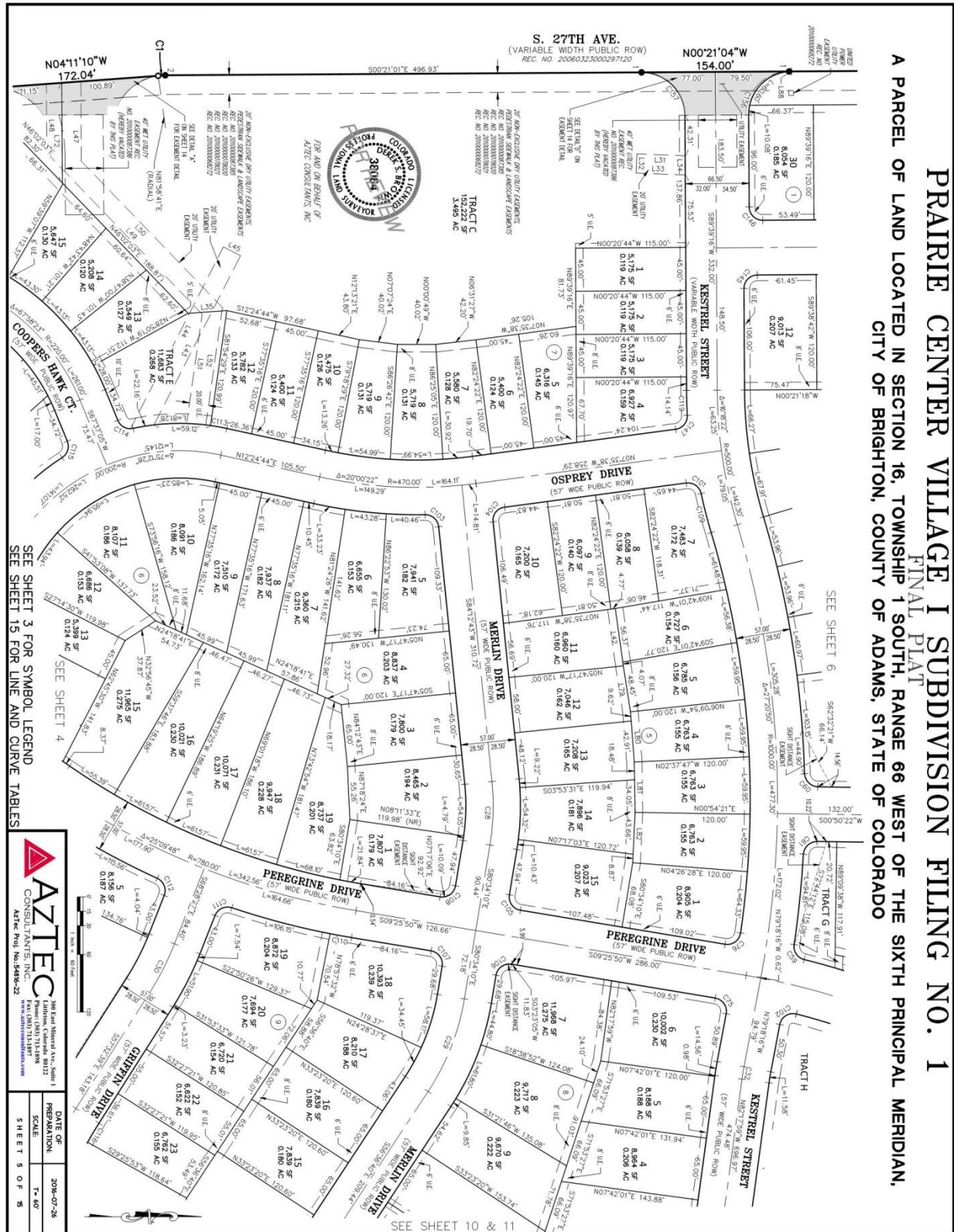
Margaret R. Brubaker, Esq., City Attorney

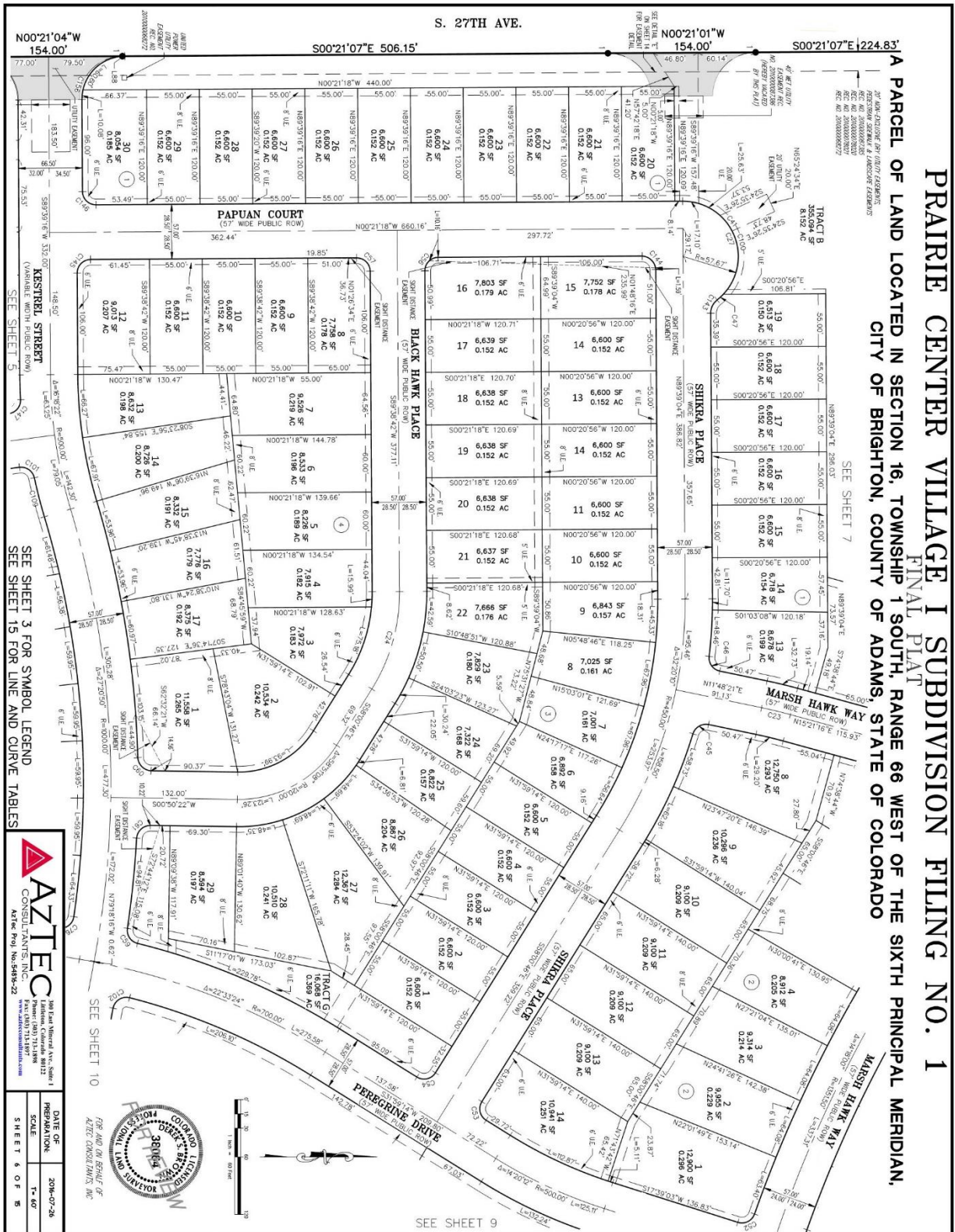
EXHIBIT A

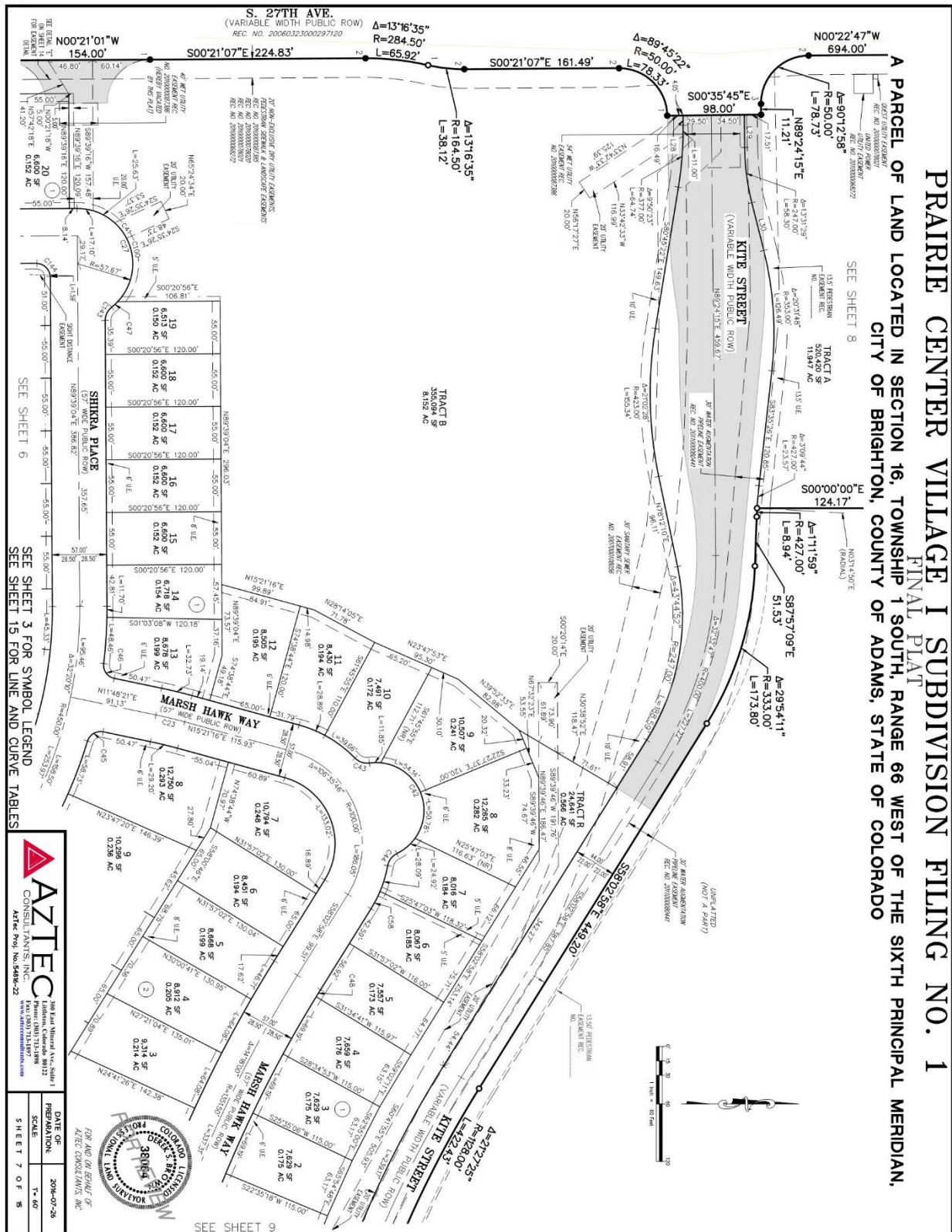
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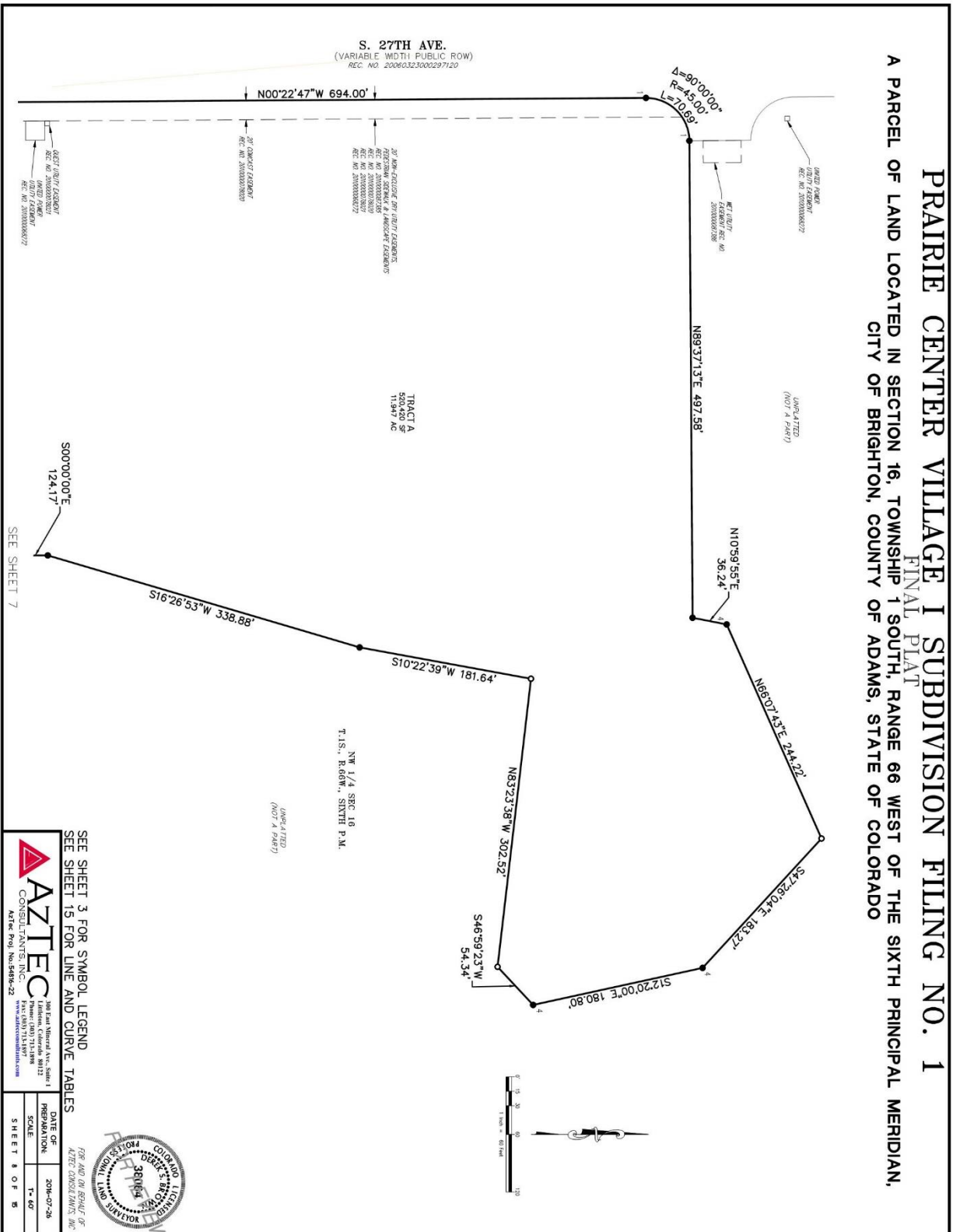






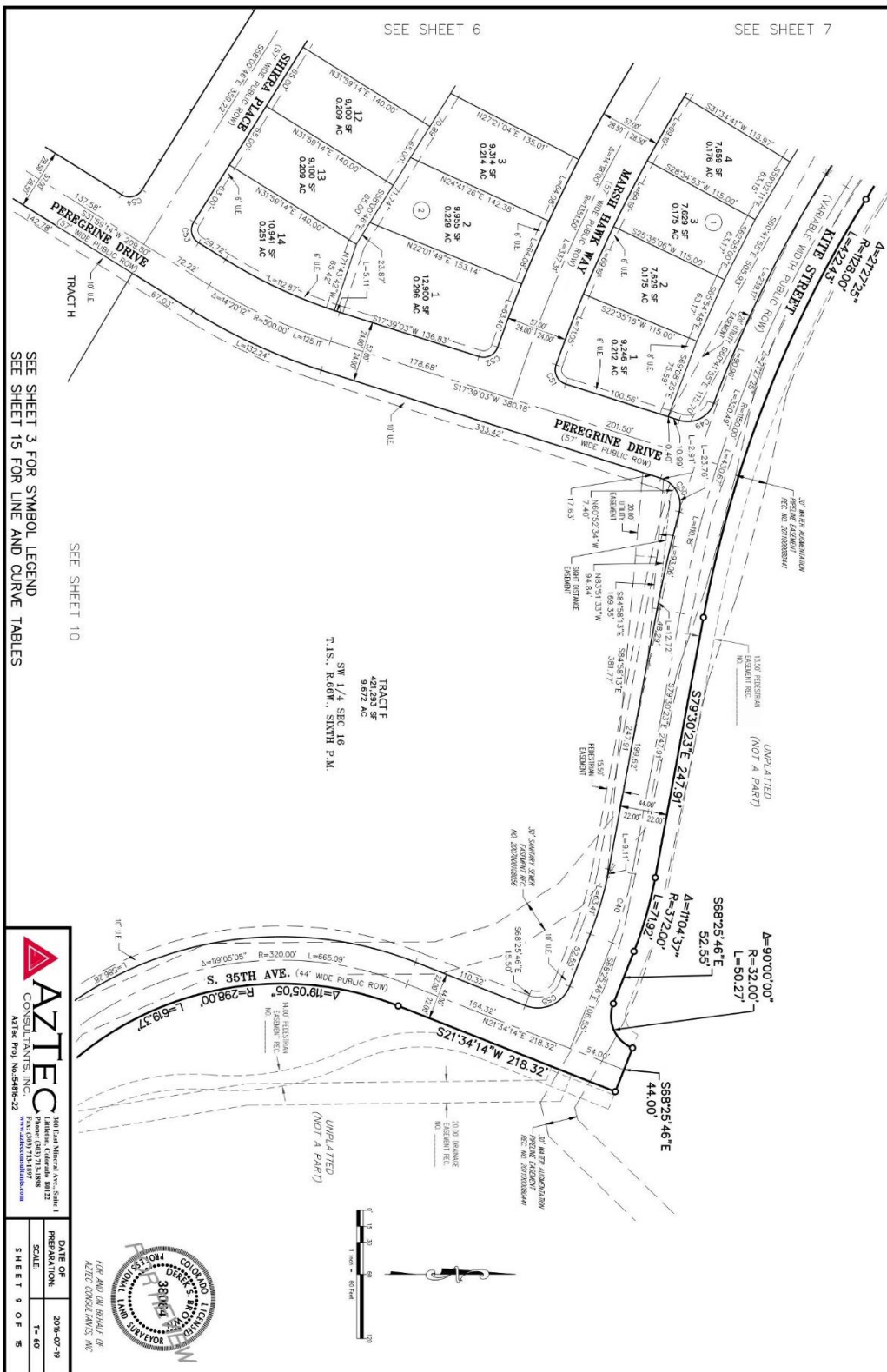


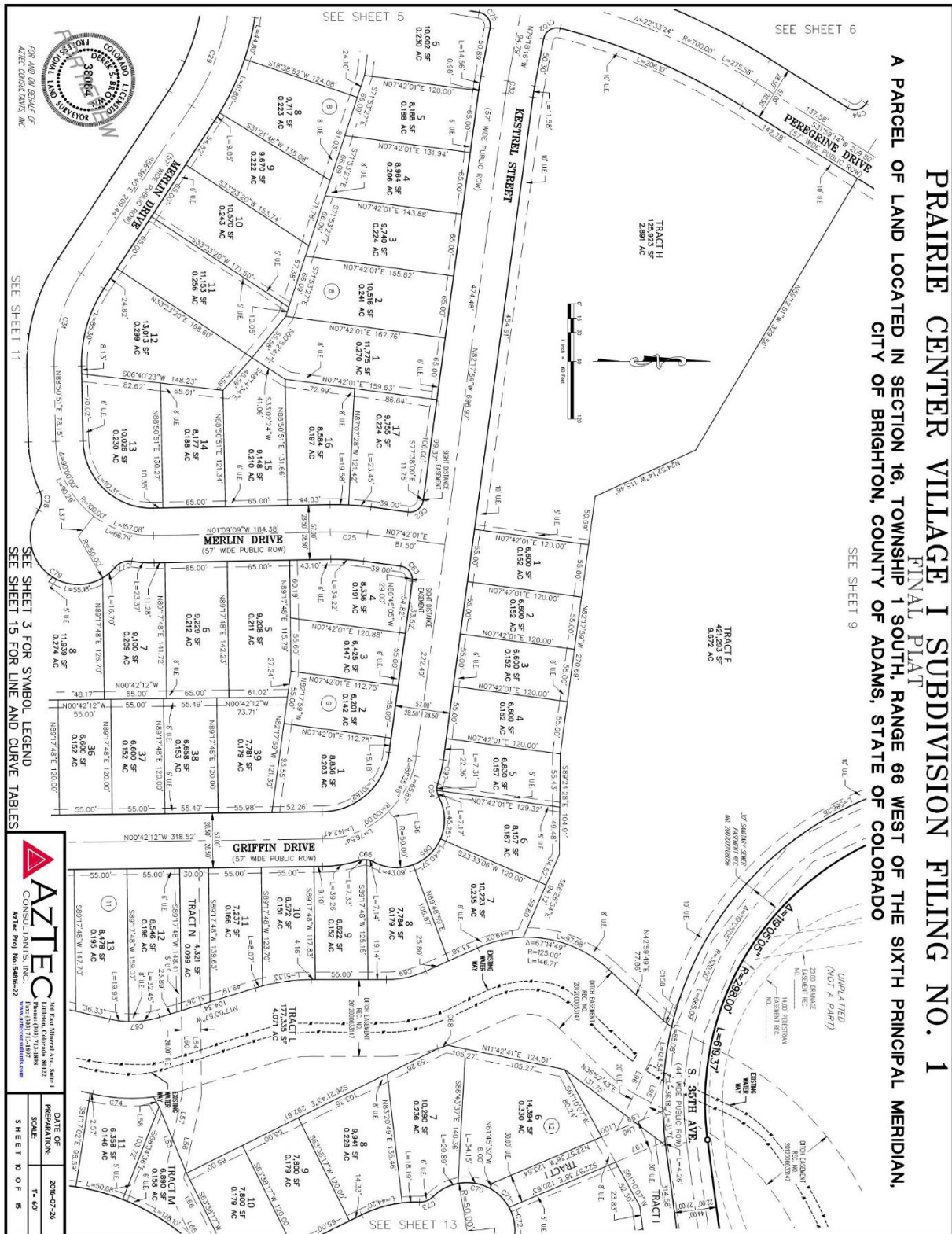


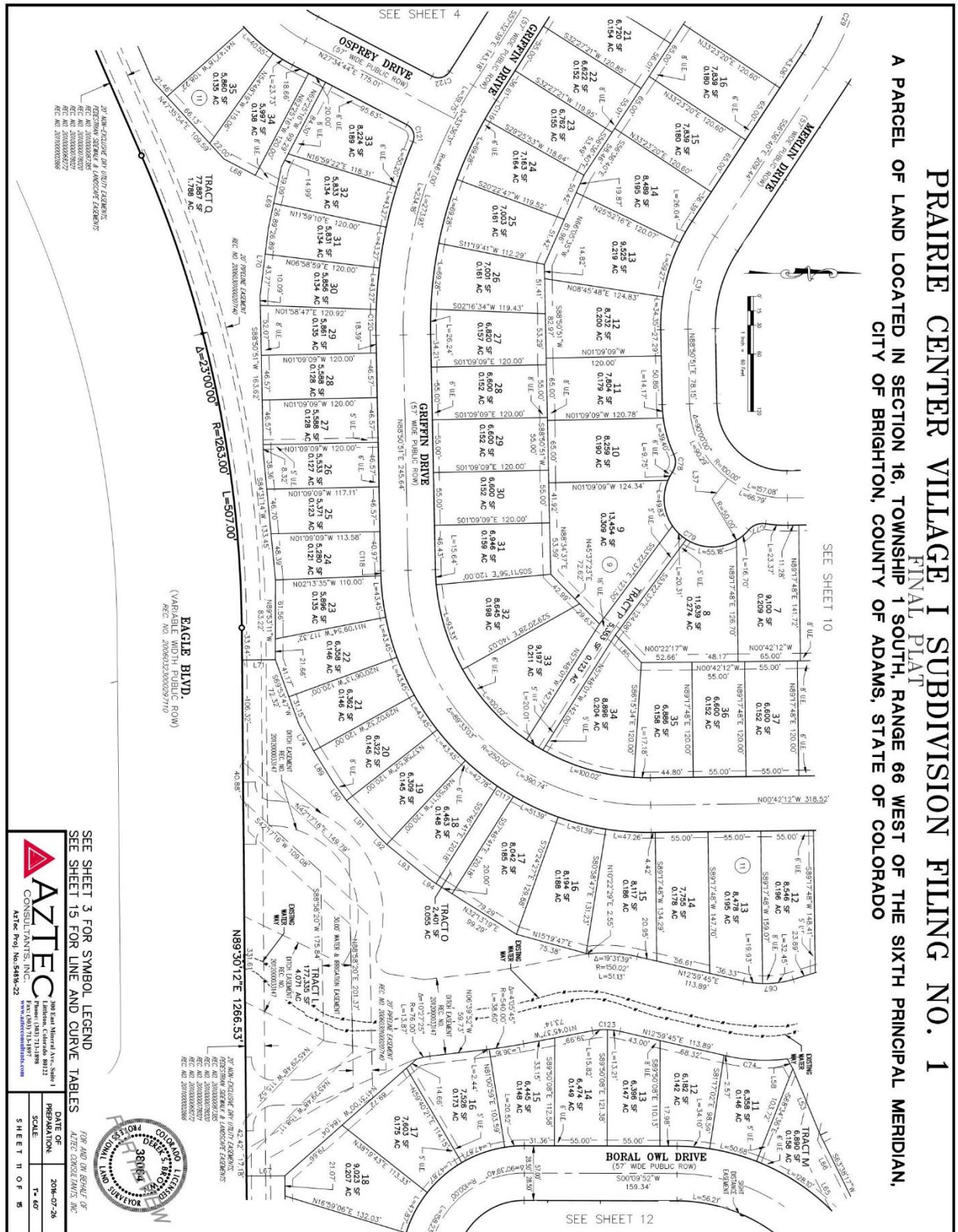


PRAIRIE CENTER VILLAGE I SUBDIVISION FILING NO. 1

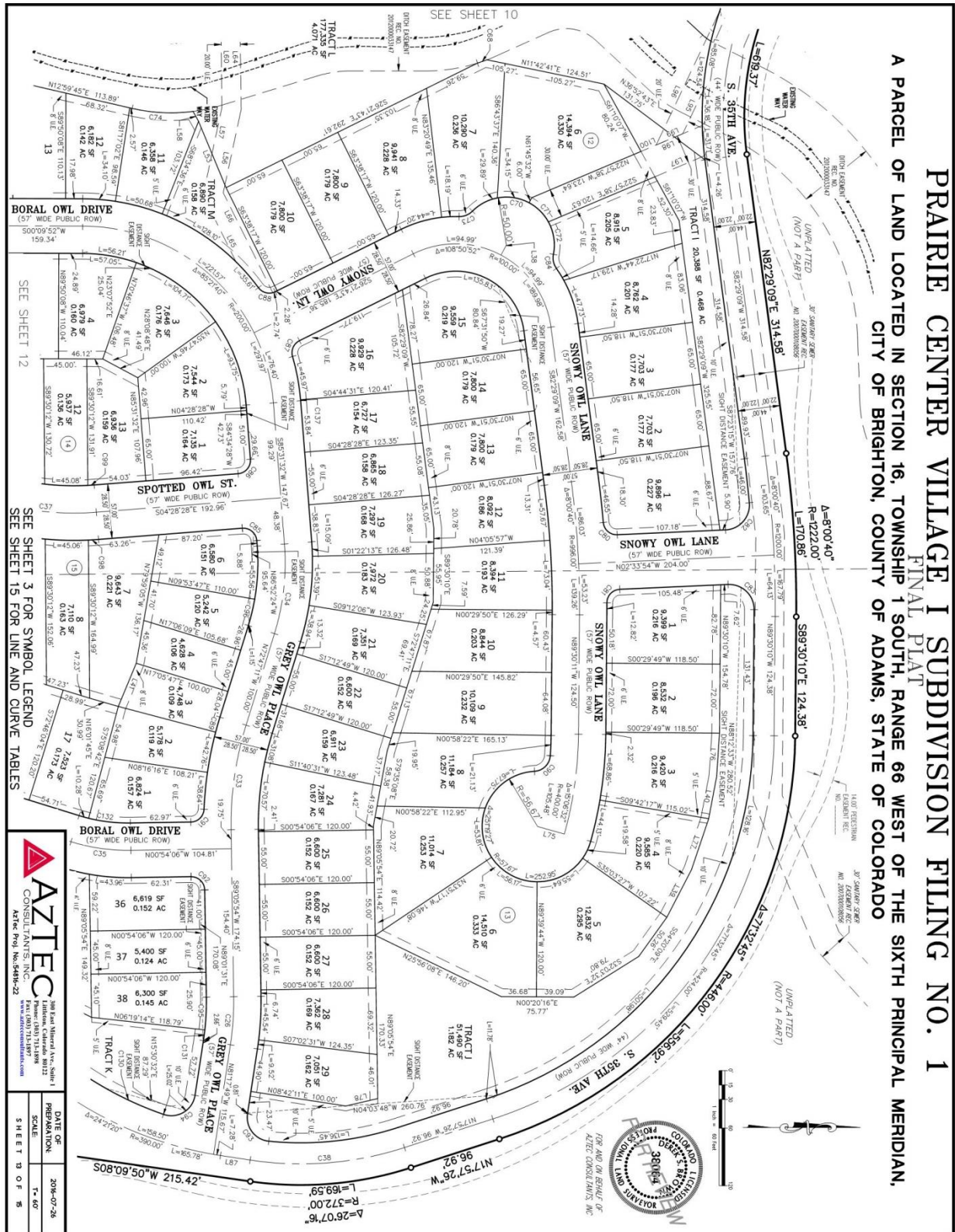
A PARCEL OF LAND LOCATED IN SECTION 16, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

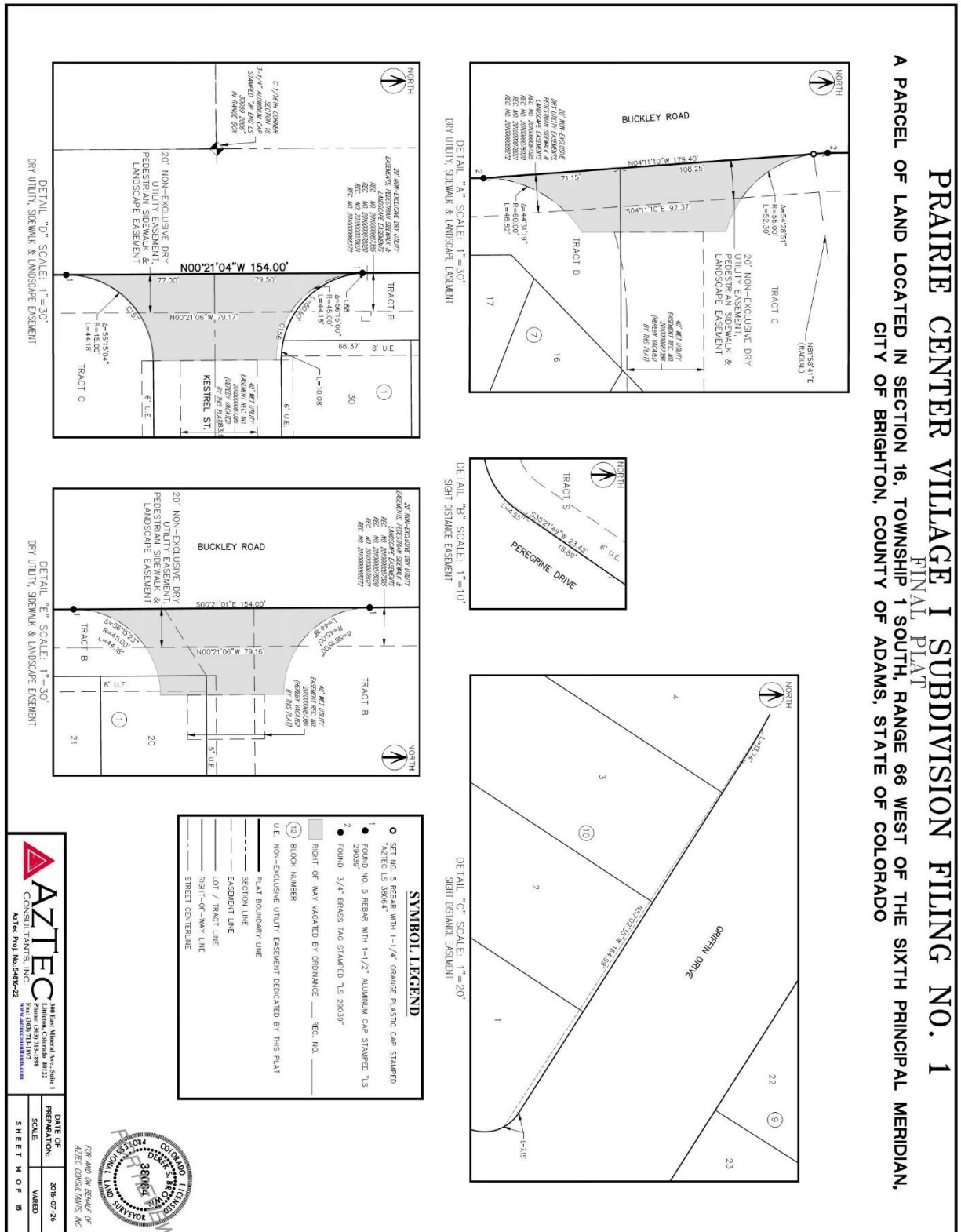












PRAIRIE CENTER VILLAGE I SUBDIVISION FILING NO. 1

A PARCEL OF LAND LOCATED IN SECTION 16, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

CURVE TABLE				CURVE TABLE				CURVE TABLE				CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH	CURVE	DELTA	RADIUS	LENGTH	CURVE	DELTA	RADIUS	LENGTH	CURVE	DELTA	RADIUS	LENGTH
C1	7+01.87	55.00'	7.36'	C41	20303.28'	57.67'	20.64'	C81	8739.16'	14.00'	21.42'	C121	8512.54'	14.00'	20.82'
C2	1316.35'	284.50'	65.92'	C42	16222.02'	50.00'	141.69'	C82	9242.42'	28.60'	42.07'	C122	8507.22'	14.00'	20.80'
C3	1316.35'	164.50'	38.12'	C43	5359.55'	17.50'	16.49'	C83	9303.44'	26.00'	42.23'	C123	2345.22'	70.00'	29.02'
C4	8945.22'	50.00'	78.33'	C44	5359.55'	17.50'	16.49'	C84	4635.38'	19.00'	15.45'	C124	9000.00'	14.00'	21.99'
C5	9012.58'	50.00'	78.73'	C45	8308.33'	14.26'	20.69'	C85	9000.00'	14.00'	21.99'	C125	9000.00'	14.00'	21.99'
C6	9000.00'	45.00'	70.69'	C46	8802.98'	14.00'	20.78'	C86	9000.00'	14.00'	21.99'	C126	3029.50'	303.50'	161.55'
C7	1115.97'	427.00'	8.94'	C47	834.15'	57.67'	8.63'	C87	7954.23'	14.00'	19.52'	C127	621.30'	71.50'	7.93'
C8	2954.11'	333.00'	173.80'	C48	0222.22'	133.00'	8.60'	C88	7954.23'	14.00'	19.52'	C128	545.56'	128.50'	12.93'
C9	2607.16'	372.00'	169.56'	C49	8723.33'	28.00'	39.66'	C89	228.08'	378.50'	16.31'	C129	303.28'	377.50'	20.15'
C10	3137.33'	405.00'	223.59'	C50	8723.33'	26.00'	39.66'	C90	8255.43'	17.50'	25.33'	C130	1358.47'	362.50'	88.45'
C11	3956.20'	197.00'	137.32'	C51	9151.38'	14.00'	22.45'	C91	8640.36'	14.00'	21.99'	C131	222.56'	271.50'	11.29'
C12	90700.00'	45.00'	70.69'	C52	8844.21'	13.94'	21.59'	C92	90700.00'	14.00'	21.99'	C132	1441.50'	171.50'	44.00'
C13	2300.00'	1263.00'	507.00'	C53	90700.00'	14.00'	21.99'	C93	9249.27'	25.00'	40.50'	C133	8235.45'	14.00'	20.18'
C14	2952.22'	1137.00'	41.46'	C54	90700.00'	14.00'	21.99'	C94	10022.32'	25.00'	43.80'	C134	8252.19'	14.00'	20.25'
C15	9443.47'	65.00'	107.47'	C55	90700.00'	32.00'	50.27'	C95	713.20'	271.50'	34.92'	C135	0720.41'	328.50'	1.93'
C16	9429.46'	45.00'	74.22'	C56	90700.00'	14.00'	21.99'	C96	719.01'	221.50'	28.29'	C136	9039.40'	71.50'	113.14'
C17	1137.20'	1137.00'	236.64'	C57	90700.00'	14.00'	21.99'	C97	1123.36'	128.50'	25.45'	C137	076.04'	228.50'	1.07'
C18	1315.41'	289.50'	67.01'	C58	9081.17'	128.50'	20.49'	C98	150.43'	328.50'	10.58'	C138	304.26'	328.50'	17.62'
C19	1315.41'	160.50'	37.15'	C59	8432.32'	14.00'	20.66'	C99	123.50'	271.50'	6.92'	C139	354.29'	178.50'	12.18'
C20	3094.44'	427.00'	23.57'	C60	8138.43'	14.83'	21.13'	C100	13342.32'	57.67'	134.57'	C140	1590.91'	57.67'	160.18'
C21	2031.48'	353.00'	126.49'	C61	8408.06'	14.47'	21.25'	C101	8514.35'	14.03'	20.88'	C141	9930.00'	14.00'	24.31'
C22	1331.29'	247.00'	58.30'	C62	90700.00'	14.00'	21.99'	C102	9442.22'	14.00'	22.80'	C142	9723.22'	14.00'	23.80'
C23	3324.54'	500.00'	30.97'	C63	90700.00'	14.00'	21.99'	C103	8914.35'	14.00'	22.80'	C143	5216.04'	17.50'	15.95'
C24	3220.32'	180.00'	107.25'	C64	4723.45'	17.50'	14.48'	C104	9353.31'	13.33'	21.85'	C144	8302.40'	14.93'	21.65'
C25	8511.17'	250.00'	38.63'	C65	14729.28'	50.00'	128.71'	C105	90700.00'	14.00'	21.99'	C145	8939.26'	14.00'	21.99'
C26	9361.17'	300.00'	50.29'	C66	4723.45'	17.50'	14.48'	C106	90700.00'	14.00'	21.99'	C146	1627.39'	328.50'	94.38'
C27	14216.47'	57.67'	143.20'	C67	3000.42'	100.00'	52.38'	C107	90700.00'	14.00'	21.99'	C147	8532.08'	14.00'	20.90'
C28	1513.07'	250.00'	66.40'	C68	2419.44'	180.00'	10.46'	C108	90700.00'	14.00'	21.99'	C148	1627.39'	328.50'	94.38'
C29	2357.30'	250.00'	104.54'	C69	3453.00'	100.00'	42.32'	C109	4333.52'	528.50'	42.10'	C149	847.50'	328.50'	50.44'
C30	1055.49'	300.00'	57.23'	C70	14673.47'	50.00'	127.75'	C110	136.39'	808.50'	22.73'	C150	8751.81'	328.50'	48.28'
C31	3452.29'	170.00'	102.49'	C71	3257.26'	50.00'	28.76'	C111	8702.17'	14.00'	21.27'	C151	8751.81'	328.50'	48.28'
C32	299.42'	250.00'	13.07'	C72	4033.42'	50.00'	34.96'	C112	8702.17'	14.00'	21.27'	C152	445.49'	89.50'	7.44'
C33	1805.55'	350.00'	110.66'	C73	4635.38'	19.00'	15.45'	C113	4791.22'	228.50'	17.23'	C153	477.42'	89.50'	6.71'
C34	2141.16'	250.00'	94.63'	C74	20271.40'	180.00'	63.97'	C114	7954.23'	14.00'	19.52'	C154	7703.33'	17.50'	23.34'
C35	1808.02'	200.00'	63.30'	C75	9115.54'	14.00'	22.30'	C115	7954.23'	14.00'	19.52'	C155	0728.07'	89.50'	0.73'
C36	1614.17'	300.00'	85.02'	C76	9114.43'	14.00'	22.28'	C116	301.28'	438.50'	23.15'	C156	8939.43'	45.00'	70.68'
C37	2012.56'	300.00'	105.85'	C77	5906.22'	19.00'	19.60'	C117	4706.56'	278.50'	20.00'	C157	8939.43'	45.00'	70.68'
C38	2639.36'	350.00'	162.86'	C78	5906.22'	19.00'	19.60'	C118	104.25'	278.50'	5.22'	C158	1228.46'	50.00'	10.69'
C39	14201.17'	285.00'	67.09'	C79	17394.34'	50.00'	151.76'	C119	247.02'	532.00'	25.85'				
C40	1104.37'	350.00'	67.66'	C80	8739.16'	14.00'	21.42'	C120	307.57'	485.50'	27.09'				



AZTEC
CONSULTANTS, INC.
300 East Mineral Ave., Suite 1
Littleton, Colorado 80120
Phone: (303) 733-1897
www.aztecconsultants.com
AZTEC Proj. No. 2449-22

DATE OF PREPARATION: 2006-07-26
SCALE: N/A
SHEET 5 OF 5



Schedule of Public Improvements and Phasing Plan
Prairie Center Village I, Filing 1
Phase 1a Model Homes



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Type of Improvements	Quantity / Length	Unit Cost	Total Estimate by Line Item	Total Actual Cost at Construction Acceptance
Streets	4,890 lf	\$74.80	\$365,772.00	
Alleys	0	0	0	
Curb/Gutter/Sidewalk/Concrete	4,890 lf	\$72.70	\$355,503.00	
Medians, Entries (Landscaping)	0		\$0.00	
Bridges/Crossings/Culverts	0		\$0.00	
Guard Rails	0		\$0.00	
Street Lights	14 ea	\$3617.00	\$50,638.00	
Traffic Signal Lights	0		\$0.00	
Park Landscaping & Amenities	1 ls	\$606,200.00	\$606,200.00	
Trails/Paths	6,945 sf	\$5.50	\$38,197.50	
Fencing	0		\$0.00	
Retaining Walls	0	\$98.00	\$0.00	
Public Parking Lots	0		\$0.00	
Fire Hydrants	8 ea	\$5250.00	\$42,000.00	
Potable Water Lines	5,162 lf	\$60.60	\$312,817.20	
Non-Potable Water Lines			\$0.00	
Irrigation System	80,571 sf	\$1.00	\$80,571.00	
Sanitary Sewer Lines	4,503 lf	\$73.80	\$332,321.40	
Storm Sewer Lines	1,795 lf	\$224.50	\$402,977.50	
Retention and Detention	1 ls	\$23,800	\$23,800.00	
Public Landscaping	80,571 sf	\$1.90	\$153,084.90	
Regulatory Signage & Striping	4,890 lf	2.20	\$10,758.00	
Sub-Total			\$2,750,840.50	

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Type of Improvements	Quantity / Length	Unit Cost	Total Estimate by Line Item	Total Actual Cost at Construction Acceptance
Streets	1,898 lf	\$74.80	\$141,970.40	
Alleys	0	0	0	
Curb/Gutter/Sidewalk/Concrete	1,898 lf	\$72.70	\$137,984.60	
Medians, Entries (Landscaping)	0		\$0.00	
Bridges/Crossings/Culverts	0		\$0.00	
Guard Rails	0		\$0.00	
Street Lights	3 ea	\$3617.00	\$10,851.00	
Traffic Signal Lights	0		\$0.00	
Park Landscaping & Amenities	0		\$0.00	
Trails/Paths	5,760 sf	\$5.50	\$31,680.00	
Fencing	0		\$0.00	
Retaining Walls	0	\$98.00	\$0.00	
Public Parking Lots	0		\$0.00	
Fire Hydrants	2 ea	\$5250.00	\$10,500.00	
Potable Water Lines	1,725 lf	\$60.60	\$104,535.00	
Non-Potable Water Lines			\$0.00	
Irrigation System	127,710 sf	\$1.00	\$127,710.00	
Sanitary Sewer Lines	1,475 lf	\$73.80	\$108,855.00	
Storm Sewer Lines	0	\$224.50	\$0.00	
Retention and Detention	0	0	\$0.00	
Public Landscaping	127,710 sf	\$1.90	\$242,649.00	
Regulatory Signage & Striping	1,898 lf	2.20	\$4,175.60	
Sub-Total			\$920,910.60	

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[illegible]

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[illegible]

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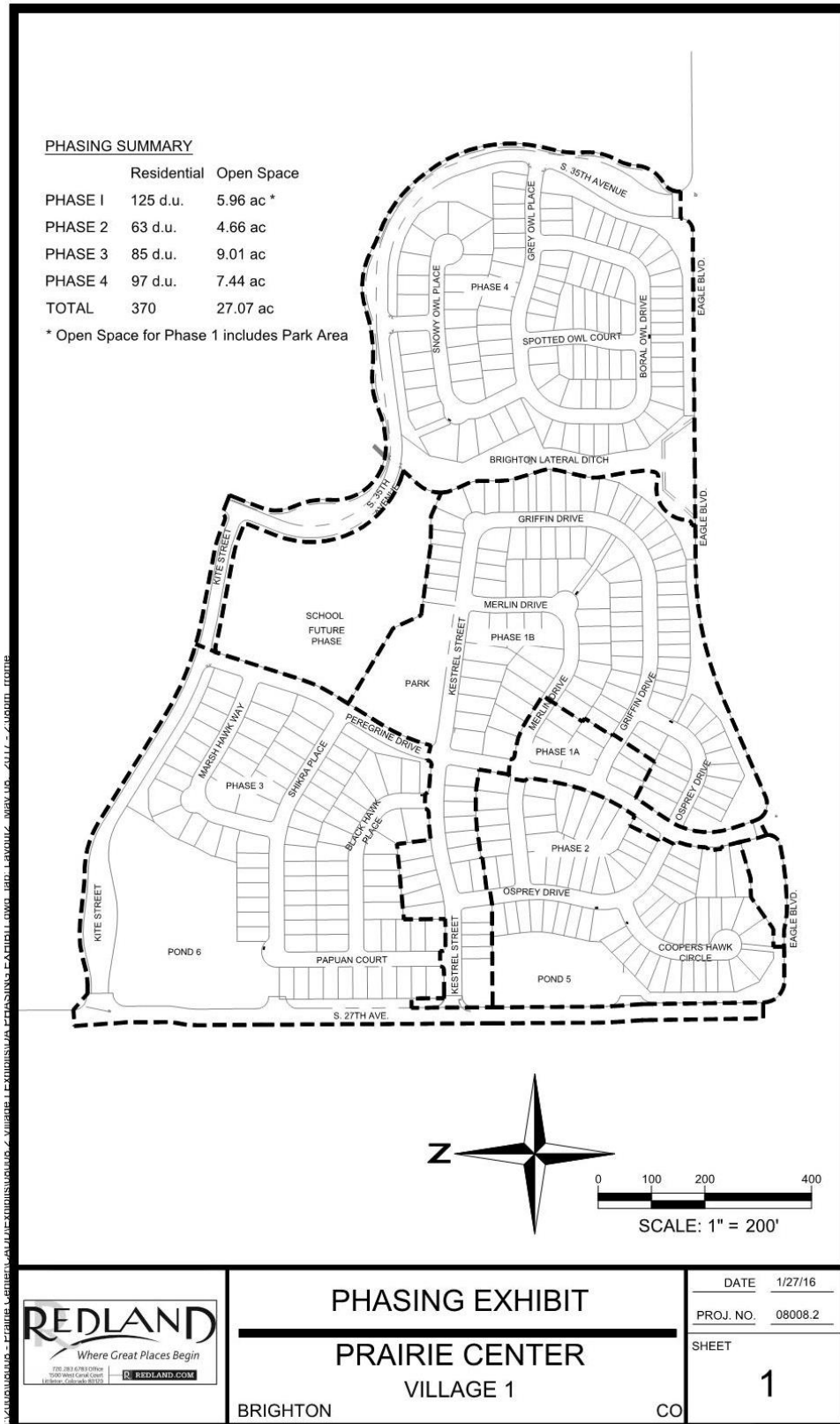


EXHIBIT C**IRREVOCABLE LETTER OF CREDIT FORM**

This form serves as an example of Irrevocable Letter of Credit terms which the City of Brighton will accept. Although acceptable letters of credit terms may vary, the City will approve only letters of credit which comply with the requirements of the City's Development/Subdivision/Annexation Agreements. The City will not accept any Letter of Credit forms provided by lending institutions if they do not comply with the provisions of the City's identified Agreements, or if they impose undue restrictions on the City's ability to draw on the Letter of Credit for the purposes stated in the specified Agreement.

**LENDER'S
LETTERHEAD**

TO: City of Brighton, Colorado
500 South 4th Avenue
Brighton, CO 80601

Letter of Credit #: _____
Issuing Bank: _____
Date of Issue: _____
Expiration Date: _____
Amount: _____

Greetings:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of _____ dollars (\$ _____), which is available against presentation of your draft or drafts drawn on us at sight for the account of _____ (Developer/Customer), to guarantee the construction of the required improvements, warranties, and satisfactory compliance of _____ (Developer/Customer) with the terms and conditions of the Agreement between the City and the Developer/Customer.

Partial drawings are permitted.

The sole condition for payment of any draft drawn under this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager, stating the (Developer/Customer), its successor, transferee, or assign, has failed to perform in accordance with the _____ Agreement dated _____.

Demands for payment by the City pursuant to this Letter of Credit shall be deemed timely if deposited in the U.S. mail prior to its date of expiration, affixed with first-class postage, and addressed to the above letterhead address.

This Letter of Credit shall have an initial term of one (1) year from its Date of Issue, but shall be deemed automatically extended without amendment or other action by either party for additional periods of one year from the present or any future expiration date hereof, unless we provide the City with written notice, by certified mail, return receipt requested, at least ninety (90) days prior to the expiration date, that we do not wish to extend this Letter of Credit for an additional period. After receipt by the City of such notice, the City may draw hereunder, on or before the then-applicable expiration date, and for the then-remaining available amount by means of the City's sight draft, accompanied by a letter, on the City's letterhead, signed by the City Manager, stating the following:

We are in receipt of written notice from (NAME OF BANK) of its election not to renew its Letter of Credit No. _____ for an additional term of one (1) year and (Developer/Customer), its successor, transferee, or assign, is still obligated to the City under the _____ Agreement, and an acceptable replacement Letter of Credit has not been received.

We hereby agree with the City that:

(A) Such drafts will be processed in good faith and duly honored upon presentation to us;

(B) The exclusive venue for any action concerning this Letter of Credit shall be the District Court for Adams County, Colorado;

(C) The procedural and substantive laws of the State of Colorado shall apply to any such action;

(D) In the event it becomes necessary for the City to bring an action to enforce the terms of this Letter of Credit, or any action alleging wrongful dishonor of this Letter of Credit, and the City prevails in such action, the City shall be entitled to recover its reasonable attorney's fees and all costs and expenses associated with such action;

(E) If we bring an action against the City related directly or indirectly to this Letter of Credit, and the City prevails in such action, the City shall be entitled to recover its reasonable attorney's fees and other costs of such action; and

(F) The amount of funds available under this Letter of Credit may not be reduced except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the City.

This Letter of Credit is subject to the Uniform Commercial Code of the State of Colorado.

Very truly yours,

(NAME OF BANK)

By: _____
Signature of Authorized Signing Officer

Print Name

STATE OF _____)
) ss:
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____, by
_____, the _____ (position of signatory)
at _____ (bank).

My Commission Expires:

Notary Public

SEAL

EXHIBIT D

LEGAL DESCRIPTION OF PUBLIC USE LAND CONVEYANCE

1. **School Site Dedication.** Developer will dedicate Tract F of the Plat (the “**School Site**”) to Brighton School District 27J for school (student education) purposes; provided, however, such school purposes shall not include maintenance facilities and yards, bus storage/yards, material storage yards or the like.
2. **Neighborhood Park.** Developer will dedicate Tract H of the Plat to the City for neighborhood park purposes in accordance with Section 20(k) of **Exhibit G**.
3. **Open Space Land Dedication.** The City and Developer acknowledge that the Developer previously agreed to dedicate to the City, via special warranty deed and subject to matters of record, the real property generally depicted as Planning Area 7e on the Project PUD (as defined in Section 4 of **Exhibit G**) and known as Lutz Reservoir/Prairie Lake Regional Wildlife Sanctuary (the “**Lutz Parcel**”) pursuant to the terms of Exhibit D of that certain Prairie Center Village V Subdivision Filing No. 1 Development Agreement entered into by the City, Developer and the District dated October 20, 2015, and recorded in the real property records of the Clerk and Recorder for Adams County at Reception No. 2016000001263 (the “**Village V Development Agreement**”). In accordance with and subject to Section 3.9(b) of the Comprehensive Agreement (as defined in Section 4 of **Exhibit G**), the special warranty deed shall reserve all minerals and water appurtenant to the Lutz Parcel. Contemporaneously with the conveyance of the Lutz Parcel, the District shall convey to the City, by bill of sale, the sidewalk and trail improvements situated within the Lutz Parcel and, upon such conveyance, the City shall issue, and shall be deemed to have issued, final acceptance of such improvements for maintenance by the City. No additional open space land dedication relating to the Development is required by this Agreement. In accordance with Section 3.2(a) of the Comprehensive Agreement, the dedication of the Lutz Parcel to the City as contemplated by the Village V Development Agreement and the Agreement fully satisfies the requirements of the bald eagle mitigation plan for Prairie Center. As of the date of the Agreement, the following sets forth a summary of the open space dedication obligations for Prairie Center and the Development, and the land dedicated in satisfaction thereof:

[Exhibit D continues on following page]

**PRAIRIE CENTER PARKS & OPEN SPACE
TRACKING AND SUMMARY CHART**

Subdivision Plat	Total DUs	Park Tracts	OS Tract(s)	Park Provided (ac./ft²)	Open Space Provided (ac./ft²)	Less: Detention¹ (ac./ft²)	Less: Other⁴ (ac./ft²)	Total Parks & OS Provided (ac./ft²)	Parks & OS Required² (ac./ft²)	Excess (Deficit) (ac./ft²)
Prairie Center Village V Subdivision Filing No. 1	288 ³	B	A, C	3.063 133,441	24.807 1,080,556	(5.195) (226,311)	(4.538) ⁴ (197,697)	18.137 789,989	17.902 779,811	0.235 10,178
Prairie Center Regional Wildlife Sanctuary (unplatte ⁵)	0		PUD Parcel 7e	0	53.21 2,317,828	0	0	53.21 2,317,828		53.21 2,317,828
Prairie Center Village I Subdivision Filing No. 1	370	H	A, B, C, D, E, G, I, J, K, L, M, N, O, P, Q, R, S	2.891 125,923	36.301 1,581,306	(14.092) (613,850)	0	25.101 1,093,379	22.999 1,001,836	2.102 91,543
Total										55.547 2,419,549

¹ Detention areas below the 10-year water surface elevation

² Number of dwelling units x 2.96 people per dwelling unit; required 21.0 acres of park and open space per 1000 people

³ 288 dwelling units are on Lot 2 only.

⁴ Oil and gas operations areas within Tract C

⁵ Open space provided is preliminary and based on the PUD Parcel 7e acreage. Final open space provided acreage will be pursuant to the legal description for Parcel 7e as conveyed to the City.

EXHIBIT E

[Not Applicable to this Agreement]

EXHIBIT F**WATER DEDICATION AGREEMENT**

THIS AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 20____ by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado (the “City”) and THF Prairie Center Development, LLC [*or THF Prairie Center Development, LLC’s successors or assigns as signatory*] (the “Developer”).

WHEREAS, Developer is the owner of the property described in **Exhibit A** attached hereto and by this reference made a part hereof (the “Property”); and

WHEREAS, in conjunction with the approval of the Final Plat for the Property, DEVELOPER will execute a development agreement; and

WHEREAS, as agreed to by the Developer at the time of annexation of the Property, and as required by the regulations and laws of the City, as a condition of Final Plat approval, the Developer must either dedicate acceptable water resources or pay the “without water rights” fee for the Property, as determined at the sole discretion of the City; and

WHEREAS, after reviewing its current inventory of water resources, together with other factors relating to the City’s water resource needs, the City has determined that the Developer shall dedicate water resources for Phases 2, 3, and 4 of the Property (including Tract A of the Final Plat for the Property), as more particularly set forth in the Prairie Center Village I Subdivision Filing No. 1 Development Agreement (as may be amended, the “Development Agreement”) and below.

NOW, THEREFORE, in consideration of the recitals and representations set forth herein, together with other good and sufficient consideration, the PARTIES AGREE AS FOLLOWS:

1. With respect to Phases 2, 3, and 4 of the Property (as such phases are described in **Exhibit B** to the Development Agreement), the Developer or the applicable applicant shall transfer to the City water rights in form acceptable to the City Water Attorney and City Water Rights Engineer, in the total amount of 145.05 acre-feet. Such water dedication shall occur prior to the issuance of any permits for Phases 2, 3, or 4. Said water dedication shall be free and clear of any and all encumbrances unacceptable to the City in its sole discretion and shall satisfy all of the requirements of Resolution No. 99-20, as the same may be amended from time to time.
2. With respect to Tract A of the Final Plat for the Property, the Developer or the applicable applicant shall transfer to the City water rights in form acceptable to the City Water Attorney and City Water Rights Engineer, in the total amount of 26.28 acre-feet. Such water dedication shall occur on the date of the earlier to occur of (a) the date that

- is four (4) years after the recording of the Plat for the Project or (b) the date upon which a final plat for any residential portion of Village 2, 3, or 4 of Prairie Center (as depicted in the Prairie Center Mixed-Use PUD) is approved by the City and recorded in the real property records of the clerk and recorder for Adams County, Colorado. Said water dedication shall be free and clear of any and all encumbrances unacceptable to the City in its sole discretion and shall satisfy all of the requirements of Resolution No. 99-20, as the same may be amended from time to time.
3. In addition to the transfer of water rights as set forth in paragraph 2 above, the Developer or applicant will pay at building permit issuance, the Water Plant Investment Fee “with water rights” fee for each water tap for Phases 2, 3, and 4 in the amount as set forth in the City’s Annual Fee Resolution, as the same may be amended from time to time, in effect at the time of building permit issuance.
 4. In addition to the transfer of water rights as set forth in paragraph 3 above, the Developer or applicant will pay at the time of such water rights transfer, the Water Plant Investment Fee “with water rights” fee for each water tap for Tract A of the Final Plat for the Property in the amount as set forth in the City’s Annual Fee Resolution, as the same may be amended from time to time, in effect at the time of payment.
 5. The parties acknowledge and agree that any replatting or resubdivision of the Property that materially impacts the water rights dedication requirements will, by necessity, require a re-evaluation of the amount of water dedication for which the Developer will be obligated, which may result in an increase or a decrease in the water dedication requirement.
 6. This Agreement is may not be assigned or transferred by the Developer without the prior written consent of the City in its sole discretion, and may only be modified or amended in writing, signed by the parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

[Signatures begin on the next page]

DEVELOPER:

By: _____

Name

Title

Company Name

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of _____.

WITNESS my hand and official seal.

By: _____
Notary Public

My Commission Expires: _____

CITY OF BRIGHTON:

By: _____
Richard N. McLean, Mayor

ATTEST:

By: _____
Natalie Hoel, City Clerk

EXHIBIT G
Special Provisions

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN PRAIRIE CENTER VILLAGE I SUBDIVISION FILING NO. 1 DEVELOPMENT AGREEMENT (INCLUDING THE OTHER EXHIBITS ATTACHED THERETO, THE “**AGREEMENT**”), AMONG THE CITY OF BRIGHTON, COLORADO (“**CITY**”); PRAIRIE CENTER METROPOLITAN DISTRICT NO. 3, A QUASI-MUNICIPAL CORPORATION AND POLITICAL SUBDIVISION OF THE STATE OF COLORADO (“**DISTRICT**”); AND THE PRAIRIE CENTER DEVELOPMENT, L.L.C., A COLORADO LIMITED LIABILITY COMPANY (“**DEVELOPER**”) (EACH A “**PARTY**” AND COLLECTIVELY, THE “**PARTIES**”). SHOULD THERE BE ANY CONFLICT BETWEEN THE TERMS OF THE AGREEMENT AND THE TERMS OF THIS **EXHIBIT G**, THE TERMS OF THIS **EXHIBIT G** SHALL CONTROL.

1. Definitions.

- (a) Unless otherwise specifically defined within this **Exhibit G**, defined terms used in this **Exhibit G** shall have the same meanings given them in the Agreement, including the other exhibits attached thereto.
- (b) References to “Civil Engineering Documents” when used in the Agreement or any exhibit thereto, including without limitation, this **Exhibit G**, shall include, as applicable as dictated by the context, the following documents prepared for the Development as approved by the City: Prairie Center Village I Construction Plans (prepared by Redland), Final Drainage Report Prairie Center Village I Subdivision (prepared by Redland), Final Utility Report Prairie Center Village I Subdivision (prepared by Redland), Prairie Center Village I Revised Traffic Analysis and Conformance Report (prepared by Fox Tuttle Hernandez) and Prairie Center Village I Final Site Plan (prepared by DTJ Design).
- (c) The term “Construction Acceptance” or “construction acceptance” as used in the Agreement or any exhibit thereto, including without limitation, this **Exhibit G**, has the meaning as described in Section 2.8 of the Agreement.
- (d) The term “Final Acceptance” or “final acceptance” as used in the Agreement or any exhibit thereto, including without limitation, this **Exhibit G**, has the meaning as described in Section 2.10 of the Agreement.

- 2. Phasing Plan.** The Phasing Plan, attached hereto as **Exhibit B**, sets forth the approved phasing of construction of the Public Improvements for this Development. Subject to this Section 2, the phasing shall be completed in sequential order, starting with Phase 1A and proceeding to Phase 4. Notwithstanding the foregoing, the Developer may make a written request to the City to develop and complete Phases 2, 3 and/or 4 in non-sequential order, which request will include a revised Phasing Plan consistent with the requested modified

phasing. Any such modification to the Phasing Plan may be approved administratively by the City Community Development Director (“**Director**”), and may require that all Public Improvements for prior Phases that are required to serve the out-of-sequence residential building permits shall be completed, and receive Preliminary Acceptance from the City, before any out of sequence residential building permits will be issued. In the event that the Director determines that a modification to the Phasing Plan compromises health and safety, delays the installation of Public Improvements, alters the timing of any dedications or the construction and improvement of any park or open space tracts, or materially alters the development plan, the Director may submit a proposed amendment to the Agreement for the modified Phasing Plan to the City Council for review and approval. No modification to the Phasing Plan may be made without the prior written consent of the City.

3. **Temporary Uses.** Temporary uses refer to, but are not limited to, temporary sales office, temporary construction office, construction yard, and model homes. Temporary uses are allowed, with approval of a temporary use permit, for a period of one year, with renewal after that year determined by the Director. Model homes are allowed to be constructed on the Property, as contemplated by the Phasing Plan, with an approved residential building permit that has been approved by the City’s Chief Building Official in accordance with the terms of the Agreement.
4. **Comprehensive Agreement; Project PUD; City Ordinances.** The Parties acknowledge that on or about December 5, 2005, the City, the City of Brighton Water, Sewer and Drainage Enterprise, the Developer, THF Prairie Center Retail One, L.L.C., Prairie Center Metropolitan District No. 1, and Prairie Center Metropolitan District No. 2 entered into that certain Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, which was recorded in the real property records of the Clerk and Recorder of Adams County, Colorado (“**Records**”) on December 16, 2005 at Reception No. 20061216001378220 (as modified by the First Amendment to Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, made and entered into as of July 7, 2009, and recorded in the Records at Reception No. 2011000051551, as modified by the Second Amendment to Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, made and entered into as of February 8, 2012, and recorded in the Records at Reception No. 2012000014188, and as modified by the Third Amendment to Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, made and entered into as of June 16, 2015, and recorded in the Records at Reception No. 2015000064391, the “**Comprehensive Agreement**”). The Parties further acknowledge that (i) the Property is included within the property subject to the Comprehensive Agreement, (ii) Prairie Center Metropolitan District Nos. 1 and 2 previously have assigned all of their right, title and interest in the Comprehensive Agreement to the District and the District has assumed all such right, title and interest in

the Comprehensive Agreement (“**Assignment**”), and the development rights and responsibilities of the District are subject to the terms of the Assignment, and (iii) development of the Property is and shall be subject to the terms and conditions of the Comprehensive Agreement, unless modified herein. Except as otherwise provided in the Comprehensive Agreement, the Prairie Center Mixed Use PUD recorded in the Records at Reception No. 2011000051553 (as may be amended from time to time, “**Project PUD**”) and/or this Agreement (including this **Exhibit G**), Developer shall comply with all applicable City regulations and ordinances, as may be subsequently amended from time to time, including but not limited to, Ordinance #1650, Zone District Regulations, at the time of each permit application, including, but not limited to, right-of-way infrastructure permits.

5. **Community Mailboxes.** The Parties acknowledge that the Developer previously has provided to the City a drawing of the proposed locations of the mailbox kiosks for the Development, which locations are acceptable to the City and shall be subject to U.S. Postal Service approval prior to installation. The mailbox kiosk(s) serving a particular Phase shall be installed prior to the City’s issuance of residential building permits for such Phase.
6. **Trail Design, Construction, and Maintenance.** Developer or the District, at its sole cost and expense, shall construct, or cause to be constructed, the trail Public Improvements in connection with the applicable development Phase as set forth in **Exhibit B** in accordance with the approved Civil Engineering Documents. The trail Public Improvements for the applicable Phase shall be completed (as evidenced by the City’s grant of construction acceptance therefor) prior to the issuance of any residential building permits for such Phase. The maintenance, repair, and replacement of the trail Public Improvements shall be the City’s sole responsibility after the same have received final acceptance by the City.
7. **Prairie Center Open Space.** Prior to the issuance of the first residential building permit for any dwelling unit in the Development (excluding Phase IA), the Developer shall dedicate the Lutz Parcel to the City in accordance with the terms of the Village V Development Agreement.
8. **Neighborhood Park.**
 - (a) **Construction.** The Developer or the District shall construct, or shall cause to be constructed, all neighborhood park Public Improvements located in Tract H of the Plat (the “**Neighborhood Park Improvements**”) consistent with the approved Civil Engineering Documents, which shall receive construction acceptance from the City before the City will issue any residential building permit within Phase 2 of the Phasing Plan, attached to the Agreement as **Exhibit B**.
 - (b) **Maintenance.** The District shall be responsible for all maintenance of the Neighborhood Park Improvements until Final Acceptance thereof by the City. After Final Acceptance, the City shall be responsible for maintenance of the Neighborhood Park Improvements; provided, however, the District shall be

responsible for mowing, weeding, maintenance of the irrigation system (excluding water usage fees and charges, which shall be the responsibility of the City) and trash removal services on Tract H of the Plat until certificates of occupancy have been issued for not less than 90% of the lots, in the aggregate, in Phases 1A, 1B, 2 and 3 of the Development.

- (c) Water Tap. The Developer or the District shall purchase the water tap and pay the applicable impact fees for said tap for the Neighborhood Park Improvements at the time the first building permit is issued for the Neighborhood Park Improvements.
- (d) Fees. It is anticipated that, in connection with applicable development applications for the Development, the City shall impose and collect a “neighborhood park impact fee” at the “without land dedication” rate, pursuant to the City’s adopted “Fee Resolution” in effect at the time of permit issuance for the construction of the Neighborhood Park Improvements, and as such term is defined in the Comprehensive Agreement (“**Park Impact Fee**”). The Park Impact Fee revenues collected by the City from “Applicants” (as such term is defined in the Comprehensive Agreement) within the Development shall be used to pay for or reimburse the expenses incurred by the Developer and/or the District, as applicable, in connection with installation and construction of the Neighborhood Park Improvements (the “**Park Developer(s)**”), as set forth in Section 3.9(e)(ii) of the Comprehensive Agreement. The Park Developer(s) shall remit sufficiently detailed “Actual Construction Costs” (defined below) to the City, including all paid invoices for such Actual Construction Costs. Upon verification by the City that such accounting accurately represents the Actual Construction Costs incurred and paid by the applicable Park Developer for construction of the Neighborhood Park Improvements, the City shall remit directly to such Park Developer all Park Impact Fees collected by the City from Applicants within the “Property” (as defined in the Comprehensive Agreement), not to exceed the Actual Construction Costs and not to exceed such Park Impact Fees collected by the City. Any Park Impact Fee amounts collected by the City in excess of the Actual Construction Costs for the Neighborhood Park Improvements shall be retained by the City for remittance to the District, Developer and/or applicable Applicants in connection with construction of future parks within Prairie Center in accordance with Section 3.9(e)(ii) of the Comprehensive Agreement. As used in this Section 8(d), “**Actual Construction Costs**” shall mean “Hard Costs” and “Eligible Soft Costs” (as such terms are defined in the Comprehensive Agreement); provided however, such costs shall apply to all Public Improvements set forth on **Exhibit B** and shall apply to all such costs incurred by the District and Developer, as applicable.
- (e) Residential Densities. If the residential densities in the Development increase from those approved on the Plat, thus requiring the dedication of additional land for the neighborhood park or payment of a fee in lieu thereof, the City shall accept a fee in lieu of dedication and the amount of such fee shall be determined in accordance

with the City Municipal Code and Fee Resolution in effect at the time payment is made. The payment of cash in lieu of dedication, as applicable, shall be made at the time of the City's approval of the final plat resulting in such increase in residential density.

9. **Underdrain System.** The District intends to install an underdrain system within the Development to serve the residential lots therein. The City's standards do not provide for underdrain systems and the City does not inspect said systems or offer comments on their construction, effectiveness, suitability, reliability, etc. If the District installs an underdrain system within the Development, it shall do so at its sole expense and risk. The District, its successors and assigns, shall be responsible for the maintenance of the portion of any such underdrain system constituting "trunk lines" or "main lines" and each individual residential lot owner will be responsible for the maintenance of the portion of such underdrain system located on and intended to serve only such owner's lot and extending from the lot to the connection to such trunk or main lines. To the fullest extent permitted by law, the District, its successor and assigns, shall and does agree to indemnify, protect, and hold harmless the City, its officers, employees, and agents ("**Indemnitees**") from all claims, damages, losses, liens, causes of actions, suits, judgments, and expenses (including reasonable attorneys' fees), of any nature, kind, or description ("**Liabilities**") by any third party arising out of, caused by, or resulting from or related to the District's design and installation of the underdrain systems in the Development and/or relating to the District's maintenance of the portion of the underdrain system it is required to maintain pursuant to this Section 9. The City shall not be responsible for any permitting or water rights requirements, or any other issues which may arise due to the installation or maintenance of any underdrain systems in the Development. The City shall not, however, challenge or otherwise assert, nor defend the assertions of others, that the installation or maintenance of any underdrain systems in the Development give rise to any permitting or water rights requirements in the future.
10. **Non-Potable Water System.** The Developer is responsible for the extension of the non-potable water system into the Development.
11. **Water Services and Fees.** The City agrees that it shall provide, or ensure the provision of water and water taps to adequately serve the Development, subject to the terms and provisions set forth herein and in the Comprehensive Agreement, including, but limited to Sections 3.5(a) and 3.5(e) thereof. In accordance with Sections 3.5(a) and 3.5(e) of the Comprehensive Agreement:
 - (a) With respect to Phases 1A and 1B, Developer or the applicable Applicant shall
 - (i) pay the "Water System Improvement Fee" component of the "Water Plant Investment Fee" (as such terms are defined in the Comprehensive Agreement) in accordance with the Fee Resolution; and
 - (ii) notwithstanding the generally applicable fee amount set forth in the Fee Resolution, shall satisfy the "Water Resource Fee" (as such term is defined in the Comprehensive Agreement) component of the Water Plant Investment Fee by paying such "without water

rights” fee in the amount of \$1,084,200 which amount shall fully satisfy the Water Resource Fee for Phases 1A and 1B if the Applicant pays the fee prior to December 31, 2017. If the “without water rights” fee is not paid by December 31, 2017, the Applicant shall pay the “without water rights” fee in the amount in effect at the date of such payment pursuant to the current Fee Schedule. One-half of the “without water rights” fee shall be paid at the time of recording of this Agreement and the Final Plat in the real property records of the clerk and recorder for Adams County (and shall be a condition precedent to such recordation). The remaining one-half of the “without water rights” fee shall be paid at the time the Developer applies for the first permit for any construction within the Development or within ninety (90) days after the date when the initial one-half of the “without water rights” fee was paid, whichever occurs first.

- (b) With respect to Phases 2, 3, and 4, the Developer or the applicable Applicant shall (i) pay the Water System Improvement Fee component of the Water Plant Investment Fee; and (ii) convey to the City 145.05 acre feet of specifically designated acceptable water shares or other form of water rights that meet the City’s established standards and criteria as set forth in the “Code” (as such term is defined in the Comprehensive Agreement), in which event the Water Resource Fee shall not be payable and (A) such Applicant and the City shall enter into, if required by the City, the agreement set forth in **Exhibit F** attached to the Agreement and incorporated herein by this reference; and (B) such Applicant shall use good faith efforts to obtain the requisite dry up covenant(s) if requested by the City. The City shall not issue any site construction permits for Phase 2, 3, or 4 prior to satisfaction of the foregoing payment and water dedication requirements, as set forth in **Exhibit F**.
- (c) With respect to Tract A of the Plat, not later than the date of the earlier to occur of (a) the date that is four (4) years after the recording of the Plat for the Development; or (b) the date upon which a final plat for any residential portion of Village 2, 3, or 4 of Prairie Center (as depicted in the Project PUD) is approved by the City and recorded in the real property records of the clerk and recorder for Adams County, (X) the Developer or the applicable Applicant shall convey to the City 26.28 acre feet of specifically designated acceptable water shares or other form of water rights that meet the City’s established standards and criteria as set forth in the “Code” (as such term is defined in the Comprehensive Agreement), in which event the Water Resource Fee shall not be payable; (Y) such Applicant and the City shall enter into, if required by the City, the agreement set forth in **Exhibit F** attached to the Agreement and incorporated herein by this reference; and (Z) such Applicant shall use good faith efforts to obtain the requisite dry up covenant(s) if requested by the City.

12. **Off-Site Water Transmission Lines in Eagle Boulevard and 27th Avenue.** All off-site water transmission lines required to serve the Development have been installed and

constructed prior to the date of the Agreement in accordance with the terms and provisions of the Comprehensive Agreement, and in particular, Section 3.5(c) thereof, and shall be eligible for reimbursement as more particularly set forth in Section 3.10 of the Comprehensive Agreement.

13. **Sanitary Sewer Services.** The City agrees that it shall provide sanitary sewer collection and treatment services for the Property, subject to the provisions set forth herein and in the Comprehensive Agreement, and in particular, Section 3.7 thereof, including the obligation of the Developer or the District to design and construct the “144th Avenue Interceptor Line” (as defined in the Comprehensive Agreement) when the Southwest Sewer Interceptor reaches 80% of capacity, as more particularly set forth in Section 3.7(b) of the Comprehensive Agreement.
14. **Off-Site Sanitary Sewer Lines in Eagle Boulevard and 27th Avenue.** All off-site sanitary sewer collector lines required to serve the Development have been installed and constructed prior to the date of the Agreement in accordance with the terms and provisions of the Comprehensive Agreement, and in particular Section 3.7 thereof, and shall be eligible for reimbursement as more particularly set forth in Section 3.10 of the Comprehensive Agreement. Developer acknowledges its obligation to design and construct the 144th Avenue Interceptor Line as set forth in Section 3.7(b) of the Comprehensive Agreement. Whether that obligation is triggered by this Development shall be determined as set forth in Section 3.7(b) of the Comprehensive Agreement.
15. **Common-Interest Management Association.** If neither the District nor any of the other Prairie Center Metropolitan Districts (collectively, the “Prairie Center Districts”) will be undertaking maintenance of all “Common Areas” (defined below) within the Development, prior to the issuance of the first residential building permit in Phase 1B of the Development, the Developer shall provide proof to the City that a Common-Interest Management Association has been created to maintain any common areas located within the Development for which the Prairie Center Districts are not undertaking such maintenance, including but not limited to landscape tracts, perimeter fencing, and subdivision signage. For purposes of the Agreement, “Common Areas” means Tracts D, E, G and I through T, inclusive, of the Plat.
16. **Common Area Landscaping.** The Developer or the District shall purchase water taps for all community landscape areas and Common Areas that are to be developed, owned, and maintained by the Common-Interest Management Association or a Prairie Center District. Developer or the District shall complete, or shall cause to be completed, the installation of landscaping for said community landscape areas and Common Areas for the applicable Phase, in accordance with the approved Civil Engineering Documents, and receive construction acceptance by the City prior to the issuance of any certificate of occupancy within such Phase, subject to the terms of Section 2.8.6 of the Agreement.

17. **School Site.** Contemporaneously with grading for Phase 4, or such earlier date as may be requested by the Brighton School District 27J (“School District”) to the Developer, Developer shall grade the School Site, consistent with the approved Civil Engineering Documents, and plant native grass seed. Promptly after completion of the grading and native grass planting of the School Site, as contemplated by this Section 17, Developer shall convey and dedicate the School Site to the School District by statutory form of special warranty deed, subject to all matters of record and reserving all minerals and water underlying the School Site (subject to the terms of the Comprehensive Agreement). The City shall have no responsibility for the maintenance of the School Site, and the Developer shall maintain the School Site until such time as the School Site is dedicated and conveyed to the School District. Developer shall receive approval of the type of native seed from the City Director of Parks and Recreation prior to planting. Additionally, Developer shall construct and install water and sanitary sewer service line stubs into the School Site at a point on the School Site boundary in the location provided on the approved Civil Engineering Documents. Prior to the issuance of any residential building permits in Phase 4, the Developer shall deliver to the City a copy of the deed dedicating and conveying the School Site to the School District.
18. **Brighton School District Capital Facility Fee.** The Developer is aware of the School District 27J Capital Facility Fee Foundation (“**Foundation**”), whose purpose is to administer the collection of a “Capital Facility Fee” for disbursement to the School District to fund a portion of the costs of providing additional capital facilities to service new growth, and has voluntarily agreed to enter into a “Participant Agreement” with the School District with respect thereto. As shall be set forth in the Participant Agreement, the applicable Capital Facility Fees shall be paid directly to the Foundation prior to or at the time of application for the applicable residential building permit. After establishment and assessment of the applicable Capital Facility Fees, as a condition of approval of any residential building permit, the Developer (or the Developer’s assignee with respect to the Participant Agreement for the applicable lot(s)) shall provide evidence to the City that such fees have been paid to the Foundation in accordance with this Section 18 prior to the release of the applicable residential building permit(s), all in accordance with the terms of the Participant Agreement.
19. **Construction Days/Hours.** Notwithstanding City ordinances, regulations, rules or requirements to the contrary, the Developer and its contractors shall have the right to (a) undertake construction activities on Saturdays during the same hours that such construction activities may be undertaken during the week (Monday through Friday); and (b) undertake dirt hauling and grading activities overnight (24 hours a day) prior to any Certificates of Occupancy being issued for any properties located in Prairie Center Village V.
20. **Amendments and Supplements to Agreement.** The following Sections of the Agreement are modified to the extent set forth below:

(a) Section 1: Definitions.

- (i) The definition of “Developer” in Section 1 of the Agreement is hereby deleted in its entirety and in its place inserted the definition of “Developer” set forth in the introductory paragraph of the Agreement.
- (ii) For the avoidance of doubt, the definition of “Common-Interest Management Association” in Section 1 of the Agreement shall not be deemed to include, and shall not include, the District or any other Prairie Center District.

(b) Section 2.3: Schedule of Improvements. Section 2.3 is amended by deleting the first two sentences of Section 2.3 and in their place inserting the following two sentences:

For this Agreement, the term “Schedule of Improvements” and/or “Phasing Plan(s)” shall mean the detailed listing of all of the public improvements, as described in **Exhibit B** attached hereto and incorporated herein by this reference (“Public Improvements”), the design, construction, installation, and phasing of which are the sole responsibility of the Developer or the District, as applicable. The “Schedule of Improvements” may be divided into phases of development of the Property as set forth in **Exhibit B** and the construction drawings submitted as a part of the Plat application (as more particularly described in Section 2.17, each a “Phase” and collectively, the “Phases”), and shall specify, as to each improvement listed below, as applicable, the type, the size, the general location, and the estimated cost of each improvement:

(c) Section 2.7: Plan Submittal and Approval. Section 2.7 is amended by deleting the first sentence of Section 2.7 and in its place inserting the following sentence:

Prior to commencing any construction work on any Public Improvements for a particular Phase of the Development, Developer shall furnish to the City complete Civil Engineering Documents for all Public Improvements to be constructed in such Phase and obtain approval of the same for such Phase.

(d) Section 2.8: Construction Acceptance and Warranty.

- (i) Section 2.8.1 is amended by deleting the first sentence of Section 2.8.1 and in its place inserting the following sentence:

No later than ten (10) days after construction of all Public Improvements for the applicable Phase is completed, Developer shall request inspection of such Public Improvements by the City.

- (ii) Section 2.8.6 is amended by deleting the first and second sentences of Section 2.8.6 and in their place inserting the following two sentences:

No residential building permits shall be issued by the Building Division of the Community Development Department prior to “Construction Acceptance” of the applicable Phase of Public Improvements. Notwithstanding the foregoing, residential building permits may be issued for individual Phases in which the only remaining Public Improvements to be completed are detached sidewalks, landscaping and/or final asphalt lift for streets within that Phase, provided that a sufficient Improvement Guarantee is in place for these remaining Public Improvements in such Phase. In order to preserve the integrity of the roadways during construction, the Developer acknowledges and agrees to delay completion of the final lift of asphalt for collector streets within any individual Phase until at least 75% of the certificates of occupancy have been issued for that individual Phase. The City acknowledges and agrees that certificates of occupancy may be issued for individual Phases in which the final lift of asphalt for streets within such Phase has not been completed. Without limiting the generality of the foregoing, the City acknowledges that Phase 1A as shown on the Phasing Plan is intended to be developed as model homes, and only those Public Improvements required for Phase 1A as set forth in **Exhibit B** shall be required to be constructed and installed in connection with such Phase 1A.

- (e) Section 2.9: Maintenance of Improvements. Section 2.9 is amended by inserting at the end of Section 2.9 the following sentence:

Notwithstanding the foregoing, no provision contained in this Section 2.9 amends, rescinds or otherwise modifies the responsibility of the Developer and/or the District for their maintenance responsibilities with respect to any previous agreement(s) between Developer and the District to which the City is not a party and which may concern the responsibility (as between the Developer and the District) for maintenance of the Public Improvements, so long as said previous agreements are not in conflict with the maintenance standards set forth in this Agreement.

- (f) Section 2.12: Testing and Inspection. Section 2.12 is amended by deleting the phrase “Public Improvements Plans” and in its place inserting the defined term “Civil Engineering Documents”.

- (g) Section 2.13.1: Improvement Guarantees. Section 2.13.1 is amended by deleting the first two sentences of Section 2.13.1 and inserting in their place the following sentences:

Developer shall submit to the City an Improvement Guarantee for all Public Improvements required for the particular Phase of the Development as set forth in **Exhibit B** prior to the City's issuance of permits for such Phase. Said Improvement Guarantee may be in cash, bond, or a letter of credit in a format provided by the City. Notwithstanding the foregoing, and as more particularly set forth in Section 3.1 of the Comprehensive Agreement, if the Public Improvements are being constructed by or for the District, the City shall accept for the Improvement Guarantee up to five (5) dual obligee completion bonds from the applicable Prairie Center District(s) and/or the contractor, as appropriate, in a form acceptable to the City, wherein both the City and the appropriate contracting party (e.g., the applicable Prairie Center District(s) or the Developer) are named as beneficiaries.

- (h) **Section 3.1: Rights of Way, Easements and Permits.** Section 3.1 is amended and restated in its entirety to read as follows:

Rights-of-way and Easements. Before City may approve construction plans for any Public Improvements, Developer shall acquire, at its own expense, and convey to the City all necessary land, rights-of-way and easements required by the City for the construction of the proposed Public Improvements related to the Development. All such conveyances shall be free and clear of (i) liens, taxes, and monetary encumbrances except for ad valorem real property taxes for the current year and thereafter; and (ii) any other encumbrances that may limit such property for its intended public use, in the City's sole determination. Notwithstanding the foregoing, the dedication and conveyance of all rights of way and easements for the Development on the Property shall be subject to the requirements of the Comprehensive Agreement, including without limitation, Sections 3.5(f), 3.7(c), 3.8 and 3.9(c) thereof, and Developer shall dedicate all such rights of way and easements, if any, by the Plat and City shall be deemed to have accepted the same upon recording of the Plat. Should additional rights of way or easements permits for the development of the Property be necessary, Developer shall dedicate the same pursuant to a conveyance instrument mutually agreed upon between the City and Developer.

- (i) **Sections 3.4 and 3.6: Reimbursement.** Sections 3.4, 3.5 and 3.6 are deleted in their entirety and replaced with Section 3.10 of the Comprehensive Agreement, which is incorporated herein by this reference.

- (j) **Section 4.3: Streets.** Section 4.3 is amended and restated in its entirety to read:

Streets. Except as modified by the Project PUD, all internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time. Further, all such streets shall be constructed in accordance with the approved Civil Engineering Documents, and shall be constructed in accordance with the Public Improvements Phasing Plan, as set forth

in **Exhibit B**. The Parties acknowledge and agree that the obligation to install sidewalks comprising “street improvements” (as defined in Section 4.1) shall be in connection with, and contemporaneously with, construction of the residential improvements on the subject lot, as generally contemplated by Section 2.8.6.

- (k) Section 5.1: Public Land Conveyance. Section 5.1 is amended and restated in its entirety to read as follows:

Public Land Conveyance. Developer shall convey to the City Tract H of the Plat and shall convey to the School District Tract F of the Plat as set forth in **Exhibit D** attached hereto and incorporated herein by this reference. The City shall accept for public use only those lands which, pursuant to the title commitment, are free and clear of (i) all liens, taxes, and monetary encumbrances, except for ad valorem real property taxes for the current year and thereafter; and (ii) any other encumbrances that may limit such property for its intended public use, in the City’s sole determination. Developer shall dedicate and convey Tract H of the Plat to the City by special warranty deed, in form and substance mutually agreed upon by Developer and the City, not later than 90 days after the date the Plat is recorded. The Parties acknowledge such deed shall include an easement reservation for the benefit of the District to facilitate the District’s construction and installation of the Neighborhood Park Improvements (defined in Section 8(a)). The City shall be deemed to have accepted such deed upon recording of the same. Contemporaneously with such conveyance, Developer shall cause a title policy for Tract H to be issued to City in form and substance acceptable to City. Developer shall convey Tract F to the School District as set forth in **Exhibit G** attached hereto and incorporated herein by this reference. Should additional public lands for the development of the Property be necessary and not otherwise expressly addressed herein, as set forth in Section 3.9 of the Comprehensive Agreement, Developer shall dedicate the same pursuant to a conveyance instrument mutually agreed upon between the City and Developer.

- (l) Section 5.2: Landscape Improvements. Section 5.2 is amended and restated in its entirety to read as follows:

Landscape Improvements. The Parties acknowledge and agree that the obligation to install landscaping for rights-of-way and associated irrigation Public Improvements shall be in connection with, and contemporaneous with, development of the applicable lot abutting such right-of-way. Prior to installation of landscaping in and adjacent to rights-of-way for the applicable lot, Developer shall furnish to the City complete final landscape and irrigation plans and obtain approval by the City Manager or the Manager’s designee prior to the commencement of construction of such landscape and irrigation Public Improvements. A Prairie Center District or a Common-Interest Management

Association shall maintain the landscaping and associated irrigation within the rights-of-way of the street Public Improvements.

- (m) Section 6.2: Water Dedication. Section 6.2 is hereby deleted in its entirety. Section 11 of this **Exhibit G** addresses water dedication matters.

- (n) Section 8.2: Drainage Improvements.

- (i) Section 8.2.1 is amended by deleting the first sentence and in its place inserting the following sentence:

Drainage Public Improvements for the Development shall be constructed by Developer and in accordance with the approved Civil Engineering Documents.

- (ii) Section 8.2.2 is amended by inserting, at the end of Section 8.2.2, the following sentence:

Nothing in this Section 8.2.2 shall relieve subsequent purchasers or lot owners of the duty to comply with all approved grading and drainage plans for the Development.

- (o) Section 8.3: Post-Construction Stormwater Management. Section 8.3 is deleted in its entirety and in its place inserted the following:

Post-Construction Stormwater Management. Post construction stormwater management shall comply with Chapter 14-8 Storm Drainage BMC, as additionally described in **Exhibit H and attachments H1-H4.** All private drainage facilities shall be operated, repaired, maintained, and replaced by a Common-Interest Management Association or a Prairie Center District, according to the Maintenance Agreement for Private Drainage Structures, **Exhibit H and attachments H1-H4,** unless or until the City relieves such party of that responsibility in writing. The party responsible for such maintenance shall ensure City access to drainage facilities at the site for the purpose of inspection and repair.

- (p) Section 10.4: Assignment, Delegation and Notice. Section 10.4 is amended and restated in its entirety to read as follows:

Assignment, Delegation and Notice. Developer shall provide to the City, for approval, written notice of any proposed assignment and delegation of any obligations under this Agreement to any successor in interest of Developer, and Developer and such successor shall, until the City has given written approval of such assignment and delegation, be jointly and severally liable for the obligations of Developer under this Agreement. Notwithstanding the foregoing, the City acknowledges that the District has constructed or shall construct all of the Public

Improvements and has provided or shall provide an Improvement Guarantee therefor in accordance with Section 2.13 of this Agreement as amended by **Exhibit G** attached hereto. Accordingly, the execution of this Agreement by the Parties shall constitute Developer's notice of assignment of the obligation to construct the Public Improvements under this Agreement, and all references to Developer's obligation to construct the Public Improvements shall be deemed references to Developer's and District's joint and several obligation, and this Agreement shall constitute the City's approval of such assignment. Notwithstanding the foregoing or any provision of the Agreement to the contrary, in no event shall the District have any obligation, responsibility or liability with respect to the construction and installation of any Public Improvements or any other improvements that may be contemplated to the extent such construction and installation of the same is not permitted under the District's Service Plan, as amended from time to time, as approved by the City.

- (q) **Section 10.7: Force Majeure.** Section 10.7 is amended and restated in its entirety to read as follows:

Force Majeure. Whenever Developer or District is required to complete construction, maintenance, repair, or replacement of Public Improvements by an agreed-upon deadline, if the performance cannot as a practical matter be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer or District, Developer or District, as applicable, shall have such additional time as necessary to complete such construction, maintenance, repair, or replacement so long as such Party is diligently pursuing the same to the extent practical given the particular circumstances.

- (r) **Section 10.9: Previous Agreements.** Section 10.9 is amended and restated in its entirety to read as follows:

Previous Agreements. All previous written and recorded agreements between the Parties, their successors and assigns, including, but not limited to, the Comprehensive Agreement, shall remain in full force and effect and shall control the Development. If any prior agreements, including the Comprehensive Agreement, conflict with this Agreement, then this Agreement, including attached **Exhibit G** Special Provisions, controls.

- (s) **Section 10.11: Severability.** Section 10.11 is amended and restated in its entirety to read as follows:

Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and affect so long as enforcement of the remaining provisions would not be inequitable to the

Party against whom they are being enforced under the facts and circumstances then pertaining, or substantially deprive such Party of the benefit of its bargain under this Agreement. The Parties shall cooperate in reforming this Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition, subject to Section 2.2 of the Comprehensive Agreement.

EXHIBIT H

STORMWATER FACILITIES MAINTENANCE AGREEMENT FOR TREATMENT AND DRAINAGE FACILITIES LOCATED ON PRIVATE PROPERTY

THIS AGREEMENT is made this ____ day of _____, 20____, between Prairie Center Metropolitan District No. 3, a quasi-municipal corporation and municipal subdivision of the State of Colorado, hereinafter referred to as the “Owner,” and the City of Brighton, a Colorado home rule municipality, hereinafter referred to as “City.”

RECITALS

WHEREAS, The ordinances and regulations of the City require that stormwater treatment and drainage facilities located on private property shall be operated, maintained, repaired, and replaced as necessary by the landowner and/or other responsible party, or their successors and assigns as agreed to by the City; and

WHEREAS, This Stormwater Facilities Maintenance Agreement is entered into by the parties to provide for the continued operation, maintenance, repair, and replacement as necessary of the stormwater treatment and drainage facilities located on the property described in **Exhibit H1**, by the Owner and/or other Responsible Party as identified in **Exhibit H2**; and

WHEREAS, This Agreement specifies the stormwater facilities management requirements necessary for the operation, maintenance, repair, or replacement of stormwater treatment and drainage facilities in accordance Chapter 14, Storm Drainage, of the Brighton Municipal Code as it is amended from time to time.

COVENANTS

THE PARTIES COVENANT AND AGREE AS MORE FULLY SET FORTH HEREIN.

Section 1. Subject Property

The subject property on which the stormwater treatment and drainage facilities to be operated, maintained, repaired or replaced by the Owner and/or the Responsible Party, is more fully described in **Exhibit H1**, attached hereto and by this reference is made a part hereof (hereinafter referred to as “Property”).

Section 2. Facilities

The stormwater treatment and drainage facilities located on the Property to be operated, maintained, repaired or replaced by the Owner, and/or the Responsible Party, are more fully

described in **Exhibit H3**, attached hereto and by this reference is made a part hereof (hereinafter referred to as “Facilities”).

Section 3. Site Specific Maintenance Plan

The Owner and/or Responsible Party agree that unless expressly assumed by the City in writing, the long-term routine and extraordinary maintenance of all Facilities installed on Property are continuing obligations of the Owner and/or the Responsible Party in accordance with the terms of this Agreement and attached exhibits, including the Site Specific Maintenance Plan contained in **Exhibit H4**, attached hereto and which by this reference is made a part hereof (hereinafter referred to as “Plan”).

Section 4. Obligations of Owner and/or Responsible Party

The Owner and the Responsible Party agree to the following:

- A) All Facilities on the Property shall be maintained to meet erosion control, groundwater recharge, and stormwater runoff quantity and quality standards of Chapter 14, Storm Drainage, the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual Volume 3, and the City of Brighton Standards and Specifications Manual, Chapter 3, Drainage and Flood Control, as the same may be amended from time to time.
- B) To operate, maintain, repair, and replace as necessary all facilities, including routine and non-routine maintenance, as the same may be required by this Agreement, the ordinances, rules and regulations of the City as they may be amended from time to time. Preventative and corrective maintenance repair and replacement shall be performed to maintain the function and integrity of the Facilities.
- C) To keep the Facilities in good condition and repair, free of trash, debris, algae, standing water and other conditions that would constitute a nuisance. Such maintenance shall include, but not limited to slope stabilization, bank grading, sediment removal, mowing, repairs of mechanical and structural components, installation and maintenance of adequate landscaping as well as adequate provision for weed control and replacement of dead plant material. In the event that any detention or retention area within the Property contains standing water for more than ninety-six (96) continuous hours, the Owner and/or Responsible Party shall install an aeration or other appropriate mitigation system acceptable to the City, in order to minimize or prevent algae blooms, mosquitoes, and any other conditions that may constitute a nuisance or otherwise adversely affect the public health, safety and welfare.
- D) The Owner and/or Responsible Party shall perform regular inspections in accordance with the Plan on all required Facilities and document maintenance, repair, and replacement needs to ensure compliance with the requirements of this Agreement.

E) Upon written notification by the Director of Utilities, the Owner and/or Responsible Party shall, at their own cost and within a reasonable time period determined by the Director, have an inspection of the Facilities conducted by a qualified professional; file with the Director a copy of the written report of inspection prepared by the professional; and, within the time period specified by the Director complete (or commence and diligently pursue completion if such work reasonably requires additional time) any maintenance, repair, or replacement work recommended in the report to the satisfaction of the Director.

F) Maintenance and inspection records shall be retained by the Owner and/or Responsible Party for at least five (5) years, and shall be readily available to the Director upon request.

G) All Facilities, whether structural or non-structural, shall be maintained and the Owner and/or Responsible Party, their respective successor and assigns.

H) To perform all maintenance, repair, and replacement of “trunk lines” and “main lines” comprising any underdrain system constructed and installed within the Property as contemplated by Exhibit G to that certain Prairie Center Village I Subdivision Filing No. 1 Development Agreement relating to the Property.

Section 5. City Access to Property

By the terms of this Agreement, the Owner irrevocably grants the Director complete access to the Facilities over and across the privately owned streets or additional areas within the Property, at any reasonable time, upon notice to undertake inspections, sampling, testing, repairs or other preventative measures required to enforce the terms of this Agreement at the Owner’s expense. The City may, in its sole discretion, access the site without advanced notice for the purpose of inspection, sampling and testing of the facilities in an emergency circumstance to protect the public health, safety and welfare.

Section 6. Remediation

A) If the Director determines that operation, maintenance, and repair standards for the Facilities are not being met; or, maintenance, repairs, or replacement of Facilities is required, the Director may, in writing, direct the Owner and/or Responsible Party of the operation failures, needed maintenance, repair, replacement and/or the necessity to install any Facilities in order to keep the stormwater treatment and drainage facilities in acceptable working condition.

B) Should the Owner and/or Responsible Party fail to cure any deficiency in the notice specified in Section 6(A) above within thirty (30) days after the date of such notice, the Director may enter the Property and perform or cause to be performed the required abatement and assess the reasonable cost and expenses for such work against the Owner and/or Responsible Party as provided in Section 14-2-100 City Inspections; Costs of Remediation, of the Brighton Municipal Code, as the same may be amended from time to time. Such costs may include the actual cost of any

work deemed necessary by the Director, in order to comply with this Agreement, plus reasonable administrative, enforcement, and inspection costs.

C) The Owner and/or Responsible Party shall be jointly and severally responsible for payment of the actual cost of any work deemed necessary by the Director, in order to comply with this Agreement, plus reasonable administrative, enforcement, and inspection costs.

D) In the event the City initiates legal action occasioned by any default or action of Owner or the Responsible Party, then Owner and/or the Responsible Party agree to pay all costs incurred by City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same may become a lien against the Property.

Section 7. Notification of Change of Ownership and/or Responsible Party

The Owner and the Responsible Party shall notify the City in writing of any changes in ownership as the same is defined herein or change in the Responsible Party within thirty (30) days of the effective date of the conveyance, change, or assignment and shall provide to the City a verified statement from the new Owner or Responsible Party that it has received a copy of this Agreement and the attached exhibits and assumes the responsibilities expressed hereunder. Should the Owner or Responsible Party fail to so notify the City of such change or provide the verified statement from the new Owner or Responsible Party, the conveyance, change, or assignment shall not relieve the new Owner and/or Responsible Party of any obligations hereunder.

Section 8. Notice

All notices provided under this Agreement shall be effective when personally delivered or mailed first class mail, postage prepaid and sent to the following addresses:

If Owner:

If Responsible Party:

To Owner or Responsible Party as stated on **Exhibit H2**.

If City:

With Copy To:

Director of Utilities
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303.655.2033

City Manager
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303.655.2001

Section 9. Definitions

A) **“Director”** means the Director of Utilities of the City of Brighton, or his or her designee.

B) **“Routine”** maintenance procedures includes, but are not limited to, inspections, debris and litter control; mechanical components maintenance, repair, and replacement; vegetation management; and, other routine tasks.

C) **“Non-routine procedures”** include, but are not limited to, those associated with removing accumulated sediments from stormwater quality facilities, restoration of eroded areas, snow and ice removal, fence repair or replacement, restoration of vegetation and long term structural repair, maintenance and replacement.

D) **“Owner”** means the legal or beneficial owner of the subject portion of the Property, including those persons holding the right to purchase or lease the Property or any other person holding proprietary rights in the Property as identified in **Exhibit H2**, including their agents, representatives, successors and assigns.

E) **“Responsible Party”** means the party, person or entity that is responsible for the maintenance of the facilities as required by this Agreement as identified in **Exhibit H2** including their agents, representatives, successors and assigns. Unless otherwise specified in this Agreement and the exhibits attached hereto, the obligations of the Responsible Party and the Owner are joint and several.

F) **“Stormwater treatment and drainage facilities”** include, but are not limited to, storm sewer inlets, pipes, culverts, channels, ditches, hydraulic structures, rip-rap, detention basins, micro-pools, water quality facilities and on-site control measure(s) to minimize pollutants in urban runoff as more fully set forth in **Exhibit H3**.

G) **“Unit Owner’s Association”** means an association organized under C.R.S. §38-33.3-301.

H) All the definitions and requirements of Chapter 14 of the Brighton Municipal Code are incorporated by reference into this Agreement.

Section 10. Miscellaneous

A) The burdens and benefits in this Agreement constitute covenants that run with the Property and are binding upon the parties and their heirs, successors and assigns. Owner will notify any successor to title of all or part of the Property about the existence of this Agreement. Owner will provide this notice before such successor obtains an interest in all or part of the Property. Owner will provide a copy of such notice to City at the same time such notice is provided to the successor.

B) The Owner shall record this Agreement in the records of the Clerk and Recorder of Adams County and return a copy of the recorded Agreement to the City with the recording information reflected thereon.

C) The parties agree that the interpretation and construction of this Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court for Adams County, Colorado.

D) Except as provided in Section 6(D) above, in the event of any litigation between the parties regarding their respective rights and obligations hereunder, the substantially prevailing party shall be entitled to receive reasonable attorney fees and costs incurred in connection with such action.

E) If any portion of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable, such portion shall be deemed as severed from this Agreement, and the balance of this Agreement shall remain in effect.

F) Each of the parties hereto agrees to take all actions, and to execute all documents, that may be reasonably necessary or expedient to achieve the purposes of this Agreement.

G) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.:

CITY OF BRIGHTON, COLORADO

By: _____
Curtis Bauers, Director of Utilities

Attest:

By: _____
Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

OWNER/RESPONSIBLE PARTY:

PRAIRIE CENTER METROPOLITAN DISTRICT
NO. 3, a quasi-municipal corporation and political
subdivision of the State of Colorado

ATTEST:

Ann Finn, Secretary

By:_____
Michael Tamblyn, President

EXHIBIT H1
Property Description

Tracts A, B and C, Prairie Center Village I Subdivision Filing No. 1, City of Brighton, County of Adams, State of Colorado.

EXHIBIT H2
Owner/Responsible Party Contact Information

Owner/Responsible Party:

Prairie Center Metropolitan District No. 3

Attn: Ann Finn

141 Union Blvd., Ste. 150

Lakewood, CO 80228

Copy all communications to:

McGeady Becher, P.C.

Attn: MaryAnn McGeady

450 E 17th Avenue, Ste. 400

Denver, CO 80203-1214

EXHIBIT H3
Facilities Description and Location Map

Detention ponds and appurtenances thereto located on the Property, including, but not limited to, forebays, micro-pools, spillways, outlet structures and trickle channels, all as more particularly described in the Prairie Center Development On-Site Regional Detention Ponds and Outfall, City of Brighton, County of Adams, State of Colorado, Public Improvement Construction Plans, produced by JR Engineering, Job No. _____, dated _____, as amended (referenced as ponds 4, 5 and 6 therein).

EXHIBIT H4
Site Specific Maintenance Plan
(Use UDFCD Recommendation)

In order for stormwater facilities to be effective, proper maintenance is essential. Maintenance includes both, routinely scheduled activities, as well as non-routine repairs that may be required after large storms, or as a result of other unforeseen problems. Planning level maintenance for the individual stormwater facilities is included in this Site Specific Maintenance Plan

1) Retention/Detention Ponds:

Responsibilities:

The Owner is solely responsible for long-term maintenance of any pond and any inlet or outlet infrastructure, including re-connection to the future outfall system.

Inspection

Inspect the pond at least annually. Note the amount of sediment in the forebay and look for debris at the outlet structure.

Debris and Litter Removal

Remove debris and litter from the pond as needed. This includes floating debris that could clog the outlet or overflow structure.

Aquatic Plant Harvesting

Harvesting plants will permanently remove nutrients from the system, although removal of vegetation can also re-suspend sediment and leave areas susceptible to erosion. Additionally, the plants growing on the safety wetland bench of a retention pond help prevent drowning accidents by demarking the pond boundary and creating a visual barrier. For this reason, harvesting vegetation completely as routine maintenance is not recommended. However, aquatic plant harvesting can be performed if desired to maintain volume or eliminate nuisances related to overgrowth of vegetation. When this is the case, perform this activity during the dry season (November to February). This can be performed manually or with specialized machinery. If a reduction in cattails is desired, harvest them annually, especially in areas of new growth. Cut them at the base of the plant just below the waterline, or slowly pull the shoot out from the base. Cattail removal should be done during late summer to deprive the roots of food and reduce their ability to survive winter

Mosquito Control

Mosquito control may be necessary if the pond is located in proximity to outdoor amenities. The

most effective mosquito control programs include weekly inspection for signs of mosquito breeding with treatment provided when breeding is found. These inspections and treatment can be performed by a mosquito control service and typically start in mid-May and extend to mid-September. The use of larvicidal briquettes or "dunks" is not recommended for ponds due to their size and configuration.

Sediment Removal from the Forebay

Remove sediment from the forebay before it becomes a significant source of pollutants for the remainder of the pond. More frequent removal will benefit long-term maintenance practices. For dry forebays, sediment removal should occur once a year. Sediment removal in wet forebays should occur approximately once every four years or when build up of sediment results in excessive algae growth or mosquito production. Ensure that the sediment is disposed of properly and not placed elsewhere in the pond.

Sediment Removal from the Pond Bottom

Removal of sediment from the bottom of the pond may be required every 10 to 20 years (for retention ponds) or 15-25 years (for detention ponds) to maintain volume and deter algae growth. This typically requires heavy equipment, designated corridors, and considerable expense. Harvesting of vegetation may also be desirable for nutrient removal. When removing vegetation from the pond, take care not to create or leave areas of disturbed soil susceptible to erosion. If removal of vegetation results in disturbed soils, implement proper erosion and sediment control practices until vegetative cover is reestablished. For constructed wetland ponds, reestablish growth zone depths and replant if necessary.

Sediment Removal from the Trickle Channel, and Micropool

Remove sediment from the trickle channel annually. Sediment removal from the micropool is required about once every one to four years, and should occur when the depth of the pool has been reduced to approximately 18 inches. Small micropools may be vacuumed and larger pools may need to be pumped in order to remove all sediment from the micropool bottom. Removing sediment from the micropool will benefit mosquito control. Ensure that the sediment is disposed of properly and not placed elsewhere in the basin.

Erosion and Structural Repairs

Repair basin inlets, outlets, trickle channels, and all other structural components required for the basin to operate as intended. Repair and vegetate eroded areas as needed following inspection.

2) Swales:

Responsibilities

The Owner is responsible for long-term maintenance of any swale within the owner's property; the City is responsible for long-term maintenance of any swale within the City's Property.

Inspection

Grass buffers and swales require maintenance of the turf cover and repair of rill or gully development. Healthy vegetation can often be maintained without using fertilizers because runoff from lawns and other areas contains the needed nutrients. Periodically inspecting the vegetation over the first few years will help to identify emerging problems and help to plan for long-term restorative maintenance needs. Inspect vegetation at least twice annually for uniform cover and traffic impacts. Check for sediment accumulation and rill and gully development.

Debris and Litter Removal

Remove litter and debris to prevent rill and gully development from preferential flow paths around accumulated debris, enhance aesthetics, and prevent floatables from being washed offsite. This should be done as needed based on inspection, but no less than two times per year.

Aeration

Aerating manicured grass will supply the soil and roots with air. It reduces soil compaction and helps control thatch while helping water move into the root zone. Aeration is done by punching holes in the ground using an aerator with hollow punches that pull the soil cores or "plugs" from the ground. Holes should be at least 2 inches deep and no more than 4 inches apart. Aeration should be performed at least once per year when the ground is not frozen. Water the turf thoroughly prior to aeration. Mark sprinkler heads and shallow utilities such as irrigation lines and cable TV lines to ensure those lines will not be damaged. Avoid aerating in extremely hot and dry conditions. Heavy traffic areas may require aeration more frequently.

Mowing

When starting from seed, mow native/drought-tolerant grasses only when required to deter weeds during the first three years. Following this period, mowing of native/drought tolerant grass may stop or be reduced to maintain a length of no less than six inches. Mowing of manicured grasses may vary from as frequently as weekly during the summer, to no mowing during the winter.

Irrigation Scheduling and Maintenance

Irrigation schedules must comply with the City of Brighton water regulations. The schedule must provide for the proper irrigation application rate to maintain healthy vegetation. Less irrigation is typically needed in early summer and fall, with more irrigation needed during July and August. Native grass should not require irrigation after establishment, except during prolonged dry periods when supplemental, temporary irrigation may aid in maintaining healthy vegetation cover. Check for broken sprinkler heads and repair them, as needed. Do not overwater. Signs of overwatering and/or broken sprinkler heads may include soggy areas and unevenly distributed areas of lush growth.

Completely drain and blowout the irrigation system before the first winter freeze each year. Upon reactivation of the irrigation system in the spring, inspect all components and replace damaged parts, as needed.

Fertilizer, Herbicide, and Pesticide Application

Use the minimum amount of biodegradable nontoxic fertilizers and herbicides needed to establish and maintain dense vegetation cover that is reasonably free of weeds. Fertilizer application may be significantly reduced or eliminated by the use of mulch-mowers, as opposed to bagging and removing clippings. To keep clippings out of receiving waters, maintain a 25-foot buffer adjacent to open water areas where clippings are bagged. Hand-pull the weeds in areas with limited weed problems.

Frequency of fertilizer, herbicide, and pesticide application should be on an as-needed basis only and should decrease following establishment of vegetation.

Sediment Removal

Remove sediment as needed based on inspection. Frequency depends on site-specific conditions. For planning purposes, it can be estimated that 3 to 10% of the swale length or buffer interface length will require sediment removal on an annual basis.

☐ **For Grass Buffers:** Using a shovel, remove sediment at the interface between the impervious area and buffer.

☐ **For Grass Swales:** Remove accumulated sediment near culverts and in channels to maintain flow capacity. Spot replace the grass areas as necessary.

Reseed and/or patch damaged areas in buffer, sideslopes, and/or channel to maintain healthy vegetative cover. This should be conducted as needed based on inspection. Over time, and depending on pollutant loads, a portion of the buffer or swale may need to be rehabilitated due to sediment deposition. Periodic sediment removal will reduce the frequency of revegetation required. Expect turf replacement for the buffer interface area every 10 to 20 years.

3) Storm sewer inlet pipes, boxes and manholes:

Responsibilities

The property owner is hereby accepting long-term maintenance responsibilities of storm sewer pipes, inlets and MH located in private property.

Inspection

Frequent inspections of storm pipes, inlets and manholes are recommended in the first two years, and then annually. Look for debris and strong odors indications.

Debris and Litter removal

Remove silt and flow blocking debris as soon as possible. Remove sediment and waste collected from cleaning activities of the drainage system in appropriate containers to approved off-site disposal areas. A vac-jet truck maybe needed to perform this work by properly trained personnel.

Erosion and Structural Repairs

Repair all structural components required for the pipe, inlet and manhole to operate as intended.

4) Emergency Spillways:**Responsibilities**

The Owner is solely responsible for long-term maintenance of all ponds' spillways.

Inspection

Inspect annually.

Erosion and Structural Repairs

Repair all structural components required for the spillway to operate as intended.