

**BRIGHTON CITY COUNCIL RESOLUTION  
BRIGHTON COMMONS FINAL PLAT AND  
DEVELOPMENT AGREEMENT**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE BRIGHTON COMMONS FINAL PLAT AND DEVELOPMENT AGREEMENT FOR APPROXIMATELY 8.5 ACRES OF PROPERTY, GENERALLY LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO, COMMONLY KNOWN AS BRIGHTON COMMONS, AUTHORIZING THE MAYOR TO EXECUTE THE DEVELOPMENT AGREEMENT; AND SETTING FORTH OTHER DETAILS RELATED THERETO.**

**RESOLUTION NO.: 2017-73**

*WHEREAS*, Stratus Brighton Commons, L.L.C. (the “Owner”), owns an approximately 8.5 acre property, generally located at the southeast corner of 50<sup>th</sup> Avenue and Bridge Street, and more specifically described in **EXHIBIT A**, attached hereto (the “Property”); and

*WHEREAS*, CWC Consulting (the “Applicant”), on behalf of the Owner, has requested approval of the Brighton Commons Final Plat, attached hereto as **EXHIBIT B** (the “Final Plat”); and

*WHEREAS*, the City Council approved an ordinance (Ordinance No. 1934) to annex the Property into the City boundary on February 19, 2008; and

*WHEREAS*, the City Council approved an ordinance (Ordinance No. 2237) to zone the Property as Brighton Commons Amended PUD, on October 26, 2016; and

*WHEREAS*, the City Council finds and declares that a Notice of Public Hearing was mailed to all adjacent property owners, consistent with the public notice requirements of the *Municipal Code*; and

*WHEREAS*, the City Council finds and declares that, although not required by the *Municipal Code*, a Notice of Public Hearing was posted on the Property and published in the *Brighton Blade*, for no less than five (5) days prior to the date of the City Council public hearing; and

*WHEREAS*, the City Council conducted a public hearing, during its regular meeting, on July 18, 2017, to review and consider the Final Plat and Development Agreement for the Property; and

*WHEREAS*, the City Council has reviewed the Final Plat pursuant to the applicable provisions and criteria set forth in the *Municipal Code*; and

**WHEREAS**, the City Council finds and declares that the Final Plat does comply with the requirements of the Final Plat procedures and Subdivision Regulations, provides consistency with the purpose and intent of the regulations, provides compatibility with surrounding areas, is harmonious with the character of the neighborhood, is not detrimental to the immediate area, is not detrimental to the future development of the area, and is not detrimental to the health, safety, or welfare of the inhabitants of the City.

***NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:***

Section 1. That the Brighton Commons Final Plat, attached hereto as **Exhibit B**, is hereby approved.

Section 2. That the Brighton Commons Development Agreement, attached hereto as **Exhibit C**, is hereby approved.

Section 3. That the Mayor is authorized to execute the Final Plat for Brighton Commons and the Brighton Commons Development Agreement, and in furtherance thereof, that the City Manager and/or his designees are hereby authorized and directed to execute such additional documents, agreements and/or related instruments, and to take such acts as are reasonably necessary, to carry out the terms and provisions of the Agreement, for and on behalf of the City of Brighton.

***RESOLVED, this 18<sup>th</sup> day of July, 2017.***

**CITY OF BRIGHTON, COLORADO**

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Richard N. McLean, Mayor

***ATTEST:***

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Natalie Hoel, City Clerk

***APPROVED AS TO FORM:***

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Margaret R. Brubaker, Esq., City Attorney

**EXHIBIT A**  
**Legal Description**

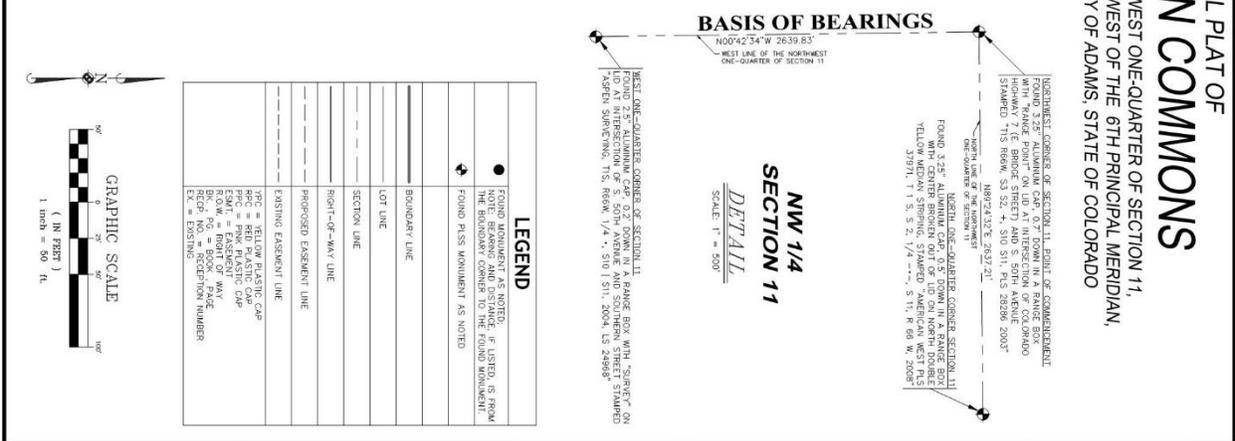
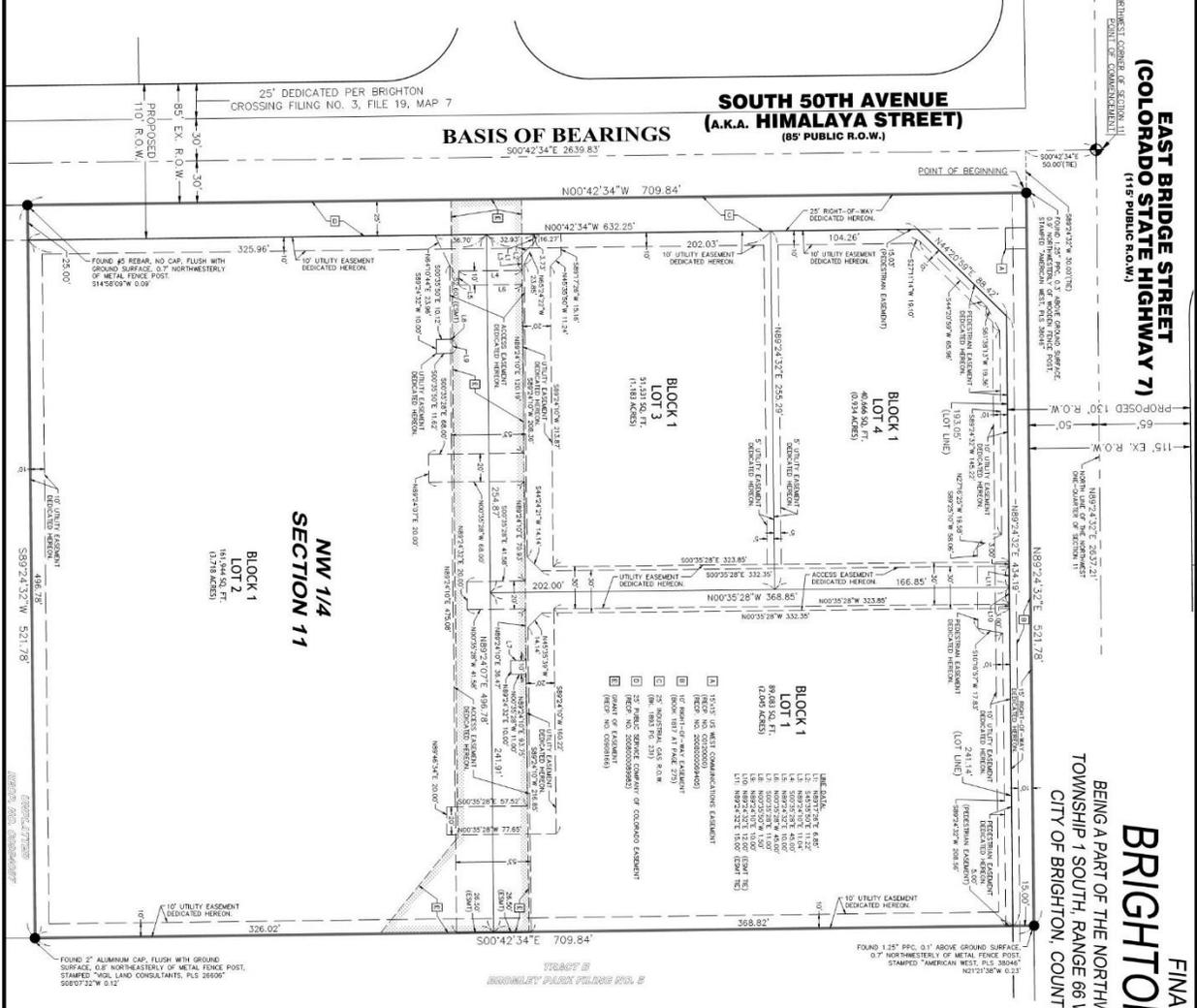
That part of the North one-half Northwest one quarter, Section 11, Township 1 South, Range 66 West of the 6th P.M., Adams County Records described as:

Beginning at the Northwest corner North one-half said Northwest one-quarter; thence S 00°00'00" W on an assumed bearing along the West line said North one-half Northwest one-quarter a distance of 50.00 feet; thence S 89°53'14" E parallel with the North line said North one-half Northwest one-quarter a distance of 30.00 feet to the true point of beginning; thence continuing S 89°53'14" E parallel with said North line a distance of 521.78 feet to a point; thence S 00°00'00" W parallel with the West line said North one-half Northwest one-quarter a distance of 834.84 feet; thence N 89°53'14" W parallel with the North line said North one-half Northwest one-quarter a distance of 521.78 feet to a point 30.00 feet East of the West line said North one-half Northwest one-quarter; thence N 00°00'00" E parallel with said West line a distance of 834.84 feet to the true point of beginning;

Except that portion conveyed in Deed recorded June 14, 2002 at Reception No. C0984087,

County of Adams,  
State of Colorado.





DRAFTED: S.L.G.3 DATE: JANUARY 6, 2017 SHEET NO. 2 OF 2 SHEETS SURVEY PREPARED FOR: STRATUS COMPANIES	CHECKED: E.D.C. JOB NO. 159-00023 FILE NO. 00017	<b>BRIGHTON COMMONS</b> FINAL PLAT PART OF THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN SHEET 2 - PLAT DETAIL		DATE: 04/11/17 REVISION: ADDRESSED CITY OF BRIGHTON COMMENTS BY: SLG3	 6900 TEDDY LANE SUITE 6000 LONG BEACH, COLORADO 80508 TELEPHONE: 303-266-7700 FAX: 303-266-7701 ONE ENGINEERING - LAND SURVEYING - CONSTRUCTION SERVICES
		DATE: 05/16/17 REVISION: MODIFIED PLAT WITH TWO ADDITIONAL LOTS BY: SLG3			

**EXHIBIT C**  
**Development Agreement**

**BRIGHTON COMMONS**  
**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of June, 2017 by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado (the “City”) and Stratus Brighton Commons, LLC a Colorado limited liability company (the “Developer”).

**WHEREAS**, the Developer has submitted a Final Plat (the “Plat”), Brighton Commons (the “Development” or “Property”), attached hereto as **Exhibit A** and incorporated herein by reference. Said Plat has been reviewed and approved by the City Council of the City of Brighton; and

**WHEREAS**, Stratus Companies is the owner of an approximately 8.5-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 and the Developer (the “Parties”) hereto promise, covenant, and agree as follows:

**SECTION 1**  
**DEFINITIONS**

**Definitions.** The following terms and definitions shall apply to this Development Agreement and the exhibits and attachments hereto. If there is a conflict between the following definitions and a specific provision of the Development 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 this Development 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 this Development 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 this Development 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 this Development 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
  - 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 detached sidewalks and/or 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.”

**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

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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, it's successor or assign will forfeit all rights to reimbursement from the owner and/or developer of the specified property.

**2.6 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**

**3.1 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.

- 3.2 **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.
- 3.3 **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

- 5.1 **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.

- 5.2 **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

- 6.1 **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

- 7.1 **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.

- 7.2 **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**, 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.

- 7.3 **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 this Agreement, attached hereto and incorporated herein by this reference.

## **SECTION 10 MISCELLANEOUS TERMS**

- 9.1 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.

- 9.2 **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.
- 9.3 **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.
- 9.4 **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 Development 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.
- 9.5 **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.
- 9.6 **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

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

Developers:

Stratus Brighton Common, LLC  
8480 E Orchard Road, Ste. 1100  
Greenwood Village, CO 80111  
Attn; Richard Dean

With a copy to:  
Greenberg, Traurig LLP  
1200 17<sup>th</sup> Street  
Suite 2400  
Denver, CO 80202  
Attn: Keith Pockross

**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.**

- 9.7 **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.

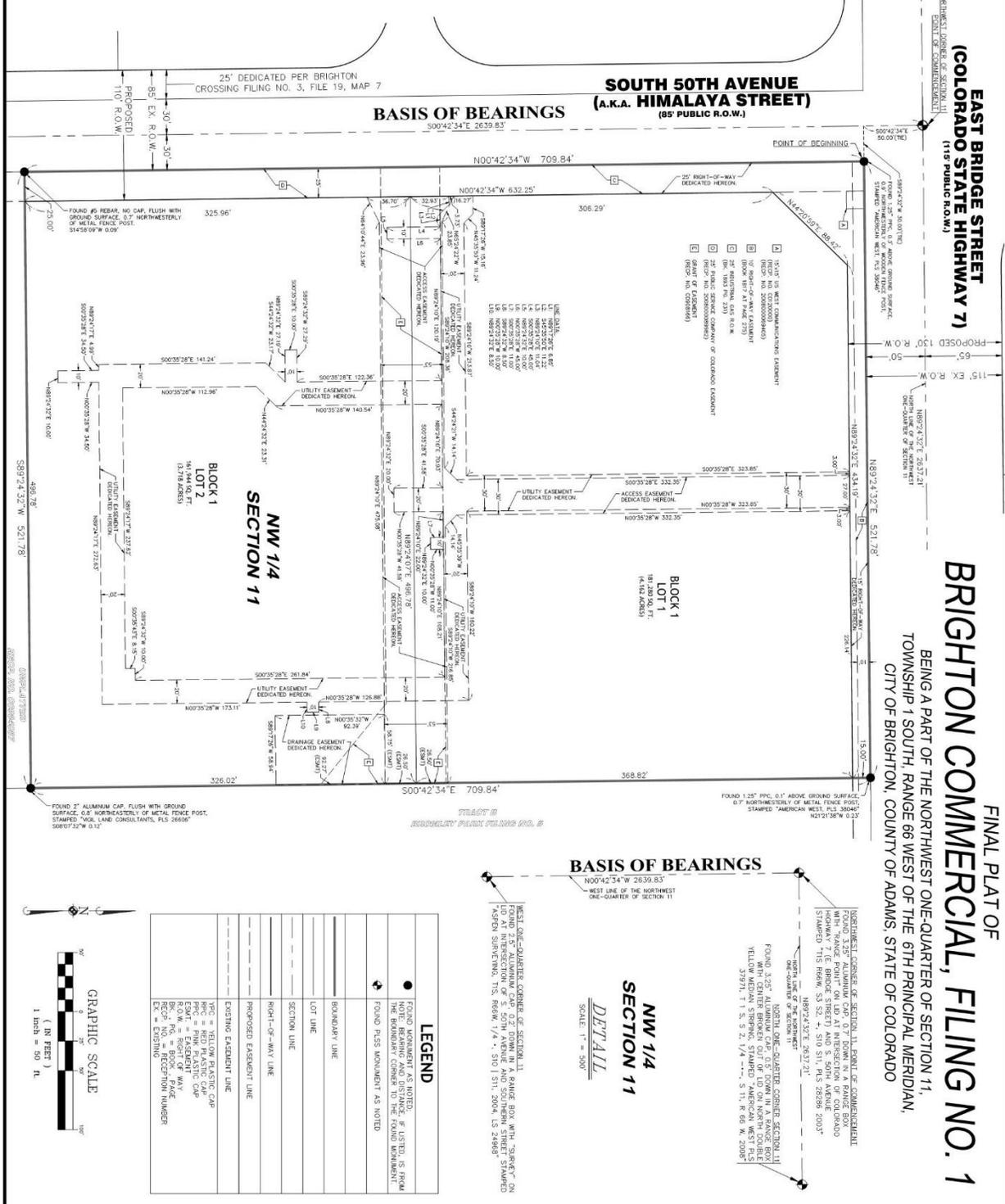
- 9.8 Approvals.** Whenever approval or acceptance of a matter is required or requested of the City, pursuant to any provisions of the Agreement, the City shall act reasonably in responding to such matter.
- 9.9 Previous Agreements.** All previous written and recorded agreements, between the Parties, 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.
- 9.10 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.
- 9.11 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.
- 9.12 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.

**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]







2	DRAFTED: S.L.G.3	CHECKED: E.D.C.
2	DATE: JANUARY 6, 2017	JOB NO. 120-00023 130-00012
	SURVEY PREPARED FOR: STRATUS COMPANIES	

**BRIGHTON COMMERCIAL, FILING NO. 1**  
 FINAL PLAT  
 PART OF THE NORTHWEST ONE-QUARTER OF SECTION 11,  
 TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN  
 SHEET 2 - PLAT DETAIL

DATE	REVISION	BY

**CWC CONSULTING GROUP**  
 CIVIL ENGINEERING • LAND SURVEYING • CONSTRUCTION SERVICES

5800 TEDDY LANE, SUITE 4030  
 LOUIS VEGAS, COLORADO 80124  
 TELEPHONE: 303-550-0000  
 FAX: 303-550-2711



LEGEND	
●	FOUND MONUMENT AS NOTED. IF LISTED, IS FROM FOUND PLSS MONUMENT AS NOTED.
○	FOUND PLSS MONUMENT AS NOTED.
—	BOUNDARY LINE
—	LOT LINE
—	SECTION LINE
—	RIGHT-OF-WAY LINE
—	PROPOSED EASEMENT LINE
—	EXISTING EASEMENT LINE
—	TYPC = YELLOW PLASTIC CAP
—	PRPC = RED PLASTIC CAP
—	PRPC = RED PLASTIC CAP
—	ESMT = EXISTENT MARY
—	BK = BOOK
—	PLC = PAGE
—	REC. NO. = RECEPTION NUMBER
—	EX. = EXISTING

**NW 1/4 SECTION 11 DETAIL**  
 SCALE: 1" = 500'

**EAST BRIDGE STREET (COLORADO STATE HIGHWAY 7) (115' PUBLIC R.O.W.)**

**BRIGHTON COMMERCIAL, FILING NO. 1**

BEING A PART OF THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

**FINAL PLAT OF**

**EXHIBIT B**  
**Schedule of Public Improvements**

Type of Improvements	Quantity/ Length	Unit Cost	Total Estimate by Line Item	Total Actual Cost at Construction Acceptance
Streets	1955 LF	\$111.14	\$217,278.70	
Alleys				
Curb/Gutter/Sidewalks	1955 LF	\$ 61.75	\$120,721.25	
Medians and Landscaping	2193 LF	\$ 21.25	\$ 46,601.25	
Bridges/Crossings/Culverts				
Guard Rails				
Street Lights				
Traffic Signal Lights				
Park Landscaping				
Park Amenities (play equipment and services)				
Trails/Paths				
Fencing				
Retaining Walls				
Public Parking Lots				
Fire Hydrants				
Potable Water Lines	844 LF	\$ 63.56	\$ 53, 644.64	
Non-Potable Water Lines				
Irrigation Systems				
Sanitary Sewer Lines	300 LF	\$ 74.25	\$ 22,275.00	
Storm Sewer Lines	80.00 LF	\$ 115.94	\$ 9,275.00	
Retention and Detention	1 Sed Pond	\$ 4,500.00	\$4,500.00	
Public landscape				
Other: <i>Please define</i>				

**EXHIBIT C**  
**Irrevocable Letter of Credit Form**

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**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.**

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**LENDER'S  
LETTERHEAD**

TO: City of Brighton, Colorado  
500 South 4<sup>th</sup> 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



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**

[Not Applicable to this Agreement]

**EXHIBIT E**  
**Restrictive Dry-Up Covenant; Grant of Easement;  
Warranty of First Right to Dry-Up Credit; and Agreement to Assist**

[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 Stratus Brighton Commons, LLC a Colorado limited liability company (the “Developer”).

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

**WHEREAS**, in conjunction with the approval of the Preliminary 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 Development, 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 pay the “without water rights” fee.

**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. The DEVELOPER will pay at building permit issuance the “*Without Water Rights*” Fee for water taps 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 payment is made.
2. This Agreement shall be an attachment to the Brighton Commons Development Agreement and incorporated therein by references.
3. This Agreement is non-transferable 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:**



**EXHIBIT G**  
**Special Provisions**

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN BRIGHTON COMMONS DEVELOPMENT AGREEMENT, BETWEEN THE CITY OF BRIGHTON, COLORADO, AND STRATUS BRIGHTON COMMONS, LLC. SHOULD THERE BE ANY CONFLICT BETWEEN THE DEVELOPMENT AGREEMENT AND THE SPECIAL PROVISIONS SET FORTH IN THIS **EXHIBIT G**, THE TERMS OF THIS **EXHIBIT G** SHALL CONTROL.

1. **Definitions.** The following terms and definitions shall apply to this Exhibit G, Special Provisions:
  - A. The term “Final Plat” shall mean the Brighton Commons Final Plat, as finally approved by the City.
  - B. The term “Construction Plans” shall mean the Brighton Commons Construction Plans, as finally approved by the City.
  - C. The term “City Specifications” shall mean the *Public Works Standards and Specifications Manual, 2015 Edition*, as the same may be amended.
  - D. The term "Landscape Plans" shall mean the Landscape Plans approved by the City as part of the Construction Plans and Final Development Plans for each parcel within the Development.
2. **Phasing Plan.** The Developer intends to construct the infrastructure in a single Phase.
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 of Community Development.
4. **City Regulations.** Developer agrees to develop the Property in conformance with the Brighton Municipal Code, Land Use Code, all applicable master plans, adopted standards and specifications, and all applicable City regulations and ordinances, as the same be amended from time to time, and in effect at the time of their application to the Development.
5. **Creation of an Owners’ Association.** The developer shall create an Owners’ Association to oversee those common areas designated by the Developer to be maintained by an Owners’ Association; presently, those common areas include, without limitation the private street and utilities located in the 30’ access and utility easements identified on the Final Plat. Upon the creation of the Owners’ Association, the Developer shall provide to the City copies of all documentation evidencing the creation of the Association and its assumption of the aforementioned maintenance responsibilities same prior to, and as a condition precedent to, the issuance of any building permits for property within the Development.
6. **Neighborhood Park, Community Park, and Open Space Land Dedication.** The proposed use of the Property is for solely commercial purposes. As such there is no

requirement for dedication of land or payment of a fee in lieu of dedication for neighborhood parks, community parks or open space. If any of the Property is developed for residential use in the future, the owner thereof shall pay the required fee-in-lieu of dedication for Neighborhood Park(s), Community Park(s), and Open Space Land according to the standards and in the amounts in place at the time the first building permit is issued for any residential use on the Property.

7. **Trails/Sidewalk Construction.** The trails, public sidewalks, and private sidewalks within the Development shall be constructed as follows:
  - A. The Developer, at its sole cost and expense, shall design and construct all public sidewalks within the Development, and receive written acceptance thereof from the City, prior to the issuance of any certificates of occupancy for any buildings within the Development.
  - B. The Owner of each parcel, at its sole cost and expense, shall be responsible to design and construct all trails and private sidewalks found on their property, prior to the issuance of any certificates of occupancy for any buildings on the Owner's parcel.
  - C. All trails, public sidewalks, and private sidewalks shall be constructed in accordance with the Final Plats, Landscape Plans, Construction Plans, and applicable City specifications in effect at the time of construction.
  
8. **Construction of Bridge Street.** Developer, at its sole cost and expense, shall construct to completion, Bridge Street as a Major Arterial, as follows:
  - A. The Developer shall, at its sole cost and expense, construct the south one-half of Bridge Street adjacent to the subject Property in accordance with the Final Plats, Construction Plans, Landscape Plans, and other applicable City specifications in effect at the time of construction. No certificates of occupancy shall be issued for any building(s) in the Development until such time as the construction of this portion of Bridge Street is completed, and Construction Acceptance has been granted by the City.
  - B. In accordance with the approved PUD Plan for the Property, the Developer shall construct the public sidewalk on the south side of Bridge Street from the east property line approximately 730 feet east to the existing public sidewalk. The sidewalk construction shall be in substantial conformance with the Construction Plans provided by the City. The sidewalk shall be funded using development impact fees associated with the Brighton Commons development. The sidewalk shall be installed by the Developer on final grades (an earthen bench graded to final specification) constructed by the City. The sidewalk shall be constructed prior to the issuance of the first certificate of occupancy for the Development. If the final grades have not been completed by the City by the time of the first certificate of occupancy for the Development, the Developer shall pay a fee of \$45,077.50 as full consideration in lieu of the sidewalk and shall be relieved of any further obligation for the sidewalk.
  - C. The Developer acknowledges that access from Bridge Street into and out of the Development will be restricted to a right in/right out only, with no left turns available for incoming or outgoing traffic.

9. **Construction of 50<sup>th</sup> Avenue.** Developer, at its sole cost and expense, shall construct to completion, 50<sup>th</sup> Avenue as a Minor Arterial, as follows:
  - A. The Developer shall, at its sole cost and expense, construct the east one-half of 50<sup>th</sup> Avenue adjacent to the subject Property in accordance with the Final Plats, Construction Plans, Landscape Plans, and other applicable City specifications in effect at the time of construction. No certificates of occupancy shall be issued for any building(s) within the Development until such time as the construction of this portion of 50<sup>th</sup> Avenue is completed, and Construction Acceptance has been granted by the City.
  
10. **Maintenance of Trails/Sidewalks/Tree Lawn.** The Developer acknowledges and agrees that the owner of each parcel within the Development is responsible for the maintenance of all landscaping and the sidewalk located between the back-of-curb and the subject Property along those portions of 50<sup>th</sup> Avenue and Bridge Street that abut the Property. Maintenance as used herein includes, without limitation, irrigation, trimming, weeding, repairs, replacement, and snow removal.
  
11. **Annexation into the Metro District.** Developer, at its sole cost and expense, shall undertake all tasks necessary to annex the Development into either the Bromley Park No. 6 Metropolitan District, or the Adams East Metropolitan District, both of which have an intergovernmental agreement with the South Beebe Draw Metropolitan District for management of storm drainage (the “District”). The ultimate District that the Development will be annexed into will be as directed by Beebe Draw. Any fees assessed by the District are the sole responsibility of the Developer. No building permits shall be issued for any structure within the Development until such as time as the Developer completes the annexation into the District and provides written documentation to the City in support thereof.
  
12. **Construction and Maintenance of Private Streets.** The specified private streets in the access easement, more specifically described in the Final Plat, Construction Plans and Landscape Plans shall be constructed at the sole costs and expense of the Developer prior to the issuance of any certificates of occupancy for property within the Development. Consistent with the provisions of paragraph 5 above, those streets shall be maintained by the Owners’ Association; and, upon the creation of the Owners’ Association, the Developer shall provide to the City copies of all documentation evidencing the same prior to, and as a condition precedent to, the issuance of any building permits for property within the Development.
  
13. **Construction and Maintenance of Private Drainage Infrastructure.** The Developer, at its sole cost and expense, and in accordance with paragraph 11 above, shall construct to completion the specified drainage facilities and related infrastructure, including, without limitation, ponds, storm water culverts, and related drainage infrastructure, as more specifically described in the Final Plats, Construction Plans, and Landscape Plans. The drainage facilities and related infrastructure shall be maintained by Developer in full compliance with the provisions and requirements set forth in the Stormwater Facilities Maintenance Agreement for Treatment and Drainage Facilities Located on Private Property attached hereto as Exhibit H, and incorporated herein by this reference.

Maintenance as used herein shall include, at a minimum, routine maintenance and cleaning of the culverts and associated infrastructure, removal of debris, repair and replacement as necessary.

14. **Public Sanitary Sewer Construction.** The Developer, at its sole cost and expense, shall construct to completion that portion of the 8 inch public sanitary sewer line from the existing public sanitary sewer main on the Property through the length of the utility easement, more fully described on the Final Plat, to service all future lots of the Development, as more specifically set forth in the Final Plats, Construction Plans, and Landscape Plans. Prior to issuance of any building permits for the Development.
15. **Brighton School District Capital Facility Fee.** The proposed use of the Property is for solely commercial purposes. As such, there is no requirement that the Developer participate in the School District Capital Facility Fee Foundation. However, if any portion of this Development is used for residential purposes, the Developer is aware of the School District Capital Facility Fee Foundation, whose purpose is to administer the collection from various Development Entities of a “Capital Facility Fee” for disbursal to School District 27J to fund a portion of the costs of providing additional capital facilities to service new growth, and has voluntarily agreed to be a participating Development Entity in that process and, accordingly, enter into a Participant Agreement with the School District. In addition, any portion of the subject Property is used for residential purposes, the Developer agrees to pay a Brighton School District Capital Facility Fee for each residential unit. Fees payable to the Foundation shall be paid directly to the School District as part of the each residential building permit. After establishment and assessment of any school fees as aforesaid, as a condition of approval of any residential building permit, the Developer shall provide evidence to the City that such fees have been paid to the Foundation in accordance with this section, prior to the release of a residential building permit.
16. **Improvement Guarantees.** Notwithstanding section 2.13.1(A), the Improvement Guarantees shall be required prior to issuance of the Construction Permit.

**EXHIBIT H**  
**Stormwater Facilities Maintenance Agreement for  
Treatment and Drainage Facilities Located on Private Property**

**THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Stratus Brighton Commons, LLC, 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 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 and non-structural, shall be maintained and the Owner and/or Responsible Party in perpetuity, unless otherwise specified in writing by the Director.

H) To perform all additional maintenance, repair, and replacement as set forth in **Exhibit G of the Development Agreement**, Special Provisions, attached hereto and which by this reference is made a part hereof.

### **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 within thirty (30) days of the date of the notice specified in 7 (A) above, 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 other 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 a 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, 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 as a common interest community which may be a Responsible Party under the terms and conditions of this Agreement.

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 the appropriate 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 Weld County, Colorado.

D) Except as provided in Section 7 (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:**

By: \_\_\_\_\_  
Richard Dean, Manager

By: \_\_\_\_\_  
Richard Dean, Manager

**EXHIBIT H1**  
**Property Description**

That part of the North one-half Northwest one quarter, Section 11, Township 1 South, Range 66 West of the 6th P.M., Adams County Records described as:

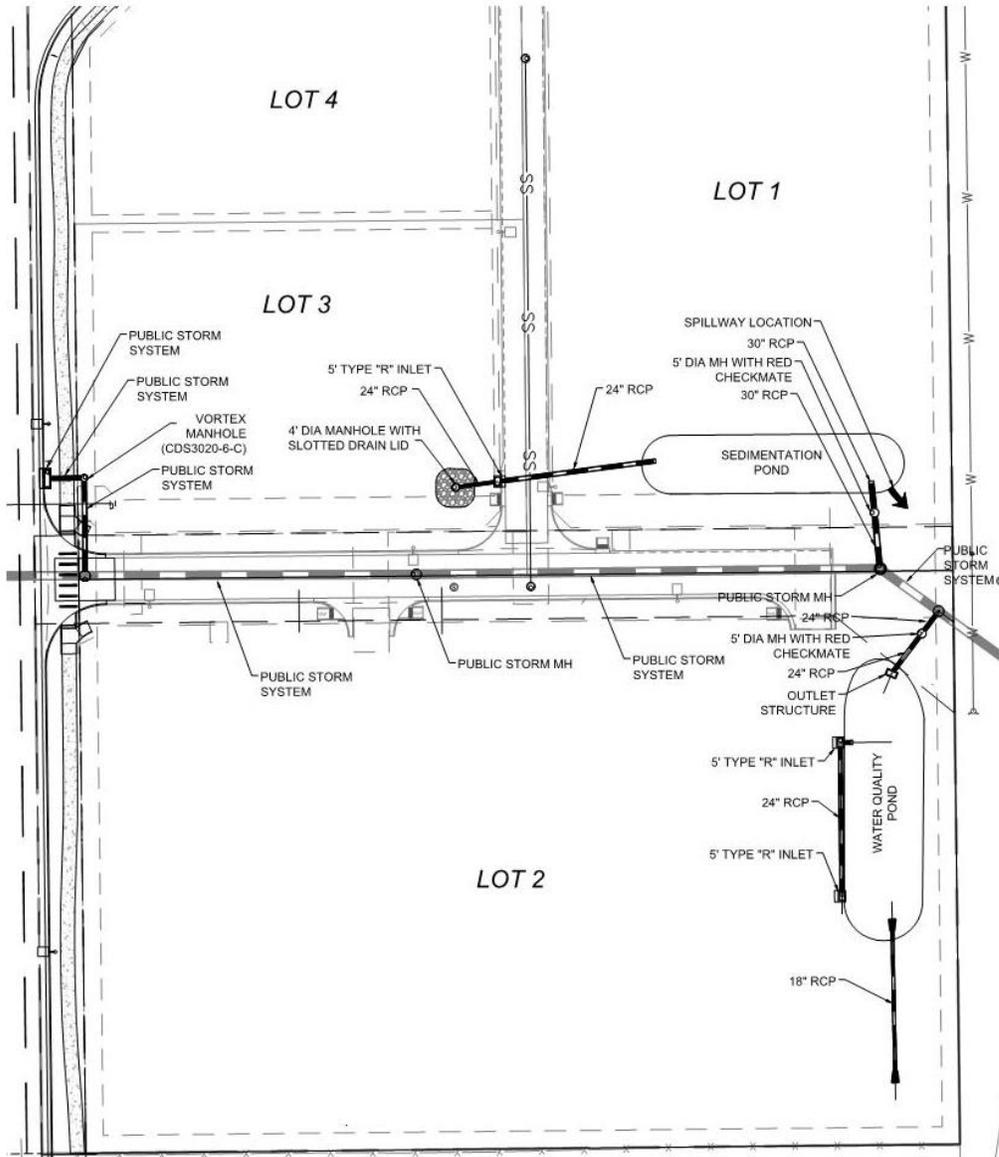
Beginning at the Northwest corner North one-half said Northwest one-quarter; thence S 00°00'00" W on an assumed bearing along the West line said North one-half Northwest one-quarter a distance of 50.00 feet; thence S 89°53'14" E parallel with the North line said North one-half Northwest one-quarter a distance of 30.00 feet to the true point of beginning; thence continuing S 89°53'14" E parallel with said North line a distance of 521.78 feet to a point; thence S 00°00'00" W parallel with the West line said North one-half Northwest one-quarter a distance of 834.84 feet; thence N 89°53'14" W parallel with the North line said North one-half Northwest one-quarter a distance of 521.78 feet to a point 30.00 feet East of the West line said North one-half Northwest one-quarter; thence N 00°00'00" E parallel with said West line a distance of 834.84 feet to the true point of beginning; Except that portion conveyed in Deed recorded June 14, 2002 at Reception No. C0984087, County of Adams, State of Colorado.

**EXHIBIT H2**  
**Owner/Responsible Party Contact Information**

Storm Sewer/ Drainage Ponds:

Stratus Brighton Commons, LLC  
8480 East Orchard Road, Suite 1100  
Greenwood Village, CO 80111

### EXHIBIT H3 Facilities Location Map



**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 Pond 1A, 1B and 2 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.