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City of Brighton City Clerk**

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

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

WHEREAS, the Developer has submitted a Final Plat (the "**Plat**"), Prairie Center Village V Subdivision Filing No. 1 (the "**Development**"), 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, the Developer is the owner of the real property comprising the Development (the "**Property**"); 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; and

WHEREAS, the District has represented that it shall be conducting certain infrastructure improvements and providing certain services for the Development, and is, therefore, a party to this Agreement.

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

**SECTION 1
DEFINITIONS**

Definitions. The following terms and definitions shall apply to this Agreement and the exhibits and attachments hereto:

The term, "Civil Engineering Documents" includes civil plans, construction plans, civil drawings and/or construction drawings 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. The foregoing list is not exhaustive in nature and includes any plans and reports included in the civil engineering scope.

"Construction Permit" as used in this 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.

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, or cause to be paid, all fees related to development of the Property 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 of permit issuance. 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 Public Improvements. 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, or cause to be constructed, all Public 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), including the Plat, 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 2.17 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 Construction Engineering Documents 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. 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 Public Improvements, the City may conduct the inspection without approval of the Developer. 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 Construction Costs, rather than the estimated costs, of all the completed Public Improvements listed on the Schedule of Improvements, including satisfactory documentation to support said Actual Construction Costs. Developer shall provide “as built” drawings, a certified statement of Actual Construction Costs, and a videotaped scope of all sewer lines no later than thirty (30) days after the Public Improvements are completed and as a condition of construction acceptance. If Developer has not completed the Public Improvements on or before the completion dates set forth in the Phasing Plan and/or Schedule of Improvements provided for in Section 2.3 herein, the City may exercise its rights to secure performance as provided in Section 10.1 of this Agreement. If the Public 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 Public 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 10.1 of this Agreement. The City reserves the right to schedule re-inspections, depending upon the scope of deficiencies: **No Residential Building Permits 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. 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 Public Improvements related to the Development, Developer shall, at its own expense, take all actions necessary to maintain said Public 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 10.1 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 Public Improvements and shall notify the Developer in writing of all deficiencies and necessary repairs. After Developer has corrected all deficiencies and made all necessary repairs identified in said written notice, the City shall issue to Developer a letter of “final acceptance.” If any mechanic’s liens have been filed with respect to the Public Improvements, the City may retain all or a portion of the Improvement Guarantee up to the amount of such liens.
- 2.11 Reimbursement to the City.** The City may complete construction, repairs, replacements, testing, maintenance or other work for Developer, pursuant to Sections 2.8, 2.9 or 2.12 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, previously approved by the City in writing, 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 Civil Engineering Documents requires inspection by the appropriate department, such as the Streets & Fleet, Utilities, and Community Development 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 Community Development Department. 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.** Developer shall submit, or cause to be submitted, to the City an improvement guarantee (“**Improvement Guarantee**”) for all Public Improvements related to each Phase of the Development as described in **Exhibit B**. Said Improvement Guarantee may be in cash, bond, or a letter of credit in form and substance as approved by the City. Infrastructure permits shall be issued for only that Phase of the Development for which said Improvement Guarantees have been furnished. The total amount of the Improvement Guarantee for each Phase of the 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 Construction Acceptance – 115%
 - B. Upon Construction Acceptance Prior to Final Acceptance – 15% of Actual Construction Costs
 - C. After Final Acceptance – 0%
- 2.14** 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. If the City draws on the guarantee to correct deficiencies and complete any Public Improvements, any portion of said guarantee, not utilized in correcting the deficiencies and/or completing the Public Improvements, shall be returned to Developer within thirty (30) days after said final acceptance. In the event the Improvement Guarantee expires, or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of the Public 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 2.14. 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, construction or final acceptance, or certificates of occupancy or completion.
- 2.15** **Indemnification and Release of Liability.** 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. 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, 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 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, its officers or its employees.

- 2.16 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 Public 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).
- 2.17 Phasing.** For purposes of this Agreement, the term "Phase" refers to a designated portion of the Property in the Development within which construction of all or designated Public Improvements specified in Section 2.17 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 Public Improvement for each Phase of the Development shall be in accordance with said Phasing Plan and completion schedules, or City-approved modifications thereof. All modifications shall be in writing and signed by the City Manager or the Manager's designee.

SECTION 3 CONSTRUCTION OF IMPROVEMENTS

- 3.1 Rights-of-way and Easements.** Before City may approve construction plans for any Improvements herein agreed upon, Developer shall acquire, at its own expense, and convey to the City all necessary land, rights-of-way and easements required by the City for the construction of the proposed Improvements related to the Development. All such conveyances shall be free and clear of liens, taxes, and encumbrances except for ad valorem real property taxes for the current year and thereafter and shall be by Special Warranty Deed in form and substance acceptable to the City Attorney. The City at the Developer's expense shall record all title documents. The Developer shall also furnish, at its own expense, an ALTA title policy, for all interest(s) so conveyed, subject to approval by the City Attorney.
- 3.2 Construction.** Developer shall furnish and install, or cause to be constructed and installed, at its own expense, all of the Public Improvements listed on the "Schedule of Improvements" attached as **Exhibit B**, in conformance with the approved Civil Engineering Documents. 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 10.1 of the Agreement.
- 3.3 Utility Coordination and Installation.** In addition to the Public Improvements described in **Exhibit B**, Developer shall also be responsible for coordination of, and payment for, and the installation of on-site and off-site electric, street lights, natural gas, telephone, and other utilities. All utilities shall be placed underground, to the extent required by City Code or other applicable law.

3.4 Reimbursement. To the extent that public improvements are constructed by the Developer, for the benefit of landowners and persons other than the Developer, the City, for a period of fifteen (15) years following the issuance of Final Acceptance of such improvements, shall require other benefited landowners and persons to pay 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. 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, prepare a reimbursement agreement to be signed by the Developer and the City Manager.
- 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 in excess of reasonable and necessary costs at then prevailing rates and/or the proposed cost recovery plan is not appropriate or reasonable. If 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.
 - 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 recorded;
 6. The City agrees not to approve a proposed development; record a final subdivision plat, or issue a building permit for an identified benefited property until the payments are made to the Developer, 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. Reimbursement of the Developer's costs is contingent on actual collection of the front foot charge by the Developer;
 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.
- 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 10.6 of this Agreement. If the City mails a notice of application for development, building permit or final plat, to the Developer or assigns by regular mail using the Developer, successor or assign's last known address in the City files, and no response is received within thirty (30) days, 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 of the benefited property from further reimbursement obligations and the Developer will forfeit all rights to reimbursement from the owner and/or developer of the specified property.

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

- a) The Developer, successors, and/or assigns agree 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 such reimbursement agreement(s).
- b) If the Developer, successors, and/or assigns 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 3.4 of this Agreement.
- c) The cost recovery period in a shared improvement reimbursement obligation shall not exceed fifteen (15) years following the Final Acceptance of such improvement(s).

SECTION 4 STREET IMPROVEMENTS

4.1 Definitions. For the purposes of this Agreement, "street improvements" shall be defined to include, where applicable, but not limited to, all improvements within the right-of-way, such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and

gutter, medians, entryways, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping, and drainage improvements.

- 4.2 **Street Signs, Traffic Signs and Striping.** The Developer will install, or cause to be installed, 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, or cause to be installed, at its expense, signs and striping on collector and arterial streets in a manner reasonably approved by the City and in accordance with the CDOT Manual on Uniform Traffic Control Devices (MUTCD), as from time to time amended, and other applicable legal requirements.
- 4.3 **Streets.** All internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time, and the approved Civil Engineering Documents, 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.** Developer shall convey to the City all lands for public use as shown in the Final Plat(s). such as described in **Exhibit D.** Such lands for public use shall be as set forth on the Plat for all or any portion of the Development approved by the City and before any such Final Plat is recorded. 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. 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 MAINS

- 6.1 **Specifications.** All water mains, lines, and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications, and the

Schedule of Improvements, attached hereto as **Exhibit B**, including both on-site and off-site improvements.

SECTION 7 SEWER LINES

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

SECTION 8 OTHER IMPROVEMENTS

- 8.1 **Street Lights.** The total cost of street light installation, as shown on the approved construction plans for the Development, shall be the Developer's obligation. Developer shall cause, at its own expense, United Power, or the applicable utility company, to install all required street lighting pursuant to City plans and specifications. Said streetlights shall be consistent with the City standard streetlight and shall be installed concurrently with the streets on which they are located unless otherwise approved by the City.
- 8.2 **Drainage and Stormwater Improvements.** Drainage and stormwater Public Improvements, both on-site and off-site, required to provide for, and proper to reasonably regulate, stormwater facilities for 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, shall be constructed by Developer pursuant to Chapter 14, *Storm Drainage*, BMC, all applicable state and federal stormwater regulations, as additionally described in **Exhibit H**, City-approved Civil Engineering Documents and the Schedule of Improvements, attached hereto as **Exhibit B**. Developer shall initiate no overlot grading until the City approves drainage improvement plans in writing and a permit is issued therefor. Drainage improvements shall not cause any damage to adjacent or downstream properties resulting from erosion, flood, or environmental impact during construction and/or after construction completion. Drainage improvements not constructed by the Developer and specific for each lot shall be constructed by the owner of said lot, at the minimum, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the City's then-existing drainage, stormwater and floodplain regulations.
- 8.3 **Stormwater Management During Construction.** The Development shall be constructed in accordance to City of Brighton Municipal Code Chapter 14-2 Storm Drainage Ordinance and all applicable State and Federal stormwater regulations, as additionally described herein.
- 8.4 **Exhibit H. 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

- 10.1 Breach of Agreement.** 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 Public 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. In the event that no Improvement Guarantee has been posted, or the Improvement Guarantee has been exhausted or is insufficient, the City has the right to begin work on the Public Improvements at the expense of the Developer. If the City determines in its sole discretion that an emergency exists, such that the applicable Public Improvement must be completed in less than seven (7) days, the City may immediately draw upon the Improvement Guarantee and may complete the Public Improvements at Developer's expense. If 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. The City may also, during the cure period and until completion of the applicable Public Improvements in compliance with this Agreement, withhold any additional infrastructure permits, building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing herein shall be construed to limit the City from pursuing any other remedy at law or in equity, which may be appropriate under City, state, or federal law. Failure to timely complete construction of Public Improvements, which is solely due to inclement weather, shall not be considered a breach of this Agreement. All costs incurred by the City, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by the Developer, shall be the responsibility of the Developer. The City may deduct these costs from the Improvement Guarantee and seek indemnification and reimbursement from the Developer if the Improvements Guarantee does not cover the same.

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

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

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

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

With a copies to:
 THF Prairie Center Development, L.L.C.
 Attn: Corporate General Counsel
 2127 Innerbelt Business Center Drive,
 Suite 300
 St. Louis, MO 63114

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

District:
 Prairie Center Metropolitan

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

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

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

- 10.7 Force Majeure.** Whenever Developer is required to complete construction, maintenance, repair, or replacement of improvements by an agreed-upon deadline, the time for performance shall be extended for a reasonable period if the performance cannot, as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer.
- 10.8 Approvals.** Whenever approval or acceptance of a matter is required or requested of the City, pursuant to any provisions of the Agreement, the City shall act reasonably in responding to such matter.
- 10.9 Previous Agreements.** All previous written and recorded agreements between the Parties, their successors, and assigns, including, but not limited to, any amended and restated Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.
- 10.10 Title and Authority.** Developer warrants to the City that it is the record owner for the Property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant having full power and authority to enter into this Agreement.
- 10.11 Severability.** This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Developer or any agent thereof, any provision of the Agreement is held to be violate of the city, state, or federal laws and hereby rendered unenforceable, the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 10.12 Agreement Status After Final Acceptance.** Upon final acceptance by the City of all Public Improvements and compliance by Developer with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, and the applicable statute of limitations has tolled for any potential claim, this Agreement shall no longer be in effect.

[Signatures begin on the next page]

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

DEVELOPER:

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

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

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

Signature: _____

By: Jason Meyerpeter
Manager

STATE OF MISSOURI)
) SS.
COUNTY OF)

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

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

Notary Public
My Commission Expires: _____

DISTRICT:

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

ATTEST:

Ann Finn, Secretary

By: _____
Michael Tamblyn, President

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, City Attorney

EXHIBIT A

PRAIRIE CENTER VILLAGE V, FILING 1

[Plat begins on the next page]

EXHIBIT B

SCHEDULE OF IMPROVEMENTS AND PHASING PLAN

[Schedule of Improvements begins on the next page]

EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN
PHASE 1 SITE IMPROVEMENTS

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE ^A	EXTENDED COST
Storm Sewer				
Type M Rip Rap (12")	10	CY	\$ 80.00	\$ 800.00
24 Inch Reinforced Concrete Pipe	507	LF	\$ 80.00	\$ 40,560.00
30 Inch Reinforced Concrete Pipe	123	LF	\$ 110.00	\$ 13,530.00
36 Inch Reinforced Concrete Pipe	943	LF	\$ 130.00	\$ 122,590.00
42 Inch Reinforced Concrete Pipe	127	LF	\$ 170.00	\$ 21,590.00
30" FES	1	EA	\$ 2,500.00	\$ 2,500.00
24" RCP Plug	1	EA	\$ 1,000.00	\$ 1,000.00
30" RCP Plug	1	EA	\$ 1,500.00	\$ 1,500.00
36" RCP Plug	2	EA	\$ 2,000.00	\$ 4,000.00
Inlet Type R L 5 (5 Foot)	1	EA	\$ 5,500.00	\$ 5,500.00
Inlet Type R L 10 (10 Foot)	3	EA	\$ 7,500.00	\$ 22,500.00
Manhole 6 Foot ID (5-10 Foot)	5	EA	\$ 7,500.00	\$ 37,500.00
Manhole 84"x84" Box Base (5-10 Foot)	8	EA	\$ 15,000.00	\$ 120,000.00
Manhole 96"x96" Box Base (5-10 Foot)	1	EA	\$ 17,000.00	\$ 17,000.00
Sanitary Sewer				
8 Inch PVC Sanitary Pipe (0'-12')	67	LF	\$ 38.00	\$ 2,546.00
8 Inch PVC Sanitary Pipe (12'-18')	1008	LF	\$ 45.00	\$ 45,360.00
8 Inch Sanitary Plugs	3	EA	\$ 800.00	\$ 2,400.00
Manhole Slab Base 4 Foot ID (10-16 Foot)	7	EA	\$ 4,750.00	\$ 33,250.00
Manhole Slab Base 4 Foot ID (16-20 Foot)	3	EA	\$ 5,500.00	\$ 16,500.00
Water Main				
2 Inch Domestic Water Tap	1	EA	\$ 2,000.00	\$ 2,000.00
2 Inch Copper Water Pipe	47	LF	\$ 12.00	\$ 564.00
2 Inch Vault	1	EA	\$ 5,000.00	\$ 5,000.00
6 Inch DIP Fireline	22	LF	\$ 50.00	\$ 1,100.00
8 Inch 11 1/4 Degree Bend with Kickblock	4	EA	\$ 620.00	\$ 2,480.00
8 Inch 45 Degree Bend with Kickblock	4	EA	\$ 620.00	\$ 2,480.00
8 Inch PVC Water Pipe	763	LF	\$ 35.00	\$ 26,705.00
8 Inch Gate Valve	4	EA	\$ 2,000.00	\$ 8,000.00
8 Inch Plug with Kickblock	2	EA	\$ 620.00	\$ 1,240.00
12 Inch PVC Water Pipe	1086	LF	\$ 50.00	\$ 54,300.00
12 Inch Gate Valve	5	EA	\$ 2,500.00	\$ 12,500.00
12 Inch 11 1/4 Degree Bend with Kickblock	8	EA	\$ 850.00	\$ 6,800.00
12 Inch 22 1/2 Degree Bend with Kickblock	3	EA	\$ 850.00	\$ 2,550.00
12x6 Inch Fireline Tee	2	EA	\$ 1,200.00	\$ 2,400.00
12x8 Inch Tee	1	EA	\$ 1,200.00	\$ 1,200.00
12x8 Inch Cross	1	EA	\$ 1,200.00	\$ 1,200.00
12 Inch Plug with Kickblock	1	EA	\$ 850.00	\$ 850.00
Fire Hydrant Assembly (Tee, Valve and Hydrant included)	2	EA	\$ 5,250.00	\$ 10,500.00
2" Temporary BlowOff	3	EA	\$ 2,100.00	\$ 6,300.00
2 Inch Air Release Valve and Vent Assembly	1	EA	\$ 3,500.00	\$ 3,500.00
Road Improvements				
Subgrade Reconditioning (Road Section)	7865	SY	\$ 2.00	\$ 15,730.00
Hot Bituminous Pavement (Grading SG, 100, PG 64-22)	1859	TONS	\$ 280.00	\$ 520,520.00
Hot Bituminous Pavement (Grading SX, 100, PG 76-28)	744	TONS	\$ 290.00	\$ 215,760.00
Curb and Gutter Type II (Section IIB)	3370	LF	\$ 18.00	\$ 60,660.00
Subgrade Reconditioning (Walk & Trail Section)	3107	SY	\$ 2.00	\$ 6,214.00
4 foot Concrete Walk (4 Inch Section)	1572	SY	\$ 32.00	\$ 50,304.00
ADA Curb Ramp	4	EA	\$ 1,500.00	\$ 6,000.00
Pavement Marking Paint	1	LS	\$ 6,500.00	\$ 6,500.00
Pavement Marking Demolition	1	LS	\$ 5,500.00	\$ 5,500.00
Thermoplastic Marking	9	EA	\$ 750.00	\$ 6,750.00
Sign R1-1 (Stop Sign with Street Name)	3	EA	\$ 500.00	\$ 1,500.00
Sign R3-7R (Right Lane Must Turn Right)	2	EA	\$ 500.00	\$ 1,000.00
Sign R7-1 (No Parking)	4	EA	\$ 500.00	\$ 2,000.00
Manhole Adjustments	24	EA	\$ 650.00	\$ 15,600.00
Water Valve Adjustments	11	EA	\$ 250.00	\$ 2,750.00
Phase 1 Public Improvement				\$ 1,579,083.00

EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN
PHASE 2 SITE IMPROVEMENTS

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE ^A	EXTENDED COST
Storm Sewer				
Type M Rip Rap (12")	10	CY	\$ 80.00	\$ 800.00
24 Inch Reinforced Concrete Pipe	285	LF	\$ 80.00	\$ 22,800.00
30 Inch Reinforced Concrete Pipe	532	LF	\$ 80.00	\$ 42,560.00
30" FES	1	EA	\$ 2,500.00	\$ 2,500.00
24" RCP Plug	1	EA	\$ 1,000.00	\$ 1,000.00
30" RCP Plug	1	EA	\$ 1,500.00	\$ 1,500.00
Inlet Type R (10 Foot)	2	EA	\$ 7,500.00	\$ 15,000.00
Manhole 6 Foot ID (5-10 Foot)	7	EA	\$ 7,500.00	\$ 52,500.00
Sanitary Sewer				
8 Inch PVC Sanitary Pipe (0'-12')	82	LF	\$ 38.00	\$ 3,116.00
8 Inch PVC Sanitary Pipe (12'-18')	595	LF	\$ 45.00	\$ 26,775.00
8 Inch Sanitary Plugs	3	EA	\$ 800.00	\$ 2,400.00
Manhole Slab Base 4 Foot ID (10-16 Foot)	6	EA	\$ 4,750.00	\$ 28,500.00
Water Main				
12 Inch PVC Water Pipe	987	LF	\$ 50.00	\$ 49,350.00
12 Inch Gate Valve	1	EA	\$ 2,500.00	\$ 2,500.00
12 Inch 11 1/4 Degree Bend with Kickblock	7	EA	\$ 850.00	\$ 5,950.00
12 Inch 22 1/2 Degree Bend with Kickblock	1	EA	\$ 850.00	\$ 850.00
12 Inch 45 Degree Bend with Kickblock	4	EA	\$ 850.00	\$ 3,400.00
Road Improvements				
Subgrade Reconditioning (Road Section)	4520	SY	\$ 2.00	\$ 9,040.00
Hot Bituminous Pavement (Grading SG, 100, PG 64-22)	1062	TONS	\$ 280.00	\$ 297,360.00
Hot Bituminous Pavement (Grading SX, 100, PG 76-28)	425	TONS	\$ 290.00	\$ 123,250.00
Curb and Gutter Type II (Section IIB)	2007	LF	\$ 18.00	\$ 36,126.00
Subgrade Reconditioning (Walk & Trail Section)	2881	SY	\$ 2.00	\$ 5,762.00
4 foot Concrete Walk (4 Inch Section)	943	SY	\$ 32.00	\$ 30,176.00
Pavement Marking Paint	1	LS	\$ 3,500.00	\$ 3,500.00
Pavement Marking Demolition	1	LS	\$ 2,500.00	\$ 2,500.00
Thermoplastic Marking	6	EA	\$ 750.00	\$ 4,500.00
Sign R1-1 (Stop Sign with Street Name)	1	EA	\$ 500.00	\$ 500.00
Sign R3-7R (Right Lane Must Turn Right)	1	EA	\$ 500.00	\$ 500.00
Sign R7-1 (No Parking)	2	EA	\$ 500.00	\$ 1,000.00
Manhole Adjustments	6	EA	\$ 650.00	\$ 3,900.00
Water Valve Adjustments	1	EA	\$ 250.00	\$ 250.00
Phase 2 Public Improvement				\$ 779,865.00

EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN
PHASE 1 TRAIL IMPROVEMENTS

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE*	EXTENDED COST
Trail Improvements				
10 foot Concrete Walk (6 Inch Section)	983	SY	\$ 49.50	\$ 48,658.50
			Phase 1 Public Improvement	\$ 48,658.50

EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN
PHASE 2 TRAIL IMPROVEMENTS

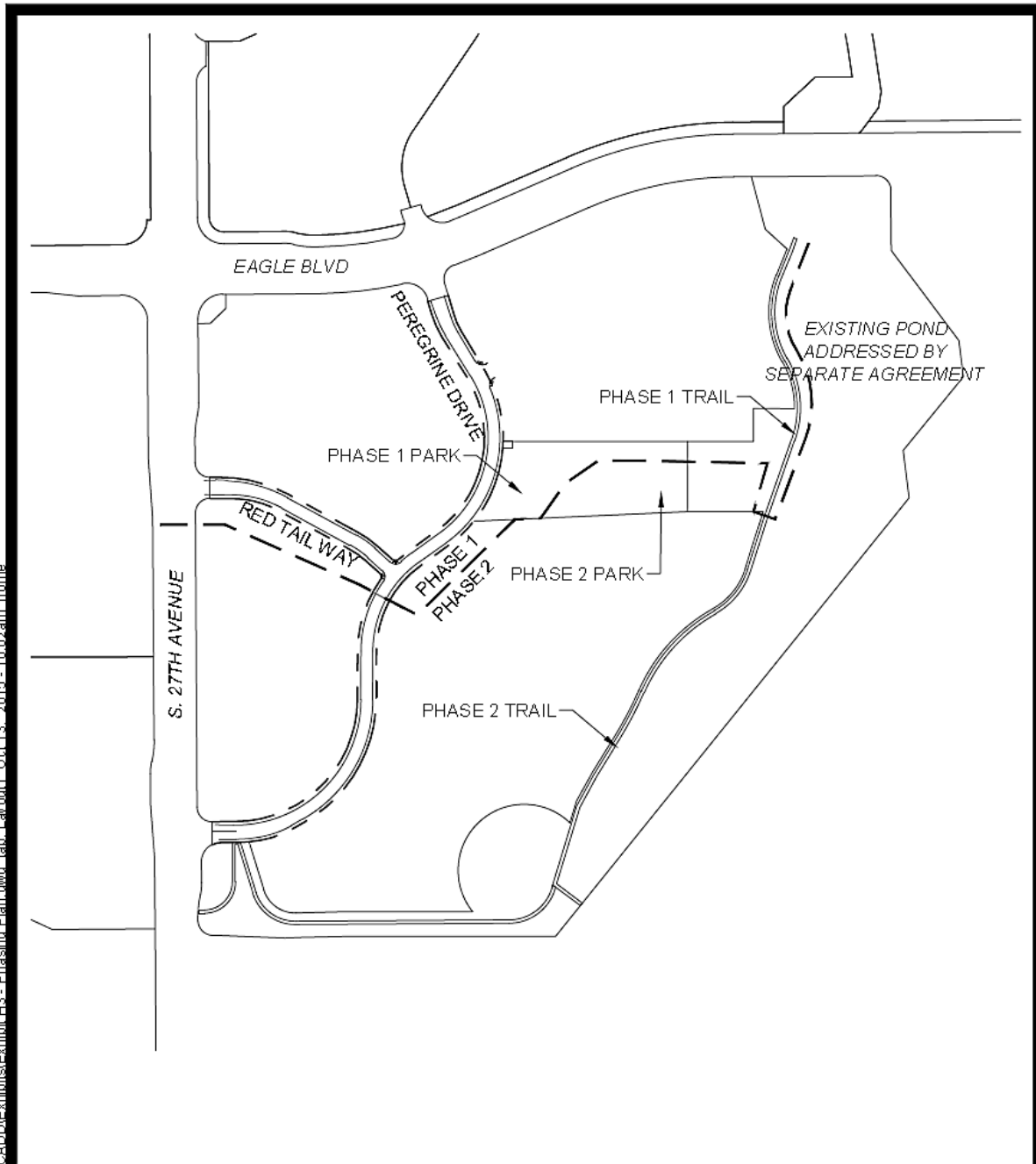
DESCRIPTION	QUANTITY	UNIT	UNIT PRICE*	EXTENDED COST
Trail Improvements				
10 foot Concrete Walk (6 Inch Section)	3143	SY	49.50 \$	155,578.50
			Phase 2 Public Improvement	\$ 155,578.50

EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN
PHASE 1 PARK IMPROVEMENTS

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE*	EXTENDED COST
Park Improvements				
Storm Inlet	1	LS	\$ 10,460.00	\$ 10,460.00
Hardscape	1	LS	\$ 44,835.00	\$ 44,835.00
Canopy Trees (2" CAL.)	11	EA	\$ 550.00	\$ 6,050.00
Ornamental Trees (2" CAL. Min.)	17	EA	\$ 450.00	\$ 7,650.00
Evergreen Trees (Average 6' Ht.)	4	EA	\$ 450.00	\$ 1,800.00
Planting Beds	1835	SF	\$ 5.00	\$ 9,175.00
Sod	7780	SF	\$ 0.55	\$ 4,279.00
Native Seed (Soil prep & seed)	8680	SF	\$ 0.30	\$ 2,604.00
Irrigation (Planting bed)	1835	SF	\$ 4.00	\$ 7,340.00
Irrigation (Sod & native seed)	16460	SF	\$ 0.80	\$ 13,168.00
Irrigation Controller	1	EA	\$ 18,000.00	\$ 18,000.00
Irrigation Tap Installation (1 controller, 2 taps)	1	LS	\$ 13,500.00	\$ 13,500.00
Irrigation valves/decoders (additional per system)	1	LS	\$ 13,100.00	\$ 13,100.00
Playground (Phase I)	1	EA	\$ 25,000.00	\$ 25,000.00
Fibar Safety Surface	3035	SF	\$ 3.50	\$ 10,622.50
Volleyball Sand Court	1	LS	\$ 25,000.00	\$ 25,000.00
Sport Court (6" post tension concrete)	1	LS	\$ 20,000.00	\$ 20,000.00
Picnic Area with Shade Structure	1	LS	\$ 20,000.00	\$ 20,000.00
Entry Feature/Signage Allowance	1	LS	\$ 10,000.00	\$ 10,000.00
8" Concrete Curb (playground)	180	LF	\$ 8.00	\$ 1,440.00
Site Furnishings	1	LS	\$ 4,000.00	\$ 4,000.00
Phase 1 Public Improvement				\$ 268,023.50

EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN
PHASE 2 PARK IMPROVEMENTS

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE*	EXTENDED COST
Park Improvements				
Canopy Trees (2" CAL.)	27	EA	\$ 550.00	\$ 14,850.00
Ornamental Trees (2" CAL. Min.)	17	EA	\$ 450.00	\$ 7,650.00
Evergreen Trees (Average 6' Ht.)	2	EA	\$ 450.00	\$ 900.00
Planting Beds	4200	SF	\$ 5.00	\$ 21,000.00
Sod	60801	SF	\$ 0.55	\$ 33,440.55
Native Seed (Soil prep & seed)	8920	SF	\$ 0.30	\$ 2,676.00
Irrigation (Planting bed)	4200	SF	\$ 4.00	\$ 16,800.00
Irrigation (Sod & native seed)	69721	SF	\$ 0.80	\$ 55,776.80
Park Shelter	1	EA	\$ 25,000.00	\$ 25,000.00
Shelter Decking/Patio	3335	sf	\$ 12.00	\$ 40,020.00
Playground (Phase II)	1	EA	\$ 50,000.00	\$ 50,000.00
Fibar Safety Surface	3281	SF	\$ 3.50	\$ 11,483.50
Amphitheater (walls, seating)	1	LS	\$ 25,000.00	\$ 25,000.00
Concrete Paving (4" Thick)	12760	SF	\$ 4.50	\$ 57,420.00
Decorative Concrete Paving (4" Thick)	2266	SF	\$ 8.00	\$ 18,128.00
8" Concrete Curb Planters	707	LF	\$ 8.00	\$ 5,656.00
Shade Sails at Amphitheater	1	LS	\$ 40,000.00	\$ 40,000.00
Site Furnishings	1	LS	\$ 15,000.00	\$ 15,000.00
Irrigation Tap Installation (1 1/2" Tap)	1	LS	\$ 22,450.00	\$ 22,450.00
Phase 1 Public Improvement				\$ 463,250.85



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	EXHIBIT B	DATE 10.2015
	PHASING MAP	PROJ. NO. 08008.D1
	BRIGHTON CO	SHEET 1 OF 1

EXHIBIT C

[Intentionally deleted.]

EXHIBIT D**PUBLIC LAND CONVEYANCE**

1. **School Site Dedication.** School site dedication requirements relating to the Development are set forth in Section 3.9(a) of the Comprehensive Agreement (defined in **Exhibit G**), which is incorporated herein by this reference.
2. **Community Park Dedication.** Notwithstanding any contrary provision of the Comprehensive Agreement or the City's ordinances and regulations, the City and Developer agree that the timing of dedication of land in satisfaction of community park requirements in connection with the Development, comprising a portion of Planning Area 7d as generally depicted on the Project PUD (as defined in Section 3 of **Exhibit G**), is not desired at the time of residential development within Village V. In lieu of such dedication, Developer shall dedicate to the City, via special warranty deed, the parcel generally depicted as Planning Area 7e on the Project PUD and known as Lutz Reservoir/Prairie Lake Regional Wildlife Sanctuary (the "**Lutz Parcel**"). Not later than 120 days after the City's approval of the Plat, Developer shall commence the dedication process for the Lutz Parcel via delivery to the City of an ALTA/ACSM Land Title Survey, preliminary commitment for title insurance and proposed form of special warranty deed for the Lutz Parcel for the City's review and comment. Developer and the City shall cooperate in good faith to thereafter finalize and consummate the dedication of the Lutz Parcel as contemplated by this Section 2. At the time of conveyance of the Lutz parcel to the City, Developer shall cause the issuance of a title policy to the City for the Lutz Parcel in form and substance acceptable to the City.
3. **Neighborhood Park Dedication.** Developer shall dedicate to the City, via special warranty deed, Tract B of the Plat for park purposes and ancillary uses as permitted by the Project PUD.
4. **Open Space Land Dedication.** After recording of the Plat, Developer shall dedicate and convey to the District Tract C of the Plat via special warranty deed for open space purposes and ancillary uses as permitted by the Project PUD. Areas of Tract C below the 10-year water surface elevation (5,081 feet) within the detention ponds within Tract C (the "**Non-Eligible Areas**") are not eligible to count toward open space dedication requirements. The Non-Eligible Areas total 226,311 square feet.
5. **Future Actual Density.** The Parties acknowledge that the total actual residential density for the entire Development is not known as of the date of this Agreement and confirm that Section 3.9 of the Comprehensive Agreement relating to dedication of open space, neighborhood parks and community parks and other public land dedication requirements that are calculated with reference to projected population or other reference that is affected by changes in density will be established at the time of future plats or future final development plans, as applicable, based on the actual density realized within the portion

of the Development affected by such approved “Development Application” (as defined in the Comprehensive Agreement”), subject to Section 3.9 of the Comprehensive Agreement.

EXHIBIT E**RESTRICTIVE DRY-UP COVENANT; GRANT OF EASEMENT;
WARRANTY OF FIRST RIGHT TO DRY-UP CREDIT;
AND AGREEMENT TO ASSIST**

THIS COVENANT, AGREEMENT, WARRANTY AND EASEMENT are made and given this _____ by _____, _____ County, Colorado (hereinafter the "Owner"), and accepted by the City of Brighton, a municipal corporation of the County of **Adams**, State of Colorado (hereinafter "Brighton") on the _____.

Owner and/or Owner's assigns entered into an agreement with Brighton dated _____ whereby Owner and/or Owner's assigns agreed to transfer, and Brighton agreed to accept _____ share(s) of the Capital Stock of the _____ represented by stock certificate number(s) #'s _____ (the "Water Rights"). The Owner acknowledges Owner's understanding that the Water Rights are intended to be utilized by Brighton for municipal water uses, and/or for augmentation or exchange purchases, and that in order to effect such uses, the Water Rights will need to be changed in an appropriate proceeding before the District Court, Water Division No. 1, State of Colorado (hereinafter "Water Court") from irrigation to municipal, augmentation and/or exchange purposes.

The Water Rights have historically been used for the irrigation of lands owned by the Owner located in **Adams** County, Colorado. A description of the property where such irrigation use has historically occurred is attached to this covenant as Exhibit A, and is incorporated fully into this covenant by this reference. Owner further understands that the Water Court may require, as a term and condition of such change, that the lands historically irrigated as described in Exhibit A must be dried up and not further irrigated as a term and condition of allowing such change.

THEREFORE, in consideration of the willingness of Brighton to accept the Water Rights, and the making of such acceptance, as well as other good and valuable consideration, receipt of which is hereby acknowledged by Owner, Owner covenants and agrees as follows:

1. From and after the date hereof, except as may be otherwise allowed or required by this document, neither the Water Rights nor any other water shall be used in connection with the property described in Exhibit A without the written consent of Brighton, or its successors or assigns, having been first obtained, which consent may be withheld in Brighton's sole discretion.
2. Owner shall take any action necessary to eliminate any consumptive use of water for irrigation purposes on the property described in Exhibit A (the "land") as may be determined and/or required by the Water Court or other court or tribunal of competent

- jurisdiction in the judgment and decree entered in any case involving the change or exchange of any of the Water Rights, or by the State Engineer, State of Colorado, in any approval by his office of a substitute water supply plan entered pursuant to the provisions of Section 37-92-308, Colorado Revised Statutes, as the same may be amended or replaced, during the duration of such plan.
3. Owner hereby grants to Brighton a non-exclusive perpetual easement for the purpose of access to and over the land as may be necessary to take actions to effectuate and enforce this covenant, including but not limited to the conducting of any monitoring or testing activity that may be required by the State Engineer or by any court or tribunal of competent jurisdiction to enforce this covenant or that may be a pre-condition for changing the Water Rights.
 4. Unless otherwise required by any decree changing the Water Rights, or allowing such rights to be exchanged, or by the conditions of any substitute water supply plan as may be approved by the State Engineer, this covenant shall not prohibit the Owner or Owner's successors and assigns from irrigating the land with water rights which may in the future be transferred to such land and for such use through an appropriate Water Court proceeding, irrigating the land with water from a well or wells to be constructed in the future that are authorized to pump pursuant to a Water Court-approved plan for augmentation, irrigating the land with water that is not tributary to the South Platte River, to include not-nontributary water that is duly augmented, or irrigating the land with treated water supplied by a municipality or a water district.
 5. Notwithstanding the provisions of paragraph 4 hereof, the land shall not be planted with, nor have upon it, any alfalfa or similar deep rooted crop, and any alfalfa or similar deep rooted crop presently existing, or which may exist in the future, shall be eradicated by Owner by deep tilling, chemical treatment or other means, unless otherwise allowed by Brighton in a signed writing..
 6. This covenant shall burden, attach to and run with the property described in Exhibit A, and shall be binding not only upon the Owner, but also upon Owner's heirs, successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of the property described in Exhibit A. This covenant shall also run with and benefit the Water Rights. The terms and provisions of this covenant shall not expire and shall be perpetual unless specifically released in writing by Brighton or its successors and assigns. This covenant may be enforced by Brighton or by any party having any right, title or interest in the Water Rights or by the State Engineer of the State of Colorado, at any time in any action at law or in equity.
 7. Owner further warrants and represents that this covenant shall entitle Brighton to the first and prior right to claim credit for the dry-up or nonirrigation of the property described in Exhibit A, and agrees to provide Brighton with all assistance Brighton

- may reasonably require in regard to the above-referenced change of the Water Rights, including but not limited to the provision of testimony before the Water Court in any proceeding involving such change.
8. Owner agrees that it will at its sole expense take all steps necessary to accomplish the full and complete establishment of a self-sustaining dry land vegetative ground cover on all of the land within two years from the date of this covenant, and Owner shall thereafter cease all irrigation on such land unless and until a court decree, as referenced in paragraph 4 above, may be duly entered, and then irrigation shall be allowable only to the extent authorized in said paragraph 4. Provided, however, that Brighton may, in its sole discretion, agree in writing with the Owner to a modification of the conditions of this covenant to allow other irrigation practices, or to authorize the use of the lands that were historically irrigated for dry land agricultural practices. Further, Brighton may agree in writing that the need to establish a dry land vegetative ground cover on the historically irrigated lands is unnecessary since such lands have been developed, or the use of such lands has been otherwise so changed that future irrigation as historically occurred will no longer be possible. Any such future agreement shall be recorded in the official records of the County of **Adams** at Owner's expense. Owner further covenants and agrees that it will at its sole expense also take all steps necessary to accomplish revegetation of such lands, or otherwise eliminate irrigation, as may be required by court order or decree in the Water Court proceeding, if such requirements are different from what is required in this paragraph 8. If Owner should fail or refuse to do so, then Brighton shall have the right to come upon the land and take all measures to accomplish the required revegetation or other requirements imposed by the Water Court, and Owner shall reimburse Brighton fully for its costs and expenses in so doing. Owner further agrees that it will not take any actions that would violate such court order or decree. Brighton further agrees to duly record any final decree of District Court, Water Division 1, State of Colorado, or of any other entity or court with the authority to do so, approving the change of the Water Rights to municipal and other uses, at Brighton's expense and promptly upon its entry, in the County of **Adams**.

OWNER OF RIGHTS:

By: [Name of signatory]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____,

By:

WITNESS my hand and official seal:

Notary Public

My commission expires: _____

CITY OF BRIGHTON, COLORADO

By: Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

EXHIBIT F

[Intentionally deleted.]

EXHIBIT G

SPECIAL PROVISIONS

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

1. **Definitions.** Unless otherwise specifically defined within this **Exhibit G**, defined terms used in this **Exhibit G** shall have the same meanings given them in the foregoing Prairie Center Village V Subdivision Filing No. 1 Development Agreement (the “**Agreement**”).
2. **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 pursuant to City ordinances and regulations in effect as of the date of application for such permit. Model homes are allowed to be constructed on the Property upon issuance of a residential building permit approved by the City’s Chief Building Official.
3. **Comprehensive Agreement; Project PUD; City Ordinances.** The Parties acknowledge that on or about December 5, 2005, the City of Brighton, the City of Brighton Water, Sewer and Drainage Enterprise, THE Prairie Center Development, L.L.C., THE Prairie Center Retail One, L.L.C., Prairie Center Metropolitan District No. 1 and Prairie Center Metropolitan District No. 2 entered into a Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, which was recorded in the real property records of the Clerk and Recorder of Adams County, Colorado (“**Records**”) on December 16, 2005 at Reception No. 20061216001378220 (as modified by the First Amendment to Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, made and entered into as of July 7, 2009, and recorded in the Records at Reception No. 2011000051551, as modified by the Second Amendment to Comprehensive Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, made and entered into as of February 8, 2012, and recorded in the Records at Reception No. 2012000014188, and as modified by the Third Amendment to Comprehensive

Funding Plan, Master Development Agreement, Pre-Annexation Agreement, and Intergovernmental Agreement for Prairie Center, Brighton, Colorado, made and entered into as of June 16, 2015, and recorded in the Records at Reception No. 2015000064391, the “**Comprehensive Agreement**”). The Parties further acknowledge that (i) the Property is included within the property subject to the Comprehensive Agreement, (ii) Prairie Center Metropolitan District Nos. 1 and 2 previously have assigned all of their right, title and interest in the Comprehensive Agreement to the District and the District has assumed all such right, title and interest in the Comprehensive Agreement (“**Assignment**”), and the development rights and responsibilities of the Districts are subject to the terms of the Assignment, and (iii) development of the Property is and shall be subject to the terms and conditions of the Comprehensive Agreement, unless modified herein. Except as otherwise provided in the Comprehensive Agreement, the Prairie Center Mixed Use PUD recorded in the Records at Reception No. 2011000051553 (as may be amended from time to time, “**Project PUD**”) and/or this Agreement (including this **Exhibit G**), Developer shall comply with all applicable City regulations and ordinances in effect at the time of Plat approval, as may be subsequently amended from time to time, including but not limited to, Ordinance #1650, Zone District Regulations.

4. Neighborhood Park Design, Construction, Fees, Maintenance, Irrigation Taps, The neighborhood park shall be designed and constructed in two phases as depicted in **Exhibit B** and outlined below:
 - A. **Design.** The conceptual design of the entire Tract B neighborhood park is attached hereto as **Exhibit I** and incorporated herein by this reference. The final design of Phase 1 shall be provided to the City for review and approval contemporaneously with final development plan review and approval for the first lot of the Plat. The final design of Phase 2 of the neighborhood park shall be submitted to the City for review and approval contemporaneously with final development plan review and approval for Lot 3 of the Plat.
 - B. **Construction.** Construction of the Public Improvements for Phase 1 of the neighborhood park, as set forth in **Exhibit B**, shall be completed no later than the issuance of the final certificate of occupancy for the first lot of the Plat to develop. Construction of the Public Improvements for Phase 2 of the neighborhood park, as set forth in **Exhibit B**, shall be completed prior to the issuance of the final certificate of occupancy within Lot 3 of the Plat.
 - C. **Maintenance.** The District shall (i) mow and maintain, or shall cause the mowing and maintenance of, the landscaping (excluding any trails) within Phase 1 of the neighborhood park until Phase 2 of the neighborhood park is completed (“**Landscaping Maintenance Period**”); and (ii) provide, or cause to be provided, irrigation water for irrigation of the landscaping within Phase 1 of the neighborhood park for a period of one year after such Phase 1 is completed. Except as provided in the foregoing sentence, the City shall maintain and repair

the neighborhood park and all improvements therein after construction is completed. At the expiration of the Landscaping Maintenance Period, the City shall have responsibility for all maintenance and repair of the neighborhood park and improvements therein.

- D. Taps.** The “Applicant” (as defined in the Comprehensive Agreement) for the first final development plan approved within the Development shall purchase water tap and pay the applicable impact fees for said tap for the neighborhood park at time building permit is issued for the neighborhood park.
- E. Fees.** It is anticipated that, in connection with applicable development applications for the Development, the City shall impose and collect a “neighborhood park impact fee” pursuant to the City’s adopted fee schedule (“Park Impact Fee”). The Park Impact Fee revenues collected by the City from Applicants within the Development shall be used to pay for or reimburse the expenses incurred by the applicable person(s) in connection with installation and construction of the neighborhood park (the “Park Developer(s)”), as set forth in Section 3.9(e)(ii) of the Comprehensive Agreement. The Park Developer(s) shall remit sufficiently detailed Actual Construction Costs to the City, including all paid invoices associated with such Park Developer’s construction of the applicable phase of the neighborhood park. With respect to Phase 1 of the neighborhood park, upon verification by the City that such accounting accurately represents the Actual Construction Costs incurred and paid by the applicable Park Developer for construction of such Phase 1, the City shall remit directly to such Park Developer all Park Impact Fees collected from the Applicant of the first lot to develop within the Development, not to exceed the Actual Construction Costs of such Phase 1 and not to exceed Park Impact Fees collected from such Applicant. With respect to Phase 2 of the neighborhood park, upon verification by the City that such accounting accurately represents the Actual Construction Costs incurred and paid by the applicable Park Developer for construction of such Phase 2, the City shall remit directly to such Park Developer all Park Impact Fees collected from other Applicants within the Development (excluding of the first lot to develop within the Development), not to exceed the Actual Construction Costs of such Phase 2 and not to exceed Park Impact Fees collected from such Applicants. Any Park Impact Fee amounts collected by the City in excess of the Actual Construction Costs for the neighborhood park shall be retained by the City for remittance to the District, Developer and/or applicable Applicants in connection with construction of future parks within Prairie Center in accordance with Section 3.9(e)(ii) of the Comprehensive Agreement.

- 5. Trail Design, Construction, and Maintenance.** Developer or the District shall construct, or cause to be constructed, within Tract C, the trail Public Improvements set forth in **Exhibit B**. The final design of Phase 1 of the trail Public Improvements within Tract C shall be provided to the City for review and approval contemporaneously with

final development plan review and approval for the first lot of the Plat. The final design of Phase 2 of the trail Public Improvements within Tract C shall be submitted to the City for review and approval contemporaneously with final development plan review and approval for development of the second lot within the Plat. Phase 1 of the trail Public Improvements shall be completed (as evidenced by the City's grant of construction acceptance therefor) prior to the issuance of the final certificate of occupancy for the first lot of the Plat to develop. Phase 2 of the trail Public Improvements shall be completed (as evidenced by the City's grant of construction acceptance therefor) prior the issuance of the final certificate of occupancy for the second lot of the Plat to develop. The maintenance, repair and replacement of the trail Public Improvements shall be the City's responsibility; however, the District shall repair any damage caused by use by any oil and gas operators within the Development.

6. **Open Space.** As provided in Section 4 of **Exhibit D**, Developer shall dedicate and convey to the District Tract C of the Plat for open space and ancillary purposes as permitted in the Project PUD. The design of the Tract C open space shall be submitted to the City for review and approval prior to issuance of building permits for the second lot of the Plat to develop. Said design shall incorporate screening measures across from the commercial development to the east of the Development as shown on the Conceptual Screening Plans dated 12/21/2007, on file with the City. The Developer or District shall construct, or cause to be constructed, the open space improvements (excluding trails, which are addressed in Section 5 above) within Tract C prior to the issuance of building permits for the last lot of the Plat to develop. The District shall maintain all open space improvements (excluding trails) constructed by the Developer or District within Tract C.
7. **Dedication, Design and Construction of Red Tail Way and Peregrine Drive.** The Developer, at its sole cost and expense, shall design and construct, or cause to be designed and constructed, Red Tail Way as a local street section, from 27th Avenue to Peregrine Drive, within Phase 1, as depicted on the Phasing Plan in **Exhibit B**, in accordance with the Plat, City-approved Civil Engineering Documents and Project PUD. Subject to Section 2.8 of the Agreement (as amended by this **Exhibit G**), no residential building permits for development within the Property shall be issued until such time as the City has granted construction acceptance of this portion of Red Tail Way. The Developer shall, at its sole cost and expense, design and construct, or cause to be designed and constructed, Peregrine Drive as a local street section, from Eagle Boulevard to Red Tail Way, within Phase 1, as depicted on the Phasing Plan in **Exhibit B**, in accordance with the Plat, Civil Engineering Drawings and Project PUD. Subject to Section 2.8 of the Agreement (as amended by this **Exhibit G**), no residential building permits shall be issued for development within the Property until such time the City has granted construction acceptance of such first phase of Peregrine Drive. The Developer shall, at its sole cost and expense, design and construct, or cause to be designed and constructed, Peregrine Drive as a local street section, from Red Tail Way to 27th Avenue, within Phase 2 as depicted on the Phasing Plan in **Exhibit B**, in accordance with the Plat, Civil Engineering Documents and Project PUD. Subject to Section 2.8 of the Agreement

(as amended by this **Exhibit G**), no residential building permits shall be issued for the second lot of the Plat to develop until such time as the City has granted construction acceptance of such second phase of Peregrine Drive.

- 8. Water Services and Fees.** City agrees that it shall provide, or ensure the provision of, water and water taps to adequately serve the Development, subject to the terms and provisions set forth herein and in the Comprehensive Agreement, including, but limited to Sections 3.5(a) and 3.5(e) thereof. In accordance with Sections 3.5(a) and 3.5(e) of the Comprehensive Agreement, City and Developer agree that Developer or the applicable Applicant (as defined in the Comprehensive Agreement) shall pay the Water System Improvement Fee component of the Water Plant Investment Fee and shall satisfy the Water Resource Fee component of the Water Plant Investment Fee (as those terms are defined in the Comprehensive Agreement) for the Development, or applicable portion thereof, by paying such “without water rights” fee in the amount in effect at the time payment is due and paid. Notwithstanding the foregoing, City and Developer agree that, at the sole election of the applicable Applicant, such Applicant within the Development may convey to the City, in whole or in part, sufficient specifically designated acceptable water shares or other form of water rights that meet the City’s established standards and criteria as set forth in the Code (as defined in the Comprehensive Agreement), in which event (i) the Water Resource Fee shall be satisfied or reduced by such conveyance; and (ii) such Applicant and the City shall enter into, if required by the City, the agreement set forth in **Exhibit E** and the City’s standard form of water dedication agreement.
- 9. Off-Site Water Transmission Lines in Eagle Boulevard and 27th Avenue.** All off-site water transmission lines required to serve the Development have been installed and constructed prior to the date of this Agreement in accordance with the terms and provisions of the Comprehensive Agreement, and in particular, Section 3.5(c) thereof, and shall be eligible for reimbursement as more particularly set forth in Section 3.10 of the Comprehensive Agreement.
- 10. On-Site Water Mains.**

 - A.** As described in the Civil Engineering Documents and Phasing Plan, the Developer, at its sole cost and expense, shall design and construct, or cause to be designed and constructed, within Phase 1, the 8” water main within Red Tail Way prior to issuance of certificates of occupancy within the Property.
 - B.** As described in the Civil Engineering Documents and Phasing Plan, the Developer, at its sole cost and expense, shall design and construct, or cause to be designed and constructed, in Phase 1, that portion of the 12” water main within Peregrine Drive from Eagle Boulevard to Red Tail Way prior to issuance of certificates of occupancy within the Property.
 - C.** As described in the Civil Engineering Documents and Phasing Plan, the Developer, at its sole cost and expense, shall design and construct, or cause to be

designed and constructed, in Phase 2, that portion of the 12” water main within Peregrine Drive from Red Tail Way to 27th Avenue prior to issuance certificates of occupancy for the second lot of the Plat to develop.

- 11. Sanitary Sewer Services.** City agrees that it shall provide sanitary sewer collection and treatment services for the Property, subject to the provisions set forth herein and in the Comprehensive Agreement, and in particular, Section 3.7 thereof, including the obligation of the Developer or the District to design and construct the “144th Avenue Interceptor Line” (as defined in the Comprehensive Agreement) when the Southwest Sewer Interceptor reaches 80% of capacity, as more particularly set forth in Section 3.7(b) of the Comprehensive Agreement.
- 12. Off-Site Sanitary Sewer Lines in Eagle Boulevard (144th Avenue) and 27th Avenue.** All off-site sanitary sewer collector lines required to serve the Development have been installed and constructed prior to the date of this Agreement in accordance with the terms and provisions of the Comprehensive Agreement, and in particular Section 3.7 thereof, and shall be eligible for reimbursement as more particularly set forth in Section 3.10 of the Comprehensive Agreement. Developer acknowledges its obligation to design and construct the 144th Avenue Interceptor Line as set forth in Section 3.7(b) of the Comprehensive Agreement. Whether that obligation is triggered by this Development shall be determined as set forth in Section 3.7(b) of the Comprehensive Agreement.
- 13. On-Site Sanitary Sewer Mains.**

 - A.** As described in the Civil Engineering Documents and Phasing Plan, the Developer, at its sole cost and expense, shall design and construct, or cause to be designed and constructed, within Phase 1, the 8” sanitary sewer main within Red Tail Way prior to issuance of certificates of occupancy within the Property.
 - B.** As described in the Civil Engineering Documents and Phasing Plan, the Developer, at its sole cost and expense, shall design and construct, or cause to be designed and constructed, in Phase 1, that portion of the 8” sanitary sewer main within Peregrine Drive from Eagle Boulevard to Red Tail Way prior to issuance of certificates of occupancy within the Property.
 - C.** As described in the Civil Engineering Documents and Phasing Plan, the Developer, at its sole cost and expense, shall design and construct, or cause to be designed and constructed, in Phase 2, that portion of the 8” sanitary sewer main within Peregrine Drive from Red Tail Way to 27th Avenue prior to issuance certificates of occupancy for the second lot of the Plat to develop.
- 14. Brighton School District Capital Facility Fee.** Developer is the “master developer” of the Development and construction of any residential dwelling units within the Development shall be by third-parties and not by Developer. Accordingly, unless Developer is an Applicant for residential building permits within the Development,

Developer shall not be required to satisfy the fee-in-lieu or land dedication requirements of the *Intergovernmental Agreement Concerning Fair Contributions for School Sites Between the City of Brighton and Brighton School District 27J dated February 16, 1999, as amended*, (the “**Fair Contributions IGA**”) or to be a participating development entity and enter into a “Participant Agreement” with the Brighton School District Capital Facility Fee Foundation for the funding of capital facilities. Notwithstanding the foregoing, obligations under the Fair Contributions IGA and/or any “Participant Agreement” shall apply to any successors or assigns of Developer with respect to the Property to the extent such successors or assigns apply to the City for residential building permits within the Development.

15. **Oil/Gas Wells.** The depiction of the oil and gas operations areas on the Plat does not constitute approval of any oil/gas wells on the Property.

16. **Amendments and Supplements to Agreement.** The following Sections of the Agreement are modified to the extent set forth below:

a. **Section 1: Definitions.** Section 1 is amended by the insertion of the following new definition:

“Actual Construction Costs” as used in this Agreement shall mean Hard Costs (as defined in the Comprehensive Agreement); provided however, such costs shall apply to all Public Improvements set forth on **Exhibit B** and shall apply to all such costs incurred by the District and Developer, as applicable.

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

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

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

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

d. Section 2.8: Construction Acceptance and Warranty.

- i. Section 2.8 is amended by deleting the first sentence of Section 2.8 and in its place inserting the following sentence:

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

- ii. Section 2.8 is further amended by deleting the last three sentences of Section 2.8 and in their place inserting the following two sentences:

No certificates of occupancy shall be issued by the Administrative Division of the Community Development Department prior to “construction acceptance” of the applicable Phase of Public Improvements. Notwithstanding the foregoing, certificates of occupancy may be issued for individual Phases in which the only remaining Public Improvements to be completed are detached sidewalks, landscaping and/or final asphalt lift for streets within that Phase, provided that a sufficient Improvement Guarantee is in place for these remaining Public Improvements.

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

Notwithstanding the foregoing, no provision contained in this Section 2.9 amends, rescinds or otherwise modifies the responsibility of the Developer and/or the District for their maintenance responsibilities (i) as more particularly set forth in the applicable sections of the Comprehensive Agreement, including without limitations, Sections 3.11(b) and 3.12(a), and (ii) with respect to any previous agreement(s) between Developer and the District to which the City is not a party and which may concern the responsibility (as between the Developer and the District) for maintenance of the Public Improvements, so long as said previous agreements are not in conflict with the maintenance standards set forth in this Agreement.

- f. Section 2.13: Improvement Guarantees. Section 2.13 is amended by inserting after the third sentence of Section 2.13 the following sentence:

Notwithstanding the foregoing, and as more particularly set forth in Section 3.1 of the Comprehensive Agreement, if the Public Improvements are being constructed by or for the District, the City shall accept for the Improvement Guarantee up to five (5) dual obligee completion bonds from the applicable Districts and/or the contractor, as appropriate, in a form acceptable to the City, wherein both the City and the appropriate contracting party (e.g., the District or applicable district(s) or the Developer) are named as beneficiaries.

- g. Section 3.1: Rights of Way, Easements and Permits. Section 3.1 is amended and restated in its entirety to read:

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

- h. Section 3.3: Utility Coordination and Installation. Developer hereby represents and warrants that all off-site dry utilities required to be constructed and installed for the Development have been constructed and installed as of the date of the Agreement. Section 3.3 is amended by deleting the first sentence of Section 3.3 and in its place inserting the following sentence:

In addition to the Public Improvements described on **Exhibit B**, Developer shall also be responsible for installation of on-site electric, street lights, natural gas and telephone utilities to serve the Development.

- i. Sections 3.4 and 3.5: Reimbursement. Sections 3.4 and 3.5 are deleted in their entirety and replaced with Section 3.10 of the Comprehensive Agreement, which is incorporated herein by this reference.
- j. Section 4.3: Streets. Section 4.3 is amended and restated in its entirety to read:

Streets. Except as modified by the Project PUD, all internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time. Further, all such streets shall be constructed in accordance with the approved Civil Engineering Documents, and shall be constructed in accordance with the Public Improvements Phasing Plan, as set forth in **Exhibit B**. The Parties acknowledge and agree that the obligation to install sidewalks comprising "street improvements" (as defined in Section 4.1) shall be in connection with, and contemporaneous with, development of the applicable lot abutting such sidewalks/street Public Improvements.

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

Public Land Conveyance. Developer shall convey to the City Tract B as shown on the Plat and set forth in **Exhibit D**. The City shall accept for public use only those lands which, pursuant to the title commitment, are free and clear of (i) all liens, taxes, and monetary encumbrances, except for ad valorem real property taxes for the current year and thereafter; and (ii) any other encumbrances that may limit such property for its intended public use, in the City's sole determination. Developer shall convey Tract B after the Plat is recorded via special warranty deed in form and substance mutually agreed upon by Developer and City, and City shall be deemed to have accepted the same upon recording of such special warranty deed. Contemporaneously with such conveyance, Developer shall cause a title policy for Tract B to be issued to City in form and substance acceptable to City. Should additional public lands for the development of the Property be necessary, as set forth in Section 3.9 of the Comprehensive Agreement, Developer shall dedicate the same pursuant to a conveyance instrument mutually agreed upon between the City and Developer.

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

Landscape Improvements. The parties acknowledge and agree that the obligation to install landscaping for rights-of-way and associated irrigation improvements shall be in connection with, and contemporaneous with, development of the applicable lot abutting such right-of-way. Prior to installation of landscaping in and adjacent to rights-of-way for the applicable lot, Developer shall furnish to the City complete final landscape and irrigation plans and obtain approval by the City Manager or the Manager's designee prior to the commencement of construction of the landscape and irrigation. The District shall maintain the landscaping within the rights-of-way of the street Public Improvements.

m. Section 8.2: Drainage Improvements.

- i. Section 8.2 is amended by deleting the first sentence and replacing therefor the following sentence:

Drainage Improvements for the Development shall be constructed by Developer and in accordance with plans and specifications approved by the City.

- ii. Section 8.2 is further amended by inserting, at the end of Section 8.2, the following sentence:

Nothing in this Section 8.2 shall relieve subsequent purchasers or lot owners of the duty to comply with all approved grading and drainage plans for the Development.

n. Section 8.4: Post-Construction Stormwater Management.

- i. Section 8.4 is amended by deleting the first sentence and replacing therefor the following sentence:

Post construction stormwater management by the Developer shall comply with Chapter 14-8 Storm Drainage BMC.

- ii. Section 8.4 is further amended by deleting the second sentence of Section 8.4.

o. Section 10.4: Assignment, Delegation and Notice. Section 10.4 is amended and restated in its entirety to read as follows:

Assignment, Delegation and Notice. Developer shall provide to the City, for approval, written notice of any proposed assignment and delegation of any obligations under this Agreement to any successor in interest of Developer, and Developer and such successor shall, until the City has given written approval of such assignment and delegation, be jointly and severally liable for the obligations of Developer under this Agreement. Notwithstanding the foregoing, the City acknowledges that the District has constructed or shall construct all of the Public Improvements and has provided or shall provide an Improvement Guarantee therefor in accordance with Section 2.13 of this Agreement as amended by **Exhibit G** attached hereto. Accordingly, the execution of this Agreement by the District and the City shall constitute Developer's notice of assignment of the obligation to construct the Public Improvements under this Agreement, and all references to Developer's obligation to construct the Public Improvements shall be deemed references to Developer's and District's joint and several obligation, and this Agreement shall constitute the City's approval of such assignment.

- p. Section 10.7: Force Majeure. Section 10.7 is amended and restated in its entirety to read as follows:

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

- q. Section 10.9: Previous Agreements. Section 10.9 is amended and restated in its entirety to read as follows:

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

- r. Section 10.11: Severability. Section 10.11 is amended and restated in its entirety to read as follows:

Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and affect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining, or substantially deprive such Party of the benefit of its bargain under this Agreement. The Parties shall cooperate in reforming this Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition, subject to Section 2.2 of the Comprehensive Agreement.

EXHIBIT H

[Intentionally deleted.]

EXHIBIT I

NEIGHBORHOOD PARK CONCEPTUAL DESIGN

[Follows This Page.]

