

**CITY COUNCIL RESOLUTION**

**A RESOLUTION APPROVING THE CONSTRUCTION AND OPERATIONS AGREEMENT BETWEEN THE CITY OF BRIGHTON AND THE BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 4 FOR THE CONSTRUCTION AND OPERATION OF THE PARKING LOT SERVING THE BRIGHTON CROSSING BEACH CLUB AND THE CITY OF BRIGHTON PUBLIC PARK, AND AUTHORIZING THE CITY MANAGER TO SIGN THE SAME ON BEHALF OF THE CITY**

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**RESOLUTION NO. 04-30**

**WHEREAS**, The City and Brighton Crossing Metropolitan District No. 4 ("District") are authorized by the provisions of Article XIV, 18, of the Colorado Constitution and Section 29-201 et seq. of the Colorado Revised Statutes to enter into contracts with other local governments for the performance of functions which they are authorized by law to perform on their own; and

**WHEREAS**, the District is constructing a recreation center and pool on property owned by it in the Brighton Crossing Subdivision, a public park on a portion of adjacent property owned by the City, and also to construct a parking lot for the benefit of the users of the pool area and public park; and

**WHEREAS**, the City and District have worked together to provide for the construction, operation, and maintenance of the subject parking lot, and are desirous of setting forth their understandings and agreements in a written document; and

**WHEREAS**, the City finds and determines that the attached Construction and Operations Agreement will provide the City of Brighton with a parking lot and associated landscaping for the community park in Brighton Crossing Subdivision without additional cost; and

**WHEREAS**, the City of Brighton City Council determines that it is in the best interests of the City of Brighton to enter into the Construction and Operations Agreement with the District to construct the parking lot and install landscaping.

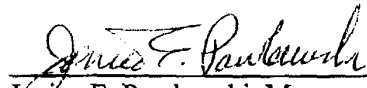
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:**

RETURN TO:  
CARMA COLORADO  
9110 E NICHOLS AVE #180  
ENGLEWOOD CO 80112


1. The Construction and Operations Agreement between the City of Brighton and Brighton Crossing Metropolitan District #4, a copy of which is attached hereto, is hereby approved.
2. The City Manager and City Clerk are hereby authorized to execute and sign the Construction and Operations Agreement and any and all additional documentation on behalf of the City to facilitate said Agreement.

RESOLVED AND PASSED THIS 6th DAY OF April, 2004.

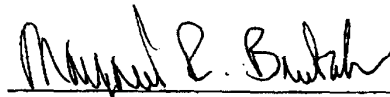
CITY OF BRIGHTON, COLORADO  
CITY COUNCIL

  
\_\_\_\_\_  
Janice E. Pawlowski, Mayor

ATTEST:

  
\_\_\_\_\_  
Karen Borkowski, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Margaret R. Brubaker, Esq., City Attorney

## CONSTRUCTION AND OPERATIONS AGREEMENT

This Construction and Operations Agreement (this "Agreement") is entered into by and between Brighton Crossing Metropolitan District No. 4, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 9110 East Nichols, Suite 180, Englewood, Colorado 80112 (the "District") and the City of Brighton, a Colorado home rule municipality (the "City"), whose address is Brighton City Hall, 22 South 4<sup>th</sup> Avenue, Brighton, Colorado 80601.

### RECITALS

WHEREAS, the District is the owner of that certain two (2) acre parcel (the "District Parcel") located in the City of Brighton, County of Adams, State of Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the City is the owner of that certain twenty-seven (27) acre parcel (the "City Parcel") which is adjacent to the District Parcel located in the City of Brighton, County of Adams, State of Colorado, more particularly described on Exhibit B attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to its Service Plan, as approved by Adams County, the District is empowered to construct certain public improvements necessary and of benefit to the Brighton Crossing Development; and

WHEREAS, the District is constructing a recreation center and pool (the "Pool Area") on the District Parcel, and a public park (the "Public Park") on a portion of the City Parcel, which Public Park shall ultimately comprise approximately seventeen (17) acres; and

WHEREAS, the District also desires to construct a parking lot (the "Parking Lot") and other improvements, as identified herein, on the City Parcel for the benefit of the users of the Pool Area and the Public Park and the City, and the City agrees therewith.

### AGREEMENT

In consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Construction of Parking Lot. The District shall design and construct the Parking Lot, in accordance with plans and specifications approved in writing by the City prior to the start of construction, and shall be responsible for all costs associated with the construction thereof. The District also agrees to install, at its cost, all lighting necessary and as required by the City for the Parking Lot.

2. Construction of Irrigation Improvements. The District shall be responsible for the construction of all water lines, valves, sprinkler apparatus, control boxes/panels and any other

related improvements or appurtenances deemed necessary for irrigation of the landscaping in the Public Park and Pool Area (the "Irrigation Improvements"). Construction of the Irrigation Improvements by the District shall include separate irrigation taps for the Public Park and the Pool Area, respectively. The City agrees to provide the necessary water taps for irrigation of the Public Park portion of the City Parcel at no cost to the District. From and after final acceptance by the City of the irrigation system and related improvements for the Public Park portion of the City Parcel, the District assumes and agrees to pay the costs of all water used on the District Parcel, Pool Area and the Public Park.

3. Landscaping. The District shall also install all landscaping in accordance with Exhibit C attached hereto and, by reference, made a part hereof, and shall be responsible for all costs associated with the installation thereof. After final acceptance by the City of all Public Park and other Improvements contemplated herein, in their entirety, the City shall become responsible for maintaining the Public Park portion of the City Parcel, in all respects. The District shall at all times be responsible for maintaining all Improvements on the District Parcel, in all respects.

4. Parking Lot. The District assumes and agrees to pay the costs of utilities necessary for the lighting at the Parking Lot at all times during the term of this Agreement. The District further agrees to be responsible for the operation, maintenance and capital repairs of the Parking Lot and the costs associated therewith. Obligations of the District for operation, maintenance and capital repairs associated with the Parking Lot, from and after the date of acceptance by the City, shall be as follows:

a. Reasonable day to day operation and maintenance of the Parking Lot shall be undertaken as deemed necessary by the District and shall be the sole responsibility of the District. Day to day operation and maintenance of the Parking Lot shall include by way of illustration, but not be limited thereby, landscape maintenance, snow plowing, sweeping and removal of trash and debris.

b. All capital repairs necessary to the Parking Lot shall be undertaken by the District, provided, however, that the costs therefore shall be shared equally by the Parties, subject to the City's annual budgeting procedures and appropriation requirements, and subject to the availability of adequate funds therefor. "Capital Repairs" of the Parking Lot shall include by way of illustration, but not be limited thereby, all necessary repairs to the Parking Lot, such as crack fill, striping, seal coat and full replacement of the asphalt as may be necessary, and repair and/or replacement of associated curbs, gutters and drainage improvements. The District shall coordinate with the City as necessary prior to initiation of such repairs, and shall provide the City with all contracts or subcontracts for the same upon written request of the City. Upon completion of any capital repair undertaken by the District, the District shall provide the City with a copy of the agreement for such repair and any change orders, and a copy of all invoices for the actual costs associated with the repair (the "District Billing"). The City shall pay the District fifty percent (50%) of the actual costs reflected in the District Billing within forty-five (45) days of receipt of the District Billing.

c. The City agrees that within thirty (30) days of execution hereof that it shall provide written documentation to the District naming a City representative or representatives responsible for coordination of the following matters and the requisite City procedures specific to the same to the extent such procedures are not addressed herein:

- i. Acceptance of the Parking Lot Improvements;
- ii. Coordination of capital repairs of the Parking Lot; and
- iii. Submission of the District Billing.

5. Irrigation and Landscaping. The District agrees to be solely responsible for the installation, maintenance and repair of all irrigation and landscaping improvements in and around the Public Park and Pool Area and which are constructed pursuant to Section 2, above, until such time as this Agreement terminates. This Agreement shall not terminate until such time as the Parties enter into a subsequent Intergovernmental Agreement (“IGA”) addressing the ongoing shared maintenance and operation of all Improvements contemplated herein. From and after initial acceptance of certain Landscaping and Irrigation Improvements by the City, the maintenance and repair thereof shall be the sole responsibility of the District until the Public Park is constructed in its entirety (17 acres) and finally accepted by the City. From and after the completion of the construction and the City’s final acceptance of the Public Park Improvements in their entirety, the City shall have the sole responsibility for the maintenance of all Public Park improvements.

6. Warranties and Bond. The District shall warrant all improvements herein required to be constructed and maintained by the District for a period of one (1) year after substantial completion thereof, and shall guarantee or otherwise secure such warranties with appropriate warranty bonds.

7. Construction Easement. To the extent that the same is reasonably necessary in scope, purpose, and duration, the City hereby grants to the District a temporary non-exclusive easement appurtenant over the City Parcel to the District for the construction, operation, maintenance and use purposes in accordance with the terms of this Agreement.

8. Parking Lot Use. The City agrees that pool users will be allowed to use the Parking Lot for so long as the pool continues in operation, and the Parties agree that an appropriate easement or license agreement will be entered into in order to adequately document such shared use, in connection with the IGA contemplated herein.

9. Term of Agreement. This Agreement shall terminate upon the City’s final acceptance of all improvements contemplated herein, and when the Parties have entered into a separate agreement for shared use and maintenance of all Improvements. It is the intention of the Parties that they shall enter into an Intergovernmental Agreement (“IGA”) in relation to the operations and maintenance duties of the Parties with respect to the Parking Lot and Public Park and other matters identified herein, to become effective upon the termination of this Agreement. The Parties agree that they shall use reasonable efforts to begin negotiations with respect to the

anticipated IGA so that the same may become effective upon final acceptance of the improvements, but further agree that until such time as the IGA is executed, the terms and conditions of this Agreement shall continue in full force.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

11. Attorneys' Fees. In the event of any arbitration or litigation relating to the rights and obligations of the Parties pursuant to this Agreement, the substantially prevailing party shall be entitled to recover its reasonable costs and attorneys' fees from the other party.

12. Notices. All notices required herein shall be in writing and shall be deemed given if personally delivered or mailed with postage prepaid by United States mail to:

Brighton Crossing Metropolitan District No. 4  
Attn: President  
9110 East Nichols, Suite 180  
Englewood, CO 80112

City Manager  
City of Brighton  
22 So. 4<sup>th</sup> Avenue  
Brighton, CO 80601

or other such address as either party may herein after direct.

13. Relationship of Parties. Nothing contained herein shall be construed or interpreted as (a) entitling any person or entity not a party to this Agreement to any benefits of this Agreement; (b) appointing any party as the agent of another party or authorizing any party to enter into contracts in the name of any other party; or (c) creating, establishing or imposing a fiduciary duty owed by one party to another party hereunder or in any way creating a fiduciary relationship between the Parties.

14. Amendment. This Agreement may not be amended or modified except by an instrument in writing duly executed by the Parties.

15. Assignment. No party shall have the right to assign its rights or obligations hereunder without the prior written consent of the other Parties hereto, which may be granted or withheld in the sole discretion of such Parties.

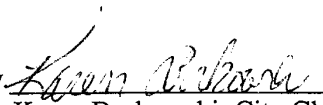
16. Benefit and Binding Effect. This instrument and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their successors and permitted assigns.

EXECUTED THIS 20<sup>th</sup> day of October 2004.

**THE CITY OF BRIGHTON**

By:   
John Bramble, City Manager

Attest:

By:   
Karen Borkowski, City Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ADAMS )

This instrument was acknowledged before me this 7th day of October 2004 by John Brumba as City Manager for the City of Brighton.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

MY COMMISSION EXPIRES  
September 25, 2007.

[Signature]  
Notary Public

**BRIGHTON CROSSING METROPOLITAN  
DISTRICT NO. 4**

By: [Signature]  
Thomas P. Morton, President

Attest:

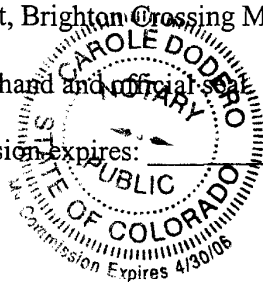
By: [Signature]  
Its: [Signature]

STATE OF COLORADO )  
 ) ss.  
COUNTY OF NEAPAHOE )

This instrument was acknowledged before me this 2th day of October, 2004 by Thomas P. Morton, President, Brighton Crossing Metropolitan District No. 4.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_



[Signature]  
Notary Public



# EXHIBIT A

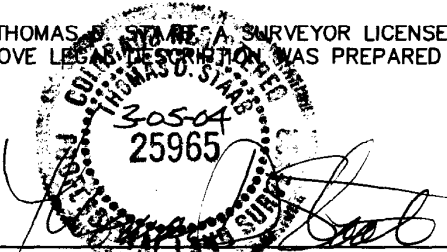
SHEET 1 OF 2

## LEGAL DESCRIPTION

TRACT WW, BRIGHTON CROSSING FILING NO. 2, AS RECORDED IN FILE 18 AT MAP 591 OF THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER, LOCATED IN SECTION 2, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON COUNTY OF ADAMS, STATE OF COLORADO;

SAID PARCEL CONTAINS 2.07 ACRES, MORE OR LESS.

I, THOMAS D. STAAB, A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.



THOMAS D. STAAB, PLS 25965  
FOR AND ON BEHALF OF  
CARROLL & LANGE, INC.

3-05-04

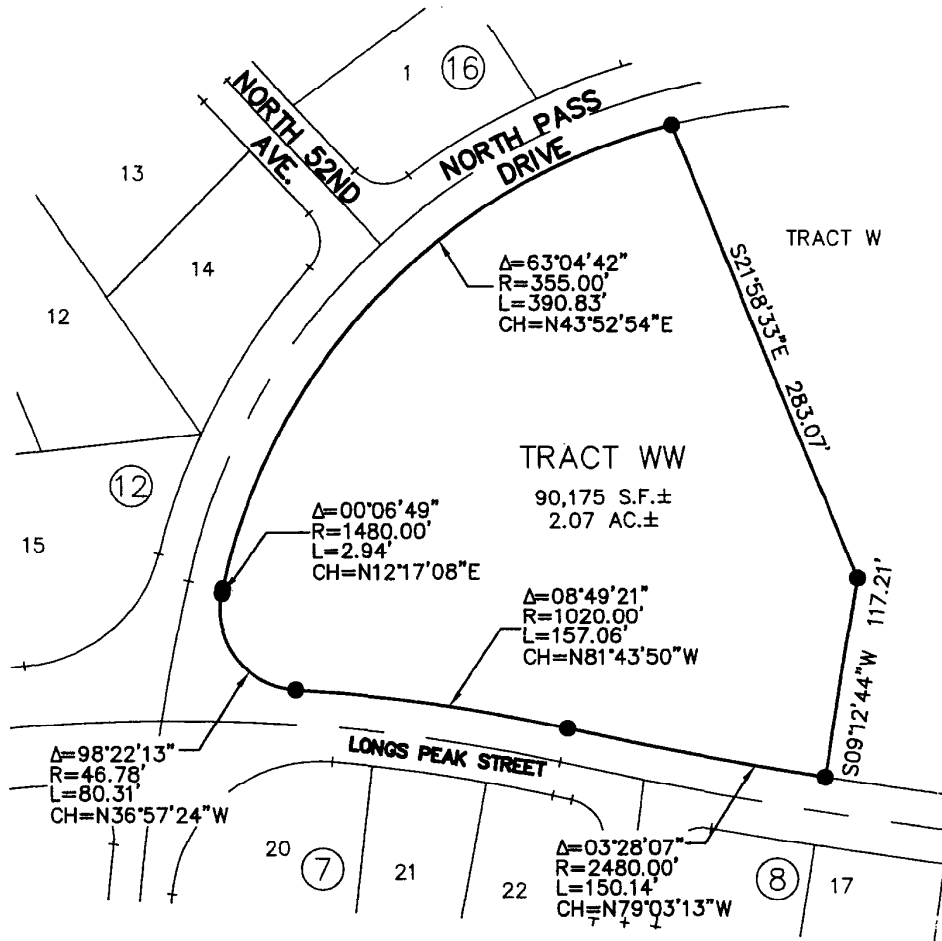
DATE



**Carroll & Lange** LLC  
Professional Engineers & Land Surveyors  
165 South Union Blvd., Suite 156  
Lakewood, Colorado 80228  
(303) 980-0200

# EXHIBIT A

SHEET 2 OF 2



SCALE: 1" = 100'

BRIGHTON CROSSING FILING NO. 2  
FILE 18, MAP 591

**NOTE:**

- Denotes Change of Direction Only. This exhibit does not represent a monumented survey. It is intended only to depict the attached legal description.



**Carroll & Lange** INC  
 Professional Engineers & Land Surveyors  
 165 South Union Blvd., Suite 156  
 Lakewood, Colorado 80228  
 (303) 980-0200

# EXHIBIT B

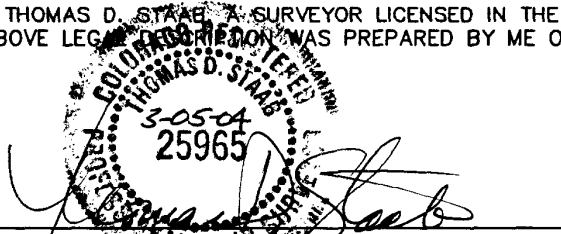
SHEET 1 OF 2

## LEGAL DESCRIPTION

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SAID PARCEL CONTAINS 17.40 ACRES, MORE OR LESS.

I, THOMAS D. STAAB, A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.



THOMAS D. STAAB, P.L.S. 25965  
FOR AND ON BEHALF OF  
CARROLL & LANGE, INC.

3-05-04  
DATE

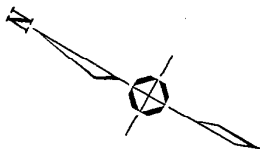


Carroll & Lange <sup>LLC</sup>

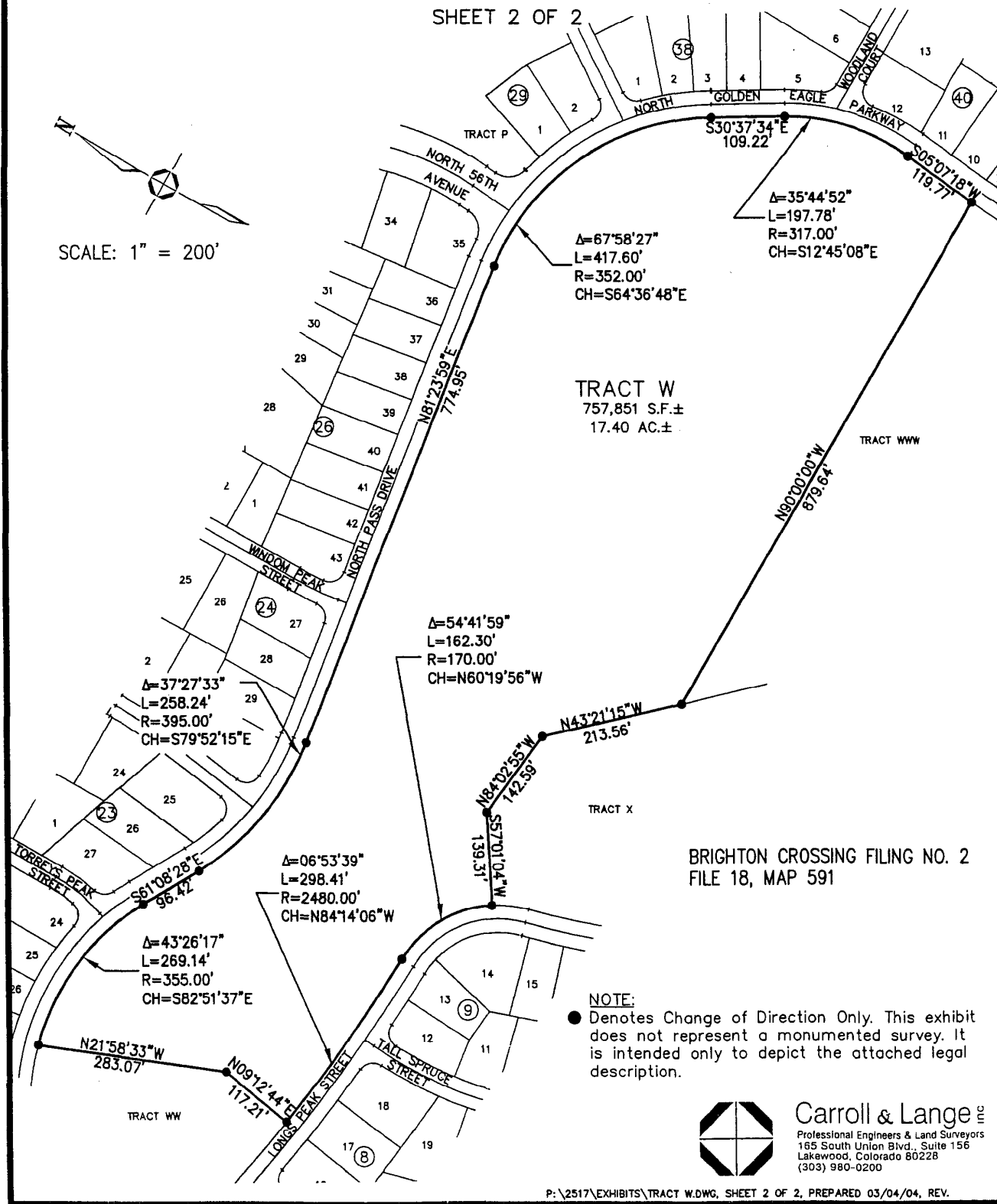
Professional Engineers & Land Surveyors  
165 South Union Blvd., Suite 156  
Lakewood, Colorado 80228  
(303) 980-0200

# EXHIBIT B

SHEET 2 OF 2



SCALE: 1" = 200'



**TRACT W**  
757,851 S.F.±  
17.40 AC.±

BRIGHTON CROSSING FILING NO. 2  
FILE 18, MAP 591

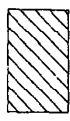
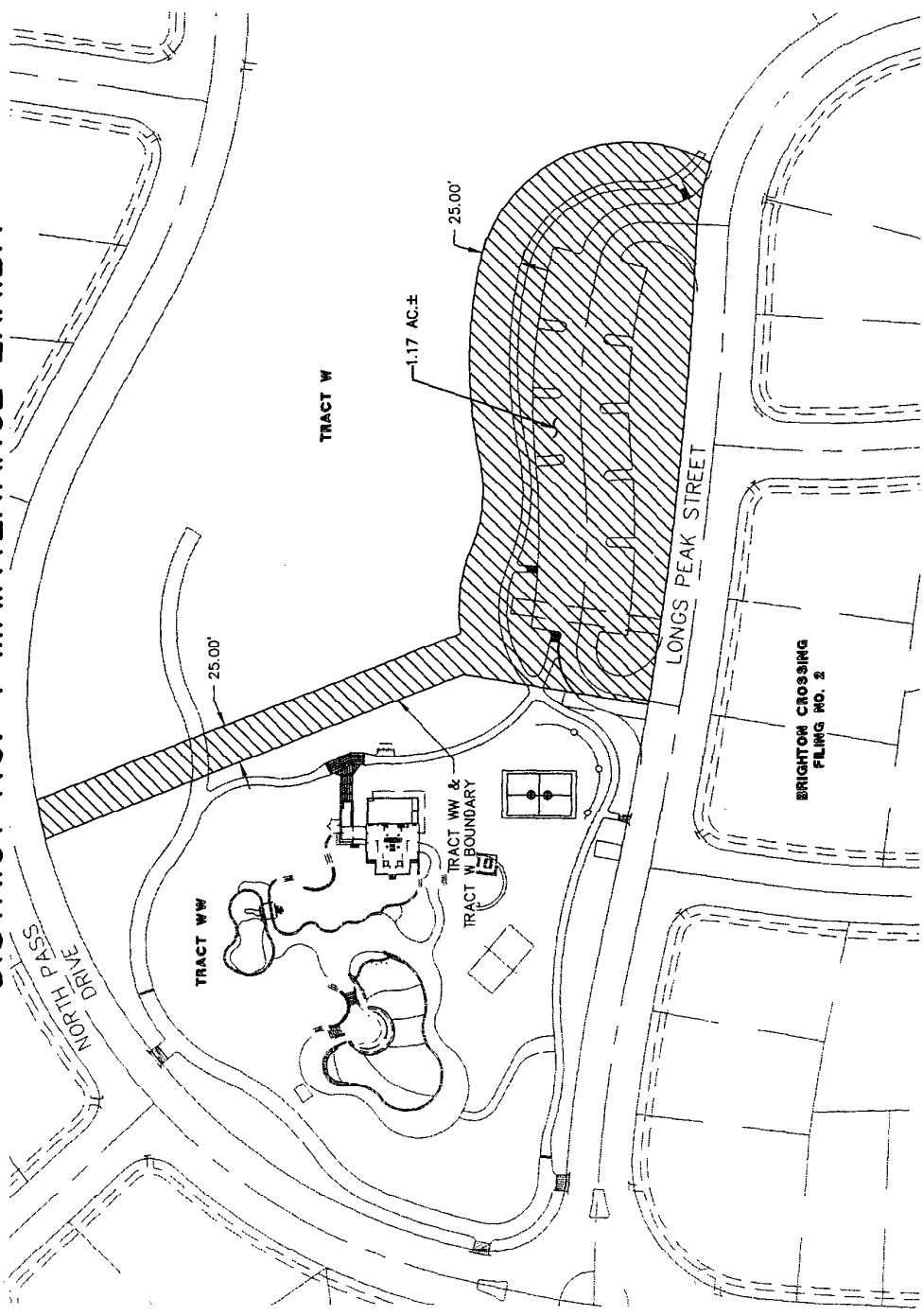
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**Carroll & Lange** PC  
Professional Engineers & Land Surveyors  
165 South Union Blvd., Suite 156  
Lakewood, Colorado 80228  
(303) 980-0200

**EXHIBIT C  
BRIGHTON CROSSING METROPOLITAN  
DISTRICT NO. 4 MAINTENANCE EXHIBIT**



AREA TO BE MAINTAINED BY BRIGHTON CROSSING METROPOLITAN DISTRICT NO. 4 PER AGREEMENT



**Carroll & Lange**  
Professional Engineers & Land Surveyors  
185 South Union Blvd., Suite 156  
Lakewood, Colorado 80228  
(303) 960-0200

N.T.S.

