

**AN AGREEMENT FOR ECONOMIC INCENTIVES BETWEEN THE CITY OF
BRIGHTON, COLORADO AND
76 COMMERCE CENTER LLC.**

THIS AGREEMENT is entered into this 15th day of August, 2017, by and between the City of Brighton, Colorado a home rule municipal corporation (the “CITY”), and 76 Commerce Center LLC., (“HYDE DEVELOPMENT”).

RECITALS

This Agreement is made with respect to the following facts:

- A. The City Council through the enactment of Resolution 99-24 and 04-121, has found and determined that the stimulation of economic development through the creation of new employment opportunities, the establishment of a sound tax base, the promotion of business and industry serve the general welfare of the citizens of Brighton; and
- B. The City Council through the enactment of Resolution 99-24 and 04-121, has established a justification for an economic incentives program to foster economic development within the City; and
- C. Hyde Development has brought to the City a proposal for the Project, as further defined below, and has requested certain development incentives from the City; and
- D. Hyde Development is under contract to purchase and acquire fee title to certain industrial and commercial lands located in the Bromley Interstate Business Park/Lot 2, Block 1, Bromley Park Filing No. 102 (the “Property”); and desires to build thereon approximately one million seven hundred seventy seven thousand (1,777,000) square feet of industrial and commercial buildings for the development of a large industrial business park; and
- E. The Project is located in an “Enterprise Zone” as defined in C.R.S. §39-30-101 *et seq.*, and is, therefore, eligible for certain tax rebate incentives; and
- F. The City, in reliance on the facts set forth herein, together with representations and agreements declared by Hyde Development regarding the Project, desires to offer certain

economic development incentives (the “Economic Development Incentive Package”) to Hyde Development as an inducement to expand the employment base in the City, and increase the sales tax and property tax base of the City, as well as to attract new businesses such as manufacturing operations, additional suppliers to existing businesses, restaurants, and lodging facilities; and

NOW, THEREFORE, for and in consideration of the recitals, premises, mutual covenants and agreements herein contained, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Hyde Development agree as follows:

AGREEMENT

SECTION 1 . DEFINITIONS. Unless the context otherwise clearly indicates, the following words and phrases, as used in the Agreement, shall be defined as follows:

- 1.1 “Agreement” shall mean this Agreement for Economic Incentives between the City of Brighton, Colorado and 76 Commerce Center LLC. approved by the Brighton City Council on or about August 15, 2017.
- 1.2 “Certificate of Occupancy” shall have the meaning as provided in the most recently adopted International Building Code, as amended by the City.
- 1.3 “City” shall mean the City of Brighton, Colorado, a home rule municipal corporation.
- 1.4 “Economic Development Incentive Package” shall be comprised of a reduction of certain building use taxes related to construction and operation of the Project, as more specifically set forth and described herein. Subject to the conditions more specifically set forth herein, and in particular Section 5 hereof, the total Economic Development Incentive Package to Hyde Development shall expire ten (10) years from the later of: (a) the date Hyde Development actually acquires ownership of the subject property, or (b) the date on which the Economic Incentives Agreement has been fully signed by the City and Hyde Development as set forth in this agreement.
- 1.5 “Initial Construction of Project” shall mean the issuance of any permits for the construction of the site and building structures by Hyde Development and any other facilities and improvements which are necessary to the operation of the Project on the Property, as well as all other infrastructure improvements (including, without limitation, all water and sewer mains, electrical transmission conduits and equipment and other utility facilities not owned by public utilities or that are the obligation or responsibility of a quasi-public or

private utility), landscaping, facilities and appurtenances constructed and situated now or hereafter upon the Property as part of the Project and which are specifically set forth on City-approved site plans issued no later than December 31, 2017, subject to extension for delays as provided in Section 4 hereof.

- 1.6 “Project” shall mean the construction of approximately 1,777,000 square feet of industrial and commercial buildings to be developed in phases by Hyde Development and located on the Property.
- 1.7 “Property” shall mean Lot 2, Block 1, Bromley Park Filing No. 102, and those immediately adjacent parcels that may be developed by Hyde Development as part of the Project.
- 1.8 “Use Tax” shall be as defined in §3-32-20 of the Brighton Municipal Code and shall be limited herein to only the use tax related to building materials for construction of the Project on the Property (the “Building Use Tax”).

SECTION 2. PUBLIC PURPOSE. The City Council hereby declares that there are particular public purposes for which the economic development incentives contained in this Agreement overcome any individual interests incidentally served by the incentives. The Council finds that development of the Project by Hyde Development will be a general benefit to the citizens of Brighton through increased employment, long-term tax base growth, and related economic development benefits. In addition to these general public purposes:

- 2.1 These incentives will permit Hyde Development to build and operate the Project which will contribute to the development of new businesses within the City, and will result in substantial and long-term expansion of new employment and the tax base within the City;
- 2.2 These incentives will provide direct and indirect benefits to the City’s industrial and commercial markets. These public purposes outweigh any incidental individual interests and are not a special aid, grant or privilege.

SECTION 3. ELIGIBILITY. City Council has reviewed the Economic Development Incentive Package request in conjunction with the criteria set forth in Resolution No. 99-24 and Resolution 04-121 and finds that the economic benefit to the City by virtue of development of the Project in the City as represented by Hyde Development is demonstrated and that the proposal is eligible for economic incentives, based upon the following:

- 3.1 The proposed Project will put to beneficial use presently underutilized real estate in the City of Brighton.

- 3.2 The proposed Project will result in new employment opportunities in the City of Brighton.
- 3.3 The proposed Project will increase the property tax base previously established within Brighton.
- 3.4 The proposed Project will provide new commercial and industrial development opportunities not currently available within Brighton.

SECTION 4. CONSTRUCTION OF PROJECT. Hyde Development shall begin and continuously pursue construction of the Project to completion. Construction of Building Five (5) is expected to be completed by December 31, 2018 with a total estimated completion of the development of the Project no later than December 31, 2027. Recognizing that construction projects of this magnitude may encounter unexpected delays based on factors such as market absorption rates and other similar factors effecting industrial and commercial developments, Hyde Development may request, and the City will approve, an extension of the completion date of the Project for a period not to exceed six (6) months, to June 30, 2028, so long as building permits for the Project have been issued by the City and construction has commenced at the time such request is made.

SECTION 5. ECONOMIC DEVELOPMENT INCENTIVE - REDUCTION IN BUILDING USE TAX

- 5.1 For purposes of any reduction in the amount of use taxes on construction materials for the Project, the following procedures shall apply:
 - a. Subject to the limitations and conditions set forth herein, the City shall reduce by fifty percent (50%) the Use Tax payable by Hyde Development for construction materials for the construction of the Project (the "Building Use Tax"). The total of this reduction in Building Use Tax for construction materials for the construction of the Project shall not exceed fifty percent (50%) of the valuation of the Project times the Brighton Use Tax rate of 3.75%. Based on an approximate total valuation of \$104,000,000, the City Portion of this Use Tax is estimated to be \$1,430,000, with an estimated rebate of \$715,000. Note: The city cannot reduce the Metro District portion of the Use Tax, which is approximately \$520,000. Valuation is estimated at \$104,000,000. Use tax is calculated at 3.75% times 50% of valuation. $3.75\% \times \$52,000,000 = \$1,950,000$. The Bromley Park portion of this is \$520,000 (1%). The net owed for City portion is \$1,430,000.
 - b. Hyde Development intends to construct the Project in phases. Therefore, said fifty percent (50%) reduction in Building Use Tax for construction materials shall occur for each building at the time Hyde Development makes final application for and payment for Building Permits for construction of a particular building of the Project and only after written formal request for said reduction is submitted by Hyde Development to the City Manager (with a copy

to the Finance Director and Chief Building Official). Calculations as to valuation shall be determined according to the procedures set forth in the International Building Code as adopted and implemented by the City at the time payment is due.

- c. The right to said reduction in Use Tax for construction materials shall be personal to Hyde Development and shall not run with the land, and shall be limited to the Construction of the Project, and subject to the requirements and conditions set forth herein, including, without limitation the initial December 31, 2018 deadline as more particularly set forth in 1.6 hereof, subject to extension for delays as provided in Section 4 hereof and subject to delays resulting from force majeure as described in Section 11 below.
- d. Hyde Development shall keep accurate books and records of all costs incurred in connection with the construction of the Project. During regular business hours, and upon reasonable advance notice to Hyde Development, the City or its designee is hereby authorized to review Hyde Development's books and records. Such review shall be conducted at the expense of the City. Findings from a review of Hyde Development's books and records may result in an adjustment to the amount of the Building Use Tax reductions.

SECTION 6. SUBORDINATION TO TAX BONDS. Nothing herein shall be construed to grant to, or create in Hyde Development any right, claim, lien or priority in or to the City's tax revenue superior to or on a parity with the rights, claims, or liens of the holders of tax revenue bonds, notes, certificates or debentures payable from or secured by any taxes, existing or hereafter issued by the City. Moreover, nothing herein shall be construed to deny or limit the City's full authority to issue such tax bonds. Accordingly, Hyde Development specifically acknowledges and agrees that all rights to the Economic Development Incentive Package from use taxes on construction materials for the Project contemplated under this Agreement are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such tax revenue bonds, notes, certificates or debentures payable from or secured by any use taxes existing or hereafter issued by the City. It is further acknowledged that the development incentive use tax reduction to Hyde Development shall be available only from the City's building materials use tax revenues collected from the Project on the Property and remitted to the City and only to the extent herein provided, and no obligation of the City pursuant to this Agreement shall provide access to any other City revenue source, nor shall such obligation be deemed to create any pledge of credit of the City.

SECTION 7. ANNUAL APPROPRIATION OF FUNDS BY THE CITY. The parties hereto acknowledge and agree that the City has advised and opined that the Economic Development Incentive Package (i.e., building use tax reduction) provided for under this Agreement (and in particular Sections 5) is dependent upon the continuing availability of funds beyond the term of the City's current fiscal period and that such reduction is contingent upon funds for such purpose being budgeted and appropriated annually. In the event that the City does not budget and appropriate sufficient funds for any payment herein at any time, the City shall provide written notice to Hyde

Development that said payment or payments will not be made. Further, if any court of competent jurisdiction determines that this Agreement violated the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately convert to a one year contract, with automatic annual renewal provisions, subject only to failure by the City to appropriate funds annually. The failure to appropriate or have funds available shall not be a breach of this Agreement.

SECTION 8. GENERAL OBLIGATIONS OF HYDE DEVELOPMENT

- 8.1 As set forth in Section 4 of this Agreement, the Parties have agreed that this Agreement is specifically subject to and conditioned upon certain performance obligations by the various parties. In particular, Hyde Development shall comply with all City Codes, ordinances, resolutions and regulations, and pay all taxes, fees and expenses required by the City in connection with the development and construction of the Project in the amounts in effect at the time payment is due. Hyde Development acknowledges that it is responsible for compliance with the obligations and responsibilities as identified in this Agreement.
- 8.2 During the term of this Agreement, Hyde Development shall not seek administrative or judicial review of the constitutionality or applicability of any tax statute or ordinance lawfully and accurately determined by any tax official to be applicable to the Property, the Project or raise the unconstitutionality or inapplicability of any such tax statute or ordinance as a defense in any proceedings, including delinquent tax proceedings. The forgoing shall not however, restrict, or preclude any person from challenging by way of protest, the real estate tax valuation, assessment or classification, in accordance with proceedings available under applicable laws.

SECTION 9. NO VESTED PROPERTY RIGHTS. It is understood and agreed by the parties that no vested property rights are granted by this Agreement. Hyde Development represents to the City that there are no vested rights to the Property from the County of Adams or any other governmental entity and Hyde Development hereby waives and releases any rights which it may have been so granted.

SECTION 10. EVENTS OF DEFAULT EMEDIES.

- 10.1 Default or an Event of Default under the Agreement shall mean that one or more of the following events shall have occurred during the term of this Agreement.
- a. Hyde Development assigns or attempts to assign this Agreement, the Project, or any part of the Property (other than to a specific and separate, but related, Hyde LLC for each building in the Project or assignment to a bank for construction loans directly related to the Project); or

- b. Hyde Development fails to commence, diligently pursue, and complete construction of the Project as required by Section 4; or
- c. Hyde Development fails to substantially observe or perform any other covenant, obligation or agreement required under this Agreement (together with any amendments hereto); or
- d. If any of the facts, representations, promises or agreements made by Hyde Development in regard to the Project and made as justification for the incentives provided herein, are not substantiated or completed; or
- e. If Hyde Development becomes delinquent in its obligation to pay all or any portion of ad valorem real and/or personal property taxes or sales taxes when due, provided that Hyde Development retains the right to timely and properly protest such taxes as allowed by law; or
- f. Hyde Development files for protection under the United States Bankruptcy Code during the term of the Agreement.

10.2 Upon the occurrence of any Event of Default, the City shall provide written notice to Hyde Development, Hyde Development shall immediately proceed to cure or remedy such Default, and in any event, such Default shall be cured within thirty (30) days after receipt of the notice. If, in the sole discretion and judgment of the City Council, Hyde Development has commenced to cure such default within said thirty-day period and if, in the sole discretion and judgment of the City Council, Hyde Development thereafter diligently proceeds in good faith with efforts to cure the same, the City Council may, but is not required to, grant Hyde Development additional time to cure such default.

10.3 Whenever any Event of Default occurs and is not cured under subsection 10.2 of this Agreement, the City may cease the agreement under the Economic Development Incentive Package and may take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including without limitation, specific performance or to seek any other right or remedy at law or in equity, including damages.

10.4 The rights and remedies of the parties to this Agreement as provided herein are cumulative except as otherwise expressly limited, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by other party. No action or inaction on the part of the City shall be deemed a waiver of the right of the City to declare a breach of this Agreement in the event of default by Hyde Development, except pursuant to an express written waiver, and no such express

written waiver by the City shall be deemed a waiver of the right to declare a breach of this Agreement in the event of further or subsequent default by Hyde Development, even if such default is of the same kind or character as the waived default.

SECTION 11. DELAYS. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, orders of civil or military authorities, failure to obtain permits, approvals or consents (including building permits and certificates of occupancy) from local, state, or federal agencies, unavailability of materials or labor or other causes, which are beyond the normal control of such parties.

SECTION 12. ASSIGNMENT. This Agreement and the proceeds or obligations hereof are not assignable by Hyde Development, except as specifically set forth in Section 10.1a hereof.

SECTION 13. TERMINATION. This Agreement, and the terms and provisions hereof, shall terminate upon the earlier of the following to occur: (a) an Event of Default that is not cured pursuant to Section 13.2 hereof; (b) the date at which Hyde Development has received the full amount of the Economic Development Incentive Package; or (c) the last day of the tenth (10th) year following opening date; provided, however, that if termination occurs as a result of the expiration of the time period set forth in clause (c) hereof, any obligations of the City for rebate and/or reduction of any amount of the Economic Development Incentives Package that have accrued on such date (but not yet paid) shall remain due and payable and such obligation shall not be discharged by such expiration under clause (c) hereof.

SECTION 14. NO THIRD PARTY BENEFICIARIES. The City shall not be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

SECTION 15. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective three (3) business days after deposited in the U.S. mail, postage prepaid, and addressed to the intended recipient as follows. Any party can change its address by written notice to the other given in accordance with this paragraph.

CITY OF BRIGHTON

500 SOUTH 4TH AVENUE

BRIGHTON, COLORADO 80601

ATTN: CITY MANAGER

76 COMMERCE CENTER LLC.
1350 LAGOON AVENUE SUITE #920
MINNEAPOLIS, MINNESOTA 55408
ATTN: PRESIDENT

WADE ANDERSON, ESQ.
GRAY PLANT MOOTY
80 S. 8TH ST., SUITE 500
MINNEAPOLIS MN 55402

SECTION 16. BINDING EFFECT. This Agreement shall be binding upon the City and Hyde Development.

SECTION 17. GOOD FAITH. Each party hereto shall exercise good faith in the performance and enforcement of this Agreement. Hyde Development acknowledges the benefits of this Agreement and agrees to use good faith in interviewing and hiring qualified Brighton residents for positions and the Project, subject to restrictions in existing labor contracts.

SECTION 18. VENUE. This Agreement is being executed and delivered and is intended to be performed in the County of Adams, State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement and interpretation of this Agreement.

SECTION 19. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

SECTION 20. WAIVER OF BREACH. A written waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

SECTION 21. SECTIONS CAPTIONS. The captions of the sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

SECTION 22. AUTHORITY. Hyde Development and the City each hereby warrants that the party signing below has full and lawful authority to execute this Agreement on behalf of Hyde Development and the City.

SECTION 23. CONDITIONS.

23.1 This Agreement is specifically subject to, and conditioned upon, Hyde Development satisfying all the schedule and deadline requirements set forth in Section 4 hereof.

23.2 This Agreement is specifically subject to, and conditioned upon, Hyde Development completing the Project in its entirety, over phases, as represented herein.

IN WITNESS WHEREOF, the City and 76 Commerce Center LLC. have executed this Agreement as of the date first written above.

CITY OF BRIGHTON, COLORADO

BY:

Richard N. McLean, Mayor

ATTEST:

BY:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

BY:

Margaret R. Brubaker, City Attorney

76 COMMERCE CENTER LLC.

BY:

Paul Hyde, President

STATE OF COLORADO)

)

County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, as President of 76 Commerce Center LLC.

WITNESS my hand and official seal.

My Commission Expires

Notary Public