RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Brighton City Clerk

THIS SPACE FOR RECORDER'S USE ONLY

Bromley Park, Filing 102, 1st Amendment
(76 Commerce Center)
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2018, by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of **Adams,** State of Colorado (the "City") and 76 COMMERCE CENTER LLC (the "Developer").

WHEREAS, the Developer has submitted a Plat Amendment (the "Plat"), Bromley Park, Filing 102, 1st Amendment (the "Development" or "Property"), attached hereto as **Exhibit A** and incorporated herein by reference. Said Plat has been reviewed and approved by the City Council of the City of Brighton; and

WHEREAS, the Developer, is the owner of a 122.377-acre parcel of land, more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof; and

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

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

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

SECTION 1
DEFINITIONS

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

"***Benefited landowner***" for reimbursement purposes means the landowner or developer that will directly benefit by the availability of an off-site Public Improvement constructed pursuant to this Development Agreement for connection, protection and/or service for the proposed development

of the benefited property, whether connected or not, and but for its prior construction the benefited landowner would have been required to build the Public Improvement.

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

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

"***Completion of Construction***" means the date the City has certified in writing that all three of the following have occurred with respect to a particular Phase:

a) Construction of the Public Improvements for a particular Phase is complete in accordance with the construction specifications and the requirements of this Development Agreement;
b) The City has issued Final Acceptance of the Public Improvements for a particular Phase; and
c) The City can full occupy or utilize the Public Improvement for a particular Phase for the purpose for which it is intended.

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

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

a) Reasonable, i.e., the cost is generally recognized as necessary for the performance of the project and is one that a prudent person would consider reasonable given the same set of circumstances;

b) It must be allocable to the applicable improvement project, i.e., the cost is incurred for the benefit of only one project or the item can be easily assigned to multiple benefiting projects; and,
c) A specific project may only be charged that portion of the cost which represents the direct benefit to that project.

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

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

"Phase" has the meaning given in Section 2.16 of this Agreement. ***"Phases"*** means one or more Phase.

"Public Improvements" means the public improvements specified on the Schedule of Public Improvements for Phase 1 set forth on **Exhibit B-1** attached hereto, as well as other public improvements submitted for review and approved by the City for Phases 2 and 3, as those phases are depicted on **Exhibit B-2** attached hereto.

SECTION 2
GENERAL CONDITIONS

2.1 **Development Obligation.** Developer shall be responsible for the performance of the covenants set forth herein.

2.2 **Development Impact Fees and Other Fees.** Developer shall pay all fees related to development of the property described in the Plat(s) at the time of issuance of a building permit for any or all portions of the Development. The amount of the fees shall be the amount in effect at the time construction permits are issued. Any amendment to the kinds of fees or the amounts of said fees enacted by the City after the date of this Agreement-are incorporated into this Agreement as if originally set forth herein.

2.3 **Schedule of Public Improvements.** For this Agreement, the term "Schedule of Public 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 Public 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:

a. Water Lines
b. Sanitary Sewer Lines
c. Storm Sewer Lines
d. Drainage Retention/Detention Ponds
e. Streets/Alleys/Rights-of-Way

f. Curbs/Gutters
g. Sidewalks
h. Bridges and Other Crossings
i. Traffic Signal Lights
j. Street Lights
k. Signs
l. Fire Hydrants
m. Guard Rails
n. Neighborhood Parks/Community Parks
o. Open Space
p. Trails and Paths
q. Street Trees/Open Space and/or Common Area Landscaping
r. Irrigation Systems
s. Wells
t. Fencing/Retaining Walls
u. Parking Lots
v. Permanent Easements
w. Land Donated and/or Conveyed to the City
x. Value of Land Beneath All Infrastructure Improvements
y. Value of Water Donated and/or Conveyed to the City

The Schedule of Public Improvements for Phase 1 shall be as set forth on Exhibit B-1 attached hereto.

2.4 **Engineering Services.** Developer agrees to furnish, at its sole expense, all necessary engineering services and civil engineering documents relating to the design and construction of the Development and the Public Improvements set forth in the Schedule of Public Improvements for Phase 1 described in **Exhibit B-1**, attached hereto and incorporated herein by this reference, and for all subsequent Phases. Said engineering services shall be performed by, or under the supervision of, a Registered Professional Engineer, or a Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for Public Improvements as established and approved by the City as of the date of submittal to the City.

2.5 **Construction Standards.** Developer shall construct all 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), 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 Public Improvements to be constructed in each Phase of the Development, as defined in Section 2.16 below, and obtain approval of the plans for each Phase prior to commencing any construction work thereon. The City shall issue its written approval or disapproval of said plan as expeditiously as reasonably possible. Said approval or disapproval shall be based upon standards and criteria for public improvements as established and approved by the City, and the City shall notify Developer of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the City prior to construction.

2.8 **Construction Acceptance and Warranty.**

2.8.1 No later than ten (10) days after construction of Public Improvements in a Phase is completed, Developer shall request inspection of the Public Improvements for such Phase by the City. If Developer does not request this inspection within ten (10) days of completion of the Improvements, the City may conduct the inspection without approval of the Developer.

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

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

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

2.8.5 If the Public Improvements completed by Developer for a Phase 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 for a Phase are unsatisfactory, the City shall provide written notice to Developer of the repairs, replacements, construction, or other work required to receive "construction acceptance." Developer shall complete the work within thirty (30) days of said notice, weather permitting. After Developer completes the repairs, replacements, construction, or other work required, Developer shall request of the City a re-inspection of such work to determine if construction acceptance can be granted, and the City shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, construction, or other work required within thirty (30) days of said notice, the City may exercise its right to secure performance as provided in Section 9.1 of

this Agreement. The City reserves the right to schedule re-inspections, depending upon the scope of deficiencies:

2.8.6 No Residential Building Permits shall be issued by the 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 for a building within a Phase prior to Construction Acceptance of Public Improvements within such Phase unless expressly permitted in **Exhibit G** of this Agreement.

2.9 **Maintenance of Public Improvements.** For a one (1) year period from the date of Construction Acceptance of any Public Improvements within a Phase of the Development, Developer shall, at its own expense, take all actions necessary to maintain said Improvements and make all needed repairs and replacements, which, in the reasonable opinion of the City, shall become necessary. If within thirty (30) days after Developer's receipt of written notice from the City requesting such repairs or replacements the Developer has not completed such repairs, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement.

2.10 **Final Acceptance.** At least thirty (30) days before one (1) year has elapsed from the issuance of Construction Acceptance, or as soon thereafter as weather permits, Developer shall request a "final acceptance" inspection. The City shall inspect the Public Improvements for such Phase 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" for such Phase. If any mechanic's liens have been filed with respect to the Public Improvements for such Phase, the City may retain all or a portion of the Improvement Guarantee up to the amount of such liens until such liens are satisfied or otherwise released.

2.11 **Reimbursement to the City.** Upon Developer's failure to perform after the required notice and opportunity to cure, the City may complete construction, repairs, replacements, testing, maintenance or other work for Developer, pursuant to Sections 2.8, 2.9 or 2.10 of the Agreement, with funds other than the Improvements Guarantee, in which event Developer shall reimburse the City within thirty (30) days after receipt of written demand and supporting documentation from the City. If Developer fails to so reimburse the City, the Developer shall be in default of the Agreement and the City may exercise its rights under Section 10.1 of this Agreement.

2.12 **Testing and Inspection.** Developer shall employ, at its own expense, a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City, on a timely basis, for City review and approval prior to commencement or continuation of that particular Phase of construction. In addition, at all times during said construction, the City

shall have access to inspect the materials and workmanship of said construction. All materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications. All work shown on the approved Public Improvements plans requires inspection by the appropriate department, such as the Streets & Fleet and Utilities Departments. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During the hours listed above, inspections shall be scheduled by 4:00 p.m. of the day prior to the requested inspection day. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance for approval. All requests for after-hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the City for all direct costs of the after-hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.

2.13 Improvement Guarantees.

2.13.1 Developer shall submit to the City an "Improvement Guarantee" for all Public Improvements related to a particular Phase of the Development, as listed in Section 2.3 above and as specified in **Exhibit B-1** for Phase 1. Said guarantee may be in cash, bond, or a letter of credit in the form attached hereto as **Exhibit C**. Infrastructure permits shall be issued for only that Phase of the Development for which said guarantees have been furnished. The total amount of the guarantee for each Phase of development shall be as follows:

A. Prior to City approval of Public Improvements Construction Plans for a Phase – $100,000.00 (receipt of which is hereby acknowledged by the City)
B. After Final Acceptance of the Public Improvements for a Phase – $0.00

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

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

including but not limited to the issuance of construction permits of any kind including infrastructure permits, building permits, and construction or final acceptance, or certificates of occupancy or completion.

2.14 Indemnification and Release of Liability.

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

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

2.15 Insurance OSHA. Developer shall, through contract requirements and other normal means, guarantee and furnish to the City proof thereof that all employees and contractors engaged in the construction of Improvements are covered by adequate workmen's compensation insurance and public liability insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

2.16 Phasing. For purposes of this Agreement, the term "Phase" refers to a designated portion of property in the Development within which construction of all or designated Public Improvements specified in Section 2.3 above and set forth in **Exhibit B-1** for Phase 1, 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 for Phase 1 specified in **Exhibit B-1**. The City hereby approves Developer's Phasing Plan which is attached as **Exhibit B-2**. The completion of each Phase of the Development, including public and private Improvements, shall be in accordance with said Phasing Plan and completion schedules, or City-approved modifications thereof. All modifications shall be in writing and signed by the City Manager or the Manager's designee.

SECTION 3
CONSTRUCTION OF PUBLIC IMPROVEMENTS

3.1 **Rights-of-way, and Easements.** Before City may approve construction plans for Public Improvements for a Phase 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 Public Improvements related to the Development. All such conveyances shall be free and clear of liens, taxes, and encumbrances except for ad valorem real property taxes for the current year and thereafter and shall be by Special Warranty Deed in form and substance acceptable to the City Attorney. The City at the Developer's expense shall record all title documents. The Developer shall also furnish, at its own expense, an ALTA title policy, for all interest(s) so conveyed, subject to approval by the City Attorney.

3.2 **Construction.** Developer shall furnish and install, at its own expense, all of the Public Improvements listed on the Schedule of Public Improvements for Phase 1 attached as **Exhibit B-1**, and all Public Improvements approved for subsequent Phases in conformance with the civil drawings, plans, and specifications approved by the City prior to construction and the applicable ordinances, regulations and specifications of the City. If Developer does not meet the above obligations, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.

3.3 **Utility Coordination and Installation.** In addition to the Public Improvements for Phase 1 described in **Exhibit B-1**, Developer shall also be responsible for coordination of, and payment for, and the installation of on-site and off-site electric, street lights, natural gas, telephone, and other utilities. All utilities shall be placed underground, to the extent required by City Code or other applicable law.

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

3.5 **Reimbursement-City.** To the extent that Public Improvements are constructed by the Developer, that will benefit landowners, developers, and persons other than the Developer, the City, for a period of fifteen (15) years following the issuance of Final Acceptance of

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

A. After the Public 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 Public 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 Public 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 Public Improvement(s);
        c. The amount of frontage each property has adjacent to the Public Improvement(s);
        d. The acreage and parcel number of each property, which the Developer asserts has or will be benefited by the Public 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 Public Improvement(s) will be determined for reimbursement by the owners and/or developers of the benefited properties; and

g. Any other information deemed necessary by the City Manager, or the Manager's designee.

5. If the foregoing information is not submitted by the Developer within the ninety (90) days after Final Acceptance, then all rights and claims for reimbursement shall be deemed waived, and reimbursement will thereafter be denied. If the information is submitted in a timely manner, the City Manager, or the Manager's designee, will review it and, if approved as submitted or modified by the City Manager, prepare a reimbursement agreement to be signed by the Developer and the City Manager. . If the Developer fails or refuses to sign the reimbursement agreement with the City within thirty (30) days of preparation by the City Manager, then all rights and claims for reimbursement shall be deemed waived, and reimbursement will thereafter be denied.

B. The City Manager, or the Manager's designee, will review the reimbursement materials and plan for reasonableness and appropriateness of the costs claimed and the proposed cost recovery plan, and may request further documentation for any such costs. The City Manager, or the Manager's designee, may make such adjustments, as the Manager or the Manager's designee, in their sole discretion, determines to be necessary if the costs are deemed to be in excess of reasonable and necessary costs at then prevailing rates and/or the proposed cost recovery plan is not appropriate or reasonable. If the City Manager, or the Manager's designee, does not notify the Developer in writing of any adjustments thereto within thirty (30) days after the materials and proposed plan were submitted, or if backup documentation is requested within thirty (30) days, within thirty (30) days after the requested back up documentation is submitted, then the costs and the recovery plan will be deemed approved as submitted and a reimbursement agreement shall prepared and executed as provided in subsection 5. above.

C. The reimbursement agreement shall include, but not be limited to:

1. A description of the Public 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 Public Improvement(s);
4. The manner or formula that will be applied to determine the amount of reimbursement owed by the owners or developers of benefited properties;
5. Property owners and/or developers submitting plats or development plans for the identified benefited properties shall pay the required sums directly to the Developer before a final plat for any portion of their property is approve or recorded;
6. The City agrees not to approve a proposed development; approve or record a final subdivision plat, or issue a building permit for an identified benefited property until the payments are made to the Developer or a reimbursement agreement between the original Developer and benefited landowner, developer or other person has been executed, but assumes no responsibility

therefore and hereby assigns to Developer the right, if any, for collecting the reimbursements from the benefited property owners and/or developers; If the benefited landowner, developer or other person fails or refuses to pay the reimbursement costs or execute the reimbursement agreement which reflects the reimbursement agreement terms with the City within sixty (60) days of submission of the agreement, no further approvals shall be granted by the City as more specifically set forth in Sections 3.4 and 3.5.

7. The term of any reimbursement agreement, established hereunder, shall not exceed fifteen (15) years from Final Acceptance, regardless of whether or not the original costs have been fully reimbursed;
8. The books and records of the Developer, relating to the actual costs of the improvement(s) for which the Developer seeks reimbursement, shall be open to the City at all reasonable times for the purpose of auditing and verifying the Developer's costs.

D. The Developer will be responsible for notifying all property owners who will be affected by the reimbursement agreement, by regular mail, postage prepaid, that a reimbursement request, which may affect their property, has been submitted to the City Manager within 30 days of submission of the request to the City Manager.

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

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

A. The Developer, agrees to use its best efforts and work in good faith to reach an agreement regarding reimbursement for such Shared Improvements, and assumes sole responsibility for the administration and collection of any and all moneys payable under shared improvements reimbursement agreement(s). A fully executed Shared Improvements reimbursement agreement shall be a condition precedent to the City's approval of an application for development, building permit, or approval and recording of a final plat, related to the benefitted property subject to such reimbursement agreement(s).

B. If the Developer, is unable to secure a fully executed Shared Improvements reimbursement agreement prior to the issuance of Final Acceptance, the City may set the amount of the reimbursement obligation as provided in Section 3.5 of this Agreement.
C. The cost recovery period in a Shared Improvement reimbursement obligation shall not exceed fifteen (15) years following the Final Acceptance of such improvement(s).

SECTION 4
STREET IMPROVEMENTS

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

4.2 **Street Signs, Traffic Signs and Striping.** The Developer will install, at the Developer's expense, street name signs on local, collector, and arterial streets, and stop signs, speed limit, and other signs on local streets. Developer shall install, at its expense, signs and striping on collector and arterial streets in a manner reasonably approved by the City and in accordance with the CDOT Manual on Uniform Traffic Control Devices (MUTCD), as from time to time amended, and other applicable legal requirements.

4.3 **Streets.** All internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time, and the approved construction Plans, and shall be constructed in accordance with the Schedule of Public Improvements for Phase 1 as set forth in **Exhibit B-1**, and for subsequent Phases. City acknowledges that no streets within the Development will be public streets.

SECTION 5
PUBLIC LAND CONVEYANCE AND LANDSCAPING

5.1 **Public Land Conveyance.**

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

5.1.2 As part of its application for a final plat for all or any portion of the Development, the Developer shall also furnish, at its own expense, an ALTA title commitment, for all interest(s) to be conveyed, subject to approval by the City Attorney,. The City shall accept for public use only those lands which, pursuant to the title commitment, are free and clear

of all liens, taxes, and encumbrances, except for ad valorem real property taxes for the current year and thereafter. The City shall not accept lands for public use with encumbrances, either surface or underground, as revealed on the title commitment or upon physical inspection, which limit the property for its intended public use. The Developer shall, at its sole expense, cause a title policy in conformance herewith to be delivered to the City at the time of the conveyance.

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

SECTION 6
WATER

6.1 **Specifications.** All water mains, lines, and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications, and the Schedule of Public Improvements for Phase 1, attached hereto as **Exhibit B-1**, and subsequent Phases, including both on-site and off-site improvements.

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

SECTION 7
SEWER LINES

7.1 **Specifications.** All sewer lines and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications and the Schedule of Public Improvements for Phase 1, attached hereto as **Exhibit B-1**, and subsequent Phases, including both on-site and off-site improvements.

SECTION 8
OTHER IMPROVEMENTS

8.1 **Street Lights.** All lighting within the Development will be private and not part of Public Improvements.

8.2 **Drainage and Stormwater Improvements.**

8.2.1 Developer shall construct drainage and stormwater improvements and facilities, both on-site and off-site,– as required to provide for, and– to reasonably regulate,– the proper drainage and control of flood and surface waters within the Development in order that storm and surface water may be properly drained and controlled, pollution may be reduced, and the environment protected and enhanced. Such drainage and stormwater improvements and facilities shall comply with Chapter 14, *Storm Drainage,* BMC, all

applicable state and federal stormwater regulations, as additionally described in **Exhibit H,** all City-approved plans and specifications, and the Schedule of Public Improvements for Phase 1, attached hereto as **Exhibit B-1**, and subsequent Phases.

8.2.2 Drainage improvements shall not cause any damage to adjacent or downstream properties resulting from erosion, flood, or environmental impact during construction and/or after construction completion. Drainage improvements not constructed by the Developer and specific for each lot shall be constructed by the owner of said lot, at the minimum, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the City's then-existing drainage, stormwater and floodplain regulations.

8.3 **Post-Construction Stormwater Management.** Post construction stormwater management by the Developer shall comply with Chapter 14-8 Storm Drainage BMC, as additionally described in **Exhibit H and attachments H1-H4**. All private drainage facilities shall be operated, repaired, maintained, and replaced by the Developer according to the Maintenance Agreement for Private Drainage Structures, **Exhibit H and attachments H1-H4,** to ensure facilities continue serving their intended function in perpetuity, unless or until the City relieves the Developer of that responsibility in writing. The Developer shall ensure access to drainage facilities at the site for the purpose of inspection and repair.

SECTION 9
SPECIAL PROVISIONS

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

SECTION 10
MISCELLANEOUS TERMS

10.1 **Breach of Agreement.**

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

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

10.1.3 If the City determines in its sole discretion that an emergency exists, such that the improvement must be completed in less than seven (7) days, the City may immediately

draw upon the Improvement Guarantee and may complete the Improvements at Developer's expense.

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

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

10.1.6 Nothing herein shall be construed to limit the City from pursuing any other remedy at law or inequity, which may be appropriate under City, state, or federal law. Failure to timely complete construction of 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:	Developers:
	76 Commerce Center LLC
City of Brighton	Attn: Paul Hyde

City Manager 500 South 4th Avenue Brighton, CO 80601	1350 Lagoon Avenue, #920 Minneapolis, MN 55408
With a copy to: Margaret R. Brubaker, Esq. Mehaffy Brubaker & Ernst, LLC City Attorney 500 South 4th Avenue Brighton, CO 80601	With a copy to: Gray Plant Mooty Mooty & Bennett, PA Attn: Wade Anderson 500 IDS Center 80 South 8th Street Minneapolis, MN 55402

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 for a Phase and compliance by Developer with all terms and conditions of this Agreement with respect to such Phase, 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 with respect to such Phase. The City shall confirm Developer's compliance with this Section 10.12 as to

each Phase by issuing a satisfaction and release of this Agrement as to each Phase, which Developer may record, at Developer's expense, in the office of the Clerk and Recorder in Adams County, Colorado. Notwithstanding the foregoing, Exhibit F to said Development Agreement (Water Dedication Agreement) and Exhibit H to said Development Agreement (STORMWATER FACILITIES MAINTENANCE AGREEMENT FOR TREATMENT AND DRAINAGE FACILITIES LOCATED ON PRIVATE PROPERTY) shall remain in full force and effect according to their terms.

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

[Signatures begin on the next page]

DEVELOPER:
76 COMMERCE CENTER LLC

By: Paul Hyde, President

STATE OF MN)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 7th day of March, 20 18,

By:

WITNESS my hand and official seal:

Notary Public

CALLY JANE SAMSON
NOTARY PUBLIC
STATE OF MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2020

My commission expires: January 31, 2020

CITY OF BRIGHTON, COLORADO

By: Kenneth J. Kreutzer, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

EXHIBIT A

BROMLEY PARK, FILING 102, 1ST AMENDMENT

Plat begins on next page.

BROMLEY PARK FILING NO. 102 1ST AMENDMENT

MINOR SUBDIVISION PLAT

A REPLAT OF LOT 2, BLOCK 1, BROMLEY PARK FILING NO. 102

LOCATED IN SECTION 1, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN,

CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 1 OF 4

LEGAL DESCRIPTION:

BY THESE PRESENTS, THE UNDERSIGNED, BEING THE OWNER(S) OF A PARCEL OF LAND SITUATED IN SECTION 1, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF ARVADA, COUNTY OF ADAMS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 2, BLOCK 1, BROMLEY PARK FILING NO. 102, ADAMS COUNTY, CO

CONTAINING 5,330,730 SQUARE FEET OR 122.377 ACRES, MORE OR LESS.

HAS LAID OUT , PLATTED, AND SUBDIVIDED THE ABOVE DESCRIBED LAND, UNDER THE NAME AND STYLE OF " BROMLEY PARK FILING NO. 102 1ST AMENDMENT." AND BY THESE PRESENTS GRANT TO THE CITY AND COUNTY OF BROOMFIELD ALL EASEMENTS AS SHOWN OR NOTED ON THE PLAT FOR PUBLIC AND MUNICIPAL USES AND FOR USE BY FRANCHISEES OF THE CITY AND COUNTY OF BROOMFIELD AND FOR USE BY PUBLIC AND PRIVATE UTILITIES.

OWNER
76 COMMERCE CENTER LLC, A MINNESOTA LIMITED LIABILITY COMPANY

_____

STATE OF COLORADO)
) SS
COUNTY OF ADAMS)

THE FOREGOING INTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, A.D. 20___, BY STEPHEN GRAND AS AGENT FOR BROOMFIELD COMMERCIAL, LLC, A COLORADO LIMITED LIABILITY COMPANY.

WITNESS MY HAND AND OFFICIAL SEAL.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

ATTORNEY'S CERTIFICATE:

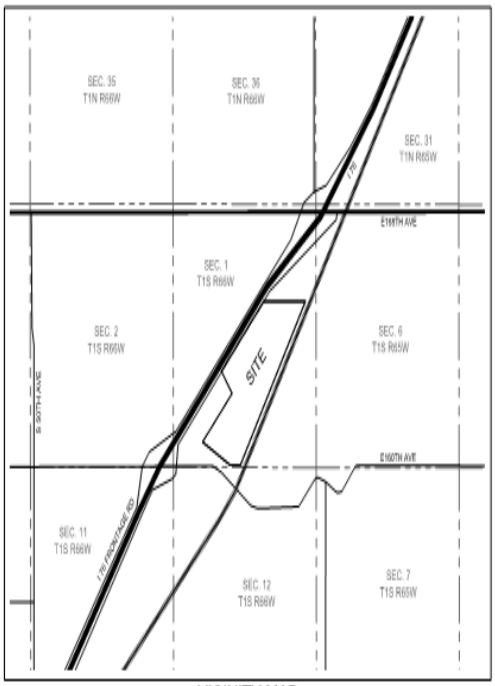
I, _____, AN ATTORNEY AT LAW DULY LICENSED TO PRACTICE BEFORE THE COURTS OF RECORD OF COLORADO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE OF ALL LANDS HEREIN ABOVE INDICATED AND SHOWN UPON THE WITHIN PLAT AS PUBLIC WAYS AND EASEMENTS AND THAT TITLE TO SUCH LAND IS THE DEDICATOR'S, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OF RECORD.

DATED THIS _____DAY OF _____, 20___.

SURVEYOR'S CERTIFICATE:

I, _____, A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY OF BROMLEY PARK FILING NO. 102 1ST AMENDMENT WAS MADE UNDER MY SUPERVISION AND THE ACCOMPANYING PLAT ACCURATELY AND PROPERLY SHOWS SAID SUBDIVISION.

_____
THOMAS D. STAAB
COLORADO PLS NO. 25965
SURVEY LICENSE EXPIRES 10/31/19
FOR AND ON BEHALF OF
WARE MALCOMB



VICINITY MAP
NOT TO SCALE

NOTES:

1. **NOTICE**: ACCORDING TO COLORADO LAW YOU **MUST** COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

2. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508, C.R.S.

3. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY WARE MALCOMB TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY, AND TITLE OF RECORD, WARE MALCOMB RELIED UPON FIDELITY NATIONAL TITLE INSURANCE COMPANY, COMMITMENT NO. 100-A0010366-020-LM1, AMENDMENT NO. 7 EFFECTIVE DATE AUGUST 17, 2017 AT 7:00 A.M.

4. BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 1 WITH A PLATTED BEARING "WHICH BEARS NORTH 89°42'05" WEST ACCORDING TO BROMLEY PARK FILING NO.102" SAID LINE BEING MONUMENTED AS SHOWN HEREON.

5. THE LINEAL DISTANCE UNIT USED IN THE PREPARATION OF THIS LEGAL DESCRIPTION IS THE UNITED STATES SURVEY FOOT. THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY DEFINES THE UNITED STATES SURVEY FOOT AS 1200/3937 METERS.

6. UTILITY EASEMENTS ARE TO BE DEDICATED FOR EACH BUILDING IN CONJUNCTION WITH INDIVIDUAL SITE PLANS.

PARCEL AREA TABLE		
PARCEL #	AREA (Sq. Ft.)	AREA (ACRES)
LOT 2, BLOCK 1	315,932	7.253
LOT 3, BLOCK 1	585,991	13.869
LOT 4, BLOCK 1	3,696,476	84.859
TRACT A	713,322	16.376

MONUMENT TABLE:

1. FOUND #5 REBAR WITH 1.5" ALUMINUM CAP MARKED "30830 FRONTIER SURV"
2. FOUND #5 REBAR
3. FOUND #5 REBAR WITH 1.25" RED PLASTIC CAP MARKED "LS 13155"
4. FOUND #5 REBAR WITH 1.25" YELLOW PLASTIC CAP MARKED "LS 24669 HCE"
5. FOUND #4 REBAR WITH 1" YELLOW PLASTIC CAP MARKED "PLS 13482 AWF"
6. FOUND #5 REBAR WITH 1.25" YELLOW PLASTIC CAP MARKED "PLS 37948 FARNSWORTH"
7. FOUND #5 REBAR WITH 1.5" ALUMINUM CAP MARKED "30830 FRONTIER SURV"
8. FOUND #5 REBAR WITH 1.25" PLASTIC CAP MARKED "PLS 6973" LOCATED N88D05'17"E 0.97' FROM CALCULATED POSITION, MONUMENT NOT ACCEPTED. SET 18" #5 REBAR WITH YELLOW PLASTIC CAP MARKED "PLS 25965"
9. FOUND #5 REBAR WITH 1.25" RED PLASTIC CAP MARKED "LS 13155" LOCATED N86D59'41"E 0.69' FROM CALCULATED POSITION, MONUMENT NOT ACCEPTED. SET 18" #5 REBAR WITH YELLOW PLASTIC CAP MARKED "PLS 25965"
10. FOUND #4 REBAR WITH 1" YELLOW PLASTIC CAP MARKED "PLS 13482 AWF" LOCATED N77D16'56"W 0.74' FROM CALCULATED POSITION, MONUMENT NOT ACCEPTED. SET 18" #5 REBAR WITH YELLOW PLASTIC CAP MARKED "PLS 25965"
11. FOUND #5 REBAR WITH 1.5" PLASTIC CAP MARKED "CDOH" LOCATED N64D29'04"W 0.44' FROM CALCULATED POSITION, MONUMENT NOT ACCEPTED. SET 18" #5 REBAR WITH YELLOW PLASTIC CAP MARKED "PLS 25965"
12. FOUND #5 REBAR WITH 1.25" YELLOW PLASTIC CAP MARKED "LS 38215" LOCATED S67D38'24"W 0.22' FROM CALCULATED POSITION, MONUMENT NOT ACCEPTED. SET 18" #5 REBAR WITH YELLOW PLASTIC CAP MARKED "PLS 25965"

APPROVAL CERTIFICATE:

APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BRIGHTON, COLORADO THIS _____ DAY OF _____, 20___.

_____ ATTEST _____
COMMUNITY DEVELOPMENT DIRECTOR CITY CLERK

CLERK AND RECORDER:

_____
RECEPTION NUMBER

ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF ADAMS COUNTY, AT BRIGHTON COLORADO ON THIS _____ DAY OF _____, 20____ AT _____O'CLOCK.

_____ BY: _____
ADAMS COUNTY CLERK AND RECORDER DEPUTY CLERK

990 south broadway
suite 230
denver, co 80209
p 303.561.3333
waremalcomb.com

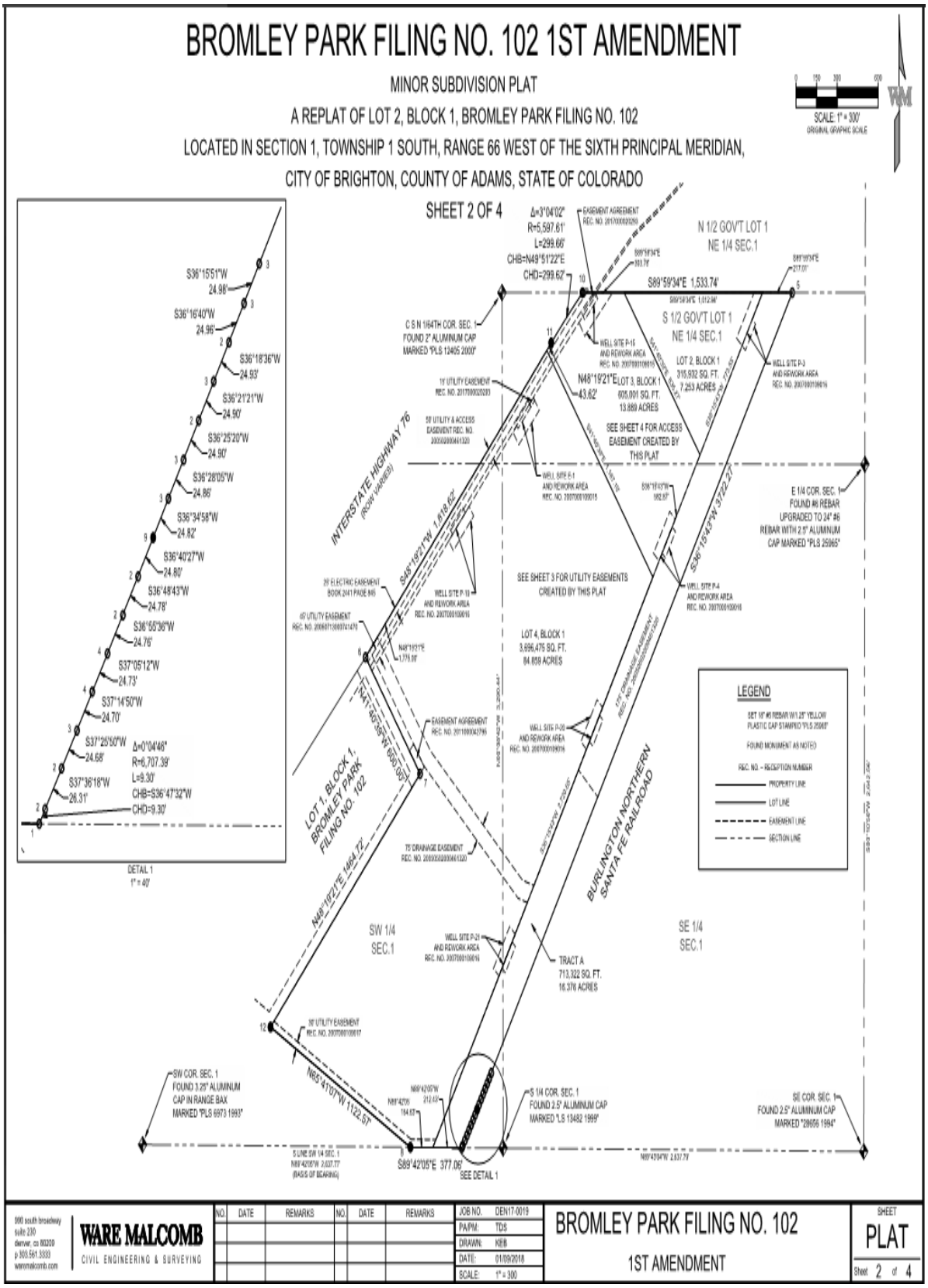
WARE MALCOMB
CIVIL ENGINEERING & SURVEYING

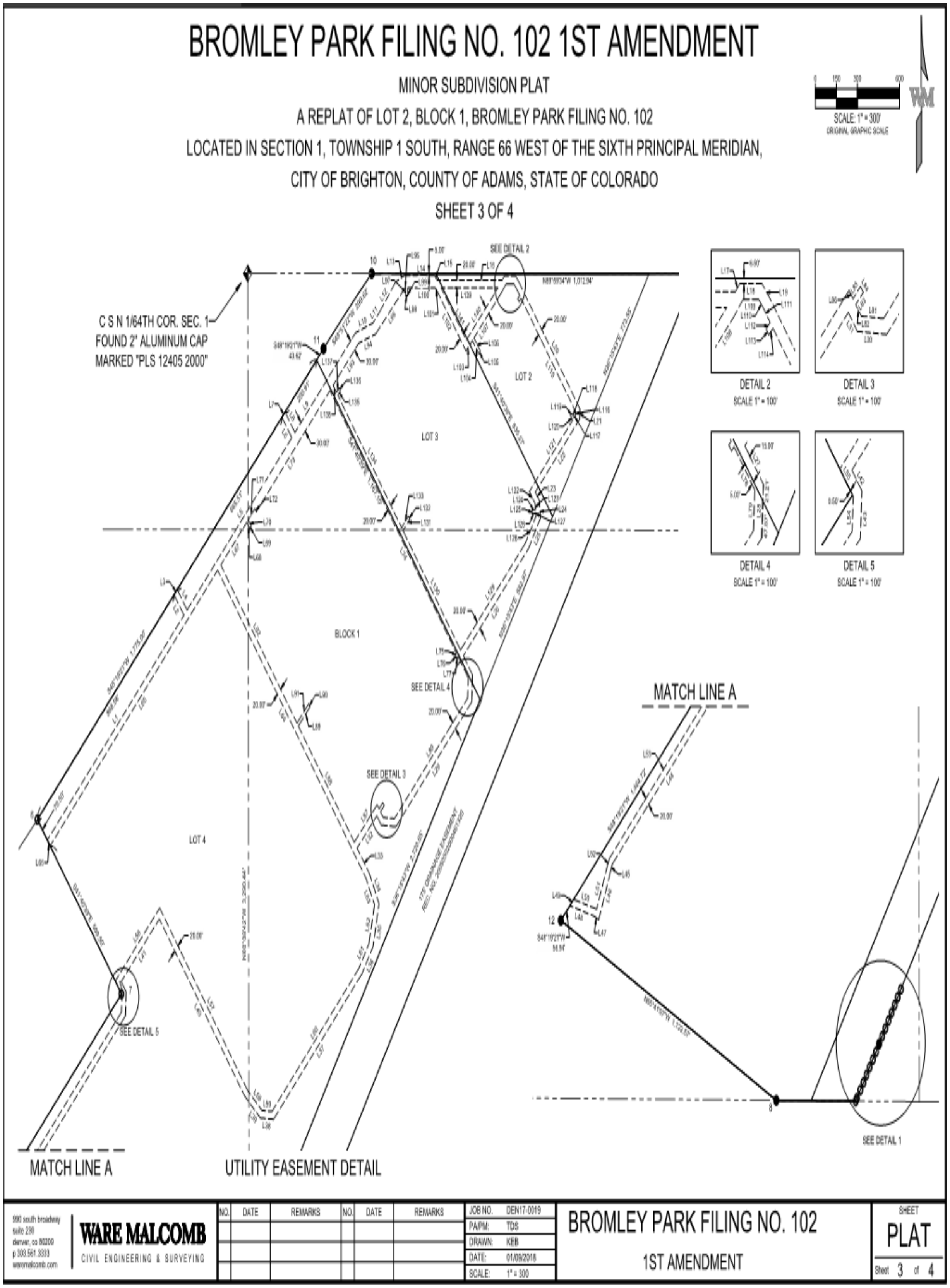
NO.	DATE	REMARKS	NO.	DATE	REMARKS

JOB NO.	DEN17-0019
PA/PM:	TDS
DRAWN:	KEB
DATE:	01/09/2018
SCALE:	1" = NA

BROMLEY PARK FILING NO. 102
1ST AMENDMENT

SHEET
PLAT
Sheet 1 of 4


BROMLEY PARK FILING NO. 102 1ST AMENDMENT
MINOR SUBDIVISION PLAT
A REPLAT OF LOT 2, BLOCK 1, BROMLEY PARK FILING NO. 102
LOCATED IN SECTION 1, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 4
SCALE: 1" = 300'
ORIGINAL GRAPHIC SCALE
N 1/2 GOVT LOT 1
NE 1/4 SEC.1
S 1/2 GOVT LOT 1
NE 1/4 SEC.1
S89°59'34"E 1,533.74'
C S N 1/64TH COR. SEC. 1
FOUND 2" ALUMINUM CAP
MARKED "PLS 12405 2000"
INTERSTATE HIGHWAY 76
(ROW VARIES)
LOT 2, BLOCK 1
315,932 SQ. FT.
7.253 ACRES
LOT 3, BLOCK 1
605,091 SQ. FT.
13.889 ACRES
LOT 4, BLOCK 1
3,696,475 SQ. FT.
84.859 ACRES
TRACT A
713,322 SQ. FT.
16.376 ACRES
SEE SHEET 4 FOR ACCESS EASEMENT CREATED BY THIS PLAT
SEE SHEET 3 FOR UTILITY EASEMENTS CREATED BY THIS PLAT
E 1/4 COR. SEC. 1
FOUND #6 REBAR
UPGRADED TO 24" #6
REBAR WITH 2.5" ALUMINUM
CAP MARKED "PLS 25965"
LOT 1, BLOCK 1,
BROMLEY PARK
FILING NO. 102
BURLINGTON NORTHERN
SANTA FE RAILROAD
SW 1/4
SEC.1
SE 1/4
SEC.1
SW COR. SEC. 1
FOUND 3.25" ALUMINUM
CAP IN RANGE BAX
MARKED "PLS 6973 1993"
S 1/4 COR. SEC. 1
FOUND 2.5" ALUMINUM CAP
MARKED "LS 13482 1999"
SE COR. SEC. 1
FOUND 2.5" ALUMINUM CAP
MARKED "28656 1994"
S89°42'05"E 377.06'
SEE DETAIL 1
DETAIL 1
1" = 40'
LEGEND
SET 18" #5 REBAR W/1.25" YELLOW
PLASTIC CAP STAMPED "PLS 25965"
FOUND MONUMENT AS NOTED
REC. NO. - RECEPTION NUMBER
PROPERTY LINE
LOT LINE
EASEMENT LINE
SECTION LINE
WARE MALCOMB
CIVIL ENGINEERING & SURVEYING
JOB NO. DEN17-0019
PA/PM: TDS
DRAWN: KBB
DATE: 01/09/2018
SCALE: 1" = 300
BROMLEY PARK FILING NO. 102
1ST AMENDMENT
SHEET
PLAT
Sheet 2 of 4


BROMLEY PARK FILING NO. 102 1ST AMENDMENT
MINOR SUBDIVISION PLAT
A REPLAT OF LOT 2, BLOCK 1, BROMLEY PARK FILING NO. 102
LOCATED IN SECTION 1, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 3 OF 4
SCALE: 1" = 300'
C S N 1/64TH COR. SEC. 1
FOUND 2" ALUMINUM CAP
MARKED "PLS 12405 2000"
SEE DETAIL 2
LOT 2
LOT 3
BLOCK 1
LOT 4
SEE DETAIL 3
SEE DETAIL 4
SEE DETAIL 5
SEE DETAIL 1
DETAIL 2
SCALE 1" = 100'
DETAIL 3
SCALE 1" = 100'
DETAIL 4
SCALE 1" = 100'
DETAIL 5
SCALE 1" = 100'
MATCH LINE A
MATCH LINE A
UTILITY EASEMENT DETAIL
WARE MALCOMB
CIVIL ENGINEERING & SURVEYING
NO. DATE REMARKS
JOB NO. DEN17-0019
PA/PM: TDS
DRAWN: KEB
DATE: 01/09/2018
SCALE: 1" = 300
BROMLEY PARK FILING NO. 102
1ST AMENDMENT
SHEET
PLAT
Sheet 3 of 4

BROMLEY PARK FILING NO. 102 1ST AMENDMENT

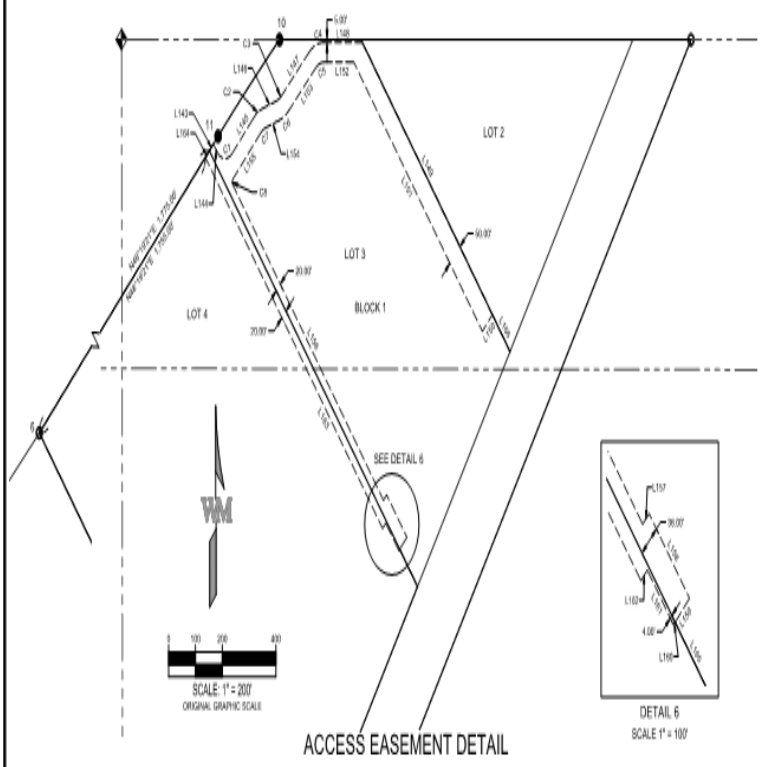
MINOR SUBDIVISION PLAT

A REPLAT OF LOT 2, BLOCK 1, BROMLEY PARK FILING NO. 102

LOCATED IN SECTION 1, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN,

CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 4 OF 4



ACCESS EASEMENT DETAIL

DETAIL 6
SCALE 1" = 100'

UTILITY EASEMENT LINE TABLE

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N48°19'21"E	868.58'
L2	N41°40'39"W	70.00'
L3	N48°19'21"E	20.00'
L4	S41°40'39"E	70.00'
L5	N48°19'21"E	665.51'
L6	N41°40'39"W	70.00'
L7	N48°19'21"E	20.00'
L8	S41°40'39"E	70.00'
L9	N48°19'21"E	366.68'
L10	N73°12'14"E	85.62'
L11	N48°19'21"E	41.34'
L12	N45°30'26"E	119.42'
L13	N67°30'26"E	43.64'
L14	S89°59'34"E	143.82'
L15	S41°59'34"E	16.97'
L16	S89°59'34"E	309.15'
L17	N45°30'26"E	16.97'
L18	S89°59'34"E	53.82'
L19	S48°59'34"E	33.94'
L20	S41°40'39"E	434.15'
L21	S89°19'21"W	26.82'
L22	S48°19'21"W	261.48'
L23	S41°40'39"E	28.00'
L24	S87°59'39"E	45.97'
L25	S36°59'34"E	97.88'
L26	S48°19'21"W	413.74'
L27	S41°40'39"E	66.39'
L28	S89°19'21"W	98.79'
L29	S48°19'21"W	482.24'
L30	N86°40'39"W	99.47'
L31	N41°40'39"W	32.39'
L32	S48°19'21"W	125.00'
L33	S41°40'39"E	86.99'
L34	S87°20'39"E	86.99'
L35	S14°39'21"W	114.41'
L36	S37°19'21"W	97.99'
L37	S48°19'21"W	561.34'
L38	N86°40'39"W	82.63'
L39	N52°39'39"W	96.14'
L40	N41°40'39"W	668.41'
L41	S48°19'21"W	242.09'
L42	S41°40'39"E	35.99'
L43	S89°19'21"W	61.99'
L44	S48°19'21"W	1161.99'
L45	S33°40'21"W	22.63'
L46	S24°55'53"W	139.72'
L47	N89°41'01"W	34.47'

LINE TABLE		
LINE #	BEARING	DISTANCE
L48	N76°56'07"W	117.61'
L49	N48°19'21"E	34.48'
L50	S76°56'07"E	112.21'
L51	N24°18'53"E	115.70'
L52	N29°49'21"E	36.27'
L53	N48°19'21"E	1167.25'
L54	N03°19'21"E	44.86'
L55	N41°40'39"W	47.23'
L56	N48°19'21"E	262.00'
L57	S41°40'39"E	626.44'
L58	S52°55'39"E	86.19'
L59	S86°40'39"E	48.28'
L60	N48°19'21"E	551.08'
L61	N37°19'21"E	81.85'
L62	N14°34'21"E	102.14'
L63	N38°25'39"W	74.28'
L64	N41°40'39"W	1060.69'
L65	S48°19'21"W	1065.00'
L66	N41°40'39"W	20.00'
L67	N48°19'21"E	164.67'
L68	S41°40'39"E	33.46'
L69	N48°19'21"E	10.00'
L70	N41°40'39"W	33.46'
L71	N48°19'21"E	43.67'
L72	S41°40'39"E	10.00'
L73	N48°19'21"E	467.66'
L74	S41°40'39"E	604.00'
L75	S48°19'21"W	7.66'
L76	S41°40'39"E	10.00'
L77	N48°19'21"E	7.66'
L78	S41°40'39"E	74.68'
L79	S03°19'21"W	53.21'
L80	S48°19'21"W	465.67'
L81	N86°40'39"W	53.99'
L82	N41°40'39"W	19.79'
L83	N48°19'21"E	33.82'
L84	S41°40'39"E	10.00'
L85	N48°19'21"E	33.82'
L86	S41°40'39"E	14.31'
L87	S48°19'21"W	145.00'
L88	N41°40'39"W	366.00'
L89	N48°19'21"E	74.68'
L90	N41°40'39"W	10.00'
L91	S48°19'21"W	74.68'
L92	N41°40'39"W	544.00'
L93	N48°19'21"E	162.98'
L94	N73°44'11"E	83.68'

LINE TABLE		
LINE #	BEARING	DISTANCE
L95	N48°37'45"E	192.88'
L96	S89°59'34"E	3.94'
L97	S00°00'26"W	28.13'
L98	S89°59'34"E	10.00'
L99	N00°00'26"E	28.13'
L100	S89°59'34"E	130.73'
L101	S44°59'34"E	14.84'
L102	S41°40'39"E	202.96'
L103	N48°19'21"E	48.79'
L104	S41°40'39"E	46.12'
L105	N48°19'21"E	10.00'
L106	N41°40'39"W	46.12'
L107	N48°19'21"E	171.66'
L108	N48°19'21"E	171.66'
L109	S89°59'34"E	36.79'
L110	S44°59'34"E	14.48'
L111	S41°40'39"E	25.63'
L112	S48°19'21"W	12.99'
L113	S41°40'39"E	10.00'
L114	N48°19'21"E	12.99'
L115	S41°40'39"E	389.46'
L116	S00°19'21"W	10.36'
L117	S48°19'21"W	8.32'
L118	N41°40'32"W	10.36'
L119	S48°11'28"W	10.00'
L120	S41°48'32"E	10.34'
L121	S48°19'21"W	274.86'
L122	S41°40'39"E	41.00'
L123	S07°55'30"E	14.62'
L124	S82°13'13"W	18.53'
L125	S07°55'30"E	10.00'
L126	N82°04'31"E	18.53'
L127	S07°55'30"E	7.20'
L128	S36°15'43"W	57.05'
L129	S48°19'21"W	411.63'
L130	N41°40'39"W	410.86'
L131	N48°19'26"E	44.21'
L132	N41°40'34"W	10.00'
L133	S48°19'26"W	44.21'
L134	N41°40'39"W	499.31'
L135	N48°19'21"E	17.00'
L136	N41°40'39"W	10.00'
L137	S48°19'21"W	17.00'
L138	N41°40'39"W	23.83'
L139	S89°59'34"E	269.40'
L140	S48°19'21"W	201.23'
L141	N41°40'39"W	175.19'

CURVE TABLE					
CURVE #	DELTA	RADIUS	ARC LENGTH	CHORD DIRECTION	CHORD LENGTH
C1	90°00'00"	40.00'	62.83'	S86°40'39"E	56.57'
C2	25°24'50"	100.00'	44.36'	N61°01'46"E	43.99'
C3	24°06'30"	60.00'	25.25'	N61°40'58"E	25.06'
C4	40°22'41"	90.00'	63.43'	N69°49'05"E	62.12'
C5	40°22'41"	50.00'	35.24'	S69°49'05"W	34.51'
C6	24°06'30"	100.00'	42.08'	S61°40'58"W	41.77'
C7	25°24'50"	60.00'	26.61'	S61°01'46"W	26.40'
C8	90°00'00"	10.00'	15.71'	S03°19'21"W	14.14'

990 south broadway
suite 230
denver, co 80209
p 303.561.3333
www.wareMalcomb.com

WARE MALCOMB
CIVIL ENGINEERING & SURVEYING

NO.	DATE	REMARKS	NO.	DATE	REMARKS

JOB NO.	DEN17-0019
PA/PM:	TDS
DRAWN:	KEB
DATE:	01/09/2018
SCALE:	1" = 200

BROMLEY PARK FILING NO. 102

1ST AMENDMENT

SHEET PLAT

Sheet 4 of 4

EXHIBIT B-1

Developer shall submit a schedule of improvements for phases 2 and 3 for review and approval by the City prior to submittal of any building permits within those phases.

Schedule of Public Improvements
76 Commerce Center

	Phase 1 (Lots 2, 3 and NE portion of Lot 4 + watermain loop)		
Type of Improvement	Quantity	Unit Cost	Total Estimate
Water Line - 12" Line	14,620 LF	$68.80	$1,005,856
Water Line - Water/Gate Valves	47 EA	$2,859.28	$134,386
Water Line - Water Line Connections	3 EA	$3,570.67	$10,712
Water Line - Fire Hydrants	8 EA	$8,491.00	$67,930
Sanitary - 12" Line	2,666 LF	$45.25	$120,639
Sanitary - Sanitary Sewer Connection	1 EA	$6,559.00	$6,559
Sanitary - Clean-Out	9 EA	$3,712.67	$33,414
Sanitary - Manholes	9 EA	$7,408.11	$66,673
Asphalt at Frontage Road - 4.5" Paving over 10" Base	2,945 SY	$40.20	$118,389
			$1,564,558

EXHIBIT B-2
PHASING PLAN

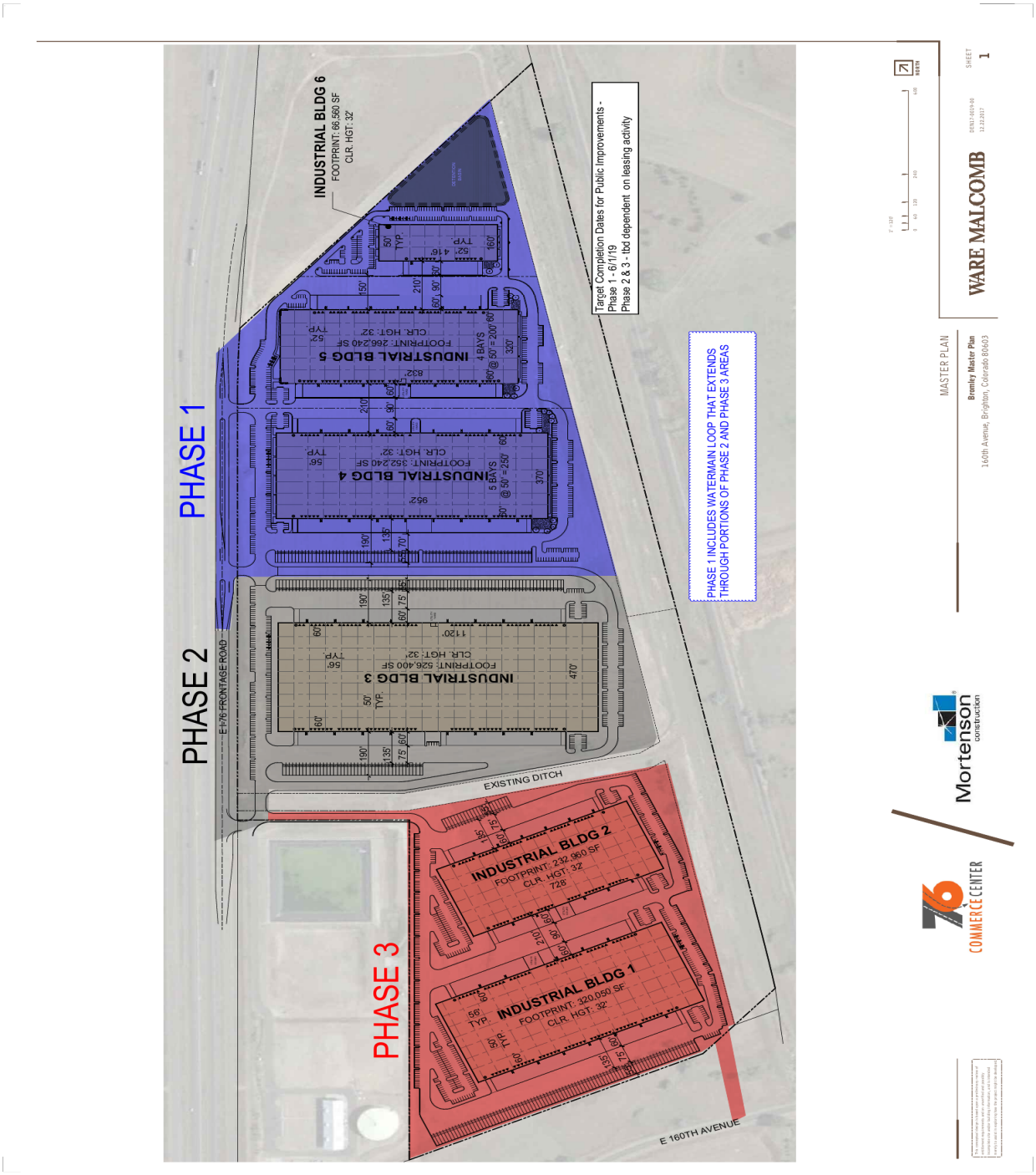


EXHIBIT C

****

THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND DOES NOT CONSTITUTE A VALID LETTER OF CREDIT

****

IRREVOCABLE STANDBY LETTER OF CREDIT NO. XXXXXXXXXX

ISSUANCE DATE: XXXXXXXXX

EXPIRATION DATE: ONE YEAR FROM ISSUANCE

AMOUNT: $_____

BENEFICIARY:
CITY OF BRIGHTON, COLORADO
500 SOUTH 4TH AVENUE
BRIGHTON, CO 80601

APPLICANT:
76 COMMERCE CENTER, LLC
1350 LAGOON AVE S STE 920
MINNEAPOLIS, MN 55408

ISSUING BANK:
FIRST NATIONAL BANK OF OMAHA
1620 DODGE STREET, SC 1096,
OMAHA, NE 68197

WE HEREBY ESTABLISH THIS IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR FOR AN AMOUNT UP TO THE AGGREGATE SUM OF US DOLLARS ONE HUNDRED FIVE DOLLARS SEVEN HUNDRED SEVENTY SIX AND NO/100 ($105,776.00) WHICH IS AVAILABLE UPON PRESENTATION OF YOUR DRAFTS AT SIGHT DRAWN ON FIRST NATIONAL BANK OF OMAHA, ATTN: INTERNATIONAL DEPT., 1620 DODGE STREET, SC 1096, OMAHA, NE 68197 FOR THE ACCOUNT OF 76 COMMERCE CENTER, LLC TO GUARANTEE THE CONSTRUCTION OF THE REQUIRED IMPROVEMENTS, WARRANTIES, AND SATISFACTORY COMPLIANCE OF 76 COMMERCE CENTER, LLC WITH THE TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE CITY AND 76 COMMERCE CENTER, LLC.

DRAFTS DRAWN UNDER THIS CREDIT ARE TO BE ENDORSED HEREON AND BEAR THE CLAUSE, “DRAWN UNDER FIRST NATIONAL BANK OF OMAHA, LETTER OF CREDIT NUMBER XXXXXX DATED XXXXX.”

ALL DRAFTS MUST BE ACCOMPANIED BY THE FOLLOWING DOCUMENTS(S):

1. A LETTER, ON THE CITY’S LETTERHEAD, SIGNED BY THE CITY MANAGER, STATING “76 COMMERCE CENTER, LLC ITS SUCCESSOR, TRANSFEREE, OR ASSIGN, HAS FAILED TO PERFORM IN ACCORDANCE WITH THE [INSERT NAME] AGREEMENT DATED [INSERT DATE]”;OR “WE ARE IN RECEIPT OF

WRITTEN NOTICE FROM FIRST NATIONAL BANK OF OMAHA OF ITS ELECTION NOT TO RENEW ITS LETTER OF CREDIT NO. XXXXXXXX FOR AN ADDITIONAL TERM OF ONE (1) YEAR AND 76 COMMERCE CENTER, LLC, ITS SUCCESSOR, TRANSFEREE, OR ASSIGN, IS STILL OBLIGATED TO THE CITY UNDER THE [INSERT NAME] AGREEMENT, AND AN ACCEPTABLE REPLACEMENT LETTER OF CREDIT HAS NOT BEEN RECEIVED".

2. THE ORIGINAL LETTER OF CREDIT AND ANY/ALL ORIGINAL AMENDMENTS.

WE HEREBY ENGAGE WITH YOU THAT ANY DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON THE PRESENTATION AT FIRST NATIONAL BANK OF OMAHA, ATTN: INTERNATIONAL DEPT., 1620 DODGE STREET, SC 1096, OMAHA, NE 68197-1096, VIA COURIER SERVICE ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED ABOVE.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS NINETY (90) DAYS PRIOR TO ANY SUCH EXPIRATION DATE WE NOTIFY YOU IN WRITING THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED PROVIDED THEY DO NOT EXCEED THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

THE AMOUNT OF FUNDS AVAILABLE UNDER THIS LETTER OF CREDIT MAY NOT BE REDUCED EXCEPT BY PAYMENT OF DRAFTS DRAWN HEREUNDER, OR PURSUANT TO WRITTEN AUTHORIZATION GIVEN TO US BY THE CITY.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, REQUIREMENT OR QUALIFICATION. THE OBLIGATION OF FIRST NATIONAL BANK OF OMAHA UNDER THIS CREDIT IS THE INDIVIDUAL OBLIGATION OF FIRST NATIONAL BANK OF OMAHA AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO, OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

THIS LETTER OF CREDIT SETS FORTH IN FULL TERMS OF OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY NOTE, DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES AND ANY SUCH

REFERENCE SHALL NOT BE DEEMED TO BE INCORPORATED HEREIN BY REFERENCE TO ANY NOTE, DOCUMENT OR AGREEMENT.

THE ORIGINAL LETTER OF CREDIT AND ANY/ALL ORIGINAL AMENDMENTS MUST BE PRESENTED WITH EACH DRAWING OR WHEN CANCELLING THE LETTER OF CREDIT PRIOR TO THE EXPIRY.

IN THE EVENT IT BECOMES NECESSARY FOR THE CITY TO BRING AN ACTION TO ENFORCE THE TERMS OF THIS LETTER OF CREDIT, OR ANY ACTION ALLEGING WRONGFUL DISHONOR OF THIS LETTER OF CREDIT, AND THE CITY PREVAILS IN SUCH ACTION, THE CITY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES AND ALL COSTS AND EXPENSES ASSOCIATED WITH SUCH ACTION.

IF WE BRING AN ACTION AGAINST THE CITY RELATED DIRECTLY OR INDIRECTLY TO THIS LETTER OF CREDIT, AND THE CITY PREVAILS IN SUCH ACTION, THE CITY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF SUCH ACTION.

EXCEPT SO FAR AS OTHERWISE STATED, THIS LETTER OF CREDIT IS SUBJECT TO THE RULES OF THE INTERNATIONAL STANDBY PRACTICES (ISP98), PUBLICATION NO. 590, AS ADOPTED BY THE INTERNATIONAL CHAMBER OF COMMERCE, WHICH ARE IN EFFECT AT THE TIME OF ISSUANCE OF THIS LETTER OF CREDIT.

BY:_____
KATRINA HAHN, SR. ADVISOR GLOBAL BANKING

_____
PRINT NAME

EXHIBIT D

Not required for Bromley Park, Filing 102, 1st Amendment

EXHIBIT E

Not required for Bromley Park, Filing 102, 1st Amendment

EXHIBIT F

WATER DEDICATION AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____ by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado (the "City") and 76 COMMERCE CENTER LLC (the "Developer") (the City and the Developer may be referred to herein as the "Parties").

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

WHEREAS, in conjunction with the approval of the Preliminary Plat for the Property, Developer will execute a Development Agreement; and

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

WHEREAS, after reviewing its current inventory of water resources, together with other factors relating to the City's water resource needs, the City has determined that the Developer shall dedicate water resources as more particularly set forth below.

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

1. The Developer shall transfer to the CITY, in connection with approval of the Final Plat for the Bromley Park, Filing 102, 1st Amendment, in a form acceptable to the City Water Attorney and City Water Rights Engineer, and in accordance with the schedule set forth below, water rights sufficient to meet to the City's reasonable requirements for water dedication as set forth herein. Said water rights shall be free and clear of any and all encumbrances and shall satisfy all of the requirements of Resolution No. 01-160, as the same may be amended from time to time.
    a. The amount of the water dedication shall exceed what is required for the then existing warehouse demand and is determined by the City to be 25.17 acre-feet for the entire Development, based on current information provided by Developer and subject to the provisions of Section 1.d below.
    b. Developer may partially satisfy the water dedication requirements for the Development as set forth in this Agreement by dedicating at least ten (10) shares of the Fulton Irrigating Ditch Company ("Fulton") concurrent with the construction of the first building within the Development. After review and approval of the Fulton shares by the City, the City shall credit the water

associated with the shares against the water dedication (25.17 acre feet) required by this Agreement.

c. If the Developer elects to proceed pursuant to Section [1.b] of this Agreement, the City shall issue a building permit for Phase 1, and the Developer acknowledges, understands and agrees that it will be required to dedicate the balance of the required water dedication (25.17 acre feet less the amount credited to the Fulton shares pursuant to Section [1.a] above) by dedicating additional acceptable water rights to the City. The water rights shall be identified and dedicated before the City will issue a Certificate of Occupancy for any building within Phase 1.

d. Recognizing that the ultimate user(s) within the Development has yet to be determined, the Developer acknowledges, understands and agrees that if any of the users in the Development is a high water consumer (i.e., water demand in excess of a standard storage warehouse demand, such as, but not limited to, beverage bottling, food production, and indoor agriculture), and the additional estimated usage causes the entire site usage to exceed the dedicated 25.17 acre-feet, the Developer will be required to dedicate additional water rights, beyond the currently identified 25.17 acre feet, to satisfy the revised water dedication requirement necessitated by the high water user. Such dedication must be completed before the City will issue a tenant finish permit as defined in the International Building Code, Section 105.1, for any building(s) portion in the Development in which the high water consumer will be a tenant.

2. This Agreement shall be an attachment to the Bromley Park, Filing 102, 1st Amendment, and its future plat amendments and incorporated therein by references.

3. This Agreement is non-transferable, except that it may be assigned pursuant to the terms of the Development Agreement, and may only be modified or amended in writing, signed by the Parties hereto.

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

DEVELOPER/OWNER:

By: _____
Paul Hyde, 76 Commerce Center LLC

COUNTY OF _____)
) SS
STATE OF _____)

The foregoing Agreement was acknowledged before me this _____ day of

_____, 20_____. By: _____

WITNESS my hand and official seal.

By: _____
Notary Public

My Commission Expires: _____

CITY OF BRIGHTON:

By: _____
Kenneth J. Kreutzer, Mayor

ATTEST:

By: _____
Natalie Hoel, City Clerk

IN WITNESS WHEREOF, Grantor has executed the foregoing on the date and year first above written.

GRANTOR:

By: _____
Name
Title
Company Name

COUNTY OF ADAMS)
) SS
STATE OF COLORADO)

The foregoing Agreement was acknowledged before me this _____ day of

_____, 20_____. By: _____

WITNESS my hand and official seal.

By: _____
Notary Public

My Commission Expires: _____

EXHIBIT G

SPECIAL PROVISIONS

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN BROMLEY PARK, FILING 102, 1st AMENDMENT DEVELOPMENT AGREEMENT, BETWEEN THE CITY OF BRIGHTON, COLORADO, AND 76 COMMERCE CENTER LLC. SHOULD THERE BE ANY CONFLICT BETWEEN THE DEVELOPMENT AGREEMENT AND THE SPECIAL PROVISIONS SET FORTH IN THIS **EXHIBIT G**, THE TERMS OF THIS **EXHIBIT G** SHALL CONTROL.

1. **Definitions.** The following terms and definitions shall apply to this Exhibit G, Special Provisions:

A. The term "Plat Amendment" shall mean the City-approved final plat document entitled *Bromley Park, Filing No. 102, 1st Amendment.*
B. The term "Lot 2" shall mean a 7.253 acre lot designated as such on the Plat Amendment.
C. The term "Lot 3" shall mean a 13.889 acre lot designated as such on the Plat Amendment.
D. The term "Lot 4" shall mean an 84.859 acre lot designated as such on the Plat Amendment.
E. The term "Lot 1" shall mean a 25.036 acre lot, designated as such on the Bromley Park Filing 102 Final Plat (also known as East Cherry Creek Valley Treatment Facility).
F. The term "Tract A" shall mean a 16.376 tract designated as such on the Plat Amendment.
G. The term "Phase 1" shall mean Lots 2, 3 and the northeast portion of Lot 4, as more specifically depicted on Exhibit B, attached hereto.
H. The term "Phase 2" shall mean the future subdivision of a portion of Lot 4 and Lot 5, as more specifically depicted on Exhibit B, attached hereto.
I. The term "Phase 3" shall mean the future subdivision of a portion of Lot 4, Lot 5, Lot 6 and Lot 7(see "Future Phase" below).
J. The terms "Future Phase" or "Future Phases" shall mean the possible re-plat of Lot 4 into additional lots and the Final Development Plans associated with the southwestern portion of Lot 4 also known as Phase 2 and Phase 3.
K. The term "Final Development Plan ("FDP")" shall mean the City-approved Final Development Plan and associated construction documents for the 76 Commerce Center: Lot 2, 3 and the northeastern portion of Lot 4.
L. The term "CDOT" shall mean the Colorado Department of Transportation.
M. The term "Construction Plans" shall mean the City-reviewed and approved Civil Plans, titled "76 Commerce Center Final Development Plan and Civil Plans".
N. The term "Landscape Plans" shall mean the Landscape Plans approved by the City as part of the Construction Plans and the Final Development Plans for each parcel within the Development.

O. The term "Common-Interest Management Association" shall mean a Home Owners Association (HOA) or other entity legally established for the purpose of owning and maintaining privately owned common-interest areas and infrastructure that are not maintained by individual property owners or by the City. These common areas may include recreational amenities, parks, walkways, trails, drainage facilities, common area landscape tracts, subdivision signs, common area fencing, or any other privately owned common-interest areas and infrastructure that are not owned and maintained by individual property owners or the City. Common-Interest Management Associations may also provide common-interest services such as mail kiosks, trash collection, snow plowing, and other common-interest services that are not performed by individual property owners or the City.

2. **Phasing Plan.** The Phasing Plan, attached hereto as **Exhibit B-2,** sets forth the intended phasing of the construction of the Public Improvements for this Development. No amendments or alterations to the Phasing Plan may be made without the prior written consent of the City.

3. **Temporary Uses.** Temporary uses refer to, but are not limited to, temporary sales office, temporary construction office and construction yard. Temporary uses are allowed, with approval of a temporary use permit, for a period of one year, with renewal after that year determined by the Director of Community Development.

4. **City Regulations.** Developer agrees to develop the Property in conformance with any and all City Regulations and/or Ordinances, as the same may be subsequently amended from time to time.

5. **Sanitary Sewer.** Wastewater service to the Bromley Park area of the City, including the Property, is provided by the City of Brighton, pursuant to the Brighton and Lochbuie Wastewater Service Intergovernmental Agreement between the City of Brighton and the Town of Lochbuie January 17, 1991 [hereinafter the "Lochbuie Agreement"] with treatment by the facilities owned and operated by the Town of Lochbuie. DEVELOPER acknowledges, represents, and agrees to coordinate with the Town of Lochbuie regarding any infrastructure requirements necessary to serve the Development and any regulatory or pre-treatment requirements, if applicable or required.

A. **Sanitary Sewer Construction.** The Developer, at its sole cost and expense, shall construct to completion, in the first Phase of the Development, that portion of the sanitary sewer line and related appurtenances, as depicted in the Final Plat, Construction Plans and Landscape Plans. Prior to initiating construction of said sanitary sewer line, the Developer shall provide to the City fully executed and recorded copies of all off-site easement documents and requisite agreements permitting the crossing or other access/usage of those properties required for the

construction of the off-site portion of said sanitary sewer line and related appurtenances.

B. **Sanitary Sewer Capacity.** The Property, per the previous studies, has an anticipated sanitary sewer flow of 300,000 gallons per day. Should any future user within the Development exceed this anticipated flow, the Developer shall submit for review and approval a Utility Report that analyzes the existing flow and capacity of the line from the connection point to the south (upstream). Such report shall demonstrate to the satisfaction of the Director of Utilities that sufficient capacity exists for the proposed use(s).

C. **Privately-Owned Lift Station and Grinder Pump**. The Developer acknowledges and agrees that it will be responsible for the construction of a lift station and grinder pump on Lot 2 of the Development. The Developer acknowledges and agrees that said lift station and grinder pump are not owned by the City, that the owner of Lot 2 shall be responsible for the repair and maintenance of the lift station and grinder pump and shall ensure that the same at all times meet all certifications and provide those certifications to the City, if requested.

6. **Stormwater Improvements and Drainage.** The Developer, at its sole cost and expense, shall construct to completion, in the first Phase of the Development, that portion of the sanitary sewer lines, water quality ponds, and related infrastructure as depicted in the Final Plats, Construction Plans and Landscape Plans.

A. **South Beebe Draw Metropolitan District/Offsite Improvements.** The Developer acknowledges, understands and agrees that the South Beebe Draw Metropolitan District operates and maintains public storm sewer systems in the Bromley Park area, which includes the Property, and shall satisfy all requirements of said District for the provision of stormwater services for the Development. All stormwater associated with the Development shall drain in accordance with the Construction Plans.

B. **Construction and Maintenance of Onsite Water Quality Ponds Infrastructure.** The Developer, at its sole cost and expense, shall construct to completion, the necessary drainage facilities for the Development as set forth in the Final Plat, Construction Plans and Landscape Plans, including ponds, storm water culverts, and related drainage infrastructure on Lots 2, 3 and 4 as well as all necessary drainage infrastructure improvements necessary for the Future Phases as those Phases are constructed. All on-site drainage infrastructure improvements

shall be maintained by the owner of the property on which said improvements are located, including routine maintenance and cleaning of the culverts and associated infrastructure to ensure proper functioning of the drainage system.

7. **Construction of Roadway and Intersection Improvements.** Developer, at its sole cost and expense, shall design and construct to completion or contribute to each improvement indicated below. Improvements shall be in accordance with the Construction Plans, and at the time indicated in the Phasing Plan, and applicable Colorado Department of Transportation (CDOT) and City Specifications. All permits required by CDOT and conditions of those permits shall be furnished to the City upon issuance and prior to any work commencing on said improvements. The improvements and requirements are as follows:

A. **76 Commerce Center Site Access Points.** There shall be three (3) access points required for the 76 Commerce Center Site and Future Phases from the I-76 Frontage Road, as generally depicted on the phasing plan: the North Access Point, between Lot 3 and Lot 4; the Middle Access Point, between Lot 4 and Lot 5; and the South Access Point, to be shared with Lot 1 and Lot 4. There shall be one (1) emergency access required from Bridge Street.

1. **North Access Point.** The DEVELOPER shall design and construct, at its sole cost and expense, in accordance with the Construction Plans for the 76 Commerce Park Final Development Plan, an access point and all auxiliary turning lanes associated therewith (the "North Access Point"), for the purpose of accessing the 76 Commerce Center Site from the I-76 Frontage Road. The final design of the North Access Point shall be as determined by a traffic study, completed and paid for by the Developer, and approved by CDOT and the City, to include a +/- 75'southbound left-turn lane and associated +/-120'deceleration lane. The design of the auxiliary turning lanes is subject to written approval from CDOT. Construction of said auxiliary turning lanes shall be completed and approved by CDOT before the City will release the first Certificate of Occupancy (CO) for improvements on Lot 2 or Lot 3 on the 76 Commerce Center Site.

2. **Middle Access Point.** The DEVELOPER shall design and construct, at its sole cost and expense, in accordance with the Construction Plans for the 76 Commerce Center Final Development Plan, an access point and all auxiliary turning lanes associated therewith (the "Middle Access Point"), for the purpose of accessing the 76 Commerce Center Site from the I-76 Frontage Road. The

final design of the Middle Access Point shall be as determined by a traffic study, completed and paid for by the Developer, and approved CDOT and the City, to include a +/- 75' southbound left-turn lane and associated +/-120'deceleration lane. The design of the auxiliary turning lanes is subject to written approval from CDOT. Construction of said auxiliary turning lanes shall be completed and approved by CDOT before the City will release a Certificate of Occupancy (CO) for improvements on Lot 4 on the 76 Commerce Center Site.

3. **South Access Point.** The DEVELOPER shall design and construct, at its sole cost and expense, in accordance with the Construction Plans for Phase 2, an access point and all auxiliary turning lanes associated therewith (the "South Access Point"), for the purpose of accessing the 76 Commerce Center Site from the I-76 Frontage Road., The final design of the South Access Point shall be as determined by a traffic study, completed and paid for by the Developer, and approved CDOT and the City, to, include a +/- 75'southbound left-turn lane and associated +/-120' deceleration lane. The design of the auxiliary turning lanes is subject to written approval from CDOT. Construction of said auxiliary turning lanes shall be completed and approved by CDOT before the City will release the first Certificate of Occupancy (CO) for improvements on Lot 5 or within Phase 2 of the Development.

4. **Emergency Access Point.** The DEVELOPER shall design and construct, at its sole cost and expense, in accordance with the Construction Plans for Phase 3, a minimum 20' wide emergency access, with an all-weather surface, from 160th Avenue to Phase 3 or the most southern portion of Lot 4. The Development shall acquire, at its sole cost an expense, all offsite easements necessary for the construction of said emergency access. Construction of said emergency access shall be completed and approved by the City before the City will release the first Certificate of Occupancy (CO) for improvements on Lots 6 or 7 or within Phase 3 of the Development.

B. **Required Off-Site Improvements/ Intersection at Bridge Street and I-76 East Frontage Road.** All required improvements to this intersection shall be permitted and constructed in accordance with CDOT specifications for Phase 1. Developer, at its sole expense, shall design and construct the all way stop control, including but not limited to, any required striping, and signage, in accordance with the Construction Plans and applicable CDOT and City specifications. All permits required by

CDOT and all conditions placed on those permits shall be furnished to the City upon issuance thereof, and prior to the commencement of any work on said improvements.

C. Design and Developer Financial Contribution for Off-Site Improvements/Interchange at Bromley Lane and I-76.

1. Design. DEVELOPER shall provide the City a conceptual design drawing for the Bromley/I-76 Interchange improvements before the City will issue any building permits for any improvements in Phases 1, 2 or 3.

2. Developer Financial Contributions. In lieu of requiring the Developer to design and construct certain improvements to Bromley Lane and the Ramp intersections at I-76, the Developer agrees to pay and the City agrees to accept the following payments therefor, which payment shall be made in funds acceptable to the City before the City will issue any building permit for improvements in Phases 1, 2 or 3.

a. **Bromley Lane and Eastbound Ramp.** Eighteen Thousand Six Hundred Dollars ($18,600) for the Developer's pro rata share of the costs associated with the traffic signal, signage, striping and road widening.

b. **Bromley Lane and Westbound Ramp**. Thirteen Thousand Eight Hundred Dollars ($13,800) for the Developer's pro rata share of the costs associated with the traffic signal, signage, striping and road widening.

EXHIBIT H

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

THIS AGREEMENT is made this ___ day of _____, 2018, between _____, hereinafter referred to as the "Owner," and the City of Brighton, a Colorado home rule municipality, hereinafter referred to as "City."

RECITALS

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

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

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

COVENANTS

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

Section 1. Subject Property

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

Section 2. Facilities

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

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

Section 3. Site Specific Maintenance Plan

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

Section 4. Obligations of Owner and/or Responsible Party

The Owner and the Responsible Party agree to the following:

A) All Facilities on the Property shall be maintained to meet erosion control, groundwater recharge, and stormwater runoff quantity and quality standards of Chapter 14, Storm Drainage, the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual Volume 3, and the City of Brighton Standards and Specifications Manual, Chapter 3, Drainage and Flood Control, as the same may be amended from time to time.

B) To operate, maintain, repair, and replace as necessary all facilities, including routine and non-routine maintenance, as the same may be required by this Agreement, the ordinances, rules and regulations of the City as they may be amended from time to time. Preventative and corrective maintenance repair and replacement shall be performed to maintain the function and integrity of the Facilities.

C) To keep the Facilities in good condition and repair, free of trash, debris, algae, standing water and other conditions that would constitute a nuisance. Such maintenance shall include, but not limited to slope stabilization, bank grading, sediment removal, mowing, repairs of mechanical and structural components, installation and maintenance of adequate landscaping as well as adequate provision for weed control and replacement of dead plant material. In the event that any detention or retention area within the Property contains standing water for more than ninety-six (96) continuous hours, the Owner and/or Responsible Party shall install an aeration or other appropriate mitigation system acceptable to the City, in order to minimize or prevent algae blooms, mosquitoes, and any other conditions that may constitute a nuisance or otherwise adversely affect the public health, safety and welfare.

D) The Owner and/or Responsible Party shall perform regular inspections in accordance with the Plan on all required Facilities and document maintenance, repair, and replacement needs to ensure compliance with the requirements of this Agreement.

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

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

G) All Facilities, whether structural and non-structural, shall be maintained and the Owner and/or Responsible Party in perpetuity, unless otherwise specified in writing by the Director.

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

Section 5. City Access to Property

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

Section 6. Remediation

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

B) Should the Owner and/or Responsible Party fail within thirty (30) days of the date of the notice specified in 7. (A) above, the Director may enter the Property and perform or cause to be performed the required abatement and assess the reasonable cost and expenses for such work against the Owner and/or other Responsible Party as provided in Section. 14-2-100 City Inspections; Costs of Remediation, of the Brighton Municipal Code, as the same may be amended from time to time. Such costs may include the actual cost of any work deemed necessary by the Director, in order to comply with this Agreement, plus reasonable administrative, enforcement, and inspection costs.

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

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

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

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

Section 8. Notice

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

If Owner: *If Responsible Party:*

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

If City: *With Copy To:*

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

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

Section 9. Definitions

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

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

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

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

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

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

G) "**Unit Owner's Association"** means an association organized under C.R.S. §38-33.3-301 as a common interest community which may be a Responsible Party under the terms and conditions of this Agreement.

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

Section 10. Miscellaneous

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

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

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

D) Except as provided in Section 7. (D) above, in the event of any litigation between the parties regarding their respective rights and obligations hereunder, the substantially prevailing party shall be entitled to receive reasonable attorney fees and costs incurred in connection with such action.

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

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

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

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

CITY OF BRIGHTON, COLORADO

By: _____
Curtis Bauers, Director of Utilities

Attest:

By: _____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, Esq., City Attorney

OWNER:

By:_____
[Name and Title]
Paul Hyde, Chief Manager

RESPONSIBLE PARTY:

By:_____
[Name and Title]
Paul Hyde, Chief Manager

EXHIBIT H1
Property Description

Lots 2, 3 and 4, Block 1, Bromley Park Filing No. 102, First Amendment, Adams County, Colorado

EXHIBIT H2
Owner/Responsible Party Contact Information

76 Commerce Center, LLC.
Attn: Paul Hyde
1350 Lagoon Avenue South - Unit 920
Minneapolis, MN 55408

EXHIBIT H3
Facilities Description and Location Map

1) Ponds: Pond EF on Lot 2, Pond D on Lot 4, Pond C on Lot 5, Pond B on Lot 6 and Pond A on Lot 7. See the approved Construction Plans and the Drainage Report.

2) Swales: Located throughout the project. See the approved Construction Plans.

3) Storm sewer inlet pipes, boxes and Manholes, etc: Located throughout the project, see the approved Construction Plans.

4) Emergency Spillways: Located throughout the project, see the approved Construction Plans.

6) Evacuation Pond System: Located throughout the project, see the approved Construction Plans.

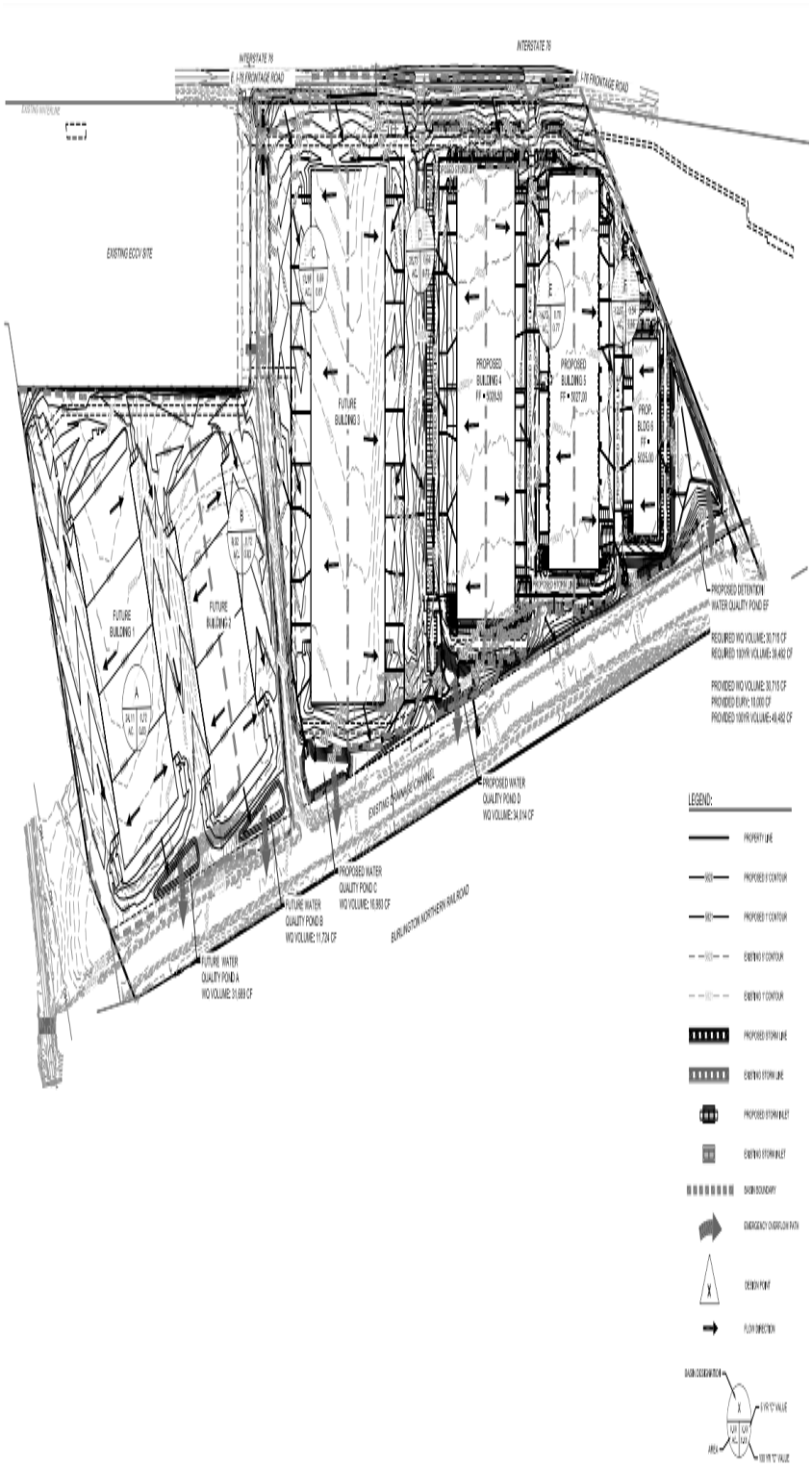

INTERSTATE 76
I-76 FRONTAGE ROAD
EXISTING ECCV SITE
FUTURE BUILDING 1
FUTURE BUILDING 2
FUTURE BUILDING 3
PROPOSED BUILDING 4
PROPOSED BUILDING 5
PROPOSED DETENTION WATER QUALITY POND EF
PROPOSED WATER QUALITY POND D
WQ VOLUME: 34,014 CF
EXISTING DRAINAGE SWALE
PROPOSED WATER QUALITY POND C
WQ VOLUME: 10,980 CF
FUTURE WATER QUALITY POND B
WQ VOLUME: 11,724 CF
FUTURE WATER QUALITY POND A
WQ VOLUME: 31,889 CF
BURLINGTON NORTHERN RAILROAD
LEGEND:
PROPERTY LINE
PROPOSED 5' CONTOUR
PROPOSED 1' CONTOUR
EXISTING 5' CONTOUR
EXISTING 1' CONTOUR
PROPOSED STORM LINE
EXISTING STORM LINE
PROPOSED STORM INLET
EXISTING STORM INLET
BASIN BOUNDARY
EMERGENCY OVERFLOW PATH
DESIGN POINT
FLOW DIRECTION
BASIN DESIGNATION
AREA
5-YR "Q" VALUE
100-YR "Q" VALUE

EXHIBIT H4
Site Specific Maintenance Plan
(Use UDFCD Recommendation)

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

1) Retention/Detention Ponds:

Responsibilities:

The Owner is solely responsible for long-term maintenance of Pond 1A, 1B and 2 and any inlet or outlet infrastructure, including re-connection to the future outfall system.

Inspection

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

Debris and Litter Removal

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

Aquatic Plant Harvesting

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

Mosquito Control

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

Sediment Removal from the Forebay

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

Sediment Removal from the Pond Bottom

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

Sediment Removal from the Trickle Channel, and Micropool

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

Erosion and Structural Repairs

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

2) Swales:

Responsibilities

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

Inspection

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

Debris and Litter Removal

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

Aeration

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

Mowing

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

Irrigation Scheduling and Maintenance

Irrigation schedules must comply with the City of Brighton water regulations. The schedule must provide for the proper irrigation application rate to maintain healthy vegetation. Less irrigation is typically needed in early summer and fall, with more irrigation needed during July and August. Native grass should not require irrigation after establishment, except during prolonged dry periods when supplemental, temporary irrigation may aid in maintaining healthy vegetation cover. Check

for broken sprinkler heads and repair them, as needed. Do not overwater. Signs of overwatering and/or broken sprinkler heads may include soggy areas and unevenly distributed areas of lush growth.

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

Fertilizer, Herbicide, and Pesticide Application

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

Sediment Removal

Remove sediment as needed based on inspection. Frequency depends on site-specific conditions. For planning purposes, it can be estimated that 3 to 10% of the swale length or buffer interface length will require sediment removal on an annual basis.
-**For Grass Buffers**: Using a shovel, remove sediment at the interface between the impervious area and buffer.

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

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

3) Storm sewer inlet pipes, boxes and manholes:

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

Inspection

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

Debris and Litter removal

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

Erosion and Structural Repairs

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

4) Emergency Spillways:

Responsibilities

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

Inspection

Inspect annually.

Erosion and Structural Repairs

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