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AND WHEN RECORDED MAIL TO:
City of Brighton City Clerk

THIS SPACE FOR RECORDER'S USE ONLY

FULTON PLAZA FILING NO. 1
SUBDIVISION

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____ by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams**,** State of Colorado (the "City", "Brighton") and Adams County, a political subdivision of the State of Colorado (the "County", "Owner", and "Developer").

WHEREAS, Adams County (the "Owner") is the owner of a 12.290-acre parcel of land comprised of two lots and one tract (the "Property"), more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof; and

WHEREAS, the Owner has submitted a Final Plat (the "Plat"), Fulton Plaza Filing No. 1 Subdivision (the "Development", "Subdivision", 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 City's development regulations require that the public improvement obligations be guaranteed in a form acceptable to the City;

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

WHEREAS, the City acknowledges that the stated purpose of the County in submitting an application for a Final Plat and entering into this Agreement is not to develop the Property, but to subdivide and rezone the Property so that the Property may be subsequently sold by the County to a developer.

NOW THEREFORE, in consideration of the foregoing Agreement, the City and the Owner (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 area"*** refers to land within or related to a development, not individually available for sale or lease, that is designed and intended for the common use and enjoyment of residents, employees, or visitors of the development and may include such complementary structures and improvements as are necessary and appropriate.

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

"***Completion of Construction***" means the date the City has certified in writing that all three of the following have occurred:

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

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

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

a) Reasonable, i.e., the cost is generally recognized as necessary for the performance of the project and is one that a prudent person would consider reasonable given the same set of circumstances;
b) It must be allocable to the applicable improvement project, i.e., the cost is incurred for the benefit of only one project or the item can be easily assigned to multiple benefiting projects; and,
c) A specific project may only be charged that portion of the cost which represents the direct benefit to that project.

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

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

SECTION 2
GENERAL CONDITIONS

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

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

2.3 **Schedule of Improvements.** For this Agreement, the term "Schedule of Improvements" and/or "Phasing Plan(s)" shall mean a detailed listing, together with the costs thereof, of all of the Public Improvements, the design, construction, installation, and phasing of which is the sole responsibility of the Developer. The "Schedule of Improvements" may be divided into Phases of the approved Final Plat(s) for the Development, and shall

specify, as to each improvement listed below, the type, size, general location, and estimated cost of each improvement and the development Phase in which the Public Improvement is to be built:

- Water Lines
- Sanitary Sewer Lines
- Storm Sewer Lines
- Drainage Retention/Detention Ponds
- Streets/Alleys/Rights-of-Way
- Curbs/Gutters
- Sidewalks
- Bridges and Other Crossings
- Traffic Signal Lights
- Street Lights
- Signs
- Fire Hydrants
- Guard Rails
- Neighborhood Parks/Community Parks
- Open Space
- Trails and Paths
- Street Trees/Open Space and/or Common Area Landscaping
- Irrigation Systems
- Wells
- Fencing/Retaining Walls
- Parking Lots
- Permanent Easements
- Land Donated and/or Conveyed to the City
- Value of Land Beneath All Infrastructure Improvements
- Value of Water Donated and/or Conveyed to the City

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

2.5 **Construction Standards.** Developer shall construct all Improvements required by this Agreement, and any other Improvements constructed in relation to the Development, in accordance with the plans and specifications approved in writing by the City, and with the approved Final Plat(s), and in full conformity with the City's construction specifications applicable at the time of construction plan approval.

2.6 **Development Coordination.** Unless specifically provided in this Agreement to the contrary, all submittals to the City or approvals required of the City in connection with this Agreement, shall be submitted to or rendered by the City Manager or the Manager's designee, who shall have general responsibility for coordinating development with the Developer.

2.7 **Plan Submission and Approval.** Developer shall furnish to the City complete civil engineering documents and plans for all Improvements to be constructed in each Phase of the Development, as defined in Section 1.16 below, and obtain approval of the plans for each Phase prior to commencing any construction work thereon. The City shall issue its written approval or disapproval of said plan as expeditiously as reasonably possible. Said approval or disapproval shall be based upon standards and criteria for public improvements as established and approved by the City, and the City shall notify Developer of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the City prior to construction.

2.8 **Construction Acceptance and Warranty.**

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

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

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

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

2.8.5 If the Improvements completed by Developer are satisfactory, the City shall grant "construction acceptance," which shall be subject to final acceptance as set forth herein. If the Improvements completed by Developer are unsatisfactory, the City shall provide written notice to Developer of the repairs, replacements, construction, or other work required to receive "construction acceptance." Developer shall complete the work within thirty (30) days of said notice, weather permitting. After Developer completes the repairs, replacements, construction, or other work required, Developer shall request of the City a re-inspection of such work to determine if construction acceptance can be granted, and the City shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements,

construction, or other work required within thirty (30) days of said notice, the City may exercise its right to secure performance as provided in Section 9.1 of this Agreement. The City reserves the right to schedule re-inspections, depending upon the scope of deficiencies:

2.8.6 No Commercial Building Certificates of Occupancy shall be issued by the Administrative Division of the Community Development Department prior to Construction Acceptance of Public Improvements unless expressly permitted in Exhibit G of this document.

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

2.10 Final Acceptance. At least thirty (30) days before one (1) year has elapsed from the issuance of Construction Acceptance, or as soon thereafter as weather permits, Developer shall request a "final acceptance" inspection. The City shall inspect the Improvements and shall notify the Developer in writing of all deficiencies and necessary repairs. After Developer has corrected all deficiencies and made all necessary repairs identified in said written notice, the City shall issue to Developer a letter of "final acceptance." If any mechanic's liens have been filed with respect to the public Improvements, the City may retain all or a portion of the Improvement Guarantee up to the amount of such liens.

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

2.12 Testing and Inspection. Developer shall employ, at its own expense, a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City, on a timely basis, for City review and approval prior to commencement or continuation of that particular phase of construction. In addition, at all times during said construction, the City shall have access to inspect the materials and workmanship of said construction. All materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications. All work shown on the approved Public Improvements Plans requires inspection by the appropriate department, such as the Streets & Fleet and Utilities Departments. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During the hours listed above, inspections shall be scheduled by 4:00 p.m. of the day

prior to the requested inspection day. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance for approval. All requests for after-hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the City for all direct costs of the after-hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.

2.13 Improvement Guarantees.

2.13.1 Developer shall submit to the City an Improvement Guarantee for all Public Improvements related to each phase of the Development, as listed in Section 2.3 above and specified in Exhibit B. Said guarantee may be in cash, bond, or a letter of credit in a format provided by the City as shown in **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 calculated as a percentage of the total estimated cost, including labor and materials, of all Public Improvements to be constructed in said phase of the Development as described in **Exhibit B**. The total minimum amounts are as follows:

A. Prior to City approval of Public Improvements Construction Plans – 115%
B. Upon Construction Acceptance prior to Final Acceptance – 15%
C. After Final Acceptance – 0%

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

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

2.14 Indemnification and Release of Liability.

2.14.1 To the extent allowed by law, Developer agrees to indemnify and hold harmless the City, its officers, employees, agents, or servants and to pay any and all judgments rendered against the City and/or said persons on account of any suit, action, or claim

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

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

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

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

2.17 **Water Dedications.** See **Exhibits E & F** attached hereto**.**

SECTION 3
CONSTRUCTION OF IMPROVEMENTS

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

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

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

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

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 improvements must be fully paid by the Developer before the Developer is entitled to reimbursement under any agreement established hereunder pursuant to Sections 3.5 and 3.6, Shared Improvements. The actual costs of the improvement(s) includes the actual cost of design and construction of the improvement(s), including the cost of over-sizing of utilities, and an adjustment for the current interest rate during the cost recovery period of the reimbursement agreement. The amount of the reimbursement to be paid shall not exceed the actual cost of the improvement(s) paid by the Developer, plus reasonable interest, as agreed to by the City and the Developer.

A. After the improvements are constructed by the Developer and Final Acceptance is issued by the City, the Developer shall submit to the City Manager, or the Manager's designee, within ninety (90) days from Final Acceptance for review and approval, documentation of the actual costs of these off-site improvements and a proposed plan for recovery of those costs, including the following:
    1. Final invoices from all contractors, subcontractors, engineers, architects, and consultants, which contain a description of work done, prices, fees, and all charges invoiced and paid for by the Developer, unless previously submitted;
    2. Copies of paid receipts or other satisfactory evidence of payment of the costs claimed for the improvement(s), unless previously submitted;
    3. A verified statement from the Developer and/or contractor, subcontractor, engineer, architect, or consultant certifying that final payment has been paid and/or received;
    4. As-built map or plan satisfactory to the City which shows:
        a. The location of the improvement(s) as constructed, unless previously submitted;
        b. The name and address of the owner of each property which the Developer asserts has or will be benefited by the improvement(s);
        c. The amount of frontage each property has adjacent to the improvement(s);
        d. The acreage and parcel number of each property, which the Developer asserts has or will be benefited by the improvement(s);
        e. A reference to the book and page and/or reception number from the county records where the information for each property was obtained;
        f. A proposed manner by which the actual costs of the improvement(s) will be determined for reimbursement by the owners and/or developers of the benefited properties; and
        g. Any other information deemed necessary by the City Manager, or the Manager's designee.
    5. If the foregoing information is not submitted by the Developer within the ninety (90) days after Final Acceptance, then all rights and claims for

reimbursement shall be deemed waived, and reimbursement will thereafter be denied. If the information is submitted in a timely manner, the City Manager, or the Manager's designee, will review it and, if approved as submitted or modified by the City Manager, prepare a reimbursement agreement to be signed by the Developer and the City Manager. If the Developer fails or refuses to sign the reimbursement agreement with the City within thirty (30) days of preparation by the City Manager, then all rights and claims for reimbursement shall be deemed waived, and reimbursement will thereafter be denied.

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

C. The reimbursement agreement shall include, but not be limited to:
    1. A description of the improvement(s) for which the Developer will be reimbursed;
    2. A recitation of all reimbursable costs;
    3. A list of properties, owners and descriptions that are or will be benefited by the improvement(s);
    4. The manner or formula that will be applied to determine the amount of reimbursement owed by the owners or developers of benefited properties;
    5. Property owners and/or developers submitting plats or development plans for the identified benefited properties shall pay the required sums directly to the Developer before a final plat for any portion of their property is approve or recorded;
    6. The City agrees not to approve a proposed development; approve or record a final subdivision plat, or issue a building permit for an identified benefited property until the payments are made to the Developer or a reimbursement agreement between the original Developer and benefited landowner, developer or other person has been executed, but assumes no responsibility therefore and hereby assigns to Developer the right, if any, for collecting the reimbursements from the benefited property owners and/or developers. If the benefited landowner, developer or other person fails or refuses to pay the reimbursement costs or execute the

reimbursement agreement which reflects the reimbursement agreement terms with the City within sixty (60) days of submission of the agreement, no further approvals shall be granted by the City as more specifically set forth in Sections 3.4 and 3.5.

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

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

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

3.6 <u>Reimbursement - Shared Improvements.</u> 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 Public Improvements Phasing Plan, as set forth in **Exhibit B**.

SECTION 5
PUBLIC LAND CONVEYANCE AND LANDSCAPING

5.1 **Public Land Conveyance.** There are no requirements for public land conveyance by the Bromley Interchange Subdivision Final Plat.

5.2 **Landscape Improvements.** For landscape improvements associated with 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 Improvements, attached hereto as **Exhibit B**, 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 Improvements, attached hereto as **Exhibit B**, including both on-site and off-site improvements.

SECTION 8
OTHER IMPROVEMENTS

8.1 Street Lights. The total cost of street light installation, as shown on the approved construction plans for the Development, shall be the Developer's obligation. Developer shall cause, at its own expense, United Power, or the applicable utility company, to install all required street lighting pursuant to City plans and specifications. Said streetlights shall be consistent with the City standard streetlight and shall be installed concurrently with the streets on which they are located unless otherwise approved or required by the City.

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 Improvements, attached hereto as **Exhibit B.**

8.2.2 Developer shall initiate no overlot grading until the City approves the required drainage improvement plans in writing and a permit is issued therefore. Drainage improvements shall not cause any damage to adjacent or downstream properties resulting from erosion, flood, or environmental impact during construction and/or after construction completion. Drainage improvements not constructed by the Developer and specific for each lot shall be constructed by the owner of said lot, at the minimum, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the City's then-existing drainage, stormwater and floodplain regulations.

8.3 **Stormwater Management During Construction.** The Development shall be constructed in accordance to City of Brighton Municipal Code Chapter 14-2 Storm Drainage Ordinance and all applicable state and federal stormwater regulations, as additionally described in **Exhibit H.**

8.4 **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 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 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 notice is provided by the City of the transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Developer under this Agreement.

10.5 **Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

10.6 **Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

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

Owner/Developer:

Adams County Colorado
4430 South Adams Parkway
Brighton, CO 80601

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:
County Attorney
Adams County Colorado
4430 South Adams Parkway
Brighton, CO 80601

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 improvements and compliance by Developer with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, and the applicable statute of limitations has tolled for any potential claim, this Agreement shall no longer be in effect.

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

[Signatures begin on the next page]

OWNER/DEVELOPER:

ADAMS COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

_____
By: , Chair

STATE OF _____)
) ss.
COUNTY OF _____)

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

_____
By:

WITNESS my hand and official seal:

_____
Notary Public

My commission expires: _____

CITY OF BRIGHTON, COLORADO

_____
By: Kenneth J. Kreutzer, Mayor

ATTEST:

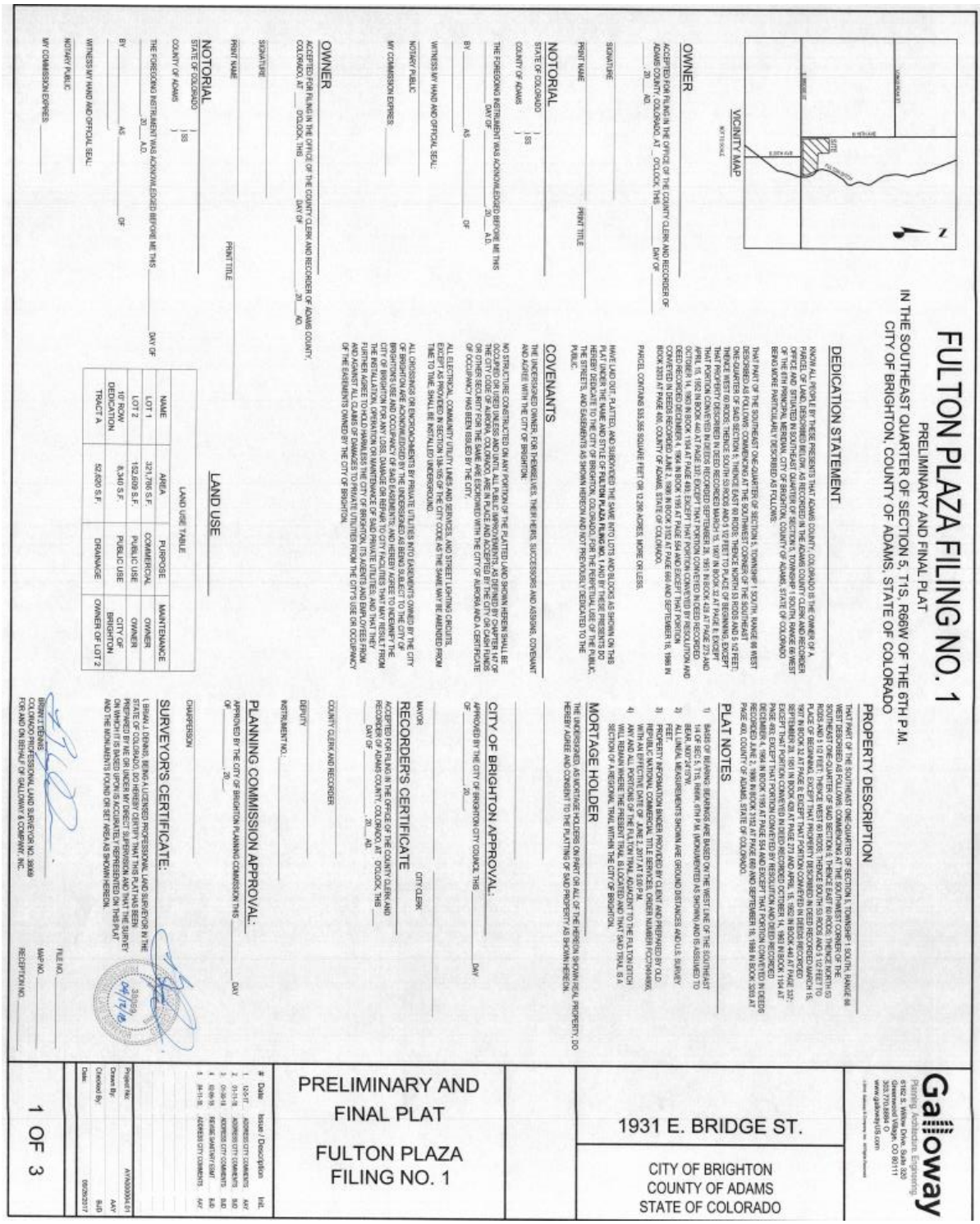
_____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, Esq., City Attorney

EXHIBIT A

FULTON PLAZA FILING NO. 1 SUBDIVISION



FULTON PLAZA FILING NO. 1
PRELIMINARY AND FINAL PLAT
IN THE SOUTHEAST QUARTER OF SECTION 5, T1S, R66W OF THE 6TH P.M.
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

VICINITY MAP

OWNER
ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF ADAMS COUNTY, COLORADO, AT ___ O'CLOCK, THIS _____ DAY OF _____, 20___ AD
SIGNATURE
PRINT NAME PRINT TITLE
NOTORIAL
STATE OF COLORADO } SS
COUNTY OF ADAMS }
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ___ DAY OF _____, 20___ A.D.
BY _____ AS _____ OF _____
WITNESS MY HAND AND OFFICIAL SEAL:
NOTARY PUBLIC
MY COMMISSION EXPIRES:

DEDICATION STATEMENT
KNOW ALL PEOPLE BY THESE PRESENTS THAT ADAMS COUNTY, COLORADO IS THE OWNER OF A PARCEL OF LAND, DESCRIBED BELOW, AS RECORDED IN THE ADAMS COUNTY CLERK AND RECORDER OFFICE AND SITUATED IN SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
THAT PART OF THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 66 WEST DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 5; THENCE EAST 60 RODS; THENCE NORTH 53 RODS AND 5 1/2 FEET; THENCE WEST 60 RODS; THENCE SOUTH 53 RODS AND 5 1/2 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PROPERTY DESCRIBED IN DEED RECORDED MARCH 15, 1901 IN BOOK 428 AT PAGE 273 AND APRIL 15, 1902 IN BOOK 440 AT PAGE 331; EXCEPT THAT PORTION CONVEYED IN DEED RECORDED OCTOBER 14, 1963 IN BOOK 1194 AT PAGE 493; EXCEPT THAT PORTION CONVEYED BY RESOLUTION AND DEED RECORDED DECEMBER 4, 1964 IN BOOK 1195 AT PAGE 554 AND EXCEPT THAT PORTION CONVEYED IN DEEDS RECORDED JUNE 2, 1989 IN BOOK 3152 AT PAGE 690 AND SEPTEMBER 18, 1996 IN BOOK 3293 AT PAGE 490, COUNTY OF ADAMS, STATE OF COLORADO.

PROPERTY DESCRIPTION
THAT PART OF THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 66 WEST DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 5; THENCE EAST 60 RODS; THENCE NORTH 53 RODS AND 5 1/2 FEET; THENCE WEST 60 RODS; THENCE SOUTH 53 RODS AND 5 1/2 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PROPERTY DESCRIBED IN DEED RECORDED MARCH 15, 1901 IN BOOK 428 AT PAGE 273 AND APRIL 15, 1902 IN BOOK 440 AT PAGE 331; EXCEPT THAT PORTION CONVEYED IN DEED RECORDED OCTOBER 14, 1963 IN BOOK 1194 AT PAGE 493; EXCEPT THAT PORTION CONVEYED BY RESOLUTION AND DEED RECORDED DECEMBER 4, 1964 IN BOOK 1195 AT PAGE 554 AND EXCEPT THAT PORTION CONVEYED IN DEEDS RECORDED JUNE 2, 1989 IN BOOK 3152 AT PAGE 690 AND SEPTEMBER 18, 1996 IN BOOK 3293 AT PAGE 490, COUNTY OF ADAMS, STATE OF COLORADO.

PLAT NOTES
1) BASIS OF BEARING: BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHEAST 1/4 OF SEC 5, T1S, R66W, 6TH P.M. (MONUMENTED AS SHOWN) AND IS ASSUMED TO BEAR: N00°24'07"W.
2) ALL LINEAL MEASUREMENTS SHOWN ARE GROUND DISTANCES AND U.S. SURVEY FEET.
3) PROPERTY INFORMATION BINDER PROVIDED BY CLIENT AND PREPARED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY UNDER NUMBER FCC7048906, WITH AN EFFECTIVE DATE OF 11:00 P.M. ON JULY 31, 2017.
4) ANY AND ALL PORTIONS OF THE FULTON FINAL ADJACENT TO THE FULTON PLAZA WILL REMAIN WHERE THE PRESENT FINAL IS LOCATED AND THAT SAID FINAL IS A SECTION OF A REGIONAL TRAIL WITHIN THE CITY OF BRIGHTON.

MORTAGE HOLDER
THE UNDERSIGNED, AS MORTAGE HOLDERS ON PART OR ALL OF THE HEREON SHOWN REAL PROPERTY, DO HEREBY AGREE AND CONSENT TO THE PLATTING OF SAID PROPERTY AS SHOWN HEREON.

COVENANTS
THE UNDERSIGNED OWNER, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS AND ASSIGNS, COVENANT AND AGREE WITH THE CITY OF BRIGHTON:
NO STRUCTURE CONSTRUCTED ON ANY PORTION OF THE PLATTED LAND SHOWN HEREIN SHALL BE OCCUPIED OR USED UNLESS AND UNTIL ALL PUBLIC IMPROVEMENTS, AS DEFINED BY CHAPTER 16? OF THE CITY CODE OF AURORA, COLORADO, ARE IN PLACE AND ACCEPTED BY THE CITY OR CASH FUNDS OR OTHER SECURITY HAVE BEEN POSTED WITH THE CITY OF AURORA AND A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED BY THE CITY.
ALL ELECTRICAL, COMMUNITY UTILITY LINES AND SERVICES, AND STREET LIGHTING CIRCUITS, EXCEPT AS PROVIDED IN SECTION 138-105 OF THE CITY CODE AS THE SAME MAY BE AMENDED FROM TIME TO TIME, SHALL BE INSTALLED UNDERGROUND.
ALL CROSSINGS OR ENCROACHMENTS BY PRIVATE UTILITIES INTO EASEMENTS OWNED BY THE CITY OF BRIGHTON ARE ACKNOWLEDGED BY THE UNDERSIGNED AS BEING SUBJECT TO THE CITY OF BRIGHTON'S USE AND OCCUPANCY OF SAID EASEMENTS, AND HEREBY AGREE TO INDEMNIFY THE CITY OF BRIGHTON FOR ANY LOSS, DAMAGE OR REPAIR TO CITY FACILITIES THAT MAY RESULT FROM THE PRESENCE, OPERATION OR MAINTENANCE OF SAID PRIVATE UTILITIES, AND THAT THEY FURTHER AGREE TO RELOCATE, AT THEIR EXPENSE, ANY SUCH FACILITIES AS MAY BE REQUIRED AND AGREE ALL CLAIMS OF DAMAGES TO PRIVATE UTILITIES FROM THE CITY'S USE OR OCCUPANCY OF THE EASEMENTS OWNED BY THE CITY OF BRIGHTON.

OWNER
ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF ADAMS COUNTY, COLORADO, AT ___ O'CLOCK, THIS _____ DAY OF _____, 20___ AD
SIGNATURE
PRINT NAME PRINT TITLE
NOTORIAL
STATE OF COLORADO } SS
COUNTY OF ADAMS }
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ___ DAY OF _____, 20___ A.D.
BY _____ AS _____ OF _____
WITNESS MY HAND AND OFFICIAL SEAL:
NOTARY PUBLIC
MY COMMISSION EXPIRES:

LAND USE

LAND USE TABLE

NAME	AREA	PURPOSE	MAINTENANCE
LOT 1	321,786 S.F.	COMMERCIAL	OWNER
LOT 2	192,609 S.F.	PUBLIC USE	OWNER
16' ROW DEDICATION	8,340 S.F.	PUBLIC USE	CITY OF BRIGHTON
TRACT A	52,620 S.F.	DRAINAGE	OWNER OF LOT 2

PLANNING COMMISSION APPROVAL:
APPROVED BY THE CITY OF BRIGHTON PLANNING COMMISSION THIS _____ DAY OF _____, 20___
CHAIRPERSON

SURVEYOR'S CERTIFICATE:
I, BRIAN J. DENNIS, BEING A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT HAS BEEN PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT THE SURVEY ON WHICH IT IS BASED UPON IS ACCURATELY REPRESENTED ON THIS PLAT AND THE MONUMENTS FOUND OR SET ARE AS SHOWN HEREON.
04/17/18
BRIAN J. DENNIS
COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR NO. 38009
FOR AND ON BEHALF OF GALLOWAY & COMPANY, INC.

RECORDER'S CERTIFICATE
ACCEPTED FOR FILING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF ADAMS COUNTY, COLORADO, AT ___ O'CLOCK, THIS ___ DAY OF _____, 20___ AD
MAYOR CITY CLERK

CITY OF BRIGHTON APPROVAL:
APPROVED BY THE CITY OF BRIGHTON CITY COUNCIL THIS _____ DAY OF _____, 20___
COUNTY CLERK AND RECORDER
DEPUTY
INSTRUMENT NO.:

Galloway
Planning | Architecture | Engineering
6162 S. Willow Drive, Suite 320
Greenwood Village, CO 80111
303.770.8884 O
www.gallowayus.com

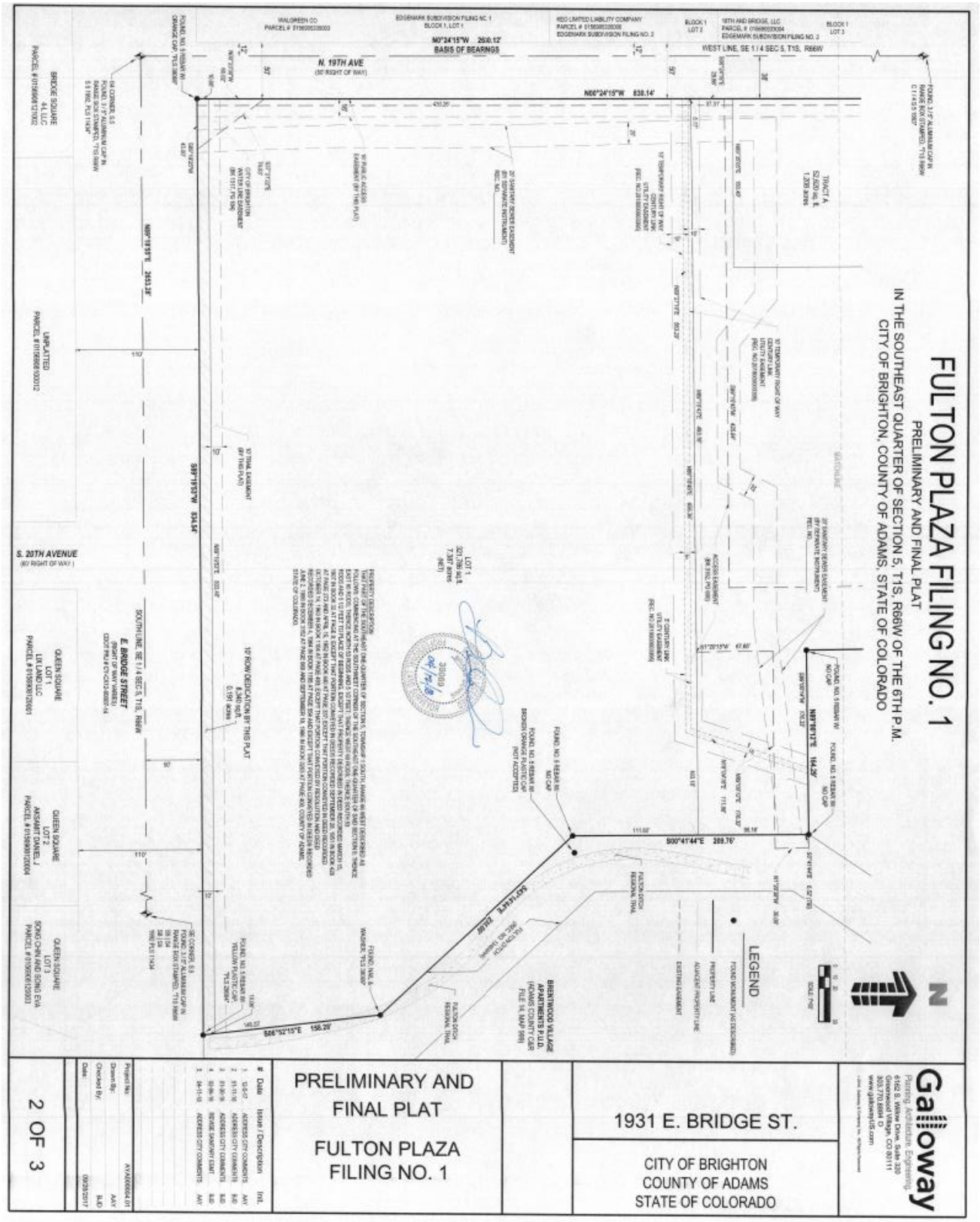
1931 E. BRIDGE ST.
CITY OF BRIGHTON
COUNTY OF ADAMS
STATE OF COLORADO

PRELIMINARY AND FINAL PLAT
FULTON PLAZA FILING NO. 1

#	Date	Issue / Description	Init.
1	12/4/17	ADDRESS CITY COMMENTS	AAY
2	01/1/18	ADDRESS CITY COMMENTS	BJD
3	01/9/18	ADDRESS CITY COMMENTS	BJD
4	02/8/18	RESUBMITTAL/SUBT	BJD
5	04/1/18	ADDRESS CITY COMMENTS	AAY

Project No: AYN0000M.01
Drawn By: AAY
Checked By: BJD
Date: 09/26/2017
FILE NO.
MAP NO.
RECEPTION NO.

1 OF 3


FULTON PLAZA FILING NO. 1
PRELIMINARY AND FINAL PLAT
IN THE SOUTHEAST QUARTER OF SECTION 5, T1S, R66W OF THE 6TH P.M.
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO
N
LEGEND
PRELIMINARY AND FINAL PLAT
FULTON PLAZA FILING NO. 1
1931 E. BRIDGE ST.
CITY OF BRIGHTON
COUNTY OF ADAMS
STATE OF COLORADO
Galloway
2 OF 3

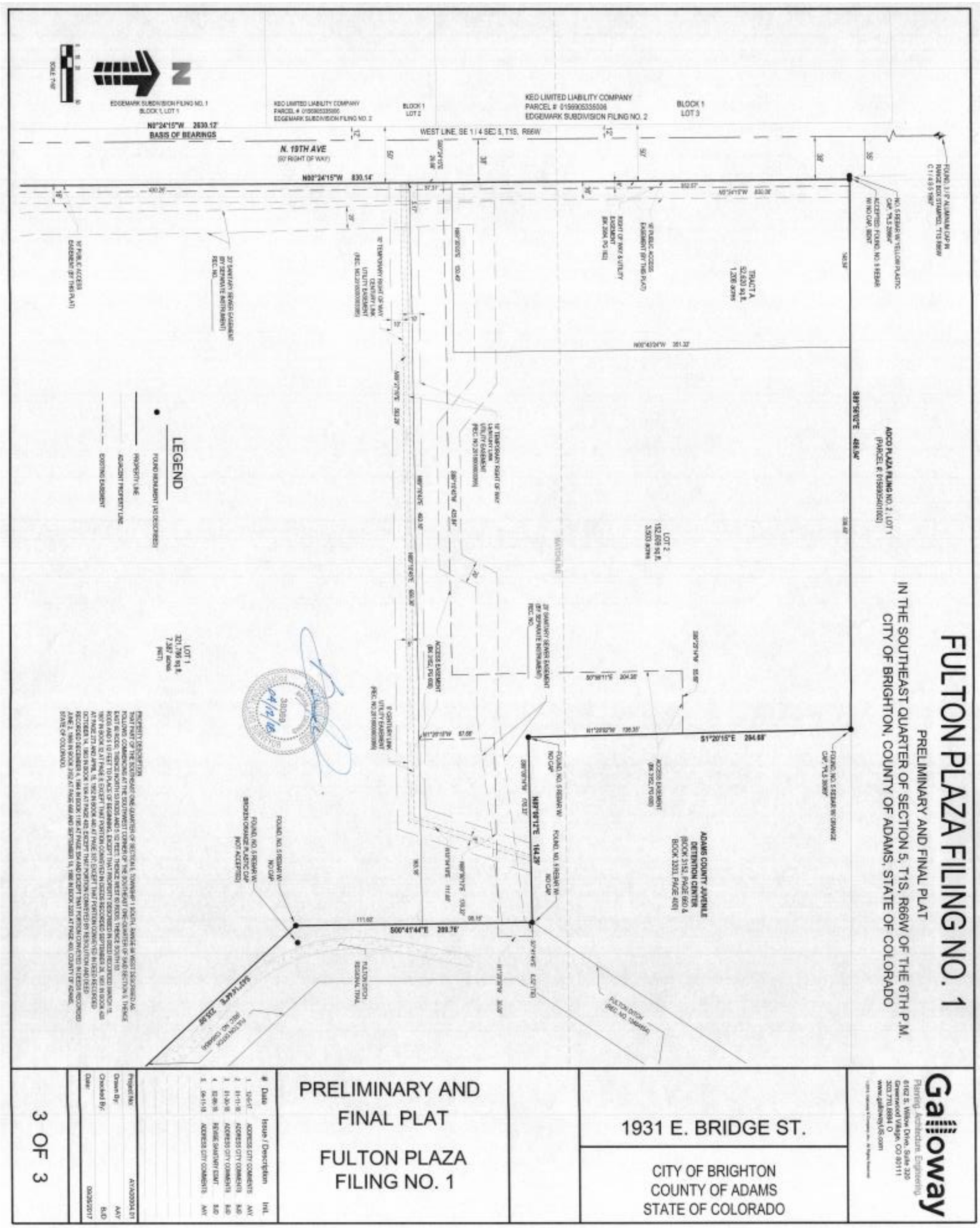

FULTON PLAZA FILING NO. 1
PRELIMINARY AND FINAL PLAT
IN THE SOUTHEAST QUARTER OF SECTION 5, T1S, R66W OF THE 6TH P.M.
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO
LEGEND
N. 19TH AVE
LOT 1
LOT 2
TRACT A
ADAMS COUNTY JUVENILE DETENTION CENTER
PRELIMINARY AND FINAL PLAT
FULTON PLAZA FILING NO. 1
1931 E. BRIDGE ST.
CITY OF BRIGHTON
COUNTY OF ADAMS
STATE OF COLORADO
Galloway
3 OF 3

EXHIBIT B

SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN

The specific obligations of the Owner/Developer regarding the construction of public improvements for the Development is more particularly set forth in Exhibit G Special Provisions, attached hereto and by this reference made a part hereof. The following is a general delineation of those obligations:

Upon the submittal of the Final Development Plan for all or any portion of the Development, the Owner/Developer shall provide a complete Schedule of Public Improvements, consistent with the requirements set forth in Section 2.3 hereof.; and provide the requisite financial guarantee for said improvements consistent with the requirements of Section 2.13 hereof. Owner/Development acknowledges and agrees that no construction activity permits will be issued by the City for all or any portion of the Development unless and until said financial guarantees are in place.

Recognizing that the exact Schedule of Improvements will depend on the extent to which the Development, or any portion thereof, is developed, the Owner/Developer understands and acknowledges that the City will require the Schedule to include, generally, the following improvements:

- The undergrounding of all utility poles along North 19th Avenue adjacent to the Development;
- The realignment of access points to the Development;
- The design and construction of a sidewalk along North 19th Avenue and a trail along Bridge Street adjacent to the Development;
- The design and installation of public landscaping along North 19th Avenue and Bridge Street adjacent to the Development;
- The design and construction of public transportation improvements on Bridge Street and North 19th Avenue in accordance with the most recent City Transportation Master Plan and City Public Works Standards Manual;
- Design and construction of the necessary drainage infrastructure to serve the Development; and
- Design and construction of the necessary water and sanitary sewer infrastructure to serve the Development.

See Exhibit G attached hereto.

EXHIBIT C

IRREVOCABLE LETTER OF CREDIT FORM

This form serves as an example of Irrevocable Letter of Credit terms which the City of Brighton will accept. Although acceptable letters of credit terms may vary, the City will approve only letters of credit which comply with the requirements of the City's Development/Subdivision/Annexation Agreements. The City will not accept any Letter of Credit forms provided by lending institutions if they do not comply with the provisions of the City's identified Agreements, or if they impose undue restrictions on the City's ability to draw on the Letter of Credit for the purposes stated in the specified Agreement.

LENDER'S
LETTERHEAD

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

Letter of Credit #: _____
Issuing Bank:_____
Date of Issue:_____
Expiration Date:_____
Amount:_____

Greetings:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of _____dollars ($_____), which is available against presentation of your draft or drafts drawn on us at sight for the account of _____(Developer/Customer), to guarantee the construction of the required improvements, warranties, and satisfactory compliance of _____ (Developer/Customer) with the terms and conditions of the Agreement between the City and the Developer/Customer.

Partial drawings are permitted.

The sole condition for payment of any draft drawn under this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager, stating the (Developer/Customer), its successor, transferee, or assign, has failed to perform in accordance with the _____ Agreement dated _____.

Demands for payment by the City pursuant to this Letter of Credit shall be deemed timely if deposited in the U.S. mail prior to its date of expiration, affixed with first-class postage, and addressed to the above letterhead address.

This Letter of Credit shall have an initial term of one (1) year from its Date of Issue, but shall be deemed automatically extended without amendment or other action by either party for additional periods of one year from the present or any future expiration date hereof, unless we provide the City with written notice, by certified mail, return receipt requested, at least ninety (90) days prior to the expiration date, that we do not wish to extend this Letter of Credit for an additional period. After receipt by the City of such notice, the City may draw hereunder, on or before the then-applicable expiration date, and for the then-remaining available amount by means of the City's sight draft, accompanied by a letter, on the City's letterhead, signed by the City Manager, stating the following:

> *We are in receipt of written notice from (NAME OF BANK) of its election not to renew its Letter of Credit No. _____ for an additional term of one (1) year and (Developer/Customer), its successor, transferee, or assign, is still obligated to the City under the _____ Agreement, and an acceptable replacement Letter of Credit has not been received.*

We hereby agree with the City that:

(A) Such drafts will be processed in good faith and duly honored upon presentation to us;

(B) The exclusive venue for any action concerning this Letter of Credit shall be the District Court for Adams County, Colorado;

(C) The procedural and substantive laws of the State of Colorado shall apply to any such action;

(D) 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;

(E) 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; and

(F) 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.

This Letter of Credit is subject to the Uniform Commercial Code of the State of Colorado.

[Signatures begin on the next page]

Very truly yours,

(NAME OF BANK)

By:_____
Signature of Authorized Signing Officer

_____
Print Name

STATE OF _____)
) ss
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____, by _____, the _____ (position of signatory) at _____ (bank).

My Commission Expires:

_____
Notary Public

SEAL

EXHIBIT D

Exhibit D is intentionally left blank, pending development of the Property.

EXHIBIT E

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

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

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

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

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

1. From and after the date hereof, except as may be otherwise allowed or required by this document, neither the Water Rights nor any other water shall be used in connection with the property described in Exhibit A without the written consent of Brighton, or its successors or assigns, having been first obtained, which consent may be withheld in Brighton's sole discretion.

2. Owner shall take any action necessary to eliminate any consumptive use of water for irrigation purposes on the property described in Exhibit A (the "land") as may be determined and/or required by the Water Court or other court or tribunal of competent

jurisdiction in the judgment and decree entered in any case involving the change or exchange of any of the Water Rights, or by the State Engineer, State of Colorado, in any approval by his office of a substitute water supply plan entered pursuant to the provisions of Section 37-92-308, Colorado Revised Statutes, as the same may be amended or replaced, during the duration of such plan.

3. Owner hereby grants to Brighton a non-exclusive perpetual easement for the purpose of access to and over the land as may be necessary to take actions to effectuate and enforce this covenant, including but not limited to the conducting of any monitoring or testing activity that may be required by the State Engineer or by any court or tribunal of competent jurisdiction to enforce this covenant or that may be a pre-condition for changing the Water Rights.

4. Unless otherwise required by any decree changing the Water Rights, or allowing such rights to be exchanged, or by the conditions of any substitute water supply plan as may be approved by the State Engineer, this covenant shall not prohibit the Owner or Owner's successors and assigns from irrigating the land with water rights which may in the future be transferred to such land and for such use through an appropriate Water Court proceeding, irrigating the land with water from a well or wells to be constructed in the future that are authorized to pump pursuant to a Water Court-approved plan for augmentation, irrigating the land with water that is not tributary to the South Platte River, to include not-nontributary water that is duly augmented, or irrigating the land with treated water supplied by a municipality or a water district.

5. Notwithstanding the provisions of paragraph 4 hereof, the land shall not be planted with, nor have upon it, any alfalfa or similar deep rooted crop, and any alfalfa or similar deep rooted crop presently existing, or which may exist in the future, shall be eradicated by Owner by deep tilling, chemical treatment or other means, unless otherwise allowed by Brighton in a signed writing..

6. This covenant shall burden, attach to and run with the property described in Exhibit A, and shall be binding not only upon the Owner, but also upon Owner's heirs, successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of the property described in Exhibit A. This covenant shall also run with and benefit the Water Rights. The terms and provisions of this covenant shall not expire and shall be perpetual unless specifically released in writing by Brighton or its successors and assigns. This covenant may be enforced by Brighton or by any party having any right, title or interest in the Water Rights or by the State Engineer of the State of Colorado, at any time in any action at law or in equity.

7. Owner further warrants and represents that this covenant shall entitle Brighton to the first and prior right to claim credit for the dry-up or nonirrigation of the property described in Exhibit A, and agrees to provide Brighton with all assistance Brighton

may reasonably require in regard to the above-referenced change of the Water Rights, including but not limited to the provision of testimony before the Water Court in any proceeding involving such change.

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

OWNER/DEVELOPER:
ADAMS COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

_____
By: , Chair

STATE OF COLORADO)
) ss.
COUNTY OF _____)

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

_____
By:

WITNESS my hand and official seal:

_____
Notary Public

My commission expires: _____

CITY OF BRIGHTON, COLORADO

_____
By: Kenneth J. Kreutzer, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, Esq., City Attorney

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 Adams County (the "Owner"/"Developer").

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

WHEREAS, as agreed to 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 Property has five existing water and sewer service taps, as further defined in Exhibit G, Section 10 herein. In the event future development of the Property demands increased water services than what is provided by the existing service taps, the Developer shall transfer to the CITY, prior to any new construction activity on Lot 1, or redevelopment construction activity on Lot 2, water shares from either the FRICO-Barr, Burlington-Barr system, or any other water system acceptable and approved by the City in the amount necessary and deemed appropriate to serve the Property by, and at the sole discretion of, the City.

2. This Agreement shall be an attachment to the Fulton Plaza Filing No. 1 Subdivision Final Plat and incorporated therein by reference.

3. This Agreement is non-transferable and may only be modified or amended in writing, signed by the parties hereto.

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

[Signatures begin on the next page]

DEVELOPER/OWNER:

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: _____

CITY OF BRIGHTON, COLORADO

_____
By: Kenneth J. Kreutzer, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, City Attorney

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 FULTON PLAZA FILING NO. 1 SUBDIVISION DEVELOPMENT AGREEMENT, BETWEEN THE CITY OF BRIGHTON, COLORADO, AND ADAMS COUNTY. 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. **Temporary Uses.** Temporary Uses refers to, but is not limited to, a temporary sales office, temporary construction office, and construction yard. Temporary uses are allowed, with a City approved temporary use permit, for a period of one year, with renewal after that year as determined by the Director of Community Development.

2. **City Regulations.** Developer shall develop the Property in full conformance with all CITY ordinances and regulations, including, without limitation, the following section of the Brighton Municipal Code, Chapter 17. Land Use and Development Code, Section 17-48 Commercial Design Standards, as the same may be amended from time to time; and the Public Works Standards Manual, current edition.

3. **Schedule of Public Improvements.** Upon the submittal of the Final Development Plan for all or any portion of the Development, the Owner/Developer shall provide a complete Schedule of Public Improvements for the whole Development, consistent with the requirements set forth in Section 2.3 hereof; and provide the requisite financial guarantee for said improvements consistent with the requirements of Section 2.13 hereof. Owner/Development acknowledges and agrees that no construction activity permits will be issued by the City for all or any portion of the Development unless and until a complete Schedule of Improvements is submitted and approved by the City and the financial guarantees are in place. The Irrevocable Letter of Credit form attached hereto as Exhibit C shall be completed and submitted to the City when development commences on the Property and the initial Schedule of Improvements is finalized and approved by the City.

4. **Access Points**. Owner/Developer, at its sole cost and expense, shall design and construct the necessary improvements to eliminate the existing eastern access point from Bridge Street to the Development and combine the two existing central access points to the Development from Bridge Street into one access point, and receive written acceptance thereof from the City, prior to, and as a condition precedent to, the issuance of any vertical construction building permit for the Development. Such design and construction shall be in accordance with the City approved Final Plats, Open Space Plans, Construction Plans, approved Transportation Master Plan, approved Public Works Standards Manual, and applicable City specifications in effect at the time of construction.

The City reserves the right to limit future accesses and turning movements for any existing and or future access points.

5. **Public Transportation Improvements.** Owner/Developer, at its sole cost and expense, shall design and construct the necessary public transportation improvements along those portions of Bridge Street and North 19th Avenue adjacent to the Development in accordance with the most recent City Transportation Master Plan and City Public Works Standards Manual. The Owner/Developer acknowledges and agrees that it may be required to design and dedicate additional rights-of-way or easements and/or design and construct additional lanes for acceleration, deceleration, or turn movements once the extent of the development of the Property is determined and approved. Design work shall be submitted at the time of a Final Development Plan and construction shall be completed and finally accepted by the City before the City will issue any vertical building permits for the Development.

6. **Utility Poles.** Owner/Developer, at its sole cost and expense, shall design and construct the necessary improvements to underground all of the existing utility service lines that run along the western boundary of the Development, and any new utility service lines deemed necessary for the Development, and receive written acceptance thereof from the City. Construction acceptance for undergrounding of the service lines shall be a condition of commencement of construction activity on the first lot to develop within the Development. Such design and construction shall be in accordance with the City approved Final Plats, Open Space Plans, Construction Plans, and applicable City Master Plans and Public Works Standards in effect at the time of construction. Design work shall be submitted at the time of a Final Development Plan and construction shall be completed and finally accepted by the City before the City will issue any vertical building permits for any portion of the Development.

7. **Sidewalks/Trails.** Owner/Developer, at its sole cost and expense, shall design and construct a trail along the northern side of Bridge Street adjacent to the Development and a sidewalk along the eastern side of North 19th Avenue adjacent to the Development and shall receive written construction acceptance thereof from the City. Owner/Development acknowledges and agrees that no vertical construction activity permits will be issued by the City for the first lot to develop within the Development unless and until said sidewalks have been constructed and received construction acceptance. Design work shall be submitted at the time of a Final Development Plan. Such design and construction shall be in accordance with the City approved Master Plan and Public Works Standards, Final Plats, Open Space Plans, Construction Plans, and applicable City specifications in effect at the time of construction. .

8. **Public Landscaping.** Owner/Developer, at its sole cost and expense, shall design, construct and install the appropriate public landscaping along the northern side of Bridge Street and the eastern side of North 19th Avenue adjacent to the Development and shall receive written acceptance thereof from the City. Acceptance of the landscaping shall be

a condition of the City's issuance of any certificates of occupancy on the first lot to develop within the Development. Such design and installation shall be in accordance with the City approved Master Plans, and Public Works Standards, Final Development Plan, Open Space Plans, Construction Plans, and applicable City specifications in effect at the time of approval of a Final Development Plan. Design work shall be submitted at the time of a Final Development Plan and construction and installation shall be completed and finally accepted before the City will issue any certificates of occupancy for any facilities on the Property.

9. **Construction and Maintenance of Drainage Infrastructure.** As specifically set forth and acknowledged by the Owner/Developer at the time of a Final Development Plan with Construction Plans and Landscape Plans, the Owner/Developer, at its sole cost and expense, shall construct to completion, with the development of all or a portion of Lot 1, and/or redevelopment of Lot 2, whichever occurs first, the specified drainage facilities including ponds, storm water culverts, and related drainage infrastructure. The drainage facilities shall be completed, constructed, and accepted before the City will approve any vertical construction permits for all or any portion of the Development. The Owner and Developer shall be jointly and severally responsible for the ongoing maintenance of all drainage infrastructure and facilities, including, without limitation, routine maintenance and cleaning, repair and replacement, of the culverts and associated infrastructure to ensure proper functioning of the drainage system pursuant to Exhibit H herein.

10. **Water and Sanitary Sewer.**

a. As specifically set forth and acknowledged by the Owner/Developer at the time of a Final Development Plan with Construction Plans, and Landscape Plans, the Developer, at its sole cost and expense, shall construct to completion, with the development of all or any portion of Lot 1, that portion of the water and sanitary sewer infrastructure necessary to serve any remaining portion of Lot 1. The necessary water and sanitary sewer infrastructure shall be completed and finally approved by the City before the City will issue any vertical construction permits for all or any portion of Lot 1. Prior to initiating construction of said water and sanitary sewer infrastructure, the Developer shall provide to the City fully executed and recorded copies of all off-site easement documents and agreements across those properties required for the construction of the off-site portion, if any, of said water and sanitary sewer lines.

b. The following taps for the Property are currently on record with the City:

One 3" tap (Properties addressed as 1901 - 1931 Bridge St., west building)
One 2" tap (Property addressed as 1931 Bridge St.)
One 1" tap (Property addressed as 1927 Bridge St.)
Two ¾" taps (Auxiliary buildings north and south of east building)

c. When any portion of the Property is developed, the Developer shall reconfigure all plumbing infrastructure and associated water and sewer service taps and/or meter pits/vaults to be consistent with plans as finally approved at the time of any Final Development Plan approval and with all applicable City regulations and the Public Works Standards Manual, current edition. If the plans approved in the Final Development Plan do not use and/or reconfigure any of the five taps referenced in subparagraph b. above, the unused or reconfigured water and sewer service taps shall be abandoned and capped at the sole cost and expense of the Developer. The City may, at its sole discretion, after reviewing the final Development Plan, allow all or some of the five existing taps to be utilized for the development of lots 1 and 2, and/or may allow, at its sole discretion, credit from the existing taps toward a new tap. Any credit of an existing tap toward a new tap will be calculated at the then-current fee structure in effect at the time of construction permit issuance.

d. The City will not give any cash reimbursements for unused existing water service taps on the Property.

e. If the City approves the utilization of an existing tap, the Developer shall purchase and install new meters, at its sole cost and expense.

11. **Fire Protection Line.** Before the City will approve a Final Development Plan for Lot 1 of the Development, the Developer shall perform surveying, potholing, and all other necessary actions to determine whether the fire protection line servicing the Adams County Youth Detention Center is located on any portion of Lot 1, and provide an engineer certified survey thereof to the City. If it is determined that the fire protection line traverses the Property, the Developer shall execute an easement agreement, dedicating to the City a twenty foot (20') wide non-exclusive easement centered on the fire protection line. If the location of the fire protection line is such that the dedication of a twenty foot (20') wide non-exclusive easement centered on the fire protection line is not possible because of its proximity to Lot 2, the Developer will dedicate as much of the twenty feet (20') as possible. The easement agreement, if deemed necessary, shall be reviewed and accepted by the City before the City will issue any building permits for development in Lot 1. Additionally, any additions, new development or redevelopment on Lot 2, shall identify the subject fire protection line on any construction plans, provide the necessary easement, and ensure that the use of the fire protection line is continued.

12. **Trail Easement.** There is a portion of an existing public trail that traverses Lot 1 of the Development which is located outside of the easement associated with the Fulton Ditch, and for which no recorded easement exists. Before the City will approve a Final Development Plan for Lot 1 of the Development, and as a condition precedent to such approval, the Developer shall execute a public access easement of at least six feet in width from the western edge of the existing trail extending to the eastern property line, and running generally along the route of the existing trail, with the exact location,

dimensions and specifications to be approved by the City. Said easement, once approved by the City, shall be recorded by the Developer at its sole cost and expense.

EXHIBIT H

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

THIS AGREEMENT is made this ___ day of _____, 20___, between _____, hereinafter referred to as the "Owner," and the City of Brighton, a Colorado municipal corporation, 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"). The Facilities do not include the regional drainage facilities along the northern, southern and eastern boundaries of the Development, which regional drainage facilities are to be designed, constructed, operated, maintained, repaired and replaced by the City.

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"). City hereby assumes responsibility for the long-term routine and extraordinary maintenance of the regional drainage facilities installed on the Property.

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, 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 to comply with the Director's reasonable directions 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 property, 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) 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. Upon conveyance of the Property, or any portion thereof, to a third party, Owner/Responsible Party shall be released from all obligations hereunder with respect to that portion of the Property so transferred. Owner and Responsible Party may assign all of their obligations hereunder to a third party, provided such third party agrees in writing to accept such assignment and to perform the obligations of Owner/Responsible Party hereunder.

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 Adams 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.

[Signatures begin on the next page**]**

BRIGHTON:

CITY OF BRIGHTON, a Colorado municipal corporation

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: _____
Title: _____

RESPONSIBLE PARTY:

By: _____
Name: _____
Title: _____

EXHIBIT H1
Property Description

KNOW ALL PEOPLE BY THESE PRESENTS THAT ADAMS COUNTY, COLORADO IS THE OWNER OF A PARCEL OF LAND, DESCRIBED BELOW, AS RECORDED IN THE ADAMS COUNTY CLERK AND RECORDER OFFICE AND SITUATED IN SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, RANGE 66 WEST DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 5; THENCE EAST 60 RODS; THENCE NORTH 53 RODS AND 5 1/2 FEET; THENCE WEST 60 RODS; THENCE SOUTH 53 RODS AND 5 1/2 FEET TO PLACE OF BEGINNING, EXCEPT THAT PROPERTY DESCRIBED IN DEED RECORDED MARCH 15, 1907 IN BOOK 32 AT PAGE 8; EXCEPT THAT PORTION CONVEYED IN DEEDS RECORDED SEPTEMBER 28, 1951 IN BOOK 428 AT PAGE 273 AND APRIL 15, 1952 IN BOOK 440 AT PAGE 337; EXCEPT THAT PORTION CONVEYED IN DEED RECORDED OCTOBER 14, 1963 IN BOOK 1104 AT PAGE 493; EXCEPT THAT PORTION CONVEYED BY RESOLUTION AND DEED RECORDED DECEMBER 4, 1964 IN BOOK 1195 AT PAGE 554 AND EXCEPT THAT PORTION CONVEYED IN DEEDS RECORDED JUNE 2, 1986 IN BOOK 3152 AT PAGE 660 AND SEPTEMBER 18, 1986 IN BOOK 3203 AT PAGE 400, COUNTY OF ADAMS, STATE OF COLORADO.

PARCEL CONTAINS 535,355 SQUARE FEET OR 12.290 ACRES, MORE OR LESS.

EXHIBIT H2
Owner/Responsible Party Contact Information

Joelle Greenland
Adams County
4430 South Adams Parkway
Brighton, CO 80601

EXHIBIT H3

Facilities Description and Location Map

1.) Pond: To be determined at the time of Final Development Plan

2.) Swale: To be determined at the time of Final Development Plan

3.) Storm sewer inlet pipes, boxes and Manholes, etc: To be determined at the time of Final Development Plan

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 maybe 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) Infiltration Pond:

Responsibilities:

The Developer is responsible for the long-term maintenance of the infrastructure on Lot 1.

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

Mosquito Control

Mosquito control may be necessary if the pond is located in proximity to outdoor amenities. The

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

Sediment Removal from the Forebay

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

Sediment Removal from the Pond Bottom

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

Sediment Removal from the Trickle Channel, and Micropool

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

Erosion and Structural Repairs

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

2) Swales:

Responsibilities

The Owner is responsible for long-term maintenance of any swale within the owner's property; the City is responsible for long-term maintenance of any swale within the City's property. Notwithstanding anything contained herein to the contrary, City is responsible for long-term maintenance of any swale on property owned by Owner and utilized for regional drainage.

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; provided, however, that City shall be responsible for long-term maintenance responsibilities of storm sewer pipes, inlets and MH located within regional drainage easements on property owned by Owner...

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.