

**BROMLEY PARK, FILING NO. 103
DEVELOPMENT AGREEMENT**

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 5th day of January, 2010 by and between the **CITY OF BRIGHTON, COLORADO**, a home rule municipality of the County of Adams, State of Colorado (hereinafter called the "City"), and **King Paul 1, LLC**, a Colorado limited liability company, **Jacobs Colorado LLC**, a Colorado limited liability company, and **IVE Colorado LLC**, a Colorado limited liability company, hereinafter collectively referred to as "**Developer**".

WHEREAS, Developer has submitted a Final Plat ("Plat") for Bromley Park, Filing No. 103 (the "Development") attached hereto as Exhibit A and incorporated herein by reference. Said Plat has been reviewed and approved by the City Council of the City; and

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

WHEREAS, the development regulations of the City require the Developer to execute a development agreement ("Agreement") with the City relative to improvements related to the development;

NOW THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant, and agree as follows:

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**SECTION 1
GENERAL CONDITIONS**

- 1.1. **Development Obligation.** Developer shall be responsible jointly and severally for the performance of the covenants set forth herein.
- 1.2. **Development Impact Fees and Other Fees.** Developer shall pay all fees related to development of the property described in the Plat at the time of issuance of a building permit for all or any portion of the Development. The amount of the fees shall be the amount in effect at the time payment is made. Any amendment to the kinds of fees or the amounts of said fees enacted by City Council after the date of this Agreement are incorporated into this Agreement as if originally set forth herein.
- 1.3. **Schedule of Improvements.** For this Agreement, the term "Schedule of Improvements" shall mean a detailed listing of all of the public Improvements, the design, construction, and installation of which are the sole responsibility of the Developer. The "Schedule of Improvements" may be divided into the Phases of the approved Final Plat(s) for the Development, and shall specify, as to each Improvement listed below, the type, the size, the general location, and the estimated cost of each Improvement:

Water Lines
Sanitary Sewer Lines
Storm Sewer Lines
Drainage Retention/Detention Ponds Dedicated to the City

Office of the City Clerk

CITY OF BRIGHTON
BROMLEY PARK, FILING NO. 103 DEVELOPMENT AGREEMENT
22 South 4th Avenue
Brighton, CO 80601

City of Brighton-City Clerk
22 South 4th Avenue
Brighton, CO 80601

PAGE 1

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Retaining Walls
Wells
Fire Hydrants
Streets
Alleys
Curb/Gutter/Sidewalks
Parking Lots
Bridges and Other Crossings
Guard Rails
Street Lights
Traffic Signal Lights
Signs
Permanent Easements
Rights of Way
Neighborhood Parks
Trails and Paths
Community Parks
Irrigation Systems
Fencing
Open Space
Other Land Donated/Conveyed to the City
Value of Land Beneath All Infrastructure Improvements
Value of Water Donated or Conveyed to the City

- 1.4 **Engineering Services.** Developer agrees to furnish, at its expense, all necessary engineering services relating to the design and construction of the Development and the public improvements set forth in the Schedule of Public Improvements (the "Improvements") described in **Exhibit B**, attached hereto and incorporated herein by this reference. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer or 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.
- 1.5 **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.
- 1.6 **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.
- 1.7 **Plan Submission and Approval.** Developer shall furnish to the City complete plans for all Improvements to be constructed in each Phase and obtain approval of the plans for each Phase of the Development prior to commencing any construction work thereon. The

City shall issue its written approval or disapproval of said plan(s) 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.

- 1.8 Construction Acceptance and Warranty.** No later than ten (10) days after construction of all Improvements is completed, Developer shall request inspection 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 Developer. Developer shall provide "as built" drawings and a certified statement of construction costs no later than thirty (30) days after the Improvements are completed. If Developer has not completed the Improvements on or before the completion dates set forth in the "Phasing Plan" provided for in Section 1.16 herein, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement. 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 reinspection 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 reinspections, depending upon the scope of deficiencies. **No Building Permits shall be issued by the Building Division prior to Construction Acceptance. Notwithstanding the foregoing, building permits may be issued for individual Phases in which the only remaining Improvements to be completed are detached sidewalks and/or final asphalt lift for streets within that Phase, provided that a sufficient bond is in place for these remaining Improvements.**
- 1.9 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.
- 1.10 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. 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 (Exhibit "B") and specifying the actual, rather than the estimated costs of all Improvements listed on the Schedule of Improvements, including satisfactory documentation to support said actual costs.

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 Developer does not submit an updated and revised Schedule of Improvements and correct all deficiencies and make repairs identified in said inspection to the City's satisfaction within thirty (30) days after receipt of said notice, weather permitting, the City may exercise its rights to secure performance as is provide in Section 9.1 of this Agreement. 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. If Developer fails to submit an updated and revised Schedule of Improvements or fails to have the Improvements finally accepted within one year of the date of the issuance of construction acceptance or if any of the Improvements are found not to conform to this Agreement, or to applicable City standards and specifications, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.

- 1.11 Reimbursement to the City.** The City may complete construction, repairs, replacements or other work for Developer pursuant to Sections 1.7, 1.8, 1.9 or 1.10 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 City, the Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of this Agreement.

1.12 Testing and Inspection.

(a) Developer shall employ, at its own expense, a licensed and registered testing company, previously approved by the City in writing, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City on a timely basis for City review and approval prior to commencement or continuation of that particular phase of construction. In addition, at all times during said construction the City shall have access to inspect the materials and workmanship of said construction and 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.

(b) All work shown on the approved public improvements plans requires inspection by the Public Works Department, Engineering Division. 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 a minimum of 24 hours in advance with the Engineering Division. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance to the Director of Public Works 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.

- 1.13 Improvement Guarantees.** Developer shall submit to the City an Improvement Guarantee for all public Improvements related to each Phase of the Development. Said guarantee may be in cash, bond, or a letter of credit in form and substance as shown on Exhibit C attached hereto and incorporated herein by reference. Said guarantee, if a letter of credit, or bond shall not expire during the winter season (November - March). Said Improvement Guarantee shall include, but not by way of limitation, street construction, landscaping, fencing, streetlights, water, sewer, storm sewer and drainage improvements. 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 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 on Exhibit B. The total minimum amounts of each Improvement Guarantee 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%

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 (30) days prior to expiration of such 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. In the event that the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of the Improvements and related construction is 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 1.13. 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 9.1 of this Agreement, as well as the suspension of the development activities by the City, including but not limited to, the issuance of infrastructure permits, building permits and certificates of occupancy.

- 1.14 Indemnification and Release of Liability.** Developer agrees to indemnify and hold harmless the City, its officers, employees, agents or servants and to pay any and all judgments rendered against said persons on account of any suit, action or claim caused by, arising from or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors, and to pay to the City and said persons their reasonable expenses, including, but not limited to, reasonable attorney's fees and reasonable expert witness fees incurred in defending any such suit, action or claim; provided, however, that Developer's obligation herein shall not apply to the extent said action, suit, or claim results from any negligent or willful acts or

omissions of officers, employees, agents or servants of the City or the conformance with the requirements imposed by the City. Said obligation of Developer shall be limited to suits, actions, or claims based upon conduct prior to "final acceptance" by the City of the construction work. Developer acknowledges that the City's review and approval of plans for development of the property 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.

- 1.15 **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).
- 1.16 **Phasing.** For purposes of this Agreement, the term "Phase" refers to a designated portion of property in the Development upon which construction of all public Improvements (water, sewer, drainage, streets, etc.) occurs at one time. It is anticipated that the Development will be developed, sequentially, in Phases, consistent with **Exhibit B**. The City hereby approves Developer's Phasing Plan, 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 plan and completion schedules or City-approved modifications thereof. All modifications shall be in writing and signed by the City Manager or the Manager's designee.

SECTION 2 CONSTRUCTION OF IMPROVEMENTS

- 2.1. **Rights-of-way, Easements and Permits.** 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 those of record and shall be by Special Warranty Deed in form and substance acceptable to the City Manager or the Manager's designee. 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 Manager or the Manager's designee.
- 2.2. **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 drawings, plans and specifications approved by the City prior to construction. 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.
- 2.3. **Utility Coordination and Installation.** In addition to the Improvements described on **Exhibit B**, Developer shall also be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone and

utilities. All utilities shall be placed underground to the extent required by City Code, or other applicable law.

- 2.4. **Reimbursement.** To the extent that roads, water lines, sewer lines, drainage channels, trails, crossings and other related facilities are constructed by Developer for the benefit of landowners and persons other than Developer, the City, for a period of fifteen (15) years following the completion of construction of such Improvements, shall require other benefited landowners and persons to pay 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 accepted by the City. Property owners and/or developers submitting plats or development plans which are adjacent to or directly benefiting from these Improvements shall pay the required sums directly to the Developer before a plat for any portion of their property is recorded. The City agrees not to record said 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.

SECTION 3 STREET IMPROVEMENTS

- 3.1. **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.
- 3.2. **Street Signs, Traffic Signs and Striping.** The Developer will install, at 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, striping on collector and arterial streets in a manner reasonably approved by the City and in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.
- 3.3. **Streets.** All internal and external streets shall be constructed in accordance with the approved City of Brighton's Transportation Master Plan and Public Works Standards and Specifications for street cross-sections, as the same be amended from time to time, (for collector and arterial streets) and shall be constructed in accordance with the Phasing Plan, which is a part of the attached **Exhibit B.**

SECTION 4 PUBLIC LAND CONVEYANCE AND LANDSCAPING

- 4.1 **Public Land Conveyance.** Developer shall convey to the City all lands for public use as shown in the Final Plat. Such conveyances shall be made after a Final Plat for all or any portion of the Development is approved by the City and before any such final Plat is recorded. No Final Plat shall be recorded or implemented until said conveyance is complete. Said conveyances shall be by special warranty deed in form and substance satisfactory to the City Manager or the Manager's designee. As part of its application for a final plat for all or any portion of the Development, the Developer shall provide to the

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

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

SECTION 5 WATER MAINS

- 5.1. **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 as **Exhibit B**, including both on-site and off-site improvements.

SECTION 6 SEWER LINES

- 6.1. **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 as **Exhibit B**, including both on-site and off-site improvements.

SECTION 7 OTHER IMPROVEMENTS

- 7.1. **Street Lights.** The total cost of street light installation 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, on a phased basis. The Developer shall select the street light type.
- 7.2. **Drainage Improvements.**
(a) Drainage improvements for the Development shall be constructed by Developer and, at the minimum, in accordance with plans and specifications approved by the City. Developer shall initiate no overlot grading until the City approves drainage improvement plans in writing. Developer shall provide temporary erosion control during overlot grading until drainage improvements are installed as dictated by the EPA Phase II Storm Water regulations for sites over one acre.

(b) Drainage improvements 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 floodplain regulations. Developer shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of all lots within the Development.

- 7.3. **Trash, Debris, Mud.** Developer agrees that during construction of the Development and the Improvements described herein, Developer shall take any and all steps necessary to control trash, debris and wind or water erosion in the Development. If the City determines that said trash, debris or wind or water erosion causes damage or injury or creates nuisance, Developer agrees to abate said nuisance and/or to correct any damage or injury within five working days after notification by the City. If Developer does not abate said nuisance or if an emergency situation exists, to be determined by the City in its sole discretion, the City may abate the nuisance and/or correct any damage or injury without notice to the Developer at the Developer's expense. Developer also agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the City. If Developer does not abate, or if an emergency exists, City may abate at the Developer's expense.

SECTION 8 SPECIAL PROVISIONS

See **Exhibit G** attached hereto and incorporated herein by this reference.

SECTION 9 MISCELLANEOUS TERMS

- 9.1. **Breach of Agreement.** In the event that the Developer should fail to timely comply with any of the terms, conditions, covenants and undertakings of this Agreement, or any provisions of the Brighton Municipal Code related to development, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach of the Developer by the City, unless the City in writing and in its sole discretion designates a longer period, then the City may draw upon the Improvement Guarantee and complete the Improvements at the Developer's expense. The Developer's expense shall be limited to the costs incurred by the City, as defined herein. Notice by the City to the Developer will specify the conditions of default. In the event that no Improvement Guarantee has been posted or the Improvement Guarantee has been extended or is insufficient, then the City has the right to begin work on the Improvements at the expense of the Developer. 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 if available and may complete the Improvements at Developer's expense even if the Improvement Guarantee is not available; in such event, the City shall use its best efforts to notify Developer at the earliest practical date and time. The City may also, during the cure period and until completion of the Improvements in compliance with this Agreement, withhold any additional infrastructure permits, building permits, certificates of

occupancy, or provision of new utilities fixtures or services. Nothing herein shall be construed to limit the City from pursuing any other remedy at law or 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 the Agreement. Any 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.

- 9.2. **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.
- 9.3. **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.
- 9.4. **Assignment, Delegation and Notice.** Developer shall provide to the City for approval written notice of any proposed transfer of title to any portion of the Property and of the Development Agreement obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. Developer and successor shall, until written City approval of the transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Developer under this Agreement.
- 9.5. **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.
- 9.6. **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
22 South 4th Avenue
Brighton, CO 80601

Developer:
King Paul I, LLC
IVE Colorado LLC
Jacobs Colorado LLC
Attention: Chris King
7000 E. Bellview Ave.
Englewood, CO 80111

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

With a copy to:
Burns, Figa & Will, P.C.
Attention: Matt Dillman
6400 S. Fiddlers Green Cir., Ste. 1000
Greenwood Village, CO 80111

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.

- 9.7 **Force Majeure.** Whenever Developer is required to complete construction, maintenance, repair, or replacement of improvements by an agreed-upon deadline, the City may, in its sole discretion, grant a reasonable extension of time 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.
- 9.8 **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.
- 9.9 **Previous Agreements.** All previous written and recorded agreements between the parties, their successors and assigns, including, but not limited to, the Annexation Agreement, dated December 16, 2008, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.
- 9.10 **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.
- 9.11 **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 violate city, state, or federal laws and is thereby rendered unenforceable, the City in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 9.12 **Agreement Status After Final Acceptance.** Upon Final Acceptance by 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 statute of limitations has tolled for any potential claim, this Agreement shall no longer be in effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

CITY OF BRIGHTON, COLORADO

A Home Rule Municipality

By: Richard N. McLean
Richard N. McLean, Mayor

ATTEST:

By: Natalie Hoel
Natalie Hoel, Interim City Clerk

APPROVED AS TO FORM:

By: Margaret R. Brubaker
Margaret R. Brubaker, Esq.
City of Brighton Attorney

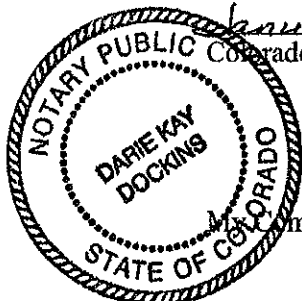
DEVELOPER/OWNER

KING PAUL, 1, LLC, a Colorado limited liability company

By: Paul T. DeCrescentis
Paul T. DeCrescentis, Manager

STATE OF COLORADO)
) SS
COUNTY OF Adams)

The foregoing instrument was acknowledged before me this 21 day of January, 2010, by Paul T. DeCrescentis, Manager of King Paul 1, LLC, a Colorado limited liability company.



Darie Kay Docking
Notary Public

Commission Expires: 2/23/2014

JACOBS COLORADO LLC, a Colorado limited liability company

By: Columbo 11 LLC, a Colorado limited liability company, Manager

By: Paul T. DeCrescentis
Paul T. DeCrescentis, Manager

STATE OF COLORADO)
) SS
COUNTY OF Adams)

My Commission Expires: 2/23/2014

By: Paul T. DeCrescentis, Manager

The foregoing instrument was acknowledged before me this 21 day of January, 2010, by Paul T. DeCrescentis, Manager of Columbo 11 LLC, a Colorado limited liability company, Manager of IVE Colorado LLC, a Colorado limited liability company.

Marjorie Rockwell
Notary Public

My Commission Expires: 2/23/2014

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[reduced copy of Final Plat]

BEING A PART OF THE NORTHWEST QUARTER OF SECTION 12, AND THE
NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 66 WEST, CITY
OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

EDWARD LAWRENCE, PLS 2200
FOR AND ON BEHALF OF
FRONTIER BUSINESS INC.
THE NOBLES STREET
ALBUQUERQUE, NM 87101

CONCISELY ESTIMATED PURSUING TO THE ABOVE, GENERAL MOTIONS AND REQUESTS
CITY OF LOS ANGELES, CALIFORNIA, AND NOT PREVIOUSLY INDICATED OR
OTHERWISE ESTIMATED PURSUING TO THE ABOVE, GENERAL MOTIONS AND REQUESTS

BY DEPUTY: _____
 ASSISTANT AG. _____

[illegible]

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[reduced copy of Final Plat]



EXHIBIT A (continued)

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[reduced copy of Final Plat]

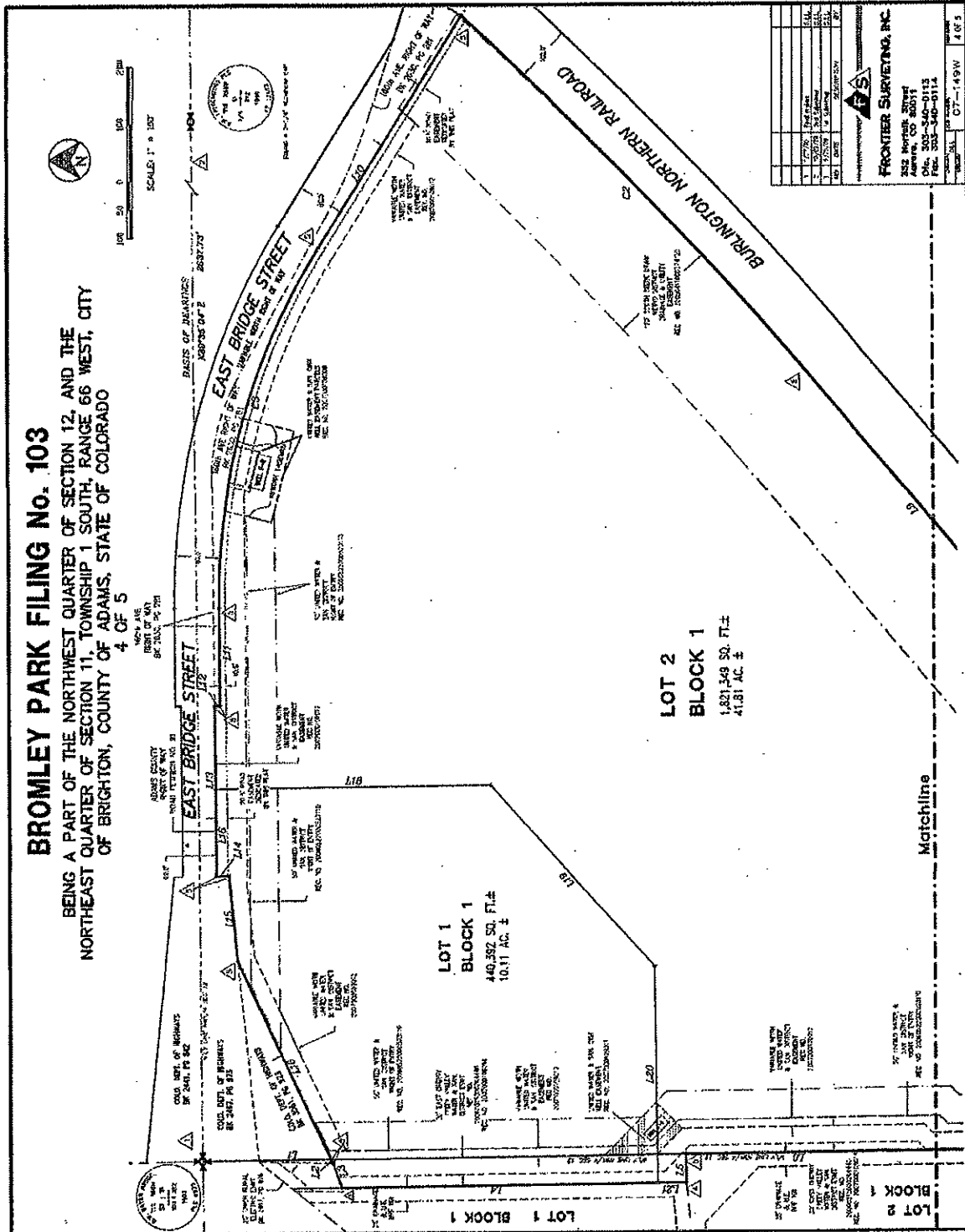


EXHIBIT A (continued)

Page 5 of 5
[reduced copy of Final Plat]

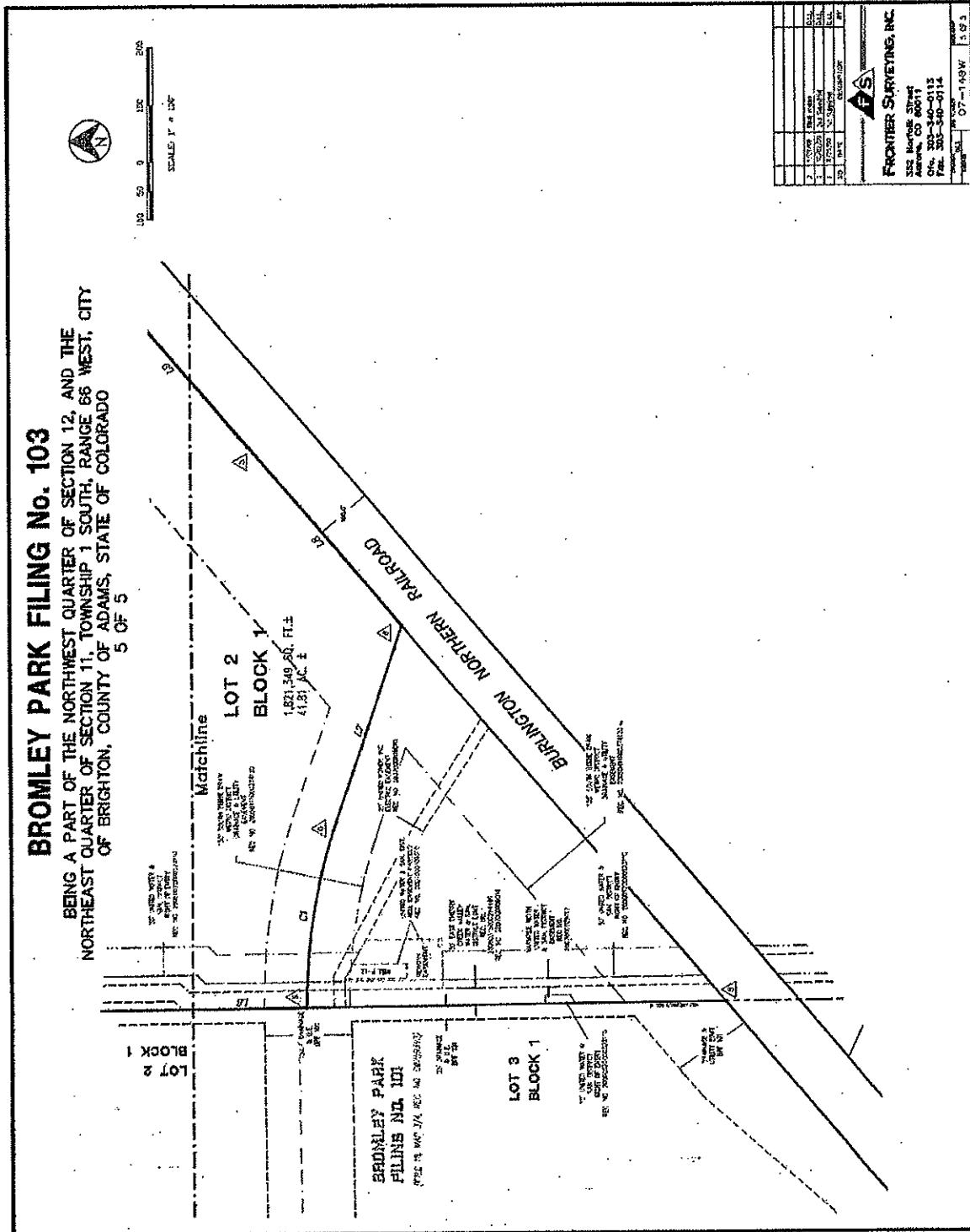


EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS

[Developer is not required to provide a Schedule of Improvements at this time. The Developer will provide engineering plans and a Schedule of Improvements at the time of site plan review.]

EXHIBIT C
IRREVOCABLE STANDBY LETTER OF CREDIT
LETTER OF CREDIT NO. _____

[The Developer is not required to provide a Letter of Credit at this time. The Developer will provide a letter of credit at the time of site plan review.]

EXHIBIT D
LEGAL DESCRIPTION OF PUBLIC USE LAND CONVEYANCE

[Public Use Land conveyance is described and dedicated via the Final Plat for Bromley Park,
Filing No. 103.]

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

[Not applicable or required for Bromley Park, Filing No. 103.]

**EXHIBIT F
WATER DEDICATION AGREEMENT**

[Not applicable or required for Bromley Park, Filing No. 103.]

**EXHIBIT G
SPECIAL PROVISIONS**

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN BROMLEY PARK, FILING NO. 103 DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BRIGHTON, COLORADO AND KING PAUL 1, LLC. SHOULD THERE BE ANY CONFLICT BETWEEN THE DEVELOPMENT AGREEMENT AND THE SPECIAL PROVISIONS SET FORTH IN THIS EXHIBIT G, THE TERMS OF THIS EXHIBIT G SHALL CONTROL.

1. **Temporary Uses.** Temporary uses refer to, but are not limited to, temporary sales office, temporary construction office and construction yard. Temporary uses are allowed, with approval of a temporary use permit, for a period of one year, with renewal after that year determined by the Director of Community Development.
2. **City Regulations.** Developer agrees to follow any and all City Regulations and/or Ordinances in effect at the time of final plat approval, as may be subsequently amended from time to time, including, but not limited to: the Annexation Agreement for the Chikuma Parcel, dated February 26, 2009, and recorded in Adams County records by Instrument #2009000013684; the Bromley Park Land Use Regulations, dated October 29, 1986, and recorded in Adams County records, Book 3301, Pages 962-1000, as amended; the design standards, established by the Bromley Park P.U.D., 11th Amendment, recorded on February 26, 2009, Instrument Number 2009000013691. The Brighton Industrial Design Standards approved by Ordinance #2040, as amended, shall not apply to the Development.
3. **Development Sign.** The Developer or successors shall install a development sign in accordance to Section IX Subdivision Regulations, subsection II,D,9 within 30 days of plat approval.
4. **Future Platting, Public Improvements and Development Agreement Amendments.**
 - a. **Future Subdivision Requirements.** It is anticipated that Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision may be sold to the owners of Lot 1, Block 1, of the Bromley Park Filing No. 101 Subdivision. In order to sell this lot, the land must first be subdivided and a final plat therefor be approved by the City. As the Developer has no immediate plans for the development of Lot 2, Block 1, of the Bromley Park Filing No. 103 Subdivision, it is contemplated that future subdivision of Lot 2, Block 1 may be necessary, depending on the future use(s) and/or ownership of Lot 2, Block 1. The Developer agrees to subdivide Lot 2, Block 1, as may be necessary, according to the Subdivision Regulations in Section 17-40 of the Municipal Code, Subdivisions. The City has agreed to enter into this Agreement (the Bromley Park Filing No. 103 Development Agreement) with the understanding that public improvements associated with the platting of the Development will be engineered and constructed, or funds escrowed to the City by the Developer, at the sole discretion of the City, at the time of City approval of Final Development Plans, as set forth in the Bromley Park Land Use Regulations, for Lot 2, Block 1. Should any portion of Lot 2, Block 1, be sold, the Developer agrees to subdivide the Development, according to the Subdivision

b. **Final Development Plan and Engineering Plan Requirements.** Prior to City approval for any Final Development Plans for Lot 2, Block 1, or any portion thereof, the Developer agrees to provide engineering plans for all required Public Improvements, including, but not limited to, improvements to Bridge Street, the extension of water and sanitary sewer lines, and storm water drainage improvements. The engineering plans for the Public Improvements shall be approved by the City, prior to any construction activity on Lot 2, Block 1, including, overlot grading activity.

c. **Schedule of Public Improvements and Letter of Credit Requirements.** Developer agrees to provide the required Schedule of Public Improvements and a letter of credit (see 1.3 and 1.13 hereof) or another form of guarantee acceptable to the City, which shall be reviewed and approved by the City, prior to approval of any Final Development Plans for Lot 2, Block 1. Said approved Schedule of Public Improvements and letter of credit shall be attached to this Agreement as an amendment hereto at that time.

construction of Bridge Street, or the escrow of funds therefore shall be determined at the time of a Final Development Plan review for Lot 2, Block 1. If the City requires Developer to escrow funds rather than construct, said escrow shall be made at the issuance of the first building permit for all or any portion of Lot 2, Block 1, and shall be equal to the costs necessary to design and construct the improvements, as documented by the Developer and approved by the City.

- b. **Lot 1, Block 1 Bridge Street Improvements.** It is anticipated that Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision may be sold to the owners of Lot 1, Block 1, of the Bromley Park Filing No. 101 Subdivision, for the purpose of expanding the existing building and/or for the purpose of expanding outdoor storage on Lot 1, Block 1, of the Bromley Park Filing No. 101 Subdivision. Upon the occurrence of any development or site improvement on Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision that requires a building permit (other than the construction of a fence), the Owner/Developer of Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision shall assume full responsibility for the costs for the design and construction (or escrow of funds if deemed acceptable by the City) of Bridge Street adjacent to Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision. The costs for the design and construction of Bridge Street adjacent to Lot 1, Block 1, or the escrow of funds therefore, shall be determined at the time of Final Development Plan review for all or any portion of Lot 1, Block 1. If the City requires Developer to escrow funds rather than construct, said escrow shall be made at the issuance of the first building permit for Lot 1, Block 1 (excluding the issuance of a building permit for the construction of a fence), and shall be equal to the costs necessary to design and construct the improvements, as documented by the Developer and approved by the City.
- c. **Timing of Bridge Street Improvements.** At the time that a Final Development Plan for Lot 2, Block 1 has been submitted to the City for review, if no development or improvements have occurred on Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision that require a building permit, the design and construction (or escrow of funds therefor) for that portion of Bridge Street which is adjacent to Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision, shall be required. In this instance, the Owner/Developer of Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision shall assume full responsibility for the design and construction (or escrow of funds if deemed acceptable by the City) of Bridge Street adjacent to Lot 1, Block 1, of the Bromley Park Filing No. 103 Subdivision. If the City requires the escrow funds rather than construction, said escrow shall be made at the issuance of the first building permit for Lot 2, Block 1, and shall be equal to the costs necessary to design and construct the improvements, as approved by the City.

8. Water and Sewer Service.

- a. **No availability of Water and Sanitary Sewer Service.** Developer acknowledges that water and sanitary sewer service is not currently available from the City facilities to serve the Development and that said services may be available from City facilities at a remote location, and agrees to proceed with the final platting of the Development with that understanding. Developer assumes the sole responsibility for the construction of and the connection to all water and

sanitary sewer facilities necessary to serve the Development. Developer will construct all necessary infrastructure to serve the Development with adequate water and sewer service, at the time of development. The City shall review and approve the engineering documents prior to the construction and connection to all water and sanitary sewer facilities to serve the Development.

- b. **Sanitary Sewer Service and Storm Water Facilities – South Beebe Draw Metropolitan District.** Developer acknowledges that it has entered into negotiations with the South Beebe Draw Metropolitan District (the “South Beebe District”) regarding the availability of sanitary sewer and storm water service, the installation and construction of sanitary sewer and storm water infrastructure and the connection to existing infrastructure that was installed by the District, if necessary, to serve the Development. Developer acknowledges and agrees that no development on the Development will be commenced or approved by the City unless and until sanitary sewer and storm water service are secured from the South Beebe District and the necessary infrastructure is constructed for said services, and the same is acceptable to the City. Developer acknowledges, represents and agrees that the City has no legal obligations or other responsibilities for the provision of sanitary sewer and storm water service to the Development, and that it must look to the South Beebe District for such services.
- c. **Utility Report Required.** Developer acknowledges and agrees that a Utility Report will be required at the time that a Final Development Plan application is submitted to the City, and that the Developer will be required to verify that the water and sanitary sewer infrastructure routes shown on the Utility Report can provide adequate supplies and capacities for said utilities (water and sanitary sewer), as determined by the City of Brighton’s Department of Public Works standards and requirements. If at the time of the Final Development Plan application, the Utility Report does not show that an adequate supply or capacity for water and sanitary sewer utilities can be achieved, to the satisfaction of the City of Brighton’s Department of Public Works, with the infrastructure routes depicted in the Utility Report, the Developer acknowledges and agrees that it shall be responsible for engineering an alternative method of delivering the utilities (water and sanitary sewer) to the Development, which will be the sole responsibility of the Developer to engineer, fund and construct. The Developer acknowledges its responsibility in this regard and shall not hold the City of Brighton in any way responsible if an adequate supply or capacity for utilities (water and sanitary sewer) is not available. Developer further acknowledges and agrees that no development on the Development will be commenced by the Developer or approved by the City unless and until water and sanitary sewer services are available and the necessary infrastructure is constructed for said services.

9. **Schedule of Improvements and Letter of Credit Due at Final Development Plan Review.** Notwithstanding any provisions in the Agreement to the contrary, Developer and the City agree that this Agreement does not obligate Developer to construct any improvements within the Development at the execution of this Agreement. Accordingly and consistent with the Exhibits attached to this Agreement (and in particular, Exhibit G hereof), Developer is not required to provide a Schedule of Improvements or a Letter of

Credit at the execution of this Agreement. However, the Agreement does set forth the covenants and obligations that will be imposed on Developer at the time of final development plan review for all or any portion of the Development.