

BRIGHTON CITY COUNCIL RESOLUTION

Telluride Business Park Final Plat and Development Agreement

RESOLUTION NO.: 07-125

A Resolution of the City Council of the City of Brighton, Colorado, Approving the Final Plat and Development Agreement for the Telluride Business Park (the "Subdivision"), Described as a part of the NW ¼ of Section 9, Township 1 South, Range 66 West of the 6th Principal Meridian, Adams County, Colorado.

WHEREAS, the applicant, Brett Steinbar, has requested approval from the City of Brighton City Council for the proposed Telluride Business Park Subdivision, consisting of approximately 3.14 acres more particularly described in Exhibit A (the "Property"); and

WHEREAS, the Property was annexed into the City of Brighton's municipal boundaries on August 17, 1971; and

WHEREAS, the Property was zoned C2, Restricted Retail and Service August 17, 1971; and

WHEREAS, the Final Plat includes one lot; and

WHEREAS, the Subdivision is proposed to be developed into a commercial office complex; and

WHEREAS, the Final Plat includes a privately maintained detention pond, shared drainage system and shared access; and

WHEREAS, the City of Brighton's Comprehensive Plan shows the Property as being appropriate for Commercial; and

WHEREAS, a Notice of Public Hearing was posted on the property, and Neighborhood Notices were sent to adjacent property owners, and a Notice of Public Hearing was published in the *Brighton Standard Blade* for not less than 5 days before the date of the Public Hearing, pursuant to the City's Land Use and Development Regulations and Guidelines and the Colorado Revised Statutes; and

WHEREAS, the City Council finds and declares that the Final Plat complies with the requirements of the Final Plat procedure regulations, provides consistency with the purpose and intent of the regulations, provides compatibility with surrounding areas, is harmonious with the character of the neighborhood, is not detrimental to the immediate area, is not detrimental to the future development of the area, and is not detrimental to the

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health, safety, or welfare of the inhabitants of the City.

NOW THEREFORE, be it resolved that the City of Brighton City Council does hereby approve the Telluride Business Park Subdivision Final Plat (attached as Exhibit B) and Development Agreement (attached as Exhibit C) with the following condition:

1. The required agreements between the three parcels involved in the storm drainage ponds shall be recorded prior to or concurrently with the final plat and development agreement.
2. The required submittals identified in the Telluride Business Park Development Agreement shall be provided in accordance to the Agreement.

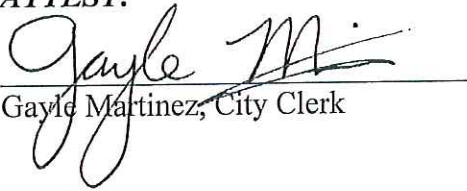
RESOLVED, this 6th day of Nov. 2007.

CITY OF BRIGHTON, COLORADO

By:


Janice E. Pawlowski, Mayor

ATTEST:


Gayle Martinez, City Clerk



Approved as to Form:

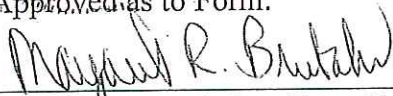

Margaret R. Brubaker, Esq., City Attorney

Exhibit A

Legal Description

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 00°38'41" EAST ON AN ASSUMED BEARING ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 885.91 FEET; THENCE SOUTH 89°25'01" WEST PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 45.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°25'01" WEST AND PARALLEL WITH SAID NORTH LINE, A DISTANCE OF 650.42 FEET TO A POINT ON THE CENTERLINE OF THE BRIGHTON LATERAL DITCH; THENCE SOUTH 17°26'36" WEST ALONG SAID CENTERLINE A DISTANCE OF 210.32 FEET; THENCE NORTH 89°25'01" EAST AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 715.72 FEET TO A POINT 45.00 FEET WEST OF THE EAST LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 00°38'41" WEST AND PARALLEL WITH SAID EAST LINE, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 3.14 ACRES MORE OR LESS

Exhibit C

Development Agreement
32 Pages to follow

**Telluride Business Park
DEVELOPMENT AGREEMENT**

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 6th day of November, 2007 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 **NORTH FOREST OFFICE CONSTRUCTION, LLC** (a Colorado Limited Liability Company) hereinafter referred to as "Developer".

WHEREAS, Developer has submitted a Final Plat ("Plat") for TELLURIDE BUSINESS PARK (the "Development" or "Property") attached hereto as Exhibit A and incorporated herein by reference. Said Plat has been reviewed and approved by the City Council of the City; and

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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:

**SECTION 1
GENERAL CONDITIONS**

- 1.1. **Development Obligation.** Developer shall be responsible 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

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

Prior to or during construction of the public Improvements, the City may demand and the Developer shall provide revised cost estimates for any Improvement. If such cost estimates exceed the original estimate by ___ % or greater, the Developer shall adjust the Improvement Guarantee as necessary, as more particularly set forth in Section 1.13 hereof.

- 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. Engineering services shall consist of, but not be limited to, survey, design, plans and profiles, estimates, construction supervision, and the furnishing of necessary documents in connection therewith.

All engineering plans shall be submitted for review by, and be subject to the “stamped as accepted” notation by the Director of Public Works, or his designee. The said acceptance does not constitute approval of the plans, but merely conformance with City requirements. The City engineer’s review and acceptance does not relieve Developer or Developer’s engineer of the responsibility for proper design and construction.

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 Public Works construction standards and 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 updated 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, or if the Developer fails to provide

Office of the City Clerk
CITY OF BRIGGION
22 South 4th Avenue
Brigton, CO 80601

the sworn affidavit as provided herein, 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 for all costs incurred 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 and shall be substantially in the form and content as shown on **Exhibit C** attached hereto and incorporated herein by reference, and shall be subject to the review and approval of the city attorney. Said guarantee, if a letter of credit, or bond shall not expire during the winter season (November - March). The Developer shall keep the Guarantee current and in full force and effect until the Developer completes the work, and the City has issued the letter of Final Acceptance of the Public Improvements for the Development. 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 1.12. If such an Improvement Guarantee is not submitted or maintained, or augmented as required, 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 dedication in the Plat or 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 for such conveyance. The Developer shall also furnish, at its own expense, an ALTA title policy, for all interest(s) so dedicated or 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 at the Developer's expense to the extent required by City Code, or other applicable law.
- 2.4. **Reimbursement.** Extension of water and sewer lines, streets, storm drainage infrastructure and facilities, street lighting, traffic control devices, trails, crossings and other public improvements and related facilities may be achieved according to a reimbursement agreement whereby owner(s) of lands abutting or benefited by such facilities or improvements shall reimburse the Developer for their proportionate share of Developer's costs to extend public facilities which benefit such intervening lands, according to formulae established by the City for calculating the reimbursement amounts. Developer and/or assigns agrees to use its best efforts and work in good faith to reach an agreement regarding reimbursement and assumes sole responsibility for the administration and collection of any and all moneys payable under reimbursement agreement(s). A fully executed reimbursement agreement shall be a condition precedent to the City's approval of a final plat, or the issuance of building permits for intervening lands subject to such reimbursement agreement(s). If a fully executed reimbursement agreement cannot in good faith be reached in a reasonable time,

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the City may set the amount of the reimbursement obligation, ^{using} ~~sum~~ the formulae referenced above. The reimbursement obligation set forth herein shall not exceed fifteen (15) years following the completion of construction of such Improvements. 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.

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 this Section and plans and specifications approved by the City, pursuant to all applicable standards set forth in the City's Public Works Standards and Specifications and Land Use and Development Regulations and Guidelines. Developer shall initiate no overlot grading within the Development until the City approves such grading and/or 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 shall not cause any damage to adjacent or downstream properties resulting from erosion, floor or environmental impact during construction and after construction.

(c) Drainage improvements for each lot shall be constructed according to City approved and engineering and must be maintained by the owner or successor of

said lot, at the minimum, in accordance with grading and drainage plans approved by the City and as otherwise provided in this Section.. 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.

(d) Storm drainage pond areas within the Development (including retention and detention facilities) shall be designed and constructed by the Developer pursuant to plans and specifications approved by the City, and in conformance with all applicable standards and specifications. Retention facilities shall be designed and constructed so as to incorporate a proper outlet structure or structures and related appurtenances capable of effectively draining or pumping the retention facility as necessary. All retention and/or detention ponds or other storm drainage facilities within the Development shall be maintained by the Developer and successors, shall be kept in good condition and repair, and free of trash, debris, algae, standing water and other conditions that would constitute a nuisance. Such maintenance responsibilities shall include but not be limited to the installation and maintenance of adequate landscaping as well as adequate provision for weed control and replacement of dead plant material, and the repair and replacement of storm drainage facilities. In the event that any detention or retention area or storm drainage facility within the Development contains standing water for more than 72 continuous hours, Developer 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.

- 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:

Brett Steinbar
North Forest Office Provider, Inc.
12150 Washington Center Pkwy., #3208
Thornton, CO 80241

With a copy to:

Margaret R. Brubaker, Esq.
City Attorney
22 South 4th Avenue
Brighton, CO 80601

With a copy to:

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 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.
- 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 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.
- 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: _____


Janice E. Pawlowski, Mayor

ATTEST:

EXHIBIT A (continued)

Page 2 of 2

Office of the City Clerk
 CITY OF BRIGHTON
 22 South 4th Avenue
 Brighton, CO 80601

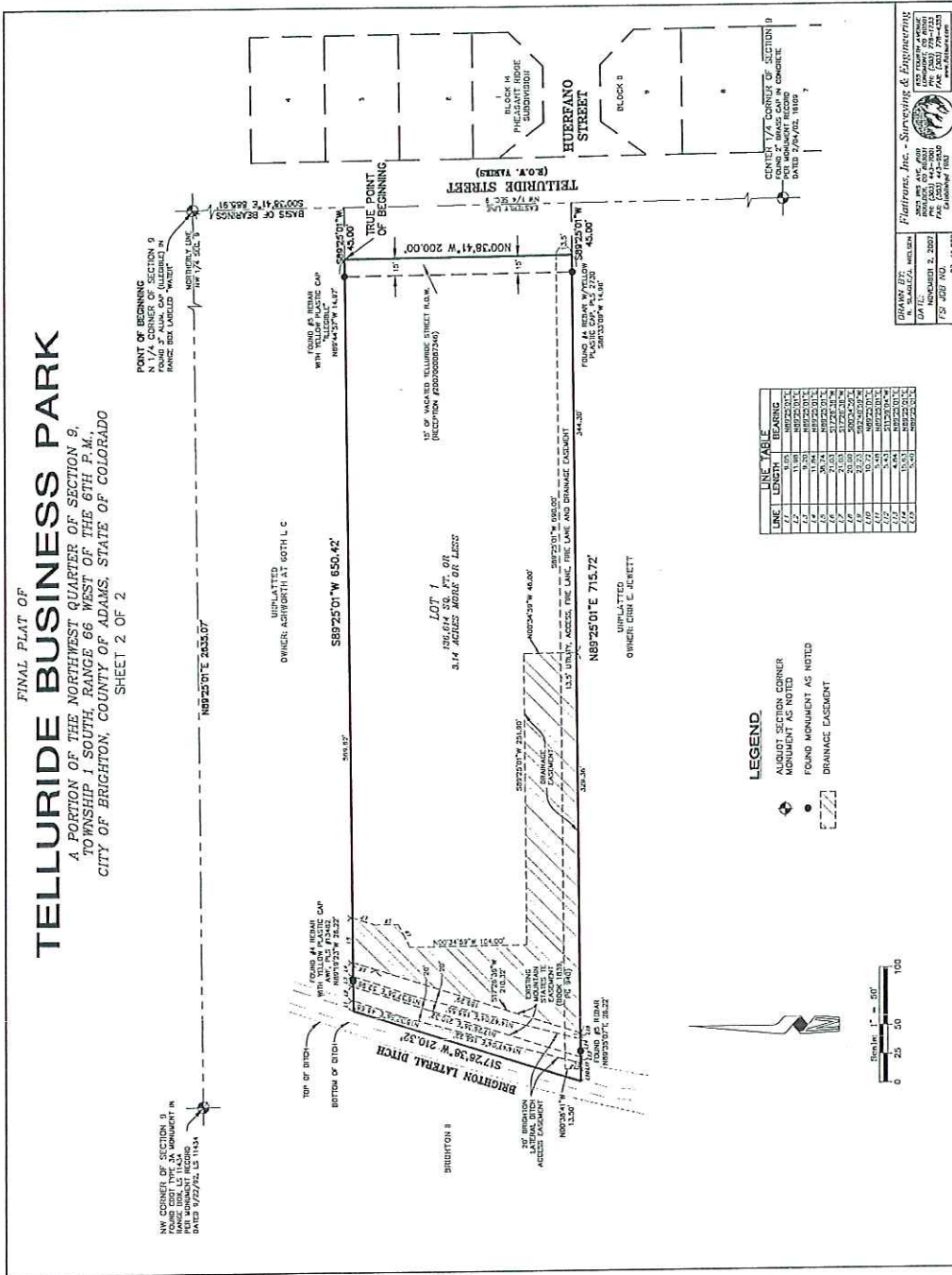


EXHIBIT B
SCHEDULE OF PUBLIC IMPROVEMENTS

	Quantity	Unit	Cost	Subtotal
Sanitary				
6" Sanitary Main Sewer	59	LF	\$ 30.00	\$ 1,770.00
Man Hole	2	EA	\$2,100.00	\$ 4,200.00
Water				
8" PVC Water Main	752	LF	\$ 32.00	\$ 24,064.00
Fire Hydrant	2	ea	\$2,000.00	\$ 4,000.00
Regional Trail				
10' Wide walk	2000	SF	\$ 3.00	\$ 6,000.00
Cost Estimate				\$ 40,034.00
Surety Amount				\$ 46,039.10

Office of the City Clerk
 CITY OF SALT LAKE CITY
 22 South 4th Avenue
 Brigham, CO 80601

EXHIBIT C

IRREVOCABLE STANDBY LETTER OF CREDIT

Form and Substance

LETTER OF CREDIT NO. _____

Date: _____

Beneficiary:

City of Brighton
22 South 4th Avenue
Brighton, CO 80601
Attn: Director of Finance

Ladies and Gentlemen:

1. We hereby open in your favor, at the request and for the account of _____, this irrevocable standby letter of credit in an aggregate amount not to exceed \$ _____, to be available for payment of your drafts drawn at sight on us and accompanied, in the case of each draft, by your signed written statement addressed to us stating: *The amount represented by the draft accompanying this statement is the amount required to be paid to Beneficiary on account of the default of _____ under the Development Agreement, dated _____, by and between Beneficiary and _____.*
2. This credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this credit is referred to, or to which this credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement.
3. This credit shall include the following Special Conditions:
 - a. Partial drawings shall be permitted.
 - b. All bank charges other than those of _____ are for the account of the Beneficiary.
4. This credit shall expire on _____, unless extended as provided herein.
5. It is a condition of this credit that it will be automatically extended for an additional period of twelve (12) months from the present, unless, not less than sixty (60) days prior to the then relevant expiration date, we notify you by Registered Mail that we elect not to extend this credit for any additional period. Upon your receipt of such a notification, you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed statement that you received notification of our election no to extend.
6. Drafts must be marked "Drawn under Irrevocable Standby Letter of Credit No. _____".
7. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices at: _____ on or before the close of business on the expiration date.
8. This credit shall be governed by and construed in accordance with the *Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500 (1993 Revision)* and, to the extent not inconsistent therewith, the laws of the State of Colorado.

Issuer

By:

(authorized signature)

Office of the City Clerk
CITY OF BRIGHTON
22 South 4th Avenue
Brighton, CO 80601

EXHIBIT D

LEGAL DESCRIPTION OF PUBLIC USE LAND CONVEYANCE

Public Use Land conveyance not required for Telluride Business Park Subdivision.

Office of the City Clerk
CITY OF SAGHION
22 South 4th Avenue
Brighton, CO 80601

EXHIBIT E

NON-IRRIGATION COVENANT

Non-irrigation Covenant not required for Telluride Business Park subdivision.

Office of the City Clerk
CITY OF BRIGHTON
22 South 4th Avenue
Brighton, CO 80601

EXHIBIT F

WATER DEDICATION AGREEMENT

Water Dedication not required for Telluride Business Park subdivision.

Office of the City Clerk
CITY OF BRIGHTON
22 South 4th Avenue
Brighton, CO 80601

EXHIBIT G

SPECIAL PROVISIONS

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN TELLURIDE BUSINESS PARK SUBDIVISION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BRIGHTON, COLORADO AND NORTH FOREST OFFICE CONSTRUCTION, 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, construction yard, and model homes. 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: Ordinance #1650, the Zone District Regulations, except as provided for in Section 9 of this Exhibit; and Ordinance #1820 which established the Commercial Design Standards.
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 approval of the final plat for the Development. (Date to be posted by: Dec. 6, 2007)
4. **Detention Pond Maintenance.** All detention ponds and/or other storm drainage facilities within the Development shall be maintained by the Developer, shall be kept in good condition and repair, and free of trash, debris, algae, standing water and other conditions constituting a nuisance. Such maintenance responsibilities shall include but not be limited to the 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 area or storm drainage facility within the Development contains standing water for more than 72 continuous hours, Developer 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 within the Development.

5. **Detention/Retention Construction.** The parties acknowledge that the drainage solution for this Development and the related Telluride Commons residential development necessitate the execution of certain agreements and easements with other property owners, and in particular, the property directly north of this Development more particularly described in Exhibit H, attached hereto (the "Property to the North"). All such agreements and easements must address the construction of all necessary improvements and facilities, the calculation and payment obligations regarding the design and construction costs for all necessary improvements and facilities, and such grants and agreements to allow flows to cross the subject Property and the Property to the North of the Development, and shall be fully executed and recorded prior to or concurrently with this development agreement and the Telluride Commons Business Park final plat.

6. **Emergency Overflow Channel and Water Quality Release.**

a. Developer acknowledges its responsibility for the construction of an overflow channel to address excess flows from the drainage facilities, which channel shall be constructed in strict compliance with City Public Works Standards and Specifications, and the plans for which must be approved by the City prior to construction. The overflow channel may be constructed on the Property to the North, and if so, construction shall be subject to execution of the necessary agreements and easements referenced in paragraph 5 above. If the overflow channel is not constructed on the Property to the North prior to the request for a certificate of occupancy for the Development, the Developer shall design and construct, at its sole cost and expense, a City approved overflow channel or City approved alternative design prior to issuance of a certificate of occupancy for the Development.

b. Developer acknowledges its responsibility for the construction of a water quality release mechanism to the Brighton Lateral Ditch, which release mechanism shall be constructed in strict compliance with City Public Works Standards and Specifications, and the plans for which must be approved by the City prior to construction. This Development shall connect to such water quality release mechanism for the purpose of discharging stagnant water from the Development retention pond. The release mechanism may be constructed on the Property to the North, and if so, construction shall be subject to execution of the necessary agreements and easements referenced in paragraph 5 above. If the water quality release mechanism is not installed by the Property to the North prior to the request for a certificate of occupancy for the Development, the Developer shall design and construct, at its sole cost and expense, a City approved water quality release mechanism or City approved alternate design for the Development retention pond prior to issuance of a certificate of occupancy for the Development.

8. **Water and Sewer Tap Credit.** The City agrees to credit the Developer in the amount of Thirteen Thousand Nine Hundred Seventy and 00/100 Dollars (\$13,970.00 dollars (\$8,900.00 for water and \$5,070.00 for sewer) for the vacation of the existing ¾" water tap on the Property, such credit to be applied at the time a permit is issued for the new water tap(s) for the Property. Developer is not subject to the water resource fee as this Development is an infill development and is abandoning an existing tap. (Credit Issued Date _____)

9. **Telluride Street Improvements.**

a. Developer shall pay to the City cash in lieu of construction for the future widening of Telluride Street to include single lane of roadway, curb, gutter, striping, street lighting, reseeding/restoration, traffic control, and necessary earthwork. Said cash in lieu payment shall be paid to the City in cash or certified funds prior to issuance of the first building permit and the amount shall be based on an estimate of improvements provided by the

Developer and approved by the City. (Escrow Acct. Info. _____)

- b. Developer shall construct to City standards and specifications a ten-foot (10') wide trail along Telluride Street and complete the construction and receive City approval prior to the issuance of a certificate of occupancy for the first building in the Development.
10. **Water Line Reimbursement.** The total reimbursement due to the City for the removal and construction of the new Twelve inch (12") water line located in Telluride Street to serve the Development is Fifteen Thousand Three Hundred Fifty Four and 48/100 Dollars (\$15,354.48). Such reimbursement shall be paid in full to the City in cash or certified funds prior to the issuance of the first building permit for the Development. (Receipt#/Date: 11/28/87 13,012.918)
 11. **Sewer Line Reimbursement.** A reimbursement from the Developer to the City for the removal and construction of a new sewer line in Telluride Street shall not be required so long as the Development does not connect to the sewer line in Telluride Street and does connect into the sewer line located along the west Property line. If connection is made to the sewer line in Telluride Street the cost of reimbursement will be based on the location of connection and such reimbursement would be paid in full to the City in cash or certified funds prior to the issuance of the first building permit for the Development.

EXHIBIT H

(legal description of property to the north of the Development)

SECT,TWN,RNG:9-1-66 DESC: BEG 50 FT S OF NE COR NW4 SEC 9 TH W 60 FT
TO TRUE POB TH S 835/91 FT TH W 635/43 FT TO PT ON C/L BRIGHTON
LATERAL DT TH ALG SD C/L N 17D 51M E 286/95 FT N 14D 21M E 279/61
FT TO BEG OF CURVE TO LEFT HAV RAD OF 432/88 FT THE CHD BRS N
02D 44M W 292/64 FT TH ALG ARC OF SD CURVE 298/52 FT TO PT 50 FT
S OF N LN SD NW4 TH E 488/72 FT TO POB EXC N 25 FT THEREOF 9/72A
(Parcel Number 0156909200001),

Office of the City Clerk
CITY OF BRIGHTON
22 South 4th Avenue
Brighton, CO 80601