

RECORD AND RETURN TO:  
City of Brighton City Clerk  
500 SOUTH 4<sup>TH</sup> AVENUE  
BRIGHTON, COLORADO 80601

## TELLURIDE BUSINESS PARK II DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 15<sup>th</sup> day of December, 2015 by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of **Adams**, State of Colorado ("City") and NORTH FOREST DEVELOPMENT COLORADO, LLC, a Colorado limited liability company (the "Developer").

**WHEREAS**, the Developer submitted a Final Plat to the City, entitled, Telluride Business Park Filing #2 (the "Development"), attached hereto as **Exhibit A** and incorporated herein by reference (the "Plat"). Said Plat has been reviewed and approved by the City Council of the City of Brighton; and

**WHEREAS**, the Developer owns that certain 3.38-acre parcel of land, more or less, more particularly described in the Plat (the "Property"); and

**WHEREAS**, the City's development regulations require that the public improvement obligations for the Development be guaranteed by the Developer in a form acceptable to the City, and that the Developer execute and perform this Agreement.

**NOW THEREFORE**, in consideration of the foregoing, and for good and valuable consideration acknowledged and received, the City and Developer (the "Parties") hereto promise, covenant, and agree as follows:

### SECTION 1 DEFINITIONS

**"Benefited Landowner"** for reimbursement purposes means an owner or developer of neighboring, adjacent or abutting lands benefitted by the availability of public infrastructure or utility connections constructed, extended and/or paid for by another, and may include the Developer under this Agreement.

**"Civil Engineering Documents"** means plans, drawings and documents such as engineering plans, construction drawings, specifications and the like, and includes demolition plans, grading plans, drainage plans, water system plans, sanitary sewer system plans, street plans, utility plans, landscaping plans, or any similar plans or drawings for the Development or Improvements.

**"Common-Interest Management Association"** means any residential, commercial or industrial Unit Owners' or Homeowners' Association entity created for the Development pursuant to Article 33.3, of Title 38, C.R.S. *Colorado Common Interest Ownership Act*, for the purpose of

owning or maintaining common-interest areas or common-area infrastructure including, for example, recreational amenities, parks, sidewalks, trails, drainage facilities, common area landscape tracts, subdivision signs, common area fencing, mail kiosks, or to provide common-area services such as trash collection, snow removal, landscape maintenance or other common-interest services, not provided by individual property owners or the City.

**“Completion of Construction”** means the date the City certifies completion of the following:

- a) Construction is complete in accordance with the Civil Engineering Documents and the requirements of this Development Agreement; and
- b) The City has issued Final Acceptance for all Improvements; and
- c) The City can utilize the Improvements for their intended purpose.

**“Construction Permit”** includes any building permit, infrastructure permit, temporary use permit, grading, excavating, drainage, erosion and sediment control permits, permits for the moving of structures, or other permit required for the Development or Improvements.

**“Costs”** or **“Actual Costs”** means all costs of designing constructing Improvements required by this Agreement, as identified and estimated in the Schedule of Improvements and Exhibit B, and as provided in Section 2.8.2 below. For reimbursement purposes Actual Costs means the actual costs of designing and constructing the Improvement(s) to completion, including the cost of over-sizing any utilities. Any reimbursement of Actual Costs, in whole or in part, shall be by written reimbursement agreement which may provide for a cost recovery period and a prevailing market rate of interest during such cost recovery period. Actual Costs subject to reimbursement must be:

- a) Actually paid and incurred for the Improvement(s), and supported by the documentation identified in Section 2.8.2; and
- b) Commercially reasonable, i.e., generally recognized as necessary for the Improvement(s) and such that a prudent and reasonable developer or construction professional would pay under the circumstances;
- c) Allocable to a specific Improvement(s), i.e., incurred, in whole or in part, for the construction of one Improvement or project, and easily allocable on a pro-rata basis between and among the Development and any other benefitted lands; and,
- d) Attributable to Improvement(s) conferring a benefit to the Development or other benefitted lands.

The term **“Costs”** or **“Actual Costs”** shall not include indirect costs such as overhead, profit, administration, general office or staff expense, equipment rental, maintenance, insurance, etc.

**“Developer”** means the person or entity having the legal obligation to perform this Agreement and legal authority to apply for land use approval for the Development.

**SECTION 2  
GENERAL CONDITIONS**

- 2.1 **Development Obligation.** Developer shall be responsible for the performance of the covenants set forth herein.
- 2.2 **Development Impact Fees and Other Fees.** Developer shall pay all fees related to development of the property described in the Plat(s) at the time of issuance of a Construction Permit for any or all portions of the Development. The amount of the fees shall be the amount in effect at the time such permits are issued. Any amendment to the kinds of fees or the amounts of said fees enacted by the City after the date of this Agreement are incorporated into this Agreement as if originally set forth herein.
- 2.3 **Schedule of Improvements.** For this Agreement, the term “Schedule of Improvements” shall mean a detailed listing of all Public Improvements, the design, construction, installation, and phasing of which is the sole responsibility of the Developer. The “Schedule of Improvements” may be divided into approved Phases pursuant to a written “Phasing Plan” for the Development, and shall specify, as to each improvement listed below (each, an “Improvement”), the type, size, general location, and estimated cost of each Improvement and the Phase in which the Improvement shall be completed:
- Water Lines
  - Sanitary Sewer Lines
  - Storm Sewer Lines
  - Drainage Retention/Detention Ponds
  - Streets/Alleys/Rights-of-Way
  - Curbs/Gutters
  - Sidewalks
  - Bridges and Other Crossings
  - Traffic Signal Lights
  - Street Lights
  - Signs
  - Fire Hydrants
  - Guard Rails
  - Neighborhood Parks/Community Parks
  - Open Space
  - Trails and Paths
  - Street Trees/Open Space and/or Common Area Landscaping
  - Irrigation Systems
  - Wells
  - Fencing/Retaining Walls
  - Parking Lots
  - Permanent Easements
  - Land Donated and/or Conveyed to the City
  - Value of Land Beneath All Infrastructure Improvements
  - Value of Water Donated and/or Conveyed to the City

- 2.4 Engineering Services.** Developer shall at its expense furnish all necessary engineering services and Civil Engineering Documents relating to the design and construction of the Development and all Improvements set forth in the Schedule of Improvements, Phasing Plan and **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, and/or a Registered Land Surveyor, and/or such other professionals licensed by the State of Colorado as are necessary and appropriate. Such services shall be furnished in accordance with applicable Colorado law and shall conform to the standards and criteria for Public Improvements as established and approved by the City as of the date of submittal to the City.
- 2.5 Construction Standards.** Developer shall construct all Improvements required by this Agreement, and any other Improvements required for the Development, in accordance with the plans, specifications, and Civil Engineering Documents approved in writing by the City, according to the approved Final Plat(s), and in full conformity with the City's Public Works standards and specifications applicable at the time of construction plan approval.
- 2.6 Development Coordination.** Unless specifically provided in this Agreement to the contrary, all submittals to the City or approvals required of the City in connection with this Agreement, shall be submitted to or rendered by the City Manager or the Manager's designee, who shall have general responsibility for coordinating development review with the Developer.
- 2.7 Plan Submission and Approval.** Developer shall furnish to the City complete Civil Engineering Documents and plans for all Improvements to be constructed in each Phase of the Development, and obtain approval of the plans for each Phase prior to commencing any construction work thereon. The City shall issue its written approval or disapproval of said plans within a commercially reasonable time after submittal by Developer. 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 by Developer and said plans resubmitted for approval by the City prior to construction.
- 2.8 Construction Acceptance and Warranty.**
- 2.8.1** Within ten (10) calendar days after construction of Public Improvements is completed, Developer shall request inspection of the Improvements by the City. If Developer does not request such inspection within ten (10) calendar days then the City may conduct the inspection without Developer's request or approval.
- 2.8.2** At the time of said request, and as a condition thereof, the Developer shall submit to the City a revised and updated Schedule of Improvements, identifying any modifications to the original Schedule of Improvements and specifying the Actual Costs, (rather than the estimated costs), of all the completed Improvements listed on the Schedule of Improvements, including appropriate documentation supporting said Actual Costs.
- 2.8.3** Developer shall provide "as built" drawings and a certified statement of construction costs no later than thirty (30) calendar days after an Improvement is

completed, or prior to any reduction in an Improvement Guarantee (see Section 2.13 below), whichever occurs earlier.

**2.8.4** If Developer has not completed the Improvements on or before the completion dates set forth in the Phasing Plan and/or Schedule of Public Improvements then the City may exercise its rights to secure performance of this Agreement.

**2.8.5** Upon inspection, if the Improvements completed by Developer are satisfactory, then 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, then 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) calendar days of said notice, weather permitting. After Developer completes the repairs, replacements, or other work required, Developer shall request of the City a re-inspection of such work to determine if construction acceptance can be granted, and the City shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements or other work required within thirty (30) days of said notice, the City may exercise its right to secure performance of this Agreement. The City reserves the right to schedule re-inspections, depending upon the scope of deficiencies:

**2.8.6** **No Building Permit for the Development shall be issued by the Administrative Division of the Community Development Department prior to Construction Acceptance of Public Improvements unless expressly permitted in Exhibit G of this document. Notwithstanding the foregoing, residential building permits may be issued for individual Phases in which the only remaining Improvements to be completed are detached sidewalks and/or final asphalt lift for streets within that Phase, provided that a sufficient Improvement Guarantee is in place for those remaining Improvements. No Commercial Building Certificates of Occupancy shall be issued by the Administrative Division of the Community Development Department prior to Construction Acceptance of Public Improvements unless expressly permitted in Exhibit G of this document.**

**2.9** **Maintenance of Improvements.** For a one (1) year period from the date of Construction Acceptance of any Improvement related to the Development, Developer shall at its 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 of this Agreement.

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

Improvements, the City may retain all or a portion of the Improvement Guarantee sufficient to discharge such lien(s).

**2.11 Reimbursement to the City.** The City may, but shall not be obligated to, complete construction, repairs, replacements, testing, maintenance or other work for Developer, pursuant to Section 2 of this Agreement, using funds other than the Improvement Guarantee, in which event Developer shall reimburse the City within thirty (30) days after receipt of written demand and supporting documentation from the City. If Developer fails to so reimburse the City, the Developer shall be in default of the Agreement and the City may exercise its rights under Section 10 of this Agreement.

**2.12 Testing and Inspection.** Developer shall at its expense employ a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City, on a timely basis, for City review and approval prior to commencement or continuation of that particular phase of construction. In addition, at all times during said construction, the City shall have access to inspect the materials and workmanship of said construction. All materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications. All work shown on the approved Civil Engineering Documents requires inspection by the appropriate department, including Streets & Fleet and Utilities Departments. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During those hours inspections shall be scheduled by 4:00 p.m. of the day prior to the requested inspection day. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance for approval. All requests for after-hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the City for all direct costs of the after-hours inspection services. If an after-hours request is denied, work shall not proceed until inspection occurs.

**2.13 Improvement Guarantees.**

**2.13.1** Developer shall submit to the City an Improvement Guarantee for all Public Improvements related to each phase of the Development, as listed in Section 2.3 above and specified in Exhibit B. Said guarantee may be in cash, bond, or a letter of credit in a form acceptable to the City. Infrastructure permits shall be issued for only that phase of the Development for which said guarantees have been furnished. The total amount of the guarantee for each phase of development shall be calculated as a percentage of the total estimated cost, including labor and materials, of all Public Improvements to be constructed in said phase of the Development as described in **Exhibit B**. The total minimum amounts are as follows:

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

**2.13.2** In addition to any other remedies it may have, the City may, at any time prior to Final Acceptance, draw on any Improvement Guarantee issued, pursuant to this Agreement, if Developer fails to extend or replace any such Improvement Guarantee at

least thirty (30) days prior to expiration of such Improvement Guarantee, or fails to otherwise comply with this Agreement or the terms of the Improvement Guarantee. If the City draws on the guarantee to correct deficiencies and complete any Improvements, any portion of said guarantee, not utilized in correcting the deficiencies and/or completing the Improvements, shall be returned to Developer within thirty (30) days after Final Acceptance.

**2.13.3** In the event the Improvement Guarantee expires, or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of the Improvements and related construction as reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish written notice to the Developer of the condition, and within thirty (30) days of receipt of such notice, the Developer shall provide the City with a substituted qualifying Improvements Guarantee or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 2.13. If such an Improvement Guarantee is not submitted or maintained, then Developer is in default of this Agreement and is subject to the provisions of Section 10 of this Agreement, as well as suspension by the City of all development activity, including but not limited to the right to withhold construction permits of any kind including infrastructure permits, building permits, Construction or Final Acceptance letters, or certificates of occupancy or completion.

**2.14 Indemnification and Release of Liability.**

**2.14.1** Developer agrees to indemnify and hold harmless the City, its officers, employees, agents, and servants, and to pay any and all claims or judgments rendered against the City and/or said persons on account of any suit, action, or claim or demand caused by, arising from, or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors, and Developer shall 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, claim or demand; provided, however, that Developer's obligation herein shall not apply to the extent said action, suit, or claim results from any grossly negligent or willful act or omission of officers, employees, agents or servants of the City or from the Developer's conformance with requirements imposed by the City. Said obligation of Developer shall be limited to suits, actions, claims or demands accruing or arising prior to Final Acceptance.

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

**2.15 Insurance OSHA.** Developer shall, through contract requirements and other normal means, guarantee and furnish to the City proof thereof that all employees and contractors

engaged in the construction of Improvements are covered by adequate workmen's compensation insurance and public liability insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

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

### SECTION 3 CONSTRUCTION OF IMPROVEMENTS

- 3.1 Rights-of-way, and Easements.** Before City may approve construction plans for any Improvements herein agreed upon, Developer shall at its expense acquire and convey to the City all necessary land, rights-of-way and easements required by the City for the construction of the proposed Improvements related to the Development. All such conveyances shall be free and clear of liens, taxes, and encumbrances except for ad valorem real property taxes for the current year and thereafter and shall be by Special Warranty Deed in form and substance acceptable to the City Attorney. The City at the Developer's expense shall record all title documents. The Developer shall also furnish, at its expense, an ALTA title insurance policy, for all interest(s) so conveyed, subject to approval by the City Attorney.
- 3.2 Construction.** Developer shall at its expense furnish and install all of the Improvements listed on the "Schedule of Improvements" attached as Exhibit B, in conformance with the civil drawings, plans, and specifications approved by the City prior to construction, and the applicable ordinances, regulations and specifications of the City. If Developer does not meet the above obligations, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 10 of the Agreement.
- 3.3 Utility Coordination and Installation.** In addition to the Improvements described in Exhibit B, Developer shall at its expense also be responsible for coordination and installation of on-site and off-site electric, street lights, natural gas, telephone, and other utilities. All utilities shall be placed underground, to the extent required by City Code or other applicable law.
- 3.4 Reimbursement.** To the extent that the Developer pays to construct, extend, over-size or otherwise provide roads, water lines, sewer lines, drainage channels, trails, crossings and other Improvements, off-site or on-site, which Improvements would also serve Benefited

Landowner(s) in the future, then for a period of fifteen (15) years following Final Acceptance of such Improvements, the City may withhold final approval and recording of any final plat submitted by such Benefitted Landowner(s), for the purpose of fostering and encouraging agreement and payment of appropriate reimbursement to the Developer by such Benefitted Landowner(s). If the Developer requests and is entitled to receive such reimbursement, in whole or in part, then the Developer shall submit Actual Costs of the subject Improvements to the City, after construction is completed by Developer and Final Acceptance issued by the City. Although the City may withhold final approval and recording in this manner, pending appropriate reimbursement (or agreement to reimburse) by Benefitted Landowner(s), the Developer acknowledges that the City assumes no obligation to secure or collect such reimbursement, and the City hereby assigns to Developer the right and obligation to collect reimbursement from Benefitted Landowner(s).

**3.5 Reimbursement Method.** All costs for construction of Improvements must be fully paid before the Developer is entitled to reimbursement under any agreement established hereunder. The amount of reimbursement sought shall not exceed the Actual Costs of a Benefitted landowner's pro-rata share of the subject Improvement(s), plus reasonable interest during any cost-recovery period not to exceed Developer's actual cost of capital.

- A. After the Improvements are constructed and within ninety (90) calendar days after Final Acceptance is issued by the City, the Developer shall submit to the City Manager or the Manager's designee for review and approval, documentation of the Actual Costs of off-site or over-sized Improvements and a proposed plan for recovery of pro-rata costs, including:
1. Final invoices from all contractors, subcontractors, engineers, architects, and consultants, containing a description of work completed and including all fees, charges and costs for such work;
  2. Copies of paid receipts or other satisfactory evidence demonstrating payment by Developer of the costs claimed for Improvement(s);;
  3. A verified statement from the Developer and its general contractor (and engineer, architect, and/or other professional consultant as applicable), certifying that final payment was delivered;
  4. As-built drawings, maps or plans satisfactory to the City showing:
    - a. The location of all Improvement(s) as constructed;
    - b. The name and address of the record owner of each property which the Developer claims has or will be benefited by the Improvement(s);
    - c. The amount of frontage each such property has adjacent to the Improvement(s);
    - d. The acreage and parcel number of each such property;
    - e. A reference to the book and page and/or reception number from County records where property information was obtained;
    - f. A proposed manner by which each Benefitted Landowner's pro-rata share of Actual Costs will be determined for reimbursement purposes; and



Developer the right, if any, to collect reimbursement from Benefitted Landowners. If the Benefitted Landowner unreasonably fails or in bad faith refuses to pay commercially reasonable reimbursement costs or execute a reimbursement agreement, then the City may elect to deny final approval to any Benefitted Landowner.

7. The term of any reimbursement agreement established hereunder, shall not exceed fifteen (15) years from Final Acceptance, regardless of whether or not Actual Costs have been fully reimbursed;
  8. All books and records of the Developer relating to Actual Costs of Improvement(s) for which Developer seeks reimbursement, shall be open to the City at all reasonable times for the purpose of auditing and verifying such costs.
- D. The Developer shall notify all property owners affected by any reimbursement agreement, by U.S. mail, first class postage prepaid, that a reimbursement request which may affect their property has been submitted to the City Manager. Developer shall issue such notice in connection with submitting any reimbursement request to the City Manager.
- E. It is the responsibility of the Developer or its successors or assigns to notify the City in writing of any changes in address for notices and other matters under this Agreement. Upon receipt of an application for development by a Benefitted Landowner, the City shall mail notice of such application to Developer using the Developer's last known address provided to the City. Unless the Developer responds within thirty (30) days after mailing of such notice, seeking reimbursement, then the City shall be authorized to approve the application for development and to release the Benefitted Landowner from any reimbursement obligation, and the Developer, its successors and assigns shall forfeit any right to receive such reimbursement.
- F. For shared Improvements, the construction of shared Improvements and related facilities may be arranged according to a joint reimbursement agreement between Benefitted Landowners including Developer, who each agree in good faith to pay and/or reimburse their proportionate share of Improvement costs providing mutual benefit. In such cases the Developer shall use its best efforts and work in good faith to reach agreement regarding reimbursement for shared Improvements, and Developer assumes sole responsibility for the administration and collection of any and all moneys payable under shared Improvements reimbursement agreement(s). A fully executed shared Improvements reimbursement agreement shall be a condition precedent to the City's approval of an application for development, building permit, or approval and recording of a final plat, related to any Benefitted Landowner subject to such reimbursement agreement(s).

**SECTION 4  
STREET IMPROVEMENTS**

- 4.1 Definitions.** For the purposes of this Agreement, street improvements shall include all improvements within the right-of-way, such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping, and drainage improvements.
- 4.2 Street Signs, Traffic Signs and Striping.** The Developer shall at its expense install street name signs on all local, collector and arterial streets, and stop signs, speed limit, and other traffic control signs on local streets. Developer shall at its expense install signs and striping on collector and arterial streets in a manner reasonably approved by the City and in accordance with the CDOT Manual on Uniform Traffic Control Devices (MUTCD), as from time to time amended, and any other applicable legal requirements.
- 4.3 Streets.** All internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time, and the approved construction Plans, and according to any Public Improvements Phasing Plan in **Exhibit B**.

**SECTION 5  
PUBLIC LAND CONVEYANCE AND LANDSCAPING**

- 5.1 Public Land Conveyance.**
- 5.1.1** Developer shall convey to the City all lands for public use as shown in the Final Plat(s), such as those listed in **Exhibit D**. Such conveyance of lands for public use shall be completed at the time the Final Plat for all or any portion of the Development is approved by the City and as a condition precedent to the recording of any such Final Plat. No Final Plat(s) shall be recorded or implemented until said conveyance is complete. Said conveyances shall be by special warranty deed in form and substance satisfactory to the City Attorney.
- 5.1.2** As part of its application for a final plat for all or any portion of the Development, the Developer shall also furnish, at its own expense, an ALTA title commitment, for all interest(s) to be dedicated and conveyed to the City, subject to approval by the City Attorney. The City shall accept for public use only those lands that are free and clear of all liens, taxes and encumbrances that may interfere with their intended public use, except for ad valorem real property taxes for the current year and thereafter. The City shall not accept lands for public use with encumbrances, either surface or underground, as revealed on the title commitment or upon physical inspection, which limit the property for its intended public use. The Developer shall, at its sole expense, cause a title policy in conformance herewith to be delivered to the City at the time of the conveyance.
- 5.2 Landscape Improvements.** For public lands and rights-of-way, Developer shall furnish to the City complete final landscape and irrigation plans for each Phase of development and obtain approval by the City Manager or the Manager's designee prior to commencement of construction.

## SECTION 6 WATER

- 6.1 **Specifications.** All water mains, lines, and appurtenances thereto shall be constructed and installed pursuant to City-approved plans, specifications and the Schedule of Improvements, attached hereto as **Exhibit B**, including both on-site and off-site improvements as necessary for the Development.
- 6.2 **Water Dedications.** Developer shall comply with all requirements associated with the dedication and conveyance of water for the Development, or the payment of a fee-in-lieu of such water dedication, as applicable [See **Exhibits E & F attached hereto.**]

## SECTION 7 SEWER LINES

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

## SECTION 8 OTHER IMPROVEMENTS

- 8.1 **Street Lights.** The total cost of street light installation, as shown on the approved construction plans for the Development, shall be the Developer's obligation. Developer shall cause United Power, or the applicable utility company, to install all required street lighting pursuant to City-approved plans and specifications. Said streetlights shall be consistent with the City-standard streetlight and shall be installed concurrently with the construction of streets on which they are located, unless otherwise approved or required by the City.
- 8.2 **Drainage and Stormwater Improvements.**
- 8.2.1 Developer shall construct on-site and off-site drainage and storm-water improvements and facilities, as necessary to provide adequate drainage capacity and to properly regulate and control the proper drainage of flood and surface water runoff within the Development. In order that such storm and surface water may be properly drained and controlled, pollution reduced, and the environment protected and enhanced, such drainage and storm-water improvements and facilities shall comply with Chapter 14, *Storm Drainage*, BMC, all applicable state and federal stormwater regulations (as additionally described in **Exhibit H**). All City-approved plans and specifications, and the Schedule of Improvements, attached hereto as **Exhibit B**.
- 8.2.2 Developer shall initiate no overlot grading until the City approves the required drainage improvement plans in writing and a grading permit is issued. Drainage improvements shall not cause any damage to adjacent or downstream properties resulting from erosion, flood, or environmental impact during or after construction. Any lot-specific drainage improvements not constructed by the Developer shall be constructed by

the lot owner, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the City's then-existing drainage, stormwater and floodplain regulations.

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

## SECTION 9 SPECIAL PROVISIONS

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

## SECTION 10 MISCELLANEOUS TERMS

- 10.1 Breach of Agreement.**

**10.1.1** In the event that the Developer should fail to timely comply with any of the terms, conditions, covenants, or obligations 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) calendar days of written notice of breach issued by the City, unless the City in writing and in its sole discretion designates a longer period, then the City may draw upon the Improvement Guarantee and complete the Improvements at the Developer's expense. The Developer's expense shall be limited to the costs incurred by the City, as defined herein. Notice by the City to the Developer will specify the conditions of default.

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

**10.1.3** If the City determines in its sole discretion that an emergency exists, such that an Improvement must be completed in less than seven (7) days, the City may immediately draw upon the Improvement Guarantee without notice to Developer, and may complete the Improvements at Developer's expense.

**10.1.4** In the event the Improvement Guarantee is unavailable or guarantees an insufficient amount, the City shall use its best efforts to notify Developer at the earliest practical time.

**10.1.5** The City may also, during any cure period and until completion of the Improvements in compliance with this Agreement, withhold any additional infrastructure permits, building permits, certificates of occupancy, or utility connections or services.

10.1.6 Nothing herein shall be construed to limit the City from pursuing any other remedy at law or in equity, which may be appropriate under City, state, or federal law. Failure to timely complete construction of Improvements, which is solely due to inclement weather, shall not be considered a breach of this Agreement. All costs incurred by the City, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies occasioned by the Developer's breach, shall be the responsibility of the Developer. The City may deduct these costs from the Improvement Guarantee and seek indemnification and reimbursement from the Developer if the Improvement Guarantee does not reimburse the City.

10.2 **Recording of Agreement.** The City shall record this Agreement at Developer's expense in the office of the Clerk and Recorder in Adams County, Colorado, and the City shall retain the recorded Agreement.

10.3 **Binding Effect of Agreement.** This Agreement shall run with the land included within the Development and shall inure to benefit of and be binding upon the successors and assigns of the parties hereto.

10.4 **Assignment, Delegation and Notice.** Developer shall provide to the City, for approval, written notice of any proposed transfer of title to any portion of the Property and of the Development Agreement obligations to any successor, as well as arrangements, if any, for delegation of the Improvement obligations hereunder. Developer and its successors and assigns shall, until written City approval of the transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Developer under this Agreement.

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

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

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

Developer:  
North Forest Office Space Development - Colorado, LLC  
13655 E. 104<sup>th</sup> Ave., Ste. 800 500  
Commerce City, CO 80022

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

or to such other address or the attention of such person(s) as hereafter designated in writing in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 10.7 Force Majeure.** Whenever Developer is required to complete performance, construction, maintenance, repair, or replacement of Improvements by an appointed deadline, the time for performance shall be extended for a reasonable period if the performance cannot as a practical matter be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer.
- 10.8 Approvals.** Whenever approval or acceptance of a matter is required or requested of the City, pursuant to any provision of this Agreement, the City shall act with reasonable diligence in reviewing and responding to such matter.
- 10.9 Previous Agreements.** Any previous written or recorded agreement between the Parties affecting the Property, or their successors and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall continue to apply to this Development. If any such prior agreements conflict with this Agreement, then this Agreement controls.
- 10.10 Title and Authority.** Developer warrants to the City that it is the record owner for the Property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant having full power and legal authority to enter into this Agreement.
- 10.11 Severability.** This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Developer any provision of the Agreement is held to violate local, state, or federal law and is thereby rendered unenforceable, then the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 10.12 Agreement Status After Final Acceptance.** Upon Final Acceptance by the City of all Improvements and full compliance by Developer with all terms and conditions of this Agreement, and provided that no litigation or claim is pending related to this Agreement, and the applicable statute of limitations has tolled for any potential claim, this Agreement shall no longer be in effect.

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

[signatures on following page]





## TELLURIDE BUSINESS PARK II

A PORTION OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 66  
WEST OF THE 6TH P.M.  
CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 2 OF 3

**Ownership**  
IN WITNESS WHEREOF, THESE PARTIES TO BE EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_ HAS CAUSED  
THIS INSTRUMENT TO BE EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_

OWNER: ADAM K WOODS FAMILY TRUST  
BY: ADAM K WOODS AS \_\_\_\_\_ OF ADAM K \_\_\_\_\_

ACTED BY PUBLIC  
STATE OF COLORADO )  
COUNTY OF ADAMS )  
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_\_

BY: \_\_\_\_\_  
WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_  
NOTARY ADDRESS: \_\_\_\_\_

**Ownership**  
IN WITNESS WHEREOF, THESE PARTIES TO BE EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_ HAS CAUSED  
THIS INSTRUMENT TO BE EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_

OWNER: DEAN R COLLIGAN  
BY: DEAN R COLLIGAN \_\_\_\_\_

ACTED BY PUBLIC  
STATE OF COLORADO )  
COUNTY OF ADAMS )  
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_\_

BY: \_\_\_\_\_  
WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_  
NOTARY ADDRESS: \_\_\_\_\_

**This Company's Certificate**  
REPRESENTING LAND TITLE GUARANTY COMPANY CERTIFY THAT I HAVE  
EXAMINED TITLE TO THE DESCRIBED LAND REFERRED TO IN THE CITY OF  
BRIGHTON, COLORADO, AND THAT THE SAME IS UNENCUMBERED AND IS  
FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT THOSE  
WHICH APPEAR IN SCHEDULE B-1 OF COMPONENT NUMBER  
703-3467.

LAND TITLE GUARANTY COMPANY DATE \_\_\_\_\_

**City Council**  
THIS IS TO CERTIFY THAT THIS PLAT WAS ACCEPTED AND APPROVED BY THE CITY  
COUNCIL FOR THE CITY OF BRIGHTON ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
ASSESSMENT OF THE BRIGHTON MUNICIPAL CODE

MAP ID: \_\_\_\_\_

**Certificate of the Clerk and Recorder**  
THIS PLAT AND OBLIGATION WAS FILED IN THE OFFICE OF THE ADAMS COUNTY  
CLERK AND RECORDER, IN THE STATE OF COLORADO AT \_\_\_\_\_ M. ON THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: COUNTY CLERK AND RECORDER DEPUTY \_\_\_\_\_

INSTRUMENT NO. \_\_\_\_\_

**Flatrons, Inc.**  
Surveying, Engineering & Geomatics  
www.flatrons.com  
655 BRYAN AVE  
LOUISVILLE, CO 80501  
TEL: (303) 774-1124  
FAX: (303) 774-1124

TELLURIDE BUSINESS PARK II  
COPYRIGHT 2016, FLATRONS, INC.

**FOR REVIEW ONLY**

LOG NUMBER: 161600035455  
DATE: 05/09/2016  
PLAT BY: ELIZABETH  
CHECKED BY: J. ZEIDMAN  
SHEET 2 OF 3



**TELLURIDE BUSINESS PARK**

FSI #64,834

THE FOLLOWING IS FOR BUDGET PURPOSES ONLY -  
FINAL PRICING TO BE DETERMINED FROM APPROVED FINAL DRAWINGS.

DATE: 3/14/2016

**FLATIRONS, INC. - ENGINEER ESTIMATE  
WIDENING OF TELLURIDE STREET & STORM WATER**

| CODE |   | UNIT | # OF UNITS | PRICE      | COST               |
|------|---|------|------------|------------|--------------------|
| 1000 | TELLURIDE ST. (WESTERN PORTION)                   |      |            |            |                    |
|      | 9" FULL DEPTH ASPHALT                             | SY   | 711        | \$40.00    | \$28,440.00        |
|      | CROSS PANS  | EA   | 1          | \$2,000.00 | \$2,000.00         |
|      | VERTICAL CURB 24"                                 | LF   | 152        | \$22.00    | \$3,344.00         |
|      | STREET LIGHTING                                   | LS   | 1          | \$5,000.00 | \$5,000.00         |
|      | STRIPING  | LS   | 1          | \$1,000.00 | \$1,000.00         |
|      | RESEEDING/RESTORATION                             | LS   | 1          | \$800.00   | \$800.00           |
|      | 10' CONCRETE TRAIL                                | LF   | 200        | \$40.00    | \$8,000.00         |
|      | ROW LANDSCAPE MATERIAL AND LABOR                  | EA   | 1          | \$6,500.00 | \$6,500.00         |
|      | TRAFFIC CONTROL                                   | LS   | 1          | \$800.00   | \$800.00           |
|      | EARTHWORK - MISCELLANEOUS                         | LS   | 1          | \$9,000.00 | \$9,000.00         |
|      | EARTHWORK - SUBGRADE PREP                         | LF   | 300        | \$5.00     | \$1,500.00         |
|      | 30" CORRUGATED PLASTIC OUTLET PIPE                | LF   | 40         | \$40.00    | \$1,600.00         |
|      | PRECAST OUTLET STRUCTURE                          | EA   | 1          | \$2,500.00 | \$2,500.00         |
|      | TRASH GRID AND RESTRICTOR PLATE                   | EA   | 1          | \$750.00   | \$750.00           |
|      | 100 YEAR RESTRICTOR PLATE                         | EA   | 1          | \$250.00   | \$250.00           |
|      | WATER QUALITY ORIFICE PLATE                       | EA   | 1          | \$250.00   | \$250.00           |
|      | STORMWATER OUTLET LABOR                           | EA   | 1          | \$1,250.00 | \$1,250.00         |
| 1000 | <b>SUBTOTAL - TELLURIDE ST. (WESTERN PORTION)</b> |      |            |            | <b>\$72,984.00</b> |

**EXHIBIT C**

**IRREVOCABLE LETTER OF CREDIT FORM**

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

**LENDER'S  
LETTERHEAD**

TO: City of Brighton, Colorado  
500 South 4<sup>th</sup> Avenue  
Brighton, CO 80601

Letter of Credit #: \_\_\_\_\_  
Issuing Bank: \_\_\_\_\_  
Date of Issue: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_  
Amount: \_\_\_\_\_

Greetings:

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

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

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

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

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

We hereby agree with the City that:

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

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

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

(D) In the event it becomes necessary for the City to bring an action to enforce the terms of this Letter of Credit, or any action alleging wrongful dishonor of this Letter of Credit, and the City prevails in such action, the City shall be entitled to recover its reasonable attorney's fees and all costs and expenses associated with such action;

(E) If we bring an action against the City related directly or indirectly to this Letter of Credit, and the City prevails in such action, the City shall be entitled to recover its reasonable attorney's fees and other costs of such action; and

(F) The amount of funds available under this Letter of Credit may not be reduced except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the City.

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

Very truly yours,  
(NAME OF BANK)

By: \_\_\_\_\_  
Signature of Authorized Signing Officer

\_\_\_\_\_  
Print Name



**EXHIBIT D**

**LEGAL DESCRIPTION OF PUBLIC USE LAND CONVEYANCE**

1. **School Site Dedication.** School land dedication is not applicable for Telluride Business Park II, as no residential is proposed for the subdivision. See Exhibit G, Special Provisions.
2. **Community Park.** Community Park dedication is not applicable for Telluride Business Park II, as no residential is proposed for the subdivision. See Exhibit G, Special Provisions.
3. **Neighborhood Park.** Neighborhood Park dedication is not applicable for Telluride Business Park II, as no residential is proposed for the subdivision. See Exhibit G, Special Provisions.
4. **Open Space Land Dedication.** Open Space dedication is not applicable for Telluride Business Park II, as no residential is proposed for the subdivision. See Exhibit G, Special Provisions.

Telluride Business Park II

Development Agreement

Final Draft

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**EXHIBIT E**

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

**[Not required for the Telluride Business Park II]**

**EXHIBIT F**

**WATER DEDICATION AGREEMENT**

**THIS WATER DEDICATION AGREEMENT** ("Agreement") is made and entered into this 27<sup>th</sup> day of April, 2016 by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado (the "City") and NORTH FOREST DEVELOPMENT COLORADO, LLC, a Colorado limited liability company (the "Developer").

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

**WHEREAS**, in conjunction with the approval of the Final Plat for the Property, Developer executed a Development Agreement; and

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

**WHEREAS**, after reviewing its current inventory of water resources, together with other factors relating to the City's water resource needs and the water needs of this Development, the City has determined and the Developer has agreed that the Developer shall pay the "without water rights" fee for this Development.

**NOW, THEREFORE**, in consideration of the foregoing recitals and representations, together with other good and sufficient consideration, the Parties agree:

1. The Developer will pay at the time of building permit issuance, the "*Without Water Rights*" Fee for water taps sufficient to serve the Development, in the amount set forth in the City's Annual Fee Resolution then in effect, as the same may be amended from time to time.
2. This Agreement is an attachment to the Telluride Business Park II Development Agreement and is incorporated therein by reference.
3. This Agreement is non-transferable and may only be modified or amended in writing, signed by the parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized officials to execute and deliver this Agreement the day and year first above written.



**EXHIBIT G**

**SPECIAL PROVISIONS**

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN TELLURIDE BUSINESS PARK II DEVELOPMENT AGREEMENT. SHOULD THERE BE ANY CONFLICT BETWEEN THE DEVELOPMENT AGREEMENT AND THE SPECIAL PROVISIONS SET FORTH IN THIS **EXHIBIT G**, THE MORE SPECIFIC TERMS OF THIS **EXHIBIT G** SHALL CONTROL.

1. **Phasing Plan.** The Phasing Plan, attached hereto as **Exhibit B**, sets forth the approved phasing of construction of the Improvements for this Development. No amendments or alterations to the Phasing Plan may be made without the prior written consent of the City.
2. **Temporary Uses.** Temporary uses refer to, but are not limited to, temporary on-site construction offices. Such temporary uses may be allowed with approval of a temporary use permit issued by the Planning and Community Development Department.
3. **City Regulations.** Developer shall develop the Property in conformance with all City Ordinances and Regulations, including those outlined in Chapter 17 of the City's Municipal Code, as the same may be subsequently amended from time to time, including, but not limited to: Article 17-16, the Zone District Regulations; and Article 17-24, Performance Standards; and Article 17-48, the Commercial Design Standards; and the Public Works Design and Construction Standards and Specifications Manual, current edition.
4. **Trails Construction.** Developer shall at its expense design and construct to completion a ten-foot (10') wide concrete trail along Telluride Street, for the full length of the Property, in accordance with the approved Final Plat, Open Space Plans, Civil Engineering Documents, and applicable City specifications in effect at the time of construction, and Developer shall obtain written Construction Acceptance of the trail prior to, and as a condition precedent to, the issuance of any building permit for the Development.
5. **Construction of Telluride.** Prior to the issuance of any building permit for the Development, and as a condition precedent thereto, the Developer shall pay a fee-in-lieu for the design and construction of the future widening of Telluride Street, to include a single lane of asphalt-paved roadway, curb, gutter, striping, street lighting, reseeding/restoration, traffic control, and all necessary earthwork. Said fee-in-lieu shall be paid to the City in cash or other good and immediately available funds, and shall be calculated based upon the City approved engineer's estimate of costs provided by the Developer in **Exhibit B**.

6. **Construction and Maintenance of Drainage Infrastructure.** As described in the Final Plat, Civil Engineering Documents and Landscape Plans, the Developer shall at its expense construct all specified drainage facilities including ponds, storm water culverts and related drainage infrastructure for the Development in the appropriate drainage easements. Development of this parcel must include storm water outlet construction from the pond located on Parcel #156909200002 - adjacent to north - Telluride Business Park. All such drainage infrastructure shall be maintained by Developer or its successor-in-title including routine maintenance and cleaning of all culverts and associated infrastructure, to ensure proper functioning of the drainage system as outlined in **Exhibit H.**
7. **Common Landscape Areas.** The Developer shall purchase water taps for all landscape areas and tracts that are to be developed, owned, and maintained by any Common Interest Management Association or similar entity (each, an "Association"). Developer shall complete the installation of all landscape Improvements for such common areas, in accordance with the Landscape Plans and Civil Engineering Documents, prior to completion of each Phase of development and consistent with any Phasing Plan attached as part of **Exhibit B.** The Developer and any Association shall remain jointly and severally liable for all landscaping Improvement obligations, including installation, replacement, and maintenance. The installation of landscaping shall be completed and approved by the City before construction shall be allowed to begin on the next Phase. The Developer and any Association shall maintain all common-area landscaping in good condition and shall be responsible for the replacement of any dead or diseased landscaping, for one year after issuance of the last certificate of occupancy within the Development or applicable Phase.
8. **Water Line Reimbursement.** At or before the time of connecting the Development to City water service, the Developer shall pay a reimbursement fee of \$15,354.48 due to the City for and in consideration of the City's reconstruction of that certain twelve-inch (12") water line located in Telluride Street. Such reimbursement shall be paid in full to the City prior to, and as a condition precedent to, the issuance of a building permit for the Development.
9. **Sewer Line Reimbursement.** So long as this Development connects to the existing sewer line located along the Development's west property line, Developer shall not be required to reimburse the City for the new sewer line in Telluride Street. However, if connection is made to the new sewer line in Telluride Street, then the cost of reimbursement shall be calculated based on the location of such connection, and such reimbursement shall be paid in the manner provided in Section 8 above.

**EXHIBIT H**

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

**THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between North Forest Development Colorado, LLC, hereinafter referred to as the "Owner," and the City of Brighton, a Colorado home rule municipality, hereinafter referred to as "City."**

**RECITALS**

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

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

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

**COVENANTS**

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

**Section 1. Subject Property**

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

**Section 2. Facilities**

The stormwater treatment and drainage facilities located on the Property to be operated, maintained, repaired or replaced by the Owner, and/or the Responsible Party, are more fully described in **Exhibit H3**, attached hereto and by this reference is made a part hereof (hereinafter referred to as "Facilities").

### **Section 3. Site Specific Maintenance Plan**

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

### **Section 4. Obligations of Owner and/or Responsible Party**

The Owner and the Responsible Party agree to the following:

- A) All Facilities on the Property shall be maintained to meet erosion control, groundwater recharge, and stormwater runoff quantity and quality standards of Chapter 14, Storm Drainage, the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual Volume 3, and the City of Brighton Standards and Specifications Manual, Chapter 3, Drainage and Flood Control, as the same may be amended from time to time.
- B) To operate, maintain, repair, and replace as necessary all facilities, including routine and non-routine maintenance, as the same may be required by this Agreement, the ordinances, rules and regulations of the City as they may be amended from time to time. Preventative and corrective maintenance repair and replacement shall be performed to maintain the function and integrity of the Facilities.
- C) To keep the Facilities in good condition and repair, free of trash, debris, algae, standing water and other conditions that would constitute a nuisance. Such maintenance shall include, but not limited to slope stabilization, bank grading, sediment removal, mowing, repairs of mechanical and structural components, installation and maintenance of adequate landscaping as well as adequate provision for weed control and replacement of dead plant material. In the event that any detention or retention area within the Property contains standing water for more than ninety-six (96) continuous hours, the Owner and/or Responsible Party shall install an aeration or other appropriate mitigation system acceptable to the City, in order to minimize or prevent algae blooms, mosquitoes, and any other conditions that may constitute a nuisance or otherwise adversely affect the public health, safety and welfare.
- D) The Owner and/or Responsible Party shall perform regular inspections in accordance with the Plan on all required Facilities and document maintenance, repair, and replacement needs to ensure compliance with the requirements of this Agreement.
- E) Upon written notification by the Director of Utilities, the Owner and/or Responsible Party shall, at their own cost and within a reasonable time period determined by the Director, have an inspection of the Facilities conducted by a qualified professional; file with the Director a

copy of the written report of inspection prepared by the professional; and, within the time period specified by the Director complete any maintenance, repair, or replacement work recommended in the report to the satisfaction of the Director.

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

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

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

#### **Section 5. City Access to Property**

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

#### **Section 6. Remediation**

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

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

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

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

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

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

**Section 8. Notice**

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

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

*City:*

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

*With Copy To:*

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

**Section 9. Definitions**

- A) **"Director"** means the Director of Utilities of the City of Brighton, or his or her designee.
- B) **"Routine"** maintenance procedures includes, but are not limited to, inspections, debris and litter control; mechanical components maintenance, repair, and replacement; vegetation management; and, other routine tasks.
- C) **"Non-routine procedures"** include, but are not limited to, those associated with removing accumulated sediments from stormwater quality facilities, restoration of eroded areas, snow and ice removal, fence repair or replacement, restoration of vegetation and long term structural repair, maintenance and replacement.

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

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

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

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

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

#### **Section 10. Miscellaneous**

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

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

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

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


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

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

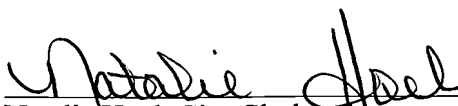
G) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

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

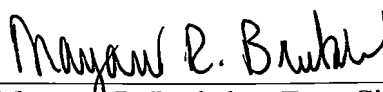
**CITY OF BRIGHTON, COLORADO**

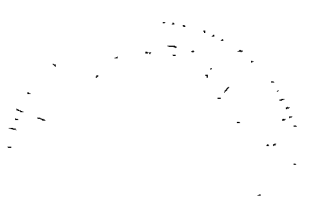
By:   
Curtis Bauers, Director of Utilities

ATTEST:

  
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

  
Margaret R. Brubaker, Esq., City Attorney





**EXHIBIT H1  
Property Description**

**LEGAL DESCRIPTION**

FOR THE PROPOSED COMMERCIAL DEVELOPMENT NEAR THE INTERSECTION OF TELLURIDE STREET AND HUERFANO STREET AN 3.37 ACRE PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO SHEET 1 OF 1

KNOW ALL MEN BY THESE PRESENTS THE UNDERSIGNED BEING THE OWNER OF THAT PART OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ASSUMING THE THE EASTERLY LINE OF THE NORTHWEST QUARTER OF SECTION 9 AS SHOWN ON THE PLAT OF TELLURIDE BUSINESS PARK, AS RECORDED IN ADAMS COUNTY AT REC# 2007000112535 ON DECEMBER 7, 2007, TO BEAR SOUTH 00°38'41" EAST, BETWEEN A FOUND 3" ALUMINUM CAP "COLO. DEPT. OF TRANS. PLS 11434 1992" "S4/S9,T1S, R66W" IN RANGE BOX AT THE NORTH QUARTER CORNER OF SECTION 9 AND A FOUND 3 1/4" ALUMINUM CAP IN RANGE BOX STAMPED "AMERICAN WEST LS 27269 2005" "C 1/4, SEC 9, T1S, R66W" AT THE CENTER QUARTER CORNER OF SECTION 9. ALL BEARINGS SHOWN HEREON ARE RELATIVE THERETO

COMMENCING 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 1085.91 FEET; THENCE SOUTH 89°25'01" WEST, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF TELLURIDE BUSINESS PARK AMENDMENT NO. 1; THENCE SOUTH 00°38'41" EAST, PARALLEL WITH SAID EAST LINE, A DISTANCE OF 200.00 FEET; THENCE SOUTH 89°25'01" WEST AND PARALLEL WITH SAID NORTH LINE, A DISTANCE OF 748.87 FEET TO A POINT ON THE CENTERLINE OF THE BRIGHTON LATERAL DITCH; THENCE ALONG SAID CENTERLINE 201.38 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 900.94 FEET, AN INCLUDED ANGLE OF 12°48'25" AND SUBTENDED BY A CHORD BEARING NORTH 8°41'39" EAST, A DISTANCE OF 200.96 FEET; THENCE CONTINUING ALONG SAID CENTERLINE, NORTH 17°25'56" EAST, A DISTANCE OF 1.75 FEET TO THE SOUTHWEST CORNER OF TELLURIDE BUSINESS PARK AMENDMENT NO. 1; THENCE NORTH 89°25'01" EAST PARALLEL WITH SAID NORTH LINE AND ALONG THE SOUTH LINE OF TELLURIDE BUSINESS PARK AMENDMENT NO. 1, A DISTANCE OF 715.72 FEET TO THE POINT OF BEGINNING.BEGINNING, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO.

SAID PARCEL CONTAINS 3.37 ACRES MORE OR LESS.

JOB NUMBER: 15-64,834  
DRAWN BY: J. BLASINGAME  
DATE: JULY 2, 2015

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

**Flatirons, Inc.**  
*Surveying, Engineering & Geomatics*



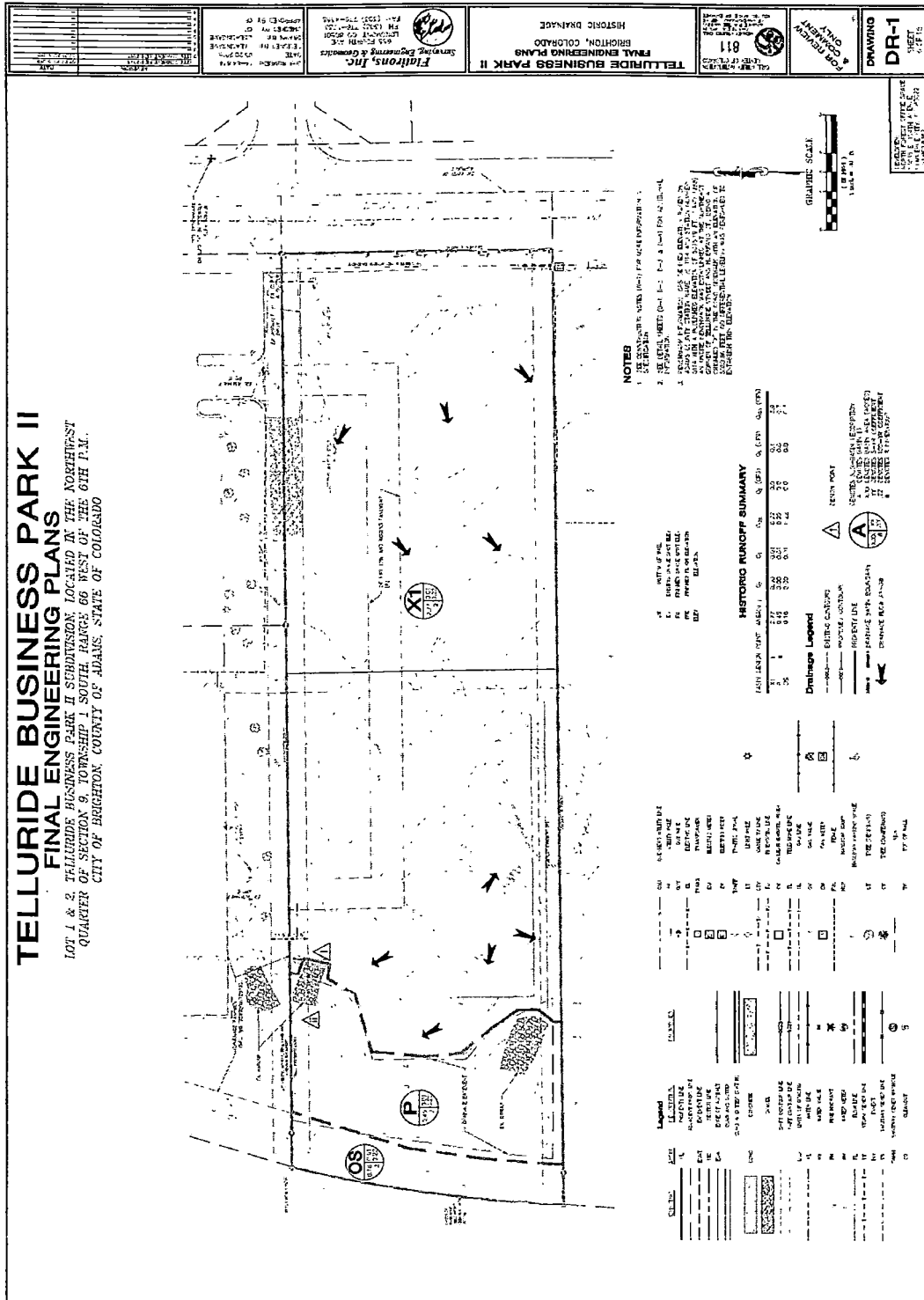
655 FOURTH AVE  
 LONGMONT, CO 80501  
 PH: (303) 776-1733  
 FAX: (303) 776-4355  
[www.FlatironsInc.com](http://www.FlatironsInc.com)

BY: J. BLASINGAME FILE: 64834- VIC MAP & LEGAL DWG DATE: 7/7/2015 10:15 AM

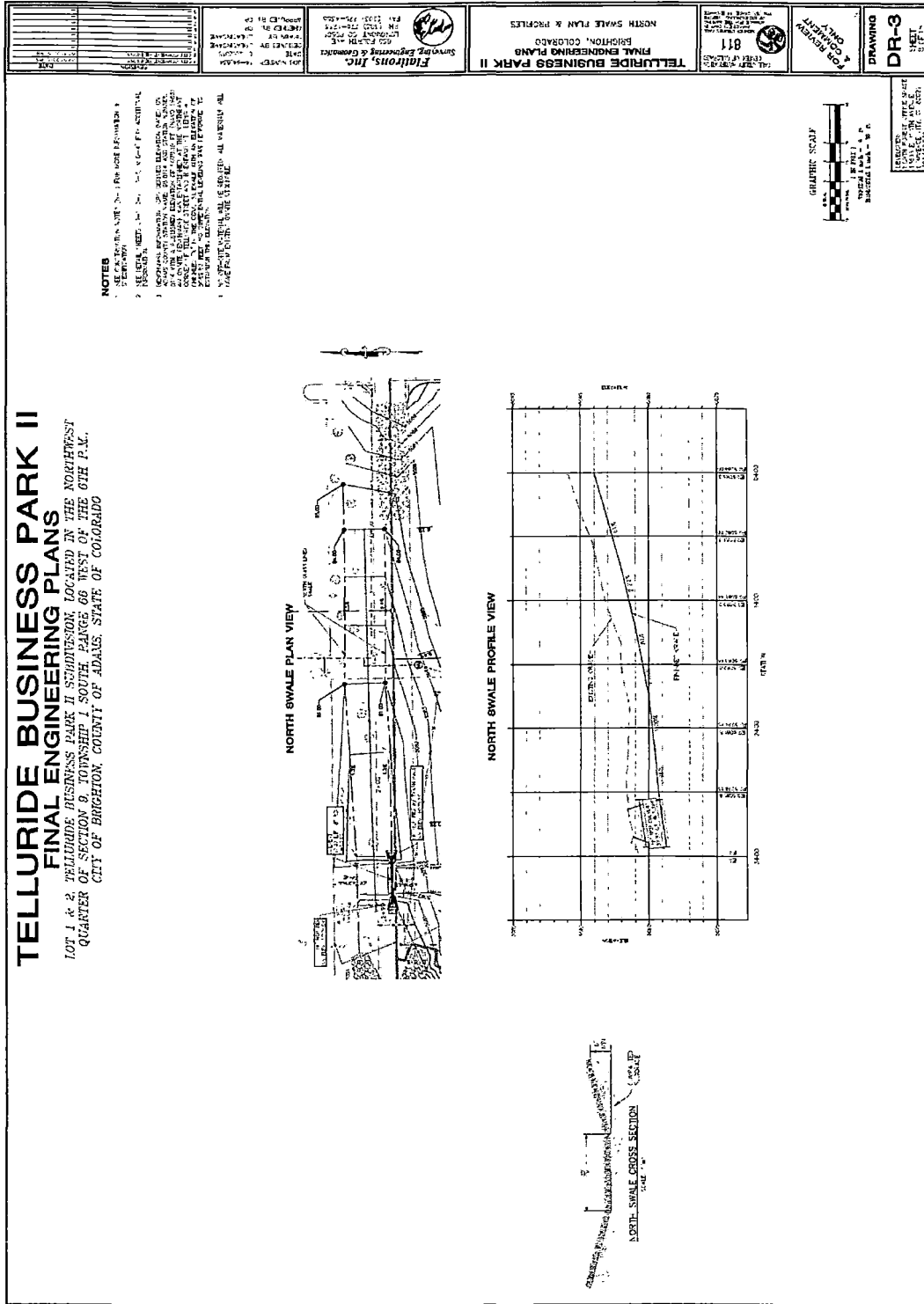


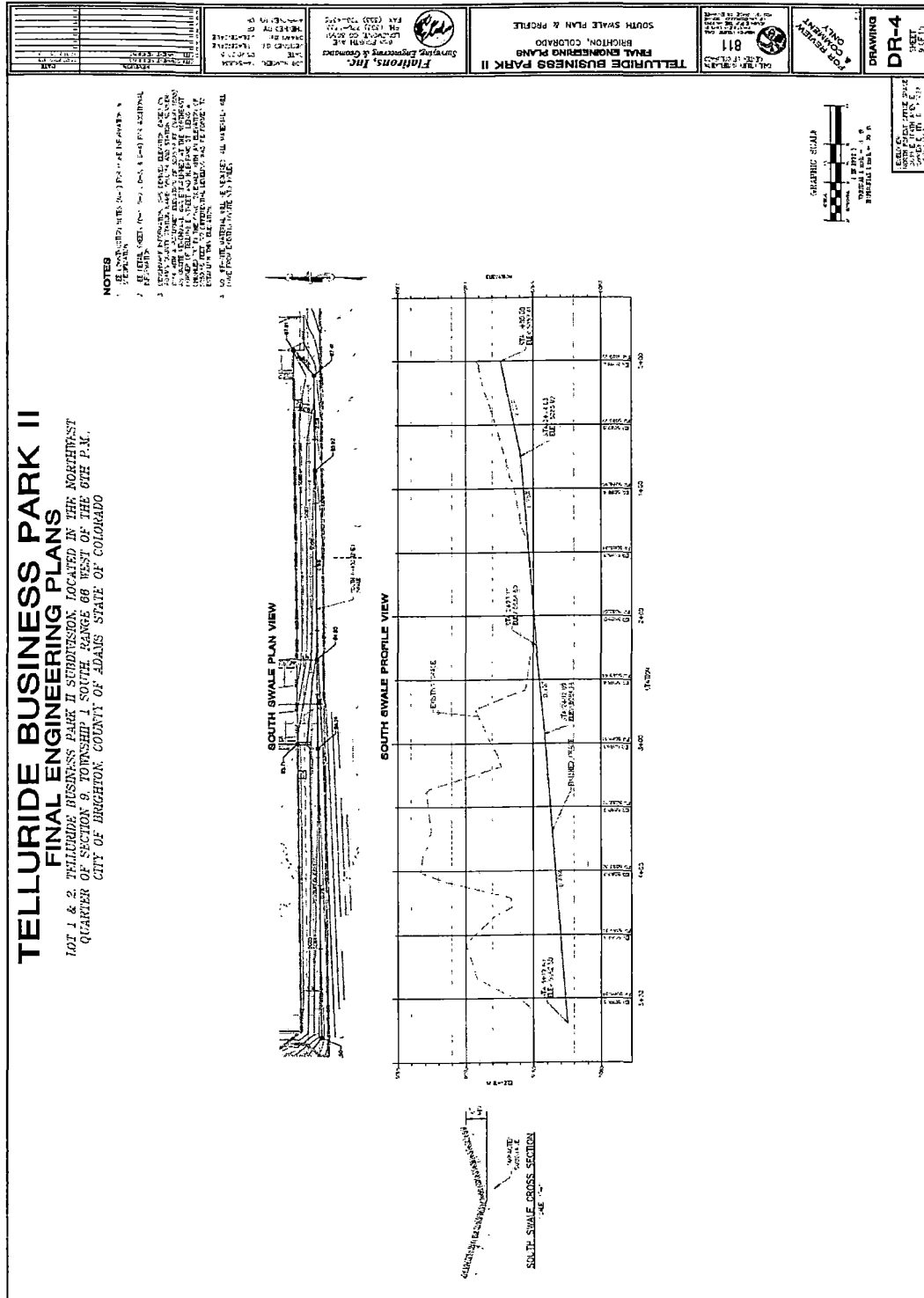
**EXHIBIT H3**  
**Facilities Description and Location Map**

- 1) Pond:**
- 2) Swales:**
- 3) Storm sewer inlet pipes, boxes and Manholes, etc:**
- 4) Emergency Spillways:**
- 5) Manifold under Brighton Lateral**
- 6) Evacuation Pond System**









**EXHIBIT H4**  
**Site Specific Maintenance Plan**  
**(Use UDFCD Recommendation)**

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

**1) Retention/Detention Ponds:**

**Responsibilities:**

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

**Inspection**

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

**Debris and Litter Removal**

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

**Aquatic Plant Harvesting**

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

### **Mosquito Control**

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

### **Sediment Removal from the Forebay**

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

### **Sediment Removal from the Pond Bottom**

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

### **Sediment Removal from the Trickle Channel, and Micropool**

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

### **Erosion and Structural Repairs**

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

## **2) Swales:**

### **Responsibilities**

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

### **Inspection**

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

### **Debris and Litter Removal**

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

### **Aeration**

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

### **Mowing**

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

### **Irrigation Scheduling and Maintenance**

Irrigation schedules must comply with the City of Brighton water regulations. The schedule must provide for the proper irrigation application rate to maintain healthy vegetation. Less irrigation is typically needed in early summer and fall, with more irrigation needed during July and August. Native grass should not require irrigation after establishment, except during prolonged dry periods when supplemental, temporary irrigation may aid in maintaining healthy vegetation cover. Check for broken sprinkler heads and repair them, as needed. Do not overwater. Signs of overwatering and/or broken sprinkler heads may include soggy areas and unevenly distributed areas of lush growth.

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

### **Fertilizer, Herbicide, and Pesticide Application**

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

Frequency of fertilizer, herbicide, and pesticide application should be on an as-needed basis only and should decrease following establishment of vegetation.

### **Sediment Removal**

Remove sediment as needed based on inspection. Frequency depends on site-specific conditions. For planning purposes, it can be estimated that 3 to 10% of the swale length or buffer interface length will require sediment removal on an annual basis.

**For Grass Buffers:** Using a shovel, remove sediment at the interface between the impervious area and buffer.

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

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

### **3) Storm sewer inlet pipes, boxes and manholes:**

#### **Responsibilities**

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

#### **Inspection**

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

#### **Debris and Litter removal**

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

#### **Erosion and Structural Repairs**

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

### **4) Emergency Spillways:**

#### **Responsibilities**

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

#### **Inspection**

Inspect annually.

#### **Erosion and Structural Repairs**

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