

PLANNING AND DEVELOPMENT DEPARTMENT

MEMORANDUM 17-03

DATE: February 13, 2017

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: James A. Hayes, AICP, City Manager *JH*
Brook Svoboda, Director of Planning and Development *BS*
Becky Smith, AICP, Planning Manager *BS*

SUBJECT: CR-18 Northglenn Pavilions Filing No. 4 – Final Plat and Subdivision Improvement Agreement

Purpose

To approve the Final Plat for Northglenn Pavilions Filing No. 4 (ATTACHMENT 2), and to repeal and reenact the existing Subdivision Improvement Agreement (SIA) through the attached resolution which would approve a new SIA (ATTACHMENT 1) for the associated Northglenn Pavilion Filing No. 4.

Background

The attached resolution would approve the Final Plat for the Northglenn Pavilions Filing No. 4, repeal the existing adopted SIA and adopt the proposed SIA to accommodate public infrastructure for the construction of 34 residential units arranged in duplex configurations.

In December of 2015 the City Council adopted a resolution that approved a SIA with the previous developer. At that time, the proposed Plat consolidated the 7 existing parcels into 1. The Minor Subdivision for the proposal at that time was never recorded.

The applicant is proposing to divide the seven (7) lots into thirty-four (34) lots and two (2) tracts (tracts A and B) to accommodate the proposed development under a "townhouse" scenario where the individual lots and structures are sold for private use and maintenance. Common areas and tracts A and B will be managed under a Home Owners Association (HOA). Previously the property was comprised of 7 lots under the original Northglenn Pavilion plat filing. All previous easements dedicated to the City of Northglenn are to be vacated with this Final Plat. Easements for water, sanitary sewer, and stormwater will be dedicated to the City via separate documents.

The Planning Commission approved the Final Plat, via Planning Commission Resolution #2016-12 (ATTACHMENT C), at the December 20th, 2017 Public Meeting with the following conditions:

- 1. The Developer shall enter into a Development Agreement, with the City of Northglenn, that will be recorded with the Adams County Clerk and Recorder, to memorialize the public improvements shown in the PUD plans.*
- 2. The utility configuration for the site requires the conveyance of an utility easement from the existing 12 unit condominium development to the City of Northglenn. To date that easement has not been executed. The applicant has stated that they are waiting to execute the easement until ownership of the property has changed. As a condition of*

approval, staff recommends that the easement be executed, recorded, and noted on the proposed plat prior to recording with the Adams County Clerk and Recorder.

Staff would like to note a correction to condition #2. The easement required from the existing 12 unit condominium development is a private easement granted to the Developer/HOA of the new development not to the City of Northglenn. As a condition of approval, staff recommends that the private easement be executed, recorded, and noted on the proposed plat prior to recording with the Adams County Clerk and Recorder.

The subdivision plat reflects the lot configuration for a 3.118 acre parcel of land for a proposed 34 unit housing development. Divides the existing 7 lots into 34 lots and tracts A & B, to accommodate development of the site.

Whenever a Subdivision includes improvements necessary to serve the area under development an improvement agreement guarantee is required by the City's Subdivision regulations (Section 12-2-4). The SIA memorializes the required infrastructure improvement and prescribes the following:

1. Prior to the issuance of any permits, the City Engineer shall certify the 100% Civil Construction Plans.
2. Developer shall provide a surety (Letter of Credit or Certificate of Deposit) in the amount of 100% of the (developer's) engineer's estimate for the improvements.
3. Said surety is required to be provided and accepted by the City, prior to the recordation of the Subdivision, and the issuance of any permits.
4. The Developer shall have twelve (12) months from the issuance of the 1st building permit to complete the improvements.
5. Upon completion the developer shall request a final inspection of the improvements and submit "As-Built" plans, once approved by the City, the surety will be reduced to 10% for a period of 2 years (warranty period).
6. At the end of the warranty period the City will re-inspect the improvements and then issue final acceptance with a release of the remaining surety.

The project has identified \$23,600.00 in improvements, which includes required connection charges, fire hydrant relocation, new manhole, and one stormceptor at the outfall of the detention pond. See Exhibits C&D of the SIA for additional details.

Budget Implications

Adoption of this resolution has no budgetary impacts.

Schedule/Time Implications

NA

Next Steps/City Council Options

The City Council makes the final decision regarding Final Plats and SIAs. The City Council options are as follows:

1. Approve the request, with or without conditions or stipulations;
2. Deny the request for reasons stated; or
3. Table the request for further consideration.

Staff Recommendation

Staff recommends Council approve CR-18

Staff Reference

Brook Svoboda, Director of Planning and Development bsvoboda@northglenn.org 303.450.8937

Attachments

Attachment 1 – Subdivision Improvement Agreement

Attachment 2 - Final Plat for Northglenn Pavilions Filing No. 4

**CITY OF NORTHGLENN
SUBDIVISION IMPROVEMENT AGREEMENT – FINAL PLAT
FOR**

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into and made by and between **BH NORTHGLENN, LLC 10630 E BETHANY DRIVE, SUITE B, AURORA, CO 80014** ("Owner/Developer") and the **CITY OF NORTHGLENN, COLORADO**, a Colorado home rule municipal corporation whose address is 11701 Community Center Dr, Northglenn, Colorado, hereinafter referred to as the "City" or "Northglenn." The Owner/Developer and the City shall collectively be referred to as the "Parties." This Agreement shall be effective following execution by the Owners/Owner/Developer and immediately upon the date of the authorized execution of this Agreement by the City.

RECITALS AND REPRESENTATIONS:

WHEREAS, Owner/Developer represents that it is the sole owner of the following described property located in the City of Northglenn, County of Adams, State of Colorado:

See Exhibit A

hereinafter referred to as the "Property;"

WHEREAS, Owner/Developer represents that it has authority to apply for and process a final plat for the Property, titled **NORTHGLENN PAVILION FILING NO. 4** ("Final Plat"), and is authorized to obtain all necessary approvals and enter into any agreements necessary for the development of the Property (the "Project");

WHEREAS, Owner/Developer plans to develop the Project and such development requires the dedication, construction, installation, and/or improvement of certain public improvements including but not limited to, storm drainage facilities, public thoroughfares and streets, private drives, curb, gutter and sidewalk, and other public and private facilities and improvements as described in the Final Plat application to serve the proposed development of the Property;

WHEREAS, in conjunction with submittal of the Final Plat, the Owner/Developer has submitted to the City supporting documentation including construction, grading/drainage, utility, street improvement, storm sewer, and electrical plans (collectively the "Construction Plans");

WHEREAS, on _____, 20____, the City Council of the City of Northglenn, after holding all necessary public hearings and having received a recommendation of approval from the Planning Commission, approved the final plat for the Property. A copy of the final plat is attached hereto as **Exhibit B** and incorporated herein; and

WHEREAS, it is the intent of this Agreement that the Owner/Developer shall be responsible for and shall pay all costs and expenses associated with the proposed, development of the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties, the approval by the City of Northglenn of the Final Plat, the dedication of certain land to the City for public purposes, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the parties, the Parties hereto agree as follows:

AGREEMENT

- 1.0 **PURPOSE.** The purpose of this agreement is to set forth the terms, conditions, and fees to be paid by the Owner/Developer upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the City of Northglenn Subdivision and Zoning Regulations, the City of Northglenn Home Rule Charter, any and all state statutes, and any other sections of the City of Northglenn Municipal Code, and are not intended to supersede any requirements contained therein.
- 2.0 **DELIVERY OF FINAL PLAT.** Upon the City's approval of the Final Plat, Owner/Developer shall immediately deliver the original of the Final Plat, containing all revisions and amendments required by the City Council or as directed by City Staff prior to Final Plat approval, to the City Clerk. Owner/Developer shall also pay for the costs of recordation of the Final Plat and this Agreement. In addition, Owner/Developer shall deliver to the City Clerk, along with the Final Plat, two (2) sets of complete and final Construction Plans.
- 3.0 **RECORDATION OF PLAT.** Owner/Developer shall prepare and submit to the City Clerk the Final Plat in a form and upon material acceptable for recordation by the Adams County Clerk and Recorder and shall provide the required Collateral as hereinafter defined. Failure of Owner/Developer to submit an acceptable Final Plat and Collateral Public Improvements as specified in Section 12 of this Agreement to the City Clerk within ninety (90) days of the date of this Agreement shall, upon the enactment of a resolution by the City Council finding that the submittal was untimely, void Final Plat approval for the Project and this Agreement. If Owner/Developer timely submits a completed and recordation-ready Final Plat to the City, the City agrees to record the Final Plat no later than fifteen (15) days after it is submitted to and received by the City. The Final Plat and Construction Plans, as approved by the City, are incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement.
- 4.0 **PUBLIC UTILITY FEES.** Owner/Developer shall pay all installation charges for lighting and gas services required by Xcel Energy providing services to the Project.

- 5.0 UNDERGROUNDING OF ALL UTILITIES. The Owner/Developer shall underground all electric, gas, cable and telephone lines (collectively, "utilities") within the boundaries of the Final Plat or which are required to be relocated pursuant to this Agreement or as a condition of approval of the Final Plat. All utilities providing public services to the Project shall be located within dedicated and platted public utility easements or public street rights-of-way which shall be approved and subject to acceptance by the City.
- 6.0 SUBDIVISION MONUMENTATION. In accordance with the applicable provisions of the Colorado Revised Statutes, as amended, and the Northglenn City Municipal Code, as amended, the Owner/Developer shall establish all subdivision monumentation and have the monumentation approved by the City prior to issuance of any certificate of occupancy within the Project.
- 7.0 STREET MAINTENANCE. The Owner/Developer shall take all reasonable steps necessary to limit and prevent the accumulation of, and to remove accumulated mud, sediment, dirt, trash, and other debris that is "tracked," blown, or otherwise carried onto public property and public rights-of-way during development of the Project. Owner/Developer also shall take all reasonable steps necessary to prevent its construction activities from damaging adjacent properties, including public rights-of-way and other public property. If any adjacent property or public right-of-way is damaged or destroyed during the construction of the Public Improvements as defined herein, Owner/Developer shall, at its sole cost, promptly repair or replace the same to a condition similar or equal to that existing before such damage.
- 8.0 DRAINAGE, RETENTION, AND DETENTION FACILITIES. The Owner/Developer shall construct all drainage, retention, and detention facilities in accordance with the Construction Plans approved by the City Engineer.
- 8.1 The Owner/Developer shall be responsible for all onsite drainage retention and detention as prescribed in Articles 13 & 17 of Chapter 16 of the City of Northglenn Municipal Code as amended.
- 8.2 PUBLIC PROPERTY DEDICATION/TITLE POLICY. A title commitment for any Property being dedicated to the City or upon which Public Improvements are being constructed shall be provided to the City. The title commitment shall show that all property is or shall be, subsequent to the execution and recording of the Final Plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as the City in its sole discretion determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the Final Plat.

8.3 By execution of the Final Plat, the Owner/Developer has offered for dedication to the City at no cost and the City has accepted such dedication of certain real property interests, as depicted on the Final Plat. No building permit or certificate of occupancy shall be issued unless and until the above requirement is satisfied.

9.0 CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Owner/Developer shall design, furnish, construct, and install the following public improvements as illustrated on the Final Plat and the approved Construction Plans ("Public Improvements") at the Owner/Developer's cost and expense:

See Exhibit C – Public Improvements Description

The Public Improvements shall be designed, furnished, constructed, and installed in accordance with the Final Plat, the Construction Plans and the Public Improvement Plans approved by the City Engineer and in accordance with applicable provisions of the City's applicable ordinances, rules and regulations in effect at the time of construction and all uniform building, construction, fire, plumbing, and safety codes adopted by the City in effect at the time of construction.

At all times during construction of the Public Improvements, the City shall have the right to test and inspect, or to require testing and inspection of materials and construction at Owner/Developer's expense. No excavation, facility or Public Improvement shall be covered until inspected by Northglenn, or the applicable service provider, or until such inspection is waived by the City in writing.

10.0 CONSTRUCTION PLANS AND COST ESTIMATE REQUIRED. Prior to the recordation of the Final Plat or the issuance of the first building permit for any improvement within the Project, the Owner/Developer shall provide to the City the following:

10.1 Final construction and engineering plans and drawings (collectively, the "Public Improvement Plans") suitable for the commencement of construction of all Public Improvements required within for Project bearing the stamp of a Colorado licensed engineer with experience in the design and engineering of such improvements. Such Public Improvement Plans shall be prepared in accordance with this Agreement, the Northglenn City Municipal Code, and the City of Northglenn Public Right-of-Way Standards and Specifications as amended and shall be subject to approval by the City Engineer in accordance with the Northglenn City Municipal Code. Such Public Improvement Plans shall specifically include, by way of illustration but not limitation, 100% complete final construction and engineering plans and drawings;

and

10.2 Construction cost estimates, as shown in **Exhibit D** for all costs and expenses associated with the construction and completion of all Public Improvements to be constructed by the Owner/Developer in accordance with this Agreement. Such cost estimate shall bear the stamp and a certification of accuracy of a Colorado-licensed engineer with experience in construction cost estimating. The City may, in its discretion and at the City's cost and expense, submit the Public Improvement Plans and Owner/Developer's cost estimate to a City-retained engineer for review and an opinion of the construction cost estimate. Reasonable revisions and modifications to the Owner/Developer's construction cost estimate requested by the City or the City-retained engineer shall be implemented by the Owner/Developer prior to final acceptance of the estimate by the City. Where the City's cost estimate exceeds the Owner/Developer's estimate, the City's estimate shall govern and control the amount of any required letter of credit or other surety required from the Owner/Developer for the Public Improvements.

11.0 REQUIRED SECURITY FOR PUBLIC IMPROVEMENTS.

11.1 In order to secure the construction and installation of the Public Improvements the Owner/ Developer shall, prior to recording the final plat in the real estate records of Adams County, which recording shall occur no later than ninety (90) days after the execution of this Agreement, at the Owner/Developer's expense, furnish the City with the performance guarantee described herein. The performance guarantee provided by the Owner/Developer shall be cash, an irrevocable letter of credit or other form of security as approved by the City, in which the City is designated as beneficiary in an amount equal to construction cost estimate described in Section 10.2 of this Agreement, in order to secure the performance and completion of the Public Improvements. The Owner/Developer agrees that approval of the final plat of the City is contingent upon the Owner/Developer's provision of the performance guarantee described herein within ninety (90) days of the execution of this agreement in the amount and form provided herein. Failure of the Owner/Developer to provide cash or an irrevocable letter of credit to the City in the manner provided herein shall negate the City's approval of the final plat. Letters of credit shall be substantially in the form and content set forth in Exhibit E, attached hereto and incorporated herein, and shall be subject to the review and approval of the City Attorney. The Owner/Developer shall not start the construction of any public or private improvement on the Property including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the City has received the cash or received and approved the irrevocable letter of credit.

Due to the length of the construction period for the Public Improvements, Owner/Developer may at any time on or after the anniversary of this Agreement request that the City release that portion of the cash or letter of credit held as security by the City for performance of this Agreement to reduce the amount of such security to the estimated cost of the remaining construction costs to be incurred to complete the Public Improvements. Owner/Developer shall, if requested by City, provide to City copies of invoices for construction of the Public Improvements, evidence of payment of such invoices, provisional lien releases for portions of the work performed through such date and any other documents reasonably requested by City related to construction progress towards completion of the Public Improvements. Upon providing such documentation to the City, City shall, within twenty (20) days, release to Owner/Developer that portion of the security held by the City equal to the difference between (i) the amount of security held by the City and (ii) the estimated costs remaining to complete construction of the Public Improvements; provided, that such release shall not reduce the amount of the security below the amount required by this Agreement to be retained by the City between the date of completion of the Public Improvements and the end of the warranty period discussed below.

In the event the Public Improvements are not constructed or completed within the period of time specified herein or a written extension of time mutually agreed upon by the parties to this agreement, the City may draw on the cash or letter of credit to complete the Public Improvements called for in this agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and the Owner/Developer has not yet provided a satisfactory replacement, the City may draw on the letter of credit and either hold such funds as security for performance of this agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the City deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the City Public Works Director, the Owner/Developer shall provide cash or shall issue an irrevocable letter of credit to the City in the amount of ten percent (10%) of the total cost of construction and installation of the Public Improvements, to be held by the City during the two (2) year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

12.0 COMPLETION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS.

- 12.1 The Owner/Developer shall complete construction of the Public Improvements within one (1) Year of the date on which the Owner/Developer provides the performance guarantee to the City for the

construction of the Public Improvements in accordance with the terms of this Agreement. Upon completion of construction of the Public Improvements and Owner/Developer's written request for probationary acceptance of such Improvements ("Construction Acceptance"), the Owner/Developer shall:

1. File with the City an original or sepia reproducible copy of the as-built construction plans of such Public Improvement(s), stamped and certified by the Engineer of Record who shall also be a Colorado registered professional engineer; and
2. Submit to the City a sworn affidavit and documentary evidence that there exists no lien or encumbrance upon or against the Public Improvements resulting from unpaid amounts owing to contractors, subcontractors, material persons, or other persons involved or engaged in the construction or installation of the Public Improvements. The Owner/Developer shall promptly modify, alter, and repair at its own cost and expense any improvements not constructed in accordance with the Construction Plans so that the improvements conform to the Construction Plans. The Public Improvements shall become the property of the City (and the City's maintenance responsibility) upon Construction Acceptance of the Public Improvements by the City.

12.2 The City shall issue to the Owner/Developer a certificate of Construction Acceptance granting probationary acceptance of the Public Improvements and setting the terms of the warranty period. The probation and warranty period ("Warranty Period") shall terminate Two (2) years from the date of Construction Acceptance.

12.3 At the end of the Warranty Period, the City shall reinspect the Public Improvements and require correction of all defects and failures of the Public Improvements prior to the issuance of final acceptance of the Public Improvements and release of any remaining Collateral ("Final Acceptance").

13.0 WARRANTY OF PUBLIC IMPROVEMENTS. The Owner/Developer hereby represents that the Public Improvements shall be designed to reasonably achieve the purposes intended for the Public Improvements and hereby warrants the design, quality of materials, quality of construction, and quality of workmanship of all such City-accepted Public Improvement(s) for a period of two (2) years from the date of the City's Construction Acceptance of the Public Improvements.

14.0 HOMEOWNER'S ASSOCIATION. A homeowners' association shall be created by the Developer under the laws of the State of Colorado or the property shall be

included in an existing homeowners' association if possible. The homeowners' association must be lawfully established before any properties with the development are sold to third parties. The articles of incorporation shall be reviewed by the City Attorney to insure that they have met the City's requirements that the homeowners' association maintain and operate any public improvements and/or open space identified on the plat and to assume all responsibilities therefore as shown on the final plat, including sufficient funding to meet these responsibilities.

- 15.0 PAYMENT OF FEES AND CHARGES. The Owner/Developer will comply with all ordinances, rules, and regulations of the City and shall pay all fees and other charges in a timely manner as required by the City including, but not limited to, building permit fees, inspection fees, tap or connection fees, and plan review fees which are imposed by the City by ordinance, rule, resolution, motion, agreement, or by the terms and conditions of this Agreement. In addition to any other remedy available to the City, the City may withhold and deny issuance of any building permit, certificate of occupancy, or other permit or approval until all due and outstanding fees are paid by the Owner/Developer.
- 16.0 FORM OF PAYMENT OF ALL FEES AND CHARGES. Unless otherwise agreed to by the City Manager on a case by case basis, the Owner/Developer's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the City of Northglenn, City Hall, 11701 Community Center Dr, Northglenn City, Colorado .
- 17.0 DELAYS. The Parties have executed this Agreement such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions that justify a delay of construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting from events that are beyond the control of the delaying party and which are agreed to by the Parties as justifying delay.
- 18.0 WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. The Parties understand and agree that nothing contained in the Final Plat is intended to waive or modify any applicable provision of state or local law.
- 19.0 NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City of Northglenn, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

20.0 BINDING EFFECT. The Parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property. At the time it records the Final Plat, the City shall also record this Agreement. To the extent permitted by law, all Owner/Developer and all future successors, heirs, legal representatives, and assigns of the Owner/Developer shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.

21.0 NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner/Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City and Owner/Developer that any person other than the City or Owner/Developer and their successors and assigns receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 GOVERNING LAW, VENUE, AND ENFORCEMENT. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Adams County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance. In addition to any other available remedies, it is understood and agreed that the City may withhold any permits or certificates requested by the Owner/Developer, including but not limited to building permits and certificates of occupancy for any lot within the Project in the event of a breach of this Agreement by the Owner/Developer.

23.0 AGREEMENT AND RELEASE. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Owner/Developer without the express written consent of the City of Northglenn. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution of the City Council. No assignment shall release the Owner/Developer from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Owner/Developer, the City may, at its sole discretion, require the party assuming any duty, obligation, or responsibility of the Owner/Developer to provide to the City written evidence of financial or other ability or capability to meet the particular duty, obligation, or responsibility being assumed by the party.

24.0 VESTED RIGHTS AND SUBSEQUENT LEGISLATIVE ENACTMENT. The Parties acknowledge and understand that the approval of the Final Plat was not processed or approved in accordance with or pursuant to Section 13, Article 3 of Chapter 11 of the Northglenn City Municipal Code or C.R.S. § 24-68-101 et seq. and the approval of the Final Plat does not constitute approval of a "site specific

development plan" as that phrase is defined in either Chapter 11 of the Northglenn City Municipal Code or in C.R.S. § 24-68-101 et seq. The approval of the Final Plat shall not therefore create or grant a "vested property right" as defined by Chapter 11, Article V and C.R.S. § 24-68-101 et seq. Nothing in this Agreement shall limit, prevent, or preclude the later adoption by the City Council of a legislative enactment which is general in nature and which may be applicable to the Project as well as other similarly situated property; subject, however, to rights which may accrue to the Owner/Developer by virtue of the vesting of property rights acquired in accordance with common law.

25.0 INDEMNIFICATION. The Owner/Developer shall indemnify and hold harmless the City, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of the Owner/Developer, or of any other person or entity for whose act or omission the Owner/Developer is liable, with respect to construction of the Public Improvements; and the Owner/Developer shall pay any and all judgments rendered against the City as the result of any suit, action, or claim together with all reasonable expenses and attorney fees incurred by the City in defending any such suit, action or claim.

The Owner/Developer shall pay all property taxes due and owing on the Property dedicated to the City concurrently with or prior to such dedication, and shall indemnify and hold harmless the City for any property tax liability arising at or prior to the dedication to the City.

The Owner/Developer shall require that all contractors and other employees engaged in construction of Public Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

24.1 WAIVER OF DEFECTS. In executing this agreement the Owner/Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the City to impose conditions on the Owner/Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this agreement.

24.2 RELEASE OF LIABILITY. It is expressly understood that the City cannot be legally bound by the presentations of any of its officers or agents or their designees except in accordance with the City of Northglenn Home Rule Charter, the City of Northglenn Municipal Code, and the laws of the State of Colorado.

26.0 PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

27.0 INVALID PROVISION; SEVERABILITY. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

28.0 RECORDING OF AGREEMENT. This Agreement shall be recorded in the real estate records of Adams County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

29.0 TITLE AND AUTHORITY. The Owner/Developer expressly warrants and represents to the City that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this subdivision agreement. The Owner/Developer and the undersigned individuals understand that the City is relying on such representations and warranties in entering into this Agreement.

30.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

31.0 INCORPORATION OF EXHIBITS. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Construction documentation referenced herein is a public record on file and available for review at the City of Northglenn, City Hall, 11701 Community Dr, Northglenn City, Colorado.

32.0 ATTORNEY FEES. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Owner/Developer and a court of competent jurisdiction determines that the Owner/Developer was in default in the performance of the agreement, the Owner/Developer shall pay the attorney fees, expenses and court costs of the City.

33.0 NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

DATED THIS _____ DAY OF _____, 2015.

CITY OF NORTHGLENN, a Colorado home
rule municipal corporation

ATTEST:

By: _____
Johanna Small, City Clerk

By: _____
Joyce Downing, Mayor

OWNER/DEVELOPER

BH NORTHGLENN, LLC
10630 E BETHANY DRIVE, SUITE B
AURORA, CO 80014

BY: BH Northglenn, LLC, a Colorado limited liability company

BY: Caisson Investments, Inc., a Colorado corporation, its Manager

BY: _____
Jeffrey D. Willis
President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged before me on _____, 2015, by _____, as
_____ for the _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

EXHIBIT A
DESCRIPTION OF PROPERTY

Lot 1,2,3,4,6,7 and 8 Northglenn Pavilion Filing No. 2, Located in the SE ¼ of Section 35 T1, R68W of the 6th P.M., City of Northglenn, County of Adams, State of Colorado.

NORTHGLENN PAVILION FILING NO. 4

A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 1 OF 2

LEGAL DESCRIPTION

BH NORTHGLENN, LLC., BEING THE OWNER OF THE REAL PROPERTY OF 3.118 ACRES DESCRIBED AS FOLLOWS: LOT 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2, LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M., CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO.

OWNERSHIP AND DEDICATION

THE UNDERSIGNED CERTIFIES TO AND FOR THE BENEFIT OF THE CITY COUNCIL OF NORTHGLENN CITY, COLORADO, THAT AS OF THE DATE SET FORTH BELOW, WE BH NORTHGLENN, LLC. BEING THE OWNER OF THE LAND DESCRIBED ABOVE, HAVE GOOD RIGHT AND FULL POWER TO CONVEY, ENCUMBER AND SUBDIVIDE SAME, AND THAT THE PROPERTY IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, EASEMENTS AND RIGHTS OF WAY EXCEPT THE EASEMENTS AND RIGHTS-OF-WAY DEPICTED ON THIS PLAT, IN THE EVENT OF A DEFECT IN SAID TITLE WHICH BREACHES THE WARRANTIES IN THIS CERTIFICATE, THE UNDERSIGNED, JOINTLY AND SEVERALLY, AGREE TO REMEDY SUCH DEFECT UPON DEMAND BY NORTHGLENN CITY, WHICH REMEDY SHALL NOT BE DEEMED EXCLUSIVE.

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, BEING THE OWNERS, MORTGAGEES OR LIEN HOLDERS OF THE LAND DESCRIBED ABOVE, HAVE CAUSED THE LAND TO BE LAID OUT AND PLATTED UNDER THE NAME OF NORTHGLENN PAVILION FILING NO. 4 AND DO HEREBY DEDICATE AND GRANT TO THE PUBLIC FOREVER AND IN FEE SIMPLE THE ROADS AND OTHER PUBLIC WAYS AND LANDS SHOWN HEREON, AND DO HEREBY DEDICATE TO NORTHGLENN CITY, AND APPROPRIATE UTILITY COMPANIES AND EMERGENCY ASSISTANCE ENTITIES, THE EASEMENTS AS SHOWN HEREON FOR THE PURPOSES STATED IN COMPLIANCE WITH THE CITY OF NORTHGLENN SUBDIVISION REGULATIONS AND THE LANDOWNERS SHALL BEAR ALL EXPENSE INVOLVED IN PLANNING, DESIGN, AND CONSTRUCTION OF ALL PUBLIC IMPROVEMENTS EXCEPT TO THE EXTENT EXPRESSLY STATED IN ANY CITY-APPROVED AND RECORDED SUBDIVISION IMPROVEMENT AGREEMENT. DEDICATION SHALL BE FINAL UPON ADOPTION BY THE CITY COUNCIL ACCEPTING THE PROPERTY DEDICATED BY THIS PLAT, EXCEPT AS OTHERWISE STATED ON THIS PLAT, THERE SHALL BE NO LIMITATION OR RESTRICTION UPON THE PURPOSE OR PUBLIC USE OF PROPERTY DEDICATED BY THIS PLAT.

IN WITNESS WHEREOF, WE DO HERETO SET OUR HANDS AND SEALS THIS _____ DAY OF _____

BH NORTHGLENN, LLC.

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS) SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

MORTGAGE INTEREST HOLDER(S) CONSENT TO DEDICATION

MORTGAGEE CONSENT TO DEDICATION: THE UNDERSIGNED HOLDERS OF MORTGAGE INTERESTS AND LIENS AGAINST THE PROPERTY OFFERED FOR DEDICATION AND TRANSFER TO THE PUBLIC AND CITY OF NORTHGLENN CONSENTS AND APPROVES OF SUCH DEDICATION AND TRANSFER AND SUBORDINATES AND RELEASES ITS INTERESTS TO SUCH DEDICATED AND TRANSFERRED PROPERTY.
IN WITNESS WHEREOF, WE DO HERETO SET OUR HANDS AND SEALS THIS _____ DAY OF _____, 2016

(PRINTED NAME OF MORTGAGE INTEREST HOLDER)

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS) SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

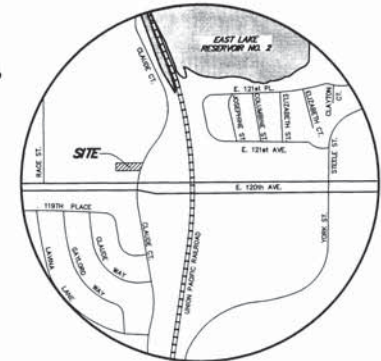
MY COMMISSION EXPIRES: _____

CITY OF NORTHGLENN STANDARD NOTES:

1. STREET MAINTENANCE. IT IS MUTUALLY AGREED BY THE SUBDIVIDER AND THE CITY THAT THE DEDICATED PUBLIC WAYS, INCLUDING BUT NOT LIMITED TO STREETS, ROADS, DRIVES AND ALLEYS, SHOWN ON THIS PLAT, WILL NOT BE ACCEPTED FINALLY FOR MAINTENANCE BY THE CITY UNTIL AND UNLESS THE SUBDIVIDER CONSTRUCTS THE SAME IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENT AND SUBDIVISION REGULATIONS IN EFFECT AT THE DATE OF RECORDING THIS PLAT AND APPROVAL OF THE CITY HAS ISSUED TO THAT EFFECT.
2. DRAINAGE MAINTENANCE. THE OWNER, ITS LEGAL REPRESENTATIVES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS IN INTEREST AND ASSIGNS SHALL BE JOINTLY AND SEVERALLY LIABLE AND RESPONSIBLE FOR MAINTAINING THE STRUCTURAL INTEGRITY AND OPERATIONAL FUNCTIONS OF ALL DRAINAGE FACILITIES LOCATED ON THE PROPERTY SHOWN HEREON UNLESS OTHERWISE SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO, PRIVATE DRAINAGE FACILITIES AND PUBLIC AND PRIVATE DRAINAGE EASEMENTS. DRAINAGE IMPROVEMENTS ARE SUBJECT TO SECTION 16-17-13. POST-CONSTRUCTION REQUIREMENT OF PERMANENT BMPs, AS AMENDED.
3. VEHICULAR ACCESS CONTROL. VEHICULAR ACCESS TO PUBLIC STREETS IN THIS SUBDIVISION SHALL BE SOLELY BY WAY OF DRIVEWAYS SPECIFICALLY APPROVED BY THE CITY OF NORTHGLENN.
4. UNDERGROUND UTILITIES. ALL TELEPHONE LINES, ELECTRIC LINES, CABLE TELEVISION LINES AND OTHER LIKE UTILITY SERVICES SHALL BE PLACED UNDERGROUND. TRANSFORMER, SWITCHING BOXES, TERMINAL BOXES, METER CABINETS, PEDESTALS, DUCTS AND OTHER FACILITIES NECESSARILY APPURTENANT TO SUCH UNDERGROUND UTILITIES MAY BE PLACED ABOVE GROUND.

GENERAL NOTES:

1. BEARINGS ARE BASED ON THE NORTH LINE OF NORTHGLENN PAVILION FILING NO. 2 AS BEARING S89°42'42"E, AS PER THE PLAT OF NORTHGLENN PAVILION FILING NO. 2 (ASSUMED MERIDIAN).
2. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN SIX YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. FOUND 2" ALUMINUM CAPS STAMPED "DB & CO LS 27275 AT ALL EXTERIOR BOUNDARY CORNERS OF THE SUBJECT PROPERTY UNLESS OTHERWISE NOTED.
4. PREPARED BY: DREXEL, BARRELL & CO.
3800 36TH STREET
BOULDER, CO 80301
(303) 442-4338
5. ALL PREVIOUS EASEMENTS DEDICATED TO THE CITY OF NORTHGLENN ARE TO BE VACATED WITH THE FINAL PLAT.
6. TRACT A AND TRACT B WILL BE OWNED AND MAINTAINED BY THE HOA FOR ACCESS, UTILITY AND LANDSCAPE PURPOSES AND PUBLIC UTILITY AND STORMWATER EASEMENTS ARE DEDICATED WITHIN TRACT A AND TRACT B VIA SEPARATE DOCUMENTS. DRAINAGE SYSTEM COMPONENTS LOCATED WITHIN TRACT A AND TRACT B WILL BE OWNED AND MAINTAINED BY THE HOA. TRACT A IS DEDICATED AS AN ACCESS EASEMENT TO THE CITY OF NORTHGLENN.
7. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY DREXEL, BARRELL & CO. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS OF WAY AND TITLE OF RECORDS DREXEL, BARRELL & CO. RELIED UPON TITLE COMMITMENT NO. ABJ70493505-3 DATED SEPTEMBER 9, 2016 AS PREPARED BY LAND TITLE GUARANTEE COMPANY.



VICINITY MAP
(N.T.S.)

APPROVALS

PLANNING AND DEVELOPMENT

THIS MINOR SUBDIVISION HAS BEEN APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT OF THE CITY OF NORTHGLENN, COLORADO ON THE _____ DAY OF _____, 2016.

PLANNING AND DEVELOPMENT, DIRECTOR

PUBLIC WORKS AND UTILITIES

THIS MINOR SUBDIVISION HAS BEEN APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS AND UTILITIES OF THE CITY OF NORTHGLENN, COLORADO ON THE _____ DAY OF _____, 2016.

PUBLIC WORK AND UTILITIES, DIRECTOR

SURVEYOR'S CERTIFICATE

I, MATHEW E. SELTERS, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY OF "NORTHGLENN PAVILION FILING NO. 4" REPRESENTED BY THIS PLAT WAS MADE UNDER MY DIRECT SUPERVISION ON DECEMBER 02, 2016 AND MONUMENTS SHOWN THEREON ACTUALLY EXIST AND THIS PLAT ACCURATELY REPRESENTS SAID SURVEY TO THE BEST OF MY KNOWLEDGE, BELIEF AND OPINION.

MATHEW E. SELTERS
COLORADO REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 27275

RECORDER'S CERTIFICATE

STATE OF COLORADO)
COUNTY OF ADAMS) SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 2016, AT _____ O'CLOCK _____ M., RECEPTION NO. _____, FILE _____, MAP _____.

BY: _____
CLERK AND RECORDER

BY: _____

DEC 06 2016

A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2

TRACT B



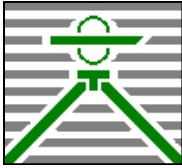
EXHIBIT C
DESCRIPTION OF PUBLIC IMPROVEMENTS

Relocate fire hydrants and associated line work to accommodate the new site layout

One additional sanitary sewer manhole southeast of the condo building

One stormceptor at the outfall of the detention pond.

EXHIBIT D
ENGINEER'S COST ESTIMATES



Engineers/Surveyors

Boulder
Colorado Springs
Greeley
303 442 4338
303 442 4373 Fax

Engineer's Opinion of Probable Cost For Public Improvements

Drexel Barrell & Co.

Client: Berkeley Homes

Project Title: *Northglenn Pavilion*

Project # 15780-04BLCV

Date: 8/16/2016

Item	Description	Quantity	Unit	Unit Price	Total
Public Water Main					
A	Fire Hydrants to be Relocated ¹	2	EA	\$0.00	\$0.00
B	6" Ductile Iron Pipe	62	LF	\$50.00	\$3,100.00
C	Abandon Existing Fire Line (Cap at Main)	2	EA	\$1,000.00	\$2,000.00
Water Quality Structure					
A	Stormceptor STC 900	1	EA	\$ 10,000.00	\$ 10,000.00
Sanitary Sewer					
A	4' Diameter Manhole	1	EA	\$ 8,500.00	\$ 8,500.00
TOTAL					\$23,600.00

Notes

¹ Existing fire hydrants to be re-used

EXHIBIT E
LETTER OF CREDIT FORM

BANK LETTERHEAD
NAME OF INSTITUTION
ADDRESS
CITY, STATE, ZIP

SAMPLE

DATE

IRREVOCABLE STANDBY LETTER OF CREDIT

BENEFICIARY:

PERMITTEE:

CITY OF NORTHGLENN
11701 COMMUNITY CENTER DRIVE
NORTHGLENN, COLORADO 80233

LETTER OF CREDIT NUMBER:

DATE ISSUED:

EXPIRARY DATE: THIS IRREVOCABLE LETTER OF CREDIT SHALL EXPIRE 12 MONTHS AFTER THE ISSUANCE DATE; PROVIDED THAT NAME OF INSTITUTION HAS GIVEN THE CITY OF NORTHGLENN NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS PRIOR WRITTEN NOTICE OF THE IMPENDING EXPIRATION.

AT: ISSUING BANK'S INTERNATIONAL BANKING COUNTERS LOCATED AT ADDRESS INDICATED ABOVE.

AMOUNT: \$AMOUNT U.S. DOLLARS

WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT AVAILABLE BY PAYMENT BY DRAFT(S) DRAWN AT SIGHT ON NAME OF INSTITUTION AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THIS ORIGINAL LETTER OF CREDIT.

2. A STATEMENT ISSUED AND SIGNED BY THE BENEFICIARY
CERTIFYING AS FOLLOWS:

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE
CITY OF NORTHGLENN, HEREBY CERTIFIES THE PERMITTEE HAS
FAILED TO COMPLY WITH A CONDITION UPON WHICH THE
CERTIFICATE OF OCCUPANCY WAS ISSUED BY THE CITY OF
NORTHGLENN TO THE PERMITTEE FOR THE FOLLOWING PROPERTY:
_____."

SPECIAL CONDITIONS:

PARTIAL DRAWING IS PERMITTED.

PURSUANT TO U.S. LAW, WE ARE PROHIBITED FROM ISSUING, TRANSFERRING,
ACCEPTING OR PAYING LETTERS OF CREDIT TO ANY PARTY OR ENTITY
IDENTIFIED BY THE OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF
TREASURY, OR SUBJECT TO DENIAL OF EXPORT PRIVILEGES BY THE U.S.
DEPARTMENT OF COMMERCE.

DRAFT DRAWN UNDER THIS CREDIT MUST BEAR THE CLAUSE: "DRAWN" UNDER
NAME OF INSTITUTION IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER.

THIS CREDIT IS SUBJECT TO "THE UNIFORM CUSTOMS AND PRACTICE FOR
DOCUMENTARY CREDITS" (1993 REVISION) INTERNATIONAL CHAMBER OF
COMMERCE PUBLICATION NUMBER 500.

WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) DRAWN AND/OR DOCUMENTS
PRESENTED AND NEGOTIATED UNDER AND IN COMPLIANCE WITH THE TERMS
OF THIS IRREVOCABLE STANDBY LETTER OF CREDIT WILL BE DULY HONORED
UPON PRESENTATION TO US.

NAME OF INSTITUTION
A MEMBER OF THE FEDERAL RESERVE SYSTEM

STANDBY LETTERS OF CREDIT

Attachment 2

FINAL PLAT

NORTHGLENN PAVILION FILING NO. 4

A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 1 OF 2

LEGAL DESCRIPTION

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IN WITNESS WHEREOF, WE DO HEREUNTO SET OUR HANDS AND SEALS THIS _____ DAY OF _____

JEFFERY A. CARTER AS _____

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS)SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

MORTGAGE INTEREST HOLDER(S) CONSENT TO DEDICATION

MORTGAGEE CONSENT TO DEDICATION: THE UNDERSIGNED HOLDERS OF MORTGAGE INTERESTS AND LIENS AGAINST THE PROPERTY OFFERED FOR DEDICATION AND TRANSFER TO THE PUBLIC AND CITY OF NORTHGLENN CONSENTS AND APPROVES OF SUCH DEDICATION AND TRANSFER AND SUBORDINATES AND RELEASES ITS INTERESTS TO SUCH DEDICATED AND TRANSFERRED PROPERTY.
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(PRINTED NAME OF MORTGAGE INTEREST HOLDER)

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS)SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

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NOTARY PUBLIC

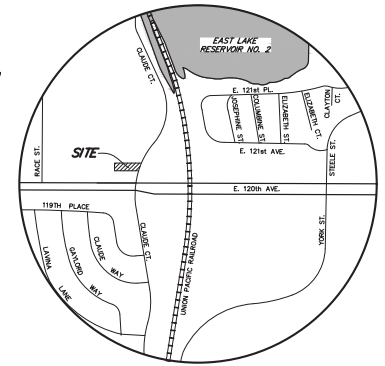
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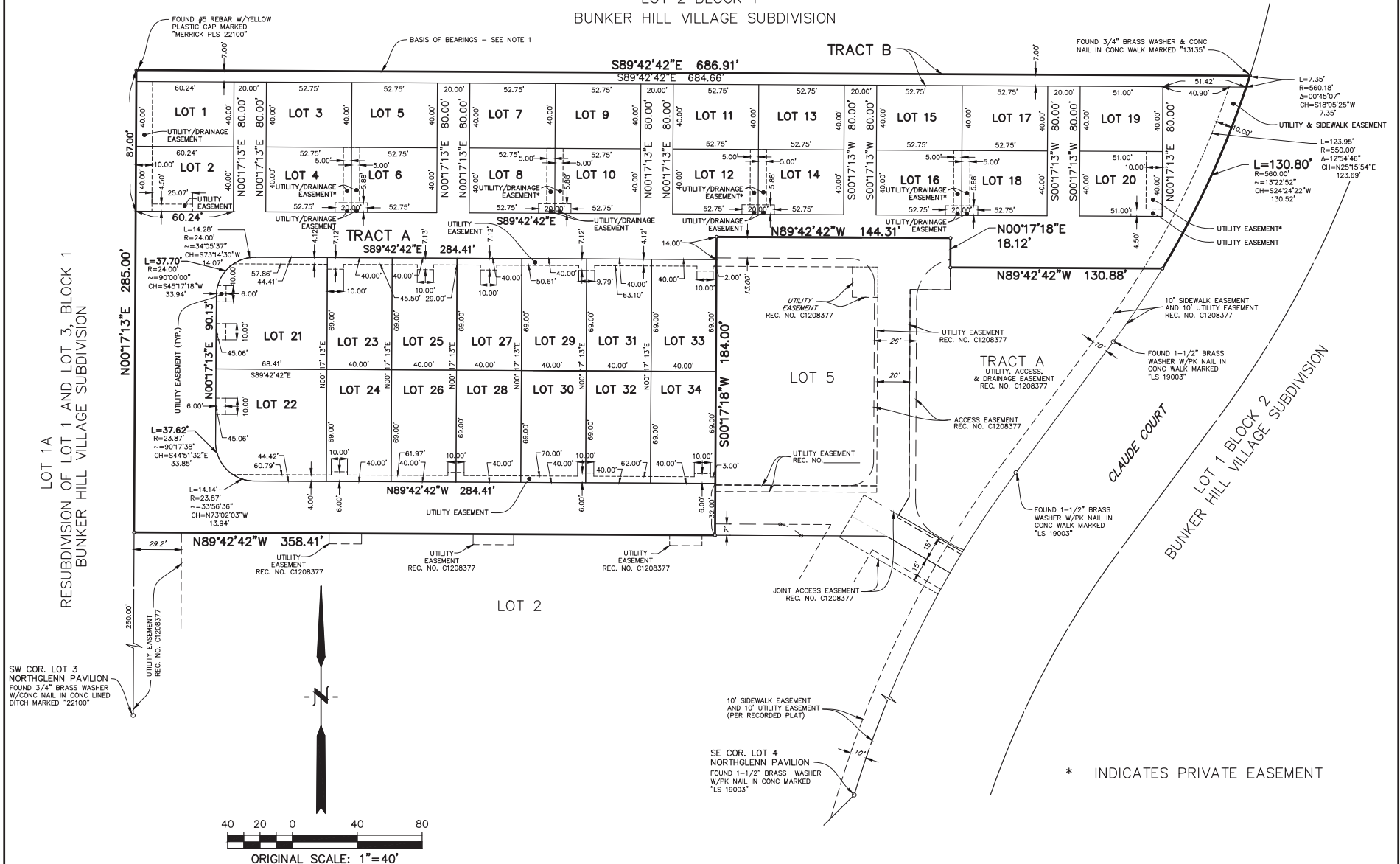
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- FOUND 2" ALUMINUM CAPS STAMPED "DB & CO LS 27275 AT ALL EXTERIOR BOUNDARY CORNERS OF THE SUBJECT PROPERTY UNLESS OTHERWISE NOTED.
- PREPARED BY: DREXEL, BARRELL & CO.
3800 38TH STREET
BOULDER, CO 80301
(303) 442-4338
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NORTHGLENN PAVILION FILING NO. 4

A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2

LOT 2 BLOCK 1
BUNKER HILL VILLAGE SUBDIVISION



SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-18
Series of 2017

Series of 2017

A RESOLUTION APPROVING THE FINAL PLAT AND SUBDIVISION AGREEMENT FOR NORTHGLENN PAVILION FILING NO. 4, AND REPEALING RESOLUTION NO. 15-175, SERIES OF 2015

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby approves the Final Plat for the Northglenn Pavilion Filing No. 4, attached hereto as **Exhibit A**, and incorporated herein by this reference.

Section 2. The City Council hereby approves the Subdivision Improvement Agreement between the City of Northglenn and BH Northglenn, LLC, attached hereto as **Exhibit B**, and incorporated herein by this reference.

Section 3. Resolution No. 15-175, Series of 2015, is hereby repealed.

DATED at Northglenn, Colorado, this ____ day of _____, 2017.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

NORTHGLENN PAVILION FILING NO. 4

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CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 1 OF 2

LEGAL DESCRIPTION

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JEFFERY A. CARTER AS _____

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS)SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

MORTGAGE INTEREST HOLDER(S) CONSENT TO DEDICATION

MORTGAGEE CONSENT TO DEDICATION: THE UNDERSIGNED HOLDERS OF MORTGAGE INTERESTS AND LIENS AGAINST THE PROPERTY OFFERED FOR DEDICATION AND TRANSFER TO THE PUBLIC AND CITY OF NORTHGLENN CONSENTS AND APPROVES OF SUCH DEDICATION AND TRANSFER AND SUBORDINATES AND RELEASES ITS INTERESTS TO SUCH DEDICATED AND TRANSFERRED PROPERTY.
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ACKNOWLEDGEMENT

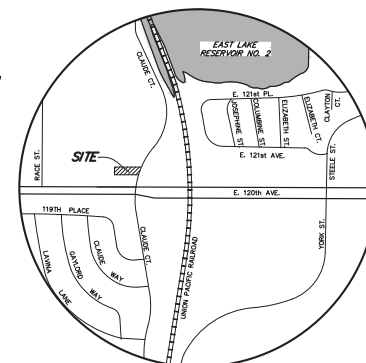
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WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____



A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2

TRACT B



**CITY OF NORTHGLENN
SUBDIVISION IMPROVEMENT AGREEMENT – FINAL PLAT
FOR**

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into and made by and between **BH NORTHGLENN, LLC 10630 E BETHANY DRIVE, SUITE B, AURORA, CO 80014** ("Owner/Developer") and the **CITY OF NORTHGLENN, COLORADO**, a Colorado home rule municipal corporation whose address is 11701 Community Center Dr, Northglenn, Colorado, hereinafter referred to as the "City" or "Northglenn." The Owner/Developer and the City shall collectively be referred to as the "Parties." This Agreement shall be effective following execution by the Owners/Owner/Developer and immediately upon the date of the authorized execution of this Agreement by the City.

RECITALS AND REPRESENTATIONS:

WHEREAS, Owner/Developer represents that it is the sole owner of the following described property located in the City of Northglenn, County of Adams, State of Colorado:

See Exhibit A

hereinafter referred to as the "Property;"

WHEREAS, Owner/Developer represents that it has authority to apply for and process a final plat for the Property, titled **NORTHGLENN PAVILION FILING NO. 4** ("Final Plat"), and is authorized to obtain all necessary approvals and enter into any agreements necessary for the development of the Property (the "Project");

WHEREAS, Owner/Developer plans to develop the Project and such development requires the dedication, construction, installation, and/or improvement of certain public improvements including but not limited to, storm drainage facilities, public thoroughfares and streets, private drives, curb, gutter and sidewalk, and other public and private facilities and improvements as described in the Final Plat application to serve the proposed development of the Property;

WHEREAS, in conjunction with submittal of the Final Plat, the Owner/Developer has submitted to the City supporting documentation including construction, grading/drainage, utility, street improvement, storm sewer, and electrical plans (collectively the "Construction Plans");

WHEREAS, on _____, 20____, the City Council of the City of Northglenn, after holding all necessary public hearings and having received a recommendation of approval from the Planning Commission, approved the final plat for the Property. A copy of the final plat is attached hereto as **Exhibit B** and incorporated herein; and

WHEREAS, it is the intent of this Agreement that the Owner/Developer shall be responsible for and shall pay all costs and expenses associated with the proposed, development of the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties, the approval by the City of Northglenn of the Final Plat, the dedication of certain land to the City for public purposes, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the parties, the Parties hereto agree as follows:

AGREEMENT

- 1.0 **PURPOSE.** The purpose of this agreement is to set forth the terms, conditions, and fees to be paid by the Owner/Developer upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the City of Northglenn Subdivision and Zoning Regulations, the City of Northglenn Home Rule Charter, any and all state statutes, and any other sections of the City of Northglenn Municipal Code, and are not intended to supersede any requirements contained therein.
- 2.0 **DELIVERY OF FINAL PLAT.** Upon the City's approval of the Final Plat, Owner/Developer shall immediately deliver the original of the Final Plat, containing all revisions and amendments required by the City Council or as directed by City Staff prior to Final Plat approval, to the City Clerk. Owner/Developer shall also pay for the costs of recordation of the Final Plat and this Agreement. In addition, Owner/Developer shall deliver to the City Clerk, along with the Final Plat, two (2) sets of complete and final Construction Plans.
- 3.0 **RECORDATION OF PLAT.** Owner/Developer shall prepare and submit to the City Clerk the Final Plat in a form and upon material acceptable for recordation by the Adams County Clerk and Recorder and shall provide the required Collateral as hereinafter defined. Failure of Owner/Developer to submit an acceptable Final Plat and Collateral Public Improvements as specified in Section 12 of this Agreement to the City Clerk within ninety (90) days of the date of this Agreement shall, upon the enactment of a resolution by the City Council finding that the submittal was untimely, void Final Plat approval for the Project and this Agreement. If Owner/Developer timely submits a completed and recordation-ready Final Plat to the City, the City agrees to record the Final Plat no later than fifteen (15) days after it is submitted to and received by the City. The Final Plat and Construction Plans, as approved by the City, are incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement.
- 4.0 **PUBLIC UTILITY FEES.** Owner/Developer shall pay all installation charges for lighting and gas services required by Xcel Energy providing services to the Project.

- 5.0 UNDERGROUNDING OF ALL UTILITIES. The Owner/Developer shall underground all electric, gas, cable and telephone lines (collectively, "utilities") within the boundaries of the Final Plat or which are required to be relocated pursuant to this Agreement or as a condition of approval of the Final Plat. All utilities providing public services to the Project shall be located within dedicated and platted public utility easements or public street rights-of-way which shall be approved and subject to acceptance by the City.
- 6.0 SUBDIVISION MONUMENTATION. In accordance with the applicable provisions of the Colorado Revised Statutes, as amended, and the Northglenn City Municipal Code, as amended, the Owner/Developer shall establish all subdivision monumentation and have the monumentation approved by the City prior to issuance of any certificate of occupancy within the Project.
- 7.0 STREET MAINTENANCE. The Owner/Developer shall take all reasonable steps necessary to limit and prevent the accumulation of, and to remove accumulated mud, sediment, dirt, trash, and other debris that is "tracked," blown, or otherwise carried onto public property and public rights-of-way during development of the Project. Owner/Developer also shall take all reasonable steps necessary to prevent its construction activities from damaging adjacent properties, including public rights-of-way and other public property. If any adjacent property or public right-of-way is damaged or destroyed during the construction of the Public Improvements as defined herein, Owner/Developer shall, at its sole cost, promptly repair or replace the same to a condition similar or equal to that existing before such damage.
- 8.0 DRAINAGE, RETENTION, AND DETENTION FACILITIES. The Owner/Developer shall construct all drainage, retention, and detention facilities in accordance with the Construction Plans approved by the City Engineer.
- 8.1 The Owner/Developer shall be responsible for all onsite drainage retention and detention as prescribed in Articles 13 & 17 of Chapter 16 of the City of Northglenn Municipal Code as amended.
- 8.2 PUBLIC PROPERTY DEDICATION/TITLE POLICY. A title commitment for any Property being dedicated to the City or upon which Public Improvements are being constructed shall be provided to the City. The title commitment shall show that all property is or shall be, subsequent to the execution and recording of the Final Plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as the City in its sole discretion determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the Final Plat.

8.3 By execution of the Final Plat, the Owner/Developer has offered for dedication to the City at no cost and the City has accepted such dedication of certain real property interests, as depicted on the Final Plat. No building permit or certificate of occupancy shall be issued unless and until the above requirement is satisfied.

9.0 CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Owner/Developer shall design, furnish, construct, and install the following public improvements as illustrated on the Final Plat and the approved Construction Plans ("Public Improvements") at the Owner/Developer's cost and expense:

See Exhibit C – Public Improvements Description

The Public Improvements shall be designed, furnished, constructed, and installed in accordance with the Final Plat, the Construction Plans and the Public Improvement Plans approved by the City Engineer and in accordance with applicable provisions of the City's applicable ordinances, rules and regulations in effect at the time of construction and all uniform building, construction, fire, plumbing, and safety codes adopted by the City in effect at the time of construction.

At all times during construction of the Public Improvements, the City shall have the right to test and inspect, or to require testing and inspection of materials and construction at Owner/Developer's expense. No excavation, facility or Public Improvement shall be covered until inspected by Northglenn, or the applicable service provider, or until such inspection is waived by the City in writing.

10.0 CONSTRUCTION PLANS AND COST ESTIMATE REQUIRED. Prior to the recordation of the Final Plat or the issuance of the first building permit for any improvement within the Project, the Owner/Developer shall provide to the City the following:

10.1 Final construction and engineering plans and drawings (collectively, the "Public Improvement Plans") suitable for the commencement of construction of all Public Improvements required within for Project bearing the stamp of a Colorado licensed engineer with experience in the design and engineering of such improvements. Such Public Improvement Plans shall be prepared in accordance with this Agreement, the Northglenn City Municipal Code, and the City of Northglenn Public Right-of-Way Standards and Specifications as amended and shall be subject to approval by the City Engineer in accordance with the Northglenn City Municipal Code. Such Public Improvement Plans shall specifically include, by way of illustration but not limitation, 100% complete final construction and engineering plans and drawings;

and

10.2 Construction cost estimates, as shown in **Exhibit D** for all costs and expenses associated with the construction and completion of all Public Improvements to be constructed by the Owner/Developer in accordance with this Agreement. Such cost estimate shall bear the stamp and a certification of accuracy of a Colorado-licensed engineer with experience in construction cost estimating. The City may, in its discretion and at the City's cost and expense, submit the Public Improvement Plans and Owner/Developer's cost estimate to a City-retained engineer for review and an opinion of the construction cost estimate. Reasonable revisions and modifications to the Owner/Developer's construction cost estimate requested by the City or the City-retained engineer shall be implemented by the Owner/Developer prior to final acceptance of the estimate by the City. Where the City's cost estimate exceeds the Owner/Developer's estimate, the City's estimate shall govern and control the amount of any required letter of credit or other surety required from the Owner/Developer for the Public Improvements.

11.0 REQUIRED SECURITY FOR PUBLIC IMPROVEMENTS.

11.1 In order to secure the construction and installation of the Public Improvements the Owner/ Developer shall, prior to recording the final plat in the real estate records of Adams County, which recording shall occur no later than ninety (90) days after the execution of this Agreement, at the Owner/Developer's expense, furnish the City with the performance guarantee described herein. The performance guarantee provided by the Owner/Developer shall be cash, an irrevocable letter of credit or other form of security as approved by the City, in which the City is designated as beneficiary in an amount equal to construction cost estimate described in Section 10.2 of this Agreement, in order to secure the performance and completion of the Public Improvements. The Owner/Developer agrees that approval of the final plat of the City is contingent upon the Owner/Developer's provision of the performance guarantee described herein within ninety (90) days of the execution of this agreement in the amount and form provided herein. Failure of the Owner/Developer to provide cash or an irrevocable letter of credit to the City in the manner provided herein shall negate the City's approval of the final plat. Letters of credit shall be substantially in the form and content set forth in Exhibit E, attached hereto and incorporated herein, and shall be subject to the review and approval of the City Attorney. The Owner/Developer shall not start the construction of any public or private improvement on the Property including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the City has received the cash or received and approved the irrevocable letter of credit.

Due to the length of the construction period for the Public Improvements, Owner/Developer may at any time on or after the anniversary of this Agreement request that the City release that portion of the cash or letter of credit held as security by the City for performance of this Agreement to reduce the amount of such security to the estimated cost of the remaining construction costs to be incurred to complete the Public Improvements. Owner/Developer shall, if requested by City, provide to City copies of invoices for construction of the Public Improvements, evidence of payment of such invoices, provisional lien releases for portions of the work performed through such date and any other documents reasonably requested by City related to construction progress towards completion of the Public Improvements. Upon providing such documentation to the City, City shall, within twenty (20) days, release to Owner/Developer that portion of the security held by the City equal to the difference between (i) the amount of security held by the City and (ii) the estimated costs remaining to complete construction of the Public Improvements; provided, that such release shall not reduce the amount of the security below the amount required by this Agreement to be retained by the City between the date of completion of the Public Improvements and the end of the warranty period discussed below.

In the event the Public Improvements are not constructed or completed within the period of time specified herein or a written extension of time mutually agreed upon by the parties to this agreement, the City may draw on the cash or letter of credit to complete the Public Improvements called for in this agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and the Owner/Developer has not yet provided a satisfactory replacement, the City may draw on the letter of credit and either hold such funds as security for performance of this agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the City deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the City Public Works Director, the Owner/Developer shall provide cash or shall issue an irrevocable letter of credit to the City in the amount of ten percent (10%) of the total cost of construction and installation of the Public Improvements, to be held by the City during the two (2) year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

12.0 COMPLETION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS.

- 12.1 The Owner/Developer shall complete construction of the Public Improvements within one (1) Year of the date on which the Owner/Developer provides the performance guarantee to the City for the

construction of the Public Improvements in accordance with the terms of this Agreement. Upon completion of construction of the Public Improvements and Owner/Developer's written request for probationary acceptance of such Improvements ("Construction Acceptance"), the Owner/Developer shall:

1. File with the City an original or sepia reproducible copy of the as-built construction plans of such Public Improvement(s), stamped and certified by the Engineer of Record who shall also be a Colorado registered professional engineer; and
2. Submit to the City a sworn affidavit and documentary evidence that there exists no lien or encumbrance upon or against the Public Improvements resulting from unpaid amounts owing to contractors, subcontractors, material persons, or other persons involved or engaged in the construction or installation of the Public Improvements. The Owner/Developer shall promptly modify, alter, and repair at its own cost and expense any improvements not constructed in accordance with the Construction Plans so that the improvements conform to the Construction Plans. The Public Improvements shall become the property of the City (and the City's maintenance responsibility) upon Construction Acceptance of the Public Improvements by the City.

12.2 The City shall issue to the Owner/Developer a certificate of Construction Acceptance granting probationary acceptance of the Public Improvements and setting the terms of the warranty period. The probation and warranty period ("Warranty Period") shall terminate Two (2) years from the date of Construction Acceptance.

12.3 At the end of the Warranty Period, the City shall reinspect the Public Improvements and require correction of all defects and failures of the Public Improvements prior to the issuance of final acceptance of the Public Improvements and release of any remaining Collateral ("Final Acceptance").

13.0 WARRANTY OF PUBLIC IMPROVEMENTS. The Owner/Developer hereby represents that the Public Improvements shall be designed to reasonably achieve the purposes intended for the Public Improvements and hereby warrants the design, quality of materials, quality of construction, and quality of workmanship of all such City-accepted Public Improvement(s) for a period of two (2) years from the date of the City's Construction Acceptance of the Public Improvements.

14.0 HOMEOWNER'S ASSOCIATION. A homeowners' association shall be created by the Developer under the laws of the State of Colorado or the property shall be

included in an existing homeowners' association if possible. The homeowners' association must be lawfully established before any properties with the development are sold to third parties. The articles of incorporation shall be reviewed by the City Attorney to insure that they have met the City's requirements that the homeowners' association maintain and operate any public improvements and/or open space identified on the plat and to assume all responsibilities therefore as shown on the final plat, including sufficient funding to meet these responsibilities.

- 15.0 PAYMENT OF FEES AND CHARGES. The Owner/Developer will comply with all ordinances, rules, and regulations of the City and shall pay all fees and other charges in a timely manner as required by the City including, but not limited to, building permit fees, inspection fees, tap or connection fees, and plan review fees which are imposed by the City by ordinance, rule, resolution, motion, agreement, or by the terms and conditions of this Agreement. In addition to any other remedy available to the City, the City may withhold and deny issuance of any building permit, certificate of occupancy, or other permit or approval until all due and outstanding fees are paid by the Owner/Developer.
- 16.0 FORM OF PAYMENT OF ALL FEES AND CHARGES. Unless otherwise agreed to by the City Manager on a case by case basis, the Owner/Developer's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the City of Northglenn, City Hall, 11701 Community Center Dr, Northglenn City, Colorado .
- 17.0 DELAYS. The Parties have executed this Agreement such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions that justify a delay of construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting from events that are beyond the control of the delaying party and which are agreed to by the Parties as justifying delay.
- 18.0 WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. The Parties understand and agree that nothing contained in the Final Plat is intended to waive or modify any applicable provision of state or local law.
- 19.0 NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City of Northglenn, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

20.0 BINDING EFFECT. The Parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property. At the time it records the Final Plat, the City shall also record this Agreement. To the extent permitted by law, all Owner/Developer and all future successors, heirs, legal representatives, and assigns of the Owner/Developer shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.

21.0 NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner/Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City and Owner/Developer that any person other than the City or Owner/Developer and their successors and assigns receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 GOVERNING LAW, VENUE, AND ENFORCEMENT. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Adams County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance. In addition to any other available remedies, it is understood and agreed that the City may withhold any permits or certificates requested by the Owner/Developer, including but not limited to building permits and certificates of occupancy for any lot within the Project in the event of a breach of this Agreement by the Owner/Developer.

23.0 AGREEMENT AND RELEASE. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Owner/Developer without the express written consent of the City of Northglenn. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution of the City Council. No assignment shall release the Owner/Developer from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Owner/Developer, the City may, at its sole discretion, require the party assuming any duty, obligation, or responsibility of the Owner/Developer to provide to the City written evidence of financial or other ability or capability to meet the particular duty, obligation, or responsibility being assumed by the party.

24.0 VESTED RIGHTS AND SUBSEQUENT LEGISLATIVE ENACTMENT. The Parties acknowledge and understand that the approval of the Final Plat was not processed or approved in accordance with or pursuant to Section 13, Article 3 of Chapter 11 of the Northglenn City Municipal Code or C.R.S. § 24-68-101 et seq. and the approval of the Final Plat does not constitute approval of a "site specific

development plan" as that phrase is defined in either Chapter 11 of the Northglenn City Municipal Code or in C.R.S. § 24-68-101 et seq. The approval of the Final Plat shall not therefore create or grant a "vested property right" as defined by Chapter 11, Article V and C.R.S. § 24-68-101 et seq. Nothing in this Agreement shall limit, prevent, or preclude the later adoption by the City Council of a legislative enactment which is general in nature and which may be applicable to the Project as well as other similarly situated property; subject, however, to rights which may accrue to the Owner/Developer by virtue of the vesting of property rights acquired in accordance with common law.

25.0 INDEMNIFICATION. The Owner/Developer shall indemnify and hold harmless the City, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of the Owner/Developer, or of any other person or entity for whose act or omission the Owner/Developer is liable, with respect to construction of the Public Improvements; and the Owner/Developer shall pay any and all judgments rendered against the City as the result of any suit, action, or claim together with all reasonable expenses and attorney fees incurred by the City in defending any such suit, action or claim.

The Owner/Developer shall pay all property taxes due and owing on the Property dedicated to the City concurrently with or prior to such dedication, and shall indemnify and hold harmless the City for any property tax liability arising at or prior to the dedication to the City.

The Owner/Developer shall require that all contractors and other employees engaged in construction of Public Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

24.1 WAIVER OF DEFECTS. In executing this agreement the Owner/Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the City to impose conditions on the Owner/Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this agreement.

24.2 RELEASE OF LIABILITY. It is expressly understood that the City cannot be legally bound by the presentations of any of its officers or agents or their designees except in accordance with the City of Northglenn Home Rule Charter, the City of Northglenn Municipal Code, and the laws of the State of Colorado.

26.0 PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

27.0 INVALID PROVISION; SEVERABILITY. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

28.0 RECORDING OF AGREEMENT. This Agreement shall be recorded in the real estate records of Adams County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

29.0 TITLE AND AUTHORITY. The Owner/Developer expressly warrants and represents to the City that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this subdivision agreement. The Owner/Developer and the undersigned individuals understand that the City is relying on such representations and warranties in entering into this Agreement.

30.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

31.0 INCORPORATION OF EXHIBITS. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Construction documentation referenced herein is a public record on file and available for review at the City of Northglenn, City Hall, 11701 Community Dr, Northglenn City, Colorado.

32.0 ATTORNEY FEES. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Owner/Developer and a court of competent jurisdiction determines that the Owner/Developer was in default in the performance of the agreement, the Owner/Developer shall pay the attorney fees, expenses and court costs of the City.

33.0 NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

DATED THIS _____ DAY OF _____, 2015.

CITY OF NORTHGLENN, a Colorado home
rule municipal corporation

ATTEST:

By: _____
Johanna Small, City Clerk

By: _____
Joyce Downing, Mayor

OWNER/DEVELOPER

BH NORTHGLENN, LLC
10630 E BETHANY DRIVE, SUITE B
AURORA, CO 80014

BY: BH Northglenn, LLC, a Colorado limited liability company

BY: Caisson Investments, Inc., a Colorado corporation, its Manager

BY: _____
Jeffrey D. Willis
President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged before me on _____, 2015, by _____, as
_____ for the _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

EXHIBIT A
DESCRIPTION OF PROPERTY

Lot 1,2,3,4,6,7 and 8 Northglenn Pavilion Filing No. 2, Located in the SE ¼ of Section 35 T1, R68W of the 6th P.M., City of Northglenn, County of Adams, State of Colorado.

NORTHGLENN PAVILION FILING NO. 4

A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO

SHEET 1 OF 2

LEGAL DESCRIPTION

BH NORTHGLENN, LLC., BEING THE OWNER OF THE REAL PROPERTY OF 3.118 ACRES DESCRIBED AS FOLLOWS: LOT 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2, LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M., CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO.

OWNERSHIP AND DEDICATION

THE UNDERSIGNED CERTIFIES TO AND FOR THE BENEFIT OF THE CITY COUNCIL OF NORTHGLENN CITY, COLORADO, THAT AS OF THE DATE SET FORTH BELOW, WE BH NORTHGLENN, LLC. BEING THE OWNER OF THE LAND DESCRIBED ABOVE, HAVE GOOD RIGHT AND FULL POWER TO CONVEY, ENCUMBER AND SUBDIVIDE SAME, AND THAT THE PROPERTY IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, EASEMENTS AND RIGHTS OF WAY EXCEPT THE EASEMENTS AND RIGHTS-OF-WAY DEPICTED ON THIS PLAT, IN THE EVENT OF A DEFECT IN SAID TITLE WHICH BREACHES THE WARRANTIES IN THIS CERTIFICATE, THE UNDERSIGNED, JOINTLY AND SEVERALLY, AGREE TO REMEDY SUCH DEFECT UPON DEMAND BY NORTHGLENN CITY, WHICH REMEDY SHALL NOT BE DEEMED EXCLUSIVE.

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, BEING THE OWNERS, MORTGAGEES OR LIEN HOLDERS OF THE LAND DESCRIBED ABOVE, HAVE CAUSED THE LAND TO BE LAID OUT AND PLATTED UNDER THE NAME OF NORTHGLENN PAVILION FILING NO. 4 AND DO HEREBY DEDICATE AND GRANT TO THE PUBLIC FOREVER AND IN FEE SIMPLE THE ROADS AND OTHER PUBLIC WAYS AND LANDS SHOWN HEREON, AND DO HEREBY DEDICATE TO NORTHGLENN CITY, AND APPROPRIATE UTILITY COMPANIES AND EMERGENCY ASSISTANCE ENTITIES, THE EASEMENTS AS SHOWN HEREON FOR THE PURPOSES STATED IN COMPLIANCE WITH THE CITY OF NORTHGLENN SUBDIVISION REGULATIONS AND THE LANDOWNERS SHALL BEAR ALL EXPENSE INVOLVED IN PLANNING, DESIGN, AND CONSTRUCTION OF ALL PUBLIC IMPROVEMENTS EXCEPT TO THE EXTENT EXPRESSLY STATED IN ANY CITY-APPROVED AND RECORDED SUBDIVISION IMPROVEMENT AGREEMENT. DEDICATION SHALL BE FINAL UPON ADOPTION BY THE CITY COUNCIL ACCEPTING THE PROPERTY DEDICATED BY THIS PLAT, EXCEPT AS OTHERWISE STATED ON THIS PLAT, THERE SHALL BE NO LIMITATION OR RESTRICTION UPON THE PURPOSE OR PUBLIC USE OF PROPERTY DEDICATED BY THIS PLAT.

IN WITNESS WHEREOF, WE DO HERETO SET OUR HANDS AND SEALS THIS _____ DAY OF _____

BH NORTHGLENN, LLC.

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS) SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

MORTGAGE INTEREST HOLDER(S) CONSENT TO DEDICATION

MORTGAGEE CONSENT TO DEDICATION: THE UNDERSIGNED HOLDERS OF MORTGAGE INTERESTS AND LIENS AGAINST THE PROPERTY OFFERED FOR DEDICATION AND TRANSFER TO THE PUBLIC AND CITY OF NORTHGLENN CONSENTS AND APPROVES OF SUCH DEDICATION AND TRANSFER AND SUBORDINATES AND RELEASES ITS INTERESTS TO SUCH DEDICATED AND TRANSFERRED PROPERTY. IN WITNESS WHEREOF, WE DO HERETO SET OUR HANDS AND SEALS THIS _____ DAY OF _____, 2016

(PRINTED NAME OF MORTGAGE INTEREST HOLDER)

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF ADAMS) SS

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY _____

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

CITY OF NORTHGLENN STANDARD NOTES:

1. STREET MAINTENANCE. IT IS MUTUALLY AGREED BY THE SUBDIVIDER AND THE CITY THAT THE DEDICATED PUBLIC WAYS, INCLUDING BUT NOT LIMITED TO STREETS, ROADS, DRIVES AND ALLEYS, SHOWN ON THIS PLAT, WILL NOT BE ACCEPTED FINALLY FOR MAINTENANCE BY THE CITY UNTIL AND UNLESS THE SUBDIVIDER CONSTRUCTS THE SAME IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENT AND SUBDIVISION REGULATIONS IN EFFECT AT THE DATE OF RECORDING THIS PLAT AND APPROVAL OF THE CITY HAS ISSUED TO THAT EFFECT.
2. DRAINAGE MAINTENANCE. THE OWNER, ITS LEGAL REPRESENTATIVES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS IN INTEREST AND ASSIGNS SHALL BE JOINTLY AND SEVERALLY LIABLE AND RESPONSIBLE FOR MAINTAINING THE STRUCTURAL INTEGRITY AND OPERATIONAL FUNCTIONS OF ALL DRAINAGE FACILITIES LOCATED ON THE PROPERTY SHOWN HEREON UNLESS OTHERWISE SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO, PRIVATE DRAINAGE FACILITIES AND PUBLIC AND PRIVATE DRAINAGE EASEMENTS. DRAINAGE IMPROVEMENTS ARE SUBJECT TO SECTION 16-17-13. POST-CONSTRUCTION REQUIREMENT OF PERMANENT BMPs, AS AMENDED.
3. VEHICULAR ACCESS CONTROL. VEHICULAR ACCESS TO PUBLIC STREETS IN THIS SUBDIVISION SHALL BE SOLELY BY WAY OF DRIVEWAYS SPECIFICALLY APPROVED BY THE CITY OF NORTHGLENN.
4. UNDERGROUND UTILITIES. ALL TELEPHONE LINES, ELECTRIC LINES, CABLE TELEVISION LINES AND OTHER LIKE UTILITY SERVICES SHALL BE PLACED UNDERGROUND. TRANSFORMER, SWITCHING BOXES, TERMINAL BOXES, METER CABINETS, PEDESTALS, DUCTS AND OTHER FACILITIES NECESSARILY APPURTENANT TO SUCH UNDERGROUND UTILITIES MAY BE PLACED ABOVE GROUND.

GENERAL NOTES:

1. BEARINGS ARE BASED ON THE NORTH LINE OF NORTHGLENN PAVILION FILING NO. 2 AS BEARING S89°42'42"E, AS PER THE PLAT OF NORTHGLENN PAVILION FILING NO. 2 (ASSUMED MERIDIAN).
2. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN SIX YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. FOUND 2" ALUMINUM CAPS STAMPED "DB & CO LS 27275 AT ALL EXTERIOR BOUNDARY CORNERS OF THE SUBJECT PROPERTY UNLESS OTHERWISE NOTED.
4. PREPARED BY: DREXEL, BARRELL & CO.
3800 36TH STREET
BOULDER, CO 80301
(303) 442-4338
5. ALL PREVIOUS EASEMENTS DEDICATED TO THE CITY OF NORTHGLENN ARE TO BE VACATED WITH THE FINAL PLAT.
6. TRACT A AND TRACT B WILL BE OWNED AND MAINTAINED BY THE HOA FOR ACCESS, UTILITY AND LANDSCAPE PURPOSES AND PUBLIC UTILITY AND STORMWATER EASEMENTS ARE DEDICATED WITHIN TRACT A AND TRACT B VIA SEPARATE DOCUMENTS. DRAINAGE SYSTEM COMPONENTS LOCATED WITHIN TRACT A AND TRACT B WILL BE OWNED AND MAINTAINED BY THE HOA. TRACT A IS DEDICATED AS AN ACCESS EASEMENT TO THE CITY OF NORTHGLENN.
7. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY DREXEL, BARRELL & CO. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS OF WAY AND TITLE OF RECORDS DREXEL, BARRELL & CO. RELIED UPON TITLE COMMITMENT NO. ABJ70493505-3 DATED SEPTEMBER 9, 2016 AS PREPARED BY LAND TITLE GUARANTEE COMPANY.



VICINITY MAP
(N.T.S.)

APPROVALS

PLANNING AND DEVELOPMENT

THIS MINOR SUBDIVISION HAS BEEN APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT OF THE CITY OF NORTHGLENN, COLORADO ON THE _____ DAY OF _____, 2016.

PLANNING AND DEVELOPMENT, DIRECTOR

PUBLIC WORKS AND UTILITIES

THIS MINOR SUBDIVISION HAS BEEN APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS AND UTILITIES OF THE CITY OF NORTHGLENN, COLORADO ON THE _____ DAY OF _____, 2016.

PUBLIC WORK AND UTILITIES, DIRECTOR

SURVEYOR'S CERTIFICATE

I, MATHEW E. SELTERS, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY OF "NORTHGLENN PAVILION FILING NO. 4" REPRESENTED BY THIS PLAT WAS MADE UNDER MY DIRECT SUPERVISION ON DECEMBER 02, 2016 AND MONUMENTS SHOWN THEREON ACTUALLY EXIST AND THIS PLAT ACCURATELY REPRESENTS SAID SURVEY TO THE BEST OF MY KNOWLEDGE, BELIEF AND OPINION.

MATHEW E. SELTERS
COLORADO REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 27275

RECORDER'S CERTIFICATE

STATE OF COLORADO)
COUNTY OF ADAMS) SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 2016, AT _____ O'CLOCK _____ M., RECEPTION NO. _____, FILE _____, MAP _____.

BY: _____
CLERK AND RECORDER

BY: _____

DEC 06 2015

A RESUBDIVISION OF LOTS 1, 2, 3, 4, 6, 7 AND 8, NORTHGLENN PAVILION FILING NO. 2,
LOCATED IN THE SE1/4 OF SECTION 35, T1S, R68W OF THE 6TH P.M.,
CITY OF NORTHGLENN, COUNTY OF ADAMS, STATE OF COLORADO
SHEET 2 OF 2

TRACT B



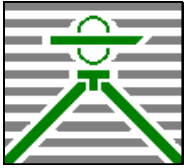
EXHIBIT C
DESCRIPTION OF PUBLIC IMPROVEMENTS

Relocate fire hydrants and associated line work to accommodate the new site layout

One additional sanitary sewer manhole southeast of the condo building

One stormceptor at the outfall of the detention pond.

EXHIBIT D
ENGINEER'S COST ESTIMATES



Engineers/Surveyors

Boulder
Colorado Springs
Greeley
303 442 4338
303 442 4373 Fax

Engineer's Opinion of Probable Cost For Public Improvements

Drexel Barrell & Co.

Client: Berkeley Homes

Project Title: *Northglenn Pavilion*

Project # 15780-04BLCV

Date: 8/16/2016

Item	Description	Quantity	Unit	Unit Price	Total
Public Water Main					
A	Fire Hydrants to be Relocated ¹	2	EA	\$0.00	\$0.00
B	6" Ductile Iron Pipe	62	LF	\$50.00	\$3,100.00
C	Abandon Existing Fire Line (Cap at Main)	2	EA	\$1,000.00	\$2,000.00
Water Quality Structure					
A	Stormceptor STC 900	1	EA	\$ 10,000.00	\$ 10,000.00
Sanitary Sewer					
A	4' Diameter Manhole	1	EA	\$ 8,500.00	\$ 8,500.00
TOTAL					\$23,600.00

Notes

¹ Existing fire hydrants to be re-used

**EXHIBIT E
LETTER OF CREDIT FORM**

BANK LETTERHEAD
NAME OF INSTITUTION
ADDRESS
CITY, STATE, ZIP

SAMPLE

DATE

IRREVOCABLE STANDBY LETTER OF CREDIT

BENEFICIARY:

PERMITTEE:

CITY OF NORTHGLENN
11701 COMMUNITY CENTER DRIVE
NORTHGLENN, COLORADO 80233

LETTER OF CREDIT NUMBER:

DATE ISSUED:

EXPIRARY DATE: THIS IRREVOCABLE LETTER OF CREDIT SHALL EXPIRE 12 MONTHS AFTER THE ISSUANCE DATE; PROVIDED THAT NAME OF INSTITUTION HAS GIVEN THE CITY OF NORTHGLENN NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS PRIOR WRITTEN NOTICE OF THE IMPENDING EXPIRATION.

AT: ISSUING BANK'S INTERNATIONAL BANKING COUNTERS LOCATED AT ADDRESS INDICATED ABOVE.

AMOUNT: \$AMOUNT U.S. DOLLARS

WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT AVAILABLE BY PAYMENT BY DRAFT(S) DRAWN AT SIGHT ON NAME OF INSTITUTION AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THIS ORIGINAL LETTER OF CREDIT.

2. A STATEMENT ISSUED AND SIGNED BY THE BENEFICIARY
CERTIFYING AS FOLLOWS:

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE
CITY OF NORTHGLENN, HEREBY CERTIFIES THE PERMITTEE HAS
FAILED TO COMPLY WITH A CONDITION UPON WHICH THE
CERTIFICATE OF OCCUPANCY WAS ISSUED BY THE CITY OF
NORTHGLENN TO THE PERMITTEE FOR THE FOLLOWING PROPERTY:
_____."

SPECIAL CONDITIONS:

PARTIAL DRAWING IS PERMITTED.

PURSUANT TO U.S. LAW, WE ARE PROHIBITED FROM ISSUING, TRANSFERRING,
ACCEPTING OR PAYING LETTERS OF CREDIT TO ANY PARTY OR ENTITY
IDENTIFIED BY THE OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF
TREASURY, OR SUBJECT TO DENIAL OF EXPORT PRIVILEGES BY THE U.S.
DEPARTMENT OF COMMERCE.

DRAFT DRAWN UNDER THIS CREDIT MUST BEAR THE CLAUSE: "DRAWN" UNDER
NAME OF INSTITUTION IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER.

THIS CREDIT IS SUBJECT TO "THE UNIFORM CUSTOMS AND PRACTICE FOR
DOCUMENTARY CREDITS" (1993 REVISION) INTERNATIONAL CHAMBER OF
COMMERCE PUBLICATION NUMBER 500.

WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) DRAWN AND/OR DOCUMENTS
PRESENTED AND NEGOTIATED UNDER AND IN COMPLIANCE WITH THE TERMS
OF THIS IRREVOCABLE STANDBY LETTER OF CREDIT WILL BE DULY HONORED
UPON PRESENTATION TO US.

NAME OF INSTITUTION

A MEMBER OF THE FEDERAL RESERVE SYSTEM

STANDBY LETTERS OF CREDIT