

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("AGREEMENT"), made and entered into by and between the County of Adams, State of Colorado ("COUNTY") and Welby Business Park, LLC, a Colorado limited liability company ("DEVELOPER").

WITNESSETH:

WHEREAS, Developer is the owner of real property in the County of Adams, State of Colorado, as described in Exhibit "A" attached hereto ("PROPERTY"), and by this reference made a part hereof;

WHEREAS, Developer desires to renovate an existing building and construct four new industrial-flex buildings (with a combined ground floor area of approximately 117,680 square feet, more or less) on the Property ("PROJECT");

WHEREAS, Developer desires to construct the industrial-flex buildings in two phases, with each phase comprised of two buildings that, combined, total roughly 58,840 square feet of ground floor area, more or less; and

WHEREAS, it is provided by resolution of the Board of County Commissioners ("BOCC"), County of Adams, that the Developer shall have entered into a written agreement with the County to install public and/or private improvements, and to deed land for public purposes or right-of-way.

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

1. **Engineering Services.**

A. *Public Improvements.* Developer shall furnish, at its own expense, all engineering and other services in connection with the design and construction of the "Public Improvements" described and detailed on Exhibit "B" attached hereto, and by this reference made a part hereof.

B. *County Improvements.* County will provide all engineering and other services in connection with the design and construction of all improvements within the right-of-way for

York Street, including the area dedicated to the County by the Developer as provided herein ("COUNTY IMPROVEMENTS"). County Improvements shall include pavement, drainage, sidewalks, curb, gutter, lighting (if any), and landscaping according to the County's planned cross-section for the street.

2. **Drawings and Estimates.** The drawings and cost estimates for the Public Improvements that are described and detailed on Exhibit "B" are approved by the County. Upon request by the County, Developer shall provide one set of reproducible "as-built" drawings, a pond certification letter, both stamped and signed by a registered professional engineer, and a final statement of construction costs for the Public Improvements.

3. **Construction.**

A. *Public Improvements.* Developer shall furnish and construct the improvements described in Exhibit "B" according to the specifications set out therein at its own expense. The improvements shall be constructed according to the schedule set out in Exhibit "B". In addition to those Improvements described in Exhibit "B", Developer, with approval from the County, may opt to install a temporary drainage system that includes a pipeline under York Street, in the event that the County Improvements are not complete and Adams County agrees to provide such permits and licenses for installation of such pipelines at no cost to Developer. Such pipeline shall not be considered a County Improvement, and the County may remove such pipeline provided that the County concurrently provides an adequate alternative outfall for the detention pond on the Property.

B. *County Improvements.* Developer shall pay a fee-in-lieu to the County for Developer's proportionate fair share of the County Improvements. The fee-in-lieu shall be \$434,185, as specified in Exhibit C, and shall be payable as follows:

1. The first payment, in the amount of \$191,041, representing 44 percent of the Project frontage on York Street, shall be due and payable prior to the issuance of a certificate of occupancy for any building in Phase 1, as identified on Exhibit "B", or the commencement of construction of the County Improvements, whichever occurs first.
 2. The second payment, in the amount of \$243,143, representing 56 percent of the Project frontage on York Street, shall be due and payable prior to the issuance of a certificate of occupancy for any building in Phase 2, as identified on Exhibit "B", or the commencement of construction of the County Improvements, whichever occurs first.
4. **Time for Completion.** Public Improvements shall be completed according to the terms of this agreement on or before the "construction completion date" appearing in Exhibit "B". The County may for good cause, grant extension of time for completion of any part or all of

Public Improvements appearing on said Exhibit "B". Any extension of time shall be in written form only.

5. **Guarantee of Compliance.** Developer shall furnish to the County a cash escrow deposit or other acceptable collateral, releasable only by the County, to guarantee compliance with this Agreement. Said collateral shall be in the amount of \$204,576.12 for Phase 1 which includes twenty percent (20%) to cover administration, and an additional five percent (5%) per year to cover inflation. No Building Permits shall be issued for any phase until the collateral required for that phase is furnished in the amount required and in a form acceptable to the BoCC.

Upon completion of said Public Improvements constructed according to the terms of this Agreement, and Preliminary Acceptance by the BoCC, the collateral shall be released. Completion of said improvements shall be determined solely by the County, and a reasonable part of said collateral, up to 20%, may be retained to guarantee maintenance of Public Improvements for a period of one year from the date of completion.

No Certificate of Occupancy (C/O) for any building may be issued until the improvements described in Exhibit "B", including the retention pond and drainage improvements, have been preliminarily accepted by the BoCC.

6. **Acceptance and Maintenance of Public Improvements.** All improvements designated "public" on Exhibit "B" shall be public facilities and become the property of the County or other public agencies upon final acceptance, at which time the County and its Successors and Assigns will be responsible for maintaining the Public Improvements, except the retention pond, which shall be maintained by Developer at Developer's expense. Upon issuance of Preliminary Acceptance, the Developer shall begin the one (1) year guaranty period ("Guaranty Period"). During the Guaranty Period the Developer shall be responsible for all maintenance and repairs to the Public Improvements, including such maintenance, repairs, or replacements that, in the reasonable judgment of the County, are required due to defective materials or workmanship. Failure by the Developer to maintain and repair the Public Improvements during this period shall be cause for the Community and Economic Development Department to extend the Guaranty Period until such work is completed. If, within thirty (30) days of written notice to the Developer from the County requesting repairs or replacements pursuant to this Section, the Developer has not undertaken with due diligence to make the same, the County may make such repairs or replacements at the Developer's expense. In the case of an emergency such written notice may be waived, but in any event, the County shall make all reasonable efforts under the circumstances to contact Developer and require Developer to make such repairs before undertaking the repairs itself.

7. **Vested Rights.** Pursuant to Article 28 of Title 24, Colorado Revised Statutes (“VESTED RIGHTS LAW”), this Development Agreement (including its recitals) is a “site specific development plan” that describes with reasonable certainty the type and intensity of use for the Property. Except as provided in the Vested Rights Law on the date of mutual execution of this Agreement (“EFFECTIVE DATE”), Developer shall have a vested right to complete the Project pursuant to the *Adams County Development Standards and Regulations* that are in effect on the Effective Date. Said vested right shall expire six years after the Effective Date.
8. **Improvements and Dedication.** The undersigned Developer hereby agrees to provide the following improvements, and to dedicate described property.
- A. *Improvements.* Designate separately each public and private improvement.
- Public Improvements:
- See Exhibit “B” for description, estimated quantities and estimated construction costs.
- The improvements shall be constructed in accordance with all County requirements and specifications in accordance with the approved plans and time schedule as indicated in Exhibit “B”.
- B. *Public dedication of land for right-of-way purposes or other public purpose.* Upon approval of this agreement by the Board of County Commissioners, the Developer hereby agrees to convey by warranty deed to the County of Adams the following described land for right-of-way or other public purposes:
- See Exhibit “D” for descriptions of land to be dedicated.
9. **Termination of 1981 Agreement.** This Agreement terminates that certain Development Agreement between the County and Developer’s predecessor in title Jerry Depue and Rosalee Depue (husband & wife), dated May 18, 1981 and recorded in the public records of Adams County, Colorado on June 23, 1981 at Book 2565, Page 16.
10. **Force Majeure.** No Party shall be deemed in default of this Agreement, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott, or other similar events beyond the reasonable control of the Party, provided that the Party relying upon this provision gives prompt written notice thereof to the other Party, and takes all steps reasonably necessary to mitigate the effects of the force majeure event.

11. **Successors and Assigns.** This Agreement shall be binding upon the heirs, executors, personal representatives, successors, and assigns of the Developer, and shall be deemed a covenant running with the real property as described in Exhibit "A" attached hereto. Developer may assign this Agreement:

A. to any purchaser of the Property upon closing; or

B. to any entity which: (i) controls the management of Developer (e.g., a parent company) by virtue of the extent of its ownership interest (e.g., greater than 50 percent ownership of stock or other equity interest) or operating agreement ("CONTROL"); or (ii) is subject to the Control of a person or entity that also has Control of Developer; or (iii) is subject to Developer's Control (e.g., a subsidiary).

12. **Notices.** Any notice required or allowed to be given under this Agreement shall be given by properly addressed email and either by certified mail or by nationally recognized overnight courier service. Notice is effective as of the time the email is sent. Notices sent by certified mail or courier shall be sent within one business day after the transmittal of the email. Notice is effective if sent to the persons and addresses set forth in this Section, unless notice (as described in this Section) is given to specify a different person or address.

All notices to County shall be sent to:

Adams County
Community and Economic
Development Department
4430 S. Adams County Parkway
Brighton, Co 80601-8218
Attn: Nana Appiah
(720) 523-6819
Email:

All notices to Developer shall be sent to:

Paul Yantorno
1480 East 73rd Avenue
Denver, CO 80229
Tel: 303-912-4694
Email: paul@centerco.com

With copy to:

Rita M. Connerly, Esq.
Fairfield and Woods, P.C.
1801 California Street, Ste. 2600
Denver, CO 80202
Tel: (303) 894-4411
Email: rconnerly@fwlaw.com

13. **Installation and Maintenance of Landscaping.** The landscape improvements for Phase I shall be approved and installed in accordance with County requirements and with any conditions of approval placed on the building permit for Phase I construction. Landscape improvements for Phase II may be phased. Issuance of building permits for Phase II shall serve as collateral for an approved landscape plan.

Welby Business Park, LLC,
A Colorado limited liability company

By: C. Paul Yantow (manager)

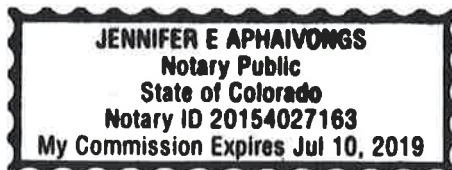
STATE OF COLORADO }
CITY AND COUNTY OF BROOMFIELD } ss.
JA ~~DENVER~~ }

The foregoing instrument was acknowledged before me this 29 day of SEPTEMBER, 2015, by CARL PAUL YANTOW as MANAGER for Welby Business Park, LLC, a Colorado limited liability company.

My commission expires: 7-10-2019

Address: 11775 WADSWORTH BLVD.
BROOMFIELD, CO 80020

[Signature]
Notary Public




APPROVED BY resolution at the meeting of 10-6-15, 2015.

Collateral to guarantee compliance with this agreement and construction of public improvements shall be required in the amount of \$204,576.12 for Phase 1. No Building Permits shall be issued until said collateral is furnished in the amount required and in a form acceptable to the Board of County Commissioners.

BOARD OF COUNTY COMMISSIONERS

ATTEST:

ADAMS COUNTY, COLORADO



Clerk of the Board



Chairman

APPROVED AS TO FORM
COUNTY ATTORNEY



WELBY BUSINESS PARK
Case No.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Legal Description:

Block 1, Lot 1, Welby Business Park

County of Adams, State of Colorado

EXHIBIT B

WELBY BUSINESS PARK - RETENTION POND

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Item No.	CDOT NO.	DESCRIPTION	UNIT	QUANTITY	ENGINEER'S OPINION	
				TOTAL	Unit \$	Total \$
1	203-00010	Unclassified Excavation	CY	2524	\$ 21.94	\$ 55,377
2	212-00006	Seeding (Native)	AC	0.36	\$ 2,000.00	\$ 720
3	506-00206	Riprap (Type VL- 6-inch) spillway	CY	33	\$ 100.00	\$ 3,333
4	625-00000	Construction Surveying	LS	1	\$ 2,000.00	\$ 2,000
						\$ 61,430

WELBY BUSINESS PARK - 77TH AVENUE IMPROVEMENTS

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Item No.	CDOT NO.	DESCRIPTION	UNIT	QUANTITY	ENGINEER'S OPINION	
				TOTAL	Unit \$	Total \$
1	201-00000	Clearing and Grubbing	LS	1	\$2,000.00	\$ 2,000
2	202-00240	Removal of Asphalt Mat (planing)	SY	120	\$ 26.00	\$ 3,120
3	208-00020	Erosion Control (Silt Fence)	LF	580	\$ 2.00	\$ 1,160
4	403-00720	Hot Mix Asphalt (Patch)	TN	144	\$ 160.00	\$ 23,040
5	412-00400	4" Concrete Pavement	SY	344	\$ 65.00	\$ 22,331
6	412-00800	8" Concrete Pavement	SY	100	\$ 110.00	\$ 11,000
7	608-00010	Curb Ramp	SY	23	\$ 124.49	\$ 2,863
8	609-21020	Curb and Gutter Type II	LF	604	\$ 21.75	\$ 13,137
9	625-00000	Construction Surveying	LS	1	\$2,500.00	\$ 2,500
10	626-00000	Mobilization	LS	1	\$5,000.00	\$ 5,000
11	630-00012	Construction Traffic Control	DAY	20	\$ 739.01	\$ 14,780
						\$ 100,932

SUBTOTAL PHASE 1:..... \$162,362.00

ADDITIONAL 20% ADMINISTRATION:.....\$32,472.40

5% INFLATION PER YEAR (one year): \$9,741.72

TOTAL COLLATERAL:\$204,576.12

Construction Completion Date, PHASE 1: July 1, 2016

Initials or signature of Developer: 

Sorenson Engineering, Inc.
 7000 13th Avenue SW
 Suite 100 • Golden, CO 80401
 Phone: (303) 440-9400
 Fax: (303) 440-9401

PROPOSED CONDITIONS
WELBY BUSINESS PARK
7645 York Street
Adams County, Colorado

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This 11x17 Exhibit Is Reduced
from a 24x36 Full Size Version

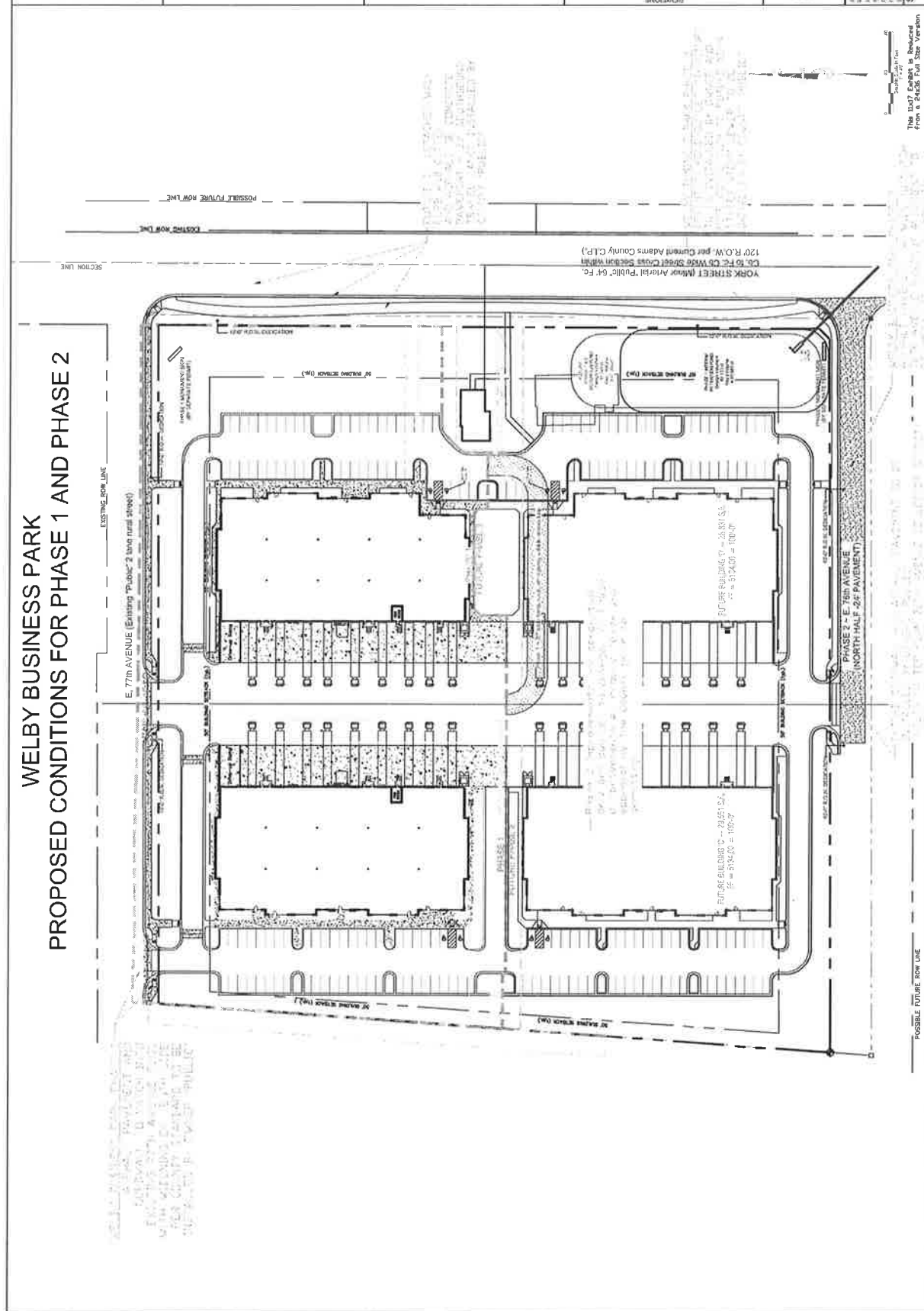


EXHIBIT C

YORK STREET COST ESTIMATES

WELBY BUSINESS PARK - YORK STREET IMPROVEMENTS

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Item No.	CDOT NO.	DESCRIPTION	UNIT	QUANTITY	ENGINEER'S OPINION	
				TOTAL	Unit \$	Total \$
1	201-00000	Clearing and Grubbing	LS	1	\$ 3,000.00	\$ 3,000
2	203-00010	Uncl. Excavation and Embankment	CY	1390	\$ 21.94	\$ 30,497
3	202-00240	Removal of Asphalt Mat (planing)	SY	3654	\$ 26.00	\$ 95,004
4	208-00020	Erosion Control (Silt Fence)	LF	700	\$ 2.00	\$ 1,400
5	403-00720	Hot Mix Asphalt (Patch)	TN	1218	\$ 160.00	\$ 194,880
6	412-00400	4" Concrete Pavement	SY	741	\$ 65.00	\$ 48,165
7	608-00010	Curb Ramp	SY	8	\$ 124.49	\$ 996
8	609-21020	Curb and Gutter Type II	LF	716	\$ 21.75	\$ 15,573
9	625-00000	Construction Surveying	LS	1	\$ 7,500.00	\$ 7,500
10	626-00000	Mobilization	LS	1	\$15,000.00	\$ 15,000
11	630-00012	Construction Traffic Control	DAY	30	\$ 739.01	\$ 22,170
						\$ 434,185
				PHASE 1 (44%):		\$ 191,041
				PHASE 2 (56%):		\$ 243,143

EXHIBIT D

Legal Descriptions of Property to be Dedicated