

**SECOND AMENDED AND RESTATED
DEVELOPMENT AGREEMENT FOR WELBY BUSINESS PARK**

This SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("AGREEMENT") is made and entered into by and between the County of Adams, State of Colorado ("COUNTY"), and LYK Welby, LLC, a Colorado limited liability company ("OWNER").

WITNESSETH:

WHEREAS, Owner is the successor in title to Welby Business Park, LLC, a Colorado limited liability company ("DEVELOPER"), with regard to 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 and County entered into that certain DEVELOPMENT AGREEMENT, dated October 6, 2015 ("PHASE 1 AGREEMENT"), recorded in the Public Records of Adams County, Colorado on October 7, 2015 at Reception No. 2015000083907, with respect to the renovation of an existing building and the construction of four new industrial-flex buildings (with a combined ground floor area of approximately 117,680 square feet, more or less, two in Phase 1 and two in Phase 2) on the Property ("PROJECT") in two phases;

WHEREAS, pursuant to the Phase 1 Agreement, Developer provided the required collateral for Phase 1, paid a fee-in-lieu of \$191,041.00 for improvements to York Street, deeded all public dedications required by the Phase 1 Agreement to the County, and completed the public improvements for the first phase ("PHASE 1") (as of September 23, 2016), and thereafter the County released the required collateral;

WHEREAS, Developer and County entered into that certain FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR WELBY BUSINESS PARK, dated April 3, 2018 ("BUILD-OUT AGREEMENT"), recorded in the Public Records of Adams County, Colorado on April 6, 2018 at Reception No. 2018000028124, in order to update the Phase 1 Agreement to provide for the implementation of Phase 2 (which resulted in the build-out of the Property);

WHEREAS, pursuant to the Build-Out Agreement, Developer provided the required collateral for Phase 2, paid an additional fee-in-lieu of \$250,723.60 for improvements to York Street (including funding the redesign of the intersection at York Street and 76th Avenue to accommodate a 40-foot curb radius), deeded all public dedications required by the Build-Out Agreement to the County, modified the Permanent Storm Water Drainage Facilities Maintenance Easement to reflect the as-built condition of the on-site stormwater management facilities, and constructed a temporary Off-Site Stormwater Connection;

WHEREAS, the Build-Out Agreement contemplates that the temporary Off-Site Stormwater Connection will remain in place until the County completes certain improvements to York Street, at which time Developer will coordinate with the County's contractor to install a permanent Off-Site Stormwater Connection, and the County will construct a segment of 24-inch stormwater pipe that is related to said connection across York Street at the County's expense;

WHEREAS, the Owner and the County desire to acknowledge that all obligations of the Owner that are set out in the Build-Out Agreement have been satisfied, except that the permanent Off-Site Stormwater Connection has not been installed because the County has not yet commenced the anticipated York Street improvements adjacent to the Property;

WHEREAS, the approved design for the Off-Site Stormwater Connection anticipated certain grades and elevations in the design of York Street and related improvements which have since been updated and changed, and as such, Owner and the County wish to update and improve the design of the Off-Site Stormwater Connection at the Owner's expense in order to reduce long-term maintenance and replacement costs and improve operational efficiency; and

WHEREAS, this Agreement is intended to update and supersede the Build-Out Agreement in its entirety.

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

1. Engineering Services.

A. *Public Improvements.* All public improvements contemplated by the Phase 1 Agreement and the Build-Out Agreement are constructed except the Off-Site Stormwater Connection (defined in Section 2.A.2., below).

B. *County Improvements.* The 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 areas dedicated to the County by the Owner pursuant to the Phase 1 Agreement and the Build-Out Agreement; except that the Owner shall reimburse the County for the professional fees paid to the County's engineering consultant, work performed by the County or the County's Contractors, and materials needed, to the extent that they are related to the redesign of the York Street improvements to accommodate the Off-Site Stormwater Connection described and detailed in **Exhibit "B"**. Reimbursement will be in the amount of the County's actual costs for the work performed under this agreement, the Cost Estimate is included in Exhibit "B". Reimbursement shall be delivered to the County within 30 days after delivery of documentation to Owner regarding the County's actual costs. Reimbursement shall be secured as provided in Section 4 of this Agreement.

2. Construction.

A. Public Improvements.

1. Except as provided in subsection 2.A.2., below, Owner has received final acceptance of all public improvements required by the Phase 1 Agreement and preliminary acceptance for the Build-Out Agreement. The improvements from Phase 1 have been accepted by the County and collateral has been released. The improvements from the Build-Out Agreement were preliminarily accepted by the County on February 4, 2019.

2. The County anticipates making improvements to York Street in 2020-2021. At such time as the County commences construction of the York Street improvements in a location that allows for the construction and operation of the outfall pipeline ("OFF-SITE STORMWATER CONNECTION") that is described in **Exhibit "C"** and **Exhibit "D"** ("COST ESTIMATE" and "REVISED PLANS") hereto, the Owner shall cause the Off-Site Stormwater Connection to be constructed at the Owner's expense in accordance with the Revised Plans. The Revised Plans shall supersede the "Welby Business Park Phase II Site Plan Set – Civil & Survey" (referred to in the Build-Out Agreement as "Phase 2 Plans") with regard to the 24-inch outfall pipeline shown thereon.

a. The Owner acknowledges that the York Street Capital Improvements Project ("CIP") is currently under revision. The Owner further acknowledges that the CIP may make the current alignment of the Off-Site Stormwater Connection, as shown in the Revised Plans, infeasible. If changes to the CIP make the Off-Site Stormwater Connection infeasible, the Owner shall construct the improvements in accordance with the Welby Business Park Phase II Site Plan Set- Civil & Survey.

3. The Off-Site Stormwater Connection to be constructed by the Owner does not include the segment of 24-inch outfall pipe described in the Revised Plans that crosses York Street ("CROSSING"). The Crossing shall be installed by the County at the County's expense. When the Off-Site Stormwater Connection and the Crossing are completed and connected, the Owner shall cease using the Temporary Drainage System and plug its pipeline with flow fill.

4. The Owner's agent, designated below, will coordinate all construction activities related to the roadway and storm sewer connection to the York Street CIP directly with Adams County. The County has no liability to the Owner with regard to contracts and communications between Owner (or the Owner's agent) and the County's contractor.

B. County Improvements.

1. Owner has met its obligation with respect to fees-in-lieu for York Street under the Phase 1 Agreement and the Build-Out Agreement.

2. County will construct the Crossing and the crossspan and curb returns at the intersection of York Street and 76th Avenue as part of the York Street improvements. These County improvements are shown on **Exhibit "E"**.

3. Time for Completion. Owner will complete the Off-Site Stormwater Connection in coordination with the County's York Street CIP contractor, as provided in Section 2 of this Agreement.

4. Guarantee of Compliance.

A. *Collateral.* Owner shall furnish to the County a cash escrow deposit, bond, letter of credit, or other acceptable collateral, releasable only by the County, guaranteeing compliance with this Agreement. Said collateral shall be in the amount of **\$10,206.42**, which includes 20 percent to cover administration, and an additional five percent per year to cover inflation.

B. *Release of Collateral.* Upon completion of the Off-Site Stormwater Connection and Preliminary Acceptance in accordance with Section 5-02-05-01 of the Adams County Development Standards and Regulations, all collateral related to Welby Business Park that has not previously been released shall be released, except that **\$2,041.28 (twenty percent)** may be retained to guarantee maintenance of the Off-Site Stormwater Connection for a period of one year from the date of completion. Completion of said improvements shall be determined solely by the County.

5. Acceptance and Maintenance of Off-Site Stormwater Connection.

A. The Off-Site Stormwater Connection shall become the property of the County upon final acceptance, at which time the County and its successors and assigns will be responsible for maintaining the Off-Site Stormwater Connection. If the Off-Site Stormwater Connection does not provide sufficient velocity to transport sediment, the County may refuse acceptance, in which case the Off-Site Stormwater Connection shall, at Owner's option, be repaired or reconstructed at Owner's expense to provide sufficient velocity or maintained by the Owner at the Owner's expense.

B. Upon issuance of Preliminary Acceptance for the Off-Site Stormwater Connection, the Owner shall begin the one-year guaranty period ("GUARANTY PERIOD"). During the Guaranty Period, the Owner shall be responsible for all maintenance and repairs to the Off-Site Stormwater Connection, including such maintenance, repairs, or replacements that, in the reasonable judgment of the County, are required due to defective materials or workmanship.

C. If, within ten days of written notice to the Owner from the County requesting such repairs or replacements, the Owner has not undertaken with due diligence to make

the same, the County may make such repairs or replacements at the Owner's expense. In the case of an emergency, such written notice may be waived.

6. Improvements. The undersigned Owner hereby agrees to provide the following improvements:

See **Exhibit "B"**, **Exhibit "C"** and **Exhibit "D"** 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 according to the time schedule set out in this Agreement.

7. 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, public health orders related to a pandemic or comparable event, 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.

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

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

B. to any entity that: (i) controls the management of Owner (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 Owner; or (iii) is subject to Owner's Control (e.g., a subsidiary).

9. 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:
Jill Jennings Golich, Director

All notices to Owner shall be sent to:
Paul Yantorno

Adams County Community and Economic
Development Department
4430 S. Adams County Parkway
Brighton, Colorado 80601-8218
Email: jjenningsgolic@adcogov.org

Authorized Representative for Purposes of
this Agreement Only
Welby Business Park, LLC
1480 East 73rd Avenue
Denver, Colorado 80229
Email: paul@centerco.com

With copy to:
Todd G. Messenger, Esq.
Fairfield and Woods, P.C.
1801 California Street, Ste. 2600
Denver, Colorado 80202
Email: tmessenger@fwlaw.com

With copy to:
Melissa Lum, Manager
LYK Welby, LLC
80 North King
Honolulu, HI 96817
808-531-5200
Email: myjl@lyk.com

With Copy to:
Sherry Bennett, Property Manager
Colliers International
4643 South Ulster Street, Suite 1000
Denver, CO 80237
(303) 745-5800
Email: Sherry.bennett@colliers.com

With copy to:
Larry Fulton
Karsh Gabler Call, P.C.
Denver West Office Park
1546 Cole Blvd. Bldg. 5 Suite 100
Lakewood, CO 80401
(303) 759-9669
Email: lfulton@karshgabler.com

OWNER:

LYK Welby, LLC
A Colorado limited liability company

By: LYK Colorado 5, LLC,
a Colorado limited liability company,
its Manager

By: Jeffrey M.C. Lum

Its: Manager

STATE OF HAWAII }
 } ss:

COUNTY OF HONOLULU }

The foregoing instrument was acknowledged before me this ____ day of October, 20____, by Jeffrey M.C. Lum as Manager of LYK Colorado 5, LLC, a Colorado limited liability company, as Manager of LYK Welby, LLC, a Colorado limited liability company.

My Commission Expires: _____

Notary Public

APPROVED BY resolution at the meeting of _____, 2020.

Collateral to guarantee compliance with this Agreement and construction of the Off-Site Stormwater Connection shall be required in the amount of **\$10,206.42**, and shall be provided prior to County execution of this Agreement.

ATTEST: BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Clerk of the Board

Chair

APPROVED AS TO FORM:

County Attorney

EXHIBIT "A"
OWNER PROPERTY

Legal Description:

Block 1, Lot 1, Welby Business Park, less and except:

(1) the property described in that certain Warranty Deed from Welby Business Park, LLC to the County of Adams, dated September 29, 2015, and recorded in the public records of Adams County, Colorado on March 4, 2016 at Reception No.

2016000016690;

(2) the property described in that certain Special Warranty Deed from Welby Business Park, LLC to the County of Adams, dated January 9, 2018, and recorded in the public records of Adams County, Colorado on April 12, 2018 at Reception No.

2018000029701; and

(3) the property described in that certain Warranty Deed from Welby Business Park, LLC to the County of Adams, dated February 15, 2018, and recorded in the public records of Adams County, Colorado on July 5, 2018 at Reception No.

2018000054260.

County of Adams, State of Colorado.

\$10,206.42

EXHIBIT "B"

OFF-SITE STORMWATER CONNECTION COST ESTIMATES

Welby Buisness Park Pond Outlet Structure Modifications



Hudick Excavating Inc. dba HEI CIVIL

5460 Montana Vista Way
Castle Rock, CO 80108

Contact: Dale Lancaster
Phone: 303-688-9500
Fax: 303-688-5254

Date: 10/29/2020
Quote To: Adams County
4430 S. Adams County Parkway Suite W2000B
Brighton, CO 80601
Attention: David Rausch
Phone: 720-523-6840
Fax:

Job Name: York Street Phase 1
Date of Plans: 9/14/2020

Revision Date:
HEI Bid Number: DL20159

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	Remove Existing Main. Trail	97.00	SY	7.00	679.00
20	Flow Fill Existing 24" RCP	70.00	LF	18.00	1,260.00
30	Flow Fill Existing 8" PVC	53.00	LF	18.00	954.00
40	Remove Existing Manhole	1.00	EA	750.00	750.00
45	Remove Pump/s	1.00	LS	1,125.00	1,125.00
50	Remove Existing Rip Rap	6.00	CY	30.20	181.20
55	Connect To Existing	1.00	EA	2,715.00	2,715.00
60	24" RCP	50.00	LF	83.14	4,157.00
70	Outlet Modification	1.00	LS	3,850.00	3,850.00
80	10' Wide Grass Pavers Main. Trail	83.00	SY	95.00	7,885.00
90	Landscape Restoration	1.00	LS	17,500.00	17,500.00
100	Survey	1.00	LS	1,250.00	1,250.00
GRAND TOTAL					\$42,306.20

Engineering Cost (revise County Plans) \$15,000

NOTES:

Does include any of the 24" RCP noted as "previously designed Rotello outfall alignment"

Grand Total: \$57,306.20

No detail provided for the grasscrete pavers pricing assumes True Grid Pro Lite with 6" of class 6 as a base course will be acceptable.

Please call if you have any questions.

Initials or signature of Owner: _____

EXHIBIT "C"

COST ESTIMATES FOR PUBLIC IMPROVEMENTS FOR WORK PERFORMED BY DEVELOPER

<p align="center">Engineer's Opinion of Probable Costs</p> <p align="center">Welby Business Park Phase II - Amended Detention Pond Outfall System</p> <p align="center">Anticipated Completion Date - March 31, 2021</p>					
<u>Item #</u>	<u>Item Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit cost</u>	<u>Total cost</u>
1	Outlet Box Modification	ls	1	\$ 3,750.00	\$ 3,750.00
2	Stormwater Outfall Including Surface Restoration	lf	50	\$ 80.00	\$ 4,000.00
3	Construction Surveying	ls	1	\$ 600.00	\$ 600.00
	SUBTOTAL				\$ 8,350.00
				+20% Administration Fee	\$ 1,670.00
	SUBTOTAL				\$ 10,020.00
				+5% Inflation Per Year	\$ 186.42
	TOTAL				\$ 10,206.42

Initials or signature of Owner: _____

REVISED PLANS (OFF-SITE STORMWATER CONNECTION)

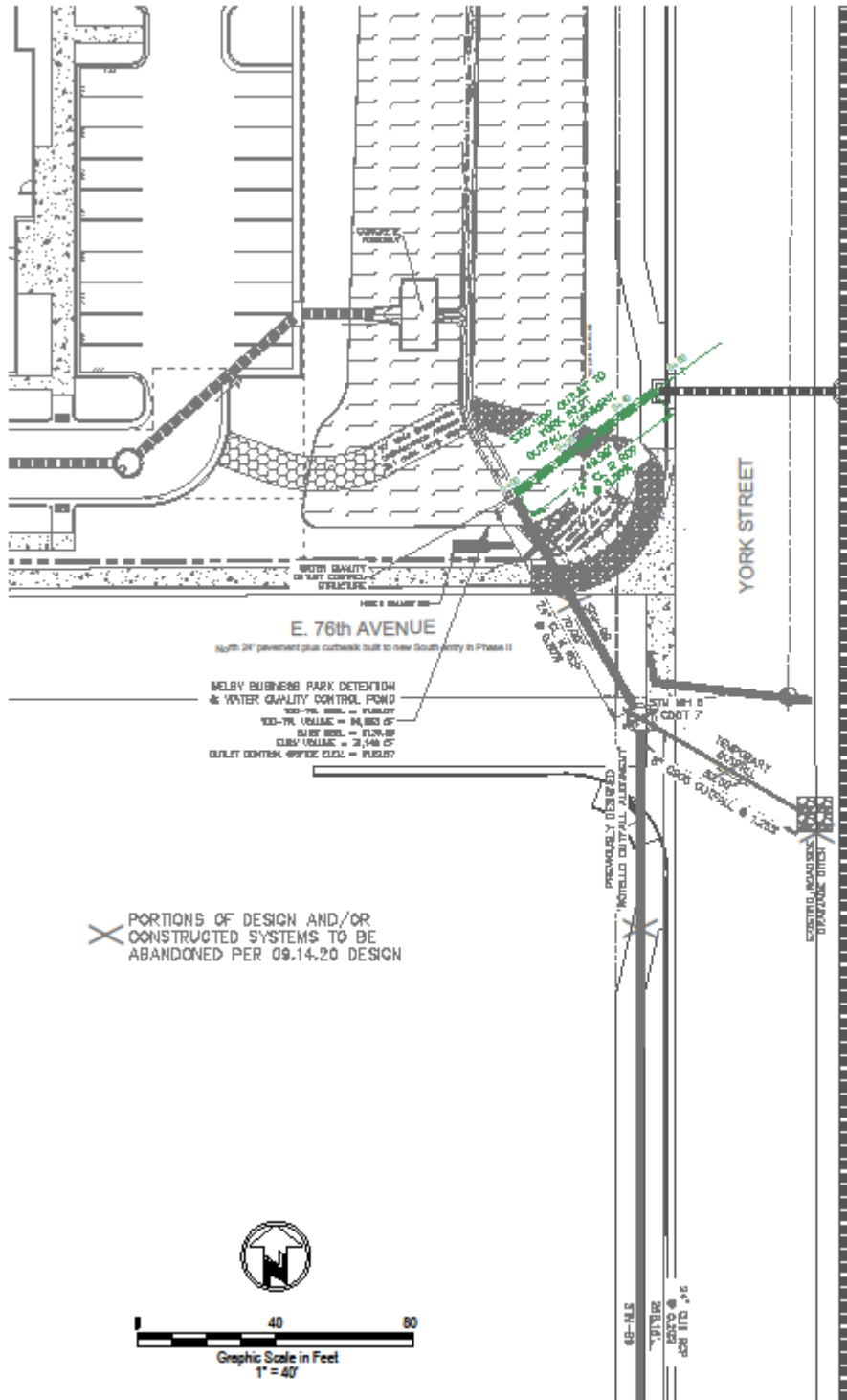


EXHIBIT "E"
COUNTY IMPROVEMENTS

