

## DEVELOPMENT AGREEMENT

(Legato Filing No. 1)

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date") by and between the CITY OF COMMERCE CITY ("City"), a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado, and Cohen Denver Airport, LLC ("Developer" or "Owner"), a Nevada Limited Liability Company, whose principal business address is 9875 West La Mancha Ave., Las Vegas, NV 89149, Attention: Brad Burns.

**WHEREAS**, Developer owns certain real property within the City generally located at a part of Section 22, Township 2 South, Range 66 West, of the 6<sup>th</sup> P.M., City of Commerce City, County of Adams, State of Colorado, and more specifically described in **Exhibit A**, also known as Legato Filing No. 1 ("Property");

**WHEREAS**, Developer intends to subdivide and/or develop the Property, the effect of which will directly impact and generate the need for on-site and off-site improvements;

**WHEREAS**, the City has enacted a Land Development Code (the "LDC") that, as a result of the subdivision and/or development, requires certain public improvements to be installed and/or constructed on or adjacent to the Property; and

**WHEREAS**, Developer acknowledges that the improvements required herein are reasonably attributable to the special impacts that will be generated by the proposed uses of the Property and that the terms and conditions set forth in this Agreement are reasonable, necessary and appropriate.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

### **I. IMPROVEMENTS REQUIRED**

A. Developer shall provide the improvements or other performance requirements as set forth in **Exhibits B and C** (collectively, the "Improvements") as follows:

1. **Exhibit B**, attached hereto and incorporated herein by this reference, identifies all required infrastructure improvements related to public roadways, right of ways, storm sewer systems, and sidewalks (including multiuse paths) (the "Infrastructure Improvements"). Required Infrastructure Improvements shall be detailed in construction plans to be approved by the City.
2. **Exhibit C**, attached hereto and incorporated herein by this reference, identifies all required improvements relating to or concerning landscaping for and along all roadways (including but not limited to principal and minor arterial roadways, major and minor collector roadways) and trails, in all private parks, and in open space areas and inclusive of sidewalks and trails outside the right of way, and all associated appurtenances (the "Landscape Improvements"). Required Landscape Improvements shall be detailed in landscape plans to be approved by the City.
3. Exhibits B and C include a description of Improvements and schedules, in a form acceptable to the City, of the estimated costs of Improvements to be accepted by the City. If construction of Infrastructure Improvements and/or installation of Landscape Improvements have not begun within one (1) year of the Effective Date, Developer shall submit to the City not later than ninety (90) days prior to commencement of construction or installation, as applicable, revised

Handwritten signature and initials, possibly "R.M.", in the bottom right corner.

Exhibits B and/or C, as appropriate, providing then-current schedules of estimated costs for the applicable Improvements and compliant with all then-current laws, codes, rules, regulations, standards and specifications of the City.

4. Costs provided in Exhibits B and C are provided for surety estimates only and shall not be used to establish or alter construction standards or specifications. The omission of any particular improvement from city approved construction plans or development permits shall not modify the obligation to provide the Improvements. Nothing in this Agreement shall be interpreted to alter or amend the City's Construction Standards and Specifications.
- B. Developer shall, at its sole expense, design, construct and install the Improvements for initial acceptance as provided in Section IV herein ("Initial Acceptance") and shall repair the Improvements as necessary until final acceptance by the City as provided in Section V herein ("Final Acceptance").
- C. Construction and landscape plans must be approved by the City prior to commencement of construction of Infrastructure Improvements or installation of Landscape Improvements.
- D. If the City or a third party designs and constructs any Improvements, the City or third party shall control the timing, scope, manner of design and construction and Developer shall grant the City or third party any easements, access, and right-of-way at no cost to the City necessary to construct such Improvements. In such a case, within the later of ninety (90) days of a written demand for payment or at the time of future development, Developer shall reimburse the City or third party for the actual costs of the design and construction of such Improvements, which costs shall be determined at the completion of construction. Nothing in this Agreement shall obligate the City to install or complete any Improvements or to require the City to recover costs of Improvements from any person.

## **II. SECURITY FOR CONSTRUCTION/INSTALLATION OF IMPROVEMENTS**

### **A. Security for Construction of Infrastructure Improvements.**

1. Prior to commencing construction of any of the Infrastructure Improvements, Developer shall provide, or cause to be procured, to the City an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred fifteen percent (115%) of the estimated cost of the Infrastructure Improvements (the "Infrastructure Security"). A bond or letter of credit shall be valid until Initial Acceptance of the Infrastructure Improvements. Any bond or letter of credit shall meet the requirements for bonds or letters of credit set forth in subsections III.D.1-2.
2. Upon issuance of the letter of Initial Acceptance described in Section IV.A., the City shall release the Infrastructure Security so long as all releases of mechanic's lien have been filed with respect to the project and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
3. Developer Default.
  - a. In the event Developer fails to obtain Initial Acceptance within twenty-four (24) months from the commencement of construction, subject to extension at the City's sole discretion, the City may retain the Infrastructure Security and apply such funds to completion of the Infrastructure Improvements including administrative costs related to the retention of the Infrastructure Security and completion of construction.

Handwritten signature and initials in the bottom right corner of the page.

- b. The City may, at its sole discretion, refund all or part of the Infrastructure Security not applied to completion of the Infrastructure Improvements.
- c. The method and manner in which the City elects to construct or install the Infrastructure Improvements shall be at the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the Infrastructure Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.

B. Security for Installation of Landscape Improvements.

- 1. In the event Developer is unable to complete all Landscape Improvements prior to Initial Acceptance of the Infrastructure Improvements due to periods of adverse weather or similar reasons approved by the City, Developer shall provide to the City an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred fifty percent (150%) of the estimated cost of the uncompleted Landscape Improvements (the "Landscape Security"). Any irrevocable letter of credit or performance surety bond provided by Developer shall be valid until Initial Acceptance. Any bond or letter of credit shall meet the requirements set forth in subsections III.D.1-2.
- 2. Except as provided in subsection II.B.4. herein, the City shall release the Landscape Security only upon completion and City acceptance of all Landscape Improvements so long as all releases of mechanic's lien have been filed with respect to the Landscape Improvements and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
- 3. If delayed as provided for in subsection II.B.1. herein, Developer shall complete the Landscape Improvements not later than eight (8) months from the date of written request by the City.
- 4. Developer Default
  - a. In the event Developer fails to complete the Landscape Improvements within eight (8) months from the date of the City's written request, the City may retain the Landscape Security and apply such funds to completion of the Landscape Improvements.
  - b. The City may, at its sole discretion, refund all or part of the Landscape Security not applied to completion of the Landscape Improvements.
  - c. The method and manner in which the City elects to install the Landscape Improvements shall be at the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the Landscape Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.
- 5. Regardless of the provisions of this Section II.B., the City shall not be responsible for maintaining the Landscape Improvements within the right-of-way of any arterial or collector roadways. The City shall maintain medians within principal and minor arterials to the extent landscaping has been installed by the City. Individual lot owners shall be required to maintain tree lawn areas as approved and installed along local roadways.

C. Bonds and Letters of Credit. The Developer shall provide, or cause to be provided, all bonds and letters or credit, and any other security required by this Section II, to the Department of Finance of

the City of Commerce City with a notice to the City Engineer evidencing compliance with this provision.

### III. WARRANTY

- A. Developer hereby warrants all Improvements to be free from defects, including but not limited to, defects of materials, workmanship and design and that the Improvements otherwise fully comply with all applicable City standards and specifications in effect on the date of this Agreement.
- B. Prior to Initial Acceptance of the Infrastructure Improvements, Developer shall execute and deliver to the City a warranty performance guarantee equal to fifteen percent (15%) of the total estimated cost of the Infrastructure Improvements (the "Infrastructure Warranty").
- C. Prior to Initial Acceptance of the Landscape Improvements, Developer shall execute and deliver to the City a warranty performance guarantee equal to fifty percent (50%) of the total cost of Landscape Improvements to include all vegetative materials, irrigation and recreation facilities (the "Landscape Warranty"). Developer shall execute the Landscape Warranty as herein provided without regard to which party completed the Landscape Improvements.
- D. The Infrastructure Warranty and the Landscape Warranty (together, the "Warranties") shall each be in the form of an irrevocable letter of credit, warranty bond or cash escrow and shall provide security for costs that may be incurred in repairing or replacing the respective Improvements for thirty-six (36) months from the date of issuance of the Initial Acceptance (the "Warranty Period").
  - 1. Any entity issuing a bond shall have at least an "A" rating from Moody's, or an equivalent rating as designated by a nationally recognized ratings firm, and shall be included in the most recent listing of companies holding Certificates of Authority as Acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.
  - 2. Letters of credit shall be in a form acceptable to the City and shall be drawn on a local Colorado institution acceptable to the City.
- E. In the event any substantial repair or replacement is required to any of the Improvements during the Warranty Period and such repair or replacement is not timely made upon notice of defect, or in any event before the expiration of the Warranty Period, the City may elect one or more of the following:
  - 1. Extend the Warranty Period for up to an additional one (1) year after acceptance of the completed repair or replacement and require the Developer to extend the term of the appropriate Warranty;
  - 2. Call the appropriate Warranty and secure repair or replacement of the non-conforming Improvements; and/or
  - 3. Order denial or suspension of outstanding building permits or Certificates of Occupancy until repair or replacement of the non-conforming Improvements has been performed and Initial Acceptance thereof has been granted by the City.
- F. Bonds and Letters of Credit. The Developer shall provide, or cause to be provided, all bonds and letters or credit, and any other security required by this Section III, to the Department of Finance of the City of Commerce City with a notice to the City Engineer evidencing compliance with this provision.

#### **IV. INITIAL ACCEPTANCE**

##### **A. Initial Acceptance of Infrastructure Improvements.**

1. In order to obtain Initial Acceptance of Infrastructure Improvements for a phase or an entire project, Developer shall submit to the City a written request for Initial Acceptance of Infrastructure Improvements and one (1) copy of record drawings.
2. Within ten (10) business days of receipt of a request for Initial Acceptance, the City shall review the record drawings and shall either approve the drawings or return the drawings to the Developer with comments.
  - a. In the event the record drawings are returned to Developer with comments, Developer shall submit to the City the record drawings revised in accord with the City's comments.
  - b. Once the record drawings are approved, Developer shall submit to the City "certified record" drawings on Mylar and electronic AutoCAD files.
3. Within ten (10) business days of receipt of a request for Initial Acceptance of Infrastructure Improvements, the City shall inspect the Infrastructure Improvements.
  - a. During or subsequent to inspection of the Infrastructure Improvements, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City.
  - b. In the event Developer fails to correct, repair or replace the punch list items within thirty (30) days of the date the punch list is provided, the City shall not grant Initial Acceptance, but shall instead conduct a subsequent inspection of the Infrastructure Improvements and generate a new written punch list. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
  - c. In no event shall the City grant Initial Acceptance of Infrastructure Improvements until after Developer has corrected, repaired and replaced the punch list items to the City's satisfaction.
4. Upon a finding of satisfactory completion of the Infrastructure Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Infrastructure Warranty, the City shall grant Initial Acceptance of the Infrastructure Improvements via certified letter to Developer, the date of which shall constitute the date of commencement of the Warranty Period for the Infrastructure Improvements as identified in Section III.D.
5. Building permits may be issued prior to Initial Acceptance for the phase for which the Infrastructure Security has issued provided that all required fire hydrants, water for fire suppression, roadway, curb and gutter have been constructed to City specifications and paved emergency access to the lots on which building permits are requested are satisfactory as determined by the City. For single family residential lots, the potential authorization of building permits shall be limited to no more than four (4) model homes within the Property prior to Initial Acceptance of the Improvements. Such model homes shall not be sold, conveyed, or otherwise transferred to a third party prior to Initial Acceptance of the Improvements. Certificates of Occupancy shall not be issued for any structure prior to Initial Acceptance of

Handwritten signature and initials, possibly "AC" and "R.D.", in black ink.

Infrastructure Improvements, however, the aforementioned model homes may be eligible for temporary occupancy permits where authorized by law.

B. Initial Acceptance of Landscape Improvements.

1. In order to obtain Initial Acceptance of Landscape Improvements for a phase or an entire project, Developer shall submit to the City a written request for Initial Acceptance of Landscape Improvements.
2. The City shall inspect the Landscape Improvements within a reasonable time after receipt of a request for Initial Acceptance.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City.
    - i. Not less than thirty (30) days after the date the punch list is provided to Developer, unless Developer authorizes an earlier inspection, the City shall conduct a re-inspection of the Landscape Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Initial Acceptance as set forth herein.
  - b. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Initial Acceptance, and in no event shall the City grant Initial Acceptance until after Developer has corrected, repaired and replaced the punch list items to the City's satisfaction.
3. Upon a finding of satisfactory completion of the Landscape Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Landscape Warranty, the City shall grant Initial Acceptance of the Landscape Improvements via certified letter to Developer, the date of which shall constitute the date of commencement of the Warranty Period for the Landscape Improvements as provided in Section III.D.

V. FINAL ACCEPTANCE

A. Timing for Final Acceptance.

1. Developer shall obtain Final Acceptance of the Infrastructure Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.
2. Developer shall obtain Final Acceptance of the Landscape Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.

B. Procedure for Final Acceptance. Not earlier than sixty (60) days or later than forty-five (45) days prior to the date of expiration of a Warranty Period, Developer shall submit a written request for Final Acceptance of the related Improvements.



1. Within a reasonable time after Developer's request for Final Acceptance, the City shall conduct a final inspection of the appropriate Improvements (either Landscape or Infrastructure) or authorized phase thereof.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Final Acceptance.
    - i. Not less than thirty (30) days after the date the punch list is provided to Developer, unless Developer authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Final Acceptance as set forth herein.
  - b. If the subdivision and/or development of the Property involves a land dedication to the City for a future park or school site, floodplain or open space (the "Dedicated Area(s)"), the City shall inspect such Dedicated Area(s). In the event any damage or dumping has occurred in, on or to any Dedicated Area, Developer shall be responsible for the restoration thereof. Despite the issuance of a Letter of Final Acceptance pursuant to this Section V, if any, the City shall not release the Landscape Warranty unless Developer has restored the Dedicated Area(s) to the City's satisfaction. Nothing herein shall be construed or deemed as requiring the City to release the Landscape Warranty prior to Final Acceptance of the Landscape Improvements.
2. Developer shall certify to the City that all persons and entities having provided labor and/or services in the construction or installation of the Improvements for which Final Acceptance is being sought have been fully paid subject to such exceptions as may be disclosed to the City and that are acceptable to the City.
3. If the Improvements subject to the inspection request fully conform to this Agreement and the City's applicable standards and specifications, and all corrections, repairs or replacements have been made to bring the Improvements into conformance, the City shall issue to Developer, via certified mail, a Letter of Completion and Final Acceptance.
4. Subject to the provisions of subsection 1.b. of this Section V.B., the City shall release the Warranty only after Final Acceptance of the Improvements related thereto.
- C. In the event Developer does not request Final Acceptance of Improvements forty-five (45) days prior to the expiration of the Warranty Period related thereto, or as extended by the City, the City shall have the right at any time thereafter to conduct a final inspection of the Improvements.
- D. If, pursuant to final inspection requested by the Developer or initiated by the City, including inspection of Dedicated Area(s), any Improvements or Dedicated Area(s) are found not to conform to the requirements of this Agreement or applicable City standards and specifications, the City may exercise any and all rights set forth in Section XV.

Handwritten signature and initials, possibly "AC" and "D.J.", in dark ink.

- E. Developer's failure to obtain Final Acceptance of Improvements prior to expiration of the Warranty Period related thereto shall constitute a Default under this Agreement, and the City may exercise its rights to secure performance as provided in Section XV.
- F. Nothing herein shall be construed or deemed as requiring the City to finally accept or release from Warranty any Improvements that are defective or damaged.

## **VI. PHASING**

Phasing of the Improvements, if applicable, shall be permitted subject to the terms and conditions of this Agreement and as described and depicted in **Exhibit D**. Developer, at its discretion, may modify the sequence of phase construction if approved by the both the Director of Community Development and the Director of Public Works.

## **VII. DEVELOPMENT STANDARDS AND PROCEDURES**

- A. Engineering and Landscaping Services. Developer shall procure at its sole expense all professional services, including all engineering, surveying and landscaping services, necessary and appropriate for development of the Property, which services shall fully conform to the City's applicable ordinances, standards and specifications.
  - 1. All professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed, accredited and/or certified in accordance with applicable state and local law.
  - 2. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.
- B. Plan Review. All applicable plans must be reviewed and approved by the City prior to construction or installation. No construction or installation of Improvements shall occur without prior plan approval.
- C. Right-of-Way Permits. Prior to commencing construction of the Improvements, Developer shall obtain all permits required under Chapter 10 of the Commerce City Revised Municipal Code (the "CCRMC"), pay all fees related thereto and pay any associated City use taxes, if required.
- D. Testing. Developer shall employ at its sole expense a professional qualified, independent testing company to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with City standards and specifications. Developer shall furnish to the City certified copies of test results and shall release and authorize full access to the City and its designated representatives all work-up materials, procedures and documents used in preparing test results.
- E. Inspection. During construction or installation of the Improvements and until Final Acceptance thereof, Developer shall request and coordinate with the City all inspections of the Improvements. If the required inspections are not conducted, the City shall have the right to require Developer to remove and replace the Improvements. Developer shall reasonably cooperate and assist the City to gain access to the areas designated for inspection. Developer shall also notify the City upon discovery of any non-conformance with the approved plans, standards and specifications for the Improvements. Inspection and acceptance by the City of any Improvements shall not relieve Developer of any responsibilities under this Agreement.

- F. Erosion Control. All work associated with the installation or construction of Improvements shall conform to the City's requirements for erosion control and the approved erosion and sediment control drawings associated with the Property.
1. Developer shall, at its own expense, keep on-site and adjacent streets and rights-of-way used as construction routes clean of mud, rocks and debris at all times during construction.
  2. Within twenty-four (24) hours of verbal notification by the City of non-compliance with this subsection F, Developer shall commence clean-up operations and diligently pursue completion of such clean-up operations to the satisfaction of the City.
  3. If Developer fails to respond within twenty-four (24) hours, the City is unable to contact Developer after reasonable effort, or Developer fails to diligently pursue clean-up operations to the satisfaction of the City, the City may take corrective action to clear or clean-up the affected streets and rights-of-way and invoice Developer for all costs incurred by the City, including administrative costs, for which Developer shall be liable for payment within seven (7) days of the invoice being issued by the City.
- G. Damage to Public Infrastructure. If the Developer or any agent or representative thereof causes damage to any public infrastructure (including without limitation, any surface pavers, flagstones, or other stone or concrete surfaces, planters, street and decorative lights, or canopies) such damage shall be promptly repaired with the same kind, quality, color, serviceability and material composition aspects as was possessed by the infrastructure damaged, unless otherwise expressly agreed to by the City in writing.

#### **VIII. OBLIGATIONS OF SUBSEQUENT MORTGAGEE OR LIEN HOLDER**

Any subsequent mortgagees or lien holders shall subordinate their interests in the Property to the rights and remedies of the City for purposes of this Agreement. No subsequent mortgagee or lienholder is obligated to complete any of the Improvements unless such subsequent mortgagee or lienholder becomes the Owner and continues development of the Property by requesting permits, certificates or other approvals from the City. In such event, the Improvements shall be completed pursuant to the terms and conditions of this Agreement.

#### **IX. CONTRACTORS AND SUPPLIERS – LICENSING; PAYMENT – REMOVAL OF LIENS**

- A. Developer shall ensure that all contractors and/or subcontractors employed by Developer are licensed as required by state and local law before any work on the Improvements is commenced.
- B. Developer shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the Improvements and to any persons who may otherwise be entitled to assert a lien upon the Property by virtue of C.R.S. § 38-22-102, *et seq.* Developer shall indemnify and defend the City with respect to any such lien and, regardless of the merits of the lien, shall immediately take any and all steps necessary to remove the lien from the Property.

#### **X. NON-LIABILITY**

Developer acknowledges that the City's review and approval of plans for the development of the Property are done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to, Developer or third parties is assumed by such review approval or immunity waived as is more specifically set forth in Colorado Governmental Immunity Act, C.R.S. § 24-10-106.5.

Handwritten signature and initials, possibly "AD" and "R.J.", in dark ink.

## **XI. INDEMNIFICATION**

- A. Developer shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Developer or its employees, agents, representatives or other persons acting under Developer's direction or control in performing or failing to perform the work to be performed under this Agreement. Developer shall indemnify, defend, and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the actions or omissions of Developer and/or its employees, agents or representatives or other persons acting under Developer's direction or control.
- B. Developer specifically represents that all property dedicated (both in fee simple and as easements or other right of way) to the City within the Property is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U. S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261, and that the Property as is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, shall indemnify, defend, and hold harmless the Indemnified Parties from any liability whatsoever that may be imposed upon the City by any governmental authority or any third party, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any part of the property dedicated to the City, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the Improvements constructed on the dedicated property, except to the extent that such circumstances are the result of acts or omissions of the Developer. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the Indemnified Parties upon the property dedicated to the City.
- C. If any action, lawsuit, or claim is brought or asserted against the Indemnified Parties for which indemnity may be sought by the Indemnified Parties from the Developer, the Indemnified Parties shall promptly notify the Developer in writing, and the Developer shall promptly assume the defense thereof, including, but not limited to, the employment of counsel (the selection of which has been approved by the Indemnified Parties and such approval shall not be unreasonably withheld), the payment of all legal fees, expenses, and costs, and the right to negotiate and consent to settlement; provided however, that the Developer shall not settle any such action which may adversely affect the City without the City's written consent, which consent shall not be unreasonably withheld.
- D. The obligations of the Developer shall be in addition to any rights that any Indemnified Parties may have at common law or otherwise.
- E. The provisions set forth in this Section shall survive the completion of the Improvements and the satisfaction, expiration or termination of this Agreement. The obligations of this Section XI shall not apply to the extent the City becomes liable by final judgment to pay a third party as the result of the negligent act or omission of the City.

Handwritten signature and initials, possibly "AC" and "R J", in dark ink.

## **XII. INSURANCE**

- A. Coverages. Prior to beginning any work whatsoever under this Agreement including preparatory work such as surveying, staking or clearing the Property, Developer shall, at no cost to the City, procure or cause to be procured the following coverages and maintain such coverages until all Improvements have been finally accepted:
1. Commercial General or Business Liability coverage insuring against liability for personal injury, bodily injury or death arising out of the performance of Developer's obligations under this Agreement with minimum combined single limits of One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) general aggregate.
  2. Products/Completed Operations coverage insuring against any liability for bodily injury or property damage caused by the completed Improvements with a combined single limit of at least One Million Dollars (\$1,000,000.00).
  3. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) for any one occurrence with respect to each of Developer's owned, hired or non-owned vehicles assigned to or used in connection with the performance of Developer's obligations under this Agreement. In the event Developer's insurance does not cover non-owned vehicles, the requirements of this paragraph shall be met by each employee of Developer who uses a vehicle in connection with this Agreement, and Developer agrees to assure compliance by each employee prior to allowing use of a vehicle not owned by Developer.
  4. Workers' Compensation insurance as required by Colorado state statute and any other insurance required by applicable law.
  5. For the coverages required in subsections XII.A.1-3, Developer shall provide umbrella or excess coverage written on a "follow-form" basis to the underlying policy and in a coverage amount not less than One Million Dollars (\$1,000,000.00). In so doing, the coverage shall provide complete protection to the City consistent with the liability limits that may be imposed upon the City pursuant to the C.R.S. § 24-10-114, as may be amended.
- B. Self-Insurance. Evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages if first approved by the City in its sole discretion.
- C. Requirements. Developer shall at a minimum procure and maintain, or cause to be procured and maintained, the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Developer pursuant to retroactive dates. Coverage for extended reporting periods shall be procured to maintain such continuous coverage.
- D. Certificates of Insurance and Endorsements.
1. One or more Certificates of Insurance ("Certificates") shall be completed by Developer's insurer as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, which Certificates shall be provided to the City for review and approval prior to commencement of any work under this Agreement.

2. Each Certificate required herein, except Workers' compensation coverage, shall name the City and its officers and employees as additional insureds.
  3. Completed Certificates shall be sent to:  
  
Risk Manager  
City of Commerce City Human Resources Department  
7887 E. 60<sup>th</sup> Ave.  
Commerce City, CO 80022  
  
City Engineer  
City of Commerce City Public Works Department  
8602 Rosemary Street  
Commerce City, CO 80022
  4. The City shall review the Certificates and endorsements as soon as practical, typically within ten (10) working days of receipt. The Certificates shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.
  5. In the event the period of coverage for any insurance required herein expires prior to the conclusion of Developer's obligations hereunder, Developer shall, not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the City with a new certificate of insurance and endorsements evidencing new or continuing coverage in accordance with the requirements of this Agreement.
- E. Failure to Obtain Insurance Constitutes Breach. Developer's failure to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a breach of this Agreement and, if said breach is not cured within ten (10) days of written notice by the City to Developer, the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Developer to the City upon demand, or the City may offset the cost of the premiums against any monies due to Developer from the City, regardless of the source or location of such funds.
- F. Certified Copies. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Developer agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this Agreement.
- G. Subcontracts. Developer shall include the insurance requirements set forth in this Agreement in all contracts and subcontracts entered into for the construction or installation of the Improvements. Developer shall be responsible for the failure of any such contractor or subcontractor to procure and maintain insurance meeting the requirements set forth in this Agreement. The City reserves the right to approve variations in the insurance requirements applicable to such contractors or subcontractors upon joint written request of the contractor or subcontractor and Developer if, in the City's discretion, such variations do not substantially affect the City's interests.

### **XIII. FEES, CHARGES AND DEDICATIONS**

Fees, charges and dedications shall be assessed pursuant to Article IX of the LDC or as amended by City Council. The fees associated with the Property are outlined as follows:

Handwritten signature and initials, possibly "AJ" and "RJD", in the bottom right corner.

- A. Public Parks and Recreation Fees. Developer shall make to the City a cash payment or land dedication or a combination thereof for public parks, trails and recreation facilities as set forth in the LDC.
- B. Land Dedication for Schools. Developer shall make a cash payment or land dedication or a combination thereof to the City for public school facilities as set forth in the LDC.
- C. Road Impact Fee. Upon issuance to Developer of a building permit for any structure within the Property, Developer shall pay a road impact fee to the City as set forth in the LDC.
- D. Drainage Impact Fee. Upon issuance to Developer of a building permit for any structure within the Property, Developer shall pay a drainage impact fee as set forth in the LDC.
- E. Water Acquisition Fee. Upon issuance to Developer of a building permit for any structure within the Property, Developer shall pay a water rights acquisition fee as set forth in the LDC.
- F. Fire and Emergency Services Fee. Fire and emergency services fees shall be payable to the applicable fire and emergency services provider, as set forth in the LDC.

#### **XIV. RECORDATION – COVENANT RUNNING WITH THE LAND; BINDING EFFECT**

- A. Recording. Upon execution hereof, Developer shall, at its sole cost and expense, cause this Agreement to be recorded in the real estate records of the Clerk and Recorder for Adams County, Colorado. The City, at its sole option, also may cause the Agreement to be recorded.
- B. Binding Effect.
  - 1. This Agreement shall be binding on the parties hereto and their respective successors and assigns, without regard to the method or manner of succession or assignment, and shall be deemed and constitute a covenant running with the land.
  - 2. Developer and any successor or assign of this Agreement, in whole or in part, shall be jointly and severally liable for the performance and obligations of such portion of the Agreement succeeded to or assigned unless otherwise consented to in writing by the City and executed in the same manner as this Agreement.
  - 3. This Agreement shall remain in full force and effect until all applicable provisions herein have been fulfilled.
- C. Assignment. In the event Developer assigns any obligations of this Agreement, in whole or in part, the Developer shall provide notice of the assignment to the City, including a fully executed copy of the assignment, within 30 days of the execution of any assignment or assignment agreement.

#### **XV. DEFAULT – REMEDIES**

- A. In the event Developer should fail to timely comply with any of the terms, conditions, covenants and undertakings hereof (a “Default”) and the Default is not cured and brought into compliance within thirty (30) days of written Notice to Developer by the City (“Notice of Default”), except as provided in Section V herein, unless the City in writing designates a longer cure period reasonably requested by Developer, the City may call for payment of the applicable Warranty.

- B. The Notice of Default shall specify the conditions of Default. During the cure period the City may withhold building permits, Certificates of Occupancy or provision of new utilities fixtures or services.
- C. Nothing hereunder shall be construed to limit the City, in the event of a Default or other breach of this Agreement, from pursuing any other remedy at law or in equity that may be appropriate under the Home Rule Charter of the City of Commerce City, the Commerce City Revised Municipal Code, applicable law and the legal standards of the State of Colorado or United States before any court of competent jurisdiction. Such remedies shall be cumulative.
- D. In the event of a Default or other breach of this Agreement, the party in Default or breach shall be liable for payment to the non-defaulting/non-breaching party of all costs and reasonable attorney fees incurred by the non-defaulting/non-breaching party as a result of the Default or breach.
- E. Notwithstanding any provision of this Agreement that may be construed to the contrary, in no event shall the City, including its elected and appointed officials, current and former officers and employees, servants, agents, attorneys, representatives, insurance carriers, and self-insurance pools, be liable to the Developer for any exemplary, punitive, special, indirect, consequential, remote, or speculative damages arising out of or relating to, in any manner, this Agreement, whether arising in contract, tort, or otherwise, even if City has been informed of the possibility thereof, including without limitation a claim for impairment of bonding capacity.
- F. To the extent any damages arising under this Agreement may be covered by insurance, the Developer agrees to waive all rights of subrogation against the City, its agents, associated and affiliated entities, successors, or assigns, its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools for losses arising from any acts or omissions of the City.

#### **XVI. NOTICE**

Any notice that may be given under this Agreement shall be made in writing and shall be deemed effective upon personal service of the other party or upon the date of mailing by certified mail, return receipt requested, addressed as follows (or other address the party to be notified may have designated by like notice to the sender):

DEVELOPER:  
Development Manager  
c/o Brad Burns  
Cohen Denver Airport, LLC  
9875 W La Mancha Ave LV NV 89149  
702-355-1400

CITY:  
Director, Dept. of Public Works  
City of Commerce City  
8602 Rosemary Street  
Commerce City, CO 80022  
(303) 289-8156

**With copies to:**

Director, Dept. of Community Development  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Director, Dept. of Parks, Recreation & Golf  
City of Commerce City  
6060 E. Parkway Drive  
Commerce City, CO 80022



City Attorney's Office  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

## **XVII. MISCELLANEOUS PROVISIONS**

- A. Incorporation by Reference. The recitals to this Agreement and the attached Exhibits A-D are incorporated into this Agreement by reference.
- B. Title and Authority. Developer warrants to the City that it is (i) the record owner of the Property; (ii) authorized to execute this Agreement pursuant to a valid ground or similar lease; or (iii) acting in accordance with the currently valid and unrevoked power of attorney of the record owner attached hereto. Each individual executing this Agreement covenants and warrants that he or she is fully authorized to execute this Agreement on behalf of the party he or she represents.
- C. Compliance with Applicable Law. Developer hereby covenants and agrees that it shall comply with all applicable federal, state and local laws, ordinances and regulations.
- D. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17<sup>th</sup> Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.
- E. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- F. No Waiver. The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Developer, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.
- G. 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 Developer, and nothing contained in this Agreement shall give or allow any such claim to right of action by any other third person on such Agreement. It is the expressed intention of the City and the Developer that no person other than the City or Developer receiving services or benefits under this Agreement shall be deemed a beneficiary hereof.
- H. No Partnership or Agency – Independent Contractor Relationship. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Developer and the City shall be as independent contractors, and neither the City nor Developer shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.
- I. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

Handwritten signature and initials, possibly "AD" and "R.J.", in black ink.

- J. Counterparts; Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and, taken together will constitute one and the same instrument. Signature pages may be executed via “wet” signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.
- .K Severability. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- L. Acknowledgement of Open Records Act – Public Document. Developer hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (the “Act”), and as such, this Agreement and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Agreement, are be subject to public disclosure under the Act.
- M. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Developer on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- N. Consent to Electronic Signatures and Electronic Records. The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[The remainder of this page intentionally left blank. Signature page(s) follow(s).]**

Handwritten signatures in black ink, including a circular stamp and several initials.

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this DEVELOPMENT AGREEMENT, the parties have executed this DEVELOPMENT AGREEMENT as of the date first written above.

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Roger Tinklenberg, City Manager

ATTEST:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

Approved as to form:

\_\_\_\_\_  
Matt Hader, Interim City Attorney

Recommended for approval:

\_\_\_\_\_  
James E. Tolbert, Director  
Department of Community Development

\_\_\_\_\_  
Joe Wilson, Director  
Department of Public Works

\_\_\_\_\_  
Chris Hodyl, Interim City Engineer  
Department of Public Works



COHEN DENVER AIRPORT, LLC  
MANAGER: COHEN 2006 TRUST

Ruth Ganot  
Signature [signature must be notarized]

Ruth Ganot, Trustee, Cohen 2006 Trust

Andrew Cohen  
Signature [signature must be notarized]

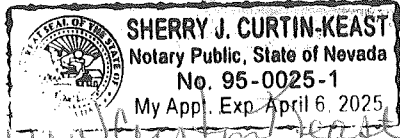
Andrew Cohen, Trustee, Cohen 2006 Trust

STATE OF NEVADA )  
 )ss  
COUNTY OF CLARK )

The foregoing instrument was signed before me this 13<sup>th</sup> day of May, 2022, by  
Ruth Ganot, Trustee, Cohen 2006 Trust, Manager of Cohen Denver Airport, LLC.

WITNESS my hand and official seal.

My commission expires 04/06/2025.

  
Sherry J. Curtin-Keast  
Notary Public

STATE OF Illinois )  
 )ss  
COUNTY OF Lake )

The foregoing instrument was signed before me this 16<sup>th</sup> day of May, 2022, by  
Andrew Cohen, Trustee, Cohen 2006 Trust, Manager of Cohen Denver Airport, LLC.

WITNESS my hand and official seal.

My commission expires 9/20/25.

[Signature]  
Notary Public



AD R.D.

**PIA**  
**EXHIBIT A - LEGAL DESCRIPTION**

**LEGATO FILING NO. 1**

A PORTION OF THE NORTH HALF OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE WEST END BY A FOUND 2-1/2" ALUMINUM CAP IN RANGE BOX, STAMPED "ISI 2018 PLS 29425" AND AT THE EAST END BY A FOUND 2" ALUMINUM CAP, STAMPED "WESTERN STATES SURVEYING INC. 1994 PLS 24960". SAID NORTH LINE BEARS NORTH 89°38'58" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

**COMMENCING** AT THE NORTHWEST CORNER OF SAID SECTION 22;

THENCE SOUTH 64°06'27" EAST 1,491.75 FEET TO THE **POINT OF BEGINNING**;

THENCE NORTH 89°38'34" EAST 793.48 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 484.40 FEET;

THENCE 226.41 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°46'50";

THENCE NORTH 64°05'59" EAST 349.99 FEET;

THENCE SOUTH 70°54'01" EAST 41.64 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 490.00 FEET AND A CHORD WHICH BEARS SOUTH 46°29'57" EAST 215.84 FEET;

THENCE 217.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°26'50";

THENCE SOUTH 59°13'22" EAST 250.10 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 410.00 FEET;

THENCE 267.45 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 37°22'30";

THENCE SOUTH 21°50'53" EAST 144.37 FEET;

THENCE SOUTH 24°39'07" WEST 41.93 FEET;

THENCE SOUTH 69°39'07" WEST 1,418.59 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 377.00 FEET;

THENCE 122.10 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°33'22" TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET;

THENCE 21.95 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 83°50'58";



THENCE NORTH 45°03'17" WEST 776.35 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 340.00 FEET AND A CHORD WHICH BEARS NORTH 12°46'00" EAST 154.40 FEET;

THENCE 155.75 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°14'50";

THENCE NORTH 00°21'26" WEST 280.90 FEET;

THENCE NORTH 44°38'34" EAST 39.46 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 1,475,365 SQUARE FEET, OR 33.87 ACRES, MORE OR LESS.

10/05/2020

Handwritten signature and initials, possibly "AD" and "D.D.", in the bottom right corner.

## **EXHIBIT B**

### **Improvements and schedule of estimated costs for all public roadways, storm sewer systems, and sidewalks.**

Developer shall construct and install all the following roadways to meet a local roadway cross section.

- Biscay Court/East 94<sup>th</sup> Place/Dunkirk Street from East 95<sup>th</sup> Avenue to East 93<sup>rd</sup> Place.
- East 94<sup>th</sup> Avenue from Biscay Court to Ceylon Street.
- East 93<sup>rd</sup> Avenue from Biscay Court to Ceylon Street.
- Biscay Court from East 94<sup>th</sup> Avenue to East 93<sup>rd</sup> Place.
- Ceylon Street from East 95<sup>th</sup> Avenue to East 93<sup>rd</sup> Place.
- Danube Street from East 93<sup>rd</sup> Place to the end cul-de-sac.
- Danube Street from East 94<sup>th</sup> Place to East 93<sup>rd</sup> Place.

These shall include: pavement, curb, gutter, sidewalks, storm drainage, all related appurtenances, signage & striping, streetlights, traffic signals, a fire department approved turnaround and all other appurtenances necessary to be in full compliance with the CCRMC, LDC, and all applicable rules, regulations, and standards adopted by the City.

Insert schedule of costs in form approved by City

Handwritten signature and initials, possibly "AB" and "R.D.", in black ink.

# ENGINEER'S OPINION OF COSTS

Date: 9/30/21

## Exhibit B Legato Filing 1

Subdivision Name: Filing 1

Case File No. S-772-20-20,Z-953-D-472-20

### Public Infrastructure Costs

ITEM NO.	Description	Unit	Quantity	Base Cost	Extended Cost
<b>STORM SEWER</b>					
1	INLET, TYPE R (5')	EA	2	\$ 6,500.00	\$ 13,000.00
2	INLET, TYPE R (5' MODIFIED)	EA	1	\$ 10,500.00	\$ 10,500.00
3	INLET, TYPE R (10')	EA	11	\$ 9,500.00	\$ 104,500.00
4	INLET, TYPE R (10' MODIFIED)	EA	1	\$ 12,500.00	\$ 12,500.00
5	INLET, TYPE R (15')	EA	4	\$ 12,500.00	\$ 50,000.00
6	INLET, TYPE R (15' MODIFIED)	EA	1	\$ 15,500.00	\$ 15,500.00
7	REINFORCED CONCRETE PIPE, COMPLETE IN PLACE, 18", CLASS III	LF	613	\$ 50.00	\$ 30,670.00
8	REINFORCED CONCRETE PIPE, COMPLETE IN PLACE, 24", CLASS III	LF	520	\$ 85.00	\$ 44,225.50
9	REINFORCED CONCRETE PIPE, COMPLETE IN PLACE, 30", CLASS III	LF	340	\$ 105.00	\$ 35,700.00
10	REINFORCED CONCRETE PIPE, COMPLETE IN PLACE, 36", CLASS III	LF	58	\$ 130.00	\$ 7,488.00
11	MANHOLE, 5' DIAMETER	EA	7	\$ 5,000.00	\$ 35,000.00
SUBTOTAL					\$ 359,083.50
<b>PAVING, CURB, GUTTER AND SIDEWALK</b>					
12	SUBGRADE PREP, 12"	SY	20,200	\$ 2.20	\$ 44,440.00
13	HOT BITUMINOUS PAVEMENT (7.5" thick)	SY	20,200	\$ 35.00	\$ 707,000.00
14	CONCRETE SIDEWALK, 6" THICK	SF	57,939	\$ 6.00	\$ 347,634.00
15	TRAIL WALKS	SF	17,735	\$ 6.00	\$ 106,410.78
16	CURB & GUTTER, MOUNTABLE	LF	11,700	\$ 15.00	\$ 175,500.00
17	CURB & GUTTER, 6" VERTICAL W/2' CONCRETE PAN	LF	800	\$ 32.00	\$ 25,600.00
18	HANDICAP RAMP, SINGLE	EA	18	\$ 2,000.00	\$ 36,000.00
19	HANDICAP RAMP, DOUBLE	EA	12	\$ 2,000.00	\$ 24,000.00
20	HANDICAP RAMP, MIDBLOCK	EA	8	\$ 2,000.00	\$ 16,000.00
21	CROSS PAN	EA	10	\$ 3,500.00	\$ 35,000.00
SUBTOTAL					\$ 1,517,584.78
<b>EARTHWORK</b>					
22	TOPSOIL STRIPPING (6")	CY	41,947	\$ 1.50	\$ 62,920.00
23	TOPSOIL RESPREAD	CY	41,947	\$ 1.75	\$ 73,406.67
24	EXCAVATION, FILL	CY	60,000	\$ 2.50	\$ 150,000.00
25	EXCAVATION CUT	CY	105,000	\$ 2.50	\$ 262,500.00
26	EXCAVATION, STOCKPILING	CY	45,000	\$ 3.50	\$ 157,500.00
SUBTOTAL					\$ 706,326.67
<b>SIGN, STRIPE, AND TRAFFIC CONTROL</b>					
27	STREET SIGNS	EA	60	\$ 250.00	\$ 15,000.00
28	STREET LIGHTS	EA	20	\$ 7,500.00	\$ 150,000.00
29	SIGN POSTS	EA	44	\$ 45.00	\$ 1,980.00
30	STRIPING (CROSS WALK, CHANNELIZING LANE, CHEVRON)	LF	1,448	\$ 10.00	\$ 14,480.00
SUBTOTAL					\$ 181,460.00
<b>MISCELLANEOUS ITEMS</b>					
31	DEMOLITION	LS	1	\$ 35,000.00	\$ 35,000.00
SUBTOTAL					\$ 35,000.00
<b>Total</b>					<b>\$ 2,799,455</b>

MOBILIZATION (0.5% of sub total)	LS	1	\$ 13,997.27	\$ 13,997
ENGINEERING (2% of sub total)	LS	1	\$ 55,989.10	\$ 55,989
TRAFFIC CONTROL (1% of sub total)	LS	1	\$ 27,994.55	\$ 27,995
CONSTRUCTION MANAGEMENT (2% of sub total)	LS	1	\$ 55,989.10	\$ 55,989
CONTINGENCY (10% of sub total)	LS	1	\$ 279,945.49	\$ 279,945

**TOTAL (DOLLARS): \$ 3,233,370**

*Handwritten signature/initials*

### **EXHIBIT C**

#### **Landscape Improvements and schedule of estimated costs along all roadways, trails, opens spaces, and in all private parks, and inclusive of sidewalks and trails not in the right of way.**

The improvements identified herein are associated with land use application number(s): S-772-21 and Z-953-D-472-21

The following landscape improvements shall be installed consistent with and according to the Legato Filing No. 1 PUD Development Permit – Landscaping Plan (the “Plan”) last revised 7-8-2021. Landscaping Improvements shall include but not be limited to the following:

1. Right-of-Way Landscaping as depicted in Z-953-D-472-21, including that landscaping associated with the following:
  - a. Biscay Court from E. 95<sup>th</sup> Avenue to E 94<sup>th</sup> Place;
  - b. E 94<sup>th</sup> Place from Biscay Court to Dunkirk Street;
  - c. Ceylon Street from E. 95<sup>th</sup> Avenue to E 93<sup>rd</sup> Place;
  - d. E 94<sup>th</sup> Avenue from Biscay Lane to Ceylon Street;
  - e. E 93<sup>rd</sup> Avenue from Biscay Lane to Ceylon Street;
  - f. Biscay Lane from Xanadu Street to Wheeling Street;
  - g. Danube Street north of E 93<sup>rd</sup> Place;
  - h. Danube Court from E. 94<sup>th</sup> Place to E 93<sup>rd</sup> Place; and
  - i. Dunkirk Street from E. 94<sup>th</sup> Avenue to E 93<sup>rd</sup> Place.
  - j. E 93<sup>rd</sup> Drive from Biscay Court to Ceylon Street.
2. All landscaping as depicted in Z-953-D-472-21 associated with the open space and park areas in Tracts A, B, C, D, E, F, and G.

Developer shall install and maintain in perpetuity the required Landscaping Improvements along all principal and minor arterials and major and minor collector roadways.

For multi-lot or multi-building developments, the table and tract map includes itemized landscape and related improvements organized either by Tract and Phasing (if applicable).

The itemization and depictions contained herein shall not be construed to alter the scope or content of the required landscape improvements. Itemizations herein are for surety purposes only and shall not substitute or replace the requirements set forth in the CCRMC, LDC, or any applicable rules, regulations, or standards adopted by the City.

(Sample itemization and tract map attached)

Handwritten signature and initials, possibly "AB" and "R.D.", in the bottom right corner.

# EXHIBIT C LANDSCAPE OPINION OF COSTS

<b>Engineer's Estimate of Probable Costs</b>					
May 24th, 2021					
Subdivision Name: <b>Legato Filing 1</b>					
Case File No. S-751-21, D-461-21					
<b>Landscape Cost</b>					
<b>Filing 1</b>					
Item No.		Unit	Quantity	Base Cost	Extended Cost
<b>E. 94th Place</b>					
1	Turf Grass Sod w/soil prep	ft2	74,693	\$0.60	\$44,815.61
2	Irrigation * Does not include tap fees, Backflow	ft2	74,693	\$0.90	\$67,223.42
3	Shade trees - 2.5" Cal B&B	ea	52	\$500.00	\$26,000.00
<b>Dunkirk Street</b>					
1	Turf Grass Sod w/soil prep	ft2	10,635	\$0.60	\$6,380.72
2	Irrigation * Does not include tap fees, Backflow	ft2	10,635	\$0.90	\$9,571.09
3	Shade trees - 2.5" Cal B&B	ea	35	\$500.00	\$17,500.00
<b>Danube Street</b>					
1	Turf Grass Sod w/soil prep	ft2	6,459	\$0.60	\$3,875.25
2	Irrigation * Does not include tap fees, Backflow	ft2	6,459	\$0.90	\$5,812.88
3	Shade trees - 2.5" Cal B&B	ea	26	\$500.00	\$13,000.00
<b>Danube Court</b>					
1	Turf Grass Sod w/soil prep	ft2	6,459	\$0.60	\$3,875.25
2	Irrigation * Does not include tap fees, Backflow	ft2	6,459	\$0.90	\$5,812.88
3	Shade trees - 2.5" Cal B&B	ea	29	\$500.00	\$14,500.00
<b>Ceylon Street</b>					
1	Turf Grass Sod w/soil prep	ft2	9,329	\$0.60	\$5,597.51
2	Irrigation * Does not include tap fees, Backflow	ft2	9,329	\$0.90	\$8,396.27
3	Shade trees - 2.5" Cal B&B	ea	30	\$500.00	\$15,000.00
4	Ornamental trees - 2" Cal B&B	ea	5	\$400.00	\$2,000.00
<b>E. 94th Ave</b>					
1	Turf Grass Sod w/soil prep	ft2	6,198	\$0.60	\$3,718.75
2	Irrigation * Does not include tap fees, Backflow	ft2	6,198	\$0.90	\$5,578.13
3	Shade trees - 2.5" Cal B&B	ea	28	\$500.00	\$14,000.00
<b>E. 93rd Ave</b>					
1	Turf Grass Sod w/soil prep	ft2	4,857	\$0.60	\$2,914.48
2	Irrigation * Does not include tap fees, Backflow	ft2	4,857	\$0.90	\$4,371.72
3	Shade trees - 2.5" Cal B&B	ea	22	\$500.00	\$11,000.00
<b>Biscay Court</b>					
1	Turf Grass Sod w/soil prep	ft2	2,631	\$0.60	\$1,578.30
2	Irrigation * Does not include tap fees, Backflow	ft2	2,631	\$0.90	\$2,367.45
3	Shade trees - 2.5" Cal B&B	ea	6	\$500.00	\$3,000.00
<b>Open Space @ Biscay Court &amp; 95th Ave</b>					
1	Turf Grass Sod w/soil prep	ft2	4,103	\$0.60	\$2,461.61
2	Shrub Bed Mulch and soil prep (1-1/2" River Rock)	ft2	11,344	\$1.30	\$14,746.97
3	Rock Cobble Mulch (2"-4" White Cobble Rock)	ft2	2,256	\$1.80	\$4,060.62
4	Native Seed	ft2	64,589	\$0.20	\$12,917.83
5	Landscape Edger	lf	1,599	\$2.80	\$4,476.61
6	Irrigation * Does not include tap fees, Backflow	ft2	82,292	\$0.90	\$74,062.41
7	Shade trees - 2.5" Cal B&B	ea	21	\$500.00	\$10,500.00
8	Evergreen trees - 6' Ht.	ea	31	\$450.00	\$13,950.00
<b>Filing 1 (continued)</b>					
Item No.		Unit	Quantity	Base Cost	Extended Cost
9	Ornamental trees - 2" Cal B&B	ea	26	\$400.00	\$10,400.00

*AK R.A.*

[illegible]

AC 22.