

## BNC METROPOLITAN DISTRICT NO. 3

141 Union Boulevard, Suite 150  
Lakewood, Colorado 80228-1898  
Tel: 303-987-0835 · 800-741-3254  
Fax: 303-987-2032

### NOTICE OF A SPECIAL MEETING AND AGENDA

<u>Board of Directors</u>	<u>Office</u>	<u>Term/Expires</u>
Janis L. Emanuel	President	2025/May 2025
Robert J. Bol	Treasurer	2027/May 2027
Theodore Antenucci	Assistant Secretary	2025/May 2025
VACANT		2027/May 2025
VACANT		2027/May 2025
David Solin	Secretary	

DATE: February 5, 2024  
TIME: 3:00 p.m.  
PLACE: McGeady Becher P.C.  
450 E. 17<sup>th</sup> Ave., Suite 400  
Denver, Colorado 80203

**Although at least one person will be present at the physical meeting location, the meeting will also be held via video/telephonic means, with the access information below:**

<https://us02web.zoom.us/j/5469119353?pwd=SmtlcHJETFhCQUZEcVBBOGZVU3Fqdz09>

**Dial In:** 1-719-359-4580

**Meeting ID:** 546 911 9353

**Passcode:** 912873

#### I. ADMINISTRATIVE MATTERS

- A. Present Disclosures of Potential Conflicts of Interest.
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- B. Approve Agenda; confirm location of the meeting and posting of meeting notices, and designate 24-hour posting location.
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- C. Review and approve the Minutes of the November 16, 2023 Annual Meeting, the November 16, 2023 Special Meeting, and the December 4, 2023 Continued Special Meeting (enclosures).
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#### II. PUBLIC COMMENT

- A. Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes per person.
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III. FINANCIAL MATTERS

- A. Review and ratify approval of payment of claims for the following periods (enclosures):

Fund	Period ending Nov. 30, 2023	Period ending Dec. 31, 2023	Period ending Jan. 31, 2024
General	\$ 8,103.92	\$ 16,962.56	\$ 3,556.90
Debt	\$ -0-	\$ -0-	\$ -0-
Capital	\$ -0-	\$ -0-	\$ -0-
<b>Total</b>	<b>\$ 8,103.92</b>	<b>\$ 16,962.56</b>	<b>\$ 3,556.90</b>

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- B. Review and accept unaudited financial statements through the period ending December 31, 2023, updated cash position statement dated December 31, 2023 (enclosures).
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IV. LEGAL MATTERS

- A. Review and consider adoption of a resolution pertaining to amendments to the Indenture of Trust relating to the District's General Obligation (Limited Tax Convertible to Unlimited Tax) Convertible Capital Appreciation Bonds, Series 2022A (the "Series 2022A Bonds"), such resolution approving and authorizing execution of an Amended and Restated Indenture of Trust between the District and UMB Bank, n.a. relating to the Series 2022A Bonds (enclosure).
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- B. Review and consider adoption of a resolution pertaining to amendments to the Indenture of Trust relating to the District's Subordinate General Obligation Limited Tax Bonds, Series 2022B(3) (the "Series 2022B(3) Bonds"), such resolution approving and authorizing execution of an Amended and Restated Indenture of Trust between the District and UMB Bank, n.a. relating to the Series 2022B(3) Bonds. (enclosure).
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- C. Review and consider ratifying approval of Engineer's Report and Certification #09 – BNC Metropolitan District Nos. 1, 2, & 3, dated November 16, 2023 and prepared by Ranger Engineering, LLC, certifying eligible costs for Public Improvements in the total amount of \$4,950,285.52 ("Report No. 9"), ratifying acceptance of verified costs for Public Improvements in the amount of \$4,568,505.61 (per the allocation to the District in Report No. 9), and ratifying authorization of the reimbursement of \$4,568,505.61 to Catellus CC Note, LLC pursuant to Report No. 9 (enclosure).
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D. **Conveyance of Tracts E and F, Turnberry Filing No. 5, City of Commerce City, Adams County, Colorado to the District.** Review and consider approval or acceptance (as appropriate) of the following documents (enclosures):

1. Landscape Acceptance Reports dated December 12, 2023 for Turnberry Filing No. 5 and Turnberry Filing No. 6, prepared by PCS Group, Inc.  

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2. Letter from the District to AMH Development LLC regarding Conditions to Acceptance of Special Warranty Deed and Bill of Sale.  

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3. Landscape Installation License Agreement between the District and AMH Development LLC.  

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4. Indemnification Agreement (Mechanics' Liens and Public Infrastructure) made and entered into by AMH Development LLC in favor of the District.  

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5. Special Warranty Deed between Catellus CC Note LLC as Grantor and the District as Grantee.  

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6. Bill of Sale (for facilities, personal property and improvements) between Catellus CC Note LLC as Grantor and the District.  

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7. Assignment of Warranties (for public infrastructure improvements) between Catellus CC Note LLC as Grantor and the District.  

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V. OTHER BUSINESS

A. \_\_\_\_\_

VI. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR JUNE 11, 2024.**

## RECORD OF PROCEEDINGS

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### MINUTES OF THE STATUTORY ANNUAL MEETING OF THE BOARD OF DIRECTORS OF THE BNC METROPOLITAN DISTRICT (THE “DISTRICT”) HELD NOVEMBER 16, 2023

Pursuant to Section 32-1-903(6), C.R.S., a statutory annual meeting of the Board of Directors of the District (referred to hereafter as the “Board”) was convened on November, 16, 2023, at 12:45 p.m., via video / telephone conference. The meeting was open to the public.

#### ATTENDANCE

##### Directors In Attendance Were:

Janis L. Emanuel  
Robert J. Bol

Following discussion, upon motion duly made by Director Emanuel seconded by Director Bol and, upon vote, unanimously carried, the absence of Director Theodore Antenucci was excused.

##### Also In Attendance Were:

David Solin; Special District Management Services, Inc.

Paula Williams, Esq., Kate Olson, Esq. and Craig Sorensen; McGeady Becher P.C.

Jason Carroll and Alyssa Ferreira; CliftonLarsonAllen LLP

Michael Kuykendall and Nick Montalbano; Catellus Development Corp.

#### ANNUAL MEETING ITEMS

**Confirmation of Posting of Annual Meeting Notice:** It was noted for the record that notice of the time, date and location of the annual meeting was duly posted on the District’s website and that no objections to the means of hosting the meeting by taxpaying electors within the District’s boundaries have been received.

**Presentation Regarding the Status of the Public Infrastructure Projects Within the District and Outstanding Bonds:** No presentation was made, as there were no members of the public present.

**Unaudited Financial Statements, Including Year-to-Date Revenue and Expenditures of the District in Relation to its Adopted Budget, for the**

## RECORD OF PROCEEDINGS

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**Calendar Year:** The District Accountant presented the District's Unaudited Financial Statements, including year-to-date revenue and expenditures of the District in relation to the District's adopted budget, for the calendar year.

**Public Questions:** There were no public questions.

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### **ADJOURNMENT**

There being no further business to come before the Board at this time, the annual meeting was adjourned.

Respectfully submitted,

By \_\_\_\_\_  
Secretary for the Annual Meeting

## RECORD OF PROCEEDINGS

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### MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE BNC METROPOLITAN DISTRICT NO. 3 HELD NOVEMBER 16, 2023

A Special Meeting of the Board of Directors of the BNC Metropolitan District No. 3 (referred to hereafter as “Board”) was convened on Thursday, November 16, 2023 at 1:00 p.m. The District Board meeting was held via Zoom video/telephone conference. The meeting was open to the public.

#### ATTENDANCE

#### Directors In Attendance Were:

Janis L. Emanuel  
Robert J. Bol

Following discussion, upon motion duly made by Director Emanuel seconded by Director Bol and, upon vote, unanimously carried, the absence of Director Theodore Antenucci was excused.

#### Also In Attendance Were:

David Solin; Special District Management Services, Inc.

Paula Williams, Esq., Kate Olson, Esq. and Craig Sorensen; McGeady Becher P.C.

Jason Carroll and Alyssa Ferreira; CliftonLarsonAllen LLP

Michael Kuykendall and Nick Montalbano; Catellus Development Corp.

#### ADMINISTRATIVE MATTERS

**Disclosures of Potential Conflicts of Interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Solin noted that a quorum was present and requested members of the Board to disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting, and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with the statute. Attorney Williams noted that all Directors’ Disclosure Statements have been filed, and that no new conflicts were disclosed at the meeting.

**Agenda:** Mr. Solin distributed for the Board’s review and approval a proposed Agenda for the District’s Special Meeting.

## RECORD OF PROCEEDINGS

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Following discussion, upon motion duly made by Director Emanuel seconded by Director Bol and, upon vote, unanimously carried, the Agenda was approved, as amended.

**Location of Meeting and Posting of Notices:** The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District's Board meeting. The Board determined that the meeting would be held by video/telephonic means, and encouraged public participation via video or telephone. The Board further noted that notice of the time, date and location of the meeting was duly posted and that the District had not received any objections to the video/telephonic manner of the meeting, or any requests that the video/telephonic manner of the meeting be changed by taxpaying electors within the District boundaries.

**Minutes:** The Board reviewed Minutes of the October 27, 2023 Special Meeting.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Minutes of the October 27, 2023 Special Meeting were approved, as presented.

**Resolution No. 2023-11-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices:** The Board discussed Resolution No. 2023-12-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

The Board determined that Regular Meetings for 2024 will be scheduled for June 11, 2024 and October 15, 2024 at 1:00 p.m. via Zoom video/telephone conference.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board adopted Resolution No. 2023-11-01, Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

**Section 32-1-809, C.R.S., Compliance for 2024:** Mr. Solin discussed with the Board the requirements of Section 32-1-809, C.R.S.

Following discussion, the Board directed that the required Transparency Notice be posted on the District website and the Special District Association website.

**Insurance Matters:**

## RECORD OF PROCEEDINGS

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Cyber Security and Increased Crime Coverage: Attorney Williams discussed cyber security issues and increased crime coverage options with the Board.

Insurance Committee: The Board discussed establishing an Insurance Committee to make final determinations regarding insurance.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board appointed Mr. Solin as the District’s Insurance Committee to obtain proposals for increased crime coverage in 2024.

District’s Insurance and Special District Association Membership: The Board discussed the renewal of the District’s Insurance and Special District Association (“SDA”) membership for 2024.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board authorized the renewal of the District’s insurance and SDA membership for 2024.

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**PUBLIC COMMENT** There was no public comment.

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### **FINANCIAL MATTERS**

**Claims:** The Board considered ratifying the approval of the payment of claims as follows:

Fund	Period ending Apr. 30, 2023	Period ending May 31, 2023	Period Ending Jun. 30, 2023	Period Ending Jul. 31, 2023
General	\$ 4,054.95	\$ 6,479.88	\$ 2,021.50	\$ 15,555.02
Debt	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Capital	\$ -0-	\$ -0-	\$ -0-	\$ -0-
<b>Total</b>	<b>\$ 4,054.95</b>	<b>\$ 6,479.88</b>	<b>\$ 2,021.50</b>	<b>\$ 15,555.02</b>

Fund	Period ending Aug. 31, 2023	Period ending Sep. 30, 2023	Period Ending Oct. 31, 2023
General	\$ 8,425.55	\$ 21,884.83	\$ 16,916.97
Debt	\$ -0-	\$ -0-	\$ -0-
Capital	\$ -0-	\$ -0-	\$ -0-
<b>Total</b>	<b>\$ 8,425.55</b>	<b>\$ 21,884.83</b>	<b>\$ 16,916.97</b>

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board ratified approval of the payment of the claims, as presented.

**Unaudited Financial Statements:** Ms. Ferreira reviewed with the Board the



## RECORD OF PROCEEDINGS

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unaudited financial statements of the District for the period ending September 30, 2023, the updated cash position statement updated September 30, 2023, and the property tax reconciliation.

Following discussion, upon motion duly made by Director Emanuel and seconded by Director Bol and, upon vote, unanimously carried, the Board accepted the unaudited financial statements for the period ending September 30, 2023, the updated cash position statement updated September 30, 2023, and the property tax reconciliation, as presented.

**2022 Audit:** The Board reviewed the 2022 Audit.

Following discussion, upon motion duly made by Director Emanuel and seconded by Director Bol and, upon vote, unanimously carried, the Board ratified approval of the 2022 Audit and ratified the authorization to execute the Representations Letter.

**Preparation of 2023 Audit:** The Board reviewed the proposal from Haynie & Company for preparation of the 2023 Audit.

Following discussion, upon motion duly made by Director Emanuel and seconded by Director Bol and, upon vote, unanimously carried, the Board approved the proposal from Haynie & Company for preparation of the 2023 Audit, for an amount not to exceed \$6,700.00.

**2023 Budget Amendment Hearing:** The President opened the public hearing to consider amendment of the 2023 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider amendment of the 2023 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District.

No written objections were received prior to or at this public hearing. No public comments were received, and the public hearing was closed.

Ms. Ferreira informed the Board that an amendment to the 2023 Budget was required.

Following review and discussion, upon motion duly made by Director Emanuel and seconded by Director Bol and, upon vote, unanimously carried, the Board adopted Resolution No. 2023-11-02 to Amend the 2023 Budget. A copy of the adopted Resolution is attached hereto and incorporated herein by this reference.

**2024 Budget Hearing:** The President opened the public hearing to consider the proposed 2024 Budget and discuss related issues.

## RECORD OF PROCEEDINGS

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It was noted that publication of Notice stating that the Board would consider adoption of the 2024 Budget and the date, time, and place of the public hearing was made in a newspaper having general circulation within the District, and that no written objections or public comments were received prior to this hearing.

Following discussion, the Board determined to continue the 2024 Budget Hearing to Monday, December 4, 2023 at 11:00 a.m. (the “Continued Meeting”).

**Resolution Authorizing Adjustment of the District Mill Levy in Accordance with the Service Plan:** The Board deferred this matter to the Continued Meeting.

**DLG-70 Certification of Tax Levies Form:** The Board deferred this matter to the Continued Meeting.

**Master Service Agreement with CliftonLarsonAllen LLP:** Ms. Ferreira reviewed with the Board the Master Service Agreement between the District and CliftonLarsonAllen LLP, and the accompanying Statements of Work.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol, and upon vote, unanimously carried, the Board approved the Master Service Agreement between the District and CliftonLarsonAllen LLP, and the accompanying Statements of Work, subject to final legal review.

**Preparation of the 2025 Budget:** The Board discussed preparation of the 2025 Budget.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol, and upon vote, unanimously carried, the Board appointed the District Accountant to prepare the 2025 Budget, and set the date for the Budget Hearing on October 15, 2024 at 1:00 p.m.

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### **LEGAL MATTERS**

**Third Amendment to 2019-2021 Operation Funding Agreement between the District and Catellus CC Note, LLC:** The Board deferred this matter to the continued meeting.

**Adams County District Court Case No. 2023CV30630, BNC Metropolitan District No. 1 and BNC Metropolitan District No. 2 v. BNC Metropolitan District No. 3, Theodore Antenucci, Janis L. Emanuel, Robert Bol, Julianna Antenucci, and Pauline Bol:** Attorney Williams updated the Board on the status of the case. No executive session was needed.

## RECORD OF PROCEEDINGS

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**Rescission of the District’s December 5, 2022 Approval of the Second Amendment to Cost Sharing Intergovernmental Agreement by and between BNC Metropolitan District Nos. 1, 2, and 3:** The Board discussed rescinding the District’s December 5, 2022 approval of the Second Amendment to Cost Sharing Intergovernmental Agreement by and between BNC Metropolitan District Nos. 1, 2, and 3 (“Second Amendment”), due to the refusal of BNC Metropolitan District Nos. 1 and 2 to approve or sign the Second Amendment.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board rescinded the District’s December 5, 2022 approval of the Second Amendment.

**Resolution No. 2023-11-03, Resolution Amending Policy on Colorado Open Records Act Requests:** The Board reviewed Resolution No. 2023-11-03, Resolution Amending Policy on Colorado Open Records Act Requests.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board adopted Resolution No. 2023-11-03, Resolution Amending Policy on Colorado Open Records Act Requests.

### **Project Fund Requisitions:**

**Project Fund Requisition No. 1 – Series 2022A Bonds:** The Board reviewed Project Fund Requisition No. 1 under the District’s General Obligation (Limited Tax Convertible to Unlimited Tax) Convertible Capital Appreciation Bonds, Series 2022A, dated October 2023, authorizing reimbursement to Catellus CC Note, LLC in the amount of \$581,263.39, for verified Public Improvement Costs (the “Series 2022A Requisition”).

Following review and discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board ratified approval of the Series 2022A Requisition.

**Project Fund Requisition No. 1 – Series 2022B(3) Bonds:** The Board reviewed Project Fund Requisition No. 1 under the District’s Subordinate General Obligation Limited Tax Bonds, Series 2022B(3), dated October 2023, authorizing reimbursement to Catellus CC Note, LLC in the amount of \$1,386,015.74, for verified Public Improvement Costs (the “Series 2022B(3) Requisition”).

Following review and discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board ratified approval of the Series 2022B(3) Requisition.

## RECORD OF PROCEEDINGS

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**District Boundary Issues:** Attorney Williams informed the Board that the District has been contacted by a property owner regarding certain property that (according to the Adams County Assessor) lies within the boundaries of both BNC Metropolitan District Nos. 1 and 3, and that such property may not have been intended to be within the boundaries of BNC Metropolitan District No. 3.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board directed legal counsel to file a motion for a corrective order to exclude the property from the District’s boundaries, if investigation determines that course of action is appropriate.

**Engineer’s Report and Certification #09:** The Board reviewed Engineer’s Report and Certification #09 – BNC Metropolitan District Nos. 1, 2, & 3, dated November 16, 2023 and prepared by Ranger Engineering, LLC, certifying eligible costs for Public Improvements in the total amount of \$4,950,285.52 (“Report No. 9”).

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board approved Report No. 9, accepted verified costs for Public Improvements in the amount of \$4,568,505.61 (per the allocation to the District in Report No. 9), and authorized the reimbursement of \$4,568,505.61 to Catellus CC Note, LLC pursuant to Report No. 9.

**CAPITAL MATTERS**

There were no capital matters.

**OPERATIONS AND MAINTENANCE**

**Operation and Maintenance Requirements for 2024:** It was noted that the primary need for operations and maintenance in 2024 will be landscape maintenance. No action was taken by the Board.

**OTHER BUSINESS**

There was other business.

**CONTINUATION OF MEETING**

Upon motion made by Director Emanuel, seconded by Director Bol, and upon vote, unanimously carried, the meeting was continued to Monday, December 4, 2023 at 11:00 a.m.

Respectfully submitted,

**RECORD OF PROCEEDINGS**

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By: \_\_\_\_\_  
Secretary for the Meeting

## RECORD OF PROCEEDINGS

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### MINUTES OF A CONTINUED SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE BNC METROPOLITAN DISTRICT NO. 3 HELD DECEMBER 4, 2023

A Continued Special Meeting of the Board of Directors of the BNC Metropolitan District No. 3 (referred to hereafter as “Board”) was convened on Monday, December 4, 2023, at 11:00 a.m. The District Board meeting was held via Zoom video/telephone conference. The meeting was open to the public.

#### ATTENDANCE

#### Directors In Attendance Were:

Janis L. Emanuel  
Robert J. Bol

Following discussion, upon motion duly made by Director Emanuel seconded by Director Bol and, upon vote, unanimously carried, the absence of Director Theodore Antenucci was excused.

#### Also In Attendance Were:

David Solin; Special District Management Services, Inc.

Paula Williams, Esq. and Craig Sorensen; McGeady Becher P.C.

Alyssa Ferreira; CliftonLarsonAllen LLP

Michael Kuykendall and Nick Montalbano; Catellus Development Corp.

#### ADMINISTRATIVE MATTERS

**Disclosures of Potential Conflicts of Interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. It was noted that conflict disclosure statements for all directors were filed with the Secretary of State prior to the November 16, 2023 meeting from which this meeting was continued, and that no new conflicts were disclosed at the meeting.

**Agenda:** Mr. Solin distributed for the Board's review and approval a proposed Agenda for the District's Continued Special Meeting.

Following discussion, upon motion duly made by Director Emanuel seconded by Director Bol and, upon vote, unanimously carried, the Agenda was approved, as presented.

## RECORD OF PROCEEDINGS

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**Location of Meeting and Posting of Notices:** The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District's Board meeting. The Board determined that the meeting would also be held by video/telephonic means, and encouraged public participation via video or telephone. The Board further noted that notice of the time, date and location of the meeting was duly posted and that the District had not received any objections to the video/telephonic manner of the meeting, or any requests that the video/telephonic manner of the meeting be changed by taxpaying electors within the District boundaries.

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### **FINANCIAL MATTERS**

**Continued 2024 Budget Hearing:** It was noted that the public hearing to consider the proposed 2024 Budget and discuss related issues was opened at the November 16, 2023 meeting and has remained open since its continuation from that meeting.

Ms. Ferreira reviewed the estimated 2023 expenditures and the proposed 2024 expenditures.

Following discussion, the Board considered the adoption of Resolution No. 2023-12-01 to Adopt the 2024 Budget and Appropriate Sums of Money and Resolution No. 2023-12-02 Set Mill Levies (for the General Fund at 18.148 mills and the Debt Service Fund at 51.987 mills, for a total mill levy of 70.135 mills). Upon motion duly made by Director Emanuel and seconded by Director Bol and, upon vote, unanimously carried, the Resolutions were adopted, as discussed, and execution of the Certification of Budget and Certification of Mill Levies was authorized, subject to receipt of final Certification of Assessed Valuation from the County on or before January 3, 2024. Mr. Solin was authorized to transmit the Certification of Mill Levies to the Board of County Commissioners of Adams County and the Division of Local Government, not later than January 10, 2024. Mr. Solin was also authorized to transmit the Certification of Budget to the Division of Local Government not later than January 30, 2024. Copies of the adopted Resolutions are attached to these minutes and incorporated herein by this reference.

**Resolution Authorizing Adjustment of the District Mill Levy in Accordance with the Service Plan:** The Board reviewed Resolution No. 2023-12-03, Resolution Authorizing Adjustment of the District Mill Levy in Accordance with the Service Plan.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board adopted Resolution No. 2023-12-03, Resolution Authorizing Adjustment of the District Mill Levy in Accordance with the Service Plan. A copy of the adopted Resolution is attached to these minutes and incorporated herein by this reference.

## RECORD OF PROCEEDINGS

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**DLG-70 Certification of Tax Levies Form (“Certification”)**: Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board authorized the District Accountant to prepare and sign the Certification, and directed the District Manager to file the Certification with the Board of County Commissioners and other interested parties.

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### **LEGAL MATTERS**

**Third Amendment to 2019-2021 Operation Funding Agreement between the District and Catellus CC Note, LLC**: The Board discussed the Third Amendment to 2019-2021 Operation Funding Agreement between the District and Catellus CC Note, LLC.

Following discussion, upon motion duly made by Director Emanuel, seconded by Director Bol and, upon vote, unanimously carried, the Board approved the Third Amendment to 2019-2021 Operation Funding Agreement between the District and Catellus CC Note, LLC.

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### **OTHER BUSINESS**

There was no other business.

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### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director Emanuel, seconded by Director Bol, and upon vote, unanimously carried, the meeting was adjourned at 11:14 a.m.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meeting



BNC Metropolitan District No.3  
November-23

Vendor	Invoice #	Date	Due Date	Amount in USD	Expense Account	Account Number
CliftonLarsonAllen LLP	3959291	9/30/2023	9/30/2023	\$ 1,522.24	Accounting	107000
CliftonLarsonAllen LLP	3959266	11/10/2023	11/10/2023	\$ 4,300.28	Accounting	107000
Special District Management Services, Inc.	10.2023	10/31/2023	10/31/2023	\$ 2,308.40	District management	107440
				\$ 8,130.92		

**BNC Metropolitan District No.3**  
**November-23**

	<u>General</u>	<u>Debt</u>	<u>Capital</u>	<u>Totals</u>
<b>Disbursements</b>	\$ 8,130.92	\$ -		\$ 8,130.92
<b>Payroll</b>				
<b>Total Disbursements</b>	<u>\$ 8,130.92</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 8,130.92</u>

**BNC Metropolitan District No.3**

**December-23**

<b>Vendor</b>	<b>Invoice #</b>	<b>Date</b>	<b>Due Date</b>	<b>Amount in USD</b>	<b>Expense Account</b>	<b>Account Number</b>
CliftonLarsonAllen LLP	3981702	11/28/2023	11/28/2023	\$ 623.70	Accounting	107000
Colorado Community Media	100466	11/17/2023	12/17/2023	\$ 36.12	Miscellaneous	107480
Colorado Special Districts Property and Liability Pool	24PL-60372-1264	12/13/2023	12/13/2023	\$ 2,747.00	Prepaid insurance	101255
Haynie & Company	C72117	9/30/2023	9/30/2023	\$ 6,100.00	Auditing	107020
McGeady Becher P.C.	702W 11.2023	11/30/2023	11/30/2023	\$ 5,520.74	Legal services	107460
Otten Johnson Robinson Neff + Ragonetti, PC	487429Interest	10/13/2023	10/13/2023	\$ 7.60	Legal services	107460
Special District Management Services, Inc.	11.2023	11/30/2023	11/30/2023	\$ 1,927.40	District management	107440
				\$ 16,962.56		

**BNC Metropolitan District No.3**  
**December-23**

	<u>General</u>	<u>Debt</u>	<u>Capital</u>	<u>Totals</u>
<b>Disbursements</b>	<b>\$ 16,962.56</b>	<b>\$ -</b>		<b>\$ 16,962.56</b>
<b>Payroll</b>				
<b>Total Disbursements</b>	<b>\$ 16,962.56</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 16,962.56</b>

BNC Metropolitan District No.3

January-24

Vendor	Invoice #	Date	Due Date	Amount in USD	Expense Account	Account Number
Bol, Robert	10.27.2023	10/27/2023	10/27/2023	\$ 92.35	Directors' fees	107250
Bol, Robert	12.4.2023	12/4/2023	12/4/2023	\$ 92.35	Directors' fees	107250
Bol, Robert	11.16.2023	11/16/2023	11/16/2023	\$ 92.35	Directors' fees	107250
McGeady Becher P.C.	702W 12.2023	12/31/2023	12/31/2023	\$ 1,802.85	Legal services	107460
Special District Management Services, Inc.	12.2023	12/31/2023	12/31/2023	\$ 1,477.00	District management	107440
				\$ 3,556.90		

**BNC Metropolitan District No.3**  
**January-24**

	<u>General</u>	<u>Debt</u>	<u>Capital</u>	<u>Totals</u>
<b>Disbursements</b>	\$ 3,556.90	\$ -		\$ 3,556.90
<b>Payroll</b>				
<b>Total Disbursements</b>	\$ 3,556.90	\$ -	\$ -	\$ 3,556.90

**CERTIFIED RECORD**  
**OF**  
**PROCEEDINGS**  
**BNC METROPOLITAN DISTRICT No. 3**  
**CITY OF COMMERCE CITY, ADAMS COUNTY, COLORADO**  
**PERTAINING TO AMENDMENTS TO**  
**THE INDENTURE OF TRUST RELATING TO THE DISTRICT'S**  
**GENERAL OBLIGATION (LIMITED TAX CONVERTIBLE TO UNLIMITED TAX) CONVERTIBLE**  
**CAPITAL APPRECIATION BONDS, SERIES 2022A**

(Attach copy of notice of meeting, as posted)



STATE OF COLORADO )  
 )  
ADAMS COUNTY )  
 )  
BNC METROPOLITAN DISTRICT NO. 3 )  
 )

The Board of Directors of BNC Metropolitan District No. 3, City of Commerce City, Adams County, Colorado, met in special session in the offices of McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203, on Monday, the 5<sup>th</sup> day of February, 2024, at the hour of 3:00 p.m. Such meeting was also made accessible via Zoom video/telephone conference, as follows:

Zoom link:

<https://us02web.zoom.us/j/5469119353?pwd=SmtlcHJETFhCQUZEcVBBOGZVU3Fqdz09>

**Dial In:** 1-719-359-4580

**Meeting ID:** 546 911 9353

**Passcode:** 912873

*In accordance with §11-57-211, C.R.S., one or more of the members of the Board participated in this meeting and voted through the use of a conference telephone, and there was at least one person physically present at the designated meeting area to ensure that the public meeting was in fact accessible to the public.*

The following members of the Board of Directors were present, constituting a quorum:

Absent:

Thereupon there was introduced the following resolution:

## RESOLUTION

**WHEREAS**, BNC Metropolitan District No. 3, City of Commerce City, Adams County, Colorado (the “District”), is a duly and regularly created, established, organized, and existing metropolitan district, existing as such under and pursuant to the constitution and laws of the State of Colorado; and

**WHEREAS**, the District has heretofore authorized and issued its General Obligation (Limited Tax Convertible to Unlimited Tax) Convertible Capital Appreciation Bonds, Series 2022A, originally issued in the aggregate principal amount of \$11,815,297.50 (the “Bonds”); and

**WHEREAS**, the Bonds were issued pursuant to an Indenture of Trust between the District and UMB Bank, n.a., as trustee (the “Trustee”), dated as of December 29, 2022 (the “Original Indenture”), and pursuant thereto, the District provided certain covenants to each and every Owner (as such term is defined in the Original Indenture) of the Bonds; and

**WHEREAS**, the District has proposed the amendment of certain covenants and provisions included in the Indenture, and in connection therewith has proposed certain changes to the Original Indenture as set forth herein, and the Board has determined that such changes are in the best interests of the District and its residents and taxpayers; and

**WHEREAS**, pursuant to Section 10.02 of the Original Indenture, amendments such as those set forth herein require the consent of the Consent Parties (as such term is defined in the Original Indenture) with respect to a majority in aggregate principal amount of the Bonds then outstanding and affected thereby; and

**WHEREAS**, the Board has determined to adopt this resolution (the “Amending Resolution”) to amend the Original Indenture as provided herein and as further evidenced in that certain Amended and Restated Indenture of Trust between the District and the Trustee anticipated to be executed on or around January 31, 2024, subject to the consent of the Consent Owners of the Bonds as aforesaid;

**THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BNC METROPOLITAN DISTRICT NO. 3:**

**Section 1. Definitions.** As used herein, capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto by the Original Indenture.

**Section 2. Condition Precedent; Effective Date.** Notwithstanding anything herein to the contrary, the effectiveness of this Amending Resolution shall be subject to the prior consent of the Consent Parties with respect to a majority in aggregate principal amount of the Bonds then outstanding and affected thereby, as required by the Original Indenture. Upon the receipt of such consents, the provisions of this Amending Resolution shall be immediately effective, with no further legislative action required by the Board.

**Section 3. Amendments to Section 3.05 of Original Indenture.**

(a) The following paragraph contained in Section 3.05 of the Original Indenture shall be amended and restated in its entirety to read as follows:

**Section 3.05 Flow of Funds.** Upon issuance of the Bonds, the District shall transfer to the Trustee any and all moneys then held by the District which constitute Pledged Revenue, and thereafter the District shall transfer all amounts comprising Pledged Revenue to the Trustee as soon as may be practicable after the receipt thereof, and in no event later than the 15th day of the calendar month immediately succeeding the calendar month in which such revenue is received by the District; provided, however, that in the event that the total amount of Pledged Revenue received by the District in a calendar month is less than \$50,000, the Pledged Revenue received during such calendar month may instead be remitted to the Trustee no later than the 15th day of the calendar month immediately succeeding the calendar quarter in which such revenue is received by the District (i.e., no later than April 15th for Pledged Revenue received in January, February or March, no later than July 15th for Pledged Revenue received in April, May or June, no later than October 15th for Pledged Revenue received in July, August or September, and no later than January 15th for Pledged Revenue received in October, November or December). In addition, in order to assure the proper application of moneys constituting Pledged Revenue, on and after the date of issuance of any Additional Bonds, the District shall also transfer to the Trustee all moneys pledged to the payment of such Additional Bonds which are derived from ad valorem taxes of the District, or Specific Ownership Taxes, and any such moneys shall constitute part of the Trust Estate. **IN NO EVENT IS THE DISTRICT PERMITTED TO APPLY ANY PORTION OF THE PLEDGED REVENUE TO ANY OTHER PURPOSE, OR TO WITHHOLD ANY PORTION OF THE PLEDGED REVENUE.** To the extent permitted by law, the Trustee shall apply the Pledged Revenue and such other moneys in the following order of priority. For purposes of the following: (i) the priorities established below are intended to create a tiered “waterfall” structure in which no Pledged Revenue flows to a lower priority until all of the higher priorities have been fully funded as provided herein; (ii) when credits to more than one fund, account, or purpose are required at any single priority level, such credits shall rank pari passu with each other, and (iii) when credits are required to go to funds or accounts which are not held by the Trustee under this Indenture, the Trustee may rely upon the written instructions of the District with respect to the appropriate funds or accounts to which such credits are to be made.

**Section 4. Amendment to Section 4.05 of Original Indenture.** Section 4.05 of the Original Indenture shall be amended and restated in its entirety to read as follows:

**Section 4.05 Additional Covenants and Agreements.** The District hereby further irrevocably covenants and agrees with each and every Owner that so long as any of the Bonds remain Outstanding:

(a) The District shall not dissolve, merge, or otherwise alter its corporate structure in any manner or to any extent as might materially adversely affect the security provided for the payment of the Bonds, and will continue to operate and manage the District and its facilities in an efficient and economical manner in accordance with all applicable laws, rules, and regulations; provided however, that the foregoing shall not prevent the District from dissolving pursuant to the provisions of the Act.

(b) At least once a year the District will cause an audit to be performed of the records relating to its revenues and expenditures, and the District shall use its reasonable efforts to have such audit report completed no later than September 30 of the calendar year after the calendar year which is the subject of such audit. The foregoing covenant shall apply notwithstanding any state law audit exemptions that may exist. In addition, at least once a year in the time and manner provided by law, the District will cause a budget to be prepared and adopted. Copies of the budget and any audit will be filed and recorded in the places, time, and manner provided by law.

(c) In the event the District engages in a public or limited offering of debt, the District shall use its reasonable efforts to participate in the preparation of any such related official statement or limited offering memorandum, and to provide such due diligence information as may be necessary in relation thereto in a timely manner.

(d) The District will carry general liability, public officials liability, and such other forms of insurance on insurable District property upon the terms and conditions, in such amounts, and issued by recognized insurance companies, as in the judgment of the District will protect the District and its operations.

(e) The District shall use its best efforts to retain as its legal counsel a law firm maintaining at least five lawyers registered to practice law in Colorado, with experience representing Colorado Special Districts and knowledge of Title 32 of the Colorado Revised Statutes, as amended.

(f) Each District official or other person having custody of any District funds or responsible for the handling of such funds, shall be bonded or insured against theft or defalcation at all times.

(g) In the event the Pledged Revenue and other moneys available hereunder for payment of the Bonds is insufficient or is anticipated to be insufficient to pay the principal of, premium if any, and interest on the Bonds when due, the District shall use its reasonable efforts to refinance, refund, or otherwise restructure the Bonds so as to avoid such insufficiency.

(h) In the event any ad valorem taxes are not paid when due, the District shall diligently cooperate with the appropriate county treasurer to enforce the lien of such unpaid taxes against the property for which the taxes are owed.

(i) In the event the Pledged Revenue and other moneys available hereunder for payment of the Bonds is insufficient or is anticipated to be insufficient to pay the principal of, premium if any, and interest on the Bonds when due, the District shall require the auditor of its annual financial statements or the District's Treasurer to include a statement in the District's annual financial statements, and a written notice to the Trustee, as to whether all of the Pledged Revenue received by the District was remitted to the Trustee as required hereunder.

(j) To the extent permitted by law, in the event that a member of the Board or any officer, agent, consultant or employee of the District knowingly and intentionally causes the District to trigger an Event of Default as listed in Section 8.01 hereof, the District shall use its best efforts to remove such officer, agent, consultant or employee from its service and employ as soon as may be practicable.

(k) The District shall promptly notify the Trustee of any Event of Default of which the District has knowledge, setting forth the details of such Event of Default and any action which the District proposes to take with respect thereto.

(l) The District will provide the Trustee with written notice of the occurrence of the Conversion Date as soon as is practicable after the occurrence thereof.

**Section 5. Amendment to Section 8.01 of Original Indenture.** The following paragraph of Section 8.01 of the Original Indenture shall be amended and restated in its entirety to read as follows:

It is acknowledged that due to the limited nature of the Pledged Revenue, prior to the Unlimited Tax Receipt Date the failure to pay the principal of or interest on the Bonds when due shall not, of itself, constitute an Event of Default hereunder. **WITHOUT LIMITING THE FOREGOING, AND NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, THE DISTRICT ACKNOWLEDGES AND AGREES THAT THE**

APPLICATION OF ANY PORTION OF THE PLEDGED REVENUE TO ANY PURPOSE OTHER THAN DEPOSIT WITH THE TRUSTEE IN ACCORDANCE WITH THE PROVISIONS HEREOF CONSTITUTES A VIOLATION OF THE TERMS OF THIS INDENTURE AND A BREACH OF THE COVENANTS MADE HEREUNDER FOR THE BENEFIT OF THE OWNERS OF THE BONDS, WHICH SHALL ENTITLE THE TRUSTEE TO PURSUE, ON BEHALF OF THE OWNERS OF THE BONDS, ALL AVAILABLE ACTIONS AGAINST THE DISTRICT IN LAW OR IN EQUITY, AS MORE PARTICULARLY PROVIDED IN THIS ARTICLE EIGHT. THE DISTRICT FURTHER ACKNOWLEDGES AND AGREES THAT THE APPLICATION OF PLEDGED REVENUE IN VIOLATION OF THE COVENANTS HEREOF WILL RESULT IN IRREPARABLE HARM TO THE OWNERS OF THE BONDS AND MAY RESULT IN, SUIT, ACTION, OR SPECIAL PROCEEDINGS BEING BROUGHT AGAINST THE DISTRICT AND ITS AGENTS IN RELATION TO (AND IN NO WAY BY LIMITATION), *INTER ALIA*, SECURITIES FRAUD AND THE TORTIOUS ACT OF CONVERSION. IN NO EVENT SHALL ANY PROVISION HEREOF BE INTERPRETED TO PERMIT THE DISTRICT TO RETAIN ANY PORTION OF THE PLEDGED REVENUE OR TO APPLY ANY PORTION OF THE PLEDGED REVENUE FOR ANY PURPOSES OTHER THAN TO THE APPLICATION AND PAYMENT OF PRINCIPAL AND INTEREST OF THE DISTRICT'S BONDED INDEBTEDNESS, INCLUDING, BUT IN NO WAY LIMITED TO, FOR PAYMENT OF THE DISTRICT'S ONGOING OPERATIONS AND MAINTENANCE COSTS.

**Section 7. Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers of the District and the members of the Board, not inconsistent with the provisions of this Amending Resolution and relating to the matters dealt with herein, are hereby ratified, approved, and confirmed.

**Section 8. Authorization to Execute Documents.** The President or Vice President and Secretary or an Assistant Secretary of the District shall, and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Amending Resolution, including, but not limited to, the execution of such certificates and affidavits as may be reasonably required under the circumstances. The execution by the President or Vice President of the District of any document authorized herein shall be conclusive proof of the approval by the District of the terms thereof.

**Section 9. Costs and Expenses.** All costs and expenses incurred in connection with the amendment of the Bonds as provided hereby, shall be paid from legally available moneys of the District, and such moneys are hereby appropriated for that purpose.

**Section 10. Supplemental Act.** Pursuant to §11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with this Amending Resolution shall be commenced more than thirty days after the adoption hereof.

**Section 11. Repealer.** All orders, bylaws, and resolutions of the District, or parts thereof, inconsistent or in conflict with this Amending Resolution, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 12. Severability.** If any section, paragraph, clause, or provision of this Amending Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Amending Resolution, the intent being that the same are severable.

**Section 13. No Other Changes.** Except as amended by this Amending Resolution, all terms of the Original Indenture shall remain in full force and effect.

**ADOPTED AND APPROVED** this 5<sup>th</sup> day of February, 2024.

( S E A L )

---

President or Vice President

ATTESTED:

---

Secretary or Assistant Secretary

Thereupon, Director \_\_\_\_\_ moved the adoption of the foregoing resolution. The motion to adopt the resolution was duly seconded by Director \_\_\_\_\_, put to a vote, and carried on the following recorded vote:

Those voting AYE:

Those voting NAY:

Thereupon the President, as Chairman of the meeting, declared the resolution duly adopted and the Secretary or Assistant Secretary was directed to enter the foregoing proceedings and resolution upon the minutes of the Board.

Thereupon, after consideration of other business before the Board, the meeting was adjourned.

**CERTIFIED RECORD**  
**OF**  
**PROCEEDINGS**  
**BNC METROPOLITAN DISTRICT No. 3**  
**CITY OF COMMERCE CITY, ADAMS COUNTY, COLORADO**  
**PERTAINING TO AMENDMENTS TO**  
**THE INDENTURE OF TRUST RELATING TO THE DISTRICT'S**  
**SUBORDINATE GENERAL OBLIGATION LIMITED TAX BONDS, SERIES 2022B(3)**



(Attach copy of notice of meeting, as posted)

STATE OF COLORADO )  
 )  
ADAMS COUNTY )  
 )  
BNC METROPOLITAN DISTRICT NO. 3 )  
 )

The Board of Directors of BNC Metropolitan District No. 3, City of Commerce City, Adams County, Colorado, met in special session in the offices of McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203, on Monday, the 5<sup>th</sup> day of February, 2024, at the hour of 3:00 p.m. Such meeting was also made accessible via Zoom video/telephone conference, as follows:

Zoom link:

<https://us02web.zoom.us/j/5469119353?pwd=SmtlcHJETFhCQUZEcVBBOGZVU3Fqdz09>

**Dial In:** 1-719-359-4580

**Meeting ID:** 546 911 9353

**Passcode:** 912873

*In accordance with §11-57-211, C.R.S., one or more of the members of the Board participated in this meeting and voted through the use of a conference telephone, and there was at least one person physically present at the designated meeting area to ensure that the public meeting was in fact accessible to the public.*

The following members of the Board of Directors were present, constituting a quorum:

Absent:

Thereupon there was introduced the following resolution:

## RESOLUTION

**WHEREAS**, BNC Metropolitan District No. 3, City of Commerce City, Adams County, Colorado (the “District”), is a duly and regularly created, established, organized, and existing metropolitan district, existing as such under and pursuant to the constitution and laws of the State of Colorado; and

**WHEREAS**, the District has heretofore authorized and issued its Subordinate General Obligation Limited Tax Bonds, Series 2022B(3), originally issued in the aggregate principal amount of \$4,790,000 (the “Bonds”); and

**WHEREAS**, the Bonds were issued pursuant to an Indenture of Trust between the District and UMB Bank, n.a., as trustee (the “Trustee”), dated as of December 29, 2022 (the “Original Indenture”), and pursuant thereto, the District provided certain covenants to each and every Owner (as such term is defined in the Original Indenture) of the Bonds; and

**WHEREAS**, the District has proposed the amendment of certain covenants included in the Indenture, and in connection therewith has proposed certain changes to the Original Indenture as set forth herein, and the Board has determined that such changes are in the best interests of the District and its residents and taxpayers; and

**WHEREAS**, pursuant to Section 10.02 of the Original Indenture, amendments such as those set forth herein require the consent of the Consent Parties (as such term is defined in the Original Indenture) with respect to a majority in aggregate principal amount of the Bonds then outstanding and affected thereby; and

**WHEREAS**, the Board has determined to adopt this resolution (the “Amending Resolution”) to amend the Original Indenture as provided herein and as further evidenced in that certain Amended and Restated Indenture of Trust between the District and the Trustee anticipated to be executed on or around January 31, 2024, subject to the consent of the Consent Owners of the Bonds as aforesaid;

**THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BNC METROPOLITAN DISTRICT NO. 3:**

**Section 1. Definitions.** As used herein, capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto by the Original Indenture.

**Section 2. Condition Precedent; Effective Date.** Notwithstanding anything herein to the contrary, the effectiveness of this Amending Resolution shall be subject to the prior consent of the Consent Parties with respect to a majority in aggregate principal amount of the Bonds then outstanding and affected thereby, as required by the Original Indenture. Upon the receipt of such consents, the provisions of this Amending Resolution shall be immediately effective, with no further legislative action required by the Board.

**Section 3. Amendments to Section 3.05 of Original Indenture.**

(a) The following paragraph contained in Section 3.05 of the Original Indenture shall be amended and restated in its entirety to read as follows:

**Section 3.05 Flow of Funds.** The District shall transfer all amounts comprising Subordinate Pledged Revenue to the Trustee as soon as may be practicable after the receipt thereof, and in no event later than the 15th day of the calendar month immediately succeeding the calendar month in which such revenue is received by the District; provided, however, that in the event that the total amount of Subordinate Pledged Revenue received by the District in a calendar month is less than \$50,000, the Subordinate Pledged Revenue received during such calendar month may instead be remitted to the Trustee no later than the 15th day of the calendar month immediately succeeding the calendar quarter in which such revenue is received by the District (i.e., no later than April 15th for Subordinate Pledged Revenue received in January, February or March, no later than July 15th for Subordinate Pledged Revenue received in April, May or June, no later than October 15th for Subordinate Pledged Revenue received in July, August or September, and no later than January 15th for Subordinate Pledged Revenue received in October, November or December). In addition, in order to assure the proper application of moneys constituting Subordinate Pledged Revenue, on and after the date of issuance of any Additional Bonds, the District shall also transfer or make available to the Trustee all moneys pledged to the payment of such Additional Bonds which are derived from ad valorem taxes of the District, or Specific Ownership Taxes and any such moneys shall constitute part of the Trust Estate. **IN NO EVENT IS THE DISTRICT PERMITTED TO APPLY ANY PORTION OF THE SUBORDINATE PLEDGED REVENUE TO ANY OTHER PURPOSE, OR TO WITHHOLD ANY PORTION OF THE SUBORDINATE PLEDGED REVENUE.** To the extent permitted by law, the Trustee shall apply the Subordinate Pledged Revenue and such other moneys in the following order of priority. For purposes of the following: (i) the priorities established below are intended to create a tiered “waterfall” structure in which no Subordinate Pledged Revenue flows to a lower priority until all of the higher priorities have been fully funded as provided herein; (ii) when credits to more than one fund, account, or purpose are required at any single priority level, such credits shall rank pari passu with each other, and (iii) when credits are required to go to funds or accounts which are not held by the Trustee under this Indenture, the Trustee may rely upon the written instructions of the District with respect to the appropriate funds or accounts to which such credits are to be made.

**Section 4. Amendment to Section 4.05 of Original Indenture.** Section 4.05 of the Original Indenture shall be amended and restated in its entirety to read as follows:

**Section 4.05 Additional Covenants and Agreements.** The District hereby further irrevocably covenants and agrees with each and every Owner that so long as any of the Bonds remain Outstanding:

(a) The District shall not dissolve, merge, or otherwise alter its corporate structure in any manner or to any extent as might materially adversely affect the security provided for the payment of the Bonds, and will continue to operate and manage the District and its facilities in an efficient and economical manner in accordance with all applicable laws, rules, and regulations; provided however, that the foregoing shall not prevent the District from dissolving pursuant to the provisions of the Act.

(b) At least once a year the District will cause an audit to be performed of the records relating to its revenues and expenditures, and the District shall use its reasonable efforts to have such audit report completed no later than September 30 of the calendar year after the calendar year which is the subject of such audit. In addition, at least once a year in the time and manner provided by law, the District will cause a budget to be prepared and adopted. Copies of the budget and any audit will be filed and recorded in the places, time, and manner provided by law.

(c) The District will carry general liability, public officials liability, and such other forms of insurance on insurable District property upon the terms and conditions, in such

amounts, and issued by recognized insurance companies, as in the judgment of the District will protect the District and its operations.

(d) The District shall use its best efforts to retain as its legal counsel a law firm maintaining at least five lawyers registered to practice law in Colorado, with experience representing Colorado Special Districts and knowledge of Title 32 of the Colorado Revised Statutes, as amended.

(e) In the event the District engages in a public or limited offering of debt, the District shall use its reasonable efforts to participate in the preparation of any such related official statement or limited offering memorandum, and to provide such due diligence information as may be necessary in relation thereto in a timely manner.

(f) Each District official or other person having custody of any District funds or responsible for the handling of such funds, shall be bonded or insured against theft or defalcation at all times.

(g) In the event any ad valorem taxes are not paid when due, the District shall diligently cooperate with the appropriate county treasurer to enforce the lien of such unpaid taxes against the property for which the taxes are owed.

(h) In the event the Subordinate Pledged Revenue is insufficient or is anticipated to be insufficient to pay the principal of, and the premium if any, and interest on the Bonds by their date of maturity, the District shall use its reasonable efforts to refinance, refund, or otherwise restructure the Bonds so as to avoid such insufficiency.

(i) In the event the Subordinate Pledged Revenue and other moneys available hereunder for payment of the Bonds is insufficient or is anticipated to be insufficient to pay the principal of, premium if any, and interest on the Bonds when due, the District shall require the auditor of its annual financial statements or the District's Treasurer to include a statement in the District's financial statements, and a written notice to the Trustee, as to whether all of the Subordinate Pledged Revenue received by the District was remitted to the Trustee as required hereunder.

(j) To the extent permitted by law, in the event that a member of the Board or any officer, agent, consultant or employee of the District knowingly and intentionally causes the District to trigger an Event of Default as listed in Section 8.01 hereof, the District shall use its best efforts to remove such officer, agent, consultant or employee from its service and employ as soon as may be practicable. The District shall promptly notify the Trustee of any Event of Default of which the District has knowledge, setting forth the details of such Event of Default and any action which the District proposes to take with respect thereto.

(k) The District will not amend or supplement any of the documents pertaining to the Series 2022A Senior Bonds in any way which (i) alters the amortization of the principal of such Series 2022A Senior Bonds, (ii) increases the rate or rates of interest borne by the Series 2022A Senior Bonds, or (iii) alters the provisions pertaining to the release of the Series 2022A Senior Bond Surplus Fund as provided in the Series 2022A Senior Bond Indenture, except upon the prior written consent of the Consent Parties with respect to 100% in aggregate principal amount of the Bonds.

(l) The District will not use moneys in the Series 2022A Senior Bond Surplus Fund in connection with any refunding or defeasance of all or any part of the Series 2022A Senior Bonds (or, if secured thereby, any Permitted Refunding Bonds) except upon the prior written consent of the Consent Parties with respect to 100% in aggregate principal amount of the Bonds. The foregoing shall not be construed to apply to or affect the use of such moneys to secure the Series

2022A Senior Bonds (or, if secured thereby, any Permitted Refunding Bonds) in the manner set forth in the Series 2022A Senior Bond Indenture.

**Section 5. Amendment to Section 8.01 of Original Indenture.** The following paragraph of Section 8.01 of the Original Indenture shall be amended and restated in its entirety to read as follows:

It is acknowledged that due to the limited nature of the Subordinate Pledged Revenue, the failure to pay the principal of or interest on the Bonds when due shall not, of itself, constitute an Event of Default hereunder. **WITHOUT LIMITING THE FOREGOING, AND NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, THE DISTRICT ACKNOWLEDGES AND AGREES THAT THE APPLICATION OF ANY PORTION OF THE SUBORDINATE PLEDGED REVENUE TO ANY PURPOSE OTHER THAN DEPOSIT WITH THE TRUSTEE IN ACCORDANCE WITH THE PROVISIONS HEREOF CONSTITUTES A VIOLATION OF THE TERMS OF THIS INDENTURE AND A BREACH OF THE COVENANTS MADE HEREUNDER FOR THE BENEFIT OF THE OWNERS OF THE BONDS, WHICH SHALL ENTITLE THE TRUSTEE TO PURSUE, ON BEHALF OF THE OWNERS OF THE BONDS, ALL AVAILABLE ACTIONS AGAINST THE DISTRICT IN LAW OR IN EQUITY, AS MORE PARTICULARLY PROVIDED IN THIS ARTICLE EIGHT. THE DISTRICT FURTHER ACKNOWLEDGES AND AGREES THAT THE APPLICATION OF SUBORDINATE PLEDGED REVENUE IN VIOLATION OF THE COVENANTS HEREOF WILL RESULT IN IRREPARABLE HARM TO THE OWNERS OF THE BONDS AND MAY RESULT IN, SUIT, ACTION, OR SPECIAL PROCEEDINGS BEING BROUGHT AGAINST THE DISTRICT AND ITS AGENTS IN RELATION TO (AND IN NO WAY BY LIMITATION), INTER ALIA, SECURITIES FRAUD AND THE TORTIOUS ACT OF CONVERSION. IN NO EVENT SHALL ANY PROVISION HEREOF BE INTERPRETED TO PERMIT THE DISTRICT TO RETAIN ANY PORTION OF THE SUBORDINATE PLEDGED REVENUE OR TO APPLY ANY PORTION OF THE SUBORDINATE PLEDGED REVENUE FOR ANY PURPOSES OTHER THAN TO THE APPLICATION AND PAYMENT OF PRINCIPAL AND INTEREST OF THE DISTRICT'S BONDED INDEBTEDNESS, INCLUDING, BUT IN NO WAY LIMITED TO, FOR PAYMENT OF THE DISTRICT'S ONGOING OPERATIONS AND MAINTENANCE COSTS.**

**Section 7. Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers of the District and the members of the Board, not inconsistent with the provisions of this Amending Resolution and relating to the matters dealt with herein, are hereby ratified, approved, and confirmed.

**Section 8. Authorization to Execute Documents.** The President or Vice President and Secretary or an Assistant Secretary of the District shall, and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Amending Resolution, including, but not limited to, the execution of such certificates and affidavits as may be reasonably required under the circumstances. The execution by the President or Vice President of the District of any document authorized herein shall be conclusive proof of the approval by the District of the terms thereof.

**Section 9. Costs and Expenses.** All costs and expenses incurred in connection with the amendment of the Bonds as provided hereby, shall be paid from legally available moneys of the District, and such moneys are hereby appropriated for that purpose.

**Section 10. Supplemental Act.** Pursuant to §11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with this Amending Resolution shall be commenced more than thirty days after the adoption hereof.

**Section 11. Repealer.** All orders, bylaws, and resolutions of the District, or parts thereof, inconsistent or in conflict with this Amending Resolution, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 12. Severability.** If any section, paragraph, clause, or provision of this Amending Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Amending Resolution, the intent being that the same are severable.

**Section 13. No Other Changes.** Except as amended by this Amending Resolution, all terms of the Original Indenture shall remain in full force and effect.

**ADOPTED AND APPROVED** this 5<sup>th</sup> day of February, 2024.

( S E A L )

---

President or Vice President

ATTESTED:

---

Secretary or Assistant Secretary

Thereupon, Director \_\_\_\_\_ moved the adoption of the foregoing resolution. The motion to adopt the resolution was duly seconded by Director \_\_\_\_\_, put to a vote, and carried on the following recorded vote:

Those voting AYE:

Those voting NAY:

Thereupon the President, as Chairman of the meeting, declared the resolution duly adopted and the Secretary or Assistant Secretary was directed to enter the foregoing proceedings and resolution upon the minutes of the Board.

Thereupon, after consideration of other business before the Board, the meeting was adjourned.  
57694075.1





**ENGINEER'S REPORT and CERTIFICATION #09**

**BNC METROPOLITAN DISTRICT NOS. 1, 2, & 3**

**PREPARED FOR:**

BNC Metropolitan District Nos. 1-3  
c/o McGeady Becher, PC  
450 E. 17<sup>th</sup> Ave, Suite 400  
Denver, CO 80203

**PREPARED BY:**

Ranger Engineering, LLC  
2590 Cody Ct.  
Lakewood, CO 80215

**DATE PREPARED:**

November 16, 2023

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## ENGINEER’S REPORT

### Introduction

Ranger Engineering, LLC (“Ranger”), was retained by BNC Metropolitan District No. 1, BNC Metropolitan District No. 2, and BNC Metropolitan District No. 3 (“Districts”) as an Independent Consulting Engineer to certify costs associated with constructed Public Improvements associated with the Districts.

The Districts are located within Commerce City, County of Adams, State of Colorado (“Town”). The development area is approximately 130 acres. This certification considers soft & indirect and construction costs within and without the District boundaries.

The attached Engineer’s Certification states that the Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in this Engineer's Report, for hard costs covering a range from approximately November 2022 to September 2023, are valued at **\$4,950,285.52**. Table I summarizes costs certified to date.

Table I - Cost Certifications to Date					
Cert. No.	Date	Total Costs Paid	Eligible Construction Costs	Eligible Soft Costs	Total Eligible Costs
01	5/24/2018	\$347,803.00	\$0.00	\$347,803.00	\$347,803.00
02	1/22/2019	\$546,458.84	\$0.00	\$546,458.84	\$546,458.84
03	11/23/2019	\$3,994,731.15	\$2,700,684.68	\$1,074,753.81	\$3,775,438.49
04	12/20/2019	\$8,566,241.43	\$6,948,375.08	\$0.00	\$6,948,375.08
05	4/30/2020	\$1,065,150.78	\$422,341.73	\$271,449.49	\$693,791.22
06	12/21/2022	\$13,777,996.10	\$9,334,290.74	\$3,140,862.82	\$12,475,153.57
07	5/4/2023	\$3,594,271.85	\$1,739,245.65	\$509,521.72	\$2,248,767.37
08	10/10/2023	\$2,901,814.67	\$1,633,235.62	\$356,660.97	\$1,989,896.59
09	11/16/2023	\$5,658,791.29	\$4,909,228.30	\$41,057.22	\$4,950,285.52
<b>Total</b>		<b>\$40,453,259.11</b>	<b>\$27,687,401.79</b>	<b>\$6,288,567.87</b>	<b>\$33,975,969.66</b>

Table II summarizes the cost breakdown of the construction and soft & indirect costs. Table III provides district reimbursement allocation breakdown between the Districts. Tables IV and V provide category breakdowns of construction and soft & indirect costs reviewed for this certification. VI provides a detailed breakdown of the eligible hard costs per the Service Plan categories. Table VII provides a detailed breakdown of the eligible soft & indirect costs per the Service Plan categories.

### Public Improvements as Authorized by the Service Plan

Ranger reviewed the Amended and Restated Service Plan for BNC Metropolitan District No. 1, the Service Plan for BNC Metropolitan District No. 2, and the Service Plan for BNC Metropolitan District No. 3. Prepared by McGeady Sisneros, P.C., now McGeady Becher, P.C. Approved September 15, 2003.

Section I.A of the Service Plan states:

*The District shall have all the powers of a metropolitan district, except that the District shall not provide fire protection services. Further, after installation of the water and sanitary sewer improvements to serve the proposed development, the District intends to dedicate such improvements to the South Adams County Water and Sanitation District (“SACWSD”). The South Adams County*

*Fire Protection District will provide fire protection. The City will provide law enforcement. The development is within the Brighton School District 27J.*

Section I.B of the Service Plan states:

*The BNC Service Area is entirely within the boundaries of the County of Adams (the “County”), the boundaries of the City, the boundaries of SACWSD and the boundaries of the South Adams County Fire Protection District. The BNC Service Area is now vacant and is not presently served with the facilities and services to be provided by the District. The County, the City or any other special districts do not consider it feasible or practical to provide the BNC Service Area with certain park and recreation, water, sanitary sewer, storm drainage, and street and safety protection facilities services and services described in this Service Plan. Therefore, it is necessary that the Districts be organized to provide the inhabitants of the BNC Service Area with those park and recreation, water, sanitary sewer, storm drainage, and street and safety protection facilities and services, which the County, the City or any other special districts have determined they cannot feasibly or practically provide within the BNC Service Area.*

Section VI.B states:

*It is proposed that a total maximum amount of Sixty Million Dollars (\$60,000,000) of bonds that are secured by ad valorem property taxes (including general obligation and any bonds issued, the repayment of which is from the pledge of revenue from a capped debt service mill levy) for various purposes be submitted to the electors of the proposed District for their approval at an election.*

Exhibit C of the Service Plan shows the Maps Depicting Public Improvements. Ranger has determined that the constructed improvements and associated soft and indirect construction costs (“Public Improvements”) under consideration in this report and certification for reimbursement by the Districts are indeed authorized by the Service Plan.

### **Scope of Certification**

The Service Plan states that the Districts shall have all the powers of a metropolitan district, except for fire protection, to construct Public Improvements in accordance with the Special District Act. Based on Ranger’s experience with metropolitan districts, as well as language of the Service Plan, the Public Improvements were broken into the cost categories of Street Improvements, Park & Recreation Improvements, Water Improvements, and Sanitary and Storm Drainage Improvements. Various soft costs were identified as Operations costs, but these costs are not eligible for reimbursement under the scope of this report, as only Capital improvements have been considered for reimbursement. For a detailed breakdown of district eligible costs, refer to Tables IV - VII. Current work is primarily related to work completed within Filings 4, 5, and 6.

### **General Methodology**

Ranger employed a phased approach toward the preparation of this Engineer’s Report and Certification of Public Costs (“Engineer’s Certification”).

### **Phase I – Authorization to Proceed and Document Gathering**

Ranger was authorized to proceed with the Engineer’s Certification in October 2019. Ranger received initial documentation in October 2019. Subsequent supporting documentation for construction improvements was delivered by the District on an ongoing basis through the current period.

### **Phase II – Site Visit**

Ranger performed site visits to document completion of the Public Improvements. The intent of a site visit was to verify general completion of pay application quantities in accordance with the approved construction drawings and does not guarantee quality or acceptance of Public Improvements. It is assumed that the City, South Adams County Water and Sanitation District (“SACWSD”) or another third party provided QA/QC and acceptance of the improvements. CVL Consultants (“CVL”) are the Engineer of Record and are assumed to have verified that installation of improvements was substantially constructed in accordance with the final design and the construction standards, and that the improvements are fit for their intended purpose. A.G. Wassenaar, Inc. was engaged to provide materials testing for earthwork, concrete, and asphalt.

Ranger has reviewed multiple Grant and Acceptance of Utilities Agreements between SACWSD and Catellus CC Note or home builders responsible for a filing. The Grant and Acceptance is an ongoing process as construction continues into new filings.

### **Phase III – Review of Documentation**

Documentation was requested at the beginning of work. Requested documentation include the following:

- Executed Contracts and Bid Tabs
- Approved Construction Drawings
- Acceptable Proof of Payment (Cancelled checks and bank statements or lien waivers)
- Invoices and/or Pay Applications
- Approved changes or amendments to contract documents
- Copies of any agreements that will impact District funding

See Appendix A for a complete listing of documents reviewed, as deemed necessary, by Ranger.

### **Phase IV – Verification of Construction Quantities**

Construction quantity take-offs were performed from available construction drawings, plats, and site plans. These quantity take-offs were used in conjunction with Phases V and VII below to certify reasonableness of construction costs.

### **Phase V – Verification of Construction Unit Costs and Indirect Costs**

Construction Unit Costs and Indirect Costs were reviewed for market reasonableness. Ranger took into consideration the type of construction and the timeframe during which the construction occurred. Ranger reviewed the prime contracts as well as detailed construction pay applications. Scott Contracting (“Contractor”) was utilized on this project to perform and oversee multiple scopes of work within the area as well as offsite, and only costs related to Public Improvements were considered District eligible. G.W. Scott Landscaping, Inc. was utilized for landscaping and irrigation installation. Additional contractors were used for miscellaneous site work.

For Cost Certification #06, multiple contractors were utilized in Filings 4, 5, 6 for multiple scopes of work. Contractors include Scott Contracting, GreenEarth Midwest, Three Sons, Bemis Construction, New West Paving, Colorado Design Scapes, and ESCO Construction.

**Phase VI – Verification of Payment for Public Costs**

Catellus Development Corporation (“Developer”) provided payments for hard and soft & indirect costs related to the construction costs. The Developer provided cancelled checks or wires and bank statements to verify payments for all soft & indirect costs. Fidelity National Title Company provided payment as well out of a funded escrow. The Contractor provided lien waivers for all hard costs related to the Public Improvements. Only costs with an approved form of proof of payment have been certified in this report.

On Cost Certification #06, #07, and #08, costs were submitted that were paid for by Century Communities Inc (“CCI”) and AMH Development (“AMH”). Where available, cleared checks with bank details were utilized to verify payment. When cleared checks were not available, Ranger contacted vendors directly to get a confirmation of payment. The Developer has rights to reimbursement for eligible costs spent by CCI and AMH through reimbursement agreements.

**Phase VII – Determination of Costs Eligible for Reimbursement**

Ranger concluded the Engineer’s Certification by determining which improvements were eligible for District reimbursement and what percent of the costs for those improvements were reimbursable. An overall percentage for Filing 4 was identified as 26.71% district eligible. The Filing percentage was identified by comparing public (Tracts and Right of Way) versus private (Lots) areas per the approved construction plans and plats. Percentages of CVL costs were also identified by reviewing overall scope of design work as it relates to public and private improvements. Various soft cost vendors had specific eligible percentages identified based on approved contract scopes of work.

Costs approved in Certifications #01 and #02 were completed by others. Ranger did not review these costs as they were assumed to be correct.

Public Improvement for this certification includes streets, park and recreation, water, and sanitary and storm improvements. The tables in this report identify eligible Capital costs directly paid by the Developer.

Costs are split between the three Districts dependent upon where the improvements are installed per a Cost Sharing Intergovernmental Agreement. The following percentages were used to determine the allocation of costs based upon the location of the improvements:

Percent Allocations by District

Location	BNC #1	BNC #2	BNC #3
BNC #1	100%	0%	0%
BNC #2	0%	100%	0%
BNC #3	0%	0%	100%
Turnberry Pkwy	44%	56%	0%
108th Ave	44%	56%	0%
Parcel B LS	100%	0%	0%
Revere South	20%	20%	60%
BNC #3 / R.S.	1%	1%	99%
Potomac	35%	45%	20%

**Project Notes:**

Cost Certification #03 was revised as the percent eligibility of various vendors was reviewed and updated after initial issuance of the report. Vendors impacted by the review were A.G. Wassenaar, Inc., CVL Consulting, and PCS Group Inc.

Starting on Cost Certification #04, reviewed construction costs related to Public Improvements contracted through Lennar Colorado, LLC (“Lennar”). Per the Facilities Acquisition and Reimbursement Agreement among the District, Developer, and Lennar, the Developer will be reimbursed for costs spent by Lennar associated with the Public Improvements. Contractor bid quantities and change order details were provided by Lennar along with lump sum pay application quantities and contractor unconditional lien waivers. Ranger was able to tie out costs to general construction scopes of work but pay applications did not have specific billing against a line item in the bid quantities. Also, lien waivers were all electronically signed by contractors. For soft costs, Lennar provided an affidavit verifying costs as paid.

On Cost Certification #05, additional landscaping costs related to Metco were certified, as a portion of the costs were previously prorated incorrectly. Total costs to date were not impacted with this change.

Revisions on Cost Certification #07 were related to summary tables and allocations between construction and soft costs, but did not impact the total eligible amounts.

On Cost Certification #08, JBS Pipeline Turnberry F5 Pay Applications 1-5 costs were associated for improvements completed in Phase 1. Additional stored materials were included in the pay applications, but the stored materials costs were not certified.

On Cost Certification #09, total costs billed to date related to the GRC Turnberry F5 contract were reviewed. It was determined that additional costs were previously included in the certification and an adjustment was applied to the final contract billing. Ranger coordinated with GRC to verify total costs billed to date and total certified costs were accurate.

## ENGINEER'S CERTIFICATION

Collin D. Koranda, P.E. / Ranger Engineering, LLC (the "Independent Consulting Engineer"), states as follows:

1. The Independent Consulting Engineer is an engineer duly qualified and licensed in the State of Colorado with experience in the design, construction and certification of Public Improvements of similar type and function as those described in the above Engineer's Report.

2. The Independent Consulting Engineer has performed a site visit and reviewed applicable construction and legal documents related to the Public Improvements under consideration to state the conclusions set forth in this Engineer's Certification.

3. The Independent Consulting Engineer finds and determines that the constructed value of Capital costs related to the Public Improvements considered in the attached Engineer's Report dated November 16, 2023 including soft & indirect, District funded, and hard costs, are valued at **\$4,950,285.52**. In the opinion of the Independent Consulting Engineer, the above stated value for the Public Improvements is reasonable and consistent with costs of similar improvements constructed for similar purposes during the same timeframe in similar locales.

Regards,

**Ranger Engineering, LLC**

A handwritten signature in blue ink, appearing to read "Collin D. Koranda".

Collin D. Koranda, P. E.



## APPENDIX A

### Documents Reviewed

#### Construction Documents

- Turnberry Parkway Water and Irrigation Plans. Final Construction Plans. Prepared by CVL Consultants. Dated August 10, 2019.
- Turnberry Parcel H – Phase 1 Sanitary Sewer As Built Construction Plans. Prepared by CVL Consultants. Dated June 18, 2019.
- Turnberry – Filing No. 4 Plat. Prepared by CVL Consultants. Recorded August 8, 2017.
- Turnberry Subdivision Filing No. 5. Prepared by CVL Consultants. Dated 3/20/20.
- Turnberry Filing No. 5 Final Construction Plans. Prepared by CVL Consultants. Dated 5/7/21.
- Turnberry Filing No. 5 Utility Construction Plans. Prepared by CVL Consultants. Dated 12/15/20.
- Turnberry Subdivision Filing No. 6. Prepared by CVL Consultants. Recorded 3/3/26/21.
- Turnberry Filing No. 6 Final Construction Plans. Prepared by CVL Consultants. Dated 5/7/21.
- Turnberry Filing No. 6 Utility Construction Plans. Prepared by CVL Consultants. Dated 2/25/21.

#### Contractor Pay Applications

- GRC Filing 5 – Pay App 6-8 / RET. 11/16/22-5/22/23.
- JBS Turnberry F5 – Pay Apps 6-15. 11/30/22-8/31/23.
- New West Paving Turnberry F5 – Pay Apps 1-3. 5/24/23-7/17/23.
- RE Monks Turnberry – Pay App 1. 7/31/23.
- Thoutt Bros Turnberry F5 – Pay Apps 1-5. 5/19/23-9/20/23.

Refer to Table VII for a full list of soft & indirect invoices.

#### Agreements

- Amended and Restated Service Plan for BNC Metropolitan District No. 1. Prepared by McGeady Sisneros, P.C., now McGeady Becher, P.C. Approved September 15, 2003
- Service Plan for BNC Metropolitan District No. 2. Prepared by McGeady Sisneros, P.C., now McGeady Becher, P.C. Approved September 15, 2003
- Service Plan for BNC Metropolitan District No. 3. Prepared by McGeady Sisneros, P.C., now McGeady Becher, P.C. Approved September 15, 2003

- Cost Sharing Intergovernmental Agreement between BNC Metropolitan District No. 1, BNC Metropolitan District No. 2, and BNC Metropolitan District No. 3. Dated October 24, 2017.
- Facilities Acquisition and Reimbursement Agreement among BNC Metropolitan District No. 2, Catellus CC Note LLC, and Lennar Colorado, LLC. August 10, 2017.
- Facilities Funding and Acquisition Agreement between BNC Metropolitan District No. 2 and Catellus CC Note LLC. October 24, 2017.
- Reimbursement Agreement between BNC Metropolitan District No. 3, Catellus CC Note, LLC and AMH Development, LLC. Dated June 23, 2021.
- Reimbursement Agreement between BNC Metropolitan District No. 3, Catellus CC Note, LLC and Century Land Holdings, LLC. Dated June 24, 2021.



**BNC Metropolitan District Nos. 1-3**  
**Summary of Costs**  
**Table II**

Type of Costs	Total Cost Paid	Costs This Period	Total District Eligible Costs	Eligible Costs This Period	Percent District
<b>Direct Construction Costs</b>	\$ 31,432,405.62	\$ 5,284,560.78	\$ 27,687,401.79	\$ 4,909,228.30	88.1%
<b>Soft and Indirect Costs</b>	\$ 9,020,853.49	\$ 374,230.51	\$ 6,288,567.87	\$ 41,057.22	69.7%
<b>Totals</b>	<b>\$ 40,453,259.11</b>	<b>\$ 5,658,791.29</b>	<b>\$ 33,975,969.66</b>	<b>\$ 4,950,285.52</b>	<b>84.0%</b>



**BNC Metropolitan District Nos. 1-3  
District Reimbursement Allocation  
Table III**

<b>Certification</b>	<b>Date</b>	<b>BNC MD No. 1</b>	<b>BNC MD No. 2</b>	<b>BNC No.3</b>	<b>Total Eligible Costs</b>
01	8/10/2017	\$121,731.05	\$156,511.35	\$69,560.60	\$347,803.00
02	1/22/2019	\$546,458.84	\$0.00	\$0.00	\$546,458.84
03	12/6/2019	\$0.00	\$3,775,438.49	\$0.00	\$3,775,438.49
04	12/20/2019	\$0.00	\$6,948,375.08	\$0.00	\$6,948,375.08
05	4/30/2020	\$0.00	\$693,791.22	\$0.00	\$693,791.22
06	12/21/2022	\$1,495,044.91	\$1,731,018.06	\$9,249,090.60	\$12,475,153.57
07	5/4/2023	\$102,845.92	\$102,845.92	\$2,043,075.53	\$2,248,767.37
CURRENT		\$167,983.16	\$213,796.75	\$4,568,505.61	\$4,950,285.52
		<b>\$2,434,063.88</b>	<b>\$13,621,776.86</b>	<b>\$15,930,232.34</b>	<b>\$31,986,073.07</b>



**BNC Metropolitan District Nos. 1-3  
Construction Costs Summary By Category  
Table IV**

<b>Category</b>	<b>Total Eligible Construction Cost</b>	<b>Category Percentage</b>
Streets	\$ 10,164,938.13	36.7%
Parks and Recreation	\$ 2,980,412.47	10.8%
Water	\$ 7,100,304.11	25.6%
Sanitary and Storm	\$ 7,441,747.08	26.9%
	<b>\$ 27,687,401.79</b>	<b>100.0%</b>

<b>Category</b>	<b>Total Eligible This Period</b>	<b>Category Percentage</b>
Streets	\$ 969,975.31	19.8%
Parks and Recreation	\$ 31,056.09	0.6%
Water	\$ 2,379,754.61	48.5%
Sanitary and Storm	\$ 1,528,442.29	31.1%
	<b>\$ 4,909,228.30</b>	<b>100.0%</b>



**BNC Metropolitan District Nos. 1-3  
Soft & Indirect Costs Summary By Category  
Table V**

<b>Category</b>	<b>Total Eligible Soft Costs</b>	<b>Category Percentage</b>
Streets	\$ 3,852,624.26	61.3%
Parks and Recreation	\$ 960,147.46	15.3%
Water	\$ 744,893.76	11.8%
Sanitary and Storm	\$ 730,902.38	11.6%
	<b>\$ 6,288,567.87</b>	<b>100.0%</b>

<b>Category</b>	<b>Eligible Soft Costs This Period</b>	<b>Category Percentage</b>
Streets	\$ 15,073.43	36.7%
Parks and Recreation	\$ 4,419.61	10.8%
Water	\$ 10,528.93	25.6%
Sanitary and Storm	\$ 11,035.25	26.9%
	<b>\$ 41,057.22</b>	<b>100.0%</b>





BNC Metropolitan District Nos. 1-3

Construction Costs Detail Table VI

Main construction cost detail table with columns for Contract Values, Payments Made, Eligibility, and Submitted Invoices. Includes rows for various construction items like Water, Sanitary and Storm, Streets, and Electrical work.







**BNC Metropolitan District Nos. 1-3  
Soft and Indirect Costs Detail  
Table VII**

**Invoice Values**

**Payments Made**

Vendor	Work Description	Invoice Number	Invoice Date	Amount	Amount Paid	Check Number	Check Amount	Check Date	Clear Date	Filing	Account	Cost Cert	Category	Allocation	Percent Eligible	Eligible This Period	Total Eligible	
CMS ENVIRONMENTAL SOLUTIONS	Clearing / Grading / Lot Pad	142698	11/01/22	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	03/17/23	03/21/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	145428	01/01/23	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	03/17/23	03/21/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	146704	02/01/23	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	03/17/23	03/21/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	148187	03/01/23	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	03/17/23	03/21/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	149582	04/01/23	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	05/02/23	05/02/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	150943	05/01/23	\$ 790.00	\$ 790.00	Vendor	\$ 790.00	06/01/23	05/25/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 444.46	\$444.46	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	152519	06/01/23	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	08/01/23	07/25/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CMS ENVIRONMENTAL SOLUTIONS	Site Prep / Erosion Control	154014	07/01/23	\$ 595.00	\$ 595.00	Vendor	\$ 595.00	11/09/23	11/09/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 334.75	\$334.75	
CVL (Westwood)	Site Engineering Design	1220701175	07/27/22	\$ 5,996.50	\$ 5,996.50	Vendor	\$ 5,996.50	05/03/23	05/03/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 3,373.68	\$3,373.68	
Dewberry	Drone Services 6 Communities	2174743-5	09/10/22	\$ 541.67	\$ 541.67	Vendor	\$ 541.67	02/15/23	02/16/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 304.75	\$304.75	
Dewberry	Drone Services 6 Communities	2201447-5	11/10/22	\$ 541.67	\$ 541.67	Vendor	\$ 541.67	02/01/23	01/24/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 304.75	\$304.75	
Dewberry	Drone Services 6 Communities	2214596-5	12/10/22	\$ 541.67	\$ 541.67	Vendor	\$ 541.67	02/01/23	01/31/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 304.75	\$304.75	
EV Studio	Surveys & Engineering Fee	21285-10	08/31/22	\$ 6,500.00	\$ 6,500.00	Vendor	\$ 6,500.00	01/11/23	01/12/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 3,656.96	\$3,656.96	
EV Studio	Clearing / Grading / Lot Pad	21285-12	10/31/22	\$ 14,000.00	\$ 14,000.00	Vendor	\$ 14,000.00	01/11/23	01/12/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 7,876.52	\$7,876.52	
EV Studio	Clearing / Grading / Lot Pad	21285-13	11/30/22	\$ 1,200.00	\$ 1,200.00	Vendor	\$ 1,200.00	01/10/23	01/12/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 675.13	\$675.13	
EV Studio	Retainage	21285-14	11/30/22	\$ 7,600.00	\$ 7,600.00	Vendor	\$ 7,600.00	01/10/23	01/12/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 4,275.83	\$4,275.83	
EV Studio	Site Prep / Erosion Control	21285-15	12/31/22	\$ 10,400.00	\$ 10,400.00	Vendor	\$ 10,400.00	01/10/23	01/10/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 5,851.13	\$5,851.13	
EV Studio	Site Prep / Erosion Control	21285-16	02/20/23	\$ 7,620.00	\$ 7,620.00	Vendor	\$ 7,620.00	03/02/23	03/02/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 4,287.08	\$4,287.08	
EV Studio	Site Prep / Erosion Control	21285-17	03/31/23	\$ 9,280.00	\$ 9,280.00	Vendor	\$ 9,280.00	04/03/23	04/04/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 5,221.01	\$5,221.01	
EV Studio	Site Prep / Erosion Control	21285-18	03/31/23	\$ 3,800.00	\$ 3,800.00	Vendor	\$ 3,800.00	04/10/23	04/11/23		AMH	09	Multiple	Turnberry Pkwy	56%	\$ 2,137.91	\$2,137.91	
Xcel (PSI)	New Gas Distribution	CK04042023A	04/04/23	\$ 301,254.00	\$ 301,254.00	5091	\$301,254.00	04/11/23	04/11/23		AMH	09	Non-District	Turnberry Pkwy	0%	\$ -	\$0.00	
				<b>\$9,016,685.11</b>	<b>\$ 9,020,853.49</b>												<b>\$ 41,057.22</b>	<b>\$6,288,567.87</b>



## **EXHIBIT A**

### **BNC Site Overlay**

# Site Overlay

BNC Metropolitan  
District Nos. 1-3



BNC MD No. 1

BNC MD No. 2

BNC MD No. 3

Google Earth

4000 ft





pcs group inc. www.pcsgroupco.com

community design | entitlement | site design | landscape architecture | community imaging

December 12th, 2023

RE: TURNBERRY F5 - GENERAL LANDSCAPE INSPECTION ITEMS

Dear Special District Management Services, Inc.,

At the request of Catellus CC Note, LLC, PCS Group Inc inspected the landscape depicted on the landscape construction drawings (named TURNBERRY F5 - LANDSCAPE CDs\_2021-01-11.pdf ) within Turnbery F5.

PCS Group assumes no liability for the work performed or materials installed by the Landscape Contractor or any Subcontractors. The intent of these landscape inspections is to help ensure general conformance with the design intent of the approved landscape plans. Inspection approval by PCS Group shall not relieve the landscape contractor or his work from conforming to county codes, industry standards, or the requirements set forth in the approved landscape plans. Fine grading was inspected from an aesthetic standpoint only. Spot elevations, slopes, drainage patterns, structural design, installation of walls, stairs, pavement, footings and irrigation were also not inspected by PCS Group.

**Landscape Acceptance Report:**

**This Landscape inspection for Turnberry F5 Metro District Landscape of Turnberry Subdivision occurred on December 4th, 2023 with representatives from the Groundworks Development (Mark Johnson) and myself. At this time PCS Group is recommending initial acceptance of the Landscape Improvements as they were found to be to be in conformance with the approved construction plans and in good condition.**

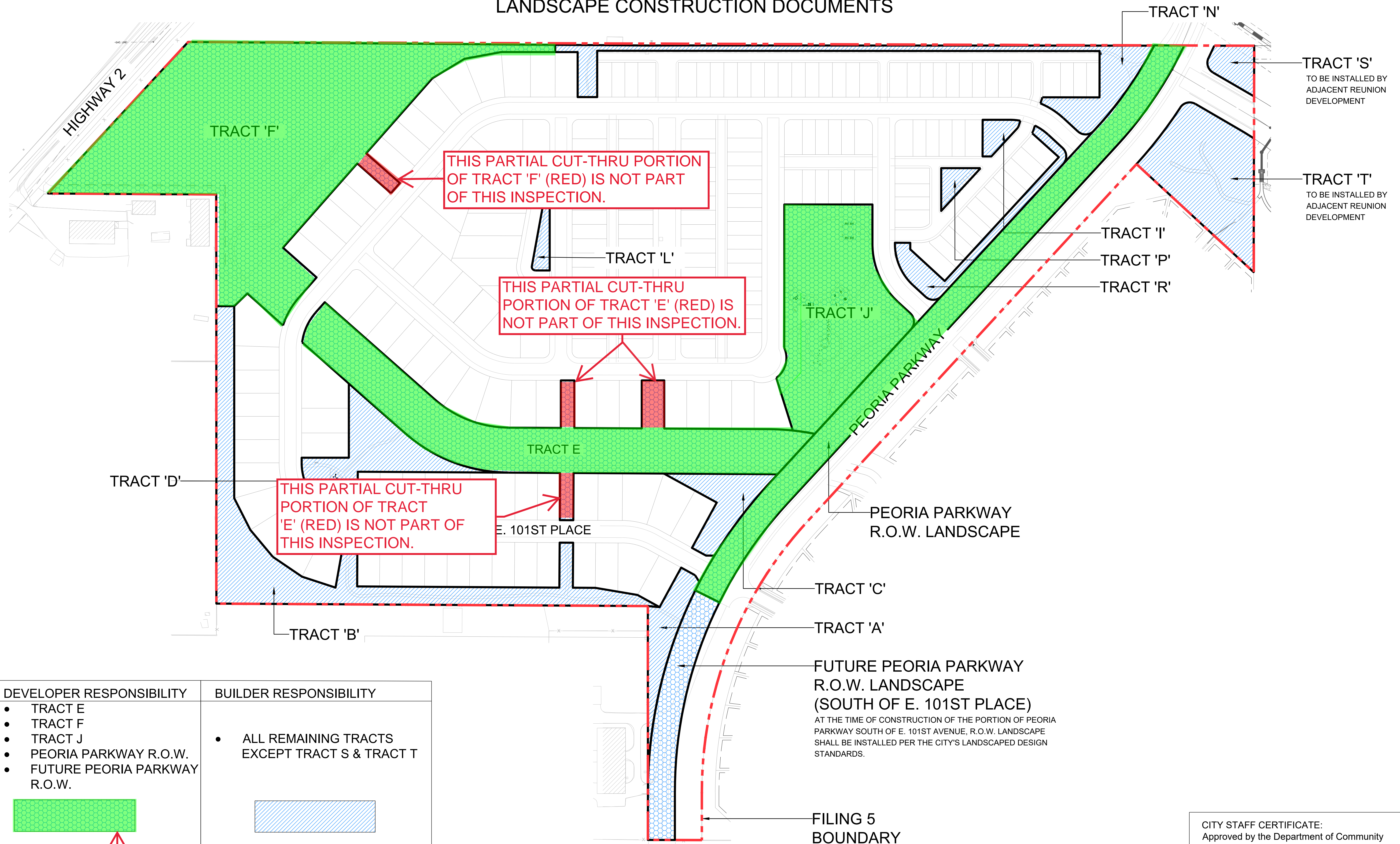
**\*It should be noted however all recently seeded native grass areas are to be reviewed in Spring 2024 to monitor establishment. Please also note that it is PCS Group's understanding that the cut through tracts depicted in red on page 2 of this letter will be completed after Tracts E and F are conveyed to the Metro District by the builder and that the builder will provide surety to the Metro District in the amount shown on the attached cost estimate to allow for the transfer of ownership and maintenance of Tracts E and F to the Metro District prior to completion of the landscape improvements within the red cut through tracts."**

Sincerely,  
Garrett Graham

*Garrett Graham*

**BURLINGTON NORTHERN/CATELLUS PUD  
TURNBERRY SUBDIVISION FILING NO. 5**

A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
**LANDSCAPE CONSTRUCTION DOCUMENTS**



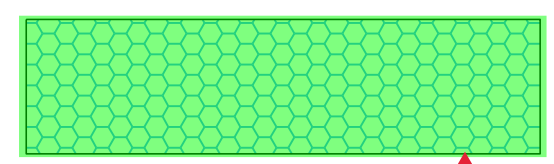
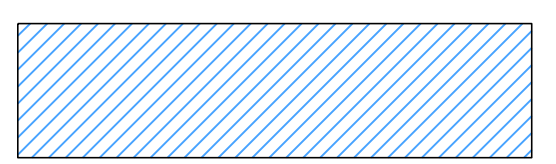
THIS PARTIAL CUT-THRU PORTION OF TRACT 'E' (RED) IS NOT PART OF THIS INSPECTION.

THIS PARTIAL CUT-THRU PORTION OF TRACT 'F' (RED) IS NOT PART OF THIS INSPECTION.

THIS PARTIAL CUT-THRU PORTION OF TRACT 'E' (RED) IS NOT PART OF THIS INSPECTION.

TRACT 'S'  
TO BE INSTALLED BY ADJACENT REUNION DEVELOPMENT

TRACT 'T'  
TO BE INSTALLED BY ADJACENT REUNION DEVELOPMENT

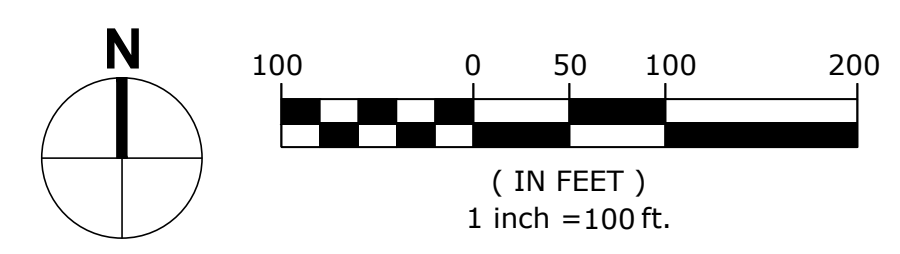
DEVELOPER RESPONSIBILITY	BUILDER RESPONSIBILITY
<ul style="list-style-type: none"> <li>TRACT E</li> <li>TRACT F</li> <li>TRACT J</li> <li>PEORIA PARKWAY R.O.W.</li> <li>FUTURE PEORIA PARKWAY R.O.W.</li> </ul>	<ul style="list-style-type: none"> <li>ALL REMAINING TRACTS EXCEPT TRACT S &amp; TRACT T</li> </ul>
	

**LIMITS OF INSPECTION**

FUTURE PEORIA PARKWAY R.O.W. LANDSCAPE (SOUTH OF E. 101ST PLACE)  
AT THE TIME OF CONSTRUCTION OF THE PORTION OF PEORIA PARKWAY SOUTH OF E. 101ST AVENUE, R.O.W. LANDSCAPE SHALL BE INSTALLED PER THE CITY'S LANDSCAPED DESIGN STANDARDS.

Y:\TURNBERRY\LANDSCAPE ARCHITECTURE\CURRENT DWGS\FILING 5\TURNBERRY FIL 5 - LANDSCAPE CDS\CATELLUS.DWG, GARRETT, 3/19/2021 11:47 AM

CALL 811  
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BEFORE YOU DIG  
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UTILITY NOTIFICATION  
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1-800-922-1987



CITY STAFF CERTIFICATE:  
Approved by the Department of Community Development of the City of Commerce City, this  
\_\_\_ day of \_\_\_, 20\_\_.

Department of Community Development

10333 E. Dry Creek Rd Suite 240  
Englewood, CO 80152  
Tel: 720-482-9838  
CIVILING.NET

**CML**  
CONSULTANTS

CATELLUS CC NOTE, LLC  
C/O MICHAEL KUYKENDALL  
66 PEORIA AVENUE, SUITE 200  
Oakland, CA 94607

BURLINGTON NORTHERN/CATELLUS PUD  
TURNBERRY SUBDIVISION FILING NO. 5  
PIA LANDSCAPE EXHIBIT

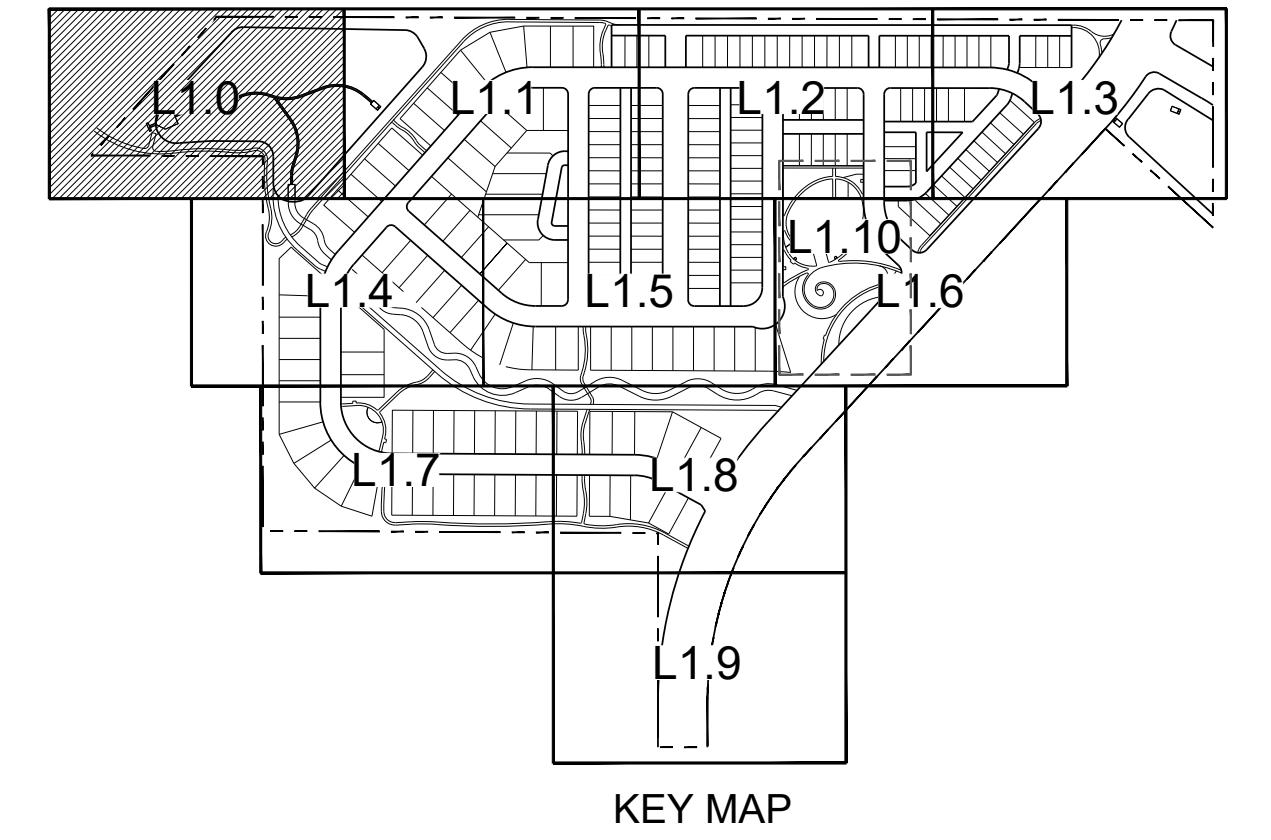
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FILE NO: 8130130433  
DRAWN BY: [ ]  
CHECKED BY: [ ]  
DATE: JANUARY 2021

SHEET NUMBER **L5.0**

No.	Revisions	Date	Appr.	Date

# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

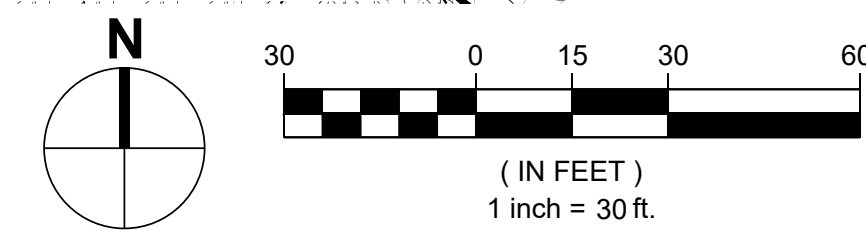
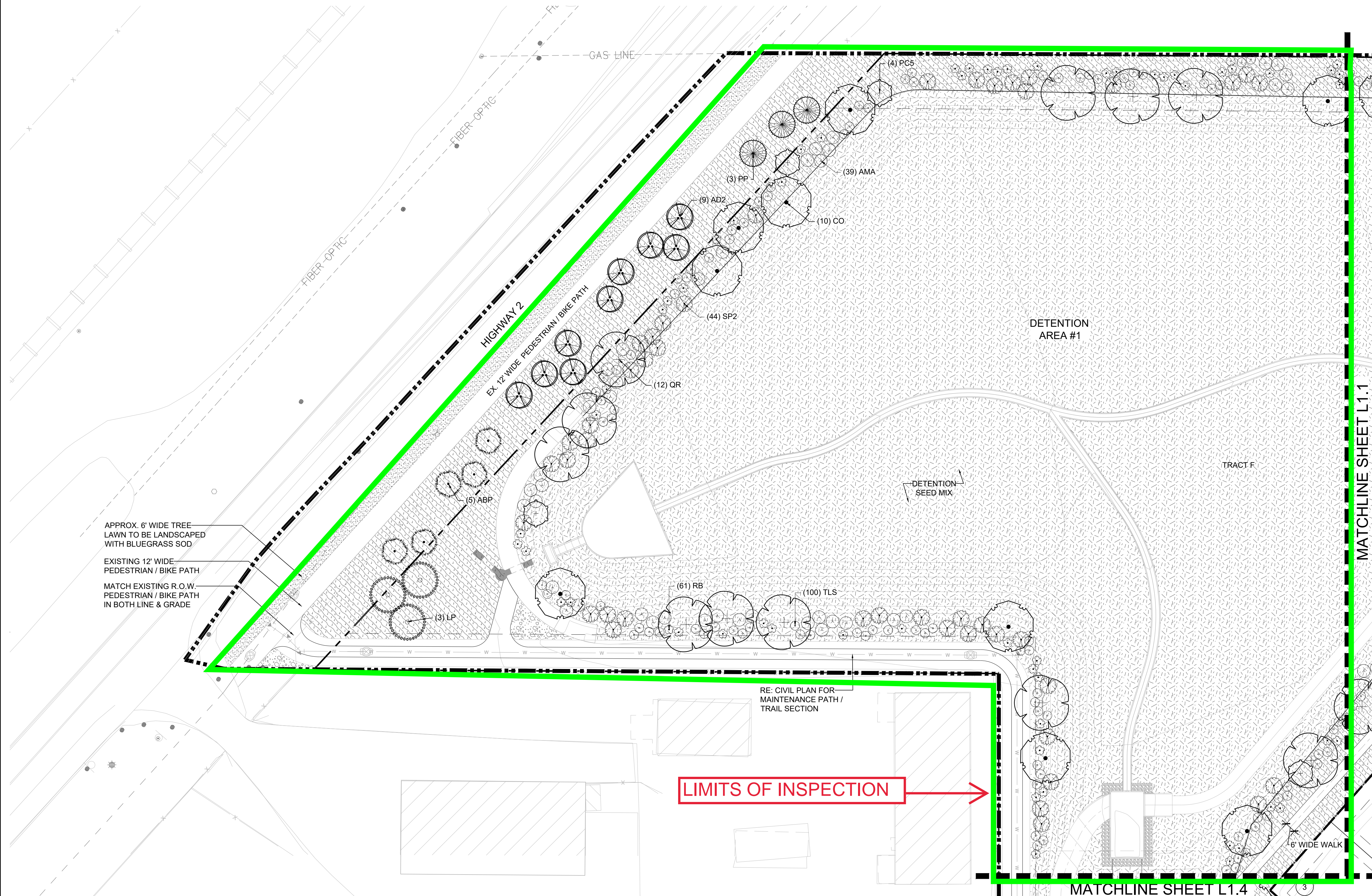
A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



## LEGEND

- LANDSCAPE BOUNDARY
- DECIDUOUS TREES
- EVERGREEN TREES
- ORNAMENTAL TREES
- DECIDUOUS SHRUBS
- EVERGREEN SHRUBS
- ORN. GRASSES
- TURF GRASS
- DETENTION POND NATIVE SEED MIX
- SHORT GRASS NATIVE SEED MIX
- ROCK MULCH
- FIBAR
- OPEN RAIL FENCE
- 5' SHADOW BOX FENCE

NOTE: ANY AREA DETERMINED BY THE CITY ENGINEER TO BE WITHIN A SIGHT-DISTANCE-TRIANGLE MAY NOT CONTAIN PLANT MATERIAL THAT AT THE TIME OF PLANTING OR AT MATURITY EXCEEDS 36 INCHES ABOVE THE GUTTER FLOW LINE EXCEPT TREES WHICH MUST BE LIMBED TO 8 FEET AT ADEQUATE MATURITY.



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Department of Community Development

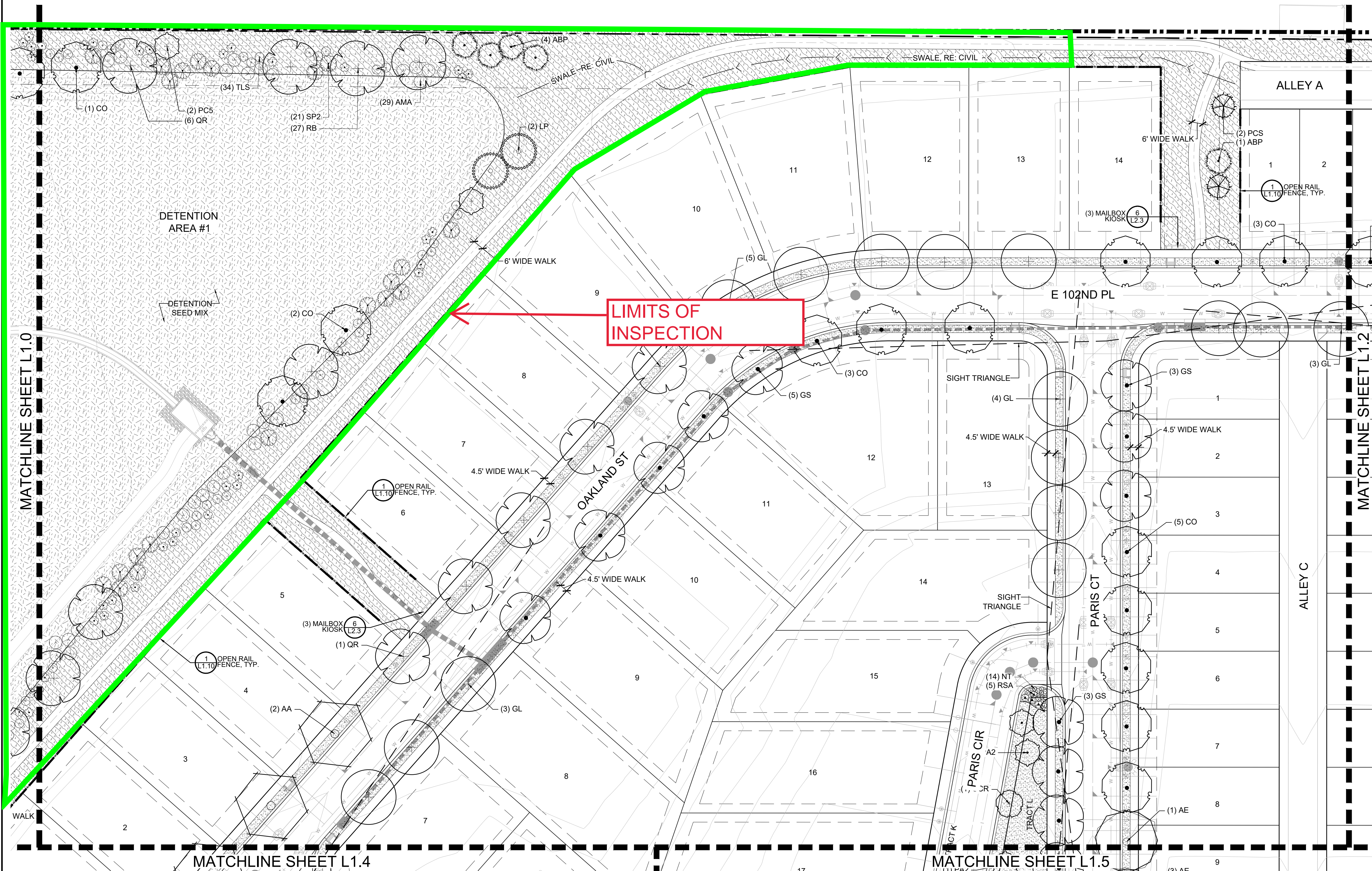
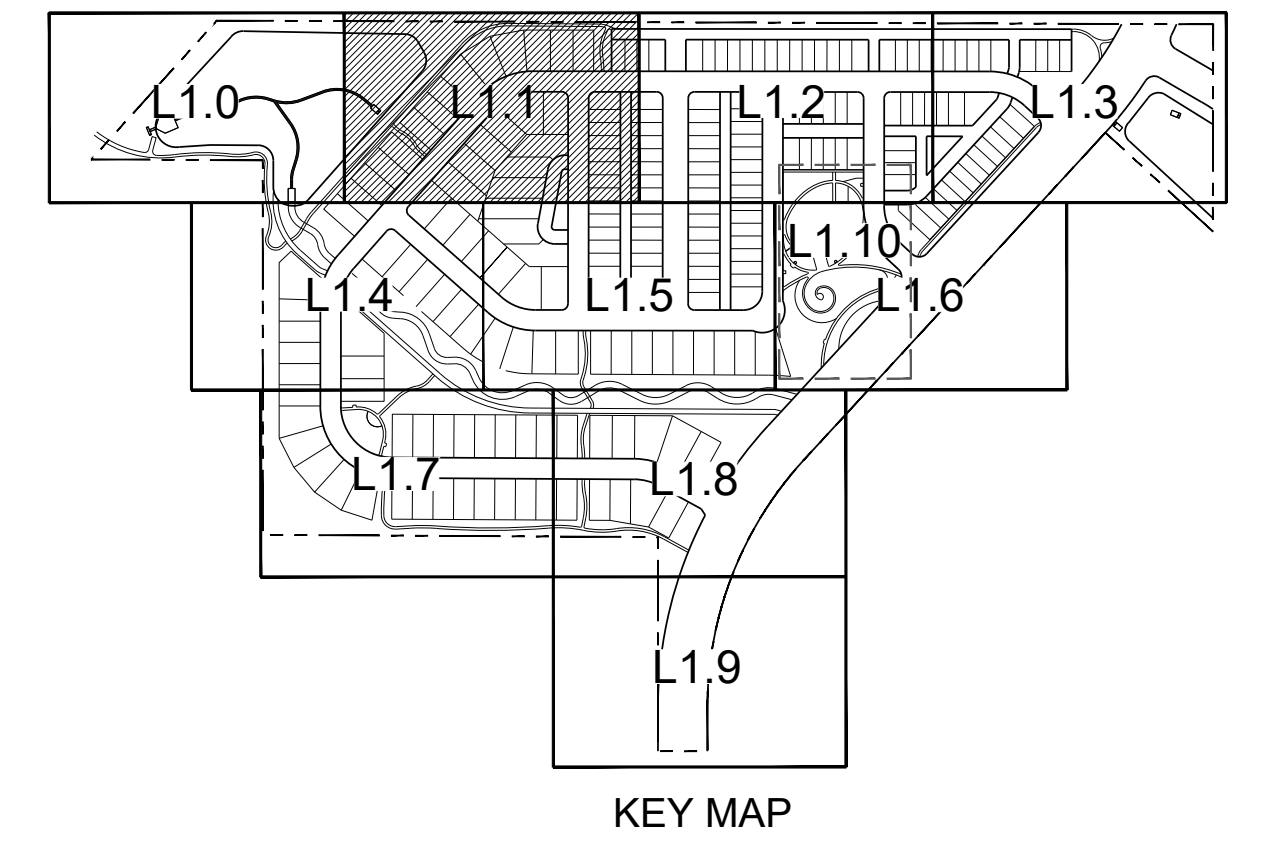
10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9828 CIVILING.NET		CATELLUS CC NOTE, LLC C/O MICHAEL KUWENDALL SUITE 200 OAKLAND, CA 94607	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN	SCALE: AS SHOWN	FILE NO: 8130130433	DRAWN BY:	CHECKED BY:	DATE: JANUARY 2021	SHEET NUMBER <b>L1.0</b>																												
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BEFORE YOU DIG  
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# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

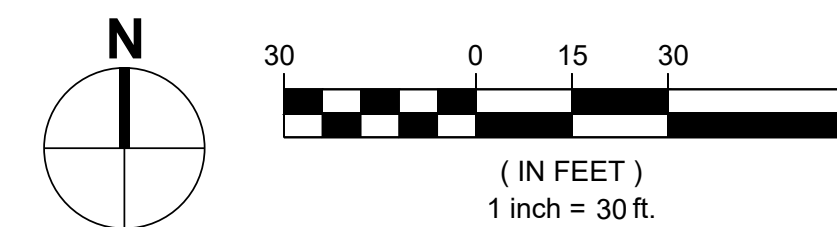
A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



## LEGEND

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Department of Community Development

Y:\TURNBERRY\LANDSCAPE ARCHITECTURE\CURRENT DWG\FILING 5\TURNBERRY FIL 5 - LANDSCAPE.CDS DWG, GARRETT, 1/11/2021 8:25 AM

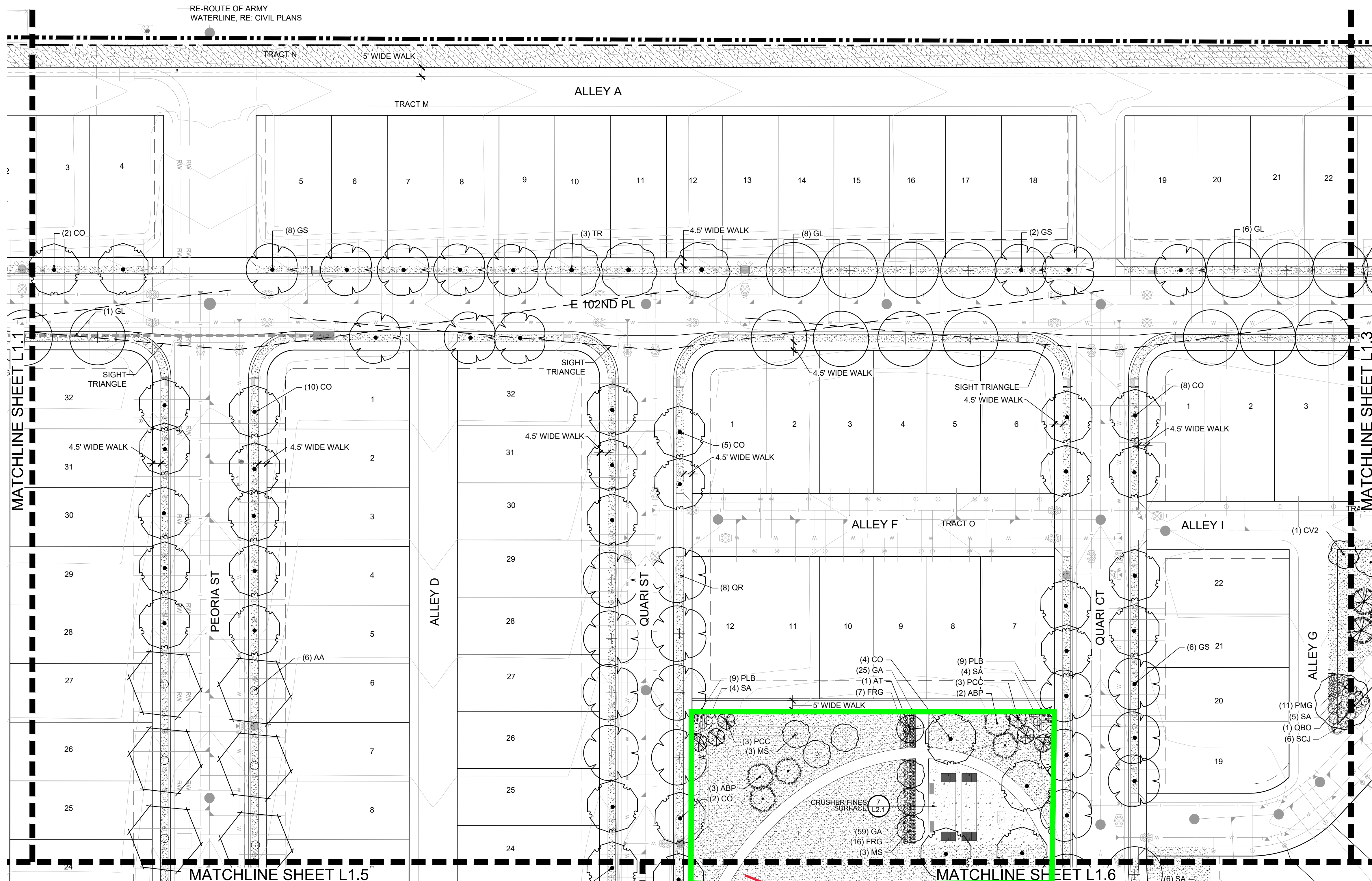
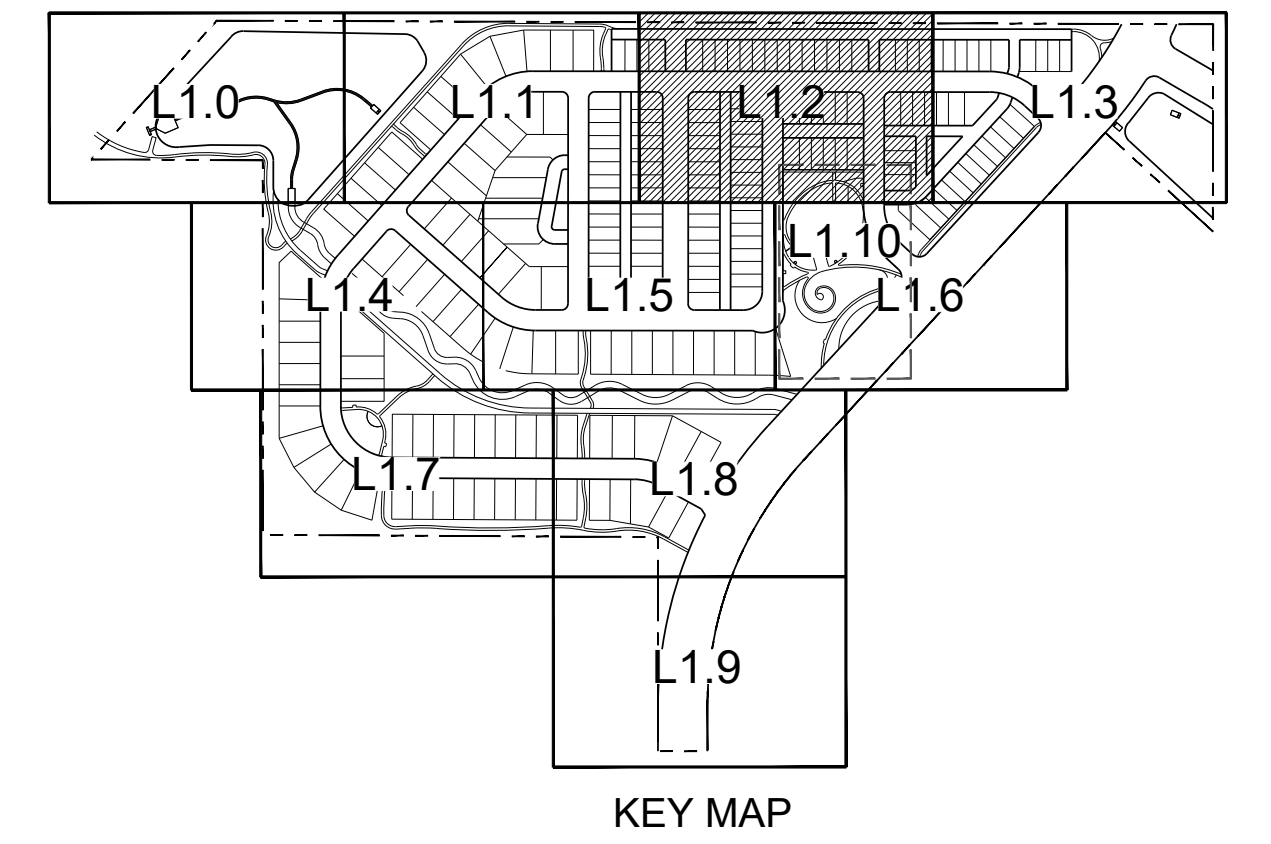
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UNCC 1-800-922-1987  
UTILITY NOTIFICATION  
CENTER OF COLORADO

10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9528 CIVILING.NET		CATELLUS CC NOTE, LLC C/O MICHAEL KUYKENDALL 66 FIFTH AVENUE, SUITE 200 Oakland, CA 94607	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN	SCALE: AS SHOWN	FILE NO: 8130130433	DRAWN BY:	CHECKED BY:	DATE: JANUARY 2021	SHEET NUMBER <b>L1.1</b>											
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No.	Revisions	Date	Init.	Appr.	Date															



# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS

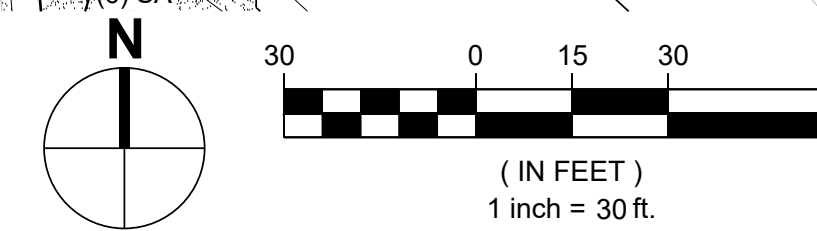


## LEGEND

- LANDSCAPE BOUNDARY
- DECIDUOUS TREES
- EVERGREEN TREES
- ORNAMENTAL TREES
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- SHORT GRASS NATIVE SEED MIX
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LIMITS OF INSPECTION



CITY STAFF CERTIFICATE:  
Approved by the Department of Community Development of the City of Commerce City, this \_\_\_ day of \_\_\_, 20\_\_.

Department of Community Development

Y:TURNBERRYLANDSCAPE ARCHITECTURE/RECURRENT DIVISIONS/TURNBERRY FIL 5 - LANDSCAPE CDS DIVS. GARRETT, 1/11/2021 8:25 AM

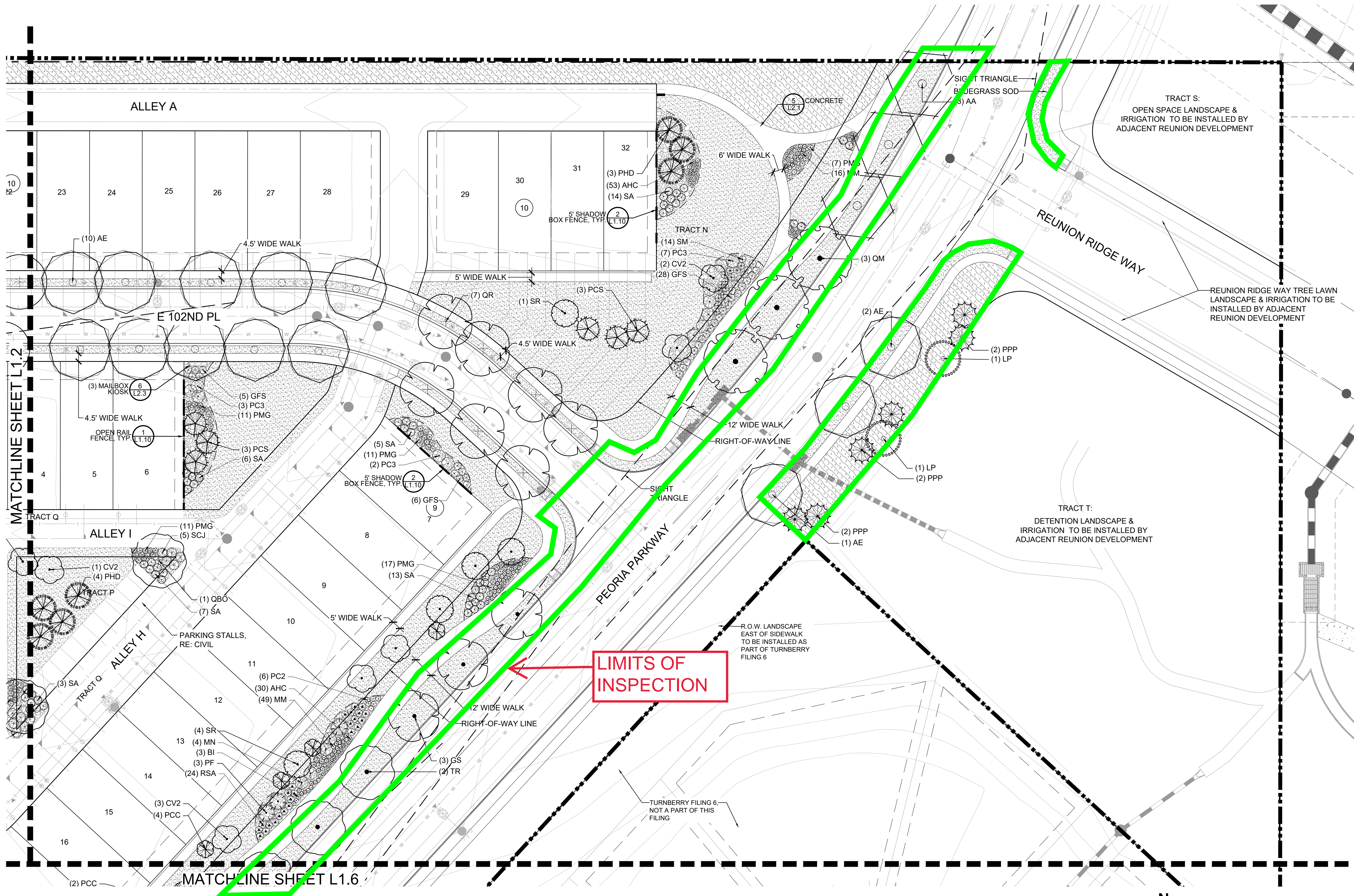
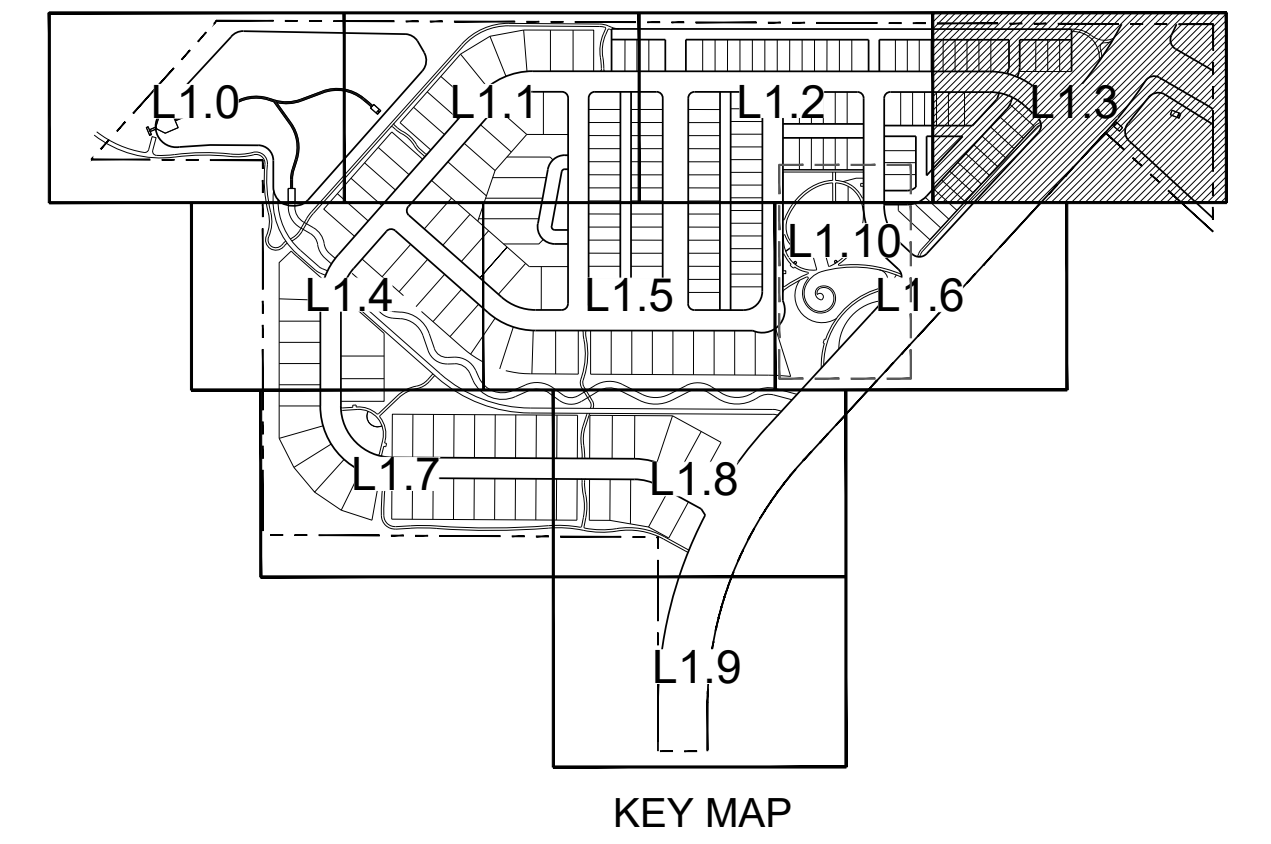
CALL 811  
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10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9528 CIVILING.NET		CATELLUS CC NOTE, LLC C/O MICHAEL KUYKENDALL 66 FRUITLAND BLVD. SUITE 200 Oakland, CA 94612	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN	SCALE: AS SHOWN	FILE NO: 8130130433	DRAWN BY: AS SHOWN	CHECKED BY:	DATE: JANUARY 2021	Revisions	No.	Date	Appr.	Date

SHEET NUMBER  
**L1.2**

# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

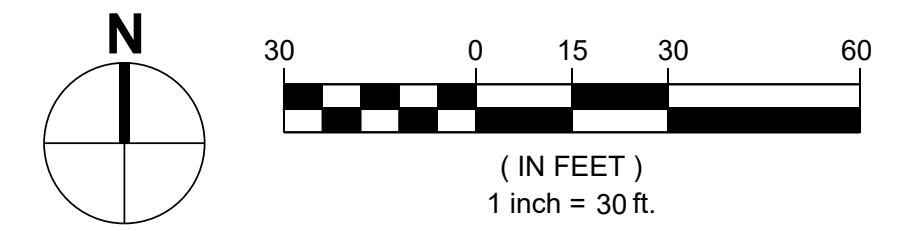
A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



### LEGEND

- LANDSCAPE BOUNDARY
- DECIDUOUS TREES
- EVERGREEN TREES
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CITY STAFF CERTIFICATE:  
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\_\_\_ day of \_\_\_, 20\_\_.  
Department of Community Development

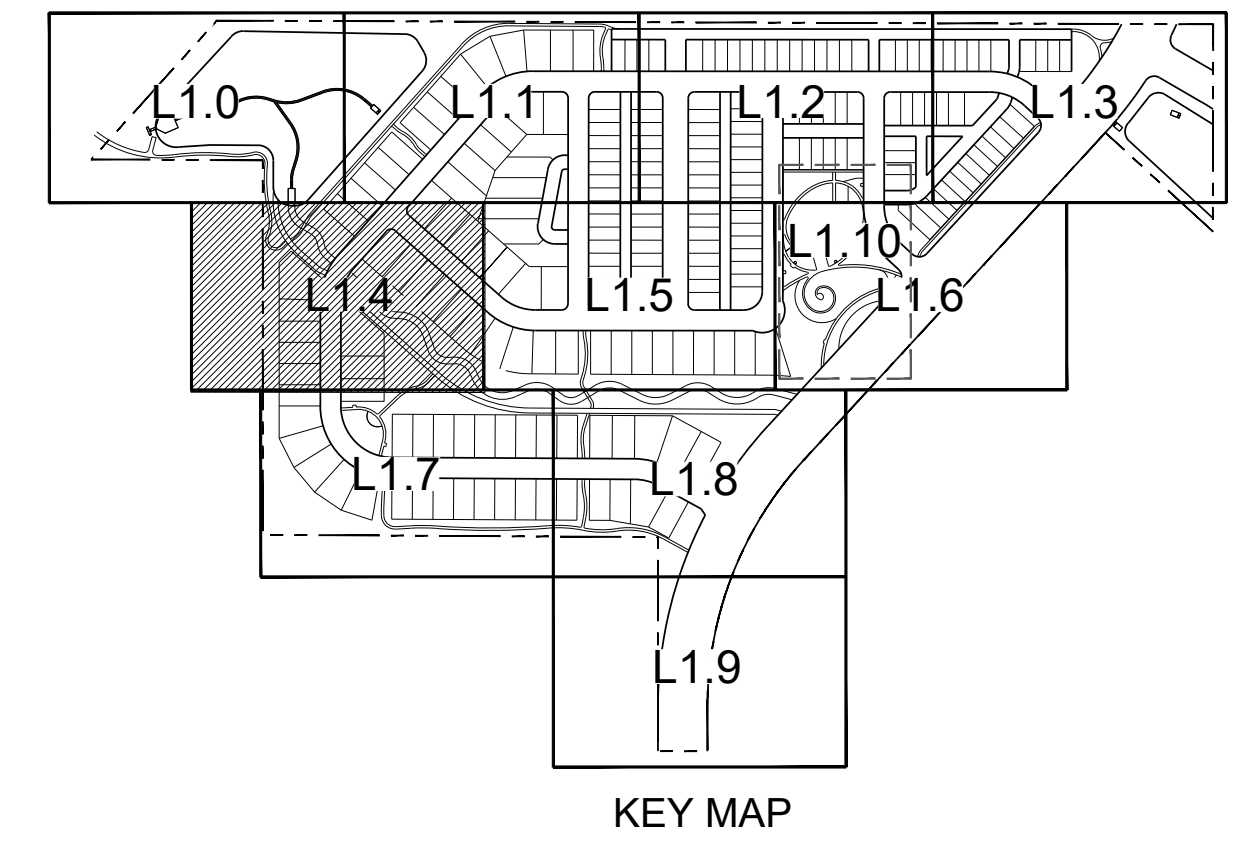
10333 E. Dry Creek Rd. Suite 240 Englewood, CO 80152 Tel: 720-482-9828 CIVILING.NET		CATELLUS CC NOTE, LLC C/O MICHAEL KUWENDALL 66 FIFTH AVENUE SUITE 200 Oakland, CA 94607	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN	SCALE: AS SHOWN	FILE NO: 8130130433	DRAWN BY: AS SHOWN	CHECKED BY:	DATE: JANUARY 2021	Revisions	No.	Date	Appr.	Date

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SHEET NUMBER  
**L1.3**

# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



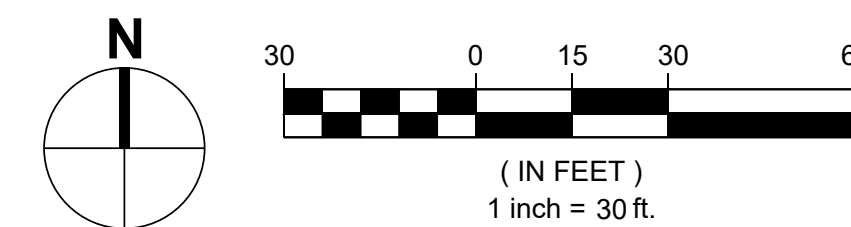
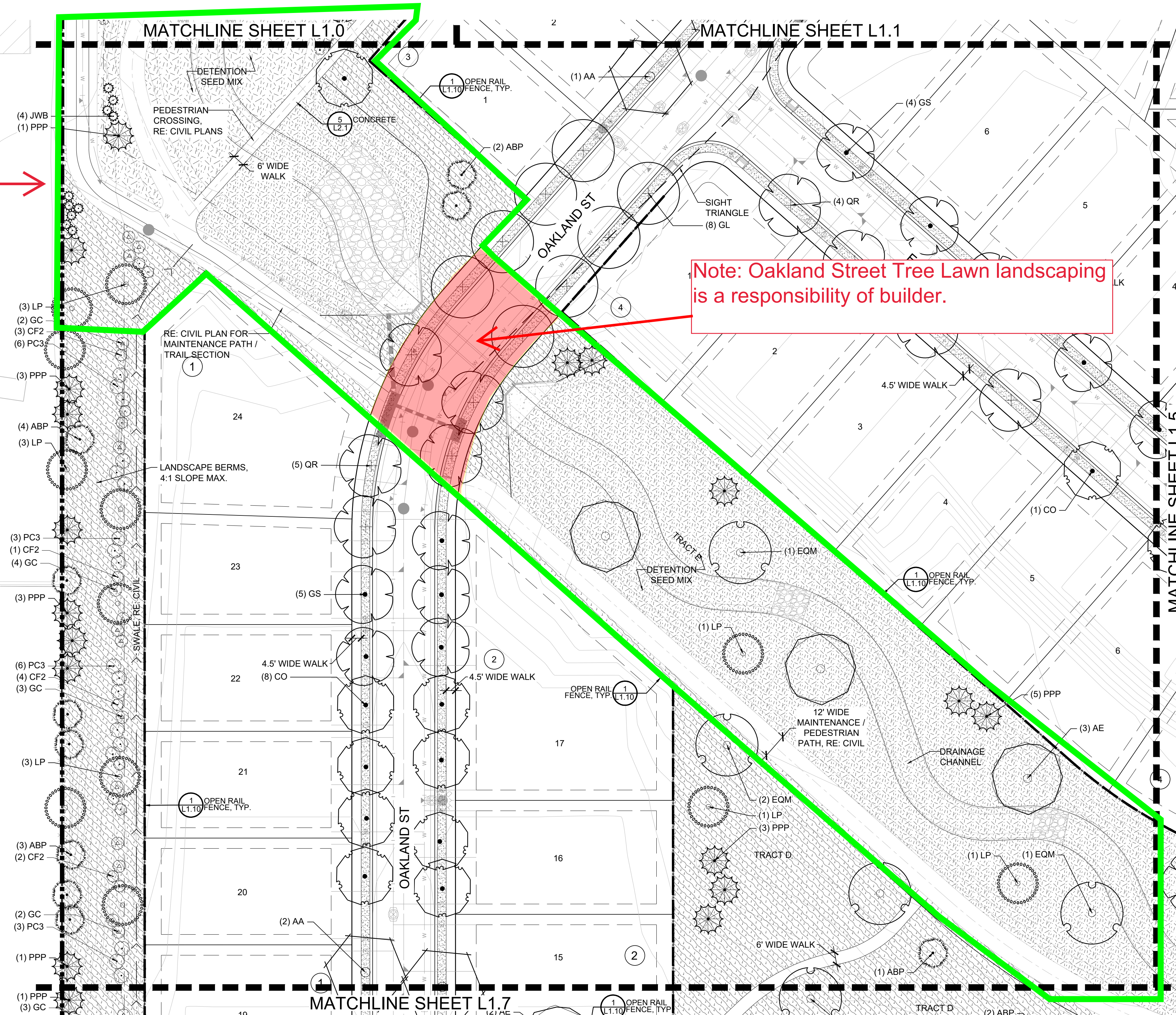
## LEGEND

- LANDSCAPE BOUNDARY
- DECIDUOUS TREES
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LIMITS OF INSPECTION

Note: Oakland Street Tree Lawn landscaping is a responsibility of builder.



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\_\_\_ day of \_\_\_, 20\_\_.  
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10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9528 CIVILING.NET	Revisions	No.	Date	Appr.	Date
	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN				
	SCALE: AS SHOWN DRAWN BY: [blank] CHECKED BY: [blank] DATE: JANUARY 2021	FILE NO: 8130130433	SHEET NUMBER <h1>L1.4</h1>		

Y:\TURNBERRY\LANDSCAPE ARCHITECTURE\CURRENT DWGS\FILING 5\_C05\TURNBERRY\_FIL 5 - LANDSCAPE\_C05.DWG, GARRETT, 1/11/2021 8:25 AM

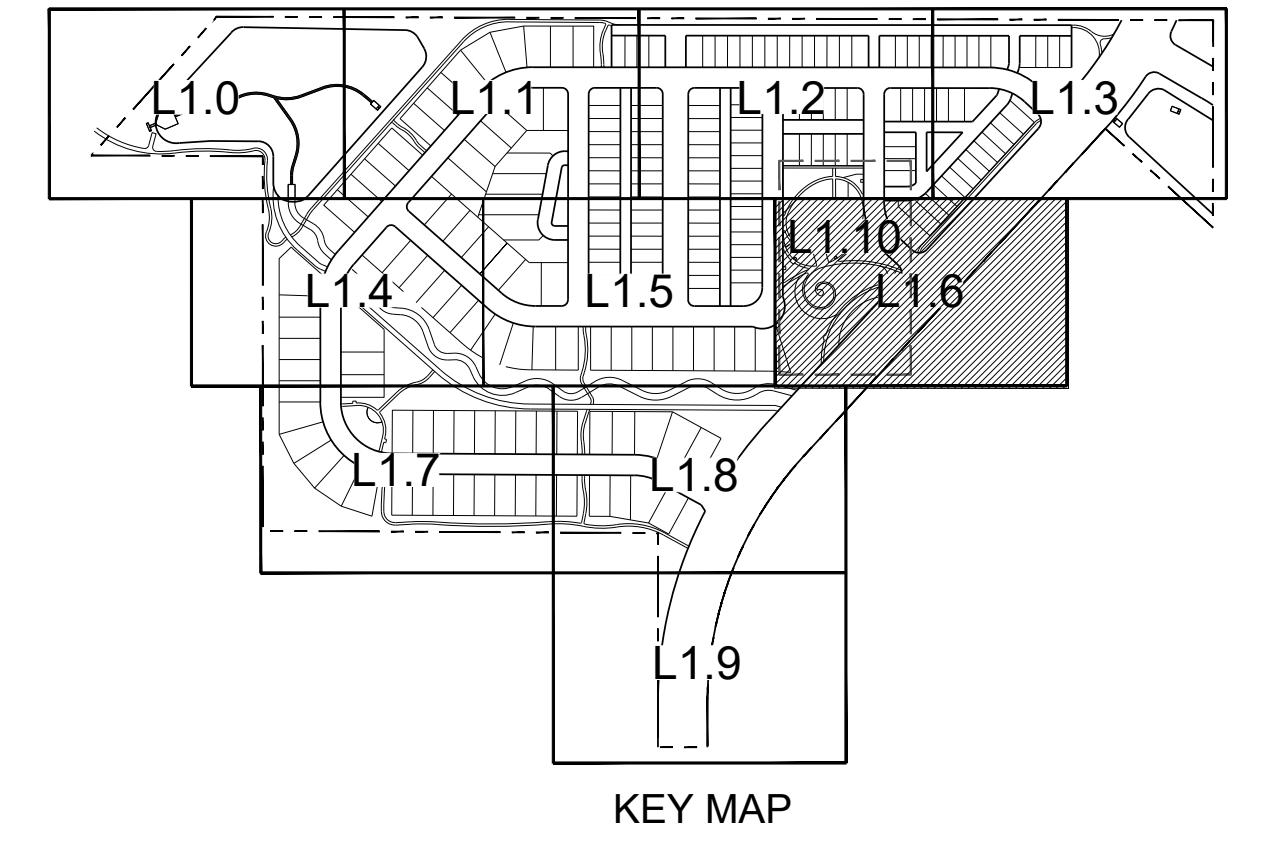
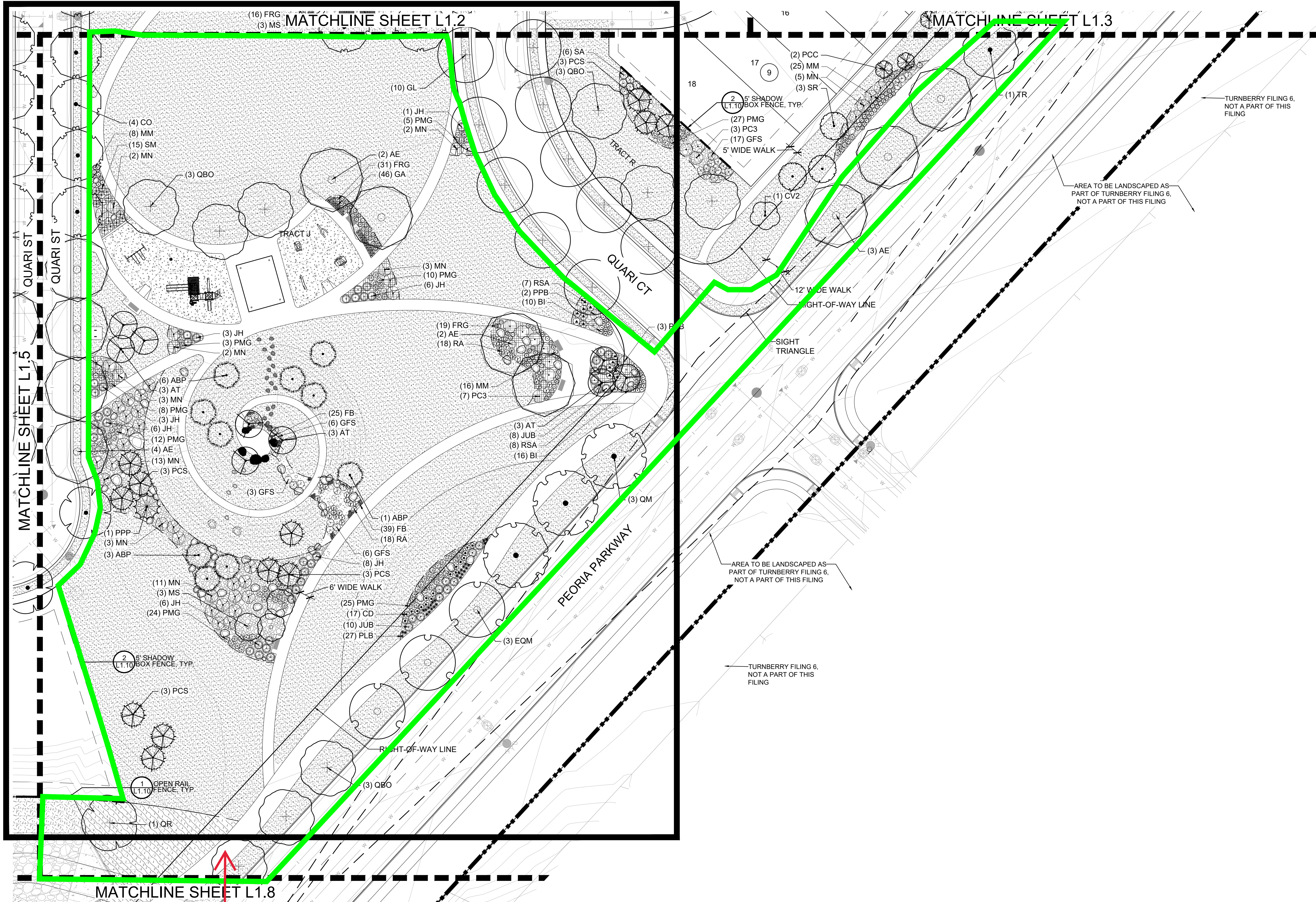
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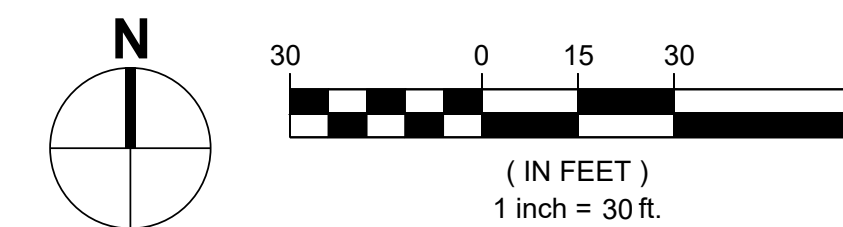
RE: SHEET L1.11 & L1.12 FOR PARK ENLARGEMENT PLAN



### LEGEND

- LANDSCAPE BOUNDARY
- DECIDUOUS TREES
- ⊗ EVERGREEN TREES
- ⊙ ORNAMENTAL TREES
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LIMITS OF INSPECTION

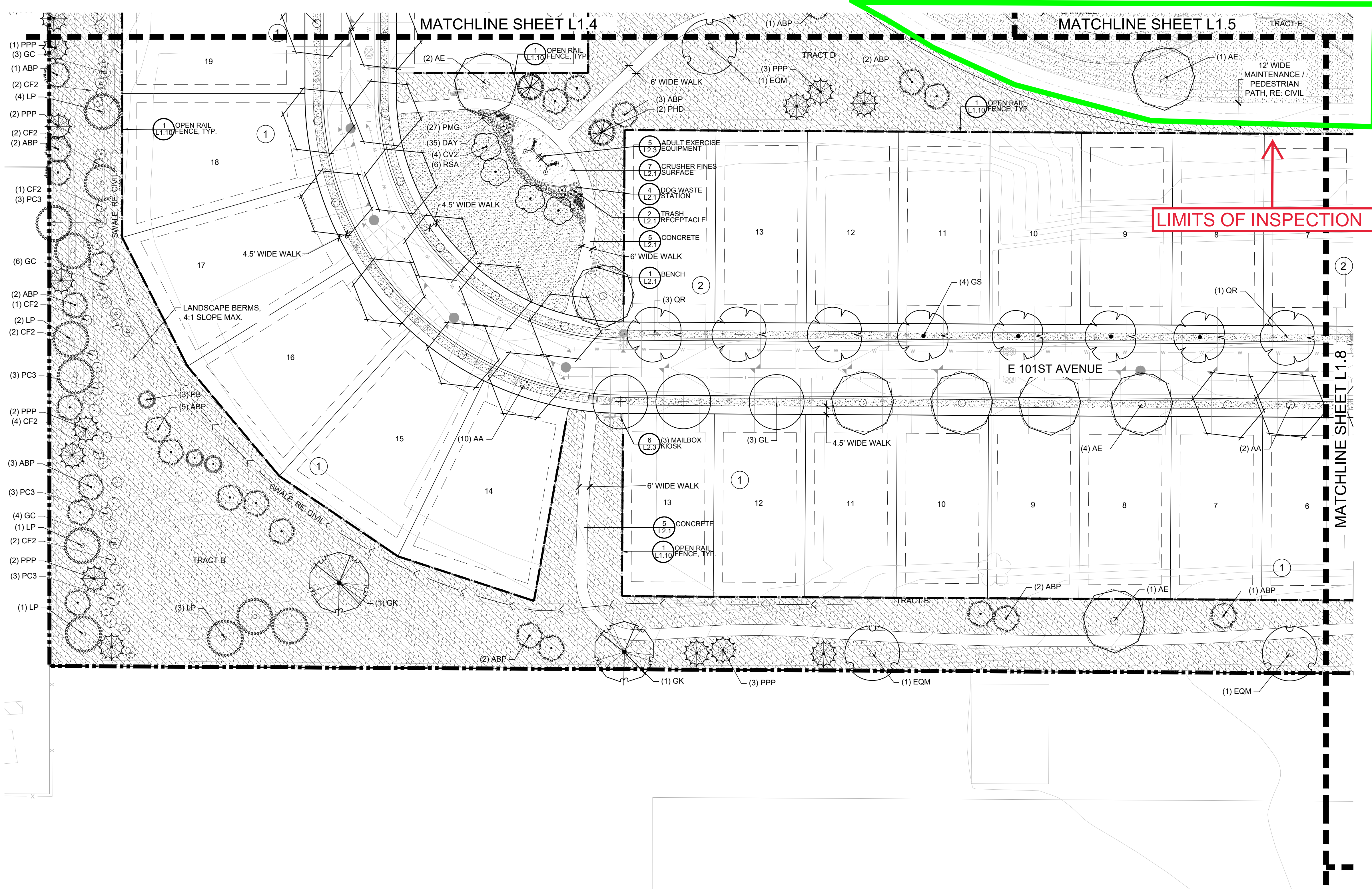
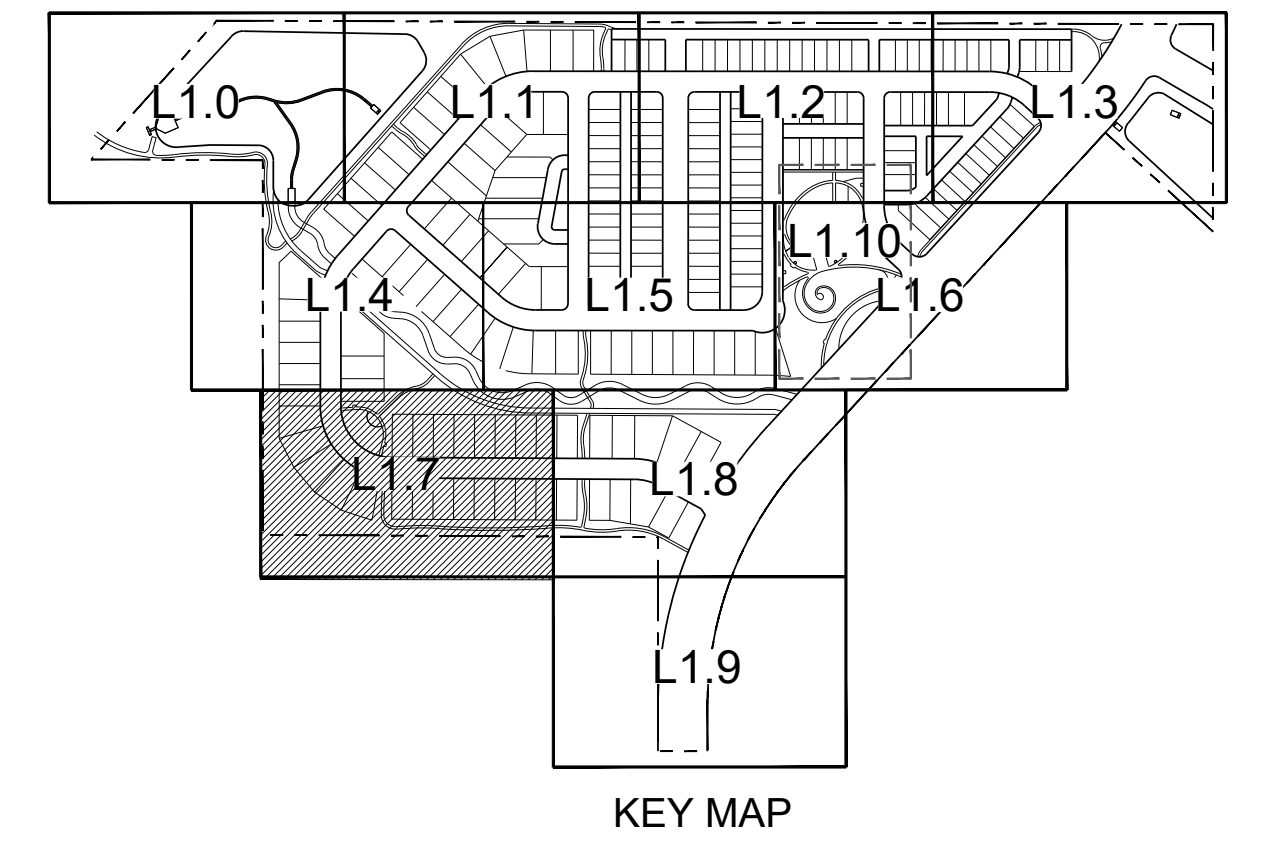
10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9828 WWW.CVLINC.NET		<b>CATELLUS CC NOTE, LLC</b> C/O MICHAEL KUYKENDALL 66 FRANKLIN AVENUE SUITE 200 OAKLAND, CA 94607	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN	SCALE:	AS SHOWN	FILE NO:	8130130433
DRAWN BY: CHECKED BY: DATE:				JANUARY 2021			
SHEET NUMBER <h1>L1.6</h1>				CITY STAFF CERTIFICATE: Approved by the Department of Community Development of the City of Commerce City, this ___ day of ___, 20___. Department of Community Development			

Y:\TURNBERRY\LANDSCAPE ARCHITECTURE\CURRENT DWGS\FILING 5\_C05\TURNBERRY FIL 5 - LANDSCAPE CDS.DWG, GARRETT, 1/11/2021 8:26 AM

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CENTER OF COLORADO  
1-800-922-1987

# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

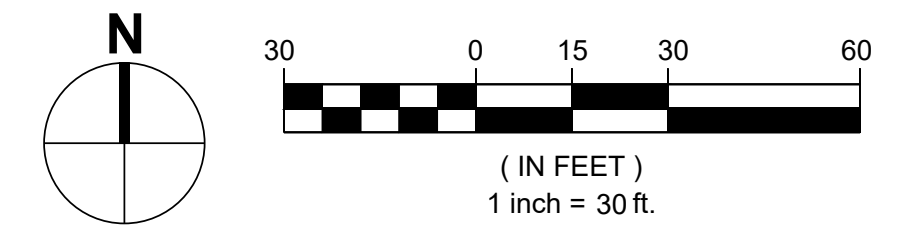
A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



### LEGEND

- LANDSCAPE BOUNDARY
- DECIDUOUS TREES
- EVERGREEN TREES
- ORNAMENTAL TREES
- DECIDUOUS SHRUBS
- EVERGREEN SHRUBS
- ORN. GRASSES
- TURF GRASS
- DETENTION POND NATIVE SEED MIX
- SHORT GRASS NATIVE SEED MIX
- ROCK MULCH
- FIBAR
- OPEN RAIL FENCE
- 5' SHADOW BOX FENCE

NOTE: ANY AREA DETERMINED BY THE CITY ENGINEER TO BE WITHIN A SIGHT-DISTANCE-TRIANGLE MAY NOT CONTAIN PLANT MATERIAL THAT AT THE TIME OF PLANTING OR AT MATURITY EXCEEDS 36 INCHES ABOVE THE GUTTER FLOW LINE EXCEPT TREES WHICH MUST BE LIMBED TO 8 FEET AT ADEQUATE MATURITY.



No.	Revisions	Date	Init.	Appr.	Date

10333 E. Dry Creek Rd Suite 240  
Englewood, CO 80152  
Tel: 720-482-9828  
CIVILING.NET



CATELLUS CC NOTE, LLC  
C/O MICHAEL KUYENDALL  
66 FIFTH AVENUE SUITE 200  
Oakland, CA 94607

BURLINGTON NORTHERN/CATELLUS PUD  
TURNBERRY SUBDIVISION FILING NO. 5  
LANDSCAPE PLAN

SCALE: AS SHOWN  
FILE NO: 8130130433

DRAWN BY: CHECKED BY: DATE: JANUARY 2021

SHEET NUMBER L1.7

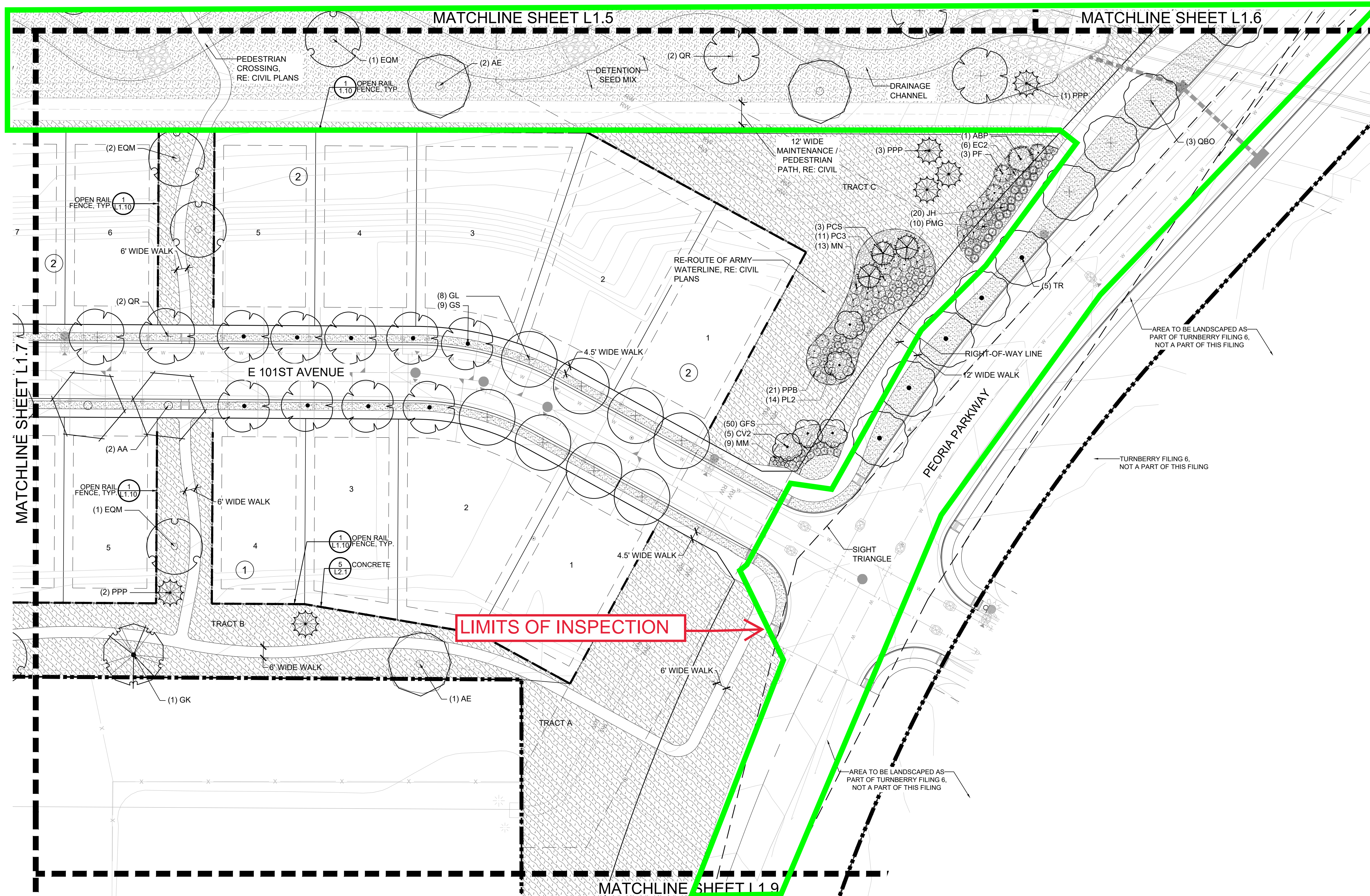
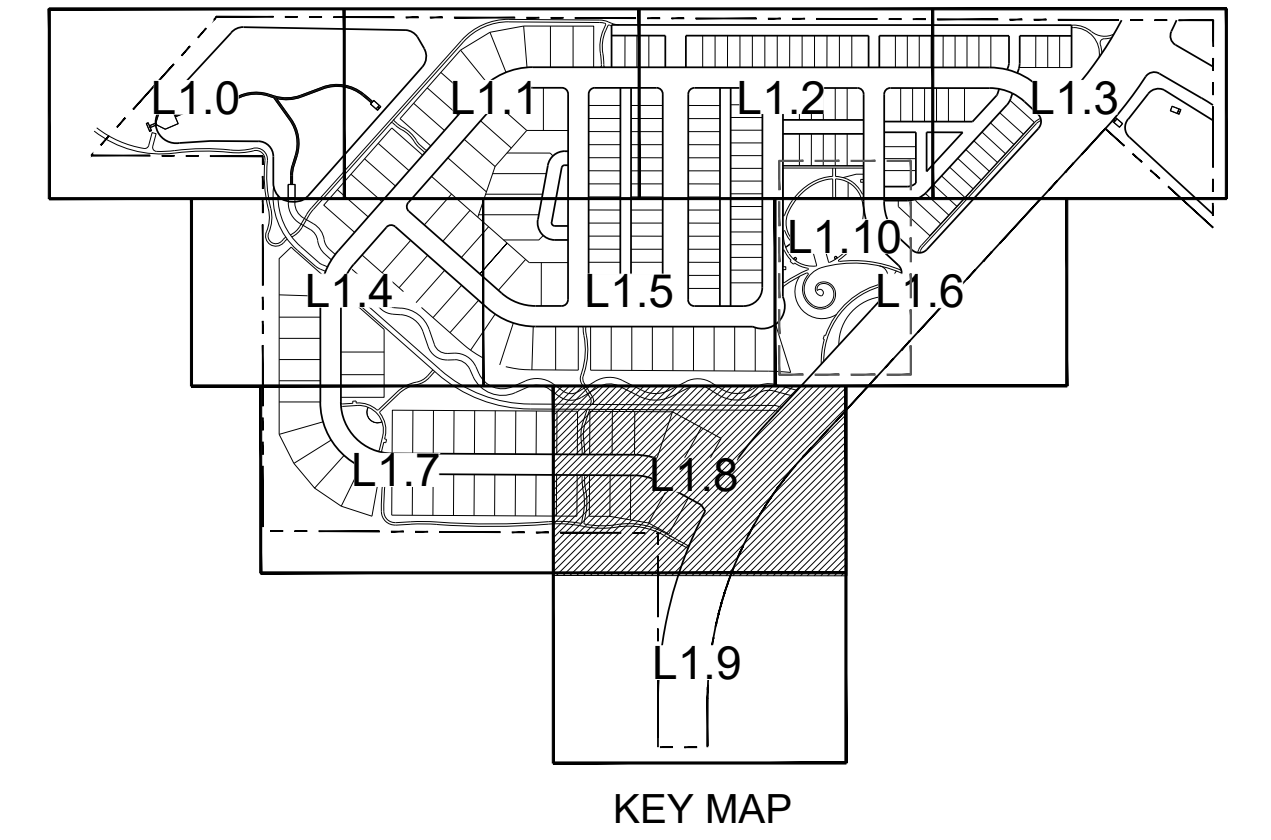
CITY STAFF CERTIFICATE:  
Approved by the Department of Community Development of the City of Commerce City, this  
\_\_\_ day of \_\_\_, 20\_\_.  
Department of Community Development

Y:TURNBERRYLANDSCAPE ARCHITECTURE CURRENT DWG: FILING 5: CDS: TURNBERRY FIL 5 - LANDSCAPE CDS: DWG: GARRETT, 1/11/2021 8:26 AM

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CENTER OF COLORADO

# BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5

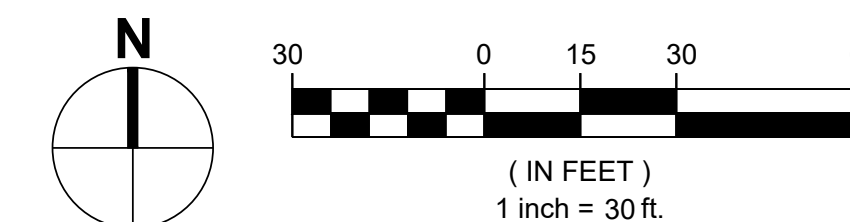
A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



## LEGEND

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CITY STAFF CERTIFICATE:  
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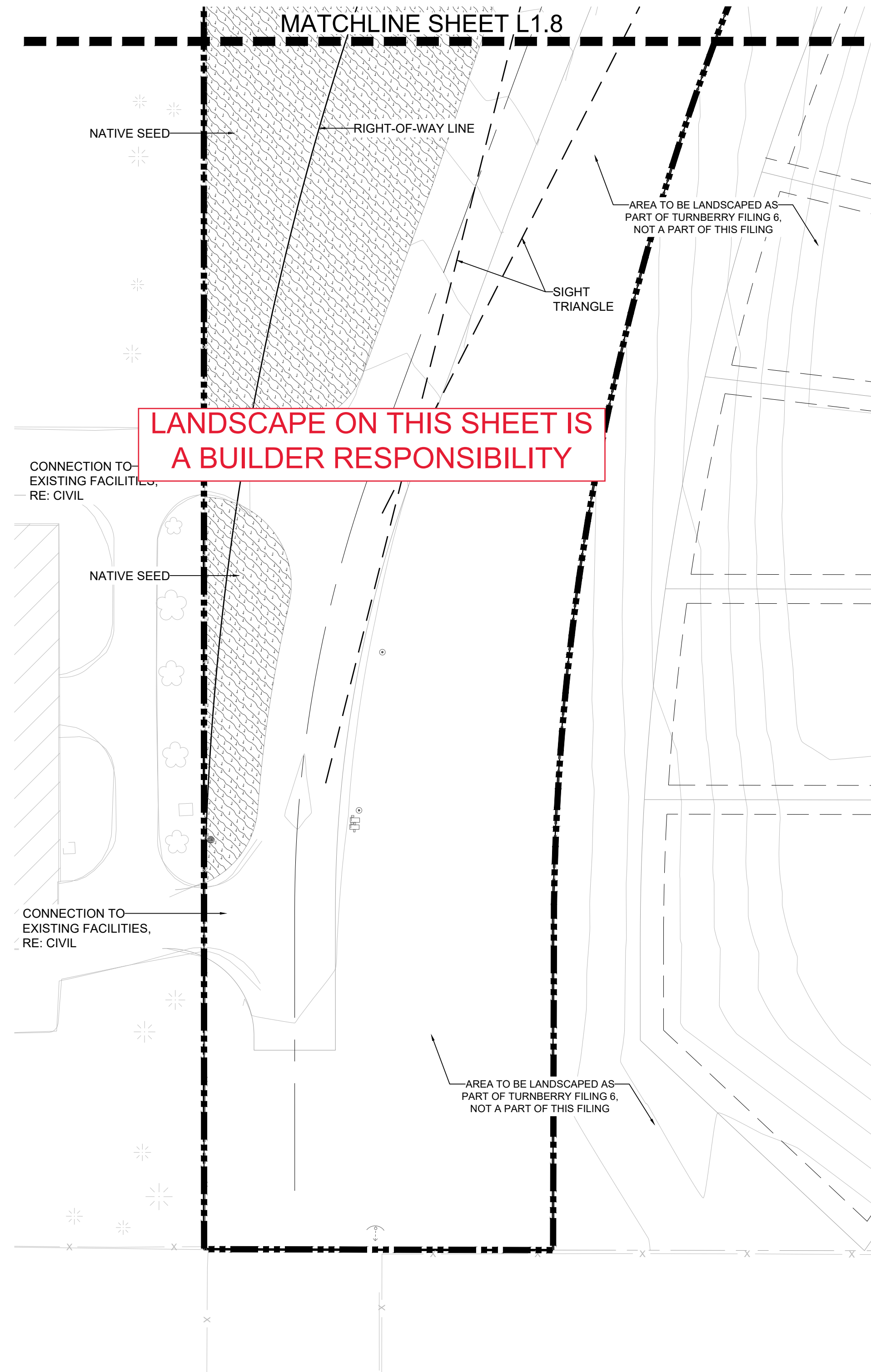
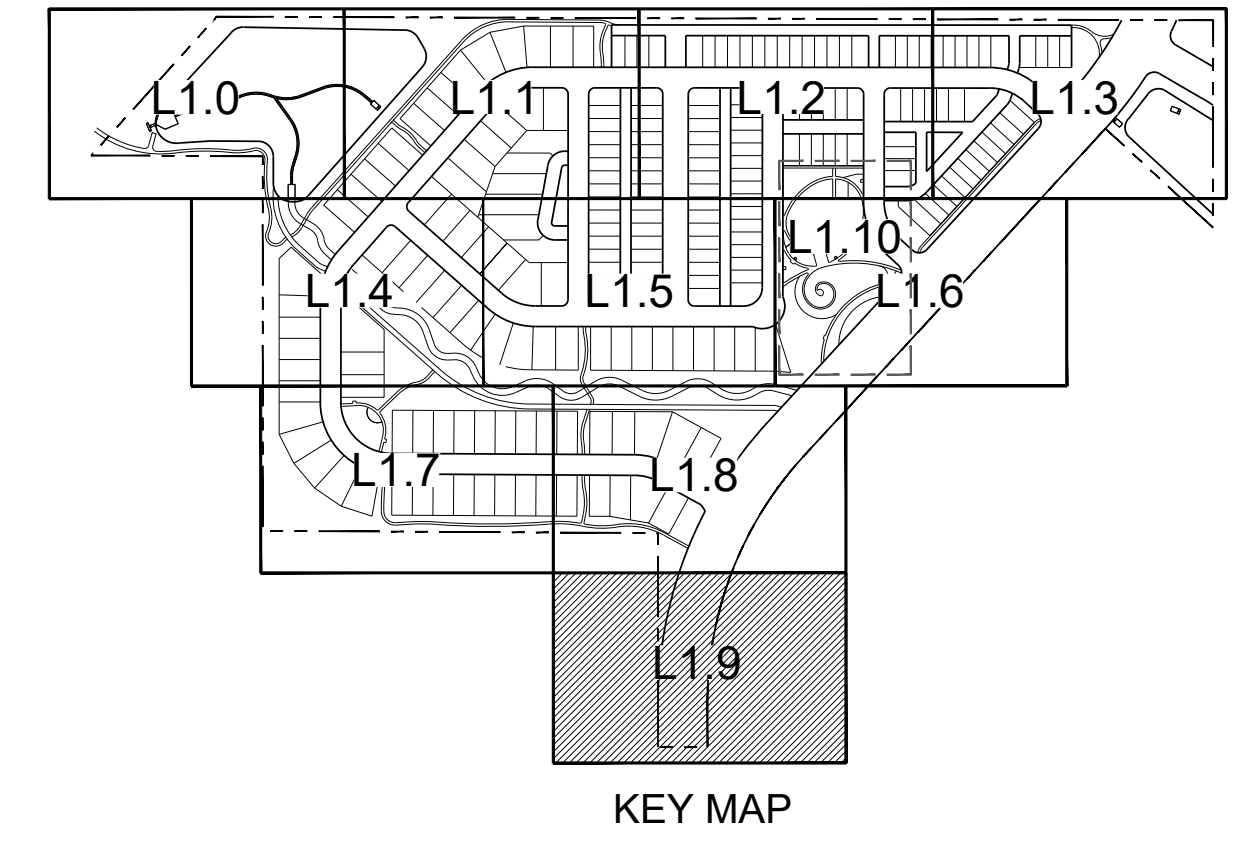
10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9828 CIVILING.NET	10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9828 CIVILING.NET
<b>CIVILING</b> CONSULTANTS	<b>CIVILING</b> CONSULTANTS
CATELLUS CC NOTE, LLC C/O MICHAEL KUYKENDALL 66 FORT WASHINGTON BLVD STE 200 Oakland, CA 94612	CATELLUS CC NOTE, LLC C/O MICHAEL KUYKENDALL 66 FORT WASHINGTON BLVD STE 200 Oakland, CA 94612
BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN
SCALE: AS SHOWN FILE NO: 8130130433	SCALE: AS SHOWN FILE NO: 8130130433
DRAWN BY: CHECKED BY: DATE: JANUARY 2021	DRAWN BY: CHECKED BY: DATE: JANUARY 2021
SHEET NUMBER <b>L1.8</b>	SHEET NUMBER <b>L1.8</b>

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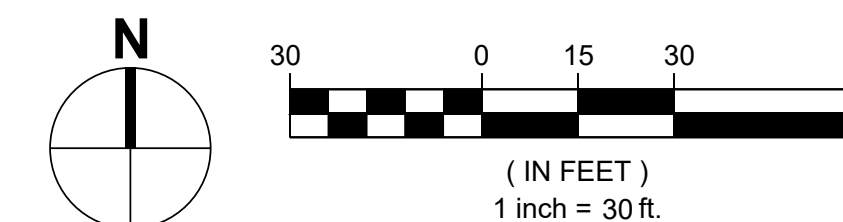
A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
LANDSCAPE CONSTRUCTION DOCUMENTS



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\_\_\_ day of \_\_\_, 20\_\_.  
\_\_\_\_\_  
Department of Community Development

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					Date
<b>L1.9</b>	AS SHOWN				
	FILE NO:	8130130433			
BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 5 LANDSCAPE PLAN			10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9528 CIVILING.NET		
CATELLUS CC NOTE, LLC C/O MICHAEL KUYKENDALL 565 Franklin Ave., Suite 200 Oakland, CA 94607			<b>CIVIL CONSULTANTS</b>		



**Turnberry Subdivision Filing 5  
 Partial / Remaining Landscape Estimate**

**Project Number: Z-706-D-423-20**

**Date: 11/28/2023**

**Prepared by: PCS Group**

<b>SUMMARY</b>		
1. Partial Tract E - Cut Through Tract Area	<b>Subtotal:</b>	<b>\$ 3,618.59</b>
2. Partial Tract E - Cut Through Tract Area	<b>Subtotal:</b>	<b>\$ 5,246.20</b>
3. Partial Tract E - Cut Through Tract Area	<b>Subtotal:</b>	<b>\$ 3,146.20</b>
4. Partial Tract F - Cut Through Tract Area	<b>Subtotal:</b>	<b>\$ 6,697.83</b>
	<b>10% Contingency</b>	<b>\$ 1,870.88</b>
<b>Partial / Remaining Landscape Estimate Total</b>		<b>\$ 20,579.70</b>

**Notes:**

1. Estimate does NOT include concrete walks & ramps associated with streets, pedestrian crosswalk striping, road infrastructure, utilities, earthwork, or mobilization costs.
2. This opinion of probable landscape construction costs is made on the basis of the Planner/Landscape Architect's experience and qualifications and represents the best judgment as an experienced and qualified professional generally familiar with the industry. However, since the Planner/Landscape has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the Planner/Landscape Architect cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from this opinion of probable construction cost. If the OWNER wishes greater assurance as to probable construction costs, the OWNER shall employ an independent cost estimator or contractor.

<b>1. Partial Tract E - Cut Through Tract Area</b>				
ITEM	QUANTITY	UNIT	COST/UNIT	TOTAL COST
Deciduous Trees (2" Cal.)	2	EA	\$ 480.00	\$ 960.00
Native Seed Mixture	2,501	SF	\$ 0.19	\$ 475.19
Bluegrass Sod	104	SF	\$ 0.60	\$ 62.40
Soil Prep & Fine Grading (Seed, Sod Area & Shrubs Beds)	2,605	SF	\$ 0.20	\$ 521.00
Irrigation	1	LS	\$ 1,600.00	\$ 1,600.00
			<b>Subtotal</b>	<b>\$ 3,618.59</b>

<b>2. Partial Tract E - Cut Through Tract Area</b>				
ITEM	QUANTITY	UNIT	COST/UNIT	TOTAL COST
Deciduous Trees (2" Cal.)	1	EA	\$ 480.00	\$ 480.00
Native Seed Mixture	2,500	SF	\$ 0.19	\$ 475.00
Bluegrass Sod	114	SF	\$ 0.60	\$ 68.40
Soil Prep & Fine Grading (Seed, Sod Area & Shrubs Beds)	2,614	SF	\$ 0.20	\$ 522.80
Concrete Walks	300	SF	\$ 7.00	\$ 2,100.00
Irrigation	1	LS	\$ 1,600.00	\$ 1,600.00
			<b>Subtotal</b>	<b>\$ 5,246.20</b>

<b>3. Partial Tract E - Cut Through Tract Area</b>				
ITEM	QUANTITY	UNIT	COST/UNIT	TOTAL COST
Deciduous Trees (2" Cal.)	1	EA	\$ 480.00	\$ 480.00
Native Seed Mixture	2,500	SF	\$ 0.19	\$ 475.00
Bluegrass Sod	114	SF	\$ 0.60	\$ 68.40
Soil Prep & Fine Grading (Seed, Sod Area & Shrubs Beds)	2,614	SF	\$ 0.20	\$ 522.80
Irrigation	1	LS	\$ 1,600.00	\$ 1,600.00
			<b>Subtotal</b>	<b>\$ 3,146.20</b>

<b>4. Partial Tract F - Cut Through Tract Area</b>				
ITEM	QUANTITY	UNIT	COST/UNIT	TOTAL COST
Native Seed Mixture	2,357	SF	\$ 0.19	\$ 447.83
Bluegrass Sod	125	SF	\$ 0.60	\$ 75.00
Soil Prep & Fine Grading (Seed, Sod Area & Shrubs Beds)	125	SF	\$ 0.20	\$ 25.00
Concrete Walks	650	SF	\$ 7.00	\$ 4,550.00
Irrigation	1	LS	\$ 1,600.00	\$ 1,600.00
			<b>Subtotal</b>	<b>\$ 6,697.83</b>



pcs group inc. www.pcsgroupco.com

community design | entitlement | site design | landscape architecture | community imaging

December 12th, 2023

RE: TURNBERRY F6 - GENERAL LANDSCAPE INSPECTION ITEMS

Dear Special District Management Services, Inc.,

At the request of Catellus CC Note, LLC, PCS Group Inc inspected the landscape depicted on the landscape construction drawings (named TURNBERRY F6 - LANDSCAPE CDs\_2021-01-11.pdf ) within Turnberry F6.

PCS Group assumes no liability for the work performed or materials installed by the Landscape Contractor or any Subcontractors. The intent of these landscape inspections is to help ensure general conformance with the design intent of the approved landscape plans. Inspection approval by PCS Group shall not relieve the landscape contractor or his work from conforming to county codes, industry standards, or the requirements set forth in the approved landscape plans. Fine grading was inspected from an aesthetic standpoint only. Spot elevations, slopes, drainage patterns, structural design, installation of walls, stairs, pavement, footings and irrigation were also not inspected by PCS Group.

**Landscape Acceptance Report:**

**This Landscape inspection for Turnberry F6 Metro District Landscape of Turnberry Subdivision occurred on December 4th, 2023 with representatives from the Groundworks Development (Mark Johnson) and myself. At this time PCS Group is recommending initial acceptance of the Landscape Improvements as they were found to be to be in conformance with the approved construction plans and in good condition.**

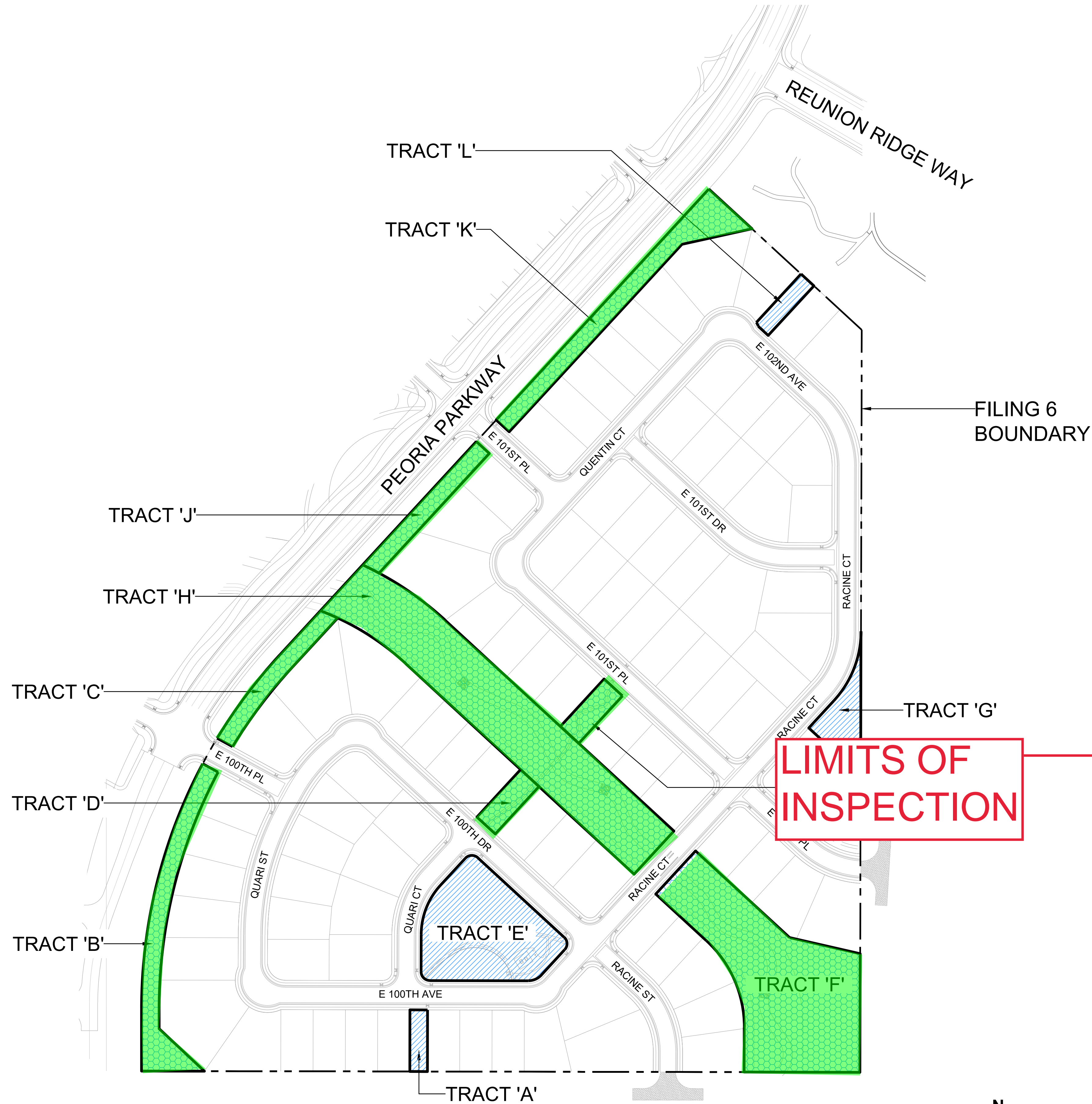
**\*It should be noted however all recently seeded native grass areas are to be reviewed in Spring 2024 to monitor establishment.**

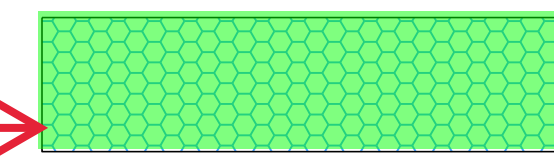
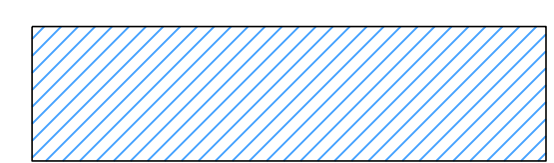
Sincerely,  
Garrett Graham

PCS Group, Inc. - (720) 465-2261 - garrett@pcsgroupco.com

**BURLINGTON NORTHERN/CATELLUS PUD  
TURNBERRY SUBDIVISION FILING NO. 6**

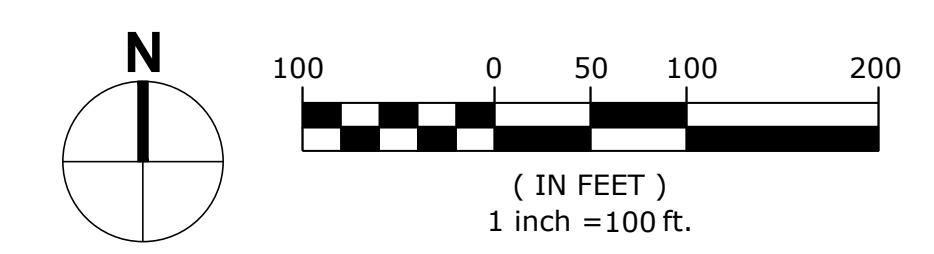
A PART OF WEST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO  
**LANDSCAPE CONSTRUCTION DOCUMENTS**



<b>DEVELOPER RESPONSIBILITY</b>	
•	TRACT B
•	TRACT C
•	TRACT D
•	TRACT F
•	TRACT H
•	TRACT I
•	TRACT J
•	TRACT K
	
<b>BUILDER RESPONSIBILITY</b>	
•	ALL REMAINING TRACTS
	

**LIMITS OF INSPECTION**


**FILING 6 - PIA LANDSCAPE EXHIBIT**



**CITY STAFF CERTIFICATE:**  
Approved by the Department of Community Development of the City of Commerce City, this  
\_\_\_ day of \_\_\_, 20\_\_.  
\_\_\_\_\_  
Department of Community Development

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UTILITY NOTIFICATION CENTER OF COLORADO

SHEET NUMBER	DRAWN BY:	CHECKED BY:	DATE:	JANUARY 2021	FILE NO:	8130130433	SCALE:	AS SHOWN	BURLINGTON NORTHERN/CATELLUS PUD TURNBERRY SUBDIVISION FILING NO. 6 PIA LANDSCAPE EXHIBIT	CATELLUS CC NOTE, LLC C/O MICHAEL KUYKENDALL 66 FIFTH AVENUE, SUITE 200 OAKLAND, CA 94607		10333 E. Dry Creek Rd Suite 240 Englewood, CO 80152 Tel: 720-482-9828 CIVILING.NET	Revisions	No.	Init.	Appr.	Date



January \_\_, 2024

**VIA EMAIL**

AMH Development LLC  
280 Pilot Road, Suite 200  
Las Vegas, Nevada 89119  
Attn: legal department  
Email: [hcho@ah4r.com](mailto:hcho@ah4r.com) and [tcabibi@ah4r.com](mailto:tcabibi@ah4r.com)

Re: Conditions to Acceptance of Special Warranty Deed and Bill of Sale – Tracts E and F,  
Turnberry Filing No. 5, Commerce City, Colorado (“**Tracts**”)

Dear Ms. Cho and Mr. Cabibi:

Our office represents BNC Metropolitan District No. 3 (the “**District**”). On October 27, 2023, the District adopted those certain Rules and Regulations Regarding Dedication and Acceptance of Public Improvements, a copy of which is attached (the “**Rules**”). We understand that AMH Development, LLC (“**AMH**”) is working with Catellus CC Note, LLC (“**Catellus**”) to convey Tracts to the District for District ownership and maintenance.

Pursuant to the Rules, the District may accept conveyance of real property if the vast majority of public improvements are complete within said property to be transferred, but landscaping cannot be completed because of the growing season.

A portion of the public improvements on the Tracts was completed by Catellus, which non-AMH improvements are identified on **Exhibit A** (the “**Catellus Improvements**”). The District has performed a walk-through of the Catellus Improvements and all punch list items related to the Catellus Improvements have been completed. The District has also received all documentation required by the Rules for acceptance of the Catellus Improvements.

As such, the only improvements remaining to be complete on the Tracts are landscaping improvements to be completed by AMH. The District is willing to accept the Tracts in advance of such landscaping improvements being completed, pursuant to the terms and conditions of this letter. Based on the estimates from the landscape architect that prepared the landscape plans for the Tracts, the items set forth on **Exhibit B** attached hereto and incorporated herein remain to be completed (the “**Remaining Improvements**”). Further, as detailed on **Exhibit B**, the cost to complete the Remaining Improvements is estimated to be \$ \_\_\_\_\_ (the “**Cost Estimate**”). The District agrees to accept a conveyance of the Tracts so long as all requirements set forth in the Rules have been satisfied and a letter of credit (the “**LOC**”) or cash in the amount of the Cost Estimate (the LOC or cash, is hereby referred to as the “**Surety**”) is delivered to the

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District. If delivered in the form of cash, the District shall have no obligation to invest the same in an interest-bearing account.

If the Surety is in the form of an LOC, the LOC shall name the District as the beneficiary, have an expiration date of no sooner than 12 months following its issuance, and shall provide for automatic renewals thereof, unless previously terminated. The issuer of the LOC shall be reasonably acceptable to the District.

The District may draw upon the Surety if the Remaining Improvements have not been completed (as evidenced by a certification of the landscape architect) on or before July 15, 2024 (the “**Outside Date**”). Within ten (10) days after receipt of a certification from the landscape architect that the Remaining Improvements have been completed and receipt of an assignment of all remaining warranties, the District will return the Surety to AMH.

If the Remaining Improvements are not complete by the Outside Date, the District shall have a right to draw on the Surety. If the District draws on the Surety, it shall thereafter use such funds to complete the Remaining Improvements. If the reasonable, actual cost to complete the Remaining Improvements exceeds the Surety, AMH shall remain responsible for repayment of such excess costs to the District. If the cost to complete the Remaining Improvements is less than the Surety, the District shall return any excess funds to AMH. The District shall provide a final accounting to AMH within 60 days following its completion of the Remaining Improvements, which will include reasonable documentation evidencing the actual costs incurred by the District in completing the Remaining Improvements. Any funds from AMH to the District or the District to AMH shall be paid by the applicable party within thirty (30) days following the final accounting. In the event that the Remaining Improvements have not been completed by either party on or before the date that is two (2) years after the Outside Date, the District will return any remaining Surety to AMH.

The District agrees to grant AMH a license to complete the Remaining Improvements in the form attached hereto as **Exhibit C**.

If the foregoing is acceptable, then, please deliver to the District:

1. A Special Warranty Deed to the Tracts in the form attached hereto as **Exhibit D**;
2. A Title Commitment for the Tracts; and
3. The cash or LOC issued in form and by an issuer acceptable to the District.

Upon receipt of the foregoing, provided the Title Commitment is acceptable and a Title Policy is capable of being issued, the District will do the following:

1. The District will deliver the Special Warranty Deed to the Title Company for recording and issuance of a Title Policy, and will provide AMH with a recorded copy of the Special Warranty Deed upon receipt from the Title Company.
2. The District will execute and send you the License Agreement.

3. The District will hold the Surety in accordance with the terms of this Letter Agreement.

Please acknowledge AMH's agreement with the foregoing by executing a copy of this letter below and return the executed copy to me. By execution below, AMH further acknowledges and agrees that the District shall retain all rights and remedies available to it at law or in equity to enforce completion of the Remaining Improvements if AMH fails to do so.

If you have questions, please don't hesitate to contact me.

Very truly yours,

MCGEADY BECHER P.C.

Paula J. Williams

THE FOREGOING CONDITIONS TO ACCEPTANCE OF THE TRACTS AND IMPROVEMENTS ARE HEREBY ACKNOWLEDGED AND AGREED AS OF THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

AMH DEVELOPMENT LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

cc: Board of Directors BNC Metropolitan District No. 3  
Nick Montalbano

**EXHIBIT A**

Catellus Improvements/AMH Improvement Map



**EXHIBIT B**  
Remaining Improvements and Cost Estimate

EXHIBIT C  
Form of License Agreement

EXHIBIT D  
Form of Special Warranty Deed

LANDSCAPE INSTALLATION LICENSE AGREEMENT

**THIS LANDSCAPE INSTALLATION LICENSE AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between **BNC METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is c/o SDMS, 141 Union Blvd., Suite 150, Lakewood, CO 80228 (“**Grantor**”) and **AMH DEVELOPMENT LLC**, whose address is 280 Pilot Road, Suite 200, Las Vegas, Nevada 89119 (“**Grantee**”).

**RECITALS**

- A. Grantor is the owner of Tracts E and F, Turnberry Filing No. 5, City of Commerce City, County of Adams, State of Colorado (the “**Tracts**”); and
- B. Pursuant to the authority granted to the Grantor by its Service Plan, as approved by the City Council of the City of Commerce City, Colorado, as it may be amended from time to time (the “**Service Plan**”), the District may own and operate public improvements, including, but not limited to, open space and landscaping improvements to benefit property owners, residents and guests within its service area.
- C. Grantee has an obligation to complete certain landscaping improvements within the Tracts, which landscaping improvements are identified on Exhibit A attached hereto and incorporated herein by reference (the “**Landscaping Improvements**”).
- D. Grantor desires to grant to Grantee a license agreement for the installation of such Landscaping Improvements, subject to the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals set forth above, all of which are fully incorporated and made an integral part of this Agreement, the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee (each a “**Party**” and collectively, the “**Parties**”) agree as follows:

- 1. Grant. Grantor hereby grants to Grantee, for it and its contractors, subcontractors, materialmen and suppliers, a temporary non-exclusive license (the “**License**”) over, across and through the Tracts solely for the purposes of installation of the Landscaping Improvements. In no event shall Grantee be entitled to use the Tracts for any other purposes without the prior written consent of the Grantor.
- 2. Maintenance and Restoration Obligations. Grantee shall be solely responsible to ensure that, during the License Term (as defined below) and immediately upon expiration or termination of this Agreement, the Tracts are left in a clean an orderly fashion, free from all trash and other debris, in the same condition as the Tracts appeared upon the commencement of the

License Term, excluding the changed condition resulting from the installation of the Landscaping Improvements, condemnation and reasonable wear and tear.

3. Representations or Warranties. Grantor represents and warrants to Grantee that it owns fee title to the Tracts and that Grantor has the right and authority to enter into this License Agreement. Except as aforesaid, Grantee accepts the Tracts in its “as is” condition and configuration, with all faults, and accepts all risks related thereto. Except as expressly set forth herein, no representations or warranties have been or are being made by Grantor regarding the condition of the Tracts or the suitability of the Tracts for any purpose and Grantor hereby disclaims any and all warranties, whether express or implied by law, with regard to the Tracts.

4. Insurance. Upon execution of this Agreement, Grantee shall deliver to Grantor a certificate of insurance (in a form reasonably acceptable to Grantor) showing that Grantee currently carries such commercial general liability and other risk insurance coverages with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 in the aggregate and naming Grantor as an additional insured thereon. In the event such certificate is not delivered by Grantee or Grantor determines that the coverages and amounts are not acceptable, Grantor may terminate the License immediately and without prior notice.

5. Certain Reserved Rights. Grantor reserves the right to use the Tracts so long as such use does not materially or unreasonably interfere with the use of Grantee as permitted herein.

6. Damages; Indemnification. Except as may be prohibited or limited by applicable law, (i) Grantee will be responsible for all costs required to repair damages to the Tracts caused by Grantee or its permittees in the exercise of the rights granted under this Agreement and (ii) Grantee shall indemnify and hold Grantor harmless from and against actual loss, cost, expense (including attorneys' fees), claims, demands, causes of action, liability, and damages arising from third-party claims against Grantor (collectively, “Claims”) which result from or arise out of any grossly negligent act or omission or the willful misconduct of Grantee or its permittees from the exercise of the rights granted under this Agreement; provided, however, such indemnification shall not extend to any Claims caused by or arising from Grantor’s gross negligence or willful misconduct. Grantor does not waive, and no provision of this Agreement shall be deemed a waiver of, the immunities and limitations of liabilities to which Grantor is entitled as a matter of law, including, without limitation, the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S., as amended from time to time.

7. Assignment. Neither Party shall assign or transfer this Agreement or the License granted herein without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Term. The License granted herein shall commence on the date of mutual execution hereof by the Parties and expire on the earlier to occur of: (a) delivery to Grantor of a certificate of the landscape architect that prepared the landscaping plans for the Tracts confirming the completion of the Landscaping Improvements; or (b) July 15, 2024 unless otherwise extended by mutual agreement of the Parties. Notwithstanding the foregoing, in the

event that Grantee breaches this Agreement, including the use of the Tracts for uses not permitted by this Agreement or otherwise in a manner that violates applicable Colorado law, Grantor may immediately terminate this Agreement and the License granted hereby, provided however, that Sections 2, 3 and 6 through 17 shall survive and not be affected by the termination of this Agreement.

9. No Third Party Beneficiaries. It is mutually agreed that enforcement of the terms and conditions of this Agreement shall be strictly reserved to the Parties hereto, their successors and assigns, and nothing contained in this Agreement shall give or allow any claim or right of action under this Agreement by any other or third person.

10. Amendments. No modification, waiver or amendment of any of the terms or conditions of this Agreement shall be binding upon a Party unless in writing and signed by such Party.

11. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. If allowed by law, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

12. Entire Agreement. This Agreement, together with the exhibits attached hereto, contains the entire agreement of the Parties hereto with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the Parties hereto.

13. Disclaimer of Joint Venture. This Agreement, together with the exhibits attached hereto, contains the entire agreement of the Parties hereto with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the Parties hereto.

14. Attorneys' Fees. In the event any party seeks to enforce its rights hereunder through litigation, arbitration or another legal proceeding, the court or panel shall award to the prevailing party as part of its judgment or award its reasonable attorneys' fees and costs.

15. Section Headings. The section headings contained herein are included for reference purposes only.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement.

17. Governing Law. The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Landscape Installation License Agreement as of the date first set forth above.

*[Signatures appear on the following page.]*

**GRANTOR:**

**BNC METROPOLITAN DISTRICT, NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

**AMH DEVELOPMENT LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**  
**LANDSCAPING IMPROVEMENTS**

**INDEMNIFICATION AGREEMENT  
(Mechanics' Liens and Public Infrastructure)**

THIS INDEMNIFICATION AGREEMENT (this "Agreement") is made and entered into effective as of \_\_\_\_\_, 2023 ("Effective Date"), by AMH Development LLC, a Delaware limited liability company ("Indemnitor" or "AMH"), in favor of BNC Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State of Colorado ("Indemnitee" or "District").

**RECITALS:**

- A. AMH owns certain real property within the service area of the District upon which it has constructed Public Infrastructure (defined below).
- B. Pursuant to the District's Rules and Regulations Regarding Dedication of Public Improvements, prior to the District accepting real property or Public Infrastructure, AMH is required to provide lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers for the Public Infrastructure have been paid in full.
- C. AMH and the District desire to enter into this Agreement whereby AMH provides assurance to the District that no contractors, subcontractors, material providers or suppliers that performed any work on or provided materials for the Public Infrastructure have any claim for any mechanics' or materialmans' liens related to the Public Infrastructure.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency which are hereby acknowledged and accepted by the parties, the parties to this Agreement agree as follows:

**AGREEMENT:**

1. **DEFINITIONS.** As used herein, the following terms shall have the following meanings:

**TERM:**

**DEFINITION:**

**Construction:** Any and all work, construction and/or placement or segregation of materials performed by or on behalf of Indemnitor on the Property related to the Public Infrastructure.

**Public Infrastructure:** Pursuant to the District's Service Plan, as approved by the City of Commerce City, Colorado, the District is authorized to construct, acquire and install public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation transportation, television relay and translation, and mosquito control and other facilities and services, which benefit property within the District's boundaries and/or service area. As used herein, the term "Public Infrastructure" means all public improvements described in the

preceding sentence that AMH has agreed to construct (and has in fact caused to be constructed).

**Mechanics' Liens:** All liens or rights to lien existing against the Property or which subsequently attach or are claimed against the Public Infrastructure or the Property by reason of Indemnitor's Construction of the Public Infrastructure.

**Property:** That certain real property as described on Exhibit A attached hereto.

**2. REPRESENTATIONS, WARRANTIES AND COVENANTS.** As of the Effective Date, Indemnitor represents and warrants to Indemnitee as to the Public Infrastructure that: (a) all sums due and owing for Construction of the Public Infrastructure have been paid or will be paid promptly and in full before the respective times for filing Mechanics' Liens affecting the Property or the Public Infrastructure; (b) Indemnitor has funds sufficient to pay all Construction costs applicable to the Public Infrastructure; (c) as of the Effective Date, there are no Mechanics' Liens against the Property or the Public Infrastructure; and (d) no claims have been made to Indemnitor and no suits are now pending on behalf of any contractor, subcontractor, material provider or supplier in relation to the Construction.

**3. TERM.** This Agreement shall remain in effect for a period of one (1) year after the Effective Date; provided that no claim of Mechanics' Lien has been asserted at such time. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed to expire if a claim of Mechanics' Lien has been asserted at such time and such expiration shall be stayed until the claim of Mechanics' Lien has been resolved pursuant to this Agreement.

#### **4. INDEMNIFICATION OBLIGATIONS.**

**4.1. Indemnity.** Indemnitor shall at all times indemnify, defend and hold Indemnitee and its directors, officers, managers, agents and employees harmless against any liabilities, claims of liability, obligations, losses, costs, charges, expenses, causes of action, suits, demands, judgments and damages of any kind or character whatsoever, including, but not limited to, reasonable attorneys' fees and costs incurred or sustained by Indemnitee, and actual attorneys' fees awarded against Indemnitee by reason of Mechanics' Liens for labor performed or materials used or furnished in the Construction of the Public Infrastructure or in any action at law or equity under any theory of recovery by reason of the existence of Mechanics' Liens for labor performed or materials used or furnished in the Construction of the Public Infrastructure. Insurance coverage carried by Indemnitor shall in no way lessen or limit the liability of Indemnitor under the terms of this indemnification obligation.

**4.2. Duty To Notify Indemnitee.** If any action is filed at law or in equity or any judicial or non-judicial proceeding (including arbitration) is commenced against the Property that triggers Indemnitor's indemnification obligation in Section 4.1, Indemnitor agrees to promptly notify Indemnitee in writing of such claim, action or proceeding as soon as possible of Indemnitor's acquisition of knowledge thereof but, in no event, later than thirty (30) days from receipt of said knowledge.

**4.3. Rights and Obligations.** Indemnitor shall cause any Mechanic's Lien to be removed from the Property and/or the Public Infrastructure, as applicable, within thirty (30) days of written notice to Indemnitor of recordation thereof. In the event Indemnitor fails to do so, Indemnitee is authorized to use whatever means in its discretion it may deem appropriate to cause said Mechanics' Lien or suit to be removed or dismissed, and the costs thereof, together with reasonable attorneys' fees, will be immediately due and payable by Indemnitor. If the payment of a sum of money or bonding will discharge, eliminate or remove the effect of the Mechanics' Lien as to the Property, Indemnitor shall pay such sum or obtain such bond as is sufficient to discharge, eliminate or remove the Mechanics' Lien in a manner legally sufficient to effect the release of the Mechanics' Lien of record, and shall deliver documents to Indemnitee, in a form reasonably satisfactory to Indemnitee.

**5. LIEN WAIVERS.** Indemnitor's indemnification obligations set forth herein are given in lieu of providing lien waivers from all of the contractors who performed labor or supplies materials for the construction of the Public Infrastructure shall hereby be deemed satisfied.

**6. REMEDIES.** Indemnitor specifically acknowledges that upon any default by the Indemnitor under this Agreement after demand by Indemnitee, Indemnitee shall have the right to exercise any and all remedies available at law, in equity or under this Agreement against the Indemnitor, including, but not limited to, injunctive relief, specific performance, damages and/or self-help.

**7. NOTICE.** Any notices, demands or communications under this Agreement between Indemnitor and Indemnitee shall be in writing and may be given either by personal service, electronic-mail, by overnight delivery, or by mailing via United States mail, certified mail, postage prepaid, return receipt requested, addressed to each party as set forth on the signature page of this Agreement. If the address for Indemnitee is not completed on the signature page, notice to Indemnitee shall be given to Indemnitee's State office. All notices given in accordance with the requirements in this Section shall be deemed to be received as of the earlier of actual receipt by the addressee thereof or the expiration of ninety-six (96) hours after depositing same in the United States Postal System.

**8. MISCELLANEOUS.**

**8.1. No Waiver.** No delay or omission by Indemnitee in exercising any right or power under this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Indemnitee of a breach of any of the covenants, agreements, restrictions, obligations or conditions of this Agreement to be performed by the Indemnitor shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, obligations or conditions under this Agreement.

**8.2. No Third-Party Beneficiaries.** This Agreement is only between Indemnitor and Indemnitee, and is not intended to be, nor shall it be construed as being, for the benefit of any third-party.

**8.3. Partial Invalidity.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**8.4. Modification or Amendment.** Any alteration, change, modification or amendment of this Agreement or any documents incorporated herein, in order to become effective, shall be made by written instrument executed by all parties this Agreement.

**8.5. Execution in Counterpart.** This Agreement and any modification, amendment or supplement to this Agreement may be executed by Indemnitor in several counterparts, and as so executed, shall constitute one agreement binding on all Indemnitors, notwithstanding that all Indemnitors are not signatories to the original or the same counterpart.

**8.6. Merger of Prior Agreements And Understandings.** This Agreement and other documents incorporated herein by reference contain the entire understanding and agreement between the parties relating to the obligations of AMH and the District with respect to Mechanics' Liens, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, shall be of no force or effect.

**8.7. Other.** This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. This Agreement shall be interpreted in accordance with the laws of the State of Colorado. Exclusive venue shall be in the Adams County District Court. The parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At Indemnitee's request, Indemnitor shall carry on its duties and obligations under this Agreement during any legal proceedings until and unless this Agreement is otherwise terminated. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. The recitals set forth hereinabove are incorporated into this Agreement. This Agreement shall inure to the benefit of and bind the personal representatives, successors and assigns of the parties hereto.

**8.8. Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

The parties to this Agreement execute the same to become effective as of the Effective Date.

**INDEMNITOR:**

AMH Development LLC,  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

280 Pilot Road, Suite 200.  
Las Vegas, Nevada 89119

**INDEMNITEE:**

BNC Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State of Colorado

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit A**

Property



After Recording Return To:  
McGeady Becher P.C.  
450 E. 17th Avenue, Suite 400  
Denver, CO 80237  
Attn: Paula Williams

**No Documentary Fee - Exempt**

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED, made this \_\_\_\_ day of \_\_\_\_\_, 2024, between **CATELLUS CC NOTE LLC**, a Delaware limited liability company (the “**Grantor**”), and **BNC METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is c/o McGeady Becher P.C., 450 E. 17<sup>th</sup> Avenue, Suite 400, Denver, Colorado 80203 (the “**Grantee**”).

WITNESSETH, that the Grantor, for and in consideration of the sum of TEN AND 00/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto Grantee, and Grantee's successors and assigns forever, all the real property, together with all improvements, if any, situate, lying and being in the County of Adams, State of Colorado, known as:

Tracts E and F, Turnberry Filing No. 5, City of Commerce City, County of Adams, State of Colorado (the “**Property**”).

TOGETHER WITH all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the Grantor, either in law or in equity, of, in and to the Property, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto Grantee, and Grantee's successors and assigns forever. Grantor, for Grantor and Grantor's successors and assigns, does covenant and agree that Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained Property in the quiet and peaceable possession of Grantee, and Grantee's successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under Grantor, subject to those matters in the real property records of Adams County, Colorado;

IN WITNESS WHEREOF, this Special Warranty Deed is executed by the Grantor as of the day and year first above written.

**GRANTOR:**

**CATELLUS CC NOTE LLC**, a Colorado  
limited liability company

A \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY \_\_\_\_\_ )

OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Catellus CC  
Note LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Bill of Sale

KNOW ALL BY THESE PRESENTS that Catellus CC Note, LLC, a Delaware limited liability company (“Grantor”), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto BNC Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 141 Union Boulevard, Suite 150, Lakewood, Colorado 80228 (“District”), its successors and assigns, all of Grantor’s right, title and interest in and to the facilities, personal property and the improvements shown on **Exhibit I** attached hereto and incorporated herein by this reference (“Improvements”), excluding therefrom those Improvements previously conveyed to other jurisdictions for perpetual ownership.

TO HAVE AND TO HOLD the same unto the District, its successors and assigns forever; and Grantor, its successors and assigns, shall warrant and defend the sale of said Improvements made unto the District, its successors and assigns, against all and every person or persons whomsoever, and warrants that (i) the conveyance of the Improvements to the District, its successors and assigns, is made free from any claim or demand whatsoever; and (ii) the Improvements were constructed and installed in accordance with plans and specifications reviewed and approved by the District and all applicable Rules and Regulations of the District.

IN WITNESS WHEREOF, Grantor executes this Bill of Sale this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:  
 CATELLUS CC NOTE, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
 Its: \_\_\_\_\_

STATE OF COLORADO            )  
   )   ss.  
 COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ and by \_\_\_\_\_ as \_\_\_\_\_ of Catellus CC Note, LLC, a Delaware limited liability company.

Witness my hand and official seal.  
 My commission expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

**ASSIGNMENT OF WARRANTIES**

**“District Improvements”:** Those public infrastructure improvements described on **Exhibit A**.

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is hereby acknowledged, **CATELLUS CC NOTE LLC**, a Delaware limited liability company (“Grantor”), hereby assigns to **BNC METROPOLITAN DISTRICT NO. 3** (“District”) any and all contractual warranties, equipment warranties, and product warranties issued in connection with the District Improvements, and authorizes the District to enforce such warranties. The Grantor further agrees to cooperate in the prosecution of any and all such warranty claims, including providing records, drawings, blueprints, specifications, results of materials tests and inspections, and testimony of such witnesses as may be necessary to document any and all warranty claims. Additionally, in the event and to the extent that any contractor or supplier does not honor the District’s right to enforce any warranties hereunder assigned, Grantor shall reasonably cooperate with the District to enforce such rights for and on behalf of the District.

GRANTOR:

**CATELLUS CC NOTE LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name:

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **DISTRICT IMPROVEMENTS**

District Improvements includes streets, sidewalks, landscaping, lighting, water lines, storm drains, sanitary and sewer lines and related dry utility (e.g., gas, electric and telephone) improvements necessary for the installation and/or operation of other District Improvements constructed within and adjacent to Tracts E and F, Turnberry Filing No. 5, Commerce City, Colorado