

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND LCS
BUILDING CORPORATION

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into on the date of the last signature below, by and between the CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City"; and LCS BUILDING CORPORATION, a Colorado Corporation, hereinafter referred to as the "Developer."

WITNESSETH:

WHEREAS, the Developer is the owner of certain real property situated in the County of Larimer, State of Colorado (hereafter sometimes referred to as the "Property" or "Development") and legally described as follows, to wit:

A REPLAT OF LOTS 4, 5, 8 AND 9 OF PROSPECT INDUSTRIAL PARK AND VACATED RIGHT-OF-WAY RIVERBEND COURT, located in the northeast corner of Section 20, Township 7 North, Range 68 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado.

WHEREAS, the Development is known to the City as LIBERTY COMMON JUNIOR HIGH SCHOOL – PHASE 2, ID# FDP250006; and

WHEREAS, the Developer desires to develop the Property and has submitted to the City all plats, plans (including utility plans), reports and other documents required for the approval of a final plan according to the City's development application submittal requirements master list (the "Final Development Plan Documents") copies of which are on file in the office of the City Engineer and made a part hereof by reference; and

WHEREAS, the parties hereto have agreed that the development of the Property will require increased municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the Property and not to the City of Fort Collins as a whole; and

WHEREAS, the City has approved the Final Development Plan Documents submitted by the Developer, subject to certain requirements and conditions, which involve the installation of and construction of utilities and other municipal improvements in connection with the development of the Property.

facility configuration that occur as a result of the construction of buildings and/or development of lots, whether by the Developer or others.

6. The Developer shall limit the construction of the off-site storm drainage improvements to the limits of construction as shown on the Final Development Plan Documents. The Developer shall re-seed and/or restore all areas that are disturbed during construction of the off-site storm drainage improvements in accordance with the Final Development Plan Documents promptly following construction. The Developer shall ensure that no negative impact occurs to the adjoining properties during the construction of these facilities. No grading shall be done outside of the approved areas as shown on the Final Development Plan Documents.

7. Developer's drainage design for this Development includes evacuation of storm drainage runoff through a bioretention facility and into the drainage outfall system in a reasonable amount of time. The bioretention facility has been designed to discharge stormwater runoff from frequent storms over a 12-hour period. Under the intended operation of the bioretention facility, there will not be standing water in the facility more than 24 hours after the end of a rainfall event. If after construction and acceptance of the bioretention facility associated with this Development, surfacing or standing water conditions persist in this facility; and if such conditions are beyond what can be expected in accordance with the approved stormwater design, the Developer shall promptly, upon such discovery, take appropriate action in order to return or modify (subject to City's approval of any such modification) the facility to function in accordance with the designed operation in accordance with the Final Development Plan Documents.

8. The Developer shall be responsible for maintenance of all storm drainage facilities not identified as public in the Final Development Plan Documents in accordance with the Standard Operating Procedures (SOPs) contained in Exhibit C, attached hereto and incorporated herein by reference.

D. Streets

1. No street oversizing reimbursement from the City is due the Developer for this Development.

2. As identified in Article III, Chapter 23 of City Code ("Encroachments") no encroachments or obstructions are allowed within the public rights-of-way without a permit ("Encroachment Permit"). The Developer understands and acknowledges that if the Final Development Plan Documents now or in the future, through an amendment process, include any encroachments or obstructions in the public rights-of-way the Developer shall apply for, meet any requirements or conditions, and obtain an approved Encroachment Permit before the installation of the encroachment(s).

a. All requirements and conditions as identified on the Encroachment Permit and identified as Encroachments shall

be met and maintained both before and after issuance of the Encroachment Permit. The Encroachment Permit, which is non-transferable, is issued to the property owner or to the lessee of the property (with the property owner's consent) in which the encroachment is adjacent to or benefits and the Developer understands that at such time as ownership of that parcel changes and/or a new lessee exists (as applicable) a new encroachment permit will need to be applied for and new liability insurance will need to be provided by the property owner. The permit is revocable pursuant to Chapter 23 of City Code.

- b. The Developer, for itself and its successor(s) in interest, does hereby release and hold harmless the City from any damages to the encroachment arising from the City's actions in maintaining, repairing and/or replacing the public infrastructure including utilities, except as caused by the City's gross negligence or willful misconduct.
- c. The City shall have no responsibility for the installation and maintenance of any encroachment and the Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any and all claims that might arise, directly or indirectly, as a result of the Developer's installation or maintenance of any encroachments onto the public right-of-way.
- d. Only public utilities (defined as utilities owned and maintained by the City and gas utilities owned by Xcel Energy) or utility providers that have a franchise agreement with the City are allowed to be installed and located within public rights-of-way and public easements. Private utilities are allowed to cross public rights-of-way and easements provided that the crossing is perpendicular to the public right-of-way or easement, that sleeves are provided for the crossing in accordance with City standards, encroachment permits for such crossing are obtained, and the utility is registered with the utility locate center. Any private utilities found within public rights-of-way or easements not meeting the above criteria serving the Property shall be required to be removed by the Developer at the Developer's expense or apply for and obtain an approved Encroachment Permit. All sleeves across the right-of-way

shall be designed and installed in accordance with City standards then in effect.

- e. If there is any conflict between this provision and the Encroachment Regulations, then the Encroachment Regulations will control. The Developer acknowledges that, as with any regulation, the Encroachment Regulations are subject to change and Developer agrees to abide by any changes to the Encroachment Regulations.

3. Notwithstanding any provision herein to the contrary, the Developer shall be responsible for all costs for the initial installation of traffic signing and striping for this Development, including related to the Developer's internal street operations and of any adjacent or adjoining local, collector or arterial streets that is made necessary because of the Development.

4. Following completion of all public infrastructure improvements, the Developer shall continue to have responsibility for maintenance and repair of said improvements in accordance with the Land Use Code.

5. Before issuance of any development construction permit for the Development, the Developer shall pay \$52,485 to the City to be used toward the Reduced Speed School Zone Flashers that will be incorporated into the future pedestrian/school crossing of Sharp Point Drive adjacent to the school site. The overall design of the pedestrian/school crossing will be determined by the City of Fort Collins, and the Developer and the City agree that should the pedestrian/school crossing be constructed by the City before the City receives this payment, the City will have the right to use the \$52,485 payment as a reimbursement to the City for the cost of construction of the aforementioned crossing.

6. Before issuance of any development construction permit for the Development, the developer shall pay \$6,237 (being 1.6% of the overall estimated cost of \$388,882) to the City to be used toward the future traffic signal at Sharp Point Drive and Prospect Road. The overall design of the signal will be determined by the City of Fort Collins, and the Developer and the City agree that should the traffic signal be constructed by the City before the City received this payment, the City will have the right to use the \$6,237 as a reimbursement to the City for the costs of construction of the aforementioned traffic signal.

E. Natural Resources

Refer to Final Development Plan Documents for construction schedule regarding nearby eagle nesting sites.