

## DEVELOPMENT AGREEMENT

THIS AGREEMENT, is made and entered into this 22<sup>ND</sup> day of September 2004, by and between the CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City"; and Bas Bleu Development, LLC, a Colorado limited liability company, 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:

That portion of Lots 2 and 4, Block 3, City of Fort Collins, being located in the Northwest  $\frac{1}{4}$  of Section 12, Township 7 North, Range 69 West of the 6th P.M., in the County of Larimer, State of Colorado, which, considering the Southwesterly line of said Block 3 as bearing N.  $44^{\circ}38'26''$  W, and with all bearings contained herein relative thereto, is more particularly described by the following boundary lines:

BEGINNING at the Southeast corner of said Lot 2, Block 3; thence N  $44^{\circ}38'26''$  W, along the Northeasterly right-of-way line of Willow Street, 95.00 feet; thence N  $45^{\circ}21'34''$  E, along the centerline of a proposed Private Drive, 129.74 feet; thence 58.33 feet along the arc of a curve to the right, having a radius of 37.00 feet, a central angle of  $01^{\circ}02'15''$ , and a long-chord which bears S  $89^{\circ}28'53''$  E 52.47 feet; thence S  $44^{\circ}19'19''$  E 57.80 feet to the end of said centerline of Private Drive, said point also being on the Northwesterly right-of-way line of Pine Street; thence along said right-of-way line S  $45^{\circ}21'34''$  W 166.42 feet, more or less, to the POINT OF BEGINNING, containing 15,538 square feet (0.357 Acres $\pm$ ), more and less, and being subject to any easements, rights-of-way, or restrictions now existing or on record.

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 lands to be developed 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 Property.

NOW, THEREFORE, in consideration of the promises of the parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. General Conditions

A. The terms of this Agreement shall govern all development activities of the Developer pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, but not be limited to, the following: (1) the actual construction of improvements, (2) obtaining a permit therefor, or (3) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct improvements thereon.

B. All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, and bikepaths shall be installed as shown on the Final Development Plan Documents and in full compliance with the standards and specifications of the City on file in the office of the City Engineer at the time of approval of the utility plans relating to the specific utility, subject to a three (3) year time limitation from the date of approval of the site specific development plan. In the event that the Developer commences or performs any construction pursuant hereto after the passage of three (3) years from the date of approval of the site specific development plan, the Developer shall resubmit the utility plans to the City Engineer for reexamination. The City may then require the Developer to comply with the approved standards and specifications of the City on file in the office of the City Engineer at the time of the resubmittal.

C. No building permit for the construction of any structure within the Property shall be issued by the City until the public water lines and stubs to each lot, fire hydrants, electrical lines, sanitary sewer lines and stubs to each lot, and public streets (including curb, gutter, and pavement with at least the base course completed) serving such structure have been completed and accepted by the City. No building permits shall be issued for any structure located in excess of six hundred and sixty feet (660') from a single point of access, unless the structures contain sprinkler systems that are approved by the Poudre Fire Authority.

D. Any water lines, sanitary sewer lines, storm drainage lines, electrical lines, and/or streets described on Exhibit "A," attached hereto, shall be installed within the time and/or sequence required on Exhibit "A." If the City Engineer has determined that any water lines, sanitary sewer lines, storm drainage facilities and/or streets are required to provide service or access to other areas of the City, those facilities shall be

shown on the Final Development Plan Documents and shall be installed by the Developer within the time as established under "Special Conditions" in this document.

E. Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, and storm drainage facilities and appurtenances, and all streets, curbs, gutters, sidewalks, bikeways and other public improvements required by this Development as shown on the Final Development Plan Documents and other approved documents pertaining to this Development on file with the City.

F. Street improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all individual lot service lines (water and sewer) leading in and from the main to the property line and all electrical lines.

G. The installation of all utilities shown on the Final Development Plan Documents shall be inspected by the Engineering Department of the City and shall be subject to such department's approval. The Developer agrees to correct any deficiencies in such installations in order to meet the requirements of the plans and/or specifications applicable to such installation. In case of conflict, the Final Development Plan Documents shall supersede the standard specifications, except that if the conflicts are a result of Federal or State mandated requirements, then the Federal or State mandated requirements shall prevail.

H. All storm drainage facilities shall be so designed and constructed by the Developer as to protect downstream and adjacent properties against injury and to adequately serve the Property (and other lands as may be required, if any). The Developer shall meet or exceed the minimum requirements for storm drainage facilities as have been established by the City in its Drainage Master Plans and Design Criteria. 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 discharge of injurious storm drainage or seepage waters from the Property in a manner or quantity different from that which was historically discharged and caused by the design or construction of the storm drainage facilities, except for (1) such claims and damages as are caused by the acts or omissions of the City in maintenance of such facilities as have been accepted by the City for maintenance; (2) errors, if any, in the general concept of the City's master plans (but not to include any details of such plans, which details shall be the responsibility of the Developer); and (3) specific written or otherwise documented directives that may be given to the Developer by the City. The City agrees to give notice to the Developer of any claim made against it to which this indemnity and hold harmless agreement by the Developer could apply, and the Developer shall have the right to defend any lawsuit based on such claim and to settle any such claim provided Developer must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City first receives a notice of such claim under the Colorado Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such

failure shall constitute a release of this indemnity and hold harmless agreement as to such claim. Approval of and acceptance by the City of any storm drainage facility design or construction shall in no manner be deemed to constitute a waiver or relinquishment by the City of the aforesaid indemnification. The Developer shall engage a Colorado licensed professional engineer to design the storm drainage facilities as aforesaid and it is expressly affirmed hereby that such engagement shall be intended for the benefit of the City, and subsequent purchasers of property in the Development.

I. The Developer shall pay storm drainage basin fees in accordance with Chapter 26, Article VII of the City Code. Storm drainage improvements eligible for credit or City repayment under the provisions of Chapter 26 are described together with the estimated cost of the improvements on the attached Exhibit "B," which improvements, if applicable, shall include right-of-way, design and construction costs. See Section II.C, Special Conditions, Storm Drainage Lines and Appurtenances, for specific instructions.

J. The Developer shall provide the City Engineer with certified Record Plan Transparencies on Black Image Diazo Reverse Mylars upon completion of each phase of the construction. Utilities will not be initially accepted prior to as-built drawings being submitted to and approved by the City of Fort Collins.

K. The Developer specifically represents that to the best of its knowledge all property dedicated (both in fee simple and as easements) to the City associated with this Development (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U. S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261, and that such property as is dedicated to the City pursuant to this Development, is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any governmental authority or any third party, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Development, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the public improvements constructed on the dedicated property, except to the extent that such circumstances are the result of acts or omissions of the Developer. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with this Development. The City agrees to give notice to the Developer of any claim made

against it to which this indemnity and hold harmless agreement by the Developer could apply, and the Developer shall have the right to defend any lawsuit based on such claim and to settle any such claim provided the Developer must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City first receives a notice of such claim under the Colorado Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

L. The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Development Agreement waive) its rights as property owner. The City's rights as owner may include without limitation those rights associated with the protection of the City Property from damage, and/or the enforcement of restrictions, limitations and requirements associated with activities on the City Property by the Developer as an easement recipient.

## II. Special Conditions

### A. Water Lines

Not Applicable

### B. Sewer Lines

Not Applicable

### C. Storm Drainage Lines and Appurtenances

1. No on-site or off-site storm drainage improvements are associated with Phase 1 of this Development, and accordingly no drainage certification shall be required for this Phase. Future phases shall provide any needed drainage infrastructure for this Development and drainage certification shall be done at such time.

### D. Streets.

1. Subject to the conditions of this Agreement, the City agrees to reimburse the Developer for oversizing public street improvements along Willow Street for those portions of said street abutting the Property as shown on the Final Development Plan Documents. Reimbursement for Willow Street shall be for oversizing the street from local (access) standards to minor collector standards. Any additional oversizing or amenities not a part of the standard minor collector section are not eligible for reimbursement. The City shall make reimbursement to the Developer for the

aforesaid oversized street improvements in accordance with Section 24-112 of the Code of the City. The Developer agrees and understands that the City shall have no obligation to make reimbursement payments for street oversizing unless funds for such payments shall first have been budgeted and appropriated from the Street Oversizing Fund by the City Council; and the Developer further understands that to the extent that funds are not available for such reimbursement, the City may not, in the absence of the Developer's agreement, require the construction, at the Developer's expense, of any oversized portion of streets not reasonably necessary to offset the traffic impacts of the Development. The Developer does hereby agree to construct the aforesaid oversized street improvements with the understanding that the Developer may not be fully reimbursed by the City for the cost of such construction. The Developer further agrees to accept payment in accordance with Section 24-112 (d) of the Code of the City as full and final settlement and complete accord and satisfaction of all obligations of the City to make reimbursements to the Developer for street oversizing expenses. It is anticipated by the City that the City's reimbursement, in accordance with Section 24-112 (d), would not be less than fifty percent (50%) of the Developer's actual expenses incurred and will be calculated in accordance with the formula as set forth in Section 24-112 (d).

2. It is understood that the improvements that are to be constructed in the public right-of-way as described in this Section II(D) are "City improvements" (as defined below) and, as such, any contract for the construction of the same must be executed in writing. If the cost of such improvements exceeds the sum of Thirty Thousand Dollars (\$30,000), the contract for the construction of the same must be submitted to a competitive bidding process resulting in an award to the lowest responsible bidder; and evidence must be submitted to the City prior to the commencement of the work showing that the award was given to the lowest responsible bidder. If the cost of such improvements exceeds Fifty Thousand Dollars (\$50,000), the contract for the construction of the improvements must be insured by a performance bond or other equivalent security. For purposes of this paragraph, the term "City improvements" shall mean either (1) existing improvements owned by the City that are to be modified or reconstructed, or (2) any improvements funded in whole or in part by the City.

3. In accordance with Section 24-95 of the City Code the Developer is responsible for constructing the portion of Willow Street and Pine Street adjacent to the site prior to the issuance of any building permit. Notwithstanding the foregoing, the Developer shall have the option to postpone the design and construction of Willow Street and Pine Street to phase 2 of this Development by delivering to the City a non-expiring escrow sufficient to guarantee completion of the design and construction of the improvements necessary for Willow Street and Pine Street to meet City street design standards. The amount of said funds shall be \$ 50,000.00, which is the estimated cost to design and construct said improvements, including but not limited to any the future inlet(s), stormdrain line(s), pavement, subgrade, curb, gutter, sidewalks, crossspans, sidewalk ramps, and the street trees. Said amount shall be deposited with the City prior to the issuance of any building permit or certificate of occupancy for this Development. If after 3 years from the date that the escrow was posted the street design has not been

completed, the street improvement work has not begun, and the building is still being utilized as a theater, then the City shall have the right to utilize said escrow funds for the design and construction of the frontage improvements along Willow Street and Pine Street.

4. The parking placement and layout on Willow Street and Pine Street as shown on the Phase 2 plans is "concept only". It is agreed that public on-street parking is desired and can be placed on both streets, but no final layout or design has been agreed upon. The final parking layout and design shall be determined, reviewed and approved as a part of the Phase 2 plan approval process.

5. For Pine Street, if "head-in" parking is designed and constructed on Pine Street, the curb, gutter and parking area shall be concrete. If the drainage from this parking area cannot be designed to drain entirely to the front of the parking area, either fully or partially draining to a pan behind the parking stall, then the maintenance of said parking area shall be the responsibility of the Developer.

6. With Phase 1 of this Development, no parking on Willow Street or the west side of the building can occur. Parking in these areas is not allowed until such areas are improved in connection with Phase 2. The "head-in" parking as shown on the Phase 1 plans shall be allowed on Pine Street until such time as Phase 2 improvements are made, at which time no parking in this area shall be allowed until the improvements as shown on the Phase 2 plans are constructed. The Developer shall be responsible for the installation and maintenance of the parking stall striping on Pine Street and shall be responsible for the maintenance of the parking area on Pine Street.

7. Prior to the commencement of any construction of Phase 2 improvements or the issuance of any building permit therefore, the Developer shall submit for City review and approval site, landscape, elevation, utility plans and drainage reports addressing the design and extent of work to be done with Phase 2. The plans shall include designs for Willow Street, Pine Street and all off-site design as required by the City.

8. 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 both signing and striping related to the Developer's internal street operations and the signing and striping of any adjacent or adjoining local, collector or arterial streets that is made necessary because of the Development.

9. Following completion of all public infrastructure improvements, the Developer shall continue to have responsibility for maintenance and repair of said improvements in accordance with for LUC projects, Sections 2.2.3, 3.3.1 and 3.3.2 of the Land Use Code of the City.

#### E. Natural Resources

Not Applicable

F. Soil Amendment

In all areas associated with this Development that are to be landscaped or planted in accordance with the Final Development Plan Documents, and do not require a building permit, the soils shall be loosened and amended by the Developer in accordance with Section 3.8.21 of the Land Use Code prior to the issuance of a certificate of occupancy in this development. Completion of soil amendments shall include certification by the Developer that the work has been completed. This certification shall be submitted to the City at least two (2) weeks prior to the date of issuance of a certificate of occupancy in this Development.

G. Ground Water, Subdrains and Water Rights

1. The City shall not be responsible for, and the Developer (for itself and its successor(s) in interest) hereby agrees to indemnify and hold harmless the City against any damages or injuries sustained in the Development as a result of ground water seepage or flooding, structural damage, or other damage unless such damages or injuries are proximately caused by the City's negligent operation or maintenance of its storm drainage facilities in the Development. However, nothing herein shall be deemed a waiver by the City of its immunities, defenses, and limitations to liability under the Colorado Governmental Immunity Act (Section 24-20-101 CRS, et. seq.) or under any other law.

2. If the Development includes a subdrain system, any such subdrain system, whether located within private property or within public property such as street rights-of-way or utility or other easements, shall not be owned, operated, maintained, repaired or reconstructed by the City and it is agreed that all ownership, operation, maintenance, repair and reconstruction obligations shall be those of the Developer or the Developer's successor(s) in interest. Such subdrain system is likely to be located both upon private and public property and, to the extent that it is located on public property, all maintenance, operation, repair or reconstruction shall be conducted in such a manner that such public property shall not be damaged, or if damaged, shall, upon completion of any such project, be repaired in accordance with then existing City standards. The City shall not be responsible for, and the Developer, for itself and its successor(s) in interest, hereby agrees to indemnify and hold harmless the City against any damages or injuries sustained in the Development as the result of groundwater seepage or flooding, structural damage or other damage resulting from failure of any such subdrain system.

3. Without admitting or denying any duty to protect water rights, the Developer, for itself and its successor(s) in interest, hereby agrees to indemnify and hold harmless the City against any damages or injuries to water rights caused, directly or indirectly by the construction, establishment, maintenance or operation of the Development.



4. The City agrees to give notice to the Developer of any claim made against it to which the foregoing indemnities and hold harmless agreements by the Developer could apply, and the Developer shall have the right to defend any lawsuit based on such claim and to settle any such claim provided the Developer must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City first receives notice of such claim under the Colorado Governmental Immunity Act for the same, shall cause the foregoing indemnities and hold harmless agreements by the Developer to not apply to such claim and such failure shall constitute a release of the foregoing indemnities and hold harmless agreements as to such claim.

#### H. Hazards and Emergency Access

1. No combustible material will be allowed on the site until a permanent water system is installed by the Developer and approved by the City.

2. Prior to beginning any building construction, and throughout the build-out of this Development, the Developer shall provide and maintain at all times an accessway to said building or buildings. Such accessway shall be adequate to handle any emergency vehicles or equipment, and the accessway shall be kept open during all phases of construction. Such accessway shall be constructed to an unobstructed width of at least 20 feet with 4 inches of aggregate base course material compacted according to city standards and with an 80 foot diameter turnaround at the building end of said accessway. The turnaround is not required if an exit point is provided at the end of the accessway. Prior to the construction of said accessway, a plan for the accessway shall be submitted to and approved by the Poudre Fire Authority and City Engineer. (Three plan sets shall be submitted to the Poudre Fire Authority at 102 Remington Street for review and processing.) If such accessway is at any time deemed inadequate by the Poudre Fire Authority or City Engineer, the accessway shall be promptly brought into compliance and until such time that the accessway is brought into compliance, the City and/or the Poudre Fire Authority may issue a stop work order for all or part of the Development.

#### I. Footing and Foundation Permits

1. Notwithstanding any provision in this Agreement to the contrary, the Developer shall have the right to obtain a Footing and Foundation permit upon the installation of all underground water, sanitary sewer, and storm sewer facilities, and an emergency accessway for the Phase in which the permit is being requested. Facilities shall include but not be limited to all mains, lines, services, fire hydrants and appurtenances for the Phase as shown on the Final Development Plan Documents.

#### J. Development Construction Permit

1. The Developer shall apply for and obtain a Development Construction Permit for this Development, in accordance with Division 2.6 of the Land Use Code (or Section 29-12 of the Transitional Land Use Regulations, if applicable), prior to the Developer commencing construction. The Developer shall pay the required fees for said Permit and construction inspection, and post security to guarantee completion of the public improvements required for this Development, prior to issuance of the Development Construction Permit.

K. Maintenance and Repair Guarantees

1. The Developer agrees to provide a two-year maintenance guarantee and a five-year repair guarantee covering all errors or omissions in the design and/or construction of the public improvements required for this Development, which guarantees shall run concurrently and shall commence upon the date of completion of the public improvements and acceptance thereof by the City. More specific elements of these guarantees are noted in Exhibit "C." Security for the maintenance guarantee and the repair guarantee shall be as provided in Section 3.3.2(C) of the Land Use Code, or Section 29-14 of the Transitional Land Use Regulations, as applicable. Notwithstanding the provisions of paragraphs III (H) and (I) of this Agreement to the contrary, the obligations of the Developer pursuant to this paragraph and Exhibit "C" may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.

III. Miscellaneous

A. The Developer agrees to provide and install, at its expense, adequate barricades, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer and Traffic Engineer in accordance with the City's "Work Area Traffic Control Handbook" and shall not remove said safety devices until the construction has been completed.

B. As required pursuant to Chapter 20, Article IV of the City Code, the Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Engineer. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets

cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials.

C. The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's construction inspectors by ceasing operations when winds are of sufficient velocity to create blowing dust which, in the inspector's opinion, is hazardous to the public health and welfare.

D. The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Development Plan Documents, or any documents executed in the future that are required by the City for the approval of an amendment to a development plan, and the City may withhold (or to the extent permitted by law, revoke) such building permits and certificates of occupancy as it deems necessary to ensure performance in accordance with the terms of this Development Agreement. The processing and "routing for approval" of the various development plan documents may result in certain of said documents carrying dates of approval and/or execution that are later than the date of execution of this Development Agreement or the Memorandum Of Agreement (if any) recorded to give record notice of this Agreement. The Developer hereby waives any right to object to any such discrepancy in dates.

E. Nothing herein contained shall be construed as a waiver of any requirements of the City Code, Land Use Code, or Transitional Land Use Regulations (as applicable) and the Developer agrees to comply with all requirements of the same.

F. In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

G. All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the Fort Collins City Council, in its discretion.

H. This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

I. In the event the Developer transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding property owner shall be bound by the terms of this Agreement.

J. Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either party shall fail to perform according to the terms of this Agreement, such party may be declared in default. In the event that a party has been declared in default hereof, such defaulting party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance or; (c) avail itself of any other remedy at law or equity.

K. In the event of the default of any of the provisions hereof by either party which shall require the party not in default to commence legal or equitable action against said defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in Paragraph III.D of this Agreement.

L. Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

M. It is expressly understood and agreed by and between the parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Colorado and the City of Fort Collins, Colorado.

N. Any notice or other communication given by any party hereto to any other party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City:                    Engineering Development Review  
    City of Fort Collins  
    P.O. Box 580  
    Fort Collins, CO 80522

With a copy to: City Attorney's Office  
City of Fort Collins  
P.O. Box 580  
Fort Collins, CO 80522

If to the Developer: Tom Sutherland, Manager  
Bas Bleu Development, LLC  
812 Garfield St  
Fort Collins, Co 80524

With a copy to: Bob Brandes  
Myatt, Brandes & Gast  
323 S. College Ave  
Fort Collins, Co 80524


Notwithstanding the foregoing, if any party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity or address to which notices under this Agreement are to be sent as provided above, such party shall do so by giving the other parties to this Agreement written notice of such change.

O. When used in this Agreement, words of the masculine gender shall include the feminine and neuter gender, and when the sentence so indicates, words of the neuter gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning, and as if prepared by all parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the parties hereto pertaining to the matters addressed in this Agreement. There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.


THE CITY OF FORT COLLINS, COLORADO,  
a Municipal Corporation

By:   
\_\_\_\_\_  
City Manager

ATTEST:

  
\_\_\_\_\_  
City Clerk / Chief Deputy

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
City Engineer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

DEVELOPER:

Bas Bleu Development, LLC, a Colorado  
limited liability company

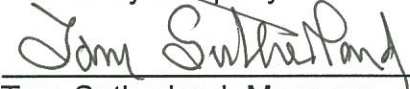
By:   
\_\_\_\_\_  
Tom Sutherland, Manager

EXHIBIT "A"

1. Schedule of electrical service installation.

Electrical lines need to be installed prior to the installation of the sidewalk, curb returns, handicap ramps, paving and landscaping. If the Developer installs any curb return, sidewalk or handicap ramp prior to the installation of electrical lines in an area that interferes with the installation of the electrical line installation, the Developer shall be responsible for the cost of removal and replacement of those items and any associated street repairs.

2. Schedule of water lines to be installed out of sequence.

Not Applicable.

3. Schedule of sanitary sewer lines to be installed out of sequence.

Not Applicable.

4. Schedule of street improvements to be installed out of sequence.

Not Applicable

5. Schedule of storm drainage improvements to be installed out of sequence.

Not Applicable.

EXHIBIT "B"

Not Applicable



## EXHIBIT "C"

### MAINTENANCE GUARANTEE:

The Developer hereby warrants and guarantees to the City, for a period of two (2) years from the date of completion and first acceptance by the City of the public improvements warranted hereunder, the full and complete maintenance and repair of the public improvements constructed for this Development. This warranty and guarantee is made in accordance with the City of Fort Collins Land Use Code and/or the Transitional Land Use Regulations, as applicable. This guarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, easements and other public properties, including, without limitation, all curbing, sidewalks, bike paths, drainage pipes, culverts, catch basins, drainage ditches and landscaping. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or city department.

The Developer shall maintain said public improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements and environmental protection requirements of the City. The Developer shall also correct and repair, or cause to be corrected and repaired, all damages to said public improvements resulting from development-related or building-related activities. In the event the Developer fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Developer. The City shall also have any other remedies available to it as authorized by this Agreement. Any damages which occurred prior to the end of said two (2) year period and which are unrepaired at the termination of said period shall remain the responsibility of the Developer.

### REPAIR GUARANTEE:

The Developer agrees to hold the City of Fort Collins, Colorado, harmless for a five (5) year period, commencing upon the date of completion and acceptance by the City of the public improvements constructed for this Development, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the Property shown on the approved plans and documents for this Development; and the Owner furthermore commits to make necessary repairs to said public improvements, to include, without limitation, the roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills or excavations.

Further, the Developer agrees that the City shall not be liable to the Developer during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Developer.

The obligations of the Developer pursuant to the "maintenance guarantee" and "repair guarantee" provisions set forth above may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.