

RECEPTION #20210020156, 2/26/2021 2:12:15 PM, 12 of 56, \$288.00

Angela Myers, Clerk & Recorder, Larimer County, CO

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Development Plan Documents. Upon completion of the Owner's construction and the City's acceptance thereof, the Owner shall submit to the Parks Department copies of its paid invoices for construction of the Parks Portion (local street). The Parks Department shall reimburse the Owner therefor, at such time as the park site is developed, which development of the park site shall be within the sole discretion of the City and the City will not pay any interests, costs or fees associated with any amount of time between when the Owner submits its paid invoices and the City chooses to develop the park site.

3. N. Timberline Road. In accordance with Section 24-95 of the Municipal Code, the Owner is responsible for constructing N. Timberline Road adjacent to the Development. Subject to the conditions of this Agreement and the Municipal Code, the City agrees to reimburse the Owner for oversizing public street improvements along N. Timberline Road for those portions of said street abutting the Property as shown on the Final Development Plan Documents. Specifically, the City shall reimburse the Owner for increasing 628.51 L.F. of the street and sidewalk on the west side of N. Timberline Road (centerline sta. 37+90.34 to sta. 44+18.85) from local access standards to four lane arterial standards, excluding the raised median.

4. E. Vine Drive. In accordance with Section 24-95 of the Municipal Code, the Owner is responsible for the design and construction of the local access portion of E. Vine Drive adjacent to the Development.

A. Emmerson Lane to Merganser Street. The Owner shall construct E. Vine Drive from Emmerson Lane to Merganser Street in accordance with the Final Development Plan Documents. Subject to the conditions of this Agreement and the Municipal Code, the City agrees to reimburse the Owner for oversizing public street improvements along E. Vine Drive for those portions of said street abutting the Property from Emmerson Lane to Merganser Street as shown on the Final Development Plan Documents. Specifically, the City shall reimburse the Owner for increasing 1,024 L.F. of street and sidewalk on the north side of E. Vine Drive (centerline sta. 12+16.80 to sta. 22+40.80) from local access standards to major collector standards.

B. Existing Box Culvert to Emmerson Lane. The City plans to replace the existing box culvert on E. Vine Drive adjacent to the Development upon its completion of the design and the appropriation of funds for construction. Therefore, notwithstanding the Owner's construction obligation for E. Vine Drive, the Owner and the City agree that in lieu of the Owner's construction of the local curb, gutter, pavement, sidewalk and parkway for 338.97 L.F. (centerline sta. 8+77.83 to sta. 12+16.80) of E. Vine Drive from the existing box culvert to Emmerson Lane (the "Deferred E. Vine Drive Improvements"), the Owner shall deliver to the City, prior to the issuance of any building permit within the Development, a cash deposit sufficient to guarantee construction of the Deferred

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E. Vine Drive Improvements. The amount of said cash deposit shall be equal to the Local Street Cost for 338.97 L.F. plus the cost to relocate the existing overhead power/utility lines underground. The Local Street Cost is the per linear foot estimate of the cost to install the local street portion of a roadway including, but is not limited to, the cost of the pavement and subgrade, curb, gutter, 4.5 feet (in width) of sidewalk, and the parkway landscaping that has been approved by the City for the year in which the deposit is made. Payment of the cash deposit by the Owner to the City in lieu of the construction of the Deferred E. Vine Drive Improvements shall satisfy the Owner's obligation for the local access portion of E. Vine Drive from the existing box culvert to Emmerson Lane.

The Deferred E. Vine Drive Improvements shall be constructed by the City at such time that the City deems the improvements to be necessary or at such time as improvements are made to adjacent portions of E. Vine Drive, whichever occurs first, at the sole discretion of the City.

Notwithstanding the provisions contained in Paragraph I.D. of this Agreement, completion and acceptance of the Deferred E. Vine Drive Improvements shall not be required as a condition of any building permit issuance for structures within the Development, provided that the Owner has completed construction of the remainder of E. Vine Drive improvements (Emmerson Lane. to Merganser Street) in accordance with the Final Development Plan Documents and further, provided that the Owner has made the payment in lieu of construction of the Deferred E. Vine Drive Improvements.

5. Improvements in BNSF Right of Way

To offset impacts from the Development, the Owner is required to construct improvements along Vine Drive, which includes improvements within BNSF Right of Way ("BNSF ROW Improvements"). BNSF refuses to enter into an agreement directly with the Owner to construct the BNSF ROW Improvements. Therefore, the Owner's improvements within BNSF Right of Way will require the City to enter into a separate, Construction & Maintenance agreement ("C&M Agreement") with BNSF that sets forth the requirements for construction and maintenance of improvements within BNSF Right of Way, the City will construct said improvements. While the City is entering into the C&M Agreement, and constructing said improvements, both the Owner and the City acknowledge that the BNSF ROW Improvement are a Owner obligation and that Owner is ultimately responsible for providing the BNSF ROW Improvements as part of the Development. The BNSF ROW Improvements generally shall include a flared end section, reinforced concrete pipe, connection to existing manhole and associated swale and roadway shoulder grading as depicted in the Final Development Plan Documents. Because the BNSF Row Improvements are ultimately the Owner's obligation, the Owner agrees to provide a payment in lieu to the City for all costs associated with the construction of the BNSF ROW Improvements as well as reimburse the City for the C&M Agreement costs, including any administrative fees, permit fees, costs for required insurance under