

**RECEPTION #20240028092, 7/10/2024 1:59:28 PM, 1 of 35, \$183.00 Electronically Recorded
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**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
TTRES CO Fort Collins Vine, LLC**

THIS DEVELOPMENT AGREEMENT (the "**Agreement**"), is made and entered into this 10th day of July 2024, by and between the CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "**City**"; and TTRES CO Fort Collins Vine, LLC, a Delaware limited liability company, operating as a foreign corporation subject to the requirements of the Colorado Secretary of State (ID# 20231145960), 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:

Lot 1, Block 1, LOCATED IN THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., City of Fort Collins, County of Larimer, State of Colorado, as further described as a portion of the plat recorded at Rec. No. 20240024906 in the real property records of the Larimer County Clerk & Recorder.

WHEREAS, the Development is known to the City as The Landing at Lemay, ID# PDP230004, and FDP230020; 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 (collectively, 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 acknowledge that Developer intends to develop the Property in multiple phases (each, a "**Phase**") as generally described herein; 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 as a whole; and

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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, all as described herein.

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 Recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference.

B. References to the City Code, Land Use Code, or other laws, regulations, or rules shall include subsequent amendments thereto or adopted laws, regulations, or rules intended to replace or otherwise supersede prior laws, regulations, or rules. By way of example, if the City were to adopt in the future a revised Land Use Code that replaces and supersedes the current Land Use Code, then the relevant section of the revised Land Use Code would apply in lieu of the Land Use Code provisions referenced herein. Notwithstanding, the foregoing language is not intended to alter or otherwise affect valid vested rights except as may be provided for in § 24-68-105, C.R.S.

C. 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.

D. All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, and bike paths 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.

E. 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, sidewalk, and pavement with at least the base course completed) serving

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such structure have been completed and accepted by the City. No building permits shall be issued for any structure within the Development 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.

F. Any water lines, sanitary sewer lines, storm drainage lines, electrical lines, and/or streets described on Exhibit A, attached hereto and incorporated herein by reference, 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 the Special Conditions section of this Agreement.

G. Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, storm drainage facilities and appurtenances, 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.

H. The street improvements described in this Agreement 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.

I. The installation of all public 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. Developer shall be responsible for obtaining any and all private/third party approvals required for the installation of any private utilities shown on the Final Development Plan Documents. The Developer agrees to correct any deficiencies in such installations in order to meet the requirements of the Final Development Plan Documents. In case of conflict, the Final Development Plan Documents shall supersede the City's 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.

J. Unless authorized by the City pursuant to law, the public right-of-way shall not be used for staging or storage of materials or equipment ("**Staging**") associated with the Development, nor shall it be used for parking by any contractors, subcontractors, or other personnel working for or hired by the Developer to construct the Development. The Developer shall find a location(s) on private property to accommodate any necessary Staging and/or parking needs associated with the completion of the Development. Information on the location(s) of these areas shall be provided to the City as a part of the Development Construction Permit application.

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K. All privately maintained streets within the Development shall be constructed in accordance with the Final Development Plan Documents. Public easements shall be provided for access, utilities, and drainage as required by the design and location of such infrastructure and as reflected in the Final Development Plan Documents. Alignment and grades on privately maintained streets and drives shall allow for safe access, ingress and egress by owners, visitors, the general public, and public safety officials and equipment, as set forth on the plat for the Property. Any private streets constructed at less than the standards set forth in the Larimer County Urban Area Street Standards ("LCUASS") will not be accepted by the City for ownership and maintenance until the streets are improved to meet LCUASS.

L. All storm drainage facilities shall be designed and constructed by the Developer so 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. No language in this Paragraph shall be construed or interpreted as establishing in any way the City's liability for any act or omission and the terms of this Paragraph solely relate to the Developer's obligation to indemnify and hold harmless the City. The City agrees to promptly 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.

M. The Developer shall pay the applicable "stormwater plant investment fee"

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in accordance with Chapter 26, Article VII of the Code of the City of Fort Collins (the "**City Code**"). This fee is included with building permit fees and shall be paid prior to the issuance of each building permit.

N. The Developer shall provide as-built drawings to the City for review and acceptance 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. Developer shall provide the City Engineer with certified Record Plan Transparencies on Black Image Diazo Reverse Mylars for acceptance prior to the issuance of the first certificate of occupancy for each Phase of the Project.

O. The Developer specifically represents that to 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.

P. 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

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constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Agreement waive) its rights as property owner. The City's rights as owner of the City Property 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.

Q. If the Developer or its contractor or any agent or representative of the Developer causes damage to any public infrastructure (including without limitation, any surface pavers, flagstones, or other stone or concrete surfaces, planters, street and decorative lights, or canopies) such damage shall be promptly repaired with the same kind, quality, color, serviceability and material composition aspects as was possessed by the infrastructure immediately prior to incurring such damage, unless otherwise expressly agreed to by the City in writing.

II. Special Conditions

A. Water Lines

Not applicable.

B. Sewer Lines

Not applicable.

C. Storm Drainage Lines and Appurtenances

1. The Developer agrees to provide and maintain erosion and sediment control improvements as shown on the Final Development Plan Documents until all disturbed areas in and adjacent to this Development's construction activities are stabilized. The Developer shall also be required to post security ("**Security**") in the amount shown in the Final Development Plan Documents prior to beginning construction to guarantee the proper installation and maintenance of the improvements described therein, and upon completion of construction, removal of the erosion and sediment control measures shown on the Final Development Plan Documents. Said Security shall be made in accordance with the criteria set forth in the City's Stormwater Criteria Manual ("**Criteria**") referenced at City Code § 26-500. When said Security is a letter of credit or a bond the Developer shall replace the Security no later than thirty (30) days before its expiration date. If the Security posted by the Developer is a letter of credit, and such letter has not been replaced or renewed within thirty (30) days of its expiration date, the City may elect to draw and hold the funds as it sees fit. The City shall have the option in any case to also withhold building permits and certificates of occupancy, as stated in Paragraph III.D of this Agreement, as it deems necessary in order to ensure that at all times the Developer is maintaining appropriate levels of security to guarantee completion of the erosion and sediment control improvements. If, at any time, the Developer fails to abide by the erosion control provisions of the Final Development Plan Documents or the erosion control provisions of the Criteria after receiving notice of the same or an

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emergency situation exists which would reasonably require immediate mitigation measures, then, in either event, and notwithstanding any provisions contained in Paragraph III.J to the contrary, the City may enter upon the Property for the purpose of making such improvements and undertaking such activities as may be necessary to ensure that the provisions of the Final Development Plan Documents and the Criteria are properly enforced. The City may apply such portion of the Security as may be necessary to pay all costs incurred by the City in undertaking the administration, construction, and/or installation of the erosion control measures required by said plans and the Criteria. In addition, subject to Section I.N above, Developer shall have the option to request building permits and certificates of occupancy for certain improvements prior to the completion of all Phases as long as Developer installs, maintains, and ultimately removes the erosion and sediment control measures as and when required by the City throughout the build-out of this Development. When identified, any violations of applicable laws, regulations, or policies regarding erosion and sediment control are to be corrected immediately per Part I.D.8 of the Developer's Colorado Discharge Permit System ("CDPS") Permit for Stormwater Discharges Associated with Construction Activity as required by the Colorado Department of Public Health and Environment ("CDPHE") and City Code § 26-498, Water Quality Control. If no CDPS Permit is required, violations of any applicable laws, regulations, or policies regarding erosion and sediment control are to be corrected immediately as required by the CDPHE and the Environmental Protection Agency ("EPA") in accordance with the Clean Water Act, and City Code § 26-498, Water Quality Control. Failure to correct any violation shall permit the City to issue a "stop work order" preventing the Developer from continuing construction of any kind within the Development until fully corrected. Upon stabilization of the disturbed areas, and upon the request of the Developer, the City will confirm that the Property is stabilized from potential erosion and sediment control discharges from construction activities and that all temporary erosion and sediment control measures used by the Developer are removed. In confirmation by the City that the Property is stabilized, any remaining portions of the Security that is associated with the adequate maintenance of erosion and sediment control improvements shall be returned to the Developer.

2. All on-site and off-site storm drainage improvements associated with this Development, as shown on the Final Development Plan Documents, shall be completed by the Developer in accordance with said Final Development Plan Documents prior to the issuance any certificate of occupancy. Completion of improvements shall include the certification by a professional engineer licensed in Colorado that the drainage facilities which serve this Development have been constructed in conformance with said Final Development Plan Documents. Said certification shall be submitted to the City for review and acceptance at least two (2) weeks prior to the issuance of any certificate of occupancy in this Development.

3. For private permanent water quality improvements located on private property associated with this Development (the "**Private Water Quality Improvements**"), on-site inspection by a City Inspector is required to verify the proper installation of such improvements at different stages of construction as specified in the City's Overall Site and Drainage Certification form. In the event of non-compliance, the City Inspector shall

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have the option to withhold building permits and certificates of occupancy. In addition, the City may avail itself of any other legal remedy that may be provided in the City Code, the Fort Collins Land Use Code (“**Land Use Code**”) or this Agreement, as deemed necessary in order to ensure that the Developer or its successor(s) in interest properly installs and maintains the Private Water Quality Improvements as specified in the Final Development Plan Documents.

4. The Developer or its successor(s) in interest shall be responsible for maintaining the structural integrity and operational function of all drainage facilities constructed as part of this Development including, but not limited to, all drainage facilities and water quality features, extended detention water quality basins, bioretention facilities and permeable pavement systems. These drainage facilities and features must be maintained in their original operational integrity throughout the build-out of this Development, following the completion of the construction of said facilities and features, and after acceptance of said facilities and features as certified to the City. If at any time following construction and certification (as required pursuant to Paragraph II.C.2 above) or during the construction of additional structures or lots within this Development, the City determines that said drainage facilities and features no longer comply with the Final Development Plan Documents, the City may give written notice to the Developer of all items that do not comply with the Final Development Plan Documents and request the restoration of the drainage facilities and features back to the function, standards and specifications designed and specified in the Final Development Plan Documents. Failure to maintain the structural integrity and operational function of said drainage facilities and features following certification will result in the withholding of the issuance of additional building permits and/or certificates of occupancy and, in addition, the City may avail itself of any other legal remedy that may be provided in the City Code, the Land Use Code and/or this Agreement until said drainage facilities and water quality features are repaired and restored to the physical characteristics, operational function and structural integrity originally specified in the Final Development Plan Documents approved by the City for this Development.

5. All lots must be graded to drain in the configuration shown on the Final Development Plan Documents. For this reason, the following requirements shall be followed for all buildings/structures on all lots:

- a. Prior to the issuance of a certificate of occupancy for any lot or building the Developer shall provide the City with certification that the lot has been graded in compliance with the Final Development Plan Documents. This grading certification shall demonstrate that the lot and building finish floor elevation has been built in accordance with the elevation specified on the Final Development Plan Documents. The certification shall also show that the minimum floor elevation or minimum opening elevation for any building constructed is in compliance with the minimum elevation as required on the Final Development Plan Documents. The certification shall demonstrate as well that any minor swales adjacent to the building or on the lot have been graded correctly and in accordance with the grades shown on the Final Development Plan Documents. The certification shall also show that the elevations of all corners of the lot are in accordance with the

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elevations shown on the Final Development Plan Documents. Said certification shall be completed by a Colorado licensed professional engineer and shall be submitted to the City for review and acceptance at least two (2) weeks prior to the requested date of issuance of the applicable certificate of occupancy.

- b. The Developer shall obtain the City's prior approval of any changes from the Final Development Plan Documents in grade elevations and/or storm drainage facility configuration that occur as a result of the construction of buildings and/or development of lots, whether by the Developer or others. The City reserves the right to withhold the issuance of building permits and certificates of occupancy for this Development until the City has deemed such changes as being acceptable for the safe and efficient delivery of storm drainage water.
- c. 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 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.
- d. Developer's drainage design for this Development includes evacuation of storm drainage runoff out of the water quality and detention facilities and into the drainage outfall system in a reasonable amount of time. The water quality and detention facilities have been designed to discharge stormwater runoff from frequent storms over a forty (40) hour period through a small diameter outlet. Under the intended operation of the water quality and detention pond, there will not be standing water in these facilities after more than forty-eight (48) hours after the end of a rainfall event. If after construction and acceptance of the detention facilities associated with this Development, surfacing or standing water conditions persist in these facilities, and if such conditions are beyond what can be expected in accordance with the approved stormwater design, the Developer shall promptly, upon such discovery, install an adequate de-watering system in the detention facilities. Such a system shall be reviewed and approved by the City prior to installation.
- e. Developer's drainage design for this Development includes evacuation of storm drainage runoff through bioretention facilities and into the drainage outfall system in a reasonable amount of time. These bioretention facilities have been designed to discharge stormwater runoff from frequent storms over a twelve (12) hour period. Under the intended operation of these bioretention facilities, there will not be standing water in the facility after more than twenty-four (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

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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.

- f. 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. Onsite Cordova Road Costs. A portion of Cordova Road will be located within the boundaries of the Property ("**Onsite Cordova Road**"). Developer shall make a "cash-in-lieu" contribution ("**Onsite Contribution**") to the City for the future construction of the Onsite Cordova Road. The Onsite Contribution shall be determined based on the linear frontage multiplied by the yearly local portion dollar amount that's adopted when the fee is paid. The length of linear frontage for the Onsite Cordova Road improvements is 233.5 linear feet. This payment must be made prior to the issuance of the first building permit for the Property.

2. Offsite Cordova Road Costs. Developer shall make a "cash-in-lieu" contribution ("**Offsite Contribution**") to the City for the future construction of the portions of Cordova Road that will be located outside the boundaries of the Property ("**Offsite Cordova Road**"). The Offsite Contribution shall include separate construction cost and right-of-way ("**ROW**") acquisition cost components, as follows:

- a. The construction cost component of the Offsite Contribution ("**Construction Cost Component**") shall be determined based on the linear frontage multiplied by the yearly local portion dollar amount that's adopted when the fee is paid. The length of linear frontage for the Offsite Cordova Road improvements is 495.0 linear feet. This payment must be made prior to the issuance of the first building permit for the Property. Cordova Road shall be constructed in accordance with the City's "Two Lane Arterial" standard and in accordance with plans to be approved by the City.
- b. The ROW acquisition cost component of the Offsite Contribution ("**ROW Cost Component**") shall be based upon the actual cost incurred by the City to acquire the ROW for the Offsite Cordova Road in accordance with applicable law, not to exceed Five Hundred Thousand Dollars (\$500,000.00) ("**ROW Acquisition Cost Cap**"). The City shall be responsible for acquiring the necessary ROW. The City may seek authorization to acquire the ROW through the use of eminent domain, and may also choose to defer ROW acquisition to an undetermined future date. The City and other parties (excluding Developer) will be responsible for ROW acquisition costs through the use of eminent domain that exceed the ROW Acquisition Cost Cap. Prior to the Developer's completion of construction of the

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final Phase of the Development, the City will either (i) complete the acquisition of the necessary ROW, or (ii) determine that the ROW acquisition costs exceed the ROW Acquisition Cost Cap. If the ROW acquisition is completed and actual costs (staff time, appraisal costs, land purchase price, and fees incidental to closing) are less than the ROW Acquisition Cost Cap, then the ROW Cost Component shall be equal to the actual cost of the ROW acquisition, and the remaining balance of the Offsite Contribution shall be refunded to Developer in a timely manner. If the ROW acquisition is not completed by the completion of the final Phase of the Development and Developer timely removes all encumbrances and other uses under its control that interfere with the City's acquisition or use of the Offsite Cordova Road ROW dedication parcel, including all activities associated with the provided license to stage and access the project for construction, the ROW Cost Component shall not exceed the ROW Acquisition Cost Cap. In either instance, the Offsite Contribution must be paid within ten (10) business days of the date the Development Construction Permit ("**DCP**") for the Property is issued. If this payment is not made by the end of the tenth business day following the DCP issuance, then the DCP shall be void without further action required of the City, and the Developer will forfeit the permit application fee and all amounts paid for other components of the Project.

Notwithstanding the foregoing, if the City is able to acquire fee title to the entirety of the Offsite Cordova Road prior to the completion of the final Phase of the Development ("**Offsite Cordova Road Acquisition Deadline**"), Developer shall be responsible for constructing approximately 495.0 linear feet of the Offsite Cordova Road using the Offsite Contribution. Both the Offsite Cordova Road and Onsite Cordova Road, including the portion of such road running from the intersection of Duff Drive up to and including the intersection with Link Lane (collectively, "**Full Cordova Road**") shall be fully constructed by Developer. If the City is unable to obtain fee title to the Offsite Cordova Road by the Offsite Cordova Road Acquisition Deadline, the City will retain the Offsite Contribution that Developer paid to the City contemporaneously with the DCP issuance until such time as it acquires the Full Cordova Road, at which point it will apply those funds to complete the Full Cordova Road.

3. Cordova Road Extension. The Final Development Plan Documents do not include constructing the Full Cordova Road. However, if 1) the entirety of the Offsite Cordova Road ROW is acquired by the City, and 2) the Developer has not completed construction of the final Phase in the Development, the Developer agrees to amend the Final Development Plan Documents to require the construction of the Full Cordova Road and related changes to stormwater improvements. If the Developer is obligated to construct the Full Cordova Road, the following provisions shall apply:

- a. Subject to the conditions of this Agreement, the City agrees to reimburse the Developer for oversizing the Full Cordova Road as shown on the Final Development Plan Documents ("**Oversizing Reimbursement**"). The Oversizing Reimbursement shall be equal to the cost to upgrade the streets from local access

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standards to the City's "Two Lane Arterial" standard and for the cost of acquiring the ROW necessary to accommodate the expansion of such street and sidewalk ("**Road Oversizing**"). The City shall pay the Oversizing Reimbursement to Developer in the manner provided in and in accordance with City Code Section 24-112. As identified in the City Code, the City shall not participate in the cost of transportation improvements required solely for the special use and benefit of the Development as may be required by the transportation impact study for the Development or by the City Traffic Engineer.

- b. The Developer acknowledges that the City shall have no obligation to pay the Oversizing Reimbursement unless funds for such payments are budgeted and appropriated from the transportation improvements fund by the City Council. The Developer does hereby agree to complete the Road Oversizing for the Full Cordova Road on the terms and conditions set forth herein 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 of the Oversizing Reimbursement in accordance with City Code Section 24-112(d) as full and final settlement and complete accord and satisfaction of all obligations of the City to make reimbursements to the Developer for construction of the Road Oversizing.
- c. It is understood that the improvements to be constructed in the public right-of-way described in this Section II.D are City Improvements. 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. Any contract for the construction of City Improvements must be executed in writing. If the estimated cost of the City Improvements exceeds Sixty Thousand Dollars (\$60,000.00), the contract for construction of the City Improvements must be subject to a competitive bidding process resulting in an award to the lowest responsible bidder. 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 the City Improvements exceeds One Hundred Thousand Dollars (\$100,000.00), the contract for construction of the City Improvements must be insured by a performance bond or other equivalent security.
- d. In the event the Developer does not construct the Full Cordova Road as part of its Development, the Developer, for itself and its successor(s) in interest, does hereby agree the City shall not be obligated to construct the Full Cordova Road, and hereby indemnifies and holds harmless the City from any and all claims that might arise, directly or indirectly, as a result of the City not constructing the Full Cordova Road, resulting from the Developer's inability to provide for the dedication and construction of the Full Cordova Road as shown on the approved Project Development Plan ("**PDP**"). The Developer, for itself and its successor(s) in interest understands that the inability to complete construction of the Full Cordova Road may result in perceived concerns that are including but not limited to increased response time for emergency services for community members in the

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Development, increased maintenance obligations for privately maintained streets located outside of City limits, and noise impacts to future community members in the Development at such time that the Full Cordova Road is built. The Developer, for itself and its successors and assigns, hereby agrees to pay all costs and fees incurred by the City in defense of any claims arising from these concerns, including, but without limitation, attorney's fees. The Developer further agrees to indemnify and hold the City harmless for any damages or awards arising from or relation to any such claim or civil action.

4. North Lemay Avenue ROW Costs. Pursuant to City Code Section 24-95(c), the Developer agrees to reimburse the City for the City's costs associated with constructing the local access portion of North Lemay Avenue adjacent to the Property ("**Local Access Contribution**"). The Local Access Contribution is calculated based on the linear frontage multiplied by the yearly local portion dollar amount that's adopted when the fee is paid. The length of linear frontage for North Lemay Avenue improvements is 933.0 linear feet. Payment shall be made to the City prior to the issuance of the first building permit for the Development.

5. Duff Drive ROW Costs. The Developer acknowledges there is a Reimbursement Agreement dated January 16, 2019 between the developer of the adjacent Capstone Cottages, Capstone Collegiate Communities – Fort Collins LLC project and the City, which attaches a reimbursement payment obligation on the Property for a portion of the costs for improvements constructed on the northern portion of Duff Drive abutting the Property ("**Duff Drive Contribution**") prior to any building permits being issued for the Development. The Developer agrees to provide a payment of Two Hundred Sixty-Four Thousand Seven Hundred Eight and 18/100 Dollars (\$264,708.18) to the City, pursuant to that prior Reimbursement Agreement, to satisfy the Developer's Duff Drive Contribution and to satisfy the associated local improvement reimbursement obligations attached to the Property. This payment must be made at the earlier of (a) the date that is fourteen (14) calendar days after the first Memorandum of Agreement for the purchase of any portion of the Offsite Cordova Road ROW is fully executed and recorded in the public records of Larimer County, and (b) prior to the date the first building permit is issued for the Development.

6. Street Standards. The pavement design and construction standards for privately maintained streets shall be the same as the standards for public streets, as set forth in the Land Use Code. Grades, alignments, and widths may be modified in accordance with accepted design principles, only on the condition that safe access is maintained for all future owners, visitors, the general public, and public safety officials and equipment. Such modifications from public street standards may be made only if approved by the City Engineer. Easements for access, utilities, and drainage shall be dedicated to the public and clearly shown on the plat.

7. Encroachments. As identified in Article III, Chapter 23 of the City Code (the "**Encroachment Regulations**") no encroachments or obstructions are allowed within the public rights-of-way without a permit ("**Encroachment Permit**"). The Developer

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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 ROW the Developer shall apply for, meet any requirements or conditions, and obtain an approved Encroachment Permit prior to the installation of the encroachment(s).

- a. All requirements and conditions as identified on the Encroachment Permit and identified in the Encroachment Regulations shall be met and maintained both prior to 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) to 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 the Encroachment Regulations.
- 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 ROW.
- d. Only public utilities (defined as utilities owned and maintained by the City and gas utilities owned by Xcel Energy) and utilities installed by utility providers that have a franchise agreement with the City are allowed to be installed and located within public ROW and public easements. Private utilities are allowed to cross public ROW and easements provided that the crossing is perpendicular to the public ROW 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 serving the Property which are found within public ROW or easements not meeting the above criteria shall be required to be removed by the Developer at the Developer's expense, or the Developer shall apply for and obtain an approved Encroachment Permit. All sleeves across the ROW 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

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that, as with any regulation, the Encroachment Regulations are subject to change and Developer agrees to abide by any changes to the Encroachment Regulations.

8. Traffic Improvements. 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. Maintenance. Following completion of all City Improvements, the Developer shall continue to have responsibility for maintenance and repair of said improvements in accordance with Sections 2.2.3, 3.3.1, and 3.3.2 of the Land Use Code of the City.

E. Natural Resources

Prior to the commencement of grading or other construction on the Property, burrowing owl surveys will be conducted by a qualified wildlife biologist according to Colorado Parks and Wildlife Division recommended protocols. If the site is cleared of burrowing owls, then prairie dogs inhabiting the site will be removed according to methods approved by the City Environmental Planner. No grading may occur until the removal is verified through an onsite inspection by the City Environmental Planner

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 within each applicable Phase shall be loosened and amended by the Developer in accordance with Land Use Code § 3.8.21 prior to the issuance of a Certificate of Occupancy in the applicable Phase of this Development, and as otherwise required as set forth herein or as set forth on Exhibit A. In all areas associated with this Development that are to be landscaped or planted in accordance with the Final Development Plan Documents, and which do require a building permit, the completion of soil amendments shall include certification by the Developer that the work has been completed in accordance with City Code §12-132. This certification shall be submitted to the City for review and acceptance at least two (2) weeks prior to the date of issuance of any certificate of occupancy for the applicable Phase of this Development.

G. Ground Water, Subdrains and Water Rights

1. 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 resulting from failure of any subdrain system build pursuant to the Final Development Plan Documents unless such damages or injuries are proximately caused by the City's negligent operation or maintenance of the City's storm drainage facilities in

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the Development. No language in this Paragraph shall be construed or interpreted as establishing in any way the City's liability for any act or omission and the terms of this Paragraph solely relate to the Developer's obligation to indemnify and hold harmless the City.

2. If the Development includes a subdrain system, any such subdrain system, whether located within private property or within public property such as street ROW 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 contained herein 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 stockpiled combustible material will be allowed on the Property 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 a reasonable accessway to each building. Such accessway shall be adequate to handle any emergency vehicles or equipment, and the accessway shall be kept open during all

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phases of construction. Such accessway shall be constructed to an unobstructed width of at least twenty (20) feet with four (4) inches of aggregate base course material compacted according to City standards and with a one hundred (100) 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. A digital plan set shall be submitted to the Poudre Fire Authority 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

Notwithstanding any provision in this Agreement to the contrary, the Developer shall have the right to obtain Footing and Foundation permits 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, 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 City Improvements required for this Development as described herein, prior to issuance of the Development Construction Permit.

2. Prior to the issuance of a Development Construction Permit the Developer shall obtain the approval of a Construction Management Plan from the City. The Construction Management Plan shall define the management of the construction of the Development, establishing the timing, duration, location, delivery and storage of materials and idle equipment; the timing, duration, and location of parking; and the timing, duration, and location for the operation of equipment. The Construction Management Plan shall define the impacts (if any) to public rights-of-way, which would then be subject to the Encroachment Regulations as indicated in Paragraph II.D.6 of this Agreement.

K. Maintenance and Repair Guarantees

The Developer agrees to provide a two (2) year maintenance guarantee and a five-year repair guarantee covering all errors or omissions in the design and/or construction of the City Improvements, which guarantees shall run concurrently and shall commence upon the date of completion of the City Improvements and acceptance thereof

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by the City. More specific elements of these guarantees are noted in Exhibit B, attached hereto and incorporated herein by reference. Security for the maintenance guarantee and the repair guarantee shall be as provided in Section 3.3.2(C) of the Land Use Code. Notwithstanding the provisions of Paragraphs III. H. and I. of this Agreement to the contrary, the obligations of the Developer pursuant to this Paragraph II.K. and Exhibit B 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.

L. Forestry

1. A Street Tree Permit must be obtained from the City Forester pursuant to City Code Chapter 27, Art. II, Division 2, before any trees or shrubs noted on the Final Development Plan Documents are planted, pruned, or removed from any public ROW or City property. This includes areas between the sidewalk and curb, medians, and other City property. The City may withhold any certificate of occupancy for the Development if the Developer fails to obtain a Street Tree Permit until the Developer obtains a Street Tree Permit and the planting, pruning, and removal of trees or shrubs on or from the public ROW or City property is in compliance with the Street Tree Permit and Final Development Plan Documents. In addition to withholding any certificate of occupancy, the City may avail itself of any other legal remedy provided by law for the failure to obtain a Street Tree Permit. As a condition of the Street Tree Permit and of this Agreement, at least one (1) week prior to planting any trees the Developer shall: (1) allow City Forestry Division staff to inspect the proposed planting sites to review compliance with the Final Development Plan Documents and applicable regulations; and (2) allow City Forestry Division staff to inspect and approve, at the nursery if possible, all trees to be planted. City Forestry has the right to reject and/or substitute any trees that do not meet the Forestry Divisions standards.

2. All tree pruning and removal on the Property must be done by an arborist licensed by the City of Fort Collins and the name of such arborist shall be provided to the City Forestry Division prior to any pruning or removal commencing. A list of licensed arborists is maintained by the City Forestry Division and is available upon request or at fcgov.com/forestry. The use of heavy construction equipment, including but not limited to excavators, backhoes, and bulldozers to remove trees is not allowed without prior Forestry Division written permission.

M. Park Planning and Development

1. The Developer has agreed to confirm the exact location of the sidewalk connection from the Development to Lemay Avenue with the City Parks department prior to construction. Any irrigation lines, infrastructure, related equipment, or landscaping that is disturbed, destroyed, or moved shall be promptly replaced or repaired at no cost to the City.

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2. The Developer and its successor(s) in interest shall, in perpetuity, be responsible for irrigation and maintenance of public ROW landscaping along Cordova Road, as depicted in approved irrigation and landscape plans incorporated in the Final Development Plan Documents.

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 ROW and 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 of the Development 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 ROW free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders 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 ROW. 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 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 ROW 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 that, 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 Agreement. The processing and routing for approval of the various Final Development Plan Documents may result in certain of said documents carrying dates of approval or execution that are later than the

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date of execution 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 or the Land Use Code and the Developer agrees to comply with all requirements of the same.

F. In the event the City does not immediately pursue damages for any breach of this Agreement, no such delay or inaction shall be held or construed to be a waiver of any current or 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, including any subsequent replatting of all or a portion of the Property. This Agreement shall also 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, pursuant to Section II.K, and is thereby divested of all or partial equitable and legal interest in the Property, as provided in the City's written assignment terms, 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 the subject 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.

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K. In the event of the default of any of the provisions hereof by the Developer which shall require the City to commence legal or equitable action against the Developer, the Developer shall be liable to the City for its 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 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: TTRES CO Fort Collins Vine, LLC
111 Monument Circle, Suite 1500
Indianapolis, IN 46204
Attn: Brian Southworth

With a copy to: TTRES CO Fort Collins Vine, LLC
111 Monument Circle, Suite 1500
Indianapolis, IN 46204
Attn: Dana S. Grimes, Esq.

With a copy to: Western-Southern Life Assurance Company
400 Broadway
Cincinnati, OH 45202

If to the Owner: TTRES CO Fort Collins Vine, LLC

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111 Monument Circle, Suite 1500
Indianapolis, IN 46204
Attn: Josh Purvis

With a copy to: TTRES CO Fort Collins Vine, LLC
111 Monument Circle, Suite 1500
Indianapolis, IN 46204
Attn: Dana S. Grimes, Esq.

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 all genders, and when the sentence so indicates, gendered words 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.

P. Lender Acknowledgment

1. The City acknowledges (i) that it has been informed by Western-Southern Life Assurance Company, an Ohio corporation (the "**Lender**"), that the Lender intends to extend a loan (the "**Loan**") to the Developer to finance the costs of constructing and equipping the Development.

2. The City acknowledges that, pursuant to Paragraph III.N of this Agreement, the Developer has requested that copies of all notices given by the City to the Developer shall also be given to the Lender at the address set forth therein. The City further acknowledges that the Lender has a right (but not the obligation) to remedy or cure any default by the Developer under this Agreement on behalf of the Developer and that the City will accept such remedy or cure if properly carried out by the Lender on behalf of the Developer.

3. Nothing contained herein shall be construed to impose any liability or obligation of the City to the Lender, except as expressly provided in this Paragraph III.P.

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Q. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or under any other law.

The remainder of this page is intentionally left blank.
Signatures begin on the following page.

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THE CITY OF FORT COLLINS, COLORADO,
a Municipal Corporation

DocuSigned by:
Kelly DiMartino
By: _____
0B06B5074B09400...

DocuSigned by:
Kelly DiMartino, City Manager



ATTEST:

DocuSigned by:
Heather L Walls

034E242B0309420...
Heather L Walls
Deputy City Clerk

APPROVED AS TO CONTENT:

DocuSigned by:
Tim Dinger

0F6AA2700B004EA...
Tim Dinger
Civil Engineer II

APPROVED AS TO FORM:

DocuSigned by:
Cyril Vidergar

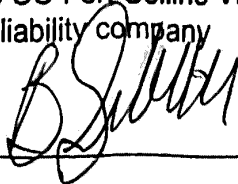
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Cyril Vidergar
Assistant City Attorney

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OWNER/DEVELOPER:

TTRES CO Fort Collins Vine, LLC, a Delaware limited liability company

By: 

Printed: Brian Southworth

Title: Authorized Rep

Date: 6/26/2024

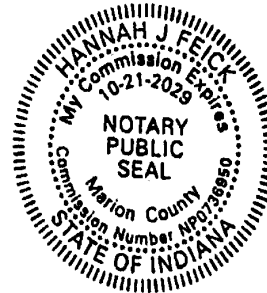
STATE OF Indiana)
) ss.
COUNTY OF MARION)

The foregoing instrument was acknowledged before me this 26 day of JUNE, 2024, by BRIAN SOUTHWORTH as the AUTH. REP. TTRES CO Fort Collins Vine, LLC, a Delaware limited liability company.


Notary Public

My Commission Expires: 10-21-29

My County of Residence: MARION



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Tina Harris, Clerk & Recorder, Larimer County, CO**

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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.

6. Schedule of street improvements installation.

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.

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EXHIBIT B

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. 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 Developer 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

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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.

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EXHIBIT C
STANDARD OPERATING PROCEDURES (SOPs)

A. Purpose

In order for physical stormwater Best Management Practices (BMPs) to be effective, proper maintenance is essential. Maintenance includes both routinely scheduled activities, as well as non-routine repairs that may be required after large storms, or as a result of other unforeseen problems. Standard Operating Procedures (SOPs) clearly identify BMP maintenance responsibility. BMP maintenance is the responsibility of the entity owning the BMP.

Identifying who is responsible for maintenance of BMPs and ensuring that an adequate budget is allocated for maintenance is critical to the long-term success of BMPs. For this project, the privately owned BMPs shown in Section B below are to be maintained by the Developer (or successor in interest which may be a property owner, or Homeowners Association (HOA), or property manager). Developer acknowledges and accepts the obligation to keep maintenance records and provide these records to the City upon request.

B. Site-Specific SOPs

The following stormwater facilities contained within this development are subject to SOP requirements:

- Directly Connected Downspouts
- Perforated Subdrain
- Storm Drain Lines
- Dry Extended Detention
- Sedimentation Sump
- Pre-Sedimentation Forebay
- Bioswale
- Bioretention
- Vegetated and/or Cobble Swale
- Underground Detention

The location of said facilities can be found on the Landing at Lemay Utility Plans and Landscape Plans. Required inspection and specific maintenance procedures and frequencies are outlined in the following pages. General maintenance requirements and activities, as well as BMP-specific constraints and considerations shall follow the guidelines outlined in Volume 3 of the Urban Drainage and Flood Control District (UDFCD) Urban Storm Drainage Criteria Manual.

SOP Maintenance Summary Table

Stormwater Facility / BMP	Ownership / Responsibility	UDFCD Maintenance Reference
Directly Connected Downspouts	Private	N/A
Perforated Subdrain	Private	N/A

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Storm Drain Lines	Private	Follow guidelines for <i>Storm Sewer System Cleaning (Chapter 5, Source Control BMP Fact Sheet S-12)</i>
Dry Extended Detention	Private	Follow guidelines for <i>Extended Detention Basins (Chapter 6, Section 7.0)</i>
Sedimentation Sump	Private	N/A
Pre-Sedimentation Forebay	Private	Follow guidelines for <i>Pre-Sedimentation Forebay (Chapter 6, Section 9.0)</i>
Bioretention/Bioswale	Private	Follow guidelines for <i>Bioretention (Chapter 6, Section 5.0)</i>
Vegetated and/or Cobble Swale	Private	Follow guidelines for <i>Grass Buffers and Swales (Chapter 6, Section 4.0)</i> . Take note of native vegetation. Also follow recommendations on <i>Landscape Plans and Specifications</i> .
Underground Detention	Private	Follow guidelines for <i>Underground BMPs (Chapter 6, Section 12.0)</i>

Directly Connected Downspouts

Many of the downspouts connect directly to the storm drain system. The following SOP generally applies to all direct downspout connections.

This SOP can more specifically apply to those which drain directly to the reservoir areas beneath the Modular Block Pavers. At each of these connections, the downspout discharges to a perforated drain basin. The drain basins discharge directly to the MBP reservoir. The drain basins are designed to prevent debris and sediment from entering the MBP reservoir area. Debris and sediment compromise the functionality and effectiveness of the system.

Routine Maintenance Table for Directly Connected Downspouts

Required Action	Maintenance Objective	Frequency of Action
Inspections	Inspect the downspout and basin to ensure the system functions as it was designed. Repair or replace damaged downspouts as needed.	Routine
Sediment, Debris and Litter removal	Remove debris and litter from the basin. Remove sediment from the sump.	Routine – just before annual storm seasons (i.e., April/May); at the end of storm season after leaves have fallen; and following significant rainfall events.

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Perforated Subdrain

The perforated subdrain system storm drain outfall at the bottom of the Low Impact Development (LID) system is critical to the overall function of the system subbase. As such, special maintenance has been identified to ensure these perforated drain systems perform as they were designed.

Perforated subdrains leading away from the LID system is designed to provide faster release of water when accumulation occurs under the LID system. Outflow should be seen into downstream storm boxes. If not seen it is recommended that the system is inspected using a video camera to verify no clogging has occurred.

Perforated subdrains leading toward the LID system are designed to provide an opportunity for infiltration. These subdrains may lead to a drywell where additional infiltration capacity is available to reduce runoff per the stated LID goals adopted by the City.

Routine Maintenance Table

Required Action	Maintenance Objective	Frequency of Action
Inspection	Use a video camera to inspect the condition of the perforated drain pipes. Cleanout pipes as needed. If the integrity of the pipe is compromised, then repair the damaged section(s).	Every two to five years.
Inspection	Where accessible, expose inlet and/or outlet of perforated pipe and watch for water inflow and/or outflow.	Minimum Annually

Storm Drain Lines Maintenance Plan

Storm drain lines are subject to sedimentation as well as tree roots clogging the flow path or altering the pipe slope. Maintenance is important to ensure these storm drain systems perform as they were designed.

Routine Maintenance Table

Required Action	Maintenance Objective	Frequency of Action
Inspection	Use a video camera to inspect the condition of the storm drain pipes. Cleanout pipes as needed. If the integrity of the pipe is compromised, then repair the damaged section(s).	Every two to five years.

Dry Extended Detention Basin

Routine Maintenance Table (Summary from Chapter 6 of UDFCD)

Required Action	Maintenance Objective	Frequency of Action
Lawn mowing and Lawn care	Occasional mowing to limit unwanted vegetation. Maintain irrigated turf grass as 2 to 4 inches tall and non-irrigated native turf grasses at 4 to 6 inches.	Routine – Depending on aesthetic requirements.

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Sediment, Debris and Litter removal	Remove sediment, debris and litter from the entire pond to minimize outlet clogging and improve aesthetics.	Routine – Including just before annual storm seasons (that is, April and May), end of storm season after leaves have fallen, and following significant rainfall events.
Major Pond Sediment removal	Remove accumulated sediment from the bottom of the basin.	Non-routine – Performed when sediment accumulation occupies 20 percent of the WQCV. This may vary considerably. Inspections required every 10 years, non-routine maintenance performed at that time if necessary. Typical is 10 – 20 years if no construction activities take place in the tributary watershed.
Inspections	Inspect basins to ensure that the basin continues to function as initially intended. Examine the outlet for clogging, erosion, slumping, excessive sedimentation levels, overgrowth, embankment and spillway integrity, and damage to any structural element.	Routine – Annual inspection of hydraulic and structural facilities. Also check for obvious problems during routine maintenance visits, especially for plugging of outlets.

Sedimentation Sump Maintenance Plan

The sedimentation sumps located upstream of drywells or infiltration galleries are intended to reduce the accumulation of sediment and debris in underground systems. These sumps have a capacity provided for accumulated sediment that must be maintained. These sumps are located within manholes or inlets as shown on the utility plans and provided with snouts to reduce the hydrocarbon load dispersed into the undergrounds system that could compromise the functionality.

Routine Maintenance Table

Required Action	Maintenance Objective	Frequency of Action
Inspections and Debris Removal	Hydrocarbons and sediment will need to be removed regularly from the inlet. Sediment should be removed prior to the depth of the water reducing below 2' from the top of the sediment buildup to the snout bottom. The layer of hydrocarbons should be removed from the inlet prior to accumulation beyond half of the height of the snout. A vacuum truck should be used to remove all sediment, hydrocarbons and residual water from the inlet. Remaining sediment may be removed manually and disposed of in a legal manner. The sump should then be filled with clean water.	Routine – Inspect at least every other year or as conditions apply.
	The Snout apparatus should be replaced as age deterioration occurs and prior to failure. The seal should be checked regularly to ensure hydrocarbons are not bypassing the device.	

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Pre-Sedimentation Forebay

Routine Maintenance Table (Summary from Chapter 6 of UDFCD)

Required Action	Maintenance Objective	Frequency of Action
Debris and Litter removal	Remove debris and litter as needed. Floating debris can clog the overflow structure	Routine – Including just before annual storm seasons (that is, April and May), end of storm season after leaves have fallen, and following significant rainfall events.
Forebay Sediment removal	Remove accumulated sediment from the bottom of the basin before it becomes a significant source of pollutants for the remainder of the pond. Inspect to ensure that sediment does not result in excessive algae growth or mosquito production.	Non-routine – Performed when sediment accumulation appears to result in excessive algae growth or mosquito production. This may vary considerably, but expect to do this every approximately every 4 years, as necessary per inspection if no construction activities take place in the tributary watershed. More often if they do.
Inspections	Inspect to ensure that the facility continues to function as initially intended. Examine the outlet for clogging, erosion, slumping, excessive sedimentation levels, overgrowth, embankment integrity and damage to any structural element.	Routine – Annual inspection of hydraulic and structural facilities. Also check for obvious problems during routine maintenance visits, especially for plugging of outlets. Note the amount of sediment in the forebay and look for debris at the outlet structure.

Bioretention

Routine Maintenance Table (Summary from Chapter 6 of UDFCD)

Required Action	Maintenance Objective	Frequency of Action
Lawn mowing and vegetative care	Occasional mowing of grasses and weed removal to limit unwanted vegetation. Maintain irrigated turf grass as 2 to 4 inches tall and non-irrigated native turf grasses at 4 to 6 inches.	Routine – Depending on aesthetic requirements, planting scheme and cover. Weeds should be removed before they flower.
Debris and litter removal and snow stockpiling	Remove debris and litter from bioretention area and upstream concrete forebay to minimize clogging of the sand media. Remove debris and litter from the pond area and outlet orifice plate to minimize clogging. Remove debris and litter from curb channel and sidewalk chase outlets adjacent to pond if applicable to minimize clogging. Avoid stockpiling snow in the bioretention area to minimize clogging from sediment accumulation.	Routine – Including just before annual storm seasons and after snow season (April or May), end of storm season after leaves have fallen, and following significant rainfall events.

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Inspections	Inspect detention area to determine if the sand media is allowing acceptable infiltration. If standing water persists for more than 24 hours after storm runoff has ceased, clogging should be further investigated and remedied.	Routine – Biannual inspection of the hydraulic performance.
Growing media replacement	Restore infiltration capacity of bioretention facilities.	Non-routine – Performed when clogging is due to the migration of sediments deep into the pore spaces of the media. The frequency of replacement will depend on site-specific pollutant loading characteristics.

Grass Buffers and Swales

Routine Maintenance Table (Summary from Section 4.0, Chapter 6 of UDFCD)

Required Action	Maintenance Objective	Frequency of Action
Lawn mowing and Lawn care	Maintain irrigated grass at 2 to 4 inches tall and non-irrigated native grass at 6 to 8 inches tall. Collect cuttings and dispose of them offsite or use a mulching mower.	Routine – As needed.
Aeration	Reduces soil compaction and helps water move into the root zone.	Routine – at least once per year when ground is not frozen. Heavy traffic areas may require more frequent aeration.
Fertilizer, Herbicide and Pesticide Application	Use minimum amount of biodegradable nontoxic fertilizers and herbicides needed to establish and maintain dense vegetation cover that is reasonably free of weeds.	Frequency of application should be on an as-needed basis only and should reduce following the establishment of vegetation.
Debris and Litter removal	Remove litter and debris to prevent rill and gully development. Keep the swale area clean for aesthetic reasons, which also reduces the potential for floatables being flushed downstream.	Routine – As needed by inspection, but no less than two times per year.
Sediment removal	Remove accumulated sediment near the buffer interface with impervious area. Replace the grass areas damaged in the process.	Routine – As needed by inspection. Estimate the need to remove sediment from 3 to 10 percent of total length of interface per year, as determined by annual inspection. Expect turf replacement for the interface ever 10-20 years.
Inspections	Check the grass for uniformity of cover, sediment accumulation in the swale, and near culverts.	Routine – Inspect vegetation at least twice annually.

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Underground Detention - StormTech Subsurface Stormwater Management Chambers

Subsurface stormwater management chambers are located under the parking lot by Detention Pond 1 as shown in the Final Development Plan documents. The primary purpose of this system is to provide detention quantity storage. However, the chambers and associated Isolator Row provide additional water quality and low-impact development benefits as well.

An important component of any stormwater BMP is proper inspection and maintenance. The StormTech Isolator Row is a patented technique to improve Total Suspended Solids (TSS) removal and provide easy access for inspection and maintenance.

Routine Maintenance Table for Subsurface Stormwater Management Chambers

Required Action	Maintenance Objective	Frequency of Action
Inspection of Isolator Row	Inspect the Isolator Row for sediment. Using a flashlight and stadia rod, measure depth of sediment and record on maintenance log. If sediment is at, or above, a 1.5" depth Isolator Row must be cleaned. Reference StormTech Operations & Maintenance Guidelines for further information.	Inspect immediately following construction and every 6 months thereafter during the first year of operation. Adjust the inspection interval based on previous observations of sediment accumulation and high water elevations.
Cleaning of Isolator Row	Use a JetVac process with a fixed culvert cleaning nozzle and a rear facing spread of 45" or more. Apply multiple passes of JetVac until backflush water is clean. Vacuum structure sump as required. Reference StormTech Operations & Maintenance Guidelines for further information.	If sediment is at, or above, a 1.5" depth Isolator Row must be cleaned.
Inspection of Upstream and Downstream Structures	Inspect and clean all basins, manholes, and associated structures upstream and immediately downstream of the system.	Follow same schedule as Isolator Row inspections, or more frequently, if desired.