

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
DILLON COMPANIES, LLC

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into this 17th day of August 2023, by and between the CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City"; and DILLON COMPANIES, LLC, a Kansas limited liability company, hereinafter referred to as the "Developer."

WITNESSETH:

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

Lot 1, Lot 2 and Lot 4 of K-Mart Plaza and Lot 2 of Extension of K-Mart Plaza, located in Section 23, Township 7 North, Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado.

WHEREAS, the Development is known to the City as King Soopers 146 – Midtown Gardens Marketplace, ID# PDP200012/FDP210001; and

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

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

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

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. 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.

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

D. 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 such structure have been completed and accepted by the City. No building permits shall be issued for any structure located in excess of six hundred and sixty feet (660') from a single point of access, unless the structures contain sprinkler systems that are approved by the Poudre Fire Authority.

E. 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 "Special Conditions" in this Agreement.

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

G. 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.

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

I. 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.

J. 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 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.

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

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

M. 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.

N. The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this 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.

O. If the Developer or contractor or any agent or representative thereof 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 damaged, 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 a security deposit in the amount shown in the Final Development Plan Documents prior to beginning construction to guarantee the proper installation and maintenance and, upon completion, removal of the erosion and sediment control measures shown on the Final Development Plan Documents. Said security deposit(s) shall be made in accordance with the criteria set forth in the *Stormwater Criteria Manual* ("Criteria") referenced at City Code § 26-500. When said security deposit(s) is a letter of credit or a bond the Developer shall replace the security no later than 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 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 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 said plans and the Criteria are properly enforced. The City may apply such portion of the security deposit(s) 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, the City shall have the option to 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 the Developer installs, maintains, and ultimately removes the erosion and sediment control measures 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 prevent the Developer from building in any future phases 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 deposit that is associated with the adequate maintenance of erosion and sediment control improvements shall be returned.

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 at least two 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 "Overall Site and Drainage Certification" form. In the event of non-compliance, the City Inspector shall have the option to withhold building permits and/or certificates of occupancy. 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 Development Agreement, as deemed necessary in order to ensure that the Developer properly installs and maintains the Private Water Quality Improvements as specified in the Final Development Plan Documents.

4. The Developer 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/or permeable pavement systems. These drainage facilities and/or 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 and/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 must 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 Development 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. It is important that all lots 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:

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 and or the building has been graded correctly. This grading certification shall demonstrate that the lot or 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 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 at least two weeks prior to the requested date of issuance of the applicable certificate of occupancy.

6. 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 houses 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.

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

D. Streets

1. Subject to the conditions of this Agreement, the City agrees to reimburse the Developer for oversizing public street improvements along College Avenue for those portions of said street abutting the Property as shown on the Final Development Plan Documents. Reimbursement for College Avenue shall be for the difference of increasing the sidewalk width from the existing seven (7) foot width to ten (10) feet. The ten-foot sidewalk will accommodate both bicycle and pedestrian traffic. The City shall make reimbursement to the Developer for the aforesaid oversized street improvements 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 required by the transportation impact study for the Development, or by the City Traffic Engineer. The

Developer acknowledges that the City shall have no obligation to make reimbursement payments for street oversizing unless funds for such payments are budgeted and appropriated from the transportation improvements fund by the City Council. The Developer does hereby agree to construct the aforesaid oversized street improvements with the understanding that the Developer may not be fully reimbursed by the City for the cost of such construction. The Developer further agrees to accept payment in accordance with 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 street oversizing expenses.

2. It is understood that the improvements that are to be constructed in the public right-of-way as described in this Section II.D are "City improvements" (as defined below) and, as such, any contract for the construction of the same must be executed in writing. If the cost of such improvements exceeds the sum of Sixty Thousand Dollars (\$60,000), the contract for the construction of the same must be submitted to a competitive bidding process resulting in an award to the lowest responsible bidder; and evidence must be submitted to the City prior to the commencement of the work showing that the award was given to the lowest responsible bidder. If the cost of such improvements exceeds One Hundred Thousand Dollars (\$100,000), the contract for the construction of the improvements must be insured by a performance bond or other equivalent security. For purposes of this Paragraph, the term "City improvements" shall mean either (1) existing improvements owned by the City that are to be modified or reconstructed, or (2) any improvements funded in whole or in part by the City.

3. The traffic study for the Development shows that impacts from the Development resulted in the failure to meet acceptable vehicular level of service at the intersection of College Avenue and Drake Road (the "Intersection"), as required in Section 3.7.3(D) of the Land Use Code. It was further determined that the construction of an eastbound Drake Road right turn lane to southbound College Avenue ("Drake Road Right Turn Lane") would result in the Intersection meeting acceptable vehicular level of service. To mitigate the level of service at the Intersection, the Developer would normally have responsibility to construct the Drake Road Right Turn Lane; however, both the City and the Developer acknowledge that in lieu of constructing such improvements, the Developer will pay to the City, prior to issuance of any building permit for the Development, the sum of \$243,300.00 (the "Payment"), which the City has determined is the cost to construct the Drake Road Right Turn Lane at the Intersection. The City agrees that the Developer in providing the Payment, will satisfy its obligation to construct the Drake Road Right Turn Lane, resulting in acceptable vehicular level of service at the Intersection, in accordance with Section 3.7.3(E)(1)(a)2 of the Land Use Code. The City shall use the Payment only for costs of the design and construction of the Drake Road Right Turn Lane.

If the Payment is made by the Developer after the year 2023, the Developer agrees to pay to the City the Payment plus an additional amount to be calculated as described below to recognize the effect of inflation, which additional amount shall be increased each year until Payment is made to the City. Upon receipt of the Payment and any additional amount required under this Subsection to adjust for inflation, the Developer's obligation

to pay its share of the Drake Road Right Turn Lane in conjunction with this Development shall be satisfied.

The inflation factor (Inf. Fac.) for each year's increase in the amount of the fee shall be calculated using the construction cost index for Denver as published in the Engineering News Record (ENR) for September 2023, as the base index (I-base) and the same index published in the ENR in the month preceding payment (I-year of payment). The formula for calculating said inflation factors shall be as follows:

$$\text{Inf. Fac.} = \frac{(\text{I-year of payment}) - (\text{I-base})}{(\text{I-base})}$$

The amount to be added to the fee to compensate for inflation shall be equal to the amount of the fee times the inflation factor. Said amounts added to compensate for inflation shall not reduce the total Payment amount due.

Any interest earned by the City as a result of said Payment shall belong to the City.

4. In accordance with Section 24-95 of the City Code the Developer is responsible for constructing the portion of Drake Road adjacent to the site prior to the issuance of the first building permit. Notwithstanding the foregoing, both the City and the Developer acknowledge that in lieu of constructing the Drake Road median improvements, the Developer will pay to the City a cash deposit sufficient to guarantee completion of the construction of the improvements. The amount of said funds shall be the estimated cost of the pavement, subgrade and medians within the roadway of Drake Road as shown in the Final Development Plan Documents which are not to be constructed at this time. The estimate shall be prepared by the Developer and approved by the City, plus an additional 25% of the estimate to cover any contingencies and unexpected costs. Said amount shall be deposited with the City prior to the issuance of any building permit for this Development.

The improvements to Drake Road shall be constructed at such time that the City deems the improvements to be necessary or at such time as improvements are made to adjacent portions of Drake Road, whichever shall first occur.

Any interest earned by the City on this deposit shall belong to the City.

5. The City has an identified capital improvement project that will construct ultimate improvements to Drake Road along the south side of the Development ("Drake Capital Project"). The Developer agrees to design and construct the ultimate improvements of the Drake Capital Project. The Drake Capital Project design shall be incorporated into the Final Development Plan documents.

Subject to the conditions of this Agreement, the City agrees to reimburse the Developer for design of the Drake Capital Project improvements and for oversizing public street improvements along Drake Road for those portions of said street abutting the Property

as shown on the Final Development Plan Documents. Reimbursement for Drake Road shall be for the difference of increasing the sidewalk width from the local access standard of four and a half (4.5) feet width to ten (10) feet. The ten-foot sidewalk will accommodate both bicycle and pedestrian traffic. The City shall make reimbursement to the Developer for the aforesaid oversized street improvements 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 required by the transportation impact study for the Development, or by the City Traffic Engineer. The Developer acknowledges that the City shall have no obligation to make reimbursement payments for street oversizing unless funds for such payments are budgeted and appropriated from the transportation improvements fund by the City Council. The Developer does hereby agree to construct the aforesaid oversized street improvements with the understanding that the Developer may not be fully reimbursed by the City for the cost of such construction. The Developer further agrees to accept payment in accordance with 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 street oversizing expenses.

6. The pavement design and construction standards for privately maintained streets shall be the same as the standards for public streets. 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. 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 understands and acknowledges that if the Final Development Plan Documents now or in the future, through an amendment process, include any encroachments or obstructions in the public rights-of-way the Developer shall apply for, meet any requirements or conditions, and obtain an approved Encroachment Permit 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 owner or to the lessee (with the property owner's consent) of the property to which the encroachment is adjacent or is benefited 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 right-of-way.
- d. Only public utilities (defined as utilities owned and maintained by the City and gas utilities owned by Xcel Energy) or utility providers that have a franchise agreement with the City are allowed to be installed and located within public rights-of-way and public easements. Private utilities are allowed to cross public rights-of-way and easements provided that the crossing is perpendicular to the public right-of-way or easement, that sleeves are provided for the crossing in accordance with City standards, encroachment permits for such crossing are obtained, and the utility is registered with the utility locate center. Any private utilities found within public rights-of-way or easements not meeting the above criteria serving the Property shall be required to be removed by the Developer at the Developer's expense or the Developer must apply for and obtain an approved Encroachment Permit. All sleeves across the right-of-way and public easements shall be designed and installed in accordance with City standards then in effect.
- e. If there is any conflict between this provision and the Encroachment Regulations, then the Encroachment Regulations will control. The Developer acknowledges that, as with any regulation, the Encroachment Regulations are subject to change and Developer agrees to abide by any changes to the Encroachment Regulations.

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

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

E. Natural Resources

Not applicable.

F. Soil Amendment

In all areas associated with this Development that are to be landscaped or planted in accordance with the Final Development Plan Documents, and do not require a building permit, the soils shall be loosened and amended by the Developer in accordance with Section 3.8.21 of the Land Use Code prior to the issuance of a Certificate of Occupancy in this Development. In all areas associated with this Development that are to be landscaped or planted in accordance with the Final Development Plan Documents, and 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 Section 12-132 of the City Code. This certification shall be submitted to the City at least two (2) weeks prior to the date of issuance of any certificate of occupancy in 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 unless such damages or injuries are proximately caused by the City's negligent operation or maintenance of the City's storm drainage facilities in 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 rights-of-way or utility or other easements, shall not be owned, operated, maintained, repaired or reconstructed by the City and it is agreed that all ownership, operation, maintenance, repair and reconstruction obligations shall be those of the Developer or the Developer's successor(s) in interest. Such subdrain system is likely to be located upon both 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 in Paragraph II.G 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 phases of construction. Such accessway shall be constructed to an unobstructed width of at least 20 feet with 4 inches of aggregate base course material compacted according to City standards and with a 100-foot diameter turnaround at the building end of said accessway; provided, however, that the turnaround shall not be 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. Digital plan sets shall be submitted to the Poudre Fire Authority at 102 Remington Street for review and processing. If such accessway is at any time deemed inadequate by the Poudre Fire Authority or City Engineer, the accessway shall be promptly brought into compliance and until such time that the accessway is brought into compliance, the City and/or the Poudre Fire Authority may issue a stop work order for all or part of the Development.

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 public improvements required for this Development, 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.7 of this Agreement.

3. Prior to issuance of the Development Construction Permit, Developer shall execute an amendment acceptable to the City to the "Shared Parking and Access Easement Deed and Agreement" dated May 29, 2014, between Owner and the City, Larimer County Clerk & Recorder Reception #20140048657, and such amendment shall accomplish the following:

a. Modify the BRT Easement Tract, as such term is defined in the Shared Parking and Access Easement Deed and Agreement as depicted and legally described in Exhibit D (attached hereto), and to include an additional property depicted on Exhibit E (attached hereto) in the legal description of the BRT Easement Tract; and

b. Expand the allowable number of parking spaces within the BRT Easement Tract by adding 34 new spaces, resulting in a new total of ninety-four (94) parking spaces in the BRT Easement Tract.

K. 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 under either of the following circumstances:

1. Upon the installation of all underground water, sanitary sewer, and storm sewer facilities, and the emergency accessway for the Property (the "Required Improvements"). The Required Improvements shall include but not be limited to all mains, lines, services, fire hydrants and appurtenances for the site as shown on the Final Development Plan Documents; or

2. Upon the installation of only those Required Improvements deemed necessary or desirable to issue the Footing and Foundation permit as determined in the sole discretion of the City after discussion with the Developer prior to issuance of the Development Construction Permit. Should the City allow the Developer to install certain Required Improvements after issuance of the Footing and Foundation permit, the remaining Required Improvements that must be installed by the Developer and the timing for such installation shall be memorialized in the Development Construction Permit. The Developer agrees to comply with the Development Construction Permit with regards to the installation and timing of the remaining Required Improvements.

L. Maintenance and Repair Guarantees

The Developer agrees to provide a two-year maintenance guarantee and a five-year repair guarantee covering all errors or omissions in the design and/or construction of the public improvements required for this Development, which guarantees shall run concurrently and shall commence upon the date of completion of the public improvements and acceptance thereof by the City. More specific elements of these guarantees are noted in Exhibit 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 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.

M. 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 noted on the Final Development Plan Documents are planted or pruned on, or removed from, any public right-of-way 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 right-of-way 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 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. Existing and new street trees must continue to be watered at a minimum of 40 gallons per week during all construction activities in temperatures above 40 degrees using irrigation or hauled water sources. If street trees are damaged or die due to lack of water during construction activities, the developer will be charged the value of the trees as per appraisal by City Forestry Division Staff.

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.

3. During construction, prior to either Development Construction Permit issuance or of any demolition, grading, excavation, or site work commencing on the Property, whichever occurs earlier, tree protection must be installed around all trees that are shown to be preserved and protected on the Final Development Plan Documents and an arborist licensed by the City of Fort Collins must provide written confirmation to the City that such tree protection has been installed. Required tree protection measures are set forth in Land Use Code Section 3.2.1(G) and include, but are not limited to, the requirement that a minimum four (4) foot high barrier be erected no closer than six (6) feet from the trunk or one-half (½) the length to the drip line (i.e. the canopy edge), whichever is greater.

4. Prior to landscape work commencing on the Property, the Developer shall schedule a meeting between City Forestry Division staff and the landscapers who will perform the work.

5. Tree protection must be maintained throughout the duration of construction activities on the Property. At any time during construction, and upon City Forestry Division written notice that tree protection is not adequate for one or more trees, the Developer shall cease construction activities adjacent to such tree or trees until required tree protection measures are in place to the satisfaction of the City Forestry Division.

N. Transfort

1. In accordance with Section 3.6.5 of the Fort Collins Land Use Code, the Developer is responsible for construction and installation of bus stops and the associated passenger amenities as described in the Final Development Plan Documents and the City of Fort Collins Bus Stop Design Standards & Guidelines. Accordingly, the Developer shall 1) construct the concrete pad and bus pull-out for the bus stop as described in the Final Development Plan Documents, adjacent to the site on Drake Street and 2) coordinate with Transfort staff the acquisition and installation of the bus stop shelter and applicable passenger amenities as described in the City of Fort Collins Bus Stop Design Standards & Guidelines in effect at the time of the development construction activities. The Developer will acquire and install the applicable passenger amenities prior to the final Certificate of Occupancy issuance for the project Property.

2. Upon inspection and acceptance of the bus stop by the City, such bus stop shall become the property of the City and the City shall be responsible for all maintenance. As City property, the City, in its sole discretion and at its own cost, shall have the right to upgrade, relocate, or remove any or all portions of the bus stop. All passenger amenity improvements shall be the property of the City and the City shall be responsible for all maintenance. As City property, the City, in its sole discretion and at its

own cost, shall have the right to upgrade, relocate, or remove any or all portions of the passenger amenities.

O. Private Access Agreements

To meet the transportation level of service requirements under the Fort Collins Land Use Code (the "Standards") for the Development, Developer has entered into that certain Reciprocal Easement Agreement dated August 22nd, 2022, and an Easement and Access Agreement dated August 22nd, 2022, which have been or will be recorded in the real property records of the Clerk and Recorder of Larimer County, Colorado (the "Access Agreements"). Developer, for itself, its successors and its assigns, and any subsequent owner of the Development, agrees not to terminate the Access Agreements or to modify the Access Agreements in a manner that would cause the Development not to comply with the applicable Standards, without the prior written consent of the City.

III. Miscellaneous

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

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

C. The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's construction inspectors by ceasing operations

when winds are of sufficient velocity to create blowing dust 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 development plan documents may result in certain of said documents carrying dates of approval and/or execution that are later than the date of execution of this 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 waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

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

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

J. Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either party shall fail to perform according to the terms

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

K. In the event of the default of any of the provisions hereof by 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 Paragraph III.D of this Agreement.

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

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

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

- | | |
|----------------------|--|
| If to the City: | Engineering Development Review
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522 |
| With a copy to: | City Attorney's Office
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522 |
| If to the Developer: | Dillon Companies, LLC (King Soopers)
c/o Kevin McKenzie
65 Tejon St
Denver, CO 80223 |
| With a copy to: | The Kroger Co.
c/o Jennifer Gothard |

1014 Vine Street
Cincinnati, OH 45202

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

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

P. 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 CITY OF FORT COLLINS, COLORADO,
a Municipal Corporation

By: _____ DocuSigned by: *Kelly DiMartino*
Kelly DiMartino, City Manager



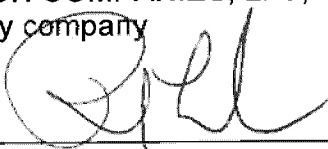
ATTEST: _____ DocuSigned by: *Rita R. Knoll*
City Clerk

APPROVED AS TO CONTENT: _____ DocuSigned by: *Dave Betley*
City Engineer

APPROVED AS TO FORM: _____ DocuSigned by: *Aaron A. Quinn*
Assistant City Attorney

DocuSign Envelope ID: 56DD73EC-0194-44C4-BD1C-9949602FDD26

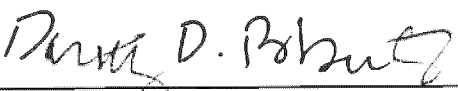
DEVELOPER:
DILLON COMPANIES, LLC, a Kansas limited liability company

By: 

Its: **Rick J. Landrum**
Vice President



ATTEST:

By: 
Dorothy D. Roberts, Assistant Secretary

STATE OF Ohio)
) ss.
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 23rd day of February, 2023, by Rick J. Landrum as Vice President of Dillon Companies, LLC, a Kansas limited liability company.


Notary Public

My Commission Expires: August 9, 2027

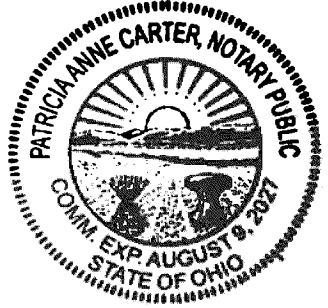


EXHIBIT A

1. Schedule of electrical service installation.

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

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

Not Applicable.

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

Not Applicable.

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

Not Applicable

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

Not Applicable.

EXHIBIT B

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

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.

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 (SOP's) 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 property owner, Homeowners Association (HOA), or property manager.

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
- Sedimentation Sump
- Underground Detention

The location of said facilities can be found on the **Midtown Gardens Marketplace** 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
Storm Drain Lines	Private	Follow guidelines for <i>Storm Sewer System Cleaning</i> (Chapter 5, Source Control BMP Fact Sheet S-12)
Sedimentation Sump	Private	N/A
Underground Detention	Private	Follow guidelines for <i>Underground BMPs</i> (Chapter 6, Section 12.0)

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.

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.

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	<p>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.</p> <p>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.</p>	Routine – Inspect at least every other year or as conditions apply.

Underground Detention - StormTech Subsurface Stormwater Management Chambers

Subsurface stormwater management chambers are located under the parking lot on the east side of the site. 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.

Exhibit D

page 1

**LEGAL DESCRIPTION
SHARED PARKING EASEMENT**

A SHARED PARKING EASEMENT OVER PART OF TRACT 2, K-MART PLAZA PLAT, RECORDED AT BOOK K PAGE 3 RECORDED IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE, LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, SAID EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 2;

THENCE N89°27'52"W, A DISTANCE OF 119.21 FEET ON THE SOUTH LINE OF SAID TRACT 2;

THENCE N00°32'08"E, A DISTANCE OF 16.62 FEET TO THE PROPOSED NORTH RIGHT-OF-WAY LINE OF DRAKE ROAD AND POINT OF BEGINNING;

THENCE S81°27'51"W, A DISTANCE OF 44.12 FEET ON SAID PROPOSED NORTH RIGHT-OF-WAY LINE TO AN ANGLE POINT THEREIN;

THENCE N89°31'52"W, A DISTANCE OF 249.71 FEET CONTINUING ON SAID PROPOSED NORTH RIGHT-OF-WAY LINE TO THE EAST LINE OF A TRACT DEEDED TO THE CITY OF FORT COLLINS AT RECEPTION NO. 20140048656;

THENCE ON SAID EAST LINE FOR THE FOLLOWING THREE (3) COURSE;

1. THENCE N01°41'18"E, A DISTANCE OF 19.83 FEET;
2. THENCE N88°54'47"W, A DISTANCE OF 7.28 FEET;
3. THENCE N01°22'06"E, A DISTANCE OF 173.39 FEET;

THENCE S88°39'54"E, A DISTANCE OF 33.02 FEET;

THENCE S00°04'39"E, A DISTANCE OF 91.71 FEET;

THENCE S89°28'09"E, A DISTANCE OF 262.80 FEET;

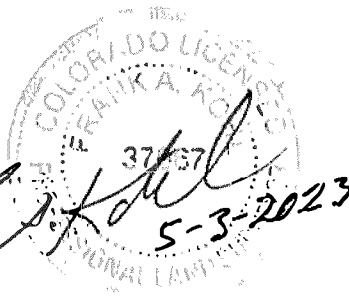
THENCE S00°01'32"W, A DISTANCE OF 93.89 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 33,065 SQUARE FEET OR 0.759 ACRES.

BASIS OF BEARING: THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, IS ASSUMED TO BEAR NORTH 00°22'28" EAST, A DISTANCE OF 2640.62 FEET, MONUMENTED AT THE SOUTH END BY A 2-5" ALUMINUM PIPE WITH 3" ALUMINUM CAP IN A RANGE BOX STAMPED LS 17495, 1991 AND MONUMENTED AT THE NORTH END BY A 2.5" ALUMINUM CAP IN A RANGE BOX, STAMPED LS 17495, 1995, WITH ALL OTHER BEARINGS REFERENCED THERETO.

EXHIBIT D—page 2 IS ATTACHED HERETO AND IS ONLY INTENDED TO DEPICT EXHIBIT D—page 1 - LEGAL DESCRIPTION. IN THE EVENT THAT EXHIBIT D—page 1 CONTAINS AN AMBIGUITY, EXHIBIT D—page 2 MAY BE USED TO RESOLVE SAID AMBIGUITY.

PREPARED FOR AND ON BEHALF OF GALLOWAY
BY FRANK A. KOHL, PLS# 37067



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LEGEND



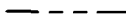
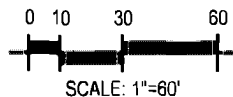
-  ALIQUOT CORNER (AS DESCRIBED)
 -  SHARED PARKING EASEMENT
 -  PLSS ALIQUOT LINE
- ALL LINEAL UNITS ARE US SURVEY FEET

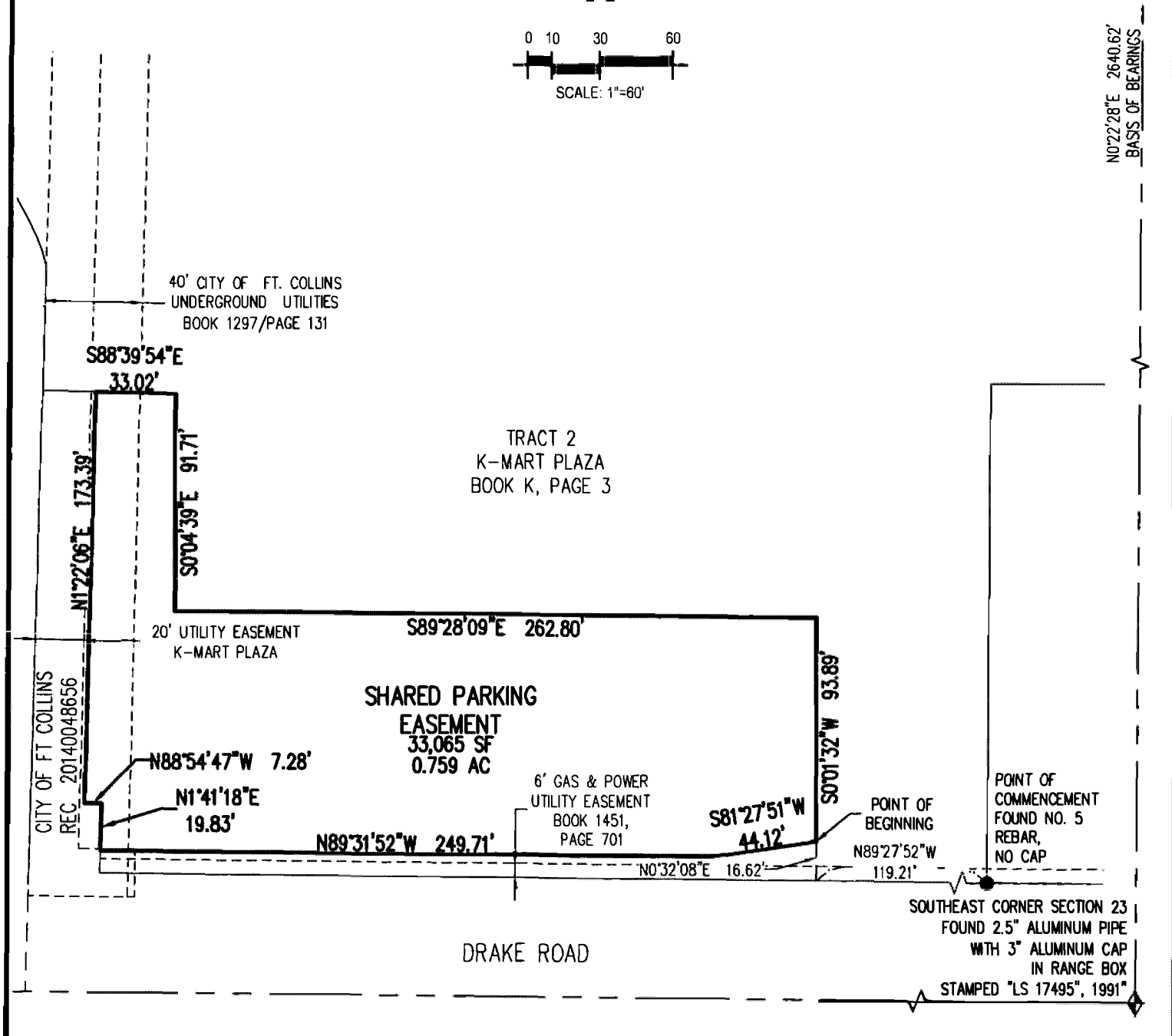
EXHIBIT D

page 2



EAST QUARTER CORNER,
 SECTION 23, T. 7 N., R. 69 W.
 FOUND 2.5" ALUMINUM CAP
 IN RANGE BOX STAMPED "LS 17495" 1995

N0°22'28"E 2640.62'
 BASIS OF BEARINGS



PART OF TRACT 2, K-MART PLAZA, LOCATED
 IN THE SOUTHEAST QUARTER OF SECTION 23
 T. 7 N., R. 69 W. OF THE 6TH P.M. FORT COLLINS, LARIMER COUTY, CO

SHARED PARKING EASEMENT EXHIBIT

Project No:	KSS000018.02
Drawn By:	AN
Checked By:	FAK
Date:	5/3/2023



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 Johnstown, CO 80534
 970 800 3300 • GallowayUS.com

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Exhibit E
page 1

LEGAL DESCRIPTION
SHARED PARKING EASEMENT

A SHARED PARKING EASEMENT OVER PART OF LOT 2, EXTENSION OF K-MART PLAZA PLAT, RECORDED AT BOOK 5, PAGE 4 AND PART OF TRACT 2, K-MART PLAZA PLAT, RECORDED AT BOOK K, PAGE 3 AND PART OF A TRACT DEEDED TO DILLION COMPANY INC., RECORDED AT RECEPTION NO. 20140048658, ALL RECORDED IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE, ALL LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, SAID EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;

THENCE S01°22'03"W, A DISTANCE OF 87.39 FEET ON THE WEST LINE OF SAID LOT 2;

THENCE S88°37'57"E, A DISTANCE OF 16.96 FEET, MEASURED PERPENDICULAR TO SAID WEST LINE, TO THE POINT OF BEGINNING;

THENCE S88°40'35"E, A DISTANCE OF 15.50 FEET;

THENCE S01°19'25"W, A DISTANCE OF 415.00 FEET;

THENCE N88°40'35"W, A DISTANCE OF 15.50 FEET;

THENCE N01°19'25"E, A DISTANCE OF 415.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 6,432 SQUARE FEET OR 0.148 ACRES.

BASIS OF BEARING: THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, IS ASSUMED TO BEAR NORTH 00°22'28" EAST, A DISTANCE OF 2640.62 FEET, MONUMENTED AT THE SOUTH END BY A 2-5" ALUMINUM PIPE WITH 3" ALUMINUM CAP IN A RANGE BOX STAMPED LS 17495, 1991 AND MONUMENTED AT THE NORTH END BY A 2.5" ALUMINUM CAP IN A RANGE BOX, STAMPED LS 17495, 1995, WITH ALL OTHER BEARINGS REFERENCED THERETO.

EXHIBIT E - page 2 IS ATTACHED HERETO AND IS ONLY INTENDED TO DEPICT EXHIBIT E-page 1 - LEGAL DESCRIPTION. IN THE EVENT THAT EXHIBIT E-page 1 CONTAINS AN AMBIGUITY, EXHIBIT E-page 2 MAY BE USED TO RESOLVE SAID AMBIGUITY.

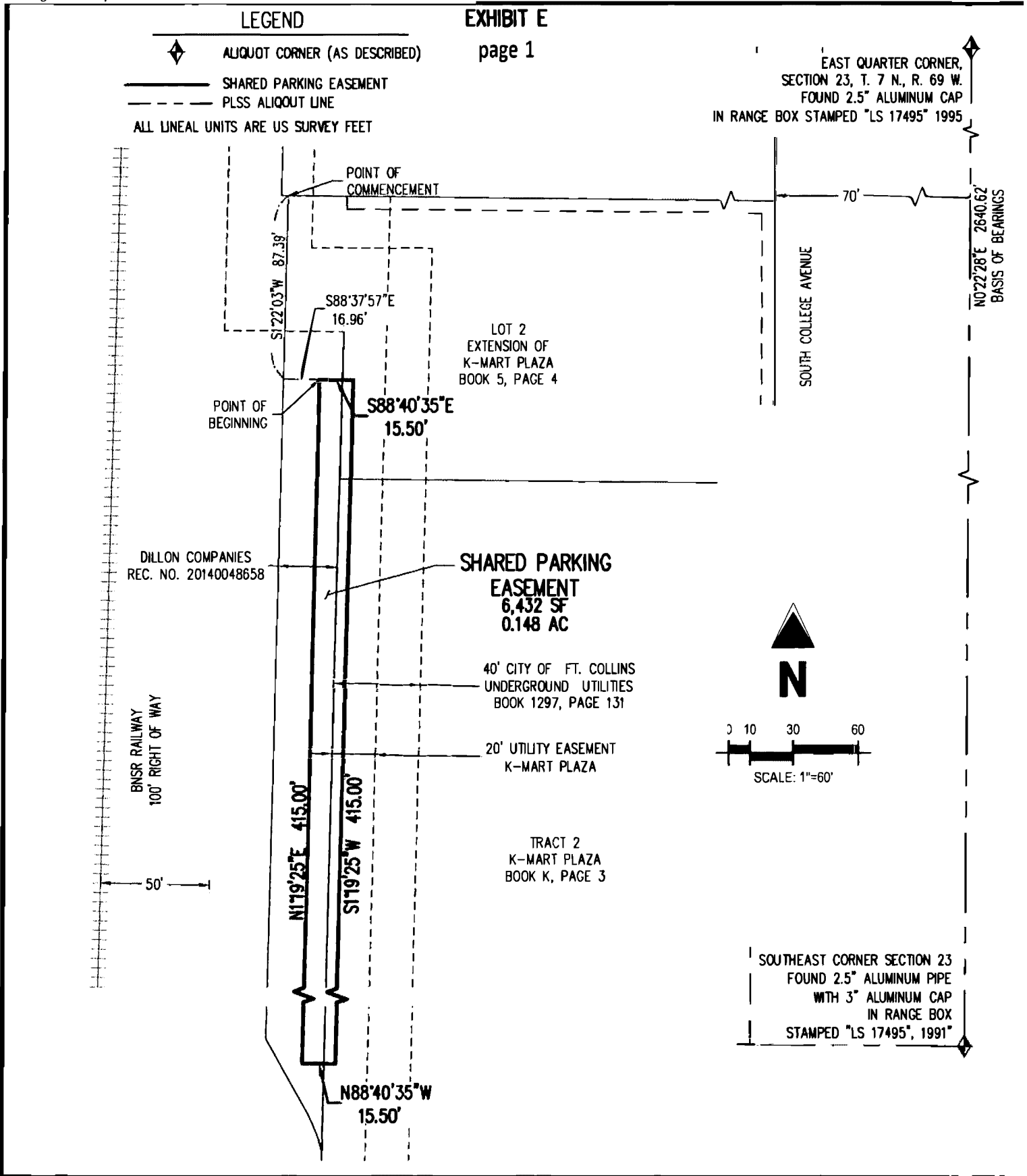
37067
3-1-2023

PREPARED FOR AND ON BEHALF OF GALLOWAY
BY FRANK A. KOHL, PLS# 37067

November 30, 2022

H:\King Soopers - City Market\CO, Fort Collins - KSS000146 -#18 College & Drake\Survey\Documents\Legal Descriptions\KSS146-
SharedParkingEasement-West doc

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PART OF THE SOUTHEAST QUARTER OF SECTION 23, T. 7 N., R. 69 W. OF THE 6TH P.M.
 CITY OF FORT COLLINS, COUNTY OF LARIMER, COLORADO

SHARED PARKING EASEMENT EXHIBIT

Project No: KSS000018.02
 Drawn By: AN
 Checked By: FAK
 Date: 11/30/2022

Galloway

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