

RECEPTION #20240028092, 7/10/2024 1:59:28 PM, 1 of 35, \$183.00 Electronically Recorded
Tina Harris, Clerk & Recorder, Larimer County, CO

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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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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