

**MEMORANDUM**

**TO:** Darin A. Atteberry, City Manager  
**FR:** Maurice Head, Affordable Housing Planner  
**TH:** Gregory Byrne, Director, CPES  
Joe Frank, Director, Advance Planning  
**DT:** May 18, 2006  
**RE:** Signature Requested

Attached is an Agreement of Restrictive Covenant for the following affordable housing project, which has been signed by the developers:

***Adrian Subdivision***

The development will have 7 single-family homeownership units that will be restricted for 20 years. The project is located at W. Vine and Impala Drive.

After approval as to form by the Deputy City Attorney, signature by the City Manager, and attestation by the City Clerk, please return to the Advance Planning Department or call for pick-up (Maurice Head x6342 or Stephanie Sydorko, x6376).

Thank you!

Recorded at the request of:

When recorded return to:

**AGREEMENT OF RESTRICTIVE COVENANTS AFFECTING REAL PROPERTY**

THIS AGREEMENT OF RESTRICTIVE COVENANTS AFFECTING REAL PROPERTY ("Agreement") is executed this 24<sup>th</sup> day of May, 2006, by and between the CITY OF FORT COLLINS, a Colorado municipal corporation ("City"), and William John Adrian, Jr. and Julie K. Adrian, owners, ("Developer"), with reference to the following:

A. The Developer has entered into an agreement to provide affordable ownership opportunities of that certain real property located in the City of Fort Collins, County of Larimer, State of Colorado, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Developer desires to develop the Adrian Subdivision as seven (7) single-family homeownership units ("Project"), excluding the house and lot at 2333 W. Vine Drive in the City of Fort Collins.

C. Developer and the City are entering into this Agreement for the purpose of granting the Developer certain benefits for the construction of affordable housing in the City. This includes without limitation, Priority Processing, Development Plan Fee Waiver and certain other incentives for which the Developer may qualify in developing the Property. The City will provide the aforementioned benefits to Developer in exchange for the resulting purchase price and terms for sales consistent with affordable housing guidelines issued by the City, which states homeownership units shall not exceed 80% of Area Median Income with respect to household size.

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual promises and covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the City and Developer hereby agree as follows:

**ARTICLE 1. TERM; RECORDATION; BINDING EFFECT**

The term of this Agreement shall be twenty (20) years, commencing upon the issuance of the first certificate of occupancy for any unit in the Project, unless such term is extended or earlier terminated. This Agreement shall be recorded as a restrictive covenant in the Office of the Larimer County, Colorado, Clerk and Recorder. This Agreement, and the terms and conditions hereof, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns, as provided herein.

Simultaneously with the creation of each affordable unit as a separately subdivided parcel of real property, by recording of a condominium map or otherwise, and prior to any sale or contract to sell, the Developer will subject each affordable unit to this covenant recorded with the Larimer County Clerk and Recorder and shall give written notice to prospective homeowners of the 20 year affordability and income requirements of the City of Fort Collins.

## ARTICLE 2. RESTRICTED UNITS

a. During the term of this Agreement, all seven (7) units in the Project will be held for sale in a manner which qualifies the Project as an affordable housing project under Section 5.1.2 of the City of Fort Collins Land Use Code.

Any amendment to such Land Use Code which reduces either (i) the percentage of median income or (ii) the percentage of gross income threshold levels used to determine qualification as affordable housing, shall not apply to the Project or individual units for sale in the Project.

## ARTICLE 3. DEFAULT/ENFORCEMENT

Failure or delay by the Developer to perform any term or provision of this Agreement constitutes a default under this Agreement provided, however, the Developer shall not be deemed to be in default if the Developer (i) cures, corrects, or remedies such default within sixty (60) days after receipt of a notice from the City of the default, or (ii) commences cure within such period if it reasonable takes longer than sixty (60) days to cure, and after commencement, Developer diligently pursues such cure to completion. The City may not institute proceedings against the Developer in default until the time for cure, correction, or remedy of a default has expired. Subject to the obligations of the City to first provide the notice of default and allow the Developer ineligible for any further participation in future City affordable housing Agreements, in addition to other remedies as provided by law. Upon any default of the Developer under this Agreement, the City may seek specific performance of this Agreement.

## ARTICLE 4. EFFECT OF COVENANTS

The City is deemed beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in it's own right and for the purpose of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of the City shall run without regard to whether the City has been, remains, or is an owner of any land or interest therein in the Project.

## ARTICLE 5. GENERAL PROVISIONS

a. Concurrent Remedy. No right or remedy herein conferred on or reserved to the City is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

b. Waiver. No covenant or condition of this Agreement can be waived except by the written consent of the parties. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party. A waiver of one covenant or condition by one party does not grant or imply a waiver of any other covenant or condition to be performed by the other party. Each party shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite said forbearance or indulgence.

c. Entire Agreement and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All references herein to this Agreement shall mean and include the Exhibits hereto unless the context otherwise requires. All amendments and modifications hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

d. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the parties; and the parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

e. Venue. If either party to this Agreement initiates any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement, or which relates to this Agreement in any manner, the City and the Developer agree that the proper venue for any such action is the Larimer County, Colorado District Court.

f. Authority of Signatories to Bind Principals. The persons executing this agreement on behalf of their respective principals represent that they have been authorized to do so and that they thereby bind the principals to the terms and conditions of this Agreement.

g. Notices and Demands Between the Parties. All notices and demands between the City and the Developer shall be in writing and shall be given either by: (i) personal service, (ii) delivery by reputable document delivery service (such as Federal Express) that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, postage prepaid, return receipt requested, addressed to the Developer as follows:

**Developer's Address:**

Attn: Julie K. Adrian, Developer  
13550 Alex Place  
Carr, CO 80612

**City's Address**

Attn: Maurice Head, City Planner  
Advance Planning Department  
P. O. Box 580  
Fort Collins, CO 80522-0588

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the fifth business day following deposit in the United States mail. Such written notices and demands shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

h. Assignment and Transfer.

a. The Developer shall have the right to sell, transfer, convey and assign the Project and its rights and obligations under this Agreement at any time subject to the prior written consent of the City, which consent shall not be unreasonably withheld, however, that such City consent shall not be required in connection with any of the following:

(1) The conveyance or dedication of any portion of the Project to the City or other appropriate governmental agencies, or the granting of easements or permits to public utilities to facilitate the construction of the Project, or

(2) Subject to the ownership restrictions set forth in Article 2 hereof, the sale to affordability-qualified buyers of units in the Project, or

(3) The encumbering of the Project by liens and mortgages if subordinate to this Agreement and authorized in this Agreement, or

(4) The replacement of personal property or fixtures.

b. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and the permitted successors and assigns of the Developer. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

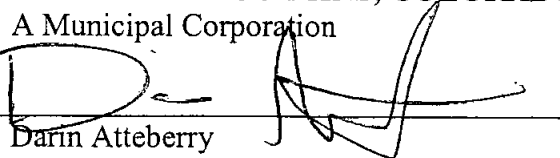
[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written hereinabove.

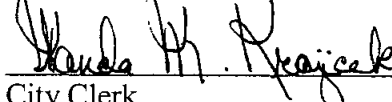
CITY:

**THE CITY OF FORT COLLINS, COLORADO**  
A Municipal Corporation

By:

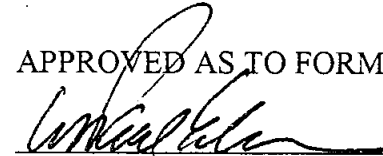
  
Darin Atteberry  
City Manager

ATTEST:

  
City Clerk

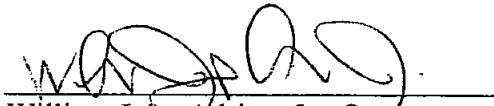


APPROVED AS TO FORM:

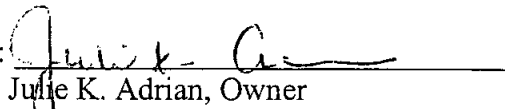
  
Deputy City Attorney

DEVELOPER

By:

  
William John Adrian, Jr., Owner

By:

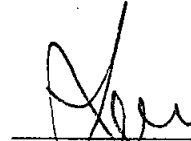
  
Julie K. Adrian, Owner

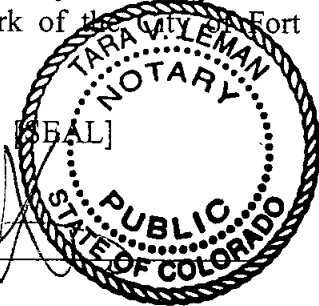
STATE OF COLORADO)  
 ) ss.  
COUNTY OF LARIMER)

Subscribed and sworn to before me this 24<sup>th</sup> day of May, 2006, by Darin Atteberry as City Manager, and Wanda Krajicek, as City Clerk of the City of Fort Collins, Colorado, a Colorado municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires:  
12/22/08

  
Notary Public




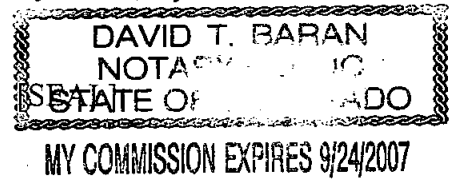
STATE OF COLORADO)  
 ) ss.  
COUNTY OF LARIMER)

Subscribed and sworn to before me this 18 day of May, 2006, by William John Adrian, Jr., as Owner.

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires:  
9/24/07

  
Notary Public




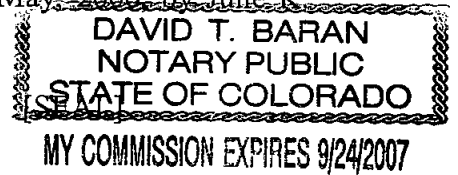
STATE OF COLORADO)  
 ) ss.  
COUNTY OF LARIMER)

Subscribed and sworn to before me this 18 day of May, 2006, by Julie K. Adrian, as Owner.

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires:  
9/24/07

  
Notary Public



“EXHIBIT A”

PROPERTY DESCRIPTION

ADRIAN SUBDIVISION

A parcel of land being a part of the Northeast Quarter (NE1/4) of Section Nine (9), Township Seven North (T.7N.), Range Sixty-nine West (R.69W.), Sixth Principal Meridian (6<sup>th</sup> P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

**COMMENCING** at the North Quarter Corner of said Section 9 and assuming the North line of said NE1/4 as bearing South 89°14'52" East, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2627.67 feet with all other bearings contained herein relative thereto:

THENCE South 89°14'52" East along the North line of the NE1/4 of said Section 9 a distance of 1101.60 feet to the East Right of Way (ROW) line of Impala Drive as dedicated in the Replat of the Green Acres Subdivision;

THENCE South 00°39'43" West along the East ROW line of Impala Drive a distance of 150.28 feet to a Point of Curvature (PC);

THENCE continuing along the East ROW line of Impala Drive and along the arc of a curve concave to the East a distance of 3.75 feet, said curve has a Radius of 643.16 feet, a Delta of 00°20'03" and is subtended by a chord bearing South 00°29'41" West a distance of 3.75 feet to the **TRUE POINT OF BEGINNING**;

THENCE South 89°22'20" East a distance of 108.15 feet;

THENCE North 48°12'51" East a distance of 23.72 feet;

THENCE South 89°22'20" East a distance of 68.80 feet to the West line of a parcel of land described in Reception No. 91012605 of the Records of Larimer County;

THENCE South 00°37'49" West along said West line a distance of 296.50 feet to the North line of said parcel of land described in Reception No. 91012605 of the Records of Larimer County;

THENCE North 88°06'11" West along said North line a distance of 174.66 feet to the East ROW line of Impala Drive as dedicated in the Replat of the Green Acres Subdivision;

The next Three (3) courses and distances are along the East ROW line of said Impala Drive:



THENCE North  $00^{\circ}39'43''$  East a distance of 45.73 feet to a PC;

THENCE along the arc of a curve concave to the West a distance of 126.39 feet, said curve has a Radius of 743.16 feet, a Delta of  $09^{\circ}44'40''$  and is subtended by a chord bearing North  $04^{\circ}12'37''$  West a distance of 126.24 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the East a distance of 105.63 feet, said curve has a Radius of 643.16 feet, a Delta of  $09^{\circ}24'37''$  and is subtended by a chord bearing North  $04^{\circ}22'39''$  West a distance of 105.51 feet to the **TRUE POINT OF BEGINNING**.

Said parcel contains 1.196 acres more or less ( ).

**SURVEYOR'S CERTIFICATE**

I, Steven A. Lund, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.