

<p>FORT COLLINS MUNICIPAL COURT 214 N. Mason Fort Collins, CO 80521 . Phone: (970) 221-6800</p> <hr/> <p>Plaintiffs: Eric Sutherland; and J&M Distributing d/b/a Fort Collins Muffler and Automotive</p> <p>v.</p> <p>Defendants: THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry.</p> <p>Intervenor: NEXT CHAPTER PROPERTIES, LLC, an Illinois Limited Liability Company.</p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com FAX Number: (970) 482-8929</p>	<p>Case Number: 2018-CIVIL01</p>
<p>CITY DEFENDANTS' DESIGNATION AND SUBMISSION OF CERTIFIED RECORD</p>	

COMES NOW the City of Fort Collins (“the City”), on behalf of the City Council of the City of Fort Collins and the improperly named “Administration Branch of the City of Fort Collins,” through its counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and respectfully designates and submits those portions of the certified record which it deems necessary for this Court’s review. In support thereof, the City states as follows:

1. Plaintiffs have filed this action in municipal court pursuant to C.R.C.P. 106(a)(4), requesting declaratory and injunctive relief related to the City Council’s decision upholding the Planning & Zoning Board approval of the Preliminary Development Plan for the Johnson Drive Apartments Project, PDP #170034.
2. Under Rule 106(a)(4)(I), the Court's review is limited to an examination of the record of the administrative proceedings below, seeking only to determine whether the governmental agency exceeded its jurisdiction or abused its discretion. As noted in the City’s recent Motion for Clarification, Rule 106(a)(4)(III)-(IV) places the burden on the plaintiffs to first designate those portions of the record they deem necessary for the Court’s review under this framework,

typically done by including a motion and proposed order for certification of the record when the complaint is filed. These provisions also place the burden on the plaintiffs to advance the costs for such portions of the record designated.

3. The Plaintiffs failed to include such a motion and order with their original complaint or with any of the amendments thereto, and have likewise failed to timely designate any record for certification pursuant to the Court's order dated July 31, 2018. They have therefore shirked their responsibility under the Rule to designate a record and advance the costs of the same in order to enable this Court to review the issues they raise in their Amended Complaint.

4. However, in the interest of having this matter resolved on its merits, and providing the Court with the full record needed for that end, the City is hereby designating and submitting the following items from the administrative proceeding below:

- a) **Agenda Item Summary 1 and 8 attachments, consisting of 381 pages, provided to the City Council at its hearing held February 27, 2018, regarding "Consideration of an Appeal of the Planning and Zoning Board Decision Regarding Johnson Drive Apartments Project Development Plan PDP 170034;"**
- b) **Case law handout provided by Eric Sutherland to City Council at the hearing held February 27, 2018;**
- c) **Minutes from the City Council meeting and hearing held February 27, 2018, consisting of 8 pages;**
- d) **Verbatim transcript of the hearing held at the Regular City Council meeting on February 27, 2018.**
- e) **Resolution 2018-023 of the Council of the City of Fort Collins, Making Findings of Fact and Conclusions of Law Regarding the Appeals of the Planning and Zoning Board's Decision Approving the Johnson Drive Apartments Project Development Plan PDP170034;**
- f) **Agenda Item Summary 13, consisting of 3 pages, for March 6, 2018 City Council meeting;**
- g) **Minutes from the regular City Council meeting held March 6, 2018, consisting of 11 pages, reflecting approval of Resolution 2018-023 as part of the consent agenda;**
- h) **Pertinent portions of the City of Fort Collins Land Use Code.**
- i) **Pertinent portions of the City of Fort Collins Municipal Code.**
- j) **The City of Fort Collins Charter.**

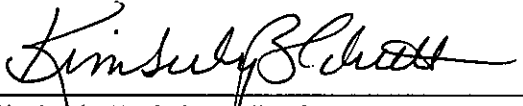
5. All of the above record items have been properly certified by City Clerk Rita Knoll as being true and accurate copies for purposes of this Court's review, as reflected in the certifications submitted herewith.

6. The City reserves the right to supplement and correct the record on motion at any time pursuant to C.R.C.P. 106(a)(4)(IV). The City also reserves the right to seek an award of any and all costs incurred in the production of the record, which should have been advanced by the plaintiffs.

RESPECTFULLY SUBMITTED this 9TH day of August, 2018.

Respectfully submitted,

WICK & TRAUTWEIN, LLC

By: 

Kimberly B. Schutt #25947
Attorneys for the improperly named
defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing CITY DEFENDANTS' DESIGNATION AND SUBMISSION OF CERTIFIED RECORD was served this 9TH day of August, 2018, via email transmission on the following:

Eric Sutherland
3520 Golden Currant
Fort Collins, CO 80521

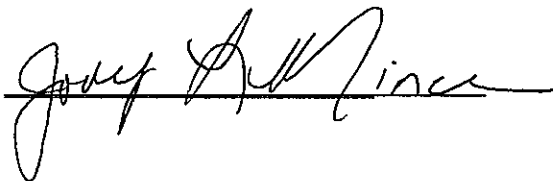
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A handwritten signature in black ink, appearing to read "Jeffrey Cullers", is written over a horizontal line.