

RESOLUTION 2020-069
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN AGREEMENT TO SECURE PUBLIC BENEFITS FOR
WATERS' EDGE DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR WATERS'
EDGE METROPOLITAN DISTRICT NOS. 1 THROUGH 5

WHEREAS, Waters' Edge Development Inc., a Colorado corporation, (the "Developer") is currently the owner of a proposed 235-acre development in northeast Fort Collins to include primarily residential units and a small amount of commercial development, with all to be developed in two phases (the "Development"); and

WHEREAS, the first phase of the Development, to be known as Waters' Edge West, has received final development plan approval from the City for 377 total dwelling, consisting of 197 single family dwelling units, 50 single family alley-loaded dwelling units, 82 single family attached dwelling units and 48 multi-family dwelling units; and

WHEREAS, the second phase of the Development, to be known as Waters' Edge East, has not yet received development review approval from the City but is anticipated to include 471 residential lots and some commercial development; and

WHEREAS, pursuant to the provisions of Colorado's Special District Act, the Developer previously submitted to the City an application for the Fort Collins City Council's approval of a Consolidated Service Plan for Waters' Edge Metropolitan District Nos. 1-5 (the "Service Plan"), which Service Plan the City Council approved on September 18, 2018 , in Resolution 2018-084; and

WHEREAS, the Developer sought the organization of Waters' Edge Metropolitan District Nos. 1-5 (the "Districts") to enable the Development to proceed in a manner that will provide the public benefits described in Exhibit "K" of the Service Plan, which are: (1) affordable housing; (2) a non-potable water irrigation system; (3) enhanced and expanded open space, parks and trails; and (4) rehabilitation of the Windsor Ditch #8 (collectively, the "Public Benefits"); and

WHEREAS, Section IV.B. of the Service Plan requires that Developer's provision of the Public Benefits be secured by a development agreement between the City and the Developer that has been approved by resolution of the City Council before the Districts can, among other things, impose any property taxes or issue any debt; and

WHEREAS, City staff and the Developer have negotiated the "Agreement to Secure Public Benefits for the Waters' Edge Development" attached as Exhibit "A" and incorporated herein by reference (the "Public Benefits Agreement"), which sets forth the terms and conditions by which the Developer's provision of the Public Benefits will be secured for the City; and

WHEREAS, the City Council hereby finds that approval of the Public Benefits Agreement is in the City's best interest and will serve the public's health, safety and welfare.

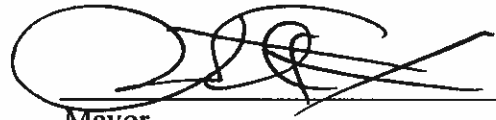
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO, as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby approves the Public Benefits Agreement.

Section 3. That the City Manager is authorized to enter into the Public Benefits Agreement on the City's behalf in substantially the form attached as Exhibit "A," subject to minor modifications as the City Manager, in consultation with the City Attorney, may determine to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 18th day of August, A.D. 2020.



Mayor

ATTEST:



City Clerk



**AGREEMENT TO
SECURE PUBLIC BENEFITS FOR
WATERS' EDGE DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR
WATERS' EDGE METROPOLITAN DISTRICT NOS. 1 THROUGH 5**

THIS AGREEMENT TO SECURE PUBLIC BENEFITS FOR WATERS' EDGE DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR WATERS' EDGE METROPOLITAN DISTRICT NOS. 1 THROUGH 5 (this "**Agreement**") is made and entered into this _____ day of _____, 2020, by and between the CITY OF FORT COLLINS, COLORADO, a home rule municipality of the State of Colorado ("**City**") and WATERS' EDGE DEVELOPMENTS INC., a Colorado corporation ("**Developer**"). The City and the Developer shall be referred to herein individually as a "**Party**" and jointly as the "**Parties**."

WITNESSETH:

WHEREAS, the land-use development agreement between the City of Fort Collins and Waters' Edge Developments Inc., as amended, ("**Second Filing Development Agreement**") and related plat were approved by the City on June 4, 2018 (the "**Second Filing**"); and

WHEREAS, the Second Filing was approved for a total of 377 dwelling units including 197 single family dwelling units, 50 single family alley loaded dwelling units, and 82 single family attached dwelling units, together with a tract for future development of a minimum of 48 multi-family dwelling units; and

WHEREAS, the Second Filing is legally described as follows:

Waters' Edge Second Filing, located in Section 30, Township 8 North, Range 68 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado.

WHEREAS, the Waters' Edge Second Filing Final Development Plan (the "**Second Filing FDP**") was approved by the City on June 4, 2018; and

WHEREAS, the second phase of development within Waters' Edge Metropolitan District Nos. 1-5 (each a "**District**" and collectively the "**Districts**") is identified in the Consolidated Service Plan for the Districts (the "**Service Plan**") as the Inclusion Area, and encompasses 126.3 acres and is legally described on Exhibit "A" attached hereto and incorporated by reference (referred to herein as "**Waters' Edge East**," and together with the Second Filing, the "**Property**" or "**Development**"); and

WHEREAS, the Developer has not yet submitted final site plans or development approval applications to the City for Waters' Edge East, but the Developer anticipates that such future site plan and development approval applications will include approximately 471 residential lots, as well as a commercial property; and

WHEREAS, the Developer desires to develop the Property into a uniquely sustainable healthy living community and this commitment includes full compliance with the required number of affordable homes as well as a significant number of homes in the balance of the community planned to be attainable homes designed to allow aging residents to age-in-place with single story living plans, limited or no entry steps and other architectural modifications addressing the needs of those requiring additional physical considerations, all in a neighborhood that is socially and physically connected to avoid isolation of its residents as they age; and

WHEREAS, this vibrant community concept will also promote environmental conservation through reduced water usage and energy efficient homes, and will demonstrate the use of renewable energy not only in the homes but in the maintenance of the community's significant open space, trail systems and parks; and

WHEREAS, the Developer has evidenced its commitment to these goals through the completed buyout of the existing oil and gas production and reserves, the plugging and abandonment of wells in the neighborhood and the planned conversion of oil and gas well-sites into public space that includes programs and/or displays for the continuing education of the greater community on the importance of environmental conservation, including the commitment to build a sustainability center for the residents and other citizens of the City; and

WHEREAS, the Developer's goals for the Property align with and promote the City's Triple Bottom Line priorities of economic health, environmental services, and social sustainability; and

WHEREAS, pursuant to the provisions of Article 1 of Title 32 of the Colorado Revised Statutes (the "**Special District Act**"), the City Council of the City approved the Service Plan for the Districts by Resolution 2018-084; and

WHEREAS, organization of the Districts is intended to enable development of the Property in a manner that will provide the public benefits generally described in Exhibit K of the Service Plan, and more particularly defined and described in Paragraph I.B. below (the "**Public Benefits**"); and

WHEREAS, Section IV.B.2. of the Service Plan requires that the Public Benefits to be provided by a developer of a planned development shall be secured by a development agreement between the City and such developer and the City and the Developer desire to secure the Public Benefits in accordance therewith through this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. SECURING OF PUBLIC BENEFITS

A. Overview.

1. Method of Securing Public Benefits. Although the intent is that one or more of the Districts will ultimately reimburse the Developer for those Public Benefits they have the legal ability to fund, the Developer shall have the obligation to develop, construct and/or install the Public Benefits in accordance with the terms and conditions of this Agreement.

2. Public Benefits Summary. Exhibit K to the Service Plan generally summarizes four (4) categories constituting the Public Benefits which are required to be secured under this Agreement: (1) Affordable Housing; (2) Significant Reduction in Potable Water Usage; (3) Enhanced and Expanded Open Space, Parks and Trails; and (4) Rehabilitation of the Windsor #8 Ditch. Each of these categories are defined and addressed in Sections I.B.1 through I.B.4. below.

B. Public Benefits Secured

1. Affordable Housing.

a. The Developer has not yet submitted final site plans or development approval applications to the City for Waters' Edge East, but the Developer anticipates that such future site plan and development approval applications will include approximately 471 residential lots. The "**Total Dwelling Units**" shall mean the total number of dwelling units authorized under one or more approved development plans for Waters' Edge East. For the purposes of determining compliance with this Section I.B.1.a., at least 10% of the Total Dwelling Units approved within Waters' Edge East (with any fraction rounded up to the next whole number) must each be a dwelling unit affordable for households earning eighty percent (80%) or less of the area median income for the Fort Collins/Loveland Metropolitan Statistical Area published annually by the U.S. Department of Housing and Urban Development ("**AMI**") for the applicable Household Size (as hereinafter defined), which units may be offered for-sale or for-rent ("**Required Affordable Units**"). However, the Required Affordable Units offered for-rent must on average be affordable to households earning no more than sixty percent (60%) of the AMI for the applicable Household Size. This sixty percent (60%) average shall be calculated using the averaging methodology adopted by the Colorado Housing and Finance Authority in response to the United States Congress' Fiscal Year 2018 Omnibus Spending Bill signed into law by President Trump on March 23, 2018. As used herein, "**Household Size**" means, (i) for Required Affordable Units that are studios, a family of 1 person, (ii) for Required Affordable Units that have a single bedroom, a family of 1.5 persons (meaning that the household income level for such Required Affordable Units will be equal to the average of the AMI for a family of 1 and a family of 2) and (iii) for Required Affordable Units that have more than 1 bedroom, a family of 2 persons. If the approved number of Total Dwelling Units is more than 471 residential lots, the number of the Required Affordable Units shall be increased accordingly by the 10% requirement. However, if less than 471 Total Dwelling Units are approved, the number of Required Affordable Units shall not be less than 48 dwelling units.

b. Each of the Required Affordable Units must continue to satisfy its affordability standard as defined in Section I.B.1.a. above for at least twenty (20) years from the date of issuance of the first certificate of occupancy for each such unit. This means that it is the intent of the Parties that the initial and subsequent conveyances and leases of each of the Required

Affordable Units during the twenty (20)-year period must be to purchasers or lessees whose AMI qualifies them for that Required Affordable Unit as defined in Section I.B.1.a. above. This requirement shall be secured and deemed satisfied upon recording of a restrictive covenant or deed restriction for each of the Required Affordable Units in a form reasonably acceptable to the City, which shall include (without limitation) the information set forth in the last paragraph in Section I.B.1.c. below, that is for the City's benefit and enforceable by the City at law and in equity and recorded with the Larimer County Clerk and Recorder (the "**20-Year Covenant**"). When recorded, the 20-Year Covenant shall not be subordinate to any lien or other financial encumbrance other than liens for real property taxes. Notwithstanding the foregoing, the Developer may use methods other than the 20-Year Covenant to secure for twenty (20) years the affordability of the Required Affordable Units if the method is first approved in writing by the City.

c. The Required Affordable Units may be provided through any of the following three (3) mechanisms or by any other mechanism mutually agreed upon in writing by the Developer and the City, or any combination of the same:

(i) Developer has developed any portion of the Required Affordable Units within Waters' Edge East under one or more approved final development plan.

(ii) Execution of a contract for the sale of land of any portion of Waters' Edge East by the Developer to a non-profit or for-profit builder with a legally enforceable contract obligation to the City in a form reasonably acceptable to the City to develop such land as part or all of the Required Affordable Units, and the subsequent development of that land under one or more future approved final development plans for Waters' Edge East by such builder as part or all of the Required Affordable Units. At the time any such sale is closed and relevant documentation provided to the City by the Developer for each such sale, the City shall determine the number and type of Required Affordable Units which reasonably could be expected to develop on such acreage pursuant to the future approved final development plan and all other applicable City ordinances, regulations, standards and policies and, upon such determination, those units shall count toward the Required Affordable Units.

(iii) A reservation of any portion of Waters' Edge East to be developed under one or more future approved final development plans by the Developer for the benefit of and legally enforceable by the City at law and in equity for the eventual sale to an entity for development of all or a portion of the Required Affordable Units. At the time such reservation is made by the Developer and the reservation is in a form reasonably acceptable to the City that is for the City's benefit and enforceable by the City at law and in equity and recorded with the Larimer County Clerk and Recorder, the City shall determine the number and type of Required Affordable Units which could reasonably be expected to develop on such acreage pursuant to the future approved final development plan and all other applicable City ordinances, regulations, standards and policies. Upon such determination, those units shall count toward the Required Affordable Units.

As to any Required Affordable Units provided pursuant to subparts (ii) and (iii) above, in the deed conveying the land for development of such Required Affordable Units from Developer to the initial purchaser thereof from the Developer (the "Initial Purchaser"), the Developer must include

the following: (A) a specific reference in the body of the deed, reflecting that the property conveyed thereby is conveyed subject to the 20-Year Covenant, (B) attach a copy of the 20-Year Covenant as an exhibit to such deed, (C) a requirement that the Initial Purchaser include, in the body of the deed conveying each such Required Affordable Unit to a residential purchaser from such Initial Purchaser, a statement that, in accordance with the 20-Year Covenant, if such residential purchaser or any subsequent owner of such Required Affordable Unit sells or leases such Required Affordable Unit while the Required Affordable Unit is subject to the 20-Year Covenant, such subsequent owner or lessee must comply with the affordability requirements of the 20-Year Covenant as set forth in Section I.B.1.a. above (the “Affordability Notice”) and (D) a provision that, while the Required Affordable Units to be developed on such land are subject to the 20-Year Covenant, the Initial Purchaser thereof is responsible for causing to be prepared annually a report to the City, regarding the compliance of such Required Affordable Units with the 20-Year Covenant as set forth in Section I.B.1.a. above (the “Compliance Report”). As to any of the Required Affordable Units provided pursuant to subpart (i) above, the Developer shall include in any deed by which it conveys a Required Affordable Unit to the Initial Purchaser of the Unit: (1) a specific reference in the body of the deed, reflecting that the property conveyed thereby is conveyed subject to the 20-Year Covenant, (2) attach a copy of the 20-Year Covenant as an exhibit to such deed, and (3) the Affordability Notice. In addition, for the Required Affordable Units provided pursuant to subpart (i) above, the Developer shall cause the Compliance Reports for these Units to be prepared and delivered to the City on an annual basis. Each annual Compliance Report for the Required Affordable Units provided under subparts (i), (ii) and (iii) above must be delivered to the City within ninety (90) days after the end of each calendar year and must report whether any Required Affordable Units which were for-rent at any time during the past calendar year and whether any Required Affordable Units which were sold during such preceding calendar year, that such rentals and/or sales, as applicable, were to a household satisfying the requirements of Section I.B.1.a. above.

d. At least sixty-six percent (66%) of the Required Affordable Units shall be secured through one of the mechanisms described in Sections I.B.1.c.(i) through (iii) above (or through any other mechanism agreed upon in writing between the City and the Developer) before the City is required to issue any building permit that will authorize the construction of more than fifty percent (50%) of the Total Dwelling Units within Waters’ Edge East, and the remaining thirty-four percent (34%) of the Required Affordable Units shall be so secured prior to the City being required to issue a building permit that will authorize the construction of any of the last one hundred (100) of the Total Dwelling Units within Waters’ Edge East.

2. Significant Reduction in Potable Water Usage.

a. Non-Potable Water System. The Parties acknowledge that the Developer has agreed to install a non-potable water system to provide irrigation water to all the natural areas and private lots in the Second Filing as provided under the Second Filing FDP and the Second Filing Development Agreement. It is the intention that such non-potable water system shall be owned and operated by Waters’ Edge Metropolitan District No. 1 or one of the other Districts. The Developer shall apply to the District for acceptance of such non-potable water system in accordance with the relevant agreement(s) in place between the Developer and the

District concerning acquisition of public improvements and infrastructure. Developer's legal obligation to provide this non-potable water system is a prerequisite to Developer's receipt from the City of any building permit for residential construction under the approved Second Filing FDP. The Parties acknowledge and agree that a final irrigation construction plan for this non-potable water system shall be provided to the City for its review and approval prior to the issuance of any building permit for the Second Filing FDP. Subject to the successful inclusion of Waters' Edge East into the Districts, Developer agrees to install a non-potable water system to provide irrigation water to all the natural areas and private lots within Waters' Edge East. The City's approval of a future final development plan and development agreement for Waters' Edge East, as required under the City Land Use Code ("LUC") that legally obligates the Developer to provide such non-potable water system and the City's approval of a final irrigation construction plan for that system shall be prerequisites to Developer's receipt from the City of any residential building permit for construction under that future approved final development plan for Waters' Edge East.

b. Strategic Landscaping. The Developer desires to promote water conservation in the community and has agreed to design and install landscaping in a minimum of 50% of the natural areas, open space, and parks that fall within a "low" or "very low" landscape hydrozone calculation within the Second Filing as provided in the Second Filing FDP (the "**Strategic Landscaping**"). The Parties acknowledge that the Second Filing FDP includes the Strategic Landscaping and the Second Filing Development Agreement obligates the Developer to provide the Strategic Landscaping. The Parties also acknowledge that the Developer's legal obligation to provide the Strategic Landscaping as set out in the Second Filing FDP is a prerequisite to Developer's receipt from the City of any building permit for residential construction under the approved Second Filing FDP.

3. Enhanced and Expanded Open Space, Parks and Trails.

a. Trails & Pedestrian Friendliness. The Developer desires to create a community that is pedestrian-friendly, walkable, and inter-connected and has committed under the Second Filing FDP and the Second Filing Development Agreement to include the following features in the approved Second Filing to promote walkability and pedestrian friendliness: (i) construction of an eight foot wide tree lawn and five foot wide sidewalk on both sides of Morningstar Way; (ii) a twelve foot wide soft trail along the Natural Habitat Buffer Zone; and (iii) four to six foot wide sidewalk and soft trail connections through blocks and open space areas (the "**Pedestrian Benefits**"). The Parties acknowledge that the Second Filing FDP includes the Pedestrian Benefits and the Second Filing Development Agreement obligates the Developer to provide the Pedestrian Benefits. Developer's legal obligation to provide the Pedestrian Benefits is a prerequisite to Developer's receipt from the City of any building permit for residential construction under the approved Second Filing FDP.

b. Public Spaces. Subject to the successful inclusion of Waters' Edge East into the Districts and to the extent that such benefits are not completed within the Second Filing, Developer agrees to include the following amenities for public use in a future final development plan for Waters' Edge East: a senior activity center that promotes social inclusion and connections with amenities such as a shared workshop and art studio, innovative open spaces

with amenities such as sports courts, a community garden, and a sustainability center with charging stations for electric mowers and educational materials on renewable energy sources (the “**Public Spaces**”). The City’s approval of a future final development plan and development agreement for Waters’ Edge East, as required under the LUC, that legally obligates the Developer to provide the Public Spaces shall be a prerequisite to Developer’s receipt from the City of any residential building permit for construction under that future approved final development plan for Waters’ Edge East.

4. Rehabilitation of the Windsor #8 Ditch. As part of the Developer’s development of Waters’ Edge East, the Developer agrees to rehabilitate the Windsor #8 Ditch, including creation of wetlands to improve water quality, creation of wildlife habitat, trails that link to the regional trail system provided by other parties, improved storm water retention and transformation of the ditch area into a usable community natural area (the “**Ditch Rehabilitation**”). The City’s approval of a future final development plan and development agreement for Waters’ Edge East, as required under the LUC, that legally obligates the Developer to provide the Ditch Rehabilitation shall be a prerequisite to Developer’s receipt from the City of any building permit for residential construction under that future approved final development plan for Waters’ Edge East.

C. City Acknowledgement. The City specifically acknowledges that this Agreement secures the delivery of the Public Benefits as described and secured in paragraphs I.B.1 through I.B.4. above, and satisfies the requirement and precondition set forth in Section IV.B. of the Service Plan for securing the Public Benefits as generally described in Exhibit K of the Service Plan.

II. MISCELLANEOUS

A. City Findings. The City hereby finds and determines that the approval of this Agreement is in the best interests of the City and the public’s health, safety and general welfare.

B. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

C. Covenants/Binding Effect. 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 and 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.

D. Default.

1. Notice; Cure. If either Party defaults under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default in accordance with Section II.M, and the defaulting Party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure and provided further that in no event shall such cure period exceed a total of six (6) months. Notwithstanding the cure period set forth in this Section II.D.1, Developer, its successors and assigns, shall have the right to include a claim for breach of this Agreement in any action brought under C.R.C.P. Rule 106 if Developer, its successors and assigns, believes that the failure to include such claim may jeopardize its ability to exercise its remedies with respect to this Agreement at a later date. Any claim for breach of this Agreement brought before the expiration of the applicable cure period set forth in this Section II.D. shall not be prosecuted by Developer, its successors and assigns, until the expiration of such cure period except as set forth in this Agreement, and shall be dismissed by Developer, its successors and assigns, if the default is cured in accordance with this Section II.D.

2. Remedies. If any default under this Agreement is not cured as described above, the non-defaulting Party shall have the right to enforce the defaulting Party's obligation hereunder by an action at law or in equity, including, without limitation, injunction and/or specific performance, and shall be entitled to an award of any damages available at law or in equity.

E. Governing Law. This Agreement shall be construed under and governed by the laws of the State of Colorado.

F. Integration; Amendment. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or collateral agreements or understandings. The Parties agree that this Agreement may be amended only by an instrument in writing signed by the City and the Developer, and successors and permitted assigns of the Developer to whom the Developer has granted in writing the right to consent to any such amendments. Notwithstanding the foregoing, this Agreement shall be in addition to and supplemented by the development agreements that will be entered into by the Developer with the City for the Property as required in Section 3.3.2.(B) of the City's Land Use Code.

G. Jurisdiction and Venue. The City and the Developer, its successors and assigns, stipulate and agree that in the event of any dispute arising out of this Agreement, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall only be proper in Larimer County, Colorado. The Parties hereby submit themselves to jurisdiction of the State District Court, 8th Judicial District, County of Larimer, State of Colorado.

H. City Approvals. Where this Agreement requires the City's future approval or consent, such approval or consent may be given by the City Manager of the City within his or her

sole discretion. Where this Agreement requires the City Council's approval or consent, such approval or consent shall be within the Council's sole discretion.

I. Multiple-Fiscal Year Obligations. To the extent that any of the obligations of the City contained in this Agreement are or should be considered multiple-fiscal year obligations, such obligations shall be subject to annual appropriation by the Fort Collins City Council, in its sole discretion.

J. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Developer and the City, and nothing contained in this Agreement shall be construed as making the Developer and the City joint venturers or partners.

L. No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Developer, and its successors and assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party.

M. Notices. Any notice or communication required under this Agreement between the City and the Developer, and its successors and assigns, must be in writing and may be given either personally, by registered or certified mail, return receipt requested, by Federal Express or other reliable courier service that guarantees next day delivery or by facsimile transmission (followed by an identical hard copy via registered or certified mail). If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by any other method, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent; or (b) as applicable: (i) three (3) days after a registered or certified letter, return receipt requested, containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; (ii) the following business day after being sent via Federal Express or other reliable courier service that guarantees next day delivery; or (iii) the following business day after being sent by facsimile transmission (provided that such facsimile transmission is promptly followed by an identical hard copy sent via registered or certified mail, return receipt requested). Any Party hereto may at any time, by giving written notice to the other party hereto as provided in this Section II.M, designate additional persons to whom notices or communications shall be given and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Fort Collins ATTN: City Manager 300 LaPorte Avenue Fort Collins, CO 80521
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With a copy to:	City of Fort Collins ATTN: City Attorney 300 LaPorte Avenue
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Fort Collins, CO 80521

If to Developer: Waters' Edge Developments, Inc.
ATTN: Dan Nickless
5935 South Zang Street, Suite 230
Denver, CO 80127

With copies to: WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law
ATTN: Robert Rogers, Esq.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

N. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

O. Recordation. The Developer agrees to the City recording this Agreement with the Larimer County Clerk and Recorder, and the Developer shall pay the cost of the same.

P. 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 remaining provisions of this Agreement shall continue in full force.

Q. Survival. The covenants, representations and warranties and agreements to be performed or complied with under this Agreement by the Parties shall be continuing obligations of the Parties until fully complied with or performed, respectively.

R. Waiver. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

[Remainder of page left intentionally blank. Signature Pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

CITY:

CITY OF FORT COLLINS, COLORADO,
a Municipal Corporation

By: _____
Darin A. Atteberry, City Manager

Date: _____, 2020

ATTEST:

Delynn Coldiron, City Clerk

APPROVED AS TO FORM:

John R. Duval, Deputy City Attorney

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____,
2020, by _____ as City Manager of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires:

Notary Public

DEVELOPER:

WATERS' EDGE DEVELOPMENTS INC., a
Colorado corporation

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing Agreement was acknowledged before me this ___ day of _____,
2020, by _____ of Waters' Edge Developments Inc.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A
(Legal Description of 'Waters' Edge East)

A parcel of land, located in Section Twenty-nine (29), Township 8 North (T.8N.), Range Sixty-Eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado and being more particularly described as follows:

All that portion of Section 29 including Lind Property, Second Filing, Final Plat Recorded January 18, 2007 as Reception No. 20070004594, according to County of Larimer Records, excepting therefrom the following parcels:

- (1.) That portion of Section 29 lying east of the centerline of the W.P. Elder Reservoir Outlet Canal.
- (2.) Water's Edge Metropolitan Districts 1, 3, 4 and 5.
- (3.) All of that tract of land known as Lind Property, Final Plat Recorded December 2, 2003 as Reception No. 258077, according to County of Larimer records.