RESOLUTION 2021-030
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN AGREEMENT TO SECURE PUBLIC
BENEFITS FOR MULBERRY DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR
MULBERRY METROPOLITAN DISTRICTS NOS. 1 THROUGH 6

WHEREAS, Mulberry Development LLC, a Colorado limited liability company (the "Developer") is currently under contract to purchase approximately 232 acres of vacant land in two separate parcels from two different owners, which real property is legally described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property is located north of Mulberry Street (Highway 14) along both sides of Greenfield Court; and

WHEREAS, the Developer has not yet submitted to the City a development application for the Property but intends to apply to the City for approval of a planned unit development ("PUD") for the Property as such PUDs are authorized under the City's Land Use Code; and

WHEREAS, the Developer desires to develop the Property under a PUD in phases and proposes to construct approximately 1,600 dwelling units consisting of single-family attached and detached units and multi-family units, up to 160,000 square feet of commercial and retail uses including a grocery store, and up to 86,000 of square feet of office uses integrated into a pedestrian-oriented market street (the "Project"); and

WHEREAS, pursuant to the provisions of Colorado's Special District Act, the Developer previously submitted to the City an application for approval of a Consolidated Service Plan for the Mulberry Metropolitan District Nos. 1-6 (the "Service Plan"), which Service Plan the City Council approved on April 16, 2019, in Resolution 2019-050; and

WHEREAS, the Developer sought the organization of Mulberry Metropolitan District Nos. 1-6 (the "Districts") to enable development of the Property in a manner that will provide the public benefits described in Exhibit "I" of the Service Plan, which are: (1) affordable housing; (2) critical on-site and off-site public infrastructure; (3) high-quality and smart growth elements; and (4) environmental sustainability (collectively, the "Public Benefits"); and

WHEREAS, Section IV.B.2. 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 Mulberry Development as Provided in Service Plan for Mulberry Metropolitan District Nos. 1 Through 6" attached as Exhibit "B" 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 "B," 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 the effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 23rd day of March, A.D. 2021.

Mayor

ATTEST:

City Clerk

CITY OF FORT COLLINS SEAL COLORADO

EXHIBIT A

The Whitham Property

The NW1/4 of Section 9, Township 7 North, Range 68 West of the 6th P.M., EXCEPT Right of Way for County Road 48 and EXCEPT Right of Way in Book 245 at Page 77, County of Larimer, State of Colorado.

The Springer-Fisher Property

The West ½ of the Southwest ¼ of Section 9, Township 7 North, Range 68 West of the 6th P.M.,

EXCEPT that portion thereof conveyed in Deed recorded July 3, 1959 in Book 1097 at Page 148 and corrected in Deed recorded May 20, 1965 in Book 1290 at Page 520;

ALSO EXCEPT that portion thereof conveyed in Deed recorded December 3, 1984 in Book 2300 at Page 1701,

ALSO EXCEPT that portion conveyed to Larimer County by Special Warranty Deed recorded July 10, 2017 at Reception Number 20170044766,

County of Larimer, State of Colorado.

AGREEMENT TO
SECURE PUBLIC BENEFITS FOR
MULBERRY DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR
MULBERRY METROPOLITAN DISTRICT NOS. 1 THROUGH 6

THIS AGREEMENT TO SECURE PUBLIC BENEFITS FOR MULBERRY DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR MULBERRY METROPOLITAN DISTRICT NOS. 1 THROUGH 6 (this "**Agreement**") is made and entered into this ____ day of _____, 2021, by and between the CITY OF FORT COLLINS, COLORADO, a home rule municipality of the State of Colorado (the "**City**") and MULBERRY DEVELOPMENT LLC, a Colorado limited liability company (the "**Developer**"). The City and the Developer may be referred to herein individually as a "**Party**" and jointly as the "**Parties**."

WITNESSETH:

WHEREAS, Whitham Farms LLC ("Whitham") is currently the owner of the approximately 157.55 acres of real property legally described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Whitham Property"); and

WHEREAS, Springer-Fisher Inc. ("Springer-Fisher") is currently the owner of the approximately 75 acres of real property legally described in **Exhibit "B"** attached hereto and incorporated herein by reference (the "Springer-Fisher Property"); and

WHEREAS, Whitham and Springer-Fisher shall hereafter be referred to jointly as "the Owners" and the Whitham Property and Springer-Fisher Property shall hereafter be referred to jointly as "the Property"; and

WHEREAS, the Developer is currently under contract with each of the Owners to purchase from them their respective portions of the Property, which Property is generally located north of East Mulberry Street, south of East Vine Drive and east of the East Ridge Subdivision; and

WHEREAS, although the Developer has not yet submitted to the City under the City's Land Use Code (the "LUC") any development approval applications for the Property, the Developer anticipates that such future development approval applications will seek development review approval for approximately 1,600 dwelling units, including single-family detached, single-family attached, and multi-family living options, as well as a neighborhood town center and pedestrian-oriented market street, including approximately 20-30 acres of retail, commercial, and office uses to be developed on the Property (the "Project"); and

WHEREAS, the Project will be developed on the Property in phases and for each phase the Developer will be required to obtain the approval of a "final plan" as provided in the LUC ("Final Plan") and, as part of that approval of the Final Plan for each phase, the Developer will be required under the LUC to enter into a development agreement with the City for each phase setting forth, among other things, the Developer's obligations for constructing public improvements related to that phase of the Project and any restrictions placed on the issuance on building permits and certificates of occupancy for structures built in that phase (the "Development Agreement"); and

WHEREAS, it is the intent of the Parties that this Agreement, the Final Plans and the Development Agreements for all the phases of the Project shall be read together in determining the Developer's obligations to provide the "Public Benefits" as hereafter described and required in this Agreement; 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 (the "**Council**") approved on April 16, 2019, the Consolidated Service Plan (the "**Service Plan**") for the Mulberry Metropolitan District Nos. 1-6 (each a "**District**" and collectively the "**Districts**") by Resolution 2019-050; 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 I 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 the Developer for its planned development shall be secured by a development agreement between the City and the Developer and the City and the Developer desire to secure the Public Benefits in accordance therewith through this Agreement; and

WHEREAS, the Parties also desire to more fully address in this Agreement the timing and requirements related to the provision of certain of the Public Benefits that shall be delivered through approved Final Plans and related Development Agreements entered into as part of the development review approval of each phase of the Project.

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 I 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) Critical On-Site and Off-Site Public Infrastructure, (3) High-Quality and Smart Growth Elements, and (4) Environmental Sustainability. 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 the Property, but the Developer anticipates that such future site plans and development approval applications will include approximately 1,600 dwelling units to be constructed on the Property. The "**Total Dwelling Units**" shall mean the total number of dwelling units authorized under one or more approved Final Plans for the Property. For the purposes of determining compliance with this Section I.B.1.a., at least fifteen percent (15%) of the Total Dwelling Units approved within the Project (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, as adjusted for household size, in the for-sale context, and an average of not more than sixty percent (60%) or less of the area median income, as adjusted for household size, in the for-rent context, both as measured against the Fort Collins/Loveland Metropolitan Statistical Area published annually by the U.S. Department of Housing and Urban Development ("**AMI**"), which units may be offered either for-sale or for-rent consistent with the additional parameters set forth below ("**Required Affordable Units**"). If more than 1,600 Total Dwelling Units are approved for the Property, the number of the Required Affordable Units shall be increased accordingly so that the Required Affordable Unit count meets or exceeds the fifteen percent (15%) requirement. On the other hand, if less than one thousand six hundred (1,600) Total Dwelling Units are approved, the number of Required Affordable Units shall not be less than two hundred forty (240) dwelling units. Of the Required Affordable Units, a minimum of forty (40) dwelling units shall be offered for-sale at a price that is affordable for households earning eighty percent (80%) or less of AMI, as adjusted for household size (the "**For-Sale Affordable Units**"). The For-Sale Affordable Units shall be built as "dispersed site" units, integrating market rate units and affordable housing units within the Project. The above-referenced disbursement requirement does not apply to The Required Affordable Units offered for rent. This sixty percent (60%) average AMI in the for-rent context shall be calculated using the averaging methodology adopted by the Colorado Housing and Finance Authority in effect at the time the affected Required Affordable Units are determined by the City to count toward the Required Affordable Units as provided in Section I.B.1.c. below.

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 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 ensure 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 four (4) 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 the Project under one or more approved Final Plans for the Project.

(ii) Execution of a contract for the sale of land of any portion of the Project 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 the Project 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 the Property to be developed under one or more future approved Final 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 Plan(s) and all other applicable City ordinances, regulations, standards and policies. Upon such determination, those units shall count toward the Required Affordable Units.

(iv) The Developer conveys any portion of the Property to the City to be used by the City in its land bank program for affordable housing. At the time such conveyance is made by the Developer to the City, 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 Plan(s) for that Property and all other applicable City ordinances, regulations, standards and polices. Upon such determination, those units shall count toward the Required Affordable Units.

d. As to any Required Affordable Units provided pursuant to subparts I.B.1.(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:

(i) A specific reference in the body of the deed, reflecting that the property conveyed thereby is conveyed subject to the 20-Year Covenant,

(ii) A copy of the 20-Year Covenant as an exhibit to such deed,

(iii) 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

(iv) 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 and filed annually with the City Manager's Office, as provided in Section I.B.1.f. below, a written report stating compliance of such Required Affordable Unit with the 20-Year Covenant as set forth in Section I.B.1.a. above (the "**Compliance Report**").

e. As to any of the Required Affordable Units provided pursuant to subpart I.B.1.c.(i) above, the Developer shall:

(i) 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; and

(ii) Cause the Compliance Reports for these Units to be prepared and delivered to the City on an annual basis.

f. Each annual Compliance Report for the Required Affordable Units provided under subparts (i), (ii) and (iii) above must be delivered to the City Manager's Office 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.

g. At least sixty-six percent (66%) of the Required Affordable Units must be provided through one of the mechanisms described in Sections I.B.1.c.(i) through (iv) 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 eight hundred (800) Total Dwelling Units within the Project, and the remaining thirty-four percent (34%) of the Required Affordable Units must be so provided 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 the Project. The City agrees that this hold on the last one hundred (100) Total Dwelling Units shall not apply to the issuance of a building permit for any Required Affordable Unit.

2. Critical On-Site and Off-Site Public Infrastructure. The Developer agrees that one or more of the future Final Plans for the Property and related future Development Agreements between the City and Developer shall require that the following critical public infrastructure and contributions be provided by the Developer:

a. Rail Crossing. Fund, design and construct a railroad crossing of the Great Western Railroad for both vehicular and pedestrian access in the dedicated Greenfield Court right of way (the "**Rail Crossing Improvements**");

b. Greenfields Roundabout. Fund, design and construct a traffic roundabout on Greenfields Court planned near East Mulberry Street (the "**Greenfields RAB**");

c. Vine & Timberline Intersection Contribution. Contribution to the City by the Developer of $250,000 for the design and construction, or alternatively design and construction by the Developer at a cost of $250,000 or greater, of the improvements to the intersection of East Vine Drive and North Timberline Road (the "**Vine & Timberline Contribution**");

d. Frontage Road and Highway 14 Median Contribution. Contribution to the City by the Developer of $800,000 for the design and construction, or alternatively design and construction by the Developer at a cost of $800,000 or greater, of landscape improvements in the North Frontage Road and Highway 14 Median and at the intersection of North Frontage Road and Highway 14 (the "**Median Contribution**"); and

e. Community Gateway Contribution. Contribution to the City by the Developer of $500,000 for the design and construction, or alternatively design and construction by the Developer at a cost of $500,000 or greater, of monumentation and landscape improvements on parcels located between the realigned North Frontage Road and East Mulberry Street to create a welcoming entry feature (the "**Community Gateway Contribution**"). Despite this parcel of property's ideal location for a profitable convenience store or drive-thru site, the Developer has committed to developing this site as a City monument and community entry feature, at a lost opportunity cost to Developer of approximately $1,250,000 in foregone land value.

The timing for each of the above-described critical onsite and off-site public infrastructure shall occur as reasonably determined by the City as part of its consideration of the development application filed with the City under the LUC for each phase of the Project and with the resulting obligations included in the Final Plan and Development Agreement approved for each such phase of the Project. The City's approval of one or more future Final Plans and Development Agreements for the Project, as required under the LUC, that legally obligates the Developer to provide the Rail Crossing Improvements, Greenfields RAB, Vine & Timberline Contribution, Median Contribution and/or the Community Gateway Contribution shall be prerequisites to the Developer's receipt from the City of any residential building permit for construction under the

applicable future approved Final Plan and Development Agreement for the relevant phase of the Project.

3. High-Quality and Smart Growth Elements. The Developer agrees that the future approved Final Plans for the Property and the related future Development Agreements between the City and Developer shall include the following smart growth elements: (i) increased density from Low Density Mixed-Use Neighborhood District standard of 4 units per acre in LUC Division 4.5, (ii) alley access to the garages of at least 40% of the Total Dwelling Units, (iii) added utility services and raw water dedication, (iv) enhanced pedestrian crossings, (v) a central pedestrian-oriented greenway spine through the center of the neighborhood, (vi) a secondary bicycle path to provide a more direct route for cyclists, (vii) an enhanced east-west greenway to connect from the railroad crossing to Cooper Slough, and (v) a mixed-use design. Such future approved Final Plans shall also include neighborhood parks, pocket parks adjacent to the pedestrian-oriented greenway spine, and a commercial center promenade (collectively, "Smart Growth Elements"). The timing of Developer's obligation for each of the Smart Growth Elements shall occur as reasonably determined by the City as part of its consideration of the development applications filed with the City under the LUC for each phase of the Project and with the resulting obligations included in the Final Plan and Development Agreement approved for each such phase of the Project. The City's approval of one or more future Final Plans and Development Agreements for the Project that legally obligates the Developer to provide any of the Smart Growth Elements, shall be prerequisites to the Developer's receipt from the City of any residential building permit for construction under the applicable future approved Final Plan and Development Agreement for the relevant phase of the Project.

4. Environmental Sustainability.

a. Solar Photovoltaic Energy. The Developer agrees that one or more of the future approved Final Plans for each of the phases of the Project and related future Development Agreements shall require the Developer to construct a solar power generation system or systems that shall generate a minimum of 800 kilowatts (each a "**Solar Power Generation System**"). At Developer's option, each Solar Power Generation System shall be certified by either (i) a licensed, independent, third-party electrical engineer or solar professional in accordance with the requirements of the City, or (ii) an agent or representative of the City, in accordance with the requirements of the City. The Developer shall also provide documentation satisfactory to the City certifying that each Solar Power Generation System will be owned, operated and maintained by the owner of the property on which the Solar Power Generation System is located (the "**Owner's Certification**"). The City must have received certification of one or more Solar Power Generation Systems generating at least 400 kilowatts and the related Owner's Certification before the City is required to issue any certificate of occupancy for more than fifty percent (50%) of the Total Dwelling Units within the Property, and certification of one or more Solar Power Generations Systems generating the remaining 400 kilowatts and the related Owner's Certification shall be received by the City prior to the City being required to issue a certificate of occupancy for any of the last one hundred (100) of the Total Dwelling Units within the Property.

b. Water Conservation through Non-Potable Irrigation System. The Developer agrees that the future approved Final Plans for each phase of the Project and related future Development Agreements shall require the Developer to design and install a non-potable

water system to provide irrigation water to all the natural areas and private lots in that phase of the Project (the "Water System"). The Parties acknowledge that it is the Developer's intention that the Water system shall be owned, operated and maintained by Mulberry Metropolitan District No. 1 or one of the other Districts. The Developer shall apply to the applicable District for acceptance of the Water system in accordance with the relevant agreement(s) in place between the Developer and the District concerning the District's acquisition of public improvements and infrastructure. Nevertheless, the Developer shall be responsible for ensuring the Water System and each phase of it is in full compliance with all applicable federal and Colorado law including, without limitation, the Colorado Constitution, statutes and regulations regarding water use, applicable court decrees regarding water rights and well permitting requirements. The Developer shall also provide to the City, for its prior approval, the Water System design plans for each phase of the Project and such plans must comply with all applicable City ordinances, regulations, standards and policies, as well all applicable county, state and federal laws and regulations. Developer's legal obligation to provide the Water System for each phase of the Project, as provided in this Agreement, shall be included in the Final Plan and Development Agreement for that phase, and Developer agreeing to this obligation in the Final Plan and Development Agreement is a prerequisite to Developer's receipt from the City of a building permit for the construction of any building in that phase of the Project. In addition, the approved Final Plan and Development Agreement for each phase of the Project must provide that the City shall not be required to issue a certificate of occupancy for any building in that phase if the portion of the Water System designed to serve that building has not been installed in accordance with the City-approved design plans for that phase of the Water System and the Water System is operational to serve that building.

c. Sustainable Landscape Design. The Developer desires to promote water conservation in the Project through its landscaping design. The Developer agrees that all the future approved Final Plans for the Project and related future Development Agreements related to each phase of the Project shall require xeric plantings and grouping of plant species with similar water needs to allow for efficiency in irrigation (the "**Sustainable Landscape Design**"). The Developer also agrees that its legal obligation to provide the Sustainable Landscape Design for each phase of the Project shall be a prerequisite to Developer's receipt from the City of any building permit for residential construction within that phase of the Project.

d. Enhanced Community Resiliency. The Developer agrees that one or more of the future approved Final Plans for the Project and related future Development Agreements shall require that the following improvements to provide for enhanced community resiliency be provided by the Developer:

(i) Improvements to the Cooper Slough to reduce runoff and lower peak flows through upstream planting and mitigation;

(ii) Improvements to Lake Canal to help bring it out of the current flood plain; and

(iii) Landscape architecture designed to support the flight distances and migration patterns of applicable pollinators (together, the "**Enhanced Community Resiliency Improvements**").

The timing of Developer's obligation for each of the Enhanced Community Resiliency Improvements shall occur as reasonably determined by the City as part of its consideration of the development applications filed with the City under the LUC for each phase of the Project and with the resulting obligations included in the Final Plan and Development Agreement approved for each such phase of the Project. The City's approval of one or more future Final Plans and Development Agreements for the Project that legally obligates the Developer to provide any of the Enhanced Community Resiliency Improvements, shall be prerequisites to the Developer's receipt from the City of any residential building permit for construction under the applicable future approved Final Plan and Development Agreement for the relevant phase of the Project.

C. City Acknowledgement. The City and Developer specifically acknowledge and agree that the Public Benefits described and secured in paragraphs I.B.1 through I.B.4. above, shall only be deemed to have satisfied the requirement and precondition set forth in Section IV.B. of the Service Plan for securing the Public Benefits as generally described in Exhibit I of the Service Plan when this Agreement goes into full effect as provided in Section II. R. below.

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 and the Final Plans and Development Agreements approved for the Property.

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.L, 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 the LUC.

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.

K. 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.

L. 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.L, 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
With a copy to:	City of Fort Collins ATTN: City Attorney 300 LaPorte Avenue Fort Collins, CO 80521
If to Developer:	Mulberry Development LLC 4801 Goodman Road Timnath, CO 80547 ATTN: Patrick McMeekin
With copies to:	WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law

ATTN: Robert Rogers, Esq.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

M. 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.

N. Recordation. The Developer agrees to record this Agreement with the Larimer County Clerk and Recorder after the recording of each of the deeds from the Owners conveying their respective portions of the Property to the Developer and prior to recording any other encumbrance on the Property, and the Developer shall pay the cost of both recordings of this Agreement.

O. 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.

P. 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.

Q. 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.

R. Effective Date and Termination. This Agreement shall not go into full effect unless and until all of the following events have occurred: (i) the Owners have both deeded their respective portions of the Property to the Developer, (ii) both deeds have been duly recorded with the Larimer County Clerk and Recorder, and (iii) this Agreement has been duly recorded as against both the Whitham Property and the Springer-Fisher Property as provided in Section II.N above. However, if any of these events has not occurred on or before June 30, 2023, this Agreement shall terminate on July 1, 2023, and the Parties shall be released from all obligations hereunder.

[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 Atteberry, City Manager

Date: _____, 2021

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 _____, 2021, by _____ as City Manager of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires:

_____
Notary Public

DEVELOPER: MULBERRY DEVELOPMENT LLC, a Colorado limited liability company

_____

By: _____
Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing Agreement was acknowledged before me this ___ day of _____, 2021, by _____ of Mulberry Development LLC.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires: _____

EXHIBIT A

The Whitham Property

The NW1/4 of Section 9, Township 7 North, Range 68 West of the 6th P.M., EXCEPT Right of Way for County Road 48 and EXCEPT Right of Way in Book 245 at Page 77, County of Larimer, State of Colorado.

EXHIBIT B

The Springer-Fisher Property

The West ½ of the Southwest ¼ of Section 9, Township 7 North, Range 68 West of the 6th P.M.,

EXCEPT that portion thereof conveyed in Deed recorded July 3, 1959 in Book 1097 at Page 148 and corrected in Deed recorded May 20, 1965 in Book 1290 at Page 520;

ALSO EXCEPT that portion thereof conveyed in Deed recorded December 3, 1984 in Book 2300 at Page 1701,

ALSO EXCEPT that portion conveyed to Larimer County by Special Warranty Deed recorded July 10, 2017 at Reception Number 20170044766,

County of Larimer, State of Colorado.