DEVELOPER'S AGREEMENT
VILLAGES AT RIVERDALE FILING NO. 1- AMENDMENT NO.1
CARRIAGE HOUSE

THIS DEVELOPER'S AGREEMENT ("Agreement") is entered into between the City of Thornton ("City"), a Colorado municipal corporation, located at 9500 Civic Center Drive, Thornton, Colorado 80229; Oakwood Homes, LLC Colorado ("Owner") 4908 Tower Road Denver, CO 80249. The City and the Owner may be referred to herein collectively as "Parties" or individually as "Party." Unless otherwise specifically provided in any section or subsection herein, the terms and conditions of this Agreement shall be effective upon recordation.

RECITALS

A. The Owner represents that it is the sole Owner of the following described real property located in the City of Thornton, County of Adams, and State of Colorado and intends to develop real property within the City generally located at the northeast corner of East 128th Avenue and Tamarac Street and more specifically described as Villages at Riverdale Carriage House ("Property").

B. The effect of the Developer's intention to subdivide and/or develop the Property will be to directly impact and generate the need for on-site and off-site Improvements. The Developer acknowledges that the Improvements set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate.

C. The City, pursuant to Chapter 18 of the Thornton City Code ("Code"), requires execution of a Developer's Agreement establishing the obligations to provide for such Improvements necessitated by subdivision and/or development, and to satisfy all conditions placed on the development during the applicable review and approval processes.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the City of the subdivision and development of the Property, the dedication of certain land and easements to the City, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties agree as follows.

AGREEMENT

1.00 DEFINITIONS Unless the context otherwise clearly indicates, the following words and phrases shall be defined as follows:

1.1 “APPROVED PLANS” shall mean the City approved Conceptual Site Plans, Development Permits, construction drawings that were reviewed for compliance with City Codes and the Standards and Specifications. The engineer of record is responsible for adequacy of design and ensuring that the Improvements meet all City Codes and the Standards and Specifications.

1.2 “CITY” shall refer to the City of Thornton, Colorado, a municipal corporation, organized pursuant to Article XX, Colorado Constitution as a home rule municipality and shall include the City Manager, or designee or other official, body or agency designated by Charter or Ordinance to act on behalf of the City.

1.3 “CODE” shall mean the latest adopted version of the Thornton City Code.

1.4 “CONCEPTUAL SITE PLAN” shall refer to the plan approved by the City Council which establishes the framework for development and creates unique criteria for development on a specific property.

1.5 “CONTRACTOR” shall mean the Person under contractual obligation with the Developer to construct the Improvements identified herein, such term shall for purposes of this Agreement, include the term Developer throughout this Agreement.

1.6 “DEVELOPER" or “DEVELOPERS” shall mean Oakwood Homes, LLC Colorado and any Person acting through a duly executed power of attorney, in a form approved by the City, granting the attorney-in-fact full authority to act in the stead of or on behalf of the Owner or Owners, and shall mean and include any and all Owners of the Property.

1.7 “DEVELOPMENT PERMIT” shall refer the permit issued in accordance with the requirements and procedures outlined in the Code.

1.8 “FINAL ACCEPTANCE” shall be an acknowledgement by the City that the Warranty Period has expired with regard to the Improvements, and there are no outstanding items to be corrected under the provisions of the warranty.

1.9 “IMPROVEMENTS” shall mean all Public Improvements and Private Improvements that are constructed, installed, or placed in or on any type of real property located within or intended to be used within the City.

1.10 “INITIAL ACCEPTANCE” shall be an acknowledgement by the City that, to the best of the City’s knowledge all of the Public Improvements have been completed in accordance with the Approved Plans and Standards and Specifications.

1.11 “LANDSCAPING IMPROVEMENTS” shall include but not be limited to living plants (i.e. trees, shrubs, sod, etc.), natural features (i.e. rock, stone, mulch, etc.), and structural features (i.e. irrigation systems, rails, fences, benches, retaining

walls, playground equipment, fountains, etc.) as depicted on the Approved Plans for the Property.

1.12 "LETTER OF COMPLETION" shall be the letter notifying the Developer that the Private Improvements were constructed in accordance with the Approved Plans and the Standards and Specifications.

1.13 "OWNER" shall mean the Person or Persons in record title of the Property; individually, jointly and severely, or otherwise.

1.14 "PERFORMANCE GUARANTEE" shall mean any form of security, including a performance bond, cash escrow, assignment of funds or irrevocable letter of credit, in an appropriate amount and in a form that is satisfactory to the City.

1.15 "PERSON" shall have the same meaning as set forth in Section 1-2 of the Code; unless the context otherwise dictates a different meaning.

1.16 "PHASES" shall refer to Phases of development as indicated in the Phase Map attached hereto and incorporated herein as Exhibit B ("Phase Map").

1.17 "PRIVATE IMPROVEMENTS" shall include all Improvements intended to be privately owned and maintained, as defined by the Standards and Specifications.

1.18 "PUBLIC IMPROVEMENTS" shall include all Improvements intended to be publicly owned and maintained, as defined by the Standards and Specifications.

1.19 "PUBLIC LANDSCAPING IMPROVEMENTS" shall include, but not be limited to, living plants (i.e. trees, shrubs, sod, etc.), natural features (i.e. rock, stone, mulch, etc.), and structural features (i.e. irrigation systems, rails, fences, benches, retaining walls, playground equipment, fountains, etc.), as depicted on the Approved Plans for the Property and intended to be publicly owned and maintained.

1.20 "STANDARDS AND SPECIFICATIONS" shall mean the "Standards and Specifications for the Design and Construction of Public and Private Improvements" as adopted and amended by the City from time to time.

1.21 "WARRANTY GUARANTEE" shall mean any form of security, including a warranty bond, cash escrow, assignment of funds or irrevocable letter of credit, in an appropriate amount and form satisfactory to the City, to guarantee work performed and materials utilized in the time frame prior to Final Acceptance by the City.

1.22 "WARRANTY PERIOD" shall be the time frame during which the Developer is held liable for all work performed and materials utilized prior to Final Acceptance.

2.00 TITLE AND AUTHORITY Developer warrants to the City that it is the record Owner of the Property or acting in accordance with a currently valid and unrevoked power of attorney authorizing the Developer to take all actions with respect to the Property, as contemplated in this Agreement, on behalf of the recorded Owner or Owners of the Property and is in effect at the time of this Agreement. Each of the Persons executing this Agreement on behalf of the Parties hereto, hereby covenant and warrant that such Person is fully authorized to execute this Agreement on behalf of the Party or Parties such Person represents.

3.00 COMPLIANCE WITH CITY STANDARDS The Developer agrees to comply with all applicable City ordinances, regulations and permits issued by the City, and including specifically the Standards and Specifications, and shall pay all fees and charges imposed by such ordinances, regulations, permit or Standards and Specifications, in a timely manner.

4.00 IMPROVEMENTS REQUIRED – SECURITY

4.01 Improvements Developer shall construct and install the Improvements as set forth in this Agreement, which performance is deemed a material term of this Agreement. Construction and installation of the Improvements shall be in accordance with the Approved Plans and the Standards and Specifications. A schedule of the estimated costs, incorporated herein as Exhibit A ("Cost Estimate"), of the Improvements, as approved by the City, shall be utilized for establishing surety amounts. The Approved Plans are intended to represent all the Improvements set forth in the Cost Estimate. If there is a conflict between the Cost Estimate and the Approved Plans, the Approved Plans shall govern.

4.02 Construction of Improvements It shall be the responsibility of the Developer, at its sole expense, to design, construct and install the Improvements. Only Public Improvements shall be granted acceptance by the City as set forth in Section 5.00 herein. Private Improvements shall be issued a Letter of Completion as set forth in Section 5.03 herein. The Developer hereby agrees that once the construction of Improvements is commenced, time is of the essence for the completion of such Improvements in accordance with the requirements of this Agreement. Failure to construct the Improvements depicted within any of the Approved Plans in a timely manner, once construction has begun and unless otherwise extended in writing by the City or on account of Force Majeure, shall constitute a material breach of the obligation to construct such Improvement pursuant to this Agreement, and the City may declare the Developer in default of this Agreement in accordance with Section 15.00. Once constructed, the Developer shall repair and maintain such Public Improvements as set forth in Section 5.05 herein.

4.03 Payment for Improvements The Developer shall at all times promptly make payments for all amounts due to persons supplying labor, materials or services in connection with the Public Improvements identified in this Agreement, and to any Persons who may otherwise be entitled to assert a lien upon the public

property or real property that is to become public property by virtue of state law. In the event that any Person records a lien, or threatens to do so upon the such property as provided herein, the Developer will indemnify and defend the City with respect to the claimed lien, and shall further immediately take any and all steps as are necessary to remove a recorded lien from the public property, at the Developer's expense, regardless of the merits of the claim of the lien claimant.

4.04 Security for Improvements The Developer's obligation to construct Improvements depicted within the Approved Plans shall be secured by a Performance and Warranty Guarantee.

A. The Developer shall obtain a Performance Guarantee which shall be furnished to the City prior to the issuance of any construction permit. The type of Performance Guarantee chosen by the Developer shall be in accordance with all applicable provisions of the Standards and Specifications, the Code, and as required by Section 3.00 herein, except as provided in Section 5.06 of this Agreement. In addition, any Improvements within existing improved rights-of-way require a security deposit in the form of a letter of credit in the amount of one hundred percent (100%) of the estimated cost for such improvements as identified in the Cost Estimate and in accordance with Section 2-272(f)(3)(a) of the Code.

B. The entity issuing the Performance and Warranty Guarantee shall have at least an "A" rating from Moody's, or an equivalent rating as designated by a nationally recognized ratings firm, and be included in the most recent listing of companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.

C. If, at any time prior to the City's acceptance of the Public Improvements, the Performance Guarantee expires or the entity issuing the Performance Guarantee fails to meet the requirements of this Section 4.04, or the estimated construction costs of the Improvements are reasonably determined by the City to be greater than the amount of the Performance Guarantee provided, then the City shall furnish the Developer with written notice of such condition, and within twenty (20) calendar days of the date of such notice the Developer shall provide the City with a substitute Performance Guarantee, or increase the Performance Guarantee to achieve one hundred percent (100%) of the estimated construction cost of Improvements other than Landscaping Improvements, which shall be secured at one hundred fifty percent (150%) of the estimated costs as set forth in Section 5.06. If such Performance Guarantee is not furnished, as set forth herein, the City reserves the right to issue a stop work order as defined in the Standards and Specifications, and

may declare the Developer in default of this Agreement in accordance with Section 15.00.

D. The Developer providing the Performance Guarantee shall have no direct or indirect ownership interest in or managerial control over an entity issuing any type of Performance Guarantee.

E. Upon the receipt and approval of the Performance Guarantee by the City, the Developer and the Developer's successor shall be eligible to apply for building permits pursuant to the City's applicable procedures and regulations then in effect. Receipt of the Performance Guarantee does not release the Developer of the conditions outlined in Section 11.00 herein.

F. The issuance of a permit to facilitate the demolition and removal of existing Improvements on the Property shall not apply to this Section 4.04.

4.05 Licensing of Contractors and/or Subcontractors The Developer shall ensure that all Contractors and subcontractors employed by the Developer shall be licensed by the City before any work on the Improvements is commenced.

5.00 ACCEPTANCE OF PUBLIC IMPROVEMENTS

5.01 Conveyance to the City

A. Prior to Initial Acceptance of Public Improvements, and unless such conveyance has not been previously made to the City, the Developer, by good and sufficient documents of conveyance, shall dedicate, convey, and grant to the City in perpetuity all required easements, rights-of-way, and fee title to real property, without expense to the City, and free and clear of all encumbrances as may be reasonably required to construct, place and maintain such Improvements, as determined by the City. Said instruments of conveyance shall be in a form acceptable to the City Attorney and shall be furnished to the City.

B. In the event that the Developer is not record title owner of a property interest which Developer is required to dedicate, convey or grant to the City pursuant to this Agreement and as required by the Standards and Specifications, it shall be the sole obligation of Developer to acquire title to such property.

C. As to any conveyance required by the City pursuant to this Agreement, the Developer shall at its sole expense provide the City with a policy of title insurance insuring that title to the property conveyed to the City is free and clear of all liens and encumbrances

superior to the City's interest in the property unless otherwise approved by the City.

D. The Developer shall be solely responsible to pay all general taxes attributable to the property interests, as applicable, interests conveyed to the City until the date of conveyance, and at the request of the City shall submit such estimated taxes, prorated to the date of conveyance, in conjunction with the conveyance.

5.02 Initial Acceptance of Public Improvements

A. The Developer shall submit a written request for Initial Acceptance of all Public Improvements, for a Phase or for the entire Property, a minimum of seven (7) business days before the estimated completion date of the Public Improvements identified in the request for Initial Acceptance. The City's inspection of the Public Improvements will be within ten (10) business days of the City's receipt of the Developer's written request for Initial Acceptance. Upon inspection, the City will either issue a letter of Initial Acceptance of Public Improvements or issue a punch list of items that the Developer shall complete before a letter of Initial Acceptance of Public Improvements will be issued. If a punch list is issued, the Developer shall have sixty (60) calendar days to complete the punch list, subject to Force Majeure. If the items on the punch list are not completed within sixty (60) calendar days, the City reserves the right to issue a stop work order as defined in the Standards and Specifications, and may declare the Developer in default of this Agreement in accordance with Section 15.00.

B. If at any time prior to a request for Initial Acceptance of any of the Public Improvements that are constructed or partially constructed, the Developer ceases construction of such Public Improvements, such cessation of work shall constitute a material breach and unless corrected as provided by Section 15.00, the City may declare the Developer in default of the Agreement in accordance with Section 15.00.

C. Upon a finding of satisfactory completion of the Public Improvements in compliance herewith and all applicable ordinances and the Standards and Specifications, the City shall issue a letter of Initial Acceptance of Public Improvements to the Developer, which shall constitute the date of commencement of the Warranty Period. Prior to the issuance of the letter of Initial Acceptance of Public Improvements the Developer shall obtain and deliver to the City a Warranty Guarantee, and provide the City mechanics lien waiver statements with respect to the Property.

D. The City shall, within thirty (30) days of issuance of the letter of Initial Acceptance of Public Improvements, return any applicable Performance Guarantee to the Developer or designated Party, by a letter of transmittal.

E. At the time of Initial Acceptance of the Public Improvements listed in this Agreement, such Public Improvements shall be deemed to be thereby conveyed to the City.

5.03 Completion of Private Improvements

A. Upon a finding of satisfactory completion of the Private Improvements in compliance herewith and all applicable ordinances, regulations, and applicable permits issued by the City and the Standards and Specifications of the City, the City shall issue a Letter of Completion to the Developer.

B. If at any time prior to a request for the Letter of Completion of any of the Private Improvements that are constructed or partially constructed, the Developer ceases construction for such Private Improvements, such cessation of work shall constitute a material breach and unless corrected as provided by Section 15.00, the City may declare the Developer in default of the Agreement in accordance with Section 15.00.

C. Upon issuance of the Letter of Completion, the City shall release all Performance Guarantees being held for assurances of completion for the Private Improvements.

5.04 Warranty Guarantee

A. The Developer shall warrant that all Public Improvements constructed pursuant to any applicable construction permit shall be free from defects, including, but not limited to, defects of materials, workmanship and design, and that the Public Improvements will otherwise fully comply with all applicable provisions of the Standards and Specifications for a period of no less than two (2) years from the date of Initial Acceptance or until eighty percent (80%) of the building permits have been issued for the Property, whichever is longer.

B. The Developer shall provide a Warranty Guarantee equal to fifteen percent (15%) of the total estimated costs of the Public Improvements, excluding Landscape Improvements as provided in Section 5.06. The Warranty Guarantee shall provide security for the costs which may be necessary in repairing and/or replacing

Improvements during the two (2) year Warranty Period following Initial Acceptance of the Public Improvements by the City.

C. In the event that any substantial repair or replacement is required to any of the Public Improvements during the Warranty Period and such repair or replacement is not timely made upon notice to the Developer and or in any event before the expiration of the Warranty Period, the City may elect to:

1. Extend the Warranty Period for up to one (1) additional year past the original expiration following Initial Acceptance of the completed repair or replacement;

2. Adjust the amount or term of the Warranty Guarantee, as may be appropriate; or

3. Declare the Developer in default to the Developer pursuant to Section 15.00.

5.05 Final Acceptance of Public Improvements

A. No earlier than sixty (60) days nor later than forty-five (45) days prior to the date of expiration of the Warranty Period, the Developer shall submit a written request for Final Acceptance of Public Improvements, and within ten (10) days of such request the City shall conduct a final inspection of the Public Improvements, or authorized Phase thereof. The Developer shall certify to the City, in connection with the request for Final Acceptance of Public Improvements that all persons and entities having provided labor and/or services in the construction of the Public Improvements have been fully paid subject to such exceptions as may be disclosed to the City and which are acceptable to the City. If the Public Improvements, subject to the inspection request fully conform to the Standards and Specifications, and all repairs, have been made to bring same into such conformance, then the City shall issue a letter of completion and/or Final Acceptance of the subject Public Improvements to the Developer. After Final Acceptance of the Public Improvements, the Developer may request, and the City shall release, the Warranty Guarantee.

B. The Developer is required to request Final Acceptance of the Public Improvements no later than forty-five (45) days prior to the end of the Warranty Period. The City shall, within ten (10) days of the request, perform a final inspection of the Public Improvements and submit to the Developer a punch list of any corrective items necessary to obtain Final Acceptance. The Developer shall complete the corrective items and have the Public Improvements Finally Accepted by the City no later than ten (10) working days

prior to the expiration of the Warranty Period. If the Developer fails to have Public Improvements Finally Accepted within ten (10) days prior to the date of expiration of the Warranty Period, then the City may declare the Developer in default pursuant to Section 15.00 herein and the City may draw on any applicable Warranty Guarantee, or the City may elect to extend the Warranty Period in additional sixty (60) day increments. In the case the City elects to extend the Warranty Period an additional punch list of corrective items will be issued to the Developer and those items shall be completed prior to the issuance of Final Acceptance of Public Improvements.

C. Nothing herein shall be construed or deemed as requiring the City issue Final Acceptance and release from warranty any Improvements that are defective or damaged.

D. Repair of any damage or deterioration of the Public Improvements that impairs the structural integrity of the Public Improvements that are a consequence of construction within the Property, as determined by the City, prior to issuance of the final certificate of occupancy for the Property, shall be the responsibility of the Developer, and any successors or assigns.

5.06 Landscaping Improvements

A. In the event that the Developer is unable to complete the Landscaping Improvements, as identified in this Agreement because of periods of adverse weather, Force Majeure, or for other reasons beyond the Developer's control, as approved by the City, the Developer may submit to the City an additional Performance Guarantee for only the Landscaping Improvements in the form of a cash payment, a cashier's check, assignment of funds or an irrevocable letter of credit payable to the City in an amount equal to one hundred fifty percent (150%) of the estimated cost of all uncompleted Landscaping Improvements. Upon receipt of any Performance Guarantee for Landscaping Improvements authorized by this paragraph, in a form acceptable to the City, the City may issue a certificate of occupancy.

B. These Landscaping Improvements shall be completed at a time agreeable to both Parties; however, no later than eight (8) months from the date of approval of the request for the additional Performance Guarantee for the Landscaping Improvements by the Developer. The City shall release the Performance Guarantee for Landscaping Improvements only upon completion or Acceptance of all Landscaping Improvement obligations by the Developer.

C. Failure of the Developer to complete the Landscaping Improvements as provided herein shall constitute a material breach of this Agreement, and unless cured, the City may declare the Developer in default of this Agreement in accordance with Section 15.00.

D. In the event of a default by the Developer, the method and manner in which the City elects to construct and install the Landscaping Improvement obligations shall be within the discretion of the City provided, however, that nothing herein shall obligate the City to install or complete the Landscaping Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of the Developer requiring completion of Landscaping Improvements. Any remaining funds will be returned to the Developer after the City determines the construction has been completed. The City, however, shall not be deemed to have accepted any payment responsibility or liability in conjunction with any documents identified in this section.

E. The Developer shall be responsible for maintenance of the Public Landscaping Improvements until Initial Acceptance of all Public Landscaping Improvements. The Developer shall provide the City a Warranty Guarantee for all Public Landscaping Improvements equal to fifty percent (50%) of the total estimated cost of Public Landscaping Improvements as identified in the Cost Estimate in the same manner as set forth in Section 5.04.

6.00 INSURANCE

6.01 The Developer agrees to procure and maintain in force, and at its own cost, the following coverages:

A. Workers' Compensation Insurance as required by the Labor Code of the State of Colorado and Employers' Liability Insurance.

B. Commercial, General or Business Liability Insurance with minimum combined single limits of $2,000,000.00 for each occurrence and $2,000,000.00 general aggregate.

C. Automobile Liability Insurance with minimum combined single limits for bodily injury and Property damage of not less than $600,000.00 for any one occurrence, with respect to each of the Developer’s owned, hired, or non-owned vehicles assigned to or used in performance of services.

6.02 Evidence of qualified self-insured status may be substituted for one (1) or more of the foregoing insurance coverages, if approved by the City.

6.03 The Developer shall at a minimum procure and maintain the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. Only insurers with an A rating, or better, by AM Best will be acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Developer pursuant to retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

6.04 The Developer agrees to have the City named as an Additional Insured on all General Liability and Auto Liability insurance policies as evidenced through a Certificate of Insurance and an Additional Insured endorsement.

6.05 A Certificate of Insurance shall be completed by the Developer's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services to the Property. The City shall review the Certificate within ten (10) working days of receipt. The Certificate shall identify the Developer's Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least sixty (60) days prior written notice has been given to the City. The completed Certificate of Insurance shall be sent to:

City of Thornton
9500 Civic Center Drive
Thornton, Colorado 80229-4326
Attention: Development Engineering

6.06 Failure on the part of the Developer to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a breach of this Agreement and, if said breach is not cured within ten (10) days of written notice by City to Developer, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith and all monies so paid by City shall be repaid by the Developer to City upon demand, or City may offset the cost of the premiums against any monies due to Developer from City, or revoke all building permits until a new policy is provided.

6.07 The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. The Developer agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this Agreement.

6.08 The Parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-

101, *et seq.,* as from time to time amended, or otherwise available to the City, its officers, or its employees.

7.00 LIABILITY LIMITATIONS

7.01 Non-Liability

The Developer acknowledges that the City's review and approval of plans for the development of the Property is done in furtherance of the general public health, safety and welfare, and that no specific relationship with, or duty of care to the Developer or third parties associated with the Developer is assumed by such review and approval, or immunity waived, as is more specifically set forth in Government Immunity Act C.R.S. 24-10-101, *et seq.*

7.02 Indemnification

The Developer agrees to indemnify, defend, covenant not to sue, and hold harmless the City, its officers, officials, and employees, from and against all actions, claims, or demands on account of any injury, damage, loss or liability, including fines imposed by any applicable state or federal regulatory agency, court costs, expenses, and attorney fees, which arises out of or is in any manner connected with any of the work to be performed by the Developer, any Subcontractor of the Developer, or any officer, employee, agent, successor or assign of the Developer or Subcontractor under this Agreement.

8.00 WAIVER A waiver by any Party to this Agreement or the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

8.01 The Developer specifically waives all the provisions under Part 8 of Article 20 of Title XIII, C.R.S., regarding defects in the Improvements under the Agreement and agrees that the provisions of said statutory provisions shall not apply to this Agreement or to any construction defects as defined in the statutory provisions.

8.02 The City shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work from showing the true amount and character of the work performed and materials furnished by the Developer, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the Standards and Specifications.

9.00 BUILDING PERMIT RESTRICTIONS The Developer agrees it shall be estopped from asserting that this Agreement, the City’s approval of construction plans or the City’s issuance of any type of permit for construction of the Improvements in any way, constitutes an approval of building permit allocations or building permits.

9.01 The Developer expressly understands and acknowledges that the expenditure of funds for the construction and installation of any Improvements prior to approval of building permit allocations or building permits is exclusively at the Developer's risk. The City reserves the right, in exercise of its police power, to choose not to grant building permits, or otherwise restrict or condition the granting of building permits for the Property based on current or future ordinances of the City.

9.02 Upon written request of the Developer, at the sole discretion of the Development Engineering Manager, the Developer may begin construction of the Improvements without furnishing a Performance Guarantee, as provided in this Agreement, upon the following conditions: 1) the Developer shall be required to obtain Initial Acceptance of all Public Improvements for the development or within each Phase of the development prior to the issuance of a building permit, 2) after the Developer begins construction of the Improvements if the Improvement remains unfinished for a period of one (1) year from the date this Agreement becomes effective, the City shall require a Performance Guarantee in accordance with this Agreement in lieu of the building permit restriction required by this Subsection. The Developer will have fifteen (15) days to provide the City such a Performance Guarantee, or the City may issue a stop work order as defined in the Standards and Specifications to remain in effect until the Performance Guarantee is provided to the City.

9.03 Upon completion of the Public Improvements and the City's Initial Acceptance of the same, this building permit restriction shall be removed upon receipt of the Warranty Guarantee as outlined in Section 5.04.

10.00 PHASING In the event that phasing is permitted and undertaken by the Developer, no building permits may be issued within any subsequent Phase until Initial Acceptance has been granted for the Improvements in the previous phase. The receipt of a Performance Guarantee by the City does not satisfy the condition of Initial Acceptance as defined in this Agreement, and the Standards and Specifications.

11.00 SPECIAL PROVISIONS The Developer and the City further agree to the following requirements:

11.01 Each Phase, as depicted on the attached Phase Map, shall have two points of access and a looped water system, as determined by the Fire Marshal, prior to the issuance of any building permits for that Phase to allow for proper fire protection during construction and development, and shall have the appropriate sanitary sewer substantially completed, as determined by the Development Engineering Manager, prior to the issuance of any building permit for that Phase.

11.02 Developer may obtain building permits for up to 5 model homes (model home complex) to be located in a Phase 1 prior to the completion of the Improvements required in said Phase; provided, that 1) all Improvements in the immediately preceding Phase have been substantially completed as determined by the Development Engineering Manager; and 2) adequate fire protection and all

weather emergency access(es), as determined by the Fire Marshal, is(are) available to the site on which the model homes are to be constructed. The Developer shall submit a request for said model home building permits showing the site designated for the location of the model home complex, parking, emergency access driveways/roadways, nearby fire hydrants, security and customer control fencing and sufficient information regarding utility services to the model home complex. Upon meeting these requirements, the City may issue certificates of occupancy for the purpose of model show homes; provided, the Developer has completed the Improvements serving the model home complex subject to the satisfaction of the Development Engineering Manager. Prior to issuance of a certificate of occupancy for a model home, the water lines and sanitary sewers shall have passed all required inspections and tests.

11.03 The Developer shall complete and have under Initial Acceptance the Improvements identified in the attached Cost Estimate, Phase 1 and further defined in the construction plans, prior to the issuance of the 60th building permit, which includes the model home permits.

All remaining landscaping, park, and recreation Improvements are addressed elsewhere in this Developer's Agreement.

11.04 The Developer shall at its own expense, design, furnish, construct, and install all Improvements in accordance with the Approved Plans and "City of Thornton Standards and Specifications for the Design and Construction of the Public and Private Improvements",. These Improvements are required to serve this subdivision including, but not limited to streets, utilities, drainage, streetlights, curb, gutter, sidewalks, parks, trails and right-of-way landscaping. All Public Improvements constructed by the Developer in public rights-of-way, easements or other land dedication to the City on the subdivision shall become the property of the City and the Developer shall warrant the Public Improvements for two years from the date of Initial Acceptance or until 80% of the total building permits for the subdivision are issued, whichever is greater.

11.05 The Developer shall have substantially completed all appropriate drainage work, including off-site drainage Improvements/detention facilities, easements and erosion control measures, necessary to convey storm water flows from the subdivision to a drainage way acceptable to the Development Engineering Manager prior to any paving, concrete work, or issuance of the first building permit for the Property.

11.06 All new and existing utility and power lines shall be installed underground prior to the issuance of any building permit for the Property. Necessary aboveground appurtenances (meters, transformers, etc.) shall be carefully located with maximum aesthetic considerations, and outside of any sight triangles. Any aboveground appurtenances that will be visible from the public rights-of-way shall be screened from view. Screening shall consist of landscaping and/or, low fencing shall be installed. Specifics of the screening requirements shall be reviewed at the

time of the Minor Development Permit for Landscaping Improvements.

11.07 The Developer shall construct the portion of the median in Tamarac Street to close the existing median opening, including adding landscaping and irrigation per the approved plans prior to the first Building Permit for the Property.

11.08 The Developer shall pay $56,347.65 for the Gleneagle Estates – 128th Avenue Water Infrastructure Reimbursement Agreement between the City and Shoshone South Ltd. Dated March 29, 2006 upon execution of this Agreement. This collection shall be based upon a Construction Cost Index of 7354.98 for August 2017.

11.09 The Developer shall pay $1,114.53 for the Gleneagle Estates – Wastewater Infrastructure Reimbursement Agreement between the City and Shoshone South Ltd. Dated July 9, 2007 upon execution of this Agreement. This collection shall be based upon a Construction Cost Index of 7354.98 for August 2017.

11.10 The Developer shall pay $4,176.93 for the Quebec Riverdale Wastewater Infrastructure Reimbursement Agreement between the City and Quebec Riverdale LLC dated July 9, 2007 upon execution of this Agreement. This collection shall be based upon a Construction Cost Index of 7354.98 for August 2017.

11.11 Improvements to the Tract B pocket park, as shown on the approved Minor Development Permit shall be completed and found to be in compliance with the Approved Plans, as determined by the Senior Landscape Architect prior to the issuance of the 30th building permit for the Property or within 24 months of the first Certificate of Occupancy for the Property.

11.12 The landscaping and seeding adjacent to and within Tract C (detention pond) shall be completed and found to be in compliance with the Approved Plans and re-certified for volume and design after the landscaping is completed prior to Initial Acceptance of Phase 1 for the Property.

11.13 All right-of-way and common landscape areas shall be completed found to be in compliance with the Approved Plans, and issued a Letter of Completion prior to the issuance of the 30th building permit for the property. The Developer is responsible for maintaining all homeowners' association/ metropolitan district common landscape areas until the City has inspected and verified that the landscaping improvements comply with the approved Development Permit.

11.14 Due to a shortfall of land donated for the required Public Land Donation (PLD), the Developer shall provide amenity upgrades to the Homeowners' Association (HOA) pocket park above and beyond the normal required park amenity requirements, in an amount equal to or in excess of $25,697.98 as shown on the approved Overall Site Plan (ODP) and Zoning for the Property. The amenity upgrades shall be approved with the Approved Drawings for the park Tract B prior to the issuance of the 1st building permit for the Property. Prior to the issuance of

the 35th building permit of the Property, the Developer shall submit paid invoices to the City for approval of the amenity upgrades to satisfy this requirement.

11.15 All perimeter and common fencing shall be completed and found to be in compliance with the Approved Plans prior to the issuance of the 30th building permit, which includes the model home permits.

11.16 The Developer is required to acquire a building permit through the Building Inspection Division for all fences required with the development of the subdivision.

11.17 Developer agrees that the Improvements constructed shall be in conformance with any and all National Pollutant Discharge Elimination Systems (NPDES) standards including compliance with and applicable NPDES permits issued to the Developer, applicable to the development. The Developer further agrees that in the event there is any violation of such standards or NPDES permit issued, if the City, as a result of the Developer's actions, is subject to or is given a monetary fine, penalty or any type of obligation is imposed; such circumstance will constitute a default under the terms of this Agreement. Failure of the Developer to cure the default by reimbursement to the City, upon notice to cure as required by Section 15.00 herein, shall result in a default of this Agreement.

11.18 The Developer and the City hereby agrees that if the Developer has chosen to obtain a title insurance policy to assure the City that all the land to be dedicated to the City as public land or for public purposes, on any subdivision plat required for the Property, is free and clear of all encumbrances will, if not otherwise provided to the City, upon recordation of such plat immediately provide the City an endorsement to any said title insurance policy naming the City as an additional insured and providing the City with evidence of such endorsement within three (3) business days from the date of recordation. The Developer further agrees that any encumbrance show by such title insurance policy that affects or impacts in any way the land to be dedicated to the City as public property or for public purposes will be removed from the title insurance policy exceptions, to the satisfaction of the City and at the expense of the Developer, prior to the issuance of any building permit, grading permit or development permit for the Property.

11.19 All approvals from UDFCD, must be reviewed and approved before the issuance of the construction permit.

11.20 The Property may be subject to the regulations outlined in Chapter 18 of the City Code pertaining to the Residential Growth Pacing System should it be reenacted at any time by City Council.

12.00 NOTICE Any notice which may be given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing by United States Mail, postage prepaid, to the other Party, and unless amended by written notice, to the following:

OWNER:
Oakwood Homes, LLC Colorado
4908 Tower Road
Denver, CO 80249
Telephone # 303- 486-8500
Attn: Bruce Rau, Vice President

CITY OF THORNTON:
Deputy City Manager
City Development Department
9500 Civic Center Drive
Thornton, CO 80229-4326
(303) 538-7295

13.00 BINDING EFFECT/NON-ASSIGNMENT

13.01 Except as set forth at Section 13.02 below, or as otherwise provided herein, this Agreement shall be binding on the Parties hereto, their respective successors and assigns, and shall be deemed to constitute a covenant running with the land. Any such successor and assign shall be jointly and severally liable for performance of this Agreement. This Agreement shall remain in full force and effect until all applicable provisions herein have been fulfilled. The obligations and/or liabilities of this Agreement may not be assigned by the Developer or any Owner, if not the Developer, without approval of all the Parties to this Agreement.

13.02 This Agreement shall not be binding on the specific parcels within the Property sold or conveyed by the Developer to individual homeowners.

14.00 OBLIGATIONS OF MORTGAGOR OR LIENHOLDER The Parties agree that the signatures of any mortgagors or lienholders are to subordinate their interests in the Property to the rights and remedies of the City for purposes of this Agreement if liens or mortgages exist or should a lien or mortgage be placed on the Property after recordation of this Agreement. No mortgagor or lienholder is obligated to complete any of the Improvements described in this Agreement unless the mortgagor or lienholder becomes the Owner of the Property and continues development of the Property by requesting any or all applicable permits, certificates or other approvals from the City. In that event, the Improvements shall be completed pursuant to the terms and conditions of this Agreement.

15.00 DEFAULT A written Notice of default ("Default") shall be sent by the City to the Developer and shall specify the conditions of Default.

15.01 If the Default occurs because the Developer fails to timely comply with any material terms, conditions, or obligations hereof, and any such non-compliance, is not cured or brought into compliance within thirty (30) calendar days of the date of the written Default notice to the Developer, unless the City in writing designates a longer cure period, as reasonably requested by the Developer, then the City may initiate either any of the following actions:

A. The City may call for payment on any applicable performance guaranty or Warranty Guarantee, in whatever form, that was provided by the Developer; and

B. The City may issue a stop work order, as defined in the Standards and Specifications, until the Default is cured as provided herein. If the Default is not cured, the stop work order shall remain in effect until a subsequent Developer assumes the responsibilities of development pursuant to Section 13.00; and

C. The City may pursue any other remedy at law or equity before any court of competent jurisdiction and any such remedies authorized in this Section 15.00.

The Developer hereby grants an access easement to the City for the purpose of constructing the Improvements identified on the Approved Plans in order to protect and promote the public's health safety and welfare.

15.02 In the event that the Default is for an event of insolvency, the City may do the following:

A. The City may issue a stop work order, as defined in the Standards and Specifications, until the Default is cured as provided herein. If the Default is not cured, it shall remain in effect until a subsequent Developer assumes the responsibilities of development pursuant to Section 13.00 of this Agreement; and

B. The City and all non-defaulting Parties may allow an assignment of all of the obligations of the defaulting Party as provided in Subsection 13.01 of this Agreement. The consent of the defaulting Party will not be required and the defaulting Party will not be considered a Party to this Agreement for purposes of such assignment.

16.00 INSOLVENCY Notwithstanding the ability of the Developer to cure a default, pursuant to Section 15.00, it shall be a material breach of this Agreement for the Developer to cause an event of Insolvency to occur during the term of this Agreement. An event of Insolvency shall mean the following: a) the Developer or Owner of the property, if different than the Developer, files a Bankruptcy; b) The Developer or Owner allows the Property to be subject to a foreclosure or if the Property is sold as a result of a foreclosure; c) the Developer ceases to do business, by prolonged cessation of work; prolonged means that all building permits issued for the Property have expired and no inspections of the construction on the Property have occurred within six (6) months of expirations of such permits; or d) the Developer is no longer authorized to do business in Colorado. When the City becomes aware of an event of Insolvency, the City shall notify the Developer or the Owner, if different from the Developer, of Default by reason of an event of Insolvency and that the City will proceed with any action as authorized by this Agreement.

17.00 GOVERNING LAW, ENFORCEMENT AND REMEDIES This Agreement shall be governed by the laws of the State of Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity.

17.01 The rights and remedies of the City, as provided in this Agreement, are in addition to and do not limit any other available rights and remedies afforded by the Agreement or as otherwise available by law.

17.02 In addition to any other available remedies, it is understood and agreed that the City may withhold or revoke any permits or certificates, including but not limited to, building permits and certificates of occupancy, for the Property or for any structure or lot within the Property in the event of a breach of this Agreement by the Developer that is not cured.

18.00 NO THIRD PARTY BENEFICIARIES It is expressly understood and agreed that 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, the Owner, and the Developer, and nothing contained in this Agreement shall give or allow any such claim to right of action by any other third person on such Agreement. It is the expressed intention of the City, the Developer, and the Owner, if different than the Developer, that any person other than the City, the Developer, and the Owner, if different than the Developer, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

19.00 SEVERABILITY If any portion of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this Agreement.

20.00 INTEGRATION AND AMENDMENTS This Agreement shall constitute the entire Agreement between the Parties. No subsequent amendment hereto shall be valid unless made in writing and executed by the Parties.

21.00 ATTORNEYS' FEES If the Developer breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGES WILL FOLLOW]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the Party below has executed this Agreement as of the dates herein set forth.

DEVELOPER _____ Date _____

Print Name _____

Signature _____ Title _____

ATTEST:

Secretary _____ Date _____

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was signed before me this __ day of _____, 20___.
by _____, of _____, its _____.

WITNESS my hand and official seal. My commission expires _____.

Notary Public _____

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the Party below has executed this Agreement as of the dates herein set forth.

OWNER	Date
Print Name	
Signature	Title

ATTEST:

Secretary	Date

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was signed before me this __ day of _____, 20___.

by _____, of _____, its _____.

WITNESS my hand and official seal. My commission expires _____.

Notary Public

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the Party below has executed this Agreement as of the dates herein set forth.

MORTGAGOR/LIENHOLDER	Date
Print Name	
Signature	Title

ATTEST:

Secretary	Date

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was signed before me this __ day of _____, 20___.

by _____, of _____, its _____.

WITNESS my hand and official seal. My commission expires _____.

Notary Public

CITY OF THORNTON

_____

Jason O' Shea, Acting Executive Director
City Development

ATTEST:

_____ _____

Kristen Rosenbaum, City Clerk Date

(SEAL)

APPROVED AS TO FORM:

_____ _____

Luis A. Corchado, City Attorney Date

APPROVED FOR COST ESTIMATE AND/OR PHASE MAP

_____ _____

Cassie Free, Date
Development Engineering Manager

Engineer's Estimate of Probable Cost

for

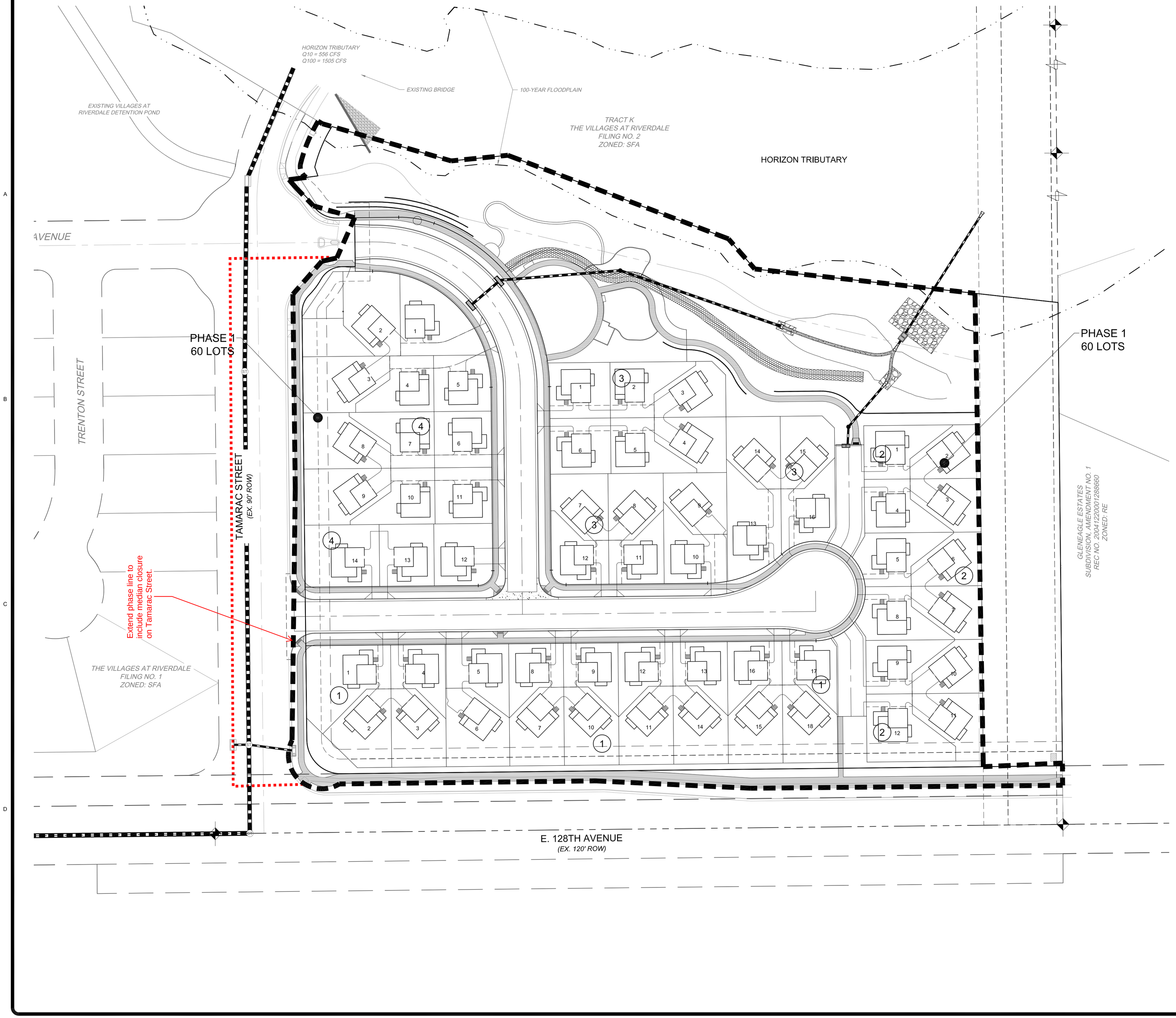
Villages at Riverdale

Prepared for:

Prepared by:
Jansen Strawn Consulting Engineers
45 West 2nd Avenue
Denver, CO 80223

TOTAL IMPROVEMENTS =
$1,735,954

Date Prepared:
March 10, 2016



JANSEN STRAWN
CONSULTING ENGINEERS
45 WEST 2ND AVENUE
DENVER, CO 80223
P.303.561.3333
F.303.561.3339
FOR AND ON BEHALF OF
JANSEN STRAWN CONSULTING ENGINEERS, INC.

BENCHMARK:

CALL UTILITY NOTIFICATION CENTER OF COLORADO
811
CALL 2 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES.

No.	Description of Revisions	Date	By
	Designed By: TL	Checked By: TJ	

VILLAGES AT RIVERDALE

PHASING MAP

Date: 09/13/2016
Job No.: 15096

PH01

Sheet PH01 of PH01