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JEFFERSON COUNTY, Colorado

04-13-17



## Timberline Farms Development Agreement

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**THIS DEVELOPMENT AGREEMENT** ("Agreement") between CD Timberline, LLC, a Colorado limited liability company (hereinafter referred to as "Owner/Developer"), Charles and Jill Richardson (hereinafter referred to as "Deed of Trust Holder"), and the City of Arvada, Colorado, a Colorado municipal corporation (hereinafter referred to as the "City"), shall be effective upon its execution by all applicable parties and immediately upon approval by the City of Arvada as evidenced by the approval signature where indicated below.

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### RECITALS AND REPRESENTATIONS:

WHEREAS, the Owner/Developer represents that it is the sole owner of all of the following described property located in the City of Arvada, County of Jefferson, State of Colorado, more fully described as follows:

(See attached Legal Description)

known as Timberline Farms hereinafter referred to as the "Property."

WHEREAS, the Owner/Developer is planning development of the Property as Timberline Farms, which is generally located south of W. 58<sup>th</sup> Avenue between Simms and Tabor Street.; and

WHEREAS, the Owner/Developer is planning development of the Property as a mixed use development with up to 318 residential units consisting of 302 apartment units, 12 duplexes, and up to 4 single family lots. The Owner/Developer's development and construction plans include the installation of certain public infrastructure including, but not necessarily limited to, sanitary sewer facilities, water line facilities, storm drainage facilities, roadways and emergency access improvements, walks, and landscape improvements, more particularly shown on City Job No. 3445.

WHEREAS, the Owner/Developer has submitted to the City a final development plan, a final plat, and construction plans for the Property, which include a final site plan, final landscape plan, final drainage plans, and other supporting documentation for the development thereof. The final development plan, final plat, construction plans, and other supporting documents, as approved by the City, are public records on file and available for review at the City of Arvada City Hall, 8101 Ralston Road, Arvada, Colorado. These approved plans and associated documents are also incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement, and may herein be referred to collectively as the "Final Plans".

WHEREAS, the parties hereto understand and agree that the intent of this Agreement is to establish obligations and responsibilities with respect to the development of the Property in accordance with the approved Final Plans, said obligations and responsibilities being covenants that run with the Property, encumbering such and governing the development thereof. The Owner/Developer herein shall be affirmatively bound to satisfy all of the obligations and responsibilities set forth herein (including the construction of public improvements).

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties, the approval by the City of Arvada of the Final Plans for the Property, the dedication of certain land and/or easements to the City and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1. PLAN AND AGREEMENT APPROVALS: The Owner/Developer, upon approval of the Final Plans for the Property, shall immediately submit three full size paper copies and one pdf of the approved final development plan to the Community Development Director. No construction may occur on or

associated with the Property and no building permits may be issued until a final development plan and construction documents for all required improvements are submitted and approved by the Community Development Director and the City Engineer. Upon approval, the Owner/Developer shall file with the City Engineer six paper copies (four full size 24" x 36" and two half size 11' x 17") and an electronic copy of the approved final construction plans under City Job No. 3445 for the construction of emergency access lanes, water lines, sanitary sewer services, storm drains and storm drainage structures and streets associated with development of the Property, as required by the City. In addition, the Owner/Developer shall provide an electronic copy of the final drainage and soils reports. Said Construction Plans shall meet the approval of the City and the proposed development shall be constructed according to the Final Plans. No approval of the public improvements as referenced in the Construction Plans is conferred by this Agreement and approval shall be independently made by the City Engineer following the City Engineer's determination that the plans meet the applicable City engineering specifications, commonly accepted engineering practices, and all applicable codes, ordinances, and State, Federal and local laws.

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2. CODE COMPLIANCE: The Owner/Developer shall comply with all codes, ordinances, rules and regulations of the City. Development of the Property shall also be in conformance with all aspects of the approved Final Plans and shall be completed prior to issuance of the first certificate of occupancy within the Property, except as otherwise specified in paragraph No. 5 or elsewhere herein. This shall include, but not be limited to, street and parking lot paving and striping, landscaping, trash enclosures, rooftop and wall mounted equipment, building elevations, and all other requirements of the approved Final Plans and applicable City codes, ordinances, and rules and regulations unless more specifically defined elsewhere herein.

3. PAYMENT OF FEES: The Owner/Developer shall pay all fees and other charges in a timely manner as required by the City, including but not limited to building permits, inspection fees, tap fees, drainage fees, park and school dedication and development fees, and departmental review fees imposed by the City by ordinance, rule, resolution, motion, or by the terms and conditions of this Agreement. Unless otherwise agreed to by the City, the Owner/Developer's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the City of Arvada, Municipal Building, 8101 Ralston Road, Arvada, Colorado 80001. The City shall not accept personal or business checks or drafts not certified by a financial institution as payable.

4. FIRE DISTRICT APPROVALS: The Owner/Developer shall address all of the comments noted in the referral responses from Arvada Fire, including any requirements for fire hydrants, emergency access lanes, auto-turn analysis, and fire lane signage, and shall obtain approval from the Arvada Fire Protection District prior to issuance of each building permit and certificate of occupancy (as applicable) for the Property.

5. CONSTRUCTION PHASING: The Owner/Developer shall submit a construction-phasing plan for City review and approval, which illustrates the phasing of the public and private improvements for the entire Property prior to approval of the final development plan for the Property. Within each identifiable phase of development, all public improvements (except sidewalks) shall be completed prior to issuance of the first building permit and all remaining aspects of the approved Final Plans related to that phase shall be constructed prior to the final certificate of occupancy within such phase. All sidewalks must be installed prior to issuance of the first certificate of occupancy within each phase.

6. FIRE ACCESS: The Owner/Developer shall ensure that approved fire apparatus access shall be provided during construction of Timberline Farms to within 150 feet of all points of the first floor perimeter walls. Unless otherwise approved, fire apparatus access consisting of the first-lift of asphalt or concrete shall be provided prior to commencing construction above grade. In addition, fire hydrants shall be installed and made operational to provide minimum required fire-flow prior to commencing construction above grade.

7. CONTRACTOR LICENSING: Before proceeding with work contemplated herein, the Owner/Developer shall ensure that all contractors and/or subcontractors employed by the Owner/Developer shall be licensed by the City before the contractor and/or subcontractor may commence

work on any improvements associated with development of the Property. The Owner/Developer shall be responsible for ascertaining the status of any contractor or subcontractor to be utilized in the development of the Property, with respect to any uncorrected deficiencies in that entity's previous, unrelated work within the public rights-of-way or its outstanding omissions related to such work, including, but not limited to, failure to submit as-built construction plans or failure to complete the process of placing public improvements under warranty as required elsewhere herein, or failure to submit tax certifications, or failure to submit test records.

8. DEVELOPMENT IMPROVEMENTS: The Owner/Developer shall, at its own expense, design, furnish, construct, and install the public and private improvements in accordance with the approved Final Plans and specifications as approved by the City. These improvements shall include, but not be limited to, construction of all public/private streets, alleys, driveways, parking areas, water lines and mains, sewer lines and mains, drainage facilities, and landscaping within and adjacent to the Property in accordance with the approved Final Plans for the Property and with the requirements of the LDC. All public improvements (excluding sidewalks) must be completed prior to issuance of the first building permit for the Property for each phase, unless specified differently herein. Installation of all sidewalks must be completed prior to issuance of the first certificate of occupancy within each phase.

All public improvements constructed by the Owner/Developer in public rights-of-way, easements, streets or alleys shall become the property of the City immediately upon acceptance of said improvements by the City and the Owner/Developer shall warrant said improvements for two years from the date of acceptance by the City. The Owner/Developer shall complete the process of placing completed public improvements under warranty promptly upon their completion. Failure to complete the process of placing such improvements under warranty may, in the City's discretion, result in the withholding or denial of subsequent building permits or certificates of occupancy.

The City may request, and the Owner/Developer shall provide at the Owner/Developer's cost, documentary evidence satisfactory to the City that any public rights-of-way, easements, or other property dedicated, conveyed, acquired, devised, or granted to the City are free and clear of encumbrances which, in the sole opinion of the City, defeat, limit, or impede the City's ability to use the public property as intended. The Owner/Developer acknowledges that no construction may occur and no building permits may be issued until construction documents for all required improvements are submitted and approved by the City Engineer. The Owner/Developer shall coordinate all work with adjacent property owners prior to commencement of all work on the adjacent properties. The Owner/Developer shall restore areas they disturb on the adjacent properties to existing or better conditions than prior to disturbance.

9. FUGITIVE DUST AND EROSION CONTROL: The Owner/Developer shall meet all requirements and obligations imposed by the State of Colorado, County of Jefferson, and City of Arvada concerning management of stormwater runoff and fugitive dust, and shall comply with all State, County and City imposed requirements governing the stormwater conveyances, detention ponds, fugitive dust, and requirements associated with permits issued for erosion and sediment control on the Property. The Owner/Developer shall provide a copy of all State and County permits acquired to Arvada's Stormwater Program prior to commencement of any earth disturbance work associated with the Property. Further, the Owner/Developer shall fully comply with the applicable sections of the City's Site Development Permit Ordinance, sections 50-70 through and including 50-79 of the Arvada City Code, including the requirement to install and maintain best management practices to reduce soil erosion and control sediment generated by development of the Property. Compliance with such shall be a pre-condition of obtaining building permits or certificates of occupancy, as the case may be. The City may deny or revoke any permit issued to the Owner/Developer in the event of non-compliance with the City or State requirements. The Owner/Developer shall also follow any new standards that the City may adopt for erosion and sediment control and fugitive dust due to changes in State and Federal requirements or drought conditions.

10. RIGHTS-OF-WAY: The Owner/Developer shall comply with all applicable provisions of Chapter 78, Article V, section 78-291 through 78-316 of the Arvada City Code, entitled "Rights-of-Way." This article contains requirements including, but not limited to, Owner/Developer escrow of \$100,000 for

improvements in public rights-of-way and street surface restoration for public streets. Said escrow must be received prior to issuance of a permit for construction of public improvements and prior to installation of any infrastructure improvements on the Property.

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11. SUBDIVISION MONUMENTATION: In accordance with the applicable Colorado Revised Statutes as amended, and in accordance with Section 7.7 of the LDC, the Owner/Developer shall establish all subdivision monumentation and have the monumentation approved by the City prior to issuance of the first certificate of occupancy within the Property.

12. STREET IMPROVEMENTS AND MAINTENANCE: The Owner/Developer shall maintain, in a reasonable, suitable and proper condition for travel, ingress and egress, all streets and access ways included within the approved Final Plans for the Property until they are completed and accepted for maintenance by the City. The Owner/Developer shall take all steps necessary to limit and prevent the accumulation of, and to remove mud, sediment, dirt, trash, and other debris that is tracked, blown, or otherwise carried onto public property or off-site onto private property during development. Such obligation shall continue until all development associated with the Property is complete and improvements accepted by the City for maintenance. If the Owner/Developer fails to remedy any conditions caused or generated by the development as contemplated herein within twenty-four (24) hours of oral or written notice by the City, the City may enter the property, streets and public ways to remedy such conditions. The Owner/Developer shall pay the City for any and all costs incurred by the City in remedying such conditions. Payment of said costs shall be made prior to the City's issuance of additional building permits or certificates of occupancy for all or any part of the development, or immediately upon request from the City, whichever is sooner. The City may limit, deny or revoke building permits or certificates of occupancy until such time as costs incurred, pursuant to this Agreement, are paid in full. Nothing herein shall obligate the City to remedy such conditions or shall limit the City in its selection of the method or manner of remedy, including but not limited to contracting with an individual or company to remedy such conditions. The Owner/Developer shall also replace any broken, damaged, or settled concrete that fronts any lot associated with this development as deemed necessary by the City, prior to the issuance of the final certificate of occupancy within each phase of development on the Property.

13. SIMMS STREET IMPROVEMENTS: To ensure the possibility of a future extension of Simms Street south to the Valley at Rainbow Ridge subdivision, a 50 foot wide right-of-way for Simms Street shall be dedicated to the City as part of the Timberline Farms Final Plat. In addition, prior to recordation of the Timberline Farms final plat, Owner/Developer shall provide to the City \$186,283.73 for the future bridge over Van Bibber Creek as needed for the future Simms Street connection.

14. INTERSECTION AND TRAFFIC IMPROVEMENTS: Prior to approval of the final plat and FDP for Timberline Farms, Owner/Developer shall provide \$25,000 toward additional intersection improvements at W. 58<sup>th</sup> Avenue and Ward Road due to the added impacts of this development on that intersection. In addition, the Owner/Developer shall complete all roadway improvements in accordance with the approved Final Plans, including but not limited to Tabor Street and W. 56<sup>th</sup> and W. 58<sup>th</sup> Avenue improvements to ensure access to adjacent properties and to ensure proper drainage flows. Said improvements shall be completed prior to issuance of the first building permit within each phase of development.

Prior to issuance of the first building permit within Blocks 2-4, the Owner/Developer shall also complete traffic improvements in conjunction with development of this site as specifically defined below:

a. Enhancements to the Simms Street/W. 58<sup>th</sup> Avenue intersection to ensure an adequate 4-way signalized intersection as determined by the City.

b. Enhancements to the intersection of W. 58<sup>th</sup> Avenue and Tabor Street to provide a ¾ movement intersection with no left-out movement.

15. INSTALLATION OF PARKING AND HARD SURFACE ACCESS: The Owner/Developer shall install, sign and stripe all parking and hard surface areas within the Property, as illustrated on the approved Final Plans and in conformance with the LDC prior to the issuance of any certificate of

occupancy for the Property. The Owner/Developer shall comply with "Interpretation of Hard Surface Areas," Arvada City Code, Section 94-64 as amended, and with the LDC.

16. PUBLIC UTILITIES: In conjunction with roadway improvements, the Owner/Developer shall be responsible for undergrounding existing overhead utilities in conformance with the LDC including, but not limited to, the undergrounding of the overhead utilities along the west side of Tabor Street as shown on the Final Plans. The Owner/Developer shall pay all installation charges for lighting, electric and gas required by Public Service Company/Xcel Energy for development of the Property. Prior to installation of utility boxes, the Owner/Developer shall submit utility box locations and landscape screening plans to the City for approval. Utility boxes shall be located away from highly visible public corridors and screened from view. All utility boxes installed on-site prior to January 15, 2017 may remain in their current location. The Owner/Developer shall screen all utility boxes (including those existing prior to January 15, 2017) to the satisfaction of the City prior to issuance of each certificate of occupancy adjacent to the subject utility box. Any required improvements must be completed prior to the issuance of the first certificate of occupancy within each phase of development on the Property and shall be completed at no cost to the City.

17. LIGHTING RESTRICTIONS: Cut-off type fixtures with flush-mounted, flat lenses that cast light downward, and not out toward adjacent properties, must be used. All exterior lighting specifications must comply with the LDC. All exterior lighting must be approved by the Community Development Director prior to issuance of the first building permit for each phase of development within the Property. Should it be determined by the City, at a later date, that lighting on the Property is problematic to any adjacent residential uses, the Owner/Developer shall promptly adjust the light fixtures to resolve the issue to the City's satisfaction.

18. FLOODPLAIN AND DRAINAGE IMPROVEMENTS: Construction of improvements within the Van Bibber floodplain and drainage, shall address all comments from the City's Engineering Division and Urban Drainage and Flood Control District. These improvements shall be completed to ensure that the requirements of Urban Drainage and Flood Control District are met in order for the City to obtain maintenance eligibility for Van Bibber Creek.

In addition, the Owner/Developer shall complete the following:

- a. Obtain City, Urban Drainage and Flood Control District, and Army Corps of Engineers approval of a channel evaluation report by an environmental consultant for the Van Bibber impacts prior to any work within the floodplain and prior to issuance of the southernmost two residential building permits within Block 3 of Timberline Farms (excluding garages and accessory structures and as shown on the Final Plans as Buildings A11 and A14).
- b. Obtain approval of the Van Bibber Improvement plans by Urban Drainage for maintenance eligibility prior to City approval of the Community Acknowledgement form for the CLOMR.
- c. Obtain FEMA approval of a Conditional Letter of Map Revision (CLOMR) for proposed changes to the existing 100 year floodplain limits associated with this development prior to issuance of the southernmost two residential building permits within Block 3 of Timberline Farms (excluding garages and accessory structures and as shown on the Final Plans as Buildings A11 and A14).
- d. Obtain approval of all applicable drainage permits, including, but not limited to a Nationwide or 404 permit from the Army Corps of Engineers prior to issuance of the southernmost two residential building permits within Block 3 of Timberline Farms (excluding garages and accessory structures and as shown on the Final Plans as Buildings A11 and A14).

- e. Construct all floodplain and drainage improvements in accordance with the approved CLOMR.
- f. Obtain a Letter of Map Revision (LOMR) from FEMA prior to issuance of a certificate of occupancy for the southernmost two residential buildings within Block 3 of Timberline Farms (excluding garages and accessory structures and as shown on the Final Plans as Buildings A11 and A14).
- g. Obtain a floodplain development permit from the City prior to commencement of any work within the floodplain. Said permit shall not be issued until the CLOMR has been approved. All work within the floodplain shall meet the requirements of the City of Arvada Floodplain Ordinance and the Engineering Code of Standards and Specifications.
- h. As shown on the Final Plans, the Owner/Developer shall construct a temporary sediment basin on Tract F prior to issuance of the first building permit. This temporary basin must be replaced with a permanent detention pond prior to issuance of the southernmost two residential building permits within Block 3 of Timberline Farms (excluding garages and accessory structures and as shown on the Final Plans as Buildings A11 and A14). Said detention pond shall be constructed in conformance with the Final Plans.
- i. Should the Owner/Developer not obtain a CLOMR as specified in item "a." above, then no additional building permits within Block 3 shall be issued unless an FDP amendment for Timberline Farms has been reviewed and approved by the City.
- j. Prior to issuance of the first residential building permit within Blocks 2-4 of Timberline Farms (excluding garages and accessory) a HEC-RAS analysis and written analysis for the bridge at the Simms Street crossing must be provided to the City showing that the Timberline improvements will not negatively impact future surrounding property owners in both Timberline Farms and Valley at Rainbow Ridge. Approval of the HEC-RAS must be obtained prior to issuance of the first certificate of occupancy within Blocks 2-4 of Timberline Farms.

19. STORMWATER APPURTENANCE CONSTRUCTION AND MAINTENANCE: The Owner/Developer shall obtain approval from the City Engineer of the final drainage plan and Site Development Permit for this development prior to approval of the associated Construction Plans/Final Plans. Prior to expanding site construction activities, Owner/Developer must obtain approval of an amendment to the Site Development Permit. The Owner/Developer shall install stormwater conveyances, detention ponds, swales, infiltration beds, underground best management practices, or any other stormwater feature as detailed on the approved construction drawings. The Owner/Developer shall meet all requirements, obligations, and best engineering principles imposed by the State of Colorado, County of Jefferson, City of Arvada and Urban Drainage and Flood Control District governing the construction of stormwater conveyances, detention ponds, swales, infiltration beds, underground best management practices, or any other water quality feature.

Drainage easements are required for all detention areas and drainage channels, which shall be privately maintained by the Owner/Developer, its successors or assigns. The Owner/Developer shall include language to this effect in any covenants for the Property. Maintenance of stormwater appurtenances must be conducted on a routine basis and in response to the Owner/Developer's or its successors' or assigns' annual inspection and evaluation of the stormwater conveyances' condition. Should ownership of stormwater appurtenances or maintenance responsibilities change, the City of Arvada Stormwater Program must be notified in writing of all new contact information within thirty (30) days of changes taking effect. The City will enforce stormwater installation and maintenance provisions

throughout the construction of the Property and beyond as required by law. In no event shall the City be responsible for constructing or maintaining the drainage/detention facilities or maintaining the easements within the Property.

20. PRIVATE STORM SEWER EASEMENT: In conjunction with transfer of ownership of Lots 8 and 9 of Block 4 of Timberline Farms, the Owner/Developer shall reserve a 15 foot private storm sewer easement along the common lot line between said lots. Such easement and infrastructure therein shall be maintained by Owner/Developer, its successors or assigns.

21. DITCH IMPROVEMENTS: The Owner/Developer shall grant to the City, at no cost to the City, a 10' wide irrigation ditch easement for the Arapahoe Ditch that straddles the west property line of Tract C as shown on the Timberline Farms final plat.

22. PRIVATE IRRIGATION LINE: The existing 8 inch PVC irrigation line within W. 57<sup>th</sup> Avenue and the two manholes therewith are a private system, owned and maintained by the Juchem Ditch. Said improvements shall continue to be privately owned and maintained by the Juchem Ditch, its successors, or assigns and shall not be the maintenance responsibility of the Owner/Developer. In no event shall these improvements be owned or maintained by the City of Arvada.

23. POOL DECK DRAINAGE: Prior to issuance of a building permit for the Clubhouse, the Owner/Developer must demonstrate to the satisfaction of the City how it will ensure that no wash water will be permitted to drain from the pool deck. During routine maintenance and cleaning, the pool deck drains must either be redirected to the sanitary sewer or be plugged and all wash water vacuumed or otherwise removed and disposed of in the sanitary sewer system. The Developer shall also ensure that no paper products, food debris, or similar contaminants will enter the storm sewer system.

24. WATER RIGHTS: Article 4, Section 25-50, of the Arvada City Code requires that all Property annexed into the City, must convey any "tributary water rights appurtenant thereto" to the City of Arvada. However, the City is not purchasing such rights at this time. Should it be determined otherwise, the Owner/Developer agrees to comply with the conveyance requirements of the Arvada City Code. In addition, the City, upon annexation, will not acquire, or require conveyance of, existing well water rights, but the Owner/Developer agrees that the City shall have a right of first refusal to have such rights conveyed to the City, pursuant to § 3.28.4.C.6.b. of the Arvada Land Development Code, in the event the Owner/Developer, or its successors or assigns, desires to convey such rights to any party other than a subsequent purchaser of the landowner's lot(s) upon which the well is situated.

25. PARK AND TRAIL IMPROVEMENTS: The Owner/Developer shall be responsible for installation of all parking lot improvements to the adjacent Stenger parking lot and for trail improvements along Van Bibber Creek as depicted on the approved Final Plans and as identified in review comments by the City's Department of Golf, Parks, and Hospitality. Prior to commencement of work as defined above, the Owner/Developer shall obtain City approval.

26. INSTALLATION OF LANDSCAPING AND RECREATIONAL AMENITIES: The Owner/Developer acknowledges that the City has adopted in the past, and may in the future, adopt water restrictions which impact the viability of installing and maintaining the landscaping as illustrated on the approved landscape plans for the Property. Those watering restrictions may prohibit or qualify the installation of trees, shrubs, new seed, and/or sod for irrigated turf areas. In the event of such prohibition, the Owner/Developer shall deposit funds with the City for escrow in an amount equal to 110% of the estimated cost of improvements not installed due to the prohibition, including, but not limited to irrigated turf areas, trees, shrubs, mulch, edger, and weed barrier. Upon expiration of water restrictions, the Owner/Developer shall complete installation of the remaining improvements in accordance with the Final Plans for the Property, within ninety (90) days. During any restrictions, the City still encourages the installation of trees and shrubs, if they are drip-irrigated or hand-watered. However, the City may not have any water available for the irrigation of these landscape materials installed at that time. If the Owner/Developer proceeds with the installation of any plantings at that time, it is done at the Owner/Developer's sole risk.

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Installation of irrigation systems and other hard surface areas (such as fencing, playground equipment, covered shelters, or other such amenities) shall be completed by the Owner/Developer, at its sole expense, prior to the issuance of the first certificates of occupancy within the Property, unless the improvements have been delayed due to reasons beyond the Owner/Developer's control, such as adverse weather conditions. The Owner/Developer shall deposit funds with the City for escrow in an amount equal to 150% of the estimated cost of the remaining hard surface site elements (including irrigation systems, fencing and other elements as noted above) that are not installed prior to issuance of certificates of occupancy. During periods of time when no water restrictions are in effect, the Owner/Developer shall deposit funds with the City for escrow in an amount equal to 150% for all improvements not completed prior to issuance of a certificate of occupancy. A landscape contractor, acceptable to the City, shall make a determination of the estimated cost of improvements. The City, at its sole discretion and upon the City's rejection of an estimate provided by the Owner/Developer, may obtain an estimate of the costs of landscaping. Such estimate shall be binding upon the Owner/Developer in determining the amount of funds to be escrowed for purposes of this paragraph.

The City shall release its interest in the escrowed funds only upon completion of all landscaping obligations by the Owner/Developer and approval of such by the City. In the event that the Owner/Developer defaults upon its obligations as specified in this paragraph, following the escrow of funds, the City may apply all funds toward the completion of the Owner/Developer's landscaping obligations. For the purpose of applying such funds toward the completion of the Owner/Developer's landscaping obligations, "completion" shall mean and include the cost of labor, materials, contract management, and administration. The City shall refund the escrowed funds not applied to completion of landscaping required by the final landscape plan upon application and verification of entitlement. The method and manner in which the City elects to undertake and complete the landscaping obligations of the defaulting Owner/Developer shall be within the sole 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 Owner/Developer's obligations under this paragraph.

27. INSTALLATION OF FENCING: The Owner/Developer shall ensure that all fencing for the Property conforms to the Final Plans and the requirements of Section 6.5 of the LDC. Fencing shall require separate permits and approvals from the City prior to construction/installation. The Owner/Developer agrees to install all fencing as illustrated on the Final Plans for the Property. Installation of the fencing must be completed prior to the issuance of the first certificate of occupancy within the Property. No fencing illustrated on the Final Plans is deemed approved by the City as part of the Final Plans approval. Fencing shall require separate permits and approvals from the City prior to construction/installation.

28. LANDSCAPING AND FENCING MAINTENANCE: The Owner/Developer or its successors, or assigns, including any property owner's association, shall maintain in perpetuity (at its sole expense) all landscaping, fencing, and any other amenities (collectively referred to herein as "Landscaping") installed within or associated with the Property pursuant to the Final Plans, regardless of whether the landscaping, as actually installed, fails to specifically conform to the requirements of the Final Plans and regardless of whether the Owner/Developer or the City installs the landscaping.

29. SCREENING OF MECHANICAL EQUIPMENT: The Owner/Developer shall screen all roof mounted and wall mounted equipment from view pursuant to Section 6.6.4.F.3 of the LDC to the satisfaction of the Community Development Director prior to issuance of each certificate of occupancy within the Property.

30. TRASH ENCLOSURES: The Owner/Developer shall construct all trash enclosures in conformance with the Final Plans and Section 6.5.11 of the LDC, prior to issuance of the first certificate of occupancy for each phase of the Property. The trash enclosures, including the gates, must be constructed of non-combustible materials, and have an architectural design compatible with the primary structure, using matching materials and/or colors. The Owner/Developer or its successors or assigns

shall keep the trash enclosure gates closed at all times, except for the periodic moments when access is needed to place trash within the containers, or empty or replace the trash receptacles themselves.

31. **SIGNAGE:** The Owner/Developer shall ensure that all signage for the Property conforms to the Final Plans and the requirements of Section 6.17 of the LDC. No signage illustrated on the Final Plans is deemed approved by the City as part of the Final Plans approval. Signage shall require separate permits and approvals from the City prior to construction/installation.

32. **PARK LAND DEDICATION/DEVELOPMENT FEES:** The City and the Owner/Developer acknowledge that the Owner/Developer must satisfy the park dedication and park development requirements of the LDC. For Timberline Farms, these requirements shall be satisfied by a combination of park land dedication, park and open space improvements, and cash-in-lieu thereof. In conjunction with the Timberline Final Plat, the Owner/Developer shall dedicate park land to allow for expansion of the existing parking lot on the west end of the Stenger ball fields. In addition to the land dedication, the Owner/Developer shall construct the parking lot expansion to include asphalt parking, curb, gutter, walks, lighting, landscaping and water quality pond as depicted on the approved Final Plans. These improvements shall be for public use as part of the Stenger/Lutz Sports Complex, owned by the City of Arvada. The calculations for these shall be based on the fee schedule in effect at the time of payment. Based on the current fee rates and a per acre land value of \$171,190.80 as provided by the Owner/Developer, the total cash-in-lieu fees are as follows:

Total Park Dedication Due:	5.957 acres
<u>Park Dedication Provided:</u>	<u>- 1.739 acres</u>
Park Dedication Remaining	4.218 acres due
Per Acre Land Value	x\$171,190.80/acre = \$722,082.79 dedication fees-in-lieu
<u>Plus Park Development Fee</u>	<u>+ \$418,578.20 development fees-in-lieu</u>
Total Fees-in-Lieu	\$1,140,660.99

The park fees in lieu must be provided to the City based on the timing as noted below and shall be reimbursed upon completion of improvements and acceptance by the City:

- a. The Owner/Developer has estimated the public park/open space improvements associated with the Stenger parking lot will cost \$954,708.22. As a result, the remaining fees-in-lieu in the amount of \$185,952.77 must be provided to the City prior to FDP approval and recordation of the final plat.
- b. The Owner/Developer shall provide the \$954,708.22 fees-in-lieu prior to commencement of construction activities on the Stenger site and prior to issuance of the first building permit on Blocks 2 – 4, whichever occurs first.
- c. To minimize impacts to the public use of the Stenger fields, construction activities associated with the Stenger parking lot shall not commence prior to November 1 and must be completed prior to April 1 (within five months) or prior to the first certificate of occupancy for Timberline Farms, whichever occurs first.
- d. Funds in the amount of \$100,000 shall be retained by the City for a one year warranty period for improvements to the Stenger parking lot. Commencement of the one year warranty shall occur immediately upon approval and acceptance of the improvements by the City through the notice of Substantial Completion. At the conclusion of the one year warranty period, the \$100,000 shall be released to the Owner/Developer following warranty inspection by the City to determine that all improvements remain in accordance with the approved Final Plans.

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- e. In addition to the Stenger improvements, the Owner/Developer shall also complete improvements and restoration to Tracts D and E as dedicated to the City by the Timberline Farms final plat in conformance with the approved Final Plans. To ensure completion of said improvements, the Owner/Developer shall provide \$40,000 to the City prior to FDP approval and recordation of the final plat.
  - f. Funds in the amount of \$5,000 shall be retained by the City for a one year warranty period for improvements to Tracts D and E. Commencement of the one year warranty shall occur immediately upon approval and acceptance of the improvements by the City through the notice of Substantial Completion. At the conclusion of the one year warranty period, the \$5,000 shall be released to the Owner/Developer following warranty inspection by the City to determine that all improvements remain in accordance with the approved Final Plans.

33. SCHOOL DEDICATION FEE-IN-LIEU The Owner/Developer shall provide cash-in-lieu for school land dedication as required by the LDC, Section 7.12.4. Payment of these fees shall be based on the fee rate in effect at the time of payment and shall be paid to the City prior to approval of the final plat and the FDP. Based on the current fee rate and a land value of \$171,190.80 per acre, the total school dedication cash-in-lieu is \$407,434.10.

34. COVENANTS: Prior to issuance of the first certificate of occupancy, the Owner/Developer shall record final covenants for the Property, if applicable, in the appropriate county. Should covenants be created for Timberline Farms, language must be included in the covenants specifying property owner or homeowner's association maintenance obligations for detention and landscape areas as noted elsewhere herein. In no event shall the City of Arvada be responsible for maintenance of these facilities. A copy of this document must be submitted to the City for review and approval prior to recordation.

35. AS-BUILT CONSTRUCTION PLANS: The Owner/Developer shall file, or cause to be filed, with the City an original or reproducible copy of the as-built construction plans of all public improvements promptly upon the completion of such improvements. Failure to do so will delay commencement of the two-year warranty for said public improvements, in which case the Owner/Developer agrees to hold harmless and indemnify the City for any and all actions, claims, damages, injuries, and liabilities resulting from, or in any way related to, such improvements or the failure to submit such as-built plans. The Owner/Developer further understands and agrees that, as a result of its failure to promptly submit such as-built plans, the City may withhold or deny subsequent building permits or certificates of occupancy, either related to the Property or any subsequent development by the Owner/Developer, until such failure is remedied.

36. ANIMAL RESTRICTIONS: In conjunction with the existing residence on Block 4 of Timberline Farms, three miniature horses currently reside. These are not allowed under the new PUD-R zoning. However, these three are considered "non-conforming" and will be allowed to remain. Any other animal uses would need to comply with City regulations/code, As such, full size horses, or more than three, etc. would not be allowed in Timberline Farms.

37. DELAYS: The parties have executed this Agreement such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay in construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting from events which are beyond the control of the delaying party and which are agreed to by the parties as justifying delay.

38. 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.

39. **BINDING EFFECT:** The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the Property. In the event that all or part of the Property is sold, transferred, or otherwise conveyed to additional or multiple parties, all owners and developers shall be jointly and severally responsible for the obligations of the Owner/Developer as set forth in this Agreement.

40. **SEVERABILITY:** Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement. This Agreement may be amended only by an instrument in writing signed by all parties.

41. **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, and the Owner/Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City and the Owner/Developer that any other person receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

42. **GOVERNING LAW AND ENFORCEMENT:** The laws of the State of Colorado shall govern this Agreement. The parties agree and acknowledge that this Agreement may be enforced at law or in equity. 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 this development in the event of a breach of this Agreement by the Owner/Developer.

43. **ATTORNEY'S FEES:** If the Owner/Developer breaches this Agreement, then the Owner/Developer shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

44. **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.

45. **RECORDATION FEES:** The City of Arvada shall record this Agreement and any approved subdivision plat for the Property (as applicable) with the Clerk and Recorder's office of the appropriate county per the provisions of the LDC. Prior to recordation, the Owner/Developer shall provide the City with an updated title commitment to ensure that all appropriate parties in interest sign this Agreement. Prior to recordation, the Owner/Developer shall also pay all costs associated with recordation of these items with the County Clerk and Recorder, based on the recordation rate of \$6 for the first 8 ½" x11" sheet and \$5 per each sheet thereafter and \$11 for the first 24" x 36" sheet and \$10 per each sheet thereafter.

46. **INCORPORATION OF EXHIBITS:** Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Reference to "Job Numbers" or "Project Numbers" in this Agreement is a reference to Final Plans and documentation which is retained as a public record on file and available for public inspection and review upon request at the City of Arvada, Municipal Building, 8101 Ralston Road, Arvada, Colorado. Such Final Plans and documentation filed with the City, approved by the City and noted within this Agreement are hereby incorporated into this Agreement for all purposes.

47. **REVIEW OF REFERENCED DOCUMENTS:** The Owner/Developer hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Arvada City Code, Arvada Land Development Code, and Engineering Specifications, were prior to the execution of this Agreement, and are presently, available for review and inspection at the Arvada Municipal Building, 8101 Ralston Road, Arvada, Colorado, from 8:00 a.m. through 5:00 p.m., Monday through Friday.

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48. INDEMNIFICATION AND HOLD HARMLESS: The Owner/Developer shall indemnify, hold harmless, release and discharge the City of Arvada and the City's officers, employees, agents, and contractors from all liability, claims, and demands, including reasonable attorney's fees and court costs, which arise out of or are in any manner connected with or related to the annexation or rezoning, or approval of the Final Plans for the Property.

49. DEED OF TRUST HOLDER INTERESTS AND RESPONSIBILITIES: This Agreement is intended to control development of the Property. Execution of this Agreement by the Deed of Trust Holder signifies its consent to the Agreement, but does not obligate the Deed of Trust Holder to perform any of the Agreement's terms except as otherwise provided for herein unless the Deed of Trust Holder assumes development of the Property and then only (1) as a condition precedent to the issuance of building permits for the construction of improvements on the subject property, and/or the issuance of certificates of occupancy, as the case may be, or (2) if a public improvement, required to be constructed as a term and condition of the Agreement is only partially constructed at such time as Deed of Trust Holder assumes development responsibilities for all or a portion of the Property, and failure to complete the construction of such public improvement would endanger the public health, safety, or welfare, in which case the Deed of Trust Holder shall be required to complete only so much of the public improvement as is necessary to eliminate the danger to the public health, safety, and welfare.

50. ANNEXATION AGREEMENT: This Agreement shall supersede the previously recorded Timberline Farms Annexation Agreement only as to any inconsistencies between the two.

51. NOTICES: Any notice or communication required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail or mail service such as Federal Express, United Parcel Service, etc.. Such notice or communications shall be given to the parties at their addresses set forth below:

City:  
**City of Arvada**  
8101 Ralston Road  
Arvada, CO 80001-8101

Owner/Developer  
**CD-Timberline, LLC**  
c/o Confluence Companies  
15710 W. Colfax Ave. #202  
Golden, CO 80401

Deed of Trust Holders  
Charles and Jill Richardson  
5685 Tabor Street  
Arvada, CO 80002


DATED THIS 13 DAY OF April, 2017.

**CITY OF ARVADA**, a Colorado Municipal Corporation

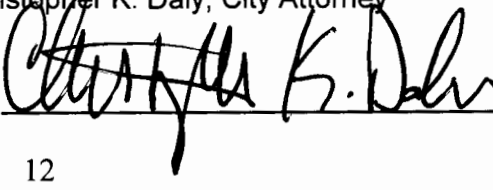
  
\_\_\_\_\_  
Rita McConnell, Community Development Director



ATTEST:


  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
Christopher K. Daly, City Attorney

By:   
\_\_\_\_\_

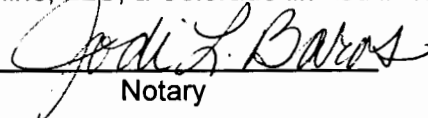
**OWNER/DEVELOPER**  
**CD-Timberline, LLC**  
A Colorado limited liability company

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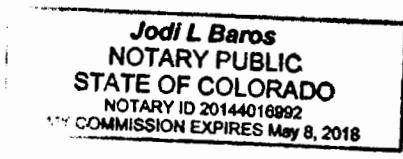
By:   
Anthony De Simone as Chief Operating officer

STATE OF Colorado )  
COUNTY Jefferson ) ss.

The foregoing was acknowledged before me this 13<sup>th</sup> day of April 2017, by Anthony De Simone, as Chief Operating Officer of CD-Timberline, LLC, a Colorado limited liability company.

  
Notary

My Commission Expires:  
May 8, 2018



**DEED OF TRUST HOLDERS**

**Charles Richardson and Jill Richardson**

By: *Charles Richardson*  
Charles Richardson

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By: *Jill Richardson*  
Jill Richardson

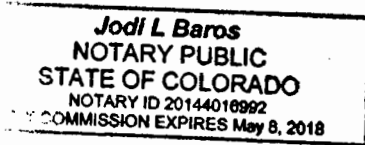
STATE OF Colorado )  
COUNTY Jefferson ) ss.

The foregoing was acknowledged before me this 13<sup>th</sup> day of April 2017, by Charles and Jill Richardson.

*Jodi L. Baros*  
Notary

My Commission Expires:

May 8, 2018



## TIMBERLINE FARMS DESCRIPTION

A PARCEL OF LAND SITUATED IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 AND CONSIDERING THE EAST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 TO BEAR N00°13'07"E WITH ALL BEARING CONTAINED HEREIN RELATIVE THERETO; THENCE N00°13'07"E ALONG SAID EAST LINE A DISTANCE OF 1250.57 FEET TO A POINT 70.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4; THENCE S89°21'10"W PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 A DISTANCE OF 331.36 FEET TO A CORNER OF A PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 81022139 OF THE JEFFERSON COUNTY RECORDS; THENCE ALONG THE SOUTH LINE OF SAID RECEPTION NUMBER THE FOLLOWING THREE COURSES;

1. S89°21'10"W PARALLEL WITH SAID NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 A DISTANCE OF 270.74 FEET;
2. S50°41'35"W A DISTANCE OF 32.02 FEET;
3. S89°21'10"W A DISTANCE OF 36.03 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4;

THENCE S00°10'07"W ALONG SAID WEST LINE A DISTANCE OF 405.95 FEET TO THE NORTHEAST CORNER OF ALVERA SUBDIVISION AS RECORDED IN BOOK 18 AT PAGE 44 OF THE JEFFERSON COUNTY RECORDS; THENCE S89°22'35"W ALONG THE NORTH LINE OF SAID ALVERA SUBDIVISION A DISTANCE OF 663.30 FEET TO THE NORTHWEST CORNER OF ALVERA SUBDIVISION; THENCE S00°05'04"W ALONG THE WEST LINE OF SAID ALVERA SUBDIVISION A DISTANCE OF 495.78 FEET TO THE SOUTHWEST CORNER OF SAID ALVERA SUBDIVISION; THENCE N89°12'39"E ALONG THE SOUTH LINE OF SAID ALVERA SUBDIVISION A DISTANCE OF 662.19 FEET TO THE SOUTHEAST CORNER OF SAID ALVERA SUBDIVISION AND A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4; THENCE S00°04'41"W ALONG SAID WEST LINE A DISTANCE OF 332.34 FEET TO THE SOUTHWEST CORNER OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4; THENCE N89°12'45"E ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 A DISTANCE OF 661.66 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 8 AND THE POINT OF BEGINNING. THE DESCRIBED AREA ABOVE CONTAINS 1,155,787 SQUARE FEET OR 26.533 ACRES MORE OR LESS