

**FIRST AMENDMENT
TO THE
INDIGO TRAILS DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE INDIGO TRAILS DEVELOPMENT AGREEMENT ("First Amendment") is made and entered into this _____ day of _____, 2015, by and between **RH INDIGO TRAILS, LLLP d/b/a INDIGO TRAILS, LLLP**, a Colorado limited liability limited partnership ("Developer"), and **THE CITY OF BRIGHTON**, a Colorado home rule municipality ("City").

WITNESSETH:

WHEREAS, Developer and City previously entered into that certain Development Agreement dated December 19, 2000 recorded in Adams County, Colorado on March 23, 2001 at Reception Number C0776735 (the "Agreement"), which Agreement affects that certain real property located in the City of Brighton, Adams County, Colorado, comprising approximately 132 acres, more or less, and generally known as "Indigo Trails," located north of East 144th Avenue, east of Chambers Road, south of the 148th Avenue alignment and west of the South 19th Avenue alignment, and more particularly described in the Agreement ("Indigo Trails"); and

WHEREAS, pursuant to the Agreement and the approved Final Plat for Indigo Trails, the subdivision was and is defined by six (6) discrete (although related) phases of construction and development, known and referred to as Indigo Trails Phases I, II, III, IV, V and VI; and

WHEREAS, by that certain Assignment and Assumption Agreement dated May 31, 2001 and recorded in Adams County on June 6, 2001 at Reception No. C0810470, Developer assigned to Morrison Homes of Colorado, Inc., a Colorado corporation, certain of Developer's rights and obligations under the Agreement, associated with Phase I of Indigo Trails; and

WHEREAS, by that certain other Assignment and Assumption Agreement dated April 25, 2002 and recorded in Adams County on April 29, 2002 at Reception No. CO961749, Developer assigned to Morrison Homes of Colorado, Inc., a Colorado corporation, certain of Developer's rights and obligations under the Agreement, associated with Phase II of Indigo Trails; and

WHEREAS, in connection with this First Amendment, and by that certain other Assignment and Assumption Agreement dated _____, 2015 and recorded in Adams County on _____ 2015 at Reception No. _____, Developer assigned (or intends to assign) to Meritage Homes of Colorado, Inc., an Arizona corporation, certain of Developer's rights and obligations under the Agreement associated with Phase III of Indigo Trails; and

WHEREAS, Developer remains obligated under the Development Agreement generally, and specifically for Phases IV, V and VI, except to the extent that Developer's obligations for Phases I, II and III have been expressly transferred and assigned, and accepted and assumed by Developer's Assignee(s), pursuant to the above-referenced Assignment and Assumption Agreements; and

WHEREAS, in connection with the proposed assignment of Developer's obligations for Phase III, Developer has also submitted that certain proposed amendment to the approved Final

Plat for Indigo Trails, known as “Indigo Trails Filing No. 1, Amendment No. 1,” a copy of which is attached hereto and incorporated by reference (the “Amended Plat”).

NOW, THEREFORE, in consideration of the promises and covenants of the Agreement and this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Agreement to Amend Development Agreement. The Parties to the Agreement desire and intend to modify and amend certain specific provisions of the Agreement, according to the terms and provisions of this First Amendment. The Agreement remains valid and in full force and effect, and is modified only as provided herein and not otherwise. From and after the date of this First Amendment, the “Agreement” means the Agreement together with this First Amendment, and the Developer shall fully and faithfully perform the Agreement according to its terms.

2. Amended Plat; Phase III. A copy of the Amended Plat is attached and incorporated into the Agreement by this reference. The Amended Plat affects a portion of Phase III, described as Lots 1 through 9, Block 20; Lots 6 through 8, Block 22; Lots 1 through 7, and Lots 11 through 17, Block 23; Lots 1 through 6, and Lots 11 and 12, Block 24; Lot 6, Block 25; Tracts S and T; Red Clover Way; and Trefoil Court – all being a part of Indigo Trails, Filing No. 1, Adams County, Colorado. The real property comprising all of Phase III is more particularly described in attached **Exhibit A**, incorporated by this reference.

3. Phase III Public Improvements. Pursuant to the Agreement the Developer shall at its expense design and construct all public improvements reflected in or contemplated by the Amended Plat, all public improvements referenced in this First Amendment, all public improvements in Phase III (and required or needed to serve Phase III), and all improvements and appurtenances related to the foregoing, all according to the terms of the Agreement, including:

a. Trefoil Court shall be renamed Trefoil Way and shall be constructed as a through street. Developer shall at its expense design and construct Trefoil Way, Trefoil Circle, and all related public improvements to completion, according to all provisions of the Agreement, including but not limited to any approved phasing plan and the City’s Public Works Standards & Specifications. Developer shall construct hammer-head turn-around improvements at the northern terminus of Trefoil Way (as depicted in the Amended Plat) as a temporary condition, until such time as the City requires through-connection to the proposed subdivision to the north (currently known as “Bromley Farms”). At the time of such through-connection, the temporary hammer-head improvements shall be removed at Developer’s expense including the re-grading, restoration, repair, re-vegetation and re-seeding of all lands disturbed by construction or removal of the hammer-head improvements.

b. Red Clover Way shall be constructed as a cul-de-sac and shall be renamed Red Clover Court. Developer shall at its expense design and construct Red Clover Court and all related public improvements to completion, according to all provisions of the Agreement, including but not limited to any approved phasing plan and the City’s Public Works Standards & Specifications.

c. Honeysuckle Court shall be constructed as depicted in the Amended Plat. Developer shall at its expense design and construct Honeysuckle Court and all related public

improvements to completion, according to all provisions of the Agreement, including but not limited to any approved phasing plan and the City's Public Works Standards & Specifications.

d. Certain Lot lines and utility easement boundaries are modified and relocated by the Amended Plat, for the purpose of accommodating revised utility locations, proposed architectural and building plans, and the public improvements referenced above.

e. Tract S and Tract T are deleted by the Amended Plat, and the lands formerly comprising Tracts S and T are incorporated into the modified Lots, easement boundaries, and other areas reflected in the Amended Plat.

f. The Developer shall at its expense design (and re-design to the extent required by the Amended Plat), and construct all necessary water, sanitary sewer, storm drainage and related infrastructure associated with the development of Phase III and as otherwise required by the Agreement.

4. Estimated Construction Costs. The Developer shall at its expense supply for the City's review and approval, updated and current estimated costs for all engineering, design and construction of all public improvements required for Phase III and all related public improvements required by the Agreement, to be included in an updated **Exhibit B** to be attached and incorporated herein by reference, prior to the City's final approval of this First Amendment, and prior to any permits being issued by the City for Phase III.

5. Indian Paintbrush Drive Connection. The City acknowledges that the Developer previously advanced certain funds to engineer, design and construct Indian Paintbrush Drive according to the terms of the Agreement. Since then, the Parties acknowledge that a portion of the City's "South Outfall" storm drainage infrastructure was constructed in certain areas originally planned for the Indian Paintbrush Drive alignment. The Developer's previously advanced funds shall be used to remove the Trefoil Way hammer-head improvements, to restore all lands affected thereby, and to contribute to constructing the Trefoil Way connection to Indian Paintbrush Drive. To the extent that any advanced funds remain thereafter, such funds may be credited for use within Phases IV, V or VI of Indigo Trails. The hammer-head improvements shall be removed (and the affected lands restored) when the "Bromley Farms" property to the north develops, and the City requires Trefoil Way to be connected to Indian Paintbrush Drive. The City shall cause the Trefoil Way connection to Indian Paintbrush Drive to be constructed by the party responsible for developing "Bromley Farms" to the north of Indigo Trails.

6. Phase III Lots; Homeowner's Association. The Parties acknowledge that the real property comprising Indigo Trails, including all of Phase III, is subject to the terms and provisions of that certain "Declaration of Covenants, Conditions and Restrictions of Indigo Trails" dated May 21, 2002 and recorded in Adams County on May 23, 2002 at Reception No C0973712 (the "Declaration"). The Developer warrants and represents that all Lots within Phase III are subject to the Declaration and as such, that such Lots shall be and become part of the existing homeowner's association for Indigo Trails according to the terms of the Declaration.

7. Model Homes; Honeysuckle Court Lots. The City acknowledges that the Developer may desire to apply for permission to construct certain model homes in Phase III, prior to the Developer's full completion of all public improvements required by the Agreement. The City is willing to entertain applications for three (3) building permits for certain specific Lots located on Honeysuckle Court (specifically: Lots 1, 2 and 3, Block 25); provided that the Developer must

CITY OF BRIGHTON, COLORADO

By: Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to Form:

Margaret R. Brubaker, Esq., City Attorney

EXHIBIT A
LEGAL DESCRIPTION
INDIGO TRAILS PHASE III

Lots 5, 6, and 7, Block 15
Lots 1 – 10, inclusive, Block 18
Lots 1 – 5, inclusive, Block 22
Lots 8 – 10, inclusive, Block 23
Lots 7 – 10, inclusive, Block 24
Lots 1 – 5, inclusive, Block 25
Tract R,

Indigo Trails Filing No. 1,
City of Brighton,
County of Adams,
State of Colorado

AND
Lots 1 – 23, inclusive, Block 1
Lots 1 - 3, inclusive, Block 2
Lots 1 – 9, inclusive, Block 3

Indigo Trails Filing No. 1, Amendment No. 1
City of Brighton,
County of Adams,
State of Colorado

Exhibit B

Estimate of Development Cost

(Follows on the next two (2) pages)

Peak Civil Consultants

Estimate of Development Cost

EXHIBIT B

Project: **Indigo Trails Phase 3**
 Client: **Indigo Trails, LLLP**
 Description: **Brighton, Colorado**

Prepared by: **RF**
 Date: **December 1, 2014**
 Job Number: **14.53**

	<u>Quantity</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Comments</u>
Section I: Streets					
Streets (Local Section)					
Mobilization	2	EA	\$9,000.00	\$18,000.00	
Subgrade Preparation	10,792	SY	\$2.50	\$26,980.00	
Curb & Gutter	5,482	LF	\$14.80	\$81,133.60	under all hard surface except sidewalks 3' mountable curbing
Cut & Backfill	5,482	LF	\$2.00	\$10,964.00	
Asphalt	10,777	SY	\$20.40	\$219,950.80	6" asphalt depth
Sidewalk	6,257	LF	\$19.00	\$118,883.00	4' wide 6" thick detached sidewalk
Sidewalk	820	LF	\$47.50	\$38,950.00	10' wide 8" thick detached sidewalk
Curb Return w/4C Ramp	14	EA	\$1,450.00	\$20,300.00	
Curb Return	14	EA	\$1,000.00	\$14,000.00	
Crosspan	910	SF	\$9.50	\$8,645.00	8' wide
Adjust Valve Boxes	9	EA	\$300.00	\$2,700.00	
Raise Manhole Rims	11	EA	\$450.00	\$4,950.00	
Remove/Haul-Off Existing Curb & Gutter	300	LF	\$9.00	\$2,700.00	Along Wildflower Drive
Rotomilling (8' wide)	160	SY	\$18.75	\$3,000.00	
2" Overlay	160	SY	\$8.40	\$1,344.00	
Local Street Subtotal				\$570,400.40	
Streets (Temporary Connection/Fire Access)					
Subgrade Preparation	1,062	SY	\$2.50	\$2,655.00	under all hard surface
Asphalt	1,062	SY	\$20.40	\$21,664.80	6" asphalt depth
Temporary Connection Subtotal				\$24,319.80	
Streets Total				\$594,720.20	

Section II: Utilities

Storm Sewer					
5' Type R Inlet	2	EA	\$5,000.00	\$10,000.00	
Storm Manholes	3	EA	\$4,500.00	\$13,500.00	
18" RCP Storm Sewer	242	LF	\$50.00	\$12,100.00	
24" RCP Storm Sewer	524	LF	\$60.00	\$31,440.00	
24" F.E.S.	1	EA	\$1,200.00	\$1,200.00	
Outlet Riprap	1.8	CY	\$100.00	\$177.78	
Storm Sewer Total				\$68,417.78	

Peak Civil Consultants

Estimate of Development Cost EXHIBIT B

Project: Indigo Trails Phase 3
 Client: Indigo Trails, LLLP
 Description: Brighton, Colorado

Prepared by: RF
 Date: December 1, 2014
 Job Number: 14.53

	Quantity	Unit	Unit Cost	Total Cost	Comments
Water					
12" PVC	731	LF	\$55.00	\$40,205.00	
12" Bends	1	EA	\$500.00	\$500.00	
12"x8" Tee	1	EA	\$650.00	\$650.00	
12"x6" Tee	1	EA	\$650.00	\$650.00	
12" Plug w/Blowoff	2	EA	\$1,600.00	\$3,200.00	
Remove 12" Plug	1	EA	\$1,500.00	\$1,500.00	
8" PVC	2,310	LF	\$40.00	\$92,400.00	
8" Tees	2	EA	\$500.00	\$1,000.00	
8" Bends	4	EA	\$350.00	\$1,400.00	
8" Gate Valves	5	EA	\$1,700.00	\$8,500.00	
8" plug w/Blowoff	3	EA	\$1,500.00	\$4,500.00	
Fire Hydrant Assemblies	4	EA	\$6,500.00	\$26,000.00	
Remove Plug - Connect to Existing 8"	4	EA	\$1,200.00	\$4,800.00	
Water Services	65	EA	\$1,800.00	\$117,000.00	Type M Riprap
Clear Water Testing	3,041	LF	\$3.00	\$9,123.00	
Water Total				\$311,428.00	
Sanitary Sewer					
Mobilization	1	EA	\$10,000.00	\$10,000.00	
8" PVC	3,095	LF	\$45.00	\$139,275.00	
Manholes	14	EA	\$3,500.00	\$49,000.00	
Sewer Services	65	EA	\$2,000.00	\$130,000.00	
Connect to Existing	5	EA	\$500.00	\$2,500.00	
Air Test	3,095	LF	\$3.00	\$9,285.00	
Sanitary Sewer Total				\$340,080.00	
Section III: Miscellaneous					
R.O.W. Landscaping	12,800	SF	\$3.00	\$37,800.00	Includes Landscape Architect Fees
Landscaping Total				\$37,800.00	
Total On-Site Improvements				\$1,352,428.00	
16% Contingency per Development Agreement				\$202,863.80	
Total Improvement Guarantee @ 115%				\$1,555,291.80	