

SCHOOL SITE DEDICATION AGREEMENT

THIS SCHOOL SITE DEDICATION AGREEMENT (this "**Agreement**") is made and entered into as of September 29, 2014, by and between **WS-RHA DEVELOPMENT, LLC**, a Delaware limited liability company, its successors and assigns ("**Developer**") and the **DOUGLAS COUNTY SCHOOL DISTRICT**, a Colorado public school district ("**District**").

RECITALS

A. Developer is developing that certain planned community in the City of Aurora ("**City**") commonly known as Inspiration Colorado, and formerly known as Rockinghorse ("**Property**"), which is a master planned, residential, open space community zoned and entitled for a maximum of 2,000 single family residential units, together with open space, recreational amenities and other related uses, and consisting of two distinctive lifestyle communities as generally depicted in the Framework Development Plan ("**FDP**") for the Property approved by City Council of the City on December 17, 2001, and any amendments thereto (the "**Project**"):

B. The Project is subject to that certain Annexation and Development Agreement dated as of September 1, 2000 ("**Original Annexation Agreement**"), and recorded in the real property records of the Douglas County, Colorado, Clerk and Recorder's Office on September 22, 2000, at Reception No. 00067208, in Book 1898 at Page 913, as amended and restated by that certain Amended and Restated Annexation and Development Agreement dated December 17, 2001 and recorded in the real property records of the Douglas County, Colorado, Clerk and Recorder's Office on March 26, 2002, at Reception No. 02028675, in Book 2293 at Page 1038, and the First Amendment to the Amended and Restated Annexation and Development Agreement dated October 27, 2003, (collectively the "**Restated Annexation Agreement**").

D. Developer is the successor in interest to the original Annexor under the Restated Annexation Agreement. On or about the date of this Agreement, the City and Developer have amended and restated the Restated Annexation Agreement in its entirety by the execution and approval of the Second Amended and Restated Annexation and Development Agreement ("**Second Restated Annexation Agreement**").

E. Pursuant to Section 147-48(a)(2) of the Municipal Code of the City, the dedication of school sites and the payment of fees-in-lieu of such dedication for the Project shall be as required by written agreement between Developer and the District. The Developer and the District are entering into this Agreement to implement Section 147-48(a)(2) of the Municipal Code of the City.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the District agree follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by this reference.

2. School Site and Fees. Pursuant to Section 147-48(a)(2) of the Municipal Code, of the City the dedication of school sites and the payment of fees-in-lieu of such dedication upon the annexation and development of residential properties within the City shall be as required by written agreement between Developer and the applicable school district. As such, the Developer and the District agree with respect to the Project that Developer shall provide for the dedication of school sites and the payment of fees-in-lieu of such dedication as follows:

a. The acreage of school land that is required by the District, as determined by the District's current student generation rate formula for non-age qualified residential development of the Project under the FDP, is 15.165 acres more or less. Developer will satisfy the school land requirement as follows:

i. Developer will dedicate to the District the school site location that is designated and set forth in the FDP and is more particularly described as Tract C, Rockinghorse Subdivision Filing No. 5, consisting of 12.817 acres more or less (the "**School Site**").

ii. The Developer will satisfy a portion of the school land requirement by constructing an offsite drainage detention facility offsite of the School Site in-lieu of a one (1) acre detention facility that otherwise would have been required to be located on the School Site. The construction of the offsite detention facility satisfies the requirement for one (1) acre of school land.

iii. Developer will pay to the District cash-in- lieu of dedication ("**Cash-in-Lieu Payment**") for an additional 1.348 acres. The value shall be based on an anticipated market value after completion of platting and construction of public improvements for the land to be dedicated as required in Section 2.a.i. above. The Developer shall submit a proposal for the Cash-in-Lieu Payment and supply the information necessary for the City Council to evaluate the adequacy of the proposal. This information shall include at least one (1) appraisal of the property by a qualified appraiser.

b. If any portion of the Project is approved or developed so that the number of residential dwelling units that are not Age Qualified Residences is more than 714 dwelling units thereby increasing the number of students that will be generated by the Project, the District shall reevaluate the Project's need for additional land school land by recalculating the student generation rates for the Project based on the increased number on non-Age Qualified Residences. If it is determined based on the District's formula for student generation rates that

additional school land dedication is required, then the Developer will pay to the District cash-in-lieu of dedication for the additional acreage of land required in an amount determined in accordance with Section 2.a.iii. above. The term “**Age Qualified Residences**” means an age-qualified community of residential housing that is established and administered through a Declaration of Covenants, Conditions and Restrictions that is recorded in the real property records of Douglas County and that is intended primarily for persons fifty-five (55) years of age or older and restricting children under the age of 17 that is established under and in compliance with the Fair Housing Amendments Act, 42 U.S.C. §3601 *et seq.* (1988), as amended, the exemption for housing for older persons set out in 42 U.S.C. §3607(b)(2)(C), and the regulations promulgated thereunder.

c. The Developer acknowledges that the District has adopted a voluntary capital mitigation fee in the amount of \$1253.00 per newly constructed home that is not an Age Qualified Residence. Each homebuilder at the Project may pay the voluntary capital mitigation fee at the time at which the homebuilder closes the sale of an individual home and transfers title to a 3rd party homebuyer. Rocking Horse Metropolitan District No. 2 shall be responsible for collecting any such fees and transferring them to the District.

d. The school land dedication, fees and the Cash-in-Lieu Payment under Section 2 above fully satisfies all of the Developer’s school land dedication and impact fee obligations. The District will not require the Developer to make any additional school land dedications or to pay any other school impact fees and shall not impose on the Project a school impact fee or similar fee of any kind.

e. The District shall give the Developer not less than sixty (60) days advance written notice of the date that the District requires the transfer of the School Site to the District. The School Site dedication shall be by special warranty deed, free and clear of all encumbrances, liens, and title exceptions that adversely and materially impair or prevent the use of the school site for school purposes and facilities. The School Site shall be a subdivided parcel of land and the external boundaries of the school site shall be monumented on the ground, in accordance with the City’s subdivision regulations. The Developer shall make the Cash-in-Lieu Payment at the time that the School Site is dedicated to the District.

3. Default. A "breach" or "default" by Developer or the District shall be defined as Developer's or the District's failure to fulfill or perform any material obligation applicable to the party contained in this Agreement.

4. Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in this Agreement below, and the defaulting party shall have twenty (20) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 20-day period and the defaulting party gives written notice to the non-defaulting party within such 20-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 20-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

5. Remedies. If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party's obligations hereunder by an action for any equitable remedy, including injunction and/or specific performance, and/or an action to recover actual damages.

6. Venue. Venue for any action to enforce or interpret the terms of this Agreement shall be exclusively in the District Court, Douglas County, Colorado.

7. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement.

8. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

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

10. Merger and Ratification. This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions mentioned therein and incidental thereto, and supersedes all negotiation or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of this Agreement must be made in writing and signed by the appropriate authorities of the District or of the Developer. All amendments hereto must be in writing signed by the appropriate authorities of the District and Developer in a form suitable for recording.

11. Expenses. Except as otherwise provided in this Agreement, Developer and the District shall each bear their respective costs and expenses associated with entering into, implementing and enforcing the terms of this Agreement.

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

13. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

14. Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this

Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement.

15. Notices. Any notice or communication required under this Agreement between the District and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual, receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section, designate additional persons to whom notices or communications shall be given, and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to District :

Richard D. Cosgrove, P.E.
Director of Planning and Construction, Facilities Management
Douglas County School District
620 Wilcox Street
Castle Rock, Colorado 80104

With a required copy to:

Thomas Tsai, JD, MHA
Chief Operating Officer
Douglas County School District
620 Wilcox Street
Castle Rock, Colorado 80104

If to Developer, by mail delivery:

WS-RHA Development, LLC
9033 E. Easter Place, Suite 110
Centennial, Colorado 80112
Attention: Jeffrey Handlin

With a required copy to:

Fox Rothschild LLP
1225 17th Street, Suite 2200
Denver, Colorado 80202
Attention: Rick Rubin, Esq.

16. Assignment. Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that to the extent Developer assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Developer's obligations under this Agreement by its assignee or transferee shall, upon written notice to the District, thereby relieve Developer of any further obligations under this Agreement with respect to the matter so assumed.

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

18. 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 parties hereto, their successors and assigns, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, Developer and the City have executed this Agreement as of the date first written above.

DEVELOPER:

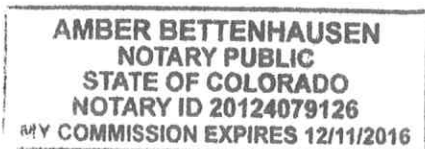
WS-RHA Development, LLC,
a Delaware limited liability company

By: 
Jeffrey Handlin, Authorized Signatory

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 1st day of October, 2014 by Jeffrey Handlin as Authorized Signatory of WS-RHA Development, LLC, a Delaware limited liability company.

Witness my hand and official seal.
My commission expires: 12/11/2016




Notary Public

DISTRICT:

DOUGLAS COUNTY SCHOOL DISTRICT,
a Colorado public school district

By: 
Name: Thomas Tsai, JD, MHA
Title: Chief Operating Officer

STATE OF Colorado)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 29th day of September, 2014 by Thomas Tsai, JD, MHA, as Chief Operating Officer of Douglas County School District, a Colorado public school district.

Witness my hand and official seal.

My commission expires: November 16, 2016


Notary Public

