

AMENDED AND RESTATED MAINTENANCE AGREEMENT

THIS AMENDED AND RESTATED MAINTENANCE AGREEMENT ("Amendment") is made this 5 day of SEPTEMBER, 2006, to be effective January 1, 2006, by and between TRAILMARK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("District"), and TRAILMARK HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation ("Association") (collectively, the "Parties").

RECITALS

WHEREAS, the Parties entered into a Maintenance Agreement ("Agreement") dated September 21, 2001, that outlined responsibility for maintenance of certain landscape, street and sidewalk, lighting and fence areas within the boundaries of the District and the Association; and

WHEREAS, the boundaries of the Association and the District overlap; and

WHEREAS, pursuant to its declaration, the Association is organized for the purpose, in part, of providing maintenance for certain common areas within the Association area as well as other services; and

WHEREAS, effective January 1, 2006, the District transferred a majority of its maintenance responsibilities to South Suburban Park and Recreation District ("South Suburban"), including all open space, park, athletic fields and trails; and

WHEREAS, the District will continue to directly maintain the two (2) reservoirs, three (3) detention ponds and fence bordering public open space within the District; and

WHEREAS, the District also has maintenance responsibility for several small landscaped tracts as more fully described on Exhibit A ("Tracts"); and

WHEREAS, the Parties have determined that, because of the transfer of maintenance to South Suburban, it is economically beneficial for the Association to coordinate, administer and perform the maintenance operations of the District for the Tracts and certain other landscape improvements; and

WHEREAS, the Parties desire to amend and restate the Agreement and establish arrangements whereby the maintenance performed by the Association on behalf of the District will be funded.

NOW THEREFORE, in consideration of the promises and covenants between the District and the Association, it is agreed as follows:

COVENANTS AND AGREEMENTS

1. Maintenance Operations. The Association agrees to perform or contract to have performed the maintenance, repair and replacement of the landscape improvements for the Tracts

and the retaining walls located in Filing 4 next to the open space and Filing 1 next to Denver Botanic Gardens (“Retaining Walls”). In consideration of the Association’s maintenance of the Tracts and Retaining Walls, the District will pay fifty percent (50%) of the costs associated with maintaining the Retaining Walls, ten percent (10%) of the water bill from Tap No. 1, and eleven percent (11%) of the “Base Contract Items” as set forth on Exhibit B, from the Association’s yearly landscape maintenance costs, which shall not include any additional services requested by the Association.

2. Additional Services. If additional services are required, the Parties may modify this Amendment as provided herein.

3. Payment by the Association. The Association shall prepare and submit to the District an invoice of the maintenance costs attributable to the District as set forth in Section 1. Invoices shall be delivered to the District semiannually on or before May 1 and November 1. The District shall remit the invoiced costs within thirty (30) days of the invoice date. The Association shall also provide to the District a copy of the monthly invoice and backup sheets from any contractors.

4. Default; Remedies.

(a) If the District fails timely to make a required payment, the Association shall provide written demand for payment. If the District fails to cure and payment remains delinquent for thirty (30) days, the Association shall provide a second written demand for payment. If the District fails to cure and payment remains delinquent for sixty (60) days after the date of the second written demand for payment, the Association shall discontinue providing maintenance service pursuant to this Amendment until such time as all payments to the Association from the District are brought current.

(b) In the event of a breach of any term of this Amendment by either Party, except as provided in subsection (a) above, and upon ten (10) days’ written notice and opportunity to cure, the non-breaching Party shall have the right to protect and enforce its rights under this Amendment and any provision of law by such suit, action, or special proceedings as the non-breaching Party shall deem appropriate, including without limitation, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages caused by breach of this Amendment, including attorneys’ fees and all other costs and expenses incurred in enforcing this Amendment.

(c) No waiver of any breach hereunder by either Party shall extend to or affect any subsequent or any other then-existing breach nor shall such waiver impair any rights or remedies consequent thereon. All rights and remedies of the Parties provided herein shall be cumulative, may be exercised separately, concurrently, or repeatedly, and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

5. Insurance. The Association, throughout the term of this Amendment, shall obtain and maintain in full force and effect, and each of the Association’s contractors and subcontractors performing work on or about the Tracts or Retaining Walls shall obtain and maintain in full force and effect, throughout the term of any contract or subcontract: (i)

Commercial General Liability insurance coverage at a limit of \$1,000,000 for each occurrence and \$2,000,000 annual aggregate for bodily injury and property damage combined; (ii) Automobile Liability insurance at a limit of \$1,000,000 for each accident, Combined Single Limit for bodily injury and property damage; and (iii) Workers' Compensation insurance at statutory limits, such that all employees of the Association and/or its contractors or subcontractors entering on the Tracts or Retaining Walls shall be covered by a policy in full force and effect. Certificates evidencing that the above-required insurances are in full force and effect shall be delivered to the District's Manager by the Association's Manager simultaneously with the execution of this Amendment and prior to entry on the Tracts by any contractors and/or subcontractors. All such certificates shall evidence that the insurance represented thereby may not be terminated, canceled or materially modified absent thirty (30) days' prior written notice to the District. With respect to General Liability and Automobile Liability, the certificate shall name the District as Additional Insured. The District shall maintain any additional insurance coverage that the District deems to be reasonably necessary.

6. Notices. All notices, demands, or requests required or permitted to be given by either Party to the other shall be in writing and shall be effective immediately upon receipt, if personally delivered or effective within three (3) days of posting, if mailed. Notice shall be given as follows:

If to the District and/or the District Manager:

TrailMark Metropolitan District
141 Union Boulevard, Suite 150
Lakewood CO 80228
Attn: Joel Meggers
Telephone: (303) 987 0835
Facsimile: (303) 987 2032

with a copy to:

McGeady Sisneros, P.C.
1675 Broadway, Suite 2100
Denver CO 80202
Attn: Mary Jo Dougherty
Telephone: (303) 592-4380
Facsimile: (303) 592-4385

If to the Association and/or the Association Manager:

TrailMark Homeowners Association
c/o Management Specialists, Inc.
5855 Wadsworth Bypass
Arvada, CO 80003
Telephone: (303) 420-4433
Facsimile: (303) 420-6611

with a copy to:

Mark K. Payne, Esq.
Winzenburg, Leff, Purvis & Payne, LLP
1660 Lincoln Street, Suite 1750
Denver, CO 80264
Telephone: (303) 863-1870
Facsimile: (303) 863-1872

Either party, by written notice so provided, may change the address to which future notices or payments shall be sent.

7. Modification. This Amendment shall be modified only by a writing signed by the Parties.

8. Integration. This Amendment, together with any other documents referred to herein, constitutes the entire agreement between the Parties with respect to the matters set forth herein.

9. Governing Law. This Amendment shall be governed by the laws of the State of Colorado.

10. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original, and all of which constitute the entire Amendment.

11. Prior Agreement. This Amendment replaces and supersedes in its entirety the original Agreement.

12. Termination. Either Party may terminate this Amendment with or without cause by providing sixty (60) days' advance notice as outlined in Section 6.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above set forth.

TRAILMARK METROPOLITAN DISTRICT

By: 

Attest:



Secretary

TRAILMARK HOMEOWNERS
ASSOCIATION, INC.

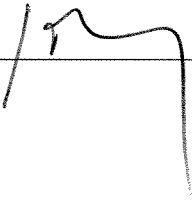
By:  _____

EXHIBIT A

Tracts

Tract T, Chatfield Green Subdivision Filing No. 2, County of Jefferson, State of Colorado

Tracts B and C Chatfield Green Subdivision Filing No. 5, County of Jefferson, State of Colorado

EXHIBIT B

Base Contract Items

Description:

1. Mowing and trimming sod areas
2. Mowing and trimming of native areas
3. Edging
4. Aeration
5. Weeding mulched areas
6. Weeding native and wildflower areas
7. Overseeding wildflower beds
8. Overseeding native areas (by hand)
9. Overseeding native areas (using mechanical equipment)
10. Installing and removing tree wrap (as specified)
11. Trash clean up
12. Irrigation system repair and adjustments (labor rate)
13. Winter watering
14. Clear storm inlets
15. Annual flower bed preparation, spring and fall (tilling, amending, etc.)
16. Seasonal flower displays, spring and fall
17. Pruning trees and shrubs
18. Tree replacements
19. Shrub replacements
20. Graffiti removal
21. Adding playground mulch
22. Island maintenance