

THIRD AMENDED AND RESTATED MAINTENANCE AGREEMENT

THIS THIRD AMENDED AND RESTATED MAINTENANCE AGREEMENT (“Amendment”) is made this 1st day of May 2014, 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 (“TrailMark 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 TrailMark Association; and

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

WHEREAS, pursuant to its declaration, the TrailMark Association is organized for the purpose, in part, of providing maintenance for certain common areas within the TrailMark 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 and the TrailMark Association have partial maintenance responsibilities in regards to the six (6) foot privacy fence and split rail fencing that borders the TrailMark Association’s common areas or public open space (“Fence”); and

WHEREAS, the District will maintain the two (2) reservoirs, three (3) detention ponds, and the Fence; 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 entered into the Amended and Restated Maintenance Agreement dated September 5, 2006, the Second Amended and Restated Maintenance Agreement dated July 20, 2010 and the Parties desire to further amend and restate the Agreement and to clarify the arrangements whereby the maintenance performed by the TrailMark Association on behalf of the District and the maintenance performed by the District on behalf of the TrailMark Association will be funded.

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

COVENANTS AND AGREEMENTS

1. Maintenance Operations. The TrailMark Association agrees to perform or contract to have performed the maintenance, repair and replacement of the landscape improvements for the Tracts and the maintenance, repair and replacement of 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 TrailMark 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 TrailMark Association's yearly landscape maintenance costs, which shall not include any additional services requested by the District. The TrailMark Association agrees to perform or contract to perform incidental repairs or incidental painting of the Fence.

The District agrees to perform or contract to perform painting of the Fence for each filing in TrailMark when undertaken as a complete project or replacement of the Fence, other than incidental painting or repairs. Incidental shall mean any repair or painting with a cost less than \$1,000.00. When the Fence borders on private property, or common areas owned by Star Canyon Condominium Association, Inc. or Star Canyon Homeowners' Association, Inc., the District shall only be responsible for painting the side of the Fence that faces the TrailMark Association's common area or TMMD's public open space. The owner of the private property, including the Star Canyon Condominium Association, Inc. or Star Canyon Homeowners' Association, Inc., shall be responsible for maintaining the side of the fence facing their property. The District and the Trailmark Association agree to pay fifty percent (50%) of the expenses related to the maintenance, replacement and repair of the Fence and the solar aeration system.

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

3. Payment. The TrailMark Association shall prepare and submit to the District an invoice for 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 1st and November 1st. The District shall remit the invoiced costs within thirty (30) days of the invoice date. The TrailMark Association shall also provide to the District a copy of the monthly invoice and backup sheets from any contractors.

The District shall prepare and submit to the TrailMark Association an invoice for half of the Fence and solar aeration system maintenance as set forth in Section 1. Invoices shall be delivered to the TrailMark Association semiannually on or before May 1st and November 1st. The TrailMark Association shall remit the invoiced costs within thirty (30) days of the invoice date. The District shall also provide to the TrailMark Association a copy of the invoices and backup sheets from the contractors.

4. Default Remedies.

(a) If a Party fails timely to make a required payment (“Defaulting Party”), the non-defaulting Party shall provide written demand for payment. If the Defaulting Party fails to cure and payment remains delinquent for thirty (30) days, the non-defaulting Party shall provide a second written demand for payment. If the Defaulting Party fails to cure and payment remains delinquent for sixty (60) days after the date of the second written demand for payment, the non-defaulting Party may discontinue providing maintenance service pursuant to this Amendment until such time as all payments 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 TrailMark Association, throughout the term of this Amendment, shall obtain and maintain in full force and effect, and each of the TrailMark 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 TrailMark 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 TrailMark 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 TrailMark Association shall maintain property insurance for the Fence. The District shall pay fifty percent (50%) of the TrailMark Association’s property insurance premiums for the Fence and fifty percent (50%) of any deductibles under such insurance policy.

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
c/o Community Resource Service
7995 East Prentice Ave. Suite 103E
Greenwood Village, CO 80111
Telephone: (303) 381-4960
Facsimile: (303) 381-4961

with a copy to:

White Bear & Ankele, Professional Corporation
2154 E. Commons Avenue, Suite 2000
Centennial, CO 80122
Attn: George M. Rowley
Telephone: (303) 858-1800
Facsimile: (303) 858-1801

If to the TrailMark Association and/or the TrailMark Association Manager:

TrailMark Homeowners Association
c/o Hammersmith Management Inc.
5855 Wadsworth Bypass 5619 DTC Parkway Suite 900
Greenwood Village, CO 80111
Telephone: (303) 980-0700
Facsimile: (303) 980-0576

with a copy to:

Mark K. Payne, Esq.
Winzenburg, Leff, Purvis & Payne, LLP
1660 Lincoln Street, Suite 1550
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.

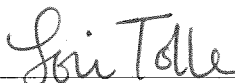
11. Prior Agreement. This Amendment replaces and supersedes in its entirety the original Agreement as heretofore amended.

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

13. Governmental Immunity. Nothing in this Agreement shall be construed to constitute a waiver, in whole or in part, of any of the District's rights and protections under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

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

TRAILMARK METROPOLITAN DISTRICT




Officer of the District

ATTEST:


Secretary

TRAILMARK HOMEOWNERS ASSOCIATION, INC.



President

ATTEST:

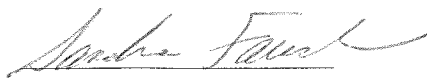

Treasurer

EXHIBIT A

Tracts

Tract G, 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. Over seeding native areas (by hand)
8. Over seeding native areas (using mechanical equipment)
9. Installing and removing tree wrap (as specified)
10. Trash clean up
11. Irrigation system repair and adjustments (labor rate)
12. Winter watering
13. Clear storm inlets
14. Annual flower bed preparation, spring and fall (tilling, amending, etc.)
15. Seasonal flower displays, spring and fall
16. Pruning trees and shrubs
17. Tree replacements
18. Shrub replacements
19. Graffiti removal

ACKNOWLEDGMENT

By signing below Star Canyon Condominium Association, Inc. and Star Canyon Homeowners' Association, Inc., acknowledge that they have read and understand the provisions of Section 1 of the Third Amended and Restated Maintenance Agreement relative to fence maintenance. More specifically Star Canyon Condominium Association, Inc., and Star Canyon Homeowners' Association, Inc., acknowledge that after the fence is painted in 2013 they shall be responsible for painting and maintenance of the side of the fence facing their property from the date the fence is painted forward. The signing of this acknowledgement does not make Star Canyon Condominium Association, Inc. nor Star Canyon Homeowner's Association, Inc. a party to, or a third party beneficiary of the Third Amended and Restated Maintenance Agreement. The sole parties to and beneficiaries to the Third Amended and Restated Maintenance Agreement remain the District and Trailmark Association."

STAR CANYON CONDOMINIUM
ASSOCIATION, INC.

Bethy L. McGivernis, President

ATTEST:

Charles Bringer, Treasurer

STAR CANYON HOMEOWNERS'
ASSOCIATION, INC.

Edward Johnson, President

ATTEST:

James L. Van der Weij, TREASURER