

After Recordation Please Return To:
Miller Rosenbluth, LLC
700 17th Street, Suite 2200
Denver, Colorado 80202

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (this "Agreement") is made effective as of this 14th day of August, 2009, by and between PARKER JORDAN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") whose address is c/o RS Wells, LLC, 8390 East Crescent Parkway, Suite 500, Greenwood Village, CO 80111, and SOUTHCREEK MASTER HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation (the "Association") whose address is 40 Hammersmith Management, 5619 DTC Parkway, Suite 900, Greenwood Village, CO 80111 1-9

Recitals

A. The Association is the owner of certain real property located in the County of Arapahoe, State of Colorado.

B. The Association and the District have agreed to enter into this Agreement to create an easement over and across such property as depicted and described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Easement Area") for the purpose of providing a public pedestrian and recreational trail and certain trail improvements, including but not limited to signage, stairways, steps, bridges, fencing, barriers, paving or surfacing material, culverts, benches, trash receptacles, landscaping and vegetation (collectively, the "Improvements"), and to set forth their agreement with respect to such easement and related matters.

Agreement

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Association and the District hereby covenant and agree as follows:

1. GRANT OF TRAIL EASEMENT. The Association hereby grants, bargains, declares and conveys to the District, its successors and permitted assigns, a perpetual, non-exclusive easement (the "Trail Easement") in, to, through, over, under and across the Easement Area to construct, reconstruct, operate, manage, use, repair, replace, remove and/or maintain the Improvements. It is hereby acknowledged that the Trail Easement constitutes a servitude upon the land and runs with the land. Such Trail Easement is granted by the Association and is accepted by the District in order to provide public access to recreational opportunities and activities throughout the Easement Area. Notwithstanding the foregoing definition of "Improvements," the District shall obtain written approval from Arapahoe County's Engineering Division prior to constructing any landscape improvements or fencing within drainage easements or tracts used for drainage as designated in the Southcreek Filing No. 1 Final Development Plan.

2. PUBLIC ACCESS. The District may permit, in its sole discretion, public access to the Improvements for four-season, any pedestrian or mechanized, non-motorized recreational activities, including, but not limited to walking, skiing, bicycling, and in-line skating. Except as provided below, motor vehicles are not permitted. The District shall have the right, in its sole

Arapahoe County Clerk & Recorder, Nancy A. Doty
Reception #: 89091179
Receipt #: 5488071 Recording Fee: \$48.00
Pages Recorded: 8
Date Recorded: 8/20/2009 2:13:40 PM



discretion, to temporarily restrict or limit public use of and access to the Improvements for the purposes of construction or maintenance of the Improvements as provided in paragraphs 4 and 5 herein, but may not permanently close, restrict or prohibit public use of and access to the Improvements without the Association's prior written consent. The District will be responsible for any modifications to the Improvements that become required upon a request to bring the Improvements in compliance with ADA standards.

3. IMPROVEMENT LOCATION. While the precise location of the Improvements is not determined, the Improvements shall be included within the Easement Area. The District and the Association agree to construct the Improvements in substantial compliance with design plans mutually agreed upon by the parties. Notwithstanding the foregoing, the District has the right to relocate the Improvements within the Easement Area at the District's sole discretion. Unless both parties agree in writing, the Improvements will not be located or relocated in a location that would require the removal or destruction of any structures existing on the Easement Area as of the date of this Agreement.

4. CONSTRUCTION. The District shall, at the District's expense, construct, reconstruct, operate, manage, use, repair, replace, remove and/or maintain the Improvements. The District, its agents, contracts, successors and assigns, shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Area for any purpose necessary and at any and all times necessary or convenient for the full enjoyment of the rights granted to it in this Agreement, including, but not limited to construction, reconstruction, operation, management, use, repair, replacement, removal and/or maintenance of the Improvements.

5. MAINTENANCE. The District or its designee shall be solely responsible for maintaining the Easement Area and the Improvements. Maintenance shall specifically include, without limitation, (a) keeping the Easement Area in a clean and un-littered condition, (b) removing when reasonable and necessary, snow, ice and other debris from the Improvements, (c) repairing, replacing, and renewing the Improvements, and (d) keeping the Improvements in good order, condition and repair. The standard for such maintenance and repair shall be in accordance with maintenance standards for similarly situated trails in the vicinity of Arapahoe County, Colorado.

6. UTILITIES. The Association shall be responsible for, and shall pay before delinquency, all charges for any and all utility services that are supplied to the Easement Area. The Association may then request reimbursement for costs associated with the Improvements from the District pursuant to the District's reimbursement policy, as the same may be amended from time to time.

7. ASSOCIATION RESTRICTIONS. The Association, its successors and assigns, shall not construct, place or permit any structure or plant on any part of the Easement Area that would unreasonably interfere with the Improvements or the District's right of ingress, egress, and access to and use of, the Easement Area, without first obtaining the District's written consent. Additionally, if the Association violates these restrictions, or if the Association's actions cause damage to the Improvements, the Association will be liable for the cost to correct such violation or damage.

8. VEGETATION MANAGEMENT. The District may clear brush within the Easement Area as required to maintain the Improvements and may remove dead, dying or diseased vegetation within the Easement Area which poses a safety risk to trail users after the Improvements have been constructed; otherwise the District may cut or remove additional vegetation only with the prior written consent of the Association. The District shall not employ herbicides, pesticides, growth inhibitors or other chemicals within the Easement Area without the prior written consent of the Association. The Association shall not harvest any trees in the Easement Area without the prior written consent of the District, except that the Association may remove dead, diseased or dying trees without prior permission of the District, provided that the Association has given the District notice of the proposed activity so that the District can divert public use of the Improvements if necessary.

9. FENCING, BARRIERS AND SIGNS. The District, or the Association with the District's prior written consent, may erect and maintain such fencing and barriers within the Easement Area as may be reasonably necessary to prevent access to the Improvements by motor vehicles. The District shall have the right to erect reasonable signs, blazing or other markings within the Easement Area to inform the public of the Improvements location or other Improvement features. The Association shall not erect fences, barriers or signs that impede access to or use of the Improvements.

10. MOTOR VEHICLES. The District may use motorized vehicles and equipment within the Easement Area to construct, reconstruct, operate, manage, use, repair, replace, remove, maintain and/or patrol the Improvements, and for medical emergencies. The Association and the District shall not use or permit the use of motor vehicles within the Easement Area, except as specifically provided elsewhere herein.

11. HANDICAPPED ACCESS. The District may permit motor-driven wheelchairs or all terrain vehicles for the use of handicapped persons within the Easement Area if consistent with the purposes of this Agreement.

12. DRIVEWAYS AND OTHER ACCESS. Except as specifically permitted under this Agreement, no rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements shall be constructed, developed or maintained into, on, over, under, or across the Easement Area without the prior written permission of the District. The District shall not unreasonably withhold or condition the District's permission, provided that granting permission would not materially impair the recreational use of the Easement Area and is otherwise not inconsistent with the purposes of this Agreement.

13. BUILDINGS AND OTHER NON-RECREATIONAL USES. The District shall use the Easement Area exclusively for recreation and open space purposes. No residential, commercial or industrial activities shall be permitted, and no building or structure shall be constructed, created, erected or moved into the Easement Area, other than the Improvements.

14. RIGHT OF ENTRY AND ADJOINING PROPERTY. The District shall have the right to enter upon the Easement Area and to survey, construct, reconstruct, operate, manage, use, repair, replace, remove and/or maintain the Improvements, and to remove objects interfering

therewith. In addition, the District shall have the right to use so much of the adjoining property of the Association during surveying, construction, reconstruction, operation, management, use, repair, replacement, removal and/or maintenance of the Improvements as may be reasonably required; provided, however, that such activities shall not interfere unreasonably with Association's use and enjoyment of such adjoining property. The adjoining property shall include all real property owned by the Association within twenty (20) feet of the Easement Area. The District shall repair any damage caused to any adjoining property and the improvements within a reasonable timeframe, and shall be liable for any injury to person or damage to property, to the extent arising out of the District's use of the Trail Easement.

15. SUBJACENT AND LATERAL SUPPORT. The District shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the construction, reconstruction, operation, management, use, repair, replacement, removal and/or maintenance of the Improvements. It is specifically agreed by and between the Association and the District that, except as provided in this Trail Easement, the Association shall not take any action which would impair the lateral or subjacent support for the Improvements. The Association shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the construction, reconstruction, operation, management, use, repair, replacement, removal and/or maintenance of any improvements on property adjoining the Easement Area. It is specifically agreed by and between the Association and the District that, except as provided in this Trail Easement, the District shall not take any action which would impair the lateral or subjacent support for such improvements. This Paragraph is not intended to prohibit the development of any private property located adjacent to the Easement Area.

16. DRAINAGE PATTERNS. Reasonable efforts will be made to design the Improvements in a manner that will not interfere with or change the drainage patterns of the Easement Area. The District agrees to pay for a third party engineer on behalf of the Association for the purpose of reviewing the District's plans to determine what, if any, impact the Improvements will have on the drainage patterns. Some minor modifications to the existing drainage patterns of the Easement Area may be required; however, the Association will have the right to review and approve any such changes; such approval shall not be unreasonably withheld.

17. ASSIGNMENT. It is expressly acknowledged and agreed that the District shall have the right and authority to assign this Agreement and the Trail Easement, in whole or in part, to any appropriate local governmental entity, including but not limited to all rights to use, and all obligations associated with, the Agreement as are granted to and assumed by the District herein, subject to such assignee assuming the obligations set forth herein. The District contemplates conveying the Improvements to Arapahoe County, Colorado upon completion. The District shall have the right and authority to grant temporary construction easements to any appropriate local governmental entity for purposes of construction, reconstruction, operation, management, use, repair, replacement, removal and/or maintenance of the Improvements, subject to all of the terms and conditions of the Trail Easement.

18. FUTURE EASEMENTS. The Association, its successors and assigns, reserve the right to grant further easement interests in the Easement Area to other grantees so long as such interests and uses are not inconsistent with, or unreasonably interfere with, the use of the Easement Area and benefits of the Trail Easement by the District, its successors and permitted assigns, as

described herein.

19. ABANDONMENT. The District agrees that at such time and in the event that the Improvements or Trail Easement described herein are abandoned by the District and any permitted assignee, the Trail Easement will terminate automatically and the real property interest represented by the Trail Easement will revert to the Association, its heirs, successors and/or assigns.

20. ASSOCIATION AUTHORITY. The Association covenants and agrees with the District that the Association has full power and lawful authority to grant, bargain, declare and convey the Trail Easement and that the Easement Area is free and clear from all grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature as of the date the Association was conveyed the Easement Area via Warranty Deed from KB Home Colorado, Inc., except matters of record. The Association further promises and agrees to warrant and forever defend the District in the exercise of the District's rights hereunder against any defect in the Association's title to the Easement Area as of the date the Association was conveyed the Easement Area via Warranty Deed from KB Home Colorado, Inc. and the Association's right to make the grant herein described, except matters of record.

21. BINDING EFFECT. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Association and the District.

22. EMINENT DOMAIN. In the event the Trail Easement is extinguished by eminent domain or other legal proceedings, the District shall be entitled to any proceeds which pertain to the extinguishment of the District's rights and interests in the Trail Easement.

23. COVENANT. The rights and responsibilities set forth in this Agreement are intended to be covenants on the Easement Area and are to run with the land.

24. CONVEYANCE OF EASEMENT AREA. In any deed conveying an interest in all or part of the Easement Area, the Association shall make reference to this Agreement and the Trail Easement and shall indicate that this Agreement is binding upon all successors in interest in the Easement Area in perpetuity. The Association shall also notify the District of the name(s) and address(es) of the Association's successor(s) in interest.

25. INDEMNITY. To the extent permitted by law, the District hereby indemnifies and saves harmless the Association against an and all loss, damage, liability, claims, demands, cost or expense, including reasonable attorney fees and costs incurred in defending against the same, arising from or in any way attributable to the District's responsibilities under this Agreement, the activities of the District or any of the District's employees, the District's work, or the District's presence or activities on the Easement Area, as well as the use of the Improvements or the Easement Area by any person pursuant to the Easement granted hereunder, including, without limitation, injuries or deaths to persons and damage to property. The Association indemnifies and saves harmless the District against any and all loss, damage, liability, claims, demands, cost or expense, including reasonable attorney fees and costs incurred in defending

against the same, arising from or in any way attributable to the activities of the Associations or any of the Association's employees, the Associations' work or the Association's presence or activities on the Easement Area without limitation, injuries or deaths to persons and damage to property.

26. INSURANCE. For the duration of this Agreement, the District shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Easement Area is located such liability insurance as will protect the District from claims which may reasonably arise out of or result from the District's rights and obligations hereunder or by any person's use of the Improvements on the Easement Area pursuant to the Trail Easement granted hereunder. Within five (5) days of signing this Agreement and before starting any work under this Agreement, and thereafter at least twenty (20) days before the expiration of such insurance, the District shall furnish an executed Certificate of Insurance to the Association, specifying that the District has obtained and will maintain required insurance coverage as set forth herein. The Association shall be named as an additional insured under such insurance.

27. COSTS AND ATTORNEY FEES. In the event any action, suit, or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorney fees incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions.

28. RECORDATION. This Agreement shall be recorded in the real property records of Arapahoe County.

[Remainder of page intentionally left blank].

EXHIBIT A

Easement Area

TRACT AA

A PARCEL OF LAND LOCATED IN THE SE 1/4 OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

ALL THAT PART OF TRACT AA, SOUTHCREEK SUBDIVISION FILING NO. 1 AS RECORDED UNDER RECEPTION NO. B0047116 OF THE ARAPAHOE COUNTY RECORDS LYING NORTHWESTERLY OF A LINE DESCRIBED AS THE NORTHEASTERLY EXTENSION OF THE WESTERLY LINE OF LOT 83 BLOCK 4 TO THE NORTHEASTERLY LINE OF SAID TRACT AA.

CONTAINING 32,192 SQUARE FEET OR 0.739 ACRES MORE OR LESS

TRACT BB

A PARCEL OF LAND LOCATED IN THE SE 1/4 OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

THE SOUTHEASTERLY 20.00 FEET OF TRACT BB, SOUTHCREEK SUBDIVISION FILING NO. 1 AS RECORDED UNDER RECEPTION NO. B0047116 OF THE ARAPAHOE COUNTY RECORDS.

CONTAINING 1,800 SQUARE FEET OR .041 ACRE MORE OR LESS