

**RECREATIONAL TRAIL CONSTRUCTION AND PUBLIC ACCESS
EASEMENT AGREEMENT**

THIS RECREATIONAL TRAIL CONSTRUCTION AND PUBLIC ACCESS EASEMENT AGREEMENT ("Agreement") is made and entered into to be effective this 9th day of November, 2016 by and between the PARKER JORDAN METROPOLITAN DISTRICT ("PJMD") and THE LANDINGS AT CHERRY CREEK HOMEOWNERS ASSOCIATION (the "HOA"), and collectively referred to herein as the "Parties".

WHEREAS, PJMD has entered an Intergovernmental Agreement with Arapahoe County (the "County") dated Jan. 1, 2016 (the "IGA") regarding the construction, ownership, access rights to and maintenance of certain recreational trails, including a trail (the "HOA Trail") to be located on certain property within the boundaries of PJMD and on property that is owned by the HOA which is described in Exhibit A attached hereto (the "Premises"); and

WHEREAS, PJMD desires to obtain all necessary easements for construction of and access to the HOA Trail from the HOA and the HOA has agreed to own and be responsible for the on-going maintenance of the HOA Trail; and

WHEREAS, the HOA is authorized by C.R.S. 38-33.3-302(1)(i) to grant easements through or over its common elements, including the easements contemplated herein; and

WHEREAS, the HOA Trail will allow improved access to and from the HOA trail system to the County's regional trail system; and

WHEREAS, the Parties believe the HOA Trail will be of benefit to the County, PJMD and the HOA.

NOW, THEREFORE, for and in consideration of ten dollars and the premises and the promises contained herein, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. PJMD Construction. PJMD shall design, engineer, and construct the HOA Trail at no expense to the HOA and shall do so in accordance with the specifications set forth on **Exhibit A** hereto, including the appropriate connection to the existing trail located outside the HOA boundaries. PJMD shall ensure that its contractors are duly licensed and insured or bonded.

2. Grant of Temporary Construction Easement. The HOA hereby grants to PJMD a temporary easement in, to, through, over and across the Premises, including points of necessary access to and adjacent to the Premises for purposes of constructing the HOA Trail. The temporary construction easement is granted for vehicular and pedestrian ingress and egress to and from the Premises and for PJMD's use to do all things reasonably necessary to construct and install the HOA Trail, including but not limited to, the transport, stockpiling and storage of construction materials, soil, equipment and vehicles. This temporary construction easement shall also extend to officials from Arapahoe County in accordance with their right to observe construction pursuant to the IGA. PJMD will, upon request by the HOA, provide the

construction drawings prior to beginning construction of the HOA Trail on the Premises. Upon completion of construction, PJMD shall restore the area used for construction of the HOA Trail to substantially the same condition it was in prior to its use of the same. This temporary construction easement shall terminate upon the completion of the construction of the HOA Trail.

3. Plans and Specifications. PJMD shall require that the construction work on the HOA Trail be performed in substantial compliance with all applicable construction plans and specifications and standards of care.

4. Ownership and Maintenance of Trail. Upon completion of the construction of the HOA Trail and the delivery of a bill of sale from PJMD to the HOA, the HOA shall own the HOA Trail. As owner, the HOA shall be responsible at its own expense for the on-going maintenance of the HOA Trails, including keeping the HOA Trails in good and passable condition, free from obstructions, and clear of debris, and the installation of any instructional or directional signage along the HOA Trail as may be necessary or reasonably requested by PJMD. The HOA shall also be responsible for implementing a weed control program to keep weeds out of and from encroaching upon the HOA Trail. The HOA shall not be responsible for the maintenance of trails located outside of its property line.

5. Non-Exclusive Trail Easement. The HOA hereby grants, bargains, sells, and conveys a perpetual non-exclusive easement to PJMD and the public through, over and across the Premises to use the HOA Trail for purposes of connecting to any other trail located outside the boundaries of the HOA (the "Trail Easement"). Permitted uses of the Trail Easement include bicycle, pedestrian or other non-motorized uses. The Trail Easement shall include the right of perpetual ingress and egress in, to, through, over and across the Premises for the stated purposes and uses at any and all times necessary or convenient for the full enjoyment of the rights granted in this Agreement.

6. Limitations on Use. HOA covenants and agrees that no structure, fixture, improvement or other obstruction above ground that will interfere with the purposes or uses of the Trail Easement granted in paragraph No. 5 above will be placed, erected, installed or permitted on the Trail Easement without the express prior approval of PJMD or its successor. HOA further covenants and agrees that in the event the terms of this section are violated by the HOA or any person acting by, through, or at the direction of the HOA, such violation will be corrected and eliminated within thirty (30) days upon receipt of written notice of such violation from PJMD, and if not corrected or eliminated within such time, PJMD shall have the right, but not the obligation, to correct or eliminate such violation and the HOA shall promptly pay the actual costs thereof.

7. Additional Uses. Except as otherwise provided in this Agreement, the HOA reserves the right to use the Premises and to grant further easement interests in the Premises to other grantees so long as such interests and uses do not materially or unreasonably interfere with the use of the HOA Trail pursuant to the Trail Easement created herein.

8. Mechanic's Liens. PJMD will not permit or suffer any mechanic's, materialmen's, or other lien to be placed against the Premises on account of supplies, labor,

machinery, tools, equipment, or materials furnished or used in connection with the construction of the HOA Trail. Upon receipt of any notice of a recorded lien that violates the preceding sentence's mandate, PJMD will, at its own expense, promptly cause the lien to be released. If PJMD fails to promptly cause the lien to be released the HOA may take all steps necessary to release the lien, and PJMD shall pay the HOA's associated costs, including but not limited to reasonable attorneys' fees.

9. Indemnity; Governmental Immunity. PJMD agrees, to the fullest extent permitted by applicable law, to indemnify and hold harmless from and against any and all loss, cost, damage, expense and liability, including reasonable attorneys' fees and costs that may be incurred by or asserted, claimed, or charged against HOA, its members, directors, employees, agents, successors, and assigns in connection with PJMD's activities under this Agreement. Nothing in this Agreement shall be construed as a waiver, in whole or in part, of any governmental immunity granted to PJMD by law.

10. Authority. HOA represents and warrants that it owns the Premises in fee simple and has full power and lawful authority to grant, bargain, sell, and convey the easements granted by this Agreement in the manner set forth herein.

11. Runs with the Land. The rights and responsibilities set forth in this Agreement are intended to be covenants on the Premises and are to run with the land.

12. Recordation. This Agreement shall be recorded in the real estate records of the Arapahoe County Clerk and Recorder's office and shall be indexed in the name of the HOA as Grantor and PJMD as Grantee.

13. Good Faith and Fair Dealing. The Parties will deal with each other honestly, fairly, and in good faith, with the intent to carry out the goals and purposes of the Agreement.

14. Applicable Law. The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado. Venue for any action arising out of this Agreement shall be proper in the District Court of Arapahoe County, Colorado.

15. Termination. In the event the PJMD does not construct the HOA Trail within ten years of the date this Agreement is executed, this Agreement shall automatically terminate and no document need be recorded to vacate the easements granted herein.

16. No Third Party Beneficiaries. The terms, conditions, and rights created by this Agreement do not give or permit claim or right to any third party. Any non-party to the Agreement that receives benefit from the Agreement is an incidental beneficiary.

17. Integration, Amendment. This Agreement and the Exhibit to it constitute the full and complete agreement of the Parties. The Parties agree that there have been no representations made regarding the subject matter hereof other than those contained herein, and that if any such representations have been made, they are not part of this Agreement and do not affect this

Agreement. This Agreement may only be amended by mutual written agreement signed by both Parties.

IN WITNESS WHEREOF, the Parties have approved this Agreement to be effective as of the date first set forth above.

THE LANDINGS AT CHERRY CREEK
HOMEOWNERS ASSOCIATION

By: 

MATTHEW BARLOW

Print Name

President

Date: 9 NOV, 2016

PARKER JORDAN METROPOLITAN
DISTRICT

By: 
Bill Lambert, President

ATTEST:





LEGEND
 PROPOSED TRAIL ROUTE
 EXISTING TRAIL ROUTE
 EXISTING ROAD
 EXISTING WATERWAY



A	THE PROPOSED TRAIL ROUTE SHALL BE CONSTRUCTED TO MEET THE DESIGN CRITERIA SET FORTH IN THE PROJECT MANUAL.
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PROP. SIDEWALKS

PARKER-JORDAN METROPOLITAN DISTRICT 2016 TRAIL PROJECT TRAIL SECTION #2A		E.M.H. - A
DATE: 10/15/16 DRAWN BY: [Name] CHECKED BY: [Name]	PROJECT NO.: [Number] SHEET NO.: [Number]	SCALE: [Scale]