

Upon Recordation, Please Return To:
Miller & Associates Law Office, LLC
1641 California Street, Suite 300
Denver, CO 80202

EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement"), dated as of MARCH 2, 2015, is between Tallman Gulch Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (together with its successors and assigns, the "District"), and Tallman Owners Association, Inc., a Colorado nonprofit corporation (together with its successors and assigns, the "Association"), each a "Party" and collectively, the "Parties."

Recitals

A. The District is the owner of Tracts A, B, C-1, C-2, C-3, D, E, F-1, F-2 and G, Tallman Gulch, Filing No. 1, Douglas County, Colorado (as further described in Exhibit A, as attached hereto and incorporated herein by reference, the "Property"), according to Final Plat of Tallman Gulch, Filing No. 1, recorded in the Office of the Clerk and Recorder of Douglas County, Colorado on June 2, 2006 at Reception No. 2006046645, as amended by First Amendment thereto recorded September 20, 2007 at Reception No. 2007075023 (as amended, and as further or supplemented from time to time, the "Plat").

B. The District desires to grant to the Association, and the Association desires to accept, an easement over the Property for the purposes described below, subject to the terms and conditions set forth herein.

Grant of Easement

1. Grant of Easement For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District, as the owner of the Property ("Owner") hereby grants to the Association the following nonexclusive, perpetual easements:

(a) an easement over that portion of the Property reflected on the Plat as 16' Trail Easement (the "Trail Easement") for the purposes of maintaining, operating, repairing and replacing a recreational trail for right-of-way use by members of the Association and of the general public to walk, jog, run, hike, bicycle or skate;

(b) an easement over Tracts C-3 and F-2 for recreation uses permitted under applicable law (the "Recreation Use Easement");

(c) an easement over that portion of Tract B constituting a passive neighborhood park in accordance with the Plat for those passive neighborhood park uses permitted under applicable law (the "Park Use Easement");

(d) an easement over that portion of Tracts A, C-1, C-2, D, E, F-1, G and that portion of Tract B constituting conservation easement open space in accordance with the Plat for those uses permitted by applicable law on conservation easement open space (the "Conservation Open Space Easement"), and

(e) an easement over the Property for purposes of maintaining, operating, repairing and replacing the landscaping, trails, monuments, benches, lighting and other public improvements located thereon, including, without limitation, drainage and stormwater management improvements (the "Maintenance Easement," together with the Trail Easement, the Recreation Use Easement, the Park Use Easement and the Conservation Open Space Easement, shall collectively be referred to as the "Easements," and individually shall be referred to as an "Easement") upon and subject to the terms and conditions set forth herein.

The Association, its licensees, agents, contractors, successors and assigns shall have the right of perpetual ingress and egress in, to, through, over, under, and across the Property for any purpose necessary for the full enjoyment of the rights granted to it in this Agreement, provided that such ingress, egress and related activities are for the purposes and with the limitations set forth in this Section 1.

2. **Restrictions.** Notwithstanding anything herein to the contrary, no motorcycles, snowmobiles, or other motor vehicles shall be permitted on or within the Property except: (a) emergency vehicles; (b) maintenance vehicles and other motor vehicles that are reasonably necessary or appropriate for any maintenance, replacement or repair permitted under this Easement; and (c) as may be approved by the District in writing from time to time. The Association shall not construct, place, relocate or remove any structure, building sign, vegetation or other landscape feature upon any of the Property to which the Easements apply without the prior consent of the District; notwithstanding the foregoing, in the event of an emergency, the Association may remove or relocate any facility without advance approval of the District, provided that such removal or relocation is as limited in scope as may be reasonably determined to be necessary to effectively respond to such emergency.

3. **Relocation Rights.** The District may relocate the Easements in its sole discretion on the condition that: (a) the District pay all costs and expenses incurred in connection with such relocation; and (b) as relocated, the Easements adequately serves the purposes for which they are intended.

4. **Reserved Rights.** The Easements are subject to the following reservation of rights by the District for itself and for the benefit of its successors and assigns:

(a) The District reserves the right to use or permit the use of the Property for any purpose that does not unreasonably interfere with the use and enjoyment of the Easements.

(b) The District reserves the right to grant additional easements and other rights to third parties over, upon and under the Property on the condition that such easements, alterations and improvements do not unreasonably interfere with the Easements.

(c) The District reserves the right to restrict access temporarily to all or any portion of the Property at any time, and from time to time: (i) for purposes of facilitating construction, maintenance, repair or replacement activities on the Property or other property; or (ii) for reasons of public welfare and safety.

5. Conduct of Operations. The Association shall conduct all of its operations in connection with the Easements in accordance with the following requirements:

(a) The Association shall confine all of its guests, invitees, agents and employees to the areas subject to the applicable Easement, and to the uses permitted thereby.

(b) The Association shall take all steps necessary to protect the Property, all improvements and equipment located thereon, and all adjacent properties from damage or destruction resulting from the use of the Easements by the Association, its guests, invitees, agents and employees. In addition, the Association shall promptly repair or replace any such damage or destruction at its own expense.

(c) The Association shall take all steps necessary to protect its guests, invitees, agents, employees and others from personal injury resulting from the use of the Easements by the Association, its guests, invitees, agents and employees.

(d) The Association shall take all steps necessary to cause its guests, invitees, agents, employees and others to restrain all household pets on a leash or otherwise under their control when in any areas of the Property and to clean up and remove from the Property any waste products deposited by such pets on the Property.

(e) The Association shall, at its expense, comply with all laws, rules, orders, ordinances, regulations and other requirements of any governmental, quasi-governmental or insurance authority, to the extent that any of the foregoing relate to Association's use or enjoyment of the Easements.

6. Assumption of Risk. The Association acknowledges and agrees that:

(a) the location of the Property in proximity to a high-pressure gas line(s) may result in nuisances or hazards to persons and property including, without limitation, injury or death to users of the Easements; and

(b) the Association and its guests, invitees, agents, employees and others do knowingly and voluntarily assume all risks associated with such location, including, but not limited to, property damage or personal injury arising from the high-pressure gas line(s).

7. Release and Indemnity from the Association.

(a) The Association hereby releases the District and its directors, managers or other officers, employees, agents, independent contractors, licensees, invitees or guests (each, an "Indemnified Party"), and the Indemnified Parties shall not be liable in any manner to the Association, or any of its members, directors, managers or other officers, employees, agents, independent contractors, licensees, invitees or guests, or any other person or entity claiming through or under the Association, for any death, injury or loss of any nature whatsoever resulting

from any act or omission occurring on or about the Property in connection with the use of the Easements (collectively, "Indemnified Losses").

(b) The Association shall indemnify, defend and hold harmless each Indemnified Party from any and all Indemnified Losses and any and all losses asserted against or incurred by any Indemnified Party as a result of or in connection with:

(i) any act or omission of the Association, its members, directors, managers or other officers, employees, agents, independent contractors, licensees, invitees or guests, or any other person or entity claiming through or under the Association occurring on or about the Property in connection with the use of the Easements, except to the extent that the act or omission results from the gross negligence or willful misconduct of the Indemnified Party; and

(ii) the failure of the Association to perform or observe any obligation to be performed or observed by the Association under this Agreement.

8. Maintenance and Repair. The Association, at its sole cost and expense, shall:

(a) operate, maintain, repair and replace any landscaping and other public improvements on the Property:

(i) in a good and workmanlike manner that provides for the safe and efficient use and operation of the portions of the Property and such public improvements for the purposes set forth under applicable law; and

(ii) in a manner commensurate with the nature of a residential community, including, without limitation, the aesthetic nature of such a community; and

(iii) in accordance with all applicable laws, regulations, orders and other legal requirements;

(b) replace, repair and restore any property, improvement or signage that is damaged or disturbed in connection with the Association's use of the Property; and

(c) be responsible for all rubbish or trash removal from the Property.

Collectively, the activities referenced in Section 8(a), 8(b) and 8(c), supra, shall be referred to as the "Work." The Association shall maintain the public improvements covered by the Work at its sole cost and expense.

At least thirty (30) days prior to the commencement of any Work in or to the Property, by or for the Association or anyone claiming under the Association, the Association shall notify the District of the proposed Work and the names and addresses of the persons and/or entities supplying labor and materials for the proposed Work. During and prior to any such Work on the Property, the District and its agents shall have the right to enter and inspect the Property at all

reasonable times or take any further action the District may deem proper for the protection of the District's or others' interest in the Property.

9. Independent Contractor. The Association is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and the Association's employees, agents, officers or subcontractors. Neither the Association nor any of its employees, agents, officers or subcontractors are or shall be deemed to be employees, agents or contractors of the District. The Association is not, and shall not act as, an agent of the District. The employees, agents, subcontractors or contractors who assist the Association in the performance of the Work shall at all times be under the Association's exclusive control and direction, and shall be considered employees, subcontractors, contractors or agents of the Association and not of the District. The Association shall pay all wages, salaries and other amounts due to any persons or entities performing the Work, and shall be responsible for preparing and filing all reports and obligations respecting such persons or entities, including, without limitation, social security tax, income tax withholding, unemployment compensation, workers' compensation, employee benefits and other similar matters. Further, the Association shall have the sole authority and responsibility to employ, discharge and otherwise control any individuals or entities performing the Work. The Association has sole authority and responsibility as principal for its agents, employees, subcontractors, contractors and all others it retains to perform or assist in performing the Work, if any.

10. Subcontractor. The Association is solely and fully responsible to the District for the performance of all Work under this Agreement, whether performed by the Association or by a subcontractor, contractor, agent or employee retained by the Association. The Association agrees that each and every agreement of the Association with any subcontractor, contractor, agent or employee to perform Work under this Agreement shall contain an indemnification provision identical to the one contained in Section 7, *supra*, holding the District harmless for the negligent or tortious actions of such subcontractor, contractor, agent or employee. The Association further agrees that any such subcontract or contract to perform Work shall be terminable not-for-cause and that, unless directed otherwise by the District, the Association shall immediately terminate all such subcontracts or contracts immediately upon termination of this Agreement. Prior to commencing any of the Work, a subcontractor or contractor of the Association shall provide evidence of insurance coverage to the District as provided in Section 11, *infra*. The Association further agrees that all such contracts or subcontracts shall provide that they may be terminated immediately without further cost upon the termination of this Agreement.

11. Insurance.

(a) The Association shall acquire and maintain, during the term of this Agreement, including any extensions of the term, statutory workers' compensation insurance coverage, comprehensive general liability insurance coverage and automobile liability insurance coverage in the minimum amounts set forth below:

1. Workers' Compensation Insurance in accordance with applicable Colorado law, including employers' liability.
2. Commercial general liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each occurrence; \$2,000,000 general aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis, including:
 - i. Premises operations;
 - ii. Personal injury liability without employment exclusion;
 - iii. Blanket contractual;
 - iv. Broad form property damages, including completed operations;
 - v. Medical payments;
 - vi. Products and completed operations;
 - vii. Independent Association coverage;
 - viii. Coverage inclusive of construction means, methods, techniques, sequences and procedures, employed in the capacity of a construction Association; and
 - ix. Care, custody and control coverage.
3. Commercial automobile liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each accident covering any automobile.
4. All coverages specified above, with the exception of commercial automobile liability insurance, shall any right of subrogation against the District and its directors, officers, consultants and employees. The policies shall state: "Permission is expressly granted to the insured to waive any right of subrogation against an individual, firm or corporation, provided such waiver is executed in writing prior to any occurrence giving rise to claims hereunder."

The District and its directors, officer, employees and agents shall be named as an additional insured on the Association's commercial general liability insurance and automobile liability insurance. The commercial general liability insurance shall include contractual liability insurance. Any policy of insurance obtained to comply with this Paragraph shall provide that the District shall receive no less than thirty (30) days written notice prior to the policy's cancellation, non-renewal or modification to any provisions of such policy affecting the insurance coverage requirements of this Agreement. With the exception of automobile liability insurance, a waiver of subrogation and rights of recovery against the District, its directors, officers, employees, agents and consultants is required for each coverage provided, provided that the recovery is not due to cause or causes directly attributable to the District's own gross negligence or intentional misconduct. All coverages provided pursuant to this Section 11 shall be primary and any insurance maintained by the District shall be considered excess. The District shall have the right to verify or confirm, at any time, all coverages, information or representations contained herein.

All insurance companies issuing policies hereunder shall carry at least an A-10 rating from A.M. Best Company or obtain a written waiver of this requirement from the District.

(b) Prior to commencing any Work under this Agreement, the Association shall provide to the District a certificate or certificates evidencing the policies required by this Section 11, as well as the amounts of coverage for the respective types of coverage. If the Association subcontracts any portion(s) of the Work, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability in amounts satisfactory to the District and to the Association. If the coverage required under this Paragraph expires during the term of this Agreement, the Association or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

(c) If any insurance policy obtained by the Association is a claims-made policy, the following conditions shall apply: the policy shall provide the Association the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. The Association agrees to purchase this extended reporting period. If the policy is a claims-made policy, the retroactive date of any renewal of such policy shall not be later than the effective date of this Agreement, as it may be subsequently revised, amended or restated. If the Association purchases a subsequent claims-made policy in place of any prior policy, the retroactive date of such subsequent policy shall not be later than the effective of this Agreement, as it may be subsequently revised, amended or restated.

(d) The Association's failure to purchase the required insurance coverage detailed herein shall not serve to release it from any obligations contained herein; nor shall the purchase of the required insurance serve to limit the Association's liability under any provision herein. The Association shall be responsible for the payment of any deductibles and premiums on issued policies.

12. General Performance Standards. In addition to the requirements detailed in Section 8, supra, the Association shall perform the Work in accordance with the following:

(a) The Association shall not damage any improvements in place by its operations. All damages to the improvements in place caused by the operations of the Association shall be promptly repaired at the sole cost and expense of the Association to the condition immediately preceding such damage.

(b) The Association shall thoroughly clean up at the conclusion of performing any of the Work and at all times shall maintain a clean, safe, orderly and workmanlike manner.

(c) The Association shall provide all notices and comply with all laws, ordinances, rules, regulations, and orders of any governmental or quasi-governmental entity with appropriate jurisdiction bearing on the performance of the Work under this Agreement, including the payment of all taxes. Except as otherwise provided herein, the Association shall secure and pay for all permits, fees and licenses necessary for the performance of the Work.

(d) The Association shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts, as amended, insofar as they may be applicable to the performance of the Work.

(e) The Association shall perform the Work in accordance with standard horticultural practices in the Denver metropolitan area and shall use trained and properly supervised personnel in performing the Work.

(f) The Association agrees, at its sole expense, to promptly replace any defective material or fix any defective workmanship related to the Work if so directed by the District.

13. Termination. Either Party may terminate this Agreement for any reason by delivering to the other Party a written notice of such termination, specifying the effective date, which date shall not be less than thirty (30) days after the date of the notice. Unless otherwise directed by the District, the Association shall immediately cease all Work and shall immediately terminate all contracts or subcontracts to the extent that they relate to the performance of the Work.

14. Noncompliance by the Association. In the event that the Association fails to comply with any of its obligations set forth in this Agreement, the District may terminate the Easement by giving written notice to the Association, without prejudice to the District's other rights and remedies.

15. Amendments. This Agreement may not be amended, modified, revoked, supplemented, waived or otherwise changed except by a written instrument mutually executed by both Parties .

16. Legal Proceedings. Notwithstanding anything to the contrary contained in this Agreement, if either Party institutes legal proceedings against the other with respect to this Agreement, the nonprevailing Party shall pay to the prevailing Party an amount equal to all reasonable attorneys' fees and disbursements and all other costs and expenses incurred by the prevailing Party in connection therewith.

17. Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed an original and both of which together shall be deemed one and the same instrument.

18. No Third Party Beneficiary. The Parties enter into this Agreement for the sole benefit of the Parties, to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this Agreement.

19. Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the District afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

20. **Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement and each and every provision thereof, are declared to be severable.

21. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver, unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

22. **Inurement.** Each and every one of the benefits and burdens of this Agreement shall insure to and be binding upon the Parties, their respective legal representatives, heirs, administrators, successors and assigns.

23. **Runs With Land.** The rights and responsibilities set forth in this Agreement are intended to be covenants upon the Property and are to run with the land.

24. **Governing Law.** The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado.

25. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto relating to the Agreement and sets forth the rights, duties and obligations of each to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

26. **Recordation.** This Agreement shall be recorded in the official records of the Douglas County, Colorado, Clerk and Recorder.

27. **Assignment and Delegation.** The Parties may not assign this Agreement, or parts hereof, or its rights hereunder, without the prior express written consent of the non-assigning Party. The Parties may not delegate this Agreement, or parts hereof, or its duties hereunder, without the prior express written consent of the non-delegating Party.

28. **No Warranty.** The rights granted hereunder are hereby contracted for and shall be granted with respect to the Property in its "AS IS" physical and ownership condition without any warranty expressed or implied. This grant is subject to all other prior granted or reserved rights and interests in the Property, if any, whether of record or not. The District does not warrant title in, or right to use the Property.

[Remainder of Page Intentionally Left Blank]

**TALLMAN OWNERS ASSOCIATION, INC., a
Colorado nonprofit corporation**

By: [Signature]
Its: President

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 2 day of March,
2015 by Timothy Craft as President of Tallman Owners Association, Inc., a
Colorado nonprofit corporation.

My notarial commission expires 1/27/2017.

Witness my hand and official seal.

Linda J. Shannon
Notary Public

**LINDA J. SHANNON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054003681
MY COMMISSION EXPIRES 01/27/2017**

Exhibit A

The Property

**Tracts A, B, C-1, C-2, C-3, D, E, F-1, F-2 and G, Tallman Gulch, Filing No. 1, Douglas
County, Colorado**