

**ACCESS EASEMENT GRANT AND MAINTENANCE AGREEMENT
FOR HIGHVIEW DRIVE RIGHT-OF-WAY (ROW)
FOR LOTS 43 and 44
WALDEN III FILING 2 SUBDIVISION**

THIS ACCESS EASEMENT GRANT AND ROAD MAINTENANCE AGREEMENT ("Agreement") for the Highview Drive ROW in the Walden III Filing 2 Subdivision is entered into as of **<Date TBD>**, by and between:

1. PARTIES

Property Owners: The undersigned owners of property (Lots 43 and 44) benefitting from the ROW described below (collectively, "Owners").

- Brian R and Diane E Werner are the owners of the real property situated in the County of El Paso, State of Colorado, legally described as Lot 43, Walden III Filing 2 Heights Subdivision (Assessor Parcel # 6115006001).
- Christopher D & Jessica R Ojennes are the owners of the real property situated in the County of El Paso, State of Colorado, legally described as Lot 44, Walden III Filing 2 Heights Subdivision (Assessor Parcel # 6115005014).

2. RECITALS

2.1 Vacation of Road: The County of El Paso, pursuant to C.R.S. 43-2-301 et seq., has approved the vacation of the public ROW known as Highview Drive Extension.

2.2 Transfer of Ownership: Following vacation, title to the ROW has vested in the abutting property owners as provided under C.R.S. 43-2-302.

- a. **Purpose:** The parties desire to formalize an agreement governing the easement of, ongoing use of, and maintenance of the ROW for the mutual benefit of the Owners.
- The County Of El Paso has not maintained the Highview Drive ROW for more than 30 years, with the abutting residents completing regular maintenance.
 - The Owners understand that El Paso County does not maintain ROWs and improvements thereon.
 - This Agreement shall become fully in force, as to all Owners who have signed, upon the approval of and recording of this document.

3. ROAD DESCRIPTION

This Right-of-Way (ROW) is located between Lots 43 and 44 of the Walden III Filing 2 subdivision, and is legally described in Exhibit A of this document. It was originally intended to be an extension of Highview Drive as part of planned development to the West, however the development that is now in place did not make use of it. This ROW will not be part of any future development, and the Engineering Manager of Department of Public Works confirmed that this ROW can be vacated.

4. EASEMENT AND MAINTENANCE RESPONSIBILITIES

4.1 Grant of Easement: Each of the Owners hereby grants to the other Owner and to their successors and assigns, a nonexclusive easement for access, utilities, and drainage for the benefit of each such landowner's respective parcel described above across the ROW, as depicted in Exhibit A.

In addition, this Right-of-Way (ROW) Vacation will be subject to the following easements:

- An easement for trail access to the Walden Preserve 2 trail system, which is maintained by the Walden Metropolitan District, and is located to the west of the ROW.
- A utility easement to allow access to a water main that runs within this land, and provides water by the Walden Corporation to the Walden Preserve 2 subdivision (PCD File No. SP185).
- A drainage easement to accommodate a detention pond outfall, located in the southern portion of the ROW.

4.2 Use of the Owner' Real Estate: Use of the ROW by the Owners is confined to the present configuration of their respective properties. The Owners and their successors may reconfigure, construct improvements on or otherwise modify or use their property. The Owners agree to construct no obstructions on their respective properties in a manner which would prevent or reasonably impede personal travel, utility access, maintenance of the ROW, or drainage across the ROW. The respective Owners each shall have full use and occupancy of their respective real estate which is subject to the easement set forth above.

4.3 Joint Maintenance Obligation: N/A

4.4 Maintenance Defined: N/A

5. COST SHARING --- N/A

6. EASEMENT AND ACCESS RIGHTS

Owners grant each other perpetual, non-exclusive easements for ingress, egress, and utility access over and across the ROW, as depicted in Exhibit A. This easement shall run with the land and bind successors and assigns.

7. INDEMNIFICATION

Owners agree to defend, indemnify, and hold harmless the County of El Paso from any claims, damages, or liabilities arising from the use, maintenance, or condition of the ROW after vacation.

8. DISPUTE RESOLUTION

Disputes arising under this Agreement shall first be addressed through good faith negotiations between Owners. Unresolved disputes will first go to mediation in El Paso County, Colorado; if not settled, they proceed to binding arbitration under American Arbitration Association rules or as agreed by the parties.

9. TERM AND RECORDING

This Agreement shall run with the land, be binding on the parties and their successors, and remain in effect until amended or terminated by written instruction executed by all Owners. This Agreement may not be revoked without the written unanimous consent of the affected Owners. This Agreement shall be filed with the Clerk and Recorder of El Paso County, Colorado, to provide notice to all current and future Owners. This Agreement shall be enforceable by the Owners' successors and assigns and personal representatives. Any persons or other entities who acquire title to the Owners' property hereinabove described, whether by purchase or otherwise, shall be subject to the provisions of this Agreement to the same extent as is such parties had been signatory to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one document.

10. THIRD PARTIES

This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either of the Property Owners or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

11. SEVERABILITY

In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

12. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. This Agreement will apply to the land, bind the parties and their successors, and stay in effect until amended or terminated by written instruction signed by all Owners. Venue shall be in the El Paso County District Court.

IN WITNESS WHEREOF, the Parties affix their signatures below.

Access Easement Grant and Maintenance Agreement for Highview Drive ROW for Lots 43 and 44 in Walden III Filing 2 Subdivision

Brian R and Diane E Werner, Owners of Assessor Parcel # 6115006001 agree to the Access Easement Grant and Maintenance Agreement for Highview Drive ROW dated <Date TBD>.

By: 
Brian R Werner

By: 
Diane E Werner

STATE OF COLORADO)
) ss.
COUNTY OF ELPASO)

This instrument was acknowledged before us on _____,
by Brian R and Diane E Werner.

(Seal)

Notary Public

My commission expires: _____

Access Easement Grant and Maintenance Agreement for Highview Drive ROW for Lots 43 and 44 in Walden III Filing 2 Subdivision

Christopher D & Jessica R Ojennes, Owners of Assessor Parcel # 6115005014 agree to the Access Easement Grant and Maintenance Agreement for Highview Drive ROW dated <Date TBD>.

By: Christopher D Ojennes
Christopher D Ojennes

By: Jessica R Ojennes
Jessica R Ojennes

STATE OF COLORADO)
) ss.
COUNTY OF ELPASO)

This instrument was acknowledged before us on _____,
by Christopher D & Jessica R Ojennes.

(Seal)

Notary Public

My commission expires: _____

