

**ACCESS AND UTILITY EASEMENT AND MAINTENANCE  
AGREEMENT  
FOR MCDERMOTT SUBDIVISION**

This Access and Utility Easement And Maintenance Agreement For McDermott Subdivision, dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, (Agreement) is made between Craig A. McDermott and Sally A. McDermott as owners of Parcel A and as owners of Lot 1, Lot 2 and Lot 3 of McDermott Subdivision Filing No. 1.

**RECITALS:**

- A. Craig A. McDermott and Sally A. McDermott (“Grantors”) are the owners of the real property situated in the County of El Paso, State of Colorado (Assessor Parcel #5208000030) (“Parcel A”), which is also shown on the Exhibit hereto as 5208000030 and whose legal description according to the El Paso County Assessor is **N 990 FT OF NE4SE4 EX E 30 FT SEC 8-12-65**.
- B. Grantors are subdividing Parcel A into three lots (Lot 1, Lot 2 and Lot 3, respectively, as shown on the Final Plat of McDermott Subdivision Filing No. 1 in the real estate records of El Paso County, Colorado.
- C. In connection with the Final Plat, Grantors are creating an Access and Utility Easement across a portion of Lots 1 and 2 for the benefit of Lots 2 and 3, as shown on the Final Plat.
- D. Grantors wish to set forth the terms governing the Access Easement.
- E. This Agreement shall become fully in force upon recording of the Final Plat of McDermott Subdivision Filing No. 1.

**NOW THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors grant and accept the agreements, covenants, declaration and restrictions set forth herein.

- 1. Grant of Easement. Effective upon the recording in the real estate records of El Paso County, Colorado, of the Final Plat of subdivision of Parcel A showing the Access and Utility Easement from Herring Rd. across a portion of Lot 1 and a portion of Lot 2, to Lot 3, Grantors grant the non-exclusive easement (“Easement”) as shown on the Final Plat.

2. Benefit/Appurtenant. The Easement shall be for the benefit of the owner of Lots 2 and 3 and shall burden Lots 1 and 2. The Easement shall be appurtenant to each such Lot.
3. Purpose of the Easement. The Easement shall be for ingress, egress, access, utilities and drainage.
4. Use of the Easement. No owner of any Lot nor their successors and assigns shall construct fences or place any other obstructions on their respective properties in a manner which would prevent, or reasonably impede, vehicle or personnel travel, utility access or drainage across the Easement. Otherwise, the respective owners of the Lots shall each have full use and occupancy of their respective real estate, subject to the Easement.
5. Standard for Maintenance of the Easement as a Driveway. As a minimal standard, the owners of Lots 2 and 3 shall provide maintenance sufficient to provide reasonable access for emergency vehicles. At their own expense, the owner of Lot 2 and the owner Lot 3 may each make such improvements to the Easement for driveway purposes as shall in their judgment reasonably be required for their access purposes.
6. Sharing Maintenance Costs. The cost and expense of maintaining the improvements on the Easement in good operating condition, including the cost of any repair to the Improvements and the cost of operating any gate at Herring Road shall be shared by the owners ("Owners") of Lots 2 and 3 upon the following terms.
  - a. Such cost shall be allocated to the respective Owners according to the number of dwelling units located on each Owner's parcel of land accessing by the Easement. Each Owner shall pay in the proportion that the number of dwelling units on such Owner's land accessing by the Easement bears to the total number of such dwelling units.
  - b. The cost of any substantial repair required as a result of damage caused by a particular user's unusual use or abuse of the road shall be paid for by the Owner of the parcel most related to such user.
7. Maintenance Decisions. The Owners agree that decisions about maintenance shall be determined by majority vote of the Owners of the real estate accessed by the Easement, with each Owner having the number of votes corresponding to the number of dwelling units (whether occupied or not) on such Owner's parcel(s) accessing by the Easement. Such vote may appoint an Administrator to carry out such decision(s).
8. Maintenance Process. The Administrator shall arrange for sufficient maintenance to meet the standard above and to enable the Owners and emergency vehicles to use the Easement for its intended purposes as set forth herein. Such maintenance shall include snow removal, grading, re-gravelling, cleaning culverts, weed treatment, tree and debris removal, and any other maintenance generally desired by Owners. The Administrator shall either (i) pay for such maintenance directly and be reimbursed by

each Owner according to each Owner's proportionate share; (ii) arrange to have each Owner directly pay the proportionate cost of such maintenance; (iii) require periodic payments into a fund to be used for such maintenance; or (iv) use some combination of the foregoing. To the extent the Administrator pays for any Owner's share, the Administrator shall have a lien on each such Owner's respective Lot until such Owner's share is paid in full with interest accruing on any unpaid amount at the rate of 10% per annum simple interest and the Administrator shall be entitled to recover the costs of enforcing such lien and collecting such amount, including reasonable legal fees, expert witness fees and costs. The Administrator may refuse to order such maintenance until there is, in the Administrator's opinion, sufficient commitment or actual payment to reimburse the Administrator and pay for such maintenance. Unless otherwise agreed by Owners of the Lots with 60% of the dwelling units, the Administrator shall serve without compensation.

9. Property Uses.

The real estate accessing through the Easement shall be used exclusively for private residential purposes. No dwelling erected or maintained accessing through the Easement shall be used or occupied for any purpose other than for a single-family dwelling and such accessory uses as are permitted under El Paso County land use regulations without special permit or variance. The construction of separate guest quarters may be allowed on a case-by-case basis if approved by the appropriate zoning authority, subject to any conditions in such approvals.

10. Binding Agreement. The agreement for granting the Easement and for the maintenance of the driveway on the Easement shall be binding upon the relevant Owners, and their respective successors, assigns, and personal representatives upon recording in the real estate records of El Paso County in connection with the recording of the Final Plat of the subdivision.

11. Amendment/Termination. Except as stated below, this Agreement may not be revoked without the written consent of the Owners.

**Grantors:**

\_\_\_\_\_  
Craig A. McDermott

\_\_\_\_\_  
Sally A. McDermott

STATE OF COLORADO

)

) ss.

COUNTY OF EL PASO

)

This instrument was acknowledged before me on \_\_\_\_\_, by Craig A. McDermott and Sally A. McDermott.

[Seal]

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

Include  
Exhibit of  
Easement