

PRIVATE DRIVEWAY MAINTENANCE AGREEMENT

This Agreement applies to Lots 1, 2, 3, and 4 Murr Subdivision, comprised of 40.266 acres of land in The Southeast quarter of the Southwest quarter of Section 33, Township 13 South, Range 64 Wet, of the 6th P.M., County of El Paso, State of Colorado, together with the west 66 feet of the Northeast quarter of the Southwest quarter and Except the East 68.4 feet of the Southerly 373.8 feet, thereof.

This Agreement has been identified on the Plat of the Murr Subdivision and also shall be identified in all deeds pertaining to these three lots for as long as this Agreement is in effect.

WHEREAS, to minimize the cost to present and future lot owners of developing and maintaining a private driveway, the undersigned have deemed it desirable to jointly utilize and maintain the existing and planned private driveway located in the Murr Subdivision to serve the above – described **four residential lots**.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the undersigned do hereby agree as follows.

1. **Definitions.**

a. **Owner:** The record owner in fee simple of any above-described Lots or any Lot later formed from the above-described Lots. For the purpose of voting, there shall be one vote per Lot, regardless of number of owners, joint ownership or common tenancy.

b. **Driveway Easement:** The easement created and shown on the final plat of the Murr Subdivision for the purposes of construction, reconstruction and maintenance of a joint use driveway or any relocation thereof. Said easement shall include the right of access thereto by each user and their agents.

c. **Property:** The properties affected by this agreement are the legally platted Lots 1, 2, 3 and 4 Murr Subdivision, in The Southeast quarter of the Southwest quarter of Section 33, Township 13 South, Range 64 Wet, of the 6th P.M., County of El Paso, State of Colorado, together with the west 66 feet of the Northeast quarter of the Southwest quarter and Except the East 68.4 feet of the Southerly 373.8 feet, thereof, thereof, and any Lots created therefrom.

2. **Interest.** The owner of each property served by the driveway shall have an interest in said driveway as follows,

a. The owner of Lot 4 shall have an undivided interest in the portion of Driveway adjacent to Lot 4, a 1/4 interest in the portion of Driveway adjacent to Lot 1.

b. The owner of Lot 1 shall have an undivided interest in the portion of Driveway falling on Lot 1, and a 1/4 interest in the portion of Driveway on Lot 4.

c. The owner of Lot 2 shall have a 1/4 interest adjacent to the portion of Driveway on Lots 1 and 4.

d. The owner of Lot 3 shall have a 1/4 interest adjacent to the portion of Driveway on Lots 1 and 4.

3. **Use:** Each owner's interest shall be coupled to and transferred with the fee title to each property and shall not be severable therefrom except as provided herein. Such interest shall entitle owners of properties served by the driveway to an equal right to use, specifically subject to the following:

a. The driveway shall be used in such a way as to cause no material injury to the subdivision.

b. The construction of this driveway shall be in compliance with El Paso County standards, and maintained in such a manner as to be in compliance with El Paso County standards.

c. The use of driveway is limited to owners of the lots within the Murr Subdivision and their families, agents and guests.

d. The total width of the driveway shall not exceed 36 feet, in accordance with El Paso County standards.

e. Individual property owners shall be responsible for any and all physical damage to the driveway above and beyond normal wear and tear resulting from their use of the driveway. Should such physical damage occur, the owner responsible shall timely cause said damage to be repaired.

f. Each lot's owner shall be obligated to share in the costs of permits, installation, operation, maintenance, repair, or any necessary improvements as approved by equal vote of the majority.

g. A Driveway Commission Agent shall be elected by a simple majority of the property owners, will serve a term as agreed to by the property owners, and can be replaced or renewed at any time by a simple majority vote of the lot owners. The Driveway Commission Agent shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain the minimum road surface standards.

h. Before authorizing expenditures for future road improvements, lot owners will be notified by the Driveway Commission Agent, cost estimates will be provided, and a simple majority agreement will be required. If any lot owner performs improvements, maintenance, repairs or replacements without the approval of the other lot owners prior to performing such work, the lot owner performing such work shall become liable for the entire cost thereof, unless such work is deemed an emergency. However, where emergency repairs are necessary, neither majority vote nor prior approval is necessary before making such improvements or undertaking such maintenance.

i. All installation and construction costs necessary to utilize or extend the existing driveway and resulting from development of a lot shall be the sole responsibility of that lot's owner.

j. The initial development and installation of the driveway will be completed by the owner of Lot 4. Each subsequent Lot owner shall reimburse the owner of Lot 4 for their interest in the driveway. Detailed written records, together with copies of all receipts pertinent thereto shall be kept by the owners and provided to each other upon reasonable request to establish the amount to be paid.

k. Except as listed above, relating to the initial costs of installation, and maintenance, no capital improvements shall be made to the driveway which results in assessments to any owner of more than \$500.00 in any one year unless agreed to in writing by all lot owners.

l. No owner shall be entitled to compensation from any other owner for administrative time or personal time expended in the management of the driveway; however, owners may be reimbursed for material purchased for repair of the common drive.

4. **Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land as long as the road remains private. At such time as all affected lots have a legal, sufficient, County-approved access to a public road, this agreement may be terminated by a majority vote of lot owners. If terminated, the ownership of the driveway automatically reverts to the owner upon whose lot the drive is situated.

5. **Binding Agreement.** This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

6. **Amendment.** This Agreement may be amended only with a two-thirds simple majority vote of all lot owners.

7. **Enforcement.**

a. If any owner shall violate any of the covenants herein, it shall be lawful for any other owner or user to prosecute any proceedings at law or equity against the person or persons violating such covenants and either prevent him/her from doing so, or to recover costs or damages for such violation(s), or both.

b. Any controversy, dispute, or question arising out of, in connection with, or in relation to this agreement or its interpretation, performance, non-performance, or any breach thereof shall be determined by arbitration conducted in accordance with the existing rules of the Colorado Uniform Arbitration Act (CRS 13-22-201).

c. In the event any that sums due from any owner are not paid when owed, then such sums shall be considered delinquent and together with interest, attorney fees and cost of collection, shall become a continuing lien on the delinquent owners' property. The lienor shall be the owner(s) who advance the sums unpaid by the delinquent party. Such lien

shall cloud the title of the property of the owners his/her heirs, successors, devisees, personal representatives and assigns.

d. If the delinquent sums are not paid within thirty (30) days after the due date, they shall bear interest at the rate of twelve (12%) percent per annum and the lienor(s) may record a Statement of Lien and foreclose his lien against the property as provided under Colorado law.

8. **Amendment.** This agreement may be modified or amended at any time by a recorded statement signed by all parties hereto, or their successors in interest.

9. **Notice.** Any notice required to be sent to any owner under the provisions hereof shall be deemed to have been properly given when mailed, by first class mail, to the address of record of the last known address of the owner of record at the time of mailing.

10. **Severability.** Invalidation of any of the covenants, limitations or provisions of this agreement by judgement or court order shall in no way affect any of the remaining provisions hereof, and same shall continue in full force and effect.

11. **Applicable Law and Venue.** This agreement shall be construed in accordance with the laws of the State of Colorado. The parties agree the exclusive place of venue and jurisdiction shall be any court of competent jurisdiction located within El Paso County, Colorado.

12. **Attorney Fees and Costs.** In the event that it becomes necessary to enforce the terms hereof, the prevailing party shall be entitled to its attorney fees and costs in connection with such dispute.

AGREED TO:

State of Colorado)
) SS
County of El Paso)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by.

My commission expires: _____

Witness my hand and official seal.

[SEAL]

Notary Public