

**A Covenant and Contract between Ponderosa Heights Homeowners Association of Custer County, Inc., a Colorado non-profit corporation (hereafter referred to as the “Association”), and Mr. Gary D. Martin and Ms. Jacqueline Martin, the current Easement owners (hereafter referred to as the “Easement Owner”)**

The foregoing hereby attest that:

Whereas the Martins, the current Easement Owner, own an undivided, 100% interest in the Road Right-of-Way Easement first recorded September 13th, 1996, in book 306, page 64, under reception number 173773 in the records of Custer County, Colorado and described in attached Exhibit A (hereafter referred to as the “Easement”);

Whereas this Easement includes the right to convey a non-exclusive easement for access (i.e., ingress and egress) over and across said Road Right-of-Way (hereafter referred to as “Non-Exclusive Access”);

Whereas this Easement provides enhanced and beneficial access for the members of the Association, through previous conveyance of Non-Exclusive Access for applicable lots, and as recorded in the real estate records of Custer County, Colorado for said lots;

Whereas the Easement Owner reserves the right to make future conveyance of Non-Exclusive Access, including for consideration, and may elect to do so in the future;

Whereas the Association has the power to add additional lots in accordance with its Governing Documents, and may elect to do so in the future;

Whereas the Association and the Easement Owner agree a defined limit on lot annexation (and the concomitant Non-Exclusive Access conveyance) is desirable, to maintain the character and scope of the Association, and that a documented process for lot annexation (and concomitant Non-Exclusive Access conveyance) is likewise desirable;

Whereas the Association and the Easement Owner agree a contractual basis for this relationship, and resulting clarity regarding this Easement is beneficial for them, their heirs, successors, and assigns;

Therefore, for good and valuable consideration, the Association and the Easement Owner do hereby covenant and agree as follows:

- 1) **Definitions and Reference.** For the purposes of this covenant and contract, certain definitions are adopted from the 2011 DECLARATION OF PROTECTIVE COVENANTS FOR PONDEROSA HEIGHTS SUBDIVISION (AMENDED) AND OTHER LANDS CUSTER COUNTY, COLORADO, and any subsequent amendments (hereafter together referred to as the “Declaration”), Section 1.2, “Definitions” or equivalent, and are incorporated herein. Note that not all definitions are applicable to this covenant and contract and its scope, and their incorporation shall not be construed to the contrary.

The Declaration itself as stated above is hereby incorporated by reference.

This covenant and contract shall hereafter be referred to as the "Easement Covenant and Contract", consistent with the definition "Easement Contract" in the Declaration.

- 2) **Furnishing Governing Documents.** It shall be the Easement Owner's responsibility to furnish current copies of the Association's Governing Documents to any buyer interested in purchasing Non-Exclusive Access and in Annexing an eligible Lot to Ponderosa Heights Subdivision (Amended) and Other Lands, Custer County, Colorado. The Association shall make current copies of the Governing Documents available to the Easement Owner upon request. In all cases and for all requests copies of the Governing Documents may be furnished in printed or electronic format.
  
- 3) **Lots Eligible for Non-Exclusive Access Purchase and Annexation.** Both the Easement Owner and the Association acknowledge that the only Lots eligible for Annexation, and therefore the only Lots to which Non-Exclusive Access for Easement may be sold, are those specific Lots of Ponderosa Heights Subdivision (Amended), Custer County, Colorado and Victoria Heights (also known as Victorian Heights Subdivision), Custer County, Colorado, that are enumerated in the Declaration, Section 2.3, "Expansion and Maximum Number of Lots". Those lots, hereafter called "Eligible Lots", are:
  - a. Ponderosa Heights Subdivision (Amended) Lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 31, 34, 35, 36, 37, 38, 52, 55, 56, 57, 58, 59, 60, 61, and 62.
  - b. Victoria Heights (also known as Victorian Heights Subdivision) Lots 12, 15, 16, 18, 19, 20.
  
- 4) **Purchase and Annexation Agreement.** Purchase of Non-Exclusive Access and Annexation, where applicable, are mutual requirements and actions to purchase and annex shall be executed together. The Association and Easement Owner agree that a Purchase and Annexation Agreement, drafted pursuant to this Easement Covenant and Contract, shall be used for any purchase and sale of Non-Exclusive Access and Annexation of Eligible Lots, and that it must be executed for the sale of Non-Exclusive Access and Annexation of the applicable Lot to be effective. A combined Purchase and Annexation Agreement shall contain the terms for the purchase and sale of Non-Exclusive Access and also the terms for the Annexation of Eligible Lots as specified in this Easement Covenant and Contract. This Purchase and Annexation Agreement shall be a binding contract between the Easement Owner and the buyer of Non-Exclusive Access (hereafter the "Buyer") in regard to purchase and sale of Non-Exclusive Access, and it shall also be a binding commitment made by the same Buyer in regard to Annexation (i.e., joining) his/her/their Lot to the Association.

Furthermore, any Purchase and Annexation Agreement shall conform to the required provisions of Section 9 of this Easement Covenant and Contract, and shall be recorded by the Easement Owner in the records of Custer County, Colorado, once executed and following closing.

The Easement Owner shall not be required to seek the Association's permission or pre-approval to execute a Purchase and Annexation Agreement with a Buyer provided it is in compliance with this Easement Covenant and Contract and provided that the Lot in question is eligible to be Annexed.

- 5) **Notification.** The execution of a Purchase and Annexation Agreement and subsequent closing of the Non-Exclusive Access purchase and sale transaction means that a Lot (i.e., real property) has been annexed to Ponderosa Heights Subdivision (Amended) and Other Lands, Custer County, Colorado, and that the Association has a new Member. The Easement Owner shall therefore notify the Association within 30 days of the closing, and provide at a minimum the name(s) and address of the new Member and a brief description of the newly annexed Lot to include its number and subdivision. Notification shall be in writing to the Association at the Association's current physical or box mailing address.
- 6) **Amendment, Cancellation, Duration.** This Easement Covenant and Contract may be amended or canceled only by the mutual consent of the Association and the Easement Owner, provided any such amendment or cancellation is duly executed by both parties.

The duration of this Easement Covenant and Contract shall be:

- a. Until such time as amended or cancelled in accordance with this section if applicable, or
  - b. Until such time as the Association or any successor organization to the Association is abandoned or terminated in accordance with the Declaration or any succeeding declaration. In such a case of abandonment or termination of the Association, this Easement Covenant and Contract shall be considered to have expired, i.e., this Easement Covenant and Contract shall be null and void and in such case the Easement Owner shall no longer be encumbered by the terms and conditions of this Easement Covenant and Contract, and the Easement Owner shall have the right to continue conveying the Non-Exclusive Access.
- 7) **Protection of Certain Rights.** Execution, amendment, cancellation, or expiration of this Easement Covenant and Contract shall not impair or alter any of the following:
    - a. The Easement Owner's ownership rights in the Easement, to include the right to convey said Non-Exclusive Access to anyone, or the same rights of any of their heirs, successors, or assigns therein to do the same.
    - b. Any prior, recorded conveyances of Non-Exclusive Access to Members of the Association, whether held by the Members, their heirs, successors, or assigns.
    - c. Any conveyances of Non-Exclusive Access, granted in accordance with an executed Purchase and Annexation Agreement, but where said conveyance has not yet been recorded in Custer County records.
    - d. The Association's Governing Documents.
  - 8) **Benefits and Burdens.** The Easement described herein:
    - a. Burdens Lots 13A (formerly known as a portion of Lot 13), 39, and 41 of Ponderosa Heights Subdivision (Amended), Custer County, Colorado.
    - b. Currently Benefits Lots 13 A (formerly known as a portion of Lot 13), 27, 29, 30, 32, 33, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, and 54 of Ponderosa Heights Subdivision (Amended), Custer County, Colorado and the W1/2 of Lot 2, Section 5, Township 21 South, Range 73 West of the 6<sup>th</sup> P.M, Custer County, Colorado.
    - c. Could potentially benefit those Eligible Lots specified in Section 3 of this Easement Covenant and Contract, if annexed.

This Easement Covenant and Contract enumerates rights and responsibilities of the Easement Owner and the Association, and places requirements and restrictions upon both parties' actions. As such, this Easement Covenant and Contract shall be recorded in the records of Custer County, Colorado, once executed, so as to run with the Easement, subject to the provisions of Sections 6 and 7 of this Easement Covenant and Contract document .

9) **Required Provisions of Purchase and Annexation Agreement.** A Purchase and Annexation Agreement drafted pursuant to this Easement Covenant and Contract shall contain the following information:

- a. Legal description of said Easement
- b. Name and address of Buyer and legal description of Buyer's Lot
- c. A reference to this Easement Covenant and Contract between the Easement Owner and the Association and it's recordation information

A Purchase and Annexation Agreement drafted pursuant to this Easement Covenant and Contract shall furthermore contain the following clauses, incorporated verbatim:

- d. **"Definitions and Reference.** For the purposes of this Purchase and Annexation Agreement, certain definitions are adopted from the 2011 DECLARATION OF PROTECTIVE COVENANTS FOR PONDEROSA HEIGHTS SUBDIVISION (AMENDED) AND OTHER LANDS CUSTER COUNTY, COLORADO , and any subsequent amendments (hereafter together referred to as the "Declaration"), Section 1.2 "Definitions" or equivalent, and are incorporated herein."
- e. **"Receipt of Documentation.** Buyer hereby acknowledges receipt of current copies of the Association's Governing Documents, prior to executing this Purchase and Annexation Agreement, to include the Declaration, By-Laws, Articles of Incorporation, and any Rules and Regulations."
- f. **"Dues.** Buyer shall pay dues in the year this Purchase and Annexation Agreement is executed, and based on full-year dues as set forth in the Association's Governing Documents. Buyer shall pay these dues, prorated from the date of Purchase and Annexation Agreement execution, to the Ponderosa Heights Homeowners Association of Custer County, Inc. The Easement Owner (who may also be referred to as the "Seller") shall forward Buyer's dues to the Association within a reasonable amount of time."
- g. **"Commitment.** The Buyer hereby subjects the Joining Lot, perpetually, permanently, and completely to the Declaration, the 2011 version of which was recorded February 2nd, 2012 in book 686, page 326, under reception number 00218329 in the records of Custer County, Colorado, and any future amendments to the Declaration, so that it may be annexed by the Association in accordance with the Declaration. The Buyer furthermore agrees to subject said Lot, its Owners, grantees, heirs, successors, assigns, and/or any Related Users to the other Governing Documents of the Association; these include the Articles of Incorporation, the By-Laws, and the Associations Rules and Regulations and any future amendments thereto. In doing so, the Buyer hereby explicitly assumes all of the obligations and responsibilities stipulated in the Declaration and the Association's other Governing Documents. The Buyer, his/her/their grantees,

heirs, successors, and/or assigns shall not convey the Non-Exclusive Access to anyone, for the Non-Exclusive Access shall run with the land in perpetuity, that is with the Joining Lot. The Owner of the Joining Lot, his/her/their grantees, heirs, successors, assigns, and any Related Users shall benefit from said Non-Exclusive Access by having access for ingress and egress over the defined road right-of-way, to and from the Joining Lot.”

- h. **“Completion.** Upon execution of this Purchase and Annexation Agreement, said agreement becomes binding upon the Buyer and any grantees, heirs, successors, or assigns. Upon closing of the purchase and sale transaction for Non-Exclusive Access, the Buyer shall become a full Member of the Association with all appurtenant rights and responsibilities, and the Joining Lot shall be considered annexed and fully part of Ponderosa Heights Subdivision (Amended) and Other Lands, Custer County, Colorado. This membership, its rights, and its responsibilities shall run with the title to the Joining Lot and shall apply equally to the Buyer’s grantees, heirs, successors, or assigns.”
- i. **“Maintenance Extent.** Buyer hereby acknowledges that he/she/they is/are aware that maintenance of roads by Ponderosa Heights Homeowners Association of Custer County, Inc., is limited to only those roads which are authorized for maintenance as stated in the Declaration, Section 3.5, “Easements and Roadways”. **No** commitment or warranty to expand maintenance extents in the future, express or implied, is made by this Purchase and Annexation Agreement.”

10) **Severability.** Invalidity of any part of this Easement Covenant and Contract by judgments or court orders shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

On behalf of Ponderosa Heights Homeowners Association of Custer County, Inc., this Easement Covenant and Contract is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by the President in accordance with the Association's Governing Documents, and is attested to by the Secretary:

\_\_\_\_\_  
(President, James A. Perry)

\_\_\_\_\_  
(Secretary, Terry Smith)

**STATE OF COLORADO)**  
**County of Custer     )**

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by James A. Perry, President, and Terry Smith, Secretary, Ponderosa Heights Homeowners Association of Custer County, Inc.

Witness my hand and official seal

My commission Expires: \_\_\_\_\_

Address: \_\_\_\_\_

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

This Easement Covenant and Contract is executed this \_\_\_\_\_ day of \_\_\_\_\_  
2012, by Gary D. Martin and Jacqueline Martin (Easement Owner).

\_\_\_\_\_  
(Gary D. Martin)

\_\_\_\_\_  
(Jacqueline Martin)

**STATE OF COLORADO)**  
**County of Custer     )**

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2012, by Gary D. Martin and Jacqueline Martin (Easement Owner).

Witness my hand and official seal

My commission Expires: \_\_\_\_\_

Address: \_\_\_\_\_

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

**For a Covenant and Contract between Ponderosa Heights Homeowners Association of Custer County, Inc., a Colorado non-profit corporation (hereafter referred to as the "Association"), and Mr. Gary D. Martin and Ms. Jacqueline Martin, the current Easement owners (hereafter referred to as the "Easement Owner") dated \_\_\_\_\_.**

**EXHIBIT A: ACCESS EASEMENT DESCRIPTION**

ACCESS EASEMENT

AN EASEMENT FOR INGRESS/EGRESS AND THE INSTALLATION AND MAINTENANCE OF UTILITIES OVER AND ACROSS A PORTION OF LOTS 13, 39 AND 41 OF PONDEROSA HEIGHTS SUBDIVISION (AMENDED) AS FILED IN THE CUSTER COUNTY, COLORADO RECORDS UNDER RECEPTION NUMBER 104742; BEING 30' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE; BEGINNING AT A POINT IN THE CENTERLINE OF OAK DRIVE BEING WITHIN THE PERIMETER OF LOT 13, ALL IN SAID PONDEROSA HEIGHTS, FROM WHICH THE SOUTHEAST CORNER OF SECTION 6, TOWNSHIP 21 SOUTH, RANGE 73 WEST OF THE 6<sup>TH</sup> P.M., CUSTER COUTY, COLORADO BEARS N 79°53'37" E, 556.67', ALSO FROM WHICH THE SOUTHWEST CORNER OF SAID LOT 13 BEARS S 87°14'57" W, 768.25'; THENCE ON THE FOLLOWING 22 COURSES:

- 1) N 41°24'38" W, 186.34'
- 2) N 73°18'34" W, 164.64'
- 3) N 14°03'51" W, 57.49'
- 4) N 44°51'48" E, 327.93'
- 5) N 67°31'58" E, 187.35'
- 6) N 55°13'35" E, 105.35"
- 7) N 07°55'04" W, 64.76'
- 8) N 87°24'27" W, 88.56'
- 9) N 76°10'09" W, 200.24'
- 10) N 47°30'52" W, 84.18'
- 11) N 30°47'44" W, 218.73'
- 12) N 64°20'44" W, 41.16'
- 13) S 81°20'58" W, 77.35'
- 14) N 84°07'51" W, 164.25'
- 15) N 03°32'36" E, 104.47'
- 16) N 67°03.32" E, 133.81'
- 17) N 43°19'17" E, 138.43'
- 18) N 67°06'51" E, 158.09'
- 19) S 81°55'51" E, 52.17'
- 20) N 57°54'29" E, 45.00'
- 21) N 23°55'26" E, 92.59'
- 22) N 34°13'44" E, 197.16' TO THE POINT OF TERMINUS OF THE HEREIN DESCRIBED EASEMENT CENTERLINE BEING THE CENTERLINE OF SUN DRIVE OF SAID PONDEROSA HEIGHTS, ALSO BEING THE EASTERLY LINE OF SAID LOT 39, FROM WHICH THE SOUTHEAST CORNER THEREOF BEARS S 09°01'57" W, 321.10'.

NOTE: IT IS UNDERSTOOD IN THE PRECEDING EASEMENT DESCRIPTION THAT THE SIDELINES OF SAID EASEMENT ARE INTENDED TO EXTEND OR FORESHORTEN AS NECESSARY TO INTERSECT THE LINES DEFINED AS FOLLOWS:

- THE CENTERLINE OF SAID OAK DRIVE AT THE POINT OF BEGINNING (P.O.B.)
- THE CENTERLINE OF SUN DRIVE AT THE POINT OF TERMINUS (P.O.T.)