

## **ACCESS AND UTILITY EASEMENT AGREEMENT**

This Access and Utility Easement Agreement ("Agreement") is made this 8<sup>th</sup> day of October, 2013 by and between Panorama Terraces Homeowners Association, Inc., a Colorado nonprofit corporation ("Grantor") and Justin P. Ganzer and Loretta A. Ganzer whose legal address is 2106 Yosemite Rd., Grand Junction, Colorado 81507 ("Grantees"). Grantor and Grantees are sometimes referred to collectively herein as the "Owners" and severally as an "Owner".

### **RECITALS**

A. Grantor owns certain real property in Mesa County, Colorado ("Grantors Property") described as follows:

Tract E of Panorama Terraces Subdivision as shown on the plat of said subdivision, recorded October 26, 2007 in Book 4541 at pages 953 – 955, Reception no. 2409294 of the records of the Clerk and Recorder for Mesa County, Colorado

B. Grantee owns certain real property in Mesa County, Colorado ("Grantees Property") more particularly described as follows:

See attached Exhibit A incorporated herein by reference.  
Also known as 678 Wild Rose Way, Grand Junction, CO 81507

C. Grantee desires to obtain and Grantor is willing to grant a nonexclusive easement for ingress, egress and utilities to and from Grantee's property over a portion of Grantor's property ("Easement Property"), upon and subject to the terms and conditions of this Agreement. The Easement Property is more particularly described as follows:

That portion of Tract E of Panorama Terraces Subdivision shown on the plat of said subdivision recorded October 26, 2007 in Book 4541 at pages 953 – 955, Reception no. 2409294 labeled thereon as "20' access and utility easement", County of Mesa, State of Colorado

NOW THERFORE, in consideration of the foregoing and the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners agree as follows:

1. Permanent Easement for Ingress and Egress. Grantor hereby grants, bargains, sells and conveys to Grantees, their heirs, personal representatives, successors, assigns, guests and invitees a perpetual non-exclusive easement for ingress to and egress from the Grantees property over the Easement Property described above, together with all rights and privileges as are necessary, or incidental to the proper use of such easement. The easement for ingress and egress shall be appurtenant to and run with the parcels of land benefited and

burdened thereby. Grantor, its successors, assigns, guests and invitees shall have an equal right to use of the Easement Property, but without interference with the Grantees use thereof, and provided that any increased cost of repair and maintenance caused by the Grantors use shall be borne by Grantor.

2. Permanent Easement for Utilities. In addition to using the easement granted herein for ingress and egress, the Grantor further grants, bargains, sells and conveys to Grantees and Grantees heirs, personal representatives, successors and assigns the perpetual right to install, connect, use, repair, maintain and replace utilities, utility lines or pipelines in, under, above, and/or within the Easement Property granted to Grantees herein on the following terms and conditions:

(a) Utilities, utility lines or pipelines will be installed, repaired and maintained in a workmanlike manner, and will be installed and located such that they will not interfere with any other Owners reasonable use of its property;

(b) The cost of installing, repairing and maintaining such utilities, utility lines or pipelines will be borne by the party installing them;

(c) Installation, repair and maintenance of utilities shall not interfere with or cause damage to any existing easements. Any damage to an existing easement caused by the installation, repair or maintenance shall be repaired immediately by, and at the sole cost and expense of the Owner causing the damage.

(d) The term utilities as used herein shall mean such facilities as may be necessary for transmission of water, sewer, gas, electricity, telecommunication services, telephone, cable, television, fiberoptic, or other communication lines, and similar utilities including the right to enter upon the Easement Property to inspect, trench, lay, bury and compact such lines.

3. Reserved Rights. Exclusive use of the Easement Property is not granted hereby. Grantor, for itself and its successors and assigns expressly reserve the right to use the Easement Property for ingress and egress, and for installation, connection, use, maintenance, repair and replacement of utilities, and for any other purpose so long as such use does not unreasonably interfere with Grantees use of the Easement Property for its intended purpose, and provided, however, that Grantor shall not cause or permit the Easement Property to be blocked by any barriers, gates or other obstructions at any time.

4. Improvement and Maintenance of Easement Property. Without limiting the generality of any other provision of this Agreement, it is expressly agreed that installation, repair, maintenance and replacement of the ingress, egress and utility easements within the Easement Property may be undertaken by either Owner, at such Owner's expense; however, neither Owner shall adversely affect access to the other Owners property through such installation, repair, maintenance or replacement. If contribution towards any such expense is desired by either Owner, then written agreement to share costs must be obtained from the other Owner in advance of the commencement of such work.

5. **Indemnity.** Neither Owner shall be liable to the other Owner or to any other person for or on account of any injury or damage to persons or property by reason of any act or thing done or admitted to be done by the other Owner or by any agent, employee, contractor, guest, family member, tenant, licensee, permittee or invitee of the other Owner, and each Owner shall indemnify and hold the other Owner harmless from and against any and all actions, claims, demands, injuries, death, losses, liabilities, damages, expenses (including reasonable attorneys fees), and other harm of whatever kind or character, arising out of the use or enjoyment by the Owner, or by any agent, employee, contractor, guest, family member, tenant, licensee, permittee or invitee of such Owner of the easements granted herein on the Easement Property. Each party agrees to maintain property and liability insurance covering risks ordinarily associated with use of the easements on and use of the Easement Property.

6. **Title Warranty.** The Grantor warrants that it has good and sufficient title to the Easement Property and hereby promises to defend the same against all claims from persons claiming by, through or under the Grantor, subject to all prior encumbrances, easements, restrictions, reservations and rights of way of record.

7. **No Waiver.** Neither Owner shall be deemed to have waived any provision hereof unless such waiver is in writing and signed by such Owner. No waiver by an Owner of any particular breach or default on the part of the other Owner shall be deemed a waiver of any other breach or default or of the same or any similar breach or default in the future.

8. **Provisions to Run with Land.** All provisions of this Agreement including all benefits and burdens, shall annex to and run with the lands of the Owners described in this Agreement, and shall bind and inure to the benefit of the Owners and their respective heirs, personal representatives, successors and assigns, subject to the provisions hereof.

9. **Counterpart Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.

10. **Easement Not to Be Obstructed.** The Owners shall not use the easements granted herein in any way that will impede, interfere with, or impair the rights already held by or granted in this easement, nor shall they damage or obstruct any of the easements. If any Owner, the agents, employees, guests or invitees of any Owner, or any other person using the easement at the express or implied invitation of an Owner, damages the easements granted herein, that Owner shall immediately repair the damage at the sole cost and expense of such Owner.

11. **Miscellaneous Provisions.** The easements cannot be modified orally, but only by an agreement in writing signed by all Owners. If any term or provision of the easements or application thereof is invalid or unenforceable, the remainder of the easements and any other application of such a term or provision shall not be affected thereby. The captions in this Agreement are for convenience and reference purposes only, are not a part of the easements and shall not define or limit any of the terms or provisions hereof. This easement shall be governed

by the laws of the State of Colorado in all respects, including matters of validity, construction, performance and enforcement.

IN WITNESS WHEREOF, this Agreement is effective as of the date first set forth above.

Panorama Terraces Homeowners Association, Inc.,  
A Colorado nonprofit corporation

By: Glen D. Whaley  
Glen D. Whaley

Its: President

STATE OF COLORADO )  
)ss.  
COUNTY OF MESA )

The foregoing Access and Utility Easement Agreement was acknowledged before me this 8 day of October, 2013 by Glen D. Whaley as \_\_\_\_\_ of Panorama Terraces Homeowners Association, Inc..

WITNESS my hand and official seal.

My Commission expires: 6/27/2015.



My Commission Expires 06/27/2015  
County of Mesa

Angela Walter  
Notary Public

By: Justin P. Ganzer  
Justin P. Ganzer

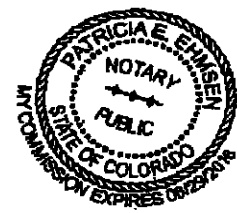
By: Loretta A. Ganzer  
Loretta A. Ganzer

STATE OF COLORADO )  
)ss.  
COUNTY OF MESA )

The foregoing Access and Utility Easement Agreement was acknowledged before me this 8th day of October, 2013 by Justin P. Ganzer and Loretta A. Ganzer.

WITNESS my hand and official seal.

My Commission expires: 6/29/16.



Patricia E. Emmons  
Notary Public

Exhibit A

**PARCEL 1:**

A PARCEL OF REAL PROPERTY SITUATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 11 SOUTH, RANGE 101 WEST OF THE 6TH PRINCIPAL MERIDIAN, MESA COUNTY, COLORADO, SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS NORTH 86°05'03" EAST A DISTANCE OF 1010.46 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 14, BEING MONUMENTED BY A NUMBER 5 REBAR WITH AN ALUMINUM CAP BEARING THE NOTATION PLS 18480;  
THENCE SOUTH 15°43'03" WEST A DISTANCE OF 117.64 FEET TO A NUMBER 5 REBAR WITH AN ALUMINUM CAP BEARING THE NOTATION PLS 18480;  
THENCE SOUTH 51°08'11" WEST A DISTANCE OF 260.76 FEET TO A NUMBER 5 REBAR WITH AN ALUMINUM CAP BEARING THE NOTATION PLS 18480;  
THENCE SOUTH 56°28'41" WEST A DISTANCE OF 257.47 FEET TO A NUMBER 5 REBAR WITH AN ALUMINUM CAP BEARING THE NOTATION PLS 18480 ON THE EASTERLY BOUNDARY OF PANORAMA SUBDIVISION FILING 2;  
THENCE NORTH 02°04'12" EAST A DISTANCE OF 559.99 FEET TO THE NORTHEAST CORNER OF PANORAMA SUBDIVISION FILING 2 REPLAT OF LOTS 10, 11 AND 12;  
THENCE ALONG SAID BOUNDARY THE FOLLOWING 3 COURSES:  
1.) NORTH 72°00'14" WEST A DISTANCE OF 208.40 FEET;  
2.) NORTH 80°54'14" WEST A DISTANCE OF 74.22 FEET;  
3.) NORTH 63°48'09" WEST A DISTANCE OF 351.78 FEET;  
THENCE NORTH 38°00'00" EAST A DISTANCE OF 214.24 FEET TO THE SOUTHERLY BOUNDARY OF A PARCEL DESCRIBED IN BOOK 1018 AT PAGE 576;  
THENCE ALONG THE BOUNDARY OF SAID PARCEL THE FOLLOWING 3 COURSES:  
1.) SOUTH 45°37'09" EAST A DISTANCE OF 157.19 FEET;  
2.) NORTH 44°22'51" EAST A DISTANCE OF 100.00 FEET;  
3.) NORTH 45°37'09" WEST A DISTANCE OF 168.37 FEET;  
THENCE NORTH 38°00'00" EAST A DISTANCE OF 215 FEET MORE OR LESS TO THE CENTERLINE OF THE COLORADO RIVER;  
THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE CENTERLINE OF SAID COLORADO RIVER TO A POINT FROM WHICH THE POINT OF BEGINNING LIES SOUTH 22°53'00" WEST;  
THENCE 193 FEET MORE OR LESS TO THE POINT OF BEGINNING,  
COUNTY OF MESA, STATE OF COLORADO.

**PARCEL 2:**

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 11 SOUTH, RANGE 101 WEST OF THE 6TH PRINCIPAL MERIDIAN, MESA COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHEAST CORNER OF LOT 11 OF THE REPLAT OF LOTS 10, 11 AND 12 OF PANORAMA SUBDIVISION, FILING NO. 2, AS RECORDED IN PLAT BOOK 9 AT PAGE 200 AT RECEPTION NO. 883427 IN THE OFFICE OF THE MESA COUNTY CLERK AND RECORDER;  
THENCE N64°41'00"W ALONG THE NORTHERLY LINE OF SAID LOT 11 A DISTANCE OF 152.0 FEET;  
THENCE N04°11'00"E A DISTANCE OF 246.0 FEET TO THE POINT OF BEGINNING;  
THENCE N46°30'00"W A DISTANCE OF 145.0 FEET;  
THENCE N43°30'00"E A DISTANCE OF 100.0 FEET;  
THENCE S46°30'00"E A DISTANCE OF 240.0 FEET;  
THENCE S43°30'00"W A DISTANCE OF 100.0 FEET;  
THENCE N46°30'00"W A DISTANCE OF 95.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING,  
COUNTY OF MESA, STATE OF COLORADO.