

ANB0524R

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	<b>EASEMENT</b>
NAME OF PROPERTY OWNER OR GRANTOR:	AMERICAN NATIONAL BANK AND FP INVESTMENTS, LLC
PURPOSE:	RECIPROCAL EASEMENT FOR ACCESS AND UTILITIES ON THE ACCESS EASEMENT AREA
ADDRESS:	611 24 ROAD
PARCEL NO:	2945-054-00-024
CITY DEPARTMENT:	PUBLIC WORKS
YEAR:	2005
EXPIRATION:	NONE
DESTRUCTION:	NONE

**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made as of 8/31, 2005, between AMERICAN NATIONAL BANK, a national banking association ("ANB"), and FP INVESTMENTS, LLC, a Colorado limited liability company ("FPI").

Recitals

A. ANB is the owner of Lot 1, Caldwell Subdivision, City of Grand Junction, State of Colorado ("Lot 1"), and FPI is the owner of Lot 2, Caldwell Subdivision, City of Grand Junction, State of Colorado ("Lot 2"). Lot 1 and Lot 2 are collectively referred to in this Agreement as the "Lots."

B. ANB and FPI desire to create a reciprocal easement for access and utilities on the Access Easement Area (as defined below), on the terms and conditions set forth in this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. Grant of Easements.

(a) ANB hereby grants to FPI a perpetual, non-exclusive easement (the "FPI Easement") on, over and across the southerly 15 feet of Lot 1 (the "FPI Easement Area") for (i) vehicular and pedestrian access to and from Lot 2 (as it may hereafter be developed), and the construction, operation, maintenance, repair and replacement of a road thereon, and (ii) the installation, operation, maintenance, repair and replacement of underground utilities therein. The FPI Easement shall constitute an easement appurtenant running with the land for the benefit of Lot 2, and may be used by (1) FPI and its employees, agents, contractors, visitors, invitees, licensees, tenants and subtenants (collectively, "Permittees"), and (2) all subsequent owners of property within Lot 2 and their respective Permittees.

(b) FPI hereby grants to ANB a perpetual, non-exclusive easement (the "ANB Easement") on, over and across the northerly 15 feet of Lot 2 (the "ANB Easement Area") for (i) vehicular and pedestrian access to and from Lot 1 (as it may hereafter be developed), and the construction, operation, maintenance, repair and replacement of a road thereon, and (ii) the installation, operation, maintenance, repair and replacement of underground utilities therein. The ANB Easement shall constitute an easement appurtenant running with the land for the benefit of Lot 1, and may be used by (1) ANB and its Permittees, and (2) all subsequent owners of property within Lot 1 and their respective Permittees.

(c) The FPI Easement Area and the ANB Easement Area are collectively referred to in this Agreement as the "Access Easement Area." The Access Easement Area is depicted on Exhibit A attached hereto.

2. Maintenance and Repair.

(a) Except as provided in subsection 2(b) below, each owner of property within the Lots shall pay a share of the costs of maintenance and repair of the Access Easement Area equal to a fraction, the numerator of which is the number of square feet of land owned by such owner, and the denominator of which is 81,786 ("Allocated Share"). Any party may order such repair or maintenance work as such party reasonably deems necessary to maintain the Access Easement Area in reasonably good condition. Any party paying more than such party's Allocated Share of any such costs shall be entitled to reimbursement from the other parties, based upon each such party's Allocated Share. Such reimbursement shall be due and payable within 30 days after receipt of a request for reimbursement, accompanied by copies of invoices evidencing expenses reasonably incurred by such party in connection therewith. To avoid disputes, the parties should confer with one another prior to incurring significant expenses or authorizing significant repairs or maintenance. If a dispute occurs, the dispute shall be resolved in accordance with Section 7 below.

(b) If any owner of property within the Lots, or such owner's employees, agents or contractors, damages the Access Easement Area, such owner (the "Responsible Owner") shall promptly cause such damage to be repaired at the Responsible Owner's sole cost and expense. If the Responsible Owner fails to promptly complete such repair, then any other owner (the "Performing Owner") shall have the right to cause such repair to be performed and the Responsible Owner shall reimburse the Performing Owner for all costs reasonably incurred by the Performing Owner in connection therewith. Such reimbursement shall be due and payable within 30 days after receipt of request for reimbursement, accompanied by copies of invoices evidencing expenses reasonably incurred by the Performing Owner in connection therewith.

3. Interest; Lien. Any amounts that are not paid when due hereunder shall accrue interest at the rate of 18 percent per annum, from the date due until paid. If any owner (the "Delinquent Owner") fails to pay when due any amount owing under this Agreement, the amount owed, together with reasonable costs of collection (including, without limitation, reasonable attorneys' fees) and interest thereon as provided in the preceding sentence, shall be a lien on the Delinquent Owner's property. The party to whom such payment is owed shall have the right to foreclose such lien in the manner provided by law for the foreclosure of mortgages in Colorado.

4. Liability; Insurance. Each party hereby agrees to indemnify, defend and hold the other parties harmless from and against any and all claims, suits, actions, judgments, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the use of the Access Easement Area by such party or its employees, agents, licensees, invitees or tenants. Each party shall at all times maintain contractual and comprehensive general liability insurance covering such party's liability under this Section 4

with an insurance company reasonably acceptable to all parties and in such amounts and on such forms as are reasonable and customary. Such insurance policy shall name each of the other parties as an additional insured and shall provide that the insurance will not be cancelled or materially changed in the scope or amount of coverage unless 30 days' advance notice is given to such parties. Such insurance shall be primary, and not as contributing with, or in excess of, any insurance carried by the other parties. Upon the execution of this agreement and at least 30 days prior to the expiration of any insurance policy required hereunder, each party shall deliver a certificate of insurance to the other parties evidencing insurance meeting the foregoing requirements. Each party shall have the right to prohibit use of the Access Easement Area by any other party during any time when such other party does not have insurance meeting the foregoing requirements in full force and effect.

5. Covenants Run With the Land. Each of the agreements, covenants, conditions, and provisions contained in this Agreement shall run with the land and shall be for the benefit of and binding upon the Lots in the hands of the parties hereto and their successors or assigns; provided, however, that each party's obligations under this Agreement shall be limited to those obligations and liabilities arising or accruing under this Agreement during such party's ownership of property within the Lots.

6. Notices. Any notice, request, demand or other communication required or permitted under this Agreement (collectively, "Notices") shall be in writing and shall be addressed to the parties as set forth below. Notices shall be (a) delivered by courier service, in which case they shall be deemed delivered on the first business day after deposit thereof with the courier service, (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) days after deposit in the United States mail, (c) transmitted by facsimile transmission, in which case they shall be deemed delivered when delivery has been electronically confirmed by the recipient's facsimile machine, as evidenced by the written confirmation produced by the sender's facsimile machine, or (d) by personal delivery, in which case they shall be deemed delivered when so delivered. The addresses and facsimile machine numbers of the parties are:

If intended for ANB, to ANB at:

American National Bank  
Attn: President  
131 North 6<sup>th</sup> Street  
Grand Junction, Colorado 81501  
Telecopy No.: (970) 245-3805  
Phone No.: (970) 242-7063

With a copy to:

American National Bank  
Attn: General counsel  
3033 East 1<sup>st</sup> Avenue, Suite 200  
Denver, Colorado 80206  
Telecopy No.: (303) 321-4444  
Phone No.: (303) 394-5003

If intended for FPI, to FPI at:

FP Investments, LLC  
Attn: Linda Kaboth  
3033 East First Avenue, Suite 200  
Denver, Colorado 80206  
Telecopy No. (303) 391-5140  
Phone No. (303) 321-4444

with a copy to:

FP Investments, LLC  
Attn: General Counsel  
3033 East 1<sup>st</sup> Avenue, Suite 200  
Denver, Colorado 80206  
Telecopy No.: (303) 321-4444  
Phone No.: (303) 394-5003

Either party, by notice given as provided above, may change the address and/or telecopy number to which future notices shall be sent.

7. Arbitration. If any dispute arises out of or relates to this Agreement, or breach thereof, the parties shall attempt, in good faith, to settle the dispute within thirty days before resorting to arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules in Grand Junction, Colorado. If any dispute is submitted to arbitration, any judgment upon the award rendered by the arbitrator shall be final and binding and may be entered in any court having jurisdiction thereof. Any remedy that would be available to the parties to this Agreement from a court of law, including without limitation injunctive relief, shall be available from the arbitrator. The prevailing party in any such arbitration shall be awarded, in addition to any amounts of relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

8. Estoppel Certificates. Each party shall provide, upon thirty days written request, verification that to such party's knowledge, the other party is not in default with respect to any obligation pursuant to this Agreement, or a description of any such defaults. If either party fails to respond to a written request for verification within thirty days from receipt of such request, such party shall be deemed to have waived any claim for lien or damages hereunder.

9. No Implied Waiver. The failure or delay of any party to exercise any of its rights under this Agreement shall not constitute a waiver of any such rights. No party shall be deemed to have waived any right under this Agreement unless such waiver is made expressly and in writing, and no waiver made as to any instance or any particular right shall be deemed a waiver as to any other instance or any other right.


10. Force Majeure. If the performance by any party of its obligations under this Agreement is delayed due to the occurrence of any Force Majeure (as defined below), the period of time to complete such performance hereunder shall be extended for a period of time equal to the period of time during which such performance is actually delayed as a direct result of such Force Majeure. As used herein, the term "Force Majeure" shall mean events which cause an actual delay in the progress of a party's performance hereunder by reason of a strike, lockout, or extraordinary labor difficulty, explosion, sabotage, accident, riot or civil commotion, act of war, fire or other catastrophe, extraordinarily adverse weather conditions, or other reason of a like nature and not within the reasonable control of such party; provided that the party asserting such delay shall exercise commercially reasonable efforts to minimize such delay. Force Majeure shall not in any event include a party's financial inability to perform.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

12. Recording. This Agreement shall be recorded with the Clerk and Recorder of Mesa County, Colorado.


EXECUTED as of the day and year first above written.

AMERICAN NATIONAL BANK,  
a national banking association

By:   
~~W.T. Sisson, Senior~~ Regional President  
STIG HALLINGBYE

FP INVESTMENTS, LLC, a Colorado  
limited liability company

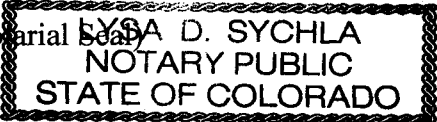
By: FP Holdings, LLC, its Managing Member  
By: Sturm Group, Inc., Manager

By:   
John A. Fox, Executive Vice  
President and Chief Financial Officer

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> of August, 2005 by John A. Fox, as Executive Vice President and Chief Financial Officer of Sturm Group, Inc., the Manager of FP Holdings, LLC, the Managing Member of FP Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

(Notarial Seal) 

Lisa P. Sychla  
Notary Public

My commission expires: 5-18-2008

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Mesa )

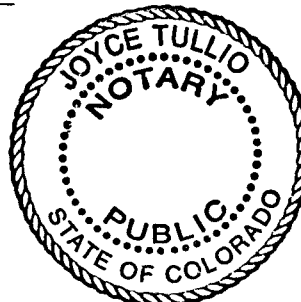
~~STIG HALLINEBYE~~ The foregoing instrument was acknowledged before me this 31<sup>st</sup> of August, 2005 by ~~W.T. Sisson~~, as Senior Regional President of American National Bank, a national banking association.

Witness my hand and official seal.

(Notarial Seal)

Joyce Tullio  
Notary Public

My commission expires: 9/17/2007



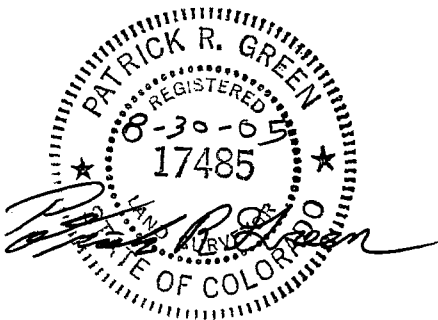
**EXHIBIT A**

**EASEMENT DESCRIPTION**

A Reciprocal Access and Utility Easement across Lots 1 and 2, Caldwell Subdivision, as described in Book 3918, Pages 159 and 160 of Mesa County records, all located in the Southeast Quarter of the Southeast Quarter (SE¼ SE¼) of Section 5, Township 1 South, Range 1 West of the Ute Meridian, more particularly described as follows:

Commencing at the Southeast corner of Section 5, Township 1 South, Range 1 West of the Ute Meridian, whence the Northeast corner of the Southeast Quarter of the Southeast Quarter (SE¼ SE¼) of said Section 5 bears North 00 degrees 03 minutes 01 seconds West, a distance of 1319.88 feet, for a basis of bearings with all bearings contained herein relative thereto; thence North 00 degrees 03 minutes 01 seconds West, a distance of 883.93 feet; thence South 89 degrees 56 minutes 59 seconds West, a distance of 77.50 feet; thence South 47 degrees 45 minutes 23 seconds West, a distance of 21.76 feet to a point on the West right-of-way line of 24 Road, as shown on said plat of Caldwell Subdivision; thence South 05 degrees 39 minutes 37 seconds, a distance of 30.51 feet, along said West right-of-way line of 24 Road to the POINT OF BEGINNING; thence South 05 degrees 39 minutes 37 seconds West, a distance of 30.17 feet, continuing along said West right-of-way line; thence South 89 degrees 34 minutes 32 seconds West, a distance of 266.91 feet, along a parallel line 30 feet South of the South line of Lot 1, said Caldwell Subdivision, to a point on the East line of an existing Reciprocal Access and Utility Easement, as described in deed recorded at Book 3918, Pages 172 through 184; thence along the East line of said Reciprocal Access and Utility Easement the following three (3) courses: (1) North 00 degrees 03 minutes 01 seconds West, a distance of 15.00 feet; (2) North 89 degrees 34 minutes 32 seconds East, a distance of 4.50 feet; (3) North 00 degrees 03 minutes 01 seconds West, a distance of 15.00 feet; ; thence North 89 degrees 34 minutes 32 seconds East, a distance of 265.41 feet, along a parallel line 30 feet North of the South line of Lot 1, said Caldwell Subdivision, to a point on the West line of said 24 Road right-of-way, the POINT OF BEGINNING

Said easement containing 7985 square feet, as described.



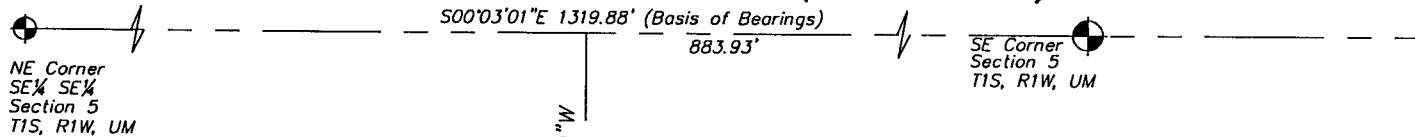
2004-63-add-access-esmt.doc/rsk

Prepared by:  
Patrick R. Green, PLS 17485  
LANDesign, L.L.C.  
244 North 7<sup>th</sup> Street  
Grand Junction, Colorado 81501



# EXHIBIT B

**24 Road**  
(Variable Width ROW)



$\Delta=90^{\circ}22'27''$   
 $R=94.32'$   
 $L=148.77'$   
 $Ch=133.82'$   
 $Brg=S45^{\circ}14'15''E$

$\Delta=38^{\circ}43'14''$   
 $R=94.32'$   
 $L=63.74'$   
 $Ch=62.54'$   
 $Brg=S19^{\circ}24'38''E$

$\Delta=51^{\circ}39'13''$   
 $R=94.32'$   
 $L=85.03'$   
 $Ch=82.18'$   
 $Brg=S64^{\circ}35'52''E$

Fnd #5 Rebar  
 With Cap  
 Stamped PLS 9175

**F Road (Patterson)**  
(Variable Width ROW)

POB  
 $S05^{\circ}39'37''W$   
 $30.17'$

$N89^{\circ}34'32''E$  265.41'  
**30' Reciprocal Access & Utility Easement**

$N00^{\circ}03'01''W$  15.00'  
 $N00^{\circ}03'01''W$  15.00'

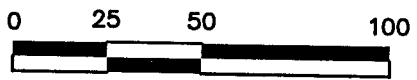
$N89^{\circ}34'32''E$  4.50'  
 $N00^{\circ}03'01''W$  386.51'

Peggy Himes  
 2945-054-00-090  
 Book 1409 Page 545

Peggy Himes  
 2394 Highway 6 & 50  
 Book 1153 Page 500  
 Book 2104 Pages 47-48  
 2945-054-00-092



SCALE: 1" = 50'



SE Corner  
 Section 5  
 T1S, R1W, UM

NE Corner  
 Section 5  
 T1S, R1W, UM

14' Multipurpose Easement

15' Drainage Easement

Utility Easement  
 Book 2648  
 Pages 420-422  
 Book 2648  
 Pages 423-426

10'x 20' Sign Easement

Access and Utility Easement

Access and Utility Easement

1

2