

RECEPTION #: 2562942, BK 5124 PG 644 02/11/2011 at 03:20:42 PM, 1 OF 9, R \$50.00 S \$1.00 EXEMPT
Sheila Reiner, Mesa County, CO CLERK AND RECORDER

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Wendell Porterfield
Otto, Porterfield & Ayres, LLC
P.O. Box 3149
Vail, Colorado 81658

**TEMPORARY ACCESS EASEMENT AGREEMENT
(Wexford Estates)**

THIS TEMPORARY ACCESS EASEMENT AGREEMENT (Wexford Estates) (this "**Agreement**"), dated to be effective as of February 9, 2011, by Wexford Borrower, LLC, a Colorado limited liability company ("**Grantor**"), and the City of Grand Junction a Colorado home rule municipality (the "**City**").

RECITALS

A. Grantor owns the real property (the "**Wexford Estates Subdivision**") located within Mesa County, Colorado more particularly described on that certain plat for Wexford Estates, being a Replat of Lots 1 and 2 of Wexford Subdivision, Book 4441, Pages 789-790, Reception Number 2384382, filed concurrently with this Agreement (the "**Plat**").

B. The Plat contains, *inter alia*, (i) three lots described thereon as Lot 25, Lot 26 and Lot 27 and (ii) one tract described thereon as Tract D (collectively the "**Burdened Property**").

C. Grantor desires to grant to the City a 40' temporary easement for vehicular access for the public over portions of the Burdened Property as more particularly depicted and described on Exhibit A attached hereto and incorporated herein (the "**Easement Area**"), until such time as permanent ingress and egress to and from the Wexford Estates Subdivision to the public street system can be established and has been approved by the City, as specified below upon and subject to the terms and conditions contained in this Agreement.

ARTICLE I
THE EASEMENT

Grantor hereby grants to the City the temporary easement described in this Agreement as more particularly depicted and described on Exhibit A, upon and subject to the terms and conditions contained herein.

1.01 Easement.

Grantor hereby grants to the City a nonexclusive, temporary easement (the "**40' Temporary Access Easement**") over and across the Easement Area solely for the purposes of

temporary vehicular ingress and egress access use by the public to and from D ½ Road, 29 ½ Road (as such roads are shown and described on the Plat) and the Wexford Estates Subdivision.

ARTICLE II
GENERAL TERMS AND CONDITIONS

2.01 Reserved Rights. The Easement is subject to the following rights reserved by Grantor:

Grantor, for itself and its successors and assigns, (i) reserves the right to use and occupy the Easement Area for any lawful purpose consistent with the rights and privileges granted herein and (ii) reserves the right to grant additional easements and other rights to third parties over and under the Easement Area, on the condition that such right to use and such additional easements and other rights do not unreasonably interfere with the City's use and enjoyment of the Easement and/or any utility easements dedicated to the City.

2.02 Encroachments.

The Easement is subject to all existing encroachments of buildings and improvements onto, over and under the Easement Area, and to all other encroachments of buildings and improvements hereafter constructed or installed on the Easement Area that do not unreasonably interfere with City's use of the Easement.

2.03 Relocation.

The 40' Temporary Access Easement may be relocated by Grantor as and when a substantially similar temporary easement area that can support vehicular ingress and egress access use by the public to and from the Wexford Estates Subdivision and the adjoining real property shown on the Plat as Siena View Subdivision, Filing No. One is approved by the City in its reasonable discretion (the "Relocated 40' Temporary Access Easement"). Following the City's approval of the relocated area of the 40' Temporary Access Easement, the parties shall execute, acknowledge and deliver a form of amended and restated Temporary Access Easement Agreement in recordable form pursuant to which the Easement Area shall be amended to correspond to the revised legal descriptions that identify the relocated area of the easement. Following the recording of the amended agreement, the City shall promptly execute, deliver and record a document whereby the City releases, vacates and quitclaims its right, title and interest in and to the 40' Temporary Access Easement to Grantor (or its successors or assigns, as applicable).

2.04 Term.

This Agreement shall automatically terminate upon the date on which a permanent access point is established by Grantor (or its successors or assigns) and approved by the City (which shall be in addition to the access point at D ¼ Road/29 ½ Road, as such roads are shown and described on the Plat), such that two perpetual access points provide vehicular ingress and egress access use by the public and connect the Wexford Estates Subdivision to the public street system. Following such approval by the City, the City shall promptly execute, deliver and

record a document whereby the City releases, vacates and quitclaims its right, title and interest in and to the 40' Temporary Access Easement (or the Relocated 40' Temporary Access Easement, as applicable) to Grantor (or its successors or assigns, as applicable).

2.05 Miscellaneous.

(a) Easement Appurtenant.

The Easement granted herein is only granted for the purposes stated in this Agreement. The Easement and this Agreement run with and burden the Burdened Property, and the Easement shall be an easement in gross benefiting the City and for the use of the public as a temporary right of way. The City shall have no right to assign, pledge, hypothecate or otherwise encumber its rights and obligations under Agreement without the consent of the party or parties owning the Burdened Property.

(b) Agreement Assignable.

Grantor (and its successors and assigns) may freely assign this Agreement in writing. If the assignee agrees to assume the obligations of Grantor (or its successors or assigns) hereunder, Grantor (and its successors and assigns) shall thereby be released from all liability hereunder. Nothing in this subsection or in this Agreement shall, however, relieve Grantor of any of its obligations under the Development Improvements Agreement between Grantor and the City related to the Wexford Estates Subdivision.

(c) Amendment.

Except as provided herein, this Agreement may not be amended, modified, supplemented, revoked or terminated except by a written instrument signed and delivered by Grantor and the City.

(d) Captions.

The captions appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of its provisions.

(e) Governing Law.

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

(f) Partial Invalidity.

If for any reason whatsoever, any term, obligation or condition of this Agreement, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, obligation or condition:

- (i) shall be deemed to be independent of the remainder of this

Agreement and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of this Agreement or any part thereof; and

(ii) the remainder of this Agreement not affected, impaired or invalidated will continue to be applicable and enforceable to the fullest extent permitted by law against any person and circumstance other than those as to which it has been held or rendered invalid, unenforceable and illegal.

**EXHIBIT A
TO
TEMPORARY ACCESS EASEMENT AGREEMENT
(Wexford Estates)**

Description and Depiction of Easement Area

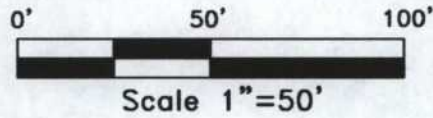
(Depiction attached)

Commencing at the Mesa County Survey Marker located at the Center $\frac{1}{4}$ corner of Section 17 Township 1 South, Range 1 East of the Ute Meridian and when aligned with the Mesa County Survey Marker being the Center -East $\frac{1}{16}$ corner of said Section 17 is recorded as bearing N89°59'00" at Reception Number 2384382 in the Mesa County Clerk and Recorder's Office and all bearings contained herein to be relative thereto; thence S00°01'13"E 40.00 feet to the North line of Lot 1 of Wexford Subdivision; thence along said North line S89°59'00"E 136.90 feet to the point of beginning; thence leaving said North line S00°02'39"E 205.97; thence along the arc of a curve to the right 25.97 feet with a radius of 283.00 feet, central angle of 05°15'29" and whose long chord bears S02°35'05"W 25.96 feet; thence along the arc of a curve to the right 8.81 feet with a radius of 16.50 feet, central angle of 30°34'34" and whose long chord bears S20°30'07"W 8.70 feet; thence along the arc of a curve to the right 43.26 feet with a radius of 48.00 feet, central angle of 51°38'26" and whose long chord bears S77°58'28"E 41.81 feet; thence along the arc of a curve to the right 7.95 feet with a radius of 322.50 feet, central angle of 01°24'46" and whose long chord bears S08°17'35"W 7.95 feet; thence S35°20'08"E 7.80 feet; thence N00°02'39"W 262.97 feet to the South right-of-way line of D $\frac{1}{2}$ Road thence along said South line N89°59'00"W 40.00 feet to the point of beginning, City of Grand Junction and County of Mesa.

EXHIBIT A



All lineal measurements are in US survey feet.

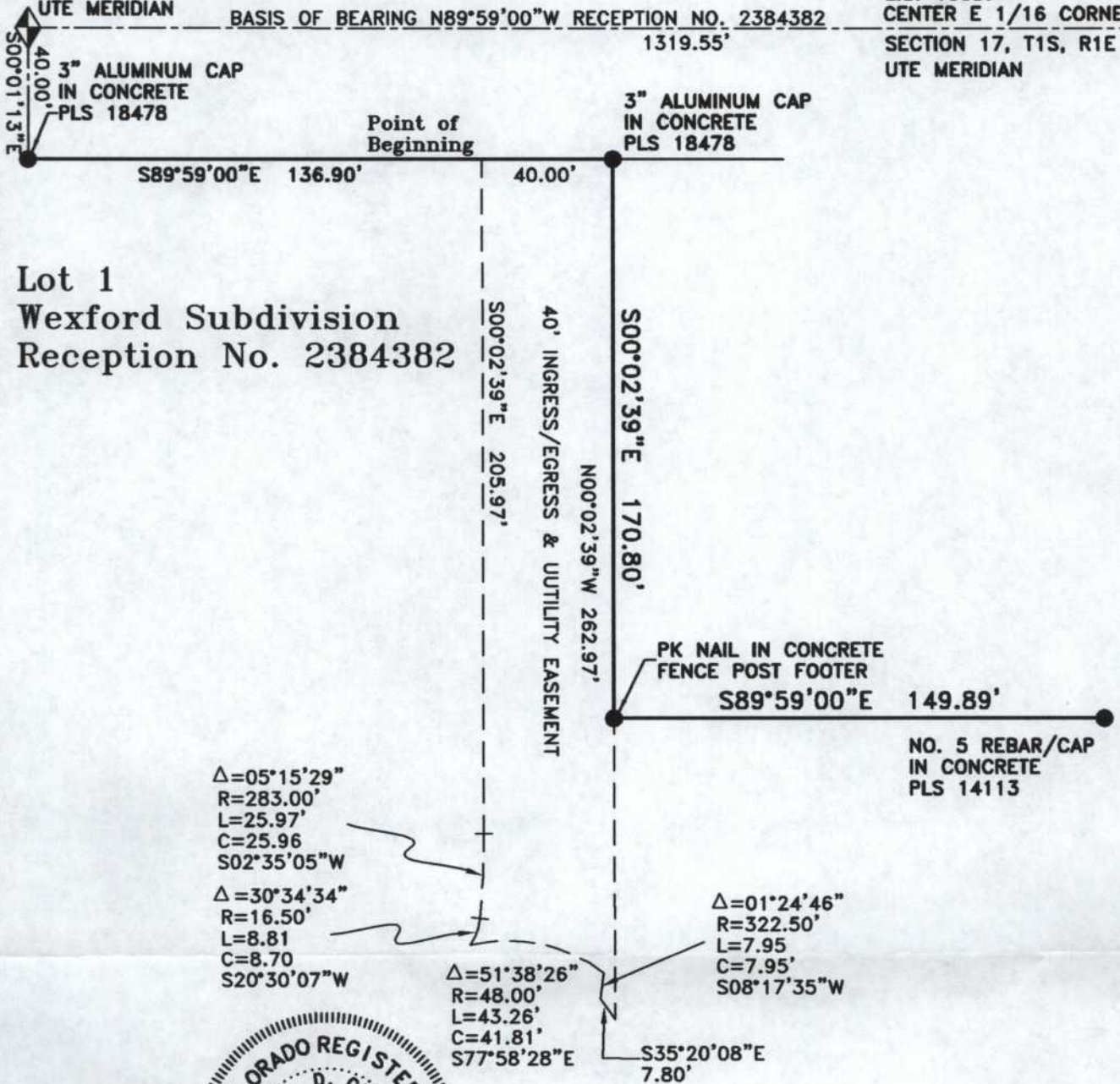


POINT OF COMMENCEMENT
MCSM (BRASS CAP) NO. 801-1
CENTER 1/4 CORNER
SECTION 17, T1S, R1E
UTE MERIDIAN

D 1/2 ROAD

MCSM (BRASS CAP)
L.S. 10097
CENTER E 1/16 CORNER
SECTION 17, T1S, R1E
UTE MERIDIAN

BASIS OF BEARING N89°59'00"W RECEPTION NO. 2384382
1319.55'



Cecil D. Caster
Registered Professional Land Surveyor
P.L.S. Number 24943



Monument Surveying Inc.
741 Rood Ave.
Grand Junction, CO 81501
245-4189 | 02-02-11
Wexford Estates
Ingress, Egress & Utility Esmt.

Description for 40' Ingress-Egress and Utility Easement

Commencing at the Mesa County Survey Marker located at the Center $\frac{1}{4}$ corner of Section 17 Township 1 South, Range 1 East of the Ute Meridian and when aligned with the Mesa County Survey Marker being the Center -East $\frac{1}{16}$ corner of said Section 17 is recorded as bearing N89°59'00" at Reception Number 2384382 in the Mesa County Clerk and Recorder's Office and all bearings contained herein to be relative thereto; thence S00°01'13"E 40.00 feet to the North line of Lot 1 of Wexford Subdivision; thence along said North line S89°59'00"E 136.90 feet to the point of beginning; thence leaving said North line S00°02'39"E 205.97; thence along the arc of a curve to the right 25.97 feet with a radius of 283.00 feet, central angle of 05°15'29" and whose long chord bears S02°35'05"W 25.96 feet; thence along the arc of a curve to the right 8.81 feet with a radius of 16.50 feet, central angle of 30°34'34" and whose long chord bears S20°30'07"W 8.70 feet; thence along the arc of a curve to the right 43.26 feet with a radius of 48.00 feet, central angle of 51°38'26" and whose long chord bears S77°58'28"E 41.81 feet; thence along the arc of a curve to the right 7.95 feet with a radius of 322.50 feet, central angle of 01°24'46" and whose long chord bears S08°17'35"W 7.95 feet; thence S35°20'08"E 7.80 feet; thence N00°02'39"W 262.97 feet to the South right-of-way line of D $\frac{1}{2}$ Road thence along said South line N89°59'00"W 40.00 feet to the point of beginning, City of Grand Junction and County of Mesa.