

DECLARATION OF COVENANTS

FOR THE

FISH CREEK PARK ROAD ASSOCIATION

THIS DECLARATION is made this 8th day of August, 1988, by
JOSEPHINE B. WERTZ (Wertz).

WITNESSETH:

WHEREAS, Wertz is the owner of certain real estate (the Property)
located in Larimer County, Colorado, more particularly described on
the attached Exhibit "A".

WHEREAS, Wertz desires to provide for the maintenance of roads
and to establish certain standards covering the Property by means of
Protective Covenants to insure the lasting beauty, value, and
enjoyment of the Property and to this end and for the benefit of the
Property and the owners thereof, Wertz desires to subject the Property
to the Protective Covenants and liens hereinafter set forth, and;

WHEREAS, a Nonprofit Corporation will be incorporated as the Fish
Creek Park Road Association, Inc. (the Association) under the laws of
the State of Colorado, to administer this Declaration and the matters
contained herein;

NOW, THEREFORE, Wertz hereby publishes and declares that in
addition to the ordinances of Larimer County, Colorado, the following
Protective Covenants and obligations shall be deemed to run with the
land and shall be a burden and benefit to Wertz, her successors, and
assigns, and any persons or entity acquiring or owning an interest in
the Property and improvements, her grantees, heirs, executors,
administrators, devisees, successors, or assigns.

ARTICLE I: DEFINITIONS

Section 1: "Owner" shall mean and refer to the record owners,
whether one or more persons or entities, of any Parcel of the
Property, including contract purchasers, but excluding those having
such interest merely as security for the performance of an obligation.

Section 2: "Roads" shall mean and refer to all roads
constructed on the Property by Wertz which are necessary to provide
vehicular, horseback, or foot-travel access from public roads to
Parcels of the Property or public lands. "Roads" shall not include

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private driveways constructed by individual Owners to provide access to dwellings or other structures located upon the Owners' Parcels of the Property.

Section 3: "Common Expenses" shall mean and refer to the cost of repairs and maintenance of the roads, drainage crossings, entrance gate and cattle guards; and shall include by way of example and not limitation, casualty, public liability, and other insurance; taxes; assessments for road repairs and maintenance; maintenance of drainage crossings; management and administration costs; wages; legal and accounting fees; expenses and liabilities incurred by the Association pursuant to or by By-Laws of the Association; the payment of any deficit remaining from a previous period; the creation of a reasonable reserve fund assessed by the Association pursuant to these Protective Covenants; the Articles of Incorporation; or the By-Laws of the Association.

Section 4: "Parcel" shall mean and refer to increments of land consisting of the minimal acres required by government regulation, initially consisting of 35 or more acres in size.

ARTICLE II: EASEMENTS

Section 1: Easement Reservation. Wertz hereby expressly excepts and reserves unto herself, and to her successors and assigns, a non-exclusive perpetual road right-of-way easement, sixty feet (60') in width, over and across, and thirty feet (30') on each side of the centerline of all roads constructed by Wertz. In addition thereto, Wertz hereby expressly excepts and reserves unto herself, and to her successors and assigns, a non-exclusive twenty foot (20') utility easement adjacent to, and parallel with, all said road right-of-ways, Parcel lines, and section lines; together with a utility guying easement on all Parcels as required by the utility involved; with said twenty foot (20') utility easement to be within the road right-of-way easement. Electrical poles, when in place, shall take precedence over road easement rights.

Section 2: Maintenance of Easements. Wertz shall have no obligation to maintain or repair the Roads, except to the extent that Wertz continues to be a member of the Association. The Association is

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hereby charged with the duty and responsibility of providing for the maintenance, repairs, and renovation of the Roads.

Section 3: Conveyance of Easements. Wertz hereby agrees to non-exclusively convey to the Association road easements and utility easements as described in reservations reserved by Wertz in certain deeds to individual Parcel Owners. Said conveyance shall be accomplished at the time the Association is incorporated.

ARTICLE III: OWNERS' RIGHTS

Owners' Easement of Enjoyment. Every Owner shall have a non-exclusive easement and right of enjoyment in and to the Roads which shall be appurtenant to, and shall pass with the title to every Parcel of the Property. An Owners' easement and right of enjoyment in and to the Roads shall not be exercised in any manner which subsequently interferes with the easement and right of any other Owner with respect thereto and shall be subject to the following:

- A. The right of the Association to charge reasonable fees and assessments to meet the estimated Common Expenses.
- B. The right of any governmental or quasi-governmental body having jurisdiction over the Property to have access and the right of ingress and egress over and across the Roads.

ARTICLE IV: ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Every Owner of a Parcel of the Property shall become a member of the Association upon acquisition of a Parcel of the Property, and said membership shall be deemed to run with the land. Upon the transfer of the Parcel to a third party, the Owner shall have the obligation to notify the Association of the title transfer. Each Owner shall have one vote per Parcel owned within the Property, and shall be entitled to vote as provided in the Articles of Incorporation and By-Laws of the Association. When more than one person or entity holds a Parcel of the Property, as a joint tenant, tenant in common, or otherwise, all such persons shall be members of the Association and shall be considered as only one Owner for voting purposes. Concept: One vote per Parcel, one assessment per Parcel, except that Wertz shall be obligated to pay one assessment regardless of how many Parcels she owns, and shall have one vote per Parcel owned.

ARTICLE V: ASSESSMENT FOR COMMON EXPENSES

Section 1: Assessment Obligation. Wertz, for each Parcel of the

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Property owned, hereby covenants, and each Owner of any Parcel of the Property by acceptance of a deed is deemed to covenant and agrees to pay all assessments imposed by the Association. Assessments shall be due yearly or at such other intervals as may be set by the Association from time to time. The Association shall prepare and deliver by mail, a statement for the yearly assessment to each Owner.

Section 2: Amount of Assessments. Assessments made for expenses shall be based upon the cash requirements deemed to be the aggregate sum which the Association shall from time to time determine to be necessary to provide for anticipated expenses. The amount of the assessment which shall be paid by each Owner of a Parcel of the Property shall be determined by dividing the aggregate sum the Association determines necessary to be paid by the Owners by the number of Parcels owned within the Property. In no event shall said assessment exceed Two Hundred Dollars (\$200.00) per year per each Parcel of the Property. In the event any Parcel of the Property is subdivided, each person or entity purchasing a portion of the subdivided Parcel shall be an Owner for the purposes of these Protective Covenants and shall be obligated to pay the assessment for expenses as herein provided.

ARTICLE VI: LIEN FOR NON-PAYMENT OF ASSESSMENTS

Section 1: Effect of Non-Payment of Assessments, Remedies of the Association. It shall be the duty of each Owner to pay a proportionate share of all assessments made by the Association for expenses pursuant to this Declaration. If any Owner shall fail or refuse to pay the proportionate share of the expenses when due ("the Defaulting Owner"), the amount thereof shall constitute a lien on the Defaulting Owner's Parcel and upon the recording of notice thereof by the Association, such lien shall be constituted upon the Defaulting Owner's interest in the Parcel, prior to all other liens and encumbrances, recorded or unrecorded, except (a) taxes, and (b) all sums unpaid on mortgages or deeds of trust of record, representing a lien against the Parcel.

Section 2: Evidence of Lien. To evidence such lien for unpaid expenses, the Association shall prepare a written notice setting forth the amount; the name of the Defaulting Owner and a description of the

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Defaulting Owner's Parcel. Such notice shall be signed on behalf of the Association by an officer of the Association and shall be recorded in the records of the Clerk and Recorder of Larimer County, Colorado. Such lien shall attach from the date of recording and may be enforced by foreclosure by the Association of the Defaulting Owner's Parcel in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all Owners. In any such foreclosure, the Defaulting Owner shall be required to pay all costs and expenses of such proceedings, and all reasonable attorney's fees incurred in connection with the filing and actual foreclosure. The Defaulting Owner shall also be required to pay to the Association any expenses due and owing during the period of foreclosure, and the Association shall be entitled to appoint a receiver to collect the same. The Association shall have the power to bid on the Parcel at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the same.

ARTICLE VII: USE COVENANTS

Section 1: Land Use and Building Type. No Parcel of land shall be used for any purpose other than single family residential. No buildings other than a single family dwelling with a private attached or unattached garage (if desired) or unattached pump house (if desired), non-residential outbuildings and structures such as a barn, shed, stable, or corral for use specifically in connection with the care of livestock, a shop for the maintenance of equipment, and a guest house, shall be erected, placed, or permitted to remain on any Parcel. No mobile homes shall be placed or maintained on any Parcel of the property at any time, except as provided in Article VII, Section 4, below. Notwithstanding the foregoing, double-wide mobile home units and modular home units shall be permitted so long as said unit has a pitched roof and a wooden exterior.

Section 2: Building Location and Easements. No building or other permanent structure shall be located so as to interfere with any easement.

Section 3: Nuisance. Nothing which may be, or may become, annoying or a nuisance to other Parcel Owners shall be permitted on any Parcel. No obnoxious or offensive activity or commercial business

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or trade shall be engaged in, or upon any Parcel; except that professional offices such as those of a doctor, lawyer, dentist, engineer, or real estate agent, and certain home occupations permitted by Larimer County Zoning Ordinances, may be maintained within the main dwelling. For purposes of this covenant, ungaraged inoperative automobiles, machines, or other equipment which remain on any Parcel for longer than ninety (90) days are a nuisance.

Section 4: Temporary Residence. A pickup camper, camptrailer, motorhome, or tent may occupy a Parcel for recreational purposes only, and shall not become a permanent dwelling. Mobile homes may be placed on the premises for a period not to exceed eighteen (18) months during, and only after obtaining a building permit and beginning construction of a permanent dwelling. Notwithstanding the foregoing, a pickup camper, motorhome, mobile home or tent may be stored on a Parcel provided that the Owner shall have a residence on the Property.

Section 5: Refuse and Rubbish. Rubbish, refuse, garbage, and other wastes shall be kept within sealed containers, shall not be allowed to accumulate on the Property, and shall be disposed of in a sanitary manner. No Parcel shall be used or maintained as a dumping ground for such materials.

Section 6: Livestock. Any Parcel may be used for the grazing of livestock such as cattle, horses, and sheep. Overgrazing is prohibited. Livestock shall not be permitted to run loose and shall be properly cared for with adequate maintenance, food, and shelter. It shall be the responsibility of the Owner to fence the Parcel when livestock is maintained on the Parcel, subject to the terms of the operative grazing lease.

Section 7: Fences. Fences shall be permitted on individual Parcels; provided however, that any fence shall be so constructed as to not interfere with the easements required for access to adjoining lands, unless cattle guards twelve feet (12') in width are installed in place of gates. In the event that a cattle guard is constructed, a bypass gate shall be installed.

ARTICLE VIII: GENERAL PROVISIONS

Section 1: Grazing Lease. The Director of the Association shall be authorized to act and bind the Association under the terms and

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conditions of any grazing leases, subsequent to receiving authorization at the annual meeting of the membership.

Section 2: Enforcement. Enforcement of this Declaration and these Protective Covenants shall be by appropriate proceedings at law or in equity against those persons in violation. Any judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, for recovery of assessments due, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by any Owner or by the Association on behalf of the Owners, and the Association may assess the cost of the prosecution to its members. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude the enforcement of a further or continued violation.

Section 3: Severability. Should any part or parts of these Protective Covenants be declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining Protective Covenants. The Statute of Limitations regarding covenant enforcement is hereby waived, and shall be of no force and effect.

Section 4: Duration. The herein included agreement and Protective Covenants shall run with the land; shall be binding upon all persons owning Parcels of the Property and any persons hereinafter acquiring said Parcels of the Property, and shall be in effect for a period of twenty-five (25) years from and after the date these Protective Covenants are recorded. After which period said Protective Covenants shall be of no further force and effect unless the Owners of two-thirds (2/3) of the then Parcel Owners shall elect in writing to extend these Protective Covenants for an additional specified period; at which time these Protective Covenants shall be of no further force and effect unless similarly extended for an additional period or periods. Provisions for maintenance of the Road shall not be permitted to lapse with the other Protective Covenants unless other provisions are made for continuation of said maintenance.

These Protective Covenants may be altered in whole or in part at any time the then record Owners of two-thirds (2/3) of the land area

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within the Property so elect by a written and recorded instrument.

Section 5: Cost of Enforcement. In the event the Association commences an action to enforce any of these Protective Covenants, and the Association prevails, the Association shall be entitled to recover all costs and expenses including reasonable attorney's fees incurred by the Association in the prosecution of such action.

Section 6: Common Scheme of Development. The undersigned, her successors and assigns, shall have the right to bring within the scheme of these Protective Covenants and the structure of the Association additional properties in accordance with a general plan of development. Such additions shall be made by filing of record a supplement to these Protective Covenants.

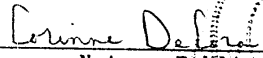
IN WITNESS WHEREOF, Josephine B. Wertz has caused this instrument to be executed the day and year first above written.

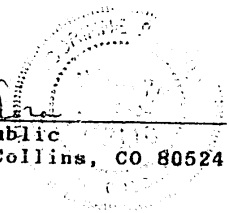

Josephine B. Wertz

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

The foregoing instrument was acknowledged, subscribed, and sworn to and before me this 2th day of August, 1988, by Josephine B. Wertz.

Witness my hand and official seal.
My commission expires: 4-13-91.


Notary Public
312 E. Mulberry, Ft. Collins, CO 80524



9 EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE DECLARATION OF COVENANTS FOR FISH CREEK PARK ROAD ASSOCIATION.

LEGAL DESCRIPTION

Parcel 2

That portion of Section 24, Township 7 North, Range 71 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

Considering the West line of the Southwest Quarter of Section 24, Township 7 North, Range 71 West of the 6th P.M. to bear North $00^{\circ}04'55''$ West with all bearings contained herein, relative thereto.

Beginning at the Southwest corner of said Section 24; thence North $00^{\circ}50'04''$ East 229.82 feet; thence East 711.70 feet to the TRUE POINT OF BEGINNING; thence continuing East 601.59 feet; thence North 2247.68 feet; thence South $00^{\circ}10'32''$ West 681.94 feet; thence South 2225.97 feet more or less to the TRUE POINT OF BEGINNING.

Parcel 4

That portion of Section 24, Township 7 North, Range 71 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

Considering the West line of the Southwest Quarter of Section 24, Township 7 North, Range 71 West of the 6th P.M. to bear North $00^{\circ}04'55''$ West with all bearings contained herein, relative thereto.

Beginning at the Southwest corner of said Section 24; thence North $00^{\circ}50'04''$ East 229.82 feet; thence East 1393.29 feet to the TRUE POINT OF BEGINNING; thence North 991.67 feet; thence North $85^{\circ}55'22''$ East 1232.68 feet to the North-South centerline of said Section 24; thence North $89^{\circ}48'17''$ East 305.32 feet; thence South $00^{\circ}47'28''$ West 845.37 feet; thence South $88^{\circ}07'13''$ West 305.61 feet to the North-South centerline of said Section 24; thence along said centerline South $00^{\circ}47'28''$ West 225.07 feet; thence West 1214.66 feet more or less to the TRUE POINT OF BEGINNING.

Parcel 1

That portion of Sections 24 and 25, Township 7 North, Range 71 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

Considering the West line of the Southwest Quarter of Section 24, Township 7 North, Range 71 West of the 6th P.M. to bear North $00^{\circ}04'55''$ West with all bearings contained herein, relative thereto.

Beginning at the Southwest corner of said Section 24; thence North $00^{\circ}50'04''$ East 229.82 feet; thence East 2044.24 feet to the TRUE POINT OF BEGINNING; thence continuing East 563.70 feet to the North-South centerline of said Section 24; thence along said centerline South $30^{\circ}47'26''$ West 144.24 feet; to the South Quarter corner of said Section 24, said point being also the North Quarter corner of said Section 25; thence along the North-South centerline of said Section 25 South $00^{\circ}07'24''$ West 2573.99 feet to the Center of said Section 25; thence along the East-West centerline of said Section 25 South $00^{\circ}14'54''$ West 556.43 feet; thence North 2733.23 feet more or less to the TRUE POINT OF BEGINNING.

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EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE DECLARATION OF
COVENANTS FOR FISH CREEK PARK ROAD ASSOCIATION.

LEGAL DESCRIPTION
CONTINUED

Parcel 1

That portion of Section 26, Township 7 North, Range 71 West of
the 6th P.M., County of Larimer, State of Colorado, more
particularly described as follows:

Considering the West line of the Southwest Quarter of Section
24, Township 7 North, Range 71 West of the 6th P.M. to bear
North $00^{\circ}04'55''$ West with all bearings contained herein,
relative thereto.

Beginning at the Southwest corner of said Section 24, said point
being, also, the Northeast corner of said Section 26; thence;
along the North line of said Section 26 North $89^{\circ}20'37''$ West
180.01 feet to the TRUE POINT OF BEGINNING; thence continuing
North $89^{\circ}20'37''$ West 1324.66 feet; thence South $08^{\circ}49'34''$ East
1252.76 feet; thence South $89^{\circ}20'37''$ East 1143.04 feet; thence
North $00^{\circ}29'32''$ West 1235.89 feet more or less to the TRUE POINT
OF BEGINNING.