



DECLARATION OF COVENANTS  
FOR THE  
FISH CREEK ROAD ASSOCIATION

THIS AMENDED DECLARATION is made this 7<sup>th</sup> day of July, 2005, by the Undersigned, as the Owners of real property located in the County of Larimer, State of Colorado, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

WITNESSETH

WHEREAS, The Owners desire 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. The Owners desire to subject the Property to the covenants and liens hereinafter set forth, and;

WHEREAS, Fish Creek Road Association Inc, a Nonprofit Corporation was formed under the laws of the State of Colorado, to administer this Declaration and the matters contained herein.

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

ARTICLE 1: 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 Fish Creek Road Association 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 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

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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 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. The Declarant hereby expressly excepts and reserves unto itself, and to its successors and assigns, a non-exclusive perpetual road right-of-way easement, thirty feet {30'} in width, over and across, and fifteen feet {15'} on each side of the centerline of all roads constructed. Electrical poles, when in place, shall take precedence over road easement rights.

Section 2: Maintenance of Easements. The Association is hereby charged with the duty and responsibility of providing for the maintenance, repairs, and renovation of the roads.

Section 3: Conveyance of Easements. The Owners hereby agree to non-exclusively convey to the Association road easements and utility easements as described in reservations reserved by the Owner in certain deeds to individual parcel Owners.

#### 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 Owner's 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 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.
- C. For legal and safety reasons, no recreation vehicles {ATV's, motorcycles, etc.} are allowed on association roads, except for thoroughfare only.

#### 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.

#### ARTICLE V: ASSESSMENT FOR COMMON EXPENSES

Section 1: Assessment Obligation. 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. Assessment shall be a minimum of \$250.00 per year, per parcel, and will be reassessed yearly at the annual meeting. 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 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 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 the appointment of 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), non-residential outbuildings and structures such as a barn, stable, or corral for use specifically in connection with the care of livestock, 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.

**Section 2: Building Location and Easements.** No residential dwelling shall be erected within fifty {50} feet of an outside boundary of an individual parcel.

**Section 3: Nuisance.** Nothing with 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 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 as may be permitted by Larimer County Zoning Ordinances, may be maintained within the main dwelling, as long as it does not generate foot or vehicle traffic. For the purposes of this covenant, utility trailers, stock trailers, farm equipment, or antique machinery is acceptable as long as it does not resemble a junk yard or nuisance in appearance to other Property Owners.

**Section 4: Temporary Residence.** A pickup camper, camp trailer, 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.

**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 material.

**Section 6: Livestock.** Any parcel may be used for the grazing of livestock such as cattle, horses, bison, llamas, etc. Overgrazing is prohibited, by causing erosion and damage to other parcels. Livestock shall not be permitted to run loose and shall be

properly care 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.

**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 fourteen feet {14'} in width are installed in place of gates. In the event that a cattle guard is constructed, a bypass gate shall be installed.

**Section 8: Hunting.** Hunting shall not be permitted due to the close proximity of homes, and to the safety of humans, pets, and livestock. Personal target practice is allowed if extreme care and thought is given to the safety of others.

**Section 9: Recreational Uses:** As agreed by all land owners, an approximate one hundred feet {100'} buffer zone parallel to Fish Creek on Exhibit A will remain open for hiking, horseback riding, and other non-motorized uses.

#### **ARTICLE VIII: GENERAL PROVISIONS**

**Section 1: Enforcement.** Enforcement of this Declaration and these 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 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 2: Severability.** Should any part or parts of these covenants be declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining covenants. The Statute of Limitations regarding covenant enforcement is hereby waived, and shall be of no force and effect.

**Section 3: Duration.** The herein included agreement, covenants, restrictions, and conditions 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 Covenants are recorded. After which period said 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 Covenants for an additional specified period; at which time these 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 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 within the Property so elect by a written and recorded instrument.



EXHIBIT "A" OWNER

Steven A Koch

Steven A. Koch

Karen I. Koch

Karen I. Koch

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged, subscribed and sworn to and before me this 18<sup>th</sup> day of July, 2005 by Steven A. Koch and Karen I. Koch.

Witness my hand and official seal.  
My commission expires:

Ladonna Hecock  
Notary Public

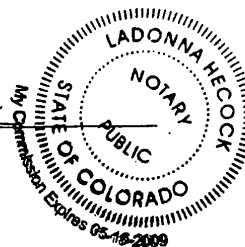


EXHIBIT "A" OWNER

Alan W. Lloyd

Alan W. Lloyd

Barbara L. Lloyd

Barbara L. Lloyd

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged, subscribed and sworn to and before me this 10<sup>th</sup> day of August, 2005 by Alan W. Lloyd and Barbara L. Lloyd.

Witness my hand and official seal.  
My commission expires:

Ladonna Hecock  
Notary Public

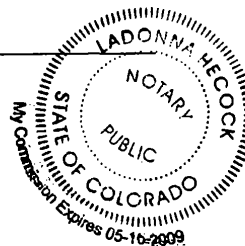


EXHIBIT "A"

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

Considering the East line of the Northeast Quarter of said Section 25 to bear North  $00^{\circ}47'00''$  East with all bearings contained herein, relative thereto.

BEGINNING at the East Quarter corner of said Section 25; thence along the East-West centerline of said Section 25 South  $88^{\circ}14'55''$  West 2555.97 feet to the center of said Section 25; thence along the North-South centerline of said Section 25 North  $00^{\circ}07'24''$  East 2573.99 feet to the North Quarter corner of said Section 25, said point being also the South Quarter corner of said Section 24; thence along the North-South centerline of said Section 24 North  $00^{\circ}47'28''$  East 2648.34 feet to the Center of said Section 24; thence along the East-West centerline of said Section 24 North  $88^{\circ}10'33''$  East 507.50 feet to the Westerly right of way line of an existing county road; thence along said right of way line the following sixteen courses: South  $67^{\circ}10'56''$  East 158.55 feet to the beginning of a curve concave to the Southwest, having a central angle of  $19^{\circ}03'59''$  and a radius of 543.00 feet; thence Southeasterly along the arc of said curve 180.69 feet to the end of said curve; thence South  $48^{\circ}06'57''$  East 671.46 feet; thence South  $45^{\circ}17'57''$  East 153.36 feet to the beginning of a curve concave to the West, having a central angle of  $69^{\circ}20'00''$  and a radius of 199.20 feet; thence Southerly along the arc of said curve 241.05 feet to the end of said curve; thence South  $24^{\circ}02'03''$  West 286.40 feet to the beginning of a curve concave to the East, having a central angle of  $56^{\circ}14'01''$  and a radius of 412.00 feet; thence Southerly along the arc of said curve 404.36 feet to the end of said curve; thence South  $32^{\circ}11'57''$  East 1246.90 feet to the beginning of a curve concave to the Southwest having a central angle of  $11^{\circ}26'01''$  and a radius of 925.00 feet; thence Southeasterly along the arc of said curve 184.59 feet to the end of said curve; thence South  $20^{\circ}45'57''$  East 39.80 feet to the beginning of a curve concave to the West having a central angle of  $47^{\circ}49'06''$  and a radius of 256.50 feet; thence Southerly along the arc of said curve 214.07 feet to the end of said curve; thence South  $27^{\circ}03'03''$  West 45.10 feet to the beginning of a curve concave to the East having a central angle of  $53^{\circ}08'06''$  and a radius of 193.70 feet; thence Southerly along the arc of said curve 179.63 feet to the end of said curve; thence South  $26^{\circ}04'57''$  East 453.20 feet to the beginning of a curve concave to the Northeast, having a central angle of  $42^{\circ}26'57''$  and a radius of 316.50 feet; thence Southeasterly along the arc of said curve 234.49 feet to the end of said curve; thence South  $68^{\circ}31'57''$  East 73.56 feet to the East line of the Northeast Quarter of said Section 25; thence along said East line South  $00^{\circ}47'00''$  West 1307.04 feet more or less to the point of BEGINNING.

The above described parcel contains a gross acreage of 227.18 acres more or less.