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County Clerk
Reception No. 412695
By *Joanne M. Reitinger* County Clerk

JOINT MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 13th day of JANUARY, 1989, by and between CRESTED BUTTE MEADOWS COMPANY, a Colorado nonprofit corporation of P.O. Box 1301, Crested Butte, Colorado 81224 (hereinafter "Meadows"); CRESTED BUTTE HIGHLANDS PROPERTY OWNERS ASSOCIATION, INC., a Colorado nonprofit corporation of P.O. Box 1549, Crested Butte, Colorado 81224 (hereinafter "Highlands"); and DAVID A. BAXTER and FRED FAIR of c/o First Western Lending of Aspen, Inc., 117 S. Spring Street, Aspen, Colorado 81611, (hereinafter "Ridge"); is upon the following terms and conditions:

WITNESSETH:

WHEREAS, Meadows is the legally constituted property owners association for the Crested Butte Meadows subdivision, which subdivision plat is recorded with the Clerk and Recorder of Gunnison County, Colorado dated September 30, 1977, and bearing reception number 320475, and

WHEREAS, Highlands is the legally constituted property owners association for the Crested Butte Highlands subdivision, which subdivision plat is recorded with the Clerk and Recorder of Gunnison County, Colorado dated July 19, 1977, and bearing reception number 318186, and

WHEREAS, Ridge is the owner of certain real property located in Gunnison County, Colorado, which real property is more particularly described on the attached and incorporated "Exhibit A", and

WHEREAS, Ridge intends to subdivide the above referred real property into seven (7) lots at some point in the future, and

WHEREAS, the Meadows subdivision, the Highlands subdivision, and the Ridge property are all served by a common access road traveling 1.2 miles through the Crested Butte South Subdivision, thence into and through the Highlands subdivision, thence into and through the Ridge property, thence into and through the Meadows subdivision, where it ends (hereinafter "Road"), and

WHEREAS, the parties find it desirable to enter into an agreement whereby the expenses of maintaining the Road will be shared among the parties on an equitable basis,

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, preambles, and conditions set forth herein, the parties agree as follows:

Section 1. Maintenance Defined. Maintenance upon the Road shall be defined as:

- a) plowing snow off of the Road after any storm which deposits five (5) or more inches of new snow, and
- b) grading the Road twice a year, once in the spring and once in the fall, and
- c) installing new gravel upon the road when wear upon the old gravel surface reasonably requires such installation, and
- d) any other activity necessary to keep the Road reasonably passable to passenger cars on a year around basis.

Section 2. Sharing of Maintenance Expenses. The expenses of the above defined maintenance shall be borne and shared between the parties based upon the number of lots within the parties' subdivisions as follows:

- Meadows - 17 Lots
- Highlands - 16 Lots
- Ridge - For the purposes of this Agreement will be assumed to have 7 lots. The three lower lots (Tracts 1 through 3) will gain access below Highlands. The four upper lots (Tracts 4 through 7) will gain access above Highlands.

Thus, the Road serves a total of 40 lots. The pro rata share of the cost of maintenance is based upon the number of lots served by each section of Road. The 1.2 mile section below the Highlands subdivision serves all 40 lots and will be known as "Section A." The section within the Highlands Subdivision serves 37 lots and will be known as "Section B". The section within the Ridge Property serves 21 lots and will be known as "Section C." The section within the Meadows Subdivision serves 17 lots and will be known as "Section D."

The costs attributable to the maintenance of Section A of the Road shall be borne and paid for 42.5% by Meadows, 17.5% by Ridge, and 40% by Highlands.

The costs attributable to the maintenance of Section B of the Road shall be borne and paid for 10.81% by Ridge, 45.95% by Meadows, and 43.24% by Highlands.

The costs attributable to the maintenance of Section C of the Road shall be borne and paid for 80.95% by Meadows, and 19.05% by Ridge.

The costs attributable to the maintenance of Section D of the Road shall be borne and paid for 100% by Meadows.

Section 4. Management of Maintenance Activities. For the purposes of this Agreement and the activities and obligations set forth hereunder, Meadows shall be the managing entity. As such Meadows will:

- a) enter into contracts for the performance of maintenance work on behalf of all parties, and
- b) properly supervise the performance of maintenance work and contracts, and
- c) keep proper books of accounts for all maintenance expenditures, and
- d) set up and maintain a separate checking account for maintenance revenues and expenditures, and
- e) prepare and submit to the other two parties, on or before June 1 of each calendar year, a maintenance budget and program for the following calendar year, and
- f) use its best, reasonable efforts to obtain maintenance materials, labor, and/or contracts at the lowest price commensurate with quality of service and workmanship, and
- g) keep adequate records of all maintenance activities, which records shall be available for the inspection of the other two parties,

- h) submit a final report of revenues, expenditures, and projects for the previous year with the budget submitted on June 1.

Section 5. Budget Approval. After the submission on or before June 1 of the budget referred to in Section 4.e), above, Ridge and Highlands shall review same and make any suggestions for changes or modifications to Meadows on or before July 1. Between July 1 and August 1, the parties shall meet, review and discuss the budget using their best efforts to agree upon a final budget. In the event of any disagreement regarding the budget, a majority vote among the three parties shall resolve such disagreement. Failure, by Ridge or Highlands to comment upon the budget by July 1 shall be deemed an automatic approval. In any event, the budget shall be finalized and approved by August 1 of each year. Subsequent to August 1, each party shall place such assessments upon the lots in each parties subdivision as will guarantee payment of the following years expenses as provided in Paragraph 6, below.

Section 6. Payment of Maintenance Costs. After approval of the maintenance budget for any calendar year, each party shall pay to Meadows its pro rata share as required by Section 2 of this Agreement, during said calendar year, as follows:

- a) One-Half (1/2) of payment due shall be paid by February 1.
- b) One-Half (1/2) of payment due shall be paid by August 1.

Any surplus of payments over actual expenditures shall be carried over into the next years budget. Any shortfall in the budget shall be paid by the parties to Meadows on or before December 31 of the budget year for which a shortfall exists.

Section 7. Ridge Subdivision. Upon the platting by Baxter and Fair, or their successors and/or assigns, of the anticipated Ridge subdivision, Baxter and Fair or their successors and/or assigns shall provide that this Agreement shall bind the lotowners therein and any property owners association created thereby. In the event that in the future the Ridge property contains more or fewer than seven (7) lots, or the lots within the Ridge subdivision use different sections of the Road than set forth above, or any lots within the Ridge subdivision do not use any portion of the Road, the pro-rata percentages reflected in Paragraph 2, above, shall be revised upon the same conceptual formula applied to those lots within the Ridge subdivision which actually do use the Road.

Section 8. Miscellaneous. This Agreement shall be binding upon the parties, and their heirs, successors, representatives, and assigns, and shall be recorded in the records of the Gunnison County Clerk and Recorder. This Agreement may be amended only if approved, in writing, by all of the parties hereto. The proper venue for any legal action to interpret or enforce this Agreement shall be the appropriate Court in Gunnison County, Colorado. In the event of any such action, the substantially prevailing party therein shall be entitled to reasonable attorney's fees as part of any judgment. The remedy of specific performances shall be available for any breach or non-performance of this Agreement in addition to any other remedies provided by law. Time is of the essence in the performances of any act required by this Agreement.

EXHIBIT "A"

Township 14 South, Range 85 West, 6th P.M.

Section 22: NE $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$,

EXCEPTING THEREFROM that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 22, being a portion of the parcel of land described in deed recorded in Book 249 at page 301, Gunnison County records, which lies South and East of the following described line, to wit: Beginning at a point on the summit of the ridge running Southwest of Point Lookout and North of the Cement Creek Ranger Station, the relative position of the NE corner of said Section 22, whence the SE corner of said section bears South 5280 feet; thence following said ridge South 65°36' West, 94 feet; thence following said ridge, South 38°04' West, 1354 feet; thence following said ridge South 17°12' West, 225 feet to a point on the South line of said NE $\frac{1}{4}$ NE $\frac{1}{4}$, 332 feet East of the center of the NE $\frac{1}{4}$ of said Section 22;

ALSO EXCEPTING THEREFROM a second tract of land located in the southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, being a tract 208.6 feet square whose south and west lines are the same as the south and west lines of said quarter section,

County of Gunnison,
State of Colorado.

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