

# CONVEYANCE AND DEDICATION OF RIGHT OF WAY

KNOW ALL MEN by these presents, that the undersigned, ESTHER KOZAK and KAZIMIERZ KOZAK, do hereby dedicate and set apart to the use of the public forever, and hereby dedicate to the public utilities, that access and utility easement described on Exhibit A attached hereto and incorporated herein by this reference, situate in the County of Garfield, State of Colorado, as a perpetual roadway, access and utility easement for the installation and maintenance of streets and roads, utilities, irrigation and drainage facilities, including, but not limited to, electric lines, water lines, gas lines, telephone lines, together with the right to trim interfering trees and brush, with perpetual right of ingress and egress for installation and maintenance of such streets, roads and utility lines.

Made and executed this 20<sup>th</sup> day of January, 1995.

Esther Kozak  
Esther Kozak, Individually

Kazimierz Kozak  
Kazimierz Kozak, Individually

STATE OF COLORADO    )  
                                  ) ss  
COUNTY OF GARFIELD )

January, 1995, by ESTHER KOZAK and KAZIMIERZ KOZAK.

Witness my hand and official seal.

My Commission Expires: 9-11-98

Michael A. Smith  
Notary Public

EXHIBIT "A"

ACCESS AND UTILITY EASEMENT

An Access and Utility Easement in the W1/2NE1/4 of Section 25, Township 5 South, Range 91 West of the 6th P.M. being 50.00 feet in width and lying 25 feet on each side of the following described centerline:

Beginning at a point on the northerly right-of-way of County Road No. 245 whence the Southeast Corner of said W1/2NE1/4 bears S89°39'33"E 357.71 feet; thence 133.38 feet along the arc of a curve to the right having a central angle of 18°11'46" and a radius of 420.00 feet, the chord of which bears N 57°01'35"E 132.82 feet; thence 117.84 feet along the arc of a curve to the left having a central angle of 54°00'54" and a radius of 125.00 feet; thence N12°06'34"E 152.88 feet; thence 269.21 feet along the arc of a curve to the right said curve having a central angle of 13°31'49" and a radius of 1140.00 feet; thence N25°38'23"E 73.26 feet to the point of terminus said point being on the east line of said W1/2NE1/4 and also being on the west line of the Three Elk Run Subdivision from said point of terminus said Southeast Corner of said W1/2NE1/4 bears S00°02'12"W 642.97 feet.

## AGREEMENT AND GRANT OF EASEMENT

### A. PARTIES

The parties to this Agreement are THREE ELK RUN LLC (Grantor) and KAZIMIERZ KOZAK and ESTHER KOZAK, whose address is 0095 Peach Court, New Castle, CO 81647, (Grantees).

### B. RECITALS

The reason and purpose for entering into this Agreement is premised upon the following:

1. Grantor is the developer of Three Elk Run Subdivision, Garfield County, Colorado, the plat of which is recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 473965 (Elk Run).

2. To the extent that Grantor has not dedicated the roadways within Elk Run to the public, Grantor is the owner thereof and has the right to convey an easement over and across the roadway which is located between Garfield County Road No. 245 and Elk Run.

3. Grantees are the owners of Tract 1, Kozak Exemption, Garfield County, Colorado, the plat of which is recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 465410 (Tract 1).

~~4. Grantees have granted to Grantor an easement and right-of-way over and across Tract 1 for a water pipeline and Grantees are desirous of obtaining from Grantor an easement and right-of-way for ingress, egress and utilities extending from Garfield County Road No. 245 through Elk Run to the easterly boundary of Tract 1.~~

### C. AGREEMENT

The parties agree as follows:

- 1. Recitals True and Correct.** The recitals above set forth are true and correct.
- 2. Grant of Easement.** Grantor hereby grants, conveys and sets over to Grantees an easement and right-of-way for ingress and egress and utilities extending over and across:

a. the roadways extending from Garfield County Road No. 245 through Elk Run as the same are depicted upon the plat of Elk Run to a point which is co-terminus with the boundary line between Lots 13 and 14 of Elk Run,

b. the boundary line common to Lots 13 and 14 to the easterly boundary of Tract 1, the width of which shall be thirty (30) feet, fifteen (15) feet on either side of the boundary line common to said Lots 13 and 14.

3. **Acceptance of Easement and Conditions.** Grantees accept the easement and right-of-way herein granted to them by Grantor and, in furtherance thereof, agree:

a. to be responsible for their proportionate share of the cost and expense of constructing and maintaining the easement and right-of-way along the boundary line common to Lots 13 and 14, which cost and expense shall be shared with the owners of Lots 13 and 14 in the same percentage interest as each utilize such easement; and

b. to enter into an agreement with the Three Elk Run Homeowners Association for the purpose of making provision for the Grantees to pay a proportionate share of the maintenance expenses incurred in maintaining the roadway extending from County Road No. 245 through Elk Run.

4. **Contingency.** This Agreement is contingent upon and shall only become effective upon the Grantees obtaining the agreement with the Three Elk Run Homeowners Association as required by paragraph C.3.b.

5. **Appurtenance to Tract 1 Only.** The easement and right-of-way herein granted is limited to Tract 1 and may not be sold or assigned to any party other than the owner of Tract 1, and to that extent the easement and right-of-way herein granted shall become an appurtenance to and run with the title to Tract 1.

6. **Consent of Mortgagee.** The property the subject of the easement and right-of-way herein granted is subject to the lien of a mortgage securing the payment of an indebtedness owed to the Regional Bank of Colorado, Rifle, Colorado. By execution hereof the Regional Bank of Colorado consents to and joins in this conveyance and subordinates the lien of its mortgage deed to the conveyance herein made.

7. **Binding Effect.** The terms and conditions hereof shall extend to and be binding upon the parties hereto, their successors and assigns of all kinds.



STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 1995, by Kazimierz Kozak and Esther Kozak.

Witness my hand and official seal.

Sally G. Wagner  
Notary Public

Address:  
My commission expires:

818 Colorado Avenue  
Glenwood Springs, CO 81601  
My commission expires May 1, 1997

The terms and conditions of the above and foregoing Agreement and Grant of Easement are hereby approved by the Regional Bank of Colorado, Rifle, Colorado, and the lien of the mortgage deed held by it encumbering the lands the subject of the easement and right-of-way is hereby subordinated to the grant of easement herein made.

Date: June 29, 1995

REGIONAL BANK OF COLORADO  
RIFLE, COLORADO

By: Lillian L. Danner

Title of Officer Signing: Asst. Vice President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 20th day of June, 1995, by Lillian L. Dahlin as Asst. Vice President of Regional Bank of Colorado, Rifle, Colorado.

Witness my hand and official seal.

[Signature]  
Notary Public

Address: 120 W. 3rd  
My commission expires: April 10, 1998

## MAINTENANCE AGREEMENT

### A. PARTIES

The parties to this Agreement are THREE ELK RUN HOMEOWNERS ASSOCIATION (HA) and KAZIMIERZ KOZAK and ESTHER KOZAK (Kozak).

### B. RECITALS

The reason and purpose for entering into this Agreement is premised upon the following:

1. HA is the association charged with the responsibility for the maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Three Elk Run Subdivision as the same appears upon plat thereof recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 473965 (Elk Run).
2. Kozak is the owner of Tract 1, Kozak Exemption, as the same appears upon plat thereof recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 465410 (Tract 1)
3. Kozak has received the conveyance of an easement and right-of-way from Three Elk Run LLC for an easement and right-of-way extending from Garfield County Road No. 245 through Elk Run to a point on the boundary between Lots 13 and 14, Elk Run, thence along the boundary of said Lots 13 and 14 to the easterly boundary of Tract 1.
4. The grant of the easement and right-of-way to Kozak is contingent upon Kozak entering into an agreement with HA for the purpose of Kozak paying a proportionate share of the maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Elk Run.

### C. AGREEMENT

The parties agree as follows:

1. Recitals True and Correct. The recitals above set forth are true and correct.

2. **Share of Maintenance Costs.** Kozak hereby agrees to pay his proportionate share of the costs of maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Elk Run (Roadways).

3. **Proportionate Share of Costs.** The costs and expenses of the maintenance of the Roadways shall be the proportionate share thereof which shall be paid by each lot owner within Elk Run. ✓

4. **Billing for Cost.** For purposes of maintenance and upkeep of the Roadways, HA shall bill Kozak on the same basis and at the same rate as all other homeowners are billed within Elk Run for such maintenance and upkeep; provided, however, the share to be paid by Kozak shall be for road maintenance and upkeep only and no other expenses of operating the homeowners association shall be included in such billing.

5. **Pertains to Tract 1 Only.** The scope of this Agreement shall extend to Kozak as the owner of Tract 1 and shall be an emolument, benefit to and obligation upon Tract 1 only and may not be assigned in whole or in part to any other person other than the owner of Tract 1.

6. **Gender.** The use of the singular masculine herein shall include the plural and feminine.

7. **Binding Effect.** The terms and conditions hereof shall extend to and be binding upon the parties hereto, their successors and assigns of all kinds.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set opposite the name of each.

Date: June 16, 1995

THREE ELK RUN HOMEOWNERS ASSOCIATION

By: [Signature]  
President

Attest:

[Signature]  
Secretary

Date: \_\_\_\_\_

[Signature]  
KAZIMIERZ KOZAK

Date: June 23, 1995

[Signature]  
ESTHER KOZAK

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1995, by Edward McCune as President and Barbara McCune as Secretary of Three Elk Run Homeowners Association.

Witness my hand and official seal. *my commission expires 4-18-98*

*Jody Whitman*  
Notary Public

Address: 2644 East Ave Rifle CO 81650  
My commission expires: 4-18-98



STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 1995, by Kazimierz Kozak and Esther Kozak.

Witness my hand and official seal.

*Sally Cook Vezeman*  
Notary Public

Address: -  
My commission expires:

818 Colorado Avenue  
Glenwood Springs, CO 81601  
My commission expires May 1, 1997

Return to: JAT  
Delaney & Balcomb, P.C.  
P.O. Drawer 790  
Glenwood Springs, CO 81602  
Maintenance Agreement  
Three Elk Run Homeowners Association/Kozak