



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Grand Junction Field Office
2815 H Rd
Grand Junction, Colorado 81506
www.co.blm.gov/gjra/gjra.html



CO130(2800)
COC-59527

SEP 19 2006

Addendum to COC-59527

Right-of-Way (ROW) Grant COC-59527, issued February 11, 1997 and as amended, provides legal access across BLM-administered land to private properties represented by the Miller Canyon Homeowner's Association (HOA). As a member of the aforesaid Miller Canyon HOA, the Elk Reserve HOA is hereby granted legal access across the BLM land described in ROW Grant COC-59527, subject to the same terms and conditions of that Grant, and to the terms agreed upon in the attached Exhibit C, Road Use and Maintenance Agreement between Miller Canyon HOA and Elk Reserve HOA, dated August 9, 2006.

*Tommy John
Rental Specialist*

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

SERIAL NUMBER COC-59527

1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

2. Nature of Interest:

a. By this instrument, the holder:

Miller Canyon Homeowners Association
19423 N. Turkey Creek Road, Suite B
Morrison, Colorado 80465
Attn: Mr. Peter Heineman

receives a right to construct, operate, maintain, and terminate an access road, on public lands described as follows:

Sixth Principal Meridian

T. 13 S., R. 101 W.

Sec. 6: Lot 6, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,

T. 13 S., R. 102 W.

Sec. 1: N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$.

b. The right-of-way or permit area granted here is 30 feet wide, 5,800 feet long and contains 4 acres, more or less.

c. This instrument shall terminate on February 10, 2027, upon 30 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation. *Probably need to start the process of renewal*

d. This instrument may be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

1/10/85
1
Miller Canyon Homeowners Association
19423 N. Turkey Creek Road, Suite B
Morrison, Colorado 80465
Attn: Mr. Peter Heineman

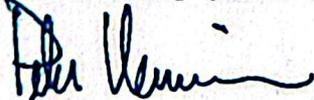
3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The map and stipulations set forth in Exhibits A and B attached hereto are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.



Signature of Holder



Title

1/19/97

(Date)



Signature of Authorized Officer

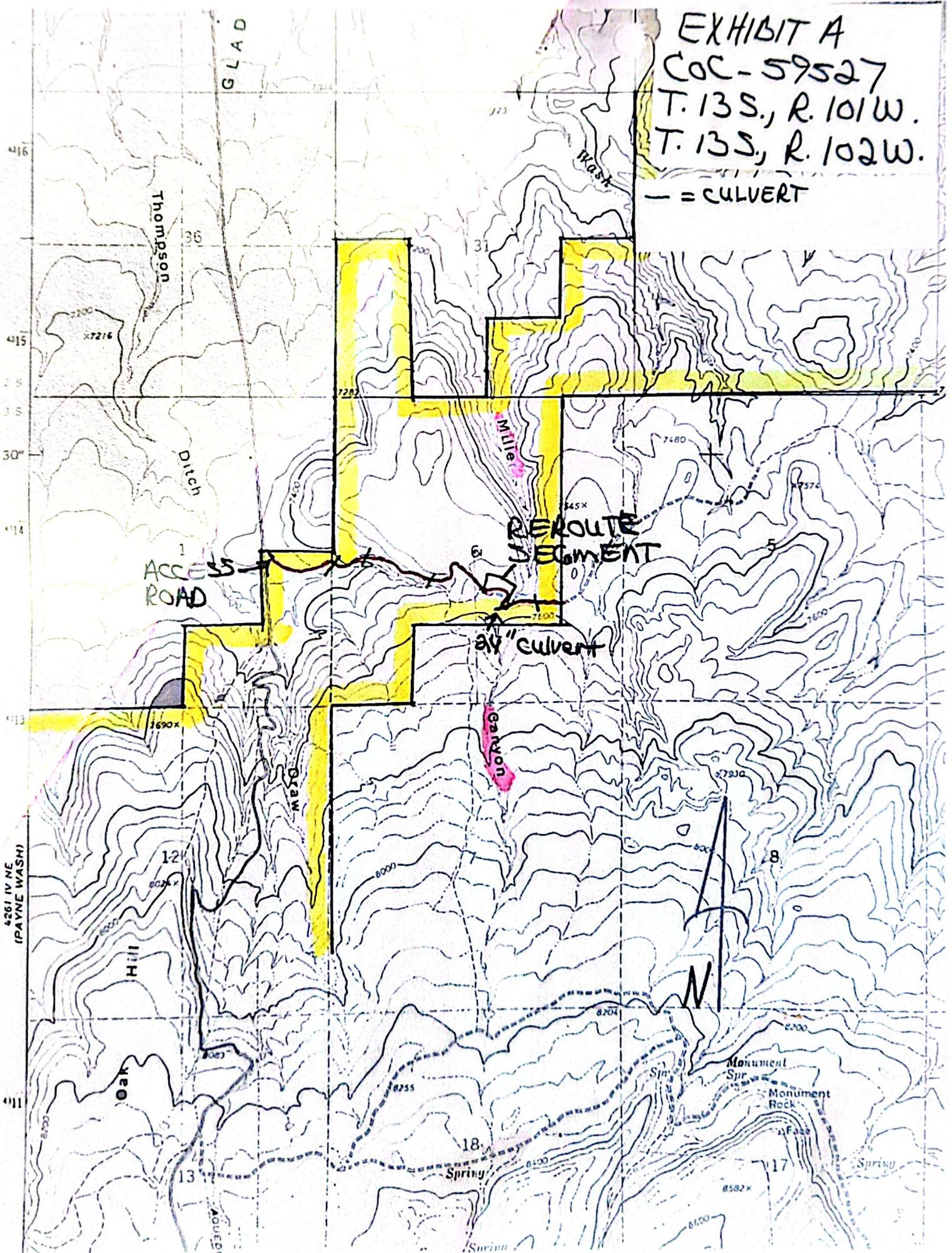
Area Manager
Title

2/11/97

(Effective date of Grant)

EXHIBIT A
COC-59527
T. 13S., R. 101W.
T. 13S., R. 102W.

- = CULVERT



4261 IV NE
(PAYNE WASH)

1
ACCESS
ROAD

REROUTE
SEGMENT

24" culvert

N

Hill

Oak

18
Spring

Monument
Spr

Monument
Rock

17
Spring

Oak
Creek

Ditch

Thompson

GLAD

Wash

416

415

30'

414

413

411

36

31

12

13

8

17

18

7216

7690x

8020x

8000

8000

7200

8000

8000

8255

8100

723

700

7200

7450

7400

8000

8100

8100

7400

7480

7450

7400

7200

8000

8200

8200

8100

7570

7600

7200

8000

8200

8502x

8100

7400

7200

8000

8200

8502x

8100

SPECIAL STIPULATIONS

1. The holder shall request a preconstruction conference with the authorized officer at least two days prior to the commencement of construction under this grant. The contact person is Robin Buchanan at the Grand Junction Resource Area office, phone (970) 244-3028.
2. Construction, maintenance and operation of the right-of-way shall be in conformance with the "PROJECT DESCRIPTION" attached to and submitted with the right-of-way application, except where otherwise specified by special stipulations.
3. Construction activities occurring between the west section line of section 6 and the crossing of Miller Canyon shall be monitored by a qualified professional archaeologist. A report of the monitor results shall be sent to the BLM, Grand Junction Resource Area archaeologist, 2815 H Road, Grand Junction, CO 81506.
4. The alignment shall be rerouted approximately 50 feet to the north along an approximately 550 foot section of the road just west of the crossing of Miller Canyon as shown on the attached map, Exhibit A, in order to avoid an archaeological site.
5. When saturated soil conditions exist on or along the right-of-way, construction shall be halted until soil material dries out sufficiently for construction to proceed without undue damage and erosion to the right-of-way.
6. Construction activities shall be confined to the minimum area necessary for the road upgrade and maintenance, not to exceed 30 feet in width with a 20 foot driving surface. The road shall be crowned and ditched.
7. The existing alignment shall be followed along the entire right-of-way except for the reroute required by Stipulation No. 4. No cutting of trees or surface disturbance shall occur in order to round off corners, etc., unless prior written notice is obtained from the BLM Authorized Officer.
8. In areas where it is necessary to remove material from the roadway, the material shall be collected and placed in areas within the roadway needing fill. Excess material shall not be cast over the downhill side of the road.
9. Access road drainage dips shall be installed at approximately 500 foot intervals.
10. Culverts of at least sixteen-inch diameter shall be placed in all side drainages, except for the crossing of Miller Canyon in which a 24-inch or greater culvert shall be installed. All fill material shall be placed in layers not exceeding 6 inches. Fill material shall be compacted with a hand compactor 12 inches on both sides and above the culvert. Fill outside of the 12-inch limit shall be placed in 6-inch lifts or less and compacted with a rubber-tired vehicle or using other standard compaction methods.
11. Culverts shall be installed at the elevation of the natural streambed. The up and down stream fill slopes shall be riprapped with a well graded mixture of rock sizes containing no material greater than 2 feet or smaller than 3 inches.

12. Drainages shall not be blocked or filled with loose dirt or debris.
13. Backslopes shall be constructed no steeper than 1½:1, run:rise. Round the upper edges of all cutbanks.

Slope stakes, culvert location, and other construction control stakes as deemed necessary by the authorized officer shall be installed on the ground and maintained in place during road construction.
14. The holder shall coordinate with the Town of Fruita and locate the existing water line prior to any digging near the intersection of the proposed right-of-way and 16.5 Road.
15. All soil erosion associated with the operation must be stabilized to a condition at least equal to that present before disturbance.
16. All disturbed areas shall be contoured to blend with the natural topography. Blending is defined as reducing form, line, and color contrast associated with the surface disturbance so that the project area will fit into the natural landscape as much as possible.
17. The holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer and shall permit free and unrestricted public access to and upon the right-of-way.
18. Trash shall be confined in a covered container while the project is in progress. Upon completion, all trash, flagging, laths, etc. shall be removed and hauled to an authorized disposal site. No burning of trash, trees, brush or any other material shall be allowed.
19. Thirty days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection shall be held to determine an acceptable termination and reclamation plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any abandonment activities.

STANDARD STIPULATIONS

1. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
2. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

3. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601 et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant (see 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193). Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
4. The holder shall comply with applicable State standards for public health and safety, environmental protection and siting, construction, operation and maintenance, if these State standards are more stringent than Federal standards for similar projects.

ROAD USE AND MAINTENANCE AGREEMENT

This Road Use and Maintenance Agreement ("Agreement") is made and entered into this 9th day of August, 2006 by and between Miller Canyon Ranch Homeowners Association, a Colorado non-profit corporation ("Miller Canyon HOA") and Horse Creek Land LLC., a Colorado limited liability company and Elk Reserve Homeowners Association, Inc., a Colorado non-profit corporation (Elk Reserve HOA").

RECITALS

- A. It is the intention of Horse Creek Land to subdivide the Elk Reserve Property into no more than 25 lots. The Elk Reserve HOA is the homeowners association for the Elk Reserve Property.
- B. The northern border of the Elk Reserve Property abuts and is contiguous with the southern border of Miller Canyon. Miller Canyon HOA is the homeowners association for the real property known as Miller Canyon Ranch, the plat for which is recorded in Book 17, Page 43 of the Mesa County real estate records.
- C. The access from Mesa County S 16.5 Road to both Miller Canyon and the Elk Reserve Property is over a right of way granted to Miller Canyon HOA by the United States Bureau of Land Management ("BLM") in Decision COC-59527, as amended, which right of way grant is also known as ES.5 Road (the "BLM right of way"), a copy of which BLM right of way is attached as Exhibit A and made a part hereof.
- D. Miller Canyon HOA and the Elk Reserve Parties desire to enter into this Agreement by which the two parties agree to share the costs for the maintenance of ES.5 Road.

AGREEMENT

In consideration of the sum of ten dollars (\$10.00) paid by the Elk Reserve parties to Miller Canyon, in consideration of the mutual promises contained herein. The parties mutually covenant and agree as follows:

Effective Date and Time. Notwithstanding the date of this Agreement, this Agreement shall be and become effective upon acceptance by Miller Canyon HOA and at that time this Agreement may be recorded in the Mesa County real estate records. The Recitals shall be a part of this Agreement.

Sharing of Costs and Expenses and Responsibility. Upon the effective date of this Agreement, the Parties agree to share in the costs and expenses of road maintenance for the 1.5 miles of ES.5 Road. The annual maintenance period will run from July 1 to June 30 of each year. Miller Canyon HOA will allocate a minimum of \$2,100 for the 2006/2007 maintenance period and the Elk Reserve Parties will commit to some road repairs and upgrades during the 2006/2007 maintenance period.

Addition of other parties. The parties agree to work together to get other landowners who use ES.5 Road for access. The Road Managers will determine the impact and proposed use by the landowners and will make a recommendation to their respective boards for the proposed contribution by the third party to maintain ES.5 Road.

Determining the need for repairs or maintenance. Miller Canyon HOA and the Elk Reserve HOA shall each appoint a member as its representative for matters relating to the maintenance of ES.5 Road ("Road Manager"). Each entity's Road Manager shall be responsible for working cooperatively with the other Road Manager in recommending the type and frequency of maintenance, improvements or rebuilding of the Road. Prior to the annual HOA meetings, the Road Managers will recommend to each HOA the projects and costs to be budgeted for that year. Each HOA will commit to provide funds for at least one grading and minimal road base replacement each year. The Road Managers authority will be limited to board approved funds for projects that have been previously approved by their respective HOA boards. In the event of an emergency which makes the road impassable for a 4-WD vehicle, the Road Managers will be given authorization to commit no more than \$500.00. The Road Managers will periodically meet and discuss the condition of the road and schedule maintenance activities. Nothing in this agreement precludes either party from performing any additional repairs or maintenance which shall be at the sole cost and shall be the sole responsibility of the entity taking such action.

Cost sharing for maintenance and grading. The intention of the parties is to share costs based on the use and impact to the road. Miller Canyon and Elk Reserve HOA will pay its proportional share based on the total number of lots but at no time will the Elk Reserve parties be responsible for less than 25% of the maintenance costs. Upon the subdivision of the Elk Reserve Property, Horse Creek Land LLC or its successors and assigns shall be obligated to pay the costs allocated to any lots offered for sale in the Elk Reserve Subdivision. Each lot offered for sale during the maintenance period must pay the whole year and will not be given any prorated refunds for that year if the lot is no longer for sale.

Cost sharing for repairs due to storms, soil failure, vandalism. The parties agree to split the costs equally in the event that a repair is required due to acts beyond the control of the parties.

Repairs due to guests, contractors, agents, and members. If a repair is required due to the negligence or irresponsible act of a member or guest, contractor, or agent, then that member's HOA shall pay to repair the road.

Disagreement regarding the need for repairs or maintenance. The parties agree to cooperate and act reasonably and in good faith regarding all aspects of the agreement. The Road Managers shall attempt to reach a consensus for repairs, maintenance and rebuilding. If the Road Managers cannot agree, they must refer the matter to their respective HOA officers. If the officers cannot reach an agreement, then either HOA may request a joint meeting of the HOAs by mailing or delivering by hand a written notice. The written notice shall describe the proposed repairs and shall contain an estimate of the costs involved. Prior to the meeting, the Road Managers shall provide detailed cost estimates with at least two bids for the work. The presidents of the HOAs shall mutually agree upon a time and place for a meeting but the meeting shall not be less than three (3) weeks nor more than six (6) weeks after the date of the notice. The purpose of the meeting will be to determine the need and costs of the proposed work. The decision of the scope

ROAD USE AND MAINTENANCE AGREEMENT

Horse Creek Land LLC, a Colorado Limited Liability Corporation

By: [Signature]
Peter Heineman, Manager

ELK RESERVE HOMEOWNERS ASSOCIATION,
INC. a Colorado nonprofit corporation

By: [Signature]
Peter Heineman, President

STATE OF COLORADO)
COUNTY OF JEFFERSON) ss.

The foregoing AGREEMENT was executed before me this 8TH day of August, 2006, by Peter Heineman as Manager of Horse Creek Land, LLC.

WITNESS my hand and official seal.

My commission expires:

**KATHLEEN L. BILODEAU
NOTARY PUBLIC
STATE OF COLORADO**

My Commission Expires June 12, 2008

[Signature]
Notary Public

STATE OF COLORADO)
COUNTY OF JEFFERSON) ss.

The foregoing AGREEMENT was executed before me this 8TH day of August, 2006, by Peter Heineman as President, of Elk Reserve Homeowners Association, Inc., a Colorado nonprofit corporation.

WITNESS my hand and official seal.

My commission expires:

**KATHLEEN L. BILODEAU
NOTARY PUBLIC
STATE OF COLORADO**

My Commission Expires June 12, 2008

[Signature]
Notary Public