

RLA - BRA Agreement 1 Aug '78

ARTICLE I

Term of the Agreement

1.1 This Agreement shall be for the benefit of the lot owners of The Retreat, Maitland and the successors and grantees of each, and of the members of RLA and Bulwark, and shall be deemed to run with the lands of each of the parties.

1.2 The roadway uses granted herein shall be deemed to be non-exclusive easements and rights-of-way in perpetuity, and this Agreement shall continue in full force and effect until December 31, 2050, after which it may be continued and extended for successive periods of fifty years each upon the joint agreement of the RLA and Bulwark or their successors.

B 1925 12912 291145
THIS AGREEMENT, made and entered into this 1st day of AUGUST, 1978, by and between THE RETREAT LANDOWNERS ASSOCIATION, a Colorado non-profit corporation (hereinafter referred to as "RLA"), WALTER McC. MAITLAND and RUTH V. MAITLAND (hereinafter collectively referred to as "Maitland"), and BULWARK RIDGE OWNERS ASSOCIATION, a Colorado non-profit corporation (hereinafter referred to as "Bulwark").

W I T N E S S E T H :

WHEREAS, RLA is the association of lot owners in a platted subdivision of Larimer County, Colorado in five filings known as "The Retreat"; and

WHEREAS, there exists in the said The Retreat a system of roads and roadways constructed for and dedicated to the use and benefit of the owners of the lots therein; and

WHEREAS, the rights-of-way of a portion of said roadway system now exist for the benefit of the public; and

WHEREAS, RLA, through its governing board of directors, has the requisite authority to enter into contracts with respect to the common affairs of the lot owners of The Retreat, including the right and authority to provide for the use, construction and maintenance of the roadway system running through The Retreat and serving the lot owners therein; and

WHEREAS, Maitland owns lands lying generally to the north and west of The Retreat which are described in Exhibit A attached hereto, on which said lands Maitland has constructed or intends to construct a system of roadways; and

WHEREAS, the lands of Maitland are accessible from existing county and state roads only by traversing the roadway system of The Retreat, and the public lands abutting Maitland's lands are accessible to The Retreat lot owners only by traversing the lands of Maitland; and

WHEREAS, Maitland has executed an instrument entitled "Declaration of Covenants, Conditions, Easements and Restrictions Affecting Construction and Maintenance of Roadways" ("Declaration") dated May 9, 1978, a copy of which is attached hereto, whereby Maitland has dedicated and will dedicate a system of roads for access to their lands described in Exhibit A and other lands which may later be added to said Declaration, and providing for the maintenance and upkeep

of those roadways by Maitland and their successors and grantees through the creation of a landowners association; and

WHEREAS, Maitland has caused to be created a Colorado non-profit corporation known as "The Bulwark Ridge Owners Association," whose primary purpose shall initially be to provide for and administer the maintenance of the roadway system over and across Maitland's land as provided for in the Declaration, and to administer the understandings reached in the agreement regarding the use and maintenance by the members of Bulwark of the RLA roadway system; and

WHEREAS, RLA, Maitland and Bulwark desire to provide for the use by the lot owners of The Retreat and by Maitland and their respective successors and assigns of the roadway systems of each of the parties,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree:

ARTICLE I

Term of the Agreement

1.1 This Agreement shall be for the benefit of the lot owners of The Retreat, Maitland and the successors and grantees of each, and of the members of RLA and Bulwark, and shall be deemed to run with the lands of each of the parties.

1.2 The roadway uses granted herein shall be deemed to be non-exclusive easements and rights-of-way in perpetuity, and this Agreement shall continue in full force and effect until December 31, 2050, after which it may be continued and extended for successive periods of fifty years each upon the joint agreement of the RLA and Bulwark or their successors.

ARTICLE II

Scope of the Agreement

2.1 During the term hereof, Maitland and their grantees, as members of Bulwark, shall have full right and authority to use the roadway system of RLA at any and all times as and for the means of access to their lands, subject only to the rules and regulations concerning the use thereof as imposed by RLA on its members, except for commercial uses as described in Article IV. Members of RLA may use the roadway system of Maitland and Bulwark at any and all times, subject only to the reasonable rules and regulations concerning use thereof imposed by

Bulwark or its members or by governmental authority. RLA members shall not be members of Bulwark, and no fee or charge shall be imposed on RLA members for such use. Each grantee of Maitland shall automatically become and be a member of Bulwark in accordance with the Declaration and the Articles and By-Laws of Bulwark. Each such Bulwark member shall become a member of RLA at the time of becoming a Bulwark member, in equal standing as a member of the RLA and entitled to the full rights and benefits and subject to the same obligations and duties as a member of RLA. To the extent made necessary hereby, RLA agrees to amend and modify its Articles and By-Laws to provide that such is the case.

2.2 RLA covenants and agrees that following execution of this Agreement, it will commence year-round maintenance of its roadway system to the boundaries of The Retreat.

2.3 The Declaration and the Articles and By-Laws of Bulwark provide that each Bulwark member shall pay an assessment to (i) pay costs of maintenance of the Bulwark roadway system, and (ii) the assessments of RLA created and assessed in accordance with this Agreement.

2.4 Bulwark shall have a lien upon the lands of its members for non-payment of any assessment for common expenses. One of such common expenses will be the assessment by RLA on its members, including Bulwark members, for maintenance of the RLA roadway system. Bulwark commits hereby, as further defined in Section 3.5, that it will assign to RLA, Bulwark's right to enforce its lien created upon non-payment of Bulwark common expenses, the effect of which assignment shall be that RLA will have the right to assert, enforce and collect any unpaid assessment of RLA.

ARTICLE III

Assessments of Bulwark Members

3.1 Each member of Bulwark, by and pursuant to the Declaration and the By-Laws of Bulwark, and in accordance with this Agreement, shall automatically, upon becoming a member of Bulwark, become a full member of RLA, entitled to all benefits and rights of RLA membership and subject to all rules, regulations and duties thereof.

3.2 A Bulwark member shall specifically be required as an RLA member to pay the periodic assessments levied by the Board of Directors of RLA on its members, subject only to adjustment and decrease as provided in Article V below.

3.3 Bulwark covenants and agrees that it will furnish to RLA a list of Bulwark's members upon execution of this Agreement, and will thereafter furnish, as and when they occur, any changes and additions thereto. RLA may inspect Bulwark records during normal business hours to verify the identity and number of Bulwark members.

3.4 Bulwark further covenants and agrees that it will act as agent of RLA in the collection of RLA assessments of Bulwark members. Pursuant thereto, RLA may forward to Bulwark the assessments of Bulwark members attributable to RLA membership. Bulwark will proceed to assess its members in accordance with its By-Laws and shall remit to RLA the proceeds therefrom when received.

3.5 In accordance with the Declaration and the By-Laws of Bulwark, failure of a Bulwark member to pay any assessment gives rise to a lien in Bulwark against the property owned by said member. Bulwark covenants and agrees that if Bulwark does not pay or cause to be paid the assessment of its defaulting member within 30 days after the due date thereof, Bulwark will assign to RLA its rights to enforce its lien against Bulwark's non-paying member, and RLA may proceed to enforce the lien against the non-paying Bulwark member in its own place and stead.

ARTICLE IV

Use of RLA Roadway System for Non-Commercial Purposes

4.1 Neither Maitland nor Bulwark members shall use the RLA roadway system for commercial purposes without the prior consent, in writing, of the Board of Directors of RLA. The intent of this restriction and limitation is that the RLA roadway system shall be utilized by Bulwark members as a means of access to their properties and for the use and benefit of themselves, their guests and invitees. Should Maitland or any Bulwark member seek or desire to utilize the RLA roadway system for a commercial purpose, such person shall apply to RLA for permission to do so, which permission shall not be unreasonably withheld; provided, however, that RLA may impose reasonable conditions upon such commercial use, including, but not limited to, the payment of additional fees and costs occasioned by the commercial use.

ARTICLE V

Reduction of RLA Assessments in Certain Circumstances

5.1 This Agreement contemplates that Bulwark members shall be RLA members

and thereby entitled to each and every benefit of an RLA member. It further contemplates that each Bulwark member will be liable to pay a full membership assessment as any other RLA member. The parties acknowledge that the principal portion of the RLA assessment of its members currently exists to maintain the roadway system through The Retreat.

5.2 Notwithstanding the foregoing, the parties to this Agreement recognize that RLA may hereafter embark on other projects which may benefit the owners of lots in The Retreat, but due primarily to their remote location, may not benefit members of Bulwark.

5.3 In recognition of this fact, it is agreed that Bulwark, by a resolution duly adopted by its Board of Directors and approved by its members in accordance with the procedures of its Articles and By-Laws, may request that RLA shall thereafter adopt a separate budget and a separate assessment for maintenance of its roadway system. The RLA assessment of Bulwark members shall thereafter be in accordance with said separate budget and assessment, and membership rights in RLA shall include only the use and maintenance of The Retreat Roadway System.

ARTICLE VI

Substituted Lands of Maitland

6.1 Maitland has advised RLA that they may in the future exchange a portion of the lands described in Exhibit A for lands now adjacent to or located nearby which are owned by the United States Forest Service. The parties agree that should such exchange take place, the Forest Service lands thereafter owned by Maitland shall constitute a portion of the lands governed by this Agreement, and Maitland and their grantees of such exchanged lands shall be members of Bulwark and RLA as if said lands had been included in the first instance.

ARTICLE VII

Statement of Intent as to Merger of Owners Associations

7.1 The parties recognize and acknowledge that the density of development of Maitland's lands may some day in the future approximate the density of development as now exists in The Retreat. While not committing or binding themselves by this Agreement, the parties acknowledge that a merger between RLA and Bulwark might at some time in the future be desirable. This expression of intent is designed solely to remind the members of the respective associations that such was the feeling of the parties to this Agreement at the time it was entered into.

General Provisions

8.1 Should any part of this Agreement or any other documents created as a result hereof be declared invalid or unenforceable by any court of competent jurisdiction, such decis.on shall not affect the validity of the remaining parts of this Agreement or of such other documents.

8.2 This Agreement shall be amended only by an instrument in writing, subscribed by an officer of each of Bulwark and RLA, pursuant to resolutions duly adopted by the Board of Directors of each.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Walter McC. Maitland
Walter McC. Maitland

Ruth V. Maitland
Ruth V. Maitland

THE RETREAT LANDOWNERS ASSOCIATION

Attest: Michael W. Harris RLA Secretary

By: Ernest D. Oswald, Jr. - President
Michael W. Harris RLA Secretary

BULWARK RIDGE OWNERS ASSOCIATION

Attest: Ruth V. Maitland, Secy

By: Walter McC. Maitland
Ruth Maitland, Sect.

STATE OF COLORADO)
COUNTY OF El Paso) ss:

AND SUBSCRIBED to before me this 1st day of August, 1978 by Walter McC. Maitland and Ruth V. Maitland.

My Commission Expires:
My Commission expires Dec. 16, 1977

Delma L. Garnet
Notary Public, State of Colorado

STATE OF COLORADO)
COUNTY OF El Paso) ss:

SWORN AND SUBSCRIBED to before me this 1st day of August, 1978 by Walter McC. Maitland as President and Ruth V. Maitland as Secretary of Bulwark Ridge Owners Association.

My Commission Expires:
My Commission expires Dec. 16, 1979

Delma L. Garnet
Notary Public, State of Colorado

EXHIBIT A

The following described lands, all located in Township 6 North, Range 72 West of the 6th Principal Meridian, Larimer County, Colorado:

Section 9: E $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 10: SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 15: NW $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$
 Section 16: E $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 22: NW $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NE $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 E $\frac{1}{2}$ SE $\frac{1}{4}$
 Section 23: E $\frac{1}{2}$ NE $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$;
 SE $\frac{1}{4}$
 Section 24: SW $\frac{1}{4}$ SW $\frac{1}{4}$
 Section 25: NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 26: NW $\frac{1}{4}$ NW $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$

EXCEPT all of the lands located therein platted as THE RETREAT, FILINGS 1 THROUGH 5, inclusive, and all roads, common areas and parks designated in said plats. And,

EXCEPT Lot 16, GROZIER SUBDIVISION NO. 2.

SUPPLEMENTAL AGREEMENT

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THIS AGREEMENT, made and entered into this 27th day of

October, 1978, by and between THE RETREAT LANDOWNERS ASSOCIATION, a Colorado Non-profit corporation (hereinafter referred to as "RLA"), WALTER MCC. MAITLAND and RUTH V. MAITLAND (hereinafter collectively referred to as "Maitland"), and BULWARK RIDGE OWNERS ASSOCIATION, a Colorado non-profit corporation (hereinafter referred to as "Bulwark"), WITNESSETH:

WHEREAS, parties hereto have heretofore entered into an Agreement dated August 1, 1978, and executed contemporaneously herewith by RLA, and

WHEREAS, the parties desire to set forth some further and additional understandings concerning said Agreement,

NOW, THEREFORE, in consideration of the execution of said Agreement and this Agreement and of the mutual covenants and promises therein and herein contained, the parties agree as follows:

1. Nothing in this Agreement nor in the Agreement dated August 1, 1978, shall be construed to extend the protective covenants of the Retreat to any land owned by Maitland's and over which Bulwark has any control outside of the Retreat, Filings 1-5.

2. Nothing herein nor in the Agreement dated August 1, 1978, shall be construed to give the Architectural Control Committee of the RLA any jurisdiction outside the Retreat, Filings 1-5.

3. One of the programs carried on by the RLA within the Retreat, Filings 1-5, is a program of pine beetle control, which program is paid for through the dues of members of RLA. It is mutually understood and agreed that RLA will not extend said program beyond the Retreat, Filings 1-5. It is further mutually understood and agreed that the assessments paid by Bulwark members pursuant to Article 3 of said Agreement of August 1, 1978, shall be reduced by the same proportion that the costs of such program bear to the total RLA budget for the period for which each assessment is made.