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CERTIFIED TO BE A TRUE COPY  
OF THE ORIGINAL DOCUMENT  
By [Signature]  
Commonwealth Land Title Insurance Company

RE-RECORD TO ADD EXHIBIT "B"

096139719

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ARDIS W. SCHEFF  
EL PASO COUNTY CLERK  
**WARRANTY DEED**

1862  
10-1-

THE CITY OF COLORADO SPRINGS, a Colorado home rule municipal corporation, whose address is 30 South Nevada Avenue, Colorado Springs, Colorado 80903, in the County of El Paso and State of Colorado, for the consideration of TEN DOLLARS (\$10.00) in hand paid, hereby sells and conveys to RACEWAY ASSOCIATES, L.L.C., a Colorado limited liability company, the real property in the County of El Paso and State of Colorado, as described on Exhibit A attached hereto, with all its appurtenances, together with all mineral rights it owns with respect to the real property, and warrants the title to the same, subject to the Schedule B exceptions denoted in Commonwealth Land Title Insurance Company title commitment No. 745624 C-3, and the Protective Covenants attached hereto as Exhibit B.

REAR

The property conveyed by this deed does not include any water rights which have been or are currently used in connection with the property or any rights or interests in or to all groundwater underlying the property, all such water rights and interests being expressly reserved by the City of Colorado Springs.

IN WITNESS WHEREOF, the City of Colorado Springs, Colorado has caused its corporate seal to be hereto affixed and these presents to be signed and delivered by its duly authorized officer this 30<sup>th</sup> day of October, 1996.

CITY OF COLORADO SPRINGS, a Colorado home rule municipal corporation

By [Signature]  
Robert M. Isaac  
Mayor

STATE DOCUMENTARY

NOV 01 1996

FEE EXEMPT

COLORADO  
NOTARY PUBLIC  
STATE OF COLORADO  
COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of October, 1996 by Robert M. Isaac, Mayor, and the City of Colorado Springs, Colorado.

NOTARY PUBLIC  
STATE OF COLORADO

[Signature]  
Notary Public

My commission expires: July 31, 2000

RECORDER NOTE: Legibility of writing, typing or printing UNSATISFACTORY in portions of this document when received.

745624

25 x 11

ROBERT C. "BOB" BALINK  
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Rec \$46.00 1 of 9

El Paso County, CO



205166057

Recorder's Note: Copy

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Exhibit A

A TRACT OF LAND BEING THOSE PORTIONS OF SECTIONS 32 AND 33, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AND SECTIONS 4, 5 AND 8, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTHEAST SECTION CORNER BY A NO. 6 REBAR WITH A 3-1/4 INCH ALUMINUM SURVEYOR'S CAP STAMPED "JR ENG LTD RLS 10377 1995" AND AT THE SOUTH SIXTEENTH CORNER BY A NO. 6 REBAR WITH A 3-1/4 ALUMINUM SURVEYOR'S CAP STAMPED JR ENG LTD RLS 10377 1995", IS ASSUMED TO BEAR NORTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, A DISTANCE OF 1294.32 FEET.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 5, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 57 MINUTES 49 SECONDS EAST, ON THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 343.87 FEET; THENCE SOUTH 89 DEGREES 02 MINUTES 11 SECONDS WEST, A DISTANCE OF 354.40 FEET; THENCE NORTH 00 DEGREES 35 MINUTES 17 SECONDS WEST, A DISTANCE OF 1640.50 FEET; THENCE NORTH 08 DEGREES 49 MINUTES 07 SECONDS EAST, A DISTANCE OF 950.60 FEET; THENCE NORTH 23 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2813.15 FEET; THENCE NORTH 11 DEGREES 34 MINUTES 00 SECONDS WEST, A DISTANCE OF 400.64 FEET; THENCE NORTH 42 DEGREES 50 MINUTES 00 SECONDS EAST, A DISTANCE OF 207.92 FEET; THENCE NORTH 03 DEGREES 30 MINUTES 19 SECONDS EAST, A DISTANCE OF 46.67 FEET; THENCE NORTH 48 DEGREES 30 MINUTES 19 SECONDS EAST, A DISTANCE 1100.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 25; THENCE SOUTHERLY, ON SAID RIGHT-OF-WAY LINE, THE FOLLOWING FIVE (5) COURSES: 1. SOUTH 30 DEGREES 48 MINUTES 38 SECONDS EAST, A DISTANCE OF 98.95 FEET; 2. SOUTH 33 DEGREES 53 MINUTES 56 SECONDS EAST, A DISTANCE OF 1391.45 FEET; 3. SOUTH 26 DEGREES 58 MINUTES 37 SECONDS EAST, A DISTANCE OF 1246.80 FEET TO A POINT OF CURVE; 4. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A DELTA OF 03 MINUTES 27 SECONDS 00 SECONDS, A RADIUS OF 5580.00 FEET, A DISTANCE OF 335.99 FEET TO A POINT; 5. SOUTH 23 DEGREES 27 MINUTES 48 SECONDS EAST, NON-TANGENT TO THE LAST COURSE, A DISTANCE OF 2362.60 FEET; THENCE SOUTH 89 DEGREES 24 MINUTES 43 SECONDS WEST, A DISTANCE OF 2046.00 FEET TO THE EASTERLY SOUTH SIXTEENTH CORNER OF SAID SECTION 5; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, ON THE EAST LINE OF SAID SECTION 5, A DISTANCE OF 1294.32 FEET TO THE POINT OF BEGINNING.

*[Signature]*  
Commonwealth Land Title Insurance Company

DECLARATION OF PROTECTIVE COVENANTS

Introduction:

These Protective Covenants are attached to and made a part of a deed conveying certain land (the "Property") from the City of Colorado Springs ("Declarant") to Raceway Associates, L.L.C. ("Owner"). Declarant owns substantial real estate adjacent to, and in the vicinity of, the Property known as the "Hanna Ranch", which Declarant, by its Colorado Springs Utilities "CSU"), uses for various energy producing and wastewater treatment processes. It is essential to Declarant that the Property be maintained in a manner consistent with the overall operations of CSU at the Hanna Ranch. Consequently, these Covenants are hereby placed on the Property.

Purpose: The real property described in the deed to which these Covenants are attached ("Real Property") is hereby made subject to the following conditions, covenants, restrictions and reservations, all of which shall be deemed to run with the described land, to insure proper use of said premises so as to:

- (a) Protect real property owned by Declarant located adjacent to said real property known as the Hanna Ranch;
- (b) Prevent development of the Parcel for any use other than that specified in Article II of this Declaration;
- (c) Prevent encroachment onto the Hanna Ranch property immediately adjacent to the Real Property;
- (d) Preserve a "buffer zone" for operations of the Colorado Springs Utilities on the Hanna Ranch.

Applicability: These Covenants apply to all of the Property and to any individual or entity having any interest in the Property after the date of this deed.

ARTICLE I  
Definition of Terms

The following terms and words as used hereinafter shall be defined as follows:

- (a) Declarant - shall mean the City of Colorado Springs, a Colorado home rule municipality and municipal corporation.
- (b) Hanna Ranch property - shall mean and include that property adjacent to the Real Property described herein owned by Declarant known as the "Hanna Ranch".

(c) Owner - shall mean Raceway Associates, L.L.C., a Colorado limited liability company, and any successor or trustee appointed in a bankruptcy proceeding regarding the L.L.C.

ARTICLE II  
Permitted Uses

The Real Property shall only be used as an overflow parking lot for spectators attending motor car and other scheduled activities at the adjacent racetrack formerly used for horse racing known as "Pikes Peak Meadows". Owner shall not permit those attending events at the racetrack to park, camp, or otherwise trespass on property owned by Declarant.

ARTICLE III  
Fencing

The only fencing permitted on the Real Property shall be that erected by Owner as required by contract around the perimeter of the Real Property after Owner submits design plans to Colorado Springs Utilities, and after Colorado Springs Utilities' approval of the same. Owner shall at all times keep said fence in good repair. "No trespassing" signs shall be prominently displayed at 50-foot intervals on said fence.

ARTICLE IV  
Structures

No permanent structures shall be permitted to be built on the Parcel except as provided herein, and natural, historical drainage flows from the Hanna Ranch onto the Parcel shall not be hindered or impaired by Owner. No trespassing permitted on adjoining Declarant property. Owner shall not permit those attending events at the Racetrack to park, camp, or otherwise trespass on property owned by Declarant. Owner shall at its sole expense, and after submitting design plans to Colorado Springs Utilities, and after Colorado Springs Utilities' approval of the same, construct a chain link or other mutually agreeable materials fence around the perimeter of the Parcel to be located on the Parcel and Owner shall at all times keep said fence in good repair. "No trespassing" signs shall be prominently displayed at 50-foot intervals on said fence. Owner shall complete construction of such fence prior to using the Parcel for spectator parking. Declarant agrees that it will complete the review of any design plans within sixty (60) days of submittal of same to it. Prior to completion of construction of said fence, Owner shall employ security guards to patrol the Parcel in sufficient quantities to ensure that no trespassing on adjacent Declarant property occurs during events at the Racetrack. Owner shall be permitted to construct, in accordance with structural designs which must be approved by Declarant prior to construction, a water tank on Declarant property

adjacent to the Parcel to be used solely to store water to be supplied to the Racetrack and no other facility, by separate agreement, at a site to be approved by Declarant. Owner shall be permitted to place impervious surfacing, if required, on areas within the Parcel designated as VIP or RV parking. Any such surfacing shall require the approval of Declarant prior to installation which shall not be unreasonably withheld. Nothing contained herein is intended to prohibit Owner from constructing improvements as necessary to utilize the Parcel for parking. Such parking improvements which may be constructed on the Parcel may include: drainage crossing, lighting, directional signs, transportation shelters and temporary restroom facilities. In addition, Owner may build a pump house for protection of the wells on the Parcel subject to prior approval of Declarant, which will not be unreasonably withheld. No additional wells shall be permitted to be drilled on the Parcel without the express written approval of Declarant, except for replacement wells as provided in the well sale agreement between Declarant and the City of Fountain. Any such replacement wells shall conform with all applicable laws, rules and regulations.

#### ARTICLE V

#### No encumbrances permitted on Real Property

The Owner shall not permit any lien, encumbrance, mortgage or deed of trust to be placed on the Parcel which, either singularly or in combination with prior liens, encumbrances, mortgages or deeds of trust, equal or exceed \$500,000.00 in value, without the prior express written permission of Declarant. Owner agrees that it will advise any holder of a lien, encumbrance, mortgage or deed of trust on the Parcel in writing at the time the holder's interest is to be recorded that Declarant has a prior and superior encumbrance on the Parcel by virtue of these protective covenants which will be recorded. Furthermore, any Deed of Trust recorded against the Parcel shall provide that it shall be released, at least as to the Parcel, upon payment to the holder of the Deed of Trust by Declarant of any amount remaining owed after payment of Declarant's repair, restoration and environmental remediation costs as provided in sections 2.4 and 2.6 of the Purchase Agreement between Declarant and Owner and reasonable attorney's fees as provided in section 2.4 of the Purchase Agreement between Declarant and Owner, even if said remaining amount is less than the outstanding balance due under said Deed of Trust. If the remaining amount held by Declarant under section 2.4 of the Purchase Agreement between Declarant and Owner exceeds the balance of the Deed of Trust, the excess shall be refunded to Owner.

ARTICLE VI  
Preservation of the Property

Owner shall take whatever steps are necessary, including, but not limited to, irrigation and maintenance of natural grasses, to ensure that particulate standards for air quality on the Parcel are kept at all times within required legal limits. Owner shall be permitted to place impervious surfacing, if required, on areas within the Parcel designated as VIP or RV parking. Any such surfacing shall require the approval of the Declarant prior to installation which shall not be unreasonably withheld. Natural, historic drainage flows from the Hanna Ranch shall not be hindered or impaired by Owner. Nothing contained herein is intended to prevent Owner from constructing drainage improvements on the Parcel which are reasonably necessary for Owner's use of the Parcel.

ARTICLE VII  
Declarant's access to Interstate 25 shall be maintained

Owner shall in no way interfere with the Declarant's right of access at any time to the existing interchanges with Interstate 25 (exits 123 and 125) which provide access to the Hanna Ranch properties owned by Declarant. During times when construction or improvements are occurring on either or both exit 123 and 125, Owner will, to the extent reasonably possible, provide Declarant alternative access to the Hanna Ranch property.

ARTICLE VIII  
Duration and Amendment

This Declaration of Covenants, and any amendments hereto, shall remain in effect for fifty (50) years from the date they are signed, and shall automatically be renewed thereafter at 50-year intervals unless, prior to the expiration of the initial term of any 50-year extensions thereof, an instrument stating that extension is not desired, signed and acknowledged by Declarant, is filed of record with the El Paso County Clerk and Recorder. They may be amended from time to time hereafter by an instrument in writing executed and acknowledged by Declarant.

ARTICLE IX  
Enforcement

The conditions, covenants, restrictions and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of the Declarant and Owner of the Real Property. These conditions, covenants, restrictions and reservations may be enforced, as provided herein after, by Declarant. Violation of any condition, covenant, restriction or reservation herein contained shall give to Declarant the right to bring proceedings in law or equity against the party or parties

violating or attempting to violate any of said covenants, conditions, restrictions and reservations, to enjoin them from so doing, to cause any such violation to be remedied, or to recover damages resulting from such violation.

If Owner:

(i) ceases to use the Parcel exclusively for overflow parking for spectators attending motor sport races or other events at the adjacent racetrack property for a period of five years, or

(ii) violates any recorded covenants affecting the Parcel, and has not promptly corrected the violation within 30 days after receiving written notification of the violation, or such additional reasonable time as Owner, if acting with due diligence, may require to correct the problem, Declarant shall have an immediate right to reenter and take possession of the Parcel, without legal proceedings of any kind, including prior notice and hearing, and title to the Parcel shall automatically revert to Declarant. Provided, however, such five-year period of nonuse and the corrective period for covenant violations may be tolled by the provisions of section 2.5 of the Purchase Agreement between Declarant and Owner, and the period of time identified by Declarant to correct a covenant violation may be extended if Owner has initiated prompt corrective measures and is pursuing such corrective measures with due diligence, but such corrective measures by their nature require more than the time specified in Declarant's written notification of violation.

For covenant violations, Declarant shall also have the right, but not the obligation, to enforce the covenant. Any failure on Declarant's part to insist on compliance with the covenants shall not estop or prevent in any manner Declarant from exercising its right to reenter the Parcel and from acquiring title to the Parcel by automatic reversion as provided herein. Upon exercising its right to reenter, Declarant shall have the right to restore the Parcel to the condition which existed prior to the sale to Owner by removing any improvements and by performing any necessary environmental remediation. All costs of repairs, restoration and environmental remediation shall be the responsibility of Owner. Fifteen days after completion of all necessary repair, restoration and environmental remediation work as provided in section 2.6 of the Purchase Agreement between Declarant and Owner, or, at Declarant's option, within 15 days of receiving a final decree quieting title to the Parcel in Declarant, Declarant shall pay to Owner the lesser of the following gross sums: (a) the appraised market value of the Parcel, based on a highest and best use as agricultural property; or (b) One million dollars (\$1,000,000.00). The parties shall select an independent appraiser for any such appraisal as follows: Owner shall be permitted to select one name off of Declarant's list of approved appraisers. If Owner fails to select an appraiser within 30 days of written request by Declarant, Declarant shall have the right to select the appraiser from its approved list of appraisers. Declarant shall

pay the costs of such appraisal conducted by the selected appraiser. Once the selected appraiser has appraised the market value of the Parcel, based on a highest and best use as agricultural property, Declarant shall notify Owner whether the gross sum to be paid shall be the appraised market value or the amount of One Million dollars (\$1,000,000.00), whichever is less. Thereafter, the applicable gross sum shall be reduced by whatever reasonable costs Declarant may incur as provided in sections 2.4, 2.5 and 5.6 of the Purchase Agreement between Declarant and Owner and whatever reasonable attorney's fees Declarant incurs in obtaining possession or title to the Parcel, in quieting title to the Parcel, and obtaining release of any Deed of Trust, lien, encumbrance, or mortgage upon the Parcel. The remaining amount, if any, shall be paid to Owner. Although title will have automatically reverted to Owner, Owner will tender the money only in exchange for a general warranty deed conveying title to Declarant. This restriction of use and automatic reversion are obligations running with the Parcel and shall be set forth in the deed Declarant issues to Owner and in the covenants. In the event Declarant take possessions or ownership of the Parcel, this shall not operate as a merger of title and shall not prevent Declarant from enforcing these covenants.

#### ARTICLE X Separability

Invalidation of any of these covenants or any part hereof by judgments or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

#### ARTICLE XI No Waivers

The failure of Declarant or any successor or assign of Declarant to enforce any of the terms, conditions, covenants, restrictions or reservations contained in these Covenants shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other term, condition, covenant, restriction or reservation. Neither Declarant nor any other party with the right of enforcement shall be liable for any failure to enforce any term, condition, covenant, restriction or reservation contained in these Covenants.

#### ARTICLE XII

Nothing contained within these Covenants is intended to create any right or remedy for any third party who is not the



Declarant or Owner. The Declarant is the sole party which has the right to enforce these Covenants.

DATED 18 June, 1996.

CITY OF COLORADO SPRINGS

By: [Signature]  
Robert Isaac, Mayor

ATTEST:

[Signature]  
Kathryn M. Young

APPROVED AS TO FORM:

[Signature]  
UTILITIES ATTORNEY

RACEWAY ASSOCIATES, L.L.C.

By: [Signature]  
Linda Clifford, Its [Signature]

ATTEST:

[Signature]  
Joyce C. Eastburg

STATE OF COLORADO )  
  ) ss.  
COUNTY OF EL PASO )

The foregoing DECLARATION OF PROTECTIVE COVENANTS was acknowledged before me this 18th day of ~~April~~, 1996, by Robert Isaac, Mayor of the City of Colorado Springs June

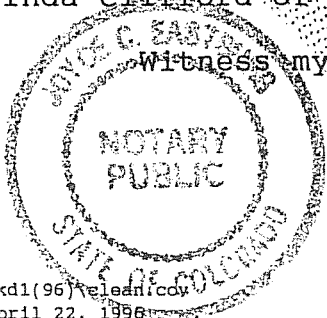
Witness my hand and official seal.

[Signature]  
Notary Public  
My Commission Expires: July 31, 1996

STATE OF COLORADO )  
  ) ss.  
COUNTY OF EL PASO )

The foregoing DECLARATION OF PROTECTIVE COVENANTS was acknowledged before me this 23rd day of April, 1996, by Linda Clifford of Raceway Associates, L.L.C.

Witness my hand and official seal.



[Signature]  
Notary Public  
My Commission Expires: 11-21-96