

RECORDED AT 2:45 O'CLOCK P.M. RECEPTION NO. 445735
FEB 28 1993 EVIE FITTHALER, RECORDER MONTEZUMA CO. COLORADO
KW

STATE DOCUMENTARY FEE
DATE FEB 28 1993
EXEMPT
TOTAL DUES/CHARGES

mod. fee

NONEXCLUSIVE ACCESS EASEMENT

BOOK 0704 PAGE 240

KNOW ALL MEN BY THESE PRESENTS THAT W. THOMAS LUNNEN, RICHARD PAULSEN, ROBERT W. ROHE, and the ELK SPRING RANCH HOWEOWNERS ASSOCIATION, a Colorado nonprofit corporation (hereinafter referred to as "ESRHA"), hereinafter called "Grantors," for and in consideration of the sum of Ten and More Dollars (\$10.00 & More), the receipt and sufficiency of which is hereby acknowledged, do hereby sell and convey to Tru-Worth, Ltd., a Colorado limited partnership, 201 Main, Westcliffe, Colorado 81252, hereinafter called "Grantee", its heirs, successors and assigns, the real property situated in Montezuma County Colorado, to wit:

A non-exclusive access and utility easement 40 feet in width, within the easement known as Elk Spings Drive, according to Plat of record with the Montezuma County Clerk and Recorder's Office, Reception No. 434591, Plat Book 12, Page 50, recorded September 2, 1993. (hereinafter referred to as "Easement Area.")

With all its appurtenances and warrant the title to the same, subject to:

1. The Declaration of Covenants, Conditions and Restrictions for Elk Springs Ranch recorded under Reception Number 434589, Book 0677 Page 894, on September 2, 1993;
2. The Plat for Elk Springs Ranch, recorded under Reception No. 434591, Plat Book 12, Page 50, recorded September 2, 1993.

The easement is for the exclusive benefit of, and is appurtenant to, that real property situated in Montezuma County Colorado, to wit:

SE1/4NE1/4, SE1/4 of Section 1, Township 35 North, Range 13 West, N.M.P.M.;
Lots 5, 6, and 7 of Section 6, Township 35 North, Range 12 West, N.M.P.M.;
Lots 1 and 2 of Section 7, Township 35 North, Range 12 West, N.M.P.M.;
E1/2 of Section 12, Township 35 North, Range 13 West, N.M.P.M.;
NE1/4, E1/2NW1/4, SW1/4NW1/4, N1/2SW1/4 of Section 13, Township 35 North, Range 13 West, N.M.P.M.; and
E1/2SE1/4 of Section 14, Township 35 North, Range 13 West, N.M.P.M.
Lots 1 and 2 of Section 18, Township 35 North, Range 12 West, N.M.P.M.

LESS AND EXCEPT any portion of the above described property lying in Elk Springs Ranch according to the plat filed for record September 2, 1993, in Book 12 and Page 50. (hereinafter referred to as the "Dominant Estate").

COLORADO LAND TITLE CO.
970 Main Ave. P.O. Box 497
Durango, Colorado 81302
(303) 247-6464

*Return to: Tru-Worth, Ltd.
201 Main, Westcliffe, Co. 81252*

This easement may not be transferred or assigned to the benefit or use of owners of any other real property.

Grantors shall have the right to use and occupy the Easement Area for any purpose not inconsistent with Grantee's full enjoyment of the rights hereby granted; provided, however, that Grantors, their successors or assigns, shall have the right to:

1. Enter upon and use the Easement Area for any purpose consistent with the General Dedication of the Easement Area as set forth in the Declaration of Covenants, Conditions and Restrictions for Elk Springs Ranch recorded under Reception Number 434589, Book 0677 Page 894, on September 2, 1993; or
2. Enter upon and use the Easement Area for any purpose consistent the Plat for Elk Springs Ranch, recorded under Reception No. 434591, Plat Book 12, Page 50, recorded September 2, 1993.
3. Enter upon the Easement Area to operate, repair and maintain the access and utility easement.

The property interest of Grantee, or its heirs, successors, or assigns, therein shall immediately terminate and shall thereafter revert to Grantors, their heirs, successors, or assigns:

Grantee, and its heirs, successors and assigns, shall not:

1. Cause or permit any division of the Dominant Estate into parcels of land of less than 35 acres; or
 2. Cause or permit any use of the Dominant Estate for more than one residence per parcel; or
 3. Fail to record, prior to subdivision or sale of any lands within the Dominant Estate, Covenants, Conditions and Restrictions
 - A. Substantially similar to those recorded under Reception Number 434589, Book 0677 Page 894, on September 2, 1993; and
 - B. Creating an interdependent covenanted subdivision with parcels of less than 35 acres of land;
- and

- C. Creating a homeowners association pertaining to the Dominant Estate (hereinafter the "HADE") that shall be a non-profit Colorado corporation in which each lot owner within the Dominant Estate shall be a member; with the HADE having the power to levy assessments on the owner of lots within the Dominant Estate and to enforcement the assessments through actions and suits;
4. Fail to pay, on a monthly basis, to ESRH, beginning from the date of closing of the sale of any lot within the Dominant Estate, an amount equal to 60% of the actual expenses of ESRH to operate, maintain or repair Elk Springs Road; provided however:
- a) Within 30 days following the end of each fiscal year of ESRH, it shall furnish to the grantee or the HADE with a written statement identifying the amount of the previous years' actual expenses incurred by ESRHA relating to maintenance, repair and operation of Elk Springs Road, as well as the upcoming year's operating budget; the statement to be certified by an officer of the ESRHA;
- b) The HADE is authorized and empowered to provide a written notice of deficiency in the maintenance and condition of Elk Springs Road to ESRHA; and if it fails to correct a *bona fide* deficiency within sixty (60) days after delivery of written notice, then the HADE may, at its option, undertake to correct the deficiency. All costs incurred in correction of the deficiency may be offset against future monthly payment obligations of HADE to ESRH.
5. Fail to pay to the Colorado Department of Transportation, within sixty days of written notice of the amount due, an amount equal to 74% of the actual charges, costs and expenses to be incurred as a result of that certain Highway Access Permit between ESRHA and the Colorado Department of Transportation, dated October 7, 1993.
6. Fail to levy and collect assessments from the individual lots owners within the Dominant Estate to timely pay the monthly fees due to ESRH under the preceding ¶ D & E this Access Easement. This duty of the HADE to collect assessments shall be independent and severable from the obligation of HADE to pay monthly fees due to ESRH under this Access Easement;

In the event, Grantee, or its heirs, successors, or assigns, fail to do anything required under the Easement, then the Grantors, their heirs, successors, or assigns, shall have the right by action at law or equity to enforce and compel such action, and shall, if successful in the action, be entitled to recover, in addition to the other legal or equitable relief granted by the Court, their reasonable costs, expenses, and attorney's fees.

IN WITNESS WHEREOF, the Grantors have executed this deed on the date set forth below.

2-25-95
DATE

[Signature]
W. THOMAS LUNNEN

2-25-95
DATE

[Signature]
RICHARD PAULSEN

2-25-95
DATE

[Signature]
ROBERT W. ROHE

2-25-95
DATE

As President of Elk Springs Ranch Homeowners Association, Inc.

STATE OF CALIFORNIA)
COUNTY OF _____) ss

The foregoing instrument was acknowledged before me this _____ day of February, 1995, by W. Thomas Lunnien.

Notary Public

My Commission Expires: _____

