

JOINT ACCESS DRIVE AGREEMENT  
LOTS 13 AND 25  
TRAPPERS CROSSING AT WILDCAT

THIS AGREEMENT is executed at Crested Butte, Colorado, with an effective date of March 28, 1994 by Trappers Crossing, Ltd., a Delaware limited partnership ("Trappers") in its capacity as the owner of Lot 13 and Lot 25, Trappers Crossing at Wildcat as follows:

1. RECITALS. The following recitals apply to this Agreement

1.1 A 50 foot access easement ("Road") was created by the Plat of Trappers Crossing at Wildcat, according to the Amended Plat thereof filed October 20, 1992 and bearing Reception No. 438114 of the records of Gunnison County, Colorado ("Plat").

1.2 The Road is situate upon Lot 25 and provides access to Lot 13 and Lot 25 of Trappers Crossing at Wildcat.

1.3 Trappers, as the record owner of Lot 13 and Lot 25 as set forth on the Plat, hereby sets forth the terms, conditions and obligations for the construction, maintenance, operation and use of the Road.

2. GRANT OF EASEMENT. In accordance with the Plat, Trappers gives, grants and conveys to the owners of Lot 13 and Lot 25 a perpetual easement and right of way for ingress and egress over and across the Road under the terms and conditions hereafter set forth.

3. PURPOSE OF EASEMENT. The purpose for which the easement is granted is to allow the use of the Road as a private road to provide ingress and egress to Lot 13 and Lot 25 from the commencement of the Road at the common boundary line between Lot 25 and Lot 26 as set forth on the Plat to its termination at the boundary line of Lot 13. The Road shall at all times be a private road for use by the owners of Lot 13 and Lot 25, their successors, assigns, guests and invitees.

4. EFFECTIVE DATE. This Agreement shall become effective upon the first conveyance of Lot 13 and/or Lot 25 to any owner ("Owner") by Trappers and shall apply to and be binding upon the Owner of such Lot or Lots from and after the date of the first conveyance of such Lot by Trappers.

5. CONSTRUCTION AND MAINTENANCE OF ROAD. The Owners of Lot 13 and Lot 25 shall have the sole duty, responsibility and obligation to construct the Road, to maintain the Road and to provide snow removal for the Road under the terms and conditions of this Agreement.

6. CONSTRUCTION CRITERIA The Road shall be constructed and maintained under the following criteria:

6.1 The Road shall have a minimum traveled width of 14 to 16 feet.

6.2 The Road shall have a gravel surface unless the owners of Lots 13 and Lot 25 otherwise agree in writing.

6.3 The plans and specifications for the construction of the Road shall be submitted to the Board of Directors of Trappers Crossing at Wildcat Association ("Association") as provided by the Declaration of Protective Covenants of Trappers Crossing at Crested Butte recorded April 26, 1990 in Book 677 at page 509 of the records of Gunnison County, Colorado, and the Amendment thereto recorded February 14, 1991 in Book 687 at page 946 of the records of Gunnison County, Colorado, and the Road shall be constructed in accordance with such conditions of approval as the Association may impose.

7 METHOD OF CONSTRUCTING ROAD.

7.1 The Owner of Lot 13 or Lot 25 who first desires to construct the Road shall construct and install the Road or the portion of such Road to be used by that Owner. The first Owner to construct the Road shall be required to only construct the Road to the point where the Owner's private driveway leaves the Road and if such portion of the Road is less than the entire Road, it shall subsequently be the duty of any additional Owner to continue the construction of the Road as may be required to the point where that Owner's private driveway leaves the Road.

7.2 The Owner constructing the Road shall construct the Road at his or their sole cost and expense, but subject to the right of reimbursement and proportionate sharing of cost in accordance with the provisions of paragraph 9 hereafter. Thereafter, as soon as the Owner of the other Lot commences the actual use of the Road, that Owner shall immediately reimburse and pay to the Owner who constructed the Road, his or their proportionate share of the cost of the construction of the Road upon receipt of a bill from the Owner constructing the Road of the reasonable costs and expenses expended in the construction of the Road.

7.3 The term "actual use" of the Road means the date that any Owner commences a regular use of the Road for the construction, installation or placement of any improvements upon such Owner's Lot. The term "actual use" does not include inspections or visits to the Lot for the showing, purchase or visitation to the Lot prior to the time of the commencement of any construction.

7.4 Trappers shall, at its sole cost and expense, rough cut the Road. It is understood that the rough cut roadway is not a finished Road, and that Trappers has no other duty to construct such road.

8. MAINTENANCE AND SNOW PLOWING.

8.1 The Owners shall each pay their proportionate share of all maintenance of the Road commencing on the date of their first actual use of the Road as defined in paragraph 7.3 above and shall pay the same promptly upon a receipt of a bill of the costs and expenses of such maintenance.

8.2 The Owners shall each pay their proportionate share of all snow plowing of the Road as to any section of the Road snow plowed for such Owner's use during the winter snow plowing season; "use" meaning any time the Road is traveled by the Owner, his guests or invitees for access to such Owner's Lot. The proportionate share of each Owner shall be applicable for each time the Road is snow plowed during the winter snow plowing season for any Owner's use. Each Owner shall pay his or their proportionate share upon receipt of a bill of the costs and expenses of each snow plowing.

8.3 The Owners of the Lots shall meet at least annually, either in person, by conference telephone call or by written correspondence, to determine the manner and method by which the Road shall be maintained and snow plowed for the next 12 months. In the event that the Owners of the Lots are unable to agree between themselves as to the method such maintenance or snow plowing is to be performed, then the Owners, or any individual Owner, shall submit the same to arbitration in the manner provided by paragraph 12 of this Agreement.

9. PROPORTIONATE SHARING OF COST. The Owners of Lot 13 and Lot 25 shall proportionately share in the cost of the construction, maintenance and snow plowing based upon the following formula:

9.1 The Owner of each Lot shall pay 1/2 of the cost of construction, maintenance and snow plowing from the point where the Road commences on the common boundary line between Lot 25 and Lot 25 to the point on the Road of the private driveway to Lot 25.

9.2 The Owner of Lot 13 shall pay the entire cost of construction, maintenance and snow plowing from the point where the private driveway of Lot 25 leaves the Road to the point where the Road ends at the boundary line of Lot 13.

10. LIABILITY AND INDEMNIFY. The Owner of each Lot agrees to indemnify and save the other Lot Owners harmless from any and all claims, including costs and expenses of defending any such claim, arising or alleged to arise from any act or omission of such Owner or such Owner's agents, employees, contractors, invitees or users, or arising from

any injury or damage to any person or the property of any person occurring from the usage of the Road by the Owner of the Lot, his guest and invitees.

11. NO OBSTRUCTIONS. Except for the construction of the Road, no Owner shall place any fence, gate, obstruction or device of any nature or description that would in any manner impede, obstruct or limit the full and complete use of the Road by all persons entitled to the use thereof unless the owners of Lot 13 and Lot 25 so agree in writing.

12. ARBITRATION. In the event of any dispute between the Owners of Lot 13 and Lot 25 as to their rights, duties and obligations under this Agreement and such Owners are unable to mutually resolve such dispute among themselves, then such dispute shall be submitted to binding arbitration to the Board of Directors of the Association. The decision of the Board of Directors of the Association shall be final and binding upon the parties and the decision of the Board of Arbitrators may be enforced in the manner provided by Rule 109, Colorado Rules of Civil Procedure.

13. APPURTENANT EASEMENT. The Road, and the easement for the Road, is an appurtenant easement to Lot 13 and Lot 25 and shall be a binding and continuing easement appurtenant to each Lot and may not be assigned, conveyed or any interest granted therein separate and apart from an assignment, conveyance or grant of interest in such Lot.

14. APPLICABLE LAW. This Agreement is entered into in Gunnison County, Colorado and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

15. ATTORNEYS' FEES. If any action is brought either in a court of law, or submitted to arbitration in the manner provided by paragraph 12 above, by any party to this Agreement as to the enforcement, interpretation or construction of this Agreement or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action or arbitration.

16. AMENDMENT AND VALIDITY. This Agreement may be amended, changed or modified at any time by an agreement or document in writing and executed by the then Owners of Lot 13 and Lot 25 and recorded in the records of Gunnison County, Colorado. If any portion of this Agreement, or amendment thereto, shall be held to be invalid or contrary to law or the terms and conditions of the Declaration of Protective Covenants of Trappers Crossing at Crested Butte recorded April 26, 1990 in Book 677 at page 509 of the records of Gunnison County, Colorado, and the Amendment thereto recorded February 14, 1991 in Book 687 at page 946 of the records of Gunnison County, Colorado, such portion shall be severable from this Agreement and the remainder of this Agreement shall remain in full force and effect and shall be valid and enforceable between the parties.

