

After Recording send original to:

Erin J. Johnson, Esq.  
P.O. Box 189  
Rico, Colorado 81332

## GRANT OF EASEMENT FOR ACCESS

**GRANT OF EASEMENT FOR ACCESS** made effective this 13 day of FEB, 2012, by and between the **ELK STREAM RANCH PROPERTY OWNERS ASSOCIATION**, whose address is PO Box 285, Mancos, CO 81328, ("Association") Grantor, and Daulton Family Trust, Robert Anthony Daulton and Benjamin Paul Daulton, Trustees, whose address is PO Box 725, Mancos, CO 81328, ("Owner"), Grantee. The signatories to this agreement are from time to time referred to collectively as the "Parties".

### RECITALS

(a) The Association owns and maintains the easements for private roads located within the Elk Stream Ranch subdivision, Phases I, II, and III, as common elements of the Association ("Association Roads"), as shown as "46" and "G.3" on the map attached as Exhibit A, which is attached hereto and incorporated herein by reference as though fully set forth. Exhibit A indicates the general location of the Association Roads as platted in the Elk Stream Ranch Subdivisions; and

(b) Grantee is the owner of a parcel of real property situated in the County of Montezuma, Colorado, that is legally described as follows:

Montezuma County Parcel #R016876: S: 18 T: 35 R: 12 TR SE/NW AKA TR 2  
37.058 AC B530 P636 B713 P644

aka 48490 Road G.3, Mancos, CO 81328 (hereinafter referred to as the "Daulton R016876 Tract" or the "Benefitted Tract");

(c) The Owner desires to establish legal access rights to the Daulton R016876 Tract through the Association Roads. The Parties acknowledge that the Daulton R016876 Tract is not contiguous to the Elk Stream Ranch Subdivision, or the access points of the Association Roads intended to be used by the Owner.

(d) The Association is willing to grant an easement for access purposes to the Owner for use of the Association Roads, subject to certain conditions as contained herein. The Parties acknowledge that because the Daulton R016876 Tract is not contiguous to the Elk Stream Ranch Subdivisions, and that the Elk Stream Ranch Subdivision is not contiguous to a public road, this easement does not provide insurable access for title insurance purposes from a public road to the Daulton R016876 Tract; and

(e) The undersigned Parties desire to memorialize their agreement for the grant of easement on the Association Roads on the terms and conditions as set forth herein, including the requirement that

the Grantee maintains a separate License Agreement with the Association at all times. The Parties acknowledge that in the event that the Grantee's separate License Agreement is terminated by the Associations, this Grant of Easement for Access will be automatically terminated.

**NOW THEREFORE** in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Incorporation of Recitals, Definitions and Exhibits. The provisions, terms, definitions and exhibits set forth or referenced in the above Recitals are hereby incorporated into this agreement and made an integral part hereof.
2. Elk Stream Ranch Property Owners Association Grant of Access Easement. The Elk Stream Ranch Property Owners Association does hereby grant to Grantee and their successors, assigns and subsequent grantees, a non-exclusive easement for ingress and egress over and across the primary roads within the Elk Stream Ranch Subdivision, excluding all private driveways, the legal descriptions of which are shown on the subdivision plats as recorded in Montezuma County and listed on Exhibit B which is attached hereto and incorporated herein by reference.
3. The foregoing grant of access easement shall be only for the purpose of providing the Grantee with non-exclusive access on, over and across the Association Roads within the boundaries of the Elk Stream Ranch Subdivision.
4. The Parties agree that the easement granted herein for the use of the Association Roads is limited to the Association Roads in an "as is" and "where is" condition, without any representation or warranty whatsoever as to their condition, fitness for a particular purpose or any other warranty, express or implied.
5. Grantee acknowledges that it has carefully reviewed this Grant of Easement for Access and has consulted and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Grant of Easement for Access, Grantee hereby waives any claim or defense it may have against Grantor or its successors or assigns under or pertaining to this easement based on waiver, laches, estoppel, or any prior implied easement or easement of necessity or by prescription.
6. Agreement to Terms and Conditions By Grantee. The undersigned Parties do hereby agree that the easement rights granted herein are subject to the following terms and conditions:
  - (a) The Grantee shall have access rights only to the Association Roads, which do not include any private driveways within the Elk Stream Ranch Subdivision.
  - (b) The Grantee shall have no right to construct, maintain or upgrade the existing Association Roads, or to erect or construct any well, structure or other obstruction that hinders or impedes the use or enjoyment of the easements granted herein.
  - (c) The Grantee shall obtain and at all times maintain a separate annual License

Agreement with the Association, which requires the Grantee to pay fees for annual and long-term maintenance of the Association Roads subject to the terms of the License Agreement. The License Agreement also requires that the Grantee and its officers, directors, employees, members, associates, volunteers, invitees and agents abide by the Rules and Regulations of the Association which include fines for violations of such Rules and Regulations.

(d) The Grantee acknowledges that under the terms of the separate License Agreement, the Owner of the Benefitted Tract shall be responsible for any and all fines and other consequences of misuse of the Association Roads by Grantee and its occupants, tenants, invitees, customers, guests, employees, successors and assigns.

(e) The Grantee, for itself, its successors, assigns, agents and invitees, agrees to traverse the Association Roads without unreasonably interfering with the use or enjoyment of the Association Roads by any owner of real property located within the Elk Stream Ranch Subdivisions.

(f) The Grantee shall comply with all applicable Federal, State, and local laws and regulations, and Association Rules and Regulations, now existing or hereafter enacted or promulgated, concerning the use of the Association Roads.

(g) The Grantee shall at all times comply with all of the terms and conditions of this Grant of Easement for Access.

7. The Association shall maintain the Association Roads in a manner consistent with their Governing Documents.

8. The Grantee shall pay the Association for Annual Maintenance, Road Expense Reserve Funds, and fines for any violations of applicable Rules and Regulations as defined and determined in the annual License Agreements.

9. Termination. This Grant of Access Easement shall automatically terminate upon any of the following events:

(a) That the Benefitted Tract of the Grantee, as defined herein, is subdivided;

(b) That the Benefitted Tract property of the Grantee, as defined herein, is served by other *public or private* access that is as adequate or more adequate than the access hereby created;

(c) That the Grantee's License Agreement with the Association is terminated for any reason.

In the event of such termination, all rights of the Grantee will cease, and the Grantee will be prevented from using the Association Roads. In the event of termination of this Grant of Easement, this instrument shall be immediately void and of no further effect. No recordation of a notice of termination or any other documentation evidencing the termination of this Grant of Easement is required to make such termination effective as against a bona fide purchaser for value of the

Benefitted Tract.

10. Notices. Any notices required or permitted herein shall be deemed delivered when deposited in the United States Mail, postage prepaid, certified or registered, addressed to the Association as their address appears in the records of the Secretary of State of the State of Colorado, or to the Grantee to the address of the owner of the Benefitted Tract at the address as it appears in the records of the Montezuma County Assessor.

11. Easement to Run with Land. This Grant of Easement for Access and all other covenants, agreements, rights and obligations created hereby, shall run with the Grantee Tract, and shall be binding on and inure to the benefit of all persons having or acquiring fee title to the Grantee Tract, all upon the terms, provisions and conditions set forth herein. The Grant of Easement for Access and all the rights and obligations of the Grantor and Grantee with respect to the easement set forth herein will commence as of the Effective Date and shall continue in perpetuity unless otherwise terminated.

12. No Rights in Public. Nothing contained herein is intended to dedicate, grant, or reserve to the general public or the public at large or for any public purpose whatsoever, or to permit any member of the general public to acquire any right, by adverse possession, prescription, grant, dedication or otherwise, to possess, use or occupy the Association Roads, or any portion thereof, said grant, dedication, reservation, or prescriptive rights being expressly denied.

13. Waivers. No provision of this Easement Agreement shall be deemed waived except by a writing executed by the party against whom the waiver is sought to be enforced. No waiver of any provision of this Easement Agreement shall be deemed a continuing waiver of such provision or deemed a waiver of any other provision of this Easement Agreement.

14. Default. If any party hereto breaches any provision of this Easement Agreement and fails to cure such breach within 10 days after receipt of written notice thereof, the non-defaulting party shall have the right to enforce the terms and provisions of this Agreement by any proceeding at law or in equity. The failure by any Party to enforce this Agreement or any term or provision hereof shall in no event be deemed a waiver of the right to do so thereafter.

15. Attorney Fees and Costs. In the event of a dispute arising out of the enforcement of the above referenced Grant of Easements for Access, the prevailing Party in any action, litigation or arbitration shall be entitled to recover all reasonable attorney fees and costs incurred.

16. Waiver of Jury Trial. In connection with any action brought to enforce or interpret this Grant of Easement for Access, all parties waive the right to a jury trial.

17. Authority to Execute. Each person executing this Grant of Easement for Access represents and warrants that it is duly authorized to execute this agreement by the party on whose behalf it is so executing.

18. Disclaimer of Joint Venture. This Easement Agreement is not intended to create a joint venture, partnership or agency relationship between Grantor and Grantee, and such joint venture,

partnership, or agency relationship is specifically hereby disclaimed.

19. **Survival.** All terms, covenants, releases, and indemnities which are intended to survive termination or expiration of this Grant of Easement for Access shall survive such termination or expiration. Under no circumstances, however, shall the easement granted to Grantee pursuant to this agreement survive any such termination or expiration.

20. **Amendment of Easement.** This Grant of Easement for Access is the entire integrated agreement of the Parties, and it supersedes and merges any prior oral or written agreements, negotiations or understandings among them or their predecessors in interest. This Grant of Easement for Access may be modified, amended, canceled or superseded, and any of the terms or conditions hereof may be waived; however, said amendment and waiver may only be effectuated by a written agreement executed by all Parties.

21. **Governing Law/Remedies/Costs and Expenses.** This Grant of Easement for Access shall be construed under and governed by the laws of the state of Colorado, with jurisdiction and venue restricted to a court of competent jurisdiction in Montezuma County, Colorado. All of the rights and remedies of the Parties under this Grant of Easements for Access, including, without limitation, injunctive relief and specific performance, shall be cumulative and shall be binding upon, and inure to the benefit of, each Party and each of their respective successors, heirs, and assigns. Time is of the essence to the performance of any undertakings required by this Grant of Easement for Access.

22. **Counterparts and Facsimile Copies.** This Grant of Easement for Access may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile copies of any Party's signature hereon shall be deemed an original for all purposes of this Grant of Easement for Access.

EXECUTED by the undersigned Parties on the dates indicated below.





Search



ezuma County

PLSS Section Range

Fixed Labels

Transportation

County Boundary

City Boundaries

Cortez Layers

Water Bodies

Wells

Streams & Rivers

Lakes

Parcels In a Subdivision

Districts

Commissioner

Steve Chappell - District 1

Larne Rule - District 2

Gerald Koppenhafer - District

Fire Protection Districts

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Carol Tullis Clerk/Recorder, Montezuma County, Co







Grant of Easement  
For Access

EXHIBIT B

LEGAL DESCRIPTION OF THE ELK STREAM RANCH SUBDIVISION ROADS

The legal descriptions of the primary roads within the Elk Stream Ranch Subdivision, excluding all private driveways, are shown on the following subdivision plats as recorded in Montezuma County:

1. Elk Stream Ranch, Phase 1, Located in Sections 6 & 7, T35N R12W, and Sections 1 & 12, T35N R13W, N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 12, Page 143, Rec. #453557, on February 7, 1996 .
2. Elk Stream Ranch, Phase 1, Amendment 1, Located in Sections 6 & 7, T35N R12W, and Sections 1 & 12, T35N R13W, N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 13, Page 55, Rec. #460856, on January 29, 1997.
3. Elk Stream Ranch, Phase 2, Located in Sections 7 & 18, T35N R12W, and Sections 12, 13, & 14, T35N R13W N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 12, Page 144, Rec. #453558, on February 7, 1996 .
4. Elk Stream Ranch, Phase 2, Amendment 1, Located in Sections 7 & 18, T35N R12W, and Sections 12, 13, & 14, T35N R13W N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 13, Page 74, Rec. #463467, on June 5, 1997.
5. Elk Stream Ranch, Phase 2, Amendment 1, Located in Sections 7 & 18, T35N R12W, and Sections 12, 13, & 14, T35N R13W N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 13, Page 84, Rec. #464963, on August 22, 1997. [Note: Duplicate title, different document]
6. Elk Stream Ranch, Phase 3 and Boundary Adjustment, Located in Sections 5 & 6, T35N R12W, N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 13, Page 121, Rec. #471590, on May 28, 1998.
7. Elk Stream Ranch, Phase 3, Amendment 1, Located in Sections 5 & 6, T35N R12W, N.M.P.M., as recorded in the office of the Clerk and Recorder of Montezuma County at Plat Book 14, Page 103, Rec. #495256, on May 2, 2001.