

MUTUAL EASEMENT AGREEMENT

THIS MUTUAL EASEMENT AGREEMENT, in multiple copies, is executed the 16th day of September 1993, at Gunnison County, Colorado as follows:

1. PARTIES. The parties to this Agreement are:

GUERRIERI JOINT VENTURE, a Colorado partnership, whose address is Post Office Box 602, Gunnison, Colorado 81230, hereafter termed "Guerrieri",

and

VIRGIL AND LEE SPANN RANCHES, INC., a Colorado corporation, whose address is 36781 West Highway 50, Gunnison, Colorado 81230, hereafter termed "Spann",

and

DORA MAE TRAMPE, individually and as trustee under the last will and testament of Henry Fredericke Trampe, whose address is Trampe Ranches, 393 County Road 8, Gunnison, Colorado 81230, hereafter termed "Trampe",

and

JOSEPH A. ECCHER and NANCY ECCHER, in joint tenancy, whose address is Post Office Box 234, Crested Butte, Colorado 81224, hereafter termed "Eccher".

2. FACTS AND PURPOSES. The following facts and purposes apply to this Agreement.

2.1 Guerrieri is the owner of Tract T, also known as Lot 18, of the property historically known as the East Side Cattle Association Property, the legal description of which is attached as Exhibit A ("Guerrieri Land").

2.2 Spann is the owner of Tract R, also known as Lot 23, of the property historically known as the East Side Cattle Association Property, the legal description of which is attached as Exhibit B ("Spann Land").

2.3 Trampe is the owner of Tract Q, also known as Lot 13, of the property historically known as the East Side Cattle Association Property, the legal description of which is attached as Exhibit C ("Trampe Land").

2.4 Eccher is the owner of the SE1/4, Section 35, Township 13 South, Range 86 West, 6th P.M. ("Eccher Land").

2.5 Guerrieri, Spann and Trampe jointly own, each having an undivided one-third interest therein, Tract S, also known as Lot 26, of the property historically known of the East Side Cattle Association Property, the legal description of which is attached as Exhibit D ("Easement Land").

2.6 The Easement Land has traditionally been utilized for access to the Guerrieri Land, the Spann Land, the Trampe Land and the Eccher Land.

2.7 The parties to this Agreement desire to enlarge the Easement Land and to set forth the terms and conditions by which the Easement Land, as enlarged, will be jointly owned and utilized by the parties for the purpose of ingress and egress to the respective tracts of land and for the installation of utilities.

3. AGREEMENT. The parties to this Agreement each mutually covenant and agree to the terms and conditions set forth in this Agreement.

4. ENLARGEMENT OF EASEMENT LAND. The Easement Land is currently 30 feet in width. The parties agree as follows:

4.1 The Easement Land shall be enlarged from its current 30 foot width to 80 feet in width and being 40 feet on either side of the centerline of the Easement Land as now existing.

4.2 Guerrieri shall grant an easement 25 feet in width adjacent to and on the northerly side of the Easement Land for the enlarged easement.

4.3 Spann will grant an easement 25 feet in width adjacent to and on the southerly side of the Easement Land for the enlarged easement.

4.4 As so enlarged, the Easement Land will thereafter be an easement 80 feet in width from the Crested Butte - Gothic County Road to the Eccher Land.

4.5 Hereafter, all references to the "Easement Land" shall mean the Easement Land as enlarged under the terms of this paragraph 4.

5. USE OF EASEMENT LAND. From and after the date of this Agreement, the Easement Land shall be used for the following purposes:

5.1 Full, complete and unrestricted access to the Guerrieri Land, the Spann Land, the Trampe Land and the Eccher Land and for ingress to and egress from such lands to the County Road.

5.2 The installation, construction and maintenance of underground utilities, including water, sewer, electrical, telephone, gas, cable television and any other utility service required or desired to serve the tracts of land. All such utilities shall be installed, constructed and maintained as underground utilities and no above ground utilities service is permitted.

5.3 The grazing of livestock, but subject to the condition that at such time as the Easement Land is fully fenced then no further livestock grazing will be permitted.

6. ROAD CONSTRUCTION. An access road shall be constructed over and across the Easement Land from the County Road to the Eccher Land under the following terms and conditions:

6.1 The access road to be initially constructed shall be by type, size and classification a Rural Lane (gravel) as specified in the Gunnison County Standard Specifications for Road and Bridge Construction.

6.2 The centerline of the access road shall be the approximate centerline of the Easement Land and as may be curved at the eastern boundary for appropriate entrance to the Eccher Land.

6.3 Eccher shall be solely responsible for the construction and installation of the initial access road. The access road as initially constructed shall:

6.3.1 Be considered to be an agricultural road serving lands currently being utilized for agricultural purposes.

6.3.2 The road shall be roughed in with a road base 22 foot in width.

6.3.3 The finished road shall be not less than 10 feet in width and finished with not less than 3 inches of standard road gravel surface.

6.3.4 Adequate size culverts would be installed as required for water and erosion control.

6.3.5 The road shall generally conform to the Gunnison County Standards Specifications for Road and Bridge Construction but the parties agree that no engineering specifications shall be required and that Eccher may construct such road initially as an agricultural access road finished to not less than 10 feet in width.

6.4 The road shall be completed not later than August 1, 1994.

6.5 Any access roads or driveways to connect the respective tracts of land to the access road as constructed shall be the separate cost and expense and shall be constructed by the owner of the tract of land to be served by such access road or driveway.

6.6 At such time as the access road needs to be enlarged and improved as may be required by Gunnison County, Colorado as a full access road to serve any residence or subdivision, the cost to improve and construct such access road to conform to the requirements of Gunnison County, Colorado shall be at the cost and expense of the person requiring such improved access road.

7. PRIVATE ROAD. The road as constructed on the Easement Land shall be a private road to be used by the owners of the tracts of land and their successors and assigns, subject to the following:

7.1 The Guerrieri Land, the Spann Land, the Trampe Land and the Eccher Land, including any subdivisions or divisions thereof, shall have full, free and unrestricted access and right of use for ingress and egress of the road.

7.2 The road shall at all times remain a private road and shall not be dedicated or conveyed to Gunnison County, Colorado as a public road unless or until the owners of the Guerrieri Land, the Spann Land, the Trampe Land and the Eccher Land mutually covenant and agree to dedicate and convey the same as a public road, it being specifically understood that such agreement must have the affirmative vote of not less than three of the four tracts of land.

8. REPAIRS AND MAINTENANCE. From and after the construction of the road by Eccher, the same shall be maintained and repaired under the following terms and conditions:

8.1 All maintenance and repairs, including snowplowing, shall be borne and paid prorata by the actual persons using such road.

8.2 In the event of any damage to the road caused by any person or agent of such person, or contractor, then such damage shall be repaired by the person who caused the same and the road shall be repaired to the same condition as it existed prior to such damage.

9. INSTALLATION OF UTILITIES. The installation of any utilities upon the Easement Land shall be at the cost of the person requesting or installing such utilities to provide utility service to a tract of land. Provided, however, that if at any time in the future, any other tract of land or person connects to or commences to use such utility service, such person shall reimburse the original installer their prorata share for the cost of the installation of such utility service.

10. FENCING OF RIGHT-OF-WAY. The following terms and conditions apply to the fencing of the Easement Land:

10.1 It is recognized that the Easement Land is not currently fenced on the north boundary and south boundary thereof.

10.2 Eccher, at their option and at their cost and expense, as a part of the construction of the initial access road, may erect and maintain a statutory fence on the exterior boundary lines of the property together with one gate for entrance to the Guerrieri Land and one gate for the entrance to the Spann Land to be placed at a location agreed upon by the property owner as may be desired by them for their usage of the access road.

10.3 If and when the access road is utilized for access to the Guerrieri Land, the Spann Land or the Trampe Land for non-agricultural purposes (i.e., residential subdivision or other non-agricultural uses), the following conditions shall apply:

10.3.1 The owner of the land no longer being used for agricultural purposes shall have the right, at their option, to fence either or both the north boundary and the south boundary of the Easement Land, together with any required gates, in a manner sufficient to fence in any livestock that may graze on any land adjoining the Easement Land. For example, if the Guerrieri Land were subdivided, Guerrieri would have the right, at their option, to fence the south boundary, the north boundary line or both the north and south boundary lines to fence out livestock from the Easement Land.

10.3.2 If fences and/or gates are constructed as provided in paragraph 10.3.1 above, the person erecting such fence and gates shall be required to maintain the same until such land so fenced is no longer used for agricultural purposes or the grazing of livestock.

10.3.3 At such time as the adjoining land is no longer utilized for agricultural purposes or the grazing of livestock, then the person erecting the fence shall have no further duty to maintain the same and the owner of that adjoining land may then either remove the fence, replace the fence or continue to maintain the existing fence and gates.

10.3.4 Upon any land adjoining the Easement Land being subdivided or used for non-agricultural purposes, the owner thereof shall be required to maintain any necessary fencing and/or gates so that no horses or other livestock within such a subdivision or land area could enter upon the Easement Land.

10.3.5 Any fencing and/or gates required by this paragraph shall be adequate to enclose livestock and, at a minimum, shall be a statutory fence as defined by the statutes of the State of Colorado. Provided, however, that upon the subdivision or other non-agricultural uses of any adjoining land, then any fence and/or gates for such adjoining land may be of a type and design of the property owner's choice.

10.4 So long as the Guerrieri Land, the Spann Land and the Trampe Land are used solely for agricultural purposes, Eccher may install either a gate or a cattle guard with a separate gate at the intersection of the access road with the Crested Butte-Gothic County Road. Thereafter, as such time as either the Guerrieri Land, the Spann Land, the Trampe Land or the Eccher Land are used for non-agricultural purposes, the Easement Land shall be fenced in the manner above provided, and upon such fencing, and any gate or cattle guard shall be removed from the intersection of the access road and the Crested Butte-Gothic County Road.

11. COUNTY ROAD PERMIT. The Planning Commission of Gunnison County, Colorado has confirmed that the construction of the initial rural lane road to serve the prospective property and a residence on the Eccher land does not require a road permit from Gunnison County, Colorado. However, it is acknowledged and understood that the construction of an improved access road to serve a residential subdivision will require a road permit from Gunnison County, Colorado in accordance with the Gunnison County Land Use Resolution. The parties shall jointly apply for such permit and shall share equally in the cost of obtaining the same.

12. GCEA POWER POLE. It shall be the responsibility of Trampe, and at Trampe's cost, to have Gunnison County Electric Association remove the existing power poles in the Easement Land and relocate the power poles on the north and south boundary lines of the Easement Land.

13. SIGNS. No signs of any nature shall be constructed, erected or maintained within the Easement Land. Provided, however, shall be allowed:

13.1 Any sign designating the access road as a county road or as a private road as the case may be.

13.2 A road directory sign at the entrance to the access road designating and identifying the persons or lands served by the access road.

14. COSTS, FEES AND EXPENSES. Each party to this Agreement shall share equally in all legal fees and associated costs and expenses of this Agreement.

15. SUBDIVISION OF LANDS. All of the parties to this Agreement recognize that the owners of the respective tracts of land, their successors and assigns, may at some future date subdivide or divide their respective tracts of land into multiple lots or tracts of land in accordance with the Gunnison County Land Use Resolution. Each party acknowledges and recognizes the right of the owners of such tracts of land to do so and so long as such subdivision or division of land is done in accordance with the Gunnison County Land Use Resolution, no party to this Agreement shall object to or oppose such subdivision or division of land. The owners of any such lots or tracts of land as so subdivided shall have all of the rights and privileges for the use of the Easement Land as set forth in this Agreement and shall assume and be bound by all of the obligations and requirements as set forth in this Agreement.

16. NOTICES. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested, or by telecopier or telegraphic communication to the required party at the following addresses:

GUERRIERI: As set forth in Paragraph 1 above  
SPANN: As set forth in Paragraph 1 above  
TRAMPE: As set forth in Paragraph 1 above  
ECCHER: As set forth in Paragraph 1 above

Notice shall be deemed delivered at the time of personal delivery, telecopier or telegraphic communication or when mailed to the required party. Any party may change its address by giving written notice of a change of address to the other party in the manner above provided.

17. ENTIRE AGREEMENT. This Agreement constitutes the entire and only agreement between the parties. All prior negotiations, agreements, representations and understandings, whether written or oral, are merged into and superseded by this Agreement and shall be of no further force and effect.

18. AMENDMENT. This Agreement cannot be modified, amended or changed in any manner except by an agreement in writing signed by the parties hereto.

19. APPLICABLE LAW. This Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado.

20. JURISDICTION AND VENUE. Jurisdiction and venue of any action as to this Agreement and the interpretation, enforcement or the determination of the rights and duties of the parties hereto shall be the District Court of Gunnison County, Colorado. Each party submits to the personal jurisdiction of the District Court of Gunnison County, Colorado and waives any and all rights under the laws of any other State or County to object to the jurisdiction of the District Court of Gunnison County, Colorado as to any action pertaining to this Agreement.

21. ATTORNEYS' FEES. If any legal action is commenced or maintained in court, whether in law or in equity, by any party to this Agreement as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Agreement or any document provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

22. TIME IS OF THE ESSENCE. It is expressly agreed that time is of the essence of this Agreement.

23. TERMINATION. This Agreement and the terms and conditions hereof shall remain in full force and effect until fully performed by the parties, and it is understood and agreed that the terms and conditions of this Agreement shall survive the date of closing and shall not be merged nor extinguished by any instrument of conveyance or assignment.

24. BINDING AGREEMENT. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, legal representatives and heirs.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

GUERRIERI JOINT VENTURE,  
a Colorado partnership

By: 

Burt A. Guerrieri, General Partner

VIRGIL AND LEE SPANN RANCHES, INC.,  
a Colorado corporation

By: 

Lee Spann, President





STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The foregoing instrument was acknowledged before me this 16th day of September, 1993, by Dora Mae Trampe, individually and as trustee under the last will and testament of Henry Fredericke Trampe.

Witness my hand and official seal.

My commission expires: August 29, 1995



Colette A. Perusek  
Notary Public

STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The foregoing instrument was acknowledged before me this 16th day of September, 1993, by Joseph A. Eccher and Nancy Eccher.

Witness my hand and official seal.

My commission expires: August 29, 1995



Colette A. Perusek  
Notary Public

EXHIBIT A

(GUERRIERI LAND)

Parcel No. 1.

A tract of land situated in the S/2 NW/4 and N/2 SW/4 of Section 35, Township 13 South, Range 86 West, 6th P.M., Gunnison County, Colorado, more particularly described as follows:

Beginning at the Northeast corner of the S/2 NW/4 of said Section 35;

Thence South 00°11'05" West 825.0 feet along the North-South centerline of said Section 35 to the true point of beginning;

Thence South 00°11'05" West 549.07 feet along the North-South centerline of said Section 35;

Thence West 428.0 feet;

Thence North 00°11'05" East 549.07 feet;

Thence East 428.0 feet to the true point of beginning.

Parcel No. 2.

A tract of land situated in the S/2 NW/4 and N/2 SW/4 of said Section 35, more particularly described as follows:

Beginning at the Northeast corner of the S/2 NW/4 of said Section 35;

Thence South 00°11'05" West 825.0 feet along the North-South centerline to a point;

Thence West 428.0 feet to the true point of beginning;

Thence South 00°11'05" West 549.07 feet;

Thence West 445.0 feet;

Thence North 03°47'31" East 550.27 feet;

Thence East 410.38 feet to the true point of beginning.

BK PG  
731 524

Parcel No. 3.

A tract of land situated in the S/2 NW/4 and N/2 SW/4 of said Section 35, more particularly described as follows:

Beginning at the Northeast corner of the S/2 NW/4 of said Section 35;

Thence South  $00^{\circ}11'05''$  West 825.0 feet along the North-South centerline of said Section 35 to a point;

Thence West 838.38 feet to the true point of beginning;

Thence South  $03^{\circ}47'31''$  West 550.27 feet;

Thence West 296.40 feet to a point on the East right of way of County Highway No. 135;

Thence North  $09^{\circ}50'49''$  West 492.04 feet along the East right of way of said Highway No. 135 to a point of curve;

Thence 204.80 feet along the arc of a non-tangent curve to the right on the East right of way of said Highway No. 135 having a radius of 160.0 feet and a delta of  $73^{\circ}20'14''$  and a chord bearing North  $35^{\circ}07'18''$  East 191.0 feet to a point of non-tangency;

Thence North  $75^{\circ}04'07''$  East 46.57 feet along the South right of way of said Highway No. 135;

Thence South  $76^{\circ}51'57''$  East 61.61 feet along the South right of way of said Highway No. 135;

Thence North  $84^{\circ}37'36''$  East 202.89 feet along the South right of way of said Highway No. 135;

Thence South 109.03 feet to the true point of beginning.

EXHIBIT B  
(SPANN LAND)

TRACT R, partitioned to VIRGIL & LEE SPANN RANCHES, INC.:

A TRACT OF LAND SITUATED IN THE N $\frac{1}{2}$ SW $\frac{1}{4}$  OF SECTION 35 T. 13 S., R.86 W., 6th PRINCIPAL MERIDIAN TO WIT;

BEGINNING AT THE NE CORNER OF THE S $\frac{1}{2}$ NW $\frac{1}{4}$  OF SAID SECTION 35; THENCE S 00°11'05" W 1404.07' ALONG THE EAST LINE OF THE SE $\frac{1}{2}$ NW $\frac{1}{4}$  AND THE NE $\frac{1}{2}$ SW $\frac{1}{4}$  OF SAID SECTION 35 TO THE TRUE POINT OF BEGINNING;

THENCE S 00°11'05" W 1002.23' ALONG THE EAST LINE OF THE N $\frac{1}{2}$ SW $\frac{1}{4}$  TO A POINT ;

THENCE WEST 595.54' ALONG THE NORTH LINE OF TRACT Q TO A POINT;

THENCE N01°20'33"E. 650.55' ALONG THE EAST LINE OF THE TOWN CEMETERY TO A POINT;

THENCE WEST 515.0' ALONG THE NORTH LINE OF THE TOWN CEMETERY TO A POINT;

THENCE SOUTH 26.0' ALONG THE WEST LINE OF THE TOWN CEMETERY TO A POINT ON THE EAST RIGHT OF WAY OF AN EXISTING ROAD;

THENCE N 09°50'49" W 383.50' ALONG THE EAST R.O.W. OF SAID ROAD TO A POINT;

THENCE EAST 1164.1 ALONG THE SOUTH LINE OF TRACT S TO THE TRUE POINT OF BEGINNING CONTAINING 17.94 ACRES MORE OR LESS.

EXHIBIT C  
(TRAMPE LAND)

BK PG  
731 526

TRACT Q, partitioned to DORA MAE TRAMPE, individually and as Trustee under the last will and testament of Henry Fredericke Trampe:  
A TRACT OF LAND SITUATED IN THE S $\frac{1}{2}$ SW $\frac{1}{4}$  OF SECTION 35 T. 13 S., R. 86 W., 6th PRINCIPAL MERIDIAN TO WIL;

BEGINNING AT THE SW CORNER OF SAID SECTION 35; THENCE N 48°00'00" E 175.0' TO THE TRUE POINT OF BEGINNING;

THENCE N 49°00'00" E 750.0' ALONG THE WEST LINE OF THE TOWN DUMP TO A POINT;

THENCE S 75°00'00" E 420.34' ALONG THE NORTH LINE OF THE TOWN DUMP TO A POINT;

THENCE S 49°00'00" W 750.0' ALONG THE EAST LINE OF THE TOWN DUMP TO A POINT;

THENCE SOUTH 11.56' TO A POINT ON THE SOUTH LINE OF THE SW $\frac{1}{4}$  OF SAID SECTION 35;

THENCE S 89°39'00" E 451.03' ALONG THE SOUTH LINE OF SAID SECTION 35 TO A POINT;

THENCE N 00°03'50" W 205.13' ALONG THE EAST LINE OF THE TOWN SEWAGE TREATMENT PLANT TO A POINT;

THENCE S 89°39'00" E 80.13' ALONG THE NORTH LINE OF THE TOWN SEWAGE TREATMENT PLANT TO A POINT;

THENCE N 61°00'00" E 580.0' ALONG THE NORTH LINE OF THE TOWN SEWAGE TREATMENT PLANT TO A POINT;

THENCE S 45°01'17" E 696.66' ALONG THE EAST LINE OF THE TOWN SEWAGE PLANT TO A POINT ON THE SOUTH LINE OF SAID SECTION 35;

THENCE S 89°39'00" E 583.22' ALONG THE SOUTH LINE OF SAID SECTION 35 TO THE S $\frac{1}{4}$  OF SAID SECTION 35;

THENCE N 00°11'05" E 1555.83' ALONG THE NORTH - SOUTH CENTERLINE OF SAID SECTION 35 TO A POINT;

THENCE WEST 595.54' ALONG THE SOUTH LINE OF TRACT R TO A POINT;

THENCE S 01°20'33" W 629.8' ALONG THE EAST LINE OF THE TOWN CEMETERY TO A POINT;

THENCE WEST 1340.19' ALONG THE SOUTH LINE OF THE TOWN CEMETERY TO A POINT ON THE EAST LINE OF AN EXISTING ROAD;

THENCE S 39°08'38" W 223.07' ALONG THE R.O.W. OF SAID ROAD TO A POINT;

THENCE S 41°49'13" W 331.44' ALONG THE R.O.W. OF SAID ROAD TO A POINT;

THENCE S 39°11'24" W 202.57' ALONG THE R.O.W. OF SAID ROAD TO A POINT OF CURVE;

THENCE 234.77' ALONG THE EAST R.O.W. OF SAID ROAD ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 30°28'57" AND A RADIUS OF 441.28' TO THE TRUE POINT OF BEGINNING CONTAINING 43.55 ACRES MORE OR LESS.

EXHIBIT D  
(EASEMENT LAND)

TRACT S, partitioned to SILVER SPRINGS RANCHES, INC. (undivided 1/3 interest), VIRGIL & LEE SPANN RANCHES, INC. (undivided 1/3 interest), and DORA MAE TRAMPE, individually and as trustee under the last will and testament of Henry Fredericke Trampe.

A TRACT OF LAND SITUATED IN THE N $\frac{1}{2}$ SW $\frac{1}{4}$  OF SECTION 35 T. 13 S., R 86 W., 6th PRINCIPAL MERIDAN, TO WIT:

BEGINNING AT THE NE CORNER OF THE S $\frac{1}{2}$ NW $\frac{1}{4}$  OF SAID SECTION 35; THENCE S 00°11'05" W 1374.07' ALONG THE EAST LINE OF THE SE $\frac{1}{2}$ NW $\frac{1}{4}$  AND THE NE $\frac{1}{2}$ SW $\frac{1}{4}$  OF SAID SECTION 35 TO A POINT;

THENCE WEST 1169.40' ALONG THE SOUTH LINE OF TRACT T TO A POINT ON THE EAST RIGHT OF WAY OF AN EXISTING ROAD;

THENCE S 09°50'49" E 30.45' ALONG SAID R.O.W. TO A POINT;

THENCE EAST 1164.10' ALONG THE NORTH LINE OF TRACT R TO A POINT OF THE EAST LINE OF THE NE $\frac{1}{2}$ SW $\frac{1}{4}$  OF SAID SECTION 35;

THENCE N 00°11'05" E 30.0' ALONG SAID EAST LINE TO THE TRUE POINT OF BEGINNING CONTAINING 0.80 ACRES MORE OR LESS.