

ORDINANCE NO. 20

SERIES 2010

AN EMERGENCY ORDINANCE ACCEPTING AN EASEMENT FOR A PUBLIC TRAIL THROUGH SMITH HILL RANCHES AND APPROVING THE DEED OF EASEMENT AGREEMENT, VACATION AGREEMENT AND SETTLEMENT AGREEMENT GRANTING SUCH EASEMENT

WHEREAS, the Town of Crested Butte, Colorado ("Town") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town Council authorized, by that certain Ordinance No. 11, Series 2010 adopted June 7, 2010, the purchase of, in pertinent part, certain lands located in Gunnison County and legally described as Township 13 South, Range 86 West, 6th P.M., Section 27: S2/3NW1/4SE1/4; S1/2SE1/4 ("To Be Acquired Lands");

WHEREAS, the To Be Acquired Lands currently have ingress and egress to said lands through, in pertinent part, Smith Hill Ranches pursuant to that certain Easement Agreement ("Easement Agreement") dated December 24, 1990 and recorded on February 14, 1991 in the Office of the Clerk and Recorder of Gunnison County, Colorado at Reception No. 425370;

WHEREAS, the Easement Agreement contemplates a road easement through Smith Hill Ranches for purposes of ingress and egress to the To Be Acquired Lands;

WHEREAS, the Town staff has informed the Town Council that a road in the location contemplated in the Easement Agreement would be, among other things, (1) difficult to construct, (2) unduly scar the burdened property, (3) expensive to construct, and (4) unnecessary given the fact that the To Be Acquired Lands will be held in a conservation easement given to the Crested Butte Land Trust contemporaneously with the Town's acquisition of the To Be Acquired Lands;

WHEREAS, the Town staff has also informed the Town Council that, based on such information, and the fact that the To Be Acquired Lands will be protected from development and preserved for recreational and other compatible uses, a public trail easement through Smith Hill Ranches would be preferable, in an alternate location, to a road easement as contemplated in the Easement Agreement;

WHEREAS, the Town Council found that, in deciding to acquire the To Be Acquired Lands, the central tenet of such decision was to conserve the To Be Acquired Lands from development and to preserve said lands for recreational and other compatible uses;

WHEREAS, in accordance with such principles, the Town Council desires to not obtain a road easement across Smith Hill Ranches, but instead obtain a trail easement through said property, in an alternate location, for use by the public for recreational purposes and ingress and egress thereto, and in conjunction therewith, vacate the Easement Agreement in exchange for said trail easement from Smith Hill Road to the To Be Acquired Lands

WHEREAS, the Town's acquisition of the To Be Acquired Lands is scheduled to occur on June 30, 2010;

WHEREAS, the Town Council is authorized pursuant to §§ 31-25-501 and 31-25-302, C.R.S., as amended, to enter into agreements in order to, in pertinent part, acquire interests in land, including, without limitation, easements, both inside and outside the boundaries of Crested Butte, necessary, suitable or proper for public interests, including the for the establishment of a public trail;

WHEREAS, pursuant to § 31-25-302, C.R.S, such acquisition shall be by ordinance duly adopted by the Town Council;

WHEREAS, the Town staff has negotiated the terms and conditions for the acquisition of a public trail easement through Smith Hill Ranches to be given to the Town by the owners of the subject property, such easement to be appurtenant to the To Be Acquired Lands, in exchange for the Town agreeing to vacate and terminate the Easement Agreement and the road easement and associated rights contemplated therein; and

WHEREAS, the Town Council, finding that the terms of said agreement negotiated by the Town staff are acceptable and appropriate, hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described public trail easement be accepted as set forth hereinbelow.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Acceptance of Public Trail Easement. The Town Council hereby accepts the grant of the public trail easement and the vacation and termination of the Easement Agreement and the rights and privileges granted therein and approves the agreement for the same attached hereto as **Appendix "A"** ("**Deed of Easement**"). Upon execution of the Deed of Easement, the Town Attorney shall cause the same to be recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado contemporaneously with the Town's acquisition of The To Be Acquired Lands. In furtherance thereto, the Town Council authorizes and directs the Mayor and the Town Clerk to appropriately execute the Deed of Easement and any and all other documents necessary and appropriate to consummate the grant of the public

trail easement and the vacation and termination of the Easement Agreement and the rights and privileges granted therein.

Section 2. Effective Upon Adoption; Emergency. The Town Council hereby finds that (1) gaining the public trail easement and the vacation and termination of the Easement Agreement and the rights and privileges granted therein is of critical importance to the acquisition and conservation of the To Be Acquired Lands, and (2) it is, critical that the Town obtain such trail easement contemporaneously with the acquisition of the To Be Acquired Lands. Section 4.12 of the Town Charter permits the Town Council's adoption of ordinance by emergency for the preservation of, among other things, public property. The Town's acceptance of the trail easement contemporaneously with the acquisition of the To Be Acquired Lands is necessary for the preservation and protection of the To Be Acquired Lands. Therefore, this ordinance is an emergency and shall take effect immediately upon adoption.

Section 3. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND ADOPTED BY THE TOWN COUNCIL THIS 29th DAY OF JUNE, 2010.

TOWN OF CRESTED BUTTE, COLORADO

By: *Leah B. Williams*
Leah B. Williams, Mayor

ATTEST:

Carmen H. Bell
Carmen Bell, Deputy Town Clerk

(SEAL)



EXHIBIT "A"

Deed of Easement

[attach here]

Final

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06/30/2010 04:36 PM Pg: 1 of 28
174 R: \$141.00 D: \$0.00

**RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:**

Town of Crested Butte
Attn: Town Attorney
P.O. Box 39
Crested Butte, CO 81224

Deed of Easement Agreement, Vacation Agreement and Settlement Agreement

This Deed of Easement Agreement, Vacation Agreement and Settlement Agreement (the "Easement Agreement") is entered into in Gunnison County, State of Colorado to be effective as of June 30, 2010 by and between The Phoenix Family Group, Ltd., a Texas limited liability partnership, James A. Kontos, and Bank of the West, with address of: 5103 Holly Terrace Houston, TX 77056; Po Box 2638 Crested Butte, CO 81224; 633 17th Street Denver, CO 80202, respectively, Grantor or collectively Grantors; and the Town of Crested Butte, a Colorado home rule municipality, with an address of P.O. Box 39, Crested Butte, CO 81224, Grantee. Both Grantors and Grantee hereinafter are individually referred to as "Party" and collectively referred to as "Parties".

Whereas, there is an Easement Agreement between Adelaide F. Biggs ("Biggs"), and Margaret C. Kochevar, Jake R. Kochevar, a/k/a Jacob Kochevar III, and Mathew Kochevar (collectively "Kochevars") dated December 24, 1990 and recorded in the records of the Gunnison County Clerk and Recorder at reception number 425370 at Book 687 pages 924 through 934, inclusive, ("Kochevar Easement") which in part provides for ingress and egress and the installation of underground utilities to the property described as Township 13 South, Range 86 West, 6th P.M., Section 27: S1/2 of the SE1/4, and the S2/3 of the NW1/4 of the SE1/4, County of Gunnison, State of Colorado ("Kochevar or Grantee Property") attached hereto as Exhibit A;

Whereas, Grantors own the real property described in Exhibit B to this Easement Agreement (the "Grantor Property");

Whereas, Grantee desires to create a recreational use trail (the "Trail") to traverse the Grantor Property in the location generally depicted on Exhibit C;

Whereas, the Grantee is the sole successor owner of the Kochevar Property that is benefited by the Kochevar Easement, and is the sole successor and assignee of all the rights and claims of the Kochevars under the Kochevar Easement pursuant to the Assignment attached hereto as Exhibit D;

Whereas, a dispute has arisen regarding the permitted uses, scope, location and other issues regarding the Kochevar Easement;

Whereas, the Parties desire to forever settle all issues associated with the Kochevar Easement; including without limitation, ingress and egress rights to the Kochevar Property; to vacate the Kochevar Easement; and to terminate all rights or claims under the Kochevar Easement; and the grant to the Grantee of the easement right provided herein; and

Whereas, the Parties have agreed to enter into this Easement Agreement providing for the grant of an easement made to the Grantee hereunder in exchange for and in consideration of the Grantee's vacation of the Kochevar Easement and the termination of, and waiver and release of any

Final

and all claims and rights that now or hereafter could be made under the Kochevar Easement or that could now or hereafter be made for ingress or egress to the Kochevar Property.

Now Therefore, in consideration of the promises, mutual covenants and agreement contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals above are incorporated herein as not mere recitals but also representations, agreements and covenants of the Parties.

2. **Vacation and Termination of Kochevar Easement and All Rights Thereunder.** In exchange for and consideration for the grant of the easement granted to the Grantee under this Easement Agreement, and the promises and obligations hereunder, the Parties, their successors and assigns, agree (i) that the Kochevar Easement is hereby terminated and vacated and (ii) to permanently waive and release all rights and claims that could now or hereafter be made for ingress or egress to the Kochevar Property or that could now or hereafter be made or asserted under the Kochevar Easement. The Parties agree to execute any and all documents, in addition to this Easement Agreement as may be reasonably requested by the Grantors to further accomplish the termination and vacation of the Kochevar Easement, if deemed necessary by the Grantors. The Parties acknowledge that no monetary consideration has been paid by the Grantee for the conveyance of this Easement Agreement and that the consideration for conveyance of this Easement Agreement is the Grantee's agreement, on behalf of itself and all of its successors and assigns, to terminate and vacate the Kochevar Easement and to waive and release all rights and claims thereunder.

3. **Grant of Easement.** Grantors convey the following easement:

3.1 Grantors hereby grants and conveys to the Grantee and Grantee hereby accepts from Grantors a perpetual public limited use recreation easement for ingress and egress to the Grantee Property located on the Grantor Property extending 5 feet on each side of the centerline of a to be constructed Trail in the location as substantially and materially depicted on Exhibit C and where currently flagged ("Trail Area") with such reasonable changes as may be needed to avoid natural obstacles; provided, however, that the Trail to be constructed by the Grantee within the Trail Area will be a width of no more than 36 inches, but may be as much as 60 inches in switch-back areas. The conveyance for public use of the Trail Area is limited to the Trail, with the remaining width of the easement within the Trail Area being limited to the use of the Grantee for construction and maintenance of the Trail only; provided further that during construction, the Trail Area may temporarily be extended to 7 1/2 feet from the centerline of the to be constructed Trail. Said easement shall be appurtenant to the Grantee Property. Upon the completion of the construction of the Trail, Grantee shall cause the as-built location of said Trail to be promptly surveyed, and upon the completion of said survey, the same delivered to Grantors. Upon approval of said survey by Grantors, such approval to not be unreasonably withheld, delayed or denied the Parties shall cause this Easement Agreement to be amended with the new as-built location of the Trail attached hereto, replacing Exhibit C hereto. Thereafter, said Trail shall be in the location of the as-built Trail and the easement granted for maintenance of the Trail under this Easement Agreement for the Trail Area shall be 5 feet from the centerline of the as-built Trail.

3.1.1 The public shall not have any right to use the Trail until the Trail, crossings, locators and signage are constructed and complete.



3.1.2 The Grantee shall not have any right to use the Trail Area until construction of the Trail Area has begun. Construction of the Trail will be accomplished, once commenced, within one full building season, i.e., in one period of time commencing with the thaw of the ground and ending with the subsequent freezing of the ground.

3.2 Notwithstanding any language in this Easement Agreement to the contrary, the public's right to use the Trail shall automatically terminate if there no longer exists on the Grantee Property a conservation easement. Such a termination of the public's right to use the Trail shall not effect the easement rights of the owner of the Grantee Property to use and maintain the Trail pursuant to the terms hereof, such easement rights remaining appurtenant to the Grantee Property.

4. Permitted Uses. The Trail may be used by the Grantee and the public for recreational use only. For the purposes of this Easement Agreement, "recreational use" shall mean hiking, running, bicycling, cross country skiing, snow shoeing and similar low impact, non motorized, recreational uses.

4.1 No motorized vehicles are permitted on the Trail or Trail Area.

4.2 Any person using the Trail Area shall stay on the Trail; the public's use of the Trail Area shall be restricted to the Trail.

4.3. The public's use of the Trail shall be restricted to the daylight hours between sunrise and sunset of each day.

4.4 No animals other than dogs shall be permitted on the Trail or Trail Area.

4.5 There shall be no day or overnight camping on the Trail or Trail Area.

4.6 The dumping or accumulation of any kind of trash or refuse on or within view of the Trail Area is prohibited.

5. Monitoring, Maintenance, Signage, Locators and Crossings. The Grantors shall have no obligation or responsibility for the construction, monitoring of use, maintenance, or repair of the Trail or Trail Area.

5.1 Grantee, at its sole expense, shall assume complete responsibility for and agrees to care for and maintain the Trail and Trail Area, signage, locators and crossings in clean condition and in a good and safe order and repair commensurate with the uses intended and consistent with good conservation practices. Grantee's maintenance responsibilities shall include, but not be limited to: weed control; trash and debris removal; clearing the Trail of dog waste as is reasonably necessary; grooming as needed; keeping trail clear of unwanted obstructions as is consistent with the intended use; and preventing, controlling and correcting erosion and water runoff as a result of the construction or existence of the Trail.

5.2 Grantee, at its sole expense, shall assume complete responsibility for controlling the public's use of the Trail to ensure that the public's use of the Trail complies with the Terms of this Easement Agreement. The Grantee shall monitor the Trail with sufficient frequency to ensure compliance with the terms of this Easement Agreement.

5.3 The Grantee, at its expense shall post signs at multiple conspicuous locations along the Trail, in locations designated by the Grantors, stating that users must stay on the Trail and traveling off of the Trail is prohibited and that those persons found off of the Trail will be prosecuted for trespassing. Grantee shall also erect signs at the end points of the Trail on the Grantor Property, stating the regulations set forth in this Easement Agreement regarding use of the Trail including; but not limited to, the following regulations: (i) the time period for use of the Trail and the restricted hours of use; (ii) that no motorized vehicles are allowed; (iii) that all trash must be carried out; (iv) that there is no day or night camping; (v) that no horses, pack animals or other livestock are permitted on the Trail; (vi) that there is no overnight use of the Trail; and; (vii) that the Trail is located within private property and users failing to stay on the Trail will be prosecuted for trespassing. The Grantee shall establish such additional signs as it deems reasonably necessary to advise the public of the use restrictions set forth above, and such additional restrictions as the Grantee and Grantors deem appropriate. Grantee will be responsible for maintaining and replacing such signage.

5.4 If the Trail crosses a fence line belonging to Grantors or Smith Hill Ranches Homeowners Association, Grantee must construct a crossing facility and such crossing design shall be in the form of a customary rebar "roll over", "up and over" (e.g., as exist on the Snodgrass Mountain Trail) or a gate and cattle guard, and must be approved by the Grantors, which such approval shall not be unreasonably withheld, delayed or denied. Grantee will be responsible for all related fencing and crossing repair, maintenance and replacement.

5.5 Grantee will mark the location of the trail with "locators" in those locations where the location of the Trail may not be readily apparent and will do so in the winter months when snow covers the Trail so as to provide the public with notice of the location of the Trail.

5.6 The Grantee shall meet as requested with the Grantors to discuss the need for additional signage, locators, and/or other necessary actions to assure compliance with the terms of this Easement Agreement by the Grantee or the public.

5.7 The Grantee shall have the right to enter upon the Trail Area at any reasonable time to perform its fence crossing, signing, maintenance and monitoring functions as set forth above.

6. Restrictions on Use. The following restrictions on use shall apply:

6.1 No portion of the Trail Area may be improved for roadway use, paved, graveled or otherwise covered with concrete, asphalt, or any other paving or gravel material.

6.2 Timber harvesting on the Trail Area is prohibited, except as may be necessary to maintain the use of the Trail.

6.3 There will be no structure, restroom or other facility of any type located on the Trail Area.

6.4 Construction or reconstruction of any crossings, locators, or sign in the Trail Area, except as set forth in paragraph 5.3, 5.4 and 5.5 above, is prohibited.

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6.5 No commercial or industrial uses shall be allowed on the Trail or in the Trail Area.

6.6 No water, electric, telephone, cable, data, or other public or private utility corridors and improvements, including without limitation, pipelines, conduits, transmission lines or other similar structures above or underground shall be allowed within the Trail or Trail Area.

6.7 Except for construction, maintenance or repair of the Trail, any alteration of the surface of the Trail Area, including without limitation, the movement, excavation or removal of soil, sand, vegetation, gravel, rock, peat or sod, is prohibited.

7. Nature of the Easement.

7.1 The easement granted in this Easement Agreement and the duties and obligations of the Grantors pursuant to this Easement Agreement shall be a burden to the Grantor Property and may not be transferred, assigned or conveyed apart or separately from such property. Such duties and obligations shall run with the Grantor Property, and shall be binding upon and shall inure to the benefit and burden of the successors and assigns of said Property. Likewise, the rights and benefits of this Easement Agreement shall inure to the benefit of the successors and assigns of the Grantor Property.

7.2 All duties and obligations of the Grantee pursuant to this Easement Agreement shall be appurtenant to the Grantee Property and shall be a benefit to the Grantee Property and may not be transferred, assigned or conveyed apart or separately from Grantee Property. The duties and obligations of Grantee hereunder shall run with the Grantee Property, and shall be binding upon and shall inure to the benefit and burden of the successors and assigns of said Property. Such duties and obligations may not be assigned or delegated by the Grantee.

8. Grantors' Rights Unaffected. Grantors shall retain the right to make full use of Grantor Property, except for such use as might interfere with the rights of Grantee hereunder. It is specifically understood that Grantors may use the Grantor Property within the Trail Area for any purpose that is not inconsistent with the grant of this Easement Agreement.

9. Grantors' Cooperation in Construction. Grantors shall cooperate with Grantee to permit Grantee to construct the Trail, provided that, Grantee shall promptly re-grade to natural contour and re-vegetate in native vegetation any areas so disturbed during construction or otherwise disturbed by construction and thereafter insure that the re-vegetated area is maintained until the new vegetation is established. All disturbances or damage to the Grantor Property other than the finished Trail, locators, signage, and crossings will be repaired so that the Grantor Property is in substantially the same condition it was prior to Grantee beginning construction. Grantee will perform construction activities only between the hours of 8:00 a.m. and 5:00 p.m. Once Grantee begins construction of the Trail, locators, crossings and signage, Grantee will continuously work on the project such that completion of the project will occur within one full building season as aforesaid.

10. Grantors' Immunity. The Parties expressly acknowledge that the Trail is granted for a "recreational purpose" under C.R.S. Section 33-41-101, et seq., and that Grantors may be entitled to the benefits, protections and limitations on liability afforded by Colorado law governing recreation easements, including with out limitation said Section 33-41-101, et seq. provided however, by asserting such immunity, Grantors and Grantee are not agreeing to or otherwise consenting to any

use of the Trail or Trail Area that is not provided for in this Easement Agreement. By granting this Trail easement, Grantors shall have no obligation to repair, clear or otherwise maintain the Trail or Trail Area or to insure or indemnify Grantee or the public for any injury, death, or damage to any person or property, alleged to have occurred as a result of use of the Trail or Trail Area or due to the condition of the Trail or Trail Area.

11. **Grantee's Indemnification of Grantors.** Grantee hereby releases Grantors and the Smith Hill Ranches Homeowners Association, a Colorado Non Profit Corporation (the "Association") together with the Grantors' and the Association's, successors, assigns, directors, officers, members, managers, partners, employees, agents and representatives ("Grantor Releasees") and shall fully protect, defend, indemnify and hold harmless Grantor Releasees from and against any and all claims, costs and fees (including but not limited to all reasonable attorneys' fees) losses damages, cause of action, or liability of any nature arising from or in connection with the granting of the Easement Agreement, the condition of the Trail or Trail Area, the Grantee's or the public's use of the Trail or Trail Area; including without limitation, any claims, damages or losses related to damage to property or the injury or death to any person or animal using the Trail or Trail Area. The parties acknowledge that the indemnification obligation hereunder is a contractual commitment of the Grantee.

12. **Insurance.** Grantee shall maintain a comprehensive general liability insurance policy to provide protection against liability from claims arising out of the Grantee's or the public's use of or condition of the Trail or Trail Area and Grantee agrees to add Grantors and Grantor Releasees and its and their successors and assigns as additional insureds on such comprehensive general liability insurance policy that Grantee has, which insurance shall be maintained by Grantee to provide protection against liability from claims arising out of the Grantee's or the public's use of or condition of the Trail or Trail Area. Such insurance shall be carried in amounts of not less than two million five hundred thousand dollars (\$2.5M) per occurrence and that provides Grantors and its successors and assigns with thirty (30) days' advance written notice prior to cancellation or termination. Grantee shall upon written request thereof from Grantors or any successor or assign, provide a Certificate of Insurance as verification of compliance with these requirements. No provisions of this Easement Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, right, benefits or protection provided to the Grantee under the Colorado Governmental Immunity Act, Section 24-10-101, et seq. C.R. S.

13. **No Warranties.** Notwithstanding any provisions of this Easement Agreement to the contrary, Grantors make no representations or warranties of any kind in relation to this Easement Agreement or the rights granted herein, other than that (i) the Grantors are the fee simple owners of the Grantor Property, (ii) none of Grantor Property is currently the subject of any federal, state or local government forfeiture or tax proceeding that could result in the impairment of this Easement Agreement and/or the rights granted hereunder or any proceeding, action, petition or filing under Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect or any successor statute, or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency or the arrangement or adjustment of debts that could affect Grantor Property, and that (iii) the persons signing for Grantors have the authority to bind the Grantors. All other warranties, express or implied are disclaimed. Grantee acknowledges that it is accepting this Easement Agreement subject to all matters of record or otherwise, and that the Grantors are providing this Easement "As Is" with all faults and with no representation regarding priority, enforceability or otherwise.

14. **Binding Effect.** This Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns forever including all future record owners of the Grantor Property traversed by the Trail Area, or any part thereof and all future owners of the Grantee Property.

15. **Severability.** If any provision of this Easement Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby, the Parties intending that the intent of the Parties hereto under this Agreement be captured despite such invalid provisions, and in such case the court shall be authorized to so amend this Easement Agreement to capture the meaning of this Agreement.

16. **Perpetual Duration.** The covenants, terms, conditions, obligations, requirements and restrictions of this Easement Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, transferees and assigns and shall continue as a servitude, burden and benefit running in perpetuity with the Grantee Property, and Grantor Property, as the case may be.

17. **Termination of Rights and Obligations.** The Grantee shall promptly respond to Grantors' concerns regarding the lack of compliance with the terms of this Easement Agreement by the Grantee or the public. Grantee shall take reasonable actions to comply or cause the public to comply with the terms of this Easement Agreement. A Party's rights and obligations under this Easement Agreement shall terminate, but the easement granted under this Easement Agreement shall not be terminated, upon transfer of the Party's interest in the Grantors or Grantee Property, except that liability for acts or omissions occurring prior to the transfer shall survive the transfer.

18. **Enforcement.** If either Party finds what it reasonably believes is a violation of the Easement Agreement by the other, it shall promptly give notice in writing of the alleged violation, and may seek any available legal or equitable remedy. If a court with jurisdiction determines that a violation is imminent, exists or has occurred, it may enter a damage award, and/or grant an injunction against the violating party to stop it, temporarily or permanently or to permanently enjoin the public's use of the Trail and Trail Area easement; provided, however, that under no circumstances may access, ingress and egress by Grantee or a conservation easement holder, or their respective successors, transferees and assigns in interest to the Grantee Property, through the Grantor Property as contemplated in this Easement Agreement ever be terminated, if such access, ingress or egress is consistent with the terms of the Easement Agreement and such party is in material compliance with the terms of the Easement Agreement. A Court may also issue an injunction or order to require the violating party to restore the Grantor Property to its condition prior to the violation.

19. **Attorneys' Fees.** In the event the interpretation or enforcement of this Easement Agreement should ever become the subject of litigation between the Grantors and Grantee, the prevailing party shall be entitled to an award of its reasonable costs and attorneys' fees incurred in connection therewith.

20. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

21. Controlling Law. The interpretation and performance of this Easement Agreement shall be governed by the laws of the State of Colorado. Venue for any dispute concerning this Easement Agreement shall be Gunnison County, Colorado.

22. Further Actions. Each Party agrees to execute such additional documents and do all things as may be reasonable and necessary to carry out the intent, purpose and provisions of this Easement Agreement.

23. Entire Agreement. This Easement Agreement sets forth the entire agreement of the parties with respect to the Easement Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement Agreement, all of which are merged herein.

24. Counterparts; Photo-static Copies. This Easement Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument. For purposes of enforcement of this Easement Agreement and the terms hereof, photo-static copies shall be deemed originals.

[Signature Page(s) To Follow]

Final

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

GRANTOR: The Phoenix Family Group, Ltd., a Texas limited liability partnership

By: Ganky, Inc. a Texas corporation, as General Partner

By: Adelaide Biggs (Ganky Inc)
Name: ADELAIDE R BIGGS
Title: President

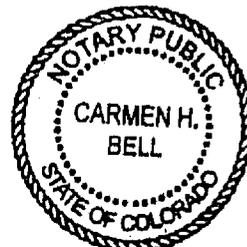
STATE OF COLORADO)
) ss:
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Adelaide Biggs

Witness my hand and official seal.

Carmen H Bell
Notary Public

My commission expires: 7/16/2011



My Commission Expires 07/16/2011

Final



GRANTOR: James A. Kontos

[Handwritten Signature]
James A. Kontos

STATE OF COLORADO)

) ss:

COUNTY OF GUNNISON)

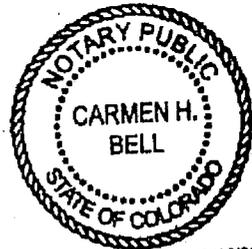
The foregoing instrument was acknowledged before me this 30th day of June, 2010, by

James A. Kontos

Witness my hand and official seal.

[Handwritten Signature]
Notary Public

My commission expires: 7/16/2011



My Commission Expires 07/16/2011

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco }

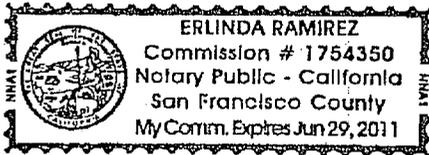
On June 29, 2010 before me, Erlinda Ramirez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Paul Howard Nakae
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Erlinda Ramirez
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Deed of Easement, Vacation Agreement + Settlement Agreement

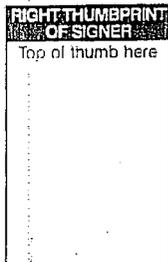
Document Date: June 29, 2010 Number of Pages: _____

Signer(s) Other Than Named Above: No other signers

Capacity(ies) Claimed by Signer(s)

Signer's Name: Paul Howard Nakae

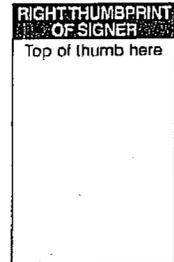
- Individual
- Corporate Officer — Title(s): EVP
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Bank of the West

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Final



GRANTEE:
TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: Leah Williams
Leah Williams, Mayor

Attest: Carmen A Bell
Carmen Bell, Deputy Town Clerk

STATE OF COLORADO)
) SS:
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 4/25/2012



Final

S Dominguez Gunnison County, CO 599312
06/30/2010 04:36 PM Pg: 14 of 28
174 R: \$141.00 D: \$0.00



EXHIBIT A
Legal description of Grantee Property or Kochevar Property

Section 27: S2/3NW1/4SE1/4
S1/2SE1/4

All in Township 13 South, Range 86 West, 6th P.M.,

Gunnison County, Colorado.

Final

S Dominguez Gunnison County, CO 599312
06/30/2010 04:36 PM Pg: 15 of 28
174 R: \$141.00 D: \$0.00

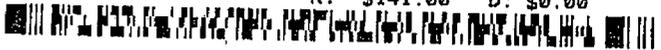


Exhibit B
Legal Description of Grantor Property

Grantor: The Phoenix Family Group, Ltd.:

Ranch 3, THE SMITH HILL RANCHES, according to the Plat thereof recorded August 29, 2003,
bearing Reception No. 534305,

County of Gunnison,
State of Colorado

Grantor: James A. Kontos:

Ranch 4, THE SMITH HILL RANCHES, according to the Plat thereof recorded August 29, 2003,
bearing Reception No. 534305,

County of Gunnison,
State of Colorado

Grantor: Bank of the West:

Ranch 1, THE SMITH HILL RANCHES, according to the Plat thereof recorded August 29, 2003,
bearing Reception No. 534305,

County of Gunnison,
State of Colorado

Final

S Dominguez Gunnison County, CO 599312
06/30/2010 04:36 PM Pg: 16 of 28
174 R: \$141.00 D: \$0.00

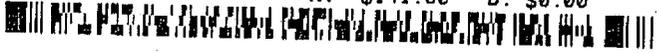


EXHIBIT C

Trail Location Map

Final

S Dominguez Gunnison County, CO 599312
06/30/2010 04:36 PM Pg: 18 of 28
174 R: \$141.00 D: \$0.00



EXHIBIT D

Assignment of Kochevar Easement to Grantee

ASSIGNMENT OF GRANT OF EASEMENT

THIS INSTRUMENT ("Assignment") is made as of ^{June} April 25th, 2010, by and between Donna L. Kochevar (c/o Sylvain Hayoun as her attorney-in-fact), Eve Kochevar (aka Eva L. Kochevar), Davies Revocable Living Trust, Estate of Margaret C. Kochevar (collectively "Assignor") and The Trust for Public Land, a California nonprofit public benefit corporation ("Assignee").

ASSIGNMENT

ASSIGNOR, for and in consideration of good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, does hereby, sell, assign, transfer, set over and deliver unto Assignee, its successor in interest, transferees and assigns all of Assignor's right, title and interest in, to and under the following grant of easement ("**Grant of Easement**"):

That certain Easement Agreement between Adelaide F. Biggs and Margaret C. Kochevar, Jake R. Kochevar, a/k/a Jacob Kochevar, III and Matthew A. Kochevar dated December 24, 1990 and recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado on February 14, 1991 at Book 687, Page 924, Reception No. 425370.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors in interest, transferees and assigns.

IT IS MUTUALLY AGREED as follows:

1. Express Intent of the Parties. It is the express intent of the parties to this instrument that, from and after the date of this instrument, Assignee shall be the "Grantee" under the Grant of Easement for all purposes, and that Assignor shall no longer have any of the rights, powers, privileges and obligations of the Grantee under the Grant of Easement and the terms and conditions of this instrument shall be liberally construed to effectuate this express intent.
2. Further Cooperation. The parties hereto agree to execute any and all other documents, agreements and instruments, and to take any and all other actions, which may be reasonably necessary or desirable to effect the transactions contemplated hereunder.
3. Partial Invalidity. If any provisions of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provisions to other persons or circumstances shall not be affected hereby.



4. Amendment. This instrument may be amended only by writing signed by each of the parties to this instrument.

5. No Other Effect. Except as expressly provided herein, in all other respects, the Grant of Easement shall remain unmodified, and in full force and effect

6. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of Assignor, Assignee, and their respective heirs, devisees, personal representatives, successors and assigns.

7. Governing Law. The laws of the State of Colorado shall govern the construction, validity, performance and enforcement of this instrument.

8. Entire Agreement. This instrument is the only agreement of the parties concerning the subject matter and supersedes any and all prior agreements and understandings, whether written or oral, concerning the subject matter. There are no verbal representations, understandings, stipulations, agreements or promises pertaining to this not incorporated in writing herein.

9. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

[Signatures on following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

Assignor:

DONNA L. KOCHEVAR

By: Donna L. Kochevar
By Sylvain Hayoun
SYLVAIN HAYOUN, as attorney
-in-fact for Donna L. Kochevar

Date: _____

By: _____
EVE KOCHEVAR, aka
EVA KOCHEVAR

Date: _____

DAVIES REVOCABLE LIVING TRUST

By: _____
Mary C. Davies, Trustee

Date: _____

ESTATE OF MARGARET C.
KOCHEVAR

By: _____
Mary Jo Lanza, Personal
Representative

Date: _____

Assignee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: _____
Tim Wohlgenant
Its: Colorado Director

Date: _____

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

Assignor:

DONNA L. KOCHEVAR

By: _____
SYLVAIN HAYOUN, as attorney
-in-fact for Donna L. Kochevar

Date: _____

By: Eve Kochevar
EVE KOCHEVAR, aka
EVA KOCHEVAR

Date: 6-28-10

DAVIES REVOCABLE LIVING TRUST

By: _____
Mary C. Davies, Trustee

Date: _____

ESTATE OF MARGARET C.
KOCHEVAR

By: _____
Mary Jo Lanza, Personal
Representative

Date: _____

Assignee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: _____
Tim Wohlgenant
Its: Colorado Director

Date: _____

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

Assignor:

DONNA L. KOICHEVAR

By: _____
SYLVAIN HAYOUN, as attorney
-in-fact for Donna L. Koichevar

Date: _____

By: _____
ÈVE KOICHEVAR, aka
EVA KOICHEVAR

Date: _____

Assignee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: _____
Tim Wohlgenant
Its: Colorado Director

Date: _____

DAVIES REVOCABLE LIVING TRUST

By: Mary C. Davies, Trustee
Mary C. Davies, Trustee

Date: 6/25/10

ESTATE OF MARGARET C.
KOICHEVAR

By: _____
Mary Jo Lanza, Personal
Representative

Date: _____



IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

Assignor:

DONNA L. KOICHEVAR

By: _____
SYLVAIN HAYOUN, as attorney
-in-fact for Donna L. Kochevar

Date: _____

By: _____
EVE KOICHEVAR, aka
EVA KOICHEVAR

Date: _____

DAVIES REVOCABLE LIVING TRUST

By: _____
Mary C. Davies, Trustee

Date: _____

ESTATE OF MARGARET C.
KOICHEVAR

By: *Mary Jo Lanza, Personal Representative*
Mary Jo Lanza, Personal
Representative

Date: *June 25, 2010*

Assignee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: _____
Tim Wohlgenant
Its: Colorado Director

Date: _____

IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

Assignor:

DONNA L. KOICHEVAR

By: _____
SYLVAIN HAYOUN, as attorney
-in-fact for Donna L. Kochevar

Date: _____

By: _____
EVE KOICHEVAR, aka
EVA KOICHEVAR

Date: _____

DAVIES REVOCABLE LIVING TRUST

By: _____
Mary C. Davies, Trustee

Date: _____

ESTATE OF MARGARET C.
KOICHEVAR

By: _____
Mary Jo Lanza, Personal
Representative

Date: _____

Assignee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: _____
Tim Wohlgenant
Its: Colorado Director

Date: 6-25-10

S Dominguez Gunnison County, CO 599312
06/30/2010 04:36 PM Pg: 25 of 28
174 R: \$141.00 D: \$0.00



ASSIGNMENT OF GRANT OF EASEMENT

THIS INSTRUMENT ("Assignment") is made as of June 28, 2010, by and between The Trust for Public Land, a California nonprofit public benefit corporation ("Assignor") and the Town of Crested Butte, a Colorado home rule municipality (the "Assignee").

ASSIGNMENT

ASSIGNOR, for and in consideration of good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, does hereby, sell, assign, transfer, set over and deliver unto Assignee, its successor in interest, transferees and assigns all of Assignor's right, title and interest in, to and under the following grant of easement ("**Grant of Easement**"):

That certain Easement Agreement between Adelaide F. Biggs and Margaret C. Kochevar, Jake R. Kochevar, a/k/a Jacob Kochevar, III and Matthew A. Kochevar dated December 24, 1990 and recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado on February 14, 1991 at Book 687, Page 924, Reception No. 425370.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors in interest, transferees and assigns.

IT IS MUTUALLY AGREED as follows:

1. Express Intent of the Parties. It is the express intent of the parties to this instrument that, from and after the date of this instrument, Assignee shall be the "Grantee" under the Grant of Easement for all purposes, and that Assignor shall no longer have any of the rights, powers, privileges and obligations of the Grantee under the Grant of Easement and the terms and conditions of this instrument shall be liberally construed to effectuate this express intent.
2. Further Cooperation. The parties hereto agree to execute any and all other documents, agreements and instruments, and to take any and all other actions, which may be reasonably necessary or desirable to effect the transactions contemplated hereunder.
3. Partial Invalidity. If any provisions of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provisions to other persons or circumstances shall not be affected hereby.
4. Amendment. This instrument may be amended only by writing signed by each of the parties to this instrument.

5. No Other Effect. Except as expressly provided herein, in all other respects, the Grant of Easement shall remain unmodified, and in full force and effect

6. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of Assignor, Assignee, and their respective heirs, devisees, personal representatives, successors and assigns.

7. Governing Law. The laws of the State of Colorado shall govern the construction, validity, performance and enforcement of this instrument.

8. Entire Agreement. This instrument is the only agreement of the parties concerning the subject matter and supersedes any and all prior agreements and understandings, whether written or oral, concerning the subject matter. There are no verbal representations, understandings, stipulations, agreements or promises pertaining to this not incorporated in writing herein.

9. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

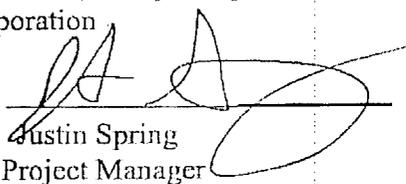
[Signatures on following page]



IN WITNESS WHEREOF, the undersigned have executed this instrument effective as of the date first above written.

Assignor:

THE TRUST FOR PUBLIC LAND,
a California nonprofit public benefit
corporation

By: 

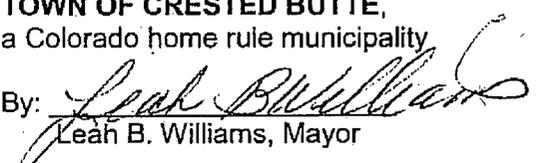
Justin Spring

Its: Project Manager

Date: 6/28/2010

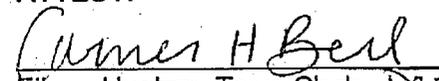
Assignee:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: 

Leah B. Williams, Mayor

ATTEST:


Eileen Hughes, Town Clerk Deputy
(SEAL) Carmen Bell

