

RESOLUTION NO. 15

SERIES NO. 2014

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE EXPENDITURE OF UP TO \$700,000.00 FROM THE TOWN'S OPEN SPACE FUND FOR THE PURCHASE AND CONSERVATION OF APPROXIMATELY 93 ACRES LOCATED AT PARCEL NO. 1, THE RESERVE, TOWN OF MOUNT CRESTED BUTTE, GUNNISON COUNTY, STATE OF COLORADO

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now 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 staff has recommended that the Town Council provide funds for the Crested Butte Land Trust's (the "Land Trust") purchase and conservation of approximately 93 acres of real property located at Parcel No. 1, The Reserve, Town of Mount Crested Butte, Gunnison County, State of Colorado (the "Subject Property");

WHEREAS, the Town staff has, in support of such recommendation, presented to the Town Council that the Subject Property will be encumbered by a conservation easement, to be held by the Land Trust, restricting the development of the Subject Property; and

WHEREAS, the Town Council finds hereby that providing up to \$700,000.00 to the Land Trust to purchase and conserve the Subject Property is in the best interest of conserving lands from development, and, therefor in the best interest of Town and the general public.

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

1. **Findings.** The Town Council hereby authorizes the expenditure of up to \$700,000.00 from the Town's Open Space Fund for the purchase and conservation of approximately 93 acres of real property located at Parcel No. 1, The Reserve, Town of Mount Crested Butte, Gunnison County, State of Colorado.
2. **Funding Agreement; Authorization.** Pursuant to the above findings, the Town Council hereby approves the delivery of such funds to the Crested Butte Land Trust pursuant to the terms and conditions of the "**Funding Agreement**" attached hereto as **Exhibit "A."** In furtherance thereof, the Town Council hereby authorizes the Mayor to execute the Funding Agreement.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 20th DAY OF October, 2014.

TOWN OF CRESTED BUTTE

By: Aaron J. Huckstep
Aaron J. Huckstep, Mayor

ATTEST

Lynelle Stanford
Lynelle Stanford, Town Clerk

(SEAL)



EXHIBIT "A"

Funding Agreement

[attach approved form here]

OPEN SPACE FUNDING AGREEMENT

THIS OPEN SPACE FUNDING AGREEMENT (the "**Agreement**") is entered into effective this ___ day of _____, 2014 (the "**Effective Date**") by and between the TOWN OF CRESTED BUTTE, a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224 (the "**Town**") and the CRESTED BUTTE LAND TRUST, a Colorado non-profit corporation with an address at 308 3rd Street, P.O. Box 2224, Crested Butte, Colorado 81224 ("**Grantee**"). The Town and Grantee are sometimes individually referred to herein as a "**party**," collectively as the "**parties**."

RECITALS:

A. Pursuant to §4-4-90(b), as amended, of the Crested Butte Municipal Code, the Town may, in pertinent part, fund the purchase of interests in real property to be conserved from development outside of Crested Butte and designate such other entities as it deems appropriate to acquire such interests in real property in place of the Town.

B. The Town Council, by Resolution No. 15, Series 2014, appropriated \$700,000.00 in funding to be used for Grantee's purchase of the fee title to the real property described on **Exhibit "A"** attached hereto (the "**Subject Property**").

C. The Town and Grantee desire herein to memorialize the terms and conditions upon which the Town will fund and Grantee will complete the purchase of the Subject Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are material terms and conditions of this Agreement and are supported by the same consideration as the other terms and conditions hereof.

2. **Grant Funds; Payment Obligation.**

A. The Town hereby grants \$700,000.00 (the "**Grant Funds**") to Grantee subject to the terms and conditions set forth in this Agreement.

B. Four Hundred Thousand and No/100 Dollars (\$400,000.00) (the "**Initial Payment**") of the Grant Funds shall be paid to Grantee at closing (the "**Closing**") on the Property; provided that, Closing shall occur on or before May 15, 2015. If Closing does not occur on or before May 15, 2015, this Agreement and the grant made herein shall terminate and be void *ab initio*, unless the Town agrees to continue this Agreement based upon a Closing after May 15, 2015.

C. Provided that Closing occurs on or before May 15, 2015, the Town shall endeavor to pay Grantee, Grantee acknowledging and agreeing that that the Town's ability to pay Grantee the remaining Grant Funds is subject to the Town having sufficient funds, as reasonably determined by the Town taking into account funds in the Town's Open Space Fund from tax received from the Town's Land Transfer Excise Tax and the need for the Town keep a reasonable balance in such Open Space Fund, the remaining \$300,000.00 in successive payments of at least \$75,000.00 on March 31 (provided that this payment will be made at the time of Closing in such Closing occurs on or before March 31, 2014, or on the date of Closing provided Closing occurs on or before May 15, 2014), June 30, September 30 and December 31, 2015. In the event that the Town does not have a sufficient funds in the Town's Open Space Fund at any time payment is due as contemplated in this subsection B., the Town shall pay what it is reasonably able to pay taking into account those qualifications described above. Notwithstanding the foregoing, in the event that the Town does not have sufficient funds to complete the payments as described above by December 31, 2015, the Town's obligations hereunder shall terminate; provided, however, it is the intent of the parties to negotiate a new funding agreement in such event.

D. Notwithstanding anything in this Agreement to the contrary, (i) nothing contained in this Agreement shall constitute a pledge of the full faith and credit of the general tax revenues, funds or moneys of the Town except the amount appropriated for the purpose of making payments hereunder during the current fiscal year, (ii) the Town is not obligated hereby to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or to make payments from any funds of the Town other than funds appropriated for the payment of current expenditures, (iii) all payment obligations of the Town under this Agreement, including, without limitation, the Town's obligation to pay the Grant Funds, are from year-to-year only and do not constitute a multiple fiscal-year direct or indirect financial obligation of the Town, (iv) the agreement hereunder to pay the Grant Funds is subject to annual renewal and such agreement to pay shall be terminated upon the occurrence of an event of non-appropriation and, in such event, (x) all payments from the Town under this agreement shall terminate, and (y) Grantee expressly waives hereby all remedies and claims against the Town.

E. The Grant Funds shall be used by Grantee solely to acquire the Subject Property and to defray the costs and expenses in connection therewith, including the administration of the same. Grantee agrees that the Initial Payment shall be used to pay the purchase price to acquire the Subject Property and to defray certain direct costs of the Grantee in connection with such purchase, which amounts shall be paid at Closing on the purchase of the Subject Property.

F. Notwithstanding the foregoing, the Grant Funds may not be used for the general administration and overhead costs of Grantee.

3. **Purchase Money Loan; Conservation Easement.**

A. The Initial Payment shall be used by Grantee at Closing as partial payment of the purchase price to acquire the Subject Property and to defray certain direct costs and

expenses in connection therewith. The remaining amount of the purchase price for the Subject Property will be paid from funds received from various sources and will include loaned money not to exceed \$600,000 (the "Loan"). The Loan will be collateralized against other real property owned in fee by the Grantee (the "Trade Lands") and described to Grantor in writing to Grantor's elected officials prior to such collateralization. Grantee shall pay off the Loan against the Trade Lands as soon as reasonably possible, with reasonable efforts being made by Grantee to accomplish the same, through funding which may come from third party sources or the Town of Crested Butte, or both; except that Grantee shall not request that Grantor fund any more than the Grant Funds in connection with the acquisition and conservation of the Subject Property. Upon payment of the Loan, the lien encumbering the Trade Lands shall be extinguished and released of record by the recording of a release of such lien in the official real property records of the Clerk and Recorder of Gunnison County, State of Colorado, with notice thereof delivered to the Town.

B. As part of the Grantee's purchase of the Subject Property, Grantee shall take and hold a conservation easement on the Subject Property in substantially the same form as the Deed of Conservation Easement (the "Conservation Easement") in favor of Grantee attached hereto as Exhibit "B."

C. Neither Grantee nor the holder of fee title in the Subject Project may sell, assign, transfer or otherwise pledge, hypothecate, lien or mortgage the Subject Property or any interest therein without the express written approval of the Grantor.

4. No Liens. Grantee shall not allow the Subject Property to become subject to any lien or claim of lien that is not subordinate to the terms of the Conservation Easement on account of any act or omission of Grantee or any person operating under the authority of Grantee. In such case, Grantee shall be responsible for the satisfaction or payment of any such lien filed or placed of record against the Subject Property. Should any such lien or claim of lien be filed against the Subject Property, Grantee shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice of the filing thereof. Should Grantee fail to discharge such lien within such 10-day period, then the Town may discharge the same, in which event the Grantee shall reimburse the Town, on demand, for the amount of the lien or the amount of the bond, if greater, plus all costs and expenses incurred by the Town in connection therewith, inclusive of reasonable attorneys' fees, costs and expenses.

5. Signage. In the event that any signage is installed respecting the funding for the acquisition of the Subject Property the Town shall be listed on such signage as a grantee of such funding. Such signage shall be approved in advance by the Town, such approval to not be unreasonably withheld, conditioned or delayed.

6. Liability.

A. Indemnity. To the extent allowed by law, Grantee shall be responsible for, indemnify, defend and hold harmless the Town, its elected officials, officers, agents, employees, insurers, insurance pools and attorneys (collectively, the "Town Parties") from any and all liabilities, claims, demands, damages or costs (including reasonable attorneys' fees) resulting

from, growing out of, or in any way connected with or incident to Grantee's receipt of the Grant Funds and any of its acts or omissions pursuant to this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the Town Parties, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.

B. **No CGIA Waiver.** The parties understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the parties, their elected officials, officers, agents, employees, insurers, insurance pools and attorneys officers.

C. **Compliance with Regulatory Requirements and Federal and State Mandates.** Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, immigration compliance, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. To the maximum extent permitted by law, Grantee hereby agrees to indemnify, defend and hold harmless the Town from any cost, expense or liability for any failure to comply with any such applicable requirements.

D. **Nondiscrimination.** During the performance of this Agreement, Grantee and its contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, and shall comply with any other applicable laws prohibiting discrimination. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

7. **Audit and Accounting Records.** Grantee shall maintain standard financial accounts, document, and records relating to the acquisition, use, management, operation and maintenance of the Subject Property. The accounts, documents, and records related to acquisition of the Subject Property shall be retained by Grantee for five (5) years following the date of disbursement by the Town of the Grant Funds, and shall be subject to examination and audit by the Town or its designated agent during this period. All accounts, documents, and records described in this paragraph shall be kept in accordance with generally accepted accounting principles.

8. **Breach.** In addition to such other remedies as shall be available at law or in equity, in the event that Grantee breaches any of the terms or conditions of this Agreement and fails to correct the same within thirty (30) days of receipt of notice from the Town of such breach, the Town reserves the right to seek equitable relief and/or all other remedies as available to it under applicable law, including but not limited to, the return of all or a portion of the Grant Funds.

9. **Miscellaneous Provisions.**

A. **Good Faith.** Both parties have an obligation of good faith, including the obligation to make timely communication of information that may reasonably be believed to be of interest to the other party.

B. **Assignment.** Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Town.

C. **Applicable Law.** Colorado law applies to the interpretation and enforcement of this Agreement.

D. **Status of Grantee.** The parties acknowledge that the Town lacks the power and right to direct the actions of Grantee. Grantee acts in its separate capacity and not as an officer, employee or agent of the Town.

E. **Survival.** The terms and provisions of this Agreement and Grantee's obligations hereunder shall survive the funding of the Grant Funds and the acquisition of, and any future conveyance of, the Subject Property.

F. **Fax and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one agreement. In addition, the parties agree to recognize signatures to this Agreement transmitted by facsimile as if they were original signatures.

G. **Third Party Beneficiary.** The parties hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Town and Grantee, and that no third party beneficiaries are intended.

H. **Notice.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the addresses first shown in this Agreement.

I. **Construction; Severability.** Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect. At any time when this Agreement refers to a party's ability to act or make determinations or decisions with discretion, this Agreement shall be construed to permit such party to act and to make such determinations and/or decisions in its sole discretion.

J. **Entire Agreement.** Except for the Conservation Easement, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

K. **Authority.** The parties represent and warrant to the other that each is duly authorized and existing business entity; each is qualified to do business Colorado; each has full right and authority to enter into this Agreement; the person signing on behalf of each party is duly authorized to do so and has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement; and each party's compliance with the terms hereof do not violate any agreement or other obligation of such party.

L. **Prevailing Party.** In the event of any dispute arising from or related to this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred in connection therewith, including, without limitation, court costs, attorneys' fees and other related expenses.

M. **Record Memorandum.** A record memorandum of this Agreement may be recorded by the Town in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement as of the Effective Date set forth above.

TOWN:

GRANTEE:

TOWN OF CRESTED BUTTE

CRESTED BUTTE LAND TRUST

By: _____
Todd Crossett, Town Manager

By: _____
Name: _____
Title: _____

Name: ____

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

EXHIBIT "A"

Subject Property

EXHIBIT "B"

Conservation Easement

Formatted: Font: Bold, Underline

EXHIBIT A
LEGAL DESCRIPTION
(The Reserve at Promontory Parcel No. 1)

A tract of land being described as Parcel No. 1, in Special Warranty Deed recorded as Reception No. 539411, also being described as Parcel No. 2, in Quitclaim Deed recorded as Reception No. 544263, records of Gunnison County Colorado; said parcel being a portion of the S1/2NE1/4 and N1/2SE1/4 of Section 14, Township 13 South, Range 86 West, 6th Principal Meridian, being more particularly described as follows:

Beginning at the S1/16 Corner common to Sections 13 and 14, T.13 S., R. 86 W. of the 6th P.M., said point being monumented with a BLM Brass Cap;

thence N01°49'09"E a distance of 1402.43 feet along the section line common to said Sections 13 and 14 to the 1/4 Corner common to said Sections 13 and 14;

thence continuing N01°53'01"E along said common section line a distance of 840.00 feet;

thence N89°30'49"W a distance of 374.88 feet to a point on the southerly boundary line of a parcel of land described in Book 584 at Page 248 of Gunnison County records;

thence the following four (4) courses along the southerly boundary of said parcel:

- (1) 513.85 feet along the arc of said non-tangent curve to the left having a radius of 318.00 feet, a central angle of 92°34'57" and a chord which bears N83°57'02"W a distance of 459.74 feet;
- (2) thence 68.07 feet along the arc of a non-tangent curve to the right having a radius of 117.00 feet, a central angle of 33°19'56" and a chord which bears S65°54'58"W a distance of 67.11 feet;
- (3) thence N53°45'02"W a distance of 241.50 feet;
- (4) thence 129.18 feet along the arc of a non-tangent curve to the left having a radius of 187.00 feet, a central angle of 39°34'52" and a chord which bears N48°20'02"W a distance of 126.63 feet;

thence N00°39'05"E a distance of 318.32 feet to a point on the north line of the SE1/4NE1/4 of said Section 14;

thence N89°40'15"W a distance of 160.00 feet along the north line of the SE1/4NE1/4 to the NE1/16 Corner of said Section 14;

thence N89°38'26"W a distance of 405.40 feet along the north line of the SW1/4NE1/4 of said Section 14 to the most northeasterly corner of a parcel of land described in Book 393 at Page 01, records of Gunnison County;

thence the following six (6) courses along the easterly and southerly boundary of said parcel of land:

- (1) S36°18'35"E a distance of 194.66 feet;
- (2) thence 235.29 feet along the arc of said non-tangent curve to the left having a radius of 146.00 feet, a central angle of 92°20'07" and a chord which bears S21°06'25"W a distance of 210.64 feet;
- (3) thence 131.34 feet along the arc of a curve to the right having a radius of 210.00 feet, a central angle of 35°50'04" and a chord which bears S07°08'35"E a distance of 129.21 feet;
- (4) thence S10°46'25"W a distance of 305.50 feet;

(5) thence 342.82 feet along the arc of a non-tangent curve to the left having a radius of 415.41 feet, a central angle of $47^{\circ}16'59''$ and a chord which bears $S12^{\circ}53'35''E$ a distance of 333.17 feet;
(6) thence $S70^{\circ}12'38''W$ a distance of 402.85 feet to a point on the west line of the $E1/2SW1/4NE1/4$ of said Section 14;

thence $S01^{\circ}06'47''W$ a distance of 162.05 feet along the west line of the $E1/2SW1/4NE1/4$ to the C-W-E $1/64$ of said Section 14;

thence $S01^{\circ}03'55''W$ along the west line of the $E1/2NW1/4SE1/4$ of said Section 14 a distance of 964.17 feet;

thence $S90^{\circ}00'00''E$ a distance of 312.53 feet;

thence $N26^{\circ}31'44''E$ a distance of 66.05 feet;

thence 283.83 feet along the arc a non-tangent curve to the left having a radius of 322.17 feet, a central angle of $50^{\circ}28'40''$ and a chord which bears $N63^{\circ}14'51''E$ a distance of 274.74 feet to a point of non-tangent line;

thence $S63^{\circ}18'35''E$ a distance of 1399.44 feet to a point on the south line of the $NE1/4SE1/4$ of said Section 14;

thence $N89^{\circ}50'57''E$ along the south line of the $NE1/4SE1/4$ of said Section 14 a distance of 162.03 feet to the point of beginning,

County of Gunnison,
State of Colorado.

DEED OF CONSERVATION EASEMENT

Crested Butte Land Trust

Parcel 1, Promontory Property- Gunnison County, CO

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH GRANT # _____ (“GRANT”) FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND (“BOARD”). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT is granted this ___ day of January, 2015, by **NORTH VILLAGE RESERVE, INC.**, a Colorado corporation, having an address of 12 Snowmass Road, Mt. Crested Butte, CO 81225, P.O. Box 5700, Mt. Crested Butte, CO 81225 (the “**Grantor**”) to and for the benefit of the **CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation, having an address at 308 Third Street, P.O. Box 2224, Crested Butte, Colorado 81224 as grantee (the “**Grantee**”), for the purpose of forever conserving the wildlife habitat, open space character, and outdoor recreational opportunities of the subject property. Grantee acknowledges that North Village Reserve, Inc. intends to convey the Property described herein to the **TOWN OF MT. CRESTED BUTTE**, a Colorado municipal corporation, 911 Gothic Road, P.O. Box 5800, CO 81225 (the “**Town**”), subject to the terms of this Deed of Conservation Easement immediately after the recording of this Deed of Conservation Easement, and that upon such transfer the Town will be the Grantor hereunder; this initial conveyance to the Town is not a “Sale” as described in Paragraph 13, below. The Grantor and the Grantee are individually referred to herein as a “**Party**”, and are collectively referred to herein as the “**Parties**”.

The following Exhibits are attached hereto and hereby incorporated herein:

- Exhibit A - Description of Property
- Exhibit B - Map of Property, including Trail and Trailhead Locations
- Exhibit C - Acknowledgement of Baseline Report
- Exhibit D - Exceptions to Title

RECITALS:

- A) Grantor is the sole owner in fee simple of certain real property located in Gunnison County, Colorado, consisting of 48.64 acres, more or less, more particularly described in **Exhibit A** and depicted in **Exhibit B**, including Minerals, as defined herein, together with the improvements located thereon (collectively, the “**Property**”).
- B) The Property possesses natural wildlife habitat and recreational values (collectively, the “**Conservation Values**”) of great importance to the Grantee, the Town, the people of Gunnison County, the people of the State of Colorado, and the people of the United States of America, which Conservation Values are worthy of protection, and which are described in the Baseline Report, described herein. The Conservation Purposes described and detailed in these Recitals are part of the Conservation Values of the Property. The Conservation Values are the Open Space, Wildlife Habitat and Public Recreation

Conservation Values described in these Recitals. The Property is distinctive because of its importance to larger conservation efforts, and its access to public lands. For recreationists, the Property represents permanent access, therein offering the opportunity for people of all ages to form lasting connections to natural lands, fostering a culture that values biodiversity and the wild lands necessary to support it.

- C) The following Conservation Purpose, in accordance with Treasury Regulations §1.170A-14(d)(4) is furthered by this Easement: “To preserve open space (including farmland and forest land ... if such preservation is (A) Pursuant to a clearly delineated federal, state or local governmental policy” (see Recital F, below) “and will yield a significant public benefit, or (B) For the scenic enjoyment of the general public and will yield a significant public benefit. This Conservation Purpose includes at least the following “**Open Space**” Conservation Values:
- 1) Preservation of the Property will provide an important open space, scenic vista and will buffer this area from surrounding growth.
 - 2) The Property lies in a saddle between the northern edge of the Town of Mt. Crested Butte and Snodgrass Mountain. The East River snakes to the northeast and the Maroon Bells rise in its backdrop. The Property is largely surrounded by the Gunnison National Forest and other conserved natural areas that contribute to habitat connectivity and the value of the land. The Property is also a visual boundary between the Town of Mt. Crested Butte and Gothic valley, referred to as the “line of flowers”.
 - 3) The Property is visible from many public places including: (a) neighboring and nearby public lands owned by the Town of Mt. Crested Butte, and lands administered by the U.S. Department of Agriculture, National Forest Service, Gunnison National Forest (**Forest Service**”); (b) a public trail on the Property and public trails on adjoining and nearby lands; (c) Gothic Road; (d) the Town of Mt. Crested Butte; and (e) the Crested Butte Mountain Resort.
 - 4) The Property includes significant wildlife and bird habitat, and is in an area which is experiencing substantial development that has reduced open and scenic vistas available to the public; preservation of the Property is consistent with federal, state and local public conservation programs and with conservation efforts underway on adjoining or nearby properties; development of the Property would contribute to the degradation of the scenic vistas available to the public and to wildlife habitat, resulting in a loss of tourism and commerce to the area.
- D) The following Conservation Purpose, in accordance with Treasury Regulations §1.170A-14(d)(3) is furthered by this Easement: “To protect significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives.” This Conservation Purpose includes at least the following “**Wildlife Habitat**” Conservation Values:
- 1) Conservation of the Property, which is located on the eastern flank of Snodgrass Mountain, will protect migration, foraging, and resting habitat for many species, including black bear, deer, and elk. The area is a migration corridor and both summer and winter range for elk. Habitat quality is high because of the wetlands, aspen and forests, and its proximity to other protected areas. Golden eagles are often seen soaring overhead. Coyote, fox, mountain lion, beavers and a host of other small mammals and birds depend on this natural area and its water

resources. The upper portions of Snodgrass Mountain are identified as habitat for the endangered Canada lynx.

- 2) Two creeks traverse the Property and feed into the East River. The Property contains over nine acres of wetlands, an important water source for wildlife and for recharging ground water supplies. At least three native willow species as well as wetlands vegetation are common throughout the meadows.
 - 3) The Property is adjacent to other lands that have been protected to preserve wildlife habitat, open space, and scenic vistas.
 - 4) Preservation of the Ranch also complements "Colorado's Comprehensive Wildlife Conservation Strategy" (CWCS). This strategy was developed in 2006, based on the collective judgment of many Colorado scientists, who accounted for the interest of citizens concerned about Colorado wildlife conservation. The CWCS identifies the conservation of wildlife habitat as important to the state. The Ranch supports several of CWCS's strategic directives to: conserve wildlife habitat, maintain habitat and landscape connectivity, and provide public education opportunities to benefit wildlife.
 - 5) The Wildlife Habitat Conservation Values are further detailed in the Baseline Report.
- E) The following Conservation Purpose, in accordance with Treasury Regulations §1.170A-14(d)(2) is furthered by this Easement: "The preservation of land areas for outdoor recreation by, or the education of, the general public." This Conservation Purpose includes at least the following "**Public Recreation**" Conservation Values:
- 1) The general public shall have access to the Trail on the Property, subject to any reasonable regulations imposed pursuant to the Public Access Paragraph 9 by Grantor and Grantee necessary and appropriate to protect public health and safety. These may include any temporary or seasonal restrictions necessary to protect the Wildlife Habitat Conservation Values described in the Recitals and described in greater detail within the Baseline Report and to balance wildlife habitat needs and public recreation.
 - 2) The Grantor may allow additional public access provided such access is consistent with preservation of the Conservation Values, as provided herein.
- F) The Conservation Purposes of this Easement are recognized by, and the grant of this Easement will serve the following clearly delineated governmental conservation policies:
- 1) Colorado Revised Statutes Sec. 38-30.5-101, *et seq.*, provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural ... or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity."
 - 2) The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes Sec. 33-1-101, *et seq.*, which provide that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors," and that "it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this

state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.”

- 3) The Western Governors’ Association Policy Resolution 08-21 supports “voluntary incentive-based methods for preserving open space, maintaining land and water for agricultural and timber production, wildlife, and other values.”
- 4) Gunnison County Land Use Regulation, Section 1-103D.3., seeks “to protect and preserve lands from land use activities and patterns of development that would cause significant adverse net impacts to sensitive wildlife habitat....”
- 5) The Crested Butte Area Plan also places priority on wildlife habitat. The Area Plan recommends that “developers should work with their neighbors to maintain historic grazing operations.” With regard to wildlife habitat the Area Plan recommends, “Development in Important Wildlife Habitat Areas should be avoided because habitat survival and species survival go hand-in-hand.”
- 6) Mt. Crested Butte Community Plan dated July 5, 2007, Section III “Parks, Recreation and the Natural Environment” includes the following goals: “1. Preserve open space, natural beauty and critical environmental areas”; “3. Preserve the recreational aspect of our quality of life and ensure the availability of quality recreational experiences in the future....”
- 7) Funding for this project has been provided in part by the Great Outdoors Colorado Trust Fund program. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state’s wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.
- G) The Crested Butte Land Trust is a charitable organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) and is a “qualified organization” as defined in Section 170(h)(3) of the Code, and a charitable organization as defined in Section 38-30.5-104(2), CRS.
- H) The Grantor desires to protect the Conservation Values of the Property in perpetuity by creation of a conservation easement in gross under Article 30.5 of Title 38, Colorado Revised Statutes.
- I) Grantee agrees by accepting this Easement to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, for reasons given, and in consideration of the above mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. Sec. 38-30.5-101, *et seq.*, Grantor hereby voluntarily grants and conveys to the Grantee, its successors and assigns a Conservation Easement in perpetuity, consisting of the rights and restrictions enumerated herein, over and across the Property

(the “**Easement**” or the “**Deed**”), exclusively for the purpose of conserving and forever maintaining the Property so as to preserve the wildlife habitat of the Property and the opportunities for public recreation provided by the Property.

1. Purpose. The purpose of this Easement is to ensure that the Conservation Values are preserved and protected in perpetuity (“**Purpose**”). This Purpose is in accordance with §170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto. To effectuate the Purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property that do not substantially diminish or impair the Conservation Values and to prevent any use of the Property that will substantially diminish or impair the Conservation Values. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, other than the preservation and protection of the Conservation Values.
2. Baseline Documentation Report. The Parties acknowledge that a written report dated _____, 201 __, has been prepared, reviewed, and approved by the Parties, which documents the Property’s condition as of the conveyance date of this Easement (the “**Baseline Report**”). A copy of the Baseline Report shall be kept on file with each Party and by this reference is made a part hereof. The Parties acknowledge that the Baseline Report is intended to establish the condition of the Property as of the conveyance date of this Easement, and each Party has acknowledged the same in a signed statement, a copy of which is attached hereto as Exhibit C. The Parties further agree that the existence of the Baseline Report shall in no way limit the Parties’ ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the conveyance date of this Easement.
3. Rights Granted to the Grantee. To accomplish the Purpose of this Easement, in addition to the rights described in C.R.S. Sec. 38-30.5-101, *et seq.*, as amended from time to time, the following rights are granted to the Grantee:
 - 3.1. To preserve and protect the Conservation Values of the Property;
 - 3.2. To enter upon the Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Easement. The Grantee may utilize vehicles on existing roads, and other reasonable modes of transportation elsewhere, for monitoring and enforcement purposes;
 - 3.3. To prevent any activity on or use of the Property that is inconsistent with the Purposes of this Easement, or which may be reasonably expected to have material adverse impact on the Conservation Values of the Property, and to require the restoration of such areas or features of the Property that are materially damaged by any inconsistent activity or use; and
 - 3.4. To place and maintain on the perimeter of the Property, at the Trailhead (defined in Paragraph 4.1.2.1, below), and/or in the Parking Area (defined in Paragraph 4.1.2.1, below) a sign or signs indicating that a conservation easement is held by the Grantee on the Property. The size of the sign and the location, design and content of such signs shall be determined by the Grantee. Grantee shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Grantee’s role in securing and

holding this Easement and the Board's Grant and investment in this Property to the public. The Grantee shall be responsible for the maintenance of any such signs.

4. Reserved Rights. Grantor reserves to Grantor, and to Grantor's successors and assigns, all rights accruing from Grantor's ownership of the Property, including without limitation the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or restricted herein and that do not substantially diminish or impair the Conservation Values.
 - 4.1. Recreational Uses. Without limiting the generality of the foregoing, the Grantor reserves the right to use the Property to engage in and to permit the public to engage in non-motorized passive recreational activities, including, but not limited to, hiking, bicycling, horseback riding, cross-country skiing, snow-shoeing, and other similar low-impact recreational uses, subject to the terms of the Public Access Paragraph 9, herein, subject to easements, rights of way and matters of record described in the attached **Exhibit D**; Grantor further reserves the right to lease or permit outfitting on the Property, provided that public access to Snodgrass Trail, described below, shall not be limited, except as described in the Access Paragraph 9, herein) for such uses, and including uses such as are allowed under the Outfitting & Grazing Lease Agreement between Grantor, as landlord, and Fantasy Ranch Horseback Adventures, LLC, as tenant, recorded December 29, 2011 at Reception No. 610393 in the record of the Gunnison County Clerk and Recorder, (collectively, the "**Recreational Uses**").
 - 4.1.1. Trails and Trail Construction.
 - 4.1.1.1. Existing Trail. The existing trail on the Property ("**Snodgrass Trail**") in the location shown on **Exhibit B**, shall be maintained for Recreational Uses, and may be reconfigured or relocated on the Property with the prior written approval of the Grantee provided that such reconfiguration or relocation shall preserve a continuous trail through the Property from the trailhead near Gothic Road to the location of the Snodgrass Trail on Forest Service land at the westerly boundary of the Property, as shown on **Exhibit B**. Public use of the Snodgrass Trail for Recreational Uses is permitted, subject to the terms of the Public Access Paragraph 9, herein.
 - 4.1.1.2. Additional Trails. Additional trails ("**Additional Trails**") for Recreational Uses (the Additional Trails and the Snodgrass Trail are together referred to herein as the "**Trails**") may be constructed and maintained on the Property by Grantor to the extent permitted in the Management Plan (described in Paragraph 4.1.2.1, below), or with the prior written approval of the Grantee.
 - 4.1.2. Trailhead, Parking Area.
 - 4.1.2.1. Management Plan; Trails, Trail Facilities. Additional Trails and facilities related to the Snodgrass Trail and/or such Additional Trails, including, but not limited to, a trailhead ("**Trailhead**") together with access driveway ("**Driveway**") from Gothic Road

to the parking area (“**Parking Area**”) at the “**Trailhead Building Area**” in the general location shown on the attached Exhibit B, an informational/directional kiosk and pit toilet or outhouse or other restroom facilities at the in the Trailhead Building Area, signage (which is in addition to the signage described in Paragraph 3.4, above), benches, and other improvements necessary to support the uses of the Trails (“**Trail Facilities**”), may be constructed, maintained, repaired and replaced on the Property in the locations and in the manner identified in an open space management plan, as approved by the Grantor and the Grantee and as amended from time to time by Grantor and Grantee (“**Management Plan**”). In addition, the dilapidated cabin (currently used for storing fencing materials) which is located in the Trailhead Building Area, may be used for agricultural or agriturism purposes (but not for housing or residential purposes) and may be removed, relocated or improved (but not enlarged) within the Trailhead Building Area envelope with prior approval of the Grantee. Trails and the Parking Area may be dirt or covered in gravel, as provided in the Management Plan. The Management Plan will identify important natural resource values and ensure that public uses and/or Trail Facilities are compatible with preserving the Conservation Values. The Grantee shall provide a copy of the Management Plan and any subsequent updates to the Board.

- 4.1.3. Nothing in this Easement shall be deemed to alter protections provided to the Grantor or the Grantee under C.R.S §33-41-103, or any subsequent legislation. Grantor and the Grantee specifically agree that the Grantor is both the owner and the manager of the Property, including the manager of recreational activities on the Property, and as provided in C.R.S §33-41-103(2)(d), the Grantee shall not be held liable for the Grantor’s management of the Property for recreational or any other purposes.
- 4.2. Agricultural Uses. In additional to preserving the Grantor’s right to utilize the Property for the Recreational Uses, described above, it is the intention of the Parties to preserve the ability of the Property to be agriculturally productive, including allowing ranching and grazing, as well as to preserve the public recreation, open space character and scenic qualities of the Property.
 - 4.2.1. Grazing. Grantor may graze livestock on the Property provided that at all times Grantor shall utilize good grazing and range management practices that prevent pasture deterioration and over-grazing and which protect the Conservation Values of the Property. In the event the Grantee determines that the range is deteriorating, that overgrazing is occurring, or that the Conservation Values of the Property are not being protected, the Grantor and the Grantee shall promptly enter into an Agricultural Management Plan for the Property with the Natural Resources Conservation Service (“**NRCS**”) or other resource management agency or consultant mutually agreed upon by Grantor and Grantee. Thereafter, grazing and other agricultural activities on the Property shall be conducted only in

accordance with the Agricultural Management Plan until Grantor and Grantee mutually agree to modify or terminate such plan.

5. Prohibited and Restricted Uses. Any activity on or use of the Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities are expressly prohibited or are restricted as set forth below:
 - 5.1. Development Rights. To fulfill the Purpose of this Easement, Grantor hereby conveys to Grantee all development rights deriving from, based upon or attributable to the Property ("**Grantee's Development Rights**"), except any such rights described in the easements, rights of way and matters of record described in **Exhibit D**, attached hereto, and those expressly reserved by Grantor in this Easement, and the Parties agree that Grantee's Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose of this Easement, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.
 - 5.2. Subdivision. The Parties agree that the division, subdivision or de facto subdivision of the Property (including Minerals), whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. At all times the Property (including Minerals) shall be owned and conveyed as a single parcel which shall be subject to the provisions of this Deed. Ownership of the Property by joint tenancy or tenancy in common is permitted; provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide in any manner such undivided interests in the single parcel.
 - 5.3. Commercial and Industrial Activities. The Property may be used for the Recreational Uses and Agricultural Uses described in Paragraph 4, above, and for the uses permitted in the easements, rights of way and matters of record described in the attached **Exhibit D**, but shall not be used for industrial activities, or for commercial activities that are not allowed Recreational Uses or Agricultural Uses.
 - 5.4. Buildings or Other Structures. No buildings or structures shall be erected or placed on the Property, except to the limited extent allowed under Paragraph 4, above, and except for fencing allowed under Paragraph 5.13, below.
 - 5.5. Road Construction. No roads or driveways shall be constructed or permitted on the Property, except as provided in Paragraph 4.1, above, and except that road and driveways, and utilities may be constructed on the Property as follows:
 - 5.5.1. The Property is encumbered by an Easement Deed between North Village Reserve, Inc., a Colorado corporation, as grantor, and Brush Creek Holdings, LLC, a Colorado limited liability, as grantee dated July 27, 2007 and recorded on September 11, 2007 as Reception No. 578671 (the "**2007 Easement Deed**") which grants a non-exclusive perpetual easement for access, ingress, egress and installation of utilities. The

“**Temporary Easement**” area described in the 2007 Easement Deed may be utilized in the manner described in the 2007 Easement Deed. The Temporary Easement area shall not be relocated without the prior written approval of the Grantee. Any such relocation of the Easement Area shall be consistent with the Management Plan described above.

- 5.5.2. In the deed from North Village Reserve, Inc., to the Town, North Village Reserve, Inc., has reserved a non-exclusive perpetual easement for access, ingress, egress and installation of utilities (“**Reservation of Easement**”) in the location of the Temporary Easement area described in the 2007 Easement Deed to benefit property adjacent to this Property which is subject to U.S. Department of Agriculture, Forest Service, Ski Area Term Special Use Permit Auth ID: GUN699, expiration date 12/05/2048 (“**Forest Service Special Use Permit**”). The use of a portion of the Property as described in the Reservation of Easement is permitted. The Temporary Easement area shall not be relocated without the prior written approval of the Grantee. Any such relocation of the Easement Area shall be consistent with the Management Plan described above.
- 5.6. Trails, Trail Construction, Trail Facilities. Use of the Trails and construction and maintenance of the Trails and Trail Facilities is restricted as described in Paragraph 4.1, above.
- 5.7. Paving. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or other paving materials.
- 5.8. Utilities. Grantor may install, construct and maintain underground utilities for the uses permitted on the Property, but for no other uses including uses on other properties, except as allowed in Paragraph 5.5, above, and by the easements, rights of way and matters of record described in the attached **Exhibit D**.
- 5.9. Signs and Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except “no trespassing” signs, signs regarding the non-motorized low-impact recreational use of the Property, informational and outreach signs, and signs informing the public of the status of ownership and directing public traffic. No signs shall significantly diminish or impair the Conservation Values. Grantee must approve in advance in writing any signs on the Property. Notwithstanding anything to the contrary in this Paragraph 5.9, the signs described in Paragraph 3.4, above, and the signs permitted in the Management Plan, are permitted on the Property.
- 5.10. Mining.
- 5.10.1. No Mining. The drilling, exploration by geophysical and other methods, mining, extraction and operating for and producing from the Property, including the construction of any and all roads, pipelines, structures, equipment, tanks, storage facilities, ponds, evaporation pools or pits, utility lines, of any kind or description, and including all activities described as “oil and gas operations” in C.R.S. Sec. 34-60-103, as amended (collectively referred to as “**mining**”), of soil, sand, gravel, rock, stone, decorative stone, oil, natural gas, coalbed methane (including any

and all substances produced in association therewith from coalbearing formations), hydrocarbon, fuel, or any other mineral substance, of any kind or description (collectively referred to as “**Minerals**”), is prohibited on the Property, except as provided in this paragraph entitled “Mining”. Notwithstanding any of the foregoing to the contrary, soil, sand, gravel or rock may be extracted upon written notice to but without further permission from Grantee, so long as such extraction is solely for use on the Property for non-commercial purposes, is in conjunction with activities permitted herein, is accomplished in a manner which is consistent with the Purpose of this Easement, and does not substantially diminish or impair the Conservation Values. Any such extraction shall be limited to an area less than one-half (1/2) acre in size at any given time. Any area which is disturbed by extraction must be re-vegetated and restored to a natural condition promptly after completion of extraction.

- 5.10.2. The Minerals shall not be divided from or separated from ownership of the Property; at all times the Minerals shall remain in the same ownership as the remainder of the Property.
- 5.10.3. This Mining Paragraph 5.10 shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto.
- 5.11. Trash. The dumping or uncontained accumulation of trash or refuse on the Property is prohibited. If trash disposal is allowed at the Trailhead Grantor shall be responsible for supplying and maintaining bear-proof trash containers and promptly removing trash from the containers and the Property.
- 5.12. Hazardous Materials. The storage, dumping or other disposal of “**Hazardous or Toxic Materials**” or of non-compostable refuse on the Property is prohibited, except to the limited extent provided herein. For the purpose of this Easement “Hazardous or Toxic Materials” shall be taken in its broadest legal context and shall include any petroleum products as defined in ASTM Standard E 1527-05 and any hazardous or toxic substance, material or waste that is regulated under any federal, state or local law. Notwithstanding anything in this Easement to the contrary, the prohibitions in this Easement do not make or allow the Grantee or the Board to become an owner or operator of the Property, nor does it permit the Grantee or the Board to exercise physical or managerial control over the day-to-day operations of the Grantor or to control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Grantee may bring an action to protect the Conservation Values of the Property, as described in this Easement. (The prohibitions in this Easement do not impose liability on the Grantee or the Board for Hazardous or Toxic Materials, nor shall the Grantee or the Board be construed as having liability as a “responsible party” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”) as amended, or similar federal or state statutes.) Nothing in this paragraph shall prohibit the storage or use of agricultural chemicals or products on the Property, or use of chemicals or Hazardous or Toxic Materials as part of Grantor’s scientific research, provided that such storage and use does not pose a significant risk to

human health, and is in accordance with applicable laws, regulations and manufacturer's instructions, and provided that such use does not substantially diminish or impair the Conservation Values.

- 5.13. Fencing. All fencing on the Property, including all exterior boundary fencing, shall be compatible with the movement of wildlife across the Property as determined by the Colorado Division of Parks and Wildlife or its successor wildlife agency.
- 5.14. Motorized Vehicles. The use of motorized vehicles on the Property is prohibited except as may be necessary for Property management purposes by the Grantor, for construction of Trails and Trail Facilities, and for emergency purposes including firefighting, or for Easement monitoring and enforcement purposes by the Grantee, and except as permitted in the easements, rights or way and matters of record described in the attached **Exhibit D**.
- 5.15. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Commercial timber harvesting on the Property is prohibited.
- 5.16. Hunting. Grantor may permit hunting on the Property, subject to such restrictions as it deems appropriate, provided that any such activities shall be conducted in accordance with applicable laws and regulations, and pursued in a manner that does not substantially diminish or impair the Conservation Values.
6. Water Rights. No water rights are encumbered by this Easement. The Mt. Crested Butte Water & Sanitation District is the owner of the Malensek Ditch No. 5 which traverses the Property.
7. Responsibilities of the Grantor and the Grantee Not Affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:
 - 7.1. Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property, including any taxes imposed upon, or incurred as a result of, this Easement. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall promptly reimburse the Grantee for the same.
 - 7.2. Upkeep and Maintenance. The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, including maintenance of the Recreational Trails and trailheads, trash removal, and weed control and eradication to the extent it may be required by law, and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. The Grantee shall have no obligation for the operation, upkeep or maintenance of the Property.
 - 7.3. Insurance, Mortgages. The Grantor shall be responsible for the maintenance of reasonable comprehensive general liability insurance coverage on the Property. Grantor shall name the Grantee as an additional insured on such comprehensive

general liability insurance coverage and shall provide a certificate of such insurance to the Grantee upon the reasonable request of the Grantee. If the Grantor is a public entity, it may claim or assert protection from liability from claims arising from use of the Property, including use by the public, under the Colorado Governmental Immunity Act C.R.S. §24-10-101, *et seq.*, (the "Act") except that Grantor shall not claim or assert protection under the Act against the Grantee. Any mortgage or deed of trust which encumbers all or a portion of the Property shall be subordinate to the terms of this Easement and the foreclosure of any such mortgage or deed of trust shall not adversely affect the existence or continuing validity of this Easement.

- 7.4. Owner/Manager Liability. Nothing in this Easement shall be deemed to alter protections provided to the Grantee under C.R.S §33-41-103, or any subsequent legislation. Grantor and the Grantee specifically agree that the Grantor is both the owner and the manager of the Property, including the manager of recreational activities on the Property, and as provided in C.R.S §33-41-103(2)(d), the Grantee shall not be held liable for the Grantor's management of the Property for recreational or any other purposes.

8. Enforcement.

- 8.1. The Grantee shall have the right to prevent and correct violations of the terms of this Easement. If, after investigation, the Grantee finds what it believes is an unresolved violation, it may at its discretion take appropriate legal action. The Grantee shall immediately notify Grantor and the Board in writing of the nature of the alleged violation. Except when an ongoing or imminent violation could irreversibly diminish or impair the open space character, public recreation, wildlife habitat of the Property, the Grantee will give the Grantor sixty (60) days to correct the violation before filing any legal action and the Parties shall pursue resolution of the dispute through the mediation process described in this paragraph ("**Mediation Process**"). The Board shall in no event be required to participate in the Mediation Process. For purposes of this Easement the Mediation Process is as follows: (a) Upon notice from the Grantee to the Grantor of a potential violation of the Easement, both Parties agree to meet as soon as possible to resolve this difference; (b) If a resolution of this difference cannot be achieved at the meeting, both Parties agree promptly to meet with a mutually acceptable mediator to attempt to resolve the dispute as early in the sixty (60) day period as possible; (c) Grantor shall discontinue any activity which could increase or expand the alleged violation during the Mediation Process; and (d) Should mediation fail to resolve the dispute, the Grantee may, in its sole discretion, take appropriate legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. These rights are in addition to any rights as described in C.R.S. Sec. 38-30.5-101, *et seq.*, as amended from time to time. The failure of the Grantee to take immediate action shall not bar it from doing so at a later time.
- 8.2. Enforcement of the terms of this Easement shall be at the sole discretion of the Grantee. Any forbearance by the Grantee in the exercise of its rights under this

Easement shall not be deemed or construed to be a waiver by the Grantee of any term of this Easement or of any of the Grantee's rights under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. Grantor hereby waives any defense of laches, estoppel, or prescription, including the one year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.*

- 8.3. If the Grantee prevails in any action to enforce or defend the terms of this Easement, any costs incurred by the Grantee in enforcing the terms of this Easement against Grantor, including costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. If the court finds no violation or if Grantor prevails in any action to enforce or defend the terms of this Easement, then Grantor and the Grantee shall each bear their own expenses and attorney fees. The Grantor and the Grantee agree that this allocation of expenses is appropriate in light of the potential disparate financial incentives of the Grantor and the Grantee and the Grantee's public benefit mission.
9. Public Access. The general public shall have access to the Recreational Trails on the Property free of charge, subject to the easements, rights of way and matters of record described in the attached **Exhibit D**, subject to any reasonable restrictions approved by Grantor and Grantee necessary and appropriate to protect public health and safety, and including any temporary or seasonal restrictions necessary to protect the Wildlife Habitat Conservation Values described in the Recitals and described in greater detail within the Baseline Report, and to balance wildlife habitat needs with public recreation. The Grantor may choose to allow public access to portions of the Property off-trail in accordance with these same considerations.
10. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change to the Property resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm, avalanche and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such natural events. For purposes of this Easement, "natural event" shall not include acts of third parties. The Grantor shall be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Easement. Grantor understands that nothing in this Easement relieves the Grantor of any obligation or restriction on the use of the Property imposed by law.
11. Assignment of Easement.
- 11.1. This Easement is transferable by the Grantee, but the Grantee may assign its rights and obligations under this Easement only to an organization that (a) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) is authorized to acquire and hold conservation easements under Colorado law, (c) agrees in writing to assume

the responsibility imposed on the Grantee by this Easement, and (d) is approved in writing as a transferee by the Board in its sole discretion. The Grantee shall provide the Grantor and the Board with a written request to assign the Easement at least forty-five (45) days prior to the date of the assignment transaction..

- 11.2. The Board shall have the right to require the Grantee to assign its rights and obligations under this Easement to a different organization if the Grantee ceases to exist or for any reason fails or refuses to enforce the terms and provisions of this Easement; is unwilling, unable, or unqualified to enforce the terms and provisions of this Easement; or is unwilling or unable to effectively monitor the Property for compliance with this Easement at least once every calendar year. Prior to any assignment under this Assignment of Easement Paragraph 11.2, the Board shall consult with Grantee and provide Grantee an opportunity to address the Board's concerns. If the Board's concerns are not addressed to its satisfaction, the Board may require that Grantee assign this Easement to an organization designated by the Board that complies with Paragraph 11.1 (a), (b) and (c), above.
- 11.3. If the Grantee desires to transfer this Deed to a qualified organization having similar purposes as the Grantee, but Grantor or the Board has refused to approve the transfer, a court with jurisdiction shall transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on the Grantee by this Deed, provided that Grantor and the Board shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.
- 11.4. Upon compliance with the applicable portions of this Assignment of Easement Paragraph 11, the Parties shall record an instrument completing the assignment in the records of the county or counties in which the Property is located. Assignment of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances.
12. Transfer of Property. Any time the Property itself, or any interest in the Property, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee and the Board in writing at least forty-five (45) days prior to such transfer. The document of conveyance shall expressly refer to this Easement. The Grantor may be required to pay the Board an Additional Board Refund under Paragraph 13 below. Upon any transfer of the Property, or any portion thereof, Grantor shall have no further liability or obligations under this Easement with respect to the portion of the Property which is transferred, except to the extent such liability arises from acts or omissions occurring prior to the date of transfer.
13. Additional Board Refund. The Board's Grant has provided partial consideration for the Town's acquisition of fee title to the Property, associated water rights, if any, and/or partial real estate interest in the Property above and beyond this Easement; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the Property or associated rights ("Sale"), excluding any lease of the Property to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "**Additional Board Refund**"), in

addition to any payment that the Board may be entitled to receive under Paragraphs 11 and 12 above.

- 13.1. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale (which shall be defined as the fair market value of the property being sold in the Sale, minus direct transaction costs) ("**Net Proceeds**"). The Additional Board Refund shall be determined by: a) first dividing the Board's Grant amount (\$ _____) by the original purchase price for fee title to the Property (\$ _____) resulting in a ratio of _____%; b) then by multiplying the resulting ratio of _____% by the Net Proceeds; and c) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale. The Additional Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale.
- 13.2. Possible Exception to Refund Requirement. If a Sale occurs to a third party which is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board. (For example, if the Grantor proposed that the Grant project would include public access to the Property, and the Sale will result in substantially the same amount and type of public access, the Board will deem that a material change in the Grant project's scope has not occurred, and Grantor shall not be required to pay the Board an Additional Board Refund, unless another aspect of the Grant project has changed that reduces the Grant project's scope from that of the original Grant as approved by the Board).
14. Amendment of Easement. If circumstances arise under which an amendment to or modification of this Easement or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Easement so long as the amendment (a) is consistent with the Conservation Values and Purpose of this Easement, (b) does not affect the perpetual duration of the restrictions contained in this Easement, (c) does not affect the qualifications of this Easement under any applicable laws, (d) complies with Grantee's and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time), and (e) receives the Board's prior written approval. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. In order to preserve the Easement's priority, the Board may require that the Grantee obtain subordinations of any liens, mortgages, easements, or other encumbrances on the Property. For the purposes of the Board's approval under item (e) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Easement. Nothing in this paragraph shall be construed as requiring Grantee or the Board to agree to any particular proposed amendment.
15. Hold Harmless. To the extent allowed by law, Grantor shall hold harmless, indemnify, and defend the Grantee, the Board, and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of

each of them (collectively, “**Indemnified Parties**”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney’s fees, arising from or in any way connected with (1) injury or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless determined by a court of competent jurisdiction to be due solely to the negligent or intentional acts or omissions of any of the Indemnified Parties (in which case liability will be apportioned in accordance with Colorado law); (2) the obligations of Grantor and the Grantee specified herein and the obligations of the Grantee under the Enforcement Paragraph 8, above; and (3) the presence or release of Hazardous or Toxic Materials on, under or about the Property. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee or the Board, nor shall Grantee or the Board have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of CERCLA.

16. Termination of Easement.

- 16.1. Real Property Interest. This Easement constitutes a real property interest immediately vested in the Grantee, which the Parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement by the ratio of the value of the Easement at the time of this Grant to the value of the Property unencumbered by the Easement at the time of this Grant (the “**Donation Percentage**”). For the purposes of this Paragraph, the Donation Percentage of the Easement shall remain constant; the Parties agree that the Donation Percentage is _____ and No/100s percent (_____ %) of the value of the Property unencumbered by the Easement, as supported by the appraisal for the Easement.
- 16.2. Condemnation or Other Extinguishment. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party and the Board in writing when it first learns of such circumstances. Grantee is entitled to receive from the net proceeds of the condemnation, extinguishment or sale of the Property, the greater of (a) the Donation Percentage, or (b) the percentage that the Easement represents of the Property unencumbered by the Easement at the time of termination of the Easement (the “**Extinguishment Percentage**”). Grantee shall use its proceeds in a manner consistent with the Purpose of this Easement as provided in Treasury Regulation sections 1.170A-14(g)(6).
- 16.3. Change of Circumstances. In making this Grant the Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement in whole or in part. In addition, the inability of the Grantor, or Grantor’s heirs ,

successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for termination of this Easement in whole or in part.

17. Interpretation. This Easement shall be interpreted under the laws of the State of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose and to the protection of the Conservation Values.
18. Perpetual Duration. The easement created by this Easement shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.
19. Approvals. Certain activities herein are allowed only if the permission of the Grantee is first obtained. When approval of the Grantee is required, the Grantor must give notice to the Grantee of the intention to undertake any activity which requires approval but is otherwise permitted herein, and meet with the Grantee to discuss the estimated costs that Grantor will be responsible for paying as a result of the Grantee's review of Grantor's proposal. The notice shall inform the Grantee of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and must be deemed sufficient by the Grantee in its discretion for review of the proposed activity to constitute proper notice. The Grantee shall have forty-five (45) days from the receipt of the notice to review the proposed activity and to notify the Grantor of any objections thereto. Except as provided herein, where the Grantee's approval may be withheld in its discretion, the approval may be withheld only upon a reasonable determination by the Grantee that the action as proposed would be inconsistent with the Purpose of this Easement and would materially adversely impact the Conservation Values of the Property; the reason(s) for such determination shall be set forth with specificity by the Grantee in such written notice to Grantor. Where the Grantee's approval is required, Grantor shall not undertake the requested activity until Grantor has received the Grantee's approval in writing, and has paid the costs of Grantee described in this Paragraph. The Grantor shall be responsible for the reasonable costs of the Grantee associated with the review of any proposed approval under this Easement, including the reasonable costs for surveys, biological studies, appraisals, staff time and supplies, but excluding general overhead and indirect costs, unless the Parties agree otherwise in writing in advance for any particular approval. Any costs charged to Grantor shall be itemized in a statement provided to Grantor.
20. Notices. Any notices required by this Easement shall be in writing and shall be personally delivered or sent by prepaid Federal Express or other similar courier service specifying the earliest available delivery, or by prepaid certified mail, return receipt requested, to the Grantor, the Grantee and the Board at the following addresses, unless otherwise notified in the manner required above:

To the Grantor:

at the address shown above and to:

To the Grantee:

Crested Butte Land Trust
308 Third Street
P.O. Box 2224
Crested Butte, Colorado 81224

To the Board:

Executive Director
State Board of the Great Outdoors Colorado Trust Fund
303 East 17th Avenue, Suite 1060
Denver, CO 80203

21. Grantor's Title Warranty, Access. The Grantor warrants that it has good and sufficient title (subject to the matters shown on **Exhibit D** attached hereto), and legal and physical access to the Property based upon the Access Easement recorded as Reception No. _____, on January ____, 2015, in the records of the Gunnison County Clerk and Recorded (the "**Access Easement**"), that the Grantee has access to the Property for the Purposes described in this Easement, that any mortgages, deeds of trust or monetary liens encumbering the Property are subordinate to the terms of this Easement, and it hereby promises to defend these warranties against all claims from any persons claiming by through or under Grantor. The Parties intend that this Easement encumber the Property, including any and all soil, sand, gravel, oil, natural gas, fuel, rock, stone or any other mineral substance of any type or character on or thereunder, whether any such interest is now owned or is later acquired by the Grantor.
22. Grantor's Environmental Warranty. The Grantor warrants that it has no knowledge of a release or threatened release of Hazardous or Toxic Materials on the Property and promises to the extent allowed by law, defend and indemnify the Grantee and the Board, and the successors and assigns of each, against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from a breach of this warranty.
23. Grantor's Other Warranties. Grantor warrants that is duly authorized, properly organized and in good standing, and has taken all necessary actions to execute this Easement and this Easement is enforceable against Grantor in accordance with its terms. Grantor warrants that to its knowledge it is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse effect on the Property or this Easement.
24. Acceptance. As attested by the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement.
25. Recording. The Grantee shall record this instrument in timely fashion in the official records of Gunnison County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.
26. General Provisions.

- 26.1. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado. Venue for any dispute concerning this Easement shall be Gunnison County, Colorado.
- 26.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Grant to effect the Purpose of this Easement and the policy and purpose of C.R.S. §38-30.5-101, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 26.3. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, 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.
- 26.4. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 26.5. Joint Obligation. In the event the Property is owned by more than one owner, all such owners shall be jointly and severally liable for the obligations imposed upon Grantor by this Easement.
- 26.6. Non-Merger. Unless the Parties first expressly state in writing that they intend a merger of estates or interests to occur, and unless the Parties have also obtained the prior written consent of the Board approving such merger of estates or interests, then no merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement. If Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold of the Property), Grantee must first obtain the written approval of the Board. As a condition of such approval, the Board may require that the Grantee first transfer the Easement to another qualified organization consistent with the Assignment Paragraph 11, above.
- 26.7. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.
- 26.8. Termination of Rights and Obligations of Grantee. Provided that the Board has consented to a transfer of this Easement by the Grantee, the Grantee's rights and obligations under this Easement shall terminate upon transfer of the Grantee's interest in the Easement or Property, except that liability for acts or omissions occurring prior to the transfer shall survive the transfer.

- 26.9. 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 its construction or interpretation.
- 26.10. No Third-Party Beneficiaries. This Easement is entered into by and between the Grantor and the Grantee, and except as provided herein, is solely for the benefit of the Grantor, the Grantee and the Board, and their respective successors in interest and assigns, and does not create rights or responsibilities in any third parties beyond Grantor, Grantee and the Board.
- 26.11. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoors Colorado Trust Fund, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.
- 26.12. Authority to Execute. Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Easement, that the individual executing this Easement on behalf of said Party is fully empowered and authorized to do so, and that this Easement constitutes a valid and legally binding obligation of said Party enforceable against said Party in accordance with its terms
- 26.13. Recitals. The Recitals above are incorporated into and are part of this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF Grantor and the Grantee have executed this Deed of Conservation Easement to be effective as of the first date set forth above.

GRANTOR:

NORTH VILLAGE RESERVE, INC., a Colorado corporation,

By: _____

Its: _____

Accepted as Grantee:

CRESTED BUTTE LAND TRUST, a Colorado nonprofit corporation

by: _____
_____, President

attest: _____
_____, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this ____ day of January, 2015, by _____, as _____ and by _____ as _____, of the Crested Butte Land Trust, a Colorado nonprofit corporation

WITNESS my hand and official seal.

My commission expires: _____.

(SEAL)

Notary Public

Exhibit A – Description of Property
(2 pages)

GUNNISON COUNTY, COLORADO:

A tract of land being described as Parcel No. 1, in Special Warranty Deed recorded as Reception No. 539411 also being described as Parcel No. 2, in Quitclaim Deed recorded as Reception No. 544263, records of Gunnison County, Colorado; said parcel being a portion of the S1/2NE1/4 and N1/2SE1/4 of Section 14, Township 13 South, Range 86 West, 6th Principal Meridian, being more particularly described as follows:

Beginning at the S1/16 Corner common to Sections 13 and 14, T. 13 S., R. 86 W. of the 6th P.M., said point being monumented with a BLM Brass Cap; thence N01°49'09"E a distance of 1402.43 feet along the section line common to said Sections 13 and 14 to the 1/4 Corner common to said Sections 13 and 14; thence continuing N01°53'01"E along said common section line a distance of 840.00 feet; thence N89°30'49"W a distance of 374.88 feet to a point on the southerly boundary line of a parcel of land described in Book 584 at Page 248 of Gunnison County records; thence the following four (4) courses along the southerly boundary of said parcel: (1) 513.85 feet along the arc of said non-tangent curve to the left having a radius of 318.00 feet, a central angle of 92°34'57" and a chord which bears N83°57'02"W a distance of 459.74 feet; (2) thence 68.07 feet along the arc of a non-tangent curve to the right having a radius of 117.00 feet, a central angle of 33°19'56" and a chord which bears S65°54'58"W a distance of 67.11 feet; (3) thence N53°45'02"W a distance of 241.50 feet; (4) thence 129.18 feet along the arc of a non-tangent curve to the left having a radius of 187.00 feet, a central angle of 39°34'52" and a chord which bears N48°20'02"W a distance of 126.63 feet; thence N00°39'05"E a distance of 318.32 feet to a point on the north line of the SE1/4NE1/4 of said Section 14; thence N89°40'15"W a distance of 160.00 feet along the north line of the SE1/4NE1/4 to the NE1/16 Corner of said Section 14; thence N89°38'26"W a distance of 405.40 feet along the north line of the SW1/4NE1/4 of said Section 14 to the most northeasterly corner of a parcel of land described in Book 393 at Page 01, records of Gunnison County; thence the following six (6) courses along the easterly and southerly boundary of said parcel of land: (1) S36°18'35"E a distance of 194.66 feet; (2) thence 235.29 feet along the arc of said non-tangent curve to the left having a radius of 146.00 feet, a central angle of 92°20'07" and a chord which bears S21°06'25"W a distance of 210.64 feet; (3) thence 131.34 feet along the arc of a curve to the right having a radius of 210.00 feet, a central angle of 35°50'04" and a chord which bears S07°08'35"E a distance of 129.21 feet; (4) thence S10°46'25"W a distance of 305.50 feet; (5) thence 342.82 feet along the arc of a non-tangent curve to the left having a radius of 415.41 feet, a central angle of 47°16'59" and a chord which bears S12°53'35"E a distance of 333.17 feet; (6) thence S70°12'38"W a distance of 402.85 feet to a point on the west line of the E1/2SW1/4NE1/4 of said Section 14; thence S01°06'47"W a distance of 162.05 feet along the west line of the E1/2SW1/4NE1/4 to the C-W-E 1/64 of said Section 14; thence S01°03'55"W along the west line of the E1/2NW1/4SE1/4 of said Section 14 a distance of 964.17 feet; thence S90°00'00"E a distance of 312.53 feet; thence N26°31'44"E a distance of 66.05 feet; thence 283.83 feet along the arc a non-tangent curve to the left having a radius of 322.17 feet, a central angle of 50°28'40" and a chord which bears N63°14'51"E a distance of 274.74 feet to a point of non-tangent line; thence S63°18'35"E a distance of 1399.44 feet to a point on the south line of the NE1/4SE1/4 of said Section 14; thence N89°50'57"E along the south line of the NE1/4SE1/4 of said Section 14 a distance of 162.03 feet to the point of beginning (containing 92.72 acres, more or less)

EXCEPTING THEREFROM that portion of the above-described property encumbered by "The

Reserve” Deed of Conservation Easement granted by CBMR Real Estate, LLC, a Colorado limited liability company, to Colorado Open Lands, a Colorado non-profit corporation recorded on March 1, 2004 as Reception No. 539404, records of Gunnison County, Colorado (containing 44.08 acres, more or less).

Said parcel containing 48.64 acres, more or less.

Exhibit B – Map of Property

(Page 1 of 2)

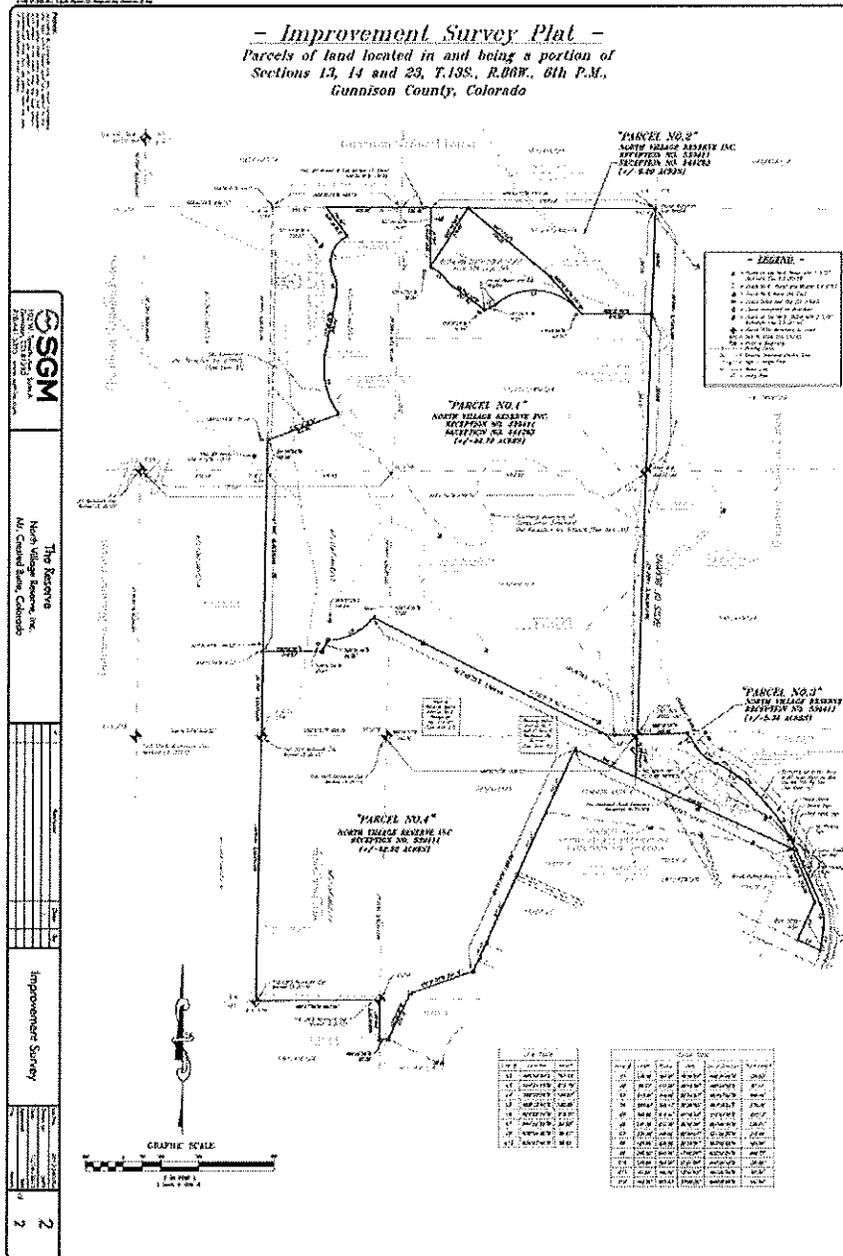


Exhibit B – Map of Property
(Page 2 of 2)

Exhibit C - Acknowledgment of Baseline Documentation Report

The undersigned, on behalf of the **NORTH VILLAGE RESERVE, INC.**, a Colorado corporation (original "Grantor"), **TOWN OF MT. CRESTED BUTTE**, a Colorado municipal corporation, (successor "Grantor") and a representative of the **CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation (the "Grantee"), acknowledge that the "**Promontory Property Baseline Documentation Report**", dated _____, and prepared by Dawn Reeder, Principal Biologist, Rare Earth Science, is an accurate representation of the biological and physical condition of the Property as of the date of conveyance of this Easement.

GRANTOR (original):

NORTH VILLAGE RESERVE, INC., a Colorado corporation,

By: _____

Its _____

GRANTOR (successor):

TOWN OF MT. CRESTED BUTTE, a Colorado municipal corporation

By: _____

Its: _____

GRANTEE:

CRESTED BUTTE LAND TRUST, a Colorado nonprofit corporation

By: _____

Andrea F. Johnston, Executive Director

Exhibit D – Exceptions to Title

1. Notice of Memorandum Agreement recorded October 13, 1998 as Reception No. 487733, between Crested Butte Mountain Resort, Inc., a Colorado corporation and High Country Citizen's Alliance, a Colorado nonprofit corporation.
2. Notice of Restrictions on Real Property recorded October 14, 1998 as Reception No. 487844.
3. "The Reserve" Deed of Conservation Easement by CBMR Real Estate, LLC, a Colorado limited liability company to Colorado Open Lands, a Colorado nonprofit corporation recorded March 1, 2004 as Reception No. 539404.
4. Easement Deed between North Village Reserve, Inc., a Colorado corporation and Brush Creek Holdings, LLC, a Colorado limited liability as more fully set forth in said document recorded September 11, 2007 as Reception No. 578671.
5. Ski Easement Deed between Brush Creek Holdings, LLC, a Colorado limited liability company and North Village Reserve, Inc., a Colorado corporation as more fully set forth in said document recorded September 11, 2007 as Reception No. 578672.
6. Lease between North Village Reserve, Inc., a Colorado corporation and Fantasy Ranch Horseback Adventures, LLC, a Colorado limited liability company as set forth in the instrument recorded December 29, 2011 at Reception No. 610393.
7. All Patent reservations as reserved in United States Patents recorded October 15, 1920 in Book 184 at Page 240; including: (a) Any vested and accrued water rights for mining, agriculture, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and (b) A right of way thereon for ditches or canals constructed by the authority of the United States.
8. Notice of Memorandum of Agreement recorded October 13, 1998 as Reception No. 487733, between Crested Butte Mountain Resort, Inc., a Colorado corporation and High Country Citizen's Alliance, a Colorado non-profit corporation.
9. Notice of Restrictions on Real Property recorded October 14, 1998 as Reception NO. 487844.
10. Any rights, interests, or claims, which may exist or arise by reason of the facts shown on Improvement Survey Plat dated December 10, 2013, prepared by Stephen L. Ehlers, Colorado L.S. No. 20133, including: (a) Overhead electrical lines encroaching the subject property along the easterly boundary line; (b) The fact that the fence along the easterly boundary line is not on the property line and encroaches the subject property; (c) Fence encroaching the subject property along the westerly boundary; (d) All existing trails, paths, and roads, as shown; (e) Fence encroaching the subject property along the northerly boundary, running transverse across the subject property; (f) Any Easement and Right of Way for Gothic Road as it passes through the subject property at the northeast corner.

11. Easement or Right of Way for Malensek Ditch No. 5.
12. Reservation of Easement by North Village Reserve, Inc., a Colorado corporation, in deed granted to the Town of Mt. Crested Butte, recorded on January ____, 2015 as Reception No. _____, Gunnison County, CO.

The following exceptions apply only to the Access Easement:

13. All Patent reservations as reserved in United States Patents recorded May 17, 1915, Book 184 at Page 17 including: (a) Any vested and accrued water rights for mining, agriculture, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and (b) A right of way thereon for ditches or canals constructed by the authority of the United States.
14. Terms and conditions in Easement Agreement between Crested Butte Mountain Resort, Inc., a Colorado corporation and the Town of Mt. Crested Butte, a Colorado home rule municipality as recorded September 12, 1996 in Book 790 at Page 535.
15. Right of way 80 feet in width for Gothic County Road as granted by Crested Butte Mountain Resort, Inc., a Colorado corporation to Town of Mt. Crested Butte, Colorado, a Colorado home rule municipality as described in Right of Way Deed Recorded September 12, 1996 in Book 790 at Page 540.
16. Terms and conditions of Amended Agreement and Notice of Relocated Easement as set forth in the instrument recorded September 8, 2005 at Reception No. 557956.