

RESOLUTION NO. 25

SERIES NO. 2016

RESOLUTIONS OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING THE IMPROVEMENTS
CONSTRUCTION AND REVOCABLE LICENSE
AGREEMENT WITH BANX LLC FOR 115 ELK
AVENUE

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 to the Town Council that the Town enter into an agreement for the Town's construction of certain improvements on private property at 115 Elk Avenue, and in the public right of way and sidewalk adjacent thereto, and grant a revocable license to encroach into such public right of way and sidewalk with such improvements to the record title owner of such property, Banx LLC; and

WHEREAS, the Town Council finds hereby that the Town entering into an agreement for the Town's construction of certain improvements on private property at 115 Elk Avenue, and in the public right of way and sidewalk adjacent thereto, and the Town granting a revocable license to encroach into such public right of way and sidewalk with such improvements with the owner of such property is in the best interests of the Town.

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

1. **Findings.** The Town Council finds hereby that the Town entering into an agreement for the Town's construction of certain improvements on private property at 115 Elk Avenue, and in the public right of way and sidewalk adjacent thereto, and the Town granting a revocable license to encroach into such public right of way and sidewalk with such improvements with the owner of such property is in the best interests of the Town.

2. **Authorization of Mayor or Mayor Pro Tem.** Based on the foregoing findings, the Town Council hereby authorizes the Mayor or Mayor Pro Tem to execute the "Improvements Construction and Revocable License Agreement" in substantially the same form as attached hereto as **Exhibit "A."**

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS
15th DAY OF August, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel
Glenn Michel, Mayor

ATTEST

Lynelle Stanford
Lynelle Stanford, Town Clerk



EXHIBIT "A"

Improvement Construction and Revocable License Agreement

[attach approved form here]

Bill Crank
town hall
349-5338

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:
Town of Crested Butte
Attn: Town Clerk
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224

IMPROVEMENTS CONSTRUCTION AND REVOCABLE LICENSE AGREEMENT

THIS IMPROVEMENTS CONSTRUCTION AND REVOCABLE AGREEMENT (this "Agreement") is made and entered into this 10th day of June, 2016, by and between the TOWN OF CRESTED BUTTE, COLORADO (the "Town"), a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and Banx LLC, ("Owner"), a Colorado limited liability corporation with an address of P.O. Box 1477, Crested Butte, CO 81224.

RECITALS:

- A. Owner is the fee title owner of certain real property commonly known as Block 20, Lot 24, 115 Elk Avenue, Crested Butte, Colorado 81224 or the "Silver Queen building," legally described in Exhibit "A" attached hereto (the "Premises").
- B. The Premises is bounded on the north side by certain public property (the "Public Property").
- C. Owner has requested that the Town construct and install for the benefit of Owner certain improvements on the Premises and the Public Property.
- D. The Town is willing to construct and install for the benefit of Owner certain improvements on the Premises and the Public Property, subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the covenants, terms, conditions and requirements set forth herein, the sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

AGREEMENT:

1. No Admission; Interpretation. The parties' agreement to the terms hereof shall in no manner be deemed an admission, express or implied, of (a) liability by either party to the other party or any third person, (b) any fact, or (c) the merits of the position taken by either party with respect to any matter. None of the provisions of this Agreement shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party

Bill Crank
Town Hall
349-5338

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WHEN RECORDED RETURN TO:
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Attn: Town Clerk
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having or being deemed to have structured or dictated such provisions. Each party acknowledges and agrees that its obligations contained herein are supported by independent consideration given by the other party as part of an arm's length transaction. Each party acknowledges and agrees that it has been represented by competent legal counsel in the negotiation and preparation of this Agreement.

2. **Construction of Improvements.** The Town agrees to construct the improvements in the locations described in **Exhibit "A"** attached hereto (the "**Private Improvements**"). The Private Improvements shall be constructed at the Town's sole cost and expense. Upon completion of the Private Improvements, the Town will notify Owner thereof in writing. Commencement of the Improvements shall occur within a reasonable amount of time following Owner's delivery of written notice to the Town to commence the same. The Town and Owner shall coordinate and cooperate in regards to the Town's performance of the construction and installation of the Improvements. Completion of the construction and installation of the Improvements shall occur within a reasonable amount of time following commencement thereof. Upon completion of the Improvements, the Town will notify Owner thereof in writing.

3. **Grant of License.** The Town hereby grants to Owner and its successors in interest a revocable license (the "**License**") to keep and maintain the improvements located on Public Property as depicted in **Exhibit "A"** (the "**Public Property Improvements**"; together with the Private Improvements, collectively the "**Improvements**") in the location set forth thereon. The License shall be subject to the following:

3.1. The License shall exist and continue until the happening of either the following events, which such event shall automatically terminate and extinguish the License: (a) the Public Property Improvements are removed or damaged such that such Public Property Improvements cannot be reasonably used in their present location; or (b) the Town Council finds at a regular, public meeting that (i) the Public Property Improvements must be removed in order to make the Public Property available for public use or for such other reason as determined by the Town Council in its sole discretion, or (ii) Owner is in default of this Agreement.

3.2. The License is made subordinate to the right of the Town to use the Public Property for any public purpose, including, without limitation, public pedestrian uses, surface and subsurface improvements and public utilities. In addition to the Town revocation rights set forth in Section 3.1, Owner agrees that if the Town subsequently determines to, without limitation, install, modify or change the grade of any street or sidewalk, or to modify, repair or install any underground utility, or to effect any other work in connection with any other public or utility improvement, or to use or occupy the area of the encroachment by the Public Property Improvements, then the License hereby authorized must be modified and the Public Property Improvements removed completely or otherwise relocated to a location acceptable to the Town, and the Public Property shall be restored to its pre-existing and/or unobstructed condition to the satisfaction of the Town at Owner's sole cost and expense. The Town's decision as to

the necessity of such public use, occupancy or improvements shall be final and binding upon Owner.

3.3. Upon notice to Owner of the Town Council's decision to revoke this License, the Public Property Improvements must be promptly removed. In the event that the Public Property Improvements are not so removed by Owner, the Town may remove the Public Property Improvements and restore the effected Public Property location to its original condition at Owner's sole cost and expense. In such case the Town shall have no responsibility for damage to the Public Property Improvements or Owner's other property, whether personal or real property, located on Public Property and the Premises, as the case may be. Owner shall immediately reimburse the Town such costs and expenses incurred by the Town in such removal.

4. **Ongoing Maintenance; Damage to Improvements.** Owner assumes and accepts sole responsibility for the maintenance, operation, upkeep and repair of the Improvements, which shall be performed only upon receipt of permits from the Town to the extent required by applicable law. The Town shall not be liable for any damage to the Improvements caused by the Town's operations, including, without limitation, snow removal, street or alley maintenance, street or alley repairs and improvements and utility installation, maintenance and repairs.

5. **Liability; Indemnification.**

5.1. In consideration for the Town's construction and installation of the Improvements, and the Town's granting of the License hereunder, OWNER WAIVES ALL CLAIMS AGAINST THE TOWN, ITS ELECTED OFFICIALS, EMPLOYEES, CONTRACTORS, AGENTS, INSURERS, INSURANCE POOLS AND ATTORNEYS (COLLECTIVELY, THE "**TOWN PARTIES**") FROM AND AGAINST ANY AND ALL LIABILITY FOR ANY CLAIM, SUIT, JUDGMENT, DAMAGE, INJURY, LOSS, COST, EXPENSE OR PENALTY OF ANY KIND OR NATURE WHATSOEVER, INCLUDING REASONABLE ATTORNEYS' FEES (TOGETHER, "**CLAIMS**") ARISING OUT OF OR IN CONNECTION WITH, WHETHER DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS AND THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS CONNECTED WITH THE TO BE REPLACED SIDEWALKS AND THE DESIGN, INSTALLATION, CONSTRUCTION AND PLACEMENT OF THE IMPROVEMENTS. THE TOWN SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES relating to the Improvements, their design, installation, construction and placement, or any loss, damage or injury resulting therefrom.

5.2. OWNER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE TOWN PARTIES FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH, WHETHER DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS AND THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS CONNECTED WITH THE TO BE REPLACED

SIDEWALK AND THE DESIGN, INSTALLATION, CONSTRUCTION AND PLACEMENT OF THE IMPROVEMENTS.

5.3. Owner's obligations hereunder shall survive the expiration or earlier termination of this Agreement.

6. **Force Majeure.** If the Town is delayed in commencing or completing construction and installation of the Improvements, as required herein, by reasons of any cause not within the Town's reasonable control or power, then the time for the Town to commence or complete construction and installation, as the case may be, shall be deemed extended by the period of time during which said cause of delay shall continue.

7. **Disclaimer of Warranties.** THE TOWN EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE IMPROVEMENTS, INCLUDING, WITHOUT LIMITATION, CLAIMS CONNECTED WITH THE DESIGN, INSTALLATION, CONSTRUCTION AND PLACEMENT OF THE IMPROVEMENTS, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Owner's obligations hereunder shall survive the expiration or earlier termination of this Agreement.

8. **Governmental Immunity.** Owner understands and agrees that the Town is relying on, and does 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 Town, its elected officials and employees.

9. **Subject to Laws.** This Agreement is subject to all State of Colorado and Town municipal laws as they now exist or may hereafter be amended.

10. **Representations by Owner.** Owner represents and warrants that: (a) it is duly qualified to do business and is in good standing in the State of Colorado; (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement; (c) the individual executing this Agreement has the full power and authority of Owner and each of its constituent members to do so; and (d) the Agreement does not violate any other obligation of Owner.

11. **Notices.** All notices required pursuant to this Agreement shall be deemed served upon depositing a certified letter, return receipt requested, in the United States mail, addressed to the party being served with such notice at the addresses set forth above, unless a request to mail to a different address is provided in writing to the other party.

12. **Prevailing Party.** In the event of any dispute between the parties in connection with this Agreement, the non-prevailing party shall pay the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and

expenses, incurred in such dispute. The parties' obligations hereunder shall survive the expiration or earlier termination of this Agreement.

13. **Entire Agreement; Amendment.** This Agreement represents the entire agreement of the parties respecting the subject matters addressed herein. This Agreement may be amended only in writing by properly approved and executed agreement.

14. **Successors and Assigns.** The rights and obligations of the parties shall inure to the benefit and burden to the parties' successors and permitted assigns.

15. **No Waiver.** No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

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

[Remainder of Page Intentionally Left Blank;
Signature Page(s) To Follow]

IN WITNESS WHEREOF, the parties have entered into this Agreement by their duly authorized representatives effective as of the date first written above.

TOWN:

TOWN OF CRESTED BUTTE, COLORADO
a Colorado home rule municipality

By: *Roland Mason*
Roland Mason, Mayor Pro Tem

Attest:

By: *Lynelle Stanford*
Lynelle Stanford, Town Clerk



OWNER:

Bany LLC
a Colorado *limited liability*

By: *Priscila Palhawa*
Name: *Priscila Palhawa*
Title: *owner 1/4 share*

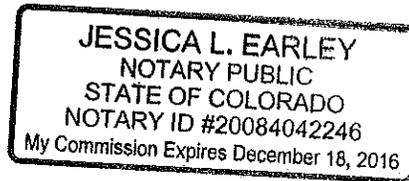
STATE OF Colorado)
COUNTY OF Gunnison) ss.

The foregoing Improvements Construction and Revocable License Agreement was acknowledged before me this 8 day of August, 2016 by Roland Mason, Mayor Pro Tem of the Town of Crested Butte, a Colorado home rule municipality, on behalf of said entity.

WITNESS my hand and official seal.
My commission expires: 12-18-2016

Jessica J Earley
Notary Public Signature

STATE OF Colorado)
COUNTY OF Gunnison) ss.



The foregoing Improvements Construction and Revocable License Agreement was acknowledged before me this 5 day of August, 2016 by Bony LLC, a Colorado LLC, on behalf of said entity.

WITNESS my hand and official seal.
My commission expires: 12-18-2016

Jessica J Earley
Notary Public Signature

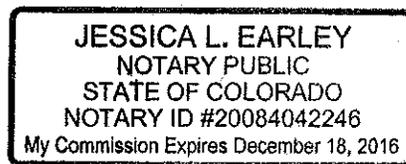


EXHIBIT "A"

Premises / Private Improvements Location and Public Property / Public Property Improvements

[attach drawing here]

Attach drawing / description depicting:

1. Premises.
2. Location on the Premises of Private Improvements.
3. Description of Private Improvements.
4. Location on the Public Property of Public Property Improvements.

ELK AVENUE

