



DEED OF CONSERVATION EASEMENT

17 ~~17~~ **THIS DEED OF CONSERVATION EASEMENT** ("Easement") is made this day of December, 2007, by HIDDEN MINE RANCH, LLC, a Colorado limited liability company, having an address of P.O. Box 3642, Crested Butte, Colorado 81224 ("Grantor"), in favor of the TOWN OF CRESTED BUTTE, COLORADO, a body politic and corporate, having an address of P.O. Box 39, Crested Butte, Colorado 81224 ("Town" or "Grantee").

RECITALS:

- A. Grantor is the owner of the fee simple interest in the property legally described in **EXHIBIT A** attached hereto and made a part of this Easement, which consists of approximately 757.68 acres of land in Gunnison County, Colorado (the "Grantor's Property").
- B. Grantor desires to convey to Grantee a conservation easement in accordance with the terms of this Easement, over a certain conservation area of the Grantor's Property. The conservation area of approximately 517.80 acres is described in **EXHIBIT B**, attached hereto and made a part of this Easement which is designated as the "Open Space Easement", except those parcels legally encumbered by those certain Deeds of Conservation Easement recorded on December 31, 2002 at Reception No. 526878, and on December 27, 2004 at Reception No. 549626 of the official records of Gunnison County (the "Conservation Area"). A trail proposed for use by the public, is approximately located in **EXHIBIT B** (the "Trail").
- C. The Conservation Area possesses recreational values, wildlife and plant habitat and other important nature features, scenic and recreational qualities, historic significance, and open space of great importance to Grantee, the people of the Town of Crested Butte, the people of the County of Gunnison, and the people of the State of Colorado. The Conservation Area is identified in the Crested Butte Area Plan as a preservation area.
- D. The preservation of open space is supported by the policies of Gunnison County and the Town of Crested Butte, as reflected in the Gunnison County Comprehensive Plan, the Crested Butte Land Use Plan dated April 6, 1996, and the Crested Butte Area Plan dated July 5, 2006.
- E. The use of the Trail for recreational purposes is supported by the policies of Gunnison County and the Town of Crested Butte, as reflected in the Gunnison County Trails Master Plan, and the Crested Butte Land Use Plan, dated April 6, 1996.



- F. Conservation of the Conservation Area by the grant of a conservation easement as set forth in this Easement will further the purpose of Colorado Revised Statutes (C.R.S.) §§38-30.5-101, *et seq.*, which provide in part for the establishment of conservation easements to maintain land "...in a natural, scenic or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity...."
- G. The Town is a governmental organization as described in §170(h)(3)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), and is qualified to receive grants of conservation easements as contemplated by C.R.S. §38-30.5-104(2).
- H. The scenic and open space values, the characteristics of the Conservation Area and its current use, and current developed features of the Conservation Area and the Trail, if any, as of the date of this Easement are to be described in a Present Condition Report which will be prepared by Grantee with the cooperation of Grantor no later than September 1, 2008. Said values, characteristics and features are hereinafter described as the conservation values of the Conservation Area (the "Conservation Values"). This report shall be reviewed and executed for acknowledgement of accuracy by Grantor and Grantee. The report will be used by Grantee to assure that any future changes in the use of the Conservation Area will be consistent with the terms of this Easement. However, the report is not intended to preclude the use of other evidence to establish the present condition of the Conservation Area if there is a controversy over its use.
- I. Grantor intends to make a charitable gift of the property interest conveyed by this Easement to the Town, in accordance with the requirements of §170(h) of the Code, for the purposes of ensuring that, under the Town's perpetual stewardship, (i) the Conservation Values of the Conservation Area will be conserved and maintained forever, uses of the Conservation Area that are inconsistent with the Conservation Values will be prevented or corrected, and (ii) trail access to the public over the Trail will be provided in accordance with the terms of this Easement.
- J. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Conservation Area for the benefit of this and future generations, simultaneously acknowledging that the Grantor intends to convey a recreational easement to the Town for recreational use of the Trail, which use shall be subject to the terms of this Conservation Easement.

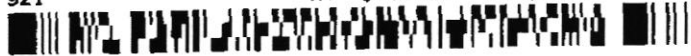


NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Grantor hereby voluntarily grants and conveys to the Grantee, and Grantee voluntarily accepts (i) a perpetual conservation easement in gross over, on and across the Conservation Area, an immediately vested interest in real property defined by §§38-30.5-101, *et seq.*, of the nature and character described in this Easement, for the purpose of maintaining and forever conserving the Conservation Values of the Conservation Area subject to an easement over, on and across the Trail for the purpose of allowing public access over the Trail in perpetuity.

1. Purpose. The purpose of this Easement is to conserve and maintain in perpetuity the Conservation Values of the Conservation Area. It is also the purpose of this Easement to acknowledge the use of the Trail by the public without charge, except as allowed in Subparagraph 2.n., for certain passive recreation uses, as are described herein, that are consistent with the Conservation Values of the Conservation Area. It is acknowledged and agreed that, except as specifically permitted herein, use of the Trail by motorized vehicles is inconsistent with the Conservation Values.

2. Prohibited and Permitted Acts. Any activity on or use of the Conservation Area or Trail inconsistent with the purpose of this Easement is expressly prohibited. Subject to the foregoing, and without limiting the generality of any of the foregoing, Grantor and Grantee hereby acknowledge and agree:

- a. Use of Trail.** The Trail shall be used by the public each year during the time period of May 1 through October 31. The use of the Trail shall be limited to pedestrian, equestrian and biking uses; provided, however, that in no event shall the use of the Trail violate the terms of this Easement.
- b. Restricted Hours.** There shall be no use of the Trail by the public between the hours of 9:00pm and sunrise.
- c. Timber Harvesting.** Timber harvesting on the Conservation Area, and timber harvesting which causes erosion or other damage to the Conservation Area, is prohibited. Notwithstanding the foregoing, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage and to maintain the use of the Trail.
- d. Mining.** The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance on the Conservation Area, or on Grantor's Property which interferes with the enjoyable use of the Trail, is prohibited, except for the construction and maintenance of the Trail.
- e. Trash.** The dumping or accumulation of any kind of trash or refuse on or within view of the Conservation Area is prohibited.



- f. **Pets.** No domesticated animals other than dogs and horses shall be permitted on the Trail. All dogs on the Trail shall be on a leash. All dog owners shall pick up after their dogs. There are many deer in the vicinity of the Conservation Area and no dogs shall be allowed to chase or otherwise harass the deer.
- g. **Overnight Use.** There shall be no day or overnight camping on the Conservation Area, except for the owners and their invitees of Hidden Mine Ranch Subdivision.
- h. **Motorized Vehicles.** No motorized vehicles are permitted on the Conservation Area, except that (i) motorized wheelchairs and similar devices used by individuals to whom the Americans with Disabilities Act would apply are allowed; (ii) trail maintenance vehicles are permitted; (iii) four wheel drive vehicles are permitted to be used for noncommercial purposes by the Hidden Mine Ranch Subdivision owners and their invitees on any existing roads as allowed by the Hidden Mine Ranch Owner's Association; and (iv) off highway vehicles, including snowmobiles, are permitted to be used for noncommercial purposes by the Hidden Mine Ranch Subdivision owners and their invitees on the existing roads and trails as allowed by the Hidden Mine Ranch Owners' Association, but excluding the trail created by the Recreation Easement entered into by the parties.
- i. **Grantor's Property.** The public shall have the right of access only on the Trail and shall have no right of access on or across any portion of Grantor's Property, including the remainder of the Conservation Area, other than the Trail. Statutory and common law rules of trespass shall apply for any member of the public who leaves the Trail and enters Grantor's Property, and nothing in this Easement shall be construed to limit Grantor's right to bring trespass actions against individuals who do so.
- j. **Subdivision.** Any legal or *de facto* division or subdivision of the Conservation Area, whether by physical or legal process, is prohibited. By executing this Easement, Grantor is waiving and surrendering their right to develop the Conservation Area. Neither the Grantor nor its assigns, successors or affiliated entities shall be allowed to use the Conservation Area in any manner to increase or otherwise affect the density of development on any adjacent or other parcel within Gunnison County.
- k. **Construction of Buildings and Other Structures.** The construction or reconstruction of any building, structure, sign or billboard in the Conservation Area, except those existing on the date of this Easement



and identified in the Present Condition Report, is prohibited, except as specifically allowed herein. The existing historic cabins on the Conservation Area may be restored, maintained and used for recreational use only, without utilities, and not for residential use, as allowed by the Hidden Mine Ranch Owners' Association.

- l. Roads.** No portion of the Conservation Area shall be improved for roadway use, paved, or otherwise covered with concrete, asphalt, or any other paving material.
- m. Fences.** Grantor or Grantee may build a fence to delineate the perimeter of the Trail. No such fence which is approximately parallel to the Trail shall be constructed within fifty feet (50') from the centerline of the Trail. Any such fence which crosses the Trail shall be appropriately gated at the Trail to allow for public access.
- n. Residential or Industrial Activity.** No residential, commercial or industrial uses shall be allowed on the Conservation Area, other than *de minimis* recreational commercial use of the Trail with the prior written consent of Grantee.
- o. Utility Corridors.** New water, electric, telephone or other public or private utility corridors and improvements, including without limitation, pipelines, transmission lines or other similar structures in the Conservation Area, are prohibited except as are necessary to maintain and improve the Conservation Values of the Conservation Area.
- p. Hazardous Materials.** The storage, dumping or disposal on the Conservation Area of any hazardous or toxic substance or material which is regulated under any federal, state, or local law (collectively, "Hazardous Materials") is prohibited.
- q. Surface Disturbance.** Except for construction, maintenance or repair of the Trail, any alteration of the surface of the Conservation Area, including without limitation, the movement, excavation or removal of soil, sand, gravel, rock, peat or sod, is prohibited.
- r. Conservation Practices.** The Conservation Area including the Trail shall be managed in accordance with good conservation practices.
- s. Noise.** Grantee shall enforce noise regulations for the Trail consistent with noise regulations enforced within the incorporated boundaries of the Town of Crested Butte.



- t. **Trail Use.** The Grantee of any recreational easement for use of the Trail shall adopt rules and regulations for the use of the Trail which incorporate, at a minimum, the usage limitations for the Trail set forth in this Easement.

3. Grantee's Rights. To accomplish the purpose of this Easement the following rights are hereby conveyed to Grantee:

- a. To preserve and protect the Conservation Values of the Conservation Area.
- b. To periodically enter upon the Conservation Area to monitor compliance with the terms of this Easement, fulfill Grantee's obligations under this Easement and otherwise enforce the terms of this Easement; provided, however, that Grantee's entry onto the Conservation Area shall not unreasonably interfere with Grantor's use and quiet enjoyment of Grantor's Property.
- c. To prevent any activity on or use of the Conservation Area from occurring or continuing that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Conservation Area which may be damaged by any inconsistent activity or use.

4. Responsibilities of Holder of the Trail Easement. In order to ensure that the public complies with the terms of this Easement, the holder of any recreational easement for use of the Trail, or its designee ("Holder of the Recreation Easement"), shall have the following responsibilities with regard to enforcement of the terms of this Easement, and maintenance of the Trail after it is constructed:

- a. Clearly mark the Trail and construct signage informing the public that public access is limited to the Trail only.
- b. Periodically monitor the Trail with sufficient frequency to ensure compliance with the terms of this Easement.
- c. Post at the beginning of the Trail, signs stating the regulations set forth in this Easement regarding use of the Trail including, but not limited to, the following regulations: (i) the time period for use of the Trail and the restricted hours of use; (ii) that all dogs must be on a leash and all dog owners must pick up after their pets; (iii) that no motorized vehicles are allowed (except as provided in this Easement); (iv) that all trash must be carried out; (v) that there is no overnight use of the Conservation Area permitted; (vi) that use of the Trail is subject to this Easement; and (vii) the Trail is located within private property and users failing to stay on the Trail may be prosecuted for trespassing.

- d. Provide trash receptacles at the beginning of the Trail and empty such trash receptacles as needed. Grantee shall be responsible for general trash and debris clean-up and removal on the Trail, and reasonably extending onto the Conservation Area.
- e. Clear the Trail of horse manure and dog waste as is reasonably necessary.
- f. Maintain the Trail to prevent erosion.
- g. Meet as necessary with Grantor and Grantee to discuss the need for additional signage and/or other necessary actions to require compliance with the terms of this Easement by the Holder of the Recreation Easement or the public. Grantee and the Holder of the Recreation Easement shall take reasonable steps to respond to Grantor's requests with regard to actions necessary to require compliance with the terms of this Easement.

5. Rights Retained by Grantor.

- a. Grantor retains the right to perform any act not specifically prohibited or limited by this Easement and which is not inconsistent with the Conservation Values of the Conservation Area or public use of the Trail. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on Grantor's Property, except on the Trail, the right to sell or otherwise transfer the Grantor's Property (including the Conservation Area) to anyone Grantor chooses, and the right to develop Grantor's Property in any manner that is not inconsistent with the terms of this Easement.
- b. Grantor shall have the right to enforce all of the terms of this Easement.
- c. In the event that there is a violation of this Easement or there are continuing occurrences of violations of this Easement, Grantor shall deliver written notice to Grantee describing such violations(s). Grantee shall have thirty (30) days to cure such violation(s) or prevent further occurrences of continuing violations and enforce the terms of this Easement. In the event such violation has not been cured or such continuing violations have not ceased within such thirty (30) day period, Grantor shall have the right to exercise either or both of the following remedies:



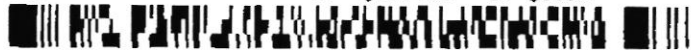
- (i) Grantor shall have the right to close off and prohibit public access to the Trail until such time as the violation is cured or the continuing violations have ceased; and
- (ii) Grantor shall have the right to seek preliminary and permanent injunctions, declaratory action, mandamus action, specific performance and/or other equitable relief available to Grantor.

6. **Trail Construction.** The Trail will be constructed to a width of no more than 36 inches, maintained and repaired by Grantee, the Holder of the Recreation Easement, or its designee.

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specifically set forth herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Conservation Area. Additionally, unless otherwise specified herein, nothing in this Easement shall require Grantor or Grantee to take any action to restore the condition of the Conservation Area after any Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Conservation Area imposed by law. Among other things, this shall apply to:

- a. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Grantor's Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement. Grantor shall furnish Grantee with satisfactory evidence of payment of taxes upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon fifteen (15) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate. Any such payment shall be repaid by Grantor within 90 days after payment and shall bear interest until paid by Grantor at the rate of eighteen percent (18%) per annum.
- b. **Liability.** To the maximum extent allowed by law, Grantor, Grantee and the Holder of the Recreation Easement shall be entitled to the rights and protections provided by C.R.S. 34-41-101, or any substitute legislation.

8. **Enforcement.** Grantee shall have the obligation to enforce and to prevent and correct or require correction of violations of the terms and purpose of this Easement by the public. Grantee or its designee shall periodically monitor the Conservation Area at sufficient intervals to enforce compliance with the terms of this Easement. In addition, if Grantee finds what it believes is a violation by Grantor, Grantee shall notify Grantor in



writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Conservation Area to its condition prior to the violation, or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, or if no written explanation is provided to Grantee, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity which could continue, increase, or expand the alleged violation during the negotiation and mediation process. Should mediation fail to resolve the dispute within sixty (60) days of Grantee's notice to Grantor of the alleged violation, or by such other date as the parties may mutually agree, the parties may take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an order or injunction to require Grantor to restore the Conservation Area to the condition that existed prior to the violation. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of scenic or environmental values. Notwithstanding any requirement outlined herein, if either party, in its sole and absolute discretion, determines that there is imminent harm or danger to Grantor's Property, the Conservation Area or the Conservation Values, then that party may request a court of competent jurisdiction (via an *ex parte* hearing if necessary) to issue an injunction to stop it, temporarily or permanently. The failure of either party to discover a violation or to take immediate legal action shall not bar that party from doing so at a later time.

9. Costs of Enforcement. Any costs incurred by Grantee in successfully enforcing the terms of this Easement against Grantor, including without limitation, costs of suit, expert and other witness fees 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 Grantor prevails in any action to enforce the terms of this Easement, and there is a finding that Grantee's actions or claims were groundless or frivolous, as defined in C.R.S. 13-17-101, *et seq.*, or its replacement provisions, Grantor's costs of suit, including without limitation, expert and other witness fees and reasonable attorneys' fees, shall be borne by Grantee.

10. Party's Discretion. Enforcement of the terms of this Easement shall be at the reasonable discretion of either party, and any forbearance by a party to exercise its rights under this Easement in the event of any breach of any term of this Easement by the other party shall not be deemed or construed to be a waiver by the forbearing party of such term or of any subsequent breach of the same or any other term of this Easement or any of the forbearing party's rights under this Easement. No delay or omission by a party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

11. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription, and agrees that the one-year statute of limitations provided



under C.R.S. 38-41-119, or any substitute legislation, does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute..

12. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, rehabilitation, operation, upkeep, and maintenance of Grantor's Property. Grantor shall keep Grantor's Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall not place or cause to be placed any voluntary liens or other encumbrances on Grantor's Property, except those that are by law or by express terms subordinate to this Easement.

13. Termination of Easement. Subject to Subparagraph 26.m. if at the joint request of Grantor and Grantee, a court with jurisdiction determines that conditions on or surrounding the Conservation Area have changed so much that none of the Conservation Values can be fulfilled, the court may terminate this Easement. The total loss of all the Conservation Values are the only grounds under which this Easement can be terminated. Each party shall promptly notify the other when it first learns of such circumstances. Upon such termination, Grantee may use the endowment funds associated with this Easement, if any, for purposes consistent with Grantee's organizational mission. Grantor and Grantee agree that the granting of this Easement immediately vests Grantee with a property right, and the fair market value of this property right is a percentage of the fair market value of Grantor's Property. This percentage shall be set forth in a real estate appraisal issued prior to February 1, 2008, a copy of which shall be placed on file with both parties and by this reference made a part hereof. This percentage reflects the value used to calculate the deduction for federal income tax purposes allowable by reason of this Easement, pursuant to Section 170(h) of the Code, as amended, whether or not Grantor claims any deduction for federal income tax purposes. This percentage will change to reflect any new percentage which may be established by the Internal Revenue Service. Grantor and Grantee further agree that this percentage shall remain constant, so that should this Easement be extinguished, be sold for public use, leased or taken for public use, or terminated, Grantee shall be entitled to a portion of the proceeds from any such extinguishment, sale, lease, exchange, involuntary conversion, or condemnation award. Grantee's share of the proceeds shall be the aforementioned percentage of the value of Grantor's Property at the time of such extinguishment, sale, lease, exchange, involuntary conversion, or condemnation. Grantee's use of the proceeds shall comply with Treasury Regulation §1.170A-14(g)(6)(i).

14. Condemnation. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain. Grantee shall be entitled to compensation in proportion to the values set forth in Paragraph 15 below, unless otherwise provided by Colorado or Federal law at the time.

15. Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value determined by multiplying the fair market value of Grantor's Property unencumbered by the Easement by the percentage referenced in Paragraph 13 above.



16. Assignment and Transfer by Grantee. Grantee's rights under this Easement may be assigned or transferred only with Grantor's prior written consent, which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and (b) authorized to acquire conservation easements under Colorado law. As a condition of such transfer, Grantee shall require that the Conservation Values that this Easement is intended to advance continue to be carried out. If Grantee ceases to exist, materially breaches its obligation under this Easement, or for any reason unreasonably fails or refuses to enforce the terms and provisions of this Easement, following at least thirty (30) days written notice to Grantee, Grantor may petition a court with jurisdiction to transfer this Easement to another qualified organization that agrees to assume responsibility to enforce the terms and provisions of this Easement.

17. Transfer of the Property by Grantor. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of Grantor's Property, including, without limitation, a leasehold interest. Grantor shall notify Grantee in writing within five (5) business days after closing using the form in **EXHIBIT C** attached hereto to include a copy of the new ownership deed. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

18. Perpetual Duration. The easement created by this Easement shall be a servitude running with Grantor's Property in perpetuity. 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 successors, assigns, licensees, lessees and guests.

19. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally, transmitted by facsimile, or sent by first class, certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor: Hidden Mine Ranch, LLC
P.O. Box 3642
Crested Butte, CO 81224
FAX: (970) 349-_____

with a copy to:
Cliggett & Associates, P.C.
P.O. Box 867
Gunnison, CO 81230
Fax: (970) 641-4418



To Grantee: Town of Crested Butte
P.O. Box 39
Crested Butte, CO 81224
FAX: (970) 349-6626

or to such other address as either party from time to time shall designate by proper notice to the other.

20. Present Condition Report. The Parties agree that the provisions of Recital H. are enforceable provisions of this Easement. Grantee, at its expense, has caused a survey showing the Conservation Area to be performed. A copy of the survey shall be provided to Grantor prior to the time of execution hereof. Grantor shall, at its expense, cause the corners of the Conservation Area to be monumented, and the locations of all roads existing on the Conservation Area as of the execution date of this Easement, to be surveyed by global positioning systems and located on a map, prior to October 1, 2008.

The parties further agree that, in the event a controversy arises with respect to the condition of the Conservation Area as of the conveyance date of this Easement, or compliance with or violation of any term or provision of this Easement, the parties may use the Present Condition Report and any other relevant or material documents, surveys, reports, and other information to assist in resolving the controversy.

21. Subsequent Liens on Grantor's Property. No provisions of this Easement should be construed as impairing the ability of Grantor to use Grantor's Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Easement.

22. No Merger. No merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.

23. Grantor's Representations and Warranties.

a. Grantor warrants that Grantor has good and sufficient title to Grantor's Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year, and hereby promises to defend title to Grantor's Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

b. Grantor represents and warrants that to the best of its knowledge:

(i) No Hazardous Substance exists or has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across Grantor's Property, and that there are not now any underground storage tanks located on Grantor's Property;



(ii) Grantor and Grantor's Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to Grantor's Property and its use;

(iii) There is no pending or threatened litigation in any way affecting, involving, or relating to Grantor's Property; and

(iv) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulations, or requirement applicable to Grantor's Property or its use.

24. Acceptance. Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement.

25. Recording. Grantee shall record this instrument in a timely fashion in the official records of Gunnison County, and may re-record it at any time as may be required to preserve Grantee's rights in this Easement.

26. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

b. Liberal Construction. Any general rule of construction to the notwithstanding, this Easement shall be liberally construed in favor of the grant of this Easement and the policy and purpose of CRS. §38-30.5-101 *et seq.* as amended, or any substitute legislation. 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.

c. 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 provision 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.

d. 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.

e. No Forfeiture. Nothing contained herein shall result in a forfeiture or reversion of Grantor's title in any respect.



f. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of that party's interest in the Easement or Grantor's Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

g. Captions. The captions in this Easement 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.

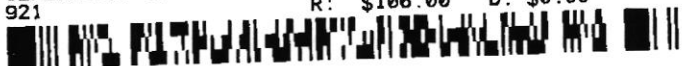
h. Authority. The parties each covenant and warrant that it has the proper authority to enter into this Easement.

i. No Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor and Grantee, and their respective heirs, beneficiaries, successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor or Grantee.

j. Change of Conditions. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued conservation of the Conservation Area or public use of the Trail, and shall not constitute grounds for terminating this Easement.

k. Code Enforcement. If any provision(s) of this Easement are found to violate the Code, or any of the regulations promulgated thereunder, more specifically if any provision(s) would invalidate Grantor's state or federal tax deductions, credits or other benefits, they are hereby deemed to be void *ab initio* and of no force or effect.

l. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will confer a private benefit to the Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-1(h)(3)(i)), or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws, except as provided in Paragraph 13, or Subparagraph 26.k. Any amendment must be consistent with the purpose of this Easement and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of Gunnison County. Either party shall have the right to charge



a reasonable fee to the other party for time and costs associated with any amendment requested by the other party.

m. Good Faith. Both parties shall act in good faith with each other when performing the terms and obligations of this Easement.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement to be effective as of the day and year first above written.

GRANTOR:

HIDDEN MINE RANCH, LLC,
a Colorado limited liability company

By: [Signature]
Clifford Michael Higgins, Manager

GRANTEE:

TOWN OF CRESTED BUTTE,
COLORADO, a body politic and corporate

By: [Signature]
Alan Bernholtz, Mayor

ATTEST: [Signature]
Eileen Hughes, Town Clerk

(SEAL)



STATE OF COLORADO }
County of Gunnison } ss.

The foregoing instrument was acknowledged before me this 17th day of December, 2007, by Clifford Michael Higgins as Manager of Hidden Mine Ranch, L.L.C. a Colorado limited liability company.

Witness my hand and official seal.



[Signature]
Notary Public
My commission expires: 6/21/2010

STATE OF COLORADO }
County of Gunnison } ss.

The foregoing instrument was acknowledged before me this 17 day of December, 2007, by Alan Bernholtz as Mayor and Eileen Hughes as Clerk of the Town of Crested Butte, Colorado.

Witness my hand and official seal.

(SEAL)



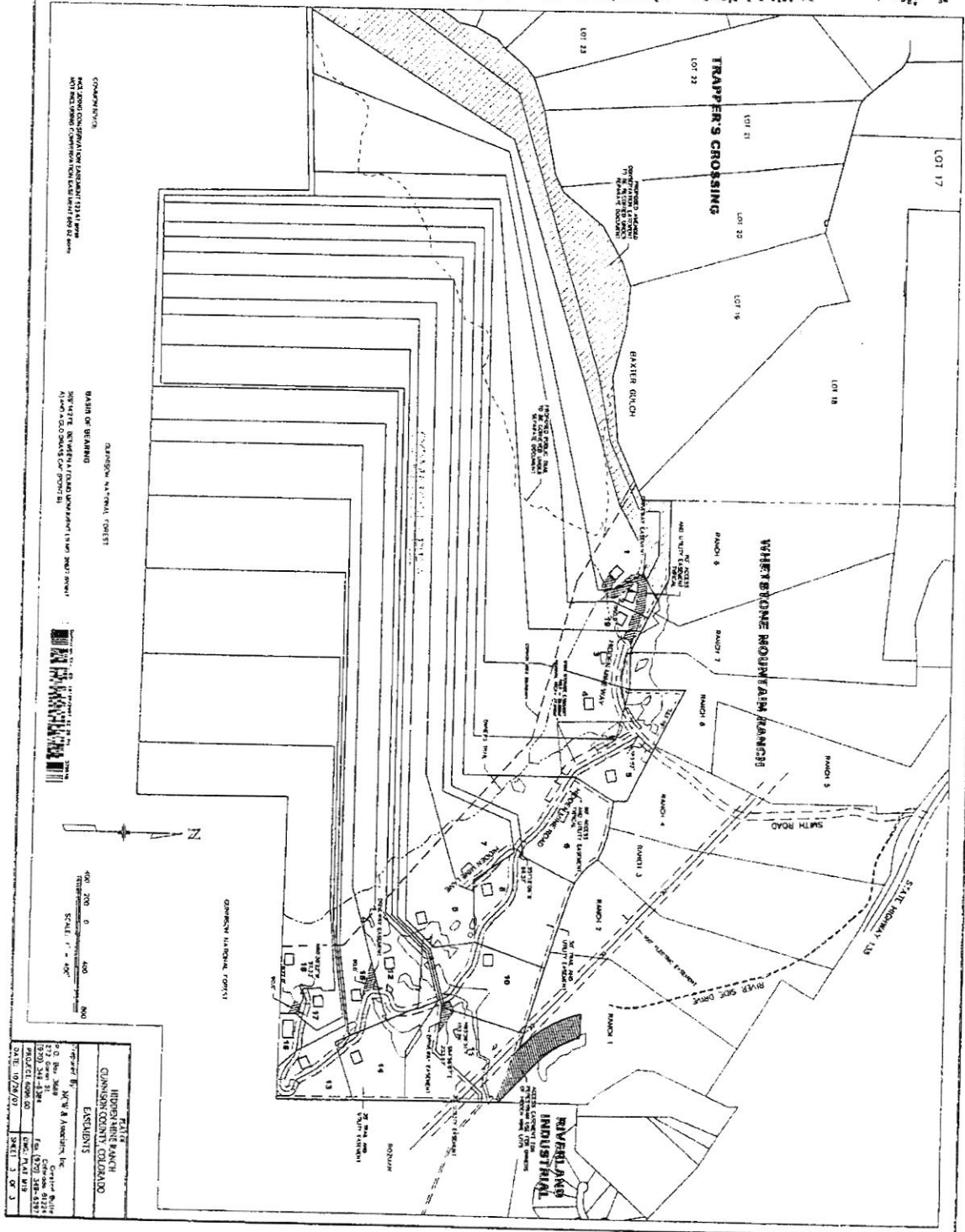
My Commission Expires 07/16/2011

Curmer H Beal
Notary Public
My commission expires: 7/16/2011

After Recording Please Return to:
John D. Belkin, Esq.
P.O. Box 2919
Crested Butte, CO 81224



EXHIBIT A (page 3 of 3)



12/20/2007 02:23 PM
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EXHIBIT B



EXHIBIT C

Sample Notice of Transfer of Property

To: Town of Crested Butte ("Grantee")
From: Hidden Mine Ranch, a Colorado limited liability company, LLC ("Grantor")

Pursuant to Paragraph 18 of the Deed of Conservation Easement dated December ____, 2007, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in Grantor's Property legally described in **Exhibit A** attached hereto effective **[insert date of closing]** to **[insert name of new Grantor]**, who can be reached at **[insert name, legal address, phone and fax number]**. Also pursuant to Paragraph 18 of the aforementioned Conservation Easement, a copy of the new ownership deed is attached.

GRANTOR:
