

**BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO**

**RESOLUTION NO: 11- 15**

**A RESOLUTION GRANTING AN EXEMPTION FOR A DIVISION OF LAND FROM  
THE DEFINITION OF THE TERMS "SUBDIVISION" AND "SUBDIVIDED LAND";  
ESTATE OF P.C. KLINGSMITH; GUNNISON COUNTY RESOLUTION NO: 2008-18**

WHEREAS, on May 9, 2008 the Board of County Commissioners of the County of Gunnison, Colorado (herein the "Board") granted an exemption for a division of land from the definition of the terms "subdivision" and "subdivided land" for the Klingsmith Parcel through Resolution No: 2008-18 which was recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on May 13, 2008, bearing Reception No: 583874 (herein the "Exemption"); and

WHEREAS, the Exemption conditionally divided from the real property identified in Appendix "A" attached hereto and incorporated herein (the "Entire Parcel") a parcel identified in Appendix "B" attached hereto and incorporated herein (the "Klingsmith Residence Tract"); and

WHEREAS, the Board, placed in Resolution No: 2008-18 the following conditions for granting the Exemption; and

"1. The division of the parcel identified in Appendix A into two separate parcels identified in Appendix B, attached hereto and incorporated herein, is exempt from the terms "subdivision" and "subdivided land" ONLY for the purpose of making available the resultant parcels for security for financing for immediate health care and elderly care for a member of the ownership family (i.e. a financing situation could foreclose on a resultant parcel).

2. No portion of the parcel identified on Appendix A shall be separately conveyed (except as identified in paragraph 1 above) unless and until the formal subdivision process is completed and approved. If this paragraph 2 is violated, this Resolution shall be null and void and of no effect", (herein the "Resolution No: 2008-18 Conditions"); and

WHEREAS, the Board has been informed that, despite the Resolution No: 2008-18 Conditions, the Klingsmith Residence Tract has been used as security for financing several personal loans and not specifically for financing immediate health care and elderly care of a member of the ownership family; and

WHEREAS, the Board has also been informed that, despite the Resolution No: 2008-18 Conditions, the formal subdivision process has not been initiated nor are there any funds currently available to initiate the subdivision process; and

WHEREAS, for reasons including the non-performance of the Resolution No: 2008-18 Conditions, the Co-Personal Representatives of the estate of Pete Klingsmith have initiated a Petition For Judicial Subdivision Of Estate Property in Gunnison District Court Action 10PR46, a copy of which Petition is attached hereto and incorporated herein as Appendix "C" (the "Probate Litigation"); and

WHEREAS, the Board of County Commissioners intends to assist in the resolution of the Probate Litigation;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Gunnison, Colorado, pursuant to C.R.S. 30-28-101(10)(d) the Board of County Commissioners of Gunnison County, Colorado grants an exemption from the definition of the terms "subdivision" and "subdivided land" of the full and unconditioned division from the Entire Parcel of the Klingsmith Residence Tract. In the event of any conflict between this instant Resolution and Resolution No: 2008-18, this instant Resolution controls.

INTRODUCED by Commissioner Swenson, seconded by Commissioner Chamberland, and adopted this 19th day of April, 2011.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By Hap Channell  
Hap Channell, Chairperson

By Paula Swenson  
Paula Swenson, Vice Chairperson

By Phil Chamberland  
Phil Chamberland, Commissioner

ATTEST:

Katherine Haase  
Katherine Haase, Deputy County Clerk





A tract of land within the NW1/4SW1/4 of Section 10, Township 49 North Range 1 West, New Mexico Principal Meridian, Gunnison County, Colorado; said tract being more particularly described as follows:

Commencing on the west quarter corner of said Section 10, (as marked by a USGLO brass cap monument), thence South 04°25'08" East 438.93 feet to the northwest corner of the Marshall/Bedell/Bufington property, (as described under Reception No. 493246 of the records of Gunnison County, thence South 64°45'31" East 112.56 feet along the northerly boundary of said Marshall/Bedell/Bufington property; thence North 67°01'30" East 198.32 feet along said boundary; thence South 36°00'36" East 14.25 feet along said boundary; thence South 68°41'20" East 24.82 feet along said boundary to the northeast corner of said Marshall/Bedell/Bufington property; thence South 00°30'00" East 405.37 feet along the east boundary of said Marshall/Bedell/Bufington property to the southeast corner of said Marshall/Bedell/Bufington property, said corner also being the POINT OF BEGINNING for the herein described tract; thence the following courses around said tract:

1. South 60°39'46" West 248.35 feet along the southerly boundary of said Marshall/Bedell/Bufington property to a point on the westerly boundary of the Lands End Co. property (as described under Reception No. 493345 of said records);
2. South 31°08'00" East 426.96 feet along the boundary to the south corner of said Lands End Co. property;
3. South 89°31'44" East 314.89 feet along the southerly boundary of Parcel 6 of the Lands End Co. property (as described in Book 738 at Page 70 of said records) to the southeasterly corner of said Parcel 6;
4. North 06°03'00" East 46.18 feet along the easterly boundary of said Parcel 6 to the northeasterly corner of said Parcel 6;
5. North 84°23'00" East 40.84 feet along the southerly boundary of Parcel 4 of said Lands End Co. property, to the southeasterly corner of said Parcel 4;
6. North 06°03'00" East 332.82 feet along the easterly boundary of said Parcel 4 to the northeasterly corner of said Parcel 4;
7. North 00°35'36" West 125.00 feet along the easterly boundary of Lands End Co. property (as described under reception No 496154 of said records), to the northeast corner of said Lands End Co. property;
8. North 89°46'14" West 334.58 feet along the northerly boundary of said Lands End Co. property to the northwest corner of said Lands End Co. property;
9. South 00°30'00" East 100.00 feet along the west boundary of said Lands End Co. property;
10. North 89°46'00" West 64.01 feet to a point on the east boundary of the previously referenced Lands End Co. property, (as described under Reception No. 493345 of said records);
11. North 00°30'00" West 82.25 feet along said boundary to the southeast corner of said Marshall/Bedell/Bufington property, said corner also being the POINT OF BEGINNING for the herein described tract;

This tract contains 5.46 acres, more or less, excepting therefrom 1.31 acres previously transferred to Phil Klingsmith by Conservator's Deed executed on April 10, 2008 and recorded at Reception No. 583406 in the records of Gunnison County Clerk and Recorder, Gunnison County, Colorado on April 22, 2008 (said Conservator's Deed attached hereto as Exhibit A).

#### APPENDIX A





Property description of proposed Klingsmith residence tract  
prepared for Pete Klingsmith

A tract of land within the NW1/4SW1/4 of Section 10, Township 49 North, Range 1 West, New Mexico Principal Meridian, Gunnison County, Colorado; said tract being more particularly described as follows:

Commencing at the west quarter corner of said Section 10, (as marked by a USGLO brass cap monument); thence South 35° 27' 53" East 1279.66 feet to a point on the east boundary of Parcel No.4 of the Lands End property, (as described in Book 788 at page 70 of the records of Gunnison County), said point also being the POINT OF BEGINNING for the herein described tract; thence the following courses around said tract:

1. South 06° 09' 00" West 232.98 feet along said east boundary to the southeast corner of said Parcel No.4, said corner also being the northeast corner of the Klingsmith property, (as described under Reception No.606682 of said records);
2. South 06° 49' 40" West 50.61 feet along the east boundary of said Klingsmith property to the southeast corner of said Klingsmith property;
3. North 89° 31' 44" West 39.50 feet along the south boundary of said Klingsmith property to the southwest corner of said Klingsmith property, said corner also being the southeast corner of Parcel No.6 of said Lands End property;
4. North 89° 32' 55" West 172.64 feet along the south boundary of said Parcel No.6;
5. North 00° 27' 05" East 80.46 feet to a point on an existing fence line;
6. North 54° 39' 52" East 15.92 feet along said fence line;
7. North 22° 20' 19" East 31.19 feet along said fence line;
8. North 04° 35' 31" East 47.38 feet along said fence line;
9. North 18° 48' 19" East 16.75 feet along said fence line;
10. North 37° 18' 28" East 3.59 feet along said fence line;
11. North 60° 46' 59" West 23.16 feet;
12. North 37° 51' 10" East 99.36 feet;
13. North 49° 07' 46" East 10.65 feet;
14. EAST 157.27 feet to a point on the east boundary of Parcel No.6, said point also being the POINT OF BEGINNING of the herein described tract.

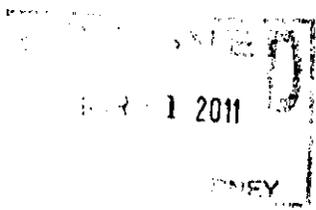
The basis of bearings used herein is astronomic north as determined by solar observations.

This tract contains 1.31 acres more or less.



APPENDIX B



<input checked="" type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court Gunnison County, Colorado Court Address: Gunnison County Courthouse 200 E. Virginia Avenue Gunnison, Colorado 81230	 MAY 1 2011 COURT USE ONLY
<b>In the Matter of the Estate of:</b> Philip Charles Klingsmith, Jr., a/k/a P.C. Klingsmith, and as Pete Klingsmith, Deceased  Board of Commissioners of Gunnison County, Respondent	
Attorney or Party Without Attorney (Name and Address): David M. Barton David M. Barton, P.C. 304 W. Tomichi, Suite 26 Gunnison, Colorado 81230  Phone Number: 970/641-2181      E-mail: barton@qwestoffice.net FAX Number: 970/641-5770      Atty. Reg. #: 13139	Case Number: 10 PR 46  Division                      Courtroom
<b>PETITION FOR JUDICIAL SUBDIVISION OF ESTATE PROPERTY</b>	

This Petition is brought by the Co-Personal Representatives pursuant to C.R.S. §15-12-704 and §30-28-101(10)(c)(II) for an order dividing real property of the estate as a legal subdivision, or alternatively, for instructions to the Co-Personal Representatives as to distribution of the remaining estate assets. As grounds for this Petition, the Co-Personal Representatives show as follows:

1. The Board of Commissioners of Gunnison County, Colorado is named as a Respondent herein pursuant to C.R.S. §30-28-101(10)(c)(II).
2. The joint Will and Last Testament of P.C. Klingsmith and Carolyn H. Klingsmith dated April 26, 2005 (the "Will") devises 1.31 acres of land known as "Lands End" together with an easement for access thereto, to Phil Klingsmith and members of his family (Will Article III A). The Will further devises an adjoining parcel of land, known as "Pete's Retreat" which comprises approximately 4.15 acres, to Chris Klingsmith and certain members of his family. The two parcels of land together are referred to herein as the "entire parcel". At the time of P.C. Klingsmith's death, the entire parcel had not been legally subdivided into the separate Lands End and Pete's Retreat parcels.
3. On April 17, 2008, Co-Petitioner Helen K. Allen, acting as Conservator for P.C. Klingsmith (Case No. 08-PR-13) petitioned this Court for an order authorizing her to convey the Lands End parcel to Phil Klingsmith so that he could obtain financing, part of which was to be used for nursing home care expenses for P.C. Klingsmith. In the Conservator's Petition to the Court to approve that conveyance, she represented that Phil Klingsmith had agreed to apply under the Gunnison County Land Use Resolution for legal subdivision of the entire parcel following completion of the loan transaction. Ultimately, the Court approved that transaction by Order dated April 28, 2008. At or about the same time that the Conservator was petitioning the Court for approval of the conveyance of the Lands End parcel to Phil Klingsmith, Phil applied to the Board of County Commissioners of Gunnison County to subdivide the entire parcel without going through the Land Use Resolution process in order to allow the Conservator to convey the 1.31 acre parcel to him. The Board of County Commissioners by Resolution 2008-18, dated May 9, 2008, approved the subdivision for the one time limited purpose of obtaining health care financing for P.C. Klingsmith. The Resolution recites in Paragraph

**APPENDIX C**



4 that formal subdivision proceedings had already been initiated, which, at the time, actually was not true. The Resolution further specifies that until formal subdivision under the Land Use Resolution is completed and approved, no portion of the entire parcel may be separately conveyed.

4. To date, no application under the Gunnison County Land Use Resolution for formal subdivision of the entire parcel has ever been submitted to Gunnison County. The Conservator for P.C. Klingsmith had always understood that Phil Klingsmith had agreed to submit and process the application to Gunnison County on behalf of the family. It was simply never done.
5. Notwithstanding the restrictions in the Court's Order approving the conveyance of Lands End to Phil Klingsmith dated April 28, 2008 and the Minute Order of April 18, 2008 in Case No. 08-PR-13, Phil did in fact pledge the 1.31 acre parcel as collateral for additional loans after the initial authorized loan from Alpine Bank. Except for one loan which in part refinanced the initial loan, all of the additional borrowing by Phil Klingsmith was for his own personal uses. At present, deeds of trust with combined initial principal amounts of approximately \$415,000.00 encumber Lands End as a result of the borrowing by Phil Klingsmith.
6. The Co-Personal Representatives are informed that Phil Klingsmith and his spouse have recently filed a bankruptcy petition.
7. The Estate of P.C. Klingsmith at this time has nominal liquid assets because virtually all of the estate's financial assets were liquidated and expended during the conservatorship to pay for the health care costs of P.C. Klingsmith prior to his death. The remaining assets in the estate are items of property specifically devised in the Will. Prior to the decedent's death, the Conservator had to pledge some of the real estate owned by the estate as collateral for loans from Gunnison Savings and Loan Association to pay health care expenses. Those loans are current debts of this estate which now total approximately \$62,000.00.
8. The Conservator for P.C. Klingsmith had listed the entire parcel for sale over two years ago. During two full years of listing for sale with two different realtors, no offers for purchase were received. The entire parcel was listed for sale in hopes of raising estate funds to pay off the Gunnison Savings and Loan debt referenced in the preceding paragraph.
9. A \$115,000.00 Alpine Bank loan secured by the deed of trust on Land's End, is now in default.
10. Petitioners desire to make distribution of the devises directed by the Will. Petitioners propose to distribute Lands End to Phil Klingsmith and his family members subject to all debt encumbering it. Arrangements have been made by certain children of P.C. Klingsmith to either assume the estate debt incurred to Gunnison Savings and Loan Association for the health care expenses of P.C. Klingsmith prior to his death, or to pay it off. The Co-Personal Representatives lack estate funds, however, to apply for and process a subdivision application for dividing the entire parcel under the Gunnison County Land Use Resolution. Accordingly, unless the Court grants the relief requested in this Petition, the Co-Personal Representatives don't know how to make distribution in accordance with the Will and complete their administration of the estate. Because the Co-Personal Representatives have been unable to sell the entire parcel under the current real estate market, they alternatively request instructions from the Court as to

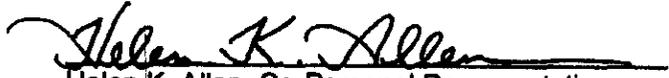


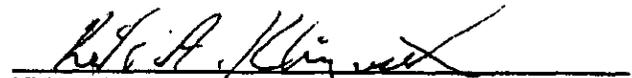
how to proceed with administration of the estate if subdivision of the entire parcel is not approved.

WHEREFORE, Petitioners request that this matter be set for hearing and that the Court approve a subdivision of the entire parcel into the parcels devised under the Will so that Petitioners can complete administration of the estate.

Respectfully submitted this 30<sup>th</sup> day of March, 2011.

David M. Barton, Attorney for Petitioners  
David M. Barton, P.C.  
304 W. Tomichi, Suite 26  
Gunnison, Colorado 81230

  
Helen K. Allen, Co-Personal Representative

  
Kirk A. Klingsmith, Co-Personal Representative

CERTIFICATE OF MAILING

I hereby certify that on this 30<sup>th</sup> day of March, 2011, a true and correct copy of the attached PETITION FOR JUDICIAL SUBDIVISION OF ESTATE PROPERTY was placed in the U.S. Mail, correct first class postage prepaid and attached, and sent to the following:

David Baumgarten  
Gunnison County Attorney  
200 E. Virginia  
Gunnison, CO 81230



S Dominguez Gunnison County, CO  
04/29/2011 12:58 PM  
447  
R: \$0.00 Pg: 7 of 7  
D: \$ 605159  
