AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Villanueva Conservation Easement

Action Requested: Other Interpretation

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

The Villanueva Family Trust requests an interpretation of the Stuplich Covenant conservation easement on the property located at 24888 Highway 135. The Trust would like to construct a berm in the conservation easement.

Fiscal Impact:

Submitted by: Hillary Seminick **Submitter's Email Address:** hseminick@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
if David approved this method then I defer to his judgment. MRH

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 8/10/2020 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/14/2020

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 15

Agenda Date: 8/18/2020

Revised April 2015

Gunnison County, CO
Community Development Department
221 N. Wisconsin St. Ste. D, Gunnison, CO 81230
Phone: (970) 641-0360
Website: www.gunnisoncounty.org
Email: planning@gunnisoncounty.org

To: Gunnison County Board of County Commissioners

From: Hillary Seminick, AICP, Senior Planner, Community Development Department

Date: August 18, 2020

Re: **Villanueva Conservation Easement Interpretation**

The Applicant, Villanueva Family Trust, requests an interpretation of the *Stuplich Covenant* conservation easement on the property located at 24888 Highway 135, Crested Butte (parcel no. 3257-070-00-051). The subject parcel is a little over 20 acres in size and the conservation easement is nearly 10 acres.

The recorded conservation easement (Exhibit A), was executed on October 30, 2003 to the benefit of Gunnison County. The conservation easement was a condition of the Butte Pasture Subdivision (platted in 2004). Curiously, the subject property is not within Butte Pasture Subdivision.

The Applicant is proposing an earthen berm approximately 50 feet in width and 200 feet long. The height would vary from five to 15 feet. A reclamation permit from Public Works would be required prior to the construction of the berm. A portion of the conservation easement is located within the 100 year floodplain. Construction of a berm within a floodplain is discouraged because it would change the characteristics of the floodplain and additional requirements would be triggered by FEMA.

The Applicant wishes to gain clarity and an interpretation of the Commission to determine if a berm within the conserved portion of the property. *Section 4. Permitted Uses and Practices* of the conservation easement does not explicitly state if berm construction is or is not permitted.

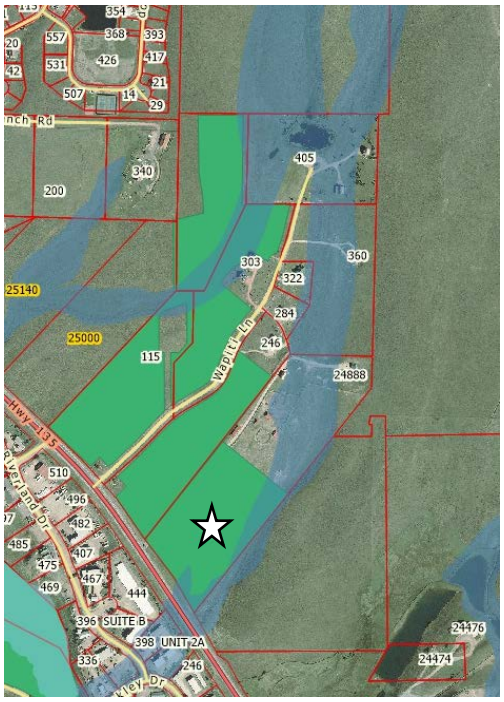


Figure 1. Location Map: subject property indicated by star, green area indicates conservation easement boundary, blue area indicates FEMA regulatory floodplain.

/S/ Hillary Iza Seminick, AICP

Exhibits

A. Conservation easement
B. Proposed Berm
C. Ownership Documents

LAND CONSERVATION COVENANT

THIS LAND CONSERVATION COVENANT is executed the 30 day of October, 2003 by Robert R. Stuplich ("Grantor"), for the benefit of Gunnison County, Colorado ("County"), as follows:

1. **Property Affected**. Grantor is the owner in fee simple of the real property described on attached **Exhibit A** ("Real Property").

2. **Recitals**. The following Recitals apply to this Land Conservation Covenant:

2.1 The Real Property has historically been used for ranching and agricultural purposes, including the raising and grazing of livestock, and allowing the land to be left fallow or uncultivated for conservation purposes;

2.2 The Real Property has also historically been used for recreation purposes, including snowmobiling, skiing, walking, hiking, horseback riding and other recreational uses;

2.3 The Real Property has significant ecological, wildlife habitat, open space and aesthetic values as part of the agricultural and natural resource system of the upper East River valley in Gunnison County, Colorado;

2.4 Grantor intends that the natural elements and ecological and aesthetic values of a part of the Real Property be preserved by continuing the agricultural, ranching, recreational and other uses that have proven historically to be compatible with such elements and values;

2.5 Grantor intends that a part of the Real Property remain in a substantially undisturbed and natural state, altered only by agricultural, ranching and recreational uses;

2.6 Grantor, as owner of the Real Property in fee simple, intends to identify and assure the preservation of a part of the Real Property's significant natural elements and maintain its agricultural and water quality to the extent set forth in this Land Conservation Covenant; and

2.7 Grantor intends that all future uses of a part of the Real Property shall comply with this Land Conservation Covenant to preserve and protect the natural elements and ecologic and aesthetic values of the Real Property.

3. **Appurtenant Covenant**. In consideration of the County's approval of the Butte Pasture subdivision located adjacent to the Real Property, Grantor, for itself, its representatives, successors and assigns, and all future persons or entities having any right, title or interest in or to the Real Property, hereby makes, declares and imposes this Land Conservation Covenant to run with and be appurtenant to that part of the Real Property described on attached **Exhibit B** ("Preserved Real Proeprty"), in perpetuity.

4. **Permitted Uses and Practices**. The following uses and practices are permitted on the Preserved Real Property:

4.1 Maintaining and repairing existing structures, fences, corrals, ditches and other improvements. Additional structures and improvements may be constructed and maintained which are related to horse sheds and fencing, on condition that the gross cubical volume of such horse sheds does not exceed 3,000 cubic feet.

4.2 Constructing and maintaining roads and underground utilities on the Preserved Real Property to access and serve the Real Property and/or other land adjacent or near to the Preserved Real Property.

4.3 Ranching, including the pasturing, grazing, feeding and caring of livestock, and the growing, baling and storing of hay. The Preserved Real Property may also be left fallow and uncultivated during any period of time that the Preserved Real Property is not used for the grazing of livestock and/or the growing of hay or other crops;

4.4 Constructing and maintaining the water resources on the real property, including, without limitation, wells, reservoirs, pipelines and ditches;

4.5 Controlling predatory animals and varmints in accordance with applicable laws, rules and regulations;

4.6 Constructing and maintaining underground utility lines;

4.7 Hunting, snowmobiling, skiing, walking, hiking, horseback riding and other recreational activities exclusively on a non-commercial basis; and

4.8 Engaging in any other agricultural uses or practices which do not diminish the natural, ecological, wildlife, open space and aesthetic features and values of the Preserved Real Property.

5. **Prohibited Uses and Practices**. The following uses and practices shall be prohibited on the Preserved Real Property:

5.1 Constructing residential dwellings or buildings.

5.2 Establishing any commercial or industrial uses or activities, except for agricultural uses or activities.

6. **Term of Land Conservation Covenant**. This Land Conservation Covenant shall be a covenant running with the Preserved Real Property and appurtenant to the Preserved Real Property in perpetuity and without term or limitation.

7. **Modification**. This Land Conservation Covenant shall not be terminated, modified, amended or changed in any manner by the owner or owners of the Preserved Real Property or by any other person or entity without the written consent of Gunnison County, Colorado.

8. **No Public Access**. This Land Conservation Covenant grants no right for the County, the public or any person or entity to enter upon the Real Property for any purpose whatsoever without the express permission of the owner of the Real Property, except that representatives of Gunnison County shall have periodic access to the Preserved Real Property for the purpose of verifying compliance with this Land Conservation Covenant.

9. **Enforcement**. This Land Conservation Covenant and all of the conditions, covenants, rights, usages or restrictions contained herein may be enforced by:

9.1 The Grantor;

9.2 The owner or owners of all or any part of the Real Property; and/or

9.3 Gunnison County, Colorado.

In the event of a violation of any term, condition, covenant, right, usage or restriction contained in this Land Conservation Covenant, any person or entity set forth in subparagraphs 9.1, 9.2 or 9.3, above, may give written notice of any such violation to the owner or owners of the Preserved Real Property and if such violation has not been corrected within 30 days following such written notice, then such person or entity may commence an action in law or in equity for damages, injunction or other appropriate remedy.

10. **Applicable Law**. This Land Conservation Covenant applies to Gunnison County, Colorado real property and shall be interpreted, construed and governed by the law of the State of Colorado.

11. **Jurisdiction and Venue**. Exclusive jurisdiction and venue of any action to interpret or enforce this Land Conservation Covenant shall be in the District Court or County Court of Gunnison County, Colorado.

12. **Attorneys' Fees**. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Land Conservation Covenant or any document provided for herein or related hereto, the prevailing party in any such action shall be awarded reasonable attorneys' fees together with all reasonable costs and expenses incurred.

13. **Binding Agreement**. This Land Conservation Covenant shall be binding upon and inure to the benefit of the Grantor and its heirs, representatives, successors and assigns.

Dated as of the date first written above.

Robert R. Stuplich

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Land Conservation Covenant was acknowledged before me this 30 day of October, 2003 by Robert R. Stuplich

Witness my hand and official seal. My commission expires: 6/18/2006

Christina Cesario
Notary Public

536312
Page: 5 of 8
10/30/2003 04:59P
S Dominguez Gunnison Cty Co 920 R 41.00 D 0.00

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land located in the West Half of the Southwest Quarter of Section 7, Township 14 South, Range 85 West of the 6th Principal Meridian, and in the East Half of the Southeast Quarter of Section 12, Township 14 South, Range 86 West of the 6th Principal Meridian, more particularly described as follows:

Commencing at the West quarter corner of said Section 7, thence N88°47'39"E a distance of 1223.06 feet; thence S00°22'51"W a distance of 829.64 feet to the true point of beginning; thence N89°37'09"W a distance of 505.63 feet; thence S37°16'35"W a distance of 1442.54 feet; thence S38°21'23"E distance of 292.12 feet; thence S30°41'05"E a distance of 255.26 feet; thence N37°16'35"E a distance of 1760.87 feet; thence N00°22'51"E a distance of 191.93 feet to the point of beginning,

County of Gunnison,
State of Colorado.

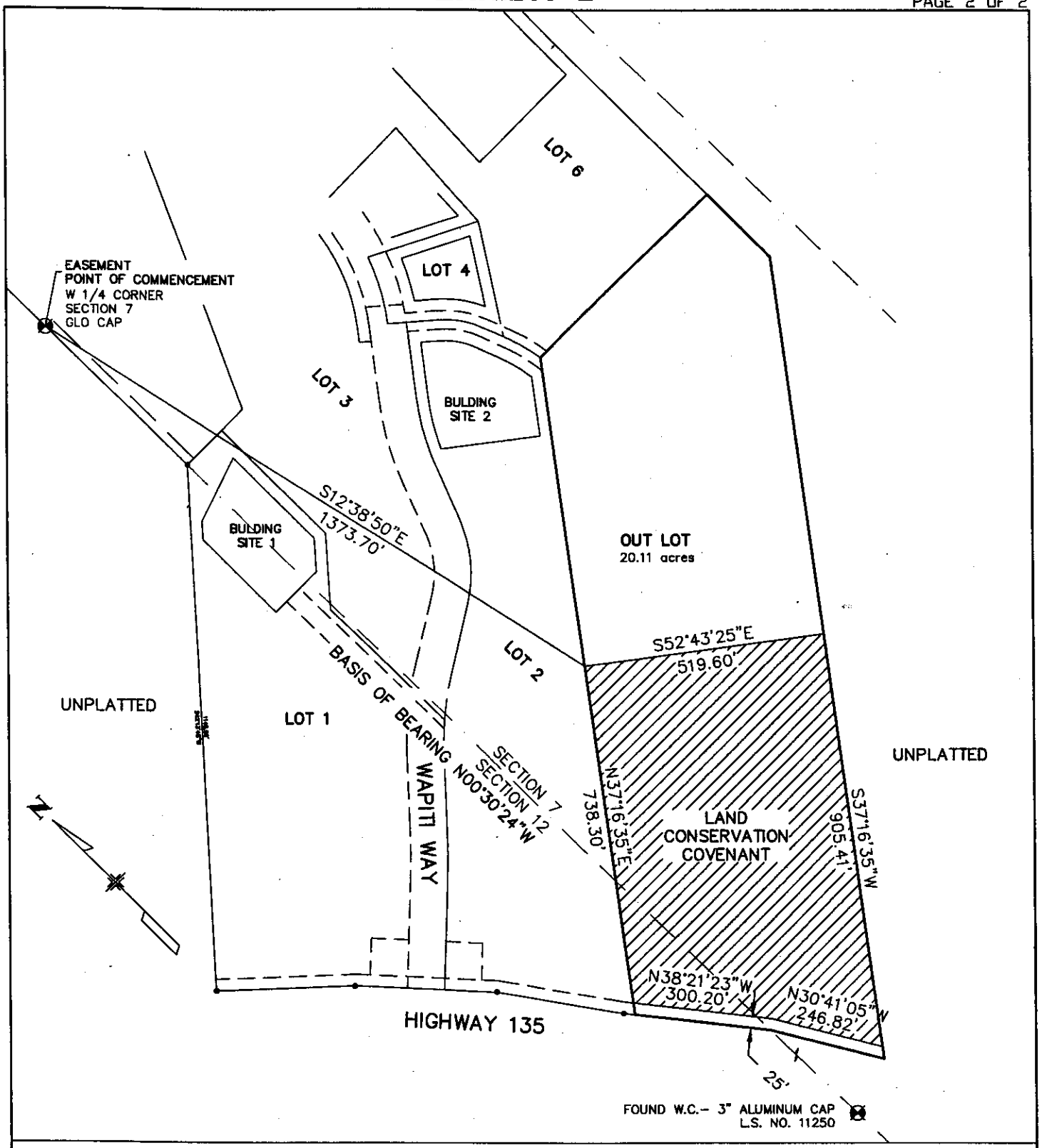
EXHIBIT B

A Land Conservation Covenant located within a 20 acres parcel within Section 7, Township 14 South, Range 85 West and Section 12, Township 14 South, Range 86 West, of the Sixth Principal Meridian, Gunnison County, State of Colorado being more particularly described as follows:

Commencing at the West Quarter Corner of Said Section 7;
Thence South 12°38'50" East, a distance of 1,373.70 feet to the POINT OF BEGINNING, said point being located on the northwesterly line of said parcel;
Thence South 52°43'25" East, a distance of 519.60 feet, said point being located on the southeasterly line of said parcel;
Thence along said parcel boundary South 37°16'35" West, a distance of 905.41 feet;
Thence North 30°41'05" West, a distance of 246.82 feet;
Thence North 38°21'23" West, a distance of 300.20 feet , said point being located on the northwesterly line of said parcel;
Thence along said parcel boundary North 37°16'35" East, a distance of 738.30 feet to the POINT OF BEGINNING.

Containing 422,088 square feet or 9.690 acres, more or less.

EXHIBIT B


EASEMENT
POINT OF COMMENCEMENT
W 1/4 CORNER
SECTION 7
GLO CAP
LOT 6
LOT 4
LOT 3
BULDING SITE 2
BULDING SITE 1
S12°38'50"E
1373.70'
OUT LOT
20.11 acres
S52°43'25"E
519.60'
LOT 2
BASIS OF BEARING N00°30'24"W
SECTION 7
SECTION 12
UNPLATTED
LOT 1
WAPITI WAY
N37°16'35"E
738.30'
LAND CONSERVATION COVENANT
S37°16'35"W
905.41'
UNPLATTED
N38°21'23"W
300.20'
N30°41'05"W
246.82'
HIGHWAY 135
25'
FOUND W.C.- 3" ALUMINUM CAP
L.S. NO. 11250
300 150 0 300 600
SCALE: 1" = 300'

Gunnison County

Hillary Seminick, AICP
Senior Planner
Community Development
Gunnison County
221 N. Wisconsin Street, Suite D
Gunnison, CO 81230
Phone: (970) 641-7930
www.GunnisonCounty.org

VILLANUEVA
24888 STATE HWY 135
CRESTED BUTTE, CO. 81224

WARRANTY DEED

State Doc Fee: $89.90
Recording Fee: $11.00

THIS DEED is dated the 22nd day of June, 2016, and is made between

O. A. Pesnell, Jr.

(whether one, or more than one), the "Grantor" of the County of Mobile and State of Alabama and

Villanueva Family Trust, dated October 31, 1998

(whether one, or more than one), the "Grantee", whose legal address is PO Box 414, Crested Butte, CO 81224 of the County of Gunnison and State of Colorado.

WITNESS, that the Grantor, for and in consideration of the sum of **Eight Hundred Ninety Nine Thousand Dollars and No Cents** (**$899,000.00**), the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, conveys and confirms unto the Grantee and the Grantee's heirs and assigns forever, all the real property, together with any improvements thereon, located in the County of Gunnison and State of Colorado described as follows:

A parcel of land located in the West half of the Southwest Quarter of Section 7,Township 14 South, Range 85 West of the 6th Principal Meridian, and in the East half of the Southeast Quarter of Section 12, Township 14 South, Range 86 West of the 6th Principal Meridian, more particularly described as follows:

Commencing at the West quarter corner of said Section 7, thence N 88°47'39"E a distance of 1223.06 feet; thence S 00°22'51" W a distance of 829.64 feet to the true point of beginning; thence N 89°37'09"W a distance of 505.63 feet; thence S 37°16'35" W a distance of 1442.54 feet; thence S 38°21'23" E distance of292.12 feet; thence S 30°41'05" E a distance of 255.26 feet; thence N 37°16'35" E a distance of 1760.87 feet; thence N 00° 22'51" E a distance of 191.93 feet to the point of beginning.

COUNTY OF GUNNISON,
STATE OF COLORADO.

also known by street address as: 24888 State Highway 135, Crested Butte, CO 81224

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantees, and the Grantees' heirs and assigns forever.

The Grantor, for the Grantor and the Grantor's heirs and assigns, does covenant, grant, bargain, and agree to and with the Grantee, and the Grantee's heirs and assigns: that at the time of the ensealing and delivery of these presents, the Grantor is well seized of the premises above described; has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, and in fee simple; and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except and subject to:

2016 taxes and all subsequent years, restrictions, reservations, covenants, easements and rights-of-way of record, if any.

And the Grantor shall and will WARRANT THE TITLE AND DEFEND the above described premises, in the quiet and peaceable possession of the Grantees, and the heirs and assigns of the Grantees, against all and every person or persons lawfully claiming the whole or any part thereof.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

6/22/16

O. A. Pesnell Jr.

State of Colorado
County of Gunnison

The foregoing instrument was acknowledged before me this 22 day of June, 2016 by O. A. Pesnell Jr..

CHRISTINA CESARIO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19984016768
MY COMMISSION EXPIRES 06/18/2018

Witness my hand and official seal.

Notary Public
My commission expires: 6/18/2018

TO WHOM IT MAY CONCERN:

I ALFRED VILLALLANUEVA, TRUSTEE OF VILLANUEVA FAMILY TRUST OCTOBER 31, 1998, IN WHICH SAID PROPERTY IS HELD, (PROPERTY AT 24888 STATE HIGHWAY 135), AUTHORIZE MY SONS, DAVID & RUBEN VILLANUEVA TO PROCEDE IN ANY AND ALL MATTERS REGUARDINGT SAID PROPERTY.

THIS DAY FORWARD 1/1/18

SINCERELY,

ALFRED VILLANUEVA

Alfred Villanueva

970-349-6422
P.O. BOX 419
CRESTED BUTTE, CO. 81224

REVOCABLE TRUST RIDER

DEFINITIONS USED IN THIS RIDER

(A) **"Revocable Trust."** The VILLANUEVA FAMILY TRUST created under trust instrument dated October 31, 1998 .

(B) **"Revocable Trust Trustees."** ALFRED VILLANUEVA and NIDIA VILLANUEVA trustees of the VILLANUEVA FAMILY TRUST.

(C) **"Revocable Trust Settlors."** ALFRED VILLANUEVA, and NIDIA VILLANUEVA settlors of the VILLANUEVA FAMILY TRUST signing below.

(D) **"Lender."** Bank of the West, a California state banking corp..

(E) **"Security Instrument."** The Deed of Trust and any riders thereto of the same date as this Rider given to secure the Note to the Lender of the same date and covering the Property (as defined below).

(F) **"Property."** The property described in the Security Instrument and located at:

Address: 24688 STATE HIGHWAY 135, CRESTED BUTTE, Colorado 81224
Legal Description: SEE ATTACHED LEGAL

"PURCHASE MONEY"
Parcel ID/Sidwell Number: 3257-070-00-051

["Property Address"].

THIS REVOCABLE TRUST RIDER is made this 22nd day of June, 2016, and is incorporated into and shall be deemed to amend and supplement the Security Instrument.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, the Revocable Trust Trustee(s), the Revocable Trust Settlor(s), and the Lender further covenant and agree as follows:

ADDITIONAL BORROWER(S). The term "Borrower" when used in the Security Instrument shall refer to the Revocable Trust Trustee(s), the Revocable Trust Settlor(s), and the Revocable Trust, jointly and severally. Each party signing this Rider below (whether by accepting and agreeing to the terms and covenants contained herein and agreeing to be bound thereby, or both) covenants and agrees that, whether or not such party is named as "Borrower" on the first page of the Security Instrument, each covenant and agreement and undertaking of the "Borrower" in the Security Instrument shall be such party's covenant and agreement and undertaking as "Borrower" and shall be enforceable by the Lender as if such party were named as "Borrower" in the Security Instrument.

BY SIGNING BELOW, the Revocable Trust Trustee(s) accepts and agrees to the terms and covenants contained in this Revocable Trust Rider.

VILLANUEVA FAMILY TRUST

ALFRED VILLANUEVA, Trustee of the VILLANUEVA FAMILY TRUST, under trust instrument dated October 31, 1998.

NIDIA VILLANUEVA, Trustee of the VILLANUEVA FAMILY TRUST, under trust instrument dated October 31, 1998.