

RECREATIONAL TRAIL EASEMENT

This RECREATIONAL TRAIL EASEMENT ("**Trail Easement**") is made and entered into by and between the Town of Rico, a Colorado home rule municipality and political subdivision of the State of Colorado ("**Grantee**"), whose legal address is PO Box 9, Rico, Colorado 81332, and Michael Popek and Alana Karen (collectively "**Grantor**"), whose legal address is 959 Waverly Street, Palo Alto, CA 94301. Grantee and Grantor may sometimes singularly be referred to as a "Party" or collectively be referred to as the "Parties."

RECITALS:

A. Grantor owns certain real property legally described in Exhibit A1 and A2, attached hereto and incorporated herein by this reference ("**Grantor's Property**").

B. Grantor and Grantee desire to establish a perpetual, nonexclusive public trail easement across Grantor's Property in the location depicted and described in the attached Exhibit B attached hereto and incorporated herein by this reference.

NOW THEREFORE, in consideration of the terms and conditions of this Trail Easement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the Parties agree as follows.

AGREEMENTS:

1. Grant of Trail Easement. Grantor hereby grants, quitclaims, conveys, assigns, establishes, and creates to and for the benefit of Grantee, for Grantee's and the public's use and the use of Grantee's agents, contractors and employees, a perpetual, non-exclusive public recreational trail easement over and across Grantor's Property for pedestrian, bicycle and other non-motorized mechanical means of conveyance and for trail and infrastructure installation and maintenance within the area depicted on Exhibits B ("**Trail Easement**"). In granting the Trail Easement, Grantor expressly represents, and Grantee acknowledges, that Grantor does not: (a) extend any assurances that the Trail Easement area is safe for any purpose; (b) confer upon any person using the Trail Easement the legal status of an invitee or licensee to whom a duty of care is owed by Grantor; (c) assume any responsibility or incur an liability for any injury to person or property or for the death of anyone caused by an act or omission of such person.

2. Restrictions on Use. Camping, campfires, hunting, livestock and equestrian uses shall not be permitted in the Trail Easement area. Except as set forth in sections 4 and 5 below, motorized use shall not be permitted in the Trail Easement area.

3. Grantor's Rights. Grantor reserves the right of ownership, use, and occupancy of Grantor's Property, insofar as the ownership, use, and occupancy does not materially impair the rights granted to Grantee herein. Without limiting the foregoing, Grantor may install utility and cable lines, paving, and landscaping, fencing and other improvements so long as the same do not interfere with Grantee's use of the designated Trail Easement area on Grantor's Property. Moreover, Grantor may remove or plow snow from driveway areas, grade and/or pave driveway

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Lana Hancock, County Clerk & Recorder

Dolores County, CO

09-30-2020 01:21 PM Recording Fee \$58.00

areas, and nothing in this Agreement shall be construed to limit Grantor's right to modify the circulation of automobile or pedestrian traffic within Grantor's Property, provided that use of the Trail Easement is not materially diminished, unreasonably interfered with, or causes a violation of applicable law.

4. Construction of Trail Improvements. A trail currently exists only on portions of the Trail Easement area. Grantee has the right to clear brush, rocks and stumps, and in that portion of the Trail Easement area where no trail currently exists, to construct a single tract dirt trail ("New Trail") as well as a pedestrian/bicycle bridge to be constructed/installed across the East Fork of the Dolores River in the historic bridge location shown on Exhibit B. Unless waived by Grantee, construction of the bridge shall not occur prior to issuance of the U.S. Forrest Service's approval designating a non-motorized trail extending from the north and south ends of the Trail Easement area. Grantee shall construct and maintain the New Trail in a manner to minimize erosion. Prior to constructing/installing a bridge, Grantee shall provide written notice to Grantor, which includes the bridge's design and specifications, and a cost estimate for the bridge, and Grantor shall have ten (10) days within which to approve the bridge design, which approval shall not be unreasonably withheld. Said written notice and Grantor's response may be sent via email. Grantor's failure to respond to Grantee's notice within two (2) weeks shall be deemed an approval. In the event Grantor responds to Grantee citing concerns with the bridge design, Grantor and Grantee shall negotiate in good faith to resolve such concerns. At the north and south ends of the Trail Easement area just inside Grantor's Property's boundaries, Grantee shall install gates and/or boulders and signage to block and prohibit unauthorized motorized access. Grantor shall have the opportunity to approve all signage prior to installation, which approval shall not be unreasonably withheld. All trail improvements shall be constructed at Grantee's sole cost and expense, except for the Bridge Upgrade, if any. Motorized tools, vehicles and equipment may be used for construction and installation of the trail improvements authorized herein. Upon substantial completion of the construction of the New Trail, Grantee shall send written notice of completion to Grantor ("**Notice of Completion**") notifying Grantor that the New Trail is substantially completed. The Notice of Completion shall be accompanied by a "**Notice of Location**" in which the Grantee's surveyor depicts and legally describes the "as-built" location of the New Trail and which shall be recorded as an amendment to Exhibits B hereto. Not less than twenty (20) days following the provision of the Notice of Completion and Notice of Location, Grantee is authorized and directed to sign and record the Notice of Location. A copy of the recorded Notice of Relocation shall be delivered to Grantor.

5. Trail Relocation. If the location of the Trail Easement interferes with Grantor's use and development of the Grantor's Property, Grantor may require Grantee to relocate the Trail Easement to another portion of the Grantor's Property as reasonably and mutually determined by Grantor and Grantee at the cost of the Grantee in a manner which does not require relocation of Grantee's adjoining sections of trail on adjacent properties and which does not require relocation of the bridge. In the event that the Trail Easement is relocated, Grantor shall be authorized to record a modification/supplement to this Agreement revising the Trail Easement area, which Grantee shall promptly execute and deliver to evidence such relocation, which consent and delivery shall not be unreasonably withheld, delayed or otherwise conditioned. Nothing herein shall limit or preclude the ability of Grantor to develop the Grantor Property, provided Grantor has reasonably identified an alternative for the Trail Easement.

6. Maintenance of Trail Easement Area: Grooming. Grantee, at its sole cost and expense, shall be responsible for maintaining the trail and other trail improvements located in the Trail Easement area in reasonably good condition. Motorized tools, vehicles and equipment may be used for such maintenance. During the months of November through March each winter, Grantee shall be permitted to groom the trail for Nordic recreation, including but not limited to Nordic skiing, snow shoeing, fat biking and other non-motorized use (“**Nordic Grooming**”). Nordic Grooming may only occur between the hours of 8am and 9pm.

7. Suspension of Easement. Grantor reserves the right to suspend use of the Trail Easement upon any of the following occurrences:

7.1 In the event that Grantee fails to substantially and promptly perform any of the Grantee’s obligations hereunder;

7.2 In the event that the Easement Area is repeatedly used for other than the Authorized Uses; or

7.3 In the event that Grantee fails to obtain or maintain the Insurance Coverage as described in Section 13 below.

8. Denial of the Use of the Easement by Grantor. If the suspension is due to one of the causes set forth in 7.1 through 7.2 above, Grantor shall deliver written notice to Grantee itemizing the specific violation under the terms of this Agreement, or the specific instances of trespassing or interference. Thereupon, Grantee shall have thirty (30) days from the date of the notice to in good faith comply with the notice and cure the violation or to provide assurances acceptable to Grantor that the trespasses or interferences will cease. If Grantor fails to either cure the violation or provide such assurances within that time frame, the Grantor may suspend use of the Trail Easement until such violation is cured or such assurances are provided to Grantor’s reasonable satisfaction. If the Grantee fails to obtain or maintain the Insurance Coverage, then any rights to use the Easement shall be immediately and automatically suspended until such time as the Insurance Coverage is in force and proof thereof has been furnished to the Grantor. In addition, in the event the Colorado Landowner Protection Statutes, defined in Section 12 below, in effect as of the date hereof, are amended or repealed in whole or part, which amendment or repeal, in the reasonable judgment of the Grantor reduces or terminates the liability protections afforded Grantor, then unless and until Grantee is able to obtain additional liability insurance coverage, which to Grantor’s reasonable satisfaction fully protects Grantor against additional exposure, Grantor may, upon written notice to Grantee, immediately suspend the Easement and prevent further use of any or all of the Easement Area until and unless Grantee obtains such additional liability insurance coverage, reasonably acceptable to the Grantor.

9. Default. In the event of a default by either Party under this Trail Easement in the observance or performance of any of the covenants or other provisions here to be observed or performed by such Party, if such default is not cured within sixty (60) days after notice to defaulting Party (or if such default is incapable of cure within such 60-day period and defaulting Party commences to cure within such 60-day period and thereafter diligently and continuously takes

action to effect a cure), the non-defaulting Party shall have the following remedies: (a) to cure, if capable of cure, the breach by the defaulting Party, with the right of reimbursement from the defaulting Party for all reasonable costs and expenses incurred in connection with such cure, including reasonable legal fees; (b) an action for specific performance and/or injunction; and (c) an action for actual damages. No breach of this Trail Easement shall entitle any party to consequential, incidental, economic, treble or punitive damages or to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Party may have by reason of any breach of this Agreement.

10. Mechanic's Liens. Grantee shall not permit any mechanic's liens to be placed upon the Grantor's Property in connection with construction and maintenance performed by or on behalf of Grantee in conjunction with the Trail Easement.

11. Notices. All notices and other communications required or permitted under this Trail Easement shall be in writing and shall be (a) personally delivered, (b) deposited with a nationally recognized overnight delivery service that routinely issues receipts, or (c) given by registered or certified mail. Any such notice or other communication shall be effective when such notice is delivered to the addresses set forth above. Any Party, by ten (10) days' prior written notice given as set forth above, may change the address to which future notices or other communications intended for such Party shall be sent.

12. Landowner Protection Statutes; Indemnification. In granting and accepting the recreational Trail Easement, the Parties intend to avail themselves of the maximum immunities, benefits and protections available to each of them pursuant to the public recreational use statute, CRS §33-41-101 *et seq.*, the Colorado landowner liability statute, CRS §13-21-115, and the Colorado Governmental Immunity Act, CRS §24-10-114 (collectively the "**Colorado Landowner Protection Statutes**"). Nothing in this Agreement is intended to waive any limits on liability afforded to the Parties under the Colorado Landowner Protection Statutes. By granting the Trail Easement, Grantor shall have no obligation to repair, clear or otherwise maintain the Trail Easement area, or to insure or indemnify Grantee or the public for any injury, claim or damage to any person or property whether alleged to have occurred as a result of use of the Trail Easement for public non-motorized trail or otherwise, or due to the condition of the road or trail, unless the need therefore is caused by grantor, in which case Grantor shall perform the maintenance or care so required. To the extent allowed by law, Grantee hereby agrees to defend and hold harmless Grantor and Grantor's heirs, successors and assigns to the full extent allowed under Colorado law, from and against any and all claims, demands, causes of action, damages, losses, liabilities, costs and expenses of any kind or nature (including those involving death, personal injury or property damage and including reasonable attorney's fees) arising from or incurred in any way in connection with the use of the Trail Easement by anyone, including members of the general public, excepting any such claims or losses which may arise direction from the willful, intentional, reckless, or grossly negligent acts of Grantor, its agents or employees, or other claims as described in CRS §33-41-104(1). Grantee may satisfy this obligation by maintaining comprehensive public entity liability insurance coverage to which the Grantor is named as an additional insured.

13. Insurance. Grantee shall obtain and maintain insurance and name Grantor as an additional insured on its general liability insurance policy, which shall cover those claims and

liabilities arising in connection with any use of the Trail Easement by Grantee, its citizens, residents, visitors, licensees and invitees and any other person. The limits of such insurance coverage must meet or exceed liability limits allowed from time to time under the Colorado Governmental Immunities Act ("**Insurance Coverage**"). Upon written request from Grantor, Grantee shall provide a certificate of the Insurance Coverage. The Insurance Coverage shall provide that Grantor shall receive notice of cancellation of Grantee's policy at least 30 days prior to its termination. Without limiting Grantee's Insurance Coverage obligations, Grantor may also obtain and maintain its own insurance coverage.

14. **Modification.** No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a written instrument duly executed by the Parties hereto or such others as may from time to time own an interest in the respective Properties.

15. **Entire Agreement.** This Agreement constitutes and incorporates the entire agreement among the Parties hereto concerning the subject matter of this Agreement and supersedes any prior agreements concerning the subject matter hereof.

16. **Attorneys' Fees.** If any action is commenced between the Parties concerning this Agreement or for the enforcement of rights and duties of any Party pursuant to this Agreement, the court shall award the substantially prevailing Party in the action its reasonable attorneys' fees in addition to any other relief that may be granted.

17. **Severability.** If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

18. **Successors and Assigns/Covenants Run With Land.** The terms and conditions of this Agreement bind and inure to the benefit of the Parties, and their respective successors, assigns and personal representatives. The Trail Easement granted herein shall constitute a covenant running with the land and shall bind Grantor's Property described herein and inure to the benefit of and be binding upon the Parties, their grantees, and respective successors and assigns, and any persons claiming by, through or under them.

19. **No Waiver.** No provision of this Agreement may be waived except by written instrument signed by the Party to be charged with such waiver. Waiver by any Party of any agreement, condition, or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Agreement.

20. **Construction of Agreement.** This Agreement resulted from review and negotiations between the Parties and their attorneys. This Agreement will be construed to have been drafted by all of the Parties so that the rule of construing ambiguities against the drafter will have no force or effect.

21. **Governing Law.** This Agreement shall be governed by and construed in accordance

with the laws of the State of Colorado, without reference to conflicts of law principles.

22. Authorization. Each Party is authorized and empowered to execute this Agreement and all necessary corporate or partnership action has been taken to authorize execution of this Agreement.

23. Execution. The Parties shall execute and deliver such further documents as may be reasonably required in order to effect the intent of this Agreement.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original and all of which when taken together shall constitute one and the same instrument; provided, however, that this Agreement will not become binding upon any Party unless and until executed (whether or not in counterpart) by all the Parties.

25. Facsimile/E-Mail. Original signatures of the parties hereto on copies of this Agreement transmitted by facsimile or e-mail shall be deemed originals for all purposes hereunder and such copies shall be binding on all parties hereto.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first above written.

GRANTEE:

Town of Rico

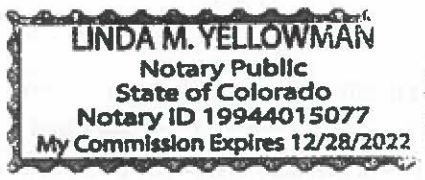
By: Barbara C. Betts
Barbara Betts, Mayor

STATE OF COLORADO)
COUNTY OF DOLORES)

Subscribed to and acknowledged before me this 22 day of SEPTEMBER, 2020 by Barbara Betts as Mayor of the Town of Rico, a home rule municipality and political subdivision of the State of Colorado.

Witness my hand and official seal.
My commission expires: 12-28-2022

Linda M. Yellowman
Notary Public



GRANTOR:

[Signature]
Mike Popek

[Signature]
Alana Karen

STATE OF CA

COUNTY OF Santa Clara

Subscribed to and acknowledged before me this 04 day of Sept, 2020
by Mike Popek and Alana Karen

Witness my hand and official seal.
My commission expires: 08/30/2023

[Signature]
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

Subscribed and sworn to (or affirmed) before me
on this 04 day of Sept, 2020, by
Michael Popek & Alana Karen
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature: [Signature] (Seal)

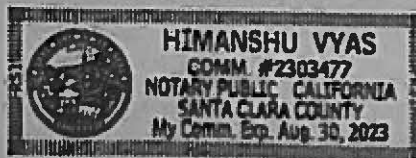


EXHIBIT A-1

A tract of land in Section 2, Township 39 North, Range 11 West, N.M.P.M., which is all that part of the Dolores Placer Claim, U.S. Mineral Survey #336, located in the Pioneer Mining District, lying West of Colorado Highway 145, being more particularly described as follows:

Beginning at a point in said Section 2, which is Corner No. 5, Dolores Placer Claim, U.S. Mineral Survey #336, from which point the Northeast Corner of said Section 2 bears North 61°51'04" East a distance of 961.68 feet and from which point U.S.L.M. #3 bears South 77°28'58" East a distance of 923.03; thence South 80°33'36" East a distance of 334.30 feet along the North line of the Dolores Placer Claim, U.S. Mineral Survey #336, to a point on a fence line; thence South 12°25'51" West a distance of 126.82 feet along a fence line; thence South 79°47'45" East a distance of 139.65 feet along a fence line to the West right of way of Colorado Highway 145; thence 337.45 feet along the arc of a curve to the right with a radius of 1843.86 feet, the long chord of which bears South 22°28'03" West a distance of 336.98 feet along the right of way of Colorado State Highway 145; thence South 27°43'30" West a distance of 196.50 feet along the West right of way of Colorado State Highway 145; thence South 28°43'30" West a distance of 165.50 feet along the West right of way of Colorado State Highway 145; thence South 24°43'30" West a distance of 69.00 feet along the West right of way of Colorado State Highway 145; thence 444.58 feet along the arc of a curve to the left with a radius of 1498.39 feet, the long chord of which bears South 16°13'28" West a distance of 442.95 feet along the West right of way of Colorado State Highway 145; thence South 07°43'30" West a distance of 69.00 feet along the West right of way of Colorado State Highway 145; thence South 03°43'30" West a distance of 675.41 feet on the West right of way of Colorado State Highway 145; thence West a distance of 704.83 feet to the West line of the Dolores Placer Claim, U.S. Mineral Survey #336; thence North 0°10'45" East a distance of 387.00 feet along the West line of the Dolores Placer Claim, U.S. Mineral Survey #336, to Corner No. 4 of the Dolores Placer Claim, U.S. Mineral Survey #336; thence North 24°38'13" East a distance of 1845.25 feet along the West line of the Dolores Placer Claim, U.S. Mineral Survey #336, to Corner No. 5, Dolores Placer Claim, U.S. Mineral Survey #336, the point of beginning,
County of Dolores, State of Colorado.

LESS AND EXCEPT that portion of the above named mining claim, if any, within overlapping mining claims.

Popek Trail

Exhibit for Easement Agreement

Legend

-  Popek Property Line
-  Trail Alignment 07-18-2020

EXHIBIT B



Google Earth

2000ft



EXHIBIT A-2

A tract of land in Section 2, Township 39 North, Range 11 West, N.M.P.M., Dolores County, Colorado, which is all that part of the Dolores Placer Claim U.S. Mineral Survey #336, located in the Pioneer Mining District of Dolores County, Colorado, lying West of Colorado Highway 145, being more particularly described as follows:

Beginning at a point in Section 2, Township 39 North, Range 11 West, N.M.P.M., Dolores County, Colorado, which is Corner No. 3, Dolores Placer Claim U.S. Mineral Survey #336, from which point the Northeast corner of said Section 2 bears N20°43'28"E a distance of 4588.97 feet;
thence N0°10'45"E a distance of 1774.12 feet along the West line of the Dolores Placer Claim U.S. Mineral Survey #336, to Corner No. 4 of the Dolores Placer Claim U.S. Mineral Survey #336;
thence East a distance of 704.83 feet to the West right-of-way line of Colorado Highway 145;
thence S03°43'30"W a distance of 1613.59 feet along the West right-of-way of Colorado Highway 145;
thence S02°16'30"E a distance of 150.00 feet along the West right-of-way of Colorado Highway 145;
thence N86°16'30"W a distance of 25.00 feet along the West right-of-way of Colorado Highway 145;
thence S03°43'00"W a distance of 118.78 feet along the West right-of-way of Colorado Highway 145 to the South line of the Dolores Placer Claim U.S. Mineral Survey #336;
thence N79°55'27"W a distance of 587.92 feet along the South line of Dolores Placer Claim U.S. Mineral Survey #336 to the point of beginning.
County of Dolores, State of Colorado.