

ORDINANCE NO. 6

SERIES 2012

**AN ORDINANCE ADOPTING THE GUIDELINES, RULES
AND REQUIREMENTS GOVERNING RESIDENT-
OCCUPIED AFFORDABLE HOUSING**

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, pursuant to Article XX of the Colorado Constitution, as implemented through the Town of Crested Butte Charter, Title 31, Article 23, and Title 20, Article 29, C.R.S., the Local Government Land Use Control Enabling Act of 1974, the Town has the authority to enact and enforce land use regulations, including, without limitation, requirements for affordable housing;

WHEREAS, contemporaneously with the adoption of this ordinance, the Town Council has adopted that certain Ordinance No. 19, Series 2011, An Ordinance Amending and Replacing the Town's Resident-Occupied Affordable Housing Requirements Contained in Chapter 16, Article 21 of the Crested Butte Municipal Code and Amending the Resident-Occupied Affordable Housing Payments-in-lieu Contained in Appendix "A" to the Code (the "Ordinance") requiring that certain kinds of development mitigate its impacts on demand for affordable housing by providing, among other things, deed restricted resident-occupied affordable housing;

WHEREAS, the Ordinance calls for the Town Council's establishment of certain rules and requirements for the sale, ownership and rental of such deed restricted resident-occupied affordable housing;

WHEREAS, the Town staff has presented to the Town Council draft Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in Crested Butte (the "Guidelines") that set forth the rules and requirements for the sale, ownership and rental of such deed restricted resident-occupied affordable housing; and

WHEREAS, the Town Council has found that the Guidelines presented by the Town staff set forth the rules and requirements desired by the Town Council for the sale, ownership and rental of deed restricted resident-occupied affordable housing, and, accordingly, are in the best interest of health, safety and general welfare of the residents and visitors of Crested Butte.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWN OF CRESTED BUTTE, COLORADO, THAT,**

Section 1. Adoption of Resident-Occupied Affordable Housing Guidelines. The Town Council hereby adopts the Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in substantially the same form as attached hereto as **Exhibit "A"**.

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 16th DAY OF APRIL, 2012.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 4th DAY OF JUNE, 2012.

TOWN OF CRESTED BUTTE, COLORADO

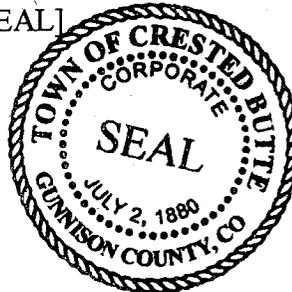
By: _____

Aaron J. Huckstep, Mayor

ATTEST:

Eileen Hughes, Town Clerk

[SEAL]



**Guidelines, Rules, and Requirements Governing
Resident-Occupied Affordable Housing in the
Town of Crested Butte**

June 4, 2012

Section 1. Definitions.

To the extent of conflict between definitions in these Guidelines, Rules, and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte and Chapter 16, Article 21 of the Crested Butte Municipal Code (Code), the definitions in the Code shall control.

- Applicant -** Any person who wishes to purchase or rent a ROAH unit.
- Approved Entity -** Any entity approved by the Crested Butte Town Council which has a purpose of providing or administering affordable housing, or any person who would own a ROAH unit for the purpose of housing employees therein, provided the Approved Entity agrees to comply and be responsible for compliance with all requirements in these Guidelines.
- Area Median Income (AMI) -** Means figures published annually for counties by the U.S. Department of Housing and Urban Development (HUD) by household size. When a single figure is referenced, such as the median income for Gunnison County, it refers to one hundred percent (100%) of the area median income for a four-person (4-person) household.
- Bona Fide Offer -** Means an offer made in good faith, without fraud or deceit, between unrelated parties to purchase an Owner-Occupied ROAH unit which the owner intends to accept.
- Consumer Price Index (CPI) -** Is the Denver-Boulder-Greeley, Colorado Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor index.
- Customary Closing Costs -** The normal, ordinary costs associated with the sale and purchase of real property including, without limitation, costs and expenses associated with closing a loan on real property. The customary closing costs shall be allocated as follows:

Owner (Seller)

50% of the title company's closing/settlement fees.

All real property taxes prorated to the date of closing based upon taxes for the calendar year immediately preceding closing or the most recent mill levy and most

Buyer

50% of the title company's closing/settlement fees.

Survey, or improvement location certificate, if applicable.

Guidelines

recent assessment.

Pro-rated water and sewer monthly use fees to the date of closing.

All other outstanding fees and assessments such as home owners association dues prorated to the date of closing.

Owner's title insurance.

Town administration fee, up to 1½% of total sale price, if applicable.

Document preparation fees.

All real estate commissions.

Owners' title policy.

Recording fees.

Certificate of taxes due.

100% of loan fees.

Mortgagee policy

Inspection fees.

The Town encourages the Town Land Excise Transfer Tax (Real Estate Transfer Tax) to be equally divided between the owner and buyer.

- Deed Restriction -** Means that certain ROAH Deed Restriction encumbrance recorded against a Resident-Occupied Affordable Housing unit that restricts the sale, purchase and use of such ROAH unit to the requirements of these Guidelines.
- Dependent -** A minor child, eighteen (18) years or younger, or other relative of the renter or owner of a ROAH unit, which such child or relative is listed as a dependent for federal income tax purposes by such renter or owner, or his or her present or former spouse, significant other or life partner (said child must also be related by blood or adoption and reside with the individual at least one hundred eighty (180) days out of every twelve (12)-month period of time).
- Disabled Person -** A person who meets the definition of "individual with a disability" contained in 29 U.S.C. Section 706(8), as amended, and/or defined in the Americans with Disabilities Act of 1990; and/or a person who has a "handicap" as defined in C.R.S. § 24-34-301(4), the Colorado Anti-discrimination Act.
- Grievance -** Any dispute that an owner, purchaser or tenant may have with the Town or its designee in connection with these Guidelines.
- Gross Assets -** Anything which has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of action which belong to any person, as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation, or estate that is applicable or subject to the payment of debts. Gross

Guidelines

assets shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts. Assets are evaluated at current fair market value, not accounting book value.

- Gross Income -** Total individual income including:
1. income from employment, Social Security benefits, alimony and child support;
 2. trust and other investment income; and
 3. net income derived from a business or from income-producing property after reasonable deductions for expenses, depreciation, taxes and similar allowances.
- Only the income of people who are eighteen (18) years old, or older, will be counted in the household income.
- Guidelines -** These Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte.
- Household -** All owners of Owner Occupied ROAH units or renters of ROAH Rental units, their immediate family which includes spouses, siblings, parents and/or offspring, either biologically, by marriage or by legal adoption, regardless of age, and any parties who by legal arrangement including by leasehold interest, deed, joint tenancy, tenancy in common, or tenancy in its entirety shall have a legal right to fee ownership of leasehold interest, who will be occupying the ROAH unit.
- Household Assets -** Gross assets minus liabilities of a Qualified Buyer or Qualified Renter and his or her Dependents.
- Household Income -** Combined gross income of all persons in the Household.
- Household Size -** Household size is computed by adding up the Qualified Buyer or Qualified Renter, his or her Dependents, and all others included in the definition of Household.
- Letter of Certification -** A letter issued by the Town stating that the person to whom it has been issued is a Qualified Buyer. A Letter of Certification is valid for up to one (1) year.
- Liabilities -** Existing financial obligations or debts.
- Maximum Sale Price -** The maximum amount for which a ROAH unit may be transferred, calculated as described in Exhibit A. The Town does not represent or Guarantee that the owner will obtain the Maximum Sale Price.
- Net Assets -** Gross assets minus liabilities. Retirement accounts will be reviewed on a case-by-case basis to determine whether or not they shall be included as a net asset.

Guidelines

- Owner Occupied ROAH unit -** A ROAH unit which is limited to an owner occupied unit by deed restriction.
- Qualified Buyers -** Persons meeting the Eligibility Qualifications for eligible owners set forth in Section 3 below.
- Qualified Renters -** Persons meeting the Eligibility Qualifications for eligible renters set forth in Section 6 below.
- Resident-Occupied Affordable Housing Unit (ROAH unit) -** Any single unit of real property, whether a single family home, condominium unit, a townhouse unit, a tract or lot, or an accessory dwelling unit located in the Town, which may be an Owner Occupied ROAH unit or ROAH Rental unit, that is subject to these Guidelines.
- Roommates -** Those people occupying a ROAH unit who are neither Qualified Buyers nor Qualified Renters.
- Town -** The Town of Crested Butte, as defined in Section 1-2-10 of the Crested Butte Municipal Code.
- Town Code (Code) -** Means the Crested Butte Municipal Code.
- Town Council -** The Town Council of the Town of Crested Butte, acting in its official capacity.

Section 2. Purpose.

These Guidelines apply to all ROAH units created in accordance with Chapter 16, Article 21 of the Code. These Guidelines are created for the purposes of guiding the use of ROAH units by Qualified Buyers and Qualified Renters. These Guidelines are intended to assure that all purchasers, sellers (owners) and renters will be treated fairly and impartially.

Section 3. Eligible Owners.

A. Rental ROAH Units.

The Town may own a ROAH Rental unit. An Approved Entity may own a ROAH Rental unit after approval by the Town Council, if it agrees to be responsible for compliance with all requirements in these Guidelines. The developer or owner of the property subject to the requirements of Chapter 16, Article 21 of the Code may own ROAH Rental units but shall be responsible for compliance with all requirements in these Guidelines and the requirements of Chapter 16, Article 21 of the Code.

Guidelines

B. Owner Occupied ROAH Units.

The Town may own an Owner Occupied ROAH unit. The developer or owner of the property subject to the requirements of Chapter 16, Article 21 of the Code may own an Owner Occupied ROAH unit and shall be responsible for compliance with all requirements in these Guidelines. A Qualified Entity may own an Owner Occupied ROAH unit as an intermediary, to resolve issues, when Qualified Buyers are unable to purchase the Owner Occupied ROAH unit. A Qualified Buyer may own an Owner Occupied ROAH unit. Only a Qualified Buyer may occupy an Owner Occupied ROAH unit after purchasing the unit.

C. Qualified Buyers.

A Qualified Buyer is a natural person who meets all of the following Eligibility Qualifications, as determined by the Town Manager, and who has been issued a Letter of Certification by the Town Manager.

1. Eligibility Qualifications:

- a. Work in Gunnison County. The person is employed in Gunnison County.
- b. Percentage of Income in the County. 80% of all his or her income is "earned income" in Gunnison County during the twelve (12) months prior to applying to qualify to purchase an Owner Occupied ROAH unit. "Earned income" shall be defined by the Internal Revenue Service (IRC S 32(c) Earned Income or as it may be amended).
- c. Land Ownership. No person or his or her Dependents shall own an interest, alone or in conjunction with others, in any improved residential real estate except residential property which according to the terms of a restrictive covenant cannot be owner-occupied at the time of closing on an Owner Occupied ROAH unit. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to closing on an Owner Occupied ROAH unit. An owner of a 50% or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration. Unimproved residential real property may be owned by a Qualified Buyer but must remain unimproved during the time an Owner Occupied ROAH unit is owned by a Qualified Buyer. If unimproved residential real property is improved with a residence, the owner must sell the Owner Occupied ROAH unit upon issuance of a Certificate of Occupancy on the other real property.

Notwithstanding the provisions in Section 3.B.1.c., a Qualified Buyer who is moving from an Owner Occupied ROAH unit to another deed restricted affordable housing unit may continue to own the ROAH unit as provided for in Sections 5. C. 1. d., e. and f.

- d. Residency. The person must reside in Gunnison County, Colorado, at the time a purchase contract is signed.
- e. Maximum Household Income Limit. The maximum Household Income for a Qualified Buyer shall depend upon the particular Owner Occupied ROAH unit sought and shall be no greater than the percentage of Gunnison County AMI identified in the restrictive covenant for the Owner Occupied ROAH unit. Household Income will be based on the actual size of the household applying for an Owner Occupied ROAH unit. For example, if the maximum

Guidelines

Household Income limit is 80% of the AMI, and a three person household applies, the maximum Household Income will be based on 80% of the AMI for a three (3) person household.

- f. Asset Limit. The assets of a Qualified Buyer and all people in the household, including his or her Dependents, but not renters, shall not exceed four (4) times the maximum Household Income limit for the Owner Occupied ROAH unit as set forth in the restrictive covenant for the Owner Occupied ROAH unit, unless the Qualified Buyer or at least one (1) of his or her Dependents is/are a senior citizen aged fifty-nine and one-half (59 ½) or older, in which case the asset limit is 150% of four (4) times the maximum Household Income for the Owner Occupied ROAH unit as set forth in the restrictive covenant. Vacant land, which can be owned by a Qualified Buyer, will be valued as stated in the Gunnison County Assessor's Office notice of valuation.
2. Exemptions from Eligibility Qualifications. A request for an exemption from the Eligibility Qualifications may be requested from the Town. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines, and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for an exemption.
 - a. A request for an exemption must be submitted in writing to the Town and shall include appropriate documentation in support of the exemption. The applicant shall submit any additional information reasonably requested by the Town Manager in support of such request.
 - b. The request shall be reviewed by the Town Manager. Upon demonstration that an exemption is appropriate, the Town Manager may grant the request, with or without conditions. The approval should not compromise the public good and should not substantially impair the intent and purpose of these Guidelines. The Town Manager may request that the decision for the requested exemption be rendered by the Town Council.
 - c. Examples of hardships, exceptional circumstances or compelling reasons include, but are not limited to:
 - i. a person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year;
 - ii. a person who temporarily left Gunnison County to attend college or other educational training;
 - iii. a recently hired employee of the Town;
 - iv. an employee of the Town who helps provide essential services to the Town;
 - v. a person who is certified as being unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to last indefinitely;
 - vi. a person with federally recognized disabled dependents; or
 - vii. a person or persons who are court-appointed legal guardians with wards who are otherwise Qualified Buyers.
 3. Establishing Eligibility Qualifications. To establish Eligibility Qualifications, the Town Manager will request documentation that may include, but not be limited to, copies of the following:

Guidelines

- a. most recent federal income tax returns (Form 1040);
 - b. most recent IRS Form W2s associated with the most recent 1040 form;
 - c. completed, signed, and dated Town application;
 - d. an affidavit by the applicant regarding the applicant's ownership of other real property;
 - e. an affidavit by the applicant verifying the truth of the information provided;
 - f. landlord verification (proof of residency by physical address);
 - g. wage stubs;
 - h. employer name and address; and
 - i. any other verification deemed necessary by the Town Manager to make a determination.
4. Town to Make Determination as to Eligibility. The Town Manager shall make the final determination as to the Eligibility Qualifications of a prospective purchaser of an Owner Occupied ROAH unit.
5. Mortgage Loan Co-signers.
- a. A person other than a Qualified Buyer may co-sign, along with the Qualified Buyer, on a mortgage loan for an Owner Occupied ROAH unit. That person may also appear on the title to the Owner Occupied ROAH unit.
 - b. If title to an Owner Occupied ROAH unit transfers solely to the co-signer, the Owner Occupied ROAH unit must be sold to a Qualified Buyer unless the co-signer meets all of the criteria for a Qualified Buyer at the time of the title transfer. The Owner Occupied ROAH unit may not be occupied or rented prior to the sale.

Section 4. Procedures for Sale of Units.

The sale of all Owner Occupied ROAH units shall be in accordance with the procedures set forth below.

- A. Consulting Legal Counsel. All purchasers and sellers are advised to consult legal counsel regarding examination of title, all contracts, agreements and title documents pertaining to the purchase or sale of property discussed herein. The retention of such counsel or such related services shall be at purchaser's or owner's (seller's) own expense.
- B. Sellers Decide to Whom They May Sell. Owners may sell to any Qualified Buyer who has been issued a Letter of Certification.
- C. Qualified Buyers. Qualified Buyers must meet the same Eligibility Qualifications and be qualified after complying with the following:
 1. Applicants shall complete an application for an Owner Occupied ROAH unit, which application shall contain sufficient information for the Town Manager to determine whether or not the applicant is a Qualified Buyer.
 2. An applicant will be notified by the Town Manager as to whether he or she meets the Eligibility Requirements to be a Qualified Buyer. People who are determined by the Town Manager to be Qualified Buyers will be issued a Letter of Certification, which the Qualified Buyer can use to

Guidelines

demonstrate to the owner that he or she is a Qualified Buyer. An applicant who has been determined not to be a Qualified Buyer may request an exemption from the Town Council.

3. Applicants should refrain from making an offer to purchase an Owner Occupied ROAH unit until after a Letter of Certification is issued by the Town Manager.
- D. Offering Owner Occupied Units for Sale. Owner(s) shall notify the Town Manager of the intent to sell an Owner Occupied ROAH unit prior to advertising the Owner Occupied ROAH unit or listing it for sale. The owner shall consult with the Town Manager to confirm the correct Maximum Sale Price for the Owner Occupied ROAH unit prior to announcing the Owner Occupied ROAH unit for sale. The owner shall list the Owner Occupied ROAH unit with the Town if a licensed transactional broker is available through the Town. If no transactional broker is available, the owner may sell an Owner Occupied ROAH unit directly or the owner may list the ROAH unit with a real estate broker licensed to do business in the State of Colorado. After notifying the Town Manager of the intent to sell the Owner Occupied ROAH unit, the owner must also place an announcement in the legal publications section of the official newspaper of the Town, at owner's expense, containing:
1. The address of the Owner Occupied ROAH unit;
 2. A statement that potential buyers must meet Town Eligibility Qualifications, or receive an exemption from the Town Council;
 3. The contact address for the owner; and
The offered sale price of the Owner Occupied ROAH unit, not to exceed the Maximum Sale Price, as established in Exhibit A. Maximum Sale Price will be established as of the date the seller notifies the Town Manager of the seller's desire to sell the Owner Occupied ROAH unit.
 - 4.
- E. Determining the Maximum Sale Price. The Maximum Sale Price for each Owner Occupied ROAH unit shall be calculated according to the appropriate formula set forth in Exhibit A.
- F. Customary Closing Costs. The owner shall not permit the prospective purchaser to assume any or all of the seller's customary closing costs. The owner shall not accept any other consideration which would cause an increase in the sales price of the Owner Occupied ROAH unit above the Maximum Sale Price, or for any other reason induce the owner to sell the Owner Occupied ROAH unit to a purchaser in violation of these Guidelines.
- G. No Guarantees. The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price.
- H. Administration Fees.
1. If a licensed transactional broker is available through the Town, at the closing of the sale of an Owner Occupied ROAH unit, the owner will pay the Town an administration fee in an amount to be established by the Town Manager. The amount shall not exceed one and one-half percent (1 1/2%) of the total sale price of the Owner Occupied ROAH unit. One-half (1/2) of the administration fee shall be paid by the owner at the time of listing, which is applied to the total administration fee payable at closing. The Town Manager may instruct the title company to pay the balance of administration fees owed to the Town out of the funds available to the owner at the closing. In the event the owner fails to perform under the listing contract, rejects all offers at

Guidelines

Maximum Sale Price in cash or cash-equivalent terms, or withdraws the listing after advertising has commenced, that portion of the administration fee paid will not be refunded. In the event the owner withdraws for failure of any bids to be received at Maximum Sale Price or with acceptable terms, the advertising and administrative costs incurred by the Town shall be deducted from the administration fee and the balance refunded or credited to the owner's administration fee when the Owner Occupied ROAH unit is sold.

2. If a licensed transactional broker is not available through the Town, there will be no administration fees.

I. First Right of Refusal.

1. Offer of Purchase/First Right of Refusal. No owner may sell an Owner Occupied ROAH unit or any interest therein except pursuant to the provisions of this Section. Any owner, except the Town, who receives and intends to accept a Bona Fide Offer for the purchase of an Owner Occupied ROAH unit, shall give prompt written notice to the Town Manager of the name and address of the proposed purchaser, the terms of the proposed transaction and other information as the Town Manager may reasonably require. The owner shall thereupon offer to sell his or her Owner Occupied ROAH unit to the Town under the same terms and conditions. The giving of notice shall constitute a warranty and representation to the Town that such owner believes the offer to purchase to be bona fide in all respects.
2. Term of Town Council's Right. Within fourteen (14) days beginning on and including the date of the actual receipt of such information, the Town Council shall have the right to purchase the noticed Owner Occupied ROAH unit on the same terms and conditions as contained in the Bona Fide Offer.
3. Exercise of Right. In order to exercise its right of first refusal, the Town Council must, on or before the end of such fourteen day (14 day) period actually deliver to the owner a written commitment to purchase the noticed Owner Occupied ROAH unit. If the Town Council exercises its right to purchase the noticed Owner Occupied ROAH unit, it shall contract with the owner to purchase the noticed Owner Occupied ROAH unit upon the same terms and conditions as contained in the Bona Fide Offer, or upon terms and conditions no less favorable to the owner. The Town Council shall also tender to the owner any down payment or deposit made under the Bona Fide Offer.
4. Non-exercise of Right. If the Town Council does not exercise its right hereunder within the time period provided, the owner shall be free to accept and close upon the Bona Fide Offer. If the owner does not, within the period provided in the Bona Fide Offer, close the transaction on the terms and conditions contained therein, the owner shall be required to again comply with all of the terms and provisions of this Section in order to subsequently sell the Owner Occupied ROAH unit.
5. Failure to Comply. Any sale of an Owner Occupied ROAH unit without full compliance with the terms and provisions of this Section may be voided at the election of the Town Council.
6. Certificate. After full compliance with this Section by an offering owner, and after the period of time provided for purchase by the Town has expired and the right of first refusal has not been

Guidelines

exercised, the Town Attorney shall execute a certificate of record stating that the provisions of this Section have been met and any right of first refusal vested with the Town has terminated.

7. Exceptions. The following transfers or conveyances are excepted from the provisions of this section:
 - a. A transfer to, or purchase by, any mortgagee who acquires title as a result of foreclosure proceedings or conveyance in lieu thereof; and a transfer or sale by any such mortgagee after acquisition of the unit by foreclosure or conveyance in lieu thereof.
 - b. A transfer or conveyance between or among co-tenants of the same Owner Occupied ROAH unit, spouses, children or parents of owners (who must be Qualified Buyers).
 - c. A transfer or conveyance by gift, devise or inheritance or by operation of law.

Section 5. Ownership of ROAH Units and Maintaining Eligibility for Ownership.

All ROAH unit owners must comply with the following requirements:

A. ROAH Units Subject to Deed Restriction.

Each ROAH unit, including Owner Occupied ROAH units and ROAH Rental units, is subject to the terms and conditions of these Guidelines, except where otherwise noted herein. Each ROAH unit is also subject to the Deed Restriction to be executed by the purchaser of a ROAH unit upon purchase and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado, incorporating the terms and restrictions contained herein. Such Deed Restriction shall be joined by any senior lien holder. A copy of each recorded deed conveying title to a ROAH unit and an original of such Deed Restriction and joinder of lien holder benefitting the Town shall be provided to the Town at closing, failing which, such transfer of the subject ROAH unit shall be void *ab initio*.

B. Occupancy.

All ROAH units must be occupied by owners or by renters of ROAH units as their sole and exclusive residence, subject to the provision on Leaves of Absence described in Section 5.D.

C. Re-Qualification.

1. Continuing Compliance with Eligibility Qualifications. The Town Manager may conduct random audits and investigate complaints or reports of non-compliance at his or her discretion. The Town Manager may require an owner to demonstrate that he or she complies with all applicable Eligibility Qualifications. If the owner fails to meet the applicable Eligibility Qualifications or ceases to use the housing as his or her sole and exclusive place of residence (subject to the provisions on Leaves of Absence), an Owner Occupied ROAH unit shall be sold to a Qualified Buyer as provided herein. In the event that title to an Owner Occupied ROAH unit vests by descent in individuals and/or entities who are not Qualified Buyers, the Owner Occupied ROAH unit shall be offered for sale and shall be sold to a Qualified Buyer within one (1) year after the Town notifies the owner of the obligation to sell. In the event an Owner Occupied ROAH unit is required to be sold pursuant to this section, the Owner Occupied ROAH unit may not be occupied or rented prior to the sale.

- a. The Town Manager may temporarily suspend the owner occupancy requirements in subparagraph 1. When the Town Manager finds the following circumstances to be true:

Guidelines

- i. An owner makes a written request to the Town Manager to rent his or her unit, for no more than six (6) months;
 - ii. The Owner Occupied ROAH unit owner has been actively trying to sell the unit for at least six(6) months; and
 - iii. The owner has moved out of Gunnison County, or is about to move out of Gunnison County, and does not intend to return.
 - b. An Owner Occupied ROAH unit that is rented when the owner has moved, or is about to move, out of the county shall only be rented to Qualified Renters, as described in Section 6. Such renters shall be qualified by the Town Manager as described in Section 6.B.
 - c. Prior to the end of the six (6) month rental term, if the Owner Occupied ROAH unit has not been sold, the owner may request a second six (6) month rental term. At the end of the second rental term the Owner Occupied ROAH unit may no longer be rented and, if the owner has not returned to live in the ROAH unit, the Owner Occupied ROAH unit shall be sold to a Qualified Buyer as provided herein.
 - d. The Town Manager may temporarily suspend the prohibition against owning more than one (1) developed residential property in Section 3.B.1.C. when the Town Manager finds the following circumstances to be true:
 - i. An owner makes a written request to the Town Manager to rent his or her unit, for no more than six (6) months;
 - ii. The owner of the Owner Occupied ROAH unit has been actively trying to sell the unit for at least six (6) months; and
 - iii. The owner has a contract to purchase another deed restricted affordable housing unit within the Town limits of Crested Butte.
 - e. An Owner Occupied ROAH unit that is no longer occupied by the owner may be rented to Qualified Renters, as described in Section 6. Such renters shall be qualified by the Town Manager as described in Section 6.B.
 - f. At the end of the six (6) month rental term the Owner Occupied ROAH unit shall no longer be rented and shall be sold to a Qualified Buyer as provided herein.
2. Exceptions to Complying with Eligibility Qualifications. Each owner shall continue to comply with the applicable Eligibility Qualifications except for the following:
 - a. Total Maximum Income Limits and Asset Limits.
 - b. An owner who reaches the age of fifty-nine and one-half (59 1/2) years and/or otherwise demonstrates retirement from full-time work need not continue to comply with the following Qualified Buyer requirements:
 - (i) Work in Gunnison County (Section 3 B.1.a.);
 - (ii) Percentage of Income (Section 3.B.1.b.); and
 - (iii) Occupancy (Section 5.B.).

Guidelines

D. Leaves of Absence.

1. Requests for Leaves of Absence. An owner may request written approval from the Town Manager for a leave of absence for up to one (1) year or, at the Town Manager's discretion, up to one (1) additional year. Leaves of Absence may not exceed two (2) years in any ten-year (10-year) period. Leaves of Absence may be granted upon convincing evidence that the owner has a valid reason for leaving and a commitment to return to live in the ROAH unit.
2. Renting a ROAH Unit During a Leave of Absence. An Owner Occupied ROAH unit may be rented if an owner has requested and received, in writing, permission from the Town Manager for a Leave of Absence, and additional permission to rent the Owner Occupied ROAH unit during the period of the absence.
3. People to Whom ROAH Units May be Rented. When an owner has been granted a Leave of Absence, the owner's Owner Occupied ROAH unit may only be rented to those people who meet the Eligibility Qualifications of a Qualified Renter as set forth herein.

E. Roommates Occupying an Owner Occupied ROAH Unit with the Owner. Roommates need not meet Eligibility Requirements.

Section 6. Rentals.

ROAH units which will be used as "ROAH Rental units" by the Town, the developer or owner of the property subject to the requirements of Chapter 16, Article 21 of the Code and subsequent owners of the ROAH Rental units must be occupied by at least one (1) Qualified Renter.

A. Qualified Renters. Qualified Renters are people who meet all of the following Rental Eligibility Qualifications and are named on a lease for a ROAH Rental unit.

1. Rental Eligibility Qualifications:

- a. Work in Gunnison County. The person is employed in Gunnison County.
- b. Percentage of Income in the County. 80% of all his or her income is "earned income" in Gunnison County during the twelve (12) months prior to applying to qualify to rent a ROAH Rental unit. "Earned income" is defined by the Internal Revenue Service (IRC S 32(c) Earned Income or as it may be amended).
- c. Land Ownership.
No person or his or her Dependents shall own an interest, alone or in conjunction with others, in any improved residential real estate at the time of entering into a lease on a ROAH Rental unit, except residential property which according to the terms of its deed restriction cannot be owner-occupied. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to entering into a lease on a ROAH Rental unit. An owner of a 50% or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration. Unimproved residential real property must remain unimproved during the time a ROAH

Guidelines

Rental unit is rented. If the unimproved property is improved with a residence, the lease will be terminated the renter must vacate the premises, upon issuance of a Certificate of Occupancy on the other real property.

- d. Residency. The person must reside in Gunnison County, Colorado, at the time a lease is signed.
- e. Maximum Household Income Limit. The maximum Household Income limit for a Qualified Renter shall depend upon the particular ROAH Rental unit sought and shall be no greater than the percentage of Gunnison County AMI set forth in the restrictive covenant for the ROAH Rental unit. Household Income will be based on the actual size of the household applying for a ROAH Rental unit. For example, if the maximum Household Income limit is 80% of the AMI and a three (3) person household applies, the maximum income will be based on 80% of the AMI for a three (3) person household.
- f. Asset Limit. The assets of the Qualified Renter and all people in the household, including his or her Dependents, shall not exceed four (4) times the maximum Household Income for the ROAH Rental unit unless the Qualified Renter or his or her Dependents is/are a senior citizen aged fifty-nine and one-half (59 ½) or older, in which case the asset limit is 150% of four (4) times the maximum Household Income for the ROAH Rental unit as set forth in the restrictive covenant. Vacant land, which can be owned by a Qualified Renter, will be valued as stated in the Gunnison County Assessor's Office notice of valuation.
- g. Qualified Renters of Town Employee Units. When compliance with the requirements of Chapter 16, Article 21 of the Code results in a ROAH Rental unit being owned by the Town and when the Town Council designates such units as Town employee units, the order of priority for renters of these Town employee ROAH Rental units is as follows:
 - i. full-time employees of the Town as defined by the Town Manager;
 - ii. part-time employees of the Town as defined by the Town Manager;
 - iii. Mountain Express employees;
 - iv. essential services employees, including but not limited to:
 - a. Fire personnel;
 - b. Emergency Medical Technicians (EMTs);
 - c. Public school teachers and administrators;
 - d. Mt. Crested Butte emergency services personnel;
 - e. County Sheriff personnel; and
 - f. Others as identified by the Town Council; and
 - v. the general public.

B. Qualifying for Rental Affordable Housing.

1. Determination by Town. The Town Manager will decide which applicants meet the Rental Eligibility Qualifications for Town owned ROAH Rental units. Approved Entities that own ROAH Rental units shall decide which applicants meet the Rental Eligibility Qualifications and shall be responsible for compliance with the requirements of Section 6.A. Approved Entities are subject to Section 8. (Default/Breach/Enforcement). Approved Entities may request that the

Guidelines

Town Manager decide which applicants meet the Rental Eligibility Qualifications for Approved Entity owned ROAH Rental units and, if the Town Manager agrees, an agreement between the Town and the Approved Entity shall set forth the conditions of doing so.

2. Establishing Rental Eligibility Qualifications. To establish Rental Eligibility Qualifications, the Town Manager, or Approved Entities, may request documentation as set forth in Section 3.B.3., Establishing Eligibility Qualifications.

C. Exemptions.

1. Any prospective renter may apply for an exemption from the Rental Eligibility Qualifications utilizing the exemption procedures for Qualified Buyers set forth above at Section 3.B.2.
- 2: Retirees. Qualified Renters may continue to rent a ROAH Rental unit after retirement as long as they continue to meet all Rental Eligibility Qualifications, excluding: Work in Gunnison County, Percentage of Income in the County, and Maximum Income. Retirees shall also be exempt from sole and exclusive residency requirements.

D. Re-qualifying for New Lease Term.

1. Continuing to Meet Rental Eligibility Qualifications. Only Eligible Renters may renew leases for ROAH Rental units. The qualifications of renters shall be reviewed and verified prior to the execution of a new lease to ensure they continue to meet the Eligibility Qualifications for the ROAH Rental unit. A Town employee, whose employment with the Town is terminated, shall vacate the ROAH Rental unit at the end of his or her lease unless the Town employee begins working for Mountain Express or one of the essential services organizations listed in Section 6.A.1.g.iv.
2. Continuing to Rent When No Longer Meeting Eligibility Qualifications. If a Qualified Renter no longer meets the Rental Eligibility Qualifications upon review for a new lease term, the formerly Qualified Renter may continue to rent and occupy the ROAH Rental unit at the rent and upon the terms established by the lease for up to one additional year in order to provide adequate time to comply with the requirements or secure new housing. The foregoing shall not apply to Town employees whose employment with the Town has terminated.

- E. Occupying ROAH Rental Units. Qualified Renters must occupy the ROAH Rental unit as their sole and exclusive residence, subject to the provision on Leaves of Absence, below.

F. Leaves of Absence.

1. Requests for Leaves of Absence. A Qualified Renter may request written approval from the Town Manager for a Leave of Absence for up to one (1) year or, at the Town Manager's discretion, up to one (1) additional year. Leaves of Absence may be granted upon convincing evidence that the Qualified Renter has a valid reason for leaving and a commitment to return to live in the ROAH Rental unit. Leaves of Absence shall not exceed two (2) years in any ten-year (10-year) period.

Guidelines

2. Subletting a ROAH Unit During a Leave of Absence. A ROAH Rental unit may be sublet in its entirety after a Qualified Renter has received, in writing, permission from the Town Manager for a Leave of Absence. The following conditions apply when subletting:
 - a. The ROAH Rental unit may only be sublet to those who meet the Rental Eligibility Qualifications.
 - b. The Maximum Rental Rate for the ROAH Rental unit shall be no more than the rate established in the original lease.

Section 7. Grievance Procedures.

A grievance may be presented to the Town under the following procedures:

- A. Filing a Grievance. Any grievance must be presented in writing to the Town Manager. It may be simply stated, but shall specify:
 1. the particular ground(s) upon which it is based;
 2. the action requested; and
 3. the name, address, telephone number of the complainant and similar information about his/her representative, if any.
- B. Hearing.
 1. If a grievance cannot be resolved by the Town Manager, a hearing before the Town Council may be requested in writing by the complainant. Upon receipt of the written request, a hearing must be scheduled within twenty (20) days unless waived by the complainant.
 2. The complainant and the Town shall have the opportunity to examine and, at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant, before the hearing.
 3. The complainant and the Town have the right to be represented by counsel. All costs and expenses incurred by a complainant in prosecuting any complaint or grievance shall be said complainant's sole responsibility and shall not be the responsibility of the Town irrespective of the outcome of said complaint or grievance.
- C. Decision. Based on the record of proceedings, the Town Council will provide a written decision upon request and include the reasons for its determination. The decision of the Town Council shall be binding on the complainant and the Town, except in such cases where an appeal to a court of competent jurisdiction is requested. The parties shall take all reasonable actions necessary to carry out the decision except in cases where the decision of the Town Council is appealed to a Court.

Section 8. Default/Breach/Enforcement.

- A. Procedure for Violation, Default or Breach. If a violation, default or breach is alleged, the Town Manager shall send a notice of such to the owner detailing the nature of the violation and allowing the owner or renter fifteen (15) days to determine the merits of the allegations, or to correct the violation.

Guidelines

In the event the owner or renter disagrees with the allegation of violation of these Guidelines, and the matter cannot be settled informally with the Town Manager, the owner or renter may request, in writing, a hearing before the Town Council. If the owner or renter does not request a hearing or the violation is not cured within the fifteen-day (15-day) period, the owner shall be considered in violation of these Guidelines.

1. Hearing. The hearing described above shall be scheduled within twenty (20) days of the date of the receipt of a written request for a hearing. At any such hearing, the complainant and the Town may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made and the decision of the Town Council shall be a final decision, subject to judicial review.
2. Effect of Non-compliance. In the event a ROAH unit is sold, and/or conveyed, or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a ROAH unit for all purposes, shall be deemed to include and incorporate by this reference all terms herein contained.
3. Enforcement Options. In the event an owner or renter fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction and if the Town substantially prevails in such action, it shall be entitled to an award for its attorney fees and costs.

Section 9. Deed Restriction.

Each Owner Occupied ROAH unit and ROAH Rental unit shall be deed restricted by a recorded Deed Restriction in substantially the same form as attached hereto as Exhibit "B." Such form Deed Restriction may be modified and amended with the approval of the Town Attorney; provided that any amendments to such Deed Restriction that, on balance, materially alter the benefits contemplated to be provided to the Town there under, shall be approved by motion of the Town Council. All Deed Restrictions shall be executed by the Mayor or Mayor Pro Tem.

Section 10. Scrivener's Error.

In the event that any scriveners or other clerical error is found in these Guidelines, the Town Manager may correct said scriveners or other clerical error by memorandum recorded in the real property records of Gunnison County, State of Colorado. Said corrective memorandum shall not require the approval of the Town Council.

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
Aaron Huckstep, Mayor

Guidelines

ATTEST:

Eileen Hughes, Town Clerk

SEAL

Exhibit A

Maximum Sale Price

No Owner Occupied ROAH unit may be sold for an amount in excess of the Maximum Sale Price. The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price. Maximum Sale Price will be established as of the date the seller notifies the Town Manager of the seller's desire to sell the Owner Occupied ROAH unit.

A. Ascertaining Maximum Sale Price.

1. When the person who creates the Owner Occupied ROAH unit decides to sell it, (the initial sale) the initial Maximum Sale Price, shall not exceed the current initial Maximum Sale Price displayed in Table 1 B of the Crested Butte Resident-Occupied Affordable Housing Administrative Procedures (Administrative Procedures) as updated each year as explained in Part 1. B. of the Administrative Procedures. Each ROAH unit shall be designated a Category 1 or Category 2 ROAH unit in the deed restriction for the unit and the designated Category will determine which row of prices will be used in Table 1 B. Because initial Maximum Sale Prices vary by household size, the price will vary depending upon whether the Qualified Buyer's household size includes 1, 2, 3, 4 or more people, as explained in Part 1 B. of the Administrative Procedures.
2. When a Qualified Buyer sells his or her Owner Occupied ROAH unit, the Maximum Sale Price shall be calculated by Formula #1 or Formula #2 found in Section C of Exhibit A. Formula #1 or Formula #2, whichever results in the lower Maximum Sale Price, shall be used for the sale of all Owner Occupied ROAH units after the initial sale.
3. ROAH Rental units may be sold, but only to Approved Entities that agree to comply with the restrictive covenant for the ROAH Rental unit. There is no maximum sale price for ROAH Rental units, but the units must be rented to households that qualify to be in Category 1 or Category 2, as stated in the deed restriction and must be affordable for households as stated in Section 16-21-60(1) of the Code.

B. Calculating Maximum Sale Price.

1. The Maximum Sale Price includes:
 - a. The most recent purchase price of an Owner Occupied ROAH unit;
 - b. The cost of Permitted Subsequent Improvements (See paragraph B. 3. a. below for allowed Permitted Subsequent Improvements) for which a Town building permit has been issued;
 - c. Cost of decks less than eighteen (18) inches high for which no building permit is required;
 - d. Closing costs incurred by owner at purchase of the Owner Occupied ROAH unit (See definition of Customary Closing Costs); and
 - e. All costs must be substantiated as follows:
 - i. All costs must be documented costs (costs for which a receipt is submitted) for all Permitted Subsequent Improvements made during ownership of an Owner Occupied ROAH unit including the cost of materials and labor;

Guidelines

- ii. The cost of labor, including sweat equity, cannot exceed the cost of materials; and
- iii. Owner sweat equity shall be substantiated by a worksheet indicating hours worked, how sweat equity was used and dates of work and an affidavit shall be provided stating that the hours worked are true and accurate.

2. Maximum Sale Price Does Not Include:

- a. Taxes and insurance;
- b. Homeowners' or condominium association fees;
- c. Maintenance costs;
- d. Loan points or origination fees;
- e. Property taxes;
- f. Water and sewer fees (both availability of service fees and monthly service fees);
- g. Construction loan interest and permanent mortgage interest;
- h. Special improvement district assessments;
- i. Crested Butte Real Estate Transfer Tax;
- j. Costs for which no receipts are provided;
- k. Costs for which receipts are provided but that do not state the product purchased;
- l. Costs to clean up the job site;
- m. Costs to install telephone, cable television, satellite television, computer services and other similar services which will most likely be reinstalled for the next owner;
- n. Fire extinguishers and other non-permanent accessories such as appliances that are not intended to be sold with the ROAH unit;
- o. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items;
- p. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, floor coverings, floor tile and other, similar items; and
- q. Upgrades or addition of decorative items, including lights, window coverings, floor tile, carpeting and other similar items.

3. Permitted Subsequent Improvements. The costs of Permitted Subsequent Improvements are permitted to be included in the Maximum Sale Price of an Owner Occupied ROAH unit in order to allow owners to be reimbursed for enhancing the value of their Owner Occupied ROAH unit through improvements that require Town building permits and the cost of decks less than 18 inches high. The value of Permitted Subsequent Improvements may also appreciate as described in the formulas.

Permitted Subsequent Improvements (including owner-contributed sweat equity) made after the initial sale shall not exceed ten percent (10%) of the value of the purchase price, from the date of the sale of the Owner Occupied ROAH unit to a Qualified Buyer, for an initial ten-year (10-year) period. For every ten-year (10-year) period thereafter, another ten percent (10%) of the value of all improvements (including the initial purchase price and the value of Permitted Subsequent Improvements for each ten-year (10-year) period thereafter) may be added to the value of the improvements. Each time the Owner Occupied ROAH unit is sold, the initial ten-year (10-year) period begins again and the value of subsequent improvements that may be reimbursed shall be based on ten percent (10%) of the most recent purchase

Guidelines

price. Permitted Subsequent Improvements to Owner Occupied ROAH units which are initially sold for less than one hundred thousand dollars (\$100,000) shall be limited to twenty percent (20%) of the purchase price because ten percent (10%) of one hundred thousand dollars (\$100,000) may not allow for a significant amount of Permitted Subsequent Improvements.

- a. Permitted Subsequent Improvements include only the following permitted, permanent, durable improvements to real property, for which receipts must be provided to the Town Manager and for which a Town building permit has been issued and the cost of decks no greater than eighteen (18) inches high, for which a building permit is not required:
 - i. improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
 - ii. improvements for energy and water conservation;
 - iii. improvements for health and safety protection devices;
 - iv. improvements to add and/or finish permanent/finished storage space;
 - v. improvements to finish unfinished space;
 - vi. the cost of adding decks and balconies and any extensions thereto;
 - vii. tap fees; and
 - viii. building permit fees.

Improvements include the cost of materials and labor. The cost of labor, including owner contributed labor, cannot exceed the cost of materials.

- b. Permitted Subsequent Improvements shall not include the list of items included in Section B.2 above (Maximum Sales Price Does Not Include:);
 - c. All Permitted Subsequent Improvement items and costs shall be approved by the Town Manager prior to being added to the Maximum Sale Price as defined in these Guidelines and must be documented with receipts.
4. Information that Must be Provided When the Town Calculates Maximum Sale Price. The owner shall submit to the Town Manager such documentation as the Town Manager may require in order to calculate the Maximum Sale Price, which shall, at a minimum, include the following:
- a. Records establishing the purchase price of the Owner Occupied ROAH unit;
 - b. Receipts to verify the costs of improvements located thereon, including labor costs;
 - c. A copy of any building permit obtained for the improvements; and
 - d. An affidavit verifying that the receipts are valid and correct and represent costs actually paid by the owner for construction of improvements for their home. (Cancelled checks, without receipts, will not be acceptable documentation of costs.)

C. Formulas for Calculating Maximum Sale Price.

a. Formula #1. (3% Per Annum)

Guidelines

The Maximum Sale Price using 3% per annum for all sales after the initial sale of an Owner Occupied ROAH unit is calculated based on:

- the most recent purchase price of an Owner Occupied ROAH unit, plus
- 3% of that cost for each year the seller has owned the Owner Occupied ROAH unit, not compounded annually, and prorated for partial years, plus
- the cost of Permitted Subsequent Improvements (see above), plus
- 3% of the Permitted Subsequent Improvements cost (including owner contributed labor) for each year after the building permit was issued for the improvement, not compounded annually, and prorated for partial years, from the date a building permit was issued by the Town for those improvements (see above).

- p = Most recent sales price of the Owner Occupied ROAH unit.
 c = Permitted Subsequent Improvements costs - after the Owner Occupied ROAH unit was purchased (see above).
 d = Labor, including owner-contributed labor, for Permitted Subsequent Improvements (see above).
 BP = Building permit.

The Maximum Sale Price (MSP) of the unit is determined by the following formula:

$$p + ((p * .03) * \# \text{ of years since purchased}) + (c_1 + d_1) + (((c_1 + d_1) * .03) * \# \text{ of years since BP for } c_1 \text{ and } d_1) + (c_2 + d_2) + (((c_2 + d_2) * .03) * \# \text{ of years since BP...}) \text{ etc.} = \text{MSP}$$

Example

Seller purchased the ROAH unit in January, 2012 and paid	\$ 170,000
Cost of Permitted Subsequent Improvements finished in July, 2013	\$ 3,000
Cost of labor for Permitted Subsequent Improvements	\$ 2,000
Seller sold the ROAH unit in July, 2015.	
<u>Total costs</u>	<u>\$ 175,000</u>

$$\$170,000 + ((\$170,000 * .03) * 3.5) + (\$3,000 + \$2,000) + (((\$3,000 + \$2,000) * .03) * 2) = \$193,150$$

b. Formula #2 (Consumer Price Index Method)

The Maximum Sale Price using CPI for the second sale, after an Owner Occupied ROAH unit was sold by the developer, and for all subsequent sales is calculated based on:

- the most recent purchase price of a unit, plus
- the cost of Permitted Subsequent Improvements (see above), plus
- the change in the Consumer Price Index (CPI) where:

- p = Most recent sales price of the Owner Occupied ROAH unit.
 c = Permitted Subsequent Improvements costs after the Owner Occupied ROAH unit was

Guidelines

- purchased (see above).
- d = Labor, including owner-contributed labor for Permitted Subsequent Improvements (see above).
- BP = Building permit
- CPI = the Denver-Boulder-Greeley, Colorado Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor index.

CPI figures are published for the first half and second half of each year. Therefore, CPI will always be the published CPI number for the six (6) month period prior to the expense. The Maximum Sale Price (MSP) of the property is determined by the following formula:

$$p * \frac{\text{CPI prior to date of Town notification}}{\text{CPI prior to purchase by seller}} + ((c_1 + d_1) * \frac{\text{CPI prior to date of Town notification}}{\text{CPI prior to Issuance of BP}}) + ((c_2 + d_2) * \frac{\text{CPI prior to date of Town notification}}{\text{CPI prior to Issuance of BP}}) \text{ etc} = \text{MSP}$$

Example

• Seller purchased the unit in January, 2012 and paid	\$ 170,000
• Cost of Permitted Subsequent Improvements finished in July, 2013	\$ 3,000
• Cost of owner-contributed labor for Permitted Subsequent Improvements	\$ 2,000
• <u>Seller sold the unit in July, 2015</u>	
<u>Total</u>	<u>\$ 175,000</u>

CPI at the end of December 2011 was	211.96 (actual)
CPI at the end of June 2013 was	212.45 (projected, not actual)
CPI at the end of June 2015 was	220.88 (projected, not actual)

$$\$170,000 * 220.88/211.96 + ((\$3,000 + \$2,000) * 220.88/212.45) = \$182,352.60$$

Since Formula #2, using CPI, results in a lower Maximum Sale Price than Formula #1, the results of Formula #2 number would be the Maximum Sale Price:

Exhibit B

**RECORDING REQUEST BY:
WHEN RECORDED RETURN TO:**

Town of Crested Butte
Attn: Town Clerk
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224

RESIDENT-OCCUPIED AFFORDABLE HOUSING DEED RESTRICTION

THIS RESIDENT OCCUPIED AFFORDABLE HOUSING DEED RESTRICTION
(**"Deed Restriction"**) is entered into this ___ day of 20___ (the **"Effective Date"**) by
_____ (**"Owner"**), whose address is _____,
_____ and the **TOWN OF CRESTED BUTTE** (the **"Town"**), a Colorado
home rule municipality, whose address is P.O. Box 39, 507 Maroon Avenue, Crested Butte,
Colorado 81224. This Deed Restriction shall apply to the following real property and
improvements thereon:

[INCLUDE LEGAL DESCRIPTION FROM TITLE COMMITMENT HERE]

(the **"Property"**).

AGREEMENT:

1. **Applicability of Housing Guidelines.** The ownership of the Property shall be limited exclusively to successful applicants who meet the qualifications set forth in the Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte dated _____ and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado on _____, 20__ at Reception No. _____, as amended and modified from time to time (the **"Guidelines"**), and as determined by the Town or its designee at the time of purchase and during ownership. The Property shall be subject to the Guidelines, the terms and condition of which shall be incorporated herein by this reference. The use and occupancy of all or part of the Property is hereby limited exclusively to people who meet the referenced qualifications. The Property must be owned, occupied, sold, purchased and used only by persons meeting the qualifications set forth in the Guidelines.

2. **Ownership Limitations.** ***[INCLUDE LIMITATIONS HERE]***
Ownership, use and occupancy of the Property is subject to the following:

Guidelines

1. The household income for households occupying this property shall be limited to one of the following:

- Category 1 $\leq 80\%$ of Gunnison County Area Median Income (AMI); or
- Category 2 81 to 120% of Gunnison County AMI (Category 2 units).

2. This property shall be limited to one of the following:

- Owner Occupied ROAH unit; or
- ROAH Rental unit.

3. **Transfer of the Property.** In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void *ab initio* and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines and any amendments thereto, including but not limited to those provisions governing the qualifications for ownership, rental, sale, transfer or conveyance of the Property.

4. **Obligation Regarding Financing.** Owner and any beneficiary of any deed of trust or other lien encumbering the Property shall give immediate notice to the Town of any instance of either (i) Owner's receipt of notice of the commencement of foreclosure proceedings relative to the Property, or (ii) of any delinquency of twenty one (21) days or more in Owner's payment on any indebtedness secured by a deed of trust or other lien encumbering the Property.

5. **Default.** Any breach of the terms and conditions set forth herein, including, without limitation, a transfer in violation of the terms hereof shall constitute a "**default.**" Further, breach by Owner of the terms of any deed of trust or other lien encumbering the Property or of the terms of any obligation secured by such a deed of trust or other lien shall constitute a default hereunder. In the event of a default, following notice and an opportunity to cure as provided for hereinbelow, the Town shall have all rights and remedies set forth herein and available at law and in equity.

6. **Notice of Violation; Cure.** The Town, in the event of a default of any term or condition of this Deed Restriction by Owner, shall deliver written notice of default to Owner identifying the default and allowing Owner thirty (30) days to cure such default (the "**Cure Period**"). In the event that Owner fails to cure any such default within the time period allowed, the Town may resort to any lawful means to enforce the terms of this Deed Restriction, including, but not limited to, specific performance of the terms of this Deed Restriction, an action for damages, including an action to recover any undue financial benefit resulting from a sale that does not comply with the terms of this Deed Restriction, or the exercise of the Option (as defined herein below).

7. **Default of Deed of Trust.** In the event that Owner defaults on the terms of any deed of trust or other lien encumbering the Property, or of the terms of any obligation secured by such a deed of trust or other lien, the Town shall have all the rights of Owner under the deed of

Guidelines

trust or other lien and applicable law, the same being assigned and transferred hereby to the Town in such circumstances. The Town may, but shall not be obligated to, make any payment required in order to avoid foreclosure or to redeem the Property after foreclosure. The Town may make such payments during the notice and cure periods, in which case the Town shall be entitled to reimbursement for said payments plus interest at a rate of ten percent (10%) above the prime rate per annum and all costs and expenses, including reasonable attorneys' fees, costs and expenses, as a condition of Owner's cure.

8. **Option to Purchase.** In the event of a default by Owner which remains uncured for a period of thirty (30) days as set forth above, the Town shall have an option to purchase the Property as set forth herein ("**Option**"). The Town shall have forty-five (45) days after expiration of the Cure Period in which to exercise the Option (the "**Option Period**"). The Town shall exercise the Option by delivering to Owner written notice of such exercise within the Option Period. The Town shall be granted entry onto the Property during the Option Period in order to inspect the Property. If the Property is vacant, Owner or lienholder shall maintain utility connections until expiration of the Option Period or Closing (as defined hereinbelow). The Town shall have the Option to purchase the Property for the amount due to any holder of a promissory note secured by a first deed of trust on the Property and any reasonable costs and expenses incurred by the holder during the Option Period (the "**Senior Lienholder Amount**"). The Town may also, instead of purchasing the Property itself, assign its right to purchase the Property pursuant to the Option to another public agency, a nonprofit entity or other potential qualified owner under the Guidelines. If the Town assigns the Option, the assignee shall be bound to purchase the Property pursuant to the terms of this Deed Restriction. If the Town or its assignee elects to purchase the Property, the parties shall have the following rights and obligations:

(i) Owner shall permit a final walk-through of the Property by the Town during the final three (3) days prior to Closing.

(ii) Upon payment of the Senior Lienholder Amount by the Town, Owner shall deliver to the Town a general warranty deed for the Property, free and clear of all liens and encumbrances.

(iii) Normal and customary Closing costs shall be shared equally by Owner and the Town. Owner shall be responsible for, at its cost, any and all title insurance fees, document fees and recording fees for the deed. Taxes shall be prorated based upon taxes for the calendar year immediately preceding Closing. Any fees incident to the issuance of a letter or statement of assessments by an association shall be shared equally between Owner and the Town. Owner shall receive a credit for that portion of association assessments paid in advance from date of Closing.

(iv) Closing on the purchase of the Property by the Town shall occur within sixty (60) days of the Town's exercise of the Option at a date and time to be mutually agreed upon by the Town and Owner (the "**Closing**"). The location of the Closing shall be the title company closing

Guidelines

the transaction, said title company to be selected by the Town. Possession shall be delivered to the Town at Closing, unless otherwise agreed between Owner and Town.

9. **Termination of Deed Restriction**. In the event of foreclosure, acceptance of deed in lieu of foreclosure by the holder of a first deed of trust or an assignment of an insured mortgage to the United States Department of Housing and Urban Development (HUD), this Deed Restriction shall automatically and permanently terminate and be of no further force and effect if either of the following conditions is satisfied:

- (a) the Option Period has expired without exercise of the Option by the Town;
- or
- (b) the Town has exercised the Option but failed to close or perform under the Option in accordance with this Deed Restriction.

In the event of the termination of this Deed Restriction, the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County, Colorado, a full and complete release of this Deed Restriction. The Town's rights in a foreclosure, including, without limitation, its right of redemption, shall be the same as if it were the beneficiary of a second deed of trust. The amount of debt secured by such a second deed of trust shall be considered to be the difference between the Senior Lien holder Amount as of the date the notice of election and demand for sale is filed with the public trustee and the fair market value of the Property at that time; except that in the event that the fair market value is less than the Senior Lien holder Amount, then the amount of debt secured by such a second deed of trust shall be considered to be the difference between the amount of the certificate of purchase and the Senior Lien holder Amount. For purposes hereof, the "**fair market value**" shall be determined by a qualified real estate appraiser who is a Member of the Appraisal Institute ("M.A.I."). The appraiser shall be engaged by the Town and approved by Owner, which approval shall not be unreasonably withheld. The appraisal shall consider the sales prices of comparable properties sold in the market area during the preceding three (3)-year period. The appraisal shall also consider the effect of the terms and conditions created herein. The cost of the appraisal shall be paid for by Owner. A copy of the appraisal shall be delivered to both the Town and Owner within seven (7) days of its completion.

10. **Deed Restrictions Run with the Land**. The foregoing restrictions on ownership, use and occupancy of the Property constitute a perpetual Deed Restriction and covenant that shall run with the land as a burden thereon for the benefit of the Town, or its designee, and shall be binding on Owner, its heirs, personal representatives, successors, assigns, lessees, licensees and any transferees. The foregoing covenant and restrictions shall be administered by the Town and shall be enforceable by appropriate legal or equitable action, including, but not limited, to specific performance, injunction, abatement or eviction of non-complying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. All such remedies shall be cumulative and concurrent. If the Town substantially prevails in such an action, it shall also be entitled to an award for its reasonable attorneys' fees, costs and expenses.

Guidelines

11. **General Provisions**. The following terms and conditions shall apply to this Deed Restriction:

(a) **Notices**. Any notice, consent or approval which is required to be given hereunder, shall be given by either: mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein; or hand-delivering the same to any address provided herein. Notices shall be considered delivered on the date of delivery if hand-delivered or if both hand-delivered and mailed; or three (3) days after postmarked, if mailed only. Notices, consents and approvals shall be sent to the parties at the addresses first written above unless otherwise notified in writing

(b) **Severability**. Whenever possible, each provision of this Deed Restriction and any other related document shall be interpreted in such manner so as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

(c) **Choice of Law**. This Deed Restriction and each and every related document shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action arising from this Deed Restriction shall be in Gunnison County, Colorado.

(d) **Successor and Assigns**. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the parties' heirs, successors, transferees and assigns.

(e) **Section Headings**. Section headings within this Deed Restriction are inserted solely for convenience of reference and are not intended to and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

(f) **Waiver**. No claim of waiver, consent or acquiescence with respect to any provision of this Deed Restriction shall be valid against any party hereto except on the basis of a written instrument executed by the parties. The party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing however.

(g) **Gender and Number**. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

(h) **Construction**. None of the provisions of this Deed Restriction shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.

(i) **Amendments in Writing**. This Deed Restriction may only be modified or amended in writing by the Town or its designee and Owner. No such modification shall be effective until an

Guidelines

instrument in writing is executed and recorded in the Office of the Clerk and Recorder of Gunnison County.

(j) Further Assurances. The Town and Owner shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to make this Deed Restriction fully and legally effective, binding and enforceable as contemplated herein.

(k) Counterparts; Facsimile. This Deed Restriction may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same instrument. For purposes of enforcement of this Deed Restriction and any terms and conditions contained herein, facsimile reproductions shall be deemed to be original documents.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE(S) TO FOLLOW]**

Guidelines

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Deed Restriction as of the Effective Date written above.

OWNER:

By: _____
Name: _____

TOWN:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
_____, Mayor

ATTEST:

_____, Town Clerk

(SEAL)

Guidelines

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Resident-Occupied Affordable Housing Deed Restriction was acknowledged before me this ___ day of _____, 20___, by _____.

Witness my hand and official seal.

My commission expires _____.

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Resident-Occupied Affordable Housing Deed Restriction was acknowledged before me this ___ day of _____, 20___, by _____, Mayor of the Town of Crested Butte, Colorado, a Colorado home rule municipality, on behalf of such entity.

Witness my hand and official seal.

My commission expires _____.

JOINDER OF LIENHOLDER

By execution of this **JOINDER OF LIENHOLDER** (this "**Joinder**") the undersigned lien holder hereby agrees to be bound by all of the agreements, terms, conditions, covenants and requirements, and inures to the benefits, rights and protections contained in that certain Resident-Occupied Affordable Housing Deed Restriction ("**Deed Restriction**") dated _____, 20_____, and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado on _____, 20__ at Reception No. _____, respecting the real property and improvements described therein, as and when the circumstances may dictate. For purposes hereof, the contents, terms and conditions of the Deed Restriction are incorporated herein as if fully set forth herein.

IN WITNESS WHEREOF, the undersigned lien holder has given this Joinder by its duly authorized representative as of the Effective Date of the Deed Restriction.

LIENHOLDER:

_____, a

By: _____

Name: _____

Title: _____

Address:

Attn: _____

Phone: _____

Guidelines

E-mail: _____

Facsimile: _____