

RESOLUTION NO. 21

SERIES NO. 2016

RESOLUTIONS OF THE CRESTED BUTTE TOWN  
COUNCIL APPROVING THE AMENDED AND  
RESTATED RESTRICTIVE COVENANT  
AGREEMENT FOR 310 SECOND STREET,  
CRESTED BUTTE

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, the Town staff has recommended to the Town Council that the Town and the property owner of the South 26 feet of Lots 14, 15, 16, Block 21, Town of Crested Butte (the "Property"), commonly known as 310 Second Street, amend and restate the Restrictive Covenant Agreement (the "Original RCA") recorded on February 15, 1985 at Reception No. 386324 currently recorded against the Property; and

WHEREAS, the Town Council finds hereby that amending and restating the Original RCA is in the best interest of the Town and the property owner therefor.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

1. **Findings.** The Town Council finds hereby that amending and restating the Original RCA, and replacing the same with the "Amended and Restated Restrictive Covenant Agreement" attached hereto as Exhibit "A" is in the best interest of the Town and the property owner therefor.
2. **Authorization of Mayor.** Based on the foregoing, the Town Council hereby authorizes the Mayor to execute the Amended and Restated Restrictive Covenant Agreement in substantially the same form as attached hereto.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL  
THIS 18<sup>th</sup> DAY OF July, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel  
Glenn Michel, Mayor

ATTEST

Lynelle Stanford  
Lynelle Stanford, Town Clerk

(SEAL)



**EXHIBIT "A"**

**Amended and Restated RCA**

[attach approved form here]

RECORDING REQUESTED BY:  
WHEN RECORDED RETURN TO:

Town of Crested Butte  
Attn: Town Building and Zoning Director  
P.O. Box 39  
Crested Butte, CO 81224

**AMENDED AND RESTATED RESTRICTIVE COVENANT AGREEMENT**

THIS AMENDED AND RESTATED RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made effective this 20 day of July, 2016 by and between the TOWN OF CRESTED BUTTE, COLORADO (the "Town"), Colorado home rule municipal corporation with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and JOZEF T. RIJKS and TERESA S. RIJKS (collectively, "Owner") with an address of P.O. Box 1558, Crested Butte, CO 81224

WITNESSETH:

WHEREAS, Owner is the record owner of certain real property located within Crested Butte and legally described as follows:

South 26 feet of Lots 14, 15, 16, Block 21  
Town of Crested Butte,  
County of Gunnison,  
State of Colorado,

commonly known as 310 Second Street, Crested Butte, Colorado 81224 (the "Subject Property");

WHEREAS, a Restrictive Covenant Agreement (the "Original RCA") recorded on February 15, 1985 at Reception No. 386324 is currently recorded against the Property; and

WHEREAS, the Town and Owner desire to amend and replace the Original RCA with this Agreement.

NOW, THEREFORE, in consideration of the agreements, covenant and conditions set forth herein, the Town and Owner agree as follows:

**AGREEMENT:**

1. Amendment and Restatement of Original RCA.

1.1 The Original RCA is hereby amended, restated and replaced in its entirety with this Agreement. The Original RCA shall be of no further force and effect. The following

requirement shall apply to the Property: only four (4) bedrooms shall be allowed on the Subject Property.

1.2 This Agreement, as an amendment and restatement to the Original RCA, is supported by equal and the same consideration as the Original RCA.

1.3 This Agreement is subject to all the requirements, rights and obligations set forth in the Crested Butte Municipal Code (the "**Code**"), including, without limitation, those set forth in Sections 4-8-10, 16-24-30, 16-9-70, 16-24-20 and 18-13-10 (a) (regarding entry for enforcement and inspection), as amended, as if such requirements, rights and obligations were included verbatim herein. Regarding entry and inspection, Owner consent to such entry and inspection in consideration of the rights granted in this Agreement, at upon reasonable notice to Owner and at reasonable times. Upon written inquiry by the Town respecting Owner's compliance with the terms hereof, Owner shall reasonably promptly and truthfully, and under penalty of perjury, respond to the Town's inquiry in the time frame given to Owner in such inquiry. Absent the Town giving Owner a specific time for such response, such time frame for Owner's response shall be 30 days from Owner's receipt of such inquiry.

2. **Duration; Obligations.** The rights, obligations and restrictions contained in this Agreement shall run with the land and title to the Subject Property and shall forever bind all persons and entities having any right, title or interest in and to the Subject Property.

3. **Warranty of Priority.** Owner represents and warrants that the lien or encumbrance created by the obligations contained in this Agreement pursuant to the Code shall be superior to any deed of trust or other lien on the Subject Property.

4. **Indemnification.** Owner, for itself, its successors and assigns hereby undertakes to indemnify, defend, hold harmless and pay the Town, its elected officials, appointed boards, officers, employees, managers, attorneys, contractors, agents, insurers and insurance pools, from any and all loss, cost, expense, claim or damage of any kind, including, without limitation, reasonable attorneys' fees, costs and expenses, arising from or relating to Owner's obligations under this Agreement and the breach thereof, and its and their exercise of the rights and privileges granted by this Agreement.

5. **Default; Remedies.**

5.1 The following conditions, occurrences or actions shall constitute a default by Owner under this Agreement:

(a) Owner's failure to pay to the Town upon demand any amounts due and owing the Town in connection with the Subject Property; or

(b) Owner's violation of any provision of this Agreement or the Code.

7.4 **No Third-Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Town or Owner.

7.5 **Enforcement.** Every violation of this Agreement shall be deemed to be a nuisance and shall be subject to all the remedies provided for the abatement of nuisances. A failure to comply with this Agreement shall be grounds for an action to recover damages, for injunctive relief, for specific performance and/or any other remedy available at law and in equity.

7.6 **Notices.** All notices required pursuant to this Agreement shall be deemed served upon depositing a certified letter, return receipt requested, in the United States mail, addressed to the party being served with such notice at the addresses set forth above, unless a request to mail to a different address is provided in writing to the other party.

7.7 **Severability.** If any provision of this Agreement is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

7.8 **Entire Agreement.** This Agreement represents the entire agreement of the parties respecting the subject matters addressed herein. Any other agreement, written or oral, are hereby merged herein. This Agreement may be amended only in writing by properly executed agreement.

7.9 **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue is any action in connection with this Agreement shall be the District Court of Gunnison County, Colorado.

7.10 **Waiver.** No breach by Owner, or his heirs, successors, and assigns, of any term or covenant of this Agreement, shall create a waiver by, or estoppel against the Town, as to future or continuing breaches it being the express understanding of the parties that breaches of this Agreement may be waived only by written consent of the Town.

7.11 **Amendment.** No term or provision of this Agreement may be amended, except in writing signed and duly acknowledged by the parties, and in the Town's case, duly adopted by the Board or Town Council, as applicable. No such amendment shall be effective until recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

7.12 **Counterparts; Telecopy.** This Agreement may be executed in multiple counterparts, each of when, when taken together, shall constitute one and the same instrument. For purposes of enforcement, facsimile, E-mail and telecopy reproductions of this Agreement shall be deemed to be originals.

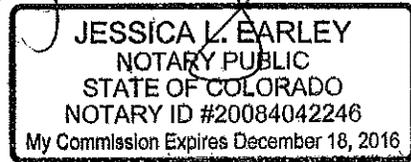
[Remainder of Page Intentionally Left Blank;  
Signature Page(s) to Follow]

STATE OF Colorado )  
 ) ss.  
COUNTY OF Gunnison

The foregoing Amended and Restated Restrictive Covenant Agreement was acknowledged before me this 25 day of July, 2016 by Glenn Michel, Mayor of the Town of Crested Butte, a Colorado home rule municipal corporation on behalf of said entity.

Witness my hand and official seal.  
My commission expires: 12-18-2016

Jessica L. Earley  
Notary Public

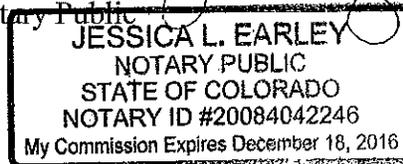


STATE OF Colorado )  
 ) ss.  
COUNTY OF Gunnison

The foregoing Amended and Restated Restrictive Covenant Agreement was acknowledged before me this 20 day of July, 2016 by Jozef T. Rijks.

Witness my hand and official seal.  
My commission expires: 12-18-2016

Jessica L. Earley  
Notary Public



STATE OF Colorado )  
 ) ss.  
COUNTY OF Gunnison

The foregoing Amended and Restated Restrictive Covenant Agreement was acknowledged before me this 20 day of July, 2016 by Teresa S. Rijks.

Witness my hand and official seal.  
My commission expires: 12-18-2016

Jessica L. Earley  
Notary Public

