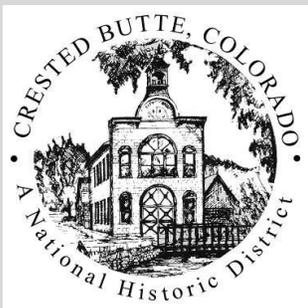


AGENDA
Town of Crested Butte
Regular Town Council Meeting
Monday, April 1, 2019
Council Chambers, Crested Butte Town Hall



Critical to our success is an engaged community and knowledgeable and experienced staff.

Town Council Values

- *Support Crested Butte's quality of life*
- *Promote resource efficiency and environmental stewardship*
- *Encourage a sustainable and healthy business climate*
- *Maintain an authentic and unique community*
- *Remain fiscally responsible*
- *Continue thoughtful management of our historic character*
- *Seek collaborative solutions to regional and local issues*

The times are approximate. The meeting may move faster or slower than expected.

6:00 WORK SESSION

1) Climate Action Plan Update.

6:05 2) E Bike Discussion.

6:40 3) Update on Big Mine Hockey Changing Rooms.

7:00 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM

7:02 APPROVAL OF AGENDA

7:04 CONSENT AGENDA

1) March 18, 2019 Regular Town Council Meeting Minutes.

2) Restaurant/Bar Seating on Public Sidewalks for: Brick Oven LTD DBA Brick Oven Pizzeria Located at 223 Elk Avenue; B & C Restaurants LLC DBA Elk Avenue Prime Located at 226 Elk Avenue; Vertigo Ventures LLC DBA The Secret Stash Located at 303 Elk Avenue; Teocalli Tamale Company DBA Teocalli Tamale Located at 311½ Elk Avenue; Public House LLC DBA Public House Located at 202 Elk Avenue; and Ladybug LTD DBA Talk of the Town Located at 230 Elk Avenue.

3) Approval of the Updated Noxious Weed List.

The listing under Consent Agenda is a group of items to be acted on with a single motion. The Consent Agenda is designed to expedite Council business. The Mayor will ask if any citizen or council member wishes to have any specific item discussed. You may request that an item be removed from Consent Agenda at that time, prior to the Council's vote. Items removed from the Consent Agenda will be considered under New Business.

7:06 PUBLIC COMMENT

Citizens may make comments on item not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments may be limited to five minutes.

7:12 STAFF UPDATES

7:20 PUBLIC HEARING

1) Ordinance No. 8, Series 2019 - An Ordinance of the Crested Butte Town Council Adding Code Section 10-6-60 Prohibiting the Possession of Tobacco/Nicotine Products by Persons Under the Age of Eighteen to the General Offenses Section of the Crested Butte Municipal Code; And Providing Penalties for Violation Thereof.

7:40 2) Ordinance No. 10, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of Unit A (Located in the Upper Level of the Chamber of Commerce Visitors Center - A Town Owned Building) Located at 601 Elk Avenue to Nautilus Sailing, LLC.

7:45 3) Ordinance No. 11, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Repeal of Section 4-2-90(b)(1) of the Town Code Concerning a Credit for the 1.5% Vendor's Fee Against Taxes Due from Gross Sales.

7:55 4) Ordinance No. 12, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Release of Deed Restrictions on Block 77, Lot 3, Unit B Peeler Townhouses in the Paradise Park Subdivision, Town of Crested Butte, Gunnison County, State of Colorado Reception No. 543195 and Replacement with New Deed Restriction.

8:00 5) Ordinance No. 13, Series 2019 - An Ordinance of the Crested Butte Town Council Deleting and Re-Codifying Chapter 16, Article 12 Condominiums and Townhouses, and Amending Chapter 17, Articles 1-General Provisions and Article 3-Major and Minor Subdivisions Generally.

8:05 6) Ordinance No. 14, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 6, Block 79 Unit A, 914 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Joseph Carpenter and Katherine Cooke for the Sale Price of \$275,000.00.

8:10 7) Ordinance No. 15, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 6, Block 79 Unit B, 916 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Guy Ciulla for the Sale Price of \$275,000.00.

8:15 8) Ordinance No. 16, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 14, Block 79, Unit A, 909 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Elizabeth Philbin for the Sale Price of \$275,000.00.

8:20 9) Ordinance No. 17, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 14, Block 79 Unit B, 911 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Chelsea Dalporto- McDowell for the Sale Price of \$275,000.00.

8:25 **NEW BUSINESS**

1) Ordinance No. 18, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned property Legally Described as Lot 5, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Brice and Karen Hoskin for the Sale Price of \$40,000.00.

8:30 2) Ordinance No. 19, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned property Legally Described as Lot 13, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Tara Hiteman for the Sale Price of \$30,000.00.

8:35 3) Ordinance No. 20, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 2, Block 80, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Benjamin Blackwood for the Sale Price of \$65,000.00.

8:40 4) Purchase Agreement for the Kikel Parcel A from the Crested Butte Land Trust for a Purchase Price of \$530,000.00.

8:45 5) Purchase Agreement with Bywater LLC for a Duplex Located on Lot 6, Block 76 for a Purchase Price of \$671,000.00.

8:50 6) Ordinance No. 21, Series 2019 - An Ordinance of the Crested Butte Town Council for an Amendment of Zoning Conditions and Restrictive Covenants Book 674, Page 293, Reception No. 417949 for Lot 23, Block 21, Town of Crested Butte Commonly Known as 315 6th Street.

9:00 7) Discussion of Proposed Rule Regarding Waters of the United States.

9:20 8) Discussion of Mayor and Council Compensation.

9:35 **LEGAL MATTERS**

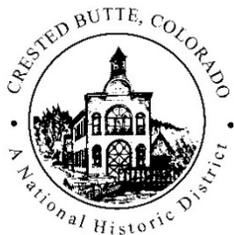
9:40 **COUNCIL REPORTS AND COMMITTEE UPDATES**

9:55 **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

10:05 **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, April 8, 2019 - 6:00PM Council Meets as Planning Commission
- Monday, April 15, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 6, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 20, 2019 - 6:00PM Work Session - 7:00PM Regular Council

10:10 **ADJOURNMENT**



Staff Report

April 1, 2019

To: Mayor Schmidt and Town Council

From: Mel Yemma, Open Space/Creative District Coordinator

Thru: Michael Yerman, Director of Community Development

Subject: **Work Session—Climate Action Plan Update**

Background: The Town Council’s values include: “Supporting a sustainable and healthy business climate” and “embracing resource efficiency/environmental stewardship.” To live up to these values, the Town Council has set a 5 year goal to “reduce the Greenhouse Gas Emissions footprint of Town’s operations by 50% versus 2017 levels; and, reduce Town of Crested Butte community emissions footprint by 25%. Additionally, the Town Council set a 2019 goal/priority of creating a Greenhouse Gas Emissions Action Plan, to create a path forward of reaching this important 5 year goal.

Climate Action Plan Overview: A Climate Action Plan (CAP) is a roadmap document that outlines specific actions to reduce Greenhouse Gas Emissions (GHG). CAPs can be completed in different ways, from varying levels of community engagement and stakeholder input, to the size of the scope of the plan.

Town staff has consulted with many different regional partners, consultant groups, and other mountain towns and counties about their experiences with developing CAPs. After much consideration, Town staff is planning to release a Request for Proposals (RFP) on April 4th for a consultant group to develop a CAP for the Town.

The Town would like the CAP to focus on specific priority projects and policies that result in GHG reductions to help us work towards and meet our goals, while also exploring ways to affect human behavior in the community at-large when it comes to transportation, waste reduction, energy use, etc.

In the RFP, the Town will be seeking proposals that demonstrate the ability to involve key community stakeholders and regional partners, while developing a realistic CAP that helps the Town meet its GHG reduction goals. The Town is especially interested in proposals that foster community buy-in and carries out the process with regional approach.

Climate Action Plan Process and Goals: The Town would overall like to see CAP proposals that include:

1. Reviewing existing plans, policies and programs within the Town’s operations, identifying gaps in these plans, and completing a best practice scan of other communities of similar size and geography;

2. Engaging community stakeholders, which includes Town staff, Town Council members, key community stakeholders, and regional partners;
3. Presenting a model of greenhouse gas reduction strategies and prioritization of implementation projects, policies and strategies for the Town moving forward;
4. Developing and producing a CAP that includes a list of project and policy priorities (including cost estimates for those projects) to help the Town meet our goals;
5. And, based upon this CAP, creating a monitoring and verification checklist.

Tentative CAP Process Timeline: Town staff is proposing the following tentative timeline for the CAP planning process, which is included in the RFP:

April 4, 2019	-CAP RFP Released
May 3, 2019	-Proposals due by 5 p.m.
May 6-14, 2019	-Selection Advisory Committee reviews proposals and conducts interviews
May 20, 2019	-Applicant selection and contract approval by Town Council
Late May -- Mid-June 2019	-Process is mapped out with project team -Creation and appointments of stakeholder group
June -- Mid-July 2019	-Project team hosts public kick-off meeting -Project team reviews Town's energy action plan/GHG inventory and other master plans/relevant documents -Project team identifies gaps and opportunities for the overall process and plan
Mid July -- Early October 2019	-Project Team hosts stakeholders meetings -Modeling of GHG reduction strategies
October -- November 2019	-Development of CAP -Development of monitoring/verification checklist -Presentation of CAP to Community -Presentation of CAP to Town Council -Town Council adopts CAP

After the adoption of the CAP, the Town will then utilize the CAP to map out a sustainability program for the Town and plan for priority projects during the fall budgeting process.

Action Needed at This Time: Town Staff recommends that two Council members be appointed to serve as Town Council liaisons on the selection committee and stakeholder group in this process (to be decided under "Other Business" during the regular Council meeting).



Staff Report

April 1, 2019

To: Mayor Schmidt and Town Council

From: Mel Yemma, Open Space/Creative District Coordinator

Thru: Michael Yerman, Director of Community Development

Subject: **Work Session—E-Bikes Discussion**

Purpose: To provide an update to the Town Council about regulating (via signage) E-Bikes on trails that are owned or have an easement-held by the Town of Crested Butte (Town) or Crested Butte Land Trust (Land Trust).

Trails Background: Since the Land Trust's inception in 1991, the Town and the Land Trust have partnered on multiple conservation and trail projects up and down the Gunnison valley. Several of the open space projects have provided unmatched recreational opportunities for visitors and community members. Together, the Land Trust and Town manage over 20 miles of trail, much of which is in close proximity to downtown Crested Butte. Each of the following natural surface trails are either on land owned by the Land Trust or Town, or on private land with an easement held by the Land Trust or Town:

- Lower Loop trail network (*Mix of Land Trust owned land and BLM administered land, Conservation Easements on Land Trust Land held by Town*)
- Budd Trail (*Private land, easement held by Land Trust and Land Trust property, easement held by Town*)
- Lupine 1 and 2 (*Mix of Town-owned Land, Town-held easement on private land, and Land Trust-owned land*)
- Gunsight Connector (*Private Land, easement held by Land Trust*)
- Green Lake Trail (*Private Land, easement held by Town*)
- Woods Walk trail network (*Mix of private land with easements held by Town and Land Trust, some sections are not encumbered by an easement*)
- Snodgrass and Teddy's Trail (*Mix of private land with easement held by Land Trust, and land owned by Mt. CB*)
- Peanut Mine Trail (*Land Trust property*)
- Baxter Gulch Trail (*Mix of Town-owned land, private land with easements held by Land Trust or Town, and USFS*)
- KB Connector and GB Loop (*Mix of Lands owned by Land Trust and BLM, Conservation Easements on Land Trust Land held by Town*)

All of these trails are designated as non-motorized, and most sections that are encumbered by a trail, recreation, or conservation easement have similar language prohibiting motorized use:

“No motorized vehicles are permitted on the Trail area excepting only motorized wheelchairs and similar devices used by individuals to whom the Americans with Disabilities Act would apply; and maintenance vehicles reasonably necessary for constructing, maintaining or repairing the trail.”

E-Bikes Background: Electric assisted bicycles (e-bikes) are growing in popularity and regulating the use of them is currently a conundrum for many land managers. In 2017, the Colorado General Assembly passed HB 17-1151, which defines e-bikes as “a vehicle having two or three wheels, fully operable pedals, and **an electric motor** not exceeding 750 watts of power.” Additionally, HB 17-1151 defines e-bikes in three types of classes:

“Class 1” Electrical assisted bicycle means an electrical assisted bicycle equipped with **a motor** that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour.”

“Class 2” Electrical assisted bicycle means an electrical assisted bicycle equipped with **a motor** that provides assistance regardless of whether the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour.”

“Class 3” Electrical assisted bicycle means an electrical assisted bicycle equipped with **a motor** that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty-eight miles per hour.” (Emphasis added to highlight differences in classes)

HB 17-1151 excludes “Class 1” and “Class 2” from the definition of a “motor vehicle”. However, because all three classes of e-bikes are still defined as having a “motor,” the Land Trust and Town staff view all three classes as not compatible with the language in our easements, which exclude motorized use from the trails, with the exception of devices used by individuals to whom the Americans with Disabilities Act would apply.

The U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) have also passed e-bikes policies that regulate e-bikes as if they are motorized vehicles, and thus are prohibited from non-motorized trails. Both the USFS and BLM have committed to monitoring e-bike use and technology and remain open to re-visiting and adapting this decision.

Update and Discussion: In order to uphold our easements and due to concerns of increasing popularity and use of e-bikes, the Land Trust and Town staff would like to prohibit the use of e-bikes on the natural-surface trails listed above. This form of regulation would be via signage and outreach, as we do not have a means to enforce the prohibition of e-bikes.

As property owners and land managers, the Land Trust and Town staff both view e-bikes as having a motor, and therefore are not consistent with the language in easements. Additionally, because some of the trails listed above intersect with federal lands administered by the USFS or BLM, we would like to have consistent regulations with the federal agencies. Overall, we would like to ensure consistency for users connecting through our properties and easements to federal lands.

While e-bikes are currently not a big issue on these trails, their popularity is rapidly increasing and we would like to get ahead of this management challenge. Because the USFS and BLM have already made their policy clear, and the trails listed above are intended to be non-motorized, we would like to have consistent signage and messaging communicating that e-bikes are not permitted on these natural

surface, non-motorized trails (with an exception of devices used by individuals to whom the Americans with Disabilities Act would apply).

The Land Trust and Town both see the value in e-bikes as a way to provide an exceptional recreation experience, allow increased bicycle commuting, and as a tool for adaptive recreationists to experience the trails. E-bikes are currently allowed on the paved recreation path trail between Crested Butte and Mt. Crested Butte, and we believe there are sufficient opportunities to utilize e-bikes on roads and motorized trails. Additionally, the Deli Trail easements are annual agreements that could be updated to allow for the use of e-bikes as the Deli Trail is an important commuter trail.

Furthermore, the prohibition of motorized vehicles in our easements are excluded by devices used by individuals to whom the Americans with Disabilities Act would apply, and we intend follow up this discussion with the Adaptive Sports Center and other important stakeholders to discuss how to meet their needs with this regulatory effort (for example, to allow e-bikes with the land owner's consent in special circumstances with the Adaptive Sports Center and other recreationists with disabilities).

Overall, Town staff is not asking for action taken by the Town Council. This update and discussion surrounds the regulation, in the form of signage and outreach, about e-bikes on these trails. The Town has no means or intention of enforcing this regulation. However, because other neighboring land managers have taken a stance on e-bikes, and as e-bikes are becoming more popular, and as these trails are becoming more popular, the Land Trust and Town staff would like to bring more clarity to the public regarding the use of e-bikes on these trails.



Staff Report

April 1, 2019

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Janna Hansen, Parks and Recreation Director
Subject: Update on Big Mine Hockey Changing Rooms

Background: Since 2011 the Town has been working in good faith to address the space constraints at Big Mine Warming House which largely affect the hockey and Nordic programs run by West Elk Hockey Association (“WEHA”), and CB Nordic (“Nordic”). The Town, in agreement with the Town of Mt. Crested Butte, allocated \$300,000.00 in 2014 from Whatever USA (“WUSA”) to address hockey changing room needs at Big Mine Park.

Throughout 2017 and 2018 WEHA, Nordic, and the Town worked together on a concept to address both Warming House and refrigeration needs at Big Mine. The user groups became uncomfortable with the scale and cost of that project and in the fall of 2018 decided to put the brakes on and simplify the scope. During the winter of 18/19 the Town, WEHA, and Nordic re-engaged in discussions and developed a plan to build simple hockey changing rooms under the Ice Arena roof at Big Mine. The addition of changing rooms would help alleviate the stress on the Warming House caused by simultaneous WEHA and Nordic use, primarily during after school times. The Nordic board is also considering various options at Big Mine Park to address their space needs including team space, larger outdoor accessible restrooms, lobby space, rental space, office space, and grade concerns on the west side of the building.

In 2012 local architect and builder, Sean Norton, put together a concept for hockey changing rooms under the roof at the rink. Town staff and WEHA representatives have been working with Sean to update those drawings and develop BOZAR approved plans. There is currently a place holder on the May BOZAR agenda to review this project. If Council approves moving forward with this project, the scope would include design and engineering for construction documents and cost estimates.

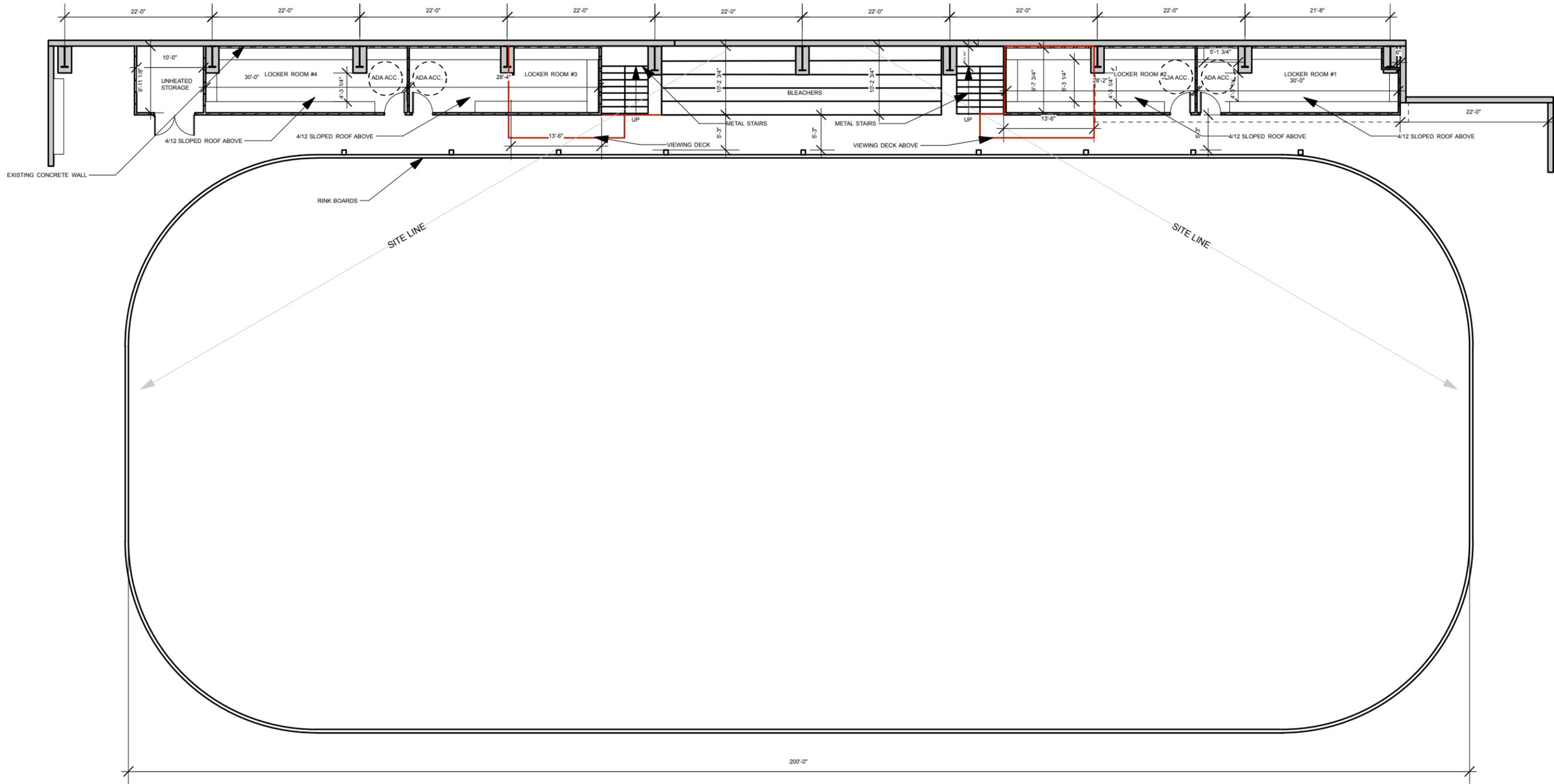
Financial Considerations: The following expenditures have been made from the \$300,000 since the WUSA contribution:

- 2016 - \$86,000 for utility upgrades
- 2017 - \$12,000 for Warming House design and engineering
- 2018 - \$4,500 for Warming House design and engineering

This leaves a balance of \$197,500 from the original \$300,000 from WUSA.

Discussion: The 2019 budget does not include this project and if approved would be included in a budget amendment in order to move forward in 2019. With Nordic and WEHA participant numbers higher than ever before, the situation at the Warming House has become dire. It is the desire of the user groups to alleviate this stress as soon as possible. If Council approves moving forward with this project, the user groups and consultants are confident that construction could be completed before the 2019 hockey and Nordic season begins with a budget not to exceed the remaining \$197,500.

Recommendation: Staff recommends that Council direct Staff to move forward with the Hockey Changing Room Project including the BOZAR approval process in May, development of final construction documents in June, posting of bid documents in July, with a bid award coming back to the Council for approval in August.



1 Locker Rooms Version 2
A1 Scale: 1/16" = 1'-0"

MINUTES
Town of Crested Butte
Regular Town Council Meeting
Monday, March 18, 2019
Council Chambers, Crested Butte Town Hall

Mayor Schmidt called the meeting to order at 7:00PM.

Council Members Present: Will Dujardin, Chris Haver, Candice Bradley, Jackson Petito, Laura Mitchell, and Paul Merck

Staff Present: Town Manager Dara MacDonald, Town Attorney John Sullivan, and Town Clerk Lynelle Stanford

Community Development Director Michael Yerman, Town Planner Bob Nevins, Assistant Design Review Coordinator Jessie Earley, Parks and Recreation Director Janna Hansen, Chief Marshal Mike Reily, and Finance Director Rob Zillioux (for part of the meeting)

APPROVAL OF AGENDA

Merck moved and Dujardin seconded a motion to approve the agenda. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

CONSENT AGENDA

- 1) **March 4, 2019 Regular Town Council Meeting Minutes.**
- 2) **Black and White Ball Special Event Application and Special Event Liquor Permit for June 30, 2019 Closing 4th Street Between Elk Avenue and Maroon Avenue.**
- 3) **People’s Fair Special Event Application for August 31 through September 1, 2019 Closing Elk Avenue from 2nd Street to 4th Street and 3rd Street from Alley to Alley.**
- 4) **Council Member Appointments to Boards and Committees.**
- 5) **Letter to the USFS on Comments to the Wild and Scenic Rivers Eligibility Report.**
- 6) **Update to the Paradise Park, Block 76 Lottery Procedures.**

Merck moved and Dujardin seconded a motion to approve the Consent Agenda. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

PRESENTATION OF BOZAR PROJECT OF THE YEAR

Jessie Earley reviewed and described the projects, including multiple honorable mentions. Schmidt presented the awards.

PUBLIC COMMENT

John Wirsing - 115 9th Street

- Thanked the Council for putting the garbage receptacle back at the rec path bridge.

Kent Cowherd

- Provided feedback and recommendations related to the laundromat situation in Town.
- Recognized bad driving around Town and suggested police presence.
- Mentioned future items on the agenda. He encouraged discussion and implementation of the parking plan. He wanted the Council to discuss purchasing a unit with the ADU money. He thought it would be nice for the post office to be located off Elk Avenue.

STAFF UPDATES

- Schmidt referred to the staff report from MacDonald.
- MacDonald reported on the closure of Red Lady Avenue between 4th and 5th Streets, and she responded to a question from Petito wondering whether anyone requested that it not be closed.
- Petito asked if the water main break near Old Town Inn was a reoccurrence in the same or nearly the same location.
- The community-grant application process had been opened.
- Stanford responded to questions regarding the pole-vaulting special event.
- MacDonald confirmed the Slate River Working Group would present at a future work session.
- Hansen explained the process and identified the number of loads of snow that had been hauled.
- Dujardin asked about the next intergovernmental dinner.
- Schmidt extended condolences for the person who died in the roof slide in CB South and expressed appreciation for Alex Theaker's outcome.

PUBLIC HEARING

1) Ordinance No. 3, Series 2019 - An Ordinance of the Crested Butte Town Council Amending the Town Code to Amend Crested Butte Municipal Code Section 18-2-30 (6) Concerning Fire Suppression Requirements for Townhomes Under the International Residential Code.

Yerman recommended the Council deny the ordinance. Staff planned to install sprinkler systems and move forward. Schmidt confirmed proper public notice had been given, and he opened the public hearing.

Rob Geislinger - Regional Field Services Coordinator at the National Fire Sprinkler Association

- He had not seen a major fire loss in a building that was sprinklered.
- Sprinklers were becoming the standard of care in Colorado.
- Systems cost, but it was important to look at the cost and benefits together.

Marty Graves - 24 Castle Road in Mt. Crested Butte and reported to own property on Gothic and 8th in Town

- Asked the Council if they were more interested in saving money or lives.
- Cited statements made by Bywater in past meetings.
- She would be disappointed if the Council prioritized saving money versus saving lives.
- Recalled fires that occurred.
- She hoped the Council seriously considered the points of view reflected in the paper.
- Sprinklers saved lives.

Crockett Farnell - 201 Sopris

- He agreed with what he heard in the meeting.
- Affordable housing would not be viable if it was not built well.
- He provided an example of a fire in the house by the creek. He reminded the Council of the Crested Butte North building on the mountain.
- He encouraged the Council to take the advice of the professionals.

John Wirsing - 115 9th Street

- His concern was that new regulations added layers of cost.
- He wondered how many people had been killed in triplexes that had burned, and he didn't think there had been anyone. They would have a level of safety that no other triplexes had.
- He believed in what others were saying, but Town was making regulations that caused affordable housing to be unaffordable.

Rix Rixford - 708 West New York in Gunnison

- Put together a fact sheet for the Council, and he asked if anyone had any questions.
- Sprinklers were important.

Ric Ems - Crested Butte Fire Protection District

- They were getting into more engineered lumbers. Everything was becoming more synthetic.

Jim Starr - 323 Gothic

- He seconded the critical need for safety.

Schmidt closed the public hearing.

Haver stated that he pushed to discuss the sprinklers again. He explained his reasoning. Petito supported revisiting it, too. Schmidt wanted to see about not having to run a parallel water system. Dujardin was connected to both fires mentioned by Farnell.

Mitchell moved and Dujardin seconded a motion to deny Ordinance No. 3, Series 2019 the Code amendment for Section 18-2-30(6) concerning fire suppression requirements for townhomes under the International Residential Code. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

2) Ordinance No. 8, Series 2019 - An Ordinance of the Crested Butte Town Council Adding Code Section 10-6-60 Prohibiting the Possession of Tobacco/Nicotine Products by Persons Under the Age of Eighteen to the General Offenses Section of the Crested Butte Municipal Code; And Providing Penalties for Violation Thereof.

Reily identified the main issue was there was no ordinance that prohibited kids under eighteen from possessing tobacco or vaping products. He believed the ordinance would be beneficial to the local kids. The idea was to make the parents aware and get kids into a cessation program. Schmidt confirmed proper public notice had been given. He opened the public hearing.

Andy Tyzzer - 14 Ruland Place in CB South

- His son attends Crested Butte Community School.
- He stated this ordinance was the wrong tool for a positive result.
- He asked an officer in Gunnison if there was a measure of efficacy in the program.
- He mentioned a comment made by Kari Commerford of GCSAPP regarding the effort in Gunnison, indicating that criminalization was not an effective tool.
- He asked why they would use law enforcement. Kids should take the two-hour block of education, and it should be put into the school system.
- He talked with people at City Market regarding marketing of tobacco products.

Kari Commerford - Director of GCSAPP

- It was agreed upon by the coalition that criminalization was not a good way to approach substances. This ordinance was not criminalization.
- She reviewed the process laid out by the ordinance.
- They would be working to bring awareness to where tobacco and nicotine products were being advertised.
- Tobacco use rates had gone down.

Students from the Crested Butte Community School: Havalin Haskell, Caroline Bryndal, Hope Freeman, and Sami Lakoski

- They wanted the ordinance to pass.
- Kids were not thinking of vaping as a real drug. Education was a big step in helping this issue.

- They wanted it to stop.
- Kids were vaping all day long. It was a big issue.
- Social media had a large influence.
- Dujardin asked them how they had been educated at school on this issue.

Joel Wisian - Serves on the School Accountability Committee

- They were in support of the ordinance.

Susan Tyzzer

- Did not want minors to have to experience criminalization.
- Parents needed to have conversations with their kids.

Havalin Haskell

- The ordinance was opening up the opportunity for parents to know their kids were vaping.

Caroline Bryndal

- Vaping led to kids using marijuana. The point was stopping it before it started.

Corey Bryndal

- Kids lived in a permissive culture.
- They had the opportunity to stop the issue early on.
- Invest in the kids.

Kari Commerford

- Elaborated upon stress, in responding to comments made by the Tyzzers.

Andy Tyzzer

- Agreed that they should do what they could. He suggested limiting the visual attractions.
- Protect children, not punish them.

Schmidt closed the public hearing. Reily clarified the idea was not to be punitive; it was about consequence management. Dujardin asked about a scenario of reporting from social media postings. Petito recognized the point was to protect kids from an addictive chemical that was actively being marketed, and he would like to see the intent reflected in the ordinance. Reily confirmed the Marshals enforced based on the Council's intent. Mitchell said it was well intended, but there would be unintended consequences. She thought the ordinance was an overreach.

Petito made a motion to approve Ordinance No. 8, Series 2019 with an amendment adding in the whereas clause the finding of the Town of Crested Butte the intent was not to expose minors to the criminal justice system but instead to refer them to education and cessation, which contemplated amendments throughout, to indicate the first offense would be eligible for a deferred prosecution. There was a detailed discussion around deferred sentencing and prosecution. Petito withdrew his motion.

Merck moved and Mitchell seconded a motion to continue Ordinance No. 8, Series 2019 to the April 1st meeting with the memorialization of the amendments suggested by Jackson. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

3) Ordinance No. 9, Series 2019 - An Ordinance of the Crested Butte Town Council Amending, Chapter 18, Article 2, Section 18-2-30 of the Town Code Related to Building Regulations.

Schmidt read the title of the ordinance. Yerman explained this ordinance cleaned up the Code. Schmidt confirmed proper public notice had been given. The public hearing was opened. No one from the public commented. Schmidt closed the public hearing.

Petito moved and Merck seconded a motion to approve Ordinance No. 9, Series 2019. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

NEW BUSINESS

1) Ordinance No. 10, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of Unit A (Located in the Upper Level of the Chamber of Commerce Visitors Center - A Town Owned Building) Located at 601 Elk Avenue to Nautilus Sailing, LLC.

Schmidt wondered who Nautilus Sailing was. Zillioux informed the Council they were a for profit company. He explained Town was offering a one-year lease, and he outlined the terms.

Mitchell moved and Haver seconded a motion to set Ordinance No. 10, Series 2019 to public hearing at the April 1st Council meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

2) Ordinance No. 11, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Repeal of Section 4-2-90(b)(1) of the Town Code Concerning a Credit for the 1.5% Vendor’s Fee Against Taxes Due from Gross Sales.

Schmidt read the title of the ordinance. Zillioux explained the vendor fee. He reported that about one half of municipalities in Colorado eliminated the fee, and he recommended that Town eliminate the vendor fee. He was looking for ways to balance the budget. Haver outlined vendor fees and fines assessed by other entities, as well as other fees that businesses paid in Town. Dujardin said they needed to hear from the public.

Mitchell moved and Bradley seconded a motion to set Ordinance No. 11, Series 2019 to public hearing at the April 1st Council meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

3) Ordinance No. 12, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Release of Deed Restrictions on Block 77, Lot 3, Unit B Peeler Townhouses in the Paradise Park Subdivision, Town of Crested Butte, Gunnison County, State of Colorado Reception No. 543195 and Replacement with New Deed Restriction.

Schmidt read the title of the ordinance. Yerman explained the reason for the new deed restriction was that they were trying to assist a homeowner who wanted to refinance. Schmidt confirmed Town would have the first right of refusal with the new deed restriction. Yerman identified the deed restriction would be the same as the one applied in Block 76. Mitchell asked if the deed restriction would blanket the whole building or if it would cover just the unit.

Petito moved and Dujardin seconded a motion to set Ordinance No. 12, Series 2019 to public hearing at the April 1st meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

4) Ordinance No. 13, Series 2019 - An Ordinance of the Crested Butte Town Council Deleting and Re-Codifying Chapter 16, Article 12 Condominiums and Townhouses, and Amending Chapter 17, Articles 1-General Provisions and Article 3-Major and Minor Subdivisions Generally.

Schmidt read the title of the ordinance. Nevins apologized for confusion around packet items. He explained the purposes of the ordinance. BOZAR reviewed and recommended the text amendments as presented by Staff. Schmidt asked for an example of what might happen and how the ordinance would change the situation. He questioned if it would make it easier for the Town or the applicant. Nevins explained what could be approved administratively with technical review. Yerman elaborated upon examples of what would be changed by the ordinance.

Mitchell moved and Dujardin seconded a motion to approve first reading and to set a public hearing date for second reading of Ordinance No. 13, Series 2019 on the April 1st meeting. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

5) Ordinance No. 14, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 6, Block 79 Unit A, 914 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Joseph Carpenter and Katherine Cooke for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance. Carpenter thanked Council and Staff. He and Cooke felt lucky to own a home in Town.

Dujardin moved and Merck seconded a motion to set Ordinance No. 14, Series 2019 to a public hearing on April 1st. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

6) Ordinance No. 15, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 6, Block 79 Unit B, 916 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Guy Ciulla for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance.

Bradley moved and Mitchell seconded a motion to set Ordinance No. 15, Series 2019 to a public hearing on April 1st. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

7) Ordinance No. 16, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 14, Block 79, Unit A, 909 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Elizabeth Philbin for the Sale Price of \$275,000.00.

Schmidt read the title of the ordinance.

Dujardin moved and Bradley seconded a motion to set Ordinance No. 16, Series 2019 to a public hearing on April 1st. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

8) Ordinance No. 17, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Lot 14, Block 79 Unit B, 911 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Chelsea Dalporto - McDowell for the Sale Price Of \$275,000.00.

Dalporto - McDowell extended her gratitude to the Council. She was grateful to be grounded in one place.

Petito moved and Haver seconded a motion to set Ordinance No. 17, Series 2019 to a public hearing on April 1st. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

LEGAL MATTERS

None

COUNCIL REPORTS AND COMMITTEE UPDATES

Jackson Petito

- He would be meeting with the Housing Foundation on Wednesday afternoon.

Laura Mitchell

- She had been trying to catch up on RTA.
- Mountain Express needed to start running a tweener bus. They would choose bus decorations soon. The Bartenders' Association asked for busses to run past midnight.

Paul Merck

- Went to STOR Committee meeting. He pointed out a letter in the packet regarding e bikes.
- Toured Avalanche Park. They looked at the trees in the area that had been affected by beetles. The stand was full of mistletoe. Schmidt asked questions regarding the mistletoe.
- Dujardin wanted to discuss e bikes. Sullivan offered to provide a memo with information on legislation. MacDonald affirmed the discussion could be scheduled for a future agenda. She explained restrictions were imposed per the easements.

Candice Bradley

- Attended the Hats Off to Public Art meeting. They discussed the sculpture garden. There was talk of doing a music garden, but there was concern about residential noise. Ideas for future public art pieces were thrown around.
- She would meet with The Center on Wednesday.

Will Dujardin

- He had meetings coming up with Mountain Express and the Upper Gunnison River Water Conservancy District.
- He reminded that Council adopted CC4CA's policy agenda. CC4CA wondered if Town would support advocating for better practices to deal with waste and recycling. He read the policies on which they were asking for Town's support. No one on the Council voiced objection.

Jim Schmidt

- Attended the mayor/managers meeting hosted by CBMR. They introduced their senior staff. They described their marketing as surgical. He asked them specifically about the summer.
- The hospital hired a suicide prevention specialist.
- He thanked everyone who helped him.

OTHER BUSINESS TO COME BEFORE THE COUNCIL

Haver mentioned upcoming training from the Community Foundation. He would forward information to anyone who was interested.

Petito asked about the timeline for discussion on the ADU settlement money.
MacDonald would arrange presentations on the deed restriction buy down program.
Schmidt wanted to discuss water service to homes that had sprinklers.

Dujardin would not be present at the meeting on April 8th.

DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, April 1, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, April 8, 2019 - Planning Commission
- Monday, April 15, 2019 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 6, 2019 - 6:00PM Work Session - 7:00PM Regular Council

ADJOURNMENT

Mayor Schmidt adjourned the meeting at 9:42PM.

James A. Schmidt, Mayor

Lynelle Stanford, Town Clerk (SEAL)



Staff Report

April 1, 2019

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Lynelle Stanford, Town Clerk
Subject: **Restaurant/Bar Seating on Public Sidewalks**
Date: March 22, 2019

Summary:

The following establishments have applied for sidewalk seating for 2019:

1. Brick Oven LTD DBA Brick Oven Pizzeria located at 223 Elk Avenue;
2. B & C Restaurants LLC DBA Elk Avenue Prime located at 226 Elk Avenue;
3. Vertigo Ventures LLC DBA The Secret Stash located at 303 Elk Avenue;
4. Teocalli Tamale Company DBA Teocalli Tamale located at 311 ½ Elk Avenue;
5. Public House LLC DBA Public House located at 202 Elk Avenue; and
6. Ladybug LTD DBA Talk of the Town located at 230 Elk Avenue.

A representative from each business signed the Application for Revocable License for Restaurant/Bar Seating on Public Sidewalks and agreed to abide by the terms and limitations of the license where granted. All of the establishments submitted previously approved diagrams of their premises that include extensions to their liquor licensed premises.

If approved, the following stipulations apply:

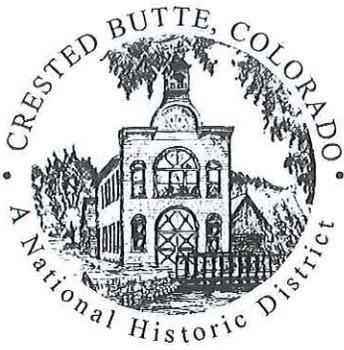
Insurance renewal provided to the Town by B & C Restaurants LLC DBA Elk Avenue Prime at the time of expiration of the current policy on August 21, 2019.

Insurance renewal provided to the Town by Vertigo Ventures LLC DBA Secret Stash at the time of expiration of the current policy on June 19, 2019.

Insurance renewal provided to the Town by Public House LLC DBA Public House at the time of expiration on the current policy on September 30, 2019.

Recommendation:

Staff recommends approving the applications for restaurant/bar seating on public sidewalks as submitted as part of the Consent Agenda.



Application for Revocable License for Restaurant/Bar Seating on Public Sidewalks 2019

.....
Date: 3/18/2019 Square Footage: 225 Fee Paid: \$675

Business Name: Brick Oven LTD DBA Brick Oven Pizzeria
Owner: Dan Loftus
Address: 223 Elk Ave ^{Crested Butte} CB CO Block 21 Lot 2829
Contact: Dan Loftus
Phone #: 970 209 3859 Cell # _____
E-mail address: dan@brickovench.com

Property Owner: Dan Loftus ^{Crested Butte}
Address: PO Box 2283 CB CO 81224
Phone #: 970 209 3859 Cell # _____
E-mail address: dan@brickovench.com

Is it the intent to serve alcohol on the licensed premises Yes No

[If yes, fill out the attached liquor license permit application and report of change and return with application with the required state fee. If the license is not granted this fee will be returned to the applicant.]

Please attach a map of the requested seating area (see attached example). The map should be to scale and no smaller than 1/8 of an inch to a foot with dimensions noted. The map should show the table and chair layout, the adjacent pedestrian area and at least ten feet on either side of the requested licensed area showing access to the pedestrian area. Show the percent grade on any adjacent brick areas used for the pedestrian area. A containment structure (fencing) location which separates the license area from the pedestrian way should also be shown on the map and a separate detail of what is proposed for the containment structure should be provided.

I have read the reverse side of this form which lists the limitations and requirements for securing the license and I agree to abide by the terms and limitation of the license where granted. I understand that failure to abide by these requirements is grounds for immediate revocation of the license. I certify that all information provided herein is accurate. I understand that this application is for a discretionary license which may or may not be granted by the Town.

 owner
Applicant Signature and Title
3/18/2019
Date

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
2. The business must have direct first floor frontage adjacent to the hard surfaced sidewalk on Elk Avenue.

The requested licensed area must meet the following criteria.

3. The licensed area must be directly adjacent to the appurtenant business frontage.
4. The licensed area may not restrict the public right of way in a manner that leaves less than seven feet of hard surfaced area for pedestrian travel. There must be at least three feet adjacent to any parallel parking adjacent to the pedestrian way. There must be at least an additional four feet of hard surfaced pedestrian surface with a cross slope of no greater than 2% for handicap accessibility. The two areas are mutually exclusive. The pedestrian way may not be obstructed by impediments such as light poles, trash cans, flower boxes or bike racks and access to the pedestrian way must also be at least seven feet wide and meet the accessibility requirements.
5. The maximum depth of the license area onto public property may measure no more than seven (7) feet.
6. The licensed area may not be wider than the business frontage on the first floor adjacent to the Elk Avenue sidewalk.
7. The seating area may not be larger than the interior seating area of the restaurant.
8. The containment barrier must be 42 inches tall with rigid top rails attached to self supporting stanchions and be constructed of durable attractive materials. If decorative materials are attached to the top rails or stanchions they must incorporate substantial openings throughout to allow viewing into the site. Barriers that are solid in body (i.e. stretched fabric, plexiglass, see-through mesh, etc.) are not permissible." Commercial advertising shall not be incorporated into the barrier design.

Restrictions on time of use of the licensed area are as follows.

9. The dates of the license shall be from the Friday prior to Memorial Day to October 15 of the current calendar year.
10. The licensed area may not be utilized during July 4th. The Town Council may place additional restrictions depending on special events requested.
11. The tables, chairs, liquor containment structure and any other items associated with the restaurant use must be removed daily from the public right of way during the time when the restaurant is not open. The containment fencing may be left parallel against the front wall of the business frontage if collapsed.

The business must adhere to the following rules and regulations.

12. Above criteria shall be reviewed by the Town and deemed compliant prior to licensing.
13. The business is responsible for keeping the licensed area clean and free of debris and food waste.
14. The business may not make permanent changes to or damage the licensed area including but not limited to drilling into the public sidewalk.
15. The business may not utilize portable heating devices in the licensed area.
16. The business must operate entirely within the licensed premises and not encroach into the pedestrian way.
17. The business may not use umbrellas within the licensed premises.

After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the TOWN OF CRESTED BUTTE ("Town"), a Colorado home rule municipality, with an address of P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224 and Brick Oven LTD ("Licensee"), with an address of 223 Elk Ave, Crested Butte CO.

WITNESSETH:

WHEREAS, Licensee is the owner and operator of a certain business ("Business") located at 223, Elk Ave, Crested Butte, Colorado ("Premises");

WHEREAS, Licensee is the fee owner or has a property right (e.g., lease) to use and occupy its Business on the Premises;

WHEREAS, the Premises is bound by the Town's public streets, sidewalks and/or rights of way ("Public Ways");

WHEREAS, Licensee desires to keep and maintain outdoor seating and related personal property (collectively, "Seating Effects") in the Public Ways; and

WHEREAS, the Town is willing to grant to Licensee a revocable license to keep and maintain its Seating Effects in the Public Ways under the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the preambles, covenants, terms, and conditions set forth herein, the sufficiency of such consideration being acknowledged by both parties, the Town grants to Licensee the following revocable license to keep and maintain its Seating Effects upon the Town Public Ways as described herein:

AGREEMENT:

1. **License.** Licensee shall be entitled to a non-exclusive license for the limited purpose of keeping and maintaining its Seating Effects in the Public Ways in the location as depicted on Exhibit "A" ("licensed area") attached hereto. Specific conditions applicable to the license granted herein are listed in Exhibit "B" attached hereto. The application submitted to the Town by Licensee in connection with this Agreement and the license granted hereunder is incorporated herein. Licensee's use of the licensed area and its conduct of any activities relative thereto on the Public Ways shall at all times comply with all applicable governmental requirements, including,

without limitation, other Town and State of Colorado permitting and licensing requirements.

2. **Term**. The revocable license granted herein shall exist and continue until the expiration of this Agreement or the earlier termination hereof where the Town Council finds, for any reason or no reason at all, at a regular, public meeting that the license to use the Public Ways granted hereunder shall be terminated, and the license granted hereunder extinguished.

3. **Assumption of Risk; Waiver**. Licensee assumes the risk of damage to its Personal Effects arising from or relating to Licensee's use of the Public Ways. Additionally, Licensee assumes all risk of damage to property or injury to persons in connection with the license granted under this Agreement and the encroaching Personal Effects. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Licensee waives and releases the Town, and its officers, elected officials, agents and employees, from any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways, whether or not caused by the act or omission, negligence or other fault of the Town, and its officers, elected officials, agents and employees.

4. **Indemnification**. By execution hereof, Licensee, for itself and its successors, representatives and assigns, hereby agrees to indemnify, defend and save harmless the Town, and its officers, elected officials, agents and employees, against any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways. Licensee shall name the Town as an additional insured on Licensee's policy of liability insurance, which shall provide coverage of at least \$1,000,000.00, combined single limit.

5. **Revocation**. Upon notice to Licensee of the Town Council's decision to revoke the license granted under this Agreement, for any reason or no reason at all, the encroaching Personal Effects shall be removed immediately. In the event that the encroaching Personal Effects are not so removed by Licensee, the Town may remove the same at Licensee's sole cost and expense. In the event of any legal action or advice necessary to execute such removal, Licensee shall also pay the Town all costs and/or attorneys' fees incurred by the Town.

6. **Maintenance**. Licensee agrees to assume the sole responsibility for the maintenance and/or upkeep of the encroaching Personal Effects. The Town shall not be liable for any damage to said Personal Effects caused by any acts or omissions of the Town, including, without limitation, in connection with snow removal, street or alley maintenance or street or alley improvements.

7. **Binding**. This Agreement, the benefits conferred and obligations incurred hereunder, shall inure Licensee's successors in interest and permitted assigns.

8. **No Assignment.** This Agreement and the license granted hereunder shall not be assignable or transferrable by Licensee without the Town's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer in contravention of this requirement shall be void ab initio.

9. **Notices.** Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed to the addresses first set forth above, or to such other addresses as the parties shall designate. Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or (y) the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received.

10. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement, if any.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

(d) This Agreement may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures.

[Signature Page(s) To Follow]

IN WITNESS WHEREOF, the Town and Licensee have executed this Agreement to be effective as of the date first written above.

LICENSEE:

[Brick Oven LTD]

By: DL
Name: Don Loftus
Title: owner

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

EXHIBIT "A"

Location of Seating Effects in Public Ways / License Area

[attach drawing and/or narrative here]

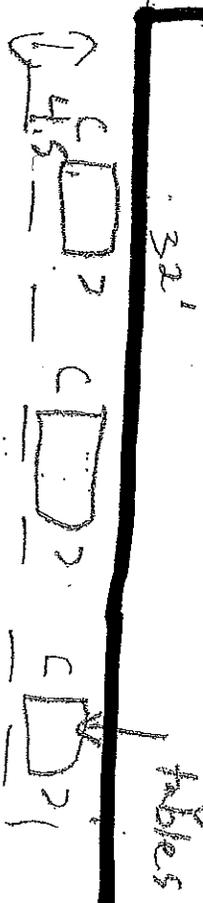
Brick Oven LTD

Current Premises

Walkway
← 7' →



Barrier
REQD.



28" Square
tables

All 2 top

3.5' concrete

3" Spac Post w/ 4" square top

14" x 2" Rail

8.5' Bricks to sidewalk

EXHIBIT "B"

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

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After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
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Application for Revocable License for Restaurant/Bar Seating on Public Sidewalks 2019

Date: 2/8/19 Square Footage: 161 Fee Paid: \$483

Business Name: B&C Restaurants LLC DBA Elk Ave Prime
Owner: Julie Higgins
Address: 226 Elk Ave Block 28 Lot 4-5
Contact: Curtis Higgins
Phone #: 970.349.1221 Cell # 214.437.1726
E-mail address: curtis@elkaveprime.com

Property Owner: M & M Elk Avenue LLC
Address: PO BOX 52389 8520 Business Park Dr, Shreveport LA 71105
Phone #: 318-798-2648 Cell # _____
E-mail address: mmacissac@gamble.guestcare.com

Is it the intent to serve alcohol on the licensed premises Yes No

[If yes, fill out the attached liquor license permit application and report of change and return with application with the required state fee. If the license is not granted this fee will be returned to the applicant.]

Please attach a map of the requested seating area (see attached example). The map should be to scale and no smaller than 1/8 of an inch to a foot with dimensions noted. The map should show the table and chair layout, the adjacent pedestrian area and at least ten feet on either side of the requested licensed area showing access to the pedestrian area. Show the percent grade on any adjacent brick areas used for the pedestrian area. A containment structure (fencing) location which separates the license area from the pedestrian way should also be shown on the map and a separate detail of what is proposed for the containment structure should be provided.

I have read the reverse side of this form which lists the limitations and requirements for securing the license and I agree to abide by the terms and limitation of the license where granted. I understand that failure to abide by these requirements is grounds for immediate revocation of the license. I certify that all information provided herein is accurate. I understand that this application is for a discretionary license which may or may not be granted by the Town.

Julie Higgins President 2/08/19
Applicant Signature and Title Date

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20. Payment of a licensed lease fee of \$3.00 per square foot.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the TOWN OF CRESTED BUTTE ("Town"), a Colorado home rule municipality, with an address of P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224 and B+C Restaurants LLC ("Licensee"), with an address of 226 Elk Avenue, Crested Butte CO.

WITNESSETH:

WHEREAS, Licensee is the owner and operator of a certain business ("Business") located at 226, Elk Avenue, Crested Butte, Colorado ("Premises");

WHEREAS, Licensee is the fee owner or has a property right (e.g., lease) to use and occupy its Business on the Premises;

WHEREAS, the Premises is bound by the Town's public streets, sidewalks and/or rights of way ("Public Ways");

WHEREAS, Licensee desires to keep and maintain outdoor seating and related personal property (collectively, "Seating Effects") in the Public Ways; and

WHEREAS, the Town is willing to grant to Licensee a revocable license to keep and maintain its Seating Effects in the Public Ways under the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the preambles, covenants, terms, and conditions set forth herein, the sufficiency of such consideration being acknowledged by both parties, the Town grants to Licensee the following revocable license to keep and maintain its Seating Effects upon the Town Public Ways as described herein:

AGREEMENT:

1. **License.** Licensee shall be entitled to a non-exclusive license for the limited purpose of keeping and maintaining its Seating Effects in the Public Ways in the location as depicted on Exhibit "A" ("licensed area") attached hereto. Specific conditions applicable to the license granted herein are listed in Exhibit "B" attached hereto. The application submitted to the Town by Licensee in connection with this Agreement and the license granted hereunder is incorporated herein. Licensee's use of the licensed area and its conduct of any activities relative thereto on the Public Ways shall at all times comply with all applicable governmental requirements, including,

without limitation, other Town and State of Colorado permitting and licensing requirements.

2. **Term**. The revocable license granted herein shall exist and continue until the expiration of this Agreement or the earlier termination hereof where the Town Council finds, for any reason or no reason at all, at a regular, public meeting that the license to use the Public Ways granted hereunder shall be terminated, and the license granted hereunder extinguished.

3. **Assumption of Risk; Waiver**. Licensee assumes the risk of damage to its Personal Effects arising from or relating to Licensee's use of the Public Ways. Additionally, Licensee assumes all risk of damage to property or injury to persons in connection with the license granted under this Agreement and the encroaching Personal Effects. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Licensee waives and releases the Town, and its officers, elected officials, agents and employees, from any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways, whether or not caused by the act or omission, negligence or other fault of the Town, and its officers, elected officials, agents and employees.

4. **Indemnification**. By execution hereof, Licensee, for itself and its successors, representatives and assigns, hereby agrees to indemnify, defend and save harmless the Town, and its officers, elected officials, agents and employees, against any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways. Licensee shall name the Town as an additional insured on Licensee's policy of liability insurance, which shall provide coverage of at least \$1,000,000.00, combined single limit.

5. **Revocation**. Upon notice to Licensee of the Town Council's decision to revoke the license granted under this Agreement, for any reason or no reason at all, the encroaching Personal Effects shall be removed immediately. In the event that the encroaching Personal Effects are not so removed by Licensee, the Town may remove the same at Licensee's sole cost and expense. In the event of any legal action or advice necessary to execute such removal, Licensee shall also pay the Town all costs and/or attorneys' fees incurred by the Town.

6. **Maintenance**. Licensee agrees to assume the sole responsibility for the maintenance and/or upkeep of the encroaching Personal Effects. The Town shall not be liable for any damage to said Personal Effects caused by any acts or omissions of the Town, including, without limitation, in connection with snow removal, street or alley maintenance or street or alley improvements.

7. **Binding**. This Agreement, the benefits conferred and obligations incurred hereunder, shall inure Licensee's successors in interest and permitted assigns.

8. **No Assignment.** This Agreement and the license granted hereunder shall not be assignable or transferrable by Licensee without the Town's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer in contravention of this requirement shall be void ab initio.

9. **Notices.** Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed to the addresses first set forth above, or to such other addresses as the parties shall designate. Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or (y) the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received.

10. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement, if any.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

(d) This Agreement may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures.

[Signature Page(s) To Follow]

IN WITNESS WHEREOF, the Town and Licensee have executed this Agreement to be effective as of the date first written above.

LICENSEE:

[B+C Restaurants LLC]

By: [Signature]
Name: Julie Higgins
Title: President

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
James A. Schmidt, Mayor

ATTEST:

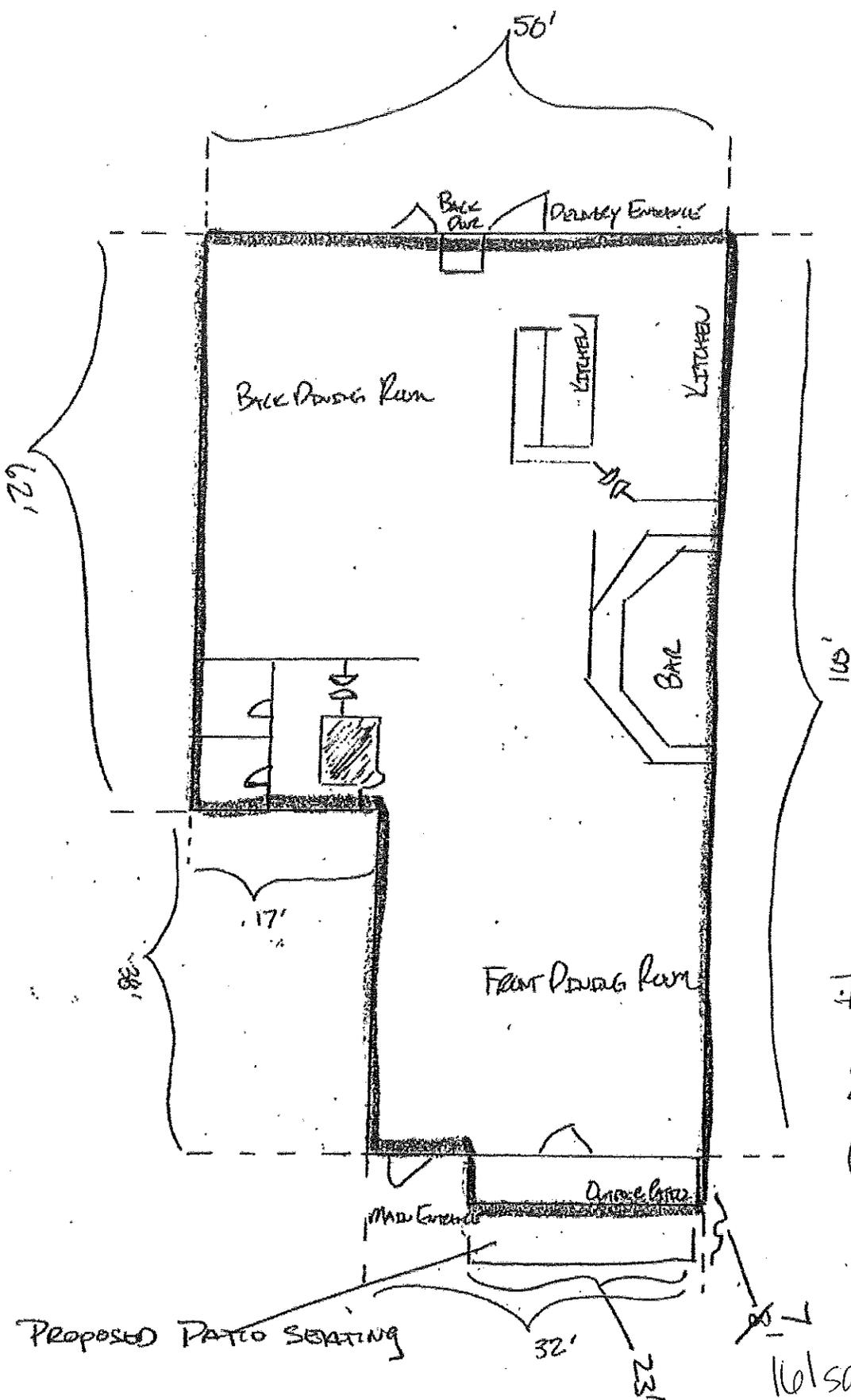
Lynelle Stanford, Town Clerk

[SEAL]

EXHIBIT "A"

Location of Seating Effects in Public Ways / License Area

[attach drawing and/or narrative here]



Elk Ave Prime
~~MAX wellis~~
 226 Elk Ave
 Crested Butte, CO
 81224

161 sqft

Elk Ave

EXHIBIT "B"

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
2. The business must have direct first floor frontage adjacent to the hard surfaced sidewalk on Elk Avenue.

The requested licensed area must meet the following criteria.

3. The licensed area must be directly adjacent to the appurtenant business frontage.
4. The licensed area may not restrict the public right of way in a manner that leaves less than seven feet of hard surfaced area for pedestrian travel. There must be at least three feet adjacent to any parallel parking adjacent to the pedestrian way. There must be at least an additional four feet of hard surfaced pedestrian surface with a cross slope of no greater than 2% for handicap accessibility. The two areas are mutually exclusive. The pedestrian way may not be obstructed by impediments such as light poles, trash cans, flower boxes or bike racks and access to the pedestrian way must also be at least seven feet wide and meet the accessibility requirements.
5. The maximum depth of the license area onto public property may measure no more than seven (7) feet.
6. The licensed area may not be wider than the business frontage on the first floor adjacent to the Elk Avenue sidewalk.
7. The seating area may not be larger than the interior seating area of the restaurant.
8. The containment barrier must be 42 inches tall with rigid top rails attached to self supporting stanchions and be constructed of durable attractive materials. If decorative materials are attached to the top rails or stanchions they must incorporate substantial openings throughout to allow viewing into the site. Barriers that are solid in body (i.e. stretched fabric, plexiglass, see-through mesh, etc.) are not permissible." Commercial advertising shall not be incorporated into the barrier design.

Restrictions on time of use of the licensed area are as follows.

9. The dates of the license shall be from the Friday prior to Memorial Day to October 15 of the current calendar year.
10. The licensed area may not be utilized during July 4th. The Town Council may place additional restrictions depending on special events requested.
11. The tables, chairs, liquor containment structure and any other items associated with the restaurant use must be removed daily from the public right of way during the time when the restaurant is not open. The containment fencing may be left parallel against the front wall of the business frontage if collapsed.

The business must adhere to the following rules and regulations.

12. Above criteria shall be reviewed by the Town and deemed compliant prior to licensing.
13. The business is responsible for keeping the licensed area clean and free of debris and food waste.
14. The business may not make permanent changes to or damage the licensed area including but not limited to drilling into the public sidewalk.
15. The business may not utilize portable heating devices in the licensed area.
16. The business must operate entirely within the licensed premises and not encroach into the pedestrian way.
17. The business may not use umbrellas within the licensed premises.

After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.



Application for Revocable License for Restaurant/Bar Seating on Public Sidewalks 2019

Date: 3/14/19 Square Footage: 240 Fee Paid: \$720

Business Name: ^{DBA} Secret Stash Vertigo Ventures LLC
Owner: Kyleena Falzare
Address: 303 Elk Ave Block 22 Lot 17-21
Contact: Carson West
Phone #: 209-414-2930 Cell #: 970-349-6245
E-mail address: Carson.stash@gmail.com
Kyleena.cb@gmail.com

Property Owner: J+k Holdings
Address: 303 Elk Ave
Phone #: _____ Cell # 970-209-5159
E-mail address: kyleenacb@gmail.com

Is it the intent to serve alcohol on the licensed premises Yes No

[If yes, fill out the attached liquor license permit application and report of change and return with application with the required state fee. If the license is not granted this fee will be returned to the applicant.]

Please attach a map of the requested seating area (see attached example). The map should be to scale and no smaller than 1/8 of an inch to a foot with dimensions noted. The map should show the table and chair layout, the adjacent pedestrian area and at least ten feet on either side of the requested licensed area showing access to the pedestrian area. Show the percent grade on any adjacent brick areas used for the pedestrian area. A containment structure (fencing) location which separates the license area from the pedestrian way should also be shown on the map and a separate detail of what is proposed for the containment structure should be provided.

I have read the reverse side of this form which lists the limitations and requirements for securing the license and I agree to abide by the terms and limitation of the license where granted. I understand that failure to abide by these requirements is grounds for immediate revocation of the license. I certify that all information provided herein is accurate. I understand that this application is for a discretionary license which may or may not be granted by the Town.

Applicant Signature and Title 3/14/19
Date

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
2. The business must have direct first floor frontage adjacent to the hard surfaced sidewalk on Elk Avenue.

The requested licensed area must meet the following criteria.

3. The licensed area must be directly adjacent to the appurtenant business frontage.
4. The licensed area may not restrict the public right of way in a manner that leaves less than seven feet of hard surfaced area for pedestrian travel. There must be at least three feet adjacent to any parallel parking adjacent to the pedestrian way. There must be at least an additional four feet of hard surfaced pedestrian surface with a cross slope of no greater than 2% for handicap accessibility. The two areas are mutually exclusive. The pedestrian way may not be obstructed by impediments such as light poles, trash cans, flower boxes or bike racks and access to the pedestrian way must also be at least seven feet wide and meet the accessibility requirements.
5. The maximum depth of the license area onto public property may measure no more than seven (7) feet.
6. The licensed area may not be wider than the business frontage on the first floor adjacent to the Elk Avenue sidewalk.
7. The seating area may not be larger than the interior seating area of the restaurant.
8. The containment barrier must be 42 inches tall with rigid top rails attached to self supporting stanchions and be constructed of durable attractive materials. If decorative materials are attached to the top rails or stanchions they must incorporate substantial openings throughout to allow viewing into the site. Barriers that are solid in body (i.e. stretched fabric, plexiglass, see-through mesh, etc.) are not permissible." Commercial advertising shall not be incorporated into the barrier design.

Restrictions on time of use of the licensed area are as follows.

9. The dates of the license shall be from the Friday prior to Memorial Day to October 15 of the current calendar year.
10. The licensed area may not be utilized during July 4th. The Town Council may place additional restrictions depending on special events requested.
11. The tables, chairs, liquor containment structure and any other items associated with the restaurant use must be removed daily from the public right of way during the time when the restaurant is not open. The containment fencing may be left parallel against the front wall of the business frontage if collapsed.

The business must adhere to the following rules and regulations.

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13. The business is responsible for keeping the licensed area clean and free of debris and food waste.
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15. The business may not utilize portable heating devices in the licensed area.
16. The business must operate entirely within the licensed premises and not encroach into the pedestrian way.
17. The business may not use umbrellas within the licensed premises.

After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the TOWN OF CRESTED BUTTE ("Town"), a Colorado home rule municipality, with an address of P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224 and Vertigo Ventures LLC ("Licensee"), with an address of 303 Elk Ave, Crested Butte CO.

WITNESSETH:

WHEREAS, Licensee is the owner and operator of a certain business ("Business") located at 303, Elk Avenue, Crested Butte, Colorado ("Premises");

WHEREAS, Licensee is the fee owner or has a property right (e.g., lease) to use and occupy its Business on the Premises;

WHEREAS, the Premises is bound by the Town's public streets, sidewalks and/or rights of way ("Public Ways");

WHEREAS, Licensee desires to keep and maintain outdoor seating and related personal property (collectively, "Seating Effects") in the Public Ways; and

WHEREAS, the Town is willing to grant to Licensee a revocable license to keep and maintain its Seating Effects in the Public Ways under the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the preambles, covenants, terms, and conditions set forth herein, the sufficiency of such consideration being acknowledged by both parties, the Town grants to Licensee the following revocable license to keep and maintain its Seating Effects upon the Town Public Ways as described herein:

AGREEMENT:

1. License. Licensee shall be entitled to a non-exclusive license for the limited purpose of keeping and maintaining its Seating Effects in the Public Ways in the location as depicted on Exhibit "A" ("licensed area") attached hereto. Specific conditions applicable to the license granted herein are listed in Exhibit "B" attached hereto. The application submitted to the Town by Licensee in connection with this Agreement and the license granted hereunder is incorporated herein. Licensee's use of the licensed area and its conduct of any activities relative thereto on the Public Ways shall at all times comply with all applicable governmental requirements, including,

without limitation, other Town and State of Colorado permitting and licensing requirements.

2. **Term**. The revocable license granted herein shall exist and continue until the expiration of this Agreement or the earlier termination hereof where the Town Council finds, for any reason or no reason at all, at a regular, public meeting that the license to use the Public Ways granted hereunder shall be terminated, and the license granted hereunder extinguished.

3. **Assumption of Risk; Waiver**. Licensee assumes the risk of damage to its Personal Effects arising from or relating to Licensee's use of the Public Ways. Additionally, Licensee assumes all risk of damage to property or injury to persons in connection with the license granted under this Agreement and the encroaching Personal Effects. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Licensee waives and releases the Town, and its officers, elected officials, agents and employees, from any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways, whether or not caused by the act or omission, negligence or other fault of the Town, and its officers, elected officials, agents and employees.

4. **Indemnification**. By execution hereof, Licensee, for itself and its successors, representatives and assigns, hereby agrees to indemnify, defend and save harmless the Town, and its officers, elected officials, agents and employees, against any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways. Licensee shall name the Town as an additional insured on Licensee's policy of liability insurance, which shall provide coverage of at least \$1,000,000.00, combined single limit.

5. **Revocation**. Upon notice to Licensee of the Town Council's decision to revoke the license granted under this Agreement, for any reason or no reason at all, the encroaching Personal Effects shall be removed immediately. In the event that the encroaching Personal Effects are not so removed by Licensee, the Town may remove the same at Licensee's sole cost and expense. In the event of any legal action or advice necessary to execute such removal, Licensee shall also pay the Town all costs and/or attorneys' fees incurred by the Town.

6. **Maintenance**. Licensee agrees to assume the sole responsibility for the maintenance and/or upkeep of the encroaching Personal Effects. The Town shall not be liable for any damage to said Personal Effects caused by any acts or omissions of the Town, including, without limitation, in connection with snow removal, street or alley maintenance or street or alley improvements.

7. **Binding**. This Agreement, the benefits conferred and obligations incurred hereunder, shall inure Licensee's successors in interest and permitted assigns.

8. **No Assignment.** This Agreement and the license granted hereunder shall not be assignable or transferrable by Licensee without the Town's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer in contravention of this requirement shall be void ab initio.

9. **Notices.** Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed to the addresses first set forth above, or to such other addresses as the parties shall designate. Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or (y) the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received.

10. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement, if any.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

(d) This Agreement may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures.

[Signature Page(s) To Follow]

IN WITNESS WHEREOF, the Town and Licensee have executed this Agreement to be effective as of the date first written above.

LICENSEE:

[Vertigo Ventures LLC]
OBA Secret Stash / Red Room
By: [Signature]
Name: Kyleena Falzone
Title: Owner

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

EXHIBIT "A"

Location of Seating Effects in Public Ways / License Area

[attach drawing and/or narrative here]

THIRD STREET

THE SECRET STAYS #
303 ELK AVE.

PATIO

DOORS



SEATING PROPOSAL
3 - Rectangular Tables
w/ 6 seats each
3 - Square Tables
w/ 2 seats each



RIGID BARRIER

SIDE WALK



LAMP
POST

BRICK SIDEWALK

ELK AVE.

EXHIBIT "B"

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
2. The business must have direct first floor frontage adjacent to the hard surfaced sidewalk on Elk Avenue.

The requested licensed area must meet the following criteria.

3. The licensed area must be directly adjacent to the appurtenant business frontage.
4. The licensed area may not restrict the public right of way in a manner that leaves less than seven feet of hard surfaced area for pedestrian travel. There must be at least three feet adjacent to any parallel parking adjacent to the pedestrian way. There must be at least an additional four feet of hard surfaced pedestrian surface with a cross slope of no greater than 2% for handicap accessibility. The two areas are mutually exclusive. The pedestrian way may not be obstructed by impediments such as light poles, trash cans, flower boxes or bike racks and access to the pedestrian way must also be at least seven feet wide and meet the accessibility requirements.
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Restrictions on time of use of the licensed area are as follows.

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11. The tables, chairs, liquor containment structure and any other items associated with the restaurant use must be removed daily from the public right of way during the time when the restaurant is not open. The containment fencing may be left parallel against the front wall of the business frontage if collapsed.

The business must adhere to the following rules and regulations.

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13. The business is responsible for keeping the licensed area clean and free of debris and food waste.
14. The business may not make permanent changes to or damage the licensed area including but not limited to drilling into the public sidewalk.
15. The business may not utilize portable heating devices in the licensed area.
16. The business must operate entirely within the licensed premises and not encroach into the pedestrian way.
17. The business may not use umbrellas within the licensed premises.

After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.



Application for Revocable License for Restaurant/Bar Seating on Public Sidewalks 2019

Date: 2-12-19 Square Footage: 130 Fee Paid: \$390

Business Name: Teocalli Tamale Company DBA Teocalli Tamale
Owner: Mike Burke
Address: 311 1/2 Elk Ave #POB 2890 Block 22 Lot 22
Contact: Mike Burke
Phone #: 970 596 4222 Cell # _____
E-mail address: bluegrassburke@hotmail.com

Property Owner: Larry Dunn / Purple Mtn. Properties
Address: POB 425
Phone #: 970 349 5648 Cell # N/A
E-mail address: N/A

Is it the intent to serve alcohol on the licensed premises Yes No

[If yes, fill out the attached liquor license permit application and report of change and return with application with the required state fee. If the license is not granted this fee will be returned to the applicant.]

Please attach a map of the requested seating area (see attached example). The map should be to scale and no smaller than 1/8 of an inch to a foot with dimensions noted. The map should show the table and chair layout, the adjacent pedestrian area and at least ten feet on either side of the requested licensed area showing access to the pedestrian area. Show the percent grade on any adjacent brick areas used for the pedestrian area. A containment structure (fencing) location which separates the license area from the pedestrian way should also be shown on the map and a separate detail of what is proposed for the containment structure should be provided.

I have read the reverse side of this form which lists the limitations and requirements for securing the license and I agree to abide by the terms and limitation of the license where granted. I understand that failure to abide by these requirements is grounds for immediate revocation of the license. I certify that all information provided herein is accurate. I understand that this application is for a discretionary license which may or may not be granted by the Town.

Applicant Signature and Title

2-12-19

Date

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In order to apply for a license the business must meet the following criteria.

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20. Payment of a licensed lease fee of \$3.00 per square foot.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the **TOWN OF CRESTED BUTTE** ("Town"), a Colorado home rule municipality, with an address of P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224 and Teocalli Tamale Company ("Licensee"), with an address of 311 1/2 Elk Ave, Crested Butte CO.

WITNESSETH:

WHEREAS, Licensee is the owner and operator of a certain business ("Business") located at 311 1/2, Elk Avenue, Crested Butte, Colorado ("Premises");

WHEREAS, Licensee is the fee owner or has a property right (e.g., lease) to use and occupy its Business on the Premises;

WHEREAS, the Premises is bound by the Town's public streets, sidewalks and/or rights of way ("Public Ways");

WHEREAS, Licensee desires to keep and maintain outdoor seating and related personal property (collectively, "Seating Effects") in the Public Ways; and

WHEREAS, the Town is willing to grant to Licensee a revocable license to keep and maintain its Seating Effects in the Public Ways under the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the preambles, covenants, terms, and conditions set forth herein, the sufficiency of such consideration being acknowledged by both parties, the Town grants to Licensee the following revocable license to keep and maintain its Seating Effects upon the Town Public Ways as described herein:

AGREEMENT:

1. **License.** Licensee shall be entitled to a non-exclusive license for the limited purpose of keeping and maintaining its Seating Effects in the Public Ways in the location as depicted on Exhibit "A" ("licensed area") attached hereto. Specific conditions applicable to the license granted herein are listed in Exhibit "B" attached hereto. The application submitted to the Town by Licensee in connection with this Agreement and the license granted hereunder is incorporated herein. Licensee's use of the licensed area and its conduct of any activities relative thereto on the Public Ways shall at all times comply with all applicable governmental requirements, including,

without limitation, other Town and State of Colorado permitting and licensing requirements.

2. **Term**. The revocable license granted herein shall exist and continue until the expiration of this Agreement or the earlier termination hereof where the Town Council finds, for any reason or no reason at all, at a regular, public meeting that the license to use the Public Ways granted hereunder shall be terminated, and the license granted hereunder extinguished.

3. **Assumption of Risk; Waiver**. Licensee assumes the risk of damage to its Personal Effects arising from or relating to Licensee's use of the Public Ways. Additionally, Licensee assumes all risk of damage to property or injury to persons in connection with the license granted under this Agreement and the encroaching Personal Effects. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Licensee waives and releases the Town, and its officers, elected officials, agents and employees, from any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways, whether or not caused by the act or omission, negligence or other fault of the Town, and its officers, elected officials, agents and employees.

4. **Indemnification**. By execution hereof, Licensee, for itself and its successors, representatives and assigns, hereby agrees to indemnify, defend and save harmless the Town, and its officers, elected officials, agents and employees, against any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways. Licensee shall name the Town as an additional insured on Licensee's policy of liability insurance, which shall provide coverage of at least \$1,000,000.00, combined single limit.

5. **Revocation**. Upon notice to Licensee of the Town Council's decision to revoke the license granted under this Agreement, for any reason or no reason at all, the encroaching Personal Effects shall be removed immediately. In the event that the encroaching Personal Effects are not so removed by Licensee, the Town may remove the same at Licensee's sole cost and expense. In the event of any legal action or advice necessary to execute such removal, Licensee shall also pay the Town all costs and/or attorneys' fees incurred by the Town.

6. **Maintenance**. Licensee agrees to assume the sole responsibility for the maintenance and/or upkeep of the encroaching Personal Effects. The Town shall not be liable for any damage to said Personal Effects caused by any acts or omissions of the Town, including, without limitation, in connection with snow removal, street or alley maintenance or street or alley improvements.

7. **Binding**. This Agreement, the benefits conferred and obligations incurred hereunder, shall inure Licensee's successors in interest and permitted assigns.

8. **No Assignment.** This Agreement and the license granted hereunder shall not be assignable or transferrable by Licensee without the Town's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer in contravention of this requirement shall be void ab initio.

9. **Notices.** Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed to the addresses first set forth above, or to such other addresses as the parties shall designate. Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or (y) the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received.

10. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement, if any.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

(d) This Agreement may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures.

[Signature Page(s) To Follow]

IN WITNESS WHEREOF, the Town and Licensee have executed this Agreement to be effective as of the date first written above.

LICENSEE:

[Teocalli Tamale Company]

By: 
Name: Mike Burke
Title: President

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

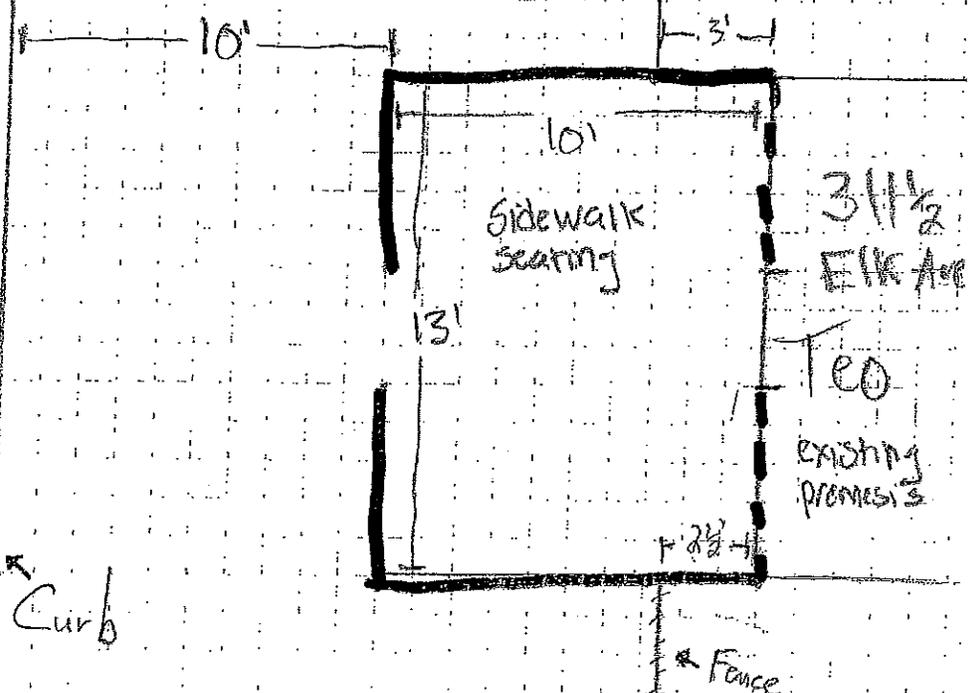
EXHIBIT "A"

Location of Seating Effects in Public Ways / License Area

[attach drawing and/or narrative here]

Teocalli, Tamale
Outdoor Seating

311
Rug
Gallery



← Curb

Teo
existing
premises

← Fence

EXHIBIT "B"

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
2. The business must have direct first floor frontage adjacent to the hard surfaced sidewalk on Elk Avenue.

The requested licensed area must meet the following criteria.

3. The licensed area must be directly adjacent to the appurtenant business frontage.
4. The licensed area may not restrict the public right of way in a manner that leaves less than seven feet of hard surfaced area for pedestrian travel. There must be at least three feet adjacent to any parallel parking adjacent to the pedestrian way. There must be at least an additional four feet of hard surfaced pedestrian surface with a cross slope of no greater than 2% for handicap accessibility. The two areas are mutually exclusive. The pedestrian way may not be obstructed by impediments such as light poles, trash cans, flower boxes or bike racks and access to the pedestrian way must also be at least seven feet wide and meet the accessibility requirements.
5. The maximum depth of the license area onto public property may measure no more than seven (7) feet.
6. The licensed area may not be wider than the business frontage on the first floor adjacent to the Elk Avenue sidewalk.
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8. The containment barrier must be 42 inches tall with rigid top rails attached to self supporting stanchions and be constructed of durable attractive materials. If decorative materials are attached to the top rails or stanchions they must incorporate substantial openings throughout to allow viewing into the site. Barriers that are solid in body (i.e. stretched fabric, plexiglass, see-through mesh, etc.) are not permissible." Commercial advertising shall not be incorporated into the barrier design.

Restrictions on time of use of the licensed area are as follows.

9. The dates of the license shall be from the Friday prior to Memorial Day to October 15 of the current calendar year.
10. The licensed area may not be utilized during July 4th. The Town Council may place additional restrictions depending on special events requested.
11. The tables, chairs, liquor containment structure and any other items associated with the restaurant use must be removed daily from the public right of way during the time when the restaurant is not open. The containment fencing may be left parallel against the front wall of the business frontage if collapsed.

The business must adhere to the following rules and regulations.

12. Above criteria shall be reviewed by the Town and deemed compliant prior to licensing.
13. The business is responsible for keeping the licensed area clean and free of debris and food waste.
14. The business may not make permanent changes to or damage the licensed area including but not limited to drilling into the public sidewalk.
15. The business may not utilize portable heating devices in the licensed area.
16. The business must operate entirely within the licensed premises and not encroach into the pedestrian way.
17. The business may not use umbrellas within the licensed premises.

After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.



Application for Revocable License for Restaurant/Bar Seating on Public Sidewalks 2019

Date: 2/28/19 Square Footage: 72 Fee Paid: \$216

Business Name: ^{DBA} Public House Public House LLC
Owner: Public House LLC
Address: 202 Elk Ave. Block 28 Lot 16 + west half of Lot 15
Contact: Kyra Martin
Phone #: 9702751044 Cell # same
E-mail address: Kyra@grassy.creek.ni

Property Owner: Ice House LLC
Address: 221 North Hogan, Suite 403, Jacksonville, FL 32202
Phone #: 9702751044 Cell # same
E-mail address: kyra@grassy.creek.ni

Is it the intent to serve alcohol on the licensed premises Yes No

[If yes, fill out the attached liquor license permit application and report of change and return with application with the required state fee. If the license is not granted this fee will be returned to the applicant.]

Please attach a map of the requested seating area (see attached example). The map should be to scale and no smaller than 1/8 of an inch to a foot with dimensions noted. The map should show the table and chair layout, the adjacent pedestrian area and at least ten feet on either side of the requested licensed area showing access to the pedestrian area. Show the percent grade on any adjacent brick areas used for the pedestrian area. A containment structure (fencing) location which separates the license area from the pedestrian way should also be shown on the map and a separate detail of what is proposed for the containment structure should be provided.

I have read the reverse side of this form which lists the limitations and requirements for securing the license and I agree to abide by the terms and limitation of the license where granted. I understand that failure to abide by these requirements is grounds for immediate revocation of the license. I certify that all information provided herein is accurate. I understand that this application is for a discretionary license which may or may not be granted by the Town.

Kyra Martin VP
Applicant Signature and Title

2/28/19
Date

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
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5. The maximum depth of the license area onto public property may measure no more than seven (7) feet.
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After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the TOWN OF CRESTED BUTTE ("Town"), a Colorado home rule municipality, with an address of P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224 and Public House LLC ("Licensee"), with an address of 202 Elk Avenue, Crested Butte CO.

WITNESSETH:

WHEREAS, Licensee is the owner and operator of a certain business ("Business") located at 202 Elk Avenue, Crested Butte, Colorado ("Premises");

WHEREAS, Licensee is the fee owner or has a property right (e.g., lease) to use and occupy its Business on the Premises;

WHEREAS, the Premises is bound by the Town's public streets, sidewalks and/or rights of way ("Public Ways");

WHEREAS, Licensee desires to keep and maintain outdoor seating and related personal property (collectively, "Seating Effects") in the Public Ways; and

WHEREAS, the Town is willing to grant to Licensee a revocable license to keep and maintain its Seating Effects in the Public Ways under the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the preambles, covenants, terms, and conditions set forth herein, the sufficiency of such consideration being acknowledged by both parties, the Town grants to Licensee the following revocable license to keep and maintain its Seating Effects upon the Town Public Ways as described herein:

AGREEMENT:

1. License. Licensee shall be entitled to a non-exclusive license for the limited purpose of keeping and maintaining its Seating Effects in the Public Ways in the location as depicted on Exhibit "A" ("licensed area") attached hereto. Specific conditions applicable to the license granted herein are listed in Exhibit "B" attached hereto. The application submitted to the Town by Licensee in connection with this Agreement and the license granted hereunder is incorporated herein. Licensee's use of the licensed area and its conduct of any activities relative thereto on the Public Ways shall at all times comply with all applicable governmental requirements, including,

without limitation, other Town and State of Colorado permitting and licensing requirements.

2. **Term**. The revocable license granted herein shall exist and continue until the expiration of this Agreement or the earlier termination hereof where the Town Council finds, for any reason or no reason at all, at a regular, public meeting that the license to use the Public Ways granted hereunder shall be terminated, and the license granted hereunder extinguished.

3. **Assumption of Risk; Waiver**. Licensee assumes the risk of damage to its Personal Effects arising from or relating to Licensee's use of the Public Ways. Additionally, Licensee assumes all risk of damage to property or injury to persons in connection with the license granted under this Agreement and the encroaching Personal Effects. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Licensee waives and releases the Town, and its officers, elected officials, agents and employees, from any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways, whether or not caused by the act or omission, negligence or other fault of the Town, and its officers, elected officials, agents and employees.

4. **Indemnification**. By execution hereof, Licensee, for itself and its successors, representatives and assigns, hereby agrees to indemnify, defend and save harmless the Town, and its officers, elected officials, agents and employees, against any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways. Licensee shall name the Town as an additional insured on Licensee's policy of liability insurance, which shall provide coverage of at least \$1,000,000.00, combined single limit.

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7. **Binding**. This Agreement, the benefits conferred and obligations incurred hereunder, shall inure Licensee's successors in interest and permitted assigns.

8. **No Assignment.** This Agreement and the license granted hereunder shall not be assignable or transferrable by Licensee without the Town's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer in contravention of this requirement shall be void ab initio.

9. **Notices.** Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed to the addresses first set forth above, or to such other addresses as the parties shall designate. Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or (y) the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received.

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[Signature Page(s) To Follow]

IN WITNESS WHEREOF, the Town and Licensee have executed this Agreement to be effective as of the date first written above.

LICENSEE:

[Public House LLC]

By: Kyra Martin
Name: Kyra Martin
Title: VP

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

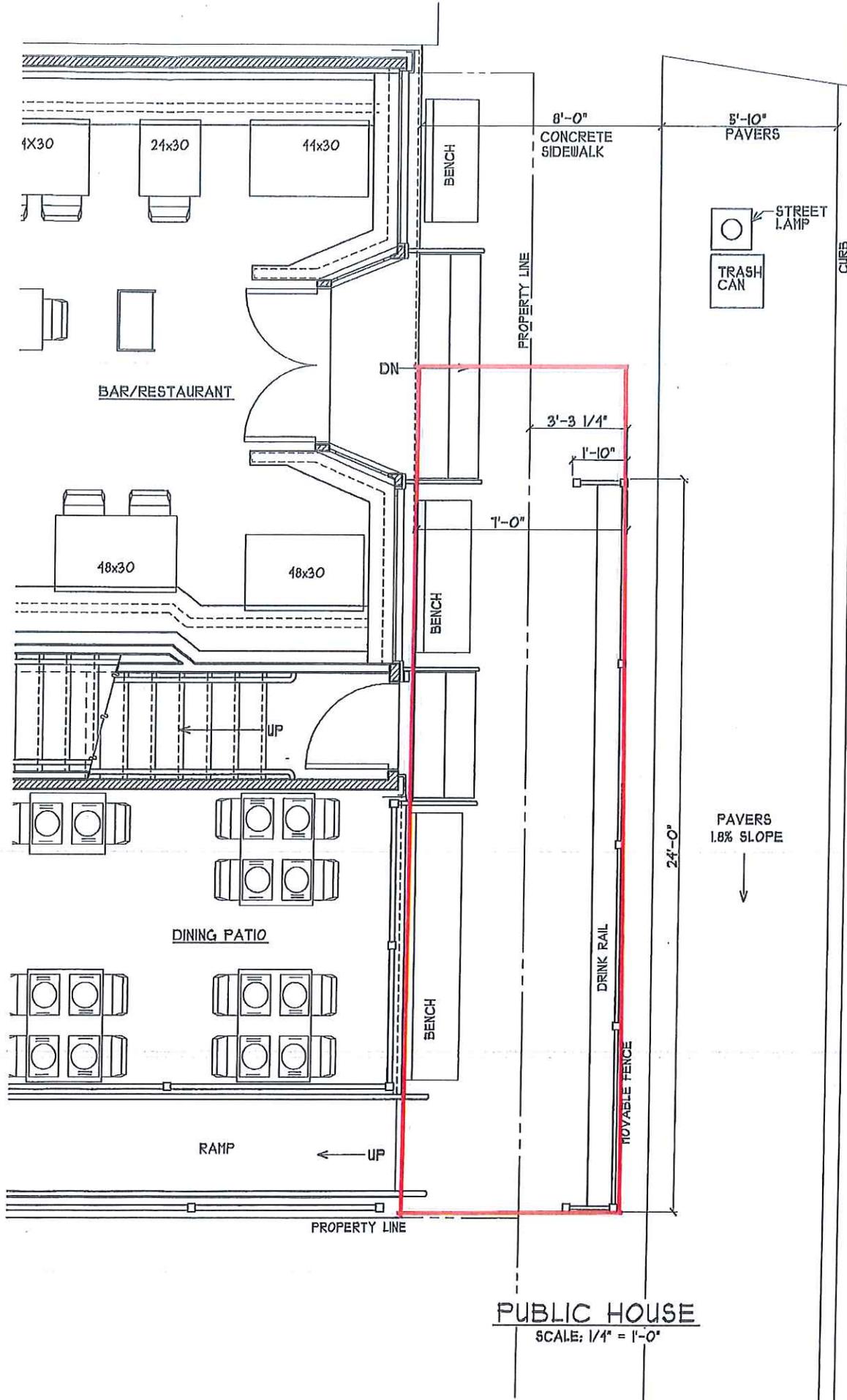
[SEAL]

EXHIBIT "A"

Location of Seating Effects in Public Ways / License Area

[attach drawing and/or narrative here]

*Same as
summer 2018*



ELK AVENUE

PUBLIC HOUSE
SCALE: 1/4" = 1'-0"

EXHIBIT "B"

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

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After approval of the license but prior to utilizing the licensed area the business must provide the following.

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REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the **TOWN OF CRESTED BUTTE** ("Town"), a Colorado home rule municipality, with an address of P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224 and Ladybug LTD ("Licensee"), with an address of 230 Elk Ave, Crested Butte CO.

WITNESSETH:

WHEREAS, Licensee is the owner and operator of a certain business ("Business") located at 230, Elk Ave, Crested Butte, Colorado ("Premises");

WHEREAS, Licensee is the fee owner or has a property right (e.g., lease) to use and occupy its Business on the Premises;

WHEREAS, the Premises is bound by the Town's public streets, sidewalks and/or rights of way ("Public Ways");

WHEREAS, Licensee desires to keep and maintain outdoor seating and related personal property (collectively, "Seating Effects") in the Public Ways; and

WHEREAS, the Town is willing to grant to Licensee a revocable license to keep and maintain its Seating Effects in the Public Ways under the terms and conditions set forth herein.

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4. **Indemnification**. By execution hereof, Licensee, for itself and its successors, representatives and assigns, hereby agrees to indemnify, defend and save harmless the Town, and its officers, elected officials, agents and employees, against any and all claims for personal injury or property damage, including reasonable attorneys' fees, arising out of or connected in any way with the Licensee's use of the Public Ways. Licensee shall name the Town as an additional insured on Licensee's policy of liability insurance, which shall provide coverage of at least \$1,000,000.00, combined single limit.

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6. **Maintenance**. Licensee agrees to assume the sole responsibility for the maintenance and/or upkeep of the encroaching Personal Effects. The Town shall not be liable for any damage to said Personal Effects caused by any acts or omissions of the Town, including, without limitation, in connection with snow removal, street or alley maintenance or street or alley improvements.

7. **Binding**. This Agreement, the benefits conferred and obligations incurred hereunder, shall inure Licensee's successors in interest and permitted assigns.

8. **No Assignment.** This Agreement and the license granted hereunder shall not be assignable or transferrable by Licensee without the Town's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer in contravention of this requirement shall be void ab initio.

9. **Notices.** Any notice, statement or demand required to be given under this Agreement shall be in writing and shall be, and at the option of the party giving notice, (i) personally delivered, (ii) transmitted by certified or registered mail, return receipt requested, postage prepaid, (iii) by FedEx or other recognizable overnight courier, or (iv) by confirmed facsimile (provided, that a confirmatory copy is thereafter sent by certified or registered mail or recognizable overnight courier), addressed to the addresses first set forth above, or to such other addresses as the parties shall designate. Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or (y) the date that the return receipt, overnight courier's records or confirmed facsimile indicates that delivery to the addressee was received.

10. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement, if any.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Agreement is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

(d) This Agreement may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures.

[Signature Page(s) To Follow]

IN WITNESS WHEREOF, the Town and Licensee have executed this Agreement to be effective as of the date first written above.

LICENSEE:

[Ladybug LTD]

By: Mary Boddington

Name: MARY BODDINGTON

Title: OWNER

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____

James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

EXHIBIT "A"

Location of Seating Effects in Public Ways / License Area

[attach drawing and/or narrative here]

Restroom Proposal

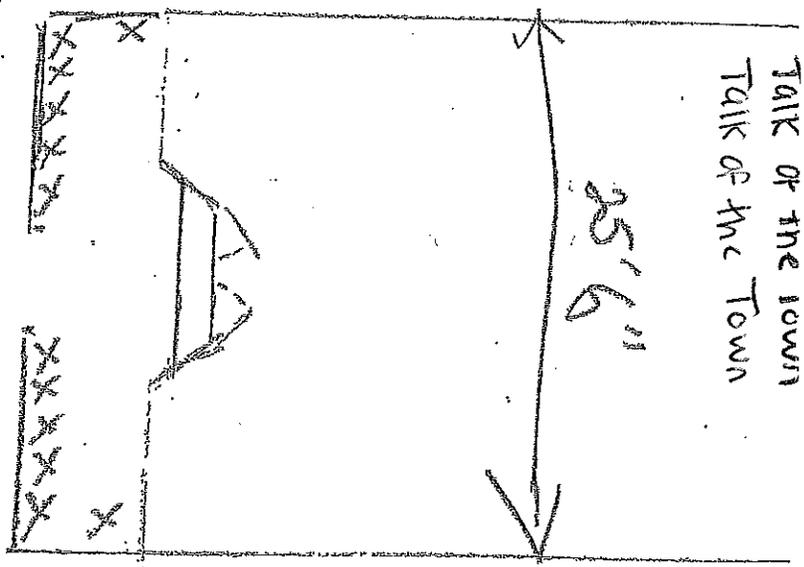
12-30" high wood studs
(width of north)

Talk of the town
Talk of the town

35' 6"

There will be 2 no smoking signs on either side of entry!

License Area
4' x 25' 6"



Containment barrier
(see below)

Concrete
side walls
9' 7"

Lamp post

Elk Avenue

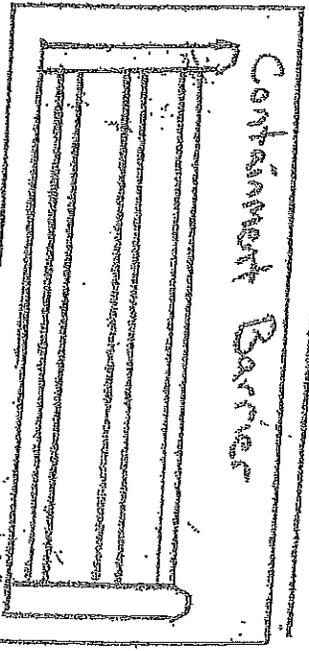
3' 4" horizontal flat
metal slats

10" spacing

2 Town Bike Racks
need to be moved

4' 0"

Containment Barrier



BNLX
SECTION
8'

barrier will have a ledge for driver!

EXHIBIT "B"

Conditions Applicable to License

In order to apply for a license the business must meet the following criteria.

1. The business must have a valid conditional use permit and business license for a restaurant/bar issued by the Town of Crested Butte.
2. The business must have direct first floor frontage adjacent to the hard surfaced sidewalk on Elk Avenue.

The requested licensed area must meet the following criteria.

3. The licensed area must be directly adjacent to the appurtenant business frontage.
4. The licensed area may not restrict the public right of way in a manner that leaves less than seven feet of hard surfaced area for pedestrian travel. There must be at least three feet adjacent to any parallel parking adjacent to the pedestrian way. There must be at least an additional four feet of hard surfaced pedestrian surface with a cross slope of no greater than 2% for handicap accessibility. The two areas are mutually exclusive. The pedestrian way may not be obstructed by impediments such as light poles, trash cans, flower boxes or bike racks and access to the pedestrian way must also be at least seven feet wide and meet the accessibility requirements.
5. The maximum depth of the license area onto public property may measure no more than seven (7) feet.
6. The licensed area may not be wider than the business frontage on the first floor adjacent to the Elk Avenue sidewalk.
7. The seating area may not be larger than the interior seating area of the restaurant.
8. The containment barrier must be 42 inches tall with rigid top rails attached to self supporting stanchions and be constructed of durable attractive materials. If decorative materials are attached to the top rails or stanchions they must incorporate substantial openings throughout to allow viewing into the site. Barriers that are solid in body (i.e. stretched fabric, plexiglass, see-through mesh, etc.) are not permissible." Commercial advertising shall not be incorporated into the barrier design.

Restrictions on time of use of the licensed area are as follows.

9. The dates of the license shall be from the Friday prior to Memorial Day to October 15 of the current calendar year.
10. The licensed area may not be utilized during July 4th. The Town Council may place additional restrictions depending on special events requested.
11. The tables, chairs, liquor containment structure and any other items associated with the restaurant use must be removed daily from the public right of way during the time when the restaurant is not open. The containment fencing may be left parallel against the front wall of the business frontage if collapsed.

The business must adhere to the following rules and regulations.

12. Above criteria shall be reviewed by the Town and deemed compliant prior to licensing.
13. The business is responsible for keeping the licensed area clean and free of debris and food waste.
14. The business may not make permanent changes to or damage the licensed area including but not limited to drilling into the public sidewalk.
15. The business may not utilize portable heating devices in the licensed area.
16. The business must operate entirely within the licensed premises and not encroach into the pedestrian way.
17. The business may not use umbrellas within the licensed premises.

After approval of the license but prior to utilizing the licensed area the business must provide the following.

18. Proof of liability insurance in the amount of a minimum of \$1,000,000 with the Town of Crested Butte named as an additionally insured.
19. If applicable, authorization of liquor license premise modification to include the licensed area by the State of Colorado.
20. Payment of a licensed lease fee of \$3.00 per square foot.



Staff Report April 1, 2019

To: Town Council

Thru: Dara MacDonald, Town Manager

From: Janna Hansen, Parks and Recreation Director

Subject: Approval of the Updated Noxious Weed List

Background:

In 2016 Town Council adopted Ordinance No. 11 amending Chapter 7, Article 3 of the Crested Butte Municipal Code (“Code”) to include new regulations for the management of undesirable plants. At that time Council also adopted the Noxious Weed Management Plan including a designated Noxious Weed List. The Colorado Noxious Weed Act (§ 35-5.5-106 (2008)) grants the authority to local municipalities to declare noxious weeds and allows for the enforcement of their management.

The current Noxious Weed List for the Town includes the following plants:

1. Absinthe wormwood (*Artemisia absinthium*)
2. Black henbane (*Hyoscyamus niger*)
3. Canada thistle (*Cirsium arvense*)
4. Common tansy (*Tanacetum vulgare*)
5. Dalmatian toadflax (*Linaria dalmatica*)
6. Dame’s rocket (*Hesperis matronalis*)
7. Diffuse knapweed (*Centaurea diffusa*)
8. Hoary cress (*Lepidium draba*)
9. Houndstongue (*Cynoglossum officinale*)
10. Leafy spurge (*Euphorbia Esula*)
11. Musk thistle (*Carduus nutans*)
12. Orange hawkweed (*Hieracium aurantiacum*)
13. Oxeye daisy (*Leucanthemum vulgare*)
14. Plumeless thistle (*Carduus acanthoides*)
15. Russian knapweed (*Acroptilon repens*)
16. Scentless chamomile (*Matricaria perforata*)
17. Scotch thistle (*Onopordum acanthium*)
18. Spotted knapweed (*Centaurea maculosa*)
19. Yellow sweet clover (*Melilotus officinalis*)
20. Yellow toadflax (*Linaria Vulgaris*)

Summary:

The Town’s Noxious Weed Advisory Board (“Board”), in consultation with Mt. Crested Butte and Gunnison County, recommends adding the following weeds to the Town’s Noxious Weed List:

1. Cheatgrass (*Bromus tectorum*)

In the 1940s, Aldo Leopold warned this invasive plant posed a grave threat to western US habitats. Since then, it has spread. And spread. Wildfires love this grass that matures quickly then dries out early in the summer. Cheatgrass grows 8-25" tall and the blades are covered in soft short hairs. Cheatgrass has the ability to draw down soil moisture and nutrients to very low levels, making it difficult for other species to compete. Cheatgrass seeds quickly work their way into socks and animal fur.



2. Cyprus Spurge (*Euphorbia cyparissias*)

This noxious weed is on the state of Colorado's A List (that's really bad!) and numerous patches of this weed have been found in Town the past two seasons by our County weed management partners. Cyprus Spurge



grows up to 12" tall and exudes a milky white sap when broken. The yellow-green flowers mature to red and its root system produces large clonal colonies through an extensive underground system. It can invade open disturbed areas such as fields, pastures, agricultural land, roadsides, and yards. It is toxic to livestock and contaminates hayfields. It can form huge infestations displacing native vegetation.



The Town also has a Noxious Weed Watch List including the following plants:

1. Prickly Lettuce (*Lactuca serriola*)
2. WinterCress (*Barbarea vulgaris*)
3. Western Salsify (*Tragopogon dubius*)

The Board recommends adding Puncturevine (*Tribulus terrestris*) to the Watch List. Puncturevine is a toxic plant that invades pastures, roadsides, fields, and other disturbed areas. The seeds have thorns that are easily transported on shoes, clothing and the fur of animals.



Adding these plants to the Town's Noxious Weed List and Watch List is in line with the following 2019 Priorities presented to Council during the annual report by the Chair of the Weed Advisory Board during the November 5, 2018 Council meeting:

- Contain, monitor and swiftly deal with Cheat grass, Puncturevine, Black henbane, and Houndstongue
- Keep Cheatgrass from moving up valley

Recommendation

Staff recommends approving the additions of Cheatgrass and Cyprus Spurge to the Town of Crested Butte Noxious Weed List, and Puncturevine to the Town of Crested Butte Noxious Weed Watch List.



Memorandum

To: Town Council
From: Dara MacDonald, Town Manager
Subject: Manager's Report
Date: April 1, 2019

Town Manager

- 1) Parking Plan implementation – If the Council wishes to proceed with paid parking for Summer 2019, staff would need that direction by April 15th to have the system implemented by late June. **Should we schedule further discussion for April 15th or would the Council prefer to pass for this year?**
- 2) MT 2030 Conference – Please see the attached invitation from Andy Beerman, Park City Mayor, for a conference October 2-4 in Park City. This summit will be an international coalition of mountain communities committed to aggressive carbon reduction goals by 2030.
- 3) Post Office
 - Amazon – Attached is a series of emails with Amazon. As you can see, Amazon is no longer willing to deprioritize USPS for our area, thus most packages will continue to go through the post office.
 - Post Office - Attached is a follow up email I sent on March 19th to our postmaster, Michael Nooney and his boss out of Denver, Jerry Martinez. No response has been received.
- 4) Vacation – As a reminder I will be out of the office April 10 – May 3, returning to work on May 6th. Per Section 6.2 of the Town Charter the **Town Council should appoint an Acting Manager in my absence**. I recommend appointing Rob Zillioux, Finance Director, to act in this capacity.
- 5) Verizon tower – Verizon has expressed some willingness to revisit their lease with the school district for the tower site at the elementary school if an appropriate alternative site can be found and lease terms negotiated. Three possible sites that are being discussed are the GCEA substation, the Town's Avalanche Park parcel and the Town Shops. I will keep the Council informed as conversations continue.

Public Works

- 1) WWTP State Inspection –
 - The Wastewater Treatment Facility underwent a CDPHE (Colorado Department of Health and Environment) Compliance Evaluation Inspection (CEI) on 3/20/2019. A CEI typically takes place every three years; however, our last inspection occurred in 2014. Inspections are designed to verify compliance of the treatment works and collection system with the permit self-monitoring requirements, effluent limits, design requirement, as well as, evaluates the facility's design capacity, operations, maintenance, conditions of infrastructure, laboratory practices, and record keeping.

- The inspection on 3/20/2019 found two “findings”, or items that required corrective action. The first was a mistake in a calculation of a two year rolling average Ammonia value that was reported on January 2019’s Discharge Monitoring Report. This item was corrected immediately after the inspection. The second was regarding the 8th and Belleview lift station in the collection system. According to CDPHE regulations, this lift station was required to have a Site Application during construction. CDPHE could not find any record of this document. Unless the Town can find the document with in their records, it will have to hire an engineering firm to develop another Site Application for submission to CDPHE. At this time, Town staff is determining the exact year the lift station was originally constructed and whether or not we have a Site Application on file. If a Site Application can be located, no other corrective action will be required.

Marshals

- 1) Deputy Marshal John Chandler met all of the requirements and successfully tested for promotion to Deputy Marshal II. The promotion will be effective on April 1 (not an April fool).

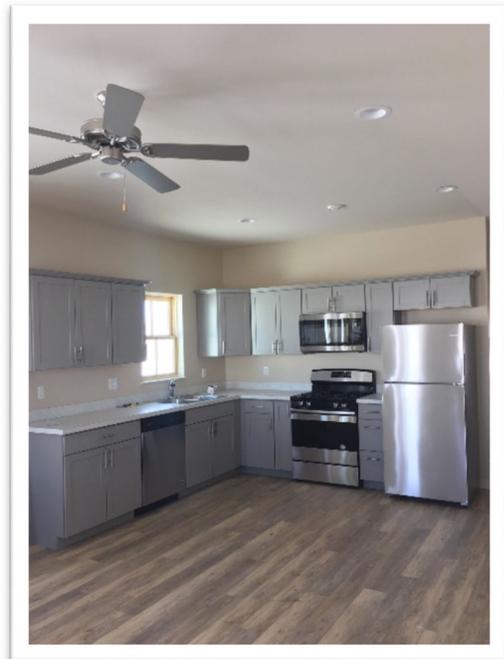
Parks & Rec

- 1) Town Park Playground Renovation Project – Play equipment is being built as we speak at the IDS shop in Gunnison (see attached photos). The new Yelenick playground will include sunken pirate ships, slides, swings, sand diggers, a nature trail, and more! Keep an eye out for details about a pirate-themed costume party grand opening. New amenities coming this summer at Town Park also include hammocks, a basketball court, horseshoe pits, trees, and gardens. Weather permitting, we are hoping for a July grand opening.
- 2) Henderson Park Planning - Henderson Park needs some love! Renovation plans are being made for this pocket park located at the corner of 3rd St. and Whiterock Ave. We have asked the public what amenities they would like to see via survey monkey (ie. new play equipment for 2-5 year olds, gardens and picnic spaces, public art, etc.) There will be a public meeting to share survey results and solicit additional feedback on Tuesday, April 9th at 5:30pm at Town Hall.
- 3) Rainbow Playground Resurfacing Project – The Town has partnered with CBCS and Black Dragon Development to coordinate new poured in place surfaces for the new Yelenick Playground, Rainbow Park, and the CBCS playground this summer. Schedules will be coordinated to insure that at least one playground will remain open at all times while this work is being performed.
- 4) Big Mine Ice Arena has remained open later in the year than ever before! Due to cold temperatures and a dedicated staff, the Ice Arena has received much late season use and enjoyment.
- 5) Spring Soccer may get a late start this year. Due to significant amounts of snow on Town fields and limited indoor space, it is anticipated that soccer will start unusually late this spring. Options for limited indoor play in the evenings is under consideration.

Community Development

- 1) Applications for the Block 76 lottery are available at the gvrha.org website. The application process is open until May 17th. The lottery will be held on June 20th. The project includes 1, 2 and 3-bedroom units at a variety of price points.
- 2) The latest housing survey has only had 47 respondents with only 34 stating they intend to apply for the Block 76 housing lottery. Both newspapers will be running news articles this coming week. Hopefully this generates more responses. We are attempting to collect data on what unit types/sizes people are interested in as well as whether people desire for-sale or rental units.

- 3) The GVRHA continued the adoption of the Regional Housing Plan until the April meeting to allow additional information to be added to the plan.
- 4) The request to review the separation of domestic and fire suppression water lines will need to be vetted by the Public Works Director and the Crested Butte Fire District. However, the lines into the existing Paradise Park sites are 1" lines. So regardless, the contractor is going to have to excavate to install new 2" lines for fire suppression.
- 5) The Town build duplexes are progressing ahead of schedule. The Duplex at 914/916 Butte Avenue is nearly 95% complete. There are several small punch list interior items but the two largest items including exterior paint and landscaping will require warmer temperatures. The Duplex at 909/911 Teocalli Avenue is 90% complete. Interior finishes, paint, and appliances are underway and being installed. Both of these duplexes are on track to have new residents moved in by July 1. The School District Duplex at 917/919 Teocalli is 80% complete. Interior paint, roofing, plumbing, drywall finishing, and kitchens are being installed. This duplex is on track to be complete by August 1st. On April 10th at 2:30pm the GVRHA will be touring the duplex on Butte Avenue. Interested members of the Council can stop by to see the almost finished product.
- 6) Avalanche Park – mistletoe and pine beetle
 - Town staff have been working closely with the CO State Forest Service since last fall to address management of the trees in Avalanche Park. They assisted with developing the RFP for tree removal and will supervise the work at Avalanche Park. They are also providing a grant to the Town to reimburse 50% of the cost of the project this year.
 - The main priority is removing the trees that have pine beetle before the beetles spread, but the Forest Service indicated that they are interested in helping us come up with management plans for this property and other similar properties (Red Lady Open Space) that are experiencing problems with Mistletoe, deadfall, etc. However the campground discussion evolves will probably affect their recommendations for this specific property.



Town Clerk

- 1) The organizer of the Farmers Market proposed an additional Thursday night market from July 11 to August 29. Their first choice of location was the Zero Block of Elk. Staff supported alternative locations such as Big Mine and Crank's Plaza.
- 2) The application for Bridges of the Butte reflected a 12 hour ride, rather than the traditional 24 event. They proposed the ride take place on June 29th.
- 3) The public hearing on the liquor license for Tin Cup Pasty Co (former location of the Ginger) has been postponed from April 15th, due to outstanding issues with the building.

Finance

- 1) Sales tax update - YTD February sales tax growth was 1.5% while vacation rental excise tax growth was 53%. For February itself, sales tax was only slightly up versus February 2018, while excise tax was below 2018. As excise tax was new January 2018, it may take a while before the lumpiness is taken out of that revenue pattern.

Intergovernmental

Gunnison County has confirmed that they are planning to host the next intergovernmental meeting in the coming months.

Upcoming Meetings or Events

April 9th – Henderson Park Design Ideas public meeting – Council Chambers, 5:30 p.m.

* As always, please let me know if you have any questions or concerns. You may also directly contact department directors with questions as well.



March 10, 2019

Friends,

As Mayors and Councilmembers of Mountain Towns, we share the stewardship responsibilities for iconic places defined by passionate people with deep ties to the natural environment. As leaders in these compact, influential, and caring communities, we should be on the forefront of addressing global climate change. Our snow-based economies and lifestyles are in peril and our residents are activated. Now is the time to collectively give a voice to our action and demonstrate what solutions are possible.

Despite this epic winter, climate change is on our doorstep and looming large in our future. Unreliable snowpack, droughts, fires, flooding, and other ecological disasters affect us on an increasingly regular basis. Action by our communities can feel small and inconsequential on a global scale, and our efforts are often overlooked by larger organizations. Yet in a world seeking solutions, we are proof in concept of what motivated, nimble and innovative communities can do to immediately address climate change and resilience.

We have an opportunity to use our collective voice to inspire action, commit to aggressive goals, and develop solutions. On **October 2-4, 2019** Park City is inviting you to join us for the **MT2030 Summit** to do just that.

We are gathering a group of inspirational speakers and panelists to build our resolve before collectively setting bold 2030 goals. There will be workshops to compare best practices and discussions on how to use our influence to draw international attention to our efforts and solutions. Individually, many of us have already taken ambitious goals, but together we could accelerate global solutions. We live at the apex of this threat, let's send a clear signal to our communities, as well as regional and national leaders, that now is time to take meaningful action.

Please reach out to me to discuss further. Starting in April, more details will be found at www.mt2030.org.

Regards,

A handwritten signature in black ink that reads "Andy B" with a long, sweeping underline.

Andy Beerman
Park City Mayor
andy@parkcity.org
435.731.8366

Received March 22, 2019



Message From Executive Customer Relations

Hi Dara,

I'm sorry for the delay in getting back to you. We're constantly working to improve the delivery experience for all of our customers and appreciate your dedication in ensuring the voice of your community is heard. At this time we're not able to remove or deprioritize USPS as shipper for the 81224 postal code since there is a portion of this zip code within Crested Butte and neighboring communities that receives street deliveries from USPS. I understand you were previously told we could take this action, but that was regarding the 81225 postal code. I regret any inconvenience or frustration this may cause.

Thank you again for taking the time and opportunity to write to us on these concerns. We truly value your input.

We'll consider your feedback as we plan further improvements.

We'd appreciate your feedback. Please use the buttons below to vote about your experience today.

Best regards,
Elizabeth M King
Executive Customer Relations

Amazon.com

Thank you for your inquiry. Did I solve your problem?

Yes No

Your feedback is helping us build Earth's Most Customer-Centric Company.

Thank you for choosing **Amazon Business**.

[Your Account](#) | [Amazon.com](#) | [Help](#)

Original Message

Elizabeth,

Just wondering if you have gotten any further in your efforts to work with USPS to find a solution for our postal delivery situation in Crested Butte?

Appreciate your attention to this matter.

Dara

On Jan 28, 2019, at 6:13 AM, Dara MacDonald <dmacdonald@crestedbutte-co.gov<mailto:dmacdonald@crestedbutte-co.gov>> wrote:

Elizabeth,

We appreciate your continued efforts to reach resolution that helps our community handle the increased package pressure resulting from the popularity of online shopping. Interestingly, this topic continues to come up as we speak with other mountain communities. I just spoke with a Trustee from Granby Colorado about this shared problem last week.

The Mayor and I have a meeting with our local postmaster and his boss from Denver about this on Tuesday afternoon. It would be great to have some direction prior to then from Amazon on what your organization can do to relieve the pressures on our local post office.

Thanks,

Dara

On Jan 24, 2019, at 4:34 PM, Amazon.com<<http://amazon.com>> Executive Customer Relations <ecr-replies@amazon.com<mailto:ecr-replies@amazon.com>> wrote:

Message From Executive Customer Relations

Hi Dara,

I'm sorry for the delay in responding to you.

Our transportation team is still working closely with USPS to find the option that will work best considering the uniqueness of your town.

I'll keep you updated on any new improvements made. I appreciate your continued patience.

We'd appreciate your feedback. Please use the buttons below to vote about your experience today.

Best regards,

Elizabeth M King
Executive Customer Relations

Original Message
Brittany,

Thank you for your previous response. I do have some follow-up questions.

What exactly does it mean to be deprioritized for USPS delivery? I am confused because our post office is receiving daily package deliveries direct from Amazon on a truck coming out of the Denver area.

Because there is no USPS home delivery in our area and because there is no indication when ordering from Amazon on what the shipper will be, many people put both their street address (in case it is UPS) and their PO Box for shipping info. These packages are subsequently available for pick-up at the post office.

It seems to be a common experience that when people put only their street address for shipping, the item is shipped to the post office who then sends it back to Amazon because they do not provide home delivery in our area. So what do you advise for these situations?

For the past week folks have been waiting in lines at the local post office in excess of 45 minutes to conduct any business. This is obviously creating an unpleasant experience for your customers and the citizens of my community.

I hope that you can help me to better understand how to advise our community to successfully receive their parcels at home.

Thank you for your attention to this matter.

Dara MacDonald
Town Manager
(970) 349-5338

From: Amazon.com<<http://amazon.com/>> Executive Customer Relations [<mailto:ecr-replies@amazon.com>]

Sent: Monday, November 19, 2018 2:15 PM

To: Dara MacDonald <dmacdonald@crestedbutte-co.gov<<mailto:dmacdonald@crestedbutte-co.gov>>>

Subject: A Message from Brittany with Amazon.com<<http://amazon.com/>> Executive Customer Relations

Message From Executive Customer Relations

Hello Dara,

Thank you for your patience while I reached out to USPS. Please note USPS is still deprioritized for the town of Crested Butte, and UPS has become the primary carrier, unless the 1) Customer has a PO Box in their address line USPS will still receive the package to deliver or 2) there is no other ship option besides USPS to get it there.

If you have any other questions please let me know.

Thank you again for your patience and I hope you have a wonderful day.

We'd appreciate your feedback. Please use the buttons below to vote about your experience today.

Best regards,

Brittany Abrams, ECR

Executive Customer Relations

Your feedback is helping us build Earth's Most Customer-Centric Company.

Thank you for choosing Amazon Business.

Original Message

Dear Amazon,

Thanks again for your assistance last year.

Recently I have been hearing from folks here in Crested Butte who had been getting Amazon packages delivered to their homes for the past year, that once again packages are being sent to our local Post Office. Given the small size of our post office and the upcoming holidays, could you please check and make sure that USPS is still deprioritized as the carrier for Crested Butte?

Thanks for your attention to this matter and please let me know if there is anything we can do on our end to facilitate or prioritize home delivery.

Dara MacDonald
Town Manager
(970) 349-5338

From: Miller, Martha [<mailto:mimmartha@amazon.com>]

Sent: Thursday, December 07, 2017 3:45 PM

To: Dara MacDonald

Subject: Follow Up

Dear Dara,

Thank you for your recent correspondence regarding the change from UPS to the postal service and impacts in Crested Butte. In order to remedy the issues raised Amazon has deprioritized USPS as the carrier for Crested Butte, Colorado and UPS has become the primary carrier, unless the 1) Customer has a PO Box in their address line USPS will still receive the package to deliver or 2) there is no other ship option besides USPS to get it there.

We think this should alleviate the issue.

Please let me know if there is anything more I can do to help.

Thank you!

Martha Miller | Public Policy | Amazon

mimmartha@amazon.com<<mailto:mimmartha@amazon.com>><<mailto:mimmartha@amazon.com>> | M 415.271.4180

Dara MacDonald

From: Dara MacDonald
Sent: Tuesday, March 19, 2019 11:23 AM
To: J Schmidt; Nooney, Michael - Ukiah, CA
Cc: Martinez, Jerry O - Denver, CO
Subject: RE: Meeting with USPS

Mr. Martinez,

We wanted to follow up with you since we have not heard anything since our meeting in January.

1. During that meeting you said that you have requested a “space constraint review”. Has that process advanced and do you have any timeframe for completion of that review?
2. You said you would check on why Crested Butte residents do not receive free PO Boxes since home delivery is not offered in our community. Have you found a reason? We have done a bit of research and confirmed that residents are offered free PO Boxes in a number of other mountain towns such as Breckenridge, Frisco, Pagosa Springs, Grand Lake and Park City, UT.
3. You mentioned that you are looking for possible locations to locate parcel boxes or lockers, such as the exterior of the existing post office. Has this idea advanced? As I mentioned, the Town has strict design guidelines and we would strongly suggest that we meet early to review any plans for the placement of lockers to ensure that the design will be successful in our community. Alternatively, we would be happy to discuss the spaces that the Town owns near the post office as one of those might work for the placement of lockers.
4. You were going to check on the lifetime of the existing lease – possibly ending in 2023. The Town is very interested in finding a solution that works for effective operation of the community’s post office and we may be able to assist with siting in a more satisfactory location in the future if you would like our assistance.
5. As for staffing, were you able to bring on the 2 additional employees that you had made conditional offers to when last we spoke?

We were able to gain some great feedback from other mountain communities who have also been struggling with increased pressure during the holidays in the last two seasons. They have seen varying degrees of success in addressing the long lines and package delivery problems. Breckenridge sounds like it has been successful with increasing staffing and extended holiday hours – opening as early as 5:45 a.m. for package delivery. We certainly hope that these proactive ideas will be considered in Crested Butte prior to next December.

I appreciate your responses to the questions above. Please let us know what the Town can do to assist the post office in making sure that the long lines and poor experiences from the last two winters are not repeated again.

Dara MacDonald
Town Manager
(970) 349-5338



From: J Schmidt

Sent: Monday, January 07, 2019 1:32 PM

To: Nooney, Michael - Ukiah, CA <Michael.Nooney@usps.gov>

Cc: Martinez, Jerry O - Denver, CO <Jerry.O.Martinez@usps.gov>; Dara MacDonald <dmacdonald@crestedbutte-co.gov>; Will Dujardin <wdujardin@crestedbutte-co.gov>; Kent Cowherd <kcowherd@crestedbutte-co.gov>; Chris Haver <chaver@crestedbutte-co.gov>; Jackson Petito <jacksonp@crestedbutte-co.gov>; Laura Mitchell <lmitchell@crestedbutte-co.gov>; Paul Merck <pmerck@crestedbutte-co.gov>

Subject: Re: Meeting with USPS

Dear Mr. Nooney,

Thank you for agreeing to meet with me though January 25 will not work as the county and the town along with many other public and private agencies have scheduled an all day retreat concerning the One Valley Prosperity Project in Gunnison on that day.

I have not tried to reach you at work as the lines at the Post Office have been overwhelming and I did not want to take you away from helping the customers at the P.O.

I called Ms. Linda Neil because I knew that you were new to the position of Postmaster and the answers to my questions and complaints will probably have to be made by those up the ladder in the Postal Service. I assume Jerry Martinez is the person you are responsible to so I have copied him on this email. I have also copied our town manager and the members of our council.

I have to say that almost everyone I've run into in the last several weeks has a post office complaint and have not been shy about voicing them to me as mayor. I would place them in the following categories.

1. Waiting in line from 45 minutes to 2 hours for a package.
2. The package could not be found, come back later or another day or with a tracking number.
3. Driving to Gunnison or Almont because it was quicker to go there than wait in CB to send a package.(No lines in Gunnison.)
4. Why is there no home delivery when 98% of the country gets free home delivery.
5. Why do I have to pay a fee for a PO Box when home delivery is not offered. Surely the cost is less to put mail in a box than to have a person go around to all the houses.
6. Why don't they send some staff up from Gunnison or elsewhere where there are no lines.
7. Why is there no stamp machines? (I need to stand in line for an hour to buy a stamp?)
8. Why is there no package drop off place perhaps with a scale and postage machine?
9. My Christmas packages did not arrive on time.
10. I didn't have time to wait so I'll come back in a few days, a few weeks, whenever the line gets reasonable. How long is a package left in the post office before being sent back?

The lines at the post office have spilled over to cause parking problems in the core of the town. If the 25 or 30 drove cars, the cars are all sitting on the street or the parking lot for an hour or more instead of driving off after 5 minutes. The Post Office was built in 1975 or '76 and the demand has geometrically outgrown the space. What can the town do to facilitate a move to a better location and a bigger building?

It is my understanding that the PO is short staffed by 2 or 3 people and I also realize that the Postal Service has procedures that take time to get people hired or transferred. But are there not temporary employees available to help out?

Mr. Nooney, I know you and your staff have been put into an awful situation with the holidays. Our town manager has contacted Amazon several times pleading for home delivery of packages as UPS and FedEx do deliver to houses and businesses throughout town. She has had some success. For instance, I recently ordered 3 items from Amazon. Two were delivered to my house and I received an email saying the third was undeliverable by USPS though it did have my street address and I've only lived here for 42 years.

I was somewhat miffed by your inability to meet with me in less than 3 weeks from my contact but I will give you a pass on that if the intention was to catch up with your work or if Mr. Martinez or someone else is coming from Denver.

The lines and service this year were a disaster reflecting poorly on the Postal Service and the town. We must find a solution.

Please suggest another date to meet with myself and our town manager.

Sincerely,
Jim Schmidt
Mayor, Crested Butte

Sent from my iPad

On Jan 4, 2019, at 2:14 PM, Nooney, Michael - Ukiah, CA <Michael.Nooney@usps.gov> wrote:

Hi Jim,

I have been advised that you would like to meet with myself and other USPS personnel about the Crested Butte Post Office.

Does 01/25/2019 work for you?

Michael Nooney
Postmaster
Crested Butte, CO
81224
(970) 349-5568









Staff Report

April 1, 2019

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Chief Marshal Michael Reily
Subject: Adoption of an Ordinance prohibiting possession of tobacco/nicotine products by persons under the age of eighteen

Summary:

Colorado leads the US in youth vaping rates. Through the data provided by the Healthy Kids Colorado Survey we know that our community youth perceive that they have high accessibility to vaping products and that less than 48% of youth perceive that nicotine is harmful. Vaping products have not been regulated by the FDA and therefore we don't have a lot of knowledge of the long-term effects of the chemicals found in the devices and products. In order to help keep our youth healthy we are requesting that Crested Butte Town council adopt an ordinance amending the Town Code to add Section 10-6-60 prohibiting the possession of tobacco/nicotine products by persons under the age of eighteen. The city of Gunnison adopted a similar ordinance in 2011 and updated it in 2017.

Previous Council Action:

The Council considered this ordinance on second reading and public hearing on March 18th. After taking public testimony the hearing was closed and Council directed the Town Attorney to make changes to make underage possession a noncriminal offense. There are two versions of the ordinance attached. One shows the redline changes while the other, more final version, has those changes accepted in the document. Council should thus be able to easily follow the changes that were made. The Town Attorney and staff are comfortable recommending that the Council proceed with the revised ordinance.

Background:

The Gunnison County Substance Abuse Prevention Project (GCSAPP) and the Crested Butte Community School requested assistance in preventing the number of youth who start and continue using vaping products. We have seen the youth use rate soar in the past two years and youth do not perceive vaping to be harmful. The mission of GCSAPP is to utilize evidence-based strategies and community mobilization to reduce substance abuse by youth in Gunnison County in order for youth to be healthy, stable, and productively involved in their communities. This year GCSAPP's Choice Pass program included nicotine in the drug testing panel and has seen a statistically significant increase in violations. Youth are reporting that they are experiencing physiological symptoms of nicotine withdrawal after they stop using as part of this program.

Vaping among youth is a concern and being proactive in creating policy to help reduce youth use rates is of paramount importance.

Discussion:

It is currently not illegal for youth under the age of eighteen to possess tobacco/nicotine products. By creating this ordinance, our community will have an additional tool in order to help prevent youth from using tobacco/nicotine products and support them in making healthy choices.

Legal Implications:

A person receiving a summons for the alleged violation of 10-6-60, shall appear in Crested Butte Municipal Court with a parent or legal guardian on the date set forth on the summons. Should the minor fail to appear with a parent or legal guardian, a summons shall be issued for both the minor and the minor's parent(s) or legal guardian(s) compelling their attendance in Crested Butte Municipal Court of the minor and at least one of the minor's parents or legal guardians

Janet Reinman, the Gunnison County Director of Juvenile Services, currently sends first offenders through a tobacco education program through Second Step (<https://www.secondstep.org/>). This will be the legal consequence for a first offense under the proposed amendment to the Town Code. Subsequent offenses would be subject to fines as described in the ordinance.

Financial Implications:

There are no discernable financial implications to the Town to updating the Code with this ordinance.

Recommendation:

The Marshal's Office and Town Staff recommend the Town adopt this ordinance prohibiting the possession of tobacco/nicotine products by persons under the age of eighteen and making it a noncriminal offense.

Recommended Motion:

A Council member make a motion to "approve Ordinance 2019-08."

Followed by a second and roll call vote.

ORDINANCE NO. 08

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL ADDING CODE SECTION 10-6-60 PROHIBITING THE POSSESSION OF TOBACCO/NICOTINE PRODUCTS BY PERSONS UNDER THE AGE OF EIGHTEEN TO THE GENERAL OFFENSES SECTION OF THE CRESTED BUTTE MUNICIPAL CODE; AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

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 the laws of the State of Colorado;

WHEREAS, the Town Council of the Town of Crested Butte, Colorado recognizes that the use of tobacco/~~Nicotine~~ nicotine products has detrimental long-term health effects; and

WHEREAS, the State of Colorado prohibits the sale of tobacco/nicotine products to persons under the age of eighteen pursuant to C.R.S. Section 18-13-121; and

WHEREAS, the State of Colorado prohibits the possession of tobacco/nicotine products to persons under the age of eighteen pursuant to C.R.S. Section 25-14-301, but provides that a violation of this statute is a noncriminal offense; and

WHEREAS, these statutes permit the Town to enact an ordinance that imposes requirements that are more stringent than those provided under State law; and

WHEREAS, the Town’s intent is to protect minor persons under the age of eighteen from the detrimental long-term health effects of beginning the use of tobacco/nicotine products at an early age, refer them to education and cessation programs, and avoid the consequences of being exposed to the criminal justice system as a result of possessing tobacco/nicotine products; and

WHEREAS, at the request of the Gunnison County Substance Abuse Prevention Project and the Crested Butte Community School, the Town Council finds that the adoption of the provisions of this ordinance would benefit the health, safety and general welfare of the citizens of the Town.

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

Section 1. Amending Chapter 10, Article 6 to add Subsection 10-6-60, Unlawful Possession of Tobacco/Nicotine Products by Minor Persons Under the Age of Eighteen.

Sec. 10-6-60 Unlawful possession of Tobacco/Nicotine Products by Minor Persons Under the Age of Eighteen.

(a) No minor person under the age of eighteen years shall possess any tobacco/nicotine product within the Town. "Tobacco/Nicotine Product" means any product that contains or is derived from tobacco or contains nicotine, and is intended to be ingested or inhaled by or applied to the skin of any individual: including but not limited to cigarettes, cigars, chewing tobacco, e-cigarettes, vape pens, or vaporized apparatus, except that "tobacco/nicotine product" does not mean any product that the Food and Drug Administration of the United States Department of Health and Human Services has approved as a tobacco use cessation product.

(b) No minor person under the age of eighteen years shall purchase or attempt to purchase any tobacco/nicotine product within the Town.

(c) No person shall knowingly give, sell, or distribute any tobacco/nicotine product to any minor person who is under the age of eighteen years within the Town.

(d) It shall not be an offense under this section if the minor person under the age of eighteen years was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes and tobacco products to persons under the age of eighteen years.

(e) Violation of any of the provisions of this section is a ~~petty~~noncriminal offense.

(1) A minor person receiving a summons for the violation of 10-6-60 shall appear in Crested Butte Municipal Court with a parent or legal guardian on the date set forth on the summons. Should the minor person fail to appear with a parent or legal guardian, a summons shall be issued for both the minor and the minor's parent(s) or legal guardian(s) compelling the attendance in Crested Butte Municipal Court of the minor and at least one of the minor's parents or legal guardians.

(2) Upon issuance of a first summons and complaint for a violation of section 10-6-60, if such minor person appears before the Municipal Court accompanied by a parent or guardian, such minor person shall be eligible to enter into a deferred prosecution stipulation with the Town, provided the minor person agrees, upon conviction, be sentenced to participate in and complete a tobacco product education class and to pay any fees associated therewith. Following completion of this education class, the charges against the minor person shall be dismissed with prejudice.

(3) Upon the issuance of a second summons and complaint and a second conviction for a violation of section 10-6-60, the Court shall assess a penalty consistent with the Court's fee schedule for this offense, which is one hundred dollars (\$100).

(4) For a third or more summons and complaint and a conviction for a violation of section 10-6-60, the Court shall assess a penalty which is double the Court’s fee schedule for the ~~second~~ conviction.

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 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 of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 08

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL ADDING CODE SECTION 10-6-60 PROHIBITING THE POSSESSION OF TOBACCO/NICOTINE PRODUCTS BY PERSONS UNDER THE AGE OF EIGHTEEN TO THE GENERAL OFFENSES SECTION OF THE CRESTED BUTTE MUNICIPAL CODE; AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

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 the laws of the State of Colorado;

WHEREAS, the Town Council of the Town of Crested Butte, Colorado recognizes that the use of tobacco/nicotine products has detrimental long-term health effects; and

WHEREAS, the State of Colorado prohibits the sale of tobacco/nicotine products to persons under the age of eighteen pursuant to C.R.S. Section 18-13-121; and

WHEREAS, the State of Colorado prohibits the possession of tobacco/nicotine products to persons under the age of eighteen pursuant to C.R.S. Section 25-14-301, but provides that a violation of this statute is a noncriminal offense; and

WHEREAS, these statutes permit the Town to enact an ordinance that imposes requirements that are more stringent than those provided under State law; and

WHEREAS, the Town’s intent is to protect minor persons under the age of eighteen from the detrimental long-term health effects of beginning the use of tobacco/nicotine products at an early age, refer them to education and cessation programs, and avoid the consequences of being exposed to the criminal justice system as a result of possessing tobacco/nicotine products; and

WHEREAS, at the request of the Gunnison County Substance Abuse Prevention Project and the Crested Butte Community School, the Town Council finds that the adoption of the provisions of this ordinance would benefit the health, safety and general welfare of the citizens of the Town.

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

Section 1. Amending Chapter 10, Article 6 to add Subsection 10-6-60, Unlawful Possession of Tobacco/Nicotine Products by Minor Persons Under the Age of Eighteen.

Sec. 10-6-60 Unlawful possession of Tobacco/Nicotine Products by Minor Persons Under the Age of Eighteen.

- (a) No minor person under the age of eighteen years shall possess any tobacco/nicotine product within the Town. "Tobacco/Nicotine Product" means any product that contains or is derived from tobacco or contains nicotine, and is intended to be ingested or inhaled by or applied to the skin of any individual: including but not limited to cigarettes, cigars, chewing tobacco, e-cigarettes, vape pens, or vaporized apparatus, except that "tobacco/nicotine product" does not mean any product that the Food and Drug Administration of the United States Department of Health and Human Services has approved as a tobacco use cessation product.
- (b) No minor person under the age of eighteen years shall purchase or attempt to purchase any tobacco/nicotine product within the Town.
- (c) No person shall knowingly give, sell, or distribute any tobacco/nicotine product to any minor person who is under the age of eighteen years within the Town.
- (d) It shall not be an offense under this section if the minor person under the age of eighteen years was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes and tobacco products to persons under the age of eighteen years.
- (e) Violation of any of the provisions of this section is a noncriminal offense.
- (1) A minor person receiving a summons for the violation of 10-6-60 shall appear in Crested Butte Municipal Court with a parent or legal guardian on the date set forth on the summons. Should the minor person fail to appear with a parent or legal guardian, a summons shall be issued for both the minor and the minor's parent(s) or legal guardian(s) compelling the attendance in Crested Butte Municipal Court of the minor and at least one of the minor's parents or legal guardians.
- (2) Upon issuance of a first summons and complaint for a violation of section 10-6-60, if such minor person appears before the Municipal Court accompanied by a parent or guardian, such minor person shall be eligible to enter into a deferred prosecution stipulation with the Town, provided the minor person agrees to participate in and complete a tobacco product education class and to pay any fees associated therewith. Following completion of this education class, the charges against the minor person shall be dismissed with prejudice.
- (3) Upon the issuance of a second summons and complaint and a conviction for a violation of section 10-6-60, the Court shall assess a penalty consistent with the Court's fee schedule for this offense, which is one hundred dollars (\$100).

(4) For a third or more summons and complaint and a conviction for a violation of section 10-6-60, the Court shall assess a penalty which is double the Court’s fee schedule for the conviction.

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 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 of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



Staff Report

April 1, 2019

To: Mayor and Town Council

From: Rob Zillioux, Finance and HR Director

Subject: Ordinance No. 10, Series 2019 - An Ordinance of the Crested Butte Town Council Approving the Lease of Unit A (Located in the Upper Level of the Chamber of Commerce Visitors Center - A Town Owned Building) Located at 601 Elk Avenue to Nautilus Sailing, LLC.

Summary: Nautilus Sailing, LLC has been a long-term tenant of the Town. Their most recent lease expired in 2013. The Council directed staff to review all of the expired leases of town property and to bring forward new leases for those entities. Staff recommends entering into a new lease with Stepping Stones.

Previous Council Action: In January of 2017, with Resolution 2017-02, the Council approved a policy regarding the leasing of non-residential municipal property.

Background: With the creation of a facility manager position a couple of years ago, the Town has begun to get a handle on the maintenance status of the many buildings the Town own and has begun investing in building improvements and deferred maintenance.

As of March, 2019 the Town had four tenants with expired or non-existent leases. All of the tenants are current with payments based upon the terms of the expired leases. Staff has been reaching out to all of our non-residential tenants with expired leases to make them aware that the Town would like to enter into new leases. In some cases this also included new proposed lease rates. Based upon the policy adopted by the Council, staff generated a sliding lease rate based first upon the size of the space rented with the goal of getting all of the tenants to \$2 - \$6 per square foot, per year for non-profits. For profit organizations will have leases closer to market rates.

Discussion: The space that Nautilus Sailing, LLC leases is approximately 170 sq. ft. This is one of the smaller spaces that the Town rents. They have been paying \$3,000 per year rent. Town has performed maintenance on the building. They have been paying utilities for their space, through the Chamber of Commerce. As drafted the lease would continue to require Nautilus Sailing, LLC to pay utilities. The annual lease rate proposed is as follows:

2019	\$3,000	\$17.65 sq. ft.
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The rental term is for 1 year with an automatic 1 year renewal, unless either party provides termination notice

Legal Implications: It is in the best interest of both the Town and its tenants to have a clear lease acknowledging the terms under which the tenant is permitted to use the property ensuring adequate insurance is in place and laying out the maintenance responsibilities.

Recommendation: Staff recommends the Town enter into a lease with Nautilus Sailing, LLC.

Proposed Motion: Motion and a second to approve Ordinance No. 10, Series 2019 at the April 1st Council meeting.

ORDINANCE NO. 10

SERIES 2019

An Ordinance of the Crested Butte Town Council Approving the Lease of Unit A (Located in the Upper Level of the Chamber of Commerce Visitors Center - A Town Owned Building) Located at 601 Elk Avenue to Nautilus Sailing, LLC.

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; and

WHEREAS, pursuant to Section 31-15-713 (c), C.R.S., the Town Council may lease any real estate, together with any facilities thereon, owned by the Town when deemed by the Town Council to be in the best interest of the Town; and

WHEREAS, pursuant to Section 713 (c), when the term of such lease is more than one year, the Town Council must approve such lease by ordinance of the Town Council; and

WHEREAS, on February 1, 2012, the Town entered into a one-year lease with Nautilus Sailing, LLC (formerly Sail Western Colorado) for property owned by the Town located at 601 Elk Ave; and

WHEREAS, the term of the lease expired on January 31, 2013; and

WHEREAS, the Town Council and Nautilus Sailing, LLC wish to enter into Business Lease attached hereto as Exhibit A; and

WHEREAS the Town Council finds hereby that approving leases of various Town properties for use by certain entities is in the best interest of the Town.

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

1. **Findings.** The foregoing recitals are hereby fully incorporated herein.
2. **Authorization of Town Manager or Mayor.** Based on the foregoing, the Town Council hereby authorizes the Town Manager or Mayor to execute a lease in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS _____ DAY OF _____, 2019

ADOPTED BY THE TOWN COUNCIL UPON SECOND RADING IN PUBLIC
HEARING THIS _____ DAY OF _____, 2019

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A Schmidt, Mayor

ATTEST

Lynelle Stanford, Town Clerk

(SEAL)

EXHIBIT "A"**Lease Agreements****BUSINESS LEASE**

THIS BUSINESS LEASE (this "**Lease**") is entered into this 1st day of April, 2019, with an effective date of April 1st, 2019 (the "**Effective Date**") by and between the TOWN OF CRESTED BUTTE, COLORADO ("**Landlord**"), a Colorado home rule municipality and the Nautilus Sailing, LLC, ("**Tenant**").

AGREEMENT:

Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions as set forth herein, the real property and improvements thereon located in portion of the second floor of the Chamber of Commerce building, 601 Elk Avenue Crested Butte (the "**Premises**").

Tenant has inspected the Premises and accepts the same in its "as is" condition.

1. **Use; Parking; Maintenance; Utilities; Signage.**

(a) Tenant may use and occupy the Premises solely for the Nautilus Sailing, LLC and related purposes in keeping with the mission of the Tenant. Any other uses shall be following Landlord's prior written consent.

(b) All public facilities on the Premises shall be utilized as directed by Landlord and not restricted by Tenant. There is not parking provided on the Premises.

(c) During the Term (as defined below), Tenant shall provide routine maintenance and care respecting the Premises, including, without limitation, regular cleaning and general cosmetic care (collectively, "**Projects**"). All such maintenance and care shall be performed at Tenant's sole cost and expense.

(d) Without limiting Tenant's obligation respecting such maintenance and care of the Premises, Landlord shall provide regular grounds maintenance (e.g., lawn care, snow removal) on and adjacent to the Premises.

(e) Unless otherwise specified, the Lessee shall pay for heating, electricity, water, sewer and weekly refuse collection as arranged with the Chamber of Commerce. Lessee shall pay all charges for telephone, internet, television and other such services. Lessee shall be responsible for causing any necessary television or other cable lines to be placed for service to the Premises. Any such placement shall not cause damage to the Premises and/or building.

(f) All exterior signage shall be installed only upon prior approval of Landlord.

2. **Term.**

(a) Provided that Tenant is not in default under any term or condition of this Lease, Tenant shall have and hold the Premises for a one (1) year period (the "**Term**") that shall commence on the Effective Date hereof and expire one (1) year following the commencement of the Term. The Term shall automatically be extended for an additional one (1) year, unless the Lease is terminated in writing by either party at least 90 days prior to the expiration of the initial Term.

(b) At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in broom clean, good order and condition, in the same condition and repair as Tenant initially took occupancy of the Property on the Effective Date, ordinary wear and tear excepted. Tenant shall fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions and improvements. All trade fixtures, equipment, furniture, alterations, additions and improvements not so removed shall conclusively be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or to any other person and without obligation to account therefor. Tenant shall pay Landlord all expenses incurred in connection with Landlord's disposition of such property, including the cost of repairing any damage to any improvements or the Premises caused by such removal. Tenant's obligation to observe and perform the foregoing requirements shall survive the expiration or earlier termination this Lease.

3. **Rent; Additional Rent; Security Deposit.**

(a) Tenant shall pay Landlord \$250 on the Effective Date of this Lease and each successive month thereafter (the "**Rent**"), during the effective term (the "**Rent**")

(b) Any Rent that is paid late shall accrue interest at a rate of 1.5% of such unpaid Rent per month. Rent shall be prorated for any partial month.

(c) Rent, any additional rent and any other amounts due Landlord under this Lease shall be paid at Landlord's address specified herein for notices, without prior demand and without any abatement, deduction or setoff.

(d) To secure the faithful performance by Tenant of all of Tenant's covenants, conditions, and agreements in this Lease to be observed and performed, Tenant shall deposit with Landlord a security deposit (the "**Security Deposit**") within one (1) year of execution of the Lease. Tenant's security deposit shall be of \$250.00. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise. The parties agree that the Security Deposit or any portion thereof, may be applied to any Event of Default (as defined below) that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that Landlord may have on account thereof. If Tenant shall perform all of its respective covenants and agreements in the Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of the Lease, together with a statement, shall be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, or any renewal or extension thereof (or such earlier time if required by applicable law), provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.

4. **Landlord's Access.** Landlord, its agents, employees and contractors may, at their sole risk, enter the Premises at any time in response to an emergency, and at other reasonable time upon reasonable prior notice to Tenant, without limitation, (a) inspect the Premises, (b) determine whether Tenant is complying with its obligations under this Lease, (c) supply any other service that Landlord is required to provide, (d) post notices of non-responsibility or similar notices, or (e) make repairs which this Lease requires Landlord or Tenant to make. All work of Landlord shall be performed as promptly as reasonably possible and so as to cause as little interference to Tenant as reasonably possible, at all times taking into account the nature and extent of such work. Landlord shall at all times have a key with which to unlock all of the doors to the Premises (excluding Tenant's vaults, safes and similar areas designed in writing by Tenant in advance).

5. **No Alterations.** Without limiting Tenant's obligations to maintain, repair, restore and replace the Premises and any portion thereof, Tenant shall not make any alterations, additions, repairs, restorations or improvements to the Premises without Landlord's prior written consent.

6. **Compliance with Laws.**

(a) Tenant shall not use or occupy, or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy or other governmental requirement.

(b) Tenant and the Premises shall remain in compliance with all applicable laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations and ordinances, all as amended and modified from time to time..

7. **No Unsightliness.** Tenant covenants and agrees that no unsightliness shall be permitted on the Premises. Without limiting the generality of the foregoing, no vehicles, machinery, equipment, tools, refuse, scrap, debris, garbage, trash, bulk materials, used vehicle parts or waste shall be kept, stored or allowed to accumulate on the Premises at any time. The Tenant shall have the right to tow vehicles from the Premises and place signage on the Premises to enforce the above provisions.

8. **Insurance.**

(a) At its sole expense, Tenant shall obtain and keep in force during the Term commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of Landlord and Tenant, including coverage for contractual liability, broad form property damage, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy of the Premises. The insurance shall be noncontributing with any insurance that may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, or damage to Landlord, its agents, and employees, or the property of such persons.

(b) Upon receipt of written notification from the Town, at Tenant's sole expense, Tenant shall obtain and keep in force, during the Term, "all-risk" coverage naming Landlord and Tenant as their interests may appear and other parties that Landlord or Tenant may designate as additional insureds in the customary form for buildings and improvements of similar character, on all buildings and improvements now or hereinafter located on the Premises. Such coverage shall include, without limitation, the historic replacement value of the Premises building structure. The amount of the insurance shall be designated by Landlord no more frequently than once every twelve (12) months, shall be set forth on an "agreed amount endorsement" to the policy of insurance and shall not be less than the value of the buildings and improvements.

(c) All insurance required in this Section and all renewals of it shall be issued by companies authorized to transact business in the State of Colorado, and rated at least A+ Class X by Best's Insurance Reports (property liability) or approved by Landlord. All insurance policies shall be subject to approval by Landlord and any lender as to form and substance, said approval not to be unreasonably withheld or delayed; shall expressly provide that the policies shall not be canceled or altered without thirty (30) days' prior written notice to Landlord and any lender, and to Landlord in the case of general liability insurance; and shall, to the extent obtainable without additional premium expense, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(d) All policies of liability insurance that Tenant is obligated to maintain according to this Lease (other than any policy of workmen's compensation insurance) shall name Landlord and such other persons or firms as Landlord specifies from time to time as additional insureds provided such other persons have an insurable interest and does not result in any additional premium expenses. Original or copies of original policies (together with copies of the endorsements naming Landlord, and any others specified by Landlord, as additional insureds) and evidence of the payment of all premiums of such policies shall be made available to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days' prior to the expiration of the term of each policy. All public liability, property damage liability, and casualty policies maintained by Tenant shall be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry. No insurance required to be maintained by Tenant by this Section shall be subject to any deductible in excess of \$20,000.00 without Landlord's prior written consent.

(e) Landlord and Tenant waive all rights to recover against each other, or against the officers, elected officials, directors, shareholders, members, partners, joint ventures, employees, agents, customers, invitees, or business visitors of each of theirs, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises and any personal property located on the same. Tenant shall cause all other occupants of the Premises claiming by, under, or through Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver in this Section and to obtain such waiver of subrogation rights endorsements.

9. **Indemnification; Tenant Waiver and Release.**

(a) Tenant shall indemnify Landlord, its elected officials, officers, employees, agents, contractor, attorneys, insurers and insurance pools (collectively, the “**Landlord Parties**”; as applicable, each an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses, liabilities, judgments, and expenses (including attorneys’ fees and court costs) incurred in connection with or arising from: (i) the use or occupancy of the Premises by Tenant or any person or entity claiming under Tenant, the employees, agents, contractors, guests, invitees or visitors of Tenant or any person or entity (each, a “**Tenant Related Person**”); (ii) any activity, work, or thing done or permitted or suffered by a Tenant Related Person in or about the Premises; (iii) any acts, omissions, or negligence of any Tenant Related Person; (iv) any breach, violation, or nonperformance by any Tenant Related Person of any term, covenant, or provision of this Lease or any law, ordinance or governmental requirement of any kind; or (v) except for loss of use of all or any portion of the Premises or Tenant’s property located within the Premises that is proximately caused by or results proximately from the gross negligence of Landlord, any injury or damage to the person, property or business of a Tenant Related Person entering upon the Premises under the express or implied invitation of Tenant. If any action or proceeding is brought against an Indemnitee by reason of any claim solely arising out of subparagraphs (i) through (v) above, upon notice from Landlord, Tenant shall defend the claim at Tenant’s expense with counsel reasonably satisfactory to Landlord.

(b) Tenant waives and releases all claims against Indemnitees with respect to any loss, injury, death, or damage (including consequential damages) to persons, property, or Tenant’s business occasioned by, without limitation, theft; act of God; public enemy; injunction; riot; strike; insurrection; war; court order; requisition; order of governmental body or authority; fire; explosion; falling objects; steam, water, rain or snow; leak or flow of water (including water from the elevator system), rain or snow from the Premises or into the Premises or from the roof, street, subsurface, or from any other place, or by dampness, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the building; or from construction, repair, or alteration of the Premises or from any acts or omissions of any visitor of the Premises; or from any cause beyond Landlord’s control.

10. **Default Provisions.**

(a) If Tenant fails to perform any of its obligations under this Lease, then Landlord, after ten (10) days’ written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may (but shall not be required to) pay the amount or perform the obligation. All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any obligations (together with interest at the prime rate from the date of Landlord’s payment of the amount or incurring of each cost or expense until the date of full repayment by Tenant) shall be payable by Tenant to Landlord on demand and as additional rent. In the proof of any damages that Landlord may claim against Tenant arising out of Tenant’s failure to maintain insurance that is required by terms of this Lease, Landlord shall not be limited to the amount of the unpaid insurance premium but shall also be entitled to recover as damages for

the breach the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide the insurance.

(b) The following occurrences are "**Events of Default**": (i) Tenant defaults in the due and punctual payment of rent or any other amount due under this Lease, and the default continues for five (5) days after notice from Landlord; (ii) Tenant defaults in the performance of any other obligation under this Lease that is not cured after ten (10) days' written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances); or (iii) Tenant vacates or abandons the Premises.

(c) If any one or more Events of Default occurs, then Landlord may, at its election, give Tenant written notice of its intention to terminate this Lease on the date of the notice or on any later date specified in the notice, and, on the date specified in the notice, Tenant's right to possession of the Premises shall cease and this Lease shall be terminated. In addition, landlord shall have all other rights available at law and in equity, including, without limitation, recovery of actual damages, costs and expenses, including reasonable attorneys' fees. All remedies may be cumulatively and concurrently applied and enforced.

12. **Assignment.** Tenant may not assign this Lease, or sublet the Premises, in whole or in part, without Landlord's prior written consent.

13. **Notices.** All notices, demands, and requests required to be given by either party to the other shall be in writing, and with a copy given to counsel for each such party as provided below. All notices, demands, and requests shall be delivered personally or sent by electronic mail (e-mail), nationally recognized overnight courier, certified or registered mail, return receipt requested, postage prepaid, or via facsimile, addressed to the parties at the addresses set forth below or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the day of delivery if delivered personally, on the first business day following the confirmation of sending of an e-mail when sent by electronic mail, on the first business day following deposit with the courier service when delivered by overnight courier, three business (3) days subsequent to the date that said notice was deposited with the United States Postal Service, or on the first business day following the date of confirmation of receipt when delivered by facsimile.

To Landlord: Town of Crested Butte
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224
Facsimile: (970) 349-6626
Attn: Town Manager

To Tenant: Nautilus Sailing, LLC
P.O. Box
Crested Butte, CO 81224
Attn: **Tim**

14. **No Waiver**. No waiver of any condition or agreement in this Lease by either Landlord or Tenant shall imply or constitute a further waiver by such party of the same or any other condition or agreement.

15. **Attorneys' Fees**. In case a dispute between the parties shall arise in connection with this Lease, the prevailing party shall be entitled to recover and shall be awarded (in addition to other relief granted) all reasonable attorneys' fees and costs in connection with such dispute from the non-prevailing party.

16. **Severability**. If any sentence, paragraph or article of this Lease is held to be illegal or invalid, this shall not affect in any manner those other portions of the Lease not illegal or invalid and this Lease shall continue in full force and effect as to those remaining provisions.

17. **Successors and Assigns**. The conditions and provisions hereof shall inure to the benefit of, and shall be binding upon, Landlord, Tenant and their respective personal representatives, successors and permitted assigns.

18. **Immigration Compliance**. Tenant certifies that it has complied, and during the term of this Lease will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of Tenant on this Lease: (1) certifies that Tenant is not a natural person unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq., and Tenant utilizes subcontractors or employees in Tenant's business. Tenant shall not:

(a) knowingly employ or contract with an illegal alien to perform work under this Lease; or

(b) enter into a contract with a subcontractor that fails to certify to Tenant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Lease.

Tenant has confirmed the employment eligibility of all employees and subcontractors who are newly hired for employment to perform work under this Lease through participation in either the e-verify program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.). Tenant may not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Lease is being performed. If Tenant obtains actual knowledge that a subcontractor performing work under this Lease knowingly employs or contracts with an illegal alien, Tenant shall:

(i) notify the subcontractor and the Landlord within three (3) days that Tenant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Tenant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Tenant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. Tenant acknowledges that in the event Tenant violates any of the provisions of the foregoing the Town may terminate this Lease for breach of contract. No notice need be given of said termination. If this Lease is so terminated, Tenant shall be liable for actual and consequential damages to the Landlord.

19. **Obligation to Report.** Tenant shall report any material damage to the Premises or disturbances therein or thereon to Landlord as soon as it becomes aware of any such damages or disturbances.

20. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Lease, if any.

(b) This Lease shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Lease is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease will be in the District Court of Gunnison County, Colorado.

(d) This Lease may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures

(e) An recordation of this Lease or any record thereof, or the recordation of any encumbrance against the Premises and/or the Improvements by any person, including, without limitation, any mortgagee of Tenant, except Landlord and any mortgagee of Landlord, shall be void *ab initio* and a default under this Lease.

(f) This Lease constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. Any other agreements between the parties, whether written or oral are hereby merged herein and of no further force and effect.

(g) Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed Lease by their duly authorized officials effective as of the Effective Date first written above.

LANDLORD:

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Dara MacDonald, Town Manager

ATTEST:

_____ [Seal]
Lynelle Stanford, Town Clerk

TENANT:

NAUTILUS SAILING, LLC

By: _____

Name: _____

Title: _____



Staff Report

April 1, 2019

To: Mayor and Town Council

From: Rob Zillioux

Subject: Ordinance No. 11, Series 2019 - An Ordinance of the Crested Butte Town Council Authorizing the Repeal of Section 4-2-90(B)(1) of the Town Code Concerning a Credit for the 1.5% Vendor's Fee Against Taxes Due from Gross Sales.

Summary: Vendor fees represent a percentage of sales tax collections that merchants are allowed to keep. Historically, the idea was to cover the cost of processing sales taxes and transferring them to state and local governments. Vendor fees were originally put into place when businesses tracked all items and sales by hand. However, nearly all businesses now collect and distribute sales tax via integrated software systems.

Vendor fees are not mandated for home rule municipalities. In Colorado, slightly more than half of the home rule municipalities, including Crested Butte, allow for a vendor fee. The remaining municipalities do not have a vendor fee. Among others, Denver, Colorado Springs, Steamboat Springs and Vail do not offer a vendor fee. Municipalities are trending toward eliminating vendor fees, as most businesses not collect and distribute via integrated software systems.

Town of Crested Butte Code Sec. 4-2-90 (b) (1) allows local businesses to keep 1 ½% of the sum of the sales tax they collect on behalf of the Town.

In light of integrated software systems, and the trend away from offering vendor fees, staff recommends eliminating the vendor fee for Crested Butte.

Discussion: As municipalities have begun eliminating vendor fees, there has been little to no backlash from the business community. With today's point of sale systems, and tax collection systems, the burden on businesses is very little. Staff does not believe Crested Butte businesses, generally speaking, would take exception to this change.

Financial Implications: The total of 2018 vendor fees was \$61,500. Eliminating this fee would go a long way toward helping bolster current and future Town finances:

- Help balance the budget for 2019 and beyond. The Council approved 2019 budget has a deficit of \$672,724. Moreover, Town reserves have declined roughly \$4,000,000 since 2017.

- Help achieve a Council Five Year Goal to “maintain at least one year of operating reserves in Town’s funds.” The General Fund currently has a reserve equating to only 9 months operating expense, versus the 12 months goal Council established.
- Boost Community Grants. For the spring 2019 cycle, Town only has \$21,000 budget remaining to provide as Grants.
- \$61,500 would pay for the salary and insurance for a new marshal.
- \$61,500 would pay for the sprinkler systems for 4-5 new affordable housing units.

Recommendation: Staff recommends eliminating the Town of Crested Butte vendor fee.

Proposed Motion: Motion and a second to approve Ordinance No. 11, Series 2019 at the April 1st Council meeting.

ORDINANCE NO. 11

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE REPEAL OF SECTION 4-2-90(b)(1) OF THE TOWN CODE CONCERNING A CREDIT FOR THE 1.5% VENDOR'S FEE AGAINST TAXES DUE FROM GROSS SALES

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

WHEREAS, Section 1-4-70 of Crested Butte Municipal Code (the "Town Code") provides that "amendments to this Code shall be adopted as ordinances;"

WHEREAS, the Town Finance Director and the Town Council have determined that Section 4-2-90(b)(1) regarding the credit for the 1.5% vendor's fee against taxes due from gross sales is outdated and no longer necessary;

WHEREAS, the Town Council finds that repealing Section 4-2-90(b) (1) would be in the best interest of the health, safety, and general welfare of the residents, businesses and visitors of Crested Butte.

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

Section 1. Repeal of Section 4-2-90(b) (1) of Town Code. Sections 4-2-90(b)(1) of the Town Code concerning a credit for the 1.5% vendor's fees from against taxes due from gross sales is outdated and no longer necessary and is therefore repealed in its entirety.

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 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 of any ordinance previously adopted by the Town Council that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL, UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Dara MacDonald, Town Manager

Subject: **Ordinance 12, Series 2019- Release and Replace of Master Deed Restriction**

Date: April 1, 2019

Background:

A home owner in Paradise Park has begun the process to refi his unit located at Block 77, Lot 3 Unit B or 824 Unit B Teocalli Avenue. The goal of the Town's Affordable Housing program is to, "Create and sustain housing opportunities that allow locals to be accommodated in successful housing situations." To assist with the refi, the Town is updating the deed restriction to the current deed restriction being applied to housing being built in Block 76.

Recommendation:

A Council member make a motion followed by a second to approve Ordinance 12, Series 2019 releasing and replacing the Master Deed Restriction at 824 Teocalli Avenue.

ORDINANCE NO. 12

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE RELEASE OF DEED RESTRICTIONS ON BLOCK 77, LOT 3, UNIT B, PEELER TOWNHOUSES IN THE PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, GUNNISON COUNTY, STATE OF COLORADO RECEPTION NO. 543195, AND REPLACEMENT WITH NEW DEED RESTRICTION

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 the Constitution and the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property; and,

WHEREAS, the Town owns an interest in certain deed restrictions upon Block 77, Lot 3, Unit B, Peeler Town Houses, Paradise Park Subdivision, Town of Crested Butte, Gunnison County, State of Colorado, according to the plat recorded at Reception No. 543195 of the records of the Gunnison County Clerk and Recorder (the “Property”), pursuant to that certain Master Deed Restriction recorded at Reception No. 641510 of the records of the Gunnison County Clerk and Recorder; and,

WHEREAS, Joshua Schumacher (“Owner”) is the current fee simple owner of the Property; and,

WHEREAS, Owner desires to refinance the existing mortgage on the Property, and Owner and Owner’s lender have requested the Town to release the Master Deed Restriction recorded at Reception No. 641510 as it pertains to the Property and replace it with a new Master Deed Restriction; and,

WHEREAS, Owner’s lender, Community Bank, have agreed to subordinate its interest in the Property under the deed of trust that will secure the Owner’s refinancing loan to the Town’s new replacement Master Deed Restriction; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Deed Restrictions upon the Unit should be released and replaced, as set forth herein.

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

Section 1. **Authorization to Release Town-owned Deed Restrictions.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado,

hereby authorizes the Town to release the following described property from the Deed Restrictions recorded at Reception No. 641510, of the Gunnison County Clerk and Recorder, to wit:

Block 77, Lot 3,
Unit B, Peeler Park Town Houses,
Paradise Park Subdivision,
Town of Crested Butte, Gunnison County, Colorado

according to the plat recorded at Reception No. 543195 of the records of the Gunnison County Clerk and Recorder (the "Property").

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute any additional documents necessary and appropriate to consummate the release of the Deed Restrictions and the replacement of such Deed Restrictions with land use conditions and deed restrictions that apply to the current uses on the Property, following approval thereof by the Town Attorney.

Section 2. New Deed Restrictions. The Town Council hereby approves the new deed restrictions in the form attached hereto as **Exhibit A** that will replace the Deed Restrictions that are being released and hereby authorizes the Town Manager and the Town Clerk to record these new deed restrictions against the Property following approval thereof by the Town Attorney.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which conflicts with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

RECORDING REQUESTED BY: WHEN RECORDED RETURN TO:

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

MASTER DEED RESTRICTION

Block 77, Lot 3, Unit B

THIS MASTER DEED RESTRICTION (this "**Deed Restriction**") is made this ____ day of April 2019 (the "**Effective Date**") by the **TOWN OF CRESTED BUTTE, COLORADO** (the "**Town**"), a Colorado home rule municipal corporation with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224.

RECITALS:

A. The Town is the owner of an option and interest in and option to purchase the real property legally described in **Exhibit "A"** (the "**Property**") attached hereto under that certain Master Deed Restriction recorded at Reception No. 641510 of the records of the Gunnison County Clerk and Recorder.

B. Joshua Schumacher ("Owner") is the current fee simple owner of the real property legally described as Block 77, Lot 3, Unit B Peeler Town Houses, Town of Crested Butte, Gunnison County, State of Colorado, according to the plat recorded at Reception No. 543195 of the Gunnison County

C. Owner desires to refinance the existing mortgage on the Property, and Owner and Owner's lender have requested the Town to release the Master Deed Restriction recorded at Reception No. 641510 as it pertains to the Property and replace it with this Master Deed Restriction

D. An individual lot, and the dwellings, structures, appurtenances, improvements and fixtures located thereon and located within the Property is defined herein as a "**Unit**."

E. "**Qualified Buyers**" are natural persons meeting the income, residency and other qualifications set forth in the Town of Crested Butte's Affordable Housing Guidelines, adopted by Resolution No. 2, Series 2016, as may be amended and modified by the Town from time to time (the "**Affordable Housing Guidelines**").

F. The Town hereby restricts the acquisition, transfer, use and occupancy of the Units to Qualified Buyers who fall within the income categories established in the Affordable Housing Guidelines.

G. This Deed Restriction shall constitute a resale agreement setting forth the

maximum resale price (the "**Maximum Resale Price**") for which the Units may be sold and the terms and provisions controlling such resale.

H. The Town Council approved Ordinance 12, Series 2019 releasing the Option to Purchase Deed Housing in the deed restriction recorded at Reception No. 641510 from the Property and replacing it with this Master Deed Restriction.

RESTRICTIONS:

1. Use and Occupancy.

- a. The use and occupancy of the Property, and each of the Units thereon, shall be limited exclusively to Owners who meet the definition of Qualified Buyers and their families, the requirements of this Deed Restriction and the Affordable Housing Guidelines. For purposes hereof, an "**Owner**" is a person(s) who is a Qualified Buyer who acquires an ownership interest in a Unit in compliance with the terms and provisions of this Deed Restriction and the Affordable Housing Guidelines, it being understood that such person(s) shall be deemed an "Owner" hereunder only during the period of his ownership interest in the Unit, and shall be obligated hereunder for the full and complete performance and observance of all of the covenants, conditions and restrictions contained in this Deed Restriction and the Affordable Housing Guidelines during such period.
- b. An Owner, in connection with the purchase of a Unit, must:
 - i. occupy the Unit as his sole place of residence during the period that such Unit is owned by him;
 - ii. not own, directly or indirectly through a legal entity, any interest alone or in conjunction with others, in any developed residential property or dwelling units in accordance with the limitations established by the Affordable Housing Guidelines;
 - iii. not engage in any business activity in the Unit, other than as permitted by the Affordable Housing Guidelines and the Crested Butte Municipal Code (the "**Code**");
 - iv. not permit any junior lienholder encumbrance to be recorded against the Unit without the Town's prior written approval;
 - v. not sell or otherwise transfer the Unit other than in accordance with this Deed Restriction and the Affordable Housing Guidelines;

- vi. not permit any use or occupancy of the Unit except in compliance with this Deed Restriction and the Affordable Housing Guidelines;
 - vii. continue to meet the residency, employment, and other requirements of a Qualified Buyer established by the Affordable Housing Guidelines; and
 - viii. be subject to recertification of employment, residency and ownership of the Unit shall be required as set forth in the Affordable Housing Guidelines; and/or
2. **Maximum Resale Price.** In no event shall the Unit be sold by Owner for an amount in excess of the Maximum Resale Price. On purchase, resale, transfer and issuance of a certificate of occupancy for the Unit as permitted under this Deed Restriction and the Affordable Housing Guidelines, at closing, Owner shall execute an "Acknowledgement of Deed Restriction and Maximum Resale Price" (the "**DR Acknowledgement**") in substantially the same form as attached hereto as **Exhibit "B"**. The DR Acknowledgement shall be recorded in the real property records of the Clerk and Recorder of Gunnison County, Colorado immediately after the recording of the vesting deed for the Unit and before the recording of any deed of trust. Failure to so record the DR Acknowledgment before any deed of trust shall void the transfer of the Unit under the vesting deed *ab initio* (from the beginning).
3. **Sale of the Unit.** In the event that the Owner seeks to sell the Unit, she shall offer the unit for sale per the process defined in the Affordable Housing Guidelines. The sale of the Unit shall not exceed the Maximum Sales Price.
4. **Non-Qualified Transferees.** In the event that title to the Unit vests by descent in, or is otherwise acquired by any persons(s) who are not a Qualified Buyer (a "**Non-Qualified Transferee**"), the Unit shall immediately be listed for sale as provided herein, for the highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, whichever is less. If all bids are below ninety-five percent (95%) of the Maximum Resale Price or the appraised market value, the Non-Qualified Transferee may elect to sell the unit for a lower price or list the Unit for sale until a bid in accordance with this section is made. The cost of an appraisal shall be paid by the Non-Qualified Transferee.
- a. Non-Qualified Transferees shall consent to any sale, conveyance or transfer of the Unit to a Qualified Buyer and shall execute any and all documents necessary to do so. Non-Qualified Transferees agree not to: (a) occupy the Unit; (b) rent all or any part of the Unit, except in compliance with this Deed Restriction and the Affordable Housing Guidelines; (c) engage in any other

business activity in the Unit; (d) sell or otherwise transfer the Unit except in accordance with this Deed Restriction and the Affordable Housing Guidelines; or (e) sell or otherwise transfer the Unit for use in a trade or business.

- b. The Town shall have the right and option to purchase the Unit, exercisable within a period of fifteen (15) calendar days after receipt of any sales offer submitted to the Town by a Non-Qualified Transferee, and in the event of exercising its right and option, the Town shall purchase the Unit from the Non-Qualified Transferee for a price of ninety-five percent (95%) of the Maximum Resale Price, some other mutually agreed upon price, or the appraised market value, whichever is less. The offer to purchase shall be made by the Non- Qualified Transferee within fifteen (15) days of acquisition of the Unit.
 - c. Where the provisions of this Section 4 apply, the Town may require Owner to rent the Unit in accordance with the requirements hereof in Section 6.
5. **Owner Residence, Employment and Continuing Compliance.** The Unit shall be utilized only as the sole and exclusive place of residence of an Owner. In the event that Owner changes his place of residence or ceases to utilize the Unit as his sole and exclusive place of residence, ceases to be a full-time employee in accordance with the Affordable Housing Guidelines, or otherwise ceases to be in compliance as a Qualified Buyer, the Unit must be offered for sale pursuant to the provisions of this Deed Restriction and the Affordable Housing Guidelines. An Owner shall be deemed to have changed his place of residence by becoming a resident elsewhere or accepting employment outside of Gunnison County, or residing in the Unit for fewer than nine (9) months per calendar year without the express written approval of the Town, or by ceasing to be a full-time employee as required by the Affordable Housing Guidelines. The Town may require Owner to rent the Unit in accordance with the requirements hereof. If at any time Owner also owns directly or indirectly through a legal entity any interest alone or in conjunction with others in any developed residential property or dwelling units as described in the Affordable Housing Guidelines, Owner shall immediately list such other property for sale and shall sell his interest in such property in accordance with this Deed Restriction and the Affordable Housing Guidelines. In the event that such other property has not been sold by Owner within one (1) year of its listing, Owner hereby agrees to immediately list the Unit for sale pursuant to this Deed Restriction and Affordable Housing Guidelines. Should Owner not receive a full-price bid on the Unit, Owner must accept the first reasonable offer for the Unit as deemed appropriate by the Town.
6. **Owner Rentals.** An Owner may not, except with prior written approval of the Town, rent the Unit for any period of time. Prior to occupancy, any tenant must be approved by the Town in accordance with the income, occupancy and other qualifications established in the Affordable Housing Guidelines. The Town shall

not approve any rental if such rental is being made by Owner to utilize the Unit as an income producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the Town prior to occupancy. Any such lease approved by Town shall state the lease term and the monthly rent. The monthly rent cannot exceed Owner's costs, including monthly expenses of the cost any mortgage principal and interest payments, taxes, property insurance, condominium or homeowners' assessments and utilities in Owner's name, plus any additional amount as permitted by the Affordable Housing Guidelines and a reasonable security deposit. The requirements hereof shall not preclude Owner from sharing occupancy of the Unit with non-owners on a rental basis provided that Owner continues to meet the requirements contained in this Deed Restriction and the Affordable Housing Guidelines. In no event shall Owner create an additional dwelling unit in the Unit as defined in the Code. Nothing herein or in the Affordable Housing Guidelines shall be construed to create any liability for the Town attributable to the rental of the Unit or require the Town to provide a tenant for the Unit, the same being expressly disclaimed hereby.

7. **Compliance Review: Remedies for Breach.** Owner shall promptly provide to the Town all such information as the Town shall reasonably require as necessary to verify compliance with this Deed Restriction and the Affordable Housing Guidelines. The Town shall maintain the confidentiality of any financial data provided by Owner, except for such disclosures as are necessary with respect to any litigation, enforcement or other legal proceedings. In the event that the Town has reasonable cause to believe that Owner is violating this Deed Restriction and the Affordable Housing Guidelines, the Town shall have the right to inspect the Unit at reasonable times on at least 24 hours' written notice. In the event that a violation of this Deed Restriction or the Affordable Housing Guidelines is discovered, the Town shall send a notice of such violation to Owner describing the nature of the violation and all owing Owner fifteen (15) days to cure such violation. Said notice shall state that Owner may request a hearing before the Town within fifteen (15) days to dispute the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the violation shall be considered final and Owner shall immediately list the Unit for sale in accordance with this Deed Restriction. The failure to request a hearing shall constitute an exhaustion of administrative remedies for the purpose of judicial review. If a hearing is, (i) the decision of the Town based on the record of such hearing shall be final for the purpose of determining if a violation has occurred, and (ii) the Town shall have absolute discretion to determine the appropriate action to be taken to either remedy the violation or require Owner to list the Unit for sale in accordance with this Deed Restriction.
8. **Notice Obligation.** Owner and any beneficiary of any deed of trust or other encumbrance affecting the Unit shall give immediate notice to the Town of any instance of (a) Owner's receipt of notice of foreclosure or legal proceedings relative to the Unit, (b) any uncured delinquency of ten (10) days or more in Owner's

payment of any amounts in connection with the Unit, (c) Owner's uncured default under any deed of trust or other encumbrance affecting the Unit, and (d) any transfer, encumbrance or conveyance of all or part of the Unit.

9. **Default.** Any breach of the terms and conditions set forth herein, including, without limitation, a transfer, encumbrance or conveyance in violation of the terms hereof shall constitute a "**default**" hereunder. Default by Owner of the terms of any deed of trust or other encumbrance affecting the Unit shall also constitute a default hereunder. In the event of a default, following notice and an opportunity to cure as provided for herein, the Town shall have all rights and remedies set forth herein and available at law and in equity.
10. **Remedies.**
 - a. In the event that Owner fails to timely cure any default, the Town may resort to any lawful means to protect its interest in this Deed Restriction, including, without limitation, curing such default and pursuing an action against Owner and any beneficiary of any deed of trust or other encumbrance affecting the Unit for damages. Any amounts paid by the Town shall accrue interest at the rate of 18% per annum and the Town shall be entitled to recover all costs and expenses to recover any amounts paid by the Town including reasonable attorneys' fees.
 - b. This Deed Restriction shall be administered by the Town or its designee 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.
 - c. Owner appoints the Town as its attorney in fact for purposes of curing any default under this Deed Restriction. Owner shall give and execute an instrument of authorization reflecting such appointment when required by the Town.
11. **Town Option to Purchase.** In the event of a default of any deed of trust or other encumbrance affecting the Unit that remains uncured by Owner, the Town shall have an option (the "**Option**") to purchase the Unit. The Town shall have forty-five (45) days after written notice from the holder of any instrument secured by a deed of trust or other encumbrance affecting the Unit of any default 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 Unit during the Option Period in order to inspect the Unit. Owner or any lienholder shall maintain utility connections until expiration of the Option Period or Closing (as defined below). The Town shall have the Option to

purchase the Unit for the amount due to any holder of a promissory note secured by a first deed of trust on the Unit (the "**Lienholder Amount**"). The Town shall have the following rights and obligations respecting its exercise of the Option:

- a. Owner shall permit a final walk-through of the Unit by the Town during the final three (3) days prior to Closing.
 - b. Upon payment of the Lienholder Amount by the Town, Owner shall cause to be delivered to the Town a general warranty deed for the Unit, free and clear of all liens and encumbrances.
 - c. 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 paid by Owner. Owner shall receive a credit for that portion of association assessments paid in advance from date of Closing.
 - d. Closing on the purchase of the Unit by the Town shall occur expeditiously, but in any case, 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 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.
12. **Termination of Deed Restriction.** In the event of a sale in foreclosure or acceptance of deed in lieu of foreclosure by the holder of a deed of trust where the Town does not exercise the Option or otherwise fails to close on the Option as provided herein, this Deed Restriction shall automatically and permanently terminate and be of no further force and effect as respects the subject Unit. In the event of the termination of this Deed Restriction, the Town shall cause to be recorded in the real property records of the Clerk and Recorder of Gunnison County, Colorado a full and complete release of this Deed Restriction.
13. **Run with the Land; Binding.** Subject to Section 13 hereof, this Deed Restriction shall be a perpetual covenant that shall run with the land as a burden thereon for the benefit of the Town, its designees and assigns, and shall be binding on Owner, its heirs, personal representatives, successors, assigns, lessees, licensees and transferees.

The Town shall have the right to terminate this Deed Restriction as to any Unit when the Town is the fee title owner of such Unit by recording an instrument

reflecting such termination in the real property records of the Clerk and Recorder of Gunnison County, Colorado. Upon such termination, as to the effected Unit, this Deed Restriction shall be null and void.

14. **Transfer and Conveyance.** In the event the Unit is sold, transferred, encumbered or otherwise conveyed without complying with this Deed Restriction, such sale, transfer, encumbrance or conveyance shall be wholly null and void *ab initio* and shall confer no title or other interest whatsoever upon the purported transferee. Each and every encumbrance or conveyance of the Unit shall be deemed, for all purposes, to include the Affordable Housing Guidelines.

15. **General Provisions.** The following terms and conditions shall apply to this Deed Restriction:
 - a. **Notices.** Any notice, consent or approval that 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 last of record for the parties.

 - 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. **Attorneys' Fees.** If the Town is required to enforce any provision of this Deed Restriction or the Affordable Housing Guidelines, the Town shall be entitled to collect any and all costs and expenses in connection therewith including, without limitation, reasonable attorneys' fees.

 - d. **Choice of Law; Venue.** 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.

 - e. **Assignment and Transfer.** This Deed Restriction and the rights, benefits and obligations contained herein may be assigned and transferred, in whole or in part, by the Town without notice to Owner or any lienholder. Such right of assignment and transfer shall include, without limitation, the rights of

performance and enforcement of the terms hereof.

- f. **Successors and Assigns**. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon all heirs, personal representatives, successors, assigns, lessees, licensees and transferees.
- g. **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.
- h. **Recitals**. The Recitals herein contain material terms to this Deed Restriction.
- i. **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.
- j. **Gender and Number**. Whenever the context so requires herein, the neuter, male or female gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
- k. **Construction**. None of the provisions of this Deed Restriction shall be construed against or interpreted to the disadvantage of a party 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.
- l. **Amendments in Writing**. This Deed Restriction may only be modified or amended in writing by the Town. No such modification shall be effective until an instrument in writing is executed and recorded in the official real property records of the office of the Clerk and Recorder of Gunnison County.
- m. **Conflict**. In the event of any conflict or inconsistency between this Deed Restriction and the Affordable Housing Guidelines, this Deed Restriction shall in all cases prevail and control.

IN WITNESS WHEREOF, the Town has made this
Deed Restriction effective as of Effective Date.

TOWN:

TOWN OF CRESTED BUTTE,
COLORADO, a
Colorado home rule
municipal
corporation

By: _____
James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Master Deed Restriction was
acknowledged before me this ____ day of _____,
2019, by James A. Schmidt, Mayor, Town of Crested Butte,
Colorado, a Colorado home rule municipal corporation on
behalf of said entity.

Witness my hand and official seal

My commission expires _____

EXHIBIT "A"

Property

Block 77, Lot 3, Unit B Peeler Town Houses, Town of Crested Butte, Gunnison
County, State of Colorado Reception No. 543195

EXHIBIT "B"**DR Acknowledgement Form****RECORDING REQUESTED BY:****WHEN RECORDED RETURN TO:**

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

**ACKNOWLEDGEMENT OF DEED RESTRICTION
 AND MAXIMUM RESALE PRICE**

By execution of this **ACKNOWLEDGEMENT OF DEED RESTRICTION AND MAXIMUM RESALE PRICE** (this "**DR Acknowledgement**"), the undersigned fee title owner ("**Owner**") of the following real property and improvements thereon:

Block 77, Lot 3, Unit B Peeler Town Houses, Town of Crested Butte, Gunnison County, State of Colorado Reception No. 543195

(the "**Unit**"), and the Owner's Lender, Community Bank ("Lender") hereby acknowledges, confirms and agrees to be bound by the terms, agreements, conditions, covenants and requirements of that certain Master Deed Restriction (the "**Deed Restriction**") dated _____, 2019, and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado on _____ at Reception No _____, respecting the Unit, as and when the circumstances may dictate. For purposes hereof, the contents, terms and conditions of the Deed Restriction are hereby incorporated herein as if fully set forth verbatim herein. Lender agrees to subordinate its Deed of Trust encumbering the Unit to this Deed Restriction. In addition, the following matters shall also apply to the Unit:

1. (a) \$240,189.47 represents the "**Maximum Sales Price**" as of the effective date of this DR Acknowledgement.

2. In no event shall the Unit be sold for an amount in excess of the following:

(a) The Maximum Sales Price plus an increase of three percent (3%) of such price per year from the date of Maximum Sales Price listed above and of Owner's notice of intent to sell (prorated at the rate of .25 percent for each whole month for any part of a year) plus an amount (based upon the Consumer Price Index, Seasonally-adjusted Housing Category, U.S. City Average, Urban Wage Earners and Clerical Workers (Revised), published by the U.S. Department of Labor, Bureau of Labor Statistics) calculated as follows: Owner's purchase price divided by the Consumer Price Index published at the time of Owner's purchase stated on the Settlement Statement, multiplied by the Consumer Price Index current at the date of intent to sell. In no event shall the multiplier be less than one (1). For purposes hereof, the "date of intent to sell" or Owner's notice shall be the date of execution of a listing contract, or if a listing contract is not otherwise necessary, the date shall be determined to be the date upon which an Owner provides written notice of intent to sell to the Town or a requirement for Owner to sell is first applicable (the "**Maximum Resale Price**").

3. Subject to the limitations of this Section, for the purpose of determining the Maximum

Resale Price in accordance with this Section, Owner may add to the amount specified above, the cost of Permitted Capital Improvements as described in the Affordable Housing Guidelines.

4. For the purpose of determining the Maximum Resale Price, Owner may also add the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency, provided that written certification is provided to the Town of both the applicable requirement and the information required in the Affordable Housing Guidelines.

5. In order to obtain Maximum Resale Price, Owner must ensure that the Unit meets the Town's generally applicable minimum standards for a seller of a deed-restricted unit to receive full value as determined by the Town in its discretion. This shall include requirements to clean the home, ensure that all fixtures are in working condition and to repair damage to the Unit beyond normal wear and tear and as stated in the Minimum Standards for Seller to Receive Full Value at Resale as set forth in the Affordable Housing Guidelines. If the seller does not meet this requirement, the Town may require that Owner escrow at closing a reasonable amount as determined by the Town to achieve compliance, or reduce the Maximum Resale Price accordingly.

6. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Deed Restriction and the Affordable housing Guidelines.

7. In the event of any inconsistency between this DR Acknowledgement, the Deed Restriction and the Affordable Housing Guidelines, this DR Acknowledgement shall control, then the Deed Restriction, then the Affordable Housing Guidelines.

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

IN WITNESS WHEREOF, the Town and Owner have entered into this DR Acknowledgement effective as of the date of Owner's signature set forth below (the "Effective Date").

TOWN:

TOWN OF CRESTED BUTTE, COLORADO, a Colorado home rule municipal corporation

Date: _____

By: _____
Dara MacDonald, Town Manager

ATTEST:

Lynelle Stanford, Town Clerk (SEAL)

OWNER:

Date: _____

By: _____
Name: _____

By: _____
Name: _____
Address: _____

Attn: _____
Phone: _____
E-mail: _____

LENDER:

Date: _____

By: _____
Name: _____

By: _____
Name: _____
Address: _____

Attn: _____
Phone: _____
E-mail: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Acknowledgement of Deed Restriction and Maximum Resale Price was acknowledged before me this __ day of _____, 20__, by Dara MacDonald, Town Manager, Town of Crested Butte, Colorado, a Colorado home rule municipal corporation on behalf of said entity.

Witness my hand and official seal.
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Acknowledgement of Deed Restriction and Maximum Resale Price was acknowledged before me this __ day of _____, 20 __, by _____ as the Owner.

Witness my hand and official seal.
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Acknowledgement of Deed Restriction and Maximum Resale Price was acknowledged before me this __ day of _____, 20 __, by _____ as the Lender.

Witness my hand and official seal.
My commission expires _____

As



Staff Report Text Amendment Application

April 1, 2019

To: Mayor Schmidt and Town Council

Thru: Michael Yerman, Community Development Director

From: Bob Nevins, Town Planner

Subject: Ordinance No, 13, Series of 2019-2nd Reading, Public Hearing
Proposed Text Amendments to Chapter 16, Article 12-Condominiums and
Townhouses and Chapter 17, Article 3-Major and Minor Subdivisions

Date: April 1, 2019

1.0 Introduction. The Town of Crested Butte Community Development Department is proposing text amendments related to Municipal Code Chapter 16, Article 12-Condominiums and Townhouses and Chapter 17, Article 3-Major and Minor Subdivisions Generally, in accordance to Sec. 16-23-20 Initiation and Sec. 17-1-80 Amendments. The proposed text amendments are contained within Ordinance No. 13, Series of 2019 (**Attached**).

First reading of the ordinance occurred at a regular Town Council meeting on March 18, 2019. Following a brief overview of the proposed Code changes by staff, Mayor Schmidt questioned how the new regulations would change or expedite the current review process and whether there would be adequate public oversight if plats are approved administratively. Council then voted 7-0 to set public hearing date for April 1, 2019.

2.0 BOZAR Recommendation. By approving the Consent Agenda on February 19, 2019, Town Council acted to further consider the proposed text amendments by referring the application to the Board of Zoning and Architectural Review (BOZAR) for its study and recommendation. BOZAR reviewed the proposed text amendments at a regular public meeting on February 26, 2018; four (4) members were in attendance and three (3) members were absent. Staff presented the proposed text amendments concerning specific Articles in Chapters 16 and 17 of the Municipal Code. BOZAR members inquired about why Condominiums and Townhouses were being re-codified within Subdivision and they wanted to ensure that there would be proper oversight in terms of review and approval of condominium and townhouse plats by the Community Development Director instead of Town Council.

BOZAR then voted 4-0 in favor of recommending that Town Council approve the proposed text amendments as written by the Community Development Department.

3.0 Final Revisions. Following the BOZAR meeting, Community Development staff and Town Attorney conducted a final review of the proposed text amendments and based on Board comments and further consideration, made the following modifications:

- Sec. 17-3-20 Minor subdivisions was revised to more accurately describe activities that are to be reviewed as minor subdivision applications;
- Sec. 17-3-40 Condominium and Townhouse subdivisions deleted superfluous subsections concerning Fees (18) and Paradise Park Subdivision (19); and
- Sec. 17-3-50 Exemptions was revised to include the re-platting of up to eight (8) existing lots, tracts or parcels with certain conditions.

In response to concerns expressed by Town Council and BOZAR regarding administrative approval of condominium, townhouse and exemptions plats, including declaration or party wall agreements by the Community Development Director, the following modifications have been made to the final ordinance:

- Town Manager or designee will be authorized to approve condominium, townhouse and exemption plats, including declaration or party wall agreements.

4.0 Purpose and scope: The intent of these text amendments is to: 1) include condominiumization and townhouse subdivisions within Chapter 17 Subdivision; 2) expand the types of activities that are exempted from the terms of the subdivision regulations with administrative approval; and 3) more clearly define the review standards, application requirements and review procedures for condominiumization, townhouse plats, minor subdivisions and subdivision exemptions. The proposed text amendments include:

- Chapter 16, Article 12-Condominiums and Townhouses (*to be deleted and re-codified*);
- Chapter 17, Article 1, Sec. 17-1-100 Definitions (*added: definitions for townhouse and condominium*);
- Chapter 17, Article 3, Sec. 17-3-10 Types of Subdivisions (*formerly titled: Descriptions with revisions*);
- Chapter 17, Article 3, Sec. 17-3-20 Characteristics of minor subdivisions (*with revisions*);
- Chapter 17, Article, Sec. 17-3-40 Condominiumization and Townhouse subdivisions (*formerly titled: Exemptions; re-codified from Chapter 16, Article 12 with revisions*); and
- Chapter 17, Sec. 17-3-50 Exemptions (formerly Sec. 17-3-40 Exemptions with revisions)

5.0 Text Amendment application. The Town of Crested Butte Community Development Department is submitting this Text Amendment application in accordance with Municipal Code Sec. 16-23-30 Application and contains the following required information:

- (a) *“Any application for an amendment of these Chapters shall contain the following information.”* The Municipal Code requirements are shown below in *italics*, followed by Town staff’s response:

(1) *“A legal description of any land to be rezoned, together with a diagram drawn to scale showing the boundaries of the area requested to be rezoned.”*

Response: Not applicable. There is no request to rezone any areas within the Town.

(2) *“A statement of the present zoning and the requested new zoning.”*

Response: Not applicable. The proposed text amendment does not change or affect any of the present zoning districts; and the application is not requesting any new or amended zoning.

(3) *“A statement of justification for such action, including facts concerning any change of conditions, an error in the original zoning or the unusual or peculiar suitability of a lot to a certain use.”*

Response: The current Municipal Code includes Condominiums and Townhouses in Chapter 16 Zoning; and the Code requires certain minor insubstantial activities to be processed as Minor Subdivisions with review by BOZAR and certification of the final plat by BOZAR and Town Council. The proposed text amendment seeks to: 1) re-codify Condominiums and Townhouses within Chapter 17 Subdivision of the Municipal Code and providing for an administrative review and approval of the final plat by the Town Manager or designee; 2) more accurately describe the types of minor activities that can be processed administratively as subdivision exemptions; and 3) more clearly identify the submittal requirements, review standards and approval processes for these kinds of subdivision applications.

(4) *“A description of the land and uses thereof within two hundred (200) feet of the boundary lines of the proposed area of change in all directions; and*

Response: Not applicable.

(5) *“A statement as to the effect that the new zoning or changes would have on adjacent areas or uses.”*

Response: The proposed text amendments will: 1) re-codify Condominiums and Townhouses within Chapter 17 Subdivision; 2) expand the types of minor activities that are exempt from the subdivision regulations; and 3) allow certain subdivision activities and exemptions to be reviewed and approved administratively by the Town Administrator or designee instead of having to be processed as Minor Subdivisions. These amendments should be beneficial to property owners/applicants, Town Council, BOZAR and staff by enabling certain lesser applications to be processed administratively as subdivision exemptions; establishing clear application requirements and review standards; and making the overall application and review process more thorough and efficient.

(b) *“Any application to create or amend the zoning of a parcel of land containing more than fifty thousand (50,000) square feet of land shall be subject to the requirements set forth in Chapter 17 of this Code and reviewed for approval as a subdivision under said regulations.*

Response: Not applicable. This text amendment application does not create or amend the zoning of any parcel of land.

6.0 Final Revised Text Amendments. The proposed revisions to the text amendments contained in the First Reading (3-18-19) of Ordinance No. 13, Series of 2019 are included **Attachment 1**. The existing text is shown in regular type; existing text to be deleted is shown in **red type** and crossed-out; proposed new text is underlined in **red type**; and changes from first reading are underlined and highlighted in **red type**. The final text amendments are included within the attached Ordinance No. 13, Series of 2019.

7.0 Recommended Action.

A Council member make a motion to approve the adoption of Ordinance No. 13, Series of 2019, followed by a second.

Attachments:

- 1- Proposed Revisions to Ordinance No. 13, Series of 20019 (1ST Reading, 3-18-19)
- 2- Ordinance No. 13, Series of 2019

ORDINANCE NO. 13,

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL DELETING AND RE-CODIFYING CHAPTER 16, ARTICLE 12 CONDOMINIUMS AND TOWNHOUSES, AND AMENDING CHAPTER 17, ARTICLES 1-GENERAL PROVISIONS AND ARTICLE 3-MAJOR AND MINOR SUBDIVISIONS GENERALLY.

WHEREAS, the Town of Crested Butte, Colorado (“Town”) is a home rule municipality duly and regularly organized and existing as a body corporate and public under the Colorado Constitution and laws of the State of Colorado; and

WHEREAS, the Town has the authority to enact and enforce land use regulations pursuant to Article XX of the Colorado Constitution, as implemented through the Town of Crested Butte Charter and Code; and Title 31, Article 23, and Title 20, Article 29, C.R.S.; and

WHEREAS, the Town Municipal Code (the “Code”) in Chapter 16, Article 12 currently has provisions for condominium and townhouses; and

WHEREAS, Chapter 17, Article 3 of the Code currently has provisions for major and minor subdivisions; and

WHEREAS, the Town wishes to create more efficient and thorough review and approval procedures for condominium and townhouse plats and subdivision exemptions; and

WHEREAS, the Town Council referred the staff’s request for proposed text amendments regarding condominiums, townhouse plats and subdivision exemptions to the Board of Zoning and Architectural Review (“BOZAR”); and

WHEREAS, BOZAR reviewed the proposed amendments to Chapter 16, Article 12 and Chapter 17, Article 3 pertaining to condominium and townhouses and subdivision exemptions on February 26, 2019 and voted 4-0 to recommend the text amendments to Town Council; and

WHEREAS, the Town Council has taken BOZAR’s recommendation into consideration and reviewed the proposed regulations pertaining to condominiums, townhouses and subdivision exemptions; and

WHEREAS, the Town Council hereby finds that it is in the best interests of the Town to make the proposed text amendments to the Code.

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

Attachment 1-Proposed Revisions

Section 1: Chapter 16, Article 12 Condominiums and Townhouses. Chapter 16, Article 12 Condominiums and Townhouses is hereby deleted in its entirety. Condominiumization and Townhouse subdivisions are re-codified and amended under Chapter 17, Article 3, Sec. 17-3-40.

Section 2: Sec. 17-1-100 Definitions. The following definitions will be added to Sec. 17-1-100 in alphabetical order:

Condominium or condominium project means a building or buildings consisting of separate fee simple estates to an individual air space unit of a multi-unit property, together with an undivided fee simple interest in common elements, as further defined in the Colorado Common Interest Ownership Act (CCIOA).

Townhouse or townhouse project means a building or buildings consisting of fee simple estates to individual units having common vertical walls, together with fee simple title to the land on which each unit is built and any yard and parking space appurtenant to said unit; and any easements for ingress and egress and for installation, replacement, repair and maintenance of utilities appurtenant to a unit. No townhouse or townhouse project shall have common horizontal walls.

Section 3: Sec. 17-3-10 Descriptions. Sec. 17-3-10 is deleted in its entirety and rewritten to read as follows:

Sec. 17-3-10. Types of subdivisions.

Subdivision types are characterized as minor subdivisions under Sec. 17-3-20 or major subdivisions under Sec. 17-3-30. Condominiumization and Townhouse subdivisions are subject to Sec. 17-3-40; and activities that are exempt from these subdivision regulations are subject to Sec. 17-3-50.

Section 4: Sec. 17-3-20 Characteristics of minor subdivisions. Sec. 17-3-20 is deleted in its entirety and rewritten to read as follows:

Sec. 17-3-20. Minor subdivisions.

(a) A minor subdivision is any one (1) or more of the following activities:

(1) A re-subdivision creating eight (8) or less parcels from lots that include a building and/or structure, if the following conditions are met:

a. The property is zoned;

b. Each new re-platted parcel (lot) meets all requirements for the zoning district in which the land is located;

c. Each new re-platted parcel (lot) has access to an existing dedicated public street; and

d. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat.

(2) A re-subdivision creating four (4) or less parcels from tracts that include a building and/or structure, if the following conditions are met:

a. The property is zoned:

b. Each new re-platted parcel (lot) meets all requirements for the zoning district in which the land is located;

c. Each new re-platted parcel (lot) has access to an existing dedicated public street; and

d. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat.

~~(1) Any application that requires Board review of a Certificate of Architectural Appropriateness, rezoning or a PUD in association with the proposed subdivision.~~

~~(2) Any application that is requesting more than one (1) subdivision exemption.~~

~~(3) An application that may result in the creation of parcels described as parts of lots or tracts.~~

~~(4) An appeal of a subdivision exemption decision by the Community Development Director.~~

Section 5: Sec. 17-3-40 Exemptions. Sec. 17-3-40 is deleted in its entirety and rewritten to read as follows:

Sec. 17-3-40 Condominiumization and Townhouse subdivisions.

(a) Applicability. These regulations set forth requirements for the creation of condominiums and townhouses including the new condominiums or townhouses, changes to existing condominiums or townhouses, and requirements for consolidation of residential condominiums and townhouses.

(b) Plat requirements. Any condominium or townhouse plat shall conform to the following requirements:

(1) Mylars. There shall be at least one (1) mylar and two (2) full sets of blue line prints, the size to be twenty-four (24) inches by thirty-six (36) inches, with a one-half inch border on the top, bottom and right-hand side, and a one-and one-half inch border on the left-hand side. As many sheets as may be necessary may be submitted for a single plat or filing.

(2) Cover sheet. The cover sheet shall contain the full name of the condominium or townhouse project.

(3) Legal opinion. The cover sheet shall contain a legal opinion, executed by an attorney licensed to practice in the State, evidencing title of the property being dedicated to be in the

owner, and showing all exceptions to the title, if any. Such opinion shall be substantially in the following form:

ATTORNEY'S OPINION

I, (printed name of the attorney), being an attorney duly licensed to practice before courts of record in the State of Colorado, do hereby certify that I have examined the title to all lands herein dedicated and shown upon this plat and that title to such lands is in the dedicator free and clear of all liens, taxes and encumbrances, except as follows:

(Herein list all exceptions)

Dated this ___ day of _____, 20__.

/s/

Attorney-at-Law
Supreme Court Reg. No. _____

(4) Dedication. The cover sheet shall contain a notarized dedication of the full legal description of the parcel being dedicated, executed by the owner, as such owner is identified in the legal opinion. Such dedication shall be substantially in the following form:

**FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION
(IN CAPITAL LETTERS)**

KNOW ALL PEOPLE BY THESE PRESENTS: That (Full name of Owner), being the owner of the following described real property, hereby declares and executes this Condominium or Townhouse Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), Town of Crested BUTTE, County of Gunnison, State of Colorado, as follows:

a. DESCRIPTION. The property description of the real property laid out and platted as (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) shown on this Plat is:

**PROPERTY DESCRIPTION
(Full Legal Description)**

b. CONDOMINIUM DECLARATION OR PARTY WALL AGREEMENT. The real property aid out as (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), Town of Crested Butte, Gunnison County, Colorado, is platted and dedicated pursuant to the terms and conditions of the Condominium Declaration or Party Wall Agreement for (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) dated _____, 20__ and recorded _____, 20__ in Book ___ at Page ___ of the official records of Gunnison County, Colorado.

IN WITNESS WHEREOF, (Full name of Owner), executed this dedication this ___ day of _____, 20__.

(Full name of Owner)

By: _____

ATTEST

s/s

(Notary Public)

(5) Survey certificate. The cover sheet shall contain a certificate prepared by a person licensed in the State as a land surveyor, to the effect that he project is completed as shown on the Plat. Such certificate shall be in substantially the following form:

LAND SURVEYOR'S CERTIFICATE

I, (Full name of the Land Surveyor), being a registered land surveyor in the State of Colorado, do hereby certify that this Condominium or Townhouse Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) was made by me and under my supervision and is accurate to the best of my knowledge, that the improvements as constructed conform substantially to this plat, and that this plat fully and accurately depicts the layout, measurements and location of all of the improvements on the real property, the Condominium or Townhouse unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings (if a Condominium Project).

Dated this ___ day of _____, 20__.

/s/ _____
(Full Name and Address of Land Surveyor with
Colorado Registration No. _____) (Seal)

(6) Government approval form. The cover sheet shall contain printed provisions for the acceptance and approval of the plat by the ~~Community Development Director~~ Town Manager or designee, by Town Council and by the County Clerk and Recorder, in substantially the following form:

TOWN OF CRESTED BUTTE APPROVAL

The within Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), is approved for filing this ___ day of _____, 20__.

/s/ _____
By: ~~Community Development Director~~ Town Manager or designee

ATTEST:

s/s _____
Town Clerk (Seal)

GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

(To be placed in the lower right-hand corner of the cover sheet)

This Plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado on this ___ day of _____, 20__.

Reception No. _____ Time: _____ Date: _____
Book No. ___ Page No. ___
/s/ _____ County Clerk

- (7) Lienholder consent. Lienholder consent to the plat as reflected in a title commitment for the property shall be included thereon.
- (8) Scale. All buildings and improvements shall be drawn to scale, and the scale, both written and graphic, is to be identified on each sheet.
- (9) Location map. The plat shall contain a location map, identifying a sufficient part of the surrounding land and streets so as to easily determine the location of the subject parcel within the Town.

(10) Site plan. The site plan, at a minimum, shall depict with accurate dimensions the following:

- a. Exterior boundaries of the entire site, with all courses and distances noted thereon, which must conform to the requirements of the zone district or approved general P.U.D. plan within which the project is located;
- b. Boundaries between townhouse units, the unit designation for each unit and all courses and distances;
- c. Outline or building footprint for all buildings, structures and improvements located on the property, with the linear measurements of all exterior walls of each building;
- d. Shortest distances between all buildings and between the buildings and the nearest project perimeter property line, which must conform to the setback requirements for the zone district or approved P.U.D. plan within which the project is located;
- e. All parking spaces, including properly sized required handicapped accessible spaces, if any, as determined by the Town;
- f. Ingress and egress to the property and to the buildings located thereon, and from each townhouse unit to the off-street parking spaces appurtenant to that unit, with easements to the same townhouses, where applicable;
- g. Location and linear measurements of any overhanging features, exterior stairs, and decks on any buildings;
- h. If a centralized trash storage or dumpster area will serve the project, the location of an on-site, open and unoccupied area at least twelve (12) feet by twelve (12) feet in size, which is accessible at all times;
- i. If common off-street parking areas are to be utilized for the project, the location of an adjacent area equal in size to at least thirty-three percent (33%) of the off-street parking area, including the driving area within the parking lot and driveways, for snow storage;
- j. Location of all utility easements; and
- k. Location and extent of possible future development on the site.

(11) Designation of direction. Both the location map and site plan shall have north arrows indicated thereon (designating true and magnetic north).

(12) Improvements. In addition to the other required on the plat, additional sheets shall be provided portraying the floor plans of all buildings, structures or other improvements located upon the property, depicting at a minimum the following:

- a. All exterior walls, bearing walls and/or party walls, long with the thickness of such walls;
- b. All exterior doors, windows and sliding or French doors;

- c. Identification of each individual condominium unit and general and limited common elements appurtenant to each condominium unit; or the appropriate identification of each individual townhouse lot and unit;
- d. Location of all walls enclosing any condominium or townhouse unit, and any other enclosure, such as a manager's unit, employee unit or amenities;
- e. Cross-sections of all condominium units, showing the elevation above sea level of each floor as finished; cross-sections and the elevation of each floor for townhouses shall not be required;
- f. Minimum exterior wall height, minimum vertical distance from the eave line of the roof to the finished grade level and the maximum building height as finished, all of which must conform to the requirements of the zone district or approved general P.U.D. plan within which the project is located;
- g. The linear measurements of all of the above;
- h. Location of water and sewer tap-ins to the Town's main lines and of water shut-off valves, all of which shall be readily accessible by the Town; townhouse units must each have separate water shut-offs, sewer cleanouts and electrical meters, which shut-offs and cleanouts shall be readily accessible by the Town, and the location of which shall be approved by the Town; and
- i. Landscaped areas and the location of any retaining walls.

(c) Condominiumization within "M" Mobile Home District. The plats of properties being condominiumized within the "M" District, because of the unique character of mobile homes, are exempt from all requirements contained within this Article that otherwise require the depiction of all buildings and improvements located on the property being condominiumized.

(d) Declaration requirements. The owner of the property being dedicated shall execute and cause to be properly acknowledged a declaration (or party wall agreement for townhouses), prepared in compliance with the purpose, intent and requirements of the Colorado Common Interest Ownership Act (CCIOA), which declaration or party wall agreement shall also contain the following:

- (1) A provision for the ultimate obligation by the condominium association to pay all water and sewer charges for all individual units within the project, and any common element charges in accordance with the rules and regulations of the Town.
- (2) A clear definition and description of the rights, duties and liabilities of unit owners with respect to the general common elements and the limited common elements, and easements.
- (3) In the event the condominium or townhouse units are expandable, appropriate provisions relating to the phasing of the project, along with the identification, by legal description, of the property onto which the units and/or project will be expanded, identification of the total maximum number of units and/or maximum floor area which could be constructed within the entire expanded project, and identification of the interest each unit owner will have, by percentages, after the expansion.

(4) A provision that, in the event, any unit is owned by more than one (1) person or by a partnership, joint venture, corporation or other such entity, the owners thereof shall designate in writing to the homeowner's association, the name and address of the agent of the owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed, and that, upon failure to so designate an agent, the association shall be deemed to be the agent for receipt of notices to such owners.

(5) Where there is additional square footage permitted on the project or units according to the applicable zone district provisions, a provision for the allocation of such square footage between and among the units.

(e) Submittal review and approval of plats, declarations and party wall agreements for townhouses or condominiums.

(1) All plats, declarations and party wall agreements shall be filed with the Community Development Department for initial review by the Building Department and Town Attorney as to compliance of the document with the Town Code and other applicable law.

(2) All fees as established by resolution of the Town Council must be paid before the Town will review the submittals.

(3) The ~~Community Development Director~~ Town Manager or designee shall forward the documents to the Town Attorney for review. If the Town Attorney finds that the documents comply with the Town Code and other applicable law, the Town Attorney shall forward to the ~~Community Development Director~~ Town Manager or designee, in writing, a recommendation of approval of such documents. If the documents do not comply with the Town Code and other applicable law, the Town Attorney will notify the applicant with a copy to the ~~Community Development Director~~ Town Manager or designee, of modifications to the documents that are necessary to bring them into compliance. The applicant may then resubmit the amended documents to the Community Development ~~Director~~ Department after the modifications have been made.

(4) If the Town Attorney determines that the documents should be approved except for minor revisions, the Town Attorney may conditionally approve them and notify the applicant with a copy to the ~~Community Development Director~~ Town Manager or designee of the minor revisions. The applicant may then submit the revised documents to the Community Development ~~Director~~ Department after the revisions have been made.

(f) ~~Community Development Director~~ Town Manager or designee approval.

(1) Upon receipt of a recommendation by the Town Attorney, the ~~Community Development Director~~ Town Manager or designee will review the subject plat and declaration or party wall agreement and either approve the same and execute the plat, or disapprove the plat if the materials fail to satisfy Code requirements. The ~~Community Development Director~~ Town Manager or designee may waive minor differences, considered to be negligible, under the same criteria in as set forth in Subsection ~~16-12-7017-3-40~~(e) above relating to the Town Attorney's recommendation.

(2) Upon final approval by the Community Development Director of the plat and declaration or party wall agreement, the owner or his or her agent shall immediately cause the plat and declaration or party wall agreement to be recorded with the County Clerk and Recorder, and shall forthwith thereafter return one (1) full set of mylars, two (2) full sets of blue line prints and one (1) complete copy of the declaration or party wall agreement to the Town, bearing the recording information thereon.

(g) Waivers of setbacks. If there are minor differences in dimensions between the setback distances of buildings or structures from lot lines or distances between buildings and those required by the Town Code, the ~~Community Development Director~~ Town Manager or designee may waive the requirements if in his or her discretion ~~he~~ deems the differences to be negligible and the applicant has otherwise complied with the intent of the Code.

(h) Consolidation of residential units. Properties with condominiums and townhouses approved by the Town may be consolidated by following the same process as creating condominiums and townhouses, subject to the ~~Community Development Director's~~ Town Manager's or designee's determination that the following requirements are met:

- (1) Consolidation shall not result in any fewer residential units or reduction in square footages for any existing unit.
- (2) Consolidation is reflected in a vacation plat approved in the same manner as the plat creating the condominium or townhouse on the subject property.
- (3) Consolidation does not reduce the number of parking spaces required by any land use approval or the Code.
- (4) Tap fees previously paid are not reimbursable if the number of taps are reduced.

Section 6: Sec. 17-3-50 Exemptions. A new Sec. 17-3-50, Exemptions shall be added to read as follows:

Sec. 17-3-50 Exemptions from subdivision regulations

(a) The following applications shall be exempt from these subdivision regulations:

(1) Lot-line adjustments. Adjustment of lot lines between previously platted contiguous lots necessary to correct a survey or engineering error, to allow a boundary change between adjacent lots or parcels to relieve a hardship or practical necessity, or to allow transfer of land from a larger conforming lot to a smaller non-conforming lot in order to make both lots conforming. The lot lines between contiguous lots that are under single or separate ownership may be adjusted if the following conditions are met:

- a. The property owners whose lot lines are being adjusted shall provide written consent to the submittal of the subdivision exemption application.
- b. The lot line adjustment shall not create the opportunity for further subdivision of either lot to create another new lot for sale or development.

c. Each of the adjusted lots shall meet the standards of this Chapter. If either of the lots or structures thereon are non-conforming prior to the proposed adjustment, no lot line adjustment shall be allowed that increases the non-conformity of the lot or structure.

(2) Lot combinations. Combinations or mergers of not more than two (2) conforming, previously platted contiguous lots, or two (2) or more non-conforming, previously platted contiguous lots within the same zone district. The lots may be combined or merged if the following conditions are met:

- a. The lots to be consolidated or merged shall be under single ownership.
- b. The resulting combined or merged lot shall meet the standards of this Chapter and other applicable ordinances.

(3) Vacations. A vacation of a building site, lot, parcel or tract line.

(4) Re-plats. ~~A re-platting creating eight (8) or less parcels from vacant lots; and a re-platting creating four (4) or less parcels from vacant tracts. The replatting of up to eight (8) existing platted lots, tracts or parcels~~ if the following conditions are met:

- a. All of the new re-platted ~~parcels (lots)~~ meet all requirements for the zoning district in which the land is located;
- b. All of the new re-platted ~~parcels (lots)~~ will have access to an existing dedicated public street; ~~and~~
- c. ~~The platting of a~~Any utility, drainage, snow storage, parking or other necessary easements ~~are shown on the plat; and~~
- e. d. No subdivision improvements agreement need be prepared or entered into between the applicant and the Town unless the Town Manager or designee determines such an agreement is necessary.

(b) Subdivision exemption standards. The ~~Community Development Director-Town Manager or designee~~ shall approve an application for a subdivision exemption if it complies with these standards:

- (1) Compliance with Code. The exemption shall comply with the zone district standards for that specific location and all applicable requirements of the Code.
- (2) Exemptions shall not create or increase a non-conforming use, structure or lot.
- (3) No increase in total allowable floor area. The exemption shall not increase the total allowable floor area for the lot or lots greater than the total floor area allowed without the exemption. Any change in allowable floor area permitted by the exemption within these floor area totals shall be consistent with the adjacent properties.
- (4) No subdivision agreement need be prepared or entered into between the applicant and the Town unless the ~~Community Development Director-Town Manager or designee~~ determines such an agreement is necessary.

(5) Limitations. A maximum of one (1) subdivision exemption application may be submitted and approved for a specific lot, parcel or subdivision; multiple subdivision exemption applications or successive individual subdivision exemption applications for a specific lot, parcel or subdivision are not permitted.

(c) Application contents. An application for a subdivision exemption shall contain the following minimum contents:

- (1) The required application fee.
- (2) A narrative statement explaining how the subdivision exemption complies with the zoning district standards and the subdivision exemption standards.
- (3) A legal description of the property, proof of ownership acceptable to the Town and properly notarized letter signed by the property owner(s) along with the designation, if any, of the owner representative's name, address and telephone number.
- (4) An improvement location certificate (ILC) survey drawn to scale, dimensioned and wet stamped by a Colorado licensed surveyor.
- (5) Floor plans of any existing or proposed structures drawn to scale and dimensioned sufficient to allow the Building Official to calculate the Floor Area Ratio.
- (6) A proposed exemption plat drawn to scale and dimensioned in general accordance with Appendix I Required Wording on Minor Subdivision Final Plat with a certificate showing approval of the plat by the ~~Community Development Director~~ Town Manager or designee.
- (7) Any other information, documents or certificates reasonably deemed necessary by the ~~Community Development Director~~ Town Manager or designee.

(d) Application, review and approval procedure. Subdivision exemptions shall be approved in accordance with the following procedures:

- (1) Pre-application conference. A pre-application conference with Community Development staff is recommended, but optional, prior to submission of the application.
- (2) Submission of application. Applicant shall submit an application that contains those materials specified above in Sec. 17-3-50(c) to the Community Development ~~Director~~ Department.
- (3) Review and approval. The Community Development ~~Department and Director~~, Town Attorney ~~and Building Department~~ shall review the application and all relevant materials to determine whether the application complies with the review conditions and standards of this Section and the Town Manager or designee shall issue a written approval, approval with conditions or denial of the application based on compliance with the requirements of this Sec. 17-5-50.
- (4) Recording of exemption plat. Within ninety (90) days from the date of the subdivision exemption approval, applicant shall submit two (2) mylar copies of the exemption plat, suitable for recording, to the Community Development ~~Department~~ Director. The ~~Director~~

Town Manager or designee shall review the exemption plat to ensure that it complies with the terms and conditions of the approval and then shall obtain signatures for all of the certificates on the plat. The signed exemption plat shall be recorded, at applicant's expense, in the records of the Gunnison County Clerk and Recorder.

Section 7. 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 8. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code shall remain valid and in full force and effect. Any provision of the Code that is in conflict with this ordinance is hereby repealed as of the effective date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 18th DAY OF MARCH, 2019.

ADOPTED AS AMENDED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS ____ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE

James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 13**SERIES 2019****AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL DELETING AND RE-CODIFYING CHAPTER 16, ARTICLE 12 CONDOMINIUMS AND TOWNHOUSES, AND AMENDING CHAPTER 17, ARTICLES 1-GENERAL PROVISIONS AND ARTICLE 3-MAJOR AND MINOR SUBDIVISIONS GENERALLY.**

WHEREAS, the Town of Crested Butte, Colorado (“Town”) is a home rule municipality duly and regularly organized and existing as a body corporate and public under the Colorado Constitution and laws of the State of Colorado; and

WHEREAS, the Town has the authority to enact and enforce land use regulations pursuant to Article XX of the Colorado Constitution, as implemented through the Town of Crested Butte Charter and Code; and Title 31, Article 23, and Title 20, Article 29, C.R.S.; and

WHEREAS, the Town Municipal Code (the “Code”) in Chapter 16, Article 12 currently has provisions for condominium and townhouses; and

WHEREAS, Chapter 17, Article 3 of the Code currently has provisions for major and minor subdivisions; and

WHEREAS, the Town wishes to create more efficient and thorough review and approval procedures for condominium and townhouse plats and subdivision exemptions; and

WHEREAS, the Town Council referred the staff’s request for proposed text amendments regarding condominiums, townhouse plats and subdivision exemptions to the Board of Zoning and Architectural Review (“BOZAR”); and

WHEREAS, BOZAR reviewed the proposed amendments to Chapter 16, Article 12 and Chapter 17, Article 3 pertaining to condominium and townhouses and subdivision exemptions on February 26, 2019 and voted 4-0 to recommend the text amendments to Town Council; and

WHEREAS, the Town Council has taken BOZAR’s recommendation into consideration and reviewed the proposed regulations pertaining to condominiums, townhouses and subdivision exemptions; and

WHEREAS, the Town Council hereby finds that it is in the best interests of the Town to make the proposed text amendments to the Code.

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

Section 1: Chapter 16, Article 12 Condominiums and Townhouses. Chapter 16, Article 12 Condominiums and Townhouses is hereby deleted in its entirety. Condominiumization and Townhouse subdivisions are re-codified and amended under Chapter 17, Article 3, Sec. 17-3-40.

Section 2: Sec. 17-1-100 Definitions. The following definitions will be added to Sec. 17-1-100 in alphabetical order:

Condominium or condominium project means a building or buildings consisting of separate fee simple estates to an individual air space unit of a multi-unit property, together with an undivided fee simple interest in common elements, as further defined in the Colorado Common Interest Ownership Act (CCIOA).

Townhouse or townhouse project means a building or buildings consisting of fee simple estates to individual units having common vertical walls, together with fee simple title to the land on which each unit is built and any yard and parking space appurtenant to said unit; and any easements for ingress and egress and for installation, replacement, repair and maintenance of utilities appurtenant to a unit. No townhouse or townhouse project shall have common horizontal walls.

Section 3: Sec. 17-3-10 Descriptions. Sec. 17-3-10 is deleted in its entirety and rewritten to read as follows:

Sec. 17-3-10. Types of subdivisions.

Subdivision types are characterized as minor subdivisions under Sec. 17-3-20 or major subdivisions under Sec. 17-3-30. Condominiumization and Townhouse subdivisions are subject to Sec. 17-3-40; and activities that are exempt from these subdivision regulations are subject to Sec. 17-3-50.

Section 4: Sec. 17-3-20 Characteristics of minor subdivisions. Sec. 17-3-20 is deleted in its entirety and rewritten to read as follows:

Sec. 17-3-20. Minor subdivisions.

(a) A minor subdivision is any one (1) or more of the following activities:

- (1) A re-subdivision creating eight (8) or less parcels from lots that include a building and/or structure, if the following conditions are met:
 - a. The property is zoned;
 - b. Each new re-platted parcel (lot) meets all requirements for the zoning district in which the land is located;
 - c. Each new re-platted parcel (lot) has access to an existing dedicated public street; and

- d. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat.
- (2) A re-subdivision creating four (4) or less parcels from tracts that include a building and/or structure, if the following conditions are met:
- a. The property is zoned;
 - b. Each new re-platted parcel (lot) meets all requirements for the zoning district in which the land is located;
 - c. Each new re-platted parcel (lot) has access to an existing dedicated public street; and
 - d. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat.

Section 5: Sec. 17-3-40 Exemptions. Sec. 17-3-40 is deleted in its entirety and rewritten to read as follows:

Sec. 17-3-40 Condominiumization and Townhouse subdivisions.

(a) Applicability. These regulations set forth requirements for the creation of condominiums and townhouses including the new condominiums or townhouses, changes to existing condominiums or townhouses, and requirements for consolidation of residential condominiums and townhouses.

(b) Plat requirements. Any condominium or townhouse plat shall conform to the following requirements:

(1) Mylars. There shall be at least one (1) mylar and two (2) full sets of blue line prints, the size to be twenty-four (24) inches by thirty-six (36) inches, with a one-half inch border on the top, bottom and right-hand side, and a one-and one-half inch border on the left-hand side. As many sheets as may be necessary may be submitted for a single plat or filing.

(2) Cover sheet. The cover sheet shall contain the full name of the condominium or townhouse project.

(3) Legal opinion. The cover sheet shall contain a legal opinion, executed by an attorney licensed to practice in the State, evidencing title of the property being dedicated to be in the owner, and showing all exceptions to the title, if any. Such opinion shall be substantially in the following form:

ATTORNEY'S OPINION

I, (printed name of the attorney), being an attorney duly licensed to practice before courts of record in the State of Colorado, do hereby certify that I have examined the title to all lands herein dedicated and shown upon this plat and that title to such lands is in the dedicator free and clear of all liens, taxes and encumbrances, except as follows:

(Herein list all exceptions)

Dated this ___ day of _____, 20__.

/s/ _____
Attorney-at-Law
Supreme Court Reg. No. _____

(4) Dedication. The cover sheet shall contain a notarized dedication of the full legal description of the parcel being dedicated, executed by the owner, as such owner is identified in the legal opinion. Such dedication shall be substantially in the following form:

FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION
 (IN CAPITAL LETTERS)

KNOW ALL PEOPLE BY THESE PRESENTS: That (Full name of Owner), being the owner of the following described real property, hereby declares and executes this Condominium or Townhouse Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), Town of Crested BUTTE, County of Gunnison, State of Colorado, as follows:

a. DESCRIPTION. The property description of the real property laid out and platted as (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) shown on this Plat is:

PROPERTY DESCRIPTION
 (Full Legal Description)

b. CONDOMINIUM DECLARATION OR PARTY WALL AGREEMENT. The real property aid out as (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), Town of Crested Butte, Gunnison County, Colorado, is platted and dedicated pursuant to the terms and conditions of the Condominium Declaration or Party Wall Agreement for (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) dated _____, 20__ and recorded _____, 20__ in Book ___ at Page ___ of the official records of Gunnison County, Colorado.

IN WITNESS WHEREOF, (Full name of Owner), executed this dedication this ___ day of _____, 20__.

(Full name of Owner)

By: _____

ATTEST

s/s _____
 (Notary Public)

(5) Survey certificate. The cover sheet shall contain a certificate prepared by a person licensed in the State as a land surveyor, to the effect that he project is completed as shown on the Plat. Such certificate shall be in substantially the following form:

LAND SURVEYOR'S CERTIFICATE

I, (Full name of the Land Surveyor), being a registered land surveyor in the State of Colorado, do hereby certify that this Condominium or Townhouse Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) was made by me and under my supervision and is accurate to the best of my knowledge, that the improvements as constructed conform substantially to this plat, and that this plat fully and accurately depicts the layout, measurements and location of all of the improvements on the real property, the Condominium or Townhouse unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings (if a Condominium Project).

Dated this ____ day of _____, 20__.

/s/ _____
(Full Name and Address of Land Surveyor with
Colorado Registration No. _____) (Seal)

(6) Government approval form. The cover sheet shall contain printed provisions for the acceptance and approval of the plat by the Town Manager or designee, by Town Council and by the County Clerk and Recorder, in substantially the following form:

TOWN OF CRESTED BUTTE APPROVAL

The within Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), is approved for filing this ____ day of _____, 20__.

/s/ _____
By: Town Manager or designee

ATTEST:

s/s _____
Town Clerk (Seal)

GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

(To be placed in the lower right-hand corner of the cover sheet)

This Plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado on this ____ day of _____, 20__.

Reception No. _____ Time: _____ Date: _____
Book No. ____ Page No. ____
/s/ _____
County Clerk

(7) Lienholder consent. Lienholder consent to the plat as reflected in a title commitment for the property shall be included thereon.

(8) Scale. All buildings and improvements shall be drawn to scale, and the scale, both written and graphic, is to be identified on each sheet.

(9) Location map. The plat shall contain a location map, identifying a sufficient part of the surrounding land and streets so as to easily determine the location of the subject parcel within the Town.

(10) Site plan. The site plan, at a minimum, shall depict with accurate dimensions the following:

- a. Exterior boundaries of the entire site, with all courses and distances noted thereon, which must conform to the requirements of the zone district or approved general P.U.D. plan within which the project is located;
- b. Boundaries between townhouse units, the unit designation for each unit and all courses and distances;

- c. Outline or building footprint for all buildings, structures and improvements located on the property, with the linear measurements of all exterior walls of each building;
- d. Shortest distances between all buildings and between the buildings and the nearest project perimeter property line, which must conform to the setback requirements for the zone district or approved P.U.D. plan within which the project is located;
- e. All parking spaces, including properly sized required handicapped accessible spaces, if any, as determined by the Town;
- f. Ingress and egress to the property and to the buildings located thereon, and from each townhouse unit to the off-street parking spaces appurtenant to that unit, with easements to the same townhouses, where applicable;
- g. Location and linear measurements of any overhanging features, exterior stairs, and decks on any buildings;
- h. If a centralized trash storage or dumpster area will serve the project, the location of an on-site, open and unoccupied area at least twelve (12) feet by twelve (12) feet in size, which is accessible at all times;
- i. If common off-street parking areas are to be utilized for the project, the location of an adjacent area equal in size to at least thirty-three percent (33%) of the off-street parking area, including the driving area within the parking lot and driveways, for snow storage;
- j. Location of all utility easements; and
- k. Location and extent of possible future development on the site.

(11) Designation of direction. Both the location map and site plan shall have north arrows indicated thereon (designating true and magnetic north).

(12) Improvements. In addition to the other required on the plat, additional sheets shall be provided portraying the floor plans of all buildings, structures or other improvements located upon the property, depicting at a minimum the following:

- a. All exterior walls, bearing walls and/or party walls, long with the thickness of such walls;
- b. All exterior doors, windows and sliding or French doors;
- c. Identification of each individual condominium unit and general and limited common elements appurtenant to each condominium unit; or the appropriate identification of each individual townhouse lot and unit;
- d. Location of all walls enclosing any condominium or townhouse unit, and any other enclosure, such as a manager's unit, employee unit or amenities;
- e. Cross-sections of all condominium units, showing the elevation above sea level of each floor as finished; cross-sections and the elevation of each floor for townhouses shall not be required;

f. Minimum exterior wall height, minimum vertical distance from the eave line of the roof to the finished grade level and the maximum building height as finished, all of which must conform to the requirements of the zone district or approved general P.U.D. plan within which the project is located;

g. The linear measurements of all of the above;

h. Location of water and sewer tap-ins to the Town's main lines and of water shut-off valves, all of which shall be readily accessible by the Town; townhouse units must each have separate water shut-offs, sewer cleanouts and electrical meters, which shut-offs and cleanouts shall be readily accessible by the Town, and the location of which shall be approved by the Town; and

i. Landscaped areas and the location of any retaining walls.

(c) Condominiumization within "M" Mobile Home District. The plats of properties being condominiumized within the "M" District, because of the unique character of mobile homes, are exempt from all requirements contained within this Article that otherwise require the depiction of all buildings and improvements located on the property being condominiumized.

(d) Declaration requirements. The owner of the property being dedicated shall execute and cause to be properly acknowledged a declaration (or party wall agreement for townhouses), prepared in compliance with the purpose, intent and requirements of the Colorado Common Interest Ownership Act (CCIOA), which declaration or party wall agreement shall also contain the following:

(1) A provision for the ultimate obligation by the condominium association to pay all water and sewer charges for all individual units within the project, and any common element charges in accordance with the rules and regulations of the Town.

(2) A clear definition and description of the rights, duties and liabilities of unit owners with respect to the general common elements and the limited common elements, and easements.

(3) In the event the condominium or townhouse units are expandable, appropriate provisions relating to the phasing of the project, along with the identification, by legal description, of the property onto which the units and/or project will be expanded, identification of the total maximum number of units and/or maximum floor area which could be constructed within the entire expanded project, and identification of the interest each unit owner will have, by percentages, after the expansion.

(4) A provision that, in the event, any unit is owned by more than one (1) person or by a partnership, joint venture, corporation or other such entity, the owners thereof shall designate in writing to the homeowner's association, the name and address of the agent of the owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed, and that, upon failure to so designate an agent, the association shall be deemed to be the agent for receipt of notices to such owners.

(5) Where there is additional square footage permitted on the project or units according to the applicable zone district provisions, a provision for the allocation of such square footage between and among the units.

(e) Submittal review and approval of plats, declarations and party wall agreements for townhouses or condominiums.

(1) All plats, declarations and party wall agreements shall be filed with the Community Development Department for initial review by the Building Department and Town Attorney as to compliance of the document with the Town Code and other applicable law.

(2) All fees as established by resolution of the Town Council must be paid before the Town will review the submittals.

(3) The Town Manager or designee shall forward the documents to the Town Attorney for review. If the Town Attorney finds that the documents comply with the Town Code and other applicable law, the Town Attorney shall forward to the Town Manager or designee, in writing, a recommendation of approval of such documents. If the documents do not comply with the Town Code and other applicable law, the Town Attorney will notify the applicant with a copy to the Town Manager or designee, of modifications to the documents that are necessary to bring them into compliance. The applicant may then resubmit the amended documents to the Community Development Department after the modifications have been made.

(4) If the Town Attorney determines that the documents should be approved except for minor revisions, the Town Attorney may conditionally approve them and notify the applicant with a copy to the Town Manager or designee of the minor revisions. The applicant may then submit the revised documents to the Community Development Department after the revisions have been made.

(f) Town Manager or designee approval.

(1) Upon receipt of a recommendation by the Town Attorney, the Town Manager or designee will review the subject plat and declaration or party wall agreement and either approve the same and execute the plat, or disapprove the plat if the materials fail to satisfy Code requirements. The Town Manager or designee may waive minor differences, considered to be negligible, under the same criteria in as set forth in Subsection 17-3-40(e) above relating to the Town Attorney's recommendation.

(2) Upon obtaining all necessary signatures on the final plat and declaration or party wall agreement, the owner or his or her agent shall immediately cause the plat and declaration or party wall agreement to be recorded with the County Clerk and Recorder, and shall forthwith thereafter return one (1) full set of mylars, two (2) full sets of blue line prints and one (1) complete copy of the declaration or party wall agreement to the Town, bearing the recording information thereon.

(g) Waivers of setbacks. If there are minor differences in dimensions between the setback distances of buildings or structures from lot lines or distances between buildings and those required by the Town Code, the Town Manager or designee may waive the requirements if in his

or her discretion deems the differences to be negligible and the applicant has otherwise complied with the intent of the Code.

(h) Consolidation of residential units. Properties with condominiums and townhouses approved by the Town may be consolidated by following the same process as creating condominiums and townhouses, subject to the Town Manager's or designee's determination that the following requirements are met:

- (1) Consolidation shall not result in any fewer residential units or reduction in square footages for any existing unit.
- (2) Consolidation is reflected in a vacation plat approved in the same manner as the plat creating the condominium or townhouse on the subject property.
- (3) Consolidation does not reduce the number of parking spaces required by any land use approval or the Code.
- (4) Tap fees previously paid are not reimbursable if the number of taps are reduced.

Section 6: Sec. 17-3-50 Exemptions. A new Sec. 17-3-50, Exemptions shall be added to read as follows:

Sec. 17-3-50 Exemptions from subdivision regulations

(a) The following applications shall be exempt from these subdivision regulations:

(1) Lot-line adjustments. Adjustment of lot lines between previously platted contiguous lots necessary to correct a survey or engineering error, to allow a boundary change between adjacent lots or parcels to relieve a hardship or practical necessity, or to allow transfer of land from a larger conforming lot to a smaller non-conforming lot in order to make both lots conforming. The lot lines between contiguous lots that are under single or separate ownership may be adjusted if the following conditions are met:

- a. The property owners whose lot lines are being adjusted shall provide written consent to the submittal of the subdivision exemption application.
- b. The lot line adjustment shall not create the opportunity for further subdivision of either lot to create another new lot for sale or development.
- c. Each of the adjusted lots shall meet the standards of this Chapter. If either of the lots or structures thereon are non-conforming prior to the proposed adjustment, no lot line adjustment shall be allowed that increases the non-conformity of the lot or structure.

(2) Lot combinations. Combinations or mergers of not more than two (2) conforming, previously platted contiguous lots, or two (2) or more non-conforming, previously platted contiguous lots within the same zone district. The lots may be combined or merged if the following conditions are met:

- a. The lots to be consolidated or merged shall be under single ownership.

b. The resulting combined or merged lot shall meet the standards of this Chapter and other applicable ordinances.

(3) Vacations. A vacation of a building site, lot, parcel or tract line.

(4) Re-plats. A re-platting creating eight (8) or less parcels from vacant lots; and a re-platting creating four (4) or less parcels from vacant tracts, if the following conditions are met:

a. All of the new re-platted parcels (lots) meet all requirements for the zoning district in which the land is located;

b. All of the new re-platted parcels (lots) will have access to an existing dedicated public street;

c. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat; and

d. No subdivision improvements agreement need be prepared or entered into between the applicant and the Town unless the Town Manager or designee determines such an agreement is necessary.

(b) Subdivision exemption standards. The Town Manager or designee shall approve an application for a subdivision exemption if it complies with these standards:

(1) Compliance with Code. The exemption shall comply with the zone district standards for that specific location and all applicable requirements of the Code.

(2) Exemptions shall not create or increase a non-conforming use, structure or lot.

(3) No increase in total allowable floor area. The exemption shall not increase the total allowable floor area for the lot or lots greater than the total floor area allowed without the exemption. Any change in allowable floor area permitted by the exemption within these floor area totals shall be consistent with the adjacent properties.

(4) No subdivision agreement need be prepared or entered into between the applicant and the Town unless the Town Manager or designee determines such an agreement is necessary.

(5) Limitations. A maximum of one (1) subdivision exemption application may be submitted and approved for a specific lot, parcel or subdivision; multiple subdivision exemption applications or successive individual subdivision exemption applications for a specific lot, parcel or subdivision are not permitted.

(c) Application contents. An application for a subdivision exemption shall contain the following minimum contents:

(1) The required application fee.

(2) A narrative statement explaining how the subdivision exemption complies with the zoning district standards and the subdivision exemption standards.

(3) A legal description of the property, proof of ownership acceptable to the Town and properly notarized letter signed by the property owner(s) along with the designation, if any, of the owner representative's name, address and telephone number.

(4) An improvement location certificate (ILC) survey drawn to scale, dimensioned and wet stamped by a Colorado licensed surveyor.

(5) Floor plans of any existing or proposed structures drawn to scale and dimensioned sufficient to allow the Building Official to calculate the Floor Area Ratio.

(6) A proposed exemption plat drawn to scale and dimensioned in general accordance with Appendix I Required Wording on Minor Subdivision Final Plat with a certificate showing approval of the plat by the Town Manager or designee.

(7) Any other information, documents or certificates reasonably deemed necessary by the Town Manager or designee.

(d) Application, review and approval procedure. Subdivision exemptions shall be approved in accordance with the following procedures:

(1) Pre-application conference. A pre-application conference with Community Development staff is recommended, but optional, prior to submission of the application.

(2) Submission of application. Applicant shall submit an application that contains those materials specified above in Sec. 17-3-50(c) to the Community Development Department.

(3) Review and approval. The Community Development Department and Town Attorney shall review the application and all relevant materials to determine whether the application complies with the review conditions and standards of this Section and the Town Manager or designee shall issue a written approval, approval with conditions or denial of the application based on compliance with the requirements of this Sec. 17-5-50.

(4) Recording of exemption plat. Within ninety (90) days from the date of the subdivision exemption approval, applicant shall submit two (2) mylar copies of the exemption plat, suitable for recording, to the Community Development Department. The Town Manager or designee shall review the exemption plat to ensure that it complies with the terms and conditions of the approval and then shall obtain signatures for all of the certificates on the plat. The signed exemption plat shall be recorded, at applicant's expense, in the records of the Gunnison County Clerk and Recorder.

Section 7. 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 8. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code shall remain valid and in full force and effect. Any provision of the Code that is in conflict with this ordinance is hereby repealed as of the effective date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 18th DAY OF MARCH, 2019.

ADOPTED AS AMENDED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS ____ DAY OF _____, 2019.

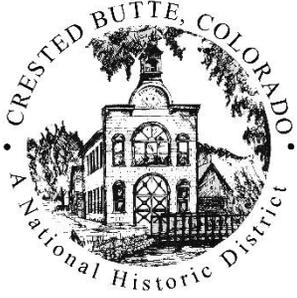
TOWN OF CRESTED BUTTE

James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Subject: **Ordinances 14-17, Series 2019 Duplex Sales**

Date: April 1, 2019

Background:

On February 8, 2019, the Town in conjunction with the Gunnison Valley Regional Housing Authority conducted a lottery for the sale of 4 duplex units located in Block 79. These units are slated to be finished and ready for the new buyers on July 1, 2019.

Ordinances 14-17 Series 2019 authorize the sale of the duplexes for a sales price of \$275,000. The following are the winners of each of the 4 units:

1. Lot 6, Block 79 Unit A, 914 Butte Avenue / Joseph Carpenter and Kathrine Cooke
2. Lot 6, Block 79 Unit B, 916 Butte Avenue / Guy Ciulla
3. Lot 14, Block 79 Unit A, 909 Teocalli Avenue / Elizabeth Philbin
4. Lot 14, Block 79 Unit B, 911 Teocalli Avenue/ Chelsea Dalporto-McDowell

The Ordinances also authorizes the Town Manager and Town Attorney to execute all necessary documents for the sale.

Recommendation:

A Council person make a separate motion followed by a second to approve Ordinances 14-17, Series 2019.

ORDINANCE NO. 14

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 6, BLOCK 79, UNIT A, 914 BUTTE AVENUE, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO JOSEPH CARPENTER AND KATHERINE COOKE FOR THE SALE PRICE OF \$275,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Joseph Carpenter and Katherine Cooke for \$275,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$275,000.00 plus customary closing costs and fees, the real property legally described as Lot 6, Block 79, Unit A, 914 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Joseph Carpenter and Katherine Cooke, for the use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. Appropriation of Funds. The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 15

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 6, BLOCK 79, UNIT B, 916 BUTTE AVENUE, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO GUY CIULLA FOR THE SALE PRICE OF \$275,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Guy Ciulla for \$275,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$275,000.00 plus customary closing costs and fees, the real property legally described as Lot 6, Block 79, Unit B, 916 Butte Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Guy Ciulla, for the use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. Appropriation of Funds. The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 16

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 14, BLOCK 79, UNIT A, 909 TEOCALLI AVENUE PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO ELIZABETH PHILBIN FOR THE SALE PRICE OF \$275,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Elizabeth Philbin for \$275,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$275,000.00 plus customary closing costs and fees, the real property legally described as Lot 14, Block 79, Unit A, 909 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Elizabeth Philbin, for the use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. Appropriation of Funds. The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 17

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 14, BLOCK 79, UNIT B, 911 TEOCALLI AVENUE, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO CHELSEA DALPORTO-MCDOWELL FOR THE SALE PRICE OF \$275,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Chelsea Dalporto-McDowell for \$275,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$275,000.00 plus customary closing costs and fees, the real property legally described as Lot 14, Block 79, Unit B, 911 Teocalli Avenue, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Chelsea Dalporto-McDowell, for the use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. Appropriation of Funds. The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Subject: **Ordinances 18-20, Series 2019 Block 79 and 80 Lot Sales**

Date: April 1, 2019

Background:

On February 8, 2019, the Town in conjunction with the Gunnison Valley Regional Housing Authority conducted a lottery for the sale of 3 lots located in Blocks 79 and 80. These lots will close this year. Two applicants plan to break ground this year and one applicant plans to break ground in 2020.

Ordinances 18-20 Series 2019 authorizes the sale of the lots. The following are the winners and price of each of the lots:

1. Lot 5, Block 79 Brice and Karen Hoskin \$40,000
2. Lot 13, Block 79 Tara Hiteman \$30,000
3. Lot 2, Block 80 Benjamin Blackwood \$65,000

The Ordinances also authorizes the Town Manager and Town Attorney to execute all necessary documents for the sale.

Recommendation:

A Council person make a separate motion for each ordinance followed by a second to set Ordinance 18-20, Series 2019 to a public hearing on April 15, 2019.

ORDINANCE NO. 18

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 5, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO BRICE AND KAREN HOSKIN FOR THE SALE PRICE OF \$40,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Brice and Karen Hoskin for \$40,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. **Authorization to Sell Town-owned Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$40,000.00 plus customary closing costs and fees, the real property legally described as Lot 5, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Brice and Karen Hoskin, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. **Appropriation of Funds.** The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. **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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 19

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 13, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO TARA HITEMAN FOR THE SALE PRICE OF \$30,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Tara Hiteman for \$30,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$30,000.00 plus customary closing costs and fees, the real property legally described as Lot 13, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Tara Hiteman, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. Appropriation of Funds. The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 20

SERIES 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 2, BLOCK 80, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO BENJAMIN BLACKWOOD FOR THE SALE PRICE OF \$65,000.00

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 the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town Council has directed the Town staff to sell the above-described property to Benjamin Blackwood for \$65,000.00; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

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

Section 1. Authorization to Sell Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$65,000.00 plus customary closing costs and fees, the real property legally described as Lot 2, Block 80, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Benjamin Blackwood, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

Section 2. Appropriation of Funds. The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

Section 3. 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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director
Noel Durant, Executive Director

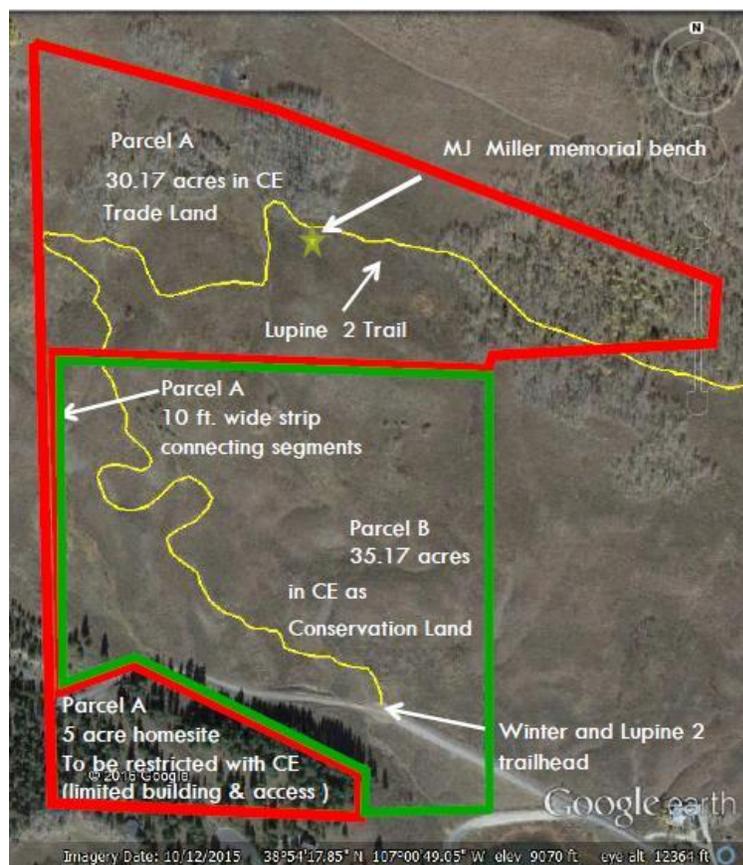
Subject: Purchase Agreement Kikel Parcel A

Date: April 1, 2019

Background:

The Kikel property, also known as the Slate River Trailhead, is located just northeast of Nicholson Lake. The 70-acre parcel was purchased by the Crested Butte Land Trust (Land Trust) in May 2007 for \$2,684,378 with help from the Town of Crested Butte (Town), Great Outdoors Colorado, Crested Butte Mountain Resort, 1% for Open Space, and the Gunnison County Land Preservation Board. With these funding sources there was still a funding gap to close the project, so the Land Trust took a loan to finance the remainder needed and created the ownership structure below to repay its debt for the property.

The property includes two parcels, each encumbered by a conservation easement (parcels A and B). Parcel A is a 35-acre trade land, owned by the land trust for the purpose of resale, the proceeds of which will benefit further open space conservation. Parcel A is encumbered by a 30-acre Conservation Easement (CE) on the northern “flag” of the property held by the Town and includes a 5-acre homesite adjacent to Alpine Meadows subdivision that is encumbered by a deed to restrict development that limits what can be built on the property, also held by the Town. Parcel B is a 35-acre conservation land owned by the Land Trust which is encumbered by a conservation easement held by the Town which covers all 35 acres and prohibits development.



Today, it is the starting point for endless summer and winter adventures. Nordic skiers and snowshoers can reach pristine wilderness areas via the trailhead while taking in breathtaking views of Paradise Divide and the surrounding peaks. In the summer and fall, the Lupine Trail, which meanders

across the parcel, hosts thousands of hikers and bikers. The property also continues to provide grounds for historic grazing lands for the Allen Family cattle operation.

About the Purchase:

If the Council elects to proceed with the purchase of Kikel Parcel A, the Town will execute a purchase agreement with the Land Trust for an amount of \$530,000. Funding for the purchase will come from the Town's 1.5% Real Estate Transfer Tax dedicated for open space. The Town will take ownership of the property and the existing CE which encumbers the 30 acre portion of Parcel A will be assigned from the Town to the Land Trust. The remaining 5 acres will have a new CE deeded on it to limit the potential development into the future. While the Town has no intentions at this time to develop a home as is currently permitted, the Town will retain the ability in the future to potentially develop a recreation monitoring presence. Staff is encouraging the Council and the community to land bank this portion of the site for the future to ensure future open space management needs have the opportunity to use the site as maybe needed. The new CE will ensure the land stays protected while allowing options for a potential human presence management into the future.

The new CE as well as the assignment of the existing CE from the Town to the Crested Butte Land Trust will must occur via an Ordinance. This Ordinance will come before the Council in June.

Recommendation:

A Council person followed by a second make a motion to approve a purchase agreement for the Kikel Parcel A from the Crested Butte Land Trust for a purchase price of \$530,000.

CONTRACT FOR SALE OF REAL ESTATE

(Kikel Parcel A - CBLT/Town of Crested Butte – Gunnison County, CO)

THIS CONTRACT FOR SALE OF REAL ESTATE (the “**Agreement**”) is entered into this ___ day of April, 2019, by and between **CRESTED BUTTE LAND TRUST**, a Colorado nonprofit corporation, having an address at 308 Third Street, P.O. Box 2224, Crested Butte, Colorado 81224 (the “**Seller**”) and the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality, having an address at 507 Maroon Street, P.O. Box 39, Crested Butte, Colorado 81224 (the “**Purchaser**”). The Seller and the Purchaser are collectively referred to as the “**Parties**”. The following exhibits are attached to and made a part of this Agreement:

- Exhibit A - Description of Property
- Exhibit B - Affidavit of Non-foreign Status

RECITALS:

- A. Seller is the owner of 35.17 acres, more or less, located in Gunnison County, Colorado, which is described in the attached **Exhibit A** (the “**Property**”) of which (1) approximately 30.17 acres is encumbered by the Deed of Conservation Easement granted by the Crested Butte Land Trust (Seller) to the Town of Crested Butte (Purchaser) and recorded December 19, 2008 as Reception No. 588208, Gunnison County, Colorado (the “**2008 Conservation Easement**”), and (2) approximately 5.0 acres lying south of the centerline of Slate River Road (the “**5-Acre Parcel**”) is encumbered by a Covenant to Limit Development entered into between the Crested Butte Land Trust and the Town of Crested Butte, recorded December 19, 2008 as Reception No. 588210, Gunnison County, Colorado (the “**Covenant to Limit Development**”).
- B. Purchaser wishes to acquire the Property for the purpose of maintaining the Property as open and scenic space.
- C. The Parties acknowledge that it is an express condition of this Agreement that, in order to ensure that the Property will forever remain in its open and scenic condition, at closing (1) Seller will sell the Property to Purchaser; (2) Purchaser will assign its interest in the 2008 Conservation Easement to the Seller; (3) the Parties will release the Covenant to Limit Development; and (4) Purchaser will grant a new deed of conservation easement to the Seller encumbering the 5-Acre Tract (the “**2019 Conservation Easement**”).

AGREEMENT:

The Parties agree as follows:

1. **PROPERTY.** Seller agrees to sell and Purchaser agrees to buy on the terms and conditions set forth in this Agreement, the Property, including, without limitation, (i) any and all buildings and improvements situated thereon, (ii) any and all sand, gravel, soil and surface minerals owned by Seller, (iii) any and all appurtenant or associated wells, springs and water rights and associated equipment, facilities and rights, and (iv) all other incidents and appurtenances belong thereto. The Property is being sold in “as is” condition, subject to all covenants, easements, restrictions and reservations of record and any matters that might be revealed by a current, complete and accurate survey and inspection of the Property.
2. **PURCHASE PRICE.** The purchase price for the Property shall be Five Hundred Thirty Thousand and no/100s Dollars (\$530,000.00) (the “**Purchase Price**”). At closing the Purchase Price shall be paid by delivery of funds to the Title Company by wire transfer of funds from or on behalf of the Purchaser.
3. **CLOSING DATE; TITLE COMPANY.** The title and escrow company for this transaction is Gunnison County Abstract Company, 504 North Main Street, Gunnison, Colorado 81230 (the “**Title Company**”). The closing of the transaction contemplated hereunder (the “**Closing**”) shall be held at a location mutually agreed upon by Purchaser, Seller, and the Title Company, on or before August 9, 2019 (the “**Closing Date**”).
4. **SATISFACTORY INSPECTION AND REVIEW.** The Seller and Purchaser expressly covenant and agree that Purchaser’s satisfaction upon the review and inspection provided for herein is a specific condition precedent to the obligation of Purchaser to purchase the Property. Purchaser shall have a period in which to review the documents and to make the inspections described below. The period of inspection (the “**Inspection Period**”), unless extended as provided herein, shall terminate on the earlier of: (i) Receipt by Seller of notice from Purchaser that the Property is suitable for purchase; or (ii) July 19, 2019.
 - 4.1. Title Commitment. Within 14 days after both parties have signed this Agreement, Seller will obtain and provide to Purchaser a title commitment naming Purchaser as the insured in the amount of the Purchase Price, issued by the Title Company together with legible copies of the deed or deeds by which the Seller holds title to the Property, legible copies of any instruments listed in the legal description for the Property, and legible copies of all exceptions to title, pursuant to which the Title Company shall issue to Purchaser an ALTA owner’s policy of title insurance, including “gap” and mechanic’s lien coverage, insuring title and access to the Property as of the date of Closing in the amount of the Purchase Price (the “**Title Commitment**”). Pursuant to the Title Commitment, upon Closing the Title Company shall issue to Purchaser a standard coverage owner’s

policy of title insurance, insuring title to the Property as of the date of Closing in the amount of the Purchase Price.

- 4.2. **Due Diligence: Inspection; Right of Entry.** Purchaser shall have the right to enter upon the Property at reasonable times for physical inspection and other reasonable purposes related to the transaction contemplated by this Agreement. Purchaser shall be solely liable for any and all claims, liens, damages, losses, and causes of action which may be asserted by Purchaser or Purchaser's employees, agents, or any third party who enters upon the Property or conducts tests related to the Property at the request of or on behalf of Purchaser or its agents, provided that such liability shall not apply to claims arising out of the negligent, willful or wanton conduct of Seller.

5. **ELECTION AT THE END OF THE INSPECTION PERIOD.** During the Inspection Period, Purchaser may make physical and other inspections, and/or other evaluations required to satisfy itself as to the acceptability and suitability of the Property for purchase. Should Purchaser not be satisfied that the Property is acceptable or suitable, Purchaser shall notify Seller in writing on or before the expiration of the Inspection Period of its dissatisfaction, at which time this Agreement shall be considered null and void and of no further force and effect; provided, however, if the objections of Purchaser are to title or other defects which Seller can reasonably cure within a reasonable time following the receipt of notice from Purchaser, Seller shall have the opportunity to cure such defects to the reasonable satisfaction of Purchaser before the end of the Inspection Period. Purchaser shall, at any time, have the right to waive the conditions precedent to its performance under this Agreement before the end of the Inspection Period and if Purchaser elects to waive the conditions precedent to its performance and to terminate the Inspection Period, this Agreement will remain in full force and effect. Failure of Purchaser to notify Seller of its dissatisfaction prior to the expiration of the Inspection Period shall be deemed a waiver of this condition precedent and acceptance of the Property as suitable for purchase, as required above.

6. **DOCUMENTS.** In addition to execution of customary closing documents required by the Title Company, the following documents shall be executed and delivered to Closing in the form agreed upon by the Parties during the Inspection Period:
 - 6.1. **Special Warranty Deed** from the Seller to the Purchaser.
 - 6.2. **Assignment of 2008 Deed of Conservation Easement** from the Purchaser to the Seller.
 - 6.3. **Termination of the Covenant to Limit Development** between the Seller and the Purchaser.

- 6.4. **2019 Deed of Conservation Easement** from the Purchaser to the Seller.
7. **TAXES.** All taxes and assessments for the Property, if any, shall be prorated as of the date of Closing based on the most recent ascertainable tax bill. Taxes for all years prior to the Closing shall be paid by Seller prior to Closing.
8. **COSTS AND FEES.** Closing fees, escrow fees, per page recording costs, documentary fees (if any), shall be paid by 50% by the Purchaser and 50% by the Seller. The premium for the title insurance policy and any endorsements described above shall be paid 50% by the Purchaser and 50% by the Seller.
9. **DAMAGES; DEFAULT.**
- 9.1. Seller's Remedies. In the event that all of the conditions to this Agreement for the benefit of Purchaser shall have been satisfied, or waived by Purchaser and: (a) Seller shall have fully performed or tendered performance of its obligations under this Agreement, and (b) Purchaser shall be unable or shall fail to perform its obligations under this Agreement, then Seller may elect, as Seller's sole remedy, to terminate this Agreement and be released from its obligations hereunder.
- 9.2. Purchaser's Remedies. In the event that all of the conditions to this Agreement for the benefit of Seller shall have been satisfied, or waived by Seller and: (a) Purchaser shall have fully performed or tendered performance of its obligations under this Agreement, and (b) Seller shall be unable or shall fail to perform its obligations under this Agreement, then Purchaser may elect, as Purchaser's sole remedy, to terminate this Agreement and be released from its obligations hereunder.
10. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered upon sending of such notice. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier or email, or sent by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:
- If to Purchaser:
- at the address shown above and via e-mail to noel@cblandtrust.org and allan@acbpc.com
- If to Seller:
- at the address shown above and via e-mail to dmacdonald@createdbutte-co.gov, myerman@crestedbutte-co.gov, and john@sullivangreenseavy.com
11. **MISCELLANEOUS.**

- 11.1. Broker's Commission. Seller and Purchaser each represent to the other that they have not contracted with any broker or finder with regard to this transaction. Each party agrees to be solely responsible as to its conduct for any and all liability, claims, demands, damages and costs of any kind arising out of or in connection with any broker's or finder's fee, commission or charges claimed to be due any person in connection with such person's conduct respecting this transaction except as set forth herein.
- 11.2. Certificate. At or prior to Closing, Seller shall furnish to Purchaser a duly executed Certificate of Non-Foreign Status in the form attached to this Agreement as **Exhibit "B"**. Seller hereby declares and represents to Purchaser that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate.
- 11.3. Assigns. Purchaser may not assign this contract and its rights as Purchaser hereunder without the written consent of Seller, which may be withheld in Seller's absolute discretion. Such assignment shall not relieve Purchaser of its obligations under this Agreement in the absence of express release from Seller.
- 11.4. Binding Effect. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of Seller and its successors and assigns.
- 11.5. Exhibits. The exhibits hereto constitute an integral part of this Agreement and are hereby incorporated herein.
- 11.6. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.
- 11.7. Severability. If any provision of this Agreement shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 11.8. Entire Agreement. This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.
- 11.9. Authority. Each party to this Agreement warrants to the other that the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.
- 11.10. Merger. The obligations, covenants, representations, warranties and remedies set forth in this Agreement shall not merge with transfer of title but shall survive the closing.
- 11.11. Further Actions. Each party shall execute and deliver or cause to be

executed and delivered any and all instruments reasonably required to convey the Property to Purchaser and to vest in each party all rights, interests and benefits intended to be conferred by this Agreement.

- 11.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute shall be in Gunnison County, Colorado.
- 11.13. Offer. When signed and delivered by the Seller to the Purchaser, this Agreement will constitute an offer to the Purchaser that can be accepted only by the Purchaser signing and delivering to Seller an executed original of this Agreement on or before (but not after) April 9, 2019. Seller may withdraw such offer in writing at any time prior to its acceptance.
- 11.14. Labor and Material. Seller shall deliver to Purchaser at closing an affidavit, in a form acceptable to the Title Company, signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person or persons furnishing the labor or materials that the costs thereof have been paid.
- 11.15. 1099 Reporting. The Title Company is designated as the party responsible for filing a Form 1099 with the Internal Revenue Service promptly after Closing, to the extent required by the Internal Revenue Code and Treasury Regulations.
- 11.16. Certificate. Crested Butte Land Trust is an organization described in Section 501(c)(3) of the Internal Revenue Code and as such it is required to file certain reports pertaining to the purchase or sale of the Property with the Internal Revenue Service. Purchaser authorizes the Title Company to release to Seller any tax identification or transaction information as is requested by Seller for such reporting.
12. **SATURDAYS, SUNDAYS, HOLIDAYS**. If the final date of any time period of limitation set out in any provision of this agreement falls on a Saturday, Sunday or a legal holiday under the laws of the state of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.
13. **EFFECTIVE DATE**. The Effective Date of this Agreement shall be the last date signed by either party.
14. **AS-IS, WHERE-IS**.
- 14.1. Purchaser acknowledges and agrees that it has been given the full opportunity to inspect the Property and accordingly that it is relying solely on its own investigation of the Property (including without limitation the status of water and minerals, and the environmental condition of the Property and improvements). Seller is not liable or bound in any manner by

any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person, except to the extent, if any, specially included in this Agreement.

- 14.2. Except for standard warranties of Seller's title to the Property, Seller has not made, does not make, and has not authorized anyone else to make, and specifically disclaims any representations, warranties, promises, agreements or guaranties of any kind, as to: (a) the value, nature, quality, condition or environmental condition of the Property, which includes, without limitation the water, soil and geology of the Property; the existence or non-existence of access to or from the Property or any portion thereof; (b) the location of the Property or any portion thereof within any flood plain, flood prone area or watershed; (c) the availability of water, sewer, electrical, gas, telephone, cable or other utility services; (d) the number of acres in the Property; (e) rights or claims of easements not shown in the public records and rights or claims of third-parties in possession; (f) acreage, boundary discrepancies, conflicts in boundary areas, shortage in area, location of fences and whether they are on boundaries or not, encroachments and rights or claims which an accurate survey would disclose; (g) the existence or applicability of or compliance with any land use, zoning, subdivision or building codes, laws and regulations; (h) the present or future physical condition or suitability of the Property, including without limitation, the environmental condition or status of the Property; (i) any other matter or thing relating to the Property or this Agreement. Purchaser expressly acknowledges that (a) no such representations have been made by Seller (or on Seller's behalf), and in entering into this Agreement, Purchaser does not rely on any representations other than those set forth herein; (b) Purchaser has inspected the Property, or caused an inspection of the same to be made on Purchaser's behalf, and is thoroughly familiar and fully satisfied therewith, and is relying solely on Purchaser's investigation of the Property. Purchaser shall take title to and possession of the Property in "as is" condition, as of the date thereof, subject to wear and tear until Closing.

15. **SELLER'S AND PURCHASER'S CONTINGENCIES.** Specific contingencies to Seller's and Purchaser's obligations to perform hereunder are (a) the Parties agreeing upon the terms of the 2019 Conservation Easement, each in its sole discretion, prior to the end of the Inspection Period; and (b) the State Board of the Great Outdoors Colorado Trust Fund not objecting to this transaction. If either contingency is not met or is not waived by the Parties, then this Contract shall be null and void
16. **PURCHASER'S CONTINGENCIES.** Specific contingencies to Purchaser's obligation to perform hereunder are: (a) Purchaser being satisfied, in its sole discretion, prior to the end of the Inspection Period that the Property is acceptable and suitable for purchase; and (b) the approval by the Town of Crested Butte's

Council of the transaction contemplated prior to the end of the Inspection Period.
If either contingency is not met or is not waived by the Purchaser, then this
Contract shall be null and void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
date first above written.

PURCHASER

TOWN OF CRESTED BUTTE, a Colorado home rule municipality

By: _____(signature)

James A. Schmidt

Its: Mayor

Date: _____

SELLER

CRESTED BUTTE LAND TRUST, a Colorado nonprofit corporation

By: _____

Its: _____

Date: _____

EXHIBIT "A"**Description of Property**

Parcel A, according to the Plat recorded September 25, 2008 bearing Reception No. 586761, County of Gunnison, State of Colorado



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Thru: Dara MacDonald, Town Manager

Subject: **Bywater 2nd Duplex Purchase Contract- Block 76, Lot 1**

Date: April 1, 2019

Background:

As part of the Bywater contract for the construction of affordable housing units on Block 76, the Town has the option to purchase two additional units if the units in Phase 1 does not sell out after 9 months. The total commitment to the contract is an additional \$671,000. Since the possible purchase will not occur until next year, the contract is subject to the Council's appropriation to purchase the unit in 2020 budget. The Council will have an update on whether this scenario will occur during the adoption of the 2020 budget.

Recommendation:

A Council person to make a motion followed by a second to approve the purchase contract for a duplex located on Lot 1, Block 76 for a sales price of \$671,000 and authorizing the Town Manger to execute the contract and any subsequent changes to be approved by the Town Attorney.

This form is approved for use by brokers in Colorado by the Colorado Real Estate Commission. A broker's use of this form must be limited to inserting transaction-specific information within the form. The broker may also advise the parties as to effects of the form, and the broker's use of the form must be appropriate for the transaction and the circumstances in which it is used. The broker must advise the parties that the form has important legal consequences and that the parties should consult legal counsel before signing the form.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS1-6-15) (Mandatory 1-16)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

Date: March, 2019

AGREEMENT

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, Town of Crested Butte, Colorado, will take title to the Property described below as **Joint Tenants** **Tenants In Common** **Other In severalty.**

2.2. No Assignability. This Contract **Is Not** assignable by Buyer unless otherwise specified in **Additional Provisions.**

2.3. Seller. Seller, Bywater, LLC, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Gunnison, Colorado:

Block 76, Lot 6, Paradise Park Subdivision, Town of Crested Butte (Lot); Seller has received title to the Property from the Town and Seller has agreed in a separate Contract to Buy, Sell and Develop Deed Restricted Housing in the Town of Crested Butte's Paradise Park Subdivision (Development Contract) to construct a duplex, a duplex, and related improvements (collectively, Improvements) on the Lot pursuant to the Development Contract, as amended from time to time. The Property to be conveyed back to Buyer at Closing pursuant to this Contract shall include the Lot and the Improvements.

known as No. 802 & 804 Gothic
Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property). Buyer acknowledges and agrees that the Property is subject to the Master Deed Restriction upon Block 76 of the Paradise Park Subdivision recorded February 22, 2019, at Reception No. 658805 in the records of the Gunnison County Clerk and Recorder. At the Closing (as hereinafter defined), the Buyer agrees to execute an acknowledgment of such restriction, a copy of which is attached hereto and incorporated herein as Exhibit A.

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Inclusions – Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions**: lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers (including N/A remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under **Due Diligence Documents**): **None** **Solar Panels** **Water Softeners** **Security Systems** **Satellite Systems** (including satellite dishes). If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Inclusions – Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

47 **2.5.3. Personal Property – Conveyance.** Any personal property must be conveyed at Closing by Seller free and
 48 clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance of all
 49 personal property will be by bill of sale or other applicable legal instrument.

50 **2.5.4. Other Inclusions.** The following items, whether fixtures or personal property, are also included in the
 51 Purchase Price: N/A

52
 53
 54 **2.5.5. Parking and Storage Facilities.** *Any and all rights that Seller may have in any parking and storage facilities*
 55 *appurtenant to the ownership of the Property shall be included in the conveyance of the Property to Buyer.* Use Only
 56 **Ownership** of the following parking facilities:

57 _____; and Use Only **Ownership** of the following storage facilities: _____.

58 **2.6. Exclusions.** The following items are excluded (Exclusions):

59 N/A

60
 61 **2.7. Water Rights, Well Rights, Water and Sewer Taps.** *Intentionally deleted.*

62
 63 **3. DATES AND DEADLINES.** *All dates as outlined below will begin 10 months from CO of the last building in Phase 1 of the*
 64 *executed Bywater Development Contract.*

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	N/A
		Title	
2	§ 8.1	Record Title Deadline	21 days after
3	§ 8.2	Record Title Objection Deadline	24 days after
4	§ 8.3	Off-Record Title Deadline	21 days after
5	§ 8.3	Off-Record Title Objection Deadline	24 days after
6	§ 8.4	Title Resolution Deadline	28 days after
7	§ 8.6	Right of First Refusal Deadline	N/A
		Owners' Association	
8	§ 7.3	Association Documents Deadline	21 days after
9	§ 7.4	Association Documents Objection Deadline	24 days after
		Seller's Property Disclosure	
10	§ 10.1	Seller's Property Disclosure Deadline	N/A
		Loan and Credit	
11	§ 5.1	Loan Application Deadline	N/A
12	§ 5.2	Loan Objection Deadline	N/A
13	§ 5.3	Buyer's Credit Information Deadline	N/A
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
15	§ 5.4	Existing Loan Documents Deadline	N/A
16	§ 5.4	Existing Loan Documents Objection Deadline	N/A
17	§ 5.4	Loan Transfer Approval Deadline	N/A
18	§ 4.7	Seller or Private Financing Deadline	N/A
		Appraisal	
19	§ 6.2	Appraisal Deadline	N/A
20	§ 6.2	Appraisal Objection Deadline	N/A
21	§ 6.2	Appraisal Resolution Deadline	N/A
		Survey	
22	§ 9.1	New ILC or New Survey Deadline	N/A
23	§ 9.3	New ILC or New Survey Objection Deadline	N/A
24	§ 9.4	New ILC or New Survey Resolution Deadline	N/A
		Inspection and Due Diligence	
25	§ 10.3	Inspection Objection Deadline	21 days after
26	§ 10.3	Inspection Resolution Deadline	28 days after
27	§ 10.5	Property Insurance Objection Deadline	21 days after
28	§ 10.6	Due Diligence Documents Delivery Deadline	21 days after

Item No.	Reference	Event	Date or Deadline
29	§ 10.6	Due Diligence Documents Objection Deadline	24 days after
30	§ 10.6	Due Diligence Documents Resolution Deadline	28 days after
31	§ 10.7	Conditional Sale Deadline	N/A
		Closing and Possession	
32	§ 12.3	Closing Date	See §30(b)
33	§ 17	Possession Date	Closing
34	§ 17	Possession Time	Closing
35	§ 28	Acceptance Deadline Date	30 days after
36	§ 28	Acceptance Deadline Time	4:00 p.m.

65 **Note:** If FHA or VA loan boxes are checked in § 4.5.3 (Loan Limitations), the **Appraisal** deadlines do **Not** apply to **FHA** insured
66 or **VA** guaranteed loans.

67 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. Any box, blank
68 or line in this Contract left blank or completed with the abbreviation “N/A”, or the word “Deleted” means such provision, including
69 any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted. If no box is
70 checked in a provision that contains a selection of “None”, such provision means that “None” applies.

71 The abbreviation “MEC” (mutual execution of this Contract) means the date upon which both parties have signed this Contract. The
72 abbreviation “CO” (Certificate of Occupancy) means the date when the Town of Crested Butte issues a Certificate of Occupancy
73 for the Property and the completed interior finish and improvements within the Property.

74 **4. PURCHASE PRICE AND TERMS.** The Purchase Price for the Property is \$671,000. Within 5 days of MEC, Buyer shall
75 deposit with Seller the amount of \$ 0 as Earnest Money. No interest shall accrue on the Earnest Money for the benefit of
76 Buyer. In addition to the Earnest Money, Buyer shall pay the balance of the Purchase Price of \$671,000 at the Closing. Except as
77 otherwise provided in this Contract, or the Development Contract, the Earnest Money shall be refundable. Buyer’s obligation to
78 close on this Contract is subject to

79 **4.1. Price and Terms.** Intentionally deleted.

80 **4.2. Seller Concession.** Intentionally deleted.

81 **4.3. Earnest Money.** Intentionally deleted.

82 **4.4. Form of Funds; Time of Payment; Available Funds.**

83 **4.4.1. Good Funds.** The Purchase Price less the Earnest Money paid to Seller in accordance with this Contract
84 shall be payable by Buyer to Seller in Cash at Closing. All amounts payable by the parties at Closing, including any loan proceeds,
85 Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer
86 funds, certified check, savings and loan teller’s check and cashier’s check (Good Funds).

87 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be
88 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing
89 **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract,
90 **Does** **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at
91 Closing in § 4.1.

92 **4.5. New Loan.** Intentionally deleted.

93 **4.6. Assumption.** Intentionally deleted.

94 **4.7. Seller or Private Financing.** Intentionally deleted.

95

TRANSACTION PROVISIONS

96
97 **5. FINANCING CONDITIONS AND OBLIGATIONS.** *Intentionally deleted.*

98 **6. APPRAISAL PROVISIONS.** *Intentionally deleted.*

99 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common Interest Community
100 and subject to such declaration.

101 **7.1. Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON
102 INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF
103 THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE
104 COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE
105 ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL
106 OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS
107 OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD
108 PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS,
109 AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING
110 CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A
111 COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF
112 PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL
113 OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE
114 DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE
115 ASSOCIATION.

116 **7.2. Owners' Association Documents.** Owners' Association Documents (Association Documents) consist of the following:

117 **7.2.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of organization, operating
118 agreements, rules and regulations, party wall agreements;

119 **7.2.2.** Minutes of most recent annual owners' meeting;

120 **7.2.3.** Minutes of any directors' or managers' meetings during the six-month period immediately preceding the date
121 of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.2.1, 7.2.2 and 7.2.3, collectively,
122 Governing Documents); and

123 **7.2.4.** The most recent financial documents which consist of: (1) annual and most recent balance sheet, (2) annual
124 and most recent income and expenditures statement, (3) annual budget, (4) reserve study, and (5) notice of unpaid assessments, if
125 any (collectively, Financial Documents).

126 **7.3. Association Documents to Buyer.**

127 **7.3.1. Seller to Provide Association Documents.** Seller is obligated to provide to Buyer the Association
128 Documents, at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the
129 Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon
130 Buyer's receipt of the Association Documents, regardless of who provides such documents.

131 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer has the Right to
132 Terminate under § 25.1, on or before **Association Documents Objection Deadline**, based on any unsatisfactory provision in any of
133 the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after
134 **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to
135 Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive
136 the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing**
137 **Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to
138 Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right
139 to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

140 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

141 **8.1. Evidence of Record Title.**

142 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance
143 company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish
144 to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price,
145 or if this box is checked, an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued
146 and delivered to Buyer as soon as practicable at or after Closing.

147 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance
148 company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to
149 Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

150 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

151 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not** contain Owner's
 152 Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions
 153 which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap
 154 period (period between the effective date and time of commitment to the date and time the deed is recorded), and (6) unpaid taxes,
 155 assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by
 156 **Buyer** **Seller** **One-Half by Buyer and One-Half by Seller** **Other** _____.
 157 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over
 158 any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below,
 159 among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under
 160 § 8.4 (Right to Object to Title, Resolution).

161 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations, covenants,
 162 conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such
 163 documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title
 164 Documents).

165 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**, copies of all Title
 166 Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county
 167 where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the
 168 party or parties obligated to pay for the owner's title insurance policy.

169 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any
 170 portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

171 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the
 172 Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's
 173 objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or
 174 any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title
 175 Documents are not received by Buyer, on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment
 176 that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to
 177 Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any
 178 required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents,
 179 or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection,
 180 pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.4 (Right to Object to
 181 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence
 182 of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline
 183 specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents
 184 as satisfactory.

185 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing
 186 surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation,
 187 governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal
 188 and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). Buyer has the right to inspect
 189 the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement,
 190 boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition
 191 (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 and § 13), in Buyer's sole subjective discretion,
 192 must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after
 193 the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such
 194 Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record
 195 Title), any title objection by Buyer and this Contract are governed by the provisions set forth in § 8.4 (Right to Object to Title,
 196 Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified
 197 above, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

198 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is not limited to those
 199 matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's sole subjective discretion. If
 200 Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

201 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice of
 202 Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or
 203 before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives
 204 Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and
 205 waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title
 206 Deadline or the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten days after receipt of the applicable
 207 documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title Resolution Deadline also will be
 208 automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

209 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on or before
210 the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

211 **8.5. Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION
212 INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE
213 PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK
214 FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE
215 CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH
216 INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE
217 SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY
218 TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING
219 FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND
220 RECORDER, OR THE COUNTY ASSESSOR.

221 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline**, based on any
222 unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

223 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a right to approve
224 this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the right
225 of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate. If the
226 right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect.
227 Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this
228 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

229 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed
230 carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property,
231 including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations,
232 unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property, and various
233 laws and governmental regulations concerning land use, development and environmental matters.

234 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**
235 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF**
236 **THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER**
237 **RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL**
238 **ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM**
239 **RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL,**
240 **GAS OR WATER.**

241 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY**
242 **TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A**
243 **MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND**
244 **RECORDER.**

245 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT**
246 **TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION**
247 **OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING**
248 **OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.**

249 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**
250 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING**
251 **DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL**
252 **AND GAS CONSERVATION COMMISSION.**

253 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section, and others, may be excepted, excluded from,
254 or not covered by the owner's title insurance policy.

255 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such matters as there are
256 strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and **Off-Record Title Objection Deadline**).

257 **9. NEW ILC, NEW SURVEY.** *Intentionally deleted.*
258

259 **DISCLOSURE, INSPECTION AND DUE DILIGENCE**

260 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, BUYER**
261 **DISCLOSURE AND SOURCE OF WATER.**

262 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer
263 the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller
264 to Seller's actual knowledge, current as of the date of this Contract.

265 **10.2. Disclosure of Latent Defects; Present Condition.** Seller must disclose to Buyer any latent defects actually known
 266 by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as otherwise provided in this Contract, Buyer
 267 acknowledges that Seller is conveying the Property to Buyer in an “As Is” condition, “Where Is” and “With All Faults.”

268 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections
 269 (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer’s expense. If (1) the physical
 270 condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing,
 271 HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property
 272 (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any
 273 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the
 274 Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer’s sole subjective discretion,
 275 Buyer may, on or before **Inspection Objection Deadline**:

276 **10.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

277 **10.3.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical condition that
 278 Buyer requires Seller to correct.

279 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection**
 280 **Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**,
 281 this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer’s written withdrawal of the Inspection
 282 Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

283 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written agreement
 284 between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at
 285 Buyer’s request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer
 286 must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify,
 287 protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such
 288 Work, claim, or lien. This indemnity includes Seller’s right to recover all costs and expenses incurred by Seller to defend against
 289 any such liability, damage, cost or expense, or to enforce this section, including Seller’s reasonable attorney fees, legal fees and
 290 expenses. The provisions of this section survive the termination of this Contract. This § 10.4 does not apply to items performed
 291 pursuant to an Inspection Resolution.

292 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and premium for
 293 property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Objection**
 294 **Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer’s sole subjective discretion.

295 **10.6. Due Diligence.**

296 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver copies of the following
 297 documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents**
 298 **Delivery Deadline**:

299 **10.6.1.1.** All current leases, including any amendments or other occupancy agreements, pertaining to the
 300 Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):

301

302

303 **10.6.1.2.** Other documents and information:

304

305 (a) *To the extent available, as-built construction plans for the Property and the Improvements, including, but not limited*
 306 *to, architectural, electrical, mechanical, and structural systems;*

307 (b) *Engineering reports;*

308 (c) *Certificate of Occupancy.*

309 (d) *Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results,*
 310 *advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic*
 311 *hazardous or contaminated substances, and/or underground storage tanks and/or radon gas pertaining to the Property. If no reports*
 312 *are in Seller’s possession or known to Seller, Seller shall warrant that no such reports are in Seller’s possession or known to Seller.*

313 (e) *Copies of any Americans with Disabilities Act reports, studies or surveys concerning the compliance of the Property*
 314 *with said Act;*

315 (f) *All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction*
 316 *over the Property and written notices of any violations of any such permits, licenses or use authorizations, if any.*

317 (g) *All warranties for plumbing and mechanical systems in the Improvements, and appliances installed in the*
 318 *Improvements.*

319

320

321 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object to Due Diligence
 322 Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory in Buyer’s sole subjective discretion,
 323 Buyer may, on or before **Due Diligence Documents Objection Deadline**:

324 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
 325 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any unsatisfactory
 326 Due Diligence Documents that Buyer requires Seller to correct.

327 **10.6.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received by Seller, on or
 328 before **Due Diligence Documents Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof
 329 on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents**
 330 **Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such
 331 termination, i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**.

332 **10.7. Conditional Upon Sale of Property.** *Intentionally deleted.*

333 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer Does Does Not
 334 acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for
 335 the Property. There is No Well. Buyer Does Does Not acknowledge receipt of a copy of the current well permit.

336 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND**
 337 **WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO**
 338 **DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

339 **10.9. Carbon Monoxide Alarms. Note:** If the improvements on the Property have a fuel-fired heater or appliance, a
 340 fireplace, or an attached garage and include one or more rooms lawfully used for sleeping purposes (Bedroom), the parties
 341 acknowledge that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within
 342 fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code.

343 **10.10. Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or more residential dwellings for
 344 which a building permit was issued prior to January 1, 1978, this Contract is void unless (1) a completed Lead-Based Paint Disclosure
 345 (Sales) form is signed by Seller, the required real estate licensees and Buyer, and (2) Seller receives the completed and fully executed
 346 form prior to the time when this Contract is signed by all parties. Buyer acknowledges timely receipt of a completed Lead-Based
 347 Paint Disclosure (Sales) form signed by Seller and the real estate licensees.

348 **10.11. Methamphetamine Disclosure.** If Seller knows that methamphetamine was ever manufactured, processed, cooked,
 349 disposed of, used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property was
 350 remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further
 351 acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever
 352 been used as a methamphetamine laboratory. Buyer has the Right to Terminate under § 25.1, upon Seller's receipt of Buyer's written
 353 Notice to Terminate, notwithstanding any other provision of this Contract, based on Buyer's test results that indicate the Property
 354 has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State
 355 Board of Health promulgated pursuant to § 25-18.5-102, C.R.S. Buyer must promptly give written notice to Seller of the results of
 356 the test.

357 **11. TENANT ESTOPPEL STATEMENTS. [Intentionally Deleted]**

358

CLOSING PROVISIONS

359 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

360 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to enable
 361 the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is
 362 obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in
 363 a timely manner, all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish
 364 any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer
 365 and Seller will sign and complete all customary or reasonably required documents at or before Closing.

366 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions Are Are Not executed with
 367 this Contract.

368 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as
 369 the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by
 370 the mutual agreement of the Parties and if they cannot agree, then as specified by the Closing Company.

371 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent of service vary between
 372 different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

373 **13. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by Buyer with the other
 374 terms and provisions hereof, Seller must execute and deliver a good and sufficient general warranty deed to Buyer, at Closing,
 375 conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title
 376 will be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of
 377 Buyer's signature hereon, whether assessed or not. Title will be conveyed subject to:

- 378 **13.1.** Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted
 379 by Buyer in accordance with **Record Title**,
 380 **13.2.** Distribution utility easements (including cable TV),
 381 **13.3.** Those specifically described rights of third parties not shown by the public records of which Buyer has actual
 382 knowledge and which were accepted by Buyer in accordance with **Off-Record Title** and **New ILC or New Survey**,
 383 **13.4.** Inclusion of the Property within any special taxing district, and
 384 **13.5.** Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether
 385 assessed prior to or after Closing, and
 386 **13.6.** Other N/A

387 **14. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid will be paid at or before Closing from the
 388 proceeds of this transaction or from any other source.

389 **15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

390 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required
 391 to be paid at Closing, except as otherwise provided herein.

392 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by Buyer Seller
 393 One-Half by Buyer and One-Half by Seller Other _____.

394 **15.3. Status Letter and Record Change Fees.** Any fees incident to the issuance of Association's statement of assessments
 395 (Status Letter) must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller. Any record change
 396 fee assessed by the Association including, but not limited to, ownership record transfer fees regardless of name or title of such fee
 397 (Association's Record Change Fee) must be paid by None Buyer Seller One-Half by Buyer and One-Half by
 398 Seller.

399 **15.4. Local Transfer Tax.** The Local Transfer Tax of _____% of the Purchase Price must be paid at Closing
 400 by None Buyer Seller One-Half by Buyer and One-Half by Seller.

401 **15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such
 402 as community association fees, developer fees and foundation fees, must be paid at Closing by None Buyer Seller
 403 One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s):
 404 _____ in the total amount of _____% of the Purchase Price or \$____.

405 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed
 406 \$N/A for:

407 Water Stock/Certificates Water District
 408 Augmentation Membership Small Domestic Water Company _____
 409 and must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller.

410 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when due by
 411 None Buyer Seller One-Half by Buyer and One-Half by Seller.

412 **16. PRORATIONS.** The following will be prorated to the **Closing Date**, except as otherwise provided:

413 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the
 414 year of Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most Recent Mill Levy and
 415 Most Recent Assessed Valuation, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran
 416 exemption or Other _____.

417 **16.2. Rents.** Rents based on Rents Actually Received Accrued. At Closing, Seller will transfer or credit to Buyer
 418 the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such
 419 transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must assume
 420 Seller's obligations under such Leases.

421 **16.3. Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in
 422 advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance
 423 by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer
 424 acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special
 425 assessment assessed prior to **Closing Date** by the Association will be the obligation of Buyer Seller. Except however, any
 426 special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether
 427 assessed prior to or after Closing, will be the obligation of Seller. Seller represents that the Association Assessments are currently
 428 payable at \$ _ per ___ and that there are no unpaid regular or special assessments against the Property except the current regular
 429 assessments and _____. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly
 430 request the Association to deliver to Buyer before **Closing Date** a current Status Letter.

431 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and _____.

432 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

433 **17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the
 434 Leases as set forth in § 10.6.1.1.

435 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable
 436 to Buyer for payment of \$ 50 per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until
 437 possession is delivered.

438 Buyer represents that Buyer will occupy the Property as Buyer's principal residence unless the following box is checked, then
 439 Buyer **Does Not** represent that Buyer will occupy the Property as Buyer's principal residence.

440 If the box is checked, Buyer and Seller agree to execute a Post-Closing Occupancy Agreement.

441

GENERAL PROVISIONS

442 **18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

443 **18.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time
 444 (Standard or Daylight Savings as applicable).

445 **18.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not specified, the
 446 first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal
 447 or Colorado state holiday (Holiday), such deadline **Will** **Will Not** be extended to the next day that is not a Saturday, Sunday
 448 or Holiday. Should neither box be checked, the deadline will not be extended.

449 **19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND**
 450 **WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the
 451 condition existing as of the date of this Contract, ordinary wear and tear excepted.

452 **19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss
 453 prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), and if the repair of the damage
 454 will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use
 455 Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before
 456 **Closing Date** if the Property is not repaired before **Closing Date** or if the damage exceeds such sum. Should Buyer elect to carry out
 457 this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by
 458 Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided
 459 for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds
 460 prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of
 461 Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's
 462 lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow
 463 at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total
 464 Purchase Price, plus the amount of any deductible that applies to the insurance claim.

465 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services),
 466 system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date
 467 of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion
 468 or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or
 469 replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by
 470 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before
 471 Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the
 472 option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must
 473 not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive
 474 Closing. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover
 475 the repair or replacement of such Inclusions.

476 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may
 477 result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation
 478 action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's
 479 sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and
 480 Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value
 481 of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

482 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the
 483 Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

484 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge that
 485 the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title
 486 and consultation with legal and tax or other counsel before signing this Contract.

487 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines in this Contract.
 488 This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored
 489 or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party
 490 has the following remedies:

491 **21.1. If Buyer is in Default:**

492 **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid
 493 by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty, and the Parties agree the
 494 amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat
 495 this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

496 **21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 applies unless the box in § 21.1.1 is checked. Seller may
 497 cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller, and retained by Seller. It is agreed
 498 that the Earnest Money is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and
 499 (except as provided in §§ 10.4, 22, 23 and 30), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure
 500 to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

501 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received
 502 hereunder will be returned and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this
 503 Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

504 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration
 505 or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all
 506 reasonable costs and expenses, including attorney fees, legal fees and expenses.

507 **23. MEDIATION.** If a dispute arises relating to this Contract, (whether prior to or after Closing) and is not resolved, the parties
 508 must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps
 509 to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is
 510 binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator
 511 and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire
 512 dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that
 513 party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a
 514 lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This section
 515 will not alter any date in this Contract, unless otherwise agreed.

516 **24. EARNEST MONEY DISPUTE.** *Intentionally deleted. See Paragraph 30.*

517 **25. TERMINATION.**

518 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the
 519 termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written
 520 notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or
 521 before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory
 522 and waives the Right to Terminate under such provision.

523 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will be returned
 524 and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 30.

525 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and specified
 526 addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining
 527 thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms
 528 of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or
 529 obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same.
 530 Any successor to a Party receives the predecessor's benefits and obligations of this Contract.

531 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

532 **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing, except as provided in
 533 § 27.2, and is effective when physically received by such party, any individual named in this Contract to receive documents or

534 notices for such party, the Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing
535 must be received by the party, not Broker or Brokerage Firm).

536 **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or
537 Seller, any individual named in this Contract to receive documents or notices for such party, the Broker or Brokerage Firm of Broker
538 working with such party (except any notice or delivery after Closing must be received by the party; not Broker or Brokerage Firm)
539 at the electronic address of the recipient by facsimile, email or _____.

540 **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email address
541 of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the
542 documents, or (3) facsimile at the Fax No. of the recipient.

543 **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with
544 the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property
545 located in Colorado.

546 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and
547 Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before
548 **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and
549 Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such
550 copies taken together are deemed to be a full and complete contract between the parties.

551 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited
552 to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title Insurance,**
553 **Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity, Insurability, Due**
554 **Diligence, Buyer Disclosure and Source of Water.**

555 ADDITIONAL PROVISIONS AND ATTACHMENTS

556 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate
557 Commission.)

558
559 (a) *Alpine Title of Gunnison Colorado shall conduct the Closing (Closing Company) and issue the Title Commitment*
560 *and Title Policy required by this Contract.*

561
562 (b) *Subject to earlier termination as provided in this Contract, and unless the Parties agree to a different date, the*
563 *Closing shall occur on or before 10 months after CO. If the CO is not issued on or before October 31, 2020, the Buyer shall have*
564 *the right to terminate this Contract and receive a full refund of the Earnest Money, or receive a conveyance of the Property and*
565 *complete construction of the Improvements on the Property.*

566
567 (c) *Seller shall construct the Improvements in accordance with Development Contract and ensure that a CO is issued.*
568 *Upon substantial completion of the construction of the Improvements, Buyer shall walk through and inspect the Improvements with*
569 *the Seller during which inspection a punch list of incomplete work or work needing repair shall be compiled. The punch list shall*
570 *be completed and delivered to Seller by the Inspection Objection Deadline. Seller shall ensure that Seller or its subcontractors*
571 *complete or repair all items on the punch list by the Inspection Resolution Deadline to the extent reasonably feasible. If more time*
572 *is reasonably required to complete or repair an item, Seller shall ensure that the Contractor endeavors to finish such construction*
573 *or repair as soon as possible.*

574
575 (d) *Pursuant to Paragraph 12 of the Development Contract, Seller shall provide the Buyer with a customary one-year*
576 *warranty for the work and materials associated with the construction of the Improvements, and a two-year warranty on all*
577 *mechanical systems and plumbing in the Improvements. These warranties will commence from the date on which the CO is issued*
578 *for the Improvements.*

579
580 (e) *In addition to the remedies provided for in this contract, Buyer shall be entitled to exercise all of its rights and*
581 *remedies under the Development Contract between Seller and Buyer.*

582
583 (f) *Consistent with Paragraph 5 of the Development Contract, the Town's obligations under this contract are contingent*
584 *upon the Property being on the market for more than nine months following the date the Town issues the certificate of occupancy*
585 *for the units constructed on the Property. The Town's obligation to purchase the Property is subject to annual appropriations*
586 *under Article X of the Colorado Constitution as set forth in Paragraph 28 of the Development Contract, which is incorporated*

587 herein. This Contract is also contingent upon the approval of the Crested Butte Town Council and the Town's ability to
588 appropriate funds for the purchase of the Property.

589 (g) Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed
590 during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not
591 constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.
592

593 **31. ATTACHMENTS.**

594 **31.1.** The following attachments **are a part** of this Contract:

595 *Exhibit A – Master Deed Restriction*

596
597 **31.1.1. Post-Closing Occupancy Agreement.** If the Post-Closing Occupancy Agreement box is checked in § 17 the
598 Post-Closing Occupancy Agreement is attached.

599 **31.2.** The following disclosure forms **are attached** but are **not** a part of this Contract: *N/A*
600
601
602

603

604

SIGNATURES

605

Buyer's Name: Town of Crested Butte, Colorado

Buyer's Name: _____

Buyer's Signature Date

Address: 507 Maroon Avenue, P.O. Box 39

Crested Butte, CO 81224

Phone No.: 970.349.5338

Fax No.: 970.349.6626

Email Address: dmacdonald@crestedbutte-co.gov

Buyer's Signature Date

Address: _____

Phone No.: _____

Fax No.: _____

Email Address: _____

606 **[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]**

Seller's Name: Bywater, LLC

Seller's Name: _____

Seller's Signature Date

Address: _____

Phone No.: 970.922.9222

Fax No.: _____

Email Address: jwisian@gmail.com

Seller's Signature Date

Address: _____

Phone No.: _____

Fax No.: _____

Email Address: _____

607

608 **32. COUNTER; REJECTION.** This offer is **Countered** **Rejected.**
609 **Initials only of party (Buyer or Seller) who countered or rejected offer** _____

610

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker **Does** **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a **Buyer's Agent** **Seller's Agent** **Transaction-Broker** in this transaction.

This is a **Change of Status**.

Brokerage Firm's compensation or commission is to be paid by **Listing Brokerage Firm** **Buyer** **Other**

_____.

Brokerage Firm's Name: _____

Broker's Name: _____

 Broker's Signature _____ Date _____

Address: _____

Phone No.: _____

Fax No.: _____

Email Address: _____

34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker **Does** **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Seller as a **Seller's Agent** **Buyer's Agent** **Transaction-Broker** in this transaction.

This is a **Change of Status**.

Brokerage Firm's compensation or commission is to be paid by **Seller** **Buyer** **Other**

_____.

Brokerage Firm's Name: _____

Broker's Name: _____

 Broker's Signature _____ Date _____

Address: _____

Phone No.: _____

Fax No.: _____

Email Address: _____



To: Mayor Schmidt and Town Council

From: Michael Yerman, Community Development Director

Subject: **Ordinances 21, Series 2019 Amendment to Restrictive Covenant**

Date: April 1, 2019

Background:

Mark Schumacher (Owner) of 315 6th Street executed a restrictive covenant with the Town in 1989. As part of the covenant the residence was restricted as follows:

“to maintain said dwelling unit as a long-term residence by restricting any leases associated with the dwelling to a minimum of 6 months.”

The Owner approached the Town about the unit being owner occupied or the owner of the business in the front of the structure being allowed to occupy the unit. The Owner’s legal counsel contacted the Town about the possibility of the unit being owner occupied. The Town did not agree with the interpretation under the current restrictive covenant that it could be used as an owner occupied unit. However, the staff recognized there was some potential ambiguity in the restrictive covenant. The staff offered to bring an amendment of the restrictive covenant for the Council’s consideration to help clarify the restrictive covenant to allow for it to be owner occupied. The proposed amendment will also bring the restrictive covenant language up to the current language being use in new covenants. The following is the proposed amendment.

“to maintain said dwelling unit as a long term rental as defined in Section 16-1-20 of the Town Code, as it may be amended from time to time unless owner of the Property is occupying the dwelling unit as his primary residence, or the owner of the business located on the Property is occupying the dwelling unit. If the owner of the business is an entity such as a corporation or a limited liability company, then the individual occupying the unit must be a majority owner of the entity.”

The staff feels this is a good compromise and cleans up an old restrictive covenant. The Covenant amendment ensures the unit will continue to provide long-term housing for the community.

Recommendation:

A Council person make a motion followed by a second to set Ordinance 21, Series 2019 to a public hearing on April 15, 2019.

ORDINANCE NO. 21

SERIES 2019

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL AUTHORIZING THE AMENDMENT OF LAND
USE CONDITIONS AND RESTRICTIVE COVENANTS**

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 the Constitution and the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

WHEREAS, the Town and property owner Mark Schumacher executed an agreement for Notice of Zoning Conditions and Restrictive Covenants on December 19, 1989 (“Restrictive Covenant Agreement”), for Schumacher’s property with the following legal description:

Lot 23, Block 24, Town of Crested Butte, County of Gunnison, State of Colorado, Commonly known as 315 6th Street, Crested Butte, Colorado 81224 (“Property”).

WHEREAS, The Restrictive Covenant Agreement Easement was recorded in Book 674, Page 293, Reception No. 417949, on December 28, 1989, in the records of the Gunnison County Clerk and Recorder. A copy of the recorded Restrictive Covenant Agreement is attached hereto as **Exhibit 1**.

WHEREAS, The Town and Schumacher have agreed to amend one of the Conditions of Approval in the Restrictive Covenant Agreement, and the parties desire to memorialize their agreement as set forth in the Amendment of Zoning Conditions and Restrictive Covenants attached hereto as **Exhibit 2**; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Restrictive Covenants should be discontinued and released, as set forth hereinbelow.

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

Section 1. Authorization to Amend Town-owned Restrictive Covenant. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to amend the Restrictive Covenant Agreement recorded at recorded in Book 674, Page 293, Reception No. 417949, on December 28, 1989, in the records of the Gunnison County Clerk and Recorder, upon the Property described as follows:

Lot 23, Block 24, Town of Crested Butte, County of Gunnison, State of Colorado, Commonly known as 315 6th Street, Crested Butte, Colorado 81224 (“Property”).

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute the Amendment of Zoning Conditions and Restrictive Covenants attached hereto as **Exhibit 2**, and any additional documents necessary and appropriate to consummate the amendment of the Restrictive Covenant Agreement between the Town and Schumacher, following approval thereof by the Town Attorney.

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 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 of any ordinance previously adopted by the Town which conflicts with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2019.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
James A. Schmidt, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

THIS AGREEMENT AND INDENTURE, made this 19th day of December, 19889, between Mark A. Schumacher, of Almont, Colorado, (hereinafter referred to as the "Owner"), and the TOWN OF CRESTED BUTTE, COLORADO, a Colorado Home Rule Municipal Corporation (hereinafter referred to as the "Town"), is upon the following terms and conditions:

BOOK 674 PAGE 293

WITNESSETH:

WHEREAS, the Owner is the record owner of certain real property located in the Town of Crested Butte, County of Gunnison, and State of Colorado, more particularly described as follows:

Lot 23, Block 24

which real property is subject to the zoning and land use ordinances of the Town of Crested Butte (said real property hereinafter referred to as the "Property"), and

WHEREAS, the Owner has applied to the Town for certain zoning and land use approvals not allowed as a matter of right under the Town's Zoning Ordinance, and

WHEREAS, said discretionary zoning and land use applications have been considered and approved by the Town's Board of Zoning and Architectural Review as required by the Town's Zoning Ordinance, and

WHEREAS, the Town's Board of Zoning and Architectural Review has placed certain conditions on these approvals, which conditions have been agreed to by the Owner, and

WHEREAS, Section 15-2-17 of the Town's Zoning Ordinance provides that conditions or restrictions relative to the use and/or occupancy of the Property which are made a consideration of a discretionary zoning or land use approval, shall be recorded and executed by the Owner and may be recorded by the Town in the real property records of Gunnison County, Colorado:

NOW, THEREFORE, in consideration of the above stated recitations and the mutual covenants and conditions set forth hereafter, the Town and Owner agree as follows:

1. Grant of Discretionary Land Use and/or Zoning Approval. The Town, through the appropriate action of its Board of Zoning and Architectural Review and/or Town Council, hereby grants to the Owner, with respect to the Property described above, a () VARIANCE, (XX) CONDITIONAL USE, () CONDITIONAL WAIVER, () SPECIAL DEVELOPMENT PERMIT, () PUD APPROVAL, () CONDITIONAL REZONING APPROVAL, and/or () ARCHITECTURAL APPROVAL, as follows:

to allow an accessory dwelling in a B-3 zone

2. Conditions of Approval. In consideration of the above referred discretionary approval, the Owner hereby agrees to the following conditions and/or restrictions on the use and/or occupancy of the Property by himself, and his heirs, successors, and assigns; which conditions and/or restrictions shall be restrictive covenants granted by the Owner to run with the land, in perpetuity, to the benefit of the Town;

- 1. to provide 2 parking spaces of not less than 9' by 18' for use by the dwelling residents and to guarantee access to said spaces year round.
2. to maintain said dwelling unit as a long-term residence by restricting any leases associated with the dwelling to a minimum of 6 months.

3. Remedies. In addition to any other remedy provided by law for the enforcement of this Agreement creating Restrictive Covenants, the Town shall be entitled to the remedies of specific enforcement and/or injunctive relief, and further, the Town shall be entitled to an award of reasonable attorney's fees in the successful prosecution or defense of any action to enforce this Agreement.

BOOK 674 PAGE 294

4. Nonwaiver. No breach by the 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 shall be waived only by written consent of the Town.

5. Severance Clause: Any provision of this Agreement which is invalidated or otherwise prohibited by law, will be treated as if it were never a part of this Agreement, and the validity of the remainder of this Agreement shall be unaffected.

IN WITNESS WHEREOF, THE PARTIES EXECUTE THIS AGREEMENT AND GRANT OF RESTRICTIVE COVENANTS ON THE DATE SET FORTH ABOVE.

TOWN OF CRESTED BUTTE:

OWNER AND GRANTOR:

BY Wesley C. Light
Mayor

BY [Signature]

ATTEST: [Signature]
Town Clerk



STATE OF COLORADO }
COUNTY OF GUNNISON } ss.

The foregoing Agreement and Grant of Restrictive Covenants, styled as a Notice of Zoning Conditions and Restrictive Covenants, was acknowledged before me this 19th day of December, 1989, by Mark Schumacher, Owner and Grantor.



[Signature]
Notary Public

Address: 207 Sopris
Crested Butte, Co.

My Commission Expires: 11-20-92

Return To:

AMENDMENT OF ZONING CONDITIONS AND RESTRICTIVE COVENANTS

THIS AMENDMENT OF ZONING CONDITIONS AND RESTRICTIVE COVENANTS is agreed and entered into this __ day of _____, 2019, between the Town of Crested Butte, Colorado, a Colorado home rule municipal corporation (“Town”), whose legal address is 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224, and Mark A. Schumacher, whose legal address is _____, Almont, Colorado 81224 (“Schumacher”).

RECITALS

A. The Town and Schumacher executed an agreement for Notice of Zoning Conditions and Restrictive Covenants on December 19, 1989 (“Restrictive Covenant Agreement”), for Schumacher’s property with the following legal description:

Lot 23, Block 24, Town of Crested Butte, County of Gunnison, State of Colorado,
Commonly known as 315 6th Street, Crested Butte, Colorado 81224 (“Property”).

B. The Restrictive Covenant Agreement Easement was recorded in Book 674, Page 293, Reception No. 417949, on December 28, 1989, in the records of the Gunnison County Clerk and Recorder. A copy of the recorded Restrictive Covenant Agreement is attached hereto as **Exhibit 1**.

C. The Town and Schumacher have agreed to amend one of the Conditions of Approval in the Restrictive Covenant Agreement, and the parties desire to memorialize their agreement herein.

D. The Town Council has approved this amendment by Ordinance No. 21, Series 2019, on _____, 2019.

In consideration of the forgoing Recitals and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Town and Schumacher agree as follows:

1. Paragraph 2, subsection 2 of the Conditions of Approval in the Restrictive Covenant Agreement is deleted and replaced with the following Condition of Approval:

“2. to maintain said dwelling unit as a long term rental as defined in Section 16-1-20 of the Town Code, as it may be amended from time to time unless owner of the Property is occupying the dwelling unit as his primary residence, or the owner of the business located on the Property is occupying the dwelling unit. If the owner of the business is an entity such as a corporation or a limited liability company, then the individual occupying the unit must be a majority owner of the entity.”

THIS AGREEMENT AND INDENTURE, made this 19th day of December, 1989, between Mark A. Schumacher, of Almont, Colorado, (hereinafter referred to as the "Owner"), and the TOWN OF CRESTED BUTTE, COLORADO, a Colorado Home Rule Municipal Corporation (hereinafter referred to as the "Town"), is upon the following terms and conditions:

BOOK 674 PAGE 293

WITNESSETH:

WHEREAS, the Owner is the record owner of certain real property located in the Town of Crested Butte, County of Gunnison, and State of Colorado, more particularly described as follows:

Lot 23, Block 24

which real property is subject to the zoning and land use ordinances of the Town of Crested Butte (said real property hereinafter referred to as the "Property"), and

WHEREAS, the Owner has applied to the Town for certain zoning and land use approvals not allowed as a matter of right under the Town's Zoning Ordinance, and

WHEREAS, said discretionary zoning and land use applications have been considered and approved by the Town's Board of Zoning and Architectural Review as required by the Town's Zoning Ordinance, and

WHEREAS, the Town's Board of Zoning and Architectural Review has placed certain conditions on these approvals, which conditions have been agreed to by the Owner, and

WHEREAS, Section 15-2-17 of the Town's Zoning Ordinance provides that conditions or restrictions relative to the use and/or occupancy of the Property which are made a consideration of a discretionary zoning or land use approval, shall be recorded and executed by the Owner and may be recorded by the Town in the real property records of Gunnison County, Colorado:

NOW, THEREFORE, in consideration of the above stated recitations and the mutual covenants and conditions set forth hereafter, the Town and Owner agree as follows:

1. Grant of Discretionary Land Use and/or Zoning Approval. The Town, through the appropriate action of its Board of Zoning and Architectural Review and/or Town Council, hereby grants to the Owner, with respect to the Property described above, a () VARIANCE, (XX) CONDITIONAL USE, () CONDITIONAL WAIVER, () SPECIAL DEVELOPMENT PERMIT, () PUD APPROVAL, () CONDITIONAL REZONING APPROVAL, and/or () ARCHITECTURAL APPROVAL, as follows:

to allow an accessory dwelling in a B-3 zone

2. Conditions of Approval. In consideration of the above referred discretionary approval, the Owner hereby agrees to the following conditions and/or restrictions on the use and/or occupancy of the Property by himself, and his heirs, successors, and assigns; which conditions and/or restrictions shall be restrictive covenants granted by the Owner to run with the land, in perpetuity, to the benefit of the Town;

- 1. to provide 2 parking spaces of not less than 9' by 18' for use by the dwelling residents and to guarantee access to said spaces year round.
2. to maintain said dwelling unit as a long-term residence by restricting any leases associated with the dwelling to a minimum of 6 months.

3. Remedies. In addition to any other remedy provided by law for the enforcement of this Agreement creating Restrictive Covenants, the Town shall be entitled to the remedies of specific enforcement and/or injunctive relief, and further, the Town shall be entitled to an award of reasonable attorney's fees in the successful prosecution or defense of any action to enforce this Agreement.

BOOK 674 PAGE 294

4. Nonwaiver. No breach by the 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 shall be waived only by written consent of the Town.

5. Severance Clause: Any provision of this Agreement which is invalidated or otherwise prohibited by law, will be treated as if it were never a part of this Agreement, and the validity of the remainder of this Agreement shall be unaffected.

IN WITNESS WHEREOF, THE PARTIES EXECUTE THIS AGREEMENT AND GRANT OF RESTRICTIVE COVENANTS ON THE DATE SET FORTH ABOVE.

TOWN OF CRESTED BUTTE:

OWNER AND GRANTOR:

BY Wesley C. Light
Mayor

BY [Signature]

ATTEST: [Signature]
Town Clerk



STATE OF COLORADO }
COUNTY OF GUNNISON } ss.

The foregoing Agreement and Grant of Restrictive Covenants, styled as a Notice of Zoning Conditions and Restrictive Covenants, was acknowledged before me this 19th day of December, 1989, by Mark Schumacher, Owner and Grantor.



[Signature]
Notary Public

Address: 207 Sopris
Crested Butte, Co.

My Commission Expires: 11-20-92

Return To:

SULLIVAN GREEN SEAVY LLC

MEMORANDUM

TO: Town of Crested Butte, Town Council
 FROM: Town Attorney
 DATE: April 1, 2019
 RE: Waters of the United States

Under the federal Clean Water Act, the jurisdiction of the Corps of Engineers (COE) and EPA (together, the federal agencies) to regulate certain activities such as construction in wetlands or streams is limited by the Clean Water Act to “Waters of the United States” (WOTUS). The scope of waters that fall within the definition of WOTUS has been a subject of much litigation and rulemaking. The federal agencies are proposing a new rule to define the types of waters that fall within its jurisdiction. Comments on the proposed rule are due on **April 15, 2019**.

A memo from the NWCCOG “QQ” committee, included in the packet, explains the history of the WOTUS issue and why it is important to the mountain region. A draft comment letter on the proposed rule from QQ is also included in the packet.

I. Discussion.

The Town, HCCA, and the Coal Creek Watershed Coalition have focused on water quality protection for many years. In fact, in the 1980s the Town drafted one of the first watershed protection ordinances in Colorado and defended it in court. The Town watershed regulations require a local permit for certain activities in the Coal Creek watershed, whether located within the Town or on federal land. The Town and Gunnison County coordinate their respective jurisdiction over areas of the watershed outside the Town limits. The Town also relies on the protection

ATTORNEYS & COUNSELORS AT LAW

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 Denver, CO 80206
 Phone: 303-322-0366
 Fax: 303-316-0377

Barbara J.B. Green
 Phone: 303-355-4405
 barbara@sullivangreenseavy.com

3223 Arapahoe Avenue, Suite 300
 Boulder, CO 80303
 Phone: 303-440-9101
 Fax: 303-443-3914

provided by the COE and EPA “404” regulations that require federal permits for the disposal of dredge and fill material in waters of the United States. Thus, the scope of federal regulatory authority that is at the heart of the WOTUS rulemaking is important to the Town’s watershed protection policies.

QQ draft comment letter

At the last QQ meeting, the Board directed staff to prepare a draft comment letter to its members for review based on its policies. QQ is seeking input from its members before sending a final comment letter on the proposed rule. The letter comments on these key areas of the proposed rule:

Ephemeral waters. The QQ letter opposes eliminating so-called ephemeral waters from federal agency jurisdiction because it will remove protections for a significant number waters in the headwaters region. Federal agencies have historically determined the jurisdiction of waters that were not traditionally navigable based on whether the water bore a significant nexus to other jurisdictional waters. The 2019 Proposed Rule’s eliminates this significant nexus test in favor of determining a water’s jurisdiction based on whether it provides “perennial or intermittent flow” to a jurisdictional water. If flow is “ephemeral,” then it is not under CWA jurisdiction.

Ditches. The QQ letter asks that the proposed rule continue to allow the federal agencies to regulate ditches if they function as tributaries, and asks to exclude ditches that simply transport water, such as the Mc Cormick Ditch. Ditches have historically been regulated by the COE if they are essentially “tributaries.” As a matter of policy, and because of the important hydrologic and habitat functions ditches may both EPA and the (the EPA for decades, and the Corps since 2000). On the other hand, ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands; and those that do not flow, either directly or through another water into navigable waters should be excluded. Such an exclusion would allow the agencies to continue to exclude most agricultural ditches and those adjacent to roads, railroads and runways. QQ supports this approach to ditches.

Wetlands. QQ is also concerned about the proposal to eliminate wetlands that do not exhibit a surface connection to a jurisdictional water from federal

agency jurisdiction. Wetlands are still connected to jurisdictional waters through subsurface or watershed connections. These wetlands have a significant impact on the water quality and quantity of the headwaters region, and jurisdiction over these wetlands should be maintained.

Waterlaw initial letter

The Town also received a letter from its water counsel firm, Waterlaw, that was sent to all of its clients regarding a comment letter regarding the proposed rule. Scott Miller is the member of the firm who works with Crested Butte.

According to the letter and conversations with Scott Miller, many of the firm's clients such as special districts, ranchers, and other traditional water users support the idea that ditches such as the Mc Cormick ditch that just transport water for all uses should not be subject to COE regulations. The difference with QQ is that the initial Waterlaw letter advocated removing *all* ditches from COE jurisdiction. The initial letter also advocated for the elimination of the "nexus" test which QQ supports retaining.

Because of the different views of the proposed WOTUS rule, Dara, John Sullivan, Barbara Green and Scott Miller held a phone conference to discuss the differences. During the call, Scott asked that we not include the initial letter in the Council packet because it is likely to be revised. A final letter might be available by the Council meeting.

HCCA

Dara also sought input from HCCA who responded that the QQ position is consistent with its position on COE jurisdiction.

II. Recommendation

1. The QQ letter is aligned with the Town's policies to aggressively protect the water quality and aquatic environment in the watershed. We do not recommend that Crested Butte propose any revisions to the QQ letter.
2. There is no need for the Town to prepare its own letter because the QQ letter represents its interests.

WOTUS Memo

April 1, 2019

Page 4

3. If the Waterlaw final letter is available for the Council meeting, Council should decide whether it wants to “sign on.” However, if Waterlaw still advocates eliminating all ditches from COE jurisdiction, and eliminating the “nexus” test, we do not recommend signing onto the letter.

P.O. Box 2308 • Silverthorne,
Colorado 80498



970-468-0295 • Fax 970-468-1208
qqwater@nwccog.org

MEMORANDUM

TO: QQ Members

**FROM: Christopher McMichael, legal intern with Sullivan, Green, Seavy,
Torie Jarvis, and Barbara Green**

DATE: February 22, 2019

SUBJECT: QQ Update on 2019 Proposed “Waters of the United States” Definition

The Environmental Protection Agency and the Department of the Army, Corps of Engineers (“EPA” or “Corps” or “the Agencies”) recently issued a pre-publication draft rule revising the Clean Water Act definition of “waters of the United States” (“2019 Proposed Rule”) after suspending the 2015 “Clean Water Rule.”

The definition of “waters of the United States” (“WOTUS”) determines which bodies of water fall under the jurisdiction of the Clean Water Act (“CWA”). For Colorado, the 2019 Proposed Rule would primarily affect activities requiring dredge and fill permits under Section 404 of the CWA, issued by the Corps. The State regulates other aspects of the CWA and has a broader definition of “waters of the state.”¹ 404 permits are needed whenever dredged and fill material is disposed of in waters of the United States. Activities that require the 404 dredge-and-fill permits include any development in wetlands and other waterbodies, headwaters diversion projects, construction of dams or other impoundments, and any other related activities affecting a jurisdictional water.

This memo will explain the background leading up to this 2019 Proposed Rule, some of the major proposed changes, and how QQ might participate in the upcoming rulemaking.

I. Background and Reasons for the 2019 Proposed Rule

¹ The Colorado Water Quality Control Commission and Water Quality Control Division regulate the water quality standards and maximum daily load programs under Section 302 of the CWA and the Section 402 National Pollutant Discharge Elimination System (NPDES) permit program.

The definition of “waters of the United States” has been the topic of legal discussions and Supreme Court cases for decades. In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (“SWANCC”), the Supreme Court found that isolated wetlands, or wetlands that were near jurisdictional waters but not adjacent or abutting those waters, were not subject to CWA jurisdiction because there was not a “significant nexus” between the isolated wetlands and the jurisdictional waters.²

Later, the Supreme Court in *Rapanos et al v. U.S. Army Corps of Engineers* (“*Rapanos*”) added to the confusion by issuing a decision without a clear majority regarding whether wetlands adjacent to tributaries fell under the CWA jurisdiction.³ Four justices determined that these adjacent wetlands were not jurisdictional because the adjacent wetlands did not have a “continuous surface connection” to a “relatively permanent, standing or continuously flowing” body of water.⁴ Justice Kennedy agreed that the wetlands in question were not jurisdictional, but with different reasoning. Relying on the decision in *SWANCC*, Justice Kennedy found no “significant nexus” between the adjacent wetlands and a jurisdictional water. According to Justice Kennedy, a significant nexus exists when the wetlands “significantly affect the chemical, physical, or biological integrity” of jurisdictional waters.⁵

In the wake of these Supreme Court decisions, the Agencies issued guidance documents to help clear up uncertainty about which waters were jurisdictional as “waters of the United States.”⁶ The guidance documents relied on the *SWANCC* decision and Justice Kennedy’s evaluation in *Rapanos*. Wetlands were jurisdictional under the CWA if they abut a tributary or are directly adjacent to a navigable water. If there is a question about whether a wetland is jurisdictional, then the Agencies will apply the “significant nexus test” outlined in the guidance. When waters fall outside the scope or do not fit into regulatory definitions, the Agencies can still assert jurisdiction over those waters if they have a “significant nexus” to a jurisdictional water.

Despite the guidance, there was still confusion and inconsistency surrounding the definition of “waters of the United States.” These guidance documents were only agency policy, not law. Furthermore, the guidance documents were confusing and difficult to use. The Agencies struggled to provide consistent results in their determinations, with different Corps offices applying the guidance differently. The Agencies also reported considerable time and expense in making jurisdictional determinations because of the additional analysis suggested by the guidance documents.

In response to requests for clarity by local governments and other regulated entities, including in the QQ region, the Agencies proposed a rule in 2015 which sought to clarify the definition of “waters of the United States” (“Clean Water Rule”). QQ provided [detailed comments](#), generally

² 531 U.S. 159 (2001).

³ 547 U.S. 715 (2006).

⁴ *Id.* at 739.

⁵ *Id.* at 780.

⁶ CWA Policy and Guidance Documents, *Section 404 Jurisdiction*, available at: <https://www.epa.gov/cwa-404/cwa-policy-and-guidance#404juris>

supportive, on this Clean Water Rule. The Clean Water Rule never went into effect in most states, including Colorado, because of pending litigation.

In 2017, the current administration formally proposed rescinding the Clean Water Rule but has not finalized the proposed repeal. In early 2018, the current administration added an effective date of the Clean Water Rule of 2020, a decision currently in litigation and not in effect as well.

In the meantime, in Colorado the Agencies are left with the same pre-2015 agency guidance to determine if certain waters fall under the CWA's jurisdiction. In order to address the ongoing confusion, the EPA and the Corps have promulgated a new definition for "water of the United States."

II. Overview of 2019 Proposed Rule

The Agencies have decided to repeal and revise the definition of "waters of the United States" because they believe the Clean Water Rule was too far-reaching, confusing as to which waters are subject to regulations, and burdensome for economic growth.⁷ By promulgating the 2019 Proposed Rule, the Agencies hope to provide clear, definitive, and consistent determinations for which waters are subject to CWA jurisdiction. The 2019 Proposed Rule was officially published in the federal register on February 14, 2019, but the Agencies released a pre-publication version for stakeholders to begin considering issues for public comment in December 2018.⁸ The comments in this memo are based on the pre-publication version of the rule.

The Clean Water Rule outlined seven categories of jurisdictional waters, whereas the 2019 Proposed Rule has only six categories of jurisdictional waters.

The six categories are:

- Traditional Navigable Waters and Territorial Seas (slight change from Clean Water Rule)
- Tributaries (same category in Clean Water Rule)
- Ditches (new category)
- Lakes and Ponds (new category)
- Impoundments (same category in Clean Water Rule)
- Wetlands (revised category)

The Agencies did not include the category of "other waters," which is part of the Clean Water Rule, in the Proposed 2019 Rule. Removing the "other waters" category would eliminate a case-by-case determination of "other waters" that might fall under CWA jurisdiction based on a "significant nexus" to other jurisdictional waters.

⁷ Environmental Protection Agency, "Proposed Revised Definition of 'Waters of the United States' Fact Sheet," (December 2018) (available at https://www.epa.gov/sites/production/files/2018-12/documents/wotus_2040-af75_nprm_frn_2018-12-11_prepublication2_1.pdf)

⁸ *Id.*

Most significant to QQ are the changes to the Agencies' definition of tributaries and wetlands. Generally, the 2019 Proposed Rule criteria for jurisdictional waters is dependent on whether bodies of water such as tributaries, wetlands, and ditches provide "perennial or intermittent" flow or whether bodies of water physically touch traditional navigable waters. The significant nexus test has been eliminated from the 2019 Proposed Rule. The changes to these categories are discussed below.

a. Traditional Navigable Waters and Territorial Seas

The first category of jurisdictional waters identified in the 2019 Proposed Rule is Traditional Navigable Waters ("TNW"), or waters that are "navigable in fact" and used in interstate or foreign commerce, and territorial seas.⁹ The "traditional navigable waters" category remains largely unchanged from the Clean Water Rule except the "interstate waters" subcategory has been eliminated. The Agencies state that all "interstate waters" are either traditionally navigable waters or meet the requirements for one of the other proposed categories of waters, and thus a separate subcategory for "interstate waters" is duplicative. The definition of TNWs is important because other categories, such as tributaries, ditches, and adjacent wetlands, are defined based on their proximity and contribution of flow to TNWs.

b. Tributaries

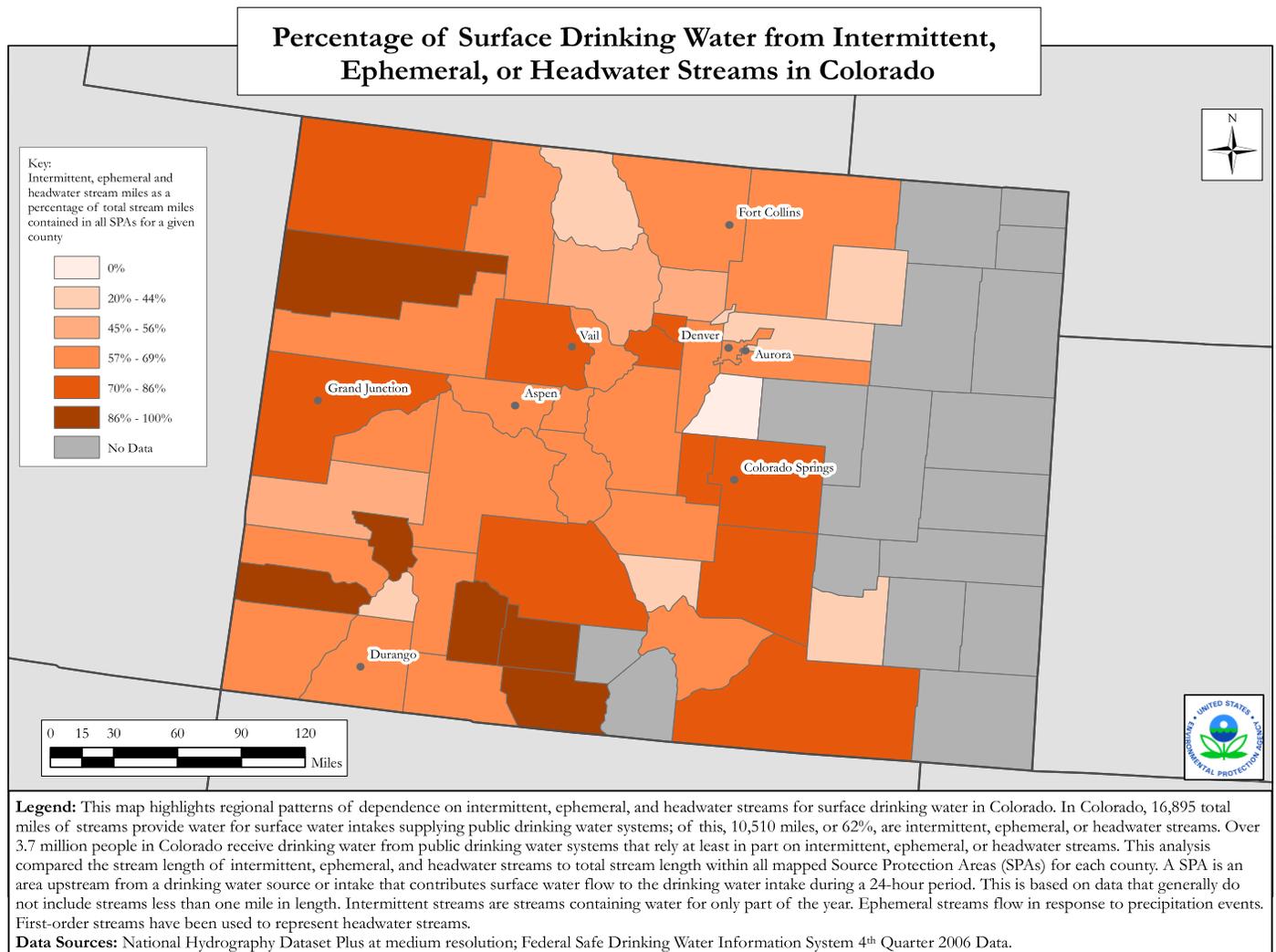
The Agencies' proposed redefinition of which tributaries fall under CWA jurisdiction is one of the most significant changes from previous definitions. The 2019 Proposed Rule defines a tributary as a "river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a traditional navigable water or territorial sea in a typical year."¹⁰ Prior to the 2019 Proposed Rule, tributaries were considered jurisdictional if they contributed flow to a TNW, had a bed and bank, and had an ordinary high water mark. Under the new definition, tributaries are jurisdictional only if they convey perennial or intermittent flow downstream in a typical year.

Agencies describe "perennial and intermittent flow" as surface water which flows continuously year round or that flows continuously during certain times of a typical year.¹¹ Importantly for the QQ region, rivers or streams with flows consisting of melting snowpack are generally considered "intermittent flows." Waters that flow merely in response to precipitation (rain or snowfall) or flooding events would not be considered jurisdictional. These types of waters are known as "ephemeral features" and are not considered jurisdictional under the proposed rule. This marks a departure from the Clean Water Rule and pre-2015 practice in which some ephemeral waters were considered jurisdictional based whether the waters bore a "significant nexus" to neighboring jurisdictional waters.

⁹ *Id.* at 61-62.

¹⁰ *Id.* at 72.

¹¹ *Id.* at 73-74.



With the changes outlined by the 2019 Proposed Rule, the number of the waters that are considered jurisdictional tributaries will likely decrease. The included map suggests as much as 62% of drinking water supplies in Colorado are considered intermittent or ephemeral. Furthermore, it is unclear how the agencies will distinguish between waters flowing as a result of snow or rainfall (ephemeral) and those waters that flow based on seasonal melting snowpack (intermittent). QQ should consider submitting comments on the potential exclusion of some of these ephemeral or intermittent features from CWA jurisdiction.

c. Ditches

Most ditches will not be considered jurisdictional under the 2019 Proposed Rule. For ditches to be considered jurisdictional under the 2019 Proposed Rule, they must be: 1) TNWs used in interstate or foreign commerce, 2) subject to the ebb and flow of the tide, 3) constructed in a

tributary under the new tributary definition, or 4) constructed in an adjacent wetland under the new definition of adjacent wetland.¹²

Many man-made ditches were excluded from jurisdiction under the Clean Water Rule or pre-2015 agency policy as well. However, currently, some ditches could be jurisdictional if they had a significant nexus to a jurisdictional water. Under the 2019 Proposed Rule, those ditches that might have previously qualified for jurisdiction based on the significant nexus test would be excluded unless the ditches were constructed in a jurisdictional tributary or wetland and exhibited perennial or intermittent flow to those waters.

d. Lakes and Ponds

“Lakes and Ponds” is a new category in the 2019 Proposed Rule. A lake or pond would be jurisdictional if: 1) it is a traditional navigable water, 2) it contributes perennial or intermittent flow to a jurisdictional water either directly or indirectly, or 3) if it is flooded by a jurisdictional water in a typical year.¹³ Some lakes and ponds that might have been considered jurisdictional under the significant nexus test are now subject to the “perennial and intermittent” flow requirements in order to fall under CWA jurisdiction, and some previously jurisdictional lakes and ponds may now be excluded.

e. Impoundments

The impoundments category of the 2019 Proposed Rule remains unchanged from the Clean Water Rule and from pre-2015 agency policy. Impounded jurisdictional waters of the United States are still considered jurisdictional and subject to CWA regulations.¹⁴

f. Wetlands

Which wetlands are under CWA jurisdiction has long been the most confusing and contentious aspect of the “waters of the United States” definition. The 2019 Proposed Rule defines adjacent wetlands as “wetlands that abut or have a direct hydrologic surface connection to other ‘waters of the United States’ in a typical year.”¹⁵ The Agencies favored a direct surface connection between wetlands and waters, based on Justice Scalia’s 4-person plurality opinion in *Rapanos*, instead of utilizing Justice Kennedy’s more narrow significant nexus test as the Agencies have done since 2006.

The 2019 Proposed Rule excludes wetlands that do not demonstrate “perennial or intermittent flow in a typical year” to a jurisdictional water.¹⁶ Subsurface connections between a wetland and a jurisdictional water would not be enough to invoke CWA jurisdiction under the 2019 Proposed Rule. This would eliminate some wetlands, like those separated from tributaries by berms or

¹² *Id.* at 94.

¹³ *Id.* at 105.

¹⁴ *Id.* at 70.

¹⁵ *Id.* at 114.

¹⁶ *Id.* at 115.

dikes, that have been jurisdictional previously because of the “significant nexus” to nearby jurisdictional waters.

g. Excluded Waters

The agencies have also identified some waters that are excluded from CWA jurisdiction.¹⁷ The exclusions in the 2019 Proposed Rule are substantively the same from the Clean Water Rule and Pre-2015 agency guidelines, except the Agencies explicitly exclude “ephemeral surface features” which only flow in response to precipitation.

III. Potential Impacts for the QQ Region

One of QQ’s central policies is to strengthen available tools to protect water quality and quantity. The CWA is one of the most important of these tools because of the Section 404(b)(1) guidelines that protect the aquatic environment when jurisdiction is triggered. Also, the impacts of transmountain diversion projects to the aquatic environment are regulated when CWA jurisdiction is invoked. QQ has long supported clarifying the “waters of the United States” definition as an important step towards better protecting water quality and quantity in the headwaters region.

However, as outlined below, the 2019 Proposed Rule would exclude some waters that previously received CWA protections, and may introduce additional uncertainty about which tributaries and wetlands are jurisdictional. There are several potential impacts of the 2019 Proposed Rule for QQ members:

- The 2019 Proposed Rule could affect transmountain diversion projects. Water development projects involving off-channel reservoirs, isolated wetlands, adjacent wetlands, and smaller ephemeral tributaries will likely be outside of CWA jurisdiction.
- The 2019 Proposed Rule is likely to remove some waters in the QQ region from federal jurisdiction. For example, previously, if development were to occur in a wetland area that had a significant nexus to a jurisdictional water, either through a surface or subsurface connection, then it would require a 404 permit. However, under the 2019 Proposed Rule, a wetland must either directly touch a jurisdictional water or possess perennial or intermittent flow to a TNW in order to require a 404 permit and invoke CWA protections.

As such, the proposed rule might be insufficient to address the water quality impacts of future residential, commercial and industrial development of the QQ region. The QQ region is projected to face significant pressures from additional population growth and an increased emphasis on resource extraction industries in upcoming years.
- The 2019 Proposed Rule introduces ambiguity as to which headwaters streams qualify as “tributary” because of perennial or intermittent flow. Headwaters streams

¹⁷ *Id.* at 133.

would be a tributary if they flow as the result of snowpack, defined as “layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.*, in northern climes and mountainous regions).” However, streams with “ephemeral flow” as a direct result of precipitation, such as snowfall or rainfall, may not be considered tributaries. It will be difficult to determine whether flow is ephemeral or intermittent in parts of the headwaters region. This rule change will potentially create ambiguity and lead to additional lengthy jurisdictional determination reviews and inconsistent application by the Agencies.

- The 2019 Proposed Rule eliminates the significant nexus test, so Agencies are not required to assess connections throughout the watershed when determining CWA jurisdiction. This approach is not consistent with the watershed approach taken by many in the QQ region to protect water quality.

IV. Next Steps for the QQ Board

We recommend QQ submit comments to the Agencies on the potential water quality impacts of this proposed rule in the QQ region. The 2019 Proposed Rule was published in the Federal Register on February 14, 2019, and **comments are due April 15, 2019.**

We look forward to speaking to you about the 2019 Proposed Rule at the next quarterly meeting, and please reach out should have any questions, concerns, or comments before the March meeting.

April 15, 2019

Andrew Wheeler

R.D. James

RE: Docket ID No. 12345

DRAFT
Comment on Waters of the United States Rulemaking

Dear Mr. Wheeler and Mr. James:

These comments are submitted by the Northwest Colorado Council of Governments Water Quality/Quantity Committee (“QQ”) to address the EPA’s and Army Corps’ (“the Agencies”) rulemaking regarding the definition of “Waters of the United States” under the Clean Water Act (“CWA”). QQ’s members are municipalities, counties, and water and sanitation districts in the headwaters region of the Colorado, Gunnison, and Yampa River basins (“headwaters region”). QQ’s purpose is to enhance the region’s water quality while encouraging its responsible use for the good of Colorado and the environment. The CWA provides considerable water quality protections that benefit QQ. Furthermore, the Northwest Colorado Council of Governments is the designated Regional Water Quality Management Agency under Section 208 of the CWA appointed by Executive Order of the governor of Colorado to prepare and implement the region’s 208 plan.

QQ was an active participant in the Agencies’ 2015 Clean Water Rule rulemaking, and generally supported the water quality protections and clarification on CWA jurisdiction which that rule provided. The Agencies’ current rulemaking regarding the Definition of “Waters of the United States” (“2019 Proposed Rule”) does not afford waters in the QQ region the same level of protection and adds confusion as to which waters are considered jurisdictional under the CWA. The following comments focus on how the 2019 Proposed Rule would impact waters in the QQ region and other similar regions throughout the country.

I. General Comments

Water quality is critically important to QQ because of the role water plays in the region’s economy. Tourism is the largest employment sector in the headwaters region, comprising 48% of all jobs.¹ Tourism and recreational activities impacted by water quality include fishing, hunting, kayaking, rafting, lake recreation, hiking, camping, wildlife and bird watching, skiing, and other snow sports. Travelers to the headwaters region have an economic impact throughout the entire state of Colorado as many of them purchase goods and services throughout the state. In addition, water from the headwaters region flows downstream to six other states and Mexico, providing water for use by more than 30 million people. Colorado has interstate compacts with these states to ensure that citizens of those states have access to clean water. Local governments like those

Coley/Forrest Inc., “Water and its Relationship to the Economies of the Headwaters Counties,” Northwest Colorado Council of Governments (December 2011), http://nwccog.org/wp-content/uploads/2015/03/QQStudy_Report_Jan-2012.pdf.

comprising QQ are charged with protecting water quality through their stormwater, wastewater and water treatment systems. Clean Water Act (CWA) protections help to ensure safe drinking water and robust economies. Maintaining CWA jurisdiction while clarifying the scope of federal authority over water bodies is essential to this goal.

II. Comments to Specific Sections of the Proposed Rule

a. Tributaries

In mountain regions of the west, almost all streams are non-navigable tributaries, because their source is snowmelt or groundwater. The benefit of clean water to local communities in the headwaters that are dependent on tributaries is substantial. These waters are the lifeblood of headwater communities, serving as drinking water supplies and receiving waters for wastewater discharges. They also support significant beneficial uses such as fisheries, boating, wading and other water-based uses all of which warrant CWA protection, especially considering that these waters flow downhill to join with other streams to create navigable waters. Tributary wetlands also serve a critical function by absorbing naturally occurring pollutants such as heavy metals. Without CWA protection, these wetlands could no longer perform this function.

The nexus between headwaters and Clean Water Act goals is aptly described in a paper published in the *Journal of the American Waters Resources Association*: “[H]ydrological connectivity allows for the exchange of mass, momentum, energy, and organisms longitudinally, laterally, vertically, and temporally throughout stream networks and the underlying aquifers. Therefore, hillslopes, headwater streams, and downstream waters are best described as individual elements of integrated hydrological systems.”² Thus, CWA protection for waters at the top of the watershed, whether they are intermittent or ephemeral streams or nearby wetlands, is essential because these waters affect the biologic, chemical, and physical integrity of downstream navigable waters. There is no rational basis to exclude these waters from CWA protection because they always are functionally interconnected to the waters that they join.

Eliminating ephemeral waters from CWA jurisdiction will remove protections for a significant number waters in the QQ region, harming water quality and the region’s economy. The Agencies have historically determined the jurisdiction of waters that were not traditionally navigable based on whether the water bore a significant nexus to other jurisdictional waters. The 2019 Proposed Rule’s eliminates this significant nexus test in favor of determining a water’s jurisdiction based on whether it provides “perennial or intermittent flow” to a jurisdictional water. If flow is “ephemeral,” then it is not under CWA jurisdiction.

In the headwaters region, ephemeral and intermittent features constitute as much as 62% of drinking water sources. Even if not used as drinking water, these waters provide recreational opportunities, which are vital to the region’s economy. The headwaters region is experiencing unprecedented population growth and development. Limiting CWA jurisdiction likely will lead to increased development occurring within or near wetlands or tributaries without securing federal 404 permits or being subject to CWA regulations. If these streams are not afforded

² Tracie-Lynn Nadeau and Mark Cable Rains, “Hydrological Connectivity Between Headwater Streams and Downstream Waters: How Science Can Inform Policy” *Journal of the American Water Resources Association* 43:1 (February 2007):128.

protection under the CWA, then there could be negative impacts on the region's water quality and economy.

Furthermore, the determination of whether a water is intermittent and thus jurisdictional, or ephemeral and thus non-jurisdictional, will be based on a new set of unpredictable and undefined analyses. The Agencies state they will use a variety of methods including relying on experts and landowners to conduct field visits and collect data, water samples, and photographs over the span of multiple years to determine the flow of certain features. This approach sounds much like the significant nexus evaluation, except with increased emphasis on demonstrating visual connections instead of science-based hydrological connections. While an important goal of this rulemaking is to increase clarity for regulated entities, these new analyses have the potential to introduce new ambiguity and unpredictability.

In particular, the Proposed Rule distinguishes between waters that flow because of snowfall or precipitation events (ephemeral) and waters that flow as a result of the melting of "layers of snow that accumulate over extended periods of time" (intermittent). Given the increase in drought and warmer temperatures already seen in the headwaters, and expected to increase, distinguishing between snowpack and a snowfall event will be difficult and continue to be more difficult. The trend will be fewer waters under CWA jurisdiction in the headwaters, to the detriment of water quality.

b. Wetlands

QQ is also concerned about the reduced number of wetlands protected under the CWA. While the 2019 Proposed Rule would maintain adjacent and abutting wetlands as jurisdictional, the rule eliminates wetlands that do not exhibit a surface connection to a jurisdictional water from federal jurisdiction. Wetlands that do not have a surface connection, or only have a surface connection during certain times of the year or in response to precipitation, are still connected to jurisdictional waters through subsurface or watershed connections. These wetlands have a significant impact on the water quality and quantity of the headwaters region, and jurisdiction should be maintained.

c. Ditches

It is important to understand that in the arid West, water supply via ditches is common, particularly in rural headwaters communities. Ditches historically divert water directly from tributary streams and rivers, and frequently return much needed water as return flow to the system. We offer two comments related to the proposed rule's inclusion of ditches in the proposed rule.

i. Ditches functioning as tributaries

First, maintaining jurisdiction for ditches functioning as tributaries is an important part of this proposed rule and should be maintained. At times, more flow from a stream can be diverted into a ditch than would be left in a stream. Other times, ditches contribute very limited flow only during significant storm events or may spill occasionally while not normally contributing flow. The proposed rule properly focuses on CWA jurisdiction over ditches that meet the proposed definition of tributary or drain jurisdictional wetlands.

QQ recommends clarifying how the agencies would determine how a ditch contributes perennial or intermittent flow, as opposed to ephemeral flow, to navigable waters. As discussed under “tributaries,” above, the proposed rule defines intermittent flow, triggering jurisdiction as a tributary, based on whether surface water is “flowing continuously during certain times of a typical year and more than in direct response to precipitation.” This definition leaves considerable ambiguity around how Agencies will assess jurisdiction for ditches based on flow amounts, especially as the controlled flow is not always based on precipitation events.

ii. Maintenance of ditches

The proposed rule does not change (and in fact cannot change) exemptions for activities listed in Section 404(d) of the Clean Water Act. Currently and under the proposed rule, the discharge of dredged or fill material associated with construction or maintenance of irrigation ditches or the maintenance (but not construction) of drainage ditches does not require a Section 404 permit.³ These types of discharges are exempt as long as a case-by-case determination establishes that the discharge is not part of “any activity having as its purpose bringing an area of navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced...”⁴ Local governments own and operate ditches such as water supply, flood control channels, drainage conveyances, stormwater, and irrigation ditches for parks and other public facilities, and these exemptions are essential for local governments to fulfill these responsibilities.

The proposed inclusion of ditches functioning as tributaries is consistent with these existing ditch exemptions. Any activity on the proposed exempted ditches will not significantly affect navigable waters and therefore will never be part of any activity with a purpose to bring an area of navigable waters into a new use. Because of the importance of these existing exemptions and the considerable concern over the proposed rule’s affect on the existing exemptions, the proposed rule should be explicit that the proposed rule would not change these exemptions in any way as the proposed rule does for ranching, farming and silviculture exemptions.

III. Conclusion

The protections for water quality offered under the CWA are critically important for the headwaters economy and environmental health. Water quality protection in the headwaters will become increasingly important as the region sees increased development and future water needs. Protecting water quality also means protecting the region’s economic backbone of tourism, recreation, and agriculture. The narrowing of CWA jurisdiction in this new proposed rule threatens the health of QQ rivers, streams, and wetlands, and the QQ region’s economy.

QQ requests the proposed rule incorporate an evaluation for ephemeral streams and wetlands with important hydrological connections but no surface connections to jurisdictional waters; the significant nexus test has afforded that type of case-by-case analysis that provides important stream protection. QQ also requests clarifications for how Agencies will determine whether a

³ 404(f)(1)(C) of the CWA (see also 33 CFR 323.4(a)(3) and 40 CFR 232.3(c)(3)).

⁴ Section 404(f)(2); *see also* 40 CFR 232.3(b).

water is intermittent or ephemeral, especially for ditches, as this could create significant additional confusion for what waters are jurisdictional in the headwaters. Finally, we request additional clarifications around which ditches will be considered jurisdictional.

QQ requests and appreciates your consideration of our comments. Please do not hesitate to contact me directly or Torie Jarvis at qqwater@nwccog.org for more information or questions.

Sincerely,

cc:

Senator Michael Bennet
Senator Cory Gardner
Representative Scott Tipton
Representative Joe Neguse
NWCCOG/ QQ Members

draft



Staff Report

April 1, 2019

To: Mayor and Town Council

From: Dara MacDonald, Town Manager

Subject: Increasing compensation for the positions of Mayor and Council members

Summary: The Council has previously identified the goal of recruitment and retention of quality Council members. One method of achieving this goal is to review the compensation elected officials receive in exchange for their service. The Mayor has heard from several members of the Council that they would like to revisit compensation for serving as an elected official. This action would not apply to any sitting member of the Council until after the next time their position is up for election.

Previous Council Action: The most recent action taken on this issue was in June of 2017 with Ordinance 2017-15. That ordinance increased compensation for Council members from \$4,800 to the current rate of \$6,000 (\$500 per month). The ordinance also increased the compensation for Mayor from \$9,600 to \$10,800 (\$900 per month). Prior to Ordinance 2017-15 the compensation had not been increased since 2012.

Background: Section 3.6 of the Crested Butte Home Rule Charter allows for members of the Council and the Mayor to receive such compensation as the Council shall prescribe by ordinance, provided that the compensation of any member during his or her term of office shall not be increased or decreased.

At this time the position of Mayor receives \$10,800 per year and Council members each receive \$6,000. Compensation for elected officials was last increased in 2017. The averages from other CAST communities were reviewed in 2017 and came out to just over \$11,000 per year for Mayor and \$6,700 for Council members.

By way of example an increase of \$100 per month would result in compensation of \$7,200 per year (\$600 per month) for Council members and \$12,000 (\$1,000 per month) for the Mayor and an annual budget increase of \$8,400. Similarly an increase of \$150 per month would result in \$7,800 per year (\$650 per month) for Council members and \$12,600 (\$1,050 per month) for the Mayor and an annual budget increase of \$12,600.

Financial Implications: Should the Council approve an increase in compensation there would be a minor budget implication following the election in November with increases going into effect for newly elected positions.

Proposed Next Steps: If the Council wishes to consider changing the compensation for elected officials you should direct staff to bring forward an ordinance for consideration with direction on the amount of increases to be considered.

2017 Review of Elected Official Compensation

CAST									
	Population	2017 Annual Budget	Mayor Pay Basis	Amount	Annual Total	Council Pay Basis	Amount	Annual Total	
Aspen	6,658	\$ 94,184,525	Hourly	\$ 29.06		Hourly	\$ 21.25		
Avon	6,447	\$ 33,373,157	Monthly	\$ 1,000.00	\$ 12,000.00	Monthly	\$ 500.00	\$ 6,000.00	
Breckenridge	4,500	\$ 75,727,629	Monthly	\$ 1,200.00	\$ 14,400.00	Monthly	\$ 800.00	\$ 9,600.00	
Carbondale	6,427	\$ 17,472,694	Monthly	\$ 1,500.00	\$ 18,000.00	Monthly	\$ 900.00	\$ 10,800.00	
Dillon	904	\$ 10,674,781	Annual	\$ 10,800.00	\$ 10,800.00	Annual	\$ 4,800.00	\$ 4,800.00	
Durango	16,887	\$ 41,060,471	Annual	\$ 9,000.00	\$ 9,000.00	Annual	\$ 6,000.00	\$ 6,000.00	
Estes Park	5,858	\$ 9,898,297	Annual	\$ 7,500.00	\$ 7,500.00	Annual	\$ 5,500.00	\$ 5,500.00	
Frisco	2,683	\$ 13,080,948	Annual	\$ 11,400.00	\$ 11,400.00	Annual	\$ 6,000.00	\$ 6,000.00	
Glenwood Springs	9,614	\$ 66,753,211	Annual	\$ 14,400.00	\$ 14,400.00	Annual	\$ 12,000.00	\$ 12,000.00	
Gunnison	5,854	\$ 22,401,593	Monthly	\$ 600.00	\$ 7,200.00	Monthly	\$ 500.00	\$ 6,000.00	
Mountain Village	1,320	\$ 39,005,737	Annual	\$ 9,600.00	\$ 9,600.00	Annual	\$ 4,800.00	\$ 4,800.00	
Mt. Crested Butte	801	\$ 5,721,690	Per Meeting	\$ 300.00	\$ 7,200.00	Per Meeting	\$ 150.00	\$ 3,600.00	
Ouray	1,000	\$ 6,076,566	Monthly	\$ 500.00	\$ 6,000.00	Monthly	\$ 200.00	\$ 2,400.00	
Pagosa Springs	1,127	\$ 8,223,000	Annual	\$ 3,600.00	\$ 3,600.00	Annual	\$ 2,400.00	\$ 2,400.00	
Silverthorne	3,887	\$ 14,000,000	Annual	\$ 9,000.00	\$ 9,000.00	Annual	\$ 3,600.00	\$ 3,600.00	
Snowmass Village	2,826	\$ 23,906,706	Monthly	\$ 1,700.00	\$ 20,400.00	Monthly	\$ 1,000.00	\$ 12,000.00	
Steamboat Springs	12,088	\$ 46,271,468	Annual	\$ 13,460.00	\$ 13,460.00	Annual	\$ 10,250.00	\$ 10,250.00	
Telluride	2,325	\$ 30,339,513	Annual	\$ 18,000.00	\$ 18,000.00	Annual	\$ 9,600.00	\$ 9,600.00	
Vail	5,305	\$ 73,012,360	Annual	\$ 12,000.00	\$ 12,000.00	Annual	\$ 7,500.00	\$ 7,500.00	
Winter Park	999	\$ 17,412,013	Per Meeting	\$ 400.00	\$ 9,600.00	Per Meeting	\$ 200.00	\$ 4,800.00	
Crested Butte	1,487	\$ 20,993,219	Annual	\$ 9,600.00	\$ 9,600.00	Annual	\$ 4,800.00	\$ 4,800.00	
			Average (excluding Aspen & CB)		\$ 11,240.00			\$ 6,718.42	
			Average (excluding Aspen, Pagosa, Snowmass & CB)		\$ 11,150.59			\$ 6,661.76	





FOOD for 
CHILDREN
 HEALTHY SNACKS & GUNNI-PACKS



**HONORING
 GUNNISON COUNTY
 SENIORS**



March 14, 2019

Jim, Paul, Laura, Jackson, Chris, Will
 and Candice,

Thank you for supporting the Food Pantry
 with a community grant of \$500. This
 unrestricted contribution will enable us to
 purchase fresh produce, protein and dairy
 to balance the bakery items and canned
 goods we receive from local stores and food
 drives. The people of Gunnison County
 who are struggling to stay warm and eat
 this winter sincerely appreciate your
 help.

I salute your success in supporting
 the very many causes that are
 meaningful to the citizens of Crested Butte!

Katie Dip, GCFP Secretary.

Agenda
Design Review Committee
Monday
March 18, 2019

- 3:00 Insubstantial determination requested by **Patrick Duke** to site metal siding above the 18” wainscot allowance to three feet at the town home located at 818 Teocalli Avenue, Unit A, Redwell Townhomes, Block 77, Tract 4 in the R2A zone. (Duke)
- An insubstantial determination is requested.
- 3:30 Consideration of the application of **James Steyaert and Harmony Cummings** to demolish the existing primary and accessory building and site a single family residence and accessory building to be located at 222 Whiterock Avenue, Block 40, Lots 6-7 in the R2C zone. (Vandervoort/Steyaert)
- Architectural approval is required.
- A conditional use permit for a non-residential, heated and/or plumbed accessory building in the R2C zone is required.
- Permission to demolish two non-historic structures is requested.

The above times are only tentative. The meeting may move more quickly or slowly than scheduled

Agenda
BOARD OF ZONING and ARCHITECTURAL REVIEW
Tuesday
March 26, 2019

- 6:00 Call to Order.
- 6:01 Review and approve the minutes from the **February 26, 2019** BOZAR meeting.
- 6:03 Collect Guidelines from each member. Committee member selection.
- 6:15 Consideration of a land use application by the **Town of Crested Butte as authorized by Cypress Foothills, LP** concerning an undeveloped 14.157 acre parcel that adjoins the Town of Crested Butte's northeastern municipal boundary. Full application information is available at www.townofcrestedbutte.com . Municipal Code land use requirements to be considered include: (Nevins/Yerman)
- Establishment of zoning pursuant to Chapter 16, Article 3 Zoning Districts;
- Creation of R1F Residential standards pursuant to Chapter 16, Article 23 Amendments; and
- Major Subdivision Sketch Plan review pursuant to Chapter 17, Article 5 Major Subdivisions.
- Recommendation to the Planning Commission is required.
- 7:15 Consideration of the application of **Bywater LLC in conjunction with the Town of Crested Butte** to construct a triplex and cold accessory building to be located at 8, 10, 12 Ninth Street, Block 79, Lot 10 in the R2A zone. (Barney/Reeser/Wisian)
- Architectural approval is required.
- 8:00 Consideration of the application of **Bywater LLC in conjunction with the Town of Crested Butte** to construct a triplex to be located at 11, 13, 15 Ninth Street, Block 78, Lot 6 in the R2A zone. (Barney/Reeser/Wisian)
- Architectural approval is required.
- 9:00 Consideration of the application of **322 Belleview Avenue, a Colorado LLC** to demolish a portion of the building and reconstruct the second floor and roof of the existing, non-historic commercial building located at 322 Belleview Avenue, Block 46, Lots 5-6 in the C zone. (Hadley/Ryan)
- Architectural approval is required.
- Permission to demolish a portion of a non-historic commercial building is requested.
- 10:00 Consideration of the application of **James Steyaert and Harmony Cummings** to demolish the existing primary and accessory building and site a single family residence and accessory building to be located at 222 Whiterock Avenue, Block 40, Lots 6-7 in the R2C zone. (Vandervoort/Steyaert)
- Architectural approval is required.
- A conditional use permit for a non-residential, heated and/or plumbed accessory building in the R2C zone is required.
- Permission to demolish two non-historic structures is requested.
- 11:15 Miscellaneous:
- o DRC for April 15 and 22: Magner and Nauman (BOZAR – April 30th)
 - o DRC for May 13 and 20: Magner and _____ (BOZAR – May 28th)
 - o DRC for June 10 and 17: _____ (BOZAR – June 25th)
 - o Board member changes
 - o Update from Bob Nevins on the Subdivision Exemption Ordinance.
 - o Insubstantial:
 - o Duke (818 Teocalli, Unit A) – Metal wainscot, directed to full Board in June as an insubstantial.
- 11:30 Adjourn

The above times are only tentative. The meeting may move more quickly or slowly than scheduled



AGENDA

Regular Town Council Meeting

6:00 PM - Tuesday, March 19, 2019
Council Chambers

	Page
1. WORK SESSION - 5:00PM	
Concept Plan Review for a Planned Unit Development for Lots NI-1, NI-2 and ROS-1 Chalet Village Addition 1, AKA 16, 18 and 24 Treasury Road by Pearls Management, LLC	
1.1. Work Session - Nordic Inn PUD	3 - 16
2. CALL TO ORDER - 6:00PM	
3. ROLL CALL	
4. APPROVAL OF MINUTES	
4.1. Approval of the February 26, 2019 Special Town Council Meeting Minutes February 26, 2019 - Meeting Minutes	17 - 23
4.2. Approval of the March 5, 2019 Regular Town Council Meeting Minutes March 5, 2019 Minutes	24 - 28
5. REPORTS	
5.1. Town Manager's Report	29 - 34
5.2. Community Development Report	35 - 44
5.3. Finance Report	
5.4. Police Department Report	45
5.5. Public Works Report	46 - 47
5.6. Town Council Reports	
5.7. Mt. Crested Butte Water and Sanitation District - Mike Fabbre	
6. CORRESPONDENCE	
7. OLD BUSINESS	
7.1. Discussion and Possible Consideration of the Date of the 2019 Annual Town Picnic - Tiffany O'Connell	
7.2. Discussion and Possible Consideration of Amended and Restated Affordable Housing Deed Restriction for Homestead Subdivision - Carlos Velado Homestead Development Contract and amended deed restriction 3-19	48 - 56
7.3. Discussion and Possible Consideration of Second Amendment to Contract to Buy, Sell and Develop Deed Restricted Housing in Homestead Subdivision - Carlos Velado Homestead Housing - Second Amendment Contract Signed	57 - 60
8. NEW BUSINESS	

- 8.1. Discussion and Possible Consideration of Ordinance No. 3, Series 2019 - An Ordinance of the Town Council of the Town of Mt. Crested Butte, Colorado, Amending Chapter 21, Zoning, of the Town Code of the Town of Mt. Crested Butte, Colorado (Modifying Setback Regulations and Chapter Organization) - First Reading - Leah Desposato 61 - 133
[Ordinance 3, Series 2019](#)
- 8.2. Discussion and Possible Consideration of the Fifth Amendment to Annexation and Development Agreement (East Trade Parcel) - Michael Kraatz 134 - 212
[Fifth Amendment to Annexation Agreement](#)
[Annexation Agreement and Amendments 1-4](#)

9. OTHER BUSINESS

10. PUBLIC COMMENT

Citizens may make comments on items not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments are limited to five minutes.

11. ADJOURNMENT

GUNNISON COUNCIL AGENDA
MEETING IS HELD AT CITY HALL, 201 WEST VIRGINIA AVENUE
GUNNISON, COLORADO; IN THE 2ND FLOOR
COUNCIL CHAMBERS

Approximate meeting time: 3 hours

TUESDAY

MARCH 26, 2019

REGULAR SESSION

5:30 P.M.

- I. Presiding Officer Call Regular Session to Order: (silent roll call by City Clerk):**
- II. Public Hearing on Text Amendment which proposes modification to the B1 Zone District and Section 3.7 Accommodations, Retail, Service-Commercial Use Standards within the *City of Gunnison Land Development Code*.**
 Background: To receive public input on the text amendment application, ZA 19-3, which proposes modification to the B1 (Professional Business) Zone District within Table 2-5 Nonresidential Zone District Dimensional Standards and Section 3.7 Accommodations, Retail, Service – Commercial Use Standards within the *City of Gunnison Land Development Code*.
 Staff contact: Community Development Director Anton Sinkewich
 Estimated time: 15 minutes
- III. Public Hearing on Text Amendment to propose amending Section 5.4 E. Wetland and Streams Corridor Protection, Buffer/Setback Areas within the *City of Gunnison Land Development Code*.**
 Background: To receive public input on the text amendment application, ZA 19-2, which proposes to amend Section 5.4 E. Wetland and Streams Corridor Protection, Buffer/Setback Areas within the *City of Gunnison Land Development Code*.
 Staff contact: Community Development Director Anton Sinkewich
 Estimated time: 15 minutes

Public Hearings are the formal opportunity for the City Council to listen to the public regarding the issue at hand. Citizens giving input must identify themselves. Anonymous testimony will not be considered. In a quasi-judicial public hearing, the Council is acting in much the same capacity as a judge. Most land use applications including marijuana/liquor license applications are types of quasi-judicial actions. The Council must limit its decision consideration to matters which are placed into evidence and are part of the public record at the hearing. Legislative and administrations public hearings include those that are a formal opportunity for Council to listen to the public regarding the issue at hand, i.e. increases in utility rates or the annual city budget.

IV. Citizen Input: (estimated time 3 minutes)

At this agenda time, non-agenda scheduled citizens may present issues of City concern to Council on topics on are not to be considered later in the meeting. Per Colorado, Open Meetings Law, no Council discussion or action will take place until a later date; unless an emergency situation is deemed to exist by the City Attorney. Each speaker has a time limit of 3 minutes to facilitate efficiency in the conduct of the meeting and to allow an equal opportunity for everyone wishing to speak

V. Council Action Items

A. Consent Agenda: *The consent agenda allows City Council to approve, by a single motion, second and vote, matters that have already been discussed by the entire Council or matters that are considered routine or non-controversial. The agenda items will not be separately discussed unless a councilor, City staff, or a citizen requests and item be removed and discussed separately. Items removed from the consent agenda will then be considered after consideration of the consent agenda.*

○ **Authorization to Amend City Contract with Veris Environmental, LLC to initiate Alternate A and B for the Oxidation Ditch Solids Removal Project.**

Background: Alternate A and B is the same scope of work as the base bid. The bids for Alternate A and B remain in effect for 365 days of receipt of the original bid. Award now will fall within this allowable time frame. Some reallocation of budgeted funds will be required. The cost of Alternate A is \$58,200 and the cost of Alternate B is \$65,000.

Staff contact: Public Works Director David Gardner

○ **SCADA System Upgrades**

Background: SCADA system upgrades include replacement and installation of PLC's, radios and updating software. This capital improvement request is budgeted for \$80,000.00.

Staff contact: Water and Sewer Superintendent Joe Doherty and Public Works Director David Gardner

Action Requested of Council: A motion, second and vote to approve the Consent Agenda as presented with the following items:

- Authorize an amendment to the contract with Veris Environmental to initiate Alternate A and B for the oxidation ditch solids removal project; and
- Approval to contract with Browns Hill Engineering & Controls which may include the additional purchase of SCADA licensing software in the amount not to exceed \$80,000.

Estimated time: 5 minutes

B. Excuse Mayor Gelwicks from the March 12, 2019 Regular Session Meeting

Background: Councilors are allowed to be formally excused from a Regular, Special or Reorganization Session meeting by a quorum vote of the City Council per Section 4.4 (F) of the Gunnison Municipal Home Rule Charter.

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion and a second to excuse Mayor Gelwicks from the March 12, 2019 Regular Session meeting.

Estimated time: 2 minutes

C. Approval of the March 12, 2019 Regular Session meeting minutes.

Background: per City Charter, the City Clerk produces minutes of the Council actions for all regular and special session meetings. Minutes are approved or amended at the follow regular session meetings and become permanent city record. If a city councilor was not present at the meeting, they must abstain in the vote and action on approval of the minutes.

Staff contact: City Clerk Erica Boucher

Action Requested of Council: A motion, second and vote to approve the minutes of the March 12, 2019 Regular Session meeting.

Estimated time: 2 minutes

- D. Ordinance No. 3, Series 2019, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Amending Sections: 2, Table 2-5, Nonresidential Zone District Dimensional Standards and 3.7, Accommodations, Retail, Service - Commercial Use Standards, of the City of Gunnison Land Development Code*
 Background: The proposed text amendment is being driven by the Gunnison Vibrancy Initiative community input and recommendation, the Land Development Code Diagnosis, and public comment received in regard to the B1 zone district at multiple public hearings.
 Staff contact: Community Development Director Anton Sinkewich
Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and order published Ordinance No. 3, Series 2019 on first reading.
 Estimated time: 10 minutes
- E. Ordinance No. 2, Series 2019; Second Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Amending the Rates to be Charged by the City of Gunnison Electric Department for Electricity Consumed.*
 Background: This ordinance raises electric rates charged by the City of Gunnison for electricity consumed by the customer. This increase will allow the City to cover increased maintenance/operational costs and to replace necessary components and equipment.
 Staff Contact: Public Works Director David Gardner and Electric Superintendent Will Dowis
Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and adopt Ordinance No. 2, Series 2019 on second reading.
 Estimated time: 5 minutes
- F. Ordinance No. 4, Series 2019, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado Amending Section 5.4 E. 2., Wetland and Streams Corridor Protection, Buffer/Setback Areas, Wetlands of the City of Gunnison Land Development Code*
 Background: This text amendment is to correct an error to the *Land Development Code* regarding a setback from a delineated wetland of 50 feet. The original intent was geared around protection of the Tomichi Creek and the Gunnison River.
 Staff contract: Community Development Director Anton Sinkewich
Action Requested of Council: Introduce, read by title only by the City Attorney, motion, second and vote to pass and order published Ordinance No. 4, Series 2019 on first reading.
 Estimated time: 10 minutes
- G. Resolution No. 2, Series 2019.** *A Resolution of the City Council of the City of Gunnison, Colorado, Acting by and Through Its Enterprise Fund, Declaring Its Official Intent to Reimburse Itself with Proceeds of a Future Borrowing for Capital Expenditures to be Undertaken by the City; Identifying the Capital Expenditures and the Funds to be Used for Such Payment; and Providing Certain Other Matters in Connection Therewith*
 Background: In order to borrow proceeds for capital expenditures to be used at the Wastewater Treatment facility, a resolution is required by the State of Colorado declaring official intent for the City to reimburse itself with these future proceeds.

Staff Contact: Public Works Director David Gardner

Action Requested of Council: Introduce, read by title only, motion, and vote to pass and adopt Resolution No. 2, Series 2019.

Estimated time: 5 minutes

VI. Council Discussion Items

A. GCSAPP Presentation on Community Risk and Protective Factors.

Background: Gunnison has been working through the data collection and evaluation phase of the Communities that Care process since May 2018. The first step was to identify risk and protective factors. To help us identify these priorities, GCSAPP looked at the Healthy Kids Colorado Survey, the HSR 10 CTC supplemental questions for 2016 Colorado Behavioral Risk Factor Surveillance System (BRFSS) Data Gunnison County Community Survey, and GCSAPP Community Health Needs Assessment 2016. These surveys provide measures of the predictors of health and behavior problems (risk and protective factors) as well as health and behavior problems themselves.

Community contact: GCSAPP Director Kari Commerford

Estimated time: 15 minutes

B. Cattlemens Days Grant Discussion.

Background: Report and discussion regarding City support of Cattlemens Days.

Community contact: Cattlemens Days President Kevin Coblenz

Estimated time: 15 minutes

VII. Reports:

Community Development Semi-Annual Report

City Attorney Report

City Clerk Schedule Update

City Manager Strategic Projects Update and Report

City Councilors with City-related meeting reports; discussion items for future

Council meetings

VIII. Meeting Adjournment

The City Council Meetings agenda is subject to change. The City Manager and City Attorney reports may include administrative items not listed. Regular Meetings and Special Meetings are recorded and action can be taken. Minutes are posted at City Hall and on the City website at www.gunnisonco.gov. Discussion Sessions are recorded; however, minutes are not produced. For further information, contact the City Clerk's office at 970.641.8140. **TO COMPLY WITH ADA REGULATIONS, PEOPLE WITH SPECIAL NEEDS ARE REQUESTED TO CONTACT THE CITY CLERK 24 HOURS BEFORE ALL MEETINGS AT 970.641.8140.**

DATE: Tuesday, March 19, 2019

Page 1 of 2

PLACE: Board of County Commissioners' Meeting Room at the Gunnison County Courthouse

GUNNISON RIVER VALLEY LOCAL MARKETING DISTRICT SPECIAL MEETING:

- 8:30
- Call to Order
 - Memorandum of Agreement; Marble Crystal River Chamber of Commerce
 - Adjourn

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS REGULAR MEETING:

- 8:35
- Call to Order
 - Agenda Review
 - Minutes Approval:
 1. 2/12/19 Special Meeting
 2. 2/19/19 Regular Meeting
 - Consent Agenda: These items will not be discussed unless requested by a Commissioner or citizen. Items removed from consent agenda for discussion may be rescheduled later in this meeting, or at a future meeting.
 1. Ratification of BOCC Correspondence; Letter of Support; Colorado Opportunity Scholarship Initiative
 2. Liquor License Renewal; Three Rivers Smokehouse; April 17, 2019 – April 17, 2020
 3. Contractor Agreement; Fossil Ridge Behavioral Health LLC
 4. Grant Applications; Upper Gunnison River Water Conservancy District; \$40,000 & Colorado Parks & Wildlife – Fishing is Fun; \$215,000
 5. Professional Services Agreement; Kelly Banas LPC
 6. Grant Application; GCSAPP & Colorado Department of Transportation
 7. Request to Submit Grant Application; Department of Health & Human Services Substance Abuse & Mental Health Services Administration; Strategic Prevention Framework – Partnerships for Success Grant; \$300,000 Annually
 8. Acknowledgment of County Manager's Signature; Consulting Agreement; MJM Project Consulting, LLC
 9. Fiscal Agreement; Licensed Provider Child Care Services
 10. Grant Application; Airport Terminal Design; Federal Aviation Administration
 11. Resolution; A Resolution Adjusting Ground Rent for Use of Premises at the Gold Basin Industrial Park
 12. Business Associate Agreement; CoreSource, Inc.
 13. **ADDITION:** Grant Application; Department of Local Affairs; Rural Economic Development Initiative; Icelab
 - Scheduling
- 8:45
- Public Hearing; Request for Waiver of Gunnison County Standard Specifications for Road & Bridge Construction; Gregory Subdivision
- 8:55
- County Manager's Report
ADDITION: Grant Application; Department of Local Affairs; Energy / Mineral Impact Assistance Fund Grant; Solar PV
- 9:05
- Deputy County Manager's Report
 1. Resolution; A Resolution Authorizing Temporary Weight Restriction for a Portion of County

*NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager and Deputy County Manager's reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded and **ACTION MAY BE TAKEN ON ANY ITEM.** Work Sessions are not recorded and formal action cannot be taken. For further information, contact the County Administration office at 641-0248. If special accommodations are necessary per ADA, contact 641-0248 or TTY 641-3061 prior to the meeting.*

**GUNNISON COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING & REGULAR MEETING AGENDA**

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DATE: Tuesday, March 19, 2019

Page 2 of 2

PLACE: Board of County Commissioners' Meeting Room at the Gunnison County Courthouse

Road 734 also known as Slate River Road

2. Resolution; A Resolution Authorizing Temporary Seasonal Closure and Weight Restriction for a Portion of County Road 38 also known as Gold Basin Road

- 9:20
- Discussion; Possible 11/5/19 Elections Coordination
- 9:25
- Vouchers and Transfers
 - Sales Tax & Local Marketing District Reports
 - Treasurer's Reports
 - Unscheduled Citizens: Limit to 5 minutes per item. No formal action can be taken at this meeting.
 - Commissioner Items: Commissioners will discuss among themselves activities that they have recently participated in that they believe other Commissioners and/or members of the public may be interested in hearing about.
 - Adjourn

GUNNISON COUNTY BOARD OF HEALTH:

- 9:45
- Call to Order
 - 2019 Meeting Agenda Planning
 - Vital Records 2018 Data Review
 - Suicide Prevention
 - Crisis Walk-in Center
 - Adjourn

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> no later than 6:00 pm on the Friday prior to the meeting.

GUNNISON COUNTY BOARD OF COMMISSIONERS
WORK SESSION AGENDA

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DATE: Tuesday, March 26, 2019

Page 1 of 1

PLACE: Board of County Commissioners' Meeting Room at the Gunnison County Courthouse

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS WORK SESSION:

- 8:30 • Discussion; Transportation Impact Fee

- 9:00 • Gunnison Valley Hospital Board of Trustees; Quarterly Update

- 10:30 • Visitors; Colorado Stone Quarries & Greg Lewicki & Associates; Quarry Road Trail

- 11:30 • Discussion; Sustainable Tourism & Outdoor Recreation Committee Representative

- Adjourn

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> no later than 6:00 pm on the Friday prior to the meeting.

April 8, 2019

Council meets as Planning Commission to Review Sketch Plan Application for Slate River Annexation

April 15, 2018**Work Session**

Coal Creek Coalition Update

Public Hearing

Slate River Annexation (probably continued to subsequent meetings)

New Business

Ordinance - Lease

Briefing of the Legal Implications of Vested Rights

Resolution - Amending Fee Schedule

Executive Session

Slate River Working Group - Legal Advice

May 6, 2019**Work Session**

Creative District Restructuring

Slate River Working Group Update

County Commissioner Update

Consent Agenda

Crested Butte Art Market Special Event Application

Award of Community Grants

Bid Award for Old Town Hall Elevator

Public Hearing

Tin Cup Pasty Liquor License

New Business

Q1 Financial Update

May 20, 2019**New Business**

Ordinance - Creative District Restructuring

Ordinance - Lease

June 3, 2019**New Business**

Bid Award for Block 76 Water Main Project

Ordinance - Lease

June 17, 2019

Work Session - Joint Meeting with Housing Foundation
InDeed Deed Restriction Purchase Program

July 1, 2019

Ordinance - Releasing Kikel CE

Future Items

- Quarterly Financial Reports
- Heights Open Space Plat Note and Covenants
- DOLA Update
- Annual Report from the Creative District Commission - October
- Snow Plan - October
- Deadline for Presentation of Annual Budget - October 15th
- Annual Report by the Chair of the Weed Advisory Board o Weed Management in the Town of Crested Butte - November
- Funding Agreement with the Chamber - December
- Ordinance - CO Model Traffic Code 2018