

AGENDA
Town of Crested Butte
Special Town Council Meeting
Monday, April 10, 2017
Council Chambers, Crested Butte Town Hall

PUBLIC NOTICE IS HEREBY GIVEN THAT THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO WILL HOLD A SPECIAL MEETING ON MONDAY, APRIL 10, 2017 BEGINNING AT 5:00PM IN THE TOWN COUNCIL CHAMBERS LOCATED IN THE CRESTED BUTTE TOWN HALL, 507 MAROON AVENUE, CRESTED BUTTE, COLORADO.

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

5:00 SPECIAL COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM

5:02 APPROVAL OF AGENDA

5:04 PUBLIC HEARING

- 1) Ordinance No. 8, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 1, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Michael and Lori Horn for the Sale Price of \$65,000.00.
- 2) Ordinance No. 9, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 7, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Andrew Allen for the Sale Price of \$55,000.00.
- 3) Ordinance No. 10, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 9, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Kevin and Susan Emery for the Sale Price of \$25,000.00.
- 4) Ratification of Ordinance No. 7, Series 2017 - An Emergency Ordinance of the Crested Butte Town Council Authorizing the Redemption of 721 Butte Avenue, Unit 1, Town of Crested Butte Pursuant to § 38-38-302, Et Seq. of the Colorado Revised Statutes in an Amount Not to Exceed \$125,000.00.

5:20 NEW BUSINESS

- 1) Approval of the Substance Abuse Prevention Community Grant Award to Gunnison County Substance Abuse Prevention Project in an Amount up to \$10,000.

5:30 ADJOURNMENT



To: Mayor Michel and Town Council

From: Michael Yerman, Director of Planning

Subject: **Ordinances 8-10, Series 2017 Lot Sales**

Date: April 10, 2017

Background:

On June 23, 2016, the Town in conjunction with the Gunnison Valley Regional Housing Authority conducted a lottery for the sale of 8 single-family lots located in Block 79 and 80. Each new owner is responsible for finding construction financing, preparing plans and construction budgets, and construction of their home.

In September of 2016, half of the lottery winners closed on their lot purchase with the Town. Three of the other lottery winners are set to close on their lots on May 5, 2017. The sale of Town-owned property requires an ordinance of the Town Council. One original lot winner backed out of their lot and this lot went to a subsequent applicant/lottery winner. The 2 year building process restarted and Carson West will close with the Town in May 2018.

Once the Council adopts each ordinance to sell these lots, these property owners can begin the BOZAR approval process. The following three lot owners are ready to close on their lots in May:

Lot 1, Block 79 Michael and Angela Horn \$65,000
 Lot 7, Block 79 Andrew Allen \$55,000
 Lot 9, Block 79 Kevin and Susan Emery \$25,000

Recommendation:

A Council person make a motion followed by a second to approve Ordinance 8, Series 2017.

A Council person make a motion followed by a second to approve Ordinance 9, Series 2017.

A Council person make a motion followed by a second to approve Ordinance 10, Series 2017.

ORDINANCE NO. 8

SERIES 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 1, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO MICHAEL AND LORI HORN 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 Michael and Lori Horn 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 1, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Michael and Lori Horn, 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 _____, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

**By: _____
Glenn Michel, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 9**SERIES 2017****AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 7, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO ANDREW ALLEN FOR THE SALE PRICE OF \$55,000.00**

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 Andrew Allen for \$55,000.00; 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 \$55,000.00 plus customary closing costs and fees, the real property legally described as Lot 7, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Andrew Allen, 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.

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TOWN OF CRESTED BUTTE, COLORADO

**By: _____
Glenn Michel, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

ORDINANCE NO. 10

SERIES 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 9, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO KEVIN AND SUSAN EMERY FOR THE SALE PRICE OF \$25,000.00

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 Kevin and Susan Emery for \$25,000.00; 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 \$25,000.00 plus customary closing costs and fees, the real property legally described as Lot 9, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Susan and Kevin Emery, 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.

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TOWN OF CRESTED BUTTE, COLORADO

**By: _____
Glenn Michel, Mayor**

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



Staff Report April 10, 2017

To: Mayor and Town Council
From: Bob Gillie, Acting Town Manager
Subject: **Ratification of Ordinance #7, Series 2017**
Date: April 7, 2017

Summary:

At the regular meeting of the Town Council on April 3, 2017, the Council approved emergency Ordinance #7, Series 2017 related to the redemption of Poverty Gulch unit #1, 721 Butte Avenue. Section 4.12 (b) of the Town Charter requires that an emergency ordinance must be ratified in a public hearing within 20 days by at least 5 members of the Council. The ordinance is on the agenda for ratification.

Staff Recommendation:

Ratify Ordinance #7, Series 2017.

Proposed Motion for ordinance #:

I move to ratify Ordinance #7, Series 2017

:

ORDINANCE NO. 7**SERIES 2017****AN EMERGENCY ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE REDEMPTION OF 721 BUTTE AVENUE, UNIT 1, TOWN OF CRESTED BUTTE PURSUANT TO § 38-38-302, ET SEQ. OF THE COLORADO REVISED STATUTES IN AN AMOUNT NOT TO EXCEED \$125,000.00**

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 §§ 31-25-301 and 302, C.R.S., as amended, Article XX of the Colorado Constitution and the Town of Crested Butte Charter to acquire interests in land necessary, suitable or proper for public interests;

WHEREAS, Unit 1, Poverty Gulch Condominiums, according to the Condominium Map recorded at Reception No. 498092 and the Condominium Declaration of Poverty Gulch Condominiums recorded at Reception No. 498091 (the “**Property**”) is currently in foreclosure proceedings subject to a Notice of Election and Demand for Sale by the Public Trustee of the County of Gunnison (the “**Public Trustee**”) dated September 16, 2016;

WHEREAS, the Town has filed a Notice of Intent to Redeem and Redemption Amount Statement with the Public Trustee dated March 20, 2017 (the “**Redemption Notice**”);

WHEREAS, pursuant to the Redemption Notice and §§ 38-38-302, *et seq.* C.R.S. (the “**Foreclosure Statute**”), the Town has the right to redeem the Property (the “**Redemption Right**”);

WHEREAS, the Public Trustee’s Certificate of Purchase dated March 8, 2017 and recorded at Reception No. 645290 (the “**Certificate of Purchase**”) is currently held by Mindy Sturm (the “**Sturm**”) and is subject to the Town’s Redemption Right;

WHEREAS, the Town Staff has recommended that the Town redeem the Property pursuant to its Redemption Right by paying the Public Trustee the redemption amount as provided by Sturm pursuant to the Foreclosure Statute and as provided in **Exhibit “A”** attached hereto;

WHEREAS, the Town has spent public funds in the acquisition and development of properties, including, without limitation, the Property, for the purposes of establishing, creating and maintaining affordable housing;

WHEREAS, establishing, creating and maintaining affordable housing is a critical mission of the Town Council and a critical need of the residents of Crested Butte;

WHEREAS, the Town Council finds that it is in the best interest of the health, peace, safety and welfare of the residents and visitors of Crested Butte to redeem the Property pursuant to its Redemption Right by paying the Public Trustee the redemption amount as provided by Sturm pursuant to the Foreclosure Statute and as provided in **Exhibit “A”** so that the Town may ensure that the terms, conditions, restrictions, agreements and obligations as contained in Town of Crested Butte 1995 Affordable Housing Guidelines Butte Avenue and Seventh Street Deed Restriction recorded on November 17, 1999 at Reception No. 497829; Town of Crested Butte 1995 Affordable Housing Guidelines (1999 Edition) recorded December 20, 1999 at Reception No. 498499, amended and replaced by Amended and Restated Affordable Housing Guidelines recorded July 18, 2013 at Reception No. 621504 and Acknowledgment, Consent and Agreement recorded August 5, 2013 at Reception No. 621881 (collectively, the “**Deed Restriction**”) remain an encumbrance on the Property that runs with the Property in perpetuity;

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, peace, safety and welfare of the residents and visitors of Crested Butte, that the Town redeem the Property pursuant to its Redemption Right as described above and as set forth below; and

WHEREAS, the Town Council hereby finds that this ordinance and the actions authorized hereunder are of an emergency nature because protecting the Deed Restriction by way of the Town redeeming the Property pursuant to its Redemption Right as described above requires that the Town pay the Public Trustee the redemption amount as provided as provided in **Exhibit “A”** by 12:00 P.M., MT on Tuesday, April 4, 2017 is time limited, and for such reason, and in support of the Town’s protection of affordable housing established, created and maintained by public funds, it is necessary and appropriate that this ordinance take immediate effect immediately upon adoption.

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

Section 1. Incorporation. The facts and findings set forth in the recitals above are material terms of this ordinance and are hereby incorporated herein as material terms and conclusive findings of fact of the Town Council. Capitalized terms shall have the meanings ascribed to such terms hereinabove.

Section 2. Authorization to Redeem. The Town Council, pursuant §§ 31-25-301 and 302, C.R.S., as amended, Article XX of the Colorado Constitution and the Town of Crested Butte Charter, hereby authorizes the Town Manager and the Town Attorney to redeem the Property by paying the Public Trustee the redemption amount as provided by Sturm pursuant to the Foreclosure Statute and as provided in **Exhibit “A”** by 12:00 P.M., MT on Tuesday, April 4, 2017, and for a sum in the foreclosure proceedings not to exceed \$125,000.00. Such authorized amount includes, without limitation, \$9,236.22 paid to the Poverty Gulch Condominiums Homeowners Association and \$12,000.00 paid to H2 Properties, Inc. previously authorized and approved by motions of the Town Council at regular and special meetings of the Town Council on March 20, 2017 and March 22, 2017, respectively, plus costs and expenses in connection with exercising the Redemption Right and acquiring title to the Property by way of a confirmation deed to be issued by the Public Trustee, and pursuant thereto, hereby authorizes and directs the Town Manager and the Town Attorney to give and execute any and all documents and take all actions necessary and advisable to consummate said transactions. All actions of the Town

Council in furtherance thereto and included in motions of the Town Council to date as aforesaid are hereby ratified and confirmed.

Section 3. Appropriation of Funds. The Town Council hereby appropriates the sum not to exceed \$125,000.00 plus costs and expenses in connection with exercising the Redemption Right and acquiring title to the Property by way of a confirmation deed to be issued by the Public Trustee out of the Affordable Housing Fund, and authorizes the expenditure of said sum for such purpose.

Section 4. Effective Upon Adoption; Emergency. The Town Council hereby finds that for the immediate preservation of the health, peace, safety and welfare, for the reasons stated hereinabove, it is necessary and appropriate that this ordinance be of an emergency nature and take effect immediately upon adoption.

Section 5. 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 6. 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 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 _____, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS __ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

(SEAL)

EXHIBIT "A"

[attach Public Trustee Lienor Redemption Statement here]

Gunnison County Treasurer/Public Trustee
P.O. Box 479
Gunnison, CO 81230

Town of Crested Butte, Colorado, a Colorado home rule municipality

C/O Garfield & Hecht, P.C.

PO Box 2919

Crested Butte, CO 81224

Phone: (970)349-6698 Fax:

FORECLOSURE # 2016-014
721 BUTTE AVENUE, UNIT I
CRESTED BUTTE CO 81224

Date: 3/27/2017

Lienor Redemption Statement

** This amount is estimated to be valid until NOON on 4/4/2017 per C.R.S.38-38-302(4). When you intend to bring the funds, you MUST check with our office via email or fax for an updated figure that will include interest due through the date of payment. The Public Trustee's office CANNOT accept personal checks, money orders, payroll checks or third party checks endorsed over to it. Pursuant to law, all moneys payable to a Public Trustee must be in the form of a certified check, cashier's check, teller's check or official teller's or cashier's check as defined in Colorado law, or in the form of cash or electronic funds transfer. Checks payable to the Public Trustee must be certified or issued by a Colorado or Federally chartered bank, savings and loan association or credit union licensed to do business in Colorado.

Lien Amount		\$93,000.00
Interest Rate		6.1250%
Per Diem		\$15.61
# of Days		28
Total Interest		\$437.08
Advances	WIRE FEE	\$35.00
Advances	TITLE O&E	\$50.00
Advances	TITLE COMMITMENT	\$300.00
Advances	ATTORNEY FEE 1	\$2,632.50
Advances	ATTORNEY FEE 2	\$581.50
Sub Total		\$97,036.08
Certificate of Redemption		\$43.00
Wire Fee		\$0.00
Total **		\$97,079.08



Teresa Brown, Deputy Public Trustee



Staff Report

April 5, 2017

To: Mayor and Town Council

Thru: Jim Schmidt & Chris Ladoulis, Grant Committee
Bob Gillie, Acting Town Manager

From: Lois Rozman, Finance Director

Subject: Substance Abuse Prevention Community Grant

Summary: The new Community Grant program for substance abuse prevention application period closed in March. There were 3 entities which inquired about the grant, however, only Gunnison County Substance Abuse Prevention Project (GCSAPP) filed an application. They requested \$10,000.

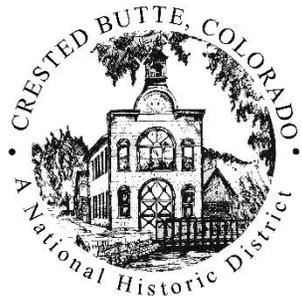
Previous Council Action: During the 2017 budget discussions, Council added \$10,000 to the Community Grants program to be used for substance abuse prevention programs. The new grant is to be available to all types of entities and not just 501(c) (3) entities.

Discussion: The grant committee of Chris Ladoulis and Jim Schmidt have reviewed the grant application from GCSAPP. Specifically, the grant would be used as follows:

- \$4,000 – August outdoor program for Crested Butte High School Students
- \$3,000 – Crested Butte Youth Council for programming and events
- \$3,000 – parent-youth education dinners

Recommendation: The grant committee recommends the Council approve \$10,000 from the Community Grant program be awarded to the GCSAPP.

Proposed Motion: I move to approve a Community Grant award of \$10,000 to Gunnison County Substance Abuse Prevention Project.



To: Mayor Michel and Town Council

From: Michael Yerman, Director of Planning

Subject: **Amended Deed Restriction 602 Butte Avenue, Unit 2**

Date: April 10, 2017

Background:

The construction of the Green Drake Building located at 123 Elk Avenue required the creation of one Resident Occupied Affordable Housing (“ROAH”) Unit. The developer Charles Schiavo provided an offsite unit located at 602 Butte Avenue, Unit 2.

During the BOZAR review process, the unit was purchase and a deed restriction was recorded on the property. The recorded deed restriction at the time did not include the provisions as permitted by the code to allow the unit to be sold as an owner occupied affordable housing unit. Home ownership is permitted under the code and the exclusion of this provision in the deed restriction was overlooked by both the Town staff and applicant.

The amended deed restriction inserts a provision to allow a local to purchase the home to be used as their primary residence. The unit’s AMI cap is 160% or less and 80% of their income must be earned in Gunnison County. The Gunnison Valley Regional Housing Authority will qualify any potential applicants. Finally, the amended deed restriction sets a 3% increase or the percentage change CPI whichever is less from the original purchase price as the max sales price. The original purchase price was \$264,000. This amended deed restriction adheres to the new Affordable Guidelines and Deed Restriction developed last year.

Recommendation:

A Council member make a motion followed by a second to authorize the Mayor to execute the Amended Deed Restriction for Unit 2 located at 602 Butte Avenue with Charles Schiavo and be recorded against the property.

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

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

**AMENDED AND RESTATED RESIDENT-OCCUPIED (ROAH) AFFORDABLE
HOUSING
DEED RESTRICTION**

**THIS AMENDED AND RESTATED RESIDENT OCCUPIED (ROAH)
AFFORDABLE HOUSING DEED RESTRICTION** (this “**Amended Deed Restriction**”) is made and entered into this ___ day _____ of 2017 (the “**Effective Date**”) by **CHARLES SCHIAVO** (“**Owner**”), whose address is 1705 Renaissance Blvd., Suite 100, Edmond, OK 73013-3043 and the **TOWN OF CRESTED BUTTE, COLORADO** (the “**Town**”), a Colorado home rule municipality, whose address is P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224. This Deed Restriction shall apply to the following real property and improvements thereon:

Unit 2,
PARADISDE DIVIDE CONDOMINIUMS,
According to the Condominium Map thereof recorded November 1, 2000 as Reception No. 506417, and according to the Declaration Establishing Paradise Divide Condominiums recorded November 1, 2000 as Reception No. 506418, and Amendment to Declaration Establishing Paradise Divide Condominiums recorded July 7, 2003 as Reception No. 532306.

Town of Crested Butte,
County of Gunnison,
State of Colorado,

(the “**Property**”).

AGREEMENT:

1. **Amend and Replace Deed Restriction**. This Amended Deed Restriction amends and replaces that certain Resident-Occupied (ROAH) Affordable Housing Deed Restriction between Owner and the Town dated July 1, 2016 and recorded in the official real property records of the Clerk and Recorder of Gunnison, County, Colorado on July 7, 2016 at Reception No. 640384.

2. **Applicability of Housing Guidelines**. The use and occupancy of the Property shall be limited exclusively to those persons who meet the qualifications set forth in Chapter 16, Article 21 of the Crested Butte Municipal Code (the “**Code**”) and as further delineated by Resolution No.2, Series 2016, as amended and modified from time to time (the “**Guidelines**”).

The Property shall be subject to the Guidelines, the terms and conditions of which shall be incorporated herein by this reference. The use and occupancy of all or part of the Property is hereby limited exclusively to people who meet the referenced qualifications.

3. **Ownership Limitations.** At the time of the execution of this Amended Deed Restriction, this unit is classified a Category 3 Resident Occupied Affordable Housing unit per Section 16- 21-60 of the Code. The Property must be occupied by an owner or long-term rental tenant earning (a) less than 160% of the Gunnison County Area Median Income, and (b) at least 80% of his or her annual income in Gunnison County. All future owners and tenants must income qualify with the Town (or if applicable the Gunnison County Regional Housing Authority) prior to acquiring title to or signing a lease for the Property.

4. **Maximum Resale Price.** \$264,000.00 represents the “Original Purchase Price” as of July 1, 2016 which is based on a valuation of the Unit purchase price.

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

(a) The Original Purchase Price plus an increase of three percent (3%) of such price per year from the date of purchase to the date 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); or

(b) 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 to the Town of intent to sell or a requirement for Owner to sell is first applicable (the “**Maximum Resale Price**”).

4.2. 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 in the Affordable Housing Guidelines as adopted by Resolution 2, Series 2016.

5. **Lienholder Limitations; Acknowledgement and Consent.**

5.1 No junior lienholder encumbrance shall be recorded against the Property without the Town’s prior written approval, which such approval shall not be unreasonably withheld, conditioned or delayed.

5.2 At the time of execution of this Amended Deed Restriction, the holder of any instrument secured by a first deed of trust shall execute the Lienholder Joinder Agreement attached hereto as **Exhibit “A.”**

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

7. **Notice Obligation.** Owner and any beneficiary of any deed of trust or other encumbrance affecting the Property 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 Property, (b) any uncured delinquency of ten (10) days or more in Owner’s payment of any amounts in connection with the Property, (c) Owner’s uncured default under any deed of trust or other encumbrance affecting the Property, and (d) any transfer, encumbrance or conveyance of all or part of the Property.

8. **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 Property 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.

9. **Remedies.**

9.1 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 Amended 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 Property 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.

9.2 This Amended 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.

9.3 Owner appoints the Town as its attorney in fact for purposes of curing any default. Owner shall give and execute an instrument of authorization reflecting such appointment when required by the Town.

10. **Town Option to Purchase.** In the event of a default on any deed of trust or other encumbrance affecting the Property that remains uncured by Owner, the Town shall have an option (the “**Option**”) to purchase the Property. 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 Property 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 Property during the Option Period in order to inspect the Property. 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 Property for the amount due to any holder of a promissory note secured by a first deed of trust on the Property (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 Property 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 Property, 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 Property 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.

11. **Termination of Amended 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 Amended Deed Restriction shall automatically and permanently terminate and be of no further force and effect. In the event of the termination of this Amended 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 Amended Deed Restriction.

12. **Run with the Land; Binding.** Subject to Section 9 hereof, this Amended 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.

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

13.1 **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 first written above unless otherwise notified in writing.

13.2 **Severability.** Whenever possible, each provision of this Amended 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.

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

13.4 **Choice of Law; Venue.** This Amended 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 Amended Deed Restriction shall be in Gunnison County, Colorado.

13.5 **Assignment.** This Amended Deed Restriction and the rights, benefits and obligations contained herein may be assigned by the Town without notice to Owner or any lienholder.

13.6 **Successor and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the parties' heirs, personal representatives, successors, assigns, lessees, licensees and transferees.

13.7 **Section Headings.** Section headings within this Amended 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.

13.8 **Waiver.** No claim of waiver, consent or acquiescence with respect to any provision of this Amended 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.

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

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

13.11 Amendments in Writing. This Amended Deed Restriction may only be modified or amended in writing by the Town or its designee and Owner. No such modification shall be effective until an instrument in writing is executed and recorded in the Office of the Clerk and Recorder of Gunnison County.

13.12 Conflict. In the event of any conflict or inconsistency between this Amended Deed Restriction and the Guidelines, this Amended Deed Restriction shall in all cases prevail and control.

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

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

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

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

OWNER:

By: _____
Charles Schiavo

TOWN:

TOWN OF CRESTED BUTTE, COLORADO,
a Colorado home rule municipality

By: _____
Glenn Michel, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

(SEAL)

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Amended and Restated Resident-Occupied Affordable Housing Deed Restriction was acknowledged before me this __ day of _____, 20__, by Charles Schiavo.

Witness my hand and official seal.

My commission expires _____.

STATE OF _____)
) ss.
COUNTY OF _____)

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

Witness my hand and official seal.

My commission expires _____.

JOINDER OF LIENHOLDER

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

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

LIENHOLDER:

_____, a

By: _____

Name: _____

Title: _____

Address:

Attn: _____

Phone: _____

E-mail: _____

Facsimile: _____