

ORDINANCE NO. 14

SERIES 2013

**AN ORDINANCE ADOPTING THE AMENDED
AND RESTATED AFFORDABLE HOUSING
GUIDELINES, PART V., POVERTY GULCH
CONDOMINIUMS (F/K/A BUTTE AVENUE AND
SEVENTH STREET)**

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

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

WHEREAS, the Crested Butte Municipal Code (the "**Code**") contains specific guidelines (the "**Guidelines**") respecting the ownership of affordable housing units in the Poverty Gulch Condominiums (f/k/a Butte Avenue and Seventh Street);

WHEREAS, the Town staff has recommended, after working closely with the owners of the units in the Poverty Gulch Condominiums, that certain amendments be made to the Guidelines, including, without limitation, changing the income limits for qualified buyers to area median incomes, adding examples of exemptions to the qualifications criteria and giving guidance for making decisions about exemptions, allowing more of the value of permitted capital improvements to be added to the maximum sales price for units that originally cost less, and clarifying the formulas for calculating maximum sales price; and

WHEREAS, the Town Council finds that the below amendments to the Guidelines accomplish the goals of making affordable housing more affordable and such amendments are therefor in the best interest of the general health, safety and welfare of the residents and visitors of Crested Butte.

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

Section 1. Amending the Guidelines. The Affordable Housing Guidelines, Part V., Butte Avenue and Seventh Street located in **Appendix "N"** of the Code are hereby deleted in their entirety and replaced with the following new Amended and Restated Affordable Housing Guidelines, Part V., Poverty Gulch Condominiums attached hereto as **Exhibit "A."**

Section 2. Severability. If any section, sentence, clause, phrase, word or other

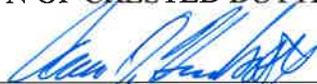
provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the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

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

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 17th DAY OF JUNE, 2013.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 17th DAY OF JUNE, 2013.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:

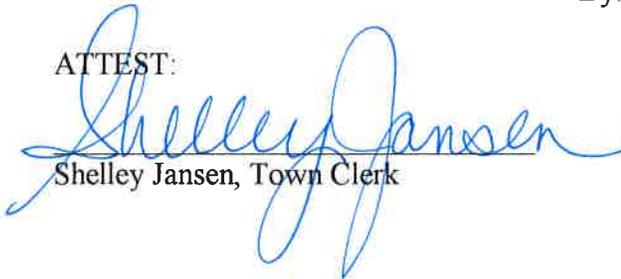

Shelley Jansen, Town Clerk



EXHIBIT "A"

[attach Amended and Restated Affordable Housing Guidelines,
Part V., Poverty Gulch Condominiums here]

Town of Crested Butte

Amended and Restated Affordable Housing Guidelines

Part V. POVERTY GULCH CONDOMINIUMS

Introduction.

These Amended and Restated Affordable Housing Guidelines, Part V. Poverty Gulch Condominiums (Guidelines) amend, restate and replace in their entirety the prior guidelines "Town of Crested Butte 1995 Affordable Housing Guidelines, 1999 Edition, Part V. Butte Avenue and Seventh Street" recorded at Reception Number 498499 in the records of the Gunnison County Clerk and Recorder.

These Guidelines affect the following Real Property: Units A-J, Poverty Gulch Condominiums, according to the Condominium Map bearing Reception No. 498092 of the records of Gunnison County, Colorado, and the Condominium Declaration of Poverty Gulch Condominiums bearing Reception No. 498091 of the records of Gunnison County, Colorado.

The Town of Crested Butte, Colorado (or its designee, including any housing authority designated by the Town, hereafter referred to as "Town") has identified the necessity for the creation of ten (10) residential condominium units (the "Unit" or "Units") as owner-occupied, deed-restricted, affordable housing. The use and occupancy of the Units shall be limited to housing for natural persons who meet the definition of "Qualified Buyers," their families and accompanying tenants. These Guidelines are intended to assure that all purchasers and sellers will be treated fairly and impartially.

All applicants are advised to consult legal counsel regarding examination of title and all contracts, agreements and title documents. The retention of such counsel, or of real estate brokers, or such related services, shall be at the purchaser's or seller's own expense. The fees paid to the Town as set forth herein are to be paid regardless of any actions or services that the purchaser or seller may undertake or acquire.

Section 1. Qualified Buyers.

A. *Definition.* A *qualified buyer* is a natural person who meets all of the following eligibility qualifications:

1. One who has lived or worked in Gunnison County for at least five (5) of the past seven (7) years, or three (3) of the past four (4) years as of the date of the contract to purchase a Unit (A single Unit will be constructed to comply with the specifications set forth in the American Disabilities Act ("ADA"). An applicant whose condition requires the use of an ADA-compliant Unit shall not be required to comply with these residency requirements.); and

2. Derives eighty percent (80%) of his or her total "Earned Income" in Gunnison County. Earned Income shall be defined by the U. S. Internal Revenue Service (IRC Sec. 32(2) Earned Income (3/20/1995) and as it may be amended); and

3. Does not own an interest, alone or in conjunction with others, in any developed residential real estate (land) (Applicants who own developed residential land must sell the developed residential land to an unrelated person or an entity in which the applicant has no interest, for fair market value, prior to closing on a Unit. If an applicant owns a fifty-percent (50%) or less undivided interest in

residential land, he or she may convey that interest to the joint owner(s) with or without receiving consideration. If the developed residential land is not sold by the time of closing on a Unit, the applicant becomes ineligible to purchase the Unit and shall not close on it. The seller of the Unit may delay closing until the applicant sells the other developed residential land, or the seller may void the contract to sell and may enter into a new contract to sell to a different qualified buyer.); and

4. Resides in Gunnison County at the time of application for a Unit; and

5. Works at least an average of one hundred twenty (120) hours each month, averaged annually, in Gunnison County, or for a company headquartered in Gunnison County; and

6. Does not exceed 100% of the Area Median Income (AMI) for Gunnison County for the household size applying for a Unit, as published by the U.S. Department of Housing and Urban Development, or its successor agency. The income to be used will depend upon the size of the household applying for the Unit. AMI is published for each household size. For instance, if a one person household applies for a Unit the AMI used will be for a one person household but if a two person household applies for the same Unit, the AMI used will be for a two person household.

B. Exemptions

1. Exemptions from Eligibility Qualifications Listed in Section 1. A.

A request for an exemption from the Qualified Buyer criteria listed in Section 1.A. may be requested from the Town Council. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for the exemption. Examples of such hardships, special circumstances of compelling reasons include, but are not limited to, the following:

a. Those people, or those with federally recognized dependents, who are certified as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely

b. those people who are court-appointed legal guardians with wards who are otherwise qualified buyers

c. current owners of Units whose circumstances change and who are now collecting Social Security Income or Worker's Compensation

d. a person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year

e. a person who temporarily left Gunnison County to attend college or other educational training

f. a recently hired employee of the Town of Crested Butte, or any other employee providing essential services to the Town

g. those people with federally recognized disabled dependents

2. Mortgage loan co-signers.

a. An individual other than the qualified buyer may co-sign, along with the qualified buyer, on a mortgage loan for a Unit. That co-signer may also appear on the title to the Unit.

b. If title to a Unit transfers solely to a co-signer, unless the co-signer is also a qualified buyer, the co-signer may not occupy or rent the Unit, and the Unit shall be listed for sale and sold to a qualified buyer.

C. Information Required to be Qualified. In order to be approved as a qualified buyer, a person must establish by competent evidence that he or she meets the eligibility qualifications. Evidence that is acceptable to establish such qualifications includes, but is not limited to, the following:

1. Copies of federal income tax returns and all applicable IRS W2 forms
2. Rent receipts
3. Record of mortgage payments
4. Utility receipts
5. Voter registration records
6. Payroll records
7. Sworn affidavits regarding property ownership, tax roll records or employment
8. Landlord verification
9. Colorado driver's license
10. Vehicle registration
11. Birth certificate
12. Any other verification deemed necessary by the Town

Section 2. Procedures for Sales of Units.

A. *To Whom May Units Be Sold?* Sale of Units subsequent to the initial sale to a qualified buyer shall be restricted to qualified buyers as defined herein. Purchasers must meet the qualified buyer criteria in Section 1. A., or receive an exemption from the Town Council as described in Section 1.B..

B. *Town Must Confirm Maximum Sales Price.* An owner of a Unit desiring to sell the Unit must consult with the Town to determine the maximum sales price permitted, as defined below, and other applicable provisions concerning a sale.

C. *Determining Sales Price.* After the initial sale of a Unit to a qualified buyer, no subsequent sale of a Unit shall be for an amount greater than the maximum sales price.

1. For purposes of these Guidelines, the *maximum sales price* shall be:

a. The seller's purchase price of the Unit; plus

b. An amount equal to any special improvement district assessments paid by the seller during the seller's ownership of the Unit; plus

c. The cost of permitted capital improvements (as defined in Exhibit A attached hereto) plus appreciation as described in the formulas below; (The amount for capital improvements included in the maximum sales price shall not exceed:

1) ten percent (10%) of the original purchase price when units originally cost more than \$100,000

2) fifteen percent (15%) of the original purchase price when the units originally cost less than \$75,000 but more than \$50,000

3) 20% of the original purchase price when the units originally cost less than \$50,000

for an initial ten-year period. For every ten-year period from the date of the original purchase another

4) ten percent (10%) of the original purchase price for units that originally cost more than \$100,000

5) fifteen percent (15%) of the original purchase price for units that originally cost less than \$75,000 but more than \$50,000

6) twenty percent (20%) of the original purchase price for units that originally cost less than \$50,000

may be added to the value of the Unit for capital improvements. In calculating such amount, only those permitted capital improvements identified in Exhibit A and for which a building permit has been issued by the Town and for which receipts are provided, shall qualify for inclusion. All such permitted capital improvements installed or constructed over the life of the Unit shall qualify. The additional 10%, 15% or 20% of the original purchase price for each subsequent ten year period may be added to the sale price on the first day of the subsequent 10 year period.)

d. The seller's contributed labor or "sweat equity" may be part of the cost of a permitted capital improvement plus appreciation as described in the formulas below.

2. The original purchase price and date of the original purchase for each unit was as follows:

Purchase price	Original Purchase Date
Unit A \$70,800	12/06/1999
Unit B \$70,800	12/06/1999
Unit C \$43,800	12/06/1999
Unit D \$43,800	12/06/1999
Unit E \$43,800	12/06/1999
Unit F \$43,800	12/06/1999
Unit G \$105,200	12/20/1999

Unit H	\$105,200	12/20/1999
Unit I	\$70,800	12/20/1999
Unit J	\$70,800	12/20/1999

Source: Gunnison County Assessor's Office, Property Record Search.

3. Maximum sales price shall be calculated using the lesser of the two (2) following calculations:
- a. An amount equal to:
 - i. three percent (3%) per annum of the seller's purchase price, prorated at the rate of twenty-five hundredths percent (.25%) per month from the date of the seller's purchase of the Unit to the date of the seller's sale of the Unit; plus
 - ii. the value of all permitted capital improvements for which a building permit has been issued, including materials and labor and for which receipts are provided to the Town (See Exhibit A.) (If several permitted capital improvements have been made after the initial Certificate of Occupancy (CO) has been issued, these are labeled c₁, c₂, c₃, etc. in the formula below.); plus
 - iii. three percent (3%) per annum of the materials used in the permitted capital improvements, prorated at the rate of twenty-five hundredths percent (.25%) per month from the date of the building permit (BP); plus
 - iv. the value of all labor, including seller's documented contributed labor or "sweat equity" for the permitted capital improvements (The value of all labor shall not exceed the value of all materials and sweat equity shall be documented as a portion of all labor.); plus
 - v. three percent (3%) per annum of all labor for the permitted capital improvements, prorated at the rate of twenty-five hundredths percent (.25%) per month from the date of the building permit.

or

- b. An amount calculated in accordance with the following formula where:

a = permitted capital improvements materials cost, as of the date of the building permit

b = labor for permitted capital improvements

BP = building permit

CPI = the Denver-Boulder-Greeley, CO Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. CPI will be the nearest CPI published prior to the dates in the formula.

$$\begin{aligned} & \text{Seller's purchase price} \times \frac{\text{CPI prior to date of sales contract} + (a_1 + b_1)}{\text{CPI prior to purchase date by seller}} \times \frac{\text{CPI prior to date of sales contract} + (a_2 + b_2)}{\text{CPI prior to issuance of BP}} + \\ & (a_3 + b_3) \dots \text{ etc.} = \text{Maximum Sale Price} \end{aligned}$$

Example

The unit is owned three and one-half (3 ½) years, or 42 months.

Seller's purchase price is	\$60,000
Cost of 1 st improvement, made in the middle of year two, or 30 months ago, is	\$ 3,000
Cost of all labor for 1 st improvement is	\$ 2,000
CPI prior to purchase by seller	165
CPI prior to date of building permit for the	168.1
CPI prior to date of sales contract is	176

Example using 3% per annum

$$60,000 + (60,000 \times .0025 \times 42) + (\$3,000 + \$2,000) + ((\$3,000 + \$2,000) \times .0025 \times 30) = \$71,675$$

Example using CPI

$$\$60,000 \times \frac{176}{165} + (\$3,000 + \$2,000) \times \frac{176}{168.1} = \$69,235$$

In this example, because the maximum sales price is lower using CPI, the maximum sales price is the amount using CPI or \$69,235.

D. Advertising the Sale of a Unit.

1. When an owner of a Unit is ready to sell a Unit, the owner shall place an announcement in the legal publications section of the official newspaper of the Town, and any other place the owner wishes to advertise the Unit, announcing the following: .

- a. the address of the Unit
- b. that households with a person meeting the qualified buyer eligibility qualifications of these Town of Crested Butte Affordable Housing Guidelines, Part V Poverty Gulch Condominiums, or a household which has received an exemption from the eligibility qualifications from the Town, may make an offer on the Unit
- c. the contact information for the owner

d. the sale price of the Unit, which price shall not exceed the maximum sale price

E. *Contracting to Sell Units.* Only qualified buyers may enter into a purchase contract with the owner.

1. In the event that none of the Units in the Poverty Gulch Condominiums are owned by Town employees, only Town employees may enter into a contract to purchase the Unit during the first fifteen (15) days following publication of the sale announcement. A representative of the owner with authority to enter into a contract must be available during said fifteen (15) days. Town employees include the following:

a. Any full-time employee who works for the Town at least thirty (30) hours per week

b. Any seasonal Town employee who has worked for the Town for at least thirty (30) hours per week for at least four (4) seasons within the past four (4) consecutive years (The four (4) seasons a Town employee has worked for the Town must be consecutive, such as four (4) consecutive winters or four (4) consecutive summers. For purposes of this Section, Mountain Express employees are seasonal employees.)

2. In the event that the ADA-compliant Unit is available for sale, only applicants whose condition requires the use of an ADA-compliant Unit may enter into a contract to purchase the Unit during the first fifteen (15) days following publication of the sale announcement. A representative of the owner with authority to enter into a contract must be available during said fifteen (15) days.

3. If at least one unit is owned by a Town employee and if the Unit offered for sale is not the ADA-compliant Unit, the owner shall decide to whom the owner shall sell the Unit, as long as the owner sells to a qualified buyer.

4. Prior to the closing of a sale of a Unit, the seller shall obtain the approval of the Town that the sales price of the Unit does not exceed the maximum sales price. The seller shall submit to the Town a copy of the sales contract for the Unit, verified by affidavit of the seller as being a true and correct copy, and a calculation of the maximum sales price accompanied by evidence of the cost of any improvements which seller believes qualify for inclusion in the maximum sales price. The seller shall pay the Town the administrative fee for calculating maximum sale price as found in the fee schedule of the Town Code.

5. The Town shall either approve or disapprove the sales contract and the maximum sales price calculation in writing and, if disapproved, shall state the reason for such disapproval, within fifteen (15) business days of the receipt of the sales contract and accompanying materials. If the sales contract is disapproved, either the seller or buyer may request a hearing before the Town Council by submitting such request in writing within ten (10) business days of the date of the written notice disapproving the contract.

6. The seller shall not permit the buyer to assume any or all of the seller's customary closing costs, nor shall the seller accept any other consideration which would cause an increase in the sales price of the Unit above the maximum sales price, so as to induce the seller to sell the Unit to such buyer.

7. Nothing herein shall be construed to constitute a representation or guarantee by the Town that, upon the sale of a Unit, the seller shall obtain the maximum sales price.

Section 3. Ownership and Residence of Units.

All owners, both initial and subsequent, must comply with the following requirements:

A. *Copies of Deeds to Town After Each Sale.* A copy of each deed conveying title to a Unit must be provided to the Town within thirty (30) days of purchase.

B. *Occupancy of Unit.* The owner of the Unit must occupy his or her Unit as his or her sole and exclusive residence, subject to the provisions on leaves of absence below.

C. *Continuing Qualifications.*

1. After the initial sale of each of the Units, each owner shall continue to comply with the eligibility qualifications of a qualified buyer with the following exceptions:

- i. an owner who has reached the age of fifty-nine and one-half (59 ½) years and retired from full-time work need not continue to derive eighty percent (80%) of his or her total "Earned Income" in Gunnison County or work at least 120 hours per month in Gunnison County
- ii. After purchasing a Unit, all owners may earn more than the maximum income allowed in the definition of a qualified buyer

2. If the owner ceases to otherwise have the qualifications of a qualified buyer, or if the owner changes his or her domicile or ceases to use the Unit as his or her sole and exclusive place of residence, subject to the provisions on leaves of absence below, the Unit will be offered for sale and will be sold to a qualified buyer as provided herein. In the event that title to a Unit vests by descent in individuals and/or entities who are not qualified buyers, as that term is defined herein, the Unit shall be listed for sale and shall be sold to a qualified buyer.

D. *Deed Restriction.* Each purchaser purchases the Unit subject to all terms and conditions contained in these Guidelines, and each Unit is subject to the deed restriction covering the purchased Unit, to be recorded with the Gunnison County Clerk and Recorder, which incorporates the terms and restrictions contained in these Guidelines.

E. *Leaves of Absence.* An owner of a Unit may request written approval from the Town to vacate a Unit for the purpose of leaving Gunnison County for a limited period of time, or may request written approval from the Town for a one-time, in-County leave of absence from his or her Unit for one (1) year. A leave of absence may be granted by the Town for up to one (1) year which, at the discretion of the Town, may be extended for one (1) additional year, but in no event shall the leave exceed two (2) years in any five-year period, upon clear and convincing evidence that the owner shows a bona fide reason for leaving and a commitment to return to live in the Unit. The Town Manager may make this determination on behalf of the Town.

F. *Rental of Units.* A Unit may be rented in its entirety under the following circumstances:

1. If an owner has requested, in writing, permission from the Town for a leave of absence and for permission to rent the Unit during the period of the leave of absence, at least thirty (30) days prior to leaving, and received permission from the Town. Notice of such intent to rent the Unit shall be provided to the Unit homeowners association at the time of request to the Town.

The Unit shall be rented in accordance with the Town's Guidelines found in Sections 3.G., 3.H., and 3.I. below, during the leave of absence.

2. After an owner has permanently vacated the Unit and has notified the Town, and is awaiting purchase of the Unit, unless the owner is a co-signer on the mortgage loan, in which case the Unit may not be rented.

G. Unit Renter Qualifications. A Unit may only be rented to those who meet the eligibility qualifications of a qualified buyer as set forth in these Guidelines, unless a contract to purchase the Unit has been signed, and the closing is required to be more than thirty (30) days but less than one hundred eighty (180) days from the date of the contract. Under such circumstances, the owner may rent the Unit to anyone for up to one hundred eighty (180) days. The Town prefers that people who meet the eligibility qualifications are given first chance to rent. Prior to the Town's qualification of a prospective tenant, said tenant shall acknowledge all covenants, rules and regulations for the Unit and agree to abide by them. Enforcement of said covenants shall be the responsibility of the homeowners association. A copy of the executed lease shall be immediately furnished by the owner to the Town and to the homeowners' association.

H. Rental Rates. The maximum rental rate for any Unit shall be no more than the total of the monthly mortgage principal and interest payment, plus condominium fees, utilities remaining in the owner's name and taxes and insurance prorated on a monthly basis, plus twenty dollars (\$20.00) per month. If the mortgage has been paid off the rental rate shall be no more than the amount of the last mortgage payment plus the condominium fees, utilities, taxes, insurance and twenty dollars (\$20) listed above. The additional amount in December, 1999 shall be twenty dollars (\$20). After December, 1999 the additional amount, twenty dollars (\$20), may increase with the change in the Denver-Boulder-Greeley Consumer Price Index for Urban Wage Earners according to the following formula:

$$\$20 \times \frac{\text{CPI prior to date rent begins}}{\text{CPI prior to December, 1999}}$$

I. Roommates. Roommates shall have a lease of at least six (6) months. Copies of all leases must be filed with the Town. The rental rate for the room shall not exceed the maximum rental rate, prorated on a per-bedroom basis.

J. Spouses and Dependents. Spouses and dependents of owners may live in owner-occupied Units.

Section 4. Grievance Procedures.

A *grievance* is any dispute that a tenant or purchaser may have with the Town with respect to acting or failure to act in accordance with the individual tenant's or purchaser's rights, duties, welfare or status. A grievance may be presented to the Town under the following procedures.

A. Filing a Grievance.

1. Any grievance must be presented in writing to the Town. It may be simply stated, but shall specify:

- a. The particular grounds upon which it is based;
- b. The action requested; and

c. The name, address and telephone number of the complainant and similar information about his or her representative, if any.

2. Upon presentation of a written grievance, a hearing before the Town Council shall be scheduled. The matter may be reasonably continued at the discretion of the Town Council. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely manner.

3. The complainant and the Town Council shall have the opportunity to examine and, before the hearing at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant to the hearing. Any document not made available after timely written request may not be relied upon at the hearing.

4. The complainant has the right to be represented by counsel.

B. Conduct of Hearing.

1. If the complainant fails to appear at the scheduled hearing, the Town Council shall make a determination to postpone the hearing or make a determination based on the written documentation and the evidence submitted.

2. The hearing shall be conducted by the Town Council as follows:

a. Oral or documentary evidence may be received without strict compliance with rules of evidence applicable to judicial proceedings

b. The right to cross-examine shall be at the reasonable discretion of the Town Council and may be reasonably regulated by the Town Council as it deems necessary for a fair hearing

3. Based on the record of proceedings, the Town Council will provide a written decision and include therein the reasons for its determination. The decision of the Town Council shall be binding on the Town, which shall take all actions necessary to carry out the decision.

Section 5. Default; Breach; Enforcement.

A. In the event the Town has reasonable cause to believe an owner is violating the provisions of these Guidelines, the Town, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, after providing the owner with no less than forty-eight (48) hours written notice.

B. The Town shall send a notice of violation to the owner detailing the nature of the violation and allowing the owner fifteen (15) days to determine the merits of the allegations or to correct the violation. In the event the owner disagrees with the allegation or violation of these Guidelines, the owner may request, in writing, a hearing before the Town. If the owner does not request a hearing and the violation is not cured within the fifteen-day period, the owner shall be considered in violation of these Guidelines.

1. The hearing described above shall be scheduled within twenty-one (21) days of the date of the receipt of a written request for a hearing. At any such hearing, the owner or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the

hearing. An electronic record of the hearing shall be made and the decision of the Town shall be a final decision, subject to judicial review.

2. In the event a Unit is sold and/or conveyed, or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a Unit, for all purposes, shall be deemed to include and incorporate by this reference all terms herein contained.

3. In the event an owner fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction; and, if the Town substantially prevails in such action, it shall be entitled to an award for its attorney's fees and costs.

EXHIBIT A

Permitted Capital Improvements

1. The term *Permitted Capital Improvement* shall include only the following and is subject to paragraph 2. below .:

a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance improvements;

b. Improvements for energy and water conservation;

c. Improvements for health and safety protection devices;

d. Improvements to add and/or finish permanent/finished storage space;

e. Improvements to finish unfinished space;

f. The cost of adding decks and balconies and any extensions thereto;

g. Building permit fees; and/or

h. Major landscaping such as trees.

2. Only the value of permitted capital improvements for which a receipt is provided to the Town shall be included in the permitted capital improvements. All receipts must indicate the value of materials and the value of labor. The value of all labor, including owner contributed labor, or sweat equity, shall not exceed the value of materials. Sweat equity shall be documented as a portion of all labor.

3. *Permitted Capital Improvements* shall NOT include the following:

a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the unit;

b. Jacuzzis, saunas, steam showers and other similar items;

c. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and electrical fixtures, painting, carpeting and other similar items;

e. Upgrades or additions of decorative items, including lights, window coverings and other similar items;

f. Construction loan interest and permanent mortgage interest;

g. Crested Butte Real Estate Transfer Tax;

h. Costs for which no receipts are provided;

i. Costs for which receipts are provided but that do not state the product purchased;

j. Costs to clean up the job site;

k. Costs to install telephone, cable television, satellite televisions, computer services and other similar services which will most likely be reinstalled for the next owner;

l. Taxes and insurance;

m. Homeowners or condominium association fees;

n. Maintenance costs;

o. Loan points or origination fees; and/or

p. Water and sewer monthly service fees.

4. All Permitted Capital Improvement Items and costs shall be approved by the Town prior to being added to the maximum sale price as defined in the Guidelines.

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

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

AFFORDABLE HOUSING DEED RESTRICTION
(Unit __, Poverty Gulch Condominiums)

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

Unit __, POVERTY GULCH CONDOMINIUMS, according to the Condominium Map bearing Reception No. 498092 of the records of Gunnison County, Colorado, and the Condominium Declaration of Poverty Gulch Condominiums bearing Reception No. 498091 of the records of Gunnison County, Colorado.

(the "**Property**").

AGREEMENT:

1. **Applicability of Housing Guidelines.** The ownership of the Property shall henceforth be limited exclusively to successful applicants and their spouses maintaining exclusive residency in Gunnison County, Colorado, who meet the qualifications set forth in the Town of Crested Butte, Amended and Restated Affordable Housing Guidelines, Part V. Poverty Gulch Condominiums, as amended (the "**Guidelines**"), as determined by the Town or its designee at the time of purchase and during ownership. The Property shall be subject to the Guidelines, the terms and condition of which shall be incorporated herein by this reference. The use and occupancy of all or part of the Property is hereby limited exclusively to people who meet the referenced qualifications, and their spouses and children. The Property must be owned, occupied, sold, purchased and used only by persons meeting the qualifications set forth in the Guidelines.

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

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

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

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

6. **Default of Deed of Trust.** In the event that Owner defaults on the terms of any deed of trust or other lien encumbering the Property, or of the terms of any obligation secured by such a deed of trust or other lien, the Town shall have all the rights of Owner under the deed of trust or other lien and applicable law, the same being assigned and transferred hereby to the Town in such circumstances. The Town may, but shall not be obligated to, make any payment required in order to avoid foreclosure or to redeem the Property after foreclosure. The Town may make such payments during the notice and cure periods, in which case the Town shall be entitled to reimbursement for said payments plus interest at a rate of eighteen percent (18%) per annum and all costs and expenses, including reasonable attorneys' fees, costs and expenses, as a condition of Owner's cure.

7. **Option to Purchase.** In the event of a default by Owner which remains uncured for a period of thirty (30) days as set forth above, the Town shall have an option to purchase the Property as set forth herein ("**Option**"). The Town shall have forty-five (45) days after expiration of the Cure Period in which to exercise the Option (the "**Option Period**"). The Town shall exercise the Option by delivering to Owner written notice of such exercise within the Option Period. The Town shall be granted entry onto the Property during the Option Period in order to inspect the Property. If the Property is vacant, Owner or lienholder shall maintain utility connections until expiration of the Option Period or Closing (as defined hereinbelow). The Town shall have the Option to purchase the Property for the amount due to any holder of a promissory note secured by a first deed of trust on the Property and any reasonable costs and expenses incurred by the holder during the Option Period (the "**Senior Lienholder Amount**").

The Town may also, instead of purchasing the Property itself, assign its right to purchase the Property pursuant to the Option to another public agency, a nonprofit entity or other potential qualified owner under the Guidelines. If the Town assigns the Option, the assignee shall be bound to purchase the Property pursuant to the terms of this Deed Restriction. If the Town or its assignee elects to purchase the Property, the parties shall have the following rights and obligations:

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

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

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

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

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

(a) the Option Period has expired without exercise of the Option by the Town; or

(b) the Town has exercised the Option but failed to close or perform under the Option in accordance with this Deed Restriction.

In the event of the termination of this Deed Restriction, the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County, Colorado, a full and complete release of this Deed Restriction. The Town's rights in a foreclosure, including, without limitation, its right of redemption, shall be the same as if it were the beneficiary of a second deed of trust. The amount of debt secured by such a second deed of trust shall be considered to be the difference between the Senior Lienholder Amount as of the date the notice of election and demand for sale is filed with the public trustee and the fair market value of the Property at that time; except that

in the event that the fair market value is less than the Senior Lienholder Amount, then the amount of debt secured by such a second deed of trust shall be considered to be the difference between the amount of the certificate of purchase and the Senior Lienholder Amount. For purposes hereof, the "**fair market value**" shall be determined by a qualified real estate appraiser who is a Member of the Appraisal Institute ("M.A.I."). The appraiser shall be engaged by the Town and approved by Owner, which approval shall not be unreasonably withheld. The appraisal shall consider the sales prices of comparable properties sold in the market area during the preceding three (3)-year period. The appraisal shall also consider the effect of the terms and conditions created herein. The cost of the appraisal shall be paid for by Owner. A copy of the appraisal shall be delivered to both the Town and Owner within seven (7) days of its completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Deed Restriction effective as of the date first written above.

OWNER:

[NAME]_____

TOWN:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
_____, Mayor

ATTEST:

_____, Town Clerk

(SEAL)

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Deed Restriction was acknowledged before me this ___ day of _____, 20___, by _____.

Witness my hand and official seal.

My commission expires _____.

STATE OF _____)
) ss.
COUNTY OF _____)

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

Witness my hand and official seal.

My commission expires _____.
