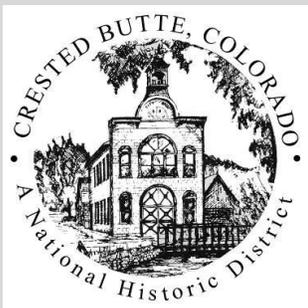


AGENDA
Town of Crested Butte
Regular Town Council Meeting
Monday, December 18, 2017
Council Chambers, Crested Butte Town Hall



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

Town Council Values

- *Preserve our high quality of Life*
- *Resource Efficiency/ Environmental Stewardship*
- *Support a sustainable and healthy business climate*
- *Maintain a "real" community*
- *Fiscally Responsible*
- *Historic Core*

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

6:00 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM

6:01 EXECUTIVE SESSION

For a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) on Brush Creek.

7:02 APPROVAL OF AGENDA

7:04 CONSENT AGENDA

- 1) December 4, 2017 Regular Town Council Meeting Minutes.
- 2) Professional Services Agreement with Western State for Energy Action Plan Update.
- 3) Approval of the Services Agreement with the Crested Butte/Mt. Crested Butte Chamber of Commerce.

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

7:06 PROCLAMATION EXPRESSING APPRECIATION FOR LOIS ROZMAN

7:12 PUBLIC COMMENT

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

7:18 STAFF UPDATES

7:30 PUBLIC HEARING

- 1) Ordinance No. 37, Series 2017 - An Ordinance of the Crested Butte Town Council Adopting Changes and Additions to the 2017 Budget and Appropriations Relative to the Sales Tax Fund and Affordable Housing Fund.

7:40 NEW BUSINESS

- 1) Resolution No. 73, Series 2017 - A Resolution of the Crested Butte Town Council Approving the Purchase of Real Property from Crested Butte Limited Partnership A/K/A Trappers Crossing, Ltd.

7:50 2) Letter to Gatesco Regarding Brush Creek Development in Response to the November 30 Council Work Session.

8:05 LEGAL MATTERS

8:10 COUNCIL REPORTS AND COMMITTEE UPDATES

8:25 OTHER BUSINESS TO COME BEFORE THE COUNCIL

8:35 DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, January 8, 2018 - 6:00PM Work Session - 7:00PM Special Council
- Monday, January 22, 2018 - 6:00PM Work Session - 7:00PM Special Council



Memorandum

To: Town Council
From: Dara MacDonald, Town Manager
Subject: Dec 18, 2017 Executive Session - Brush Creek Purchase Contract
Date: December 18, 2017

Attached is the latest draft of the purchase contract for the Brush Creek parcel between Gunnison County and APT Brush Creek Road, LLC. This latest iteration was released to the public on December 14th and will be referenced in the executive session discussion at the beginning (6:00 p.m.) of the Council meeting on Monday, December 18th.

Encl: Contract to Buy, Sell and Develop Real Estate for Workforce Housing
Exhibit A: Property Description
Exhibit B: Deed Restriction
Exhibit C: Option
Exhibit D: DIA Form

CONTRACT TO BUY, SELL AND DEVELOP REAL ESTATE FOR WORKFORCE HOUSING

This Contract to Buy, Sell and Develop Real Estate for Workforce Housing (the “Contract”) is entered into as of the date signed by all Parties, between the Board of County Commissioners of the County of Gunnison, Colorado (“Board” or “Gunnison County” or “Seller”), and APT Brush Creek Road, LLC, a Colorado limited liability company (“Buyer”). The Board and the Buyer may be referred to herein as a “Party” or collectively as the “Parties.”

1. RECITALS.

- a. The Board owns the real property in Gunnison County, Colorado, more particularly described on Exhibit A (the “Brush Creek Parcel” or the “Property”).
- b. The Buyer is an affiliate of Gatesco, Inc., a Texas corporation (Gatesco), formed for the purpose of acquiring and holding title to the Brush Creek Parcel.
- c. The Board desires to have the Brush Creek Parcel developed in a manner that provides affordable workforce housing for the north Gunnison Valley and a transportation center that provides a public transportation stop and intercept parking lot.
- d. In the interest of furthering public policy, the Colorado General Assembly has declared at Colorado Revised Statutes 29-26-101. Legislative Declaration: “(1) The general assembly hereby finds and declares that
 1. It is in the public interest to maintain a diverse housing stock in order to preserve some diversity of housing opportunities for (Colorado’s) residents and people of low—and moderate—income.
 2. A housing shortage for persons of low—and moderate—income is detrimental to the public health, safety and welfare. In particular, the inability of such persons to reside near where they work negatively affects the balance between jobs and housing in many regions of the state and has serious detrimental transportation and environmental consequences.”
- e. The Colorado General Assembly has defined affordable housing to include rentals as follows: C.R.S. 29-26-102, Definitions, “(1) Affordable housing dwelling unit” means a residential structure that is purchased or rented by and is occupied as a primary residence by one or more income eligible households, or a comparable definition as established by a local government.”
- f. The Board has the legal authority to convey real property as follows: C.R.S. 30-11-101, Powers of counties. (1) Each organized county within the state...shall be empowered... (c) To sell, convey, or exchange any real...property owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants...” (d) To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers. Any such contract may by its terms exceed one year and shall be binding upon the parties thereto as to all of its rights, duties and obligations.
- g. Gatesco, Inc is a real estate developer and residential builder with extensive experience in producing multiple family dwelling units for low—and moderate—income occupants.

h. The Board, Crested Butte Mountain Resort, Inc., the Town of Crested Butte, and the Town of Mt. Crested Butte (the “MOA Participating Parties”) together executed a Memorandum of Agreement, dated June 16, 1998 to accomplish the Board’s acquisition of the Brush Creek Parcel. Crested Butte, LLC (“CBMR”) is the successor in interest to Crested Butte Mountain Resort, Inc. The Property has since been held by the Board for the benefit of the MOA Participating Parties as required by the Memorandum of Agreement.

i. Through a two-step Request for Qualifications and Request for Proposals process, the Board’s duly authorized representative, together with all of the other MOA Participating Parties unanimously selected Gatesco to develop the Brush Creek Parcel in a manner substantially similar to that generally identified in the document titled “The Corner at Brush Creek”, dated June 23, 2017, which includes a project description for housing, common amenities, recreation and open space, transit center, architectural approach, efficiency and sustainability, stewardship and infrastructure, and phasing, attached hereto and incorporated herein (the “Project”).

j. Buyer has submitted to Gunnison County an application pursuant to the Gunnison County Land Use Resolution for review of the Project (the “Application”). The description of the project in the Application is substantially consistent with the Project except that the number of units income-restricted for workforce housing has increased. That Application is being reviewed and the Board has not made any decision on the Application. CBMR, the Town of Crested Butte and the Town of Mt. Crested Butte may participate in such review as referral agencies.

k. To provide the Board with assurance that the Brush Creek Parcel will be used for the desired Project and not any other purpose, the Buyer desires to grant to the Board, and the Board desires to receive from the Buyer, an option to buy the Brush Creek Parcel that includes the terms and conditions set forth in § 10, below and Exhibit C attached hereto.

l. Development of the Project will require Buyer to make large investments in infrastructure and facilities, including, without limitation, residential buildings, roads and parking areas, recreation facilities, water lines and wastewater lines. The Board and Buyer have established a purchase price for the Brush Creek Parcel that includes consideration of current restrictions on use of the Brush Creek Parcel, deed restrictions that will be placed on the Brush Creek Parcel, the costs of development of the Brush Creek Parcel, costs of utilities to serve the Brush Creek Parcel, and the public benefit of use of the Brush Creek Parcel to provide safe, decent, affordable housing for low—and moderate—income persons and other members of the local workforce.

m. As part of the land use change approval process, Buyer will complete, at Buyer’s expense, numerous studies regarding the Property (hydrological, wetlands, wildlife, traffic, etc.) that will provide value to Gunnison County even if the Project is not approved.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

2. DATES AND DEADLINES; CONTRACT SUMMARY.

Reference	Term / Event	Definition / Deadline
	Buyer	APT Brush Creek Road, LLC c/o Law of the Rockies Attn: Kendall Burgemeister 525 N. Main St. Gunnison, CO 81230 kburgemeister@lawoftherockies.com
	Board	Board of County Commissioners of the County of Gunnison, Colorado c/o Matthew Birnie, County Manager 200 E. Virginia Avenue Gunnison, CO 81230 Copy to: David Baumgarten, County Attorney 200 E. Virginia Avenue Gunnison, CO 81230 dbaumgarten@gunnisoncounty.org
	Closing Company	Land Title Guarantee Company 411 Third Street Crested Butte, CO 81224 ccesario@ltgc.com
	Purchase Price	\$100,000.00
	Due Diligence Delivery Deadline	MEC + 14 days
	Due Diligence Objection Deadline	MEC + 21 days
	Due Diligence Resolution Deadline	MEC + 28 days
	Closing Date	MEC + 28 days

The abbreviation “MEC” (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

3. **PROPERTY TO BE CONVEYED AT CLOSING.** At Closing, the Board shall convey to the Buyer the Brush Creek Parcel, as described on Exhibit A, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (the “Property”).

4. **PURCHASE PRICE AND TERMS.** In consideration for the transfer of the Property, Buyer shall pay to the Board the Purchase Price. All amounts payable under this Contract shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller’s check and cashier’s check (Good Funds).

5. **TITLE INSURANCE.** Buyer shall order from Closing Company a commitment to issue an owner’s title insurance policy upon Closing at Buyer’s expense.

6. **DUE DILIGENCE.**

a. As soon as possible, but in any event, no later than the Due Diligence Delivery Deadline, the Board shall provide to Buyer all of the documents and other information referenced below, to the extent such information is in the Board’s custody or control:

1. All existing surveys pertaining to the Property;
 2. All easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, options, and leases) not shown by public records;
 3. Soils reports or data pertaining to the Property;
 4. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents;
 5. All permits, licenses and other use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any.
- b. In the event the Buyer submits written requests for additional specific documents, which the Board is required to provide if they are in the Board's custody, possession or control ("Document Request"), the Board shall provide such documents as soon as reasonably possible, but in any event, within 7 calendar days of the date the Board receives a Document Request from Buyer.
- c. Buyer shall have until 11:59 pm on the Due Diligence Objection Deadline to conduct all due diligence related to this transaction, including but not limited to inspection of documents, record and off-record title matters, insurance matters, survey matters, environmental matters, the physical condition of the Property, and any other matter reasonably desired by Buyer to be reviewed in connection with this transaction. If for any reason Buyer desires not to close, Buyer shall notify the Board of such fact in writing before the expiration of the Due Diligence Objection Deadline, and this Contract shall terminate.
- d. On or before expiration of the Due Diligence Objection Deadline, Buyer also shall have the right to provide written notice to the Board of any objections. If the Board receives such written notice of objection from Buyer, the Board shall notify Buyer whether the Board is willing to use reasonable efforts to cure or correct such objection(s). If the Board is willing to use reasonable efforts to cure or correct such objection(s), the Board shall keep Buyer apprised of the status of his efforts to cure such objection(s).
- e. On or before the Due Diligence Resolution Deadline, Buyer may, by written notice to the Board waive any outstanding objections and proceed to close. If Buyer does not so waive any such objections, this Contract shall terminate.
- f. If Buyer does not terminate this Contract or provide the Board with written notice of any objections on or before the Due Diligence Delivery Deadline, or if Buyer waives previously stated objections, or if previously stated objections are cured by the Board, then this Contract shall continue in full force and effect.
- g. The Board shall cooperate with Buyer in good faith to obtain the resolution of any issues raised during the Due Diligence Period, but shall have no obligation to correct or cure any issues raised by Buyer. Notwithstanding anything in this § 5 to the contrary, the Due Diligence Period also may be extended by mutual written agreement of the Parties to allow additional time to resolve any issues arising from the due diligence.

h. Buyer has the Right to Terminate under this §5, on or before the applicable deadline, based on any unsatisfactory due diligence matter, in Buyer's sole subjective discretion.

i. Before the Due Diligence Objection Deadline, Buyer (acting through its employees and contractors) shall have the right to enter the Board Property to complete a survey and inspect the physical condition of the property at Buyer's expense. All such inspections and evaluations shall be conducted at such times as are mutually agreeable to minimize the interruption of the Board's uses of the Property, if any. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold the Board harmless from and against any liability, damage, cost or expense incurred by the Board and caused by any such Work, claim, or lien. This indemnity includes the Board's right to recover all costs and expenses incurred by the Board to defend against any such liability, damage, cost or expense, or to enforce this section, including the Board's reasonable attorney fees, legal fees and expenses. The provisions of this section shall survive the termination of this Contract.

7. WARRANTIES.

a. The Board makes the following warranties and representations to Buyer:

1. There are no actions, suits, litigation, condemnation, or other proceedings (whether civil, administrative, or otherwise) or investigations pending, against or affecting the Property.
2. It is neither a party to, nor subject to or bound by, any agreement of any kind that would conflict with its performance under this Contract.
3. The Board has received the requisite consent of the MOA Participating Parties. The execution, delivery, and performance on this Contract by the Board has been duly authorized and no consent of any other person or entity to such execution, delivery, and performance is required to render this document a valid binding instrument enforceable against the Board in accordance with its terms.

b. Buyer makes the following warranties and representations to the Board concerning this Agreement, which warranties and representations shall not be merged by any instruments of conveyance:

1. Buyer acknowledges that except as set forth in this Agreement, Seller has made no warranty or representation as to the condition of the Property and, subject to the foregoing provisions, the Property shall be conveyed to Buyer "AS IS" and "WITH ALL FAULTS".
2. Buyer acknowledges that the Board has made no representations as to the investment potential of the Property.

3. Buyer warrants and represents that it has the financial ability and experience to develop and operate the Property consistent with other first-class residential housing developments in the state of Colorado. The Board, in its sole discretion, shall determine if Buyer meets this representation, and may examine Buyer's financial records and tax returns for the previous 5 years, previous development projects, and lot sales contracts or reservation agreements in making its determination of satisfaction of this warranty and representation.

4. Buyer warrants and represents that, as a condition of the purchase of the Property, upon Final Approval of the Application, should that approval occur, Buyer will immediately initiate, or cause to be initiated, construction of the necessary infrastructure for the Property such that the Property can be marketed and operated. This warranty requires that:

a) Such infrastructure shall be completed no later than 43 years from the date of Final Approval of the Application.

b) An appropriate and necessary requirement of the Final Approval shall be that Buyer shall immediately execute a development improvement agreement ("Development Improvements Agreement") substantially in the same form and content to Exhibit BD, and provide to the Board financial security in an amount and form approved by the Board in its reasonable discretion, before Buyer initiates any work pursuant to the Final Approval. Failure of Buyer to so execute the Development Improvements Agreement and to provide the final security shall be cause for the Board to exercise its Option pursuant to §10 herein.

5. If Buyer is utilizing private or public financing to acquire and develop the Property, it shall use its best efforts to include as a term and condition of any loan agreement or financing the right of the Board, at its option, to cure any default by Buyer under such financing documents. Buyer shall pursue underwriting approval for any financing concurrently with the County's administrative review of the Application, with the objective of maintaining the proposed deed restriction in a position senior to any lien associated with such financing, and shall immediately notify the County if it is unable to obtain financing without changing the term of the deed restriction or subordinating the deed restriction to the lien.

6. Buyer shall not convey or encumber the Property, or any portion of it, prior to Final Approval.

7. It is neither a party to, nor subject to or bound by, any agreement of any kind that would conflict with its performance under this Contract.

8. Prior to Final Approval, Buyer will not allow any mechanic's liens to be recorded against the Property, and will indemnify and defend Seller from any mechanic's liens claimed against the Property. If any mechanic's lien is recorded against the Property, Buyer agrees to initiate and prosecute an action in Gunnison District Court to provide a bond or other adequate security to have any and all mechanic's liens recorded against the Property released.

9. The execution, delivery, and performance on this Contract by Buyer has been duly authorized and no consent of any other person or entity to such execution, delivery, and performance is required to render this document a valid binding instrument enforceable against Buyer in accordance with its terms.

c. These representations and warranties shall survive closing under the Agreement and the execution and delivery of any closing documents by Seller and shall not be merged in the Deed.

8. **LAND USE CHANGE FOR PROJECT.** The Buyer shall pursue with reasonable diligence all necessary approvals, including Board approval of the Application, for the Project. The Application includes, in particular, elements substantially similar to the Project, including:

a. 240 apartment units, 65% of which shall be expressly dedicated to workforce housing for qualifying households earning less than 180% of AMI (including 50% of the units being reserved for qualifying households earning less than 140% of AMI).

b. A transit center including a public transit stop and a parking lot with approximately 69 parking spots.

~~c.~~—A soft surface recreational path around the perimeter of the Property connecting to the Riverbend Trail.

Notwithstanding the foregoing, the parties acknowledge that the details of the Project may change as a result of input received during review of the Application. Development of the Project shall be consistent with any Board approval of the Application.

Throughout this Agreement, unless the context otherwise requires, “Final Approval” of the Application shall mean approval of the Application by the Board in accordance with the LUR and (1) the expiration of the time limit to challenge such approval under Colorado Rule of Civil Procedure 106 without any such challenge being commenced; or (2) entry of a final non-appealable court order upholding such approval, as the case may be.

9. **WORKFORCE AFFORDABLE HOUSING RESTRICTIONS IN DEED.** At closing, the Board shall deliver to Buyer a Warranty Deed, attached hereto as Exhibit B, which requires Buyer to provide workforce affordable housing units for certain income levels and other improvements substantially similar to those set forth in the Application. If the Board ultimately approves the Application through the Gunnison County Land Use Resolution review process, and that approval is agreed to by Buyer, the parties agree that the Warranty Deed shall be amended to reflect the particulars of such approval. The Warranty Deed shall include provisions requiring the Property to be used exclusively as required by the Board approval of the Application and shall expressly provide that the Board is authorized to enforce the provisions of the Warranty Deed by all legal and equitable means including but not limited to specific performance.

10. **OPTION.** At Closing, Buyer shall grant to the Board an option to purchase the Property in the form attached hereto as Exhibit C (the “Option”). The price shall be ~~\$200,000~~125,000. The Option shall contain language stating that it is assignable to the other MOA Participating Parties and may be exercised by one or more of the MOA Participating Parties if the Board does not exercise the Option.

- a. The Board shall have the absolute right to exercise the Option upon the occurrence of any of the following events:
1. The Buyer withdraws the Application after receiving a recommendation from the Gunnison County Planning Commission to the Board, in the Application process, to deny the Application or approve a Project substantially different than identified in § 7 above; or
 2. the denial by the Board of the Land Use Change Application for the Project; or
 3. the Buyer's failure to provide written acceptance of the Boards' final approval of the Application, which written acceptance must be provided by the Buyer no later than forty-five (45) days after the date of Final Approval; or
 4. failure of the Buyer to timely execute all of the deed restrictions, protective covenants or other instruments required by the Board's approval of the Application; or
 5. the failure of the Buyer to timely execute the Development Improvements Agreement and provide all financial security required by the Board's approval of the Application; or
 6. the passage of ~~two~~three years from the date of Closing without approval of the Application by the Board; or
 7. there is a final, non-appealable Court decision invalidating the approval in whole or substantial part, and the reason for such decision cannot be remedied on remand or, if the reason for such decision can be remedied on remand the Buyer does not immediately initiate, prosecute and complete the remedy; or
 8. if the Buyer fails to timely provide to the Board documentation of the Buyer's financial bona fides (to include without limitation, HUD underwriting of the project, Buyer's performance on existing HUD financing, HUD inspection reports and responses regarding other developments of Buyer), or the Board determines in good faith that such bona fides are not sufficient.
- b. The Option shall expire upon:
1. Final Approval of the Application; and
 2. Buyer's provision of written acceptance of the Final Approval to Board; and
 3. Execution by Buyer of all deed restrictions, protective covenants, and other instruments required by the Board's Final Approval of the Application; and
 4. Buyer's execution of the Development Improvements Agreement and provision of all financial security required by the Board's Final Approval of the Application; and
- ~~0. —Satisfaction of each obligation and conclusion of each time limit identified in §10.a.~~

12.11. CLOSING DOCUMENTS, INSTRUCTIONS, AND CLOSING.

- a. Closing Documents and Closing Information. The Board and Buyer shall cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and the Board and their designees. Buyer and the Board will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and the Board shall sign and complete all customary or reasonably required documents at or before Closing.
- b. Closing. Closing shall be on the date specified as the Closing Date or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by the Closing Company.
- c. Closing Costs. Buyer shall pay any escrow fee and closing services fee charged by the Closing Company, and any recording fees.
- d. Transfer of Title. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, the Board shall execute and deliver a good and sufficient warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:
1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Commitment ordered by Buyer in accordance with § 5 of this Contract;
 2. Distribution utility easements (including cable TV);
 3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which are accepted by Buyer in accordance with § 6 of this Contract; and
 4. Inclusion of the Property within any special taxing district.
 5. The Option.
 6. Deed restrictions or other instruments required to effectuate this Contract.
- e. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.
- f. Brokerage Disclosure. The Board has not engaged a broker in this transaction. The Buyer has engaged Doug Kroft, Red Lady Realty (Buyer's Agent), and shall be responsible for payment of any commission owed to Buyer's Agent at Closing.

13.12. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

- a. Day. As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).
- b. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado

state holiday (Holiday), such deadline shall be extended to the next day that is not a Saturday, Sunday or Holiday.

14.13. PROPERTY CONDITION AND WALK-THROUGH.

- a. The Parties to this Contract expressly agree that the Property shall be maintained in its present condition by the Board until Closing, unless otherwise agreed upon in writing.
- b. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property complies with this Contract.

15.14. RECOMMENDATION OF COUNSEL. By signing this Contract, Buyer and the Board acknowledge that this Contract has important legal consequences and have been advised to consult with legal, tax, and/or other counsel before signing this Contract.

16.15. TIME OF ESSENCE. Time is of the essence hereof.

17.16. DEFAULT AND REMEDIES

- a. Board and Buyer hereby covenant and agree that the following items shall be considered a default under this Agreement by Buyer:
 1. The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Buyer, or the admission by Buyer that it is unable to pay its debts as they become due.
 2. The consent to an involuntary petition in bankruptcy or the failure to vacate, within thirty (30) days from the date of entry thereof, any order approving an involuntary petition against Buyer.
 3. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Buyer as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of Buyer's assets or the Property.
 4. Any attachment or execution levied upon Buyer's assets and the Property which causes Buyer to be unable to perform its obligations hereunder.
 5. Any commencement of foreclosure proceedings for any lien against the Property related to actions of Buyer with respect to the Property prior to the Closing, which proceedings are not dismissed or the lien is bonded over and released within 30 days of the filing of the foreclosure proceedings.
 6. Any lien or encumbrance place on the Property in violation of §26.j26.j26.j of this contract.
 7. The failure of Buyer to construct ~~a minimum of 65%~~ the percentage, as identified in the Final Approval for the first phase of the Project, of the approved density of the Project as deed restricted units as well as the transit centers with approximately 69 parking spaces within four years of the Final Approval. The Board's remedies for the default identified in this §16.a.7 shall be equitable remedies to include but not be limited to specific performance to require such

construction and deed restrictions and also shall include all remedies available pursuant to the Development Improvements Agreement.

- b. If any obligation hereunder is not performed or waived as herein provided, the non-defaulting party has the following remedies:
1. If Buyer is in Default:
 - a) If Buyer fails to Close, or otherwise is in breach or Default prior to Closing, the Board has the right to terminate the Contract.
 - b) If Buyer fails to diligently pursue a land use change approval with Gunnison County for the Project, the Board may bring an action for rescission of this Contract. If Buyer spends \$100,000.00 or more on the land use approval process (after June 28, 2017), including payments for all professional services and studies necessary to gain approval for the Project, Buyer shall be presumed to have pursued the approval with diligence.
 - c) If Buyer pursues the land use change approval for the Project with diligence, but nevertheless fails to obtain such approval within two years from the date of Closing, the Board's remedies shall include the exercise of the Option.
 2. If the Board is in Default, Buyer has the right to terminate the contract, or the right to specific performance. Buyer waives the remedy of additional damages.

~~18.17.~~ **LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation between the parties relating to this Contract, prior to or after Closing Date, each party shall be responsible to pay its own respective costs and expenses, including attorney fees, legal fees and expenses.

~~19.18.~~ **TERMINATION.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination shall be effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate shall have accepted the specified matter, document or condition as satisfactory and waived the Right to Terminate under such provision.

~~20.19.~~ **ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing shall survive the same.

~~21.20.~~ **NOTICES, DELIVERY.** All notices required by this Contract shall be in writing and shall be either:

- (1) personally delivered to the required Party;

(2) sent by certified mail, return receipt requested, or

(3) sent by email or facsimile transmission, to the required Party, at the addresses or number set forth in § 2.

~~22-21.~~ CHOICE OF LAW. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado. The District Court for Gunnison County, Colorado shall be the exclusive venue for any dispute arising out of or related to this Contract.

~~23-22.~~ ASSIGNABILITY AND INUREMENT. This Contract shall not be assignable by Buyer without the Board's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

~~24-23.~~ EXECUTION. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties. The Parties agree to accept electronic and facsimile signatures as original signatures.

~~25-24.~~ FURTHER ASSURANCES. Each Party agrees to execute and deliver such other and additional documents and instruments and to do all other acts necessary to more fully effectuate the purpose and intent of this Contract.

~~26-25.~~ ATTACHMENTS. The following attachments are a part of this Contract:

a. Exhibit A: Description of Property

b. Exhibit B: Form of Warranty Deed

~~c.~~ Exhibit C: Form of Option

~~e.d.~~ Exhibit D: Form of Development Improvements Agreement

~~27-26.~~ ADDITIONAL PROVISIONS

a. COVENANTS, DEED RESTRICTIONS. The Parties agree to execute all covenants, deed restrictions and other legal instruments necessary to accomplish the intent of this Contract and any requirements of any approval of the Application including but not limited to mechanisms identified in such approval to ensure qualifications of tenants, and funding and financial security for accomplishment of the Project. Such mechanisms shall survive closing on this Contract.

b. LEGAL DEFENSE. Buyer and the Board shall cooperate to defend against any third party legal challenge to the validity of this Contract, with each party to pay its own costs and expenses, including attorney's fees, legal fees and expenses.

c. CONTRACT TO BE AMENDED TO CONFORM TO RESULTS OF LITIGATION. Should any third party legal or equitable challenge to this Contract or the approval of the land use change application be successful, the parties shall make good faith efforts to amend the Contract to address any legal deficiency, or terminate this Agreement without liability or penalty to Buyer or the Board in which even this Agreement shall be of no further force or effect.

d. THIRD PARTY ACTION. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement or any approval of the land use change application required herein, Buyer and the Board agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the Buyer and Board otherwise agree, each Party shall select and pay its own legal counsel to represent it in connection with such action or proceeding.

e. FORCE MAJEURE. In the event of any occurrence beyond the control of Buyer, including but not limited to acts of God, war, acts of terrorism, litigation challenging this transaction or the approval of the Application, Buyer shall not be considered to be in breach of this Agreement to the extent that Buyer’s performance is prevented by such occurrence, and any deadline for Buyer’s performance of any obligation under this Agreement shall be extended by an equitable amount of time.

f. NO CONVEYANCE OF PROJECT WITHOUT PRIOR BOARD APPROVAL. Neither the Project nor any portion of the Project shall be conveyed without prior written approval of the Board, which approval shall consider any reasonable impact to fulfillment of Buyer obligations hereunder, and which approval shall not be unreasonably withheld.

g. NO WAIVER OF REQUIREMENTS. Nothing in this Contract is, or shall be construed to be, a waiver by the Board of any applicable regulatory requirement of Gunnison County.

h. NO PREDETERMINATION OF REGULATORY PROCESS. Nothing in the Contract is, or shall be construed to be, a predetermination by Gunnison County or any applicable Gunnison County regulatory process.

i. PHASING. In all events, phasing of the development of the Project shall require full construction of the infrastructure ~~as a component first phase~~ consistent with the Development Improvements Agreement. The Board shall cooperate with Buyer to explore opportunities for funding (i.e. grants) to offset Buyer costs of infrastructure.

j. NO LIENS OR ENCUMBRANCES. No Liens or encumbrances shall be placed on the Property until after Final Approval.

k. The Board has authorized Matthew Birnie, Gunnison County Manager, to execute this Contract and all documents necessary to effectuate this Contract.

SIGNATURES

APT Brush Creek Road, LLC, a Colorado limited liability company

By: _____ Date _____
Name: _____
Title: _____

The Board of County Commissioners of the County of Gunnison, Colorado

By: _____
Name: _____

_____ Date

Exhibit A

It is the intention of the Parties to convey all of the land in Section 12, Township 14 South, Range 86 West, 6th PM, lying south and east of Brush Creek Road, and west of Larkspur Subdivision and Red Feather Ranch subdivision, excepting any portion that may lie south and west of the southwest boundary of Colorado State Highway 135.

On information and belief, this includes that property conveyed to the Board of County Commissioners of Gunnison County, Colorado by Quitclaim Deed recorded December 16, 1996 under Reception No. 472661, and that property conveyed to the Board of County Commissioners of Gunnison County, Colorado by General Warranty Deed recorded September 11, 1998, at Reception No. 486887.

On information and belief, this also includes the property quitclaimed to the Board of County Commissioners of Gunnison County, Colorado, by Quitclaim Deeds recorded at Reception Nos. 568255 and 568256.

The parties shall work with the Closing Company to develop a legal description that is satisfactory to all parties prior to Closing.

COUNTY OF GUNNISON, STATE OF COLORADO.

OPTION

APT BRUSH CREEK ROAD, LLC, a Colorado Limited Liability Company (“Grantor”), for good and valuable consideration, in hand paid, hereby grants to the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO** (“Grantee”), whose address is 200 E. Virginia, Ave., Ste. 104, Gunnison, Colorado, 81230, an irrevocable option to purchase the following real property (the “Property”):

[insert final legal description],

County of Gunnison, State of Colorado,

With all appurtenances.

The Option granted herein is subject to the following terms and conditions:

1. Consideration for Option. The Option is granted as part of the consideration paid by Grantor to Grantee for the purchase of the Property by that certain General Warranty Deed of even date herewith. No additional consideration is given by Grantee for the Option.
2. Term of Option. Unless sooner exercised by Grantee, this Option shall expire upon the satisfaction of all of the following conditions:
 - a. Final Approval of the Land Use Change Application LUC-17-00034 (the “Application”) by Grantee; and
 - b. Grantor’s provision of written acceptance of the Final Approval to Grantee; and
 - c. Execution by Grantor of all deed restrictions, protective covenants, and other instruments required by the Grantee’s Final Approval of the Application; and
 - d. Grantor’s execution of the Development Improvements Agreement and provision of all financial security required by the Grantee’s Final Approval of the Application.

“Final Approval” of the Application shall mean approval of the Application by the Grantee in accordance with Gunnison County’s Land Use Resolution and (1) the expiration of the time limit to challenge such approval under Colorado Rule of Civil Procedure 106 without any such challenge being commenced; or (2) entry of a final non-appealable court order upholding such approval, as the case may be.

3. Conditions Precedent to Exercise of Option. The Grantee shall have the absolute right to exercise the Option only upon the occurrence of any one of the following events:
 - a. The Grantor withdraws the Application after receiving a recommendation from the Gunnison County Planning Commission to the Grantee, in the Application process, to deny the Application or approve a Project substantially different than identified in the Application; or
 - b. The Grantee denies the Application; or
 - c. the Grantor’s failure to provide written acceptance of the Grantees’ final approval of the Application, which written acceptance must be provided by the Grantor no later than forty-five (45) days after the date of Final Approval; or
 - d. The failure of the Grantor to timely execute all of the deed restrictions, protective covenants or other instruments required by the Grantee’s approval of the Application; or
 - e. The failure of the Grantor to timely execute the Development Improvements Agreement and provide all financial security required by the Grantee’s approval of the Application; or
 - f. The passage of three years from the date of Closing without approval of the Application by the Grantee; or
 - g. There is a final, non-appealable Court decision invalidating the approval in whole or substantial part, and the reason for such decision cannot be remedied on remand or if the reason for such decision can be remedied on remand the Grantor does not immediately initiate, prosecute and complete the remedy; or
 - h. The Grantor fails to timely provide to the Grantee documentation of the Grantor’s financial bona fides (to include without limitation, HUD underwriting of the project, Grantor’s performance on existing HUD financing, HUD inspection reports and responses regarding other developments of Grantor), or the Grantee determines in good faith that such bona fides are not sufficient.

DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT (herein the "Agreement") is entered into this ___ day of _____, 20__ by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 (herein "Gunnison County"), and _____, whose address is _____ (herein the "Developer") as follows:

1. Purpose. The Developer has submitted to Gunnison County the Developer=s application for Land Use Change Permit No: 20__ - _____ regarding _____ (herein the AProject@). The legal description of the Project is attached hereto and incorporated herein as Appendix "A". As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7 below (herein the AImprovements@) to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by the Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition to Gunnison County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions for Gunnison County=s issuance of its approval of the Land Use Change Permit No: 20__ - _____ and the terms and conditions of this Agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in connection with Land Use Change No: 20_ - __ , as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of the Improvements within the Project in the locations and in accordance with the specifications as identified in paragraph 7 herein, by no later than _____, 20__ . Acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions

arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

B. The completion deadline set forth in this paragraph 3 may be extended by Gunnison County in its sole discretion upon written request of Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by Gunnison County hereunder may be further extended in like manner.

C. Each contract entered into by Developer for construction of the Improvements shall provide that Gunnison County is a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to Gunnison County a copy of each such contract upon its execution.

D. Gunnison County reserves the right not to permit construction of any building in the Project prior to full completion of the Improvements described in paragraph 7 herein.

4. Estimated Cost. The total cost of the Improvements to be constructed by the Developer is estimated currently to be _____ and ___/100 U.S. Dollars (\$ _____) plus a contingency amount.

5. Security. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, and before conveying any portion of the Project, obtain and provide to Gunnison County either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of \$ _____ which is 125 percent of the currently estimated cost of the Improvements to include a reasonable contingency amount. If said security is in the form of cash, it will be placed by Gunnison County in an interest bearing account; the interest shall accrue to Developer at 1% less than received by Gunnison County.

If the contract(s) provided to Gunnison County pursuant to paragraph 3C indicate a substantially different total cost than estimated in paragraph 4, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent or more.

Pending full performance of all of the terms and conditions hereof by the Developer, Gunnison County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder Gunnison County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of _____ and ___/100 U.S. Dollars (\$ _____), upon presentation by Gunnison County to the issuer of a written statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County to the Developer, except as provided in paragraph 7C.

6. Certification.

A. Not later than _____, 20__ a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding Improvements under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the County Attorney of such certification and receipt of a complete paper and two (2) electronic copies of road and utility as-built specifications and drawings, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and Gunnison County's representative have had reasonable opportunity to inspect such Improvements.

B. Not later than _____, 20___, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. Scope of Work.

A. The scope of work to be done by the Developer shall include, but not be limited

to:

7.1 The plans titled, “ _____”, prepared by _____, dated _____; and

7.2 The cost estimates titled, “ _____”, prepared by _____, dated _____; and

7.3 The terms and conditions of the Reclamation Permit for _____ (***or reference permit number***) and to include noxious weed control to the satisfaction and approval of Gunnison County Weed Coordinator; and

7.4 Those conditions cited by the Planning Commission and approved by the Board of Gunnison County Commissioners for Land Use Change Permit No: _____.

B. The conditions of this Agreement and Land Use Change Permit No: _____ are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer’s engineer, and such performance is accepted by Gunnison County in Gunnison County’s sole discretion, the Developer’s obligations to Gunnison County under this Agreement except as set forth in 7C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of one year from and after the acceptance of all of the work described in paragraph 7A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County’s reasonable opinion, become necessary. Gunnison County shall have the right to retain up to _____ and ___/100 U.S. Dollars (\$ _____) of the security for up to one year following the acceptance of all of the work described in paragraph 7A above, as security to ensure such repair and replacement. Gunnison County shall have the right to retain all of the Reclamation costs in the amount of _____ and ___/100 U.S. Dollars (\$ _____) for a two year period after completion of initial reclamation efforts to ensure the disturbed areas have been reclaimed to Gunnison County’s satisfaction.

8. Partial Release of Security.

A. Gunnison County recognizes that as work proceeds upon the Improvements, Gunnison County’s need for security shall be reduced. Accordingly, Gunnison County may make a reasonable partial release of the security to be delivered to Gunnison County pursuant to paragraph 5 herein upon receipt of a written

completion; upon receipt of certification by Developer's engineer stating the estimated cost of remaining such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. If Gunnison County does make a partial release, Gunnison County shall retain security equal to: (a) 125 percent of such estimated cost of remaining completion of Improvements plus 25 percent of the original estimated cost of the Improvements; and (b) all the estimated costs of all of the Reclamation; and shall release the balance of all security held by Gunnison County.

Pursuant to 6.A.....

And affidavit of payment pursuant to paragraph 6.B herein.

B. Upon Developer's entering into a contract or contracts for construction of Improvements hereunder, Developer and Gunnison County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, Gunnison County shall designate and authorize Gunnison County Manager to make the partial release(s) hereunder after consultation with appropriate Gunnison County staff.

9. Developer's Default. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to the Developer at: _____. In the event the Developer does not remedy such default to the satisfaction of Gunnison County within 14 days following such notice, Gunnison County may elect, in its discretion to exercise all remedies available to it, including but not limited to:

- A. To specifically enforce the terms and conditions of this Agreement;
- B. To draw upon or otherwise obtain the benefit of the security;
- C. To exercise any other rights and obtain any other remedies provided by law;
- D. To obtain from the Developer either an extension of Gunnison County's security hereunder to guarantee the completion of the Improvements only on the conditions: (1) that suitable additional security is provided to Gunnison County to guarantee the construction of said Improvements within the new time period determined by Gunnison County; and (2) that Gunnison County determines that it would not be detrimental to the interest of Gunnison County, the public or the owners of property

within the Project to allow such extension; and (3) that Gunnison County determines that it would not be in conflict with the conditions of the approved Land Use Change Permit.

E. To engage a manager to supervise the completion of improvements as identified herein. The costs incurred for hiring a manager shall be the responsibility of the Developer and may be withdrawn by Gunnison County from the security. Furthermore, all Gunnison County staff time spent thereafter on this Project shall be calculated at an hourly rate and shall be charged to the Developer and may be withdrawn from security.

10. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested or by facsimile or telegraphic communication to the required party at the following addresses:

Gunnison County:	Board of Gunnison County Commissioners of the County of Gunnison, Colorado c/o Gunnison County Attorney 200 East Virginia Gunnison, CO 81230 Fax No: 970-641-7696
------------------	--

Developer:

11. Recording of Agreement. Upon its execution, this Agreement shall be recorded by the Developer and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

12. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away of Gunnison County's police power.

13. Transfer or Assignment. No transfer or assignment of any of the rights or obligations

of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

14. Title and Authority. The Developer expressly warrants and represents to Gunnison County that it is the record owner of the real property constituting the Project, and further represents and warrants, *(together with the undersigned individual, that the undersigned individual has full power and authority to enter into this Agreement)*. The Developer *(and the undersigned individual)* understand that Gunnison County is relying on such representations and warranties in entering into this Agreement.

15. Litigation. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder; provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 14 days thereafter, shall be a condition precedent to the commencement of any litigation.

16. Time of Essence. It is mutually agreed that time of performance is an essential part of this Agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

17. Venue and Choice of Law. This Agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

18. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.

19. Hold Harmless Clause. The Developer shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

21. Entire Agreement. This Agreement contains the entire and only Agreement between the parties regarding development improvements, and no oral statements or

MINUTES
Town of Crested Butte
Regular Town Council Meeting
Monday, December 4, 2017
Council Chambers, Crested Butte Town Hall

Mayor Petito called the meeting to order at 7:03PM.

Council members present: Will Dujardin, Kent Cowherd, Chris Haver, Laura Mitchell, and Paul Merck

Staff Present: Town Manager Dara MacDonald, Town Attorneys Barbara Green and John Sullivan, and Community Development Director Michael Yerman

Town Clerk Lynelle Stanford, Finance Director Lois Rozman, Parks and Recreation Director Janna Hansen, and Public Works Director Rodney Due (for part of the meeting)

APPROVAL OF AGENDA

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

CONSENT AGENDA

- 1) November 20, 2017 Regular Town Council Meeting Minutes.**
- 2) Town Council Regular Meeting Schedule for 2018.**
- 3) Memorandum of Understanding between the Grand Mesa, Uncompahgre, and Gunnison National Forest and the Town of Crested Butte for the designation of the Town of Crested Butte as a Cooperating Agency in the GMUG Forest Plan Revision.**
- 4) Letter to Scott Armentrout, Grand Mesa Uncompahgre and Gunnison (GMUG) National Forest Supervisor, providing comments from the Town of Crested Butte on the GMUG Forest Plan Assessment.**
- 5) Resolution No. 72, Series 2017 - A Resolution of the Crested Butte Town Council Approving a Temporary Easement Agreement with the Crested Butte Limited Partnership.**

Dujardin removed the MOU (item #3) and the letter to Scott Armentrout (item #4) from Consent Agenda and moved them to New Business for discussion.

Cowherd moved and Haver seconded a motion to approve the Consent Agenda as amended by moving item numbers 3 and 4 to New Business. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

PUBLIC COMMENT

None

STAFF UPDATES

Lynelle Stanford

- Campaign finance forms for the regular election were due December 7th.
- Ballots for the run-off election were mailed last Wednesday. Voted ballots could be dropped at Town Hall from 8:30AM to 5PM. Town Hall would be open from 7AM to 7PM to drop ballots on Election Day. Ballots could also be mailed back.
- The holiday party would be on Friday.
- Meet the New Director and Light Up Night were special events taking place on Friday, as well.

Lois Rozman

- Provided reports on October sales tax, which was up 8% from last year.
- Collection on marijuana taxes was down, but there were missing filers.

Janna Hansen

- Crews would be flooding the rink tonight, a week behind schedule.
- Property owners with adjacent sidewalks were responsible for clearing ice and snow per the Town Code.

Barbara Green

- Green and Sullivan had agreed to charge the Town a flat rate.
- They both wanted to attend the meeting.
- She offered to meet individually with new, as well as pre-existing, Council members.

Rodney Due

- Updated on the wastewater treatment plant (WWTP). Everything was on schedule. Tomorrow night they would be working all night to bring the new process online, and there would be some disruption.
- Due responded, in detail, to Haver’s question on Due’s reference to trains.

Dara MacDonald

- Encouraged the Council to tour the WWTP and learn about changes that were happening.
- She wanted to discuss the law enforcement situation in the northern valley. Todd Barnes extended an invitation to the Council for a joint meeting with the Mt.

Crested Butte Council. He suggested mid-January. The Council affirmed that MacDonald could proceed with making arrangements.

- The January 8th work session would start at 5PM to meet with Sam Light from CIRSA.
- The roundabout discussion would be kicked off again. The consultants would come back for the work session on January 22th.
- The Town would go under contract with Western to update the Energy Action Plan. The service agreement would be on the next agenda, and the report would come out in June.

PUBLIC HEARING

1) Ordinance No. 35, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 4 of the Crested Butte Municipal Code to Include New Provisions Establishing the Affordable Housing Fund and a Tax on Vacation Rentals and Making Such Other Related Changes to the Code in Connection Therewith.

Petito read the title of the ordinance, and he confirmed proper public notice was given. MacDonald pointed out substantive changes from the last meeting and updates to what the funds could be used for. She explained there were a number of editorial changes in the body of the ordinance, which were not particularly substantive. MacDonald confirmed for Cowherd that funds could be used to purchase a unit and that it had been included on the list.

Petito opened the meeting to public comment.

Jim Starr - 323 Gothic

- President of Gunnison County Housing Foundation.
- Encouraged the Council to adopt the ordinance.
- He thanked Glenn Michel and Jim Schmidt for their foresight.
- He supported the ordinance.

The meeting was moved to Council discussion, and there was no further discussion.

Dujardin moved and Mitchell seconded a motion to approve Ordinance No. 35, Series 2017. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

2) Ordinance No. 36, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Release of 1991 Restrictive Covenant for Parking.

Petito read the title of the ordinance. Then, he confirmed proper public notice had been given. Yerman informed the Council that not much had changed from the last meeting. He explained the reason behind the ordinance and the history of the easement held by the Town. Technically, the Town was disposing of the property, so an ordinance was required. There were no comments from the public, and the meeting was moved to

Council discussion. Merck affirmed the parking would be adequate for the short-term rental.

Mitchell moved and Merck seconded a motion to approve Ordinance No. 36, Series 2017. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

NEW BUSINESS

1) Ordinance No. 37, Series 2017 - An Ordinance of the Crested Butte Town Council Adopting Changes and Additions to the 2017 Budget and Appropriations Relative to the Sales Tax Fund and Affordable Housing Fund.

Rozman stated the ordinance was required by State statute in order to prevent over spending on the budget that had been adopted. She explained the increase to the sales tax fund and the adjustment to the affordable housing fund. The Council had no further discussion.

Mitchell moved and Merck seconded a motion to set Ordinance No. 37, Series 2017 to public hearing at the December 18th meeting. **Motion passed.**

2) Memorandum of Understanding between the Grand Mesa, Uncompahgre, and Gunnison National Forest and the Town of Crested Butte for the designation of the Town of Crested Butte as a Cooperating Agency in the GMUG Forest Plan Revision.

Dujardin drew the Council’s attention to page 13 of the packet, which was also page 2 of the MOU. He identified that Town could provide comments on the GMUG forest plan process. In order to be most effective, he wanted to add Carbon Creek Watershed within the scope of comments that would be submitted.

3) Letter to Scott Armentrout, Grand Mesa Uncompahgre and Gunnison (GMUG) National Forest Supervisor, providing comments from the Town of Crested Butte on the GMUG Forest Plan Assessment.

Yerman suggested a motion to amend the letter to include Carbon Creek Watershed and authorize the Mayor to sign the MOU and the letter to the Forest Service with the amended change.

Dujardin moved and Mitchell seconded a motion to have Jackson sign the MOU and the letter to Scott Armentrout with the amended change to include the Carbon Creek Watershed. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

4) Council Member Appointments to Boards and Committees.

Mitchell thought that Council should wait until the outcome of the run-off election to appoint. MacDonald questioned if they wanted to appoint Council members to attend meetings. The Council agreed to temporary appointments with the intent to revisit in January.

Mitchell suggested that someone attend RTA and Mountain Express meetings. Haver and Cowherd expressed interest in RTA. Merck stated that someone could be appointed to the Creative District in his place, and Mitchell offered her position on the Chamber Board. Through discussion, it was determined that Haver and Cowherd would attend any RTA meetings. Mitchell remained on Mountain Express, and Dujardin was newly appointed. Mitchell replaced Ladoulis on the TA Board. Mitchell remained on the Chamber Board, and Dujardin became the alternate. Merck informed the Council that he stepped off the Coldharbour Institute. No one was appointed in his place. Haver would attend the next meeting for the Gunnison County Housing Authority Advisory Board. Petito remained on Gunnison Valley Housing Foundation and Merck on the Center for the Arts. There were no changes or additional appointments to the Gunnison Valley Land Preservation Board, West Elk Scenic Byway, and Colorado Association of Ski Towns. Cowherd expressed interest in DOLA Region 10, to which Ladoulis had been appointed. Dujardin agreed to serve on the Upper Gunnison River Water Conservancy District. Dujardin and Cowherd agreed to attend Water Quality/Quantity Committee meetings (QQ). Green explained that decisions were made by consensus at their meetings. Haver volunteered to be on the Downtown Crested Butte Lodging Association, as he already served as chairman. Petito volunteered to serve on the Cemetery Committee, on which Schmidt served; however, the committee would not meet before January. Haver had interest in Community Builders Taskforce. The Council opted to wait to determine the appointment on CDOT Region 3. Cowherd and Dujardin both said they could serve on the Creative District Commission. Mitchell and Merck volunteered for the Grant Review Committee. Both Merck and Haver expressed interest in the Gunnison County Sustainable Tourism and Outdoor Recreation Committee.

LEGAL MATTERS

None

COUNCIL REPORTS AND COMMITTEE UPDATES

Laura Mitchell

- Attended Chamber meeting. They had a discussion on electricity and were organizing the Fat Bike Worlds.
- Reported on the Mountain Express meeting. They were waiting for three busses and were trying to get rid of one or two. They would start charging if the new busses didn't arrive soon.

Kent Cowherd

- Had been attending Brush Creek meetings.

OTHER BUSINESS TO COME BEFORE THE COUNCIL

Petito had been hearing a lot of feedback concerning the Post Office. He offered to meet on an informal basis with the Postmaster. MacDonald said she would invite the Postmaster to talk to the Council.

Haver thought it was important to follow up on the Brush Creek work session with a response to Gatesco and that the response be timely. He wanted to create a response that was clear and simple. Haver suggested they direct Staff, together with a couple of Council members, to work on the letter. He listed points to be included and issues that he wanted Staff to investigate. Petito liked the idea of sending a response that they would approve as a body. He also agreed with having Council members work with Staff. MacDonald was happy to work with Council members and bring back a draft letter for discussion on December 18th. Cowherd added what he thought was important to include in the letter, and he offered to participate in drafting the letter. Secondly, he volunteered himself as a representative of Town at Brush Creek meetings.

Haver recognized they were talking about two separate items and that there was discussion around the land use resolution (LUR) and process. Merck wasn't ready to appoint Cowherd to speak for the Town, but he thought it was a good idea to work on a letter. Haver suggested that Merck and Cowherd represent Council on drafting the letter, and on the LUR side, he would ask Staff to continue with comments. Cowherd could talk with Staff to address the LUR. Cowherd clarified he was asking the County to look at their own document.

MacDonald asked for feedback on how actively Council wanted Town to participate in the County's processes. There was discussion on upcoming meetings and specific topics. Haver wanted to direct Staff to look at the LUR and point out parts to address. Petito asked if they wanted to discuss a position for the upcoming Planning Commission meeting on the 15th. Haver thought they needed to bring up things that hadn't been brought up, and they could send a clear message to hit the points that hadn't been hit within the LUR. Dujardin stated the plan, in general, was not addressing affordable housing on the County level, nor was it in agreement with the memorandum. Petito thought they needed a list of things that were missing. Yerman told the Council that they wanted to submit a formal comment at the first public hearing. He suggested they develop a letter for the public hearing that would be the Town's formal comment. MacDonald said the issue remained of things they weren't addressing in their work sessions. She identified three points of discussion: 1) the response to Gatesco; 2) supplementing comments to date and asking the Planning Commission to address before the sketch plan decision; and 3) technical comments to submit for the public hearing. Petito summarized that the Council affirmed they would draft a response to Gatesco; they were comfortable with having Staff submit as supplemental comments on what was missing in the LUR; and they had more time to formulate public comment.

Haver wanted to look at when they could get together to discuss goals and priorities for upcoming years. He wanted to ask Staff to look into setting up a date, agenda, and facilitation.

Cowherd revisited the meeting of the Planning Commission on the 15th. MacDonald asked if Council wanted to appoint someone from Council to represent Town, in addition to Staff. Green suggested they ask the County to hold the public hearing in Crested Butte. No one on the Council disagreed with Green's suggestion, and the Council took no action on Cowherd's idea to represent Town concerning Brush Creek.

MacDonald updated the Council on the law enforcement situation, specifically that the plan between the County and Mt. Crested Butte was murky. Agencies rely on each other heavily, and there was limited authority and staffing. It was becoming a concern that the discussion was not progressing. Mitchell said there should at least be a six-month agreement. MacDonald emphasized Town would continue to respond to incidents. The Council agreed they desired to facilitate discussion.

DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, December 18, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, January 8, 2018 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, January 22, 2018 - 6:00PM Work Session - 7:00PM Regular Council

The Council was reminded that the January 8th work session would start at 5PM.

EXECUTIVE SESSION

Petito read the reason for the Executive Session: for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) with an update on ongoing legal matters including Mt. Emmons, ADU litigation, and Brush Creek.

Mitchell moved and Dujardin seconded a motion to go into Executive Session. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

The Council went into Executive Session at 8:55PM. The Council returned to open meeting at 9:57PM. Mayor Petito made the required announcement before returning to open meeting.

ADJOURNMENT

Mayor Petito adjourned the meeting at 9:58PM.

Jackson Petito, Mayor

Lynelle Stanford, Town Clerk (SEAL)



Staff Report

December 18, 2017

To: Town Council
Thru: Michael Yerman, Community Development Director
From: Jessie Earley, Assistant Design Review and Historic Preservation Coordinator
Subject: Contract for Western State Colorado University to update the Energy Action Plan (EAP)

SUMMARY:

At the August 8, 2017 Town Council meeting, the Town Council committed to updating the existing Energy Action Plan (EAP). The Goal of the plan is to update goals with the existing plan that are more realistic since the plan was originally adopted in 2009. While the Town has actively been working on the actions outline in the plan, the goals and programs have changed substantially since its adoption in 2009. The Town staff will be working with Western State Colorado University to provide essential data to update the plan. The 2018 budget approved the cost of contracting with Western State Colorado University's Dr. Abel Chavez to update the EAP.

The timeline for this plan update will be as follows:

PHASE	ACTION/TASK	DELIVERY DATE
PHASE 1	Project Launch and Team Meeting	January 15, 2018
	Data Collection for GHG Inventory	Weeks of January 15 and January 22, 2018
	Data Collection for GHG Footprint	Week of January 29, 2018
	Data Benchmarking	Week of February 5, 2018
	Draft of Baseline Footprint	February 26, 2018
	Data Collection for 2030 GHG Forecast	Week of February 26, 2018
	Finalize Baseline Footprint and Visuals	March 9, 2018
PHASE 2	First Draft of 2030 GHG Forecast	March 21, 2018
	Finalize 2030 GHG Forecast	March 30, 2018
	Build GHG Forecast Visuals	Week of April 2, 2018
	Present GHG Footprint and Forecast to Community Stakeholders	Week of April 16, 2018
	Enhance Footprint and Forecast	Week of April 23, 2018
PHASE 3	Draft List of Energy and GHG Abatement Pathways	Week of April 30, 2018
	Abatement Pathways Meeting with Key Community Stakeholders	Week of May 14, 2018
	Final Summary Report	June 15, 2018

RECOMMENDATION:

A Council member make a motion followed by a second to approve the Professional Services Agreement with Western State Colorado University to update the existing EAP as part of the Consent Agenda.

AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT FOR PROFESSIONAL SERVICES is made this ____ day of _____ 20__ between the TOWN OF CRESTED BUTTE, a Colorado municipal corporation ("Town"), and WESTERN STATE COLORADO UNIVERSITY's Community Solutions Incubation + Innovation (CS2I) Lab ("Contractor").

WHEREAS, the Town desires that Contractor perform the services of creating an Energy & GHG Emissions Inventory and Emissions Reductions Action Plan as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the scope of work attached as Exhibit A; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

In consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Scope of Agreement. The Town agrees to retain Contractor to provide the services set forth herein, and as further specified in **Exhibit A**, attached hereto and incorporated herein by reference ("Services"), and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein.

2. Consideration. The Town agrees to compensate the Contractor for all fees and expenses, in accordance with the Fee Schedule detailed in Exhibit A, hereby incorporated by reference. The Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Contractor, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

3. Term and Renewal. This Agreement shall be effective as of the date of its execution by both parties and shall extend until the Agreement is terminated pursuant to Section 10 of this Agreement; provided, however, that to the extent that the term of this Agreement exceeds one fiscal year, the obligations described herein shall be subject to annual appropriation by the Town Council, at its sole discretion.

4. Status. The Contractor is an independent contractor and shall not be considered an employee or agent of the Town for any purpose.

5. Outside Support Services and Sub-Contractor. Any sub-Contractors shall be pre-approved by the Town. A rate sheet for such sub-Contractors shall be provided to the Town.

6. Ownership of Instruments of Service. The Town acknowledges the Contractor's work product, including electronic files, are instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the services.

7. Standard of Care. The standard of care applicable to the Contractor's services will be the same degree of care, skill, and diligence normally employed by professionals performing the same or similar services. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, or opinion produced pursuant to this Agreement. The Contractor does not guaranty that the documents and products are without error; however, the Contractor will re-perform any services not meeting this standard without additional compensation.

8. Indemnity, Insurance and Governmental Immunity Act. To the extent permitted by law, each party to this Agreement shall hold harmless and indemnify the other party, including the other party's employees, officers, agents, and assigns, from award of damages, to the extent such award of damages arises from the action or inaction of that party's own officers, employees and agents.

Nothing herein shall be interpreted as a waiver of governmental immunity, to which the other parties would otherwise be entitled under C.R.S. §24-10-101, et seq. as amended.

Contractor shall provide proof of general liability insurance to the Town upon execution of this Agreement. A copy of the Contractor's current available insurance coverage and limits is attached as Exhibit B.

9. Work By Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor warrants, represents, acknowledges, and agrees that:

- A. Contractor does not knowingly employ or contract with an illegal alien.
- B. Contractor shall not knowingly employ or contract with an illegal alien to perform works or enter into a contract with a subcontractor that fails to verify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Contractor has participated in or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the

Department of Homeland Security (hereinafter, “E-Verify”) in order to verify that Contractor does not employ illegal aliens. If Contractor is not accepted into E-Verify prior to entering into this Agreement, Contractor shall forthwith apply to participate in E-Verify and shall submit to the District written verification of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in E-Verify, and shall certify such application to the District in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This paragraph shall be null and void if E-Verify is discontinued.

D. Contractor shall not use E-Verify procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

E. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:

(a) notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

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

F. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

G. If Contractor violates this paragraph, the District may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District arising out of said violation.

10. Termination. The Town or the Contractor may terminate this Agreement at any time by providing a minimum fifteen (15) calendar days’ written notice to the other party. If the parties have mutually determined that the work has become infeasible, the parties agree to terminate the Agreement in accordance with this Section. In the event this Agreement is terminated, the Contractor shall be compensated for all work performed to date based on estimate percentage of completion, including the percentage of any and all work items begun but not completed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this ____ day of _____ 20__.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Town Manager

ATTEST:

Town Clerk

CONTRACTOR

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing AGREEMENT FOR PROFESSIONAL SERVICES was acknowledged before me this ____ day of _____ 20__ by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public



TOWN OF
Crested Butte
C O L O R A D O



WESTERN STATE
COLORADO UNIVERSITY

Scope of Work (SoW) For:

**ENERGY, MATERIAL, and GREENHOUSE GAS (GHG) EMISSIONS FOOTPRINT BASELINE AND
FORECAST – TOWN OF CRESTED BUTTE, COLORADO**

Ms. Dara MacDonald
Town Manager

Prepared By:

Western State Colorado University
Community Solutions Incubation + Innovation (CS2I) Lab

Dr. Abel Chávez
(970-943-2017; achavez@western.edu)

December 1, 2017

Scope of Work

The Town of Crested Butte (Ms. Dara MacDonald) and Western State Colorado University's CS2I Lab (Dr. Abel Chávez) will partner to develop an **Energy, Material, and Greenhouse Gas (GHG) Emissions Footprint Baseline and Forecast for the Town of Crested Butte, Colorado**. While this work will refer to past know-how contained in the UGRW (2005)¹ GHG Inventory, this effort will demand the collection of new data. As such, Dr. Chávez and CS2I Lab staff will submit data requests, and look to the Town of Crested Butte (Crested Butte) for assistance in accessing relevant community data (e.g., building energy use, fuel sales, and other). This collective effort will help CS2I apply global best practices to complete this Footprint and Baseline.

Following are short narratives for each broad phase of the Scope of Work (SoW), as defined by Ms. MacDonald and Dr. Chávez, and the anticipated timeline between January through June 2018.

Phase 1: Energy, Material, and GHG Footprint Baseline

The foundation to modern, relevant, and suitable planning includes robust community resource accounting. And while there are several types of said accounting that communities are adopting, the latest publicly and globally accepted standards, which Dr. Chávez's work in global cities (e.g., multiple US cities, China and India) helped inform directly, prescribe approaches adopted by communities today. Though there are several approaches for accounting the energy, material, and GHGs associated with a community (see Figure 1), for this work we propose Crested Butte complete a baseline using the Purely Territorial (*Scope 1*) and the Expanded Production (*Scope 1, 2, 3 related to 'production'*) approaches. The latter approach is considered a Footprint (not an Inventory), and is well suited for assessing and communicating the **in-** and **out-of-**boundary effects; for example, both tail-pipe fuel combustion (in-boundary) and life-cycle fuel processing (out-of-boundary). This combination will directly serve and significantly complement Crested Butte's ongoing efforts in real time. In the future, we suggest Crested Butte also explore completing the Consumption-Based (*Scope 1, 2, 3 related to 'consumption'*) estimate, which will provide a unique suite of planning scenarios. * *Note that the UGRW (2005) GHG Inventory is a Purely Territorial accounting.*

Further, in order to compile a baseline that is defensible and one that withstands all levels of scrutiny, Dr. Chávez will perform a series of data checks and benchmarks to assist in possibly identifying erroneous data points. Data benchmarks employed in CS2I's BAFT Model (*baseline, accounting and forecasting tool*) will also help elevate the defensibility of the forecast. While these benchmarks are not intended for comparative purposes, they do establish an efficient and rigorous framework for assessing local activity data. See Table 1 for examples of possible benchmarks.

¹ UGRW (2005). Upper Gunnison River Watershed Greenhouse Gas Emissions Inventory. Office of Resource Efficiency, Crested Butte, CO.

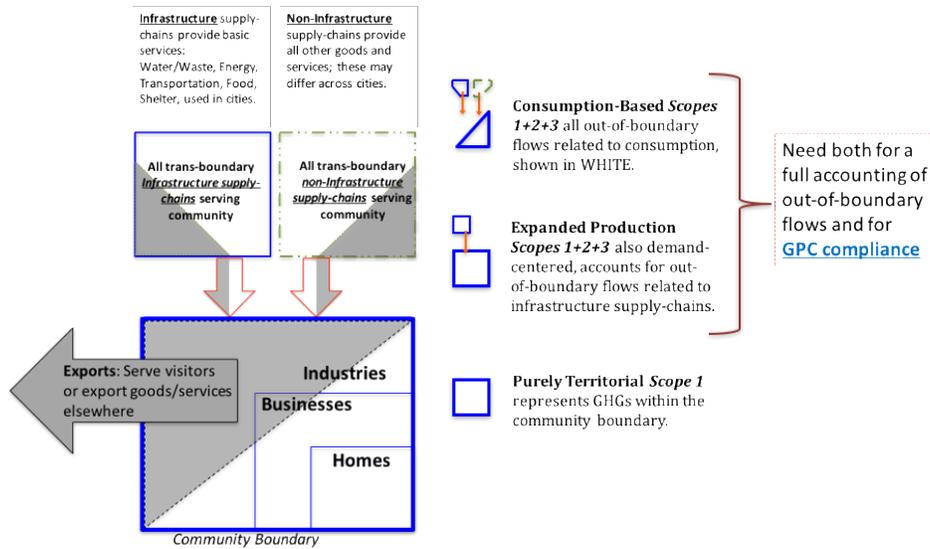


Figure 1: Illustrating the three basic types of GHG accounting approaches for communities. For the Town of Crested Butte, we will begin by completing the ‘Purely Territorial’ accounting estimate, then as prescribed in the GPC², we will estimate the out-of-boundary flows via the **Expanded Production** approach. Chávez et al. (2013)³.

Table 1: BAFT adopts a robust set of benchmarks, by sector and in- & out-of-boundary for efficient data checks. Below is a short list to illustrate some of the possible benchmarks employed in BAFT.

In-Boundary	Commercial Buildings	Electricity (MWh)
		Natural Gas (therms)
		Building Area (sq-ft)
		Electricity Intensity (kBTU/sf/yr)
In-Boundary	Residential Buildings	Natural Gas Intensity (kBTU/sf/yr)
		Electricity (MWh)
		Natural Gas (therms)
		Electricity Intensity (kBTU/HH/mo)
Hybrid	Transportation	Natural Gas Intensity (kBTU/HH/mo)
		Surface Travel Intensity (VMT/capita/yr)
		Public Transportation (PMT/capita/yr)
		Air Travel (gallons-jet fuel/enplaned passenger)
Out-of-Boundary	Imports	Vehicle Fleet Fuel Efficiency (miles/gallon)
		Food (pounds/yr)
		Retail goods (\$/yr)
		Services (\$/yr)

² GPC (2014). Global Protocol for Community-Scale Greenhouse Gas Emission Inventories (GPC). Retrieved from: <http://www.iclei.org/our-activities/our-agendas/low-carbon-city/gpc.html>.

³ Chávez, A. & Ramaswami, A. (2013). Articulating A Trans-Boundary Infrastructure Supply Chain Greenhouse Gas Emission Footprint for Cities: Mathematical Relationships and Policy Relevance. *Energy Policy*, 54, 376-384.

Phase 2: Forecast BAU GHG Emissions to 2030

Using the outputs from Phase 1, we will complete a business-as-usual (BAU) GHG emissions 2030 forecast for Crested Butte in our BAFT model. We estimate that some of the underlying activity ‘growth rates’ will leverage statistics from population trends, employment growth, consumer demand, and local energy use, among others. Forecasts can be used to help community members visualize the potential trajectory of BAU which can stimulate positive discussion. In addition, the power of forecasting opens the possibility of assessing innovative actions towards achieving community-wide goals, thus mobilizing action across various citizen groups.

In order to efficiently create a robust BAU forecast that is justifiable, reliable and defensible, we ask that all available past & present activity, energy, material, and GHG data for Crested Butte be shared with Dr. Chávez. A formal and detailed data request will be submitted at project launch.

Phase 3: Mitigation Potentials

In partnership with the Town of Crested Butte and other community stakeholders, we will explore a menu of plausible energy and GHG emissions reduction (or abatement) actions, by sector, suitable to align with Crested Butte’s GHG baseline. The possible actions will initially be drafted internally by CS2I Lab staff using robust data collection, consultation and benchmarking with CB staff. Following the internal review, the research team will hold one meeting with key community stakeholders to enhance the list of abatement actions. For each abatement action, CS2I Lab will attempt to provide estimates on the five key variables that will enable mitigation modeling and visualization in the future. The five variables are:

- a) baseline emissions, by sector;
- b) expected savings from mitigation action;
- c) level of participation;
- d) year action was implemented; and
- e) number of years action is active.

Anticipated Timeline

PHASE	ACTION/TASK	DELIVERY DATE
PHASE 1	Project Launch and Team Meeting	January 15, 2018
	Data Collection for GHG Inventory	Weeks of January 15 and January 22, 2018
	Data Collection for GHG Footprint	Week of January 29, 2018
	Data Benchmarking	Week of February 5, 2018
	Draft of Baseline Footprint	February 26, 2018
	Data Collection for 2030 GHG Forecast	Week of February 26, 2018
	Finalize Baseline Footprint and Visuals	March 9, 2018
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PHASE 3	Draft List of Energy and GHG Abatement Pathways	Week of April 30, 2018
	Abatement Pathways Meeting with Key Community Stakeholders	Week of May 14, 2018
	Final Summary Report	June 15, 2018

Budget

The budget request for the products detailed in the SoW is \$12,480.00. Half (\$6,240.00) is requested at project start, and half (\$6,240.00) at project completion, expected in June 2018. Forthcoming invoices will provide details for submitting payments.

The CS2I Lab team is excited about the possibilities that a partnership with the Town of Crested Butte can yield for the entire community and region. We are humbled by the opportunity to partner with you and share our leadership in the area of GHG inventorying and footprinting, community outreach and engagement, and innovation in tools & data management. We look forward to a strong partnership with your team!



Staff Report

December 18, 2017

To: Mayor and Town Council

From: Dara MacDonald, Town Manager

Subject: Services Agreement with the Crested Butte/Mt. Crested Butte Chamber of Commerce

Summary:

For many years the Town has passed on 75% of BOLT proceeds to the Chamber for their use in marketing and promotion of the Town's principal industry, tourism, and for payment of expenses related to the promotion and marketing of events beneficial to the business community. The attached agreement provides the funds to the Chamber while identifying expectations for use of the money and reporting expectations.

Background:

For a few years the Town and Chamber executed agreements defining the parameters and reporting requirements for the use of these funds. The agreement was last executed for the 2013 calendar year and again at the end of 2016. The Council and Chamber did agree to make some modifications to the agreement prior to adoption last year.

Chamber Director, Ashley UpChurch, approached the Town to again renew the agreement. We have reviewed the agreement together and aside from a few minor modifications, the version being presented to Council is the same as that adopted last year. Changes include the following:

- Section 2.1 Visitor Center hours – The Chamber has increased the times that the Visitor Center is open over the past few years. In previous agreements the requirement was that the Chamber be open 7 days a week June – Sept and late Nov – early April with Friday – Monday operations during the shoulder seasons. The 2016 agreement memorialized the intention for the Visitor Center to be open 9-5, 7 days a week, year round. The 2017 agreement recognizes that the Visitor Center Policy allows for the Visitor Center to be closed Tuesdays-Thursdays in the off-season, although it is the intention to remain open 7-days a week.

“2.1 **Visitor Center Services.** The Chamber shall provide adequate personnel to operate the Visitor Center seven (7) days per week 365 days a year, **with the exceptions of Tuesdays-Thursdays in the off-seasons at the discretion of the Chamber (see Visitor Center Policy).** Operating hours will be 9-5pm with reasonable flexibility to manage the hours of operation to best accommodate the tourists. Council will be notified of any

changes in the scheduled hours. The Chamber shall be responsible for the payment of all costs and expenses whatsoever, of all Visitor Center facilities. The Chamber may not engage in any conspicuous display of advocacy in public areas of the Visitor Center. The Chamber shall, through the Visitor Center, coordinate the tasks required to provide the following services for tourists and visitors to the Crested Butte area, in consideration for BOLT funds received from the Town.”

- Section 2.1.5. The previous agreements required that a toll-free number be maintained in conjunction with the Tourism Association. Both entities maintain their own toll-free lines so the language has been struck as follows:

~~“2.1.5 Maintain and advertise in conjunction with the Gunnison-Crested Butte Tourism Association (“TA”) a telephone line for a Visitor Center toll-free number.~~

- Section 2.1.6. Similar to above, the Chamber and TA each maintain a calendar so that section has been modified as follows:

~~“2.1.6 Maintain an link to the TA’s visitor-oriented annual community calendar of cultural, historical and recreational events designed to draw visits and return visits throughout the year and make such information available through the Chamber’s official website.”~~

- Section 2.5. This section previously required that the Chamber submit their draft budget for the coming year along with their request for BOLT funding. The Town must submit a draft budget prior to October 15th of each year. The Chamber has not submitted a draft budget along with a BOLT request in recent memory and is impractical since they do not typically have a budget draft until November. However, the request will still have a year-to-date budget for the current year and a listing of projects and events planned for the coming year.

~~“2.5 **Requests for BOLT Funding.** The Chamber shall provide a formal written request to the Town on or before October 1, to be considered for BOLT funding for the next fiscal year. Said request shall include a year-to-date budget through September 15, a proposed budget for the next fiscal year, and a summary of the projects and events which are anticipated to take place during the said fiscal year to promote the marketing of and enhance the business activities within the Town.”~~

- Section 8 The Chamber would like to increase the frequency of reporting from annually to twice annually – following the close of the second and at the end of the agreement each year.
- Section 8.1.5. This section has been removed. The Chamber does not collect economic demographic information, nor do they currently have a mechanism to do so.

~~8.1.5 A report of economic demographic information on visitors and participants in Chamber events. Information may include items such as number of days spent in Town/area, type of tourist/participant (e.g. younger, older, professional, general laborer, retired), income level and amount of money spent during the visit.~~

Recommendation:

A motion “to approve the Service Agreement with the Crested Butte/Mt. Crested Butte Chamber of Commerce as part of the Consent Agenda.”

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“**Agreement**”) is made and entered into this December 2017, with an effective date of January 1, 2018 (“**Effective Date**”), by and between the **TOWN OF CRESTED BUTTE** (the “**Town**”), a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224 and the **CRESTED BUTTE / MT. CRESTED BUTTE CHAMBER OF COMMERCE** (the “**Chamber**”), a Colorado non-profit corporation with an address of P.O. Box 1288, Crested Butte, Colorado 81224.

RECITALS:

A. Section 6-2-50 of the Crested Butte Municipal Code (the “**Code**”) provides for the use of the proceeds from the Town’s Business Occupation Licensing Tax, less twenty five percent (25%) thereof (the “BOLT” proceeds) for marketing and promotion of the Town’s principal industry, tourism, and for payment of expenses related to the promotion and marketing of events beneficial to the business community.

B. The Chamber desires to receive from the Town, and the Town desires to deliver to the Chamber, a portion of the BOLT proceeds in order for the Chamber to operate that certain going concern known as the “Visitor Center.”

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1 PURPOSE

The Town desires to promote awareness of tourist related attractions located within the Town through the Visitor Center, with the Visitor Center providing tourist and general information services, and the Town desires to support events that are beneficial to the business community. The Chamber will provide Visitor Center and information services which enhance the local tourism industry and tourist related attractions located within Gunnison County, and to conduct events which are beneficial to the business community.

SECTION 2 SCOPE OF PERFORMANCE

2.1 **Visitor Center Services.** The Chamber shall provide adequate personnel to operate the Visitor Center seven (7) days per week 365 days a year, with the exceptions of Tuesdays-Thursdays in the off-seasons at the discretion of the Chamber (see Visitor Center Policy). Operating hours will be 9-5pm with reasonable flexibility to manage the hours of operation to best accommodate the tourists. Council will be notified of any changes in the scheduled hours. The Chamber shall be responsible for the payment of all costs and expenses whatsoever, of all Visitor Center facilities. The Chamber may not engage in any conspicuous

display of advocacy in public areas of the Visitor Center. The Chamber shall, through the Visitor Center, coordinate the tasks required to provide the following services for tourists and visitors to the Crested Butte area, in consideration for BOLT funds received from the Town.

2.1.1 Maintain adequate supplies of State and local information, brochures and local and regional maps.

2.1.2 Promote tourist travel and distribute such documents related thereto to facilitate their best use.

2.1.3 Encourage tourist travel to points and places of Crested Butte-wide interest, promote climate and recreational advantages, and provide such other information that, in the opinion of the Visitor Center staff, tends to attract and serve visitors to Crested Butte.

2.1.4 Stimulate and encourage local and State government agencies and private persons and enterprises to participate and cooperate in the promotion of tourism and tourism development in the community.

2.1.5 Maintain and advertise a telephone line for a Visitor Center toll-free number.

2.1.6 Maintain an annual community calendar of cultural, historic and recreational events designed to draw visits and return visits throughout the year and make such information available through the Chamber's official website.

2.1.7 Provide appropriate information to returning visitors and newcomers, without regard to Chamber membership. The Visitor Center staff shall respond within a reasonable time to inquiries, provide area information to visitors, make available an inventory of up-to-date brochures, literature and miscellaneous information and work in the best interest of area tourism. Chamber membership benefits include the opportunity to display brochures; non-members who have paid BOLT shall have the opportunity to display business cards only.

2.1.8 Provide and train an adequate number of personnel to staff the Visitor Center in accordance with hours of operation. The type and number of personnel shall be at the reasonable discretion of the Chamber.

2.1.9 Maintain records of walk-ins, mail, email and phone requests in a form which will provide informative data.

2.1.10 Make available information outside of the Visitor Center building and/or in the vestibule after Visitor Center hours.

2.1.11 Coordinate with Town and maintain event calendar and notices in space provided in the enclosed bus stops.

2.2 **Promotion and Marketing of Events Beneficial to the Business Community.**

The Chamber shall manage the tasks required to provide the following events and event resources in consideration for the Town providing the BOLT proceeds to the Chamber:

2.2.1 Host the Memorial Day and Labor Day weekend sidewalk sales; events of Crested Butte Bike Week and Fat Bike World Championships that are to be held in the Town of Crested Butte; 4th of July Parade and related festivities that are held in the Town of Crested Butte; December Holiday Light-Up Night; and January 12th Night Bonfire Celebration.

2.2.2 Meet, as requested, with the coordinators of all major Town events to review opportunities for collaboration between the event and the business community.

2.2.3 Act as a resource for planners of new events in order to assist the same in developing positive working relationships with the business community.

2.2.4 Work to implement recycling and zero waste for all Chamber events.

2.2.5 The Chamber shall also endeavor to identify and develop in conjunction with appropriate persons' potential new events that would enhance the reputation and attractiveness of the Crested Butte / Mt. Crested Butte area as a visitor and tourist destination.

2.3 **Cash Position.** The Chamber shall provide copies of bank statements, reconciliations and financials to the Town upon request.

2.4 **BOLT Proceeds Separate.** The Chamber shall keep all funds received from BOLT proceeds in a separate bank account from other Chamber funds.

2.5 **Requests for BOLT Funding.** The Chamber shall provide a formal written request to the Town on or before October 1, to be considered for BOLT funding for the next fiscal year. Said request shall include a year-to-date budget through September 15 and a summary of the projects and events which are anticipated to take place during the said fiscal year to promote the marketing of and enhance the business activities within the Town.

SECTION 3 **TERM; TERMINATION**

3.1 **Term.** From the Effective Date through December 31, 2018 (the "**Term**").

3.2 **Termination.** In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have 60 days from the receipt of the notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within 60 days, the non-breaching party shall have the right to terminate the Agreement without further notice.

SECTION 4

NOTICES

Whenever notice or demand may be given by either party to the other party, such notice or demand shall be given by mail, postage pre-paid, addressed to the Executive Director of the Chamber and the Town Manager for the Town at the addresses first set forth above.

SECTION 5 BOLT PROCEEDS; VISITOR CENTER LEASE

5.1 BOLT Proceeds.

5.1.1 Provided that the Chamber is not otherwise in breach of any term or condition of this Agreement, and provided further that the Town has not otherwise terminated this Agreement, the Town shall pay the Chamber the BOLT proceeds for the period of January 1, 2018 through December 31, 2018; provided that such BOLT proceeds shall be used strictly for the purpose of performing the services set forth in Section 2.1 and 2.2 hereinabove. Such BOLT proceeds shall be provided to the Chamber, if at all, on January, April, July and October 15th. The October payment may be modified by the Town to reflect the balance remaining in the BOLT proceeds.

5.1.2 From time-to-time, the Visitor Center line of business may lend funds to the Chamber line of business, and vice versa, to close gaps in short-term cash flows. Such loans shall be sufficiently recorded and evidenced in the books, records and accounts of both lines of business when made and when repaid. Outstanding loans from BOLT proceeds to the Chamber line of business will be repaid before the end of the Chamber's fiscal year.

5.1.3 The Chamber shall keep or cause to be kept true, accurate, and complete records of all business and financial transactions relating to the aforementioned functions and shall make such records available to the Town upon reasonable request thereof and without expense. The Chamber agrees that the Town shall have the right through its duly authorized employees, agents or representatives to examine all pertinent records at any and all reasonable times upon reasonable notice for the purpose of determining compliance with the terms of this Agreement.

5.2 Visitor Center Lease. The Town shall provide for the Chamber use of the Visitor Center building located at 601 Elk Avenue, Crested Butte, Colorado 81224, pursuant to the terms of a certain commercial lease agreement ("Lease Agreement"), dated May 22, 1995, and entered into between the Chamber and the Town.

SECTION 6 REMEDIES

Upon an uncured breach of any terms of this Agreement or the Lease Agreement, the Town shall have one or more of the following remedies (1) recover damages due to the breach by the Chamber including expenses, attorneys' fees and costs; (2) terminate this Agreement and/or the Lease; and/or (3) receive a refund of any unearned amounts paid the Chamber under

this Agreement. The remedies set forth in this Section shall survive the expiration and any earlier termination of this Agreement. In addition to the foregoing, the Town reserves all rights to pursue and rights at law and in equity.

SECTION 7 **INDEMNIFICATION**

The Chamber shall defend, indemnify and hold harmless the Town, its elected, officers, employees, agents, attorneys and contractors from and against any and all claims, suits, liabilities, costs, expenses, attorneys' fees or damages (collectively "**Claims**") on account of any acts or omissions of the Chamber, or any of its contractors, subcontractors, suppliers, directors, officers, agents, employees, invitees, guests or servants. The indemnification obligations set forth in this Section shall survive the expiration and any earlier termination of this Agreement.

SECTION 8 **REPORTING**

8.1 Within forty-five (45) days of the end of the second quarter the Chamber shall file with the Town an electronic copy of the following information for the reporting period:

8.1.1 Visitor Center Statistical Report: The report shall contain the number of contacts by types of inquiry and the method of communication (i.e., walk-in, call-in, mail-in, etc.) including visitor demographics (i.e., where visitors are from and why they are visiting). The report shall also include information concerning any specific activities of interest relating to the Visitor Center operation such as new programs, planned activities or events, or other such information that are tourist related.

8.1.2 Business Support Activity Report: The report shall contain a breakdown of all activity related to activities supporting and promoting events beneficial to the business community.

8.1.3 Financial Report: The report shall contain financial information reflecting the complete financial status of the Chamber and the Visitor Center. Such report shall include balance sheets and profit and loss reports for the overall operation, membership line of business and the Visitor Center/events line of business, in form and presentation as is reasonably acceptable to the Town.

8.1.4 Event Report: For each event held in the Town of Crested Butte, the Chamber shall submit a report which summarizes the event, including participants and participant demographics, sponsors, and visitors. In addition, the Chamber shall report on any significant problems during the event, suggestions for rectifying any problems and any possible improvements or changes to future occurrences of this event. As a part of this reporting requirement, the Chamber shall conduct a post-event meeting and shall inform the Town of the time and place of such meeting. For any event that requires permitting from the Town, the Chamber and the Town shall determine any parties required to be part of post-event meetings.

8.1.4 A Chamber membership status report, including the attrition rate and outstanding renewals.

8.2 Final Report: Within forty-five (45) days of the termination of this Agreement, the Chamber shall provide a final report which shall include a complete summary of the reports required above.

SECTION 9 **REPRESENTATIONS; WARRANTIES**

9.1 The Chamber represents and warrants that it is duly qualified to do business and is in good standing with the State of Colorado.

9.2 The Chamber has the full power and authority to execute, deliver and perform its obligations under this Agreement.

9.3 The Chamber represents and warrants that it will comply with all applicable laws, ordinances, rules, regulations or orders issued by any public or governmental agency, body or authority, whether Federal, State, local or otherwise, and has obtained all applicable permits and licenses required in connection with its obligations under this Agreement.

The foregoing warranties and representations set forth in this Section shall survive the expiration or termination of this Agreement.

SECTION 10 **RELATIONSHIP**

The Chamber and any of its contractors, subcontractors, suppliers, directors, officers, agents and employees shall be an independent contractor, and not an employee of Town, within the meaning of all Federal, State and local laws and regulations governing employment insurance, workers' compensation, industrial accident, labor and taxes. The Town shall not be liable for employment or withholding taxes respecting the Chamber or any employee of Chamber. **THE CHAMBER IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION BENEFITS AS A RESULT OF ITS PERFORMANCE UNDER THIS AGREEMENT. THE CHAMBER IS REQUIRED TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE BENEFITS FOR ITS EMPLOYEES AND/OR SUBCONTRACTORS. THE CHAMBER IS SOLELY LIABLE FOR ANY FEDERAL AND STATE INCOME AND WITHHOLDING TAXES, UNEMPLOYMENT TAXES, FICA TAXES AND WORKERS' COMPENSATION PAYMENTS AND PREMIUMS APPLICABLE TO THIS AGREEMENT OR ANY WORK PROVIDED. THE CHAMBER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN FOR ANY LIABILITY RESULTING FROM NONPAYMENT OF SUCH TAXES AND SUMS.**

SECTION 11 **ASSIGNMENT**

The Chamber may not, without the Town's prior written approval, which such approval may be withheld in the Town's sole and absolute discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber all or any portion of its interests, rights or obligations in this Agreement.

SECTION 12 **IMMIGRATION COMPLIANCE**

The Chamber certifies that it has complied, and during the term of this Agreement will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of the Chamber on this Agreement: (1) certifies that the Chamber and none of its contractors, subcontractors, suppliers, directors, officers, agents and employees are not natural persons unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in C.R.S. § 8-17.5-101 et seq. and the Chamber utilizes subcontractors or employees in the Chamber's business. The Chamber shall not:

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

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

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

The Chamber shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. The Chamber acknowledges that in the event that the Chamber violates any of the

provisions of the foregoing the Town may terminate this Agreement for breach of contract. No notice need be given of said termination. If this Agreement is so terminated, the Chamber shall be liable for actual and consequential damages to the Town.

SECTION 13 **NON-DISCRIMINATION**

The Chamber expressly agrees not to discriminate against any employee, applicant for employment or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, military status, marital status or disability. The Chamber shall comply with all applicable local, State and federal laws with regard to equal employment opportunity.

SECTION 14 **MISCELLANEOUS**

14.1 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

14.2 **Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless affirmed in writing.

14.3 **Severability.** If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.4 **Survival.** All covenants, conditions, representations, warranties, rights, remedies and agreements contained in this Agreement of an ongoing and continuing nature shall survive the expiration or earlier termination of this Agreement. Any provisions that are expressly stated to survive the expiration or termination of this Agreement shall be enforced accordingly.

14.5 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado without regard to choice of law rules. Litigation respecting this Agreement shall only be brought in the applicable state courts of Gunnison County, State of Colorado.

14.6 **Entire Agreement; Amendment.** This Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Agreement. This Agreement may only be amended by an agreement in writing signed by each party hereto.

14.7 **Counterparts; Photocopy.** This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same agreement. Photocopies shall be deemed to be originals for purposes of enforcement of the terms hereof.

14.8 **Construction.** Each of the parties hereto agrees that this Agreement represents an arms' length transaction and is the product of negotiations between sophisticated parties and individuals, all of whom were represented by legal counsel, and each of whom had an opportunity to participate in, and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party, hereto, but rather shall be given a fair and reasonable construction without regard to the rule of *contra proferentum*.

14.9 **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is for the benefit of the parties hereto and is not entered into for the benefit of, and shall not be construed to confer any benefit upon, any other person.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective as of the Effective Date.

TOWN:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
Jackson Petito, Town Mayor

ATTEST:

By: _____
Lynelle Stanford, Town Clerk

(SEAL)

CHAMBER:

CRESTED BUTTE / MT. CRESTED BUTTE
CHAMBER OF COMMERCE,
a Colorado non-profit corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

(SEAL)



Staff Report

December 14, 2017

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Lois Rozman, Finance Director
Subject: **Ordinance No. 37, 2017 Budget Amendment**

Summary: Ordinance No. 37 adopts changes to the 2017 budget for additional expenditures out of the Sales Tax and Affordable Housing funds.

Previous Council Action: Council adopted the 2017 budget via Resolution No. 40, Series 2016 on December 5, 2016.

Discussion: The changes to the 2017 budget are as follows:

Sales Tax Fund increased from \$4,572,474 to \$4,719,344

Change in expenses:

- Transportation Distribution increased from \$775,813 to \$855,000
- Capital Distribution increased from \$0 to \$26,005
- Parks Distribution increased from \$408,322 to \$450,000

Change in revenue:

- Town Sales Tax increased from \$3,674,902 to \$3,875,000
- County Sales Tax increased from \$382,473 to \$422,000

Total Sales Tax Fund revenue is estimated to be \$4,849,131 including \$100,000 Contribution from Reserve from the Transportation fund balance for the contribution towards the new 4-way stop transit center and \$435,931 Contribution from Reserve for the Center for the Arts project.

Affordable Housing Fund increased from \$493,640 to \$608,970

Change in expenses:

- Deed Restricted Unit Purchase from \$0 to \$137,000 –Poverty Gulch unit approved by Council on April 10, 2017
- Legal Fees from \$10,000 to \$14,000 – legal needed for Poverty Gulch unit purchase & new plat
- Town Rental (School) Build from \$130,000 to \$205,000 – increased construction costs; Council approved an additional \$65,000 in expenditures for this project on April 3, 2017; staff is now requesting an additional \$20,000 to bring the project total to \$205,000

- Housing Authority increased from \$55,000 to \$61,000 – participate in survey for regional tax question, Council approved on March 6, 2017
- Affordable Housing Taps decreased from \$233,340 to \$116,670 – budgeted for 20 deed restricted taps but only anticipate 7 - 10 (4 duplex builds delayed a year)

Change in revenue:

- Housing Payment in Lieu revenue decreased from \$60,000 to \$34,000 – more remodels and fewer new home & commercial construction projects
- Paradise Park Sales Revenue is decreased from \$190,000 to \$90,000 – not able to close on 2 lots in Block 79, the lottery winners are to close on the lots in 2018
- Sale of Deed Restricted Unit increased from \$0 to \$110,525 for the sale of the Poverty Gulch Unit – approved by Council on November 20, 2017

Total Affordable Housing Fund revenue is estimated to be \$275,125 and a use of fund balance of \$323,845. Ending fund balance is estimated to be \$135,000.

Recommendation: Staff recommends amending Ordinance No. 37, Series 2017 to include the additional \$20,000 in expenditures in the Affordable Housing Fund to make the total expenditures in that fund be \$608,970 and then approving the ordinance following public hearing at the December 18, 2017 Council meeting.

Possible Motion: I move to amend Ordinance No. 37, Series 2017 to change the total expenditures for the Affordable Housing Fund \$608,970 and to approve Ordinance No. 37, Series 2017.

**ORDINANCE NO. 37
SERIES 2017**

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL ADOPTING CHANGES AND ADDITIONS TO THE 2017 BUDGET AND APPROPRIATIONS RELATIVE TO THE SALES TAX FUND AND AFFORDABLE HOUSING FUND

WHEREAS, the Town Council, pursuant to Resolution No. 40, Series 2016, adopted the budget and projected expenditures for the Town for 2017, and

WHEREAS, the income and expenditures for the Sales Tax Fund and Affordable Housing Fund for the fiscal year 2017, January 1 through December 31, are more than budgeted and appropriated, and

WHEREAS, the increases and contingencies could not have been reasonably foreseen at the time of adoption of Resolution No. 40, Series 2016, and

WHEREAS, the revenues to pay the increased expenditures are available in the same funds from unappropriated funds and surpluses,

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

That the appropriation for expenditures from the following funds are increased as set forth below:

1. Sales Tax Fund from \$4,572,474 to \$4,719,344
2. Affordable Housing Fund from \$493,640 to \$588,970

INTRODUCED AND FIRST READ BEFORE THE TOWN COUNCIL THIS FOURTH DAY OF DECEMBER, 2017.

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

TOWN OF CRESTED BUTTE

(SEAL)

By _____
Jackson Petito, Mayor

ATTEST:

Lynelle Stanford, Town Clerk



Staff Report

December 18, 2017

To: Mayor and Town Council

From: Dara MacDonald, Town Manager

Subject: Resolution No. 73, Series 2017 – A resolution of the Crested Butte Town Council approving the purchase of real property from Crested Butte Limited Partnership A/K/A Trappers Crossing, Ltd.

Summary: The attached purchase agreement is the result of ongoing efforts to solidify the Town’s commitment to maintaining safe and responsible management of the avalanche slide area above Big Mine Park. Through purchase of the property the Town will be able to ensure that existing uses of the property can remain and that avalanche mitigation can continue in a safe and responsible manner.

Previous Council Action: The Council directed staff during the executive session on December 4th to pursue purchase of the subject property.

Background: For over 15 years the Crested Butte community, including members of Town staff, have informally mitigated avalanche danger by ski cutting the southern slope adjacent to Big Mine Park known as the Heights Open Space (“the Open Space”). Until recently it was thought the Open Space was jointly owned by the 12 property owners of the Heights Subdivision (“the Owners”). In an effort to formalize the avalanche mitigation work that was being done, Town Staff sent a letter dated 12/28/15 to the 12 Owners to alert them of the avalanche danger, inform them that the Town has and wishes to continue to perform avalanche mitigation work on the Open Space, and notify them that a formal agreement for access to that Open Space would be forthcoming.

In March of 2016 the Town contracted with Mears and Wilbur, natural hazard consultants, to provide a report on risk assessment and mitigation options for the Open Space. The mitigation alternatives outlined in that report were evaluated in terms of risk reduction, feasibility, and cost. The alternatives included supporting structures; warning signs and education; avalanche arresting fences; mapping and avoidance; avalanche forecast, warning, and temporary closure; and forecast and artificial release (“ski cutting”). This report was shared with the Owners in a letter from the Town dated 11/3/16. Some back and forth with the Owners and their legal counsel followed.

The Town is a member of Colorado Intergovernmental Risk Sharing Agency (CIRSA) who provide property and liability insurance for the town. The CIRSA representatives stated that should the town acquire the Open Space it could be added to the Town’s insurance policy with no

additional premiums, CIRSA would expect the Town to implement appropriate avalanche mitigation protocol, and in this situation the Town would retain governmental immunity.

Town staff met with several of the local property owners of lots in the Heights. At that time we found consensus amongst those at the meeting that the Town should pursue acquiring the property and also regarding maintenance and use of the property. Following those discussions the Town ordered a survey of the property as well as a title commitment. The title commitment revealed that while the intention stated on the plat was for the open space to be conveyed to the lot owners, that conveyance never took place.

Staff subsequently contacted the owners of Crested Butte Limited Partnership a/k/a Trappers Crossing, Ltd. Trappers is interested in quit claiming two parcels to the Town, the Open Space and a small remainder parcel behind the cat barn. They have agreed to a price of \$85,000 for the conveyance with a closing scheduled for January 5, 2018. These are the last remaining parcels in Crested Butte that are held by Trappers Crossing.

The attached letter was sent to the lot owners in the Heights on December 8th outlining the steps taken by the Town and the intention to honor the earlier discussions regarding maintenance and use of the site. Following acquisition the Town would run a minor subdivision process to remove the existing plat note about the use of the open space and following that approval, record a covenant against the property with points substantially similar to the following regarding maintenance and use of the Open Space:

1. The Ditch Trail and the existing access trails north of the Ditch Trail will be the only permitted trails and will remain publicly accessible. No other trails will be constructed or maintained south of the Ditch Trail.
2. The Ditch Trail will be maintained in good condition, in an attractive state, free of debris, noxious weeds, and litter.
3. The Town will not construct nor permit to be constructed any structures or improvements (including avalanche mitigation structures) within the view shed of any dwelling located in the Heights Subdivision, or that would obstruct the current views from any lot or dwelling located in the Heights Subdivision. View shed being defined as all surrounding points that are in line-of-sight behind the horizontal plane of the northern property boundary.
4. The Town will perform avalanche mitigation work and Open Space stewardship work on the entirety of the property provided that such work complies with (3.) above.
5. The Town will not use any portion of the Open Space within the view shed of any dwelling in the Heights Subdivision for any purpose other than avalanche mitigation work and Open Space stewardship work.
6. The Town will actively work to keep the public from accessing areas of the Open Space south of the Ditch Trail and/or Disc Golf Course.
7. No vehicular access will be permitted south of the Ditch Trail with the exception of a snow cat allowed only on the Ditch Trail for winter trail grooming purposes, and as necessary for Open Space stewardship work.
8. Any site disturbances caused by mitigation work or installation or maintenance of improvements outside of the view shed area would be re-vegetated and reclaimed promptly and effectively provided that reclamation and revegetation shall be planted to maintain the view shed area and shall be maintained in a way to avoid any obstruction of the view shed area. Existing vegetation will be maintained in such a way as to preserve view sheds of current and future residences and owners of Heights Subdivision lots.

9. Heights owners with existing landscaping within the Open Space shall be responsible for maintaining that landscaping.
10. The Town would not permit or allow to continue, uses of the Open Space contrary to the terms listed above, and would actively enforce violations.

As of the writing of the staff report, staff have not had any responses from the lot owners.

Discussion: Acquisition of the properties will ensure that avalanche mitigation above the Nordic Center may continue in a safe and responsible manner. Further, it will allow for current uses on the property to continue including hiking on the Ditch Trail, disk golf course and grooming of the Ditch Trail in the winter.

Legal Implications: Acquisition of the property will allow for the Town to hire qualified community members to mitigate avalanche risk. They will thus be covered both for worker's comp and liability. In past years this has not been the case and we have been fortunate that there have not been any serious accidents.

Financial Implications: This expense is not included in the 2018 budget. The resolution would authorize the expenditure of up to \$90,000 from the sales tax fund to effectuate the closing. Without this expense the sales tax fund is anticipated to end 2018 with an unrestricted balance of \$287,364. The expense would need to be picked up in the 2018 budget amendment assuming that expenses in the fund will exceed budget because of this purchase.

Recommendation: Staff recommends approval of the resolution approving the purchase of real property from Crested Butte Limited Partnership a/k/a Trappers Crossing, Ltd.

Proposed Motion: A Council member should make a motion to approve Resolution 2017-73.

RESOLUTION NO. 73**SERIES 2017****A RESOLUTION OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING THE PURCHASE OF REAL
PROPERTY FROM CRESTED BUTTE LIMITED
PARTNERSHIP A/K/A TRAPPERS CROSSING, LTD**

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 1.4 of the Town Charter, the Town may acquire property within and without its corporate limits for any purpose deemed by the Council to be in the Town's best interest, by purchase, gift, lease or condemnation, and may sell, lease, mortgage, hold, manage, and control such property as the Town Council may determine appropriate;

WHEREAS, pursuant to the Town Council's direction, the Town has entered into a contract with the Crested Butte Limited Partnership, a/k/a Trappers Crossing, Ltd., to acquire two parcels of real property within the Town commonly known as the Heights Open Space and the Remainder Parcel (collectively, the "**Subject Property**") for the price of \$85,000.00;

WHEREAS, the Town Staff and the Town Attorney have worked cooperatively with the owners of the Subject Property and have recommended to the Town Council that it approve the contract for the purchase of the Subject Property, a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Town Council finds hereby that approving the contract to purchase the Subject Property from Trappers Crossing, Ltd., as recommended by Town staff and the Town Attorney, is in the best interest of the health, safety and welfare of the Town, its residents and visitors.

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

1. **Findings**. The Town Council hereby finds that acquiring the Subject Property on the terms set forth in the contract attached hereto as **Exhibit A** is in the public interest and approves this acquisition. The Town staff report relative to such matters is incorporated herein as supporting findings.

2. **Funding**. The closing for the purchase will take place in 2018. The 2018 budget has already been adopted by the Town Council. The Council hereby approves the expenditure of up to \$90,000 from the Sales Tax Fund to complete this transaction

recognizing that a budget amendment may be required later in 2018 if expenditures exceed the budget in this fund.

3. **Authorization of Mayor and Town Manager**. Based on the foregoing, the Town Council hereby authorizes the Mayor to execute this Resolution and the Town Manager to execute the necessary documents as approved by the Town Attorney to consummate the Town’s acquisition of the Subject Property.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL
THIS ___ DAY OF _____, 2017.

TOWN OF CRESTED BUTTE

By: _____
Jackson Petito, Mayor

ATTEST

Lynelle Stanford, Town Clerk

(SEAL)

EXHIBIT "A"

[attach copy of Trappers Crossing contract here]

Rozman Realty, Inc.
Rudolph R. Rozman
Ph: 970-209-6563

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS4-6-15) (Mandatory 1-16)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE
(LAND)**

Property with No Residences)
 Property with Residences-Residential Addendum Attached)

Date: 12/5/2017

AGREEMENT

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, *Town of Crested Butte, a Colorado Home Rule Municipality*, will take title to the Property described below as

Joint Tenants **Tenants In Common** **Other** *n/a*.

2.2. No Assignability. This Contract **Is Not** assignable by Buyer unless otherwise specified in **Additional Provisions**.

2.3. Seller. Seller, *Crested Butte Limited Partnership, a/k/a Trappers Crossing, Ltd, a Delaware Limited Partnership*, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of *Gunnison*, Colorado:

Parcel A: All of the Open Space as identified and shown on the Plat of THE HEIGHTS AT CRESTED BUTTE, dated January 28, 1991, and filed January 29, 1991 bearing Reception No. 425077, of the records of Gunnison County, Colorado.

Parcel B: N25 feet of Lots 27 & 28, Block 41, Town of Crested Butte, County of Gunnison, Colorado. known as No. , *CO* ,

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Inclusions. The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under **Exclusions**:

n/a If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Personal Property - Conveyance. Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except *n/a*.

Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.6. Exclusions. The following items are excluded (Exclusions): *n/a*

2.7. Water Rights, Well Rights, Water and Sewer Taps.

2.7.1. Deeded Water Rights. The following legally described water rights:

n/a

Any deeded water rights will be conveyed by a good and sufficient deed at Closing.

2.7.2. Other Rights Relating to Water. The following rights relating to water not included in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing: *n/a*

2.7.3. Well Rights. Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well," used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the

cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is .

2.7.4. Water Stock Certificates. The water stock certificates to be transferred at Closing are as follows: n/a

2.7.5. Water and Sewer Taps. The parties agree that water and sewer taps listed below for the Property are being conveyed as part of the Purchase Price as follows: n/a

If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.

2.7.6. Conveyance. If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

2.8. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows: n/a

3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline	
1	§ 4.3	Alternative Earnest Money Deadline		
		Title		
2	§ 8.1	Record Title Deadline	12/11/2017	Monday
3	§ 8.2	Record Title Objection Deadline	12/15/2017	Friday
4	§ 8.3	Off-Record Title Deadline	12/11/2017	Monday
5	§ 8.3	Off-Record Title Objection Deadline	12/15/2017	Friday
6	§ 8.4	Title Resolution Deadline	12/20/2017	Wednesday
7	§ 8.6	Right of First Refusal Deadline	n/a	
		Owners' Association		
8	§ 7.3	Association Documents Deadline	n/a	
9	§ 7.4	Association Documents Objection Deadline	n/a	
		Seller's Property Disclosure		
10	§ 10.1	Seller's Property Disclosure Deadline	n/a	
		Loan and Credit		
11	§ 5.1	Loan Application Deadline	n/a	
12	§ 5.2	Loan Objection Deadline	n/a	
13	§ 5.3	Buyer's Credit Information Deadline	n/a	
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a	
15	§ 5.4	Existing Loan Documents Deadline	n/a	
16	§ 5.4	Existing Loan Documents Objection Deadline	n/a	
17	§ 5.4	Loan Transfer Approval Deadline	n/a	
18	§ 4.7	Seller or Private Financing Deadline	n/a	
		Appraisal		
19	§ 6.2	Appraisal Deadline	n/a	
20	§ 6.2	Appraisal Objection Deadline	n/a	
21	§ 6.2	Appraisal Resolution Deadline	n/a	
		Survey		
22	§ 9.1	New ILC or New Survey Deadline	n/a	
23	§ 9.3	New ILC or New Survey Objection Deadline	n/a	
24	§ 9.4	New ILC or New Survey Resolution Deadline	n/a	
		Inspection and Due Diligence		
25	§ 10.3	Inspection Objection Deadline	n/a	
26	§ 10.3	Inspection Resolution Deadline	n/a	
27	§ 10.5	Property Insurance Objection Deadline	n/a	
28	§ 10.6	Due Diligence Documents Delivery Deadline	n/a	
29	§ 10.6	Due Diligence Documents Objection Deadline	n/a	
30	§ 10.6	Due Diligence Documents Resolution Deadline	n/a	
31	§ 10.6	Environmental Inspection Objection Deadline	n/a	
32	§ 10.6	ADA Evaluation Objection Deadline	n/a	

163	33	§ 10.7	Conditional Sale Deadline	n/a	74
164	34	§ 11.1	Tenant Estoppel Statements Deadline	n/a	
165	35	§ 11.2	Tenant Estoppel Statements Objection Deadline		
166	Closing and Possession				
167					
168	36	§ 12.3	Closing Date	1/5/2018	Friday
169	37	§ 17	Possession Date	At Closing	
170	38	§ 17	Possession Time	At Closing	
171	39	§ 28	Acceptance Deadline Date	12/6/2017	Wednesday
172	40	§ 28	Acceptance Deadline Time	12 p.m.	
173	41	n/a	n/a	n/a	
174	42	n/a	n/a	n/a	

180 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision
 181 applies. Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word
 182 "Deleted" means such provision, including any deadline, is not applicable and the corresponding provision of this
 183 Contract to which reference is made is deleted. If no box is checked in a provision that contains a selection of
 184 "None", such provision means that "None" applies.
 185
 186

187 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed
 188 this Contract.
 189

190
 191 **4. PURCHASE PRICE AND TERMS.**

192 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:
 193

194	Item No.	Reference	Item	Amount	Amount
195	1	§ 4.1	Purchase Price	\$85,000.00	
196	2	§ 4.3	Earnest Money		\$5,000.00
197	3	§ 4.5	New Loan		
198	4	§ 4.6	Assumption Balance		
199	5	§ 4.7	Private Financing		
200	6	§ 4.7	Seller Financing		
201	7				
202	8				
203	9	§ 4.4	Cash at Closing		\$80,000.00
204	10		TOTAL	\$85,000.00	\$85,000.00

205 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ n/a (Seller Concession). The Seller
 206 Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the
 207 Buyer's lender and is included in the Closing Statement or Closing Disclosure, at Closing. Examples of allowable
 208 items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount
 209 points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller
 210 Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.
 211

212 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of a check, will be
 213 payable to and held by Alpine Title, 113 E. Georgia Avenue, Gunnison, CO (Earnest Money Holder), in its
 214 trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with
 215 this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The
 216 parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing
 217 Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest
 218 Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado
 219 residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited
 220 with the Earnest Money Holder in this transaction will be transferred to such fund.
 221

222 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if
 223 other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.
 224

225 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates,
 226 Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set
 227 forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been returned following receipt
 228 of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual
 229 instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.
 230

231 **4.4. Form of Funds; Time of Payment; Available Funds.**

232 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan
 233

proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.4.2. Time of Payment; Available Funds. All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, **Does** **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

- 4.5. New Loan.** (Omitted as inapplicable)
- 4.6. Assumption.** (Omitted as inapplicable)
- 4.7. Seller or Private Financing.** (Omitted as inapplicable)

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS. (Omitted as inapplicable)

- 5.3. Credit Information and Buyer's New Senior Loan.** (Omitted as inapplicable)
- 5.4. Existing Loan Review.** (Omitted as inapplicable)

6. APPRAISAL PROVISIONS.

6.1. Appraisal Definition. An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

6.2. Appraisal Condition. The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

6.2.1. Conventional/Other. Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**, notwithstanding § 8.3 or § 13:

6.2.1.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

6.2.1.2. Appraisal Objection. Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraisal Value is less than the Purchase Price.

6.2.1.3. Appraisal Resolution. If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline** (§ 3), this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

6.3. Lender Property Requirements. If the lender imposes any requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the Lender Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this § 6.3 does not apply if, on or before any termination by Seller pursuant to this § 6.3: (1) the parties enter into a written agreement regarding the Lender Requirements; or (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in writing by Buyer.

6.4. Cost of Appraisal. Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by **Buyer** **Seller**. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

7. OWNERS' ASSOCIATION. This Section is applicable if the Property is located within a Common Interest Community and subject to such declaration.

7.1. Common Interest Community Disclosure. **THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE**

325 **ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT.**
326 **THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE**
327 **OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE**
328 **ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.**
329 **PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE**
330 **THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD**
331 **CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND**
332 **REGULATIONS OF THE ASSOCIATION.**
333

334 **7.2. Owners' Association Documents.** Owners' Association Documents (Association Documents)
335 consist of the following:

336 **7.2.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of
337 organization, operating agreements, rules and regulations, party wall agreements;

338 **7.2.2.** Minutes of most recent annual owners' meeting;

339 **7.2.3.** Minutes of any directors' or managers' meetings during the six-month period immediately
340 preceding the date of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§
341 7.2.1, 7.2.2 and 7.2.3, collectively, Governing Documents); and

342 **7.2.4.** The most recent financial documents which consist of: (1) annual and most recent
343 balance sheet, (2) annual and most recent income and expenditures statement, (3) annual budget, (4) reserve
344 study, and (5) notice of unpaid assessments, if any (collectively, Financial Documents).

345 **7.3. Association Documents to Buyer.**

346 **7.3.1. Seller to Provide Association Documents.** Seller is obligated to provide to Buyer the
347 Association Documents, at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes
348 the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide
349 the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who
350 provides such documents.

351 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer
352 has the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline**, based on
353 any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should
354 Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has
355 the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after
356 Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's
357 Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to
358 Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate
359 within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives
360 any Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or
361 Contract Approval).

362 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

363 **8.1. Evidence of Record Title.**

364 **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title
365 insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title**
366 **Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title
367 Commitment), in an amount equal to the Purchase Price, or if this box is checked, an **Abstract of Title** certified
368 to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as
369 practicable at or after Closing.

370 **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title
371 insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title**
372 **Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment),
373 in an amount equal to the Purchase Price.

374 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

375 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment **Will** **Will Not** contain
376 Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure
377 over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey
378 matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of
379 commitment to the date and time the deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax
380 sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by **Buyer**
381 **Seller** **One-Half by Buyer and One-Half by Seller** **Other**.

382 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete
383 or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New
384 Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not
385 satisfactory to Buyer, Buyer has a right to object under § 8.4 (Right to Object to Title, Resolution).

386 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats,
387 declarations, covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents
388 (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title
389 Commitment furnished to Buyer (collectively, Title Documents).

406 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**,
407 copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the
408 clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents
409 required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance
410 policy.
411

412 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title
413 covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title**
414 **Deadline**.
415

416 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment
417 and any of the Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title**
418 **Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment
419 or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective
420 discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the
421 **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a
422 copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the
423 earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required
424 Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title
425 Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or
426 Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the
427 provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any,
428 to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's
429 Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the
430 condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.
431

432 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies
433 of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements,
434 liens (including, without limitation, governmental improvements approved, but not yet installed) or other title
435 matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller
436 has actual knowledge (Off-Record Matters). Buyer has the right to inspect the Property to investigate if any third
437 party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line
438 discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory
439 condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 and § 13), in Buyer's
440 sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-
441 Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or
442 ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to
443 Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer and this
444 Contract are governed by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller does not
445 receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer
446 accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.
447

448 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is not
449 limited to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's
450 sole subjective discretion. If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the
451 following options:
452

453 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title
454 matter (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a
455 written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of
456 **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection
457 (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on
458 or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title
459 Deadline, or both, are extended to the earlier of Closing or ten days after receipt of the applicable documents by
460 Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title Resolution Deadline also will be
461 automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or
462

463 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under §
464 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective
465 discretion.
466

467 **8.5. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
468 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON**
469 **THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE**
470 **PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT**
471 **WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE**
472 **SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE**
473 **THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY**
474 **TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY**
475 **OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY**
476 **CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**
477

478 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline**, based on
479

any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

8.6. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

8.7. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property, and various laws and governmental regulations concerning land use, development and environmental matters.

8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.

8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.7.5. Title Insurance Exclusions. Matters set forth in this Section, and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.8. Consult an Attorney. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and **Off-Record Title Objection Deadline**).

9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, a **New Improvement Location Certificate (New ILC)** **New Survey** in the form of is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. **Seller** **Buyer** will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: **Seller** **Buyer** or:

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title), and will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object to the **New ILC or New Survey**. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

568 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by
569 Seller, on or before **New ILC or New Survey Objection Deadline**, and if Buyer and Seller have not agreed in
570 writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will
571 terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's
572 written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before expiration of
573 **New ILC or New Survey Resolution Deadline**.
574
575

576 **DISCLOSURE, INSPECTION AND DUE DILIGENCE**
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579 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND**
580 **SOURCE OF WATER.**
581

582 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller agrees
583 to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property
584 Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.
585

586 **10.2. Disclosure of Latent Defects; Present Condition.** Seller must disclose to Buyer any latent defects
587 actually known by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as otherwise
588 provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "As Is"
589 condition, "Where Is" and "With All Faults."
590

591 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to
592 have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at
593 Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural
594 integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the
595 physical condition of the Inclusions, (3) service to the Property (including utilities and communication services),
596 systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation
597 project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its
598 effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion,
599 Buyer may, on or before **Inspection Objection Deadline**:
600

601 **10.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or
602

603 **10.3.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical
604 condition that Buyer requires Seller to correct.
605

606 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before
607 **Inspection Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or
608 before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless
609 Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before
610 expiration of **Inspection Resolution Deadline**.
611

612 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other
613 written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering
614 reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the
615 Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the
616 Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from
617 and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien.
618 This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any
619 such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal
620 fees and expenses. The provisions of this section survive the termination of this Contract. This § 10.4 does not
621 apply to items performed pursuant to an Inspection Resolution.
622

623 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and
624 premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before
625 **Property Insurance Objection Deadline**, based on any unsatisfactory provision of the Property Insurance, in
626 Buyer's sole subjective discretion.
627

628 **10.6. Due Diligence.**
629

630 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver
631 copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer
632 on or before **Due Diligence Documents Delivery Deadline**:
633

634 **10.6.1.1.** All contracts relating to the operation, maintenance and management of the
635 Property;
636

637 **10.6.1.2.** Property tax bills for the last years;
638

639 **10.6.1.3.** As-built construction plans to the Property and the tenant improvements,
640 including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent
641 Certificates of Occupancy, to the extent now available;
642

643 **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
644

645 **10.6.1.5.** Operating statements for the past years;
646

647 **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
648

10.6.1.7. All current leases, including any amendments or other occupancy agreements,
pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive
Closing are as follows (Leases):

649 **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but
650 has not yet been completed and capital improvement work either scheduled or in process on the date of this
651 Contract;

652 **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which
653 have been made for the past years;

654 **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property
655 (if not delivered earlier under § 8.3);

656 **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II
657 environmental reports, letters, test results, advisories, and similar documents respective to the existence or
658 nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or
659 underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller
660 warrants that no such reports are in Seller's possession or known to Seller;

661 **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the
662 compliance of the Property with said Act;

663 **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any
664 governmental authority with jurisdiction over the Property and written notice of any violation of any such permits,
665 licenses or use authorizations, if any; and

666 **10.6.1.14.** Other documents and information:
667 **Seller will deliver to Buyer copies of Deeds from Gunnison County Records and other instruments,**
668 **if any, evidencing Seller's ownership of Parcel A and Parcel B.**

673 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and
674 object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are
675 unsatisfactory in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents**
676 **Objection Deadline:**

677 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

678 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of
679 any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

680 **10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection
681 is received by Seller, on or before **Due Diligence Documents Objection Deadline**, and if Buyer and Seller have
682 not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this
683 Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written
684 withdrawal of the Due Diligence Documents Objection before such termination, i.e., on or before expiration of **Due**
685 **Diligence Documents Resolution Deadline.**

686 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence**
687 **Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any
688 governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

689 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental
690 inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.
691 Seller Buyer will order or provide **Phase I Environmental Site Assessment, Phase II Environmental Site**
692 **Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for
693 Environmental Site Assessments) and/or , at the expense of Seller Buyer (Environmental Inspection). In
694 addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the
695 *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such
696 times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of
697 the Property, if any.

698 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site
699 Assessment, the **Environmental Inspection Objection Deadline** will be extended by days (Extended
700 Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline
701 extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, Seller
702 Buyer must pay the cost for such Phase II Environmental Site Assessment.

703 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.5,
704 Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Objection Deadline**, or if
705 applicable, the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of
706 Environmental Inspection, in Buyer's sole subjective discretion.

707 Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline**, based
708 on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

709 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that
710 certain property owned by Buyer and commonly known as . Buyer has the Right to Terminate under § 25.1
711 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such
712 property is not sold and closed by such deadline. This § 10.7 is for the sole benefit of Buyer. If Seller does not
713 receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate
714 under this provision.

715 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).**
716 Buyer Does Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of

730 Water Addendum disclosing the source of potable water for the Property. There is **No Well**. Buyer **Does**
731 **Does Not** acknowledge receipt of a copy of the current well permit.
732 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND**
733 **WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE)**
734 **TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

735 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the
736 Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent
737 abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter,
738 modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without
739 the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.
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744 **11. TENANT ESTOPPEL STATEMENTS.**

745 **11.1. Tenant Estoppel Statements Conditions.** Buyer has the right to review and object to any
746 Estoppel Statements. Seller must obtain and deliver to Buyer on or before **Tenant Estoppel Statements**
747 **Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at
748 the Property (Estoppel Statement) attached to a copy of the Lease stating:

- 749 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;
- 750 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent
751 modifications or amendments;
- 752 **11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits paid to
753 Seller;
- 754 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;
- 755 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and
- 756 **11.1.6.** That the Lease to which the Estoppel is attached is a true, correct and complete copy of
757 the Lease demising the premises it describes.

758 **11.2. Tenant Estoppel Statements Objection.** Buyer has the Right to Terminate under § 25.1, on or
759 before **Tenant Estoppel Statements Objection Deadline**, based on any unsatisfactory Estoppel Statement, in
760 Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Tenant**
761 **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel
762 Statement.
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769 **CLOSING PROVISIONS**
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772 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

773 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing
774 Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and
775 Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's
776 lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial
777 information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents
778 required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and
779 complete all customary or reasonably required documents at or before Closing.
780

781 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions **Are** **Are Not**
782 executed with this Contract.
783

784 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date
785 specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as
786 designated by **Buyer and Seller**.
787

788 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent of
789 service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title
790 companies).
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793 **13. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by
794 Buyer with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient **Quit**
795 **Claim** deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for
796 the year of Closing. Except as provided herein, title will be conveyed free and clear of all liens, including any
797 governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether
798 assessed or not. Title will be conveyed subject to:
799

- 800 **13.1.** Those specific Exceptions described by reference to recorded documents as reflected in the Title
801 Documents accepted by Buyer in accordance with **Record Title**,
- 802 **13.2.** Distribution utility easements (including cable TV),
- 803 **13.3.** Those specifically described rights of third parties not shown by the public records of which
804 Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title** and **New**
805 **ILC or New Survey**,
- 806 **13.4.** Inclusion of the Property within any special taxing district, and
- 807 **13.5.** Any special assessment if the improvements were not installed as of the date of Buyer's signature
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811 hereon, whether assessed prior to or after Closing, and

812 13.6. Other .

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14. **PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid will be paid at or before Closing from the proceeds of this transaction or from any other source.

15. **CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

15.1. **Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. **Closing Services Fee.** The fee for real estate closing services must be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller Other .

15.3. **Status Letter and Record Change Fees.** Any fees incident to the issuance of Association's statement of assessments (Status Letter) must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller. Any record change fee assessed by the Association including, but not limited to, ownership record transfer fees regardless of name or title of such fee (Association's Record Change Fee) must be paid by None Buyer Seller One-Half by Buyer and One-Half by Seller.

15.4. **Local Transfer Tax.** The Local Transfer Tax of n/a % of the Purchase Price must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller.

15.5. **Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s): n/a in the total amount of na% of the Purchase Price or \$

15.6. **Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ n/a for:

Water Stock/Certificates Water District Augmentation Membership Small Domestic Water Company n/a and must be paid at Closing by None Buyer Seller One-Half by Buyer and One-Half by Seller

15.7. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when due by None Buyer Seller One-Half by Buyer and One-Half by Seller.

16. **PRORATIONS.** The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1. **Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on Taxes for the Calendar Year Immediately Preceding Closing Most Recent Mill Levy and Most Recent Assessed Valuation, Other .

16.2. **Rents.** Rents based on Rents Actually Received Accrued. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such Leases.

16.3. **Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of Buyer Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents that the Association Assessments are currently payable at approximately \$ n/a per and that there are no unpaid regular or special assessments against the Property except the current regular assessments and n/a. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** a current Status Letter.

16.4. **Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and n/a.

16.5. **Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

17. **POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ **200.00** per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

GENERAL PROVISIONS

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18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline **Will** **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** if the Property is not repaired before **Closing Date** or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

19.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

19.5. Risk of Loss - Growing Crops. The risk of loss for damage to growing crops by fire or other casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance proceeds or benefits for the growing crops.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this Contract, Buyer and Seller acknowledge that the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

21.1. If Buyer is in Default:

21.1.1. Specific Performance. Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty, and the Parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller, and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

22. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

23. MEDIATION. If a dispute arises relating to this Contract, (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This section will not alter any date in this Contract, unless otherwise agreed.

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interplead the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation**. This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder will be returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a Party receives the predecessor's benefits and obligations of this Contract.

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27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery and Notice. Any document, or notice to Buyer or Seller must be in writing, except as provided in § 27.2, and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, the Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

27.2. Electronic Notice. As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, the Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party; not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or

27.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the Fax No. of the recipient.

27.4. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title Insurance, Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, Buyer Disclosure and Source of Water.**

ADDITIONAL PROVISIONS AND ATTACHMENTS

30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

1) Buyer have acknowledge that Rozman Realty, Inc. is a Seller`s Agent and that Buyers are a Customer.

2) Seller and Buyer agree that this contract may be executed in counterparts and that electronic or facsimile signatures shall be deemed as binding as an original signature.

31. ATTACHMENTS.

31.1. The following attachments **are a part** of this Contract:

31.2. The following disclosure forms **are attached** but are **not** a part of this Contract:

SIGNATURES

Dara T. MacDonald, Manager, Town of Crested Butte

Initials

Save Font Clear

Date: 12/5/2017

Buyer: **Town of Crested Butte, a Colorado Home Rule Municipality**
By: Dara T. MacDonald, Manager, Town of Crested Butte

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Date: 12/5/2017

Initials

Save Clear

Ronald Spence, President

Seller: **Crested Butte Limited Partnership, a/k/a Trappers Crossing, Ltd, a Delaware Limited Partnership**

By: **Ronald Spence, President**

32. COUNTER; REJECTION. This offer is Countered Rejected.
Initials only of party (Buyer or Seller) who countered or rejected offer

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. **BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a Buyer's Agent Seller's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Listing Brokerage Firm Buyer Other *n/a*.

Brokerage Firm's Name: **Rozman Realty, Inc.**

Rudolph R. Rozman

Date: 12/5/2017

Broker's Name: **Rudolph R. Rozman**

Address: **P.O. Box 909 Crested Butte, CO 81224**

Ph: **970-209-6563** Fax: Email: **rozman@crestedbutte.net**

34. **BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Seller)

Broker Does Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Seller as a Seller's Agent Buyer's Agent Transaction-Broker in this transaction. This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by Seller Buyer Other *n/a*.

Brokerage Firm's Name: **Rozman Realty, Inc.**

Broker's
Name:

Date: **12/5/2017** **87**

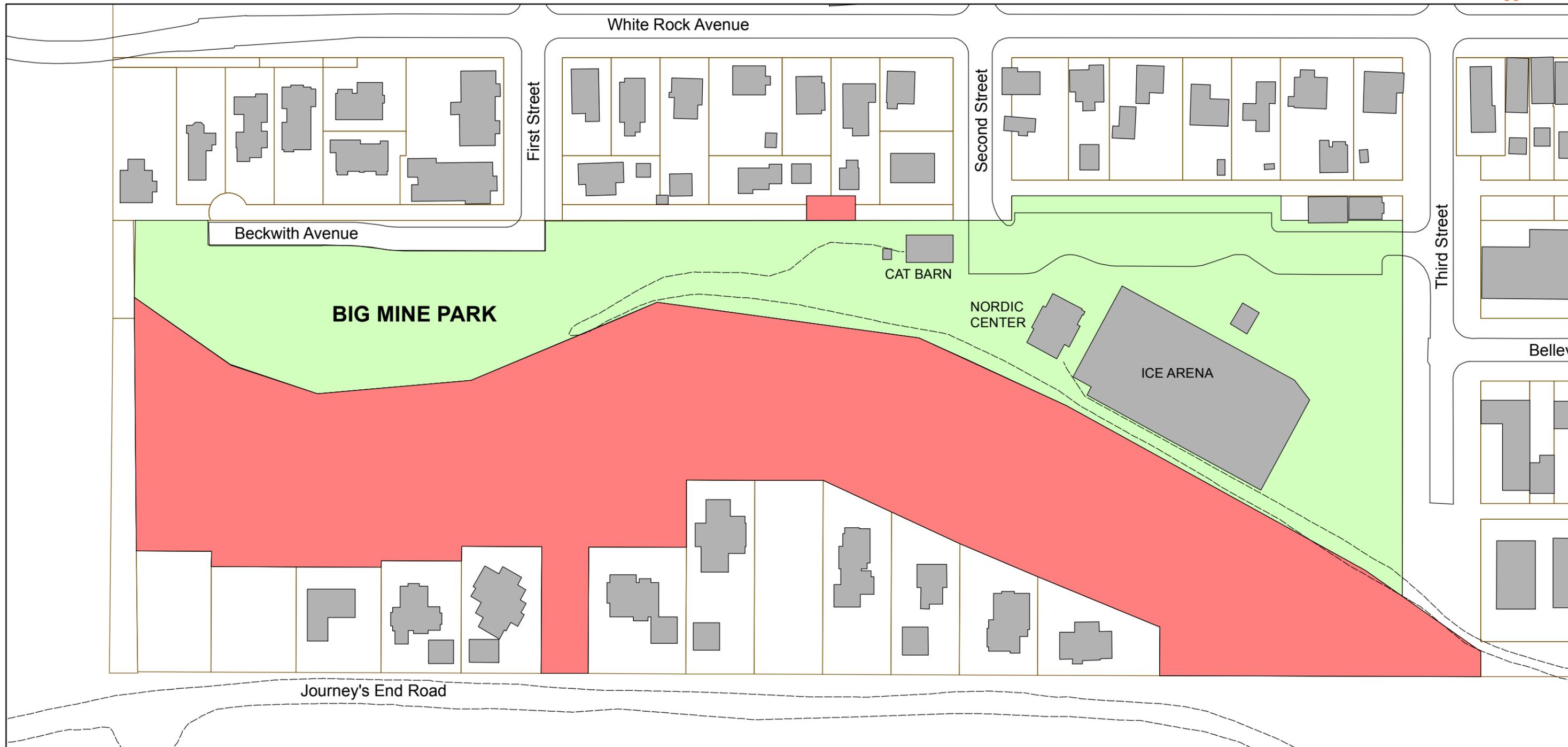
Rudolph R. Rozman

Address: **P.O. Box 909 Crested Butte, CO 81224**

Ph: **970-209-6563** Fax: Email: rozman@crestedbutte.net

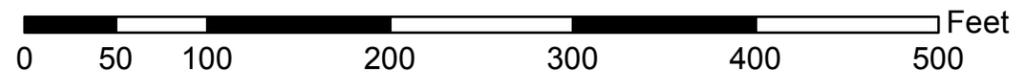
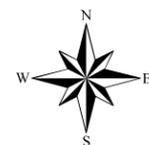
CBS4-6-15. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

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**THE HEIGHTS OPEN SPACE PURCHASE PROPERTIES
CRESTED BUTTE, COLORADO**

- Purchase Properties
- Buildings
- Parks
- Parcel Boundaries



Town of Crested Butte
 P.O. Box 39
 507 Maroon Ave.
 Crested Butte, Colorado 81224
 (970) 349-5338 (FAX 349-6626)
 email: hmayer@crestedbutte-co.gov

Town of Crested Butte

P.O. Box 39 Crested Butte, Colorado 81224

-National Trust for Historic Preservation's 2008 Dozen Distinctive Destinations Award Recipient-

-A National Historic District-

December 8, 2017

Phone: (970) 349-5338
 FAX: (970) 349-6626
www.townofcrestedbutte.com

VIA E-MAIL DELIVERY

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 Matthew Cullinan
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 Winston Salem, NC. 27106-5723
mscullinan@gmail.com

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dmanning@amsurg.com

Sean Reilly
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 Baton Rouge, LA
 70896-6338
sreilly@lamar.com

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 c/o Lesa Creveling Trust Officer
 Tulsa, OK 74101-3627
jbloomfield@trustok.com

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Jodie Strauss
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 Big Lake, TX 76932-0984
baagrade@aol.com

Richard Fertig
 116 Sullivan St.
 New York, NY 10012-5608
fertigr@gmail.com

RE: Heights Open Space Avalanche Mitigation

Dear Heights lot owner,

Since our last letter dated November 3, 2016, the Town has had multiple email communications and meetings with representatives of the Heights homeowners in an effort to gain access to the Heights Open Space for the purpose of avalanche mitigation. Upon further investigation it has emerged that Trappers Crossing Ltd. is the current land owner of the Heights Open Space.

The Town has the property under contract for purchase from Trappers Crossing Ltd. It is our intention to obtain the property in order to maintain the existing uses on the property as they have occurred for many years and to assume responsibility for avalanche mitigation of the slope.

December 8, 2017

Page 2

Town staff met with several Heights lot owners last summer and discussed limitations of use and desired maintenance of the Open Space, and feel that we have come to an agreement on future use and maintenance. The following is a list of the proposed limitations of use, and maintenance requirements for the Open Space parcel:

1. The Ditch Trail and the existing access trails north of the Ditch Trail will be the only permitted trails and will remain publicly accessible. No other trails will be constructed or maintained south of the Ditch Trail.
2. The Ditch Trail will be maintained in good condition, in an attractive state, free of debris, noxious weeds, and litter.
3. The Town will not construct nor permit to be constructed any structures or improvements (including avalanche mitigation structures) within the view shed of any dwelling located in the Heights Subdivision, or that would obstruct the current views from any lot or dwelling located in the Heights Subdivision. View shed being defined as all surrounding points that are in line-of-sight behind the horizontal plane of the northern property boundary.
4. The Town will perform avalanche mitigation work and Open Space stewardship work on the entirety of the property provided that such work complies with (3.) above.
5. The Town will not use any portion of the Open Space within the view shed of any dwelling in the Heights Subdivision for any purpose other than avalanche mitigation work and Open Space stewardship work.
6. The Town will actively work to keep the public from accessing areas of the Open Space south of the Ditch Trail and/or Disc Golf Course.
7. No vehicular access will be permitted south of the Ditch Trail with the exception of a snow cat allowed only on the Ditch Trail for winter trail grooming purposes, and as necessary for Open Space stewardship work.
8. Any site disturbances caused by mitigation work or installation or maintenance of improvements outside of the view shed area would be re-vegetated and reclaimed promptly and effectively provided that reclamation and revegetation shall be planted to maintain the view shed area and shall be maintained in a way to avoid any obstruction of the view shed area. Existing vegetation will be maintained in such a way as to preserve view sheds of current and future residences and owners of Heights Subdivision lots.
9. Heights owners with existing landscaping within the Open Space shall be responsible for maintaining that landscaping.
10. The Town would not permit or allow to continue, uses of the Open Space contrary to the terms listed above, and would actively enforce violations.

We welcome any further input from adjacent lot owners of the Heights Open Space. It is our intention upon acquisition to solidify these points by amending the plat and placing a conservation covenant on the property. The Town has created an avalanche mitigation specialist position within the Parks and Recreation Department for the performance of avalanche mitigation work on the Open Space. Ski cutting should commence promptly once significant snowfall happens in much the same way mitigation has occurred for the past 25 years.

We appreciate your patience and collaboration as we have worked through this. The Town is committed to appropriately managing avalanche danger, and trail and park use within the Open Space, and we look forward to continued collaboration into the future.

Sincerely,



Dara MacDonald, Town Manager
Town of Crested Butte
dmacdonald@crestedbutte-co.gov

Cc: Jacob With, Law of the Rockies



Memorandum

To: Town Council

From: Michael Yerman, Community Development Director
Bob Nevins, Town Planner

Thru: Dara MacDonald, Town Manager

Subject: Brush Creek Workshop-Council Concerns

Date: December 18, 2017

Background: On November 30th, Town Council invited the Gatesco development team to participate in a public work session to discuss the Corner at Brush Creek development proposal. Gatesco had submitted a Sketch Plan application containing 240 deed-restricted and free-market rental units with a community center/transit stop to Gunnison County on August 29, 2017. The site includes about 14 acres and it is located two miles south of Crested Butte at the southeast corner of State Highway 135 and Brush Creek Road in unincorporated Gunnison County.

As part of the Sketch Plan review process, the Gunnison County Planning Commission has held four (4) public work sessions:

- **October 20, 2017-** Planning Staff outlined the public review process/timeline and the applicant gave a presentation of the proposed development.
- **November 17, 2017-** The Gunnison Valley Regional Housing Authority (GVRHA) presented their strategic plan and discussed the current housing gap/needs, challenges, affordable housing guidelines, deed restrictions and examples of affordable housing projects in other mountain communities. The applicant then provided their proposed mix of deed-restricted and free-market units along with the rental rate ranges.
- **December 1, 2017-** The third work session concentrated on density, mass, scale, unit type and architectural character; there was also a site visit to similar sized projects in Gunnison, CB South, the Skyland neighborhood, Crested Butte and Mt. Crested Butte.
- **December 15, 2017-** This work session will be focused on issues related transit and water supply/wastewater.

A final work session and summary discussion is set for **January 5, 2018**; and the start of the public hearing process is scheduled to begin **January 19, 2018** at a potential location in the North Valley.

Council Work Session: At the November 30th work session, the Gatesco team presented their development proposal and it was followed by questions and comments from Town Council and members of the public. The key concerns about the proposed apartment project were: density, scale, character, rental need/affordability, water/sewer, transit service, traffic and parking. Following the work session, Council directed staff to draft a letter to Gatesco that identifies their specific issues and concerns with the proposed Corner at Brush Creek (see attached Draft Letter).

Recommendation: Town Council may review and revise the attached draft letter. If there is a consensus, the Mayor Pro-tem may sign it on Council's behalf and send the letter to Gatesco and forward a copy to the Gunnison County Planning Commission.

Attachment:

Town Council (Draft) Letter to Gatesco

December 19, 2017

Mr. Gary W. Gates, Jr., President
APT Brush Creek, LLC
P.O. Box 699
Crested Butte, Colorado 81224

RE: Corner at Brush Creek Sketch Plan Proposal

Dear Gary:

On behalf of the Town Council and citizens of Crested Butte, I want to thank you and your development team for meeting with us at the public work session in Town Hall on November 30, 2017. It is apparent that you and your team of local professionals believe strongly in the proposed Corner at Brush Creek project as demonstrated by your presentation.

We, as Town Council, along with the majority of the Crested Butte community, fully recognize that affordable, workforce housing offered to low and middle income earners is needed if we are to remain a genuine and spirited community in which we can live, work, recreate and achieve success. The development of ownership and rental workforce housing for our locals needs the creativity and resources of both the public and private sectors. Unfortunately, there is no “silver bullet” or “quick fix” to this ever escalating dilemma and this one project cannot be expected to remedy this situation overnight. This Council will remain focused, consistent and methodical in our approach to achieving our housing goals while remaining in balance with other community values, resources and service levels.

We fully support using the property at the intersection of SH 135 and Brush Creek Road for the purposes it was purchased: intercept parking and affordable housing. However, the proposed density is dramatically higher than any projects located within the surrounding neighborhoods along Brush Creek Road. The density of over 400 bedrooms on 14 acres combined with the number of large buildings (15,000 – 48,000 sq. ft.) threaten the character and capacity of the community which you hope to benefit. The charm of Crested Butte has been maintained through years of careful consideration and balancing of sometimes conflicting community goals. We ask that you reconsider your design in the face of community concerns that the impacts of this project outweigh the benefits offered by your proposal.

Our primary concerns with the current Brush Creek project are as follows along with suggested actions to address the concerns:

- 1) Utilities. The plan promotes leapfrog development or intensive development adjacent to a roadway that requires an extension of public facilities and services or requires the development of a new, stand-alone private water supply/wastewater treatment system. This would establish an undesirable precedent for similar future development.
 - Address this concern by making diligent efforts to contact the East River Sanitation District, Skyland Municipal District and Larkspur Subdivision to determine the feasibility and costs of connecting to any of those existing water supply/wastewater treatment districts or facilities and ensuring that the residential density being proposed can be accommodated.
- 2) Housing Needs. The plan does not adequately address the work force housing needs for incomes below 80% AMI nor the need for ownership units.
 - Consider a greater percentage of workforce housing units targeting incomes at or below 80% of AMI with the possibility of having some deed-restricted and free-market “for-sale” duplex and 4-plex units. Voluntarily agree that master leases will not be placed on the units restricted to those earning 80% of AMI or below.
- 3) Compatibility. The plan increases the density, mass, scale and height of the built-environment which is out of context and incompatible with the existing, adjoining residential community and rural setting that exists outside the town limits. For example the project is seven times the density of the next closest comparable project at Stallion Park. The plan does not minimize the visual impacts of the proposed 15,000 to 48,000 square feet multi-family structures by screening or siting the large multi-family structures away from public roadways. Construction of multiple large buildings on this highly visible open meadow will stand out and is not compatible with the existing rural setting and adjoining residential community.
 - Consider reducing the project’s overall density, mass, bulk and scale so that individual buildings contain a maximum of 10,000 square feet with a potential square footage bonus of 15% and maximum height of 30 feet; providing a 40-foot setback along the Brush Creek Road right-of-way or 80 feet from centerline, whichever is greater and preferably much more.
- 4) Parking & Transit. The plan fails to provide an adequate supply of parking for residents and guests of the project. The plan unrealistically relies on a pedestrian path for use by residents to travel two miles to and from Town despite there being no winter maintenance of this trail. In addition the plan does not supply adequate intercept parking. Recent evaluations of parking shortages in Crested Butte show a need for an additional 232 spaces during weekdays and a shortage of 403 spaces during peak use. This demonstrates the increasing pressures on parking in town and the need for additional transit use.
 - Modify the plan by providing 2 parking spaces/unit; and allocating sufficient acreage for a transportation hub and intercept park-n-ride area. As part of the traffic study for the project, there should be a public transit component that identifies what facilities are required to create a transit hub and park-n-ride facility at this location. Facilities may include: a transit station with an indoor heated waiting area and restrooms, bus staging areas, bus storage for vehicles, sufficient spaces for a town/resort park-n-ride lot, adequate snow storage areas and landscaped berms for screening and buffering.

- 5) Fiscal & Facilities Impacts. The size and scale of the project creates impacts to Town services, programs and resources that are not adequately addressed and/or mitigated.
- Prior to submittal of the preliminary plan review a fiscal and facilities impact analysis should be conducted and provided to the community for review.

The sketch plan process as set forth in the *Gunnison County Land Use Regulation* is meant to be exploratory and the plan is “expected to evolve” by examining alternative approaches to development of the property in a participatory joint planning and negotiation process. Given that the initial development proposal is expected to evolve and respond to a collaboration of feedback, the Crested Butte Town Council would like to request that the Corner at Brush Creek development team consider amending the initial sketch plan proposal to incorporate the suggestions above.

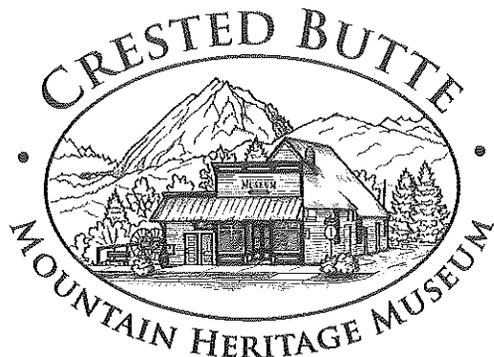
We trust that you and your local team members are listening to your neighbors and townspeople, and hearing that the current Corner at Brush Creek apartment project is too dense, too urban, too uncertain in terms of water/sewer service, too costly for working residents and too short-sighted in being able to accommodate future transit and intercept parking needs. However, we strongly believe that by working together and making constructive modifications to the Sketch Plan, we can create an economically and socially viable neighborhood for a local working families and individuals that fully embodies our shared community values and respects our rural, mountain environment.

The Crested Butte Town Council and staff are open and willing to work with you, your team and Gunnison County in creating a place for locals to call home at Brush Creek that fits the with character and authenticity of Crested Butte.

Respectfully,

Jackson Petito, Mayor

Cc: Matthew Birnie, Gunnison County
Karl Trujillo, Town of Mt. Crested Butte
Michael Kraatz, Crested Butte Mountain Resort
John O’Neal



CRESTED BUTTE MTN. HERITAGE MUSEUM, INC.

Located at 331 Elk Avenue
in Historic Tony's Conoco
Box 2480 • Crested Butte, Colorado 81224
(970) 349-1880
www.crestedbuttemuseum.com

December 1, 2017

Crested Butte Town Council
PO Box 39
Crested Butte, CO 81224

Dear Members of the Crested Butte Town Council,

On behalf of the Crested Butte Mountain Heritage Museum, thank you very much to the Crested Butte Town Council for awarding us a \$1,500 grant to develop our *1960s & 1970s Counter Culture in Crested Butte* exhibit. Your support allows us to actively advance our mission: "To preserve and share the uniquely diverse cultural history of the Gunnison Valley. We make the past a living part of the future." We do this by preserving our iconic building and collection; sharing our local history through exhibits and events; and seeking out new ways to engage with our community and guests.

Thank you again for your generous support and for the important work that you do every day for our community! Together, we make the past a living part of the future.

Sincerely,

Shelley Popke
Executive Director

*Thank you & I hope
you all come to see
the exhibit next summer!*

January 8, 2018**Work Session**

Sam Light from CIRSA

Consent Agenda

Resolution – Posting Places

CB to Carbondale Trail

New Business

Brush Creek

Oh Be Joyful Parking Agreement

Executive Session

Update on legal matters – water cases – Scott Miller attending

January 22, 2018**Work Session**

Roundabout 101 (JVA and McDowell Engineering)

New Business

Torie Jarvis presenting about NWCCOG QQ Committee

Slate River Development Annexation Concept Review

Future Items

- Land Trust possible land acquisition funding request
- Update to current version of Model Traffic Code
- Update Section 8-2-50 - winter parking signs
- Charter Franchise Agreement
- Ordinance Adopting Standard Sales Tax Definitions

Future Work Session Items:

- Affordable Housing Update