RESOLUTION NO. 28

SERIES 2017

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING A SOFTWARE LICENSE AGREEMENT WITH BEAR CLOUD SOFTWARE FOR THE IMPLEMENTATION OF STR HELPER

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

WHEREAS, the Town staff recommends that the Town enter into a software license agreement with Bear Cloud Software to utilize their STR Helper Software;

WHEREAS, following the Town staff's recommendation, the Town Council desires to enter into a software agreement with Bear Cloud Software to utilize their STR Helper Software to monitor vacation rental activity within the community pursuant to the terms and conditions set for in the agreement attached to these Resolutions; and

WHEREAS, the Town Council hereby finds that it is in the best interest of the health, safety and general welfare of the citizens and visitors of Crested Butte to enter into a software license agreement with Bear Cloud Software for the above-stated purposes, and in connection therewith, adopt and execute the software license agreement reference herein.

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 entering into the software license agreement with Bear Cloud Software for their performance of certain services and utilization of STR Helper software for the Town, in an amount not to exceed $7,500 in 2017, is in the best interest of the Town, its residents and visitors.

2.   **Approval; Authorization of Town Manager**. Based on the foregoing, the Town Council hereby approves the software license agreement with Bear Could Software in substantially the same form as attached hereto as **Exhibit "A"** (the "**Agreement**"). The Town Manager is hereby authorized to execute the Agreement and any associated documentation in connection therewith.

3.   **Funding**. The Town Council authorizing expenditure of funds from the General Fund and an amount not to exceed $7,500.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 15TH DAY OF MAY, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: _____

Glenn Michel, Mayor

ATTEST

_____

Lynelle Stanford, Town Clerk

STR Helper Software License Agreement

For

Crested Butte, Colorado

Bear Cloud Software STR Helper Software License Agreement

BY USING THE LICENSED SOFTWARE FROM BEAR CLOUD SOFTWARE, THE INDIVIDUAL IF ACTING ON BEHALF OF HIMSELF OR HERSELF ("INDIVIDUAL CUSTOMER") OR THE INDIVIDUAL WHO IS ACTING ON BEHALF OF AN EDUCATIONAL OR NONPROFIT INSTITUTION, GOVERNMENTAL AGENCY, OR OTHER ENTITY ("ENTITY CUSTOMER", THE INDIVIDUAL CUSTOMER AND ENTITY CUSTOMER TOGETHER ARE "CUSTOMER") IS AGREEING TO BE BOUND BY THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER MAY NOT INSTALL, COPY, OR USE THE LICENSED SOFTWARE.

1. DEFINITIONS.

"User Account" means, collectively, the specific User ID, and authorization for each copy of the Licensed Software issued by Bear Cloud Software to Customer.

"Affiliates" or **"Affiliate"** means an entity, institution, or organization that controls, is controlled by, or is under common control with another entity, institution, or organization, with at least majority ownership.

"Authorized Reseller" means an authorized distributor, authorized reseller, or dealer of the Licensed Software.

"Authorized User" means an employee or contractor licensed to use STR Helper.

"Documentation" means the user manuals and supporting documentation in electronic form provided with the Licensed Software under this Agreement.

"License Fee" means the applicable fee for which Customer licenses the Licensed Software.

"License Period" means a perpetual term unless (a) terminated as provided below or (b) a specific fixed term is otherwise set forth in the License and User Account.

"Licensed Software" means the specific software licensed to Customer under the terms of this Agreement (as specified in the License and User Account issued to Customer), including any Updates and Upgrades thereto.

"Bear Cloud Enhancements" means enhancements to Bear Cloud Files in which the copyright is owned by Bear Cloud Software or distributed by Bear Cloud Software from time to time.

"Bear Cloud Website" means www.strhelper.com.

"Update" means a revision to the Licensed Software or patch that improves the functionality of the Licensed Software, and may contain new features or enhancements, which is not an Upgrade.

"Upgrade" means a subsequent version of the Licensed Software that Bear Cloud Software designates as a new release and makes generally commercially available or a different flavor of the Licensed Software that that Bear Cloud Software makes generally commercially available.

2. LICENSE AND OWNERSHIP.

2.1 License and User Accounts. that Bear Cloud Software shall issue Customer a "License and User Account" via email, fax, postal mail, or courier (e.g., FedEx, UPS, DHL) that sets forth the specific Licensed Software, the specific number of Concurrent Authorized Users for Entity Customers, and the User Account associated with the Licensed Software (the License and User Account or User ID). The License and User Account is hereby incorporated by reference into this Agreement. Certain of the licenses in Section 2.2 permit use by Authorized Users of Entity Customer and the Entity Customer is responsible for compliance of all such Authorized Users with the Agreement and shall be liable for the breach of the terms of this Agreement by such Authorized Users.

2.2 Single-User License. An Individual Customer whose License and User Account issued by Bear Cloud Software specifies the "License Type" as "Single User". A Single-User license is for a named individual who is identified as the Authorized User. Subject to the terms and conditions of this Agreement, Bear Cloud Software grants to Customer a transferable license, without the right to sublicense, to use the Licensed Software.

2.3 Documentation License. Subject to the terms and conditions of this Agreement, Bear Cloud Software grants to Customer a transferable license, without the right to sublicense, to use the Documentation in connection with Customer's authorized use of the Licensed Software. Customer may not reproduce or distribute the Documentation in any manner, whether physically or electronically, without the express written permission of Bear Cloud Software.

2.4 User Account. Bear Cloud Software shall issue to Customer a License and User Account for each copy of the Licensed Software. Customer is entirely responsible for any and all activities that occur under Customer's account.

2.5 License to Bear Cloud Enhancements. Subject to the terms and conditions of this Agreement, Bear Cloud Software grants to Customer a transferable license, without the right to sublicense, to use Bear Cloud Software Enhancements solely with the Software for Customer's internal business, research, or educational purposes. Notwithstanding any other provision in this Agreement to the contrary, Bear Cloud Software makes to Customer regarding the licensed software a warranty of merchantability and a warranty of fitness for the particular purposes for which the licensed software is sold.

2.6 Restrictions. Customer shall not, nor permit any person (including any Authorized User) to: (i) reverse engineer, reverse compile, decrypt, disassemble, or otherwise attempt to derive the source code of the Licensed Software (except to the extent that this restriction is expressly prohibited by law); (ii) modify, translate, or create derivative works of the Licensed Software; (iii) sublicense, resell, rent, lease, distribute, market, commercialize, or otherwise transfer rights or usage to the Licensed Software (except as expressly permitted under this Agreement); (iv) remove, modify, or obscure any copyright notices or other proprietary notices or legends appearing on or in the Licensed Software, or any portion thereof; (v) transfer, use, or export the Licensed Software in violation of any applicable laws, rules, or regulations of any government or governmental agency; (vi) use the Licensed Software or any system services accessed through the Licensed Software to disrupt, disable, or otherwise harm the operations, software, hardware, equipment, and/or systems of a business, institution, or other entity, including, without limitation, exposing the business, institution, or other entity to any computer virus, Trojan

horse, or other harmful, disruptive, or unauthorized component; or (vii) embed the Licensed Software in any third-party applications, unless otherwise authorized in writing in advance by an officer of Bear Cloud Software.

2.7 Ownership. The Licensed Software, Bear Cloud Software Enhancements, and Documentation contain copyrighted material and other proprietary material and information of Bear Cloud Software and/or its licensors. Bear Cloud Software and/or its licensors shall retain all right, title, and interest, including all intellectual property rights, in and to the Licensed Software, Bear Cloud Software Enhancements, and Documentation. Customer will not remove, alter, or destroy any form of copyright notice, proprietary markings, or confidential legends placed upon or contained within the Licensed Software, Bear Cloud Software Enhancements, or Documentation, or any component thereof.

3. TECHNICAL SUPPORT AND UPGRADES AND UPDATES.

3.1 Technical Support. Bear Cloud Software agrees to provide Customer with technical support services which include periodic distribution of bug fixes and minor enhancements as Updates scheduled by Bear Cloud Software. All registered users of the then-current release of STR Helper and the previous release of Bear Cloud Software are eligible for free limited technical support. Installation support inquiries by telephone will be accepted by Bear Cloud Software during normal business hours. Technical support email inquiries are accepted at any time and will be answered during normal Bear Cloud Software business hours. Bear Cloud Software will attempt to respond to inquiries within the same business day.

3.2 Updates and Upgrades. To receive and use an Upgrade, Customer must pay the applicable annual fees for that Upgrade and agree to Bear Cloud Software standard terms and conditions governing the use of that Upgrade.

4. TERM AND TERMINATION.

4.1 Term. Customers with a fixed-term License Period, this Agreement shall commence on the Effective Date and shall Continue in effect until the software renewal date.

4.2 Termination. Customer may terminate this agreement at any time for any reason or no reason at all upon 30 days' written notice to Bear Cloud Software, and upon such termination Customer shall receive a refund of any unearned fees due and owing under the Agreement..

4.3 Effect of Expiration or Termination. Upon expiration or termination of this Agreement, (i) the rights and licenses granted to Customer pursuant to this Agreement shall automatically and immediately terminate and (ii) Customer shall immediately cease using the Licensed Software. In addition, for a fixed-term License Period, upon expiration of the License Period, the User Account or User ID will expire and the Licensed Software will cease to function.

5. FEES AND PAYMENT.

Fees and Payment Terms. Customer licenses the Licensed Software from Bear Cloud Software. This Agreement is between Customer and Bear Could Software solely. The applicable license fee is specified and set forth in Exhibit A.

6. IMPLEMENTATION.

Customer agrees to supply Bear Cloud Software with city property data for software implementation.

7.INTENTIONALLY DELETED.

8. LIMITATION OF LIABILITY.

8.1 Consequential Damages Waiver. OTHER THAAN FOR A VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY PERSON, IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS HAVE ANY LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF ANY REPRESENTATIVE OF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

9. U.S. GOVERNMENT CUSTOMERS.

The Licensed Software under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.111(Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

10. BEAR CLOUD SOFTWARE REPRESENTATION AND WARRNTY.

Bear Cloud Software represents and warrants that neither the Licensed Software, Enhancements, Updates, Upgrades, Website and Documentation nor any parts thereof violate the intellectual property rights of any person.

11.   INDEMNIFICATION.

Bear Cloud Software shall indemnify and hold harmless Customer from any claims, damages, attorneys' fees and costs threatened or incurred by Customer on account of any breach by Bear Cloud Software of any term hereof, including, without limitation, violation of any intellectual property rights by the Licensed Software, Enhancements, Updates, Upgrades, Website and Documentation nor any parts.

12.   PREVAILING PARTY.

In the event of any dispute in connection with this Agreement, the substantially prevailing party in such dispute shall be entitled to an award of its reasonable attorneys' fees and costs.

Bear Cloud

Exhibit A

Standard Implementation Fee ($3,000.00) — This is a one-time fee changed to implement STR Helper's standard features. Some minor customizations to STR Helper are covered in the implementation fee.

Annual Software Fee ($1,750.00) — This fee is charged for additional incorporated cities or towns located in Gunnison River Valley Local Marketing District. One account licenses are included with the annual software fee. Each license should be used by one person; however, the user can run STR Helper on multiple devices. For example, the user may choose to use STR Helper on a desktop, laptop and tablet.

Additional Account Licenses ($300.00 optional per year) — We recommend that every user has their own license. This way when notes, action items, or tasks are created, STR Helper will log the updates to the correct user.

On-site Training ($700 per day + travel expenses optional) — We do offer internet trainings for free but some clients prefer one to two days of on-site training to help expedite production rollout.
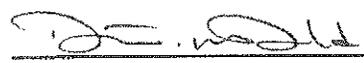
Custom Development ($140 per hour optional) — Since we are a software company we can create custom features for our clients. For example, if you need STR Helper to export data to a third-party application, then we can assign resources to engineer that request.

Optional Calendar Function Annual Fee ($2,000 optional) — STR Helper provides Calendar data monthly which is based on the dates that have been blocked out on the calendar of the various platform websites. STR Helper's tax reports are useful tools to act on property owners that failed to make tax payments or grossly under report taxes paid.
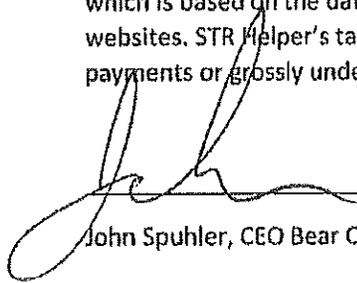
_____   5-17-17
John Spuhler, CEO Bear Cloud Software   Date

_____   Town Manager   5/18/2017
Crested Butte, Colorado   Title   Date: