

## AMENDED AND RESTATED COVENANTS AND RESTRICTIONS FOR CRESTED BUTTE SOUTH

These Amended and Restated Covenants and Restrictions for Crested Butte South (Amended and Restated Covenants) are executed with an effective date of \_\_\_\_\_, 2021, by the Crested Butte South Property Owners Association Inc., a Colorado nonprofit corporation (Association), with approval by the Owners of Lots and Units pursuant to the Colorado Common Interest Community Act, C.R.S. §§ 38-33.3-101, *et seq.* (Act). Pursuant to C.R.S. § 38-33.3-217(5), the Association adopts, executes, and certifies the following Amended and Restated Covenants and Restrictions for Crested Butte South.

### RECITALS

**WHEREAS**, Crested Butte South is a subdivision located in Gunnison County, State of Colorado, consisting originally of 839 Lots created by the developer Crested Butte South Company, by recording the Plats for Crested Butte South – First Filing recorded on August 26, 1970 at Reception No. 280978 - and the Covenants and Restrictions for Crested Butte South recorded on August 26, 1970 in Book 420 at Page 404 (Original Covenants) in the official records of Gunnison County, Colorado. The developer subsequently recorded the Plats for Crested Butte South – Second Filing on September 24, 1970 at Reception No. 281588, Plat for Crested Butte South- Third Filing recorded January 8, 1971 at Reception No. 282791, and Plat for Crested Butte South Fourth Filing recorded November 9, 1972 at Reception No. 291415, all in the official records of Gunnison County Colorado. Collectively, the Plats for the four Filings shall be referred to as the Plats or Property as appropriate.

**WHEREAS**, the following amendments and resolutions for Crested Butte South were recorded as follows:

Crested Butte South Property Owners Association Board of Directors concerning the Amendment of the Covenants and Restrictions of Crested Butte South recorded January 21, 1983 in Book 589 at Page 304; Resolution concerning the Installation and Use of Satellite Dishes recorded December 8, 1988 in Book 661 at Page 284; Resolution concerning the Use and Installation of Solid Fuel Burning Devices recorded April 27, 1990 in Book 677 at Page 578; Resolution concerning Dogs Running at Large recorded April 27, 1990 in Book 677 at Page 581; Resolution concerning Impounded Dogs recorded November 20, 1990 in Book 684 at Page 901; Resolution concerning Individual Wells and Sewage Disposal Systems recorded June 8, 1993 in Book 725 at Page 218; Resolution amending the Covenants and Restrictions of Crested Butte South recorded October 22, 1993 in Book 733 at Page 740; Resolution concerning Wells and Individual Sewer Disposal Systems recorded December 15, 1994 in Book 757 at Page 223; Amendment regarding Regulation of Modular or Factory Built Structures recorded May 1, 1996 in Book 782 at Page 202; Amendment regarding the Minimum Size of Multi-Family Structures recorded May 1, 1996 in Book 782 at Page 203; Amendment regarding Residential Uses on Commercial Property recorded May 1, 1996 in Book 782 at Page 204; Amendment regarding Resub division recorded May 1, 1996 in Book 782 at Page 205; Notice of Amendment of Covenants and Restrictions of Crested Butte South recorded November 22, 1996 under Reception No. 472225; Resolution concerning the Provision of a Legal Survey as an Architectural Submittal Requirement recorded March 27, 1998 under Reception No. 482581; Resolution concerning Setbacks for Driveways, Septic Tanks and Wells recorded April 30, 1998 under Reception No. 483318; Resolution concerning Lot Appearance recorded October 19, 1998 under Reception No. 487930; Resolution of Rules and Regulations Regarding Dogs recorded November 8, 1999 under Reception No. 497644; Amended Resolution concerning Building Deposits recorded March 22, 2001 under Reception No. 509429; Resolution regarding Outdoor Commercial Vendors recorded September 25, 2001 under Reception No. 514482; Resolution concerning the Provision of the Use of Metal Siding on the Exterior of Buildings in Crested Butte South recorded February 5, 2002 under Reception No. 517978; Resolution regarding Fines for Violations of Covenants recorded June 23, 2003 under Reception No. 531851; Amendment to Covenants and Restrictions of Crested Butte South recorded February 23, 2004 under Reception No. 539220; and Resolution regarding the Adoption of a Short Term Rental Policy by the Crested Butte South Property Owners Association, Inc. recorded May 22, 2018 under Reception No. 653309 (hereinafter Amendments and Resolutions).

**WHEREAS**, the Owners and the Association desire to amend and restate the Original Covenants and Restrictions, Amendments, and Resolutions, and have approved the subject Amended and Restated Covenants and Restrictions as required by the Act, and further desire to repeal in their entirety the Original Covenants and Restrictions, Amendments, and Resolutions, and replace the Original Covenants and Restrictions, Amendments, and Resolutions in their entirety with this Amended and Restated Covenants and Restrictions for Crested Butte South by recording of said Amended and Restated Covenants for Crested Butte South in the real property records of Gunnison County, Colorado.

**NOW THEREFORE**, the Association and the Owners, and their successors and assigns, do hereby publish, establish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations, as they may be amended from time to time, shall run with the land, and shall be a burden and a benefit to the Association and the Owners, their heirs, successors and assigns, and shall bind any person or entity having any right, title, and interest in and to the Property or any part thereof.

## **ARTICLE 1 STATEMENT OF PURPOSE**

Section 1.1 Ownership of Property. The Association and the Owners, as hereinafter defined, are the owners of the Lots, the Units, the Outlots, roads as applicable, the Parks, and property for Community Uses, as shown on the Plats or as improved upon a Lot.

Section 1.2 Statement of Purpose. These Amended and Restated Covenants are imposed for the benefit of all Owners and future owners of Lots and Units in Crested Butte South, to provide for the preservation of values of the Property, and to preserve the covenants, easements, restrictions, assessments, and liens hereafter set forth, all of which are for the benefit of the Property.

Section 1.3 Declaration of Amended and Restated Covenants. The Association and the Owners hereby declare that the Lots, Units, roads, Outlots, Parks, and property for Community Uses shall be held, sold and/or conveyed subject to the easements, restrictions, covenants, and conditions set forth in these Amended and Restated Covenants, which purpose is to protect the value thereof. These Amended and Restated Covenants shall run with the land, including all Filings in Crested Butte South and shall be binding on any parties having any right, title, and interest therein or any part thereof, their heirs, personal and legal representatives, successors, and assigns, and shall inure to the benefit of each Owner thereof. These Amended and Restated Covenants shall be enforceable by the Association or its Board of Directors, or any Owner of any Lot or Unit within Crested Butte South.

Section 1.4 Name of Community. The community shall be known as Crested Butte South.

Section 1.5 Effect of Recording. By recording these Amended and Restated Covenants and Restrictions for Crested Butte South in the real property records of Gunnison County, Colorado, the Original Covenants and Restrictions and Amendments and Resolutions are hereby repealed and replaced in entirety with and are superseded by these Amended and Restated Covenants and Restrictions for Crested Butte South.

## **ARTICLE 2 DEFINITIONS**

The following definitions shall apply to these Amended and Restated Covenants, unless the context shall expressly provide otherwise:

Section 2.1 Act means the Colorado Common Interest Community Act, as set forth in C.R.S. §§ 38-33.3-101, *et seq.*, as amended from time to time.

Section 2.2 Amended and Restated Covenants mean these Amended and Restated Covenants and Restrictions for Crested Butte South, including any amendments thereto.

Section 2.3 Assessments and Dues mean any monthly, quarterly, or annual assessments and dues, whether regular, special, or default assessments levied pursuant to the Association Documents to provide for the necessary funds for all obligations and requirements thereunder and of the Association.

Section 2.4 Association means the Crested Butte South Property Owners Association, Inc., a Colorado nonprofit corporation.

Section 2.5 Association Documents mean these Amended and Restated Covenants, Resolutions, Articles of Incorporation, Bylaws, policies, rules and regulations, Design Guidelines, Plats, and Special Area Regulations and Commercial Area Master Plan, including any amendments and resolutions to any of the foregoing adopted by the Association.

Section 2.6 Backyard Hens mean female chickens kept for egg production.

Section 2.7 Block means the specific block number as indicated on the Plats. There are 29 Blocks in Crested Butte South.

Section 2.8 Board of Directors or Board means the persons duly elected by the Owners to act on behalf of the Association. Board of Directors shall also mean "Executive Board," as that term is defined in the Act.

Section 2.9 Building means any structure having a roof supported by columns or walls, or any similar type of improvement located within Crested Butte South.

Section 2.10 Building Site or Building Envelope means any site, envelope or area within a Lot where Buildings and other improvements shall be located as approved by the Design Review Committee and as determined by the applicable setbacks.

Section 2.11 Business means a commercial entity.

Section 2.12 Bylaws mean the Amended and Restated Bylaws of the Association, as amended from time to time.

Section 2.13 Camper means any road-worthy vehicle or pull-behind trailer designed for overnight accommodations.

2.13.1 Class A Recreational Vehicle means a recreational vehicle with a panoramic front window, berths that convert from living room or dinette areas, bathroom facilities, and may have slide-outs, or additional living spaces that slide out when the vehicle is parked. Commercial passenger, school and city buses converted into RVs are included in this definition.

2.13.2 Class B Recreational Vehicle means a recreational vehicle with a raised roof that can either pop up or is fixed, has a small kitchen with refrigerators and gas grills, a water heater, heat and air conditioning, a toilet and/or an internal shower.

2.13.3 Class C Recreational Vehicle means a recreational vehicle characterized by a distinctive berth, or alcove, over the truck cab.

2.13.4 Conversion Van means a cargo or passenger van converted for overnight accommodations.

2.13.5 Pop-up Camper means a collapsible camper with pull-out berths and tent walls, towed as a compact unit behind a vehicle.

2.13.6 Travel Trailer means a non-collapsible, light-weight trailer with some simple accommodations and towed behind a vehicle.

2.13.7 Truck Camper means a slide-in camper carried in the bed of a pickup truck.

Section 2.14 Clustered Lots means the combination of Lots into one parcel for the purpose of constructing one structure containing not more than the total number of residential units which could have been built on one Lot prior to being clustered.

Section 2.15 Commerce means the conduct of a business.

Section 2.16 Commercial Area means Blocks 4, 5, and 6, Second Filing as set forth on the Plat for Crested Butte South – Second Filing recorded at Reception No. 281588.

Section 2.17 Commercial Area Master Plan means the design standards and restrictions for commercial, residential, and mixed-use development in the Commercial Area as defined above. “CAMP” is the acronym for the Commercial Area Master Plan.

Section 2.18 Commercial Lot means a Lot designated as commercial in the Commercial Area.

Section 2.19 Common Area means the real property designated for Community Uses and Purposes, Parks, and Outlots in which the Association owns any interest or has a leasehold interest for the common use and enjoyment of its members as designated on the Plats.

Section 2.20 Common Expenses mean and include the expenditures or liabilities incurred by or on behalf of the Association necessary for the repair, operation, maintenance, improvement, upgrading, management and administration of Association property, and for the administration, business and operation of the Association as more fully described in the Act and these Amended and Restated Covenants. Common Expenses include any allocations to the Reserve Fund.

Section 2.21 Crested Butte South Metropolitan District means the special district providing water, sewer, road maintenance, and snow removal services to the Association and its Members.

Section 2.22 Design Review Committee means the committee appointed by the Board responsible for approving the design and construction of an Improvement, and administering and overseeing compliance with the Residential Design Guidelines and the Commercial Design Guidelines under the Commercial Area Master Plan.

Section 2.23 Design Guidelines mean the guidelines for the Association as approved and adopted by the Design Review Committee and the Board of Directors, including any amendments thereto, for both residential and commercial projects.

Section 2.24 Domestic Animal means a reasonably sized animal customarily kept in a dwelling for company as a pet, including, but not limited to, dogs and cats.

Section 2.25 Dwelling Unit means a building or a portion of a building containing a single unit providing living facilities including permanent provisions for living, sleeping, cooking, and sanitation. Dwelling units are further classified as:

2.25.1 Accessory Dwelling Unit (ADU) means a second living unit that may be attached to or detached from and under the same ownership as, the Single-Family Unit to which it is accessory and smaller in size than the Single-Family Unit.

2.25.2 Duplex Unit means one building containing two dwelling units on one Lot which are not subdivided into Townhouse Units. Duplex Units may be built in Filings 1-4 on the Plats, and each Duplex Unit must contain one kitchen.

2.25.3 Multi-Family Unit means one building containing three or more dwelling units on one Lot. Multi-Family Units may be built in Filings 1 and 2 and may include apartment and condominium units, where each unit must contain one kitchen.

2.25.4 Single-Family Unit means one building containing one dwelling unit on one Lot.

2.25.5 Studio Unit or Efficiency Unit means a single room where the living room, bedroom, and kitchen are combined.

2.25.6 Townhouse Unit means either of two units separated by a common wall of a building on a legally subdivided Lot, by way of a recorded townhouse plat and townhouse declaration or party wall agreement. Each Townhouse Unit is a separate parcel of property owned in fee simple, and separately assessed and taxed.

Section 2.26 Family Residence means the primary residence on any Lot designed for use by the Owner of the Lot, and includes Single-Family Unit, Duplex Unit, Townhouse Unit, or Multi-Family Unit.

Section 2.27 Fiduciary means one that holds a fiduciary relation or acts in a fiduciary capacity to another person or an entity.

Section 2.28 Filing means the specific filing number as indicated on the Plats. Crested Butte South has four filings.

Section 2.29 Fractional Ownership means ownership of a single Dwelling Unit or property that is divided into separate shares and sold to and bought by multiple unrelated parties at different times and independently of the whole Dwelling Unit. Fractional Ownership does not include property purchased by parties as tenants in common at the same time but does include properties with ownership on a fractional basis that is marketed and sold by an entity whose business is to sell such shares on a fractional basis.

Section 2.30 Garage means the accessory portion of a Family Residence, either attached or detached, or other structure designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Section 2.31 Good Standing means an Owner who is current on assessments, dues, fees, and fines.

Section 2.32 Habitation means using a particular place or structure for overnight accommodations.

Section 2.33 Improvement means, including without limitation, any building, structure, fence, wall, parking area and driveway, garage, greenhouse, recreational facility, community center, patio, walkway, tree, deck, shed, enclosure, changes in exterior color or material, exterior remodels or renovations, additions, exterior alterations, exterior construction, signs, excavation, and all other site work including removal thereof, related to the development of a Lot or Association-owned property.

Section 2.34 Landscaping means planted areas and materials, including trees, shrubs and bushes, lawns, flower beds and gardens, and ground cover.

Section 2.35 Long-Term Rental Use means the use of a Family Residence or Accessory Dwelling Unit as an income-producing rental unit rented in increments of no fewer than 30 days at a time to persons who are related or non-related to the Owner of the Family Residence.

Section 2.36 Lot means a platted lot as shown on the Plats.

Section 2.37 Member means every person or entity who holds membership in the Association by virtue of being an Owner.

Section 2.38 Mixed-Use means a development or Improvement with both residential and commercial uses.

Section 2.39 Off-Highway Vehicle (OHV) means a motor vehicle capable of off-highway travel during winter or summer. OHVs include all-terrain vehicles (ATVs), off-road vehicles, four-wheelers, side-by-sides, three-wheelers, dirt bikes, motorcycles, trail bikes, and snowmobiles.

Section 2.40 Outbuilding means a permanent structure with a foundation, such as a shed or garage, on the same Lot but separate from the Dwelling Unit.

Section 2.41 Outlot means the lots on the Plats indicated as Outlot 30 in Block 22, Outlot 46 in Block 28, and Outlot 59 in Block 26, which the Association owns and maintains as Common Area.

Section 2.42 Owner means the owner(s) in fee simple of a Lot or Unit.

Section 2.43 Person means a person, entity, corporation, partnership, trust, joint venture, limited liability company, association, fiduciary or any other type of entity or designation by which title to any Lot or Unit is held.

Section 2.44 Plats mean the maps or plats for Crested Butte South: First Filing recorded on August 26, 1970 at Reception No. 280978, Second Filing recorded on September 24, 1970 at Reception No. 281588, Third Filing recorded on January 8, 1971 at Reception No. 282791, and Fourth Filing recorded on November 9, 1972 at Reception No. 291415, in the official records of Gunnison County, Colorado.

Section 2.45 Property means all real property as set forth and legally described on the Plats and subject to these Amended and Restated Covenants.

Section 2.46 Residential Design Guidelines mean the design and construction standards and restrictions for residential development.

Section 2.47 Residential Unit means living quarters or a dwelling designed to accommodate a one-family unit and containing at least one bedroom, one bathroom, one living room, and one kitchen.

Section 2.48 Rules and Regulations mean the Rules and Regulations of the Association as adopted and amended from time to time by the Board of Directors.

Section 2.49 Short-Term Rental (STR) means the use of a Family Residence or Accessory Dwelling Unit as an income-producing rental unit rented in increments of fewer than 30 days at a time to persons who are related or non-related to the Owner of the Family Residence.

Section 2.50 Temporary Structure means any structure capable of habitation or of being used for storage or parking lacking a permanent foundation. This includes, but is not limited to, greenhouses, seasonal fencing, supports, or hoop houses used for growing plants, tents, vehicles, campers, and sheds.

Section 2.51 Timeshare means a divided form of ownership in which multiple parties hold rights to use the property for a specified period of time each year, and each owner of the same accommodation is allotted an equal period of time.

Section 2.52 Unit means a condominium unit or Townhouse Unit.

Section 2.53 Vehicle means any self-propelled mode of transportation that requires a license and registration to be legally operated on public roads and highways, including trailers designed for use with such vehicles. Class A Recreational Vehicles, Mobile Homes, and semi-trailers are excluded from this definition.

### **ARTICLE 3 CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION, INC.**

Section 3.1 The Association. The operation, administration and management of the Crested Butte South Property Owners Association, Inc. shall be directed by the Board of Directors on behalf of Owners in Crested Butte South. The Association shall have all the duties, powers, and authority pursuant to C.R.S. § 38-33.3-302, the Colorado Revised Nonprofit Corporation Act, the Bylaws, policies, and applicable law necessary and convenient to manage the business and affairs of the Property.

Section 3.2 Association Manager. The Association, acting through its Board of Directors, shall have the authority to hire an Association Manager to handle the affairs of the Association. The Association Manager shall have the authority to conduct the general management, administration and operation of Crested Butte South and the Association and shall have the authority to bind all Owners with respect to matters within the scope of its duties and responsibilities as delegated, defined and directed by the Board.

Section 3.3 Voting Rights. Each Lot, Condominium, or Townhouse shall have one vote in Association matters. In the event there are multiple Owners of a Lot, Condominium, or Townhouse, the vote shall be cast as a single vote.

3.3.1 Inseparable. Such Voting Rights are inseparable from each Lot, Condominium, or Townhouse

Section 3.4 Membership. There shall be one membership per Lot, Condominium, or Townhouse. Such Membership shall terminate upon conveyance of the Lot, Condominium, or Townhouse.

Section 3.5 Compliance with Association Documents. Each Owner shall comply strictly with the provisions of these Amended and Restated Covenants, Bylaws, Rules and Regulations, policies, and resolutions of the Association and any management agreement of the Association, as each may, from time to time, be amended and in force and effect. Failure to comply with any of the same shall be grounds for an action to recover damages, injunctive relief, specific performance, or any other relief available in law or at equity, including any combination of the foregoing, maintainable by the Association on behalf of the Owners, or by an aggrieved Owner.

Section 3.6 Responsible Governance. The Association, acting through its Board of Directors, shall make, adopt, and amend as needed responsible governance policies as required under the Act and other policies as the Board determines necessary.

Section 3.7 Rules and Regulations. The Association shall from time to time adopt, amend, and repeal rules and regulations for Crested Butte South as necessary in the discretion of the Board of Directors, addressing the following:

3.7.1 The use of Common Areas;

3.7.2 The construction, extension, use and maintenance of roads and driveways within Crested Butte South owned by the Association;

3.7.3 The conservation, repair, maintenance, upkeep and use of all Association-owned Buildings, Improvements, and uses within Common Areas;

3.7.4 The maintenance and keeping of animals;

3.7.5 The regulation of noise;

3.7.6 Construction of Improvements in conjunction with the Design Review Committee; and

3.7.7 Any other rules and regulations the Board determines necessary.

Section 3.8 Public Disclosures. The Association shall make available to Owners the mandatory public disclosures as required by the Act.

Section 3.9 Notice. Notice of matters affecting the community shall be delivered to Owners in the manner set forth in the Bylaws, or by posting the same in a conspicuous place at the Association office and/or on the Association website.

Section 3.10 Neglect of Owner or Owner's Agents. If due to the act, neglect, or a violation of any provision of any of Association Documents by an Owner or an Owner's agent, loss or damage shall occur or be caused to any personal property other than the Owner's Lot, the following provisions shall apply:

3.10.1 Such Owner or Owner's agent shall be jointly and severally liable and responsible for payment of the loss or damage of the same.

3.10.2 Such Owner or Owner's agent shall, jointly and severally, indemnify, defend, and hold harmless the Association and all other Owners from any cost, expense, claim or damage of any kind, including reasonable attorneys' fees and costs arising therefrom. The amount of such loss or damage and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to the Association's rights, including lien rights, with respect to the collection and enforcement of assessments as provided in these Amended and Restated Covenants.

#### **ARTICLE 4 LAND USE**

Section 4.1 Common Provisions.

4.1.1 Common Areas. Common Areas are intended for the use and enjoyment of the Owners within Crested Butte South, and their families, guests, tenants, and employees, and the general public when permitted by the Association, and pursuant to these Amended and Restated Covenants. Buildings for non-commercial and community purposes may be erected on Lot 1, Block 5, and on Block 7, containing Red Mountain Park, as designated on the Plat for Crested Butte South – Second Filing. The Association shall be responsible for the management, maintenance and control of its Common Areas and all improvements thereon and shall keep them in a good, clean, and if applicable, functional, condition.

4.1.2 Clustering Lots. Owners of adjacent or adjoining Lots may apply for approval from the Board of Directors to cluster multiple Lots into a single Lot. Such lot clustering shall include the following:

4.1.2.a Creating a larger lot by vacation of the common Lot line(s);



4.1.2.b Agreement from any utility provider with an easement on the subject Lots as to the vacation of the utility easement and providing the equivalent or commensurate easement(s) for utility access in the event a recorded utility easement is eliminated by clustering if said utility provider requires the same;

4.1.2.c Changing the location of the Building Site as a result of clustering, and the setbacks if required by the Design Review Committee;

4.1.2.d Cluster application has been submitted and fees have been paid to the Association by the Owner, and application has been approved by the Board of Directors and complies with any requirements in conjunction therewith;

4.1.2.e Cluster application has been approved by Gunnison County, as necessary, and complies with any requirements in conjunction therewith;

4.1.2.f Clustered Lots will pay annual dues at a rate of 1.5 times per Lot, with lots clustered prior to recording of these Amended and Restated Covenants exempt from the 1.5 assessment rate and continuing to be assessed as one Lot;

4.1.2.g Clustered Lots will result in one vote;

4.1.2.h Clustered Lots shall not be partitioned or subdivided in the future; and

4.1.2.i Execution of any required documents by Gunnison County or the Association.

#### 4.1.3 Easements.

4.1.3.a Easements and Licenses. All Owners shall be subject to easements and licenses as granted by the Association or as shown on the Plats, and/or as described in these Amended and Restated Covenants.

4.1.3.b Emergency Access. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other emergency services and personnel to enter upon the Property in the proper performance of their duties. Additionally, all Owners shall permit a right of entry by the Association, whether the Owner is present or not, as may be necessary for the routine maintenance or repair of any of the Common Areas located adjacent thereto or accessible therefrom, or for making emergency repairs necessary to prevent damage to Common Areas, or another Lot, and for enforcement purposes.

4.1.3.c Reservation of Easements. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility, and other easements, permits or licenses for the best interests of the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress and egress from the Owner's Lot over and across roads owned by Gunnison County and the Association, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restrictions set forth herein.

4.1.3.d Utility Easements. An easement for the placement and servicing of utilities, eight to ten feet in width, is reserved across the front and/or rear of each Lot, and along the sidelines of some Lots, or as shown on the Plats. Except for fences approved by the Association, Owners shall not erect nor permit the erection of any structure or vegetation of any kind within said easement which might interfere in any way with the proper maintenance, use, operation, repair, construction, or patrol of any utility services located therein.

4.1.4 Exterior Storage. Exterior storage is permitted only when there is sufficient space on the Lot to accommodate a reasonable number of items requiring storage. Storage must occur on hardscapes or approved,

designated parking surfaces, and not on landscaping, or in setbacks or easements. No storage of any item is permitted on vacant or undeveloped Lots, except during the period of construction on said Lot.

4.1.5 Lot Appearance. The appearance of every Lot in Crested Butte South shall be maintained in a neat and attractive manner. Owners are to maintain all structures, landscaping, decks, patios, and driveways and parking areas. All Lots shall be kept free of litter and noxious weeds as required by Gunnison County and the State of Colorado. Owners shall store trash in a container or structure that is animal-proof and emptied at regular intervals. Discarded, yet still functional, items may be left at the curb for a maximum of three days.

4.1.6 Negligence. An Owner shall be responsible for the expense the Association incurs for the damage to, or repair or maintenance of, roads, culverts, if applicable, Common Areas, or any other property of the Association, the cause of which shall be due to the Owner's, Owner's contractors, or Owner's guests' or invitees' acts, omissions, negligence, unlawful misconduct, willful or wanton behavior or intentional actions.

4.1.7 Recreational Uses. Recreational and pedestrian uses are permitted in designated areas within Crested Butte South, such as Red Mountain Park, Hucceby Parcel - subject to the terms of the Conservation Easement recorded at Reception No. 536600, and other recreational amenities that may be developed in the future. Recreational activities within Crested Butte South shall be subject to the Association's Rules and Regulations on the same.

4.1.8 Road Maintenance. The Association shall be responsible for the proper maintenance, repair, and upkeep of its roads and driveways within Crested Butte South, including snow removal, required resurfacing of any paved roads and driveways, and grading, drainage, and dust suppression.

4.1.9 Temporary Structures.

4.1.9.a Seasonal garden structures used for growing plants are allowed. Other temporary structures or any other Outbuildings shall require approval from the Design Review Committee or the Association Manager pursuant to the Residential Design Guidelines.

4.1.9.b Structures used by a building contractor as an office or supply facility during construction are permitted to be parked upon a Lot for the period of construction. Any other temporary uses shall be reviewed and approved by the Design Review Committee or the Association Manager on a case-by-case basis.

Section 4.2 Provisions for Residential Land Uses.

4.2.1 Residential Lots. All Lots are for residential purposes only unless designated as a Commercial Lot. The number of structures permitted on each residential Lot shall be limited and subject to the Design Guidelines as they may be amended from time to time.

4.2.2 Family Residence. Residential Lots shall be used for Single-Family Residences, Outbuildings, Accessory Dwelling Units, Duplexes, Townhouse Units, or Multi-Family Residences and for the exclusive use of the Owner or Owners of the Lot, Owner's family members, guests, and tenants, and subject to any easements for the installation and maintenance of utilities, irrigation ditches, and the water and sewer systems serving Crested Butte South. Multi-Family Residences are permitted only in Filings 1 and 2. Associations governing Multi-Family Residences may impose further restrictions on use. Accessory Dwelling Units and Townhouse Units are permitted in Filings 1, 2, 3 and 4. Mixed residential and commercial use in the Commercial Area is permitted pursuant to the CAMP.

4.2.3 Accessory Dwelling Unit. One Accessory Dwelling Unit shall be permitted only for residential Lots containing a Single-Family Residence. Such Accessory Dwelling Unit shall be attached to or separate from the Single-Family Residence. The Accessory Dwelling Unit shall be served by the same driveway, water, and sewer connection serving the Family Residence on the Lot unless otherwise approved by the Design Review Committee.

4.2.4 Home Business. Home businesses are permitted as follows: An Owner who intends to operate a business from home shall meet the rules and regulations for home businesses as adopted and required by the Association and shall:

4.2.4.a be subordinate and incidental to the primary residential use of Owner's Family Residence;

4.2.4.b be conducted within the Owner's Family Residence, Outbuilding, or Accessory Dwelling Unit;

4.2.4.c not be advertised on the Lot;

4.2.4.d not require storage of material outside the Family Residence, Outbuilding, or Accessory Dwelling Unit for use in the home business; and

4.2.4.e ensure that noise, dust, fumes, vibration, odor, smoke, or heat produced outside of the Owner's Family Residence is not noticeable from adjacent properties or roadways.

4.2.5 Parking.

4.2.5.a On-street Parking. Overnight parking on the roads and streets is not permitted, except for vehicles parked in designated overnight parking zones in the Commercial Area. The Association has the express authority to have vehicles towed and impounded.

4.2.5.b Parking on Residential Lots. Every Owner shall provide designated, approved parking spaces for each developed residential Lot or Unit. All parking of licensed vehicles, allowable campers, and permitted or licensed Off-Highway Vehicles (OHVs) must occur on private Lots in designated, approved parking spaces, and such parking shall accommodate the full size of the vehicle being parked. No portion of any parked Vehicle, Camper, or OHV may extend beyond the designated, approved parking spaces.

4.2.5.c Use of Parked Campers for Habitation. Campers owned by an Owner or an Owner's guest may be used for overnight accommodations for a maximum of fourteen consecutive days and 45 days per calendar year, and pursuant to rules, regulations, and policies for such use set forth by the Board of Directors. All Campers used for habitation must have Owner authorization to be parked on said Owner's designated, approved parking spaces. No camper may be used for long- or short-term rental use. There shall be no use of generators nor discharge of grey or black water from any camper into the Crested Butte South Metropolitan District's wastewater system.

4.2.6 Setbacks. No building or other permanent structure shall be erected or maintained closer than twenty-five feet from the front or rear lines of any Lot. Side setbacks of fifteen feet shall apply to any Family Residence. Unenclosed covered porches or entryways, entrance steps, bay windows, balconies, decks, and roof overhangs that are no more than six feet from the original structure shall not be included in determining setbacks. For corner lots, the Design Review Committee shall in all cases have the right to determine which are the front and rear Lot lines, which shall determine the width of the setbacks, and this determination shall be final and binding.

4.2.7 Signs on Residential Lots. Signs identifying the address of the Lot, signs advertising the Lot for sale, construction signs, flags, and political signs in accordance with C.R.S. § 38-33.3-106.5 (c) shall be permitted.

4.2.8 Use of Family Residence as Rental Property. An owner may rent all or a portion of their Family Residence and Accessory Dwelling Unit, however, the Family Residence and the Accessory Dwelling Unit may not be used for Short-Term Rental simultaneously. Owners and tenants in any rental agreements are bound by these Amended and Restated Covenants, and rules, regulations, and policies set forth by the Association.

4.2.8.a Properties may be used as Short-Term Rentals (STRs) for a maximum of 90 days per calendar year. The Family Residence and the Accessory Dwelling Unit may not be used simultaneously for short-term rental.

4.2.8.b Owners renting their properties as STRs shall be required to post on the exterior of the Dwelling Unit contact information for a property manager or person appointed by the Owner who can respond to any rental issues within 60 minutes of contact.

Section 4.3 Provisions for Commercial, Light Industrial, and Limited Manufacturing Land Uses. Commercial or business, light industrial, and limited manufacturing uses shall be consistent with residential development as defined in the CAMP and permitted only in the Commercial Area. Enumerated permitted uses are set forth in the CAMP.

Section 4.4 Prohibited Uses.

4.4.1 Abandoned or Inoperable Vehicles. Abandoned or inoperable vehicles shall not be stored or parked on any Lot or portion of a Lot, except in a fully enclosed garage. An abandoned or inoperable vehicle is one that has not operated for six months or longer.

4.4.2 Storage on Undeveloped Lots. No storage of any item is permitted on undeveloped Lots, except as permitted under Sections 4.1.4 and 4.1.9.b.

4.4.3 Fractional Ownership and Timeshares. There shall be no fractional ownership or timeshares permitted unless such ownership existed prior to recording of these Amended and Restated Covenants in the official records of Gunnison County, Colorado.

4.4.4 Habitation of Temporary Structures or Vehicles. Habitation of temporary structures or vehicles is prohibited, except for the approved use of a Camper by an Owner or Owner's guest when it is parked on a designated, approved residential parking space and pursuant to Section 4.2.5.c.

4.4.5 Hazardous Activities. No hazardous activities shall be allowed or conducted on the Property which are or might be unsafe or hazardous to any person or property. Fireworks and open burning shall be prohibited, except for approved public firework displays and contained ambient backyard fires which are permitted pursuant to the Gunnison Land Use Resolution. No firearms are permitted to be discharged.

4.4.6 Heavy Industrial Use. Heavy industrial use is prohibited, including the parking or storage of heavy equipment such as excavation or earthwork machines on any residential or commercial Lots within Crested Butte South, except as may otherwise be permitted for construction projects.

4.4.7 Class A Recreational Vehicles, Mobile Homes, and Semi-trailers are prohibited.

4.4.8 Mining or Drilling. No Lot shall be used for the purpose of mining or drilling, quarrying, boring, or exploring or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

4.4.9 Nuisances. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance, except for permitted activities described in Section 4.5.5. No noise, including, without limitation, incessant barking dogs, exterior horns, drones, car alarms, whistles, bells, music, or other audible nuisance shall be permitted upon or above the Property which is offensive or detrimental to any other part of the Property or its Owners or occupants. This section shall not apply to security devices used to protect the security of persons and improvements on any Lot, or any reasonable, usual noise or other activity involving construction of any improvements approved by the Design Review Committee.

4.4.10 Recreational Uses. The following recreational uses are prohibited: recreational hunting or taking of any wildlife, unless said wildlife is threatening or injuring a person; riding off-road and off-highway vehicles; riding snowmobiles or similar motorized recreational equipment. Snowmobiles and other OHVs operated by the Association are permitted to maintain recreational amenities owned or managed by the Association.

4.4.11 Subdivision. Once platted, no subdivision of any Lot, or legally clustered Lot, in Crested Butte South is permitted, except for Townhouse Units and the remainder of Block 6, which shall be subdivided and platted in accordance with Association and Gunnison County requirements.

## **ARTICLE 5 ARCHITECTURAL CONTROL**

Section 5.1 Design Review Committee. The Design Review Committee shall be the governing entity for design review and approval of any Improvement on any Lot constructed within Crested Butte South. The Design Review Committee shall review all plans and specifications regarding quality, material, and color; topography, setbacks, finished grade elevation, driveways, planting, and parking facilities; as well as harmony of exterior design with existing or planned structures adjacent thereto.

5.1.1 Design Guidelines. All Improvements shall comply with these Amended and Restated Covenants, the Design Guidelines, residential or commercial as appropriate, the CAMP as appropriate, and the Construction Rules and Regulations approved and adopted by the Design Review Committee and the Board of Directors, as each may be amended from time to time.

5.1.2 Acknowledgement. Each Owner acknowledges that the members of the Design Review Committee shall change from time to time, and that the Association, its Board of Directors, and members thereof and the Design Review Committee and its members shall bear no liability with respect to any construction-related cause of action, including but not limited to damages, claims, expenses, judgments, and attorney fees, arising out of a project approved by the Design Review Committee. Furthermore, the Owner is solely responsible for obtaining opinions from qualified licensed professionals, such as architects, engineers, surveyors, and the like. The Design Review Committee is not a substitute for any opinion on the suitability or feasibility of any aspect of the proposed project, or for a qualified professional's opinion.

5.1.2.a The Design Review Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Association, the Design Review Committee or its members, the Board of Directors nor its members shall be liable to any person or entity for any official action of the Design Review Committee, Board of Directors or Association as it relates to or in connection with the determination of submitted plans and specifications, except to the extent that the Design Review Committee or any individual member thereof acted with malice or intentional wrongful acts.

5.1.3 Compliance with Applicable Building Codes. The Owner is responsible for obtaining all applicable permits, licenses, and approvals, and for complying with applicable building codes as adopted and amended by Gunnison County, including its Land Use Resolution, all local ordinances, the Special Area Regulations, and rules and regulations applicable to the subject Lot, including fire protection standards and the Crested Butte Fire Protection District requirements.

5.1.4 Variances. The Design Review Committee may grant variances from the requirements in the Design Guidelines and the location of the Building Site for good cause shown and finding of undue hardship. The Owner shall bear the burden of establishing undue hardship. The Board of Directors shall also consider the variance application and be empowered to either approve or deny the variance application.

5.1.5 Final Decision. The decision of the Design Review Committee as to the Final Plan Review shall be final, subject only to appeal to the Board of Directors and thereafter, according to the processes set forth in the CAMP and then, the right of judicial review as provided by the laws of the State of Colorado. Within 31 days of complete plan and specification submittal to the Design Review Committee (DRC), the DRC shall in writing state to the Owner the plans are approved, or the reason for disapproval or denial of the final plans and grant to the applicant Owner an opportunity to resubmit the plans with the revisions and corrections that would bring the final plans into conformity with the Design Guidelines and these Amended and Restated Covenants.

5.1.5.a In the event the Design Review Committee fails to act within 31 days after said plans and specifications have been submitted to it, such approval will not be required and compliance with the Design Guidelines and this Article 5 shall be considered met.

5.1.5.b An Owner may appeal the final decision of the Design Review Committee by following the appeal process defined in the Association Documents and by paying a reasonable fee for administrative purposes as determined by the Board of Directors.

5.1.6 Completion of Construction. All construction, reconstruction, alterations, or Improvements shall be pursued diligently to completion and shall be completed within twelve months from construction start date, unless otherwise approved by the Design Review Committee.

Section 5.2 Access. No Improvement, during construction or otherwise, may have access from any Common Areas. All improvements shall have access only from designated roadways, except as may be adjusted and approved by the Design Review Committee for site conditions.

Section 5.3 Building Dimensions. Building dimensions shall conform to the requirements of the Residential Design Guidelines, and CAMP as applicable, as determined and updated by the Design Review Committee.

5.3.1 Building Height. The maximum residential building height shall not exceed an average of thirty-two feet from average grade. The maximum commercial building height in Block 6, Second Filing shall not exceed an average of thirty-five feet from average grade. Average height is determined from average existing grade prior to construction.

5.3.2 Number of Stories. Residential and commercial buildings in all Filings are limited to two stories above finished grade. Basements do not count as a story but are included in the maximum height limit.

5.3.3 Minimum Size. Exclusive of porches, garages, and basements, the minimum size for Single-Family Units is 1,200 square feet, 650 square feet for Duplex and Multi-Family Units, and 400 square feet for Studio Units.

Section 5.4 Drainage. Drainage patterns within the Lot should be modified to improve flow away from new structures. Drainages should be directed towards existing natural drainages or drainage ways but shall not drain on to another Lot. Site designs with snow storage areas which may trespass on an adjacent Lot shall not be permitted.

5.4.1 No Owner shall permit any work, construct any Improvements, or do any landscaping which shall alter or interfere with the natural drainage of the Property, except to the extent the same is approved by the Design Review Committee and as authorized for any surface water discharge easement.

Section 5.5 Excavation. No excavation shall be made on any Lot, except in connection with an approved Building or Improvement, pursuant to these Amended and Restated Covenants and the Design Guidelines.

Section 5.6 Exterior Lighting. Outdoor lighting shall meet the requirements of the Gunnison County Land Use Resolution, as amended from time to time. In addition, outdoor lighting shall not be allowed to remain on all night and must be fully down-cast, fully shielded, cut-off type light fixtures.

Section 5.7 Fireplaces. Fireplaces, gas-burning, and wood-burning stoves shall be permitted pursuant to Gunnison County's Land Use Resolution on the same, or any other applicable requirements of any other governing entity then in effect.

Section 5.8 Landscaping. New landscaping of any Lot or the Property shall be subject to the Design Guidelines and approval by the Design Review Committee, including the removal and placement of trees. Landscaping shall encourage the diverse use of native trees, grasses, plants, and xeriscaping. Lawns and water features are discouraged. Owners shall maintain their landscaping in a neat manner and replace or remove dead or diseased vegetation. No trees shall be cut or removed from any Lot or the Property, except when: a) allowing ingress or egress to and from the Building Site, b) clearing an approved construction site, c) removing any dead or diseased trees, d) mitigating for wildfire management, or e) approved in writing from the Design Review Committee. Owners shall comply with all watering restrictions issued by Crested Butte South Metropolitan District.

## **ARTICLE 6 ANIMALS**

Section 6.1 Animals. No animals of any kind shall be bred or kept commercially on any residential Lot. At no time shall any Owner allow their dogs/cats/animals to create a nuisance, noise, odor, or otherwise, make excessive or prolonged vocalization, or disturb, threaten, or injure any person or other animal. At all times, the Owner shall be personally responsible and liable for all actions of any pet and any damages caused thereby. Owners keeping or maintaining dogs shall be subject to Gunnison County's current regulations regarding the control and licensing of dogs in unincorporated Gunnison County. Additionally:

6.1.1 Backyard Hens. The keeping and maintaining of backyard hens may be permitted only after review and approval by the Board of Directors. This review will consider the number of hens proposed, the plan for their care, containment, and sanitation, and the proximity to neighbors.

6.1.2 Dogs and Cats. An Owner may keep and maintain a reasonable number of dogs and cats.

6.1.3 Other Pets. Other pets kept exclusively indoors are permitted as each Owner sees fit.

Section 6.2 Rules and Regulations. The Board of Directors shall adopt and enforce the current rules and regulations established by Gunnison County regarding the keeping and maintaining of animals and pets within Crested Butte South, as well as its own rules and regulations, and shall have dual authority, with Gunnison County, to reasonably determine when any such animal has created a safety, noise, odor, or nuisance problem.

Section 6.3 Impoundment. The Association is specifically empowered to impound any animal running at large or being abused or neglected in Crested Butte South. Upon impoundment by the Association or other County or State Animal Welfare agency, the owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility which accepts impounded animals. It is the duty of the Owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the Owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the Association, any other Owner, or the facility.

## **ARTICLE 7 ASSESSMENTS AND DUES**

Section 7.1 Purpose of Assessments and Dues. Such assessments and dues levied by the Association shall be used for the following:

7.1.1 The operation of the Association in the performance of its duties and obligations, including the allocation of assessments to Reserve Funds.

7.1.2 The maintenance, repair, improvement, and construction of all Common Areas.

7.1.3 The payment of any other common expenses, including insurance premiums and deductibles.

7.1.4 Any other purpose not stated above, that concerns the operations and maintenance related to the Association and is approved by the Board.

Section 7.2 Types of Assessments. The Board shall have the authority to levy assessments and dues as follows:

7.2.1 Regular Assessments. Assessments and dues are for the administration and operation of the Association.

7.2.2 Special Assessments. Special Assessments are for the construction, improvement, repair, replacement, or expansion of Common Area or property owned by the Association, a short fall in operating funds, or other special purposes pertaining to a specific or special matter including but not limited to insurance deductibles, expenses not anticipated by the Association, and other expenses necessary for the administration and operation of the Association to meet its obligations hereunder and pursuant to law.

Section 7.3 Determination of Regular Assessments and Dues. Within ninety (90) days after the preparation and adoption of a Common Expense budget, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. The budget proposed by the Board does not require approval by the Owners, and it will be deemed approved by the Owners in the absence of a veto at the duly noticed meeting by a majority of all Owners, whether or not a quorum is present. Annual Assessments and dues are based on and determined by the annual Common Expense budget as adopted and approved herein. The Board may amend a budget from time to time as needed for the efficient operation and administration of the Association.

7.3.1 If any Common Expense is caused by the misconduct of a Lot or Unit Owner, the Association may assess that expense exclusively against such Owner's Lot or Unit. Any Common Expense or portion thereof benefitting fewer than all the Lots or Units shall be assessed exclusively against the Lots or Units so benefitted.

Section 7.4 Determination of Special Assessments. The Association, acting through its Board, may from time to time determine and levy one or more Special Assessments to cover expenses as set forth in Article 7.2.2 above. All special assessments shall be allocated among all Lots and Units in the same manner as regular assessments and dues, unless such special assessment benefits substantially fewer than all Lots and Units, in which event such special assessment shall be levied against only the Lots and Units so benefitted. The Board shall have reasonable discretion in apportioning responsibility to pay such special assessments. The Board shall hold a public meeting at least sixty (60) days prior to issuing any special assessment.

Section 7.5 Assessment for Clustered Lots. Clustered lots shall be assessed at 1.5 times the regular assessment for a single Lot.

Section 7.6 Default Assessments. Any expense of the Association which is the obligation of an Owner, or which is incurred by the Association on behalf or because of an Owner, including interest, fines, charges, and reasonable attorneys' fees and costs, shall be a default assessment and shall become a lien against such Owner's Lot or Unit and may thereafter be foreclosed or otherwise collected as provided herein. The Association shall first follow the Association's Collection Policy on the same, if applicable.



Section 7.7 Reserve Fund. The Association shall establish a Reserve Fund for the maintenance, repair or replacement of the Common Areas or other assets owned by the Association, operating fund deficiencies, or as permitted by law. Such Reserve Fund shall be funded through payments of assessments and held by the Association in a restricted account and accounted for separately. The Association shall adopt a policy on the investment of reserve funds as required by the Act.

Section 7.8 Billing of Assessments. The Association shall invoice all Owners for the collection of annual assessments and dues by January 31 of each year, or at such other time as determined by the Board. Unless the Board determines otherwise, regular assessments shall be payable by the Owners by February 28 of each year. The billing for Special Assessments shall be determined by the Board of Directors. The due date shall be within 30 days of the date of invoice for the Special Assessment.

Section 7.9 Delinquent Assessments. Any regular assessment that is not paid by February 28 of each year, or at such other time as determined by the Board, shall be considered delinquent. Any special assessment that is not paid as determined by the Board shall be considered delinquent. Additionally:

7.9.1 Interest and Fees. The delinquent assessment shall bear interest and/or late fees as established by the Board of Directors. Late fees on the amount due shall be imposed for every month of delinquency to cover additional costs and expenses involved in collecting payment.

7.9.2 Attorneys' Fees and Costs. The Association shall be reimbursed for collection costs and/or reasonable attorneys' fees and costs incurred due to delinquency, without the necessity of commencing legal action.

7.9.3 Creation and Notice of Lien. The Association may file a Statement of Lien by recording a written statement with the Gunnison County Clerk and Recorder of Gunnison County, Colorado. Said statement will include the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent assessments. The Statement of Lien shall be signed and acknowledged by the President, Vice President or Secretary of the Association, and shall be sent by certified mail to the Owner of the Lot at the most current address the Association has in its records. Thirty days following the mailing of the Statement of Lien, the Association may proceed to foreclose its Statement of Lien in the same manner as provided for the foreclosure of mortgages under Colorado law. Such Statement of Lien shall secure all assessments accruing or assessed after the date of recording of such Statement of Lien until the same have been satisfied and released, together with interest, late fees, the recording fee, and the Association's attorneys' fees and costs incurred in the preparation, recording, or release of such Statement of Lien. The Statement of Lien shall be superior to all other liens and encumbrances on such Lot or Unit subject to the Act.

Section 7.10 Collection Policy. Any collection efforts by the Association for unpaid dues and assessments shall comply with the Act and the Association's Collection Policy as it may be amended from time to time by the Board of Directors.

Section 7.11 Effect of Non-Payment. In addition to the imposition of interest and late charges set forth in Section 7.9.1 above, the Association may bring action at law and/or in equity against any Owner personally obligated to pay such delinquent assessment and may also proceed to foreclose its lien against such Owner's Lot or Unit. An action at law or in equity by the Association or Owner against another Owner to recover a money judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the lien therefore. In any legal action for a money judgment, the Association may recover all late charges and interest to the date of payment, and all costs of collection and reasonable attorneys' fees and costs.

Section 7.12 Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot or Unit to pay all assessments and the Association lien for the same, all successors to the ownership of a Lot or Unit shall be jointly and severally liable with the prior Owner for all unpaid assessments, interest, costs, expenses, and attorneys' fees

against such Lot or Unit.

Section 7.13 No Waiver. The failure of the Association to fix the assessment for any assessment period shall not be deemed a waiver, modification to, or a release of the Owners from their obligation to pay the assessment.

## **ARTICLE 8 INSURANCE**

Section 8.1 Property Insurance. The Association shall procure and maintain property insurance on the Common Areas, roads, buildings, and facilities and related improvements in an amount equal to the maximum insurable replacement value thereof and pursuant to the Act, affording protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement.

Section 8.2 Commercial General Liability Insurance. The Association shall procure and maintain commercial general liability insurance for claims and liabilities arising in connection with the ownership, use, existence or management of the Common Areas, roads, facilities and other improvements and the Association, in an amount, if any, deemed sufficient in the discretion of the Board of Directors, insuring the Board of Directors, officers, Board-appointed committees, the Association, and their respective employees and agents in an amount to be determined by the Board. The insurance shall cover claims of one or more insured parties against other insured parties.

Section 8.3 Fidelity Insurance. The Association shall procure and maintain fidelity insurance to protect against dishonest acts on the part of its officers, directors, managers, employees and on the part of all others who handle or are responsible for the handling of funds belonging to or administered by the Association in an amount 1) not less than \$50,000.00, or 2) two months' current assessments and dues plus reserves as calculated from the current annual budget of the Association, whichever is greater.

Section 8.4 Directors and Officers Insurance. The Board shall procure and maintain a directors and officers liability policy to provide protection to directors and officers of the Association in the performance of their duties and obligations on behalf of the Association, as well as for Board appointed committees and their members. The coverage limits of said insurance shall be determined by the Board.

Section 8.5 Workers' Compensation Insurance. The Association shall carry workers' compensation insurance for its employees, as required by law.

Section 8.6 Common Expense. All such premiums and deductibles for insurance policies described above shall be a Common Expense of the Association.

Section 8.7 Other Insurance. The Association may carry other such insurance as the Board deems appropriate.

## **ARTICLE 9 TERM AND AMENDMENT OF COVENANTS**

Section 9.1 Term. The covenants and restrictions in these Amended and Restated Covenants and on the Plats, as each may be amended from time to time, shall run with and bind the Property in perpetuity, subject to the termination provision in the Act.

Section 9.2 Amendment. These Amended and Restated Covenants may be amended only by the affirmative vote or agreement of the owners to which more than 50% of the total votes in the Association are allocated. No amendment shall be effective until approved by Gunnison County, Colorado and duly executed, acknowledged, certified, and recorded in the office of the Clerk and Recorder of the County of Gunnison, Colorado. Any amendment, upon such recording, shall be for the benefit of and be binding on all Owners of Lots and Units within the Property.

## ARTICLE 10 ENFORCEMENT

Section 10.1 Violations Deemed A Nuisance. Every violation of any of the Association Documents or any term therein shall be deemed a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 10.2 Failure to Comply. The failure to comply with any of the Association Documents, including any term therein shall be grounds for an action to recover damages, for injunctive relief, for specific performance and/or any other remedy available at law or equity. All remedies shall be cumulative. Enforcement shall be subject to the Association policy on enforcement as it may be amended from time to time. In the event the Association imposes fines on an Owner for a violation, such imposition of fines shall be subject to a policy adopted by the Board of Directors, pursuant to C.R.S. § 38-33.3-209.5(2) as amended. Notice and an opportunity to be heard shall be in keeping with such policy.

Section 10.3 Who May Enforce. Any action to enforce any violation of any provision of the Amended and Restated Covenants may be brought as follows:

10.3.1 By the Association in the name of the Association or on behalf of the Owners; or

10.3.2 By an Owner of any Lot or Unit; or

10.3.3 By Gunnison County.

Section 10.4 Enforcement by Correction. The Association shall have the right to enforce all conditions of these Amended and Restated Covenants, and the Association Documents, relating to the appearance or maintenance of any Lot or Unit or of the Improvements thereon by going upon the Lot or Unit and correcting any violation. Any action taken shall be taken in the following manner:

10.4.1 Upon failure to correct any violation and subject to the policy on enforcement, as amended, the Association may cause the violation to be cured. Such correction may include, but not be limited to, repairing improvements, landscaping, and correcting the subject violations.

10.4.2 The correction of any violation made by the Association in accordance with this Article 10 shall be at the Owner's expense. The expense shall be deemed to include the costs actually incurred by the Association, including attorneys' fees and costs in correcting such violation. The Owner shall be personally obligated for all expenses incurred by the Association, and as security for such obligation, the Association shall have a lien for any amounts expended by the Association hereunder, which lien may be filed and enforced, as for a lien for unpaid assessments, in accordance with these Amended and Restated Covenants.

Section 10.5 Rights of Gunnison County, Colorado. The Board of County Commissioners of Gunnison County, Colorado (Gunnison County) is specifically granted the right to enforce these Amended and Restated Covenants and to bring any action as may be required for the violation hereof as required to protect Gunnison County or its residents. Gunnison County may enforce these Amended and Restated Covenants in its sole discretion, without assumption of any liability where or not such enforcement is exercised, and without obligation to exercise such enforcement in any circumstance. The ability of Gunnison County to enforce these Amended and Restated Covenants is non-exclusive and does not preclude any other authorized party from enforcing the same.

Section 10.6 No Waiver. The failure of the Board of Directors, the Association, or any Lot or Unit Owner to enforce or obtain compliance as to any violation shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

**ARTICLE 11  
PRINCIPLES OF INTERPRETATION**

Section 11.1 The Act. The provisions of these Amended and Restated Covenants shall be in addition and supplemental to the Act, and to all other provisions of applicable law.

Section 11.2 Severability. If any of the provisions of these Amended and Restated Covenants or any article, sentence, clause, phrase, word or section, or the application thereof in any circumstance is invalidated, such invalidity shall not affect the validity of the remainder of these Amended and Restated Covenants, and the application of any such provision, article, sentence, clause, phrase, word, or section in any other circumstances shall not be affected thereby.

Section 11.3 Context. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 11.4 Headings. The headings of any action or article are included only for the purpose of convenience and shall not affect the meaning or interpretation of these Amended and Restated Covenants.

Section 11.5 Controlling Document. In the event of a conflict between these Amended and Restated Covenants and any other document governing the Association, including the CAMP and Residential Guidelines, these Amended and Restated Covenants shall control.

Section 11.6 Attorneys' Fees. If any action is brought in a court of law as to the enforcement or interpretation or construction of these Amended and Restated Covenants or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

Section 11.7 Applicable Law, Venue and Jurisdiction. These Amended and Restated Covenants shall be governed by Colorado law. The proper venue and jurisdiction of any action pertaining to the interpretation or enforcement of these Amended and Restated Covenants shall be in Combined Courts of Gunnison County, Gunnison, Colorado.

Section 11.8 Binding Agreement. These Amended and Restated Covenants shall bind and inure to the benefit of the parties hereto and their respective representative, heirs, successors, and assigns.

**IN WITNESS WHEREOF,** this Amended and Restated Covenants and Restrictions Crested Butte South is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_ - President, Crested Butte South Property Owners Association, Inc.

STATE OF COLORADO )

) ss.

County of Gunnison )

The foregoing Amended and Restated Covenants and Restrictions for Crested Butte South was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, President, Crested Butte South Property Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.  
(SEAL)

\_\_\_\_\_  
Notary Public. My commission expires on: \_\_\_\_\_