

## Mt. Crested Butte Community Housing Guidelines – 2020

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## I. INTRODUCTION

### A. Program Purpose and Goals

The purpose of the Mt. Crested Butte Community Housing Program is to increase the supply of housing that is affordable to those who live and work in the area. Housing conditions are such that the majority of free-market housing opportunities are not affordable to low- to middle-income households. The purpose of the Community Housing Program is to assist in mitigating high housing costs, improve the attraction and retention of employees, reduce traffic congestion from commuting workers, address overcrowded living conditions, and foster a sense of community. Community Housing units are deed restricted assets the Town of Mt. Crested Butte will have available for years to come.

Goals and objectives for Community Housing are found in the Town's Master Plan. These Guidelines are intended to complement Chapter 22 of the Mt. Crested Butte Town Code. The Gunnison Valley Regional Housing Authority also publishes guidelines, which may shed further light on household eligibility and qualifications processes. Where conflicts exist, the Town Code prevails, followed by these guidelines, followed by Gunnison Valley Regional Housing Authority guidelines. Deed restrictions on specific properties may supersede these guidelines as well.

### B. Overview

The Community Housing Program seeks to preserve existing lower-cost housing units and to distribute Community Housing in new residential and commercial developments. The Program accomplishes these goals through an Inclusionary Zoning program that applies to all new residential development, an Employee Housing Mitigation program that applies to residential and commercial development, and incentives that may be used to mitigate the costs of producing required housing, including density bonuses, parking reductions, and consideration of height limits. Greater detail can be found in Chapter 22 in the Code of the Town of Mt. Crested Butte Colorado.

The Town of Mt. Crested Butte's housing programs have three categories:

Program	Category	Income Range
Employee Housing Mitigation	1	≤ 80% AMI
Inclusionary Zoning	2	81% - 120% AMI
Annexation/Other	3	120-200% AMI

Annexation/Other	4	No income limit
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Income ranges have been established based upon the Area Median Income for Gunnison County, which are published annually with adjustments for household size. Please refer to Appendix B and C for an example of maximum annual incomes and sale prices.

The Town of Mt. Crested Butte recognizes that Community housing is a valuable community resource that needs to remain available not only for current residents and employees but also for those who may come to live in Mt. Crested Butte in the future. For this reason, units that are constructed or otherwise provided through the Community Housing Program will be deed restricted or, through other methods such as financing covenants, regulated to remain affordable over time.

### C. Program Administration

The Town Council, taking into consideration comments from the Planning Commission, shall make all decisions concerning compliance with regulations through the development application process and construction. The Town Council delegates responsibility to the Housing Agency for day-to-day administration of Community Housing units once they have been completed and are available for rent, sale or resale.

### D. Organization of the Document

These Guidelines consist of five sections:

1. **DEVELOPMENT OF COMMUNITY HOUSING UNITS**, which instructs developers and builders on mechanisms for satisfying the Community Housing requirements associated with residential and commercial development.
2. **PURCHASING AND SELLING COMMUNITY HOUSING**, which provides guidance to persons interesting in applying for Community Housing, administrators of the program, realtors, mortgage officers and others interested in the sale and occupancy of Community Housing units.
3. **RENTING COMMUNITY HOUSING**, which provides guidance to persons interested renting Community Housing.
4. **FEE COLLECTION AND ADMINISTRATION**, which specifies how fees in lieu will be calculated, collected and managed.
5. **GRIEVANCE PROCEDURES**, which defines the procedures by which developers, applicants or occupants of Community Housing may dispute the administration of the requirements.



Definitions applicable to words and phrases used in these Guidelines are contained in Chapter 22 of the Code of the Town of Mt. Crested Butte.

Appendixes A, B, and C, are updated annually following publication of Median Family Incomes by the U.S. Department of Housing and Urban Development.

## II. DEVELOPMENT OF COMMUNITY HOUSING UNITS

An applicant for any new commercial or residential development permit or subdivision within Mt. Crested Butte is subject to the requirements for Community Housing, Chapter 22 of the Code of the Town of Mt. Crested Butte. These Guidelines complement Chapter 22 of the Code of the Town of Mt. Crested Butte; where any conflicts arise, Chapter 22 shall prevail. When applicable, the Community Housing requirements are imposed as a condition of approval for all commercial and residential development, including:

- Building permits;
- Planned Unit Developments; and,
- Subdivision permits.

### A. Minimum Requirements

- Commercial Employee Housing Mitigation: All commercial construction that results in a net increase of space must produce at least 15% of the housing units for which demand is generated by on-site, permanent employment; dwellings must be affordable as defined (see Appendix B and C) for households with incomes at or below 80% AMI (Category 1) and deed restricted (Appendix E).
- Accommodations Employee Housing Mitigation: Accommodations must produce at least 25% of the housing units for which demand is generated by on-site, permanent employment. Dwellings must be affordable as defined (see Appendix B and C) for households with incomes at or below 80% AMI (Category 1) and deed restricted (Appendix E).
- Residential Employee Housing Mitigation: All residential development must produce at least 30% of the housing units for which demand is generated by on-site, permanent employment; dwellings must be affordable for households with incomes at or below 80% AMI (Category 1) and deed restricted (Appendix E).

- **Inclusionary Zoning:** At least 15% of all residential units developed shall be deed restricted for households with incomes between 81% and 120% AMI (Category 2) and deed restricted (Appendix E).

## B. Community Housing Plan

Applicants for any residential development approval or residential building permit must comply with the Community Housing Requirements. In order to receive approval for a PUD, subdivision, or building permit an applicant must receive an approved, preliminary **determination of the acceptance of the developer's Community Housing Plan**. The Community Housing Plan shall be submitted to and approved by the Planning Commission for residential projects that require their approval. If the Town Council must act on the development request, the Town Council shall consider and approve or deny the Community Housing Plan. Residential development that is approved at the staff level is exempt from submitting a Community Housing Plan, but may be subject to employee mitigation and/or inclusionary zoning fee in lieu payment. Information to be included in the Community Housing Plan is provided in Appendix D.

No building permit shall be issued until the Community Housing Plan has been approved, and the agreed upon community housing provisions have been met.

Upon final project approval, the developer will provide the final average unit sizes and lot size to the zoning administrator.

A copy of the proposed HOA documents must be given to the Housing Agency for review at least 30 days prior to consideration of adoption of the development plan by the Town.

The Zoning Administrator shall certify approval, approval with conditions or denial of the Community Housing Plan. Such approval, approval with conditions or denial shall be based on compliance with Chapter 22 of the Code of the Town of Mt. Crested Butte and these Community Housing guidelines.

An approved Community Housing Plan will become part of the development agreements executed by the Town of Mt. Crested Butte for any approved project. Any amendment to the Community Housing Plan shall require the approval of the Planning Commission or Town Council, whichever approved the original plan.

## C. Calculation Formulas

The following formulas are to be used to calculate the number of units required under these Guidelines.

Commercial	Factor	Calculation
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<b>Size of Development</b>		<b>Leasable Square Feet</b>
Jobs generated	2.9 per 1,000 SF	2.9 x SF / 1,000
Employees generated	1.3 jobs per employee	Jobs generated / 1.3
Households generated	1.8 employee per unit	Employees generated / 1.8
Unit required	15% mitigation rate	Households generated x 15%
<b>Accommodations</b>		
<b>Size of Development</b>		<b># Accommodations Rooms</b>
Jobs generated	0.5/Room	# rooms x 0.5
Employees generated	1.3 jobs per employee unit	Jobs generated / 1.3
Households generated	1.8 employees per unit	Employees generated/1.8
Units required	25% Mitigation Rate	Households generated x 25%
<b>Residential</b>		
<b>Employee Housing Mitigation Requirements</b>		<b># Units</b>
<b>Size of Development</b>		
Employees generated	<u>Unit Size</u> ≤ 2000 SF: .12 FTE 2001 – 4,500 SF: .19 FTE 4,501 SF or more: .48 FTE	# units x approximate job generation rates
Households generated	1.8 employee per unit	Employees generated / 1.8
Units required	30% mitigation rate	Households generated x 30 %
<b>Inclusionary Zoning Requirements</b>		
Units required	15% inclusionary rate	# units x 15%

#### D. Development Compliance Methods

There are multiple ways by which each of the housing requirements can be satisfied. Options are provided to allow flexibility, maximize project-financing alternatives and provide opportunities to creatively achieve the Town's goals and objectives for housing. These compliance methods describe the types of units required and the ways by which units are to be produced.

1. Construction of unit(s) on the site where the development that generates the employee housing demand is proposed.

2. Construction of units off-site or acquisition of existing units, as a less preferred method, subject to the approval of the town council of the Town of Mt. Crested Butte and any other applicable provisions of this Code, provided that such land, site, or structure has not been previously restricted to employee or community housing. Such off-site units or existing units may be permitted where the town council of the Town of Mt. Crested Butte determines that the goals and objectives for community housing can be adequately addressed through off-site development or acquisition of existing units.
3. Payment of cash in-lieu in any case where the number of units required is a fraction and in other cases subject to the approval of the planning commission of the Town of Mt. Crested Butte in accordance with Article I, section 22-7.
4. A combination of options listed above in subsections (1), (2), and (3).

i. **Single-family/ Duplex Lots and Units**

*Inclusionary zoning* requires that developers of single-family, duplex, and multi-family lots provide that 15% of the units on the lots be developed with deed- restricted Community Housing for Category 2 eligible households. Inclusionary zoning is also required for development of new housing within existing subdivisions when the homes are greater than 2,700 square feet (excluding the first 600 square ft of garage space). Compliance will be through fees in lieu, as fractional units will be required.

Requirements will be imposed through the subdivision improvement agreement. There are four options for compliance:

1. Directly develop the lots with single-family detached units priced initially in targeted range and developed in accordance with these Guidelines.
2. Transfer ownership of lots to builders who, in accordance with the interim covenants filed on the lots, must develop them in accordance with these Guidelines.
3. At the Council's discretion, donate land equivalent to the Community Housing required to the Town of Mt. Crested Butte provided that there are no covenants or other restrictions that would limit the construction of Community Housing units on the land.
5. Provision of units on-site further the Community Housing Goals more effectively than fees in lieu, however, fees in lieu or a combination of on site and in lieu, may be approved on a case by case basis.



*Employee housing mitigation* requirements are also applicable to residential development, including accommodations, within new subdivisions or new PUD's, as well as units developed on existing single-family/duplex lots. Because some of these units create less than one job each (measured in FTE's), fractions of Community Housing units will be required. As such, payment of fees in-lieu will be required. Developers have the option to directly provide units for Category 1 households if multiple single-family dwellings are constructed by the same developer, or if multiple developers work cooperatively to satisfy the requirements, and the result is that at least one full unit is required.

When the entity subdividing the lots is different from the buyer/builder of the homes, an interim covenant (Appendix F) shall be recorded, which requires a fractional payment for Inclusionary Zoning to be made at time of lot sale, and payment for employee housing mitigation made at building permit.

ii. Multi-Family Projects

To meet inclusionary zoning requirements, a developer may:

1. Directly develop multi-family dwellings priced for sale to Category 2 households and developed in accordance with these Guidelines.
2. Donate land to the Town or Housing Authority on which at least as many units as required by the regulations can be developed, provided that the off-site parcel is acceptable to the Town Council.
3. Provide units on-site further the Community Housing Goals more effectively than fees in lieu, however, fees in lieu may be approved on a case by case basis.

To satisfy employee housing mitigation requirements, options include:

1. Directly developing multi-family dwellings for rent or sale to Category 1 households in accordance with these Guidelines.
2. Donating land to the Town on which at least as many units can be developed as required, provided that the off-site parcel is acceptable to the Town Council.
3. Provide units on-site further the Community Housing Goals more effectively than fees in lieu, however, fees in lieu may be approved on a case by case basis.

Fees must be paid for every fraction of a unit required. For example, if a mixed-use commercial/condominium project triggers a requirement that 3.25 Community Housing

units be provided, the developer could build three units but be required to pay a fee equivalent to 0.25 of the fee in-lieu amount as specified in these Guidelines.

### iii. Mixed-Use Projects

Developments that contain both commercial and residential uses (as defined in Mt. Crested Butte municipal codes) must satisfy the requirements for both. The square footage for each use must be designated and the requirements for that type of space applied. If the project includes space that may be developed initially for one use but may be converted to another type of use in the future, requirements are applied based on the initial use. Changes in use are exempt from further employee mitigation requirements.

## E. Location

Town of Mt. Crested Butte prefers to include Community Housing units within the proposed development that triggers the requirements (on-site housing). These units can be distributed throughout the proposed development if appropriate; however, to foster a sense of neighborhood, clustering of Community Housing units is acceptable. Off-site locations within Mt. Crested Butte may be approved if the developer is able to demonstrate that providing units on-site would compromise the proposed project or if providing Community Housing units in a different location would be of greater benefit to the future residents of this housing or the community in general.

The Town Council will consider if zoning, environmental or other development restrictions make it unfeasible to provide the required number of units on site or if there is greater benefit to be achieved by approving a request to provide the Community Housing units in a different location. For example, if a market rate development were proposed that was not located close to transit and employment, and units could be built that were in closer proximity to these services, off-site housing may be approved.

The following conditions will guide the consideration of a request for off-site satisfaction of the requirements:

- Disturbances from short-term vacation accommodations and commercial and incompatible civic uses that cannot feasibly be buffered from the Community Housing units.
- The number of Community Housing units to be built off-site is at least 15% greater than the number required. For example, if 10 units are required, 11.5 units would satisfy the condition.
- The units to be built off site exceed by at least 15% minimum and average size requirements, offer amenities not required but desired (like garages) and/or offer superior energy efficiency/utility savings.



- A proposed offsite location is more desirable for Community Housing units than the market rate development location creating the requirement because it is better served by transit or more convenient to employment centers.
- The off-site location is in proximity to other primary residences such that a sense of neighborhood is fostered.

Developing units off site does not alter requirements concerning when Community Housing units must be developed relative to the construction of the free-market housing or commercial development that triggered the requirement.

The Town Council will consider the use of existing units as satisfying the Community Housing requirements of a development if it finds that, in addition to the above, the use of existing units will satisfy the goals and objectives of the Community Housing Program.

#### F. Unit Types

It is a goal of the Town Council to serve many types of households. As such, a variety of unit types is encouraged. The type of unit and bedroom mix of Community Housing units shall generally be in proportion to the unit type and bedroom mix within the free-market development for which the inclusionary requirement is applicable. Developers are to consider the types and sizes of Community Housing units produced previously in order to provide variety and market responsiveness within the overall supply of Community Housing.

#### G. Size Requirements

A minimum square footage requirement has been established for these homes. Average sizes have also been established for each income category so that various unit types and sizes are produced. Proposals for Community Housing units must meet these minimum square footage requirements and averages but can exceed them, at the discretion of the developer. The specified minimums and averages are for gross residential floor area as defined by the Town's Code, Chapter 21, Article 1 but are not to include garages, carports or unfinished basement space.

Community Housing units developed in accordance with the Minimum Requirements of this Article shall comply with the following minimum and average size requirements by unit type.

**Minimum and Average Size by Unit Type and Category**

Multifamily	Size in Square Feet	
	Category 1 (EHM)	Category 2 (IZ)
Studio	400	450
1 Bedroom	550	600

2 Bedroom	800	850
3 Bedroom	950	1,000
Minimum Average	800	850
<b>Single-Family Detached</b>		
2 Bedroom	950	1,000
3 Bedroom	1,250	1,300
4 Bedroom	1,440	1,500
Minimum Average	1,250	1,300

### Quality and Size Standards

Community Housing units will address livability, health and safety concerns. Costly-to-operate amenities are strongly discouraged. Energy-efficient designs, appliances and heating systems are encouraged so that the long-term affordability of Community Housing is enhanced. Designs should take into consideration the lifestyle and needs of the types of households the units are intended to serve. The program administrator will review the plans for the units to assure that there are similarities between the market-rate and Community Housing units. The program administrator will inspect them prior to Certificate of Occupancy and recording of the Deed Restriction or other permanent affordability instrument to assure the completed units conform with the approved plans.

Proposed existing units shall be inspected and evaluated for suitability by the program administrator with respect to location of the unit within the Town, amount of homeowners and condominium association (HOA) fees less any utilities included therein, quality of construction, energy efficiency, livability, health and safety concerns, and similarity to the development's market rate units. The proposed existing unit's interior shall resemble a residence with an age of five years or less.

At a minimum, Community Housing Units must have:

- a kitchen that includes a sink, cooking range, and refrigerator,
- a bathroom that is internal to the unit and includes a sink, toilet, and shower or tub,
- bedroom space adequate for a queen-sized bed,
- a closet.

Seasonal Housing Units may also be considered for meeting community housing requirements. Detailed plans for provision of kitchens, bathrooms, bedrooms and common areas should be included in the Community Housing Plan when proposing seasonal employee housing.



## H. Sales Price Calculations

The maximum sales price of a unit shall be controlled by the deed restriction covering the unit executed by the initial purchaser upon closing of the initial purchase. Within each income category the average price of units sold must be at the mid-point between the minimum AMI within the category and the maximum AMI within the category.

The sales price calculations will be updated annually by the Housing Agency to reflect the most recent changes in area median income and mortgage rates.

Sales prices for Community Housing units will be established based on the Guidelines in effect at the time the building permit is issued. It is the responsibility of the developer to submit a copy of the approved building permit to the program administrator to receive a confirmation of the sales price based upon the published sales price at that time.

Appendix C provides an example of the price calculations, which are calculated using the following method:

- An assumption of 1.5 persons/bedroom in establishing maximum sales prices, except for studio units, which will use 1 person/unit.
- The Area Median Income for Gunnison County, as published by Colorado Housing and Finance Authority.
- 30% of a household's gross income going towards housing expense as the affordability level.
- An allowance for property tax, homeowner insurance and HOA dues will be included in the affordable price, at \$250/month for units targeting 120% of AMI and less and \$350/month for units targeting over 121% AMI
- The mortgage term is assumed to be 30 years.
- The interest rate will be the most recent ten-year Federal Home Loan Mortgage Corporation (FHLMC, aka Freddie Mac) year-end average rates plus 1.5%.
- A 90% loan-to-value ratio.

## I. Rent Guidelines

Developers of rental units must provide a strategy for maintaining the affordability of units over time as part of their Community Housing Plan (Appendix D). Common strategies for ensuring long term affordability of rents include a Land Use Restriction Agreement (LURA), Deed Restriction, ownership interest by GVRHA with Right of First Refusal, and/or voluntary rent restriction agreement with Town of Mt. Crested Butte.

Rental rates for affordable units will be capped at thirty percent (30%) of the AMI adjusted by bedroom count (assuming 1.5 people/bedroom, and 1 person for studios). The thirty percent (30%) must include utilities, per GVRHA's most current utility allowance schedule.

## J. Homeowners Associations

The developer must make reasonable efforts to minimize homeowners and condominium association dues for Community Housing units. HOA dues significantly impact affordability. If the initial HOA dues exceed the allowance in the standard sale calculation, the initial sale price shall to be reduced accordingly, to ensure the home is still affordable to a household at the proposed AMI level.

For 100% Community Housing developments, HOA dues shall have a per bedroom or per square foot allocation. The HOA budget shall be sufficient to adequately keep up with the maintenance and capital needs of the building(s). Town may require the developer to capitalize a reserve of up to one year of anticipated dues collected.

For mixed income developments, any documents creating a condominium or homeowners association shall state that the Community Housing units shall only be assessed monthly dues and other shared assessments based on whichever of the following two formulas results in the lower cost for the Community Housing unit:

1. The size of the Community Housing unit in square feet compared to the total size of the other market units in the development. For example, if a Community Housing unit is 60% of the size (in square feet) of all other housing offered in the development, then the homeowners association dues would be 60% of the amount charged for the market rate units.
2. The size of the lot on which the employee dwelling unit is located as compared to the total size of the other lots in the development. For example, if the average lot size of market rate housing is 10,000 square feet and the average size of lot for a Community Housing unit is 6,500 square feet, then the Community Housing unit would pay 65% of the HOA Dues on a monthly basis.

In order to comply with this provision, the developer must include these calculations in the Community Housing Plan (Appendix D).

## K. Incentives

The Town of Mt. Crested Butte is interested in promoting Community Housing in locations that are convenient to transit and employment and conducive to fostering a sense of neighborhood. The Town is also interested in supporting a viable business community and is interested in mitigating some of the impact to developers of Community Housing requirements. A developer interested in pursuing any of the following incentives must



indicate the type of incentive(s) that are being sought and the reason for the request as part of the Community Housing Plan.

PUD's that contain Community Housing units may be eligible at the Town Council's discretion for the following:

1. A reduction in parking requirements based on the availability of public transit, off-site parking and the potential to share parking spaces with commercial users. Parking usage patterns can be taken into account when determining the amount of parking required.
2. An increase in the square footage and/or unit density of both free-market and Community Housing.
3. An increase in the allowable height of buildings, provided that view corridors are not obstructed.
4. Other regulatory variances that assist in making the proposed project more economically feasible without compromising other community goals.

#### L. Deed Restriction Categories

All Community Housing units are required to have a deed restriction or covenant that will control the occupancy, price and re-sale price of owner-occupied units and the occupancy of renter-occupied units. The type of deed restriction applicable to development depends upon the income group targeted and the extent to which the development receives incentives in the form of variances, other concessions and direct subsidies. There are three types as follows:

Type	Income Category	Incentives/ Subsidies/ Requirement	Covenants/ Restrictions For Sale	Covenants/ Restrictions For Rent
1	1 (≤80% AMI)	<ul style="list-style-type: none"> <li>• Employee housing mitigation</li> <li>• Multiple incentives</li> <li>• Public subsidies (\$ and/or land)</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> <li>• Income eligibility</li> <li>• Initial sales price</li> <li>• Resale price</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> <li>• Income eligibility</li> </ul>
2	2 (81% - 120% AMI)	<ul style="list-style-type: none"> <li>• Inclusionary zoning</li> <li>• Public subsidies (\$ and/or land)</li> <li>• Moderate incentives</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> <li>• Income eligibility</li> <li>• Initial sales price</li> <li>• Resale price</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> <li>• Income eligibility</li> </ul>

3	3 (120-200%)	<ul style="list-style-type: none"> <li>• No requirement</li> <li>• Public subsidies (\$ and/or land)</li> <li>• Minimum incentives</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> <li>• Income eligibility</li> <li>• Initial sales price</li> <li>• Resale price</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> <li>• Income eligibility</li> </ul>
4	4 (no income test)	<ul style="list-style-type: none"> <li>• No requirement</li> <li>• Minimum incentives</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> </ul>	<ul style="list-style-type: none"> <li>• Residency/employment eligibility</li> </ul>

See Section II.H Sales Price Calculations and Section III.I Resale of Deed Restricted Properties for further detail on calculating home prices.

The developer shall use the current adopted deed restriction (Appendix E), or propose any changes to the current approved deed restriction with the submission of the Community Housing Plan (Appendix D). Prior to issuance of any building permit for a project, the Town Manager shall have an approved, executed and recorded deed restriction for the required commitment by the applicant. A copy of the approved Community Housing Plan shall be sent to the Housing Agency.

#### M. Schedule

For Community Housing units required by Employee Housing Mitigation regulations, developers are required to provide at least 80% of the required Community Housing units prior to, or concurrently with, the development that generates employee housing demand. The remaining units are to be built as the development achieves a performance level that is considered successful as agreed to by the Town Council and contained in the Community Housing Plan. The developer must propose within the Community Housing Plan the measurements that will be used to gauge performance, which may include sales tax generated, number of residential units sold, occupancy rates, or persons employed, and must also propose methods for guaranteeing compliance.

At least 80% of the Community Housing units required by Inclusionary Zoning shall be ready for occupancy prior to or concurrently with the date of the certificate of occupancy for 50% of the free market units being developed. The remaining Community Housing units must be completed prior to completion of 80% of the free-market units. If the free market units are to be developed in phases, then the Community Housing units can be developed in proportion to the phasing of the free market units, provided the schedule is approved in the Community Housing Plan.

For developments that require a change in ownership of lots between PUD or subdivision approval and the construction of required Community Housing units, an interim covenant shall be placed on the lots requiring units that are to be constructed as deed restricted.



Payments in lieu shall be made at time of building permit approval on a schedule consistent with production of market units and/or commercial space.

## N. Exemptions

Exemptions vary by regulation and are specifically addressed in Secs 22-23 and 22-44 of the Town Code

### iv. Inclusionary zoning

Inclusionary zoning requirements apply to new residential development, including single-family subdivisions and duplex dwellings and multi-family structures with the exception of:

- *Community housing.* Development of *community housing* as defined herein is exempt from the requirements of this article.
- 
- New single-family dwellings within existing subdivisions platted prior to the adoption of the regulation (January 31, 2003), where the finished residential square feet is less than 2,700 square feet (excluding the first 600 square feet of garage space).
- All residential developments for which agreements for the development of employee living spaces or community housing had been executed prior to the adoption of the ordinance enacting this article shall be exempt from the requirements of this article unless major alterations to approved PUDs as defined by section 21-510 are made. Additions and remodels. Additions to and remodels of existing single-family and duplex units.
- Accommodations
- Accessory dwellings. Attached or detached accessory dwelling units on single-family lots shall be exempt from the requirements of this article.

### v. Employee housing mitigation

Employee housing mitigation requirements, both commercial and residential, apply to all development with the exception of:

- Redevelopment or remodeling that does not increase the square footage of the development by more than five hundred (500) commercial square feet or five hundred (500) residential square feet The change from one use to another; Community housing units as defined and regulated by this Chapter 22 of the Town Code of the Town of Mt. Crested Butte .

All residential and commercial developments for which agreements for the development of employee living spaces or community housing had been executed prior to the adoption of the ordinance enacting this article shall be exempt from the requirements of this article unless major alterations to approved PUDs as defined by section 21-510 are made.

#### vi. Employee Housing Prior to 2003

Existing units provided under the Employee Housing requirements that were in place prior to adoption of the current regulations (January 31, 2003) could either:

- conform to the Community Housing regulations covered by these Guidelines; or,
- remain under the regulations in force at the time the space was initially provided (Chapter 21 Article XIII of the Town Code).

It is the desire of the Town Council to preserve previously designated Employee Living Spaces as affordable rental units. If the units are to be converted to owner occupancy, the sales price and association dues cannot exceed the limits herein. This provision is further addressed in Article XIII of Ch 21 of the Code of the Town of Mt. Crested Butte.

### O. FEE COLLECTION AND ADMINISTRATION

#### vii. Payment In-Lieu

Payment of in-lieu fees are allowed and are required when the calculation to determine the number of units to be produced to meet inclusionary zoning or employee housing mitigation requirements results in a partial unit. The amount of per unit in-lieu fees is to be updated annually with changes in the median income figures published by HUD and free-market housing costs. Calculations are provided in Appendix A and updated annually.

If the requirement is for less than one unit, the fraction required is to be applied to the per unit subsidy amount to determine the fee. For example, a project that results in 0.25 Community Housing units being required, the in-lieu payment would be 25% of the affordability gap for one unit.

For projects that result in multiple units including a fraction being required, the number of Community Housing units produced could be rounded upward with no credit given for the fraction or the developer could pay a fee in-lieu to satisfy the fractional requirement.

#### viii. Authorized Uses of Fees

The funds, and any interest accrued, shall be used only for the purpose of planning, subsidizing, developing, maintaining, and administering Community Housing. The Town may allocate these funds to an entity that agrees to acquire land or units that will be devoted to the Community Housing Program.



### III. RENTING, PURCHASING AND SELLING COMMUNITY HOUSING

This section covers administration of Community Housing units once they have been built. These Guidelines are intended to complement the individual Deed Restrictions recorded against Community Housing units. Where any conflicts arise, the Deed Restriction shall prevail. The Housing Agency is delegated the responsibility for program administration, including qualifying applicants, requiring that appropriate deed restrictions are filed, and ensuring compliance with the deed restrictions over time.

#### A. Deed Restrictions

In order to assure that there is an ongoing supply of housing that is affordable in Mt. Crested Butte, all Community Housing units will carry a resale restriction or other form of covenant that guides the future sales of these homes. The purchaser(s) of a Community Housing unit must sign a document acknowledging the purchaser's agreement to be bound by the recorded deed restriction. This document must be executed concurrently with the closing of the sale and will be recorded along with the deed restriction.

Future buyers will be bound by the terms of the deed restriction. They may, however, at their option, agree to a different form of deed restriction or covenant, that may be created by the Town of Mt. Crested Butte to meet the changing interests of the community and/or lender requirements.

Deed restrictions shall include a provision giving the Town of Mt. Crested Butte the first right of refusal in the case of foreclosure. If the Town does not exercise the option and an eligible buyer cannot be located within six months of the initial listing, exemptions will be reviewed on a case by case basis by the Housing Agency.

#### B. Eligibility

In order to be eligible to purchase or rent a dwelling under this program, the household must include at least one person who is:

- An employee or a self-employed person working in Gunnison County, with first priority given to persons who work in Mt. Crested Butte and second priority to persons working in the region north of Almont before persons employed in the areas south of Almont are considered;
- A retired person who has been a full-time employee in the area for a minimum of five years immediately prior to his or her retirement;
- A disabled person who had been an employee in Gunnison County a minimum of two years immediately prior to their disability; or,

- The spouse or dependent of any such qualified employee, retired person, or disabled person.

In addition, the applicant's household:

- Must earn 80% of its income in Gunnison County through wages, salaries or distribution of profits from business operations within Gunnison County and work a minimum of 30 hours/week on average annually unless headed by a person who meets the retired person eligibility requirements described in Sec. III (B);
- Cannot own any other residential dwelling; if applicant owns a residence, applicant must sell said residence to a non-related person or entity prior to closing on a Community Housing unit or prior to receiving a certificate of occupancy for a newly constructed unit on a Community Housing lot; and,
- May own not more than one vacant residential lot within Gunnison County.
- Household Assets are limited to three times Area Median Income for the actual household size, based the maximum Area Median Income for the proposed unit. Asset testing and valuation shall only be done at the time of application for qualification of a household to initially purchase or occupy a unit, or to enter a lottery to purchase a unit and at every subsequent sale or transfer of occupancy of the unit thereafter.

The applicant must satisfy the maximum program income limits published in these guidelines. It is the responsibility of the individual or household to demonstrate eligibility. A household seeking to purchase a Community Housing unit shall submit a completed application form with the documents as required by the Housing Agency.

Employment is the only eligibility factor that will be tested on an ongoing basis after a household has qualified for and purchased a deed restricted unit.

### C. Priorities

Priority for Community Housing will be made without regard to race, color, religion, creed, national origin/ancestry, disability/handicap, sex, sexual orientation (including transgender status), marital status and familial status (children under the age of 18 in the household). The primary intent of the Community Housing Program is to provide housing opportunities for households that live and work in the Mt. Crested Butte area.

Community Housing units produced under Inclusionary Zoning requirements or with public financing or land shall be equally available to all households that meet eligibility and priority criteria. Units produced under Employee Housing Mitigation requirements, however, can be preferentially sold or rented to employees holding jobs produced as a result of the



residential or commercial development that triggered the requirement to produce Community Housing.

#### D. Application and Certification

The Housing Agency is responsible for reviewing applications and determining eligibility to purchase deed restricted homes. From time to time the Housing Agency may operate a lottery for the sale of deed-restricted properties.

To qualify to enter the lottery at least one person in a household wanting to take title to a deed-restricted property must meet the requirements for employment and income and asset limitations as stated in these Guidelines or other governing document such as deed restriction, covenant, or land use regulatory agreement. The Housing Agency must qualify persons prior to entering a lottery and will assign the number of chances a household has in the lottery.

The Housing Agency will issue a Certification of Eligibility upon approval of the household to purchase. A title company or transaction attorney may not close a purchase transaction on a deed-restricted home without having a copy of the Certification in their possession.

#### E. Lottery Process

The Lottery Process shall be conducted by the Housing Agency.

1. All applicants wishing to enter in a lottery must have received a Certificate of Eligibility from the Housing Agency prior to a lottery being conducted.
2. For newly constructed properties, the lottery will be held as specified by the Housing Agency.
3. For resale properties that require a lottery, the lottery will be held at noon on the 5<sup>th</sup> business day after the listing period has expired.
4. At the time of the lottery, the Housing Agency staff, along with an un-affiliated third-party person shall be present to verify that all entries for each applicant have been placed in the lottery container.
5. The lottery container shall be solid and non-transparent, and entries will be sufficiently mixed.
6. The un-affiliated third-party person will then draw an entry out of the container, and the name shall be recorded on the Housing Agency lottery log.
7. This process will continue until entries have been drawn for each unit available and recorded in the same manner.
8. A specified number of alternates will be drawn and recorded.
9. For new construction lotteries, the first-drawn applicant will have no more than five (5) business days to execute a contract or reservation form. Should they fail to do so, the first alternate will be notified and will have no more than five (5) business days to execute a contract or reservation form, and should they fail to do so, then the next

alternate will be notified and will have no more than three (3) business days to do so. This process will continue until there is a contract or reservation executed.

Applicants determined to be ineligible to enter the lottery may request a hearing (see Section V. Grievance Procedures) within one week of being notified of ineligibility.

#### F. Lotteries Not Required

There are certain transfers of title on deed-restricted properties that do not require a lottery to be held:

1. Town of Mt. Crested Butte elects to purchase or retain ownership of the unit.
2. An alternative to the Lottery process has been approved as part of the Community Housing Plan.
3. Person(s) chosen by a current property owner to join them in title, as long as it is in joint tenancy.  
Existing owners of deed-restricted properties may elect to list their homes for sale through the Housing Agency, or request that the Housing Agency conduct a lottery.

#### ix. First Come, First-served Process

When the lottery process is not required, particularly in the event of resales on deed-restricted properties, the following process will be followed.

1. An owner must contact the Housing Agency in writing of their intent to sell the property; the Housing Agency will first inspect the property to determine if it meets the Minimum Standards for Full Resale Value as defined in these Guidelines and then will calculate the Maximum Resale Price according to these Guidelines or the recorded deed restriction, whichever has precedence.
2. The seller may choose to list their property for sale with any licensed real estate agent of their choice unless the deed restriction requires them to list it with the Housing Agency.
3. The Housing Agency will charge not more than a 2% transaction fee for its services as a transaction broker.
4. Unless the deed restriction provides otherwise, no more than a 2% real estate commission may be added to the maximum resale price calculation.
5. All offers must be accompanied by a Certificate of Eligibility from the Housing Agency.
6. The seller must provide a copy of the executed contract to the Housing Agency within three (3) business days of acceptance of the contract.

Applicants determined to be ineligible to enter into a contract with a seller may request a hearing (see Section V. Grievance Procedures) within one week after receiving notice of ineligibility.



Prior to recordation of a deed transferring title to a deed-restricted property, a purchaser who is a qualified owner or has been approved as a non-qualified owner shall execute the Housing Agency's Acknowledgement of Restrictive Covenant/Deed Restriction and a Notice of Lien. If there is no blanket deed restriction recorded for a neighborhood a purchaser may also be required to execute a deed restriction. The Notice of Lien and any deed restriction requiring execution will be recorded in the records of the Clerk and Recorder of Gunnison County.

#### G. MAINTAINING ELIGIBILITY AND COMPLIANCE FOR OWNERSHIP OF COMMUNITY HOUSING

There is no requirement to meet income or asset criteria for persons who have already purchased and own an community housing unit or are a qualified lessee, however, occupancy and employment criteria along with non-ownership of other improved real estate must continue to be met throughout the tenancy of the household. The Housing Agency will require all owners to complete and sign a deed-monitoring affidavit on an annual basis. Responses to the affidavit may require additional documentation be provided to verify compliance.

#### H. REALES OF DEED-RESTRICTED PROPERTIES

##### x. Resale

No deed-restricted property shall be transferred subsequent to the original purchase, except upon full compliance with the procedures set forth in these Guidelines. In the event a property is sold and/or conveyed without compliance with these Guidelines, such sale or transfer shall be wholly null and void and shall confer no title whatsoever to the purported buyer.

##### xi. Notice of Intent

When an owner intends to sell or otherwise transfer title to a deed-restricted property, the owner shall submit to the Housing Agency a Notice of Intent to sell or transfer title. The property may not be transferred to any person, entity or entities not qualified by the Housing Agency as a qualified owner or approved as a non-qualified owner, nor for consideration that exceeds the Maximum Resale Price as determined by the Housing Agency pursuant to the provisions of these Guidelines.

##### xii. Maximum Resale Price

The Maximum Resale Price may not exceed the sum of: (i) the Purchase Price paid by the owner for the Property, plus: (ii) an increase of two percent (2%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month, but not compounded annually) from the date of the owner's purchase of the Property to the date of the owner's Notice of

Intent to sell the Property; plus (iii) an amount equal to any special improvement district assessments, if applicable and not transferable, paid by the owner during the owner's ownership of the Parcel; plus (iv) the cost of Permitted Capital Improvements from the date made to the property by the owner as set forth in these Guidelines; minus (v) any amounts associated with bringing the property up to the Minimum Standards for Full Resale Value as set forth in these Guidelines.

#### xiii. Property Condition Upon Sale

Pursuant to these Guidelines, each owner shall be responsible for ensuring that at transfer of title the property is clean, appliances are in working order, and there are no health or safety hazards on the property. Prior to any sale of a property, the Housing Agency shall conduct an inspection and provide the owner a list of the items that do not meet Minimum Standards for Full Resale Value. As may be necessary from time to time, the Housing Agency is authorized to take necessary actions and incur necessary expenses to bring the property into saleable condition. Such actions and expenses include, but are not limited to, cleaning the property and making necessary repairs to or replacements of appliances and/or property fixtures, such as windows, doors, cabinets, countertops, carpets, flooring and lighting fixtures, and/or correcting any health or safety violations on the property. Expenses incurred by the Housing Agency to bring the property into a saleable condition shall be itemized and documented by the Housing Agency and deducted from the owner's proceeds at closing of the transfer of the property.

#### xiv. Restriction on Additional Financial Gain

No owner shall permit any prospective purchaser to assume any or all of the owner's closing costs. No owner shall accept anything of value from a prospective purchaser except for the Maximum Resale Price before, during or after closing of the transfer of the property.

#### xv. No Guarantee of Resale Price

Nothing in these Guidelines represents or guarantees that any property will be re-sold at an amount equal to the Maximum Resale Price. Depending upon conditions affecting the real estate market and the property itself, a property may be re-sold for less than the Maximum Resale Price.

### I. Co-ownership and Co-Signing

Co-signers (persons providing security or assuming partial responsibility for a purchase money loan) may be approved for joint ownership of the unit but shall not occupy the unit unless qualified by the Housing Agency. All co-signers must execute the Acknowledgement of Restrictive Covenant/Deed Restriction prior to purchase of a unit. If title to a unit transfers solely to a non-qualified co-singer, the unit must be placed for sale according to the



terms of the deed restriction and these Guidelines.

## J. Occupancy

Unless otherwise specified in the Deed Restriction, the purchaser of a Community Housing unit must occupy the unit as his or her primary residence. The owner shall be deemed to have ceased to use the unit as his or her primary residence by accepting permanent employment outside of Gunnison County, or residing in the unit for fewer than nine (9) months out of any twelve (12) month period.

## K. Improvements to Community Housing Units

### xvi. Permitted Capital Improvements

At times owners of deed restricted properties may want to improve their home and recoup their expense for the improvement. Because one of the primary objectives in providing deed restricted homes in a community is to insure there is a supply of affordable homes, any improvements that increase the resale price of deed restricted properties relative to the original income target is a concern. Therefore, Permitted Capital Improvements should be clearly defined and restricted sufficiently to maintain affordable price points over time while still protecting the quality of the housing stock.

It should be noted that Permitted Capital Improvements (PCIs) do not include the regular repair, maintenance, replacement of fixtures and finishes, or the upkeep of a property. Those on-going owner obligations are important to the quality of the deed restricted housing stock and are addressed in the Maintenance section of these Guidelines. Upgrades to finishes may be added to the resale price not to exceed 1% of the original purchase price every five years.

The amount for Permitted Capital Improvements shall not exceed ten per cent (10%) of the original purchase price for an initial ten (10) year period. For every ten (10) year period from the date of the original purchase, another ten (10) per cent of the purchase price may be added to the value of the property for Permitted Capital Improvements. In calculating such amount, only those Permitted Capital Improvements identified in these Guidelines shall qualify for inclusion. When calculating the value of PCIs an owner must provide clear, legible, written proof of costs incurred. The cost of labor will not be included in the value added into the Maximum Resale Value.

When PCIs are allowed, only those that improve unfinished interior spaces or add new system(s) that make the property more affordable for the owner/occupant will be included in the Maximum Resale Value calculation. Luxury or cosmetic upgrades, exterior

improvements (landscaping, decks and patios), or replacement of existing finishes, appliances, or fixtures will not be included as PCIs in the Maximum Resale Value.

Appreciation of PCIs will start from the first of the month when they were completed.

An owner must provide evidence of obtaining a building permit and Letter of Completion when seeking to add the value of the PCIs to the Maximum Resale Price.

When PCIs are not allowed, properties will be fully finished with adequate storage and/or garages at the time of initial sale.

#### *Permitted Capital Improvements*

- Modifications or improvements to accommodate persons with disabilities as defined in the Americans with Disabilities Act of 1990;
- Modifications or improvements to assist seniors to age in place;
- Improvements for health and safety protection devices (including radon);
- Improvements to finish initially included unfinished interior space;
- Improvements that upgrade the durability and sustainability of the asset, such as higher quality flooring, cabinets, or countertops;
- Modifications or improvements to increase energy efficiency (including solar panels) and/or water conservation on a case-by-case basis. To be accepted, energy efficiency upgrades shall be fully functional and add value to the community housing unit. Solar systems shall align with contemporary solar system standards.

#### *Non-Permitted Capital Improvements*

- Jacuzzis, sauna, steam showers and other similar items;
- Upgrades or the addition of decorative items including lights, window coverings, paint and other similar items;
- Upgrade or replacement of appliances, plumbing and mechanical systems;
- Outdoor landscaping including the addition of decks, porches, patios, gazebos, fencing, irrigation systems and other similar fixtures;
- Cost of tools or rental equipment.

## **L. INSURANCE**

Deed-restricted housing means that the cost to build homes is often greater than the purchase price. Typically, homeowners insure their homes for 80% of what the value of the home is, assuming 20% of the value is in the land.

When properties are subsidized, owners must obtain full replacement cost coverage which will repair or replace the home; in the event of damage or destruction, insuring a deed-



restricted home to market value could result in a gap between what the insurance will pay and what it actually costs to repair or replace the home.

Any damage or destruction must be corrected or repaired before a resale of the property will be allowed.

## IV. Renting Community Housing

### M. Renting Community Housing

Rental units will be managed by developers, property owners or private management companies hired for the task. Regardless of who manages the units, it will be their responsibility to ensure that they are rented to eligible households by obtaining a copy of the household eligibility certification provided by Housing Agency. Managers are required to ensure that tenants are re-qualified on an annual basis.

### N. Rental by Qualified Owner

Exemptions for the rental of a property that requires owner-occupancy as a principal residence may be granted by the Housing Agency under certain circumstances. An owner must apply for an exemption through the Housing Agency and provide supporting documentation and the proposed lessee must be approved as a qualified lessee prior to taking occupancy.

The rent that may be charged shall not exceed the owner's monthly mortgage, plus homeowners association dues, plus utilities remaining in the owner's name, plus taxes and insurance not included in the monthly mortgage amount and land lease costs, if any. An additional \$100 per month may be included. The owner shall rent to a household that meets the eligibility and income provisions of the Community Housing guidelines. The tenant must complete an application form to certify eligibility and agree to abide by the homeowner's association covenants, rules and regulations for the unit. Both the owner and tenant must sign a statement indicating that the covenants have been provided to the tenant and the tenant has received these covenants for his/her review. In addition, a copy of the lease agreement executed between the owner and tenant shall be provided to the program administrator.

Should a qualified lessee that is the head of the household become deceased, the remaining household members shall be permitted to occupy the property until the original lease termination date, subject to the property owner's approval. If a remaining household member becomes a qualified lessee during the original term of the lease, they will be allowed to renew the lease, subject to the property owner's approval.

Roommates are permitted under these Guidelines. Roommates in owner-occupied properties do not have to meet eligibility requirements but at no time may an owner rent out rooms for lease terms of less than 6 months.

#### O. Leave of Absence

If an owner must leave Gunnison County for a limited period of time and desires to rent the unit during their absence, a leave of absence may be granted by the Housing Agency for up to one year. The owner must submit a request to rent the unit at least 30 days prior to when the owner plans to leave the area. The request shall include the reason(s) for the leave of absence, expected duration and the intent of the owner to rent the unit. A leave of absence for more than one year may be approved; however, such leave of absence may not extend for longer than two years. Rent limitations specified in Section IV. N. shall apply.

#### P. Rental by Qualified Business

Gunnison County Employer is defined as: A business, nonprofit, government agency or essential service provider whose business address is located within Gunnison County, employs persons who reside within Gunnison County, has fulltime employees who perform work in Gunnison County, and whose business taxes are paid in Gunnison County.

#### xvii. Qualified Occupants of Business Rentals

- Qualified Occupants of a unit owned by a Gunnison County Employer must make 80% of their income working in Gunnison County and work a minimum of 30 hours a week.
- Leases to Qualified Occupants must be a “long-term rental” as defined as a minimum of 6 months lease term.
- Qualified Occupants working for a Gunnison County Employer shall have first priority on renting the unit.
- In the event that the Gunnison County Employer does not have an employee who is a Qualified Occupant, the unit may be leased to another qualified renter making less than 200% AMI, provided such lease is for no less than six months. Under no circumstances, will a Gunnison County Employer rent to a Qualified Occupant who is not an employee for a period of more than 2 years. If the Gunnison County employer does not have an employee to occupy the unit for a



continuous duration of 2 years, the unit will be listed for sale per the Resale procedures below.

- A Qualified Occupant will not own any developed residential property in Gunnison County.
- An owner of a Gunnison County Business owning more than 25% of the business interests in the business entity will not occupy the unit.
- If a potential occupant or occupant is determined to be unqualified under these Guidelines or the Master Deed Restriction, the Gunnison County Employer may appeal this determination per the Grievance Procedures. The Employer has the burden of identifying why the potential occupant should be granted a variance and any other special circumstances for allowing the occupant to rent in the unit.

xviii. Compliance and verification of rental qualifications

- From time to time, the Town or Housing Agency may request that the Gunnison County Employer owning the unit provide verification that occupants of the unit are Qualified Occupants. The Employer and occupants must respond within 30 days of this request and provide sufficient evidence that the unit is being rented to a Qualified Occupant. This evidence could include but is not limited to pay stubs of occupants, leases, or tax returns.
- Any unit not occupied for a duration of over three months will be deemed to be not compliant with these Guidelines. Vacancies of over three months caused by unforeseen circumstances must be approved by the Town or Housing Agency in writing.
- Any Gunnison County Employer owning a unit who is found in violation of these Guidelines or the Deed Restriction must come into compliance within 30 days of the notice of violation. Continued non-compliance will result in forced resale of the unit to a Qualified Buyer as defined in Guidelines and the Deed Restriction. An Employer may file an appeal of the notice of violation within 10 business days.
- Vacation Rentals or Short-Term Rentals as defined by the Town Code rentals are prohibited.

xix. Purchase and Resale of Employer Owned Units

- When Gunnison County Employers purchase units, title shall be held by the business, a limited liability corporation, an individual, or other

- entity approved by the Town.
- Any Gunnison County Employer wishing to sell the unit must notify the Town or its agent in writing regarding intent to sell. The maximum resale price will be calculated per the Deed Restriction and these Guidelines. A lottery for the unit will be held as outlined in the Guidelines. The unit may be sold to either another Gunnison County Employer or Qualified Buyer making less than 200% AMI.
  - In the event a Gunnison County Employer sells or transfers ownership of its business, the unit may be transferred as part of the transaction as an asset of the business. The sale or transfer of the unit's ownership must be approved by the Town. In no event may the unit be sold or valued for more than its maximum sales price.

## V. GRIEVANCE PROCEDURES

A grievance is any dispute that a unit owner, renter, purchaser or developer may have with the Town of Mt. Crested Butte or the program's designated administrator, the Housing Agency, with respect to action or failure to act in accordance with the rights, duties, welfare or status of these persons or entities.

### *Discrimination*

The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing owner/tenant or prospective owner/tenant concerns and to ensure fair treatment of owners/tenants in the event that an action or inaction by the Town or Housing Agency is perceived to adversely affect the owner/tenant of a housing project.

Protected classes in housing include race, color, religion, creed, national origin/ancestry, disability/handicap, sex, sexual orientation (including transgender status), marital status and familial status (children under the age of 18 in the household).

Any owner/tenant or prospective owner/tenant seeking to purchase or occupy housing administered by the GVRHA who believes he or she is being discriminated against because of a protected class may file a complaint in person with, or by mail to the U.S. Department of Agriculture's Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250-9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410, and to the Colorado Department of Regulatory Agencies Civil Rights Division, 1560 Broadway, Suite 110, Denver, CO 80202, and to the GVRHA Board of Directors at 202 E. Georgia Avenue, Gunnison, CO 81230.



xx. Development

1. Upon final approval or denial of the Community Housing Plan an appeal may be made in accordance with the provisions of Chapter 22, Article 1 of the Code of the Town of Mt. Crested Butte.
2. A written appeal or grievance that relates to program administration shall be submitted to the program administrator, with a copy provided to the Town of Mt. Crested Butte Town Manager. The grievance or appeal must state the grounds upon which the grievance/appeal is made and indicate the course of action that the developer believes should be taken to resolve the issue.

The Town staff will attempt to resolve the issue by discussing the concerns with the developer or their representative. Following the resolution of the issue, Town staff will provide a brief to the Town of Mt. Crested Butte that describes the nature of the grievance or appeal, the factors considered in addressing the issue(s) and the resolution of the issue.

xxi. Buyers/Sellers/Renters

*Grievance Process*

Any owner/tenant or prospective owner/tenant seeking to purchase or occupy Community Housing who believes he or she is otherwise aggrieved may request an alternative dispute resolution process through the Housing Agency. The Housing Agency will use a voluntary mediation process where the owner/tenant or prospective owner/tenant agrees that any and all claims, controversies, breaches or disputes arising from or related to an action or inaction of the Housing Agency is subject to a requirement to mediate prior to filing any lawsuit or filing for arbitration.

The mediation shall take place in the County of Gunnison, State of Colorado utilizing a mediator provided by The Office of Dispute Resolution of the State of Colorado's Judicial Branch ("ODR"). The mediation proceedings will be conducted in compliance with the Colorado Dispute Resolution Act C.R.S. 13-22-301 et seq in effect at the time a demand for mediation is made. The Parties must agree that there is no requirement to actually reach a settlement to the dispute in mediation, but agree that if a settlement is reached during mediation it shall be reduced to writing and shall be binding upon the Parties, their heirs, executors, administrators, successors and assigns.

*Exemption Request*

A request for an exemption to the strict application of these Guidelines or any terms or

conditions of an applicable deed restriction may be made to the Housing Agency. The Housing Agency may grant an exemption if an extreme hardship can be shown, and the variance from the strict application of the Guidelines is consistent with the deed restriction intent. In order to request an exemption, a letter must be submitted to the Housing Agency stating the request, with documentation regarding the unusual hardship.

The Housing Agency may grant a request for an exemption to these Guidelines, with or without conditions. If the request is for an exemption to the terms and conditions of the deed restriction, the Housing Agency will forward the request and supporting documentation to the Town of Mt. Crested Butte, with a recommendation on approving, denying, or approving with conditions. The Town of Mt. Crested Butte Town Manager will be responsible for final decision.



## APPENDIX A - CALUCLATION OF FEE IN LIEU

### Calculation Fees in Lieu 2020

	Category 1 (<80% AMI)	Category 2 (AMI 80-120%)
Income Range (2-person household)*	\$0-\$48,320	\$48,321--\$72,480
Target Income Point**	36,240	60,400
Affordable Monthly Housing Payment (30% of income)/12mos.	906	1,510
Property Taxes (20% of payment)	181	302
Mortgage Payment	725	1,208
Max Mortgage Amt***	142,200	237,000
Affordable Purchase Price	149,700	249,500
Average Sq Ft of Units per Guidelines****	800	1,100
Cost Per Square Foot (Assessor Data 2018-19)	392	392
Cost per Unit (size X cost per sf)	313,600	431,200
Affordability Gap (Payment In Lieu subsidy)	163,900	181,700

\*[www.chfa.com](http://www.chfa.com) 2020 Rent Income Limits 2 Persons Gunnison Cty

\*\*[https://www.chfainfo.com/arh/asset/Documents/2020\\_income\\_limits.pdf](https://www.chfainfo.com/arh/asset/Documents/2020_income_limits.pdf)

\*\* 60% Income Limits chfa cat 1 and 100% income limits chfa cat 2

\*\*\*[Bankrate.com](http://Bankrate.com) Mortgage Calculator

Assuming 5% down, 5% interest and 30 year fixed

\*\*\*\* Taken from Town of MTCB Community Housing Guidelines (Constant)

## APPENDIX B – HOUSING CATEGORIES AND INCOMES

### 2020 Gunnison County Area Median Income

Household size	Category 1		Category 2		Category 3	
	<u>51%</u>	<u>80%</u>	<u>81%</u>	<u>120%</u>	<u>121%</u>	<u>160%</u>
<b>1 person</b>	\$26,928	\$42,240	\$42,768	\$63,360	\$63,888	\$84,480
<b>1.5 person</b>	\$28,866	\$45,280	\$45,846	\$67,920	\$68,486	\$90,560
<b>2 person</b>	\$30,804	\$48,320	\$48,924	\$72,480	\$73,084	\$96,640
<b>3 person</b>	\$34,629	\$54,320	\$54,999	\$81,480	\$82,159	\$108,640
<b>4 person</b>	\$38,454	\$60,320	\$61,074	\$90,480	\$91,234	\$120,640
<b>4.5 person</b>	\$40,010	\$62,760	\$63,545	\$94,140	\$94,925	\$125,520
<b>5 person</b>	\$41,565	\$65,200	\$66,015	\$97,800	\$98,615	\$130,400
<b>6 person</b>	\$44,625	\$70,000	\$70,875	\$105,000	\$105,875	\$140,000
<b>7 person</b>	\$47,685	\$74,800	\$75,735	\$112,200	\$113,135	\$149,600
<b>8 person</b>	\$50,796	\$79,680	\$80,676	\$119,520	\$120,516	\$159,360

*Effective 3/31/2020, subject to change without notice.*



## APPENDIX C – RENT AND SALE PRICES

### 2020 MONTHLY RENTAL RATES

(including utilities)

	<b>Category 1</b>		<b>Category 2</b>		<b>Category 3</b>	
	<b><u>51%</u></b>	<b><u>80%</u></b>	<b><u>81%</u></b>	<b><u>120%</u></b>	<b><u>121%</u></b>	<b><u>160%</u></b>
<b>Studio (1 person)</b>	\$673	\$1,056	\$1,069	\$1,584	\$1,597	\$2,112
<b>1 bed (1.5 person)</b>	\$722	\$1,132	\$1,146	\$1,698	\$1,712	\$2,264
<b>2 bed (3 person)</b>	\$770	\$1,358	\$1,375	\$2,037	\$2,054	\$2,716
<b>3 bed (4.5 person)</b>	\$1,000	\$1,569	\$1,589	\$2,354	\$2,373	\$3,138
<b>4 bed (6 person)</b>	\$961	\$1,750	\$1,772	\$2,625	\$2,647	\$3,500

### 2020 HOME SALE PRICES

	<b>Category 1</b>		<b>Category 2</b>		<b>Category 3</b>	
	<b><u>51%</u></b>	<b><u>80%</u></b>	<b><u>81%</u></b>	<b><u>120%</u></b>	<b><u>121%</u></b>	<b><u>160%</u></b>
<b>Studio (1 person)</b>	\$82,634	\$157,379	\$159,956	\$240,950	\$243,527	\$344,047
<b>1 bed (1.5 person)</b>	\$92,094	\$172,219	\$174,981	\$263,209	\$265,972	\$373,726
<b>2 bed (3 person)</b>	\$101,554	\$216,347	\$219,662	\$329,402	\$332,717	\$461,983
<b>3 bed (4.5 person)</b>	\$146,491	\$257,547	\$261,376	\$391,202	\$395,031	\$544,382
<b>4 bed (6 person)</b>	\$138,898	\$292,889	\$297,160	\$444,214	\$448,486	\$615,066

*Effective 3/31/2020, subject to change without notice.*

## APPENDIX D - COMMUNITY HOUSING PLAN CHECKLIST

The Community Housing Plan shall be submitted to and approved by the Town of Mt. Crested Butte prior to, or concurrent with, application to the Town of Mt. Crested Butte for the free-market portion of the initial development plan. For developments that only require planning commission approval, the planning commission shall have responsibility for approving or denying the community housing plan. For developments that require town council approval, the town council shall approve or deny the community housing plan. Any amendment to the community housing plan shall require the approval of the planning commission or town council, whichever body approved the initial plan.

At a minimum the Approved Community Housing Plan shall include the following:

- A site plan and building floor plans (if applicable), illustrating the total number of units proposed (free market and Community Housing), their location, the number of bedrooms and size (s.f.) of each unit.
- The form of compliance (on-site, off-site, land dedication, cash in lieu).
- The calculation of and method by which housing is to be provided.
- Proposed unit type, size, average size of finished square footage, location, targeted income category and initial sales price or rent for each Community Housing unit;
- The rental/sale mix of the development, and the categories to which each unit is proposed to be restricted. A tabulation of this information shall also be submitted.
- Detail on overall project phasing and timing of community housing development and metrics that will be used to coordinate overall site development with community housing triggers (number of residential units built, jobs, sales tax revenue) to ensure that community housing is completed prior to completion of market rate elements.
- Total square footage (*commercial square feet*) for commercial space with type of anticipated use described.
- Average lot size of proposed Community Housing units and average lot size of market rate housing units.
- Terms for the subdivision improvement agreement that would provide financing to ensure that any Community Housing units scheduled for future development ultimately get developed.
- Plan for preserving the affordability over time;
- Description of intended HOA structure and anticipated HOA dues schedule with calculation per Secs. 22-5 and 18-462 of the Code of the Town of Mt Crested Butte, Colorado.
- Concept for marketing to households that may be eligible for the Community Housing units.
- Description of the incentives requested.
- Computation that clearly delineates how the average cost of the Community Housing units was derived to meet the requirement that the average sales price is at the midpoint affordable to eligible households in the categories targeted; and,
- Request for off-site satisfaction of Community Housing Requirements, if applicable, that clearly and convincingly demonstrates that providing units off-site will further



the goals of the Town of Mt. Crested Butte to provide Community Housing for employees and/or current residents.

APPROVED

BY TOWN COUNCIL

TOWN OF MT. CRESTED BUTTE, COLORADO

A HOME RULE MUNICIPALITY

Janet R. Farmer 8/4/2020  
Mayor

## APPENDIX E - MT. CRESTED BUTTE DEED RESTRICTION TEMPLATE

### **TEMPLATE AFFORDABLE HOUSING DEED RESTRICTION**

THIS AFFORDABLE HOUSING DEED RESTRICTION ("Deed Restriction") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the Town of Mt. Crested Butte, Colorado, a Colorado home rule municipality, (the "Beneficiary").

1. Property Subject to Deed Restriction. The following real property ("Real Property") is hereby made subject to these Affordable Housing Restrictions ("Restrictions"):

**[INSERT LEGAL DESCRIPTION]**

2. Qualified Individuals.

2.1 The use and occupancy of the Units shall be exclusively limited to housing for natural persons where at least one member of the household meets the definition of a "Qualified Individual", as defined in section 2.2 below. The Gunnison Valley Regional Housing Authority, or any comparable governmental agency selected by The Town of Mt. Crested Butte, Colorado responsible for the administration of affordable housing ("Housing Agency") shall determine which individuals meet the definition of Qualified Individuals and shall enforce the terms and conditions of these Affordable Housing Restrictions.

2.2 A Qualified Individual is a natural person who meets all of the following qualifications:

- 2.2.1 Is employed in Gunnison County, Colorado, works at least 30 hours per week on average, annually, and earns at least eighty percent (80%) of their adjusted total income from a business, government, or organization operating in and/or serving the County and its residents; and
- 2.2.2 Will occupy the Unit as his or her primary residence. The occupant shall be deemed to have ceased to use the Unit as his or her primary residence by accepting permanent employment outside of Gunnison County, or residing in the Unit for fewer than nine (9) months out of any twelve (12) months.
- 2.2.3 Has a combined household income level set forth below which is within the range of percentages of the median household income for Gunnison County as published annually by the Department of Housing and Urban Development, as adjusted for household size ("AMI"), for the Unit which the person desires to be considered eligible for:

Category 1	< 80% AMI
Category 2	81% to 120% AMI
Category 3	121% to 160% AMI



2.2.7 Qualified individuals are not permitted to own other improved residential real estate in or out of Gunnison County. Improved residential real estate includes stick-built homes and mobile and manufactured housing on a permanent foundation or with utilities. If such property is owned, the purchaser must list for sale, the residential real estate or mobile home prior to closing on the Unit and must still meet the asset/income limitations as set forth in 2.2 herein. Upon sale, a copy of the recorded warranty deed must be provided to the Housing Agency. If they property is not sold by the time of closing on the unit, it must remain actively listed and marketed until sold.

1. PREFERENTIAL OCCUPANTS. "Preferential Occupant" means a Qualified Individual who also is one of the following categories of persons, which persons shall be given preference under section 4.2 according to the following categories in order of priority:

1.1 First, the Beneficiary, employees of the Beneficiary, or the operator of Crested Butte Mountain Resort, or their affiliates,

1.2 Second, employees of the Reserve Metropolitan Districts.

1.3 Third, an employee of a business owner in Mt. Crested Butte or self-employed person working in Mt. Crested Butte, Colorado or employees of a special district operating and performing services in Mt Crested Butte.

1.4 Fourth, an employee or business owner in the Town of Crested Butte, Colorado or self-employed person working in the Town of Crested Butte, Colorado.

1.5 Fifth, employee or self-employed person working in Gunnison County north of the intersection of County Road 813 (Jack's Cabin cut-off road) and Highway 135.

2. SALE AND RESALE LIMITATIONS

2.1 The Units may be sold only to an approved Qualified Individual, as defined in these Restrictions.

2.2 Preferential Occupants shall be considered prior to other Qualified Individuals in the sale of units if there is a waiting list or in the event that multiple offers are received.

2.3 The maximum initial sales prices of a Unit by a developer shall be calculated according to the Mt. Crested Butte Community Housing Guidelines.

2.4 After the initial sale of a Unit by the Developer to a Qualified Individual, no subsequent sale of the Unit shall be for an amount greater than the "Maximum Sales Price".

2.5 The Maximum Sales Price shall be the aggregate of the following amounts:

- 2.5.1 The seller's purchase price of the Unit;
- 2.5.2 An amount equal to 2 per cent per annum of the seller's purchase price, prorated at the rate of 0.25 per cent per month from the date of seller's purchase of the Unit to the date of seller's sale of the Unit;
- 2.5.3 An amount equal to the actual cost incurred by seller in making improvements to the Unit which are eligible to add to the seller's basis in the Unit pursuant to the Mt. Crested Butte Community Housing Guidelines.

2.6 Prior to the listing for sale of a Unit, the seller shall obtain confirmation from the Housing Agency that the sales price of the Unit does not exceed the Maximum Sales Price. The seller shall submit to the Housing Agency a copy of the proposed sales contract for the Unit, verified by affidavit of the seller, as being a true and correct copy, and a calculation of the Maximum Sales Price accompanied by evidence of the cost of any improvements which seller believes qualify for inclusion in the Maximum Sales Price. At a minimum, seller shall submit receipts to verify the costs of the improvements and affidavit verifying that the receipts are valid and correct and represent costs actually paid by seller at the time the improvements were made, and a copy of any building permit required for the improvement.

2.7 The seller shall provide the Housing Agency with a copy of an executed sales contract within 10 days of accepting such offer to purchase. Such offer to purchase must comply with all terms of this Deed Restriction.

2.8 The seller, and not the buyer, shall be responsible for the cost of the title insurance policy, including owner's extended coverage. In addition, seller shall not accept any other consideration which would cause an increase in the sales price of the Units, above the Maximum Sales Price so as to induce the seller to sell the Unit to such buyer.

2.9 NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE THAT UPON SALE OF THE UNIT, THE SELLER SHALL OBTAIN THE MAXIMUM SALES PRICE.

### 3. OWNERSHIP AND RENTAL

3.1 After the initial sale of the Unit, each subsequent owner of the Unit, by acceptance of a deed thereto, represents and warrants that the Unit shall be used only as his or her sole and exclusive place of residence at all times during his or her ownership of the unit, and he or she is and shall remain a Qualified Individual.

3.2 It is agreed that in the event an owner ceases to have the qualifications of a Qualified Individual, or if the owner changes his or her place of domicile or ceases to use the Unit as his or her sole and exclusive place of residence, the Unit will be offered for sale and will be sold to a Qualified Individual as provided herein. While the property is listed for sale, the owner may rent the Unit to a Qualified Individual as described in paragraph 5.4 below. An owner shall be deemed to have changed domicile by becoming a resident elsewhere, accepting permanent employment outside



of Gunnison County, Colorado, or residing in the Unit fewer than nine months per calendar year, without the express written consent of the Housing Agency.

3.3 In the event that title to the Unit vests by descent in individuals and/or entities who are not Qualified Individuals, as that term is defined herein, the Unit shall be transferred to a Qualified Individual or listed for sale and sold to a Qualified Individual as provided herein. While the property is listed for sale, the owner may rent the Unit to a Qualified Individual.

3.4 During the time a Unit is listed for sale, an owner may rent the Unit to a Qualified Individual. Any rental agreement for the Unit to a Qualified Individual shall be for a minimum term of three (3) months and shall allow for no less than sixty (60) days notice of termination to the tenant in the event the Unit sells. In the event a Unit is rented, the Tenant shall meet all the criteria of a Qualified Individual under section 2.2 above, with the exception of the residency requirement under section 2.2.1.

3.5 The requirements of this section shall not preclude an owner from sharing occupancy of the Unit with non-owners who do not meet the requirements concerning occupancy of the Unit, or with non-owners who do not meet the requirements of a Qualified Individual, provided that the owner continues to meet the obligations contained in this Deed Restriction. At no time during the ownership of the unit may any portion of the unit be rented out for less than 3 months.

3.6 IN NO EVENT SHALL THE OWNER OR ANY SUBSEQUENT OWNER CREATE AN ADDITIONAL DWELLING UNIT WITHIN THE UNIT.

3.7 Nothing in these restrictions shall be construed to require the Beneficiary or Housing Agency to protect or indemnify the owner or a subsequent owner against any losses attributable to the rental of the unit, including but not limited to non-payment of rent or damage to the premises; nor to require the Beneficiary or Housing Agency to obtain a tenant meeting the requirements of a Qualified Individual for the owner in the event such a tenant is not found by the owner.

3.8 Any owner or prospective buyer must agree to and execute the Notice of Lien form attached hereto as **Exhibit A**.

#### 4. FORECLOSURE

4.1 It shall be a breach of these Restrictions for an owner to default in the payments or other obligations due or to be performed under a promissory note secured by deed of trust encumbering the Unit. The owner hereby agrees to notify the Beneficiary, in writing, of any notification owner receives from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, within five (5) calendar days of owner's notification from lender, or its assigns, of said default or past due payments.

4.2 Upon receipt of notice as provided herein, the Beneficiary shall have the right, in its sole discretion, to cure the default or any portion thereof. ("Curing Party"). In such event, the owner shall be personally liable to the Curing Party for past due payments made by the Curing Party, together with interest thereon at the rate specified in the promissory note secured by the deed of trust, plus one (1) per cent, and all actual



expenses of the Curing Party incurred in curing the default. In the event the Owner does not repay the Curing Party within sixty (60) days of notice that the Curing Party has cured the owner's default, the owner agrees that the Curing Party shall be entitled to a lien against the Unit to secure payment of such amounts. Such a lien may be evidenced by a notice of lien setting the amounts due and rate of interest accruing thereon, and such notice of lien may be recorded in the real property records of Gunnison County, Colorado, until such lien is paid and discharged. The Curing Party shall have the additional right to bring an action to foreclose on the Unit for the payment of the lien set forth in this section 6.2.

4.3 In the event of a foreclosure on a promissory note secured by a first deed of trust on the Property, or any Unit, and the issuance of a public trustee's deed by the holder of such note and deed of trust ("Holder"), or the acceptance by Holder of such note and deed of trust of a deed in lieu of foreclosure of the Property, or any Unit, and Holder's subsequent recordation of the same in the Office of the Gunnison County Clerk and Recorder, the Beneficiary may acquire the Property or Unit by exercising that certain "Option to Purchase," a copy of which is attached hereto as **Exhibit B**. In the event that the Option is not exercised by the Beneficiary, this Deed Restriction shall be released and shall be of no further force or effect.

## 5. DEFAULT/BREACH

5.1 In the event the Beneficiary or Housing Agency has reasonable cause to believe an owner is violating the provisions of these Restrictions, the Beneficiary or the Housing Agency, through their authorized representatives, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, after providing the owner with no less than 24 hours written notice.

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

5.3 Whenever these Restrictions provide for a hearing before the Housing Agency, such hearing shall be scheduled by the Housing Agency within 21 days of the date of receipt of a written request for a hearing. At any such hearing, the owner or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made, and the decision of the Housing Agency shall be a final decision, subject to judicial review.

5.4 There is hereby reserved to the parties hereto any and all remedies provided by law for breach of these Restrictions or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of these Restrictions, the prevailing party shall be awarded its damages and costs, including reasonable attorney's fees.

5.5 In the event the Unit is sold and/or conveyed without compliance with



the terms of these Restrictions, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, even without reference therein to these Restrictions.

5.6 In the event an owner fails to cure any breach of these Restrictions, the Housing Agency may resort to any and all available legal or equitable actions, including but not limited to specific performance of these Restrictions.

## 6. GENERAL PROVISIONS

6.1 These Restrictions shall constitute covenants running with the Real Property as a burden thereon, for the benefit of, and shall be specifically enforceable by the Beneficiary, Housing Agency, and/or their respective successors and assigns, as applicable. Enforcement by any appropriate legal action may include, but is not limited to specific performance injunction, reversion, or eviction of noncomplying owners and/or occupants.

6.2 Any notice, consent, approval, or request which is required to be given by any party hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the address provided herein or to the address of the owner. The owner shall advise the Housing Agency of any change in address, in writing said notices, consents, and approvals, shall be sent to the parties hereto at the following addresses, unless otherwise notified in writing:

To Developer: [INSERT]

To Beneficiary: Town of Mt. Crested Butte, Colorado  
P.O. Box 5800  
Mt. Crested Butte, Colorado 81225  
Telephone: 970-349-6632  
Fax: 970-349-6326

To Subsequent Owners: At the address maintained in the records of the Gunnison County Assessor's office

6.3 Whenever possible, each provision of these Restrictions and any other related document shall be interpreted in such manner as to be valid under applicable law; but if any provision of these Restrictions shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remaining provisions of such document.

6.4 These Restrictions and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.

6.5 Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.

6.6 Owners and subsequent owners agree that he or she shall be personally

liable for their participation in any of the transactions contemplated herein and that he or she will execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of these Restrictions or any agreement or document relating hereto or entered into in connection herewith. The Developer, Beneficiary, and Housing Agency agree to reform these Restrictions as necessary to ensure that mortgages or deeds of trust on the units to be constructed on the Property remain eligible for purchase by Fannie Mae and Freddie Mac.

6.7 Any modifications of these Restrictions shall be effective only when made by a duly executed instrument by the Housing Agency and an owner, with the written consent of the Beneficiary, and recorded with the Clerk and Recorder of Gunnison County, Colorado. Notwithstanding the foregoing, the Parties agree that the Beneficiary may unilaterally amend these Restrictions where deemed necessary to effectuate the purpose and intent of these Restrictions.

**TOWN OF MT. CRESTED BUTTE, COLORADO,**

A Colorado home rule municipality

By: \_\_\_\_\_  
Name, Mayor

Attest:

\_\_\_\_\_  
Name  
Town Clerk



**Exhibit A**  
**NOTICE OF LIEN**  
**AND MEMORANDUM OF ACCEPTANCE OF THE**  
**AFFORDABLE HOUSING DEED RESTRICTION**  
**FOR (insert property address here), \_\_\_\_\_**  
**SUBDIVISION, TOWN OF MT. CRESTED BUTTE,**  
**COLORADO, GUNNISON COUNTY, COLORADO**

WHEREAS, {insert Buyer name(s), the “Buyer” is purchasing from (insert name of seller here), the “Seller” at a price of \$ (insert purchase price here) the real property described as:

(insert legal description here)  
known as the “Property”; and

WHEREAS, the Seller of the Property is requiring, as a condition to the sale transaction, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled “Affordable Housing Deed Restriction” for the Property, recorded on \_\_\_\_\_, 20\_\_ under Reception No. \_\_\_\_\_ in the real property records of Gunnison, Colorado (the “Deed Restriction”).

NOW, THEREFORE, as an inducement to the Seller to sell the Property, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Affordable Housing Deed Restriction, has had the opportunity to consult with legal and financial counsel concerning the Deed Restriction and fully understands the terms, conditions, provisions, and restrictions contained in the Deed Restriction.
2. States that any Notice to Buyer should be sent to:  
(insert Buyer mailing address here)

3. Directs any Notice to the Town of Mt. Crested Butte and the Gunnison Valley Regional Housing Authority be sent to:

Gunnison Valley Regional Housing Authority  
Attn: Executive Director  
202 E. Georgia Avenue  
Gunnison, CO 81230

Town of Mt. Crested Butte  
Attn: Town Manager  
PO Box 5800  
Mt. Crested Butte, CO 81225

4. Directs that this Notice be placed of record in the real estate records of Gunnison County, Colorado and a copy provided to the Gunnison Valley Regional Housing Authority and the Town of Mt Crested Butte

IN WITNESS WHEREOF, the Buyer has executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Buyer(s):

\_\_\_\_\_  
\_\_\_\_\_

Printed Name(s):

\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF                                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Witness my hand and official seal.  
My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



## **EXHIBIT B**

### **"SUBDIVISION NAME" AFFORDABLE HOUSING DEED RESTRICTION OPTION TO PURCHASE**

This Option to Purchase is hereby granted to the Town of Mt. Crested Butte, Colorado, a Colorado home rule municipality ("**Beneficiary**") by [REDACTED], its successors and/or assigns who is the "**Holder**" of a promissory note ("**Promissory Note**") secured by a first deed of trust on the Unit (defined below), and [REDACTED], Owner of the Unit and borrower under the Promissory Note ("**Owner**"). Beneficiary, Holder, and Owner are collectively referenced herein as the "**Parties**".

#### **Recitals**

WHEREAS, Owner is currently vested in title to the real property, which is more particularly described as follows:

[REDACTED], "**SubdivisionName**", according to the Plat recorded December 10, 2008, as Reception No. 587999, Town of Mt. Crested Butte, County of Gunnison, State of Colorado;

Also known as [REDACTED], Town of Mt Crested Butte, CO ("**Unit**"); and

WHEREAS, the Unit is subject to that certain Affordable Housing Deed Restriction (the "**Deed Restriction**"), recorded at reception number [REDACTED] in the Office of the Gunnison County Clerk and Recorder; and

WHEREAS, the Parties desire to enter into this Option regarding the purchase of the Unit, as set forth herein.

#### **Agreement**

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

**A. Definitions.** Capitalized terms not otherwise defined herein shall have the meaning given to them in the Deed Restriction.

**B. Grant of Option.** In the event of (i) a foreclosure by Holder of the Promissory Note and the issuance of a public trustee's deed in and to the Unit to Holder following the expiration of all statutory redemption rights; or (ii) the acceptance by Holder of a deed in lieu of foreclosure of the Unit and Holder's subsequent recordation of the same in the Office of the Gunnison County Clerk and Recorder,

Beneficiary shall have the option to purchase the Unit ("**Option**"), which Option shall be exercised as set forth herein.

**C. Notice.** Upon Holder's receipt of a public trustee's deed to the Unit, or upon recording the deed in lieu of foreclosure, Holder shall provide written notice to Beneficiary of the commencement of the option period ("**Notice of Option Period**"), which Notice of Option Period shall be sent by email and certified mail, return receipt requested, and addressed as follows:

BENEFICIARY: Town Manager  
Town of Mt. Crested Butte, Colorado  
P.O. Box 5800  
Mt Crested Butte, CO 81225  
Email: \_\_\_\_\_

**D. Exercise of Option.** Beneficiary shall have thirty (30) days after receipt of the above-described notice ("**Option Period**") within which to exercise this Option to purchase by delivering to Holder a "Notice of Exercise of Option" substantially in the form attached hereto as **Exhibit B-1**. The Notice of Exercise of Option shall be sent by email and certified mail, return receipt requested, and addressed as follows:

HOLDER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**E. Title and Closing.** Closing shall occur no later than ninety (90) days from the exercise of the Option. At closing, and in exchange for the Option Price (as defined below), Holder shall deliver to Beneficiary a special warranty deed conveying the Unit to Beneficiary, and also shall deliver possession of the Unit. Holder shall convey only such title as it received through the public trustee's deed or deed in lieu of foreclosure and will not create or participate in the creation of any additional liens or encumbrances against the Unit following issuance of the public trustee's deed or deed in lieu of foreclosure to Holder. Holder shall not be liable for any of the costs of conveyance to Beneficiary. At closing, and in exchange for the special warranty deed described above, Beneficiary shall tender to Holder in cash or certified funds, the following option price ("**Option Price**"):

(1) if a public trustee's deed in and to the Unit has been issued, an amount equal to the amount paid or bid at the public trustee's sale (plus any bid deficiency); plus any additional reasonable costs directly related to the foreclosure or the ownership of the Unit subsequent to the public trustee's sale up to the conveyance of the Unit to Beneficiary; OR



(2) if a deed in lieu of foreclosure has been recorded, (i) an amount equal to the amount due to Holder with respect to the Unit on the date the deed in lieu of foreclosure was recorded; plus (ii) any additional reasonable costs related to the deed in lieu of foreclosure or the ownership of the Unit incurred by Holder subsequent to the date the deed in lieu of foreclosure was recorded up to the conveyance of the Unit to Beneficiary, less (iii) any unpaid amounts secured by any other lien, deed of trust or other encumbrance on the Unit (*provided*, however, that if any such other lien, deed of trust or other encumbrance which is subordinate to Holder's deed of trust was removed by Holder, the amounts paid by Holder to obtain such removal shall also be added to the Option Price).

**F. Time is of the essence / remedies.** Time is of the essence hereof; provided, however, that the term of this Option shall be extended in a manner deemed reasonable by the Parties hereto in order to account for any circumstances beyond the reasonable control of a Party that prevent or impede the due performance of this Option. If Holder is in default, after written notice of such default is given and Holder has not cured the same within a reasonable period thereafter, Beneficiary may elect to treat this Option as being in full force and effect and shall have the right to specific performance or damages, or both.

**G. Perpetuities Savings Clause.** If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Option Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected members of the Town Council of Beneficiary, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

**H. Successors and Assigns.** The provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the Parties.

**I. Modifications.** The Parties agree that any modification to this Option Agreement shall be effective only when made by a writing signed by all Parties and recorded in the Office of the Gunnison County Clerk and Recorder.

**IN WITNESS WHEREOF**, the Parties have executed this instrument on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY;  
SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]**

**HOLDER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

The foregoing Option to Purchase for "subdivision name" has been acknowledged before me this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public

**OWNER:**

\_\_\_\_\_  
Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

The foregoing Option to Purchase for "subdivision name" has been acknowledged before me this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public



**BENEFICIARY:**

TOWN OF MT. CRESTED BUTTE, COLORADO,  
A Colorado home rule municipality

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

\_\_\_\_\_  
\_\_\_\_\_, its Town Clerk

**EXHIBIT B-1  
FORM OF NOTICE OF EXERCISE OF OPTION**

**To HOLDER:**

Please take notice that pursuant to paragraph D of that certain Option to Purchase dated, \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, and recorded at reception number \_\_\_\_\_ in the Office of the Gunnison County Clerk and Recorder, the undersigned Beneficiary hereby exercises its option to purchase the Unit described therein.

**By:**

**BENEFICIARY:**

TOWN OF MT. CRESTED BUTTE, COLORADO,  
A Colorado home rule municipality

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

\_\_\_\_\_  
\_\_\_\_\_, its Town Clerk



## EXHIBIT C

### ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the Town of Mt. Crested Butte, Colorado, a Colorado home rule municipality ("**Beneficiary**"), \_\_\_\_\_, its successors and/or assigns who is the "**Holder**" of a promissory note ("**Promissory Note**") secured by a first deed of trust on the Unit recorded at Reception No. \_\_\_\_\_, and \_\_\_\_\_, Owner of the Unit and borrower under the Promissory Note ("**Owner**"). Beneficiary, Holder, and Owner are collectively referenced herein as the "**Parties**".

#### Recitals

WHEREAS, Owner is currently vested in title to the real property, which is more particularly described as follows:

\_\_\_\_\_, "Subdivision Name", according to the Plat recorded December 10, 2008, as Reception No. 587999, Town of Mt. Crested Butte, County of Gunnison, State of Colorado;

Also known as \_\_\_\_\_, Town of Mt Crested Butte, CO ("**Unit**"); and

WHEREAS, the Unit is subject to that certain Affordable Housing Deed Restriction (the "**Deed Restriction**"), recorded at reception number \_\_\_\_\_ in the Office of the Gunnison County Clerk and Recorder; and

WHEREAS, the Parties desire to enter into this Agreement regarding the Assumption of the Promissory Note and Deed of Trust on the Unit, as set forth herein.

#### Agreement

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

**A. Definitions.** Capitalized terms not otherwise defined herein shall have the meaning given to them in the Deed Restriction.

**B. Notice.** Upon Holder's recording of a Notice of Election and Demand ("**NED**") to initiate a public trustee's foreclosure on the Unit, Holder shall provide written notice to Beneficiary of the NED ("**Notice of NED**"), which Notice of NED shall be sent by email and certified mail, return receipt requested, and addressed as follows:

**BENEFICIARY:** Town Manager  
Town of Mt. Crested Butte, Colorado  
P.O. Box 5800  
Mt Crested Butte, CO 81225  
Email: \_\_\_\_\_

**D. Timing of Exercise of Assumption Right.** Beneficiary shall have thirty (30) days after receipt of the above-described Notice of NED within which to exercise its right to assume the Note and Deed of Trust from Owner.

**E. Assumption.** By delivering a "Notice of Assumption" to Holder and Owner substantially in the form attached hereto as **Exhibit C-1**, Beneficiary hereby assumes and agrees to perform and discharge all of the obligations of Owner under the Promissory Note and Deed of Trust from and after the date thereof, and the Holder accepts Beneficiary as the successor and assign of Owner. The Notice of Assumption shall be sent by email and certified mail, return receipt requested, and addressed as follows:

**HOLDER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**OWNER:** \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**F. Title.** Upon receipt of said Notice of Assumption, Owner shall deliver, to Beneficiary, a deed in lieu of foreclosure from the Owner conveying the Unit to Beneficiary, and also shall deliver possession of the Unit. The deed in lieu of foreclosure and possession of the Unit shall be conditions precedent to the obligations of the Beneficiary to assume the obligations of the Owner under the Promissory Note and Deed of Trust.

**G. Time is of the Essence/Remedies.** Time is of the essence hereof; provided, however, that the term of this Assumption Agreement shall be extended in a manner deemed reasonable by the Parties hereto in order to account for any circumstances beyond the reasonable control of a Party that prevent or impede the due performance of this Assumption Agreement. If Holder is in default, after written notice of such default is given and Holder has not cured the same within a reasonable period thereafter, Beneficiary may elect to treat this Assumption as being in full force and effect and shall have the right to specific performance or damages, or both.



**H. Perpetuities Savings Clause.** If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected members of the Town Council of Beneficiary, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

**I.** This Agreement is made pursuant and subject to the Deed Restriction and incorporates all of the terms and conditions contained therein.

**J.** Each of the Parties shall at any time, and from time to time, do, execute, acknowledge, and deliver any and all other instruments necessary or proper to carry out the terms of this Agreement.

**K.** This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.

**IN WITNESS WHEREOF**, the Parties have executed this instrument on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

***[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]***

***[THE SIGNATURE OF THE PARTIES APPEAR ON THE FOLLOWING THREE PAGES]***

**HOLDER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

The foregoing Assumption Agreement for "subdivision name" has been acknowledged before me this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public



**OWNER:**

\_\_\_\_\_

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

State of Colorado \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

The foregoing Assumption Agreement for "subdivision name" has been acknowledged before me this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public

**BENEFICIARY:**

TOWN OF MT. CRESTED BUTTE, COLORADO,  
A Colorado home rule municipality

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

\_\_\_\_\_  
\_\_\_\_\_, its Town Clerk  
Town Clerk

**EXHIBIT C-1  
FORM OF NOTICE OF ASSUMPTION**

**To OWNER and HOLDER:**

Please take notice that pursuant to paragraph E of that certain Assumption Agreement dated, \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, and recorded at reception number \_\_\_\_\_ in the Office of the Gunnison County Clerk and Recorder, the undersigned Beneficiary hereby assumes and agrees to perform and discharge all of the obligations of Owner under the Promissory Note and Deed of Trust from and after the date hereof.

**By:**

**BENEFICIARY:**

TOWN OF MT. CRESTED BUTTE, COLORADO,  
A Colorado home rule municipality

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk



## APPENDIX F HOUSING FEE COVENANT TEMPLATE

### COVENANT TO PAY CERTAIN HOUSING FEES

This Covenant to Pay Certain Housing Fees (this “Covenant”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between [.....] and the Town of Mt. Crested Butte, Colorado (the “Town”).

#### **I. Recitals**

- A. [NAME] is the owner of [Legal Description/Subdivision] according to the plat thereof recorded in the real property records of Gunnison County, Colorado at reception number \_\_\_\_\_ (the “Plat”).
- B. The Town has two fees for housing applicable to this subdivision. Article III, Sec. 22-45 of the Town Code requires payment of an Employee Housing Mitigation fee (also referred to as the linkage fee) for new developments that do not provide employee housing (the “Employee Housing Mitigation Fee”). [OWNER] is not providing employee housing and thus is required to pay the Employee Housing Mitigation Fee. The Parties desire for the Employee Housing Mitigation Fee to be paid upon the issuance of each building permit for each Lot.
- C. The Town also has an affordable housing requirement under Art. III, Sec. 22-24 of the Town Code that states that 15% of all units developed shall be developed as affordable housing. Because three new lots are being created, this creates a fractional requirement of inclusionary units of .45. When a fraction of a unit is required, payment in lieu is permitted pursuant to Art. III, Sec. 22-8 of the Town Code. The parties desire for this inclusionary fee (the “Inclusionary Fee”) to be paid upon the initial conveyance of each Lot.

#### **II. Agreement**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including without limitation the promises and covenants set forth below and recitals set forth above, the parties agree as follows:

- 1. *Payment of Employee Housing Mitigation Fee.* Upon the issuance of any building permit for a Lot, the owner of the Lot shall pay to the Town the Employee Housing Mitigation Fee owed under the then current Town Code based upon the building for which the permit is issued.
- 2. *Payment of Inclusionary Fee.* Upon any transfer of any Lot by [OWNER], [OWNER] shall pay to the Town one-third of the Inclusionary Fee as calculated at the time of each transfer under the then current Town Code using the fractional requirement of inclusionary units of .45. A “transfer” within the meaning of this paragraph includes any transfer of the ownership of [OWNER] and any transfer of legal title to a Lot to any person or entity that is not either wholly owned by [OWNER] or wholly owned by the owners of [OWNER].

Upon the recordation of any deed transferring title, in whole or in part, of any Lot from [OWNER] to any person or entity, the payment for the Inclusionary Fee for such Lot shall be due and owing unless [OWNER] provides bona fide documentation to the Town showing that the transferee is, in fact, wholly owned by [OWNER] or wholly owned by the owners of [OWNER]. Such fee shall nevertheless be owing if, in fact, the transferee is not wholly owned by [OWNER] or wholly owned by the owners of [OWNER].

3. *Saving Fees.* If at the time that any fee becomes due under this Covenant the method of calculation of such fee by the then current Town Code is incompatible with this Covenant, then the amount of the fee to be paid shall be calculated using the then current Town Code. Notwithstanding the foregoing, however, this Covenant does not require any double payment of any fees and in no event shall the owner of any Lot be required to pay any fee owed relating to any other Lot. If at the time that any fee becomes due under this Covenant the Town Code has abolished or repealed such fee, the fee shall not be owed under this Covenant and it shall be treated as if paid.
4. *Runs with the Land.* This Covenant and the benefits and burdens hereof shall run with the land and be binding upon the parties and [OWNER]'s successors and assigns, including without limitation successor owners of the Lots.
5. *Severability.* The provisions of this Covenant are distinct and severable. If any Court should find any provision void, invalid or unenforceable for any reason, such voidness, invalidity and/or unenforceability shall not impact the remaining provisions of this Covenant, all of which are distinct and severable.
6. *Counterparts.* The parties agree that this Covenant may be executed in counterparts, each of which shall be deemed and original, and all of which together shall constitute one and the same instrument.
7. *Modification.* This Covenant shall not be amended or modified, except by subsequent written agreement of the parties.
8. *No Waiver.* A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.
9. *Duration; Termination.* This Covenant shall be perpetual in duration and shall not terminate unless and until all fees owed hereunder are paid in full. Upon full compliance with this Covenant, including full payment of all fees as set forth above, this Covenant shall terminate and the Town shall record a document stating that all fees owed under this Covenant have been paid in full such that it is terminated.

