

# CRESTED BUTTE SOUTH

## COVENANTS AND RESTRICTIONS

Book 420 page 404

Date: August 20, 1970

Filed: August 26, 1970

Reception No. 280965

THIS INDENTURE, made and entered into this 20th day of August, 1970, by this CRESTED BUTTE LAND COMPANY (hereinafter the "Company"), a Colorado corporation, having ownership of a tract of ground designated as Crested Butte South to be platted as a subdivision, more particularly described as:

Those portions of the NW1/4SW1/4 and the N1/2 of Section 27, lying west of the Cement Creek road, as well as all of the N1/2NE1/4 of Section 28, and the E1/2SE1/4 and the SE1/4NE1/4 of Section 21, and the W1/2SW1/4 and the SW1/4NW1/4 of Section 22, all in Township 14 South, Range 85 West, 6th P.M. in Gunnison County, Colorado.

WHEREAS, the Company is causing the above mentioned land to be platted into lots and blocks as shown on various plats, recorded or to be recorded, but all nevertheless subject to the provisions of the Indenture as fully as if now recorded, all to be filed in the office of the Clerk and Recorder of Gunnison County, Colorado; and

WHEREAS, the Company intends to develop and improve the said tract of land and lay out and open up the streets shown on said plats, and offer for sale the lots and parcels included in said tract; and is desirous of subjecting all of said tract of land and the lots and parcels shown on said plats to certain covenants, easements, restrictions, conditions and charges, as hereinafter set forth;

NOW, THEREFORE, WITNESSETH that the Company does hereby impose and charge all lots, blocks and parcels in Crested Butte South, with the covenants, agreements, easements, restrictions, conditions and charges hereinafter set out, for the benefit of the Company and all purchasers; and with the intention that each purchaser and the Company may enforce the provisions hereof, as follows (streets and roads and certain lots and parcels excepted):

### 1.00 DEFINITIONS

- 1.01 As used herein, the following terms shall be construed to have the meaning set forth thereafter:
- 1.01-1 "Owner" shall mean any person or combination of persons; firm; partnership; or corporation owning any lot or lots in fee.
  - 1.01-2 "Purchaser" shall mean any person or combination of persons; firm; partnership; or corporation holding the right to receive fee ownership by means of a contract for purchase of any lot or lots.
  - 1.01-3 "Lot" shall mean any platted lot within Crested Butte South; or any combination or contiguous lots therein upon which a cluster development declaration has been recorded.
  - 1.01-4 "Committee" shall mean the Crested Butte South Improvement Committee.
  - 1.01-5 "Residential unit" shall mean living quarters or a dwelling designed to accommodate a one family unit and containing at least one bedroom; one bathroom, one living room and one kitchen.
  - 1.01-6 "Cluster development" shall mean the assembly of two or more adjoining residential lots into one parcel for the purpose of constructing one structure containing not more than the total number of residential units which could have been built on all of the lots so united.

- 1.01-7 "Commercial lots" shall mean those lots designated as commercial property therein and of which the usage is restricted to trade or business.
- 1.01-8 "Dwelling place" shall mean a structure containing one or more residential units.
- 1.01-9 "Person" shall mean any person, combination of persons, firm, company, association or corporation.

## 2.00 IMPROVEMENT COMMITTEE

2.01 There is hereby created the Crested Butte South Improvement Committee, which shall be the Company until such time as 100 of the lots in Crested Butte South have been deeded to their owners, at which time the Company shall appoint four of said purchasers to serve on the Committee with the Company, two of which shall serve for one year, and the balance for two years. Thereafter the four other members of said Committee shall be elected by all the landowners in Crested Butte South for two-year terms, and when 80% of all lots in Crested Butte South are deeded to their owners, the Company shall resign from the Committee and thereafter the Committee shall consist of five persons.

2.02 The Committee may make and adopt its own bylaws for procedure; and it shall have the following powers and duties:

- 2.02-1 To incorporate as a non-profit corporation or association.
- 2.02-2 To fill vacancies occurring on the Committee.
- 2.02-3 To adopt such reasonable rules and regulations and provide such means and employ such agents as will enable it adequately and properly to carry out its duties.
- 2.02-4 To approve, or recommend changes in, building plans and specifications, grading, business signs and related matters.
- 2.02-5 To disapprove unsatisfactory plans and specifications.
- 2.02-6 To determine, collect, expend and account for monies of the Maintenance Fund as provided elsewhere herein.
- 2.02-7 To provide for lighting, improving, clearing and maintaining walks, streets and parks.
- 2.02-8 To provide for the collection and disposal of trash and rubbish.
- 2.02-9 To employ watchmen and fire marshals.
- 2.02-10 To care for vacant and unattended land on which the maintenance charge is being paid; and do those things desirable, in the opinion of the Committee, to keep such property in good order.
- 2.02-11 To do such other things as will tend toward the welfare and benefit of Crested Butte South and the landowners therein.
- 2.02-12 To enforce the restrictions, covenants, easements, conditions and charges herein contained.
- 2.02-13 To hold land and convey the same.

## 3.00 MAINTENANCE FUND

3.01 All land included and shown on the plats of Crested Butte South (except land reserved for community uses and purposes), whether owned by the Company or by others, shall be subject to an annual maintenance charge as set forth below. A purchaser of any lot within Crested Butte South who has not received a deed, but who has the right to receive one under a contract, shall be deemed an owner for the purposes of this section only.

3.02 Such annual maintenance charge shall be at the rate of \$40.00 per year for each single family dwelling; \$50.00 per year for each residential unit in a multi-family dwelling; \$8.00 per year for each unimproved lot; and \$100.00 per year for each commercial lot with a structure on it. Block 6 shall be considered to have 20 lots upon it for the purpose of this section.

3.03 The annual maintenance charge shall be payable each year hereafter commencing January 1, 1971, annually in advance, for the purpose of creating and maintaining a fund to be known as the Maintenance Fund. Such annual charge may be adjusted from year to year by the Committee in its absolute discretion as the needs of the Committee may require; but in no event shall any increase exceed 10% in any year without the affirmative vote of a majority of the then owners of lots, each owner being entitled to cast one vote for each lot owned by him.

3.04 The Committee shall apply the funds thus received, so far as the same may be adequate, to its costs and expenses in performing its duties. The Committee need not duplicate any service available from any governmental agency, public authority or improvement district.

3.05 The annual charge for maintenance shall be a lien or encumbrance on the land against which assessed, and the purchase of any such land shall be construed as a covenant to pay such charges. The Committee shall have the right and power to enforce the lien hereby imposed in its favor, to the same extent (including foreclosure and sale) and subject to the same procedure, as in the case of a mortgage under the applicable law; and may recover costs and attorney fees, as well as interest at the rate of 8% per annum from March 1 of the year in which due. The Committee shall send a written statement each year as soon as practicable stating the amount of the annual charge and unless the purchaser or owner shall pay the same by March 1, it shall be deemed delinquent. The lien reserved hereunder shall be subordinate to any trust deed, mortgage or mechanic's lien insofar as priority at any given time is concerned; but the same shall be a continuing lien and may be enforced against any successor in interest.

3.06 Prior to beginning to serve, the Committee members (including the Company) shall accept in writing the trust, duties and obligations imposed by this Indenture, and agree to discharge the same without charge for their services provided, that until the full Committee is formed and functioning, for the collection and disbursement of the Maintenance Fund hereby established, and for the overhead and clerical expense in connection with the administration thereof, the Company shall be entitled to charge 15% of the amount of the expenditures made by it from said funds, including such expenditures as payment to the Company at current market prices for labor and material furnished and work done by it.

3.07 The Committee shall exercise its discretion as to the expenditures from said Fund for any of the purposes anticipated, and its judgment in that regard shall be conclusive on all parties. The Committee does not insure or guarantee the adequacy of the Fund provided for hereby for the purposes hereinbefore set forth.

3.08 Any or all of the rights, duties or powers hereby reserved to the Company or the Committee may be assigned or transferred to any one or more public bodies, improvement districts, associations or corporations which will agree to assume said rights and duties and carry out and perform the same. Any such transfer shall be evidenced by an instrument of record evidencing the transfer and the acceptance, and obligating the transferee to the duties herein imposed, the Company and/or the Committee thereby being released there from.

#### 4.00 ARCHITECTURAL CONTROL

4.01 No building, structure, wall, fence, or addition or exterior alteration to any building, structure, wall or fence shall be commenced, erected or maintained unless and until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, location and approximate cost of the same shall have been submitted to the Committee for its consideration and approval or disapproval in writing.

4.02 All structures shall be designed by a registered architect or professional engineer, or an equally qualified person or firm.

4.03 The Committee shall review all plans and specifications with regard to quality, materials and color; topography, setback, finished grade elevation, driveways, planting and parking facilities; as well as harmony of exterior design with existing or planned structures adjacent thereto.

4.04 No metal, plastic, asbestos or asphalt siding materials shall be permitted on other than roof surfaces; but the Committee may grant variances in appropriate cases.

4.05 The event said Committee fails to act within 30 days after said plans and specifications have been submitted to it; such approval will not be required and this covenant deemed complied with. No person, however, shall commence any such construction after notice of disapproval or until 30 days have elapsed from time of submission of the plans and specifications; and the Committee may proceed by such means as it deems best advised to enforce the provisions hereof if a violation of these provisions occurs.

#### 5.00 LAND USE

5.01 With the exception of those areas designated as Commercial Lots, or set aside for community purposes, all lots shall be known and designated as residential lots; and no structure shall be permitted or placed, or altered or erected on any such lot in violation of the requirements hereof. Only single or multi-family dwelling places, not exceeding two stories in height, plus any garden-level basement or first story, may be erected or placed; together with a private garage, attached or unattached, for not more than two vehicles for the first residential unit, and one vehicle for each additional residential unit. Nothing herein contained shall prevent the placement of a child's playhouse of reasonable size and location, and neat appearance.

5.02 Only one structure for use as a dwelling place shall be constructed on any lot or cluster development. One outbuilding which may be a garage or storage building or a combination of the two may also be constructed.

#### 6.00 NON-RESIDENTIAL AREAS

6.01 All of the land in Crested Butte South, except as hereinafter provided, shall be used for residential purposes only. Certain lots and blocks may be devoted in whole or in part to use as a business or shopping center, and buildings may be erected thereon and activities carried on thereon of a business or commercial nature, excluding any manufacturing. Such areas shall be bound by the setback provisions hereof; and all such parts of Crested Butte South shall be identified on the recorded plat.

6.02 Buildings for non-commercial and community purposes (educational, recreational, fire and police protection or other civic purposes) may be erected on Lot 1, Block 5; and Block 7, designated "Reserved for Community Uses and Purposes"; provided, however, that no building or structure shall be erected or maintained thereon until there shall have been brought into being an agency or body capable of receiving such land, and the Committee shall have executed its deed conveying such land to such agency or body designating the community use to which the same shall be put.

#### 7.00 TEMPORARY STRUCTURES PROHIBITED

7.01 No basement, mobile home, trailer, tent, shack, garage, barn or any outbuilding erected on any lot at any time shall be used as a residence permanently or temporarily; nor shall any structure of temporary nature be used as a dwelling. No trailer capable of habitation or containing living quarters shall be parked on any lot or street governed hereby for more than one consecutive overnight period; provided, however, that a trailer or trailers, used temporarily by a construction contractor or sub-contractor as an office, supply facility, tool room or warehouse, may be located on any lot during the actual period of construction on that lot, but not to exceed a total of 90 days.

## 8.00 ANIMALS

8.01 No animals, livestock or poultry of any kind shall be raised, kept or bred on any lot in Crested Butte South; except that a reasonable number of family dogs, cats, birds and fish may be kept provided that they are not kept or bred for any commercial purpose, nor allowed to annoy others.

## 9.00 SETBACK REQUIREMENTS

9.01 No building, or any part thereof, except as otherwise provided herein, shall be erected or maintained closer than 25 feet to any street, nor closer than 25 feet to the rear line of any lot.

9.02 Free or open spaces shall be left on both sides of a residential structure of a minimum of ten feet in width; provided, however, that a dwelling place may extend across lot lines into two or more lots.

9.03 Unenclosed covered porches or entryways, entrance steps, bay windows, balconies, and roof overhangs shall not be included in determining setbacks if the same do not extend more than six feet from the basic structure.

9.04 The Committee shall in all cases have the right to determine which are the front and rear lot lines, and to grant variance of the above in the case of irregularly shaped lots or unusual conditions. The Committee's determination shall be final and binding.

## 10.00 MINIMUM SIZE

10.01 No residential structure which has an area of less than 1,500 square feet, exclusive of porches, garages and basements, if a single family residence; or less than 800 square feet per residential unit, not including porches, garages and basements, if a multi-family structure, shall be erected or placed on any lot or cluster development.

## 11.00 NO CONSTRUCTION IN ABSENCE OF WATER AND SEWER

11.01 No structure shall be built on any lot until the road, water and sewer adjacent to the lot involved shall be installed and functional, nor shall any individual water supply or sewage disposal system be permitted on any lot. All residential structures shall be connected to the water and sewer system provided.

## 12.00 SIGHT DISTANCE AT INTERSECTIONS

12.01 No fence, wall, hedge, shrub or structure which obstructs sight lines at elevations between two and six feet above the adjacent road surface shall be permitted to remain on any corner lot within the triangular area formed by the intersecting street property lines and a line connecting them at points 25 feet from the intersection of such lines, unless variance is granted by the Committee. Nothing herein contained shall require the removal of earth to conform hereto.

## 13.00 PARKING

13.01 No automobiles, trailers, trucks, snowmobiles or other vehicles or objects of any nature shall be parked on or in any street or road governed hereby while there is any discernible snow upon adjacent non-

public ground. The owner of every lot shall provide off-street parking for two vehicles for the first residential unit and one additional space for each additional unit.

14.00 CLUSTER DEVELOPMENT

14.01 Nothing herein contained shall prevent the assembly of lots by any common owner for the purpose of cluster construction. Such owner shall record his declaration of cluster usage, in form as hereafter provided, and thereafter the lots described by such declaration shall be considered and treated as one parcel or lot.

14.02 After recording such declaration, a cluster dwelling place may be constructed anywhere thereon, having regard to setback and height. requirements and plan approval by the Committee.

14.03 With the exception of appropriate garage structures, no other buildings may thereafter be erected anywhere on the parcel bound by the cluster declaration. No variance may be granted by the Committee.

14.04 Form of Cluster Declaration:

CLUSTER DECLARATION

The undersigned, for myself and for my heirs, successors, personal representatives and assigns, do hereby declare my election to group Lots \_\_\_\_\_, inclusive, Block \_\_\_\_\_, Crested Butte South, \_\_\_\_\_ Filing, into one plot, to be henceforth maintained as one parcel, in order that I may build thereon one structure containing a maximum number of residential units totaling the number permitted on each separate lot in the absence of this declaration, multiplied by the number of lots bound hereby. I hereby forever waive and disclaim any right to construct any other residential units on said parcel or to separate the same, binding my heirs, personal representatives, successors and assigns hereby; and agree that all other restrictive covenants applicable to the land involved shall continue in full force and effect.

STATE OF COLORADO )  
County of \_\_\_\_\_ ) ss.

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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

My Commission expires:

15.00 UTILITY EASEMENTS

15.01 An easement for the placement and servicing of utilities, eight to ten feet in width, is reserved across the front and/or rear of each lot, and along the sidelines of some lots, as shown in the recorded plat.

15.02 The owner of each lot shall, at his own cost and expense, keep and maintain that portion of the easement within his own property line at all times in good condition of repair and maintenance, and neither erect nor permit the erection of any building or structure of any kind within said easement which might interfere in any way with the proper maintenance, use, operation, repair, construction or patrol of any utility services located therein.

15.03 Any utility company or improvement district with facilities therein shall have the right to enter said easement as necessary for the purposes for which such easements are provided.

15.04 Any easement platted may be vacated by the Committee to permit cluster development; provided that the owner of the lot or lots involved grants an equivalent or commensurate easement providing similar access for utilities and connecting with other similar easements.

#### 16.00 LOCATION OF UTILITIES

16.01 All utilities shall be located underground; and no wire, pipe or pole (except poles for street lighting) shall be visible.

16.02 No radio or television aerial or cable shall be installed or maintained where visible from the exterior of any building.

#### 17.00 FILL DIRT

17.01 Where fill is necessary on a building site to obtain proper topography and landscaping, it shall be free of waste material and not contain trash, garbage, ashes or tree limbs or stumps. Any excess earth remaining after excavation shall be removed from the building site and deposited within Crested Butte South where directed by the Committee at the expense of the lot owner.

#### 18.00 LOT APPEARANCE

18.01 The appearance of every lot governed hereby shall be maintained in a neat and attractive manner. Once the surface cover thereof is disturbed or changed in any manner, the owner or purchaser thereof shall be responsible to see that grass is kept mown; trash and/or garbage is kept in covered containers emptied at reasonable intervals; and the lot kept free of weeds, trash, litter, refuse, garbage and any unsightly growth. No billboard, advertising sign or device, or other unsightly object shall be erected, placed or suffered to remain on any lot, nor shall any premises be used in any manner which would disturb the quiet or endanger the health of the adjoining landowners; provided, that one sign of not more than six square feet used to advertise the property for sale or rent may be posted at any time.

#### 19.00 TREES AND SHRUBS

19.01 No tree with a diameter of two inches or more measured four feet above the grounds, nor any shrub of three feet in height, shall, without approval of the Committee, be cut down, destroyed, moved or disfigured; and all existing trees and shrubs shall be protected during construction and preserved by proper wells and grading, as approved by the Committee.

#### 20.00 NO RESUBDIVISION

20.01 No lot governed hereby shall be subdivided, including parcels on which a cluster declaration has been recorded, except that the owner thereof may convey condominium estates in any multi-family structure pursuant to the provisions of CRS 1963 118-15-1, et seq., as amended.

#### 21.00 CHANGE OF GRADE OR DRAINAGE

21.01 No change in the grade or drainage of any lot shall be made which would affect any adjoining lot without the written consent of the owner or owners of said adjoining lots and the approval of the Committee.

#### 22.00 FENCES

22.01 No fence shall be erected or maintained within 15 feet of any street or road; nor shall any fence exceeding three feet in height be erected or maintained without the approval of the Committee.

## 23.00 HEATING FACILITIES

23.01 No structure shall be equipped with any heating apparatus which uses any but smoke-free fuel; but any structure may contain not more than one fireplace per residential unit, provided the same is not a primary heat source.

23.02 Bottles, tanks, or other storage containers for fuel must be concealed from view by fencing, an enclosure, or other satisfactory means.

23.03 Each structure must be connected to and supplied from any central fuel system installed or provided; and any fuel tanks or bottles must be removed within 30 days after fuel from a central system is available.

## 24.00 COMMERCIAL PROPERTY

24.01 Those lots so marked on the recorded plats affected hereby are designated as commercial property. All of the structures erected on any of said lots or blocks shall be for trade or commercial purposes; and the setback requirements contained elsewhere herein shall not be applicable to said lots and blocks.

24.02 Signs of a nature to adequately disclose the proprietor's business shall be attached to the structure on any of said lots, providing such signs are of a common type approved by the Committee. No flashing, moving, animated or neon signs will be permitted; nor any sign which extends above the roof line or the structure upon which erected. No sign shall exceed 50 square feet; but nothing shall prevent dignified window lettering.

24.03 No structure on a commercial lot shall exceed two stories in height, exclusive of chimneys.

24.04 Off-street parking shall be provided by each lot owner, either alone or in concert with other commercial property owners.

## 25.00 ENFORCEMENT AND AMENDMENT

25.01 The provisions hereof shall run with and bind the land and shall be enforceable by the Company, and the Committee or any owner of land affected hereby.

25.02 If any person in possession of any lots bound hereby violates or attempts to violate any of these covenants, it shall be lawful for any other person owning land governed hereby to prosecute such proceedings in the appropriate Court to prevent violation and to enforce the provisions hereof.

25.03 The failure of any person to enforce any of these restrictions shall not be deemed a waiver of breach hereof by any other person, nor of any prior or subsequent breach.

25.04 Any of the covenants, restrictions, charges and duties herein contained may be altered, repealed, amended or changed by vote of a majority of the owners of land bound hereby, Any such change shall be evidenced by the recording of an appropriate instrument in writing executed by a majority of the then owners of lots affected.

26.00 SEVERABILITY

26.01 If any provision hereof be held invalid, or the application of any provision to any person, firm or corporation or any circumstance be unenforceable, such provision shall be severable; and the remainder hereof remain in full force and effect as though the invalid portion had not been included herein.

IN WITNESS WHEREOF, the Crested Butte Land Company has caused these presents to be signed by Roger Cisneros, its President, and its corporate seal attached hereto, attested by Nancy J. Morrison, its Secretary.

CRESTED BUTTE LAND COMPAWY

By /s/ Roger Cisneros  
President

ATTEST:

/s/ Nancy J. Morrison  
Secretary

CRESTED BUTTE  
LAND COMPANY

-SEAL-

COLORADO

STATE OF COLORADO    )  
City and County of Denver    ) ss.

BE IT REMEMBERED that on this 20th day of August 1970, personally appeared before me, a Notary Public of the State of Colorado, Mr. Roger Cisneros, President of the Crested Butte Land Company, and Miss Nancy J. Morrison, Secretary of said Company, and acknowledged the foregoing Indenture as the act and deed of the said Company; and in my presence affixed the seal of said Company and their signatures hereto; and acknowledged their said signatures.

(SEAL)

My commission expires: 3-24-73

/s/ R. M. Huckeby  
Notary Public

**AMENDMENT TO  
COVENANTS AND RESTRICTIONS  
CRESTED BUTTE SOUTH**

THIS AMENDMENT TO COVENANTS AND RESTRICTIONS OF CRESTED BUTTE SOUTH is executed this \_\_\_\_\_ 31a04 of March, 2004 by the Crested Butte South Property Owners Association (the "Association"), a Colorado non-profit corporation as follows:

1. FACTS AND PURPOSES.

1.1 The Covenants and Restrictions of Crested Butte South were recorded August 26, 1970 in Book 420 at page 404 of the real property records of Gunnison County, Colorado. Amendments to the Covenants and restrictions were recorded May 1, 1996 in Book 782 at pages 202 through 205, and January 21, 1983 recorded in Book 589 at page 304 (the "Amendments") of the real property records of Gunnison County, Colorado. The Covenants and Restrictions as amended by the Amendments are collectively referred to as the "Covenants."

1.2 The Covenants encumber certain real property in Gunnison County, Colorado, more particularly described therein.

1.3 Pursuant to Section 25.04 of the Covenants and C.R.S. §38-33.3-302, the Covenants may be altered, amended or changed by a vote of the majority of the owners of land bound thereby evidenced by the recording of an appropriate instrument in writing executed by a majority of the then owners of lots affected.

1.4 Accordingly, the members of the Association have agreed to amend the Covenants.

2. AMENDMENT. Section 2.02 is hereby amended by adding the following provision:

2.02-14 To appoint a Sub-Committee to carry out the powers and duties authorized under Sections 2.02-4 and 2.02-5.

3. AMENDMENT. Section 25.01 is hereby amended to read as follows:

25.01 The provisions hereof shall run with and bind the land, including all blocks, lots, and any subdivision thereof in all filings of Crested Butte South, and shall be enforceable by the Crested Butte South Property Owners Association, the Committee, now known as the Board of Directors of the Crested Butte South Property Owners Association, or any Owner of any Block, Lot, or subdivided unit contained thereon, within Crested Butte South.

4. AMENDMENT. Section 25.04 is hereby amended to read as follows:

25.04 Any of the covenants, restrictions, charges, and duties contained in the Covenants and Restrictions may be terminated, changed, modified, amended, or added to, in whole or in part, upon the affirmative vote of a majority of the Owners that vote on the proposed amendment, provided that at least 40% of the Owners of Blocks, Lots, or subdivided units, in Crested Butte South vote thereon. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Blocks, Lots, and subdivided Units within Crested Butte South. The President and Secretary of the Association shall certify in a notarized affidavit that the amendment was adopted and approved in accordance with the provisions of this Section 25.04 and such certification shall be conclusive proof that the Amendment was duly adopted in proper form.

