CONTRACT TO BUY, SELL AND DEVELOP REAL ESTATE FOR HOUSING

DRAFT 02/09/2018

This Contract to Buy, Sell and Develop Real Estate for Housing (the "Contract") is entered into as of the latest date signed below between the Town of Crested Butte, a Colorado home rule municipal corporation ("Town" or "Seller"), and the Gunnison Valley Regional Housing Authority, a multi-jurisdictional Colorado housing authority ("GVRHA" or "Buyer"). The Town and the GVRHA may be referred to herein collectively as the "Parties."

RECITALS

1. The Town owns the real property in the Town of Crested Butte, Gunnison County, Colorado, more particularly described on Exhibit A (the "Lots" or the "Property").
2. GVRHA is a multi-jurisdictional housing authority created by the Town of Crested Butte, the Town of Mt. Crested Butte, the City of Gunnison and Gunnison County, for the purposes of advocating, promoting, planning and providing for the long-term supply of desirable and affordable housing in Gunnison County in order to maintain a well-rounded community.
3. The Town desires to sell and GVRHA desires to purchase the Lots to build four duplexes or 8 units for affordable workforce housing built on the Lots located in the Paradise Park Subdivision in the Town.
4. GVRHA will be responsible for construction of the duplexes and ensuring deed restrictions and/or lender acknowledgements are placed on each unit satisfactory with the Town upon the units after construction has been completed, and for qualifying eligible applicants to purchase the duplexes.
5. GVRHA will construct the duplexes according to applicable Town Building Code regulations and other applicable regulations of the Town.
6. The Town reserves the right to purchase up one duplex (2 housing units) by executing a purchase agreement contract with the GVRHA;

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

1. DATES AND DEADLINES; CONTRACT SUMMARY.

Reference	Term / Event	Definition / Deadline
	Buyer	GVRHA Attn: Jennifer Kermode 202 E. Georgia Avenue Gunnison, CO 81230 (970) 641-7901 jkermode@gvrha.org

	Seller	Town of Crested Butte Attn: Dara MacDonald, Town Manager and Michael Yerman, Comm. Dev. Director 507 Maroon Avenue P.O. Box 39 Crested Butte, CO 81224 (970) 349-5338 dmacdonald@crestedbutte-co.gov myerman@crestedbutte-co.gov Copy to:
	Closing Company	
	Purchase Price	$10.00
	Due Diligence Delivery Deadline	MEC + 14 days
	Due Diligence Objection Deadline	MEC + 21 days
	Due Diligence Resolution Deadline	MEC + 28 days
	Closing Date	MEC + 28 days

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

2. PROPERTY TO BE CONVEYED. At the time GVRHA obtains the construction loan, the Town shall convey to the Buyer the Lots, as described on Exhibit A, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

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

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

5. DUE DILIGENCE.

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

1. All existing surveys pertaining to the Property;

2. All easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal, options, and leases) not shown by public records;

3. Soils reports or data pertaining to the Property;

4. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents;

5. All permits, licenses and other use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any.

b. In the event the Buyer submits written requests for additional specific documents, which the Town is required to provide if they are in the Town's custody, possession or control ("Document Request"), the Town shall provide such documents as soon as reasonably possible, but in any event, within 14 calendar days of the date the Town receives a Document Request from Buyer.

c. Buyer shall have until 11:59 pm on the Due Diligence Objection Deadline to conduct all due diligence related to this transaction, including but not limited to inspection of documents, record and off-record title matters, insurance matters, survey matters, environmental matters, the physical condition of the Property, and any other matter reasonably desired by Buyer to be reviewed in connection with this transaction. If for any reason Buyer desires not to close, Buyer shall notify the Town of such fact in writing before the expiration of the Due Diligence Objection Deadline, and this Contract shall terminate.

d. On or before expiration of the Due Diligence Objection Deadline, Buyer also shall have the right to provide written notice to the Town of any objections. If the Town receives such written notice of objection from Buyer, the Town shall notify Buyer whether the Town is willing to use reasonable efforts to cure or correct such objection(s). If the Town is willing to use reasonable efforts to cure or correct such objection(s), the Town shall keep Buyer apprised of the status of his efforts to cure such objection(s).

e. On or before the Due Diligence Resolution Deadline, Buyer may, by written notice to the Town waive any outstanding objections and proceed to close. If Buyer does not so waive any such objections, this Contract shall terminate.

f. If Buyer does not terminate this Contract or provide the Town with written notice of any objections on or before the Due Diligence Delivery Deadline, or if Buyer waives previously stated objections, or if previously stated objections are cured by the Town, then this Contract shall continue in full force and effect.

g. The Town shall cooperate with Buyer in good faith to obtain the resolution of any issues raised during the Due Diligence Period, but shall have no obligation to correct or cure any issues raised by Buyer. Notwithstanding anything in this § 5 to the contrary, the Due Diligence Period also may be extended by mutual written agreement of the Parties to allow additional time to resolve any issues arising from the due diligence.

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

i. Before the Due Diligence Objection Deadline, Buyer (acting through its employees and contractors) shall have the right to enter the Town Property to complete a survey and inspect the physical condition of the property at Buyer's expense. All such inspections and evaluations shall be conducted at such times as are mutually agreeable to

minimize the interruption of the Town's uses of the Property, if any. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold the Town harmless from and against any liability, damage, cost or expense incurred by the Town and caused by any such Work, claim, or lien. This indemnity includes the Town's right to recover all costs and expenses incurred by the Town to defend against any such liability, damage, cost or expense, or to enforce this section, including the Town's reasonable attorney fees, legal fees and expenses. The provisions of this section shall survive the termination of this Contract.

6. WARRANTIES.

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

1. There are no actions, suits, litigation, condemnation, or other proceedings (whether civil, administrative, or otherwise) or investigations pending, against or affecting the Property.

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

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

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

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

2. Buyer acknowledges that the Town has made no representations as to the investment potential of the Property.

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

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

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

c. These representations and warranties shall survive closing.

7. AGREEMENT REGARDING DUPLEX CONSTRUCTION AND OCCUPATION. The Buyer and the Town agree to the following terms and conditions concerning the construction of the Duplexes on the Lots being conveyed from the Town to GVRHA:

a. GVRHA will promptly apply for and obtain the necessary loan to construct a duplex (two units) on each of the Lots.

b. The Town will convey title to each of the Lots once GVRHA has obtained the construction loan(s) for the building of the duplex (two units) on the Lot.

c. GVRHA will be responsible for qualifying applicants to purchase duplexes, homeownership training, and conducting any lottery to select qualified applicants.

d. GVRHA will act as the broker for the sale of the duplex units to the qualified buyers. The GVRHA will be eligible for up to a 2% brokerage fee from the buyer for this service.

e. The Town will pay survey, party wall agreement, and subdivision costs, if any.

f. GVRHA will be responsible for overseeing the construction of the duplexes.

g. GVRHA will be responsible for executing a contract with High Mountain Concepts to act as the general contractor for the construction of the duplexes.

h. The Town will pay tap fees for water and sewer connections to the Town, waive BOZAR fees and building permit fees for each duplex on the lots.

i. High Mountain Concepts will be responsible for the cost of physical installation of water and sewer service lines.

j. GVRHA will specify income guidelines up to 200% AMI according the Town of Crested Butte's Affordable Housing Guidelines ("Town Housing Guidelines") as adopted by Resolution 2, Series 2016 in the and work with Gunnison Watershed School District RE1J on purchase of a duplex or up to two units. GVRHA acknowledges that serving households at lower income levels is desirable, and will strive to achieve lower price points if financially feasible.

k. GVHRA will work with High Mountain Concepts to develop a construction schedule and provide this schedule to the Town.

l. GVRHA will execute deed restriction acknowledgements or any other deed restriction instruments as deemed necessary by the Town with each person who purchases the duplex units at closing for the sale of the units. These deed restrictions will be in perpetuity.

m. GVRHA will be responsible for tracking and releasing draws on the construction loan for the building of the duplexes.

n. The Town will provide up to $37,783.00 for architectural services for the design of the duplexes on the Lots.

o. The Town will execute a purchase contract for up to one duplex (two units) with the GVRHA by May 1, 2018.

p. If the Town decides to pursue this purchase, Town will provide finance for the construction of the units, and funds will be drawn down in proportion to construction progress. Payment will occur within 14 business days from receipt of invoices from the GVRHA.

8. WORKFORCE AFFORDABLE HOUSING RESTRICTIONS IN DEED. The Town shall convey title to each Lot by delivering to GVRHA a Warranty Deed, attached hereto as Exhibit 2,-that restricts Buyer to provide workforce affordable housing units for certain income levels and other improvements substantially similar to those set forth in Town Housing Guidelines. If the Town ultimately approves the GVRHA Application through the Town's review process, and that approval is agreed to by GVRHA, the parties agree that the Warranty Deed(s) shall be amended to reflect the particulars of such approval.

9. CLOSING DOCUMENTS, INSTRUCTIONS, AND CLOSING.

a. Closing Documents and Closing Information. The Town and Buyer shall cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and the Town and their designees. Buyer and the Town will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and the Town shall sign and complete all customary or reasonably required documents at or before Closing.

b. Closing. Closing shall be on the date specified as the Closing Date or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by the Closing Company.

c. Closing Costs. Buyer shall pay any escrow fee and closing services fee charged by the Closing Company, and any recording fees.

d. Transfer of Title. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, the Town shall execute and deliver a good and sufficient warranty deed for each Lot to Buyer, at the time GVRHA obtains the construction loan, conveying the Lot free and clear of all taxes except the general taxes for the year of Closing. Title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Commitment ordered by Buyer in accordance with § 4 of this Contract;

2. Distribution utility easements (including cable TV);

3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which are accepted by Buyer in accordance with § 5 of this Contract; and

4. Inclusion of the Property within any special taxing district.

e. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

f. Brokerage Disclosure. The Town has not engaged a broker in this transaction, nor has GVRHA. No commission shall be due.

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

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

b. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline shall be extended to the next day that is not a Saturday, Sunday or Holiday.

11. PROPERTY CONDITION AND WALK-THROUGH.

a. The Parties to this Contract expressly agree that the Property shall be maintained in its present condition by the Town until Closing, unless otherwise agreed upon in writing.

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

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

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

14. DEFAULT AND REMEDIES If any obligation hereunder is not performed or waived as herein provided, the non-defaulting party has the following remedies:

a. If Buyer is in Default:

1. If Buyer fails to Close, the Town has the right to terminate the Contract.

2. If Buyer fails to diligently pursue a land use change approval with the Town for the Project, the Town has the right to terminate the Contract.

3. If Buyer fails to construct the duplexes on the Lots by September 1, 2019, then Buyer agrees to reconvey the Lots to the Town, and the Town will refund the Purchase Price.

b. If the Town is in Default, Buyer has the right to terminate the contract.

15. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation between the parties relating to this

Contract, prior to or after Closing Date, each party shall be responsible to pay its own respective costs and expenses, including attorney fees, legal fees and expenses.

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

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

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

(1) personally delivered to the required Party;

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

(3) sent by email or facsimile transmission, to the required Party, at the addresses or number set forth in § 1.

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

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

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

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

23. ATTACHMENTS. The following attachments are a part of this Contract:

a. Exhibit A: Description of Property

b. Form of Warranty Deed

c. Notice of Lien

d. Lender Deed Restriction Acknowledgment

24. ADDITIONAL PROVISIONS

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

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

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

d. NO CONVEYANCE OF PROJECT WITHOUT PRIOR TOWN APPROVAL. None of the Lots shall be conveyed to a third party or encumbered without prior written approval of the Town, which approval shall consider any reasonable impact to fulfillment of Buyer obligations hereunder, and which approval shall not be unreasonably withheld.

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

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

g. NO LIENS OR ENCUMBRANCES. No Liens or encumbrances shall be placed on the Property until: (i) any approval of the Building and/or Zoning Applications by the Town, and (ii) dismissal of any legal challenges to such approval.

h. DEFAULT. Town and Buyer hereby covenant and agree that the following additional items shall be considered a default under this Agreement by Buyer:

1. The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Buyer, or the admission by Buyer that it is unable to pay its debts as they become due.

2. The consent to an involuntary petition in bankruptcy or the failure to vacate, within thirty (30) days from the date of entry thereof, any order approving an involuntary petition against Buyer.

3. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Buyer as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of Buyer's assets or the Property.

4. Any attachment or execution levied upon Buyer's assets and the Property which causes Buyer to be unable to perform its obligations hereunder.

5. Any commencement of foreclosure proceedings for any lien against the Property related to actions of Buyer with respect to the Property prior to the Closing, which proceedings are not dismissed, or the lien is bonded over and released within 30 days of the filing of the foreclosure proceedings.

i. The Town has authorized Dara MacDonald, Town Manager, to execute this Contract and all documents necessary to effectuate this Contract.

SIGNATURES

Gunnison Valley Regional Housing Authority

By:_____ _____
Name: _____ Date
Title:_____

The Town of Crested Butte, Colorado

By:_____ _____
Name: _____ Date

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Exhibit A

Lot 6, Lot 11, and Lot 14, Block 79, of the Paradise Park Subdivision

Lot 10, Block 77, of the Paradise Park Subdivision

Town of Crested Butte, County of Gunnison, State of Colorado.

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