

AGREEMENT FOR EASEMENT

THIS AGREEMENT FOR EASEMENT (this "Agreement") is entered into as of the 6th day of May, 1994, in Gunnison County, Colorado, as follows:

1. **PARTIES.** The parties to this Agreement are as follows:

1.1 RIVER GREEN PROPERTIES LIMITED PARTNERSHIP, a Colorado limited partnership ("RGPLP"), whose address is P. O. Box 420, Pineland, Florida 33945.

1.2 RIVER GREEN PROPERTY OWNERS ASSOCIATION, a Colorado non-profit corporation ("Association"), whose address is P.O. Box 632, Crested Butte, Colorado 81224.

1.3 THE CRESTED BUTTE RECREATIONAL DEVELOPMENT CO., a Colorado corporation ("CBRDC"), whose address is P. O. Box 713, Crested Butte, Colorado 81224.

2. **FACTS AND PURPOSES.** The following facts and purposes pertain to this Agreement.

2.1 RGPLP is the developer of River Green, a subdivision ("River Green Subdivision"), pursuant to the Declaration of Protective Covenants in Book 709 at page 900 and the plat bearing Reception No. 435925 (the "Plat"), both of the records of Gunnison County, Colorado.

2.2 CBRDC is the developer of Silver Sage Subdivision ("Silver Sage Subdivision"), which is to be located on the property described in the attached Exhibit A.

2.3 Association is the Association of lot owners in River Green Subdivision.

2.4 The Association and lot owners in River Green Subdivision have granted and conveyed to RGPLP the right to grant and convey one or more easements to CBRDC, pursuant to the terms and conditions of the Agreement recorded in Book 732 at page 301 of the records of Gunnison County, Colorado.

2.5 The purpose of this Agreement is for RGPLP to agree to grant and convey to CBRDC one or more easements for the purposes and subject to the terms and conditions contained in this Agreement.

3. AGREEMENT FOR EASEMENTS. RGPLP agrees to grant and convey to CBRDC one or more nonexclusive easements (collectively, the "Easement") subject to the following terms and conditions:

3.1 The Easement shall be located on, under, through and across Slate River Drive as shown on the Plat, including that parcel designated on the Plat as "common area reserved for future road R.O.W".

3.2 The Easement shall be for the exclusive purposes of ingress and egress and installation and maintenance of utilities to serve no more than 26 dwelling units in Silver Sage Subdivision.

3.3 Except in the case of a utility easement granted to a utility company, the Easement agreement shall be entered into with CBRDC (or its successor developer, or the association of property owners of Silver Sage Subdivision, as the case may be), and the easement shall be appurtenant to, and for the benefit of, the property to be developed as the Silver Sage Subdivision. In any event, the Easement agreement shall obligate and bind RGPLP, its successors and assigns, including the owners of lots within River Green Subdivision, and the Association, CBRDC, its successors and assigns, including owners of lots within Silver Sage Subdivision, and any association of property owners of Silver Sage Subdivision.

3.4 The Easement agreement shall be enforceable by the parties hereto, their successors and assigns, including individual lot owners in the River Green Subdivision and Silver Sage Subdivision, and the Association or any association of property owners of Silver Sage Subdivision, by specific performance or any other available remedy. If any action is brought in a court of law as to the enforcement, interpretation, or construction thereof, or any document provided for therein, the prevailing party in such action shall be entitled to reasonable attorney's fees, as well as costs incurred in the prosecution or defense of such action. Any sums payable under the Easement agreement which remain unpaid after the due date shall bear interest at the rate of 18 per cent per annum.

3.5 From and after the date that the subdivision plat for Silver Sage Subdivision is filed in the records of Gunnison County, Colorado, all costs of snowplowing, snow removal and maintenance of the Common Drive shall be shared and paid by the Association and CBRDC (or its successor developer, or

the association of property owners of Silver Sage Subdivision, as the case may be) on a percentage basis proportionate to the number of allowable dwelling units in each subdivision (provided that in making such calculation, a single family residence with one efficiency dwelling unit will be considered as one dwelling unit). The Association will perform, or cause to be performed, all such services and will bill CBRDC (or its successor developer, or the association of property owners of Silver Sage Subdivision, as the case may be), its proportionate share, and such amount shall be due and payable to the Association within 15 days after billing.

3.6 If any utilities, other than those identified in paragraph 4 hereof, are to be installed within the River Green Subdivision, which utilities will serve all or any part of the Silver Sage Subdivision, the size, location, and other physical characteristics of such utilities must first be approved, in writing, by the Association, which approval shall not be unreasonably withheld. In the event of any utility installation or maintenance within the easement, any property, including streets, driveways, sidewalks, utility lines, structures, or other improvements damaged or otherwise disturbed by the installation or maintenance of utilities shall be restored to their condition as they existed prior to such installation or maintenance, including, but not limited to, reseeding of grasses and repair of streets. If the installation or maintenance of any utilities involves cutting or excavating the pavement of the Common Drive (from and after the time the Common Drive is paved), there shall be deposited with the Association the sum of \$2,000.00 to ensure and guarantee the timely and workmanlike repair of the Common Drive, and it shall be the Association's responsibility to enforce such workmanlike repair of the Common Drive for the benefit of the parties to this agreement.

3.7 At such time as the Association elects to pave the Common Drive, CBRDC (or its successor developer, or the association of property owners of Silver Sage Subdivision, as the case may be) and the Association shall share in the costs of paving on the following basis:

- (i) In advance of actual paving, the Association shall notify CBRDC of its intention to pave the Common Drive.
- (ii) The Association shall seek no less than two competitive bids for the paving of the Common Drive.
- (iii) The Association shall accept the lowest qualified bid for the paving of the Common Drive.

- (iv) If the subdivision plat for Silver Sage Subdivision has not been recorded in the records of Gunnison County, Colorado, CBRDC (or its successor developer) shall pay 57.5 per cent of the cost of paving.
- (v) If the subdivision plat for Silver Sage Subdivision has been recorded in the records of Gunnison County, Colorado, then CBRDC (or its successor developer, or the association of property owners of Silver Sage Subdivision, as the case may be) shall pay its share of the cost of paving on a percentage basis proportionate to the number of allowable dwelling units in each of the subdivisions (provided that in making such calculation, a single-family residence with one efficiency dwelling unit will be considered as one dwelling unit).
- (vi) Both the Association and CBRDC (or its successor developer, or the association of property owners of Silver Sage Subdivision, as the case may be) shall deposit its share of the paving costs with the Association within fifteen days after notification of the cost thereof.

3.8 As used herein, the term "Common Drive" means that portion of Slate River Drive within River Green Subdivision, and that portion of Slate River Drive within the S1/2SE1/4SW1/4 of Section 1, Township 14 South, Range 86 West, 6th P.M., Gunnison County, Colorado.

3.9 From and after the date that the subdivision plat for Silver Sage Subdivision is filed in the records of Gunnison County, Colorado, all costs of maintenance, repair, and operation of the Common Sewer Line shall be shared and paid by the Association and CBRDC (or its successor developer, or the association of property owners of Silver Sage Subdivision, as the case may be) on a percentage basis proportionate to the number of allowable dwelling units in each subdivision (provided that in making such calculation, a single-family residence with one efficiency dwelling unit will be considered as one

dwelling unit). The Association will perform or cause to be performed all such services and will bill CBRDC (or its successor developer, or association of property owners of Silver Sage Subdivision, as the case may be) its proportionate share, and such amount shall be due and payable to the Association within 15 days after billing.

3.10 As used herein, the term "Common Sewer Line" means that portion of the sewer line, excluding service lines to individual lots within River Green Subdivision, from its connection with the East River Regional Sanitation District existing force main to its terminus in the River Green Subdivision, as shown in the Plans referenced in paragraph 4.1 hereof.

3.11 In no event will any Easement agreement or other agreement executed by RGPLP obligate the Association or any of the owners of lots in River Green Subdivision to pay for installation or maintenance of roads, utilities or other improvements within Silver Sage Subdivision or designed exclusively to serve Silver Sage Subdivision.

4. CONSIDERATION. In consideration for the granting of the Easement by RGPLP, CBRDC agrees to pay to RGPLP an amount equal to the total of the following (the "Development Cost"):

4.1 All costs of constructing the roadway for the Common Drive, in accordance with the plans and specifications prepared by Summit Engineering Company dated October 1, 1993 (the "Plans"), as set forth in the Agreement between RGPLP and Gears, Inc., dated December 15, 1993, attached hereto as Exhibit B, in the amount estimated to be \$51,931.20.

4.2 All costs of installing electrical service to River Green Subdivision (but excluding the cost of providing service to individual lots within River Green Subdivision), in accordance with the Agreement With Developer for Indeterminate Service Plan Line Extension by and between RGPLP and Gunnison County Electric Association, Inc., dated September 10, 1993, attached hereto as Exhibit C, in the estimated amount of \$8,100.00.

4.3 All costs of installing telephone service to River Green Subdivision (but excluding the cost of providing service to individual lots within River Green Subdivision), in accordance with the Land Development Agreement by and between RGPLP and U. S. West Communications, Inc., dated September 10, 1993, attached hereto as Exhibit D, in the estimated amount of \$12,611.20.

4.4 All costs of installing sewer service to River Green Subdivision (but excluding the cost of providing service

to individual lots within River Green Subdivision], in accordance with the Plans and Exhibit B, in the estimated amount of \$74,125.00, together with inspection fees charged by the East River Regional Sanitation District in the estimated amount of \$5,000.00.

Any substantial modification of the Plans or to Exhibits B, C, or D, shall be subject to the review and approval of CBRDC, which approval shall not be unreasonably withheld.

5. PROMISSORY NOTE AND DEED OF TRUST. Contemporaneously with the granting of the Easement from RGPLP to CBRDC, CBRDC will execute and deliver to RGPLP a promissory note (the "Promissory Note") in the form attached hereto as Exhibit E, secured by a deed of trust (the "Deed of Trust") in the form attached hereto as Exhibit F.

5.1 With respect to the Promissory Note, the following provisions and terms shall govern:

5.1.1 The original principal amount shall be the estimated Development Cost of \$151,767.40. At such time as the Common Drive and utilities are completed and the Final Development Cost is fixed, said note shall be amended to reflect the actual Development Cost.

5.1.2 From the date of execution of the Promissory Note to the date of any default, the Promissory Note shall bear interest at the rate of 10 per cent per year. Interest shall accrue from the date upon which RGPLP makes or has made any payment of the Development Cost, pursuant to Exhibits B, C, and D, whichever is later. The Promissory Note shall bear interest after default at the rate of 12 per cent per year.

5.1.3 The Promissory Note shall be payable in three installments, each in the amount of one-third of the principal amount, as amended, plus accrued interest. The first installment shall be due on or before November 15, 1994, the second installment shall be due on or before November 15, 1995, and the third and final installment shall be due on or before November 15, 1996. CBRDC may prepay any amount upon the Promissory Note without penalty, any prepayment to apply to the next installment due thereon.

5.1.4 Any refunds paid to RGPLP pursuant to paragraph III(F) of the Land Development Agreement with U. S. West Communications, Inc., Exhibit D, and any refunds of the inspection fees advanced to the East River Regional Sanitation District, shall be applied to the next installment due upon the Promissory Note. Upon full payment of the Promissory Note, RGPLP shall assign any further right to refunds under said agreement to CBRDC, its successors or assigns.

5.2 With respect to the Deed of Trust, the following provisions and terms shall govern:

5.2.1 The Deed of Trust shall initially encumber and constitute a second lien on all of the property to be platted as Silver Sage Subdivision, as described in paragraph 2.2 hereof. At least 14 days prior to execution of the Deed of Trust, CBRDC shall deliver to RGPLP a current commitment for a lender's policy of title insurance issued through Gunnison County Abstract Company agreeing to insure the second lien of the Deed of Trust in favor of RGPLP, subject only to standard ALTA exceptions 1, 2, 3, and 5, the terms and conditions of the Patents from the United States of America, and other exceptions to title deemed acceptable to RGPLP. Within 30 days after granting of the Easement and recording of the Deed of Trust, CBRDC shall deliver to RGPLP a lender's policy of title insurance issued in accordance with the provisions of said commitment. CBRDC will pay the title insurance premium and all other costs associated therewith at closing of the granting of the Easement.

5.2.2 At such time as the subdivision plat for Silver Sage Subdivision is filed in the records of Gunnison County, Colorado, RGPLP and CBRDC shall enter into an amendment to the Deed of Trust such that the Deed of Trust shall encumber and constitute a first lien on three lots within Silver Sage Subdivision. Such three lots shall be chosen by CBRDC from among any of the lots within Silver Sage Subdivision. At least 14 days prior to execution of the amendment to the Deed of Trust, CBRDC shall deliver to RGPLP a current commitment for a lender's policy of title insurance issued through Gunnison County Abstract Company agreeing to insure the first lien of the Deed of Trust in favor of RGPLP, subject only to standard ALTA exceptions 1, 2, 3, and 5, the terms and conditions of the Patents from the United States of America, terms and conditions of the protective covenants and plat of Silver Sage Subdivision, and other exceptions deemed acceptable to RGPLP. Within 30 days after execution and recording of the amendment to the Deed of Trust, CBRDC shall deliver to RGPLP a lender's policy of title insurance issued in accordance with the provisions of said commitment. CBRDC will pay the title insurance premium and all other costs associated therewith at closing of the amendment to the Deed of Trust. The amended Deed of Trust shall contain a "Partial Release" provision obligating RGPLP to release one of the lots encumbered by the amended Deed of Trust for each installment of principal, plus accrued interest, paid upon the Promissory Note.

5.2.3 The Deed of Trust shall contain a "strict due on transfer" provision. The interest rate on lender disbursements under the Deed of Trust shall be 12 per cent per annum.

5.3 If RGPLP is at any time dissolved, the Promissory Note and Deed of Trust shall be payable to and for the benefit of Noa E. Andress and Karen Savulis-Andress, as to an undivided 63.5 percent interest, and Nicholas J. Lypps and Mary E. Frame, as to an undivided 36.5 percent interest.

6. MISCELLANEOUS.

6.1 All costs of extending the Common Drive and extending the sewer, electrical, and telephone utilities to the Silver Sage Subdivision, and all other costs associated with the subdivision and development of Silver Sage Subdivision, shall be the sole responsibility of CBRDC.

6.2 Each party to this Agreement agrees to pay its respective attorney's fees incurred in connection with the negotiation, drafting, and execution of this Agreement and any documents contemplated hereby.

7. NOTICES. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested, or by telecopier or telegraphic communication to the required party at the following addresses:

RGPLP: As set forth in Paragraph 1 above

Association: As set forth in Paragraph 1 above

CBRDC: As set forth in Paragraph 1 above

Notice shall be deemed delivered at the time of personal delivery, telecopier or telegraphic communication or when mailed to the required party. Any party may change its address by giving written notice of a change of address to the other party in the manner above provided.

8. ATTORNEYS' FEES. If any action is brought in a court of law by any party to this Agreement as to the enforcement, interpretation or construction of this Agreement, or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as costs incurred in the prosecution or defense of such action.

9. VENUE. This Agreement is entered into in Gunnison County, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties, and all prior negotiations, agreements, representations and understandings (including, without limitation, that certain Memorandum Agreement dated May 21, 1984 between Noel E. Andress and Crested Butte Recreational Development Co., Inc., which is terminated and of no further force and effect) shall be deemed to be merged, included in and superseded by this Agreement. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

11. TIME IS OF THE ESSENCE. It is expressly agreed that time is of the essence of this Agreement.

12. BINDING AGREEMENT. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, legal representatives and heirs.

13. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

RIVER GREEN PROPERTIES LIMITED PARTNERSHIP,
a Colorado limited partnership

By: Noel E. Andress
Noel E. Andress, General Partner

RIVER GREEN PROPERTY OWNERS ASSOCIATION,
a Colorado non-profit corporation

By: Timothy J. Clark, President

THE CRESTED BUTTE RECREATIONAL
DEVELOPMENT CO., a Colorado corporation

3/15/94 By: Mickey Cooper James [Signature]
Mickey Cooper, Vice President Pres.

LEGAL DESCRIPTION FOR
CRESTED BUTTE RECREATIONAL
DEVELOPMENT COMPANY PARCEL

TOWNSHIP 14 SOUTH, RANGE 86 WEST, 6TH P.M.

Section 1: A tract of land being all of that part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section lying east of the centerline of the Slate River and being more particularly described as follows:

Beginning at the center quarter corner of said Section 1, said beginning point being marked as is each of the other corners and witness corners of said tract by a 5/8 inch steel reinforcing bar 2 feet long driven in the ground and having a 1 $\frac{1}{2}$ inch aluminum cap;

Thence proceeding around said tract South 00°30' West along the north-south centerline of said Section 1, a distance of 1,316.5 feet to the southerly boundary of said NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Thence North 89°23' West along said southerly boundary 786.7 feet to a witness corner;

Thence continuing North 89°23' West along said boundary 40 feet more or less to the centerline of the Slate River;

Thence northwesterly along said centerline to the westerly boundary of said NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Thence North 00°25' East along said westerly boundary 30 feet, more or less, and continuing North 00°25' East along said boundary for an additional 36.5 feet to the centerline of said Section 1;

Thence South 89°30' East along said centerline 1,321.9 feet to the point of beginning;

EXCEPTING THEREFROM the following described tract of land:

A strip of land varying in width and approximately 1,317 feet long located in the N $\frac{1}{4}$ SW $\frac{1}{4}$, Section 1, Township 14 South, Range 86 West, 6th P.M., more particularly described as follows:

EXHIBIT A

Beginning at the northeast corner of the tract herein described, said point being the center quarter corner of said Section 1 from whence the north quarter corner of said Section 1 bears North $00^{\circ}30'37''$ East 2,641.49 feet;

Thence proceeding around the tract herein described South $00^{\circ}30'37''$ West 1,316.82 feet along the west line of the SE $\frac{1}{4}$ of said Section 1 to a sixteenth corner, which point is the southeast corner of the tract herein described;

Thence North $89^{\circ}19'47''$ West 66.44 feet along the south line of the N $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 1, to the southwest corner of the tract herein described;

Thence North $00^{\circ}51'02''$ West 1,317 feet to a point on the north line of the N $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 1, which point is the northwest corner of the tract herein described;

Thence South $89^{\circ}29'48''$ East 97.71 feet along the north line of the N $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 1 to the point of beginning, containing 2.481 acres, more or less.

TOGETHER WITH a tract of land hereinafter described:

A strip of land varying in width and approximately 1,224 feet long located in the E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, Township 14 South, Range 86 West, 6th P.M., more particularly described as follows:

Beginning at the southwest corner of the tract herein described, said point being on the north line of the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, from whence the west quarter corner of said section bears North $89^{\circ}29'48''$ West 1,322.57 feet;

Thence proceeding around the tract herein described North $00^{\circ}25'34''$ East 23.83 feet along the west line of the E $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 1 to the northwest corner of the tract herein described;

Thence South $89^{\circ}49'44''$ East 1,224.16 feet to the northeast corner of the tract herein described;

Thence South $00^{\circ}51'02''$ East 30.93 feet to a point on the north line of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 1, which point is the southeast corner of the tract herein described;

Thence North $89^{\circ}29'48''$ West 1,224.86 feet along the north line of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 1 to the point of beginning, containing 0.769 acres, more or less.

County of Gunnison
State of Colorado