

## AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of July, 1991, is by and between the following:

Phillip Coombs, 1 Maroon Avenue,  
Crested Butte, CO 81224,  
hereinafter referred to as "Coombs",

and

Town of Crested Butte, a home rule  
municipal corporation of the State of  
Colorado, 308 3rd Street, Crested Butte,  
CO 81224, hereinafter referred to as "Town".

## RECITALS

WHEREAS, Coombs owns an unplatted 6.271 acre parcel within Town more particularly described on attached Exhibit A, hereinafter referred to as the "6.271 Acre Parcel"; and

WHEREAS, Coombs has applied to rezone and plat approximately 2.778 acres, more particularly described on attached Exhibit B, from "T" Tourist to "R1B" Residential, hereinafter referred to as "Treasury Hill, Lots 1-8"; and

WHEREAS, Coombs intends to construct in the future a resort lodge with bar and restaurant facilities on the property described on attached Exhibit C, hereinafter referred to as the "Lodge Property"; and

WHEREAS, Coombs and Town desire to set forth in writing the agreements, understandings, terms and conditions regarding the rezoning of Treasury Hill, Lots 1-8 and the development and operation of Treasury Hill, Lots 1-8 and the Lodge Property;

NOW, THEREFORE, in consideration of the Recitals and the mutual agreements set forth herein, Coombs and Town agree as follows:

## AGREEMENT

### 1. Roads.

A. Coombs, at his sole cost and expense, shall construct and pave in accordance with the Project Manual for Street Improvements, Town of Crested Butte, July 1989, the following roads, including culverts and other drainage facilities and structures related to such roads:

(1) The access road from Kebler Pass Road to the 6.271 Acre Parcel, hereinafter referred to as "Access Road";

(2) The road within Treasury Hill, Lots 1-8, hereinafter referred to as the "Subdivision Road"; and

(3) The road connecting the Access Road to the Subdivision Road, hereinafter referred to as the "Connecting Road".

B. No grade on such roads shall exceed 7%. After Town is satisfied that Coombs has constructed and paved the Access Road, Connecting Road and Subdivision Road to the standards required by this paragraph 1 and that such roads are not encumbered by any liens, Town shall assume responsibility for all maintenance and snow plowing of the Connecting Road and the Subdivision Road on condition that a building permit has been issued for a lot within Treasury Hill, Lots 1-8. The Town's maintenance responsibility pursuant to this subparagraph shall include maintaining culverts and other drainage facilities and structures related to such roads, except for the retention pond to control runoff from the 6.271 Acre Parcel, which shall be maintained by the Association and the owner of the Lodge Property. The Association and the owner of the Lodge Property shall be responsible for all maintenance and snow plowing of the Access Road, provided, however, that Town shall maintain and plow snow from the Access Road if compensated therefor by the Association and/or the owner of the Lodge Property.

C. Coombs presently owns an access easement from Kebler Pass Road to the 6.271 Acre Parcel granted in Book 547 at Page 332 of the Gunnison County records, hereinafter referred to as the "Existing Access Road". Coombs shall secure from the owners of Lot 4, Trapper's Crossing at Crested Butte, a replacement easement described on attached Exhibit D, hereinafter referred to as the "Replacement Access Road". The following terms and conditions shall apply to such Replacement Access Road:

(1) No winter parking shall be allowed thereon except as permitted by Town;

(2) No activities shall be allowed thereon which, in Town's sole discretion, impede snow plowing, other maintenance activities or access by emergency or other vehicles; and

(3) The location thereof shall be drawn onto the Utility Composite map prepared by Coombs' engineer.

2. Pedestrian Paths. Coombs shall construct and dedicate for public use, two 8 foot wide graveled pedestrian paths from Maroon Avenue to Treasury Hill Road between Lots 3 and 4 (hereinafter "Residential Pedestrian Path") and on the Waterline

Easement from Maroon Avenue to Treasury Hill Road near where Treasury Hill Road exits the 6.271 Acre Parcel (hereinafter "Lodge Pedestrian Path"). The Residential Pedestrian Path shall be maintained and plowed by the Association and the Lodge Pedestrian Path shall be maintained and plowed by the owner of the Lodge Property. Gravel shall be periodically renewed by the Association and owner of the Lodge Property to ensure that such paths remain gravel paths. A 50" portion of such pedestrian paths shall be plowed and/or shovelled by the Association and the owner of the Lodge Property following each snowfall of 4 inches or more; provided, however, that the Association shall not be required to plow the Residential Pedestrian Path until issuance of a building permit for a lot in Treasury Hill, Lots 1-6; and provided further, that the owner of the Lodge Property shall not be required to construct or plow the Lodge Pedestrian Path until issuance of a building permit for the Lodge Property. The owner of the Lodge Property shall have the right to relocate the Lodge Pedestrian Path on condition that such relocated Lodge Pedestrian Path affords access to the lodge from Maroon Avenue.

3. Retention Pond. Coombs shall construct a drainage retention pond in the drainage swale south of Lot 3. The impoundment structure shall be designed and constructed to standards approved by Town. The pedestrian path shall be located on top of such impoundment structure and Coombs shall have the right to revise the Plat as required to depict the location of the pedestrian path on such impoundment structure. No building permit shall be issued for any building upon the 6.271 Acre Parcel prior to Town's approval of the impoundment structure construction.

4. Snow Storage. Coombs and Town have agreed upon various areas for snow storage as located upon the Plat of Treasury Hill, some of which are unimproved and some of which are improved. All such snow storage areas shall be used by Town for the sole purpose of depositing snow removed from the Access Road, Connecting Road and/or Subdivision Road. The Town shall use reasonable care when storing snow on unimproved snow storage areas to prevent damage to the vegetation thereon. The improved snow storage areas shall have no grade exceeding 5% and shall be graveled and compacted by Coombs to the satisfaction of Town. Thereafter, Town shall be responsible for all maintenance of the improved snow storage areas.

5. Annexation to Crested Butte Fire Protection District. Coombs has applied to annex the 6.271 Acre Parcel into the Crested Butte Fire Protection District and to remove such 6.271 Acre Parcel from the Gunnison County Fire Protection District. No building permit shall be issued for any building on the 6.271 Acre Parcel prior to its annexation into the Crested Butte Fire Protection District.

6. Access for Nordic Council. The parties acknowledge that the Crested Butte Nordic Council uses a cross-country ski easement in the vicinity of the Access Road. Such cross-country ski easement is being relocated so that it will not cross the Replacement Access Road. The Nordic Council shall have the right to use the Access Road constructed by Coombs for access, but not for parking, so long as such use does not create an unsafe condition, damage the road or interfere with the free and unimpeded access of vehicles on such Access Road.

7. Revegetation. Coombs shall revegetate all areas disturbed during construction and installation of utilities and other facilities serving Treasury Hill, Lots 1-8 to their original condition or as near such original condition as reasonably possible.

8. Shelter Maintenance. Coombs shall renovate as a shelter the "sheep shack" located on the Lodge Property west of Maroon Avenue. Thereafter, the owner of the Lodge Property shall maintain such shelter, which shall be open to public use.

9. Certificate of Compliance. Town shall issue a Certificate of Compliance upon Coombs' completion to Town's reasonable satisfaction of the following:

A. Construction of the drainage impoundment structure and retention pond;

B. Construction of the Access Road, Connecting Road and Subdivision Road;

C. Construction of the Improved Snow Storage Areas;

D. Annexation to and approval of fire hydrant locations by the Crested Butte Fire Protection District;

E. Construction of Pedestrian Paths;

F. Renovation of the Public Shelter;

G. Installation and burying of utility lines; and

H. Revegetation of disturbed areas.

Town shall not be required to issue a Building Permit for any building to be constructed upon Treasury Hill, Lots 1-8 or the Lodge Property until Coombs is entitled to a Certificate of Compliance for the items described in subparagraphs A, B, C, D, E and G of this paragraph.

10. Lodge Property P.U.D. No Building Permit shall be issued for any building to be constructed on the Lodge Property,

except for the Public Shelter shown on the Plat, until Coombs has applied for and secured written Town approval of a Planned Unit Development for the Lodge Property. No part of the Lodge Property shall be subdivided without written Town approval.

11. Annexation Agreement. The provisions set forth in the Annexation Agreement recorded June 27, 1980 in Book 551 at Page 734 of the Gunnison County records and Town Ordinance No. 7, Series 1980 are hereby modified and supplemented by the provisions of:

- A. This Agreement;
- B. The Plat of Treasury Hill;
- C. Declaration of Protective Covenants for Treasury Hill, Lots 1-8;
- D. Declaration of Protective Covenants for Lodge Property; and
- E. Ordinance No. 8, Series 1991 of the Town of Crested Butte.

In the event of any conflict between the provisions of such Annexation Agreement or Ordinance No. 7, Series 1980, and any provision of any instrument described in subparagraph A, B, C, D or E of this paragraph, the provision of the instrument described in subparagraph A, B, C, D or E of this paragraph shall control.

12. Town Ordinances. Except as set forth in paragraph 11, above, no provision of this Agreement shall be deemed to amend, modify or repeal any provision of any ordinance of Town.

13. Appurtenant Agreement. The provisions of this Agreement and the Plat of Treasury Hill shall be appurtenant to and run with Treasury Hill, Lots 1-8 and the Lodge Property and shall be binding upon all persons and other entities who acquire any interest in such property by deed, lien, or otherwise.

14. Attorney's 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 attorney's fees as well as all costs incurred in the prosecution or defense of such action.

15. Amendment and Validity. No addendum, amendment, change or modification of this Agreement shall be binding between the parties unless in writing and executed by Coombs and Town. Any such written addendum, amendment, change or modification of this Agreement which has been executed by Coombs and Town shall be

effective without the approval of any owner, lienholder or other interest holder of any Lot in Treasury Hill, Lots 1-8. If any portion of this Agreement, or amendment hereto, shall be held invalid or contrary to law, such portion shall be severable from this Agreement and the remainder of this Agreement shall remain in full force and effect and shall be valid and enforceable between the parties.

16. Entire Agreement. The entire agreement between Coombs and Town regarding Treasury Hill, Lots 1-8 and the Lodge Property is set forth in the following documents, which shall be recorded by Coombs in the office of the Gunnison County Clerk and Recorder:

- A. This Agreement;
- B. The Plat of Treasury Hill;
- C. Declaration of Protective Covenants for Treasury Hill, Lots 1-8; and
- D. Declaration of Protective Covenants for Lodge Property.

The parties have made no representations or warranties regarding Treasury Hill, Lots 1-8 or the Lodge Property except as set forth in the foregoing documents. The parties understand that further approvals will be necessary to fully develop the 6.271 Acre Parcel, including without limitation, Town building permits, and nothing in this Agreement shall be construed to imply prior issuance of such permits or other approvals.

17. Enforcement.

A. 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 County or District Court of Gunnison County, Colorado. Town, Coombs and the Association shall have the right to enforce, by an action for specific performance, damages or other relief, the provisions of this Agreement.

B. In addition to the foregoing, Town shall have the right to take curative action to remedy any failure of Coombs to perform under the terms of this Agreement. Such right shall accrue only after Town has given written notice to Coombs and Coombs has failed within a reasonable time thereafter to initiate remedial action. Coombs shall reimburse Town for its reasonable costs incurred in taking such curative action plus interest thereon at the rate of eighteen percent (18%) per annum on amounts which are not paid within thirty (30) days of invoicing.

C. Town shall further have the right, upon thirty (30) days written notice to Association and the owner of the Lodge Property, to file a Notice of Lien encumbering Treasury Hill Lots 1-8 and the Lodge Property to secure payment of any unpaid amounts past due to Town for maintaining and/or plowing the Access Road.

18. Binding Agreement. This Agreement shall be binding upon the parties, their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above set forth.

COOMBS

\_\_\_\_\_  
Phillip Coombs

TOWN OF CRESTED BUTTE, a home rule  
municipal corporation of the State  
of Colorado

By: \_\_\_\_\_  
Wesley A. Light, Mayor

Attest:

\_\_\_\_\_  
Kerry Folger, Clerk

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF GUNNISON )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of July, 1991, by Phillip Coombs.

Witness my hand and official seal.

My commission expires:

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

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF GUNNISON )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of July, 1991, by Wesley A. Light as Mayor and Kerry Folger as Clerk of the Town of Crested Butte, a home rule municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires:

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



EXHIBIT A

Township 14 South, Range 86 West, 6th P.M.

Section 3: The SURFACE RIGHTS ONLY of a tract of  
land in the NE $\frac{1}{4}$ /NW $\frac{1}{4}$  of said section, more  
particularly described as follows:

Beginning at a point on the West line of  
the Town of Crested Butte 468 feet South  
of the Northwest corner, of said Town,  
thence running 466 $\frac{1}{2}$  feet West to a point;  
thence South 585 $\frac{1}{2}$  feet to a point; thence  
East 466 $\frac{1}{2}$  feet to a point on the West  
boundary line of the Town of Crested  
Butte; thence North 585 $\frac{1}{2}$  feet along the  
said line to the point of beginning.

County of Gunnison,  
State of Colorado

EXHIBIT B

DESCRIPTION OF LOTS 1-8 - REZONE

A parcel of land situated in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3, Township 14 South, Range 86 West of the 6th Principal Meridian, Gunnison County, Colorado; being more particularly described as follows:

Commencing at the N $\frac{1}{4}$  corner of said Section 3; thence S00°00'00"E, being the Basis of Bearing, along the east line of the NW $\frac{1}{4}$  of said Section 3 a distance of 468.00 feet;  
thence N90°00'00"W a distance of 181.50 feet to the Point of Beginning;  
thence N90°00'00"W a distance of 285.00 feet;  
thence S00°00'00"W a distance of 320.00 feet;  
thence S90°00'00"E a distance of 385.00 feet;  
thence N00°00'00"E a distance of 298.00 feet;  
thence N90°00'00"W a distance of 100.00 feet;  
thence N00°00'00"E a distance of 22.00 feet to the Point of Beginning.  
Said parcel contains 2.778 acres more or less.

EXHIBIT C

DESCRIPTION OF LOT 9

A parcel of land situated in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3, Township 14 South, Range 86 West of the 6th Principal Meridian, Gunnison County, Colorado; being more particularly described as follows:

Commencing at the N $\frac{1}{4}$  corner of said Section 3; thence S00°00'00"E, being the Basis of Bearing, along the east line of the NW $\frac{1}{4}$  of said Section 3 a distance of 468.00 feet, to the Point of Beginning;

thence N90°00'00"W a distance of 181.50 feet;

thence S00°00'00"W a distance of 22.00 feet;

thence S90°00'00"E a distance of 100.00 feet;

thence S00°00'00"W a distance of 298.00 feet;

thence N90°00'00"W a distance of 385.00 feet;

thence S00°00'00"W a distance of 265.50 feet;

thence S90°00'00"E a distance of 466.50 feet;

thence N00°00'00"E a distance of 585.50 feet to the Point of Beginning.

Said parcel contains 3.493 acres more or less.

EXHIBIT D

DESCRIPTION OF ACCESS EASEMENT

A parcel of land for an access easement, being situated in the NE $\frac{1}{4}$ /NW $\frac{1}{4}$  of Section 3, Township 14 South, Range 86 West of the 6th Principal Meridian, Gunnison County, Colorado; being more particularly described as follows:

Commencing at the N $\frac{1}{4}$  corner of said Section 3; the Basis of Bearing being S00°00'00"E along the east line of the NW $\frac{1}{4}$  of said Section 3;

thence S28°15'15"W a distance of 985.34 feet to the west boundary line of the property conveyed to Phillip Coombs in Warranty Deed recorded May 1, 1991 in Book 690 at Page 41 of the Gunnison County records, hereinafter referred to as "TREASURY HILL", being the Point of Beginning;

thence S00°00'00"W a distance of 73.04 feet, along the west boundary of said TREASURY HILL;

thence S43°11'17"W a distance of 370.10 feet to a point on a curve at the intersection with the center line of Kebler Pass Road (County Road No. 12)

thence along the arc of a curve to the left 59.09 feet having a radius of 220.00 feet and a central angle of 15°23'20", the chord of which bears N78°44'16"W a distance of 58.91 feet, along said center line;

thence N43°11'17"E a distance of 454.52 feet to the west boundary of said TREASURY HILL and the Point of Beginning. Said parcel contains 0.47 acres more or less.