

## FIRE PROTECTION DISTRICT AGREEMENT

THIS FIRE PROTECTION DISTRICT AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 1995, by and between the CRESTED BUTTE FIRE PROTECTION DISTRICT, a quasi-municipal entity of the State of Colorado ("CBFPD") and KAPUSHION DEVELOPMENT LLC, a Colorado limited liability company ("Kapushion") under the following facts:

### Recitals

A. Kapushion is developing a ten acre parcel of land which has been or will be annexed into the Town of Crested Butte (hereinafter referred to as the "Annexed Parcel"). The Annexed Parcel is described on Exhibit A attached hereto and incorporated herein by this reference.

B. The territory covered by CBFPD includes land located in Gunnison County, the Town of Mt. Crested Butte, and the Town of Crested Butte (the territory covered by CBFPD is hereinafter referred to as the "District").

C. Kapushion and CBFPD are entering this Agreement to memorialize their understanding regarding the provision of fire protection services by CBFPD to the Annexed Parcel.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, and payments hereinafter set forth, CBFPD and Kapushion agree as follows:

1. Subject to the provisions of Paragraph 2 below, Kapushion agrees to pay to CBFPD an agreed sum of money, as hereinafter defined ("Agreed Sum"), which will be multiplied by the number of designated residential lots within the Annexed Parcel. Kapushion shall pay the Agreed Sum one (1) year after the Annexed Parcel is officially annexed to the Town of Crested Butte. A lot zoned for residential use shall hereinafter be referred to as a "Residential Lot." CBFPD agrees to provide fire protection to each Residential Lot within the Annexed Parcel from the date of this Agreement.
2. Payment of the Agreed Sum by Kapushion is expressly contingent upon the following:
  - 2.1 Gunnison County, the Town of Mt. Crested Butte, and the Town of Crested Butte (collectively referred to as the "Towns and County") must pass ordinances, resolutions, or other appropriate legislation within one (1) year of the date the Annexed Parcel is officially annexed to the Town of Crested Butte which provide that each Residential Lot within the District that is not then presently platted and approved will be subject to a facilities service fee ("Fee") for fire protection.
  - 2.2 Notwithstanding anything herein to the contrary, the following annexations and subdivisions located within the District which are currently in the approval process, if approved, must be subject to the Fee for each Residential Lot: Moon Ridge, McElroy subdivision, Blanton annexation, Pristine Point, North Village, and Avion except for Phase I thereof.

- 2.3 Any land use change to residential use within the District, after adoption by the County or Town, as applicable, must be subject to the Fee. In addition, any building permit issued thereafter on an unplatted area within the District must be subject to the Fee.
- 2.4 Any Fee required under the legislation of the Towns and County must be paid in money. Land or open space donations will not be accepted in lieu of cash, unless the land is dedicated to the CBFPD for their use.
3. The Agreed Sum to be paid by Kapushion under this Agreement shall be equal to the average amount of the Fee provided for by the Towns and County in the CBFPD facilities service fee legislation. In no event shall the Agreed Sum exceed Five Hundred Dollars (\$500.00).
  4. If either of the Towns or the County fail or refuse to enact CBFPD facilities service fee legislation as set forth in paragraph 2.1, Kapushion, in its sole discretion, shall be released from any and all obligations created under this Agreement.
  5. Should any party to this Agreement reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, including, but not limited to, by instituting any action or proceeding to enforce any provision of this Agreement by litigation or arbitration, for damages by reason of any alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations under this Agreement, or for any other judicial remedy, then, if the matter is settled by judicial determination or arbitration, the substantially prevailing party (whether at trial or on appeal or by arbitration) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred, including, but not limited to, reasonable attorneys' fees and costs for services rendered to the prevailing party.
  6. In case any one or more of the provisions contained in this Agreement or any application thereof shall be found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the entire Agreement shall be unenforceable.
  7. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Colorado.
  8. This Agreement embodies the entire agreement and understanding among and between CBFPD and Kapushion and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof.
  9. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

CRESTED BUTTE FIRE PROTECTION DISTRICT, a quasi-municipal entity of the State of Colorado

KAPUSHION DEVELOPMENT LLC, a Colorado limited liability company

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

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