

ORDINANCE NO. 1

SERIES 2023

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL
AUTHORIZING THE MAYOR TO ENTER INTO A LEASE OPTION
AGREEMENT WITH TWG DEVELOPMENT, INC., RELATED TO THE
SIXTH AND BUTTE WORKFORCE HOUSING DEVELOPMENT.**

WHEREAS, the Town of Crested Butte, Colorado (“Town”) is a home rule municipality duly and regularly organized and now validly existing as a body corporate and public under and by virtue of the Colorado Constitution and laws of the State of Colorado; and

WHEREAS, pursuant to Article XX of the Colorado Constitution, as implemented through the Town of Crested Butte Charter, Article 14, Section 14.4, the Town has the authority to sell, exchange or dispose of real property by ordinance; and

WHEREAS, the Town has selected TWG Development, Inc., (“TWG”) to develop and operate a 34-unit workforce rental property

WHEREAS, TWG will be applying for Low Income Housing Tax Credits (“LIHTC”), as a source of financing to provide homes to households at 80% Adjusted Mean Income (“AMI”) and below; and

WHEREAS, the Town intends to convey the land for the project to TWG via a 75-year lease with a nominal lease payment; and

WHEREAS, the Town Council hereby finds that entering into a lease option agreement for the land that comprises three residential lots, TP 3A, TP 5A, and TP 5B; one lot, TP 5C, to be used for parking and ancillary property services; and an adjacent 19’ access, parking, and utility easement on the western side of TP-4 is in the best interest of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. The above recitals are hereby incorporated as findings by the Town Council of the Town of Crested Butte, Colorado.

Section 2. The Town of Crested Butte hereby approves the Lease Option Agreement attached as **Exhibit A** and authorizes the Mayor to execute the Lease Option Agreement.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 3rd DAY OF JANUARY 2023.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 17th DAY OF JANUARY 2023.

TOWN OF CRESTED BUTTE



Ian Billick, Mayor

ATTEST:



Lynelle Stanford, Town Clerk

[SEAL]



GROUND LEASE OPTION AGREEMENT

(Sixth & Butte, Crested Butte, CO)

This Ground Lease Option Agreement (“Agreement”), dated January 17, 2023 (“Effective Date”), is between the Town of Crested Butte, a Colorado public body, corporate and politic (the “Town”), and TWG Acquisitions, LLC, an Indiana limited liability company (“TWG”).

Background

A. The Town owns certain real property in Crested Butte, Colorado, legally described on Exhibit A (the “Property”). The Parties anticipate that the Property will be developed by TWG using funding, in part, generated from syndication of low-income housing tax credits under Section 42 of the Internal Revenue Code (“LIHTC”), as further detailed in that certain Memorandum of Understanding between the parties dated June 20, 2022 (the “MOU”). Capitalized terms not defined in this Agreement have the meaning assigned to them in the MOU.

B. TWG has agreed to submit an application by February 1, 2023 to the Colorado Housing and Finance Authority (“CHFA”) for an award of 9% LIHTC for development of the Property (the “LIHTC Application”). As part of the LIHTC Application, TWG must be able to demonstrate to CHFA that it has legally sufficient control of the site of its proposed LIHTC project.

C. To that end, TWG desires to obtain from the Town an exclusive option to enter into a ground lease for a portion of the Property, legally described on Exhibit B (the “Option Property”). The Town is willing to grant TWG an exclusive option to enter into a ground lease for the Option Property, subject to the terms and conditions of this Agreement.

Now, therefore, the parties agree as follows:

1. **Grant of Option.** In consideration of a nonrefundable payment from TWG to the Town of \$100.00 (“Option Fee”), the Town hereby grants to TWG an exclusive option to enter into a ground lease for the Option Property, subject to the terms, conditions, and covenants set forth in this Agreement (“Option”). As of the Effective Date, the Town acknowledges that the Option Fee has been paid.

2. **Option Term.** The term of the Option commences on the Effective Date and shall expire on the date that is the later of (a) the date the MOU expires or is terminated, and (b) August 1, 2023 (the “Option Term”), if not sooner exercised, extended, or terminated. If TWG does not receive a LIHTC award before August 1, 2023 then, upon payment to the Town of \$150,000 no later than August 1, 2023, TWG shall have the right to extend the Option Term to August 1, 2024 (the “Extension Payment”). The Extension Payment shall be refundable at financial closing with a successful award of LIHTC. Upon execution of the Ground Lease (defined below), this Agreement shall automatically terminate.

3. **Due Diligence.** Within 14 days after the Effective Date, the Town shall deliver to TWG: (a) a commitment for an ALTA Leasehold Owner’s Policy of Title Insurance to be issued by a title insurance company reasonably acceptable to TWG, together with copies of all documents listed on Schedule B thereof or otherwise noted thereon as exceptions to title, and (b) copies of

any and all documents including but not limited to studies, surveys, reports, analyses, contracts, easements, permits, licenses or notices in the Town's possession or which are reasonably available to the Town relating to the Option Property. TWG, its agents, employees and/or contractors, shall have the continuing right to enter upon the Option Property at all reasonable times upon prior notice to and the receipt of approval from the Town (which approval shall not be unreasonably withheld, conditioned, or delayed) to conduct such tests and studies (including, without limitation, land title and topographic surveys, soil, environmental and other physical condition tests, appraisals, and economic feasibility studies) as TWG may deem necessary or appropriate in order to determine if the Option Property is in satisfactory condition and is suitable for TWG's purposes. TWG shall provide the Town with copies of all such surveys, soil, environmental and other physical condition tests. The costs and expenses of such inspections, tests and studies shall be borne as provided in that certain Predevelopment Cost Sharing Agreement between the parties dated August 22, 2022 (the "Cost-Sharing Agreement"). TWG shall defend, indemnify and hold the Town harmless from and against any liabilities, claims, demands, actions, loss or damage to the Option Property incident to, resulting from or in any way arising out of any negligence or wrongful act of TWG, its agents, employees and/or contractors, in connection with entry upon or inspection by or on behalf of TWG of the Option Property.

4. **Ground Lease; Terms.** Within 60 days after official notice from CHFA that TWG has been awarded LIHTC for development of the project on the Option Property, the Town will deliver to TWG an initial draft of the ground lease ("Ground Lease"). The parties will use commercially reasonable efforts to agree on the final form of the Ground Lease within [60] days after TWG receives the initial draft and to execute the Ground Lease no later than August 31, 2023. The Town shall cooperate with TWG to accommodate such modifications to the form of Ground Lease as are reasonably required to obtain and consummate the LIHTC financing, and the Town shall not unreasonably withhold, condition, or delay its consent to such modifications; however, the final Ground Lease will be subject to approval by the Town Council and must contain the following terms and conditions:

- A. The Ground Lease must have a term of 75 years.
- B. If the legal description of the Option Property has changed based on an ALTA survey or a subdivision process, the Ground Lease will reflect such updated description.
- C. Annual rent under the Ground Lease will be \$100.00. This annual rent does not include charges for taxes, insurance, common area maintenance, structural upkeep, and improvements, all of which will be the responsibility of TWG.
- D. Prorations related to taxes and assessments, income and expenses, utilities and other typical prorations in the Town of Crested Butte must be addressed.
- E. In the event that, after execution of the Ground Lease, TWG wishes to sell its interest in the Option Property, the Town shall have a right of first refusal to purchase such interest at fair market value (to be determined at the time of such transfer).
- F. Except as expressly stated otherwise in the Ground Lease, TWG will acquire its leasehold interest in the Option Property in its "as is" "where is," condition, "with all

faults,” and without any warranty from the Town, express or implied. TWG will not be able to rely on any statements, representations or warranties, express or implied, made by or enforceable directly against the Town, including, without limitation, any relating to the value of the Option Property, habitability, merchantability, fitness for a particular purpose, the physical conditions of the Option Property, the sufficiency of any drainage, whether the Option Property is located wholly or partially in any flood plain or flood hazard boundary or similar area, the existence or non-existence of underground storage tanks, any other matter affecting the stability or integrity of the land, the suitability of the Option Property for any intended use, the potential for further development of the Option Property, or any other matter or attribute whatsoever regarding the Option Property.

5. Covenants.

A. TWG acknowledges that when it executes the Ground Lease, the Option Property may be subject to a declaration of covenants, conditions, and restrictions (“**Project Declaration**”), which may include: use restrictions; parking rights and obligations; and other covenants, conditions, and restrictions on the development, use, maintenance, operation, and governance of the Option Property. The Project Declaration will include requirements for the LIHTC development on the Option Property to include, at a minimum: a site manager’s office, indoor and outdoor community space, adequate storage space for residents’ outdoor recreation gear for use in extreme weather, shared laundry rooms, amenities to make the project “pet friendly” such as a dog washing station, and covered common bike storage. In addition, the Project Declaration will require that the LIHTC development on the Option Property incorporate certain sustainability measures beyond the minimum required under the building code in effect at the time of TWG’s building permit application. For example, in support of the Town’s climate action plan, the Town set a goal of eliminating the use of foam insulation where possible to reduce the embodied carbon of building assemblies.

B. Prior to the commencement date of the ground lease, the Town will cause the Option Property to be remediated in accordance with the Voluntary Clean Up Plan (“**VCUP**”) under guidance from the Colorado Department of Public Health and the Environment (“**CDPHE**”), at no cost to TWG. TWG acknowledges that, to comply with the VCUP, the Option Property will be leased to TWG subject to an environmental covenant granted by the Town for the benefit of CDPHE that runs with the land.

C. The Town acknowledges that, if TWG is awarded LIHTC, then at the time the property is placed in service the tax credit partnership formed by TWG will be required to record a land use restriction agreement (“**LURA**”) that encumbers title to the Option Property and all improvements thereon. The LURA will be binding on the Town and any successor in interest to the Town. The LURA will provide that, if the LURA terminates due to foreclosure or deed in lieu of foreclosure, the Option Property owner may not evict or terminate the tenancy of an existing tenant of any LIHTC unit other than for good cause and may not increase the gross rent above the maximum allowed under the applicable provisions of the Internal Revenue Code with respect to such LIHTC unit for a period of three years following the termination of the LURA.

6. No Subordination. The Town will not be required to subordinate its interest in the Ground Lease to any liens or encumbrances placed on the Option Property by TWG.

7. Town's Obligations.

A. To the extent permitted by applicable Town code, the Town will cause the subdivision of the Option Property in a manner consistent with the agreed upon LIHTC development plan.

B. During the pendency of this Agreement, the Town shall carry on its business and activities relating to the Option Property substantially in the same manner as it did before the Effective Date, except as otherwise provided herein.

C. During the pendency of this Agreement, the Town will not enter into any contract that will be an obligation affecting the Option Property subsequent to execution of the Ground Lease without the prior written consent of TWG. Not later than execution of the Ground Lease, the Town will terminate all contracts relating to the Option Property and any charges or costs due or arising thereunder shall be paid by the Town in full.

D. The Town shall cause Land Title Guarantee Company ("Title Company") to deliver to TWG a leasehold policy of title insurance, or a binding commitment to issue same (the "Title Policy"), issued by the Title Company as of the date and time of the execution of the Ground Lease, in an amount reasonably determined by TWG, insuring TWG as the holder of a good and marketable leasehold interest in the Option Property, subject only to the Permitted Exceptions (defined below). The term "Permitted Exceptions" shall mean: the specific exceptions (exceptions that are not part of the promulgated title insurance form) in the title commitment that Title Company has not agreed to insure over or remove from the title commitment and to which TWG has agreed in its reasonable discretion. Notwithstanding the foregoing, the Town shall remove all monetary liens affecting the Option Property as of the date of the execution of the Ground Lease (except those caused or permitted by TWG), if any. For the avoidance of doubt, the parties agree that the covenants listed in section 4 of this Agreement will be Permitted Exceptions.

8. Exercise of the Option. TWG may exercise the Option at any time during the Option Term after CHFA has awarded LIHTC for the project on the Option Property. To exercise the Option, TWG must provide, no later than 10 days prior to the expiration of the Option Term, written notice of its election to exercise the Option (the "Option Notice"). TWG must send the Option Notice, in the form attached here as Exhibit C, to the Town.

9. Assignment. TWG is entitled to assign this Agreement to an Affiliate (defined below) with the prior written consent of the Town, not to be unreasonably withheld, conditioned, or delayed. Any purported assignment by TWG to a non-Affiliate without the Town's consent, in the Town's sole discretion, shall be null and void. TWG shall provide the Town with a written request for approval at least 10 business days prior to the effectiveness of any proposed assignment. Any permitted assignee must agree to assume all of TWG's obligations hereunder from and after the date of any such assignment, and TWG shall remain liable for all obligations hereunder arising prior to the date of any such assignment. For purposes hereof, a person or entity shall be deemed an "Affiliate" of TWG if TWG shall, directly or indirectly through one or more intermediaries, control such entity and own at least fifty percent (50%) of the stock, membership, or partnership units of such entity or if the person or entity is a member of TWG. In the case of a partnership or

limited liability company formed to develop and own the Option Property, the partnership or limited liability company shall be "affiliated" with TWG if a general partner or managing member, as applicable, is an Affiliate.

10. **Exclusivity.** During the pendency of this Agreement, neither the Town nor any agent or consultant of the Town shall market, negotiate, investigate, contact, or discuss a possible sale, lease or option of the Option Property or any development concepts or proposals relating to the Option Property with any person other than TWG.

11. **Termination.** TWG shall have the right to terminate this Agreement at any time in its sole discretion. In the event of such a discretionary termination by TWG, TWG shall reimburse the Town for the reasonable out-of-pocket costs incurred by the Town in connection with the performance of its obligations under this Agreement from and after [November 1, 2022].

12. **Notices.** The parties shall send any notice, demand, or other communication under this Agreement to the parties at the following addresses:

If to TWG:

TWG Acquisitions, LLC
1301 East Washington Street, Ste. 100
Indianapolis, IN 46202
Attention: Ryan Kelly
Email: rkelly@twgdev.com

with a copy to:

TWG Development, LLC
1301 E Washington St
Indianapolis, IN 46202
Attention: Dustin Detzler
Email: ddetzler@twgdev.com

If to the Town:

Town of Crested Butte
c/o Town Manager
P.O. Box 57
507 Maroon Ave
Crested Butte, CO 81224
Attention: Dara MacDonald
Email: dmacdonald@crestedbutte-co.gov

with an email copy to:

Bryan Cave Leighton Paisner LLP
One Boulder Plaza

1801 13th Street, Suite 300
Boulder, CO 80302
Attention: Ben Doyle
Email: ben.doyle@bclplaw.com

with a copy to:

Karp Neu Hanlon
201 14th Street, Suite 200
P.O. Drawer 2030
Glenwood Springs, CO 81602
Attention: Karl Hanlon
Email: kjh@mountainlawfirm.com

The parties shall give all notices in writing. The parties shall deliver notices by hand, through an overnight courier service for next business day delivery, by e-mail, or through the U.S. Mail, postage prepaid, registered or certified. Notices are to be deemed received as of the date of hand delivery, the next business day if sent via overnight courier, upon e-mail transmission, or three days after depositing same in the United States Mail if sent via certified or registered mail. A party may change its address for notices by giving written notice to the other party in accordance with this Section.

13. **Default.** Except as otherwise addressed in this Agreement (which provisions shall control), if a party breaches this Agreement, the non-breaching party shall provide written notice to the breaching party and allow the breaching party 15 days to cure. However, if the breach does not involve the payment of money, does not place the Option Property in jeopardy of physical harm or danger of being seized or forfeited, and if the breaching party is diligently pursuing cure, then the breaching party has an additional 30 days to cure. If the breaching party fails to timely cure a default, the non-breaching party, as its sole remedy, may terminate this Agreement and seek recovery of its reasonable out-of-pocket costs and expenses incurred in connection with this Agreement.

14. **Attorneys' Fees and Costs.** TWG agrees to pay the reasonable legal and other costs incurred by the Town in the preparation of this Agreement. If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced, regardless of whether it is later dismissed, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, costs, and expenses, including expert witness fees and expenses, in addition to any other relief to which the prevailing party is granted.

15. **Successors and Assigns.** This Agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

16. **Governing Law.** The laws of the State of Colorado govern this Agreement and the legal relations between the parties, without reference to conflicts of law principles.

17. **Time of the Essence.** Time is of the essence in the performance of this Agreement.

18. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the legality, validity, and enforceability of the remaining provisions are not to be affected unless the severance of the invalid, illegal, or unenforceable provision eliminates the material benefit of this Agreement for either party.

19. **Construction.** The parties acknowledge that this Agreement has been negotiated at arm's length and in good faith. Each party has been represented by, or has been given the opportunity to be represented by, independent legal counsel. The default rule of construction – to the effect that any ambiguities are to be resolved against the drafting party – shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

20. **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Denver, Colorado, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

21. **No Joint Venture.** Nothing contained in this Agreement is to be construed to create a partnership, an agency relationship, a joint venture or any similar relationship between the Town and TWG, or any implied duties.

22. **No Third Party Beneficiaries.** The parties enter into this Agreement for the sole benefit of TWG and the Town. No other parties are intended to be direct or indirect beneficiaries and no third party has any rights in, under, or to this Agreement.

23. **Waiver.** The failure of either party to require performance of any provision of this Agreement does not limit that party's right to enforce the provision in the future. Waiver of any breach of any provision are not to be deemed a waiver of any other breach of the provision or a waiver of the provision itself or any other provision.

24. **Amendments.** Any amendment to this Agreement must be in writing and signed by both parties.

25. **Counterparts.** This Agreement may be executed in any number of counterparts, including by facsimile, pdf. or other electronic means, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

26. **No Brokers.** Each of the parties represents and warrants to the other that notwithstanding any provision contained in this Agreement, neither party has dealt with, negotiated through or communicated with any broker in connection with the Transaction, and each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against the indemnified party by any broker claiming a commission or fee by, through or under the indemnifying party or otherwise. The parties' obligations under this Section shall survive Closing or termination of this Agreement.

27. **Recording.** Neither party shall record this Agreement without the prior written consent of the other party.

28. **No Survival.** Except as otherwise expressly provided in this Agreement or in the Ground Lease, upon execution of the Ground Lease, any and all rights of action of either party for any breach by the other party, and any representation, warranty, covenant, or other obligation contained in this Agreement merge with the Ground Lease and do not survive execution of the Ground Lease, and neither party may commence any action based on this Agreement after the commencement of the Ground Lease.

29. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to its subject matter. For the avoidance of doubt, nothing in this Agreement is intended to modify the terms of the Cost-Sharing Agreement in any way.

(Remainder of page intentionally left blank; signature page(s) follow.)

The parties have executed this Ground Lease Option Agreement (6th & Butte) effective as of the Effective Date.

TWG Acquisitions, LLC,
an Indiana limited liability company

By: DocuSigned by:

2771854E84CA443...

Name: Louis A. Knobler

Title: Member

Town of Crested Butte,
a Colorado public body, corporate and politic

By: 
Ian Billick, Mayor

Attest: 
Lynelle Stanford, Town Clerk

EXHIBIT A

DESCRIPTION OF THE OPTIONED PROPERTY

Commonly known as Mineral Point, the property is composed of three residential lots: TP 3A, TP 5A, and TP 5B; one lot to be used for parking and ancillary property services, TP 5C; and an adjacent 19 foot by 219.37 foot utility easement on the abutting western side of TP 4, of the Slate River Subdivision, Filing No. 2 (Reception #689491) in the Town of Crested Butte, Gunnison County, Colorado.

EXHIBIT B

DESCRIPTION OF THE PROPERTY

Commonly known as the Sixth and Butte Workforce Housing Site, the property is composed of parcels TP 3A, TP 3B, TP 5A, TP 5B and TP 5C and an adjacent 19 foot by 219.37 foot utility easement on the abutting western side of TP 4 of the Slate River Subdivision, Filing No. 2 (Reception #689491) in the Town of Crested Butte, Gunnison County, Colorado.

SLATE RIVER SUBDIVISION, FILING NO. 2

A RE-SUBDIVISION OF TOWN PARCELS 3 AND 5, SLATE RIVER SUBDIVISION,
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 13 SOUTH,
RANGE 86 WEST OF THE 6TH P.M.,
COUNTY OF GUNNISON, STATE OF COLORADO

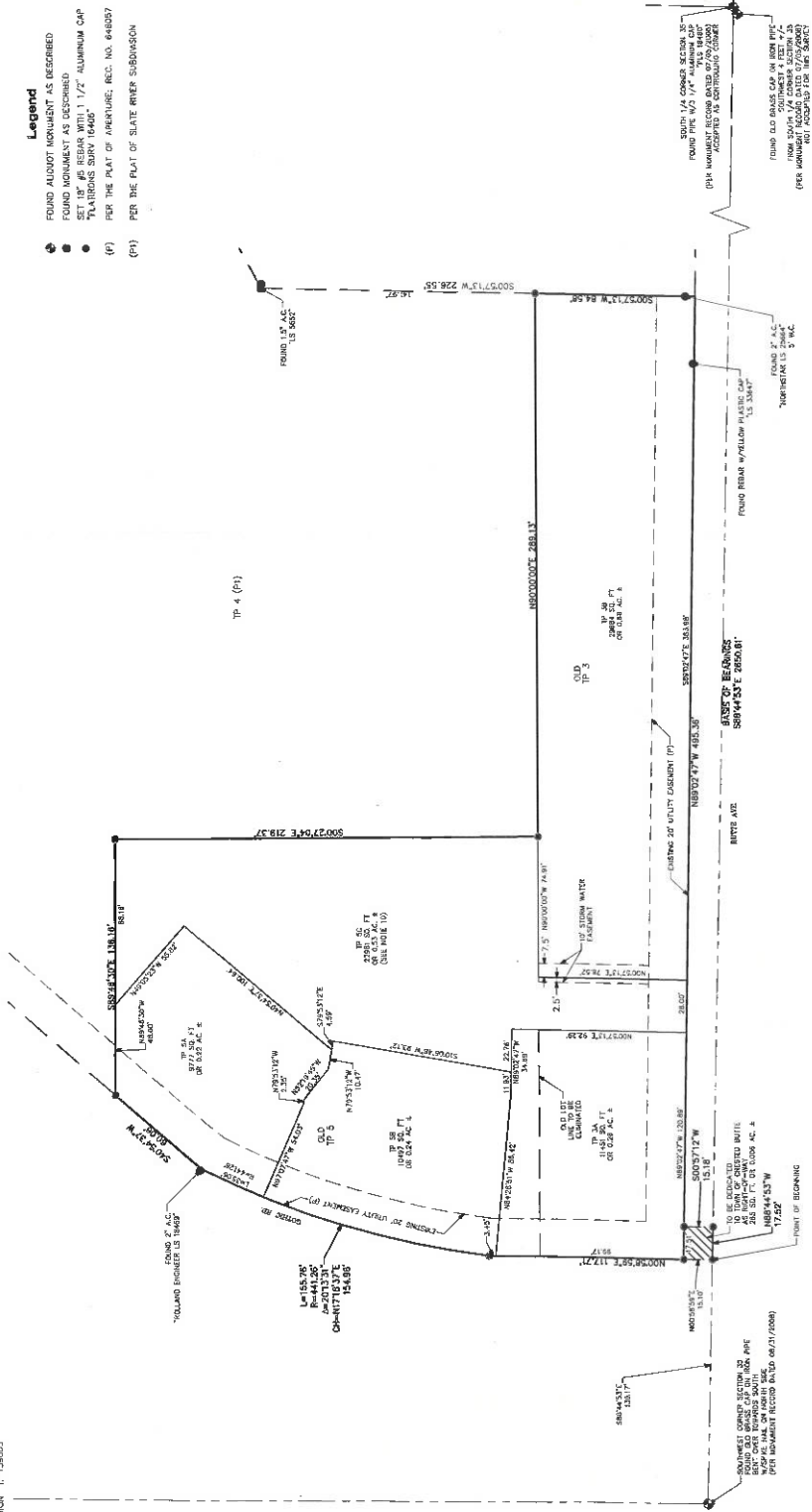
SHEET 2 OF 2

Boundary Closure Report

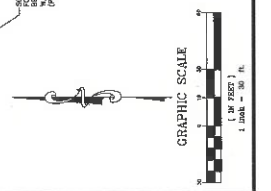
COURSE: S89°45'36"E LENGTH: 171.71'
 DELTA: S00°13'17"W RADIUS: 411.26'
 COURSE: N43°34'37"E LENGTH: 60.00'
 COURSE: S89°45'36"E LENGTH: 135.15'
 COURSE: N83°00'00"E LENGTH: 283.15'
 COURSE: S00°57'13"W LENGTH: 84.58'
 COURSE: N89°44'53"W LENGTH: 83.88'
 COURSE: N89°44'53"W LENGTH: 17.52'

AREA: 64855 SQ. FT. ±
 PERIMETER: 600.00'
 ERROR CLOSURE: 0.00'
 ERROR CLOSURE PERCENT: 0.00%

PRECISION: 1:158603



- Legend**
- ◆ FOUND ALDOUT MONUMENT AS DESCRIBED
 - FOUND MONUMENT AS DESCRIBED
 - FOUND MONUMENT AS DESCRIBED
 - FOUND MONUMENT AS DESCRIBED
 - FOUND MONUMENT AS DESCRIBED
 - (P) PER THE PLAT OF ABEYURE, REC. NO. 648057
 - (P1) PER THE PLAT OF SLATE RIVER SUBDIVISION



A RE-SUBDIVISION OF SLATE RIVER SUBDIVISION

Flatrons, Inc.
 Land Surveying Services
 855 TOWNHALL AVE
 DENVER, CO 80216
 (303) 726-1153
 FAX: (303) 726-4325
 4501 LOANAN ST.
 DENVER, CO 80216
 (303) 923-2800
 FAX: (303) 443-8830



JOB NUMBER: 17-701-553
 DATE: 06-15-2023
 DRAWN BY: M. MUNNHOLD
 CHECKED BY:
 DATE:

SHEET 2 OF 2

EXHIBIT C
FORM OF OPTION NOTICE

[Date]

Town of Crested Butte
c/o Town Manager
P.O. Box 57
507 Maroon Ave
Crested Butte, CO 81224

RE: Exercise of Option to Ground Lease 6th & Butte Property

Ladies and Gentlemen:

Pursuant to that certain Ground Lease Option Agreement by and between the Town and TWG Acquisitions, LLC or its permitted assign ("TWG"), dated January [17], 2023, TWG hereby gives notice of its exercise of the option granted under such agreement.

TWG Acquisitions, LLC
an Indiana limited liability company

By: 
2774854E44CA443

Name: Louis A. Knoble

Title: Member