

**ORDINANCE NO. 3
SERIES OF 2024**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF
CRESTED BUTTE CONCERNING THE FINANCING OF WORKFORCE
HOUSING IN THE TOWN AND APPROVING THE EXECUTION AND
DELIVERY BY THE TOWN OF A SITE LEASE AGREEMENT AND A
LEASE PURCHASE AGREEMENT AND RELATED DOCUMENTS.**

WHEREAS, the Town of Crested Butte, Colorado (the “Town”) is a duly organized and existing home rule municipality of the State of Colorado (the “State”), created and operating pursuant to Article XX of the Constitution of the State and the home rule charter of the Town (the “Charter”); and

WHEREAS, the Town is authorized pursuant to Article XX, Section 6 of the Colorado Constitution and Section 1.4 of the Charter to acquire property within and without its corporate limits for any purpose deemed by the Town Council of the Town (the “Town Council”) to be in the Town’s best interest by purchase, gift, lease or condemnation, and to sell, lease, mortgage, hold, manage, and control such property as the Town Council may determine; and

WHEREAS, pursuant to Section 14.4 of the Charter, the Town Council shall not sell, exchange or dispose of either public buildings or real property currently in use for public purposes except by ordinance; and

WHEREAS, because the demand for workforce housing in the Town exceeds the supply, the Town Council has determined and hereby determines that it is in the best interest of the Town and its inhabitants and is a public purpose for the Town to finance the acquisition, construction, installation and equipping of for rent workforce housing, including any legally permitted costs and expenditure in connection therewith (the “Project”); and

WHEREAS, the Town Council has determined and hereby determines that it is in the best interest of the Town and its inhabitants for the Town to finance a portion of the Project by entering into a lease financing as hereinafter provided; and

WHEREAS, the Town Council hereby determines that the leased property under the Site Lease and the Lease (hereinafter defined) will consist of one or more of the following: (i) the Library located at 504 Maroon Avenue, (ii) Town Hall located at 507 Maroon Avenue and (iii) the Ruby B&B located at 624 Gothic Avenue (as more particularly described in Exhibit A to the Site Lease and the Lease, collectively, the “Leased Property”); and

WHEREAS, the Town Council has determined and hereby determines that it is in the best interests of the Town and its inhabitants to provide for the financing of the Project by entering into a Site Lease Agreement between the Town, as lessor, and U.S. Bank Trust Company, National Association (the “Trustee”), acting solely in its capacity of trustee, as lessee (the “Site Lease”), pursuant to which the Town will lease the Leased Property to the Trustee, and a Lease Purchase Agreement between the Trustee, as lessor, and the Town, as lessee (the “Lease”), pursuant to which the Trustee will lease the Leased Property back to the Town; and

WHEREAS, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property; and

WHEREAS, the Town's obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory, or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, contemporaneously with the execution and delivery of the Site Lease and the Lease, the Trustee will execute and deliver an Indenture of Trust (the "Indenture") pursuant to which there will be executed and delivered certain certificates of participation (the "Certificates") dated as of their date of delivery that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease) under the Lease, shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the net proceeds of the Certificates will be used to finance the Project; and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S., as amended (the "Supplemental Act"), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, there has been presented to the Town Council and are on file with the Town Clerk of the Town (the "Town Clerk") the following: (i) the proposed form of the Site Lease; (ii) the proposed form of the Lease; (iii) the proposed form of the Continuing Disclosure Certificate to be provided by the Town in connection with the execution and delivery of the Certificates (the "Disclosure Certificate"); (iv) the proposed form of the Certificate Purchase Agreement (the "Certificate Purchase Agreement") between the Trustee and the initial purchaser of the Certificates and acknowledged by the Town; and (v) the Preliminary Official Statement (the "Preliminary Official Statement") relating to the Certificates; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO:

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town Council or the officers, agents or employees of the Town relating to the Site Lease, the Lease, the Project, and the sale, execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The Town Council hereby finds and determines, pursuant to the Constitution, the laws of the State, and the Charter, that undertaking the Project and financing the costs thereof pursuant to the terms set forth in the Site Lease, the Lease, and the Indenture are necessary, convenient, and in furtherance of the Town's purposes and are in the best interests of the inhabitants of the Town, and the Town Council hereby authorizes and approves the same.

Section 4. Supplemental Act; Parameters. The Town Council hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the Mayor of the Town (the "Mayor"), the Town Manager of the Town (the "Town Manager") and the Finance and Admin Services Director of the Town (the "Finance Director") the independent authority to make any determination delegable pursuant to Section 11-57-205 of the Supplemental Act, in relation to the Site Lease and the Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the term of the Lease, and the rental amount to be payable by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the Site Lease Termination Date shall be no later than December 31, 2064;
- (b) the Lease Term shall end no later than December 31, 2054;
- (c) the aggregate principal amount of the Base Rentals payable by the Town pursuant to the Lease shall not exceed \$11,000,000;
- (d) the maximum annual repayment amount of the Base Rentals payable by the Town pursuant to the Lease shall not exceed \$675,000;
- (e) the maximum total repayment amount of Base Rentals payable by the Town pursuant to the Lease shall not exceed \$20,250,000;
- (f) the purchase price of the Certificates shall not be less than 98% of the aggregate principal amount of the Certificates; and
- (g) the maximum net effective interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 5.75%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Town Council hereby delegates to each of the Mayor, the Town Manager and the Finance Director the independent authority to acknowledge the Certificate Purchase Agreement for the purchase of the Certificates, in substantially the form presented to the Town Council and on file with the Town, and to execute any agreement or agreements in connection therewith; provided that the Certificate Purchase Agreement may be completed, corrected, or revised as deemed necessary or appropriate by the

parties thereto in order to carry out the purposes of this Ordinance. In addition, the Mayor, the Town Manager and the Finance Director are hereby each independently authorized to determine if obtaining an insurance policy for all or a portion of the Certificates is in the best interests of the Town, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment. Each of the Mayor, the Town Manager, and the Finance Director are also hereby independently authorized to determine if obtaining a reserve fund insurance policy for the Certificates is in the best interests of the Town, and if so, to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

The delegation set forth in this Section 4 shall be effective for one year following the date hereof.

Section 5. Determination of Leased Property. The Town Council hereby determines that the real property that will serve as the Leased Property under the Site Lease and the Lease shall consist of one or more of the following: (i) the Library located at 504 Maroon Avenue (the “Library”), (ii) Town Hall located at 507 Maroon Avenue (the “Town Hall”) and (iii) the Ruby B&B located at 624 Gothic Avenue (the “Ruby B&B”). The Town Council hereby delegates to the Town Manager the authority to determine whether any or all of the Library, the Town Hall and the Ruby B&B will be included as the Leased Property under the Site Lease and the Lease in order to finance the Project. Such determination shall be set forth in a certificate signed by the Town Manager.

Section 6. Approval of Documents. The Site Lease, the Lease and the Disclosure Certificate, in substantially the forms on file with the Town Clerk, are in all respects approved, authorized and confirmed, and the Mayor is hereby authorized and directed for and on behalf of the Town to execute and deliver the Site Lease, the Lease and the Disclosure Certificate, in substantially the forms and with substantially the same contents as are on file with the Town Clerk, provided that such documents may be completed, corrected or revised as deemed necessary or appropriate by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate. The execution of the Site Lease, the Lease, and the Disclosure Certificate by the Mayor shall be conclusive evidence of the approval by the Town Council of such documents in accordance with the terms hereof and thereof.

Section 7. Official Statement. The Mayor, the Town Manager and the Finance Director are hereby independently authorized to prepare or cause to be prepared the Preliminary Official Statement in connection with the offering and sale of the Certificates, and to deem the Preliminary Official Statement (in substantially the form of the Preliminary Official Statement on file with the Town Clerk) as final for purposes of Rule 15c2-12 of the Securities and Exchange Commission. The Mayor, the Town Manager and the Finance Director are hereby independently authorized to prepare or to cause to be prepared, and to approve a final Official Statement, in substantially the form of the Preliminary Official Statement on file with the Town Clerk, and such preparation and approval is in all respects approved and authorized. The Mayor, the Town Manager and the Finance Director are hereby independently authorized and directed to execute and deliver the final Official Statement, for and on behalf of the Town, in substantially the form and with substantially the same content as the Preliminary Official Statement, provided that such

document may be completed, corrected, or revised as deemed necessary or appropriate by the Town Manager, the Finance Director, or the Town Attorney of the Town. The distribution of the Preliminary Official Statement and the final Official Statement (in substantially the form of the Preliminary Official Statement) to prospective purchasers of the Certificates is hereby ratified, approved, and authorized.

Section 8. Authorization to Execute Collateral Documents. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance and to place the seal of the Town on any document authorized and approved by this Ordinance. The Mayor, the Town Clerk, the Town Manager, the Finance Director and other appropriate employees and officials of the Town are hereby authorized and directed to execute and deliver for and on behalf of the Town any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by bond counsel prior to the execution of the documents. The execution of any document or instrument by the aforementioned officials or employees of the Town or members of the Town Council shall be conclusive evidence of the approval by the Town Council of such document or instrument in accordance with the terms hereof and thereof.

The Mayor, the Town Clerk, the Town Manager, the Finance Director and all other employees and officials of the Town that are authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the "Authorized Documents") are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. It is hereby determined that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 9. No General Obligation Debt. No provision of this Ordinance, the Site Lease, the Lease, the Indenture, the Disclosure Certificate, the Certificate Purchase Agreement, the Certificates, the Preliminary Official Statement, or the final Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory, or Charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current

fiscal year, and shall not constitute or give rise to a general obligation or other indebtedness of the Town within the meaning of any constitutional, statutory, or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Site Lease, the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 10. Reasonableness of Rentals. The Town Council hereby determines and declares that the Base Rentals payable by the Town under the Lease, in the maximum amount authorized pursuant to Section 4 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Trustee's leasehold interest in the Leased Property pursuant to the Lease. The Town Council hereby determines and declares that the period during which the Town has an option to purchase the Trustee's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

Section 11. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Town Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Town Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling the Certificates specifically waives any such recourse.

Section 12. Repealer. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 13. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 14. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies between the provisions of this Ordinance and such statutes. Any such inconsistency is intended by the Town Council and shall be deemed made pursuant to the Charter.

Section 15. Ordinance Irrepealable. After the Certificates are executed and delivered, this Ordinance shall be and remain irrepealable until the Certificates have been fully paid, satisfied and discharged, as provided in the Indenture.

Section 16. Effective Date. This Ordinance shall take effect five days after final passage and publication pursuant to Sections 4.10 and 4.11 of the Charter.

INTRODUCED, READ, AND SET FOR PUBLIC HEARING THIS 1ST DAY OF
APRIL 2024.

COLORADO



(SEAL)

ATTEST:



Lynelle Stanford, Town Clerk

TOWN OF CRESTED BUTTE,

By: 

Mallika Magner, Mayor Pro Tem

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS 15TH DAY OF APRIL 2024.

(S E A L)



TOWN OF CRESTED BUTTE,
COLORADO

Mallika Magner, Mayor Pro Tem

ATTEST:

Lynelle Stanford, Town Clerk