

ORDINANCE NO. 7

SERIES 2022

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE GRANTING OF A FENCE AND LANDSCAPE MAINTENANCE EASEMENT TO THE APERTURE HOMEOWNERS' ASSOCIATION ON TOWN PROPERTY NEAR THE RIVER TRAIL AND THE TOWN'S PUBLIC WORKS YARD IN THE TOWN OF CRESTED BUTTE, GUNNISON COUNTY, STATE OF COLORADO

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

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property; and,

WHEREAS, Aperture and the Town entered into a "Landscape Maintenance, License, and Easement Agreement" dated November 1, 2018, and recorded at reception number 657206 of the records of the Gunnison County Clerk and Recorder ("November 1, 2018 Agreement"); and,

WHEREAS, Under the November 1, 2018 Agreement and other agreements, Aperture and Cypress Foothills, LLP (Aperture) agreed to construct a River Trail along the west bank of the Slate River. Aperture also constructed a fence between the River Trail and the Town's public works yard (the "Fence"), and constructed berms, retaining walls, buffers, and landscaping and irrigation for the landscaping associated with the River Trail ("Landscaping"); and,

WHEREAS, Paragraph 2 of the November 1, 2018 Agreement contemplates that the Town will grant Aperture an easement allowing Aperture to cross, over, and through Town property for the purpose of, and to the extent necessary, to allow Aperture to perform any and all necessary or prudent maintenance or repairs of the Fence and the Landscaping (the "Easement"), following the boundary line adjustment between the Town's public works yard and the East Parcel where the Aperture subdivision is located, and the formal annexation by the Town of the West Parcel; and,

WHEREAS, these events have occurred and the November 1, 2018 Agreement states that Aperture will be responsible for maintaining and repairing the Fence and Landscaping installed on Town owned property; and,

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interests of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Town authorize the granting of the Fence and Landscape Maintenance Easement in the form attached hereto as **Exhibit A**.

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

Section 1. Authorization to Grant Easement on Town-owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to grant an easement over, and through Town property in the public works yard and in the River Trail for the purpose of allowing Aperture to perform any and all necessary or prudent maintenance or repairs of the Fence and the Landscaping (the "Easement") substantially similar to the form of Easement Agreement attached as **Exhibit A**.

The Town Council further authorizes and directs the Town Manager and Town Clerk to appropriately execute any additional documents necessary and appropriate to consummate the Easement, following approval thereof by the Town Attorney.

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which conflicts with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 4th DAY OF April, 2022.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 5th DAY OF July, 2022.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Ian Billick, Mayor

ATTEST:


Lynelle Stanford, Town Clerk

[SEAL]



Exhibit A

FENCE AND LANDSCAPE EASEMENT AGREEMENT

This Fence and Landscape Easement Agreement (this "Agreement") is entered into this ___ day of _____, 2022 by and between the Aperture Homeowners Association, Inc. ("Aperture") and the Town of Crested Butte, Colorado, a Colorado home rule municipality (the "Town"). Each of the foregoing is referred to herein as a "Party" and collectively as the "Parties."

I. Recitals

- A. Aperture and the Town entered into a "Landscape Maintenance, License, and Easement Agreement" dated November 1, 2018, and recorded at reception number 657206 of the records of the Gunnison County Clerk and Recorder ("November 1, 2018 Agreement").
- B. Under the November 1, 2018 Agreement and other agreements, Aperture and Cypress Foothills, LLP agreed to construct a River Trail along the west bank of the Slate River. Aperture also constructed a fence between the River Trail and the Town's public works yard (the "Fence"), and constructed berms, retaining walls, buffers, and landscaping and irrigation for the landscaping associated with and adjacent to the River Trail ("Landscaping"). The location of the River Trail and the Fence is shown on **Exhibit A**.
- C. Construction of the River Trail, Fence, and Landscaping is almost completed, and these improvements are located largely on Town property adjacent to the Town's public works yard. Paragraph 2 of the November 1, 2018 Agreement contemplates that the Town will grant Aperture an easement allowing Aperture to cross, over, and through Town property for the purpose of, and to the extent necessary, to allow Aperture to perform any and all necessary or prudent maintenance or repairs of the Fence and the Landscaping (the "Easement"), following the boundary line adjustment between the Town's public works yard and the East Parcel where the Aperture subdivision is located, and the formal annexation by the Town of the West Parcel. All of these events have occurred.
- D. The November 1, 2018 Agreement also states that Aperture will be responsible for maintaining and repairing the Fence and Landscaping. The purpose of this Agreement is for the Town to actually grant the easement contemplated by Paragraph 2 of the November 1, 2018 Agreement.
- E. Aperture believes that entering into this Agreement is in the best interests of its lot owners and the Aperture subdivision because the aesthetic benefits of the Fence and Landscaping are intended to benefit Aperture lot owners as well as the public at large.

II. Agreement

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises, grants, and other provisions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. *Easement.* The Town hereby grants and conveys an easement to Aperture across, over, and through Town property adjacent to and through the Town's public works yard, as further identified on **Exhibit A** for the purpose of, and to the extent necessary, to allow Aperture to perform any and all necessary or prudent maintenance or repairs of the Fence and the Landscaping (the "Easement"). Aperture shall provide the Town with reasonable notice prior to using the Easement, which notice shall be at least 24-hours in advance of accessing Town property pursuant to the Easement. Further, Aperture shall coordinate with the Town to ensure that Aperture's use of the Easement does not unreasonably interfere with operations on the Town's public works yard or cause any safety risks to Aperture's agents, Town employees, or the public. The scope of the Easement shall allow the use of heavy equipment where such equipment is necessary to properly maintain or repair of the Fence or Landscaping. If Aperture needs to close the River Trail in order to do any repairs or maintenance, Aperture will erect adequate signage informing trail users of its repair and maintenance operations during the time such operations are being conducted. The Easement shall be recorded in the Office of the Gunnison County Clerk and Recorder
2. *Limited and Non-Exclusive Easement.* The Easement is limited in its scope to what is expressly set forth above in paragraph 1 above. No expansion of the Easement is permitted. The Easement is non-exclusive. The Town reserves the right to use the servient estate to the Easement for any and all purposes that are consistent with the Easement.
3. *Revegetation and Restoration.* Immediately following any surface disturbance caused by, or resulting from, the exercise of the Easement, Aperture shall restore the surface estate to substantially the same condition as it was in prior to the surface disturbance, including revegetating and restoring any disturbed areas as well as ensuring that the surface topography is not altered by the exercise of the Easement. The term "surface disturbance" includes, without limitation, all dirt work and excavation and all other activities that result in the destruction, removal or damage of vegetation in place on Town property at the time of such activity.
4. *Cooperation; Other Documentation; Instruments.* If necessary, the Parties shall reasonably cooperate with each other in order effect the transactions contemplated in this Agreement. The parties shall give, enter into, execute and approve such additional agreements, corporate approvals, and instruments as are necessary and appropriate to effect such transactions.
5. *Authority.* The person executing this Agreement on behalf of each Party does hereby covenant and warrant that such person is duly authorized and has full right and authority to enter into this Agreement and that the person signing on behalf of each Party is authorized to do so.
6. *Waiver of Defects.* In executing this Agreement, the Parties waive all objections they may have over defects, if any, in the form of this Agreement, the formalities for

execution, or over the procedure, substance or form of the resolutions adopting this Agreement.

7. *Supplemental Agreement.* This Agreement supplements and clarifies the terms of the November 1, 2018 Agreement regarding the "Future Easement" to be granted per Paragraph 2 of the November 1, 2018 Agreement.
8. *Modification.* This Agreement shall not be amended or modified, except by subsequent written agreement of the Parties approved by resolutions of the Town Council.
9. *No Waiver.* A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.
10. *General Release.* It is expressly understood that the Town cannot be legally bound by the representations of any of its elected officials, officers, employees, agents, representatives and attorneys or their designees, except in accordance with Town ordinances, the Code and the laws of the State of Colorado, and that Aperture, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town, its elected officials, officers, employees, agents, representatives, and attorneys or their designees, which is subsequently held unlawful by a court of law; provided, however, this paragraph shall not be construed to limit the rights and remedies of the Parties otherwise provided by law, including under equitable doctrines such as estoppel.
11. *Notices.* Any notice or other information required by this Amendment to be sent to a Party shall be sent by facsimile, e-mail, overnight courier or certified mail to the following:

Aperture
Attention: President, Board of Directors
c/o Toad Property Management
Post Office Box 2776
Crested Butte, CO 81234

rob@toadpropertymanagement.com

with a copy to:

Law of the Rockies
Attention: Marcus J. Lock
525 North Main Street
Gunnison, Colorado 81230

mlock@lawoftherockies.com

Town of Crested Butte

Attention: Dara MacDonald and Shea Earley
507 Maroon Avenue
P.O. Box 39
Crested Butte, Colorado 81224

dmacdonald@crestedbutte-co.gov, searley@crestedbutte-co.gov

with a copy to:

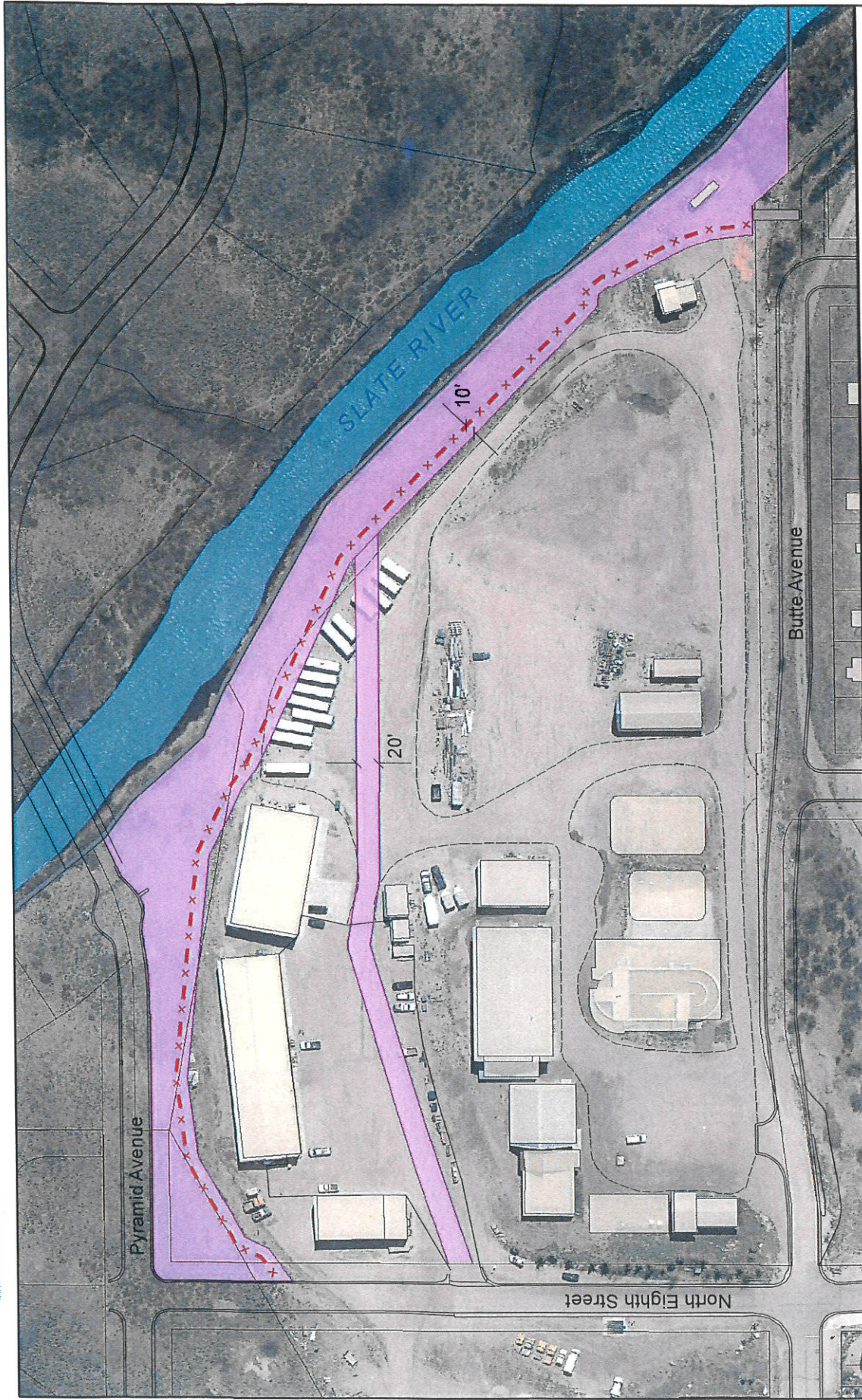
Town Attorney
Sullivan Green Seavy
Barbara J. B. Green and John Sullivan
3223 Arapahoe Ave. Suite 300
Boulder, Colorado 80303
john@sullivangreenseavy.com

Notice shall be effective when actually received by the Party intended to be notified.

12. *Attorneys' Fees; Costs.* Should this Agreement become the subject of a dispute between the Town and Aperture, the substantially prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses incurred in such dispute.
13. *Governing Law; Venue.* This Agreement and all rights conferred and obligations imposed hereunder shall be interpreted and construed in accordance with the laws and internal judicial decisions of the State of Colorado. The sole venue in any dispute shall be the District Court for Gunnison County, State of Colorado.
14. *Recording; Binding Agreement.* Upon execution, Aperture shall record this Agreement in the Office of the Gunnison County Clerk and Recorder. The benefits and burdens of this Agreement shall run with the Aperture Subdivision and Town property and be binding upon the Parties' successors and assigns.
15. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which, when taken together shall constitute one and the same instrument.

[signature pages follow]

Exhibit A



Public Works Fence and Easement Area

- Fence
- Easement Area
- Buildings
- Parcel Boundaries
- Paved Road
- Bridges
- Unpaved Road
- Town Boundary



Basemap: Orthoimagery from Aerographics Inc., 2013

Date: June 23, 2022

Filename: C:/project/townofcb/publicworks/fence_TownShops2022.mxd



FENCE AND LANDSCAPE EASEMENT AGREEMENT

This Fence and Landscape Easement Agreement (this "Agreement") is entered into this 14th day of July, 2022 by and between the Aperture Homeowners Association, Inc. ("Aperture") and the Town of Crested Butte, Colorado, a Colorado home rule municipality (the "Town"). Each of the foregoing is referred to herein as a "Party" and collectively as the "Parties."

I. Recitals

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II. Agreement

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises, grants, and other provisions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



1. ***Easement.*** The Town hereby grants and conveys an easement to Aperture across, over, and through Town property adjacent to and through the Town's public works yard, as further identified on Exhibit A for the purpose of, and to the extent necessary, to allow Aperture to perform any and all necessary or prudent maintenance or repairs of the Fence and the Landscaping (the "Easement"). Aperture shall provide the Town with reasonable notice prior to using the Easement, which notice shall be at least 24-hours in advance of accessing Town property pursuant to the Easement. Further, Aperture shall coordinate with the Town to ensure that Aperture's use of the Easement does not unreasonably interfere with operations on the Town's public works yard or cause any safety risks to Aperture's agents, Town employees, or the public. The scope of the Easement shall allow the use of heavy equipment where such equipment is necessary to properly maintain or repair of the Fence or Landscaping. If Aperture needs to close the River Trail in order to do any repairs or maintenance, Aperture will erect adequate signage informing trail users of its repair and maintenance operations during the time such operations are being conducted. The Easement shall be recorded in the Office of the Gunnison County Clerk and Recorder

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Aperture
Attention: President, Board of Directors
c/o Toad Property Management
Post Office Box 2776
Crested Butte, CO 81234

rob@toadpropertymanagement.com

with a copy to:

Law of the Rockies
Attention: Marcus J. Lock
525 North Main Street
Gunnison, Colorado 81230

mlock@lawoftherockies.com

Town of Crested Butte



Attention: Dara MacDonald and Shea Earley
507 Maroon Avenue
P.O. Box 39
Crested Butte, Colorado 81224

dmacdonald@crestedbutte-co.gov, searley@crestedbutte-co.gov

with a copy to:

Town Attorney
Sullivan Green Seavy
Barbara J. B. Green and John Sullivan
3223 Arapahoe Ave. Suite 300
Boulder, Colorado 80303
john@sullivangreenseavy.com

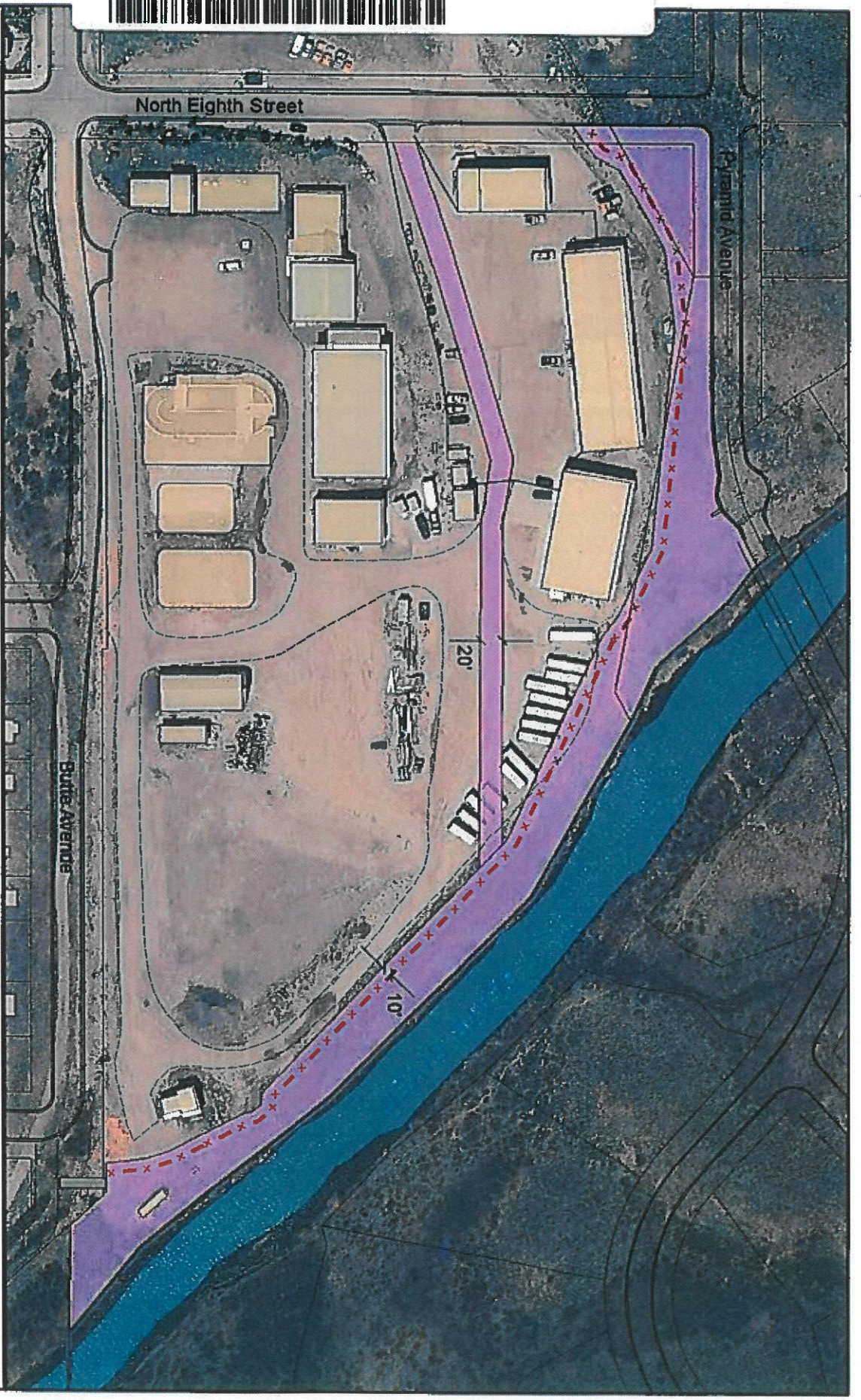
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[signature pages follow]



Exhibit A



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- Fence
- Easement Area
- Paved Road
- Unpaved Road
- Buildings
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- Town Boundary



Basemap: Orthoimagery from Aerographics Inc., 2013
Date: June 23, 2022
Filename: C:\project\townofcb\publicworks\Fence_TownShops2022.mxd