

**TOWN OF CRESTED BUTTE, COLORADO, SPECIAL TOWN COUNCIL MEETING**  
MONDAY, AUGUST 24, 2015

PUBLIC NOTICE IS HEREBY GIVEN THAT THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO WILL HOLD A SPECIAL MEETING IN THE TOWN COUNCIL CHAMBERS LOCATED IN CRESTED BUTTE TOWN HALL, 507 MAROON AVENUE, CRESTED BUTTE, COLORADO ON MONDAY, AUGUST 24, 2015 FROM 6PM TO 7PM, MT

I. CALL TO ORDER

II. SPECIAL MEETING – 6PM TO 7PM

1. Discussion and Possible Action Regarding Settlement Agreement by and between the Town of Crested Butte, Colorado and Mosaic Sales Solutions US Operating Co., LLC and Western Colorado Events, LLC Regarding the Repair of Elk Avenue in Connection with the *Whatever USA* Major Special Event.
2. Approval of Paving Contract with United Companies for the Resurfacing of Elk Avenue in Connection with the *Whatever USA* Major Special Event.
3. Resolution 25, Series 2015 – Resolutions of the Crested Butte Town Council Approving the Lease Agreement with the Crested Butte Film Festival for 620 2<sup>nd</sup> Street, aka the Nordic Center Warming House.

III. ADJOURNMENT

Posted August 21, 2015

**J. D. BELKIN & ASSOCIATES, LLC**

ATTORNEYS AT LAW  
Whiterock Professional Building  
502 Whiterock Avenue, Suite 200  
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Crested Butte, Colorado 81224  
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**MEMORANDUM**

**Non Attorney - Client Privileged and Confidential Communication**

**TO:** Town Council

**CC:** Todd Crossett, Town Manager

**FROM:** John D. Belkin, Town Attorney

**DATE:** August 24, 2015

**RE:** *Whatever, USA* – Reimbursement of Elk Avenue Repairs by Mosaic Sales Solutions US Operating Co., LLC (“**Mosaic**”) and Western Colorado Events, LLC (“**Western**”; together with Mosaic, collectively herein “**Applicant**”)  
  
Paving Contract with United Companies (“**United**”)

- 
- In your packets is the final Settlement Agreement and Mutual Release (the “**Agreement**”) with Applicant and the paving contract with United for the repair of Elk Avenue following the *Whatever, USA* Major Special Event and subsequent street remediation efforts.
  - As we have discussed at length and as has now been well documented, the Town returned \$190,000.00 of Western’s performance deposit (\$250,000.00) in good faith last December, 2014 in anticipation of slurry coating Elk Avenue at a lesser cost (\$20,000.00 +/-).
  - After an attempt to slurry coat Elk Avenue mid-June, in the face of challenging weather, etc., after it was decided that the Town would pursue the 3/4 inch overlay with United, the Town and Applicant engaged in extensive conversations of who would pay for the same leading up to the attached Agreement. At all times the payment for the street remediation, whether by slurry coat, paving, etc. had been disputed by Applicant until the Agreement.
  - The Agreement contemplates Applicant and the Town settling and releasing all claims in connection with the event, the Town’s return of the \$250,000.00 letter of credit (the

## Non Attorney - Client Privileged and Confidential Communication

Town Council

Re: Whatever, USA – Reimbursement of Elk Avenue Repairs – United Paving Contract

August 24, 2015

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“**LOC**”) in connection with Western’s performance in connection with the event and Applicant’s payment for the 3/4 paving overlay and associated costs (legal fees) with all but \$2,500.00 not being paid by Applicant.

- Part of the challenge in reaching settlement of this matter seems to have been that Mosaic and Western may have disputed amongst themselves which entity would bear the burden of the street repair costs, putting the Town in the awkward middle position. In the end, both Mosaic and Western have stepped up and been willing to work it out and get the street repaired.
- Separate and apart from the Agreement, the paving contract with United allows the Town to contract with United immediately and not have to continue with the bid process necessitated by the Town’s bidding requirement under the Crested Butte Municipal Code now that the funds therefor will be coming from Applicant as part of the Agreement.
- If approved by the Town Council, the protections for the Town on the street remediation will now come solely via United, just as in any other municipal construction project, with no further back-stop warranties being given by Western since Applicant will be released therefrom and the LOC will be returned to Western, all as part of the Agreement.
- **RECOMMENDATION:**
  - **Approve the Agreement with Applicant.** If you have any questions about the terms in the Agreement, its import, etc., please raise them during the Special Meeting and I will answer them.
  - **Approve the Town Manager’s execution of the paving contract with United.** If you have any questions, please raise them with Todd, Rodney or myself during the meeting.

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This **SETTLEMENT AGREEMENT AND MUTUAL RELEASE** (this "Agreement"), dated as of August 24, 2015 (the "Effective Date"), is by and between the Town of Crested Butte, Colorado, a Colorado home rule municipality located and doing business at 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 ("Town"), Mosaic Sales Solutions US Operating Co., LLC, a Delaware limited liability company located and doing business at 750 N. Orleans Street, Suite 600, Chicago, IL 60654 ("Mosaic"), and Western Colorado Events, LLC, a Missouri limited liability company located and doing business at 1928 Locust Street, St. Louis, MO 63103 ("WCE"). The Town, Mosaic and WCE may be individually referred to herein as a "Party" or collectively as the "Parties."

### RECITALS

A. WCE and the Town entered into that certain Major Special Event Agreement, dated August 28, 2014, attached hereto as Exhibit A (the "Special Event Agreement"), for the Whatever USA Event held on September 5-7, 2014 (the "Major Special Event").

B. Mosaic entered into that certain Subcontract Agreement with WCE, dated August 28, 2014, attached hereto as Exhibit B (the "Subcontract"), to allow Mosaic to provide certain aspects of the Major Special Event as described in the Subcontract.

C. In connection with the Major Special Event, WCE and the Town entered into a Reimbursement Agreement, dated as of July 7, 2014, attached hereto as Exhibit C (the "Reimbursement Agreement").

D. Subsequent to the Major Special Event, a dispute arose among the Parties related to each of the Parties' respective obligations under the Special Event Agreement, the Subcontract, including the repair of Elk Avenue (the "Street"), and the Reimbursement Agreement, as applicable (the "Dispute").

E. The Parties now desire to settle and resolve all existing and potential disputes, actions, charges, claims and lawsuits that they may have against each other related to the Dispute, the Special Event Agreement, the Major Special Event and the Subcontract, as applicable, pursuant to the terms and provisions of this Agreement.

F. The Parties also have agreed, among other things, to release each other and each of their respective Affiliates, as applicable, from any and all claims arising out of, connected with, incidental to or related to the Dispute, the Special Event Agreement, the Major Special Event, and the Subcontract, as applicable, pursuant to the terms and provisions of this Agreement.

### AGREEMENT

**ACCORDINGLY**, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Parties, and the Parties hereby agree as follows:

1. Settlement Payment. Within five (5) days from the Effective Date of this Agreement, Mosaic hereby agrees to pay or cause to be paid to the Town a settlement payment in the amount of Sixty Two Thousand Five Hundred and 00/100 Dollars (\$62,500.00) for the full and final resolution of the Dispute and in exchange for the Town's agreements contained in this Agreement (the "Settlement Payment"). The Settlement Payment will be made by wire transfer of immediately available funds pursuant to wire instructions provided by the Town.

2. Release of Deposit and Letter of Credit.

a. Pursuant to Section 21 of the Special Event Agreement, WCE made a deposit of \$250,000 and a deposit of \$25,000 under the Reimbursement Agreement. Of the deposits,

\$60,000 remains in possession and/or control of the Town (the "Remaining Deposit"). Upon receipt of the Settlement Payment (and by no later than five (5) days thereafter), the Town will deliver the full amount of the Remaining Deposit to WCE by wire transfer of immediately available funds pursuant to wire instructions provided by WCE.

b. Upon receipt of the Settlement Payment, the Town releases and shall immediately return to WCE the Letter of Credit held by the Town as the "Performance Guaranty" (as such term is defined in the Special Event Agreement) pursuant to Section 22 of the Special Event Agreement and agrees that WCE may terminate and/or cancel the Letter of Credit.

3. Mosaic and WCE Representations and Warranties. Mosaic hereby represents and warrants to the Town and WCE that Mosaic has not (a) filed any complaint, charge or grievance against the Town, WCE or any of their respective Affiliates, with any federal, state, local or provincial court or agency arising out of, connected with, incidental to or related to the Special Event Agreement, the Major Special Event, the Dispute and/or the Subcontract, as applicable, or (b) assigned any Mosaic Released Claim (as defined in Section 4). WCE hereby represents and warrants to the Town and Mosaic that WCE has not (a) filed any complaint, charge or grievance against the Town, Mosaic or any of their respective Affiliates, with any federal, state, local or provincial court or agency arising out of, connected with, incidental to or related to the Special Event Agreement, the Major Special Event, the Reimbursement Agreement, the Dispute and the Subcontract, as applicable, or (b) assigned any WCE Released Claim (as defined in Section 4).

4. Mosaic Release. In consideration of the releases and other obligations of the other Parties contained herein, Mosaic, for itself and its Affiliates, does hereby irrevocably and unconditionally compromise, settle, release, acquit and forever discharge the Town, WCE and their respective Affiliates, of and from any and all suits, claims, actions, causes of action, rights, demands, debts, obligations, damages, accountings, proceedings or any other matters of whatever nature (collectively, the "Claims") that Mosaic or any of its Affiliates may have, have had or in the future may have against the Town, WCE or any of their respective Affiliates, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, or liquidated or unliquidated, and whether due or to become due, regardless of when asserted, and whether under tort or contract, or express or implied, arising out of, connected with, incidental to or related to the Special Event Agreement, the Major Special Event, the Dispute and the Subcontract, as applicable (collectively, the "Mosaic Released Claims").

5. WCE Release. In consideration of the releases and other obligations of the other Parties contained herein, including, without limitation, the Town's obligations in Section 2 of this Agreement, WCE, for itself and its Affiliates, does hereby irrevocably and unconditionally compromise, settle, release, acquit and forever discharge the Town, Mosaic and their respective Affiliates, of and from any and all Claims that WCE or any of its Affiliates may have, have had or in the future may have against the Town, Mosaic or any of their respective Affiliates, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, or liquidated or unliquidated, and whether due or to become due, regardless of when asserted, and whether under tort or contract, or express or implied, arising out of, connected with, incidental to or related to the Special Event Agreement, the Major Special Event, the Dispute and the Subcontract, as applicable (collectively, the "WCE Released Claims").

6. Mosaic and WCE Covenants and Agreements. Mosaic shall not, directly or indirectly, voluntarily file, participate in, instigate or encourage the (a) filing by any individual or entity of any Claim in any federal, state, local or provincial court, or (b) commencement by any individual or entity of any proceeding or other matter before any federal, state, local or provincial agency arising out of, connected with, incidental to or related to the events occurring prior to or on the Effective Date arising out of, connected with, incidental to or related to any of the Mosaic Released Claims. WCE shall not, directly or indirectly, voluntarily file, participate in, instigate or encourage the (a) filing by any individual or entity of any Claim in any federal, state, local or provincial court, or (b) commencement by any individual or entity of any proceeding or other matter before any federal, state, local or provincial agency

arising out of, connected with, incidental to or related to the events occurring prior to or on the Effective Date arising out of, connected with, incidental to or related to any of the WCE Released Claims.

7. Town Representations and Warranties. The Town hereby represents and warrants to Mosaic and WCE that the Town has not (a) filed any complaint, charge or grievance against Mosaic, WCE or any of their respective Affiliates, with any federal, state, local or provincial court or agency arising out of, connected with, incidental to or related to the Special Event Agreement, the Major Special Event and the Dispute, or (b) assigned any of the Town Released Claims (as defined in Section 8).

8. Town Release. In consideration of the delivery of the Settlement Payment, the Town, for itself and for its Affiliates, does hereby irrevocably and unconditionally compromise, settle, release, acquit and forever discharge Mosaic, WCE and each of their respective Affiliates, of and from any and all Claims that the Town or any of its Affiliates may have, have had or in the future may have against Mosaic, WCE or any of their respective Affiliates, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, or liquidated or unliquidated, and whether due or to become due, regardless of when asserted, and whether under tort or contract, or express or implied, arising out of, connected with, incidental to or related to the Special Event Agreement, the Major Special Event, Reimbursement Agreement and the Dispute, including, without limitation, the obligation to apply a slurry coat to the Street and/or the performance of any third party selected by the Town to repair the Street (collectively, "Town Released Claims").

9. Town Covenants and Agreements. The Town shall not, directly or indirectly, voluntarily file, participate in, instigate or encourage the (a) filing by any individual or entity of any Claim in any federal, state, local or provincial court or (b) commencement by any individual or entity of any proceeding or other matter before any federal, state, local or provincial agency arising out of, connected with, incidental to or related to events occurring prior to or on the Effective Date arising out of, connected with, incidental to or related to any of the Town Released Claims.

10. No Admission. Neither this Agreement, nor anything contained in it or made a part hereof, shall constitute or shall be used as an admission by any of the Parties of any liability or wrongdoing whatsoever. Neither this Agreement, nor anything contained in it or made a part hereof, shall be introduced in any proceeding except to enforce this Agreement or to defend against any claim relating to this Agreement or as required by court order, subpoena, or other legal process. Such introduction under these exceptions shall be pursuant to notice to the other Parties and pursuant to an appropriate order protecting its confidentiality.

11. Interpretation; Construction. The use in this Agreement of the word "including" means "including, without limitation". The words "herein," "hereof," "hereunder," "hereby," "hereto," "hereinafter," and other words of similar import refer to this Agreement as a whole, as the same from time to time may be amended, modified, supplemented or restated in accordance with the terms hereof or thereof, and not to any particular article, section, subsection, paragraph, subparagraph or clause contained in this Agreement. All references to articles, sections, subsections, paragraphs, subparagraphs, and clauses shall mean the articles, sections, subsections, paragraphs, subparagraphs and clauses contained in this Agreement, except as otherwise expressly provided in this Agreement. The title of and the article, section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions contained in this Agreement. The use in this Agreement of the masculine, feminine or neuter forms also shall denote the other forms, as in each case the context may require. Where specific language is used to clarify by example a general statement contained in this Agreement, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Agreement has been chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. For purposes of this Agreement, "Affiliate", with respect to any individual or entity, means (a) a member, partner, shareholder, owner, trustee, director, employee or executive officer of any such entity, or of any entity identified in clause (c) below, (b) a member of any such individual's immediate family (or a member of the immediate family of any member, partner, shareholder, owner,

trustee, director or executive officer of any such entity, or of any individual or entity identified in clause (c) below), and (c) any other individual or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified individual or entity. As used in this definition of Affiliate, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through ownership of voting securities, by contract or otherwise.

12. Notices.

a. All notices, demands, requests, payments or other communications delivered pursuant to the terms and provisions contained in this Agreement or any applicable law shall be in writing and shall be deemed to be sufficient if (i) delivered personally, (ii) mailed by registered or certified mail, return receipt requested, postage prepaid (whether or not such mail is actually accepted by the intended recipient), or (iii) sent by a nationally-recognized, overnight courier, to the Parties at the following addresses (or at such other address for a Party as shall be specified by a written notice satisfying the requirements of this Section 1.a.):

(i) if to Town, to it at:

Town of Crested Butte  
P.O. Box 39  
507 Maroon Avenue  
Crested Butte, CO 81224  
Attn: Todd Crossett, Town Manager

(ii) if to Mosaic, to it at:

Mosaic Sales Solutions US Operating Co., LLC  
750 North Orleans Street, Suite 600  
Chicago, IL 60654  
Attn: Jeff Stelmach, President

(iii) if to WCE, to it at:

Western Colorado Events, LLC  
WCE Marketing  
1928 Locust Street  
St. Louis, MO 63103

b. All such notices, demands, requests, payments and other communications shall be deemed to have been given and received (i) in the case of personal delivery, on the date of such delivery, (ii) in the case of delivery by registered or certified mail, on the third (3<sup>rd</sup>) business day following such mailing, and (iii) in the case of delivery by a nationally-recognized, overnight courier guaranteeing next business day delivery, on the business day following dispatch.

15. Benefits of Agreement; Assignment. All of the terms and provisions contained in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assignees, personal representatives, heirs, estates, executors and Affiliates, as applicable. Except as otherwise expressly provided in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the persons referred to in the immediately preceding sentence. This Agreement shall not be assignable by any Party without the prior written consent of the other Parties, except that the Parties that are entities may assign this Agreement and their respective rights, duties and obligations hereunder to any person purchasing all or any substantial portion of such Party's business, provided that such assignment is in writing, the assignee expressly assumes all of the assignor's duties and

obligations under this Agreement, and the assignor remains liable for all of its duties and obligations under this Agreement.

16. Remedies. Each Party acknowledges and agrees that each Party shall have and retain all rights and remedies existing in his, her or its favor under this Agreement, at law or in equity, including rights to bring actions for specific performance, injunctive relief and other equitable relief to enforce or prevent a breach of or default under, or threatened breach of or default under, any term or condition contained in this Agreement.

17. Litigation Expenses. Except as otherwise expressly provided in this Agreement, the prevailing Party in any proceeding brought to enforce the terms and provisions contained in this Agreement shall be entitled to an award of all costs and expenses (including reasonable attorneys' and paralegals' fees) incurred by such prevailing Party arising out of, connected with, related to or incidental to such proceeding, which award of costs and expenses shall be in addition to any other remedy awarded in such proceeding.

18. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF COLORADO WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF COLORADO OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF COLORADO TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE DOMESTIC LAWS OF THE STATE OF COLORADO SHALL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH OTHER JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION ORDINARILY WOULD APPLY.

19. Independence of Representations and Warranties. All representations and warranties contained in this Agreement shall be given independent effect so that if a particular representation or warranty made by a Party proves to be incorrect or is breached, the fact that another representation or warranty made by such Party concerning the same or similar subject matter is correct or is not breached shall not affect the incorrectness of or the breach of such initial representation or warranty by such Party.

20. Mutual Contribution. The Parties and their respective counsel have contributed mutually to the drafting of this Agreement. Consequently, no term or condition contained in this Agreement shall be construed against any Party on the ground that a Party drafted the term or condition or caused the term or provision to be drafted.

21. Severability. It is the desire and intent of the Parties that the terms and provisions contained in this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, in the event that any term or condition contained in this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such term or condition, as to such jurisdiction, shall be ineffective, without invalidating the remaining terms and provisions contained in this Agreement or affecting the validity or enforceability of such term or condition in any other jurisdiction. Anything contained in the immediately preceding sentence to the contrary notwithstanding, if such term or condition could be drawn more narrowly so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall be so narrowly drawn, as to such jurisdiction, without invalidating the remaining terms and provisions contained in this Agreement or affecting the validity or enforceability of such term or condition in any other jurisdiction.

22. Counterparts and Facsimile Execution. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original signature page to this Agreement. All such counterparts shall be considered one and the same agreement and shall become effective when two (2) or more counterparts have been executed by each Party and delivered (including

by facsimile, telecopy or other electronic device such as .pdf format signatures deliver via e-mail) to the other Party, it being understood that all Parties need not execute the same counterpart. Any counterpart or other signature hereupon delivered by facsimile or other electronic device shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such Party.

23. Amendment and Waiver. This Agreement may not be amended, modified, supplemented or restated except pursuant to a written document executed and delivered by each Party. No waiver of any term or condition contained in this Agreement shall be effective unless it is contained in a written document executed by each Party; provided, however, that any Party may waive any duty or obligation owed to him or it by the other Party by executing a written document to that effect. No waiver by any Party of any breach of or default under any representation, warranty, covenant or agreement hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent breach of or default under any representation, warranty, covenant or agreement hereunder, or affect in any way any rights arising by virtue of any such prior or subsequent occurrence.

24. Recitals; Entire Agreement. The recitals set forth above are true and correct in all respects and incorporated by reference herein. This Agreement contains all of the contracts, agreements, and other understandings and arrangements between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous contracts, agreements, and other understandings and arrangements between the Parties with respect to the subject matter hereof.

[The remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, each of the Parties have executed or caused to be executed this Settlement Agreement and Mutual Release as of the Effective Date.

MOSAIC:

Mosaic Sales Solutions US Operating Co., LLC

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

WCE:

Western Colorado Events, LLC

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

TOWN:

Town of Crested Butte, Colorado

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXHIBIT A**

Special Event Agreement

See attached.

**EXHIBIT B**

Subcontract

See attached.

**EXHIBIT C**

Reimbursement Agreement

See attached.



2273 River Road  
P.O. Box 3609  
Grand Jct., CO 81502  
(970) 243-4900

www.united-gj.com

An Oldcastle Materials Company



3794 County Road 109  
Glenwood Springs, CO 81631  
(970) 704-4800

13124 6175 Road  
Montrose, CO 81403  
(970) 249-1815

964 CR 63L  
Telluride, CO 81435  
(970) 728-3775

www.telluridegravel.com



<b>To:</b>	Town Of Crested Butte	<b>Contact:</b>	Rodney Due
<b>Address:</b>	Crested Butte, CO 81224	<b>Phone:</b>	970-349-5338
		<b>Fax:</b>	970-349-6626
<b>Project Name:</b>	Elk Avenue Thin Lift Overlay W/ Fog	<b>Bid Number:</b>	16729
<b>Project Location:</b>	Elk Avenue, Crested Butte, CO	<b>Bid Date:</b>	8/7/2015

We are pleased to propose the following:

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	3/4" HMA Thin Lift Overlay	48,500.00	SF	\$1.05	\$50,925.00
2	Fog Seal	30,000.00	SF	\$0.10	\$3,000.00

**Total Bid Price: \$53,925.00**

**Notes:**

- This proposal is based on placing 3/4" of new HMA w/ tack coat and fog sealing the remainder of Elk Avenue. Traffic control is to be done by the Town of Crested Butte.
- United Companies will offer a two year warranty on workmanship and materials per the standard requirements of the Town of Crested Butte.
- This proposal is to become part of the contract documents.
- A minimum of 2% grade is required for all pavement. If the design specifies less than a 2% minimum grade, or the physical character of the site does not allow for a 2% minimum grade, then there is no warranty or guarantee for that pavement.
- Price shown does not include Performance and Payment bond. Add 1% if bond is required.
- This proposal is based on "spec" weather paving and conditions. Paving after the onset of cold weather may require the owner to sign a waiver of warranty.
- Unless the words "Lump Sum" appear next to an item of work, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices for actual quantities of work performed by United Companies
- Scheduling of work will be upon mutual consent between the owner and United Companies.
- This proposal does not include excavation or stabilization of soft areas. If soft conditions are discovered during the work, an engineered pavement section will be needed and upon receipt, a change order proposal will be prepared for authorization prior to proceeding with the work.
- The above price excludes engineering, staking, testing, traffic control, striping, stormwater management, permits and fees as applicable.
- The tops of manholes will be left at base grade, plated, and referenced prior to asphalt paving. The adjustment of manhole rings to final asphalt grade is not included unless a separate bid item and unit price is offered on the proposal. Manhole rings & covers will be furnished to United Companies, Inc. for the final adjustment.
- The tops of water valves will be left at base grade and referenced prior to asphalt paving. The adjustment of water valve boxes to final asphalt grade is not included unless a separate bid item and unit price is offered on the proposal.
- Prices are valid for 30 days from the date of this proposal.
- Pre-emergent controls many annual grasses and broadleaf weeds as they germinate but does not control established weeds. Russian knapweed, morning glory, alfalfa, etc. require weed killer treatment prior to disturbance of the soil. United Companies' warranty does not include weeds coming through the new asphalt mat.
- The above prices are valid contingent on the work being performed during the 2015 construction season. In the event that the work described within the signed proposal is not completed within the 2015 construction season, United Companies reserves the right to adjust the prices accordingly.
- The above prices are based on the preliminary plans provided by the owner. Upon receipt of approved construction drawings, United Companies will revise the quantities and prices as necessary.
- Scheduled shut down of the hot mix asphalt plant is the day prior to Thanksgiving of each year. Any paving past this date will be at United Companies discretion.
- Traffic control is to be done by others. Should United Companies need to supply traffic control, this charge will be assessed accordingly.
- The terms and conditions stated below are expressly made a part of this contract. This proposal shall not become a binding contract unless and until the Acceptance of Proposal and Confirmation by contractor. This proposal must be accepted as provided and delivered to United Companies, 30 days from the above date, or it shall expire. To accept the terms of this proposal, sign below and return to United Companies.

- In the event that United Companies is awarded the contract for this project, the Owner will be required to fill out a credit application from United Companies. The credit application must be approved by United Companies prior to starting work on the proposed project.
- Payment in full for all work performed hereunder during any month shall be made not later than the tenth (10th) day of the month next following. Final and complete payment for all work performed hereunder shall be made not later than fifteen (15) days after the completion of such work. Interest at the highest rate allowable under the laws of the in state which the work is done, or one and one half percent (1½%) per month, whichever is less, shall be charged and paid on all unpaid balances from the due date to the date we receive payment. You agree to pay in full all costs and expenses incurred by UNITED COMPANIES in collecting the amounts owed by you under the Agreement, including any and all court costs and attorneys' fees. Payments received will be applied against open items on unpaid invoices in an order and sequence determined by UNITED COMPANIES in its sole discretion. Any monies paid to you for our work shall be held in trust for our benefit.

We shall not become obligated to perform the work called for under this Proposal and Contract until we check and approve your credit. This Proposal and Contract shall be null and void if your credit is not approved. If credit conditions become unsatisfactory at any time prior to our completion of the work hereunder, you will furnish adequate security upon our request. To the extent you fail to provide adequate security, we may stop work.

This document is the full agreement between us, regardless of any prior proposals or communications. Any deviations from the specifications or modification of the terms of this contract and any extra or incidental work, or reductions in work, shall be set forth in writing and signed by both parties prior to the making of such change. We will be compensated for any increase in our costs caused by such change, on the basis of the increase plus ten percent (10%) profit. If a time is set for the performance of work, and if, in our judgment, such change or other circumstances beyond our reasonable control will increase the time necessary for our performance, we will be granted a reasonable extension of time.

We will provide and pay for Workers' Compensation covering our employees, as well as General Liability and Property Damage Insurance. You agree to carry General Liability and Property Damage Insurance sufficient to protect yourself against any and all claims and liabilities arising from the performance of the work, including but not limited to claims arising under your agreement to indemnify and hold us harmless under this contract.

We shall be provided with suitable access to the work area. If our work is dependent upon or must be undertaken in conjunction with the work of others, such work shall be so performed and completed as to permit us to perform out work hereunder in a normal uninterrupted single shift operation.

Unless a time for the performance of our work is specified, we shall undertake it in the course of our normal operating schedule. We shall not be liable for any failure to undertake or complete the work for causes beyond our control, and we may suspend the work for causes beyond our control, including but not limited to fire, flood or other casualty; the presence on or beneath the work site of utilities, facilities, substances, or objects, including but not limited to any substance that in our opinion is hazardous or toxic or the reporting, remediation, or clean-up of which is required by any law or regulation (together "subsurface conditions"); labor disputes or other disagreements; and accidents or other mishaps, whether affecting this work or other operations in which we are involved, directly or indirectly.

- If for causes beyond our control our work is not completed within twelve (12) months after the date of your acceptance of the proposal, we may cancel this agreement at any time thereafter on ten (10) days notice. In such event (i) we shall be relieved of any further obligation with respect to the balance of the work; and (ii) we shall be entitled to receive final and complete payment for all work performed by us to the date of cancellation within fifteen (15) days thereafter.

We shall not be responsible for, and you agree to indemnify and hold us harmless from, any suit, claim, liability, cost or expense arising from or in any way related to: sidewalks, driveways or other improvements located within our work area or designated areas of access, and to adjacent property and improvements; subsurface conditions; and any and all other alleged damages to persons or property, including but not limited to personal injury and death, arising from the performance of the work, unless such alleged damages arise from our sole negligence. You further agree to indemnify and protect us and save us harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of your breach of any obligations and covenants of this contract. It is further understood that we shall not be responsible for any damage to or deterioration of any of our work, whether completed or in process, resulting from any cause or causes beyond our reasonable control, including but not limited to design, failure of subgrade or other subsurface conditions, or failure or inadequacy of any labor or materials not furnished and installed by us, whether or not such failure or inadequacy was or could have been known at the time our work was undertaken or work performed under adverse weather conditions. You agree that the proper jurisdiction and venue for adjudication concerning this contract is Mesa County, Colorado, and you waive any right to jurisdiction and venue in any other place.

- If you have any questions regarding this proposal, please contact Greg Frazier at (970) 641-0951. Thank You

**Payment Terms:**

Payment due within 30 days of date of invoice, regardless of when payment is made by Owner

<p><b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p><b>Buyer:</b> _____</p> <p><b>Signature:</b> _____</p> <p><b>Date of Acceptance:</b> _____</p>	<p><b>CONFIRMED:</b> <b>Oldcastle SW Group, Inc. Db a United Companies</b></p> <p><b>Authorized Signature:</b> _____</p> <p><b>Estimator:</b> Greg Frazier 970-641-0951 gfrazier@united-gj.com</p>
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**RESOLUTION NO. 25**

**SERIES NO. 2015**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN  
COUNCIL APPROVING THE LEASE AGREEMENT  
WITH THE CRESTED BUTTE FILM FESTIVAL FOR 620  
2ND STREET, AKA THE NORDIC CENTER WARMING  
HOUSE**

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 virtue of the Constitution and laws of the State of Colorado;

WHEREAS, pursuant to Section 31-15-713 (c), C.R.S., the Town Council may lease any real estate, together with any facilities thereon, owned by the Town when deemed by the Town Council to be in the best interest of the Town;

WHEREAS, pursuant to Section 713(c), when the term of such lease is one year or less, the Town Council may approve such lease by resolutions of the Town Council; and

WHEREAS, the Town Council finds hereby that approving a lease of 620 Second Street, Crested Butte for use by the Crested Butte Film Festival is in the best interest of the Town, Crested Butte residents and visitors.

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

1. **Findings**. The Town Council hereby finds that granting a lease of 620 Second Street, Crested Butte for use by the Crested Butte Film Festival is in the best interest of the Town, Crested Butte residents and visitors.

2. **Authorization of Town Manager**. Based on the foregoing, the Town Council hereby authorizes the Town Manager to execute the lease agreement with the Crested Butte Film Festival in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

**EXHIBIT "A"**

**620 Second Street Lease Agreement (Crested Butte Film Festival)**

[attach form lease agreement here]

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (this "Lease"), made and entered into this \_\_\_20th\_\_\_ day of \_\_\_August\_\_\_, 2015, by and between the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality (hereafter referred to as the "Town") and **CRESTED BUTTE FILM FESTIVAL**, a Colorado limited liability company (hereafter referred to as the "Lessee") is upon the following terms and conditions:

**WITNESSETH:**

**IN CONSIDERATION** of the keeping and performance of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

1. **TERM:** This Lease shall commence as of \_September 1, 2015\_, and shall expire on \_\_\_October 7, 2015\_\_\_ (the "Term"). The Term of this lease may be extended only by a writing executed by the Town. The defined word "Term" as used throughout this Lease shall include any extension thereof.
2. **LEASE OF PREMISES TO LESSEE:** The Town hereby leases to Lessee, and the Lessee hereby takes and rents from the Town, the following described premises, together with the improvements thereon, situate in the County of Gunnison and State of Colorado, to wit:

An area of approximately \_\_\_790\_\_\_ square feet, being the space identified on **EXHIBIT A** attached hereto and incorporated herein, located at 620 2<sup>nd</sup> Street, Town of Crested Butte. Also known as the Nordic Center Warming House (hereafter, the "Premises").
3. **RENT:** The Lessee agrees to pay to Town as rent for the Premises during the Term, the sum of \$\_\_\_197.50\_\_\_, payable at the time of execution of this Lease.
4. **UTILITIES:** Unless otherwise specified, the Town shall pay for heating, electricity, water and sewer. Lessee shall pay all charges for telephone, internet, television, trash and recycling removal and other such services.
5. **CHARACTER OF OCCUPANCY:**
  - (a) The Premises shall be occupied by Lessee for the purpose of conducting its \_\_\_administrative\_\_\_ business. Lessee shall at all times properly maintain the Premises, fixtures, and furnishings located therein, and at its sole cost make all necessary day-to-day repairs needed to preserve the interior walls, floor, ceiling, and doors of the Premises, the fixtures and furnishings in good working order and condition. All such repairs or replacements shall be of a kind and quality, and shall be done in a good workmanlike manner.
  - (b) Lessee shall make no alterations, repairs, or improvements to the Premises, including, without limitation, painting the Premises, without the prior written permission of the Town. Lessee shall secure the Premises with a key provided

by the Parks and Recreation Director. Lessee shall not make additional copies of the key for the Premises. Lessee shall return the Premises to the Town in good condition at the expiration or earlier termination of this Lease, ordinary wear and tear excepted.

- (c) Lessee shall not use the Premises in any fashion that would increase the risk of fire, explosion, or any physical destruction to the Premises or the building in which such Premises are located. Said limitation on use shall specifically include a prohibition on smoking, alcohol consumption, and use of controlled substances within Premises. Further, Lessee shall not use the Premises to further any discrimination based on race, sex, creed, sexual orientation or national origin.
  - (d) Lessee occupancy shall not exceed 49 people at any time including staff and patrons.
  - (e) Lessee use is restricted to the downstairs of the Premises excluding closets locked and designated for other purposes.
  - (f) Lessee shall cause the restrooms to be maintained such that, without limitation, all toilets, sinks and other facilities are kept obstruction free and clear from debris, clothing and other articles that could cause such facilities to become clogged and otherwise function improperly.
  - (g) Lessee shall at all times use best efforts to cooperate with any other tenants in the building and the Town.
6. **JANITORIAL:** Lessee agrees to keep and maintain the Premises used exclusively by Lessee in a neat, orderly, clean and sanitary condition at all times, and to provide such janitorial and other services as may be necessary to do so. All refuse or trash resulting from Lessee's use of the Premises shall be stored in the Premises or in an external, wildlife proof dumpster to be picked up by a vendor of the Lessee's choice and expense. Lessee agrees to maintain and clean the premises including bathrooms, common areas and entryways within the building where the Premises are located once per week. Lessee agrees to replace all light bulbs as needed in the Premises. All light fixtures shall have compact fluorescent light bulbs.
7. **SIGNS:** Lessee shall be allowed to have one sign located on or near the building in which the Premises is located. Said sign shall be no more than seven (7) square feet. The design and placement of the sign shall be approved by the Board of Zoning and Architectural Review.
8. **PARKING:** Lessee is allowed the use of the parking lot at Big Mine Park located to the west and north of the Premises. Lessee shall not park more than one (1) vehicle overnight in said parking lot.
9. **ACCESS TO THE PREMISES:** The Town or the Town's authorized representative may enter upon the Premises at any reasonable hour to inspect and make repairs to the same. The Town or its representative may show the Premises to prospective tenants, upon reasonable advance notice to Lessee. In the event of an emergency, the Town and/or its representatives shall be entitled to access the Premises with or without notice to Lessee.

10. **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and encumbrances of any kind, whether caused by the action or inaction of Lessee.
11. **PAYMENT OF INCREASED COSTS:** Lessee agrees to pay to the Town any and all increased costs and expenses attributable to Lessee's occupation of the Premises including but not limited to any insurance increases or taxes that are directly attributable to Lessee's occupancy.
12. **SECURITY DEPOSIT:** Lessee has paid the Town the sum of \$250.00 to be used as security for Lessee's faithful performance of the terms and obligations of this Lease. Said amount shall be paid at the time of Lessee's execution of this Lease. This deposit shall be held by the Town during the term. The security deposit shall not bear interest. The Town shall be entitled to apply any of the security deposit to the repair of damages caused to the Premises by Lessee or on account of Lessee's use thereof, and/or to pay for cleaning of the Premises. In the event the Town determines that it is necessary in its reasonable judgment to have the Premises cleaned or repaired during the Term, or after the expiration or earlier termination of this Lease, such cleaning or repairs shall be performed at Lessee's sole cost and expense. Any amount paid out of the security deposit during the Term shall be reimbursed by the Lessee to the Town within five (5) days. At no point will the security deposit on reserve be less than \$250.00. The security deposit shall not be deemed to be the total amount for which the Lessee shall be responsible to the Town in the event of damages to the Premises. Lessee shall not be entitled to credit any amount of the deposit toward payment of any other obligation owed under this Lease. Within thirty (30) days following the expiration of the Term or sooner termination of this Lease, the Town shall either return the security deposit or, as required by Colorado law, provide Lessee with a written statement, setting forth the reason for the retention of any portion thereof together with the payment of the difference, if any between the amount of the security deposit and the damages claimed by the Town.
13. **TELEPHONE:** The Town shall be responsible for providing telephone service lines to the building. Lessee shall be responsible for placing lines from the main switch box on the building to the Premises. Lessee shall use no more than three (3) separate telephone lines within the building. Lessee shall be responsible for causing any necessary television or other cable lines to be placed for service to the Premises. Any such placement shall not cause damage to the Premises and/or building.
14. **TAXES:** The Town shall pay any and all real and personal property taxes and special assessments which may be levied upon the Premises, except those personal property taxes levied specifically upon the personal property of Lessee. Lessee shall pay all sales and uses taxes in connection with its lease and use of the Premises.
15. **ASSUMPTION OF RISK; INDEMNIFICATION; RELEASE OF CLAIMS:** In consideration for the Town leasing the Premises to Lessee, Lessee, its members, managers and officers (collectively, "Releasor/Idemnitor") hereby acknowledge and agree to the following:
  - (a) Releasor/Idemnitor hereby assumes all risk of claims, liabilities, injuries, losses, demands or damages, whether related to bodily injury, personal injury, sickness, disease, death,

property loss or damage (including attorneys' fees, costs and expenses) (collectively, "Claims") arising out of, directly or indirectly, the use of the Premises, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor and/or Indemnitee its elected officials, officers, employees, agents, insurers, insurance pools, attorneys, representatives, contractors and subcontractors (collectively, "Releasee/Indemnitee");

(b) Releasor/Idemnitor hereby waives any claims, and hereby releases, Releasee/Indemnitee against and from any and all Claims arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor and/or Releasee/Indemnitee; and

(c) Releasor/Indemnitor shall indemnify, defend and hold harmless Releasee/Indemnitee from and against any and all Claims of Releasor/Indemnitor, Releasee/Indemnitee or third parties, any of them, including, without limitation, employees, agents and contractors of Releasor/Indemnitor, Releasee/Indemnitee or any of their invitees, guests, trespassers or otherwise on the Subject Property, arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor, Releasee/Indemnitee or third parties

16. **TOWN NOT LIABLE:** Unless due to the gross negligence of the Town, the Town shall not be liable for any damage or injury which may be sustained by Lessee or any other person resulting from any reason or cause whatsoever, including, but not limited to, as a consequence of the failure, leakage or obstruction of the water, plumbing, steam, sewer, waste or sail pipes, roof, drains, leaders, gutters, valleys, downspouts, or the like, or of the electrical or heating systems, appliances; or by reason of the elements; or resulting from, either directly or indirectly, any act of Lessee or Lessee's agents, contractors, subcontractors, employees, guests, licensees, invitees, or successors; or attributable to any interference with, interruption of, or failure, beyond the reasonable control of the Town of any services to be furnished or supplied by the Town.

17. **INSURANCE:** (a) At its sole cost and expense, Tenant shall obtain and keep in force during and through the Term "all-risk" property coverage naming the Town and Tenant as their interests may appear.

(b) At its sole expense, Tenant shall obtain and keep in force during and through the Term commercial general liability insurance (coverage shall include , public liability, operations, property damage and personal injury, including death, with a minimum combined single limit of not less than \$1,000,000.00 per occurrence / \$1,000,000.00 general aggregate) and insurance covering obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of Tenant within the meaning of applicable law insuring the Town and Tenant, as their interests under this Lease appear, including, without limitation, coverage for contractual liability and broad form property damage with respect to the Premises. The insurance shall be noncontributing with any insurance that may be carried by Town and shall contain a provision that Town, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, cost or damage to Town, or the property of the same.

(c) All insurance required herein and all renewals thereof shall be issued by companies authorized to transact business in the State of Colorado and rated at least A+ Class X by Best's Insurance Reports (property liability) or otherwise approved by Town in writing. All insurance policies shall be subject to approval by Town as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Town and shall provide that no act or omission of Town that would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(d) All policies of liability insurance that Tenant is obligated to maintain according to this Agreement (other than any policy of workmen's compensation insurance) shall name Town as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Town as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Town on the date first written above. All public liability, property damage liability and casualty policies maintained by Town shall be written as primary policies, not contributing with and not in excess of coverage that Town may carry.

(e) The parties waive all rights to recover against each other, or against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with Tenant's operations and Town's operations and property.

18. **ASSIGNMENT:** Lessee shall not assign this Lease, and shall not sublet the Premises, or encumber this lease or the Premises in whole or in part, without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion.
19. **RESTRICTIONS ON USE:** Animals are not allowed within the Premises. Lessee will not construct temporary or permanent structures on the inside or outside of the building for recreational or other purposes. All outside fixtures not provided by the Town including but not limited to bike racks, benches and picnic tables must be approved by the Town. All recreational equipment such as bicycles, boats and skateboards must be stored inside the Premises overnight. Indoor furniture such as couches, tables and chairs will not be used or stored outside the Premises at any time.
20. **COMPLIANCE WITH LAWS:** Lessee agrees to comply with all laws, orders and regulations of the Town, the County, federal land management agencies and any other applicable governmental authority with respect to the Premises and Lessee's use thereof. Lessee has obtained and shall keep in force during the Term, all licenses, authorizations and permits necessary for Lessee to conduct its business operation.

21. **DEFAULT:** Except where Lessee fails to timely pay any amount due under this Lease, neither party shall be in default under this Lease unless such party fails to perform any obligation or covenant contained herein and such failure remains uncured for ten (10) days following receipt of written notice from the non-defaulting party. If Lessee is in default under this Lease it is agreed that the Town may (i) retake possession of the Premises upon ten (10) days' written notice to the Lessee without terminating the Lease, (ii) in the event of default in the payment of rent or any other payments due from Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice for payment of the rent or surrender possession of the Premises under Section 13-40-104(d) (1973 C.R.S.) if Lessee fails to pay such rent as demanded in said notice, or (iii) in the event of any other default by Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice thereof under Section 13-40-104(e) (1973 C.R.S.). Upon the termination of this Lease, Lessee shall peacefully surrender the Premises to the Town and the Town, at any time after such termination, may, without further notice, reenter the Premises and repossess it by summary proceedings, ejectment or otherwise and may dispossess Lessee and remove Lessee and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income therefrom. The Town may also, at the Town's option, and without being liable to Lessee for any damage therefore, remove and store, at Lessee's sole cost and expense, all personal property and effects of Lessee, upon the Premises without responsibility for loss or damage so long as the Town uses reasonable care in the removal thereof, and the Town shall have a valid lien on such property for any damages due the Town under this Lease and for any reasonable costs incurred by the Town in such removal or storage. The foregoing remedies shall not be exclusive, and the Town may exercise any other remedy available under the laws of the State of Colorado. Upon the termination of this Lease by reason of any default by Lessee in the obligations contained herein, the Town shall have the right to re-let the Premises for and on the account of Lessee and Lessee shall remain liable for the difference, if any, between the full amount of rent reserved hereunder and the amount received by the Town after such re-letting, after having deducted therefrom any reasonable costs and expenses of the Town. Any excess that may be derived shall belong to the Town and Lessee shall have no claim to same. The Town's failure to re-rent the Premises shall not preclude it from being able to seek damages against Lessee for any of the sums reserved hereunder. No right of redemption shall be exercised under any present or future law of the State of Colorado, in case Lessee shall be disposed for any cause, or if the Town shall in any other manner, obtain possession of the Premises in consequence of the violation of any of the covenants and agreements contained herein.
22. **SURRENDER OF PREMISES:** The Town shall have the sole discretion as to whether to renew the Lease and shall have the right to change the terms and conditions contained herein, including, without limitation, the rent. Upon the expiration or earlier termination of this Lease, Lessee shall quit and surrender the Premises in as good as state and condition as received, reasonable wear and tear excepted. If after the expiration or earlier termination of the Lease, Lessee remains in possession without written agreement as to such possession, Tenant shall be deemed to hold the Premises as a "Tenant-at-will" and shall be obligated thereon to pay rent for such period in advance at the per diem rate of \$50.00 per day. During such period of time all of the terms and conditions of this Lease shall remain in full force and effect. It shall be Lessee's responsibility to remove all additions, fixtures, or improvements located on the Premises at the

time of such expiration, or upon termination of this Lease. In the event of removal of additions, fixtures, or improvements located on the Premises, Lessee shall restore the Premises to its original condition. Lessee shall cause the carpet in the Premises to be professionally cleaned at the time of vacating the Premises, and shall remove all debris and personal property at its own cost.

23. **TOWN'S REPAIR AND MAINTENANCE OBLIGATION:** The Town shall keep the remainder of the building in which the Premises is located and the exterior thereof in good repair. The Town shall make such structural repairs as are necessary, and repair all plumbing, electrical, heating, ventilating, and other facilities serving the building, unless such repairs are caused by the acts or omissions Lessee, its officers, agents, contractors, subcontractors, employees, customers, invitees, guests or visitors, in which case the Lessee shall pay for such repairs.
24. **DESTRUCTION:** In the event the Premises are damaged in any manner that renders them untenable as a result of the acts or omission of Lessee or any person whose actions are imputable to Lessee, then Lessee shall continue to remain liable for the rentals called for hereunder through the remainder of the Term. If the damage has occurred that renders the Premises untenable through no fault of the Lessee, and the damage cannot be remedied within thirty (30) days, then either party can terminate this Lease. During the period that the Premises are untenable, rental shall abate so long as the damage was not caused by Lessee. In the event the damage was caused by Lessee or by persons or entities attributable to Lessee then rent shall continue to be paid monthly by Lessee regardless of whether Lessee can occupy the Premises.
25. **SUBORDINATION; ATTORNEY-IN-FACT:** This Lease is subject and subordinate to all present and future mortgages or deeds of trust affecting the Premises, and to any and all advances made, or that may be made on account of such mortgage or deed of trust to the full extent of the principal sum or sums secured, or intended to be secured, in the interest due thereon. Lessee agrees upon the request of the Town, to execute and deliver any and all instruments that the Town may reasonably deem necessary or advisable to be executed in respect to this provision. The failure of Lessee to execute and deliver any and all such instruments, shall afford the Town the power to execute and deliver any such instrument or instruments in the name of and on behalf of Lessee and Lessee's failure to so deliver shall constitute a default under this Lease.
26. **NOTICES:** All notices or deliveries required under this Lease shall either be (i) hand-delivered; (ii) given by certified mail directed to the address of the Town or Lessee set forth below; or (iii) given by overnight courier directed to the address of the Town or Lessee set forth below. All notices so given shall be considered effective (i) if hand-delivered, when received; (ii) if by certified mail, three (3) days after deposit; certified mail postage prepaid, with the United States Postal Service; or (iii) if by overnight courier, one (1) day after deposit with the overnight courier company. Either party may change the address to which future notices shall be sent by notice given in (Facsimile numbers are provided for convenience only.)

TOWN:           Town Manager  
                   Town of Crested Butte  
                   P.O. Box 39  
                   507 Maroon Ave  
                   Crested Butte, CO 81224  
                   Fascimile: (970) 349-6626

LESSEE:       Crested Butte Film Festival  
                   P.O. Box 1256  
                   Crested Butte, CO 81224

Notice shall be deemed properly given when sent, mailed, or hand delivered to the above addresses. Either party may change its address by giving written notice of the change to the other party.

- 27. **APPLICABLE LAW; VENUE:** This Lease is entered into in the Town of Crested Butte, Gunnison County, State of Colorado; and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease shall be in the County of Gunnison, State of Colorado.
- 28. **ATTORNEYS' FEES:** It is agreed that if the enforcement, interpretation or construction of this Lease becomes necessary of advisable, the prevailing party in such effort shall be entitled to reasonable attorneys' fees, as well as all related costs and expenses.
- 29. **NO WAIVER:** The failure of the Town to insist in any one or more instances upon strict compliance of any of the obligations, covenants, and agreements herein contained, or the failure of the Town in any one or more instances to exercise any option, privilege, or right herein contained shall in no way be construed as constituting a waiver of such default or option by the Town.
- 30. **CAPTIONS:** The captions are inserted only as a matter of convenience for reference and in no way define, limit, or describe the scope of the Lease nor the intent of any provision hereof.
- 31. **SEVERABILITY:** If any provision, covenant, clause, or agreement contained in the Lease or the application thereof shall be found to be invalid, such invalidity shall not affect the validity of the remaining provisions, covenants, clauses, agreements, or the validity of the Lease as a whole.
- 32. **BINDING:** This Lease shall be binding upon the parties hereto, their respective permitted heirs, successors and assigns.
- 33. **ENTIRE AGREEMENT:** This Lease contains the entire agreement between the parties and supersedes all prior understandings, negotiations and representations, written and oral, not contained herein. It may not be amended or modified, except by an agreement in writing signed by both parties hereto.

34. **COUNTERPARTS; FASCIMILE:** For purposes of enforcement of any term or condition of this Lease, facsimile signatures shall be deemed originals. This Lease may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Lease in duplicate as of the date first set forth above.

TOWN OF CRESTED BUTTE,  
Colorado home rule municipality

By: \_\_\_\_\_  
Todd Crossett Town Manager

ATTEST:

By: \_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

LESSEE:

CRESTED BUTTE FILM FESTIVAL

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**Premises**

2ND ST

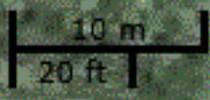
Exhibit A  
Big Mine Warming House, 1st Floor  
620 2nd Street  
Crested Butte, CO 81224

325503157011

325503156010

325503161001

325503160013



Reports

Parcel

PARCEL INFORMATION TABLE

<b>Selected Account</b>	<a href="#">R027736</a> (Click for Complete Card)
<b>Parcel Number</b>	3255-031-56-010
<b>Account Type</b>	Exempt
<b>Physical Address</b>	/
<b>LEA</b>	PARKS, RECREATION, OPEN SPACE (29991)
<b>Subdivision</b>	CRESTED BUTTE (TOWN OF)
<b>Lot/Block</b>	17-27 / 40
<b>Tax District</b>	200
<b>Acres</b>	1.424
<b>Number of Buildings</b>	
<b>Total Above Grade Sq Ft</b>	0

OWNERSHIP INFORMATION

<b>Name</b>	CRESTED BUTTE TOWN OF
<b>Mailing Address</b>	PO BOX 39 CRESTEDBUTTE, CO 81224-0039

VALUATION SUMMARY

<b>Total Current Value</b>	\$1426920
<b>Current Assessed Value</b>	\$413810
<b>Mill Levy</b>	67.759
<b>Last Year's Property Taxes</b>	\$0.00

LAST 2 SALES

Date	Amount	Qualified Sale
0000-00-00	\$0	N/A

Parcel List

Legend

Measure