

ORDINANCE NO. 13

SERIES NO. 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE AMENDMENT TO LEASE AGREEMENT WITH THE CENTER FOR THE ARTS RELATED TO TOWN-OWNED PROPERTY LOCATED AT LOTS 1-16, BLOCK 50, TOWN OF CRESTED BUTTE, 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 virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town leases Town-owned property located at Lots 1-16, Block 50, Town of Crested, Colorado (the "**Premises**") to The Center for the Arts (the "**Center**") pursuant to a Lease Agreement (the "**Lease**") between the parties dated December 23, 2010;

WHEREAS, pursuant to Ordinance No. 14, 2017, the Town has entered in a Tenant Improvement Agreement with Center for the Center's performance of certain construction and improvements respecting the Premises (the "**Project**");

WHEREAS, on account of the Project, the Town Staff has recommended that the Center amend the Lease to contemplate, among other things, the Project;

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 any such lease is one year or greater, the Town Council must approve such lease by an ordinance of the Town Council; and

WHEREAS, the Town Council hereby finds that approving an amendment to the Lease for the Center's use of the Premises in its business, and for such other purposes as set forth in such amendment, is in the best interest of the general health safety and welfare of the Town, its residents and visitors alike.

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

Section 1. Recitals and Findings. The Recitals set forth above are incorporated as if fully set forth herein. The findings set forth in such Recitals are hereby deemed findings of fact material to this ordinance:

Section 2. Findings. The Town Council hereby finds that entering into an amendment to the Lease for the Center's use of the Premises in its business, to accommodate the Project and for such other purposes as are set forth in such amendment is in the best interest of the health safety and welfare of the Town, its residents and visitors alike.

Section 3. Approval of Amendment to Lease Agreement. The Town Council approves the Amendment to Lease Agreement (the "**Amendment**") attached hereto as **Exhibit "A"**, the same being in the best interest of the health safety and welfare of the Town, its residents and visitors alike. The Mayor is hereby authorized to execute the Amendment on behalf of the Town.

Section 4. 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 as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 5. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision thereof that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 1st DAY OF May, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 15th DAY OF May, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Glenn Michel, Mayor

ATTEST:


Lynelle Stanford, Town Clerk

(SEAL)



EXHIBIT "A"

Amendment to Lease Agreement

[attach form here]

AMENDMENT TO LEASE AGREEMENT

THIS AMENDEMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into this 10th day of May, 2017, by and between the Town of Crested Butte, Colorado, a Colorado home-rule municipal corporation (hereinafter referred to as "Town") and The Center for the Arts, a Colorado non-profit corporation (hereafter referred to as "Center") and is upon the following terms and conditions:

WITNESSETH:

WHEREAS, the Town is the owner of Lots One through Sixteen, inclusive (1 – 16), Block 50, Town of Crested Butte, County of Gunnison, and State of Colorado, together with certain buildings and improvements located thereon (the "Premises"), and

WHEREAS, the Center has incorporated for the purpose of constructing and operating a public arts facility within the Town of Crested Butte, and

WHEREAS, the Town and the Center have entered into a certain Lease Agreement (the "Lease") dated December 23, 2010 for the Center's lease of the Premises, and

WHEREAS, the Center and the Town wish to amend the Lease to account for improvements that the Center will be performing on the Premises, and

WHEREAS, the Town, by and through its Town Council finds that such amendments to the Lease contemplated herein will promote the general welfare of the citizens of the Town of Crested Butte.

NOW, THEREFORE, IN CONSIDERATION of the mutual preambles, covenants, conditions, and promises set forth herein, the Town and Center agree as follows:

1. Amendment to the Lease. This Amendment amends the Lease only in the limited respects set forth herein. In the event of any inconsistency or conflict between this Amendment and the Lease, this Amendment shall in all cases govern and control.

2. Tenant Improvements Agreement. The Town and the Center have entered into a certain tenant improvements agreement (the "Tenant Improvements Agreement") of even date herewith whereby the Center will make certain improvements to the Premises.

3. Tenant Allowance. The Town shall provide the Center up to \$750,000.00 to be used by the Center to cover the hard costs of construction (the "Tenant Improvement Funds"). No amount of Tenant Improvement Funds may be used to cover the Center's operating expenses. The Center may receive such funds, or any amount thereof, upon request immediately following the Town's issuance of the Notice to Proceed. Requests for funds shall be made no more frequently than monthly.

4. Lease Payments. The Center shall make monthly lease payments (the "Lease Payments") on the first day of the succeeding month commencing on the first month that the Center receives any Tenant Improvements Funds. Lease Payments shall be in equal amounts over 12 months based on a schedule of payments that the Town will provide the Center monthly. All Lease Payments shall be made within 12 months of the Center's first receipt of Tenant Improvement Funds. After 18 months, interest on any unpaid Lease Payments shall accrue at an annual rate that is equal to the Prime Rate as published in the Wall Street Journal (WSJ). Notwithstanding the foregoing, the Center may not continue construction pursuant to the Tenant Improvements Agreement beyond Phase 1 of its Town-approved construction schedule where any Lease Payments remain past due more than 30 days.

5. New Lease. Upon the completion of construction of Phase 1 pursuant to the Tenant Improvements Agreement, the Town and the Center shall enter into a new lease (the "New Lease") addressing the Center's going forward tenancy of the Premises following construction. The New Lease shall include, without limitation, (a) facility management terms addressing the Center's ongoing maintenance and management responsibilities of the Premises; (b) funding terms addressing the Center's financing and fiscal responsibilities for the ongoing maintenance and operation of the Premises.

7. Execution and Ratification. This Amendment shall be ratified by resolution of the Board of Directors of the Center and subscribed and sealed by the President and Secretary of the Center prior to the Town's issuance of a Notice to Proceed under the Tenant Improvements Agreement.

8. Applicable Law. This Amendment is entered into in the Town of Crested Butte, Gunnison County, Colorado; and it is agreed that the proper jurisdiction and venue of any legal action regarding the interpretation and/or enforcement of this lease, or any document related hereto, shall be the County or District Court of the County of Gunnison and State of Colorado.

9. Attorney's Fees. It is agreed that if any action is brought in a court of law by either party as to the interpretation, enforcement, or construction of this Amendment, or any document related hereto, the prevailing party in such action shall be entitled to judgment for reasonable attorney's fees, as well as all costs incurred in the prosecution or defense of such action.

10. Waiver. The failure of either party to insist in any one or more instances upon compliance with any of the terms, conditions, covenants, or agreements herein contained, or the failure of either party to exercise any option, privilege, or right here in contained shall not be construed as constituting a waiver of such right, option or the right to demand compliance with such term, condition, covenant or agreement.

11. Captions. Captions herein set forth are for convenience only, and in no way define, limit, or modify the intent or language of this Amendment.

12. Severability. If any provision of this Amendment, or the application thereof shall be found invalid, such invalidity shall not affect the validity of the remaining provisions or this Amendment as a whole.

13. Entire Agreement, Amendment, Benefit. This Amendment, as it amends the Lease, represents the entire agreement between the parties, and any amendment or modification hereto shall be in writing, executed by the parties. Upon execution hereof, this Agreement shall become a contract that shall benefit and bind the parties, as well as their successors, assigns and representatives.

IN WITNESS WHEREOF, the parties hereby execute this Amendment effective as of the day and year first set forth above.



TOWN OF CRESTED BUTTE, COLORADO

By Glenn Michel
Glenn Michel, Mayor

ATTEST:

Lynelle Stanford
Lynelle Stanford, Town Clerk

THE CENTER FOR THE ARTS

By Edmund R. Schmidt
Name: Edmund R. Schmidt
Title: President of the Board

(SEAL)

ATTEST:

Marysue Deilly
Secretary