

ORDINANCE NO. 29

SERIES NO. 2023

**AN ORDINANCE OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING THE LEASE OF THE
PROPERTY AT 615 2ND STREET TO CRESTED
BUTTE NORDIC COUNCIL**

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; and

WHEREAS, pursuant to Section 1.4 of the Home Rule Charter for the Town of Crested Butte, 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; and

WHEREAS, the Town Council must approve such lease of more than one year by ordinance of the Town Council; and

WHEREAS, the Town Council and Crested Butte Nordic Council wish to enter into a long-term Business Lease attached hereto as Exhibit A; and

WHEREAS the Town Council finds hereby that approving leases of various Town properties for use by certain entities is in the best interest of the Town.

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


1. **Findings**. The foregoing recitals are hereby fully incorporated herein.
2. **Authorization of Town Manager or Mayor**. Based on the foregoing, the Town Council hereby authorizes the Town Manager or Mayor to execute a lease in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ, AND SET FOR PUBLIC HEARING THIS 4TH
DAY OF DECEMBER, 2023.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN
PUBLIC HEARING THIS 18TH DAY OF DECEMBER, 2023.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Ian Billick, Mayor

ATTEST 
Lynelle Stanford, Town Clerk

(SEAL)



EXHIBIT "A"

[attach form leases agreements here]

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made and entered into this 19th day of December, 2023, is by and between the **Town of Crested Butte**, Colorado, a Colorado home-rule municipal corporation, 507 Maroon Street, P.O. Box 39, Crested Butte, Colorado 81224 (hereinafter referred to as "Town"), and **Crested Butte Nordic Council**, a Colorado non-profit corporation, 620 2nd Street, P.O. Box 1269, Crested Butte, Colorado 81224 (hereinafter referred to as "CB Nordic"). The Town and CB Nordic are referred to collectively herein as the "Parties."

RECITALS

WHEREAS, the Town is the owner of certain real property, located at 615 2nd Street, Crested Butte Colorado 81224, Town of Crested Butte, County of Gunnison, State of Colorado, known as the **Nordic Cat Barn and Outpost**, and the improvements located thereon, which improvements are further depicted on the attached Exhibit A (collectively the "Premises");

WHEREAS, CB Nordic incorporated in 1987 for the purposes of promoting and providing instruction and training of individuals in the sport of Nordic skiing, and other related purposes, is currently operating as a non-profit corporation under Section 501(c)(3) of the Internal Revenue Code and the laws of the state of Colorado.

WHEREAS, the Town and CB Nordic are currently parties to a lease date August 19th, 2011 (the "2011 Lease"), and the Town and CB Nordic desire to replace their 2011 Lease with this Lease;

WHEREAS, CB Nordic wishes to continue using the Premises for instruction and training of individuals for the purpose of improving and developing their capabilities in the sport of Nordic skiing and for storage and maintenance of related equipment, and other related purposes.

WHEREAS, the Town, by and through its Town Council, finds that such use of the Premises will benefit and promote the general welfare of the Town of Crested Butte and its citizens.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual covenants, conditions, and promises set forth herein, the Town and CB Nordic agree as follows:

1. Lease of Premises. The Town hereby leases the Premises to CB Nordic. The Premises comprise the real property, buildings and other improvements that are the subject of this Lease, which improvements are further depicted on the attached Exhibit A.
2. Lease Term, Renewal, Rent, and Review. The initial term of this Lease shall commence on the date set forth above and continue for a period of 30 years thereafter. This Lease shall thereafter be renewed automatically for two succeeding terms of (10) years each unless either party gives written notice to the other at least one year prior to the expiration of any term of its intention not to renew. The initial and renewal terms of this Lease are referred to collectively herein as the "Terms".

During the initial term and any renewal term, the Town shall have the right to review CB Nordic's management of the Premises to ensure that the public interest and community needs are being addressed in a reasonable manner. The Town may review the following aspects of CB Nordic's operations during the term of the lease:

- a) In the event that CB Nordic experiences operating deficits (defined as annual operating revenues less than annual operating expenses), the Town shall have the right to review CB Nordic's Board's management of CB Nordic's financial affairs with particular reference to the need to minimize operating deficits. In carrying out such a review, the Town shall have access to CB Nordic's financial records upon request of the Town Manager;
- b) The extent to which CB Nordic's use of the premises conflicts with or complements the use of adjacent or nearby Town property; and
- c) The extent to which CB Nordic addresses the Nordic skiing needs of the community and provides a rate structure that is supportive of the community.

If the Town determines that CB Nordic's management of the Premises is deficient the Town shall notify CB Nordic in writing. Within three months of the notice, the Parties shall confer to identify mutually agreed upon steps to remedy the deficiencies. If the Parties cannot agree, they will select a neutral third-party mediator who would seek an acceptable voluntary solution to the dispute. If the dispute cannot be resolved through the efforts of the mediator, then the Parties may pursue any available legal or administrative recourse, including the declaration of a default pursuant to Paragraph 14 of this Lease and the commencement of a legal action to determine which Party is entitled to possession of the Premises.

3. Rent. CB Nordic shall pay to the Town, as rent for the Premises, the sum of five hundred (\$500.00) for each year during the Terms hereof. Such payments shall commence on the date this Lease is executed by the Parties and be paid thereafter on the anniversary of such date.
4. Maintenance and Repairs of Buildings. CB Nordic shall be responsible for all maintenance and repairs of the structures on the Premises unless otherwise set forth in this Lease.
5. CB Nordic Responsibilities for Grounds Maintenance, Snow Removal, and Landscaping. CB Nordic is responsible for the following tasks:
 - a) Hand shoveling (or snowcat transporting) of snow and ice removal necessary for CB Nordic operations on the Premises including grounds and roofs. Snow may not be placed in adjacent areas outside of the Premises including sidewalks, alleys, Big Mine Parking Lot, and other public rights-of-way.
 - b) Removal of any ice dams or ice build-up on roofs and walkways on the Premises
 - c) Landscaping installation and maintenance including planter boxes and exterior light fixtures.

- d) Installation and maintenance of Public Art in accordance with the Town's Public Art Policy and the requirements set forth in the approval of the Spiral Ski Pillar sculpture by the Public Art Commission.
 - e) Installation and ongoing maintenance of the water and sanitary sewer services, including that portion of the services that extends beyond the footprint of the defined premises in Exhibit A.
6. Town Responsibilities for Grounds Maintenance, Snow Removal and Landscaping. The Town is responsible for the following tasks:
- a) Removal of snow from the Big Mine Parking lot and certain adjacent pedestrian paths as shown on the annual Snow Removal Map found online at www.townofcrestedbutte.com.
7. Use of Premises and Character of Occupancy.
- a) CB Nordic shall use the Premises only as a public non-profit facility to promote instruction and training of individuals for the purpose of improving and developing their capabilities in the sport of Nordic skiing and for storage and maintenance of related equipment, and other related purposes, as permitted by its articles of incorporation, bylaws, and applicable laws. CB Nordic shall have control over the day-to-day management of the Premises, and shall allow use of the Premises by such groups and entities as it sees fit, provided that such character of use does not further any discrimination or preferences based upon race, color, sex, creed, age, ancestry, physical or mental disability, marital status, gender, gender identification, sexual orientation, sexual identification, religion, ethnicity, national origin, family responsibility or political affiliation.
 - b) Amplified sound shall not be permitted on the Premises unless specific allowances are made via a Special Event Application.
 - c) In the event CB Nordic ceases to use the Premises for the purposes identified in paragraph (a) above for a period of exceeding 180 days the Town may treat it as an event of default pursuant to Paragraph 14.
8. Improvements and Alterations. If, at any time during the term of this Lease, or any extension hereof, CB Nordic desires to make additions, alterations or modifications to the Premises, and if such additions, alterations, or modifications exceed a cost of Twenty-five Thousand Dollars (\$25,000.00), as modified upward or downward by the U.S. Department of Commerce Consumer Price Index, such additions, alterations, or modifications shall be approved in advance and in writing by the Town. CB Nordic further agrees to implement and maintain the conditions for the structure and site plan for the Premises included in the attached Exhibit A, which were part of the BOZAR approvals of the structure and site plan.

9. Utilities. CB Nordic shall be responsible for arranging and paying for all utilities used on the Premises, including but not limited to electricity, water, sewer, trash collection and telecommunications services. CB Nordic will also be responsible for annual testing of the backflow prevention device providing domestic water service to the Premises. CB Nordic agrees that it will make its best efforts to conserve energy, use renewable energy sources, and implement best management practices to minimize the use of electricity in its daily activities on the Premises and in the Buildings on the Premises.

10. Insurance, Indemnification, and Use of Improvements as Collateral.

- a) CB Nordic agrees to maintain in effect during the term of the Lease general liability insurance, naming the Town as additional insured, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit, as modified upward or downward every five (5) years during the term hereof, or of any extension, by the U.S. Department of Commerce Consumer Price Index. CB Nordic shall also maintain in effect such fire, casualty, and extended coverage insurance on the Premises during the term of the Lease as will guarantee the replacement value of the improvements and structures on the Premises. CB Nordic will provide the Town with copies of appropriate insurance policies, as described above, within 15 days after the execution of this Agreement. CB Nordic agrees to indemnify, hold harmless, and defend the Town, its officers, agents, and employees, against any claim for injury or damage caused by the act or omission of CB Nordic or any other person for whose acts CB Nordic is responsible arising from CB Nordic's use of the Premises, but only to the extent of CB Nordic's negligence.
- b) The Town may at its discretion, and, in accordance with Colorado law, agree in writing to allow CB Nordic to use the improvements on the Premises to secure indebtedness related to the construction by CB Nordic of additional improvements. CB Nordic shall not otherwise allow the placement of any lien or other claim against the Premises by reason of any improvements placed upon the Premises, and CB Nordic shall indemnify and defend the Town against any claim upon the property, whatsoever.

11. Assignment. Neither the Town nor CB Nordic shall assign this Lease to any third party.

12. Access to Premises. The Town shall have access to the Premises at any reasonable time for purposes of inspection or responding to emergencies which threaten injury to any person or harm the Premises and/or property thereon.

13. Quiet Enjoyment. The Town represents that it has full right and power to execute this lease and to grant the estate demised herein and subject to other provisions of this Lease. The Town covenants with CB Nordic that so long as this Lease remains in effect, CB Nordic

shall peaceably and quietly enjoy the Premises during the Terms of this Lease, subject and subordinate to all of the terms, covenants, and conditions of the Lease.

14. Default. Neither party shall have the right to terminate this Lease upon default by the other party in any covenant or condition unless such default remains uncured for a period of sixty (60) days following written notice to the defaulting party of such default. In the event that any cure is prevented by weather or other circumstances beyond control of one or both of the Parties the deadline for curing such default shall be extended until sixty (60) days after the weather or other such circumstance has ceased to exist. If this Lease is so terminated, the Town may retake possession of the Premises upon sixty (60) days' written notice to CB Nordic, and CB Nordic shall surrender and return the Premises to the Town, together with all permanent improvements and fixtures belonging to the Town, in good condition, normal wear and tear excepted. Nothing in this paragraph shall be deemed to limit the availability of specific performance or other causes of action as remedies for breach.

15. Execution and Ratification. This shall be ratified by resolution of the Board of Directors of CB Nordic and subscribed and sealed by the President and Secretary of CB Nordic no later than fifteen days after the effective date of the Ordinance of the Town approving this Lease.

16. Notices and Addresses. Any notice required hereunder shall be delivered by certified mail to the Parties at the following addresses:

TOWN: Town Manager
 P.O. Box 39
 Crested Butte, CO 81224

 Town Attorney
 P.O. Box 39
 Crested Butte, CO 81224

With copy to:
 Karp Neu Hanlon
 P.O. Drawer 2030
 Glenwood Springs, CO 81602

CB NORDIC: P.O. Box 1269
 Crested Butte, CO 81224

With copy to:
 Huckstep Law LLC
 P.O. Box 2958
 Crested Butte, CO 81224

17. Applicable Law, Choice of Venue. The parties agree that Colorado law will be applicable to determine any dispute under this Lease and 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.
18. 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 Lease, or any document related hereto, the prevailing party in such action shall be entitled to judgement for reasonable attorney's fees and costs incurred in the prosecution or defense of such action.
19. 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.
20. Captions. Captions used herein are for convenience only, and shall not be used to define, limit, or modify the intent or language of this Lease.
21. Severability. If any provision of this Lease, or the application thereof shall be found invalid, such invalidity shall not affect the validity of the remaining provisions or this Lease as a whole.
22. Entire Agreement, Amendment, Benefit. This 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 Lease Agreement shall benefit and bind the Parties, as well as their successors, assigns and representatives and shall supersede in all respects as of the date of such execution the 2011 Lease.

IN WITNESS WHEREOF, the Parties hereby execute this Lease as of the day and year set forth above.



TOWN OF CRESTED BUTTE, COLORADO

By: *[Signature]*

Dara MacDonald, Town Manager

ATTEST:

[Signature]

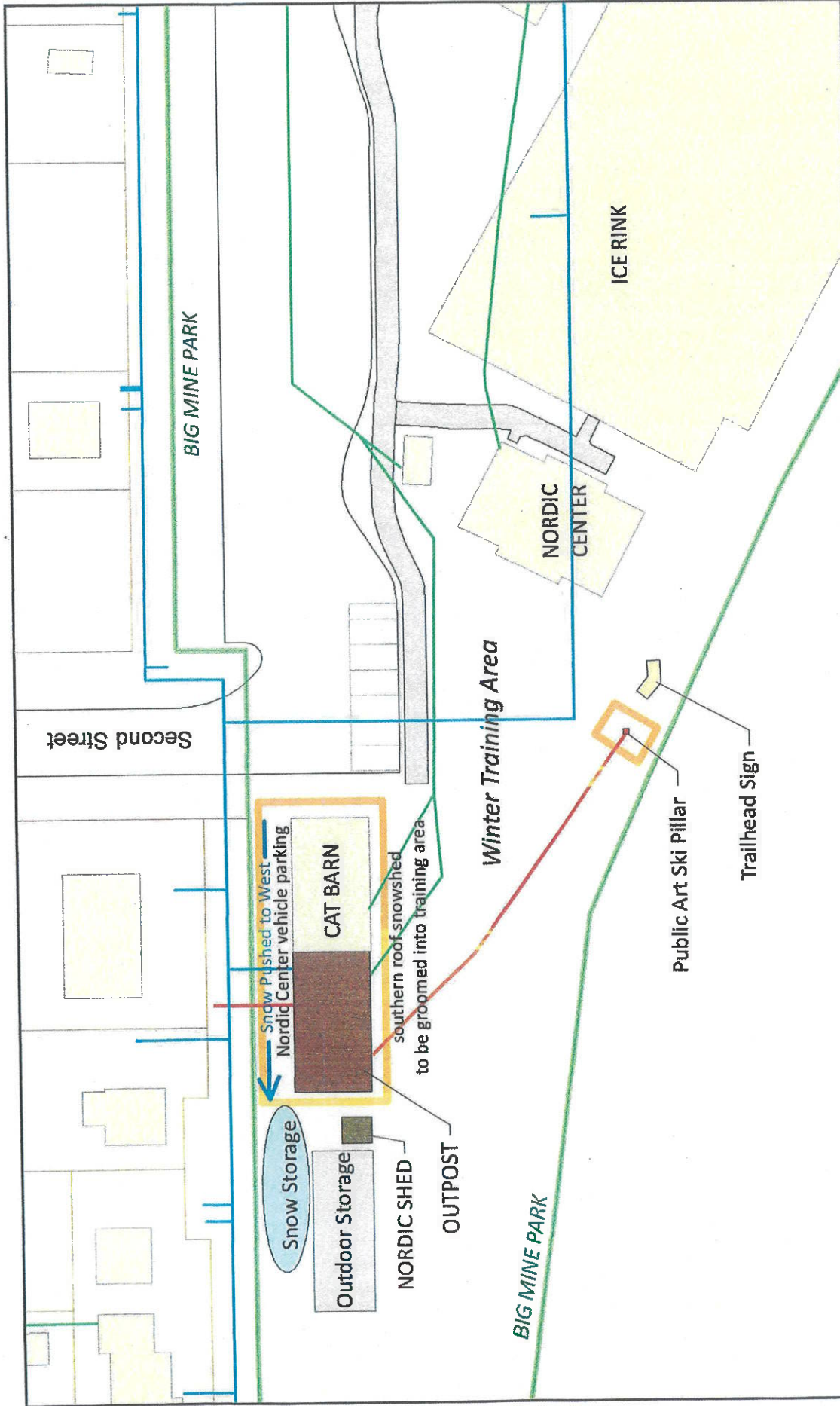
Lynelle Stanford, Town Clerk

CRESTED BUTTE NORDIC









By: *HEDDA PETERSON*

~~Martin Catmur, Board President~~

Hedda Peterson, Executive Director



OUTPOST AND CAT GARAGE SITE PLAN

-  Water Lines
-  Sanitary Sewer Lines
-  Electric Lines
-  Sidewalk
-  Buildings
-  Premises
-  Parcel Boundaries
-  Big Mine Park

