ORDINANCE NO. 39

SERIES NO. 2019

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE LEASE OF A PORTION OF THE PROPERTY AT 606 SIXTH STREET TO THE CENTER FOR THE ARTS

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, the Town is the owner of Lots One through Sixteen (1-16), Block 50, Town of Crested Butte, County of Gunnison, and State of Colorado, together with certain buildings and improvements located there on, also known as 606 6th Street; and

WHEREAS, on December 23, 2010, the Town entered into a fifty-year lease ("2010 Lease") with The Center for the Arts ("the **Center**"), a Colorado non-profit corporation, for a portion of the property known as 606 6th Street ("Property"); and

WHEREAS, on May 19, 2017, the Town entered into an Amendment to the 2010 Lease and a Tenant Improvements Agreement providing for the Center to proceed with construction of certain improvements on the Property; and

WHEREAS, the Amendment to the 2010 Lease requires that "Upon 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"; and

WHEREAS, construction of Phase 1 improvements is nearing completion; and

WHEREAS, the Town Council and Center wish to enter into a long-term Lease Agreement attached hereto as Exhibit A; and

WHEREAS the Town Council finds hereby that approving this Lease Agreement 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 as findings.

2. **Authorization of Town Manager**. Based on the foregoing, the Town Council hereby authorizes the Mayor to execute a lease in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 18th DAY OF NOVEMBER, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 3rd DAY OF February, 2020.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST

_____
Lynelle Stanford, Town Clerk

(SEAL)

EXHIBIT "A"

Business Lease Agreement

[attach form lease agreement here]

LEASE AGREEMENT

THIS LEASE AGREEMENT ('Lease"), made and entered into this 14TH day of FEBRUARY, 2020, 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 The Center for the Arts, a Colorado non-profit corporation, 606 6th Street, P.O. Box 1819, Crested Butte, Colorado 81224 (hereafter referred to as "Center"). The Town and the Center are referred to collectively herein as the "Parties."

RECITALS

WHEREAS, the Town is the owner of certain real property, located at 606 6th Street, Crested Butte Colorado 81224. Town of Crested Butte, County of Gunnison, State of Colorado, and the improvements located thereon, which improvements are further depicted on the attached Exhibit A (collectively the "Premises");

WHEREAS, the Center incorporated in 1986 for the purposes of enriching and expanding community participation in the arts in the Town and in Gunnison County, and the Center 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 the Center are currently parties to a lease dated December 23, 2010, and the Town and the Center desire to replace their 2010 lease with this Lease;

WHEREAS, the Center wishes to continue using the Premises for artistic, educational, scientific and cultural activities; and

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 Center agree as follows:

1. Lease of Premises. The Town hereby leases the Premises to the Center. 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 50 years thereafter. This Lease shall thereafter be renewed automatically for three succeeding terms of ten (10) years 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 the Center'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 the Center's operations during the term of the lease:

a) The extent to which the members of the Center's Board of Directors represent different interests and constituencies in the East River Valley;

b) The Board's management of the Center's financial affairs with particular reference to the need to minimize operating deficits. In regards hereto, the Town shall have access to the Center's financial records through its ex officio member;

c) Whether the amount of Center use allocated to the Town under paragraph7b, below, is sufficient to meet the needs of the Town;

d) The extent to which the Board is responding to a fair cross-section of community needs; and

e) The extent to which the Center's use of the Premises conflicts with or complements the use of adjacent or nearby Town property.

f) The extent to which the Center addresses the programming concerns of year-round residents, and provides a rate structure supportive of community user groups.

If the Town determines that the Center's management of the Premises is deficient in one or more of the areas listed above, the Town shall, , so notify the Center in writing. Within three months of the notice, the Parties shall confer to identify mutually agreed to 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 17 of this Lease and the commencement of a legal action to determine which Party is entitled to possession of the Premises.

3. Rent. The Center shall pay to the Town, as rent for the Premises, the sum of one dollar ($1.00) 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. The Center shall be responsible for all maintenance and repairs of all of the Buildings on the Premises unless otherwise set forth in this Lease, provided, however, that once exterior accessed bathrooms are completed on the east side of the Premises, the Town shall be responsible for all maintenance, repair, stocking and cleaning of these bathrooms.

5. Center Responsibilities for Grounds Maintenance, Snow Removal, and Landscaping. The Center is responsible for the following tasks:

a) Maintenance of the grounds included in the Premises, except for snow removal and landscaping performed by the Town as set forth in Section 6 and elsewhere in this Lease.

b) Maintenance and repairs of improvements constructed by the Center within the CDOT right of way between the Town's property and 6th Street.

c) Hand shoveling of snow and ice removal necessary for Center operations on the Premises, and for the hauling of snow from snow storage areas shown on Exhibit B.

d) Removal of any ice dams or ice build-up, particularly on areas where walkways or drives abut areas with snowmelt systems.

e) Plantings, courtyard areas, and other outdoor spaces within the Center's area of responsibility, as shown on Exhibit C.

f) During the summer season, approximately May – October, the Center shall place planters or other decorative barriers within the snow storage area on the east side of the intersection of 6th Street and Whiterock Street, as such location is depicted on Exhibit B, to limit vehicles inadvertently entering the Center's driveway at that location.

g) Installing, decommissioning, repairing and maintaining any art, sculptures, benches, bike racks, or similar outdoor installations owned by or given to the Center.

h) Bollards in the fire lane on the south side of the building shall be maintained in good working condition.

i) Snow poles delineating areas to be plowed or blown by the Town and obstacles to avoid shall be installed by October 1st of each year in advance of the winter season.

6. Town Responsibilities for Grounds Maintenance, Snow Removal and Landscaping. The Town is responsible for the following tasks:

a) Removal of snow from certain pedestrian paths, fire lanes, and drop off zones, as shown on Exhibit B.

b) Snow plowing when there is 3 inches or more of accumulation on driveways shown on Exhibit B which will occur between the hours of 12:00 am and 10:00 am, consistent with plowing operations throughout Town and the Town's snow management plan. Center is responsible for any plowing outside of those times.

c) Snow removal when there is 1 inch or more from walkways shown on Exhibit B, which will occur between 7:00 am and 5:00 pm, consistent with walkway snow

removal operations throughout Town and the Town's snow management plan. The Center is responsible for any walkway snow removal outside of those times.

d) Landscaping maintenance and repair including the maintenance of trees, shrubs, sod and other plantings, except for those plantings shown within the Center's area of responsibility, as shown on Exhibit C.

e) Installation and maintenance of Public Art in accordance with the Town's Public Art Policy, provided that the Town shall first obtain the written consent of the Center.

f) Maintenance of the irrigation system necessary for the preservation of the landscaping on the Premises including the irrigation pump and associated plumbing and electrical components.

7. Use of Premises and Character of Occupancy.

a) The Center shall use the Premises only as a public non-profit center for such artistic, cultural, scientific and educational activities as are permitted by its articles of incorporation, bylaws, and applicable laws. The Center 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 preference that violates Section 10-11-10 of the Town Code, or that is 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) The Town shall have the right to use the Premises at no cost for up to 10 days in any calendar year on an "as available" basis. In addition, the Town shall have the right to use the Premises for two (2) additional days per year at no cost for training for the Town Marshals' personnel and for training fire department personnel. The Town shall reserve the Premises in accordance with the Center's standard facility reservation process and procedures. In the event that the Town requests use of the Premises beyond the 12 free days allowed per year, the Town shall be allowed to use the Premises so long as the Town reserves the Center's facilities in accordance with the Center's standard facility reservation process and procedures and pays the Center its standard rates and fees for the use of the Center's facilities, provided however that the Town also shall receive a 20% discount on rental rates for use of the Premises for Town parks and recreation programs paid for by user fees.

c) As required in the BOZAR approvals of the structure and site plan, the Center shall make every effort to mitigate the impacts of parking and traffic related to the Center's activities on an ongoing basis. This shall include the implementation of shuttle/valet parking to and from parking areas noted or future sites that may become available, the coordination of transit access to the site, and the devotion of

Center personnel to traffic control when events exceed 275 people within the Buildings on the Premises. The Center shall coordinate with other Town and REIJ school events in scheduling Center events, and place limitations on concurrent Center events, capping total Center occupancy at 400 people.

d) Amplified sound shall not be permitted on the Premises, with the exception of the Alpenglow Stage.

8. Improvements and Alterations. If, at any time during the term of this Lease, or any extension hereof, the Center 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. The Center further agrees to implement and maintain the conditions for the structure and site plan for the Premises included in the attached Exhibit D, which were part of the BOZAR approvals of the structure and site plan.

9. Use of Fire Lane and Pedestrian Walkways. The Center may allow parking of tour buses as shown on Exhibit B. Bollards removed to allow access shall be removed for only as long as it takes a tour bus or other equipment vehicle to drive past them and then the bollards will be put back in place. Bollards shall not be left out of place during the loading/unloading period for any vehicle. The fire lane and pedestrian walkway on the south side of the building (as shown on Exhibit C) will only be used for loading and unloading of equipment for use in the theater, and will not be used for any other purpose. Day-to-day deliveries shall be made off of the 6th Street access.

10. Utilities. The Center shall be responsible for arranging and paying for all utilities used on the Premises, including but not limited to electricity, gas, water, sewer, trash collection and telecommunications services. The Center will also be responsible for annual testing of the backflow prevention device providing domestic water service to the Premises. The Town shall be responsible for annual testing of the backflow prevention device for park irrigation on grounds adjacent to the Center's facilities. The Center 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 natural gas and electricity in its daily activities on the Premises and in the Buildings on the Premises. All lighting inside the Building shall remain on occupancy sensors with the exception of the lobby-entrance area, the community room and the theater. The Center further agrees that when any rooms in the Building including the lobby-entrance area, the community room and the theater are unoccupied, all lighting in these rooms (except "Exit" signs over the doors) will be turned off by sunset.

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

a) The Center agrees to maintain in effect during the term of the Lease general public liability insurance, naming the Town as an 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. The Center 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. The Center will provide the Town with copies of appropriate insurance policies, as described above, within 10 days after the execution of this Agreement. The Center 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 the Center or any other person for whose acts the Center is responsible arising from the Center's use of the Premises, but only to the extent of the Center's negligence.

b) The Town may at its discretion, and, in accordance with Colorado law, agree in writing to allow the Center to use the improvements on the Premises to secure indebtedness related to the construction by the Center of additional improvements. The Center 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 the Center shall indemnify and defend the Town against any claim upon the property, whatsoever.

12. Town Representation on the Center's Board of Directors. The Town Council may appoint from time to time one of its members or another designated Town officer or employee, to represent the Town as an ex-officio non-voting member of the Center's Board of Directors. As such, said member or designated person shall be allowed to attend and speak at the Board's meetings, except meetings which are held as executive sessions to consider personnel, litigation, or other confidential matters, or meetings to discuss this Lease and matters directly related hereto.

13. Assignment. Neither the Town nor the Center shall assign this Lease to any third party.

14. 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.

15. Crested Butte Community School Reunification. In an emergency necessitating evacuation of the Crested Butte Community School, the Center shall be made available for reunification of students and staff of the Crested Butte Community School.

16. 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 the Center that so long as this Lease remains in effect, the Center 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.

17. Default. Neither party shall have the right to terminate this Lease Agreement 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 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 Agreement is so terminated, the Town may retake possession of the Premises upon sixty (60) days' written notice to the Center, and the Center 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. In addition, the Center shall provide all necessary books, contracts, and other records and shall work with the Town or its designated representative to insure a smooth transfer of management without interruption of scheduled activity on the Premises. Nothing in this paragraph shall be deemed to limit the availability of specific performance or other causes of action as remedies for breach.

18. Execution and Ratification. This Agreement 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 no later than fifteen days after the effective date of the Ordinance of the Town approving this Agreement.

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

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

CENTER: P.O. Box 1819
Crested Butte, CO 81224

20. 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.

21. 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 judgment for reasonable attorney's fees and costs incurred in the prosecution or defense of such action.

22. 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.

23. 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.

24. 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.

25. Entire Agreement, Amendment, Benefit. This Agreement 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.

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

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST:

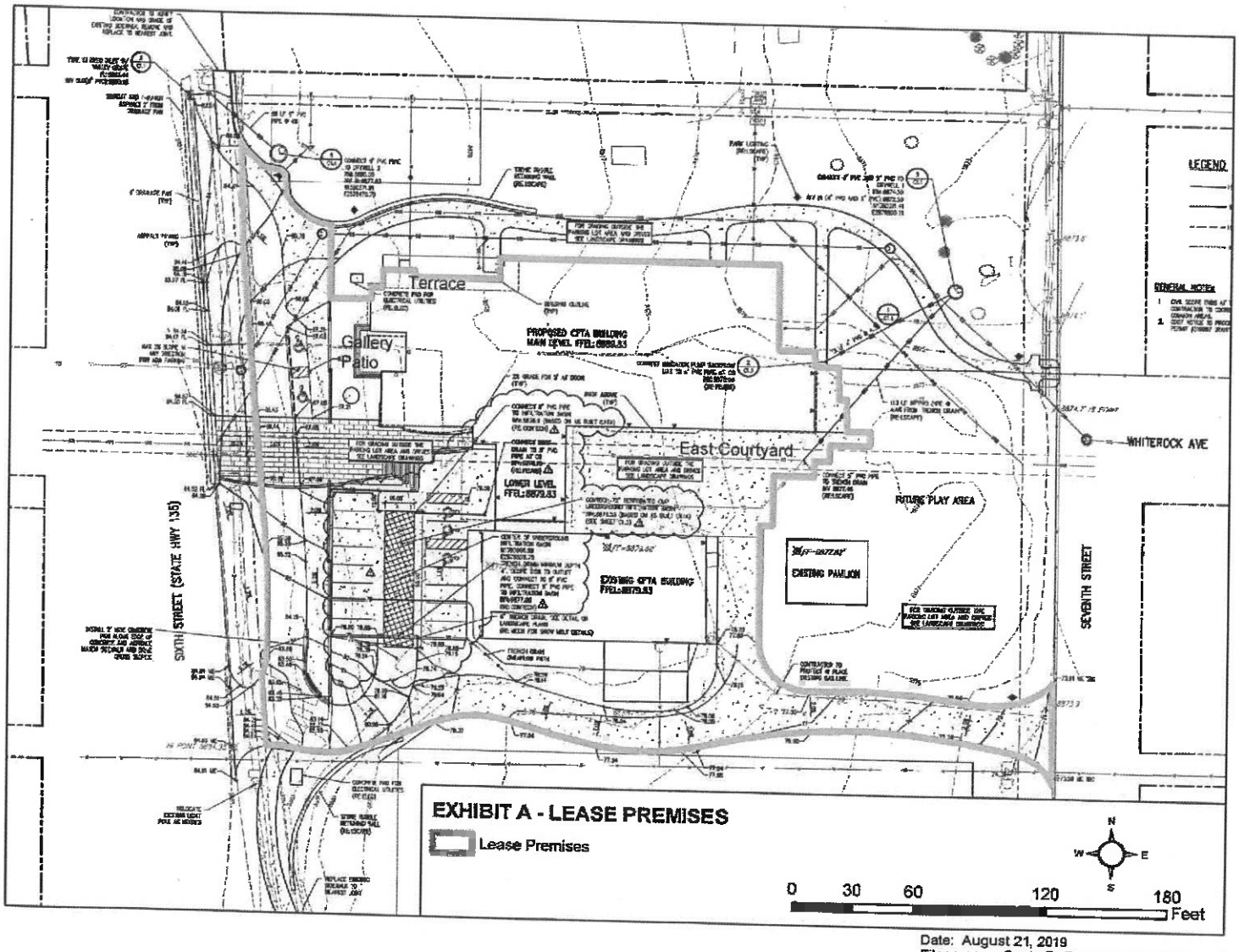
_____
Lynelle Stanford, Town Clerk

THE CENTER FOR THE ARTS

By: _____
Its: President

ATTEST:

_____
Secretary



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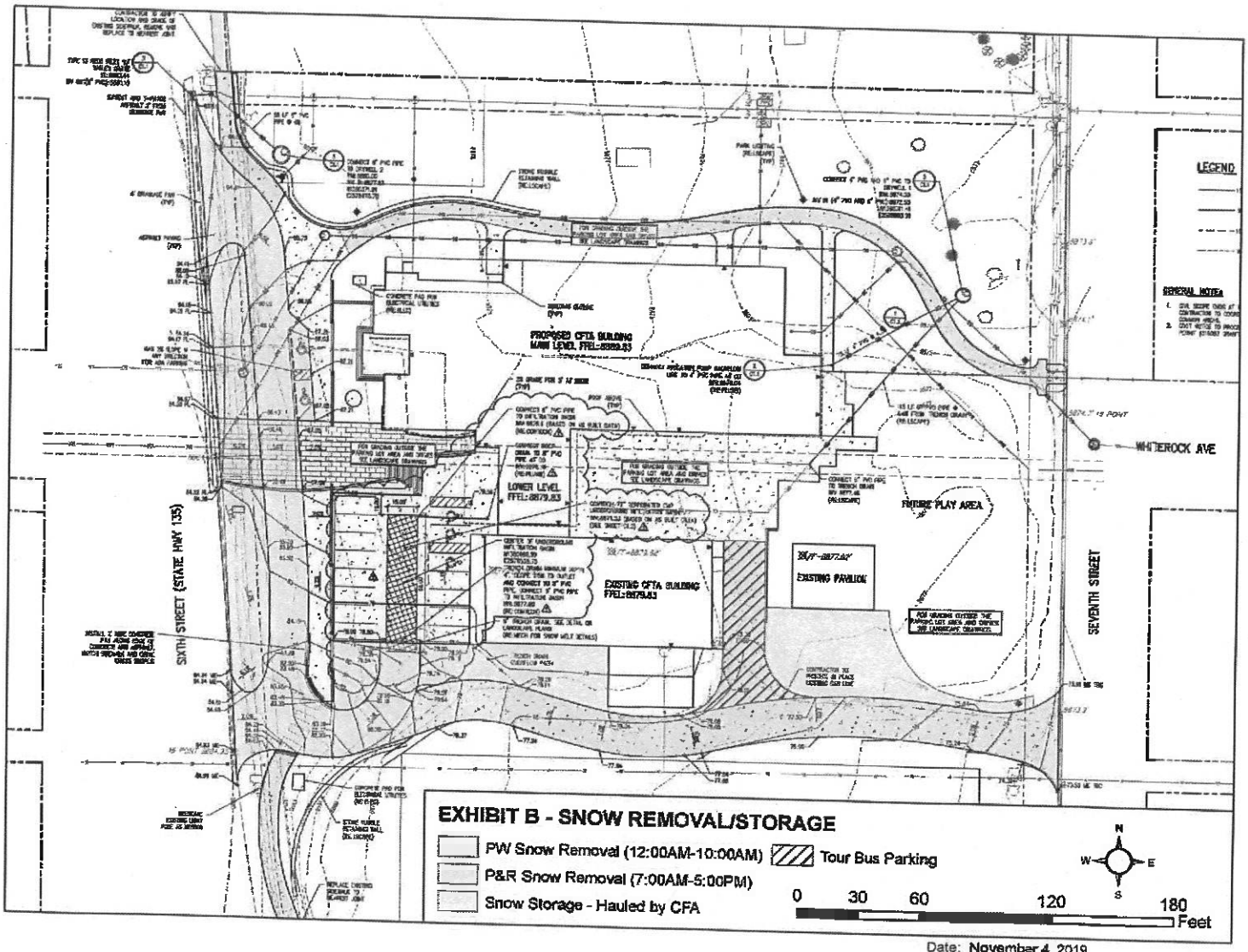

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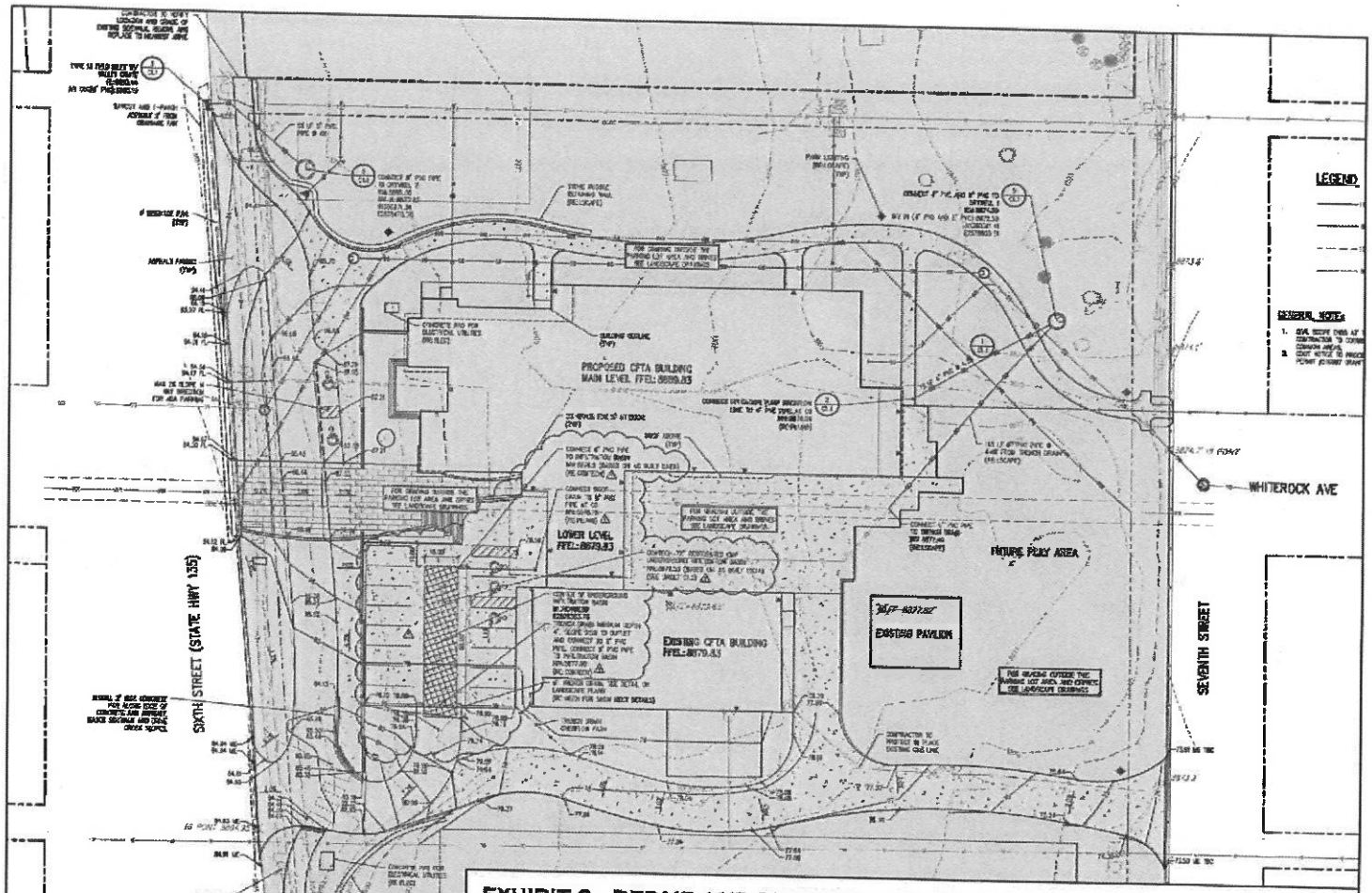

EXHIBIT C - REPAIR AND MAINTENANCE RESPONSIBILITIES

Town Responsibility

CFA Responsibility

Space Used By Town, CFA Responsible for Building

0 30 60 120 180 Feet

N W E S

Date: August 21, 2019
Filename: ~CenterForTheArts/Exhibits2019.mxd

EXHIBIT D

BOZAR 8-31-2016 – Center for the Arts

Conditions of Architectural Approval

1. The Center shall provide the following changes to the structure/site plan which will be reviewed and approved if needed by the Board as denoted below.

a. The windows, doors, and associated trim shall be finished in "classic copper" paint and the material list change to reflect this.

b. The theater window on the north elevation shall reflect that shown on the rendering. The elevation shall be changed to reflect the correct distance from the top of the wall.

c. The concrete on the west retaining wall where the Center for the Arts sign is shown shall be board-formed.

d. All the areas where windows are more expansive (north side of courtyard, above north deck, adjacent to Herschel's garden, etc.) shall be grouped in pairs of two with a minimum of 3.5 inches between the pairs.

e. The rain chain element shall be developed and approved by the full Board.

f. The exterior staircase from the front door area to the lower parking lot must be deemed safe by the Town and added to the snow management plan.

g. The lower parking lot area shall be lit by recessed step lights in the concrete wall as opposed to the lamps and poles proposed.

h. The hard surface materials for the west entry and east court shall be reviewed by the full Board.

i. Any changeable copy marquee feature shall be reviewed by the DRC or if needed the full Board shall construct the structure and site in conformance with the

f. The exterior staircase from the front door area to the lower parking lot must be deemed safe by the Town and added to the snow management plan.

g. The lower parking lot area shall be lit by recessed step lights in the concrete wall as opposed to the lamps and poles proposed.

h. The hard surface materials for the west entry and east court shall be reviewed by the full Board.

i. Any changeable copy marquee feature shall be reviewed by the DRC or if needed the full Board.

2. The Center shall construct the structure and site in conformance with the approved plans or subsequently approved plans including the structure, sidewalks around the site and to the school, lighting as designated, improvements to the 6th and 7th Street right of ways including access, parking, drainage and landscaping as represented in the approved plans.

3. The Center shall enter into a management agreement with the Town of Crested Butte to address the responsibilities for maintenance of the building and site which shall include the plowing and removal of snow in line with the submittal.

4. The Center shall enter into a management agreement with the Town of Crested Butte to define the responsibilities and coordination of the development activities related to the construction of the Center and site amenities.

5. The Center will enter into a funding agreement with the Town of Crested Butte to define the financing and fiscal responsibilities for the construction and on-going maintenance of the facilities.

6. The Center will coordinate with the Town of Crested Butte with regard to the planning and implementation of the Town Park playground and confirmation by the staff that all community facilities displaced by the expansion have been appropriately replaced.

7. The Center shall make every effort to mitigate the impacts of parking and traffic related to the Center's activities on an ongoing basis. This shall include the implementation of shuttle/valet parking to and from parking areas noted or future sites that may become available, the coordination of transit access to the site, and the devotion of Center personnel to traffic control when events exceed 275 people. The Center shall coordinate with other Town and RE1J school events in scheduling Center events, and place a limitations on concurrent Center events, capping total Center occupancy at 400 people.

8. The Center shall comply with the conditions in Resolution #4, series 2015 as adopted or subsequently amended by the Crested Butte Town Council.