ORDINANCE NO. 03

SERIES NO. 2020

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE LEASE OF 504 MAROON AVENUE TO THE GUNNISON COUNTY LIBRARY DISTRICT

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 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; and

WHEREAS, pursuant to Section 31-15-713 (c), when the term of such lease is more than one year, the Town Council must approve such lease by ordinance of the Town Council; and

WHEREAS, on September 23, 1992, the Town entered into a twenty-year lease with Gunnison County Public Library for property owned by the Town located at 504 Maroon Avenue and known as the Old Rock Schoolhouse and

WHEREAS, the term of the lease expired on September 22, 2012; and

WHEREAS, the Town Council and Gunnison County Library District wish to enter into a long-term 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**. Based on the foregoing, the Town Council hereby authorizes the Town Manager to execute a lease in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 2nd DAY OF March, 2020.

EXHIBIT "A"

Lease

[attach form lease agreement here]

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 16th DAY OF March, 2020.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST

_____
Lynelle Stanford, Town Clerk

(SEAL)

LEASE

THIS LIBRARY LEASE (this "**Lease**") is entered into with an effective date of April 1, 2020 (the "**Effective Date**") by and between the TOWN OF CRESTED BUTTE, COLORADO ("**Landlord**"), a Colorado home rule municipality and the Gunnison County Library District ("**Tenant**").

AGREEMENT:

Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms and conditions as set forth herein, the real property and improvements thereon located at 504 Maroon Ave, Crested Butte, Colorado (the "**Premises**"). The Premises is also commonly known as the Old Rock Schoolhouse and/or the Crested Butte Library.

Tenant has inspected the Premises and accepts the same in its "as is" condition.

1. **Use; Parking; Maintenance; Utilities; Signage.**

(a) Use. The Tenant shall use the Premises only as a public library for such literary, artistic, cultural, educational and community activities as are permitted by its governing documents and applicable laws. The Tenant shall have control over the day-to-day management of the Premises, and shall conduct programing and allow use of the Premises by such groups and entities as it sees fit, provided that such programming or use does not further any discrimination or preference based upon race, sex, creed, age, religion, or national origin.

(b) Parking. There are three off-street parking spaces provided on the Premises to the South of the building. During the term of this Lease, Tenant and Tenant's employees, representatives, agents, guests, invitees, licensees and patrons shall be entitled to the sole use of the three designated parking spaces in the parking area located on the Premises on a first-come, first-serve basis, at rates and upon other conditions as may be established from time to time by Tenant.

(c) Tenant's Maintenance Responsibilities. Tenant shall be responsible for all interior furniture and fixtures not attached to the structure or related mechanical systems as well as routine maintenance and cleaning. Tenant shall have the following maintenance responsibilities under this Lease:

i. Refuse and recycling;
ii. All janitorial work, including vacuuming and cleaning of carpets, floors, bathrooms and fixtures located in or on the Premises;
iii. The exterior and interior signs on the Premises, including but not limited to, any updates, changes, additions or removals related thereto;
iv. Lightbulb replacements;
v. Deep carpet cleaning at Tenant's discretion (i.e. chemical or steam cleaning);

vii. Window cleaning at Tenant's discretion (outdoor and indoor); and
viii. Interior painting at Tenant's discretion;
ix. Any other interior repairs or maintenance necessary as a result of specific damages caused by the Tenant's use of the property

(d) Landlord's Maintenance Responsibilities. Landlord shall be responsible for the integrity of the structure, exterior maintenance of the building and grounds and mechanical systems. Landlord shall have the following maintenance responsibilities under this Lease:

i. Outdoor grounds maintenance, including but not limited to, snow removal, and lawn care (seeding, watering, mowing, etc.);
ii. Snow removal from the roof of the Premises;
iii. Elevator maintenance and repairs, including but not limited to, any annual or other certifications, load testing and any other items that are legally required; any fines that are the result of any noncompliance of the elevator are the responsibility of the Landlord;
iv. Electrical, mechanical, plumbing, HVAC and sump pump system maintenance and repairs;
vi. Carbon monoxide and smoke detector maintenance and repairs;
x. Any accessibility or related issues pertaining to compliance with the Americans with Disabilities Act ("ADA");
xi. Exterior painting;
xii. Window repair or replacement;
xiii. Water and sewer maintenance and repairs (inclusive or faucets and fixtures);
xiv. Parking lot surface maintenance and annual striping; and
xx. Any other repairs that are not the responsibility of Tenant, as outlined in Section 1(c) above.

(e) Procedure for Non-compliance with Maintenance Responsibilities. In the event either Landlord or Tenant fails to comply with the maintenance responsibilities provided by this Section 8 above, Landlord or Tenant, as is applicable shall give the "non-complying party" notice to do such required acts. In the event the non-complying party fails to promptly commence such work (i.e. within three days' notice) and diligently prosecute it to completion, then the other party shall have the right, but no obligation, to do such acts and expend such funds at the expense of the non-complying party as are reasonably required to perform such work. Any amount so expended by Landlord or Tenant, as is applicable, shall be paid by the non-complying party promptly after demand with interest at the maximum rate permitted by law from the date of such work.

(f) Tenant's Utility Responsibilities. Tenant shall pay the gas and electric utilities, trash, recycling and communications services used by Tenant on the Premises during the Term, regardless of whether the services are billed directly to Tenant or through Landlord. Such amounts, where payable to Landlord, shall be payable as additional rent to be paid by Tenant within fifteen (15) days after delivery of an invoice from the Landlord for such charges and expense.

(g) Landlord's Utility Responsibilities. Landlord shall pay the expenses for water and sewer which shall include, without limitation, the expenses for exterior watering.

(h) Exterior Signage. All exterior signage shall be installed only upon prior approval of Landlord. This prior approval by Landlord shall not be required for temporary notices or announcements posted in or about the Premises by Tenant so long as such temporary notices or announcements comply with the sign regulations of the Town's Municipal Code.

2. **Term**.

(a) Unless this Lease is terminated prior to the expiration of the Term pursuant to the termination provisions contained in this Lease, Tenant shall have and hold the Premises for a twenty (20) year period (the "**Term**") that shall commence on the Effective Date of April 1, 2020 hereof and expire twenty (20) years following the commencement of the Term. The Term shall automatically be extended for an additional five (5) year term, unless the Landlord provides the Tenant with notice at least one year in advance that such additional term will not be honored or available.

(b) Tenant may withdraw and terminate this Lease at any time and at Tenant's sole discretion upon 30 days written notice to Landlord. Upon Tenant providing written notice of termination, Tenant shall only be responsible for any rents and annual payments owed until said termination date.

(c) At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in broom clean, good order and condition, in the same condition and repair as Tenant initially took occupancy of the Property on the Effective Date, ordinary wear and tear excepted. Tenant shall fully repair any damage occasioned by Tenant's removal of any trade fixtures, equipment, furniture, alterations, additions and improvements. All trade fixtures, equipment, furniture, alterations, additions and improvements not so removed and which were installed by Tenant shall conclusively be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or to any other person and without obligation to account therefor. Tenant shall pay Landlord all expenses incurred in connection with Landlord's disposition of such property, provided such expenses were due and caused by Tenant, including the cost of repairing any damage caused by Tenant to any improvements or the Premises caused by such removal. Tenant's obligation to observe and perform the foregoing requirements shall survive the expiration or earlier termination this Lease.

(d) It is mutually agreed that if, after the expiration of this Lease, the Tenant shall remain in possession of the Premises, without a written agreement as to such holding, then such holding over shall be deemed and taken to be a holding upon a tenancy from month to month at a monthly rental equal to 100% of the monthly rental last payable hereunder and subject to all other terms and conditions of this Lease.

3. **Rent; Additional Rent; Security Deposit.**

(a) Tenant shall pay Landlord $698.33 on the Effective Date of this Lease and each month thereafter during the first year of the Term (the "**Rent**"). If the Tenant so chooses, Tenant may pay the full amount for the coming year ($8,380.00) on the Effective Date and for future years on the subsequent anniversaries of the Effective Date. Rent shall increase annually by 1% beginning as follows and continuing through the Term and any extensions:

1st anniversary (2021):	$8,463.80 annually / $705.32 per month
2nd anniversary (2022):	$8,548.44 annually / $712.37 per month
3rd anniversary (2023):	$8,633.92 annually / $719.49 per month
4th anniversary (2024):	$8,720.26 annually / $726.69 per month

(b) In the event the Lease is terminated with said termination effective during the middle of any month, the monthly rental for said month shall be prorated through the date of termination.

(c) Any Rent that is paid late shall accrue interest at a rate of 1.5% of such unpaid Rent per month. Rent shall be prorated for any partial month.

(d) Rent, any additional rent and any other amounts due Landlord under this Lease shall be paid at Landlord's address specified herein for notices, without prior demand and without any abatement, deduction or setoff.

(e) To secure the faithful performance by Tenant of all of Tenant's covenants, conditions, and agreements in this Lease to be observed and performed, Tenant shall deposit with Landlord a security deposit (the "**Security Deposit**") within one (1) year of execution of the Lease. Tenant's security deposit shall be of $1,000.00. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise. The parties agree that the Security Deposit or any portion thereof, may be applied to any Event of Default (as defined below) that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that Landlord may have on account thereof. If Tenant shall perform all of its respective covenants and agreements in the Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of the Lease, together with a statement, shall be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, or any renewal or extension thereof (or such earlier time if required by applicable law), provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.

4. **Landlord's Access**. Landlord, its agents, employees and contractors may, at their sole risk, enter the Premises at any time in response to an emergency, and at other reasonable time upon reasonable prior notice to Tenant, without limitation, to: (a) inspect the Premises, (b) determine whether Tenant is complying with its obligations under this Lease, (c) supply any other service that Landlord is required to provide, (d) post notices of non-responsibility or similar notices, or (e) make repairs which this Lease requires Landlord or Tenant to make. All work of Landlord shall be performed as promptly as reasonably possible and so as to cause as

little interference to Tenant as reasonably possible, at all times taking into account the nature and extent of such work. Landlord shall at all times have a key with which to unlock all of the doors to the Premises (excluding Tenant's vaults, safes and similar areas designed in writing by Tenant in advance).

5. **No Alterations**. Without limiting Tenant's obligations to maintain, repair, restore and replace the Premises and any portion thereof, as provided by this Lease, and except as specifically authorized by Section 1(c) above, Tenant shall not make any alterations, additions, repairs, restorations or improvements to the Premises without Landlord's prior written consent.

6. **Compliance with Laws**.

(a) Tenant shall not use or occupy, or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy or other governmental requirement.

(b) Tenant and the Premises shall remain in compliance with all applicable laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations and ordinances, all as amended and modified from time to time.

7. **No Unsightliness**. Tenant covenants and agrees that no unsightliness shall be permitted on the Premises. Without limiting the generality of the foregoing, no vehicles, machinery, equipment, tools, refuse, scrap, debris, garbage, trash, bulk materials, used vehicle parts or waste shall be kept, stored or allowed to accumulate on the Premises at any time. The Tenant shall have the right to tow vehicles from the Premises and place signage on the Premises to enforce the above provisions.

~~7.~~8. **Insurance.**

(a) At its sole expense, Tenant shall obtain and keep in force during the Term of the lease commercial general liability insurance with a minimum combined single limit of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000) general aggregate. The policy shall include coverage for bodily injury, broad form property damage, and personal injury (including coverage for contractual and employee acts). The policy shall name the Landlord as additional insured. The Tenant's commercial general liability policy shall be primary as respects the coverage afforded Landlord as additional insured.

(b) At its sole expense, Tenant shall obtain and keep in force during the Term of the lease, policy or policies of "all risk" extended coverage insurance protecting Tenant against loss of or damage to Tenant's business personal property located in or about the Premises. Coverage shall be written on full replacement cost value.

(c) At its sole expense, Tenant shall obtain and keep in force during the term of the lease workers' compensation insurance to cover obligations imposed by the Workers'

Compensation Act of Colorado and employer's liability insurance in not less than the minimum amounts required by law.

(d) At all times during the Term, Landlord shall maintain a policy or policies of fire and "all risk" extended coverage insurance, on the Building that is the property of Landlord, including alterations by Tenant that have become the property of the Landlord. Coverage shall be written on full replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement cost value. Such insurance shall be maintained at the expense of the Landlord and payments for losses thereunder shall be made solely to Landlord for purposes of repair or replacement of the Premises.

(e) All insurance required of Tenant in this Section and all renewals of it shall expressly provide that the policies shall not be canceled or altered without thirty (30) days' prior written notice to Landlord; and shall, to the extent obtainable without additional premium expense, provide that no insurable act or omission of Tenant which 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.

(f) All policies of liability insurance that either party is obligated to maintain according to this Lease (other than any policy of workmen's compensation insurance) shall name the other party as an additional insured thereunder. Certificates of said insurance and evidence of the payment of all premiums of such policies shall be made available and exchanged by the parties prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days' prior to the expiration of the term of each policy. No insurance required to be maintained by Tenant by this Section shall be subject to any deductible in excess of $20,000.00 without Landlord's prior written consent.

~~8.~~9. **Default Provisions.**

(a) If either party fails to perform any of its obligations under this Lease, then the non-defaulting party, after ten (10) days' written notice to the defaulting party (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may (but shall not be required to) pay the amount or perform the obligation. All amounts so paid by the non-defaulting party and all costs and expenses incurred by the non-defaulting party in connection with the performance of any obligations (together with interest at the prime rate from the date of the payment of the amount or incurring of each cost or expense until the date of full repayment by the defaulting party) shall be payable by the defaulting party on demand. In the proof of any damages that the non-defaulting party may claim against the other party arising out of the other party's failure to maintain insurance that is required by terms of this Lease, and notwithstanding any other terms or provisions of this Lease, the non-defaulting party shall not be limited to the amount of the unpaid insurance premium but shall also be entitled to recover as damages for the breach the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, arising

out of damage to, or destruction of, the Premises occurring during any period for which the subject party has failed to provide the insurance.

(b) The following occurrences are "**Events of Default**": (i) Tenant defaults in the due and punctual payment of rent or any other amount due under this Lease, and the default continues for five (5) days after notice from Landlord; (ii) either party defaults in the performance of any other obligation under this Lease that is not cured after ten (10) days' written notice to the non-defaulting party (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances); or (iii) Tenant vacates or abandons the Premises.

(c) Subject to Colorado law, if any one or more Events of Default occurs, then the non-defaulting party may, at its election, give the defaulting party written notice of its intention to terminate this Lease on the date of the notice or on any later date specified in the notice, and, on the date specified in the notice, provided said default is not remedied within 10 days of receiving said notice. If such default is not remedied within ten days of receiving said notice, and if said default is by Tenant, Tenant's right to possession of the Premises shall cease and this Lease shall be terminated. If such default is by Landlord, Tenant may move out of the Premises without any further liability to Landlord for any payments hereunder. In addition, the non-defaulting party shall have all other rights available at law and in equity, including, without limitation, recovery of actual damages, costs and expenses, including reasonable attorneys' fees. All remedies may be cumulatively and concurrently applied and enforced.

11. **Assignment**. Tenant may not assign this Lease, or sublet the Premises, in whole or in part, without Landlord's prior written consent.

12. **Notices**. All notices, demands, and requests required to be given by either party to the other shall be in writing, and provided to such party as provided below. All notices, demands, and requests shall be delivered personally or sent by electronic mail (e-mail), nationally recognized overnight courier, certified or registered mail, return receipt requested, postage prepaid, or via facsimile, addressed to the parties at the addresses set forth below or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the day of delivery if delivered personally, on the first business day following the confirmation of sending of an e-mail, on the first business day following deposit with the courier service when delivered by overnight courier, three business (3) days subsequent to the date that said notice was deposited with the United States Postal Service, or on the first business day following the date of confirmation of receipt when delivered by facsimile.

To Landlord: Town of Crested Butte
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224
Facsimile: (970) 349-6626
Attn: Finance Director

To Tenant: Gunnison County Library District

307 N. Wisconsin
Gunnison, CO 81230
Attn: Executive Director
email: drew@gunnisoncountylibraries.org
Facsimile:

13. **No Waiver**. No waiver of any condition or agreement in this Lease by either Landlord or Tenant shall imply or constitute a further waiver by such party of the same or any other condition or agreement.

14. **Attorneys' Fees**. In case a dispute between the parties shall arise in connection with this Lease, the prevailing party shall be entitled to recover and shall be awarded (in addition to other relief granted) all reasonable attorneys' fees and costs in connection with such dispute from the non-prevailing party.

15. **Severability**. If any sentence, paragraph or article of this Lease is held to be illegal or invalid, this shall not affect in any manner those other portions of the Lease not illegal or invalid and this Lease shall continue in full force and effect as to those remaining provisions.

16. **Successors and Assigns**. The conditions and provisions hereof shall inure to the benefit of, and shall be binding upon, Landlord, Tenant and their respective personal representatives, successors and permitted assigns.

17. **Obligation to Report**. Tenant shall report any material damage to the Premises or disturbances therein or thereon to Landlord as soon as it becomes aware of any such damages or disturbances.

18. **Miscellaneous Provisions**.

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Lease, if any.

(b) This Lease shall be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Lease is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease will be in the District Court of Gunnison County, Colorado.

(d) This Lease may be executed in multiple counterparts each of which shall constitute an original, and both of which when taken together shall constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures

(e) Any recordation of this Lease or any record thereof, or the recordation of any encumbrance against the Premises and/or the Improvements by any person, including,

without limitation, any mortgagee of Tenant, except Landlord and any mortgagee of Landlord, shall be void *ab initio* and a default under this Lease.

(f) This Lease constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. Any other agreements between the parties, whether written or oral are hereby merged herein and of no further force and effect.

(g) Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

(h) If any building or improvements standing or erected upon the Premises shall be destroyed or damaged in whole or in part by fire or as a result of, directly or indirectly, war or act of God, Landlord shall promptly repair, replace, and rebuild the same at least to the extent of the value and as nearly as practicable to the character of the building or improvements existing immediately prior to such occurrences. Landlord shall use all insurance proceeds to rebuild the improvements on the Premises.

(i) The titles to the paragraphs and sections of this Lease are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions herein.

(j) Both parties represent and warrant that they have carefully reviewed this Lease, they have had the opportunity to hire competent legal representation in connection with the decision to enter into this Lease, and the contents hereof are known and understood by them.

(k) The parties understand and agree that the Tenant is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Tenant, its officers, or its employees.

[Remainder of Page Intentionally Left Blank;
Signature Page(s) to Follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed Lease by their duly authorized officials effective as of the Effective Date first written above.

LANDLORD:

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Dara MacDonald, Town Manager

ATTEST:

_____
Lynelle Stanford, Town Clerk

[Seal]

TOWN OF CRESTED BUTTE CORPORATE SEAL JULY 2, 1880 GUNNISON COUNTY, CO

TENANT:

Gunnison County Library District

By: _____
Name: Andrew J. Bockhart
Title: Executive Director