

RESOLUTION NO. 12

SERIES NO. 2014

RESOLUTIONS OF THE CRESTED BUTTE TOWN
COUNCIL APPROVING THE SHORT TERM LEASE
AGREEMENT WITH ELK AVENUE
PROMOTIONAL ASSOCIATION, INC.

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 to the Elk Avenue Promotional Association, Inc. (the "**Association**") for the Elk Avenue public rights-of-way between First and Fourth Streets and such other adjacent public property for use as a Common Consumption Area pursuant to Section 6-7-30 of the Crested Butte Municipal Code (the "**Code**") from September 5-7, 2014 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 Town Council hereby finds that granting a lease to the Association for the Elk Avenue public rights-of-way between First and Fourth Streets and such other adjacent public property for use as a Common Consumption Area pursuant to Section 6-7-30 of the Code from September 5-7, 2014 is in the best interest of the Town.
2. **Authorization.** Based on the foregoing, the Town Council hereby authorizes the Mayor to execute the lease agreement with the Association in substantially the same form as attached hereto as **Exhibit "A."** Any substantive changes thereto may be made only following written approval by the Town Attorney.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL
THIS 2ND DAY OF SEPTEMBER, 2014.

TOWN OF CRESTED BUTTE

By: *Aaron J. Huckstep*
Aaron J. Huckstep, Mayor

ATTEST
Shelley Jansen
Shelley Jansen, Town Clerk
Lynelle Stanford,

(SEAL)



EXHIBIT "A"

Form Lease Agreement

SHORT TERM LEASE AGREEMENT

(Portion of the Town of Crested Butte Elk Avenue Entertainment District)

THIS SHORT TERM LEASE AGREEMENT ("lease") is made and entered into as of the ____ day of _____, 2014, by and between the **TOWN OF CRESTED BUTTE, COLORADO**, a Colorado home rule municipality ("lessor") and the **ELK AVENUE PROMOTIONAL ASSOCIATION, INC.** ("Lessee").

1. **Premises.** Lessor hereby leases to Lessee and Lessee hereby leases and takes from Lessor for the term of the rental and upon all terms, covenants, and conditions set forth herein, that area defined as the "Common Consumption Area" located within the Elk Avenue Entertainment District (a drawing of which is attached hereto as **Exhibit "A"** and incorporated herein by reference), Crested Butte, Colorado, hereinafter referred to as the "Premises". Lessee understands and agrees that this lease is for the Premises only and is therefore independent of any license granted by the Town of Crested Butte Liquor Licensing Authority. Lessee also understands and agrees that this lease does not alter in any manner the Lessee's obligation to obtain a liquor license from the Town of Crested Butte Liquor Licensing Authority to operate a Common Consumption Area within the Crested Butte Elk Avenue Entertainment District, nor does it alter or diminish the Lessee's obligation to obtain any other licenses or permits required by the Crested Butte Municipal Code.

2. **Term.** The term of this Lease Agreement ("term") shall be for the period beginning on September 5, 2014 and ending September 7, 2014 and, specifically, for those dates as authorized for use as a Common Consumption Area by the Town of Crested Butte Liquor Licensing Authority.

3. **Rent.** Lessee shall pay the Lessor as rent for the use of the Premises the amount of ten and no/100 dollars (\$10.00), due on the date of execution of this agreement.

4. **Improvement, Repair, and Maintenance of Premises.**

a) The Premises shall be improved by Lessee, at Lessee's sole cost and expense, to include outside fencing which has been temporarily affixed to and enclosing the Common Consumption Area, to permit food and legal beverage service to be consumed in the designated area in compliance with local and state laws and regulations. It is expressly understood that the fencing is required during those periods in which Lessee desires to allow liquor consumption on the Premises.

b) The Premises shall be maintained in its present condition solely by the Lessee at Lessee's expense. Upon termination of the lease, the Premises, including but not limited to, the sidewalk structure and surface shall be restored to its original condition, solely at Lessee's expense. The Lessee shall provide access to the Town for purposes of maintaining all planters within the Premises and other governmental purposes.

c) Lessee shall be required to obtain minimum liability insurance of One Million and No/100 Dollars (\$1,000,000.00). The Lessee agrees that said insurance shall be maintained during the life of the lease, and said insurance shall name the Town of Crested Butte as an additional insured on such policy. Lessee shall deliver to Lessor a certified copy of said insurance and shall direct the insurer to notify Lessor in the event said insurance is canceled.

d) Lessee shall be solely responsible for garbage collection/disposal and all other appropriate maintenance of the Premises. Additionally, the fence or railing affixed to and upon the sidewalk shall be removed at termination of this lease or if requested by the Lessor for any right of way or utility maintenance issues.

5. **Assignment and Subletting.** Lessee shall not have the right to assign this lease, or sublease all or a part of the Premises.

6. **Indemnity.** Except as otherwise agreed herein, the Lessee shall indemnify and save Lessor harmless from any and all claims, demands, costs and expenses of every kind whatsoever, including reasonable attorneys' fees for the defense thereof, arising from the Lessee's wrongful act or negligence in or about the Premises.

7. **Remedies Upon Lessee's Default.** In the event of any such material default by Lessee, Lessor may enter in the Premises, remove Lessee's property and take hold possession of the Premises and expel Lessee. Lessor may recoup costs of such removal from Lessee and pursue any other remedies available to Lessor under the laws of the State of Colorado.

8. **Termination.**

a) This lease shall immediately terminate upon the earlier of the following: 2:00 AM on September 7, 2014; or

b) Upon the date Lessee either surrenders or has its Common Consumption Area designation and license revoked by the Town of Crested Butte Liquor Licensing Authority; or

c) Upon notification by Lessee of Lessee's intention to vacate the Premises prior to the end of the lease period.

9. **Severability: Choice of Law.** The invalidity or unenforceability of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of the remainder of this lease or any other provision hereof. This lease shall be governed by the laws of the State of Colorado. All actions herein shall be venued in Gunnison County, Colorado.

10. **Effect of Waivers.** No waiver by Lessor or Lessee of any provision hereof shall be deemed a waiver of any other provision or of any subsequent breach by Lessee or Lessor of the same or any other provision. Lessor's consent to or approval of any act by Lessee shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee.

11. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

12. **Entire Agreement.** The lease and any addenda and exhibits attached hereto or to be attached hereto, set forth all of the covenants, promises, agreements and conditions between Lessor and Lessee concerning the Premises and this lease and there are no covenants, promises, agreements, or conditions, either oral or written, between them. This lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this lease as of the date first set forth above.

LESSOR:

TOWN OF CRESTED BUTTE,
COLORADO, a Colorado home rule
municipality

By: _____
Aaron J. Huckstep, Mayor

ATTEST:

By: _____
Lynelle Stanford, Town Clerk

(SEAL)

LESSEE:

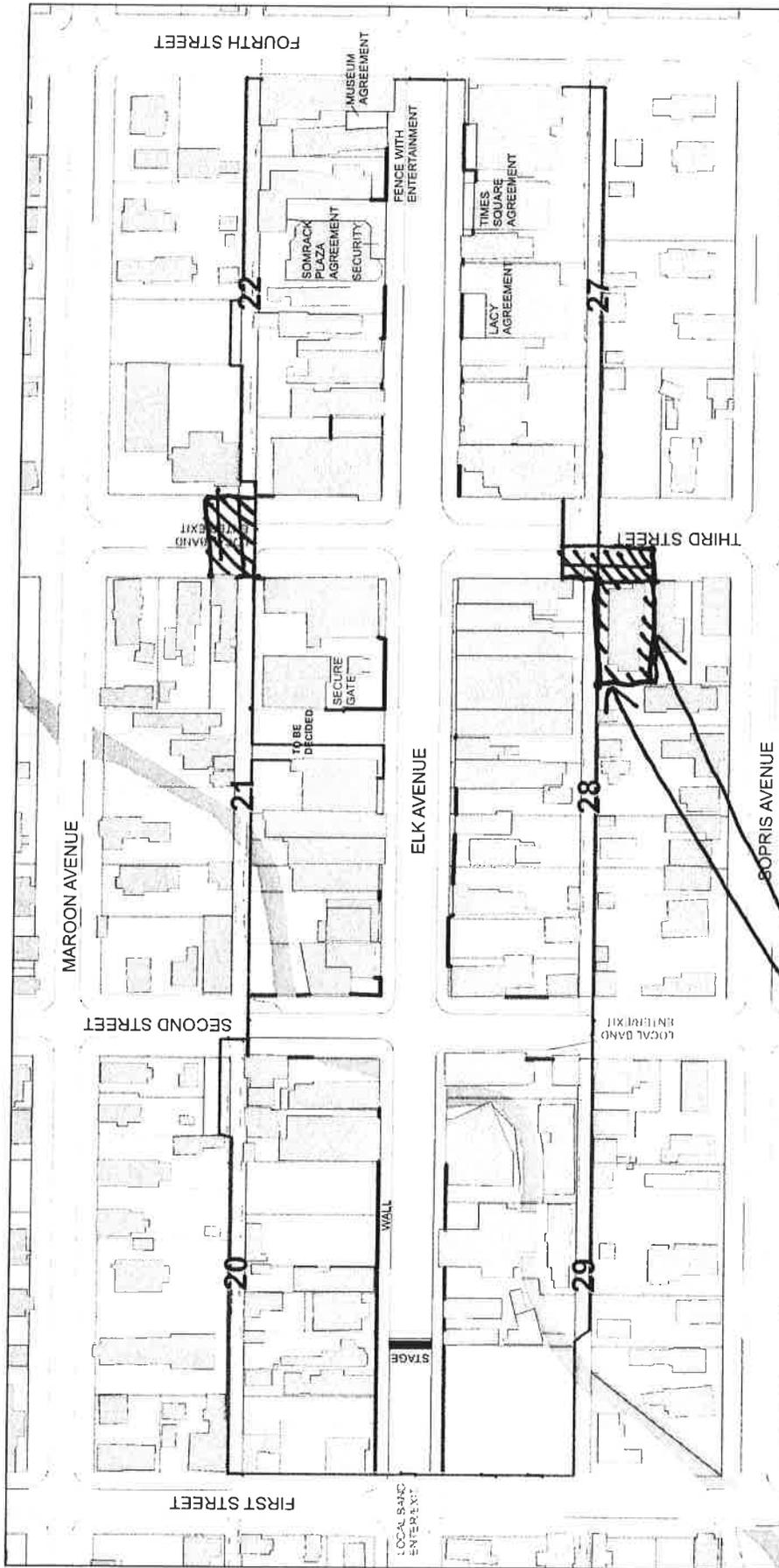
ELK AVENUE PROMOTIONAL
ASSOCIATION, INC., a Colorado non-
profit corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Premises

[attach description of Premises here]



FENCING PLAN

- Event Containment Fence
Typical alley configuration is 14 foot drive surface and 2 foot pedestrian access in Blocks 20, 22, 27, 28, and 29
- Consumption Fence
Liquor consumption fence may be existing fence, new fence, agreement with private property owner for use, or control by security personnel
- Existing Fence
- New Fence
- Wall

- Areas to be accessed by agreement with property owner
- Gates
- Local Band Enter/Exit
- Secure Gate
- Consumption Area

- ▒ Buildings
- ▒ Parcel Boundaries
- ▒ Coal Creek

