RESOLUTION NO. 13

SERIES NO. 2015

RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE LEASE AGREEMENT WITH GRAVITY GROMS LLC FOR 620 SECOND STREET, CRESTED BUTTE

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 of 620 Second Street, Crested Butte for use by Gravity Groms LLC in its business 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 of 620 Second Street, Crested Butte for use by Gravity Groms LLC in its business is in the best interest of the Town.

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

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 18th DAY OF May, 2015.

TOWN OF CRESTED BUTTE

By: _____
Aaron J. Huckstep, Mayor

ATTEST

_____
Lynelle Stanford, Town Clerk

(SEAL)

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

EXHIBIT "A"

620 Second Street Lease Agreement

[attach form lease agreement here]

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), made and entered into this 28th day of May, 2015, by and between the **TOWN OF CRESTED BUTTE**, a Colorado home rule municipality (hereafter referred to as the "Town") and **GRAVITY GROMS LLC**, a Colorado limited liability company (hereafter referred to as the "Lessee") is upon the following terms and conditions:

WITNESSETH:

IN CONSIDERATION of the keeping and performance of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

1. **TERM:** This Lease shall commence as of June 1, 2015, and shall expire on August 31, 2015 (the "Term"). The Term of this lease may be extended only by a writing executed by the parties hereto. The defined word "Term" as used throughout this Lease shall include any extension thereof.

2. **LEASE OF PREMISES TO LESSEE:** The Town hereby leases to Lessee, and the Lessee hereby takes and rents from the Town, the following described premises, together with the improvements thereon, situate in the County of Gunnison and State of Colorado, to wit:

   An area of approximately 1900 square feet, being the space identified on **EXHIBIT A** attached hereto and incorporated herein, located at 620 2nd Street, Town of Crested Butte. Also known as the Nordic Center Warming House (hereafter, the "Premises").

3. **RENT:** The Lessee agrees to pay to Town as rent for the Premises during the Term, the sum of $1000 per month, payable in advance on or before the fifteenth day of each calendar month during the Term. Where the Term commences during any month, the rent shall be prorated for the first month with such amount due upon Lessee's execution of this Lease. All rent and other payments required under this Lease shall be made without offset or deduction and no prior notice from the Town shall be required. Lessee shall pay a $25.00 late fee and interest at a rate of one and one-half percent (1 ½%) per month (18% per year) on rental or other payments which are not paid when due

4. **UTILITIES:** Unless otherwise specified, the Town shall pay for heating, electricity, water and sewer. Lessee shall pay all charges for telephone, internet, television, trash and recycling removal and other such services.

5. **CHARACTER OF OCCUPANCY:**

   (a) The Premises shall be occupied by Lessee for the purpose of conducting its youth day camp business. Lessee shall at all times properly maintain the Premises, fixtures, and furnishings located therein, and at its sole cost make all necessary day-to-day repairs needed to preserve the interior walls, floor, ceiling, and doors of the Premises, the fixtures and furnishings in good

working order and condition. All such repairs or replacements shall be of a kind and quality, and shall be done in a good workmanlike manner.

(b) Lessee shall make no alterations, repairs, or improvements to the Premises, including, without limitation painting the Premises, without the prior written permission of the Town. Lessee shall secure the Premises with a key provided by the Parks and Recreation Director. Lessee shall not make additional copies of the key for the Premises. Lessee shall return the Premises to the Town in good condition at the expiration or earlier termination of this Lease, ordinary wear and tear excepted.

(c) Lessee shall not use the Premises in any fashion that would increase the risk of fire, explosion, or any physical destruction to the Premises or the building in which such Premises are located. Said limitation on use shall specifically include a prohibition on smoking, alcohol consumption, and use of controlled substances within Premises. Further, Lessee shall not use the Premises to further any discrimination based on race, sex, creed, sexual orientation or national origin.

(d) Lessee occupancy shall not exceed 49 people at any time including staff and patrons.

(e) Lessee use is restricted to the downstairs of the Premises excluding closets locked and designated for other purposes.

(f) Lessee shall cause the restrooms to be maintained such that, without limitation, all toilets, sinks and other facilities are kept obstruction free and clear from debris, clothing and other articles that could cause such facilities to become clogged and otherwise function improperly.

(g) Lessee shall at all times use best efforts to cooperate with any other tenants in the building and the Town.

6. **JANITORIAL:** Lessee agrees to keep and maintain the Premises used exclusively by Lessee in a neat, orderly, clean and sanitary condition at all times, and to provide such janitorial and other services as may be necessary to do so. All refuse or trash resulting from Lessee's use of the Premises shall be stored in the Premises or in an external, wildlife proof dumpster to be picked up by a vendor of the Lessee's choice and expense. Lessee agrees to maintain and clean the premises including bathrooms, common areas and entryways within the building where the Premises are located once per week, and to clean the exteriors of the windows at least once per summer. Lessee agrees to clean the interior of the windows in the Premises at least once per summer. Lessee agrees to replace all light bulbs as needed in the Premises. All lights fixtures shall have compact fluorescent light bulbs.

7. **SIGNS:** Lessee shall be allowed to have one sign located on or near the building in which the Premises is located. Said sign shall be no more than seven (7) square feet. The design and placement of the sign shall be approved by the Board of Zoning and Architectural Review.

8. **PARKING:** Lessee is allowed the use of the parking lot at Big Mine Park located to the west and north of the Premises. Lessee shall not park more than one (1) vehicle overnight in said parking lot.

9. **ACCESS TO THE PREMISES:** The Town or the Town's authorized representative may enter upon the Premises at any reasonable hour to inspect and make repairs to the same. The Town or its representative may show the Premises to prospective tenants, upon reasonable advance notice to Lessee. In the event of an emergency, the Town and/or its representatives shall be entitled to access the Premises with or without notice to Lessee.

10. **LIENS:** Lessee agrees to keep the Premises free and clear of all liens and encumbrances of any kind, whether caused by the action or inaction of Lessee.

11. **PAYMENT OF INCREASED COSTS:** Lessee agrees to pay to the Town any and all increased costs and expenses attributable to Lessee's occupation of the Premises including but not limited to any insurance increases or taxes that are directly attributable to Lessee's occupancy.

12. **SECURITY DEPOSIT:** Lessee has paid the Town the sum of $1000.00 to be used as security for Lessee's faithful performance of the terms and obligations of this Lease. Said amount shall be paid at the time of Lessee's execution of this Lease. This deposit shall be held by the Town during the term. The security deposit shall not bear interest. The Town shall be entitled to apply any of the security deposit to the repair of damages caused to the Premises by Lessee or on account of Lessee's use thereof, and/or to pay for cleaning of the Premises. In the event the Town determines that it is necessary in its reasonable judgment to have the Premises cleaned or repaired during the Term, or after the expiration or earlier termination of this Lease, such cleaning or repairs shall be performed at Lessee's sole cost and expense. Any amount paid out of the security deposit during the Term shall be reimbursed by the Lessee to the Town within five (5) days. At no point will the security deposit on reserve be less than $1000.00. The security deposit shall not be deemed to be the total amount for which the Lessee shall be responsible to the Town in the event of damages to the Premises. Lessee shall not be entitled to credit any amount of the deposit toward payment of any other obligation owed under this Lease. Within thirty (30) days following the expiration of the Term or sooner termination of this Lease, the Town shall either return the security deposit or, as required by Colorado law, provide Lessee with a written statement, setting forth the reason for the retention of any portion thereof together with the payment of the difference, if any between the amount of the security deposit and the damages claimed by the Town.

13. **TELEPHONE:** The Town shall be responsible for providing telephone service lines to the building. Lessee shall be responsible for placing lines from the main switch box on the building to the Premises. Lessee shall use no more than three (3) separate telephone lines within the building. Lessee shall be responsible for causing any necessary television or other cable lines to be placed for service to the Premises. Any such placement shall not cause damage to the Premises and/or building.

14. **TAXES:** The Town shall pay any and all real and personal property taxes and special assessments which may be levied upon the Premises, except those personal property taxes levied specifically upon the personal property of Lessee. Lessee shall pay all sales and uses taxes in connection with its lease and use of the Premises.

15. **ASSUMPTION OF RISK; INDEMNIFICATION; RELEASE OF CLAIMS:** In consideration for the Town leasing the Premises to Lessee, Lessee, its members, managers and officers (collectively, "Releasor/Idemnitor") hereby acknowledge and agree to the following:

(a) Releasor/Idemnitor hereby assumes all risk of claims, liabilities, injuries, losses, demands or damages, whether related to bodily injury, personal injury, sickness, disease, death, property loss or damage (including attorneys' fees, costs and expenses) (collectively, "Claims") arising out of, directly or indirectly, the use of the Premises, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor and/or Indemnitee its elected officials, officers, employees, agents, insurers, insurance pools, attorneys, representatives, contractors and subcontractors (collectively, "Releasee/Indemnitee");

(b) Releasor/Idemnitor hereby waives any claims, and hereby releases, Releasee/Indemnitee against and from any and all Claims arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor and/or Releasee/Indemnitee; and

(c) Releasor/Indemnitor shall indemnify, defend and hold harmless Releasee/Indemnitee from and against any and all Claims of Releasor/Indemnitor, Releasee/Indemnitee or third parties, any of them, including, without limitation, employees, agents and contractors of Releasor/Indemnitor, Releasee/Indemnitee or any of their invitees, guests, trespassers or otherwise on the Subject Property, arising out of, directly or indirectly, the use of the Property, whether or not caused by any act or omission, negligence or other fault of Releasor/Indemnitor, Releasee/Indemnitee or third parties

16. **TOWN NOT LIABLE:** Unless due to the gross negligence of the Town, the Town shall not be liable for any damage or injury which may be sustained by Lessee or any other person resulting from any reason or cause whatsoever, including, but not limited to, as a consequence of the failure, leakage or obstruction of the water, plumbing, steam, sewer, waste or sail pipes, roof, drains, leaders, gutters, valleys, downspouts, or the like, or of the electrical or heating systems, appliances; or by reason of the elements; or resulting from, either directly or indirectly, any act of Lessee or Lessee's agents, contractors, subcontractors, employees, guests, licensees, invitees, or successors; or attributable to any interference with, interruption of, or failure, beyond the reasonable control of the Town of any services to be furnished or supplied by the Town.

17. **INSURANCE:** (a) At its sole cost and expense, Tenant shall obtain and keep in force during and through the Term "all-risk" property coverage naming the Town and Tenant as their interests may appear.

(b) At its sole expense, Tenant shall obtain and keep in force during and through the Term commercial general liability insurance (coverage shall include , public liability, operations, property damage and personal injury, including death, with a minimum combined single limit of not less than $1,000,000.00 per occurrence / $2,000,000.00 general aggregate) and insurance covering obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of Tenant within the meaning of applicable law insuring the Town and Tenant, as their interests under this Lease appear, including, without

limitation, coverage for contractual liability and broad form property damage with respect to the Premises. The insurance shall be noncontributing with any insurance that may be carried by Town and shall contain a provision that Town, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, cost or damage to Town, or the property of the same.

(c) All insurance required herein and all renewals thereof shall be issued by companies authorized to transact business in the State of Colorado and rated at least A+ Class X by Best's Insurance Reports (property liability) or otherwise approved by Town in writing. All insurance policies shall be subject to approval by Town as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Town and shall provide that no act or omission of Town that 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.

(d) All policies of liability insurance that Tenant is obligated to maintain according to this Agreement (other than any policy of workmen's compensation insurance) shall name Town as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Town as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Town on the date first written above. All public liability, property damage liability and casualty policies maintained by Town shall be written as primary policies, not contributing with and not in excess of coverage that Town may carry.

(e) The parties waive all rights to recover against each other, or against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with Tenant's operations and Town's operations and property.

18. **ASSIGNMENT:** Lessee shall not assign this Lease, and shall not sublet the Premises, or encumber this lease or the Premises in whole or in part, without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion.

19. **RESTRICTIONS ON USE:** Animals are not allowed within the Premises. Lessee will not construct temporary or permanent structures on the inside or outside of the building for recreational or other purposes. All outside fixtures not provided by the Town including but not limited to bike racks, benches and picnic tables must be approved by the Town. All recreational equipment such as bicycles, boats and skateboards must be stored inside the Premises overnight. Indoor furniture such as couches, tables and chairs will not be used or stored outside the Premises at any time.

20. **COMPLIANCE WITH LAWS:** Lessee agrees to comply with all laws, orders and regulations of the Town, the County, federal land management agencies and any other applicable governmental authority with respect to the Premises and Lessee's use thereof. Lessee has obtained and shall keep in force during the Term, all licenses, authorizations and permits necessary for Lessee to conduct its business operation.

21. **DEFAULT:** Except where Lessee fails to timely pay any amount due under this Lease, neither party shall be in default under this Lease unless such party fails to perform any obligation or covenant contained herein and such failure remains uncured for ten (10) days following receipt of written notice from the non-defaulting party. If Lessee is in default under this Lease it is agreed that the Town may (i) retake possession of the Premises upon ten (10) days' written notice to the Lessee without terminating the Lease, (ii) in the event of default in the payment of rent or any other payments due from Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice for payment of the rent or surrender possession of the Premises under Section 13-40-104(d) (1973 C.R.S.) if Lessee fails to pay such rent as demanded in said notice, or (iii) in the event of any other default by Lessee, treat this Lease as automatically terminated on the date specified in the Town's three (3)-day notice thereof under Section 13-40-104(e) (1973 C.R.S.). Upon the termination of this Lease, Lessee shall peacefully surrender the Premises to the Town and the Town, at any time after such termination, may, without further notice, reenter the Premises and repossess it by summary proceedings, ejectment or otherwise and may dispossess Lessee and remove Lessee and all other persons and property from the Premises and my have, hold and enjoy the Premises and the right to receive all rental income therefrom. The Town may also, at the Town's option, and without being liable to Lessee for any damage therefore, remove and store, at Lessee's sole cost and expense, all personal property and effects of Lessee, upon the Premises without responsibility for loss or damage so long as the Town uses reasonable care in the removal thereof, and the Town shall have a valid lien on such property for any damages due the Town under this Lease and for any reasonable costs incurred by the Town in such removal or storage. The foregoing remedies shall not be exclusive, and the Town may exercise any other remedy available under the laws of the State of Colorado. Upon the termination of this Lese by reason of any default by Lessee in the obligations contained herein, the Town shall have the right to re-let the Premises for and on the account of Lessee and Lessee shall remain liable for the difference, if any, between the full amount of rent reserved hereunder and the amount received by the Town after such re-letting, after having deducted therefrom any reasonable costs and expenses of the Town. Any excess that may be derived shall belong to the Town and Lessee shall have no claim to same. The Town's failure to re-rent the Premises shall not preclude it from being able to seek damages against Lessee for any of the sums reserved hereunder. No right of redemption shall be exercised under any present or future law of the State of Colorado, in case Lessee shall be disposed for any cause, or if the Town shall in any other manner, obtain possession of the Premises in consequence of the violation of any of the covenants and agreements contained herein.

22. **SURRENDER OF PREMISES:** The Town shall have the sole discretion as to whether to renew the Lease and shall have the right to change the terms and conditions contained herein, including, without limitation, the rent. Upon the expiration or earlier termination of this Lease, Lessee shall quit and surrender the Premises in as good as state and condition as received,

reasonable wear and tear excepted. If after the expiration or earlier termination of the Lease, Lessee remains in possession without written agreement as to such possession, Tenant shall be deemed to hold the Premises as a "Tenant-at-will" and shall be obligated thereon to pay rent for such period in advance at the per diem rate of $50.00 per day. During such period of time all of the terms and conditions of this Lease shall remain in full force and effect. It shall be Lessee's responsibility to remove all additions, fixtures, or improvements located on the Premises at the time of such expiration, or upon termination of this Lease. In the event of removal of additions, fixtures, or improvements located on the Premises, Lessee shall restore the Premises to its original condition. Lessee shall cause the carpet in the Premises to be professionally cleaned at the time of vacating the Premises, and shall remove all debris and personal property at its own cost.

23. **TOWN'S REPAIR AND MAINTENANCE OBLIGATION:** The Town shall keep the remainder of the building in which the Premises is located and the exterior thereof in good repair. The Town shall make such structural repairs as are necessary, and repair all plumbing, electrical, heating, ventilating, and other facilities serving the building, unless such repairs are caused by the acts or omissions Lessee, its officers, agents, contractors, subcontractors, employees, customers, invitees, guests or visitors, in which case the Lessee shall pay for such repairs.

24. **SNOW REMOVAL:** The Town shall remove snow from the parking area used by Lessee. Lessee shall cooperate with other tenants in the building to remove snow from the entrances to the building.

25. **DESTRUCTION:** In the event the Premises are damaged in any manner that renders them untenable as a result of the acts or omission of Lessee or any person whose actions are imputable to Lessee, then Lessee shall continue to remain liable for the rentals called for hereunder through the remainder of the Term. If the damage has occurred that renders the Premises untenable through no fault of the Lessee, and the damage cannot be remedied within thirty (30) days, then either party can terminate this Lease. During the period that the Premises are untenable, rental shall abate so long as the damage was not caused by Lessee. In the event the damage was caused by Lessee or by persons or entities attributable to Lessee then rent shall continue to be paid monthly by Lessee regardless of whether Lessee can occupy the Premises.

26. **SUBORDINATION; ATTORNEY-IN-FACT:** This Lease is subject and subordinate to all present and future mortgages or deeds of trust affecting the Premises, and to any and all advances made, or that may be made on account of such mortgage or deed of trust to the full extent of the principal sum or sums secured, or intended to be secured, in the interest due thereon. Lessee agrees upon the request of the Town, to execute and deliver any and all instruments that the Town may reasonably deem necessary or advisable to be executed in respect to this provision. The failure of Lessee to execute and deliver any and all such instruments, shall afford the Town the power to execute and deliver any such instrument or instruments in the name of and on behalf of Lessee and Lessee's failure to so deliver shall constitute a default under this Lease.

27. **NOTICES:** All notices or deliveries required under this Lease shall either be (i) hand-delivered; (ii) given by certified mail directed to the address of the Town or Lessee set forth below; or (iii) given by overnight courier directed to the address of the Town or Lessee set forth below. All notices so given shall be considered effective (i) if hand-delivered, when received; (ii) if by certified mail, three (3) days after deposit; certified mail postage prepaid, with the United States Postal Service; or (iii) if by overnight courier, one (1) day after deposit with the overnight courier company. Either party may change the address to which future notices shall be sent by notice given in (Facsimile numbers are provided for convenience only.)

TOWN: Town Manager
Town of Crested Butte
P.O. Box 39
507 Maroon Ave
Crested Butte, CO 81224
Fascimile: (970) 349-6626

LESSEE: Gravity Groms LLC
P.O. Box 2147
Crested Butte, CO 81224

Notice shall be deemed properly given when sent, mailed, or hand delivered to the above addresses. Either party may change its address by giving written notice of the change to the other party.

28. **APPLICABLE LAW; VENUE:** This Lease is entered into in the Town of Crested Butte, Gunnison County, State of Colorado; and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease shall be in the County of Gunnison, State of Colorado.

29. **ATTORNEYS' FEES:** It is agreed that if the enforcement, interpretation or construction of this Lease becomes necessary of advisable, the prevailing party in such effort shall be entitled to reasonable attorneys' fees, as well as all related costs and expenses.

30. **NO WAIVER:** The failure of the Town to insist in any one or more instances upon strict compliance of any of the obligations, covenants, and agreements herein contained, or the failure of the Town in any one or more instances to exercise any option, privilege, or right herein contained shall in no way be construed as constituting a waiver of such default or option by the Town.

31. **CAPTIONS:** The captions are inserted only as a matter of convenience for reference and in no way define, limit, or describe the scope of the Lease nor the intent of any provision hereof.

32. **SEVERABILITY:** If any provision, covenant, clause, or agreement contained in the Lease or the application thereof shall be found to be invalid, such invalidity shall not affect the validity of the remaining provisions, covenants, clauses, agreements, or the validity of the Lease as a whole.

33. **BINDING:** This Lease shall be binding upon the parties hereto, their respective permitted heirs, successors and assigns.

34. **ENTIRE AGREEMENT:** This Lease contains the entire agreement between the parties and supersedes all prior understandings, negotiations and representations, written and oral, not contained herein. It may not be amended or modified, except by an agreement in writing signed by both parties hereto.

35. **COUNTERPARTS; FASCIMILE:** For purposes of enforcement of any term or condition of this Lease, facsimile signatures shall be deemed originals. This Lease may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument.

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

TOWN OF CRESTED BUTTE,
Colorado home rule municipality

By: _____
Todd Crossett Town Manager

ATTEST:

By: _____
Lynelle Stanford, Town Clerk

(SEAL)

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

LESSEE:

GRAVITY GROMS LLC

By: _____ ITS OWNER
Doug Hudson, Member and Manager

EXHIBIT A

Premises
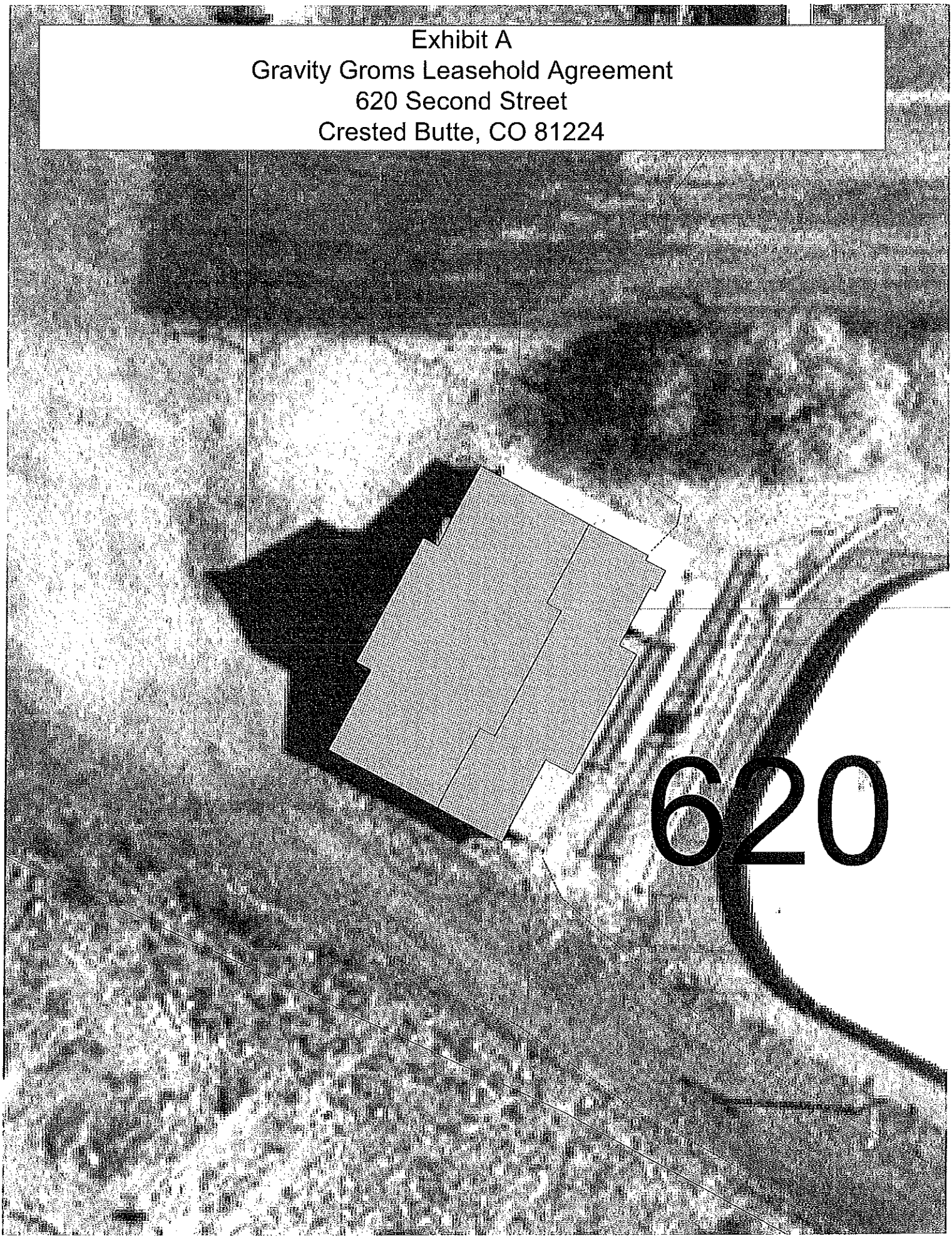
Exhibit A
Gravity Groms Leasehold Agreement
620 Second Street
Crested Butte, CO 81224