

**CORTEZ CITY COUNCIL
RESOLUTION NO. 5
SERIES 2021**

**A RESOLUTION APPROVING A LEASE OF REAL PROPERTY BETWEEN THE
CITY OF CORTEZ AND MESA VERDE COUNTRY TOURISM OFFICE AND
APPROVING A CONTRACT WITH MESA VERDE COUNTRY TOURISM OFFICE
FOR TOURISM DEVELOPMENT SERVICES**

WHEREAS, the City of Cortez owns and operates the Colorado Welcome Center, located at 928 East Main Street, in Cortez, Colorado; and,

WHEREAS, the City of Cortez currently has office space that is available at the Colorado Welcome Center that it wishes to lease; and,

WHEREAS, Mesa Verde Country Tourism Office wishes to lease office space from the City; and,

WHEREAS, the City wishes to contract with Mesa Verde Country Tourism Office regarding the development of tourism services by Mesa Verde Country Tourism Office on behalf of the City.

NOW THEREFORE, it is resolved by the City Council of the City of Cortez, Colorado, that Cortez City Council approves the lease of office space in the Colorado Welcome Center to Mesa Verde County Tourism Office as set forth in the Lease and the Agreement for Professional Services attached thereto and incorporated herein as Exhibit 1 and authorizes the Mayor to sign both.

MOVED, SECONDED AND ADOPTED THIS 23rd day of February, 2021.

CITY OF CORTEZ


MICHAEL J. LAVEY, MAYOR

ATTEST:


LINDA L. SMITH, CITY CLERK

EXHIBIT 1

PROFESSIONAL SERVICES CONTRACT

AN AGREEMENT BY AND BETWEEN THE CITY OF CORTEZ AND MESA VERDE COUNTRY TOURISM OFFICE FOR TOURISM DEVELOPMENT WORK

1.0 PARTIES

The parties to this Agreement are the City of Cortez, a Colorado Municipal corporation, hereinafter referred to as the "City," and Mesa Verde Country Tourism Office hereinafter referred to as the "Contractor."

2.0 RECITALS AND PURPOSE

2.1 The City desires to engage the Contractor for the purpose of providing tourism development services as shown on Exhibit A attached hereto and incorporated herein.

2.2 The Contractor represents that it has the special expertise and background necessary to provide the City with the services.

3.0 SCOPE OF SERVICES

The Contractor agrees to provide the City with the specific professional services of Tourism Development.

4.0 COMPENSATION

4.1 The City shall pay the Contractor for services under this agreement a total not to exceed THREE HUNDRED AND EIGHT THOUSAND NO/DOLLARS (\$308,000.00) \$183,600.00 from City and 80% of lodgers tax collected per chapter 14A Lodgers Tax Cortez City Code. The City shall deduct an annual rental of EIGHT THOUSAND TWO HUNDRED SIXTY EIGHT AND NO/DOLLARS (\$8268.00) paid quarterly by Contractor to City for space in Visitor Center. According to a Lease between the City and Contractor, copy of said Lease is incorporated herein as Exhibit A. Such amounts shall be inclusive of all costs of whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No charges shall exceed the THREE HUNDRED EIGHT THOUSAND (\$308,000.00). The scope of services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City Employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

4.2 The Contractor shall submit quarterly a detailed report to the City describing the professional services rendered. The narrative invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the month, the hours worked by employee. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

5.1 The City designates the City Manager as the responsible City staff member to provide direction to the Contractor during the conduct of the project. The Contractor shall comply with the directions given by the City Manager

5.2 The Contractor designates Kelly Kirkpatrick as its project manager. The City may rely upon the guidance, opinions, and recommendations provided by the Contractor and its representatives. Should any of the representatives be replaced, and such replacement require the City or the Contractor to undertake additional reevaluations, coordination, orientation, etc., the Contractor shall be fully responsible for all such additional costs and services.

6.0 TERM

The Contractor's services under this Agreement shall commence on 1 January, 2021 and shall end 31 December, 2021. This contract shall renew automatically renew annually unless written notice to terminate is given by either City or Contractor.

7.0 INSURANCE

7.1 The Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

7.1.1 Contractor shall procure and maintain, and shall cause each Subcontractor of the Contractor to procure and maintain or insure the activity of Contractor's Subcontractors in contractor's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

7.1.1.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease – policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease – each employee.

7.1.1.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence, and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

7.1.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000), aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

7.1.2 The Policies required above, except for the Worker's Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.

7.1.3 Certificates of insurance shall be properly endorsed and completed by the Contractor's insurance agent as evident that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

7.1.4 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate the contract, or at its discretion may procure and renew

any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be paid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the Owner.

7.1.5 The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, 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 the City its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

9.0 QUALITY OF WORK

Contractor's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of professional services of a similar nature.

10.0 INDEPENDENT CONTRACTOR

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the City as to end results of the work only.

As an independent Contractor, Contractor agrees to comply with the insurance requirements as set forth in 7.0 Insurance, above.

Neither Contractor, its agents, employees, assigns or subcontractors are entitled to receive Workers Compensation or unemployment benefits from or through the City's unemployment or Worker's Compensation coverage.

Contractor shall pay all taxes for itself, its employees, agents, subcontractors, assigns as required by local, state and federal law.

11.0 ASSIGNMENT

Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

13.2 In addition to foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination

date. In the event of such termination, the Contractor will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth in Exhibit "B", and upon such payment, all obligations of the City to the Contractor under this agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 ENFORCEMENT

15.1. In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

15.2. Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Montezuma County in connection with any dispute arising out of or in any matter connected with this Agreement.

16.0 COMPLIANCE WITH LAWS

Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules and regulations of the City for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

17.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

18.0 EQUAL OPPORTUNITY EMPLOYER

18.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

18.2. Contractor shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

19.0 COLORADO RESIDENT EMPLOYMENT REQUIREMENT: Section 8-17-101 C.R.S., states: "Whenever any public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform the work in the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on such project of public works. "Colorado labor" as used in this article means any person who is a resident of the state of Colorado at the time of employment, without discrimination as to race, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification.

20.0 COLORADO ILLEGAL ALIENS REQUIREMENT: Section 8-17.5-102 C.R.S., states: A political subdivision shall not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of certification, it does not knowingly employ or contract with an illegal alien and that the contractor has participated or attempted to participate in the basic pilot program in order to verify that it does not employ any

illegal aliens. If the contractor obtains actual knowledge that a subcontractor knowingly employs or contracts with an illegal alien, the contractor shall be required to: notify the subcontractor and the political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with illegal aliens; and terminate the subcontract with the subcontractor if within three days of receiving notice the subcontractor does not stop employing or contracting with the illegal alien.

21.0 RESTRICTIONS ON PUBLIC BENEFITS: Section 24-76.5-101 C.R.S., states: Individual natural persons over age 18 must confirm legal status. This includes contracts, grants, purchase orders and amendments with sole proprietors. Documentation required to be filed with the City include; Colorado Drivers license or ID, Military, Coast Guard or tribal document. Applicant must execute an affidavit on legal status, and verify status in SAVE.

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
- I am a Permanent Resident of the United States, or
- I am lawfully present in the United States pursuant to Federal law.

DATED: February 23 2021

City of Cortez,
A Colorado Municipal Corporation
City of Cortez
123 Roger Smith Ave Street
Cortez, Co. 81321

CONTRACTOR: Mesa Verde Country
928 E. Main St.
Cortez, CO 81321

By: Michael J. Lavey
Its: Michael J. Lavey

By: Sally Lippert
Its President

Attest: [Signature]
Secretary



THIS LEASE HAS IMPORTANT LEGAL CONSEQUENCES. THE PARTIES SHOULD CONSULT LEGAL COUNSEL BEFORE SIGNING.

**Exhibit A
COMMERCIAL LEASE
(Gross)**

This Commercial Lease (the "Lease") is made on _____ (date) and is entered into by and between Landlord (as defined below) and Tenant (as defined below). In consideration of the payment of the Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to the Lease (the "Additional Rent"); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in the Lease.

PARTIES, PREMISES, AND DEFINED TERMS

1. Landlord: City of Cortez, a(n) Charter City [Individual, Company, or Type of Entity] (the "Landlord").
2. Tenant: Mesa Verde Country Tourism Office, a(n) Colorado Non Profit Corporation [Individual, Company, or Type of Entity] (the "Tenant").
3. Premises: Landlord is the owner of certain real estate legally described as Cortez Welcome Center 928 East Main Street in Cortez, Colorado Montezuma County [insert county], Colorado (the "Real Estate"). The Real Estate is improved with a _____ [insert description of building, or buildings] (the "Improvements") (the Real Estate and the Improvements are collectively referred to as the "Property"). Landlord hereby leases and demises to Tenant the following described portion of the Property: Address 928 East Main Street Suite _____, consisting of 636 square feet (the "Premises").
4. Term: Landlord Leases the Premises to Tenant from twelve o'clock noon on the 1st day of January, 2021 and until 11:59 p.m. on the 31st day of December, 2021 (the "Term"). Subject to Tenant's performance of all obligations under the Lease, including, without limitation, payment of Rent and Additional Rent, Tenant shall enjoy quiet possession of the Premises.
5. Rent: Rental for the first year of the Term is EIGHT THOUSAND TWO HUNDRED SIXTY EIGHT and NO/100 Dollars (\$8268.00) payable in equal installments of SIX HUNDRED EIGHTY NINE and NO/100 Dollars (\$689.00) in advance to Landlord on the first day of each calendar month for that month's rental before twelve o'clock noon, without notice (the "Rent"). Unless otherwise provided in the Lease, all payments due under the Lease, including Additional Rent, shall be mailed, or delivered to Landlord at the following address: 123 Roger Smith Ave Cortez, Colorado 81321. If the Term does not begin on the first day of the month, the Rent shall be prorated accordingly. Rent for subsequent years of the Term [shall] [shall not] be increased. In the event Rent is subject to increase, it shall be increased on the following basis: Adjusted to to include prorated actual utilities, maintenance, and other building costs incurred the previous year. Rent payments will be deducted quarterly from monies paid quarterly to Tenant by Landlord. Rent will be paid quarterly by deduction from compensation paid by City to Mesa Verde Country Tourism Office.
6. Option: Tenant [shall] [~~shall not~~] have the option to extend the Term, pursuant to the terms and conditions contained herein, for an additional one year period (the "Option"). In the event Tenant desires to exercise the Option, Tenant shall, at least 30 days before expiration of the Term, provide Landlord with written notice of its intent to exercise the Option. Rent shall be adjusted and payable as follows: to include prorated actual utilities, maintenance and other building costs incurred the previous year. The option shall only be exercisable provided that no Tenant Defaults currently exist and that no Tenant Defaults have occurred over the Term of the Lease which have not been cured by Tenant as provided by the Lease.
7. ~~Security Deposit: Prior to occupying the Premises, Tenant shall keep on deposit with Landlord a security, cleaning, and damage deposit in the amount of _____ and _____/100 Dollars (\$_____)~~ as security for the return of the Premises at the expiration of the Term in as good condition as when Tenant entered the Premises, normal wear and tear excepted, as well as the faithful, timely, and complete performance of all other terms, conditions, and covenants of the Lease (the "Security Deposit").
8. Use: The Premises shall be used for business of Mesa Verde Country Tourism Office, provided this use conforms with applicable zoning regulations. Tenant shall not, without the prior written consent of Landlord, permit the Premises to be used for any other purpose.

~~9. Utilities/Additional Rent: Tenant shall be responsible for paying the following utilities on the Premises, which charges shall be deemed Additional Rent: Electric Gas Water Sewer Phone Cable/ Satellite T.V. Internet Access Refuse Disposal Other _____. If the Premises shares meter facilities for utilities, the charges shall be allocated to each tenant by Landlord based upon a reasonable basis. In the event Tenant fails to timely pay any of the aforementioned charges, it shall be deemed a Default. Landlord shall be responsible for any remaining utilities not specifically designated to be paid by Tenant, including utilities for Common Areas (as defined below).~~

10. **Payment of Additional Rent:** Additional Rent shall be paid by Tenant to Landlord in monthly installments concurrent with the Rent.

~~11. Late Payments: If any Rent, Additional Rent, or other payment is received later than _____ days after the date when due, the parties agree that Additional Rent in the amount of _____ percent (____%) of the outstanding sums shall also be due and payable. The addition of such amount and the collection thereof shall not operate to waive any other rights of Landlord for nonpayment of Rent, or for any other reason.~~

12. **Repairs and Maintenance of the Premises:** The [Landlord] [Tenant] shall maintain the foundation, exterior walls, and roof of the Improvements in good repair. The [Landlord] [Tenant] agrees to keep all the other improvements (including plate glass and other windows, window frames, and doors) upon the Premises repaired and maintained in good order as described in the Lease. The [Landlord] [Tenant] shall properly irrigate and care for all trees, shrubbery, and lawn and the [Landlord] [Tenant] shall keep all driveways, sidewalks, and parking areas on the Premises free and clear of ice and snow.

13. **Parking:** For the Term, Landlord grants to Tenant and its employees and invitees, at no additional charge, a Parking License. The Parking License is a non-exclusive license for the use of _____ parking spaces upon the Property (the "Parking License"). The Parking License shall be effective for the term of the Lease as defined below. Landlord and Tenant [shall] [shall not] designate specific spaces for the Parking License prior to commencement of the Term.

PREMISES

14. **Common Areas:** The common areas are all areas outside of the Premises upon the Property designated by Landlord for common use of Tenant, its employees, licensees, invitees, contractors, and Landlord (the "Common Areas"). Landlord grants to Tenant, its employees, licensees, invitees and contractors a non-exclusive license over such Common Areas of the Property necessary to the use and occupancy of the Premises and Parking License (the "Common Area License"). Said License shall be effective for the Term of the Lease. Tenant shall not use Common Areas for any type of storage, or parking of trucks, trailers, or other vehicles without the advance written consent of Landlord. All parking and Common Areas of Property shall at all times be subject to the management of Landlord, and are not part of the Premises. All use of the Common Areas shall be at the sole risk of Tenant, and Landlord is not liable for any damages, or injuries occasioned by such use. Landlord shall have the right, power, and authority to compile, promulgate, change, and modify all rules and regulations that it may, in its sole discretion, deem necessary for use of the Common Areas. Tenant agrees to abide by and conform with all rules and regulations pertaining to such Common Areas. Landlord shall have the right to construct, maintain, and operate lighting facilities; to police and from time to time change the area, location, and arrangement of the Common Areas and facilities; to restrict employee parking to certain areas; to temporarily close all, or any portion of the Common Areas; to discourage non-customer parking; and to do and perform any and all such other acts in and to said Common Areas and facilities as Landlord shall determine in its sole and absolute discretion.

15. **Condition of Premises and Representations:** Tenant is familiar with the physical condition of the Premises and the Property. Except as may otherwise be provided in the Lease, Landlord makes no representations, or warranties as to the physical condition of the Premises, or the Property, or their suitability for Tenant's intended use. In the event that Landlord agrees to provide any renovations, build-out, or any other labor and materials for the improvement of the Premises, or any allowance for improvements to be effected by Tenant, such work, or allowance shall be specified and agreed to between the parties in a separate document appended to this Lease and which shall constitute a part of this Lease ("Work Letter"). Other than the work, if any, to be performed pursuant to Tenant's Work Letter, the Premises are rented "as is," in current condition, and all warranties are hereby expressly disclaimed. Landlord makes no representations, or warranties as to the suitability of the Premises for Tenant's intended use. Landlord further makes no representations, or warranties as to whether Tenant's intended use will necessitate changes, or alterations to the Premises in order to comport with local, state, or federal laws and regulations. Such laws and regulations include, but are not limited to: health code regulations, access regulations (including, but not limited to, the Americans with Disabilities Act), and zoning regulations. Tenant understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any local, state, or federal laws

and regulations because of Tenant's intended use, Tenant shall be solely responsible for any and all associated costs and expenses relative thereto. Tenant further indemnifies and agrees to hold Landlord harmless from any and all claims and liabilities that may arise by virtue of Tenant's use of the Premises in violation of any local, state, or federal laws and regulations.

16. **Check-In Inspection:** Landlord and Tenant may conduct an inspection of the Premises at the time of possession. A check-in inspection sheet may be completed at that time and the information contained therein shall be sufficient and satisfactory proof of the condition of the Premises at the time of possession, should a subsequent dispute arise at a later date as to the condition of the Premises at the time of move-in.

17. **Use of Premises:** Tenant, in consideration of the leasing of the Premises, agrees as follows:

a. **Use of Premises:** To use and occupy the Premises solely as and for the use specified in Paragraph 8 of the Lease. Landlord's consent to the aforementioned use is not an assurance, or warranty that the Premises' attributes are sufficient for Tenant's use. Tenant represents and warrants that it has conducted sufficient due diligence to assure itself that the Premises are suitable for its use, and that such use is permitted by applicable law. Landlord expressly reserves its right to lease space within the Property as it sees fit, unless explicitly prohibited by other provisions in the Lease. Landlord's demise of the Premises to Tenant does not preclude Landlord from leasing other parts of the Property to other tenants who may be viewed objectively, or subjectively as competing with Tenant.

b. **Signage:** Tenant shall be permitted to erect a sign or signs upon the Premises, provided all signage is in compliance with size and other requirements of Landlord and as may be set forth by applicable ordinances and regulations including, but not limited to, sign and design ordinances. All signage shall conform to aesthetic and design criteria, themes, and standards of the Property and the Improvements. Additionally, Landlord may provide signage space on a common, or community sign located on the Property.

c. **Vacancy:** It will be deemed a Default of the Lease if the Premises are left vacant and unoccupied for over thirty (30) days. In addition to other remedies contained in the Lease, the Landlord may, without being obligated to do so, and without terminating the Lease, retake possession of the Premises and relet, or attempt to relet them for such rent and upon such conditions as the Landlord deems best, making such changes and repairs as may be required, giving credit for the amount of rent so received, less all expenses of such changes and repairs. Tenant shall be liable for the balance of the Rent and Additional Rent herein reserved until the expiration of the Term.

d. **Legal Compliance:** Tenant and its licensees and invitees shall comply with and abide by all federal, state, county, and municipal laws and ordinances in connection with the occupancy and use of the Premises. Tenant and its licensees and invitees may not possess, or consume alcoholic beverages on the Premises unless they are of legal age. No alcoholic beverages shall be sold upon the Premises unless proper licenses have been obtained. No illegal drugs or controlled substances (unless specifically prescribed by a physician for a specific person occupying or present upon the Premises) shall be permitted upon the Premises. Tenant hereby covenants and agrees to use its reasonable efforts to prevent and preclude its employees, guests, invitees, etc. from the aforementioned illegal conduct. Tenant and its licensees and invitees shall not use the Premises in any way that may result in an increase of the rate or cost to the Landlord to insure the Property. No hazardous or dangerous activities are permitted upon the Premises.

e. **Additional Prohibitions:** Neither Tenant nor its subtenants, licensees, volunteers, employees, guests, or invitees shall act in any manner that would interfere with, or be a nuisance to, other subtenants, occupants, or invitees of the Premises, or adjacent property owners, or adjacent tenants, or that would interfere with those other parties' quiet enjoyment of their premises. Said prohibition includes, but is not limited to, loud noises, loud music, noxious or unpleasant odors, and disruptive behavior or actions. Tenant shall not permit any portion of the Premises to be used in a manner that may endanger the person or property of Landlord, co-tenants, or any person living on or near the Premises. Tenant shall keep all portions of the Premises in a clean, safe, sanitary, and habitable condition.

f. **Pets and Animals:** Pets or animals [shall] [~~shall not~~] be permitted upon the Premises.

g. **Storage/Trash:** Tenant shall store all personal property entirely within the Premises. Tenant shall store all trash and refuse in adequate containers within the Premises, which Tenant shall maintain in a neat and clean condition, or within designated Common Areas so as not to be visible to members of the public in, or about the Property, and so as not to create any health or fire hazard.

h. **Hazardous Material Prohibited:** Tenant shall not cause or permit any hazardous material to be brought upon, kept or used in, or about the Premises by Tenant, its agents, employees, contractors, or invitees. If Tenant

breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused, or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs for which Tenant is responsible to Landlord for resulting damage, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

i. **Quiet Enjoyment:** Landlord agrees that upon Tenant paying the Rent and performing Tenant's obligations under the Lease, Tenant shall peacefully and quietly have, hold, and enjoy the Premises throughout the Term or until the Lease is terminated pursuant to its terms. Landlord shall not be responsible for the acts or omissions of any other tenant or third party that may interfere with Tenant's use and enjoyment of the Premises. In the event of any transfer or transfers of Landlord's interest in the Premises or in the Property, other than a transfer for security purposes only, the Landlord shall be automatically relieved of any and all obligations and liabilities accruing from and after the date of such transfer.

j. **Rules and Regulations:** Landlord shall provide Tenant with a copy of all rules and regulations affecting the Premises, and Tenant shall abide by all such rules and regulations.

18. **Subletting or Assignment:** Tenant shall not sublet the Premises or any part thereof, nor assign the Lease or any interest therein, without the prior written consent of Landlord. Such consent shall be at the sole discretion of Landlord. As a condition of assignment or sublease, Landlord may require the continued liability of Tenant or a separate personal guaranty by Tenant or its principal. If Tenant is a corporation, limited liability company, or other entity that is not a natural person, any change in ownership of more than thirty percent (30.0%) (over any period) of the ownership interest shall be deemed an assignment of the Lease. In the event an assignment or sublease is permitted, all payments from assignee or sublessee shall be made directly by said party to Landlord, and not through Tenant.

19. **Surrender of Premises:** Tenant will return the Premises to Landlord at the expiration of the Term in as good order and repair as when Tenant took possession, loss by casualty and normal wear and tear excepted. Any deterioration or damage caused by accident, abuse, carelessness, or negligence shall not be considered normal wear and tear. In the event that Tenant fails to redeliver the Premises in appropriate condition, Landlord may restore the Premises to appropriate condition, including repair, replacement, and cleaning. ~~The cost of any work necessitated shall be deducted from the Security Deposit; if the Security Deposit is insufficient to cover work performed, Tenant shall be obliged to pay the additional balance.~~

20. **Removal of Fixtures/Redelivery:** Tenant shall remove, at the termination of the Lease, provided Tenant is not in Default, Tenant's moveable trade fixtures and other items of personal property that are not permanently affixed to the Premises. Tenant shall remove the alterations and additions and signs made by Tenant as Landlord may request and repair any damage caused by such removal. Tenant shall peaceably yield up the Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove); and all fixtures, furnishings, floor coverings, and equipment that are permanently affixed to the Premises which shall thereupon become the property of the Landlord. Any personal property of Tenant not removed within five (5) days following such termination shall, at Landlord's option, become the property of Landlord.

PAYMENTS

21. **Payments/Dishonored Checks:** Payments shall be deemed received when actually delivered to, and received by, Landlord at the payment location. Dishonored checks and any checks received late in the mail will be treated as late payments. Additional bank and handling charges may also be assessed in the event of a dishonored check. The foregoing items shall be deemed Additional Rent. Landlord may require Tenant to replace such dishonored check with a money order, cashier's check, or other good funds. Landlord may further require that all subsequent payments after a dishonored check be paid with a money order, cashier's check, or other good funds.

22. **Partial Payment:** If any partial payment is made by Tenant, it shall be allocated first to the payment of Additional Rent, including, without limitation, utilities (if applicable) and other expenses; and second to unpaid Rent. Acceptance by Landlord of any partial payment shall not waive the right of Landlord to require immediate payment of the unpaid balance of Rent or waive or affect Landlord's rights to institute legal proceedings including, without limitation, an eviction action.

23. **No Offset:** No assent, express or implied, to any Default of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth in the Lease are independent. Tenant shall have no right to withhold or set off any Rent due Landlord.

24. **Joint and Several Obligations of Tenant:** In the event more than one person comprises Tenant, it is expressly understood and agreed that each person comprising Tenant is jointly and severally liable for any and all obligations of Tenant in the Lease. This means that all persons comprising Tenant are each, together and separately, responsible for all of Tenant's obligations. Landlord may, at its option, determine whom to hold responsible.

SECURITY DEPOSIT

25. Security Deposit:

~~a. Security Deposit: To secure the faithful performance by Tenant of all of Tenant's covenants, conditions, and agreements in the Lease to be observed and performed, Tenant shall deposit with Landlord the Security Deposit prior to commencement of the Lease. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise.~~

~~b. Application of Security Deposit: The parties agree: (1) that the Security Deposit or any portion thereof, may be applied to the curing of any Default that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that the Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied, which shall be added to the Security Deposit so it will be restored to its original amount; (2) that should the Premises be conveyed by Landlord, the Security Deposit or any portion thereof may be turned over to Landlord's grantee, and if the Security Deposit is turned over, Tenant agrees to look to such grantee for such application or return; (3) that Landlord shall not be obligated to hold Security Deposit as a separate fund; (4) that should the Rent be increased, the Security Deposit shall be increased in the same proportion within thirty (30) days of such Rent increase; and (5) that should a Default occur, Landlord may, as an additional remedy, increase the Security Deposit at its sole discretion.~~

~~e. Return of Security Deposit: 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.~~

REPAIRS AND MAINTENANCE

26. **Improvements, Repairs, and Maintenance:** Subject to the limitations set forth in Paragraphs 27 and 28 below, either Landlord or Tenant, as specified in Paragraph 12 above, shall be responsible for the cost and condition of the respective improvements, repairs, and maintenance relating to all structural components, interior and exterior walls, floors, ceiling, roofs, sewer connections, plumbing, wiring, appliances, and glass used in connection with the Premises.

27. **Landlord's Limited Responsibility:** In the event Paragraph 12 of the Lease provides for Landlord's responsibility for certain repair and maintenance, Landlord shall be responsible for: (i) any repairs, replacements, restorations, or maintenance that have been necessitated by reason of ordinary wear and tear, and (ii) any repairs, replacements, restorations, or maintenance that have been necessitated by sudden natural forces, or acts of God, or by fire not caused by Tenant. The cost of any maintenance, repairs, or replacements necessitated by the act, neglect, misuse, or abuse of Tenant, its agents, employees, customers, licensees, invitees, or contractors shall be paid by Tenant to Landlord promptly upon billing. Landlord shall use reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made, including, without limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Base and Additional Rent or damages, or be deemed an eviction of Tenant in whole or in part.

28. **Tenant's Allowed Responsibilities:** In the event Paragraph 12 of the Lease provides for Landlord's responsibility for certain repair and maintenance, Tenant shall not perform or contract with third parties to perform any repairs of any kind upon the Premises or structure upon which the Premises are located. In the event any repair that is the responsibility of Landlord becomes necessary, Tenant shall notify Landlord as soon as possible, and allow reasonable time for the work to be completed. Any unauthorized work performed or contracted for by Tenant will be at the sole expense of Tenant.

~~29. Tenant's Duty to Repair: In the event Paragraph 12 of the Lease provides for Tenant's responsibility for certain repair and maintenance, Tenant shall, at Tenant's sole cost and expense, maintain the Premises, including, but not limited to, the plumbing, exterior plate glass, other windows, and window frames, electric wiring, HVAC equipment, fixtures, appliances, and interior walls, doorways, and appurtenances belonging thereto installed for the use or used in connection with~~

~~the Premises (and including the foundation, exterior walls, and roof of the Improvements, if so provided in Paragraph 12). Tenant shall, at Tenant's own expense, make as and when needed all repairs to the Premises and to all such equipment, fixtures, appliances, and appurtenances necessary to keep the same in good order and condition. Tenant repairs shall include all replacements, renewals, alterations, and betterments (the "Tenant Repairs"). All Tenant Repairs shall be equal or better in quality and class to the original work. In the event Tenant fails to complete Tenant Repairs, Landlord may obtain them and bill Tenant for such work as Additional Rent.~~

30. Tenant Improvements: Unless otherwise provided in the Work Letter, Tenant shall be solely responsible for any and all improvements and alterations within the Premises necessary for Tenant's intended use of the Premises, including, but not limited to, electrical wiring, HVAC, plumbing, framing, drywall, flooring, finish work, telephone systems, wiring, and fixtures necessary to finish the Premises to a condition suitable for Tenant's use (the "Tenant Work").

31. Improvements/Prior Landlord Consent: Tenant agrees to submit to Landlord complete plans and specifications, including engineering, mechanical, and electrical work covering any and all contemplated Tenant Work, if applicable, and any subsequent improvements or alterations of the Premises. The plans and specifications shall be in such detail as Landlord may require, and in compliance with all applicable statutes, ordinances, regulations, and codes. As soon as reasonably feasible thereafter, Landlord shall notify Tenant of any failures of Tenant's plans to meet with Landlord's approval. Tenant shall cause Tenant's plans to be revised to the extent necessary to obtain Landlord's approval. Tenant shall not commence any Tenant Work, or any other improvements, or alterations of Premises until Landlord has approved Tenant's plans.

32. Tenant Work and Repairs/Compliance with Codes/Mechanic Liens: Tenant shall procure all necessary permits before undertaking Tenant Work or Tenant Repairs. Tenant shall perform all Tenant Work or Tenant Repairs in a good and workmanlike manner. Tenant shall use materials of good quality and perform Tenant Work or Tenant Repairs only with contractors previously approved of in writing by Landlord. Tenant shall comply with all laws, ordinances, and regulations, including, but not limited to, building, health, fire, and safety codes. Tenant hereby agrees to hold Landlord and Landlord's agents harmless and indemnified from all injury, loss, claims, or damage to any person or property (including the cost for defending against the foregoing) occasioned by, or growing out of Tenant Work or Tenant Repairs. Tenant shall promptly pay when due the entire cost of any Tenant Work or Tenant Repairs on the Premises undertaken by Tenant, so that the Premises shall at all times be free of liens for labor and materials. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless of and from all liability, loss, damages, costs, or expenses, including reasonable attorneys' fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials, or supplies furnished to Tenant, including lien claims of laborers, materialmen, or others. Should any such liens be filed or recorded against the Premises or the Improvements with respect to work done for, or materials supplied to, or on behalf of Tenant, or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within five (5) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanic's lien statutes. If Tenant shall be in default in paying any charge for which such mechanic's lien or suit to foreclose such lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent.

33. Common Area Maintenance: Landlord shall use reasonable efforts to maintain and repair Common Areas of Property, including walks and parking lots. The cost of any maintenance, repairs, or replacements necessitated by the act, neglect, misuse, or abuse by Tenant, its employees, licensees, invitees, or contractors shall be paid by Tenant to Landlord. Landlord shall use reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made, including, without limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Rent or damages, or be deemed an eviction of Tenant in whole or in part.

34. Keys/Locks: Tenant shall not place any additional locks upon the Premises, including, but not limited to, exterior and interior doors. Tenant shall not cause any of the locks or cylinders therein to be changed or re-keyed.

35. Waste/Rubbish Removal: Tenant shall not lay waste to the Premises. Tenant shall not perform any action or practice that may injure the Premises or Property. Tenant shall keep the Premises and the Property surrounding the Premises free and clear of all debris, garbage, and rubbish. Unless otherwise provided for in the Lease, Tenant shall be responsible for contracting for and paying for trash and debris removal required by Tenant's use of the Premises.

DEFAULT, NOTICE AND REMEDIES

36. **Default:** If Tenant is in arrears in the payment of any installment of Rent, any Additional Rent, or any portion thereof, or is in violation of any other covenants or agreements set forth in the Lease (a "Default") and the Default remains uncorrected for a period of three (3) days after Landlord has given written notice thereof pursuant to applicable law, then Landlord may, at Landlord's option, undertake any of the following remedies without limitation: (a) declare the Term of the Lease ended; (b) terminate Tenant's right to possession of the Premises and reenter and repossess the Premises pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute; (c) recover all present and future damages, costs, and other relief to which Landlord is entitled; (d) pursue Landlord's lien remedies; (e) pursue breach of contract remedies; and (f) pursue any and all available remedies in law or equity. In the event possession is terminated by reason of a Default prior to expiration of the Term, Tenant shall remain responsible for the Rent and Additional Rent, subject to Landlord's duty to mitigate such damages. Pursuant to §§ 13-40-104(d.5) and (e.5), and 13-40-107.5, C.R.S., hereby incorporated by reference, in the event repeated or substantial Defaults(s) under the Lease occur, Landlord may terminate Tenant's possession upon a written Notice to Quit, without a right to cure. Upon such termination, Landlord shall have available any and all of the remedies listed above.

37. **Abandonment:** In the event of an abandonment of the Premises, Landlord may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in Paragraph 38 below.

38. **Re-Entry:** In the event of re-entry by Landlord as a result of abandonment or a Default by Tenant:

- a. Tenant shall be liable for damages to Landlord for all loss sustained, including, without limitation, the balance of the Rent and Additional Rent, court costs, and reasonable attorneys' fees;
- b. Tenant's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Premises and left on the street or alley, or, at Landlord's option, it may be removed and stored, or disposed of at Landlord's sole discretion. Landlord shall not be deemed a bailee of the property removed and Landlord shall not be held liable for the property. Tenant shall indemnify Landlord for any expense in defending against any claim by Tenant or third party and for any legal expense, cost, fine, or judgment awarded to a third-party as a result of Landlord's action under the term of the Lease;
- c. Landlord may attempt to relet the Premises for such rent and under such terms as Landlord believes appropriate;
- d. Landlord may enter the Premises, clean and make repairs, and charge Tenant accordingly;
- e. Any money received by Landlord from Tenant shall be applied first to Rent, Additional Rent, and other payments due; and
- f. Tenant shall surrender all keys and peacefully surrender and deliver up possession of the Premises.

INSURANCE AND INDEMNIFICATION

39. **Negligent Damages:** Tenant shall be responsible for and reimburse Landlord for any and all damages to the Premises or Property and persons and property therein caused by the negligent, grossly negligent, reckless, or intentional acts of itself, its employees, agents, invitees, licensees, or contractors.

40. **Liability Indemnification/Insurance:** Tenant shall hold Landlord, Landlord's agents, and their respective successors and assigns, harmless and indemnified from all injury, loss, claims, or damage to any person or property while on the Premises, or any other part of the Property, or arising in any way out of Tenant's business, which is occasioned by a negligent, intentional, or reckless act, or omission of Tenant, its employees, agents, invitees, licensees, or contractors. Tenant shall maintain public liability insurance insuring Landlord and Landlord's agents, as their interest may appear, against all claims, demands, or actions for injury to or death in an amount of not less than one million dollars (\$1,000,000) arising out of any one occurrence, made by, or on behalf of any person, firm, or corporation, arising from, related to, or connected with the conduct and operation of Tenant's business, including, but not limited to, events on the Premises and anywhere upon the Property. Tenant shall also obtain coverage in the amount of one million dollars (\$1,000,000) per occurrence covering Tenant's contractual liability under the aforesaid indemnification clauses.

41. **Fire/Casualty Insurance:** Tenant shall maintain ~~plate glass insurance covering all exterior plate glass in the Premises~~, fire, extended coverage, vandalism, and malicious mischief insurance and such other insurance as Tenant may deem prudent, covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings, and equipment in the Premises.

42. **Insurance Requirements:** All of Tenant's insurance related to the Premises and the Property shall be in the form and from responsible and well-rated companies satisfactory to Landlord, shall name Landlord as an additional insured thereunder, and shall provide that the insurance will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to Landlord. The policies or duly executed certificates for such insurance shall be provided to Landlord prior to commencement of Term and upon request of Landlord.

43. **Waiver of Liability:** Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, damage to property sustained by Tenant, employees, agents or contractors, or any other person claiming through Tenant, resulting from any accident in or upon the Premises or the Property of which they shall be a part, including, but not limited to, claims for damage resulting from: (1) any equipment or appurtenances becoming out of repair; (2) Landlord's failure to keep the Property or the Premises in repair; (3) injury done or occasioned by wind, water, or other act of God; (4) any defect in, or failure of, plumbing, heating, or air-conditioning equipment, electric wiring, or installation thereof, gas, water and steam pipes, stairs, porches, railings, or walks; (5) broken glass; (6) the backing-up of any sewer pipe, or downspout; (7) the bursting, leaking, or running of any tank, tub, sink, sprinkler system, water closet, waste pipe, drain, or any other pipe or tank in, upon, or about the Property or Premises; (8) the escape of steam, or hot water; (9) water, snow, or ice being upon, or coming through the roof, skylight, doors, stairs, walks, or any other place upon, or near such Property, or the Premises, or otherwise; (10) the falling of any fixtures, plaster, or stucco; (11) fire or other casualty; and (12) any act, omission, or negligence of co-Tenants, or of other persons or occupants of the Property, or of adjoining or contiguous buildings, or of adjacent or contiguous property.

44. **Third-Party Liability:** Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any cotenant or other occupant of the Improvements, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to persons or property resulting in whole or in part from the criminal activities of others. To the extent not covered by normal fire and extended coverage insurance, Tenant agrees to pay for all damage to the Improvements.

45. **Landlord Insurance:** Insurance shall be procured by Landlord in accordance with its sole discretion. All awards and payments thereunder shall be the property of the Landlord, and Tenant shall have no interest in the same. Notwithstanding the foregoing, Landlord agrees to obtain building liability and hazard insurance required to be carried for the Property and Premises and adequate hazard insurance, which covers replacement cost of the Property and Premises.

46. **Indemnification Fees and Costs:** In case any claim, demand, action, or proceeding is made or brought against Landlord, its agents, or employees, by reason of any obligation on Tenant's part to be performed under the terms of the Lease or arising from any act of negligence of Tenant or its agents or employees, or which gives rise to Tenant's obligation to indemnify Landlord, Tenant shall be responsible for all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred in defending or prosecution of the same, as applicable.

OTHER PROVISIONS

47. **Destruction, or Condemnation of Premises:** Landlord's and Tenant's duties and responsibilities are as follows when destruction or condemnation of the Premises occurs:

a. **Partial Destruction of the Premises:** In case of partial destruction of the Premises by fire, or other casualty, Landlord at its discretion may repair the Premises with reasonable dispatch after notice of said partial destruction. Tenant shall remain responsible for payment of Rent. Subparagraph (d) of this Paragraph shall apply if Landlord determines that the partial destruction will not be repaired.

b. **Premises Untenable:** If the Premises are made totally untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where Landlord, within a reasonable time, decides not to rebuild, or repair, then Subparagraph (d) of this Paragraph shall apply.

c. **Condemnation:** If the whole or part of the Premises are taken by any authority for any public or quasi-public use, or purpose, then Subparagraph (d) of this Paragraph shall apply. All damages and compensation awarded for any taking shall be the sole property of Landlord.

d. Termination of Term: Tenant agrees that if Landlord decides not to repair, or rebuild the Premises where the destruction has occurred as described in Subparagraphs (a) and (b) of this Paragraph, the Term hereby granted by the Lease shall cease and the Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. A refund will be given for the balance of any Rent paid in advance for which Tenant did not have use of the Premises due to the cessation of the Term under the conditions of this Paragraph. Where the Premises have been taken due to condemnation as described in Subparagraph (c) of this Paragraph, the Term of the Lease shall cease and terminate upon the date that possession of the Premises is taken by the authority. Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. Tenant shall not hold Landlord liable for any damages as a result of any of the acts or events described in this subparagraph.

48. Holdover: Tenant shall vacate the Premises and remove all of Tenant's personal property from the Premises prior to 11:59 p.m. on the date the Term expires. Landlord may immediately commence eviction proceedings at its sole discretion. If, after the expiration of the Lease, Tenant shall remain in possession of the Premises and continue to pay Rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to the last month's Rent paid under the Lease, and subject to all the terms and conditions of the Lease.

49. Entry by Landlord: Landlord may enter the Premises at reasonable hours for reasonable purposes (such as repairs, inspections, or re-letting to prospective new tenants), upon reasonable notice to Tenant. Landlord may also enter the Premises in the event of emergency, without notice, or in the event of vacancy of the Premises, as described in Paragraph 38.

50. Guarantor: In the event the Lease is guaranteed, the person(s) guaranteeing the Lease ("Guarantor") hereby absolutely guarantees Tenant's obligations and performance under the Lease. Guarantor further agrees to be bound by the same covenants and conditions of the Lease and hereby makes the same warranties and representations as Tenant hereunder. If Tenant defaults in the performance of its obligations under the Lease, Guarantor will perform said obligations.

51. Subordination/Estoppel/Attornment: The Lease shall be subordinate to all existing and future mortgages, deeds of trust, and other security interests on the Premises and to any and all extensions, renewals, refinancing, and modifications thereof. Tenant shall execute and deliver whatever instruments may be required for such purposes, or for the purpose of informing a potential or existing lender or purchaser of the Property as to the status of its tenancy. Any such instruments or estoppel letters shall contain all information reasonably required by Landlord or other entity in conjunction with such transaction. Tenant agrees to attorn to a lender or other party coming into title to the Property upon written request of Landlord.

52. Notices: All notices required to be sent under the Lease shall be in writing and either: (i) delivered as provided by applicable law, including, *inter alia*, § 13-40-101, C.R.S., *et seq.*, [Colorado Forcible Entry and Unlawful Detainer statute]; (ii) personally delivered, with proper proof of service; or (iii) sent via U.S. first class mail, postage prepaid. All notices required to be sent to Landlord shall be sent or delivered to the address where the Rent is to be paid, and all notices required to be sent to Tenant shall be sent or delivered to the Premises, unless otherwise specified in the Lease. Notwithstanding the foregoing, all notices involving or concerning § 13-40-101, C.R.S., *et seq.* shall be delivered as provided by statute.

53. Attorneys' Fees: In the event Tenant or Landlord fails to perform any of its obligations under the Lease, or in the event a dispute arises concerning the meaning or interpretation of any provision of the Lease, the defaulting party, or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

54. Governing Law: The Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper in the county where the Premises are located.

55. Amendments and Termination: Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

56. Captions: The paragraph titles or captions in the Lease are for convenience only and shall not be deemed to be part of the Lease.

57. Pronouns; Joint and Several Use of Certain Terms: Whenever the terms referred to in the Lease are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa. All references to the "Landlord" shall mean Landlord and/or its authorized agents, contractors, or employees as may be required by the specific context. All references to the "Tenant" shall mean each and every person comprising Tenant, or an individual person, or combination of persons comprising Tenant as may be required by the specific context.

58. **Waivers:** No right under the Lease may be waived except by written instrument executed by the party who is waiving such right. No waiver of any breach of any provision contained in the Lease shall be deemed a waiver of any preceding or succeeding breach of that provision, or of any other provision contained in the Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

59. **Heirs, Assigns, Successors:** The Lease is binding and inures to the benefit of the heirs, assigns, and successors in interest to the parties, subject to the restrictions on assignment in Paragraph 18.

60. **Time of the Essence:** Time is of the essence of the Lease, and each and all of its provisions.

61. **No Reservation of Option:** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and is not effective as a lease or otherwise until execution and delivery by both Lessor and Tenant.

62. **Credit Reports:** Tenant hereby grants Landlord permission to obtain from time to time investigative consumer reports to ascertain the creditworthiness of Tenant and Tenant's guarantors, if applicable.

63. **Corporate Authorization:** If Tenant is a corporation, each individual executing the Lease on behalf of the corporation represents and warrants that he is duly authorized to execute and deliver the Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation and that the Lease is binding upon the corporation in accordance with its terms. Lessee agrees to provide Landlord with such a resolution within five (5) days of the execution of the Lease.

64. **Severability:** If any term, covenant, condition, or provision of the Lease, or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term, or provision to persons, or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby, and each provision of the Lease shall be valid and shall be enforced to the fullest extent permitted by law.

65. **Lead-Based Paint Disclosure Rule:** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenant must also receive a federally approved pamphlet on lead poisoning prevention. In the event the Premises were constructed before 1978, Landlord shall comply with the Lead-Based Paint Disclosure, 42 U.S.C. § 4852d.

66. **Other Applicable Laws:** Federal, state, county, or municipal laws and ordinances may affect the Premises, the Lease, and Landlord/Tenant relationship that are not specifically addressed in the Lease. Landlord and Tenant should consult legal counsel prior to execution of the Lease to ascertain such information.

67. **ADA Compliance:** Tenant shall not cause or permit any violation of the Americans with Disabilities Act (the "ADA") to occur on, or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction of use of rentable or usable space, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultation fees and expert fees) that arise during or after the Term as a result of such violation. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any remedial work required by any federal, state, or local governmental agency or political subdivision because of any ADA violation present on or about the Premises. Tenant shall be permitted to make such alterations to the Premises as may be necessary to comply with the ADA, at Tenant's sole expense and upon the prior written consent of Landlord. Without limiting the foregoing, if the presence of any ADA violation on the Premises caused or permitted by Tenant results in remedial work on the Premises, Tenant shall promptly take all actions at its sole expense as are required by any authority to comply with the ADA; provided that Landlord's consent to such actions shall first be obtained, which shall not be reasonably withheld.

68. **Additional Provisions:** In the event that there are any additional agreements between the parties or provisions with respect to the Premises, an Addendum may be attached to the Lease, which shall be incorporated by this reference as a part of the Lease. An Addendum containing additional provisions [is] [is not] attached. The Lease and the attached Addendum constitute the entire agreement between the parties.

THE PARTIES SHOULD INITIAL EACH PAGE OF THE LEASE AND SIGN BELOW. EACH PARTY SHOULD RECEIVE A SIGNED COPY OF THE LEASE AND ANY ADDENDA.

TENANT:

LANDLORD:

Mesa Verde Country Tourism Office a(n)

City of Cortez a(n)

Colorado Non Profit Corporation
[Individual or Type of Entity]

Charter City
[Individual or Type of Entity]

By: Kelly K. Peterson
Its: Executive Director
Or

By: Michael J. Lavey
Its: Mayor
Or

[Signature of Individual]

[Signature of Individual]

Date: _____

Date: _____

GUARANTOR (if applicable):

ATTEST:
[Signature]
City Clerk

[Signature]

[Print Name]

Date: _____

