

COUNCIL BILL NO. 29

Series 2023

A BILL FOR AN ORDINANCE APPROVING A LEASE WITH THE BRECKENRIDGE TOURISM OFFICE, INC.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The Commercial Lease of the Breckenridge Professional Building, located at 130 Ski Hill Rd., is hereby approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. Minor changes to or amendments of the approved agreement may be made by the Town Attorney if the proposed changes or amendments do not substantially affect the consideration to be received or paid by the Town pursuant to the approved agreement, or the essential elements of the approved agreement.

Section 3. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 8th day of August, 2023. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 22nd day of August, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

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Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney

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**BRECKENRIDGE PROFESSIONAL BUILDING
LEASE COVER AND SUMMARY SHEET**

TENANT NAME: Breckenridge Tourism Office, Inc.

Premises: Unit(s) 140

Guarantor: N/A

Unit Area: Approximately 2,365 Square Feet

Lease Structure: Gross

Use: Office

Base Lease Rate:

Year	Beg	End	Rent/SF	Annual Inc	MO Rent	Yr Rent
1	9/1/2023	8/31/2024	\$30.44		\$6,000.00	\$72,000.00
2	9/1/2024	8/31/2025	\$31.36	3.0%	\$6,180.00	\$74,160.00
3	9/1/2025	8/31/2026	\$32.30	3.0%	\$6,365.40	\$76,384.80
4	9/1/2026	8/31/2027	\$33.27	3.0%	\$6,556.36	\$78,676.34
5	9/1/2027	8/31/2028	\$34.26	3.0%	\$6,753.05	\$81,036.63

Lease Term: Five (5) Years

Option: None

**Rent & Additional
Rent Commencement**

Date: September 1, 2023

Date of Possession: September 1, 2023

Security Deposit: \$ None

Tenant Improvements: All tenant improvements require permits with the Town acting in its governmental capacity and Landlord approval

Parking Spaces: Non-exclusive use of Parking Areas. **No assigned parking spaces.**

Broker Commission: Breckenridge Real Estate Company, LLC is Landlord's exclusive leasing agent for the Premises.

Notes: *Tenant shall have access to the Premises prior to Commencement Date upon the date the Lease is entered into for approved tenant improvements, furniture, fixtures and equipment installation. Tenant shall not occupy the Premises until Commencement Date.*

1 **COMMERCIAL LEASE**

2 **Breckenridge Professional Building**

3 **130 Ski Hill Rd.**

4
5 THIS COMMERCIAL LEASE (“**Lease**”) is made and entered into as of the Effective
6 Date, hereafter defined, between the TOWN OF BRECKENRIDGE, a Colorado municipal
7 corporation (“**Landlord**”), and Breckenridge Tourism Office, Inc., a Colorado nonprofit
8 corporation (“**Tenant**”). In consideration of the mutual covenants provided for herein, the
9 parties hereto agree as follows:

10 I. PREMISES

11
12 Section 1.1. Landlord is the owner of certain real estate legally described as
13 Condominium Unit(s) 1-12, according to the Condominium Map of the Sawmill Station
14 Square Commercial Building No. 1 recorded January 7, 1980, under Reception No. 201810,
15 and as defined and described in the Condominium Declaration recorded January 7, 1980 at
16 Reception No. 201809 and Amendment recorded September 14, 1084 at Reception No. 284378,
17 all in the records of the Clerk and Recorder of Summit County, Colorado, Town of
18 Breckenridge, County of Summit, State of Colorado, with an address of 130 Ski Hill Road,
19 Unit(s) 140, Breckenridge, CO 80424, consisting of approximately 2,365 square feet,
20 determined in accordance with BOMA standards (collectively the “**Premises**”). Landlord
21 hereby leases and demises to Tenant all of the Premises, plus the non-exclusive use of the
22 “Common Areas” of the building known as the Breckenridge Professional Building (the
23 Common Areas and Breckenridge Professional Building shall hereinafter be referred to
24 collectively as the “**Professional Building**”). The term Common Areas as used in this Lease
25 shall include, but not be limited to, access roads, walkway areas, and other portions of the
26 Professional Building that are not designated as a unit or otherwise allocated for the
27 exclusive use of any other unit or party.

28
29 Section 1.2. The Premises, including all units and the Common Areas, are subject to
30 the terms, conditions and provisions of the Condominium Declaration for the Sawmill
31 station Square Commercial Building No. 1 described in Section 1.1, as amended
32 (“**Declaration**”).

33
34 Section 1.3. The Premises are leased in “**AS IS**” condition. Any changes in the
35 condition of the Premises as delivered by Landlord shall be at Tenant’s sole cost and
36 expense, and no credit shall be given nor any reduction in rent for changes or
37 improvements made by Tenant. Tenant shall be responsible for all improvements to the
38 Premises. No improvements shall affect the exterior appearance thereof and all
39 improvements shall be subject to Landlord’s prior written approval of plans to be provided

COMMERCIAL LEASE

1 by Tenant. Tenant shall be responsible for securing all necessary permits, at its sole cost
2 and expense, from the Town of Breckenridge Building Department.

3 II. TERM

4 Section 2.1. The “**Term**” of this Lease and the obligation to pay rent shall commence
5 on September 1, 2023 (“**Commencement Date**”), and shall continue until midnight on
6 August 31, 2028, unless sooner terminated as provided in this Lease. *However, Tenant and*
7 *Tenant’s representatives shall have access to the Premises prior to Commencement Date upon*
8 *the date the Lease is entered into for approved tenant improvements, furniture, fixtures and*
9 *equipment installation. Tenant shall not occupy the Premises until Commencement Date.*

10 Section 2.2. Landlord hereby grants to Tenant the right and option to renew the
11 initial Term of the Lease set forth in Section 2.1 hereof for none additional successive
12 periods of N/A (N/A) years each (each a “**Renewal Term**”), such renewal terms to
13 begin, respectively, upon the expiration of the original term of this Lease or the previous
14 renewal term, as applicable, and all terms, covenants and provisions of this Lease shall
15 apply to such renewal terms except that Rent shall be established as set forth in Section 3.2
16 herein, and Tenant shall not have any further option to again renew the term of the Lease
17 following the exercise of the above-stated options. To exercise the option herein granted,
18 Tenant shall deliver written notice of its intent to renew (the “**Renewal Notice**”) to
19 Landlord not earlier than six (6) months, but not later than three (3) months, before the
20 expiration of the initial Term or renewal term, as applicable; provided, however, as a
21 condition precedent to the effectiveness of Tenant’s right to renew herein, Tenant must not
22 be in default of any of its obligations under this Lease beyond all applicable notice and cure
23 periods at the time of Tenant’s delivery of the Renewal Notice. If any one of the foregoing
24 conditions precedent are not satisfied, Tenant shall have no right to renew this Lease
25 unless otherwise agreed to by Landlord in writing in its sole and absolute discretion. In the
26 event Tenant renews the Lease pursuant to the terms hereof, then Landlord and Tenant
27 shall execute an amendment to this Lease extending the Term.

28 III. RENT

29
30 Section 3.1. Tenant covenants and agrees to pay Landlord in equal monthly
31 installments, “**Rent**” for the Premises during the initial Term as follows:

Year	Beg	End	Rent/SF	Annual Inc	MO Rent	Yr Rent
1	9/1/2023	8/31/2024	\$30.44		\$6,000.00	\$72,000.00
2	9/1/2024	8/31/2025	\$31.36	3.0%	\$6,180.00	\$74,160.00
3	9/1/2025	8/31/2026	\$32.30	3.0%	\$6,365.40	\$76,384.80
4	9/1/2026	8/31/2027	\$33.27	3.0%	\$6,556.36	\$78,676.34
5	9/1/2027	8/31/2028	\$34.26	3.0%	\$6,753.05	\$81,036.63

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1 Beginning on the Commencement Date, Rent and Additional Rent (as hereinafter
2 defined) shall be due and payable each month, in advance, on the first day of each calendar
3 month without demand, set off, or deduction whatsoever, by check, money order or
4 cashier's check to Landlord's address or by automated clearing house (ACH) transfer into
5 Landlord's bank account as designated by Landlord from time to time. Tenant shall also be
6 required to prepay last month's rent on the Commencement Date.

7 Section 3.2. The Rent for each Renewal Term shall be determined prior to the start
8 of each Renewal Term at either the fair market rent for a similar unit in Town of
9 Breckenridge, or the average basic rent for a similar unit within the Professional Building,
10 whichever is higher. Landlord and Tenant shall execute an amendment to this Lease prior
11 to the start of each Renewal Term indicating the Rent according to the terms hereof.

12 Section 3.3. All items designated as "**Additional Rent**" under this Lease, as that
13 term is more fully described in Article IV hereof, shall be due and payable at the same time
14 as Rent is due, unless another time is specified. If any installment of Rent or Additional
15 Rent is not paid within five (5) days of when due, Landlord shall be entitled to collect a late
16 fee of five percent (5%) of the amount of the past due installment. Such late fee shall be
17 due and payable immediately as Additional Rent without any other notice or demand from
18 Landlord. Furthermore, any installment more than ten (10) days past due shall be
19 considered a loan from Landlord to Tenant which shall bear interest from the due date of
20 the installment or installments at the rate of eighteen percent (18%) per annum until fully
21 paid.

22 IV. ADDITIONAL RENT

23
24 Section 4.1. This lease shall be a gross lease and Tenant shall **NOT** be required to
25 pay, as "**Additional Rent**," Tenant's pro-rata share, as determined by the square footage of
26 the Premises as a percentage of the square footage of all units within the Professional
27 Building ("**Pro Rata Share**"), all the following unless otherwise provided herein:

28 Section 4.1.1. Tenant shall **NOT** be responsible for paying Tenant's Pro Rata
29 Share of all monthly or other periodic costs of the common utilities for the Premises,
30 currently including trash disposal, water and sewer, and CAM as hereafter defined. To the
31 extent allowable by each utility provider, and in the event utilities are metered separately
32 to the Premises, Tenant shall contract directly with utility providers not paid by Landlord,
33 and all utility payments shall be directed to the respective utility providers including but
34 not limited gas, electric, internet, cable and telephone.

35 Section 4.1.2. Tenant shall **NOT** be responsible for paying Tenant's Pro Rata
36 Share of all operation and maintenance costs ("**CAM**") of the Premises. CAM includes all
37 expenditures made by Landlord to operate and maintain the Professional Building,
38 including, but not limited to, utilities not separately metered to the Premises (common
39 trash disposal, water and sewer), repairs, replacement costs (due to ordinary and
40 extraordinary wear and tear or catastrophe), and snow/ice removal (including removal

COMMERCIAL LEASE

1 from roofs and other building elements, abutting roadways, and walkways, as needed),
2 landscaping and lawn maintenance, painting, staining, and exterior building repair and
3 replacement, repair and replacement of utility systems, depreciation of machinery and
4 equipment used in such repair and replacement, and the cost of all personnel to implement
5 such services, including but not limited any management fees assessed by the Landlord's
6 property manager. Any and every cost of repair or replacement of any portion of the
7 Professional Building shall be included in CAM and the foregoing list of items is provided
8 for illustrative purposes only and shall not be deemed a full, complete, or exhaustive list of
9 all possible CAM. CAM shall include amounts deemed necessary by Landlord to establish
10 and maintain appropriate reserves, based upon commercially accepted practices, for the
11 eventual repair, maintenance and replacement of all exterior and structural elements of the
12 Professional Building, including, but not limited to, the roof elements, siding elements,
13 exterior painting and/or staining ("**CAM Reserves**").

14 Section 4.1.3. Real Estate Taxes.

15
16 4.1.3.1 As used in this Lease, the term "taxes" shall mean all personal property
17 and real property taxes which may be levied, assessed or imposed arising out of Tenant's
18 occupancy and use of the Premises pursuant to this Lease.

19
20 4.1.3.2 Pursuant to Section 39-3-105, C.R.S., all real or personal property owned
21 by Landlord is exempt from taxation. However, the parties acknowledge that Tenant's
22 occupancy and use of the Premises pursuant to this Lease may be deemed to be a taxable
23 possessory interest pursuant to Section 39-1-103(17)(a), C.R.S.

24
25 4.1.3.3 Any taxes lawfully assessed arising from Tenant's occupancy and use of
26 the Premises pursuant to this Lease shall be paid by Tenant, and Tenant shall indemnify and hold
27 Landlord harmless from any such taxes. Any taxes due arising from Tenant's occupancy and use
28 of the Premises pursuant to this Lease shall be paid by Tenant in a timely manner. Prior to the
29 last day for payment of such taxes without penalty or interest, Tenant shall provide to Landlord a
30 photostatic copy of the receipt(s) or cancelled check(s) showing payment of the taxes. Tenant
31 may pay any taxes in installments if permitted by law.

32
33 4.1.3.4 In the event Tenant is liable for the payment of any taxes arising from
34 Tenant's occupancy and use of the Premises pursuant to this Lease, Tenant shall have the right,
35 at its sole expense, to contest any such taxes by the commencement and prosecution, in good
36 faith and with due diligence, of appropriate legal proceedings; provided that Tenant makes
37 timely payment of such taxes if Tenant loses the contest. Tenant shall advise Landlord prior to
38 instituting any such contest and shall as a condition of exercising such right provide Landlord
39 such reasonable assurance as it may request that such contest will be in compliance with the
40 provisions of this Section. Town, at Tenant's sole cost and expense, shall reasonably cooperate
41 with Tenant in any such contest, may join in the contest, and shall execute and deliver such
42 documents and instruments as may be necessary or appropriate for prosecuting an effective
43 contest.

44

COMMERCIAL LEASE

1 Section 4.1.4. Tenant shall be responsible for and shall pay before
2 delinquency all municipal, county, state, and federal taxes assessed during the Term of this
3 Lease against all services, goods and other sales from the Premises, furniture, fixtures,
4 equipment, goods and personal property of any kind owned by or placed in, upon or about
5 the Premises by Tenant. Within ten (10) days after demand, Tenant shall furnish Landlord
6 with satisfactory evidence of these payments.

7 Section 4.1.5. Landlord's Insurance Costs. Landlord shall procure and
8 maintain such fire and casualty, loss of rents, and liability insurance on the Premises as it
9 deems proper and appropriate ("**Insurance Costs**"). Tenant shall **NOT** be responsible for
10 paying Tenant's Pro Rata Share of all Insurance Costs. Such insurance shall not be required
11 to cover any of the Tenant's property and the Tenant shall have no interest in any of the
12 proceeds of such insurance. Tenant shall procure and maintain insurance on the Premises
13 as set forth in Section XI.

14 Section 4.1.6. Tenant shall be responsible for paying any other Additional
15 Rent incurred as set forth in this Lease.

16 Section 4.2. Any Additional Rent shall be paid by Tenant to Landlord in equal
17 monthly installments concurrent with the payment of Rent. Payments of Additional Rent
18 shall be calculated as follows: on, or before the commencement date of the Term, Landlord
19 shall give Tenant a statement of the estimated annual CAM, Real Estate Taxes (if any, paid
20 by Landlord for the Professional Building), and Insurance Costs for the Professional
21 Building based on the prior year's actual expenses ("**Estimate of Costs**"). Tenant shall pay
22 Additional Rent to Landlord based upon the Estimate of Costs divided by twelve (12). The
23 Estimate of Costs shall be the basis of such Additional Rent calculated until Tenant is
24 notified by Landlord of a change thereof. Within thirty (30) days of the end of each calendar
25 year, Landlord will compute actual CAM, Real Estate Taxes, and Insurance Costs for the
26 preceding year ("**Actual Costs**"). Landlord shall provide Tenant with a statement of Actual
27 Costs. In the event that Tenant's payment of Additional Rent for said calendar year totals
28 less than the Tenant's Pro Rata Share of the Actual Costs, Tenant shall be obligated to pay
29 Landlord, within ten (10) days of receipt of statement, the difference between Tenant's Pro
30 Rata Share of Actual Costs and the Additional Rent actually paid for said calendar year. In
31 the event Tenant's Additional Rent actually paid for said calendar year exceeds Tenant's
32 Pro Rata Share of Actual Costs, such excess shall be credited to Tenant's account. The
33 Actual Costs of the prior calendar year shall be used for the purpose of calculating the
34 Estimate of Costs for the then current year.

35 V. DEPOSIT

36
37 Section 5.1. To secure the faithful performance by Tenant of all of Tenant's
38 covenants, conditions, and agreements in the Lease to be observed and performed,
39 Landlord shall continue to hold Tenant's deposit in the amount of zero Dollars (\$ -0-) as
40 a security deposit (the "**Deposit**"). The Deposit may also be used in the event of
41 termination of the Lease by re-entry, eviction, or otherwise.

COMMERCIAL LEASE

1 Section 5.2. The parties agree: (1) that the Deposit or any portion thereof, may be
2 applied to cure any Default that may exist, and/or payment of subsequent damages and
3 costs incurred by Landlord, without prejudice to any other remedy or remedies that the
4 Landlord may have on account thereof, and upon such application Tenant shall pay
5 Landlord on demand the amount so applied, which shall be added to the Deposit so it will
6 be restored to its original amount; (2) that Landlord shall not be obligated to hold the
7 Deposit as a separate fund; and (3) that should a Default occur, Landlord may, as an
8 additional remedy, increase the Deposit at its sole discretion.

9 Section 5.3. If Tenant shall perform all of its respective covenants and agreements
10 in the Lease, the Deposit, or the portion thereof not previously applied pursuant to the
11 provisions of the Lease, together with a statement, shall be returned to Tenant without
12 interest, provided Tenant has vacated the Premises and surrendered possession thereof to
13 Landlord.

14 VI. GUARANTY

15 Section 6.1. *This section has been intentionally deleted.*

17 VII. USE AND OPERATION OF PREMISES

18
19 Section 7.1. Tenant shall use the Premises for operating a office, and for no
20 other purposes without Landlord's prior written consent, which consent may be withheld
21 in Landlord's sole discretion. Tenant shall be permitted to place and utilize the seating
22 currently placed in the hallway and shall have unrestricted access to the janitorial closet
23 located between the two restrooms closest to the Premises. Tenant shall also be permitted
24 to maintain televisions and a sound system in the Premises.

25 Section 7.2. Tenant's use of the Premises as provided in Section 7.1 shall be in
26 accordance with the following:

27 Section 7.2.1. Tenant shall not do any act or engage in any activities which
28 would result in a cancellation or increase in the rate of any insurance covering the
29 Professional Building.

30 Section 7.2.2. Tenant shall keep the Premises in a safe, sanitary, clean and
31 proper manner and condition and comply with all laws, regulations, development permits,
32 zoning regulations, rulings, ordinances, agreements or bylaws concerning the Premises or
33 Tenant's use of the Premises.

34
35 Section 7.2.3. Tenant shall not use the Premises in any manner which will
36 constitute waste, nuisance, or unreasonable annoyance.

37 Section 7.2.4. Tenant shall not intentionally do anything in the Premises that
38 will cause damage to the Premises. The Premises shall not be electrically overloaded. No

COMMERCIAL LEASE

1 machinery, apparatus or other appliance shall be used or operated in or on the Premises
2 that will in any manner injure, vibrate or shake the Premises or cause unreasonable noise
3 to be transmitted to the public.

4 Section 7.2.5. Tenant shall not cause or permit any hazardous material to be
5 brought upon, kept or used in, or about the Premises by Tenant, its agents, employees,
6 contractors, or invitees. If Tenant breaches the obligations stated in the preceding
7 sentence, or if the presence of hazardous material on the Premises caused, or permitted by
8 Tenant results in contamination of the Premises, or if contamination of the Premises by
9 hazardous material otherwise occurs for which Tenant is responsible to Landlord for
10 resulting damage, then Tenant shall indemnify, defend, and hold Landlord harmless from
11 any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

12 Section 7.3. Tenant shall not place or allow to be placed any permanent signs clearly
13 visible and readable from (and intended to advertise to) areas outside of the Premises,
14 upon, in or about the said Premises or any part thereof, except in compliance and
15 conformity with a sign permit issued by the Landlord in its governmental capacity. Further,
16 no sign shall be placed upon the Premises or the Professional Building by Tenant without
17 the prior written consent of Landlord, which consent shall not be unreasonably withheld.
18 Tenant is responsible for providing design and signage at Tenant's sole cost and expense. In
19 case Landlord shall deem it necessary to remove any such signs in order to paint or make
20 any repairs, alterations or improvements in or upon said Premises or any part thereof, they
21 may be so removed, but shall be replaced at Landlord's expense when the said repairs,
22 alterations or improvements shall have been completed. Any signs permitted by Landlord
23 shall be maintained by Tenant at its sole cost and shall at all times conform with all codes
24 or ordinances of the Town of Breckenridge, or other laws and regulations applicable
25 thereto.

26 Section 7.4. Tenant shall not cause or permit any violation of the Americans with
27 Disabilities Act (the "ADA") to occur on, or about the Premises by Tenant, its agents,
28 employees, contractors, or invitees. Tenant shall indemnify, defend and hold Landlord
29 harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or
30 losses (including, without limitation, diminution in value of the Premises, damages for the
31 loss or restriction of use of rentable or usable space, damages arising from any adverse
32 impact on marketing of space, and sums paid in settlement of claims, attorneys' fees,
33 consultation fees and expert fees) that arise during or after the Term as a result of such
34 violation. This indemnification of Landlord by Tenant includes, without limitation, costs
35 incurred in connection with any investigation of site conditions or any remedial work
36 required by any federal, state, or local governmental agency or political subdivision
37 because of any ADA violation present on or about the Premises. Tenant shall be permitted
38 to make such alterations to the Premises as may be necessary to comply with the ADA, at
39 Tenant's sole expense and upon the prior written consent of Landlord. Without limiting the
40 foregoing, if the presence of any ADA violation on the Premises caused or permitted by
41 Tenant results in remedial work on the Premises, Tenant shall promptly take all actions at
42 its sole expense as are required by any authority to comply with the ADA; provided that

COMMERCIAL LEASE

1 Landlord's consent to such actions shall first be obtained, which shall not be reasonably
2 withheld.

3 Section 7.5. Tenant shall allow no auction, fire, liquidation, relocation, sheriff's,
4 receiver's distress, or bankruptcy sale in the Premises without the previous written
5 consent of the Landlord.

6 Section 7.6. Tenant's use of the Premises shall conform with and be subject to any
7 and all rules and policies the Landlord (or any condominium association for the
8 Professional Building ("**Association**") may adopt concerning use of the Professional
9 Building and the Common Area. for all tenants a Tenant shall use its best efforts to cause its
10 agents, employees, customers, invitees, licensees and concessionaries to comply with such
11 rules and policies.

12 VIII. MAINTENANCE

13
14 Section 8.1. Subject to Tenant's obligation to pay Additional Rent provided for in
15 Section IV, Landlord shall maintain the foundation, exterior walls, roof, and mechanical
16 systems of the Professional Building. Landlord shall provide janitorial services for the
17 purposes of daily cleaning of public restrooms and public walkways. The Association shall
18 maintain all common area walkways, signage on shared sign posts, landscaping, and
19 exterior lighting in good repair. All costs incurred by Landlord in performing the work and
20 duties described in this Section 8.1 shall be included in the CAM. Landlord shall use
21 reasonable efforts to cause any necessary repairs to be made promptly; provided, however,
22 that Landlord shall have no liability whatsoever for any delays in causing such repairs to be
23 made, including, without limitation, any liability for injury to or loss of Tenant's business,
24 nor shall any delays entitle Tenant to any abatement of Rent and Additional Rent or
25 damages, or be deemed an eviction of Tenant in whole or in part. Failure by the
26 Association to maintain the common areas, or other related agreements, shall expressly not
27 be a default by Landlord of any maintenance obligations hereunder.

28 Section 8.2. Tenant shall keep all of the Premises not required to be maintained by
29 Landlord and the Association under Section 8.1, including, without limitation, all
30 equipment, facilities and fixtures therein contained, all mechanical systems within the
31 Premises, in good order, condition and repair, in a neat, clean, sanitary and safe condition,
32 and in accordance with all applicable laws, ordinances and regulations of any governmental
33 authority having jurisdiction. Tenant shall permit no waste, damage, or injury to the
34 Premises. The Tenant's obligation to maintain the interior of the Premises shall specifically
35 include the obligation to maintain the Premises, including the furniture, fixtures, walls and
36 flooring, in a condition that is at the same standards of maintenance and repair as a first-
37 class commercial property. The Tenant's maintenance obligation with respect to the
38 fixtures, furniture, furnishings and equipment shall specifically include the obligation to
39 repair, restore and replace obsolete, broken, run-down, and worn out items on a regular
40 basis. The term equipment as used herein shall include all mechanical equipment located
41 within the Premises, including but not limited to heating and plumbing equipment and

COMMERCIAL LEASE

1 fixtures, and kitchen equipment and fixtures, if any. As set forth and subject to the
2 requirements set forth in Section 7.3 above, Tenant shall be responsible for the
3 maintenance and repair of any and all signs permitted on the Premises regarding Tenant's
4 business attached to the Professional Building.

5 Section 8.4. Tenant shall keep the exterior and the interior of all windows and the
6 glass in any doors or displays, clean and, in the event any such windows or glass in doors is
7 cracked or broken, shall forthwith, at Tenant's own expense, replace all such glass with
8 glass of the same quality, unless such replacement is required as the result of breakage
9 caused by the act or omission of Landlord, its customers, invitees, agents and employees.

10 IX. ALTERATIONS

11
12 Section 9.1. No alterations, additions, or improvements, including, but not limited
13 to, the provision or installation of electrical outlets or lines, lighting fixtures, plumbing lines
14 or fixtures, or other equipment required by Tenant, shall be made, and no fixtures shall be
15 installed or attached to the Premises without Landlord's prior written approval, which
16 shall not be unreasonably delayed or withheld, of plans and specifications provided by
17 Tenant at its sole cost and expense. In addition, Landlord reserves the right of reasonable
18 approval of Tenant's selection of all third party contractors performing work on Tenant's
19 improvements, and, in order to provide Landlord an opportunity both to exercise this right
20 and to post or serve notices of non-liability, Tenant shall provide Landlord with a written
21 list of all third party contractors who will be performing work on Tenant's improvements
22 at least ten (10) days prior to the beginning of any such work.

23 Section 9.2. Tenant shall furnish such indemnification against liens, costs, damages
24 and expenses as may be reasonably required by Landlord. Except as hereinafter provided,
25 Tenant shall not make any structural alterations in or additions to the Premises. If
26 structural or non-structural alterations or additions become necessary because of the
27 application of laws or ordinances or other directions, rules or regulations of any regulatory
28 authority having jurisdiction over the Premises or the business carried on by Tenant, or
29 because of any wrongful act or default on the part of Tenant, or because Tenant has
30 overloaded an electrical or other facility, Tenant shall make such alterations and additions
31 at its own cost and expense after first obtaining Landlord's written approval of plans and
32 specifications and furnishing such indemnification against liens, costs, damages and
33 expenses as Landlord may reasonably require.

34 Section 9.3. Unless otherwise provided herein, all alterations, additions or
35 improvements when made, installed, or attached to the Premises by Tenant, not including
36 trade fixtures of Tenant, shall belong to and become the property of Landlord and shall be
37 surrendered with the Premises as part thereof upon the expiration or sooner termination
38 of this Lease, without hindrance, molestation or injury. Notwithstanding that the
39 alterations, additions, or improvements may have become an integral part of the Premises,
40 Landlord may require Tenant to remove all or any part of such alterations, additions,
41 improvements, or fixtures, including without limitation the walls erected by Tenant, at the

COMMERCIAL LEASE

1 expiration or earlier termination of this Lease, restoring the premises to the same
2 condition existing at the beginning of the original term, ordinary wear and tear excepted. If
3 Landlord does so require, Tenant shall repair all damages resulting from such removal and
4 should Tenant fail to remove such alterations, additions, improvements or fixtures or fail to
5 repair damages resulting from such removal, Landlord may remove the same or make such
6 repairs for Tenant's account, and Tenant shall pay to Landlord, on demand, an amount
7 equal to Landlord's costs incurred in such removal or repair.

8 Section 9.4. All work with respect to any permitted alterations, additions, or
9 improvements, shall be done at Tenant's sole cost and expense in a good and workmanlike
10 manner, strictly in accordance with the plans and specifications required to have been
11 approved by Landlord. In doing said work, other Tenants of Landlord shall not be
12 adversely affected nor unreasonably inconvenienced. Tenant shall, at its own expense,
13 obtain all necessary building or other permits or approvals required by appropriate
14 governmental authorities prior to beginning such work. If any mechanics' or other liens
15 shall be created or filed against the Premises by reason of labor performed or materials
16 furnished for Tenant in the alteration, addition or repair to any building or improvement,
17 Tenant shall, within ten (10) days thereafter, at Tenant's own cost and expense, cause such
18 lien or liens, and any related notices, to be satisfied and discharged of record, unless Tenant
19 promptly disputes such lien or liens and protects Landlord with title insurance, a bond, or a
20 cash deposit reasonably satisfactory to Landlord. Failure to do so shall entitle Landlord to
21 resort to such remedies as are provided herein in the case of any default of this Lease, in
22 addition to such as are permitted by law.

23 Section 9.5. Any goods, inventory, equipment, trade fixtures or other personal
24 property of Tenant, whether affixed or not affixed to the Premises, not removed by Tenant
25 upon the termination of this Lease, or upon any quitting, vacating or abandonment of the
26 Premises by Tenant, or upon Tenant's eviction, shall be considered abandoned if not
27 removed within ten (10) days after notice from Landlord, and, if not removed within such
28 ten (10) days, Landlord shall have the right to sell or otherwise dispose of the same at the
29 expense of Tenant, and shall not be accountable to Tenant for any part of the proceeds of
30 such sale, if any.

31 Section 9.6. As provided in Colorado Revised Statutes §§ 39-26-117(1)(b) and 39-
32 26-205(3), both as amended from time to time, the Premises and all of the improvements
33 made to or installed in the Premises (whether constructed by, for or at the expense of
34 Landlord or Tenant), all of which shall be deemed property owned by Landlord, shall be
35 exempt from any lien for sales and use taxes otherwise imposed by the taxing authorities of
36 the State of Colorado. In order to secure this exemption from the date of execution of this
37 Lease, upon execution of this Lease, Landlord and, at Landlord's request, Tenant, shall
38 execute a memorandum of this Lease for filing with the Colorado Department of Revenue,
39 such memorandum to be in such form as may be prescribed by that Department.

40

COMMERCIAL LEASE

1 X. UTILITIES AND SERVICES

2
3 Section 10.1. Tenant shall be responsible for contracting for and paying for all
4 electric, gas, telephone, cable and internet utility services, and any other separately
5 metered utilities provided to the Premises. Landlord, as part of CAM, will contract and pay
6 for all trash, water and sewer utility services provided to the Premises; provided, however,
7 in the event these utilities are metered separately in the future, Tenant shall contract
8 directly with utility providers not paid by Landlord, and all utility payments shall be
9 directed to the respective utility providers.

10 XI. INSURANCE AND INDEMNIFICATION

11
12 Section 11.1. The Tenant shall be responsible for any liability or damages and shall
13 indemnify and save Landlord harmless from any liability or damages for any loss, cost,
14 damage or expense (including reasonable attorneys' fees and expert witness fees) arising
15 out of any accident or other occurrence due to the negligence of the Tenant, its employees,
16 agents, servants, customers or other invitees.

17 Section 11.2. Landlord shall not be liable to Tenant for any damage to Tenant or
18 Tenant's personal property, fixtures, or Tenant improvements from any cause except when
19 such damage is the result of the negligence of Landlord, the Association, or their authorized
20 agents. Tenant waives all claims against Landlord for damage to persons or property
21 arising for any other reason.

22 Section 11.3. Landlord shall not be liable to Tenant for any damage occasioned by
23 plumbing, electrical, gas or other utility systems or facilities, for any damage resulting from
24 the leakage of water through any roof, wall, skylight or vent, or for any damage arising from
25 the acts or negligence of Tenant or other occupant of adjacent property, except where such
26 damage results from negligence of Landlord.

27 Section 11.4. Tenant shall maintain in full force and effect from the Effective Date
28 through the entire term of this Lease, at its own expense, the following policy or policies of
29 insurance:

30 Section 11.4.1. Comprehensive general liability insurance, including
31 property damage, insuring Landlord and Tenant from and against all claims, demands,
32 actions or liability for injury to or death of any persons, and for damage to property arising
33 from or related to the use or occupancy of the Premises or the operation of Tenant's
34 business with a liability limit of no less than One Million Dollars (\$1,000,000.00) per
35 occurrence with Two Million Dollars (\$2,000,000.00) aggregate per year. This policy must
36 contain coverage for Premises and operations, products and completed operations, blanket
37 contractual, personal injury, bodily injury and property damage. This insurance shall
38 include a contractual coverage endorsement specifically insuring the performance by
39 Tenant of its indemnity agreement contained in this Article XI. Such insurance shall name
40 Landlord and Landlord's mortgagee, if any, as an additional insured.

COMMERCIAL LEASE

1 Section 11.4.2. Cause of Loss – “Special Form” property insurance, for the
2 mutual benefit of Tenant, Landlord, and Landlord’s mortgagee, if any, covering any
3 improvements and structures included as part of the Premises, the Improvements, and all
4 of Tenant’s personal property and trade fixtures located on the Premises in an amount
5 equal to at least one hundred percent (100%) of the full replacement cost thereof. Such
6 insurance shall name Landlord and Landlord’s mortgagee, if any, as an additional insured.
7 As often as any such policy expires or terminates, a renewal or replacement policy
8 providing similar coverage shall be obtained by Tenant. In the event of fire or other
9 casualty, proceeds of such policy shall be payable to Tenant and Landlord, as their
10 respective interests may appear.

11 Section 11.4.3. Worker’s compensation insurance with a limit of no less than
12 that amount required by law.

13 Section 11.5. All policies of insurance described in this Article XI which Tenant is to
14 procure and maintain, shall be issued by responsible companies, reasonably acceptable to
15 Landlord and qualified to do business in the State of Colorado, and shall name Landlord as
16 an additional insured. Certificates of such insurance will be delivered to Landlord no later
17 than ten (10) days after the Effective Date and within thirty (30) days prior to the
18 termination or expiration of the term of each existing policy. All liability and property
19 damages policies procured and maintained by Tenant will contain the following provisions:
20 Landlord, although named as an additional insured, will nevertheless be entitled to
21 recovery under said policies for any loss occasioned to it, its servants, agents and
22 employees by reason of the negligence of Tenant, its officers, agents or employees; and the
23 company writing such policy will agree to give Landlord no less than thirty (30) days’
24 notice in writing prior to any cancellation, reduction, or modification of such insurance. All
25 policies procured and maintained by Tenant, as required by Section 11.4.1. will be written
26 as primary policies, not entitled to contribution from, nor contributing with any coverage
27 which Landlord may carry.

28 Section 11.6. Tenant’s obligations to carry the insurance required by this Lease may
29 be brought within the coverage of a so-called blanket policy or policies of insurance carried
30 and maintained by Tenant, so long as Landlord will be named as additional insured under
31 such policies as its interest may appear; the coverage afforded to Landlord will not be
32 reduced or diminished by reason of the use of such blanket policy of insurance; and all
33 other requirements set forth in this Article XI are otherwise satisfied.

34 Section 11.7. If Tenant fails either to acquire the insurance required pursuant to
35 this Article XI or to pay the premiums for such insurance or to deliver required certificates,
36 Landlord may, in addition to any other rights and remedies available to Landlord for
37 default, acquire such insurance and pay the requisite premiums from them. Such
38 premiums will be payable by Tenant to Landlord immediately upon demand as Additional
39 Rent.

40

COMMERCIAL LEASE

1 Section 11.8. Tenant will not carry any merchandise, stock of goods, or do anything
2 or permit its employees, guests and invitees to do anything in or about the Premises which
3 will in any way increase Landlord's insurance rates on the Premises. Tenant agrees to pay
4 to Landlord upon demand the amount of any increase in premiums for Landlord's
5 insurance resulting from the above, whether or not Landlord has consented to the act on
6 the part of Tenant or its employees, guests and invitees.

7 **XII. DAMAGE OR DESTRUCTION**
8

9 Section 12.1. In the event the Premises is damaged by fire or other peril covered by
10 "all risk" insurance and the Landlord decides to restore the Premises and the insurance
11 proceeds are made available to Landlord, Landlord agrees to repair the same, and this
12 Lease shall remain in full force and effect. The Tenant shall be obligated to promptly
13 restore and replace all of the furnishings, trade fixtures, leasehold improvements,
14 equipment and other personal property used in connection with the operation of the
15 Tenant's business.

16 Section 12.2. In the event the Premises is damaged as a result of any cause other
17 than the perils covered by "all risk" coverage insurance and the Landlord decides to restore
18 the Premises, then Landlord shall repair the same. If the Landlord decides not to restore
19 the Premises, then Landlord shall have the option: (i) to repair or restore such damage, this
20 Lease continuing in full force and effect, or (ii) to give notice to Tenant at any time within
21 sixty (60) days after such damage, terminating this Lease as of the date specified in such
22 notice, which date shall be no more than thirty (30) days after the giving of such notice.

23 Section 12.3. Landlord shall not be required to repair any damage by fire or other
24 cause, or to make any repairs or replacements of any leasehold improvements, fixtures or
25 other personal property of Tenant. Unless Landlord has notified Tenant that the Lease
26 shall be terminated, Tenant shall be required to restore all leasehold improvements,
27 fixtures or personal property to their condition prior to the date of such damage not later
28 than fifteen (15) days after the date by which Landlord has repaired damage to the
29 Premises, whether or not insurance proceeds are available to Tenant for such purpose. All
30 Tenant's work undertaken pursuant to this Article XII shall be completed in compliance
31 with this Lease.

32 **XIII. CONDEMNATION**
33

34 Section 13.1. If during the Term the whole or substantially all of the Premises shall
35 be taken as a result of the exercise of the power of eminent domain, or sold under the
36 threat of the exercise of said power, this Lease shall terminate as of the date of vesting of
37 title of the Premises pursuant to such proceeding. Substantially all of the Premises shall be
38 deemed to have been taken if a taking under any such proceeding shall involve such an area
39 that Tenant cannot reasonably operate in the remainder of the Premises the business being
40 conducted on the Premises at the time of such proceeding.
41

COMMERCIAL LEASE

1 Section 13.2. If, during the Term, less than the whole or less than substantially all of
2 the Premises shall be taken in any such proceeding or sold under the threat thereof, this
3 Lease shall not terminate. The rent thereafter due and payable by Tenant shall be abated in
4 such just proportion as the nature, value and extent of the part so taken or sold bears to the
5 whole of the Premises, and Landlord shall, as necessary, proceed to repair, restore and
6 place in proper condition for use and occupancy the part of the improvements on the
7 Premises not so taken.

8
9 Section 13.3. Any award granted for either partial or total taking shall be the sole
10 property of Landlord, and Tenant shall have no claim therein except that Tenant shall be
11 entitled to that portion of the award representing the value of such interests as Tenant may
12 have at the time of such taking and such damages, if any, as may be payable by the
13 condemning authority for relocation expense or other damage to Tenant's business, not
14 including any value attributable to this Lease or Tenant's right to lease at the rental rate in
15 effect at the time of such condemnation.

16
17 Section 13.4. The temporary taking of the Premises or any part thereof by any
18 public or quasi-public authority shall constitute a taking of the Premises only when the use
19 and occupancy by the taking authority has continued for longer than ninety (90)
20 consecutive days. During the ninety (90) day period all provisions of this Lease shall
21 remain in full force and effect except that the Rent shall be reasonably abated during such
22 period based on the extent to which the taking interferes with Tenant's use of the Premises.
23 Landlord shall be entitled to any award which may be paid for the use and occupation of
24 the Premises for the period involved.

25 XIV. ASSIGNMENT, SUBLETTING AND LICENSING

26
27 Section 14.1. Landlord shall have the right to transfer, assign, encumber, sell or
28 convey, in whole or in part, its interest in the Premises, and Landlord shall have the right to
29 transfer, assign, sell or convey its rights and obligations under this Lease including a
30 transfer to a purchaser. Within thirty (30) days after notice from Landlord, Tenant shall
31 execute and deliver to Landlord, in recordable form, a certificate reasonably satisfactory to
32 Landlord stating that this Lease is unmodified and in full force and effect, or in full force
33 and effect as modified, and stating the modification. The certificate shall also state the
34 amount of Rent paid during the preceding twenty-four (24) month period and the date to
35 which the rent has been paid. Failure to deliver the certificate within the thirty (30) day
36 period shall be conclusive upon Tenant that the Lease is in full force and effect and has not
37 been modified except as may be represented by Landlord in the certificate. Such failure
38 shall also, at Landlord's election, be deemed a default. Furthermore, if Tenant fails to
39 deliver the certificate within the thirty (30) day period, Tenant irrevocably appoints
40 Landlord as its special attorney-in-fact to execute and deliver the certificate to any third
41 party. At Landlord's request, Tenant shall furnish such financial information concerning
42 Tenant as may be reasonably required by a construction or permanent lender or purchaser
43 for the Premises.

COMMERCIAL LEASE

1 Section 14.2. Tenant shall not assign this Lease or sublet the Premises or any part
2 thereof without the prior written consent of Landlord, which consent may be withheld in
3 Landlord's sole discretion. [As a condition to assignment to an entity, the majority owner of
4 the proposed assignee, or if the majority owner is an entity, the individual who is the
5 majority owner of the owner of the assignee, shall be required to execute and deliver a
6 personal guaranty in a form acceptable to Landlord.] If Tenant is a corporation, limited
7 liability company, or other entity that is not a natural person, any change in ownership of
8 more than thirty percent (30%) (over any period) of the ownership interest shall be
9 deemed an assignment of the Lease requiring the consent of Landlord hereunder. In the
10 event an assignment or sublease is permitted, all payments from assignee or sublessee
11 shall be made directly by said party to Landlord, and not through Tenant.

12 Section 14.2.1. In the event Tenant should desire to assign this Lease or sublet the
13 Premises or any part thereof, Tenant shall submit a written request ("**Request to Assign**")
14 to Landlord at least ninety (90) days in advance of the date on which Tenant desires to
15 make such assignment or sublease. Tenant's Request to Assign shall specify all of the terms
16 of said proposed sublease or assignment, the name and social security number of the
17 individual who will guaranty the Lease, as well as the name and address of each proposed
18 assignee or subtenant and guarantor, provided that should the proposed assignee or
19 subtenant be a business entity, Tenant shall also provide the names of the owners,
20 members or shareholders for the proposed entity and their respective shares or
21 percentage of ownership/interest. Included in the Request to Assign, Tenant shall provide
22 current and complete financial statements (including a balance sheet, income statement
23 and copies of federal tax returns for the previous two (2) years) of each proposed assignee
24 or subtenant and guarantor, as well as evidence of experience and success in operating a
25 commercial business. Landlord shall have a period of twenty (20) days following receipt of
26 Tenant's Request to Assign within which to notify Tenant in writing whether: Landlord (i)
27 consents to the assignment of this Lease or the sublease of such space for the duration
28 specified by Tenant in its notice; (ii) rejects the proposed assignment or sublease; or (iii)
29 requests additional information in order to reach a determination on the proposed
30 assignment or sublease. In the event more information is requested, Landlord shall have
31 ten (10) days following receipt of such additional information to deny or approve the
32 Request to Assign.

33 Section 14.2.2. In any case where Landlord consents to an assignment or
34 sublease of the Premises, the undersigned Tenant will remain liable for the performance of
35 all of the covenants, duties, and obligations in this Lease, including, without limitation, the
36 obligation to pay all rent and other sums to be paid, and Landlord shall be permitted to
37 enforce the provisions of this Lease against the undersigned Tenant and/or any assignee or
38 sublessee and guarantor without demand upon or proceeding in any way against any other
39 person.

40 Section 14.2.3. Regardless of whether Landlord consents to an assignment,
41 sublease, license, or occupancy, or use by another person or entity actually occurs, Tenant
42 shall reimburse Landlord, upon demand, for Landlord's reasonable expenses and attorneys'

COMMERCIAL LEASE

1 fees incurred in conjunction with the review and documentation of any such assignment,
2 sublease, license or occupancy or use by another person or entity for which Landlord's
3 consent is requested, and payment of such expenses and fees may be a condition of the
4 granting of Landlord's consent.

5 Section 14.3. No interest of Tenant in the Premises may be assigned by operation of
6 law and each of the following acts shall be considered an involuntary assignment and
7 constitute a default by Tenant under this Lease:

8 Section 14.3.1. The bankruptcy or insolvency of Tenant, the making of an
9 assignment of the benefit of creditors or institution by Tenant or another of a proceeding
10 under the Bankruptcy Act, in which Tenant is the bankrupt; or, if Tenant is a partnership or
11 consists of one or more persons or entities, the bankruptcy, insolvency or the making of an
12 assignment for the benefit of creditors by any partner of the partnership or other person or
13 entity.

14 Section 14.3.2. The levy of a writ of attachment or execution on this Lease,
15 which is not set aside or discharged within sixty (60) days.

16 Section 14.3.3. The appointment of a receiver with authority to take
17 possession of the Premises in any proceeding or action in which Tenant is a party.

18

19 **XV. DEFAULT**

20

21 Section 15.1. In addition to other defaults set forth in this Lease, the following shall
22 be deemed to be events of default by Tenant under this Lease:

23 Section 15.1.1. Tenant shall fail to pay any installment (or portion thereof)
24 of the Rent or Additional Rent (collectively, "**Rent Obligations**") required to be paid under
25 this Lease when due and such failure to pay shall continue for a period of three (3) days
26 after written notice is given to Tenant.

27 Section 15.1.2. Tenant shall vacate any substantial portion of the Premises
28 for a period in excess of ten (10) days.

29 Section 15.1.3. Tenant shall fail to comply with any term, provision or
30 covenant of this Lease, other than the payment of Rent Obligations and the failure is not
31 cured within twenty (20) days after notice is given to Tenant. If the default cannot be
32 cured within twenty (20) days, Tenant shall not be in default if Tenant commences to cure
33 and notifies Landlord of the schedule for completion within the twenty (20) day period,
34 and diligently and in good faith continues to cure the default, but in no event shall the cure
35 period be greater than forty five (45) days. Provided, however, if the Tenant is in default
36 under any individual term or provision of this Lease on more than two (2) occasions in a
37 consecutive twelve (12) month period, then the right to cure such event of default shall no
38 longer exist and shall constitute grounds for termination of this Lease.

COMMERCIAL LEASE

1 Section 15.2. Upon the occurrence of an event of default, Landlord shall have
2 the option to pursue any one or more of the following remedies with or without notice or
3 demand in addition to any other remedies provided by law:

4 Section 15.2.1. Landlord can continue this Lease in full force and effect and
5 shall have the right to collect rent when due plus attorneys' fees and costs incurred by
6 Landlord in the collection of rent from Tenant. Landlord can enter the Premises and relet
7 them or any part of them to third parties for Tenant's account. Reletting may be for a
8 period shorter or longer than the remaining term of this Lease. Tenant shall pay to
9 Landlord the Rent Obligations due under this Lease on the dates when rent is due less the
10 rent Landlord receives from any reletting. Upon demand, Tenant shall be liable to Landlord
11 for all costs incurred in reletting the Premises, including, without limitation, broker's
12 commissions, attorneys' fees and like costs.

13 Section 15.2.2. Landlord can terminate Tenant's right to possession of the
14 Premises at any time by giving written notice. No other act by Landlord shall terminate
15 this Lease. Upon termination, Landlord has the right to recover from Tenant accrued and
16 unpaid rent prorated to the date of termination, the value of unpaid rents from the date of
17 termination to the date of a judicial award or other settlement less rent losses which could
18 reasonably have been avoided, the value of rents from the date of a judicial award or other
19 settlement to the date of expiration of the Lease less amounts of rent loss which Tenant
20 proves can be reasonably avoided by Landlord, and any other amounts including court
21 costs, attorneys' fees and broker's commissions, which are necessary to compensate
22 Landlord for all detriment proximately caused by Tenant's default. For the purposes of this
23 Section 15.2.2., the value of the future rents shall be equal to Rent.

24 Section 15.3. Landlord, at any time after Tenant commits a default, and appropriate
25 notice has been given without cure by Tenant, may cure the default. Any sum so paid by
26 Landlord in curing a default shall constitute Additional Rent due from Tenant and shall be
27 payable within ten (10) days after the making of demand therefor.

28 Section 15.4. No waiver of any provision in this Lease by Landlord shall be effective
29 unless it is set forth in a written instrument signed by Landlord. No waiver of any provision
30 in this Lease will imply or constitute a waiver of that or any other condition or agreement.
31 No failure of Landlord to enforce any right or remedy under this Lease will be a waiver of
32 the right or remedy. No act or thing done by Landlord or Landlord's agents during the Term
33 will be deemed an acceptance of a surrender of the Premises, and no agreement to accept a
34 surrender will be valid unless in writing signed by Landlord. The delivery of Tenant's keys
35 to any employee or agent of Landlord will not constitute a termination of this Lease or
36 surrender of the Premises unless Landlord has entered into a written agreement to that
37 effect. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the rent
38 or other charges stipulated in this Lease will be deemed to be anything other than a
39 payment on account of the earliest stipulated rent. No endorsement or statement on any
40 check, or any letter accompanying any check or payment of rent, will be deemed an accord
41 and satisfaction. Landlord will accept the check for payment without prejudice to

COMMERCIAL LEASE

1 Landlord's rights to recover the balance of such rent or to pursue any other remedy
2 available to Landlord. If this Lease is assigned, or if the Premises or part of the Premises are
3 sublet or occupied by anyone other than Tenant, Landlord may collect rent from the
4 assignee, subtenant or occupant and apply the net amount collected to rent reserved in this
5 Lease. That collection will not be deemed a waiver of the covenant in this Lease against
6 assignment and subletting, or the acceptance of the assignee, subtenant or occupant as
7 Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in
8 this Lease. The covenants set forth in the Lease are independent. Tenant shall have no right
9 to withhold or set off any Rent due Landlord.

10 Section 15.5. Landlord shall be in default of this Lease if it fails or refuses to
11 perform any provision of this Lease that it is obligated to perform if the failure is not cured
12 within twenty (20) days after notice of the default has been given to Landlord by Tenant. If
13 the default cannot be cured within twenty (20) days, Landlord shall not be in default if
14 Landlord commences to cure within the twenty (20) day period and diligently and in good
15 faith continues to cure the default. Landlord shall not be in default of this Lease if the
16 Association fails to maintain common elements and common areas in the Project.

17 Section 15.6. **LANDLORD AND TENANT HEREBY MUTUALLY WAIVE ANY AND**
18 **ALL RIGHTS WHICH EITHER PARTY MIGHT OTHERWISE HAVE TO REQUEST A TRIAL**
19 **BY JURY IN ANY PROCEEDING AT LAW OR IN EQUITY IN ANY COURT OF COMPETENT**
20 **JURISDICTION IN ANY ACTION ARISING FROM OR PERTAINING TO THIS LEASE.**

21 XVI. LANDLORD'S RIGHT OF ENTRY

22
23 Section 16.1. Landlord shall have the right, whenever the Premises are open for
24 business, to enter the Premises for the purposes of making inspections. Upon reasonable
25 advance notice to Tenant, Landlord shall have the right, at all reasonable hours, to enter the
26 Premises for the purposes of making repairs, restoring the Premises, or making alterations
27 or additions to the Professional Building as Landlord may deem necessary or desirable,
28 curing a default of Tenant, posting notices allowed under this Lease, posting "for sale" or
29 "for lease" signs during the last three (3) months of the Term or showing the Premises to
30 prospective brokers, agents or purchasers. Landlord's entry of the Premises for the
31 purposes of making repairs or alterations or additions to the Professional Building that
32 impact the Premises shall be made only after giving Tenant oral notice at least twenty-four
33 (24) hours in advance, except in the event of any repairs deemed by Landlord to be of an
34 emergency nature. Landlord shall not be liable for any unreasonable inconvenience,
35 disturbance, loss of business, nuisance or other damage arising out of Landlord's entry onto
36 the Premises except damage resulting from the acts or omissions of Landlord or its
37 authorized representatives. Tenant shall not be entitled to an abatement or reduction in
38 Rent if Landlord exercises any rights reserved under this Section 16.1, unless Landlord or
39 its representative's presence on the Premises continues for an extended amount of time or
40 significantly impairs Tenant's use of the Premises. Landlord shall conduct its activities on
41 the Premises as allowed in this Section 16.1 in a manner that will cause the least possible
42 inconvenience, annoyance, or disturbance to Tenant.

COMMERCIAL LEASE

1 XVII. SURRENDER OF PREMISES & HOLDING OVER

2
3 Section 17.1. Upon expiration of the Term, Tenant shall surrender to Landlord the
4 Premises and all Tenant's improvements and alterations in good condition, ordinary wear
5 and tear excepted. Tenant also shall remove all of Tenant's personal property that remain
6 on the Premises. If any such personal property is left remaining upon the Premises upon
7 termination or expiration of the Term, after ten (10) days written notice to Tenant,
8 Landlord may retain or dispose of any such personal property without liability to Tenant
9 for any damage resulting from such retention or disposition.

10 Section 17.2. If Tenant fails to surrender the Premises to Landlord within the time
11 provided in Section 17.1, Tenant shall hold Landlord harmless from all damages resulting
12 from Tenant's failure to surrender the Premises, including, without limitation, claims made
13 by a succeeding Tenant resulting from Tenant's failure to surrender the Premises.

14 Section 17.3. If Tenant, with Landlord's consent, remains on the Premises after the
15 time provided in Section 17.1, such holding over shall be deemed to be a month-to-month
16 tenancy terminable upon ten (10) days' notice given at any time by either party. All
17 provisions of this Lease, except those pertaining to term, shall apply to the month-to-month
18 tenancy.

19 Section 17.4. In the event of holding over by Tenant after the time provided in
20 Section 17.1 without consent of Landlord, the hold over shall be a tenancy at will and all the
21 terms of this Lease shall be applicable during that period except that Tenant shall pay
22 Landlord as Rent an amount equal to one-hundred and fifty percent (150%) of the last
23 month's Rent paid under the Lease and Additional Rent. Tenant shall vacate and deliver
24 the Premises to Landlord within ten (10) days upon receipt of notice from Landlord to
25 vacate. No holding over by Tenant, whether with or without consent of Landlord, shall
26 operate to extend this Lease.

27 XVIII. SECURITY INTEREST

28
29 Section 18.1. Tenant hereby grants to Landlord a first lien against and a security
30 interest in any and all of Tenant's furniture, fixtures, equipment and inventory located on
31 the Premises whenever acquired, their proceeds and the proceeds of any and all insurance
32 policies carried thereon as and for additional security for the faithful performance by
33 Tenant of all of its obligations hereunder. Tenant agrees to execute and deliver to
34 Landlord, upon request, such additional documents as Landlord may require, to establish
35 and perfect such security interest, including, without limitation, a financing statement in a
36 form satisfactory to Landlord, which is to be executed and delivered by Tenant to Landlord.
37 The exercise by Landlord of any rights in and to such furniture, fixtures, equipment and
38 inventory, upon default hereunder, shall be governed by Article IX of the Colorado Uniform
39 Commercial Code, as in effect at the time of such default, but such exercise shall not
40 preclude Landlord from exercising any or all other rights and remedies hereunder or as
41 provided by law or herein.

COMMERCIAL LEASE

1 XIX. SUBORDINATION AND ESTOPPEL

2
3 Section 19.1. Tenant agrees that this Lease shall be subordinate to any
4 encumbrance affecting the Premises now of record or recorded after the date of this Lease,
5 provided that Tenant is granted a reasonable non-disturbance agreement. Such
6 subordination is and shall be effective without further act of Tenant. In the event of
7 foreclosure by the holder or beneficiary of any encumbrance recorded after the date of this
8 Lease, Tenant's right to possession of the Premises pursuant to the terms of this Lease,
9 shall continue, provided that Tenant is not in default and all rent payments are current and
10 provided further that Tenant shall attorn to such holder or beneficiary as may take title to
11 the Premises through foreclosure.

12 Section 19.2. Tenant agrees, at any time and from time to time, to execute,
13 acknowledge and deliver to Landlord, upon Landlord's request, any documents and
14 instruments which may reasonably be required by Landlord or by the holder or beneficiary
15 of a mortgage or deed of trust to evidence or effectuate such subordination. Tenant further
16 agrees, at any time and from time to time, to execute, acknowledge and deliver to Landlord,
17 a statement in writing certifying that this Lease is unmodified and in full force and effect,
18 or, if there have been modifications, that the same is in full force and effect as modified and
19 stating the modifications, and the dates to which any rent or other payments due
20 hereunder from Tenant have been paid in advance, if any, and stating such other
21 reasonable information about the Lease as may be requested, including, but not limited to,
22 whether or not, to the best of the knowledge and information of the Tenant, the Landlord is
23 in default in the performance of any covenant or condition of the Lease and, if so, specifying
24 each such default. It is intended that such a statement will be relied upon by the holder or
25 beneficiary, or prospective holder or beneficiary, of a mortgage or deed of trust, by
26 assignees of such holder or beneficiary or by prospective purchasers and that the Tenant
27 shall be estopped from asserting claims contrary to that which is set forth in such a
28 statement. If Tenant fails to execute and deliver any such documents, instruments or
29 statements within ten (10) days, Tenant irrevocably appoints Landlord as Tenant's special
30 attorney-in-fact to execute and deliver such documents, instruments and statements, and,
31 at Landlord's election, such failure shall be a material breach of this Lease.

32 XXI. MISCELLANEOUS

33
34 Section 21.1. If the interests of Landlord under this Lease shall be transferred by
35 reason of foreclosure or other proceedings for enforcement of any first mortgage on the
36 Premises, Tenant shall be bound to the transferee under the terms, covenants, and
37 conditions of this Lease for the balance of the term remaining, including any exercised
38 extensions or renewals, with the same force and effect as if the transferee were Landlord
39 under the Lease and Tenant agrees to attorn to the transferee, including the mortgagee
40 under any such mortgage, as its Landlord, the attornment be effective and self-operative
41 without the execution of any further instruments upon the transferee succeeding to the
42 interest of Landlord under this Lease, provided that Tenant is granted a reasonable non-

1 disturbance agreement. The respective rights and obligations of Tenant and the transferee
2 upon the attornment, to the extent of the then remaining balance of the term of this Lease
3 shall be and are the same as those set forth in this Lease.

4 Section 21.2. All notices or demands required or permitted under this Lease shall be
5 in writing and shall be effective if: (i) sent by registered or certified mail, postage prepaid,
6 and return receipt requested, with such notice or demand to be deemed given seven (7)
7 days after so deposited in the United States mail and addressed to the party at the address
8 as set forth below; or (ii) by personal delivery if sent by Federal Express, United Parcel
9 Service, or other similar delivery service, addressed to the party at the address as set forth
10 below; with such notice or demand to be deemed given upon delivery of same; or (iii) by
11 email, with proof of delivery with such notice or demand to be deemed given upon delivery
12 of the same. Either party may change its address by giving notice. Nothing in this Section
13 shall prevent the giving of notice in such manner as prescribed by the Colorado Rules of
14 Civil Procedure for the service of legal process. The initial addresses of the parties for
15 notice are:

16 Tenant:	Landlord:
17	
18 Breckenridge Tourism Office, Inc.	Town of Breckenridge
19 130 Ski Hill Rd. #140	150 Ski Hill Rd.
20 PO Box 1909	P.O. Box 168
21 Breckenridge, CO 80424	Breckenridge, CO 80424
22 Email: lkay@gobreck.com	Attn.: Rick G. Holman, Town Manager
23	
24	

25 with a copy to:

26	Breckenridge Real Estate Company, LLC
27	Attn: Jason Swinger
28	PO Box 5157
29	Breckenridge, CO 80424
30	Email: jason@realbreckenridge.com
31	

32 Section 21.3. Tenant shall not record this Lease or a Memorandum of Lease in any
33 public records.

34
35 Section 21.4. In the event of any default or breach of this Lease, or any provision
36 hereof, the party which is not in breach or default hereunder shall be entitled to recover
37 from the breaching or defaulting party all reasonable attorneys' fees and costs (including,
38 without limitation, expert witness fees) incurred by such non-breaching or non-defaulting
39 party in enforcing the terms and provisions of this Lease or in enforcing such party's rights
40 arising hereunder or pursuant to law.

41 Section 21.5. This Lease shall be binding and inure to the benefit of Landlord and

COMMERCIAL LEASE

1 Tenant and their respective heirs, personal representative, successors and assigns.

2 Section 21.6. This Lease shall be construed and interpreted in accordance with the
3 laws of the State of Colorado without regard to its conflict of laws rules that might require
4 it to be construed or interpreted under the laws of any other state. Venue shall be proper in
5 the state courts of Summit County, Colorado.

6 Section 21.7. Neither Landlord nor any agent of Landlord has made any
7 representations or promises with respect to the Premises except as expressly set forth in
8 this Lease. This Lease contains all the agreements of the parties and cannot be amended or
9 modified except by an agreement in writing.

10 Section 21.8. Upon Tenant paying the Rent and Additional Rent, and observing the
11 performing all of the terms, covenants and conditions contained in this Lease, Tenant shall
12 have quiet possession of the Premises for the entire term or any renewal thereof, subject to
13 all of the provisions of this Lease.

14 Section 21.9. When required by the context, the singular shall include the plural and
15 the use of any one gender shall include any other gender. The captions used herein are for
16 convenience only and shall not be considered a part of this Lease.

17 Section 21.10. The unenforceability, invalidity or illegality of any provisions of this
18 Lease shall not render any other provision unenforceable, invalid or illegal. To the extent
19 practicable, the invalid provisions shall be deemed to be amended to comply with
20 applicable law in such a way as to correspond as close as possible to the intent of the
21 parties as determined from the context.

22 Section 21.11. All indemnity obligations required by this Lease shall survive the
23 expiration or termination of this Lease and shall be fully enforceable thereafter, subject to
24 any applicable statute of limitation.

25 Section 21.11. As used in this Lease a “day” is a calendar day.

26 Section 21.13. In computing any period of time prescribed or allowed by this Lease,
27 the day of the act or triggering event from which the designated time begins to run shall
28 not be included and all references to days shall be calendar days.

29 Section 21.14. This Lease may be executed simultaneously in two (2) or more
30 counterparts, each of which shall be deemed an original and all of which, when taken
31 together, constitute one and the same document. The signatures of any party to any
32 counterpart shall be deemed a signature to, and may be appended to, any other
33 counterpart.

34 Section 21.13.The “Effective Date” of this Agreement shall be the date when the later
35 of Landlord and Tenant executes this Agreement.

COMMERCIAL LEASE

1 IN WITNESS WHEREOF, the parties hereto have entered into this Lease Agreement
2 as of the day and year first above written.

3 **LANDLORD:**

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Rick G. Holman, Town Manager

Date: _____

ATTEST:

Helen Cospolich, CMC,
Town Clerk

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15

TENANT:

Breckenridge Tourism Office, Inc.
a Colorado Nonprofit Corporation

By: _____

Title: _____

Date: _____