

1 COUNCIL BILL NO. 34

2
3 Series 2023

4
5 **A BILL FOR AN ORDINANCE APPROVING THE WELLINGTON LEASE**
6 **BETWEEN THE TOWN OF BRECKENRIDGE AND THE BRECKENRIDGE**
7 **OUTDOOR EDUCATION CENTER.**
8

9 **(A portion of the real property located at 524 Wellington Road,**
10 **Breckenridge, Colorado and a building)**

11
12 WHEREAS, the Town of Breckenridge owns the real property at 524 Wellington Road in
13 Breckenridge, Colorado; and

14 WHEREAS, the Town Council has agreed to renew its long-term lease for the property
15 at 524 Wellington Road with the Breckenridge Outdoor Education Center, a Colorado non-profit
16 corporation (“BOEC”); and

17 WHEREAS, a proposed Lease has been prepared by the Town Attorney and reviewed
18 by the Town Council; and

19 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

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21 The council may lease, for such time as council shall determine, any real or
22 personal property to or from any person, firm, corporation, public and private,
23 governmental or otherwise.

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25 and;

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27 WHEREAS, the term of the proposed Lease with the BOEC exceeds one year in length;
28 and

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30 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
31 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

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Town Attorney

AMENDED AND RESTATED LEASE

BETWEEN

TOWN OF BRECKENRIDGE,
a Colorado municipal corporation
("the Landlord")

and

BRECKENRIDGE OUTDOOR EDUCATION CENTER,
a Colorado non-profit corporation
("the Tenant")

WELLINGTON LEASE

THIS WELLINGTON LEASE ("Lease") is dated _____, 2023, and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("the **Landlord**") and BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado non-profit corporation ("the **Tenant**" or "**BOEC**"). The Landlord and the Tenant are sometimes individually referred to in this Lease as a "**Party**", and are collectively referred to in this Lease as the "**Parties**."

ARTICLE 1 - BASIC LEASE PROVISIONS

1.1 Leased Premises. In consideration of the Tenant's payment of rent and the keeping of the promises, covenants, and conditions required of the Tenant by this Lease, the Landlord leases to the Tenant, and the Tenant leases from the Landlord, for the term and upon the conditions of this Lease, a portion of the real property located at 524 Wellington Road, Breckenridge, Colorado ("Property"), the leased portion of which is further described on the attached **Exhibit "A"** ("**Leased Premises**"). The Leased Premises includes a building that houses the administrative offices of the BOEC, employee housing, garage, and gear storage areas, which is referred to in this Lease as the "Building", as well as parking areas and a small storage shed. Expressly excluded from the Leased Premises are the Head-End Property and the IT Building, which remain the Landlord's obligations, and are described and depicted on the attached **Exhibit "B"**, as well as a public trail presently referred to as the "Wellington Trail" located on the easternmost portion of the Leased Premises, which shall also remain the Landlord's obligation.

1.2 Use Of Leased Premises. The Tenant will use the Leased Premises only for:

- (a) the operation of its administrative and program offices;
- (b) maintenance, restoration, or repair of the Building and all other improvements currently located within the Leased Premises;
- (c) storage and maintenance of the Tenant's equipment and vehicles;
- (d) "outfitting" associated with the Tenant's programs;
- (e) ancillary administrative functions, such as staff meetings and training, Board of Director meetings, instructional classes, social functions, and other administrative activities related to the carrying out of the Tenant's Mission;
- (f) overnight lodging associated with the residences located on the top floor of the Building; and
- (g) subletting to other non-profit organizations serving, at least in part, the Breckenridge or greater Summit County community.

The Tenant will not use the Leased Premises for any other purpose without the Landlord's prior

written consent. Tenant's failure to comply with section 1.2 shall constitute a default under Article 10.

1.3 Term. Subject to earlier termination as hereafter provided, the term of this Lease ("**Term**") will be for a period of seventy-five (75) years, commencing November 15, 2023 and terminating November 14, 2098. Nothing in this Lease permits the Tenant to use or occupy the Leased Premises after the expiration of the Term or any earlier termination of this Lease. If the Tenant continues to occupy the Leased Premises after such expiration or termination, such occupancy will (unless the Parties otherwise agree in writing) be an extension of this Lease on a month-to-month basis only, and such occupancy will be subject to all of the terms and conditions of this Lease.

1.4 Surrender of Leased Premises.

(a) Upon the expiration or earlier termination of this Lease the Tenant will surrender the Leased Premises to the Landlord in good condition, ordinary wear and tear excepted. Not later than the last day of the Term, the Tenant will remove its personal property and fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The cost of such removal will be borne by the Tenant, and the Tenant will repair all injury or damage done to the Leased Premises in connection with the installation or removal of the Tenant's personal property and trade fixtures. All of the Tenant's fixtures (including, but not limited to trade fixtures) that are so attached to the Leased Premises that they cannot be removed without material injury to the Leased Premises will, at the Landlord's option, become the property of the Landlord upon installation and remain with the Leased Premises upon surrender.

(b) The Landlord may retain or dispose of any personal property, fixtures (including, but not limited to, trade fixtures), alterations, or improvements left remaining by the Tenant at or upon the Leased Premises following the expiration or earlier termination of this Lease, and the Landlord is not accountable to the Tenant for any damages for the loss or destruction thereof, or for any part of the proceeds of sale, if any, realized by the Landlord. The Tenant waives all claims against the Landlord for any damages suffered by the Tenant resulting from the Landlord's retention or disposition of such personal property, fixtures (including, but not limited to, trade fixtures), alterations or improvements. The Tenant is liable to the Landlord for the Landlord's costs for storing, removing and disposing of any such personal property, fixtures (including trade fixtures) or alterations.

1.5 Obligation To Meet and Confer. Throughout the Term the Parties will meet and confer upon request of Town and at least every ten (10) years for the purpose of determining whether changed circumstances require an amendment to this Lease and, if so, will execute appropriate documentation amending this Lease.

1.6 Governmental Powers of the Landlord. The Tenant acknowledges that throughout the Term the Landlord has, and will continue to have, those governmental rights, powers, and authority provided by applicable law, including, but not limited to, the Breckenridge Town Charter and the ordinances of the Town of Breckenridge, all as amended from time to time. The Tenant further acknowledges that the provisions of this Lease do not limit or restrict such rights,

powers, and authority of the Landlord with respect to the Leased Premises when the Landlord is acting in its governmental capacity as a home-rule municipality under Colorado law.

ARTICLE 2 - RENT

2.1 Rent. The total rent to be paid by the Tenant for the full Term is Ten Dollars (\$10.00) ("Rent"), the receipt and sufficiency of which is acknowledged by the Landlord.

2.2 "Additional Rent" Defined. Any amount due to the Landlord from the Tenant under this Lease that is not specifically identified as Rent is additional rent.

2.3 Interest On Past Due Amounts. The Tenant will pay interest to the Landlord on any sum due to the Landlord under this Lease that is thirty (30) days or more past due at the rate of 12% per annum from the date due until the date such payment is fully paid.

2.4 Place And Manner Of Payments. All payments due to the Landlord under this Lease will be made to:

Town of Breckenridge Clerk & Finance Division
Attn: Accounts Receivable
P.O. Box 168
Breckenridge, CO 80424

or at such other place as the Town Manager of the Town of Breckenridge ("**Town Manager**") may hereafter designate by written notice provided to the Tenant in accordance with Section 15.2 of this Lease. All sums will be made in legal tender of the United States. Any check given to the Landlord will be received subject to collection, and the Tenant agrees to pay any charges, fees or costs incurred by the Landlord for the collection, including reasonable attorney's fees.

2.5 Landlord's Lien and Security Interest. The Landlord has a first security interest and a lien for all rent and other sums of money becoming due hereunder from the Tenant upon all goods, wares, equipment, fixtures, furniture, inventory and other personal property of the Tenant situated in or located upon the Leased Premises, and such property may not be removed from the Leased Premises without the express written consent of the Landlord until all arrearages in rent and other sums of money then due to the Landlord hereunder have first been paid. Upon the occurrence of any event of default by the Tenant, the Landlord may foreclose the security interest and lien in the manner provided by law. The Landlord may file a financing statement (and necessary extensions, renewals or replacements thereof throughout the Term) in a form legally sufficient to perfect its security interest and lien granted pursuant to this Section. The Tenant will execute such documents as may be required during the Term to maintain the validity and priority of the security interest and lien provided for in this Section.

ARTICLE 3 - LANDLORD'S DISCLAIMERS AND EXCULPATORY PROVISIONS

3.1 "As Is" Condition of Leased Premises. The Tenant acknowledges the Leased Premises are leased "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**", and the Landlord does not

warrant or make any representation, express or implied, relating to the **MERCHANTABILITY**, quantity, quality, condition, suitability or **FITNESS FOR ANY PURPOSE WHATSOEVER** of the Leased Premises or any portion thereof. Except as expressly provided in this Lease, the Landlord has no liability whatsoever to undertake any repairs, alterations, removal, remedial actions, or other work of any kind with respect to any portion of the Leased Premises, or any portion thereof.

3.2 Landlord's Non-liability. As a material part of the consideration to be received by the Landlord under this Lease, the Tenant assumes all risk of damage to property or injury to persons in or upon the Leased Premises from any cause other than the Landlord's gross negligence or intentional act, and the Tenant waives all claims in respect thereof against the Landlord.

3.3 Limitation of Remedies. The Landlord is not liable for any indirect, special, or consequential damages, including, but not limited to, loss of anticipated profits, revenue or savings, business interruption, or any similar claim arising from the Landlord's breach of this Lease, even if the Landlord has been advised of the possibility of such damages. This limitation applies notwithstanding the failure of an essential purpose of any limited remedy.

ARTICLE 4 - TENANT'S AFFIRMATIVE OBLIGATIONS

4.1 Tenant Liable For Costs to Prepare Leased Premises For Use By the Tenant. The Tenant is solely responsible for all work required to be done, and costs incurred in connection with, the preparation of the Leased Premises for the Tenant's use.

4.2 Taxes.

(a) As used in this Section, the term "**Taxes**" means all personal property and real property taxes levied, assessed or imposed by any taxing authority arising out of the Tenant's occupancy and use of the Leased Premises pursuant to this Lease.

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

(c) The Tenant will pay all Taxes lawfully assessed arising from its occupancy and use of the Leased Premises pursuant to this Lease, and will indemnify and defend the Landlord from any such Taxes. The Tenant will pay all Taxes in a timely manner. Upon the Landlord's written request the Tenant will provide to the Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the Taxes. The Tenant may pay any Taxes in installments if permitted by law.

(d) If the Tenant is liable for the payment of any Taxes arising from the Tenant's occupancy and use of the Leased Premises pursuant to this Lease, the Tenant may, at its sole expense, contest such Taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings. The Tenant will make timely payment of such Taxes

if the Tenant loses the contest. The Tenant will advise the Landlord prior to instituting any such contest and will as a condition of exercising such right provide the Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Section. The Landlord, at the Tenant's sole cost and expense, will reasonably cooperate with the Tenant in any such contest; may join in the contest; and will execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

4.3 Compliance With Laws. The Tenant, at its sole cost and expense, will comply with all laws, ordinances, orders, and regulations of all governmental authorities with respect to the use of the Leased Premises, as amended from time to time throughout the Term. A judgment of any court or the admission of the Tenant in any action or proceeding against the Tenant, whether the Landlord is a party thereto or not, that the Tenant has violated any law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the fact as between the Landlord and the Tenant.

4.4 Non-Discrimination. The Tenant:

(a) will not discriminate against any employee or applicant for employment to work at the Leased Premises because of race, color, creed, sex, sexual orientation, religion, national origin, or disability;

(b) will ensure that applicants who are to work at the Leased Premises are employed and that employees are treated during employment without regard to their race, color, creed, sex, sexual orientation, religion, national origin, or disability;

(c) will in all solicitations or advertisements for employees to be engaged in the performance of work at the Leased Premises state that all qualified applicants will receive consideration for employment without regard to race, color, creed, sex, sexual orientation, religion, national origin or disability; and

(d) will comply with all applicable federal, state, and local laws, rules and regulations. Without limiting the generality of the foregoing, the Tenant will comply with the applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory agency.

(e) The indemnification and termination provisions of this Lease apply to the Tenant's failure to comply with all applicable laws or regulations.

4.5 Tenant To Pay Certain Charges. In addition to the payment of Taxes as required by Section 4.2, the Tenant covenants and agrees to pay, or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all governmental charges that are levied, assessed, imposed, or that could become a lien upon the Leased Premises.

ARTICLE 5 - TENANT'S NEGATIVE OBLIGATIONS

5.1 Improvements.

(a) As used in this Article 5, "**Improvement**" means any physical improvement made, or proposed to be made, to either the Leased Premises or the Building.

(b) No Improvement may be made to the Leased Premises by the Tenant except under the following conditions:

(i) No Improvement may be undertaken until the Tenant has obtained approval of plans and specifications for such Improvement from the Landlord, acting in its capacity as owner of the Leased Premises (and not in its governmental capacity). In connection therewith, the Landlord has the right to review and approve a proposed Improvement in its sole and absolute discretion, which approval shall not be unreasonably withheld provided the proposed Improvement is consistent with Tenant's Mission.

(ii) The Tenant must also obtain a "Development Permit" from the Landlord, acting in the Landlord's governmental capacity.

(iii) An Improvement must be constructed under the supervision of an architect or engineer licensed in the State of Colorado, selected and paid by the Tenant.

(iv) All work done in connection with the construction of an Improvement must be done in a good and workmanlike manner and in material conformity with the plans and specifications that are approved by the Landlord.

(v) The construction of an approved Improvement must be prosecuted with reasonable dispatch, subject to delays caused by Force Majeure Events (see Section 15.12). before any work begins. The Tenant must procure or cause the contractor for the work to procure insurance in accordance with Article 7 of this Lease, including worker's compensation insurance covering all persons employed in connection with the work.

5.2 Landscaping. No landscaping may be installed by the Tenant at the Leased Premises without the Landlord's prior written consent, which shall not be unreasonably withheld. Once installed, all landscaping will be maintained by the Tenant in accordance with the approved landscaping plan for the Leased Premises.

5.3 Subletting. The Leased Premises has been leased to the Tenant with the expectation and hope that during the Term the Tenant may sublet a portion of the Building to other non-profit entities acceptable to the Landlord. Throughout the Term, the Tenant may use its best efforts to identify other non-profit entities whose anticipated space needs and use of the Building would be compatible with those of the Tenant. The Tenant may propose to the Landlord who may consent in writing to the following:

(a) the portion(s) of the Building that will be sublet;

- (b) the identity of the subtenants; and
- (c) the terms and conditions under which the Leased Premises or the Building will be sublet.

5.4 Assignment. The Tenant may not assign or transfer any of its rights under this Lease without the prior written consent of the Landlord. If the Tenant attempts to make any assignment or subletting without the requisite consent of the Landlord, or attempts to grant a license to use the Leased Premises, such assignment, subletting, or license will be void and, at the option of the Landlord, will terminate this Lease. Any consent by the Landlord to any assignment of this Lease or any consent by the Landlord to any sublease or license of the Leased Premises will not be a waiver by the Landlord of the provisions of this Section as to subsequent transactions of the same or similar nature. In the event of any permitted assignment, sublease, or license, the Landlord may, but is not required to, release the Tenant from its obligations hereunder for the remainder of the Term. If the Landlord consents to an assignment, sublease, or license the Tenant may be required, as a condition of granting consent, to pay the Landlord's reasonable costs incurred in considering the proposed assignment, sublease, or license including, but not limited to, legal fees and credit checks.

5.5 Assignment By Operation of Law. Neither this Lease nor any interest in this Lease is assignable or transferable by operation of law including if any of the following events occur:

- (a) any proceeding under the Bankruptcy Code, or any amendment thereto, is commenced by or against the Tenant;
- (b) the Tenant is adjudged insolvent;
- (c) the Tenant makes an assignment for the benefit of creditors;
- (d) a post-judgment writ of attachment or execution is levied on the leasehold estate created by this Lease and not released or satisfied within 30 days thereafter; or
- (e) a receiver is appointed for the Tenant with authority to take possession or control of the Leased Premises or the business conducted therein by the Tenant, then this Lease, at the option of the Landlord, will immediately terminate and will not be treated as an asset of the Tenant.

5.6 Waste or Nuisance. The Tenant will not commit or permit to be committed on the Leased Premises any waste, any public or private nuisance, or any other act or thing prohibited by law.

5.7 Mechanic's Liens.

- (a) In connection with the construction of any Improvements, the Tenant will cause the payment of all proper and valid invoices and charges of all contractors, subcontractors, suppliers, materialmen and similar parties who furnish services or materials in connection with

the construction process. In the event any person ever records a mechanic's lien to enforce any claim for services or materials alleged to have been provided in connection with the Leased Premises, the Tenant will cause the same to be released of record within sixty (60) days after the recordation thereof, and the Tenant will be liable to satisfy and cause a discharge of any such mechanic's lien claim. Notwithstanding the foregoing, the Tenant may contest any such mechanic's lien claim, provided that the Tenant conducts such contest in a timely manner and with due diligence, and that the Tenant provides the Landlord with such security in connection therewith as the Landlord may reasonably require. In connection with any such contest, the Landlord may join and participate in any such contest, at the Tenant's expense (with participation to include, without limitation, the execution and filing of pleadings and the provision and gathering of testimony and other evidence). In the event the Tenant loses any such contest, with all further rights of appeal having expired, the Tenant must satisfy the mechanic's lien claim in full prior to any foreclosure sale or other disposition of the Leased Premises which is made for the purpose of satisfying the claim.

(b) Prior to commencement of construction of any Improvements, the Tenant will deliver notices to all contractors and subcontractors and post notices in accordance with Section 38-22-105, C.R.S. (as it may be amended or in accordance with similar statutes that may be substituted therefor in the future), in locations that will be visible by parties performing any work, which notices will state that the Landlord is not responsible for the payment of such work and setting forth such other information as may be reasonably required pursuant to such statutory provisions.

ARTICLE 6 - UTILITIES, TRASH REMOVAL AND MAINTENANCE

6.1 Utilities. The Tenant will pay or cause to be paid, before any notice of delinquency, at its sole cost and expense, all charges for water, gas, heat, electricity, power, telephone, internet, or any other communications services, sewer service charges, and any other utilities charged or attributable to Tenant's use of the Leased Premises, and all other charges for services or utilities of any kind or nature used in, upon, or about the Leased Premises by the Tenant, including the cost of installing or moving meters for such utility charges. Notwithstanding the foregoing, the Tenant may contest any such charges so long as the Tenant diligently prosecutes the same pursuant to appropriate legal proceedings. If any such charge leads to a mechanic's or other lien claim against the Leased Premises, such contest will also be conducted in conformity with the standards hereof for contesting mechanic's lien claims. The Tenant will contract in its sole name for such utility charges.

6.2 Trash Removal. The Landlord will arrange for a trash dumpster to be provided for the use of the Tenant and any subtenants at the Leased Premises or, at the Tenant's option, the Tenant and all subtenants may use "roll away" trash containers so long as such containers are stored inside and are not used or maintained in such a manner as to cause a nuisance or a health threat. The Tenant will pay the cost of the periodic trash removal.

6.3 All Maintenance Is Tenant's Responsibility. The Tenant will at all times during the Term keep, operate, and maintain all portions of the Building and Leased Premises in good order, condition and repair. Without limiting the generality of the preceding sentence, it is the Tenant's

sole responsibility to provide any required maintenance, upkeep, repair, or replacement of the following portions of the Building and the Leased Premises:

- (a) the structural portions of the Building, including, without limitation, the roofs and the exterior walls;
- (b) all non-structural portions of the Building including, without limitation, the entrances, windows, partitions, doors, lighting, and plumbing fixtures, and heating and ventilation systems;
- (c) the grounds of the Leased Premises;
- (d) all landscaping, the paving, if any, and other hardscape surfaces; and
- (e) all fixtures, equipment and appurtenances relating to the Leased Premises and/or the Building.

This Section 6.3 is to be interpreted so as to absolve the Landlord from any obligation to provide any required maintenance, upkeep, repair, or replacement whatsoever of any portions of the Building and the Leased Premises excepting only the Head-End Property, the IT Building, and the Wellington Trail. Notwithstanding anything contained in this Section 6.3 to the contrary, Landlord shall be solely responsible for the maintenance, upkeep, repair and replacement of all improvements on the Head-End Property, the IT Building, and the Wellington Trail.

6.4 Snow Removal; Access. The Tenant will provide all snow plowing and snow removal necessary to keep the access driveway from Champion Trail to the Building free of snow and ice.

6.5 Painting. The Tenant is responsible for any desired or required painting of the Building. Painting is an "Improvement", and the procedures and requirements of Section 5.1 will apply to the painting of the Building; provided, however, that Section 5.1(b)(iii) (requiring all Improvements to be constructed under the supervision of an architect or engineer) does not apply to the painting of the Building.

6.6 Inspection And Entry. The Landlord and the Landlord's authorized representatives may enter the Leased Premises at all times during reasonable hours to inspect the Leased Premises. The Tenant further agrees that the Landlord may go upon the Leased Premises at all times and:

- (a) make any necessary repairs to the Leased Premises and perform any work therein that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or that the Landlord may deem necessary to prevent waste or deterioration of the Leased Premises;
- (b) post any notice provided for by law; or
- (c) otherwise protect any and all rights of the Landlord, all without any liability to the Tenant for damages or any abatement of rent.

Nothing in this Section implies or creates any duty on the part of the Landlord to do any work that under any provision of this Lease the Tenant may be or is required to do, nor will it constitute a waiver of the Tenant's default in failing to do such work. No reasonable exercise by the Landlord of any rights herein reserved will entitle the Tenant to any damage or compensation of any kind from the Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any abatement of rent.

ARTICLE 7 - INSURANCE

7.1 Tenant's Liability Insurance. Throughout the Term the Tenant will, at its expense, continuously maintain commercial general liability insurance covering the Tenant's operations on the Leased Premises with minimum combined single limits of not less than \$1,000,000. The Tenant's liability insurance policy will be endorsed to include the Landlord as an additional insured. Tenant's liability insurance will not apply to any incident occurring on either the Head-End Property, the IT Building, or the Wellington Trail.

7.2 Worker's Compensation Insurance. Throughout the Term the Tenant will, at its expense, continuously maintain worker's compensation insurance as required by Colorado law insuring the payment of compensation to all its employees engaged in the performance of work at the Leased Premises.

7.3 Additional Insurance Provisions. Every insurance policy required to be carried by the Tenant by this Article 7 will be primary insurance, and any insurance carried by the Landlord, its officers, or its employees, or carried by or provided through any insurance pool of which the Landlord is a member, will be excess and not contributory insurance to that provided by the Tenant. The Tenant is solely responsible for any deductible losses under its required insurance policies.

7.4 Insurance Criteria. Insurance policies required by this Lease will:

(a) be issued by insurance companies licensed to do business in the State of Colorado with general policyholder's ratings of at least A and a financial rating of at least XI in the most current Best's Insurance Reports available at the time such insurance is to be procured; and

(b) provide that the insurance cannot be cancelled or materially changed in the scope or amount of coverage unless fifteen (15) days' advance notice is given to the Landlord.

7.5 Evidence of Insurance. Prior to the commencement of this Lease, and on each subsequent renewal or replacement of the required insurance policies, the Tenant must provide to the Landlord a certificate of insurance evidencing compliance with the requirements of this Section. All required insurance policies will be renewed or replaced and maintained by the Tenant throughout the Term to assure continuous coverage. If the Tenant fails to give the required insurance certificate within thirty (30) days after notice or demand for it, such action will constitute a default under this Lease, and the Landlord may then proceed as provided in Article 10 of this Lease, and/or the Landlord may obtain and pay for that insurance and receive

reimbursement from the Tenant, together with interest thereon at the rate of 12% per annum.

7.6 Landlord's Building Insurance. Throughout the Term the Landlord will, at its expense, keep the Building insured against damage and destruction by fire, earthquake, vandalism, and other perils in the amount of the full replacement value of the Building, as the value may exist from time to time. The Tenant will reimburse the Landlord, as Additional Rent, for any deductible loss paid by the Landlord arising from any loss to the Building caused by the negligence or intentional act of the Tenant, or its agents, employees, contractors, subcontractors invitees, or subtenants.

ARTICLE 8 - INDEMNIFICATION

8.1 Indemnification By Tenant. The Tenant will indemnify and defend the Landlord, its officers, employees, insurers, and self-insurance pool from all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with this Lease or the Tenant's use or possession of the Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or demand arises through the gross negligence or intentional wrongful act of the Landlord, its officers, employees, or agents, or the Landlord's breach of this Lease. If indemnification is required under this Section, the Tenant will investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and bear all other costs and expenses related thereto, including court costs and attorney fees. Tenant's indemnity obligation under this Section 8.1 does not apply to any incident occurring on either the Head-End Property or the IT Building, or elsewhere on the Leased Property if caused by any users of the Head-End Property or the IT Building or the guests or invitees of such users.

8.2 Survival. All of Tenant's indemnity obligations under this Lease will survive the expiration or termination of this Lease, and will be fully enforceable by the Landlord thereafter.

ARTICLE 9 - EMINENT DOMAIN

9.1 Eminent Domain.

(a) The terms "**eminent domain**," "**condemnation**", and "**taken**" and related terms as used in this Section include any taking for public or quasi-public use and private purchases in lieu of condemnation by any authority authorized by applicable law to exercise the power of eminent domain.

(b) If the entire Leased Premises are taken by eminent domain, this Lease will automatically end on the earlier of:

- (i) the date title vests; or
- (ii) the date the Tenant is dispossessed by the condemning authority.

(c) If the taking of a part of the Leased Premises materially interferes with the Tenant's ability to continue its business operations in substantially the same manner, then the Tenant may terminate this Lease on the earlier of:

- (i) the date when title vests;
- (ii) the date the Tenant is dispossessed by the condemning authority; or
- (iii) 60 days following notice to the Tenant of the date when vesting or dispossession is to occur.

(d) Any compensation or damages paid by a condemning authority will be divided between the Landlord and the Tenant as follows:

- (i) the Tenant is entitled to that portion of the compensation or damages that represents the amount of the Tenant's moving expenses, business dislocation damages, the Tenant's personal property and fixtures, costs associated with securing commensurate replacement employee housing, administrative offices, garage space and gear storage, and the unamortized fair market value of the Building and leasehold improvements paid for by the Tenant; and
- (ii) the balance of such compensation or damages belongs to the Landlord.

ARTICLE 10 - DEFAULT

10.1 Default By Tenant. The occurrence of any one or more of the following events will constitute a default and breach of the Lease by the Tenant:

- (a) The vacating or abandonment of the Leased Premises by the Tenant.
- (b) The failure by the Tenant to make any payment of rent, additional rent, or any other payment required to be made by the Tenant hereunder, as and when due, when such failure continues for a period of ten (10) days after service of written notice thereof by the Landlord to the Tenant.
- (c) The failure by the Tenant to observe or perform any of the other covenants, conditions, or provisions of this Lease to be observed or performed by the Tenant, or to obey rules promulgated by the Landlord, within thirty (30) days after service of written notice thereof by the Landlord to the Tenant. In the event of a non-monetary default that is not capable of being corrected within thirty (30) days, the Tenant will not be default if it commences correcting the default within thirty (30) days of service of a demand for compliance notice and thereafter corrects the default with due diligence.
- (d) The failure by the Tenant to substantially satisfy its Mission, which as of the Effective Date of this Lease is as follows:

To expand the potential of people with disabilities and special needs through meaningful, educational and inspiring outdoor experiences (“Mission”).

(i) In the event Landlord reasonably determines Tenant is not substantially satisfying its Mission, or if Landlord determines Tenant’s operations and programming have substantially deviated from the Mission set forth above, Landlord shall provide Tenant with written notice providing a written description of such deviation and Tenant shall have ninety (90) days to provide Landlord with a plan outlining the efforts Tenant will pursue in order to satisfy its Mission or otherwise amend its operations and programming.

(ii) Upon receiving Tenant’s plan, Landlord shall not unreasonably withhold its approval.

(iii) The Tenant will not be in default if it commences correcting such default within 90 days of service of Landlord’s written notice, subject to input and cooperation from Landlord.

(e) The making by the Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against the Tenant of a petition to have the Tenant adjudged bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy; the appointment of a trustee or a receiver to take possession of substantially all of the Tenant's assets located at the Leased Premises or of the Tenant's interest in this Lease; or the attachment, execution or other judicial seizure of substantially all of the Tenant's interest in this Lease.

10.2 Voluntary Termination. If Tenant voluntarily terminates this Lease during the initial fifty (50) years of the Lease Term, the Parties agree that Landlord shall pay fair market value, established at the time of termination under this Section 10.2, or the amount that was paid for the initial construction of the Building and other Tenant Improvements, whichever amount is lesser. If Tenant voluntarily terminates this Lease any time during year 51 through 60 of the Lease Term, the Parties agree that Landlord shall pay fair market value, established at the time of termination under this Section 10.2, or the amount that was paid for the initial construction of the Building and other Tenant Improvements, whichever amount is the lesser (the “Established Amount”); provided, however, that the Established Amount shall be reduced by 10% for each year from year 51 through year 60. In the event Tenant voluntarily terminates the Lease in any years after year 60 of the Lease Term, the Parties agree that Landlord shall not pay any amount for the Building and other Tenant Improvements.

10.3 Landlord's Remedies Upon Default. If the Tenant is in default under this Lease, the Landlord has all of the remedies provided for in such circumstances by Colorado law.

10.4 Default By Landlord. The Landlord will be in default under this Lease if the Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within thirty (30) days following service of written notice thereof by the Tenant. In the event of a non-monetary default that is not capable of being corrected within thirty (30) days, the Landlord will not be default if the Landlord commences correcting the default within thirty (30) days of receipt of

notification thereof and thereafter corrects the default with due diligence.

10.5 Tenant's Remedies Upon Default. If the Landlord is in default under this Lease, the Tenant has all of the remedies provided for in such circumstances by Colorado law.

ARTICLE 11 - NONDISTURBANCE

11.1 Quiet Enjoyment. Subject to the terms and conditions of this Lease, the Landlord covenants that so long as there is no default in any of the covenants, conditions, or provisions of this Lease to be performed, observed, or kept by the Tenant, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the entire Term.

ARTICLE 12 - LANDLORD'S RULES

12.1 Rules. The Tenant will faithfully observe and comply with any rules and regulations promulgated by the Landlord with respect to the Leased Premises. The Landlord's rules and regulations must be reasonable, and may not unilaterally change or significantly alter the material terms and conditions of this Lease, nor shall they impede Tenant's ability to carry out its Mission. The rules and regulations, and any amendments thereto, will be binding upon the Tenant upon delivery to the Tenant.

ARTICLE 13 - HAZARDOUS MATERIALS

13.1 Hazardous Materials - Defined. As used in this Section, the term "**Hazardous Materials**" means any chemical, material, substance or waste:

(a) exposure to which is prohibited, limited, or regulated by any federal, state, county, regional or local authority, or other governmental authority of any nature; or

(b) that, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Leased Premises including, without limitation, any petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as "hazardous substances", "hazardous materials", "hazardous wastes" or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations, and precautions.

13.2 Hazardous Materials - Prohibited. The Tenant will full comply with all statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any federal, state, local, or other governmental agency with respect to the use, generation, storage, or disposal of Hazardous Materials. The Tenant will not cause, or allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the Leased Premises without the prior written consent of the Landlord, which consent may be revoked at any time. The Tenant's indemnification of the Landlord pursuant to this Lease extends to all liability, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising

out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by the Tenant, or any person claiming under the Tenant, including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials by the Tenant or any person claiming under the Tenant; provided, however, the written consent by the Landlord to the use, generation, storage, or disposal of Hazardous Materials will excuse the Tenant from the Tenant's obligation of indemnification. In the event the Tenant is in breach of the covenants herein, after notice to the Tenant and the expiration of the earlier of:

- (a) the cure period provided in Section 10.1 (c);
- (b) the cure period permitted under applicable law, regulation, or order,

then the Landlord may, in its sole discretion, declare a default under this Lease and/or cause the Leased Premises to be freed from the Hazardous Material and the cost thereof will be deemed additional rent hereunder and will immediately be due and payable from the Tenant. The obligations of the Tenant under this Section 13.2 will survive the expiration or termination of this Lease.

ARTICLE 14 - RIGHT OF FIRST REFUSAL

14.1 Right of First Refusal. If, at any time during the Term, the Landlord receives an offer for the purchase of the Leased Premises the Landlord agrees not to accept such offer or make any contract of sale with respect to the Leased Premises without first giving the Tenant the right to acquire the Leased Premises upon the same terms and conditions contained in such offer of purchase. The Landlord agrees to give to the Tenant written notice of the terms and conditions of such offer in the manner provided in Section 16.2. If the Tenant fails to enter into a bona fide contract upon the same terms and conditions as those proposed to the Landlord by the prospective purchaser within ninety (90) days after the giving of such notice, then the Landlord has the right, and will be at liberty, to sell the Leased Premises to the party making the offer. If, for any reason, the Leased Premises are not sold to such party, notice of any subsequent bona fide offer, acceptable to the Landlord, will be given to the Tenant upon the same terms and conditions for acceptance or rejection as described above. If the Tenant does not exercise its right of first refusal pursuant to this Section 14.1 and the Leased Premises are sold by the Landlord, the option to purchase set forth in this Section 14.1 will automatically terminate and be of no further force and effect.

ARTICLE 15 - MISCELLANEOUS

15.1 Attorneys Fees/Costs. If any action is brought in a court of law by either Party to this Lease concerning the enforcement, interpretation, or construction of this Lease, the prevailing Party, either at trial or upon appeal, will be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

15.2 Notices. All notices required or permitted under this Lease must be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by electronic mail directed as follows:

If intended for the Landlord to:

Town of Breckenridge
Attn: Town Attorney
P.O. Box 168
150 Ski Hill Road Breckenridge, Colorado 80424 Attn: Town Manager
Telephone number: (970) 453-2251
Email: clerk@townofbreckenridge.com

If intended for the Tenant, to:

Breckenridge Outdoor Education Center
Attn: Executive Director
P.O. Box 697 Breckenridge, CO 80424
Telephone number: (970) 453-6422
Email: sonya@boec.com

Any notice delivered by mail in accordance with this Section will be effective on the second business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this Section will be effective upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to that intended recipient. Any notice delivered by hand or commercial carrier will be effective upon actual receipt. Either Party, by notice given as above, may change the address to which future notices may be sent.

15.3 Incorporation of Exhibits. The attached **Exhibit “A”** and **Exhibit “B”** are incorporated into this Lease by reference.

15.4 Warning Concerning Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. LEASED PREMISES OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. THE BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

15.5 Additional Instruments. The Parties will deliver or caused to be delivered upon request such additional documents and instruments as may be required to accomplish the intent of this Lease.

15.6 Waiver. The failure of either Party to exercise any of its rights under this Agreement is not a waiver of those rights. A Party waives only those rights specified in writing and signed by the Party waiving such rights.

15.7 Time of the Essence. Time is of the essence under this Lease for the performance and observance of all obligations of the Landlord and the Tenant hereunder, and all provisions of this Lease are to be strictly construed.

15.8 Severability. If any provisions of this Lease are held invalid or unenforceable, the remainder of this Lease will not be affected thereby, it being the intent of the Parties that the provisions of this Lease will be enforceable to the fullest extent permitted by law. There will be substituted for any invalid or unenforceable provision a valid and enforceable provision as similar as possible to the invalid provision.

15.9 Brokerage Commission. The Landlord and the Tenant mutually warrant and represent to one another that neither of them has incurred any liability arising by, through, or under that Party for the payment of any brokerage fee or commission in connection with the transaction contemplated herein. If either of the Parties breach the foregoing warranty and representation, it will be liable to the other Party for any damage, liability, loss, claim or expense, including attorneys' fees, suffered by the other Party as a result of such breach. The liable Party will pay to the other Party such sums as are due and owing pursuant to the foregoing within 30 days after demand by the other Party.

15.10 Authority. The person signing this Lease for the Landlord represents and warrants to the Tenant that the Landlord has all inherent legal power and authority requisite to entering into this Lease; has taken all action necessary to authorize the execution of this Lease and to perform and satisfy the transactions and obligations contained herein; and has duly authorized the signatory to execute and deliver this Lease on behalf of the Landlord. The person signing this Lease for the Tenant represents and warrants to the Landlord that the Tenant has all inherent legal power and authority requisite to entering into this Lease; has taken all actions necessary to authorize the execution and delivery of this Lease and to perform and satisfy the transactions and obligations contained herein; and has duly authorized the signatory to execute and deliver this Lease on behalf of the Tenant.

15.11 Force Majeure Events. Except to the extent otherwise expressly provided by this Lease, if either the Landlord or the Tenant is delayed in the performance of any act required under this Lease by reason of strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, pandemic, acts of superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage, or any other circumstance for which such Party is not responsible or that is not in its power to control, the time for the performance of any such act will be extended for a period equivalent to the period of such delay. Notwithstanding any indications to the contrary contained in the foregoing, Force Majeure Events do not include:

(a) any financial incapacibilities or burdens suffered by either Party; (b) the effect of laws and regulations or the application and enforcement of the same by any governmental entity, or (c) a failure of timely performance by an agent or contractor of either Party. The application of Force Majeure Events is subject to the express limitations thereon contained in the other provisions of this Lease.

15.12 Recording. A fully signed copy of this Lease shall be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado.

15.13 "Day" Defined. Unless otherwise indicated, the term "day" means a calendar day (and not a business day).

15.14 "Will" or "Will Not" Defined. "Will" or "will not" indicates a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

15.15 Amendment. This Lease may not be modified except by a written Lease signed by both the Landlord and the Tenant. Oral modifications of this Lease are not permitted.

15.16 Captions. The headings of the sections and paragraphs contained in this Lease are for convenience only and do not define, limit, or construe the contents of the articles, sections and paragraphs.

15.17 Advances By the Landlord For the Tenant. If the Tenant fails to do anything required to be done by it under the terms of this Lease (other than a failure to make the payments to the Landlord herein required) the Landlord may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of the Tenant, and in doing so the Landlord will not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section the Landlord must give notice to the Tenant as provided in Section 15.2, and afford the Tenant not less than 5 days from the giving of such notice within which to do or perform the act required by the Tenant. Upon notification to the Tenant of the costs incurred by the Landlord the Tenant will promptly pay to the Landlord the full amount of costs and/or expenses incurred by the Landlord pursuant to this Section, together with interest thereon at the rate of 12% per annum.

15.18 Governmental Immunity. In entering into this Lease the Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or any other limitation, right, immunity or protection otherwise available to the Landlord, its officers, or its employees.

15.19 No Adverse Construction Based On Authorship. Each of the Parties stipulate and agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not to be construed against either Party by virtue of such Party having drafted this Lease.

15.20 Landlord's Consent. Except as otherwise expressly provided to the contrary in this Lease,

wherever in this Lease it is provided that some act requires the Landlord's prior consent, such consent will not be unreasonably withheld by the Landlord.

15.21 Third Parties. There are no third-party beneficiaries of this Lease.

15.22 Governing Laws; Venue; Waiver of Jury Trial. The laws of the State of Colorado will govern the interpretation, validity, performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this Lease will be commenced in Summit County, Colorado. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.

15.23 No Partnership. The Landlord is not a partner, associate, or joint venturer of the Tenant in the conduct of the Tenant's business at the Leased Premises. The Tenant is an independent contractor without the right or authority to impose tort or contractual liability upon the Landlord.

15.24 Annual Appropriation. Notwithstanding anything herein contained to the contrary, the Landlord's financial obligations under this Lease are subject to an annual appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow the Landlord to perform its obligations hereunder. If sufficient funds are not appropriated, this Lease may be terminated by either Party without penalty; provided, however, such appropriation shall not be unreasonably withheld by Landlord and it shall be a condition precedent to such termination that Tenant shall be afforded ninety (90) days to procure such an appropriation on Landlord's behalf. The Landlord's obligations under this Lease do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

15.25 ADA Compliance and Responsibilities.

Both the Landlord (representing the Title II entity, Town of Breckenridge) and the Tenant (a Title III entity) affirmatively acknowledge and comprehend their distinct obligations under the Americans with Disabilities Act (ADA).

The Landlord, as a public entity under Title II, provides the Premises under the fundamental principles of accessibility and nondiscrimination. The Tenant, as a Title III entity, understands that their occupation and use of the Premises entail specific responsibilities to ensure public accommodations are in full compliance with the ADA.

The Tenant acknowledges that adapting or modifying the leased space might be necessary to ensure full ADA compliance suitable for their specific operations. The Tenant will be solely responsible for ensuring their use of the Premises adheres to all relevant ADA provisions associated with Title III mandates. This may include but is not limited to, accessible entrances, paths of travel, restroom accessibility, and other necessary modifications in alignment with their commercial or public service operations.

If modifications or improvements to the Premises are required for comprehensive ADA compliance, the Tenant commits to act promptly and bear all associated costs. The Landlord

disclaims any representation or warranty as to the Premises' existing condition concerning specific Title III ADA compliance but assures baseline accessibility as per Title II mandates.

Furthermore, the Tenant shall indemnify, defend, and hold the Landlord harmless against any liabilities, claims, damages, penalties, or associated costs that arise from the Tenant's failure to uphold ADA Title III compliance during the lease term.

Both parties underscore the significance of fostering an inclusive and accessible environment and pledge a cooperative effort to ensure the principles and requirements of the ADA are upheld in their entirety.

15.26 Binding Effect. This Lease extends to and is binding upon the successors and permitted assigns of the respective Parties. The terms, covenants, agreements, and conditions in this Lease will be construed as covenants running with the Leased Premises.

15.27 Approval By Ordinance. The execution of this Lease was authorized by Ordinance No. ____, Series 2023, adopted by the Town Council of the Town of Breckenridge on _____, 2023.

[INSERT SIGNATURE BLOCKS HERE]

Exhibit "A"

LEGAL DESCRIPTION OF LEASED PREMISES

Tract B, Revett's Landing Subdivision, according to the plat thereof recorded August 13, 2001 under Reception No. 659673 of the records of the Clerk and Recorder of Summit County, Colorado, except the Head End Property, the IT Building, and the Wellington Trail.

Exhibit “B”

Description of the Head-End Property and IT Building

Head-End Property. The Parties acknowledge that as of the date of this Lease a portion of the Leased Premises (consisting of approximately 0.02 acres, more or less, and consisting of a shed approximately 24 feet by 32 feet in size) (the “Head-End Property”) is subject to that Lease between the Landlord and Universal Cable Communications Inc. d/b/a “Comcast” dated May 12, 2015.



IT Building. The Parties also acknowledge a separate building on the Leased Premises, in which Landlord maintains information technology equipment and certain telephone company equipment (“IT Building”).

The Head-End Property and the IT Building shall be excluded from the Leased Premises.

Depiction of the Head-End Property and IT Building



Exhibit B
Depiction of the Head-End Property
and IT Building

-  Trails
-  Property Lines

