

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 5041

AN ORDINANCE APPROVING A LEASE WITHIN EAGLE RIM PARK FOR A ZIP LINE LAUNCH AND A LEASE FOR A ZIP LINE LANDING WITHIN LAS COLONIAS PARK

Recitals:

The City of Grand Junction (City) and Bonsai Aerial Adventures (Bonsai) have agreed to certain terms and conditions by which the City will lease certain property within Eagle Rim and Las Colonias Parks for use as a zip line launch and landing. Those terms and conditions have been reduced to an agreement (Lease) by and between the City and Bonsai. The zip line launch and landing shall be referred collectively in the Lease as the "Bonsai Improvements" or may, as the context requires be referred to as "Eagle Rim Improvements" which are comprised of the zip line launch and the "Las Colonias Improvement" which is comprised of the zip line landing.

The primary term of the Lease shall be twenty-five years, with consideration for a renewed lease thereafter for a term to be then determined.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO AS FOLLOWS:

Section 1. *Approval.* The Lease agreement for the Bonsai Improvements and the attached Exhibits, the legal descriptions, are hereby approved. The City Manager is hereby authorized to execute the Lease by and on behalf of the City of Grand Junction, Colorado.

Section 2. *Severability.* If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 3. *Safety Clause.* The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

PASSED, APPROVED AND ADOPTED ON FIRST READING this 3rd day of November 2021 by the City Council of the City of Grand Junction, Colorado.

PASSED AND APPROVED this 17th day of November 2021.


C.B. McDaniel
President of the City Council

Attest:


Wanda Winkelmann
City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5041 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 3rd day of November 2021 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 17th day of November 2021, at which Ordinance No. 5041 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 19th day of November 2021.



Deputy City Clerk

Published: November 5, 2021
Published: November 19, 2021
Effective: December 19, 2021



ZIP LINE LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is executed this 23 day of ^{December} , 2021, by and between the City of Grand Junction, a Colorado home rule municipal corporation ("City"), whose address is 250 North 5th Street, Grand Junction, CO 81501, and Bonsai Aerial Adventures – Grand Junction, LLC, a Colorado limited liability company ("Lessee"), whose address is 1601 Riverfront Drive, Grand Junction, CO 81501.

Section 1. General

1.1 Consideration. City enters into this Lease in consideration of the payment by Lessee of the rents herein reserved and the keeping, observance and performance by Lessee of the covenants and agreements of Lessee herein contained.

1.2 Purpose. The purpose of this Lease is to permit Lessee to establish a dual zip line ("Zip Line") to be used for research and development, new and existing client marketing, demonstrations and training classes, and public use ("Zip Line Activities") within a portion of the Eagle Rim and Las Colonias Parks. Such Zip Line Activities shall be undertaken in accordance with the Cooperative Agreement dated March 29, 2018 as amended ("Cooperative Agreement") as supplemented by the Operational Plan ("Plan") which Plan is included by this reference as if fully set forth. The facilities to operate the Zip Line Activities installed or constructed by Lessee shall be referred to as the "Bonsai Improvements."

Section 2. Leased Premises and Term

2.1 Leased Premises. City hereby leases to Lessee, and Lessee hereby leases from City, the premises as defined in the Exhibits, attached, ("Leased Premises") for the Lease Term, subject to existing covenants, conditions, restrictions, easements, and encumbrances affecting the same. The employees, agents, and contractors of Lessee shall be afforded rights to access, operate and maintain the Leased Premises and the Zip Line Activities as agents of the Lessee under this Lease.

2.2 Lease Term. The primary term of this Lease shall be twenty-five years, commencing January 1, 2022 and ending January 1, 2046 ("Primary Term"). Upon the expiration of the Primary Term, if Lessee is not in default of this Lease, Lessee shall have the option to extend the lease term for one additional 15-year term, upon the same terms and conditions set forth in the Lease ("Option Term"). The Primary Term and Option Term, if

applicable, shall be referred to herein as the "Lease Term." The Primary Term shall automatically extend into the Option Term, unless Lessee gives notice to City of its election to terminate the Lease Term. Such notice shall be given to City not sooner than 180 days and not later than 90 days prior to the expiration of the Primary Term. As used herein, a "Lease Year" is the 12 months commencing on the anniversary date of the commencement of the Lease Term.

2.3 Covenant of Quiet Enjoyment. City covenants and agrees that, provided Lessee is not in default and keeps, observes and performs the covenants and agreements contained in this Lease, Lessee shall have quiet and peaceable possession of the Leased Premises over which the City has authority and such possession shall not be disturbed or interfered with by City. Lessee acknowledges and agrees that the Las Colonias Development Corporation ("LCDC") has authority over a portion of the Leased Premises and that a separate lease agreement and covenants will need to be secured from LCDC. Lessee, its employees, agents, and contractors and customers, shall have access to the Leased Premises only during normal hours of Eagle Rim and Las Colonias Parks, as prescribed in the Grand Junction Municipal Code (GJMC), and in accordance with the City and LCDC lease agreements.

2.4 Condition of Leased Premises. Lessee has inspected the condition of Leased Premises prior to execution of this Lease and accepts the same as being suitable for the intended use, which includes the construction of the Bonsai Improvements. Lessee covenants and agrees that, upon taking possession of the Leased Premises, Lessee shall be deemed to have accepted the Leased Premises "as is." The City makes no warranty or representation, express or implied, in respect to any of the Leased Premises or any part thereof either as to its fitness for use, design or condition for any particular use or purpose, or otherwise, as to the suitability of the Leased Premises for construction or maintenance of the Bonsai Improvements necessary or required to conduct the Zip Line Activities, it being agreed that all such risks are to be borne by Lessee.

2.5 Improvements to Leased Premises. No improvements shall be made to or constructed upon the Leased Premises unless and until the final plans and specifications for such improvements have been approved by City and LCDC. The Bonsai Improvements shall be constructed in strict accordance with such approved plans and specifications. Lessee shall not make any further alterations, additions or improvements to the Leased Premises and/or the Bonsai Improvements without obtaining the written consent of the City, which consent shall not be unreasonably withheld.

2.6 Permitted Use. Lessee shall use and occupy the Leased Premises solely for the purpose of constructing the Bonsai Improvements and conducting the Zip Line Activities. The Zip Line Activities shall be undertaken in accordance with the Cooperative Agreement and the Plan. Lessee shall submit an updated Plan for City review and approval biannually, by the beginning of odd numbered years. Both parties reserve the right to review and request amendments or changes to the Plan during any Lease Year, as determined to be reasonably necessary. The Leased Premises shall not be used for any other purpose without the prior written consent of City, which City may withhold at its sole discretion. Lessee shall not use the Leased Premises for any other commercial activity other than the Zip Line Activities unless authorized by City through the issuance of a Special Events permit or amendment of this Lease.

2.7 Public Use of Leased Premises. The general public shall have access to use the Bonsai Improvements in accordance with the Plan. Lessee shall not be in violation or default of this Lease to the extent that it limits public access to those areas of the Leased Premises that Lessee and City agree in writing be inaccessible to the general public.

Section 3. Rent for Leased Premises

3.1 Rent.

Lessee covenants and agrees to pay to City, without offset, deduction or abatement, Rent for the full Lease Term. "Rent" is and shall be comprised of two parts, including Base Rent and Participation Rent.

Base Rent shall be established at prevailing commercial value of leasable land at Las Colonias at the time of execution and shall use the prevailing method of assessment of commercial land lease rate which is 4.5% of the Leased Premises per square foot sale value on an annual basis. Based on such methodology, the initial Base Rent shall be \$1,069.00 per year. Base Rent shall be due on January 2 of each Lease Year. Participation Rent shall be paid at a rate of: \$2 per adult participant, and \$1 per each youth participant when ticketed at full price; \$1 per adult or \$.50 per youth ticket sold under promotional or special rates; and no Participation Rent shall be due for School District 51 trips given preferential rates as part of school sponsored outings. Biannually on even numbered years, a 4% escalator shall be added to Base Rent and Participation Rent. School District 51 schools within the City Limits will be granted preferential rates for Zip line trips as part of school sponsored outings. Participation Rent shall be paid in arrears for each Lease Year by March 31 for the prior Lease Year. City shall have the right to review during Lessee's normal business days and

hours on three days' written notice Lessee's participant records/records used to determine Participant Rent payable to the City.

3.2 Place of Payments.

Rent and other sum(s) payable by Lessee to City under this Lease and/or the Plan shall be paid to City at the address set forth above, or such other place as City may, from time to time, designate by written notice delivered by certified mail.

3.3 Base Rent Absolute.

Base Rent shall be absolutely payable without offset, reduction or abatement for any cause except as otherwise specifically provided in this Lease; that the Lease shall continue for the full Lease Term notwithstanding any occurrence preventing or restricting use and occupancy of the Leased Premises, including any damage or destruction affecting the Leased Premises, and any action by governmental authority relating to or affecting the Leased Premises, except as otherwise specifically provided in this Lease.

Section 4. Insurance.

4.1 Casualty and Liability Insurance. Lessee agrees to procure and maintain, at its own cost, the following policies of insurance. Lessee shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Lease by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. Lessee shall procure and maintain and shall cause each subcontractor of the Lessee to procure and maintain the minimum insurance coverages listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City. All coverage shall be continuously maintained from the date of commencement of this Lease. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

A. Workers Compensation insurance shall be held during the Lease Term by the Lessee to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under this Lease. The Lessee's Employer's Liability insurance shall have a minimum limit of FIVE HUNDRED THOUSANDS DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy for each employee.

B. Commercial General Liability insurance shall be held during the Lease Term by the Lessee with a minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) for each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to the Leased Premises and the Zip Line Activities and operations in support or furtherance thereof on the Leased Premises. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interest's provision.

C. Only if automobiles are used in connection with the Zip Line Activities, Automobile Liability Insurance shall be held during the Lease Term by the Lessee with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the Zip Line Activities. The policy shall contain a severability of interest's provision.

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

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

Failure on the part of Lessee to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City may in its discretion procure or renew any such policy or any extended connection therewith, and all monies so paid by the City shall be repaid by Lessee to the City upon demand, or the City may offset the cost of the premiums against any monies due to Lessee from the City.

The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et. seq.*, as from time to time amended, or otherwise available to City, its officers, or its employees,

Section 5. Utility, Operating, Maintenance and Repair Expenses.

5.1 Utility Charges. Lessee shall promptly pay all fees, taxes, costs and charges for all services, including trash, water, sewer, communications, and any other service(s) for Lessee's Zip Line Activities. If Lessee uses a service provided by City, Lessee shall pay City the fee(s) and charge(s) for the services.

5.2 Operating Expenses. Lessee covenants and agrees to pay all costs and expenses of the Zip Line Activities, including costs and expenses for utilities, labor, equipment and supplies associated with the Zip Line.

5.3 Maintenance and Repair Expenses. Lessee shall make, at Lessee's sole expense, all repairs to the Bonsai Improvements necessary to maintain the Bonsai Improvements in a safe operating condition in conformance with any regulatory requirements. Any damage or destruction to the Bonsai Improvements shall be promptly repaired or replaced by Lessee. This includes any and all vandalism, repairs of which must be completed by the Lessee. Lessee shall be responsible for constructing any necessary access (sidewalks, trails, paths) leading to the Bonsai Improvements located on the Leased Premises and maintaining the same in a safe condition. The City shall maintain the pathways and park lands not located within the Leased Premises to City standards.

5.4 Engineering. Engineering plans and drawings, operational manuals, inspection records and certifications of Lessee related to the Zip Line Activities shall be made available to City for inspection. All improvements shall be appropriate engineering and permitted by Mesa County Building Department and any other regulatory agency having jurisdiction.

Section 6. Other Covenants of Lessee

6.1 Use by Lessee. Lessee covenants and agrees to use the Leased Premises solely for the Zip Line Activities, operated in accordance with the Plan and in compliance with all rules and regulations, and any and all other zoning or ordinance restrictions required by any applicable governmental authority. The Zip Line Activities shall be conducted in a business-like manner and in conformance with all applicable regulations.

6.2 Compliance with Laws. Lessee covenants and agrees that nothing shall be done or kept on the Leased Premises in violation of any law, ordinance, order, rule or regulation of any governmental authority having jurisdiction and that the Leased Premises shall be used, kept and maintained in compliance with any such law, ordinance, order, rule or regulation.

6.3 Compliance with Insurance Requirements. Lessee covenants and agrees that nothing shall be done or kept on the Leased Premises which might impair or increase the cost of insurance maintained with respect to the Leased Premises or the Property, which might increase the insured risks or which might result in cancellation of any such insurance.

6.4 No Waste, Hazardous Waste, Hazardous Substances or Impairment of Value. Lessee covenants and agrees that nothing shall be done or kept on the Leased Premises which might impair the value of the Leased Premises or which would constitute waste or Hazardous Substances except that Lessee may use Hazardous Substances in the Leased Premises. The term Hazardous Substance as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release is either (i) regulated or monitored by any governmental authority or (ii) a basis for potential liability of City to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and or crude oil or any products, by products or fractions thereof.

6.5 No Hazardous Use. Lessee covenants and agrees that nothing shall be done or kept on the Leased Premises and that no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Leased Premises which might be unsafe or hazardous to any person or property.

6.6 No Nuisance, Noxious or Offensive Activity. Lessee covenants and agrees that no noxious or offensive activity shall be carried on upon the Leased Premises nor shall anything be done or kept on the Leased

Premises which may be or become a public or private nuisance or which may cause embarrassment, disturbance, or annoyance to others on adjacent or nearby property.

6.7 No Mechanic's Liens. Lessee covenants and agrees not to permit or suffer, and to cause to be removed and released, any mechanic's, materialmen's or other lien(s) on account of supplies, machinery, tools, equipment, labor or material furnished or used in connection with the construction, alteration, improvement, addition to or repair of the Leased Premises by, through or under Lessee. Lessee shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that, on final determination of the lien or claim for lien, Lessee shall immediately pay any judgment rendered, with interests and costs and will cause the lien to be released and any judgment satisfied.

6.8 Assignment and Subletting. Lessee shall not have the right to make or permit a Transfer by Lessee, as defined herein, without the City's prior written consent, which consent may be withheld by City in its sole and absolute discretion. For purposes of this Lease, a "Transfer by Lessee" shall include an assignment of this Lease, a sublease of all or any part of the Leased Premises or any assignment, sublease, transfer, mortgage, pledge or encumbrance of all or any part of Lessee's interest under this Lease or in the Leased Premises, by operation of law or otherwise, or the use or occupancy of all or any part of the Leased Premises by anyone other than Lessee. Any such transfer shall not release Lessee of its obligations under this Lease. At the time the request for a Transfer is made, the proposed sub-Lessee or assignee shall submit complete financial statements and plan obligations to City.

6.9 Payment of Income and Other Taxes. Lessee covenants and agrees to pay promptly when due all personal property taxes on personal property of Lessee on the Leased Premises and all federal, state and local income taxes, sales taxes, use taxes, Social Security taxes, unemployment taxes and taxes withheld from wages or salaries paid to Lessee's employees.

6.10 City Right to Inspect and Leased Premises. Lessee covenants and agrees that City and the authorized representatives of City, including City's self-insurance pool, Colorado Intergovernmental Risk Sharing Agency (CIRSA), shall have the right but not the obligation to enter the Leased Premises at any reasonable time during ordinary business hours for the purposes of inspecting, repairing or maintaining the same or performing any obligations of Lessee, which Lessee has failed to perform.

City shall be respectful of any customers present and shall schedule repair or maintenance, showing or inspection with Lessee prior to any such repair, showing or inspection.

6.11 Possible Acquisition by City and Possible Removal of Lessee's Equipment. At the end of the Lease Term, the City may purchase the Bonsai Improvements and all associated equipment at the then appraised value. If City chooses not to purchase, Lessee covenants and agrees to remove, at or prior to the expiration of the Lease Term and the lease extension if exercised, all of Lessee's Equipment, as hereinafter defined. "Lessee's Equipment" shall mean the Bonsai Improvements and all equipment, apparatus, machinery, signs, furniture, furnishings and personal property used in the Zip Line Activities. If such removal shall injure or damage the Leased Premises, Lessee covenants and agrees, at its sole cost and expense, at or prior to the expiration of the Lease Term, to repair such injury and damage in good and workmanlike fashion and to place the Leased Premises in the same condition as the Leased Premises are at the effective date of this Lease, except for any below grade improvements which shall be covered to grade.

6.12 Waiver by Lessee. Lessee waives and releases any claims Lessee may have against City or City's officers, agents or employees for loss, damage or injury to person or property sustained by Lessee or Lessee's officers, agents, employees, guests, invitees or anyone claiming by, through or under Lessee resulting from any cause whatsoever other than the negligence or misconduct of City.

6.13 Marketing and Advertising. Commercial activity on public property is regulated by the Grand Junction Municipal Code. Lessee shall not erect, place or install any signage on the Leased Premises or conduct any commercial activity, other than the permitted Zip Line Activities, without obtaining written approval in advance from the City. Lessee may place temporary signage associated with a special event without prior written approval so long as Lessee removes the temporary signage within 72 hours after posting such sign. Lessee is responsible for obtaining all appropriate permits and approvals for signage.

6.14 Not Employees. Lessee's employees or its contractors are not employed by City. As a condition of this Lease, Lessee agrees that safety is paramount and all its employees and contractors will be subject to a driving record check, criminal background check and random drug testing.

Section 7. Defaults by Lessee

7.1 Defaults Generally. Each of the following shall constitute a "Default by Lessee" under this Lease:

A. Failure to Pay Rent or Other Amounts. A Default by Lessee shall exist if Lessee fails to pay when due, Rent or any other amounts payable by Lessee under the terms of this Lease, and such failure shall continue for 5 days after written notice from City to Lessee of such failure, provided however, that Lessee shall not be entitled to more than two notices of such failure during any Lease Year and if, after two such notices are given in any lease year, Lessee fails, during such Lease Year, to pay any such amounts within five (5) days of when due, such failure shall constitute a Default by Lessee without further notice by City.

B. Deviation from Plan.

1. A Default by Lessee shall exist if Lessee materially deviates from the standards (including but not limited to staff, days and hours of operation, and services to be provided) as set forth in the Plan beyond any cure period set forth in this section. In the event: (a) a deviation from the Plan continues for a period of 30 days after written notice from City to Lessee of such deviation during any Lease Year; or, (b) if such deviation cannot be reasonably cured within such 30-day period, if Lessee shall not in good faith commence to cure such deviation within such 30-day period or shall not diligently proceed therewith to completion. Lessee shall not be entitled to more than two notices of deviation during any Lease Year and if, after two such notices are given in any Lease Year, Lessee fails to cure such deviation within 30 days, such deviation shall constitute a Default by Lessee without further notice by City.

2. A Default by Lessee shall exist if Lessee fails to meet the minimum standard of 4,000 public Zip Line rides in a Lease Year. Upon receipt of notice by City of such Default by Lessee, Lessee shall have 12-months to cure. Should Lessee fail to meet the minimum standard of 4,000 public Zip Line rides for two consecutive years, City shall have the right to exercise any of its remedies set forth in Section 8, below.

C. Violation of Lease Terms. A Default by Lessee shall exist if Lessee breaches or fails to comply with any agreement, term, covenant or condition in this Lease applicable to Lessee, and such breach or failure, to comply continues for a period of 30 days after written notice thereof by City to Lessee, or, if such breach or failure to comply cannot be reasonably cured within such 30-day period, if Lessee shall not in good faith commence to cure such breach or failure to comply within such 30-day period or shall not diligently proceed therewith to completion.

D. Transfer of Interest Without Consent. A Default by Lessee shall exist if Lessee's interest under this Lease or in the Leased Premises shall be transferred to any other party without City's prior written consent.

Section 8. City's Remedies

8.1 Remedies Generally. Upon the occurrence of any Default by Lessee, City shall have the right, at City's election, then or at any time thereafter, to exercise any of the remedies set forth in this Section 8.

8.2 Cure by City. In the event of a Default by Lessee, City may, at City's option, but without obligation to do so, and without releasing Lessee from any obligations under this Lease, make any payment or take any action as City may reasonably deem necessary or desirable to cure any such Default by Lessee in such manner and to such extent as City may reasonably deem necessary or desirable. City may do so after providing notice to Lessee, and Lessee's failure to cure the Default within twenty (30) days after notification. Lessee covenants and agrees to pay to City, within 30 days after demand, all reasonable advances, costs and expenses of City in connection with the making of any such payment or the taking of any such action, including reasonable attorney's fees, together with interest as hereinafter provided, from the date of payment of any such advances, costs and expenses by City. Action taken by City may include commencing, appearing in, defending or otherwise participating in any action or proceeding and paying, purchasing, contesting or compromising any claim, right, encumbrance, charge or lien with respect to the Leased Premises which the City, in its reasonable discretion, may deem necessary or desirable to protect its interest in the Leased Premises and under this Lease.

8.3 Termination of Lease and Damages. In the event of a Default by Lessee, City may terminate this Lease, effective at such time as may be specified by written notice, delivered via certified mail, to Lessee, and demand (and, if such demand is refused, recover) possession of the Leased Premises from Lessee. If the City exercises this option, the City shall pay the Lessee for the current appraised value of improvements. In the event of termination of the Lease each party shall bear its own attorney fees and costs.

8.4 Repossession and Re-letting. In the event of Default by Lessee, City may reenter and take possession of the Leased Premises or any part thereof, without demand or notice, and repossess the same and expel Lessee and any party claiming by, under or through Lessee, and remove the Improvements as may be necessary, without being liable for

prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Leased Premises by City shall be construed as an election by City to terminate this Lease unless a written notice, delivered via certified mail, of such intention is given to Lessee. No notice from City hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by City to terminate this Lease unless such notice specifically so states. City reserves the right, following any reentry or re-letting, to exercise its right to terminate this Lease giving Lessee such written notice, delivered via certified mail, in which event the Lease will terminate as specified in said notice.

8.5 Suits by City. Upon Default by Lessee, actions or suits for the recovery of amounts and damages payable under this Lease may be brought by City from time to time, at City's election, and City shall not be required to await the date upon which the Lease Term would have expired to bring any such action or suit.

8.6 Attorneys' Fees and Costs. The prevailing party in any action or proceeding to enforce or interpret this Lease shall be awarded its reasonable costs and expenses, including attorney fees and costs. In the event of termination of the Lease each party shall bear its own attorney fees and costs.

8.7 Late Payment Penalty. Lessee covenants and agrees to pay to City a late payment penalty in the amount of 5% per month of any installment of Rent that Lessee fails to pay within five (5) days of when due.

8.8 Remedies Cumulative. Exercise of any of the remedies of City under this Lease shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to City at law or in equity.

Section 9. Surrender and Holding Over

9.1 Surrender upon Lease Expiration. Upon the expiration or earlier termination of this Lease, or on the date specified in any demand for possession by City after any Default by Lessee, Lessee covenants and agrees to surrender possession of the Leased Premises to City, in the same condition as when Lessee first occupied the Leased Premises, except for any below grade improvements, which shall be covered to grade level.

Section 10. Miscellaneous

10.1 No Implied Waiver. No failure by City to insist upon the strict performance of any term, covenant or agreement contained in this Lease, no failure by City to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any Default by Lessee, shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy, or a waiver of any such default by Lessee.

10.2 Survival of Provisions. Notwithstanding any termination of this Lease, the same shall continue in force and effect as to any provisions hereof which require observance or performance by City or Lessee subsequent to termination.

10.3 Covenants Independent. This Lease shall be construed as if the covenants herein between City and Lessee are independent, and not dependent, and Lessee shall be entitled to any offset against City permitted by Colorado Law, if City fails to perform its obligations under this Lease.

10.4 Covenants as Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

10.5 Lessee's Remedies. Lessee may bring a separate action against City for any claim Lessee may have against City under this Lease; provided Lessee shall first give written notice, via certified mail, thereof to City and shall afford City a period of twenty (20) days to cure any such default, or, if such default cannot be reasonably cured within such 20-day period, then City shall in good faith commence to cure such default within such 20-day period. In addition, Lessee shall send notice of such default by certified or registered mail, postage prepaid, to the holder of any mortgage or deed of trust covering the Leased Premises or any portion thereof of whose address Lessee has been notified in writing and shall afford such holder a reasonable opportunity to cure any default on City's behalf. Lessee shall be entitled to remedies under Colorado Law of any default by City hereunder.

10.6 Recording Memorandum. This Lease shall not be recorded without the express written consent of the City. If the City desires or consents to the recording of this Lease, the parties shall execute a Recording Memorandum containing the names of the parties, a description of the Leased Premises and the Lease Term.

10.7 Notices and Demands. All notices, demands or billings under this Lease shall be in writing, and shall be deemed properly given and received when actually given and received or 3 business days after mailing,

if sent by registered or certified United states mail, postage prepaid, addressed to the party to receive the notice at the address set forth for such party in the first paragraph of this Lease or at such other address as either party may notify the other of in writing.

10.8 Time of the Essence. Time is of the essence under this Lease, and all provisions herein relating thereto shall be strictly construed.

10.9 Captions for Convenience. The headings and captions hereof are for convenience only and shall not be considered in interpreting the provisions hereof.

10.10 Severability. If any provision of this Lease shall be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and there shall be deemed substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

10.11 Governing Law. This Lease shall be interpreted and enforced according to the laws of the State of Colorado.

10.12 Entire Agreement. This Lease and any exhibits refined to herein, constitute the final and complete expression of the parties' agreements with respect to the Leased Premises and Lessee's occupancy thereof. Each party agrees that it has not relied upon or regarded as binding any prior agreements, negotiations, representations, or understandings, whet her oral or written, except as expressly set forth herein.

10.13 No Oral Amendment or Modifications. No amendment or modification of this Lease, and no approvals, consents or waivers by City under this Lease, shall be valid or binding unless in writing and executed by the party to be bound.

10.14 Relationship of City and Lessee. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of City and Lessee.

10.15 Authority of Lessee. Each individual executing this Lease on behalf of Lessee represents and warrants that he is duly authorized to deliver this Lease on behalf of Lessee and that this Lease is binding upon Lessee in accordance with its terms.

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed the day and year first above written.

BONSAI OPERATIONAL AND MAINTENANCE PLAN

Name of Business.

The City agrees that Bonsai Aerial Adventures – Grand Junction, LLC (“Lessee”) may operate its Zip Line Activities under a suitable tradename that is yet to be determined.

Lease Agreement.

The City and Lessee have entered into a separate Lease Agreement which terms are referenced within this Operational Plan. All operation and maintenance shall be performed in accordance with the 03/2019 ANSI-ACCT Standards, as such may be amended, revised or readopted. As leading industry experts, any operational, maintenance, training, and inspection parameters shall be developed by Lessee through the use of a qualified person. Lessee reserves the right to change or modify its operational and maintenance plan for any reason at any time. CIRSA shall also have oversight to evaluate these standards

Special Events.

Lessee acknowledges that its use of the Leased Premises for normal operations is distinguished from its use of the Leased Premises for or during special events at Las Colonias Park and/or Eagle Rim Park. The special events schedule and expectations will be reviewed and approved by both parties on an annual basis. Lessee acknowledges that there may be special events that prohibit the operation of the zip lines that are adjacent to one another during the duration of the event(s). Lessee reserves the right to charge a fee for non-operation requests and/or to deny non-operation requests based off of operational demand. City and Lessee have determined that ten days is the maximum number of special event days that may exclude the operation of the Zip Line Activities. City shall provide Lessee with 30 days' notice of any special event.

Lessee has the right to operate during and/or host its own special events as follows: Advanced requests/reservations from the public must be approved by both the Lessee and the City including the following uses:

- parties and ceremonies
- school group programs
- organizational development programs

- other occasions as deemed appropriate by Lessee
- Advanced requests from the City to the Lessee requires 30 days of notice
 - Local events/concerts/festivals, etc.
- Special zip line events as deemed appropriate by Lessee
 - nighttime zipping events. All such events must comply with existing City ordinance including but not limited to park hours and noise ordinances
 - early bird zipping events. All such events must comply with existing City ordinance including but not limited to park hours and noise ordinances
 - holiday/seasonal zipping events

Pricing.

Pricing for the Zip Line Activities for the public shall be reviewed and considered by the City and Lessee on an annual basis. Tiered pricing, resident discounts, group and special package deals are encouraged to provide opportunities appropriate for a variety of family income levels. Participation Rent shall be paid at a rate of \$2 per adult participant, and \$1 per each youth participant when ticketed at full price; and \$1 per adult or \$.50 per youth ticket sold under promotional or special rates; and no Participation Rent shall be due for School District 51 trips given preferential rates as part of school sponsored outings. Biannually on even numbered years, a 4% escalator shall be added to these rates. School District 51 schools within the City Limits will be granted preferential rates for Zip line trips as part of school sponsored outings. The City has reviewed Lessee's pricing structure set forth and has determined that the pricing is reasonable for the services to be provided. Lessee may, with the City's advance agreement, offer group rates, annual passes, punch passes, loyalty pricing and ride packages. All of these packages shall be based off the per zip pricing found below.

Persons 17 years of age and under: \$16 plus \$2 fee = \$18

Persons 18 years of age and over: \$19 plus \$2 fee = \$21

In accordance with the Cooperative Agreement between the City and Lessee, planning for physical improvements on the Lease Premises require coordination with Lessee. If City and Lessee agree at any time that the location and/or operation of any Bonsai Improvement(s) is unsatisfactory to

the City, any cost for modification of any of the Bonsai Improvements will be borne solely by Lessee.

Non-Public Operation.

Lessee may operate conduct Zip Line Activities for non-public purposes as deemed appropriate by Lessee. Such non-public Zip Line Activities shall be exempt from the Participation Rent and this Plan and any revenue derived from non-public Zip Line Activities shall be the sole property of Lessee. Non-public Zip Line Activities include:

- staff training
- open enrollment training
- Research & Development purposes
- additional special trainings as requested and approved in advance with local entities such as law enforcement, fire department, EMS, etc.

In any event nonpublic Zip Line Activities shall comprise not more than 30% of the time scheduled for public Zip Line Activities during regular, open seasons described in the "Operational Requirements" paragraph below.

Financial Performance.

Information, including but not limited to total rides by year and month, about the operation of the Zip Line Activities shall be provided to the City on an annual basis by February 1 reflecting the previous Lease Year's ridership.

Inspection and Certification Requirements.

All Zip Line Activities shall be inspected and in conformance with the State of Colorado Division of Public Safety/Division of Oil and Public Safety requirements. Inspections shall be performed by a third-party inspector, ACCT (Association for Challenge Course Technology) certified, or an inspector associated with a qualified and approved company. CIRSA may also inspect the Zip Line Activities as CIRSA deems necessary. Lessee shall not use the Leased Premises in violation of any laws or for any purpose that is unlawful, unsafe and hazardous or in violation of any law or regulations. The Lessee shall not place, dispose of or store any material or substance on the Leased Premises that is illegal, hazardous or toxic, and shall not permit any other person to do so.

Operational Requirements.

It is desirable for both the City and Lessee to have a successful operation and meet certain performance standards. Lessee shall develop and execute a business plan, which will produce at least 4,000 annual rides per calendar year. One single Zip Line ride is counted as one ride and dual Zip Line rides are counted as two rides.

Hours of operation will vary based on seasonal demand, public interest, and weather conditions. Lessee will use its best efforts to provide the following hours of public Zip Line Activities and operations:

- Memorial Day through Labor Day (Open 7 Days a Week)
 - Sunday – Wednesday: 12 pm – 8 pm
 - Thursday – Saturday: 12 pm – 10 pm
- Spring/Fall (Exact Dates TBD):
 - Friday – Sunday: 10 am – 6 pm
 - Monday – Thursday: Closed/Reservations Only
- Winter (Exact Dates TBD): Closed

Lessee will make reasonable attempts to make sure all information with regards to hours of operation and prices are up-to-date, and the operation shall be open for business as listed on website, signs and any other advertisements and/or marketing material. Lessee reserves the right to temporarily shut down Zip Line Activities due to low public demand, short staffing, weather, and technical issues. Change in operating hours shall be communicated to the public via property signage, website, social media, etc. The City logo shall be included in all marketing material to include the words: “in cooperation with the City of Grand Junction”.

Lessee shall maintain a ratio of two guides to ten guests or better and offer customer evaluations of each guide’s performance. Professional behavior is expected of each guide. A report reflecting and capturing customer satisfaction data will be created annually. This shall be included and provided to the City with the ridership information by February 1st.

Maintenance Requirements.

Lessee is responsible for maintenance of the Leased Premises and Bonsai Improvements. Lessee is required to keep the Bonsai Improvements in safe and effective operating condition for the duration of the lease. Lessee shall submit to

the City by August 1, 2022 an industry typical maintenance schedule and plan. Maintenance shall be equivalent to or better than that of City for its parks operations. Lessee shall not be held responsible, financially or otherwise, any City construction or maintenance projects in or around the Leased Premises, including any surrounding park or trail construction project or maintenance.

Lessee Shall Provide.

Lessee will design, construct, and operate and maintain the Bonsai Improvements necessary to conduct the Zip Line Activities contemplated by the Lease, the Plan and the Cooperative Agreement.) Operation and maintenance obligations include but are not limited to providing trained staff, insurance at City established coverages, inspections and repairs.

The Agreement includes certain performance standards to ensure that the operation and services are provided in a consistent and appropriate manner. The Operational Plan includes more specific performance and operational standards and will be submitted to the Director of Parks and Recreation on an annual basis. If minimum performance standards are not met, the City has the option to terminate the Lease.

The City Shall Provide.

Shared use of restrooms, parking, trails, and other amenities of the Parks.

Directional signage in collaboration with Lessee.

The "Leased Premises" – real property descriptions for the launch for the Zip Line at Eagle Rim Park and the landing tower at Las Colonias Park.

Exhibit A

A lease parcel of land being a portion of that parcel described in a deed filed under Reception Number 1796705, said lease parcel located in the SE 1/4 NW 1/4 of Section 24, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado and being more particularly described as follows:

Commencing at the Center-West (C-W) 1/16 corner of said Section 24, and assuming the south line of said SE 1/4 NW 1/4 of Section 24 bears S89°56'29"W; thence N83°06'01"E a distance of 291.94 feet to the Point of Beginning; thence N9°32'02"W a distance of 43.55 feet to the beginning of a curve concave to the southeast having a radius of 150.20 feet, a central angle of 06° 42' 41" and a chord which bears N57°16'39"E 17.58 feet; thence northeasterly along said curve a distance of 17.59 feet; thence S43°44'13"E a distance of 14.67 feet; thence S9°32'02"E a distance of 39.58 feet; thence S50°27'58"W a distance of 13.65 feet; thence N66°53'29"W a distance of 14.95 feet to the Point of Beginning, said parcel containing 1235 Square Feet or 0.028 Acres more or less.

Authored by: Renee B. Parent, CO LS38266
City Surveyor
City of Grand Junction

ABBREVIATIONS

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
R.O.W.	RIGHT OF WAY
SEC.	SECTION
T.	TOWNSHIP
R.	RANGE
Rec.	Reception
No.	Number

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder and monuments as shown. This sketch does not constitute a legal boundary survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY: R. B. P.
DATE: 08-31-2021
SCALE: N/A
APPR. BY: T.P.

Portion of 2945-243-00-272
Reception Number 1796705
Located in the NW $\frac{1}{4}$ of Sec. 24, T. 1S., R. 1W.
Ute Meridian, City of Grand Junction
Mesa County, Colorado

CITY OF
Grand Junction
COLORADO

Exhibit B

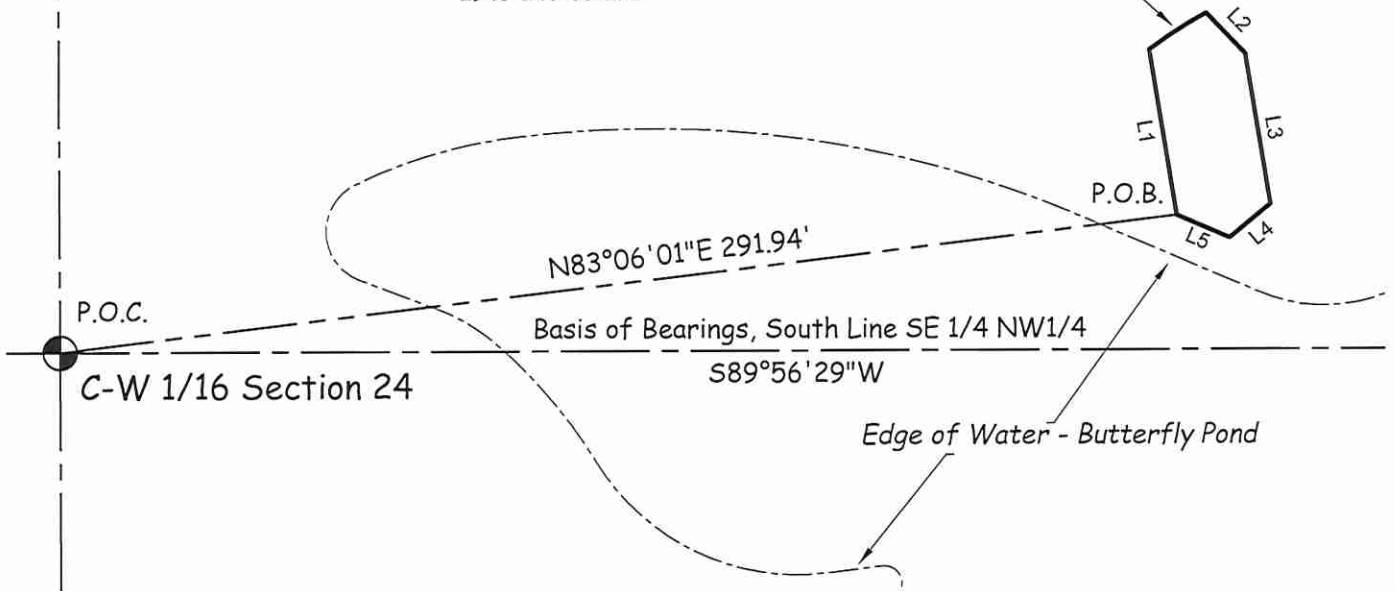
Riverfront Drive

Line Table

LINE	BEARING	HORIZ DIST
L1	N 9°32'02" W	43.55'
L2	S 43°44'13" E	14.67'
L3	S 9°32'02" E	39.58'
L4	S 50°27'58" W	13.65'
L5	N 66°53'29" W	14.95'

Rec. No. 1796705
 1625 Riverside Drive
 City of Grand Junction
 Parcel No.
 2945-243-00-272

N 57°16'39" E
 LC=17.58'
 R=150.20'
 A=17.59'
 D=6°42'41"



ABBREVIATIONS

- P.O.C. POINT OF COMMENCEMENT
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1 inch = 50 ft.

Lineal Units = U.S. Survey Foot



DRAWN BY: R. B. P.
 DATE: 08-31-2021
 SCALE: 1" = 50'
 APPR. BY: T.P.

Portion of 2945-243-00-272
 Reception Number 1796705
 Located in the NW 1/4 of Sec. 24, T. 1S., R. 1W.
 Ute Meridian, City of Grand Junction
 Mesa County, Colorado



Exhibit A

A lease parcel of land being a portion of Lot 2, O.M.M.S. SUBDIVISION FILING ONE, a plat filed for record under Reception Number 2835113, said Lot 2 located in the SW 1/4 of Section 24, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado and being more particularly described as follows:

Commencing at an angle point on the south line of said lot 2, said angle point being the western terminus of that line labeled as N89°52'14"W 700.95' on said record plat, and assuming the portion of the south line of Lot 2 extending easterly from the Point of Commencement bears N89°52'14"W with all other bearings contained herein being relative thereto; thence N40°35'04"W a distance of 186.26 feet to the Point of Beginning; thence N53°38'17"W a distance of 12.33 feet; thence N42°43'55"W a distance of 6.20 feet; thence N33°44'58"W a distance of 6.17 feet; thence N20°09'35"W a distance of 6.16 feet; thence N11°27'09"W a distance of 2.85 feet; thence N3°22'22"W a distance of 4.05 feet; thence N6°21'43"E a distance of 5.22 feet; thence N17°04'48"E a distance of 4.61 feet; thence N27°06'03"E a distance of 6.17 feet; thence N40°34'18"E a distance of 6.17 feet; thence N73°36'06"E a distance of 11.02 feet; thence S9°10'55"E a distance of 18.50 feet; thence S27°35'44"W a distance of 11.05 feet; thence S7°46'23"E a distance of 24.67 feet to the Point of Beginning, said parcel containing 744 Square Feet or 0.017 Acres more or less.

Authored by: Renee B. Parent, CO LS38266
 City Surveyor
 City of Grand Junction



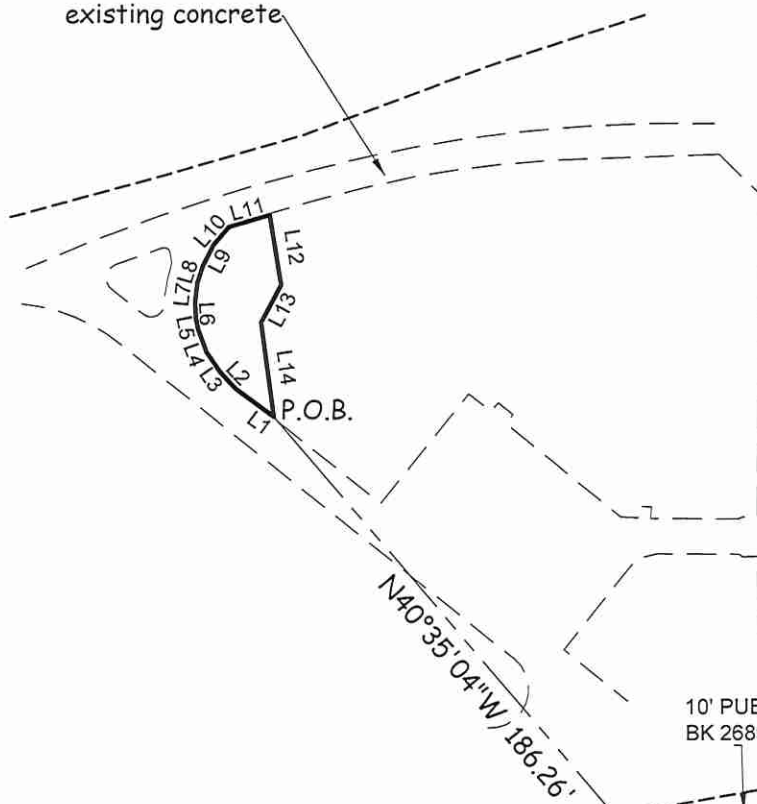
ABBREVIATIONS

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
R.O.W.	RIGHT OF WAY
SEC.	SECTION
T.	TOWNSHIP
R.	RANGE
Rec.	Reception
No.	Number

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder and monuments as shown. This sketch does not constitute a legal boundary survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY: <u>R. B. P.</u> DATE: <u>08-31-2021</u> SCALE: <u>N/A</u> APPR. BY: <u>T.P.</u>	Portion of 2945-243-62-002 LOT 2, O.M.M.S. SUBDIVISION FILING ONE Located in the SW 1/4 of Sec. 24, T. 1S., R. 1W. Ute Meridian, City of Grand Junction Mesa County, Colorado	
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Exhibit B



Line Table

LINE	BEARING	HORIZ DIST
L1	N 53°38'17" W	12.33'
L2	N 42°43'55" W	6.20'
L3	N 33°44'58" W	6.17'
L4	N 20°09'35" W	6.16'
L5	N 11°27'09" W	2.85'
L6	N 3°22'22" W	4.05'
L7	N 6°21'43" E	5.22'
L8	N 17°04'48" E	4.61'
L9	N 27°06'03" E	6.17'
L10	N 40°34'18" E	6.17'
L11	N 73°36'06" E	11.02'
L12	S 9°10'55" E	18.50'
L13	S 27°35'44" W	11.05'
L14	S 7°46'23" E	24.67'

Lot 2, O.M.M.S. Sub.
 Rec. No. 2835113
 2736 Cheyenne Drive
 City of Grand Junction
 Parcel No.
 2945-243-62-002

Lot 1, O.M.M.S. Sub.
 Rec. No. 2835113
 2736 C Road
 Mesa County Valley School District No. 51
 Parcel No. 2945-243-62-001

N89°52'14"W 700.95'
 Basis of Bearings
 CHEYENNE DRIVE

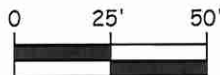
Block 1
 Bookcliff View
 Rec. No. 1115427

N00°07'52"E 17.00'
 589°52'08"E 144.13'

ABBREVIATIONS

- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- R.O.W. RIGHT OF WAY
- SEC. SECTION
- T. TOWNSHIP
- R. RANGE
- Rec. Reception
- No. Number
- HORIZ DIST Horizontal Distance

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1 inch = 50 ft.

Lineal Units = U.S. Survey Foot



DRAWN BY: R. B. P.
 DATE: 08-31-2021
 SCALE: 1" = 50'
 APPR. BY: T.P.

Portion of 2945-243-62-002
 LOT 2, O.M.M.S. SUBDIVISION FILING ONE
 Located in the SW 1/4 of Sec. 24, T. 1S., R. 1W.
 Ute Meridian, City of Grand Junction
 Mesa County, Colorado



BONSAI DESIGN, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader
By _____
F1F907DA060C48D...
Thaddeus Shrader, Managing Member

BONSAI HOLDINGS, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader, Manager - Bonsai Holdings, LLC
By _____
F1F907DA060C48D...
Thaddeus Shrader, Manager

BONSAI DEVELOPMENT, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader, Manager - Bonsai Development, LLC
By _____
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Thaddeus Shrader, Manager

BONSAI AERIAL ADVENTURES – GRAND
JUNCTION, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader, Manager - Bonsai Aerial Adventures - Grand Jun
By _____
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Thaddeus Shrader, Manager

CITY OF GRAND JUNCTION
A Colorado home rule municipal corporation

DocuSigned by:
Greg Caton - City Manager - City of Grand Junction
By _____
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Greg Caton, City Manager

SECOND AMENDMENT TO COOPERATIVE AGREEMENT

THIS SECOND AMENDMENT TO COOPERATIVE AGREEMENT (“Second Amendment”) is entered into this 23 day of December, 2021 by and among GRAND JUNCTION ECONOMIC PARTNERSHIP, INC. (“GJEP”), a Colorado non-profit corporation, THE CITY OF GRAND JUNCTION, a Colorado home rule municipality (“City”) and BONSAI DESIGN, LLC, a Colorado limited liability company (“Bonsai”), BONSAI HOLDINGS, LLC, a Colorado limited liability company (“Bonsai Holdings”), BONSAI DEVELOPMENT, LLC, a Colorado limited liability company (“Bonsai Development”), and BONSAI AERIAL ADVENTURES – GRAND JUNCTION, LLC, a Colorado limited liability company (“Bonsai Aerial Adventures”). BONSAI, BONSAI HOLDINGS, BONSAI DEVELOPMENT and BONSAI AERIAL ADVENTURES shall be collectively referred to as “BONSAI ENTITIES.” Grand Junction Economic Partnership (GJEP), the City and Bonsai Entities may be referred to herein as the “Parties.”

RECITALS

A. The Parties entered into a Cooperative Agreement dated March 29, 2018 (“Agreement”).

B. Bonsai Development broke ground on construction of its headquarters building on the Leased Premises on June 1, 2020, a date past that contemplated in the Agreement. The City fulfilled its commitment under the Agreement and funded the Escrow Account to collateralize the Construction Loan to build the headquarters building.

C. The construction of the headquarters building is complete and the City has been requested to release the \$1,000,000 collateral (“Collateral.”) The City will release the Collateral: i) upon issuance by Mesa County Building Department of an unconditional Certificate of Occupancy (CO) for the headquarters building; and ii) the Bonsai Entities affirmation of binding and enforceable obligation(s) as provided in the Agreement and herein relating to the construction of the Zip Line Improvements.

D. In July 2020 the Agreement was amended (“Amendment”) to provide, among other things, that the final design and construction of the Zip Line Improvements described in Section 3e) of the Agreement and the construction schedule together with an opening date and operations plan, as contemplated by Section 3f) of the Agreement would be complete by August 1, 2021.

E. The August 1, 2021 date was not met. Therefore, the Parties desire to specifically amend the Agreement and the Amendment to confirm the Bonsai Entities commitment to establish revised dates i) for completion of the construction of the Zip Line Improvements Plan as those are described in Section 3e) of the Agreement and as filed for Site

Plan approval with the Grand Junction Community Development Department as SPN 2021-336 and ii) for adoption of an operations plan together with an opening date as contemplated by Section 3f) of the Agreement, all of which are subject to approval and acceptance by the City.

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants below, for which adequate consideration for the making and enforcement of thereof is acknowledged, the Parties agree as follows:

1. Subject to the conditions precedent set forth in Section 3e) of the Agreement and this Second Amendment, Bonsai Entities shall complete construction of the Zip Line Improvements on or before May 31, 2022.

2. Subject to the conditions precedent set forth in Section 3f) of the Agreement, Bonsai Entities shall develop and adopt an operations plan, subject to City review and approval, and establish an opening date for the Zip Line Improvements on or before December 31, 2021.

3. On or before December 31, 2021, the City and the Las Colonias Development Corporation, to the extent reasonably necessary or required, will amend the Master Lease to allow for Bonsai to lease or otherwise occupy real estate for the landing tower for the Zip Line Improvements.

4. On or before December 31, 2021, the City will lease to Bonsai for a period not to exceed 25 years the real estate located in Eagle Rim Park reasonably necessary or required for the launch tower for the Zip Line Improvements.

5. The lease rates for the landing tower and launch tower leases described in Sections 3 and 4 of this Second Amendment shall be commensurate with the square footage of the leased premises and Bonsai's current lease rates with Las Colonias Development Corporation.

6. All terms defined in the Agreement and the Amendment shall have the same meaning when used in this Second Amendment.

7. The foregoing Recitals are and shall be deemed substantive parts of this Amendment.

8. Except as expressly set forth in this Amendment, the Agreement shall continue in full force and effect.

DATED as of the day and year first above written.

BONSAI DESIGN, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader
By _____
F1F907DA060C48D...
Thaddeus Shrader, Managing Member

BONSAI HOLDINGS, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader, Manager - Bonsai Holdings, LLC
By _____
F1F907DA060C48D...
Thaddeus Shrader, Manager

BONSAI DEVELOPMENT, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader, Manager - Bonsai Development, LLC
By _____
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Thaddeus Shrader, Manager

BONSAI AERIAL ADVENTURES – GRAND
JUNCTION, LLC
a Colorado limited liability company

DocuSigned by:
Thaddeus Shrader, Manager - Bonsai Aerial Adventures - Grand Junction
By _____
F1F907DA060C48D...
Thaddeus Shrader, Manager

CITY OF GRAND JUNCTION
A Colorado home rule municipal corporation

DocuSigned by:
Greg Caton - City Manager - City of Grand Junction
By _____
2F1EE1D55758492...
Greg Caton, City Manager

GRAND JUNCTION ECONOMIC PARTNERSHIP,
INC., a Colorado nonprofit corporation

DocuSigned by:
By Steve Jozefczyk, Deputy Director - Grand Junction Economic Part
8ECE5B952F384FE...
Steve Jozefczyk, Deputy Director