

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 _____
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Thaddeus Shrader, Managing Member

BONSAI HOLDINGS, LLC
a Colorado limited liability company

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

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

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

AMENDMENT TO COOPERATIVE AGREEMENT

THIS AMENDMENT TO COOPERATIVE AGREEMENT ("Amendment") is entered into this ____ day of July 2020 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." 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. Bonsai failed to meet the date contemplated in the Agreement for the construction of the Zip Line Improvements.

C. Notwithstanding, the City fulfilled its commitment under the Agreement and funded the Escrow Account to collateralize the Construction Loan to build the headquarters building. As necessary or required to effect the intent of the Parties to create, and as necessary enforce, a binding amendment to the Agreement ("Amendment"), the Parties affirm and agree that the Agreement is controlling except as modified by this Amendment.

D. The Parties desire and intend this Amendment to set dates for completion of:

- i) an updated, revised and refreshed Zip Line Improvements Concept Plan ("Concept Plan.") A Concept Plan is required by the Agreement;
- ii) construction of the Zip Line Improvements, together with an opening date and operations plan, as contemplated by Sections 3e) and 3f) of the Agreement; and,
- iii) review, approval and acceptance by the City as provided in Sections 3e) and 3f) of the Agreement as amended by this Amendment.

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

1. Subject to the conditions precedent set forth in Section 3e) of the Agreement as amended, Bonsai Entities shall complete the Concept Plan by November 1, 2020 and construct the Zip Line Improvements shown in the Concept Plan, together with setting an opening date and operations plan, as contemplated by Section 3f) of the Agreement, on or before August 1, 2021.

2. Bonsai Entities will provide the City design documents, specifications and submit for a site plan review for the Zip Line Improvements no less than 75 days prior to construction.

3. Following City approval of the Concept Plan, which approval will be in the form of a written approval of the site plan and a notice to proceed, Bonsai will thereafter communicate in writing with the City in advance of construction of the Zip Line Improvements. The City may, in writing addressed to Bonsai Entities, require a pre-construction meeting(s) as it may determine in its sole discretion to be necessary or required. The Zip Line Improvements and construction will be subject to inspection and acceptance by the Mesa County Building Department.

4. Bonsai's obligation to complete the construction of the Zip Line Improvements is contingent upon a) execution of a written agreement with the City as to the location of the launch tower in or near Eagle Rim Park prior to January 15, 2021 and b) execution of a written agreement with the City and LCDC as to the location of the landing tower in Las Colonias Park prior to February 15, 2021.

5. The City and LCDC, to the extent reasonably necessary or required, agree to amend the Master Lease and/or to grant to Bonsai in writing consent to the location of the launch and landing towers and the right to construct the Zip Line Improvements as approved by the City by March 31, 2021 in order to complete the final design, budget and schedule and allow construction of the Zip Line Improvements to be completed by August 1, 2021.

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

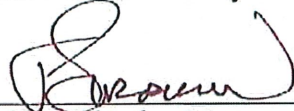
DATED as of the day and year first above written.

[signatures on next page following]

BONSAI DESIGN, LLC
a Colorado limited liability company

by 
Thaddeus Shrader, Managing Member

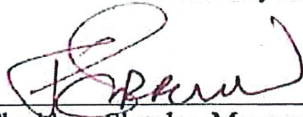
BONSAI HOLDINGS, LLC
a Colorado limited liability company

by 
Thaddeus Shrader, Manager

BONSAI DEVELOPMENT, LLC
a Colorado limited liability company

by 
Thaddeus Shrader, Manager

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

by 
Thaddeus Shrader, Manager

CITY OF GRAND JUNCTION
A Colorado home rule municipal corporation

by 
Greg Caton, City Manager

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

by _____
Robin Brown, Executive Director

SPECIAL WARRANTY DEED

Thunder Valley, LLC, a Colorado limited liability, whose street address is 244 N. 7th St., Grand Junction, CO 81501 ("Grantor"), for the consideration of Ten Dollars and Other Good and Valuable Consideration (\$10), in hand paid, hereby sell and convey to Thunder Valley Homeowners Association, Inc., whose legal address is 244 N. 7th St., Grand Junction, CO 81501 ("Grantee") Tracts A, C, and D, and the irrigation, drainage and the temporary ingress/egress easements as set forth on the plat for Thunder Valley Subdivision Filing One, Mesa County, Colorado.

Temporary ingress/egress easement will terminate automatically upon the re-plat of Lot 99.

also known by street and number as: Vacant Land

with all its appurtenances, and warrant(s) the title against all persons claiming under me, subject to: current year real property taxes and all subsequent taxes, special assessments, covenants, restrictions, reservations and easements, and rights of way, existing or apparent, or of record, if any.

Signed: August 15, 2018

THUNDER VALLEY, LLC, a Colorado limited liability company

By: Cores, LLC, a Colorado limited liability company, its Member

By: [Signature]
Kevin Bray, Member/Manager

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 15 day of August, 2018, by Thunder Valley, LLC, a Colorado limited liability company, by Cores, LLC, its Member, by Kevin Bray, its Member/Manager. *MANAGER

Witness my hand and official seal.



[Signature]
Notary Public

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement"), made this 29th day of March 2018 between **GRAND JUNCTION ECONOMIC PARTNERSHIP, INC.** (herein referred to as "GJEP"), a Colorado non-profit corporation; with offices at 122 N. 6th Street, Grand Junction, CO 81501, **THE CITY OF GRAND JUNCTION**, a Colorado home rule municipality (herein referred to as "CITY" or "the CITY") with offices at 250 N. 5th Street, Grand Junction, CO 81501 and **BONSAI DESIGN, LLC**, a Colorado limited liability company (herein referred to as "BONSAI"), **BONSAI HOLDINGS, LLC**, a Colorado limited liability company (herein referred to as "BONSAI HOLDINGS"), **BONSAI DEVELOPMENT, LLC**, a Colorado limited liability company (herein referred to as "BONSAI DEVELOPMENT"), and **BONSAI AERIAL ADVENTURES – GRAND JUNCTION, LLC**, a Colorado limited liability company (herein referred to as "BONSAI AERIAL ADVENTURES"), all with offices at 201 South Avenue, Grand Junction, CO 81501. BONSAI, BONSAI HOLDINGS, BONSAI DEVELOPMENT and BONSAI AERIAL ADVENTURES shall be collectively referred to as "BONSAI ENTITIES."

WITNESSETH:

- A. GJEP is a non-profit corporation seeking to facilitate business development in Grand Junction, Colorado including economic assistance to new businesses locating in the City of Grand Junction, Colorado;
- B. BONSAI is engaged in the business of design, development and construction of aerial adventure courses, light manufacturing, marketing and research and development (R&D) of related products and desires to expand its operations in Grand Junction, Colorado;
- C. BONSAI DEVELOPMENT is wholly owned by BONSAI HOLDINGS and was formed to hold real property to be used by BONSAI in the operation of its business;
- D. BONSAI AERIAL ADVENTURES is wholly owned by BONSAI HOLDINGS and was formed to own and operate the Zip Line Improvements described in paragraph 3.e;
- E. BONSAI desires to obtain, and GJEP desires to provide, certain forms of assistance in connection with BONSAI's expansion in Grand Junction;
- F. GJEP will provide such assistance in cooperation with the CITY and other agencies in accordance with criteria established between GJEP and such public sector organizations;
- G. In consideration of the assistance specified below, BONSAI will undertake and perform certain obligations as set forth herein; and
- H. The parties desire to reduce their agreement to writing and secure BONSAI's performance of its obligations under this Agreement.

NOW, THEREFORE, in consideration of the recitals above and mutual promises below, the parties agree as follows:

1. The Assistance. GJEP will provide or arrange for grants and other assistance (“INCENTIVE ASSISTANCE”) to BONSAI ENTITIES, or for its use and benefit, as follows:

Description	Explanation	Value
A. CITY – Escrow Account for Collateral and Cash Grant	To collateralize the Construction Loan and subsequently defray building costs. Escrow account to be funded in conjunction with private construction financing and any amounts remaining after payment of construction-related expenses payable upon completion and issuance of a Certificate of Occupancy for the Facility to BONSAI DEVELOPMENT.	\$1,000,000
B. CITY - Rebate of Property Tax for 10 years	To defray operating costs. Payable annually in arrears from the date of Certificate of Occupancy (CO) or the date from which real property taxes are assessed if different than CO date.	\$42,000 +/-
C. CITY - Payment of City Development and Impact Fees	To defray building and development costs. Benefit to accrue as building/site development project is achieved and development fees are due.	\$78,844
D. CITY or Assignee – Discounted Land Lease to BONSAI DEVELOPMENT of not to exceed 4 acres in the Las Colonias Subdivision (average of \$20,000 per year for 25 year term)	To defray operating costs	\$500,000
E. State of Colorado Cash Grant	To defray project costs; \$5,000 per local new hire up to 15 employees. Payable upon job creation NOTE: this grant is separate and distinct from the parties’ obligations under this Agreement; however, funds provided by the City pursuant to this Agreement are matching funds for the State of Colorado grant, up to a total of \$75,000.	\$75,000
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	TOTAL INCENTIVE ASSISTANCE	\$1,695,844 +/-

2. Letter of Credit/Grant Disbursements. Subject to the terms and conditions of this Agreement, the CITY shall provide the following INCENTIVE ASSISTANCE:

Upon the construction lender’s funding of the construction loan for construction of the Facility (“Construction Loan”), and execution of agreed-upon escrow instructions by the CITY, BONSAI ENTITIES and the construction lender, the CITY shall deposit the amount of \$1,000,000 in an escrow account established with the construction lender to be disbursed in accordance with the escrow instructions for expenses incurred by BONSAI ENTITIES in connection with design and construction of the Facility (“Escrow Account”). The escrow instructions for the Escrow

Account shall be the construction lender's standard-form escrow instructions together with the following specific instructions: (1) amounts shall be disbursed only for expenses related to the construction of the Facility; (2) disbursements from the Escrow Account shall be made only after Bonsai's construction loan proceeds are fully disbursed for the construction of the facility; and (3) applications for disbursement shall be in writing and be subject to approval by BONSAI, the CITY and the construction lender and shall include documentation regularly required by the construction lender for loan disbursements, including mechanics' lien waivers. In the event of a default by BONSAI on the terms of the construction loan and/or this agreement, the CITY may request the construction lender to withhold any disbursement(s) of the escrow account or if disbursement(s) has(have) begun to withhold further disbursement(s) of the Escrow Account until the default is cured to the satisfaction of the CITY. The CITY may request that disbursement(s) be withheld if it reasonably believes that the Facility cannot or will not receive a Certificate of Occupancy and/or the funds available under the construction loan and Escrow Account are insufficient to complete the Facility to the point of permitted occupancy. Any amounts remaining in the Escrow Account after issuance of the Certificate of Occupancy for the Facility shall be disbursed to BONSAI ENTITIES for investment in the Facility, the Zip Line Improvements or other capital improvements in furtherance of the incentive, or pay down of the balance of the Construction Loan, all subject to satisfaction of any and all applicable contingencies of this Agreement.

The CITY shall pay BONSAI the property tax rebate referred to in paragraph 1.B above in the amount of the City-assessed real property tax each year on the Facility for 10 years on the date real property taxes are due in full to the Mesa County Treasurer.

The CITY will pay City development fees referred to in paragraph 1.C above incurred in connection with the development of the Leased Premises, the Facility and the Improvements, including, but not limited to, application fees and impact fees.

The CITY or its assign(s) shall enter into a twenty-five (25) year ground lease ("Initial Term") for a not to exceed 4-acre site in the Las Colonias Business Park ("Leased Premises") at an average lease rate of \$20,000 per year. The lease shall give BONSAI ENTITIES immediate possession of the Leased Premises upon its effective date; provided, however, the twenty-five (25) year term and obligation to pay rent shall commence on the first day of the month after issuance of the Certificate of Occupancy for the Facility. The lease rate may be structured so that the annual rent payments are lower than the average at the beginning of the lease term and shall increase during the lease term to average \$20,000 per year and total \$500,000.00 over the Initial Term. The ground lease shall be subordinate to the construction loan and permanent financing leasehold deeds of trust, and subject to other conditions or requirements imposed by BONSAI's lender(s), including, but not limited to, an agreement between the landlord and the lender regarding the lender's rights and responsibilities in the event of a default on the Construction Loan or permanent financing by BONSAI. The lease shall provide for an option for an additional 25-year renewal term ("Renewal Term") at fair market rental rates as agreed to by the parties or as determined by appraisal if agreement cannot be reached; provided that BONSAI ENTITIES shall not be in default under the terms of the lease, this Agreement and any other agreement with the CITY at the time of exercise of the renewal options.

If the CITY or its assign(s) does not renew the lease following the Initial or Renewal Term(s), then the CITY and/or the assign(s) may purchase the Leasehold Improvements and Zip Line Improvements from BONSAI ENTITIES at their then appraised value. If the CITY or its assign(s) does not renew following the Initial or Renewal Term(s), for good cause as defined by the Lease, then the Lease shall terminate. For the purposes of the lease, "good cause" shall mean BONSAI ENTITIES' default under the terms of the lease, this Agreement and any other agreement with the CITY at the time of exercise of the renewal options. Notwithstanding the foregoing, the parties agree to consider additional renewal option(s) prior to the expiration of the lease term. The lease may contain other provisions regarding termination and other customary lease terms as agreed to by the CITY, its assign(s) and BONSAI ENTITIES consistent with applicable law.

In the event of non-renewal all Leasehold Improvements, including, but not limited to, the Zip Line Improvements, and any additions and replacements thereof, shall be the sole property of BONSAI ENTITIES, and, except in the event of a material breach of the lease by BONSAI ENTITIES, shall remain the property of BONSAI ENTITIES until a conveyance is made by BONSAI ENTITIES, notwithstanding such termination. BONSAI shall have no obligation to make the Zip Line Improvements available to the public in the event of termination of the lease. Notwithstanding the foregoing, during the first twenty-five (25) years following the effective date of the lease, if BONSAI vacates the Leased Premises, or assigns the lease and conveys the Leasehold Improvements to a third party and the third party does not agree to operate the Zip Line Improvements, the Zip Line Improvements shall become the property of the CITY at no cost or additional considerations.

If the CITY or its assign(s) does not renew the lease for other than good cause, BONSAI may institute an action against either or both the CITY and the assign(s) for claims of lost profit, lost advantage and other economic and non-economic claims and/or damages that it has sustained or may sustain by virtue of the lease non being renewed. The City and/or its assign(s) recognize that BONSAI will make a significant investment in the Facility and that non-renewal of the lease could impair that investment and the opportunity for that investment to further benefit BONSAI. If the City and/or its assign(s) fails to renew the lease without cause and claims are made/an action(s) is filed, BONSAI and the CITY shall enter mediated negotiation to find a mutually acceptable resolution to the claim(s), which resolution may provide fair market value for its demonstrated lost profit, lost advantage and other economic and non-economic damages that it has sustained or may sustain because of the unjustified failure to renew the lease.

The parties agree to cooperate in preparing a ballot question to submit to the City Council, at an appropriate election as determined by the CITY, to refer to the City voters a ballot question or questions to ask to repeal or suspend the 25-year lease restriction in the City Charter and/or ask for permission to sell the Leased Premises to BONSAI ENTITIES.

When the lease is renewed, or in the event that the Leased Premises become available for purchase by BONSAI ENTITIES, the CITY shall recognize BONSAI DESIGN's critical role in development of the Las Colonias Business Park in considering the renewal terms or establishing a purchase price for the Leased Premises.

If City voters authorize the sale of the land comprising the Leased Premises to be sold, the City Council sitting at that time may sell the Leased Premises to BONSAI ENTITIES at the lesser of (1) the lowest purchase price, on a square foot basis, of other parcels in the Las Colonias Business Park that have been sold; or (2) the then current cumulative value of the rent remaining to be paid under the lease by BONSAI ENTITIES with payments of the purchase price on the same schedule as rent due under the lease agreement.

The CITY's deposit of funds in the Escrow Account and any payment to BONSAI, or to BONSAI DEVELOPMENT for the use of BONSAI, under this Agreement is expressly contingent on:

- a) the City Council approving and authorizing an ordinance and other necessary documents for the Grand Junction Downtown Development Authority (DDA) to incur bonded indebtedness for the project on or before December 17, 2017; and
- b) expiration of the 30-day period provided by City Charter allowed for protesting the debt ordinance without a protest being filed. In the event a protest is filed, the performance of this Agreement may be suspended without claim of breach, until the protest is resolved; and
- c) BONSAI shall prepare, with the assistance of GJEP, and provide to the CITY subject to the reasonable satisfaction of the City Manager, a financial analysis of the total Incentive Assistance and the solvency, creditworthiness and financial soundness of BONSAI to fully perform the obligations of this Agreement; provided, however, that GJEP shall neither make, nor be deemed to have made, any representations or warranties as to the accuracy or completeness of the financial analysis or information, or of BONSAI's solvency, creditworthiness or financial soundness; and,
- d) BONSAI fully and faithfully performing each and every term of this Agreement as it is obligated to perform as of the date of funding of the Escrow Account.

3. BONSAI ENTITIES' Obligations. In consideration of the INCENTIVE ASSISTANCE, BONSAI ENTITIES agree to do and perform the following:

- a) Expand business operations in the City of Grand Junction, Colorado by: i) employing as of the Maturity Date a minimum of thirty-six (36) Full-Time Employees in BONSAI ENTITIES' business endeavors in the City, and ii) maintain that level of employment in the City for the Vesting Period. BONSAI may employ more full and part-time employees and otherwise expand its operations; however, such growth or expansion shall not be a condition of this Agreement.

- b) On or before the Maturity Date, BONSAI ENTITIES shall add not less than fifteen (15) additional New Jobs. The baseline employment level against which the New Jobs will be determined is the number of full-time employees of BONSAI ENTITIES as of close of business on May 31, 2017. By and with its signature below BONSAI represents that as of that date and time that it has a total of 21 Full-Time Employees in good standing and in its employ.
- c) Maintain its total employment in the City of Grand Junction at or above thirty-six (36) Full-Time Employees at an Average Wage of at least \$41,145 for the Vesting Period.
- d) Assist GJEP in the recruitment of outdoor product manufacturers and retailers by making contacts with and introductions to GJEP staff with people that Bonsai has done business with and/or may be doing business with and BONSAI knows or has reason to know are seeking an opportunity to expand an existing business or may be interested in expanding in and/or relocating to Grand Junction, Colorado. BONSAI has represented that it has an extensive network of contacts and that any referral it makes to GJEP will not be or result in a disclosure of any confidential or propriety information. BONSAI waives and releases any such claim. BONSAI may refer to GJEP any outdoor industry contact(s), including, but not limited to, with outdoor product manufacturing, retailing, service, research, media or related entity(ies) but the parties understand and agree that BONSAI shall first and foremost refer going concerns. BONSAI shall provide no less than five (5) referrals ("Referrals") per year of this Agreement. BONSAI shall allow GJEP to provide site visits to prospects of the Facility at reasonable items during normal business hours with reasonable advance notice. BONSAI will allow GJEP to use BONSAI's trademarks, service marks and identify BONSAI as a reference company that prospects may contact to learn about working with GJEP. BONSAI also agrees to provide a senior level executive to attend at least one trade show per year with staff from GJEP (each party to pay their own expenses), assist with prospects visiting the Las Colonias site and in the closing of prospect deal(s) on the Las Colonias site and/or other locations in the City, with a preference for those prospects desiring to locate in the Las Colonias Business Park.
- e) Subject to approval by applicable federal, state and local authorities with terms and conditions of approval no more onerous than those of general application, construction of a zip line in accordance with BONSAI's then current standard design and specifications. The initial construction of the zip line improvements ("Zip Line Improvements"), shall include the following: (i) launch tower; (ii) dual (side by side) racing line system; (iii) landing station located on the Leased Premises; (iv) at least 800 feet in length; and (v) launch platform located at Eagle Rim Park at a location to be agreed to by the parties with a crossing of Colorado River with the approval of the underlying landowner and issuance of any necessary permits to cross the Colorado River. Construction of the Zip Line Improvements, in generally the location and type

shown on the attached schematic drawing (“Zip Line Improvements Concept Plan”) shall be completed within the later of two (2) years from the date of this Agreement, or concurrently with the scheduled completion of the public park improvements underlying and adjacent to the Zip Line Improvements in accordance with the Master Plan for Las Colonias Business Park. BONSAI shall design, install and operate the Zip Line Improvements at a retail construction cost of no less than \$600,000.00.

- f) BONSAI shall not be required to upgrade the Zip Line Improvements without financial participation or contribution from the CITY on terms then mutually acceptable to both. BONSAI’s primary use of the Zip Line Improvements shall be for research and development, new and existing client sales demonstrations and training classes. In addition, BONSAI shall consistently operate and make available to the public the Zip Line Improvements for commercial purposes consistent with industry best practices which may include seasonal closure(s) so long as such commercial purposes are fiscally reasonable as the CITY and BONSAI determine in accordance with this and/or any other applicable agreement(s). Operation, scheduling, pricing and staffing of the Zip Line Improvements shall be determined by BONSAI and shall accommodate reasonable public access with discounts, usage incentives and preferential pricing all in consultation with the CITY as fiscally reasonable and in accordance with industry best practices. For the purposes of this Section 3.e, “fiscally reasonable” shall mean that operating revenue for commercial use of the Zip Line Improvements shall meet or exceed operating expenses, exclusive of depreciation, over a six (6) month rolling measurement period. BONSAI shall consult with the CITY prior to any unscheduled closure to the public of the Zip Line Improvements. BONSAI agrees to keep the Zip Line Improvements in good working condition until the end of the Vesting Period. In the event BONSAI discontinues operation of the Zip Line Improvements for more than one (1) year during the Vesting Period, the CITY shall have the option to purchase the Zip Line Improvements at their replacement fair market value as determined by appraisal.

4. Repayment Obligation. In the event BONSAI discontinues business operations, or materially changes its business at the Facility or otherwise breaches the terms of this Agreement prior to completion of the Vesting Period, then BONSAI shall repay a fraction of the Incentive Assistance. The amount required to be repaid to the City will be based on the number of whole months remaining in the ten-year (10) period remaining in the tax abatement period. The fraction shall be multiplied against the \$1,120,844 Incentive Assistance provided by the CITY through cash and waivers, less amounts, if any, not yet paid by the CITY and received by BONSAI ENTITIES. Payment shall be made within thirty (30) days of written notice from the CITY or GJEP to BONSAI of the amount due under these terms.

Notwithstanding anything in this Agreement to the contrary, BONSAI ENTITIES will not be deemed to be in breach of this Agreement solely because its employment at the Facility does not meet the levels set forth at paragraph 3.b) above. After the Maturity Date, for any year during

the five (5) year Vesting Period when BONSAI ENTITIES' annual employment falls below the levels set forth in paragraph 3.b), BONSAI ENTITIES will repay to the CITY an amount equal to \$5,000 multiplied by the number of New Jobs that is less than fifteen (15). Such repayment shall be in the form of repayment of such funds or in the reduction of City tax rebates described in paragraph 1.3 above, and shall be paid to the CITY or withheld by the CITY on or before the date real property taxes are due in full to the Mesa County Treasurer in the calendar year following the calendar year in which BONSAI ENTITIES fail to meet the levels set forth at paragraph 3.b) above.

5. Contingency. Each and every aspect of the Incentive Assistance described in this Agreement is subject to, and the payment to BONSAI ENTITIES of any part of the Incentive Assistance, is expressly contingent upon appropriation(s) by the CITY and the State of Colorado in addition to other contingencies expressly stated. Neither GJEP nor the CITY assumes responsibility and shall not be liable to BONSAI ENTITIES for any portion of the assistance that is not appropriated annually or at other appropriate interval(s) and/or paid by any political subdivision if a stipulation(s), contingency(ies) and/or other condition(s) precedent is not satisfied in accordance with applicable Colorado law. In the event that the CITY or the State of Colorado fails to appropriate any such funds, BONSAI ENTITIES' obligations under this Agreement shall be suspended during the period that any such appropriations are not made. If any such failure to make appropriations continues for more than one (1) year, BONSAI ENTITIES may terminate this Agreement upon notice to the other parties, provided that the CITY shall have a period of six (6) months following the effective date of the termination notice in which to cure any such failure to appropriate. In the event that the City cures the failure to appropriate during such six (6) month period, this Agreement shall continue in full force and effect.

6. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth in this paragraph:

"Annual Wage" – (i) for a worker paid hourly, the amount identified as "wages, tips and other compensation" on that worker's Form W2, excluding, however, all overtime pay and overtime hours worked; and (ii) for a salaried worker, the amount identified as "wages, tips and other compensation" on that worker's Form W2.

"Average Wage" – the arithmetic average of the Annual Wages paid to BONSAI ENTITIES' Full-Time Employees.

"Facility" – any building(s) built by and/or occupied, in whole or part by or for the use of by BONSAI ENTITIES within the Las Colonias business park, consisting of office space, a warehouse and a manufacturing facility, together with related improvements.

"Full-Time Employee" -- either:

1. a person employed by BONSAI ENTITIES working at least forty (40) paid hours per week;
2. a person employed by BONSAI ENTITIES on an annual average of at least 40 hours per week;
3. a person employed by BONSAI ENTITIES scheduled to work at least forty (40) hours per week but failing to do so for reasons of illness, absence, tardiness, etc., outside of the company's control;
4. a salaried employee employed by BONSAI ENTITIES working at least thirty-seven (37) hours per week; or
5. two people employed by BONSAI ENTITIES working at least forty (40) hours per week combined. Ordinary part-time workers who are willing to work full-time may not be aggregated to be a full time employee. State of Colorado full-time employment standards in effect as of the date of this Agreement shall apply.

“Maturity Date” – the date that is five (5) years after the date of this Agreement, or an earlier date on which BONSAI ENTITIES have added fifteen (15) New Jobs.

“New Job” – a new Full-Time Employee position added by BONSAI ENTITIES on or after the date of this Agreement. The Full-Time Employee may be a new or existing employee, so long as the position is newly created and increases the total number of Full-Time Employees over twenty-one (21).

“Vesting Period” – the five (5) year period commencing on the Maturity Date and ending five (5) years later.

7. Legal Compliance. All contracts or agreements entered into by BONSAI ENTITIES in fulfillment of any of its obligations under any of the provisions of this Agreement shall comply with all applicable federal and Colorado laws, rules and regulations.

8. Employment. All personnel engaged in any work to be performed by or for BONSAI ENTITIES under the terms of this Agreement shall be fully qualified and shall, to the extent required by law, be authorized under Colorado state and local law to perform such services.

9. Assignment. BONSAI ENTITIES shall not assign nor delegate any right or obligation under the terms of this Agreement, in whole or part, without the prior written consent of GJEP and the CITY. Such consent will not be unreasonably withheld. Notwithstanding the foregoing, BONSAI may assign its rights to payments, building construction, leasing obligations and zip line obligations to BONSAI HOLDINGS, BONSAI DEVELOPMENT and/or BONSAI AERIAL ADVENTURES as applicable.

10. Equal Opportunity. In the performance of this Agreement, BONSAI ENTITIES will comply with the letter and the spirit of the Colorado Anti-Discrimination Act of 1957, as

amended, and any other practices as is required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975.

11. No Improper Conduct. GJEP, the CITY and BONSAI ENTITIES each state, that to the best of their knowledge, information and belief, no state or local government employee has a personal or beneficial interest in the services or property described in this Agreement. GJEP and BONSAI ENTITIES state that they are familiar with §18-8-301, *et seq.*, C.R.S. (abuse of public office), and that no violation of such provisions have been committed by them.

12. Reporting and Record Keeping. In January of each year, BONSAI ENTITIES shall prepare and submit annual reports stating the number of Full-Time Employees employed during the previous calendar year. BONSAI ENTITIES will allow GJEP and the CITY (with reasonable notice and during normal BONSAI business hours) to examine its payroll and related records as determined necessary in the sole discretion of GJEP throughout the vesting period to ensure that BONSAI ENTITIES' employment and compensation obligations hereunder are being met. GJEP and its agents will, if asked, provide reasonable written assurances that such information will be kept confidential.

13. Notice. Any notice required or permitted to be given under the terms of this Agreement shall be deemed sufficiently given upon being hand delivered to the other party with receipt or mailing, United States mail, postage prepaid, certified or return receipt requested, to the parties' addresses set forth below:

To GJEP:
Grand Junction Economic Partnership
c/o Robin Brown
122 N. 6th Street
Grand Junction, Colorado 81501
Telephone Number: (970) 245-4332

To BONSAI ENTITIES:
Bonsai Design, LLC
c/o Thaddeus Shrader
201 South Avenue
Grand Junction, Colorado 81501
Telephone Number: (970) 255-7393

To the CITY:
City of Grand Junction
c/o Greg Caton
250 N. 5th Street
Grand Junction, Colorado 81501
Telephone Number (970) 244-1508

Any party may change the address to which notice is given hereunder by giving notice of the change of address in the method and manner provided by this paragraph.

14. Entire Agreement. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of GJEP, the CITY and BONSAI ENTITIES and their successors in interest and permitted assigns. This Agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes any prior discussions, agreements or negotiations. The terms of this Agreement may be modified only by a single written agreement signed by GJEP, the CITY and BONSAI ENTITIES.

15. Limitations on Damages; Termination. BONSAI ENTITIES shall not be liable under this Agreement for any indirect, special or consequential damages. BONSAI ENTITIES may terminate this Agreement for any reason by payment to GJEP and/or the CITY of any funds or consideration received by BONSAI ENTITIES hereunder in accordance with Section 4, Repayment Obligations.

BONSAI stipulates that the remedies provided to the CITY in this agreement are not indirect, special or consequential damages and the limitation provided herein is not applicable to the City's enforcement of those/each and every remedy that it has or may claim to have.

16. Venue; Choice of Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado. Mesa County, Colorado shall be the sole venue for any litigation concerning this Agreement and any of the obligations of the parties pursuant to the terms of this Agreement.

17. Attorneys' Fees and Costs. Should litigation be required to enforce or interpret the terms of this Agreement the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs in addition to any other relief. In the event of an attorney's fee award the CITY may claim the market value of the services of in-house counsel or special counsel retained to initiate or defend any and all claim(s) made by or against it.

[signatures and notarizations on following pages]

