

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into by and between the City of Fruita, Colorado, a Colorado home rule municipal corporation (the "Lessor" or "City") and IWZ, LLC, a Colorado limited liability company (the "Lessee"), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, the City is the owner of the fee simple title in that certain tract of land described in Exhibit "A" (the "Land") located in the City of Fruita, Mesa County, Colorado; and

WHEREAS, the Lessee desires to lease the Land from the Lessor upon the terms and conditions set forth herein; and

WHEREAS, the City is willing to lease the Land to Lessee to further recreation opportunities for visitors and residents as well as economic development in the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereby agree as follows:

Article I. Definitions

For the purpose of this Lease, the following words and phrases shall have the meanings indicated unless the context clearly indicates otherwise:

"Commencement of Construction" means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Facilities; (ii) all necessary permits for the construction of the Facilities, on the Leased Premises pursuant to the respective plans therefor having been issued by all applicable governmental authorities; and (iii) construction of the Facilities has commenced.

"Completion of Construction" means that (i) the construction of the Facilities on the Leased Premises has been substantially completed and (ii) all final, permanent certificates of occupancy for the occupancy of the Facilities has been issued by the City.

"Concept Plan" means the preliminary conceptual plan for the development of the Facilities on the Land as depicted on Exhibit "B".

"Days" means calendar days. In computing any period of time described in this Lease, the last day of a designated period of time shall be included in the time period, unless it is a

Saturday, Sunday or legal holiday, in which event the period of time runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

“Effective Date” means the last date of execution hereof.

“Expiration Date” shall be as defined in Section 2.02.

“Facilities” means a top quality cable park/wakeboard park venue consisting of (i) an overhead cable system for boat-free wakeboarding to be located on the Leased Premises as shown in the Concept Plan; (ii) two (2) cable wakeboard systems including, one (1) 5 tower system and one (1) 2 tower system, said systems to be installed no later than May 1, 2018; (iii) purchase and installation of lake obstacles, including ramps, jumps and rails; (iv) a floating bridge (v) clearing lakeshore of weeds and brush; (vi) a full starting dock, including seating areas, covered viewing areas, walkways and landscaping; (vi) security fencing; (vii) signage; (viii) and landscaping, irrigation, and other improvements to be constructed on the Leased Premises more fully described in a submittal (the “Facilities Plan”) filed and approved by the Lessor.

“Facilities Plan” means the submittal plan for the cable wakeboard Facilities filed by the Lessee to be approved by the City.

“Gross Revenue” means all money received by Lessee subsequent to the Rent Commencement Date as a result of any rental sublease of the Leased Premises, the rental or sale of goods, services, food and beverages, merchandise or the provision of services, party rentals (including fees charged for lessons and instruction except as defined herein), on or from the Leased Premises, but shall not include:

- (1) Cash refunds or credits allowed on returns to customers;
- (2) Sales taxes, occupation taxes, lodging taxes, use taxes and other similar taxes now or later imposed upon the sale of food, beverages, merchandise or services and paid by Lessee to the appropriate taxing authority, whether added to or included in the rental or selling price or the cost of the service provided;
- (3) The actual uncollectible amount of any check or bank draft received by Lessee as payment for goods and services and returned to Lessee from a customer’s bank as being uncollectible (commonly “non-sufficient funds” or “stop payment” checks);
- (4) The actual uncollectible amount of any charge or credit account (commonly “bad debts”) incurred by Lessee for the sale of merchandise or services;
- (5) The actual uncollectible amount of any sale of merchandise or services for which Lessee accepted a credit card or debit card;

(6) Sales or trade-ins of machinery, vehicles, trade fixtures or personal property used in connection with Lessee's operation of the Leased Premises;

(7) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of Lessee's business where such exchange or transfer is not made for the purpose of avoiding a sale which would otherwise be made from or at the Leased Premises;

(8) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;

(9) The amount of any cash or quantity discounts received from sellers, suppliers and manufacturers;

(10) The amount of any gratuities paid or given by customers to or for employees or independent contractors of Lessee;

(11) Amounts attributed to meals served or provided to employees or independent contractors of Lessee;

(12) The amount of discount taken on sales of merchandise discounted to employees or independent contractors;

(13) Receipts from the sale of waste or scrap materials resulting from Lessee's operations;

(14) The proceeds of any casualty insurance paid for damages to or destruction of the Leased Premises or any improvements or equipment thereon, actually used for Restoration (as defined in Section 8.02); and

(15) The proceeds of any business interruption insurance.

"Impositions" means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Leased Premises or any portion thereof or with respect to any property located thereon or any business conducted thereon.

"Land" means the real property described in Exhibit "A".

"Lease Term" or **"Term"** shall be as defined in Section 2.02, and shall include the Renewal Terms.

“Lease Year” means each calendar year occurring during the Lease Term, the first such calendar year commencing on January 1, 2018.

“Lessee” means IWZ, LLC, a Colorado limited liability company.

“Lessor” means the City of Fruita, Colorado, acting by and through its City Council, or designed representative.

“Permitted Use” means use of the Land for construction, reconstruction, repair, and maintenance of the Facilities, and use and operation of the Facilities as a top quality cable park/wakeboard park venue, all of which are open to the public; provided, however, the requirement that the facilities be “open to the public” does not preclude Lessee from charging an admission for entry to and use of its Facilities, the use of its Facilities for hosting tournaments, private parties, and similar events where all or a part of the Facilities are reserved for private events with or without payment of a rental fee.

“Premises” or **“Leased Premises”** means the land and lake.

“Public Access Area” means an area, as identified in the Concept Plan and the Site Plan, that will be available for public use during the hours of operation, subject to Parks and Wildlife restrictions and managed and operated by the Lessee. The Public Access Area is subject to all terms of this Lease.

“Renewal Term” means the extension of the Initial Term for up to three (3) periods of five (5) years as provided in Section 2.03.

“Rent” means Minimum Rent and Percentage Rent as defined in Article III.

“Rent Commencement Date” means the date on which Lessee opens the Facilities for general admission and use by the public, which date shall be no later than June 1, 2018.

“Site Plan” means a site plan for the development of the Leased Premises for the Facilities as approved by the Lessor as provided in Article VI. The Site Plan is not a site plan or other development plan that must be approved by the City pursuant to Fruita Land Use Code but rather is a separate final plan substantially similar to the Concept Plan for the development of the Leased Premises for the Facilities.

Each of the foregoing definitions and basic provisions shall be construed in conjunction with the references thereto contained in the other provisions of this Lease and shall be limited by such other provisions. Each reference in this Lease to any of the foregoing definitions and basic provisions shall be construed to incorporate each defined term set forth above under such definition or provision.

Article II.
Demise of Leased Premises; Option to Purchase Facilities

2.01 **Lease of Land.** Lessor, in consideration of the covenants, agreements and undertakings of Lessee as herein set forth, does hereby lease, let and demise unto Lessee, and Lessee does hereby lease from Lessor, the Land, to have and to hold for the Lease Term, all upon and subject to the terms and conditions set forth in this Lease.

2.02 **Lease Term.** The Lease Term shall be the period of time beginning on the Effective Date and ending on December 31, 2032 (the "Expiration Date") unless terminated earlier as provided in this Lease or unless extended for any five (5) year Renewal Term as provided in Section 2.03 below. This Lease will terminate without further notice when the Lease Term expires and any holding over by Lessee after the Lease Term expires will not constitute a renewal of this Lease or give Lessee any rights under this Lease or to the Land.

2.03 **Renewal Term.** Provided Lessee is not otherwise in default of this Lease, Lessee may extend the Lease Term for up to three (3) additional periods of five (5) years each (each additional period being called a "Renewal Term") by delivering written notice to Lessor not later than ninety (90) days, but not earlier than one hundred eighty (180) days, prior to the then current Expiration Date, any such extension shall be subject to the same terms and conditions set forth herein.

2.04 **"As Is" Condition.** Lessee accepts the Premises being leased "As Is" and "with all faults," and Lessor makes not warranty of any kind, express or implied, with respect to the Land. Without limiting the generality of the preceding sentence, it is expressly agreed that Lessor makes no warranty as to the marketability, habitability or fitness for any particular purpose of the Land.

2.05 **Memorandum of Lease.** The parties agree to execute, acknowledge and deliver a mutually acceptable form of Memorandum of Lease (which shall, among other things, memorialize the Effective Date), contemporaneously with the execution and delivery of this Lease, and such Memorandum of Lease shall be recorded in the real property records of the Mesa County, Colorado Clerk and Recorder.

Article III
Rent

3.01 **Rent.** During the Lease Term, Lessee shall pay rent to Lessor, without offset or deduction as follows:

(a) **Minimum Rent.** Lessee agrees to pay to Lessor as fixed Minimum Rent (herein so called), the following sums:

- (1) Lease Year 2018 through Lease Year 2019: \$1.00 per year
- (2) Lease Year 2020: \$5,000.00 annual minimum rent
- (3) Lease Year 2021 through Lease Year 2032 and any Renewal Terms thereafter: Commencing on the 1st day of January 2021 the minimum annual rent shall be increased by three percent (3%) of the minimum rent paid during the preceding lease year.

The Minimum Rent shall be per Lease Year for each Lease Year commencing with the 2018 Lease Year and continuing thereafter through the Expiration Date or early termination of this Lease, which amount shall be payable in annual advance payments, payable on or before the 30th day of January of each Year, but in any event, shall be considered late after the fifteenth (15th) day of any due date.

(b) Percentage Rent.

Beginning with the 2020 Lease Year, and for each Lease Year thereafter through the Expiration Date (whether through the expiration or early termination of this Lease), Lessee shall pay to Lessor rent in an amount equal to the greater of (i) the Minimum Rent, or (ii) Percentage Rent (herein so called), which amount shall be equal to one percent (1%) of Gross Revenue. If the amount of the Percentage Rent is determined to be greater than the Minimum Rent, payment of the difference between the Minimum Rent and Percentage Rent shall be made not later than 120 days following the end of each Lease Year. Example: The 2020 Lease Year Minimum Rent is \$5,000.00. Percentage Rent for the 2020 Lease Year is determined to equal \$15,000.00. Lessee pays to Lessor the Minimum Rent of \$5,000.00 within the first thirty (30) days of the year and an additional \$10,000.00 as Percentage Rent on or before 120 days following end of 2020 Lease Year.

(c) Rent in Final Lease Year

With respect to payment of Rent for the final Lease Year, the determination of Gross Revenue and the report regarding same as required by Section 3.06(b) shall be delivered to Lessor not later than thirty (30) days following the termination of this Lease. If the termination of the Lease is on a date prior to the end of the then current Lease Year, the calculation of Percentage Rent shall be based on the Gross Revenue for the portion of the final Lease Year during which the Lease was in effect, and the calculation of the amount of Rent due for the final Lease Year shall be based on a comparison of the Minimum Rent for the final Lease Year prorated and the Gross Revenue for the final Lease Year as determined above.

(d) Survival of Percentage Rent Obligation

Notwithstanding the termination of this Lease on the Expiration Date or such earlier time as may be provided in this Lease, the obligation to determine the Percentage Rent and the payment of same shall survive the termination of this Lease.

3.02 **Late Charge**. If Lessee fails to pay any installment of Rent on or before the same becomes due, Lessee shall pay to Lessor on demand a late charge (the "Late Charge") equal to five percent (5%) of such installment. It is understood and agreed that the Late Charge is for the purpose of reimbursing Lessor for the extra costs and expenses incurred in connection with the handling and processing of late installments of Rent. In addition to the Late Charge, all amounts of Rent or other payment to be made by Lessee to Lessor hereunder shall bear interest at the rate of eighteen percent (18%) per annum beginning on the thirtieth (30th) day of the date the payment was due if remaining unpaid.

3.03 **Place of Payment**. All installments of rent hereunder, when and as the same becomes due and payable, shall be paid in lawful money of the United States at the time to Lessor at the office of the Finance Director for the City of Fruita, Colorado or at such other place as may be directed in writing by Lessor from time to time.

3.04 **All Charges Deemed Rent**. Rent and for the purpose of Lessor's collection remedies only, all other amounts becoming payable by Lessee under this Lease shall constitute rent payable hereunder, and in the event Lessee fails to pay any such amount when due according to the provisions of this Lease, Lessor shall have all remedies available hereunder or at law or in equity for failure to pay rent. No happening, event, occurrence or situation during the Lease Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay Rent and other charges payable by Lessee under this Lease or relieve Lessee from any of its other obligations under this Lease.

3.05 **Lien for Rent**. In consideration of the mutual benefits arising under this Lease, Lessee hereby grants to Lessor a lien and security interest in all property of Lessee (including all

fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Leased Premises by Lessee and owned by Lessee, together with the proceeds from the disposition of those items) (the "Collateral"), now or hereafter placed in or upon the Leased Premises, as security for payment of all Rent and other sums agreed to be paid by Lessee herein. The provisions of this Section 3.05 constitute a security agreement under the Uniform Commercial Code, Article 1-9.7, Title 4, C.R.S. and Lessor has and may enforce a security interest in the Collateral. Except on account of replacement, removal or substitution in the ordinary course of business, the Collateral shall not be removed without the consent of Lessor until all arrearages in Rent and other sums of money then due to Lessor hereunder have been paid and discharged. On or before the Rent Commencement Date, Lessee shall execute, as Debtor, Financing Statements, to perfect this security interest pursuant to the Uniform Commercial Code. Lessor may at its election at any time file a copy of this Lease as a Financing Statement. Lessor, as Secured Party, has all of the rights and remedies afforded to a secured party under the Uniform Commercial Code in addition to and cumulative of the Lessor's liens and rights provided by law or by the other terms and provisions of this Lease. Notwithstanding the foregoing, Lessor's lien shall be subordinate to (i) any purchase money lien, (ii) any line-of-credit lien secured by the assets, inventory or accounts receivable of Lessee's business, or (iii) any Small Business Administration note, conventional bank note and related security agreements.

3.06 **Books and Records.**

(a) Lessee agrees to maintain a complete set of books and records in connection with all aspects of and specific to this Lease relating to Gross Revenue, which books and records shall be kept and maintained in accordance with generally accepted accounting practices and procedures. Said books and records shall at all reasonable times be available for inspection, copying, audit and examination by Lessor or by properly designated employees or agents of Lessor. Lessor may require the keeping of additional records or accounts relating to Gross Revenue which are customary for the businesses conducted on the Leased Premises and which are reasonably necessary for purposes of identifying, accounting for, and reporting Gross Revenue.

(b) In order to determine the Gross Revenue received by Lessee, Lessee agrees that, within thirty (30) days following the end of the 2020 Lease Year and each Lease Year thereafter, it will deliver to Lessor's City Finance Director a report certified by Lessee's managing member as being true and correct and in a form to be prescribed by and acceptable to Lessor with sufficient detail to itemize all Gross Revenue received from the Leased Premises including revenue from each of the categories identified in the definition of Gross Revenue.

(c) Lessor shall have the right, after the 2020 Lease Year, such right not to be exercised more frequently than once every other Lease Year thereafter, to audit the books and records of Lessee for the previous two-year period, excluding the 2017, 2018 and 2019 Lease Years, which are exempt from such audit pertaining only to the calculation

of Gross Revenue produced on and from the Leased Premises so as to confirm the accuracy of the annual report of Gross Revenue described herein. Such audit, if any, shall be undertaken by a nationally recognized firm or independent certified public accountants engaged by Lessor and Lessee, the expense of which is to be paid one-half by Lessor and one-half by Lessee. Lessee shall cooperate by all reasonable means in order to facilitate a timely and accurate completion of such audit. A copy of the report of such audit shall be addressed to each of Lessor and Lessee and shall be delivered to each of Lessor and Lessee at substantially the same time. If such audit reveals that Lessee has understated Gross Revenues, as defined herein, by five percent (5%) or more, then, within thirty (30) days following receipt of such audit report, Lessee shall pay to Lessor the amount of any Percentage Rent deficiency- based on such understated Gross Revenue (with such penalties for late payment as may be applicable pursuant to other provisions of this Lease). If such audit shall indicate an understatement of Gross Revenue of less than five percent (5%), Lessee, in the manner provided herein, shall pay any Percentage Rent deficiency. If such audit indicates an overstatement of Gross Revenue and, if on account of such overstatement, Percentage Rent in excess of amounts due have been paid by Lessee to Lessor, then such overpayment (less any amounts other than Minimum Rent which shall then be due and owing to Lessor) shall be credited against the next due installment of Minimum Rent. Nothing herein is intended to require Lessee to provide to Lessor, or to allow Lessor to obtain from Lessee, confidential financial and tax return information concerning Lessee and its investors. Lessor cannot require Lessee to provide complete financial statements or documents to Lessor.

(d) Lessor may, at any time, make inquiries pertaining to the operation of the Leased Premises and the improvements thereon, and Lessee shall respond to such inquiries within fourteen (14) days.

Article IV. Utilities and Taxes

4.01 **Payment of Utilities.** In addition to the payment of Rent, Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, wastewater collection, telecommunications service, drainage, irrigation and any and all other utilities used on the Leased Premises throughout the Lease Term, including any connection fees.

4.02 **Taxes.** Lessee shall pay and discharge all Impositions, taxes, general and special assessments and other similar charges which, during the Lease Term, may be levied on or assessed against the Leased Premises (including Lessee's leasehold estate therein) and all interests therein and all improvements and other property, including personal property thereon, owned by Lessee. Lessee shall pay all such taxes, charges and assessments to the appropriate official not less than fifteen (15) days before the same shall become delinquent, and Lessee agrees to indemnify and save harmless Lessor from all such taxes, charges and assessments. Lessee shall have the right in good faith and at its sole cost and expense to contest any such taxes,

charges and assessments and shall be obligated to pay the contested amount only if and when such amount is finally determined to be due. Lessee shall give notice to Lessor of its intent to contest any such taxes, charges or assessments, the amount thereof and the entity to which such taxes, charges or assessments are purportedly owed.

4.03 **Payment by Lessor.** Subject to the right of the Lessee to contest taxes, assessments, governmental charges and other Impositions as hereinabove provided, Lessor may, at any time that the payment of any item of taxes, special assessments or governmental charges which Lessee is obligated to pay under the provisions of Section 4.02 above remains unpaid, give written notice to Lessee of its default and if Lessee continues to fail to pay such item of taxes, special assessments or governmental charges or to contest the same in good faith, then at any time after fifteen (15) days from the date of such written notice Lessor may pay the items specified in the notice and Lessee covenants to reimburse Lessor on demand any amount so paid or expended in the payment of the items specified in the notice, with interest thereon at the rate of eighteen percent (18%) per annum from the date of such payment by Lessor until repaid by Lessee; provided however, if Lessor, without giving the fifteen (15) days notice as provided for above, pays any such item which has not been paid by Lessee within the time required in Section 4.02, or which has not then or thereafter been successfully contested by Lessee, Lessee shall nevertheless reimburse Lessor for such item, but without interest.

4.04 **Change in Taxation Method.** If at any time during the Lease Term there shall be levied or assessed in substitution of property taxes, in whole or in part, a tax, assessment or governmental imposition on the rents received from the Premises or the rents reserved herein, and said tax, assessment or governmental imposition shall be imposed upon Lessor, Lessee shall pay same as hereinabove provided.

4.05 **Ownership by Lessor.** Lessor and Lessee understand, acknowledge and agree that title to the Land shall at all times during the Lease Term be vested in Lessor. Lessor and Lessee further understand, acknowledge, and agree that the Facilities and any tangible personal property located on the Leased Premises shall at all times during the Lease Term be owned by Lessee. The parties agree that Lessee shall at all times during the Lease Term be solely responsible for payment of ad valorem taxes or other impositions assessed against the Premises, the Facilities, Lessee's tangible personal property and Lessee's leasehold interest in the Leased Premises.

4.06 **Failure to Pay Taxes or Other Impositions.** If Lessee shall fail to pay any taxes or assessments for which Lessee is liable before the same becomes delinquent, or fails to notify Lessor of its intention to contest the same prior to such delinquency, or fails to pay any contested Impositions before the property is threatened with foreclosure or similar proceedings, Lessor, at Lessor's election, may (but shall not be obligated to) pay such Impositions with any interest and penalties due thereon, and the amount paid by Lessor shall be repayable by Lessee on demand, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of such payment until repaid. Thereafter, in addition to all other remedies of Lessor, Lessor may

require that Lessee pay to Lessor, on an annual basis the taxes and assessments, as estimated by Lessor, becoming due during each calendar year. Any such additional payment shall be due monthly and in advance on the same day that Annual Rent is due and shall be held in escrow by Lessor.

Article V. Use of Leased Premises

5.01 **General.** Lessee shall use the Leased Premises solely for the Permitted Use for the purpose of constructing, maintaining, and operating the Facilities. The Facilities shall be open to the public during the times set forth in Section 5.07(b). Nothing in this Lease shall prevent Lessee from charging fees for use of the Facilities. In the use of the Facilities and the Leased Premises and in addition to all of the terms, conditions and obligations of this Lease, Lessee shall comply with and be subject to the laws, regulations and ordinances of the State of Colorado and the City of Fruita, Colorado.

5.02 **Compliance with Restrictions and Laws.** Lessee shall, at Lessee's sole expense, (a) comply with all laws, orders, ordinances, and regulations of federal, State, County, and municipal authorities having jurisdiction over the Leased Premises and the Facilities, (b) comply with any directive, order or citation made pursuant to law by any public officer requiring abatement of any nuisance or which imposes upon Lessor or Lessee any duty or obligation arising from Lessee's occupancy or use of the Leased Premises and the Facilities, or required by reason of a breach of any of Lessee's obligations hereunder or by or through other fault of Lessee, (c) comply with all insurance requirements applicable to the Leased Premises, and (d) indemnify and hold Lessor harmless from any loss, cost, claim or expense which Lessor incurs or suffers by reason of Lessee's failure to comply with its obligations under clauses (a), (b), (c) or (d) above. If Lessee receives notice of any such directive, order, citation or of any violation of any law, order, ordinance, regulation or any insurance requirements, Lessee shall promptly notify Lessor in writing of such alleged violation and furnish Lessor with a copy of such notice.

5.03 **Specific Covenants Regarding Environmental Matters.**

(a) Lessee covenants that (a) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls (except such substances as are used in accordance with law), shall be generated, treated, stored or disposed of, or otherwise deposited in or located on, or released on or to the Leased Premises, including, without limitation, the surface and the subsurface waters of the Leased Premises, (b) Lessee will not engage in and will not permit any other party to engage in any activity on the Leased Premises which would cause (i) the Leased Premises to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Leased Premises within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 U.S.C. § 6901, et seq., as amended, or any similar state law or local ordinance or other

environmental law, (ii) a release or threatened release of a hazardous substance from or to the Leased Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended, or any similar State law or local ordinance or any other environmental law, or (iii) the discharge (except in accordance with applicable law) of pollutants or effluents into any water source or system, or the discharge (except in accordance with applicable law) into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 U.S.C. §§ 7401, et seq., or any similar state law or local ordinance or any other environmental law, Lessee will not permit any substance or conditions in or on the Leased Premises which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, and (d) no other ground storage tank will be located on or under the Leased Premises, except as presently exists or is approved per this Lease. As used herein, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided, further, to the extent that the laws of the State of Colorado establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

(b) In the event Lessee or Lessor is obligated by any applicable federal, State or local law, ordinance or regulation or otherwise directed by any governmental agency or authority, to clean up, remove or encapsulate or cause the clean-up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos from the Leased Premises, the Lessee hereby guarantees to Lessor that the Lessee (i) shall promptly undertake to arrange for such clean-up, removal and disposal in accordance with all governmental regulations, (ii) shall exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) hereby assumes the costs and expense, including any fines, of such clean up and removal unless such condition is determined to have existed on the Leased Premises prior to Lessee's execution and acceptance of this Lease in which case, Lessor shall be responsible for, and shall assume the cost and expense of, such cleanup.

(c) In the event that any lien is recorded or filed against the Leased Premises pursuant to any governmental regulations regarding Hazardous Materials, Hazardous Wastes, or Asbestos, Lessee hereby guarantees to Lessor that Lessee shall, not later than thirty (30) days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record, unless such condition is determined to have existed on the Leased Premises prior to Lessee's execution and acceptance of this Lease in which case, Lessor shall be responsible for, and shall assume the cost and expense of,

satisfying the claim or causing the lien to be discharged.

(d) IN ADDITION TO THE FOREGOING, LESSEE SHALL PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS LESSOR, AND LESSOR'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, AGENTS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSS (INCLUDING DIMINUTION IN THE VALUE OF THE LEASED PREMISES), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES, LEGAL ASSISTANT'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMOVAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE LEASED PREMISES), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LESSOR, ITS OFFICERS, OFFICIALS, EMPLOYEES OR AGENTS BY REASON OF: (I) THE PRESENCE, DISPOSAL, ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS AND/OR HAZARDOUS WASTES ON, FROM, OR AFFECTING THE LEASED PREMISES OR ANY OTHER PROPERTY OR THE PRESENCE OF ASBESTOS ON THE LEASED PREMISES; (II) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE OR DESTRUCTION (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; (III) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS; OR (IV) ANY VIOLATION OF LAWS, ORDERS, REGULATIONS, REQUIREMENTS, OR DEMANDS OF GOVERNMENTAL AUTHORITIES, WHICH ARE BASED UPON OR IN ANY WAY RELATED TO SUCH HAZARDOUS WASTES, HAZARDOUS MATERIALS OR ASBESTOS INCLUDING, WITHOUT LIMITATION, THE COSTS AND EXPENSES OF ANY REMOVAL ACTION, REASONABLE ATTORNEY, LEGAL ASSISTANT AND CONSULTANT FEES, INVESTIGATION AND LABORATORY FEES, COURT COSTS, AND LITIGATION EXPENSES. THE ABOVE AND FOREGOING OBLIGATION CONTAINED IN THIS SECTION 5.03 SHALL ONLY APPLY TO ANY ACT OR OMISSION OF LESSEE OR OF LESSEE'S OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS IN CONNECTION WITH ANY LOSS (INCLUDING DIMINUTION IN THE VALUE OF THE LEASED PREMISES), COST, DAMAGE, LIABILITY, OBLIGATION, CAUSES OF ACTION, FINE, PENALTY OR EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES, LEGAL ASSISTANT'S FEES AND EXPENSES FOR INVESTIGATION, INSPECTION, REMOVAL, CLEAN UP, AND REMEDIAL COSTS INCURRED TO PERMIT CONTINUED OR RESUME NORMAL OPERATION OF THE LEASED PREMISES), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LESSOR, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES BY REASON OF SUBPARTS (1) THROUGH (IV) OF THIS SECTION 5.03(d) AND FOR WHICH SUCH CONDITION WAS NOT A PRE-EXISTING CONDITION OF THE LEASED PREMISES PRIOR TO LESSEE'S EXECUTION AND ACCEPTANCE OF THE LEASE.

(e) Lessor hereby warrants that Lessor has no knowledge of the existence of Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos on the property, nor any other condition, the discovery of which would likely

subject Lessee to civil, criminal or administrative liability. Lessor further covenants, warrants and promises that, to the greatest extent allowed under law, Lessee shall not be held liable by Lessor, for any condition existing prior to Lessee's execution and acceptance of this Lease.

5.04 **Natural Resources.** Lessee shall cut no timber, conduct no mining operations, drilling operations, remove no sand, gravel, or similar substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Leased Premises, except as may be authorized by Lessor or as may be required by the construction and subsequent improvements of the Facilities in accordance with plans and specifications approved by Lessor.

5.05 **Access to Property.** Lessee agrees to create specific exit points from the lake to encourage vegetation growth at the lake's edge, as further shown on the Concept Plan. Lessee shall permit public access to the lake on the Leased Premises. Lessee further agrees that Lessor's Police Department and the Lower Valley Fire Protection District shall be provided with duplicate keys (if applicable) for use in obtaining access to the Facilities for security patrols and in emergency situations. Lessor and its designated representative shall have the right to enter upon the Leased Premises for the purpose of inspection of the Facilities at any time.

5.06 **Operation and Use Restrictions for the Facilities.**

(a) Lessee shall, during the Term, manage and operate the Facilities in a first class manner consistent with industry standards for the operation of similar types of facilities.

(b) Except during seasonal closures and except when weather conditions make use of the Facilities by the public unhealthy or unsafe, Lessee shall generally operate the Facilities to be open to the public seven (7) days per calendar week between the hours of 10:00 a.m. and 8:00 p.m. Between Memorial Day and Labor Day of each year Lessee is absolutely required to be open for business no less than six (6) hours each day.

(c) Lessee shall assume all maintenance and management responsibilities of the Public Access Area (the west side of the Lake) which shall be open to public use without charge during Lessee's operating hours.

(d) Trash removal shall be performed on a daily basis except during seasonal closures. Trash removal shall be performed a minimum of three (3) times per week during such seasonal closures.

(e) Lessee shall maintain all landscaping located on the Leased Premises in a good and suitable condition including removal and management of noxious weeds pruning of bushes and trees when required for a healthy or reasonable appearance, and

weed, disease and insect control as needed. Lessee is not expected to care for the Kokopelli section of the Colorado Riverfront Trail but shall be required to care for the grounds between the trail's edge and the lake.

(f) No piers or anchoring structures shall be constructed by Lessee that would impede public access around the lake.

(g) Lessor shall not be responsible for the lake's water quality and the health of Lessee's patrons. Lessee shall comply with the Colorado Department of Public Health and Environment's regulations for water quality for natural swimming areas.

(h) Lessee shall comply with all Colorado Department of Parks and Wildlife regulations and stipulations placed on the Leased Premises, including protection of the bald eagle nesting site required by the Colorado Department of Parks and Wildlife and any seasonal closures required or recommended by the Colorado Department of Parks and Wildlife.

(i) No alcoholic beverages shall be sold, served or stored (and no alcoholic beverages may be given away) on the Leased Premises at any time.

(j) At no time shall any outdoor storage be permitted by Lessee on the Leased Premises except for the customary items that are normally stored outside for the Facilities.

5.07 **Interruption in Utilities.** Lessor shall not be liable for any interruption whatsoever (unless directly caused by the actions of Lessor) in utility services to the Facilities, and in no event shall any payments required under this Lease be modified, adjusted, reduced or abated as a result of an interruption of utility services.

Article VI. Construction and Alterations

6.01 Construction of Facilities.

(a) Lessee shall, subject to events of Force Majeure, cause Commencement of Construction of the Facilities in accordance with the Facilities Plan and Concept Plan to occur not later than February 1, 2018, and subject to events of Force Majeure to cause Completion of Construction to occur no later than June 1, 2018. If Lessee fails to cause Commencement or Completion of Construction of the Facilities within the time periods provided herein, then Lessor may, in addition to any other remedies it may have, immediately terminate this Lease upon written notice to Lessee.

(b) Lessee shall submit the Facilities Plan and a Site Plan for the development

of the Leased Premises for the Facilities for review and approval by the Lessor within forty-five (45) days after the Effective Date. The Site Plan shall be substantially similar to the Concept Plan. Lessor shall approve or deny the Facilities Plan and the Site Plan within thirty (30) business days following Lessor's receipt of the respective plan (the "Plan Review Period"). Lessor is deemed to approve the Facilities Plan and/or the Site Plan unless it provides written notice to Lessee to the contrary prior to the expiration of the Plan Review Period. If Lessor has objections to the Facilities Plan and/or the Site Plan as submitted, Lessor shall note the such objections in writing and Lessee shall cause the Facilities Plan and/or the Site Plan, as the case may be, to be revised to address such objections and re-submit the revised Facilities Plan and/or the Site Plan, as the case may be, to Lessor for approval subject to the same Plan Review Period. This process shall continue until Lessor has approved the Facilities Plan and the Site Plan or has determined that Lessor's objections cannot be addressed, in which case this Lease shall terminate without further notice. Lessee shall obtain approval of the Facilities Plan and the Site Plan by Lessor prior to the submission of any construction plans for the Facilities. The Facilities Plan and the Site Plan as approved by Lessor shall be deemed a part of this Lease without the necessity of further amendment. In no case shall the approval of the Facilities Plan and/or the Site Plan be deemed a modification or amendment of this Lease. The Facilities Plan and the Site Plan shall be in conformance with this Lease.

(c) The exterior construction materials for the Facilities shall be approved by the Lessor.

6.02 Development of Premises. In order to provide for the more orderly development of the Facilities on the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power lines and other easements, and dedications, and similar rights be granted or dedicated over or within portions of the Premises. Provided that, in the judgment of Lessor, the request is reasonable and not unduly burdensome to the Premises and is consistent with the use of the Leased Premises as a recreation area, Lessor shall, upon request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Lease Term, as Lessor deems appropriate, reasonable, and as may be required by other governmental agencies, public utilities, and companies for the purpose of granting such easements and dedications. Lessor agrees to reasonably co-operate with Lessee, at no material cost or expense to Lessor, for zoning on the Premises to conform with the Permitted Use.

6.03 Alterations.

(a) Except as expressly provided in Section 6.03(b) below, Lessee shall not make any alterations to the Premises without the prior written consent of Lessor. If Lessee desires to make any alteration to the Premises, Lessee shall, prior to commencing same, submit plans and specifications therefor to Lessor. Lessor will, within thirty (30) days after receipt of such plans and specifications, promptly review and approve the plans and specifications or note in writing any required changes or corrections that must be

made to the plans and specifications. If Lessor fails to object to the plans and specifications within thirty (30) days after submission thereof, Lessor shall be deemed to have approved such plans and specifications. If Lessor timely objects to the plans and specifications, Lessee shall make the required changes or corrections and resubmit the plans and specifications to Lessor within thirty (30) days after receiving notice of the required corrections or changes. The failure of Lessor to object to the resubmitted plans and specifications within thirty (30) days shall constitute Lessor's approval of such resubmitted plans. Minor changes in work or materials not affecting the general character of the improvements may be made at any time without Lessor's approval, but a copy of the altered plans and specifications must be furnished to Lessor. Lessor's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises, and Lessor may not unreasonably withhold approval of plans and specifications. Lessor's approval does not constitute approval of the architectural or engineering design, and Lessor, by approving the plans and specifications, assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications, and Lessee, to the extent allowed by law, shall indemnify and hold Lessor harmless from all such liability and responsibility.

(b) Notwithstanding the provisions of Section 6.03(a) above, Lessee need not obtain Lessor's consent to (i) install temporary improvements such as benches, picnic tables, and other moveable fixtures or amenities; (ii) perform repairs necessary to maintain existing improvements in a useful state of repair and operation, provided such repairs do not affect the general quality or character of the Facilities, and (iii) changes and alterations required by an authorized public official with authority or jurisdiction over the improvements, to comply with legal requirements.

(c) Any improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the Lease Term shall be considered part of the real property of the Premises and will become the property of Lessor and remain on the Premises if the Lease is terminated for an uncured event of default under this Lease, except as otherwise provided herein. Notwithstanding anything to the contrary in the Lease, all equipment directly associated with the wakeboard cable system and its controls, as well as ramps, jumps and lake features, shall upon termination of this Lease, be considered part of the real property and shall not be removed from the Premises at any time. Except as provided in this Section 6.03 (c), so long as no Event of Default exists, Lessee may, at any time while it occupies the Premises, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Lessee in, under, or on the Premises or acquired by Lessee, whether before or during the Lease Term. Lessee shall be solely responsible for repairing any damage to the Facilities and improvements on the Premises resulting from the removal. Any such items not removed upon the termination of this Lease will become Lessor's property on that date.

Article VII. Repairs

7.01 **Triple Net Lease.** This Lease shall be deemed and construed to be a "triple net lease," and Lessee shall pay to Lessor, net throughout the Lease Term, the Rent and other payments hereunder free of any costs or expenses associated with the Premises and without abatement, deduction or set off. Under no circumstances or conditions, whether now existing or hereafter arising, or whether or not beyond the contemplation of the parties, shall Lessor be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder in respect of the Premises, except as herein otherwise expressly set forth.

7.02 **Lessee to Make Repairs.** Lessee, at Lessee's own cost and expense, at all times during the Term, agrees to keep and maintain, or cause to be kept and maintained, the Facilities, and improvements included on the Leased Premises in a good state of appearance and repair, reasonable wear and tear excepted. Lessee shall perform such maintenance and repair as necessary to operate the Premises as a first-class facility. Without limiting the generality of the foregoing provisions of this Section 7.02, it is understood that Lessee's obligations with respect to the maintenance and repair of the Facilities and the Leased Premises includes all of the components comprising the Facilities, the lake, the repair and replacement of all structural items, including the walls, roof and foundation, lighting, heating, air conditioning, plumbing and other electrical and mechanical equipment, fixtures and systems, and also include all utility repairs in ducts, conduits, pipes and wiring located in, under and above the Premises, and all paving, driveways, sidewalks and parking areas. Lessor shall have no duty, obligation or liability to make any repairs, replacements, or alterations to the Premises, or any portion thereof, at any time during the term of this Lease. Without limiting the generality of the foregoing provisions of this Section 7.02, Lessee shall: (a) conduct regular inspections of the Facilities for compliance with health and safety standards and building codes and for cleanliness, good order, condition, and repair; (b) buy, clean, and repair all furnishings and equipment in and for the Facilities; (c) periodically paint, redecorate, and refurbish the Facilities and related equipment; (d) hire and maintain a staff to clean and maintain the Facilities; (e) cause all equipment and fixtures in and about the Facilities to be repaired and maintained in good condition, including, but not limited to, lights, wiring, and other equipment; and (f) contract for required services such as, but not limited to, cleaning and laundry service, and trash removal service.

7.03 **Mechanic's Liens.** Lessee shall not suffer or permit any mechanics' liens or other liens to be filed against the Premises or against Lessee's leasehold interest in the Premises. If any lien is filed for such labor or materials, such lien shall encumber only Lessee's leasehold interest in the Premises. If any such mechanics' liens shall be recorded against the Premises, Lessee shall cause the same to be removed within thirty (30) days after obtaining knowledge thereof; or, in the alternative, if Lessee desires in good faith to contest the same, Lessee shall be privileged to do so, but in such case Lessee shall indemnify and save Lessor harmless from all liability for

damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment.

Article VIII. Casualty

8.01 **Damage to Premises.** If, during the Lease Term, the Facilities, any other buildings or other improvements located on the Leased Premises are wholly or partially destroyed or damaged by fire, or any other casualty whatsoever (collectively called a "Casualty"), Lessee shall promptly repair, replace, restore and reconstruct such improvements in a good and workmanlike manner.

8.02 **Payment of Insurance Proceeds.** In the event that proceeds of insurance are to be used to repair, replace, restore or reconstruct improvements destroyed by Casualty ("Restoration"), the following provisions shall apply:

(a) Prior to the commencement of such Restoration, the plans and specifications for the Restoration must be approved by Lessor (such approval not to be unreasonably withheld or delayed).

(b) If, in the reasonable judgment of Lessor, the costs of the Restoration will exceed the amount of the Insurance Proceeds, Lessee will, upon demand by Lessor, give satisfactory proof or assurances to Lessor that the funds required to meet such deficiency (such funds to be provided by Lessee) are or will be available for such purpose;

(c) If at the time of the occurrence of the Casualty, or at any time thereafter during Restoration, there exists a default by Lessee, or any circumstance which, with the giving of notice or the passage of time, or both, would constitute such a default, then Lessee shall, if demanded by Lessor, deliver the Insurance Proceeds to a third party escrow agent designated by Lessor. In such event, the Insurance Proceeds will be advanced by the Escrow Agent in installments during the period of the Restoration, except for a final installment to be advanced following the period of the Restoration. Each installment (except the final installment) is to be advanced by the Escrow Agent in an amount not to exceed ninety percent (90%) of the value of the work completed since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by an independent supervising architect selected and paid by Lessor, together with a reasonable showing of bills for labor and material, and evidence satisfactory to Lessor that no notice of lien has been filed in the records where the filing of liens for any labor or material in connection with such work are to be filed. The final payment or disbursement of the Insurance Proceeds deposited shall be in an amount sufficient to make the total advance equal to the entire cost of any Restoration, and shall be made upon a proper certificate of completion by an independent architect, but in no

event shall the Escrow Agent be required to advance more than the balance of the Insurance Proceeds on deposit. It is expressly agreed that if this Lease shall be terminated for Lessee's default at any time prior to release or payment to Lessee of any of the Insurance Proceeds as provided in this Section 8.02(c), all of the Insurance Proceeds not therefore paid to Lessee shall be the sole property of Lessor and shall be delivered by the Escrow Agent to Lessor.

8.03 **No Rent Abatement.** Notwithstanding the occurrence of a Casualty which disrupts the operation of the Facilities, Lessee shall remain obligated to pay Annual Rent in accordance with the terms of this Lease.

Article IX Insurance and Indemnification

9.01 **Required Insurance.** Throughout the Lease Term, Lessee shall, at Lessee's expense, procure and maintain the following insurance policies:

(a) Commercial general liability insurance with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury (including death), broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. The policy shall contain a severability of interests provision.

(b) Worker's Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work, and Employers' Liability insurance with minimum limits required by Colorado law.

(c) Property insurance covering all buildings and other improvements located or being constructed on the Premises against loss or damage from perils covered by an all risk or special form policy in amounts not less than eighty (80%) percent of the full insurable value of the buildings and other improvements included in the Premises.

9.02 **Evidence of Insurance.** Prior to the Effective Date, Lessee shall furnish to Lessor a certificate of insurance evidencing the required insurance and indicating the exclusions from coverage, if any. In addition, Lessee shall furnish to Lessor a current certificate of insurance each year during the Lease Term.

9.03 **Certificates of Insurance.** All insurance and certificates of insurance required hereunder shall contain the following provisions: (i) name the Lessor, its officers, employees and agents as additional insureds as to all applicable insurance coverage with the exception of

workers compensation insurance; (ii) provide at least thirty (30) days prior written notice to Lessor for cancellation, non-renewal or material change in any such insurance; (iii) provide for a waiver of subrogation against Lessor's injuries, damages, including death, property damages, or any other loss to the extent the same is covered by the proceeds of insurance. Any such insurance required by this Article IX shall be primary and noncontributing with any insurance that may be carried by Lessor. Lessor reserves the right, from time to time throughout the Lease Term, to increase the minimum insurance limits set out above to ensure that adequate insurance is being maintained.

9.04 **Qualifying Insurance Company.** All insurance companies providing the required insurance shall be authorized to transact business in Colorado and rated at least "A" by AM Best or other equivalent rating service.

9.05 **Lessor Purchasing Insurance.** In addition to other remedies provided in this Lease, if Lessee fails to maintain the insurance required by this Article IX, Lessor may, but is not obligated to, obtain such insurance and Lessee shall pay to Lessor upon demand, as additional Rent the premium cost thereof plus interest from the date of payment by Lessor until repaid by Lessee.

9.06 **Contractor's Insurance.** Without limiting any of the other obligations or liabilities of Lessee, Lessee shall require its contractors, subcontractors and subtenants, at the contractors', subcontractors' or subtenants' expense, to maintain during the portion of the Lease Term during which they occupy or otherwise are conducting activities on the Leased Premises, the required insurance including the certificate and policy conditions as stated herein.

9.07 **Indemnification.** LESSOR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY OCCURRENCE ON THE PREMISES. LESSEE HEREBY WAIVES ALL CLAIMS AGAINST LESSOR FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON IN, UPON, OR ABOUT THE PREMISES ARISING AT ANY TIME AND FROM ANY CAUSE (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, THE NEGLIGENCE OF LESSOR) OTHER THAN SOLELY BY REASON OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR. LESSEE, FOR ITSELF AND ITS AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, LICENSEES, CONCESSIONAIRES, INVITEES, SUCCESSORS AND ASSIGNS, EXPRESSLY ASSUME ALL RISKS OF INJURY OR DAMAGE TO PERSON OR PROPERTY, EITHER PROXIMATE OR REMOTE, RESULTING FROM THE CONDITION OF THE PREMISES OR ANY PART THEREOF. LESSEE AGREES TO INDEMNIFY AND SAVE HARMLESS LESSOR AND ITS AGENTS, OFFICERS, AND EMPLOYEES (COLLECTIVELY "INDEMNITIES") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING ON, IN OR ABOUT THE LEASED PREMISES OR BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED BY ANY ACT OR OMISSION ON THE PART OF LESSEE OR ANY OFFICER, DIRECTOR, SERVANT, AGENT, EMPLOYEE, REPRESENTATIVE, CONTRACTOR,

SUBCONTRACTOR, LICENSEE, CONCESSIONAIRE, INVITEE, SUCCESSOR OR ASSIGN, OR BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF LESSEE UNDER THIS LEASE, WHETHER SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, LESSEE, ON NOTICE FROM LESSOR, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT LESSEE'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO LESSOR. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL ACTIVITIES OF LESSEE WITH RESPECT TO THE LEASED PREMISES, WHETHER OCCURRING BEFORE OR AFTER EXECUTION OF THIS LEASE. LESSEE'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY LESSEE UNDER THIS LEASE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

Article X Assignment and Sublease

10.01 **Consent of Lessor Required.** Neither Lessee nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Lease or any part hereof, or the interest of Lessee under this Lease, or in any sublease or the rent thereunder without obtaining the prior written consent of Lessor, which may be given or withheld in the sole discretion of Lessor. An assignment of this Lease shall be deemed to have occurred if in a single transaction or in a series of related transactions more than fifty percent (50%) of the ownership interests in Lessee (whether stock, partnership interest or otherwise) is transferred, diluted, reduced, or otherwise affected with the result that the present holder or owners of Lessee have less than a fifty percent (50%) interest in Lessee.

10.02 **Assignments Void.** Any attempted assignment or sublease by Lessee in violation of this Article X shall be void and shall constitute a material breach of this Lease. In no event shall any assignment, subletting or transfer, whether or not with Lessor's consent, relieve Lessee of its primary liability under this Lease for the entire term hereof, and Lessee shall in no way be released from the full and complete performance of all the terms hereof.

10.03 **Obligations to Remain in Effect.** If Lessor expressly consents to an assignment or subletting, Lessee shall at all times remain fully responsible and liable for the payment of the rentals herein specified and for compliance with all of the other obligations under this Lease (even if future assignments and sub-lettings occur subsequent to the assignment or subletting by Lessee).

10.04 **Mortgage of Leasehold.** Lessee may not mortgage the leasehold estate demised by this Lease without the prior written consent of Lessor, but no such encumbrance shall constitute a lien on the fee title to the Leased Premises, and the indebtedness secured thereby shall at all times be and remain inferior and subordinate to all the conditions, covenants and

obligations of this Lease and to all of the rights of Lessor hereunder.

10.05 **Asset-Based Lending.** Lessee shall have the right, at any time, to encumber all or any part of its interest in the inventory or trade fixtures on the Leased Premises with a lien to secure financing, and Lessor agrees to execute, subject to other provisions of this Lease, such waiver, subordination, or other agreements as any such asset-based lender may reasonably request in connection with such financing. Lessee agrees that any such Lessor's waiver shall include a provision reasonably acceptable to Lessor to the effect that (i) such asset based lender shall have the right to remove such financed items from the Leased Premises only during the Lease Term and for a period of sixty (60) days after Lessor has given written notice to such lender that the Lease has been terminated, for any reason; (ii) if such lender undertakes such removal, such lender shall be obligated to repair, at such lender's expense, any damage to the Leased Premises or the improvements thereon caused by the removal of any such financed items; and (iii) if such lender fails to remove such financed items during the Lease Term, or within sixty (60) days after receiving written notice from Lessor of the termination of this Lease, such financed items shall be deemed to have been abandoned by such lender to Lessor.

10.06 **Assignment by Lessor.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have an absolute, unequivocal right to assign or transfer its interest in this Lease, and the real property described herein, whether as collateral or absolutely, to any party whatsoever whether or not such party is related to the Lessor, and the Lessee covenants and agrees that this Lease shall remain in full force and unaffected by such transfer or assignment. In the event of the transfer or assignment by Lessor of its interest in (his Lease to any party expressly assuming Lessor's obligations under this Lease, Lessor shall thereby be released from any further obligations hereunder, and Lessee agrees to look solely to such successor in interest of Lessor for the performance of such obligations. Any security given by Lessee to secure performance of Lessee's obligations hereunder may be assigned and transferred by Lessor to such successor in interest and Lessor shall thereby be discharged of any further obligations relating thereto.

Article XI. Default and Remedies

11.01 **Default.** The occurrence of anyone or more of the following events shall constitute an Event of Default of Lessee under this Lease:

- (a) if Lessee fails to pay Rent or any other amount payable by Lessee hereunder as and when same becomes due and such failure shall continue for more than ten (10) days after Lessor gives Lessee notice of past due rent;
- (b) if Lessee attempts to make an unpermitted assignment or sublease of this Lease;
- (c) if Lessee fails to maintain in force all policies of insurance required by this

Lease and such failure shall continue far more than twenty (20) days after Lessor gives Lessee notice of such failure;

(d) if any petition is filed by or against Lessee under any present or future section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within ninety (90) days of commencement), or if any order for relief shall be entered against Lessee in any such proceedings;

(e) if Lessee becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;

(f) if a receiver, custodian, or trustee is appointed for the Facilities or for all or substantially all of the assets of Lessee, which appointment is not vacated within ninety (90) days following the date of such appointment;

(g) if Lessee fails to perform or observe any provision of this Lease and such failure shall continue far more than thirty (30) days after Lessor gives Lessee notice of such failure, or, if such failure cannot be corrected within such thirty (30) day period, if Lessee does not commence to correct such default within said thirty (30) day period and thereafter diligently prosecute the correction of same to completion within ninety (90) days after notice is sent by Lessor;

(h) if Lessee fails to pay any taxes or other Impositions;

(i) following commencement of use and operation of the Leased Premises, abandon the Leased Premises (failure to occupy and operate the Leased Premises as required in this Lease Agreement for ten (10) consecutive days, for reasons other than because of adverse weather conditions, natural disaster, acts of war or terrorism or other force majeure reasons, shall be deemed an abandonment).

11.02 Remedies. Upon the occurrence of any Event of Default, Lessor shall have the right, at Lessor's option, to elect to do any one or more of the following without further notice or demand to Lessee.

(a) terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, and, if Lessee fails to so surrender, Lessor shall have the right, without notice and without resorting to legal process, to enter upon and take possession of the Premises and the Facilities and to expel or remove Lessee and-ifs-effects without being liable for prosecution or any claim for damages therefor; and Lessee shall, and hereby agrees to indemnify Lessor for all loss and damage which Lessor suffers by reason of such termination, including without limitation, damages in an amount equal to the

total of (i) the costs of recovering the Leased Premises and all other expenses incurred by Lessor in connection with Lessee's default and (ii) the unpaid Rent, plus interest;

(b) enter upon and take possession of the Premises and the Facilities without terminating this Lease and without being liable for prosecution of any claim for damages therefore, and, if Lessor elects, relet the Premises on such terms as Lessor deems advisable, in which event Lessee shall pay to Lessor on demand the cost of repossession, repairing, and altering the Premises and the Facilities for a new Lessee or Lessees and any deficiency between the rent payable hereunder and the rent paid under such reletting; provided, however, that Lessee shall not be entitled to any excess payments received by Lessor from such reletting. Lessor's failure to relet the Premises shall not release or affect Lessee's liability for rent or for damages; or

(c) enter the Premises and the Facilities without terminating this Lease and without being liable for prosecution of any claim for damages therefor and maintain the Premises and repair or replace any damage thereto or do anything for which Lessee is responsible hereunder. Lessee shall reimburse Lessor immediately upon demand for any expenses which Lessor incurs in thus effecting Lessee's compliance under this Lease, and Lessor shall not be liable to Lessee for any damages with respect thereto.

11.03 **No Acceptance of Surrender.** No agreement to accept a surrender of the Premises and no act or omission by Lessor or Lessor's agents during the Term shall constitute an acceptance or surrender of the Leased Premises unless made in writing and signed by Lessor. No reentry or taking possession of the Premises by Lessor shall constitute an election by Lessor to terminate this Lease unless a written notice of such intention is given to Lessee.

11.04 **No Waiver.** No provision of this Lease shall be deemed to have been waived by Lessor unless such waiver is in writing and signed by Lessor. Lessor's acceptance of Rent following an Event of Default hereunder shall not be construed as a waiver of such Event of Default. No custom or practice which may occur or develop between the parties in connection with this Lease shall be construed to waive or lessen Lessor's right to insist upon strict performance of the provisions of this Lease, without a written notice thereof to Lessee from Lessor.

11.05 **Rights Cumulative.** The rights granted to Lessor in this Article shall be cumulative of every other right or remedy provided in this Lease or which Lessor may otherwise have at law or in equity or by statute, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies or constitute a forfeiture or waiver of Rent or damages accruing to Lessor by reason of any Event of Default under this Lease. Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of this Lease, including all reasonable attorneys' fees, including legal assistant's fees, incurred in connection with the collection of any sums due hereunder or the enforcement of any right or remedy of Lessor.

**Article XII.
Warranties**

12.01 **Lessor's Title**. Lessor hereby represents and warrants that it is the owner in fee simple absolute of the Land, subject to covenants, conditions, restrictions, leases, easements, and other matters of record.

12.02 **Quiet Enjoyment**. Lessor covenants and agrees that Lessee, upon paying the Rent and other charges herein provided for and observing and keeping the covenants, conditions, and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Lease without hindrance of Lessor or any person claiming under Lessor.

12.03 **Lessee Financing**. Lessee warrants and represents that Lessee shall secure sufficient financial resources to pay for the construction and completion of the Facilities. Prior to Commencement of Construction, Lessee shall provide to Lessor a letter from its primary lender regarding the financing of the cost of construction of the Facilities. Lessee understands and acknowledges that Lessor's agreement to execute this Lease has been in reliance upon the representation made in this Section 12.03.

**Article XIII.
Eminent Domain**

13.01 **Total Taking**. If all or substantially all of the Leased Premises is taken under power of eminent domain (which term as used in this Lease shall include any conveyance in lieu of condemnation or eminent domain proceedings) or other similar proceeding, then this Lease shall terminate as of the date of taking of possession by the condemning authority.

13.02 **Partial Taking**. Lessor and Lessee agree that if less than all or substantially all of the Premises is taken under power of eminent domain or other similar proceeding, then this Lease shall nevertheless continue in effect as to the remainder of the Premises; provided, however, that if Lessor and Lessee both agree within thirty (30) days following the taking that so much of the Premises has been taken or condemned as to make it economically unsound to attempt to use the remainder thereof for the conduct of Lessee's business thereon, then this Lease shall terminate upon possession of such portion of the Premises by the condemning authority.

13.03 **Award**. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee in the Premises, whether as damages or as compensation, will be the property of Lessor.

Article XIV.

Lessor's Right of Access

Lessor (and its agents, employees and contractors) shall have the right to enter the Premises in order (a) to inspect the Leased Premises and the Facilities, and (b) to confirm that Lessee is complying with all of Lessee's covenants and obligations under this Lease. Lessor shall not be liable to Lessee for the exercise of Lessor's rights under this Article, and Lessee hereby waives any claims for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.

Article XV. Advertising

In connection with any advertising or promotional material relative to the Facilities, Lessee shall use reasonable good faith efforts to include therein the use of the words "City of Fruita, Colorado" or "Fruita". In connection therewith, Lessor does hereby grant to Lessee the personal and nontransferable right and license to use the service mark of the City of Fruita in the development and promotion of the Facilities. The right granted to Lessee herein shall not be assigned, transferred or otherwise conveyed without Lessor's prior written consent. Lessee acknowledges Lessor's exclusive right, title, and interest in and to the service mark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the service mark, Lessee shall not in any manner represent that it has any ownership in the service mark or registration thereof, and Lessee acknowledges that use of the service mark shall not create in Lessee's favor any right, title, or interest in or to the service mark, but all uses of the service mark by Lessee shall inure to the benefit of Lessor. Upon termination of this Lease in any manner provided herein, Lessee will cease and desist from all use of the service mark in any way (and will at Lessor's request deliver up to Lessor, or its duly authorized representatives, all material and papers upon which the service mark appears), and Lessee shall at no time adopt or use, without Lessor's prior written consent, any word or mark which is likely to be similar to or confusing with the service mark.

**Article XVI.
Miscellaneous**

16.01 **Estoppel Certificate.** Upon the written request of either party to this Lease, the other shall execute, acknowledge and deliver to the requesting party, a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of Minimum Rent, Percentage Rent and other charges, and the time period covered by such payment; and (iv) that the other party is not in default under this Lease (or, if the other party is claimed to be in default, stating why). Such party shall deliver such statement to the party requesting the same within ten (10) days after the requesting party's request.

16.02 **Independent Covenant.** Lessee shall not for any reason withhold or reduce Lessee's required payments of Rent and other charges provided in this Lease, it being agreed that the obligations of Lessor under this Lease are independent of Lessee's obligations except as may be otherwise expressly provided. The immediately preceding sentence shall not be deemed to deny Lessee the ability of pursuing all rights granted it under this Lease or at law; however, at the direction of Lessor, Lessee's claims in this regard shall be litigated in proceedings separate from any litigation involving claims for Rent or other claims by Lessor against Lessee (i.e., each party may proceed to a separate judgment without consolidation, counterclaim or offset as to the claims asserted by the other party).

16.03 **No Joint Venture.** The relationship between Lessor and Lessee at all times shall remain solely that of landlord and tenant and shall not be deemed or construed as a partnership or joint venture.

16.04 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Lessor or Lessee (other than payment by Lessee of amounts due under this Lease), Lessor or Lessee shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to force majeure, which term shall include strikes, riots, acts of God, shortages of labor or materials, war, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of Lessor or Lessee.

16.05 **Notices.** All rents or other sums, notices, demands, or requests from one party to another shall be personally delivered or sent by United States mail certified, or registered, return receipt requested, postage prepaid, to the addresses stated below:

If to Lessor:

City of Fruita, Colorado
Attn: City Manager

Fruita City Hall
325 E. Aspen Avenue
Fruita CO 81521

With a copy to:
(which will not constitute notice)

Edward P. Sands, Esq.
City Attorney
Sands Law Office, LLC
450 West Avenue, Suite 204
Rifle CO 81650

If to Lessee:

IWZ, LLC
Attn: Victor and Kodi Imondi
691 Granite Drive
Fruita CO 81521

Notice shall be deemed to have been given (i) if by hand delivery, at the time of delivery, or (ii) if mailed, seventy-two (72) hours after the deposit of same in any United States mail post office box in the state to which the notice is addressed or ninety-six (96) hours after the deposit in any post office in the state other than the state to which the notice is addressed, postage paid, addressed as set forth above. The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

16.06 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Lease. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Lease on behalf of the parties hereto, and each party hereby certifies to the other that any necessary Resolutions, Ordinances or other act extending such authority have been duly passed and are now in full force and effect.

16.07 Time of Essence. Time is of the essence of this Lease.

16.08 Governing Law. This Lease shall be construed under and in accordance with the laws of the State of Colorado, and all obligations of the parties created hereunder are to be performed in Mesa County, Colorado. Venue for any action shall be in the Mesa County, Colorado District Court. The parties agree to submit to the personal and subject matter jurisdiction of said

court.

16.09 **Severability**. In case of any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16.10 **Amendment**. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

16.11 **Prior Agreements Superseded**. This Lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

16.12 **No Waiver**. No waiver by Lessor of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, conditions, or stipulation hereof.

16.13 **Public Uses**. Lessee agrees not to use the Leased Premises or any building or improvement situated upon said Leased Premises, or any part thereof for any use or purpose in violation of any applicable law, regulation, or ordinance of the United States, the State of Colorado or the City of Fruita, Colorado, or other lawful authority having jurisdiction over the Leased Premises.

16.14 **Rights and Remedies Cumulative**. The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

16.15 **Attorney's Fees**. In the event Lessor or Lessee breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney fees, including legal assistant's fees, so incurred by such other party. Lessee shall reimburse Lessor on demand for all reasonable fees and expenses (including attorneys' fees and legal assistant's fees) which it incurs in connection with the seeking and obtaining of permits and approvals required of Lessor hereunder. Lessor or its attorney shall advise Lessee in advance of incurring such fees or expenses, of the approximate amount of said fees or expenses and shall obtain Lessee's approval for said expenditures before incurring same.

16.16 **Further Documents**. Lessor agrees that it will from time to time and at any reasonable time execute and deliver to Lessee such other and further instruments and assurances as Lessee may reasonably request approving, ratifying, and confirming this Lease and

the leasehold estate created hereby and certifying that the same is in full force and effect and that no default on the part of Lessee exists, or if any such default does exist, Lessor shall specify in said certificate each such default. Without limiting the generality of the foregoing, Lessor acknowledges that Lessee intends to obtain third party financing with respect to the construction, operation and maintenance of improvements on the Leased Premises and, in connection therewith, Lessor agrees with Lessee to in good faith consider amendments to, or modifications of, this Lease as may reasonably be required in order to facilitate all such third-party financing.

16.17 **Exhibits and Recitals.** The exhibits and recitals to this Lease are incorporated herein.

16.18 **Lessee Representations.** The Lessee represents and covenants that: (i) Lessee is a duly organized and validly existing limited liability company under the laws of the State of Colorado and has the power and authority to transact the business in Colorado in which it is now engaged or proposed to engage; (ii) Lessee has the power and authority to execute, deliver and carry out the terms and provisions of this Lease and all other instruments to be executed and delivered by the Lessee in connection with its obligations hereunder; (iii) the execution, delivery, and performance by the Lessee of this Agreement have been duly authorized by all requisite actions by the Lessee, and this Agreement is a valid and binding obligation of the Lessee enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally; (iv) the Lessee is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of the Lessee or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered; (v) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of or default under (1) any terms, conditions or provisions of any agreement or instrument (A) to which the Lessee is now a party or is otherwise bound, or (B) to which any of its properties or other assets is subject; (2) any order or decree of any court or governmental instrumentality; or (3) any arbitration award, franchise, or permit; and (vi) the Lessee is not a party to any litigation or threatened litigation or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Lessee's ability to perform its obligations under this Agreement.

16.19 **City Use of Facilities.** Lessor shall have the right to use the Facilities without charge or cost at least four (4) times each calendar year upon prior reasonable written notice to Lessee. The days of use of the Facilities by Lessor shall not include summer weekends and holidays

16.20 **Non-Competition.** For a period of ten (10) years beginning on the Effective Date, Lessee, its parent and affiliated companies, their managers, owners and officers, and Lessee's

financing partners shall not construct, operate, manage or finance another facility or cable park wakeboard park development similar to or like the Facilities within a thirty (30) mile continuous uninterrupted radius of the Premises.

16.21 **Naming Rights.** The name or branding name of the Facilities shall be subject to the prior written approval of Lessor.

16.22 **Signs.** All signs for the Facilities shall be subject to the prior written approval of Lessor. Lessee shall be entitled to one monument sign on the Premises in accordance with Lessor's applicable sign regulations at a location approved by Lessor.

16.23 **Contingency.** This Lease is expressly contingent upon Lessee acquiring an adjoining parcel of land described as _____ and constructing a parking area, restroom facilities and a reception/office building on such parcel in compliance with City of Fruita Land Use Regulations. If Lessee fails to acquire ownership of such parcel and/or fails to develop the parking area, building and restroom facility by _____, this Lease shall be deemed terminated and of no effect.

EXECUTED this ____ day of _____, 2017.

LESSOR:

CITY OF FRUITA, COLORADO, a home rule municipal corporation, acting by and through its City Council.

By: _____
Michael Bennett, City Manager

ATTEST:

Margaret Sell, City Clerk

EXECUTED this ____ day of _____, 2017.

LESSEE:

IWZ, LLC

By: _____
Victor Imondi, Managing Partner

Kodi Imondi, Managing Partner

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

Subscribed and sworn to before me by Michael Bennett, City Manager and Margaret Sell, City Clerk, respectively, this ____ day of _____, 2017.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

Subscribed and sworn to before me by Victor Imondi, Managing Partner and Kodi Imondi, Managing Partner of IWZ, LLC, this ____ day of _____, 2017.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

Notary Public

EXHIBIT A

Description of Land being Leased

EXHIBIT B
Concept Plan

LETTER OF FINANCING FOR CONSTRUCTION OF FACILITIES

To be delivered to Lessor prior to Commencement of Construction pursuant to Section 12.03.

MEMORANDUM OF LEASE

Memorialize Effective Date of Lease and other things pursuant to Section 2.05
(to be recorded with Mesa County Clerk and Recorder)

Exhibit A

LOT 22 PABCO INDUSTRIAL PARK FIL NO 2 SEC 12 & 13 1N 3W - 32.76AC

