

**AMENDMENT NO. 1 - COMMERCIAL LEASE AGREEMENT**

THIS AMENDMENT NO. 1 TO COMMERCIAL LEASE AGREEMENT DATED MARCH 20, 2018 is made, entered into and executed this the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between David J. McHenry Family Trust, Owner (hereinafter "Lessor"), and Ouray County (hereinafter "Lessee").

**WHEREAS**, Lessor and Lessee entered into a Commercial Lease Agreement (“**Exhibit A**”) for the Lease of State and County Course Services office spaces located at Chipeta Emporium Suites B, C, D, and Theater, 630 Main Street, Ouray, Colorado 81427;

**WHEREAS**, the Lessee is desirous of extending the lease agreement as provided for in Section 2 of the Commercial Lease Agreement; and,

**WHEREAS**, the Lessor has agreed to maintain the original rent amount.

**NOW THEREFORE**, as specified in the Commercial Lease Agreement dated March 20, 2018, the Lessor and the Lessee agree to the following amendments as follows:

2. This amendment shall extend the original terms of the lease and shall expire on May 31, 2020.
3. Rent for the term is \$7,200.00 per quarter or \$2,400.00 per month.
4. All other terms and conditions to Exhibit A remain in full force and effect.

Landlord and Tenant have signed this Amendment No. 1 to Commercial Lease Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Ouray County Board of  
County Commissioners**

**David J. McHenry Family Trust**

\_\_\_\_\_  
Don Batchelder, Chair

\_\_\_\_\_  
Print Name:\_\_\_\_\_

Attest:

\_\_\_\_\_  
Michelle Nauer, Clerk & Recorder  
By: Hannah Hollenbeck, Deputy Clerk of the Board

COMMERCIAL LEASE AGREEMENT

THIS AGREEMENT made, entered into and executed this the 20th day of March, 2018, by and between David J. McHenry Family Trust, Owner (hereinafter "Lessor"), and Ouray County (hereinafter "Lessee"). Lessor and Lessee contract and agree as follows:

1. Lessor hereby leases unto Lessee the following land and any improvements thereon (hereinafter "the leased property"): Chipeta Emporium Suites B, C, D, and Theater, 630 Main Street, Ouray, Colorado 81427.
2. The term of this lease shall be for a primary term of 23 months, commencing on May 1, 2018, and expiring at midnight on March 31, 2020, unless extended as provided for herein, and subject to the Annual Appropriations paragraph below. This lease can be extended at the end of the primary term on a month-to-month basis.
3. During the primary term, Lessee shall pay to Lessor, as rental, the sum of Two Thousand Four Hundred Dollars (\$2,400.00) per month, and Seven Thousand Two Hundred Dollars (\$7,200.00) per quarter, on or before the first of each quarter. For the month of May and June, 2018, the rent of Four Thousand -Eight Hundred Dollars, due and payable on May 1, 2018 and late on May 7, 2018. Rent will then be due on the 1<sup>st</sup> of each quarter and late after the 7<sup>th</sup> of each quarter. If rent is not received by Ouray Property Management, property managers for the Lessor, by the 7<sup>th</sup> of the month there will be a \$25 late fee applied then \$5 per day late fee charged after the 8<sup>th</sup> of each month. Lessee agrees to pay a Two Thousand Four Hundred Dollar (\$2,400.00) security deposit to be held by Management Company as a security deposit for reasonable cleaning of, and repair of damages to, the premises upon the expiration or termination of this Lease, or other reasonable damages resulting from a default by Lessee. Lessee shall be liable to Lessor for all damages to the leased premises upon the termination of this Lease, ordinary wear and tear excepted. Lessee is **not** entitled to interest on the security deposit. Lessee may not apply the security deposit to any rent due under this Lease. If Lessor sells or assigns the leased premises, Lessor shall have the right to transfer Lessee's security deposit to the new owner or assignee to hold under this Lease; and upon so doing Lessor shall be released from all liability to Lessee for return of said security deposit.

The Lessor shall, within sixty (60) days after the termination of the lease or surrender and acceptance of the premises, whichever occurs last, return to the Lessee the full security deposit deposited with the Lessor by the Lessee. In the event that actual cause exists for retaining any portion of the security deposit, the Lessor shall provide the Lessee with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The Lessor is deemed to have complied by mailing said statement and any payment required to the last known address of the Lessee. Nothing shall preclude the Lessor from retaining the security deposit for nonpayment of rent, abandonment of the premises, or nonpayment of utility charges, repair work, or cleaning contracted for by the Lessee.

4. The leased property may be used for the following purposes and for no other purposes: State and County Court Services.
  - (A) Indemnity: Lessor and Lessee shall indemnify and save harmless the other from any and all losses, fines, suits, damages, expenses, claims, demands and actions of any kind resulting from their negligence, breach, or violation or non-performance of any condition hereof.
  - (B) Insurance: Lessee shall, during the entire term of the Lease keep in full force and effect a policy of public liability insurance with respect to the Property and the business operated by Lessee in the Property and which the limits of general liability shall be in a minimum amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) for each person injured, and Nine Hundred and Ninety Thousand Dollars (\$990,000.00) per occurrence, naming Lessor as additional insured. Such coverage shall include a broad form general liability endorsement. The policy shall contain a

clause that the Lessee will not cancel or change the insurance without first giving the Lessor ten (10) days prior written notice.

Lessor shall during the term hereof, at its sole expense, provide and keep in force insurance on the building against loss or damage by fire and extended coverage, in an amount equal to one hundred percent (100%) of the full insurable value thereof, which insurance shall be placed with an insurance company or companies approved by Lessor and licensed to do business in the state wherein lay the leased premises. The term "full insurable value" shall mean actual replacement value of the building (exclusive of costs of excavation, foundations and footing below ground level). The insurance required under this paragraph shall be carried in the name of the Lessor and Lessee and shall provide that any proceeds thereunder shall be paid to Lessor and Lessee and any applicable mortgage holder, according to their respective interests.

Duplicate originals or certificates of insurance of the policies provided shall be furnished by Lessor and Lessee to each other and shall contain an agreement by the insurer that such policy or policies shall not be canceled without at least ten (10) days prior notice to the Lessor and Lessee.

**Landlord shall pay the property tax on the building except that if County requests and receives a property tax exemption for the leased premises pursuant to C.R.S. 39-3-124, the rent shall be reduced or offset by the amount of property tax savings enjoyed by Landlord resulting from the property tax exemption, and said reduction shall commence on the 1st of July of each year until said reduction is offset.**

5. Lessor shall pay for water, sewer, trash, electricity and natural gas used on the premises.
  - (A) Lessor's Repairs: Lessor shall be solely responsible for maintaining the roof, foundation and exterior of the building and all parking areas in good repair for their intended use.
  - (B) Other Repairs: All repairs, maintenance, replacement or reconstruction to the interior of the portion of the building leased by Lessee, including but not limited to replacement of glass doors and windows and repair of the plumbing that is caused by the Lessee or their patrons usage, are to be made by Lessee at Lessee's expense. If Lessee fails to make such repairs or replacements promptly or within fifteen (15) days of occurrence, Lessor may, at its option, make such repairs or replacements and Lessee shall repay the costs thereof to Lessor on demand.
6. Lessee will keep the leased property in a clean and wholesome condition and will comply at all times with all lawful health and police regulations.

Lessee shall promptly comply with all of the ordinances of the City of Ouray, Colorado, or of any other governmental body applicable for said premises and to all ordinances and requirements enforced by the state board of health, sanitary, fire or police departments of the City of Ouray for the correction, prevention and abatement of nuisances in and about or connected with the Property because of Lessee's use thereof during the term of this Agreement, all at Lessee's expense. Lessee shall provide for the removal of its own trash, waste paper, boxes and cartons and shall not permit any accumulation of such materials. Lessee shall not engage in any act which shall constitute a nuisance.

7. If Lessee shall make default in the payment of the rent, or any part thereof or any other sums due under the terms hereof, when due as herein provided, or in any of the other covenants, agreements, conditions or undertakings herein contained, and such default shall continue for thirty days after notice thereof in writing to Lessee, or if (a) any proceeding under the bankruptcy act of the United States is begun by or against the Lessee, and an order of adjudication, or order approving the petition, be entered in such proceedings, or (b) a receiver or trustee is appointed for substantially all of the Lessee's business or assets, or (c) if Lessee shall make an assignment for the benefit of creditors, or (d) if Lessee shall vacate or abandon the leased property, then, and in any such event, it shall be lawful for the Lessor, at his election, to declare the term hereof ended and to re-enter the leased property, and to repossess and enjoy the said premises and any buildings and improvements situated thereon without such a re-entry and repossession working a forfeiture

of the rents to be paid and the covenants to be performed by the Lessee during the full term of this agreement. If any default shall be made in any covenant, agreement, condition, or undertaking which cannot with due diligence be cured within a period of 30 days, and if notice thereof in writing shall have been given to the Lessee, and if the Lessee, prior to the expiration of 30 days from and after the giving of such notice, shall commence to satisfy the cause of such default and shall proceed diligently and with reasonable dispatch to take all steps and do all work required to cure such default, then the Lessor shall not have the right to declare said term ended by reason of such default; provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Lessor to declare the said term ended and enforce all of their rights and remedies hereunder for any other default not so cured.

The foregoing provision for the termination of this lease for any default in any of its covenants shall not operate to exclude or suspend any other remedy of the Lessor for breach of any of said covenants, or for the recovery of said rent for the full term, and in the event of the termination or default in any of the terms of this lease as aforesaid.

8. Lessee shall permit Lessor and his agents to enter the Property at all reasonable times for any of the following purposes to inspect the same: (i) to maintain the building in which the said premises are located, (ii) to make repairs to the Property as the Lessor is obligated or may elect to make, and (iii) to post notices of non-responsibility for alterations or additions or repairs.
9. If Property, including improvements thereon, are injured by fire or other casualty, Lessee shall have the exclusive right and option to either terminate this Agreement or reconstruct and/or repair the said damaged improvements and continue this Lease under its terms and conditions as if no such casualty occurred by giving written notice to Lessor of Lessee's intention to so continue this Lease within thirty (30) days after the date of said damage or casualty. In the event that Lessee so elects to continue this Lease, any insurance proceeds payable as a result of said fire or casualty shall be first applied to pay the reconstruction or repair of said improvements, and any balance of such insurance proceeds after payment of said reconstruction or repair shall be paid to whoever owns the insurance policy under which payment is made.
10. If, during the term of this Agreement, the Property shall be taken or condemned, either in whole or part, by competent authorities for public or quasi-public use, Lessee shall have the option to terminate this Agreement as of the date of taking. If Lessee elects not to terminate this Agreement, then this Agreement shall continue in full force and effect.
11. It is understood and agreed that the relationship of the parties hereto is strictly that of Lessor and Lessee and that the Lessor has no ownership in the Lessee's enterprise and the Agreement shall not be construed as a joint venture or partnership. The Lessee is not and shall not be deemed to be an agent or representative of the Lessor.
12. All covenants, conditions and agreements and undertakings contained in this Agreement shall extend to and be binding on the respective heirs, successors and assigns of the respective parties hereto the same as if they were in every case named and expressed.
13. It is further understood and agreed by and between the Lessor and Lessee that, on account of breach or default by either party of any of their obligations hereunder, it shall become necessary for the other party to employ and/or consult with an attorney to give advice, or to enforce or demand any of either party's rights or remedies hereunder, then, and in any such event, the defaulting or breaching party shall pay all attorney fees, court costs and other expenses occasioned by such default(s) or breach(es).
14. Written notice to Lessor, all rent checks and all notices from Lessee to Lessor shall be served or sent to:  
Ouray Property Management  
PO Box 512  
Ouray, CO 81427

Until further written notice to Lessor, all notices from Lessor to Lessee shall be served or sent to Lessee at

the following address:  
Ouray County  
PO Box C  
Ouray, Colorado 81427

All notices to be given under this Agreement shall be in writing and shall be served personally or sent by United States certified or registered mail.

15. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner other than by agreement in writing signed by all parties hereto or their respective successors in interest.
16. If any section, paragraph, sentence or portion of this Agreement or the application thereof to any party or circumstance shall, to any extent, be or become invalid or illegal, such provision is and shall be null and void, but, to the extent that said null and void provisions do not materially change the overall agreement and intent of this entire agreement, the remainder of this Agreement shall not be affected thereby and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent provided by law.
17. This Agreement shall be governed in accordance with the laws of the State of Colorado.  
Optional Provisions:
18. Lessee shall have the right to make such alterations and improvements to the Property as it deems necessary or desirable upon giving written notice of same to Lessor. Such alterations and improvements shall comply with all applicable construction laws and regulations and shall conform generally with the existing improvements on the Property. The Lessee shall keep the Property free from any and all liens arising out of the work performed or materials furnished in making such improvements.
19. Additional Provisions:  
Lessor will do the following work before the move in date:
  1. Paint the walls of the 3 office spaces;
  2. Clean the carpets in the theatre and office spaces;
  3. Have the electrical issues corrected in the theatre/courtroom;
  4. Thoroughly clean the space and restrooms before move in;
  5. Remove the drapes and paint the theatre;
  6. Pull two or three rows of theater seats in front for counsel tables and chairs, remove seating on one side enough to make room for a jury box;
  7. Level floor if needed for counsel/jury seating area;
  8. Erect a dividing wall with adjoining door in first two offices, erect a dividing wall between middle and last office with no door, wall off old window from theater into concession room and sound proof the same; and
  9. Install new wall to wall carpet in the last office.
20. Lessee has permission to do the following work after the move in date:
  1. Install surface mount communication cable, security cameras, wireless equipment, antennas, and protective wire;

2. Drill small holes between offices to accommodate computer and phone wire routing;
3. Install fiber optic internet service from outside the property;
4. Trenching and boring underground, if necessary, which work shall be performed by Tenant's ISP (internet service provider) at the Tenant's sole cost;
5. To change the locks as necessary from time to time, at Tenant's sole expense so long a key is provided to Landlord at all times;
6. To install future communication and security systems such as panic buttons or other equipment that may need, at Tenant's sole cost;
7. Create locked document storage on the wing area near stage; and
8. Install window for the clerk, (first office as you walk in), at Tenant's sole expense.

21. Annual Appropriations

The parties understand that this Agreement, and the payments and other monetary obligations of the County hereunder, shall not be construed as creating a multiple-fiscal year debt or other financial obligation of County within the meaning of Section 20(4)(b) of Article X of the Constitution of Colorado. This Agreement shall not obligate the County, directly or indirectly, to make any payments or meet any other monetary obligation required herein, beyond such payments or obligations as are appropriated for any fiscal year in which this Agreement is in effect. In the event County fails to budget and appropriate, on or before December 31 of each year, funds sufficient to pay all payments and other monetary obligations due for the next ensuing year, an Event of Non-appropriation shall be deemed to have occurred and this Agreement shall cease and terminate. If an Event of Non-appropriation occurs, County shall only be obligated to make payments to Landlord for those amounts that had previously been appropriated and budgeted and not for any ensuing budget years.

22. Early Termination

Regardless of the provisions above, including but not limited to Paragraph 2, after twelve months (May 1, 2019), the Tenant shall have the right to terminate this commercial lease, upon ninety (90) day notice to Landlord in writing. There shall be no penalty for exercising early termination.

\* \* \*

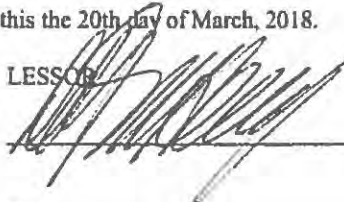
WITNESS the signatures of the parties, this the 20th day of March, 2018.

LESSEE:

  
\_\_\_\_\_

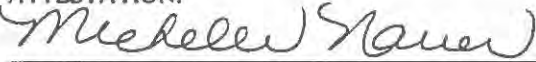
By: Don Batchelder  
Title: Chair, Board of County Commissioners

LESSOR

  
\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTESTATION:

  
\_\_\_\_\_

Michelle Nauer, Clerk and Recorder  
By: ~~Hannah Hollenbeck~~, Deputy Clerk of the Board  
MICHELLE NAUER  
COUNTY CLERK AND RECORDER  
OURAY COUNTY  
P.O. BOX C  
OURAY, CO 81427

