

ORDINANCE NO. 17

Series 2021

AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BRECKENRIDGE FILM, A COLORADO NON-PROFIT CORPORATION D/B/A THE ECLIPSE THEATER; DECLARING AN EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE
(Part of 103 South Harris Street)

WHEREAS, the Town owns the "Breckenridge Grand Vacations Community Center," located at 103 South Harris Street, Breckenridge, Colorado; and

WHEREAS, the Town desires to lease Rooms 013, 019, 019A, 019B, and 020-029 in the Breckenridge Grand Vacations Community Center, to Breckenridge Film., a Colorado nonprofit corporation d/b/a The Eclipse Theater; and

WHEREAS, a proposed Lease for the property has been prepared and reviewed by the Town Council; and

WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

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

and;

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

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

Section 1. The Lease between the Town and Breckenridge Film., a Colorado non-profit corporation d/b/a The Eclipse Theater, for Rooms 013, 019, 019A, 019B, and 020-029 in the Breckenridge Grand Vacations Community Center, 103 South Harris Street, Breckenridge, Colorado (Exhibit "A" hereto) is approved; and the Town Manager is authorized, empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

Section 2. The Town Council hereby finds, determines, and declares that it has the power to adopt this ordinance pursuant to: (i) Section 1-11-4 of the Breckenridge Town Code; (ii) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (iii) the powers contained in the Breckenridge Town Charter.

Section 3. The Town Council of the Town of Breckenridge hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. It is in the public interest for the Town to forthwith execute the Lease approved by this ordinance so that the Lease tenant, Breckenridge Film., a Colorado nonprofit corporation d/b/a The Eclipse Theater, can take immediate possession of the Town-owned real property that is the subject of the Lease. The Town Council further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the Town of Breckenridge.

Section 4. Pursuant to Section 5.11 of the Breckenridge Town Charter this Ordinance shall take effect and be in full force upon adoption of this ordinance by the affirmative votes of at least five (5) members of the Town Council.

Section 5. This ordinance shall be published in full within ten (10) days after adoption, or as soon thereafter as possible, as required by Section 5.11 of the Breckenridge Town Charter.

ADOPTED AND APPROVED as an Emergency Ordinance this 8th day of June, 2021.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: 
Eric S. Mamula, Mayor

ATTEST:


Helen Cospolich, CMC,
Town Clerk

Lease Agreement

THIS LEASE ("Lease") is made and entered into effective the 9th day of JUNE, 2021 between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Landlord"), and BRECKENRIDGE FILM, a Colorado Non-Profit Corporation, d/b/a The Eclipse Theater by Breck Film ("Tenant"). Landlord and Tenant are sometimes collectively referred to in this Lease as the "Parties", and individually as a "Party".

BRECKENRIDGE CREATIVE ARTS, a Colorado nonprofit corporation ("BCA"), has been designated by Landlord as Landlord's managing agent for the purpose of administering and enforcing this Lease. The Parties agree that BCA shall fully administer and enforce this Lease on behalf of Landlord and, except for those references in this Lease which, by their nature, must apply only to Landlord, the references in this Lease to "Landlord" mean BCA. BCA's designation as Landlord's managing agent is subject to revocation at anytime by notice to Tenant.

ARTICLE 1 - BASIC LEASE PROVISIONS

1.1. Leased Premises. In consideration of Tenant's payment of rent and the keeping of the promises, covenants, and conditions required of Tenant by this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, for the term and upon the conditions of this Lease, the premises known as Rooms 013, 019, 019A, 019B, and 020-029 in the "Breckenridge Grand Vacations Community Center," 103 South Harris Street, Breckenridge, Summit County, Colorado 80424 ("Leased Premises"). The Leased Premises are depicted on the attached Attachment "A", which is incorporated into this Lease by reference, The building in which the Leased Premises are located is referred to in this Lease as the "Building."

1.2. Use of Premises.

A. Tenant may use the Leased Premises only as a movie theater and related uses including but not limited to educational programs, guest speakers/lectures, and tenant fundraising events, unless Landlord gives it's advance written consent to another use.

B. Tenant will be entitled to continuous possession of the Leased Premises pursuant to this Lease. Tenant will have primary use of Leased Premises 52 weeks per calendar year. Tenant will provide a minimum of 48 weeks of commercial film, to include, first run, art house, mini major, independent, and high school film programing at the Leased premises each calendar year. During the slower seasons of late April, May, late October, and early November, weekly programming may be limited to weekends only.

C. Tenant also agrees to work with BCA (not in BCA's capacity as Landlord's managing agent under this Lease but in BCA's capacity as a nonprofit corporation providing cultural and entertainment activities for the Town, and its many residents and guests), or BCA's designee, to accommodate specific cultural events/partners whose request for use of Leased Premises may fall within Tenant's agreed weeks of operation subject to any prior film scheduling obligations. BCA, or its designee, will provide advanced written notice to Tenant of any request for additional use of Leased Premises.

E. Tenant will have sole use of concession area and concessionaire equipment within the Leased Premises during Tenant's term of this Lease. Tenant agrees to provide staffed concession services, if needed, to any additional users of the Leased Premises which may include a reasonable service fee to cover personnel expenses.

F. Tenant will maintain an active liquor license in good standing for the Leased Premises throughout the Term of this Lease. Tenant may include the Hopeful and Discovery Rooms at the lower level of the attached community center to defined liquor license premises.

1.3. **Square Footage.** Landlord and Tenant agree that the Leased Premises contain 3,131 net square feet.

1.4. **Shared Use Space.** Tenant and its agents, employees, and invitees have the nonexclusive right with others designated by Landlord to the use of the common areas of the Building for the common areas' intended and normal purposes. Common areas include sidewalks, parking areas (as described in Section 1.6), janitor's closet (room 010), hallway leading to commissary kitchen, restrooms, and the commissary kitchen (room 003) for cleanup purposes ("**Shared Use Spaces**"), subject to their availability.

1.5. **Term**

A. The initial term of this Lease ("**Initial Term**") will begin on July 12, 2021 and will end, unless sooner terminated as hereafter provided, on December 31, 2022. After January 1, 2023 a "**Lease Year**" shall commence on January 1st and end on the next December 31st.

B. On January 1, 2023, and on each subsequent January 1 up to and including January 1, 2031, this Lease will be automatically renewed for successive terms of one calendar year each (each successive year is a "**Renewal Term**") unless this Lease is terminated by either Party pursuant to Subsection C, below. The "**Term**" of this Lease includes both the Initial Term and any Renewal Terms.

C. Beginning January 1, 2023, either Landlord or Tenant may terminate this Lease, without cause and without liability for breach of this Lease, by giving the other Party written notice of termination prior to January 1st of any calendar year ("**Notice of Termination**") in the manner described in Section 14.5. The Notice of Termination must propose an effective date of termination of this Lease ("**Termination Date**"), which date may not be less than six months nor more than one year after the date the Notice of Termination is given to the other party. Upon the giving of timely Notice of Termination this Lease will terminate on the Termination Date unless the Landlord and Tenant agree to another Termination Date. A Party may not terminate this Lease under this Subsection C if it is in default when the notice of termination is given.

D. Unless sooner terminated as provided in Subsection C, this Lease terminates December 31, 2031.

1.6. **Parking.** Subject to availability, Tenant and Tenant's employees and customers will be allowed to use the Building's shared parking lot ("**Parking Lot**"). No parking spaces within the Parking Lot will be specifically assigned for Tenant's exclusive use.

1.7. **Compliance With Laws.** Tenant, at Tenant's sole cost and expense, will comply with all laws, ordinances, orders, and regulations of all governmental authorities with respect to the use of the Leased Premises. Landlord warrants that, to the best of its actual knowledge, on the Commencement Date, the Leased Premises will comply with all applicable laws, ordinances, orders, and regulations of governmental authorities. A judgment of any court of competent jurisdiction or the admission of Tenant

in any action or proceeding against Tenant, whether Landlord is a party to such action or proceeding or not, that Tenant has violated any law, ordinance, requirement, or order in the use of the Leased Premises will be conclusive of the fact as between Landlord and Tenant.

1.8. Surrender of Leased Premises.

A. Upon expiration or earlier termination of this Lease Tenant will surrender the Leased Premises to Landlord in substantially the same condition as existed on the Commencement Date, broom clean, ordinary wear and tear excepted. Not later than the last day of the Term, Tenant will remove its personal property and trade fixtures from the Leased Premises. The cost of such removal will be borne by Tenant, and Tenant will repair all injury or damage done to the Leased Premises in connection with the installation or removal of Tenant's personal property and trade fixtures. All of Tenant's fixtures and trade fixtures that are so attached to the Leased Premises that they cannot be removed without material injury to the Leased Premises will, at Landlord's option, become the property of Landlord upon installation and will remain with the Leased Premises upon surrender. Those trade fixtures furnished by the Landlord to include concessionaire equipment will remain the property of the Landlord.

B. Landlord may retain or dispose of any personal property or fixtures (including trade fixtures) left remaining by Tenant upon the Leased Premises upon the expiration or earlier termination of this Lease, provided Landlord first delivers 15 days' written notice to Tenant, identifying the property remaining on the Leased Premises and stating whether Landlord intends to retain or dispose of the property, and Landlord affords Tenant reasonable opportunity to remove the property during such 15 day period. Landlord will not be accountable to Tenant for any damages for the loss or destruction of such property, or for any part of the proceeds of sale, if any, realized by Landlord, provided Landlord complies with the terms of this Section. Tenant waives all claims against Landlord for any damages suffered by Tenant resulting from Landlord's retention or disposition of such personal property or fixtures (including trade fixtures) if Landlord complies with the terms of this Section.

ARTICLE 2 – RENT

2.1. Rent.

A. **Monthly Rent.** During the Term of this Lease (both the Initial Term and the Renewal Term, if applicable) Tenant will pay to Landlord each month a rental for the use of the Leased Premises. The first monthly rent payment will be due September 1, 2021. The monthly rental is the total of the Tenant's share of the following expenses associated with the Leased Premises:

- (i) Town of Breckenridge Public Works services charges based on 24% of actual total expenses of the Breckenridge Grand Vacations Community Center. The Regular Services provided by the Town of Breckenridge include utilities, snow removal, water, sewer, inspections, monitoring, trash, elevator service, and replacement and maintenance parts. The percentage of actual total expenses of the Breckenridge Grand Vacations Community Center chargeable to Tenant as part of the monthly Rent is subject to change at the sole discretion of the Town of Breckenridge.
- (ii) Janitorial expenses secured by Landlord or Tenant including trash removal, vacuuming carpets, cleaning restrooms, and restroom paper products.

(iii) Projector Maintenance Service Agreement.

Appendix A illustrates what the monthly/annual charges will be for the Initial Term of this Lease. Any changes to such charges will be communicated to the Tenant by Landlord at least 60 days prior to the commencement of the Lease Year to which the increased charges due from Tenant will begin. Capital Improvement Funds are not part of the charges to be paid by Tenant as described on Appendix A.

Tenant's rental payments due to Landlord are referred to as "**Monthly Rent**" or "**rent**," Any amount due to Landlord from Tenant under this Lease that is not specifically identified as "rent" or "Monthly Rent" is "**additional rent**." The Monthly Rent will be paid, without deduction, setoff, prior notice, or demand.

B. **Tenant's Share of Landlord's Capital Improvement Fund.** This reserve/replacement fund will be used to help pay the cost of replacing technical equipment such as projectors or making other improvements to the theater as needed and agreed upon by both Parties. The amount of the dollars going into the fund will be equal to 25% of Tenant's net operational revenues. As used in this Lease, the term "Net Operational Revenues" shall mean all revenues, of whatever kind or nature, generated by Tenant from the conduct of Tenant's theater operations at the Leased Premises less all of Tenant's actual and necessary expenses associated with the conduct of Tenant's theater operations at the Leased Premises paid by Tenant. The Parties acknowledge that there likely will be no net operational revenues during the first six months of Tenant's operations at the Leased Premises pursuant to this Lease. Tenant shall pay its share of the Capital Improvement Fund as Additional Rent. Payments into the Capital Improvement Fund will be made bi-annually to Landlord on agreed upon dates.

C. **Place of Rent Payments.** Place And Manner Of Payments. All sums payable to Landlord under this Lease will be made to:

Breckenridge Creative Arts
Director of Finance
P. O. Box 4269
Breckenridge, CO 80424

or at such other place as BCA's Director of Finance ("**Director of Finance**") may hereafter designate by written notice provided to Tenant in accordance with Section 14.5 of this Lease. All sums will be made in legal tender of the United States. Any check given to the Landlord will be received subject to collection, and Tenant agrees to pay any charges, fees or costs incurred by the Landlord for the collection, including reasonable attorney's fees.

D. **Inspection of Tenant's Books and Records.** Tenant will maintain a system of bookkeeping reasonably satisfactory to the Director of Finance and the Landlord. The Director of Finance and/or the Landlord shall have the ability to examine the profit and loss statements for the operation of this facility at least annually.

E. **Audit of Tenant's Books and Records.** The Director of Finance and/or the Landlord has the right at any time upon 30 days' written notice to audit all of the books of account, bank statements, documents, records, returns, papers and files of Tenant relating to the Tenant's Gross Profit for the

operation of this facility. Within 30 days of written notice of the request to audit, Tenant will make all such documents available for examination at the Leased Premises.

F. **Tenant's Sales Tax Returns**, Tenant agrees that Director of Finance may inspect any sales tax return or report and accompanying schedules and data which Tenant may file with Landlord pursuant to the Town of Breckenridge Retail Sales Tax Ordinance, and Tenant waives any claim of confidentiality which it may have in connection therewith.

G. **Interest On Monthly Rent**. Tenant will pay interest to Landlord on any installment of Monthly Rental that is 30 days or more past due at the rate of 8% per annum commencing on the date the installment of Monthly Rent is due and continuing until the date such installment of Monthly Rent is fully paid.

H. **Interest On Other Amounts**. Tenant will pay interest to Landlord on any amount other than Monthly Rental that is due to Landlord under this Lease at the rate of 8% per annum commencing 30 days after Landlord has provided Tenant with written notice that such sum is past due and continuing until the date the past due amount is fully paid.

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

ARTICLE 3 – LANDLORD'S DISCLAIMER AND EXCULPATORY PROVISION

3.1. **Landlord's Non-liability**, As between the Parties, Tenant, as a material part of the consideration to Landlord, assumes all risk of damage to property or injury to persons in or upon the Leased Premises from any cause other than Landlord's negligence or intentional wrongful act, and Tenant waives all claims in respect thereof against Landlord.

ARTICLE 4 – UTILITIES AND SERVICES

4.1. Utilities And Services.

A. **Utilities**. Landlord will provide as part of Tenant's rent the following utility services for the Leased Premises:

- (i) all water necessary for Tenant's operations at the Leased Premises;
- (ii) all sewer service necessary for Tenant's operations at the Leased Premises;
- (iii) all natural gas necessary for Tenant's operations at the Leased Premises;
- (iv) all electricity necessary for Tenant 's. operations at the Leased Premises; and

(v) trash and recycling services for 103 S. Harris Street, which will be made available to tenant.

B. **Tenant's Telephone and Internet.** Tenant will pay for Tenant's telephone and internet service (if any) at the Leased Premises. Tenant will cause any contracts for its telephone and internet service to be placed solely in Tenant's name, Tenant will pay all charges for such services as they become due.

ARTICLE 5 – REPAIRS, MAINTENANCE, SNOW REMOVAL, AND CLEANING

5.1. Maintenance.

A. **Landlord's Repairs.** Except for required maintenance, repairs, and upkeep for which Tenant is liable under Subsection B, the Town of Breckenridge, being the owner of the building, will pay for and make all required repairs to the Building and the Leased Premises, including:

- (i) roof;
- (ii) foundation;
- (iii) exterior walls;
- (iv) interior structural walls (excluding finish and trim of these walls);
- (v) all other structural components;
- (vi) the water, sewer, plumbing system and plumbing fixtures located on the Leased Premises;
- (vii) the mechanical, electrical, and heating/ventilation systems; and
- (viii) audio-visual equipment, theater seats, carpet replacement, and concessionaire equipment repairs and upgrades.

B. **Tenant to Reimburse Landlord For Repairs; When.** Tenant will reimburse Landlord for any maintenance, repair, and upkeep to the Building or the Leased Premises that Landlord is required to make that is caused by the negligence, misuse, or willful act of Tenant or its employees or invitees.

5.2. **Time for Repairs.** Required repairs or maintenance will be completed within a reasonable time (depending on the nature of the repair or maintenance needed) after receiving notice or having actual knowledge of the need for the repair or maintenance.

5.3. **Snow Removal.** Landlord will provide all necessary snow and ice plowing and removal from the Parking Area, and the sidewalks and entry areas of the Leased Premises.

5.4. **Cleaning of Leased Premises.** Tenant will work with landlord to contract for janitorial service to provide periodic cleaning of the Leased Premises. Tenant will be responsible for cleaning spills on carpet and theatre seats in a timely manner. Tenant will pay the cost to have carpet in premises professionally cleaned as needed.

ARTICLE 6 – TAXES

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

interest" pursuant to Section 39-1-103(17)(a), C.R.S., or any successor state statute. Any taxes lawfully assessed arising from Tenant's occupancy and use of the Leased Premises pursuant to this Lease shall be paid by Tenant, and Tenant shall indemnify and hold Landlord harmless from any such taxes. Any taxes due arising from Tenant's occupancy and use of the Leased Premises pursuant to this Lease shall be paid by Tenant in a timely manner. Prior to the last day for payment of such taxes without penalty or interest, Tenant shall provide to Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the taxes. Tenant may pay any taxes in installments if permitted by law. In the event Tenant is liable for the payment of any taxes arising from Tenant's occupancy and use of the Leased Premises pursuant to this Lease, Tenant shall have the right, at its sole expense, to contest any such taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings; provided that the commencement and prosecution of such legal proceedings does not jeopardize Landlord's interest in the Leased Premises during the pendency of the proceedings, and that Tenant makes timely payment of such taxes if Tenant loses the contest or there is any risk whatsoever that the Leased Premises may be sold. Tenant shall advise Landlord prior to instituting any such contest and shall as a condition of exercising such right provide Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Section 6.1. Landlord at Tenant's sole cost and expense, shall reasonably cooperate with Tenant in any such contest, may join in the contest, and shall execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

6.2. **Personal Property Taxes.** Tenant will pay when due all taxes, assessments, fees, and other charges that are levied against Tenant's personal property or trade fixtures installed or located in or on the Leased Premises, and that become payable during the Term of this Lease. Within 10 days after demand, Tenant will furnish Landlord with satisfactory evidence of such payments.

ARTICLE 7 – TENANT'S NEGATIVE OBLIGATIONS

7.1. **Alterations.**

A. **"Alterations"** means alterations, additions, substitutions, installations, changes, and improvements to the Leased Premises.

B. No Alteration may be undertaken until Tenant has obtained approval of plans and specifications for such Alteration from Landlord, acting in its capacity as Landlord of the Leased Premises in communication with Landlord. Landlord's consent will not be unreasonably withheld or unduly delayed for nonstructural interior Alterations that do not adversely affect the Building's appearance, value, and structural strength or integrity.

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

D. The construction of an approved Alteration must be prosecuted with reasonable dispatch, subject to delays caused by force majeure events (See Section 14.20).

E. Any Alteration made by Tenant to the Leased Premises will become the property of Landlord; will be considered as part of the Leased Premises; and will not be removed from the Leased Premises by Tenant upon the expiration or earlier termination of this Lease.

7.2. **Signs.** Tenant may not post, place, affix, erect, or display any sign within or outside of the Leased Premises, or within or outside the Building, without Landlord's prior approval. As used in this Section, the term "sign" has the meaning provided in the Breckenridge Town Code, as amended from time to time throughout the Term of this Lease In considering Tenant's request to place a sign within or outside of the Leased Premises or the Building. Landlord may remove any sign placed within or outside of the Leased Premises or the Building in violation of this Section. In addition to obtaining Landlord's discretionary permission as described above, Tenant must also obtain any required sign permit from Landlord acting in its governmental capacity, Tenant must maintain all signs located within or outside of the Leased Premises in good, clean, and attractive condition. Tenant must remove all signs placed by Tenant within or outside of the Leased Premises and Building at the expiration or earlier termination of this Lease, and repair any damage or injury caused thereby. If not so removed by Tenant, Landlord may remove such sign(s) at Tenant's expense.

7.3. **Assignment and Subletting.** Tenant may not assign, sublet, license, or allow any other person or entity to occupy or use any or all of the Leased Premises without first obtaining Landlord's prior written consent. Any assignment, encumbrance, sublease; or license without Landlord's prior written consent will be voidable and, at Landlord's election, will constitute a default under this Lease. No consent by Landlord to any of the above acts will constitute a further waiver of the provisions of this Section.

If Landlord chooses to consent to an assignment or sublease, Tenant may be required, as a condition of granting consent, to pay Landlord's reasonable costs incurred in considering the proposed assignment or sublease including, but not limited to, legal fees and credit checks, in a total amount not to exceed \$1,000.

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

7.5. **Liens.** Tenant will not permit any lien to be filed against the Leased Premises or the Building, including, but not limited to, a lien arising out of any work performed, materials furnished or obligations incurred by Tenant. The indemnification provisions of this Lease will apply to any such lien. If, because of any act or omission of Tenant, and resulting from Tenant's work on the Leased Premises, any mechanic's or other lien, charge or order for the payment of money is filed against the Leased Premises or the Building, Tenant will, at its own cost and expense, cause the same to be discharged of record or bonded within 90 days from the filing of the lien. Prior to commencing the construction of any Alteration upon the Leased Premises, Tenant will post and keep posted notice of Landlord's non-liability of the Leased Premises pursuant to Section 38-22-105, C.R.S.

ARTICLE 8 – INSURANCE

8.1. **Landlord's Building Insurance.** Landlord agrees, at Landlord's sole expense, to keep the Building insured against damage or destruction by fire, earthquake, vandalism, and other perils in the amount of its full replacement value, as such value may exist from time to time.

8.2. **Tenant's Liability Insurance.** Tenant agrees, at Tenant's sole expense, to maintain commercial general liability insurance covering Tenant's operations on the Leased Premises with minimum combined single limits of not less than One Million Dollars (\$1,000,000). The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury, blanket contractual, products, and completed operations. Tenant's liability insurance policy will be endorsed to include Landlord as an additional insured.

8.3. **Tenant's Property Insurance,** Tenant agrees, at Tenant's sole expense, to keep its personal property and trade fixtures located in or upon the Leased Premises insured with "all risks" insurance in an amount to cover one hundred percent (100%) of the replacement cost of the property and the fixtures.

8.4. **Tenant's Activities Not to Increase Insurance Rates.** Tenant will not do anything in or about the Leased Premises that will materially increase Landlord's insurance rates on the Leased Premises. Tenant agrees to pay to Landlord upon demand the amount of any increase in premiums for Landlord's insurance specifically resulting from the above, whether or not Landlord will have consented to the act on the part of Tenant. If Tenant installs any electrical equipment that overloads the lines in the Leased Premises, Tenant will make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction.

8.5. **Additional Insurance Provisions.** Every policy required above will be primary insurance. The Party required to procure and maintain a particular insurance policy will be solely responsible for any deductible losses under such policy. Every policy of insurance required by this Section will be maintained during the entire Term of this Lease.

8.6. **Insurance Criteria.** Insurance policies required by this Lease will:

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

B. provide that the insurance cannot be cancelled or materially changed in the scope or amount of coverage unless 15 days' advance notice is given to the non-procuring Party.

8.7. **Evidence of Insurance.** Prior to the commencement of this Lease, each Party will give certificates of insurance to the other Party evidencing compliance with the requirements of this Section. The policies will be renewed or replaced and maintained by the Party responsible for such policy throughout the Term of this Lease to assure continuous coverage. If either Party fails to give the required certificate within 30 days after notice or demand for it, the other Party may obtain and pay for the insurance and receive reimbursement from the Party required to have the insurance.

8.8. **No Interest in Insurance Proceeds.** Landlord has no interest in proceeds of any insurance carried by Tenant on Tenant's interest in this Lease, and Tenant has no interest in the proceeds of any insurance carried by Landlord.

ARTICLE 9 - INDEMNIFICATION

9.1. **Indemnification by Tenant.** To the fullest extent permitted by law, Tenant will indemnify and hold Landlord and the Landlord harmless against and from any and all claims arising from:

- A. the conduct of Tenant's business upon the Leased Premises;
- B. any activity, work, or other thing done, permitted or suffered by Tenant in or about the Leased Premises;
- C. any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the Terms of this Lease;
- D. any and all claims arising from any intentional or negligent act of Tenant, or any agent, employee, contractor, or invitee of Tenant; and
- E. all costs, attorney's fees, and liabilities incurred in the defense of any claim for which indemnification is required under this Section.

Tenant, upon notice from Landlord, will defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord.

9.2. **Survival of Indemnity Obligation.** The indemnity obligations required by Lease will survive the termination or expiration of this Lease, and will continue to be enforceable thereafter, subject however to statutory and equitable limitation periods.

ARTICLE 10 – DAMAGE TO LEASED PREMISES

10.1. **Damage to or Destruction of Leased Premises.** If the Leased Premises are damaged by fire or other perils that are fully covered by Landlord's insurance, Landlord will promptly repair the damage, and this Lease will remain in full force and effect, except that Tenant will be entitled to terminate this Lease or obtain a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and the making of such repairs will reasonably interfere with the business carried on by Tenant in the Leased Premises. If the damage is due to the fault or neglect of Tenant, its employees or invitees, there will be no abatement of rent. If the Leased Premises are damaged as a result of any cause other than the perils covered by Landlord's building insurance, then Landlord will not be obligated to repair or rebuild the Leased Premises, and either Party may terminate this Lease by giving the other Party 30 days' notice in accordance with the provisions of Section 14.5 of this Lease.

ARTICLE 11 – DEFAULT

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

- A. The abandonment of the Leased Premises by Tenant.
- B. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant pursuant to this Lease, as and when due, where such failure continues for a period of 10 days after service of written notice by Landlord to Tenant.
- C. The failure by Tenant to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Tenant, or to obey rules promulgated by Landlord in accordance with Section 13.1 of this Lease, within 20 days after service of written notice by Landlord to Tenant. In the event of a non-monetary default that is not readily susceptible of being corrected within 20 days, Tenant will not be in default if it commences correcting the default within 20 days of service of a demand for compliance notice and thereafter corrects the default with due diligence.

11.2. **Landlord's Remedies Upon Default.** In addition to the remedies given in this Lease or under the law, Landlord may do any one or more of the following if Tenant is in default under this Lease;

- A. Terminate this Lease, and Tenant will then surrender the Leased Premises to the Landlord;
- B. Enter and take possession of the Leased Premises, either with or without process of law, and remove Tenant, with or without having terminated this Lease; or
- C. Alter the locks and security devices at the Leased Premises.

Tenant waives claims for damages by reason of Landlord's reentry, repossession, or alteration of the locks or other security devices at the Leased Premises, and for damages by reason of any legal process.

11.3. **No Surrender.** Landlord's exercise of any of its remedies or its receipt of Tenant's keys to the Leased Premises will not be considered an acceptance or surrender of the Leased Premises by Tenant. A surrender must be agreed to in a writing signed by both Landlord and Tenant.

11.4. **Default By Landlord.** Landlord will be in default under this Lease if Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within 20 days following service of written notice by Tenant. In the event of a non-monetary default that is not capable of being corrected within 20 days, Landlord will not be in default if Landlord commences correcting the default within 20 days of receipt of notification and thereafter correct the default with due diligence.

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

11.6. **Self-Help.** If either Party defaults under this Lease ("**Defaulting Party**") the other Party ("**Nondefaulting Party**") may, without being obligated and without waiving the default, cure the default. The Nondefaulting Party may enter the Leased Premises or the Building to cure the default. The Defaulting Party shall pay the Nondefaulting Party, upon demand, all costs, expenses, and disbursements incurred by the Nondefaulting Party to cure the default.

11.7. **Survival.** The remedies permitted by this Article 11 will survive the termination of this Lease.

ARTICLE 12 – NONDISTURBANCE

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

ARTICLE 13 – LANDLORD'S RIGHTS

13.1. **Rules.** In order to address matters that are not addressed in this Lease, or matters that arise after the commencement of this Lease, Landlord may adopt reasonable rules and regulations with respect to the Leased Premises. Tenant, its employees and invitees, must faithfully observe and comply with any written rules and regulations with respect to the Leased Premises that are delivered to Tenant by Landlord during the Term of this Lease. No rule adopted by Landlord may unreasonably interfere with Tenant's conduct of its business or Tenant's use and enjoyment of the Leased Premises, or require payment of additional moneys by Tenant. If a rule adopted by Landlord conflicts with or is inconsistent with any Lease provision, the Lease provision controls.

13.2. **Holdover.** If Tenant continues to hold possession of the Leased Premises after the natural expiration of the Term of this Lease (without complying with the applicable provisions related to the options to renew herein granted), then such holding over will not be deemed a renewal of the Lease for the whole Term, but Tenant will be deemed to be a tenant from month to month only, at the same Monthly Rent herein specified; EXCEPT Landlord may, at Landlord's option, increase the Monthly Rent to an amount not more than 125% of the Monthly Rent described in Section 2.1 for any holdover period upon 10 days' prior written notice to Tenant.

13.3. **Inspection And Entry.** Except in case of a verifiable and actual emergency (in which event no advance notice will be required) Tenant agrees that Landlord and Landlord's authorized representatives may enter the Leased Premises following at least 48 hours' advance notice to Tenant during reasonable hours for the purposes of inspecting the Leased Premises. Tenant may require that Landlord be accompanied at all times by a representative of Tenant and Landlord will comply with Tenant's security procedures. Except in case of a verifiable and actual emergency, Tenant may specify the times when Landlord's entry will be permitted. Landlord will minimize any interference with Tenant's business. Subject to the foregoing, Tenant further agrees that Landlord may go upon the Leased Premises and:

- A. make any necessary repairs to the Leased Premises and perform any work that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, or that Landlord may deem necessary to prevent waste or deterioration of the Leased Premises;
- B. make repairs that Landlord is required to perform under the terms of this Lease;
- C. post any notice provided for by law; or
- D. otherwise protect any and all rights of Landlord.

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

ARTICLE 14 – MISCELLANEOUS

14.1. **Governmental Immunity.** Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Landlord, its officers, or its employees.

14.2. **Hazardous Materials - Prohibited.** Tenant will not store or permit the storage on the Leased Premises of any type of hazardous or similar material that is regulated by federal, state, or local regulation, except Tenant may store and use materials customarily used in the operation and maintenance of a business office that do not violate applicable laws.

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

14.4. **Governing Law; Venue; Waiver of Jury Trial.** This Lease is to be interpreted in accordance with the laws of the State of Colorado without regard to principles of conflicts of laws. Venue for any legal action arising out of this Lease will be proper only in Summit County, Colorado. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION TO ENFORCE, INTERPRET OR CONSTRUCT THIS AGREEMENT.

14.5. **Notices.** Whenever under this Lease a provision is made for notice or demand of any kind, notice will be in writing and will be signed by or on behalf of the Party giving or making the same, and it will be deemed sufficient notice and service thereof if notice is to Tenant and sent by registered or certified mail, postage prepaid, to the last Post Office address of Tenant furnished to Landlord for this purpose; and if to Landlord, sent by registered or certified mail, postage paid, to Landlord at the address furnished for this purpose, or to the place then fixed for the payment of rent.

Tenant's initial address for notice is:

Breckenridge Film
P.O. Box 718
Breckenridge, CO 80424

Landlord's initial address for notice is:

Town of Breckenridge
c/o President and CEO
Breckenridge Creative Arts
PO BOX 6681
Breckenridge, Colorado 80424

Any notice with respect to this Lease that is specifically required or provided for by Colorado law must be served in the manner provided by Colorado law for the service of such notice. Nothing in this Section will prevent the giving of notice in such manner as is prescribed by the Colorado Rules of Civil Procedure for the service of legal process.

14.6. **Complete Agreement.** It is understood and agreed that this Lease contains the complete and final expression of the agreement between the Parties, and there are no promises, representations, or inducements except as are set forth in this Lease. All negotiations, considerations, representations, and understandings between the Parties related to this Lease are contained in this Lease.

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

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

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

14.10. **Severability.** If any provision of this Lease is held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of this Lease are not affected or impaired in any way.

14.11. **Annual Appropriation.** Financial obligations of Landlord under this Lease payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. If sufficient funds are not made available, this Lease may be terminated by either Party without penalty. Landlord's obligations under this Lease do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

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

14.13. **Landlord's Consent or Approval.** Except as otherwise expressly provided to the contrary in this Lease, wherever in this Lease it is provided that some act requires Landlord's prior consent or approval, such consent or approval may be granted, withheld, or conditionally approved in Landlord's sole and absolute discretion.

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

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

14.16. **Authority.** The individuals executing this Lease on behalf of each of the Parties have all requisite powers and authority to cause the Party for whom they have signed to enter into this Lease and to bind such to fully perform the obligations required of such Party under this Lease.

14.17. **Third Parties.** There are no third party beneficiaries of this Lease.

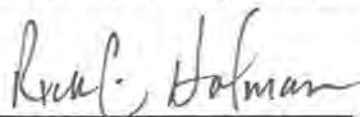
14.18. **Time of Essence,** Time is of the essence of this Lease.

14.19. **Force Majeure,** Neither Party is liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of this Lease due to causes beyond the control of that Party, including, without limitation, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, terrorism, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or that is not in its power to control.

14.20. **Binding Effect,** The covenants, conditions, and obligations contained in this Lease extend to, bind, and inure to the benefit of, not only the Parties hereto, but their respective successors and permitted assigns.

LANDLORD:

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: 
Rick G. Holman, Town Manager

Breckenridge Film, a Colorado nonprofit corporation d/b/a The Eclipse Theater by Breck Film:

By: Cynthia Dorda

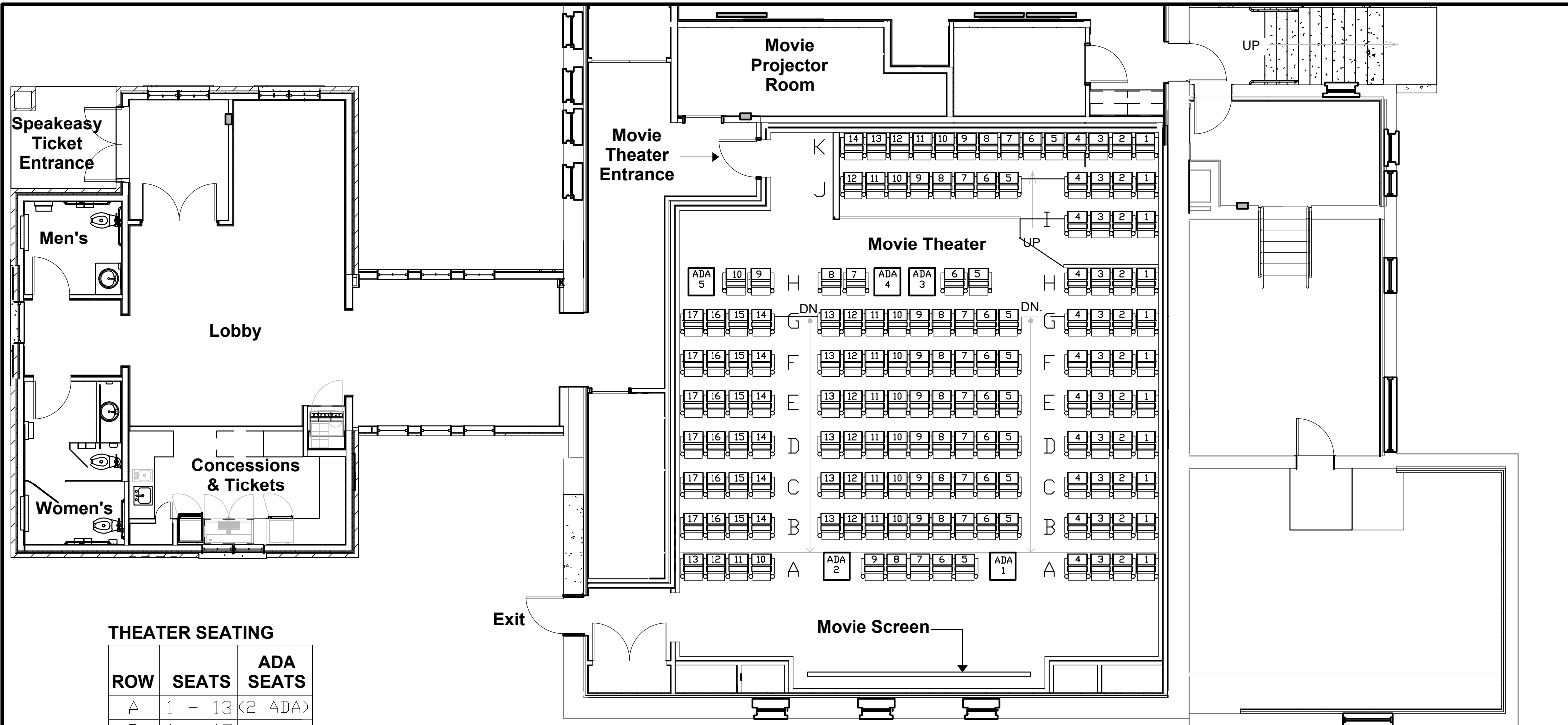
Title: President of Board

Appendix A

BCA Cost to Maintain Speakeasy Theater - 2021

Town of Breckenridge Charges for Service and Utilities: Charged to BCA Quarterly based on 24% of actual charges to the BGVCC

	Monthly Estimate		Annual Estimate
Utilities	\$ 638		\$ 7,660
Snow removal	\$ 93		\$ 1,110
Water	\$ 11		\$ 135
Sewer	\$ 44		\$ 533
Inspections	\$ 47		\$ 567
Monitoring	\$ 8		\$ 98
Trash	\$ 15		\$ 175
Elevator Service	\$ 62		\$ 745
R&M Parts	\$ 63		\$ 755
Sub - Totals	\$ 982		\$ 11,778
Other Expenses			
Janitorial expenses (inc. paper products) monthly average	\$ 1,083		\$ 13,000
Stron Projector Contract	\$ 150		\$ 1,800
Sub - Totals	\$ 1,233		\$ 14,800
Total Estimated Monthly Rent			
	\$ 2,215		



THEATER SEATING

ROW	SEATS	ADA SEATS
A	1 - 13	(2 ADA)
B	1 - 17	
C	1 - 17	
D	1 - 17	
E	1 - 17	
F	1 - 17	
G	1 - 17	
H	1 - 10	(3 ADA)
I	1 - 4	
J	1 - 12	
K	1 - 14	

**TOTAL 155 5 - ADA
160 TOTAL OCCUPANCY**

Speakeasy Movie Theater