

## COMMERCIAL LEASE

THIS COMMERCIAL LEASE (“**Lease**”) is made effective as of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between SPARKS FLY STUDIO, LTD., a Colorado limited liability company with an address of 314 Heritage Court, Fruita, Colorado 81521 (“**Lessor**”), and CITY OF FRUITA, a Colorado home rule municipality with an address of 325 E. Aspen Ave., Fruita, Colorado 81521 (“**Lessee**” or “**City**”). Lessor and Lessee are collectively referred to herein as the “**Parties**”.

WHEREAS, Lessor is the owner of the real property described on **Exhibit A** and commonly known as \_\_\_\_\_ Fruita, Colorado (the “**Property**”); and

WHEREAS, the Property includes an abandoned grain tower that is a prominent feature of the City of Fruita skyline viewed from I-70 (the “**Tower**”); and

WHEREAS, the City has historically used the Tower to hang banners promoting the City and the activities associated therewith; and

WHEREAS, the City wishes to formalize an agreement for its exclusive use of the east and west facades of the Tower; and

WHEREAS, the Parties desire to enter into this Lease to be effective upon closing of Lessor’s purchase of the Property.

NOW, THEREFORE, for and in consideration of the covenants and agreements given herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Premises. Effective upon the Effective Date, Lessor hereby leases to Lessee the west façade and east façade of the Tower from the top of foundation to the top of the situated on the Property and access thereto for the installation and maintenance of commercial grade banners as depicted on Exhibit 1 attached hereto and incorporated herein by this reference (collectively, the “**Premises**”).

2. Term. The initial term of this Lease shall be one year, commencing on the Effective Date (the “**Initial Term**”), automatically renewed on an annual basis from the Effective Date (“**Annual Term**”) for an additional fifty (50) years, unless terminated earlier as provided herein, (the “**Renewal Term**”). This Lease shall automatically renew for each Annual Term unless Lessee provides Lessor with written notice at least ninety (90) days prior that Lessee does not intend to further occupy the Premises. Lessee shall pay pro-rata Rent due as set forth in Section 3 below. Lessee’s occupancy of the Premises during the Renewal Term will be subject to the terms, conditions, and provisions hereof.

3. Rent. Lessee shall pay to Lessor gross rent in the total amount of \$24,000.00 (“**Rent**”) for the each annual term (\$2,000.00 per month). Such Rent shall be due and payable

quarterly commencing with the Effective Date. There shall be no additional charges imposed on Lessee for taxes, insurance, or utilities.

4. Changes to the Property. Notwithstanding anything to the contrary contained in this Lease, Lessee acknowledges and agrees that Lessor shall have the right to redevelop and perform other construction on the Property now and in the future (“**Existing or Future Construction**”) provided that such Existing or Future Construction does not deprive or materially interfere with Lessee’s use and occupancy of the Premises. Lessee shall not interfere with and shall prohibit anyone acting by or through Lessee from interfering with such Existing or Future Construction, and Lessee will not object thereto, will not seek to impose any restriction or limitation thereon, and will not assert any challenge thereto so long as such Existing or Future Construction does not deprive or materially interfere with Lessee’s use and occupancy of the Premises. Lessee further acknowledges that there will, necessarily, be some disruption in the Property, including, without limitation, noise, dust, interruption and re-routing of traffic, dislocation of parking, construction traffic, sidewalk superintending, and the like in connection with Existing or Future Construction. Lessee hereby accepts such non-material disruptions as a necessary and normal part of such Existing or Future Construction and hereby waives any and all claims for constructive eviction or any other default by Lessor or damages resulting from the same. Lessor reserves the right, at any time, to make alterations, expansions, or additions to the Property, provided, however, that such changes shall not affect the Tower or change the Premises, nor deny Lessee reasonable ingress to and egress to and from the Premises, or deprive or materially interfere with Lessee’s use and occupancy of the Premises.

5. Condition of Premises. Lessee warrants and represents that it has inspected the Premises and shall accept the Premises in its “as-is” condition. Lessor makes no representations or warranties as to the physical condition of the Premises, the Tower, or the Property, or their suitability for Lessee’s intended use as of the Effective Date. Lessor is not obligated to make upgrades or improvements to the Premises. In the event Lessee desires to make any alterations to the Premises, aside from the Use of Premises set forth in Section 6, below, such alterations shall be subject to prior written approval of Lessor. Lessee acknowledges that neither Lessor nor any agent, representative, or employee of Lessor has made any representation or warranty (either express or implied, including without limitation any implied warranty of habitability, merchantability, or fitness for a particular purpose, and any and all such warranties are hereby disclaimed) with respect to the Premises, the Tower, or the Property as of the Effective Date or their suitability for the conduct of Lessee’s business. Lessee’s occupancy of the Premises shall be conclusive evidence that the Premises were in good order and repair as of the Effective Date.

6. Use of Premises. Lessee shall use the Premises solely for the affixing, alteration and modification of promotional material for the City of Fruita and associated activities related thereto, and for no other purposes without the prior express written consent of Lessor in its sole and absolute discretion. Lessee shall not use the Premises to advertise any private commercial or business venture or political advertisement. Lessee shall have the right to install illumination of the Premises and operate, maintain, repair and replace the same upon prior written consent of Lessor, which consent shall not be unreasonably withheld.

- a. No Violations. Lessee shall not utilize the Premises for any purpose that is in violation of any applicable law, zoning, building regulation, rules, or any other applicable restriction in effect on the Effective Date of this Lease (collectively, “**Laws**”) on the use of the Premises. Lessee understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any Laws because of Lessee’s intended use, Lessee shall be solely responsible for any and all associated costs and expenses relative thereto, including but not limited to all fees and charges related to the construction or use of the Premises and all permitting fees. Lessor shall not have any obligation whatsoever to make or pay for any improvement within the Premises or to any property, equipment, or services serving exclusively the Premises.
  - b. Lessee’s Conduct. Lessee shall not do or permit anything to be done in or about the Premises or the Property, nor bring nor keep anything therein or elsewhere, that will in any way (i) increase the existing rate of or affect any fire or other insurance upon said Premises or Property or any of its contents, or (ii) cause cancellation of any insurance policy covering said Premises or Property or any part thereof or any of its contents. Lessee shall not (a) do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other lessees or occupants of the Property or injure any of them, (b) use or allow the Premises to be used for any improper or unlawful purpose, or (c) cause, maintain or permit any nuisance in, on or about the Premises. Lessee shall not perform any action or practice that may damage or injure the Premises or any portion of the rest of the Property.
  - c. Waste Removal. Lessee shall not commit waste on or to the Premises. Lessee shall keep the Premises free and clean of all debris, garbage, and rubbish. Lessee shall remove all trash and refuse from the Premises.
  - d. Security. Lessor shall have the right, but not the obligation, to provide security-related services for the Property. Notwithstanding the foregoing, Lessor is not responsible for the security of persons or property on the Property or within the Premises or the Tower and Lessor is not and shall not be liable in any way whatsoever for any breach of security. Lessee assumes full responsibility for protecting the Premises from theft, robbery, vandalism, or other destruction of property.
7. Maintenance and Repairs.
- a. Lessor’s Obligations. Lessor shall maintain the Property such that Lessee has access to the Tower and Premises.
  - c. Lessee Improvements. Lessee shall be solely responsible for any and all improvements and alterations to the Premises necessary for Lessee’s intended use of the Premises. Any and all such improvements and alterations shall be subject to Lessor’s prior written approval (not to be unreasonably withheld).

8. Insurance.

- a. Lessee Insurance. Lessee shall, at its expense, maintain in full force during the Term of the Lease commercial general liability insurance for the Premises with coverage at least equal to the limitations on judgments provided by the Colorado Governmental Immunity Act (“CGIA”), C.R.S. §§ 24-10-101, *et seq.*, at any given time, which shall not be interpreted as a waiver of the CGIA.
- b. Lessor Insurance. Lessor shall, at its expense, maintain commercial general liability and property insurance in the amount of liability coverage and replacement cost of any improvements as Lessor may determine. Such insurance shall not be required to cover any of Lessee’s personal property.
- c. Waiver of Subrogation. As long as their respective insurers so permit, Lessor and Lessee waive all rights to recover against each other or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees, or business visitors of each other for any loss or damage arising from any cause covered by any insurance required to be carried by either of them pursuant to this Lease or any other insurance actually carried by each of them which occur in, on or about the Premises or the Property to the extent that such loss or damage is covered by collectible insurance. Lessor and/or Lessee will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises.

9. Destruction of Premises; Condemnation.

- a. Lessor’s Duty to Repair. If the Premises shall be totally or partially destroyed or damaged by fire, earthquake, act of God, or by other casualty during the Term of this Lease not a result of Lessee’s negligent act or omission, said destruction or damage shall not release Lessee from any obligation hereunder except as provided in this Section 10; and in the case of such casualty to or destruction of any such part of the Premises, Lessor shall, at its own expense, promptly repair and restore the same to a condition as good as or better than that which existed prior to such damage or destruction. Without limiting such obligation of Lessor, the Parties agree that the proceeds of any insurance covering such damage or destruction shall be made available to Lessor for repair or replacement. As soon as practical, Lessor shall provide Lessee a written estimate of the time required to repair such damage or destruction. Lessee may elect to terminate this Lease upon written notice to Lessor given no later than 30 days after receipt of Lessor’s repair time estimate. If actual repair time will exceed Lessor’s original estimate, Lessor shall provide an additional notice to Lessee, whereupon Lessee will have an additional 30 days within which it may elect to terminate this Lease. If Lessee elects not to terminate this Lease, then Lessor shall promptly restore the Premises, excluding the improvements installed by Lessee, subject to delays arising from the collection of insurance proceeds or from force majeure events. Lessee, at Lessee’s sole expense,

shall promptly perform, subject to delays arising from the collection of insurance proceeds or from force majeure events, all repairs or restoration not required to be done by Lessor and shall promptly re-enter the Premises and commence doing business in accordance with this Lease.

- b. Rent Reduction. For any period during which the Premises cannot be occupied (“**Abatement Period**”) as a result of damage to the Premises by a cause covered by this Section or the repair thereof, Lessor shall pay back to Lessee an amount equal to the number of days in the Abatement Period, pro-rated in accordance with the rent paid pursuant to Section 3. For example, if the Abatement Period lasts 60 days, Lessor shall pay to Lessee \$305.75. Any rent abated shall be paid to Lessee within 30 days of the end of the Abatement Period.
  - c. Termination of Term. Lessor agrees that if Lessee decides to terminate the Lease due to damage or destruction of the Premises as described in this Section, the Term of the Lease shall cease upon the date that Lessee gives written notice to Lessor of such determination. A refund will be given to Lessee for the balance of any rent paid in advance for which Lessee did not have use of the Premises due to the cessation of the Term under the conditions of this Section.
  - d. Condemnation. For purposes of the provisions of this section, a “**Taking**” shall mean the taking of all or any portion of the Premises, Tower or Property as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use by a public entity other than Lessee or the sale of all or part of the Premises, Tower or Property under the threat of condemnation by a public entity other than Lessee. A “**Substantial Taking**” shall mean a Taking of twenty-five percent (25%) or more of the rentable area of either the Premises, Tower or Property. An “**Insubstantial Taking**” shall mean a Taking which does not constitute a Substantial Taking. If there is a Substantial Taking, the Term shall expire on the date of vesting of title pursuant to such Taking. In the event of an Insubstantial Taking with respect to the Premises, Tower or the Property, this Lease shall continue in full force and effect, Lessor shall cause the Premises (but excluding any alterations, improvements, fixtures and personal property constructed or owned by Lessee), less such Taking, to be restored as near as may be to the original condition thereof. If no part of the Premises or this Lease is affected by the Taking, and Lessee retains full use and enjoyment of the Premises as provided in this Lease, then the total award, compensation, damages or consideration received or receivable as a result of a Taking (“**Award**”) shall be paid to and be the property of Lessor. However, in the event of a Substantial Taking, or if any portion of the Premises or this Lease is affected by the Taking, the Lessee shall be entitled to a proportionate share of the Award, which shall be paid to and be the property of Lessee.
10. Lessor’s Right of Entry. Lessee shall permit Lessor and the agents and employees and contractors of Lessor to enter into and upon the Premises upon 24-hour advance notice to Lessee (except in the event of an emergency when no such advance notice shall be required) during all reasonable business hours for the purpose of inspecting the same, performing maintenance, repairs, or other work to the Tower.

11. Holdover. Lessee shall vacate the Premises and remove all of Lessee's personal property from the Premises prior to 11:59 p.m. on the date the Renewal Term expires. Lessor may immediately commence eviction proceedings at its sole discretion if Lessee fails to vacate the Premises by such time. If, after the expiration of the Renewal Term, Lessee remains in possession of the Premises with the consent of Lessor and continues to pay rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to 100% of the then-current fair market rental for the Premises (as determined by Lessor) and shall be subject to all the terms and conditions of this Lease.

12. Default; Remedies. If Lessee is in violation of any covenants or agreements set forth in the Lease (a "**Default**") and the Default remains uncorrected for a period of 10 days after Lessor has given written notice thereof (or such longer time as reasonably required under the circumstances so long as Lessee commences to cure with in such 10-day period and diligently proceeds therewith to completion), then Lessor may undertake the following sole and exclusive remedies: (a) suspend Lessee's right to possession of the Premises until Lessee cures the violation; or (b) pursue breach of contract remedies. If Lessor is in Default and the Default remains uncorrected for a period of 10 days after Lessee has given written notice thereof (or such longer time as reasonably required under the circumstances so long as Lessor commences to cure with in such 10-day period and diligently proceeds therewith to completion), then Lessee may undertake any available remedies at law or equity, including but not limited to repayment to Lessee of rent advanced, prorated according to the period remaining in the Term. Notwithstanding anything to the contrary herein, Lessor's managers, shareholders, officers, employees, or agents shall not be personally liable with respect to any of the terms, covenants, and conditions of this Lease.

13. Abandonment. In the event of abandonment of the Premises by Lessee, Lessor may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in Section 15 below. Abandonment shall not be deemed to occur unless Lessee fails to occupy, access, or use the Premises or to maintain personal property or equipment within the Premises for a period of at least one year.

14. Re-Entry. In the event of re-entry by Lessor as a result of: (i) Lessee's abandonment of the Premises; or (ii) termination of the Lease because the Premises permanently cease to be used as described in Section 7, then:

- a. Lessee's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Premises and stored or disposed of, at Lessor's sole discretion, at Lessee's cost. Lessor shall not be deemed a bailee of the property removed, and Lessor shall not be held liable for the property.
- b. Lessor may enter the Premises, clean and make repairs, and charge Lessee accordingly.
- c. Lessee shall surrender all keys and peacefully surrender and deliver up possession of the Premises.

15. Surrender of Premises. Lessee will return the Premises to Lessor at the expiration of the Renewal Term in as good order and repair as when Lessee took possession (loss by casualty, condemnation, and normal wear and tear excepted). Any deterioration or damage caused by abuse, carelessness, or negligence shall not be considered normal wear and tear. If Lessee fails to redeliver the Premises in appropriate condition, Lessor may restore the Premises to appropriate condition, including, but not limited to, repair, replacement, and cleaning. Lessee shall be obligated to pay the cost of any such work necessitated. At the termination of the Lease or Lessee's right to possession of the Premises, Lessee shall remove Lessee's movable trade fixtures, equipment, pipes, lines, wires, cabling, and other items of personal property that are not permanently affixed to the Premises. Lessee shall remove the alterations and additions and signs made by Lessee, as Lessor may request, and repair any damage caused by such removal. Lessee shall peaceably yield the Premises and all alterations and additions thereto (except such as Lessor has requested Lessee to remove), and all fixtures and floor coverings that are permanently affixed to the Premises, which shall thereupon become the property of Lessor. Any personal property of Lessee not removed within five business days following termination shall, at Lessor's option, become the property of Lessor.

16. No Waiver of Requirements. No assent, express or implied, to any Default of any one or more of the obligations herein shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth herein are independent.

17. Subletting. Lessee is expressly not authorized to sublet the Premises or any part thereof to.

18. Transfer by Lessor. Lessor shall have the right to transfer, sell or otherwise convey the Property or any interest therein. In the event of a transfer by Lessor of the Property or of Lessor's interest as Lessor under this Lease, Lessor's successor or assign shall take subject to and be bound by this Lease and in such event, Lessee covenants and agrees that Lessor shall be released from all obligations of Lessor under this Lease, except obligations which arose and matured prior to such transfer by Lessor; that Lessee shall thereafter look solely to Lessor's successor or assign for satisfaction of the obligations of Lessor under this Lease; and that, upon demand by Lessor or Lessor's successor or assign, Lessee shall attorn to such successor or assign.

19. Estoppel Certificates. Lessee covenants and agrees to execute, acknowledge and deliver to Lessor, within 30 days of Lessor's written request, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the Rent paid; stating that there have been no defaults by Lessor or Lessee and no event which with the giving of notice or the passage of time, or both, would constitute such a default (or, if there have been defaults, setting forth the nature thereof); and stating such other matters concerning this Lease as Lessor may reasonably request. Lessee agrees that such statement may be delivered to and relied upon by any existing or prospective mortgagee or purchaser of the Property.

20. Notices. All notices required to be sent under the Lease shall be in writing and delivered by: (i) U.S. Certified Mail, return receipt requested, postage prepaid; (ii) courier delivery; (iii) overnight delivery using a reputable overnight carrier; or (iv) electronic mail (e-mail). Notices

shall be deemed to have been made on the fifth day after deposit into the U.S. Mail, on the first day after deposit with a reputable overnight carrier, or upon receipt if delivered by courier delivery or email. All notices required to be sent to Lessor or Lessee shall be sent or delivered to the addresses below unless otherwise specified in writing by the Parties. Any notices or communications provided for in this Lease shall be sent to the Parties at the following addresses:

To Lessor: Sparks Fly Studio Ltd.

*With a copy to:*

To Lessee: City of Fruita  
Attn: Mike Bennett, City Manager  
325 E. Aspen Ave.  
Fruita, Colorado 81521  
[mbennett@fruita.org](mailto:mbennett@fruita.org)

*With a copy to:* Garfield & Hecht, P.C.  
Attn: Mary Elizabeth Geiger, Esq.  
910 Grand Ave., Suite 201  
Glenwood Springs, Colorado 81601  
[megeiger@garfieldhecht.com](mailto:megeiger@garfieldhecht.com)

21. Governing Law; Jurisdiction. This Lease shall be governed and construed by the laws of the State of Colorado. Venue and jurisdiction for any litigation arising out of this Lease shall rest exclusively with the courts in Mesa County, Colorado. LESSOR AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS LEASE, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS LEASE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

22. Attorneys' Fees. In the event of any action or proceeding under this Lease, the prevailing party shall be entitled to recover all reasonable costs and expenses, including the fees and expenses of its attorneys. All rights concerning remedies and/or attorneys shall survive any termination of this Lease.

23. Entire Agreement. This Lease memorializes and constitutes the final, complete, and exclusive agreement and understanding between the Parties on the subject matter hereof. It supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral on the subject matter hereof. This Lease may not be amended or modified, except in writing and signed by the Parties. Lessor and Lessee each acknowledges that it has participated in the drafting of and has had the opportunity to thoroughly review and negotiate this Lease.



24. Lease Not to be Recorded. Each party agrees that it will not cause or permit this Lease or any memorandum or summary of this Lease or any portion thereof to be recorded. Failure to comply with the provisions of this Section by Lessee or Lessor shall be a material default under this Lease.

25. Successors and Assigns. This Lease is binding upon and inures to the benefit of the Parties and their respective assigns and successors-in-interest.

26. Time of the Essence. Time is of the essence of the Lease and each and all of its provisions.

27. Severability. In the event any part of this Lease is found to be void, illegal, invalid, or unenforceable under present or future laws, then, in such event, the remaining provisions of this Lease shall nevertheless be binding with the same effect as though such part was deleted and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based upon the entire agreement, including the invalidated provision.

28. Captions. The captions contained in this Lease are for convenience only and shall not affect the construction or interpretation of any provision herein.

29. Non-Appropriation. No provision of this Lease shall be construed or interpreted: (a) to directly or indirectly obligate Lessee to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company, or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution. Failure by Lessee to make any payments due hereunder by operation of this Section shall not constitute a default. However, if Lessee fails to appropriate funds for payments pursuant hereto, Lessee may elect to terminate this Lease immediately.

30. Immunity. The Parties hereto understand and agree that Lessee neither waives nor intends to waive by this Lease, or any provision hereof, the monetary limitations and any other rights, immunities, and protections provided by the Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* (CGIA).

31. Authorization. Lessor and Lessee each represents and warrants to the other that the signatories to this Lease for such party are fully authorized to enter into and execute this Lease, and that all necessary actions, notices, and/or meetings required by law to authorize their execution of this Lease have been made.

33. Counterparts. This Lease may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement. Any such counterpart may be transmitted by e-mail (in PDF format), and any such counterpart so transmitted shall have full force and effect as if it were an original.

*[Remainder of page intentionally left blank.]*

This Lease is executed by the Parties hereto as of the date first set forth above.

**LESSOR:**

SPARKS FLY STUDIO LTD.

a Colorado limited liability company

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

Name:

Title:

**LESSEE:**

City of Fruita, Colorado

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

Name: Michael P. Bennett

Title: City Manager

Exhibit 1  
To Commercial Lease  
Depiction of Premises

