

TOWN OF LYONS, COLORADO  
ORDINANCE NO. 1087

**AN ORDINANCE OF THE TOWN OF LYONS, COLORADO APPROVING A  
LEASE OF CERTAIN TOWN-OWNED PROPERTY TO Z3N, LLC**

**WHEREAS**, C.R.S. § 31-15-713(1)(c) authorizes the Board of Trustees ("BOT") of the Town of Lyons, Colorado ("Town") to enter into lease agreements for real property owned by the Town when deemed by the BOT to be in the best interest of the Town; and

**WHEREAS**, C.R.S. § 31-15-801 specifically authorizes the BOT to enter into long-term rental or leasehold agreements; and

**WHEREAS**, C.R.S. § 31-15-713(1)(c) requires any lease of Town property for a period of more than one year to be approved by ordinance; and

**WHEREAS**, the BOT has determined that the Town shall convey a long-term leasehold interest to Z3N, LLC in certain real property owned by the Town (the "Leased Property"); and

**WHEREAS**, the Leased Property is described with particularity in the Lease; and

**WHEREAS**, the BOT finds and determines that it is in the best interest of the Town to enter into an agreement with Z3N for the lease of the Leased Property under the terms and conditions set forth in the Lease, a copy of which is attached hereto as **Attachment 1**; and

**WHEREAS**, pursuant to Resolution 2020-130, the BOT approved a Non-Exclusive Cable Television Franchise Agreement with Z3N ("Cable Franchise Agreement")

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF LYONS, COLORADO, as follows:**

**Section 1. Recitals Incorporated.** The above recitals are adopted as findings and determinations of the BOT and are incorporated herein by reference.

**Section 2. Lease Approved.** The BOT hereby approves the Lease between the Town and Z3N, LLC concerning the Leased Property, which is incorporated herein by reference.

**Section 3. Town Administrator Authorized to Execute Lease.** Upon the Town Administrator's receipt of the Lease duly executed by Z3N, LLC, the Town

Administrator is hereby authorized to execute and deliver the Lease on behalf of the Town and to execute and deliver any and all other documents reasonably necessary or convenient to effectuate the intent of the Lease, in accordance with the terms of this ordinance.

**Section 4. Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

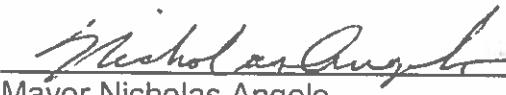
**Section 7. Severability.** Should any one or more sections or provisions of this ordinance enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this ordinance, the intention being that the various sections and provisions are severable.

**Section 8. Effective Date.** Except as otherwise expressly provided herein, the provisions of this ordinance shall become effective thirty (30) days after publication following final passage in accordance with Section 2-2-160 of the Lyons Municipal Code.

**INTRODUCED AND PASSED ON FIRST READING THIS 17th DAY OF AUGUST 2020.**

**INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 8<sup>TH</sup> DAY OF SEPTEMBER 2020.**

**TOWN OF LYONS, COLORADO**

  
\_\_\_\_\_  
Mayor Nicholas Angelo

ATTEST:

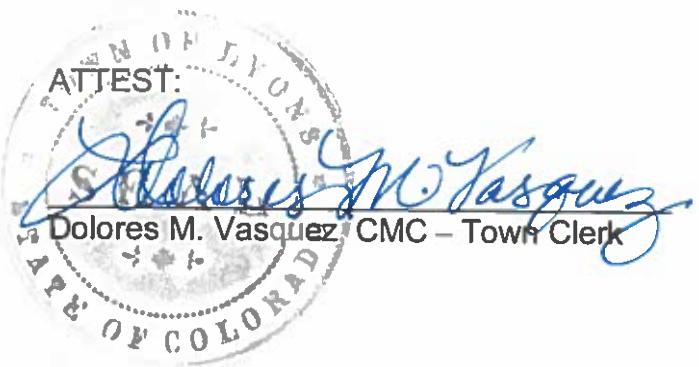


EXHIBIT 1

LEASE BETWEEN TOWN OF LYONS AND Z3N, LLC

## LEASE AGREEMENT

THIS LEASE Agreement ("Lease") is made and entered into this 8th day of September, 2020 between the TOWN OF LYONS, a Colorado Statutory Town ("Landlord") and Z3N, LLC ("Tenant"), a Colorado Limited Liability Company. Landlord and Tenant may be individually referred to "Party" and collectively as the "Parties.)

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following real property located in the Town of Lyons, County of Boulder and State of Colorado: The "Leased Premises", which are depicted on the attached Exhibit A, incorporated herein by reference, upon the following terms and conditions:

1. Term.

A. The term of this Lease shall commence as of 12:01 A.M., local time, on September 9th, 2020, and shall end, subject to earlier termination as hereafter provided, at 11:59 P.M., local time, on September 8, 2030;

B. Should Tenant remain in possession of the Leased Premises with the consent of Landlord after the natural expiration of this Lease, a new tenancy from month to month shall be created between Landlord and Tenant which shall be subject to all the terms and conditions hereof, but shall be terminable on thirty (30) days' written notice served by either Landlord or Tenant on the other party.

2. Rent. \$1,100 per year shall be required from Tenant in consideration for this Lease. Rent shall escalate annually upon the anniversary date of the mutual execution of this Lease at a rate of three percent (3%).

3. Use of Leased Premises. The Leased Premises may be used by the Tenant only to provide Cable Television Services and/or Advanced Telecommunication Services, as those terms are defined by Colorado and Federal Law. Tenant's use of the Leased Premises may also include minor storage of materials and equipment directly used for providing Cable Television Service and/or Advanced Telecommunication Services so long as they are consistent with the provisions of Sections 11 and 12. No other use of the Leased Premises shall be made by Tenant without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall comply with all the reasonable rules and regulations which the Landlord may make for the protection of the Leased Premises and with all the laws, ordinances, regulations, rules, and orders of appropriate governmental authorities either now in force or hereafter enacted pertaining to police, fire, sanitation, occupancy, and preservation of the Leased Premises during the term of this Lease. Tenant shall not, during the term hereof, maintain, commit, or permit the maintenance or commission of any hazard or nuisance on the Premises.

4. Landlord's Equipment. Tenant shall allow Landlord to place equipment for its Electric Utility Advanced Metering Infrastructure at no charge to Landlord for the Term of this Lease. Tenant shall also provide to Landlord at no charge an Internet connection for said equipment for the Term of this Lease. The Electric Utility Advanced Metering Infrastructure,

and Internet connection for said equipment, shall collectively be considered "Landlord's Equipment" which shall be solely owned and controlled by Landlord.

5. Inspection of Leased Premises. Tenant acknowledges that it is aware of the geological and topographical condition of the Leased Premises based upon its occupancy and use of the Leased Premises pursuant to a prior lease. Tenant accepts the Leased Premises in "AS IS" condition without recourse to Landlord for any dangerous conditions, known or unknown.

6. Right to Enter. Tenant shall permit Landlord, its agents, employees, and contractors, to have access to and to enter the Leased Premises at all reasonable and necessary times to inspect the Leased Premises for any purpose connected with the repair, improvement, care and management of the Leased Premises, or for any other purpose reasonably connected with Landlord's interest in the Leased Premises, and to perform any such work or other act found necessary on such inspection; provided that such inspection shall not unreasonably interfere with Tenant's use of the Leased Premise.

7. Surrender of Leased Premises; Removal of Tenant's Property. At the end of the term of this Lease (whether by the natural expiration of the term of this Lease or the earlier termination of this Lease as herein provided) Tenant shall surrender the Leased Premises to the Landlord in as good a condition as existed at the time of the commencement of this Lease, normal wear and tear excepted. At the end of the term of this Lease, within (30) days Tenant shall remove its property from the Leased Premises. Any property of Tenant's not removed from the Leased Premises by Tenant at the expiration of this Lease shall be considered abandoned and Landlord shall have the right (but not the duty), without any notice to Tenant, to sell or otherwise dispose of the same at the expense of the Tenant and shall not be accountable to the Tenant for any part of the proceeds of such sale, if any.

8. Alterations and Improvements. Tenant shall make no alterations to the Leased Premises or construct any building or make other improvements to the Leased Premises without the prior written consent of Landlord. All alterations, changes and improvements built, constructed or placed on the Leased Premises by Tenant, with the exception of fixtures removable without damage to the Leased Premises, and Tenant's moveable personal property shall, unless otherwise provided by written agreement between Landlord and Tenant, be the property of the Landlord and remain on the Leased Premises at the expiration or sooner termination of this Lease.

9. Maintenance and Snow Plowing. During the term of this Lease, Tenant, at Tenant's sole expense, shall keep the Leased Premises and the access road to said Leased Premise, as described in the Temporary Non-Exclusive Access Easement listed at the bottom of Exhibit A, in a neat and clean condition and provide all required maintenance, snow plowing, and snow removal necessary to allow the Leased Premises to be used by Tenant for the uses described in Paragraph 3.

10. Utilities. Tenant shall initiate, contract for, and pay the cost of obtaining, in its sole name, all utility services required by Tenant and Landlord's Equipment on the Leased Premises, and Tenant shall pay all charges for such services as they become due. Without

limiting the generality of the foregoing, Tenant shall have a separate electric meter installed and maintained at the Leased Premises.

11. Trash Removal. Tenant shall pay the cost of any trash removal required in connection with its use of the Leased Premises.

12. Hazardous Materials. Tenant shall not store or permit the storage on the Leased Premises of any type of hazardous or similar material which is regulated by federal, state, or local regulation.

13. Damage to Premises. If the Leased Premises should be damaged, regardless of cause, to the extent that Tenant cannot operate, Tenant shall have the right to either rebuild or repair the Leased Premises at its cost and continue this Lease or terminate this Lease by giving Landlord written notice.

14. Insurance.

A. Tenant shall procure and maintain general liability insurance with minimum combined single limits of not less than One Million Dollars (\$1,000,000). Such coverage shall be procured and maintained with forms and insurers acceptable to the Landlord. Such coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Tenant pursuant to this Lease. In the case of any claims-made policy, the necessary retroactive damages and extended reporting periods shall be procured to maintain such continuous coverages.

B. The policy required by Paragraph (A), above, shall be endorsed to include the Landlord as an additional insured. Such policy shall be primary insurance, and any insurance carried by Landlord, its officers, or its employees, or carried by or provided through any insurance pool of which Landlord is a member, shall be excess and not contributory insurance to that provided by Tenant. Tenant shall be solely responsible for any deductible losses under the policy required above.

C. A certificate of insurance shall be completed by Tenant's insurance agent and provided to the Landlord as evidence that a policy providing the required coverage, conditions, and minimum limits is in full force and effect and shall be reviewed and approved by Landlord prior to commencement of the term of this Lease. The certificate shall identify this Lease and shall provide that the coverage afforded under the policy shall not be cancelled or terminated until at least thirty (30) days' prior written notice has been given to Landlord. The completed certificate of insurance shall be sent to:

Town Administrator  
Town of Lyons  
432 5<sup>th</sup> Avenue; P.O. Box 49  
Lyons, Colorado 80540

D. Notwithstanding any other portion of this Lease, failure on the part of Tenant to procure or maintain policies providing the required coverage, conditions, and

minimum limits, or to provide the required additional insured policy endorsement, shall constitute a material breach of this Lease for which Landlord may immediately terminate this Lease, or, at its discretion, Landlord may procure or renew any such policy or any extended reporting period thereto, and may pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant to Landlord upon demand.

15. Indemnification. Tenant agrees to indemnify and hold harmless Landlord, its officers, employees and insurers from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which occur on the Leased Premises and which arise out of or are in any manner connected with Tenant's occupancy or use of the Leased Premises pursuant to this Lease. Tenant agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claim, or demand at the sole expense of Tenant. Tenant also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees. Tenant's indemnification obligation shall not extend to any damages arising out of the gross negligence or intentional acts of Landlord, its employees or agents. As to any indemnification required hereunder, so long as there are no conflicts, Tenant shall have the right to choose qualified counsel to defend Landlord, and Tenant shall have settlement authority, subject to Town approval which shall not be unreasonably withheld or delayed.

16. Liens. Tenant shall not permit the creation of any type of lien upon the Leased Premises, including, but not limited to a mechanic's or materialmen's lien. The indemnification provisions of Paragraph 14 of this Lease shall 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 shall be filed against the Leased Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days from the filing of such lien.

17. Taxes.

A. Taxes Defined. As used in this Lease, the term "taxes" shall mean all personal property and real property taxes that may be levied, assessed or imposed arising out of Tenant's occupancy and use of the Leased Premises pursuant to this Lease.

B. Possessory Interests. 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.

C. Tenant To Pay Taxes. Any taxes lawfully assessed arising from Tenant's occupancy and use of the Leased Premises 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.

D. Tenant's Right to Contest Taxes. 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 Tenant's 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 Tenant makes timely payment of such taxes if Tenant loses the contest. 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 shall be in compliance with the provisions of this Paragraph. 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.

18. Tenant Default. Tenant shall be in default under this Lease if Tenant fails to comply with any of the terms, provisions or covenants of this Lease within three (3) business days following service of a demand for compliance notice by Landlord in accordance with Colorado law; provided, however, as to any non-monetary default not capable of being cured within three (3) business days following service of a demand for compliance notice, Tenant shall not be in default if it commences correcting the non-monetary default within three (3) business days of service of the demand for compliance notice and thereafter corrects the default with due diligence.

19. Landlord's Remedies upon Default.

A. If the Tenant is in default under this Lease, Landlord shall have all of the remedies provided for in such circumstances by Colorado law, including without limitation, the right to terminate this Lease by written notice to Tenant, in which event Tenant shall immediately surrender the Leased Premises to Landlord and, if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or evict Tenant and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary, without being liable for any claim for damages therefore.

B. The parties agree that it is their intent that in the event Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the "Code"), for the purposes of proceeding under the Code, this Lease shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any person to which Tenant's rights, duties and obligations under this Lease are assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of Tenant or of Tenant's estate within the meaning of the Code. Any monies or other considerations constituting

Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

20. Landlord's Default. Landlord shall be in default under this Lease if Landlord fails to comply with any of the terms, provisions or covenants of this Lease within three (3) business days following service of a notice by Tenant; provided, however, as to any non-monetary default not capable of being cured within three (3) business days following service of the notice, Landlord shall not be in default if it commences correcting the non-monetary default within three (3) business days of service of the notice and thereafter corrects the default with due diligence.

21. Tenant's Remedies upon Default. If the Landlord is in default under this Lease, Tenant shall have all of the remedies provided for in such circumstances by Colorado law.

22. Tenant's Termination for Convience. During the initial Term of this Lease, Tenant shall have the option to terminate this Lease without cause by providing Landlord with written notice of not less than thirty (30) days. Upon such termination, Tenant shall immediately pay Landlord all then due payments for rent, but shall be relieved from the rent due for the balance of the lease term. In the event of termination, Landlord's Equipment will be maintained by Landlord and shall not be removed or otherwise altered by Tenant.

23. No Waiver of Governmental Immunity. The parties hereto understand and agree that 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 Act, as from time to time amended, or any other limitation or defense otherwise available to Landlord, its officers, or its employees.

24. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition of this Lease, or of any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. A waiver of Landlord or Tenant of any of its rights hereunder shall be valid and binding only if contained in a written instrument signed by Landlord or Tenant, as applicable. Tenant expressly recognizes Landlord's right to compensation for the use of the Leased Premises, whether characterized as rent or damages, and acceptance of rent during Tenant's occupation shall not constitute a waiver of any breach, even if accepted after notice of termination or institution of court proceedings.

25. Non-liability of Landlord. Tenant hereby releases Landlord, and the representatives, agents, attorneys and employees of Landlord, from any and all liability for any injury or damage to Tenant, or to Tenant's property located on or about the Leased Premises, resulting from any cause whatsoever, except injury or damage resulting from the gross negligence or the willful or intentional act of Landlord, or the representatives, agents, attorneys and employees of Landlord.

26. **Attorney's Fees and 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, shall be entitled to reasonable attorney's fees as well as reasonable costs, including expert witness's fees, incurred in the prosecution or defense of such action. Tenant shall further reimburse Landlord for its attorneys' fees incurred in connection with the preparation of this Lease not to exceed one thousand dollars (\$1,000).

27. Assignment and Sublease. Tenant shall not sublet the Leased Premises or any part thereof, or assign this Lease, or any part hereof, or grant any permission to use the Leased Premises or any part thereof, without the prior written consent of the Landlord, which consent may be withheld in Landlord's sole and absolute discretion. An assignment of this Lease resulting from the (i) merger of Tenant with another business entity; (ii) acquisition of Tenant by another business entity; or (iii) transfer of the Lease to another business entity controlled by Tenant, shall be deemed a permitted assignment not requiring Landlord's prior consent.

28. Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If to Landlord: Town Administrator  
Town of Lyons  
432 5<sup>th</sup> Avenue; P.O. Box 49  
Lyons, Colorado 80540

**WITH A COPY (WHICH SHALL NOT CONSTITUTE NOTICE) TO:**

Town Attorney      Kissinger & Fellman, P.C.  
3773 Cherry Creek N. Drive  
Unit 900  
Denver, Colorado 80209

If to Tenant: Z3N, LLC  
PO Box 2679  
Lyons, Colorado 80540

Notices mailed in accordance with the provisions of this Paragraph shall be effective on the third calendar day following mailing. Notices personally delivered shall be effective upon delivery. E-mail is not a valid means of giving notice under this Lease.

29. **No Partnership.** Notwithstanding anything contained in this Lease to the contrary, it is expressly understood and agreed that the Landlord shall not be construed or held to be a partner, associate or joint venturer of Tenant in the conduct of its business.

30. Complete Agreement. This Lease contains the complete and final expression of the agreement between the parties as to the subject matter of this Lease and that there are no promises, representations, or inducements except as are herein set forth.

31. Modification. This Lease may be modified only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Lease are not permitted.

32. Applicable Law. This Lease shall be interpreted in all respects in accordance with the laws of the State of Colorado without regard to its conflict of laws principles.

33. Forum Selection. The parties agree to the jurisdiction and venue of the state courts of Boulder County, Colorado in connection with any litigation arising out of or in any manner connected with this Lease.

34. Waiver of Right to Jury Trial. Both parties waive the right to a jury trial in connection with any litigation arising out of or in any matter connected with this lease.

35. Attorney's Fees. In the event any dispute arises in connection with this Lease, the prevailing Party in such dispute shall be entitled to receive its reasonable attorneys' fees and costs from the other Party.

36. Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.

37. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Lease.

38. No Recording. This Lease shall not be recorded in the real property records of the Clerk and Recorder of Boulder County, Colorado.

39. Binding Effect. This Lease shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

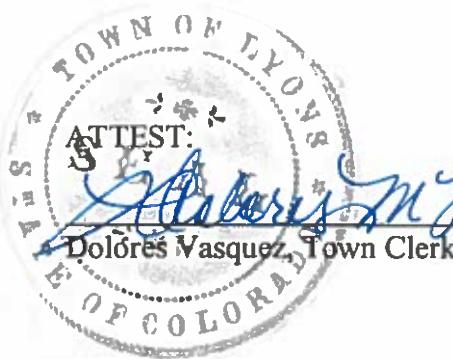
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The execution of this Lease by Landlord was authorized by Ordinance No. 1087, adopted by the Town Board of Trustees of the Town of Lyons, Colorado on September 8<sup>th</sup>, 2020.

LANDLORD:

TOWN OF LYONS, a Colorado Statutory Town

Victoria Simonsen  
Victoria Simonsen, Town Administrator



Z3N, LLC

By: Kevin Mahoney  
Name: Kevin Mahoney  
Title: Managing Member

**EXHIBIT A**  
**Leased Premises**

A parcel of land located in a portion of Lots 10, 11 and 12, Block 5, Nortonville Addition Lyons, Colorado, in Section 18, T3N, R7OW, more particularly defined as:

Beginning at the south east corner of Lot 11, Block 5, of the Nortonville Addition, Lyons, Colorado,  
thence N 00° 00' 00" E along the easterly lot line 70 Feet, to the midpoint of the lot, also the point of Beginning:

Thence N 90° 00' 00" E a distance of 5.00 Feet;  
Thence N 00° 00' 00" E a distance of 35.00 Feet;  
Thence N 90° 00' 00" W a distance of 80.00 Feet;  
Thence S 00° 00' 00" E a distance of 35.00 Feet;  
Thence N 90° 00' 00" E a distance of 75.00 Feet, more or less to the point of beginning;

Said parcel containing approximately 2,800 square feet (0.6 acres). The basis of bearings is the Easterly Lot Line of Lot 11 bearing N00°00'00"E (assumed).