



ORDINANCE 382

APPROVING LEASE AGREEMENT WITH TOMKINS HARDWARE AND LUMBER

WHEREAS, the Board of Trustees of the City of Creede (“Creede”) are granted the authority by C.R.S. § 31-15-713 to execute a lease of municipal property which is longer than one year; and

WHEREAS, the Board of Trustees finds this Ordinance will thereby promote the health, safety and general welfare of the Creede community.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COUNTY OF MINERAL, STATE OF COLORADO, the following:

Section 1: Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees.

Section 2. Lease Approved. The Board of Trustees hereby authorizes the Mayor to execute the Lease Agreement with Tomkins Hardware and Lumber, attached as **Exhibit A**.

Section 3. Correction of Errors. City Staff is authorized to correct any typographical, grammatical, cross-reference, or other errors which may be discovered in any documents associated with this Ordinance and documents approved by this Ordinance provided that such corrections do not change the substantive terms and provisions of such documents.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Board hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any paragraph, division, subdivision, section, sub section, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Publication. The City Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the City including the office of the City Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the City Clerk during normal business hours.



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Eryn K Wintz
Mineral County Clerk

Section 6. Effective Date. This Ordinance shall take effect thirty (30) days after final passage.

INTRODUCED, APPROVED, PASSED ON FIRST AND FINAL READING, on this
3rd day of JUNE, 2014.

BY:

Eric Grossman,
Mayor

ATTEST:

Randi Snead,
City Clerk

Exhibit A

TOMKINS LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into on this _____ day of _____, 2014 by and between the City of Creede, a Colorado town ("Landlord") and Tomkins Hardware and Lumber ("Tenant") (individually "Party" and collectively "Parties") for a storage area ("Premises") as described in "Exhibit A" upon the terms and conditions set forth in this Lease.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Landlord and Tenant, the Parties do hereby agree as follows:

1. **Premises.** The Landlord hereby leases to Tennant an area of vacant property east of Loma Ave. and west of the Creede Historical Museum of approximately thirty-six (3,600) hundred square feet and described in the attached "Exhibit A".

2. **Term.** The term of this Lease shall be for five (5) years, commencing July 1, 2014 through July 1, 2019, unless terminated as hereinafter provided. Extensions of this Lease may only occur through mutual consent of the Parties in writing.

3. **Lease Payment.** The Tenant shall pay to the Landlord an annual rent in the amount of five hundred (\$500.00) dollars, which annual rental payment shall be due on July 1 of each year commencing on July 1, 2014. If the annual rent payment is not received by August 1 of each year landlord may assess a penalty of \$100.00 per month that the annual rental payment is not paid and may elect to cancel this Lease for default.

4. **Maintenance Expenses.** Tenant shall be responsible for keeping the Premises clean and further agrees to maintain the property in a manner, to the extent reasonably possible, free from common hazards to occupant

5. **Permitted Use.** The use of the premises by Tenant shall be restricted to hardware inventory storage and associated activities directly related to the Tompkins Hardware business in the City of Creede. Tenant agrees that such use shall also comply with any City ordinances and regulations. Tenant may request in writing other temporary uses of the Premises which the Landlord may grant or deny at Landlords sole discretion.

6. **Hazardous Materials.** The Tenant shall not dump or release, or allow or permit the dumping or release of, Hazardous Materials on the Premises. The term "**Hazardous Materials**" as used herein includes, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as may be defined as a hazardous or toxic substance by any Federal, state or local environmental law, ordinance, rule, or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended



(42 U.S.C. Section 1801, et seq.) the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) and in the regulations adopted and publications promulgated pursuant thereto. Tenant shall be solely liable and responsible for the removal of any Hazardous Materials which are dumped or released on the Premises during the Term of this Lease and shall be liable and responsible for any other restoration of Premises associated with a dump or release or Hazardous Materials.

7. **Return of Premises.** After expiration of the Term, including any extension, or upon default by Tenant and early termination of this Lease, Tenant shall promptly remove all items, materials, equipment and vehicles stored on the Premises and shall promptly restore the Premises to the condition at the commencement of the Lease.

8. **Default.** The failure of Tenant to keep or perform any covenant or warranty, condition or agreement on its part to be kept or performed according to the terms and provisions of this Lease shall, upon the election of the Landlord, constitute a default. Upon an event of default the Tenant shall have 30 days to cure such default after receipt of a written notice from Landlord describing the default ("**Period to Cure**") and if such default is not cured by the end of the Period to Cure, the Landlord may, at its discretion, terminate this Lease by giving written notice of such action to Tenant, and may exercise all or any remedies available to the Landlord at law or in equity by virtue of such default. Notwithstanding the foregoing, the Landlord may immediately terminate this Lease and Tenant shall not be entitled to a "Period to Cure" if the default is a release of Hazardous Materials in violation of paragraph 6 of this Lease. In addition, upon termination all right and interest of the Tenant to the Premises shall be immediately forfeited to the Landlord without right of reimbursement, compensation or set off. The failure of the Landlord to terminate this Lease upon a default by Tenant shall not in any way constitute a waiver of the Landlord's right to terminate this Lease for future defaults by Tenant of the same or different type.

9. **Recover of Costs.** The Landlord shall be entitled to recover all costs, including reasonable attorneys' fees, associated with collecting the annual rent, recovering the Premises upon default or expiration of the Lease term, and for restoration of the Premises, including any removal of Hazardous Materials.

10. **Compliance with Law and Applicable Regulations.** Tenant shall use the Premises in a careful, safe and proper manner and shall not use or permit the Premises to be used for any purposes prohibited by any federal, state, county or municipal law, ordinance, rule, regulation or code applicable to the Premise. Tenant shall not use or permit all or any part of the Premises to be used in any immoral, illegal, lewd, objectionable or offensive manner or for any such purposes. Tenant shall neither do nor permit to be done any act or thing upon the Premises which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or for damage to property by reason of any business or operation carried on at, from or upon the Premises or otherwise.

11. **Premises Owned by the Landlord.** The Premises, and any improvements made thereto by the Landlord during the term of this Lease are and shall at all times remain the sole property of the Landlord, and the Tenant shall have no right, title, or interest therein.



12. **Landlord's Right of Entry.** Landlord and its agents shall have the right to enter the Premises at all times, after reasonable advance notice to Tenant.

13. **Acceptance of Possession.** Taking possession of the Premises by Tenant shall be conclusive evidence as against Tenant that the Premises was in good and satisfactory condition when Tenant took possession.

14. **Alterations by Tenant.** Tenant shall make no alterations, additions or improvements in or to the Premises without Landlord's prior written consent.

15. **Insurance Requirements.** Tenant agrees to obtain and carry general liability and workers compensation insurance for any of his employees who may access the premises throughout the term of this Lease. Tenant agrees to procure and maintain, at its own cost, a policy or policies of insurance protecting against injury, damage or loss occurring on the licensed premises in the minimum amount of \$1,000,000.00 per occurrence. Such policy or policies shall name Landlord as an "additional insured". However, the Tenant's failure to take such steps to insure the premises shall not waive, affect, or impair any obligation of the Tenant to indemnify or hold Landlord harmless in accordance with this Lease.

16. **Hold Harmless.** The Tenant promises and covenants to hold harmless, defend and indemnify the Landlord, its directors, employees, agents, representatives, successors and assigns, from and against any and all liabilities, claims, penalties or damages of any nature, whether present or future (including without limitation damages for personal injury, disease and death; property damage; administrative or judicial penalties or fines; accountants fees, consultants fees and attorney's fees associated with or necessary for the Landlord's defense of matters arising under this Lease), arising out of, or related directly or indirectly to the use of the Premises by the Tenant.

17. **No Other Encumbrances.** Tenant covenants and agrees not to encumber the Premises or the interest of Tenant in this Lease without the prior written consent of Landlord.

18. **Notice.** Any notice, demand, or other communication required or permitted to be given by any provision of this Lease shall be given in writing, delivered personally or sent by certified or registered mail, postage prepaid and return receipt requested, or by overnight courier, with shipping charges prepaid, addressed as follows:

To the Landlord: City of Creede
 Attn: Town Manager
 PO Box 457
 Creede, CO 81130
 Ph: (719) 658-2246

To Tenant: Tomkins Hardware Inc.
 Attn: Nick Lenzini
 PO Box 129
 Creede, CO 81130
 Ph: (719) 658-2240



19. **Assignment.** Tenant shall not in any manner transfer or assign this Lease without the prior written consent of the Landlord and any attempt to do so without the Landlord's prior written consent shall be null and void and confer no rights on third persons.

20. **Binding Effect.** This Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

21. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties agree that venue for any dispute regarding this Lease shall be in Mineral County, Colorado.

22. **Headings for Convenience Only.** The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Lease.

23. **Modification.** This Lease and its attached exhibits set forth the entire understanding and agreement between the Parties hereto with respect to the Premises. Except as otherwise provided herein, this Lease may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing and duly authorized and executed by the Parties hereto.

24. **No Partnership.** Despite anything in this Lease to the contrary, each Party is not and shall not in any way or for any purpose become principal or partner of the other Party in the conduct of its business, operations, or otherwise, or a joint venture or member of a joint enterprise with the other Party under this Lease.

LANDLORD:
City of Creede, Colorado

TENANT
Tomkins Hardware and Lumber

Mayor Date
Eric Grossman

Owner/Manager Date
Nick Lenzini

ATTEST

City Clerk Date
Randi Snead



EXHIBIT A

That certain area within the City of Creede, consisting of approximately 3,600 square feet as described on the diagram.

