



# CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	July 16, 2024

## **AGENDA ITEM**

Ordinance 2024-11, An Ordinance of the City Council for the City of Salida, Colorado, Approving A Lease of Real Property Located at 348 H Street From the City of Salida to Hylton Lumber LLC, Second Reading and Public Hearing.

## **BACKGROUND**

In July 2003, the City of Salida entered into a 20-year lease with Hylton Lumber Company for .96 acre of property between 3<sup>rd</sup> and 5<sup>th</sup> Streets. The term of the lease was \$200 per month. Staff have been meeting with the owners of Hylton Lumber to renegotiate the lease. The new lease is proposed to have an incremental payment increase each year for the next 5 years.

## **RECOMMENDATION**

After working with the owners of Hylton Lumber, and receiving their approval of the attached, staff is recommending Council approve Ordinance 2024-11 and the associated lease.

## **FISCAL IMPACT**

The fiscal impact of this Ordinance is a continuation of the \$200 per month payment through the end of 2024 and an incremental annual increase over the next 5 years, as noted in the attached lease agreement.

## **MOTION**

A City Councilmember should state "I move to \_\_\_\_\_ Ordinance 2024-11, An Ordinance of the City Council for the City of Salida, Colorado, Approving A Lease of Real Property Located at 348 H Street From the City of Salida to Hylton Lumber LLC, on Second Reading", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO**  
**ORDINANCE NO. 11**  
**(Series of 2024)**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA,  
COLORADO APPROVING A LEASE OF REAL PROPERTY LOCATED AT 348 H  
STREET FROM THE CITY OF SALIDA TO HYLTON LUMBER LLC**

**WHEREAS**, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado;

**WHEREAS**, the City owns certain real property within the City that consists of approximately 41,756.30 square feet and/or .96 acres and that is commonly known as 348 H Street, Salida, Colorado 81202 (the “Property”);

**WHEREAS**, the City is authorized by C.R.S. § 31-15-713(1)(c) to lease any real estate, together with any facilities thereon, that are owned by the City when deemed by the governing body to be in the best interest of the City;

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

**WHEREAS**, the City Council finds that it is presently in the best interest of the City to lease the Property to Hylton Lumber LLC in accordance with the terms and conditions set forth in the Lease, attached hereto as **Exhibit A**.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE  
CITY OF SALIDA, COLORADO AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

**Section 2.** *Lease Approved.* Pursuant to C.R.S. § 31-15-713, the City Council hereby accepts and approves the Lease for the Property between the City and Hylton Lumber LLC, attached hereto as **Exhibit A**.

**Section 3.** *Execution of Lease.* The City Council authorizes the Mayor and/or City Administrator on behalf of the City to execute the Lease, attached hereto as **Exhibit A**.

**Section 4.** *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING on this 2<sup>nd</sup> day of July, 2024, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 5<sup>th</sup> day of July, 2024, and set for second reading and public hearing on the 16<sup>th</sup> day of July, 2024.

**INTRODUCED, ON SECOND READING FINALLY ADOPTED AND ORDERED  
PUBLISHED BY TITLE ONLY** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2024.

City of Salida

[SEAL]

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Mayor Dan Shore

ATTEST:

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City Clerk/Deputy City Clerk

**EXHIBIT A**

Lease between the City of Salida and Hylton Lumber LLC  
for the Premises located at 348 H Street, Salida, Colorado 81201

See Attached

## LEASE

THIS LEASE (the “Lease”) is entered into by and between the City of Salida, a Colorado statutory city (the “Landlord”), on the one hand, and Hylton Lumber LLC, a Colorado limited liability company (the “Tenant”), on the other hand.

In consideration of the payment of the Rent and the performance of the covenants and agreements by the Tenant set forth in this Lease, the Landlord does hereby lease to Tenant the following described property (the “Premises”) in Chaffee County, Colorado consisting of approximately 41,756.30 square feet and/or .96 acres:

### See the Attached Exhibit A

The Premises are commonly known as 348 H Street, Salida, Colorado 81201.

TO HAVE AND TO HOLD the same with all the appurtenances thereto pursuant to the following terms and conditions:

1. Term. The term of this Lease shall begin on July 1, 2024 (the “Lease Commencement Date”) and shall end at midnight on December 31, 2029 (the “Lease Expiration Date”); provided, however, and subject to the other terms and conditions set forth in this Lease, either Landlord or Tenant may terminate the Lease upon three hundred sixty five (365) days prior written notice to the other party.

2. Rent. During the term of the Lease, Rent shall be payable in monthly amounts as follows:

July 1, 2024 to December 31, 2024	\$200.00 per month
January 1, 2025 to December 31, 2025	\$600.00 per month
January 1, 2026 to December 31, 2026	\$1,000.00 per month
January 1, 2027 to December 31, 2027	\$1,400.00 per month
January 1, 2028 to December 31, 2028	\$1,800.00 per month
January 1, 2029 to December 31, 2029	\$2,200.00 per month

Rent is due in advance on the 1<sup>st</sup> day of each calendar month during the term of this Lease, commencing on the Lease Commencement Date and continuing each subsequent month thereafter. Notwithstanding the foregoing, if the Lease Commencement Date falls on a day of the month other than the first day of such month, then the Rent for such fractional month shall be a proportionate amount of a full calendar month’s rental based on the proportion that the number of days in such fractional month bears to the number of days in the calendar month during which such fractional month occurs. Rent shall be paid without any reduction, abatement,

counterclaim, or setoff to Landlord, at the following address (or at such other place as the Landlord may designate in writing from time to time), 448 E. First Street, Suite 112, Salida, Colorado 81201, Attention: Finance Office, without further notice.

3. Landlord and Tenant, in consideration of the leasing of the Premises, agree as follows:

a. Tenant agrees to pay the Rent for the Premises on a timely basis.

b. Tenant agrees to pay those items listed below, without further notice from Landlord:

i. Tenant shall pay the real property taxes together with all other taxes, assessments, and other governmental charges which are levied against and may create a statutory lien upon the Premises during the term of this Lease on a timely basis;

ii. during the term of this Lease, Tenant, at its sole cost and expense and for the mutual benefit of Landlord and Tenant, shall carry and maintain the following types of insurance in the amounts specified: Tenant shall at all times keep in force (1) a comprehensive general liability insurance policy providing protection of at least One Million Dollars and 00/100 (\$1,000,000.00) per occurrence and Two Million Dollars and 00/00 (\$2,000,000.00) annual aggregate, which provides coverage against claims and liability for personal injury, bodily injury, property damage, and death; (2) automobile liability insurance in the amount of not less than One Million Dollars and 00/100 (\$1,000,000.00) per occurrence covering all owned, non-owned and hired vehicles; and (3) workers' compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the workers' compensation laws of the State of Colorado. Landlord shall be named as an additional insured on both the comprehensive general liability and automobile liability insurance policies and protected under the terms and conditions of the foregoing policies as the lessor of the Premises. The foregoing insurance policies shall be written with an insurance company licensed to do business within the State of Colorado and approved by Landlord (which approval shall not be unreasonably withheld). Tenant shall provide Landlord with the original insurance policies or a certificate of insurance (with proof of payment thereon), which shall provide that the insuring company shall give notice in writing to Landlord at least thirty (30) days (ten (10) days for non-payment of premium) prior to cancellation, termination or, in the event of a material change in such insurance, for any reason whatsoever. In addition, Tenant shall be responsible for insuring any and all personal property that may be owned by Tenant. The parties agree that all of the foregoing insurance policies shall include a clause or endorsement which shall waive the right of subrogation on the part of the insurance carrier against the Landlord;

iii. all costs and expenses of repairing and maintaining the Premises and all of its components (including, without limitation, any sidewalks and sewer lines); and

iv. all utility charges directly to the utility provider, including, without limitation, electricity, water, gas, and any other utilities furnished to the Premises.

c. Tenant agrees to keep the improvements upon the Premises, including sewer connections, plumbing, wiring and glass in good repair all at Tenant's expense. At the expiration or earlier termination of this Lease the Tenant agrees to surrender the Premises in as good a condition as when Tenant entered the Premises, ordinary wear and tear excepted. Tenant agrees to keep all sidewalks on and around the Premises free and clear of ice and snow, and to keep the Premises free from all litter, dirt, debris and obstructions. Tenant agrees to keep the Premises in a clean and sanitary condition as required by the ordinances of the city and county in which the property is situated. In furtherance of the foregoing obligations, Tenant agrees that it will not store any materials within twenty (20) feet of the waterway adjacent to the Premises.

d. Tenant agrees to use the Premises solely for the storage and sale of lumber and related materials. Tenant may not use the Premises for any other business or purpose whatsoever. Notwithstanding the foregoing, Tenant shall not use the Premises for any purposes prohibited by the laws of the United States or the State of Colorado nor shall Tenant use the Premises for any improper or questionable purposes whatsoever, and will neither permit nor suffer any disorderly conduct, noise or nuisance having a tendency to annoy or disturb any persons occupying adjacent premises.

e. Tenant agrees to neither hold nor attempt to hold Landlord liable for any injury or damage, either proximate or remote occurring through or caused by repairs, alterations, injury or accident to or about the Premises nor to hold the Landlord liable for any injury or damage occasioned by defective electric wiring, or the breakage or stoppage of plumbing or sewerage upon the Premises, whether breakage or stoppage results from freezing or otherwise. Tenant agrees that the Premises will not be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous, nor to make any alterations in or changes in, upon, or about the Premises without first obtaining the written consent of Landlord. In connection with the foregoing prohibition, Tenant acknowledges that the real property it owns that is adjacent to the Premises contains a building that is encroaching on the Premises. Consequently, Tenant agrees that any changes, alterations, or additions to the subject building require the Landlord's written approval prior to being made, and should such encroachment interfere with the Landlord's right to later develop or use the Premises Tenant agrees to remedy such encroachment.

f. Tenant agrees to allow the Landlord to enter upon the Premises during the Tenant's normal business hours.

g. Tenant's failure to comply with any of the requirements, restrictions, prohibitions, or obligations contained in this Section 3 shall be deemed a default under this Lease.

IT IS EXPRESSLY UNDERSTOOD AND AGREED BETWEEN THE LANDLORD AND TENANT AS FOLLOWS:

4. Possession. Tenant is already in possession of the Premises and accepts the Premises "AS IS". Tenant acknowledges that neither Landlord nor its agents have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or its agents agreed to undertake any alterations or to construct any tenant improvements to the Premises.

5. No assent, express or implied, to any breach of any one or more of the provisions hereof shall be deemed or taken to be a waiver of any succeeding or other breach. Any payment by Tenant, or acceptance by Landlord, of a lesser amount than due shall be treated only as a payment on account.

6. Maintenance. It is acknowledged and agreed that Landlord shall not have any maintenance obligations with respect to the Premises. Instead, any such maintenance obligations shall be the sole responsibility of the Tenant and completed at Tenant's sole cost and expense.

7. Holding Over. If, after the Lease Expiration Date, Tenant shall remain in possession of the Premises and continue to pay Rent without a written agreement as to such possession, then such continuing tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to one hundred fifty percent (150%) of the last month's Rent paid under this Lease, and subject to all of the other terms, covenants and conditions hereof.

8. Default or Breach. In the event of an occurrence of default as set forth in this Lease, other than a default concerning the payment of Rent, or a material breach hereunder, other than a material breach concerning the payment of Rent, and Tenant does not cure such default within twenty (20) days after receiving written notice thereof, or, if such default cannot be cured completely within the twenty (20) day period, if Tenant does not promptly commence within such period and thereafter proceed with due diligence to cure the same, then the parties acknowledge and agree that Landlord shall have the rights described below. The parties acknowledge and agree that Tenant shall have a three (3) day grace period, after Rent is due under the Lease, with regard to the payment of Rent hereunder. If Rent is not paid prior to expiration of the three (3) day grace period then the parties acknowledge and agree that Landlord shall have the rights described below.

Landlord shall have the right to:

a. Sue Monthly for Rent. Without resuming possession of the Premises or terminating this Lease to sue monthly for and recover all Rents due under this Lease as well as any late charges and other sums including legal fees; or



b. Terminate Lease. To give Tenant written notice of Landlord's intention to terminate this Lease on the date such notice is given or on any later date specified therein, whereupon, on the date specified in such notice, Tenant's right to possession of the Premises shall cease and this Lease shall thereupon be terminated; provided however, all of Tenant's obligations, including but not limited to, the payment of Rent and other obligations reserved in this Lease for the balance of the term hereof, shall immediately be accelerated and due and payable; or

c. Repossess Premises. Without terminating this Lease, re-enter and take possession of the Premises or any part thereof and repossess the same as of Landlord's former estate or expel Tenant and those claiming through or under Tenant and remove the effects of both or either (forcibly, if necessary) without being deemed guilty in any manner of trespass and without prejudice to any remedies for Rent delinquencies or preceding Lease defaults, in which event Landlord may from time to time without terminating this Lease relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may, in its sole discretion, deem advisable, with the right to make alterations and repairs to the Premises, and neither the serving of a demand for possession nor the re-entry or taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant. In the event of Landlord's election to proceed under this subsection, then such repossession shall not relieve Tenant of its obligations and liabilities under this Lease, all of which shall survive such repossession, and Tenant shall pay to Landlord as current damages, the basic rental sums which would be payable hereunder if such repossession had not occurred, less the net proceeds (if any) of reletting the Premises after deducting all of Landlord's expenses in connection therewith, including but without limitation all repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation of such reletting. Tenant shall pay such current damages to Landlord on the days on which the basic Rent would have been payable hereunder and as if possession had not been retaken, and Landlord shall be entitled to receive the same from Tenant on each such day.

d. Timing of Suit. Suit or suits for the recovery of the amounts and damages set forth above may be brought by Landlord, from time to time, at Landlord's election and nothing herein shall be deemed to require Landlord to await the date whereon this Lease would have expired had there been no such default or material breach or no such termination, as the case may be.

9. No Waiver. The failure of Landlord to declare any default upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but instead Landlord shall have the right to declare any such default at any time thereafter.

10. Improvements and Alterations. Tenant shall have the right, at its sole cost and expense, to make changes or alterations to the Premises; provided, however, that in all cases any

such changes or alterations shall be made subject to the following conditions, which Tenant agrees to observe and perform:

a. Tenant shall make no alterations in or additions to the Premises without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld; and Tenant shall notify Landlord at least thirty (30) days in advance of any alterations in or additions to the Premises which Tenant proposes to make. Tenant shall post notice pursuant to the Colorado Mechanics Lien Act so that any lien recorded against the Premises does not attach to Landlord's interest.

b. If Landlord permits persons requested by Tenant to perform any alterations, modifications or additions to the Premises, then prior to the commencement of any such work, Tenant shall deliver to Landlord certificates issued by insurance companies qualified to do business in Colorado evidencing that workers' compensation insurance, general liability insurance and property damage insurance, all in amounts, with companies and on forms satisfactory to Landlord, are in force and maintained by all such contractors and subcontractors engaged by Tenant to perform such work. All such policies shall name Landlord as an additional insured and shall provide that the same may not be canceled or modified without thirty (30) days (ten (10) days for non-payment of premium) prior written notice to Landlord.

c. All such alterations, additions or improvements shall be made at Tenant's sole cost and expense and, except as otherwise provided herein, shall become the property of Landlord and shall be surrendered with the Premises, as a part thereof, at the end of the term hereof. Landlord and Tenant agree to walk through the Premises on a date which is not more than sixty (60) days prior to the end of the term, to examine the improvements and alterations made by Tenant in the Premises. Landlord may within ten (10) days after such examination of the Premises by written notice to Tenant require Tenant to remove all or any part of the improvements or alterations installed by Tenant and to repair any damage to the Premises resulting from such removal. Tenant shall construct such improvements or alterations in conformance with any and all applicable rules and regulations of any federal, state, or municipal code or ordinance. At least ten (10) days before the commencement of any such work, Tenant agrees to provide Landlord with lien waivers from all persons performing such work and materialmen providing materials used in connection therewith, which waivers may be conditioned upon payment.

d. Tenant shall, at Tenant's sole cost and expense, be responsible for any alterations, modifications or improvements to the Premises, and the acquisition of any auxiliary aids, required under Title III of the Americans With Disabilities Act ("ADA"), including all alterations, modifications, or improvements required: (i) as a result of Tenant being a "Public Accommodation" (as defined in the ADA); (ii) as a result of the Premises being a "Commercial Facility" (as defined in the ADA); (iii) as a result of any leasehold improvements made to the Premises by, or on behalf of, Tenant (whether or not Landlord's consent to such leasehold improvements was obtained); or (iv) as a result of the employment by Tenant of any individual with a disability.

11. Liens. Should any mechanics' or other liens be filed against the Premises by reason of Tenant's acts or omissions or because of a claim against Tenant or its subcontractors, Tenant shall cause the same to be canceled or discharged of record, or shall file a bond sufficient to discharge such lien. In the event any lien shall be filed for labor performed or materials supplied, Tenant shall cause such lien to be released within twenty (20) days. Failure to do so will be considered a material breach of this Lease.

12. Assignment and Sublease. Tenant agrees not to assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor mortgage nor encumber this Lease or any part of the Premises, nor enter into licenses or concession agreements or in any other manner permit the occupation of or sharing of possession of any part of the Premises, or any assignment of this Lease or any estate or interest therein (all of the foregoing being hereafter referred to as an "Assignment") without the prior written consent of Landlord. Any Assignment by operation of law, or if Tenant is a corporation or other entity, the transfer, assignment or hypothecation of any stock or interest therein in excess of 50%, shall be deemed an Assignment. An Assignment consummated in violation of the provisions of this Section 12 shall be a material breach of this Lease, null and void, and of no force or effect. If Tenant shall enter into any approved sublease hereunder, Tenant shall pay to Landlord the Sublease Premium. The "Sublease Premium" shall mean in the event of a subletting, one-half (1/2) of all rent, additional rent or other consideration payable by such subtenant to Tenant or on behalf of Tenant in connection with the subletting. In determining whether to grant consent, Landlord may consider, without limitation, (a) whether the Assignment is consistent with Tenant's permitted use under this Lease and (b) whether the Assignment is to an assignee who, in Landlord's opinion, lacks adequate reputation, successful business experience in Tenant's type of business and/or means and/or financial capacity to conduct such a business. Consent by Landlord to one or more Assignments shall not constitute a waiver or consent to any subsequent Assignment; nor shall acceptance of any Rent or any other payment from any assignee be deemed a waiver or consent by Landlord or an acceptance of such Assignment. The consent of Landlord to any Assignment shall not relieve Tenant from continuing liability under this Lease, including liability for Rent, for which Tenant shall remain obligated. Tenant shall pay all reasonable costs and attorneys' fees incurred by Landlord in connection with any requested Assignment, regardless of whether such Assignment is consummated.

13. Transfers by Landlord. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations hereunder and in the Premises referred to herein, and in such event and upon such transfer Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations.

14. Abandonment. Tenant's abandonment of the Premises shall be deemed a default under this Lease. Abandonment of the Premises is deemed to have occurred if Tenant has abandoned or permanently vacated the Premises for a period of ten (10) consecutive days.

15. Signs. Tenant shall not erect any sign visible from the exterior of the Premises without first obtaining the written consent of Landlord. Tenant shall be responsible, at its sole

cost and expense, for obtaining all necessary approvals and permits for the installation of such signage and shall pay all costs relating to such installation, maintenance and removal of such signage and any damage that may occur to the Premises as a result of such installation, maintenance and removal. Tenant shall make all repairs to any such signage within ten (10) days after written notice from Landlord. Tenant agrees not to use any advertising media that shall be deemed objectionable to Landlord, such as loud speakers, phonographs, or radio broadcasts in a manner to be heard outside the Premises.

16. Subordination. This Lease and the rights of Tenant hereunder shall be subject and subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon, affecting or encumbering the Premises, or any part thereof or interest therein, and to any and all advances made thereunder, interest thereon or costs incurred and any modifications, renewals, supplements, consolidations and replacements thereof; provided, however, that as a condition to any such subordination, the holder of or beneficiary under any such encumbrance shall agree that Tenant shall not be disturbed in its possession (provided Tenant is not in breach or default under this Lease) nor shall its obligations be enlarged or its rights abridged hereunder by reason of any such mortgage or deed of trust. Without the consent of Tenant, the holder of any such mortgage or deed of trust or the beneficiary thereunder shall have the right to elect to be subject and subordinate to this Lease, such subordination to be effective upon such terms and conditions as such holder or beneficiary may direct which are not inconsistent with the provisions hereof. Notwithstanding any foreclosure or sale under any such mortgage or deed of trust (or deed in lieu thereof) this Lease shall remain in full force and effect, but Tenant shall attorn to the purchaser at any such sale or foreclosure or the grantee of any such deed.

17. Estoppel Certificate. Within ten (10) days after Landlord's request, Tenant shall execute estoppel certificates addressed to (i) any mortgagee or prospective mortgagee of Landlord or (ii) any purchaser or prospective purchaser of all or any portion of, or interest in, the Premises, on a form specified by Landlord, certifying as to such facts (if true) and agreeing to such notice provisions and other matters as such mortgagee(s) or purchaser(s) may reasonably require; provided, however, that in no event shall any such estoppel certificate require an amendment of the provisions hereof or otherwise affect or abridge Tenant's rights hereunder.

18. Attorneys 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.

19. Late Charges and Interest. In the event any payment required hereunder is not made within three (3) days after the payment is due, a late charge in the amount of five percent (5%) of the payment will be paid by the Tenant. In addition, should any payment required hereunder remain unpaid for a period of thirty (30) days after it was due then the parties agree that such amounts shall accrue interest at the rate of eighteen percent (18%) per annum.

20. Condemnation.

a. Complete Taking. If, during the term of this Lease, the whole or substantially all of the Premises shall be taken as a result of the exercise of power of

eminent domain or transferred under threat of condemnation, this Lease shall terminate as of the date of vesting of title of the Premises or delivery of possession, whichever event shall first occur, pursuant to such proceeding or transfer. For purposes of this Section 20(a), "substantially all of the Premises" shall be deemed to have been taken if a taking under any such proceeding shall involve such an area that Tenant cannot reasonably operate in the remainder of the Premises the business being conducted on the Premises at the time of such proceeding.

b. Partial Taking. If, during the term of this Lease, less than substantially all of the Premises shall be taken in any such proceeding, this Lease shall not terminate. Instead, the Rent thereafter due and payable by Tenant shall be reduced in such proportion as the nature, value and extent of the part so taken bears to the whole of the Premises.

c. Award. Any award granted for either partial or complete taking of the real property and improvements shall be the sole property of Landlord. Tenant shall be entitled to negotiate with the taking party for compensation due to loss of business or other losses associated with the taking, and retain any such award, provided it does not reduce the Landlord's award. Notwithstanding the foregoing, Tenant shall have no claim against Landlord for any loss or damage resulting from such taking.

21. Destruction of Premises. In the event of a partial or total destruction of the Premises, including improvements thereto, during the term hereof, from any cause covered by insurance, Landlord shall be entitled to all insurance proceeds resulting from such partial or total destruction (except business interruption insurance proceeds) and Landlord shall repair and/or rebuild all of the improvements, to the same or better level of size and quality as was present at the time of destruction; provided, however, Landlord shall not be required to expend monies in excess of the insurance proceeds received. The rebuilding/repair process shall commence and be completed within a reasonable time.

22. Laws and Regulations.

a. General. At its sole cost and expense, Tenant will promptly comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or in force after the date of execution of this Lease, with the requirements of any board of fire underwriters or other similar body constituted now or after that date, with any direction or occupancy certificate issued pursuant to any law by any public officer or officers, as well as with the provisions of all recorded documents affecting the Premises, insofar as they relate to the condition, use, or occupancy of the Premises.

b. Hazardous Materials.

i. For purposes of this Lease, "Hazardous Materials" means any explosives, radioactive materials, hazardous wastes, or hazardous substances, including without limitation substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of

1980, as amended, 42 U.S.C. §9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901-6987; or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (collectively, "Hazardous Materials Laws").

ii. Tenant will not cause, permit or allow the storage, use, generation, or disposition of any Hazardous Materials in, on, or about the Premises. Tenant will not cause, permit or allow the Premises to be used or operated in a manner that may cause the Premises to be contaminated by any Hazardous Materials in violation of any Hazardous Materials Laws. Tenant will immediately advise Landlord in writing of (1) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Hazardous Materials Laws relating to any Hazardous Materials affecting the Premises and (2) all claims made or threatened by any third party against Tenant, Landlord, or the Premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any Hazardous Materials on or about the Premises. Without Landlord's prior written consent, Tenant will not take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous Materials in, on, or about the Premises.

iii. Tenant will be responsible for and will defend, indemnify and hold Landlord, its agents, and each of their respective successors and assigns harmless from and against all claims, costs, and liabilities, including attorneys' fees, arising out of or in connection with Tenant's breach of this Section 22. Tenant will be responsible for and will defend, indemnify, and hold Landlord, its agents, and each of their respective successors and assigns harmless from and against any and all claims, costs, and liabilities, including attorneys' fees, arising out of or in connection with the removal, cleanup, and restoration work and materials necessary to return the Premises and any other property of whatever nature located in, on, or about the area, to their condition existing prior to the introduction of Hazardous Materials. Tenant's obligations under this Section 22 will survive the expiration or other termination of this Lease.

c. Certain Insurance Risks. Tenant will not do, permit or allow to be done any act or thing upon the Premises which would (i) jeopardize or be in conflict with insurance policies covering the Premises or (ii) subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon the Premises.

23. Indemnification. Tenant shall indemnify, defend and hold Landlord, its agents, and each of their respective successors and assigns harmless from and against all claims, losses, damages, liabilities, expenses (including reasonable attorneys' fees and costs), penalties and charges arising from or in connection with (i) Tenant's use of the Premises, (ii) the conduct of

Tenant's business, or (iii) any activity, work or things done, permitted or suffered by Tenant in or about the Premises. Tenant shall further indemnify, defend, and hold Landlord harmless from and against any and all claims, losses, damages, liabilities, expenses (including reasonable attorneys' fees and costs), penalties or charges arising from any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, employees or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding should be brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord, shall defend the same at Tenant's expense with legal counsel reasonably satisfactory to Landlord. Tenant, as a material part of its consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in or upon the Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord. Notwithstanding the foregoing, Tenant shall not be required to defend, save harmless or indemnify Landlord from any liability for injury, loss, accident or damage to any person or property resulting from Landlord's gross negligence or willful acts or omissions. Tenant's indemnity is not intended to nor shall it relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease to the extent that such policies cover the results of negligent acts or omissions of Landlord or its agents, or the failure of Landlord to perform any of its obligations under this Lease. Tenant's obligations under this Section 23 will survive the expiration or other termination of this Lease.

24. Covenant of Quiet Enjoyment. Landlord covenants that Tenant, upon paying the amounts required under the Lease, and observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall during the term hereof, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord.

25. Notice. Any notice, request, instruction, demand or other communication given hereunder by either party to the other party shall be given in writing and shall be delivered either by hand, or by registered or certified mail, postage prepaid, return receipt requested, as follows:

- a. If to Tenant, addressed to:

Hylton Lumber LLC  
348 H Street  
Salida, CO 81201

- b. If to Landlord, addressed to:

City of Salida, Colorado  
448 E. First Street, Suite 112  
Salida, CO 81201  
Attention: City Administrator

or to such other address as either party shall have previously designated by written notice given to the other party in the manner hereinabove set forth. Notices given hereunder shall be deemed given, in the case of personal delivery, on the date delivered, and in the case of delivery by certified mail, on the third (3<sup>rd</sup>) business day after delivery to the United States Postal Service.

26. Recordation. Tenant shall not record this Lease without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Recordation of this Lease by Tenant without the prior written consent of Landlord shall be deemed a material breach of this Lease.

27. Bankruptcy. This Lease is made with the express understanding and agreement that, in the event the Tenant becomes insolvent, or is declared bankrupt, then, in either event, the Landlord may declare this Lease ended, and all rights of the Tenant hereunder shall terminate and cease.

28. Entire Agreement. This Lease is fully integrated and constitutes the entire agreement and understanding between and among the parties with respect to the matters addressed herein and, except as set forth in this Lease, no representations, warranties or promises have been made or relied upon by the parties to this Lease.

29. Amendment. Any amendment or modification of this Lease shall be effective only if set forth in a written document executed by a duly authorized representative of each of the parties.

30. Severability. If any term, provision, covenant or condition of this Lease is held by any court of competent jurisdiction to be invalid, void or unenforceable in any respect, the remainder of such term, provision, covenant or condition in every other respect and the remainder of the terms, provisions, covenants or conditions of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated.

31. No Joint Venture. This Lease shall not be deemed or construed to create or establish any relationship of partnership or joint venture between Landlord and Tenant, the sole relationship between the parties being that of landlord and tenant.

32. Counterparts and Signatures. This Lease may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Signatures by the parties on this Lease that are delivered by facsimile or electronically in a portable document format (pdf) shall be deemed original signatures.

33. Headings. The headings in this Lease are for convenience of reference only, and shall not be considered a part hereof or be given any effect in the construction or interpretation of this Lease.



34. Representations and Warranties. Landlord represents and warrants that the execution of this Lease by it has been duly authorized. Tenant represents and warrants that the execution of this Lease by it has been duly authorized.

35. Gender. Words used herein regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

36. Inurement. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

37. Governing Law; Venue. The provisions of this Lease shall be governed by the laws of the State of Colorado, without giving effect to any conflict of law provisions. Any judicial proceeding brought hereunder shall be brought exclusively in Chaffee County, Colorado. Each party hereby consents to the jurisdiction of such county and waives any defense or objection to such jurisdiction and/or venue.

38. Governmental Immunity Act. No term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

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IN WITNESS WHEREOF, the parties have executed this Lease as of the date of the last signature below.

**LANDLORD**  
**City of Salida, Colorado**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
City Administrator

**TENANT**  
**Hylton Lumber LLC,**  
**a Colorado limited liability company**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **Premises**

#### **See Below and Attached**

A portion of the abandoned Denver and Rio Grande Western Railroad (Monarch Branch) right-of-way located in the Southeast Quarter of the Southwest Quarter (SE 1/4 SW 1/4) and the Southwest Quarter of the Southeast Quarter (SW 1/4 SE 1/4) of Section 32, Township 50 North, Range 9 East of the New Mexico Principal Meridian, in the City of Salida, Chaffee County, Colorado, being more particularly described as follows:

Beginning at the point of intersection of the Southeasterly boundary of said abandoned railroad right-of-way with the Northeasterly boundary of Fifth Street in said City of Salida; thence proceeding around the tract herein described along said southeasterly railroad right-of-way boundary the following: first North  $68^{\circ}17'54''$  East 253.11 feet to the beginning of a curve to the left, said curve having a central angle of  $04^{\circ}59'$  and a radius of 2908.27 feet; thence along the arc of said curve a distance of 252.95 feet to the end of said curve; thence North  $63^{\circ}19'54''$  East 278.8 feet more or less to the Southwesterly boundary of Third Street in the said City of Salida; thence leaving said railroad right-of-way boundary North  $40^{\circ}05'18''$  West along the approximate Southwesterly boundary of said Third Street a distance of 70.48 feet; thence leaving said Southwesterly street boundary South  $59^{\circ}59'46''$  West 193.46 feet; thence South  $67^{\circ}38'06''$  West 31.06 feet; thence South  $64^{\circ}14'00''$  West 99.59 feet; thence South  $31^{\circ}24'02''$  East 12.22 feet; thence South  $66^{\circ}23'27''$  West 297.81 feet; thence South  $69^{\circ}10'16''$  West 70.54 feet; thence South  $71^{\circ}32'03''$  West 75.21 feet to a point on a curve on the said Northeasterly boundary of Fifth Street, said curve having a central angle of  $08^{\circ}87'49''$ , a radius of 320.0 feet and a chord which bears South  $23^{\circ}44'12''$  East 50.01 feet; thence along the arc of said curve a distance of 50.06 feet to the point of beginning.

Containing 41,756.3 Square feet or 0.96 acres



Premises

5TH ST

1ST

H ST

4TH ST

G ST