

**Town of Milliken
Grain Elevator Lease Agreement**

THIS LEASE AGREEMENT (hereinafter referred to as the “Agreement”) made and entered into this _____ day of _____, 2016 by and between the Town of Milliken, a Colorado statutory municipal corporation, 1101 Broad Street, Milliken, CO 80543 (hereinafter “Town”) and Colorado Door Restore, LLC, a Colorado limited liability company, 1572 S. Cora Avenue, Milliken, CO 80543 (hereinafter “Lessee”).

WITNESSETH:

WHEREAS, the Town is the fee owner of certain real property being, lying and situated in Weld County, Colorado, such real property, having a street address of 1301 Broad Street, Milliken, Colorado 80543 (hereinafter referred to as the “Property”).

WHEREAS, Town is desirous of leasing a portion of the Property consisting of approximately 1,280 square feet on the south side of the Property (“Premises”) to Lessee for Lessee’s operation of a woodworking shop (“Business”) upon the terms and conditions as contained herein; and

WHEREAS, Lessee is desirous of leasing the Premises from Town to operate the Business on the terms and conditions as contained herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **TERM.** Town leases to Lessee and Lessee leases from Town the above described Premises together with any and all appurtenances thereto commencing on May 15, 2016 and terminating on May 14, 2017 (“Term”). The Parties may extend the Term for up to two additional one year terms upon mutual agreement of the Parties and subject to written letter extending the Agreement executed by the Town Administrator and Lessee.
2. **SURRENDER.** Upon expiration of the Term, or if this Agreement shall at any time be terminated prior to expiration of the Term as a result of Lessee’s failure to abide by the terms and conditions of this Agreement, Lessee shall immediately quit and surrender up to the Town possession of the Premises in a broom-clean condition and in good order and repair, ordinary wear and tear and loss from casualty excepted, and the Lessee shall remove all Lessee’s property and, at the option of and upon notice from the Town at the time of installation, any alterations and installments made by or on behalf of Lessee therefrom. Lessee’s obligation to observe or perform this covenant shall survive termination of this Agreement.

3. **RENT.** The annual rental payment for the lease of the Premises shall be Three Thousand Six Hundred Dollars (\$3,600.00), payable on the first day of the month in twelve equal installments of \$300.00 ("Rent").
4. **SECURITY DEPOSIT.** The Town acknowledges and agrees that the Lessee is not required to pay the Town a security deposit during the Term.
5. **OCCUPANCY AND USE OF PREMISES.** The Premises will be used only for the operation of Lessee's Business and associated uses to support the Business consistent with Business use, including a place where customers may visit from time to time. Any other uses shall require the written approval of the Town. The Premises cannot be used in any way that:
 - Increases or could cause an increase in the Town's existing rates for, or could cause cancellation of, any fire, casualty, liability or other insurance policy insuring the Premises or its contents; or
 - Violates or conflicts with any laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises; or
 - Constitutes a nuisance under state or Town laws or ordinances.
6. **CONDITION OF PREMISES.** Lessee stipulates, represents and warrants that Lessee is entering into this Agreement to Lease the Premises in an "as-is" condition. Lessee is authorized to make repairs to the Premises, subject to prior written approval by the Town Administrator. During the course of making said Town-approved repairs, Lessee agrees to provide written updates to the Town Administrator. The Town reserves the right to have said repairs made on its own, at its expense.
7. **ASSIGNMENT AND SUB-LETTING.** Lessee shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof without the prior written consent of Town. Consent by Town to any such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of Town or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at Town's option, terminate this Agreement.
8. **ALTERATIONS AND IMPROVEMENTS.** Lessee shall make no alterations to the improvements on the Premises or make any other improvements on the Property without the prior written consent of Town. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Lessee shall, unless otherwise provided by written agreement between Town and Lessee, be and become the property of Town and remain on the Premises at the expiration or earlier termination of this Agreement.

- 9. LIABILITY, PROPERTY DAMAGE, INSURANCE AND INDEMNITY.** Except to the extent directly caused by and the result of the negligence or willful misconduct of the Town, Lessee expressly agrees to indemnify and shall hold harmless the Town and any of its officers, agents or employees from any and all claims, liability, damages, expenses or court awards, including costs and attorney fees, that result or arise from (a) damage to property owned or controlled by Lessee within the Premises or on the Property or (b) death or injury to any persons within the Premises, including Lessee, or any employees, clients or agents of Lessee, caused by or allegedly caused by Lessee's use and occupation of the Premises. The Town shall maintain property, fire and liability insurance coverage on the Premises in such amounts as the Town shall deem appropriate. Lessee shall be responsible, at its expense, for insurance coverage on all of its personal property located in the Premises and for worker's compensation insurance as required by state statute for Lessee's volunteers, contractors, employees and agents. To the extent directly caused by and the result of the negligence or willful misconduct of the Town, the Town expressly agrees to indemnify and shall hold harmless the Lessee and any of its officers, agents or employees, to the extent permitted by law, from any and all claims, liability, damages, expenses or court awards, including costs and attorney fees that result or arise from any negligence or willful misconduct of the Town.
- 10. UTILITIES.** Lessee shall pay the cost of the electricity used on the Premises. The Town will continue to pay base fees for the water tap for the Property, as no plumbing to provide water use has been installed, and provide a Code-compliant portable toilet for use of Lessee.
- 11. MAINTENANCE AND REPAIR; RULES.** Lessee will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, except as may be otherwise approved by Town, Lessee shall:
- a) Not obstruct any driveways, sidewalks, courts, entry ways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;
 - b) Keep all doors, locks and hardware in good, clean order and repair;
 - c) Not leave windows or doors in an open position during any inclement weather;
 - d) Any Lessee's employees, clients, agents and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb other tenants or occupiers of the building;
 - e) Collect and bag in sealed plastic bags all trash, garbage, rubbish, or refuse on the Premises for weekly collection by the Town;
 - f) Abide by and be bound by any and all rules and regulations affecting the Premises which may be adopted or promulgated by the Town.
- 12. DAMAGE TO PREMISES.** In the event the Premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake, or other casualty not caused by the

negligence of Lessee, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. Should a portion of the Premises thereby be rendered uninhabitable as determined by the Town, the Town shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that Town exercises its right to repair such uninhabitable portion, the Rent shall be restored by Town as speedily as practicable, after which the Agreement shall continue according to its terms.

- 13. INSPECTION OF PREMISES.** Town and Town's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises (a) for the purpose of inspecting the Premises and all buildings and improvements thereon and (b) for the purposes of making any repairs, additions or alterations as may be deemed appropriated by Town for the preservation of the Premises or the building.
- 14. SUBORDINATION OF LEASE.** This Agreement and Lessee's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Town, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances.
- 15. LESSEE'S HOLD OVER.** This Agreement and Lessee's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Town, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances and any and all renewals, extensions or modifications of such mortgages, liens or encumbrances.
- 16. QUIET ENJOYMENT.** Lessee, upon payment of all of the sums referred to herein as being payable by Lessee and Lessee's performance of all Lessee's agreements contained herein and Lessee's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.
- 17. DEFAULT.** If Lessee fails to comply with any of the material provisions of this Agreement, other than the covenant to pay Rent, or of any present rules and regulations or any that may be hereafter prescribed by Town, or materially fails to comply with any duties imposed on Lessee by statute, within seven (7) days after delivery of written notice by Town specifying the non-compliance and indicating the intention of Town to terminate the Lease by reason thereof, Town may terminate this Agreement.
- 18. LATE CHARGE.** In the event that any payment required to be paid by Lessee hereunder is not made within FIVE (5) days of when due, Lessee shall pay to Town,

in addition to such payment or other charges due hereunder, a "late fee" in the amount of TEN DOLLARS (\$10.00) per day.

- 19. ABANDONMENT.** If, at any time during the term of this Agreement, Lessee abandons the Premises or any part thereof, Town may, at Town's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Lessee for damage or for any payment of any kind whatever. If Town's right of reentry is exercised following abandonment of the Premises by Lessee, then Town shall consider any personal property belonging to Lessee and left on the Premises to also have been abandoned, in which case Town may dispose of all such personal property in any manner Town shall deem proper and Town is hereby relieved of all liability for doing so.
- 20. ATTORNEYS' FEES.** Should it become necessary for Town to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of Rents or gaining possession of the Premises, Lessee agrees to pay all expenses so incurred, including a reasonable attorneys' fee. For any other dispute arising under this Lease, the prevailing party shall be entitled to an award of its reasonable costs including but not limited to reasonable attorneys' fees.
- 21. GOVERNING LAW.** This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of Colorado.
- 22. TABOR.** The Parties understand and agree that the Town is subject to Article X, Section 20 of the Colorado Constitution and the Parties do not intend to violate the terms of this constitutional provision by the execution of this Agreement and this Agreement does not in any way constitute a multiple fiscal year obligation of the Town.
- 23. GOVERNMENTAL IMMUNITY.** Nothing in this Agreement is intended to waive any protection afforded the Town by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, or any other applicable law providing immunity to the Town, its officials or employees.
- 24. SEVERABILITY.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.
- 25. BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the Parties hereto.

26. DESCRIPTIVE HEADINGS. The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the Town or Lessee.

27. NON-WAIVER. No indulgence, waiver, election or non-election by Town under this Agreement shall affect Lessee’s duties and liabilities hereunder.

28. MODIFICATION. The Parties hereby agree that this document contains the entire agreement between the Parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the Parties hereto.

29. NOTICE. Any notice required or permitted under this Lease or under state law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

Town of Milliken
Town Administrator
1101 Broad Street
Milliken, CO 80543

If to Tenant to:

Nicholas Baudhuin
1572 S. Cora Avenue
Milliken, CO 80543

Landlord and Tenant shall each have the right from time to time to change the address to which notice is to be given under this paragraph.

As to Town, this ____ day of _____, 20__.

LANDLORD (“TOWN”): Town of Milliken

By: _____
Mayor

ATTEST:

By: _____
Town Clerk