

- I. CALL TO ORDER

- II. ROLL CALL

- III. REVIEW AGENDA

- IV. CONSENT OF MARCH 11, 2014, MINUTES

- V. OLD BUSINESS
 - a. Creede Gifts & Gas Clarification
 - b. Recommendation - Biernat Encroachment Agreement
 - c. Recommendation – Tract 16R Replat
 - d. Recommendation – Old Firehouse
 - e. Birdsey Replat Update
 - f. Simon Replat Update
 - g. Bee McClure Annexation Update
 - h. Rio Grande Avenue Map Comparison Discussion

- VI. ADJOURN

POSTED 3/7/14

OPEN TO THE PUBLIC

ENCROACHMENT LICENSE AGREEMENT

This AGREEMENT (“**Agreement**”) is made and entered into as of this ____ day of April, 2014, (**Effective Date**”), by and between the **CITY OF CREEDE**, a Colorado statutory town, (the “**City**”) and **Alfred Biernat, Jr. and Faute de Mieux Corporation** (the “**Licensee**”). Hereinafter, the City and Licensee are sometimes referred to individually as a “**Party**” or collectively as “**Parties**”.

1. Recitals.

The City owns the streets and the alleys as platted in the South Creede, subdivision, City of Creede, Colorado (“**Property**”) for right-of-way, utility, and drainage easements.

The Licensee owns a Lots 5, 6, 7, and 8, Block 43, as well as a portion of 8, 9, 10, and 11 in Block 2, and a portion of vacated west First Street all in South Creede. The Licensee is in the process of replatting **this property**. Licensee desires to construct a fence that will encroach into portions of West First Street and Capitol Avenue just above a steep hillside as depicted on the attached survey/site map attached as “**Exhibit A**”.

2. Encroachment License.

Now, therefore, in consideration of the mutual covenants and conditions contained herein, the City hereby grants an Encroachment License to build a fence within the portions of West First Street and Capitol as shown in “**Exhibit A**”.

3. Terms.

This agreement shall be for a term of five (5) years and commence on the Effective Date. This agreement will be reviewed and reconsidered every five (5) years for performance and compliance and may be revised accordingly. This agreement may be extinguished when the aforementioned encroaching fence is removed or destroyed.

4. Use of Site.

This site will be used for a [should P&Z or BOT approve the design of the fence?] fence only and no structure of any kind shall be constructed. During the term of this Agreement the Licensee shall keep the premises free from any other encroachment(s). The Licensee shall keep the fence in good repair and comply with all City regulations. Nothing in this agreement shall waive or modify any obligation to seek building permits, variances, or other approval necessary to meet applicable laws and regulations.

5. Consideration.

The consideration for this Encroachment License shall be **ONE HUNDRED DOLLARS (\$100.00) per year**. The City will invoice the Licensee on April 15th of each year. If payment is not received within 30 calendar days, a penalty of \$10.00 per month will be added.

6. Indemnification.

Licensee agrees to protect, defend, indemnify and hold the City (inclusive of its parent companies, subsidiaries and affiliates) harmless from and against any and all liabilities, claims, expenses, demands, actions losses and damages (including reasonable attorney fees and costs), that may at any time be asserted against City by reason of: (i) the use of the Easement by Licensee, or its agents, servants, employees, customers, guests, visitors, contractor, invitees or licensees; or (ii) any reason relating to or arising from this Agreement, except in the event that any of the aforementioned claims arise directly out of the gross negligence or willful misconduct of City. The City or any utility company having authority to use the easement shall not be liable for repair or replacement of fences in the event they are moved, damaged, or destroyed by virtue of the lawful use of the easement.

7. Assignment.

This License Agreement may not be assigned by the Licensee without the prior written consent of the City. The City encourages the Licensee to inform any purchaser of the Licensee's property or interests of the existence of this Agreement and the City will promptly consider any request by the Licensee for assignment to such subsequent purchaser. This Agreement shall run with the land and be recorded against the title to the property.

8. No Warranty of Title.

This Easement License is without warranty of title and is subject to all prior liens, encumbrances, easements, restrictions, reservations, and rights of way affecting the City's property.

8. Notices.

All notices and communications required herein shall be in writing and shall be sent by certified mail to the following addresses:

City:
City of Creede
Attn: Town Manager
P.O. Box 457
Creede, Colorado 81130

Licensee:
Alfred Biernat Jr. & Faute de Mieux Corp.
3502 South Hampton
Dallas, TX 75224

Notices shall be deemed properly given when mailed by certified mail in a sealed envelope, postage prepaid, addressed to the above addresses. Any such notice or demand shall be deemed to have been given or made at the time it is deposited in the United States Post Office. Any party may change its address of record by giving written notice of the change to the other party.

9. General Provisions.

(a) *Severability.* If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance is, to an extent, held to be invalid or

unenforceable, the remainder of this Agreement or the application of that provision to persons or circumstance other than those as to which it is held invalid or enforceable, will not be affected, and each provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

- (b) *Captions.* Headings and captions to the paragraphs in this Agreement are included for convenience only and do not modify and of the terms of this Agreement.
- (c) *Further Assurances.* Each Party to this Agreement will, at its own cost and expense, execute and deliver such further documents and instruments and will take such other actions as may be reasonably required or appropriated to evidence or carry out the intent and purposes of this Agreement.
- (d) *No Waiver.* No term, covenant, representation, warranty or condition of this Agreement may be waived without the execution of a written instrument signed by the City. The failure of the City at any time to require performance of any provision under this Agreement, or to exercise any remedy available to it hereunder or at law, shall in no manner affect the right of the City to enforce or exercise the same at any later date. Further, no waiver by the City of any condition, term, covenant, representation, remedy or warranty contained in this Agreement or available at law, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of the same.
- (e) *Construction.* This Agreement is a fully negotiated agreement, and both Parties participated in its drafting and negotiation. As such, the Parties hereby agree that the rule of construction that an agreement be construed harshly against the drafting party does not apply and should not be applied in the event that this Agreement should be construed by a third party, including but not limited to a Trier of fact.
- (f) *Authority.* Each Party hereby represents and warrants to the other that it has full right, power and authority to enter into and perform its duties under this Agreement in accordance with the provisions hereof and that the execution and delivery of this Agreement has been duly authorized.
- (g) *Governing Law and Venue.* This Agreement will be governed by, and in all respects construed in accordance with, the laws of the State of Colorado, without regard to principles of conflict of laws. The proper jurisdiction and venue for any action pertaining to this Agreement shall be in the county of district court of Mineral County.
- (h) *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall, for all purposes of this Agreement, when taken together be deemed one and the same agreement and shall become effective when all counterparts have been signed and delivered to each Party hereto.

(i) *Entire Agreement.* This Agreement constitutes the final, complete and exclusive statement between the Parties to this Agreement pertaining to the Property, and it supersedes any and all prior and contemporaneous understandings or agreements between the Parties, whether written or oral. This Agreement is binding on and inures to the benefit of the Parties, their respective heirs, representatives, successor and permitted assigns. No Party has been induced to enter into this Agreement by, nor is any Party relying upon, any representation or warranty outside those expressly set forth in this Agreement. Any agreement made after the date of this Agreement is ineffective to amend, modify, waive, release, or terminate this Agreement, in whole or in part, unless that agreement is in writing, is signed by both Parties to this Agreement, and specifically states that the agreement modifies this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first stated above.

LICENSEE:
Alfred Biernat, Jr. and
Faute de Mieux Corporation

CITY OF CREEDE:

By: _____
Alfred Biernat Date

By: _____
Eric Grossman, Mayor Date

By: _____
Date

ATTEST:
By: _____
Randi Snead, City Clerk Date

OLD FIREHOUSE SCHEDULE

TO: Mayor and Board of Trustees
FROM: Clyde
SUBJECT: Old Fire House
DATE: April 9, 2014

1. **April 15th**; Planning Commission considers land use request, due process, and schedule and makes recommendation to Board of Trustees.
2. **May 6th**; Board of Trustees considers Planning Commission's recommendation.
Requested Action: approve land use request, due process, and schedule and set a public hearing for the June 3rd to consider Ordinance No. 381 and Resolution 14-07.
3. If approved, prepare ordinance, deeds and resolution, send certified return receipt requested letters to adjacent property owners and put a Notice of Public Hearing in paper no less than 15 days prior to the June 3rd meeting.
 - a. Notice to paper by May 8th.
 - b. Notice to adjacent property owners & post by May 16th.
4. **June 3rd**; Public Hearing for ordinance transferring property and resolution for replatting Old Firehouse property is held and Board of Trustees discuss and decide. (1 mylar & 3 paper 24 x 36 plus 2 11 x 17 plats for each)

Ordinance No. 381 authorizes the City to transfer property in Block 25, Creedmoor by Quit Claim Deeds to Mammoth Mountain Properties LLC.

- a. Exhibit A describes property City conveys to Mammoth Mountain Properties LLC.
- b. Exhibit B describes property Mammoth Mountain Properties LLC conveys to City.

Resolutions 2014-07 authorizes the property to be replatted.

Requested Action(s):

- | |
|----------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none">1) Approve Ordinance No. 381.2) Approve Resolution 2014-07. |
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The documents including deeds & replat maps will then be signed & recorded in the same order.

TRACT 16R MEMO

TO: Planning Commission
FROM: Clyde Dooley
SUBJECT: Tract 16R replat
DATE: April 7, 2014

Last September, Keith Luttrell, from Davis Engineering and I met with you to discuss the plans for replatting North Creede. There are only five (5) private property owners in North Creede so we're hoping to be able to complete this project in conjunction with the Forest Service land swap which we expect to take three (3) to five (5) years.

Last week we replatted the first property (Tom Headlee's) in the attempt to straighten out and clarify the properties in North Creede to match their existing use. The proposed "Tract 16R" is the property directly northeast of Toms.

Since the city already owns these lots and replatting them as shown on the preliminary plat will not materially affect access to or utility services for any lots shown on the original plat it is not considered detrimental to public interest. For these reasons and because there's no need to vacate or transfer property, there's no need for noticing and/or a public hearing so this replat can be done with a resolution approved by the Board of Trustees.

Before the Board of Trustees approve the amended plat, it needs to be reviewed and recommended by the Planning Commission. Attached is the preliminary replat prepared by Davis Engineering. Please look it over so we can discuss any issues or concerns before sending it on to the Trustees.

This replat will be recorded with the county and shown on our updated maps when completed.