

RESOLUTION NO. 98-03

**A RESOLUTION AUTHORIZING THE LEASE OF A CITY-OWNED LOT AT 2ND
AND PITKIN AVENUE BY SIMMONS LOCK AND KEY, INC.**

WHEREAS, the City has negotiated an agreement for Simmons Lock and Key, Inc. to lease certain real property located at the northwest corner of 2nd and Pitkin Avenue from the City for use as a parking lot; and

WHEREAS, the City Council deems it necessary and appropriate that the City lease said property to Simmons Lock and Key, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

The City Manager is hereby authorized and directed to sign the Lease Agreement leasing the city-owned lot at 2nd and Pitkin Avenue for \$100.00 per month to Simmons Lock and Key, Inc.

PASSED and ADOPTED this 15th day of October 2003.

The City Council of the City of Grand Junction

By: /s/: Jim Spehar
Council President, Jim Spehar

Attest: /s/: Stephanie Tuin
Stephanie Tuin, City Clerk

LEASE AGREEMENT

This lease made and entered into this _____ day of _____ 2003, by and between the City of Grand Junction, a Colorado home rule municipality and hereinafter referred to as the "City", and Simmons Lock and Key, Inc., hereinafter referred to as the "Lessee."

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Premises:

City who owns and controls certain real property hereby leases to Lessee, under the terms and condition of this Lease, the following real property in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

Lots 13 thru 17 in Block 134 of the Original Plat of the City of Grand Junction, and hereinafter referred to as the "Property".

2. Purpose:

The Property shall be used as a parking lot. It is the intent of the parties to provide Lessee with no less than 10 parking spaces at this location. City shall provide grading and striping at the commencement of the Lease term. Lessee shall not use nor intentionally permit the Property to be used in any manner contrary to the laws of the United States of America, the State of Colorado, the County of Mesa, the City of Grand Junction, or any other entity or jurisdiction having authority over uses conducted upon the Property.

3. Term of the Lease:

Subject to and upon the terms and conditions set forth herein, this lease shall continue in force for a term of twenty-four (24) consecutive months commencing on the _____, and ending on the _____, unless cancelled or terminated earlier as hereinafter provided. If Lessee performs as required pursuant to this Lease and as part of the consideration for this agreement, the City hereby gives to Lessee an option to extend this Lease for an additional twelve (12) consecutive months ("Extended Term"). In order to exercise an option for the Extended term, the Lessee shall give written notice to the City of its intention to exercise the option not less than thirty (30) days prior to the expiration of the first term.

4. Annual Rent:

The rental rate for the twenty-four (24) month term of this lease is \$2,400.00. The rent shall be paid monthly in the amount of \$100.00. The first payment of

\$100.00 shall be due and payable by Lessee concurrent with Lessee's signing of this Agreement. Each remaining monthly payment shall be made on or before the 15th day of each and every month after until the termination of this lease, without delay. In the event Lessee fails to pay said sum to the City as aforesaid, this Agreement and the lease of the Property to Lessee shall automatically terminate.

Rent checks shall be made payable to:

City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501
Attn: Jamie B. Kreiling

5. Improvements, Repairs, & Maintenance:

Lessee represents that Lessee has inspected and examined the Property and accepts it in its present condition, and agrees that City shall not be required to make any improvements upon the Property other than to complete the striping as described in §2. Lessee further affirms that the condition of the Property is sufficient for the purposes of Lessee. The City makes no warranties or promises, either express or implied, that the Property is sufficient for the purposes of Lessee.

Lessee may make improvements to the Property only with prior written consent from the City. Unless otherwise agreed by the parties, all improvements placed on or attached to the Property shall become part of the Property and shall be the sole and separate property of the City. Lessee agrees to make all improvements at Lessee's sole cost and expense, and agrees to keep the premises clean, safe and in good order and condition, including, but not limited to, the removal of all weeds, trash, litter, and debris, at all times during the term. Upon expiration of this Lease, or at any earlier termination, the Lessee will quit and surrender possession of the Property peaceably and in as good order and condition as the Property was at the commencement of the term, reasonable wear and tear and/or damage by the elements excepted; Lessee further agrees to leave the premises free from all nuisance and dangerous and defective conditions.

Upon receipt of notice in writing from Lessee, the City agrees to maintain the surface of the lot in a condition comparable to that which existed at the commencement of the lease or when the City determines that repairs are necessary, except if the repairs are required due to lessee's or lessee's employees, agents, sublessees, licensees and/or guests purposeful negligence. The City shall not repair or maintain the lot more often than annually, unless the City determines it is necessary to do so more often. All other repairs shall be made by Lessee at its sole cost and expense at all times while this lease is in effect.

6. Taxes:

This Lease may create possessory interests which are subject to the payment of taxes levied on such interests. It is understood and agreed that all taxes which become due and payable upon the Property or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of Lessee. Any such taxes shall be paid prior to delinquency.

7. Insurance and Liability:

Lessee hereby releases, covenants not to bring suit, and agrees to indemnify, defend, and hold the City and the City's officers, employees, agents and assets harmless from any and all claims, costs, judgments, awards or liability, including attorneys' fees and costs to any person or with regard to any property, including claims arising from injury or death, resulting from Lessee's, his or her agents, or employees, guests, invitees or sublessees' use and occupancy of the Property. The foregoing indemnification obligations shall extend to claims which are not reduced to a suit and any claim which may be compromised by Lessee prior to the culmination of any litigation or the institution of any litigation. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of the Lease and this Agreement.

Lessee shall purchase and at all times of this Lease maintain in effect suitable comprehensive general liability insurance which will protect the City and the City's officers, employees and agents from liability in the event of loss of life, personal injury or property damage suffered by any person or persons on, about or using the Property, including, but not limited to, Lessee and Lessee's employees, agents, sublessees, licensees and guests. Such insurance shall not be cancelled without thirty (30) days prior written notice to the City and shall be written for at least a minimum of One Million Dollars (\$1,000,000.00), combined single limit. The certificate of insurance shall be deposited with the Risk Manager of the City and must designate "The City of Grand Junction, its officers, employees and agents" as additional insureds. If a policy approved by the Risk Manager of the City is not at all times in full force and effect, this Lease shall automatically terminate and Lessee shall immediately vacate and remove its property from the Property.

8. Assignment and Mortgage:

Lessee shall not assign its responsibilities under this contract to others. The Property shall not be sublet by Lessee in its entirety. However, Lessee may sublet individual parking spaces to others at a cost of no more than Ten Dollars (\$10.00) per space per month during the term of this lease. If Lessee should sublet parking spaces under this lease to others, then Lessee shall provide a written copy of this Lease to the sublessee.

Lessee shall not hypothecate or mortgage, or pledge this lease in any manner and any attempted hypothecation or mortgaging of this lease shall be of no force or effect, and shall confer no rights upon any mortgagee or pledgee.

In the event that Lessee shall become incompetent, bankrupt, or insolvent, or should a guardian, trustee, or receiver be appointed to administer Lessee's business or affairs, neither this Lease nor any interest here shall become an asset of the guardian, trustee or receiver, and in the event of the appointment of any guardian, trustee, or receiver, this Lease shall immediately terminate and end.

9. Termination by the City:

The City may terminate this lease at any time it should be determined by its City Manager that public necessity and convenience require it to do so, by serving upon Lessee in the manner subsequently provided, a written notice of its election to so terminate, which notice shall be served at least thirty (30) days prior to the date in the notice named for such termination. At the time of granting any sublease, Lessee shall inform any sublessee in writing of the City's right to terminate: Lessee may satisfy this provision by providing such sublessee with a complete copy of this lease.

10. Default:

In the event that Lessee shall be in default of any payment of any rent or in the performance of any of the terms or conditions agreed to be kept and performed by Lessee, then in that event, the City may terminate and end this Lease, immediately, and the City may enter upon the Property and remove all persons and property, and Lessee shall not be entitled to any money paid or any part of that money; in the event that the City shall bring a legal action to enforce any of the terms of this Lease, or to obtain possession of the Property by reason of any default of Lessee, or otherwise, Lessee agrees to pay the City for all costs of the legal action that it incurs, including reasonable attorney fees.

11. Waiver:

Waiver by the City of any default in performance by Lessee of any of the terms, covenants, or conditions contained here, shall not be deemed a continuing waiver of that default or any subsequent default.

12. The City May Enter:

Lessee agrees that the City, its agents or employees, may enter upon the premises at any time during the term or any extension of it for the purpose of inspection, digging test holes, making surveys, taking measurements, and doing

similar work on the premises, with the understanding that the work will be performed in such a manner so as not to unreasonably preclude the use of the Property by Lessee.

13. Successors in Interest:

All of the terms, covenants and conditions contained here shall continue, and bind all successors in interest of Lessee.

14. Surrender, Holding Over:

Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Property to the City in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$50.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease and that said \$50.00 daily fee is an appropriate liquidated damages amount.

15. Entire Agreement:

This lease constitutes the entire agreement between the City and Lessee and no promises or representations, express or implied, either oral or written, not herein set forth shall be binding upon or inure to the benefit of the City and Lessee. This Lease shall not be modified by any oral agreement, either express or implied, and all modifications hereof shall be in writing and signed by both the City and Lessee.

16. Severability:

If any provision of this lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

17. Notices:

All notices to be given with respect to this Agreement shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or by courier service, as follows:

To the City:

With Copy to:

City of Grand Junction
Attn: City Manager
250 North 5th Street
Grand Junction, CO 81501
Fax: (970) 244-1456

City of Grand Junction
Attn: City Attorney
250 North 5th Street
Grand Junction, CO 81501
Fax: (970) 244-1456

To Lessee:
Simmons Lock and Key, Inc.
322 S. 2nd Street
Grand Junction, CO 81501
Fax:

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered; (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

18. Applicable Law:

This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Attest: For the City of Grand Junction,
a Colorado home rule municipality

By: _____
City Clerk

By: _____
City Manager

Attest: For Simmons Lock & Key, Inc.
a Colorado corporation

By: _____

By: _____

Name: _____

Title: _____

Name: _____

Title: _____