

**CITY OF RIFLE, COLORADO
ORDINANCE NO. 3
SERIES OF 2016**

AN ORDINANCE OF THE CITY OF RIFLE, COLORADO, APPROVING A
LEASE AGREEMENT BETWEEN THE CITY OF RIFLE AND 139
RAILROAD, LLC.

WHEREAS, the City of Rifle (the "City") is a home rule municipality with all powers granted by Article XX of the Colorado Constitution and the City's Home Rule Charter; and

WHEREAS, Article XX, § 6 of the Colorado Constitution states: "The statutes of the state of Colorado, **so far as applicable**, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters." Colo. Const. Art. XX, § 6 (emphasis added); and

WHEREAS, Section 4.4 of the City's Home Rule Charter provides that ordinances adopted by the City Council become effective ten (10) days after final publication; and

WHEREAS, C.R.S. § 31-15-801 purports to require that municipalities approve long term lease agreements by ordinance not to be effective for at least thirty (30) days after passage; and

WHEREAS, C.R.S. § 31-15-801 conflicts with Section 4.4 of the City's Home Rule Charter, which provides that ordinances are effective ten (10) days after final publication; and

WHEREAS, C.R.S. § 31-15-801 contains no declaration of statewide concern and specifically applies to a "city" or a "town", which terms have been construed to mean a statutory city and statutory town by the Colorado Court of Appeals in the case of *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005); and

WHEREAS, the City Council hereby finds and determines that the procedures for approval of long term lease agreements are a matter of purely local concern; and

WHEREAS, as a home rule municipality, in the matter of deciding the procedures applicable to the approval of long term lease agreements, which is a matter of purely local concern, the City is not subject to those portions of C.R.S. §§ 31-15-801 and -802 which conflict with Section 4.4 of the City's Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIFLE, COLORADO, THAT:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein as if set forth in full.

2. Approval of Lease. The Property Lease between the City of Rifle and 139 Railroad, LLC is hereby approved in substantially the form attached hereto as **Exhibit A** and incorporated herein by this reference. The City Manager is hereby authorized and directed to execute the Property Lease on behalf of the City with any changes approved by the City Attorney.

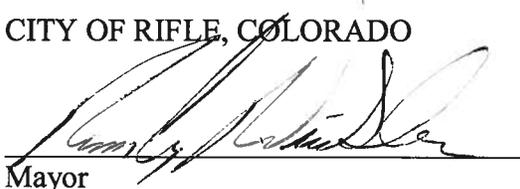
INTRODUCED on February 3, 2016, read by title, passed on first reading, and ordered published by title as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the City of Rifle, Colorado, held on February 17, 2016, passed without amendment, approved, and ordered published in full as required by the Charter.

Dated this 17 day of February, 2016.

CITY OF RIFLE, COLORADO

BY


Mayor

ATTEST:


City Clerk



PROPERTY LEASE

This LEASE is made by and between 139 RAILROAD, LLC, a Colorado limited liability company (“Lessor”) and the CITY OF RIFLE, COLORADO, a municipal corporation (“Lessee”).

WITNESSETH:

WHEREAS, Lessor owns Lots 13-21, Block N, Original Townsite Rifle, also known as 125 West 2nd, Rifle, CO 81650 and 131-139 Railroad Avenue, Rifle, CO 81650 (the “Property”);

WHEREAS, Lessee desires to lease from Lessor the Property for municipal and economic development uses, public seasonal events, and improving the vitality of the City block; and

WHEREAS, the parties desire to set forth the terms and conditions of the Lease of the Property.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated by this reference.
2. Term of Lease. The Lease shall commence on January 1, 2016 and continue to 11:59 p.m. on December 31, 2017; provided, however, this Lease shall terminate upon submission to the City of Rifle of a site plan, building permit, or other land use approval for use or development of the Property that is inconsistent with the uses contemplated by this Lease. Temporary use permits, grading permits, fencing permits, or similar approvals shall not be considered a land use approval triggering termination of the Lease. Lessee shall have fifteen (15) days from the date of a land use submission resulting in termination of the Lease in which to vacate the Property.
3. Rent. The total rent for the term of the Lease shall be one-dollar (\$1.00) payable to Lessor in advance.
4. Survival Upon Conveyance. If the Property is sold, conveyed, or ownership of the Property is otherwise transferred, this Lease shall continue to be in full force and effect and shall not be terminated by such conveyance or transfer. The provisions of this Lease shall apply to, bind, and inure to the benefit of Lessor and Lessee, and their respective heirs, successors, legal representatives, and assigns.
5. Permitted Uses. The Property may be used by the Lessee for municipal and economic development uses, public seasonal and special events, and improving the vitality of the

City block. Lessee shall have the right to make improvements to the Property in the form of site grading, landscaping, erecting non-permanent structures, and similar improvements. Site grading and demolition/removal of existing hard surfaces and installation of any permanent structures shall require written consent of the Lessor. Lessee shall be responsible for ensuring that drainage is not adversely affected by grading, landscaping, and other activities altering the surface of the Property. No other use shall be made of the Property without the prior written consent of the Lessor. Lessee agrees that Lessor may perform soil investigations on the Property during the term of this Lease. Lessee and Lessor shall coordinate the scheduling of the soil investigations and remediation actions in the event they are required, so such activities do not impact scheduled events and uses of the Property to the greatest extent possible. Lessor agrees to return the Property to its prior condition following any such activities.

6. Maintenance of Property. Lessee shall be responsible for maintaining the Property, including weed removal, trash removal, and otherwise preserving the Property in a neat and clean condition that is in compliance with relevant City, County, and State laws.
7. Insurance and Indemnification. Lessee shall hold Lessor harmless from, and indemnify and defend Lessor against any damages, liability or claims arising out of or incident to the use of the Property by Lessee, its invitees, licensees, guests, sublessees, subcontractors or employees. Lessee shall defend any litigation at its own cost and expense which may be brought against Lessor or Lessee, arising out of the Lessee's use of the Property. In furtherance thereof, Lessee shall provide liability insurance coverage for the Property and name Lessor as an additional insured.
8. Utilities. Lessee shall be responsible for and pay the cost of all utilities incurred as a result of Lessee's use of the Property.
9. Sublease. Lessee shall have the right to sublet the Property (or any part thereof) without the prior written consent of Lessor to entities conducting nonprofit or community-oriented events on the Property for periods not to exceed sixty (60) days. No sublease shall relieve Lessee from its obligations hereunder, unless expressly so provided. Any sublessee shall add Lessor as an additional insured on any required insurance. All activities by sublessee shall be in conformance with all relevant City, County, and State laws.
10. "For Sale" Sign and Information Box. The "for sale" sign currently located on the Property shall remain on the Property; however, if desired, Lessee may move the sign to an alternate location on the Property that is prominently placed and visible to traffic on Railroad Avenue. Upon sale of the Property, a new owner may maintain a sign on the Property that is in same size and in the same location as the existing "for sale" sign and such sign complies with the City of Rifle's sign code. The information box currently located on the Property shall remain on the Property; however, if desired, Lessee may move the information box to an alternate location on the Property that has access to the sidewalk on either Railroad or 2nd Street. Upon sale of the Property, a new owner may

maintain the information box in the existing or relocated location. Lessor, or upon sale a subsequent owner of the Property, shall be responsible for maintenance of the “for sale” sign and information box located on the Property.

11. Water. Lessee confirms that 39.14 EQRs of water service are appurtenant to the Property.
12. Tax Exemption. Lessee agrees to reasonably assist Lessor with a tax exemption request arising from the Lease to the extent that such assistance does not cause Lessee to incur any additional costs.
13. Property Taxes. Lessor shall be responsible for any and all taxes and assessment levied, assessed, or imposed against the Property.
14. 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.*
15. Notices. Written notices required under this Lease and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to Lessee: City Manager
 P.O. Box 1908
 Rifle, Colorado 81650

If to Lessor: 139 Railroad, LLC.
 P.O. Box 9
 Rifle, Colorado 81650
16. Authority. Each person signing this Lease, represents and warrants that said person is fully authorized to enter into and execute this Lease and to bind the party it represents to the terms and conditions hereof.
17. Section Headings. The section headings in this Lease are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Lease or any of its provisions.
18. Governing Law. This Lease shall be interpreted in accordance with and governed in all respects by the laws of the State of Colorado.
19. Severability. If any provision, or any part of any provision of this Lease shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Lease shall not be affected thereby.

20. Counterparts. This Lease may be signed by the parties in counterparts, and each signed counterpart shall become part of the final Lease and shall have the same force and effect thereof. A copy of any signature on a signature page shall be as valid and binding as an original signature.
21. Attorney Fees. In the event of a breach of this Lease, the prevailing party shall be entitled to reasonable attorney fees and costs. This provision shall survive the termination of this Lease.

CITY OF RIFLE, COLORADO



Matt Sturgeon, City Manager

ATTEST:



City Clerk



139 RAILROAD, LLC

By: _____
Title: _____