

CITY OF SALIDA, COLORADO
RESOLUTION NO. 33
(Series 2023)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO
A COMMERCIAL LEASE AGREEMENT WITH STEPH AND JOE BRADY FOR
PUBLIC PARKING ON AN APPROXIMATELY .26 ACRE PRIVATE PARCEL
LOCATED BETWEEN 1ST AND 2ND STREETS

WHEREAS, the City of Salida recognizes the need for publicly available parking in the downtown vicinity for patrons and employees of downtown-area businesses; and

WHEREAS, the City of Salida and the private property owners, Steph and Joe Brady, would like to enter into a commercial lease agreement for public parking on an approximately .26 acre portion of the private property (highlighted in "Exhibit A"); and

WHEREAS, the City of Salida and the private property owners would like to create said lease agreement beginning August 1st, 2023 with a year-to-year extension beginning May 1, 2024; and

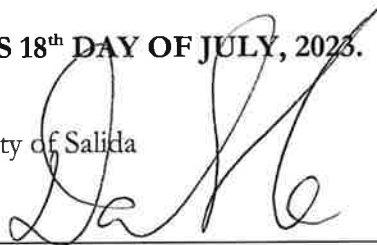
WHEREAS, the City of Salida agrees to pay the owners the sum of Fifteen Thousand Five Hundred Dollars (\$15,500), annually, with the first lease being prorated from the effective date of August 1st, 2023 and equaling Eleven Thousand Five Hundred and Ninety-Three Dollars (\$11,593), to be paid in lump sum, for the use of the property for public parking, subject to the terms and conditions of the commercial lease agreement to be executed by the parties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, AS FOLLOWS:

1. The foregoing recitals are hereby incorporated as conclusions, determinations, facts, and findings of the City Council.
2. The Commercial Lease Agreement is hereby approved, and the City Administrator is authorized to sign the contract on behalf of the City.

RESOLVED, APPROVED, AND ADOPTED THIS 18th DAY OF JULY, 2023.

City of Salida



Dan Shore, Mayor

ATTEST:




City Clerk/Deputy City Clerk

Exhibit A



COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective August 1, 2023, by and between Steph and Joe Brady ("Landlord") and City of Salida Colorado, a Colorado municipal corporation ("Tenant").

Landlord is the owner of the vacant lot ("Lot") located at on West 2nd Street listed as Parcel #368132400418 (Exhibit A), Salida, Colorado 81201, measuring approximately 12,632 square feet. The portion of the property that is subject to this lease agreement, however, is the approximately 54' x 212' (11,448 SF) rectangular area and not including the approximately 1,200 SF area within the existing chain-link fence behind the Green Cat Gallery.

Tenant wishes to lease Lot for the primary purpose of providing public parking.

Landlord desires to lease Lot to Tenant, and Tenant desires to lease Lot from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term of Lease. The term of this Lease shall commence in respect the Lot as follows:

- A. The lease term shall commence on **August 1, 2023** and shall end on **April 30, 2024**. The lease is for a term of **9 months**.

2. Rent.

Tenant shall pay Landlord fifteen thousand five hundred dollars (\$15,500) yearly on or before the first day of May. Tenant will pay Landlord a pro-rated amount for Year 2023/first part of 2024 based on the effective date of the lease (August 1, 2023), equal to eleven thousand five hundred ninety-three dollars (\$11,593) that will be due August 1, 2023.

3. Use

Tenant intends to use Lot as a public parking area.

4. Sublease and Assignment.

Tenant shall not assign or sublet Lot, including to carnival/fair operators or otherwise.

5. Repairs and Maintenance.

During the Lease term, Tenant shall maintain Lot at its expense in a manner that does not pose a public safety threat or risk to vehicles parked in Lot. This shall consist primarily of grading/re-grading of the site, placement of gravel surfacing material, pothole repair, tree trimming, and removal of some fencing only for vehicle ingress/egress facing 1st Street and 2nd Street, respectively, and gaps for pedestrian access to the Monarch Spur Trail on the northerly side. The foregoing notwithstanding, Tenant and Landlord acknowledge Lot is unpaved and thus minor potholes will always be present.

Tenant shall make a concerted effort to keep Lot free of trash and debris, at its expense. With Landlord's prior, written consent, Tenant may, but is not obligated to, provide lighting, erect fencing, pave lot, place parking curbs or make any additional improvements it believes are necessary to operate parking operations safely and efficiently. Tenant also agrees to construct a 6-foot tall wooden privacy fence in the location of the existing chain link fence along the southeastern side (approximately 80 feet) of the subject property at Tenant's expense. Tenant agrees that no other improvements (inc. grading, etc.) shall be performed, nor will any public parking transpire, until said fence has been constructed.

6. Alterations and Improvements.

Landlord may or may not approve, in writing, Tenant's request(s), at Tenant's expense, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of Lot from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. With Landlord's prior written consent, Tenant shall also have the right to place and install personal property, trade fixtures, equipment (such as grading or surfacing equipment) and other temporary installations in and upon Lot. At the time of Landlord's approval, Landlord and Tenant must also agree in writing as to whether any such alteration or improvement shall be deemed a permanent fixture which shall remain with Lot upon termination or shall be deemed to be property of Tenant which will be removed upon termination. The parties shall also set forth in writing the conditions or restoration needed for removal of any such improvement. Fixtures such as curb stops, signage, lighting, etc. shall be removed and retained by the City upon termination of the lease. In the absence of any such written agreement, all other improvements and fixtures shall constitute the sole property of the Landlord.

Provided that the procedures herein are observed, all personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on Lot by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease or upon termination of this Lease, provided that all damage to Lot caused by such removal shall be promptly repaired by Tenant at Tenant's expense. Tenant may remove the one existing small tree in the middle of the site but shall make every effort to protect the three mature trees along the southeastern edge of the site, including placing curb stops or other barriers in locations to deter strikes from vehicles. Tenant also acknowledges that access to trash pick-up locations to the rear of 124 G Street and 203 W. 1st Street properties shall remain unobstructed.

7. Environmental Hazards.

Tenant will be responsible for promptly mitigating any environmental hazards that may result from the use of the property as a parking lot including, but not limited to, spills, leaks, or disposal of hazardous materials or other materials that may pose a tangible public risk. Tenant furthermore agrees not to cause or permit any hazardous substances to be placed, held, located or disposed of on the Lot, other than that which may be associated with approved alterations and improvements discussed herein, and that any such substances shall be used in compliance with all applicable environmental laws.

8. Property Taxes.

Landlord shall pay, prior to delinquency, all general real estate taxes, sales and use taxes, and installments of special assessments coming due during the Lease term on the Leased Premises, and Tenant shall pay all personal property taxes with respect to Tenant's personal property at the Leased Premises.

9. Insurance.

A. If Lot is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Tenant shall at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the activities of its use, through a private insurer or through an intergovernmental agency, with the premiums thereon fully paid on or before due date. Such insurance shall afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph upon execution of this Lease. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration.

C. Lessor shall not be liable for any injury or damages to any property or to any person on or about the Lot nor for any injury or damage to any property of Tenant.

10. Signs.

Following Landlord's consent, Tenant shall have the right to place on Lot any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or offensive. Otherwise, Landlord agrees to sign any required consent paperwork to obtain necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant agrees to install signage, at Tenant's expense, indicating that "No Parking or Overnight Camping is Allowed". Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11. Entry.

Landlord shall have the right to enter Lot at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on Lot.

12. Termination.

This Lease may not be terminated early. Lease will automatically renew May 1, 2024 and subsequently May 1 of each year, unless either party provides written notification not to renew by the last day of February in that year.

13. Default.

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default continues for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord to pay rent or surrender possession of Lot, Landlord may declare the term of this Lease ended and proceed to reenter and take possession of the premises and pursue Landlord's remedies in accordance with Colorado law. If default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default continues for fifteen (15) days after notice thereof in writing to Tenant by Landlord to cure the default or surrender possession of Lot (without correction thereof then having been commenced and thereafter diligently prosecuted) Landlord may declare the term of this Lease ended and proceed to reenter and take possession of Lot and pursue Landlord's remedies in accordance with Colorado law. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity, including an action for damages for unpaid rent, property damage, or other damages. Landlord shall use reasonable efforts to mitigate its damages. If Tenant is in default more than three (3) times in a Calendar year, even if default has been cured, Landlord shall have the right, in its sole discretion, to terminate Lease. In the event that any payment required to be paid by Tenant hereunder is not made within fifteen (15) days of when due, a late fee of \$50 will be due and payable plus \$10 per day after the 6th day.

14. Quiet Possession.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of Lot during the term of this Lease.

15. Subordination.

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon Lot and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon Lot, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens

as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

16. Security Deposit.

Landlord shall not require a Security Deposit from Tenant.

17. Liability and Indemnification.

A. Except as otherwise provided herein, Tenant shall be in exclusive control and possession of Lot from the date this Lease is executed until it is terminated. Landlord shall not be liable for any injury or damages to any property or to any person on or about Lot nor for any injury or damage to any property of the Tenant. Landlord shall not be liable to Tenant for any entry on Lot for inspection or repair purposes.

B. To the fullest extent permitted by applicable law, Tenant shall hold harmless and indemnify Landlord from and against all expenses, liabilities, and claims of every kind and character, including reasonable attorney fees and court costs, incurred, raised, or brought by or on behalf of any person or entity arising out of either: (1) a failure by Tenant to perform any of the terms or conditions of this Lease, (2) any injury or damage happening on or about Lot, except for injury or damage caused solely by the negligence of Landlord, (3) Tenant's failure to comply with any law of any governmental authority, or (4) any mechanic's lien pertaining to work, services, or materials contracted for by Tenant or security interest filed against Lot or equipment, materials, or alterations of buildings or improvements thereon which pertains to any indebtedness incurred by Tenant.

18. Attorney Fees.

In the event any dispute arises under this Agreement that requires the use of an attorney by the Lessor, the Lessor shall be entitled to recover all reasonable attorney's fees and costs from Lessee.

19. Notice.

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

If to Landlord to:

Steph and Joe Brady
PO Box 82
Coaldale, CO 81222

If to Tenant to:

City of Salida
448 East 1st St.
Salida, CO 81201

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

20. Waiver.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

21. Memorandum of Lease.

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

22. Headings.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

23. Successors.

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

24. Consent.

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

25. Performance.

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

26. Compliance with Law.

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

27. Final Agreement.

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

28. Governing Law.

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Colorado, and all disputes under this Agreement shall be adjudicated in the District Court for Chaffee County.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.



[Landlord Signature]

July 28, 2023



[Tenant Signature]