

TOWN OF LYONS, COLORADO ORDINANCE 1117
AN ORDINANCE OF LYONS, COLORADO APPROVING
A LEASE OF TOWN PROPERTY TO RAUL VASQUEZ

WHEREAS Raul Vasquez owns a parcel of land within the Town of Lyons on which he operates a commercial stone sales business; and

WHEREAS the Town owns a tract of land adjacent to Raul Vasquez that Raul Vasquez would like to lease to conduct operations related to the stone sales business and such property is within the Town limits; and

WHEREAS CRS. 31-15-713(l)(c) authorizes the Town to lease any real estate owned by the Town when deemed by the Board of Trustees to be in the best interest of the community; and

WHEREAS the Board of Trustees finds that it is in the best interest of Lyons to lease the subject tracts 1 & 2 of land to Raul Vasquez; and

WHEREAS C.R.S. 31-15-713(l)(c) requires any lease of Town property for a period of more than one year or less to be approved by ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, THAT:

Section 1. The attached lease agreement between the Town of Lyons and Raul Vasquez is hereby approved by the Board of Trustees,

Section 2. The Mayor or Mayor Pro Tem are hereby authorized to execute the Lease Agreement for the Board of Trustees.

Section 3. Notwithstanding the foregoing, the Town shall have the right during the entire term of this Lease, including any renewal period, to terminate this Lease by giving at least 90 days written notice to Raul Vasquez that the Town intends to construct a trail across the leased premises that will render the premises unsuitable for the uses contemplated by this Lease. In the event of such termination, Raul Vasquez shall be entitled to be reimbursed by the Town for any period of time after the termination date for which Raul Vasquez has pre-paid rent,

Section 4. Repeal All other ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed, provided that such repeal shall not repeal any repealer clauses in such ordinances nor revive any ordinance thereby.

Section 5. Effective Date: This Ordinance shall become effective thirty days after publication following the final passage.

INTRODUCED AND PASSED ON FIRST READING THIS 3rd DAY OF JANUARY 2022.

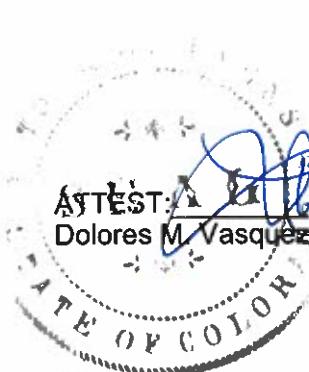
INTRODUCED, PASSED, ADOPTED, AND ORDERED PUBLISHED THIS 18TH DAY OF JANUARY 2022.

TOWN OF LYONS



Mayor Nicholas Angelo

ATTEST: _____
Dolores M. Vasquez, CMC – Town Clerk



**LEASE AGREEMENT OF
TOWN PROPERTY TO RAUL VASQUEZ**

THIS LEASE AGREEMENT ("Agreement") is made by and between the **TOWN OF LYONS**, a Colorado municipal corporation whose address is 432 Fifth Avenue, Lyons, Colorado, 80540 ("Town" or "Lessor"), and **RAUL VASQUEZ**, ("Lessee") whose mailing address is P.O. Box 604 Lyons Colorado, 80540. This Agreement is effective on the last date indicated on the signature page of this Agreement

WITNESSETH, THAT in consideration of the covenants herein, it is agreed:

1.0 Lease of Premises

1.1 Lessor hereby leases to Lessee and Lessee hereby leases from Lessor; the land more fully described as follows:

Tract 1 and Tract 2 of Parcel 9 of the Burlington Northern Railroad Land, the western boundary of which is defined by the extension of the east property line of Vasquez property South to an intersection of the southern boundary of said Parcel 9, and the eastern boundary of which is defined by the extension of the west property line of 4196 Ute Highway (Spirit Hounds, LLC) line south until it intersects with the southern boundary of said Parcel 9; less that land owned by the Highland Ditch Company as described in a quitclaim deed recorded at Reception No. 01668543, in the office of the Clerk and Recorder for Boulder County, Colorado.

1.2 This Agreement is specifically subject to all easements and rights-of-way existing or of record, now in existence or hereafter granted by Lessor including but not limited to the right of ingress and egress for the Highland Ditch Company. Additional easements or rights-of-way may be granted by the Town for use of utility extensions, or such other purposes provided such grants do not unreasonably interfere with Lessee's use of the property. Lessee agrees that Lessor shall have the continuing right to use the property for utility purposes and for maintenance, repair and extension of utilities so long as such use by Lessor does not prevent or unreasonably interfere with Lessee's use of the property for a parking lot or parking purposes.

1.3 Lessor shall have the right to use and improve ten feet of the property for a multi-modal trail and bicycle path at Lessor's discretion. Lessee agrees that the Lessor may use up to fifteen (15) Feet during construction ten (10) following the conclusion of construction, and that Lessee shall not interfere with or prevent this use.

2.0 Condition of the Property

Lessee has examined the property and accepts the same in present condition. Except as otherwise provided in this Agreement* Lessee shall return the property to Lessor upon expiration or termination of this Agreement, in the same condition as ordinary wear and tear excepted.

Term

2.1 The term of this Agreement shall be for three (3) years, commencing at noon on February 1, 2022, and ending at noon on February 1, 2025.

2.2 Notwithstanding the foregoing, the Lessor shall have the right during the entire term of this Lease, including any renewal period, to terminate this Lease by giving at least 90 days written notice to the Lessee that the Lessor intends to construct a trail across the leased premises that will render the premises unsuitable for the uses contemplated by this Lease. In the event of such a termination, the Lessee shall be entitled to be reimbursed by the Lessor for any period of time after the termination date for which the Lessee has pre-paid rent.

3.0 Delivery of Possession

Lessee shall be entitled to possession of the leased premises at noon on the Effective Date of the lease term. At the expiration or termination of this Agreement, Lessee shall peaceably and quietly quit and surrender to Lessor the premises in good order and condition subject to the other provisions of this Agreement.

4.0 Rental

Lessee shall pay to Lessor, at the Lyons Town Hall, 432 Fifth Avenue, Lyons, Colorado, or such other place as Lessor may designate in writing, the sum of three thousand three hundred dollars (\$3,300.00) per tract per year (total of \$6,600.00 per year) which shall be subject to an annual escalator for inflation based on the Consumer Price Index ("CPI"), to be paid in annual installments commencing on February 1, 2022, and due and payable on the first day of February of each year thereafter during the term of this Agreement.

5.0 Use

Lessee may use and occupy the leased property for a parking lot and for parking purposes and for any lawful purpose related thereto. Lessee shall not use or occupy nor permit the leased property or any part thereof to be used or occupied for any unlawful business, use or purpose, not for any business, use, or purpose deemed extra-hazardous, or which would void or make voidable any insurance coverage, nor for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. It shall be Lessee's sole and exclusive responsibility to meet all fire and safety regulations of any governmental entity having jurisdiction over the leased premises, at Lessee's sole expense. Lessee shall not allow odors, fumes, or vibrations on the leased premises beyond those odors, fumes, or vibrations reasonably associated with a parking lot. Lessee shall indemnify Lessor against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims, and demands, including reasonable attorney's fees, arising out of any violation of or default in this covenant by Lessee.

6.0 Possession and Quiet Enjoyment

Lessee, upon payment of the rent herein reserved and upon the performance of all the terms of this Agreement, shall at all times during the lease term and during any extension or renewal term, peaceably and quietly possess and enjoy the leased property without any disturbance from Lessor or from any other person claiming through Lessor.

7.0 No Construction of improvements

7.1. Lessee shall not construct any permanent improvements upon the leased property, except Lessee may pave the property if the paving is approved by Lessor.

7.2 Lessee acknowledges and agrees that the Town intends to construct a recreational trail across the Leased Property at such time as the Town secures the funding for the trail construction. Accordingly, Lessee agrees to remove any improvements or structures erected on the Leased Property at the Lessee's sole expense upon the Town's request for removal of the improvements and/or structures. Any such request shall be made at least twelve (12) months before the requested date of removal.

8.0 Maintenance, Repairs, Waste

8.1 Lessee shall be responsible for maintenance and repairs required to maintain the leased property at the sole cost and expense of Lessee except that any damage to the property caused by Lessor or by Lessor's use of the property for utility or pedestrian and bike path purposes shall be repaired promptly at the sole cost and expense of Lessor. Such maintenance and repairs shall be made promptly, as and when necessary. On default of Lessee in performing such maintenance and repairs as required herein, Lessor may, but shall not be required to, make such maintenance and repairs for Lessee's account, and the expense thereof shall constitute and be collectible as additional rent, together with interest thereon at the rate of eighteen percent per annum until paid.

8.2 Lessee shall not allow or permit any waste of the leased premises, or any nuisance, and shall keep the leased grounds free from accumulations of trash or debris. Lessee shall not permit wastes, trash, litter, or any dirt or similar waste materials to be deposited from the leased premises onto any portion of the property owned by the Highland Ditch Company as described in a quitclaim deed recorded at Reception No. 01668543, in the office of the Clerk and Recorder for Boulder County, Colorado.

9.0 Liens

Lessee shall keep of the property and every part thereof free and clear of any and all mechanics, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee, any alteration, improvements, or repairs or additions which Lessee may make or permit or cause to be made or any work on construction by, for or permitted by Lessee on or about the premises, or any obligations of any kind incurred by Lessee, and at all times promptly and fully pay and discharge any and all claims on which any such lien may, or could be based, and indemnify Lessor and all of the premises and against all such liens and claims of liens and suits or other proceedings pertaining thereto. Lessee shall give Lessor written notice no less than thirty days in advance of the commencement of any architectural or engineering related to the property estimated to cost in excess of \$5,000.00 in order that Lessor may post appropriate notices of Lessor's non-responsibility.

10.0 Indemnity

Lessor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person whosoever may at

any time be using or occupying or visiting the demised premises or be in, on, or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, subtenant, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Lessee shall indemnify Lessor against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to the property and any improvements that are now on or may hereafter be placed or built on the property, and for injuries to persons or property in or about the premises, from any cause arising at any time, except for damages or losses arising by reason of the negligence or misconduct of Lessor, its agents, or employees.

11.0 Utilities

Lessor shall not be required to furnish to Lessee any facilities or services of any kind, such as, but not limited to, water, hot water, heat, gas, electricity, light, and power. Lessee shall pay all charges for gas, electricity, light, heat, power, and telephone or other communication services or other utilities used, rendered, or supplied, upon or in connection with the leased property, and Lessee shall indemnify Lessor against any liability or damages on any such account.

12.0 Insurance

Lessee shall keep the property and all improvements now on or hereafter placed thereon fully insured throughout the term of this Agreement against the following:

12.1 **Casualty Loss.** Loss or damage by fire and such other risks as may be included in the broadest form of extended coverage insurance from time to time available in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer within the terms of the applicable policies, and in any event in an amount not less than eighty percent of the then full insurable value.

12.2 **Liability.** Claims for personal injury or property damage under a policy of general public liability insurance with such limits as may be reasonably requested by Lessor from time to time, but not less than \$1,000,000.00/\$2,000,000.00 in respect of bodily injury, and \$1,000,000.00 for property damage.

12.3 Other Provisions Regarding Lessee's Insurance. All insurance required of Lessee in this Agreement shall be effected under enforceable policies issued by insurers of recognized responsibility licensed to do business in this state, at least fifteen (15) days prior to the expiration date of any such policy, the original renewal policy for such insurance shall be delivered by Lessee to Lessor. Within fifteen (15) days after the premium on any policy shall become due and payable, Lessor shall be furnished with satisfactory evidence of its payment. All policies of insurance shall name Lessor and Lessee as the insured, as their respective interest may appear. To the extent obtainable, all policies shall contain an agreement by the insurers that any loss shall be payable to Lessor notwithstanding any act or negligence of Lessee which might otherwise result in forfeiture of such insurance, and that such policies shall not be canceled except upon ten (10) days prior written notice to Lessor and that the coverage afforded thereby shall not be affected by the performance of any work in or about the leased property.

12.4 If Lessee provides any insurance required of Lessee by this Agreement in the form of a blanket policy, Lessee shall furnish satisfactory proof that such blanket policy complies in all respects with the provisions of this Agreement, and that the coverage thereunder is at least equal to the coverage which would be provided under a separate policy covering only the leased premises.

13.0 Right of Entry

Lessor and its representatives may enter the leased property at any reasonable time for the purpose of inspecting the leased property, performing any work which Lessor elects to undertake made necessary by reason of Lessee's default under the term of this Agreement, exhibiting the leased property for sale, lease, or mortgage financing, or posting notices of non-responsibility under any mechanic's lien law; provided, however, that any such action by Lessor shall not unreasonably interfere with the rights of Lessee.

14.0 Assignment and Subletting

Lessee may not voluntarily assign this Agreement at any time without the consent of Lessor nor sublet the premises in whole or in part without Lessor's consent which shall not be unreasonably withheld in either case. Neither this Agreement nor the leasehold estate of Lessor nor any interest of Lessee hereunder in the demised premises or any buildings or improvements thereon shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of Law in any manner whatsoever, and any such attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Agreement.

15.0 Default

15.1 The occurrence of any of the following shall constitute an event of default:

- (A) Delinquency in the due and punctual payment of any rent or additional rent payable under this Agreement when such rent shall become payable for a period of three days after written notice.
- (B) Delinquency by Lessee in the performance of or compliance with any of the conditions contained in this Agreement other than those referred to in the foregoing subparagraph for a period of thirty days after written notice thereof from Lessor to Lessee, except for any default not susceptible of being cured within such thirty day period, in which event the time permitted to Lessee to cure such default, shall be extended for as long as shall be necessary to cure such default, provided Lessee commence promptly and proceed diligently to cure such default, and provided further that such period of time shall not be so extended as to jeopardize the interest of Lessor in this Agreement or so as to subject Lessor or Lessee to any civil or criminal liabilities.
- (C) Filing by Lessee in any court pursuant to any statute, either of the United States or any other state, of a petition in bankruptcy or insolvency or for reorganization,

or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or an assignment by Lessee for the benefit of creditors.

(D) Filing against Lessee in any court pursuant to any statute, either of the United States or of any state, of a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or trustee of all or a portion of Lessee's property, if within ninety days after the commencement of any such proceeding against Lessee's such petition shall not have been dismissed

15.2 Upon the occurrence of an event of default Lessor at any time thereafter may give written notice to Lessee specifying such event of default and stating that this Agreement shall expire on the date specified in such notice, which shall be at least three (3) days after the giving of such notice, and upon the date specified in such notice this Agreement and all rights of Lessee shall terminate. Upon the expiration of this Agreement pursuant to this article, Lessee shall peacefully surrender the leased property to Lessor, and Lessor, upon or at any time after any such expiration, may without further notice reenter the leased property and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess Lessee and remove Lessee and all other persons and property from the leased property and may have, hold, and enjoy the leased property and the right to receive all rental income therefrom.

15.3 At any time after any such expiration, Lessor may relet the leased property or any part thereof, in the name of Lessor or otherwise, for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Agreement) and on such conditions (which may include concessions of free rent) as Lessor, in its uncontrolled discretion, may determine, and may collect and receive the rent therefor. Lessor shall in no way be responsible or liable for any failure to relet the leased property or any part thereof, or for any failure to collect any rent due upon any such reletting.

15.4 No such expiration of this Agreement shall relieve Lessee of its liability and obligations under this Agreement, and such liability and obligations shall survive any such expiration. In the event of any such expiration whether or not the leased property or any part thereof shall have been relet, Lessee shall pay to Lessor the rent and additional rent required to be paid by Lessee up to the time of such expiration, and thereafter Lessee, until the end of which would have been the term of this Agreement in the absence of such expiration shall be liable to Lessor for, and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default: the equivalent of the amount of the rent and additional rent which would be payable under this Agreement by Lessee if this Agreement were still in effect, less the net proceeds of any reletting effected pursuant to the provisions of paragraph B of this article, and deducting all Lessors expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation of such reletting.

15.5 Lessee shall pay such current damages, herein called a deficiency, to Lessor monthly on the days on which the rent and additional rent would have been payable under this Agreement if this Agreement were still in effect, and Lessor shall be entitled to recover from Lessee, and Lessee shall pay to Lessor, on-demand, as and for liquidated and agreed on final damages for Lessee's default, an amount equal to the difference between the rent and additional rent reserved hereunder for the unexpired portion of the lease term and the then fair and reasonable rental value of the leased property for the same period. In the computation of such damages, the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the leased property for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent per annum. If the leased property or any part thereof is relet by Lessor for the unexpired term of this Agreement, or any part thereof, before the presentation of proof of such liquidated damages to any court, commission, or tribunal, the amount of rent reserved upon such reletting shall be deemed *prima facie* to be the fair and reasonable rental value for the part or the whole of the leased property so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of Lessor to prove for and obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the

time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the difference referred to above

15.6 Lessee hereby expressly waives, so far as permitted by law, the service of any notice of intention to reenter provided for in any statute, or of the institution of legal proceedings to that end. Lessee, for and on behalf of itself and all persons claiming through or under Lessee, also waives any right of redemption or reentry or repossession or to restore the operation of this Agreement in case Lessee shall be dispossessed by a judgment or by arrant of any court or judge or in case of reentry or repossession by Lessor. In case of any litigation under this Agreement, Lessor and Lessee, so far as permitted by law, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Agreement, the relationship of Lessor and Lessee, Lessee's use or occupancy of the leased property, or any claim of injury or damage; and further agree that the party not in default shall be entitled to recover from the party in default, all costs and reasonable attorneys' fees incurred by the non-defaulting party in enforcing its rights under this Agreement.

15.7 The terms "reenter", "entry", or "reentry", as used in this Agreement are not restricted to their technical legal meaning.

15.8 Any amounts not paid by Lessee to Lessor when due shall draw interest at the rate of eighteen percent per annum from the due date until paid. Payment of such interest shall not excuse or cure any default by Lessee under this Agreement.

15.9 No assent, express or implied, to any breach of one or more of the covenants or terms of this Agreement shall be deemed or construed to be a waiver of any succeeding or other breach.

15.10 As security for Lessee's payment of all rent, damages, and all other payments required to be made by this Agreement, Lessee hereby grants to Lessor a lien upon all property of Lessee now or subsequently located upon the leased premises. If Lessee abandons or vacates any substantial portion of the leased premises or is in default in the payment of any rentals, damage, or other payments required to be paid by this Agreement, Lessor may enter upon the leased premises, by force if necessary, and take possession of all or any part of the personal property, and may sell all or any part of the personal property at a public or private sale, in one or successive sales, with or without notice, to the highest bidder for cash and, on behalf of Lessee, sell and convey all or a part of the personal property to the highest bidder, delivering to the highest bidder all of Lessee's title and interest in the personal property sold. The proceeds of any such sale of personal property shall be applied by Lessor towards the cost of the sale and then toward the payment of all sums then due by Lessee to Lessor under the terms of this Agreement.

15.11 Notwithstanding anything to the contrary contained herein, Lessor's liability under this Agreement shall be limited to Lessor's interest in the leased premises.

16.0 Miscellaneous Provisions

16.1 The paragraph captions contained in this Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the term or provisions hereof.

16.2 Time is of the essence for this Agreement and all provisions herein.

16.3 This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

16.4 If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

16.5 This Agreement contains the entire agreement between the parties, and any executory agreement hereafter made shall be ineffective to change, modify, or discharge it in whole or in part, unless such executory agreement is in writing and signed by the party against whom the enforcement of the change, modification or discharge is sought.

17.0 Notices

Any notice from one party to another, required by the terms of this Agreement, may be delivered in-person to such party (delivery to one or two or more persons named as a party shall be effective notice to all) or shall be delivered by first-class mail, postage prepaid, and shall be deemed given one day after the date mailed, addressed to the respective parties as follows:

LESSOR:	Town Administrator Town of Lyons P.O. Box 49 Lyons, Colorado 80540	LESSEE:	Raul Vasquez P.O. Box 604 Lyons, Colorado 80540
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18.0 Memorandum: Recording

This Agreement shall be recorded with the Boulder County Clerk and Recorder.

19.0 Binding Effect

This Agreement shall bind and extend to the heirs, representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date last written below,

[Remainder of page left intentionally blank; signature page follows]

LESSOR: TOWN OF LYONS, COLORADO

Mayor Nicholas Angelo

Date: 4/20, 2022

ATTEST:

LESSEE: RAUL VASQUEZ

By:

Date: May 6, 2022

STATE OF COLORADO
COUNTY OF BOULDER

The foregoing instrument was acknowledged before me this 6 day of
May, 2022, by Raul Vasquez.

Witness my hand and official seal.

My Commission expires: December 12, 2023

(S E A L)

NOTARY PUBLIC