

**TOWN OF EMPIRE,
COLORADO**

ORDINANCE 262

**AN ORDINANCE OF THE TOWN OF EMPIRE, COLORADO AUTHORIZING
THE SECOND AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE
TOWN OF EMPIRE AND GUANELLA PASS BREWING COMPANY IN
ACCORDANCE WITH C.R.S. § 31-15-713**

WHEREAS, the Town of Empire (the "Town") is the owner of certain real property known as the "Hard Rock Cafe"; and

WHEREAS, the Town has leased that real property to the Guanella Pass Brewing Company ("Lessee") for use as a brewery/restaurant pursuant to a lease agreement executed on January 21, 2020; and

WHEREAS, due to the Corona Virus 2020 through 2021 crisis, breweries and restaurants have not been permitted to allow in-person dining, creating significant economic stress for these businesses; and

WHEREAS, the Town amended the lease agreement on June 16, 2020 to provide rent relief through December 31, 2020 as fully reflected in the First Amendment to the Lease Agreement; and

WHEREAS, the Corona Virus crisis persisted beyond December 31, 2020; and

WHEREAS, the Town desires to amend the lease agreement to provide rent relief through June 30, 2021 as fully reflected in the Second Amendment to the Lease Agreement, attached hereto as **Exhibit A** and incorporated by reference; and

WHEREAS, the Town deems the Second Amendment to be in the best interests of the Town; and

WHEREAS, pursuant to C.R.S. § 31-15-713(1)(c), municipalities may lease any real estate deemed by the governing body to be in the best interest of the municipality and may do so, through ordinance, for a period of more than one year.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF
THE TOWN OF EMPIRE, COLORADO, AS FOLLOWS:**

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

- (a) Approves the Second Amendment for the Project in substantially the form attached as **Exhibit A**.

- (b) Authorizes the Town Clerk and the Town Attorney, in consultation with the Mayor, to make such changes as may be necessary to correct any non-material errors or language in the Second Amendment that does not increase the obligations of the Town.
- (c) Authorizes the Mayor to execute the Second Amendment and the Town Clerk to attest such signature.

INTRODUCED AND PASSED ON FIRST READING THIS 15th DAY OF JUNE 2021.

ADOPTED AND ORDERED PUBLISHED ON SECOND READING THIS 20th DAY OF JULY 2021.

TOWN OF EMPIRE, COLORADO

Wendy Koch
Mayor

ATTEST:

J. P. ...
Town Clerk

SECOND AMENDMENT TO THE 2020 LEASE AGREEMENT

This **SECOND AMENDMENT TO THE LEASE AGREEMENT** (the “Second Amendment”), is entered into on this 20th day of July 2021, between the **TOWN OF EMPIRE**, a Colorado Statutory Town hereinafter referred to as the “Town” or “Lessor”; and **GUANELLA PASS BREWING COMPANY, LLC**, a Colorado limited liability company; hereinafter referred to as “Lessee.” Individually, Lessor and Lessee may be referred to as “Party” and collectively as “Parties.”

WHEREAS, the Parties entered into a Lease Agreement on January 21, 2020 (the “Lease”); and

WHEREAS, the Parties wish to amend the Lease to modify the lease payment schedule.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Paragraph 2 of the Lease is hereby amended as follows:

Rent. Rent shall be paid in accordance with the following schedule:

\$1 per month for February 1, 2020, through June 30, 2021, excluding May.

\$400 per month for July 1, 2021, through December 31, 2021, excluding October, and November.

\$800 per month for January 1, 2022, through July 31, 2022, excluding May.

\$1200 per month for August 1, 2022, through February 1, 2024, excluding May, October, and November.

All payments are due on the first day of each month. Should Lessee fail to timely tender the agreed upon rent payment on or before the first of each month, a late fee of ten percent (10%) of the agreed upon rent payment shall apply. Any payment not received by the 15th of the month for which it is due shall constitute an immediate and material breach of this Lease Agreement.

Option to Extend: Lessee shall have the option to extend this Lease for an unlimited number of additional 4-year terms (each an “Option”). Lessee shall have the option to renew the Lease on or before February 1, 2024 (first option) and February 1, 2028 (second option) and February 1 of each subsequent 4-year term by giving written notice to the Lessor of its intent to extend the Lease. The parties agree to discuss, in good faith, the monthly lease rate at the time Lessee provides Lessor with written notice of its intent to exercise each option contained herein. If the Lessee and Lessor are unable to agree on a rent amount prior to the start of the option period, the Lease will be terminated.

2. Paragraph 1 of the Lease is hereby amended as follows:

This Lease shall have a four (4) year term commencing on February 1, 2020, and expiring on February 1, 2024, with an option to renew for up to seven (7) additional four-year terms pursuant to the provisions of Paragraph 2 below, unless sooner terminated in accordance with the provisions set forth in this Lease.

3. Subgraph 7(b) of the Lease is hereby amended as follows:

(b) The brewery/restaurant will be open for business at least 250 days each year of the Lease (a year of the Lease is February 1, 2020 through January 31, 2021, February 1, 2021 through January 31, 2022, February 1, 2022 through January 31, 2023, and February 1, 2023 through January 31, 2024, and similarly for each subsequent year this Lease is in effect). The brewery/restaurant will be considered open for business under this subsection if it is open to serve customers for at least four (4) hours in a given day. Lessee, should it so choose, may operate three hundred and sixty-five days a year, and is not required to close its business except as otherwise dictated by federal, state, or local law.

4. Except as amended or modified herein, all other terms and conditions of the Lease, shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the Lease on the date set forth above.

LESSOR:

TOWN OF EMPIRE

By: Wendy Koch
Mayor Wendy Koch

LESSEE:

GUANELLA PASS BREWING
COMPANY, LLC

By: [Signature]
Steve Skalski

ATTEST: [Signature]
Town Clerk Jeannette Piel