

**CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 39
Series of 2020**

TITLE: A RESOLUTION CONCERNING THE LEASE BACK OF THE PROPERTY LOCATED AT 4084 WADSWORTH BOULEVARD TO EDWARD E. COLSON, III TRUST ET. AL.

WHEREAS, the City of Wheat Ridge (City) seeks to widen and make other improvements to Wadsworth Boulevard between 35th Avenue and 48th Avenue (Project); and,

WHEREAS, on January 14, 2019, the City Council approved Resolution No. 04-2019, and thereby conveyed to the City Manager, or his designee, the authority to negotiate with private landowners and purchase those property rights necessary to construct and maintain the Project; and

WHEREAS, pursuant to Resolution No. 04-2019, City staff negotiated in good faith with the owners of 4084 Wadsworth Blvd (Subject Property), Edward E. Colson, III Trust et. al. (Colson), to purchase same for the Project; and

WHEREAS, as a condition of the timely sale of the Subject Property to the City, Colson negotiated a short-term lease back of the Subject Property from the City; and

WHEREAS, the City's post-sale lease back of the Subject Property to Colson facilitates the continued use of the Subject Property as the site of a Mexican restaurant until at least September 30, 2020; and

WHEREAS, pursuant to C.R.S. § 31-15-713(c), so long as term of the lease is less than one year, through the passage of an authorizing resolution finding that it is the best interests of the City to do so, the City may lease any real estate it owns, together with any facilities thereon; and

WHEREAS, the City Council hereby finds that it is in the best interests of the City to lease 4084 Wadsworth Blvd, together with any facilities thereon, to Colson, until September 30, 2020.


NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, that:

Section 1: Lease between the City and Colson Approved.


The lease between the City and Colson, a copy of which is attached to this Resolution as **Exhibit A**, and incorporated herein by reference, is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2: Effective Date. This Resolution shall become effective upon adoption.

DONE AND RESOLVED this 13th day of July 2020



Bud Starker, Mayor

ATTEST:


Steve Kirkpatrick, City Clerk



Exhibit A

**Lease between the City and Edward E. Colson, III Trust et. al. (Colson)
[attached]**

PROJECT NO. NHPP 1211-086
PARCEL NO. AP-26
PROPERTY ADDRESS 4084 Wadsworth Blvd, Wheat Ridge, CO 80033

**LEASE AGREEMENT
(Building & Land)**

THIS LEASE AGREEMENT or LEASE, made and entered into this 13th day of July, 2020, by and between the City of Wheat Ridge, hereinafter referred to as "Lessor", and Edward E. Colson, III Trust dated January 12, 1995 and Karen Jeanne Colson and Dennis R. Sciotto and Carol Ann Sciotto Community Property Trust Agreement dated January 9, 2002 and Greg Ronald Velazquez and Cynthia Lee Velasquez, collectively, hereinafter referred to as "Lessee".

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. PREMISES. Lessor hereby leases and demises unto Lessee the building located at 4084 Wadsworth Boulevard, Wheat Ridge, CO 80033, including land, improvements and other rights appurtenant thereto, hereinafter referred to as Premises or Building. The Premises, known and described as 4084 Wadsworth Boulevard, Wheat Ridge, CO 80033, includes approximately 19,875 square feet of land and a building consisting of 1,519 square feet of rentable floor area; the legal description for the Premises is attached hereto, made a part hereof and marked "Exhibit A".
2. TERM. The term of this lease shall begin at on (date of closing) (Date of Closing) and end on earlier of the date the Lessee fully vacates the Premises, or September 30, 2020, whichever comes first, subject to the cancellation and termination provisions herein.
3. RENT. Lessee shall pay \$10 per (year) as rent during the term hereof.
4. SECURITY DEPOSIT. Lessee has paid and Lessor has received a security deposit in the amount of \$ to be held as a deposit against the full performance of every provision of the agreement, and as a deposit against any damages caused to the leased premises by Lessee, its guests or invites. The Lessor shall have the right to use said deposit in full or in part payment of any rental obligation or damage caused by the Lessee or failure by Lessee to leave the premises in good repair and in a clean condition. Lessee understands that they cannot use the security deposit as a payment of any rental obligation without written permission from the Lessor.
5. USE. a. The Premises shall be used solely for restaurant purposes and no other. Lessee shall not use or permit the Premises to be used for any other purpose without Lessee's prior written consent. Any other use of the Premises shall constitute a material breach of this lease and may cause this lease to terminate immediately at the Lessor's option.

b. Lessee shall not do or permit to be done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, or which is prohibited by the standard form of fire insurance policy. Lessee will not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose. Nor shall the Lessee cause, maintain or permit any nuisance in, or about the premises or commit or suffer to be committed any waste in or upon the Premises.

c. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises or the Building.

6. TAXES, UTILITIES, MAINTENANCE AND OTHER EXPENSES. It is understood and agreed that this Lease shall be an absolute net lease with respect to the Lessor, and that all taxes, assessments, insurance, utilities and other operating costs and the cost of all maintenance, repairs, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting the leased Premises shall be borne by the Lessee and not by the Lessor so that the rental return to the Lessor shall not be reduced, offset or diminished directly or indirectly by any cost or charge. Lessee shall maintain the Premises in good repair and in tenable condition free of trash and debris during the term of this Lease. Lessor shall have the right to enter the Premises at any time for the purpose of making necessary inspections.

7. HOLD HARMLESS AND INSURANCE. The Lessee shall save, indemnify and hold harmless the Lessor for any liability for damage or loss to persons or property resulting from Lessee's occupancy or use of the Premises.

8. OWNERSHIP. As of the Date of Closing, the Lessor is the owner of the Premises. The undersigned warrants and represents himself to be the authorized agent of the Lessor for the purposes of granting this lease.

9. LEASE ASSIGNMENT. Lessee is authorized to allow Daniel Hernandez to sublease the Premises to continue the present use of the Premises as Raliberto's Mexican Food restaurant. Otherwise, Lessee shall not assign this lease and shall not sublet the demised Premises without specific written permission of the Lessor and will not permit the use of said Premises to anyone, other than Lessee, its agents or employees, without the prior written consent of Lessor.

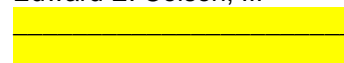
10. DAMAGE AND DESTRUCTION. In the event the leased Premises are rendered untenable or unfit for Lessee's purposes by fire or other casualty, this Lease will immediately terminate and no rent shall accrue to Lessor from the date of such fire or casualty. In the event the leased Premises are damaged by fire or other casualty so that there is partial destruction of such Premises or such damage as to render the leased Premises partially untenable or partially unfit for Lessee's purposes, either party may, within five (5) days of such occurrence, may terminate this lease by giving written notice to the other party. Such termination shall be effective not less than fifteen (15) days from the date of mailing of the notice.

11. NO VIOLATION OF LAW. The Lessee shall not commit, nor permit the commission of, any act or thing, which shall be a violation of any ordinance of the municipality, City, County, or of any law of the State of Colorado or the United States. The signatories hereto aver that they are familiar with 18-8-301, et seq., (Bribery and Corrupt Influences) and 18-8-401, et seq., (Abuse of Public Office), C.R.S., as amended, and that no violation of such provisions is present. The signatories aver that to their knowledge, no employee of the Lessor has any personal or beneficial interest whatsoever in the service or property described herein.

12. NOTICE. Any notice required or permitted by this lease may be delivered in person or by e-mail to the e-mail address provided below or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

LESSOR:
City Manager &
Public Works Director, Mark Westberg
City of Wheat Ridge

LESSEE:
Edward E. Colson, III



7500 West 29th Avenue
Wheat Ridge, CO 80033

mwestberg@ci.wheatridge.co.us
pgoff@ci.wheatridge.co.us

edcolson@roadrunner.com

Notice of change of address shall be treated as any other notice. The Lessee warrants that the address listed above is the Lessee's current mailing address and that the Lessee will notify the Lessor in writing of any changes in that address within ten (10) days of such change. The Lessor may instead of delivering or sending the notice, post the notice on the leased premises.

13. **NEW PERMANENT STRUCTURES OR IMPROVEMENTS.** No new permanent structures or improvements of any kind shall be erected or moved upon the Premises by the Lessee without the express written permission of the Lessor. Any such structure or improvement erected or moved upon the Premises without the express written consent of the Lessor may be immediately removed by the Lessor at the expense of the Lessee. Further, any structures, improvements, or items of any kind remaining on the Premises at the termination of the lease will be considered abandoned by the Lessee and may be immediately removed by the Lessor at the Lessee's expense.

14. **HAZARDOUS MATERIALS.** The Lessee agrees to defend, indemnify and hold harmless the Lessor and any employees, agents, contractors, and officials of the Lessor against any and all damages, claims, liability, loss, fines or expenses, including attorney's fees and litigation costs, related to the presence, disposal, release or clean-up of any contaminants, hazardous materials or pollutants on, over, under, from or affecting the Premises, which contaminants or hazardous materials the Lessee or its employees, agents, contractors or officials has caused to be located, disposed, or released on the Premises. The Lessee shall also be responsible for all damages, claims and liability to the soil, water, vegetation, buildings or personal property located thereon as well as any personal injury or property damage related to such contaminants or hazardous materials.

15. **BINDING AGREEMENT.** This Lease Agreement shall be binding upon and inure to the benefit of the partners, heirs, executors, administrators, and successors of the respective parties hereto.

16. **DEFAULT.** If Lessee shall fail to observe, keep or perform any of the other terms, agreements or conditions contained herein or in regulations to be observed or performed by Lessee and such default continues for a period of 30 days after notice by Lessor or beyond the time reasonably necessary for cure, if such default is of a nature to require in excess of 30 days to remedy, and/or this Lease or any interest of Lessee hereunder shall be levied upon by any attachment or execution, then any such event shall constitute an event of default by Lessee. Upon the occurrence of any event of default by Lessee hereunder, Lessor may, at its option and without any further notice or demand, in addition to any other rights and remedies given hereunder or by law, do any of the following:

(a) Lessor shall have the right, so long as such default continues, to give notice of termination to Lessee. On the date specified in such notice (which shall not be less than 3 days after the giving of such notice) this Lease shall terminate.

(b) In the event of any such termination of this Lease, Lessor may then or at any time thereafter, re-enter the premises and remove therefrom all persons and property and again repossess and enjoy the premises, without prejudice to any other remedies that Lessor may have by reason of Lessee's default or of such termination.

(c) The amount of damages which Lessor may recover in event of such termination shall include, without limitation, all legal expenses and other related costs incurred by Lessor following Lessee's default

including reasonable attorneys' fees incurred in collecting any amount owed hereunder and any damages to the Building beyond its present condition.

(d) Following the termination of this Lease or Lessee's right to possession hereunder (or upon Lessee's failure to remove its personal property from the premises after the expiration of the term of this Lease), Lessor may remove any and all personal property located in the Premises and place such property in a public or private warehouse or elsewhere at the sole cost and expense of the Lessee; such warehouse shall have all rights and remedies provided by law against Lessee as the owner of such property. In addition, in the event that Lessee shall not immediately pay the cost of storage of such property after the same has been stored for a period of 30 days or more, Lessor may sell any or all thereof at a public or private sale in such manner and at such times and places as Lessor in its sole discretion may deem proper, without notice to or demand upon Lessee. Lessee waives all claims for damages that may be caused by Lessor's removing or storing or selling the property as herein provided, and Lessee will indemnify and hold Lessor free and harmless for, from and against any and all losses, costs and damages, including without limitation all costs of court and attorneys' fees of Lessor occasioned thereby. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact with the rights and powers necessary in order to effectuate the provisions of this subparagraph (d). Such appointment shall be deemed coupled with an interest.

(e) If Lessee abandons the premises, Lessor may permanently change the locks and Lessee shall not be entitled to a key or re-entry.

(f) This Lease is entered into at a closing on Lessor's acquisition of the Premises from Lessee. Lessor will provide to Lessee a 30 day notice to vacate at that closing, as required by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act. None of the remedies described in this paragraph 16 can be exercised within the 30 day notice to vacate time frame. If Lessee does not default on this Lease, Lessee will be allowed to stay in occupancy for the term of this Lease, which extends beyond the 30 day notice to vacate time frame.

17. COMPLETE AGREEMENT. This Lease, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed by the Parties.

18. CAPTIONS, CONSTRUCTION, AND LEASE EFFECT. The captions and headings used in this Lease are for identification only, and shall be disregarded in any construction of the Lease provisions. All of the terms of this Lease shall inure to the benefit of and be binding upon the respective heirs, successors, and assigns of both the Lessor and the Lessee. If any provision of this Lease shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act then the remaining provisions of this Lease shall remain in full force and effect.

19. APPLICABLE LAW. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Lease. Any provision of this lease, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of compliant, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Lease to the extent that this agreement is capable of execution.

20. LIMITED LIABILITY COMPANY AUTHORITY. If Lessee signs as a limited liability company, each of the persons executing this Lease on behalf of the Lessee does hereby covenant and warrant that Lessee is a duly authorized and existing limited liability company, that Lessee is qualified to do business in the State of Colorado, that the limited liability company has full right and authority to enter into this Lease, and that each person signing on behalf of the limited liability company is authorized to do so.

21. LIABILITY EXPOSURE. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Lessor, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of 24-10-101, et seq., C.R.S. (Colo. Govt. Immunity Act). Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Lessor to the above-cited laws.

22. INSURANCE:

(a) The Lessee shall obtain and maintain, at all times during the duration of this Lease, insurance in the kinds and amounts detailed below. The Lessee shall require any Contractor working for them on the Premises to obtain like coverage. The following insurance requirements must be in effect during the entire term of the Lease. Lessee shall, at its sole cost and expense, obtain insurance on its inventory, equipment and all other personal property located on the Premises against loss resulting from fire, theft or other casualty.

(b) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all employees acting within the course and scope of their employment and work on the activities authorized by this Lease in Paragraph 5.

(c) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering Premises operations, fire damage, independent Consultants, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

1. \$1,000,000 each occurrence;
2. \$2,000,000 general aggregate;
3. \$50,000 any one fire.

If any aggregate limit is reduced below \$2,000,000 because of claims made or paid, the Lessee, or as applicable, its Contractor, shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Lessor a certificate or other document satisfactory to the Lessor showing compliance with this provision.

(d) If any operations are anticipated that might in any way result in the creation of a pollution exposure, Lessee shall also provide Pollution Legal Liability Insurance with minimum limits of liability of \$1,000,000 Each Claim and \$1,000,000 Annual Aggregate. The Lessor shall be named as an Additional Insured to the Pollution Legal Liability policy. The Policy shall be written on a Claims Made form, with an extended reporting period of at least two year following finalization of the Lease.

(e) Umbrella or Excess Liability Insurance with minimum limits of \$1,000,000. This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include the Lessor as an Additional Insured.

(f) The Lessor shall be named as Additional Insured on the Commercial General Liability Insurance policy. Coverage required by the Lease will be primary over any insurance or self-insurance program carried by the City of Wheat Ridge.

(g) All insurance required by this Lease Agreement shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the Lessor by certified mail to the address contained in this document.

(h) The insurance policies related to the Lease shall include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against, its agencies, institutions, organizations, officers, agents, employees and volunteers.

(i) All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Lessor.

(j) In order for this lease to be executed, the Lessee, or as applicable, their Contractor, shall provide certificates showing insurance coverage required by this Lease to the Lessor prior to the execution of this lease. No later than 30 days prior to the expiration date of any such coverage, the Lessee or Contractor shall deliver to the Notice Address of the Lessor certificates of insurance evidencing renewals thereof. At any time during the term of this Lease, the Lessor may request in writing, and the Lessee or Contractor shall thereupon within 10 days supply to the Lessor, evidence satisfactory to the Lessor of compliance with the provisions of this section. Insurance coverage must be in effect or this lease is in default.

(k) If the Lessee engages a Contractor to act independently from the Lessee on the Premises, that Contractor shall be required to provide an endorsement naming the City of Wheat Ridge as an Additional Insured on their Commercial General Liability, and Umbrella or Excess Liability policies.

23. HOLDOVER OPTION.

(a) Lessor may allow Lessee to continue to sublease the Premises to Daniel Hernandez and to continue the present use of the Premises as Raliberto's Mexican Food restaurant (Sublessee) after September 30, 2020, the expiration of the lease term. The decision to allow the option for the holdover is within the sole discretion of the Lessor.

(b) If Lessor elects to allow the option for holdover, Lessor will provide the representative of Lessee indicated in paragraph 12 above with written notice of the decision. And such notice must be provided prior to September 30, 2020.

(c) If Lessor elects to allow the option for holdover, all of the terms and conditions of this Lease Agreement shall remain in effect until the termination of the holdover option, and to the extent that the terms and conditions contained in this paragraph 23 conflict with the other terms and conditions of this Lease Agreement, the terms and conditions contained in this paragraph 23 shall prevail.

(d) If Lessor elects to allow the option for holdover, at any time after September 30, 2020, the Lessor can terminate the holdover option for any reason, thereby terminating the Lease Agreement and all of the Lessor's and Sublessee's right(s), in law or equity, to the continued use or occupancy of the Premises. To terminate the holdover option, Lessor will provide the representative of Lessee indicated in paragraph 12 above with written notice of such termination. Lessee and its Sublessee shall vacate the Premises within fifteen (15) days of the date the Lessor provides Lessee notice of termination of the holdover option.

(e) After fifteen (15) days of the date the Lessor provides Lessee notice of termination of the holdover option, Lessor may then, or at any time thereafter, re-enter the Premises, permanently change the locks and neither Lessee nor Sublessee shall be entitled to a key to or re-entry into the Premises, and Lessor may remove therefrom all persons and property and, again, repossess and enjoy the Premises, without prejudice to any other remedies that Lessor may have.

(f) If Lessor or its Sublessee do not voluntarily vacate the premises after fifteen (15) days of the date the Lessor provides Lessee notice of termination of the holdover option, and Lessor initiates any legal action to remove the Lessor and its Sublessee from the Premises, Lessor shall be entitled to recover from the Lessee all legal expenses and other related costs incurred by Lessor, associated with the removal of the Lessee or Sublessee from the Premises.

(g) After fifteen (15) days of the date the Lessor provides Lessee notice of termination of the holdover option, or at any time thereafter, if Lessor or its Sublessee do not voluntarily vacate the premises, Lessor may remove any and all personal property located in the Premises and place such property in a public or private warehouse or elsewhere at the sole cost and expense of the Lessee; such warehouse shall have all rights and remedies provided by law against Lessee as the owner of such property. In addition, in the event that Lessee shall not immediately pay the cost of storage of such property, after the same has been stored for a period of 30 days or more, Lessor may sell any or all thereof at a public or private sale in such manner and at such times and places as Lessor in its sole discretion may deem proper, without notice to or demand upon Lessee. Lessee waives all claims for damages that may be caused by Lessor's removing or storing or selling the property as herein provided, and Lessee will indemnify and hold Lessor free and harmless for, from and against any and all losses, costs and damages, including without limitation all costs of court and attorneys' fees of Lessor occasioned thereby. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact with the rights and powers necessary in order to effectuate the provisions of this subparagraph (g). Such appointment shall be deemed coupled with an interest.

WITNESS WHEREOF, the parties hereto have executed this lease agreement on the day and year first above written.

LESSEE:

Edward E. Colson, III Trust dated January 12, 1995 and Karen Jeanne Colson and Dennis R. Sciotto and Carol Ann Sciotto Community Property Trust Agreement dated January 9, 2002 and Greg Ronald Velazquez and Cynthia Lee Velasquez

Attest

By _____
(Name)
Title _____

STATE OF COLORADO)
) ss
COUNTY OF)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20__ by _____.

Witness my hand and official seal.
My commission expires _____.

Notary Public

Address

LESSOR:

CITY OF WHEAT RIDGE

By WJ Star _____

ATTEST:

Jh _____

STATE OF COLORADO)
) ss
COUNTY OF)

The foregoing instrument was subscribed and sworn to before me this 16th day of July, 2020
by William Joseph Starke _____.

Witness my hand and official seal.
My commission expires 04-27-2021.

Amber L. Garrett

Notary Public

Address
7500 W 29th Ave
Wheat Ridge, CO 80033

AMBER L. GARRETT
Notary Public
State of Colorado
Notary ID # 20094011937
My Commission Expires 04-27-2021