

FARM LEASE AGREEMENT

THIS FARM LEASE AGREEMENT (“Agreement”) is made and entered into as of the 1st day of February, 2023, by and between The City of Grand Junction, a Colorado home rule municipality (“Lessor”), and Kenny Romisch (“Lessee”).

Recitals

A. Lessor is the owner of that certain real property commonly known as the Matchett Farm in the City of Grand Junction, County of Mesa, State of Colorado, as depicted on **Exhibit “A”** attached hereto and incorporated herein by reference, hereinafter referred to as “the Property”. Lessor acquired the Property to facilitate development of the Property by the City as a regional park. Timing for the eventual use and development of the Property as a regional park is uncertain, pending planning processes and identification of funding sources. Because a majority of the Property is now a working farm, Lessor believes it is in the best interest of Lessor, the City and its inhabitants that the Property continue to be used as a farm until such time that the City is fully prepared to develop the Property as a regional park. It is the express intent of Lessor that a majority of the Property remains productive as a farm, that the water rights appurtenant to the Property be used to their full and maximum extent, that all aspects of the Property be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee desires to lease those portions of the Property as depicted on **Exhibit “A”**, hereinafter referred to as the “Demised Premises”, for the purposes of maintaining the Demised Premises as a farm in accordance with the desires and express intent of Lessor. Lessee has represented to Lessor that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Demised Premises to the highest practicable standard and to use the water rights appurtenant to the Property to their full and maximum extent, all in accordance with the desires and express intent of Lessor.

C. Lessor is actively engaged in planning for park facilities on the Property. Lessor was actively engaged in planning a road connection project at the location of Matchett Farm in 2022 for which the acreage included in such project is excluded from the Property as depicted in **Exhibit “A”**. This is a total of 6 acres that is excluded.

D. Park development may begin to occur in 2024 as part of a proposed ballot for the April 4, 2023 election to construct a Community Recreation Center. Therefore, the parties intend and understand that no action or investment shall be taken by the Lessee in 2023 that would create an expectation of use for farming activities or harvest in 2024 without first notifying Lessor and obtaining Lessor’s express permission.

NOW, THEREFORE, for and in consideration of the recitals above and the mutual promises, terms, covenants, conditions, duties and obligations to be kept by Lessor and Lessee as more fully hereafter set forth, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. Lessor hereby leases the Demised Premises to Lessee, and Lessee hereby accepts and leases the Demised Premises from Lessor, for the term set forth in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Demised Premises and the water and water rights, ditches and ditch rights appurtenant thereto, all in accordance with the provisions of this Agreement.

2. Term. The term of this Lease shall commence on February 1, 2023, and shall continue through January 31, 2024, subject to the limitations stated herein, at which time this Lease shall expire.

3. Agreement as to Farmable Acreage. Based on the best information available to both Lessor and Lessee, the parties agree that the Demised Premises consists of 101 acres of Farmable Land plus 27.3 acres of “fallow” area, as shown on Exhibit A. For the lease term, the “fallow” area may be farmed by Lessee with the exclusion of cultivating corn, except that the Lessor reserves the right to require Lessee to cease farming operations on the “fallow” area with a written 10 day notice to the Lessee. _

4. Rent.

4.1 Lessee agrees to pay Lessor \$4,250.00 per year as rent for the Demised Premises, in addition to all other sums and expenses, including but not limited to possessory interest taxes, which Lessee shall be required to pay to fulfill Lessee's duties and obligations hereunder.

4.2 The annual rental payment set forth in paragraph 4.1 above shall be due and payable by Lessee coincident with Lessee's signing of this Agreement and prior to Lessee's entry of the Demised Premises, but no later than March 1. In the event Lessee fails to pay to Lessor the rental payment set forth in paragraph 4.1 on or before March 1, and prior to Lessee's entry of the Demised Premises, this Agreement and the lease of the Property to Lessee shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

5. Duties and Obligations of Lessee. As consideration for the lease of the Property, Lessee agrees to:

5.1 Thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Demised Premises in a responsible and prudent husband-like manner; to plant, grow and harvest upon and from the Farmable Lands crops of corn, hay, grass and alfalfa and no other plants or crops without the prior written consent of Lessor.

5.2 Use the Demised Premises for farming purposes only and for no other purpose whatsoever; Lessee agrees that Lessee will not use the Demised Premises nor allow any other person to use the Demised Premises for any purpose prohibited by the applicable laws of the United States of America, the State of Colorado, the County of Mesa, the City of Grand Junction, or any other governmental authority or any jurisdiction having authority over uses conducted upon the Property.

5.3 Maintain, clean out and keep in good repair and free from litter and debris and, as is practicable, free from weeds, all ditches, diversion structures, flumes, headgates and other structures necessary to fully irrigate the Farmable Lands in accordance with historical irrigation practices and to not allow irrigation water to overrun any furrows or otherwise cause damage to the Property or the property of any other person or entity.

5.4 Waive and forego any claim, cause of action or demand Lessee may have against Lessor, its officers, employees and agents, and the City of Grand Junction, its officers, employees and agents, for injury to or destruction of any property of Lessee or any other party that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any third person; and to indemnify and hold Lessor, its officers, employees and agents, and the City of Grand Junction, its officers, employees and agents, harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of, or resulting from, Lessee's use of the Demised Premises.

5.5 Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation and storage of any hazardous, toxic or regulated substance or material, including, but not limited to, herbicides, pesticides and petroleum products. Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such material or substance shall be reported immediately to Lessor. Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by Lessee.

5.6 Continue to allow and accommodate public recreational uses upon the Property which have customarily and historically been allowed by Lessor. Lessee understands and agrees that the general public shall have daytime access to the roads and trails located upon the Property for non-motorized purposes including, but not limited to, walking, running, bicycling and horse riding.

5.7 Lessor will maintain in good repair all fences and gates presently located upon the Demised Premises.

5.8 Lessee shall not commence any farming or cultivation activity, including but not limited to plowing, planting, fertilizing, purchase of seed for the Property, that will not be completely harvested and removed from the Property by January 31, 2024 without express written permission of Lessor.

6. Irrigation of the Demises Premises. The irrigation of the Demised Premises is an essential duty and obligation to be undertaken by Lessee on behalf of Lessor. Irrigation of the Demised Premises by Lessee shall be undertaken in accordance with the following provisions:

6.1 Lessor agrees to pay the water assessments, when the same become due and payable, which are levied by authorities having jurisdiction and control over the irrigation water appropriated to the Demised Premises.

6.2 Lessee agrees to pay for all costs and fees, when the same become due and payable, which are charged for water usage in excess of the base amounts set forth in subparagraph 6.1 above.

6.3 Lessee shall apply to the Demised Premises the base water and such additional water as is necessary to irrigate crops during the historical irrigating season. Any failure by Lessee to irrigate the Demised Premises as set forth above, or any of the following acts or omissions on the part of Lessee with respect to the water rights appurtenant to the Demised Premises, shall be grounds for immediate termination of this Lease:

a. failure or refusal to cultivate the Demised Premises and/or make use of available water to the Farmable Lands without the prior written consent of Lessor; or

b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Demised Premises in such a manner as to allow the full application of water rights to the Demised Premises.

6.4 Lessee agrees to apply water in accordance to Furrow Irrigation Guidelines as stated by the Colorado State University Extension Tri River Area to the crops stated in 5.1 of this lessee agreement; corn, hay, grass, and alfalfa. A copy of the Guidelines is attached and incorporated by this reference as if fully set forth.

7. Livestock Grazing. The grazing of livestock upon the Demised Premises during the term of this Lease is not permitted.

8. Duties and Obligations of Lessor. Lessor agrees to:

8.1 As set forth in subparagraph 6.1, pay the base water assessments, when the same become due and payable, levied by authorities having jurisdiction and control over the irrigation water appropriated to the Demised Premises.

8.2 Allow Lessee to quietly enjoy the Demised Premises and all service buildings located upon the Property which are necessary for Lessee to comply with Lessee's duties and obligations pursuant to this Agreement, including scales, Butler buildings and tack sheds; provided, however, that all residences located upon the Property are specifically excluded from this Lease.

8.3 Lessor agrees to maintain all road ways throughout the Demised Premises in a manner appropriate for recreational use stated in Section 5.6; for daytime access for non-motorized purposes including, but not limited to, walking, running, bicycling, and horse riding.

8.4 Lessor agrees to maintain by spraying, cutting, or physical means all weeds or unwanted vegetation in roadways, walkways, areas adjacent to ditches and open areas not a part of the lease agreement.

respect to a subsequent similar default, but rather, Lessee's rights shall, with respect to a subsequent similar default terminate upon the giving of notice by Lessor.

11.3 Lessee shall not assign or sublease the Demised Premises, or any right or privilege connected therewith, or allow any other person, except as provided herein and except the employees of Lessee, to occupy the Demised Premises or any part thereof. This Lease shall not be assigned nor subleased. Any attempted assignment, sublease or permission to occupy the Property conveyed by Lessee shall be void and shall, at the option of Lessor, provide reasonable cause for Lessor to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval by Lessor.

12. Miscellaneous Provisions.

12.1 Lessor, by entering into this Farm Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to farm the Demised Premises and to carry out the duties, obligations, terms and provisions of this Agreement. Lessor hereby reserves the right to at reasonable times have its officers, employees, agents, contractors, and consultants enter into and upon the Property and every part thereof and to do such acts and things as may be deemed necessary for the protection of Lessor's interests therein. Such access shall include the right to perform acts which Lessor may in its sole and absolute discretion determine to be necessary for the design, development and use of the Property by Lessor or Lessor's assigns for purposes other than agricultural. The foregoing may include, but not be limited to, the performance of boundary surveys, topographic surveys, soils sampling and engineering studies.

12.2 It is expressly agreed that this Lease is one of lease and not of partnership. Lessor shall not be or become responsible for lost profits, lost opportunities or any debts contracted by Lessee. Lessee shall keep the Property and the demised premises free from any and all liens whatsoever, including, but not limited to, liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall save, indemnify and hold Lessor and the City of Grand Junction, and the officers, employees and agents of each harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the duties, obligations, terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code, rule or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold Lessor and the City of Grand Junction, and the officers, employees and agents of each harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

12.3 The parties to this Farm Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Lessee agrees to defend, indemnify and hold Lessor harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of or in connection with this Lease.

12.4 No modifications, alterations or additions of improvements upon the Property shall be performed by Lessee without the express written consent of Lessor first being obtained, which consent shall not be unreasonably withheld.

12.5 Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security any of Lessee's interest in any portion of the Property.

13. Notices. All notices to be given with respect to this Agreement shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or by courier service, as follows:

To Lessor: City of Grand Junction
1340 Gunnison Ave
Grand Junction, CO 81501
Tel: (970) 254-3866

To Lessee: Kenny Romisch
718 35 8/10 Road
Palisade, CO 81526
Tel: (970) 464-5670
Cell: (970) 261-4359

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered; (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Demised Premises to Lessor in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Demised Premises upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to Lessor the sum of \$100.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Demised Premises. The parties agree that it would be difficult to establish the actual damages to Lessor in the event Lessee fails to vacate and surrender the Demised Premises upon the expiration or termination of this Lease, and that said \$100.00 daily fee is an appropriate liquidated damages amount.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 In the event Lessor uses its Attorney or engages an attorney to enforce Lessor's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

15.2 The invalidity of any portion of this Farm Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

15.3 This Farm Lease Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

16. Total Agreement; Applicable to Successors. This Farm Lease Agreement contains the entire agreement between the parties. All representations made by any officer, agent or employee of either party, unless included herein, are null and void and of no effect. Except for automatic expiration or termination, this Agreement may not be changed, altered or modified except by a written instrument subsequently executed by both parties. This Farm Lease Agreement and the duties, obligations, terms and conditions hereof apply to, shall be binding upon, the respective heirs, successors and authorized assigns of both parties.


The parties hereto have each executed and entered into this Farm Lease Agreement as of the day and year first above written.

The City of Grand Junction



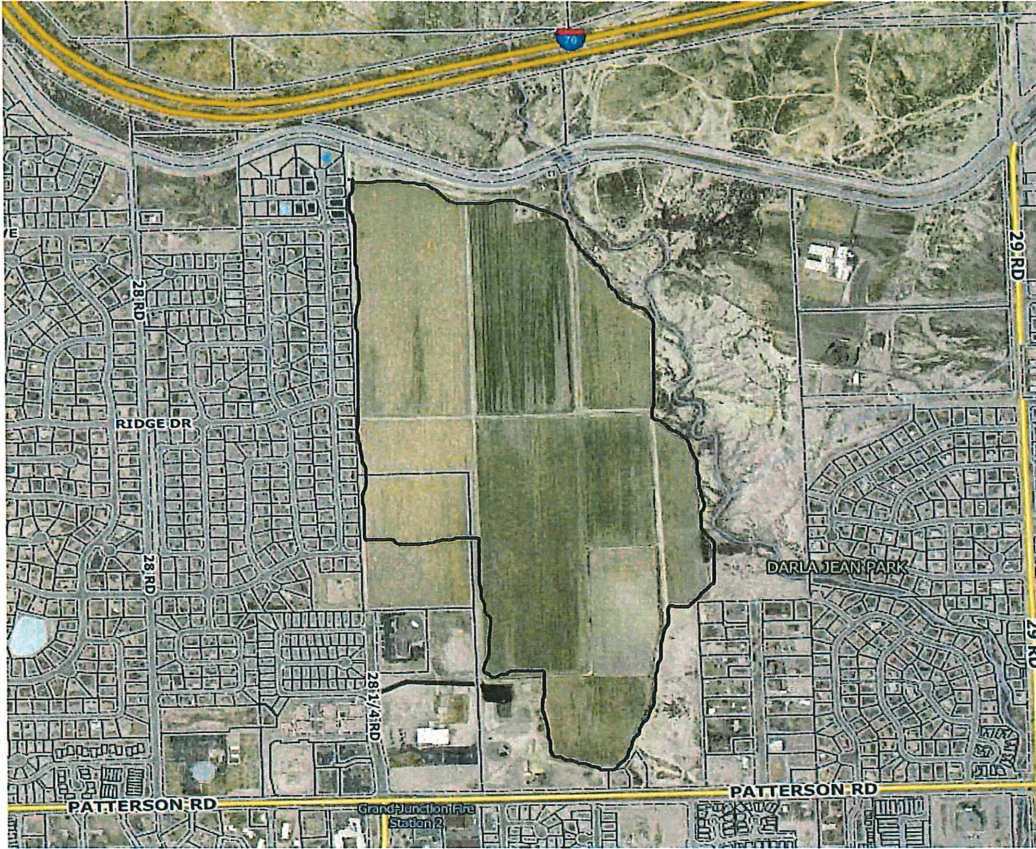
Ken Sherbenou, Parks & Recreation Director

Lessee:



Kenny Romisch
Date of Birth:
Social Security Number:
Driver's License Number:

Exhibit A



The black outlined area shows the leased acreage for farming.